

**2009 Annual Illinois Judicial Conference
Thursday, October 22, 2009
9:00 a.m.
Hilton Suites Chicago Magnificent Mile Hotel
Chicago, Illinois
Honorable Thomas R. Fitzgerald, Chief Justice**

Good morning, and welcome to the 56th 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 being here. Before I proceed, I have a few introductions.

First, I would like to recognize my former colleague Justice Ben Miller.

And the current members of the court.

From the First District: Our senior member, Justice Charles Freeman, and our newest member, 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 as your chief for the past year.

I would also like to introduce Cynthia Cobbs, Director of the Administrative Office of the Illinois Courts. Once again, Cynthia, you and your staff have done an outstanding job in coordinating the work of the committees and preparing for the conference. Thank you for your tireless work for the Court, and all the courts in our State. Your efforts are truly remarkable.

Last year at this conference, I spoke about the importance of judicial independence. This year, I would like to speak about the importance of judicial scholarship.

Article 6, Section 17 of our State Constitution instructs the Court to “provide for an Annual Judicial Conference to consider the work of the courts and to suggest improvements in the administration of justice.” That is a serious directive. It asks nothing less of us than to provide a forum for the scholarly examination of our legal system.

In reading the annual reports from the various committees while preparing these remarks, I was struck by how often certain words were repeated time and again: study, consider, research, explore, examine, discuss, draft, and propose. These are learned words - words that describe the endeavors of a scholar. There is an important point to this scholarship, and that point is to make our state’s judiciary better. More efficient, more responsive, and more equipped to reach the correct result in every case. Let us examine the work by the committees this year to see the effect of this scholarship.

Later today, we will hear a report from the Criminal Law and Probation Administration Committee detailing its work over the last year. The Committee considered the possibility of instituting a criminal dispute resolution program in Illinois. In that regard, the Committee studied programs in other states, and concluded that such a program would be possible in Illinois, but only if it were a voluntary, mediation-type program limited to misdemeanors, petty offenses, and

ordinance violations.

The Committee also considered several options for felony diversion programs, and shock incarceration programs, and decided that such programs would run counter to the principles of Evidence Based Practices - essentially, the best practices in reducing recidivism rates. The Committee discussed ways to make the process of accepting guilty pleas more efficient, and drafted a form for written guilty pleas for inclusion in judicial education training materials.

The Committee on Discovery Procedures was also busy. The Discovery Committee drafted a proposal to amend Supreme Court Rule 212, giving a trial court the discretion to allow the use of a party's discovery deposition at trial. The Discovery Committee also reviewed the use of telephone depositions, and drafted a proposal to amend Rule 206, allowing electronic depositions without leave of court. This proposal would bring our rule in line with current practice. The Committee also continued its discussion of required expert witness disclosures under Rule 213.

We will also hear from the Automation and Technology Committee, which focused on two projects this past year. First, the Committee reviewed the Disaster Recovery Guide to determine how best to continue critical court functions during a disaster. In this regard, the Committee developed language highlighting special considerations for criminal and domestic violence cases. Second, the Committee conducted a conceptual analysis of the potential for using a secure website in trial courts. The Committee concluded that a secure website would be useful in informing trial judges about legislative amendments and other time-sensitive information, allowing judges to share forms and other organizational tools that they have developed and used, and distributing to judges reference and training materials. The Committee plans to analyze threats to court information technology systems over the next year.

The Committee on Complex Litigation, likewise, revisited two projects from last year. First, it reviewed the Education Committee's Criminal Law and Procedure Benchbook and the Manual on Complex Criminal Litigation to ensure that these two resources do not needlessly overlap. Second, it revised the ADR chapter in the Complex Civil Litigation manual, and drafted text on construction cases for that manual. Additionally, the Complex Litigation Committee began drafting a revised civil manual after concluding that the current manual had become more of a treatise, than a practical guide for judges. The Fourth Edition of the civil manual reportedly will be a more streamlined, user-friendly resource for judges.

The Alternative Dispute Resolution Coordinating Committee monitored court-annexed arbitration programs in 16 counties, as well as major civil case mediation programs in 11 judicial circuits. The ADR Committee gathered reference manuals from circuits with mandatory arbitration programs and drafted a uniform manual that includes the required, fundamental practices of mandatory arbitration. The Committee also developed a new arbitrator training outline and related training materials to be used in conjunction with the uniform manual. The ADR Committee recommended that Rules 87 and 756 be amended to allow arbitrators to waive compensation and accept *pro bono* credit instead. The Committee drafted a form to accompany its proposal to amend the rules. The Committee also studied the area of child custody mediation in accord with our rules regarding child custody proceedings.

The Committee on Juvenile Justice will later detail its work in updating Volume 1 of the Juvenile Justice Benchbook, which addresses proceedings in juvenile court involving allegations

of delinquency, addicted minors, minors requiring authoritative intervention, and truant minors in need of supervision. In this regard, the Committee researched statutory changes, and relevant caselaw. The Committee also studied and examined the efficacy of so-called “problem-solving courts” in managing juvenile cases, and concluded that programs in other states should be reviewed in establishing more effective juvenile drug courts in Illinois. The Committee studied the availability and adequacy of mental health services for juveniles.

Finally, I must mention the work of the Education Committee. The Education Committee presented the New Judge Seminar to 58 new judges last January. This week-long program provided intense training in substantive and procedural areas. The Committee has also reviewed and updated the curriculum for the next New Judge Seminar, to provide the most meaningful information to new judges. Additionally, the Education Committee’s focus on faculty development continues to be an important part of its work.

It is an important component of creating a better judiciary. Not all of us can be as eloquent as Learned Hand, but we can all be learned. As the dictionary will tell you, a scholar is simply a learned person.

In closing, I would like to reflect and comment upon an experience from my career.

United States Supreme Court Justice Anthony Kennedy once said that “The law makes a promise - neutrality. If the promise gets broken, the law as we know it ceases to exist.” If judges, and lawyers, turn their back on this neutrality, our system falls apart. When I was a young judge, there were rumors that a small number of judges and lawyers were under investigation by the federal government for fixing traffic and misdemeanor cases. I had trouble believing that these rumors were true. I knew some of these judges and lawyers, and I didn’t think it was possible that they could have done these things.

Well, the rumors led to indictments, and indictments led to convictions. Twenty-five years ago, in 1984, the first defendant charged and tried in what was known as Operation Greylord was convicted. In all, 92 officials were charged, including 17 judges, 48 lawyers, 8 police officers, 10 deputy sheriffs, 8 court employees, and even one state legislator. Nearly all were convicted, most after pleading guilty. They lost everything: their liberty, their property, and their good names, in some instances for nothing more than the price of a bar bill. The question that puzzled me then was, how could they have so violated the public’s trust? A possible answer came to me years later.

I believe what was lacking was a commitment to doing what was right. These judges were unwilling to disregard the wrongness of the criminal acts, and instead viewed them as no more than *de mittimus* violations that hurt no one. In fact, these people hurt everyone - by casting the neutrality of the judiciary into doubt.

Most of the men and women in this room are veteran judges. Some of you remember Greylord because you were there and, like I did, saw the events unfold from within. Others of you remember it because you heard the stories then, or have heard them since - passed down from now more than a generation ago. It has become your obligation, our obligation, to make certain that newer judges are aware of that terrible time in our history. We are all charged with the responsibility of ensuring that it Never Happens Again.

As Theodore Roosevelt observed, "Unless a person is honest, we have no right to keep that person in public life. It matters not how brilliant his (or her) capacity, it hardly matters how great his (or her) power of doing good service on certain lines may be. No one who is corrupt, no one who condones corruption in others, can possibly do his (or her) duty by the community." Rooting out corruption can be done after the fact, by federal prosecutors, or we can attempt to create a culture of morality within our profession. That begins with us.

When he became Chief Justice, my colleague and friend Bob Thomas was instrumental in getting the court to establish a Commission on Professionalism. The aim of the Commission is to foster increased civility, and professionalism among the lawyers, and judges, in the State. At that time, Chief Justice Thomas stated that the Commission would promote the notion that lawyers can be zealous advocates without resorting to aggressive, win-at-all costs activities.

Recently, the Commission issued its annual report for 2008. In that report, the Commission highlighted a watershed lawyer mentoring program in the 17th Judicial Circuit, which includes Winnebago and Boone counties. This program pairs every newly admitted attorney with a more experienced attorney for a year-long structured apprenticeship, designed to help young lawyers learn the skills, professional values, and judgment necessary to practice law in accordance with the highest ideals of the profession. Other circuits, including those in downstate Madison and McLean counties, are considering adopting similar programs. It is our hope, and belief, that such programs can be the cornerstone to improving the practice of law here in Illinois.

The Commission is designed to aid lawyers in becoming better professionals, and better people. And that is why I am mentioning it to you here today. The point is to treat all people with respect. If you do that, you'll have it just about right. Respect is the key.

Treating your colleagues, and others in your professional and personal lives, with respect is the best way to make them respect you. One person can and does make a difference. Choose to be that person.

Thank you, again.