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ISSUES BEFORE THE JUDICIARY COMMITTEE OF THE PENNSYLVANIA CONSTITUTIONAL CONVENTION

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Practically all nations and peoples throughout the world are in the ferment of re-examining the foundations of their societies. The aspirations of man for universal harmony and justice have brought about marked transitions in ancient loyalties, and traditions, and ways of life, and kinds of government, for man has once more taken the familiar path toward the kind of government he wants and the quality of the justice he expects it to produce. The same driving force impelled his forefathers to an identical course from time to time through the ages and this has brought about ever ascending levels of civilization. Each new generation distilled the wisdom of preceding ones, coupled it with the products of its own experience and devised a formula of action which it deemed best suited for its age. This generation is no exception. It is presently constructing its own social stratum and the Pennsylvania constitutional convention is a part of that process.

The fabric of a responsible government is its constitution for it de-

lineates the rights of the citizens and the extent to which powers may be exercised and restraints put upon the people; but of all constitutional measures, those dealing with the courts and the judiciary are probably the most important. Good laws fade and die in the climate of an inadequate court, and no matter how well designed a system may be, its product is necessarily inferior if it permits those who operate it to do so corruptly, inefficiently, ignorantly, without understanding, skill or vision. The perfection of the courts and the people who man them is an ideal which can be approached even if it is impossible to achieve. Such approach, however, requires careful thought planning and insight to the problems involved.

The central problem plaguing the legal profession today is the need for improvement in the administration of justice. Case backlogs, particularly at the trial level, are basic evidence of the need for reform. Suggestions for eliminating defects range from simplifying the court structure to improving the qualifications of judges, reconsidering their means of selection, eliminating hindrances to removal, improving salary, tenure and re-

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tirement plans and reexamining and evaluating the day-to-day administration of the courts.

SIMPLICITY

In the convention's consideration of all proposals to amend the Judiciary Article of the Constitution a basic decision is required as to whether the implementing details of change in court organization, judicial administration and selection, tenure, removal and retirement of judges are to be included within the amendments, or if not, what bodies will be charged with working out the details of the policy decisions found in the amendments. Simplification of constitutional provisions is thought to be best achieved by deciding policy questions within the constitution and leaving the natural decisions within that policy to the legislature. There is a conflict between the desire to resolve all the details of operation within the constitutional amendment and end further discussion, and the wish to leave the door open to legislative change in details without having to resort to a popular referendum on each minor administrative alteration.

The simpler the constitutional structure the more reliance there must be on implementation of the broad plan by the legislature or some other governmental body. This reliance must be based on confidence that the legislature will supply the necessary details and revisions when needed.

Bearing in mind that simplicity in a constitution may mean vagueness, and eventual delay in implementing the judicial system in spite of an interim schedule, full elaboration of means of objectives may be the only insurance of the convention's aims.

- *The question of simplicity in Judiciary amendments must be resolved.*
- *If simplicity is adopted, the degree of simplicity must be charted for each amendment.*

COURT ORGANIZATION

The present judicial framework and court organization probably should be examined to determine whether alterations in hierarchy and jurisdiction are necessary for real improvement in the Judicial system. The three prominent systems being discussed are:

- *a unified court system composed of specialized judges working on stratified levels of courts,*
- *a unified judicial system composed of layers,*
- *a specialized court system.*

The unified court system employs levels of courts rather than separate courts with their own names. The highest court supervises the operation of the entire system as to both assignment of judges and rulemaking and is the ultimate court of appeal. Below that are courts of first instance—

between these there may be intermediate courts of appeal. All judges are of equal value, each having identical powers with the others below the appellate level. This means that the assignment of judges from one court to another within the same level is both feasible and practical as it assumes that all the judges are learned in the law. Unless otherwise spelled out, the latter assumption could automatically mean the elimination of the minor judiciary (such as justices of the peace) if the trial level of the unified court system is to cover their jurisdictional domain.

The layer system of courts involves several layers administered separately and horizontally with channels of appeal running from the lower to the higher levels. Each layer has relative autonomy as to assignment of judges, and creation of departments. This system recognizes that appellate level judges may not sufficiently appreciate lower court problems so as to render valid administrative decisions there. The totally unified court system advocated by some, may create a huge bureaucracy of judges and court officers which may be avoided by dividing responsibility. The layer system also maintains a hierarchical court organization which might spur excellence of performance.

Specialized courts are a self-evident concept. They are seldom organized into a system, but may be vertically responsible to the highest court. The idea is that the

judges in each court will eventually become specialists in specialized fields. Control still centers in the highest court.

The present Pennsylvania system is a fourth alternative. It is a collection of roughly related individual courts. It is not a system, but what is known as a congeries of courts. They are relatively autonomous and many think they work well and contend that a change could result in unnecessary confusion and uncertainty.

Foremost for the convention is a conclusion on:

- *whether the present court system is adequate?*
- *if not, what system is best adaptable to the present organization with a minimum of disruption?*
- *Is it advisable to have all judges within the court system of equal rank?*

Related to reorganization of the court system is how to improve the operation of the minor judiciary system (justices of the peace, aldermen and magistrates) which seems to be the subject of much criticism. If it is to be retained, should the alleged evils go untouched? If the system is eliminated, there becomes a problem of replacing it with either another system, as a substantial amount of court business is disposed of by justices of the peace, or incorporating this work within lower court jurisdiction.

The convention will probably be called upon to consider:

- *whether to keep the minor judiciary system in any form?*
- *If so, whether justices of the peace are to be required to be learned in the law?*

QUALIFICATIONS OF JUDGES— SELECTION

Unless explicitly stated in the constitution the qualifications of judges are determined by the legislature. The present Constitution does not state that all judges are required to be "learned in the law." Members of the Supreme Court must be qualified electors of the Commonwealth, and must reside in the state while all other judges must reside in the election district. By statute, judges of the Supreme, Superior and other courts of record must be both learned in the law and qualified electors: thus age, residence and citizenship are taken care of.

Under the present elective system it is generally agreed that, with some exceptions, Pennsylvania has good judges, but many contend that there would be better ones in office if a system was devised wherein the actual qualifications of each candidate (by election or appointment) were examined according to objective standards. Common to all the suggestions and practical forms of getting judges on the benches is the goal of assuring the people that only the best quality of judge should ascend the bench.

The four common selection methods are:

- a. partisan election
- b. nonpartisan election
- c. appointment by the governor with or without the legislature's approval
- d. nominative-appointive-elective system using a nominating commission.

Popular election advocates say that it assures that the judiciary does not become too independent and keeps it within the area of the people's right to self-government. Opponents say that if the election is partisan, the unfortunate possibility is that selection of judicial candidates and the standards of qualification will be decided by politicians. This argument is enhanced by the claim that even enlightened sectors of the electorate do not really know whether a judicial candidate is qualified or whether he is superior to another. An additional concern for the judicial candidate is the ethical (and sometimes mandatory) prohibition against his involvement in political issues in any overt manner; thus, real campaigning is limited for the judicial candidate. On the other hand, it is generally conceded that a non-partisan ballot is mere camouflage for underground party politics, as support must certainly be found somewhere.

Historically the appointive method of selecting judges was the prevalent system. This provides for nomination by the governor, sometimes with prior consultation or subsequent legislative approval.

Since party affiliation, other than the Governor's potential interest, is considered to be ruled out, better judges should result, but a contra argument has been advanced that there is the possibility that the judge's obligation to a political party then becomes directed toward the appointing official. This may be considered as less democratic than popular election, but defenders see no distinction between the governor's appointment of judges and that of other important state officers. Ultimately, all are responsible to the people.

Pennsylvania does have a gubernatorial appointment provision to fill vacancies created by death or resignation of a judge prior to the end of his term of office, or for filling a new judgeship created by the legislature. In all cases, confirmation by a two-thirds majority of the senate is required, and all who wish to remain on the bench must run in a subsequent partisan election.

The problems at this juncture are:

- *whether partisan election of judicial candidates should be retained?*
- *whether any form of popular election should be used?*
- *whether the gubernatorial appointment method presently prescribed for limited types of judiciary selection should be constitutionally extended to the selection of all judges?*

- *whether other methods of judicial selection should be adopted?*

There is a so-called merit selection plan which is endorsed by those insisting that both the election and appointment method are ridden with political pressures and that neither gives much guaranty that inadequate judges will not be placed upon the bench. Sometimes referred to as the "Missouri plan," merit selection involves three stages: (1) recruiting and nominating through a Judicial Nominating Commission; (2) appointment by the governor; and (3) retention or rejection by the electorate. The nominating commission is, hopefully, nonpartisan and it hunts for legal talent. Usually the governor is required to select judges from a list of names submitted to him by a Judicial Nominating Commission. Should the governor fail to appoint within a stated time period, either the chief justice, another officer or body makes the appointments. Once appointed, a judge serves a short, probationary term and then seeks retention by public choice (really election) in a nonpartisan ballot by running solely on his record with no opponent.

The most obvious advantage claimed for this plan by its proponents is that the nominating commission can evaluate candidates from a professional standpoint which the public cannot do, and that the loss of direct representation is only on the surface since

laymen are included in the commission's nominating process. Opponents claim that there is a loss of direct public control of judges and that the possibility is always present that politics may enter into the nomination.

The Pennsylvania Bar Association has proposed that the Missouri Plan be adopted and modified so as to include Judicial Nominating Commissions for each judicial district, or, in the alternative, that the plan be adopted for Allegheny and Philadelphia counties. It prefers, however, to have the plan used on a statewide basis.

The Convention will probably be called upon to consider:

- *Whether the Missouri merit selection plan in its original or a modified form is desirable for the selection of all judges in Pennsylvania?*
- *Whether subsequent to appointment any election (nonpartisan or otherwise) should be required as a concession to the concept of election in the first place? (The major counterargument here is that as a highly qualified judge would be running on a nonpartisan ballot, and is more than likely to win, why hold an election? The likely answer is that the public is entitled to vote for its judges.)*
- *Whether there should be a judicial nominating committee at all since the governor does the final appointing?*
- *Whether the governor should have the right to reject all names on a submitted panel?*
- *Whether the Chief Justice should be second to the governor if the latter elects not to appoint from the list of the judicial nominating committee?*

TENURE OF JUDGES

Tenure is an integral consideration of any reform in the selection of judges. High calibre lawyers are attracted to judicial office for a variety of reasons—prestige, power, altruism, responsibility, and the security of relative permanency. The opposing interests on the question of judicial tenure lie in the public need for an independent judiciary and the public's right to a reasonable assurance that judges will act according to accepted standards.

It is claimed for lifetime tenure that it has meant better legal talent to the federal courts and that it keeps judicial action devoid of political motivation—both inure to the public benefit in spite of the loss of election control. Pennsylvania has no lifetime provision for judges, and the organized bar has not advocated its adoption for any judicial offices.

Proponents say that limited tenure paves the way for easier removal of ill-performing judges and of those who do not realize they are not performing well due to physical and mental infirmities, and advanced age. An alleged

disadvantage of limited tenure is that the political concerns involved in running for reelection are apt to be distasteful and that the best candidates are not as likely to be attracted to an office demanding such involvement. It is debatable whether the limiting of tenure, if done primarily for the purpose of insuring that incompetent judges can be removed, is not really a refusal to face up to the issue of adequate removal safeguards.

A limited tenure of ten years across the board for all judges, with the right to run for reelection would mean that Supreme Court Justices now restricted to a single twenty-one year term would be eligible to run for an indefinite number of ten year terms.

The problems raised at this point are:

- *whether lifetime tenure should be constitutionally mandated for some or all judgeships?*
- *if not life terms, whether a uniform limited tenure provision applicable to all judges should be adopted?*
- *whether Supreme Court Justices' terms should be changed and/or eligibility for reelection provided?*

REMOVAL, DISCIPLINE, AND RETIREMENT OF JUDGES

Involved in the matter of staffing the judiciary is that of removal or retirement of judges, voluntarily or involuntarily. The common methods of removal include legisla-

tive impeachment, address and popular recall. Problem judges who neglect their duties or mistreat counsel or witnesses or whose age or health render them incapable of performing normal duties of their offices are not numerous, but completely destructive of judicial processes when they exist.

Pennsylvania has no discipline or suspension provisions short of the removal methods mentioned above, except that the Supreme Court "may" have common law supervisory power over the entire judicial system. The Court itself, however, has virtually blocked that power by holding that the constitutional methods of impeachment, address and conviction for misbehavior in office or for any infamous crime (which requires automatic removal) are exclusive. Pennsylvania does not provide presently for the recall of misbehaving judges. Recall is a method of removing judges by means of a special election held after a required number of voters sign a recall petition. The adoption of a recall provision has not been widely made as it is a troublesome, unpredictable procedure generally successful in only extreme cases of flagrant misconduct.

- *should the convention adopt a recall provision to insure the electorate a direct recourse against offending judges?*

Impeachment may be used in criminal acts in the course of the conduct of office and for breach of

a positive statutory duty. It is not a remedy for judicial neglect of non-statutory duties, for misconduct outside of office, physical or mental incapacity or disability. Impeachment is rarely used because it has been shown to be almost ineffective. Its adversaries say its grounds are too narrow, that the legislature is not an appropriate body to decide the question, that politics may and usually do enter into the problem and the rights of the accused judge are not adequately protected. Few persons will assume the burden of pressing charges, particularly attorneys who cling to the desire to protect a good image of the judicial system to the people.

Address removal is less forward than impeachment and involves a communication by the legislature to the governor directing him to remove the offender. It is presently available for removing judges for any reasonable cause which is not sufficient grounds for impeachment, although there is some disagreement whether the constitutional provision is applicable to Supreme Court Justices. Through disuse, address has become even more theoretical than impeachment. Although the grounds for removal by address are broader, the same objections to its use obtain here as for the impeachment procedure. Yet, as in impeachment, it is regarded by some as a safeguard against the abuse of judicial power and a supplement to the judiciary's power to remove its own members.

- *Should the impeachment and/or address provisions be retained as an adjunct to some other removal procedure?*

The third constitutional provision for removal on conviction of misbehavior in office, or of any infamous crime, applies to all judges and is self-executing. This category embraces the common law offenses of misconduct, misfeasance or misdemeanor in office, including breach of a statutory duty.

- *Should this provision be retained if a new removal procedure is constitutionally mandated?*

Increasingly, over the past twenty years, the highest courts of many states have entertained disciplinary proceedings against lower court judges as a part of their general supervisory powers over the bench, either by constitutional mandate, or by inherent common law power. Where the American Bar Association Canons of Judicial Ethics have been adopted as actual rules of court or have been included within the state constitution as standards of conduct governing the behavior of the judiciary, the fairly common proceeding against an offending judge is disbarment. Suspension or disciplinary actions may also be taken either by the bar association or the high court itself. In Pennsylvania, the Canons of Judicial Ethics have been adopted by the Supreme Court as a part of the rules of court. Here, substantially all judges are required to

be learned in the law so disbarment or suspension might result in automatic removal from office. In some of the states the judiciary is protected from this automatic fate because misconduct in office is presumed to be peculiar to the judicial office and not to the judge's status as a bar member. Where this prevails, the constitutional procedures for removal are exclusive:

- *should the convention avail itself of the present network of judicial canons adopted into the Supreme Court rules and its unexercised supervisory and disciplinary powers as the foundation for constitutionally vesting the Supreme Court with direction to handle discipline and removal of offending judges?*
- *should some other means be adopted for removing judges?*

Modern plans for the removal and discipline of judges are designed to deal with unfit judges without endangering judicial independence. Three major types of plans used singly or in combination are:

1. creation of a special *ad hoc* court or commission to decide disciplinary charges against judges when such complaints arise (The New York Plan).
2. creation of a special commission with a continuing existence and a permanent staff to receive and investigate complaints against judges, and to recommend removal or discipline to the state's highest

court, which makes a final decision (The California Plan).

3. grant to the highest court in the state the power to receive, investigate, prosecute, and decide charges against judges, either through its own administrative office, or by such means as the constitution, the high court itself, or the legislature provides (The New Jersey Plan).

Method One is best exemplified by the New York Plan which, under constitutional amendment, created the Court on the Judiciary composed of six members: the chief judge, the senior associate judge of the Court of Appeals (the highest court), and one justice from each of the four appellate divisions. The Court on the Judiciary has the power to remove the judges of most major trial and appellate courts in the state for cause or to retire them for mental or physical disability. Removal or retirement of lower court judges is retained by the Appellate Divisions under New York's preexisting scheme. Thus, it has two coexistent systems for removal. The Court may be called into session only by the Governor, the chief judge of the court of appeals, the presiding judge of each of the four departments of the appellate division, or the executive committee of the state bar association. The administrative board of the Judicial Conference investigates complaints about the conduct of a judge and if justified,

he may be warned or reprimanded informally.

The Court on the Judiciary handles only serious cases which might warrant removal or involuntary retirement. It will dismiss charges or censure in some form. The decision is final. The Court is autonomous in making its own rules and procedures for both the investigation and trial.

Criticisms of the plan are made on the following grounds:

- New York's unified court system should have a single removal procedure to promote uniform standards of judicial conduct and to centralize the administration.
- a permanent staff body is better designed to process complaints than a specially convened court.
- there is no assurance of confidentiality of complaints once the Court on the Judiciary convenes.
- the Court is useful only on serious offenses and has been used only three times in twenty years. Most of the complaints handled informally by the Appellate Divisions end in voluntary retirement of the judge.
- there is no assurance that fair procedure will be used as prosecutor and judge are joined in the Court and there is no appeal.
- there is no insulation of New York's elected judges (who comprise the Court) from political pressures.

Support for the New York plan is based on the arguments that:

- the Senior appellate judges are the best qualified to rule on the capability or disability of fellow judges.
- an *ad hoc* special court is less expensive than a permanent continuing body; court staffs of the member judges are pressed into service.

Seven states have adopted the California plan. A number of others are considering adopting it in some form. California's distinctive plan feature is a special commission called "The Commission on Judicial Qualifications," created by a constitutional amendment which was adopted in 1966. It is composed of nine members, five of whom are partisan elected judges appointed by the supreme court: two are from the district courts of appeal; two are from the superior court (the court of general trial jurisdiction); and one is from the municipal court. The other four members are lawyers appointed by the governing body of the state bar association and laymen appointed by the Governor. There is one executive secretary who maintains a permanent staff. The Commission has statewide jurisdiction over all of the courts and meets once every two months and specially whenever action is warranted. It is authorized to recommend to the Supreme Court the removal or retirement of a judge for the grounds specified in the constitution: i.e.,

retirement "for disability that seriously interferes with the performance of his duties and is or is likely to become permanent," censure or removal of a judge for action occurring not more than six years prior to the commencement of his current term that constitutes willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. It is significant that the commission makes its own necessary rules providing for implementation of the amendment, confidentiality and for the proceedings.

In practice, confidentiality is maintained until the matter is referred to the Supreme Court for a decision. Many complaints are disposed of without formal proceeding, such as groundless claims; or by a letter to the judge; or by voluntary retirement of the judge. In a five year period, about thirty judges have retired. Most were eligible for pension benefits for disability or service. The Pennsylvania Bar Association proposal is like the original California plan in that it spells out most of the details concerning the rules and procedures governing the "Judicial Qualifications Commission" (the elected nomenclature) and the Supreme Court. The composition of the proposed Commission would be almost identical to California's. One substantial difference exists between the two plans: grounds

for removal are set out by the bar association which provides that "any justice or judge may be removed from office or otherwise disciplined for misconduct in office, neglect of duty, failure to perform his duties, violation of any canon or legal or judicial ethic adopted by the Supreme Court, or other conduct prejudicial to the proper administration of justice."

These arguments are made against the California plan:

- it creates an independent agency, coupled with power to conduct confidential investigations, which has built-in potential for great abuse.
- the commission will become bureaucratic and perhaps expensive.
- senior appellate judges are the best qualified persons to decide questions of judicial misconduct and disability.
- the commission acts both as prosecutor and adjudicator.

Supporting reasons are:

- a single independent agency means that uniform statewide standards will be applied to all cases.
- confidentiality of investigations is assured.
- there will be less room for political pressure.

The New Jersey plan authorizes the state's highest court, through its administrative office or a state court administrator, to remove and discipline judges. That Supreme

Court has also adopted the American Bar Association Legal and Judicial Canons of Ethics. By its constitution, New Jersey provides that certain lower court judges are subject to removal from office by the Supreme Court for such causes and in a manner as provided by law. No implementing legislation specifying the causes and manner of removal have been enacted there and the Supreme Court has no general power to remove judges. But it does have jurisdiction by the constitution over the admission to the practice of law and the discipline of persons admitted, which, in conjunction with its constitutional power to make rules governing the administration of all state courts, give it full power to discipline and remove judges *as members of the bar* for judicial misconduct.

It is uncertain whether the Pennsylvania Supreme Court has the inherent power to remove and discipline lower court judges as part of its inherent supervisory powers over the court system. It should be emphasized that a plan placing primary responsibility for the removal and discipline of judges on the high court depends for its effectiveness upon forceful leadership by the court or its chief justice. Some contend the New Jersey plan works best in a small, relatively undiversified state, and would be inappropriate in Pennsylvania.

Some of the issues for the convention on removal, suspension and discipline of judges are:

- *should a designated body composed of judiciary members be constitutionally appointed to conduct removal proceedings?*
- *if so, should the same body be charged with final decisions in the matter?*
- *should the Supreme Court be constitutionally mandated to use its inherent power over the court system to regulate judicial behavior and removal of offending judges?*

INCOMPATIBLE ACTIVITIES

Article V now provides that all laws relating to courts must be of general and uniform operation and the legislature cannot create any court which would draw power away from the present courts. The legislature obviously cannot invade the judiciary's decisional province but it can impose nonjudicial duties on the lower court judges as the constitutional prohibition against this applies only to the Supreme Court or its judges. Therefore, unless a completely new system is adopted the convention will probably wish to consider:

- *spelling out the principle of separation of legislative and judicial powers as an amendment to Article V.*
- *extending to the lower courts the present prohibition of Article V, § 21 against the imposition of nonjudicial duties on the Supreme Court.*

Some judicial activities off the bench, not specifically prohibited elsewhere, may be the initiating cause for complaints against judges which eventually lead to their removal or retirement. Although the Pennsylvania Supreme Court has adopted the American Bar Association Canons of Judicial Ethics which prescribe the "dos and don'ts" for judges, they are ineffectively enforced because the machinery is simply not available here. Activities incompatible with the judicial role are difficult to circumscribe. For instance, most political activity, in spite of the present need to run on a partisan ticket, is forbidden by the canons. A judge may not run for a non-judicial office while still on the bench, nor should he lend his name to charitable and community solicitations for funds. Business activity or interest is an open invitation to a conflict of interest and even a judge's social activity must be rigidly controlled.

The Constitution charges that judges are forbidden to receive compensation or fees from any source other than that fixed by law for their services, but there is no proscription there against a judge engaging in private enterprise for profit. Non-judicial duties are not to be imposed on Supreme Court judges, nor are they to have any power of appointment other than those constitutionally established. This provision has relevance as it prevents Supreme Court justices from developing political interest

in the subject matter of cases which may come before them and keeps them from becoming distracted from judicial work by administrative or non-judicial matters.

Pennsylvania statutes prohibit certain dual judicial office-holding: the practice of law, the receipt of arbitration fees for arbitrating in required or authorized cases, and sitting when the case before the judge may be of personal interest to him.

Convention problems appear to be:

- *how much restraint should be imposed constitutionally upon judges with respect to incompatible activities?*
- *if restraints are to appear in the constitution, with or without provision for an enforcement body, what standards should be followed in framing them?*
- *should power be given to the legislature or some other governmental body to impose restraints on this type of judicial activity if it is not expressly prohibited by the constitution?*
- *should there be a constitutional limitation in imposing non-judicial duties on lower court judges?*

RETIREMENT OF JUDGES AND POST-RETIREMENT SERVICE OF JUDGES

An easy way to remove disabled or undesirable judges is to convince them that they ought to retire. A good way to make use of a good judge's experience is to put

him on the bench when and where needed after he retires.

The problem of retiring judges who do not wish to do so is a sensitive and delicate matter. No one likes to put a once glorious race horse out to pasture. Four principal ways of taking the delicacy out of the matter are: to improve the retirement and disability pensions and benefits, fix an age for mandatory retirement, set up standards for involuntary retirement for mental and physical incapacity and make post-retirement service possible for those willing and able. The last suggestion was recently instituted in Pennsylvania by constitutional amendment. Other than this, there is no constitutional provision for involuntary retirement at a fixed age or for disability. The Supreme Court tenure of twenty-one years is an indirect form of mandatory retirement as those judges are not eligible for reelection.

Disabled judges could be, if so declared, considered removable from office by the legislature under the Constitution's address provision, but it is undecided whether disability is a "reasonable cause" for removal within the meaning of those provisions. Supreme Court judges are not even debatably covered.

A common reason for the reluctance of disabled judges to retire is that retirement benefits may not be adequate. Experience shows that the very existence of a compulsory removal plan and the opportunity

for post-retirement service induce judges to retire voluntarily. California and New York Constitutions provide that judges involuntarily retired are to be considered voluntarily retired and thus entitled to full retirement benefits.

Mandatory retirement does substantially increase judicial manpower when a plan for part-time post-retirement service exists. The combined old experience and new energetic manpower helps alleviate case back-log.

There are these questions for the convention :

- *should a compulsory removal plan of some sort be adopted, if only to encourage voluntary retirement?*
- *should a voluntary retirement plan applicable to disabled judges be adopted, even though mandatory retirement at a fixed age is also adopted ?*
- *what body should be authorized to initiate proceedings and set standards and where should ultimate responsibility for forcing retirement rest?*

JUDICIAL ADMINISTRATION

Many aspects of judicial administration have been covered. The actual running of the courts is closely tied to the system of court organization; non-judicial duties, assigning judges and the present administrative duties of some judges. The day-to-day operation of the courthouse is beleaguered with antiquated methods and conflicts in

power and authority. A number of remedies have been put into operation. Addition and assignment of judges and division of appellate courts give a quick surface illusion of reform without having to overhaul the entire court system. The addition of judges in the federal courts and in Pennsylvania trial courts has been valuable.

Appellate level work is increasing from the rise in trial court calendars. Because of this accretion, the Pennsylvania Bar Association has proposed that Superior Court judgeships be raised by two to nine. The prevailing Pennsylvania assignment provisions are legislatively mandated to permit the transfer of judges from one common pleas court to another and to make use of the experienced and plentiful manpower, formerly idle, in the ranks of retired judges. Some states prefer that the appellate court(s) sit in divisions of three to hear certain classes of cases. Rehearings by the entire court are made available. Factors detracting from the popularity of the divisional system are: inconsistent opinions from different divisions of court can result, applications for rehearings can result in abundance, development of a preferred division of the appellate court can result unless the judges are rotated between divisions, and important decisions should be based on the composite judgment of the court.

Compulsory arbitration has

found new popularity in some sectors of Pennsylvania. Since a large percentage of the increase in trial work and court delay is attributable to negligence cases, it has been suggested that all negligence litigation regardless of the damages should be heard by an arbitration board. Opponents of compulsory arbitration systems view them as an admission of defeat on the problem of judicial administration. They do not see the right to appeal from an arbitration board's decision as equivalent to a jury trial in the first instance. Arguments in favor of compulsory arbitration are implicit in the fact that cases are heard before witnesses die or become otherwise unavailable. Because of the possible infringement on the basic rights of due process the convention might be urged to consider:

- *whether compulsory arbitration should be constitutionally mandated to insure the protection of basic rights and to force legislative reconsideration of the present arbitration system?*

Avoided or hidden in most efforts to "get at" the court congestion problem is the whole behind-the-scene job of administering the court's budget, routines and personnel. Until a decade ago or so, most courts applied the independence of the judiciary to their administrative problems and no one cared much about it. Back-logs in case loads reveal that no matter how hard judges work there is

seldom time to deal with administrative problems. The old methods no longer suffice and the predominantly quasi-political personnel handling this for most courts seem simply unqualified or unmotivated to finding better ways.

Pennsylvania's efforts to improve the business of the courts is better than in some states in that the common pleas courts have administrative judges, but there is no administrative head for the court system as such and no professional state court administrator. The Pennsylvania Bar Association advocates adopting both. The office of court administrator is becoming a popular one. Regardless of the system of court structure, most courts could use an administrator

to prepare budgets, set up the machinery and collect statistical data and improve internal procedures.

The complete court administrator package features the highest court chief judge as administrative head with a state court administrator handling the details. Optional are the presence of administrative judges, or trial court administrators working with the state administrative judges, or trial court administrators working with the state administrator, but all ultimately responsible to the chief judge. Any administrative system might adopt electronic data processing techniques if such are considered valuable.