

State of the Judiciary

Chief Justice Shirley S. Abrahamson, Wisconsin Supreme Court

Message to the Wisconsin Judicial Conference

Wednesday, November 8, 2006, in Appleton, Wisconsin

Good morning. Welcome to Appleton and the 2006 Wisconsin Judicial Conference. Our thanks to the program chair, Judge David Resheske of the Washington County Circuit Court, as well as the conference program committee. The committee and the staff of the Office of Judicial Education have developed what promises to be an excellent conference.

I begin this state of the judiciary address, following tradition, by noting the changes that have occurred within our judicial family since our last conference, which took place in May 2005.

We express our sadness at the passing of the following individuals who served the people of the state of Wisconsin long and well:

Judge Edwin C. Dahlberg, Rock County

Judge John A. Decker, Wisconsin Court of Appeals and Milwaukee County Circuit Court Judge

William J. Haese, Milwaukee County

Judge P. Charles Jones, Dane County

Judge Peter G. Pappas, La Crosse County

Judge Karl F. Peplau, Eau Claire County

While there is sadness in losing colleagues there is also joy in welcoming new ones. In keeping with another tradition, the new circuit court judges had breakfast this morning with the Supreme Court justices. I ask each new judge to stand until all the names are read. Our new circuit court judges are:

Jane V. Carroll, Milwaukee County

James J. Duvall, Buffalo/Pepin Counties

Roger Le Grand, La Crosse County

William S. Pocan, Milwaukee County

Karen L. Seifert, Winnebago County

Alan J. White, Columbia County

On behalf of the entire judicial family, I say: "Welcome. May your judicial careers be rewarding to you and may you serve the people of Wisconsin well."

I begin this morning with a story. This story was first written 150 years ago and new pages are added every day by each of you. This is the story of judicial independence in Wisconsin.

The date: January 7, 1856. The state is just eight years old; its Supreme Court is even newer, having been formed just three years previously in 1853. On this day, the state faces a crisis – the worst in its young life. Two men claim the governorship, and both have taken the oath of office.

The men are Coles Bashford of Oshkosh and William Barstow of Waukesha. Barstow, a

Democrat, is the incumbent. The Board of Canvassers has certified him as the winner. Barstow has arrived in Madison for his investiture accompanied by military units that are prepared to fight for him if necessary. Bashford, the Republican challenger, maintains that Barstow's victory was the result of fraudulent returns from nonexistent precincts in Wisconsin's sparsely populated north. The dueling investitures give The New York Daily Times ample fodder for weeks of reports like this one:

It is not often that one state is blessed with two governors, acting at the same time.

Wisconsin is favored above its neighbors.

But few in Wisconsin are amused, and among the least amused are the state's three Supreme Court justices, Chief Justice Edward V. Whiton, Justice Abram D. Smith and Justice Orsamus Cole, for the Court is asked to remove Barstow (the incumbent) as governor. Bashford announces publicly that he will use force if the Court does not act. Barstow has two responses to this ultimatum: First, he makes it known that he would hate to be forced to dip into the extensive cache of weapons rumored to be kept in the Capitol. Second, he refuses to recognize the Court's jurisdiction to decide an election of a Governor.

Faced with the near certainty of an armed clash between the state's militia and Bashford's supporters, the Supreme Court holds hearings. (The New York Daily Times reported that, "All the parties concerned appear to be in danger of getting shot.") The lawyers' arguments and the justices' questions and decisions are reported in more than 100 pages in the Wisconsin Reports. After lengthy philosophical discussions of the underpinnings of government and the separation of powers among the three branches, the Court concludes that the Court has, under the state constitution, the power to declare the law of the state. The Court in a unanimous decision rules that Bashford, the challenger, is the duly elected governor of the state and enters a judgment removing Barstow from office.

We have all made difficult calls over our careers. Even so, it is hard to imagine the pressure that these three justices must have felt as they ordered a sitting governor removed from office. But they would not shirk their duty. And when the Court stood up to Barstow, his supporters fell away without firing a shot.

Chief Justice Whiton and Justices Smith and Cole established the third branch as a co-ordinate, separate and co-equal branch of government. They affirmed the neutrality and impartiality of the judiciary, and showed the nation that Wisconsin would be governed by law and not by men with guns. The justices demonstrated to every person in the state that peaceful resolution of disputes could be found in the courts and that threats of violence would not cow judges.

In short, these judges set the standard to which each of us is held today. As it was then, our mission today is to dispense justice fairly, impartially and according to the rule of law.

But the challenges we face in carrying out that mission are vastly different. Today, we face a profound cultural shift that will require us to work in new ways.

One cultural shift is that in our trial courts today, many people represent themselves without the benefit of lawyers. I shall talk about innovative programs in Wisconsin to help self-represented litigants later.

A second cultural shift is that more and more litigants and witnesses do not speak or understand English. Our Court Interpreter Program now holds regular orientations, training sessions, and written and oral testing for potential interpreters. This year, four orientation sessions attracted more than 150 people representing a broad array of languages: Spanish, American Sign Language, Hindi, Hmong, Lao, Polish, Portuguese, Russian, Somali and Tagalog. This year, for the first time, we offered a skill-building workshop for Hmong to help them improve their interpreting skills and to prepare for the certifying examinations. I am pleased to say that we now have Hmong, Russian, and Korean interpreters working to achieve certification. Spanish remains an overwhelming need, and I had the honor of swearing in a new group of fully certified Spanish interpreters in 2006.

This spring, a project that began in 2004 bore fruit as Spanish translations of 16 frequently used forms – such as the guilty plea questionnaire and waiver of right to counsel – were made available on our Web site. Up next: a group of frequently used juvenile forms will be translated into Spanish, and translations into Hmong will also begin.

Building a program to train, test, and certify court interpreters – and designing programs for recruitment, orientation, character and fitness review, and discipline – is not easy. Two weeks ago, one of the judges who has led the committee from the start ended her service on this project. We owe Judge Elsa Lamelas an enormous debt of gratitude for her leadership and dedication to this vital task. We are indeed fortunate that Judge Lamelas' co-chair, Judge Rick Brown, will continue to lead the committee through the next year.

A third cultural shift is that all that paper we push might soon disappear, replaced with electronic files. Indeed, the work of a judge, and the tools with which we accomplish that work, have both changed profoundly – not just over the span of 150 years but dramatically and rapidly in the last five years. Our ability to make smart use of technology will improve judicial efficiency and increase access to the courts.

Ultimately our ability to do justice in this new world will depend upon something that is at once simpler and more complex than technology, namely a fourth cultural shift, the need to collaborate with partners in the justice system.

Partnership and cooperation are evident in the Court's relationship with the legislative and executive branches of the federal, state and local governments, as we strive to work with all government units to improve the administration of justice.

For example, our Children's Court Improvement Program in partnership with the state Division of Children and Family Services has conducted reviews of the child welfare systems in 19 counties. Among those counties is Waupaca, where the judges have built a strong working relationship with the human services department and with their county board.

The collaborative model that we have developed is receiving national recognition. It was featured at a recent conference in Washington, D.C., where Bridget Bauman of the Office of Court Operations was invited to speak. It will also be highlighted in an upcoming publication of the American Bar Association.

I am delighted to report that this program will expand, thanks to a new federal grant that will permit us to hire two additional staff to help counties implement the recommendations that come out of the reviews. Through our work in this critical area, we save lives and we help to build the foundation of a strong, healthy future for children in need.

The themes of partnership and cooperation are also evident within the judicial branch, where the Supreme Court and its administrative offices work closely with the trial courts, the tribal courts and the federal courts.

No discussion of partnerships would be complete without a mention of our work with the tribal courts. When I traveled to Vilas County in July, I viewed firsthand the difference that has been made by the protocols that were enacted to guide decisions about jurisdiction. Those protocols were signed two months after we last met, at a national meeting that Wisconsin was privileged to host in Green Bay. The meeting brought together more than 300 representatives of the nation's federal, state, and tribal courts. Chief Judge Dorothy Bain joined the chief tribal judges to sign these protocols that will guide state and tribal judges in settling jurisdictional disputes in the Ninth Judicial District.

The national meeting served as the catalyst for Wisconsin to reconvene its State/Federal/Tribal Court Forum under a new name: the State-Tribal Justice Forum. The forum will work to promote initiatives outlined in the final report from the Green Bay conference.

John Voelker will speak in greater detail about the budget, which has been dubbed the 'partnership' budget, in part because it emphasizes the value of strong relationships with our justice system partners and with the counties, on which we depend to help support the circuit courts. In the coming biennium, as in the past, I shall meet with leaders in the executive and legislative branches to present our budget and to address our priorities.

This cooperative partnership approach has accomplished much; just how much has become evident to me as I have traveled the state during 2006, completing the first leg of my 72-county courthouse tour. Since last February, I have visited with the judges and others in 21 counties: Columbia, Dane, Dodge, Green, Jefferson, La Crosse, Lafayette, Lincoln, Marathon, Marquette, Oneida, Portage, Sauk, Shawano, Sheboygan, Vilas, Walworth, Waukesha, Waupaca, Waushara, and Wood.

In each county, the discussion has varied according to local interests and concerns. But there is a common thread. In every county, our conversation has focused on at least one of the four issues identified by the Supreme Court Planning and Policy Advisory Committee as a top priority. These are:

- Assistance to self-represented litigants

- Courthouse safety
- Treatment and prevention of alcohol and drug dependency
- Enhancing public safety: effective justice strategies

As I discuss what I have learned on my journeys and our challenges and opportunities, I shall do so in the context of these priorities, emphasizing that our success in these areas is limited only by our imaginations – and by our ability to collaborate and to make smart use of technology. Videoconferencing, e-filing, online forms, data collection tools, and digital audio recording – which Judge John Storck demonstrated when I visited Dodge County – all might have a role to play.

PPAC priority #1: Assistance to self-represented litigants

In no area of the courts' work is the need for collaboration, and the utility of technology, more apparent than in assisting self represented litigants.

When we last met, I shared my sense that one project – a new set of standardized family court forms developed by the Pro Se Family Law Task Force – would move us forward in exciting directions. We have unveiled those family court forms on a brand new self-help family court Web site and demonstrated for people across the state how the forms could be completed by answering a series of questions – much like a Turbo Tax form. We'll use this model in our next project: development of a packet of small claims forms for pro se litigants.

Leading the forms projects and coordinating all statewide pro se programs is my assistant, Attorney Ann Zimmerman. Ann joined us this year, working half-time, and is a key reason why we have accomplished so much, so quickly. We also have seen coordinators added in two of our judicial districts. In District 9, we welcome Dan Johnson who will work for us on a two-year federal grant, which we received with the support of Representative Dave Obey. In District 10, we welcome Bob Hagness to work with the courts under a grant to Judicare.

Bob and Dan both have a special interest in using technology to improve service to self-represented litigants beyond the forms. Self-represented litigants need help not only in completing forms but in appearing in court. Dan will help with the District Nine 'virtual' legal clinic that will be established through a partnership among the State Bar, Northcentral Technical College, and the circuit court. The clinic will link self-represented litigants with lawyers in other counties using videoconferencing available at each technical college campus. I learned about this great idea when I visited Marathon County last summer. It addresses a need that is present in many of our less populated counties: providing legal help without creating conflicts of interest.

The videoconferencing project also was showcased in June at a first-ever joint conference that brought together the Ninth and Tenth judicial districts along with instructors from UW-Superior, representatives of Judicare and members of the public to share information and ideas on improving services to self-represented litigants. We continue the conversation – and invite judges and court staff from across the state to join in – on a newly created listerv that will improve our ability to discuss issues related to serving pro se litigants.

PPAC priority #2: courthouse safety

Courthouse safety for the public and employees comes up again and again as I move from one county to another. The need for additional security measures varies greatly from county to county, and I have found that the trial court judges are wisely participating very actively in discussions with law enforcement and county boards.

We have enabled online reporting of security incidents, which greatly improves our ability to gather information on safety threats. In one recent report, 44 counties reported having experienced security incidents in the preceding six months, ranging from threatening letters to dangerous weapons in the courthouse.

PPAC names court safety as a top priority for the next biennium and will weigh several strategies for improving security. We have requested \$160,000 over the next biennium to develop and implement a courthouse safety training program for all justice system employees. Our request envisions 141 training sessions held throughout the state over five years beginning in 2008.

Technology can be used in appropriate situations to protect a defendant whose life has been threatened, and to protect those in the courtroom. In Sauk County, not long after I visited with the judges and county board supervisors and toured the jail with Sheriff Randy Stammen, video-conferencing facilitated an orderly and safe initial appearance for the 15- year-old defendant in the high-profile Cazenovia school shooting case. Judge Patrick Taggart made the decision to use video-conferencing in consultation with both the defense and prosecution. The use of video-conferencing was also presented in Jefferson County, Waushara County and Marquette County.

Wisconsin has been a leader in the nation in developing best practices for videoconferencing. In September, we put our knowledge to the test when we partnered with the UW Extension, the State Bar and local bars to offer training for 400 jury bailiffs at 53 sites across Wisconsin. It might not surprise you to know that I, too, got in on the action: I was part of the group in Green County, stop #19 on the 72-county tour. The Green County Board voted a few weeks after my visit to move the courts out of the historic courthouse. In contrast, Green Lake County recently voted down a new courthouse. As our courthouses age, we will be seeing more and more new construction with better attention to courthouse security.

PPAC priority #3: treatment and prevention of alcohol and drug dependency

In my travels, I have met with many judges and law enforcement officers who have witnessed firsthand the damage done to families and communities by drugs and alcohol abuse. The conversation in Oneida County centered on drug treatment, although the newspaper managed to photograph me reacting to Judge Bob Kinney's contention that he earned top marks as one of my students.

Addressing the addictions that are fueling crime is a difficult and important task. This year, treatment courts dedicated to alcohol abuse were established in Racine and Waukesha counties. Just last month, we received word that seven counties were selected to divide more than one million dollars in 'TAD' money (the acronym stands for Treatment and Diversion) from a

legislative program created in the 2005-07 budget to address the overwhelming need for substance abuse treatment in communities and in the state prison system. The counties that won the grants are Burnett, Dane, Milwaukee, Rock, Washburn, Washington, and Wood.

Better options for treatment and prevention of drug and alcohol addiction will have far-reaching effects. The PPAC planning report notes that addiction is part of the picture in cases of divorce, drunk driving, truancy, theft, CHIPS, sexual assault, embezzlement, failure to pay child support, and more. The families that we see in court often present a web of problems – which is why the unified family court in La Crosse, a court that keeps all of the cases involving one family with one judge, is making a profound difference.

PPAC priority #4: Enhancing Public Safety: Effective Justice Strategies

Wisconsin's prison population has doubled - from 11,000 to nearly 23,000 – during the past decade. An increasing number of individuals are incarcerated for nonviolent offenses. The dramatic rise in prison population, the associated rise in correctional costs, and the concern that public safety has not necessarily improved along with the increase in incarceration rates have community and criminal justice leaders asking, “What can we do differently to improve outcomes for offenders, victims, and communities?”

Communities are interested in programs that protect public safety, reduce incarceration and recidivism, and address addictive behaviors. Widespread community interest in alternatives to incarceration may be driven by a variety of factors, including fiscal concerns about the high cost of incarceration and the high rate of recidivism indicating society's lack of success in dealing with the underlying causes of criminal behavior.

Whatever the motive, there is considerable momentum throughout Wisconsin to develop innovative criminal justice strategies. Ben Kempinen of the University of Wisconsin Law School, the Wisconsin Supreme Court's Policy and Planning Advisory Committee (PPAC) through its Alternatives to Incarceration Subcommittee, and I have inventoried many of these initiatives. The Supreme Court has begun a Web site describing these efforts to assist communities interested in developing programs.

The programs across the state are varied. Some programs focus on problem-solving police initiatives, including crime prevention and diverting individuals prior to the formal filing of charges. Other programs involve creation of local criminal justice coordinating councils (with a variety of names and organizational structures) to provide on-going collaboration among local legislative and executive leaders, business and community leaders, law enforcement, prosecutors, defense bar, social services, department of corrections, et al. in an effort to address selected community problems. I met with members of Waukesha's council during my visit there. Encouraging the development of coordinating councils is a top priority of the PPAC Subcommittee on Alternatives to Incarceration.

Other programs, like problem-solving courts (mental health, drug and alcohol abuse, and domestic violence), focus on the judicial system with heavy involvement of all the entities in the legal system from law enforcement to prosecutors to defense counsel, to courts, to corrections

and human services. Several programs (generally listed under the umbrella of restorative justice) include victim-offender conferencing and impact panels, teen courts and re-entry programs.

Sharing facilities across county lines is something that might work, and it's an idea that is under discussion in several Wisconsin counties. When I visited Wood County, I learned that county board supervisors there are talking with their counterparts in Marathon and Portage Counties about the possibility of a regional jail that could be constructed as one part of a criminal justice program that would include community-based alternatives.

Leaders for these varied programs come from all segments of the criminal justice system—sometimes a police chief or sheriff, sometimes a local legislative or executive leader, and sometimes a local community leader. Very often the leaders are the circuit court judges. Judges are very effective leaders in devising and running innovative programs and are also very effective in convening groups to collaborate in programs, even if the judge cannot fully participate in the program.

The Wisconsin Counties Association, with which the court system cooperates in a number of endeavors, is conducting informational sessions on the topic of alternatives to incarceration for their members. The Association's members, as you know, are county board supervisors and county executives and administrators. I have found a great deal of support in county leadership for innovative criminal justice strategies. Many county board leaders recognize that these strategies will cost money but believe that in the long run the fiscal costs and human suffering will be reduced.

Wisconsin communities are serving as laboratories for criminal justice strategies that will enhance public safety and may produce better results. The local programs vary, depending on the needs and resources of the community. Not all parts of the state face the same problems or can resolve issues in the same way. A repeated theme, however, is the need for collaborative efforts among the criminal justice professionals and the community.

Our judges are willing to embrace new criminal justice strategies only if the public is not placed at risk. But gauging an offender's risk is, as you all know, a difficult task. On January 1, 2007, we shall begin a new effort to try to improve the information that judges have prior to sentencing. The effort is known by the acronym AIM (Assess, Inform, and Measure). PPAC is working in close cooperation with the Department of Corrections to develop the program.

Across the state, in counties small and large, rural and urban, our judges and court staff are collaborating and cooperating in ways heretofore unknown, and the results are impressive, as I learned firsthand during this first leg of my 72-county tour.

Talented and diligent judges and court staff are the cornerstone of our justice system. The wage adjustment that judges and staff received this year reflects their vital role. We will continue to need excellent judges and staff who are willing to carry on the legacy that Justices Whiton, Cole and Smith entrusted to us.

Let me close by sharing with you two thoughts that I presented to the celebrants at my mid-

career party in September:

First, I have learned that being a neutral, fair and impartial judge does not mean sitting in the courthouses in judicial isolation. I have learned that judges and lawyers must be out and about, communicating about our work with our many publics. The judicial branch relies upon the trust and confidence of the people, and we'll not maintain that trust and confidence without public understanding of the judiciary's role.

Second, I have learned much from all of you. And I know, as I continue my visits across the state, that I shall continue to learn much about where we are, where we have been, and where we are headed. Greatness, in the words of Oliver Wendell Holmes, Sr., "is not so much where we stand, as in what direction we are moving. We must sail sometimes with the wind, and sometimes against it, but sail we must. And not drift, nor lie at anchor."

I am in the telephone book and in spite of technological advances, I can still, most days, operate my telephone. 608-266-1885. Keep in touch. Let's have a great conference.