

State of the Judiciary  
Chief Justice G. Mennen Williams, Michigan Supreme Court  
Message to the Michigan Legislature  
April 10, 1986, in Lansing, Michigan

It is an honor, and I do not use the word honor lightly, to appear before this joint session of the Michigan Legislature. The legislature performs a most important, if not the most important, function under the constitution to make democracy work. Not only is it an important function, but it is a challenging and difficult one that demands the most of a person mentally, physically, and spiritually. Therefore I salute you and I appreciate much more the honor to appear before you.

In all probability this is the last time I shall have this honor, which I have now enjoyed twenty-four times over almost forty years. Two now in the legislature served when I was in the governor's office, and I have served with the father and the grandfather of one of your members. Now I only wish I could go on to serve further with you and then your children and grandchildren.

Undoubtedly the principal contribution, and a peculiarly American one, of the United States Constitution of 1787, and the state constitutions that followed, was the establishment of a system of government based on a balanced tripartite division of independent legislative, executive, and judiciary powers. This balanced separation of powers has assured the people of our nation and our state freedom and a prosperous lifestyle matched by no people on earth in the history of the world.

In the long run, the preservation of this balance is fundamental to the successful operation of our form of government and the people's enjoyment of democracy. It is to the maintenance of this balance of independent powers I wish to speak today.

In my previous state of the judiciary messages, I adverted to the fact that beginning with Governor Sigler in the late 1940's, then Governor Romney, and, most recently, Governors Milliken and Blanchard, aided by the executive reorganization set forth in the 1963 Constitution, the executive branch has become a powerful, well-organized branch of government. In the 1960's, the legislature changed from the no-secretary, no-private office, no-administrative-staff body I knew as governor to a justifiably well-equipped, powerful branch of government.

As a result of modernizing and improving their ability to serve the needs of the people of this state, the legislature and the executive are now for the most part properly equipped to fully perform their constitutional responsibilities. The judiciary, however, lags behind and is not fully equipped to perform its constitutional function effectively.

It is not that the legislature, the executive, and the people have failed to recognize the principle and theory of a proper balance of power between the three independent branches of government, it is that the expressed intentions and first steps have not been followed up with complete implementation. The result is that the judiciary is not presently equipped to perform fully and adequately its proper functions in our balanced tripartite form of democracy.

This result surely is not in the best interests of the people. Together we should look to improving the situation of the judiciary and to restoring the proper balance of our tripartite system of government as promptly as the legislature, the executive, and the judiciary can.

Let me first outline the steps the judiciary has, and is, taking to modernize itself—be because we believe that in order to deserve your help the judiciary must first do all it can do to help itself.

In analyzing what we should, and could do, we were helped by having determined three years ago to visit all the judges of our state, and then the lawyers, in open meetings in various parts of the state, where the judges and lawyers could ask us any questions they wanted to ask and could tell us anything they had on their minds. If you think they tried to zing us now and then, you are right, they did, but all in the spirit of give and take.

These meetings, and citizen and media encounters around the state, opened our minds to problems that most concerned the people with the administration of justice. These meetings also molded together all the judges into a working and spiritual “one court of justice” with high morale.

As a result of our investigation, the judiciary identified three major challenges facing us today in meeting the need to properly serve the public and restore the balance of power among our three branches of government. First, the public demands the just resolution of both criminal and civil matters in an efficient and timely way that avoids unreasonable delay and expense for litigants and the general public. Second, the public indicates that the judicial system requires revitalization by responses more fully meeting the demands of people for justice and for a court system more considerate of the people that use it. Third, the people spoke in 1963 for the constitutional concept of a one court of justice, a statewide system of equal justice. This system remains to be fully implemented, and it only can be fully implemented through state financing.

To meet the first challenge of delay, the judiciary has adopted the goal of improved case processing. The program to achieve the goal of improved case processing is three-pronged:

1. adopt time standards,
2. improve data systems,
3. implement caseflow management programs.

Under the supervision of Justice DENNIS W. ARCHER—Our justice most recently from the front-line of private practice—the case delay reduction project has been implemented by a hard-working committee of judges, attorneys, court administrators, and a county clerk, with support from the state court administrator. This project, funded in part by Federal Justice Assistance Act funds, is currently developing time standards for all categories of cases. These time standards will allow judges, attorneys, and, most importantly, litigants to know how long a case should take and when to expect a final ruling. It is hoped that for most civil cases this time will be a year or less, rather than presently as much as three or four years in some places. The implementation of these time standards will be possible only through the increased use of caseflow management programs, increased training of judges and court personnel, increased analysis and monitoring of

caseloads, and improvement in data processing in the trial courts.

The first goal of case processing is supported by at least two important functions. The first, the Michigan Judicial Institute, is under the supervision of Justice MICHAEL F. CAVANAGH and is directed by Dennis Catlin. The MJI, as we call it, was honored recently by a national conference of special trial court judges for having the best judicial education program in the United States. The MJI will support the improved case processing program by special training of both judges and administrative personnel.

The second support function is the Judicial Data Center which is under the supervision of State Court Administrator V. ROBERT PAYANT and the JDC Chief, Richard Wilhelm. We would hope within the reasonable future to have about five circuit courts, ten probate courts, and thirty-five district courts on line. All of the probate courts are on the batch computer system. While all courts may not benefit from computerization, most would, and this would greatly facilitate the improved case processing program.

In response to the second challenge, that is, to improve public service and understanding of the court system, our immediate goal is to find out what the public properly wants from its courts and then to develop ways to satisfy those wants. Several initiatives are underway. Under the supervision of Justice PATRICIA J. BOYLE, a blue ribbon citizens' commission to improve Michigan's courts has been established. The men and women of the commission represent citizens throughout the state and bring enthusiasm and creativity to bear on the problems facing our courts. We anticipate recommendations from the commission in early fall and will be sharing those with you. We can then determine what best each of us can do. We feel this is an area where significant contributions can be made in the administration of justice and that the citizens working with Justice BOYLE will leave no stone unturned to come up with the best and most useful programs.

The judiciary has initiated several programs designed to increase service to and facilitate better understanding by the public. Among these programs is the sentencing guidelines program, operating under the supervision of Supervising Justice MICHAEL F. CAVANAGH. Last year I reported to you a significant reduction in sentence disparity. An additional year of experience with the guidelines verifies a reduction in sentence disparity based on race, gender, whether the defendant exercised the constitutional right to trial, and whether the defendant relied on appointed counsel. Further, 82.4 percent of all sentences statewide were within the ranges recommended in the guidelines.

The committee has recommended some changes to improve the guidelines by adjusting some of the variables and possibly the guideline ranges. The Supreme Court intends to publish these suggested revisions for comment, in order that all who are interested may contribute. We will continue to work with you to improve the guidelines.

In the criminal justice area one of the continuing problems is the best method of providing the constitutionally required assigned counsel to indigent defendants.

Several years ago, the legislature established the State Appellate Defender's Office which has provided superior legal services both to individual defendants and to practicing defense attorneys at a very modest cost per case. More recently you have instituted the Michigan Appellate

Assigned Counsel System to guarantee that other assigned appellate counsel be appropriately competent. There remains the matter of assigned trial counsel. All of this involves proper selection, proper payment, etc. This is a very intricate and complex field that has challenged the administration of justice for a number of years. To work with the legislatively established agencies, the judges, and the lawyers of this state on this problem, the court has designated Justice CHARLES L. LEVIN, who has already given of his time and talents in this area as supervising justice.

The third challenge is to carry out the constitutional mandate of one court of justice and to guarantee each citizen in every part of the state access to courts with adequate resources and personnel. In 1980, this body recognized and began the realization of this constitutional mandate. You adopted and began the implementation of the principle of equal justice for all Michigan citizens with a plan for replacement of local dollars with state funding of courts. That plan, if implemented under the five-year schedule called for then, would be substantially completed today. With the state's economic difficulties in the early 1980's this implementation has been delayed.

Our goal today in this area is to achieve what your 1980 legislation promised. To lead us in this area, we have designated Justice JAMES H. BRICKLEY as supervisory justice because of his executive and local government background.

Since this body first funded three Wayne County courts in 1981, and promised to fund the rest of the courts in the state during the ensuing five years, several changes have occurred. The relationship between trial courts and their local funding units has changed substantially. Funding units previously disinterested in state assistance for trial courts are now faced with adverse financial circumstances and many are most interested in our 1986 program of state funding. Disputes between courts and funding units over the proper level of funding have sprung up all around the state. Some of these disputes have even resulted in lawsuits. In December, 1985, the Supreme Court implemented, through an administrative order arising out of the *Hillsdale-Cheboygan* case (*Employees & Judge of the Second Judicial Dist Court v. Hillsdale Co*, 423 Mich 705 (1985).—REPORTER.), a procedure to be followed to try to resolve these disputes at the earliest possible time. Through the intervention of the State Court Administrative Office and the voluntary services of both judges and county commissioners as mediators, some of these disputes have been resolved. But the underlying problem—lack of adequate funding for court services—remains. The need for state funding is today more urgent than ever.

Your concern as a legislator is the same as mine as a justice, that is, to establish the same norm of justice everywhere in Michigan. When you write a statute prohibiting a criminal act or defining a civil act you assume, and rightfully so, that the statute will be enforced in the same way in Monroe and Marquette Counties. By definition, state statutes are to be centrally established by the legislature and evenly applied. To permit local government to impose its own concept of the administration of justice would be to undermine the constitutional basis of the legislature.

This year, our budget request contains a new concept. In prior years, we requested a percentage of the total trial court operations be funded. This year, we have abandoned that heretofore unsuccessful approach and ask you to look with us at essential services—most mandated by the federal and state constitutions—which trial courts must provide. These services include assigned

trial and appellate counsel, juror fees, witness fees, transcripts on appeal, court reporting, and JDC user fees. In addition, we support the next step in judicial standardization payments, and an enhancement to the judicial retirement system to put it on a par with other state-operated systems. This total package equates to \$29 million for a full year's funding. We urge you to explore what this funding would mean to the operation of the courts in your district and to a more uniform system of justice throughout Michigan.

After the judiciary had formulated its three-point program to improve the Michigan court system during 1986-87, it became apparent that the public, the legislature, and executive, and even the judiciary itself, was giving high priority to another area. That area was family and children services.

For example, the legislature this year passed the family equity package, to improve the collection of support payments for children of separated or divorced parents. This is a laudable achievement. Further, your interest in and support to the State Court Administrative Office, in the development of equitable child support guidelines, assures that the final product will be one which serves Michigan's children well. We welcome your continuing involvement in this program.

Two years ago, Dr. M. Agnes Mansour and I established an ongoing cooperative program between the judiciary and the department of social services, to review programs for which we had joint or at least contiguous responsibilities. To date, joint task forces have explored foster home certification, adult services, friend of the court programs, and data management. Even still, we have but scratched the surface of the issues involved.

To probe further the complexity of the courts' services to families and children, Justice DOROTHY COMSTOCK RILEY will be spearheading a task force to explore the depth and breadth of these issues. Like you, Justice RILEY'S task force will be reviewing the recommendations of the Coleman Commission, permanency planning proposals, etc., as well as communicating with judges, representatives of the Michigan Department of Social Services, private agencies, and users of the services. The overriding goal of the task force will be to determine how necessary services to children and families can be provided in the most effective manner. Your suggestions are surely welcome.

In effect, we have added a fourth, and a very important and basic point, to our three-point program to improve the Michigan court system.

What I have just described is the judiciary's program: First, improved case processing; second, a user-friendly court; and, third, state financing, plus the newly coordinated family and children services program as a fourth point. Together, these four points constitute the judiciary's comprehensive strategy to do all it can by itself to restore the balance between the government's three independent powers so as to give the people of this state the democracy and effective government their constitution promises them.

But obviously in our system of independent, but coordinated, branches of government power, no one branch can do it all by itself. All three branches must work together if the people are to be well served.

What I ask then is that the legislature and the executive give the judiciary a hand to become as well-equipped, as they are, to serve, as well as they do, the people of this state. After all, that is the constitutional mission of all three branches, together, to give Michigan citizens the best government of which our tripartite system of independent powers is capable.

The help the judiciary needs from the legislature and the executive is to strengthen the State Court Administrative Office's support of the trial courts, to further fund the Judicial Data Center so as to improve the state court computer network and to further implement the program of state funding of trial courts.

As I told the house appropriations subcommittee, the court is generally pleased with the governor's recommendations. While the governor cut our request, we think we can live with the cuts with the following exceptions, all of which was detailed to the committee. The governor cut our request by fifteen positions. We can make do presently without nine of them, but six of the fifteen are immediately essential to our program to improve the Michigan court system. Likewise the failure to subsidize user fees for the use of trial court computers will crimp the judiciary's ability to eliminate trial delay.

Finally the complete elimination of any funding to implement the next step in state funding of trial courts is a serious setback. It is understandable that perhaps the whole \$29 million for the first step will not be available this year.

However, let me call to your attention that the governor in his printed message recognized that state funding "would enable our court system to operate more efficiently and reduce the pressure on local property taxes." The governor, however, though approving state financing in principle, said this year's "hold-the-line budget doesn't permit us to act on this proposal this year." May I suggest you and he give serious consideration to at least a modest beginning of this budget year.

Again, thank you for the honor of permitting me to address you and for your kind attention.