

MICHIGAN SUPREME COURT

PUBLIC HEARING HELD OCTOBER 3, 2001

JUSTICE CAVANAGH: Good afternoon and welcome to this public hearing. I'm pinch hitting for Chief Justice Corrigan. She was called back to Lansing to participate in the dedication of Constitutional Hall celebrating the signing of the 1963 Constitution. We have a number of administrative matters on today's agenda. Justice Corrigan of course will want to go over numerous times the videotape of this public hearing and will have access to the transcript. But what I thought I would do, because we have very few who are here on most of the administrative matters and most of the speakers and attention is going to be focused on court reorganization, I thought I would run through the other items first to move them out of the way and see if we have any comments on those.

Item 2 - Proposed Amendment of Rule 10382 of the Michigan Rules of Evidence

So the first in that order would be Item 2. Proposed Amendment of Rule 10382 of the Michigan Rules of Evidence involving an offer of proof. Comment period expired September 1st of this year. This matter hasn't been on our agenda of a previous public hearing. State Bar Board of Commissioners voted to support the proposed amendment. And I'm not sure, I don't think we have anybody to speak on this matter. Is there anybody here who wishes to be heard? Okay, we'll consider that.

Item 3 - Proposed New Rule 1.110 of the Michigan Court Rules

Whether to adopt a new rule to require the payment of fines, fees or costs at sentencing consistent with the Michigan Trial Court Collections Manual. Comment period expired September 1st and this matter has not been on a previous public hearing agenda. We have received some written comments and I don't know, is anybody here to speak on that matter today

JUDGE MORRIS: Good afternoon, I'm Judge Patricia Morris. I'm a part of the demo project in the 46th Circuit and we adopted this process a couple of years ago and have had great success with it. I was actually quite surprised that the media picked up some negativity on this because when we began requesting or demanding that defendants, and by demand I mean telling them it was due at sentencing, it was not clear to the bench how that would work out. And in fact increased our collections appreciably and reduced the work of the staff in collecting those fines and costs. What happens in the real world is simply it is due at the time of sentencing and if there is a difficulty with that, the defendant who has some difficulty will work the specifics out with the probation office.

But the expectation is that it is due and it turns out that because the Bar has been notified and they prepare their clients for that, the collections are just much easier and there are lots of administrative reasons to do that. There is a perception that people go to jail if they don't pay on that day. That is clearly not what is happening. If there is a problem the judges have been requesting of the defendant the date that they expect that they will be able to pay and then that's the due date. But like any of us, if you had an interest free loan you might not pay that loan off immediately, you may take time, and that's what had been happening in our courts. So I would urge that that be the norm rather than the exception. It has worked very well in district court and in circuit court and I think that rule ought to be adopted.

JUSTICE CAVANAGH: I assume if need be you provide for or allow installment payments.

JUDGE MORRIS: Sure. If good cause is shown or if community service happens to be what this defendant, if he has no ability to pay, we do allow community service but we make the expectation that it is paid as soon as that payer has the ability.

JUSTICE CAVANAGH: Okay, thank you Judge Morris. Anybody have any questions? Thank you. Anybody else on item 3.

Item 4 - Proposed Amendment of Subrule 7.213(C) of the Michigan Court Rules.

Whether to provide with certain exceptions, that the priority of cases on the session calendar of the Court of Appeals be based on the initial filing date instead of the date of the clerk's notice to the parties. The proposal would also add "cases that the court orders expedited" to those given precedence. Comment period expired August 1st. Is there anybody to speak on that matter? Yes, Judge Powers.

JUDGE POWERS: Thank you, members of the Supreme Court. I wanted to address this question because I think of forcing the trial of cases based on calendar age is a mistake. As I'm sure you realize in trial courts, you look out six months and there are five trials stacked on top of each other and there will be a couple of criminal trials stacked on top of that as you get closer, and we rely on settlements, dismissals, all sorts of reasons to get it down to one. If there are in fact two left, however, to require us to try the oldest one first is not necessarily a good idea. If you have a complicated six-day trial, product liability, medical malpractice, whatever it might be, with out of town attorneys, experts from all over the country or certainly all over the state, you adjourn a six-day trial to another spot, it is going to be difficult to find a six-day slot which works for the court's calendar, which is going to work for busy trial lawyers' calendars, which is going to work for these experts who testify all over the country, and it becomes a six-month or year delay, whereas a one or two-day civil case with local parties and local attorneys, even

though it's two months older, I can drop that in a month or two months from now when the opportunity appears and make it work. That gets the docket moving faster. I would point out and recommend to you there is statistical information that would help you in your role in managing the whole court system and that is in the civil context a report that the clerks file quarterly which tells you among many other pieces of information how many cases in that county are two years old. You can find out which courts consistently have a lot of 2-year old cases and using that you can identify the courts that need some assistance with docket management, have the SCAO go in and assist them with their docket management system, and it is not necessary to impose a rigid and I think poor policy rule on the courts as to what cases get tried first.

JUSTICE CAVANAGH: Well the focus of this proposal, as I understand it Judge Powers, is directed to Court of Appeals cases.

JUDGE POWERS: No kidding.

JUSTICE YOUNG: Expedition of priority cases in the Court of Appeals docket.

JUDGE POWERS: Well, I can't comment on that, but I would have one more thing to say though. The docket management, you have an excellent set of docket management statistics from that report, from the reports that we file monthly as to criminal cases that are more than six months old that have not reached sentencing yet, and that can tell you which courts are having trouble with their docket management and that's where I think some assistance from the SCAO would help them. And I guess I would urge that and as for the Court of Appeals I'll have no comment.

JUSTICE CAVANAGH: Thank you. Is there anybody else on Item 4?

Item 5 - Proposed Amendment 7.213(A) of the Michigan Court Rules

Whether this subrule should be modified to allow the Court of Appeals to require that client representatives with full settlement authority appear for pre-argument conferences. The proposal would also substitute the word "mediator" for the word "moderator" throughout the rule. Comment period expired August 1st. This is the first time it has been on a public hearing agenda. The Court has received only one letter on this matter. It was written to the State Bar by the Appellate Practice Section. The Bar itself voted not to take a position on this. Is there anybody here who is interested in speaking to this proposal.

MR. BORDON: Maurice Bordon. I'm here on behalf of the Appellate

Practice Section which in general supports the proposed amendment and the proposed change to the court rule with one exception. And that is the word "full" in front of settlement authority. We have put the objection and the support in a letter but I would like to reiterate the reasons for opposition to the word or inclusion of the word "full". There are two reasons. One is what is the meaning of "full". Does that mean absolute settlement authority. Unfettered, unlimited settlement authority or something less. In my practice, and I've seen this with lots of corporate clients and other clients which are not individuals, there may not be one person with full settlement authority or ultimate settlement authority. I think we cited in the letter, with municipal corporations, for instance, it may take a city council vote as to whether or not a particular settlement should be entered into, so there may not be in all cases a single person with full settlement authority that could attend the pre-argument settlement conference. And I guess the bigger reason is the undue burden it would place on corporate parties, both plaintiff and defendant, in requiring the person with the ultimate or the

JUSTICE TAYLOR: You want the rule to read as it does in the other areas, right?

MR. BORDON: Yes, similar to what we have in the trial court with Rule 2.401(F) which does not contain the word "full" and I think that achieves the goal intended here and that is to facilitate settlement. And I think we can do that without requiring the person with full settlement authority to be present. Thank you.

JUSTICE CAVANAGH: Thank you Mr. Bordon. Anybody else care to address this issue? Okay, submitted.

Item 1 - Court Reorganization.

JUSTICE CAVANAGH: Let me call upon the Honorable Kathleen McCarthy from the 3rd Circuit in Detroit. Judge McCarthy, is she here? Maybe she's one of the ones I told this started at 1:30. I was thinking of saying 2:30 but. Judge Susan Vandercook.

JUDGE VANDERCOOK: Thank you. I would first like to thank the Supreme Court for allowing this time at the end of our conference. It is difficult for me with my docket to often come to the other public hearings, so I appreciate the opportunity. I am a probate judge. I am assigned to the Family Division of the Circuit Court in Jackson County. And I would say that family division in Jackson County is a qualified success. I think that it's qualified because at this point in time we don't have enough judges assigned to the family division. And that is by choice of Judge Schmucker who is the Chief Circuit Judge and myself, as the chief and only probate judge because we did have three judges assigned and the one circuit judge assigned was very unhappy, the bar was unhappy, and

we chose to go and make a shift in our family division plan and move the divorces without children and the PPO's without children to the other judges who handle the civil and criminal matters, and Judge Schmucker and myself do the other parts of the family division. And we feel, and it's basically agreed on that we probably have more on our dockets than the other judges but we are agreeable to doing that in the short term. We had hoped for some relief since we have a circuit judge who is retiring because of age limits and we have made it known that it is our intent to have the new judge who takes office in 2003 to be assigned to the family division. Unfortunately the people that are lining up for that job aren't family division attorneys. They are attorneys with name recognition who probably have a good chance of being elected, and that is unfortunately keeping people who might be family attorneys away from the race. It's going to be a race undoubtedly with a primary and a lot of expense. So we're at the point where we're looking at whether we're going to get relief from that. And the point I want to make, and I see this, I was on the trial court assessment commission with Justice Weaver and we saw that when we were looking at our weighted case loads, and a lot of counties weren't assigning the right number of judges to the family division, and I think for the same reason that we have. And I believe that in order to make family division work, which I think it should, I think family division is a good concept, and I think the bar in proposing it envisioned that there would be judges dedicated to the family bench. And I think in order to make it work in those counties where there are at least one full-time equivalent family judge needed, that there should be designated positions for that number of family division judges that are elected or appointed to those positions so that we can have people that indeed want to be family court judges. I do. I've been one for 13 years, I intend to be one for five more years. And there are attorneys out there that want the same thing, and I think in order to make it a viable part of a unified trial court or a consolidated trial court, there needs to be that designation on the ballot or when the appointments are made, that that is a family division slot. I don't think people get burned out. I haven't. Don Owens didn't. John Stedecky didn't, and I don't think that's an excuse for not making these designated positions. That's my comment.

JUSTICE CAVANAGH: Thank you Judge. Anybody have any questions of Judge Vandercook? Thank you.

JUDGE COOPER: Honorable Justices, thank you for giving us the opportunity to speak to this issue. I'm here on behalf of the Michigan District Judges Association and we have been discussing this over a lengthy period of time and most recently with a number of our members and they've asked me to echo what we did at the beginning of our conference when we all took an oath that we would fulfill our responsibilities, the oath of a judge. And we did not individually take oaths to be a circuit or probate or district, Court of Appeals or Supreme Court Justice. We all took an oath together at the beginning of this conference and that is consistent with the idea of one court of justice as enshrined in the Constitution. The position of the Michigan District

Judges Association has long been that we have all been elected by our citizens to be judges. Our obligation is to all the citizens of our communities across the entire state to fulfill our responsibilities as judges. We support the research which has already been presented to you with regard to the cross-assignment of judges. That is the kind of flexibility that is absolutely necessary if we are to provide a good judicial product for our citizens. To do otherwise, and to keep us all in little boxes returns our system back to the 17th Century where you have one judge sitting there without enough to do and another judge totally overloaded and no way of moving either the work or the judges around to fulfill the responsibilities that we have to our citizens. We are asking for this Court to take the leadership and Justice Young spoke to us about leadership and he said that we must not default to the Legislature, and that is exactly what we have been asking. But we want you to recognize that we have 83 different counties.

JUSTICE YOUNG: Excuse me. That's not quite what I said. It's one of the positions that could happen without the exercise of leadership.

JUDGE COOPER: Okay. And another simply is that there is no leadership and we just kind of meander along forever. The alternatives to taking leadership are not particularly pretty. What we have been suggesting is that from the perspective of Lansing, whether it's the Legislature or the Executive or the Supreme Court, often they look for one rule that can fit everything because it really looks a lot prettier. But we have 83 different counties and with the flexibility that you could give each of the counties to deal with their own problems, their own resources, and then back those up, we really could have a success. A few years back there was a judicial summit set up by the Michigan Supreme Court and this had district, circuit and probate judges, trial judges from all across the state locked in a hotel for 3 days in order to come up with something that would work. And for the first half day fingers were pointed in every direction, that everybody was saying they worked harder and the other people didn't. It took about half the day to get rid of that, and after that we started focusing on what was in the best interest of the citizens of our state. And you have, and your staff can get to you the final report of that and what it suggested was that every county be ordered by the Supreme Court to set up a local judicial council, to examine what's going on in their county, figure out what their problems are, figure out what their resources are, figure out a plan for dealing with that and get started dealing with it. And then after a period of time they would be ordered to review that and see well last year's problem was complicated civil cases or it was divorces with children or it was domestic violence or drugs or whatever it might be and this year we have a different problem. And with the backup of the Supreme Court enforcing the orders of the chief judge of that community, forcing the judges who may not be as excited as others to get along with one another, to work together, it can work and that is what we are suggesting. I have a detailed report from the Berrien trial court judges as their excitement over how their unified trial court is working with is exactly that kind of judicial council. You're hearing from Wyandotte

JUSTICE TAYLOR: Judge Cooper, is it your view that there is no need for any legislation or constitutional change to do this?

JUDGE COOPER: In the research you got, there were some suggestions for some minor tweaking that may clarify things, but I don't even think the clarification is necessary. I think we have been embodied by the Constitution and the laws and our voters with having been selected as judges to take care of things. I've handled circuit court criminal dockets for weeks. I'm assigned, under your order a lot of circuit court civil matters.

JUSTICE TAYLOR: But is there a difference between a systematic reassignment and an episodic reassignment?

JUDGE COOPER: Yes. It cannot be a permanent reassignment and I think that has been suggested. And what I think that means is not that it can't be a temporary one, but that it must be reviewed periodically and that's what this judicial council would be doing also. The judicial council would review this periodically and say okay, the assignments the way they are going now worked when our problem was jail overcrowding, but now we have a different problem and it's domestic violence or drunk drivers or who knows what, and how let's deal with that one. And it would not then be a permanent assignment which I would agree would not be consistent with law. Two judges from Kalamazoo who grabbed me as I was coming in here, they were planning to speak to you but they had an emergency back in their court, but they wanted me to bring to your attention that the Kalamazoo County judges, circuit, probate and district, want to work together. They consider themselves one court of justice and they feel that they cannot do that because they don't have the computer system and they don't have the money to set up one that would help them work together. They commented that Justice Young was at the tech conference this year in Baltimore where they were all so impressed with Windows based environments and as we delay getting into these things, and they're hearing things about Lansing is considering the possibility of some kind of upgrades along the way, every day that we delay some court somewhere in the state latches onto yet a different program because they've got to institute something. And we again need the leadership and we're going to need the monies. They commented that the libraries are not happen with the Constitution giving them monies tied to our fines and costs because it is not consistent for them. Well if they're going to want a change in how they get their money, maybe it can free up some other money where we can get a system for the whole state, but on behalf of the District Judges--oh, there is one thing I would be killed if I left out and that is, as you do these things, please remember the tacit agreement, if not the comments that have been made about electoral districts and eliminating judgeships and throwing people out of work. That it is the position of the Michigan District Judges Association that attrition is the way we should deal with that and if you are going to be changing service

districts under state law, that you not necessarily also leap to changing electoral districts. That there be some consideration in there for the electoral districts that got the judges to give up their practices and their client base and take on their responsibility as judges. I'm sorry that I overstepped, but thank you all.

JUSTICE CAVANAGH: That's fine. Thank you Judge Cooper. Does anybody have any questions of Judge Cooper. I was advised that Judge John Hammond has a plane to catch, so Judge Hammond.

JUDGE HAMMOND: Thank you. I don't have a plane to catch, I just want to get out of here. I don't want to overstate the facts. May it please the Court, my name is Judge Hammond. I'm a circuit judge in Berrien County. I understand the Court is interested in seeing a consensus if one can be attained, from the judges. I suggest to you that judges in circuit, district and probate, I certainly can speak for circuit, have struggled enormously to try and achieve that. And I know how you can get a consensus just instantly. Decide something. Because as soon as you do more than half of all the judges in the state will say "that's exactly what I wanted you to say" whatever it is. That's how you will get a consensus. Nobody wants to be wrong or on the wrong side of the powers that be and I'm sure you understand that. I suggest to you that the last solution is our present problem. What is the question, first of all, you need to know what the question is before saying an answer, and what are the pre-conditions. Are we to follow the law as set forth in our Constitution even if it is inconvenient? Or is expediency to reign supreme *uber alles*? Are our masters in chancery prohibited in name or in substance? May non-elected judges be cross-assigned to other benches? Clearly they can be cross-assigned to the same level bench, there has never been a question of that. I submit the last solution is our present problem because the matrimonial lawyers and family lawyers pushed for a family court in seven counties. In other words, they could get a divorce to trial in 76 counties. The Legislature gave us a statewide family division with no elected judges who sought that office and got elected to that office. There are two approaches that would work. One, go back to circuit, district and probate courts, with the addition, and possibly I suppose there could be some reduction, of the number of judges of certain counties, districts and circuits to meet the needs of the people and jumpstart any lazy and/or incompetent judges or removing them. Two, the other alternative, if we are to have a family division, because the experimental court judges may well be right in saying it can't work with unlimited cross-assignments of even non-elected judges that is essential to those experiments, bite the bullet, face the issue and do what is right. Stop constitutionally questionable at best unlimited cross-assignment even for non-elected judges, press for a constitutional amendment to merge probate court into circuit court, or as a refinement of that grandfather all probate judges into the family division of circuit court, together with enough circuit judges to meet the needs, hopefully on a voluntary basis and if that doesn't work, work by attrition. Remember we got into this mess because family court lawyers couldn't get cases heard and they felt there was not enough attention being paid to family

court cases. Okay, I'm willing to assume they were right in certain counties. We don't need to reverse that process. On the contrary it's a helpful process but we do need to see to it that we don't at the same time, shortchange civil or criminal. All are important. They say nothing is really terribly important unless it involves you but if you're the client it is important. As a further refinement we could move non-children or DO divorces to the general division of circuit. They don't seem to be the big problem. Retain probate court like the court of claims without judges, and provide the family division circuit judges are ex officio judges of probate when assigned there by the chief judge. Allow liberal transfer between the family division and circuit court division by the chief judge not necessitating the Supreme Court or other state court administrators doing that, and recommend in the strongest terms addition of needed judicial manpower, and I say manpower in the sense of mankind, no gender specifics. If we have lazy or incompetent judges, and there are always some who suggest that, educate, inspire, motivate or remove, but don't be satisfied with the status quo. Thank you for allowing me to speak.

JUSTICE CAVANAGH: Thank you Judge. Judge Kurt Hansen.

JUDGE HANSEN: May it please the Court, I'm Kurt Hansen from Clare and Gladwin Counties circuit judge. The last time we had a public meeting I was asked a question concerning the constitutionality of the assignment of judges on a cross-assignment basis and I had indicated that I hadn't really reached any conclusions. I have in part at this point in time and that's the focus of what I want to speak to you about. And it has to do with the demonstration project itself. Some of the things that demonstration projects do can be done within our existing Constitution and can be done within our statutory scheme within our courts. Some of the things that they are doing clearly cannot be done and that's why we have this proposal out there for a change in the Constitution to create a unified court. I would to say to you that to use the assignment power to have a demonstration project that is not provided for by the Constitution is simply wrong and we simply should not be doing it. If you called Judge Hammond's court down there in Berrien County they would answer it and they would say this is the Berrien County Trial Court. That's not provided for by the Constitution. If you call down there they won't call themselves circuit judges or probate judges or district judges, they'll call themselves trial court judges. There is nothing like that under the laws of this state. And we should not be in a situation whereby we are assigning people to these illegal projects. If you looked at this in terms of the Legislature, and if the Legislature got together and they said, you know we went out to Nebraska and we kind of like this unicameral system out here in Nebraska so we're going to experiment for four years with that and so we'll continue to elect senators and representatives but we aren't going to have it that way, we'll combine the senate and the house of representatives for four years and we'll run it that way, and we won't call it the senate and the house of representatives, we'll call it the unicameral system, and we won't call people senators or house of representatives people, we'll call them unis for that period of time, clearly the Legislature could never do

anything like that. Clearly they could not. And I think clearly we should not be doing that in terms of these demonstration projects. It's okay to continue them in terms of those situations where it is provided for by law, but if it is not, we should not be involved in that. The second thing I wanted to talk to you is how the demonstration projects results are being reported. I can tell you that we live in surrounding areas of these projects and when we talk to the lawyers they talk about the bad things within the system. Some of the judges privately will talk about the bad things involved. Some of the staff members privately will talk about the bad things in terms of these demonstration projects, but they will not speak out publicly about that for fear of the fact that there are going to be reprisals against them. And so I would suggest to you in terms of evaluating these projects that one of the things that you do is you provide for a situation where people can respond honestly so they won't be in that particular cloak of a situation. I would entertain any questions.

JUSTICE CAVANAGH: Thank you Judge Hansen. Anybody have any questions?

JUSTICE MARKMAN: Yes, Judge Hansen, to the extent that people are being deterred from sharing with us their honest assessment of the effectiveness of the demonstration projects, obviously this Court cannot be effective as it ought to be in terms of assessing the demonstration projects and trying to determine what constitutes appropriate reform. And I'm not asking you to name names but I mean what is the evidence for the fact that there are people who are discouraging participants in the process from sharing information about the effectiveness of the programs.

JUDGE HANSEN: It's not a direct threat or anything else of that nature but essentially what happens is the judges put in their project, they're all for it or they all like it, if you will, or certain people do within it, and so then if you were to speak out against it, you're putting yourself in a situation if you're an attorney, to contradict something that the judges within your circuit want to have done.

JUSTICE YOUNG: You've suggested that even judges are fearful of speaking out and pointing out the defects in whatever the demonstration projects are.

JUDGE HANSEN: I believe that's true, yes, from private conversations.

JUSTICE YOUNG: Your experience is different from mine. I certainly haven't found many judges willing to bite their tongues at least in talking to me. Perhaps there are some out there who are more mild mannered than the ones I come in contact with. Do you honestly have any evidence that judges are fearful of speaking out about problems in the demonstration projects for fear of reprisal?

JUDGE HANSEN: Do I have any evidence of that? Yes.

JUSTICE YOUNG: Okay, well I think you need to encourage your colleagues to speak out. Because I frankly don't believe, I want to suggest to you that people who do not speak out bear the adverse consequence of failing to do so.

JUDGE HANSEN: And I agree with you 100%. Thank you.

JUSTICE CAVANAGH: Professor Hill was scheduled on the agenda.

JUDGE SWALLOW: He was unable to be here today. You have copies of his report, Justice. (inaudible)

JUSTICE CAVANAGH: Thanks. Why don't I call on you next, Judge Swallow.

JUSTICE YOUNG: Here's a person who doesn't seem to have a problem about speaking out.

JUDGE SWALLOW: I don't think the northern judges--I don't think a certain number of us have ever had any problems but we let criticism run off our backs. Members of the Court, let me first of all appropriately address you as the august body which in fact you are and the institution which I very highly respect. And I hope you have equal respect for the trial bench. I filed my report last time and you have it and for the sake of brevity I'm going to not go into that again. I would just like to do one thing though. And I don't mean to correct a district judge who said he took an oath and didn't reference any particular court

JUSTICE YOUNG: Yeah, today at the conference, not in general.

JUDGE SWALLOW: No, no, the gentleman who just testified a short while ago.

JUSTICE YOUNG: Yes, we all took it together at the beginning of the conference. That's what he was referring to. Not the one he took when he assumed office.

JUDGE SWALLOW: Okay, the constitutional oath

JUSTICE TAYLOR: You must have missed the Chief Justice's speech.

JUDGE SWALLOW: Well most things are reported to me including your remarks. Paybacks are tough too.

JUSTICE KELLY: You'll want to hear the tape recording numerous times.

JUDGE SWALLOW: I love it, I love it. But just for a moment let me be serious about that constitutional oath. We've all taken it, I've taken it as a soldier and I'm sure many of you have as well. And it says I will support the Constitution of the United States of America, the Constitution of the sovereign State of Michigan and faithfully perform to the best of my ability. In my case it was the duties of a circuit judge. In your case it was a Justice of the Supreme Court. And probate judges swear to perform the duties of a probate and district court swears to perform the duties of a district judge. Members of the Supreme Court, I've listened to the last hearing. I'm hearing remarks today. I think this argument of advancement of court reorganization must be advanced and can be advanced by here deciding the question of cross-assignment of judges. Once you do that then we can move on. But until that is done, we are in sort of limbo. And I think as our oaths say and require us to, we must first direct our consideration and our duties to the Constitution that we have all sworn to uphold. I think your duty is clear. Thank you very much.

JUSTICE TAYLOR: Judge Swallow, would it be your view that this Court then should enter an order that says that as of some day--you know give a date certain--that unless the Legislature changes or the Constitution is changed, whatever it might happen to be to make all these things be in accord, that all demonstrations and such would end.

JUDGE SWALLOW: I think, Justice, that's the office you've been elected to, not me. Unless you want me to exercise my powers

JUSTICE TAYLOR: No I'm just asking you, that would be the natural import of what you have said, isn't it.

JUDGE SWALLOW: Well, I've read the Constitution and I don't know whether

JUSTICE YOUNG: Do you have a view of what the Constitution requires this Court to do?

JUDGE SWALLOW: Is that before the Court today, sir.

JUSTICE YOUNG: You ask lawyers to counsel you. I'm

JUDGE SWALLOW: Well I think you've got Article 23 which, I think if you read the history of it, it's not meant for the ongoing cross-assignment of judges. It's to fill vacancies. And I suppose I could hypothesize

JUSTICE TAYLOR: I'm not trying to catch you up, I think that what you're saying, that's why I want to be sure I understand it, I think what you're saying is that you would favor us ending all of the actions which are, as you would perceive it, unauthorized, at the soonest possible time.

JUSTICE YOUNG: Cross-assignments.

JUDGE SWALLOW: I'm saying, sir, in all due respect, that we have both taken an oath to uphold the Constitution of the State of Michigan. When it comes before me, if it does come before me I will rule. I think it's before you. These are your demonstration projects. As a Court you have authorized them. If you think it's constitutional--I'm not trying to evade your question. Do you want me to say whether I think it's constitutional.

JUSTICE YOUNG: Yeah, how about that. What is your opinion?

JUDGE SWALLOW: My opinion it's unconstitutional. Others, however, have opinions that it is constitutional. I've read the briefs of the demonstration project judges. I don't agree with them but they filed a brief.

JUSTICE TAYLOR: You would then think that, as you perceive it, that we should not be engaged in acts which are unauthorized and should end at a given date the various activities, cross-assignments, demonstration projects, whatever, that you feel aren't in compliance with the statutes and Constitution of the state.

JUDGE SWALLOW: As a circuit judge I feel that if there's a matter that's before me that I should rule on that's unconstitutional I should do my duty. I think the matter is before you sir, you should do your duty. Thank you very much.

JUSTICE CAVANAGH: Thank you. Judge Robert Kaczmarek.

JUDGE KACZMAREK: Thank you, Your Honors. I'm here I guess to give the flip side of Judge Ernst, I'm sure you remember his (inaudible) presentation, and I think the strength, whatever road we go down here, the strength of the judiciary is the quality of the people we have holding these offices and I think in order to guaranty this, I think the people who apply for appointments or run should know exactly what they are

getting into. There is a common thread between the district, circuit and probate, and that is having integrity, knowledge of the Rules of Evidence, how to conduct a hearing, but the subject matter greatly differs. And to ask somebody to assume one of these positions, to go out of whatever sector they're in into something that they are either admittedly unqualified to do or something they're not interested, as you yourselves, all six of you are making a financial sacrifice, put yourself up to abuse from the media, other people, you must believe in what you're doing here. And I'm sure Justice Taylor wouldn't want to be in Berrien County trying a slip and fall or Justice Young in someplace like Ontonogan doing a snowmobile case.

JUSTICE YOUNG: I like Ontonogan.

JUDGE KACZMAREK: Maybe you would. But you're here because you like this part of the law. And I think there is a serious breach between what probate judges and circuit judges do. I don't think you can cross over to some of these areas. Quite frankly, I have as big an ego as anybody in this room but I would be incompetent handling an estate and I'd rather probably go to a Turkish prison than listen to a neglect and abuse case, but under this system it could happen. And I don't mean to be facetious but I think in order to guarantee the quality of the people we have, I think they have to know what they're getting into when they apply. I don't think that any solution, whether it's a constitutional amendment, whatever it is, it should be clearly stated here is what your job is going to be and then they can put themselves up for it. In your case the abuse that goes with it, but in other cases, the type of case they're going to have to hear.

JUSTICE KELLY: Well couldn't we handle that problem by invoking some sort of transition period whereby those now on the bench would not be asked to do things they couldn't and didn't want to do, and then in the future as people are elected

JUDGE KACZMAREK: Absolutely. I don't think that's an unreasonable solution but I think what can happen here is either you get stuck doing something that you either are, and if you're doing it just because you're there, you've got a kid in school, it's a 9-5 job, you get a good pension, you're not going to do the job very well. You can put in the time but if you're there just to occupy the time and collect a salary, it is not what we want in the judiciary.

JUSTICE MARKMAN: Judge Kaczmarek, I would guess that your principle that judges should know what they're getting into before they get into it also has some relevance in terms of the people being entitled to know what they're getting into when they're getting into it.

JUDGE KACZMAREK: That was Judge Ernst's position I believe, that

(inaudible). You can say that this is a great unwashed mass out there that really doesn't know what they're voting for and therefore at least if somebody is running for probate judge they know there are neglect and abuse issues, there is juvenile delinquency. That's a campaign issue that could be brought forth, their knowledge of that subject.

JUSTICE MARKMAN: Well how would you respond to the suggestion that as far as the average person on the street goes in terms of casting his vote, judges are a relatively fungible institution.

JUDGE KACZMAREK: Well I can only tell them that, if a citizen asked you that I'd say well the (inaudible) 49ers are a great team, but would they have been as good if Jerry Rice was the quarterback and Joe Montana was the wide receiver and Randy Cross was a running back and somebody such as Tom Rathman was the center. I don't think so. I think we have to give the electorate credit for the brains they're born with. Maybe only a small percentage actually study the issues but at least for that percentage, I mean, you're in the same boat. You had to get elected and it's no fun proposition. But at least you knew what the issue was, what kinds of issues you would be addressing. The public presumably knows what issues you're addressing. I think, even though it may be a fiction, we have to presume the public understands there are differences in the courts.

JUSTICE MARKMAN: But you truly don't believe that it's a fiction either, do you?

JUDGE KACZMAREK: No, I think the difference between circuit and district I think is a little thinner line, but probate there are some definite things. If I'm a bank attorney you would not have an idiot like me handling the wills and estates division. It would be bad news. I suppose I could improve your appellate process but it might not improve the ease at which the case would go through. And people in those areas would understand you know, this guy has worked in this area for some time, maybe we'll support him.

JUSTICE WEAVER: Isn't that maybe why you should have a probate division and a probate register guaranteed in the Constitution right now?

JUDGE KACZMAREK: Justice, I think we had a probate division. And quite frankly if we continue on as we have, I don't think Michigan will fall into the abyss of the new dark age. Western civilization as we know it will go on.

JUSTICE WEAVER: So you don't think (inaudible) has to be done, is that it?

JUDGE KACZMAREK: I think it can be done within the framework and local control is the issue. If you've got people that are interested in what they are doing it will help. But if you've got people who are just being put there because they are not in favor with the chief judge or some other person that makes the calls and they're an unhappy camper, I can't imagine that they're going to do as good a job as if they were there for what they thought they were doing.

JUSTICE MARKMAN: Isn't it true, Judge Kaczmarek, that Judge Swallow really has put his finger on the point that cross-assignment, the constitutionality of cross-assignment is the critical issue here because if it is determined that such permanent cross-assignments, if you were, are constitutional, then it can be presumed that the people are aware of that fact when they go to the polls.

JUDGE KACZMAREK: I think probably you've hit a nerve there but I'm thinking whatever program that eventually, we want to keep and maintain a high level of people that occupy these judicial positions. And if it's just simply you get a job and here it is 9-5 and pretty good pension and a nice salary, people that may be interested, you folks know what you're getting into. If you just thought you were going to do administrative work like conduct these hearings and never get to make a real decision on substantive law, would you take the job. Maybe, maybe no.

JUSTICE TAYLOR: I attempted to ask Judge Swallow this, but (inaudible) successfully but how do we get from where we are now to where you want us to go?

JUDGE KACZMAREK: Well one think that I think Justice Kelly hit on was that if it is clearly delineated, there are people out there that probably could listen to divorces every day for 20 years and come home happy and not beat their wife or kick the dog or whatever, but most of us, you know about 20% of the time you've probably had enough of domestic relations, you probably want a little variety in your life or something. But if it is clearly delineated, I don't think that anybody has got any complaints.

JUSTICE TAYLOR: Would that be by statute, then that you would clearly delineate?

JUDGE KACZMAREK: We would probably have to have a constitutional amendment, I would think. Ohio, I think, has a "family court" or whatever it is.

JUSTICE TAYLOR: But would it be fair to understand that your position is that our current policy is unauthorized by law or Constitution and would you then be in favor of us terminating it at some point and then placing pressure on the Legislature to do

something about it?

JUDGE KACZMAREK: Well that would be one way to bring it to a head, but if you get local agreement on these things, it's all fine and good.

JUSTICE TAYLOR: But you need a statute to do that.

JUDGE KACZMAREK: Well I think we could do it without a statute to a certain extent. There is some flexibility.

JUSTICE TAYLOR: Okay, but I think everybody on this Court is trying to figure out what the logical conclusion of the arguments that are being made is.

JUDGE KACZMAREK: I'm just speaking for myself and I think people should know what they're getting into when they apply for or run for judge.

JUSTICE MARKMAN: But I'm confused by your position though. You say if there is local agreement we can work things out. But if this in fact is a constitutional problem, how can local agreement adequately deal with it?

JUDGE KACZMAREK: The constitutional argument, the river won't meeting the road until some probate judge gets assigned to do divorces they don't want to do and they'll file a lawsuit. Until then, if we're in agreement we can sort of

JUSTICE YOUNG: Ignore the Constitution.

JUDGE KACZMAREK: Well it's been done, I think.

JUSTICE YOUNG: Interesting proposition.

JUSTICE TAYLOR: But you're not really recommending that the Constitution should be ignored are you?

JUDGE KACZMAREK: I'm not recommending it but if that's a half-way course to keep the services to the people out there and not disrupt--anything that would, I think we all agree on this point that we have to have quality people doing these jobs no matter what system we run and it doesn't, I mean the Lions prove you put in a west coast offense you don't get points. The system is the personnel.

JUSTICE TAYLOR: So you don't think Jerry Rice would have been a good quarterback.

JUDGE KACZMAREK: He might have been a good quarterback but I don't know about Joe as a wide receiver.

JUSTICE TAYLOR: He's only have to catch one pass though and he would have been out.

JUSTICE CAVANAGH: Okay, thank you judge. Judge Martlew.

JUDGE MARTLEW: Good afternoon. For those of you who don't know me, I'm Jeff Martlew, Chief Judge of the 29th Circuit Court for Clinton and Gratiot counties. I would also like to address the issue of court reorganization and to give the Justices a little background I'd like you to know that I speak as one who has nearly 17 years of trial court experience, 8 years as a district judge, nearly 9 years as a circuit judge. And because I have been the chief judge in our circuit for the past 7 years, I have also been actively been involved in our family court plan. It is my recommendation to the Supreme Court that you drop the idea of trial court consolidation and look to a goal of court reorganization within the framework of our existing 3-trial court system. I say that for several reasons. First of all, I can tell you that having been a district judge I know that that is a high volume repetitive type of court where the cases that you deal with usually are not that complicated. They can be handled quickly but it takes a special type of judge who is willing to sit there and push cases all day long to keep up with the sheer number of cases that the district court has to handle. Any court, no matter how you design the system is going to have to deal with felony cases and the more complex civil cases that the circuit court handles right now, and I think the circuit court is the best place to have those cases. One of the problems for those of us that work in out state courts where there are not enough judges to have a criminal division, a civil division, a family division, is that we handle all of it. And even after 17 years as a trial judge and 25 plus years as a lawyer, I find myself still constantly confronted with civil cases where the issues are new to me, the issues are often complex, and because I spend the bulk of my time dealing with criminal and domestic cases, that's what we spend most of our time with in the circuit court, I often go into those civil cases feeling unprepared, uninformed and that I have to shoot from the hip. Also I think our citizens would be better served if the family division was moved from the circuit courts to the probate courts. I think it is important, and I want to stress the importance of recognizing those family issues as important to our society. And I think they deserve the attention of a constitutional court by judges who are predisposed to deal with those types of cases. I agree with the probate judge that spoke earlier on the issue that those are cases of vital importance to us and we need to have judges that are willing to specialize in that type of work. If you have those judges running for probate court seats rather than circuit court seats waiting to find out where they're going to be assigned, you are increasing the odds that you get judges that really want to do that important type of work.

JUSTICE KELLY: Are you suggesting there be a separate court called the family court or a division of the probate court called the family court?

JUDGE MARTLEW: It would be my suggestion that it would be a division of the probate court. It is my impression, and I don't mean this to be disrespectful of my probate court colleagues in any way, but it is my impression, at least personal experience is, that the probate judge doesn't have to spend a whole lot of time dealing with wills, estates, mental competency hearings, that type of things. Historically the time he's spent most of his things doing in both of our counties was juvenile, abuse, neglect, and delinquency cases and that's what they're still doing in addition to the domestic cases they've picked up. So I think in the smaller out county areas, you just put that all in the probate court and let the probate court handle it. In the larger areas you'd have enough judges for separate divisions.

JUSTICE YOUNG: You're suggesting we put divorces in the family division of the probate court?

JUDGE MARTLEW: That's correct. That can be done by an act of the Legislature rather than a constitutional amendment. I further recognize that in the long term this would mean that there's going to be an increase in the number of probate judges, a decrease in the number of circuit judges, and speaking now as a former district judge, I'm not sure that's such a bad idea.

JUSTICE KELLY: How do we handle the surplus of circuit judges in the interim?

JUDGE MARTLEW: Through attrition and transition. Justice, I am not making these remarks in an effort to duck family court cases. I do those now. I think it's an important part of my job. I'm perfectly willing to continue doing them and if the Supreme Court has the wisdom to follow my recommendation I may be doing it as a probate judge rather than a circuit judge. But I believe that would allow circuit judges to have the time to become more knowledgeable in the complex civil cases they have to handle. It would get probate judges, or judges handling family court cases that are really interested in handling family court cases. It's going to justify I think, based on case load, the idea that there is going to be a trial judge (inaudible) probate judge in every county of the state and it would, in my opinion, best serve our citizens by delivering fair, efficient and informed justice. I would be happy to answer any other questions.

JUSTICE CAVANAGH: Any other questions? Thank you Judge Martlew. Judge Archie Brown.

JUDGE BROWN: Good afternoon Justices. I am here with a specific purpose, essentially to answer some of the questions you had for our chief judge, Tim Connors. Again, I'm Archie Brown. I'm the presiding judge of the family division of the Washtenaw County Trial Court. Specifically there were a couple of questions and I wanted to address those, as well as some general matters. You don't have it in front of you, although I did provide it. There is a handout for you which will give you some of the statistics in more detail than I'm about to give you, both with regard to the reorganization of our juvenile division and with regard to the reorganization and full implementation of the family division itself. In answer to a question I know Justice Young has had, currently we have five judges assigned to the family division, two probate, three circuit. Of those five, four of them--of the 14 judges in Washtenaw County, four of them are of the six most senior judges in the entire county. We have had over the last four years or so during the demonstration project gone through a couple of iterations with regard to who is assigned or the number of judges are assigned, initially starting with one probate and one circuit judge, then essentially dividing one circuit judge to create two circuit judges half-time in the family division, to essentially give more docket control, better coverage, those kinds of things. And what I would like to report to you is that in the area of the domestic, and if we go back to, and what the charts will show you, starting in May of 1997 through the most recent which would have been about 3 weeks ago, those reports will indicate to you that during that period of time there has been a continual decrease in the number of cases both domestic with and without children that exceed the state guidelines, the 9-month and/or 8-month rule as well as the 12-month rule, which we directly attribute to the current assignment. And perhaps more to the point is specifically with regard to the actual number of total pending cases, that during that time period in the case of domestic with children, that the number of pending cases has gone down by fully a third and with regard to cases without children by a quarter. What that's telling us and I think what the users of the system understand is that cases are getting certain trial dates, they're getting to trial or they are resolving. And they are resolving themselves within the state guidelines. Turning now to the issue of the juvenile division. We noted that there were a number of problems. That was essentially the last part of the division, if you will, of the court that we were going to fully implement. It is something that we've wanted to do for some time. Judge Connors really took that on as an initiative at the beginning of the year. Part of it was driven by some budget issues and the child care fund which we don't need to go into here, and as a result, through a lot of work there was essentially a redesign of that, utilizing both the referee model, making sure that the referees in juvenile were doing more of the work, trying to fully integrate the juvenile court from a single judge into multiple judges that would be paired up and presumably be doing both domestic cases as well as juvenile cases, and as of March 1st we began to implement those changes. And what I'm going to do is report to you in just a minute exactly what has happened to date. Essentially with the utilization of technology, getting orders processed more quickly, utilizing and working with the users, both public defender, the prosecutor's

office, the bar, staff and the like, full coordination so that from the period of March 1st of this year through September 24 the number of delinquency cases that are over 210 days have gone from 150 to 11; the number of unauthorized delinquency cases over 210 days have gone from 171 to 5; the number of neglect and abuse cases that were authorized over 210 days have gone from 93 to 3; and the number of unauthorized neglect and abuse cases over 210 days have gone from 57 to 0. Now in addition to that, what the charts will also show you is that the total case load in the juvenile court was in excess of 1,500 cases, the most recent numbers show there are 925 active cases. We have continued to expect that would level off. It still has not. It still is continuing to go down every couple of weeks when we run the report, so we're not exactly sure where the normal case load level is. But specifically with regard to what we're doing in the Washtenaw County demonstration project I firmly believe, and I think it's borne out by all the information that we have, that all judges are cross-assigned to do anything. They are continually utilized to do anything. And on a Monday morning when we're picking criminal trials, it doesn't matter who it is, if it's a juvenile judge or a district judge, if they have time to hear the case, and we have a courtroom--we have a big facilities issue--they will hear the case. So that this, if you look at all of our case statistics, across the board civil cases, criminal cases as well as family cases, certainly the implementation of the demonstration project with this cross-assignment has made significant improvement in our system. So I would be happy to entertain any questions.

JUSTICE CAVANAGH: Any questions for Judge Brown? Thank you Judge Brown. Is Maury Klein from the State Bar General Practice Section here?

MR. KLEIN: Thank you Justices, for hearing us. I would like to focus my comments on my experiences which, in terms of the probate court, Wayne and Oakland. They have an established infrastructure in Oakland with regard to their counter personnel and Wayne with regard to their analysts. It is a different philosophy that is found in terms of the adversary proceeding that takes place in other courts. The purpose is to process the estates, to guide people. I find that sitting on the benches in Wayne or standing in line at Oakland, that there are a lot of people with small estates who would not be able otherwise to afford an attorney, who are able to take advantage of the court system and to straighten out their legal matters themselves. If these cohesive units are split up I think the public would be disserved. I think that general practitioners who are trying to aid smaller matters would be disserved. I think there would be no benefit--I think it would be a detriment to the public interest and in terms of certainly those two units we would oppose integrating probate court, breaking up the probate court and merely making it a part of the circuit or a unified court. We simply do not believe that in terms of that unit, that area of practice, that a unified bench would be a service. The other changes have taken place with regard to probate. The institution of adoption of EPIC. That is creating a number of changes that have to be absorbed. We do not believe that judges are fungible. There is a set of experiences that have been gained by working within the context of the current probate

courts and we do not believe that causing the infrastructure to have to deal with a large number of judges is going to create any benefit to the public. Lastly, this is an issue which I don't think has been brought up. I think we're going to have to face that what has happened in terms of the attack upon America is going to be taxing our judicial resources to protect the Constitution and this is not the time for a change. I think we have to be aware of what is going to be coming. There are going to be civil rights issues. There are going to be discrimination issues, there are going to be criminal issues and this is certainly not the time for a change.

JUSTICE WEAVER: Mr. Klein, in your experience, could you comment on what importance you feel the probate register has, if any, as an important office?

MR. KLEIN: I think the probate register in terms of providing the infrastructure is vitally important. I believe that although slow, that it serves its purpose.

JUSTICE WEAVER: It is true that those people who maybe can't afford an attorney find it extremely helpful to have someone who is a register that knows the law and is watching over the unsupervised probate as well as the supervised probate, is that correct?

MR. KLEIN: Yes. It provides guidance not only to people without attorneys but to attorneys as well in many circumstances.

JUSTICE WEAVER: So you would view it as important and to be protected, is that correct?

MR. KLEIN: Yes, there certainly are going to be technological and funding and other changes that should be made, but within the context of keeping the probate court together.

JUSTICE CAVANAGH: Any other questions? Thank you for your time. Judge Paul Chamberlain.

JUDGE CHAMBERLAIN: Thank you for the opportunity to address the Court today. I'm speaking on behalf of the chief judges of the pilot projects and the plan we put forth. I think you were introduced to the plan, hopefully you've had the opportunity to read the plan as we submitted it to you before your last public hearing and I'm willing to field any questions you may have about the details of that plan but first off I want to stress that we firmly believe that this process should be incremental and voluntary. It may take awhile for us to get reorganization unified throughout the state, which I assume is a goal that you all have, but that's an easier process than having

something forced on from above and having to deal with all the dissension that there will be, whether it be forced on by the Supreme Court, by the Legislature and Governor, however it be forced on, we're going to have a period of adjustment and we're going to have a period of adjustment taking it slowly and voluntarily. But we think that is the rational approach for the morale of the judiciary and for the service to the public. I think there is a consensus emerging here that we've heard some what I feel are minority dissenting positions today. The consensus as I understand it, the evidence of the consensus, I should say, as I understand the Michigan District Judges Association voted the other day to support the plan put forth by the chief judges of the pilot projects. The Probate Judges Association has offered it as an acceptable alternative to their concurrent jurisdiction plan. The National Center for State Courts, in a report I hope you all have seen, that's their 2001 follow-up assessment report released in September supports the demonstration projects plan, or the chief judges of those projects plan, in spirit if not in letter of the report. You can find that in their recommendation #3 on page 10 of the executive summary. And I would ask you to take a close look at that NCSC recommendation. The Michigan Judges Association is going to act in November and I'm optimistic, maybe cautiously but optimistic that we're going to have the judges unified in this state on a plan and that is the plan that the chief judges of the demonstration projects have put forth. Now I want to address some of the issues that came up last time that are probably on the minds of each of you Justices as you contemplate these issues. The first being last time the question was often asked what's the problem. In other words, if it's not broke don't fix it. I've submitted to you, hopefully you've received it, I turned it in yesterday and highlighted it so you wouldn't have to read the entire strategic plan, but I've submitted to you the May 1995 Isabella County Trial Court Strategic Plan. That was a community based effort. We had a wide section, and I highlighted for you to look at the membership of the community. All aspects of the community that we could possibly have represented, and the problems that we face in Isabella County are those that are faced by all of us statewide. Maybe different variants but the same problems, and those are the changing demands, changes in society that put additional demands, changing demands on the courts, and how we're going to react to those and how do we best react to it. The strategic plan that we did predated your Court doing strategic planning, predated the pilot projects, and guess what the community in Isabella County came up with. Basically the demonstration projects model. That's what our community, that's what my constituents told me they wanted. We were moving in that direction before the pilot projects were ever proposed. We got interested and wanted to be a pilot project because it was going to jump start us by about 3 years. But we were moving down that road because the community said they wanted it and we recognized we needed it to meet the demands placed on us by the stake holders and the users of the Court.

JUSTICE CAVANAGH: You're a step ahead of the trap door Judge.

JUDGE CHAMBERLAIN: Well, we're going to give up one of the three

slots we had for the demo project so if you'll bear with me momentarily, I'll make the last part quick and hopefully painless. The other is the issue of judges serving on benches where they are not elected. In Isabella County I think by the time we go through the election process that in that race, and we have a different race every two years, they're well aware of the bench and who is running for that bench. When the community comes in for a problem or an issue and they want judicial services, they don't care what judge handles it. What they want and what they told us through strategic planning and what we hear today is they want timely, understandable and fair forums. Other than academic discussions, I have never heard a complaint from anybody in Isabella County or outside Isabella County that some judge they didn't elect to the bench heard their case. Not one complaint. What they have said in Isabella County is we get in now and get heard and we like it. So those points being made, I would like to say an additional thing and that is, on the constitutional issue MJA has three memorandums of law I shared with you folks, or we shared with you folks, our memorandum last time, and there are a couple of others maybe you haven't seen, but independently judges across this state have come to the conclusion that there is not a constitutional impediment to cross-assigning. If you look at the converse side of that, I mean that's hard to swallow maybe in a democracy where we elect people, but where in the Constitution does it tell the voters that they have the right to have the judge sit on their case that they voted for in that court. Quite the contrary, the Constitution says you can elect judges to these positions and then the Supreme Court, through its assignment powers and superintending control, can move them around where they see fit. And three memorandums to that effect are out there and I hope you have the opportunity of seeing those. MJA has them.

JUSTICE CAVANAGH: Thank you judge. Are there any questions of Judge Chamberlain? Is Judge Very Massey Jones here. She was on the schedule. John Scott.

MR. SCOTT: Good afternoon, Your Honors. Thank you for giving me the opportunity to address you. My name is John A. Scott. I am the current chair of the Probate and Estate Planning Section of the State Bar. I practice here in Traverse City in private practice. I have for your perusal copies of several letters which have been addressed to members of the state bar Michigan and they deal with the question that I would like to address myself to and that is the issue of the possible merger of the probate court into or with the circuit court. I realize that you are talking about a number of other issues here today as well but my remarks are confined to that. And from those letters I think you will see a consistent position that this section and its counsel has taken over the last few years when it has been asked to reflect upon them. We believe that the probate court performs a unique and valuable function which cannot be provided by the circuit court or some other court. To be sure there are adversarial proceedings in the probate court and in fact some of the most vicious and bitter contests that exist between peoples exist over the terms of a will. The main work, however, of the probate court is

non-adversarial in nature. These are proceedings which were characterized in my law school days as *in rem* proceedings. Proceedings involving the probating of estates, the interpretation and construction of trusts and wills and all of the nuances that are involved in those issues. The appointment of guardians and conservators and the reviewing of their accountings and other acts or proposed acts in these matters. Probate courts with staffs with long traditions and training, are used to extensive and rigorous examinations and reviews of file documents when necessary. The making of administrative determinations with regards to testacy and other matters. And we seriously doubt that the ability to routinely make such determinations will continue in a staff that is as burdened as it is in the circuit court, much less one that has been combined between a circuit court and a probate court. In all these matters before probate courts interested persons often come before the court unrepresented. They are not necessarily opposed or adversarial to the petitioner or the moving party. They are not litigants in the sense that you find in circuit court. They want to see what is happening. They may have questions. They have confidence that the probate court is looking out for their interests. This is as it has been and this is as it should be. And probate staffs have long functioned with priorities which make the court approachable by persons that are unrepresented in which the court deals with a responsible attorney that is involved in the case and makes sure that that responsible attorney sees to it that those persons' rights are at least observed if not protected. To be sure, there are signs in every probate court at the desk that says the probate staff does not dispense legal advice, and yet despite that, all probate court staffs have found ways to be user friendly to those persons, and I might add, on occasion to the bar that makes mistakes and needs correcting as well. It is often the case as well that probate courts dealing with emergencies involving health and care of individuals that are *in extremis* and are incapacitated. Decisions must be made immediately. Routinely our probate courts deal with these matters on an accelerated priority basis. Where "accelerate priority" means an emergency hearing and an order entered that day, not three weeks hence when a 15-minute slot can be found in a calendar. Our concerns are largely that the circuit court is a place for adversarial proceedings. The demands placed on its systems drive it the way it functions. Its court staff have an entirely different culture from that of the probate court. Not wrong, just different. And in our view not appropriate for the handling of probate matters. We believe that the probate court culture will inevitably get short shrift in a merged court. The public, the supposed beneficiary of all this, will not be served at all. I'm reminded of the chairman of a corporation that my father worked for who said when he was approached with a merger proposition that there is no such thing as merger. There is only one organization taking over another. For the merged organization, there is just submersion. Thank you very much.

JUSTICE CAVANAGH: Harold Schutmaker.

Speaker: He wasn't able to make it. His letter is with the (inaudible) that I presented to Your Honor.

JUSTICE CAVANAGH: Very good. We've got one last scheduled speaker. Autumn Rivest.

MS. RIVEST: I'm not an attorney but I'm here on behalf of Unity for Parents, and an organization called National Alliance for Family Court Justice. I have encountered many people who have had similar experiences to mine in the family court and I would like to share some of those with you today. Since September 11 we have heard an awful lot about terrorism and psychological and financial warfare. This describes my own experience and the experience of others in the family court. I have endured numerous tactics of financial and emotional warfare by continuous stonewalling and refusing requests to have child support and alimony to be set per Michigan guidelines. The very court that I turned to for protection from a severe physical beating from my husband deliberately protected his reputation and disregarded my injuries and the welfare of two minor children. My husband had informed me that *his* judge would never set the child support per Michigan guidelines and would not take any action regarding the domestic violence case. I didn't believe him because as a law abiding citizen I had put faith in our justice system and in the officers of the court. As I witnessed my husband's predictions coming to life, I became very concerned that one or more court officers had accepted my husband's offer to up to half of the marital assets or how ever much they could screw me out of was the way he put it. By stonewalling me into financial and emotional distress it was assumed that I would reconcile and return to an abusive marriage or accept a meager settlement to prevent bankruptcy. This is not justice. This is the manipulation of one party's circumstances to achieve a predictable outcome for the party willing to pay a large sum of money. After investigating my own case, I discovered that a false document had been filed to deliberately delete the domestic case from the divorce file. Soon after this action, I was presented and signed an order which was then removed from the file and altered. When I confronted my attorney regarding this alteration, she denied it and told me I was crazy and threatened me that if I repeated this allegation I would not only lose everything in the divorce but also custody of my children because I would then be considered mentally unstable. I was then presented with another order for my signature by opposing counsel and my own attorney. They stated that there were some errors in this order and had me sign two more. When I received the true copy in the mail, it was not at all the order which I had signed. My signature had been illegally obtained and again I was told I was crazy, that was the order I had signed. After two years of continuous stonewalling, I was then ordered to mediation by a mediator personally selected by the judge. I have since discovered this is a violation of court rules. It took four months for a mediation to take place, and just prior to this mediation date, my case was dismissed, to be reopened for entry of judgment or anyways, per the mediator's decision. Just another scam I endured in this family court. I was then told by my attorney that indeed the court did try to enter a binding mediation without my knowledge and of course reading the mediation.

JUSTICE CAVANAGH: You want to summarize, Ms. Rivest, you're allotted time is up.

MS. RIVEST: Well anyway, this continues. There is not a stockbroker involved. I was literally threatened into a settlement which was not really a fair settlement, was not half, and the money is in a stock brokerage firm and the stockbroker has conspired with this court to refuse to let me withdraw my money. And I will be taking that up somewhere else.

JUSTICE CAVANAGH: Thank you. We have some others individuals names that were submitted and they were crossed off and I was under the assumption that they had withdrawn their requests, but let me double check. Judge Kurt Wilder.

JUDGE WILDER: Thank you Your Honor. The MJA has not yet taken its position and will be speaking to you after argument.

JUSTICE CAVANAGH: Okay, thank you. How about Judge Tom Davis?

JUDGE DAVIS: Yes, sir, I did intend to yield my time.

JUSTICE CAVANAGH: Okay, that concludes this hearing. I want to thank you all for your participation, your comments. The Court will continue to consider these matters and I think our next public hearing is due to be held in Lansing the first part of December, I think. The 13th of December. Thank you all.