

State of the Judiciary: Our Mission
Chief Justice Shirley S. Abrahamson, Wisconsin Supreme Court
Message to Wisconsin Judicial Conference
November 19, 2014, in Appleton, WI

Good morning. Welcome to Appleton and the 2014 Meeting of the Wisconsin Judicial Conference. This conference celebrates the 50th anniversary of the Judicial Conference. The first annual Judicial Conference was held in Fontana in December 1964.

Our thanks to Judge William Domina and Judge William Pocan, the program co-chairs, as well as to the program committee and the staff of the Office of Judicial Education, for developing what promises to be another excellent conference. Karla Baumgartner, Dona Everingham, Tammy Hennick, and Carol Koschel of the Judicial Education office deserve our special recognition for continuing the fine work of that office.

In keeping with tradition, I note the changes that have occurred within our judicial family since our last conference in November 2013. We honor and remember:

- Judge William E. Crane, Winnebago County Circuit Court, 1968 to 2000.
- Judge Richard D. Galstad, Trempealeau County Circuit Court, 1983 to 1994.
- Judge William D. Gardner III, Milwaukee County Circuit Court, 1979 to 1997.
- Judge Robert W. Radcliffe, Jackson County Circuit Court, 1984 to 2002.
- Judge Leo F. Schlaefel, Washington County Circuit Court, 1988 to 2000.
- Judge Thomas S. Williams, Winnebago County Circuit Court, 1974 to 1998.
- Judge Norman L. Yackel, Sawyer County Circuit Court, 1991 to 2009.

While there is sadness in losing colleagues there is also joy in welcoming 13 new colleagues. I ask each new judge to stand and remain standing until all the names of new judges are read:

- Judge Thomas M. Hruz, District III Court of Appeals
- Judge Michael Aprahamian, Waukesha County Circuit Court
- Judge Anna L. Becker, Jackson County Circuit Court
- Judge Vincent Biskupic, Outagamie County Circuit Court
- Judge Maureen D. Boyle, Barron County Circuit Court
- Judge Vicki L. Clussman, Waupaca County Circuit Court
- Judge T. Christopher Dee, Milwaukee County Circuit Court
- Judge Kristine E. Drettwan, Walworth County Circuit Court
- Judge Laura Gramling Perez, Milwaukee County Circuit Court
- Judge James M. Peterson, Dunn County Circuit Court
- Judge Janet C. Protasiewicz, Milwaukee County Circuit Court
- Judge Josann Reynolds, Dane County Circuit Court
- Judge David P. Wilk, Kenosha County Circuit Court

Please give these judges a hearty welcome to the Wisconsin judicial family. May they serve the people of the state long and well.

We welcome 13 new judges today. We welcomed 14 new judges last year and 22 in 2012.

About 57 circuit court and appellate judges altogether, that's about 20% of the 276 circuit court and appellate judges, have been on the bench 3 years or less. About 90 judges, or about one-third of the 276 judges, have been on the bench for 5 years or less. Approximately 117 judges, or about 43% of the 276 judges, have been on the bench for 7 years or less.

I asked several trial judges for suggestions for my message today. One judge said I should tell the judicial conference that he was proud to be a judge in Wisconsin; that he was proud of his colleagues who go to work every day and try to make the right calls; and that it was a gift for him to come to work to serve the people of the county and state.

A municipal court judge wrote me that in looking back at his diverse legal career, it is his current office as municipal judge that provides a great deal of professional and personal satisfaction and, of course, some frustration as well.

Each of you is a leader in the judicial system and in your community. This annual meeting—bringing together new judges and used (that is, experienced) judges and staff—gives us the opportunity to renew our commitment to the mission of the court system, to take stock of our accomplishments in recent years, and to address how we should prepare to meet the challenges ahead. And there are many—some chronic, some new.

Let me read the mission statement to you. It appears in various places, including the Planning and Policy Advisory Committee's (PPAC's) critical issues report and budget papers.

“The mission of the Wisconsin Court System is to protect individuals' rights, privileges and liberties, to maintain the rule of law, and to provide a forum for the resolution of disputes that is fair, accessible, independent and effective.”

This mission statement is deeply rooted in legal history. Principles embodied in our mission statement can be traced to 1215, 800 years ago, when King John signed the Magna Carta. Wisconsin Supreme Court justices are reminded of the significance of the Magna Carta each day we work in the Court's Hearing Room. One of the room's four murals depicting the bases for Wisconsin law is the artist's rendition of King John at Runnymede signing the Great Charter.

The Magna Carta was a successful and unprecedented attempt by nobles to impose limitations on King John. The King had seized their lands, destroyed their castles, and imprisoned people, all without legal cause.

Chapter 39 of the Magna Carta states: “No free man shall be taken or imprisoned or dispossessed or outlawed or exiled or in any way ruined, nor will we go or send against him except by the lawful judgment of his peers or by the law of the land.”

Chapter 39 of the Magna Carta protected only the nobles “by the law of the land.” Yet the Magna Carta's protection of the rights of the nobleman has expanded to be protection of all persons. The Magna Carta's concept of “law of the land” has evolved into our concept of due process of law.

The concept of due process can be traced from early English law, to the 1787 Northwest

Ordinance governing territorial Wisconsin, and to the Declaration of Rights in the Wisconsin Constitution.

Closely aligned with the concept of individual rights and due process of law is the idea in our mission statement that the court system is to maintain the rule of law.

To state simply this complex and nuanced concept, the rule of law embodies the idea that law should govern, not arbitrary decisions by government officials. Broader than that, the rule of law means that everyone, including government officers, is subject to and accountable to the law.

Further, the court system's mission is to provide a forum for the resolution of disputes, private as well as public. Chief Judge Jeffrey A. Kremers got it right in a recent speech when he said, "People come to court with the expectation of solving a problem or to get protection. It takes people, clerks, interpreters, attorneys, managers, court reporters, and judges, among others, to resolve those human dramas. We are not just processing pieces of paper; we are responding to human emergencies."

In responding to these human emergencies, courts must exhibit the attributes described in the mission statement. Courts must be fair, accessible, independent and effective.

The legal concept of fairness—equal protection of the law—embodied in our mission statement and in the United States and Wisconsin constitutions also can be traced to the Magna Carta. Chapter 40 states: "To no one will we sell, to no one will we refuse or delay right or justice." The law must be applied across the board, irrespective of the identity of the plaintiff, or the name of the defendant, or the nature of the cause. The integrity of our legal system requires no less.

Courts must also be accessible. You have worked diligently to make the courts more accessible to all, regardless of economic status, race, gender, language ability, or physical or mental challenges.

The judiciary, either as a branch of government or in deciding of cases—above all else, in my view—must be independent.

The idea of an independent judiciary is similarly deeply rooted in our legal history. In 1776, the Declaration of Independence chastised King George for the "obstruction of the Administration of Justice, by refusing his Assent to Laws for establishing Judicial Powers" and the King's making judges "dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries." These were among the many grievances justifying the independence of the colonies.

The Wisconsin proclamation of judicial independence was written in 1856, 158 years ago. The State was just eight years old then and the three-person Wisconsin Supreme Court was only three years old. Two men, one an incumbent governor, the other the challenger, both claimed to have been elected governor of the state, and both took the oath of office.

The challenger sought a ruling from the Wisconsin Supreme Court. The incumbent governor refused to recognize the Court's jurisdiction. Even though it faced the near certainty of an armed clash in the Capitol, the Court in a unanimous decision ruled that the challenger was the duly

elected governor. It entered a judgment removing the incumbent governor from office. The incumbent governor obeyed.

As important as its resolution of the election dispute, the three justices established that the judicial branch was a separate, co-ordinate, and co-equal branch of government with constitutional authority that did not require armed enforcement.

The Court established that the judicial branch is the final arbiter of the meaning of the Wisconsin constitution and laws, and that the other two branches are bound by the statutory, administrative, and constitutional law, as interpreted by the courts.

Judicial independence in the adjudicative function rests on the requirement and expectation that judges decide cases according to the facts and the law and that judges be insulated from pressure, however subtle or indirect, from whatever source, to do otherwise. The Court demonstrated in 1856 that judges would not be intimidated and that this state would be governed by law and not by force.

Our society values judicial independence because it protects the integrity of the judicial process and our form of government.

I turn now to the last word of our mission statement—effective. Courts shall be effective. The justice system has shown a commitment to continuous improvement, has shown the courage to adopt new procedures and practices, and has taken a lead role in building strong partnerships.

The Wisconsin court system has, for example, joined with the legislative and executive branches in the Pew-MacArthur Foundation’s “Results First” initiative. The initiative is leading the way in using one method, a cost-benefit analysis, to evaluate the effectiveness of state programs.

Here are 5 programs that make the judicial system more effective and promote our mission:

1. We have created treatment court programs, including drug courts, veterans courts, and mental health courts. Statewide drug court performance measures are being developed through a grant to help evaluate the effectiveness of Wisconsin’s drug and hybrid courts.

We owe thanks to PPAC (the Planning and Policy Advisory Committee), its Effective Justice Strategies Subcommittee, and the many dedicated judges, court staff and justice system partners who are working in these programs.

2. Wisconsin has been a leader in Evidence Based Decision Making, using current research as the basis for sound decisions. Eau Claire and Milwaukee counties were selected by the National Institute of Corrections to implement evidence based practices to improve judicial decision-making.

In April 2014, Wisconsin was one of five states selected to continue with the fourth phase of the National Institute of Corrections’ (NIC) evidence based decision making initiative. This phase involves applying to be one of two states to receive extensive technical assistance to advance evidence based decision making to selected Wisconsin counties: Chippewa, Marathon, Outagamie, La Crosse, Rock and Waukesha counties.

3. We have secured legislative funding for TAD—Treatment Alternatives and Diversion programs. We thank the Legislature for funding TAD programs, bringing the annual total state support to \$4 million.

TAD programs extend our treatment court and evidence based decision making programs. TAD programs are effective in reducing recidivism and in managing costs.

TAD graduates were less likely to be convicted of a new offense within three years after program discharge. TAD treatment courts yield benefits of \$1.93 for every \$1.00 invested, and TAD diversion projects yield benefits of \$1.98 for every \$1.00 invested.¹

4. We are also finding ways to more effectively protect children who become involved with the courts. The Children’s Court Improvement Program (CCIP) has developed several programs, often working with the Department of Families and Children, exploring the best routes to safe, permanent homes for the most vulnerable people in the state.

Wisconsin was selected in a competitive process as one of seven states to harness new brain research showing the toxic effects of neglect and abuse experienced by infants and young children. This project is sponsored by the National Governors Association’s Center for Best Practices, in collaboration with Casey Family Programs, the National Conference of State Legislatures, the National Center for State Courts and the National Council of Juvenile and Family Court Judges. Our state team will begin developing an action plan.

Wisconsin is one of eight states to participate in the Judicial Engagement Initiative through the Casey Family Programs. The Initiative promotes the safety of children, permanency, and compliance with the Indian Child Welfare Act. The initiative will be piloted in three counties in 2014-15.

CCIP has launched Wisconsin’s first ever e-learning project, an online self-directed educational resource to train judges, court staff and other stakeholders in handling key hearings involving children.

5. We are taking advantage of technology in other ways to improve our effectiveness. CCAP—the Consolidated Court Automation Program—began in 1987-1988 with GPR funds to automate county court caseload management systems.

CCAP has succeeded beyond our expectations. The system, now funded from fee and surcharge revenues, has expanded from case management to provide financial and jury management and data interfaces with other justice agencies including district attorney offices, the State Public Defender, and the Departments of Justice, Transportation, Corrections, Workforce Development, Natural Resources, and Revenue.

A case management tool known as the Judicial Dashboard provides judges and support staff with information front and center about the status of cases.

Reserve judges will soon have access to the same CCAP tools and case file information as the

other judges.

CCAP recently implemented a new statewide jury management program, providing efficiencies for jury clerks and taking advantage of modern tools—like texting and e-mail—to communicate with prospective jurors.

Thanks to a partnership between CCAP and the Department of Revenue, the courts have made tax refund intercepts a reality. Last year over \$10 million dollars were collected on behalf of the State through tax intercept and since its inception over \$76 million dollars have been collected.

Wisconsin Circuit Court Access (WCCA) provides the public with an electronic payment option for outstanding criminal fines and traffic citations and forfeitures. Last year, \$6 million dollars were collected on behalf of the State and counties. Since 2006, over \$26 million dollars have been collected.

There are more programs making our criminal courts more effective:

- The number of local criminal justice coordinating committees is increasing.
- We are cooperating with other stakeholders in the Governor's State Criminal Justice Coordinating Council, which helps continue and expand innovations initiated by the courts, particularly problem-solving courts and evidence based decision making.
- We are assisting judges to utilize validated assessment tools, including COMPAS, developed by the Department of Corrections, to determine risk and needs of defendants.

Some other state programs that promote the mission of the courts include:

- Joint programs with tribal courts through the State Tribal Justice Forum.
- A project to protect the elder population and assist guardians, court staff and judges.
- Wisconsin's 240 or so municipal courts, handling over 500,000 cases a year, working toward becoming models of good community-based justice practices with leadership provided by the Chief Judges and District Court Administrators and training by the Office of Judicial Education.

The programs I have mentioned, as well as others, are improving the effectiveness of the court system, helping accomplish our mission, and ensuring that we spend every public dollar wisely.

These programs would not exist without the active support and leadership of the trial court judges and court staff. We have much to be proud of.

I have often said that the judges of this state constitute one of the best judiciaries in the country. I say it again today: The judges of this state constitute one of the best judiciaries in the country. It is clear we have a culture that values excellence.

Of course, to carry out our work, the court system needs resources. We search for opportunities

to apply for and receive grants and technical assistance. Nevertheless, the bulk of our funding comes from Wisconsin state government and Wisconsin counties.

It is axiomatic that the legislative and the executive branches have the initial constitutional responsibility and obligation to make decisions about raising and appropriating funds in our democratic society and providing the judicial branch with resources.

In almost every State of the Judiciary address I have given, I have spoken of the uncertain economy, the State's fiscal challenges, and our need for adequate government funding for the courts. The courts are sensitive to fiscal issues, and we, like others, have been doing our best to reduce expenditures wherever possible—holding open vacancies, reducing purchases, decreasing the use of reserve judges and per diem court reporters, eliminating reimbursement for judges' and staff's travel outside the state, and limiting travel expenses within the state.

After many years of fiscal pressure on financing the court system and an unprecedented large lapse of \$11.8 million in the 2013-2015 budget, I am concerned, as you all are, about the judiciary's ability to perform its constitutional obligations as a co-equal, independent branch of government. Reductions in expenditures have been and are being made, but at some point the quality and efficiency of our justice system suffers. We are moving toward that point.

We are now on the cusp of executive and legislative consideration of the 2015-2017 budget requests. The submission last month by the Supreme Court of the court system's budget proposal was the culmination of a process begun in the spring of 2014. First we gathered suggestions for the budget from all the stakeholders. Then court staff, the Planning and Policy Advisory Committee (PPAC) and the Supreme Court focused and refined priority areas for inclusion in our budget request.

A major focus of our budget request is working cooperatively with our justice partners—counties, district attorneys, state public defenders, state agencies, treatment providers and others—to provide quality court services. Here are five key budget initiatives that will help accomplish our mission and continue our successful programs.

1. We seek an additional \$8.6 million annually for Circuit Court Support Payment programs and the Guardian Ad Litem payment program. These programs pass state funds to the counties to support circuit court operations. Over the last two decades, counties have been shouldering an increasing share of the Wisconsin court system's operating costs. This increase in circuit court funding would restore the State's share of court system funding to the level of prior years.
2. We seek \$2.1 million in one-time start-up funding to implement electronic circuit court case filing (e-filing). Although Wisconsin has been a leader in developing and implementing court technology, we lack funds to develop the software and provide the hardware for a statewide e-filing system.

Significant benefits can be achieved by adopting electronic filing in all courts for all cases. The counties will realize lower costs for paper and files and decreased need for storage space, and more efficient use of staff can be made. Judges, court commissioners, lawyers and litigants will

benefit by having, at their fingertips, simultaneous access from multiple locations to identical case files, eliminating the need to create and track physical file folders.

E-filing takes full advantage of technology for easy access to information for court users across the state.

3. Our budget proposal seeks increased compensation for judges. As a result of minimal or no increases in the judicial rate of pay in the last decade and statutory changes, a circuit court judge's take-home pay has been reduced by about 9% over the last five years. Thus we request that the compensation of Wisconsin judges and justices be increased in the 2015-2017 state compensation plan.

Wisconsin judges' salaries are unjustifiably low as measured by a number of national, regional and local indicators. The judicial rate of office for circuit court judges in the 2015-2017 compensation plan is set comparable to the average trial judge salary of Wisconsin's neighboring states such as Iowa and Minnesota.

Ignoring judicial salaries impairs the State's ability to maintain and retain high- quality and experienced judges.

Our budget also seeks the creation of a Wisconsin Judicial Compensation Commission to independently assess and recommend judicial salaries to the Legislature's Joint Committee on Employment Relations (JCOER). Such a commission was approved by the legislature in the last biennium but was vetoed by the Governor.

4. We seek position approval and funding for a statewide problem solving court coordinator position to continue the important work now being done. The position is key to the effectiveness of our treatment courts and evidence based decision making programs. It is currently funded with federal funds that will expire in June 2015. The statewide coordinator, in addition to other functions, provides assistance to the 69 operational treatment courts on best practices; works with the State Criminal Justice Coordinating Council; assists counties to establish treatment courts consistent; and helps identify funding opportunities.

The Legislative Council's Study Committee on Problem-Solving Courts corroborated the importance of this position by recommending that permanent state funding be provided for a statewide problem solving court coordinator position.

5. Two other requests are designed to improve access to justice by improving our court interpreter program. One request relates to funding for court interpreter services. The other creates a two-year pilot project in three counties to establish a centralized interpreter station offering centralized scheduling and video and telephone conferencing interpreter services.

These are five key budget requests. They reflect our values as a court system and provide judges, court staff and justice system stakeholders with resources to meet the constitutional obligations of the judiciary.

Our requested state funding to run the court system amounts to less than one percent of state tax

dollars. That means less than one penny out of every state revenue dollar goes to support the court system. We provide significant value for this investment.

So what shall we do to help ensure that the executive and legislative branches understand the need to support our budget requests?

With the state budget process gearing up, now is the time for us to reach out to members of the executive and legislative branches at the state and local levels.

Just as we have many new judges, the executive branch has many new employees and officers and the legislative branch has many new legislators. The 99-member Assembly has 23 new members elected this month. Two-thirds of the Assembly will have 4 years or less experience.

Of the 33 Senators, 7 are new members who were elected this month. Ten senators have 4 years or less experience. While new to the Senate, about 2/3 of the Senators previously served in the Assembly.

We should take advantage of this opportunity to improve inter-branch and inter- governmental relationships. We must ensure that the leaders in state and local government and the people of the state understand the role of the courts, how our branch is funded, and the importance of our budget requests to our work.

We have to persuade the state executive and legislative branches to adopt our budget.

I have learned that being a fair, neutral, impartial, and non-partisan judge does not mean sitting in the courthouse in judicial isolation. Judges, lawyers, and court staff must be out and about communicating about our work with our many constituencies, the public at large and our state and local officials.

The Supreme Court adopted the proposed budget unanimously, and I expect that the justices will work together unanimously to get the budget adopted as proposed.

I am planning to meet with the governor and the newly elected attorney general. I shall participate in the Legislative Council's orientation program for new legislators to talk about the judicial branch. I will personally meet with every member of the Joint Finance Committee, as I have in prior years, and with legislative leadership of both parties about the Court budget. I will continue to meet with other legislators, not only about our budget, but also about other issues of interest to them. The Supreme Court will continue its full court meetings with legislative committees. I am talking with leadership in the Wisconsin Counties Association and the State Bar of Wisconsin about their support for our budget. I will be making our case to the public.

Each of you, as leaders in the judicial branch and in your community, has a role in making our budget request successful. I urge you to explain the value of the court system and communicate about our budget to members of the state executive and legislative branches and to county executives and county board members. These communication efforts are essential and invaluable. At tomorrow's business meeting, the Conference's Legislative Committee will be distributing information on how you can assist in effectively explaining our position.

And let us never forget the public. The Wisconsin court system has one of the best public outreach programs in the country, including Justice on Wheels, the Supreme Court's hearing oral argument in circuit courts. We have been to 25 counties since 1993. Public trust and confidence in the Wisconsin court system remain high. We must work to maintain that trust and confidence and harness public support for the judicial branch.

There is a great deal of talent, inspiration, and hope in this room. Each of us has the opportunity and burden to serve in a leadership role. We are well equipped for the task at hand. Let's go out and do it!

I end this State of the Judiciary speech as I have ended others. I call for all of us to work together for the people of this great state. Let's make good use of the opportunities afforded each of us to provide the people with a fair, neutral, impartial and non-partisan judiciary committed to our mission.

Keep in touch about your ideas and your concerns. I am in the telephone book: 608-266-1885.

Let's have a great conference!