

State of the Judiciary
Chief Justice Shirley S. Abrahamson, Wisconsin Supreme Court
Message to the Wisconsin Judicial Conference
October 25, 2000, in Appleton, Wisconsin

Welcome to the Year 2000 Wisconsin Judicial Conference. We have before us what promises to be an excellent conference, in the best traditions of our judicial system. I extend our thanks to Court of Appeals Judge Neal Nettesheim, the conference chair; the conference planning committee; and the staff of the Office of Judicial Education.

Following tradition, each year the chief justice reports on the state of the Wisconsin judiciary. I present the report today, as I have for the past four years, with pride in what we have accomplished and with optimism for what we will accomplish.

I begin this address, again following tradition, by noting the changes that have occurred within our judicial family since our last conference.

We express our sadness at the passing of two judges:

Aaron George Murphy, Kewaunee

Richard Harvey, Jr., Racine

While there is sadness in losing colleagues; there is also joy in welcoming new ones. Justice Diane S. Sykes is now with us for a 10-year term. Let me also recognize the other members of the supreme court: Justices William A. Bablitch, Jon P. Wilcox, Ann Walsh Bradley, N. Patrick Crooks, and David Prosser Jr.

Our new circuit court judges are:

Michael Bohren, Waukesha County

Daniel Dillon, Rock County

D. Todd Ehlers, Door County

Patrick Faragher, Washington County

Andrew Gonring, Washington County

Thomas Gritton, Winnebago County

Raymond Huber, Waupaca County

Diane Nicks, Dane County

Guy Reynolds, Sauk County

Lisa Stark, Eau Claire County

Mark Warpinski, Brown County

In keeping with another tradition, the Supreme Court justices and the new circuit court judges had breakfast together this morning. We were delighted to meet the new judges. The Judicial College Class of 2000 is impressive indeed.

While this speech follows tradition in several ways, I am also going to depart from tradition in two respects. First, my speech will be shorter than usual (much to your sorrow, I am sure). Second, the shorter speech will establish a new tradition, giving J. Denis Moran, the Director of State Courts, an opportunity to speak about the State of the Office of the Director of State Courts. Denis Moran will, following my presentation and for the first time during his long tenure in office, speak of his office's leadership plans to enable the court system to address the issues his office has identified as most important to the court system.

Over the years the administrative office of the court system has grown to furnish the courts with the administrative machinery they need to scrutinize their own work and develop efficient and prompt administration of justice. The Office of the Director of State Courts has many tasks and responsibilities: It provides services to judicial officers and court staff; collects statistics and reports on the work of the courts; developed and now implements automated systems for the trial and appellate courts; advances the judiciary's legislative agenda; prepares the budget; and provides program leadership and assistance. A newly drafted paper on the administrative structure of the court system is included in your binder and available on our web site.

Neither Denis nor I will read that paper to you. It should remind all of us, however, that the staff working behind and alongside the bench are important players in the judicial system.

The vitality of the judicial system depends on leadership, and, therefore, I will focus my remarks today on leadership in the judicial branch. Judges and court staff, however, may not necessarily think of themselves as leaders. What we do, day in and day out, is follow—follow the statutes, follow the precedent, follow the rules of evidence and procedure, follow tradition, and so forth and so on. Follow, follow, follow. After all; our principal task is to fulfill the historic role of courts: resolving disputes according to precedent in a fair, impartial way according to the facts and law, not on the basis of public opinion polls, personal whim, prejudice or fear; free from interference from the legislative or executive branches or private citizens or groups. We are, in the words of President John F. Kennedy, "undisturbed by prejudices and slogans of the moment."

This concept of the role of courts is encompassed in two words: judicial independence. Judicial independence is a means to an end and the end is a fair trial according to law. Judicial independence is not for the benefit of the judges but for those using the courts.

Judicial independence depends on the support of the other branches of government and the people. As Chief Justice William H. Rehnquist recently observed, the degree to which judicial independence will be preserved will depend in some measure on the public's respect for the judiciary and the judicial system.

Think about this: Everyone in this state will spend some time in a court at one point or another in his or her life, some as litigants, jurors or witnesses, some fighting a traffic ticket, some in probate court, some as observers coming to watch the wheels of justice in motion, and some to assist us in the courts work as volunteers. They see how the offices of the clerk of circuit court and either court staff conduct themselves and treat the public. When they arrive in the courtroom they see the judge, sitting front and center, on a bench that is high above the rest of the

courtroom. They rise to greet us as we walk in, and sit when we ask them to do so. And that's just the beginning. Throughout the proceedings, whatever their nature and whatever their outcome, we judges and court staff shape our community's experience of the legal system.

In the day-to-day work and all the "following" that we do, we might lose sight of our role as leaders on the bench and off the bench for fair and impartial justice, for access to the courts, for an effective and efficient system providing equal justice for all. As judicial leaders we must tell the people we serve about our strengths and acknowledge the shortcomings in the judicial system and try to correct them. That's the way to maintain public trust and confidence.¹

In each of my four previous State of the Judiciary addresses I looked back at the year and reported on the accomplishments of the Wisconsin court system, and these have been many. In January 2000 at our joint meeting with the State Bar of Wisconsin I looked back to the 1990 Judicial Conference and used the proposals made then as the basis for grading our accomplishments during the 1990s.

I reported that we exceeded the judges' 1990 expectations in technology (CCAP, videoconferencing, our web site) and communication (open administrative conferences, a public information officer, the Third Branch newsletter, public education programs, judicial ride-alongs, and meetings with executive and legislative branches). We were making progress, I said, in alternative dispute resolution, assistance for self-represented litigants, access for those with physical disabilities or whose first language is not English, and courthouse security, for example. I said we would have to move forward in this decade in three areas: (1) judicial elections and campaign financing; (2) judicial independence and public trust and confidence in the judicial system; and (3) judges as problem-solvers, sometimes referred to as therapeutic jurisprudence. Here I spoke of drug courts, restorative justice, our one-family-one-judge pilot programs, and community courts.

Looking back at the decade of the 1990s, it became clear to me that the Wisconsin court system has fared well because our judges and court staff have provided leadership in meeting old and new challenges. It also became clear to me that judicial leadership will continue to be needed if the court system is to successfully face its new challenges in the coming years. If there is anything certain about the coming decades, it is change; change will always be with us, and change will come faster and faster.

What, I asked, has made Wisconsin judges and court staff successful leaders? What are the attributes of a judicial leader? Of course I looked for authority relating to judicial leadership that I might follow. I went to Amazon.com where, at last count, there were 8524 books relating to leadership. Only four of these more than 8500 books were matches for judicial leadership. Only one book seemed to be on point.

The paucity of material on judicial leadership indicates that either there isn't any money to be made writing on the topic, or that few have applied accepted principles of leadership to the

¹ A working group appointed by the State Bar of Wisconsin, the League of Women Voters, the Director of State Courts and the office of the Chief Justice will, later in the conference, propose an action plan to maintain public trust and confidence in the Wisconsin justice system.

judicial branch, or that judicial leadership is an oxymoron. I am not persuaded by any of these explanations.

In examining our court system's accomplishments, I conclude that Wisconsin judges and staff—at all levels of the court system—could provide the text for a book on judicial leadership.

I will talk today about the judicial leadership book that could be written about Wisconsin. I would entitle the book "Wisconsin Judicial Leadership: Achieving Excellence."

This book on Wisconsin judicial leadership, envision it, would have five chapters—one for principle of leadership. The chapters would be:

- Chapter One—Take a Hard Look
- Chapter Two—Get Everyone on the Same Page
- Chapter Three—Get Everyone into the Act
- Chapter Four—Just Do It
- Chapter Five—Celebrate Success

Chapter One—Take a Hard Look

The first principle of judicial leadership is "Take a Hard Look." The leaders in the court system take a hard look to identify those areas that need attention. They search for innovative ways to solve problems and they think of themselves as creative problem-solvers.

Let me give you two examples—one at the circuit court level, one at the state level.

Circuit Court Judge John. Damon in Trempealeau County took a hard look at the benefits of requiring offenders to participate in community service as part of their sentences. The judge determined that, if he had more options and a coordinator of community services, he could make better use of community service as a sanction. Judge Damon took a hard look and brought his findings to the county board. As a result, today there is a county-funded community service coordinator for adults, and grants have become available to expand the program to juvenile cases.

At the state level, we took a hard look at the judicial system and heard two recurring concerns: 1) the public doesn't understand the court system and 2) the court system does not have sufficient resources to do its job well. We decided that institutionalizing the use of volunteers within the court system might help address both concerns. Volunteers would not be a panacea, but they could be a strong start.

Our statewide effort on volunteers has led to two editions of a Volunteers in the Courts catalog of Wisconsin programs (published with the help of the State Bar of Wisconsin). There are now more than 5,000 people volunteering in our court system, and the volunteer program keeps growing. Our volunteer program has recently received national recognition by the U.S. Department of Justice. A copy of that report is in your conference binder. Wisconsin is now a leader in bringing volunteers into the courts.

Chapter Two—Get Everyone on the Same Page

Some of us remember when President John F. Kennedy asked the American people to commit themselves to landing a man on the moon by the end of the sixties. We also remember well Rev. Martin Luther King's articulation of his dream. These leaders inspired with their vision of the future. They succeeded in getting people with different interests, different philosophies, and different priorities, to come together to work toward a common goal, to get on the same page.

When I think of this principle of leadership, I think of Reserve Judge Tom Barland. Judge Barland in retirement is still articulating his vision and is getting other judges to join him in experimental jury programs. Remember, many citizens I only experience with the judicial system is through jury duty. In July 2000, the American Bar Association recognized Judge Barland's leadership by giving him the Award of Judicial Excellence. Continuing his leadership on this issue, a committee created by the chief judges is working on jury management issues, and I have appointed a Wisconsin team to go to a jury summit in New York City this winter.

To help decide the right direction of the court system and to help get all of us on the same page, PPAC (the Planning and Policy Advisory Committee) has, at my suggestion, created a Planning Subcommittee. PPAC was established almost a decade ago to assist in court policy and planning through a participatory decision-making process. PPAC has played an important role in shaping policy for the judicial system. PPAC has proposed, for example, facility and security standards, rules on the role of court commissioners, and videoconferencing standards.

The new subcommittee will help PPAC strengthen its function as the planning arm for the court system, to ensure that the Wisconsin court system provides a forum for the resolution of disputes that is fair, accessible, efficient, and effective, a goal we all share.

The subcommittee will seek input from others inside and outside the court system, including the judicial conference, circuit court judges, the chief judges, clerks of court, registers in probate, jurors, attorneys, and the public. PPAC, through the work of the planning subcommittee, will identify the critical issues facing the court system over the next three to five years and communicate them to the supreme court and the Office of the Director of State Courts. The subcommittee will get full staff support from the Director's office. The new planning subcommittee is described in your binder, and we encourage those of you with an interest in planning to volunteer to serve on this subcommittee.

I believe this subcommittee will help us decide what our "page" should be, and then get everyone on that page.

Chapter 3—Get Everyone Into the Act

No one of us alone can provide the highest quality justice system. Each of us is dependent on others, and we need to foster collaboration. As leaders, judges and court staff must build bridges with the bar, law enforcement, county board members, state legislators, community organizations, and the public.

Chief Judge Edward Brunner has effectively collaborated with many organizations in his community. For example, Judge Brunner and Barron County decided they were going to improve the quality of juvenile justice by redirecting referrals from schools, police, juvenile intake and the district attorney's office to a restorative justice program. This program is making great strides in the cases that have been referred.

But this change posed some challenges. Judge Brunner was properly concerned with maintaining judicial neutrality in his case-deciding role. He recognized that the concept of judicial independence is often best served by a judge keeping his or her distance from community activities that might raise or address issues that will come before the court. Furthermore, decisions about how the courts can best serve the people may often best be left to the people themselves to make.

As a result, the project has developed a nonprofit agency that is responsible to the citizens and the community, not to the court. Although the project works with the court, it makes decisions independently of the court. The project pursued and obtained a federal Juvenile Justice and Delinquency Act grant for just over \$130,000 to further develop the program.

Judge Brunner and Barron County are leaders in the area of restorative justice. If you are interested in how to get everyone into the act in your county, you may want to attend Judge Brunner's session at this conference.

At the state level, we are trying to get our colleagues in the executive and legislative branches into the act. The court system, as you know, depends on the legislative and executive branches for funding. A key item in our budget in the upcoming biennium is a request for funding to enable us to improve the role of interpreters in the courts. Another key budget item is funding for a pilot program for law clerks for circuit court judges in the Sixth District. This is a new approach to a continuing issue. Law clerks for circuit court judges have been in the budget for more years than I can remember, to no avail. I hope you all will get into the act this budget season to support this initiative and make this the year it happens.

The supreme court has organized regular open sessions with legislative committees that handle issues related to the court system. These sessions have not only been informative, but also have produced ideas for new cooperative ventures. As a result of these sessions, the Office of Judicial Education and the Legislative Council are now collaborating on a joint educational program in September 2001 for legislators, judges, and staff on the interpretation of statutes. By working together and educating each other, we hope to reduce misunderstandings among the branches.

By getting everyone into the act, the people of the state benefit. Everyone wins.

Chapter 4—Just Do It

To borrow a phrase from Nike—Just Do It. I don't mean to suggest that you play golf or do aerobic exercises, instead of sitting on the bench or at your desk. Sitting is my favorite athletic activity. Rather, I mean there comes a time to stop talking, to stop planning and to just put the idea into action.

Now, I know that "just doing it" may not come naturally to us. After all, everyone associated with the courts is, by definition, supposed to be judicious. We want to have all the facts before us; we want to work through all the options. We are uncomfortable embarking on a project without a definite sense of the end result, without knowing every single step in the process, and without being assured of a successful completion. But some problems of judicial administration are so large, some needs so pressing, that after some study we must start dealing with them. Action is eloquence.

General Colin Powell writes that "once the information is in the 40%–70% range, go with your gut."¹¹ If you wait until you have all the facts before you act in administrative matters, it's probably too late. As judges and staff, we should ask ourselves: "Am I in this job to do something, or am I in this job for something to do?"

Chief Judge Michael Skwierawski is here to do something. In March 1999 the chief judge took a new approach to a long-standing problem of getting misdemeanor cases back on track after a defendant fails to appear in court. In a pilot project, two of the eleven misdemeanor branches were given personnel responsible for bringing a defendant back to court after a missed appearance. The pilot is successful and plans are to add two more misdemeanor branches to the program.

In 1996 Judge John Des Jardins started the Outagamie Victim Impact Panel (VIP). Second-offense drunk drivers are ordered to attend a victim impact panel session where victims share the pain and anguish caused by drunk drivers.

Programs should be evaluated. Not all innovative efforts are successful the first time, nor should we expect them to be. But a recent study of the victim impact panel program documents its effectiveness. Thanks to Judge Des Jardins' efforts, we will have a much better understanding of the strengths and limitations of victim impact programs.

At the state level, the court system is using the principles of leadership to address the growing involvement of Wisconsin courts in the lives of children and families. By articulating the Wisconsin Families, Children and Justice Initiative we have been able to get a series of wins. For example, with state help, Lacrosse and Monroe counties are testing a unified family court approach. Again with state help, Columbia, Sauk, and La Crosse counties have established new CASA (Court Appointed Special Advocates) programs. These wins are adding up to an improvement in how the court system is treating children and families.

The challenge of self-represented litigants is another example of how the principles of judicial leadership can be used to achieve incremental and important gains at the county and state levels.

In many counties self-represented litigants in family cases outnumber those represented. After I communicated my concern about this issue in the last two state of the judiciary speeches, it was time for my office to do something.

In response to a National Conference on Pro Se Litigation sponsored by the American Judicature Society, the State Justice Institute, and the Open Society Institute, I appointed a working group to address the issue of self-represented litigants. The working group is composed of judges, staff, law professors, clerks of court, lawyers working on pro se projects, and others.

The working group started a mere year ago and has developed a systematic approach to addressing the challenge of self-representation. Their report will be released next month. However, the group has already garnered national attention. My assistant, John Voelker, has given presentations on our approach around the state, in other states, and at the National Conference of Chief Justices. In fact, he, District Court Administrator Gregg Moore, and attorney Tim O'Brien are currently in New Orleans representing Wisconsin as one of 14 states providing leadership on this issue.

The very existence of this working group on self-represented litigants has created momentum in the state:

- The judges and district court administrator of the 10th Judicial District have started an initiative to ensure a minimum level of service to self-represented litigants.
- Waukesha County, under the leadership of Chief Judge Kathryn Foster and Waukesha County Clerk of Circuit Court Carolyn Evenson, has received funding to establish a self-help program to represented litigants.
- Dane County, under the leadership of Court Commissioner Mary Beth Keppel and Attorney John Hendrick of Family Law Education, Inc., has established a partnership with the public library and legal services to develop a web-based assistance program for self-represented litigants and has received a \$47,000 grant to do so.

As President Franklin Delano Roosevelt said: "It is common sense to take a method and try it; if it fails, admit it frankly and try another. But above all—try something." Or as I say, "Just do it."

Chapter Five—Celebrate Success

Author Sue Bender writes: "Miracles come after a lot of hard work." There are no shortcuts to success. That's why leaders find ways to celebrate success.

We recently heard from a sheriff who had given a presentation to a group of judges. He mentioned that within a week after his presentation the chief judge from his judicial district called and complimented him for representing the district well. A simple phone call, but a lasting impression. The compliment was well deserved. Do you think the sheriff will be willing to collaborate with the court system again? You bet.

Over the years I have given a number of plaques and certificates to individuals who have accomplished something special in the court system. While it may seem routine to some, it is not routine to me. And it is not routine for the recipients. Just watch their faces. Celebrating success does make a difference. If volunteers or staff or judges do something special that helps make our courts better—recognize them.

I have celebrated our successes today by specifically mentioning a few programs and those responsible for them to illustrate the principles of leadership in the Wisconsin judicial system. I know of many others who are championing programs just as worthy of praise and attention as the ones

I have mentioned. They have shown the same leadership, innovation, creativity, and "just do-it-iveness." Today we celebrate their successes also.

And there are many leaders developing programs that we do not know about. I encourage each of you to share your successes with the rest of us so we all can learn and benefit from your efforts. To encourage your communicating and celebrating your successes with everyone, I am asking Amanda Todd, the editor of the Third Branch newsletter, to create a leadership column in the Third Branch.

Remember, we're writing the book on judicial leadership: Take a Hard Look; Get Everyone on the Same Page; Get Everyone into the Act; Just Do It; and Celebrate Success. This book may

turn out to be a best-seller. I do not, however, see the possibilities for a movie—unless, of course, Judge Judy plays me.

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In conclusion, let me say that we can all be proud of how well the participants in the judicial system have been responding to change, and we can all be proud of the direction in which we are heading. We have a way to go before we can rest easily, but we should be confident that the court system has the leadership talent to address the challenges it will surely face. Let us revere our traditions as we build new traditions. There is much to do and we must do it together.

I look forward to working with you all in the years ahead. Remember that I am in the phone book. Call me at (608) 266-1885. I need and welcome your help as we serve the people of this great state.

And now here's Denis Moran for the first State of the Office of the Director of State Courts address