

## FOREWORD TO VOLUME 1 OF THE PENNSYLVANIA COMMONWEALTH COURT REPORTS

On April 23, 1968, the electorate of Pennsylvania approved a number of significant changes in the Judiciary Article of the Pennsylvania Constitution. These changes, recommended by the limited constitutional convention of 1967-1968, included the addition of a new statewide court known as the Commonwealth Court. Under Article V, Section 4, of the Constitution, as revised, the Commonwealth Court has such jurisdiction and number of judges as provided by law. In the adopted Schedule to the Constitution, it was provided (Section 3) that the Commonwealth Court should come into existence on January 1, 1970, and that the terms of its judges be staggered.

The Constitution was implemented by the Commonwealth Court Act, 1970, January 6 (1969), No. 185, which provided for the appointment of seven judges by the Governor with the advice and consent of two-thirds of the members of the Senate. The Act provided for the selection of two judges whose terms were to expire on the first Monday of January 1978; two whose terms were to expire on the first Monday of January 1976; two whose terms were to expire on the first Monday of January 1974, and one whose term was to expire on the first Monday of January 1972.

In accordance with the provisions of the statute, Governor Raymond P. Shafer made the necessary appointments. A brief biography of those appointed, together with a statement of the termination of their initial terms appears below. Also appearing below is a short history of the Commonwealth Court and the reasons for its creation. President Judge Abraham Lipetz

of the 25th Judicial District, who acted as a liaison between the Legislature and the Pennsylvania Bar Association, has prepared said history, believing that posterity will be interested in the thinking which prompted the Legislature to arrive at its decision.

The accommodations for the Commonwealth Court were established on the Sixth Floor of the South Office Building in the Capitol complex, where a courtroom, judicial chambers, and administrative offices were created. By September of 1970 the court was ready for business and, on September 21, 1970, its first original jurisdiction case arose. Arguments were held September 25, 1970, in Harrisburg before a three-judge panel, consisting of President Judge James S. Bowman, and Judges James C. Crumlish, Jr. and Alexander F. Barbieri. The court's first decision was handed down October 23, 1970, in the matter just referred to, in an opinion by Judge Barbieri.

## HISTORY OF THE COMMONWEALTH COURT

BY

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A century of experience in litigation involving government culminated in the establishment of the Commonwealth Court as a statewide court whose jurisdiction now encompasses, either original or appellate, most aspects of state and local governmental litigation, including appeals from administrative agencies. As early as 1870,<sup>1</sup> the legislature recognized the need for a court with statewide jurisdiction at the seat of government, which, for reasons of administrative convenience, would hear matters involving the state without disrupting the orderly functioning of government. Since initially such cases would be relatively few in number, it was evident that the Dauphin County Common Pleas Court was the most convenient forum to hear them. With the growth of state departments and state administrative agencies that court's jurisdiction continued to be enlarged and when sitting in such cases came to be known over the years as the Commonwealth Court.

By the time of the Constitutional Convention in 1967-68, competent observers had long been convinced that though such cases had been ably handled by a long line of distinguished Dauphin County judges, the great increase in such litigation, coupled with the growing civil and criminal case load on the Common Pleas side, a new court with statewide elected judges was urgently needed. Proposals for its establishment had on a number of occasions been introduced into the legislature

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<sup>1</sup> Act of April 7, 1870, P. L. 57. See 17 P.S., Sec. 255.

and at the time of the Constitutional Convention there was then pending in the House a bill to create such a court.<sup>2</sup>

The debates in the convention indicated that the delegates were thoroughly familiar with the problem. Recognizing the need for a separate statewide Commonwealth Court, they wisely decided to merely mandate its creation leaving to the legislature the task of determining its precise nature and structure, though directing January 1, 1970, as the date to come into existence.<sup>3</sup> They envisioned, not only a court which would take over the Commonwealth jurisdiction of the Dauphin County Court, but a third appellate court which would relieve the increasingly heavy burdens on our two appellate courts.<sup>4</sup>

Following approval of the constitutional proposals by the electorate on April 23, 1968, the Pennsylvania Bar Association, cognizant of the need for speedy implementation of the Judiciary Article and desiring to aid the legislature in every possible way, directed the appointment of an Implementation Committee. The then President, Andrew Hourigan, promptly did so appointing to it some of its ablest members, including two former Pennsylvania Bar Association Presidents

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<sup>2</sup> See: "Commonwealth Court Investiture" by Marvin Comisky, Counsel to the Convention, President Pennsylvania Bar Association, Pennsylvania Bar Association Quarterly XLII, No. 1, p. 25—Oct. 1970.

<sup>3</sup> Article V, Sec. 4, "The Commonwealth Court shall be a statewide court, and shall consist of the number of judges and have such jurisdiction as shall be provided by law. One of its judges shall be the President Judge."

Schedule to Judiciary Article, Sec. 3, "The Commonwealth Court shall come into existence on January 1, 1970. Notwithstanding anything to the contrary in this Article, the General Assembly shall stagger the initial terms of the judges of the Commonwealth Court."

<sup>4</sup> See Comisky, *supra*, p. 26.

as Vice-Chairmen, Thomas Pomeroy (now Mr. Justice Pomeroy), and Gilbert Nurick, and assigning Frederick H. Bolton, the Executive Director, to coordinate its work. This committee was continued under the Presidencies of William Eckert and Marvin Comisky.

In the light of its history and the constitutional debates, the Commonwealth Court provision required the resolution of a number of problems. As to original jurisdiction, it was evident that it should at least take over the former jurisdiction of the Dauphin County Court. However, if it were to become a third appellate court, relieving the Superior and Supreme Courts of some of their burdens, a study would be required of all appellate jurisdiction. Two sub-committees were therefore appointed to make such studies; the Commonwealth Court, with the Honorable James Bowman, of the Dauphin County Common Pleas Court as Chairman,<sup>5</sup> and appellate jurisdiction with James Allan Montgomery as Chairman. William Zeiter was appointed reporter and draftsman for both committees and the work continued simultaneously on both studies.

The Commonwealth Court committee prepared a bill, which after approval by the full committee and the Pennsylvania Bar Association, was enacted substantially as drafted and became "The Commonwealth Court Act."<sup>6</sup> It provided for seven judges, initially to be appointed by the Governor with the advice and consent of two-thirds of the Senate, for staggered terms, not more than four of whom were to be of the same political party, thereafter to be elected for ten year terms. (Sec. 3). The regular sessions would be held at the seat of government, and also in Philadelphia and Pittsburgh, with special sessions elsewhere. (Sec. 4). It

<sup>5</sup> Now President Judge of the Commonwealth Court.

<sup>6</sup> Act of January 6, 1970, P. L. (1969), No. 185, 17 P.S., Sec. 211.1 et seq.

could sit in panels of three, (Sec. 6); and provision was made for the necessary court personnel—prothonotary, deputies and others. (Sec. 7).

The court's jurisdiction under this bill generally was the same as formerly reposed in the Dauphin County Common Pleas Court, which on the original level consisted of: civil actions by the Commonwealth and its officers (concurrent with local common pleas courts), civil actions against the Commonwealth and its officials (exclusive), with certain additional jurisdiction under a variety of specific statutes; and on the appellate level, appeals from most Commonwealth administrative agencies. (Sec. 8). The court could not carry on its judicial function until the Governor proclaimed its readiness to do so (Sec. 12), with interim jurisdiction continued in the Dauphin County Court. (Sec. 13). The Governor's appointments to the Court, which had been submitted to and approved by the Judiciary Committee of the Pennsylvania Bar Association, were confirmed by the Senate in April of 1970. On April 15, 1970, came the court's investiture,<sup>7</sup> though it was not yet ready to function.

The committee on appellate jurisdiction surveyed the case loads of the Dauphin County Commonwealth Court, and of the Superior and Supreme Courts, analyzed the existing statutes, and after conferring informally with the members of the Superior and Supreme Courts, prepared a bill in conformity with its findings. It, with minor variations, became the "Appellate Court Jurisdiction Act of 1970."<sup>8</sup>

The original jurisdiction provided for in the Commonwealth Court Act was carried over into this bill (Sec. 401), but its appellate jurisdiction was consid-

<sup>7</sup> See Comisky, *supra*, for account of investiture.

<sup>8</sup> Act of July 31, 1970, No. 223, 17 P.S., Sec. 211.101 et seq. "A.C.J.A."

erably expanded. It would now hear appeals from the Common Pleas Courts involving: civil actions by or against the Commonwealth and its officers (except habeas corpus and post conviction); violations of orders of Commonwealth agencies; appeals from certain Commonwealth Administrative Agencies; appeals from local government and local administrative agencies;<sup>9</sup> and eminent domain cases. (Sec. 402).

On direct appeal it would hear all appeals from Commonwealth Administrative Agencies, including Public Utility Commission and Unemployment Compensation Board, but excluding those heard on appeal via Common Pleas Court (i.e., operators licenses, liquor code, workmen's compensation and occupational disease). (Sec. 403).<sup>10</sup>

The jurisdiction of the Commonwealth Court was now complete; and on September 1, 1970, Governor Raymond P. Shafer formally proclaimed the court as organized and ready for the transaction of its judicial function.

The establishment of the Commonwealth Court with its enlarged appellate jurisdiction was an important step. It not only created a much needed new court, but provided the opportunity for a reappraisal of all appellate jurisdiction resulting in a redistribution of jurisdiction on appeal with the concomitant relief to the Superior and Supreme Courts. The Superior Court now would hear matters which were not appealable to the

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<sup>9</sup> See "The New Judicial Article and Its Implementation", by Philip W. Amram and Sidney Schulman (the latter a member of the Implementation Committee) as to appeals from state and local administrative agencies, Pennsylvania Bar Association Quarterly, XLII, p. 8 at p. 15—Oct., 1970.

<sup>10</sup> It would not hear on appeal matters originally commenced in the Commonwealth Court and those arising from appeals from the Board of Finance and Revenue. These would be appealed as of right directly to the Supreme Court. (Sec. 203).

Supreme or Commonwealth Courts,<sup>11</sup> and the Supreme Court, except for certain specific matters,<sup>12</sup> would hear appeals only by special allowance of two justices.<sup>13</sup> Thus, our appellate courts would be able to devote more time to the consideration of their cases, and the Supreme Court now would be enabled to devote more time to the demanding administrative duties imposed upon it under the Unified Judicial System.

There is now present a flexibility which allows for change. The open endness of the Constitutional Commonwealth Court provision allows for legislative increase in the number of judges in that court as need may require, in contrast to the Superior and Supreme Courts which are frozen at seven. The panel provision for the Commonwealth Court permits the division of its appellate work. (Commonwealth Court Act, Sec. 6). The far sighted provision in the Appellate Court Jurisdiction Act, allowing the reassignment of classes of actions or appeals by the Supreme Court, unless the legislature by concurrent resolution negates it, places the continuing responsibility for realignment of jurisdiction as needed in the court where it can knowledgeably be met.<sup>14</sup> If necessary, therefore, additional juris-

<sup>11</sup> A. C. J. A., Sec. 302. Hence it would now hear tort and contract cases without limit as to amount, all criminal cases except felonious homicide, and domestic relations cases.

<sup>12</sup> Sec. 202. Appeals as of right to Supreme Court: felonious homicide, right to public office, Orphan Court decisions, nongovernmental equity cases, contempt in Common Pleas, discipline of attorneys, supersession of District Attorney, right to issue public indebtedness, declaring unconstitutional U. S. or State laws, or home rule charters; and actions originally begun in Commonwealth Court and appeals from Board of Finance and Revenue matters.

<sup>13</sup> For a schematic presentation of jurisdiction of all courts, see 1 Pa. B. 298, Sec. 204.

<sup>14</sup> Sec. 505—"The Supreme Court may by general rule provide for the assignment and reassignment of classes of actions of classes of appeals among the several courts of this Commonwealth as the



diction can be transferred to the Commonwealth Court and more judges added.

The structure is now present for what Delegate Woodside<sup>15</sup> prophesied during the debates "would make our appellate court system in Pennsylvania, the best in the country." Indeed the broad general, as well as specific, powers in judicial administration vested in the Supreme Court under the Judiciary Article, including the power to: exercise general supervision and administrative authority over all courts and judges, (Sec. 10(a)); appoint a court administrator and the necessary staff, (Sec. 10(b)); and prescribe the practice, procedure and conduct of all courts, (Sec. 10(c)), now provides the opportunity for the first time for the development of a truly unified judicial system which could become "the best in the country."

This is a time of bitter controversy. Courts throughout the land are under attack. The backlogs rise and the problems multiply. Ways and means must be found to cope with them. The Supreme Court with its newly granted powers is faced with an enormous challenge. How well it rises to it will determine the success or failure of our judicial system.

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needs of justice shall require and Articles II, III and IV of this act and the provisions of all other acts of Assembly shall be suspended to the extent that they are inconsistent with such general rules. Such rules shall be reported to the General Assembly by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May. Such rules shall take effect upon the expiration of ninety days after they have been thus reported, unless the General Assembly, by the adoption of a concurrent resolution, signifies its legislative intent to the contrary."

This section provides the method for reconciling an ambiguity in Sec. 10(c) of the Judiciary Article relating to this subject.

<sup>15</sup> Honorable Robert Woodside, former legislator, Dauphin County Judge, Attorney General and Superior Court Judge, and member of the Implementation Committee. Quoted from Comisky, *supra*.

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The establishment of the Commonwealth Court was not only an answer to the need to lighten the burdens of our appellate courts, but was also an essential step toward the solution of the whole problem of judicial reform.