

MICHIGAN SUPREME COURT

SEPTEMBER 13, 2001 PUBLIC HEARING

JUSTICE CORRIGAN: And may I say God save these United States and this Honorable Court. On behalf of my colleagues on the Supreme Court, we are assembled this morning for a public hearing on the topic of court reorganization to listen to your ideas regarding the structure of Michigan courts for the future and most especially with an emphasis on the demonstration courts and the courts in the family divisions of our state. In light of the past 48 hours and the events in our country that have transfixed us and saddened us, it may seem to all of you that the events of this morning have diminished importance. On the contrary, this hearing and this process is critically important. It is a symbol to the people of Michigan that we are a nation and a state bound by law and that we are an orderly and civilized society where our disputes are settled by the application of human reason. In this country and in this state and in our government, we do not execute people who disagree with us. We relish and we promote disagreement in our society as the way to find by our votes how we shall govern ourselves. We respect this process. You have a perfect right to call me a political hack if you will and you will not be punished for it in this government. We remain a beacon of hope to the world precisely in the manner in which we discharge our duties and conduct our ordinary business of daily life. I call on every judge in Michigan in this branch of government to be faithful to their oath of office, to support our Constitution in these perilous times. That is your duty and it is your privilege and your honor. In that regard I must sadly inform you of another blow to the Michigan judiciary that occurred this week, yesterday in fact. And that is the loss of our respected colleague Joseph B. Sullivan from the Michigan Court of Appeals with whom all of us served. Judge Sullivan was the personification of what it means to be a judge. He was an example to me and a mentor to me when I first was on the bench and I shall recall him forever as a model. With no further ado then, let me call the witnesses this morning on the topic of court reorganization. We have numerous speakers this morning. The way that public hearings are conducted is you are limited to 3 minutes. The court will not interrupt you during those times. Because of the number of speakers this morning, we are going to limit and attempt to limit questions so that we may proceed and everyone will have an opportunity to speak and be heard. We also because of the events of today and the numerous matters that the Court has to attend to in its discharge of business will adjourn promptly at 11:30. Without further ado I will call the first speaker this morning and that is Professor James Hill of Central Michigan University.

PROFESSOR HILL: May it please the Court, I will endeavor to make mine as quickly as 3 minutes as I can. My name is James Hill. I am currently here as

director of the Center for Applied Research and World Studies at Central Michigan University. I also was an author of a year 2000 report re-examining the findings of the National Center for State Courts and their findings on the court consolidation projects that are the topic of the discussion today. Between 1996 and 1998 the NCSC examined six Michigan court consolidation demonstration projects and concluded in the report based on the performance of these demonstration projects that the consolidation efforts should continue. Since the NCSC report has been widely cited as the principal justification for court consolidation efforts by the State Legislature and by this Court, I am here today to present a different view of these projects and the NCSC report. Let me say first that I applaud the fact that this Court is seeking professional evaluation of the court consolidation experiments before proceeding to the constitutional stage. That's absolutely appropriate. At the same time I must caution that after reviewing the 7-volume report, the case for trial court consolidation appears to be neither as positive nor as persuasive as the overall NCSC conclusions would lead readers to believe. The specific concerns I have about the NCSC evaluation are listed in my evaluation report and I have copies here which I will leave behind in the interest of brevity. I do want to stress, however, some critical omissions in this report that I believe make it an inappropriate basis by itself to base a court consolidation constitutional amendment decision. First there is no comparative data provided to determine the performance of courts not in the demonstration program during 1996-1998. It appears that the NCSC assumes that any efficiencies realized in the demonstration court projects during this time period were solely attributable to court consolidation efforts and similar efficiencies were not realized in remaining courts. In discussions I've had with judges of non-participating courts I've learned that a number of courts continue to institute their own non-structural cooperative efforts to improve court efficiency. Indeed as the NCSC stated in both its evaluation of Berrien and Washtenaw County demonstration projects "in many of the other demonstration projects the most significant changes involved the very same improvements that Washtenaw and Berrien had introduced before the design and implementation of the current project." Without comparing the efficiencies of a representative sample of both the structural and non-structural efficiency approaches during this time period, it's difficult to attribute specific efficiency gains only to demonstration projects. While I'm aware of other studies this Court is sponsoring, I would urge the Court not to overlook the non-structural efficiency reforms that are and can be realized without a constitutional amendment. Just as the courts are reluctant to take on constitutional issues when they can be resolved on a non-constitutional basis, I would urge this Court to take the same approach with regard to court consolidation until an evaluation is performed that clearly measures the value of taking such a major step. Sorry, I've deleted a lot in their but

JUSTICE CORRIGAN: If you have a written submission we would welcome it.

PROFESSOR HILL: I do indeed. I can leave that with the court clerk.

JUSTICE CORRIGAN: Yes, please do that Professor Hill. Let me ask the Justices whether they have any questions for Professor Hill. Hearing none then we thank you for appearing this morning. Next I will call on Hon. Leopold R. Borrello of the 10th Circuit in Saginaw.

JUDGE BORRELLO: Good morning Chief Justice and Justices of the Supreme Court. Just a moment before I get started, when I used to practice law and appear before the Supreme Court I always thought that when this red light went on a trap door would open and I would disappear.

JUSTICE CORRIGAN: Or you wished it.

JUDGE BORRELLO: You know, you're right. A few times I did wish it. In any event, I do not have any prepared text so I'm going to be very brief. I'm here to tell you that I vehemently and have for years opposed constitutional amendment to the court structure. I believe as Justice Weaver has stated many times, one size does not fit all. I think that our court system functions better when left to its local judges to determine how best to serve their respective communities. What works well in Saginaw County may not work well in northern counties. It may not work well in areas where there are part time probate judges or circuit judges that have to go to 2 or 3 different counties to cover. I can go from my office to my courtroom in a matter of sections. Judge Davis may have to drive to get to a courtroom in order to function in his various counties. So we all are different is what I'm trying to say and I don't think that you can adopt a statute or a constitution that requires us to do certain things. What works in Saginaw County may not work in other places; what works in other places certainly does not work in Saginaw County. I think we are a model when the Legislature passed the family court legislation and I remember Judge Meter and I appeared before the Legislature and vehemently opposed that too but in any event once it was adopted Judge Harrison who is the chief probate judge in Saginaw County and myself sat down, we worked out a scheme that stayed within the confines of what the family court was supposed to operate. We did it, we drafted an agreement. We both signed on to it and it has been working well in Saginaw County. So all I'm saying is let us do what we can do. We know how best to deliver judicial services to the people of our community. Let us do that.

JUSTICE CORRIGAN: Thank you Chief Judge Borrello. Are there any questions by any members of the bench?

JUSTICE CAVANAGH: Let me as Judge Borrello, whether or not you can think of any potential constitutional amendment that would go towards facilitating what you desire, namely different sizes for different areas as opposed to let's say an endless stretching or assignment process by this Court to move people around.

JUDGE BORRELLO: I believe the current Constitution gives you ample opportunity to do all the things that I think can and should be done in order to give local control. I don't think you need a constitutional amendment. I think the Constitution that exists now. And let me add one other thing. A few years ago when this controversy started up, Judge Meter and I, and he did a study of the minutes of the Con-Con Convention of 1963 and this judge is a judge is a judge philosophy was discussed at the Con-Con and discarded and I don't now that anything has changed so I don't think we ought to go for that. And there is no trap door apparently.

JUSTICE CORRIGAN: No. Honorable Joseph Swallow of the 26th Circuit in Alpena.

JUDGE SWALLOW: Good morning Madam Chief Justice and Honorable members of the Court. I have some remarks which I have a copy of my remarks over here, would that be satisfactory?

JUSTICE CORRIGAN: Would you submit them to our clerk of court, Judge Swallow.

JUDGE SWALLOW: In circuit court our clerk sits down in front like that so you'll have to excuse my mistake. Anyway, Madam Chief Justice and members of the Court, I've sat on the bench for more than 25 years now and a good part of those have been as the administrative judge of the 26th Circuit so from that vantage report I've prepared these remarks this morning and in the interest of brevity and staying within my 3 minute allocation I will read them and perhaps have some comment as we go along. I would suggest a 3-prong proposition which I think would best serve Michigan courts. First if I had the authority I would seek legislation that would transfer jurisdiction over all family division cases to the Probate Court. This would create within each county a true family court using the family as the common denominator and not dividing it between various courts or judges. And that would also allow us to continue the maintenance of the non-adversarial culture as previously has existed in probate courts. The probate court philosophy which I'm sure Justice Weaver is very familiar with and highly advocates.

Now secondly this is obviously going to take a lot of work away from the circuit courts. What would I do there? I would seek legislation to enhance the appellate jurisdiction within circuit courts. Appellate jurisdiction already rests within the circuit court over probate courts and all statutory courts and tribunals. That's vested by Constitution. But this increase in any appellate jurisdiction must be accompanied by state supported services similar to those afforded judges of the Court of Appeals. If so given, I think the circuit bench would do an admirable job. Thirdly, and I'll just finish up quickly, I know you want to continue the efficiency that has been demonstrated as you see from some of the pilot projects. I would try to distinguish between jurisdictional consolidation and administrative consolidation. And I think you can accomplish most of what you want to accomplish with the existing Constitution by minimal statutory amendments. You already have the superintending and general control of the circuit court over the other courts within their jurisdictional area, plus the Legislature has enacted court management councils. Using those two authorities you can get regional efficiency bringing together the best of efficiency but still maintaining the jurisdictional responsibility of specific judges who have been elected by the people to specific courts. Madam Chief Justice, I would submit that as what I see from my experience over the years.

JUSTICE CORRIGAN: May I direct a question to you Chief Judge Swallow? At least by the assessment that we've been given, the proposal that you propound to us today suggests that we would require under the weighted case load analysis from the SCAO an additional 48 probate judges and presumably then a loss of 48 circuit judges from the circuit courts. That's what the weighted case load figures show. What is your response on that score.

JUDGE SWALLOW: Well first of all I would like the opportunity to have Professor Hill examine those weighted case loads and I think maybe we might come up with an entirely different bottom line.

JUSTICE CORRIGAN: Maybe the numbers are wrong but presumably with the loss of circuit jurisdiction and placement in the probate court there would be a requirement of additional judgeships in probate and the loss of circuit.

JUDGE SWALLOW: You're shifting jurisdiction in most cases where the county is a common jurisdiction. I suspect those judges who would like to do that work could run for election in that court and if you need more work for the circuit court which I think is legitimate, I've said look, let's create some appellate jurisdiction down there. You've got a hune of cry right now for more appellate judges and the circuit bench could take a lot of work away from them at substantially less fiscal impact to the state. Because we already have our courtrooms. We already have our support staff.

JUSTICE CAVANAGH: Well what type of appellate jurisdiction are you thinking about?

JUDGE SWALLOW: Well if the matter of divorce is transferred to the probate court, which is my number one suggestion and they already have the matter of child abuse and those matters, there are a number of cases that go to the Court of Appeals that could go to the circuit court. And probably 90% of those cases are abuse of discretion cases. So what we would really be looking at is areas of law and if we are given the appropriate, necessary let me say, support staff because I've sat on the Court of Appeals and I've had the benefit of prehearing report which you all are familiar with. Now if you develop for example a prehearing requirement centrally located in the state of Michigan in Clare or Grayling say or Gaylord, and that could serve the entire northern part of the state and given that type of support, circuit judges would do the job for you very, very efficiently, do the job for the people of the state of Michigan I say very efficiently, at substantially less fiscal implication for the state.

JUSTICE CORRIGAN: How do you deal with the Headlee implications of your proposal. The state of Michigan would have to fund any additional prehearing type resources wouldn't they, under Headlee.

JUDGE SWALLOW: Don't think it's long overdue for the state of Michigan to look at the state court. We're not a county court, we're a court of the state of Michigan. And I think it's long, longer overdue. And I think your predecessors sort of lost sight of that in the Grand Traverse case and I think state funding for particularly the trial courts in handling the state cases. You've got a prosecutor justice. The state of Michigan versus John Doe. Not the county of Alpena or the county of Wayne. These are state laws, these are state judges enforcing state laws and it's long, long overdue for the Legislature to wake up and for the executive office to recognize that as well, and give the appropriate funding to our state courts. Headlee, I think, is incidental to that.

JUSTICE CORRIGAN: Very well, thank you. Any other questions.

JUDGE SWALLOW: Justice Young, you had a question sir.

JUSTICE YOUNG: I want to make sure I understand what you've just said. You suggest that the traditional work of the circuit court, divorce work, be transferred to the probate court and that we manufacture appellate jurisdiction in order to retain the number of circuit judges that we currently have.

JUDGE SWALLOW: I think while it may be traditional work in the circuit court, divorce, it certainly is very tightly tied to the family.

JUSTICE YOUNG: I agree, I have no problem with the idea of ensuring that family problems are treated by the same entity. But you recognize that that is a certain amount of work that has traditionally been done by the circuit courts. And what I'm interested in is the way that you are apparently attempting to avoid the impact of the removal of that work from the circuit court being visited on the circuit court itself in terms of the numbers that ought to be reduced, whether as projected by the reports that we've got or some smaller number, surely you agree that the number of circuit judges should shrink if we make that jurisdictional transfer if we don't manufacture something else for the circuit judges to do.

JUDGE SWALLOW: Sir in all due respect, I think the word manufacture is misplaced.

JUSTICE YOUNG: No, it's my word.

JUDGE SWALLOW: The authority to do that already rests in the Constitution of our sovereign state and it requires only a legislative law. My proposal requires no constitutional amendment.

JUSTICE YOUNG: No, I'm just talking about work. Unless we find additional work, unless we are understaffed substantially at the circuit court level, if we transfer work out of the circuit court the number of judges should be reduced by some factor.

JUDGE SWALLOW: That is a proposal, we could do that Justice, but sometimes I think maybe we ought to look at what's going to work for the people of the state of Michigan. If we lose a few judges then so be it. But let's implement a system that works. But I think there is a lot for appellate jurisdiction, the Court of Appeals is screaming we need more judges. There's more work to do up there than we can handle. You can take a lot of those cases and put them in the circuit court at a lot less fiscal implication to the state of Michigan.

JUSTICE CORRIGAN: Thank you Chief Judge Swallow.

JUDGE SWALLOW: Thank you very much for allowing me to go over too, Madam Chief Justice and members of the Court.

JUSTICE CORRIGAN: Now I'll call on Honorable Lawrence Root of the 49th Circuit in Big Rapids. Is Judge Root here this morning?

JUDGE ROOT: Judge Ernst was ahead of me.

JUSTICE CORRIGAN: Oh, I apologize. Come up anyway Judge Root and I'll call Judge Ernst after that.

JUDGE ROOT: Good morning Chief Justice, Justices. In light of the time limit I'll try to be brief although that's not one of my skills. Court reform is the issue, the question is what are we trying to do. Serve the public. How do we do that. As judges I think we need to recognize that we best do that, as trial judges in particular, by focusing on a range of cases that we can become proficient at, handle, know and move. Because justice delayed is justice denied, we're often told. To try to mix into a docket cases of different types would be a management nightmare and for an individual judge, a personal decisional nightmare. And I'm trying to cover a lot of points. I'll submit written remarks later. When a citizen has a legal problem they go to an attorney that handles that kind of problem. Be it a divorce, real estate, commercial contract of some sort. They know what they need to address their problem. They need to go to a judge who understands what their lawyer is saying and use the shorthand that his lawyers will use. I believe that any judge in Michigan can handle any type of case. But to handle them in the volumes we need to and to handle them efficiently and to handle them well we need to have, and the phrase is looked somewhat down on, we need to be able to specialize to a degree. Handle a range of case types. And I believe a constitutional amendment eliminating the probate court does not assist in that effort. I believe the current Constitution has all of the tools we need and I submit recognizes the merit of what I'm saying. The Constitution has two constitutional trial courts. Requiring us to deal with that and to have this division of labor within the trial bench. And I think that that is not accidental. It was thought through and I think it has merit to it and I think it should be continued. In regard to efficiencies, we need to recognize that the courts that we now have at the trial level, district court, circuit court, probate court, handle different case types. And those different case types have different needs. District Court, often called the peoples' court handles a tremendous volume that would really screw up the circuit docket. Likewise the circuit docket would screw up a district judge trying to do his or her job. Probate court handles cases on a more hands-on basis, both in terms of the judge as well as the staff that work with them. The circuit court handles a lower volume but intends to be more intense in the handling of those individual cases. My proposal is to create a family court within the constitutional probate court but we do this over time through a period of concurrent jurisdiction statutorily between the circuit and probate courts exercised under joint operating agreements between the chief judges. If we can't agree the Michigan Supreme Court

would come in and impose an agreement on us. Over time the Michigan Supreme Court would commit to the gradual transfer of family jurisdiction into the probate courts so that at the end of whatever time period there is, the family court will be in the probate court. The circuit court will remain in whatever forum it is. I am not here today as a union steward for circuit judges. We may lose numbers over time. The question is that we will then be in balance closer. And the red light just went on and I will stop and open myself to questions.

JUSTICE CORRIGAN: Thank you, and you're welcome to submit any written remarks that you care to as well. Are there any questions for Judge Root from the Justices?

JUSTICE YOUNG: I thought the thrust of your argument was that there are specialization that it is appropriate to have different courts serve. How does a joint operating agreement that over time moves the circuit court jurisdiction into the probate court, how is that consistent.

JUDGE ROOT: Thank you for giving me the window that my time ran out on. The family cases we deal with in circuit court are much more akin in their nature to those which are handled in the probate court. It's that merger of social science and law. It's not always good and sometimes it's awkward, but it's similar to what they do in the probate court. And I think that by having the family cases, families, in one court

JUSTICE YOUNG: Divorce cases?

JUDGE ROOT: Divorce cases, paternity and non-support, child custody. All of the things where we're talking about the very personal part of peoples' lives would be in the court that I think is best set up in terms of its culture to handle those kinds of cases.

JUSTICE YOUNG: So there really isn't a specialization problem about transferring divorces immediately to probate.

JUDGE ROOT: No, that's why I recommend concurrent jurisdiction. It would avoid the institutional shock of a massive change at once. Because right now we're doing that more or less through our current family division of the circuit court. We're sharing this jurisdiction.

JUSTICE YOUNG: Okay, I think I understand.

JUDGE ROOT: Are there other questions? Then I'll yield the podium.

Thank you.

JUSTICE CORRIGAN: Thank you. Now I'll call on Chief Judge Richard Ernst from the 23rd Circuit in Tawas City. I apologize for skipping over you.

JUDGE ERNST: Chief Justice, that's the story of my life, I think. Chief Justice and Justices, I want to thank you for this opportunity. I would like to say first that the reason I'm here is because I believe the same interests that each of you have in leaving the judiciary, and I've had 32 plus years in the judiciary. I'm approaching the end of my judicial career and I hope to leave it in at least as good, if not a better position than when I started. I served in the District Court for a number of years. I believe I was elected at the same time Justice Cavanagh may have been elected to the District Court. And it's been my experience that to say a judge is a judge is a judge is simply wrong. Judges aren't fungible and I'm sure I'm pointing out that which is self-evident and recognized by you. We have certainly specialization. I received my notice of state bar dues yesterday and I note that there are 35 different sections of speciality within the state bar. And I do suggest that to elect judges to a circuit court and then have the responsibility of those judges allocated either by a chief judge or by an administrator deprives the public of an opportunity to waive the qualifications of the individual they're choosing for a specific area of law and it deprives the practicing members of the bar who may be seeking judicial office from the opportunity of seeking an office that is consistent with their experience, their temperament, their education and their goals. And so whatever form that this Court chooses to recommend or suggest to the Legislature or the public by constitutional amendment, I suggest that it keep in mind these basic premises that the public needs an opportunity to identify the attorneys and the office for which they seek, whether it's family court or a court of general jurisdiction or a court of limited jurisdiction. And the attorneys have an equal responsibility to seek an office for which they are prepared educationally, emotionally, professionally. One point I would make. In domestic relations or family law, a divorce without children is a partnership dissolution and in our particular area Judge Hamilton handles the divorces with children, I handle the divorces without children. And there are other areas which may be thought to be within the family court realm but really are partnership dissolution, economic issues that don't involve the sociology of children and parents and trying to preserve that relationship. Any questions? I thank you very much.

JUSTICE MARKMAN: Judge Ernst, can I just ask you one question. Just so I understand, you're saying that given the lack of fungibility of different judicial positions, is it current that you believe that when the people elect John Smith or Mary

Doe to some judicial position, they are entitled and they have a legitimate expectation that John Smith or Mary Doe will actually perform those specific judicial responsibilities.

JUDGE ERNST: I submit that is correct, Justice. Otherwise we defeat the purpose of having an elected trial judiciary.

JUSTICE MARKMAN: Is that value compromised in any way by even temporary assignments?

JUDGE ERNST: A temporary assignment that is necessary because of logistical reasons, disqualification, illness, certainly it is compromised but a case by case compromise where the judge assigned has the preparation, the ability to accept that assignment and discharge it fully, competently and justly, I believe is appropriate.

JUSTICE CORRIGAN: Where do you part company then, with the Michigan Supreme Court in the Huff case. How do you see this Court's authority to exercise superintending control. Do you think Huff was wrongly decided?

JUDGE ERNST: I believe you do have authority to exercise superintending control by assigning a judge to a particular case or by removing certain judges from certain cases or indeed offices. I understand in Livingston County, for example, the court has designated a probate judge as the chief judge of the circuit court because of certain local problems that exist. I trust that the electorate of that county, that circuit, will at some point in time correct those problems.

JUSTICE TAYLOR: Would it be fair to say you believe in episodic transfer but not systemic.

JUDGE ERNST: Exactly, sir, exactly.

JUSTICE CORRIGAN: Any further questions? Thank you for coming this morning. And I'll call on Honorable Kurt Hansen of the 55th Circuit in Gladwin.

JUDGE HANSEN: Madam Chief Justice, Justices of the Supreme Court. I just have three short points that I would like to make at this time. I think the problem that we're wrestling with here in the inception is that we're putting the cart before the horse. That is, we're having all these proposed solutions and there has never been an identification of what the problem is that we're trying to solve. I don't care if you're doing concurrent jurisdiction or if you're transferring jurisdiction to the probate court or you're talking about a unified system. Ultimately what you have to do first is say well

what is the problem that we're trying to solve. And you have to identify it. And we ought to be able to do that. And we ought to be able to list what the problems are and we ought to be able to say this is an administrative problem, this is a statutory problem, and this may be a constitutional problem. But until you do that, all that we're doing is we're having solutions that are looking for problems. And I don't think that's the proper way for the judiciary of this state to proceed. The second involved is that we never do any side by side comparisons. We never say well what was the system prior to the family division, what is the system that is in existence now. What are these proposed changes in terms of changing jurisdiction, what is a unification system and how do all of these things compare with all of the goals of the judiciary. And I would submit to you that ultimately, the ultimate test has to be this. Are we going to end up with fairness, impartiality, independence of the judges to be able to make appropriate decisions and reasonable efficiency. And I think that reasonable efficiency, frankly, in a democracy is the fourth thing that we look at, not the first thing that we look at. I think we have to look at the first three first. The third point that I want to talk about simply has to do with the unification system itself. I think that what clearly has to be understood is that if you do unify the courts, you're shifting the power from the local unit and you are centralizing it in the Supreme Court. Because essentially what happens, you change the method of selection of judges to hear certain types of cases. The Supreme Court appoints the chief judges of the state. The chief judges will be the ones that will assign out the respective jurisdiction to the particular judges that are involved. And how do you end up with certain types of jurisdiction of cases that you're going to end up doing. Well we know from experience in other states is that what happens is that you have to gain favoritism from the chief judge. And we know also that it very well has the potential that the people that are at the top that control it can in essence effect the outcome of cases by who is selected to hear a certain type of case, and furthermore we know that it very well may quell a dissent within it. Justice Corrigan said, in our country what do we do. We can say bad things about the Supreme Court Justices and there's nothing that you can do about that. And there isn't anything under the existing situation that you can do about that. But under a unified system you certainly could because if a local judge said something that you didn't like, you could in fact use the system at that point in time to ensure that bad things were going to happen to that local judge.

JUSTICE YOUNG: Can I ask you what you think the problem is.

JUDGE HANSEN: I'm not sure what the problem is because we dance around it all the time.

JUSTICE YOUNG: I thought you and Judge Ernst described the problem pretty well. That the voters have elected judges to specific positions and we currently find

ourselves in an environment where the Supreme Court has intervened to cross assignment.

JUDGE HANSEN: I think that's one of the problems, certainly that is a problem that has to be dealt with.

JUSTICE YOUNG: What is your remedy.

JUDGE HANSEN: What is my remedy for that particular problem. Quit doing it. And then you go to the Legislature and you say Legislature, you gutted one court, if you will, you transferred all the jurisdiction over to this other court. You know we don't have enough judges. Now you have to give us more judges.

JUSTICE YOUNG: How soon do we stop cross-assigning.

JUDGE HANSEN: How soon should that be done? I'm not sure what vehicle you would utilize, whether you have to have a case or just exactly what it is that you would have to have.

JUSTICE YOUNG: Well this is done administratively. We've defined at least one of the problems and you've got a solution and I'm asking you for your recommendation as to how soon we should stop contributing to the problem.

JUDGE HANSEN: Well frankly, Justice, I would have to think about that to see what the impact of short term or long term decision would be.

JUSTICE YOUNG: I would be interested in your answer.

JUSTICE CORRIGAN: So your recommendation to the Court, you are a strong proponent of the notion that one size does not fit all, correct.

JUDGE HANSEN: Correct.

JUSTICE CORRIGAN: So your recommendation if I understand you is that we should eliminate all the demonstration projects then.

JUDGE HANSEN: Either that or give the money to us so that we can have a true comparison. I mean it's a real problem when you take a quarter of a million dollars and you give it to one court and then you say well they're doing great things, and then to an existing court you don't give any money to and then you say you aren't doing great

things. If you're going to run demonstration projects, they should be fair projects. And you should take the existing situation and see what they're doing. And give them the same resources that you give all these other folks. So I'm not saying to eliminate the projects by any stretch of the imagination.

JUSTICE YOUNG: Those can't exist without cross-assigning.

JUDGE HANSEN: The ones that you have now, yes, but you can certainly have demonstration projects that take a quarter of a million dollars and put it into the 55th Circuit, and if we hire people to do the work and have machinery that other places have and we'll see what the efficiencies are at that point in time and we'll see whether or not there are actually any problems that require any type of statutory and/or constitutional amendments.

JUSTICE MARKMAN: Are you saying, Judge Hansen, that demonstration projects almost invariably provide us with little real world benefit because they're always the subject of some special focus or some particular attention to the extent that they just don't constitute a valid comparison with other courts.

JUDGE HANSEN: There never is a starting point, Justice Markman. They don't say here is where we are at today under this system. We want to test whether or not, if we change it this way what the outcome of that is going to be. You run it for your 6 months, 12 months, whatever it may be, and then you ascertain what the end result of that is. And so they are not valid projects the way that they are.

JUSTICE MARKMAN: Do you believe that we've learned anything positive or anything negative from the projects that have in fact been conducted for some period of time in Michigan.

JUDGE HANSEN: I think you learned in Ann Arbor that the unified system doesn't work very well because they shot it down, and they said that it didn't work down there. And the local judges said they weren't going to be involved in it because they had such a horrendous experience with it. I think also that

JUSTICE CORRIGAN: How recent is your information on what went on in Washtenaw County.

JUDGE HANSEN: This was as of the point in time, well I know that they've revised some type of a project down there at this point in time but frankly I'm not

that familiar with it. But at one point in time they simply stopped it. Period. And said they would not do it anymore.

JUSTICE WEAVER: Maybe you better check with them as to what they're doing now.

JUSTICE CORRIGAN: Anything further, Chief Judge Hansen? Any other questions Justices. All right, you're certainly invited to submit whatever written submission you would like to make. Thank you for coming this morning.

JUSTICE YOUNG: I'd like to hear your answer to my question eventually.

JUSTICE CORRIGAN: Thank you. I'll now call on Honorable Faye Harrison from the Saginaw Probate Court and Chief Judge Milton Mack from the Wayne County Probate Court. I'm not sure if you're making a joint presentation or what your desires were.

JUDGE HARRISON: I did bring prepared remarks and can do this in a very short version myself. I'm Faye Harrison and I am here currently as the president of the Michigan Probate Judges Association. Judge Mack is also here because we transfer offices in October and he is the incoming president and we thought perhaps you would be interested in the remarks of both. I do have printed remarks and if you wish to have us share that 3 minutes I can do so very concisely.

JUSTICE CORRIGAN: No, no. Judge Mack was a late addition and I wasn't sure what your desires were.

JUDGE HARRISON: Well as the current president of the Michigan Probate Judges Association I will only recall to you that the probate judges board of directors on the 17th of May of this year did go on record with a certain number of core principles which was in line with what the Chief Justice had asked us to do to identify some core principles. We have sent those to all of you. I did bring more copies of them today if any of you wishes to have them. We have also submitted at least two possible statutory changes that I believe have gone to all of you. I again brought more copies of those if you wish to have them today. I am sure that you will be hearing from some others who testify about other possible statutory amendments. I simply wanted the opportunity to reiterate a couple of the basic principles that probate judges would call to your attention. First of all, one of the current major goals that have been brought before us as judges is to make the courts accessible to and usable by the entire public. Probate courts have

recognized that need since they were first created in Michigan in 1796. The segments of the public assisted by the probate court often requires care or service over an extended period. The probate client is frequently grieving, aged, infirm, a minor or mentally ill. Over the years the needs of these individuals resulted in the development of a specialized court and a specialized staff of registers and administrators who could meet those specific needs. And each time the Michigan Constitution was rewritten—1856, 1908 and 1963—the framers found those needs compelling enough and the system productive enough to warrant requiring that a probate court exist in each county in this state. It has been said that the probate court serves citizens from the cradle to the grave and that is literally true. And the needs of the probate clients and the practitioners who aid them must stand as tall as the needs of anyone who uses the court in domestic relations cases. Second, we believe that any changes made in the court system must allow for flexibility and local control. Judges who are locally elected, court officials who live among the people they serve, lawyers who practice in those communities, can work with those in their communities to establish the needs of the community and deal with it and by and large it is the locals who pay for it and likely will continue to be. We have handled what's been thrown at us the last few years that ranges from an entire rewrite of the Estates and Protected Individuals Code to Binsfield legislation admirably. But at this point we need an opportunity to have respite and consideration as much as we do reform. I ask you to keep that in mind as you proceed.

JUSTICE CORRIGAN: Any questions for Judge Harrison.

JUSTICE KELLY: You say you need respite and consideration.

JUDGE HARRISON: Justice Kelly we have been in the probate court through the entire transition of our staff, records related to the juvenile cases, the entire rewrite over about the last 10 years of the child protection law in this state. We have gone to a situation where we are coping. I will only give you example in Saginaw County where due principally to the changes in Binsfield and the Adoption and Safe Families Act nationally in the last 3 years, my attorney bills for appointed counsel in my court alone have gone from \$329,000 in one year to \$600 and some thousand dollars this coming year. We are coping with how to implement the family court locally to work on the consolidations of everything from collection systems through. We have in many instances people who want to do this. Who want to work on it. But we need, I guess the best way I can put it is enough already. We need a little room to cope with what has already been put on those plates. And we have sat at the tables willing to talk about change since the time the 21st Century Commission Report came through. We still are. It is that we need a recognition that the local community must have a voice in it and that it needs to go slowly. I think in part you folks have determined that you do have to take it slowly

enough to listen to anyone. And I think that's what I'm here today, if I say nothing else to you, is to say remember that the probate is not just some side issue. It affects an awful lot of folks out there and the court that you're talking about now, where does it go, who are we and what do we do, has already tried to serve the citizens of the state of Michigan through a great deal. And I'm sorry, I'm making a speech in answering your question. My apology.

JUSTICE CORRIGAN: Any other questions? If not, thank you Judge Harrison for being present this morning. We appreciate your remarks.

JUDGE MACK: I'm Milton Mack, Chief Judge of the Wayne County Probate Court and I thank you Chief Justice Corrigan and members of the Supreme Court for the opportunity to speak to you today. I intend to speak to you on a more global basis. Michigan's Constitution speaks to Michigan's one court of justice. Yet efforts to restructure Michigan's judicial system began less than 10 years after the Constitution was adopted and have continued ever since. I would suggest that the 21st Century Court's Committee of the State Bar came the closest to identifying what one court of justice would look like. In fact if you look to California you will see what an operational one court of justice looks like and how it can be created. I would suggest that one court of justice is more than linkage of the courts of this state. I would suggest that it means one funding unit, the state, one employer, the judiciary, and one manager of all aspects of court operations, the judiciary. This means clear lines of authority and accountability and the ability to effectively and efficiently manage scarce public resources and to respond to changes in the environment. Currently in Wayne County Probate Court I must respond to the Wayne County Auditor General, the Auditor General for the State of Michigan, the Wayne County Executive, the Wayne County Commission, the State Legislature, the State Court Administrator and the Supreme Court. On the positive side, the probate court has the authority to manage all aspects of court operation and is the only employer of those who support court operations. Recently, SCAO conducted a management study of our court's file department. As a result we will be restructuring our entire information, collection and management system in a way we could not do if the employees were not employees of the court and the records did not belong to the court. It would be a serious step backwards to take away the ability of the probate courts of this state to effectively manage their operations and respond to public needs by merging with the circuit court. It would be better to merge the circuit court with the probate court so it would have the same authority to manage that we do. Senator Van Regamore's proposal is the fourth proposal to merge probate court in the last six years and it is clear the political will is not there to do what needs to be done to have a true unified court. We believe it's important that we move forward with a process that will engage trial courts in a meaningful way. MPGA has been at the table for the last six years and since that time we have seen five

new justices. So we are in the process of trying to re-educate. We would suggest that consensus by the trial courts has already been achieved at least once. In 1998 representatives from all the judicial associations met in Lansing at the direction of the Chief Justice and a project was agreed to by all concerned. That document would form an appropriate platform for further discussion and further consensus. I would urge that the Supreme Court engage the trial courts at arriving at proposed solutions that the trial courts must implement and manage. This means clearly identifying the problem, developing alternative solutions, testing the consequences of those alternatives and finally picking a solution. That way when anyone asks what is the question for which this policy is the answer, we will know what problem we are trying to solve. Thank you. I almost made it under two minutes.

JUSTICE CORRIGAN: Any questions for Chief Judge Mack? Thank you for being here and you're welcome to submit further remarks in writing. And may I call on Chief Judge Alton Davis of the 46th Circuit in Grayling.

JUDGE DAVIS: Good morning. If the Court please, in response to the Chief Justice's July letter soliciting input on court reform, the chief judges of the seven demonstration project courts met in August. Four of those judges are here today. Judge Conners is here from Washtenaw. He's not on the list but he's available to be heard from if you wish to hear from him concerning the Washtenaw County experience. Judge Maloney is here from Berrien County. Judge Chamberlain is here from Mt. Pleasant. Judge Sweedler could not fly from Iron County under the circumstances. Judge Wikens is out of state and Judge Fisher could not leave his docket today. Our first agreement at our meeting was to attempt to arrive at a flexible, effective method of operation that would accommodate the dictates of modern trial court practice, meet the requirements of the family court legislation and hopefully address this Court's concern as we understood it regarding long term cross assignment of judges across the benches within a given circuit. Our second agreement among ourselves was that any plan that we arrived at should be deliberately designed to attract the least opposition possible. We began by reviewing all of the proposed models that any of us had ever heard of from a constitutional amendment to joint jurisdiction between courts to doing nothing. For one reason or another each of those plans were determined to be unlikely to succeed. In the end we arrived at the plan that we advocate for you today which is dictated largely by the experience in the various circuits, particularly since the advent of the family court legislation. That plan calls for the unequivocal recognition of the authority that we believe to be inherent in this Court to authorize the cross-assignment of subject matter jurisdiction among the judges of any circuit at their request in order to best manage the workload and resources of each bench. This authority should be granted only where it is requested and to the extent that it is requested. It should not be mandated or imposed. If a circuit has the resources to meet its

obligations without cross-assignment, then it should be left alone to do so. All seven of the project court judges, chief judges, are unanimous in this recommendation. Judge Maloney is here to present our legal analysis of this recommendation. I agree with Judge Harrison and others that what the trial bench very badly needs is certainty in these matters going forward and an end to the turmoil that has existed over the past several years. And we believe that this proposal will accomplish that end. We do have a written submission that we have tendered or will tender to the Court that includes the outline and any legal analysis that we have done.

JUSTICE CORRIGAN: Any questions for Judge Davis.

JUSTICE TAYLOR: Judge Davis, are you bothered at all by the point that has been touched on here today that the folks in a county think they're electing a probate judge and instead the guy does duties that entirely different.

JUDGE DAVIS: Everything is on a continuum, Justice Taylor, to some point. And I am not particularly concerned about that and I come from a rural area where the populous knows its judges and vice versa. The proposition that we put before the Court is a proposition that would preserve the existence of the benches as they are. People would run for those positions and then once elected, if there is additional work or other work or incidental work that needs to be done for the good of the order, I can't imagine anybody in the public that would oppose that or object to it and in fact we have been doing that for the past five years in the demonstration project with very good results. And without it, the system as we have designed it today would be stood on its head. We would have a very difficult time.

JUSTICE MARKMAN: Judge Davis, how would you respond to Judge Hansen's suggestion that it is very difficult to glean much in the way of a lesson from the demonstration projects given what he believes is the unfair comparison that is involved.

JUDGE DAVIS: I largely don't understand it. The opportunity to become a demonstration project court was available to every circuit in the state. People chose to apply or not to apply and they either became demonstration project courts or they did not. We have tried to keep rather good records, starting with a baseline of where we were in a myriad of areas. Case load moving, how the judges were doing, just a lot of things. Public perception. And each one of those measurements, what our records reflect to us are a great deal more satisfaction on the part of the public, a tremendous savings of money to the municipalities that fund the courts and far more efficiency throughout our operation. The funding that was available to the project court in my circumstance was funding really for a year. It bought us some equipment that we might otherwise not have had which is

very important. And I do believe that that money needs to be available. And I know there is an initiative through the court now in recognition of that. To get this technology out there. We're in the information processing business and if you're working on an Underwood you're way behind. Those kinds of things, particularly in multi-county circuits are very valuable and the courts need them so that was a big help to us. But beyond that and after that first infusion of that money to do those things as we requested, there hasn't been any additional money over and above and beyond what the counties provide which is at the standard funding levels they have always provided. And we've had remarkable success no matter how you slice it. So I really don't understand in large degree what Judge Hansen is talking about in that regard. And I've disagreed with him before on that, we've talked about it and I still don't understand it.

JUSTICE CORRIGAN: Can I invite you to attempt to articulate the “problem” to which the demonstration courts are a solution. It has been said that it's a solution in search of a problem. How would you articulate what it is you're attempting to do.

JUDGE DAVIS: I view the demonstration project courts as laboratories. My understanding of our charge when we started was we have a system and it's in place. Now if you had some additional resources and you tell us what you need, do you think you can make this system work better for the benefit of your constituents and the people that use the court. That was the experiment. It has been wildly successful in my view. Up and down the road. Not only for the people who use the courts as litigants, but for those who have to fund the courts at the local level. It has been wildly successful. Our staff is more efficient, more effective and happier. Our judges are happier. We have a better distribution. We have a distribution problem of judges in the state of Michigan. I don't think we've got too many judges. We may have judges in the wrong place. But the cross-assignment that we have utilized very heavily in the 46th Circuit has allowed us to balance out the workload based on where the judge is. And it has been very, very successful. That's my answer. I hope it's on the mark.

JUSTICE WEAVER: Have you had people complaining about the cross assigning.

JUDGE DAVIS: Never. Not once.

JUSTICE CORRIGAN: When a judge in the demonstration project runs for election, how do you explain the system to the citizenry?

JUDGE DAVIS: The judge goes out and explains what it is the judge is doing and has done. By way of example and to show you how deeply we are involved in cross-assigning, in Crawford County we have a part time probate judge. There is funding for that judge to a full time level of his salary. The probate docket in that county would be insufficient to warrant that. That judge who we now refer to internally as a county judge does the traditional probate work in that county, he does all of the domestic relations work with children because it's keeping the childrens' work before one judge, and he does all the district court work in that county. And in addition, he's available to sign PPO's or any other emergency orders that may be presented at such time as the circuit judge is out of the building. That gives him a full docket; it makes a judge immediately accessible and available to the public when they want one; it does put all of the matters involving children before one judge, up to and including from the earliest days of probate right on through district court jurisdiction. And it has worked extremely well. And he explains that to the public, and we do it on a regular basis as a public relations matter and the public is well satisfied.

JUSTICE WEAVER: Isn't it your experience that the average person voting really doesn't know what a particular judge does. Does the average person really know about the jurisdiction of the circuit court versus the probate court, or know the difference of any of the judges.

JUDGE DAVIS: I think they know the name distinctions. They certainly don't know what exactly we do on a day to day basis. Other than the users of the court. I think people who use probate court have a fairly good knowledge of what it is a probate judge does.

JUSTICE WEAVER: And you are very well aware of the need to have these specializations as someone has talked about, such as a family division, a probate division, the need for probate register, etc.

JUDGE DAVIS: My particular view, especially in the probate field, is that those folks are specialists in that area and I would hate, myself, to go into that area. Now the circuit judges for many, many years did family court work and I think they did very well. All right the Legislature didn't agree and thought there needed to be some other differentiation. But the natural marriage there is for the judge that has been dealing with children and family related issues to work with those cases and that is a probate judge, particularly in these northern Michigan areas. We've done that. It works well for all of us.

JUSTICE WEAVER: So perhaps it is an intellectual illusion that the general public is concerned about cross-assignment because actually they're looking for

the judges to serve them. We need to be concerned that there is the specialization and people are doing work that they're capable of doing, isn't that correct. They do know there is a probate, a circuit and a district court. You've been a trial judge awhile, haven't you.

JUDGE DAVIS: 17 years.

JUSTICE WEAVER: I've been a judge 27 years. I did serve on the trial bench for 12 years and I think Justice Cavanagh, you served on the District Court, didn't you. The rest of us perhaps have not, and have not had the experience of running for public office on a local level to realize what is involved and what the people actually do know. What we do know is they would like good judicial services and isn't that how this all started. Is to improve and get better judicial services. I believe that is why Justice Williams, and we go back to him, started having sessions around the state and those of you who are around long enough remember that he had us meet and try to see how we could improve the judicial services in the state. And as you may recall, many of us were not on the Court at the time, I was when the Legislature wished to do something about changing the court structure for whatever its reasons, and did institute the family division and did reallocate monies throughout the state. That's maybe how we got here and that's how the problems, but the fact is, the public does want to be served effectively, fairly, timely and competently. And that is what you were trying to do and are doing actually in the demonstration courts, is that right.

JUDGE DAVIS: I think we do it in all of the courts. I think some of the flexibility that we've been able to experiment with the demonstration project courts has shown that that's a very good innovative thing to do and that it ought to be available to other courts if they choose to use it.

JUSTICE WEAVER: We have many, many good courts and I've had the privilege of being in most every court in this state at one time or the other over my 27 years or certainly my 15 on the appellate bench, but the demonstration courts were there to try to see if we can do a better job. I think that's how they evolved, and there was a need seemingly, to do a better job. You made mention for improving our technology and you are right we do have that going on. I have had the privilege probably of seeing the editorial support you received out of the Traverse City paper and out of other places for what is going on in your demonstration project, and have not seen anything negative.

JUSTICE MARKMAN: Judge Davis, let me put the question to you directly. Do you believe that judges are fungible. Do you never look at an individual and say this man has the qualities and the strengths of somebody that would be a fine probate

judge but I think this other gentleman would be a stronger circuit judge. Is that never the impression that you draw when you assess judicial caliber.

JUDGE DAVIS: As I said to Justice Taylor, and I think I've said the same thing to you, there is a continuum here. I do not believe that judges are entirely fungible or at least not for purposes of our culture at this time. I think it would take a great deal more public education and a great deal more judicial education if we were to attempt to do that. I think that any competent lawyer who is able to attain the bench probably has the requisite skill to learn an area of the law. But I do believe that as our benches are now constituted people are better disposed, temperamentally and otherwise, in one area than in another and I certainly would feel much more effective doing what I do than if somebody were to try to tell me that next week and from then on I'm going to do probate court work. It would be a learning curve and a loss of efficiency and my mind is not the mind of a probate judge, I guess, after the many years I've spent on the circuit bench.

JUSTICE WEAVER: And that was the purpose of the demonstration courts. It wasn't to prove that judges were fungible, right. Isn't that correct. There is nothing underlying the demonstration courts that they're fungible.

JUDGE DAVIS: The allocation of the workload among our bench, and I suspect among all benches where the cross assignments are used is by common agreement. And the judges play to their strengths. I think that's an answer to your question.

JUSTICE MARKMAN: But in undertaking a reform, I guess this is leading to this question, Judge Davis, in undertaking a reform should our premise not be that the people are making educated decisions when they select this kind of judge or that kind of judge as opposed to the suggestion or the implication that they don't really know what they're getting or who they're getting and that it's a judicial illusion and I think someone suggested. Shouldn't we operate on the premise that people are making informed and intelligent decisions about the judges that they're putting on particular courts.

JUDGE DAVIS: I would never say anything that would suggest that I have less than complete faith in the sagacity of the voters. And I do believe that they know what they're doing.

JUSTICE WEAVER: They know the type of people they're electing.

JUDGE DAVIS: Yes they do. And they know, and the smaller the jurisdiction the more likely the case. They know who they're putting where. But if that judge then has other things to do once the judge is there, that's okay too.

JUSTICE MARKMAN: Let me ask you also, what specifically do you see as the lesson of the demonstration project in your circuit, for example. Is it that (a) local flexibility should be encouraged and may be of positive value in places like the 46th Circuit, or is it (b) that the specific initiatives undertaken in the 46th Circuit should be emulated as broadly as possible.

JUDGE DAVIS: (a) I would say.

JUSTICE MARKMAN: So you're on the side of as much local flexibility as possible.

JUDGE DAVIS: Yes, and then that flexibility will breed success and success will breed innovation.

JUSTICE WEAVER: And assignment makes flexibility possible.

JUSTICE MARKMAN: It does. It's like federalism to the extent that the states are left free to engage in their own innovations presumably those that are most effective will become increasingly emulated and adopted by the other states, or in this case by the other circuits.

JUDGE DAVIS: I think that potential exists. I just know it has worked very well for us and whether somebody else emulates us or not is for them to decide but I'm pleased that we've been able to do what we're doing and I would hate to go backwards.

JUSTICE CORRIGAN: Are there any other questions? We're trying to stick to a time frame. Thank you so much Chief Judge Davis. And now we'll hear from Chief Judge Paul Maloney of the 2nd Circuit from St. Joe.

JUDGE MALONEY: Or as we refer to ourselves now the Berrien County Trial Court. Chief Justice Corrigan good morning, Justices of the Court good morning. The Court's invitation to the executive, legislative and judicial branches of government raise the issue of cross-assignments and of course there has been significant discussion here this morning about that. I think some of the lessons of the demo projects have been iterated already. One size does not fit all. Indeed all demonstration projects organized

their courts differently. All judges need to be pulling in the same direction. Indeed we were asked, invited to become a demonstration project and without the total cooperation of the judiciary, in my case 11 judges in Berrien County, the success that we have had in the demonstration projects would not have been possible. Third you need the support of your Board of Commissioners. As the representatives of the people they need to sign on to the notion that you're going to move towards a demonstration project or in our case a totally merged court. There have been references to identification of problems. I would put the issue differently. I would say how can we do better. And one of the ways that our demonstration project, I think, is illustrated is that the answer for us, and it should not be mandatory, but the answer for us has been a totally merged court into a criminal, civil and family division with all 11 judges pulling together and being cross-assigned to do all our work. We have found that that fully effects the resources of all 11 of us and we get full and effective work from all 11 of our judges equally distributed amongst the various jurisdictions of our court. We believe, as we've submitted in our written remarks that the Court has, under Art. 6, §4, the authority to exercise its superintending control authority to allow cross assignments. The demonstration project chief judges do not believe that that's limited by §23 of Art. 6. But to the extent that the policy making branches of government, being the Legislature and the Executive branch of government ought to be involved here. We would suggest that a statutory amendment is within the authority of the Legislature to grant specific authority to this Court to allow a merger of courts and cross assignments across our elective statuses. We view this as an iterative measure, one that would lock in, from our view, the benefits of the demonstration projects and would allow the debate to go on on the much broader questions concerning the jurisdiction of the circuit and probate courts. With that short remarks I see the yellow light is on already so I'll stop and be happy to entertain any questions.

JUSTICE TAYLOR: Judge Maloney, have you found that with some exceptions that there is an aversion to the family court work by judges.

JUDGE MALONEY: There are some judges who do not want to do family court work and the Supreme Court vests the authority in the chief judge to assign the judges to individual divisions. Our court has been able to accommodate the requests of all the judges in terms of the work that they wanted to do, and frankly plays to the strengths of the 11 judges that we have in our court. I have no desire, speaking personally, to do family work. I have been transferring back and forth between the criminal and civil division of our court. It happens to be our two elected judges want to do the family work and they indeed perform 2/3 of the judicial load in our family division.

JUSTICE TAYLOR: My understanding in some counties is that the junior person to come to the bench goes to the family court and pines for the day when they will

no longer be junior. And when they are no longer junior they depart and the new junior member takes over the family assignments and this seems to be a situation which rather than offering long-term supervision of a family that's in turmoil, is of a much shorter duration. And I'm troubled about that. It's my understanding, and I'm not quite certain of this, that Virginia tried a family court arrangement and found that the judges burned out so quickly that they terminated it. Have you had any sense of that. And I'm not just asking about St. Joe now, but you have a lot of contacts around the state in the demonstration projects. Have you seen this phenomenon.

JUDGE MALONEY: The potential for burnout in particular areas of the court is there. I think that's accurate, Justice Taylor. I do believe, however, you vest the authority of the chief judge of a court to deal with those issues. And if indeed a judge needs a break from that sort of work and needs to move into another assignment, the chief judges under the flexible plan for the operation of a court can do that. We have not experienced that burnout potential yet. It could be that having been a demonstration project for six years, it could be that we might with some of the members of the bench be reaching that, but again, as chief judge I put out the message that we need to start talking about assignments for the next two years, whoever the chief judge is, and not one judge has come to me and asked for relief, if you will, from their particular assignment.

JUSTICE CORRIGAN: Are there any other questions for Chief Judge Maloney this morning.

JUSTICE YOUNG: Your position legally is that Art. 6, §23 has no temporal limitation.

JUDGE MALONEY: We believe that §23 deals with three specific instances where there are vacancies in a judgeship or where for some temporary reason a judge cannot serve being, for example, a medical disability where in a single judge circuit, for example, where there's a medical issue and a judge needs to be assigned on a temporary basis from another county, a retired judge needs to be assigned in order to take those assignments. But we don't view §23 as a limitation on the superintending control authority granted to this Court pursuant to §4 and indeed I think the language of the Huff case, 1958 case which predates the 1963 Constitution and indeed the superintending control provision was revoked by the voters for the '63 Constitution. We believe that provides the broad umbrella of the superintending control authority of this Court to cross assign judges. And I have not identified any case law that would indicate there is a limitation on this Court's exercise of that authority.

JUSTICE CORRIGAN: We understand that the demonstration project chief judges have submitted a brief on this point.

JUDGE MALONEY: Indeed and we apologize, I think we submitted it yesterday, but I believe the Clerk of the Court has received that.

JUSTICE CORRIGAN: That will be distributed to the Justices if it has not already been. Thank you Chief Judge Maloney. I'm now calling on Judge Paul Chamberlain of the 21st Circuit in Mt. Pleasant.

JUDGE CHAMBERLAIN: Chief Justice if there's no objection I'm going to yield my time to the Hon. Tim Conners of Washtenaw County.

JUSTICE CORRIGAN: Certainly. Thank you.

JUDGE CONNERS: Good morning. My name is Timothy Conners. I'm the chief judge of the Washtenaw County Trial Court. My comments to you this morning, I'd like to talk just for a moment and remind ourselves of the context under which we are having this discussion. And I think we begin with some basic questions and they are as follows. First of all who are we. Let us remind ourselves we are all part of the Michigan judiciary. Everyone here in this room. And what is it that we are duty-bound to do. Our constitutional duty could not be clearer. To insure that we have one court of justice in this state. Now the divisions that we are hearing so much about this morning are not intended to defeat that purpose. The divisions of the various courts are to provide a structure to achieve it. Why? I haven't heard a lot of discussion about that. To serve the public. And in my opinion, what is the legitimate public expectation? That the resolution of disputes be heard promptly, efficiently and fairly. From the demonstration projects it is our experience that the best way for us to achieve that is through the flexibility of cross assignment, again keeping in mind that we are there to make sure that the public expectation on any case that is coming before our one court of justice is treated in that manner. Unlike the studies and the critics of the studies about the Washtenaw County experience, along with Judge Wilder who is now the president of our Michigan Judges Association and who sits on the Court of Appeals, I was there and I have lived it. Ten years ago the 14 trial judges from three separate funding units never sat in the same room. We have five separate courts treated like 14 individual fiefdoms. As a civil trial attorney it was not uncommon for my experience to not be able to get a trial in a civil case for sometimes three or four years. The family court was worse. And I would suggest that justice by attrition is justice denied and does not fulfill our obligation. I think it is important to note that we are diverse in geographic background in the demonstration projects all the way from the Upper Peninsula, throughout the state urban to rural. And

yet all of the 7 chief justices are reporting to you that we have success in that flexibility of assignment. I would encourage you to continue to allow us all to fulfill our constitutional duty to achieve that. And I'm here to answer questions and I've raised some questions. I would leave you with a question. Why is it that some people seem to be so threatened by our success?

JUSTICE CORRIGAN: Any questions for Chief Judge Connors.

JUSTICE WEAVER: Yeah, it was asserted that your project has ended. Has it ended.

JUDGE CONNERS: No. The answer is no and I will say I would be happy to debate the merits and the successes of the Washtenaw County experience with any of my colleagues in the Michigan judiciary.

JUSTICE CORRIGAN: Just for the record Chief Judge Connors, how many trial judges are there together in Washtenaw County.

JUDGE CONNERS: There are 14 trial judges with three separate funding units so we represent the largest of the demonstration projects and the most complex because of the multiplicity of funding units.

JUSTICE CORRIGAN: And what's the population of Washtenaw County.

JUDGE CONNERS: About 350,000 and the current projection is that's going to expand greatly in the next 30 years.

JUSTICE WEAVER: Do you judges in Washtenaw County want to go back to 10 years ago?

JUDGE CONNERS: In fairness I would suspect that there are one, maybe two that talk about that. And I also think it's important to note it has not been easy. I don't know anything in life of value that is achieved easily and the fact that we have had to take on some issues and the fact that we've had disagreement do me does not mean that it isn't of value.

JUSTICE KELLY: Do you feel that lawyers in Washtenaw County today who practice family law tend to believe in the majority that there cases are being heard by judges fully competent to hear them?

JUDGE CONNERS: I think there is always a range of debate within the practicing bar about any of us as judges, regardless of where we are assigned. That would be true for

JUSTICE YOUNG: Surely not the Supreme Court.

JUDGE CONNERS: Well I would suggest it might apply to all of us, and in the majority, for my opinion, the family bar is thrilled about the fact that their cases are now being heard, they're being heard timely and they're getting resolution. As to whether or not we can have, you know that's part of the elective process as to every judge, all of us are always subject to criticism of how we judge anything that we do. And should there be another person that is there. But in terms of cases being heard we've made dramatic, dramatic improvement and we have those statistics.

JUSTICE CORRIGAN: I would invite you if you have any additional data to submit it to the Court. Thank you.

JUDGE CONNERS: Thank you.

JUSTICE CORRIGAN: Next we have Chief Judge Leo Bowman, the president of the Michigan District Judges Association.

JUDGE BOWMAN: Good morning, may it please the Court, I'm Judge Leo Bowman, president of the Michigan District Judges Association. At the outset before I deliver my brief comments I would just like to say that I have been sitting quietly and I've listened to a number of the judges that have appeared and I've noted that all of them have been circuit judges. I offer this before I offer my comments and that is simply that I am the messenger for the district judges and as the messenger I would like to return to my colleagues after I deliver my comments.

JUSTICE WEAVER: Judge, I think Judge Harrison and Judge Mack would be identified as probate judges, is that correct.

JUDGE BOWMAN: They are probate judges and my comments do not include those two colleagues. I noted that their comments were in support of what I'm about to share with you. First and foremost I would indicate to the Justices that the District Judges of this state are in support of court reorganization. With that said I would note that the district judges are of the view that one plan does not fit all and I've heard that comment by a number of the circuit judges appearing before you. It is recommended

and the position of the district judges that the demonstration projects that have been in effect for the last number of years should be looked to as examples of what court reorganization could be. Utilizing these models one can develop projects and from those projects allow throughout the state a choice of what in a particular locality court reorganization should look like. District judges are of the opinion that a judge is a judge is a judge. All trial judges it is viewed and believed should be fully cross assigned. Pay should be equal and benefits should be equal. Pay should come from the state. There is a concern among judges of the district court that in the event court reorganization comes to full completion, that election districts should be looked at and considered carefully, particularly as it relates to continued diversity on the bench. I see that the red light is on and I don't want to go over my time, but I would indicate to this bench that the district court judges of this state are available and supportive of court reorganization. With that if there are any questions I would be happy to respond.

JUSTICE CORRIGAN: Thank you for coming this morning and I invite you to make a written submission of what you've told us today as well for our permanent record. Thank you, Judge Bowman. Now I have Judge Richard Garcia of the Ingham Probate Court.

JUDGE GARCIA: Madam Chief Justice, Honorable members of the Court. I am probate judge Richard Garcia. I sit on assignment full time to the Ingham County 30th Judicial Circuit Court Family Division. That took some time. The voters in my area know that in fact what I do is protect kids. I love my job. I can't wait to get to work every morning and I don't view the family division or the job I do as KP duty. I view it as something I would like to do for the next 30 years. Having said all that I am a visiting judge. My judicial assistant is a circuit court employee. All that serve me are circuit employees but I'm a probate judge. I'm reminded of the staffer that was asked why do you give such deference to the chief judge. Well that's obvious the staffer said. The chief judge determines my employment. The chief judge is the one that can fire me. Well what about the other judges, why do you give them deference. Well they too can become chief judges. It makes no sense for someone like me who serves on assignment full time to the family division, an assignment that I relish, to serve as the chief judge of the probate court. I don't do that work. Judge Economy does. Your court rule, MCR 8.110 provides that you're going to look for counsel of the judges of a particular circuit as to who ought to be their chief judge. My counsel will not be sought under the court rule. Judge Rex (?) serves as a chief judge of her circuit court and under MCR 8.110(B)(4) that must be an exceptional circumstance. If we're going to have one court, if we're going to be permanently assigned as a volunteer as an assignment or as a visiting judge to another circuit, we must also have the opportunity to do the heavy lifting. We don't want to be visitors. We want to take up the garbage like everybody else. We want to be a member of

the family. And to be a member of the family we have to be able to decide in fact part of the budget. We have to be able to have staff recognize that we too, it's not just exceptional, we too can serve as chief judges of the circuit court. If you're going to assign us there, give us that authority. The Legislature has given us that authority. This Court has not generally. Now I bring this up generally only to say this. That I believe the system is working very well in Ingham County. I think that the family court is an excellent idea. I believe that it's working very well. I believe the voters in my district understand that I am here to serve kids and they don't need to know much more than that because they know that I'm a judge that serves kids in Ingham County. I think that all the other arguments will be left to those judges that have a lot more seniority than I do. Certainly I'm not one of those junior judges, Justice Taylor, but I must add that the three judges that are on the family division are the three of us that have the least experience. Judge Manderfield, Judge Baird and Judge Garcia are your family court, along with Judge Economy. And all three of us are the newest of the judges. Did it just work out that way? You're going to have to ask those who are a lot older than I am. I would be happy to answer any questions that you may have.

JUSTICE CORRIGAN: Thank you, Judge Garcia, for coming this morning. May I call on Judge Eugene Arthur Moore of the 6th Circuit in Pontiac.

JUDGE MOORE: Justices, I come from a county in which you all know we have a large probate and circuit bench. I happen to be a probate judge. I happen to be the presiding judge of the family division within our circuit even though I'm a probate judge. We have four circuit judges assigned to the family division and we have three probate judges assigned to the family division. I haven't heard any remarks this morning that were not in support of the demonstration projects. I think it's clear that they have been very successful and that those who have participated support them. In addition to that, I haven't heard anyone this morning do anything but praise family divisions. The concept of bringing together delinquency, neglect, abuse with divorce and putting it into a family oriented part of a court. If you were to implement what was suggested by some and that is that there no more be blanket cross assignments, obviously all those demonstration projects would end and in our particular county we would have three probate judges with nothing to do because we would not have authority to handle family division matters which are all in the circuit court. What's the solution. The solution is the same thing that I've advocated for probably now 14 years, and that's a merger at least of the probate and circuit courts. Justice Cavanagh then was Chief Justice. I served on his Michigan Justice Commission, Since then you've had Chief Justice Brickley, Chief Justice Mallett, Chief Justice Weaver and now this bench where Chief Justice Corrigan is looking at the same issues. I remember telling my wife that I was on this Michigan Justice Commission and coming to Lansing at least once a week and that the chairman of it was Chief Justice

Cavanagh and that he came to every one of the meetings and she was dumbfounded to believe that anybody who was a chief justice would actually come to meetings and every one of them, but he did. The issues that we're talking about today are not new issues. They are not issues which need to be considered and reconsidered and reconsidered. They are issues which I hope this Court will look at today, make some decisions and move forward. As I've indicated I believe merger is imperative. The only way we can solve these problems is to let local decisions be made with a merged court where maybe in large counties like Wayne and Oakland you will have divisions; in smaller counties you will not have divisions. It isn't going to be easy. I can remember when we were with Chief Justice Mallett and the Legislature fighting and at least he got his proposal through the Senate. It didn't get past the House. If you decide you want to solve this problem and you want to solve it through merger, then it's going to be a lot of work. And it isn't going to be just work for Chief Justice Corrigan but it's going to be work for all of you. Why am I such an advocate? Because I think the ultimate solution of at least the merger of these two courts will do what the predecessor said and that is improve the justice that we deliver on the trial court level to the citizens of Michigan. I would be glad to answer any questions you have.

JUSTICE KELLY: We have received criticism for continuing to cross assign judges and the suggestion has been made that that could be ultimately an illegal practice if continued long enough. Do you have any comment on that.

JUDGE MOORE: Well my own personal opinion is that it is not an illegal process. Obviously that's a decision you will have to make on this bench. I think that provision in the Constitution which was alluded to a little earlier does not refer to the total assignment across the state but has been very specific about retired judges, etc. However I think that if you decide to continue with cross assignments which I certainly believe is better than eliminating them, you have not solved the problems. The problems will still be there and the next Chief Justice and the next Chief Justice after that person will be still dealing with issues which have been dealt with back to Sophie Williams and back to Mike Cavanagh. And I think that now is the time to deal with these issues and I have suggested what I humbly believe is the solution.

JUSTICE CAVANAGH: And such a merger would necessarily contemplate a constitutional amendment, correct.

JUDGE MOORE: I think it would. And it isn't going to be easy. There are going to be all kinds of people who are going to be opposed to that for political reasons. It has nothing to do with the merits of the proposal. It has to do with what can I get in return for this. But again I think that one of the honors that you have in serving on the Supreme

Court of Michigan is not only to decide cases wisely, but I think this is the third branch of government and you have an obligation as the third branch of government to take the lead in this area and not let the Legislature and not let the Governor make that decision. It has to be a decision motivated by this Court which obviously eventually will have to have the support of the Legislature and the Governor but I think the leadership has come here and I was so delighted when I got your letter because I think you have accepted that leadership.

JUSTICE YOUNG: Can I ask, there are alternative ways perhaps of accomplishing a unification of the domestic family practice. One of them that has been proposed here today is to dump it all into the probate court and that obviates all of the structural and constitutional problems. Have you got a reaction to that proposal.

JUDGE MOORE: Again I think if we do that we are going backwards. We are saying that the problems of children and families are going to be dealt with in a different court than the general trial court.

JUSTICE YOUNG: And why is that a bad thing?

JUDGE MOORE: Well I look back here in the room to be honest with you, I can tell you right now that all the district court judges and all the probate judges when I was president of the Michigan Probate Judges Association it was before the Legislature got wise enough to at least eliminate the salary differences between two of the benches. They still have a \$1,000 salary difference with the district judges, but they were all in favor of total merger, and why were they in favor of merger. Because they wanted to get the same salary as circuit judges. And when you get less money than someone else, you're looked down upon. I still have circuit judges in our particular county who say we have superintending control over the probate court. We are an appellate court and you are just a trial court as a probate judge. And I think the importance of family issues is so important that it must be placed at the highest level of the trial court. And the highest level of the trial court I would say, we should have one trial court which puts all issues including families up there. If we put it back in the probate court it will get second rate recognition as important

JUSTICE YOUNG: From whom?

JUDGE MOORE: From everyone. From our Board of Commissioners, from funding agents, etc.

JUSTICE TAYLOR: Judge Moore, do you have any thoughts about the burnout problem of people serving in the family court.

JUDGE MOORE: Some ten years ago I was president of the National Council of Juvenile Family Court Judges which is an organization of about 6,000 members, most of which were judges who served either in a specialized family court or served on a general trial bench but did family kind of work perhaps in a family division. And I never met one who didn't believe that the family court concept was the most important concept that you have in providing services to children and families. That somehow you had to have a division or you had to have judges who were going to work in that area. It didn't address the issue of burnout, however, and there's no question that if you serve in that for a long period of time there are some judges who say I don't want to do it anymore. On the other hand there are some judges that love it. We've got in this room right back here is my chief judge Joan Young. Joan Young as the chief judge could do anything she wanted in our county as far as assignment of what her responsibilities would be. She is in the family division. Before her was Ed Szosnak who was the chief circuit judge in our county. What did Ed Szosnak pick to do. He picked family work because he loved family work just like she loves it.

JUSTICE TAYLOR: I understand the concept that there are going to be people who like it sir. Is that a widely held position do you think.

JUDGE MOORE: No. I think judges can become burned out as judges but I think some judges like that kind of work and other judges don't. Some judges don't like to hear criminal matters. Some people hate the criminal call when they bring in 20 people on a chain gang and they have to sentence them bang, bang, bang. That's a burnout. So it depends on the individual I think.

JUSTICE YOUNG: Doesn't that argue in favor of putting the family court jurisdiction within the very court for which people self-select to run and be as the probate court. I happen to come from Wayne County. And the description of assignment that Justice Taylor described aptly fits Wayne County. If you are appointed or newly elected to Wayne County you are indentured to the family court until somehow somebody else moves you out or somebody dies and you can escape. However there are those who run for probate court who love and know that area of practice and they want to specialize in it. Now what kind of system should we prefer, a system where people self-consciously select to serve in that area or one in which they are forced to serve in an area in which they may not have an interest or competence.

JUDGE MOORE: Well I certainly concur that we hope to encourage people to serve in areas which they like and which they'll be good because they like it.

But I think it's all a personality issue. It has to do with who the judge is. And some are going to like it and some are not going to like it.

JUSTICE YOUNG: I agree but which system, I mean the probate system at least

JUDGE MOORE: I think we should have a system which is the most flexible and a merged court provides for the most flexibility. I heard from probate judges through the years, circuit judges are totally different than probate judges. Circuit judges sentence criminals to prison. Circuit judges have no empathy with people who come it, they are all about corporations being sued by corporations, etc. And the judges who are the champions of people are probate judges. I used to believe that too. But I can tell you right now the judges on our family division in Oakland County who come from the circuit bench, and as I said there are four of them, are just as understanding and loving in trying to help people as people like me who have a history of being a probate judge. It is the personality and the fact that you've got the name probate after your name doesn't mean you're more caring about children than if you have the name circuit after it.

JUSTICE YOUNG: But the only thing that you've told me that seems to be dispositive of why we shouldn't throw all of this jurisdiction for family and domestic relations in the probate court is a status issue.

JUDGE MOORE: That's only part of it.

JUSTICE YOUNG: Well is there something more significant than the status disparity, perceived or real.

JUDGE MOORE: I think it is too restrictive because I think that when you have some counties which are small and we've talked a lot about fungibility here today. The reality of the situation is if you're in a very small county with one judge you've got to be fungible. You don't have any choices. You've got to know all areas of the law. If you come from a huge county like Oakland or Wayne you have a lot more ability to be fungible because you've got a lot more judges. And to answer the question which was asked earlier about do people know who they're voting for. I don't think people know that they're voting for somebody who is going to handle decedent estates or whether they're going to handle divorce or what have you. What I think people look for when they are electing a judge is somebody who they think is honest and is going to be fair. And that's what they want in their judiciary. Honesty and fairness. And the public doesn't understand, I don't think, the speciality that we have.

JUSTICE WEAVER: Judge Moore, you sent us some material, I think we got it yesterday. Is it my understanding that what you are advocating is not the present Van Regenmorter legislation but the legislation that Justice Mallett went through in 1998 I believe.

JUDGE MOORE: What passed the Senate when Chief Justice Mallett was Chief Justice, it didn't pass the House. It passed the Senate by 2/3, with two additions. One of those additions is to continue a probate register who handles all the documents and handles, gives out a great deal of advice to people who come into the probate court.

JUSTICE WEAVER: But you are not advocating the present Van Regenmorter legislation.

JUDGE MOORE: No. With those two amendments, one is to keep the probate register and the other one is to allow for divisions.

JUSTICE CORRIGAN: All right. Any other questions. Thank you Judge Moore. Mark Sherbow of the Referees Association of Michigan.

MR. SHERBOW: Madam Chief Justice and Justices, thank you for this opportunity. I am much more parochial in my interests today on behalf of my particular organization. You have received tremendous suggestions and advice by this ageist body of judges here and I am not going to approach the statutory or constitutional issues. The ultimate goal as I see it is to give efficient, competent and fair service to not only, and I had written those words even before Justice Weaver was so kind to say them, not only to the public but to those who practice law and to those of us who are part of the judiciary. In doing so you are going to establish some committees to determine not only the legality or the constitutionality of whatever steps you wish to take but how it's going to work. How are we going to do it on a day to day basis. Well I'm offering the services of 260 very competent, very aggressive referees who are more than willing to help and I believe have a lot to offer. We're doing this work every day not for 2 or 4 or 6 years but throughout our careers. And I think when you have your committees that organize whatever structure you're going to establish, whether it's on a statewide basis or on a local basis, that we just have a tremendous amount to offer and I would request that you make use of our services.

JUSTICE WEAVER: Do you have a burnout problem with your referees.

MR. SHERBOW: Not nearly as substantially as the judges I believe, Your Honor. And I don't mean that flippantly. We as a group thoroughly the job we have and

you find the people who gravitate to this issue are the people who practice domestic relations law prior to the time they took these jobs, and find a need just like people who go into social work or other kinds of counseling.

JUSTICE WEAVER: I understand.

JUSTICE CORRIGAN: Thank you Mr. Sherbow for coming today.
Catherine Good, President of the Michigan Association for Family Court Administrators.

MS. GOOD: Good morning Chief Justice Corrigan and Honorable Justices. My name is Catherine Good and I'm a juvenile division administrator for Montcalm County. I'm currently president of the Michigan Association for Family Court Administration and I'm speaking today on behalf of this executive board. That's why I will be reading my remarks. For nearly 30 years our organization was the Michigan Association of Juvenile Court Administrators. As administrators it was a source of great pride that juvenile courts in Michigan had a clear identity and a rich history exemplified by dedication, experience and knowledge. The juvenile court did its utmost to assist and protect those children and families most in need in our communities. With the 1996 creation of the circuit court family division, the juvenile court section had to redefine its place in the judicial system and has been forced to search for its identity. While acknowledging the successes of the courts' demonstration projects that have been produced, there are still many juvenile courts that find themselves orphaned within their own court system. We understand that this Honorable Court is searching for solutions for the next phase of court reorganization and we applaud the Court's leadership. We would, however, point out what any good administrator understands. True success will only be realized after thorough evaluation of not only past successes but also past failures. Our Association members have been on the frontlines of court reorganization since 1996 and our executive board believes our members and make a major and positive contribution to this initiative. On October 11 and 12 our association will be having its fall conference. We do look forward again to speaking with you so that we can offer formal suggestions and recommendations based on our members' input and valuable past experiences. Thank you.

JUSTICE CORRIGAN: Thank you. And we certainly invite you to submit your recommendations and findings from your conference of your group to the Court. We're interested in what you have to say. Thank you. Murray Davis, Executive Director, Dads of Michigan.

MR. DAVIS: Good morning. If it pleases the Court, Murray Davis, founder and executive director of Dads of Michigan. I'd like to first thank this Court, thank the

Chief Justice for the opportunity not only to experience ideas and input from your colleagues, but to invite the general public as well. I would like to indicate to you that we have submitted written responses and unfortunately we aren't bringing it with us. However I would like to suggest to all of you that we have categorized our suggestions down to six what we believe to be finite problems and solutions. I will start off with one comment and one compliment. With the exception of your particular jobs, I can't think of a more tough job than those experienced by the judges in the family division courts of the state of Michigan. It is a very tough job to do and we recognize that but we want to thank each and every one of you for doing it. However, there are some areas that we recommend that you might consider for improving. The first one being the fact that we believe that with the general public that calls us all the time, 50 to 100 calls a day, there is a disconnect between the perception of the general public of what justice is done and how it is delivered to the circuit courts and how it is done actually at the court level. And basically it forms down to the fact, and when it comes to custody matters, when it comes to matters involving children, the general public has the sense that the judges and the courts are to look at them in an equitable basis. This may or may not be the case in most of the cases that we hear about. So we're recommending a number of things that you consider and that is I'm asking the family division courts to please look at the parents on an equitable basis and the fact that those children really do require both of them to be actively engaged in the lives of their children. So we ask you to look at that and we offer some recommendations. The second one is one that has to do primarily with enforcement of parenting time and child support compliance. We're asking the Court to consider looking at that situation so that you enforce that equitably. The third situation we ask has to do with retroactive support orders which put a lot of non-custodial parents in immediate arrearages and cause significant problems down stream. We also have a problem with the perception of not getting equal justice and bias apparently through the non-custodial parents, and by the way that's male and female. We are getting calls from both. So we ask the Court to consider and we're making several recommendations for doing such. And last I would like to suggest that the Court consider removing the Friend of the Court from the jurisdiction of the chief judges and place the management reporting structure up through the Board of County Commissioners. We think that would help provide a much more effective result for the actual parents and the clients, litigants that come before you. The children, for the families, and give a more effective oversight to that particular function. So that is a major reform, I recognize, I realize that it would cause a lot of contemplation perhaps, but we ask you to consider it and

JUSTICE CORRIGAN: We will Mr. Davis.

JUSTICE CAVANAGH: Why do you think the County Board of Commissioners would improve the operation of the Friend of the Court.

MR. DAVIS: We believe that if the Friend of the Court right now would have the reporting management structure through the county commissioners, who by the way are responsible from what we understand for funding of the Friend of the Court operation, we think that would make a much cleaner, much more effective, much more responsive structure to the actual litigants and to the families involved.

JUSTICE CORRIGAN: Thank you Mr. Davis and we welcome your written remarks. James Semerad, Chairman of Dads of Michigan PAC. Is he here? All right, Scott Bassett, State Bar Family Law Section. You're substituting for Mr. Bassett I take it.

MR. BOOKHOLDER: I think it may be noted. I am not Scott Bassett, I am one half of Scott Bassett although I'm his partner. Ronald Bookholder appearing on behalf of the Family Law Section. Scott is speaking at a seminar and had to leave. As I think all the Justices are aware, the Family Law Section was the primary proponent for almost 50 years, not 50 years as the Family Law Section, that came into effect in a committee in '70 and moved on, but for the family court that we currently have. I think that you've heard many justices speak and I've noted that more than half of these people are justices that are speaking today, but we represent the consumers, we represent the lawyers from the Family Law Section. We think that there was a need. We think that the need as implemented by the family court shows that the family court is effective. I would echo Judge Moore and Justice Young, one thing you've asked several different times, why not put it into the probate court. I think there is a need for one court and the reason is because the family law area at least for years and years, divorce has been considered the bastard child of the court system yet the family law area has quite frankly more cases than any other that go through the court system and you don't even really have a true count on all of the post-judgment cases that continue ad nauseam and there is a lack of access except with the family court, at least in our counties, the major areas, we find that there is more access and in response to Justice Markman's and Justice Taylor's points, I think there is a focus on the part of judges that we get the junior judges. Now Judge Moore in our particular circuit and Judge Hallmark who is sitting back there as well happen to be probate judges who are committed to this particular area. They are probate judges who serve as Judge Garcia said, as visitors on a circuit court which is totally, I believe, inappropriate. They shouldn't be visitors. They are very integral parts of our court and very welcome and are very concerned with children. I would just like to throw out a couple of things. I'm very, very concerned, I know the points were raised over here in particular, that people who serve on the court have to have a knowledge in a specialization and a comfort level and a willingness to serve. The way the system works right now is that those who are junior get the assignments. It's worked that way if you're

in the circuit right on through. I believe, and the original proposal there was to be an elected family court bench. I believe that the only way that it's going to happen where people have a willingness to serve, know they are going to serve, is if in fact there is an elected bench that they know they are going to be committed to. I never really thought much about it until I heard a lot about the cross assignments. I do believe, although I'm not inclined to know the statutes as well as the appellate bench is, that cross assignments probably in extraordinary circumstances are going to be necessary to have effectiveness within the court system and to maintain where in extraordinary circumstances there is a need for such cross assignment. But right now we do not have even enough family law judges. I note my time is up. I certainly would be happy to take any questions but I can tell you one thing, that the consumers, they really don't know who the judges are but I'll tell you what they do want to know is that when I get a judge, that that judge is going to address the case, is going to make a fair decision and is not going to duck it. And when somebody gets burned out as what's happening in many instances, or doesn't want to be a part of it as one of the judges said who is a senior judge and his junior judges are assigned, they're just not going to address it appropriately. I like the enthusiasm of Judge Garcia and hope that an elected bench would attract those people and people who in fact run for that bench know that's what they've got.

JUSTICE CORRIGAN: Thank you Mr. Bookholder. We have still four witnesses left. It's 11:30 and I will indicate to the audience we have scheduled another public hearing on October 3 which will cover this subject and I invite you, it will be in Grand Traverse on October 3 so I will invite anyone who is unable to be heard this morning to attend that session and other such public hearings as we schedule. Thank you Mr. Bookholder.

JUSTICE YOUNG: I just want to ask, has the Family Law Section submitted anything in writing.

MR. BOOKHOLDER: You know, I was asked to speak here today. I don't know that they have. I think we can if you would like.

JUSTICE YOUNG: I would like to know their position on these various proposals.

JUSTICE KELLY: I have one too. Do you have an opinion of the effectiveness of the family court from the point of view of practitioners today in Michigan across the state.

MR. BOOKHOLDER: I can't speak across the state because I don't practice, I practice in a major area when the court was originally conceived, this idea, I think initially they were thought that we'd use it in nine jurisdictions, the largest. But I can tell you that from a family law practitioner's standpoint, we know that the judge is obligated to handle only family law matters and therefore we appreciate that fact in our judges and our tri-county area are addressing them. We only have a little trepidation because we keep on getting new judges who have had no experience in our area and its kind of the junior judge concept except for the probate judges who are willingly serving there.

JUSTICE CORRIGAN: I've discussed with my colleagues and they're willing to permit the individuals remaining on the list today to speak to us. I ask you to be as succinct as possible as we have a very tight time frame this morning and this afternoon. Brian Howe of the MS Society.

MR. HOWE: Chief Justice and Justices, good morning. My name is Brian Howe and I want to make a correction here. Since the MS Society has not adopted the position or resolution that we brought about, I'm here this morning to speak as former chairperson of the probate and estate planning them.

JUSTICE CORRIGAN: Are you representing them?

MR. HOWE: I am as the former chairman.

JUSTICE CORRIGAN: Not the MS Society.

MR. HOWE: No. As you know, the Probate Section has taken a position in which we are adamantly opposed to the abolishment of the probate courts. In fact on May 18, 2001 the Probate and Estate Planning Section adopted the following policy which I would like to read. The Probate and Estate Planning Council opposes elimination of the Probate Court based upon our experience to day with court reform and our concern that a separate court, judges and staff, trained and experienced in probate matters, the public and particularly (inaudible) individuals and their families will not receive the service and consideration which they are entitled to and have previously received as citizens of Michigan. The Council also opposes further action that may erode the historical function of the probate court.

JUSTICE CORRIGAN: In delivering that message to us may I just ask you sir, does that mean that your membership opposes what has gone on in our demonstration projects and would eliminate cross assignments.

MR. HOWE: That is correct to some extent. Let me further explain. We have been in favor of the original proposals by the 21st Century to consolidate all three courts. We even supported the family court which was adopted in 1996. We now believe that was a mistake. The family court was originally put together to handle divorce and child, juvenile matters. Heretofore the probate courts had handled guardianships, conservatorships, estates and juvenile matters. We think that all should be under the jurisdiction of probate court. The family court and the Family Law Section has advocated that it is needed to have a family court because 50% of the current marriages end in divorce. We realize that but we also realize that 100% of the current lives, despite some of the immortality opinions of some of our attorneys, end in death, so we're all going to need some type of probate, either through death process, possibly through guardians or estates. As Michigan population continues to age, we see that we will even need a greater need for the probate court. So we believe it should be continued. In our larger counties, and I'll use Wayne as an example, we currently have 89,000 current open probate files. And a good number of these relating to guardianships are handled on a pro per basis. If we take away the probate courts and throw these people in a more combined system we think that the processes that are now handled by many of these people and helped out by the probate court staffs will be eliminated and we're going to be denying the access to justice that we're trying to bring to all these people.

JUSTICE CORRIGAN: All right, your time is up Mr. Howe. Are there any questions?

JUSTICE WEAVER: The Justice asked you if you oppose the assignment of judges. Has your association taken that position.

MR. HOWE: We have taken the position that the assignment of judges has deteriorated the quality of the probate court because the availability has been less in some of the larger counties. We don't believe that a template can be used across the state because of the difference of the size of the counties and we would favor some reorganization, we can see a consolidation of some of the probate courts up north, but in our larger counties we definitely feel that there should be a free standing probate court.

JUSTICE CORRIGAN: So your membership specifically has looked at Berrien County, Washtenaw County, Isabella County, Lake County and said that the functioning of those demonstration projects is poor. You're understanding the question we're asking.

MR. HOWE: We have not specifically looked at these counties.

JUSTICE CORRIGAN: All right. We invite your membership to tell us their experience in those counties that are under the demonstration projects as well.

JUSTICE WEAVER: I would also like you to address the relationship more directly at another time. I understand totally the importance of probate activity. This assignment issue, as to why you oppose assignment, or maybe you really don't oppose it. I'm trying to find out if you took a total position.

MR. HOWE: We have because we think the two courts are two primarily different cultures. The circuit court is more of an adversarial culture. The probate court is more of a facilitating court. When we have circuit court matters we see individuals and corporations that may have never even seen each other before come in and they're involved in a case.

JUSTICE WEAVER: Your prime interest as I gather is to preserve the probate, what is known as culture, in the probate court. And assignment is a secondary issue to that. If it affects the quality of service you would get in probate then you – but the other areas would not be an issue, I take it.

MR. HOWE: That's correct.

JUSTICE YOUNG: It would be useful to have a written position from your council and certainly one that takes into consideration its position on the experience of its members in the demonstration projects.

JUSTICE CORRIGAN: And the question of whether cross assignment should be terminated. We would like explicit responses if possible.

MR. HOWE: We will be happy to provide you that Chief Justice.

JUSTICE CORRIGAN: Thank you for coming today Mr. Howe. Ward Wilson, Michigan Bankers Association.

MR. WILSON: May it please the Court, Ward Wilson, I'm vice president and trust counsel for Comerica Bank. I appear before you today as a representative of the Michigan Bankers Association Trust and Investment Services Division. Our membership includes 42 banks headquartered and doing business in the state of Michigan. We serve as fiduciary in a number of matters, as trustee, personal representative, guardian and conservator. Our members handle over \$118 billion dollars in trust assets. If we have

problems or need to turn to the courts, generally it's the probate court. Our Trust Executive Committee passed a resolution last month in response to Senate Joint Resolution R. We believe that resolution does have bearing on the hearing today. The resolution reads: "The Michigan Bankers Association Trust Executive Committee opposes Joint Resolution R and any other legislation calling for the constitutional amendment to abolish the Michigan probate courts. Our position is based on the effectiveness and uniqueness of the probate courts in providing non-adversarial and timely access to justice and to the administration of estates, trusts and conservatorships for our members and customers."

JUSTICE CORRIGAN: Just so we're clear on this, that means that you also oppose the merger and retention of divisions as well. You think that's a bad idea? Mergers of probate and circuit but still the retention of a probate division. Does your organization oppose that as well.

MR. WILSON: That specifically hasn't been addressed. Your Honor, we have been approached numerous times over the last couple of years by different individuals from the Legislature and Senate asking our ideas in terms of court reorganization. Each time we have asked those individuals to tell us what's the problem, what are we looking for. We can't find a solution for a problem that's not there. We have yet to have any individual come back and tell us what the problem is.

JUSTICE CAVANAGH: Is there a problem in your organization's view with the current operation of family court.

MR. WILSON: Your Honor, we're not taking a position on that.

JUSTICE CORRIGAN: Are you familiar with the demonstration unified courts project that has been under operation in Michigan for the past several years.

MR. WILSON: Justice I have no personal knowledge. I know some of the other attorneys and trust counsel have had experiences with that.

JUSTICE CORRIGAN: Have they had bad experiences in the counties where there are demonstration projects.

MR. WILSON: Personally no, I cannot speak for the other counsel.

JUSTICE CORRIGAN: Would you ask your membership to report on our demonstration project counties and then so advise us.

JUSTICE WEAVER: Can they also tell us if they had good experiences as well as bad experiences.

MR. WILSON: I will ask for their comments.

JUSTICE YOUNG: Can I ask, is your organization opposed to the abolition of the probate court because it fears that the estate functions that the probate court has been providing will not be attended to in a merged court or is there something else.

MR. WILSON: Our viewpoint really echoes that which Mr. Howe brought up. That most of our matters before the court are not adversarial and the probate culture and the probate courts allow for effective administration and therefore we would like to see her exist.

JUSTICE WEAVER: Isn't your concern because we also have unsupervised probate and it's very important in the state to have probate registers that really know that law and to have that—you're familiar of course with the probate courts and we do have unsupervised probate passed by the Legislature in the last, I guess, 20 years. So all the more important to have someone who is particularly familiar with the probate courts, the Code, and able to make sure that those "unsupervised probates" also get some supervision because that is what is provided for in the Code, isn't it.

MR. WILSON: Justice, we would like to see that speciality remain not only for just the unsupervised estates but also the unsupervised trusts as well as the services that are provided sometimes by our members as customers in the guardian and conservatorship matters.

JUSTICE WEAVER: That is your deep and sincere concern.

MR. WILSON: Correct. It's easier for our organization members as well as their customers to proceed if they know they're going to one location, getting consistent and good information.

JUSTICE WEAVER: So it's important to have a probate court or a probate division or the probate register guaranteed constitutionally.

MR. WILSON: We would like to see a probate court remain.

JUSTICE WEAVER: Which is as guaranteed right now constitutionally.

MR. WILSON: If it pleases the Court, we have a copy of our resolution we would like to serve the Court with.

JUSTICE CORRIGAN: You're welcome to submit it to our clerk. Thank you. Steve Nowicki.

MR. NOWICKI: Hello and thank you for allowing me to speak at this hearing today. My name is Steve Nowicki and I'm representing myself. I'm just an average citizen and father. The majority of people who have spoken here today are representatives or employees that are directly impacted with the daily operations of the court and I just was hoping to present some testimony here to share some possible enlightenment on what it feels like when you go through the family court system and offer some suggestions to you folks to perhaps enhance or improve your programs because I'm seriously concerned with kids and their well being and fathers and families and it's really difficult if you get your life torn apart.

JUSTICE CORRIGAN: Tell us what you've experienced, Mr. Nowicki, that you'd like the Court to know.

MR. NOWICKI: Well I'm submitting a written report with 15 recommendations with it and I have some personal problems but I don't want to belabor on that. I'd rather focus on making some recommendations that I think are concrete and usable within a framework, whatever court system you set up. But they're very fundamental. On the receiving end of the service I can tell you quite frankly, you look in the courtrooms and you look in these peoples' eyes and they're petrified to be there. It's an adversarial system. People are going bankrupt trying to just have their rights enforced and if you dare to challenge the system they beat you down to a point where they're trying to punish you. And it's unfortunate but the children, my son, I haven't seen him in five years and it's not due to any fault of my own. It's the system that won't allow me to see my son and I'm the plaintiff in the case. Unfortunately the children don't get a chance to speak and if somebody is representing him it's usually an attorney and he's looking out for the client interest, but when you're dealing with an adverse spouse in a divorce situation who is unwilling to negotiate on anything, there is no way for you to claim back your parental rights as a non-custodial father in this system. I'm just telling you that factually. And I would encourage you wholeheartedly to try to adopt a joint custody recommendation that empowers more parents to be equally involved with their children for everybody's sake. If you were to do that, you might cut down on the volume of cases, the cost of operating the courts. If you could get people to sit down at a table and mediate

the issues you could actually have most of the matters settled without bringing in the attorneys. But the forum is not currently in place for families to actually go through it and everybody is wrestling with these new programs. I know from personal experience, I just would like to say I've heard some good things happening in Washtenaw and Wayne County and the people that are in administration there are doing a good job to change a very difficult system. And we would encourage them to continue to do it but ideally I think if you had a joint custody provision and you took out the kind of judicial discretion and unless somebody is found to be unfit, why is a father who is living with a child one day be taken out of his home and then you see your kid like 3 or 4 times a month if you're lucky.

JUSTICE CORRIGAN: Mr. Nowicki, sir, your time is up. We appreciate receiving your written submissions and wish you good luck sir. Paul Newton.

MR. NEWTON: This gentleman here is the one that was absent earlier. I'm just going to give him my time. I'll just make a few comments.

JUSTICE CORRIGAN: Are you going to cede your time or are you going to make comments.

MR. NEWTON: You want to take my time Jim?

MR. SEMERAD: Good morning, thank you very much. I feel honored and privileged to be present before you. My name is James Semerad and I'm representing Dads of Michigan PAC. However I also have a wide variety of experiences as an IT consultant. Travel globally. I am a naval commander, work at a defense logistics agency in Washington D.C. and I am active with the naval recruiting district, Coast Guard recruiting district, etc. My experience is with regards to the family court and it has become a passion not only because of my situation but because of the people that work for me in the Navy. And one example, at Selfridge 40% of my naval reserve unit was not allowed to see their children due to no fault of their own. They were just basically going through the process and basically eliminated from their childrens' lives. We have inserted a couple more weapons in the arsenal of divorce in terms of PPO's, some of the legislation in domestic violence, and those are used judiciously as weapons in the family court. I seem to find that as was discussed earlier here, many of the judges assigned to the family court are new, new to the bench. My personal observation which is really collected from opinions of many others is that they are not appropriately trained in some of the law. For example, if they were simply to learn and embrace MCLA 722.26 it would make for provisionings to allow both parents to have equal involvement in their lives. However as it turns out today, I think many of you have personal experiences. One parent usually

becomes victor in the divorce process. So that's my point. With Dads of Michigan we are dedicated, we are passionate about educating not only you with our customer feedback in a constructive manner, but also to help educate and train the people that must go before the court because we know that they are not prepared for that process. Thank you very much.

JUSTICE CORRIGAN: Thank you Mr. Newton (sic). That's the last scheduled speaker for this morning. The Court thanks everyone who has journeyed to Lansing today to participate in this public hearing. The matter of court reorganization remains under advisement with the Court. We invite anyone who chooses to appear again on October 3 and also to make comments. The files of this Court in this matter are public, open to the public, and you are certainly invited to make comments on the written submissions of others as they are coming in. So you're invited to review the file. Thank you very much. This Court stands adjourned.