

The State of the Judiciary
Chief Justice Horace W. Wilkie, Wisconsin Supreme Court
Message to the Wisconsin Judicial Conference
1975

I welcome each of you to the Eleventh Annual Meeting of the Wisconsin Judicial Conference. In this year's report on the state of the Wisconsin judiciary I must emphasize, as I did in addressing the Conference last year, the importance of viewing the entire judicial branch of government and the key role each part of the judiciary plays in the operation of our entire Wisconsin system for administering justice.

The central responsibility of all judges, of course, is to render justice in the many substantive decisions that are made from day to day in all of our Wisconsin courts. But our responsibility goes further. The people of this state expect our judiciary to operate efficiently as well as to achieve substantive justice. The courts have this basic responsibility. It is not unreasonable to expect, therefore, that the judicial branch should be set up and should have the tools to discharge that responsibility. It is in the trial courts that the first resolution of conflicts that come to the attention of our court system is achieved. Judicial statistics for the past year through December 31, 1974, should be available next month. I have no doubt that they will reflect further increase in the volume of trial court business. There has been a steady increase in this workload each year with total dispositions reflecting increased productivity by our judges. In measuring productivity, which we feel we can do much more satisfactorily under our proposed new information and statistics gathering system, we are, of course, concerned with both quantity and quality of judicial work. With the records we now have, I note, for example, a 54 percent increase in the number of criminal cases disposed of during the ten-year period ending with fiscal year 1972-1973. And, as you know, all criminal cases, misdemeanors included, involve more motions, more pretrial conferences, more post-conviction proceedings and more court work generally than ten years ago. So it is with all categories of litigation.

Supreme Court

What report can I make about the supreme court? You already know from reading the advance sheets that the number of opinions written has markedly increased. During the 1973 term, which was concluded last summer, we wrote 408 opinions, 104 or 25 percent more than just two years ago. Of course, you have also noticed that a substantial number of these opinions are per curiam, which are generally cases on which there are no oral arguments but which are considered on briefs only. Importantly, these per curiam decisions usually fall into one of three categories: (1) the case is not appealable; (2) the case is governed by a case recently decided by our court; or (3) the only issue presented is sufficiency of evidence and where the court concludes that there is little value, precedent-wise, in a detailed discussion of the sufficiency of the evidence.

For some years now the fact has been repeated over and over again that at the supreme court level we have a substantial growing backlog of cases that are ready to be considered. For example, during the term ended in mid-1974, although the supreme court disposed of 521 cases an increase of 24 percent in only four years, new filings in the same period went from 457 to 611, a growth of 33 percent. It now appears that new filings this year will exceed last year by 16

percent. The problem thus gets worse rather than better. Because we dispose of fewer cases each year than are filed, the cases carried over to the next term, went from 146 in 1970 to 383 in this past year-an increase of 162 percent. After an appeal is taken to our court it normally takes about six months to perfect the record and to file the briefs of counsel. After this is accomplished, the average civil litigant must wait for approximately a year for his cause to be considered and decided by our court. In criminal litigation, which we give priority to, the wait may be a little less. To emphasize our backlog, we rank among the bottom 20 percent of state supreme courts in moving appeals from docketing to disposition.

Prescreening

The prescreening effort by the supreme court has made a substantial contribution to our work in that it has permitted us to decide an increased number of cases and, at the same time, has permitted the court to spend more of its decision-making time on questions involved in the development of law. There is no doubt, however, that the number one need for court improvement in Wisconsin continues to be the creation of a court of appeals, intermediate between the 177 trial courts and the 7-justice supreme court. Such a court of appeals would not only meet the objective of eliminating the backlog and providing more speedy and less costly consideration of appeals, it would also reserve more supreme court time for the evaluation of precedent-making legal decisions. The creation of such a court of appeals is a matter of prime concern to the litigants. The courts do not belong to the judges or to the lawyers-but to the people. Thus, the central objective in establishing a court of appeals is to accomplish a basic improvement in our appeal structure which, most importantly, will work to the advantage of the litigants who have taken their conflicts to the courts for resolution.

1975 is the year of decision on many matters of court reorganization. You recall that our Ninth Annual Judicial Conference in 1973 endorsed the general recommendations of the Citizens Committee on Court Organization. A coordinating committee, consisting of members of the supreme court and members of both the circuit and county courts has been at work since that time on implementation efforts to carry out the work of that Citizens Committee. Although a proposed constitutional amendment that would make necessary and fundamental changes in our court structure did receive substantial support in the Assembly, it was not acted on by the state Senate. As a result the effort for judicial improvement by way of a constitutional amendment was unfortunately delayed two years.

Reorganization

There is no question that the 1975 legislature must now approve, for first passage, a constitutional amendment which will accomplish (1) the creation of a new court of appeals; (2) adoption of a single level trial court system; (3) adoption of a unified court system where all Wisconsin courts operate as a team with executive leadership provided by the supreme court; (4) adoption of specific authority for the supreme court to suspend or remove a judge for judicial misconduct.

While it is of the utmost importance to look at the long term needs of our court system and to provide for significant constitutional revision, there are other matters of major consequence

which will be considered all current legislation by the 1975 legislative session. I must first refer to the judicial manpower requirements under the court system as it now exists and will continue to exist at least through 1977. Essentially, the courts of this state must be adequate to provide substantial justice on all matters taken to them within a reasonable period of time and at a minimum expense to both litigants and to the taxpayer. We are a growing state and we have increased numbers of conflicts brought into our courts. There is no question but that the number of our courts should be adequate to our basic responsibilities and the State Administrative Committee on Courts has recommended to the new legislature that a net increase of 11 courts should be provided, all to be filled by election in the 1976 spring elections. For the first time this year the Administrative Committee held hearings in areas where court manpower changes were apparently indicated. Following these hearings specific recommendations were made for creation of additional courts: three circuit courts and three county courts for Milwaukee County, one circuit court and two county courts for Dane County, one circuit court for Manitowoc and Sheboygan Counties, one circuit court for Waukesha County and one county court for Hoek County. The committee also recommended the phasing out of one branch of the county court for Douglas County upon retirement of the presiding judge of that branch on July 1, 1980.

Another major matter that will be before the Legislature is the budget for the 1975-1977 biennium. We have all read and heard about the state's tight financial situation, and, of course, we must take this into consideration. But it should be remembered that in the last biennium the cost of the judicial branch was only one-half of one percent of the total state budget and that even if the sums allocated to the courts were doubled in the next biennium, we would still account for less than one percent of the state appropriations. When this is contrasted with the crucial role that the courts play in our society, it is clear that the cost is minimal.

We have used the budget process to propose several major changes in the method of financing the courts, consistent with the recommendations of the Citizens Committee on Judicial Organization. Specifically, the 1975-1977 budget for the trial courts proposes the shifting to the state of the entire cost of the salaries of the trial judges and court reporters, the elimination of county supplements for judges' salaries, and establishing them at the level recommended by Arthur Young and Company, the state's salary consultant. Another budget proposal is for the state to supplement the salaries paid by counties to clerks of court and family court commissioners.

On the matter of the relationship of the judicial branch and the legislative branch you will be interested to know that this morning I received an invitation to address the legislature in joint session on January 23rd on the subject of the Wisconsin judiciary.

Civil Procedure Rules

At last January's Judicial Conference, Wisconsin judges considered the details of the proposed Rules of Civil Procedure, which were submitted for adoption by the supreme court as petitioned by the Judicial Council on November 1, 1973. These proposed rules have been the subject of exhaustive analysis, not only at last year's Judicial Conference, but at the midwinter meeting of the Wisconsin Bar last February. Two hearings have been held by our court, and just today the court has announced that it has approved in principle the proposals as made under the revised

petition of last April. These new regulations for the conduct of civil litigation will be effective January 1, 1976. The Judicial Council has been asked for specific comments on the suggestions made to the court proposing modifications of these rules. Following the receipt of their comments, the court will take final action as to the detailed language of the rules. The effective date of January 1, 1976, is made with the expectation that any amendments that are proposed can be considered and accomplished, if desirable, before that effective date.

The supreme court is also considering two specific changes as to criminal procedure, which have been recommended by the Judicial Council as a result of its study of the Wisconsin Rules of Criminal Procedure in light of the ABA Standards on Criminal Justice. That federally- funded project contemplates a complete review of the ABA standards, and further recommendations for change in criminal procedures undoubtedly will be made during 1975.

Last year at this time the Administrative Committee set up a special subcommittee to study the chief judge concept. The Citizens Committee on Judicial Organization had recommended that administrative judicial districts be established throughout the state with a chief judge in each district selected and vested with functions that would provide for better supervision of judicial business in those districts, with the ultimate objective of achieving better management of our trial court responsibilities. As chairman of the Administrative Committee, I appointed a 17-member study group, chaired by Dean Robert Boden of Marquette University Law School and with judicial members from every county having five or more judges. This committee has now come forward with comprehensive recommendations both for the selection and functioning of a chief judge in administrative judicial districts to be established by the supreme court and covering the entire state with each district created to consist of the combination of whole judicial circuits except for Milwaukee, Dane and Waukesha Counties, where the district would be limited to a single county. These recommendations have been endorsed in principle by the State Administrative Committee and will now receive the detailed consideration of this Judicial Conference. In the end, the proposals will be formally submitted to the supreme court and the supreme court will be asked to schedule the proposals for a full-scale hearing later this spring.

Management

As we look on the improvement of our court system we judges must recognize that the people hold the courts finally responsible for the conduct of judicial business. This is as it should be and while there are matters pertaining to basic structure and financing of our courts which require legislative action, it behooves the courts to do what we can for better management of our own judicial branch. By adopting the concept of the chief judge and the administrative districts, we will be taking a major step towards the better management of our judicial business.

One of the most important administrative improvements that we can make in the near future is the increased utilization of expertly trained court management personnel in the trial courts. This was a major recommendation of the Citizens Committee on Court Organization. Following this recommendation we now have under way a district court administrator project, with Wisconsin Council on Criminal Justice financing, centered in the three-county area of Eau Claire, Chippewa and Dunn. It is anticipated that, in the near future, an additional district court administrator project will be inaugurated in some other area of the state.

At the base and as an indispensable prerequisite to improved trial court management, it is necessary for the judicial branch to have adequate judicial information and statistics. With this in mind a changed information system is under way and will be the specific objective of another grant from the Council on Criminal Justice, the application for which is now pending before that council, with contemplated action on that application this month. The overall goal is to develop an information system to provide statewide statistics, case monitoring, measurement of judicial manpower needs, and court cost data to assist in the planning and utilization of court resources.

Judicial Education

Wisconsin has had for a number of years a judicial education program which has been hailed as one of the best in the country. Under supreme court leadership, programs have been developed for the training of judges after their selection in order that they can perform their judicial duties in a more effective manner. The Judicial Education Committee established by the supreme court, with Judge Marvin Holz as Dean of the Wisconsin College, and Sofron Nedilsky as Judicial Education Director, has conducted for many years now an annual college for new judges who have come to the bench together with some judges who have had several years of judicial responsibility. Then, too, it has been the general policy to send as many trial judges as possible to the National College of the State Judiciary session for the trial judges every summer. A third part of the general education program consists of prison tours and sentencing institutes because of the recognition that an increased proportion of a trial judge's responsibilities is in the handling of criminal business. Still another important segment of the judicial education program covers special training sessions that have been conducted for court support personnel, for example, court reporters, clerks of court, and traffic court staff.

At this point I should thank all the trial judges for their very fine response to the series of special meetings I called this fall for regional get togethers to discuss court management problems. Six such regional sessions were held and both the attendance and interest were especially good and, in fact, everyone agreed that the success of these meetings was an indication that we should schedule more regional sessions for the consideration of problems of interest and concern to judges.

Bar Commissioners

One of the major functions of the supreme court is the regulation of the bar to ensure that the public and the judicial system are served by a competent and honorable bar. With this in mind, we recently revised the board of state bar, commissioners' membership by adding two nonlawyer members and they have already contributed significantly and affirmatively to the regulatory work of that commission as it discharges its responsibilities in the field of the disciplining of lawyers. So important is the general responsibility of our court and of the bar for ensuring proper discipline of lawyers against whom grievances may be lodged for professional misconduct, our court has created a special committee, headed by Justice Leo Hanley, to study the present rules and procedures for the handling of discipline matters.

The state bar has recognized that the education of Lawyer's is a never- ending matter and they

have specifically recommended a system whereby lawyers will be required to put in some postgraduate training in order that they can be recertified as completely competent to carry on the continued practice of law. Our court has set the proposals for a public hearing on March 24th. I am firmly convinced that there is a need for continued education, not only of lawyers, but of judges, and some program should be established whereby additional training will be required of both in order to ensure the public that lawyers and judges are currently competent to handle the ever more complicated matters that do come to the courts for resolution.

Appellate Study

Although the supreme court is convinced that the creation of an inter- mediate appellate court is the single most needed change in our appellate system, the court itself has launched a study of its own appellate procedures and practices, with the idea that some immediate further changes can be made to provide for better management of our appellate responsibilities. A grant has been obtained from the Council on Criminal Justice and a specific study by an experienced outside agency is about to commence, the study to be carried out in consultation with a special advisory committee that has been established with Justice Nathan Heffernan as chairman.

During the last year the supreme court itself has had some important changes of staff personnel. We have a new librarian, who is already moving importantly in the direction of ensuring that the library will be of outstanding service to all Wisconsin judges and lawyers and to citizens in general, and we now have a new court reporter for the supreme court. During the last year, our court created the position of executive officer who performs duties to provide for better management of our court business itself and who serves as a direct aide to me as chief justice. He is Robert Martineau who comes to the court with considerable experience in court administration and who was the court executive of the Eighth Federal Circuit in St. Louis. Among his responsibilities are to serve as secretary of the supreme court committee on bar discipline and on appellate practices and procedures.

Although the Wisconsin judiciary is in generally good shape, no one must be complacent about it. There are many important respects in which the judicial system here can be improved. The final objective will continue to be to render reasonably prompt decisions on a fair, impartial, forward-looking basis. We should all remember that the degree of civilization obtained by our democratic society is measured more than anything else by the quality of our system of rendering justice. As far as the judicial branch is concerned, this is a matter of teamwork. Every member of the supreme court is part of that team. Everyone on the trial bench is part of that team. We work together to develop a progressive detailed program for rendering justice. The supreme court is expected to assume a leadership role but we do this as part of a cooperative team. Today, tomorrow and Friday we will all have a chance to examine in depth some of the key problems requiring judicial action. Also major proposals for changes which should result in the better management of our courts. I urge each of you to participate to the fullest.

Thank you all for your attention.