STATE BAR OF MICHIGAN ANNUAL MEETING
KEYNOTE ADDRESS
THURSDAY, SEPTEMBER 26

I THANK YOU FOR THE OPPORTUNITY TO REFLECT WITH YOU ON IMPORTANT EVENTS IN THE YEAR THAT'S JUST PASSED, AND TO CALL ON EACH LAWYER HERE, AS THE NEW TERM OF COURT IS ABOUT TO BEGIN, TO RENEW YOUR COMMITMENT TO THE OATH YOU TOOK AS A LAWYER.

JUST A LITTLE OVER A YEAR AGO, I STOOD BEFORE MANY OF YOU IN THIS AUDIENCE, AT BRUCE NECKERS' SWEARING-IN. WITH YOU, I TRIED TO MAKE SOME SENSE OF THE RAW WOUNDS OF SEPTEMBER 11. ONE THING BECAME CLEAR: IT WAS TIME, AS THE BRITISH WRITER P.D. JAMES HAS SAID, TO BE IN EARNEST. IT WAS TIME TO PUT ASIDE TURF WARS, PETTINESS AND SMALLNESS OF SPIRIT. IT WAS TIME TO BE IN EARNEST ABOUT OUR MISSION AS LAWYERS, AS JUDGES, AND AS PARTICIPANTS IN OUR JUSTICE SYSTEM. IT WAS TIME TO BE IN EARNEST ABOUT OUR OBLIGATIONS TO THE PEOPLE OF MICHIGAN.

LAST YEAR AT THIS TIME, OUR COUNTRY'S WOUNDS WERE FRESH AND RAW FROM THE SEPTEMBER 11 ATTACKS. WE WERE ONLY BEGINNING TO GRASP HOW OUR LIVES HAD CHANGED, AND TO COMPREHEND THE NEW CHALLENGES THAT LAY BEFORE US.

A YEAR LATER, WE ARE AT WAR IN AFGHANISTAN. WE MAY SOON BE AT WAR WITH IRAQ. WHAT WE SAW LAST YEAR AT THIS TIME WAS QUINTESSENTIAL EVIL, FURIOUS EVIL UNLEASHED ON INNOCENTS. AND WE ALSO SAW, AS PEGGY NOONAN WROTE, THAT GOODNESS BROKE OUT IN OUR COUNTRY, TOO. WE SAW ASTONISHING ACTS OF COURAGE AND FIDELITY TO OATH BY ORDINARY AMERICANS - POLICE, FIREFIGHTERS, 911 OPERATORS, PRIESTS, AIRLINE PASSENGERS, VICTIMS' FAMILIES. AND TODAY, I THINK WE HAVE FRESH APPRECIATION FOR OUR FREEDOMS AND OUR DEMOCRACY, BECAUSE WE NOW UNDERSTAND HOW FRAGILE THEY ARE.

IN THE PAST YEAR, THIS GENERATION HAS LEARNED WHAT THE GENERATIONS WHO PRECEDED US LEARNED - THAT GREAT NATIONS DO NOT SURVIVE BY LUCK OR BY ACCIDENT, BUT BY THE PRACTICE OF VIRTUE.

HEROISM IS A WORD THAT HAS BEEN MUCH IN USE LATELY, AND SO I AM LOATH TO OVERUSE IT. I USE A DIFFERENT WORD TO DESCRIBE WHAT WE WITNESSED IN THE LAST YEAR - AND THAT IS FAITHFULNESS - KEEPING FAITH

WITH YOUR COUNTRY AND WITH THE LAW.

WHEN WE TOOK OUR OATHS AS ATTORNEYS, EACH OF US AGREED TO TAKE ON A PERMANENT CLIENT. THAT CLIENT IS THE LAW ITSELF. WE UNDERSTAND, TODAY MORE FULLY THAN EVER BEFORE, THAT WE ARE NOT DEPENDENT UPON THE LAW AS MUCH AS THE LAW IS DEPENDENT ON US, AND OUR FIDELITY TO OUR RESPECTIVE PROFESSIONAL OATHS. CARDINAL JOSEPH BERNARDIN SAID IT BEST: "GOD WRITES STRAIGHT WITH CROOKED LINES." HUMAN JUSTICE IS NOT PERFECT; WE TRY TO CARRY OUT JUSTICE TO THE BEST OF OUR ABILITY. I FIRMLY BELIEVE THAT WE ARE THE CROOKED LINES GOD USES TO WRITE MESSAGES OF JUSTICE AND PEACE.

I SPOKE A MOMENT AGO ABOUT THE LAW AS A PERMANENT CLIENT. IN MY JOB, I HAVE ANOTHER PERMANENT CLIENT, AND THAT IS MICHIGAN'S COURT SYSTEM. I COMPARE MY JOB SOMETIMES TO PUTTING OUT FIRES AND RIDING A BUCKING ALBATROSS. IN THAT CAPACITY, I'D LIKE TO BRIEFLY SHARE WITH YOU SOME OF THE IMPORTANT AND EVEN TRANSFORMATIVE WORK THAT'S GOING ON IN OUR STATE'S JUSTICE SYSTEM.

FIRST, THE HALL OF JUSTICE. IT WILL BE DEDICATED ON OCTOBER 8. THE SUPREME COURT WILL BE OPEN TO RECEIVE YOUR JUDICIAL BUSINESS IN THE NEW HALL OF JUSTICE ON OCTOBER 21, 2002. IT'S A VERY FUNCTIONAL AND BEAUTIFUL BUILDING, AND WE LOOK FORWARD TO HAVING IT STAND FOR MANY, MANY YEARS AS A SYMBOL OF OUR JUSTICE SYSTEM.

THE HALL OF JUSTICE IS CURVED TOWARD THE CAPITOL, AND PERCHED JUST OVER THE VIETNAM VETERANS MEMORIAL. IT'S A PERFECT, CONTINUING REMINDER OF THE SACRIFICE OF SOLDIERS WHO LET LIBERTY AND JUSTICE FLOURISH, AND OF THE RESPONSIBILITY OF THE JUDICIAL BRANCH IN RELATION TO THE LEGISLATIVE AND EXECUTIVE BRANCHES.

WHILE I'M ON THE SUBJECT OF THE HALL OF JUSTICE, I WANT TO THANK YOU ALL FOR THE STATE BAR'S SUPPORT OF THE HALL OF JUSTICE LEARNING CENTER. AS YOU PROBABLY KNOW, THE BAR, IN COOPERATION WITH THE MICHIGAN SUPREME COURT HISTORICAL SOCIETY, IS CO-SPONSORING A GALA RECEPTION TO RAISE FUNDS FOR THE LEARNING CENTER. PLEASE MARK THE DATE - SATURDAY, OCTOBER 12. I UNDERSTAND THAT MANY OF YOU HAVE RESPONDED VERY GENEROUSLY ALREADY. THE GOAL OF THIS JOINT EFFORT IS TO CREATE A PERMANENT ENDOWMENT IN PRIVATE DOLLARS TO SUPPORT THE WORK OF THE CENTER.

THE LEARNING CENTER IS UNIQUE. IT'S BREAKING NEW GROUND. WE THINK THIS IS THE FIRST-EVER INTERACTIVE GALLERY AIMED AT EDUCATING

THE GENERAL PUBLIC ABOUT OUR JUSTICE SYSTEM, AND WE'RE EXCITED ABOUT WHAT IT HOLDS OUT FOR THE PEOPLE OF MICHIGAN. ALREADY WE HAVE 8,000 CHILDREN SIGNED UP TO VISIT! ESPECIALLY IN TIGHT BUDGET YEARS – AND WE IN STATE GOVERNMENT HAVE BEEN TOLD TO EXPECT VERY TIGHT BUDGETS FOR THE FORESEEABLE FUTURE – THIS LEARNING CENTER WILL BE VERY MUCH DEPENDENT ON PRIVATE SUPPORT. THERE IS NO ADMISSION CHARGE, BECAUSE WE WANT TO ENCOURAGE STUDENTS AND TEACHERS AND PARENTS TO COME HERE AND LEARN ABOUT THE ROLE LAW PLAYS IN A DEMOCRACY. IN HOLDING THIS FUNDRAISER, YOU ARE REALLY CREATING A LEGACY OF LEARNING THAT WILL BENEFIT THOUSANDS OF MICHIGAN CHILDREN. SO, TO THE STATE BAR AND THE HISTORICAL SOCIETY, THE COURT'S PROFOUND THANKS.

EVEN THOUGH, GOD WILLING, THE HALL OF JUSTICE WILL STAND FOR GENERATIONS TO COME, THE HALL OF JUSTICE IS NOT A SYMBOL OF SOMETHING PERMANENT AND UNCHANGING. AFTER ALL, THE BUILDING ITSELF REPRESENTS A SIGNIFICANT STEP FOR MICHIGAN'S JUDICIARY. THIS WILL BE THE FIRST TIME EVER IN MICHIGAN HISTORY THAT THE APPELLATE JUDICIARY OF OUR STATE HAS HAD ITS OWN BUILDING. FOR THE FIRST TIME, THE SUPREME COURT AND LANSING OFFICE OF THE COURT OF APPEALS, PLUS THE STATE COURT ADMINISTRATIVE OFFICE, THE BOARD OF LAW EXAMINERS, AND RELATED AGENCIES WILL ALL BE UNDER ONE ROOF.

THE HALL OF JUSTICE CAME ABOUT BECAUSE MEMBERS OF OUR COURT, SUPPORTED BY THE GOVERNOR AND THE LEGISLATURE, SAID, "THERE HAS GOT TO BE A BETTER WAY TO DO THINGS." THANKS TO THEIR VISION, WE'LL BE HOUSED UNDER ONE ROOF, NOT SIX. WE'LL BE MORE EFFICIENT AND WE'LL SAVE TAX DOLLARS.

BUT NONE OF THAT WOULD HAVE HAPPENED IF THE JUDICIARY, AND THE STATE OF MICHIGAN, WERE LED BY PEOPLE WHO WERE UNCOMFORTABLE WITH CHANGE.

THE ROMAN POET OVID SAID, “ALL THINGS CHANGE, NOTHING IS EXTINGUISHED. THERE IS NOTHING IN THE WHOLE WORLD WHICH IS PERMANENT. EVERYTHING FLOWS ONWARD.”

CHANGE IS A CHALLENGE, NO DOUBT ABOUT IT. BUT IT IS A CHALLENGE WE MUST MEET, AT THE RISK OF FAILING MICHIGAN’S JUSTICE SYSTEM AND MICHIGAN CITIZENS.

LET ME TALK ABOUT ANOTHER POTENTIAL CHANGE – IN OUR JUDICIAL SYSTEM. THIS CHANGE HAS BEEN VARIOUSLY LABELED COURT REFORM, COURT REORGANIZATION, OR COURT CONSOLIDATION. OUR UNANIMOUS SUPREME COURT LAST MARCH 7 PROPOSED, IN A COMMUNICATION TO THE GOVERNOR AND THE LEGISLATURE, THAT THE LEGISLATURE ADOPT UNIFIED TRIAL COURTS AT LOCAL OPTION, IN A MANNER CONSISTENT WITH OUR CONSTITUTION. THE COURT ALSO EXPRESSED ITS SUPPORT FOR EXTENDING THE BENEFITS OF THE CURRENT DEMONSTRATION PROJECTS TO ALL MICHIGAN CITIZENS, AS THOSE CITIZENS WOULD LOCALLY CHOOSE. THE COURT ALSO UNANIMOUSLY EXPRESSED ITS BELIEF IN THE BENEFITS OF THE FAMILY DIVISION AND URGENTLY CALLED ON THE LEGISLATURE TO ADDRESS THE PROBLEM OF LONG-TERM CROSS-ASSIGNMENTS OF PROBATE JUDGES INTO CIRCUIT COURTS – THE STOP-GAP MEASURE BY WHICH FAMILY COURTS EXIST.

MICHIGAN’S COUNTIES ARE VERY INTERESTED IN THE DEMONSTRATION PROJECTS COURTS, AND YOU WILL UNDERSTAND WHY WHEN I TELL YOU THAT COUNTIES ACROSS OUT STATE SPEND AN AVERAGE OF 40 PERCENT OF THEIR ENTIRE BUDGETS ON COURTS. THEY ARE KEENLY INTERESTED IN COURT CONSOLIDATION BECAUSE THEY KNOW IT SAVES TAX DOLLARS.

THINK ABOUT IT: WHAT IS THE MOST TIME-HONORED, MOST-REPEATED COMPLAINT ABOUT THE JUSTICE SYSTEM, IN OURS OR ANY OTHER TIME? IT GOES ALL THE WAY BACK TO SHAKESPEARE: HAMLET’S FAMOUS LIST OF LIFE’S HARDSHIPS INCLUDES “THE LAW’S DELAY.”

ADDRESSING THE LAW’S DELAY WAS ONE REASON THE SUPREME COURT DECIDED TO STUDY TRIAL COURT REFORM. BASED ON A STUDY INITIATED BY MY COLLEAGUE MIKE CAVANAGH WHEN HE WAS CHIEF JUSTICE, THE COURT AUTHORIZED THE DEMONSTRATION PROJECT COURTS IN 1996. THERE ARE SEVEN DEMONSTRATION PROJECT COURTS IN NINE COUNTIES, WITH WASHTENAW’S BEING THE LARGEST. IN ALL THESE COURTS, DISTRICT, CIRCUIT AND PROBATE COURTS WERE COMBINED INTO ONE TRIAL COURT. ANY JUDGE WITHIN THE TRIAL COURT HAS FULL AUTHORITY TO HEAR ANY CASE THAT COMES BEFORE THE COURT.

Page 5

THE BASIC CONCEPT IS VERY SIMPLE: ALLOW THE BARRIERS THAT PRESENTLY SEPARATE CIRCUIT, PROBATE AND DISTRICT COURT, SO THAT JUDGES CAN GO WHEREVER THEY ARE NEEDED MOST; DO NOT FORCE IT, BUT ALLOW LOCALITIES TO DECIDE THIS PLAN WORKS FOR THEM.

IN SEPTEMBER 2001, THE NATIONAL CENTER FOR STATE COURTS EVALUATED THE DEMONSTRATION PROJECT COURTS. HERE'S WHAT THE STUDY FOUND:

- THE PROJECT COURTS WERE MORE EFFICIENT THAN THEY HAD BEEN BEFORE THEY BECAME CONSOLIDATED TRIAL COURTS.
- THE PROJECT COURTS REDUCED THEIR NET OPERATING COSTS, OR IMPROVED MANAGEMENT OF COURT REVENUES AND OPERATING COSTS.
- THE COURTS REDUCED THE SIZE AND AGE OF "PENDING INVENTORY" - IN OTHER WORDS, MOVED THEIR DOCKETS FASTER AND HAD FEWER CASES PENDING FOR A LONG PERIOD OF TIME.
- THE COURTS MADE EFFECTIVE USE OF TECHNOLOGY, AND (AND THIS ONE IS MOST IMPORTANT TO ME):
- <u>HASTENED THE DELIVERY OF JUSTICE TO FAMILIES</u>.

THAT LAST CONCLUSION IS ONE THAT WE SHOULD ALL KEEP IN MIND. A STAGGERING NUMBER OF FAMILIES ARE CAUGHT UP IN OUR COURT SYSTEM. IN 2001, AS OUR ANNUAL REPORT STATES, THERE WERE OVER 262,000 NEW FAMILY CASE FILINGS IN CIRCUIT COURT. THAT'S 70 PERCENT OF ALL CIRCUIT COURT FILINGS. AND THINK ABOUT WHAT 262,000 NEW CASES REPRESENTS. IF EACH ONE INVOLVES A MOTHER, FATHER, AND ONE CHILD, THAT IS NEARLY 800,000 PEOPLE. THEIR JOURNEY THROUGH THE COURTS SHOULD NOT BE LONGER OR MORE PAIN-FILLED THAN ABSOLUTELY NECESSARY.

LET'S TAKE, FOR EXAMPLE, WASHTENAW COUNTY, THE LARGEST INVOLVED IN THE DEMONSTRATION PROJECTS. WASHTENAW HAD MULTIPLE FUNDING UNITS FOR ITS COURTS. IT WAS FAR FROM CLEAR THAT COURT CONSOLIDATION WOULD WORK THERE.

BUT WASHTENAW TRIAL COURT HAS EXPERIENCED REMARKABLE SUCCESS. THE AVERAGE TIME FOR DISPOSITION OF A FELONY CASE WAS REDUCED FROM 96 TO 53 DAYS, WHICH IN TURN TRANSLATED INTO AN AVERAGE OF $2,666 SAVED IN HOUSING COSTS PER DEFENDANT. THE NUMBER OF CRIMINAL CASES PENDING MORE THAN 300 DAYS DROPPED FROM 87 IN 1999 TO JUST 13 IN 2001. TRANSFERS OF CRIMINAL CASES FROM DISTRICT TO CIRCUIT COURT WERE ELIMINATED, REDUCING DELAY AND PUBLIC EXPENSE.

THEY REPORT OTHER IMPROVEMENTS, INCLUDING QUICKER RESOLUTION OF JUVENILE CASES, ADEQUATE STAFFING AT THE FRIEND OF THE COURT, A UNIFIED BUDGET, AND DECREASED USE OF VISITING JUDGES.

ANOTHER EXAMPLE: BARRY COUNTY, BEFORE BECOMING A DEMONSTRATION PROJECT COURT, WAS AN EXAMPLE OF JUST ABOUT EVERYTHING THAT CAN GO WRONG WITH A COURT – JAIL OVERCROWDING, FINANCIAL DEFICITS, CLOGGED DOCKETS, LACK OF TECHNOLOGY. TODAY, THE JUDGES OF BARRY COUNTY ARE AMONG THE MOST ENTHUSIASTIC ADVOCATES OF COURT REFORM, BECAUSE THEY HAVE SEEN THESE PROBLEMS RESOLVED THROUGH THE DEMONSTRATION PROJECTS. BEFORE COURT CONSOLIDATION, FOR EXAMPLE, THE AVERAGE TIME FOR FELONY CASES TO MOVE FROM AN ARREST TO A PLEA WAS THREE MONTHS. THAT TIME HAS BEEN CUT IN HALF - FOUR-SIX WEEKS – AND THIS HAPPENED EVEN THOUGH THE COURT'S CASELOAD ITSELF NEARLY DOUBLED. IN SHORT, THE PROJECT COURTS ARE SHOWING US THAT WE CAN REDUCE ALL KINDS OF DELAYS, IN CIVIL AS WELL AS IN CRIMINAL CASES.

HOW WAS THIS ACCOMPLISHED? IN LARGE PART, BECAUSE THE JUDGES ARE ABLE TO ASSIST EACH OTHER WITH THEIR DOCKETS, RESPONDING TO THE NEEDS OF THE PUBLIC. THEY WERE ABLE TO GET OUT OF THEIR JURISDICTIONAL BOXES.

NOW, OUR COURT RECOGNIZES THAT WHAT WORKS WELL IN ONE COUNTY MAY NOT WORK FOR ANOTHER. WE HEARD THE MESSAGE: ONE SIZE DOES NOT FIT ALL WHEN IT COMES TO THE ADMINISTRATION OF JUSTICE IN MICHIGAN.

THAT IS WHY, IN OUR LETTER LAST MARCH, OUR COURT ASKED THE LEGISLATURE TO AUTHORIZE "LOCAL OPTION" FOR COMBINING CIRCUIT, PROBATE, AND DISTRICT COURTS INTO ONE TRIAL COURT, IN A MANNER CONSISTENT WITH THE CONSTITUTION. WE JUSTICES HAVE DIFFERENT PHILOSOPHIES, AS YOU KNOW. BUT WE ALL CREDIT THE EVIDENCE WE HEARD IN OUR PUBLIC HEARING: THE BENEFITS DEMONSTRATED BY THE PROJECT COURTS. AND WE ALL BELIEVE THAT EACH COMMUNITY SHOULD HAVE THAT CHOICE AND THAT OPPORTUNITY. IT IS FOR THE LEGISLATURE HOW TO ACCOMPLISH THIS GOAL IN A WAY THAT IS CONSISTENT WITH THE STATE CONSTITUTION.

ON AUGUST 13, IN RESPONSE TO THE COURT'S INVITATION, TWO BILLS WERE INTRODUCED IN THE LEGISLATURE. SENATE BILL 1400 AND HOUSE BILL 6260 WERE INTRODUCED BY SENATOR WILLIAM VAN REGENMORTER AND REP. JIM HOWELL. HB 6260 PERMITS PARTICIPATING COURTS TO HAVE A "PLAN OF

CONCURRENT JURISDICTION" AND SB 1400 GIVES CERTAIN PROBATE JUDGES INCLUDED IN A FAMILY DIVISION PLAN THE POWER AND AUTHORITY TO HEAR FAMILY DIVISION CASES.

I AM NOT HERE TODAY TO TAKE A POSITION ON EITHER OF THESE BILLS. BUT I AM HERE TO SAY THAT IT IS TIME TO BE IN EARNEST ABOUT COURT REFORM.

SOME JUDGES HAVE SAID TO ME, "WHY CHANGE THE SYSTEM? WHY FIX WHAT'S NOT BROKEN?" MY ANSWER IS THAT, TO FAR TOO MANY OF OUR MICHIGAN CITIZENS, THE SYSTEM IS, IF NOT BROKEN OUTRIGHT, AT LEAST IN GREAT NEED OF IMPROVEMENT. WE CANNOT IGNORE THEIR EXPERIENCES OR THEIR CRITICISMS.

OTHER PEOPLE HAVE SAID, "HAVING CONSOLIDATED COURTS IN SOME COUNTIES, AND NOT IN OTHERS, WILL RESULT IN A PATCHWORK QUILT IN MICHIGAN THAT WILL CONFUSE ATTORNEYS AND THE PUBLIC." I WOULD REMIND YOU THAT CIRCUITS EACH HAVE THEIR OWN LOCAL RULES, WHICH ATTORNEYS AND PARTIES MUST LEARN. AND WE'VE HAD A "PATCHWORK QUILT" IN NINE COUNTIES FOR THE PAST SIX YEARS, WITH NO COMPLAINTS ABOUT CONFUSION.

STILL OTHERS HAVE SAID,"WE DON'T WANT TO SACRIFICE SPECIALIZATION." THE BEAUTY OF LOCAL OPTION IS THIS: THE SIMPLE ANSWER IS, YOU DON'T HAVE TO. THE PROPOSAL IS FOR A LOCAL OPTION ONLY. THOSE WHO BELIEVE THAT COURT CONSOLIDATION WILL NOT WORK WILL NOT BE FORCED TO DO IT.

AFTER SIX YEARS OF THE DEMONSTRATION PROJECTS, THE PEOPLE OF MICHIGAN ARE ENTITLED TO KNOW THE RESULTS OF THAT EXPERIMENT. AND THEY ARE ALSO ENTITLED TO SHARE IN THE BENEFITS, IF THEY SO CHOOSE.

AS THE LEGISLATURE CONTINUES TO CONSIDER OUR COURTS' FUTURE, I ASK YOU TO CONTRIBUTE TO THE DISCUSSION. IT'S BEEN SAID THAT DEMOCRACY IS AN ONGOING DISCUSSION BETWEEN THE STATE AND ITS CITIZENS. OUR CHALLENGE, AND OUR OBLIGATION, IS TO NOT DEFER THE VERY IMPORTANT CONVERSATION ABOUT COURT REFORM. I FEAR THAT IF WE DEFER ACTION IN SEARCH OF SOME THEORETICALLY PERFECT PLAN, WE WILL HAVE LOST THE OPPORTUNITY AND COULD TRIGGER UNPLEASANT SOLUTIONS IMPOSED UPON US BY THE LEGISLATURE. I UNDERSCORE THE COURT'S DISCOMFORT WITH LONG-TERM CROSS-ASSIGNMENT.

ONCE AGAIN, TODAY, I CALL ON YOU TO THINK ABOUT WHO YOU ARE,

WHAT YOU'RE DOING WITH YOUR LIFE, AND WHERE YOU'RE GOING, AND I CALL ON YOU TO PRACTICE THE VIRTUES YOU SAW. I ASK THE GOOD LORD TO BLESS THIS BAR, ALL LAWYERS AND JUDGES. I CALL ON YOU TO PRACTICE ESPECIALLY COURAGE AND FIDELITY TO YOUR OATHS AS WE FACE THE CHALLENGES OF THE YEAR TO COME!

*****