

State of the Judiciary  
Chief Justice Michael F. Cavanagh, Michigan Supreme Court  
Message to the Michigan Legislature  
May 5, 1994, in Lansing, Michigan

It is a great honor to come here today to report to you on the state of Michigan's judicial branch. I first must thank you and your leadership for recognizing the importance of communication between the branches of government, and thus for summoning today's special session. I would like to extend my special appreciation to the Co-Clerks of the House, Mel DeStigter and David Evans, and to the Secretary of the Senate Willis Snow for their efforts with my staff in making this event possible.

In addition to the many legislators who are with us this morning, I also wish to acknowledge the representatives of the executive branch. Also present in the gallery are many of Michigan's trial judges, of whose hard work we are so proud, and officers of their associations. I am especially pleased to see some former Justices of the Supreme Court, including Chief Justice Thomas E. Brennan, Chief Justice John W. Fitzgerald, and Justice Theodore Souris. I also welcome former Chief Judge Robert J. Danhof of the Court of Appeals with whom I had the privilege of serving on that Court.

There is another person whom we should recognize today. At the end of 1994, our bench will lose one of Michigan's great public servants. For nearly forty years you have served Michigan as a Member of Congress, a United States Senator, and a Justice of the Michigan Supreme Court...you are the pride of Traverse City and Central Michigan University. . . Bob Griffin, your place is assured in the history of this state. My colleagues and I feel proud and privileged to have served with you.

Finally, as a point of personal privilege, I want to take this opportunity to recognize some people whose love and support I have enjoyed and who have in that way contributed to the judicial system in which I have been privileged to serve.

Last Saturday, April 30, marked the opening day of trout season. It also happened to be my twenty-eighth wedding anniversary. I wish to introduce the woman who has tolerated me—and the trout for all those years—my wife Patricia. As living evidence of the havoc we have wrought during our twenty-eight years of marriage, I would introduce our children: Jane Elizabeth, Michael, and Megan Kathleen. My big brother, Paul Cavanagh, retired after many years of service with the Department of Public Health Crippled Children's Division, is here with me, as he always has been. His wife Shirley and several of my nephews and nieces are here as well. Thanks to all of you for attending.

Twenty-five years ago, on May 1, 1969, Chief Justice Brennan came here to present the first State of the Judiciary address. As I read his address in the House Journal, I was struck by the changes we have seen in a quarter of a century.

In 1969, Chief Justice Brennan spoke enthusiastically of new developments which today are part of the accepted status quo. He praised the Legislature for overcoming “many obstacles” in establishing the district court; he described a requirement of annual reports from judges regarding the status of cases; he spoke of new court rules to manage the discipline process for lawyers; he discussed the newly created Judicial Tenure Commission. Together, we have come a great distance.

We have far to go, however. Years from now, one of your children will stand in my place, directing a multimedia, interactive presentation on the State of the Judiciary, with holograms and sound effects. I wonder: How much will have changed by then? How much will be the same?

So let me tell you where we are today and where, with your assistance, we are headed.

My friends, those of us who serve as judges know that a court is a special place. Francis Bacon said that “The place of justice is a hallowed place.” We wear robes as a sign of an authority that traces its roots to the Old Testament. But we also wear robes to remind us that the source of our authority is not within ourselves. It comes from the people, who briefly entrust it to our care.

And it is the people who breathe life into the courts. They do so through their belief that the courts can and do provide justice. Though we live in a skeptical age, the words “Equal Justice Under Law” are no idle phrase. Justice Thurgood Marshall had supporters and he had opponents, but when he died last year, no cynic was bold enough to doubt the sincerity of that judge’s lifelong quest for justice for all Americans.

The people also invigorate the courts every day through the jury system. Juries are the clearest day-to-day illustration of the central defining principle of this great nation—the people are the government. Citizens don’t just observe the courts; as jurors they are the courts. They appear day after day, year after year, for minimal compensation, to provide extraordinary civic service. Jurors bring humanity, life itself, to the law.

Despite all of that, the Judiciary is often referred to as the third branch of government. Most of our work goes unnoticed by the media, since our primary focus is on the resolution of disputes between individual litigants, few of whom are among the rich and famous. But today, I’d like to tell you why, as we approach the year 2000, no branch can be the first branch of government, or the second, or the third.

One reason that the courts have been seen as the third branch is that our work takes place third in time. You make the laws; you establish the public institutions; you give definition and order to society. Only then do we implement and enforce the laws you have written.

Yet this task is certainly not third in importance. Though each of the three branches of government employs different procedures and is directly responsive to different interests, there exists a common goal.

You are legislators. Great controversies stir the public soul and you address them. You legislate. And so you have made decisions regarding school financing, regarding adoption, regarding malpractice law, regarding no-fault insurance, regarding the allocation of this state’s financial

resources. In the weeks and months to come, you will consider matters such as assisted suicide, reforms in the punishment and release of criminal offenders, and the manner in which custody and support problems are addressed by our Friend of the Court offices.

Yet during the same time, we in the Judiciary also have faced these challenges. The judges of this state have made wrenching decisions concerning children and families, have addressed issues such as assisted suicide, have processed new malpractice cases and considered issues related to no-fault legislation, and have shepherded their own scarce financial resources. In the months ahead, we will face in different forms all the same great questions that you have seen.

Everyone here knows Tip O'Neill's aphorism, "All politics is local." I can tell you today that "all justice is individual."

The greatest controversies to reach our Supreme Court, even the most famous cases at the United States Supreme Court, are still, in the main, just disputes between individual human beings. You've seen Henry Fonda and Jose Ferrer in Gideon's Trumpet. Well, the question for the United States Supreme Court in *Gideon v. Wainwright* was simply whether one poor man named Clarence Earl Gideon could be imprisoned by the State of Florida for five years without the opportunity to have a lawyer. In *Brown v. Board of Education*, the United States Supreme Court was asked whether a little girl named Linda Brown had the right to enroll in an ordinary public school in Topeka, Kansas.

Here in Michigan, our courts do the same thing. We solve problems the old fashioned way—one person at a time. A district judge searching for guilt or innocence, a probate judge wrestling with an adoption case, a circuit judge hearing a volatile domestic-relations matter—each is listening to an individual, and each will offer a real answer to a real problem.

At the Supreme Court, we do the same, whether in the context of a tax case like *Caterpillar*, or a school financing case like *Schmidt*, or even your apportionment litigation. Each of these matters directly affects individual citizens.

As legislators, you hold hearings and gather information from all who wish to address you. You then enact legislation governing the whole citizenry, not individuals. Our problem-solving technique is the reverse. We decide individual cases, one by one. Our decisions are based on the record in the particular case before us, and only indirectly do our rulings apply to others.

Thus, while the Legislature and the Judiciary employ very different means, our functions are not opposed. Rather our roles are complementary, as we seek the same objective—justice.

When we recognize our fundamental sameness as servants of the people, we can perform our separate roles with purpose, and without acrimony. We can honor our differences, remembering why we are separate, and respecting—not resenting—our distinct authority.

We who have no power to appropriate do not and must not expect you to fund us without giving you a coherent explanation of our needs. And you, who have the exclusive power to enact laws, must understand that when the Judiciary construes a statute it is not seeking to infringe on your domain. When two parties propose different meanings for the language you have enacted, we

cannot avoid the question, or send the litigants back to you for an answer. You completed your work when you passed the legislation. Our work is to locate your intended meaning in the context of a particular factual setting.

So when, inevitably, we sometimes disagree about the fiscal needs of the Judiciary, or when you find fault with the manner in which we have construed a statute, let our disagreements be phrased in language that respects both the necessity of our separate roles and our sameness as servants of the people of Michigan. The rhetoric of the campaign trail—the battle of credit and blame—should have no place in the discourse between the branches of government.

My purpose in coming before you today is to emphasize that the branches of Michigan government must take specific steps to understand each other better, and to work more closely together. The Court understands, though, that we first must do all that we can, on our own, to make the courts a friendly and efficient environment for the resolution of disputes.

Last summer, the Court revised the court rules and ethical standards to assure that men and women of all races and social classes will be treated fairly, with courtesy and respect.

Earlier in 1993, the Court completed a sweeping revision of its domestic relations rules, so that divorces and child-custody matters can be handled swiftly and with as little pain as the difficult nature of these cases will allow.

Together with a Senate committee, we are reviewing how best to provide court interpreter services to persons who are not native speakers of English, as well as to the hearing impaired. This effort involves both persons who function as interpreters, and new technologies such as real-time computerized transcription.

We are also working with local courts to maximize compliance with the Americans with Disabilities Act, within the tight budgetary constraints found in so many localities. Our Telecourt system provides quick and convenient answers for citizens who have questions about our legal system. These answers are delivered in Plain English—a new dialect we are trying to master—and they have helped lift the shroud of mystery and confusion that too often surrounds the legal system.

Our State Court Administrator's Office remains active on countless fronts, working directly with our judges, and with a host of other private and public agencies, searching for ways to better serve the people of this state.

In all the nation, no organization is better than our Michigan Judicial Institute at providing continuing education for judges and court staff. We expect all court personnel to be helpful and well informed, and the Judicial Institute is central to that objective.

We have begun an exciting and important dialogue with Michigan's tribal courts. Through the efforts of the State Court/Tribal Court Forum and in subsequent conversations, we and tribal officials are exploring further opportunities for cooperation with Michigan tribes.

The Attorney Discipline Board, Attorney Grievance Commission, and Board of Law Examiners

each plays a critical role in helping Michigan lawyers maintain the highest ethical standards. With your help and with the help of the State Bar, we have doubled the commitment of funds used to protect the public from the small minority of lawyers who fail to honor their obligations to clients and the public.

We are also proud of the energy with which the whole judicial system monitors its own compliance with the high ethical standards that you and other Michigan citizens properly expect of us. In different ways, the State Court Administrator's Office and the Judicial Tenure Commission both oversee the performance of Michigan courts and judges, to assure prompt and fair treatment of litigants, witnesses, jurors, and everyone else who enters our courts.

Much of what the Court has been able to accomplish is due to the outstanding leadership and vision of the State Bar of Michigan. I want to extend a personal note of thanks to State Bar President Jon Muth, and to his predecessors with whom I have dealt in an atmosphere of cooperation and mutual respect. The State Bar of Michigan enjoys a national reputation that is second to none. This is directly attributable to the outstanding commitment and effort of its able Director, Mike Franck. Mike has announced his plan to retire as Executive Director, and we wish him all the best.

As our courts race toward the twenty-first century, we remain committed to a pattern of action, not reaction. You recall that the Legislature commissioned a report on the courts in the twenty-first century in 1990. Since that time, a number of our courts have been participating in pilot programs to share personnel and resources. We will continue to explore with you the structure of the court system and the division of work among the trial courts. And we will continue to use our authority to assign judges where they are needed, in order to facilitate the prompt delivery of justice.

Throughout this year and the next, the State Court Administrator's Office will be engaged in strategic planning. We are undertaking a thorough review of our own mission, and that of all Michigan courts. Without wavering in our commitment to a justice system that is fair, accessible, and effective, we will remain flexible and open to new methods of fulfilling that commitment.

We have done much on our own. However, there are a great many areas in which improvements can only come from joint efforts with you. Think about one example—Michigan's Friend of the Court system.

The successes are undeniable. Our child support guidelines have brought order and fairness to the process of determining support obligations.

Likewise, we have achieved remarkable success in the collection of child support payments from noncustodial parents. Indeed, during nearly every year that such statistics have been kept, Michigan has ranked first in the nation—both in total dollars collected and in collecting the highest percentage of the dollars that judges have ordered to be paid. Michigan Friend of the Court offices accomplish this feat while performing a host of other duties concerning visitation and custody enforcement—tasks required by statute here in Michigan.

Yet we have been listening at the same hearings as you. We have heard the complaints and the voices raised, urging new approaches—to aid both custodial and noncustodial parents, and most importantly, to protect the welfare of the children.

In the months to come, we must work together to locate better ways of responding to the needs of these citizens. We have an excellent system in Michigan, but we've been reminded that excellence remains at that level only through constant advancements. Together, let us institute those improvements.

We also need to work together on fair financing for all of Michigan's courts. We applaud you and we thank you for last year's efforts to commit court-generated revenue for court purposes. You have set a 31.5 percent floor for state support of local courts, and you have directed that needed funds be made available for the Court of Appeals, for the State Court Administrative Office, and to provide legal aid in civil matters for the poor. Your recent debates on this subject evidence your continued interest, and your desire to effect a more equitable funding structure.

Working closely with you on this issue, we continue to assess the proper balance for the sharing of costs between local and state funding sources. Decisions by local officials affect the case load of a court, and so it may be sensible to maintain a link between local policies and the costs incurred locally. At the same time, all of Michigan's citizens have the right to receive equal justice. Adequate resources must be available to the courts of this state without regard to the community or county in which they sit.

This address is not an occasion for telling you how to finance Michigan courts. Rather, I wish to say that we have accomplished much together, and that we need to maintain the cooperative spirit that has allowed this progress.

As you think about court financing, remember your other experiences with difficult funding issues. This is not the first time that you have been asked to take a system of mixed state and local financing, balance the objective of statewide equality of opportunity against the sound desire for local control, and effect substantial reforms. Think of your other recent accomplishments. It is said that there is nothing new under the sun. But you have created something entirely new in this House of Representatives—a joint leadership agreement. If Democratic and Republican legislators, formal opponents by definition, can share responsibility and authority, surely the legislative and judicial branches can tackle our common problems with grace and cooperation.

Let us remember these lessons as we continue our combined efforts on court financing.

A staple of speeches on the American court system is a passage in which the speaker recounts the shocking rise in court filings. You already know the staggering numbers. You know that in 1990, our courts received 4.2 million cases generated by Michigan's 9.3 million citizens and 22,000 police personnel. You can do the arithmetic. It shows that Michigan courts disposed of over 2,000 cases every hour.

You also know that the tide continues to rise, and that every single case entering our system is of overwhelming importance to the individual citizens involved. Yet our resources have not—and, in truth, probably cannot—fully keep pace.

Each of you has heard also that our Court of Appeals judges have the heaviest appellate workload of any state court in the nation—that each judge of the Michigan Court of Appeals has a caseload that is more than double the average caseload of a judge at a comparable court.

In dealing with these realities, there are, again, measures that we can take alone. Working with the Court of Appeals, and aided by the State Bar's Task Force on the Appellate Courts, we have taken a number of steps to help that Court reduce its backlog. Additional panels have been created for the Court of Appeals, using both appellate and trial court judges, and they are hearing cases in several Michigan cities, even as we gather this morning.

But your help remains essential. In particular, your continued support will be needed for the Court of Appeals. At the Supreme Court, our most pressing need is to bring together in one place all our personnel and resources, presently scattered around Lansing in half a dozen state buildings and rented offices. To manage our system well into the twenty-first century, we need a single functional building. The State Bar has expressed its support and its commitment to this building effort, but legislative backing will also be crucial.

Understand what I am saying. I am not talking about the Legislature and the Judiciary working together just so that you can write more and bigger checks for us. The cooperation must precede and extend beyond the appropriation process.

What you do affects us every day. You decide what is a crime in this state, and what the penalty should be. You enact the statutes that form our civil law. These decisions are yours to make. But your actions send a ripple throughout state government.

We have all watched the budget for the Department of Corrections pass \$1 billion per year, and keep right on going, with no sign of slowing down. Where do those prisoners come from? They come from the courts. Several times in recent years you have provided large percentage increases to the Department of Corrections while furnishing the courts with little or no additional resources. We are all part of one justice system—you cannot expect more police to arrest more criminals and fill more prison beds while passing through the same courts with the same amount of staff. It cannot happen. Countless other legislative actions have added to the workload of the courts.

Our trial courts must report more offenses to the Secretary of State, including some drug offenses that are unconnected to driving.

When licensed professionals are convicted of certain crimes, we must transmit conviction records to the Department of Commerce. We must adjudicate drunk driving cases within a specified time frame. We must collect, process, and transmit secondary road patrol traffic ticket surcharges, crime victim assessments and restitution, Department of Public Health fees for acknowledgment of paternity, and forensic lab fees. We must transmit funds to the state for inclusion in certain retirement funds. We must facilitate the entry of probation conditions on the

police computer network, and the correction of these records when the conditions are removed. Our Friends of the Court are now required to be much more involved in the mechanics of collecting child support, even when the noncustodial parent is already meeting his or her obligations. And many new offenses and new causes of action are being litigated in our courts. I am not here today to tell you that you have acted unwisely in any of these matters. However, I am here to remind you that the three branches form one government. If the courts of this state are to keep pace, then we must be provided with resources and personnel for the increased tasks. Our only alternative is to make the difficult determination of which present court services to discontinue.

As a further illustration, remember Governor Engler's State of the State address. He reported that six new prisons and two new camps have opened, and that 28,000 outstanding felony warrants will be served. He also pledged that 270 new troopers will be patrolling the state, and that more criminals will spend more time in prison through abolition of parole and of disciplinary credits for certain offenders.

These are policy decisions for you and the Governor. Some of these recommendations have already come before you, and some remain for your consideration. As you decide whether to embrace these measures, remember that the full cost is not reflected in the budget lines for the agencies directly affected. Each of these changes will affect the court system. We will continue to cooperate with the Legislature and the Governor in their efforts to reduce crime and make Michigan safer. And we will continue to advise you of the cost of this effort to the judicial branch, so that you can support our part of the effort, as well.

Last summer, Michigan had the opportunity to participate in the National Conference on the Crisis in America's System of Justice. The conference had several themes, but I was particularly struck by three things. First, this was not just about a "crisis in the courts." The crisis extends to agencies throughout government, including those of the legislative and executive branches.

Second, the problems do not lie exclusively in the realm of criminal law. As we have seen in our own state, many of the most pressing concerns of the people lie in areas of civil law, such as domestic relations and family law, and business litigation.

Third, it is essential that teams be formed, from all branches of government, to pursue workable solutions. I was proud that our Michigan delegation included representatives from the Governor's office, the Legislature, the courts, the practicing bar, and the business community. We also had local involvement as we were joined by then-County Commissioner Lynne Martinez, who only last week was sworn in as a member of this House of Representatives.

Joint efforts mark the road down which we must travel. Through cooperative effort, we can assure that the courts are able to move swiftly. And, more importantly, we can assure that the courts are able to slow down and attend properly to each individual's case. Our efforts to add timeliness cannot ignore fundamental due process.

People expect the courts to provide our most basic offering—a hearing. People want to be heard. And while many have the ability to speak quickly, it takes time to listen. Belief in our system of



justice is central to the maintenance of our society. To preserve that confidence, we must have the resources, as well as the energy and creativity, to give each person a real hearing.

Effective sharing of scarce resources so that every case can be heard timely and properly—that was the goal of those participating in the conference on the crisis in the justice system. It is also the task we must address with you.

If we are to work more effectively with each other, we each need to have better information. For our part, we have begun preparing and supplying judicial impact statements, to enable you to gauge the effect that new laws will have on the courts. We understand that you need our comments before legislation is passed, and the Court is committed to providing you with information you need to do your work.

However, a continuing obstacle to that effort is the often limited information we have concerning the workload and resources of local jurisdictions. We have made great strides in this regard, and last year's court-financing legislation was possible, in part, because we were able to provide you with more accurate figures than ever before. But this is an area in which your continued support is necessary.

I have spoken to you today about the relationship between legislative and judicial efforts. Yet, as we all know, the connecting web extends much farther. Just as your work and ours are connected, so do the decisions made in each branch affect citizens throughout the state.

Remember that it is individuals who come to our courts. They are the ones who will bear the burden if we fail to work effectively together. The child who may wait and wait for the Solomonic decision regarding which adult will have custody, the police officer who may see the arrested person dance away from an overcrowded prison or jail, the battered spouse for whom judicial aid may come one day too late, the businessperson whose assets may remain too long in jeopardy pending the outcome of a civil case—they are the ones who will tell us if we fail our shared responsibilities.

We have so much to do in the years to come. We must explore alternative dispute resolution, so citizens have choices other than litigation. We need to continue our efforts to be responsive to diverse constituencies—not only those defined by race and gender, but also groups such as the handicapped and persons who speak languages other than English. And there are other persons whose needs we must remember—the business community, the victims of crime, and the poor. Juvenile law will continue to present great challenges.

So will all forms of family law. As we move into the next century, an aging population may shift the focus of our caseload or require other innovative responses. The whole area of criminal law, including police practices, sentencing, corrections, and release practices will continue to challenge all of us. And each of us needs to be ready for a wild ride through the coming world of information and communication technology.

So let's plan together, and let's get to know each other better. Our 611 judges and 8,000 court employees extend a warm welcome to each of you. Please come visit our courts whenever you

can. Talk with our judges, and see how the courts handle the colossal workloads placed on them by modern society.

In closing, I am reminded of a speech that United States Supreme Court Chief Justice Charles Evans Hughes delivered to the Congress on the occasion of its 150th anniversary. That was fifty-five years ago, but its theme parallels what I have attempted to suggest to you today. Chief Justice Hughes said to the Congress:

In thus providing the judicial establishment, and in equipping and sustaining it, you have made possible the effective functioning of the department of government which is designed to safeguard with judicial impartiality and independence the interests of liberty. But in the great enterprise of making democracy workable we are all partners. One member of our body politic cannot say to another: "I have no need of thee." We work in successful cooperation by being true, each department to its own functions, and all to the spirit which pervades our institutions, exalting the processes of reason, seeking through the very limitations of power the promotion of the wise use of power, and finding the ultimate security of life, liberty, and the pursuit of happiness, and the promise of continued stability and rational progress in the good sense of the American people.

Ladies and Gentlemen, what is the state of Michigan courts? Excellent—the best in all the land. Yet we face many challenges, both today and tomorrow. We look forward to working with you in the exciting years ahead.