

State of the Judiciary Address

Chief Justice Shirley S. Abrahamson, Wisconsin Supreme Court

Message to the Wisconsin Judicial Conference

Wednesday, October 17, 2007, in Green Bay, Wisconsin

Good morning. Welcome to Green Bay and the 2007 Wisconsin Judicial Conference. Our thanks to the program chair, Judge Donald Zuidmulder of the Brown 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 in November 2006.

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

Judge Martha J. Bablitch, Wisconsin Court of Appeals

Judge Thomas E. Fairchild, Wisconsin Supreme Court

Judge Laurence C. Gram, Milwaukee County

Chief Justice Nathan S. Heffernan, Wisconsin Supreme Court

Judge J. Richard Long, Rock County

Judge Nicholas Schaefer, Outagamie County

Judge Burton A. Scott, Kenosha County and Wisconsin Court of Appeals

Judge Michael T. Sullivan, Milwaukee County and Wisconsin Court of Appeals

Judge Eric J. Wahl, Eau Claire County

Barbara Saeman, Office of Management Services

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:

Todd Bjerke, La Crosse County

Burneatta L. Bridge, Wisconsin Court of Appeals

Timothy Doyle, Barron County

William Hanrahan, Dane County

Timothy Hinkfuss, Brown County

Scott Horne, La Crosse County

Nancy J. Krueger, Outagamie County

Elliot Levine, La Crosse County

John Markson, Dane County

Mitchell Metropulos, Outagamie County

James Muehlbauer, Washington County

Patrick O'Melia, Oneida County

Michael Schumacher, Eau Claire County

Todd Ziegler, Monroe County

New to the appellate courts, though not to the judiciary, are Justice Annette Ziegler of the Wisconsin Supreme Court and Judge Edward Brunner of the Wisconsin Court of Appeals. And let me introduce our new Clerk of the Supreme Court and Court of Appeals, David Schanker.

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.”

On January 13, 1971, Chief Justice E. Harold Hallows stood before the Wisconsin Judicial Conference to deliver his annual State of the Judiciary Address. The Chief Justice had served on the high court for 13 years. Hallows believed that the best, most lasting solutions to the problems facing the justice system would be the product of collaboration, identified and implemented not by judges alone but by people of diverse backgrounds and viewpoints. And so it was no surprise that when he took the podium nearly 37 years ago and discussed the challenges confronting the judiciary, Chief Justice Hallows called upon the Governor to appoint a committee composed of non-judges and non-legislators to identify issues and recommend changes.

Governor Patrick Lucey appointed the Citizens Study Committee on Judicial Organization. I was among the committee’s 40 members and chair of the Subcommittee on Court Structure and Jurisdiction. We were lawyers, law professors, police officers, social workers, journalists, accountants, business executives, labor leaders and others, and our charge was “to examine the court system of this state, determine its shortcomings, and recommend changes.” Governor Lucey explained: “For too long, the judiciary has been repaired with a hodge-podge patchwork of ad hoc modifications. Today, we must be prepared to respond to problems with a rational solution which is part of a careful long-run plan.”

In other states that had undertaken similar efforts to improve the judiciary, those ‘rational solutions’ had focused largely on court structure. Creating a unified court structure with centralized management and budgeting was viewed as the best way to bring some uniformity to procedures and systems and to improve professionalism and court management. Efforts for judicial improvement in other states stopped there, but we in Wisconsin hoped to go beyond these structural matters. Here are the words of the Citizens Study Committee in its final report:

Functionalism of court structure, efficiency of administrative practices, speedy retrieval of court information, effective management of the flow of judicial business – what does all this mean to the average litigant? Perhaps not much, when he is attempting to figure out how he can afford to hire a lawyer to press his small claim, or trying to decipher a complicated legal document

The committee’s final report was 417 pages that explored the judicial system’s strengths and shortcomings and recommended sweeping changes.

The people of Wisconsin agreed that change was needed and approved a constitutional amendment, which was followed by statutory changes and the adoption of rules that still shape the operation of the courts today.

The enthusiastic, dedicated group of 40 gave us a place to start. They showed remarkable prescience as they tackled the Governor's overwhelmingly broad charge to "identify the system's shortcomings and recommend solutions," correctly identifying nearly every one of the problems that we face today. What have we done with the legacy they left us? Let's take a look.

My 72-county tour (to date I have visited 42 counties) has given me one of the best seats in the stadium from which to assess our progress in the 30 years since court reorganization. This morning's remarks will focus on the Big Seven: seven key issues that the Citizens Committee identified. Let's examine the seven key issues and look at how the Citizens Committee's proposals have provided the foundation for the system that we have worked to build.

The Big Seven are:

1. Appellate delay
2. The two-level trial court
3. Lack of legal services for the poor and middle class
4. Language barriers to justice
5. Delay, congestion, and uncoordinated record keeping
6. Untrained or non-existent court administrators
7. Judicial selection, qualification, and compensation

Issue #1: Appellate delay

Let me begin by acknowledging one of the Citizens Committee's most ambitious and successful ideas: the creation of the Court of Appeals to increase the opportunity for appeal and to decrease delay. When the Court of Appeals was created, the Supreme Court had a significant backlog of over 300 cases.

Our accomplishments

The Court of Appeals was projected to handle 1,200 cases per year. Today, with an increase in the number of judges and staff, it is handling triple that number. Still, litigants expect timely review of trial court decisions. The Wisconsin Court of Appeals continues to strive to improve case management and decrease the time for completing appeals.

The Supreme Court is able to clear its docket every term. We can safely declare the creation of the Court of Appeals a success.

Issue #2: The two-level trial court

In 1977, there were 178 trial court judges in Wisconsin. Some were county court judges, others circuit court judges. The existence of a county court and a circuit court with overlapping jurisdiction and widely divergent caseloads presented serious problems, and the Citizens Committee scored a touchdown when it recommended the single-level trial court.

Our accomplishments

Today, we have a single-level trial court with the flexibility to meet the needs of litigants across the state in an effective and efficient manner. We can move judges within the state to equalize workloads and ensure that the system functions well. We can offer the people of the state the benefit of nearly 100 full-time-equivalent court commissioners working in our counties.

Municipal courts, too, are a part of the judicial mix and serve a vital function. The Citizens Committee understood the important role of municipal courts; as Chairman John C. Geilfuss noted at the time: “many citizens receive their only impression of the judicial system [in the municipal courts]. If the procedures are unfair in these courts, or if the judges who staff them are not adequately qualified or trained, justice cannot be done.”

We have encouraged more and better communication between municipal and circuit court judges. We have established an education program and benchbook for municipal judges to enable the municipal courts to better serve the people of the state.

Another part of the mix of cooperative justice partners is the tribal courts. This partnership has registered many successes. It was in this very building that we convened the first meeting of state, federal, and tribal judges nearly nine years ago. Two years ago, the Wisconsin Judicial Education Committee and numerous state and national partners convened a national conference on state-tribal court relations here in Green Bay.

The judges of the Ninth and Tenth Judicial Districts joined with their tribal court counterparts to adopt protocols to guide the courts when the courts have overlapping jurisdiction of disputes. These protocols, first developed by District Ten, have been replicated in other parts of the country.

We have a many-faceted system that we try to keep as flexible as possible to allow us to meet the needs of each local community while safeguarding access to fair and impartial justice. Court reorganization gave us the framework for this system, and we have built upon it carefully and thoughtfully.

The Citizens Committee favored sweeping, statewide solutions — new laws, new agencies, state-level commissions, and the like. We have learned that statewide programs are a hard sell. They can be costly, and often one size does not fit all. In contrast, locally devised and administered programs bring together people of many diverse backgrounds in the community who are invested in making a difference and who are able to adjust course to reflect the changing realities that they face. After development at the county level, a program can more easily be taken statewide.

One local effort is the creation of county criminal justice councils. These councils are built around a simple goal: bring together the top decision-makers from every entity involved in the criminal justice system to improve existing procedures and establish new approaches to a community’s unique challenges. The PPAC Effective Justice Strategies Subcommittee has identified criminal justice councils as an important tool for tackling improvements and initiatives that cannot be undertaken by any one agency or organization.

Drug and alcohol court programs, victim impact panels, and other effective justice strategies have taken hold in counties across the state.

In Door County, I saw a joint criminal justice task force that works with Kewaunee County, and I learned that victim impact panels are mandatory for all second- offense-and-above OWI offenders.

In Calumet County, a Coordinated Community Response Team is working to set up a domestic violence court, which may be modeled upon Milwaukee's successful effort.

In Grant County, where the Lancaster newspaper scored points with me by reporting that I am ranked as the state's top judge, the judges hold monthly roundtable meetings to keep the lines of communication open among various justice system entities.

In Iowa County, I learned about a successful teen court that has been a model for other counties.

I learned a great deal in Kenosha about the Family Integrated Court System, which was launched in April and uses a team of service providers to help families create individualized plans for getting out of the system and staying on track.

What is happening in our counties is 21st century judicial system improvement. And this improvement would not be possible without the single-level trial court that has positioned circuit court judges to work cooperatively to lead efforts that bring together multiple justice partners.

Issue #3: Need for legal services to the poor and to middle-income individuals

The Citizens Committee found that the single greatest barrier to justice in Wisconsin was the inability by reason of poverty for litigants to obtain competent counsel in both the civil and criminal arenas. The Citizens Committee made this observation:

If "equal justice" is to have any significant meaning in a judicial system which utilizes an adversary process of finding the truth, we must commit ourselves to providing legal representation, in both civil and criminal matters, to those who cannot provide it for themselves.

On the civil side, the Committee noted that programs such as Judicare, the

Milwaukee Legal Aid Society, and the State Bar's pro bono initiative were capable of meeting some civil legal services needs but not enough. The Committee recommended that the state consolidate services under a new agency that would provide quality legal assistance throughout the state to people without lawyers. It also recommended an insurance program that would help people cover legal debt. Great, noble ideas — but ultimately they could not be accomplished.

Thirty years hence, the gap between needs and services has widened and now the vast majority of civil cases involving small claims and family matters include at least one litigant who is representing himself or herself.

Our accomplishments

We now have data that documents the need for civil legal services. The State Bar's Access to Justice Study Committee in March 2007 presented the findings of 18 months' worth of research, much of it based on a statewide survey of more than 1,200 low-income households. It showed that more than 500,000 state residents had an unmet need for legal assistance in 2006. The report points out that these individuals were, for the most part, employed homeowners who pay taxes. Judge Rick Sankovitz of Milwaukee chaired that committee; serving with him was Judge Ramona Gonzalez of La Crosse.

In March 2007, more than 200 judges and lawyers gathered for the first-ever Wisconsin Equal Justice Task Force Conference. The Conference participants discussed possible solutions, emphasizing the need for collaborative partnerships among the bench, the bar and the law schools to create permanent funding streams for services, to increase pro bono legal services by lawyers, and to develop initiatives to help self-represented litigants.

The court system has many examples of successful initiatives to assist self-represented people.

As you know, the Supreme Court has assessed each lawyer \$50 a year to help fund legal representation for the indigent, and the Governor's budget included some funding for civil access to justice.

In June 2007, representatives from all 10 judicial districts came together to look at model programs for the self-represented and to focus on building the necessary infrastructure for supporting sustainable court-based pro se programming.

We continue to see counties open local assistance centers for pro se litigants. In February, I was fortunate to attend the opening of the new Law Information Center at the La Crosse County Courthouse. Ozaukee County also expanded a self-help center in 2007.

Steering our work for self-represented persons is Attorney Ann Zimmerman. Ann has accomplished much in just over a year in her position and is currently working with the Records Management Committee to finalize a set of small-claims forms for pro se litigants. We already have developed divorce and child custody forms for statewide use in an easy-to-follow question/answer wizard, which produces the required forms. By the beginning of 2008, we should also have pro se name-change forms.

In November 2007, Ann and a team of judges, including Mike Dwyer of Milwaukee, Barbara Kluka of Kenosha, Bob Mawsdley of Waukesha, and Ed Vlack of St. Croix, will participate in a conference at Harvard where they will learn strategies for working more successfully with pro se litigants. They will bring back a customizable benchbook and a training curriculum and will work with Dave Hass and the Office of Judicial Education to develop a program for all Wisconsin judges.

Our commitment to fashioning local solutions to the challenges presented by self-represented

litigants means that some judicial districts have brought on their own pro se coordinators. This year, we welcomed Amy Wochos in the First Judicial District and, thanks to the assistance of Representative David Obey, Annette Barna in the Ninth. We continue to take small steps in the right direction.

On the criminal side, our courts become backlogged when other justice partners, particularly the district attorney and public defender offices, lack resources. The circuit courts depend on prosecutors and defense counsel being available for court hearings. A July 2007 audit by the Joint Legislative Audit Committee revealed that the state is short 117 prosecutors and that 63 of the 72 counties do not have adequate staffing in the district attorney's office to keep up with new laws. In March, when I addressed the Legislature's Joint Finance Committee, I urged that the legislature consider the need for additional prosecutors.

The state public defender office is also under increasing pressure. Standards for indigency established 20 years ago are still used to measure eligibility for appointment of a public defender. In March, when I addressed the Legislature's Joint Finance Committee, I urged — as I have every biennium — that the indigency standards be updated.

We owe a debt of gratitude to the Citizens Committee for warning of the dangers of a lack of proper legal representation in both civil and criminal matters. I am confident that our solutions — both statewide and small, local efforts that are growing by the day—are indeed resulting in a better justice system for every person in Wisconsin.

Issue #4: Language barriers to justice

Thirty years ago, the Citizens Committee recognized that language differences presented a serious barrier to justice. Their proposed solution was enactment of a new law requiring that an interpreter be appointed, at public expense, for every litigant who appeared not to speak or understand English.

Our accomplishments

Seven years ago, in 2000, we began a program that allowed us to make steady progress, demonstrate success, and tackle problems related to court interpretation. Today, I am delighted to say we have built a training, testing, and certification program for court interpreters and have translated commonly used court forms into Spanish and Hmong, with the help of Senator Herb Kohl and the state legislature. We have published a directory of certified interpreters that has become an important tool not only for judges but also for law enforcement, and this year we improved the online version so that it's easily searchable.

In 2001, we were successful in working for enactment of a new statute requiring that all parties to a criminal matter or a Chapter 51 or Chapter 938 proceeding be advised of their right to a language interpreter at public expense.

We have also worked, for several years, to persuade the legislature to enact a law requiring interpreters in all cases in which they are needed, regardless of indigency. I am pleased to say

that, this time around, the state Senate passed its version of the budget with our proposal intact; unfortunately, it was removed in the Assembly. We shall continue to work for passage of this important measure, and we continue to count the interpreters program among our successes.

Much of our focus on interpreters has been at the state level, but small, local efforts are taking root. In Richland County, for example, I saw a highly successful collaboration that has produced a number of informational pieces in Spanish.

The Citizens Committee gets credit for recognizing the pressing need to act and placing this issue at the forefront. Moreover, we continue to respect, as the Citizens Committee urged, the cultural differences of the many people in this great state.

Issue #5: Delay, congestion, and uncoordinated record keeping in trial courts

In 1977, each trial court kept its own calendar and shared little or no information with the other branches of court. Dockets were written by hand in large bound volumes by clerks who would then spend substantial time hand copying that information into other, smaller volumes.

As the Citizens Study Committee noted in its final report, “The courts of our state . . . are still operating under procedures designed in the colonial era. Indeed, the great lawyers of that period – men such as Alexander Hamilton and Thomas Jefferson — could walk into many of our courts today and be surprised by little more than the invention of electric lights.”

Chairman Geilfuss of the Committee was similarly blunt in his assessment of the problem: “We are operating space-age courts with stage coach methods and equipment.”

In its final report, the Citizens Committee emphasized the need for a statewide information system that would allow the collection, analysis, and dissemination of caseload data and other court statistics.

Our accomplishments

Ten years after court reorganization, the Director of State Courts Office launched CCAP (the Circuit Court Automation Program). CCAP has enabled us to manage caseloads by monitoring the time to disposition and the age of pending cases so that we can spot roadblocks and get judges the assistance they need before a small backlog problem becomes a big one.

The appellate courts are also on CCAP, and we are able to give people instant access to our opinions as well as access to the status of cases.

After 20 years, CCAP continues to innovate. This week CCAP is implementing RSS: Really Simple Syndication. This system allows judges, justice partners, and the public to subscribe to updates. If someone wants to track a circuit court case, subscribe to new opinions, or get press releases, the person can use the RSS feed to get that information instead of searching the websites every day for updates.

Our computer systems enabled us last year to conduct the best, most comprehensive weighted

caseload study ever performed in Wisconsin. The study is the basis for determining judicial personnel needs and the proposed judgeship bill.

We continue working on e-filing, a long-term effort that we hope will improve efficiency and reduce costs. We will need legislative assistance to keep e-filing going.

When I visited Washington County I saw great enthusiasm for the e-filing pilot project. Unfortunately, the newspaper ran my photograph right above the headline “Cooking up something wild.” The headline was actually part of a story on how to prepare wild game, not a reference to anything I was planning. Anyway, that’s my story and I’m sticking to it.

This quarter, CCAP will launch a program statewide to denote non-criminal cases where one or both parties are self-represented. If the pilot program works, we’ll enhance it to collect data for all case types in 2008. Collecting this data is critical to our planning for improved services for the self-represented.

Ultimately, whatever form it takes, technology is a tool that should help us to improve the justice system for the people of the state. We are working with the National Center for State Courts to make use of their 10 “CourTools” to measure trial court performance. Not surprisingly, three of the 10 tools focus on case disposition. If we cannot ensure that our trial courts are disposing of cases in a timely manner, we cannot do justice. That was true 30 years ago, and it’s true today. And so we have developed systems that help us to minimize problems of delay and to quickly identify and respond to trouble spots.

Technology is important, but a fair and impartial justice system depends on highly qualified, well educated, independent judges — and the judges cannot do it alone. Staff is important. The Citizens Committee recommended law clerks for all trial courts, which unfortunately continue to be the exception rather than the rule. Ten years ago, in 1997, we made a small step toward addressing this problem by developing the Volunteer Summer Law Clerk Program operated out of the Office of Court Operations. Since then, about 300 law students have spent their summers working in trial courts across the state.

Issue #6: Untrained or non-existent court administrators

Thirty years ago, many of our trial courts operated as separate entities, virtually disconnected from their counterparts in other counties and carefully sealed off from court administrators. The Citizens Committee report quoted one trial court judge as saying:

No one is really in charge of the administration of the judicial establishment at either the appellate or trial court levels. No one has the responsibility and authority to see that the judicial department is operated efficiently for the people.

Chief Justice Hallows suggested one reason for this state of anarchy in his 1971 State of the Judiciary Address: “Judges are not trained to be administrators of the courts,” he said, “any more than a doctor is trained to be an administrator of a hospital.” The Chief Justice recognized the need for professional court administrators — and the Citizens Committee scored a

touchdown when it seconded this notion:

Trained court administrators with a knowledge of modern business management methods are not in evidence in the courts of Wisconsin. The lack of such administrators produces a drain on the time and energy of active trial court judges who must spend time on non-judicial duties.

Our accomplishments

Court reorganization brought us 10 judicial districts, each with a professional court administrator who works under the supervision of the Director of State Courts and in close cooperation with the chief judge of the district. The contribution that these teams make to the quality of justice in Wisconsin is difficult to overstate. The district court administrators and chief judges have made important strides in jury management and alternative ways of taking the record as it becomes harder to find court reporters. These are just two examples of the key issues that our court administrators have handled.

Issue #7: Judicial selection, qualification, and compensation

The Citizens Committee also was deeply concerned about the quality of the judiciary. The Committee debated at length the best way to select judges and ultimately recommended that Wisconsin move to an appointment system. The final report explains:

Elections tend to reduce a judge's independence and to create or appear to create obligations to those who support him. The substantial cost of current campaigns magnifies these disadvantages.

The Citizens Committee recommended a formal, mandatory education program funded by the state and urged the Supreme Court to require that all judges — including reserve and municipal judges — participate in regular continuing education.

The Citizens Committee also recommended that a Wisconsin Judicial Commission be established to enforce the Code of Judicial Conduct.

Compensation was the third prong of the Committee's work to improve the quality of judges. The Committee recognized, as we do today, that judges must be compensated appropriately. The Committee's observations closely track the arguments we made successfully last year for a compensation adjustment:

Wisconsin judges are underpaid in light of the heavy responsibilities of their office. They are responsible for a broad range of decisions affecting property rights, compensation for injury, guilt or innocence in criminal prosecutions . . . and yet in 1970-71, the salary of every state judge including the Chief Justice of the Supreme Court, was exceeded by 41 employees of the Department of Health and Social Services and 95 employees of the University of Wisconsin. Hundreds upon hundreds of other employees of many state agencies were paid far in excess of the state base salary for either circuit or county judges.

Our accomplishments

As to judicial selection: No judicial selection method is without flaws. I have often said that I favor election of judges in Wisconsin and I am pleased — although some of you may not be — that the committee’s recommendation for appointment of judges ultimately did not carry the day.

I recognize that the tenor and cost of judicial elections may have a serious impact on public trust and confidence in the judiciary. I am concerned that the cost of judicial campaigns may keep talented people from running and that the public will perceive that judges are beholden to campaign contributors. I have appeared before the Legislature in my personal capacity to call for public financing of judicial campaigns in Supreme Court races.

We must do everything in our power to ensure that Wisconsin continues to have a fair, impartial, neutral, and non-partisan judiciary and that we maintain public trust and confidence in the judicial system.

Today, the Wisconsin Judicial Commission and our highly respected Office of Judicial Education, which puts on dozens of seminars and conferences every year, help to maintain the public’s trust and confidence by ensuring that our judges are equipped for the task of judging and held to the highest standards of conduct.

On judicial compensation: It continues to be the case that many Wisconsin state employees, state elected officials, and UW Law School professors — not to mention judges in other Midwestern states — earn more than Wisconsin judges. We continue to track judicial compensation and have asked the Office of State Employment Relations to include a judicial market wage adjustment in the 2007-09 elected official compensation plan. We hope that the budget-to-be does not do away with the gains we made last year.

The Citizens Committee scored a touchdown when it cited the lack of “a system capable of self adjustment [of judicial compensation] to meet future needs” as a major problem. Our task now is to identify the best mechanism for ensuring systematic salary review and updates. To this end, I plan to meet with the Governor and legislative leadership to identify the best mechanisms for systematic salary updates.

The Citizens Committee worked for nearly two years, examined our system, held statewide public hearings, and polled judges and lawyers to understand the myriad challenges facing a complex, statewide judicial system. The Committee’s work helped to structure a system that today allows us to move forward with creative, collaborative initiatives that are improving the justice system for the people of the state.

The Citizens Committee wrote that “it is entirely possible, and probably desirable, that we shall never be entirely satisfied with the method by which justice is dispensed. There has always been a need to critically reassess our judicial institutions and likely will always be. . . . Today’s reform is tomorrow’s anachronism. Judicial improvement is . . . a continuing process. . . . [T]he benefits of a well designed, independent, efficient and impartial judicial system belong to everyone.”

As we move forward, we will share the Citizens Committee’s commitment to improvement, the

Committee's concern for justice, and the Committee's ability to identify future issues and recommend solutions that will safeguard our fair and impartial courts for every person. If we are to maintain the people's trust and confidence in the judiciary, we must maintain the quality and integrity of the judiciary in the 21st Century.

I end this State of the Judiciary address as I have ended the others. The court system needs your help. We must work together. Keep in touch. I am in the telephone book: 608-266-1885. Let's have a great conference!