

REMARKS OF WALTER M. PHILLIPS, JR.

My name is Walter Phillips and I have been a member of the Pennsylvania Bar for over 45 years, during which time I have been an Assistant District Attorney in Philadelphia, an Assistant United States Attorney for the Southern District of New York and Special Prosecutor/Deputy Attorney General in Philadelphia for police and official corruption. In private practice, I have specialized in white collar criminal defense and civil commercial litigation. For the last seven years of the Rendell Administration, I was Chairman of the Pennsylvania Commission on Crime and Delinquency. During the course of my career, I have tried over 100 jury trials, 50 of which were in the federal district court for the Southern District of New York, considered by many to have the finest judges in the country.

Today you will hear a variety of reasons why Pennsylvania should convert from electing its judges by popular vote to appointing judges based on a merit selection system. All of those reasons are valid, indeed compelling, in my view. They include the fact that voters know almost nothing about the candidates running for judge when they enter the polling booth, since there is such little media coverage of judicial races and judicial candidates are restricted in what they can say on the stump. Another valid reason for converting to an appointive system is the fact that outrageous sums of money are raised in judicial races from attorneys who later appear before those judges after they are elected. I agree with each and every one of these reasons for changing the system of selecting judges, but I wanted to give the Committee a slightly different perspective based on a recent personal experience of attending a swearing-in of a Common Pleas Judge in Philadelphia.

The swearing-in I refer to took place several weeks ago for an attorney who was elected judge in the fall. I should point out that this person very much deserves to be a judge under any system we have of selecting judges. He is bright, honest, exercises good judgment and has a wealth of experience – 25 years in the Philadelphia District Attorney's Office. But he did not get elected judge because of those admirable qualities, as everyone at the swearing-in undoubtedly knew. No -- the gauntlet that he had to go through, which is the same for everybody running for Common Pleas Judge in Philadelphia, is unfathomable. It requires spending huge sums of the candidate's own money, payable to ward leaders and other political operatives, money which is euphemistically known in Philadelphia politics as "street money", and which is used to pay for what is also euphemistically known as "election day expenses." A state grand jury report of a decade ago and a Philadelphia Magazine article a few years back described the amounts spent by a judicial candidate for Common Pleas Court in Philadelphia as running into the hundreds of thousands of dollars.

Presiding at the swearing-in was a Pennsylvania Supreme Court Justice who took pains to recognize all the elected officials present, including ward leaders. One former Councilman and ward leader in particular that he singled out was Leland Beloff, who some years ago received a ten year federal prison sentence for trying to extort \$1 million from a Philadelphia developer.

When it came time for the newly elected Common Pleas Judge to give his remarks, he devoted virtually all of his time to thanking those who had helped him get elected. In particular, he recognized a former Congressman and ward leader by the name of Ozzie Myers. Mr. Myers, the Committee may recall, was famously heard on tape in

the Abscam bribery investigation saying to an FBI agent posing as an Arab sheik, as he accepted a \$50,000 bribe for selling out his public office, "Money talks, bullshit walks", words that were heard literally around the world and hardly put Philadelphia and its politics in a good light.

As I sat listening, I thought back to a swearing-in I had attended in New York over 20 years ago. My friend and former colleague, John Walker, was being sworn in to the Second Circuit Court of Appeals, a federal appellate court to which judges are appointed by the President. In his remarks, Judge Walker talked about the important business of the court to which he had just become a member, and how it had developed into one that commanded the respect and admiration of courts throughout the nation, particularly in the areas of antitrust, admiralty, intellectual property and securities law. Judge Walker cited some of the jurists who had sat on the Court, men like Learned Hand who was revered by judges and attorneys for his clear and concise opinions.

Needless to say, the two swearing-ins were quite in contrast to one another, with one sounding like a lesson in good government and the other more like a political rally. But it is easy to be critical, and it would be a mistake to compare the Philadelphia Common Pleas Court to the Second Circuit Court of Appeals, or to expect the caliber of a Learned Hand to grace the bench in Philadelphia. However, as long as we have a system of electing judges we will always have, and can expect to have, not only the infusion of vast sums of money, but the involvement of those who have gone to jail for violating their public trust, now posing as political operatives, profiting handsomely from the process and being recognized at swearing-ins. To borrow a line from the film *Godfather II*: "This is the business we have chosen." Well, this is the system Pennsylvania has

chosen, so we can hardly complain if convicted felons play a role in it, since there is nothing to prevent them from participating and making money off the candidates who are running for judge.

The public, however, might be understandably upset if they knew how many bright, competent, honest attorneys are deterred from seeking the bench because they know what they have to go through to get there. The public might be doubly upset if they knew that under our system people who have been convicted of serious crimes involving a violation of their public trust play an integral role in how we select our judges. Maybe, just maybe, it's time to change the system.