

The State of the Judiciary  
Chief Justice Thomas M. Kavanagh, Michigan Supreme Court  
Message to the Michigan Legislature  
March 8, 1971, in Lansing, Michigan

This is indeed *an* historic occasion. It is the first time a Chief Justice of the Supreme Court has addressed the People of the State regarding the State of the Judiciary. We appreciate this opportunity provided through the joint session of the Legislature, and we are deeply honored.

Three years ago Chief Judge Frank Wilson, of the United States District Court for Tennessee, in sentencing an individual convicted of attempted bribery of a jury, made a very relevant comment when he said:

"You stand here convicted of seeking to corrupt the administration of justice. You stand here convicted of having tampered really with the very soul of this nation. You stand here convicted of having struck at the very foundation upon which everything else in this nation depends, the very basis of civilization itself, and that is the administration of justice, because without a fair, proper and lawful administration of justice nothing else would be possible in this country. \* \* \* [T]his type of conduct \* \* \* would surely destroy this country more quickly and more surely than any combination of any foreign foes that we could possibly have."

We might ask ourselves, will history indict the Michigan Legislature, the Supreme Court, and the American system for the destruction this quote so eloquently phrases? It need not—and I contend that it will not—providing the Supreme Court and the Legislature continue to think and work together as we have during the past several years.

In this vein, I would like, on behalf of the Supreme Court and the judicial system as a whole, to publicly commend the Michigan Legislature as one of the more modern and responsive law-making bodies in the Nation. Much of the progress achieved in the courts of our State in the past seven years is directly attributable to progressive legislation, both fiscal and substantive.

This includes: The establishment of the intermediate Court of Appeals; an expansion of the Supreme Court Administrator's office; the addition of judicial manpower in our Circuit Courts and Detroit Recorder's Court; the increase in the Supreme Court's budget to secure essential quarters, staff, and tools to operate; the substitution of the district court system which, although far from perfect, is an improvement over the antiquated justice of the peace system; the support of a crash program which, together with Federal funds, enabled a temporary solution of the backlog in Detroit Recorder's Court; the increase in the salaries of court personnel, including judges, court reporters, and others. For these acts and many others you are entitled to the commendation of the people of this State, and we want to express our gratitude for your past cooperation.

These are things of the past, however; all good in themselves and necessary at the time. But one can never rest on his laurels. Progress can be accomplished only if we continue to study, to learn, and to develop programs that meet the ever-changing world in which we live.

We cannot deal with present-day problems with the tools of the 18th and 19th centuries or even with the tools that would have been satisfactory only a decade ago. The private sector of business and industry has learned this lesson and it constantly fashions and adapts new tools to solve contemporary problems. This lesson and approach are equally applicable to our judicial system.

As population and congestion increase, crime rises. As the number of automobiles increase, the number of automobile negligence cases correspondingly rises. As the citizenry becomes more mobile, the need for highways and public housing intensifies and condemnation suits multiply. As the population shifts and becomes more mobile, family bonds deteriorate and moral values erode; and divorce and juvenile cases progressively increase. Business in recent years liberally extends consumer credit and, proportionately, the number of claims and debt cases have risen. Citizens, both in the civil and criminal courts, have become more conscious of and increasingly insistent upon judicial enforcement of their civil rights. Malpractice suits and products liability actions have had a disproportionate impact upon our dockets because these are complicated and time-consuming; cases, both in terms of adversarial trial and judicial decision making.

Hurried and unthinking legislation and judicial inattention frequently add to these problems.

Legislatures often grant additional rights to citizens without compensating provisions to implement these rights in our already overburdened judicial system. For example, the Legislature recently gave citizens the right to use the courts to enjoin pollution violations. In the overpopulated industrial areas of our State where the problem is so critical, these litigants will wait, under the present backlog situation, as long as four years to secure judicial relief.

Likewise, the judicial system, itself, frequently adds to the burden and creates backlogs in the courts. For example, many judges and attorneys resist new rules and innovative procedures. Often the court rules and methods adopted to alleviate court congestion are abused or ignored so that, rather than alleviating the congestion, they are actually contributing to it.

As a result, the dockets in all of our metropolitan courts are beyond control. The average number of months from filing to jury trial in an automobile negligence case in Wayne County is over 40 months. In Saginaw, over 38 months. And in Oakland, Jackson, Muskegon, Benien and Macomb counties over 20 months. About 20 percent of the divorce cases take over two years from filing to trial. The criminally accused sometimes wait as long as eight months before receiving the "speedy trial" to which they are constitutionally entitled. Such delays cause our jails to be overcrowded.

Citizens rightfully complain and inquire: What has the Supreme Court done to correct these problems? Immediately after assuming the position of Chief Justice in January of this year, I appointed a committee of our Court to attack the problem of overcrowded dockets in the Wayne County Circuit Court. We have been meeting almost weekly with a committee of that court. More recently a committee composed of plaintiff and defense lawyers who handle a large number of cases in that court have joined in our discussions. As a result of the splendid cooperation of the Wayne County Bar and Bench, we are already planning to adopt a system of compulsory and accelerated pre-trial. Under this system a case, including all pre-trial discovery and deposition, will be ready for immediate trial within six months after it is filed. This is a radical departure from past practices where pre-trial and discovery and depositions in some instances delayed docketing for trial as long as 15 months. Only in products liability and

malpractice cases will we allow a longer pre-trial preparation because of their complicated nature.

To encourage settlements, we plan to adopt a mediation system. Under this proposal an independent and impartial 3-man panel composed of two attorneys and a circuit judge will evaluate liability and damages and assign a settlement value. A party rejecting the panel's settlement value and demanding trial must receive a favorable judgment which exceeds by 10 percent the settlement value. If the judgment is within 10 percent, the rejecting party shall be assessed costs plus the minimum attorney's fee for each day of trial.

The Court will establish a Court Administrator's office in the Detroit area with direct control over the administration of the Circuit, Recorder's and Common Pleas Courts of Wayne County. These courts, through the Court Administrator, will be accountable directly to the Supreme Court for their utilization of judicial and administrative manpower and will recommend changes in rules and procedure.

The joint committee will continue to meet and coordinate until they have succeeded in whipping the clogged civil docket of the Wayne Circuit Court. I might add that the criminal docket of Wayne Circuit Court is, for all practical purposes, up to date since they are trying all cases within 60 days from the issuance of the information.

The Supreme Court committee will meet with the Recorder's Court of the City of Detroit in the near future to establish and implement a program designed to streamline the procedures and operation of that court so that all of the people who are arrested and charged with crime will have a speedy and a fair trial. Our success in this regard will depend upon the means which you provide to deal with these particular problems.

This same Supreme Court committee has conferred with the Common Pleas Court of the City of Detroit. We have inaugurated a program, effective February 1st, in which their hours of operation have been extended for a longer day, as well as making numerous other changes which we think will speed up the handling of cases in that court.

I mention these programs and proposals only to indicate that, insofar as it is within our power, this Court is presently and actively engaged in continuing efforts to improve the administration of justice in our State.

The judiciary, however, cannot remedy its problems solely through self-initiative. We need additional programs which can be created only through the combined efforts of the Legislature and the Supreme Court. We realize, of course, that certain objectives can be immediately obtained and that others will require time, study, and extensive planning. With this in mind we should, as reasonable men, examine these programs specifically.

The Wayne Circuit Court civil docket has 34,000 cases on file as of December 30, 1970. Of these, 5,400 are 2 to 3 1/2 years old; approximately 10,000 more are over 1 year old. To correct this incredible docket condition we ask the Legislature to implement a crash program whereby we would assign from the ranks of outstate and retired judges a total of ten judges to sit in Wayne Circuit and work on the backlog of cases. Employing this type of crash program, we project that within one year the case backlog will be reduced to a stage where the court will be trying cases within one year from time of filing.

As to the facilities needed to conduct a crash program, we note that the old Recorder's Court building in the city of Detroit is presently vacant and unused, although the city continues to heat the building. We are presently engaged in negotiations for obtaining the use of the building. The rental, maintenance and equipping of the building, together with ten judges, jurors, court reporters, and the necessary supporting personnel to carry on such a program would cost approximately \$995,000. It is represented to us that \$180,000 of this could be obtained from a Federal grant, leaving a total legislative appropriation necessary of \$815,000. We are prepared to submit to the respective committees the itemized data upon which these figures are based.

We recognize that the State of Michigan is operating in a tight budget year and that appropriations are going to be closely scrutinized. However, this program and one for a crash program for Recorder's Court will total approximately \$1,000,000, which constitutes about 1/2000ths of the annual State budget. This is over and above the regular budget for the operation of the courts. It is not a question of, can we afford it. It is a question of, can we afford not to do it.

We believe, and we submit, that such a program is necessary in order to improve the administration of the judicial system in this State this year. Such a program calls for the immediate attention of the Legislature so as to be able to provide for the citizens of that area the kind of system of functioning courts to which they are entitled. These programs, both as to change of rules and as to the crash programs, will benefit the other metropolitan areas of the State where backlogs exist, because if we are successful in our crash program in Wayne County courts, the same methods will be used to reduce the backlog in the other metropolitan circuits of the State.

We now direct our attention to a program which has already been implemented but needs continued legislative support. I do not need to call to your attention the overcrowding in the Wayne County jail and the condition of the docket in Recorder's Court of the City of Detroit. The newspapers and the other media have constantly focused on the problem for the past several months. The crash program which we hope to place into effect, when it has reduced the backlog, can be utilized with some additional manpower to keep the criminal docket at a proper level and guarantee those charged their constitutional right to a speedy trial.

We have, since the expiration of the last crash program in Recorder's Court, assigned an average of 6 judges from out-county and out-State areas and underwritten the cost of the operation under the general State Court budget. To refinance the crash program, the Court Administrator is presently applying for Federal funds which entail a State matching contribution of approximately \$185,000. The details of the program will be submitted to your budget committee within the next two weeks. This program will not only eliminate the backlog but, more importantly, root out its underlying causes.

The emergent needs of which I have been speaking must not however, blur the necessity for some long-range proposals. It takes little insight to realize that "crash programs" and "temporary assignment of judges" in terms of time, transportation, and continuity of service is an inefficient and costly misuse of judicial manpower as far as long-term administration of the courts is involved. To provide for more efficient and permanent solutions we request the Legislature to provide, by statute, for 8 additional permanent judges in Wayne County Circuit Court and 7 permanent additional judges in Detroit Recorder's Court, as well as additional judges for Oakland, Macomb and Kent Counties to slow down the increasing backlog in those counties.

The detailed reasons and supporting data for our request will be furnished to the Legislature by separate memorandum.

Likewise, additional judicial manpower is needed in the Common Pleas Court of the City of Detroit. This Court, in 1930, had jurisdiction set at \$1,000 and was manned by 9 judges. Although the jurisdiction has successively increased to \$10,000, the same 9 judges attempt to keep current despite the fact that the number of jury cases filed in 1970 has increased by 1,300 over the preceding year and that the duties of the constitutionally abolished Circuit Court Commissioners have been transferred to Common Pleas. A realistic appraisal of the increased duties and jurisdiction of this Court compels us to recommend that 4 additional Common Pleas Judges be provided by statutory amendment.

In addition to the above, the Legislature must supplement the judicial manpower in the District Courts. To complement such legislation and to promote efficiency our forthcoming request will recommend the consolidation and reorganization of certain District Courts.

All of these long-range programs do not, however, involve judicial manpower. For example, our Court Administrator in the discharge of his duties must traverse the entire State. To promote a centralized administration and conserve administrative talents, we request that additional staff for the Court Administrator be hired to locally supervise designated areas. These areas shall include Wayne County and eventually specified Statewide regions, particularly below the Muskegon-Bay line. These local administrators would act as the "eyes," "ears" and "arm" of the Court Administrator in their respective areas.

To complement this program we need a system to gather, compile, and utilize current, reliable data. We are presently investigating the possible use of existing State operated communication and computer facilities. However, to properly supervise and control the litigation throughout the State and to pinpoint the factors impeding the efficient judicial operation, our Court itself will inevitably need an unsophisticated but computerized data processing system. Cognizant of the eventual need, we request an appropriate budget increase to study the feasibility of a centralized court computer system. The advantages of such a system will directly benefit every court in our State. Few people realize that in most of our counties, the court clerks are still using the pen and quill to record as many as four or five times the same calendar entries in long-hand. Under the requested system, a uniform data processing card, with sufficient duplicates, would be initially punched out and distributed in a single and efficient process.

Another immediate problem confronting our Court and the Court Administrator's office involves the question of determining who are court employees. Are probation officers and juvenile officers court personnel? Are bailiffs? Are court stenographers? In some instances, the personnel of the courts are appointed by the Governor, by the county clerk, by the sheriff, by the probation department, and other units of government. Most of them are paid by the county. The question arises, whose employees are they? Where do they belong? Who has control over them? Who ought to be able to appoint and administer them? With whom can the court employees properly negotiate as to salary, working conditions, etc.? Are they governed by the Public Employees Relations Act? May they strike?

The problems are imminent and require prompt legislative resolution. The Court Administrator has undertaken a study and analysis of the status and compensation of personnel properly falling within the judicial system. His report will be submitted to the Legislature for implementation. In

some instances, e.g., eliminating the dual function where the County Clerk serves as Circuit Court Clerk, a constitutional amendment may be necessary. His report will also recommend that judicial employees be paid out of State funds as part of our "one court of justice."

We must recognize, of course, that many of the problems besetting our courts can never be remedied without a complete reorganization of the local court. A case in point is Wayne County. As you may be aware from our recent decisions, the split jurisdiction between the Circuit and Recorder's Courts has created numerous difficult but unnecessary problems. We recommend that a District Court system be established for all of Wayne County and that the split jurisdiction be consolidated under one court of general jurisdiction to try all civil and criminal cases arising in Wayne County. We realize that our recommendation will eliminate the Recorder's Court of the City of Detroit. However, compensating politic provisions are readily available and feasible to guarantee a fair representation of all the Wayne County citizens on the Wayne County bench and still assure and retain the valued incumbency designations.

We are happy to welcome and encouraged the proposed legislative committee commissioned to study and recommend changes in the Judicial Article of our present Constitution. Their investigation will undoubtedly include some of the topics previously mentioned.

Additionally, we commend to the Committee's careful consideration the following vexatious problems:

- 1) Jurisdiction involving children is presently divided between the divorce jurisdiction of Circuit Courts and the Juvenile Division of the Probate Courts.

Should comprehensive jurisdiction over these matters be vested completely in one of these courts, or should we create a Family Court Division in the Circuit Court with the regular rotation of judges among the civil, family and criminal divisions?

- 2) The jurisdictional boundaries of some of our northern counties were drawn in the "horse and buggy" days.

Should the territorial jurisdiction of these courts, including Circuit, Probate and District, be reexamined and consolidated to reflect the impact of contemporary means of transportation on the accessibility of our courts?

- 3) Likewise, some of our northern counties have provisions for a prosecuting attorney but neither funds nor available manpower to retain full-time prosecutorial staffs.

The committee should investigate whether an area-wide District Attorney System, perhaps under the supervision and control of the State Attorney General, should be created to serve the restructured and consolidated northern courts?

- 4) A number of our counties are faced with the overwhelming and ever-increasing costs of compensating counsel appointed to represent indigent defendants and of furnishing transcripts in our appellate courts.

Should our State, like a growing number of our sister States, adopt a State-supported Public Defender System?

The problems and concerns which I have discussed are far too complex to be digested, analyzed, and acted upon following a single presentation. Resolution of such problems will require time,

extensive study and continuing communication and coordination between the Legislature and Supreme Court. Accordingly, we have decided to fill the position of Executive Assistant to the Chief Justice and Court Administrator, which has been vacant since last summer. The Executive Assistant will act as our liaison with the Legislature and with other State and Federal agencies.

Tonight in a few minutes I have endeavored to present a fair picture of the present State of the Judiciary in Michigan. The system has not yet broken down. But while astronauts walk the moon, our judicial machinery chugs and lurches along like a Model T. Its product, even if it were timely, would too often be but a rough approximation of justice. The needs of the people are not being adequately served; and their confidence in the courts has been strained to the breaking point.

Implementation of the programs I have discussed will not solve all our problems, but it will go a long way toward providing a unified, efficient and balanced system of jurisprudence for the people of our State. They are entitled to no less. It is for us, the Supreme Court, and you, the Legislature, to make sure that we jointly provide the people with a system of courts where there will be equal justice under the law for all our citizens. Unless we can achieve this objective, historians will conclude that America's noblest contribution to civilization—the 3-branch system of government—was a dismal failure and that our Founding Fathers were incompetent visionaries and, even worse, they will be right.