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Hon. **Jack A. Panella**^{a1}Copyright © 2004 by American Bar Association; Hon. **Jack A. Panella****FINDING COMMON GROUND BETWEEN GOVERNMENTAL BRANCHES: THE PENNSYLVANIA COMMONWEALTH PARTNERS PROGRAM**

In December 1999, the **Superior Court** of **Pennsylvania** started an initiative called the Pennsylvania Commonwealth Partners Program. Its goal was to provide a forum, not otherwise available at the time, in which judges and legislators could informally exchange views in a setting that promoted frank and candid comments. The need to open the lines of communication between the two branches was clear. Just as in state capitols across the land, in Pennsylvania one often overheard legislators lament that the only time they saw judges was when the judiciary wanted something.

Historically, the courts have rested upon the doctrine of separation of powers, a foundational principle of American jurisprudence that has sometimes appeared to insulate the judiciary from the often politically motivated policymaking function of the legislative branch. After all, the adjudicatory function of the courts necessitated judicial independence. But, through time, the lines separating the branches have become hazy. Many of the routine functions of courts, such as the funding of court services, became dependent upon legislative discretion. Without doubt, the self-imposed barriers that once inhibited discussion between the branches needed to be reevaluated.

The problem was compounded by increasing concerns among leaders of the bench and bar over a diminished appreciation for the constitutional mandate of institutional judicial independence, as well as a recognition of the withering respect for decisional judicial independence. Constitutional provisions confer upon the judiciary mandates for institutional judicial independence, that is, self-determining mechanisms necessary to preserve the prerogatives of the judiciary in its own procedures as well as in its relations with the legislative and executive branches. Decisional judicial independence is the core of our three-branch system of government and, every bit as important, an essential feature of our democratic society.

A demand for accountability, whether generated by the public or the other two branches of government, always seemed to accompany either notion of judicial independence, creating the potential for tension in the operations of government. The Pennsylvania Commonwealth Partners Program flowed from the quite real notion that the de jure doctrine of the separation of powers, and thereby of the three branches, is balanced in rather precious fashion by a de facto interdependence of the three branches. And, of course, once the judiciary acknowledges that accountability attends the constitutional mandate of the independence of the judiciary, the dialogue, collegiality, and partnership of the judiciary with the legislative and executive branches are immeasurably enhanced.

The Program Begins

Under this partnership program, attention was first directed to the legislature. The question became. How can we develop and implement a program to foster communication between these two branches? As conceived and designed by the Honorable Stephen J. McEwen Jr., President Judge Emeritus of the Superior Court, the program's basic objectives were for participants

- to become acquainted with other members within the justice system--whether legislators, trial judges, or appellate jurists--so as to gain the benefit of the personal experience and particular perspectives of the other members upon justice system issues;
- to identify strengths and weaknesses in current branch relationships;
- to establish a spirit of collegiality as an inherent feature of the interdependence in the relationship between the branches; and
- to identify issues, even a single issue, upon which the legislature and the judiciary could jointly work during the legislative session, and to shape the methods of this collaboration.

Starting in December 1999, the program continued for eighteen months from conception to completion of the first year of meetings. To facilitate implementation of the effort, the state was divided into thirteen regional districts, covering the sixty-seven counties that compose the sixty judicial districts of Pennsylvania. Trial judges were solicited and enlisted to schedule the meetings, and all state representatives and senators were invited to local dinner meetings scheduled within the regional districts. Although the idea was new and untested, eventually thirteen regional conferences were held and the attendance was better than initially projected. In that first year, fifty-nine representatives, eleven senators, and 230 trial judges attended. The program benefited from the efforts of appellate court judges to also attend regional meetings.

That year's meetings were designed rather formally. To stress the importance of the program, Judge McEwen hosted each event. Sessions started with prepared remarks by selected judges and legislators, with a brief dinner following. The speakers asked the audience to explore ways to

improve communication between the two branches. Judge McEwen then suggested a number of different ideas to act as building blocks in the development of collegiality.

- As Pennsylvania's busiest appellate court, the Superior Court extended an *48 invitation to legislators and trial judges to join an appellate court panel on the bench for oral argument sessions in Pittsburgh, Harrisburg, or Philadelphia.
- Members of the judiciary advised the legislators that judges of appellate or trial courts were willing to appear before the legislature, or a caucus thereof, to undertake discussion of court-related work and objectives, as well as to address issues and questions raised by the legislature.
- Several four-person panels--each including a senator, a representative, a trial judge, and an appellate court judge--agreed to rotate as a regular monthly feature on the Pennsylvania Cable Network. The panels would discuss current governmental issues and to respond to telephone inquires. Judges would participate at a level consistent with ethical rules promulgated by the Pennsylvania Supreme Court.
- The Superior Court would televise its en banc sessions to enable viewers to compare judicial proceedings with the legislative sessions that were already being televised.
- The comments by the legislators and trial judges who attended these original regional conferences were unanimously positive, and the outcome was that legislators promised to attend future meetings. Almost immediately, a recognizable, positive difference in communication blossomed between the two branches.

The Program Evolves

After the initial regional conferences, the Superior Court decided to ask the Pennsylvania Conference of State Trial Judges (Conference)--to take over the program for the following year. Under the auspices of the trial judges, the program continued in a more informal format and attendance grew. The trial judges added a number of components to ensure participation by all attendees. The then president of the conference, Judge Albert Stallone of Berks County, decided to delegate the responsibility for organizing the meetings by appointing regional coordinators among the trial judges. This added a much appreciated local flavor to the meetings. The Conference leadership also developed mechanisms to help guide the regional coordinators, developing a handbook with detailed forms, suggestions, and standardized invitation letters. To assist with the invitations for the second season of mailings, they even provided the names and addresses of all legislators living in the respective districts. Regional coordinators only had to add the names and addresses, as well as the specific information about the time and place of the meetings. The Conference leaders also supplied a standard press release accompanied by the names and addresses of all newspapers of general circulation in the district, assuming that legislators would appreciate

positive comments in their local newspapers about attendance at meetings that stressed cooperation between the branches of government.

Other innovations followed. Each regional coordinator circulated a request form to get ideas on topics of mutual concern. The request form was sent to potential attendees with a stamped, self-addressed envelope to make it easy to respond. In addition, the Conference agreed to pay \$50 per person for the dinner at a suitable catering room selected by the regional coordinator. No alcoholic beverages were supplied using state dollars. To help boost attendance, the regional coordinators, as well as other trial judges willing to help, placed follow-up phone calls to the legislators. The regional coordinators asked trial judges who were acquaintances of the legislators to make these calls.

The meetings started with an extended social hour. Weather permitting, some of the meetings actually began earlier in the day with legislators, appellate judges, and trial judges joining for a round of golf. When the actual meetings started, the participants enjoyed a very informal social hour. Interestingly, the participants used the social hour to enthusiastically discuss matters that affected the two branches of government. No encouragement was necessary. Indeed, it seemed as if the attendees were anxious for a forum to get together and talk outside of the capitol building. On many occasions, dinner had to be delayed because the discussions were extremely productive during the social hour.

After the dinner, the meeting focused on the issues of mutual concern that had been previously submitted. A trial judge was typically selected to act as a moderator over a round-table discussion, with everyone in the room having an opportunity to speak, or to gripe, in a stress-free atmosphere. Moderators oftentimes had a number of key topics to raise in the event that discussions did not flourish, but they were rarely necessary. The meetings allowed for brainstorming, frank comments, and friendly, yet spirited exchanges. Many of the meetings centered on topics sensitive to both branches: tort reform, mandatory criminal sentences, merit selection, judicial campaign financing, and the like.

New ideas were necessary to build on the successes of the first two years. Meetings continued into the third and fourth years, with new innovations adopted to keep the meetings fresh. The trial judges are now considering adding a legislator as a cosponsor for each meeting. They also are considering slowly incorporating the executive branch into the meetings. Without question, the program has created forums for the branches to discuss issues of mutual concern and has raised the legislative consciousness regarding unfunded mandates. Comments from the legislators and trial judges remain unanimously positive. Nonetheless, as Judge McEwen remarked at the inception of the program, the program will be a success only if it fosters a tradition of amicability, forthrightness, and cooperation between the two branches, a goal considerably beyond the transitory success of these first few years.

Footnotes

a1 **Jack A. Panella** is a judge of the **Superior Court** of **Pennsylvania**.

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