

State of the Judiciary Address: "Value"  
Chief Justice Shirley S. Abrahamson, Wisconsin Supreme Court  
Message to the Wisconsin Judicial Conference  
Wednesday, October 20, 2010, in Appleton, Wisconsin

Good morning. Welcome to Appleton and the 2010 Wisconsin Judicial Conference. Our thanks to the program chair, Chief Judge Benjamin Proctor of the Eau Claire County Circuit Court, as well as the conference program committee. The committee and the staff of the Office of Judicial Education have developed what once again 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 2009.

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

- Judge Myron L. Gordon, Milwaukee County Civil and Circuit Courts, Wisconsin Supreme Court, and Federal District Court
- Judge Robert A. Haase, Winnebago County Circuit Court
- Judge Gerald "Jerry" William Jaekle, Rock County Circuit Court
- Judge David V. Jennings Jr., Milwaukee County Circuit Court
- Judge Jon B. Skow, Racine County Circuit Court

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 and remain standing until all the names are read.

New to the Court of Appeals:

- Judge Brian Blanchard, District IV
- Judge Paul Reilly, District II
- Judge Gary Sherman, District IV

New to the circuit courts:

- Judge Steven Anderson, Rusk County
- Judge Joseph Boles, Pierce County
- Judge Pedro Colon, Milwaukee County
- Judge Jay Conley, Oconto County
- Judge James Czajkowski, Crawford County
- Judge William Domina, Waukesha County
- Judge Eugene Gasiorkiewicz, Racine County
- Judge Mark Goodman, Monroe County
- Judge Mark Gundrum, Waukesha County

- Judge Robert Hawley, Winnebago County
- Judge John Jorgensen, Winnebago County
- Judge Todd Martens, Washington County
- Judge James Poulos, Washington County
- Judge David Reddy, Walworth County
- Judge J. David Rice, Monroe County
- Judge Gary Sharpe, Fond du Lac County
- Judge Kathleen Stilling, Waukesha County
- Judge Angela Sutkiewicz, Sheboygan County

Let us give all of these judges a warm welcome.

My tradition in this annual address has been to take stock of the past year's accomplishments and to look forward to the challenges ahead. I often do this in the context of the court system's critical issues, as identified by the Supreme Court Planning and Policy Advisory Committee (PPAC). PPAC ranks the key critical issues by surveying all of you, and consulting with a broad range of justice system stakeholders. For the 2008-2010 biennium, these four critical issues were identified:

- Court System Funding
- Sentencing Alternatives and Strategies to Reduce Recidivism
- Self-Represented Litigants
- Judicial Independence and Selection

As I review the year's accomplishments and measure our progress on each of these critical issues, I look for a common thread. This year, the word "value" describes the common thread. I use the word "value" in three senses.

First, in the sense of creating value: that is, determining how to provide better for the people we serve. The economic downturn has made us particularly cognizant of the need to build our competencies and to build them more effectively and efficiently.

Second, I use the word "value" in the sense of measuring value: that is, figuring out whether what we are doing actually works. This exercise is particularly valuable as we look at developing sentencing reforms and alternative and effective approaches to drug and alcohol abuse and other problems litigants face. For the first time, we are harnessing quantitative information to help make the best possible decision in each case. That's what our effective justice strategies initiative is all about.

Third, I use the word "value" in the sense of preserving our value system – the beliefs and ideals that are at the core of what we do. I speak of the value of equal justice for all under law and the value of safeguarding judicial independence, preserving a judiciary that is committed to fair, neutral, impartial and non-partisan decision making.

Creating Value: Two Programs

We create value by developing programs to meet the ever-changing needs of the people, for our job is to do justice for every person who comes to the courthouse. Judges across the state have been thinking “outside the box and outside the bun” and have put into effect innovative programs to assist their communities. We create value through programs for veterans, for people with addictions, for people and institutions dealing with foreclosure, for people who do not speak English, for people with mental health issues, for people facing domestic violence, and for self-represented litigants. We create value for the individuals, for the judges and for the institution. The programs are valuable for us because we became judges not merely for the challenge of processing cases but also for the privilege of doing justice. The additional tools we have developed can help make our jobs more personally satisfying by enabling us to truly make a difference. These programs are valuable to the institution because they aim to stop the revolving door that brings back the same individuals to the courtroom, again and again. These tools try to get at the root of the problems rather than simply treating symptoms.

In 2010, we created value in a couple of new ways even as we continued building upon programs already underway. What’s new? I am glad you asked.

#### Program #1: The Chief Justice’s Task Force on Criminal Justice and Mental Health

First, the Chief Justice’s Task Force on Criminal Justice and Mental Health. I convened the task force early in the year after the Council of State Governments selected Wisconsin as one of four states to participate in a national effort to improve the criminal justice system’s response to people with mental illness. I appointed a diverse, 80- member group representing stakeholders and policymakers in both the criminal justice and mental health systems. Last month, the task force issued its report, available on our web site at the address you see on the screen.

The report documents programs currently underway throughout the state. Until now, we did not know about successful efforts that might be easily replicated – such as the Mobile Crisis Response Teams that work with law enforcement in La Crosse, Washburn and Wood counties, and specialized crisis intervention training for police through the National Alliance on Mental Illness. The report also identifies gaps in the criminal justice and mental health systems and makes recommendations for improving our responses to persons with mental illnesses in the criminal justice system.

Finally, the report contains a list of 21 next possible steps. They range from big and complex, such as changing medication formularies in the jails, to relatively simple, such as consolidating cases involving an individual with mental illness and giving mental health providers access to jail booking lists. I shall soon convene a smaller committee of interested persons to focus on implementing some of the initiatives in the report.

#### Program #2: The Self-Represented Litigants Initiative

The second way in which we created value in 2010 was through our Self- Represented Litigants Initiative. Self-represented litigants are one of the PPAC critical issues again this year, and indeed the issue is more pressing than ever. In 2009, we served more pro se litigants statewide than ever before.

During the last decade, we have done much to address the challenges presented by self-represented litigants. We have developed new, simpler court forms and better web sites devoted to family law and small claims (in the seven months since the small-claims self-help site debuted, 1,000 people have used the online wizard to complete their forms). We have also formed self-help centers in partnership with local bar associations, training programs for judges and court staff, and more.

This year, there are three important developments to share:

- Number one is the new Limited-Scope Representation Committee. The chairs are Judge John Anderson of Bayfield County and Court Commissioner Darcy McManus of Ozaukee County. They will explore whether to create a statewide program to offer limited-scope representation to pro se litigants. The idea behind limited-scope representation is that lawyers will do some, but not all, of the work on a case. We know that our judicial system is geared to work with lawyers, and that it works better for the judges and for the litigants when litigants have at least some access to legal counsel.
- Number two is a new effort in the Tenth Judicial District in partnership with Judicare. They will soon launch a pilot program to connect self-represented litigants with pro bono attorneys online. The project will initially run for 18 months in Ashland, Bayfield, Sawyer and Washburn counties. A similar program in Minnesota has been quite successful.
- Number three is the Legal Advice Clinic in Milwaukee County. This clinic has operated for one year, and recently doubled its hours. It's a free, walk-in service staffed by volunteer attorneys and Marquette Law students. In the last year, the clinic's 164 volunteers (101 attorneys and 63 law students) have helped 767 clients.

#### Measuring Value: Effective Justice Strategies

Let us turn to measuring value. First, the AIM (Assess-Inform-Measure) project. AIM was fully implemented in the pilot counties in 2009. It gives judges more information about each offender's risks and the needs they present, in order to improve the chances of success in each case. The counties piloting AIM are Bayfield, Dane, Eau Claire, Iowa, La Crosse, Marathon, and Milwaukee. Thanks to a new CCAP data- collection system, at the end of the pilot phase, for the first time, we will have hard numbers on recidivism to measure the value of alternative sentencing approaches. Building on AIM, we launched a research project in partnership with the National Center for State Courts at the start of 2010 to measure the value of the various strategies we have developed to address crime more effectively. The Effective Justice Strategies Research Project will look at what's happening statewide – the development of criminal justice coordinating councils, treatment court programs, and so forth – and will identify criminal justice strategies that work best; that is, the ones that add the most value by enhancing public safety, reducing recidivism and addressing criminal and addictive behaviors.

The researchers began with a survey, and I am delighted to report that we had a 100 percent response. Now, site visits are underway in counties that have been leaders, including Ashland,

Bayfield, Brown, Eau Claire, La Crosse, Marathon, Milwaukee, Outagamie, Ozaukee, Portage, Racine, Rock, St. Croix and Winnebago.

On the site visits, the researchers will look at drug treatment court programs, OWI court programs, mental health and veterans courts, and criminal justice coordinating councils. These justice programs continue to grow across the state. Here are a few that are new in 2010:

- In Eau Claire County: A mental health court – the state’s first – with Judge Paul Lenz at the helm;
- In Grant County: An OWI court with Judge Craig Day presiding;
- In St. Croix and Winnebago counties: Two juvenile drug courts – Judges Edward Vlack and Karen Seifert presiding in their respective counties;
- In Eau Claire and Iron counties: Two veterans’ courts – Chief Judge Benjamin Proctor and Judge Patrick Madden presiding in their respective counties. Chief Judge Proctor and his team won a federal grant to travel to New York this fall and participate in a veterans’ court planning initiative. Judge James Daley began the state’s first veterans’ treatment court in 2009 in Rock County, and Judge Todd Bjerke is spearheading a veterans’ court initiative that includes a mentoring program in La Crosse.
- In Portage County: A reminder-call program in which senior-citizen volunteers report to the Clerk of Courts Office once a week to call people and remind them of court dates. The program has reduced the number of bench warrants and the jail population. In the planning stages is a program to call people and remind them of overdue fines.
- In Milwaukee and Eau Claire counties: Pilot programs to improve how criminal cases are handled at each step – from initial contact with law enforcement through sentencing. Milwaukee and Eau Claire are among seven jurisdictions in the nation to receive technical assistance from the National Institute of Corrections and the U.S. Department of Justice for this project. Kudos to Chief Judges Jeff Kremers and Michael Schumacher for their hard work in this area.
- Also in Milwaukee County: A coordinator for the Milwaukee County Community Justice Council, created in 2008. Attorney James Hiller will help the Council to move forward on the pilot program I just mentioned, along with a proposed 24-hour universal screening program in the jail to identify individuals who may be suitable for diversion programs, and a strategic planning initiative to efficiently and safely reduce Milwaukee County’s jail population.

Two decades ago, Wisconsin had no formal criminal justice coordinating councils and no drug treatment courts. Today, there are 30 criminal justice coordinating councils, 27 drug court programs, and more of each to come. I have been privileged to speak at a number of the drug program graduations this year: in Winnebago County, which has graduated 29 people in four years; in Jefferson County, which opened the doors of its Juvenile Drug and Alcohol Court last year and celebrated its first graduate last month; and in Brown County, which also just honored its first graduate.

We also have six OWI court programs, and the ranks of treatment court programs continue to grow. Now, for the first time, we hope to have numbers to show what works and to enable us to allocate our resources as effectively as possible.

Once we measure the value of the various justice strategies, we can roll out a plan to replicate the best, most effective approaches across the state.

### Measuring Value: Court Funding

The second way we measured value in 2010 implicates another of our critical issues: court funding. For at least 40 years, there has been debate about who should pay for the circuit courts, which are funded with a mix of state and county dollars. Committees have been formed, studies have been undertaken, and various recommendations have been made. For well over a decade, PPAC has identified improvement of the court system funding structure as a priority. In 2004, a PPAC study committee concluded that circuit courts should continue to be funded by a partnership between the counties and the state, with the long-term goal of increasing the state's share.

Changes in funding need good numbers. As statistician W. Edwards Deming once memorably put it: "In God we trust; all others, bring data." And so we have developed a method for reporting circuit court costs and revenues that is consistent from county to county. In the last biennial budget, we got the statutory change needed to accomplish this, and we developed a uniform chart of accounts and hired an auditor to make sure the numbers reported on the chart were accurate. Our auditor began work this year and, as of today, has traveled to 23 counties, helping to improve the quality of the financial data while providing information on best practices that will help to ensure continual improvement.

We are well on our way to knowing – for the first time ever – the dollar value of court services provided in each county we have audited, and the value of the revenue that the courts bring in. But we will not achieve our statewide data goal unless the auditor's position is made permanent. The auditor is part of our budget request this year, and it's supported by the Wisconsin Counties Association, which understands the value of consistent and complete financial data on the circuit courts.

As in years past, I shall meet with the Governor and key legislators to discuss this and other budget requests.

I also recently testified before the Legislative Council Special Committee on Court System Funding and Strategies and discussed state/local funding and the resource-intensive programs that we have begun in order to bring better value to the people we serve.

### Preserving Our Value System

We continue to create programs of value and we measure the value of those programs to allocate resources wisely. Understanding the value we provide and sharing that information with the counties, the Governor, the Legislature, and the people helps us to secure adequate, stable funding.

But let's not lose sight of the reason we are judges. We are here to serve the 5.6 million people of this great state who depend upon us to resolve their disputes according to the law. I speak of the

value of providing equal justice for all under law and the value of safeguarding judicial independence, preserving a judiciary that is committed to fair, neutral, impartial and non-partisan decision making.

Preserving those values and living up to the people's expectation of fairness are the only ways to build trust and confidence in the judiciary.

Trust and confidence in the judicial branch has never been more important. In August, the Associated Press and the National Constitution Center conducted a national poll of 1,000 Americans to gauge their trust in various institutions. The judicial branch edged out Congress and the banks, but just 12 percent of those polled expressed that they are "extremely confident" or "very confident" in the state courts. Sixty-two percent of respondents said they are "somewhat confident" in state courts, and 24 percent said they are "not too confident" or "not confident at all." These national poll findings underscore the challenges that we face in the coming decade.

Maintaining public trust and confidence is not a new issue for the judiciary. When I spoke with you in 2000, I looked back on the previous decade and looked forward to this one. I predicted the judicial branch would be challenged in this first decade of the new millennium to safeguard judicial independence and boost public trust and confidence in the face of thorny issues arising from judicial elections and campaign financing.

Judicial elections and judicial independence go hand in hand. I support our non-partisan system for electing judges in Wisconsin. I believe the people ought to decide who sits on the bench. That is the Wisconsin tradition.

But there are problems in Wisconsin judicial elections: A relatively small percent of electors vote. Campaign financing raises numerous issues, including solicitation of funds, increased funding of campaigns by special interest groups, and recusal. Provisions of the Code of Judicial Conduct governing speech, political activity and fundraising are being challenged in the courts with mixed results. The strains on the elective system are palpable.

Candidates for judicial office must run their campaigns in a way that is worthy of the Wisconsin judiciary and the people the judiciary serves. Should we fail to do so, we shall squander the public's trust and confidence. As I said 10 years ago, "A public that does not trust its judges to exercise even-handed judgment will look upon judicial independence as a problem to be eradicated, not a value to be preserved."

The people of Wisconsin look to the judiciary to safeguard the inspiring ideal of equal justice for all under law and to preserve the values of an independent judiciary. The people must be assured that the courts work for them and them alone. We do not work for special interests, associations, advocacy groups or political parties of any kind. The courts are not pro- or anti-anything. Judges are to decide cases in a fair, impartial, neutral and non-partisan way without a personal agenda or ideology.

We are poised to begin a new decade. Looking back on the past two decades, I am convinced that the Wisconsin court system has fared well because our judges and court staff have provided

leadership in meeting old and new challenges. The coming years will surely challenge us, perhaps more than the last decades have. But I am confident that we shall find new and better ways of helping the people we serve.

I end this State of the Judiciary address as I have ended the others. I call for all of us to work together in creative ways to make good use of the opportunities afforded each of us to provide the public with a fair, neutral, impartial and non-partisan judiciary. I need and welcome your help as we serve the people of this great state. Keep in touch with your ideas and your concerns. I am in the telephone book: 608-266-1885.

Let's have a great conference!