

**ABA MIDYEAR MEETING SPEECH  
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FEBRUARY 2016**

**Thank you for that warm welcome. And thank you, President Brown, President-elect Klein and Chair Refo, for your invitation to be here today.**

**I stand before you as the President of the Conference of Chief Justices, the seventh CCJ President to address this House of Delegates in this capacity. Last week, President Brown joined the Chief Justices at our midyear meeting in Monterey where she delivered a very motivating address. Our organizations possess longstanding common interests. It makes each of us stronger and more effective to continue this communication at the highest levels between the ABA, the preeminent voice of the nation's lawyers, and the Conference of Chief Justices, the preeminent voice of state judiciaries.**

**Why is this relationship so important to our justice system? It is important because the health of the entire legal system of the United States depends on a strong state judiciary. A 2015 survey by the National Center for State Courts measured the public's perception of the nation's state court system. It showed us the courts remain the most trusted branch of government, and Americans recognize and value their unique**

role in protecting individual rights. But, it also revealed persistent concerns about customer service, inefficiency, and bias that are undermining the public's confidence in the courts and leading them to look for alternative means of resolving disputes. When more than 1,000 survey participants were recently asked, "Would you prefer to use the (state) court system or alternative dispute resolution?"—64 percent responded "ADR."

I hardly need to emphasize to you that for state courts to meet expectations for improvement and to maintain the public's trust and confidence, they must operate fairly and equitably and with easy access for all. This audience, perhaps more than any other, knows that it really matters. It really matters whether a case moves expeditiously through the court system. It really matters to the business damaged by theft of its intellectual property or financial records; it really matters to the crime victim seeking justice; it really matters to the injured worker with mounting medical bills. It really matters to lawyers trying to manage their caseloads. Ultimately, it really matters to the public's perception of its government.

Today, I would like to visit with you about four vital issues facing the state courts on which the CCJ is working diligently to improve:

- The cost and delay impacting civil cases;

- The misuse by some municipalities of court fines and fees as a funding source;
- Racial and ethnic fairness; and
- A critical shortage of attorneys practicing in rural areas.

First, civil justice. CCJ formed a Civil Justice Improvements Committee that recently completed a study of civil litigation in state courts focusing on cost and delay—both of which hinder access. The Committee’s final dataset, consisting of nearly one million civil cases from 21 levels of general and limited jurisdiction courts, reflects approximately five percent of all civil cases filed nationally in state courts each year. This is the first significant comprehensive multi-jurisdictional study of civil caseloads since 1992 and is even more comprehensive than the former study in that it examines the entire civil caseload, rather than just cases filed in general jurisdiction courts.

The findings offer a dramatically changed picture of current civil caseloads compared to caseloads of two decades ago—and to perceptions held by many civil trial lawyers and judges. Although high-end tort and commercial contract disputes are the major focus of today’s discussions and headlines about the civil justice system, they comprise only a tiny portion of civil caseloads. Instead, more than half of the cases involved lower dollar amounts for debt collection, landlord/tenant disputes and small claims cases. For all civil caseloads, three-quarters of the judgments

were \$5,200 or less. Most cases were resolved without a contested trial on the merits. At least one party was self-represented in more than three-quarters of the cases.

Across the country, court leaders are developing a variety of reform efforts to address issues to improve the civil justice system. For example, some states have designed and implemented programs targeting specific types of cases, especially related to business, commercial or complex litigation.

- California instituted a complex civil litigation pilot program in response to litigant concerns regarding the time and expenses needed to resolve complex cases, the consistency of decision making, and perceptions that the substantive law governing commercial transactions was becoming increasingly incoherent.
- Colorado began developing pilot rules, which focus on developing new procedures to streamline pretrial discovery and minimize expert witness costs.
- New Jersey, Pennsylvania and Texas have all undertaken efforts to coordinate managing mass tort litigation through the dissemination of court rules.
- Iowa and South Dakota have instituted a “fast track” litigation system for claims under \$75,000, which limits discovery and expedites trial dates.

**Second, court fines and fees. This is an issue that has dominated national headlines in the past year. There is a rising crescendo of complaints about funding municipal governments through court fines. CCJ and the Conference of State Court Administrators have long taken the position that court functions should be funded from general operating funds of the states in order that the judiciary can fulfill its obligation of upholding the Constitution and protecting the individual rights of all citizens. Now is the time to take action to ensure that courts at all levels of government—state, county or municipal—provide fair, transparent and equal justice.**

**This past November, the Boards of CCJ and COSCA voted unanimously to launch a national task force to review current practices, authorities and operations related to the use of financial sanctions—fines, fees and bail bonds. The task force will work with the support of the State Justice Institute to:**

- Draft model statutes and written policies for setting, collecting and waiving court-imposed payments;**
- Compile and create best practices for setting, processing and codifying the collection of fines, fees and bail bonds; and**
- Review and revise guidelines for the selection, tenure and oversight of municipal court judges, including reviewing and updating state Codes of Judicial Conduct to ensure its applicability to all judges.**

We must move forward, guided by what attorney at law Abraham Lincoln declared to be the “better angels of our nature.”

Third, racial and ethnic fairness. The Conference of Chief Justices, the National Consortium on Racial and Ethnic Fairness in the Courts, and the National Center for State Courts in partnership with and support from the State Justice Institute have embarked upon a national initiative: *Community Engagement in the State Courts*, which is building an engagement strategy aimed at general engagement and at bridging the gap between communities of color and the courts. It is an honor to have serving on the Advisory Board to this initiative ABA President Paulette Brown.

Unlike previous outreach efforts, which largely focused on educational outreach geared toward judges and attorneys, our engagement approach involves a two-way dialogue that brings the community leaders to the courts to establish a meaningful relationship built upon trust, respect, and understanding. Out of these dialogues we will develop tools and resources that assist state court leaders in engaging marginalized and disenfranchised communities to ensure equal access to justice for all.

Lastly, I would like to talk about a topic that is very personal to me as Chief Justice of South Dakota and a life-long resident of a rural county—the availability of attorneys to people in rural areas of this country. This is not just a problem for the so-called “fly-over” states. After visiting with

Chief Justices from other states, the problem exists in virtually every state in the country, including California, New York, Texas and Georgia for they too have rural counties.

If a law was passed evicting the attorneys from our most rural counties, universal outrage would follow. If a law was likewise passed forbidding new attorneys from locating in these rural counties, there would be more justifiable outrage. The reaction would be, in large part, from the result—no access to legal services in these rural counties. Yet time and circumstances are well on their way to yielding the same result without the necessity of laws, guards or barbed wire. In fact, no evil motive exists, just the ageing out of the existing members of the bar with no replacements in sight. The British statesman Edmund Burke observed that all that is necessary for evil to triumph is for good persons to do nothing. For many rural areas, their Atticus Finch has gone away.

The front of the United States Supreme Court building proclaims, “Equal Justice Under Law.” This declaration is made without qualification. In recent decades, much attention has been rightfully paid to fulfilling this promise in the areas of economic status and other personal classifications. Unfortunately, scant attention has been paid to the issue of geography. In all too many states, the urban areas have become islands of justice, while the surrounding rural areas are fast becoming a sea of justice denied. To do nothing to reverse this course is a

guarantee of increased failure of the legal system in rural areas until it ceases to function.

A hospital will not last long with no doctors, and a courthouse and judicial system with no lawyers faces the same grim future. Rural lawyers should not suffer the same fate as the country schoolhouse or the black and white television. In the end, without access to local legal assistance, it really does not matter very much whether the courthouse doors are locked or open to the public. Either way, nothing happens.

Justice Brandeis famously wrote, “It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

My home state has passed a law that will refund to a lawyer who agrees to practice in a rural area for five years, the cost of that lawyer’s legal education at in-state tuition rates. In just two years, it has proved highly successful with 17 counties contracting for participation in this program. Other states are investigating alternatives, which hopefully will also bear fruit. Perhaps for these rural areas, a new Atticus Finch will appear on the horizon.

Both the Conference of Chief Justices and the American Bar Association have called, in the strongest of terms, for more and better resources to be



directed to the administration of justice in our state courts. In the balance hangs the fate of our justice system.

The institutional support of the ABA is critical to defending the role of state courts in our system of justice. You, its members, are some of our staunchest allies, and for that we are most grateful. I know I speak on behalf of my colleagues who are aware of, and deeply appreciate, the countless initiatives undertaken by state and local bar associations to support state courts. Today I ask each of you to continue your individual support, as lawyers and as citizens, for state judiciaries across this great nation. You are the leaders of America's bar, and you are perfectly positioned with the opportunity to make a difference.

Know what is happening within your state court systems. Volunteer for state court committees and working groups. Advocate before your state's Legislatures and Governors for adequate court funding. Better yet, consider running for your state legislature. Educate your communities. Imagine how much we can do by going the extra mile?

Every time I drive through the small hamlet of Blunt, South Dakota I think of a man named Mentor Graham. Graham died there in the 1880's and would have been lost to history except for one thing. When Graham was a young man, he was a teacher in another state. One day a semi-illiterate farm hand came to him. He asked Graham to help him with his reading and writing skills as the farmhand had only acquired one year of

schooling. Of his writing ability, the farmhand admitted, “I can make a few hen tracks.” Graham had his regular students to teach during the day, but agreed to tutor the farmhand at night. Graham did a good job. Graham did a very good job. In fact Graham did such a good job that this semi-illiterate farmhand would go on to pen such immortal phrases as “a government of the people, by the people and for the people shall not perish from this earth.”

Yes, Mentor Graham helped Abraham Lincoln to vastly improve his reading and writing skills in Illinois in the 1830’s. What kind of a legal profession, what kind of a country, and what kind of a world would we have today if Mentor Graham had not gone the extra mile by tutoring that semi-illiterate farm hand?

On behalf of myself and the Conference of Chief Justices, I look forward to working with you on these important challenges. Thank you.