

2008 Annual Illinois Judicial Conference
Thursday, October 23, 2008
9:00 a.m.
Hilton Suites Chicago Magnificent Mile Hotel
Chicago, Illinois
Honorable Thomas R. Fitzgerald, Chief Justice

Good morning, and welcome to the 55th Annual Meeting of the Illinois Judicial Conference. On behalf of my colleagues on the Illinois Supreme Court, I would like to thank you all for attending, and for your tireless work this past year. I understand how busy a judge's schedule can be, and, on behalf of my colleagues, I am grateful for your efforts.

Let me introduce my colleagues. First, I would like to recognize two retired justices and dear friends, John Stamos and Ben Miller.

And the current members of the Court. From the First District: our senior member Justice Charles Freeman, and Justice Anne Burke. From the Second District: Justice Bob Thomas. From the Third District: Justice Tom Kilbride. From the Fourth District: Justice Rita Garman. And from the Fifth District: Justice Lloyd Karmeier.

It has been a pleasure serving with each of you, and it is my honor to speak here today for you as the 120th Chief Justice of the Illinois Supreme Court.

I would also like to introduce Cynthia Cobbs, Director of the Administrative Office of the Illinois Courts. Cynthia and her staff have again done a remarkable job in coordinating the work of the committees and preparing for the Conference.

Article 6, section 17 of our State Constitution instructs that the Supreme Court shall provide for an annual Judicial Conference to consider the work of the courts and to suggest improvements in the administration of justice, and it is pursuant to that directive that we meet here today: to discuss our court system and address ways in which we may make it better for our fellow citizens. I have attended many of these Conferences, but I feel both privileged and humbled to open this one with some remarks on the state of the state judiciary.

The state of our courts is very strong. And I hope that it continues to improve during my term as Chief Justice. The unifying theme of every Judicial Conference, naturally, is the creation of a strong judiciary. In Federalist 78, Alexander Hamilton describes the judiciary as the weakest of the three branches of government - having neither the force nor the will to impose its judgments. But Hamilton also noted that the complete independence of the courts is [particularly] essential because such independence may be a safeguard against the effects of occasional ill humors in society.

Hamilton said maybe, but I suggest that independent judges **are** the safeguard of our liberties. President Woodrow Wilson, a century ago, said that government keeps its promises in its courts. The struggle for constitutional government is a struggle for good laws, but also for **intelligent, independent, and impartial** courts, and making intelligent, independent, and impartial courts is precisely the point of the Judicial Conference. Let us examine each of these three qualities.

Intelligent courts **require** intelligent judges.

Later today, we will hear a report from the Education Committee detailing its work last year on the inaugural expanded 30-hour curriculum at the Biennial Education Conference. This year's Conference consisted of 56 sessions attended by nearly 900 judges, with more than 70 other judges serving as instructors and mentors. It is truly heartening to see this combination of the experience and wisdom from more tenured members of the bench and the commitment of newer members to take advantage of it. This coming together, this synergy, makes us all better judges.

The Education Committee also prepared and produced judicial benchbooks in five of the six core curriculum areas: evidence, family law, domestic violence, traffic law, and civil procedure, and it plans to complete the remaining benchbook for criminal law and procedure later this year. The Juvenile Justice Committee was busy, too. It will soon complete its update of the Juvenile Justice Benchbook regarding abuse, neglect, and dependency cases. The Complex Litigation Committee decided to redraft the Civil Complex Litigation Manual and began its review of the Criminal Complex Litigation Manual in order to avoid unnecessary overlap with the Criminal Law and Procedure Benchbook.

Independent courts also **require** independent judges.

Last year in his address here, then Chief Justice Thomas mentioned that the judiciary is a bureaucracy, and the purpose of that bureaucracy is to ensure that the court system operates fairly - and independently. It falls to us to make sure that the wheels of justice turn, and turn efficiently, both in courtrooms and in less traditional fora.

In that regard, the Criminal Law and Probation Administration Committee continued its study of alternative dispute resolution in criminal courts. The Juvenile Justice Committee examined the efficacy of so-called problem-solving courts. The Alternative Dispute Resolution Coordinating Committee drafted a uniform manual concerning the fundamental practices of mandatory arbitration. That committee also submitted proposed rule changes to allow arbitrators to waive their compensation in exchange for *pro bono* legal service credit.

The Complex Litigation Committee researched the possibility of an electronic judicial forum, so judges can communicate with colleagues - seek, as well as give advice - on various issues common to complex cases. The Discovery Procedures Committee investigated e-discovery, while the Automation and Technology Committee explored the benefits and detriments of using video court conference systems. Speaking of technology and video, I must mention the Illinois Courts website - our state of the art home on the world wide web. Now any interested party can stream video of oral arguments before the Supreme Court the day after they occur. The Courts website also allows access to Supreme and Appellate Court opinions, and offers educational programs for both adults and children. And it is available to schools across the state.

And finally, **impartial** courts **require** impartial judges.

It is easy to talk about the value of judicial independence. It is easy to find eloquent quotes on that subject from founding fathers like Hamilton, or statesmen like Wilson, or other commentators, including Justice Sandra Day O'Connor. In her retirement from the United States Supreme Court, Justice O'Connor has become a leading voice for an independent judiciary. She has expressed concern with efforts in other states, and in Congress, to police the judiciary. To place it under the watchful eye of the legislature, and ensure that so-called activist judges pass no

judgment on legislation that **may have** serious constitutional flaws. I applaud Justice O'Connor for her efforts and wish her continued success in them.

My former colleague Justice Philip Rarick, in *Jorgensen v. Blagojevich*, recognized the inevitability of occasional conflicts between the judiciary and the political branches. He wrote:

As arbiters of the law and guardians of individual liberties, members of the judiciary often find themselves at odds with other branches of government. Such challenges are unavoidable. They are an inherent part of the adjudicatory process. That their constitutional duty requires this of judges does not mean that their decisions will be well received by the other branches of government. Retribution against the courts for unpopular decisions is an ongoing threat.

Justice Rarick's point was that principled disagreements between coordinate branches of government are part of our democratic system, but we must be watchful, such disagreements cannot be allowed to devolve into bully tactics in the name of political expediency. Fortunately, we have not had this problem in Illinois. Perhaps that is because the Illinois courts have taken their independence so seriously for so long. Perhaps it is because our co-equal branches of government, unlike their counterparts elsewhere, have taken our independence seriously, as well.

Four years ago, my friend and former colleague Mary Ann McMorrow addressed us here as Chief Justice. In the course of a speech that presented an elucidating history of the Judicial Conference, she quoted another former member of this Court, Justice Floyd Thompson. After his retirement from the bench, Justice Thompson spoke to the 1958 Judicial Conference about a proposal to amend the judicial article of our State Constitution. Justice Thompson called our nation's establishment of an independent judicial branch by written constitution our greatest single contribution to the science of government. Thompson continued that, without an independent judiciary, there can be no freedom, and with it there can be no dictatorship. We must guard against any invasion of this fundamental principle of government in the laudable effort to improve the administration of justice.

Being watchful, being on our guard means that we must not treat judicial independence as only a matter for textbooks or treatises. It is, as Justice O'Connor has advised, not an end in itself, but a means to an end. It is the kernel of the rule of law, giving the citizenry confidence that the laws will be fairly and equally applied.

Judicial independence, and the impartiality from which it stems, is a living, breathing concept - living and breathing in each of you. Alexander Hamilton's rival Thomas Jefferson said, and I paraphrase, judges should always be men [and women] of learning and experience in the laws, of exemplary morals, great patience, calmness and attention; their minds should not be distracted with jarring interests; they should not be dependent upon any individual or group.

My friends, at the end of the day, when verdicts are rendered, and orders signed, it is you who ensure judicial independence, and so the rule of law, by putting aside outside influences, and making certain that your decisions involve nothing more than applying the law to the facts to reach the correct result.

Each time a judge makes a decision following this familiar formula, the judiciary is made stronger. We depend upon the approval of our fellow citizens for our strength. When the people of the State of Illinois believe that their courts strive for justice, and strive to improve the efficiency

of dispensing that justice, they are free with their support. And we are stronger than Hamilton could have ever imagined.

Again, thank you all.