Justice Michael A. Musmanno and Constitutional Dissents, 1967-68

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The practice of dissenting opinions in both federal and state courts has long been a part of the adjudication process of courts. Commentary in the secondary literature of periodicals has been ongoing for over a century. One can review early articles by Hampton Carson,¹ and Justice Alexander Simpson, Jr., of the Pennsylvania Supreme Court,² or later writers like Justice Michael A. Musmanno of the Pennsylvania Supreme Court,³ and more recently, Justice William J. Brennan, Jr.⁴ of the United States Supreme Court. In Pennsylvania, court reporting of state cases began with Alexander James Dallas’ Reports of Cases Ruled and Adjudged in the Courts of Pennsylvania, Before and Since the Revolution in 1790.⁵ The early reports were commercial ventures by

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¹ See generally Hampton L. Carson, Great Dissenting Opinions, 50 ALB. L.J. 120 (1894) (stating that even though most dissents are overlooked, we should pay attention to dissents of the Supreme Court because they debate areas of national concern and the dissents provide insight into the evolution of constitutional jurisprudence).

² See generally Alex Simpson, Jr., Dissenting Opinions, 71 U. PA. L. REV. 205 (1923) (explaining both the problems and benefits of dissenting opinions and that the use of dissents is important when a judge truly believes a decision will injure citizens).

³ See generally Michael A. Musmanno, Dissenting Opinions, 60 DICK. L. REV. 139 (1956) (stating that minority opinions are a crucial part of American tradition because they allow for correction and progress in the law by acting as a form of checks and balances).

⁴ See William J. Brennan, Jr., In Defense of Dissents, 37 HASTINGS L.J. 427 (1986) (lecturing that dissents play an important role by helping to maintain the integrity of judicial decisions and allowing judges to fulfill their duty to speak on issues of fundamental law which they are certain require a given result). A more recent article on dissents in the United States Supreme Court discusses how these opinions conflict with the Court’s connection between its institutional and interpretive approaches and the ideal of the rule of law, while at the same time adding legitimacy to the Court when the Court action is viewed as a conception of democracy. See Kevin M. Stack, The Practice of Dissent in the Supreme Court, 105 YALE L.J. 2235 (1996). Additionally, a recent article comments on Brennan’s lecture on dissents and proposes an argument suggesting a constitutional foundation for the judicial right to dissent. Rory K. Little, Reading Justice Brennan: Is There a “Right” to Dissent?, 50 HASTINGS L.J. 683 (1999).

⁵ See Joel Fishman, The Reports of the Supreme Court of Pennsylvania, 87 LAW LIBR. J.
a series of reporters totaling some sixty-four volumes before 1845. In 1845, the General Assembly passed an act instituting an official court reporter and for a new title to the now-official court reports, the Pennsylvania State Reports. Section 2 provided for the justices to write their opinions and to submit them to the reporter, but a proviso added “no minority opinions of the said court shall be published by the said reporter.” Later acts in the century modified the 1845 act; as late as 1943, statutory law declared: “The decisions of the Supreme Court of Pennsylvania and of the Superior Court shall be published under the supervision of the State Reporter,” which included minority opinions.

Michael A. Musmanno, Associate Justice of the Pennsylvania Supreme Court, issued more than 500 dissents during his sixteen years on the bench. Justice Musmanno was already famous when he succeeded to the bench in January 1952, having been involved as a critic of the Sacco-Vanzetti trial in 1927, a judge of the Allegheny County courts from 1932 to 1951, a judge at the Nuremberg Trials after World War II, and the author of several books and articles.

Justice Musmanno was no stranger to dissenting opinions. Upon ascending to the supreme court, he quickly began to publish dissenting opinions. The case of In re Tribune Review Publishing Co. in 1954 led to the only reported case in which a supreme court justice sued the official court reporter over the failure of the reporter to publish his dissenting opinion and which had to be determined by his colleagues sitting on the court against him. He

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6 Id. at 645, app. at 678–89 (providing a list of early reporters and their contents); see also Joel Fishman, History of the Court Reporter in the Appellate Courts of Pennsylvania, 7 WIDENER J. PUB. L. 1, 2, app. at 36 (1997).
8 Id. at 375, § 7.
9 Id. at 374, § 2.
10 Fishman, supra note 5, at 662 (stating “[s]ubsequent acts authorized the reporter to include opinions on constitutional matters and to draw up syllabi for all cases”).
11 Act of May 6, 1943, No. 94, 1943 Pa. Laws 185 § 1, quoted in Musmanno, supra note 3, at 139.
12 Musmanno, supra note 3, at 139 (stating the 1943 Act did not distinguish between majority and minority opinions when it used the term “decisions”).
14 See generally Abraham Freedman, The Dissenting Opinions of Justice Musmanno, 30 TEMP. L. Q. 253 (1957) (reviewing Michael A. Musmanno, Justice Musmanno Dissents (1956)).
15 In re Tribune Review Publ’g Co., 113 A.2d 861 (Pa. 1955). This case was tried before Chief Justice Stern, Justice Stearne, Justice Jones, Justice Bell, Justice Chidsey, and Justice Musmanno and only a per curiam opinion was published. Id. at 93.
16 See generally Musmanno v. Eldredge, 1 Pa. D. & C.2d 535 (1955) (per curiam) (holding...
also wrote an article on the value of dissenting opinions in the *Dickinson Law Review*. Soon after, in 1956, Justice Musmanno published his own book of supreme court dissents after serving on the court for only four years. In the book, he is featured with Dean Roscoe Pound of Harvard Law School who wrote an introduction to the work. From 1956 to 1968, Justice Musmanno wrote more than 500 opinions and 275 dissents.

Justice Musmanno is famous for his writing of court opinions. His legal craftsmanship, use of literary expression, and strong arguments make his opinions extremely interesting to read. For purposes of this article, I have only concentrated on four opinions written at the end of his long career. One case, containing a concurring opinion, coincides with Arlen Specter’s mayoralty race in Philadelphia in 1967, but it primarily deals with a district attorney’s power to subpoena individuals. Two cases—one containing a separate opinion and the other having a strong dissent by Justice Musmanno—deal directly with Arlen Specter’s mayoralty race. The last case, *Stander v. Kelly*, involves an attempt to stop

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that Justice Musmanno could not compel publication of his dissent because a case was not presented warranting a decision in *In re Tribune Review Publishing Co.* and the supreme court already ruled not to publish a dissent, *aff’d per curiam*, 114 A.2d 511 (1955) (adding that Justice Musmanno’s opinion could not be published because it was filed without allowing a review by the other justices). For a complete review of the case, see Joel Fishman, *History of the Court Reporter in the Appellate Courts of Pennsylvania*, 7 WIDENER J. PUB. L. 1, 17–34 (1997).

17 See Musmanno, supra note 3.

18 MICHAEL A. MUSMAMMO, JUSTICE MUSMAMNO DISSERTS (1956). The subtitle says the volume covers from January 1952 to September 1955. For an extended review of the work, see Freedman, supra note 14.

19 Pound concluded his introduction with the following:

The personality of a judge will of necessity express itself more or less in his written style. At times Justice Musmanno writes more with the ardour of an advocate than the austerity of a judge speaking the voice of the law. But his strong sense of justice, zeal for individual rights, and lively style of expression make application of legal principles to particular states of fact vivid and appealing.

JUSTICE MUSMAMNO DISSERTS, supra note 18, at ix.


21 Commonwealth *ex rel.* Specter v. Freed, 228 A.2d 382, 392 (Pa. 1967) (containing a strong concurring opinion by Justice Musmanno stating that the District Attorney did not have the power to subpoena based on his interpretation of statutes and commonplace history).

22 Commonwealth *ex rel.* Specter v. Martin, 232 A.2d 729, 745 (Pa. 1967) (containing a separate opinion by Justice Musmanno stating that Specter is a city officer and must resign as the district attorney before running for mayor as well as criticizing Chief Justice Bell for labeling his opinion a dissent when there was not a majority opinion); Chalfin v. Specter, 233
the primary election of 1968 dealing with the passage of a new judiciary article proposed by the Constitutional Convention of 1967-68. The case of *Sander v. Kelley* was, unfortunately, Justice Musmanno's last published decision with his death occurring on October 12, 1968, the day after the decision. This decision was a preliminary decision before a full opinion was delivered after Justice Musmanno's death in March 1969 upholding the constitutionality of both the constitutional convention and article V of the Constitution of 1968.

In March 1967, the Pennsylvania Supreme Court heard the case of *Commonwealth ex. rel. Specter v. Freed* in which Freed appealed from the Court of Common Pleas a subpoena issued by Specter as district attorney who was investigating whether some Philadelphia magistrates were violating state laws concerning the failure to make docket entries into their official records. Justice Roberts issued an opinion against Specter holding that Specter as a city official under the Philadelphia Home Rule Charter did not have the right to issue subpoenas. Article XIV, section 1 under the Constitution of 1874 designated district attorneys along with other officials as “county officers.” Later sections 17 and 11 of the


26 *Id.* at 385. Philadelphia Home Rule Charter section 8-409 provides:
Every officer, department, board or commission authorized to hold hearings or conduct investigations shall have power to compel the attendance of witnesses and the production of documents and other evidence and for that purpose it may issue subpoenas requiring the attendance of persons and the production of documents and cause them to be served in any part of the City. If any witness shall refuse to testify as to any fact within his knowledge or to produce any documents within his possession or under his control, the facts relating to such refusal shall forthwith be reported to any one of the Courts of Common Pleas of Philadelphia County and all questions arising upon such refusal and also upon any new evidence not included in the report, which new evidence may be offered either in behalf of or against such witness, shall as promptly as possible be heard by such court. If the court shall determine that the testimony or document required of such witness is legally competent and ought to be given or produced by him, the court may make an order commanding such witness to testify or to produce documents or do both and if the witness shall thereafter refuse so to testify or so to produce documents in disobedience of such order of the court, the court may deal with the witness as in other cases.

See *id.* at 383, n.3.
27 *Id.* at 384, n.6.
County officers shall consist of sheriffs, coroners, prothonotaries, register of wills, recorder of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys and such others as may from time to time be established by law; and no sheriff or treasurer shall be eligible for the term next succeeding the one for
First Class Home Rule Charter Act of 1949 provided for local government, but made no mention of the county officers. The constitutional amendment of November 6, 1951, added section 8 to article XIV in which the consolidation of the city and county of Philadelphia made all county officers city officers, but there was nothing in the language that referred to the district attorney and his powers. *Lennox v. Clark* provided that the prothonotary as a judicial officer and the register of wills as a quasi-judicial officer under article V did not fall under the county-city designation. The *Freed* majority opinion thus concluded that the office of the district

which he may be elected.

PA. CONST. art XIV, § 1.

28 Section 17 states:

[T]he city... shall have and may exercise all powers and authority of Local self-government and shall have complete powers of legislation and administration in relation to its municipal functions, including the power and authority to prescribe the elective city offices, who shall be nominated and elected only in the manner provided by, and in accordance with, the provisions of the Pennsylvania Election Code and its amendments, for the nomination and election of municipal officers. The charter... may provide for a form or system of municipal government and for the exercise of any and all powers relating to its municipal functions...

*Freed*, 228 A.2d at 384; see also Duquesne University Law School, Pennsylvania Constitution Web Page, at http://www.paconstitution.duq.edu (publishing the full-text of all Pennsylvania constitutions).

29 Section 11 states:

Any new charter or amendments to the charter... shall become the organic law of the city at such time as may be fixed therein... So far as the same are consistent with the grant of powers and the limitations, restrictions and regulations hereinafter prescribed, they shall supersede any existing charter and all acts or parts of acts, local, special, or general, Affecting the organization, government and powers of such city, to the extent that they are inconsistent or in conflict therewith.

*Freed*, 228 A.2d at 384–85.

30 *Id.* at 385. The pertinent subsections of article XIV, section 8 of the Constitution of 1874 state:

(1) In Philadelphia all county offices are hereby abolished, and The city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law.

(2) Local and special laws, regulating the affairs of the city of Philadelphia and creating offices or prescribing the powers and duties of officers of the city of Philadelphia, shall be valid notwithstanding the provisions of section seven of article three of this Constitution.

(3) All laws applicable to the county of Philadelphia shall apply to the city of Philadelphia.

(7) Upon adoption of this amendment all county officers shall become officers of the city of Philadelphia, and, until the General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution and the laws of the Commonwealth in effect at the time this amendment became effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

*Id.*

31 93 A.2d 834 (Pa. 1953).

32 *Freed*, 228 A.2d at 383.
attorney was a state office; however, the district attorney did not have the authority to issue subpoenas. 33

Justice Musmanno issued a concurring opinion in this case. 34 He opened his opinion with a clear statement that this case had nothing to do with Specter's run for the mayoralty office. 35

Justice Musmanno agreed that the district attorney had investigatory power, but not subpoena power. 36 Subpoena power, according to Justice Musmanno, "would arm the District Attorney with a weapon of harassment and oppression." 37 He further complained that it would let the district attorney "take mothers away form their small children, invalids out of hospitals, and aged persons out of institutions." 38 The subpoena power would make the district attorney a "one-man grand jury," a threat to anyone who could be "hailed before a non-judicial official, for inquisition on any subject, at the District Attorney's pleasure . . . [and] compelled to hire lawyers, although innocent of wrongdoing, in order to prevent an even greater deprivation of their rights." 39

Specter contended that he had subpoena powers as a city official under the Philadelphia Home Rule Charter, and amicus briefs supported his claim. 40 Justice Musmanno commented that in oral argument he asked the attorneys for the appellee whether the district attorney could go into a neighborhood and call into his office every person to ask about their drinking and other personal

33 Id. at 386–87.
34 Id. at 389 (Musmanno, J., concurring).
35 Id. In Musmanno's own colorful language, that question is as foreign to the issue in this litigation as the proposed trip to the moon is foreign to the contemplated deep-sea-diving expedition in the Atlantic to raise the ill-fated Andrea Doria . . . . To attempt to use the decision of this Court as a judicial pronouncement on a matter which is in no way before us is like trying to grow pears on an apple tree. The apple hanging on the tree of decision in this case has to do with the proposition as to whether the District Attorney of Philadelphia may, according to law, in discharging the functions of his office, subpoena to his office such persons he deems amenable to interrogation. That is the issue, that is the apple, and no amount of argumentation or interpretation can transform that apple into a pear. No mixing of seeds, no amount of botanical treatment or alimentation can grow a coconut on a banana tree, and no type of analysis, construction, exposition or diagnosis can read into this decision what is absolutely not there.
36 Id. (Musmanno, J., concurring).
37 Id. at 391 (Musmanno, J., concurring).
38 Id. (Musmanno, J., concurring).
39 Id. (Musmanno, J., concurring).
40 Id. at 391. (Musmanno, J., concurring).
habits. The attorneys said it was permissible. "[A]ppalled" at that answer, Justice Musmanno cried out against this frightening claim of dictatorship power, that a district attorney would not abuse his authority. But we know only too well that power feeds upon power. This is a government of laws not of men, and the way to prevent abuse of power is not to hand out the key to the Tower of London.

He further criticized the District Attorney for ordering a subpoena upon a district magistrate who is part of the judicial system. The magistrate's records are open to the public, and at the initial hearing, Specter even agreed that Freed had done nothing wrong. Justice Musmanno argued that if a district attorney could subpoena a magistrate, then he could subpoena a judge of the Court of Common Pleas and possibly a justice of the supreme court, "to stand before his high-backed chair of assumed procurator sovereignty, or "destroy the courtrooms and the entire machinery of justice more effectually than an enemy could do so by dropping a bomb on William Penn's hat."

Finally, he disagreed with the "syllogistic non sequitur" of the hearing judge:

1. He (the District Attorney) may investigate the conduct of magistrates. 2. He may investigate to obtain evidence in any criminal case. After laying down these categorical premises, the Hearing Judge sweeps into his syllogistic conclusion with the statement: 'It follows then that the District Attorney has the statutory power of subpoena.'

Justice Musmanno criticized the judge for not pointing to a specific statute that gave the district attorney that right. Using medical nomenclature, he stated:

1. A doctor may investigate the conduct of his patient in order to determine symptoms. 2. He may investigate to obtain evidence to determine the cause of the disease from

\[\textit{Id. at 392 (Musmanno, J., concurring).}\]
\[\textit{Id. (Musmanno, J., concurring).}\]
\[\textit{Id. at 392 (Musmanno, J., concurring).}\]
\[\textit{Id. (Musmanno, J., concurring).}\]
\[\textit{Id. at 393 (Musmanno, J., concurring).}\]
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\[\textit{Id. (Musmanno, J., concurring).}\]
\[\textit{Id. at 394 (Musmanno, J., concurring).}\]
\[\textit{Id. at 394–95 (Musmanno, J., concurring).}\]
\[\textit{Id. at 395 (Musmanno, J., concurring).}\]
which his patient suffers. Therefore, it follows that the doctor has the statutory power to operate on any part of the patient's body, including amputation, without liability in the event the wrong part of the body is cut, or the wrong limb is detached.

Granting the District Attorney the powers he seeks in this case would be to give to a District Attorney, any District Attorney, a scalpel and saw with which he could sever away the most fundamental right of American citizenship, the right to be let alone to pursue one's way in accordance with law and justice. This Court could not possibly grant the District Attorney this startling demand. 53

Musmanno concluded that the district attorney was a city officer under the Philadelphia Charter, and as a city officer, had no subpoena power. 54

In the second case, Commonwealth ex. rel. Specter v. Martin, the issue was whether Specter (as district attorney) had to resign upon running for Mayor of Philadelphia under article X, section 10-107(5) of the Philadelphia Home Rule Charter. 55 An equally divided court (3-3) determined that the district attorney was not an officer of the city and therefore did not have to resign while running for another office. 56 In this case, the city solicitor wrote to Edward Martin, finance director of the city, to stop paying a salary to Specter since he was in violation of the Home Rule Charter. 57 Martin contended that the district attorney was considered a county officer under article XIV, section 1 of the constitution. 58 Under the addition of

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53 Id. (Musmanno, J., concurring).
54 Id. (Musmanno, J., concurring).
56 No officer or employee of the City except elected officers running for re-election, shall be a candidate for nomination or election to any public office unless he shall have first resigned from his then office or employment.' The sanctions imposed on a violator of this charter provision are that he becomes 'ineligible for one year for any office or position under the City.' (Article X, § 10—107(6)), liable for a misdemeanor, punishable by a fine of not more than $300 or by imprisonment for not more than 90 days, or both, (Article X, § 10—109), and to 'removal from office or immediate dismissal,' (Article X, § 10—109).
57 This requirement [under Article X, § 10—107(5)] is imposed because an officer or employee who is a candidate for elective office is in a position to influence unduly and to intimidate employees under his supervision and because he may neglect his official duties in the interest of his candidacy. Annotation to Article X, § 10—107(5). 'In addition, if a violator is an elective or appointive officer of the City, he is to be immediately dismissed from his position . . . '; Annotation to Article X, § 10—109.
58 Id. at n.1.
59 Id. at 739.
60 Id. at 732.
61 Id. at 733.
section 8(1), "county officers' became 'officers of the city of Philadelphia,'" rendering Specter subject to the provisions of the Home Rule Charter and requiring his resignation if he ran for office. 59

Justice Jones, with Justices O'Brien and Roberts, gave an opinion in favor of Specter. 60 Chief Justice Bell dissented; 61 Justice Eagan offered both a concurring and dissenting opinion. 62 Justice Musmanno, however, offered an opinion against Specter, 63 in which he criticized Chief Justice Bell for "calling his opinion a Dissenting Opinion" and Justice Eagan for calling "his Opinion a Concurring and Dissenting Opinion" when there was "no Majority Opinion." 64 Toward the end of his opinion, Justice Musmanno acknowledged "[I]n point of authoritiveness, my Opinion is just as effective as that of Justice Jones and, of course, I say this with great respect." 65

Justice Musmanno pointed out that Specter first came before the court in November 1966 to declare himself a city officer in order to have subpoena jurisdiction in the case of Commonwealth ex rel. Specter v. Freed. 66 In May 1967, Specter changed his position and claimed not to be a city officer, and therefore not under the City Charter, in order to receive his salary in Commonwealth ex rel. Specter v. Martin. 67 His change was due to his decision to run for mayor of the City of Philadelphia; under his 1966 reasoning, Specter would have had to resign as district attorney first. Justice Musmanno stated:

Arlen Specter is the same official person today that he was on November 21, 1966, and no change in raiment can suspend the operation of the Pennsylvania Constitution by which he is bound. No raising of a forensic umbrella can protect Arlen Specter from the deluge of legal pronouncements which shrink his May 2nd suit to the size and cut of the garment he donned last November 21st. 68

Justice Musmanno felt the relationship between article XIV, section 1 of the Constitution of 1874 (declaring district attorneys are

59 Id.
60 Id. at 732-39.
61 Id. at 739-45 (Bell, J., concurring).
62 Id. at 744 (Eagen, J., concurring and dissenting).
63 Id. at 745-55.
64 Id. at 745.
65 Id. at 753.
66 228 A.2d 382 (Pa. 1967).
68 Id. at 746.
county officers) and article XIV, section 8 (transforming county officers into city officers) was "kindergarten simplicity"; to deny either was "to repudiate the English language."69 Moreover, Justice Musmanno emphasized that the person running for office had an obligation to that office.70 An officeholder had an unfair advantage in maintaining that office, when he could "wheel his official position into action, like an artillery piece, and, with it, threaten his political adversaries with prosecution and harassments."71 Specter's criticism of opponents led Justice Musmanno to denigrate this activity: "Such activity does not comport with the American concept of fairness and sportsmanship."72 Furthermore, Justice Musmanno urged that the district attorney holds a high place in the city government, especially since his spoken words "are accepted and published."73 Later, he observed that the "watchdog' business" of the district attorney's office gave the district attorney's bark "not the squeak of a Pekingese, but the low, muttering admonitory growl of the mastiff that can implement his growling with action, as for instance, an arrest which, no matter how much the arrested person might later be fully exonerated, could do him irreparable harm."74 Justice Musmanno also noted that Specter could not point to a statute that said he was not a city officer.75 Specter's reference to Mayor Dilworth's contention that this predicament "was unreasonable and unfair" was not applicable either since Mayor

69 Id.
70 Id. at 747.
71 Id.
72 Id.
73 Id. at 748. This influence of the district attorney was an important consideration when the Home Rule Charter was proposed:
A historical study of the Philadelphia Charter movement reveals that the pioneers and proponents of the home rule enterprise were very much concerned about the part the District Attorney should play in the new city government. It was obvious that one who would be at the very center of the establishment maintaining law and order had to be an integral part of the city government which was now to have autonomy. Thus, in the constitutional amendment leading to the charter itself, all county officers (and the District Attorney's office was specifically listed as a county officer) were to become city officers. The pioneers and proponents of Home Rule, as men of intelligence and foresight, realized that the District Attorney, by the very nature of his office, exercises tremendous influence on public opinion. This influence results particularly from the fact that the District Attorney as the overseeing general in the never-ceasing battle against crime and disorder, creates considerable legitimate news and is therefore a focal point of intense public interest. The momentum of his actions is such that even statements made by him on subjects having nothing to do with law enforcement in Philadelphia are accepted and published. A high public duty, therefore, rests on the District Attorney to speak facts as they are and not to embellish them with imaginative forays.

74 Id. at 747-48.
75 Id. at 749.
76 Id. at 750.
Dilworth resigned his office of district attorney before running for mayor. Justice Musmanno proclaimed that Specter's citations to statutes preceding the constitutional amendments were "as irrelevant as the snows of yesteryear." Commenting on a divided court, Justice Musmanno stated: "a see-sawing, teetering affirmation does not carry much legal or moral conviction. It is simply a surrendering to circumstance because a full court did not deliberate on the case." Of Specter's defense of the lower court opinion, Justice Musmanno noted that the use of the word "Commonwealth" in the court proceeding "does not make the District Attorney the Commonwealth." The district attorney was a city officer just as the sheriff, solicitor, commissioner of licenses and inspections, and commissioner on human relations were city employees carrying out both state and local laws. Justice Musmanno criticized the lower court for "its subsurfacing and resurfacing" in trying to defend Specter's position. The court declared Specter a state officer because "it is the Commonwealth's laws that he enforces." On the contrary, Justice Musmanno claimed: "To say that the District Attorney of Philadelphia, in the face of specific constitutional language to the contrary, is not a City officer is like saying he must be a State officer because he breathes the air of Pennsylvania." Justice Musmanno, in his final statements, concluded that if the court decided that Specter could not be District Attorney and mayoral candidate at the same time, then he still could not be removed from office. Specter had to do this voluntarily or face another dispute over removal from office through quo warranto proceedings or article VI provisions of the constitution. Justice Musmanno concluded by stating: "I further hold that it is legally immoral for a government official, armed with the unlimited prosecuting powers lodged in the office of District Attorney, to carry on an election campaign against those who are opposed to him politically."

In the third opinion, Chalfin v. Specter, Chalfin, a candidate for

76 Id.
77 Id.
78 Id.
79 Id. at 751.
80 See id.
81 Id. at 752.
82 Id. at 750.
83 Id. at 752.
84 Id. at 754.
85 Id.
86 Id. at 755.
Controller on the Democratic ticket, sued Specter and other officials to stop placing Specter on the ballot as the Republican mayoralty candidate in the November 1967 general election, to forbid payments to Specter as a candidate, and to enjoin Specter from remaining as a candidate unless he resigned his office of district attorney.\textsuperscript{87} The court held a hearing on September 25, 1967, since the time element for printing the ballot was only one day away.\textsuperscript{88} A \textit{per curiam} opinion affirmed the lower court decision that Specter could run as mayor while still holding his position of district attorney.\textsuperscript{89} Chief Justice Bell issued a concurring opinion;\textsuperscript{90} Justice Roberts also issued a concurring opinion and was joined by Justices Jones and O'Brien.\textsuperscript{91} Justice Musmanno, Justice Cohen, and Justice Eagen filed separate dissenting opinions.\textsuperscript{92} Chief Justice Bell said the two former opinions (\textit{Martin} and \textit{Freed}), led to a state of "uncertainty and bewildering confusion."\textsuperscript{93} The procedural question arose over whether this case should be handled under \textit{quo warranto} proceedings or equity.\textsuperscript{94} Chief Justice Bell determined equity was necessary in this case, otherwise Philadelphia voters "may be restricted to only one mayoralty candidate on a major party ticket."\textsuperscript{95} Furthermore, if Specter was elected and then declared ineligible, "(1) the majority of the voters of Philadelphia will be disfranchised, and (2) countless thousands of citizens of Philadelphia will have campaigned and have wasted their time and money in vain, and (3) the taxpayers will likewise be required to pay for large illegal expenditures."\textsuperscript{96} Accordingly, Chief Justice Bell called this situation a "Chinese puzzle," which required cutting the "Gordian knot" in order to reach a "practical and equitable solution." Due to misleading previous court decisions and a limited time line, Chief Justice Bell applied equitable guidelines to declare Specter a city officer who could hold his office and run for mayor at the same time.\textsuperscript{97}

Justice Musmanno's dissenting opinion is noteworthy for his highly critical attack upon his colleague Chief Justice Bell and for

\textsuperscript{88} See id. at 563–64.
\textsuperscript{89} See id. at 564.
\textsuperscript{90} See id. at 563–68 (Bell, J., concurring).
\textsuperscript{91} See id. at 568–70 (Roberts, J., concurring).
\textsuperscript{92} See id. at 570–79 (Musmanno, J., dissenting).
\textsuperscript{93} Id. at 564 (Bell, J., concurring).
\textsuperscript{94} See id. at 567 (Bell, J., concurring).
\textsuperscript{95} Id. at 567–68 (Bell, J., concurring).
\textsuperscript{96} Id. at 568 (Bell, J., concurring).
\textsuperscript{97} Id. (Bell, J., concurring).
his strong opposition to Arlen Specter holding the office of district attorney while running for the mayor of Philadelphia. Justice Musmanno began: "In all my 35 years as a judge, I have never had to suffer the pain which grips me as I write this opinion." He went on to claim a "deep respect" for the chief justice and stated "it is agonizing to me to express my mortification over the terrible mistake he has made in this case," but also noted his "mystification as to how it came about."

Justice Musmanno called the chief justice's earlier opinion in *Specter v. Martin* a "magnificently reasoned Opinion" in which Chief Justice Bell agreed that the Philadelphia Home Rule Charter governed Specter, that he should resign his district attorney's position if he were to run for the mayoralty, and declared Specter a city officer. Justice Musmanno was highly critical of Specter in the two earlier cases, stating "I further have no hesitation in saying that Mr. Specter has attempted to deceive this Court and the people of Philadelphia in his Janus-like approach to this question as to whether his office of District Attorney does or does not come under the Philadelphia charter. Critical also of Chief Justice Bell's comment that Specter could be misled, Justice Musmanno commented: "This is the man who is a college graduate, a practicing lawyer, a practicing politician, a student, a trained investigator and a traveler (physical as well as mental). To say that Arlen Specter could be misled by court decisions is carrying farce to a pinnacle of jurisprudential burlesque."

Justice Eagen's comment that Specter was "no babe in the woods," drew Justice Musmanno's retort that "Justice Eagen understated the situation" because, in actuality, Specter was a "veteran joust in the arena of life's practicalities," a "skilled swordsman" in court proceedings. Justice Musmanno claimed that the calendar refuted "categorically and devastatingly" that Specter was misled.

Musmanno then discussed the highlights of each case. Specter came before the court in November 1966 asking for subpoena power

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98 Id. at 570 (Musmanno, J., dissenting).
99 Id. (Musmanno, J., dissenting).
100 Id. (Musmanno, J., dissenting).
101 See id. (Musmanno, J., dissenting).
102 See id. (Musmanno, J., dissenting).
103 Id. at 572 (Musmanno, J., dissenting).
104 Id. (Musmanno, J., dissenting).
105 Id. (Musmanno, J., dissenting).
106 Id. at 573 (Musmanno, J., dissenting).
as a city officer; upon waiting for the opinion to be delivered, he filed his nomination petitions in March 1967.\textsuperscript{107} On March 11, 1967, the City Solicitor requested that the finance director stop Specter’s pay for failing to obey section 10-107(5) of the city charter.\textsuperscript{108} On March 17, 1967, the court declared he was not entitled to use the subpoena power.\textsuperscript{109}

Two justices declared him a city officer, two others did not, and Specter agreed he was a city officer for purposes of the suit.\textsuperscript{110} In \textit{Martin}, the court determined that he was entitled to his pay as district attorney, but split evenly over the designation of whether he was a county officer or city officer.\textsuperscript{111} Chief Justice Bell declared Specter a city officer and that he had to resign under the conditions of the Home Rule Charter.\textsuperscript{112} Chief Justice Bell further stated that removal and penalty were possible under article X, section 10-107(6) and section 10-109 of the charter.\textsuperscript{113}

For the chief justice to declare these opinions full of “bewildering confusion” was just unacceptable to Justice Musmanno, who felt Chief Justice Bell’s opinion “could not have been clearer if he had spelled out the facts of life to Arlen Specter in kindergarten blocks.”\textsuperscript{114} Chief Justice Bell further stated in \textit{Chalfin} that the “Court agree[d] with [him] on this point and [was] convinced that under the Constitution of Pennsylvania and the Philadelphia Home Rule Charter, the District Attorney of Philadelphia is a City officer and is subject to the Home Rule Charter.”\textsuperscript{115}

The justice’s refusal to make Specter resign because of the ballot machinery was a “gratuitous assumption on the part of the Chief Justice.”\textsuperscript{116} There was plenty of time to have new voting machine labels and for the selection of another candidate if the current nominee failed to qualify.\textsuperscript{117} The chief justice’s belief that only one major candidate would be on the ballot was unacceptable because of the ability of the Republican machine to set up a new candidate and the printing capability to print the necessary voting labels.\textsuperscript{118}

\textsuperscript{107} See id. (Musmanno, J., dissenting).
\textsuperscript{108} See id. (Musmanno, J., dissenting).
\textsuperscript{109} See id. (Musmanno, J., dissenting).
\textsuperscript{110} See id. (Musmanno, J., dissenting).
\textsuperscript{111} See id. (Musmanno, J., dissenting).
\textsuperscript{112} See id. (Musmanno, J., dissenting).
\textsuperscript{113} See id. at 574 (Musmanno, J., dissenting).
\textsuperscript{114} Id. (Musmanno, J., dissenting).
\textsuperscript{115} Id. (Musmanno, J., dissenting).
\textsuperscript{116} Id. (Musmanno, J., dissenting).
\textsuperscript{117} See id. (Musmanno, J., dissenting).
\textsuperscript{118} Id. (Musmanno, J., dissenting).
Justice Musmanno denied that if Specter were elected that he would be ineligible to serve: "A Court of October cannot say what a Court will say in January. In view of the backward somersault in the Chief Justice's position in this litigation between July and October, why could there not be a counter somersault between November and January?" To Chief Justice Bell's assertion that the Court "should seat Specter in his illegality in October," Musmanno responded,

[t]his is about the most preposterous situation ever seriously presented in a court of law. In other words, if one illegally constructs a building on somebody else's property, he should be entitled to both the building and the land because of the trouble which would follow his being required to move a building from land not his own! 

Although Specter's election might have jeopardized the running of the government, Musmanno complained that "What the Court is doing in this decision is to dress Arlen Specter in a white suit of impeccability to hide the rags of illogic and illegality which have marred his appearance as a candidate up to this point." 

The allusion to a "Chinese puzzle" did not appear to be apt to Justice Musmanno, who felt that "[t]he case [was] as simple and as easy to see as Niagara Falls," based on the provisions of the constitution and the Home Rule Charter. Musmanno felt the chief justice's attempt to cut the "Gordian knot" to settle the case, he felt, resulted in disaster, "instead of reasoning it loose and letting the strands straighten out in accordance with justice and law resulted in disaster." 

In concluding, Chief Justice Bell argued that to compel Specter to resign "would be a gross miscarriage of Justice." Justice Musmanno claimed, "To allow Specter to defy the charter under

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119 Id. at 575 (Musmanno, J., dissenting).
120 Id. (Musmanno, J., dissenting).
121 Id. (Musmanno, J., dissenting).
122 Id. (Musmanno, J., dissenting).
123 Id. (Musmanno, J., dissenting).
124 Justice Musmanno informed the reader:
The original Gordian knot, by the way, was tied by Gordius who attached the yoke of his chariot to the axle tree in such a manner that the ends of the cords could not be perceived. An oracle proclaimed that anyone who untied the knot would become emperor of Asia. Many hands tried to unfasten the knot but Alexander the Great whipped out his sword and cut the knot. History records that after he performed this feat, chaos followed in Asia. And that is what is happening in this case . . . .
125 Id. at 567 (Musmanno, J., dissenting).
which he obtains all his powers is to deny justice to the people [sic] of Philadelphia.”

Justice Musmanno went on to complain about Specter’s running for office while district attorney but also chastised him for using his office while running for mayor: “The District Attorney’s office is distinctly one of prosecution and, when prosecution, or threat of prosecution, is linked with an attack on the District Attorney’s political foes, the prosecution becomes persecution, which has no place on the sunlit field of fair and honorable political conflict.”

Musmanno also proclaimed in capital letters, “THE PHILADELPHIA HOME RULE CHARTER IS DEAD!” because the four members of the court declared the charter “sacrosanct” and then four members stated that it did not have to be obeyed. He went on to observe, “Since the Supreme Court has ordered that a valid, legal section of the Charter is to be Disobeyed, no possible inviolability can ever judicially attach to the Charter again.”

Unfortunately, he also saw the reputation of the court diminished as a result of the opinion:

And now, even a sadder thing must be said. The Supreme Court of Pennsylvania, through a majority of the judges thereof, have struck a blow at the dignity, the prestige of this Court, a blow whose damage may be irreparable, unless, soon, this Court recognizes its responsibility to the law and to the welfare of the people by overturning and repudiating the unconscionably self-contradictory order it hands down today.

The principal person in this litigation is well named—Specter. The decision in this case will remain a specter to haunt this Court throughout its entire future history, unless, of course, the ghost is laid to rest with a rectification of the disastrous mistake made today.

Justice Musmanno strongly criticized the court for its decision: “But this is the first time, and I challenge anyone to declare factually the contrary, where the majority members of a court declare what the law is and then imperiously order that that law be

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126 Id. at 576 (Musmanno, J., dissenting).
127 Id. at 576 (Musmanno, J., dissenting).
128 Id. at 576-77 (Musmanno, J., dissenting).
129 Id. at 577 (Musmanno, J., dissenting).
130 Id. (Musmanno, J., dissenting).
131 Id. (Musmanno, J., dissenting).
ignored. And that is what this Court has done today." Justice Musmanno went on to state that the "melancholy results" of this decision "undermined confidence in the Supreme Court," "placed an inglorious blemish" on "the oldest Supreme Court in the United States," made litigants wonder if opinions will be "rendered arbitrarily, whimsically, or haphazardly," and "made a shambles of the law of precedent . . . ." Again, he criticized Chief Justice Bell for his conflicting opinions who, "in effect, laid down the LAW OF THE CASE in this litigation."

Musmanno went on to bemoan,

I have written many dissenting opinions in my incumbency on this honored and honorable court, but if all my dissenting opinions of the past were rolled into one, they would form only a slight abrasion of distress compared to the gaping wound of sorrow I experience in writing this dissenting opinion.

He was "desolate" over what he had said about the Chief Justice and in referencing Edmund Burke claimed that "in my 35 years as a judge I have never known a decision which was so wrong as the one handed down today, nor have I sat on a case where duty more compelled me to speak as I have spoken."

Justice Musmanno finished his dissent with "observation[s]" about his other colleagues' conclusions. He disagreed with Justice Roberts' concurring opinion, stating that in Specter v. Freed Specter was declared a state officer. Three judges held Specter was, two held he was a city officer, and two held that the only question in the case dealt with subpoena powers and did not render an opinion on Specter's status. He also criticized Justice Roberts for claiming that Martin had held Specter was a state officer when the court had been equally divided. This division led to the current case where the majority of the court found Specter to be a city officer, and given that the City Charter required resignation as district attorney upon declaring his candidacy for another office, the decision was in apparent conflict with the City Charter. This decision struck "a devastating blow at the prestige of the Supreme Court of

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132 Id. (Musmanno, J., dissenting).
133 Id. (Musmanno, J., dissenting).
134 Id. (Musmanno, J., dissenting).
135 Id. at 577-78 (Musmanno, J., dissenting).
136 Id. at 578 (Musmanno, J., dissenting).
137 See id. (Musmanno, J., dissenting).
138 See id. (Musmanno, J., dissenting).
139 See id. (Musmanno, J., dissenting).
Pennsylvania.”

The final decision of the court therefore left Specter as district attorney and as the Republican mayoral candidate. In the November 1967 general election, Joseph Tate, the Democratic candidate, beat Arlen Specter by a vote of 353,326 to 342,578, thereby keeping Specter as district attorney, until he would be elected as a United States senator for Pennsylvania in 1980. How much influence the three cases had upon the election is unknown; however, the cases certainly were known to the general populace through newspaper accounts as Justice Musmanno alluded to in his opinions, and may have influenced some of the voters at the time.

Turning to *Stander v. Kelley*, it was a case involving the plaintiffs’ attempt to obtain a preliminary injunction on April 11, 1968 by requesting the court to enjoin the secretary of state from printing ballots dealing with the constitutional amendments for the primary election to be held only twelve days later. The court held that because there was “no clear abuse of discretion, or palpable legal error” on the judge’s part at the trial level, the court upheld the dismissal of the preliminary injunction without determining the merits of the case. Justice Eagen concurred, though he wanted to use King’s Bench power to hear the case because of the “serious questions which should be resolved without further undue delay.” Justice Jones, also concurring, felt that since the election had already been held, there was “no justiciability controversy” on appeal and the lower court had a “reasonable ground” to refuse to grant an injunction and had “committed no palpable legal error” by denying the request for an injunction.

Justice Musmanno dissented in the case. He began his dissent

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140 Id. (Musmanno, J., dissenting).
141 Mayors of the City of Philadelphia 1691–2000, at http://www.phila.gov/phils/Mayorlist.htm (last visited Jan. 25, 2005). There were two third-party candidates that garnered more than 9,000 votes in the election, and a third who received over 6,000 votes.
144 246 A.2d 649 (Pa. 1968).
146 *Stander*, 246 A.2d at 650.
147 Id. (Eagen, J., concurring).
148 Id. (Jones, J., concurring).
interpreting Justice Jones' argument that the case could be heard at a later date "in another more appropriate proceeding" to mean that he would be willing to hear the issues in a future case.\footnote{Id. at 651 (Musmanno, J., dissenting).} Justice Musmanno thought it important to meet the issue head on--now. It is much easier to straighten out a malforming constitutional structure while the concrete is wet than it would be after it has hardened into grotesque solidity. The time to straighten out a tree damaged in the planting is while it is still growing and not after it has attained a full but convoluted height.\footnote{Id. (Musmanno, J., dissenting).}

He was specifically critical of the Constitutional Convention of 1967-68 (called in the newspapers "ConCon") which sat as a limited constitutional convention, seated to deal with four general topics (legislation, courts, reapportionment, taxation), but not the topic of jurisdiction.\footnote{Id. (Musmanno, J., dissenting). The convention had authority to amend those portions of the Constitution dealing with "judicial administration, organization, selection, and tenure." See Pennsylvania Constitution, Declaration of Rights, at http://www.legis.state.pa.us /WU01/VC/visitor_info/creating/constitution.htm (last visited Jan. 28, 2005).} He criticized the convention for eliminating the text of article V, section 3 of the Constitution of 1874 which gave the supreme court authority over habeas corpus, injunctions, and mandamus.\footnote{Section 3 of article V of the Constitution of 1874 defined the jurisdiction of the Supreme Court: The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have original jurisdiction in cases of injunction where a corporation is a party defendant, of habeas corpus, of mandamus to courts of inferior jurisdiction, and of quo warranto as to all officers of the Commonwealth whose jurisdiction extends over the State, but shall not exercise any other original jurisdiction; they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is now or may hereafter be provided by law. Stander, 246 A.2d at 651–52 (Musmanno, J., dissenting).} In support of the section, he went on to claim,

That Article was inviolable, it was sacred to the divine principles of justice, it was the alter [sic] on which rested the guarantees of the freedom of a free people. Because, talk as much as one may about liberty and the unfettered conscience of man, unless one has a court within which to demand those rights they may as well be printed on rubber balloons that waft into the empty air and blow away over the ocean of endless wastes.\footnote{Id. at 651 (Musmanno, J., dissenting).}

He further decried the omission of "habeas corpus" from the text
of the constitution: "Nowhere in the vast undulating prairie of its
some 8000 words can one find a single blade of grass stamped
habeas corpus, even though, dating as far back as Magna Charta
[sic], Habeas Corpus has always been the mightiest oak in the
whole domain of individual rights."\textsuperscript{154}

He claimed that within the 8000-plus words of the constitution,
the court's jurisdiction had been stricken and replaced by legislative
supervision of the courts. With the elimination of the language
dealing with original jurisdiction, section 2(c) of the new
constitution, providing that the supreme court "shall have such
jurisdiction as shall be provided by law," was a "violent violation of
the basic principle of American government" of three separate
branches to the extent it gave the legislature control over the
judiciary.\textsuperscript{155}

Supporters of the new constitution pointed to article V, section
10(c),\textsuperscript{156} believing that the section gave the supreme court both
administrative and supervisory control over the courts. Justice
Musmanno, however, again interpreted the words "as shall be
provided by law" as legislative supremacy over the courts. Lacking
jurisdictional control over his own actions, Justice Musmanno was
highly critical of this legislative power to encroach on the courts.\textsuperscript{157}

Justice Musmanno's dissent in \textit{Stander} has not held up in the
decades following. Four months later in February 1969, a full
decision was rendered by the court after another injunction was
dismissed and an appeal to the court took place.\textsuperscript{158} This later
decision upheld the electorate's vote of approval for the new article
V of the constitution. The court held that the case was justiciable

\textsuperscript{154} Id. at 652 (Musmanno, J., dissenting).
\textsuperscript{155} Id. (Musmanno, J., dissenting).
\textsuperscript{156} Article V, Section 10(c) of the amended constitution stated:
The Supreme Court shall have the power to prescribe general rules governing practice,
procedure and the conduct of all courts, justices of the peace and all officers serving
process or enforcing orders, judgments or decrees of any court or justice of the peace,
including the power to provide for assignment and reassignment of classes of actions or
classes of appeals among the several courts as the needs of justice shall require, and for
admission to the bar and to practice law, and the administration of all courts and
supervision of all officers of the judicial branch, if such rules are consistent with this
Constitution and \textit{neither abridge, enlarge nor modify the substantive rights of any
litigant, nor affect the right of the General Assembly to determine the jurisdiction of any
court or justice of the peace} . . . .
\textsuperscript{157} See id. (Musmanno, J., dissenting).
\textsuperscript{158} Stander v. Kelley, 250 A.2d 474 (1969). This case was an attempt by the plaintiffs
to obtain permanent equitable relief from the provisions of the revised judiciary article (article
V). \textit{Id.} at 475–76.
even after a ratification vote by the electorate,\textsuperscript{159} and that the use of the constitutional convention to revise article V was lawful.\textsuperscript{160} Of Justice Musmanno’s earlier complaints, the court held the argument that habeas corpus and right to trial by jury “ha[d] been abrogated or nullified, is utterly and completely devoid of merit,” referring to article I, sections 6, 9, and 14 and article V, section 25 of the amended Pennsylvania Constitution; and article I, section 9, clause 2 and article III, section 2, clause 3 of the United States Constitution.\textsuperscript{161}

Of separation of powers, the court recognized “the dividing line between and the boundaries and powers of the three separate coequal branches of our Government,—namely, the Executive and the Legislative and the Judicial—are sometimes indistinct and are probably incapable of any precise or exact definition.”\textsuperscript{162} The court then went on to cite the unified judicial system article V, § 1, the supreme court § 2, and judicial administration under § 10, plus other sections of article V that included “until otherwise provided by law,” or similar language.\textsuperscript{163} The court argued that similar language appeared in the earlier constitution and had “caused no serious dissension or irreparable conflicts” in the past 94 years.\textsuperscript{164} Lesser arguments that the constitutional convention went beyond its jurisdiction, that the legislature could not be given powers to create new courts, even though it had done so in the past, and that there was a deprivation of original jurisdiction and king’s bench power were found “devoid of merit on the issue there involved.”\textsuperscript{165}

Other arguments taken up in the case, though not by Justice Musmanno, dealt with the amendment process as outlined under article XVIII of the Constitution of 1874. The court dismissed each of the claims and upheld the ratification of the constitutional convention.\textsuperscript{166}

Justice Musmanno’s worry about the court’s jurisdiction has been found illusory. By the late 1990s, the court had expanded its authority far beyond what Justice Musmanno had thought possible. The court’s use of King’s Bench authority,\textsuperscript{167} and of plenary

\textsuperscript{159} \textit{Id.} at 477–78.
\textsuperscript{160} \textit{Id.} at 478–79.
\textsuperscript{161} \textit{Id.} at 482.
\textsuperscript{162} \textit{Id.} at 482.
\textsuperscript{163} \textit{Id.} at 482–83.
\textsuperscript{164} \textit{Id.} at 483.
\textsuperscript{165} \textit{Id.}
\textsuperscript{166} \textit{Id.} at 479–83.
\textsuperscript{167} King’s Bench power derived from the Act of 1722 that created a permanent court structure in Pennsylvania up to the Revolution. Under that Act, the supreme court had the
authority in recent years led to a number of important decisions that reversed Justice Musmanno’s fears, that is, that a constitutional crisis occurred with the court using its administrative and rulemaking authority to encroach upon the legislature. Additionally, under article 10, section 10(c), the court has expanded its administrative and supervisory authority contrary to the legislature. The court has regulated attorneys in their admittance to the bar, approved model Rules of Professional Responsibility in 1970 and later Model Rules of Professional Conduct in 1987, rules for attorney disciplinary enforcement as


42 Pa. Const. Stat. Ann. § 706 (2005). Disposition of appeals states: “An appellate court may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances.”


Pa Const. art. V, section 10(c) states:
The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the judicial branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions. Notwithstanding the provisions of this section, the General Assembly may by statute provide for the manner of testimony of child victims or child material witnesses in criminal proceedings, including the use of videotaped depositions or testimony by closed-circuit television.
The last sentence was added by a constitutional amendment in November 2003.


204 Pa. Code ch. 83. This chapter also includes regulations dealing with Client Security Funds.
well as a disciplinary board of the supreme court,\textsuperscript{174} developed continuing legal education programs,\textsuperscript{175} and instituted IOLTA programs to help finance providers of legal aid.\textsuperscript{176}

In conclusion, Justice Musmanno's dissents in the \textit{Specter} cases were harsh comments both with respect to his colleagues' handling of the case and with respect to Specter himself. Justice Brennan's comment that "the dissent demonstrates flaws the author perceives in the majority's legal analysis,"\textsuperscript{177} was certainly true in the \textit{Specter} cases. Of his fears expressed in the \textit{Stander} case, the follow-up opinion probably did not abate them; but time has shown that the Supreme Court of Pennsylvania has maintained its independence and stature as the oldest state supreme court in the United States.

\textsuperscript{174} \textit{Id.} at chs. 85–95.
\textsuperscript{175} \textit{Id.} at ch. 82B.
\textsuperscript{176} \textit{Id.} at ch. 81B.
\textsuperscript{177} Brennan, \textit{supra} note 4, at 430.