



Pennsylvanians for Modern Courts

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TESTIMONY PRESENTED TO HOUSE JUDICIARY COMMITTEE PUBLIC HEARING ON HOUSE BILLS 10 AND 838

**Edmund B. Spaeth, Jr., PMC Board Chairman and
former President Judge of the Superior Court**

Harrisburg, March 2, 1995

Thank you for inviting Pennsylvanians for Modern Courts (PMC) to speak today on proposals for what can only be seen as sweeping administrative reform of Pennsylvania's appellate courts.

PMC is a statewide, non-partisan organization dedicated to reforming the judicial system to achieve what all citizens are entitled to: a qualified, independent judiciary in which they will have confidence. Unhappily, as this Committee well knows, the public does not have such confidence today.

Many reforms are necessary. Some, such as reform of the judicial discipline system, have already been accomplished by the General Assembly and approved of by the voters. Others have not, and I refer primarily to the urgent need to amend the Constitution to provide for the selection of appellate court judges based on merit instead of through partisan political elections.

Chairman Piccola has a demonstrated record of leadership and commitment to merit selection, and we greatly look forward to returning to this Committee again this session when merit selection is on your agenda. While the changes proposed in House Bills 10 and 838 represent a step in restoring the public's trust, they are not nearly enough. We urge this Committee to go full throttle and endorse a total package of judicial reform that has merit selection of appellate judges as its centerpiece.

PMC first wants to commend Chairman Piccola for his enormous effort in putting together these comprehensive reforms and for inviting the public's examination. Due to the shortness of time between the bills' introduction and this hearing, PMC has not had an opportunity to adopt a formal position. We instead offer our comments and hope that they will aid in your deliberations.

JUDICIAL COUNCIL

In the past, PMC has supported the recommendation of the 1988 Governor's Judicial Reform Commission that the Chief Justice be given administrative authority and responsibility over the entire judicial system aided by a statewide Judicial Conference that would issue recommendations for improvement for advisory purposes only. This is the typical role of Judicial Council-like bodies in other states, although opinions about the effectiveness of Judicial Councils seem to vary greatly.

These proposals go quite a bit farther, and PMC has no objection in principle to assigning supervisory and administrative powers to a Judicial Council as long as that Council has only

judge-members. As proposed, the Council would have at least four and potentially 6 non-judge members who might cast deciding votes on how the courts are run. This, we believe, would be an improper intrusion on the separation of powers.

We, therefore, suggest that the Committee consider (1) eliminating the three lawyer-members from the Council, (2) allowing the Court Administrator to serve only as a non-voting ex-officio member, and (3) removing the provision permitting designated legislative members to either dictate the docket of, or vote on matters before, the Judicial Council. This would create a more manageable 10-member Judicial Council with nine voting members, all members of the judiciary. The Committee may wish to consider having the Common Pleas Judges from other than Allegheny and Philadelphia counties selected by other members of the Council, rather than by the Chief Justice.

In devising a Judicial Council, it might be instructive for the Committee to resolve how much power to grant the Chief Justice. The bills appear to create an unfortunate ambiguity in determining who has the ultimate authority. I refer the Committee to Article V, section 10 of House Bill 10 that permits the exercise of authority by the Judicial Council together with the Chief Justice.

Perhaps the Committee might consider a provision clarifying the authority of the Chief Justice as the chief officer of the judicial system with responsibilities defined by general by-laws adopted by the Judicial Council. We think it undesirable were the door left open for Council members to vote away the Chief Justice and make him/her nothing more than a mere figurehead.

An appropriate analogy might be to think of the Chief Justice as the Chief Executive Officer, the Court Administrator as the Chief Operating Officer and the Judicial Council as the Board of Directors. Just as in a corporate setting the Board of Directors does not get involved in the minutiae of the day-to-day operations, so too should the Judicial Council be spared from "micromanaging" the unified judicial system. An executive committee chaired by the Chief Justice might be appointed to direct Council operations between regularly scheduled meetings.

Finally, PMC knows that the legislature has found the Court's involvement in rule-making quite troublesome. We understand that Robert L. Byer will speak to that issue today, and we would simply add our endorsement to his conclusion that the federal system works quite well and should be emulated.

CENTRALIZATION OF THE COURTS

The question before the Committee is what would be the most effective way for the appellate courts to work.

At the outset, we suggest that the General Assembly consider authorizing a feasibility study for implementing the Pennsylvania Judicial Center before passage of the constitutional amendment. Notwithstanding the risk that doing so might be a superfluous expenditure in the event the voter referendum is defeated, it would be tremendously disturbing were the referendum to pass only to discover later that the creation of a Judicial Center is prohibitively expensive or futile for some other reason.

Even if a feasibility study indicated that a Judicial Center were indeed possible, PMC still has some concerns regarding centralization. On the one hand, we see tremendous symbolic significance to having the state's highest court in the Capitol. Indeed most states have a central headquarters for their court of last resort, and typically that headquarters is located at the seat of government. Collegiality would be enhanced were the Justices required to hear arguments and maintain chambers at a centralized location. Although moving the entire Supreme Court operations to Harrisburg would initially be rather costly, there is a great deal of validity to the argument that it would be more economical over the long haul.

On the other hand, we can appreciate those who would urge the legislature not to prohibit justices from maintaining chambers in their local districts. In New York, where the Court of Appeals is one of the nation's most highly regarded highest Courts, justices are given chambers in their home districts in which to work during the weeks that they are not either hearing oral argument or deliberating on cases in Albany. In addition, there is some appeal to allowing the Supreme Court to have a presence throughout the state by occasionally scheduling oral argument in locations other than Harrisburg.

Given these differing viewpoints, all of which we find compelling, PMC does not have strong sentiments about the issue of centralization as regards the Supreme Court. We feel otherwise, however, regarding the Superior and Commonwealth Courts.

Each of the two intermediate appellate courts sits much more often, and hears a significantly greater number of argued cases, than does the Supreme Court. It would be far more practical for these courts to continue to sit on circuit, in three-judge panels in the Superior

Court or in panels or individually in the Commonwealth Court, than requiring all oral arguments to be held in Harrisburg. The cost to litigants, although perhaps not prohibitive, cannot be discounted. Finally, we see no need for requiring Superior Court judges to maintain chambers in Harrisburg.

Centralizing the administrative offices of the appellate courts has a great deal of appeal although we suggest that the Committee might consider maintaining satellite offices in Philadelphia and Pittsburgh for filing purposes only.

SUPREME COURT

Selection of the Chief Justice:

PMC has always considered the issue of selecting the Chief Justice in the context of merit selection. Given appointed justices, all of whom would be highly competent, we would then prefer gubernatorial appointment subject to Senate confirmation.

As long as partisan elections continue, we see difficulties in each of the methods most common for selecting a Chief Justice. Selection by the justices themselves would invite internecine warfare with the distasteful prospect of justices making promises to secure votes. Selection by the governor injects politicking into a Court already seen as too political. Finally, selection by seniority raises the danger of an inept administrator or someone lacking any interest in the job.

Until merit selection is achieved, PMC suggests the following compromise as the lesser of three evils: selection of the Chief Justice by seniority but only for a single five-year term.

PMC recommends adoption of the same method for choosing the President Judges of the Superior and Commonwealth Courts.

King's Bench Power:

Lastly, if the Committee decides to eliminate the Supreme Court's King's Bench power, PMC recommends that the General Assembly reserve the power to confer special extraordinary powers to the Supreme Court by statute should it later wish to do so.

CONCLUSION

In conclusion, PMC urges the Committee to reflect on why these bills are being considered at all. If the answer is because of the public's concern about the independence, integrity and quality of our judicial system, then the next question is whether these bills will relieve that concern.

Once again, PMC suggests that they will not. Even if House Bills 10 and 838 are adopted, we ought not be misled into believing that truly meaningful reform has been achieved. As we have testified before this Committee in the past, and as we will continue to testify, reform will happen only when who sits on the appellate bench is no longer determined by big money, offensive television advertising and all the other accoutrements of partisan elections that have so shaken the public's confidence.

Thank you for giving PMC the opportunity to present this testimony.