State of the Judiciary
Chief Justice Howard C. Ryan, Illinois Supreme Court
Message at the Illinois Judicial Conference
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A custom has developed in this country in recent years for the Chief Justice to give an annual report on the state of the judiciary. This is the first venture into that field in Illinois, but it does not necessarily herald the beginning of an era of annual speeches of this nature. Most of the time the report is given to the General Assembly. The American Bar Association has suggested that the General Assembly is the appropriate forum in which the Chief Justice should give a report on the state of the judiciary. The ABA believes that by giving the report to the General Assembly, the court is asserting its position as a co-equal branch of the government.

I could never quite appreciate or feel comfortable with the idea of the court, one co-equal branch of the government, reporting on its activities to another co-equal branch. I do feel, however, that the court should frankly and freely discuss its problems, and I do feel that a frank and honest assessment of these problems, and the strengths and weaknesses of the judicial system, is the first step in the improvement of the administration of justice.

A few months ago, the Executive Committee of the Judicial Conference suggested that the Chief Justice's report on the state of the judiciary might be an appropriate part of this annual program. Our constitution provides that there shall be an annual judicial conference "to consider the work of the courts and to suggest improvements in the administration of justice." Thus, this conference seems uniquely appropriate as a forum in which the Chief Justice should report to the judges who operate the court system in this state, and to the people of the State of Illinois, on the state of the judiciary. I shall attempt to adhere to the constitutional mandate and limit my discussion to the work of the courts and to suggestions for improvements in the administration of justice. I hasten to add that these are important matters as I perceive them and they do not necessarily represent a consensus of the court.

I think the most significant happening in the judicial system in Illinois during this past year, and certainly most significant to the people assembled here, was a pay raise. About a year ago, we felt we had a pay commission to replace the spasmodic approach to judicial salary adjustments of the past. However, our hopes were dashed when that bill was vetoed in response to the public's opposition to legislators having their salaries increased in that manner. Considering the state of the economy and the fact that this was an election year, it appeared highly unlikely that we would be able to receive any pay adjustments for at least another two years. However, the issue would not die. Many dedicated individuals went to work and ultimately brought about the fulfillment of our hopes and we did receive a pay increase. It would unduly lengthen this report if I were to mention all of those people who were involved in bringing this effort to a successful conclusion.

I must, however, mention the Illinois State Bar Association and the Chicago Bar Association and bring to your attention the outstanding role the two organizations played in helping us achieve this pay increase. I want to hold up for special recognition the names of the two persons who were then serving as presidents of those organizations - Kevin Forde of The Chicago Bar

Association and Michel Coccia of the Illinois State Bar Association. We are indeed indebted to those organizations and to those individuals. I am sure that each of you is as grateful for that pay raise as I am, but I am also sure that each of you will agree with me that there must be a better way.

I am now finishing my 28th year as a judge. I do not know how many pay bills I have watched with great concern during that period of time. Whether those bills passed or not did not depend upon the merits of the situation. Whether a particular legislator voted for or against a pay bill did not depend upon whether the judges needed a pay raise, or whether one was justified. The vote depended primarily upon the predilections of the legislator and the pressures and influences that were brought to bear upon him. This may be all a part of the legislative process, but frankly, it is one hell of a way to run a court system.

The same provision of the constitution which requires the holding of this annual judicial conference also requires that the supreme court send a letter annually to the General Assembly. You can rest assured that the Chief Justice's letter this year is going to contain the recommendation that the present frenzied method of adjusting judicial salaries be abandoned and that a sane, sensible, business-like method of adjusting judicial salaries according to need and as justified through the use of a compensation commission be adopted.

In 1962 we amended the Judicial Article of the 1870 Constitution. I don't suppose at that time that any of us fully realized the import of that amendment. That amended article was incorporated virtually intact in the 1970 Constitution. As a result, we now have a simple three-tier judicial system, with provisions for internal administrative control and provisions for administrative and supervisory authority over the entire system.

The proponents of the 1962 amendment had worked for several years to secure its adoption. They had incorporated into that amendment what was perceived by the most profound thinkers of the day as an ideal judicial system. Few states have been as successful as we have been here in Illinois in divesting their court systems of archaic appendages. This is not to say, however, that as ideal as our system is, it always functions ideally. The most perfectly designed automobile will not run at all without fuel, and it must be serviced. It must be lubricated and furthermore, it must have a driver. So it is not enough just to have a perfect vehicle. It is the operation of that vehicle that is important. Likewise, with the court system, we must be concerned not only with the structure of the court system, but also with its operation.

We have in this state some 800 judges holding court in 102 different counties, and I have no idea how many different court facilities are in operation or where court is actually held. It is a difficult job to synchronize the firing of all of these sparkplugs. Frankly, although we have a nearly ideal, nearly perfect vehicle, it does not always function perfectly and its operation may at times be justifiably criticized.

Admittedly, the most serious problem in the operation of a court system, not only in this state but in all states, is court delay. Frankly, as I perceive it, there is no single cause for delay and there is no single remedy for it. Also, I am convinced that in each of the 21 circuits in this state the causes for delay and the problems are different and require different solutions. The problem of

delay is not new. It has existed here and elsewhere for years, and I think that is probably one of the problems that we face in resolv-ing the delay situation. As much as we despise it, as much as we talk about it, as much as we attempt to eliminate it, I feel we have come to accept it as a part of the judicial process. In a sense, delay has become a part of the legal culture and attorneys structure the timetables of their practice to accommodate it. Delay is not solely a problem of judicial administration. I fear that we have all looked upon it for much too long as someone else's responsibility. I think it is the responsibility of each and every judge. We all take an oath of office as judges to faithfully discharge the duties of our office. Faithfully discharging the duties of a judge includes doing everything in our power to see that justice is not delayed. Each of us has the opportunity, through the way that he runs his individual court, to improve the administration of justice. I will return to this subject of delay a little later. First, I want to comment on the conduct of individual judges and what we as individuals can do to improve the system.

I know that all too often criticism of the courts by the media is both unfair and unjustified. We can properly explain much of this criticism by simply stating that the critics do not understand the system. However, unfortunately, all criticism cannot be explained away in this manner.

Arthur Browne, who is an investigative reporter for the New York Daily News and who is also a lawyer, recently wrote a series of articles for his newspaper entitled that euphonic and not very "objective" title, "Junk Justice." Frankly, I have read these articles and from a judicial point of view, I must consider them to be junk journalism. In any event, Mr. Browne conducted an investigation of the New York court system that lasted for some six months. He sat in the parking lots and noted the time the judges came to work in the morning and the time that they left in the evening. He walked the corridors of the courthouses and he noted the empty courtrooms and the empty chambers. He determined to his own satisfaction in most instances whether or not these absences and these empty courtrooms and empty chambers were justified.

He concluded that 75 to 80 percent of the judges in the New York system were putting in a full day's work and were performing excellently. He did find, however, that there was a small group of judges who consistently had a pattern of performing poorly and it was the poor performance of this small group of judges that inspired that appellation, "Junk Justice" - the tag he hung around the entire judicial system of the state of New York. Although I am convinced that these articles were not objective, that they were not fair, nonetheless, I must admit that there was this small number of judges in the state of New York that deserved the criticism that was leveled at the entire system.

Although most of our judges are dedicated individuals and do more than a day's work for a day's pay, I must admit that in Illinois, as in New York, we have a few who do not perform as they should and as expected. It is those few that we read about in the papers and we are all tarred with the same brush. I know that a judge cannot conform his work to a set time schedule. Mr. Browne himself said that he did not expect judges to, and he knew that judges could not, punch time-clocks. He suggested that the judges be policed by the simple mechanical device of checking the time that they come to work and the time that they leave, and the time that they spend on the substantial blasts in the media after having had frank discussions with reporters. Nonetheless, I do think that you must be willing to communicate what is going on in your court

to the public and, of course, the 1nedia is the only, or at least one of the few avenues through which we can do that.

Let's go on to a discussion of some other matters of personal performance in our courts. I think that in the operation of our individual courts we find far too many continuances and extensions of time granted unnecessarily. I feel there is a substantial abuse of the discovery procedures. Trials take far too long and attorneys waste too much time in court in needless harangue.

If you want to see how much time is actually wasted during the course of a trial, read the transcript of the next case that you hear. I have read and supervisory authority over all of the courts. Thus it is the duty of the supreme court to become involved in local court administration. Let me outline briefly our involvement to date and what we have planned for the future. In Cook County, Chief Judge Harry Comerford appointed a committee of attorneys about two years ago. William Madden, Deputy Director of the Administrative Office of the Illinois Courts worked with that committee and Judge Comerford and Judge Comerford's staff in designing a program of case flow management. It applies a different concept in that the court, and not the attorneys, control the flow of the cases.

I feel that the system has great promise. I have expressed this to Judge Comerford and to the members of the Law Division. However, the judges who are responsible for the administration and the operation of that particular program must firmly adhere to its outline. If they do not, the attorneys will again be controlling the flow of cases and we will be right back where we started.

The supreme court is going to watch the operation of the program carefully and the Administrative Office is going to monitor it. We are going to give Judge Comerford and the judges that implement that program full cooperation. The court problems and the delay that exists here are not unique to Cook County. Every circuit in this state has its own particular kind of problem. Although many of the problems throughout the state are similar, we must admit in a greater sense, each circuit's problems are distinct. In the past, to a degree, we have permitted each circuit to work out its own difficulties. The supreme court now feels that to fulfill its constitutional mandate of supervising and administering the court system, it must more closely supervise administration in each individual circuit. ln addition to the work in Cook County, Judge Gulley, the Director of our Administrative Office, members of his staff and I have met individually with three of the downstate chief judges. We have discussed the problems that exist in those individual circuits. Now, members of Judge Gulley's staff are going to work with the chief judge in each circuit and the members of his staff in designing a plan and a program to improve the administration of justice in each circuit. Within the next year we hope to duplicate this in every one of the circuits in the state of Illinois. It is not enough, however, for us to make a study, to devise a plan, to put it in operation and then to walk away. The court's Administrative Office must continue to monitor the operation of the program in each circuit and we must make alterations in the program as experience dictates.

I know that much of the difficulty in the operation of our courts is due to the litigation explosion. A simple answer to these difficulties would be to simply say let's add more judges. But more judges is not the answer. More judges require more public defenders, more prosecutors, more bailiffs, more clerks, more court reporters, more courtrooms .. The way we

must handle this increase in litigation is not simply by adding more judges, but by making a more efficient use of the personnel and facilities that are available. Let us give this overworked subject of delay a little rest and discuss some other areas that could lend themselves to improvement in the administration of justice. We read, from time to time, concerning proposals to resolve disputes outside the judicial system. A few states are experimenting in this area at the present time. Although I favor a less formal resolution of certain types of cases, I oppose removing these cases from the judicial system. I do not think that simply because courts are overburdened that a whole segment of its work should be chopped off and denied access to the system. Also, I do not think that simply to rid the system of a substantial part of its burden, the judiciary should abdicate the responsibility of dispensing justice in wide areas that have been traditionally reserved to it. These I suppose one can say are philosophical reasons why I oppose removing a lot of cases from the judicial system. As a practical consideration, I do not think that a whole new burdensome bureaucracy should be established simply to handle the cases that are taken out of the court system. There are movements afoot in both The Chicago Bar Association and the Illinois State Bar Association to promote non-judicial resolution of certain types of disputes.

I am afraid that without guidelines, these programs will develop independently of each other and independently of the court system and that a patchwork of remedies will result; and if legislative authorization and financing is achieved for this patchwork of remedies, the resulting remedies may not be compatible with one another and may not be compatible with the judicial system. The result may also diminish or weaken the authority vested in the courts by article VI of the constitution. This is not to say that there is no room in my plan for arbitration or mediation, or other innovative methods of dispute resolution. However, whatever program is designed, it should be a part of the court system. Some of the areas that I would consider are these. I feel that the right to a jury trial need extend no further than federal cases have defined it under the Federal Constitution. I think that jury trials can constitutionally be denied in a wide range of traffic, misdemeanor, ordinance, and small claims cases. I trust you will not consider that as an advisory opinion. I think that there are certain formalities in the trial of cases, certain types of cases, that can be eliminated, particularly in the less significant types of cases, and I think that court for the less significant cases should be held at locations and at hours more accessible and more convenient to the litigants. I suggest that the Executive Committee of the Judicial Conference conduct an independent study of informal resolution of disputes within the judicial system, and in doing so, it should secure input from the Chicago Bar Association and the Illinois State Bar Association, both of which have manifested interest in this area.

The American Bar Association is also going forward with pilot programs in this area. By this area, I don't mean in this geographic area, but insofar as resolution of disputes is concerned, outside of the courts. The president of the American Bar Association last week told the Conference of Chief Justices that there must be cooperation between the American Bar Association's program and those of the individual states. I would like for the Judicial Conference to report to the supreme court as early as possible, not only with the suggestions as to the substantive suggestions in this area but also suggestions for the implementation of a program.

Let me touch on another subject, and I wish to do so only because it is sure to come up again in this session of the General Assembly. This subject is commonly referred to as merit selection of

judges. I will not express a preference as to the appointive method of selecting judges as against the elective method. However, I wish to point out certain dangers that I feel we are facing every time this matter is played around with in the General Assembly. Some proponents of the appointive method are so insistent upon achieving their goal that they appear to be willing to sacrifice all else to achieve that end. As an example, two years ago, an amendment was added to a merit selection bill in the General Assembly which would have abolished judicial tenure. The proponents of the bill were even willing to embrace that amendment which would have cast us back into the judicial dark ages here in Illinois, solely for the sake of securing the appointment of judges.

When the bill was narrowly defeated in the General Assembly, the media lamented its demise and blamed it on politics as usual. I don't know what the media and other pro- ponents of merit selection were think- ing about when they embraced that amendment. Obviously, they were not thinking, but they were marching blindly ahead along the edge of the precipice chanting "merit selection." There has been too much cutting and pasting done when a merit selection bill is introduced in the General Assembly. As a result, there exists a very real danger that some horrible patchwork bill will emerge which will emasculate the nearly ideal court system that we struggled and fought so hard to obtain in 1962.

If judges are to be appointed, I strongly feel that the appointive power must be placed in an entity that cannot use it for political advantage. This would seem to rule out any state officer or group of state officers that are elected. The slogan of proponents of merit selection at one time was "take the selection of judges out of politics." Now, it is generally acknowledged that the usual appointment procedure of having a panel recommend three candidates and the governor appoint one of the three does not take the selection of judges out of politics. Last year a report of the Illinois State Bar Association Committee admitted that this system usually results in the appointment of judges of the same political party as the appointing authority.

In a speech two years ago at the annual supreme court dinner, I expressed my concern about the traditional merit selection plan of nomination by a panel and appointment by the governor. Not only will the appointees likely be of the same political persuasion as the appointor, but also they will be of the same philosophical bent. As judges are now chosen, they come from different walks of life, different backgrounds, and bring to the court different experiences. There is thus represented on the courts of this state a broad spectrum of judicial, political and social philosophy. This diversity of philosophy is healthy. If an appointive method of selecting judges is to be adopted, it must pre-serve this diversity. If it does not, judges will soon all be lock stepping along to the same cadence. I suggested in that speech two years ago that because the supreme court is composed of seven individuals from different parts of the state with different political and social backgrounds, that body represents the best possibility of preserving what I view to be a very essential element in a balanced judicial system - diversity.

Another area of concern, and I think this relates back to the invitation to close court scrutiny that I referred to earlier, is the matter of public education. By making the public aware of what the courts do, by making the public aware of the fact that it is the courts that protect the individual and that protect the fundamental rights we assert, by making the public aware of those things, we can only enhance respect for the judicial system. I think we must do this through a broad pro-

gram of public education. I don't mean we should apologize for the courts. I don't mean we should whitewash the deficiencies or that we should attempt to cover up the warts and blemishes. I think we should have, and must have, an honest-to-goodness objective educational program to tell the public what the courts do. At one time, I think we received this in our ordinary civics class in grade school and in high school.

Alabama and Massachusetts have embarked upon comprehensive public education programs. The judicial systems are working with their state boards of education in structuring courses for their public schools that tell school children what the courts do and how the courts operate. Another education opportunity that both of these states use, as well as other states, and I understand that DuPage County here has a similar program, is education through the use of the one- day one-jury program. The waiting time in the jury assembly room is used for video-taped presentations, a little video walk through the courthouse explaining to the members of the jury that in this particular office you pay your taxes, in this particular office is the sheriff, and so on and so forth. The video tape explains that this is a court, and this is what the court does. This is a wonderful opportunity for education. Chief Justice Hennessey from Massachusetts indicated that within a period of 12 years, they hope that every person in the state will be exposed to this type of indoctrination. This is apparently as rapidly as their jury lists turn over, and they have very limited, prac-tically nonexistent excuses insofar as jury service is concerned.

Now, I know that in various circuits here in Illinois, we have different types of public education programs, but I invite the Judicial Conference to consider whether or not a state-wide, somewhat uniform type of public education program falls within the mandate of our constitution. If they feel that it does, and that it does promote the work of the court, I invite the Judicial Conference to devise a program and see if we can't work it out with the state board of education and with the educational authorities, so that some type of program can be instituted in our public school system. Also, I feel that there is great merit in the one-day one-jury type of educational process.

I have addressed myself here this evening to certain areas of concern that I have harbored for our judicial system for a long time. These can by no means constitute the entire gamut of improvements needed for an efficiently-operating court system. It is possible that these suggestions have importance in my mind only because of my own myopia. In any event, I invite the consideration of this Judicial Conference of the subjects that I have mentioned and that I have discussed. I hope that there-by we will be fulfilling the mandate of the constitution.