PHILADELPHIA BAR ASSOCIATION

1101 MARKET STREET, 11TH FLOOR, PHILADELPHIA, PENNSYLVANIA 19107-2911

(215) 238-6348 FAX (215) 238-1159

LAWRENCE J. BEASER
CHANCELLOR

OFFICE
1200 FOUR PENN CENTER PLAZA
PHILADELPHIA, PA 19103-2590
(215) 569-5510 FAX (215) 569-5555

**TESTIMONY OF LAWRENCE J. BEASER,
CHANCELLOR, PHILADELPHIA BAR ASSOCIATION,
BEFORE PENNSYLVANIA HOUSE JUDICIARY COMMITTEE,
SUBCOMMITTEE ON COURTS,
REGARDING JUDICIAL REFORM IN PENNSYLVANIA**

Thursday, October 6, 1994, 1:30 p.m.
Room 646, Philadelphia City Hall
Philadelphia, Pennsylvania

Mr. Chairman and members of the Subcommittee, my name is Lawrence J. Beaser. I am a partner with the Philadelphia law firm of Blank, Rome, Comisky & McCauley and Chancellor of the Philadelphia Bar Association.

As Chancellor of the Philadelphia Bar Association, I am very pleased to be here today on behalf of our more than 12,500 members. Many of our members practice in the various state courts within Philadelphia and in various other jurisdictions throughout the Commonwealth. As Chancellor, I frequently am the recipient of comments about the operations of our courts.

During this past year, those comments have increasingly had a sharper focus and, at least among Philadelphia lawyers, there seems to be a consensus that our courts and judiciary have lost much public respect. I fear that the image of justice in Pennsylvania has lost much of its luster.

The Philadelphia Bar Association welcomes the opportunity to address you today and to communicate some of our most serious of our concerns.

When Governor Casey convened the Pennsylvania Judicial Reform Commission in July, 1987, it was in response to a growing and disturbing sentiment at the time that Pennsylvania's courts did not enjoy a sufficient reputation for excellence and integrity. Many court observers hoped that this blue-ribbon Commission, headed by Superior Court Judge Phyllis W. Beck, would begin the difficult work of bringing true reform to our courts. We hoped for reform as comprehensive and fundamental as Arthur Vanderbilt's work in New Jersey, which helped end the days when "Jersey Justice" was a joke and began an era in which the New

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Jersey state courts became among the best-respected in the nation.

The Philadelphia Bar Association endorsed the recommendations of the Beck Commission after their release in 1988. Those recommendations for improving our courts encompass a wide variety of reforms. They are, in fact, a blueprint for effecting the transformation of our court system.

One significant recommendation of the Beck Commission - wholesale revision of our judicial discipline system - came to fruition when an overwhelming percentage of voters endorsed a judicial discipline constitutional amendment in May, 1993. As Chairman Dermody noted in his closing remarks on the Senate floor last week, the Larsen impeachment proceedings have illuminated some of the serious flaws in the previous disciplinary system.

We should be proud of our new system, but its adoption is not enough. Significant but as yet unfulfilled recommendations of the Beck Commission remain to be implemented. I want to discuss two particular recommendations today. One is that we eliminate our elective system of choosing appellate judges in favor of a merit-based appointive system. The other is statewide funding and unified budgeting for a unified statewide justice system. I will focus primarily on these two recommendations.

By way of background, I have been involved with judicial reform efforts in Pennsylvania for over twenty years. As Counsel to the Governor in the 1970's, I met with representatives of organized labor, led by the AFL-CIO, and the Pennsylvania and Philadelphia Bar Associations, when they strongly urged then-Governor Shapp to adopt a voluntary merit selection system for gubernatorial appointments and to support a merit selection constitutional amendment.

I was one of the drafters of the executive order creating Governor Shapp's Trial and Appellate Court Nominating Committees. This became the first advisory merit selection system established in Pennsylvania for both the trial and appellate courts.

I administered this system, assisted the Governor in making judicial appointments, and drafted judicial reform proposals for the Governor.

Since the issuance of the Beck Report in 1988, I have acted on behalf of the Philadelphia Bar Association and Pennsylvanians for Modern Courts as a drafter of judicial reform constitutional amendments proposed to implement the Beck Commission Report.

As Chancellor of the Philadelphia Bar Association during 1994, I have had the unique opportunity to represent our Association during a time when scrutiny of the courts and our judges, by both the legal profession and the public, is perhaps higher than ever before.

Last week, the Senate of Pennsylvania was admonished, with words inspired by William Penn: "Now is the hour for the men and women of the Pennsylvania Senate to give motion to government, to give life to the constitution, to give hope to the people, and to restore integrity to the courts." Those are your words, Chairman Dermody. You were urging the Senate to do what it has now done, to find Rolf Larsen guilty of an article of impeachment and remove him from office.

Those words very aptly describe what should now be our collective goal.

I submit to you that to accomplish that goal, convicting Rolf Larsen is not enough.

Though and important step, it is not enough to have adopted the judicial discipline constitutional amendment.

It is not enough to adopt so-called reforms which in fact amount to nothing more than band-aids for a cancer-riddled system which cries out for far more serious help.

And, with great respect, it is not enough to conduct still more hearings on judicial reform.

We must instead demonstrate to the public by our actions that we will do whatever it takes to effect real reforms.

We must find a way to put the best and the brightest on the bench, regardless of hometown, race, gender or political affiliation. The people of Pennsylvania deserve nothing less. Merit selection of judges is the best way to accomplish these goals.

I. Judicial Selection Reform.

Our support for judicial selection reform predates the Beck Report. It predates the recent events surrounding our Supreme Court. It predates another embarrassing situation which you may recall - the Roofer's scandal which broke in 1986 and dominated headlines in Philadelphia and across the state for more than two years.

In fact, our support for merit selection of judges goes back much further. A chronicle of the Association's 150th Anniversary in 1952 proudly describes the Association's "active

campaign of information and education in support of the 'Pennsylvania Plan' for improving the caliber of the judiciary through adoption of a constitutional amendment providing for a better method of judicial selection." That "better method" of selecting judges was an early precursor to the merit selection plans embodied in House Bill 2, introduced by Representative Evans and many co-sponsors this legislative session.

Among our membership, a strong desire for a merit-based judicial selection process is a consistently high priority. When we surveyed our membership in 1984 and again in 1990, each time over 90% of our members identified passage of a merit selection constitutional amendment as an issue of primary importance.

A change to merit selection will give the people of Pennsylvania a more distinguished, more independent and more representative appellate bench. We deserve the very best the legal profession has to offer. That can be accomplished only if we give up the political election of judges in favor of merit selection.

Most of the arguments in favor of changing from contested political election of judges to a merit selection system focus on the problems inherent in the elective process itself. To win election to the bench, a successful judicial candidate need not prove to voters that he or she will be a good judge. Instead, the most important assets a judicial candidate in Pennsylvania can have today are name recognition, personal wealth or the ability to raise massive amounts of campaign contributions.

The Beck Commission reported that in 1983, the successful candidate for Supreme Court raised campaign funds totalling almost $193,000. Six years later, in 1989, the amount raised by the successful candidate had risen to more than $1.4 million, more than half of which was contributed by members of the legal profession. While the winning Supreme Court candidate in 1993 raised $300,000, the amount raised by the losing candidate - over $1.5 million - shows that the price of a Pennsylvania judicial campaign has not dropped.

Fund-raising by judicial candidates gives rise to troubling issues which are qualitatively different from those faced by candidates for other elective offices. Candidates for non-judicial office are able to garner financial support from those who believe in their stated positions and ideology.

Judicial candidates, on the whole, raise campaign funds from their natural constituency: the members of the bar. In the wake of the Larsen impeachment, how can we defend the practice of judges raising money from people who may soon appear before them seeking favorable decisions for one side in a dispute? How can

we expect the public to have confidence in our system of justice when the system we use to select judges gives the appearance that the quality of justice can be affected by campaign contributions or personal friendships? How can we continue to perpetuate a system which gave rise to Justice Larsen's notorious "special list"?

There are those who point to the fact that in our democratic system, each of you as members of the House of Representatives stand for election, the Governor is elected, and members of the Senate are elected. They argue that judges should similarly face the people in contested, partisan elections.

Such arguments miss the point - and the genius - of our system of separation of powers and checks and balances.

Each of you as a member of the House represents your district and, collectively, you represent all the people of Pennsylvania. Your job is to represent your constituents in the legislative process and to look out for their interests.

The Governor and the members of the Senate also serve in a representative capacity.

Judges, however, are different. When I go into court, I do not want the judge representing any of the parties, nor would you. We want that judge to decide the case based on the law and the facts presented in that court.

The constituency of a judge must be the constitution and the laws of the Commonwealth. The mission of a judge is justice.

Both in appearance and in fact, the present system of electing appellate judges through partisan, political elections widely misses the mark.

Many of our judges are honest, hardworking, and indeed, bring honor and dignity to the courts of this Commonwealth. Unfortunately, these good judges are often tainted with the broad brush of condemnation that scandal brings. Moreover, under our present system of choosing judges, those good, honest, hard-working judges would seem to have reached the bench despite the system and not as a result of it. We can only guess at how many men and women who are highly qualified for the bench have chosen not to undergo the elective process. Our system of justice can ill-afford to lose them.

I am not taking issue with the right of the people to decide under our retention system whether a judge, at the end of his or her term, should be removed from office. However, that decision can be based on a judge's record in office, not on the

judge's fund-raising ability, ballot position or county of residence.

I am not here today to tell you that merit selection is a perfect system. Nor will I tell you that a change to a system of choosing appellate judges based on merit will remove politics from the process.

However, if our objective is to provide the people of Pennsylvania with the very best and most representative appellate bench possible, merit selection is a vast improvement over the elective system. Since 1950, every state that has changed the way it selects judges for statewide positions has moved away from highly politicized election systems - all but one changed to a merit selection system. Georgia, the exception, changed from a system of partisan elections to non-partisan elections.

Opponents of merit selection frequently point to the federal system of judicial selection as an example of a merit selection system, and argue that we do not need that kind of system. Certainly the federal system can be justly criticized as highly political and the federal judicial selection process often may have little to do with true merit. But the proposals we support provide for true merit selection, rather than the political appointment of judges which often occurs under the federal system. The federal system of judicial selection is not a true merit selection system.

Unlike the federal system, H.B. 2 provides that candidates for judicial appointment be screened carefully by a Judicial Nominating Commission. Under both measures, the Nominating Commission will be appointed by the Governor and 8 of its 12 members will be selected from a list of individuals submitted by the President Pro Tempore of the Senate, the House Speaker, and the Senate and House Minority Leaders. Of the 12, half will be lawyers and half will be laypersons. No more than half will be from the same political party.

Significantly, those submitting names to the Governor for selection to the Nominating Commission would, under the proposed constitutional amendments, take into account that the Commission should include both men and women, members of the labor, business, and civic communities, and members who are from racially and ethnically diverse backgrounds who also reflect the geographical diversity of the Commonwealth. In making appointments to the Nominating Commission, the Governor shall, under the proposed constitutional amendments, ensure that its ultimate composition is similarly diverse and representative.

Upon the creation of a vacancy on the Supreme, Superior or Commonwealth Courts, the Nominating Commission will advertise the vacancy and solicit applications. It will then select five

persons of demonstrated competence, judgment and integrity to submit to the Governor for consideration, first taking into account the applicants' qualifications and then again considering the goal that each appellate bench should include both men and women, and judges and justices from racially and ethnically diverse backgrounds, and who reflect the Commonwealth's geographic diversity as well.

Many people have expressed concern that an ideological litmus test has been applied under the federal selection system from time to time. Unlike the federal system, the merit selection proposal before you does not readily allow for a litmus test on any particular issue as a prerequisite to recommendation by the Nominating Commission.

From the five names forwarded to the Governor for each vacancy, one will be nominated by the Governor to fill the vacancy. The Senate has the final word, however, as the Governor's nominee must then be confirmed by a majority vote of the Senate. After being elevated to the bench in this way, a justice or judge may be retained for an additional term or removed from the bench by a retention vote of the people.

There are those who are concerned that, under a merit selection system, the people will lose their voice in the selection process. It is true that citizens will no longer vote directly for candidates for our appellate courts under the current merit selection proposal contained in H.B. 2.

However, the Nominating Commission will be comprised of a group of people who reflect the diverse perspectives of the citizens of Pennsylvania. Both the Governor and the Senate will certainly be as responsive to public opinion on judicial candidates as they are on legislative issues. And ultimately the public will have the last word - after seeing how any particular judge performs, the voters have the chance either to retain or remove that judge.

Under our Constitution, the voters <u>should</u> also have the last word on whether to abandon the present elective system in favor of one which allows judges to remain true to their constituent: justice. On behalf of the Philadelphia Bar Association, I urge you to give the people of Pennsylvania the opportunity to make that choice.

I. <u>Funding the Courts.</u>

We must also begin to finance the judicial branch like a co-equal branch of government, rather than a poor relation which must beg, hat in hand, for operating funds each year.

According to the Justice Department's Bureau of Justice Statistics[1], in 1990, total justice spending by federal, state and local governments was, at $74 billion, a mere three percent of total government spending. The amount spent on courts? One third of one percent.

In Philadelphia, that serious lack of funding is compounded by the fact that funding for court operations and personnel is a municipal responsibility, and the Commonwealth pays only the salaries of judges. That scheme presents its own unique problems.

As reported by the Philadelphia Court of Common Pleas Judicial Study Committee in 1990, "[W]hen the state legislature acts to provide more judges, it contributes nothing to the cost necessary for facilities and support staff. It is unrealistic to expect Philadelphia, which is currently unwilling or unable to fund our present needs adequately, to contribute additional monies for new courtrooms and staff."[2]

The obvious solution, recommended by the Beck Commission in 1988, is for the state to assume responsibility for the full funding of local courts. In fact, in County of Allegheny v. Commonwealth of Pennsylvania, the Pennsylvania Supreme Court mandated statewide funding, but did not address the issue of how or when it should occur. The court instead ordered that the existing system remain in place until the General Assembly had an opportunity to enact funding legislation. Unfortunately, nothing has changed since then.

Common sense dictates that the quality of justice rendered by our courts is critically affected if the level of funding provided is insufficient. Competitive judicial and professional salaries, appropriate compensation for court-appointed counsel, adequate facilities and equipment, funding for ethics and other training for judges, all these things should be more than a wish list. Again, it is imperative that the judicial branch be funded at levels sufficient to afford it the ability to accomplish its work.

Earlier this year, the Legal Intelligencer reported that, as a result of the General Assembly's failure to adopt increased filing fees, court computerization project and other

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[1] "Just Solutions: Seeking Innovation and Change in the American Justice System," American Bar Association (1994) at 55.

[2] Philadelphia Court of Common Pleas Judicial Study Committee Report, May, 1990 at 9.

automation projects have been put on hold.[3] It was also reported that money was not appropriated in the state budget to fund a study aimed at eradicating gender and racial bias in state courts, to fund mandatory education for judges, or to establish a policy planning office.

How significant is the loss of these programs? I expect you will hear more about that from Judge Bonavitacola when he testifies. I would like, briefly, to highlight just a few of our concerns in this area.

III. Mandatory Continuing Legal Education For Judges

As you are surely aware, Pennsylvania lawyers are now required by the Supreme Court annually to complete a number of hours of mandatory legal education, including ethics and professionalism training. The Supreme Court has been criticized for imposing that requirement on lawyers while at the same time not imposing any such requirement on themselves or any other members of the judiciary.

Surely the Larsen case has amply demonstrated that judges need continuing legal education in ethics and professionalism as much as do lawyers. I urge the General Assembly to provide the Judicial Branch of our state government with sufficient funds to pay for such training. I believe that such an educational program will be helpful in improving the image of our system of justice.

IV. Gender And Racial Bias In The Courts

The need to address issues of gender and racial bias in our courts is equally important. The Pennsylvania Constitution guarantees equal justice under the law, regardless of race or sex.

But many lawyers and litigants believe that women and people of color are in fact treated differently in our courts, perhaps not in every case, but often enough that the problem is systemic, not occasional.

In November, 1993, the Philadelphia Bar Association petitioned the Pennsylvania Supreme Court to create a commission to investigate racial and ethnic bias in the state courts. Because I cannot improve on its framing of the issue at stake here, I quote the supporting brief:

> ... [T]here is no such thing as partial justice. If justice is denied to anyone,

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3 Legal Intelligencer, July 11, 1994.

especially on the basis of bigotry or systemic bias, it is denied to everyone. The halls of justice, where our citizens come to seek redress of wrongs, should not also wrong its participants.

The funding of a program to determine whether in fact our courts are tainted by systemic systems of bias against women and people of color should not be viewed as an option. We must determine whether Pennsylvania justice is indeed blind. If it is not, we must effect changes to ensure that it is.

To continue to ignore the needs of our justice system, to expect that they will somehow be met without the appropriation of funds, is dangerous. If an airplane is not routinely maintained, no one is surprised if that plane subsequently crashes. If we continue to ignore the needs of our court system, it too will crash, and the consequences will shake the very foundations of our society.

Thank you for your the opportunity to appear before you today. I think Chairman Dermody's remarks of last week are worth repeating again: "Now is the time to give motion to government, to give life to the constitution, to give hope to the people, and to restore integrity to the courts."

I hope you will consider that the mission of this committee.

The Philadelphia Bar Association stands ready to assist you in that effort in any way we can.