

**STATEMENT TO SENATE JUDICIARY COMMITTEE
PUBLIC HEARING ON MERIT SELECTION
SEPTEMBER 16, 2008 – HARRISBURG
JUSTIN M. JOHNSON, ESQUIRE**

I REGRET THAT A FALL-DOWN IN MY HOME FOLLOWING THE POWER OUTAGE ON SEPTEMBER 14, 2008 RENDERED IT IMPRACTICABLE TO TRAVEL TO HARRISBURG FOR THE PUBLIC HEARINGS ON THE 16TH. I THANK THE COMMITTEE FOR PERMITTING WRITTEN SUBMISSIONS.

I AM THE BENEFICIARY OF THE MERIT PROCESS EMPLOYED BY THEN-GOVERNOR DICK THORNBURG WHEN FACED WITH THE DUTY OF NOMINATING EIGHT CANDIDATES FOR ASCENSION TO THE SUPERIOR COURT OF PENNSYLVANIA IN 1980. THE LEGISLATURE HAD ENACTED A BILL EXPANDING THE COURT FROM SEVEN TO 15 COMMISSIONED MEMBERS. GOVERNOR THORNBURG SELECTED EIGHT LAWYERS FROM A FIELD OF AT LEAST 85 APPLICANTS TO BE CONSIDERED BY THE PENNSYLVANIA SENATE FOR APPOINTMENT TO THE COURT. WITHIN THOSE EIGHT, FOUR WERE REPUBLICANS AND FOUR WERE DEMOCRATS, AS REQUIRED BY THE ENABLING LEGISLATION. IN ADDITION, GOVERNOR THORNBURG INCLUDED ONE FEMALE AND ONE AFRICAN-AMERICAN AMONG THE EIGHT. THE CATHOLIC, PROTESTANT AND JEWISH RELIGIONS WERE ALL REPRESENTED IN THOSE FIRST, EIGHT NOMINEES.

SIX OF THE ORIGINAL EIGHT SERVED A MINIMUM OF TWELVE MONTHS ON THE COURT. ALL EIGHT DEMONSTRATED THEIR STRONG LEGAL ABILITY, APPROPRIATE TEMPERAMENT AND DEDICATION TO THE RULE OF LAW WHILE WORKING ON THE COURT. THE PROCESS EMPLOYED BY GOVERNOR THORNBURG DID NOT CONTAIN ALL OF THE PROCEDURAL PROTECTIONS CONTAINED IN SENATE BILLS 1324 AND 1325. NEVERTHELESS, I SUBMIT THAT THE RESULTS OF THE

GOVERNOR'S SELECTIONS DEMONSTRATE THE BENEFITS THAT ARE ACHIEVABLE THROUGH MERIT SELECTION. HAVING SERVED WITH MY COLLEAGUES OVER A PERIOD OF 27 YEARS, I AM SATISFIED THAT THE MANNER IN WHICH THE MEMBERS OF THE COURT SO SELECTED HAVE DISCHARGED THE DUTIES PLACED UPON THEM REFLECT HIGH CREDIT UPON THE JUDGES THEMSELVES, THE GOVERNOR WHO APPOINTED THEM AND, INDEED, THE COMMONWEALTH OF PENNSYLVANIA.

I DID NOT HESITATE, ON JUNE 17, 2008, IN JOINING MY ALLEGHENY COUNTY FELLOW LAWYERS --- INCLUDING FORMER GOVERNOR THORNBURG AND FORMER JUSTICE CYNTHIA A. BALDWIN --- IN SIGNING A LETTER TO EACH OF THE LEGISLATORS REPRESENTING CITIZENS OF ALLEGHENY COUNTY IN HARRISBURG, URGING THOSE LEGISLATORS TO SUPPORT SENATE BILLS 1324 AND 1325 AND HOUSIE BILLS 2488 AND 2386.

I PRACTICED LAW IN ALLEGHENY COUNTY FOR 18 YEARS, FIRST WITH MY FATHER AND BROTHER, AND THEN AS A PARTNER WITH THE FIRM OF BERKMAN, RUSLANDER, POHL, LIEBER & ENGEL. I THEN SERVED AS A JUDGE OF THE SUPERIOR COURT FOR ANOTHER 27 YEARS. I HAVE HAD BOTH THE PRIVILEGE AND THE OPPORTUNITY TO ENGAGE IN THE PRACTICE OF LAW AND THE DISPENSATION OF JUSTICE. I BELIEVE STRONGLY THAT THE TIMELY PASSAGE OF SENATE BILLS 1834 AND 1835 IS CRITICAL TO THE STRENGTHENING OF OUR APPELLATE COURT SYSTEM HERE IN THIS COMMONWEALTH, IF WE ARE TO HAVE A JUDICIAL SYSTEM OF WHICH ALL PENNSYLVANIANS CAN BE PROUD.

REASONABLE PEOPLE WILL DISAGREE ABOUT THE BEST WAY TO SELECT APPELLATE COURT JUDGES. CERTAINLY, OPEN DIALOGUE WILL BE IMPORTANT IF WE ARE TO CHANGE HOW WE PICK OUR

APPELLATE JUDGES. IN THE CASE OF THE SUPERIOR COURT, ONE MIGHT SPECULATE WHETHER THE PERIOD OF MORE THAN THIRTY-FIVE YEARS BETWEEN THE ELECTION OF THEODORE SPAULDING AND THE ELECTION OF CHERYL ALLEN TO THE COURT, A PERIOD DURING WHICH THERE WERE NO MINORITIES ON THAT COURT, MIGHT NOT HAVE BEEN AN ARGUABLY EMBARRASSING HIATUS HAD NOT GOVERNOR THORNBURG EXERCISED HIS APPOINTIVE POWER IN 1980 TO SUBMIT THE NAMES OF PHYLLIS BECK, PERRY SCHERTZ AND JUSTIN JOHNSON TO THE SENATE FOR YOUR CONSTITUTIONAL ADVICE AND CONSENT.

EARLIER THIS MONTH, WHILE BEING INTERVIEWED ON PITTSBURGH TELEVISION STATION WTAE, OUR CHIEF JUSTICE, RONALD CASTILLE, INDICATED SUPPORT FOR A MERIT SELECTION SYSTEM. HIS REASON SEEMED TO CENTER AROUND THE LARGE AMOUNTS OF MONEY NOW BEING SPENT DURING JUDICIAL ELECTION CAMPAIGNS --- BOTH PRIMARY AND GENERAL --- AND THE PERCEIVED DISENCHANTMENT OF THE ELECTORATE RESULTING FROM SUCH SPENDING. I AGREE THAT THIS REPRESENTS ONE REASON FOR REPLACING THE ELECTION PROCESS WHICH NOW EXISTS. I PREFER, HOWEVER, TO EMPHASIZE WHAT I BELIEVE TO BE POSITIVE REASONS FOR MOVING TO MERIT SELECTION.

THE PROPOSED LEGISLATION PROVIDES FOR A BALANCED APPELLATE COURT NOMINATING COMMISSION WHICH WILL HAVE THE DUTY TO SUBMIT FIVE POTENTIAL NOMINEES TO THE GOVERNOR. THE MAKEUP OF THE COMMISSION IS SUFFICIENTLY BROAD TO INSURE THAT DIVERSE VIEWS AND KNOWLEDGE WILL BE BROUGHT TO BEAR ON THE SELECTION PROCESS. THE GOVERNOR REMAINS FREE TO SELECT ANY ONE OF THE FIVE RECOMMENDED PERSONS. THAT SELECTION REMAINS SUBJECT TO THE ADVICE AND

CONSENT OF THE SENATE, CONTINUING THE PRESENT PRACTICE. A PROCEDURE IS INCLUDED IN THE PROPOSED LEGISLATION PROVIDING FOR A SITUATION WHERE THE SENATE DETERMINES, AS IS ITS RIGHT AND OBLIGATION, THAT CONSENT MUST BE WITHHELD.

I ALSO BELIEVE THAT THE PROVISION IS A GOOD ONE THAT REQUIRES A JUDGE WHO HAS BEEN APPOINTED AND SEATED THROUGH THIS PROCESS TO STAND FOR RETENTION AT THE EXPIRATION OF FOUR YEARS IN OFFICE. THE NEED FOR FOUR OF GOVERNOR THORNBURG'S 1980 APPOINTEES TO STAND FOR ELECTION IN 1981 RESULTED IN THE DEFEAT OF TWO OF THE APPOINTEES (ONE REPUBLICAN AND ONE DEMOCRAT), BOTH OF WHOM I HAD COME TO BELIEVE WERE WELL QUALIFIED TO CONTINUE IN OFFICE.

I BELIEVE THAT BOTH THE PROPOSED LEGISLATION AND CONSTITUTIONAL AMENDMENT REPRESENT A REASONABLE APPROACH TO ESTABLISHING THE MERIT SELECTION OF APPELLATE COURT JUDGES IN PENNSYLVANIA. WHILE IT MAY BE EXPECTED THAT AMENDMENTS MAY BE OFFERED DURING THE LEGISLATIVE PROCESS, I HAVE DISCERNED NOTHING IN THE LEGISLATION REQUIRING MATERIAL REVISION OR CORRECTION. I WOULD URGE YOUR COMMITTEE, MOVING AS PROMPTLY AS PRUDENCE AND GOOD JUDGMENT MIGHT PERMIT, TO ADVANCE THIS LEGISLATION THROUGH THE NECESSARY PROCESS WITH A DESIRE THAT IT MIGHT SURVIVE INSPECTION AND BE SUBMITTED TO THE GOVERNOR FOR APPROVAL.

JUSTIN MORRIS JOHNSON
FORMER JUDGE,
SUPERIOR COURT OF PENNSYLVANIA
SEPTEMBER 19, 2008