

State of the Judiciary  
Chief Justice Elizabeth A. Weaver, Michigan Supreme Court  
Message to the Michigan Legislature  
September 28, 2000, in Lansing, Michigan

Lieutenant Governor Posthumus, Speaker Perricone, Majority Leader DeGrow, ladies and gentlemen of the Legislature, Governor Engler, my Justice colleagues, and Judges of the Court of Appeals, distinguished guests, and friends.

Many Chief Justices have come into this beautiful chamber before me to deliver a State of the Judiciary message. Each in his or her own distinctive style has spoken of the Judiciary's accomplishments and its heavy responsibilities, its pressing problems and its emerging needs. Each has spoken eloquently of the importance of independence, and of our interdependence as co-equal branches of government.

My purpose today is to highlight what interdependence—that is, cooperation, working together for the public good—has made possible and can make possible in the future. I will report to you on the status of the judiciary and its potential to continue to improve judicial services for Michigan's citizens. For our families, children, and seniors. For plaintiffs, defendants, jurors, crime victims, and taxpayers.

Let me begin by asking you to leave Michigan for a moment and come with me to another time many years ago, and another place, my native state of Louisiana. I grew up there as the only sister of two older, and to their minds much wiser, brothers.

The propensity for government must run in my family, because one fall my older brother, Bob—fresh from an American Legion Boys State session and a summer job as a runner for a law firm—proclaimed within our household the "State of Tulane." He then proceeded to make my other brother and me its citizens. Bob made the laws of the State of Tulane, he investigated offenses, he prosecuted the alleged offenders, and he presided over the trials.

That was how one day I found myself on trial (I forget what the actual transgression was) struggling to give testimony on my own behalf. I, at most only 6 or 7 years old, quickly discovered that the rules of evidence in the State of Tulane did not allow for much of a defense. For every time I tried to answer, "Yes, I did it but I had a good reason," Bob said, "You can only answer 'yes' or 'no.'"

After several "You can only answer 'yes' or 'no'" rulings, I was devastated, and so ran crying from the courtroom to what I intuitively knew to be the Supreme Court—the highest authority—my mother!

Mother, ever caring and fair, came to my rescue and immediately disbanded the state. In fact, she proclaimed that the State of Tulane was never to be even mentioned again, anytime, anywhere. And it wasn't!

I do not tell you this story to take public revenge on my brother, who has turned out to be caring and successful (no, he is not a lawyer—he's a chemical engineer). I tell you this story because it was my earliest lesson in the value of separation of powers, of due process, and of the rule of law. I was only a child, but my sense of outrage and injustice at the way things were run in the State of Tulane was immense, and obviously unforgettable.

Collectively you in this room represent a great wealth of public experience, knowledge, and talent, which you use to serve the people of Michigan. But each of you also has had experiences early in your life similar to mine, where something personally unfair happened, and there was no rule of law readily available to correct the injustice. I ask you to remember that time today to help make this State of the Judiciary message as real and urgent as my experience in the State of Tulane.

The foundation of our legal system is our love of justice, and Michigan has built wisely upon it. Early in our statehood, we secured the distinction of having the finest Supreme Court in the land with a succession of brilliant justices.

Later, Michigan became a national leader in court management.

- It was first in the nation to designate in its constitution a State Court Administrator.
- It was first in the nation to establish a judicial training center, our Michigan Judicial Institute, a national leader in judicial and court-related education.

In fact, we have been first, or among the first, in almost every important court management improvement of the 20th century, including discipline, anti-bias initiatives, and caseload management. If there ever was a National Championship of Court Administration, an NCCA, the Michigan judiciary (like our great universities) would be a serious contender every year!

The goal has always been to provide fair, impartial, unbiased, efficient, and effective justice to all citizens of Michigan. In this arena, the Supreme Court must lead by example. Here is what we have done.

- We outpaced our caseload for the first eight months of this year, continuing a trend begun two years ago. In 1999, we disposed of nearly 2,600 cases or over 300 more than were filed. Our backlog now stands at only 270 cases, down from over 1,100 at this time in 1995.
- We decided our cases well within the time guidelines recommended for state supreme courts by the American Bar Association. The ABA standards call for 50 percent of cases to be decided within 290 days of the date they are filed. Last year we met this deadline in 81 percent of the cases, and this year our performance is even better, at 87 percent. And although much is sometimes made of the cases in which the Justices disagree, it is

important to note how often we are in agreement: 87 percent of the dispositions this year were decided unanimously.

- We opened to citizens our administrative agenda through public hearings held across the state. Through these hearings, the Supreme Court is now listening, directly, to what people have to say about the management of the courts.
- We changed our court rules to encourage the use of mediation and other methods of settling cases short of trial. Evidence shows that under the right circumstances, parties can be quite successful in developing their own solutions. This creates the potential for greater satisfaction, and a reduction in the time and expense needed to reach a result.
- We established a Council of Chief Judges to provide valuable insight into the management of our trial courts and to strengthen all chief judges as managers.
- We expanded our Local Intergovernmental Advisory Council, which improved communication between branches of local government.
- We implemented a freedom of information policy to improve access to Supreme Court records, aided by the creation of a national award-winning Supreme Court website.
- We reorganized the annual judicial conferences to emphasize judicial education.
- We are developing ways to promote the importance of jury service to make it easier and more affordable for citizens to serve, and make juries more inclusive.
- We codified standards for court records to make them more reliable statewide.
- We completed the design phase for the new Michigan Hall of Justice, and next month the erection of the steel framing should begin.

We are continually grateful to you all, and especially to Senator Harry Gast for his leadership, for this important building, which will not only symbolize the judicial branch of our democracy, but will provide for more efficiency, and a public learning center about the judicial branch for schoolchildren and all visitors, in person and on-line, to use and enjoy.

Finally, we completed four productive years with our trial court demonstration projects, seven experiments in serving the public better through innovation in local court management. These courts are proving that when the judges of all the benches work together cooperatively within a coordinated administrative structure, and when enough time is given for evaluation of what is best suited to the community, the public benefits in concrete ways.

Let me salute the chief judges of these courts, and through them their colleagues and staffs, for their difficult work as pioneers of court improvement.

- Judge Tom Davis of Crawford, Kankaskas, and Otsego counties. This multicounty court has cut costs by tens of thousands of dollars in witness fees and attorney reimbursements. It has reduced the time for jury service from 90 days to 15, and the time for completion of active felony cases by 75 percent. The court now offers citizens the convenience of on-line transactions and information.

- Judge Jim Fisher of Barry County. The Barry County demonstration court has cut the time to take a criminal case to court in half, and last year saved taxpayers \$195,000. Fred Jacobs, a Barry County publisher, called the project "a great example of how creative local cooperation can improve services to the public while reducing costs to the taxpayer." And so it is.

- Judges Mark Wickens of Lake County and Joe Schwedler of Iron County. These two judges now serve as the first and only full-time, full-service resident judges of their counties. Their local citizens are now getting faster service in all types of cases, especially children and family matters, and collections of court fines and costs are way up!

- Judge Paul Maloney of Berrien County. Here, reorganization has produced nearly \$600,000 in budget savings from improved court collections, and has given rise to a productive broad-based county initiative on juvenile justice issues, including a drug court, a sheriff's work alternative program, a truancy academy, and a day treatment program.

- Judge Paul Chamberlain of Isabella County. This county, too, has seen dramatic increases in revenues—49 percent since 1996, and has managed a 25 percent increase in caseload with no additional judges or staff. The alliances created by the demonstration project were the springboard for the development of a courthouse master plan. This month Isabella County citizens were welcomed into an efficient and user-friendly 21st century courthouse! And finally,

- Judge Tim Connors of Washtenaw County, the largest of the demonstration courts. Washtenaw's project has been something of a roller coaster ride. But we can now report that the ride has reached terra firma. Adjournments are down, dispositions and collections are up, and the jury pool is improved. And just last October, their growing expertise in community cooperation was rewarded by \$2 million in federal funding for their promising specialized domestic violence docket—one of only three such grants in the nation.

Representative Andrew Richner and his Family and Civil Law Committee heard much of this story on the road last year at three of the demonstration court sites. They saw these communities rally around their projects as a matter of civic pride. I want to thank Representative Richner, Vice-chairs Shulman and Baird, and the entire committee for their keen interest in improving our justice system.

These first demonstration courts have proved that when it comes to court improvement in 83 counties, ranging in size from approximately 1,000 people to 2 million, "one size does not fit all."

With that understanding, last month, thanks to your \$2.3 million appropriation, the Supreme Court launched the "Next Generation Project." Soon, as many as 12 additional jurisdictions will continue the experimental search for improvements of lasting value to our court system. And they'll do it their way to best suit their local needs.

What are some of the features you can expect to see?

- Consolidation of court functions to eliminate costly bureaucratic duplication.
- Better computer technology.
- More efficient use of judge and staff time.
- Improved collection of fines and costs.
- More predictable and efficient case scheduling.
- On-line transactions and information.
- "One-stop shopping" for the public.

The Next Generation courts will reach at least a third of the state's population. They will help us determine what changes should be adopted in all our trial courts, what should be optional, and what improvements should be subject to local customizing.

Today, I have the pleasure of announcing the first three Next Generation courts in Oakland, Muskegon, and Cheboygan counties. Their judges will help Michigan better define "what fits" for court improvement. We anticipate many valuable insights. I especially thank the chief judges of these first three counties for their forward-looking leadership.

Change is hard. But the vast majority of our judges are eager to embrace it in order to improve public service.

Improvements in the way courts operate don't always require organizational change. Michigan's 12 therapeutic drug courts are bringing a new focus and intensity to the fight against drug abuse, and bringing new hope. Drug courts are special dockets that combine tough enforcement techniques with individualized services to help nonviolent offenders break the cycle of substance abuse and crime.

Listen to this statement from a drug court "graduate." "The recovery program has been a miracle in my life and has helped me regain so many things I was losing. I do wish it were more readily available to many others."

I am pleased to say that there are more drug courts on the way, thanks to your appropriation and federal funding.

I commend those who have the courage and strength to defeat the grip of addiction. We have two graduates with us today: Elizabeth Campbell and John Wagner.

I thank you, the Legislature and the Governor, who have supported their efforts, and judges and staff who are proving that dedication, resolve, and compassion with firmness can transform lives.

Now, I must ask your help in meeting the needs of another at-risk population: citizens for whom guardians and conservators have been appointed. They include children whose parents cannot care for them or who need someone to manage their money. They also include adults (especially with our rapidly growing senior population), who are no longer able to care for themselves or manage their money on their own.

Those who are appointed by our probate courts as guardians and conservators should be wise, compassionate, and caring. They should possess excellent money management skills. They must be honest.

Fortunately, most fit this description and work hard, for little or no compensation. Some, however, abuse the trust we place in them. They neglect their wards. They mismanage, and sometimes even steal, their wards' money or property.

There is, of course, no foolproof way to protect against all abuses of trust. Our probate courts do an admirable job with the limited resources they have. But we can, and we must, do better. We must ensure three things: First, that quality services are available to all who need them. Second, that a guardianship or conservatorship is not imposed on any person who does not require it. Third, that abuses of trust will be swiftly corrected.

What can we do to better protect these vulnerable people? At the state level, there is much we can, and will, be doing.

- Training all probate judges on the needs of the elderly.
- Providing information to help people better understand the guardianship system, alternatives to it, and available community resources.
- Developing more user friendly forms.
- Revising court rules to improve the process.

- Cooperating with a bi-partisan group led by Senator Bev Hammerstrom and aided by Senator George Hart in developing necessary legislation.

We on the Supreme Court want to do everything possible to strengthen our courts' ability to meet and deal with these challenges. That is why I am announcing today the appointment of Michigan's first Guardianship Ombudsman. The Ombudsman will be charged with enabling our system to provide better protection for those who have guardians and conservators, and investigating complaints of suspected neglect or abuse, either physical or financial.

To accomplish the first goal, the Ombudsman, building on the work of the Court's Guardianship Task Force, will:

- Diagnose and advise on systemic problems.
- Explore the development of local volunteer services.
- Suggest further necessary legislative or court rule changes.
- Give guidance to local courts in how to detect and prevent abuses.

The key to protecting our elderly and incapacitated will be found at the local level, where the needs and resources of each community are best known and where the problems are faced daily.

To accomplish the second goal of enabling the Ombudsman to investigate complaints, your support will be needed. The Guardianship Ombudsman we appoint today—the right man for the job—can serve for only 12 months. His ability to respond to the individual concerns of your constituents will be limited. To give Michigan citizens the benefit of a permanent Ombudsman with the power to ferret out abuse, it will be necessary to fund the position and a small staff of investigators. In 1993 you established a precedent for such action by creating the Office of Children's Ombudsman. Adults with guardians and conservators deserve the same attention.

Fortunately, we have as our first Guardianship Ombudsman a widely recognized authority in the field with 25 years of experience as a Michigan probate judge. Nationally-known expert and Yale Law School professor John Langbein has called him "the ablest probate judge in the United States...a superstar." I am grateful that he has agreed to accept the challenge of this appointment, especially because it will temporarily take him away from some of his duties on the Court of Appeals. It is with great pleasure that I announce Michigan's first Guardianship Ombudsman, Judge Donald Owens.

The Next Generation Project, the drug courts, and the Guardianship Ombudsman represent new frontiers of court service for Michigan citizens. We cannot forget, however, some business left undone that is equally vital to the well-being of the system. Indeed, expectations are already high. Now the needs must be met.

Primary among these items is an innovation of great promise that you enacted in 1996: the family division of circuit court. In some counties the family division has already registered significant improvement in service delivery and increased public satisfaction. But in others, the process of change has been slower, and harder. Much work remains to be done.

One major stumbling block everywhere is that the family division can operate only because the Supreme Court, pursuant to the 1996 legislation, is assigning probate judges to serve as circuit judges within the division. Ultimately, we must complete the family division by adopting a constitutional amendment assuring that the judges who serve in the family division belong to the circuit court and are not serving there simply by assignment. At the same time, we must take great care to protect the very specialized nature of probate, estates, and mental health code work, as well as the guarantee that each county's citizens can elect exclusively at least one resident judge. We must ensure that whatever other structural or operational changes might be made, enough judges and staff are dedicated to probate work, within their own separate division or court.

The second item has to do with a small but important issue: the part-time status of the probate judges in our smallest counties. These are part-time judges whose counties generate less than an average full-time caseload, and who are permitted to practice law. The statutory salaries of these judges are unjustly much lower than that of their full-time counterparts, and the burden of paying their salaries falls mainly on county taxpayers rather than properly on the state. That is unfair to the judges, unfair to the county governments, and unfair to their taxpaying citizens. The advent of the family division has worsened this situation, making these probate judges effectively ineligible to serve in the family division and hear the juvenile cases they were elected to hear. Furthermore, counties cannot afford to pay for their assignments under the current statutory formula.

Fortunately, you have already done the hard part of solving this problem. Just before the summer recess you appropriated the money to fund a more practical salary schedule for these probate judges. What remains to be done is to amend the Revised Judicature Act to accomplish the change, including a prohibition on the practice of law before these judges take office in January for a new six-year term. Senator McManus has already introduced the required legislation. Representative Richner stands ready to move the legislation forward.

Together with the Michigan Association of Counties, I urge you to finish this job without delay.

The third item I wish to mention is equally urgent and long overdue. It can benefit our entire system of government and strengthen public safety. I am talking about the immediate creation of a true statewide automated court information system, that is, fully computerizing and connecting the courts. We have already made this task easier by completing a statewide site survey that tells us how to link up all courts using the current technology of each local jurisdiction. The survey has been delivered to your offices.



In this new century, the nationally-admired phrase of our state constitution, "one court of justice," must mean that all the components of Michigan's "one court of justice" are linked electronically. You have committed, as well you should, to making all of Michigan's K-12 public school classrooms technologically current. It is now the courts' turn.

Today, anyone with a personal computer can research the most complex topics and obtain the most exotic commodities from around the world. For example, a search taking less than one-tenth of a second turns up over 90,000 websites containing information about—wolverines. But a judge sentencing an offender for drunk driving in a Michigan trial court cannot find out if the driver has charges pending in another court of our "one court of justice!" In all but a few jurisdictions, you cannot pay a traffic ticket on-line, or file or check on the status of your case.

For the court system to serve the people as they demand and expect, services and information must be available electronically. Every Chief Justice for 40 years has come before you and asked you to provide the judicial branch with the same level of automation commonly in use in the commercial sector and government agencies. I ask you, please, let me be the last Chief Justice who needs to make this plea.

Progress in the advancement of justice is the result of many individual efforts. People from all walks of life have contributed ideas and hard work to help those of us in the court system reach excellence in our work. We recognize that we, like everyone else, cannot always meet the standard of perfection. So we continue to welcome all suggestions, advice, diverse opinion, and criticism which is factual and constructive. Anything less is harmful to the institution of the judiciary.

Our branch of government, like yours, is blessed with many dedicated, caring individuals. I would like to acknowledge them, for they are the ones most responsible for recent progress, and it is upon their shoulders that the primary burden of further improvements rests.

First, let me recognize the six men and women who are my colleagues on the Michigan Supreme Court. As you have heard, together we have exceeded national standards for timely disposition of cases, while at the same time advancing an ambitious administrative agenda for serving the people of Michigan better. Please stand: Justices Michael Cavanagh, Marilyn Kelly, Clifford Taylor, Maura Corrigan, Robert Young, and Stephen Markman.

Next, on behalf of my colleagues, I would like to thank Chief Judge Bandstra and the judges of the Court of Appeals who have also substantially reduced their case backlog. I acknowledge and commend the trial court chief judges for the difficult and uncompensated extra administrative duties they perform.

All three branches of state government, working together, have been aided by the steadfast contributions to the improvement of justice of some key individuals and

organizations. Let me recognize your local partners in funding the trial court system, the counties and municipalities, represented by Michigan Association of Counties President Ricardo Solomon and Michigan Municipal League President Ingrid Sheldon. County Clerks play an important role in the day-to-day operations of the circuit court, and I would like to recognize the County Clerk Association and its president, Peggy Haines. Also, let me acknowledge those who work in the legal system: the State Bar of Michigan and its president, Tom Ryan, and the Prosecuting Attorneys Association of Michigan and its new president, Jeffrey Sauter. Finally, within the judicial family, I acknowledge the many contributions of our three judges associations and their presidents, Judges Barry Howard, William Ervin, and James Collins.

In the end, it is simply about serving the people better. My colleague, Justice Cavanagh, reminded us in his State of the Judiciary address that when you come right down to it, justice is about solving problems, one person at a time—judges listening to each individual, then offering "a real answer to a real problem."

Let me tell you of one such problem that touched my life as a probate judge. Years ago, the parents of 11-year-old Faith and her 10-year-old sister, Hope, were killed in a tragic auto accident. The sisters found themselves the subjects of a custody fight between their homespun grandparents living on a rural Leelanau County farm and their professional aunt, uncle, and young family living in an upscale area in Florida. There were those who presumed the obvious choice was the young Florida family. It became my responsibility to decide, and after the testimony, I chose the grandparents, who personified caring, commitment, and common sense, and who I believed would be the best parents for Faith and Hope.

Not long ago, Faith, now a successful Traverse City businesswoman, faxed me a newspaper article on proper parenting that she thought might be of interest, with this note.

*Dear Justice Weaver:*

*Someone left this article at work and I thought you might enjoy it. It was 25 years ago that you decided Grandma and Grandpa knew best, and they sure did! Hope and I are doing well—both very busy with our lives. Thanks again for being such a positive influence in our lives. Have a wonderful day.*

*Faith*

Too often, the hard, sad business of much of what takes place in court and the formal language of the law obscures the essential caring nature of judging. Perceptions persist among the public nationwide that courts are too slow, too expensive, too confusing, too impersonal. And these perceptions are still too often true. But throughout Michigan you will find judges who can tell you their own "Faith and Hope" stories. These are the outcomes that nourish us in our work.

I come before you today with abundant hope and faith that we can continue to work together, to make the necessary improvements in our court system, in the name of justice, for the people of Michigan.

As human beings, our different experiences and perspectives sometimes cause us to disagree about what justice demands in a given situation. But these occasional disagreements cannot overcome our common commitment to the purposes of justice, for this commitment is what allows us to live together, in civilized society.

I am ever mindful that what we in the judiciary most need is patience, meekness, compassion, and courage to "Do Right and Fear Not."

When faced with the responsibility of governing, Solomon made this appeal: "And now, O Lord my God....(g)ive therefore thy servant an understanding heart to judge thy people...." (I Kings 3)

I believe our sense of fairness and justice is woven into the very fabric of our being by our Creator. It is fundamental. It is complete. It is compelling. It is nonpartisan.

Thank you.