

PROCEEDINGS  
OF THE  
TWO HUNDRED FIFTIETH ANNIVERSARY  
OF THE  
SUPREME COURT OF PENNSYLVANIA  
PROGRAM

---

Monday, May 22, 1972, 10:30 A.M.

---

State Supreme Court Room, Independence Hall,  
Philadelphia, Pa.

---

ANDREW HOURIGAN, JR., Chairman, 250th Anniversary  
Committee

WILLIAM C. ARCHBOLD, President, Delaware County  
Bar Association

DAVID S. SHRAGER, President, Pennsylvania Trial Law-  
yers Association

GILBERT J. HELWIG, Member, 250th Anniversary Com-  
mittee

THE HONORABLE BENJAMIN R. JONES, Chief Justice of  
Pennsylvania

William J. Schaefer,  
*Reporter.*

THE CRIER: All rise.

(The Honorable Chief Justice, the Honorable Justices of the Supreme Court of Pennsylvania enter.)

THE CRIER: Be seated.

Oyez! Oyez! The God save the Commonwealth and this Honorable Court.

Mr. Hourigan, proceed, please.

MR. HOURIGAN: If it please the Court, 250 years ago today in this city—within a short distance of this hall, which was then yet to be constructed—the provincial assembly of Pennsylvania passed an act, “For the establishing of courts of judicature in this province.” A portion of that Act provided as follows:

“There shall be holden and kept at Philadelphia, a court record, which said Court shall be called and stiled The Supream Court of Pensilvania, and that there shall be three persons of known intergrity and ability, commissioned by the governor or his lieutenant for the time being, by several distinct patents or commissions under the great seal of this province, to be judges of the said Court; one of whom shall be distinguished in his commission by the name of Chief Justice, and every of the said Justices shall have full power and authority, by virtue of this Act, when and as often as there may be occasion, to issue forth Writs of Habeas Corpus, Certiorari and Writs of Error, and all remedial and other Writs and process . . . .”

This Court has endured since 1722 progressing from its original three members to its present seven, and from its original combination trial and appellate jurisdiction to its present solely appellate jurisdiction.

The Program arranged by your committee for this occasion is divided into two parts. During the first

portion, presentations as printed in the program will be made by the members this Bar listed there. When these have been concluded, we will again address the Court for the purpose of introducing two greats from the past who, with the permission of Your Honors, will address the Court.

I now present Mr. Alexander Unkovic, President of the Pennsylvania Bar Association.

MR. UNKOVIC: Mr. Chief Justice Jones, Former Chief Justice Bell, and distinguished associate justices: Lifted out of the ages a span of two and one half centuries may seem like a brief period—a mere shifting the sands of time.

Measured as a test of the endurance of a new judicial concept in the affairs of man, however, the milestone which this Court observes here today begins to take on its true perspective.

This Court has responded to legal challenges of a new-born nation, its teething period, the flush of its manhood and its crest for leadership among the nations of the world.

As occupants of this Bench on this significant occasion, I would like to take the liberty of directing to each of you—and to the Court—sincere congratulations and good wishes for the future.

I do this on behalf of the ten thousand members of the Pennsylvania Bar Association.

As a memento of this anniversary, I have the pleasure of presenting to the Court an album containing an all-too-brief photographic resume.

It is purely pictorial. As such, it does not touch in any way upon the momentous deliberations and decisions which have come from this Body over the years.

As a photographic keepsake, it does not and cannot provide any insight into the judicial acumen and philosophies of the men who have occupied this Bench in the past.

These tasks we willingly leave to the legal historians, knowing full well that they must come to grips with the perennial dilemma of those who chronicle significant events—what to include, what to omit; where to emphasize, where to soft pedal.

For our purposes we have selected certain available materials which we realize cannot begin to depict the meaningful impact of this Court on the affairs of the Commonwealth.

We have included a photographic reproduction of a page from the oldest available Appearance Docket of the Court—dating back to 1740. There are drawings of the Old Chester Courthouse, the oldest meeting place of the Supreme Court that is still in existence, and the former State Capitol, which was destroyed by fire in 1897.

Also included is a color photo of the historic building where we are presently gathered as well as other structures which have housed the Court over the years.

In all of this we are mindful of the fact that no keepsake, no memento, no remembrance that we bring to the Court today can fully express the true significance of this Body. And that is the concept of a last resort in the legal affairs of the people of this Commonwealth; a viable institution in a system of law and government, which in spite of the anniversary we mark today, is relatively new in the history of man's striving for a better place in which to live.

I will give the album to the Prothonotary for permanent keeping.

(Mr. William C. Archbold, the President of the Delaware County Bar Association, takes the rostrum.)

MR. ARCHBOLD: Mr. Chief Justice Jones, Former Chief Justice Bell, and distinguished Associate Justices of the Supreme Court of Pennsylvania: I am here today to present to the Supreme Court this oak gavel made from a beam of the 1724 courthouse located in Chester, Pennsylvania.

This is the oldest existing structure occupied by our Supreme Court which commenced to sit there in the year of completion of the 1724 courthouse.

In addition to this gavel it is the privilege of the Delaware County Bar Association to present to the Court this original painting of the old courthouse from which the cover of this month's American Bar Association Journal was made. This, our Association feels, is the finest gift that we can present to the Supreme Court on this occasion. It comes to the Court from us with gratitude for the friendship and the warmth of the Court, and as thanks for having visited with us on May 1, 1972, Law Day U.S.A., so that we could honor this Court on the occasion of the 250th anniversary, and that you could join with us as we celebrate our centennial. Thank you.

(At this time, Mr. David S. Shrager, President of the Pennsylvania Trial Lawyers Association steps up to the rostrum.)

MR. SHRAGER: If it please the Court, this is an occasion of historic importance to the Court, the Bar, and the community. The Pennsylvania Trial Lawyers Association is delighted to participate in these ceremonies and the men and women of the Bar may presume to feel a sense of pride on this occasion. This Court has a very special relationship with the Bar that extends

beyond its role under our Constitution. It is from our profession that the membership of this Court is elevated. We are aware, then, when we honor this Court, we honor ourselves, for included among the distinguished jurists who have served this Court have been many advocates who earlier had appeared before it.

Those members of the profession who have chosen to devote their practice to the protection of the individual in his person and property, properly respect this Court, for during its 250 year history, it has had chief responsibility as protector of the heart of our legal culture, the common law. An institution which presides over the interplay between continuity and change in the law needs always to be respected. An institution which stands ready to test every legislative enactment, however well intended, against the requirements of our Constitution, needs zealously to be protected. And an institution which rejects both orthodoxy and change for their own sake, but insists that principles of law be abreast of the times and understands the law's beautiful capacity for growth, needs always to be honored. For 250 years, the public has looked to this Supreme Court to stand guard over the bedrock principle of our form of government—that it is a government of laws and not of men. There can then be no more important institution to the continued strength of a free society.

The Pennsylvania Trial Lawyers Association has the honor to present to the Court a gift which I hope will be of decorative and also utilitarian value. It is represented to me that the clock in the Philadelphia courtroom which sits before the Chief Justice has been subjected to so many excesses by counsel who have overstayed their time in oral argument that it has finally passed on. I understand too, that its replacement may have proven less than satisfactory. With this

new clock, I may bring ill tidings to a certain few of my colleagues who believe that the merit of a position may be measured by the length of its expression rather than its content. In the event, Mr. Chief Justice, that any of your colleagues should suffer from the same infirmity, you will note that this clock is portable and conveniently may be transported to the conference room.

There is one special feature of this clock which distinguishes it from most every other. Its source of energy is not electricity. Nor does it have a mainspring which must be wound mechanically. No battery need be inserted or replaced. Rather, this clock should indefinitely operate, for its power source is any change—however slight—in atmospheric pressure. So long as this Court sits in Philadelphia and hears oral argument, there should be more than an ample source of energy.

Thank you.

(Mr. Gilbert J. Helwig, Member, 250th Anniversary Committee, takes the rostrum.)

MR. HELWIG: Mr. Chief Justice Jones, Former Chief Justice Bell, and distinguished Associate Justices:

I have the happy task of speaking briefly about the commemorative coin which the Committee arranged to have made by The Franklin Mint to mark this 250th anniversary of the establishment of the Court.

On the back of the coin appears the official seal of the Supreme Court of Pennsylvania; the face of the coin, as many here will recognize, depicts a symbolic session of the Court presided over by Thomas McKean, Chief Justice of the Court at the time of the Declaration of Independence and one of the signers of that document. This scene was taken from one of the murals

painted by Miss Violet Oakley in the courtroom in the Capitol Building in Harrisburg. In the background, however, we have added a representation of David Lloyd, First Chief Justice of the Supreme Court of Pennsylvania, in recognition of the important part which he played in the establishment of the Court in 1722.

Because the independent spirit and indomitability displayed by such colonial leaders as David Lloyd did much to inspire the American quest for independence it seemed to us to be appropriate to suggest, as we have in the design of this coin, the existence of a spiritual relationship between the establishment of this Court in 1722 and the founding of our nation more than half a century later.

The motif of this coin and its issuance to celebrate this anniversary fittingly coincide with the plans recently approved by Congress to issue a series of 13 commemorative coins over the next four years, as part of the celebration of the Bi-Centennial of the Declaration of Independence. The first of the federal coins is scheduled to be issued in July of this year.

The striking of special coins to mark important events is a practice as old as civilization itself, indicating that in some way commemorative coins must satisfy a cultural need which is not fulfilled by the solemn or joyous celebration of the event itself nor by the construction of larger, grander monuments of stone or steel. The peculiar value of such coins may lie in the fact that it is possible to make them available to many persons, thus permitting a broader and more democratic participation in the event which occasions the issuance of the coin; and that their durability and permanence assure that for generations to come these coins can continue to fulfill an almost sacramental function by



reminding those into whose hands they come of the beginnings of this Court and of its work during the first 250 years of its existence.

Through the efforts of Mr. John P. Bracken and others, and with the generous financial support of the lawyers and law firms whose names are listed on the program, the Committee was able to authorize the minting of enough of these coins to present one to all who are here today and to make them available to the staff of the Court. We have arranged also to send specimens to the Governor and to legislative leaders and to many other persons and to libraries, historical societies and museums.

The Committee and the sponsoring lawyers are pleased to have had the opportunity to contribute to today's ceremonies by arranging for the creation and distribution of a memento having such a felicitous combination of historic, educational, and artistic values and uses.

To all of which, we add only the fervent hope: "May it please the Court"!

(Mr. Hourigan approaches the rostrum.)

MR. HOURIGAN: Your Honors, the history of this Court stretches far beyond the memory of our generation. The year 1722 was, to say the least, another day in a different era.

With the permission of the Court, we will now attempt to go back over this period of 250 years by requesting that the Court Crier summon from the past—and present to this assembly—two figures who helped to shape the very beginning of this Court. The first to be presented will be William Penn, who will thereafter present his illustrious contemporary, David Lloyd, the first Chief Justice.

(The Court Crier tolls his bell, and enter William Penn and David Lloyd.)

WILLIAM PENN: Honorable and Honored Sirs:

The celebration of an historic occasion, on its anniversary in after years, is a call to remembrance. In the most ancient Scriptural meaning of these words, a call to remembrance is an effort of the spirit by which a man summons up a past event to his present consciousness, so intensely that it is repeated as a present experience, with him a living participant. So you have today called to remembrance the creation, two hundred fifty years before your own time, of the Supreme Court of Pennsylvania, and in summoning it up from your past, you have with it summoned me.

I come, at your call, from the world outside time. The experience that, in the flesh, we call time and the passage of time, is, while yet we inhabit the flesh, clothed in mystery. We know little about it other than that it is some quality or characteristic of that flesh, with our sense of it changing as our physical fabric changes from youth to age. And even in the flesh it tricks us, making us suddenly feel we have already at some time long past been exactly where we are and know we have never been before. Or in the full flush of some intense and highly charged moment, while it is yet present and we are living it, we find ourselves already and at the same time remembering it as past. Even in the flesh there are overlying levels of consciousness of time, and of memory.

In the world outside time, one is free to see any event in human history as present, and more than one, widely separated in time, as present together. It is, therefore not strange to me to be living again as present the days of my struggle to lay the foundation of the laws and the courts of this my beloved province,

and in the same instant to find myself standing before Your Honors. A great poet of a time after mine, named Keats, has written "Poetry should . . . strike the reader as a wording of his own highest thoughts, and appear almost as a remembrance." Let my words try to express the highest thoughts surrounding this occasion, and perhaps serve as a remembrance of the original occasion.

I was no stranger to the courts of my day. I was in them and before them, not as a mere suitor or litigant, but as an accused. Yet more, I was before them for conscience' sake. Yes, even I was no stranger to the prisons of my day, and in them, for the liberty of my conscience, lost the liberty of my person. It was a paltry price to pay, one for the other. But from my having to pay it, sprang, in after years, the deep resolve that the courts of my beloved province should be courts themselves accountable to law and conscience, and like every good servant of government, should themselves, first of all, conform to the law binding them.

So it was that I began a struggle which would last forty years, to culminate only after my death, to establish a court of provincewide authority, supreme over all other courts, whose chief duty would be to review the law only of the case tried in a lower court. No such court had ever been known to the home country. Time after time, what I sought to accomplish was frustrated by Crown or Parliament, until at length, after my own years on earth were ended, it came to pass at the hands of my servant David Lloyd.

Centuries after my time, a lawyer named Lincoln would say, "The dogmas of the dead past are inadequate to the stormy present. The occasion is piled high with difficulty; we must rise with the occasion. As our case is new, we must think anew, and act anew. We must disenthrall ourselves." The struggle I began

and carried on almost to fruition, to establish a provincial Supreme Court of final authority over the lower courts' application of the law, was a prefiguring of the statesman Lincoln's great cry to the Congress of December, 1862. For my beloved young province, the case was new, and for it I tried to think anew and act anew.

How successfully my task was accomplished, Your Honors and your predecessors in your high office are the witnesses. Over a span of two hundred fifty years, one quarter of a millennium, your conduct of your office has been a justification of my struggle. You do well to commemorate, to call to remembrance the occasion of the creation of this Court. But the occasion would not have proved historic, it would have been forgotten, leaving nothing to commemorate, if your and your predecessors' performance in office had been less illustrious. It is the record of the Court that has turned its first day into a great day, a day to be remembered. It is the great life of a man or of an institution that makes the birthday important.

The concept of a court supreme over all others in the province, whose word as to the law would be final, was new, new on these shores, and unheard of in the mother country. Is it a sheer accident that, long after the concept became a reality, it was a lawyer out of my own province, James Wilson of Pennsylvania, who became the chief architect of the great instrument of government I did not live to see, the Constitution of the United States? Or that he built into that scheme the notion of a Supreme Court which would be the final arbiter between government and citizen of the rights declared inviolable by that compact? It is a tantalizing speculation that the court of which I dreamed, now graced by Your Honors, might have been the prototype of the monument of individual liberties conceived by Wilson. The dimension of the inquiry is

too ambitious to be embraced in the compass of this occasion.

Yet, were it true, Your Honors and I might, most properly, share, and confess to, a goodly measure of pride. Even so, my pride would not equal my gratification. For a Constitution is a whole people giving their consents to how they are to be governed, and to the rights they concede one another. A Constitution is the agreement of a whole people that they concede rights to a minority of even one which they, though sovereign, and a majority of all but that one, will not disturb. A Constitution is a people voicing its own frame of government. And I ever strove for the people of my province to be identified with its laws. I wrote these words, "Any government is free to the people under it where the laws rule and the people are a party to the laws." Long years afterward, the poet Tennyson would sum it up in a phrase, "broadbased upon her people's will."

No court would long endure without the respect and acceptance of those who appear before it. Authority can have no right or lasting sway over the one subject to it until it enters within him and becomes his authority, until he identifies with it. For no man who feels himself a man will very long submit to be governed wholly from without. The way he is first brought to identify with authority, and let it enter within him to be his authority, is by his perceiving that the authority has taken the initiative to identify with him as he stands before it. If the litigant is to know the court as his court, and trust its judgment even if adverse to him, the Court must let him see that it identifies with him as one seeking its help.

In all my proposals to the colonists of my province, I tried to let spirit speak to spirit, and forge that bond

of understanding. Methinks I may in part have succeeded. For the record of the Court on which Your Honors now sit would indicate that the spirit of that relationship between the Court and those pleading before it was breathed into your nostrils.

Your Honors, when you pronounce the law so conscientiously and with such carefully reasoned craftsmanship that it recommends itself to all men and is taken within them as their law, you touch the hem of the robe of godliness. It is the Great Judge, the Power that made us all, who in the great Book of books is portrayed as saying, "I will write my laws on their hearts, and they shall be my people."

Your high office treads upon the verge of godliness in yet another respect. All but a few men yearn deep in their bowels for justice. They yearn for it because it is their assurance, despite all outward seeming, that the basic fabric of the created order is moral. Your Honors are stewards of the divine attribute of justice.

From all I say, you will have perceived that I dreamed dreams, and that in the Court of which you are the latest of a long line of servants, I have seen my own longings and yearnings come true, far beyond my dreams. But how my dream became clothed with reality was the work of a man I found, chose, and sent, whom now I present to you—David Lloyd, first Chief Justice of the Supreme Court of Pennsylvania.

(David Lloyd takes the rostrum.)

DAVID LLOYD: May it please the Court:

I, too, like the Proprietor, am summoned up by your call to remembrance, and am allowed this brief return from the world beyond time to the world of time.

I was not born a Pennsylvanian, my native land was Wales. I was not a birthright member of the Society of Friends; as with the Proprietor, it was the faith of my manhood and my conviction. But my life in the law I began before ever I left Wales, and I came to Pennsylvania as the Proprietor's designated Attorney General, when I was thirty years of age.

It fell to my lot to become the practical planner and builder of the judicial structure the Proprietor had in his mind's eye. The Proprietor once wrote, "The world represents a rare and sumptuous palace, mankind the great family in it; and God, the Mighty Lord and Master of it . . . . We are all sensible what a state-seat it is . . . ." To my observing, he held a kindred image of the courts of his province—he thought of them as a house of several stories. He was the owner, with a vision of the structure he wished to have over and around him, and I became the architect.

He and I each attained extreme old age, for the time in which we lived. He was eleven years my senior, and died aged seventy-four, in 1718. I lived thirteen years beyond him, and reached age seventy-five. Each of us saw a sufficient measure of his work accomplished, and today are privileged to see more.

We were friends, and, sad to relate, became enemies. We stayed unreconciled for the long span of our remaining years on earth. The rock on which our friendship split was the place in our respective views of life and the world to be accorded the institution of monarchy. Our different origins no doubt lay at the root of our quarrel. He was the heart and soul of benevolence, with the blood of martyrs in his veins,—a gifted visionary, but an aristocrat, the son of a knight. I was well-born, but of mountain stock and of a race of mountain kings who won and held their place by

feats of courage and hardihood. And from my earliest years, I was a believer that the only source and ultimate repository of political power and legal authority was the people. In the classical philosophical sense, I was a republican.

In the earlier years, he was the hand and I his hammer. But then as we felt the force of our differing convictions close about us, one of us became the hammer, the other the anvil. We disagreed radically on some points, but nevertheless continued to hold other aims in common and to strive toward their realization. Even in our enmity and hostility, some solid accomplishments were forged.

We were at one in the faith we held in the common people. This faith brought us both to the belief that the real strength and authority of the laws consisted of their being embraced by the people as their own. But more to the point of this great occasion, we both were persuaded that the crowning story of the judicial structure of the province should be a new one, unknown in England, a court of appeals composed of men learned in the law, and empowered to hear appeals from any lower court in the province. It was essential, the Proprietor thought, and I agreed with him, that an appeal could be heard and disposed of on this side of the ocean, without having to face the hardship and the cost of a journey across that wild waste to carry it back to the mother country. To me as a lawyer it was essential that an appeal should be heard by minds learned in the law, not by a branch of the executive, like the Privy Council or of the legislature, like Parliament.

New ideas, like men on the frontier, have to fight for their lives. The Provincial Assembly passed my first Act of October 28, 1701, and we had a complete judicial system running in good order for a few years,



until the crown disallowed the legislation completely in 1705. I tried again in 1707, in 1711, and in 1715, but each time met frustration at the royal hands. Meantime, provincial governors, Evans, or Gookin, threatened and now and then made good their threats to establish courts by executive ordinance. To me, any such foundation for a court system was abhorrent; in my opinion, the only right foundation was the will, not of the executive, but of the people. Somehow the province and its affairs groaned and stumbled their way through these years of disorder.

The climate began to change, as the second decade of the century wore into the third. George the First, weak by being unable to speak or understand English, was the king through whose hands the power of the throne first began to slip seriously. In 1718, I became the Chief Justice of the Supreme Court, a bench of three Justices, as constituted by the Act of 1715, until it was upset in 1719, but I kept the system working by improvised devices, commissions issued under my own hand. By 1719, the Proprietor was dead, Sir William Keith was governor, Andrew Hamilton, destined to win fame as the original "Philadelphia lawyer" was Attorney General, and I was Chief Justice. Keith and Hamilton were men of sense, courage, and orderly mind. The three of us agreed the situation was endurable, but that a permanent basis had to be laid for Pennsylvania jurisprudence. The result was the Act of May 22, 1722 passed two hundred fifty years ago this day, creating the Court of whose light Your Honors are the present tenders.

Under the terms of the royal grant to the Proprietor, the crown had five years and six months after passage of any provincial legislation to disapprove it. By the summer of 1727, we were within a few months of escaping the royal veto of the Act we are here com-

memorating, and of drawing the deep breaths of the scotfree. Meantime the king's deputy collector of customs, a lawyer named Moore, who was incidentally my political arch-enemy, had been hounding an alleged violator of customs duties, and trying to assert original jurisdiction in my Court to have a *capias* out for his arrest. The alleged defaulter was contesting the existence of such original jurisdiction, and in early 1727, the controversy waxed hot.

I admit that I was a member of the legislature at the time, indeed, I was Speaker of the House, as well as Chief Justice of the Court. It was only wise insurance against a last-minute royal veto of the Act of 1722 to have a substitute standing ready in the wings, almost identical in its provisions. If the king could exercise his veto power every five years, we could keep him supplied with Acts of Assembly to veto, and thus, though our judicial house might never be a fee simple, we could struggle along on successive five-year leaseholds. So was drawn and passed the Act of August 26, 1727.

But someone in the legislature had the thought of including a provision to put brother Moore in his place about seeking original process from my Court merely to collect royal custom, and the new bill was made to carry an express prohibition of any such thing. In violent umbrage he took off for England to lead the fight against approval of the Act of 1727, and did so magnificently, obtaining its repeal in Privy Council August 12, 1731, four months after the last sands of my life had run through the glass. In the intensity of the raging against the later bill, no one awakened to the fact that if it went down it would carry down with it its implied repealer of the earlier one, which meantime had long survived the time limit for royal disallowance. So the Act of 1722 was saved, and for good measure

the Provincial Assembly on November 27, 1731 passed a third act expressly reviving and restoring the Act of 1722.

Certain historical writers credit me with plotting the deliberate strategem of inserting an inflammatory provision into the Act of 1727, by way of concentrating the pursuit on the new, false trail and throwing it off the old, true one. Jury lawyers call it the mother partridge defense, after the bird who runs along the ground feigning a broken wing, to lead the hunter away from her nestlings. Perhaps the historians do me too much credit. As for a plain answer to the question, I understand the fifth Article of your Bill of Rights sets forth a privilege against self-incrimination. It seems to me in order that I should invoke it.

I was present at the birth pangs of this Court, and saw it set out on its way to greatness. I was its first presiding officer, and I rejoice to know it endured, beyond the American Revolution, into the century when its bench became distinguished by the irresistible glare of great minds like McKean, Tilghman, John Bannister Gibson, George Sharswood, and, in the twentieth century, Horace Stern. And from its bar throughout its history has blazed back the intelligence and indomitable vigor of lawyers like Andrew Hamilton, Dallas, Binney, Sergeant, Rawle, the Ingersolls, and, in the twentieth century, Johnson and Pepper.

I was bred up to the law as a discipline, but I was ever haunted with the vision that even a discipline can be used inventively and creatively, and employed to meet the challenges of a day always new, always changing. The Proprietor did well to quote to Your Honors your lawyer-statesman Lincoln, that our case is new, and we must think anew and act anew. It is not only the Proprietor's case, or Lincoln's case, that was new

for them in their times. Our case is always new. In my day, the province of Pennsylvania was the frontier. But I know now that in his response to the needs and challenges of what your highest court has called a maturing society, mankind is always on the frontier. The unexplored continent is the human mind and spirit. We scarcely stand on its beaches.

And I rejoice to be able to say to the Court as presently constituted that it gives promise of going down in history as one of the great courts, one of the outstanding aggregations of judicial craftsmen on its long roster. Decisions of recent years, many of them courageous overrulings of outworn precedents, tell me that the Court is engaged in its own *aggiornamento*, its coming up to date. I could ask for no better evidence that my cherished institution, in its delicate task of reconciling past and present, is not afraid to face forward.

But the poets express best our own highest thoughts, the Proprietor told us, quoting one. In the metaphor we used to begin with, that the courts of the Commonwealth are the rooms and stories of a fine house, let us listen to your poet Holmes:

Build thee more stately mansions, O my soul,  
 As the swift seasons roll!  
 Leave thy low-vaulted past!  
 Let each new temple, nobler than the last,  
 Shut thee from heaven with a dome more vast,  
 Till thou at length art free,  
 Leaving thine outgrown shell by life's unresting sea!

Or let us for our Godspeed to the Court as it passes this great milestone and goes on in its history, borrow the words of the poet of the Proprietor's youth, John Milton:

Methinks I see in my mind a noble and puissant (tribunal) rousing itself like a strong man after sleep, and shaking its invincible locks. Methinks I see it as an eagle mewing her mighty youth, and kindling her undazzled eyes at the full midday beam.

**CHIEF JUSTICE JONES:** Today we mark an occasion unique and unequalled in the legal history of our nation. Today we celebrate the 250th birth date of the oldest appellate court in these United States, a Court which for a quarter of a millennium has been in continuous and uninterrupted existence.

That we meet in this Hall of Independence is most fitting and proper. In this building was proclaimed the independence of our nation; here our nation was born; here our Constitution was drawn and promulgated and here was the seat of our Court for almost a century, albeit not continuous, of its existence. Although this building did not come into existence until several decades after our Court was formed we were among its first tenants and remained such thereafter for almost a half century, and, for a short period of time, we shared quarters here with the Supreme Court of the United States. Within these walls gathered Washington, Jefferson, Madison, Hamilton, Franklin, Jay, Marshall and other great founders of our nation and today's event is hallowed by a feeling of their spiritual presence, and that we sit in their midst being judged and evaluated by them.

In retrospection, it is difficult to envisage the environs of the scene 250 years ago. Then Philadelphia had a population of 15,000 to 17,000, and the Commonwealth, then the Province, had a population of less than 100,000. In an area of approximately 14 blocks extending from the Delaware River to Broad Street and from Vine Street to South Street were approximately

1,000 homes and buildings. While the city limits extended from river to river and while there were scattered settlements suburbanwise, such as Germantown, yet the heart of the business, political and the social life of both the city and the Province was the environs of this Hall. Practically the only building now in existence which antedates the founding of our Court is Old Christ Church built in 1695.

Up until 1722, we had nine Chief Justices, none of whom were lawyers and it wasn't until the advent of David Lloyd as Chief Justice on February 15, 1717 that we had a Chief Justice learned in the law. Then the Court was and it remained for some years a three-judge court which sat at the appellate level in Philadelphia and on circuit at the nisi prius level in the Counties of Bucks, Chester and Philadelphia.

The father of the Court was David Lloyd who came to this country from the principality of Wales as Attorney General appointed by William Penn, the Proprietor. Unfortunately, the relationship between Penn and Lloyd, originally close and intimate, became estranged and bitter. It was Lloyd who envisioned and planned, against the serious opposition of the Proprietor, his agent, the Governor of the Province and the Crown itself, a court of appeals empowered to pass upon the propriety of rulings of the lower courts. Prior to the formation of this Court appeals from the rulings of lower courts were heard either by the Crown and its Privy Council or by Parliament itself, 3,000 miles away. The importance of the Judiciary Act of May 22, 1722 was two-fold: First, it provided for an appellate tribunal of the judiciary rather than by an appellate tribunal under the aegis of the executive or legislative branches of government; second, it provided a tribunal which, with celerity and dispatch, could pass upon the rulings of the lower courts and would

be composed of persons learned in the law. With actual certainty we do not know the extent of the impact of David Lloyd's ideology upon the provisions in later days of the United States Constitution; what we do know is that it is only logical to conclude that the example of this Court and its work between 1722 and 1789 must surely have influenced the founding fathers in setting up the federal judicial system.

This is a time for retrospection and also a time for introspection. While we on this Court are the beneficiaries of a great tradition and heritage, such will be of little avail unless we as a Court prove worthy of that tradition and that heritage. The years that have passed and that which our predecessors wrought will have been without meaning unless we in this day and age accept the responsibility and the challenge which such heritage imposes upon us.

Today we live in troublous times. We see throughout our nation continued attacks upon law and order, violence in our streets, the dissemination of strange doctrines and beliefs and, last but not least, a growing lack of confidence on the part of the public in the integrity and the ability of the judiciary to perform its function in our governmental framework. Judges do not, and indeed should not, enter into the political arena and necessarily we bear in silence the criticisms and attacks upon us by those whose criticism too often arises from ulterior motives. However, we cannot ignore such criticism and we must ascertain whether such criticism rests on a valid basis; if it does, then measures must be taken by us to avoid any abuse of the judicial process which engenders such criticism; if such criticism be groundless, we must look to others to defend and uphold our integrity and our ability to perform the judicial function. Mr. Justice Story once wrote: "Whenever the liberties of this country are to

be destroyed, the first step in the conspiracy will be to bring courts of justice into odium; and by overawing the timid and removing the incorruptible, to break down the last barrier between the people and universal anarchy or despotism." The need is great that courts be subject to criticism but just as great that they be allowed to perform their duties.

Mr. Justice Frankfurter has written: "Justice must satisfy the appearance of justice." That need is greater than ever today and it is the duty of this Court and every other court to so act not only to render justice but also to restore in the public the confidence that we are rendering justice. That is easy to state but difficult to attain in this day and age when so many believe that that which is established must be destroyed because being established, it is reasoned, something is wrong with it. Strange doctrines and beliefs and antagonisms were no doubt in existence in 1722 and our Court then was able to weather the storm. I have no doubt that this Court will also weather the storm if it so acts as to warrant belief in its integrity and ability to meet the challenge of today.

Two hundred and fifty years from now, those who will mark another occasion such as this will review our work and judge our performance. I pray that we may so act in the performance of our duties as to merit the accolade "Well done thy good and faithful servants."

While I know that it may be trite to make this reference, nevertheless I remind you of the strictures placed upon us several thousands of years ago by the prophet Micah, "and what doth the Lord require of thee but to do justly, and to love mercy, and to walk humbly with thy God."