

State of the Judiciary 2017 Address  
Chief Justice Patience Drake Roggensack, Wisconsin Supreme Court  
Message to the Wisconsin Judicial Conference  
November 15, 2017, in Wisconsin Dells, Wisconsin

Welcome to the 2017 Judicial Conference.

There is a saying at NASA that I find very inspiring. It goes like this: there are no passengers on a space shuttle, all are crew. So too in the Wisconsin judicial system, there are no spectators; all are working to serve the people of Wisconsin. Today we will have a conversation about how we serve.

However, before we begin our conversation, we continue a long tradition of recognizing those judges who have passed since the last Judicial Conference. Accordingly, we honor and remember:

Judge Marvin C. Holz, Milwaukee County Circuit Court, 1965 – 1993  
Judge John S. “Jack” Jude, Racine County Circuit Court, 2004 – 2016  
Judge Robert W. Landry, Milwaukee County Circuit Court, 1958 – 1993  
Judge Robert J. Parins, Brown County Circuit Court, 1968 – 1982  
Judge William L. Reinecke, Grant County Circuit Court, 1968 – 1978

Although those judges who are no longer with us leave an emptiness, we are gladdened by each new judge who has joined our judicial team and by those who have accepted new judicial responsibilities. We recognize the following changes in Wisconsin’s judiciary. Please stand when your name is called:

Judge Michael R. Fitzpatrick – 2017 District IV Court of Appeals  
Judge Bennett J. Brantmeier – 2017 Jefferson County Circuit Court  
Judge Robert F. Dehring – 2017 Jefferson County Circuit Court  
Judge Robert P. Dewane – 2017 Manitowoc County Circuit Court  
Judge Steven H. Gibbs – 2017 Chippewa County Circuit Court  
Judge Michelle Ackerman Havas – 2017 Milwaukee County Circuit Court  
Judge Jill J. Karofsky – 2017 Dane County Circuit Court  
Judge Kevin G. Klein – 2017 Price County Circuit Court Judge Jeffrey S. Kuglitsch – 2017 Rock County Circuit Court  
Judge Wynne P. Laufenberg – 2017 Racine County Circuit Court  
Judge Melissa R. Mogen – 2017 Burnett County Circuit Court  
Judge Shaughnessy P. Murphy – 2017 Eau Claire County Circuit Court  
Judge Troy L. Nielsen – 2017 Waupaca County Circuit Court  
Judge Rian W. Radtke – 2017 Trempealeau County Circuit Court  
Judge Robert S. Repischak – 2017 Racine County Circuit Court  
Judge Darcy J. Rood – 2017 Vernon County Circuit Court  
Judge Timothy C. Samuelson – 2017 Dane County Circuit Court

Judge Carrie A. Schneider – 2017 Outagamie County Circuit Court  
Judge Daniel J. Tolan – 2017 Polk County Circuit Court  
Judge Joseph R. Wall – 2017 Milwaukee County Circuit Court  
Judge Kashoua “Kristy” Yang – 2017 Milwaukee County Circuit Court

We look forward to working with our new judges and welcome them to our Wisconsin judicial team. Please give them a warm welcome.

I also recognize my colleagues on the Wisconsin Supreme Court: Justice Shirley Abrahamson, Justice Ann Walsh Bradley, Justice Annette Ziegler, Justice Michael Gableman, Justice Rebecca Bradley and Justice Daniel Kelly.

There are a number of challenges facing our courts – some are new, some old and some extraordinary.

### **The Opioid Crisis**

The opioid crisis in Wisconsin fits that last category. The scourge of opioid addiction cuts across all races and economic levels. Opioid addiction does not discriminate based on marital status or gender.

Opioid addiction clogs our courts as we address law violations for which addiction is a contributing factor. It cripples our families when parents become addicted and no longer provide a stable and safe home for their children. It also shatters families when children become addicted and parents try and try to help them overcome the problems that accompany addiction.

Heroin is a major driver in opioid addiction, which has caused a major spike in overdose deaths. For example, from 2008 to 2014 the annual rate of heroin deaths in Wisconsin nearly quadrupled, going from 70 per year to 267 per year. In 2015, Wisconsin had 281 heroin deaths and 1168 heroin cases. We also had 105 cases of fentanyl abuse in 2015. Sometimes fentanyl is used in combination with heroin, forming a deadly drug cocktail.

Wisconsin residents aged 25 to 29 had the highest rates of “opioid use disorder” arising from heroin use, with the average age of first heroin use being 25.5 years of age. We count opioid use as an opioid use disorder when the use results in hospitalization. Heroin is an equal opportunity addictor, no one is immune. Of the Wisconsin residents who died from heroin overdose in 2014: 67% had a high school diploma, 75% were male, 80% were white, 87% were unmarried and 88% died at home.<sup>1</sup> The in-home nature of heroin use and subsequent in-home deaths make it a secret crime in that even the family members of addicted persons may not know what is actually occurring until an overdose results in death or hospitalization.

Brown, Dane, Milwaukee, Rock, Washington and Waukesha counties have been hit the hardest by heroin. Dane and Milwaukee represent a bit more than 25% of the state's population, but they had 48% of the reported opioid overdoses.

More residents of Wisconsin died from drug overdoses than from breast cancer, colon cancer, firearms, influenza or HIV. Wisconsin is not unusual in experiencing increased effects from drug abuse. Between 2010 and 2014, heroin-related deaths rose 175% in the United States.

Although heroin is the major driver in the current spike in opioid overdoses, often prescription drugs such as oxycontin or hydrocodone begin the cycle of addiction. They are prescribed for much of what is now out-patient surgery – surgery that 10 years ago would have required post-surgery hospital stays of several days. For example, did you know that you can have the top of your femur cut off, a new top pounded in place, together with a new socket for the femur, all surgically completed in the morning and be sent home in the afternoon – a full hip replacement? Or you could have your knee cut off and a new one put in place and be sent home the same day?

When invasive same-day surgery happens, potent opioids are prescribed to control the pain. They are also prescribed to alleviate pain from broken and dislocated bones and that arising from severe back problems. Previously, when there were extended hospital stays, those medications would have been under the care and control of an on-duty nurse. Now those potent drugs reside in the patient's medicine cabinet at home. They are dangerous drugs for both the patient for whom they were prescribed and for other family members who may "try" them for any number of reasons. In 2015 in Wisconsin, there were more opioid related hospitalizations and deaths from prescription opioids than from heroin.

It seems that out-patient invasive surgery is here to stay. Insurance companies may require out-patient surgery for many significantly invasive procedures because hospital charges are much less than when post-surgery hospital stays are required. And, patients may prefer to recover in their own homes, if their pain can be managed so that they are made comfortable there.

As the opioid crisis has hit Wisconsin, our courts have risen to the challenge – not just in regard to handling the crimes that often follow such addictions, but also in regard to significant efforts to turn around the lives of those who have become addicted. For example, Brown County, through the efforts of Judge Thomas Walsh and the assistance of TAD funding, has established a rehabilitative court focused on heroin addiction. Heroin addiction differs from some of the other addictions we see because it is susceptible to medical treatments to reduce extreme withdrawal symptoms. However, as the medications themselves can be addictive, they must be carefully monitored by a physician. Judge Walsh has remarked that finding physicians willing to participate in heroin court and the funding to pay for the

medications used in alleviating withdrawal from a heroin addiction is not an easy task.

Children suffer significantly when their parents are addicted as the level of trauma to which they are subjected is increased day after day. Milwaukee County, which has been very affected by heroin and other substance abuse, has begun a Family Drug Treatment Court through the efforts of Judges Mary Triggiano, Joseph Donald and Jane Carroll. The Family Drug Treatment Court is a therapeutic, specialty court that operates in Children's Court, not in adult criminal court where other drug treatment courts find their footing. The Family Drug Treatment Court works to assist children of addicted parents by intervening in families overwhelmed by drug use. Milwaukee also has secured residential treatment for pregnant women and for intravenous heroin users. Two of the women's treatment facilities focus on families and allow children to remain with their mothers during their residential stay. In addition, where appropriate, the Family Drug Treatment Court works with Mental Health of America to coordinate mental health and drug treatment services to the addicted parent.

The Family Drug Treatment Court is fortunate to have the support of Secretary Eloise Anderson, Department of Children and Families, who has authorized much needed funding for treatment court coordinators, without which we simply could not attack the complicated problems that addictions create for Wisconsin families. Milwaukee County also received a \$2.1 million dollar grant from SAMSHA, to be used over five years, which will assist the operation of the Family Drug Treatment Court.

Wisconsin treatment courts have had strong support from the Legislature through TAD grants. Senate Bill 390, now moving through the Legislature, continues legislative cooperation with the courts for treatment alternatives. When enacted, Senate Bill 390 will make grants available to counties and Native American Indian tribes to enable them to establish and operate evidence-based family court procedures that make use of trauma-informed decisions in family treatment court programs that address substance abuse and mental illness.

Milwaukee Children's Court's newest initiative is the Healthy Infant Court that will address mental health needs for infants from birth to three years of age. This is a pilot project patterned after National Zero to Three Safe Baby Courts as well as parts of our Family Drug Treatment Court. This specialty court will target infants and toddlers in out-of-home care who are younger than 36 months of age. These are children traumatized by their parents' negligent or abusive care who will likely need mental health services. Judge Mary Triggiano will be directing this new opportunity to help children receive safe, nurturing permanency as soon as possible.

### **Children Court Improvement Program**

The Children Court Improvement Program, under the capable leadership of Bridget Bauman,

is another of our child-centered services. The Judicial Engagement Initiative, sponsored by Casey Family Programs, supports children and their families who are touched by the child welfare system. This program integrates best practices, data-centered case management and multi-discipline collaboration. Initially, we began with Dane, Monroe and Kenosha Counties as our pilots, all assisted by the Wisconsin Judicial Committee on Child Welfare. The pilot counties have seen improvements in child welfare processes, outcomes and engagement throughout legal and social services agencies.

In 2018, we plan to add 3 to 6 additional counties. CCIP and Casey Family Programs will continue to provide technical assistance, training and support as the process is implemented in each county.

Our CCIP also is increasing our focus on improving child safety through the use of the Child Safety Decision-Making Model. It provides court, child welfare, and legal professionals with a common decision-making framework to ensure consistent child safety practices across the state. The Wisconsin Commission on Children, Families and the Courts has convened the Child Safety Decision-Making Subcommittee to make recommendations related to the development of policy, resource materials, statutory changes, and training curricula related to child safety. This is a multi-disciplinary committee with state, county and tribal representatives working in the child welfare and court systems. This initiative is being piloted in Waukesha, La Crosse and Jackson Counties. It began in 2016 and is continuing through 2017. We have seen significant improvement in the application of child safety factors and hope to expand the program in 2018.

### **Court Funding**

Court funding has been one of my top priorities as we have assisted in the development of Wisconsin's 2017-2019 biennial budget. We have worked with the Legislature and the governor's office. I am happy to report that the court system has been allocated the funding we requested to carry on our service of the people of Wisconsin. In addition, the Legislature, which has the constitutional responsibility to set judicial salaries, provided a modest raise for all judges. It will begin June 2018. The judicial raise also raises the per diem for temporary reserve judges according to the provisions of Wis. Stat. § 753.075(3) wherein the per diem of a reserve judge is set at 90% of the daily salary of a full-time judge.

However, the grant of funds from the Legislature is only the beginning of our court funding concerns. Judge Randy Koschnick, as part of his duties as Director of State Courts, is examining how the Court spends every dollar, so that we may assess whether we are using the monies entrusted to us in ways that will best serve the people of Wisconsin.

We need to examine how we spend court funds for many reasons, one of which is the current

unpredictability of federal funding for some of our programs. At present, federal funding for some programs is coming up short because the government in Washington, D.C. has been focused on other matters. Accordingly, we will need to find financial support for those programs if they are to continue. For example, our Children Court Improvement Program is funded through three federal grants. However, to date, the federal government has funded only one line of the programing. Therefore, although we hope the federal government will soon address the concerns of children in the courts throughout the United States, unless the federal government moves quickly, we will need to find funds within what the Legislature has allocated to us in order to prevent a temporary loss of those programs.

### **OLR Review**

As well as examining the court's use of general purpose revenue funds, we have an on-going examination of the Office of Lawyer Regulation. The Review Committee, under the capable direction of Judge Gerry Ptacek, is tasked with reviewing OLR procedures and structure and reporting to the Court with recommendations that will increase the efficiency, effectiveness, and fairness of the OLR process. The committee has met monthly, and is considering changing processes, referee appointments, confidentiality and other OLR methods of operation. It is a big undertaking, and we greatly appreciate the Committee's work.

### **Commercial Docket Pilot Project**

Last year at the Judicial Conference, I announced that the Supreme Court enacted Rules Petition 16-05 and created a pilot commercial docket to operate in Waukesha County and in the Eighth Judicial District – Brown, Door, Kewaunee, Marinette, Oconto, Outagamie and Waupaca Counties. The commercial docket is also an available venue for cases filed elsewhere if both parties agree. The pilot became operational July 1, 2017. In the 4 1/2 months of its operation, we have had nine cases entered into the commercial docket. Eight cases are pending, as one case was removed from Waukesha County to federal court. We are working with the State Bar of Wisconsin in getting the word out to lawyers throughout the state in order to identify commercial cases and to facilitate proper docketing.

### **eFiling**

As you may have noticed from our press release, the first phase of mandatory eFiling is up and running in all 72 counties of Wisconsin. This phase includes civil, small claims, family, paternity, criminal, traffic and forfeiture cases. CCAP was to have completed the first phase by December 31, 2017, but they are two months ahead of schedule. My congratulations to Jean Bousquet, her capable and dedicated staff, our faithful clerks of court throughout the state and the patience of judges and their staff – some of whom were reluctant participants, but who have risen to the occasion in true Wisconsin style.

Probate matters are now beginning eFiling in 65 counties on a voluntary basis. By March 1, 2018, we anticipate that mandatory eFiling will be in place for all probate matters. Guardianships, commitments, and other case types will soon be added.

## **WCCA**

With the advent of mandatory eFiling, concerns were raised about access to court records. Therefore, the Wisconsin Circuit Court Access Oversight Committee was reconvened and studied access to WCCA in light of eFiling. The Oversight Committee was broadly based, with participation by judges, clerks of circuit court, representatives of news associations, our Chief Information Officer, district court administrators, attorneys, district attorneys, representation of Wisconsin counties, sheriffs, public defenders, Wisconsin DOJ representatives, legislators, Director of State Courts and many other users of WCCA. It has issued its final report outlining its recommendation of how and under what conditions access to records contained in WCCA may be made available. The report recommends access and transparency to those who have an interest in viewing court records, most of which are public records. Currently, our WCCA website averages about a million hits a day. The full 2017 report of the Oversight Committee is available on the court's website.

## **Trauma-informed Decision Making**

We continue our work with trauma-informed decision making, which when understood, gives us another tool to help children and adults who intersect with Wisconsin's court system. On October 29, 2017, the *Journal Sentinel* published a very nice article about Kids in Crisis that described some of the work others are doing, which is based on trauma-informed decision making that we introduced in children's court approximately two years ago. Trauma-informed decision making is a multi-disciplinary concept that the courts utilize in concert with others so that we can better understand those who come before Wisconsin courts.

## **Tribal Courts**

In April, we held our first meeting of all the Wisconsin tribal judges and the Supreme Court justices in Madison. Justice Michael Gableman and Judge Eugene Whitefish, President of the Wisconsin Tribal Judges Association, co-chaired the meeting. We shared ideas on how to better communicate and how to develop ways in which we both can better serve the people of Wisconsin. We hope to make a gathering of the tribal judges and the Supreme Court justices a regular event.

As you can see, the Wisconsin court system has no spectators, but rather a full complement of hard-working judges and court personnel. We work best when we support one another. And when we notice places where more work is needed, let's not engage in tough talk that can undermine the institutional legitimacy of our courts. Rather, let's work together to create positive solutions. I have outlined a few of those positive solutions for you today.

And so I conclude as I began, with a warm welcome to you all. And a request that we all work together to serve the people of Wisconsin with a highly skilled and knowledgeable judiciary supported by salary parity for Wisconsin judges. Let's have a super conference.