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LOUIS F. DEL DUCA, *Editor*

CONSTITUTIONAL REVISION—FURTHER IMPLEMENTATION

THE INDICTING FUNCTION OF THE GRAND JURY SHOULD BE ABOLISHED

By Judge Samuel H. Rosenberg
Philadelphia Court of Common Pleas

During the month of June, in addition to presiding over Major Crimes and Homicide matters, I was assigned to be in charge of the current Grand Jury. My experience with the June Grand Jury only served to strengthen my belief and conviction, generally shared in Philadelphia by Judges and lawyers, that the Grand Jury, in so far as its routine functions are concerned, should have been abolished ages ago.

The Grand Jury was originally conceived as the guardian of liberty and the public's protection from tyranny. As a practical matter it has been demonstrated beyond question that this has proven to be a myth. The Grand Jury is wholly dependent upon the District Attorney for direction and guidance. A group of laymen with no expertise in the area can hardly be expected to, and in fact does not, exercise the independence originally contemplated.

More than three-quarters of a century ago the Supreme Court of the United States decided that the Grand Jury is not a requisite of due process. *Hurtado v. State of California*, 110 U. S. 516, 4 S. Ct. 111, 28 C.E.D. 232 (1884).

The District Attorney can override the decision of the Grand Jury. If a bill is dismissed and the District Attorney considers the dismissal improper he may submit it to a subsequent jury. If the bill is approved when the District Attorney believes it should have been dismissed he may exercise his power not to prosecute the action. It is well known, and statistics supply irrefutable proof, that all Bills of Indictment are approved unless there is indication by the District Attorney that a particular Bill should be dismissed. The Grand Jury is a complete duplication in the criminal judicial process which inconveniences witnesses, both civil and the police. It incurs unnecessary expense through loss of worktime for witnesses, payment of witness fees and the considerable costs involved in the maintenance and operation of the jury itself.

Under the present practice, preceding the action of the Grand Jury a preliminary hearing must be conducted before a court where a prima facie case must be established before the defendant is held. At this hearing the District Attorney is present as is the defendant, represented by counsel who

may cross-examine the witnesses for the Commonwealth. Thus, there is no rationale basis for yet another "hearing" before the Grand Jury, at which time the accused is never heard nor is he represented by counsel.

The functions of the Grand Jury could be taken over by the District Attorney. Upon receipt of the transcript or record from the preliminary hearing the Indictment Division would review the case and determine whether or not the case should be prosecuted further. If so, an indictment would be prepared by the District Attorney as he does now.

There are vital duties of the Grand Jury which should not be abolished. Where evidence is presented to the court which indicates widespread corruption or misbehavior which would be more effectively pursued by the special powers of a Grand Jury then, of course, that power should be retained. In such event, which occurs infrequently, the court, of course, could convene a special investigatory Grand Jury.

In the course of a year the regular Grand Juries in Philadelphia routinely consider approximately 22,000 Bills. The paper work alone is staggering. This is an enormous and utter waste of time, effort and money.

On a related matter, the Supreme Court of the United States recently ruled that the 12-man jury traditional in criminal trials since the 14th century is not mandated by this Constitution. In his opinion for the majority, Justice Byron R White stated, "The fact that the jury at common law was comprised of precisely 12 is an historical accident, unnecessary to effect the purposes of the jury system and wholly without significance except to mystics." *William v. State of Florida*, 38 *U. S. Law Week* 4557, 4564-4565 (decided June 22, 1970).

In Pennsylvania the requirement of a 12-man jury in civil and criminal cases, the additional requirement that the verdict be unanimous, and the routine functions of the Grand Jury are but a few of the anachronisms which continue to burden the judicial process in Pennsylvania.

The abolition of the Grand Jury would require a constitutional amendment in Pennsylvania since its existence is mandated in our constitution. Art. 1, Sec. 9; Art. 1, Sec. 10 *Comm. v. Liebowitz*, 143 Pa. Super. 75, 17 A. 2d 719 (1940); *Dauphin County Grand Jury Invest. Proc.* (No. 2), 332 Pa. 342, 2 A. 2d 804 (1938). It is time that such a step be initiated. As of 1964, eighteen states did not require an indictment by a Grand Jury for the initiation of criminal prosecutions in any cases, and twenty states required a Grand Jury indictment only in felony or capital cases. Thus, Pennsylvania was one of only twelve states which required indictment by a Grand Jury in all or virtually all criminal cases. See Spain, "The Grand Jury, Past and Present: A Survey," 2 *American Criminal Law Quarterly* 119 (1964). It is time for Pennsylvania to enter the 20th Century.

CONSTITUTIONAL REVISION—FURTHER IMPLEMENTATION

REVIEWING THE REVIEW BOARD

By Richard E. McDevitt,* *Philadelphia*
Member of the Pennsylvania Bar

Composition of the Board

The Judiciary Article of the Constitution of the Commonwealth of Pennsylvania, adopted in 1968, mandated the creation of this Board to consist of five judicial members appointed by the Supreme Court, two lawyer members and two non-lawyer members to be appointed by the Governor. See Article V, Sec. 24, Pennsylvania Constitution.

On January 6, 1969, the Chief Justice appointed Judge Theodore O. Spaulding of the Superior Court and Judge William W. Lipsitt of the Common Pleas Court of Dauphin County to four-year terms; Judge Otto P. Robinson, Judge of the Common Pleas Court of Lackawanna County, to a three-year term; Judge Harry M. Montgomery of the Superior Court and Judge James B. Dwyer of the Orphans' Court of Erie County to two-year terms. The Governor of Pennsylvania appointed Richard E. McDevitt, Esq., of Philadelphia, Dr. James R. Rackley, Provost of the Pennsylvania State University, to four-year terms, and Judd N. Poffinberger, Jr., Esq., of Pittsburgh, and Robert S. Bates, Meadville newspaper publisher, to two-year terms.

The oath of office was administered on March 4, 1969, after which the organizational meeting was held in City Hall, Philadelphia, at which Judge Montgomery was elected Chairman, Judge Spaulding, Vice Chairman, and Mr. McDevitt, Secretary. Subsequently, Mr. McDevitt was elected Executive Director. The Board at present has no salaried employees. Non-judicial members receive $75.00 per meeting.

Rules of Procedure Adopted

The first order of business was the drafting of the Rules of Procedure. Sidney Schulman, Esquire, Secretary of the Procedural Rules Committee, had already prepared a draft patterned after the California Rules. The Rules of other states having similar bodies were collected and analyzed by the Board. It was decided that the Rules should follow substantially those in existence in California since 1960. Generally, that form was followed although a number of innovations were agreed upon. For example, our Rules provide that complaints

* This article is based on an address delivered by the author before the Conference of Pennsylvania County Bar Association Presidents in Hershey, Pa. on March 21, 1970.

against Justices of the Peace may be referred for preliminary investigation to the President Judge of the County where the Justice of the Peace sits. Also, we decided not to permit hearings to be conducted by a Master. Our Rules also provide that the hearing panel shall consist of five members of the Board, two of whom shall be judges. A number of drafts and revisions were made, and the final draft was submitted to the Supreme Court which approved same on June 27, 1969, effective July 1, 1969. All members of the Board participated in the drafting of the Rules and their cooperation was invaluable. In some instances the lay members saw problems and made suggestions which added greatly to the final result, and I, for one, am most appreciative for the helpful suggestions by Dr. Rackley and Mr. Bates in correcting the grammatical structure of some of my sentences.

It has been extremely helpful that the membership of the Board is spread geographically throughout the state. As Executive Director, I have been able to call on members in each area to assist in investigations.

Case Load

During 1969, a total of forty-four (44) complaints were considered by the Board; at year end, thirty-one (31) were disposed of. After investigations, twenty-five (25) of the complaints were dismissed by reason of lack of evidence of judicial misconduct; six (6) complaints were disposed of by conferences with the judicial officer involved. In each instance, the conference produced a satisfactory result so that the file could be closed. At year end, eleven (11) matters were under investigation and two (2) matters were listed for hearing. The number of complaints received by the Board is increasing due to the Bar and public suddenly becoming aware of the Board's existence, and because of the great current interest in the problem of judicial ethics and conduct. A docket is kept, and this, with a folder on each complaint, is maintained in a confidential status under lock and key.

Types of Complaints

A great many of the complaints have to do with dissatisfaction by litigants or attorneys with results in court, be it a civil or criminal matter. The Board neither has nor seeks the power to review rulings or to intrude upon the judicial decision-making prerogative. All complaints are acknowledged and where one is of the aforementioned nature, the complainant is advised that he should pursue his remedy in court either by motion or appeal.

Complaints have been received from litigants, prisoners, inmates of mental institutions, attorneys, the Attorney General, judges, district attorneys, bar associations, the State Court Administrator, and even the Governor's Office.

In some instances, newspaper

editorials have been brought to the attention of the Board which has decided whether to investigate on its own motion.

A number of matters have been resolved by calling in the judge and discussing the charges informally. Some judges have acknowledged that their conduct toward a particular lawyer was uncalled for and have volunteered to apologize to the lawyer. The attitude of most judges is that they are aggrieved by the knowledge that their conduct was offensive and they recall that as practicing attorneys, they vowed that if they ever ascended the bench they would be aware of the problems of counsel.

We feel that there is real value in giving citizens a sounding board for their grievances. In one instance, the Board received a complaint relating to physical incompetency, and it has arranged for a physician of its choice to conduct a complete examination.

Most investigations have been conducted by the Executive Director and individual Board members. On several occasions, the Attorney General has assisted in investigations. It is contemplated that in the future the Board might well call on officers of the various County Bar Associations to supply information on a confidential basis.

A judge who had maintained a docket in arrears for months was called in to confer with the Board Chairman and directed to make his list current. In one month, this was accomplished.

We have received complaints concerning judges who were neglecting their judicial duties. We have checked these out through the Attorney General's Office, or through the President Judge of the court involved, and determined that the complaints were unfounded. Quite often, when complainants have been asked to back up their charges with factual evidence, none has been forthcoming, and the complaints have been dismissed.

Unfortunately, a number of questionable practices by Justices of the Peace have been unearthed; such as abuse of process, use of objectionable forms, charge of excessive fees, refusal of bail and discourteous conduct, to mention a few. In most instances the Justice has agreed to cease and desist; and, after assuring ourselves that this was the case, we have closed our file. In two other matters involving Justices of the Peace, hearings have been listed. In several other cases we are continuing our investigation and keeping a close watch.

In one instance, a lay judge was called in for a discussion with your Executive Director because of what appeared to be obvious violation of the Criminal Rules of Procedure. At that meeting it was determined that the lay judge had not been aware of amendments which occurred in the Rules over a year before.

As we are able to catch up with our workload, and, perhaps, engage a full time investigator, we will be

able to investigate much more thoroughly.

Procedure for Handling Complaints and Inquiries

Your Executive Director acknowledges all complaints and inquiries and handles most of the preliminary investigations. During a preliminary investigation, it is the policy not to notify the Justice of the Peace or the Judge involved. Naturally, there are some exceptions to this, cases where the very nature of the charges compels notice to the judge. If the preliminary investigation indicates the need for a formal investigation, the judge is notified. The judge is notified of the charges, the name of the complainant, and is invited to reply setting forth his version of the matter. We feel that due process dictates the need for advising the judge of the identity of the accuser and the nature of the complaint.

The majority of the complaints may be dismissed after the preliminary investigation, but if there is any indication of misconduct, the judge is given full opportunity to give all information at hand.

The full Board meets at least every other month, and, with the increase in the number of complaints, will, in 1970, undoubtedly meet on a monthly basis.

All matters before the Board are treated with the utmost confidentiality. The very nature of the Board demands that confidentiality be maintained. The judiciary must be protected from frivolous complaints and unfounded slurs; but, at the same time, the public must be made to know that its real complaints will be heard.

National Annual Conferences —Other Boards and Commissions Compared

The Chairman of the Board and its Executive Director participated in the Annual Conference of similar bodies sponsored by the American Judicature Society on August 28th and 29th, 1969, at Denver, Colorado. More than twenty (20) states have commissions or boards. California, with more experience than any other state, utilizes a full-time Executive Director and a Secretary. In addition, the Executive Director, from time to time, calls in individual investigators whom he can trust to keep cases confidential. Other states operate by using investigators from the office of the State Attorney General. A few states make use of State Bar Association investigators. We left the conference feeling that our Procedural Rules are as good as, or superior to, those of the other states. We are in regular communication with California's Executive Director and have profited from that Commission's experience and their generous cooperation.

In many cases the knowledge by the Judges and Justices of the Peace, against whom complaints are filed, that this Board will investigate has appeared to have a salutary effect.

Small Number of Complaints Received

It has been our experience that a majority of the Justices of the Peace and Judges are conscientious, hard-working, honest and able. Certainly, none of these dedicated persons who have the mental and physical capacity to perform their duties has anything to fear from the Board. The number of complaints filed with any real evidence to justify is small indeed when one realizes that our jurisdiction covers more than 850 Justices of the Peace and Judges.

The Board provides a medium through which the unhappy litigant or attorney, or even the crank, may air his grievances without the glare of publicity. There were some instances where investigations disclosed practices of a judge which required correction. In these instances notification to the judge, and a discussion with him, have appeared to have been effective. We can say with pride that we have had no new complaints against any of the judges who were called in for conference.

Confidentiality

In order to preserve the confidentiality aspect of the overall proceedings, it is our intent to hold the hearings in other than a public court room. We feel that hearings are sufficiently important to all concerned that they should not be delegated to an appointed Master. We recognize that we sit first as an investigatory body, then as a quasi-judicial body. For this reason alone, we feel that a five man panel (including two judges) is justified. Although we are a quasi-judicial body, it should be noted that we are but a recommending body and that a final disposition is for the Supreme Court.

It is the Board's hope that improper and unsatisfactory judiciary demeanor will be discouraged because of the awareness of the Board's presence. Where hearings are indicated by reason of conduct or incapacity, you can be assured that they will be conducted thoroughly and promptly.

MODERNIZING THE JUDICIAL SYSTEM

REQUIREMENTS OF ADDITIONAL JUDGES FOR THE COURT OF COMMON PLEAS OF PHILADELPHIA*

By

John J. McDevitt, III, *Philadelphia*
President Judge, Court of Common Pleas

Lewis J. Goffman, Esq., *Philadelphia*
Member of the Pennsylvania Bar

Arlen Specter, *Philadelphia*
District Attorney of Philadelphia

There exists in Philadelphia a definite and urgent need for some additional judges for the Court of Common Pleas. There has been extensive discussion on exactly how many such judges would be necessary in order to provide a manageable court system with prompt trials of both civil and criminal cases. There are currently pending in the State General Assembly bills which would add ten additional positions to the judicial roster.

Since the time of the Constitutional Convention held in 1967-68, the figure of thirty additional judges has been mentioned as a feasible goal.

A Comparison with Other Large Jurisdictions

The courts of the large cities throughout the country face the same problems and challenges as our court system faces in Philadelphia. These include on the criminal side a steady increase in the crime rate and in the time needed for disposition of individual criminal cases. On the civil side, these include mounting delays in bringing cases to trial and a steadily growing stream of civil litigation. Recently, a number of national magazines, including *Life* and *Fortune,* have published articles setting forth the scope of this delay. The large metropolitan newspaper dailies, including the Philadelphia papers and the *New York Times,* have also extensively investigated this situation and come up with similar pessimistic conclusions.

Accordingly, a review of the number of judges existing in other metropolitan court systems, based on unit of population, is significant as a comparison of the extent to which we are functioning better or worse than other jurisdictions. Such statistics can aid in forming

*This report was originally written for the Philadelphia Judicial Council.

	Untried	*Deferred Sentence*	*Total*
Homicide	170	45	215
Robbery	169	38	207
Assaults	35	10	45
Burglary	76	14	90
Larceny	15	2	17
Forgery and Fraud	6	0	6
Rape and Sex Offenses	50	13	63
Narcotics	44	5	49
Arson, Weapons, etc.	6	2	8
Miscellaneous	78	3	81
Probation Violations	8	1	9
	657	133	790

criminal justice system lacks the facilities and personnel to try cases promptly due to a variety of reasons including:

(a) more criminal cases to be tried due to an increased crime rate;
(b) extra pre-trial proceedings (hearings on suppression of confessions, evidence obtained by search and seizure, lineup identification, etc.);
(c) more jury trials (more major crimes to be tried, more demands for jury trials);
(d) elongated trials;
(e) additional post-trial rights; and
(f) proceedings under the Post-Conviction Hearing Act.

In addition to criminal trials for both inmates in detention and defendants on bail, there is an extensive backlog of other matters which must be scheduled and disposed of in the Court of Common Pleas. According to statistics from the office of the Court Administrator of Philadelphia, the Court of Common Pleas had the following cases to be tried as of September 8, 1970:

Arbitration	1,179
Unmarried Mothers	284
Juvenile	1,927
Domestic Relations	1,561
Criminal Listings	5,741
Civil Listings (Non-Jury)	2,609
Civil Listings (Jury)	11,121
Adoptions	202
Total	24,624

Little attention has been paid recently to the mounting civil backlog due to the almost total commitment of the courts to criminal business. According to the Court Administrator, the average time between the filing of a Certificate of Readiness and a civil jury trial has increased to 47.7 months. There is undoubtedly considerable hardship on many civil litigants resulting from this. A better balance in the number of judges assigned to this mounting accumulation of cases can only be achieved by addition to members of the Common Pleas bench.

Requiring special attention within the criminal listings as of September 8, 1970, were:

1. Pending Homicide Cases	385
2. Major Felony Trials	424
3. Rape Cases	156
4. Recidivist Cases	197
5. Deferred Sentences	528

These last categories include the most serious cases for the administration of criminal justice. The July 4 riot at Holmesburg pointed out the danger created by lengthy pre-trial detention of men, many of whom are charged with the commission of serious crimes of violence. The number of defendants in the Deferred Sentence category is also of deep concern because a significant proportion of these are men who have been convicted of serious crimes of violence and are out on bail pending final disposition.

Judge Need as Projected from Case Disposition Rates

Compared to the workload in other Pennsylvania counties, there can be no doubt that the Philadelphia judges bear a much greater burden. Some counties have four court terms of three weeks of trials each, making a total of twelve weeks a year. With the probable exception of Allegheny and Dauphin Counties the other counties may have even less, though again with few exceptions.

The judicial compensation is the same, again with slight differences in a few judicial districts. In Philadelphia the Court Administrator reports that the effective weeks per judge per year for trial work is 37 weeks, leaving only fifteen weeks for all post trial motion hearings, research, opinion writing, judicial conferences, vacations and sick leave.

Statistical data has been maintained on case dispositions in the various areas of the Court's jurisdiction together with the number of judges assigned to such areas in a composite fashion since the date of the new Judiciary Article, January 1, 1969 and prior to that time on an individual court basis. The dispositions per judge per year have been determined by dividing the total number of judges assigned in an area of the Court's jurisdiction into the total case disposition of that area during the year, and projecting this disposition rate against the existing case loads and the number of cases backlogged in each area of the Court's jurisdiction.

The following statistical information forms the basis of projecting existing needs: (See top of p. 424)

The projection does not take into account the real probability of a greater increase in the number of cases ordered on the trial list occasioned by the very fact that the backlog has been substantially reduced or eliminated. Many cases are settled prior to being ordered on the trial list because of the time lag between the time the case is ordered on the list

Civil Jury Cases

Disposition per judge per year	459
Total civil jury cases anticipated in 1970 (1969—5,367 cases plus projected increase of 537 cases)	5,904
Judges required to dispose of annual case input	13
There are at the present time open active cases numbering	10,241
Judges required to dispose of presently pending cases within two years	11
TOTAL JUDGES REQUIRED FOR CIVIL JURY CASES	24
TOTAL NUMBER OF CIVIL JURY CASES DISPOSED OF DURING 1969	5,430

and the date it is called for trial. Counsel and the court have been successful in effectuating settlements when they were able to effectively point out that the monetary difference between plaintiff's demand and defendant's offer made it economically unfeasible to take a chance on a trial which could not take place for at least two years or more.

In this connection, as part of the overall program initiated by the Calendar Judge in 1969, a series of settlement conferences were held in cases where the injury had occurred within six to eight months prior to the conference. The percentage of success in those conferences (in excess of 80% were settled) was due in a large measure to the fact that plaintiffs were more likely to settle for a lesser amount rather than take a chance on getting more later when the "later" meant a delay of at least two years or more.

Thus, if the backlog is eliminated it is highly probable that cases of this type will not settle and will be ordered down for trial. Certainly, if counsel can expect that his case will be reached for trial on a current basis he will be more likely to order it on the list rather than settle it, in the hope that his client will receive a higher amount without having to wait any length of time. Although it may be a seeming paradox, the reduction or elimination of the backlog will in itself generate an increased number of cases ordered on the list over and beyond the the projection set forth above.

In arriving at the number of judges assigned to the Civil Equity-Non-Jury List there were included judges assigned to the Civil Motion List on which appears various preliminary motions which must be disposed of before a case can proceed to trial. Judges assigned to this List made 10,019 dispositions in 1969 in addition to the Equity-Non-Jury dispositions set forth.

Civil Non-Jury and Equity Cases

Dispositions per judge per year	370
Total civil non-jury and equity cases anticipated in 1970 (1969—3,058 cases plus projected increase of 272 cases)	3,330
Judges required to dispose of annual case input	9
There are at the present time open active cases numbering	1,791
Judges required to dispose of presently pending cases within two years	3
TOTAL JUDGES REQUIRED FOR CIVIL NON-JURY AND EQUITY CASES	12
TOTAL NUMBER OF CIVIL NON-JURY AND EQUITY CASES DISPOSED OF DURING 1969	2,618

In arriving at the number of judges assigned to the Non-Major Criminal List there were included judges assigned to the Criminal Motion Court on which appears all preliminary motions including lengthy suppression hearings. These motions must be disposed of before a case proceeds to trial. Judges assigned to this List made 3,838 dispositions in 1969.

Major Criminal Cases (Including Homicide Cases)

Dispositions per judge per year	119
Total major criminal cases anticipated in 1970 (1969—1,845 cases plus projected increase of 185 cases)	2,030
Judges required to dispose of annual case input	17
At the present time there are pending cases numbering	2,064
Judges required to eliminate pending cases within two years	8.7
TOTAL NUMBER OF JUDGES REQUIRED FOR THE TRIAL OF MAJOR CRIMINAL CASES	25.7
TOTAL NUMBER OF MAJOR CRIMINAL CASES DISPOSED OF DURING 1969	1,706

Non-Major Criminal Cases (Including Criminal Motions, PCHA, Etc.)

Dispositions per judge per year	1,247
Total non-major criminal cases anticipated in 1970 (1969—12,686 cases plus projected increase of 1,284 cases)	13,970
Judges required to dispose of annual case input	11.2
At the present time there are pending cases numbering	10,638
Judges required to eliminate pending cases within two years	4.1
Total number of judges required for the trial of non-major criminal cases	15.3
TOTAL JUDGES REQUIRED FOR CRIMINAL COURTS	41
TOTAL NUMBER OF NON-MAJOR CRIMINAL CASES DISPOSED of DURING 1969	15,351

In arriving at the number of judges assigned to the Juvenile List there were included judges assigned to Pre-Trial Hearings and Detention Hearings in accordance with the mandate of the United States Supreme Court. Judges assigned to this List made approximately 5,000 hearings in 1969.

Juvenile Cases

Dispositions per judge per year	2,179
Total juvenile cases anticipated in 1970 (1969—12,511 cases plus projected increase of 1,122 cases plus 8,105 cases previously disposed of by administrative hearings)	21,738
Judges required to dispose of annual case input	10
There are at the present time open active cases numbering	1,904
Judges required to dispose of presently pending cases within one year	1
TOTAL JUDGES REQUIRED FOR JUVENILE COURT	11
TOTAL NUMBER OF JUVENILE CASES DISPOSED OF DURING 1969	14,275

Domestic Relations Cases

Dispositions per judge per year	1,980
Total domestic relations cases anticipated in 1970 (1969—14,257 cases plus projected increase of 1,712 cases)	15,969
Judges required to dispose of annual case input	8.2
There are at the present time open active cases numbering	5,585
Judges required to dispose of presently pending cases within one year	2.8
TOTAL JUDGES REQUIRED FOR DOMESTIC RELATIONS	11
TOTAL NUMBER OF DOMESTIC RELATIONS CASES DISPOSED OF DURING 1969	14,667

Orphans' Court Division Cases

Number of Judges required by the Orphans' Court Division for assignment to Orphans' Court matters	

Summary of Judges Required

Civil Jury Cases	24
Civil Non-Jury Cases	12
Major Criminal Cases	25.7
Non-Major Criminal Cases	15.3
Juvenile Cases	11
Domestic Relations Cases	11
Orphans' Court Division Cases	4
TOTAL	103

We cannot permit the pace of the past totally to govern the future. Improved methods of scheduling and more efficient utilization of judicial manpower through the extension of the use of existing courtrooms could result in an increased rate of disposition. Also, the number of judges projected for the elimination of backlogs may not be fully needed to dispose of simultaneous increases in new cases. Based on these factors, the projected number of judges required has been reduced by 10 per cent. Applying this 10 per cent factor to the projected need of 103 judges reduces the immediate need to 93 Common Pleas Court Judges or an increase of 37 judges over the present judicial complement:

Total number of judges required to expeditiously dispose of the annual case input and eliminate the existing backlogs	93
Existing complement of Common Pleas Court Judges	56
Additional judges required for the Common Pleas Court in Philadelphia	37

Additional judges will of course require supporting personnel and facilities. The leasing of the Gibson Building space on Market Street will soon make eight new courtrooms available. Twenty-four more could be created in the remaining floors of that building.

Conclusion

Since the figure of thirty additional judges has been a constant reference point during the past several years in Philadelphia, it would appear sensible to continue this figure as the current realistic goal. We state this with the full understanding that the case load may itself continue to increase in the coming few years so that there would again be a need for additional judges within the decade of the 1970's.

In assessing the realistic need for thirty additional judges, we are not suggesting a figure which we expect to be compromised downward. We realize that some may be inclined to choose the number ten, fifteen or even twenty as the number of new judges. We reemphasize that thirty, and not less than that number, are needed. If there is any inclination to reduce the number below thirty, then we suggest that the General Assembly vest in the Chief Justice of Pennsylvania the discretion to authorize the specific number of new judges up to thirty as the Chief Justice may determine the requirements to be.

Both as a matter of correcting false impressions and unjustified accusations against the work of present judges and as an aid to establishing the need for 30 additional judges, a program of public information on these subjects should be considered.

CONSTITUTIONAL REVISION—FURTHER IMPLEMENTATION

THE NEW JUDICIAL ARTICLE AND ITS IMPLEMENTATION

By Philip W. Amram, *Washington, D. C.*
Member of the Pennsylvania and Washington, D. C. Bars
and
Sidney Schulman, *Philadelphia*
Member of the Pennsylvania Bar
Secretary, Civil Procedural Rules Committee

The new Judicial Article effective January 1, 1969 necessitated a series of implementing Acts of Assembly and Rules dealing with the reorganization of the courts, appeals and appellate jurisdiction and problems of practice and procedure.

Unfortunately all of the problems requiring implementation or judicial construction have not yet been solved more than eighteen months after the January 1, 1969, effective date. The new Appellate Court Jurisdiction Act of 1970 was signed by the Governor only on July 31, 1970 and it was not until September 1, 1970 that the required proclamation was issued by the Governor declaring the new Commonwealth Court (which under the Judicial Article was to have come into existence on January 1, 1970), organized and ready for transaction of its judicial functions.

The piecemeal legislative approach to implementation which began in December of 1968 has understandably caused confusion and the following discussion may help guide the busy practitioner through the new judicial system.

I. Appellate Court Jurisdiction

The new Appellate Court Jurisdiction Act of 1970 completely restates the jurisdiction of the Supreme and Superior Courts and redistributes jurisdiction on appeal among them and the new Commonwealth Court.

Space permits only a brief discussion of the major changes in prior practice, including the reduction of the time for appeal, but included, as an insert to this issue of the Quarterly, is a detailed outline summarizing the jurisdiction of the appellate courts.

The new Act relieves the Supreme Court in part of its present crushing burden of appeals by restricting its former direct appeal jurisdiction. In addition, *certiorari* may be requested from decisions of the Superior and Commonwealth Courts and allowance by two Justices of the Supreme Court will be required. There is an appeal of right from (1) final orders of the Commonwealth Court involving decisions of the Board of Finance and Revenue and (2) final orders

of the Commonwealth Court in matters commenced originally in the Commonwealth Court excluding actions appealed to the Commonwealth Court from another court or administrative agency or Justice of the Peace.

However, the Supreme Court now must take directly all appeals in Orphans' Court matters and in equity cases irrespective of amount, except equity proceedings involving State and local government, which will be within the appellate jurisdiction of the Commonwealth Court. The Supreme Court will also have exclusive direct appellate jurisdiction and must take appeals in matters involving felonious homicide, the right to public office, contempts, suspension, and disbarment and decisions invalidating as unconstitutional treaties, laws, acts of assembly, and home rule charters, but not local ordinances or resolutions, which are within the jurisdiction of the Commonwealth Court.

On the other hand, the Supreme Court is now relieved of all its prior direct appeals in assumpsit and trespass matters irrespective of the amount involved. These now go to the Superior Court and the prior $10,000 jurisdictional dividing line between the Supreme and Superior Court is eliminated. This will give the Supreme Court substantial relief.

Appeals in zoning matters will no longer go to the Supreme Court, but to the new Commonwealth Court. Appeals in Eminent Domain matters will now go to th Commonwealth Court.

To compensate for the increase jurisdiction of the Superior Cour in assumpsit and trespass cases, it former jurisdiction involving ap peals from state and local adminis trative agency decisions is trans ferred to the new Commonwealtl Court. Its present criminal juris diction remains largely intact, bu appeals from criminal prosecution in the Common Pleas under State Administrative regulations, or under municipal ordinances will now go to the Commonwealth Court.

Appeals from the Common Pleas in Workmen's Compensation and Occupational Disease Appeals are transferred to the Commonwealth Court, as are direct appeals from the Unemployment Compensation Board of Review and the Public Utility Commission.

The Commonwealth Court will also have direct exclusive appellate jurisdiction on appeals from administrative agencies of the Commonwealth, except appeals from revocation or suspension of motor vehicle operators license, Liquor Code appeals, and Workmen's Compensation and Occupational Disease appeals, which go first to the local common pleas courts and then to the Commonwealth Court. Generally all matters involving local government, home rule charters or ordinances and criminal violations thereof will be appealed to the Commonwealth Court except that matters involving the right of the Commonwealth or a political subdivision to create or issue in-

debtedness will, because of the need for speedy resolution, be appealable directly to the Supreme Court.

Where the party has chosen the wrong forum for appellate review, provision is made for transfer to the appropriate appellate court, or if jurisdiction is not objected to, may be assumed by the Court to which the appeal is taken.

The supervisory Kings Bench power of the Supreme Court is continued and the Act expressly provides in Sec. 205 that the court, on its own motion or upon petition of a party in matters of immediate public importance pending before any court or justice of the peace, may assume plenary jurisdiction of such matters at any stage of the proceedings and enter a final order or otherwise cause right and justice to be done. This gives the Supreme Court every necessary power irrespective of any limitations in any Section of the Act. Sections 201 (2) and (3) confer nonexclusive original jurisdiction in mandamus to inferior courts and *quo warranto* to statewide officers.

Finally Section 505 of the Act provides that the Supreme Court may, subject to the right of the legislature by concurrent resolution to disapprove, rearrange the division of appellate jurisdiction among the three appellate courts as above described, as the needs of justice shall require. This will provide the necessary flexibility to deal with any changes that may be required, without the need for legislative amendment of the Act.

The major changes in jurisdiction are also accompanied by a major change in the time for appeal which is reduced to thirty days from the entry of the order appealed from, except as to election cases where the shorter time periods of the Election Code will govern. On appeal from questions of jurisdiction under the Act of 1925, a twenty day appeal period, instead of the former fifteen day period, is now provided. In appeals under the Municipal Borrowing Law to the Commonwealth Court the time for appeal will be increased to thirty days from its former fifteen day period.

Sec. 501 (b) of the Act provides a discretionary "Interlocutory Appeal." The appropriate appellate court may, in its discretion, allow an appeal upon petition filed within 20 days from interlocutory orders (not otherwise appealable by law as a matter of right) where the lower court finds that an immediate review of a controlling question of law as to which there is substantial ground for difference of opinion will materially advance the ultimate disposition of the matter.

By new Rule 20-1/2 of the Supreme Court the time for appeal to the Supreme Court will commence from the entry upon the appropriate docket of the order appealed from and the appeal and affidavit must include a copy of the docket entry showing the entry of the judgment, sentence, order or decree appealed from. A copy of the appeal must also be served upon the appellee.

II. The Right of Appeal

One of the most important problems arising under the Judicial Article of the new Constitution is the scope and extent of the right of appeal.

Article V, Sec. 9 provides:

> "There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be provided by law; and there shall be such other rights of appeal as may be provided by law."

Prior to the new Judicial Article where (1) there was no right of appeal, (2) or the statute governing the action expressly provided that there shall be no right of appeal, (3) or where the relevant statute was silent on the question of appellate review, an appeal in the nature of a narrow *certiorari* would lie only if specifically allowed by the Supreme Court or a justice thereof under its Rule 68-1/2, upon petition filed within 30 days of the decision, order, judgment or decree sought to be reviewed.

Under prior decisions of the Supreme Court, the Superior Court was held to be without any King's Bench power to review by *certiorari* judgments as to which there was no right of appeal, even though the subject matter was within its jurisdiction. *Comm. v. Harris,* 185 A2d. 586, 409 Pa. 163 (1962). *Appeal of Bell,* 152 A2d 731, 396 Pa. 592 (1959).

Three acts were enacted on December 2, 1968 to implement the right of appeal under Article V, Sec. 9 and provide a specific right to appeal from (1) decisions of courts of record, (2) administrative agencies and (3) Justices of the Peace courts.

The Act of December 2, 1968, P.L. ———, Act #351, 12 P.S. 1111.1 provides an appeal from a court of record where no appeal is provided by some other statute.

In briefest terms the Act provides merely that where no right of appeal is provided by any other Act of Assembly there shall be a right of appeal under this Act from a final order, decision, judgment or sentence of a court of record to an appellate court as provided by Sec. 9 of Article V of the Constitution.

The Act further provides that all appeals shall go to the Superior Court within 30 days, unless otherwise provided by statute, including the Superior Court Act of 1895 as amended. This exclusive designation of the Superior Court is amended *pro tanto* insofar as the Appellate Court Jurisdiction Act of 1970 provides otherwise.

The 1968 Act did not attempt to define the scope of appeal, *i.e.,* narrow or broad *certiorari* or on the merits and the Appellate Court Jurisdiction Act of 1970 deals with the problem only to a limited extent.

Sec. 204 of the Appellate Court Jurisdiction Act provides for discretionary allowance of appeals to the Supreme Court from decisions of the Superior Court and the Commonwealth Court and ex-

pressly provides that the scope of review on such appeal "shall not be limited as on broad or narrow *certiorari.*" However, the act is silent as to scope of review in other appeals and in the other appellate courts. This question remains open.

Other questions also remain open. (1) Does the Act apply only to decisions of a court of record on matters initiated in that court? (2) Does it apply to a decision of a court of record after an appeal from an administrative agency to a court of record. The Appellate Court Jurisdiction Act of 1970 answers this in only one respect allowing appeals as of right from orders of the Commonwealth Court involving appeals of Board of Finance and Revenue decisions. (3) What is the status of Supreme Court Rule 68-1/2, which requires petition and allowance?

Following the passage of the December 2, 1968 Act the Supreme Court left its Rule 68-1/2 unchanged. Careful lawyers filed both an appeal and a petition for allowance under Rule 68-1/2.

In the first case to reach the court, *Coston v. Upper Merion Twp.* 435 Pa. 67 (1969), an appeal from a Common Pleas decision in a zoning matter had erroneously been taken to the Superior Court *prior* to the effective date of the new Article V. The statute then in force provided that the decision of the Common Pleas Court was final.

The Superior Court certified the matter to the Supreme Court. The Supreme Court decided the case under the prior law, and ignored the fact that the case was not decided until after the effective date of the new Judicial Article. The case was decided on the narrow ground that the Superior Court could only certify to the Supreme Court cases "appealable directly to the Supreme Court." The Superior Court therefore had no power to certify cases to the Supreme Court in which the statute expressly provided there was no right of appeal. Appeal in that situation under the prior law was only by leave of the Supreme Court under Rule 68-1/2 and was therefore not "appealable directly" to that court.

The decision did not mention the 1968 Act and did not discuss its effect on future appeals. Under the new Appellate Court Jurisdiction Act, Sec. 503 (b) specifically provides for certification to the appropriate appellate court of appeals erroneously taken to the wrong appellate court.

In May of 1970, the Supreme Court finally handed down a group of *per curiam* decisions, downgrading Rule 68-1/2 and strictly enforcing the 1968 Act.

In *Appeal of Plains Township School District et al.,* 438 Pa. 294 (1970), a challenged plan of school administrative units was developed by the Luzerne County Board of School Directors pursuant to the Act of July 8, 1968, 24 P.S. 2400.1 and approved by the State Board of Education. The Court of Common Pleas entered orders affirming the adjudication of the State Board. Sec. 5 of the Act provided

that such orders shall be final and appellants petitioned the Supreme Court for review under its Rule 68-1/2. The Court held that under the 1968 Act, 12 P.S. 1111.1 the appeal must go to the Superior Court, and that the need for Rule 68-1/2 had disappeared.

"Where the subject matter was not within the statutory jurisdiction of the Superior Court, it is now necessary to review the status of that Rule in light of Section 9, Article V, of the Pennsylvania Constitution which, following the amendments of 1968, provides that, 'there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law.' This section was implemented by the Act of December 2, 1968, P.L. ——— No. 351 (5 Purdon's Pa. Legislative Service 965 (1968)). Section 1 of that Act provides that '[e]xcept as provided in Section 2 [excepting orders already appealable by statute] there shall be a right of appeal under this Act from a final order, decision, judgment, or sentence of a court of record to an appellate court as provided by Sec. 9 of Article V of the Constitution. *The aforesaid appeal shall be taken to the Superior Court unless otherwise provided by statute.*' (Emphasis supplied.)[1]

"With the adoption of the statutes implementing Section 9 of Article V of the Constitution, all of which became effective January 1, 1969, the need for Rule 68-1/2 has disappeared; indeed, it is not consonant with Section 9 or the statutes referred to. We have not, however, formally revoked the rule pending new legislation relative to appellate jurisdiction, and because the profession was in many cases still using it, being unaware of Act 351 and the other new acts dealing with appeals. Continued use of Rule 68-1/2 is, however, no longer desirable, and it is the intention of the Court to abolish it forma in the near future.

"In the present case, jurisdiction ov the appeal lies with the Superior Cou since, as noted, no statute provides f an appeal from an order of the Court Common Pleas entered under Act 1. of 1968 and that Act makes such orde 'final.' There has been understandab confusion over the effect of Section Article V and its implementing statutes moreover, Act No. 351 of 1968 has n yet been printed in Purdon's Digest. is possible, therefore, that petitions i this case have inadvertently allowed t elapse the 30 day period following th entry of the order of the lower cour within which an appeal under Act No 351 must be filed. Accordingly, we wil allow petitioners an additional 30 da period from the date of this order withi which to file an appeal to the Superio Court."

However, in a footnote the court expressly stated:

"We here express no opinion as to whether or not Sec. 9, Article V of the Constitution confers any right of appeal from the order below to an appellate court in the situation presented by this case since that question is not properly before us."

This footnote leaves open the question whether there is an appeal to an appellate court as a matter of right from a decision of the Court of Common Pleas on an appeal to that court from an administrative agency. It also leaves open the question whether a school board is an "administrative agency" within the meaning of Article V. Sec. 9. It it is not, then Supreme Court Rule 68-1/2 might still have some utility.

In *Washington Arbitration* case, 436 Pa. 168 (1969) decided before the *Plains case, supra,* the Court held that the right of appeal conferred by Article V. Sec. 9 of the Judicial Article did not apply to

[1] Author's Note. The provision for appeal to the Superior Court has been amended by the Appellate Court Jurisdiction Act of 1970 which now governs jurisdiction on appeal.

the award of an arbitration panel appointed under the Act of June 24, 1968 to adjudicate wage disputes between third-class cities and their police and firemen. The Act provided that no appeal shall be allowed to any Court.

The Court held that an arbitration panel, under that Act, is neither a court nor an administrative agency within the meaning of Article V, Sec. 9 of the Judicial Article, so that there is no absolute right of appeal.

The Court, however, granted the city's petition for *certiorari* under Rule 68-1/2 and reversed the decision holding that the arbitrators has exceeded the authority vested in them by the statute by directing the city as part of the wage award to pay hospitalization premiums for members of the policeman's family. The lack of authority of the arbitrators was held to be a matter of law reviewable on narrow *certiorari*.

If the Supreme Court intends to abolish Rule 68-1/2 (see the *Plains* quotation *supra*) how will the Court handle such an arbitration matter hereafter? Isn't Rule 68-1/2 essential for such unusual situations?

III. Appeals from State Administrative Agencies

To implement the right of appeal under Article V, Sec. 9 the State Administrative Agency Law was amended by the Act of December 2, 1968, P.L. 354, 71 P.S. §§1710.46 et seq. This Act provides that even though an Act of Assembly expressly provides that "there shall be no appeal from an adjudication of an agency, or that the adjudication of an agency shall be final or conclusive, or shall not be subject to review, or where the applicable acts of assembly are silent on the question of judicial review," there shall be a right of appeal to the Dauphin County Common Pleas Court.

The jurisdiction of the Dauphin County Court is now vested in the new Commonwealth Court (see *infra*) so that in the situations enumerated above, appellate review will be in the Commonwealth Court. There may no longer be a direct petition to the Supreme Court from the agency for allowance of appeal under Rule 68-1/2.

Section 3 of the Act (71 P.S. §1710.50) excludes tax and fiscal matters which continue to be governed by the fiscal code and related acts authorizing appeals in tax matters.

IV. Appeals from Local Administrative Agencies

Practice and procedure before and appeals from local administrative agencies, as distinguished from State agencies, are now governed by the Act of December 2, 1968, No. 353. This is known as The Local Agency Law, 53 P.S. 11301 et seq. and is patterned after the State Administrative Agency Law.

The Act defines local agency to mean "any department, departmental board or commission, independent administrative board or

commission, office or other agency of a political sub-division empowered to determine or affect private rights, privileges, immunities or obligations by adjudication, but shall not include a court of record, a magistrate, alderman, Justice of the Peace nor an 'agency' as defined in the 'Administrative Agency Law.'"

Under §4 of the Act no adjudication shall be valid unless there is an opportunity to be heard. If the testimony is not stenographically recorded by the agency any party may at his own cost require a full and complete record of the proceedings to be made.

Appeals are to be taken to the Court of Common Pleas of the judicial district where the agency has jurisdiction within 30 days unless otherwise provided by statute.

Section 9 of the Act which provided that the decision of the Common Pleas Court is appealable to the Superior or Supreme Court as provided in the Superior Court Act of 1895 is now repealed absolutely. These appeals will now go to the new Commonwealth Court under the Appellate Court Jurisdiction Act.

V. Appeals from Justices of the Peace and Philadelphia Municipal Court

The Minor Judiciary Court Appeals Act of December 2, 1968, P.L. ———, Act No. 355, 42 P.S. §3001 et seq. now governs the right to and time of appeal and the practice and procedure on appeal from Justices of the Peace in cases of summary conviction and civil proceedings. The Act expressly preserves the power of the Courts of Common Pleas, including appeals from the Philadelphia Municipal Court, to issue writs of *certiorari* to the Minor Judiciary.

All appeals, in both civil and criminal cases, go to the Courts of Common Pleas (§§3 (a), 5 (a), 5 (d) of Act 355, *supra*. The Act of October 17, 1969, Act #105, P.L. ———, §19, 17 P.S. §711.19) and local Common Pleas Rules govern appeals in civil matters from the Philadelphia Municipal Court to the Common Pleas Courts which must be taken within 30 days. Appeals from summary convictions in the Municipal Court continue to be governed by the Minor Judiciary Court Appeals Act.

VI. The New Courts Created by the Judicial Article

(1) *Commonwealth Court*

The Commonwealth Court Act of January 6, 1970, P.L. ———, (1969) Act No. 185, 17 P.S. §§211.1 et seq. implemented Article V, Sec. 4 and created a Commonwealth Court of statewide jurisdiction. However, the legislature failed to confirm the appointments to the Court until April 1970 and the Governor's proclamation, declaring the Court formally organized for business, was not issued until September 1, 1970. In the interim, the jurisdiction of the Dauphin County Common Pleas

Court continued in Commonwealth matters, and the newly-confirmed Commonwealth Court judges were temporarily assigned by the Chief Justice to the Dauphin County Court to hear such matters as common pleas judges.

The appellate jurisdiction of the Commonwealth Court originally set forth in the Commonwealth Court Act was substantially enlarged by the Appellate Jurisdiction Appeals Act of 1970 hereinbefore referred to. The latter will now govern its appellate jurisdiction.

(2) *The Consolidated Common Pleas Court*

The New Judicial Article abolished the separate Orphans' Courts in the Judicial Districts in which they existed and consolidated them into the Common Pleas Courts as the Orphans' Court Division.

The Criminal Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace were also consolidated into the Common Pleas Courts.

In Philadelphia and Allegheny Counties, the separate County Courts were consolidated into the Common Pleas Courts as a Family Division thereof to administer domestic relations, juvenile matters, adoptions and delayed birth certificates.

Questions immediately arose as to the proper captioning of actions which had formerly been commenced in the abolished courts. The Supreme Court by order dated February 6, 1969 regulated captioning and docketing in the Courts of Common Pleas as follows:

Civil actions formerly in the Common Pleas Courts were to be docketed as Civil Actions—Law, or Civil Actions—Equity. Criminal actions were to be docketed, Court of Common Pleas—Criminal. Matters heretofore within the jurisdiction of the Orphans' Court were to be docketed, Court of Common Pleas—Orphans' Court Division. Juvenile proceedings were to be captioned as Court of Common Pleas—Juvenile.

The Order further provided that local rules could require further identification and that no action or proceeding should be dismissed by reason of an erroneous caption or docketing. This Order was published by West Publishing Company as an addendum to Assumpsit Rule 1018, although it applies to all actions, civil and criminal.

The legislature, in addition, enacted two implementing Acts dealing with divisions of the Common Pleas Court. The Act of December 2, 1968, P.L. ——— 357, 17 P.S. 235.1 expressly provided that in Allegheny County, there should be four divisions of the Common Pleas Court: the civil division, the criminal division, the Orphans' Court division and the family court division.

The Act also provided (§2) that the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace and the County Court, the Orphans' Court and the Juvenile Court are abolished and their present juris-

diction shall be exercised by the Court of Common Pleas.

The Act also provided (§5) for the designation of the President Judge and the assignment of the judges of the various divisions, and the designation of the presiding judges of those divisions.

The implementing Act for Philadelphia, Act of March 27, 1969, P. L. ———, Act No. 5, 17 P.S. 240 was drawn somewhat differently. It provided for fifty-six judges; thirty judges shall be members of the trial division; twenty shall be members of the family court division; and six shall be members of the Orpahns' Court division. The President Judge has power to assign judges between divisions, with the express restriction that judges assigned from one division of the court to another, shall nevertheless remain members of their original division.

The form of this Act led to fears that it might erode the one court concept and create artificial jurisdictional barriers between the divisions of the court. The decision of the Supreme Court in *Eberhardt v. Ovens,* 436 Pa. 320 (1969) justified these fears. In that case, prior to the effective date of the Judicial Article, an equity action had been brought in the Court of Common Pleas, naming the personal representative of a deceased partner as a defendant. A final decree was entered and an appeal taken to the Supreme Court. The jurisdiction of the Common Pleas Court was not questioned either during the trial of the action or on appeal. The Supreme Court *sponte* held that under §301 of Orphans' Court Act of August 1951, the Orphans' Court h exclusive jurisdiction of the a judication of title to personal pr erty in the possession of t personal representative or reg tered in the name of the decede Therefore the plaintiff, who claim that he had a partner's interest property registered in the name a deceased should have had t matter adjudicated by the Orphar Court. The Court therefore di missed the action for lack of juri diction in the Common Pleas Cour

Justice Roberts in a dissentin opinion found no basis to requi the parties to take their case t what was now merely a differer division of the same court whic originally had adjudicated the ac tion.

Justice Jones filed a separat opinion expressly disagreeing witl Justice Roberts' position. He hel that Orphans' Court jurisdictior could not be vested in any othe division of the Common Pleas Court than the Orphans' Court division. He held that Section 4 of the Schedule to the Judicial Article clearly intended that the powers formerly exercised by the separate Orphans' Court could now be exercised within the amalgamated Court of Common Pleas only by its Orphans' Court division. He viewed the Philadelphia implementing act, *supra,* creating the divisions of the Philadelphia Court of Common Pleas as keeping the former separateness between

the two courts. There remained an identical jurisdictional distinction between the trial division and the Orphans' Court division of the Common Pleas Court.

Interestingly, in dismissing the action for want of "jurisdiction," the Supreme Court did not enforce its June 27, 1969 amendment, effective September 1, 1969, to Rule of Civil Procedure 213 (f). This amendment expressly provides that, where an action is commenced in a court which has no jurisdiction over the subject matter of the action, the action shall *not* be dismissed if there is any court of appropriate jurisdiction within the Commonwealth in which the action could have been brought. The court is to transfer the action, at the cost of the plaintiff, to the court of appropriate jurisdiction. Surely if an action in a wholly wrong court should not be dismissed, an action in the wrong division of a unified court should not be dismissed. Even before the 1969 amendment to Rule 213 (f), a similar error was remedied by transfer to the proper court, not dismissal. See *Gaitley Adoption,* 303 Pa. 200 (1931) transferring an adoption proceeding, erroneously commenced in the Common Pleas to the Orphans' Court. This power to transfer has been exercised even after the statute of limitations has expired. *Carney v. Hughes,* 186 Super. Ct. 576 (1958).

The opinion in *Eberhardt* does not explain why the matter was not remanded for consideration by the Orphans' Court division. Nor did the Supreme Court consider the practical effect of the possibility that the President Judge of the Court of Common Pleas, after the reversal, could have specially assigned to the Orphans' Court division the same trial division judge who had first decided the case, when it was brought in the trial division. He could then decide it as an "Orphans' Court" judge.

In *Commonwealth ex rel Riggins v. Supt. of Philadelphia Prison,* 438 Pa. 160 (1970), the Court again considered the problem of jurisdictional distinctions between various divisions of the Common Pleas Court. In that case, a judge of the trial division of the Common Pleas Court of Philadelphia was specially assigned by the President Judge to sit as a committing magistrate in the re-arrest of a juvenile charged with murder who had been previously given a preliminary hearing before a judge of the Juvenile Court division and discharged for lack of a *prima facie* case.

The Supreme Court held that the power of all Common Pleas judges to sit as committing magistrates, which power existed prior to the adoption of the new Judicial Article, continued to be exercised by all the judges of the Court of Common Pleas regardless of the divisions to which they were assigned.

The Court further held that under Section 16 (g) of the Schedule, the President Judge of the Philadelphia Common Pleas Court had

the power to assign judges from each division to another division of the court when required to expedite the business of the court and this authorized the assignment of a trial division judge to a Juvenile Court matter.

Justice Roberts dissented, believing the proper practice required preliminary hearings in juvenile matters to be heard by a judge of the Family Court division in accordance with the rules of procedure applying to that division and secondly that he did not believe that Section 16 (g) authorizes the transfer of a judge to another division for the purpose of holding a single preliminary hearing where there was nothing in the record to indicate that the special assignment was in any way required to expedite the business of the court.

No mention was made of the *Eberhardt* decision. A possible distinction may be drawn from the fact that in the *Riggins* case there was an actual assignment by the President Judge from one division to another, while in the *Eberhardt* case a trial division judge erroneously sat without assignment on a matter within the "jurisdiction" of the Orphans' Court division.

In a somewhat similar case the Superior Court in *Commonwealth v. Dawkins,* 216 Super. Ct. 198 (1970) had earlier held that all judges of the Court of Common Pleas have power to sit as committing magistrates and that a failure to proceed with a preliminary hearing before a Philadelphia Municipal Court judge, who succeeded to the former magistrates' jurisdiction over preliminary hearings, was not fatal.

(3) *Justice of the Peace Courts*

(a) Article V, Section 7 of the new Judicial Article creates Justice of the Peace courts with one justice for each magisterial district. The General Assembly was directed by the Judicial Article Schedule to establish by law the classes of magisterial districts on the basis of "population and population density" and to fix the salaries of the justices of the peace in each class.

The classes were established by the Magisterial Districts Act of 1968, Act of Dec. 2, 1968, P.L. ———, No. 352, 42 P.S. 1301 et seq. applying to all counties other than Philadelphia or Allegheny and for Magisterial District Act for counties of the 2nd class. Act of December 2, 1968, P.L. ———, No. 359, 42 P.S. 1401 et seq. which applied to Allegheny County.

The task of carving the districts was left to the Supreme Court, which, in consultation with the judges of each judicial district, fixed the boundaries. The number of justices of the peace under the new magisterial district classifications resulted in a decrease in the number of justices from over 5,000 to under 600. The old justices of the peace continue to serve out their terms.

Provision was made, as provided in Article V, Sec. 13 of the Judicial Article, for the instruction of justices of the peace not learned

in the law by the Act of January 19, 1968, P.L. ———, No. 450, 42 P.S., §1201, repealed by the Minor Judiciary Education Act of 1970, Act of February 24, 1970, No. 22, 42 P.S., §1211, which succeeded it. The training period provided leaves much to be desired.

(b) Justices of the Peace. Rules of Conduct, Practice and Procedure

The Minor Court Committee of the Supreme Court recommended and the Supreme Court adopted Rules for Justices of the Peace governing standards of conduct, rules and standards with respect to the location of offices and business houses, and Rules of Civil Procedure governing civil actions. There were many changes in practice and procedure, particularly in venue and in pleadings and the rules should be carefully consulted. They will be found in Purdons Penna. Rules of Court. Desk copies are available in loose leaf form from the Pennsylvania Bar Institute.

The rules governing standards of conduct of the Justices of the Peace, which prohibit holding office in a political party or organization or holding an office or position of profit in the Government of the United States, the Commonwealth, or any political subdivision, except the armed services, has been attacked as unconstitutional in an action brought and still pending in the Supreme Court by the *Squires and Constables Association of Pennsylvania, Inc.* and certain named holdover justices who hold offices of profit under the State, County or local government.

They have argued that under Article VI only the legislature can declare which offices are incompatible and that the court in previous decisions has declared it has no inherent power to determine the incompatibility of offices. *Comm. ex rel Schermer v. Franek,* 311 Pa. 341 (1933) held that the court did not have the power to declare the office of Justice of the Peace and mayor incompatible. They contend that, unless express authority to declare offices incompatible can be found in the Judicial Article, then the prior rule must prevail.

On the other hand, Sec. 17 (b) of the new Judicial Article expressly declares that the Justices of the Peace shall be governed "by rules or canons which shall be prescribed by the Supreme Court," and the Supreme Court is also given the express power, under Section 10 (c) to adopt general rules governing "practice, procedure *and the conduct of all courts, Justices of the Peace* and all officers serving process or enforcing orders, judgments or decrees of any courts or justice of the peace. . . ."

To preserve the integrity of the judicial system, the Supreme Court needs the power to prescribe rules of conduct and the power of removal or suspension from office of Justices of the Peace through the Judicial Inquiry Review Board and its constitutionally authorized procedures. It is hoped that this view will prevail in the pending litigation.

(4) *Community Courts*

Community courts were authorized by Article V, Section 6 to replace justice of the peace courts in any judicial district on a local option referendum basis. The Community Court Act of May 13, 1969, P.L. ———, No. 13, 17 P.S. §710.1 et seq. provided for the establishment of such courts, their jurisdiction, number of judges and salaries, and also provided the referendum machinery. The only effort thus far to establish a community court occurred in Cambria County where it failed to gain voter approval at the November, 1969 election.

(5) *Philadelphia Municipal and Traffic Courts*

The Schedule to the new Judicial Article established a Philadelphia Municipal and Traffic Court to replace the former Philadelphia magisterial system. Its jurisdiction, as set forth in the Schedule, was implemented by the Philadelphia Municipal Court Act, Act of October 17, 1969, P.L. ———, Act No. 105, 17 P.S. 711.1 et seq. and the Traffice Court of Philadelphia, Act of October 17, 1969, P.L. ———, No. 106, P.S. 712.1 et seq.

Both courts came into existence January 1, 1969, and operated initially without enabling legislation under the authority of and with the jurisdiction conferred in the Schedule, the judges receiving the same salary they formerly received as magistrates. Although the Acts of October 17, 1969 provided for substantially higher salaries, the salaries were held by the Attorney General not to be retroactive.

However, questions still remain as to whether judgments entered by the new Municipal Court prior to October 1, 1969, become liens as provided by §5 of the Act, since the Act was silent as to retroactive effect and the Schedule did not deal with that issue.

A number of jurisdictional problems have also arisen as to the Philadelphia Municipal Court, which may require amendment. These concern the extent of the Court's jurisdiction in landlord and tenant actions. The Schedule confers jurisdiction in "matters arising under the Landlord and Tenant Act of 1951." Other provisions of the Schedule restrict jurisdiction in civil actions to assumpsit and trespass involving claims of less than $500.00. The Landlord and Tenant Act of 1951 provides that a tenant may, within five days after a levy, replevin his property upon posting bond and also permits landlords to join rent claims with actions for possession. This raises the question as to whether the Municipal Court has jurisdiction in replevin, and whether a rent claim in excess of $500 may be coupled with an action for possession.

The landlord's right to distrain without prior notice and under the Landlord and Tenant Act of 1951 has been attacked as violative of due process and a temporary restraining order was obtained through the Lawyers Committee for Civil Rights under Law from a

Federal three-judge statutory court in *Santiago et al. v. McElry et al.* (Constable), Civil Action 69-2792, United States District Court for the Eastern District of Pennsylvania. The matter is awaiting a final decision from which appeals to the United States Supreme Court are expected.

The United States Supreme Court has issued *certiorari* in a similar case, *Georgia Housing Authority of the City of Atlanta v. Sanks*, 166 S.E. 2d 19 (1969), U. S. Supreme Court Docket #266, argued December 8, 1969. Reargument has been ordered for the October 1970 term and the decision in that case may have repercussions on the current practice of landlord's distraint in Pennsylvania.

Rules of Practice for the Philadelphia Traffic Court, prepared by a committee of the Philadelphia Bar Association at the suggestion of the Chief Justice, were adopted by the Supreme Court effective as of April 1, 1970.* The form of traffic violation summons in other judicial districts is now governed by amendments to the Rules of Criminal Procedure.

(6) *The Judicial Inquiry Review Board*

Last, but not least, is the Judicial Inquiry Review Board created by Article V, Sec. 18 of the Judicial Article. For the first time there now exists a disciplinary agency which can recommend to the Supreme Court, after hearing at which full due process is afforded, disciplinary proceedings including suspension, removal from office or other discipline. The Board may receive complaints, formal or informal, from any source and make such preliminary investigation as it deems necessary.

Rules of Procedure before the Board were approved by the Supreme Court on June 27, 1969, effective July 1, 1970, as amended July 1, 1970. Unfortunately they do not appear in Purdon's deskbook of rules, but can be found in Purdon's September 1969 cumulative pamphlet or obtained from the Executive Secretary and Director of the Board, Richard E. McDevitt, Esq., 15th Floor, Morris Building, Philadelphia 19102.

VII. Court Administration

The machinery of justice established by the Judicial Article requires, for its efficient operation, supervision and administration. This is supplied by Article V, Section 10 of the Judicial Article which grants to the Supreme Court general supervisory and administrative authority over all courts and justices of the peace and officers serving process or enforcing orders of the court. The Court was also authorized to appoint a Court Administrator and such subordinate administrators and staff as may be necessary for the proper disposition of the business of all courts and justices of the peace.

Pursuant to this authority, A. Evans Kephart, former State Senator and member of the Philadel-

* See 1 Pa. Bulletin 242, Sept. 12, 1970, for rules.

phia Bar, was appointed Court Administrator. Carlile E. King, Esq. and Gerald W. Spivack, Esq. were subsequently appointed Deputy Court Administrators.

VIII. Conclusion

It must be pointed out, however, that court reorganization and administration is only a tool, not a panacea. It is an aid, not a nostrum for the ills of our judicial system. To reach the objectives of the constitutional reform, we must have the combination of vigorous use by the Supreme Court of the administrative tools made available by the new Judicial Article and the complete cooperation of the Bench and Bar throughout the Commonwealth. Without this combination, the new tools will achieve only the shadow and not the substance of the desired reforms.

New vigor, new insight and imaginative new ideas and techniques are required. We can hope that in the decade of the 70's, important results will be achieved in improving the administration of justice in Pennsylvania.