

State of the Judiciary Address: "Justice for All"
Chief Justice Shirley S. Abrahamson, Wisconsin Supreme Court
Message to Wisconsin Judicial Conference
Wednesday, November 12, 2008, in Middleton, Wisconsin

Good morning. Welcome to Middleton and the 2008 Wisconsin Judicial Conference. Our thanks to the program chair, Judge James Daley of the Rock 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 October 2007.

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

- Justice Roland B. Day, Wisconsin Supreme Court
- Judge Ted E. Wedemeyer, Jr., Milwaukee County and the Wisconsin Court of Appeals
- Judge Ronald S. Brooks (Goldberger), Milwaukee County
- Judge Robert C. Cannon, Milwaukee County and the Wisconsin Court of Appeals
- Judge David L. Dancey, Waukesha County
- Judge Robert C. Jenkins, Portage County
- Judge Dane F. Morey, Buffalo & Pepin counties
- Judge Donna J. Muza, Dunn County
- Clerk of Circuit Court Taraesa Wheary Haug, Racine County
- Robbie Brooks, CCAP

While there is sadness in losing colleagues there is also joy in welcoming new ones. In keeping with another tradition, the new circuit court and Court of Appeals judges had breakfast this morning with the Supreme Court justices. I ask each new judge to stand until all the names are read. New to the appellate courts but not to the judiciary are:

- Justice Michael J. Gableman, Wisconsin Supreme Court
- Judge Kitty K. Brennan, Wisconsin Court of Appeals, District I

New to the Wisconsin Court of Appeals is:

- Judge Lisa S. Neubauer, Wisconsin Court of Appeals, District II

New to the circuit courts are:

- Judge James D. Babbitt, Barron County
- Judge Ann Knox Bauer, Taylor County
- Judge Steven G. Bauer, Dodge County
- Judge Howard W. Cameron, St. Croix County
- Judge Juan B. Colas, Dane County

- Judge Steven R. Cray, Chippewa County
- Judge Paul S. Curran, Juneau County
- Judge Rebecca F. Dallet, Milwaukee County
- Judge Michael R. Fitzpatrick, Rock County
- Judge Kenneth W. Forbeck, Rock County
- Judge Marc A. Hammer, Brown County
- Judge Kenneth L. Kutz, Burnett County
- Judge Thomas E. Lister, Jackson County
- Judge Brian A. Pfitzinger, Dodge County
- Judge Leon D. Stenz, Forest & Florence counties

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 come before you today to deliver my annual report on the initiatives and challenges we have tackled together over the last year. I shall begin by sharing some exciting developments that have occurred since we last met. Over the past 12 months, the Wisconsin court system has been singled out for recognition as a national leader no fewer than six times:

1. First, the New York-based JEHT Foundation selected Wisconsin to receive more than half a million dollars in grant funds to support and expand our initiatives entitled Effective Justice Strategies: enhancing public safety.
2. Second, the Kentucky-based Council of State Governments selected Wisconsin as one of four states to receive grant money to convene a Chief Justice’s task force to develop a strategic plan for improving how we address mental illness in the criminal justice system.
3. Third, the Rhode Island-based Physicians and Lawyers for National Drug Policy, located at Brown University, selected Wisconsin as one of three states to develop a training program for judges on evidence-based practices for addressing substance abuse problems in the justice system.
4. Fourth, the Wisconsin court system Public Library Initiative, a cooperative effort to improve services to self-represented litigants, was written up as a model in a national library publication.
5. Fifth, the New York Times recently reported on a California study that revealed that the Wisconsin Supreme Court is one of the ten most influential state courts in the nation. Over several decades, the decisions of our highest court were followed frequently by other state high courts. This finding highlights the leadership of our Supreme Court—and also of our Court of Appeals and of the Wisconsin trial courts -- and underscores the key role we play in the development of the law of our nation.
6. Sixth, the Council of State Governments’ Justice Center has selected Wisconsin to be a Justice Reinvestment Initiative site. The Center will work with the Wisconsin Legislative Council to conduct a rigorous examination of the Wisconsin justice system and provide

data-driven policy solutions to address recidivism, reduce costs and enhance public safety. A multi-branch commitment was necessary to secure this assistance, and the Wisconsin judicial branch played an instrumental role in making this happen.

We are proud of the national recognition that we continue to receive, and prouder still that it has come from many corners and for diverse projects. Let me give brief mention to five other initiatives that bore fruit in 2008. These projects have not garnered national attention (yet) but they will. They are:

The Wisconsin Summit on Children and Families: More than 430 circuit court and tribal court judges, attorneys, social workers and advocates convened in September to address the welfare of our children. It was the largest and most diverse gathering ever held to address child welfare in Wisconsin.

The initiative to improve the jury system: The Chief Judges Subcommittee on Juror Treatment and Selection worked for six years to develop a proposal for improving minority representation on juries and safeguarding jurors' privacy. This year the Supreme Court adopted changes to the rules governing jurors.

The Videoconferencing Project: The Planning and Policy Advisory Committee (PPAC) recognized that our courts needed further guidance on the appropriate and effective use of videoconferencing to maximize the use of the technology while safeguarding the constitutional rights of litigants. PPAC successfully petitioned the Supreme Court for new rules governing videoconferencing.

The State-Tribal Justice Forum: Statewide protocols for the discretionary transfer of civil cases between tribal and state courts are now in place, thanks to the work of the State-Tribal Justice Forum through a successful petition to the Supreme Court.

The Interpreter Program: A mentoring project to improve training of interpreters working on certification is set for piloting. We also have established a partnership with the Department of Workforce Development to give us better information on the expected migration of refugee groups into Wisconsin. This year, we knew that we would need translators for a new Burmese population in Milwaukee. Next year, we are told to anticipate more refugee immigrants from Iraq. Finally: I am pleased to note that about 75 percent of the Spanish-language interpreters used in Wisconsin this year were certified. Use of certified court interpreters helps to ensure that every litigant is afforded a full and fair hearing.

Our projects come in many shapes and sizes. But no matter the form they take, they ultimately serve one goal: Justice for All. In our work for Justice for All, we face difficult choices as we consider how to allocate scarce resources. That is why PPAC has developed, with your participation and in consultation with a broad range of stakeholders, a list of four strategic issues on which the courts will focus over the next two years. These four strategic issues are:

- Sentencing Alternatives and Strategies to Reduce Recidivism
- Self-Represented Litigants

- Judicial Independence and Selection
- Improvement of Court System Funding Structure

John Voelker, the Director of State Courts, will address the courts' funding structure in his remarks this morning. I shall focus on developments in the other three areas: sentencing alternatives and strategies to reduce recidivism, serving self-represented litigants, and judicial independence and selection.

I. Sentencing Alternatives and Strategies to Reduce Recidivism

Doing justice for all means stopping the cycle of crime that is fueled by addiction. Incarceration is an important tool, but not the only one. The public relies upon the judiciary to work with justice partners to identify other tools. Tools that, in some cases, may provide better, safer, more efficient and more cost effective justice. The nearly \$600,000 grant from the JEHT Foundation will enable us to add tools to the toolbox, to train judges on the proper use of these tools, and engage in rigorous analysis of initiatives underway statewide to develop a list of best practices. The areas of focus are:

- Criminal Justice Coordinating Councils

Less than two decades ago, there were no formal criminal justice coordinating councils in Wisconsin. Today, at least 27 Wisconsin counties have established councils. The councils are built around the idea that "justice for all" is enhanced by convening regular meetings of top decision-makers from every criminal justice entity. Direct communication can improve public safety and result in a better, more efficient criminal justice system. PPAC has strongly suggested that every county in Wisconsin establish a criminal justice coordinating council.

- Problem-solving approaches

In many counties, the criminal justice coordinating council works on developing problem-solving court programs. There are now at least 21 such court programs in Wisconsin. The design varies depending upon each county's goals and resources. These court problem-solving programs offer intensive supervision to enable chronic offenders to kick their drug and alcohol habits and become contributing members of society. This month we celebrate a milestone: A total of 1,001 people have now graduated from Wisconsin drug and alcohol treatment court programs.

- A focus on veterans

Wisconsin courts are also exploring ways to better serve veterans in the justice system by looking at models that would facilitate links to appropriate treatment benefits and mentoring opportunities for veterans.

- Improved treatment for criminal defendants who are mentally ill

The U.S. Department of Justice tells us that more than half of state prison inmates report having mental health problems. Justice for all requires that we improve treatment options for people

with mental illnesses. Treatment, in turn, may improve public safety, allow for more efficient use of taxpayer dollars, and reduce recidivism rates. With the Council of State Governments' grant I shall soon convene a multi-disciplinary statewide task force to develop a strategic plan for improving how we approach mental illness in the criminal justice system.

- Training for judges on evidence-based treatment for substance abusers

We must increase the number of weapons at our disposal in the arsenal against drug and alcohol abuse. Last spring we piloted a new training program to provide information on the neurobiology of addiction, advances in psychotherapy and in the use of pharmaceuticals, and more. The training will be offered in every judicial district in the coming year so that every judge has an opportunity to be trained in evidence-based practices relating to addiction. When we attack substance abuse with the right tools, we do justice not only for the individual before us, but for the family and the community.

- AIM: Assess, Inform and Measure

The AIM program, Assess, Inform and Measure, also focuses on giving our judges the tools they need to make the best possible decisions about sentencing. The PPAC Effective Justice Strategies Subcommittee has spent significant time on this issue, and we have hired a state AIM Project Coordinator who is providing support to the pilot sites. The pilot sites include Eau Claire, Iowa, La Crosse, Marathon, Milwaukee and Portage counties. We also are developing a data collection system that will enable us to track progress in these counties and assess the program as we expand it across the state.

We may never have crystal balls (although if they do come out, we'll be first in line to pilot them), but we can improve our sentencing decisions and improve our chances of success with each individual. Justice for all demands no less.

II. Self-Represented Litigants

Improving how we serve self-represented litigants continues to rank as a top priority on PPAC surveys. In 2008, the Wisconsin program to assist self-represented litigants continued to make good progress. Here are a few of the highlights:

- The Public Library Initiative

Launched in 2007, this project continues to pick up steam. The initiative aims to acquaint public libraries with legal resources available for assisting self-represented litigants. Trainings were offered for library staff in Judicial Districts Two, Three and Four in 2008. The program was also the subject of a national library journal article.

- Court staff training

We piloted a new training program for court staff in 2008, which we will expand statewide in the coming year. Court staff needs to know how to find the balance between appropriate legal

information and inappropriate legal advice. Also in development is a distance-learning model to reach new staff and others unable to attend live training sessions.

- Judicial education

Last year, we sent a team to Harvard University to begin developing a training curriculum for judges working with non-represented litigants. The team road-tested its new program this year at the Family Law Seminar and the Judicial College. Trainings will continue in 2009 and will be offered on a district-wide basis in 2010. We also conducted training for court commissioners in May and September.

- Understandable, accessible forms

Plain-English interactive forms for small claims and name changes were released online in 2008. Forms for divorce and child-custody were released in 2007 and are now widely in use.

- Better tracking, better response to self- representation

This year, CCAP helped us design a software program to collect statistics on self-represented litigants. We'll turn it on for three months in 2009 to look at where people are appearing without lawyers. Dane, Marathon, Taylor and Waushara counties piloted the program.

Self-represented litigants continue to grow in number. The challenges that they present to the courts are enormous, so our responses are bold and multi-faceted. We know that doing justice for the individuals we serve requires no less. Our work would certainly be less messy if justice were merely a concept, a word carved into stone for us to walk past each day on our way to the office or the courtroom. But justice is our conscience and our guide. It is our mission. And we cannot achieve justice in a general, aspirational way, any more than we can achieve good health or wisdom by wishing it so. Justice requires concrete, specific action. That is what these programs are all about.

The third and final PPAC critical issue I shall address is judicial independence and selection.

III. Judicial Independence and Selection

There are many reasons why our courts are a model for the nation. Let me give you one important one: Wisconsin's impartial, independent, non-partisan judiciary. We safeguard our independence fiercely, for it is the foundation upon which "Justice for All" rests. That is why judges, lawyers, court commissioners and people who work for justice across the state named judicial independence a high priority in the PPAC survey – and why many of you commented that the time has come for full state funding of judicial campaigns and that we must do a better job of educating the public about the role of the judiciary.

The survey echoed our Supreme Court, which on December 10, 2007 sent a letter to the Legislature and the Governor calling for "realistic, meaningful public financing" for Supreme Court elections. All seven justices signed that letter. It read, in part:

A cornerstone of our state is that the judiciary is fair, neutral, impartial, and non-partisan. The risk inherent in any non-publicly funded judicial election for this Court is that the public may inaccurately perceive a justice as beholden to individuals or groups that contribute to his or her campaign. Judges must not only be fair, neutral, impartial and non-partisan but also should be so perceived by the public.

The people of our state must be assured that our courts work for them and them alone. We do not work for special interests, associations, advocacy groups or political parties of any kind, pro- or anti-anything. We work for the 5.6 million people who call this great state home. They are the “all” in “Justice for All.”

Our courts have been tested throughout history, and judges have been called upon throughout history to defend the independence of the judiciary. The attacks we face today however, are different in tone and tenor. Justice Sandra Day O’Connor sounded the alarm in a 2006 op-ed piece entitled “The Threat to Judicial Independence,” in which she wrote:

[T]he breadth and intensity of rage currently being leveled at the judiciary may be unmatched in American history. The ubiquitous "activist judges" who "legislate from the bench" have become central villains on today's domestic political landscape. Elected officials routinely score cheap points by railing against the "elitist judges," who are purported to be out of touch with ordinary citizens and their values.... Though these attacks generally emit more heat than light, using judges as punching bags presents a grave threat to the independent judiciary.

Threats to our independent, non-partisan judiciary must not and will not be tolerated in this state. Wisconsin judges have both an institutional and personal interest in the election of judges and the tenor of campaigns. We must ensure that judicial campaigns are worthy of the electorate.

Join with me in renewing our commitment to improving judicial elections. Join with me in renewing our commitment to keeping the Wisconsin judiciary strong and independent in the pursuit of justice. That’s what “Justice for All” means in Wisconsin.

I end this State of the Judiciary address as I have ended the others. We must work together. Keep in touch. I am in the telephone book: 608-266-1885.

Let’s have a great conference.