PENNSYLVANIA SUPREME COURT REVIEW, 1988

FOREWORD

A BLUEPRINT FOR JUDICIAL REFORM IN PENNSYLVANIA*

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INTRODUCTION

On July 16, 1987, Governor Robert P. Casey signed an executive order calling for an extensive re-examination of this Commonwealth's judicial system. Governor Casey proclaimed that "an impartial, independent, and honorable judiciary is indispensable to justice in a democratic society,"[1] and that there was "a growing consensus among the citizens of the Commonwealth that there is a need to consider reform of Pennsylvania's judicial system."[2] To this end, Governor Casey created and appointed a Commission, called the Pennsylvania Judicial Reform Commission, which was entrusted with considering and recommending reforms.

The twenty-three Commission members included an impressive array of civic leaders, public officials, and legal professionals and was directed to complete its work in six months. In January 1988, the Report of the Commission was presented to the Governor.

The focus of the Commission's work was the Pennsylvania judiciary. Pennsylvania's judiciary is headed by a seven-member Supreme Court. Its intermediate appellate courts consist of the Superior Court with fifteen members and the Commonwealth Court with nine members. The judiciary's trial division, the Common Pleas Courts, is basically organized by counties. Sixty judicial districts serve the sixty-seven counties; in some of the rural areas, a judicial district comprises more than one county. There are 329 authorized trial court judgeships. The minor judiciary consists of a District Justice system including 546 justices.[3]

The Chair divided the Commission into four subcommittees to examine the administration of the judicial system, the financing of the judicial system, the

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* The text of this article has been adopted from the Report of the Governor's Judicial Reform Commission. Special thanks is owed to Zygmont A. Pines, Esq., legal counsel to the Commission.

** Judge Beck served as the Chair of the Governor's Judicial Reform Commission.

1. Executive Order No. 1987-14.

2. *Id.*

3. *See* 1986 ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS ANN. REP. 115.

selection and retention of judges and the disciplining of judges. Early in its deliberations, the Commission decided that informational input from two sources was critical: interested and informed citizens of this Commonwealth and knowledgeable professionals. To accomplish this essential aspect of the Commission's work, the Commission scheduled public hearings and private "focus sessions." Public hearings were held in Philadelphia, Harrisburg, Pittsburgh, and Wilkes-Barre. About 350 individuals and organizations in the Commonwealth were invited to participate and the public hearings were advertised in newspapers throughout the Commonwealth.

Supplementing the general public's participation were the focus sessions with professionals (academicians, lawyers, administrators, judges, civic leaders, the National Center for State Courts of Williamsburg, Virginia, and the American Judicature Society of Chicago, Illinois) who made valuable contributions in the specialized subject areas. These professionals came from many areas of the United States as well as Canada. In addition, Commission members were provided with a comprehensive bibliography.

The Commission as a whole met three times in 1987: in September to identify and approve the issues each subcommittee would address; in November to consider the provisional report of each subcommittee; and in December to vote on the recommended proposals for reform.

Each subcommittee met between three and eight times. The issues each subcommittee studied largely represented the core problems facing Pennsylvania's judiciary. The subcommittees evaluated a broad spectrum of possible resolutions to these issues. The subcommittees' deliberations resulted in formal proposals for reform which were presented to the entire Commission. By and large, the proposals for reform represent the unanimous view of the Governor's Commission with the exception of the report of the subcommittee on judicial selection and retention. The dissenters issued a minority report.

SOCIETAL CHANGES AND THEIR IMPACT ON PENNSYLVANIA'S JUDICIAL SYSTEM

The issue of reform, of course, cannot be considered in a vacuum; problems exist in a context. The social, economic, and political realities in Pennsylvania today formed the jumping-off point for the Commission's deliberations. Our society, however, is rapidly changing and a judicial system must recognize new realities if it is to maintain high standards. New problems require new solutions. Indeed, the key to meaningful reform is not only the ability to respond to change but also to anticipate it.

Unfortunately, from 1722 when the Pennsylvania Supreme Court was established to 1968 when the "unified judicial system" was created pursuant to a Constitutional Convention, the Pennsylvania judiciary has responded modestly and insufficiently to its problems. For example, when the General Assembly in 1767 discovered that the three overworked justices of the supreme court were not "riding the circuit" with the necessary frequency and regularity, the justices

were enjoined to do so with the help of an additional fourth member.[4] All too frequently, when the forces of change threatened to overwhelm, the short-term response was either to redefine jurisdiction, add more judges, or create new courts. Structural, fundamental changes—such as the Governor's Commission recommended—were rarely undertaken.

This crisis-oriented preoccupation prevented the development of a broader perspective of what the judiciary's future can and should be. Thus, before proceeding to a presentation of the Commission's recommendations, it is advisable to understand why the short term solutions of the past are no longer serviceable. The new realities of today's society have imparted special problems that defy easy solutions.

Eight areas comprise these new realities which affected or will affect our judicial system: (1) changing demographics, (2) burgeoning litigation, (3) specialized litigation, (4) the need for technological and administrative expertise, (5) the need for equitable reallocation of resources, (6) the increased pressures from interest groups and factions, (7) the phenomenon of mass communication, and (8) the reality of accountability and openness of public institutions.

A. Demographics

Pennsylvania has changed dramatically in numbers and composition. In 1800, Pennsylvania had approximately 600,000 inhabitants; in 1850, 2.3 million; in 1900, 6.3 million; and in 1980, 11.8 million.[5]

In 1850 rural life remained strong, with a population composed of ethnic groups primarily from northern Europe and Germany. The growth of industrialism and the new tides of immigration brought increased numbers of Slavic, Italian, Finn, Scandinavian, and Jewish immigrants, to be later followed by Black migration from the South.

As of 1980, although Pennsylvania was in many ways still a rural state and boasted the largest rural population in the nation, it was the fourth most populous state. In addition, with sixty-nine percent of the population urbanized, Pennsylvania has the nineteenth most urban population of all the states.[6]

B. Burgeoning Litigation

The exponential growth of population provides an opportunity for increased discord and dissension. It is, of course, difficult to determine whether there is a direct cause-and-effect relationship between such population changes and dissension. It is clear, however, that this growth and diversity have been contemporaneous with a tremendous influx of cases and proliferation of laws in our judicial system.

For example, in 1850 only 369 adjudicated cases represented the total ap-

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4. *See* Surrency, *The Development of the Appellate Function: The Pennsylvania Experience*, 20 AM. J. LEGAL HIST. 173 (1976); Surrency, *The Evolution of an Urban Judicial System: The Philadelphia Story, 1683 to 1968*, 18 AM. J. LEGAL HIST. 95 (1974).

5. *See* 107 PENNSYLVANIA MANUAL 8-27 (1985).

6. *See* 107 PENNSYLVANIA MANUAL 23-24 (1985).

pellate court caseload.[7] In comparison, in 1985 the appellate courts of Pennsylvania handled 9,306 appeals. The Supreme Court filed 196 opinions and considered 2,579 petitions to appeal; the Superior Court (created in 1895) received 5,878 appeals; and the Commonwealth Court (created in 1970) received 3,286 appeals. In 1985, more than 416,000 cases were filed in the criminal, civil, family, and orphans court divisions of the trial courts in Pennsylvania. And, in the same year, there were more than two million filings with the district justices.[8] From top to bottom the court system is experiencing a crushingly large caseload.

The rising tide of litigation has put enormous pressures on Pennsylvania's judicial manpower: 31 appellate judges, 329 trial court judges, and 546 district justices. Simple computations will reveal the burdensome ratio of cases to judges and the number of appellate judges in Pennsylvania handling this tremendous caseload is proportionately one of the lowest in the nation.

C. Specialized Litigation

The courtroom today is no longer a "corner store" type forum for primarily simple disputes or small claims. The ability of a judge today to resolve thousands of disputes can no longer rest on an adequate knowledge of traditional areas of law such as property, contracts, evidence, and criminal law. The forces of diversity, dissension, and cultural and technological progress have opened up specialized frontiers of legal rights and obligations in such increasingly complex and sophisticated areas as civil rights, divorce, environment, insurance, medical malpractice, mental health, municipal corporations, negotiable instruments, products liability, social welfare, taxation, telecommunications, and workers compensation. The result is an increased burden on our judiciary and a correspondingly increased premium on judicial competence.

D. Technological and Administrative Expertise

Today, judges must be both competent in the application of the law and skilled in the administration of justice. The justice system today is a complex bureaucracy whose hierarchical structure demands appropriate management reorganization. Cohesion of all the interconnecting links, including the judges and their staffs, is indispensable to the soundness of the structure. The system of justice, which administratively resembles a giant corporation, is preeminently a public trust which must be managed efficiently and fairly. Limited resources have to be carefully administered to maximize the system's potential and prevent debilitating congestion.

The exponential growth of population and litigation means that quantity and quality can no longer be neatly divorced as unrelated concerns; adjudication and administration are no longer separable. The litigation explosion is an information explosion on both the adjudicative and administrative levels. This explo-

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7. *See* vols. 13-15 of the Pennsylvania State Reports.

8. *See* 1986 ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS ANN. REP. 109.

sive data base means that there must be technological methods to collect, process and assess information instantaneously. Thus, the judicial structure must mature both technologically and administratively. Automation can and must be the aging judicial structure's life-support system. Technological expertise will be imperative if we wish to have a system of justice that not merely survives but excels.

Correlatively, sound managerial structure and techniques will be essential. The present administrative structure of our judicial system is fragmented and places excessive strain upon the Supreme Court and the lower managerial echelon of President Judges. The administrative system as it presently exists simply does not have the capacity to integrate and unify statewide the judicial system. As a 1978 study of the system noted, the weakness of our judiciary's skeletal administrative infrastructure is particularly attributable to inadequacies in administrative supervision over trial court personnel and in the recruitment, retention, promotion, and removal of auxiliary judicial personnel.[9] This structure must be reformed to meet such demands on the system.

E. Equitable Re-allocation of Resources

The Constitutional Convention of 1967-68, in theory, constructed a unified judicial system for Pennsylvania. The citizens of this Commonwealth took a dramatic step when they ratified the Judiciary Article as proposed by the Convention. The Article mandates a "unified judicial system"[10] embracing all of our courts and justices of the peace and giving the Supreme Court supervisory and administrative authority. The theory, however, is, as yet, not a reality. Some twenty years later unification remains at the drawing board stage.

Today, the definition of what is to be included in the "unified judicial system" is still unclear. Are only the "adjudicative" functions of the system to be included in the definition or are the ancillary services of the judicial system, such as the functions performed by the register of wills, the recorder of deeds, etc., to be included? Although the Commission realized the allure of defining the "unified judicial system," the Commission concluded that the legislature was the appropriate forum to address and define what is included in the unified judicial system.

Therefore, implicit in the Commission's Report is the unavoidable present day reality that systemic unification is, at the least, a challenge *not* only of definition but also of *implementation* on two distinct levels: administration and finance. No system of justice, can be equitable or truly unified if the quality of justice is dependent on the fortuitous forces of location, wealth, or personal preference. Financial fragmentation and disparities among the counties jeopardize the equally important constitutional mandate of equal access to justice for all Pennsylvanians.[11]

Even with the achievement of administrative cohesion, judicial reform will

9. *See* Berkson, *Unified Judicial Systems: A Ranking of the States*, 3 JUST. SYS. J. 264 (1978).
10. PA. CONST. art. V, §§ 1, 10 (amended 1968).
11. PA. CONST. art. I, § 11.

be inadequate unless it includes substantial reform of the financial foundations of our judicial system. A fair and necessary balance must be struck between administrative autonomy and the efficient maximization and allocation of desperately needed resources without sacrificing the healthy pluralism among our counties.

F. Increased Pressures: Interest Groups and Factions

One of the political phenomena of our modern society is the proliferation of interest groups—political, financial, social and religious. Some would argue that the development of such societal constellations has had a positive impact on our representative organs of government and our ideal of a participatory democracy. The judiciary, however, is different from the other branches of government and needs to be insulated, to the extent possible, from special interest groups.[12] The hallmark of the justice system must be independence and impartiality, actual and apparent. Insulation from interest groups is especially important in the selection of appellate judges. Appellate judges, all of whom are presently elected statewide, run for office in elections where the vast majority of electorate cannot identify them and has little interest in them.[13] Such a climate permits special interest groups excessive influence over who the appellate judges will be.

In contrast, judges who are elected on the county level are usually known to their county-wide constituency.[14] Therefore, their personal qualifications play the determinative role in their elections and special interests play a minor, more appropriate role.

Whatever may have been the initial merits of the electoral system established in 1850, judges and attorneys find themselves today caught in an uncomfortable web of campaign contributions and partisanship. The Commission has concluded that on the appellate level no electoral reform can effectively eradicate the problem of insulating appellate judges from the pressures of such special interest groups.

The electoral process chosen by the voters in 1850 was perceived to serve the needs of the time. The democratization of the judicial branch was prompted by an understandable resentment that corporations, banks, and property owners controlled the judiciary. But 1850 was an era very different from today. It is important to note that a number of important federal constitutional rights were not yet established at that time: equal protection of the laws (fourteenth amendment in 1868); the right to vote regardless of race, color, or previous servitude (fifteenth amendment in 1870); the direct popular election of United States Sena-

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12. *See, e.g.*, Mallory v. Eyrich, 666 F. Supp. 1060 (N.D. Ohio 1987), *rev'd*, 839 F.2d 275 (6th Cir. 1988); Davidow, *Judicial Selection: The Search for Quality and Representativeness*, 31 CASE W. RES. 409, 419-25 (1981).

13. *See, e.g.*, Dubois, *Public Participation in Trial Court Elections*, 2 LAW & POLICY Q. 133 (1980); Lovrich & Sheldon, *Voters in Judicial Elections: An Attentive Public or an Uninformed Electorate?*, 9 JUST. SYS. J. 23 (1984); Comment, *How Much Do Voters Know or Care About Judicial Candidates?* 738 JUDICATURE 141 (1955); *Voting in the Dark: Poll Reveals What Voters Don't Know*, 5 PA. LAW, June 15, 1983, at 1.

14. *See* Dubois, *supra* note 13.

tors (seventeenth amendment in 1913); and the right of women to vote (nineteenth amendment in 1920).

As early as the beginning of this century, many recognized that the electoral system for choosing statewide judges, advocated by proponents of Jacksonian democracy, was an increasingly inappropriate solution for a society which had experienced drastic political and social changes. In response to the growing concerns of populists and the progressive reform movements, many began to advocate a change in the method of selection from election to appointment. Appointment, they argued, would provide judges who were more accountable and would do away with the political abuses found in the electoral system. These civic-minded reforms responded to the concerns that the judiciary was being dominated by the political machines which the reformers asserted were the new group replacing the propertied class in selecting the judges. Believing in the importance of an independent and impartial judiciary, they advocated a return to the appointment of judges.[15] Historically, the appointment of judges cannot be simplistically identified as an anti-populist stand.

The present day challenge is to acknowledge the modern political realities with its large number of special interest groups, which threaten the impartiality and independence of our appellate judicial system, and to devise a solution that will satisfy the public's rightful concerns of public participation and accountability.

G. Mass Communication

Coinciding with the growth of population and powerful socio-economic-political pressures upon the judiciary is the modern day reality of mass communication.

This age has been described as one in which "the medium is the message." A successful judicial campaign for statewide office today requires effective and expensive communication to reach millions of voters with a message that is paradoxically often devoid of any meaningful content. Support from the political machines is, of course, important but not sufficient in itself to assure victory.

Furthermore, the statewide judicial candidate of the twentieth and twenty-first century must reach millions of voters throughout Pennsylvania. In 1832, a candidate for statewide office was faced with 3,000 miles of improved roads.[16] Pennsylvania led the nation with the subsequent fast pace of industrial and technological growth. Today's campaign trail, however, is an intricate web of approximately 45,000 miles of improved roads. Aside from the formidable hurdles of this transportation network, the judicial candidate also must respond to the technological challenges of radio, television, newspapers, and sophisticated Madison Avenue techniques of advertising, all of which require exorbitant amounts of money.

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15. *See* COMMITTEE OF '70, JUDICIAL GOVERNANCE STUDY 16, 18 (1983); R. HOFSTADTER, THE AGE OF REFORM 247-71 (Vintage 1948); CARBON & BECKSON, JUDICIAL RETENTION ELECTIONS IN THE UNITED STATES 1-9 (American Judicature Society 1980).

16. *See* 107 PENNSYLVANIA MANUAL 24 (1985).

A recent analysis of the contributions toward the 1983 campaign for statewide appellate courts reveals the financial price tags for victory. For example, the successful Supreme Court candidate raised contributions totalling almost $193,000; two other Supreme Court candidates raised $138,000 and $154,000. The successful candidates for the Commonwealth Court received contributions ranging from $20,000 to $48,000. In the race for the Superior Court, two winners received contributions of $121,000 to $152,000, while the other winners received contributions ranging from $38,000 to $88,000.[17]

The political price tag for waging such expensive campaigns has the potential to create an unhealthy dependence by judges on those patrons who financed their campaigns. It may be difficult for judges to be impartial and independent in such a climate.

Today's reality is that as long as our future judges must rely on the generosity of benefactors to subsidize the escalating costs of statewide campaigning, judicial independence and integrity will be threatened. As long as the judiciary remains an elected branch of government, such substantial contributions, as the title of a recent government report on appellate court elections pointedly observed, will remain "a necessary business expense."[18]

H. Accountability and Openness

Perhaps the keystone to our changing political reality has been the public's persistent demand for greater accountability of government officials and greater openness in the processes of government. These twin demands, which are the natural consequences of greater citizen participation and mass media scrutiny in our democracy, affect the foundations of today's judicial structure, from the administration of resources and services, to the conduct of judges on and off the bench.

The forces of accountability and openness are clearly a healthy phenomenon of the last half of this century. All "judicial conduct organizations"—those which scrutinize the ethical conduct of judges—in operation today have been created since 1960; twelve since 1975. In 1972, the American Bar Association adopted the Model Code of Judicial Conduct, which was in part implemented by Pennsylvania in 1974.

Accountability and openness, in tandem, have contributed toward forcing greater self-responsibility and efficiency of the judicial system. In 1972, for example, the Pennsylvania Supreme Court adopted the rules of judicial administration. In 1976, the legislature enacted the Judicial Code as part of a program of codification and compilation of the laws pertaining to the judicial branch.

Other examples of the recent responses to the public's demands for openness and accountability abound: financial disclosure laws and regulations for government officials, including judges; ethics in government laws; enactment of "sunshine laws" regarding governmental proceedings; mandatory reporting of

17. *See* MORRISON, A NECESSARY BUSINESS EXPENSE: A REPORT ON CONTRIBUTIONS TO CANDIDATES FOR THE APPELLATE COURTS IN THE 1983 CAMPAIGN (1984).

18. *See id.*

revenue and expenditures by each branch of government; and the affirmative right of access to government proceedings, such as trials, and information secretly in the government's hands. Today's society clearly is no longer content to accept a government which is either cloaked in secrecy or immune from responsibility.

THE COMMISSION'S BLUEPRINT

Against this informational backdrop of societal changes, it is important to realize that often the determining factor in the success or failure of any endeavor is attitude. To some, the rapidity and complexity of societal changes may constitute formidable "problems" requiring quick fixes. The Commission did not adopt this approach. It is perhaps a reflection of the temper of the times that throughout its deliberations, the Commission confronted the difficult issues from the perspective of an historic challenge. There is a belief among many that today there is indeed an eagerness to accomplish meaningful judicial reform. The creation of this Commission, the public response to this Commission's deliberations, and the recent legislative proposals for judicial reform substantiate this assessment.

The Commission, therefore, has examined the state of our judiciary and concluded that a strategic re-direction of our judiciary is the only credible response toward accomplishing meaningful, long-term judicial reform. In each of the four areas of this study, the Commission has recommended a fundamental restructuring and reorganization.

This article does not contain all of the Commission's proposals for reform. It highlights only the major proposals. The complete study containing all of the proposals are in the 269-page *Report of the Judicial Reform Commission* dated January 1988.

In the area of administration, the Commission recognized the necessity of an administrative infrastructure based on the administrative regionalization of the court system at the trial court level, a substantially strengthened Administrative Office of the Pennsylvania Courts, creation of a Judicial Conference, and greater administrative authority for the Chief Justice. As to judicial discipline, a restructuring of the present disciplinary system into two tiers, investigatory and adjudicatory, and greater public disclosure will do much to ensure greater public confidence in the impartiality and integrity of our judicial system. In the area of finance, the Commission has concluded that a fundamental change in financial responsibility and management is essential to the effective operation of the unified judicial system. Lastly, as to the selection of our justices and judges who must adjudicate and administer in matters of statewide importance, the Commission recommends that an appointive appellate judiciary is preeminently the best way to secure judges who will be impartial, independent, and competent. The Commission concluded that the recommended proposals which follow present a sensible and achievable blueprint for meaningful judicial reform.

ADMINISTRATION AND UTILIZATION

I. CONSTITUTIONAL STRUCTURE

A. Separate Roles for the Supreme Court and the Chief Justice

Recommendation: The Constitution should be amended to differentiate the roles of the Supreme Court and the Chief Justice with respect to the administration of the unified judicial system. General policies and issues of systemic breadth should be determined by the Court. The Chief Justice of Pennsylvania should be recognized as the administrative head of the court system with responsibility and authority for management of the system in accordance with the policies and decisions of the Court.

B. The Supreme Court

Recommendation: The Supreme Court should exercise its constitutionally prescribed administrative policy-making authority formally by (i) revision of rules of judicial administration, or (ii) issuance of general administrative orders. All policy decisions of the Supreme Court should be broadly disseminated.

C. The Chief Justice of Pennsylvania

Recommendation: The Chief Justice should exercise his or her constitutionally prescribed administrative responsibility by (i) issuance of administrative orders of the Chief Justice, and (ii) direction and oversight of the Court Administrator and the Administrative Office of the Pennsylvania Courts.

Recommendation: The Chief Justice should be selected by the members of the Supreme Court, from their number, and should serve a term of five years. A Chief Justice should be eligible to serve successive terms.

D. President Judges

Recommendation: The President Judges of the Superior Court, the Commonwealth Court, and the Courts of Common Pleas should be selected by the members of each court, from their number, for a term of five years. A President Judge should be eligible to serve successive terms.

E. The Court Administrator of Pennsylvania

Recommendation: The Court Administrator of Pennsylvania should be a constitutionally ordained officer, appointed by and to serve at the pleasure of the Chief Justice. The Court Administrator heads the Administrative Office of the Pennsylvania Courts.

II. THE JUDICIAL CODE: EXECUTIVE AND LEGISLATIVE SUPPORT

A. State Judicial Conference

Recommendation: The Judicial Code should establish a state-wide Judicial Conference with defined composition, authority and responsibility. The Judicial

Conference should be composed of judges from the three appellate courts, the courts of general jurisdiction, and regional centers for the court system (see III-D below). The conference should be the entity through which policies and programs for the improvement of judicial administration are brought into focus for action by the Supreme Court or other governing authorities designated by the Supreme Court.

B. Administrative Office of the Pennsylvania Courts (AOPC)

Recommendation: The Judicial Code should establish the Administrative Office for the Pennsylvania Courts. The AOPC must have sufficient staff and resources to meet the needs for administrative services to the unified judicial system. The administrative office, in addition to its other functions, should be the secretariat for the Judicial Conference.

C. Elements of the Unified Judicial System

Recommendation: The Judicial Code should define the components of the unified judicial system to include not only the several courts but also the supporting agencies and offices essential to the judicial function. The judicial system must be an integrated whole, with all parts under the administrative control of the Chief Justice and the President Judges.

D. Authorized Numbers of Judges

Recommendation: The Judicial Code should authorize a sufficient number of judgeships in all courts to insure that the quality of justice is not diminished because of excessive caseloads. No member of the state's appellate courts should be expected to write more than forty-five full-scale majority opinions per year.

E. Liaison With the Supreme Court

Recommendation: The Governor and the General Assembly should seek the advice and recommendations of the Supreme Court regarding the content of the Judicial Code and the requirements of the unified judicial system.

III. JUDICIAL ADMINISTRATION: SUPREME COURT ACTION

A. Commitment to Improved Administration

Recommendation: The Supreme Court, in furtherance of its responsibility for administrative superintendence over the unified judicial system, should make a strong commitment to strengthening court administration at all levels of the system.

B. Rules of Judicial Administration; Ad Hoc Committee

Recommendation: The Supreme Court should establish promptly an *ad hoc* committee to consider the Rules of Judicial Administration and to make recommendations to the Court, including a recommendation concerning a possi-

ble standing committee to be responsible for monitoring these rules under the aegis of the Court.

C. *Planned Development of the Administrative Infrastructure*

Recommendation: The Supreme Court should authorize professional planning for development of a more adequate administrative infrastructure to serve the unified court system. Pending establishment of the Judicial Conference, the Court should consider creation of an interim study/action commission to assist the Court. Imperative as an early step is enhancement of the professional capability of the Administrative Office of the Pennsylvania Courts to participate in design and implementation of these developments.

D. *Regionalization of the Courts*

Recommendation: The Supreme Court should authorize a system for regionalization of the courts for purposes of administration, with a judicial officer at the head of each regional center and judicial councils drawn from judges within a region.

E. *Trial Courts*

Recommendation: The Supreme Court should give high priority to the improvement of judicial administration and management at the district court level. The responsibilities and powers of a President Judge (and an Administrative Judge) should be articulated. The Court should require that all trial courts be served by an administrative office. The Administrative Office of the Pennsylvania Courts, under the Chief Justice, should play a major role in the enhancement of administration of courts of general jurisdiction.

F. *Management Information System for the Courts*

Recommendation: The Supreme Court should continue the initiative already underway to provide management information systems for each court and to link the entire judicial system in a computerized network.

G. *Education and Evaluation*

Recommendation: Education for judges is a high priority on the agenda of judicial reform. Regular and mandatory continuing education programs as well as education programs for new judges are vital to the improvement of the quality of justice. A program of sabbatical leaves for judges should be considered as part of the effort to improve the quality of justice. Suitable evaluation programs for judges should augment educational programs.

H. *Financial Disclosures by Judges*

Recommendation: Disclosure requirements for judges should be at least as full as requirements imposed by law on other state employees. The Supreme

Court should closely monitor the financial disclosure requirement imposed in April 1984.

IV. Unification of the Judicial System: Supreme Court Action

A. Objective of Vertical Integration

Recommendation: In addition to strengthening judicial administration at various levels of the judicial system, the Supreme Court should act to achieve better vertical integration of the unified judicial system. All members of the judicial system, whatever their primary responsibilities, are part of a unified whole, not of discrete, separate courts.

B. Assignment of Common Pleas Judges to Appellate Courts

Recommendation: The Supreme Court should develop a program for temporary assignment of common pleas judges to serve on the intermediate appellate courts. Implementation of the program should be the responsibility of the Chief Justice with the cooperation of the President Judges of the appellate courts.

C. Assignment of Common Pleas Judges to Other Duties

Recommendation: The Supreme Court should continue its program for temporary assignment of trial court judges to other courts of common pleas.

D. Vertical Integration of Administration

Recommendation: Integration of the administrative offices serving various courts is of great importance to achievement of unification. The Supreme Court should declare that court administrators serving appellate courts, regional centers, and courts of general jurisdiction are primarily responsible to the judicial officer at the head of their respective courts, but that all administrators are also secondarily responsible to the Court Administrator, whose authority should include establishment of appropriate system-wide standards and practices.

E. Unification and Uniformity

Recommendation: The principles of unification and integration of courts, judicial officers, and administrators, do not require rigid uniformity. In a state with counties and regions as diverse as in Pennsylvania, a unified and integrated judicial system must encourage local solutions for local problems.

Judicial Discipline

I. The Necessity of a Judicial Discipline System

Recommendation: There should be a system of judicial discipline, distinct from and in addition to impeachment, to remove from office or otherwise disci-

pline judges who have been unfaithful to their trust; the system should also be empowered to deal appropriately with judges who have become physically or mentally unable to perform their duties.

II. Standards of Judicial Conduct

Recommendations:

A. The Pennsylvania Constitution's present separate but overlapping formulations of standards of judicial conduct in Sections 17 and 18 of Article 5 should be amended and combined into a single formulation.

B. The drafting of the formulation should be at once undertaken by a Special Committee the members of which would be appointed, in equal numbers, by the Pennsylvania Supreme Court, the Governor, and the General Assembly.

C. The formulation should include, among other provisions, a provision that a justice, judge, or district justice may be removed from office, suspended, censured, or otherwise disciplined for: misconduct in office; neglect of or failure to perform the duties of office; conduct that is prejudicial to the administration of justice or brings the judicial office into disrepute whether or not done in a judicial capacity or prohibited by law; and conduct in violation of canon or rule prescribed by the Pennsylvania Supreme Court. The definition of "duties of office" should include a duty to make financial disclosure as may from time to time be prescribed by law, canon or rule.

III. The Structure of the Judicial Discipline System

Recommendation: The judicial discipline system should be divided into two parts: an investigative division, within the executive branch, and an adjudicative division, within the judicial branch.

IV. The Investigative Division of the Judicial Discipline System

A. Memberships and Powers

Recommendations:

1. The investigative division should have a name that would make its function clear to the lay public, as for example, Board of Complaints Regarding Judicial Conduct (hereinafter "The Board").

2. The Board should consist of twelve members, half of them law-trained and half of them lay members.

a. The law-trained members

i. The law-trained membership should include a district justice, who may but need not be law-trained; two judges, other than senior judges, one from the Courts of Common Pleas, the other from either the Superior Court or the Commonwealth Court; and three lawyers.

ii. The Governor should nominate the law-trained members to the Senate from a list of names provided by the Supreme Court. The list should contain three times the number of names as positions available. If the Senate fails to approve or reject a nomination within 90 days from the time of submis-

sion by the Governor, the nomination should be deemed approved. Senate approval should be by majority vote. If the Senate rejects a nomination, the Governor should be required to present another nomination from the names remaining on the list provided by the Supreme Court. If the Senate again rejects the nomination, the Governor should be entitled to appoint from the list without necessity of Senate approval.

b. The lay members

i. No more than three lay members should be registered in the same political party.

ii. The Governor should nominate the lay members to the Senate. If the Senate fails to approve or reject a nomination within 90 days from the time of submission by the Governor, the nomination should be deemed approved. Senate approval should be by majority vote.

c. The terms of the members of the Board should be for four years and should be staggered. The members of the first Board should be appointed as follows: Two law-trained and two lay members for four years, two law-trained and two lay members for three years, and two law-trained and two lay members for two years. In the case of a vacancy, the Governor should make an appointment for the unexpired term.

3. The Board's powers should include the power to:

a. Receive complaints regarding judicial conduct, filed either by an individual or by the Board itself.

b. Authorize investigations regarding complaints and compel by subpoena the attendance and testimony of witnesses, including the respondent, and the production of documents, books, accounts, and other records relevant to the investigation.

c. Determine whether there is probable cause to file formal charges against a judge and present the case in support of the charges. A finding of probable cause should require the concurrence of a majority of the Board.

d. Appoint its own chief counsel by majority vote of the Board, hire staff, and otherwise prepare and administer its own budget and do what is needed to ensure its efficient operation.

e. Promulgate its own rules of procedure.

f. Through a special education division under the direction of the Board's chief counsel, issue advisory opinions, which should be published, without reference to any names. An advisory opinion would not be binding on the adjudicative division of the disciplinary system, though the adjudicative division might give weight to whether the respondent had acted in accordance with the opinion.

g. If on a complaint of mental or physical disability the Board finds probable cause, it should, before filing formal charges, present its findings to the judge and provide the judge with opportunity to resign or when appropriate to enter a rehabilitation program.

h. Prepare and disseminate an annual report of the Board's activities.

B. Practice and Procedure of the Board

Recommendations:

1. Upon receipt of a complaint, the Board should investigate the complaint and determine whether it is reasonably based. The Board should promulgate its rules for determining whether a complaint is reasonably based.

2. The judge whose conduct is complained of should be given a fair opportunity to respond to the complaint and to present to the Board such matters as the judge chooses. The judge should have the power by subpoena to compel testimony and the production of documents, books, accounts, and other records relevant to the investigation.

3. Until a determination of probable cause has been made and formal charges filed, all proceedings should be confidential except when the judge under investigation waives any right to confidentiality, or in any case in which independent of any action by the Board the fact that an investigation is in process becomes public, in which case the Board should be able to issue a statement to confirm the pendency of the investigation, to clarify the procedural aspect of the proceedings, to explain the right of the judge to a fair hearing without prejudgment or to state that the judge denies the allegations.

C. Immunity

Recommendation: Members of the Board, chief counsel, and staff should be absolutely immune from suit for all conduct in the course of their official duties. If in good faith, a complaint submitted to the Board or testimony related to the complaint should be absolutely privileged and no civil action or disciplinary complaint predicated on the complaint or testimony should be able to be maintained against any complainant or witness or their counsel. Neither should a judge hear a matter involving an individual who has filed a complaint, provided testimony, or acted as counsel in a disciplinary proceeding against the judge.

V. The Adjudicative Division of the Judicial Discipline System

A. Membership and Powers

Recommendations

1. The adjudicative division should have a name that would identify it as a court that judges judges, as for example, The Court of the Judiciary (hereinafter "The Court").

2. The Court should consist of seven members, three of them judges and one a district justice, two lay members and one lawyer. The judges should not be senior judges and should be from the Courts of Common Pleas, the Superior Court, and the Commonwealth Court; the district justice should be a lawyer. The members of the Court should be selected in a manner, and their terms should be, the same as with respect to members of the Board of Complaints Regarding Judicial Conduct.

3. The Court should be a court of record, with all the attendant duties and

powers appropriate to its function: The Court's proceedings should be public, conducted pursuant to rules duly adopted and promulgated by the Court and in accordance with the law of evidence; parties appearing before the Court should be enabled by subpoena to compel the attendance of witnesses and the production of documents, books, accounts, and other records as relevant; the Court's decisions should be in writing and include its findings of fact, conclusions of law, and discussion of reasons; the Court should be empowered to enter such order of removal from office, suspension, censure, or other discipline as authorized by the Constitution (*see* discussion *supra* of Standards of Judicial Conduct) and as warranted by the record; in the case of a disabled judge, the Court should be empowered to enter such order of removal from office, suspension, or other limitations on the judge's activities as warranted by the record; and finally, the proceedings before the Court should be transcribed.

4. The Court should have the power to order suspended, without loss of salary, any judge against whom formal charges have been filed with the Court by the Board or against whom there has been filed an indictment or information charging a felony.

5. The Court should be empowered to prepare and administer its own budget, hire staff, and otherwise make expenditures as appropriate. The Court's request to the General Assembly for the necessary monies should be made separately and not as an item in the request by the Supreme Court on behalf of the judicial system.

B. Practice Before the Court

Recommendations:

1. Upon receipt of formal charges from the Board of Complaints Regarding Judicial Conduct, the Court should schedule a prompt hearing, affording, however, the respondent judge full discovery and a fair opportunity to prepare for the hearing. At the hearing, the Board should have the burden of proving the charges by clear and convincing evidence.

2. If the Court dismisses all complaints against a respondent justice, judge or district justice, the Court should on application enter an order that the respondent be reimbursed for reasonable counsel fees and costs.

3. Members of the Court, chief counsel, and staff should be absolutely immune from suit for all conduct in the course of their official duties, and no civil action or disciplinary complaint predicated on testimony before the Court should be able to be maintained against any witnesses or their counsel.

C. Appellate Review

Recommendations:

1. A judge or district justice aggrieved by an order of the Court of the Judiciary should have the right to appeal to the Supreme Court, in a manner consistent with the rules of the Supreme Court.

2. The Board of Complaints Regarding Judicial Conduct should have the

right to appeal to the Supreme Court from an order of the Court of the Judiciary dismissing a complaint, but the appeal should be limited to questions of law.

3. On appeal, the Supreme Court should not review the record *de novo* but rather as it would review the record in a civil action in which the moving party has the burden of proving its allegations by clear and convincing evidence. The Supreme Court should be entitled, in its discretion, to award counsel fees and costs.

4. A justice aggrieved by an order of the Court of Judiciary should have the right to appeal to a special tribunal composed of seven judges, not senior judges, chosen by lot from the judges of the Superior and Commonwealth Courts. The special tribunal should hear and decide the appeal in the same manner in which the Supreme Court would hear and decide an appeal to it from an order of the Court of the Judiciary.

5. An order of suspension, without loss of salary, entered against a justice, judge, or district justice against whom formal charges have been filed with the Court of the Judiciary by the Board of Complaints Regarding Judicial Conduct or against whom there has been filed an indictment or information charging a felony should not be appealable.

VI. Finances

Recommendations:

1. The judicial disciplinary system should be assured by Constitutional provision that the General Assembly will appropriate sufficient funds to enable the prompt and fair investigation and adjudication of all complaints regarding judicial conduct.

2. The financial affairs of the judicial disciplinary system should be regularly audited by the Auditor General.

Finance

I. Statewide Funding

Recommendation: This Commission recommends that the expenses of Pennsylvania's Unified Judicial System be borne by the Commonwealth.

II. Professional Services

Recommendation: Professional assistance should be obtained to develop a plan and timetable for implementation, including legislative changes necessary to carry out the goal of statewide funding for the Unified Judicial System.

III. Initial Steps

Recommendation: As an initial step, the Commonwealth should assume the costs of the adjudicatory and administrative functions of the Unified Judicial System.

IV. Administrative Office of Pennsylvania Courts

Recommendation: The Administrative Office of Pennsylvania Courts should take certain immediate steps to:

a. establish uniform budgetary reporting standards for all courts in the unified judicial system;
b. collect all financial data relating to the operation of the unified judicial system;
c. develop a system for central statewide budgeting with the input of all the courts;
d. develop a job classification system, which includes standards of qualifications, performance and salary levels, based on merit, for all tasks performed in the judicial system, giving due consideration to local variations; and
e. develop strict auditing standards to ensure accountability of court expenditures.

V. Pennsylvania Commission on the Judiciary

Recommendation: A permanent Pennsylvania Commission on the Judiciary should be appointed by the Governor:

a. to review and recommend appropriate judicial salary levels;
b. to arrange for audits of judicial expenditures and revenues; and
c. to serve as a public resource to reinforce the unified judicial system's proven financial needs.

Majority Report on Selection and Retention

I. Judicial Selection—The Appellate Courts

A. Selection of Justices of the Supreme Court and Judges of the Superior and Commonwealth Courts

Recommendation: All appellate court justices and judges should be appointed by the Governor from lists of not less than five (5) nor more than seven (7) members of the bar of the Supreme Court of Pennsylvania, resident in Pennsylvania, who have either practiced law continuously, served as judge of a court or courts of record in Pennsylvania, or have been engaged in a law-related occupation, such as a law school teacher, a government lawyer or government official with significant law-related responsibilities for an aggregate of ten (10) years. Such lists should be prepared and submitted to the Governor by a Judicial Nominating Commission (the "Commission") as hereinafter described. The Commission's recommendation should be submitted to the Governor no later than 90 days after the date on which a vacancy occurs.

Where there is more than one vacancy on the same court to be filled at any one time, the minimum and maximum number of nominees to be submitted by the Commission to the Governor should be increased by two (2) for each such additional vacancy.

B. Commission Votes Required for Nomination

Recommendation: Nominations by the Commission to the Governor for Appellate Court appointments should be made only upon the affirmative votes of at least ten (10) members of the Commission. (*See* paragraph E for the number and composition of the Commission).

C. Submission of Nominations to the Governor; Appointment by the Governor and Confirmation by the Senate

Recommendation: Upon submission by the Commission to the Governor of a list of nominees for a judicial vacancy hereunder, that list should be made public immediately, together with a statement of the qualifications of each nominee, prepared by the Commission staff and approved by the Commission, and the Governor should not make an appointment therefrom for at least 30 days thereafter, but should make such appointment within 45 days of the submission of the list. The appointment should then immediately be submitted to the Senate for its advice and consent. Confirmation by the Senate should be upon a majority vote of all the members of the Senate.

D. Terms of Office for Appellate Court Judges and Retention

Recommendation: Justices of the Supreme Court and judges of the Superior Court and the Commonwealth Court should be appointed for an initial four-year term. At the end of the initial four-year term of each justice or judge, the Commission should again consider the qualifications of such person, including his or her record of performance during such term, should solicit public comments thereon, and, if satisfied that such person has served competently and with integrity, should recommend that such justice or judge should be retained for a full term, as hereinafter stated, and should state publicly the reasons for its recommendation. If the Commission concludes that such justice or judge should not be retained, it should so state publicly, with the reasons therefore.

If such justice or judge declares for retention at the end of such initial term, the question of his or her retention for a full term of ten (10) years thereafter should be placed on the ballot for determination by the electorate, and, if retained, the justice or judge should serve another full term of ten years thereafter or until resignation, mandatory retirement or removal otherwise as provided by law.

At the end of this full ten-year term, if such justice or judge declares for retention, the question of his or her retention for another full ten-year term should be placed on the ballot for determination by the electorate, and, if retained, the justice or judge should serve another full term of ten years thereafter or until resignation, mandatory retirement or removal otherwise as provided by law. The process should be repeated for as long as the justice or judge declares for retention, and until mandatory retirement.

The Commission should reevaluate each justice or judge for each retention term and should publicly state its conclusions as set forth above.

E. Selection of Chief Justice of the Supreme Court of Pennsylvania and President Judges of the Superior Court and the Commonwealth Court

Recommendation: The Chief Justice of the Supreme Court of Pennsylvania and the President Judges of the Superior Court and Commonwealth Court should be elected by the vote of a majority of all of the members of their respective courts for terms of five (5) years. They may be reelected in the same manner for successive five (5) year terms for as long as they remain members of said court.

F. Judicial Nominating Commission

Recommendation: Nominations to the Governor to fill vacancies on the Appellate Courts should be made by a Judicial Nominating Commission (the "Commission") which should be composed of 16 Pennsylvania residents, appointed as follows:

1. Eight appointed by the Governor, not more than four of whom may be registered members of the same political party, and four of whom should be lawyers.
2. Two appointed by the President Pro Tempore of the Senate, one of whom should be a lawyer.
3. Two appointed by the Speaker of the House, one of whom should be a lawyer.
4. Two appointed by the Senate Minority Leader, one of whom should be a lawyer.
5. Two appointed by the House Minority Leader, one of whom should be a lawyer.
6. The Chair-person of the Commission should be appointed by the Governor from among the members of the Commission, to serve as Chair-person for a term to run coterminous with the Chair-person's term of office.
7. Commission members may be appointed for only two successive full four-year terms. A Commissioner appointed to fill an unexpired term of less than two years should not be deemed to have served a full term.

Whenever a vacancy occurs in the office of a justice or judge within the jurisdiction of the Commission, the Commission should publicly advertise such vacancy and solicit the most qualified person available to apply for such vacancy.

In making their appointments to the Commission, the appointing authorities should maintain on the Commission at all times persons fairly representing the geographical, political, economic, sex and ethnic diversity of the population of the Commonwealth. Commissioners should be citizens and residents of Pennsylvania, registered voters, and have broad experience in the legal, political, social or economic lives of their communities and of the Commonwealth, and be free from partisan, political bias. They should not hold elective office, nor be politically appointed governmental officials at any level, nor should they hold office in any political party.

The Commission should establish its own rules of procedure. Each Com-

mission member should be appointed for a fixed term of four years. The initial Commissioners should be appointed for terms as follows:

(a) By the Governor:	
two for four-year terms	2
two for three-year terms	2
two for two-year terms	2
two for one-year terms	2
(b) By the President Pro Tempore of the Senate and the Speaker of the House:	
one each for a four-year term	2
one each for a one-year term	2
(c) By the Minority Leaders of the Senate and House:	
one each for three-year terms	2
one each for two-year terms	2
Total	16

Upon the occurrence of a vacancy in the office of a Commissioner during his or her term, the appointing authority of such person should appoint another person to fill such person's unexpired term of office.

Commissioners should receive reasonable per diem compensation for their services, and should be reimbursed for reasonable expenses incurred in the exercise of their duties.

The General Assembly should provide by law for the staffing and organization of the Commission, including but not limited to the following:

(a) Such personnel as may be needed from time to time, including adequate investigatory staff.

(b) The power to issue subpoenas and take testimony under oath concerning the qualifications of any applicant, candidate or nominee for judicial office within the jurisdiction of the Commission.

(c) Adequate funds as may be necessary to enable the Commission to fulfill its responsibilities.

II. Judicial Selection—Judges of the Courts of Common Pleas and District Justices

A. No General Change Recommended Except Local Option for Selection of Trial Court Judges

Recommendation: We do not recommend at this time any general change in the method of selection and retention of judges of the Courts of Common Pleas or District Justices. However, the citizens of Pennsylvania should be allowed to determine by referendum whether they wish the judges of the Courts of Common Pleas of each judicial district to be selected by an appointive system, rather than the present popular election system. If an appointive system is approved for any judicial district, the Judicial Nominating Commission for such district should consist of the same number of Commissioners, appointed in the same manner, and should follow the same procedures as set forth above for the

Judicial Nominating Commission for appellate court judges, except that all members of the Commission for any judicial district should be registered electors of that judicial district.

The question of whether to select judges by the appointive method in any judicial district should be placed on the ballot therein at a separate special election upon the petition of at least five percent of the registered voters of that judicial district and, upon approval, all judges of Courts of Common Pleas of such judicial district should thereafter be selected by that method.

III. Electoral Reform Measures

A. Separate Vote by Name Required

Recommendation: Electors should be required to vote separately for judicial candidates by name, and not by voting for a straight-party ticket, and the election laws should be changed accordingly.

B. Public Disclosure of Contributions to Judicial Campaigns

Recommendation: Within the week immediately prior to any judicial election there should be published in a prominent place in a newspaper of general circulation in the judicial district a list of all contributors to or for the benefit of any judicial candidate, as reported in the filing of campaign contributions required to be made under the Campaign Expense Reporting Law, including the name, address, occupation and amount of each contribution, as therein required. Such list should include the following contributors: (1) political committees, including those political committees established and administered by a professional corporation; (2) individuals, including those individual partners of law firms. When contributions to a judicial campaign are made by a political action committee, the published disclosure should include the names, addresses, occupations and amounts of contributions to such political action committee. The public disclosure notice should be prepared by the appropriate County Election Bureau and submitted by it to a newspaper for publication and the expense thereof should be paid by the county or counties.

There should also be public disclosure of contributions at the court house of each judicial district. Such list of all campaign contributions from lawyers and law firms should be made available for public inspection at such court house within each judicial district.

C. Contributions After Election

Recommendation: No contribution should be made to a judge-elect, or a judge, by any member of the bar of the Supreme Court of Pennsylvania, or any lawyer who may reasonably be expected to appear before that judge in the future, after the date of the election of such judge, except for the purpose of redeeming a written pledge or promise for a contribution to the campaign of such judge made and disclosed publicly prior to the election.

D. Delivery of Biographical Information and Candidate's Statement to All Voters

Recommendations: No less than two weeks prior to any judicial election there should be delivered, by mail or otherwise, to the residence of each registered voter in the judicial district of the election, a written statement, in the form of a pamphlet or otherwise, containing biographical information, and a brief statement by the candidate concerning his or her qualifications for such judicial office, as submitted for publication by the candidate. The statement or pamphlet should be prepared by the county election bureau and delivered, by mail or otherwise, to each registered elector, at the expense of the county. The election bureau should promulgate reasonable rules and regulations concerning the length and format of submissions by candidates, and the format of the statement or pamphlet, with the objective of providing helpful information to the voters concerning the judicial candidates.

E. Financial Disclosure by Judicial Incumbent Candidates

Recommendation: By rule of the Supreme Court or constitutional amendment, incumbent judges running for election should be required to make the same financial disclosure prior to the election as required of all other candidates.

DISSENTING REPORT ON SELECTION AND RETENTION

The system to elect judges presently in place in Pennsylvania should be retained and the following measures should be enacted to improve the system:

I. CAMPAIGN FINANCING

Recommendations:

A. A dollar limit should be placed on the direct contributions made by lawyers to judicial candidates.

B. Public financing should be provided for judicial campaigns.

II. GEOGRAPHIC DESIGNATIONS OF THE BALLOT

Recommendation: Legislation should be enacted to eliminate geographical designation of the candidate on the ballot.

III. BALLOT POSITION

Recommendation: Ballot positions should be rotated so that various configurations of candidates' names appear on ballots throughout the state with the result that each candidate would have the number one ballot position on an equal number of ballots.

IV. Senate Confirmation

Recommendation: Senate confirmation to fill vacancies for all judicial offices should be by simple majority vote.

V. Financial Disclosure

Recommendation: The Supreme Court should establish additional financial disclosure requirements for the judiciary so that those requirements are the same as those for members of the General Assembly and other public officials and candidates under the State Ethics Act.

VI. Evaluation Commission

Recommendation: An independent screening commission should be established to evaluate judicial candidates and publicize information relevant to the competence of judicial candidates for judicial office.

The Commission should employ investigators and operate under strict time constraints.

The Commission should rate judicial candidates as qualified or unqualified or rank-order the candidates.

VII. Canon 7—"Gag Rule"

Recommendation: Canon 7 of the Code of Judicial Conduct should be modified so as to allow judicial candidates greater freedom to express their views and philosophies. Discussion of specific litigation or issues which come before judges should continue to be prohibited.