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Testimony of Jon F. LaFaver  
March 2, 1995

This testimony is the joint effort of myself and John A. Maher. We offer it as interested citizens and lawyers, and as representing our own considered views, and not those of any institution or association with which either of us may now or previously have been identified.

We address only specific proposals of House Bill 10 and House Bill 838, without expressing any general view of those Bills, except to commend this committee for undertaking a subject which in our view cries out for attention.

First, we note the provision appearing in both bills which would remove "King's Bench power" from the Supreme Court of Pennsylvania. This is a far reaching provision which would deprive the Supreme Court of many incidents necessary to its function as "the highest Court of the Commonwealth". The Court presently enjoys King's Bench power, and has done so at least since the time of an act of the General Assembly in 1722, which confers a plenary grant of all powers exercised by the English Courts of King's Bench, Common Pleas and Exchequer.

The Court of King's Bench is the oldest in England, it being by 1722 the highest Court of the realm (other than Parliament). It was King's Bench which exercised supervisory power over all royal courts, and since it was the ONLY court with this power, it is the source of the Pennsylvania Supreme Court's power to oversee the other courts of the Commonwealth - a power which certainly must be vested somewhere, and logically in the "highest court of the Commonwealth". This is only one example of King's Bench power, and many others are enumerated, inter alia, in Blackstone's Commentaries, which was a major source of legal authority in the American colonies in 1722. The grant of this power to the Supreme Court of Pennsylvania was a shorthand way of conferring the ultimate legal authority in that Court, rather than be itemizing all the powers which King's Bench then exercised.

Since the legislature is constitutionally authorized to establish the jurisdiction of the several courts of the Commonwealth, it is certainly appropriate for the legislature to grant or limit power as it sees fit. On the other hand this action should occur in such a manner as will be most certain, and which will give rise to the least amount of confusion and varying interpretation. If certain specific powers which had resided in the King's Bench are to be eliminated, then it would be more appropriate to set those powers out specifically, instead of the generic withdrawal which will undoubtedly leave a void.

For instance, it would be possible to restrict the power of the Supreme Court to issue writs of prohibition (one of the powers of King's Bench) to, say, only constitutionally created courts, and thereby eliminating the exercise of that power from other commissions and quasi-judicial bodies, without entirely eliminating the other historical powers of King's Bench.

To proceed to another matter: the creation of the Judicial Council. It appears unclear in the Bill whether the Chief Justice of the Supreme Court has general administrative authority over all courts only as chairman of the Judicial Council - or whether he has joint power with the Council which could be exercised by him acting alone. This uncertainty arises from the use

of the words beginning with "together....." in lines 18 through 20 of Bill No. 10.

Another question arises in connection with the rule making power. Lines 26 through 30 on page 2 extend the power of the Judicial Council to "recommend" rules to the Supreme Court. Lines 24 through 26 on page 3 requires the Supreme Court to adopt these recommended rules. This appears to take all rule making power out of the "highest court of the Commonwealth" and place it in the hands of a body, the majority of whose members are members of lower courts.

Regarding the selection of the "head judge" of the various courts, the Bill provides a variety of approaches, not unlike that presently existing. It is perhaps time to add some consistency to this process, and either allow the most senior judge to serve, or allow the judges of each court to elect their own "head". To insert the Governor into the process appears to us to extend the executive power into the judicial area overmuch.

We are among those citizens who would advocate regional selection of all appellate court judges - a subject not addressed by the bills presently under consideration. However, that concept is suggested by the make-up of the proposed Judicial Council. It certainly would be inappropriate not to include members from each of the appellate courts. It does not appear so clear why the President Judges of the Courts of Common Pleas in Philadelphia and Allegheny counties are specially singled out for two seats on the Council, while the other 65 counties have to make do with three seats. Likewise the inclusion of a member from the city courts of Philadelphia and Pittsburgh gives special advantage to those two places. We would propose consideration of six members from the Common Pleas courts and the city courts, two to be selected by the presiding judge of each of the appellate courts, with no two to be selected from the same county. The non-judge members of the Council should not all be appointed by the Chief Justice alone, but should be selected by the Council members from all the appellate courts. They should be from counties not otherwise represented on the Council. It would certainly be appropriate to include the President of the Pennsylvania Bar Association.

We believe that it is efficient, logical, fiscally responsible and proper for the high judicial courts of the Commonwealth to be headquartered in the state capital. The creation of a judicial center in Harrisburg would advance that concept, and would be consistent with the procedure now existing in many other states. Perhaps the requirement that all regular sessions of those courts be held at the judicial center could be relaxed somewhat while still retaining the principle that the main situs of those courts will be in Harrisburg. It seems especially appropriate for the Superior Court, which has the largest number of judges, and which most often sits in panels, to have some flexibility in this matter.

Many areas included in these two bills have not been considered in this testimony, because of time restraints. However, based upon those items which we have been able to give our attention, we would urge careful and close scrutiny of both bills, and the widest possible input from interested segments of our society before a final proposal is offered to the full legislature.

We thank you for offering us the opportunity to express our thoughts on these very significant legislative proposals. To the extent that this committee might find our future input useful regarding the sections of these bills on which we have not opined due to time constraints, we stand ready to offer our continued cooperation.