

**STATE OF THE JUDICIARY  
ADDRESS  
2015**



**Chief Justice Patience Drake Roggensack**

Wisconsin Supreme Court

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**Annual Meeting of the Wisconsin Judicial Conference**

November 11, 2015

Madison, Wisconsin

Good morning. It is wonderful to stand before our team, the judiciary of the State of Wisconsin. Welcome to all judges and to our capable staffs. Our thanks to Judges Eugene Gasiorkiewicz of Racine County and Barbara McCrory of Rock County, the program co-chairs, to the Program Committee and to Director Karla Baumgartner and her staff in the Office of Judicial Education for developing what I believe will be an excellent Judicial Conference.

### **Veterans Day**

Before we proceed further, however, I note that today is a special day, Veterans Day, a national holiday dedicated to all who have served in the United States military. Members of our judicial team deserve our additional recognition and thanks because of their military service. Will all veterans, and all current members of the Armed Forces, please stand so we can show our appreciation.

### **Tradition**

We have a long tradition of recognizing changes that have occurred within the judiciary since our last Judicial Conference. Accordingly, we honor and remember:

- Justice N. Patrick Crooks, Wisconsin Supreme Court 1996-2015; Brown County and Brown County Circuit Court 1977-1996
- Judge Ralph Adam Fine, District I Court of Appeals 1988-2014; Milwaukee County Circuit Court 1979-1988
- Judge John G. Bartholomew, Pepin County Court, Eighth Judicial Circuit Court and St. Croix County Circuit Court 1963-1989
- Judge Thomas P. Doherty, Milwaukee County Circuit Court 1980-2001
- Judge Patrick L. Snyder, Waukesha County Circuit Court 1978-2003

Although those judges who have left us leave an emptiness, we are gladdened by each new judge who has joined us and by those who have accepted new responsibilities. Please stand as your name is called:

- Justice Rebecca G. Bradley, Wisconsin Supreme Court
- Judge William W. Brash III, District I Court of Appeals
- Judge Brian K. Hagedorn, District II Court of Appeals
- Judge Mark A. Seidl, District III Court of Appeals
- Judge Paul Bugenhagen, Jr., Waukesha County Circuit Court
- Judge Gloria L. Doyle, La Crosse County Circuit Court
- Judge David A. Feiss, Milwaukee County Circuit Court
- Judge Michael A. Haakenson, Rock County Circuit Court
- Judge Michelle Ackerman Havas, Milwaukee County Circuit Court
- Judge Todd J. Hepler, Columbia County Circuit Court
- Judge Duane M. Jorgenson, Lafayette County Circuit Court
- Judge Maria S. Lazar, Waukesha County Circuit Court
- Judge Michael P. Maxwell, Waukesha County Circuit Court
- Judge David W. Paulson, Racine County Circuit Court

- Judge Rebecca L. Persick, Sheboygan County Circuit Court
- Judge John B. Rhode, Langlade County Circuit Court
- Judge Michael P. Srenock, Sauk County Circuit Court
- Judge Robert J. Shannon, Portage County Circuit Court
- Judge James R. Troupis, Dane County Circuit Court
- Judge R. Michael Waterman, St. Croix County Circuit Court
- Judge Daniel Glen Wood, Adams County Circuit Court
- Judge Brian H. Wright, Eau Claire County Circuit Court
- Judge John M. Yackel, Sawyer County Circuit Court

We look forward to working with these members of our judicial team. Please give them a warm, Wisconsin welcome.

In reporting on the state of the judiciary, I begin by acknowledging my colleagues on the Wisconsin Supreme Court: Justice Shirley Abrahamson, Justice Ann Walsh Bradley, Justice David Prosser, Justice Annette Ziegler, Justice Michael Gableman and Justice Rebecca Bradley. As Chief Justice, I am blessed with six talented colleagues who bring their unique contributions to the development of the law through our legal opinions and to the administration of the judicial system in Wisconsin.

As the first Justice to have been selected to serve as Chief Justice by her colleagues, I would like to acknowledge the remarkable efforts that my predecessor as Chief Justice, Shirley Abrahamson, brought to her service of the Wisconsin judicial system. Just a few examples: Justice Abrahamson helped create a comprehensive online resource for litigants who represent themselves in court; she established a task force on mental health that brought together an array of interested persons to examine mental health issues affecting the courts; she encouraged the development of evidence-based decision making and practices to improve the effectiveness of the justice system; and she helped to promote and encourage volunteerism by judges, lawyers and the public to guide the courts in many areas. Let's give Justice Abrahamson a rousing thank you.

Over the next two years, I intend to utilize the talents of individual Justices to serve as liaisons to various court functions. For example, Justice David Prosser is the Chief Justice's liaison to the State Law Library. In that role, he will take the lead for the court and meet frequently with Julie Tessmer, the state law librarian, and regularly report to the court about library projects and concerns. Other Justices will have leadership roles in other areas of court administration. I am hopeful that by employing a horizontal type of administration I will encourage efficient engagement among the Justices.

When I became Chief Justice, I met with all court system department heads to gain a better understanding of their needs and responsibilities. I came away from those conversations learning a great deal that I did not know before the meetings and feeling very good about the future of the Wisconsin court system. We have a super leadership team.

Although I will not name each member of our team, I must mention J. Denis Moran, our Director of State Courts. Denis was not with us on May 1 when I became Chief Justice, so I called him up. Why not, right?

After much discussion, he agreed to join us for 6 months as the Interim Director of State Courts. Prior to returning this year, Denis chalked up 25 years leading court administration as Wisconsin's Director of State Courts. He was honored with a national merit award for his distinguished service and outstanding contributions to the profession of court administration. Recently, we signed a contract under which Denis will serve as the Director of State Courts for an additional year. We are so fortunate to have him as part of our team.

Having a fair, even-handed and efficiently run judicial system is our goal. Meeting this goal begins with the commitment of each individual Justice, judge and judicial staff member. Of course, commitment starts with the Chief Justice, and you certainly have my commitment. That commitment extends to improving relations and building partnerships with the legislative and executive branches of government so that we are better able to serve the people of Wisconsin together.

In regard to partnerships with other branches of Wisconsin government, we learn from the past and look to the future. We acknowledge that each branch of government has certain constitutional functions that are exclusive to that branch. For example, we respect the law making power of the senate and assembly, and we acknowledge that each house of the legislature determines the rules for its own proceedings.

We respect the executive power that is vested in the governor, and recognize that it is usually the executive branch of government that enforces the law. Of course we, in the exercise of our judicial power, declare what the law is. We appreciate the interest and respect that the governor, members of the senate and members of the assembly have shown for the courts of Wisconsin. We will continue to develop opportunities for cooperation with other branches of Wisconsin government whenever such cooperation serves the people of Wisconsin. We also will continue to work with the legislature and the governor to achieve adequate funding for the courts. Adequate funding for the courts is essential to the people whom all three branches of government serve.

Each year, judges and court staff work tirelessly to shepherd thousands of cases through the judicial system to resolve controversies. Some controversies call on the courts to uphold rights that affect life, liberty and property. Some cases ask courts to help settle disputes involving families and children. Some cases are incredibly complex and may have extended terms within the judicial system. Some cases present well-defined issues that require quick resolution so that the people involved have certainty under the law. Some cases make headlines; most do not. All cases require careful consideration to assure that fair, even-handed justice is administered efficiently.

Judicial engagement generally begins in the circuit courts. However, we acknowledge the very important role fulfilled by municipal judges in Wisconsin. They act in high-volume courts that provide efficient resolution for legal issues that recur on a frequent basis and require immediate resolution.

Our circuit courts are the front line of the state judicial system. Standing at their sides and ready for the call, are our retired judges and Justices who have agreed to serve as reserve

judges. The importance of their participation mirrors that of full time circuit court judges and court of appeals judges. We could not do without them.

The men and women who serve as circuit court judges are the faces of the judicial system to the public. Their role is incredibly important because it is through circuit courts that public needs most often intersect with judicial service. The respect circuit court judges show for the people who appear in their courts and the dedication circuit court judges show to the disputes presented to them will long be remembered. When litigants feel listened to and their concerns respected, circuit court judges generate respect for our entire judicial system. Thank you for doing a marvelous job representing us all, each day in court.

The needs of the people of Wisconsin are changing, and the manner in which courts can effectively meet those needs is changing as well. We must ensure access to the courts for fair, even-handed resolution of disputes to all people. However, that access and dispute resolution must be efficiently run by the court system, otherwise justice will be unduly delayed. If justice were unduly delayed, the people of Wisconsin could lose faith in the court system's ability to perform its constitutionally mandated functions. Without efficient court operations, uncertainty will rule and the people whom we and the legislative and executive branches of our government serve will be disadvantaged. We all were elected to do better; we can; and we will.

To that end, our judicial system will be embracing 21<sup>st</sup> century technology, as we must. Technological changes are inevitable because they are fundamental to providing high-quality, responsive service to the public. Over the past decade, technology has changed the way in which services are delivered in the private sector and in government. Technology also has made a tremendous impact on our personal lives.

Who would be without his or her cellphone or smartphone and not suffer a certain anxiety about having left it behind? How satisfied are any of us when we can't reach the web and access its unending informational buffet for some burning question?

### **Technology**

Well, courts are no different. They need evolving technology to meet the changing needs of the public. To that end, we may begin a new technological journey with mandatory electronic filing of cases, or "efiling," very soon. We have two rule petitions that address efilings. Initially, the court was concerned about approving mandatory efilings because the legislature did not provide additional funding to carry out the program. Jean Bousquet, the courts' CCAP guru, promised to develop another method of implementing efilings, and true to her promise, she has done so.

Our circuit court clerks are excited about moving to efilings, and they are eager to meet the challenge its initiation will provide. Diane Fremgen, the Clerk of the Supreme Court and Court of Appeals, is enthusiastic about the proposed rule change that will permit electronic transmittal of circuit court records for appeals and petitions for review.

We likely will begin with the requirement to efile a limited number of case types in all circuit courts throughout the state. As we work through the bumps that any new undertaking presents, we will ensure that technology meets the needs of the public and the courts as it

expands access and convenience. Efiling is a significant advantage to judges and to litigants who will have on-demand access to electronic court documents. For example, more than one person can view case records and documents at the same time. Efiling will enable a circuit court judge, who is presiding on a filed case, and others who have established required access credentials, to view efiled documents simultaneously. This can occur in the courtroom during a hearing or when a judge and an attorney are preparing for an upcoming hearing at different locations.

Time spent inputting case data will be reduced and efficiencies increased, as counties that have gone to a paperless system have found. For example, Dodge County Judge John Storck reports that Dodge County has been paperless since 2014 and participated in voluntary efileing since 2009. Dodge County Circuit Court has found the system saves time, money and is easy to use. Dodge County is not alone on this journey, as we have 14 paperless counties at present and 43 counties where limited efileing is occurring.

Efiling will enable clerks of court to maintain more accurate records in all cases that are electronically filed. For example, if a document is misfiled by electronically entering it into the wrong case file and an attorney or judge requests the document, the clerk can run an electronic search of all documents filed on the date that the missing document was filed. Such a search will locate where the document has been placed and enable its placement in the correct file—all electronically. With paper filing when there is a misfiling, finding the document is like looking for a needle in a haystack. It's an almost impossible task.

Counties, who are our partners in maintaining the circuit courts of Wisconsin, will benefit from the efficiencies of efileing as well. Paper storage will be significantly reduced and costs incurred by the counties for storage will be reduced as a result. This will assist counties in meeting their ever tightening budgets without disadvantaging the people of Wisconsin who access Wisconsin courts.

There will be more training for judges in regard to efileing. The Office of Judicial Education and CCAP will work closely together to provide high-quality educational opportunities for judges and clerks to move forward with this important task. Extensive training also will be offered to the bar, paralegals and court staff to ensure our transition proceeds in a smooth and efficient manner.

The 2015 Judicial Conference includes a session on "Working with Electronic Records." It will provide useful information and lay the groundwork necessary to get judges accustomed to working with paperless files. Judges James Babler, Rick Sankovitz and John Storck will assist us in that session.

Many technologies about which we were once apprehensive, now have become part of our everyday lives—tablets, cell phones and email accounts are proof of that. Over the next several years, we will gain that same level of comfort and reliance with efileing and paperless court files.

Although efileing is exciting and challenging, it is not the first move into technology for the courts. For some time now, we have been using video-conferencing. Many counties have

employed video-conferencing to lessen unnecessary trips to court and the expense associated with that travel.

As with efilings, the counties are our partners in video-conferencing. The initial expense of the needed equipment is borne by the counties. The counties realize significant savings when they are not required to transport defendants held in criminal matters as often as was required before video-conferencing equipment was installed.

### **Trauma-based Decision Making**

Efiling is not the only exciting innovation that is on the horizon or was recently implemented. We are well into training on trauma-informed decision making in court matters that involve children. Trauma-based decision making is a multi-disciplinary concept that recognizes that a child's trauma history will affect the child's responses to court interactions. The Children's Court Improvement Program, under the direction of Bridget Bauman, recently co-sponsored the 2015 Conference on Child Welfare and the Courts: "Moving Toward a Trauma-Informed Wisconsin." Through the leadership of Milwaukee County Circuit Court Judge Mary Triggiano, and Ron Rogers, Kenosha County Division of Children and Family Services, judges learned how adverse childhood experiences can remain for a lifetime and how to incorporate that knowledge into interactions with children and adults. I was able to attend the first day of the conference and found the presentations filled with very interesting information that was all new to me.

### **Treatment Courts**

Treatment courts, which may be referred to as problem solving courts, are another innovation that has taken hold in Wisconsin. They are run by exceptional circuit court judges who regularly address problems encountered when people have addictions. Addiction, and the criminal behavior that often accompanies addiction, are vexing social problems. As has occurred in other states, Wisconsin is engaged in an effort to address those problems through non-traditional criminal justice processes in treatment courts. Treatment courts use the heavy hand of criminal prosecution, along with the power to incarcerate, to require non-violent, addicted individuals to engage in treatment and move into active recovery. The goal is to successfully discharge participants once they have achieved stability in recovery, to continue their sobriety and, hopefully, remain crime-free.

Nationwide data demonstrates that individuals who go through treatment court programs are significantly less likely to recidivate, and that applies both to those who successfully complete the full treatment court program and to those who do not. Addiction is a relapsing condition, and recovery is an iterative process that often involves relapse, post-relapse analysis and reapplication to the recovery process. Data demonstrates that successful recovery is strongly correlated to consistent engagement in treatment. Treatment courts require individuals to engage in treatment, and to stay engaged long enough for the brain to begin to heal and for an innate desire for recovery to take hold.

Currently in Wisconsin, there are 74 treatment courts. Of those, 31 are adult drug treatment courts; 15 are OWI courts; five are a hybrid of those two; ten are veterans courts; four

are mental health courts; and four are tribal wellness courts. The state also has three family drug treatment courts, which are non-criminal courts addressing children in need of protection and services due to the addiction of a parent. In 2013 and 2014, the number of treatment courts rose significantly in response to increased legislative funding for Treatment Alternatives and Diversion (TAD). The legislature understood the need, and we partnered with them to fight addictions.

Many resources have been marshalled to meet the needs of these courts. For example, the Department of Justice has received a grant to fund a statewide treatment court coordinator. The legislature authorized an additional court position for a statewide treatment court coordinator, but did not authorize additional funding. However, we are partnering with DOJ to make that position a reality and have begun our search for the right person to do the job.

The Wisconsin Association of Treatment Court Professionals (WATCP) serves as the statewide professional association for the education of treatment court professionals. WATCP has an annual conference each March. Last year's conference was in Milwaukee, and was the largest in its history. Next year's conference will be in Madison. A subcommittee of WATCP has promulgated best practice standards, based on the ten key components and best practice standards of the National Association of Drug Court Professionals. Earlier this fall, more than 500 treatment court professionals statewide were provided training on the Wisconsin standards.

Above all, the most compelling aspect of treatment courts is the lives they transform and save—the members of our communities who become productive, healthy citizens and actively engaged parents. The ripple effects of addiction are profound, and so too are the ripple effects of recovery. Recovery is possible. Treatment courts provide an opportunity to individuals to make that journey, and thereby to move from dysfunction to productive, healthy lives.

As you can see, a lot is going on in our circuit courts. However, the Court of Appeals is very active as well.

### **Court of Appeals**

The Court of Appeals is celebrating its 37th anniversary as a Wisconsin court. Before the Court of Appeals began in 1978, all appeals came to the Supreme Court. It was not unusual for an appeal to languish before the Supreme Court for years before the parties had resolution of their controversy. Currently, the Court of Appeals resolves approximately 2,700 cases each year. In addition, the court decides almost 14,000 motions annually. The Court of Appeals' workload is no small task to shoulder, yet access to justice has been provided to thousands of parties on a timely and efficient schedule year after year.

Because most litigants do not proceed to the Supreme Court, the Court of Appeals often is the final decision-maker. It is common for the Court of Appeals to be the final venue for review in family law, worker's compensation, CHIPS, administrative law, employment law, and numerous other types of claims. As the final review, the Court of Appeals has assisted in developing significant bodies of law in many substantive and procedural areas. Contributions of Court of Appeals judges may be less visible to the public than are contributions of circuit court judges, nevertheless the dedication and hard work of Court of Appeals judges have provided

benefits to the public and judges alike that are lasting, year after year. Our thanks to those 16 judges for their tireless efforts. They are essential to meeting our constitutional obligations to the people of Wisconsin.

### **Tribal Courts**

Tribal courts are also an important part of serving the people of Wisconsin. In 1996, a Ho Chunk tribal judge, JoAnn Jones, and I co-chaired the first state court/tribal court planning forum. That forum was the beginning of a journey that both the tribal courts and the state courts continue on today. We began by learning about the similarities in our two court systems and by appreciating the differences too. I even learned and participated in a tribal circle dance. During the meetings of the state court/tribal court forum, we developed mutual understandings and respect for the traditions of each court system. We continue to learn of each system as they both change; and our mutual respect grows as we continue to work together in service of the people of Wisconsin, be they tribal members or non-members.

### **Judicial Education**

As public officials, we must regularly assess whether we are working in ways that best serve the people of Wisconsin. There are times when other states have developed methods of serving the public or meeting constitutional imperatives that Wisconsin has not considered. We have an obligation to learn all we can. To that end we are exploring ways in which judges may be able to travel out-of-state and to bring in out-of-state speakers for in-state judicial education seminars.

As administrative head of the Wisconsin judicial system, we, Justices of the Supreme Court, are keenly aware of our obligation to consider the level of satisfaction that all judges should have with their judicial offices. Having the ability to learn of new developments and teaching new methods to other judicial colleagues will increase job satisfaction.

### **Judicial Compensation**

We all want our court system to be the best it can be. Judicial compensation that is reflective of the significant roles judges play in maintaining the liberties to which we are all entitled under both the Wisconsin Constitution and the United States Constitution is essential. We have a long way to go, but every journey starts with a first step. In that regard, I have consulted with chief justices in other states who have successfully achieved substantial salary increases for their judges. They have agreed to share those methods that worked for them. In advance of the next biennial budget, we will institute a different strategy by which to educate the legislature on the need for increased judicial compensation as other states have done. In Wisconsin, we have a ways to go, but we are committed to employing new methods to engage the legislature in understanding that raising judges' salaries will benefit the people whom both branches of government serve. I will be calling on you for your help. You can count on it.

So I conclude as I began, with a warm welcome to the 2015 Judicial Conference. It is so good to stand here before our judicial team. Let's have a super conference.