

**STATE OF THE JUDICIARY
ADDRESS
1998**



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Wisconsin Supreme Court

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Annual meeting of the Wisconsin Judicial Conference

October 21, 1998

Stevens Point, Wisconsin

**State of the Judiciary Address
Chief Justice Shirley S. Abrahamson**

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Welcome to Stevens Point and the 1998 Wisconsin Judicial Conference. Our thanks to the conference chair, Circuit Judge Michael Nowakowski of Dane County, as well as the conference planning committee and the staff in the Office of Judicial Education, for what promises to be an excellent program.

Following tradition, I begin by noting the changes that have occurred within our judicial family.

We express our sadness at the passing of Judges Richard Bardwell, Herbert Bunde, William Byrne, William Chase, Joseph Riedner, Lowell Schoengarth and Robert Sundby, all of whom served Wisconsin long and well.

While we express sadness at losing colleagues, there is joy in welcoming new colleagues. We extend a warm welcome to new members of the bench. Justice David Prosser, Jr., replaces Justice Janine Geske on the Wisconsin Supreme Court. Our new circuit court judges are Karen Christensen, Milwaukee County, Branch 37; Richard Delforge, Oconto County, Branch 2; Steven D. Ebert, Dane County, Branch 4; C. William Foust, Dane County, Branch 14; Barbara Hart Key, Winnebago County, Branch 3; Mary Kuhnmuensch, Milwaukee County, Branch 5; William Stewart, Dunn County, Branch 1; and Maryann Sumi, Dane County, Branch 2.

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On August 29, 1906, Roscoe Pound, dean of the University of Nebraska Law School, later to be dean of Harvard Law School, addressed the American Bar Association in St. Paul, Minnesota. He warned the legal profession that the work of the courts in the twentieth century could not be carried on with the methods and machinery of the nineteenth century. "[O]ur system of courts is archaic and our procedure behind the times," he said. "Uncertainty, delay and expense . . . have created a deep-seated desire

to keep out of court, right or wrong, on the part of every sensible [person] in the community."

Roscoe Pound's message has been repeated through this century and has influenced the course of law reform and court reorganization in America. The American Judicature Society, the Institute of Judicial Administration, the Conference of State Trial Judges and the National Center for State Courts, all created within this century, demonstrate the continuing interest in court administration.

We can easily persuade ourselves that Roscoe Pound's dire warnings of 1906 are not relevant to Wisconsin in 1998. The 1978 Wisconsin court reorganization creating a single-level trial court and the Court of Appeals gives Wisconsin a structurally sound judicial system for the twenty-first century.

Furthermore, recent surveys show that the Wisconsin court system retains the support and approval of the people of this state. Approximately two-thirds of Wisconsin litigants reported that they understood what was happening to them in court, were confident the courts follow the law, thought court staff were friendly and courteous and believed their cases were completed in a reasonable amount of time.

But we cannot be complacent. The new century will bring changes in the world around us. In fact, the pace of change will increase, and additional stress will be placed on all our institutions, including the courts. We must continue to examine our judicial institutions carefully, thoughtfully and critically to ensure that the judicial branch operates efficiently, impartially and independently for the people of the state.

The mission of the Judicial Conference is to consider the business and problems related to the administration of justice. In keeping with this charge, I will discuss six challenges the judicial branch will face in the next century. They are:

1. the increasing demands of litigants representing themselves,
2. the increasing number and complexity of cases affecting families,
3. our increasingly diverse population,

4. the impact of technology,
5. the public's expectation of service and institutional responsiveness, and
6. the privatization of dispute resolution.

The judicial system must begin to address each of these challenges, and I offer some initiatives we should place on our agenda.

1. The Increasing Demands of Litigants Representing Themselves

Pro se litigation is a growing phenomenon in courts nationwide. Studies in other jurisdictions illustrate the growing numbers of unrepresented litigants:

- In Utah, one in every five civil cases is filed pro se.
- In Phoenix, in 88 percent of domestic relations cases one party appears pro se; in 52 percent of the cases, both parties appear pro se.
- In California, one party appears pro se in 67 percent of domestic relations cases and 40 percent of child custody cases.
- A recent study of 16 large urban courts by the National Center for State Courts reports that for all domestic relations cases one party appears pro se in 53 percent of the cases and both parties appears pro se in 18 percent of the cases.

Although we do not have information concerning the number of pro se litigants in Wisconsin, anecdotal evidence suggests that the numbers are increasing here, too. For example, in one week in 1998 the Milwaukee Legal Resource Center sold 110 packets of family forms to pro se litigants. The Milwaukee pro bono legal advice group served 20 people in January 1998 and 137 people in August 1998. The August figure does not include 36 people who had to be turned away because the pro bono group could not serve them.

The trend toward self-representation seems to be driven by economics. People think they cannot pay the costs of an attorney, and legal services agencies are faced

with decreasing funds. Furthermore, some people want to handle their disputes themselves. Direct participation gives litigants more understanding of the process and more control over both process and outcome.

But direct participation by a litigant often causes problems. Judges and court staff are accustomed to communicating with lawyers rather than litigants. Judges risk losing their neutral status if they have to provide guidance to pro se litigants. Pro se litigants often seek advice from court staff, who are generally not lawyers. Staff must refrain from giving assistance that might constitute the practice of law. When a case has an unrepresented litigant, it takes much longer.

We are making some progress in learning how to work with pro se litigants. Our initial projects have, however, also taught us some valuable lessons.

- The Brown County Legal Resource Center was created and funded by the joint efforts of the State Bar of Wisconsin and Brown County in September 1997. In providing service to pro se litigants in the areas of small claims, divorce and name changes, the Center had 271 contacts in its six months of operation. Though the Center experienced steadily increasing numbers of contacts, it was unable to secure long-term space and funding and was closed in March 1998.
- In January 1998, the Milwaukee Legal Resource Center began working with the family court division of the Milwaukee County circuit courts to supply pro se forms. This Center is far too successful. The demand for its services has exceeded the resources of the Center, compromising the Center's primary function as a law library. Currently other alternatives are being considered for distributing these forms.

The Milwaukee Center has taught us that providing forms is not enough. People need assistance in completing the forms, and they need information about the legal process. Volunteer lawyers from the Hispanic Lawyers Association and the Milwaukee Bar Association Task Force on Domestic Violence have been working at the Center to help the litigants.

Wisconsin and other states are experimenting with a number of initiatives to be more responsive to the unrepresented litigant. These initiatives include:

- simplifying court forms for pro se litigants,
- evaluating the feasibility of developing an Internet self-help center,
- training court personnel about advising pro se litigants,
- working with the State Bar to provide pro bono legal advice, and
- working with the State Bar to provide lay advocates to assist pro se litigants.

Unfortunately, no one has found a perfect solution, but we shall continue to encourage pilot programs.

2. The Increasing Number and Complexity of Cases Affecting Families

Family problems requiring court intervention constitute a large and growing portion of the work of Wisconsin courts. The numbers, of course, tell only part of the story. Family law cases present some of the most difficult decisions a judge is asked to make:

- Who should have custody of a child?
- Should a child be removed from the parental home?
- Should parental rights be terminated?

Substance abuse, family violence and mental illness may complicate resolution of these difficult questions. Furthermore, in family law matters the court depends on a complex and overburdened social service system and the participation of many other government offices and service providers, including schools, health care professionals, law enforcement and corrections. Our ability to work effectively with all these participants will determine how effective we are in family law cases.

In 1995 we received federal funding from the Court Improvement Program to respond to growing concerns about the courts' processing of cases involving families in crisis. We have developed a number of creative projects, including:

- a 1997 Wingspread interdisciplinary conference committed to developing innovative pilot projects for Wisconsin courts,
- a conference to be held November 2-3, 1998, to showcase these pilot projects,
- two pilot projects, in cooperation with the State Justice Institute, to explore implementing a unified family court in Wisconsin's unified court structure, and
- grants totaling \$135,600 to 13 communities to improve the handling of child abuse and neglect cases.

--\$17,000 was awarded to the La Crosse Area Hmong Mutual Assistance Association to educate local child welfare workers on Native American, African American and Hmong culture.

--\$15,000 was awarded to Fond du Lac County to produce a videotape and a workbook to educate parents, children and the community about the CHIPS process.

--\$4,500 was awarded to Dunn County for a program using trained mediators to improve communication between child protective service workers and parents.

--\$25,000 was awarded to Milwaukee County to establish a common database and improve communication among agencies.

The needs of the Milwaukee Children's Court are far greater than the \$25,000 we were able to provide with Court Improvement funds. I am happy to report that last month the Wisconsin court system received a commitment from the U.S. Department of Health and Human Services of more than half a million dollars. This money will allow us to develop and implement a case-processing strategy in Milwaukee County that minimizes the courts' involvement in stabilizing families and reduces the time it takes to move a child to a safe and permanent home.

The Milwaukee Permanency Project will use mediators in child abuse and neglect cases. If the project proves successful, we may need to consider how the courts of the twenty-first century can take a less adversarial approach to the handling of cases affecting children and families.

These pilot projects allow us to start making the changes we need to improve our handling of family cases. But much remains to be done. We must continue to seek innovative ways to improve how families fare in the legal system and how the courts protect children, a vulnerable and precious segment of our population.

The good news is that the federal Court Improvement Program gives us five years and about \$1 million. We need your ideas and leadership. It's up to you to help us use these federal funds wisely and well.

3. Our Increasingly Diverse Population

Wisconsin's population is growing. Between 1990 and 1998, it increased nearly 7 percent. By the year 2010 the population will increase another 5 percent, to over 5.5 million residents. As Wisconsin's population increases, it is also becoming more diverse. In 1996, African Americans, Asians, Hispanics and other minorities formed about 12 percent of the Wisconsin population.

Our population is also aging. By 2020, there will be 35 percent more Wisconsinites age 75 and over than there were in 1990.

To respond to the needs of this growing and changing population, the Wisconsin courts will need:

- more interpreters,
- an ability to understand and accommodate cultural diversity in our procedures and in our decision making, and
- effective ways of dealing with increased litigation in areas such as guardianships, elder abuse, health care, disability and age, racial, ethnic and religious discrimination.

The need for interpreters is already upon us, and we are responding:

- Wisconsin has joined a national consortium through which 15 states offer access to professionally developed training and test materials for interpreters. By pooling our resources with other states, we can ensure

that we will use the best methods to obtain able interpreters.

- The Director of State Courts will soon appoint a committee that will document concerns about interpreters, review programs and policies relating to interpreters in Wisconsin and in other states, and examine the viability of technology to improve access to interpreters. We believe that over time this committee will improve our understanding of the problems, suggest programs to improve the system and help us gain the support necessary to make changes needed.

These efforts are a good start, but we can do more. A number of other initiatives have been suggested:

- establish a program to recruit interpreters,
- educate court personnel, judges and attorneys on interpreter issues, and
- use telephone or videoconferencing technologies to increase access to interpreters.

Only through accurate interpreting can we protect the constitutional rights of non-English speaking participants in the legal system.

But diversity issues go beyond language. Courts in other states are beginning to speak in terms of "cultural competence," that is, the ability of judges and court staff to communicate effectively across cultural lines. The goal is not to create culture-specific legal standards or linguistically segregated court proceedings. Instead, the goal is to create a system that the people can use with confidence that they will be understood and that they will be treated fairly.

4. The Impact of Technology

Everyone, including the courts, is affected by the information revolution and the explosion of technology. To put modern technology in context, consider this:

- The first computer was built in 1944. It required more space than an 18-wheel tractor-trailer and weighed more than 17 Camaros. Today, the Director of State Courts office oversees almost 3,000 workstations in 70

counties. Thankfully, none of our computers is as big as a tractor-trailer.

- In the United States in 1991, more money was spent on computer and communications equipment than the combined monies spent on industrial, mining, farm and construction equipment.
- Information doubles every five years.

This year's Judicial Conference offers us training on the use of the Internet and e-mail, both of which will enable judges and court staff to obtain and exchange information, not only in Wisconsin but across the nation and around the world.

The rapid advancement of technology may be the greatest single trend affecting the work of the judiciary. Although judges will continue to determine the facts and interpret and apply the law, judges' tools, such as videoconferencing, e-mail, the Internet, computer discs and videotapes, will be substantially different. Wisconsin courts are already starting to use new technologies to address challenges of the past, present and future. For example:

- The public's ability to access court information has been a challenge in the past. Last year we created a Wisconsin court system home page on the World Wide Web. Now Supreme Court and Court of Appeals opinions are available immediately on release, oral argument schedules are posted and audio recordings of the Supreme Court's oral arguments can be heard on-line. In addition, the public can get information about the circuit courts by accessing court forms or reports prepared in Madison. Counties and circuit courts are developing their own Web sites. Soon, information from the Office of Judicial Education, the Board of Bar Examiners, the Board of Attorneys Professional Responsibility and the Medical Mediation Panels will also be available on the Web site.
- The transportation of prisoners to our courthouses has often caused concern about security and costs. Some counties are now using videoconferencing for a few court proceedings. The Wisconsin Counties Association, and I as chair of the Planning and Policy Advisory Committee (PPAC), have convened a statewide committee to discuss how counties and courts can best work together to ensure that videoconferencing meets today's needs and

tomorrow's possibilities, not only for some court proceedings, but for meetings and educational and training sessions.

We will be facing additional technology challenges:

- Courts around the country are experimenting with electronic filings, which would allow litigants to file papers in the clerk's office without using paper. Indeed one of our municipal courts is experimenting with a paper-less court.
- Courts around the country are experimenting with alternative means of court reporting, with court reporters becoming record managers.
- Courts around the country are addressing privacy concerns arising from increased public access to personal information as a result of automated court operations.

As we look to tomorrow's challenges, we must also look at our present technology. The Circuit Court Automation Program (CCAP) needs additional resources. A larger than expected demand for CCAP services, along with the implementation of financial and jury management systems, has put a strain on CCAP's ability to assist current users.

- As of July 1, 44 percent of CCAP's workstations, 57 percent of its servers and 67 percent of its printers were at least five years old.
- Between 1995 and 1997, calls for technical assistance rose 73 percent to 23,392 per year.
- To achieve the Department of Administration's standard of one support staff person to 30 users, CCAP would need 60 additional staff members.

Because of the strain on our limited resources, we have declared a moratorium on new CCAP installations, which means that a number of Wisconsin counties lack necessary tools. Unfortunately this situation will not improve unless additional funding becomes available.

We face this funding issue now, and it is critical. Unless funding is increased—which means adequate staffing, equipment updates and regular equipment replacement—one of

Wisconsin's most successful automation projects will be compromised. CCAP needs additional funding of about \$3 million annually in the next biennium.

Appropriate funding for CCAP is a top priority in the court system's budget proposal. It is imperative that we get this word out to the Department of Administration and the governor, to the members of the legislature and to the counties that depend on CCAP. This effort requires that judges, lawyers, court administrators, clerks of circuit court and the public communicate the importance of this program to the decision makers in the executive and legislative branches.

As we strive to be more efficient and use modern technology, we must make sure we do not depersonalize the courts. The people in the courthouse—litigants, jurors, witnesses, lawyers, judges and court personnel—are the most important part of the justice system.

5. The Public's Expectation of Service and Institutional Responsiveness

Consumers are becoming accustomed to private sector efforts to provide better and faster service. This private sector emphasis on service, quality and user-friendly systems is spreading within government. As a result, the courts are increasingly challenged to analyze our services and our performance with respect to all our customers—litigants, lawyers, witnesses, victims, jurors and observers.

If I were to ask a consumer to comment on the courts, I think the consumer would say:

This is my court, the people's court. The court does not belong to the judges, the lawyers or the court staff. You all work for me. I pay your salaries. What do you mean you have to save yourselves for the important cases? If I come to your court with my problem, it is an important case. You say you believe in family values. Then drunk driving, accident and traffic cases, CHIPS and custody cases are important. You say you care about safety in the home and on the streets? Then misdemeanor and juvenile cases are the important cases. I want the judge who sits on my case to be well trained, well qualified, well educated and

fairly compensated, to handle my important matters impartially, independently and fairly..

That's what the person on the street would, I think, tell us. Last year, with grant funding from the State Justice Institute, we were able to publish our first court user opinion study.

As I mentioned earlier, we received high marks for the most part. An upcoming issue of *Judicature* includes a report on this survey by U.W.-Madison political science chair Herbert Kritzer and John Voelker, my assistant. The article states that more than 75 percent of Wisconsin residents who used the Wisconsin courts gave more positive evaluations of the Wisconsin judicial system than does the general population in national surveys.

But the article also reports a disturbing pattern illustrating the effect of the media on public opinion about the courts. With the passage of time after their court experience, these same Wisconsin residents who used the courts became less positive about the courts. Voelker and Kritzer suggest that the media may be responsible for this drop in favorable opinion about the courts. Professor Kritzer commented as follows: "The nature of news reporting serves to feature, not the positive and routine, but the negative and exceptions. It appears that, at least in Wisconsin, negativity towards the courts is a function of popular images rather than actual experiences."

In surveys outside Wisconsin, state court systems fared poorly. As a result, in May 1999 the American Bar Association, the Conference of Chief Justices and the Conference of State Court Administrators will hold a national conference on public trust and confidence. This conference will help set a national agenda on building public trust in the courts.

Wisconsin is recognized nationally as a leader in court-community collaboration and in collaborative efforts with the executive and legislative branches. Indeed our outreach efforts are becoming models for courts across the nation.

In the coming century we can build on our strong base of popular support and our existing outreach programs. We should consider:

- institutionalizing the collection of customer satisfaction information,

- developing a public opinion feedback questionnaire on our Web site,
- establishing court advisory boards in each county,
- encouraging and supporting programs that use volunteers,
- augmenting our work with our media committee to educate the media about courts to enable them to better report to the public about the courts, and
- expanding our collaborative efforts with the other branches of government.

However, public trust and confidence in the court system entails more than outreach and feedback programs. Ultimately trust and confidence rest on the courts performing their case decision making functions well.

6. The Privatization of Dispute Resolution

A key word these days is privatization. The move toward privatization affects the courts too. For-profit businesses provide options for dispute resolution in lieu of traditional litigation. These options offer the promise of lower costs, quicker answers and greater privacy.

Free choice and competition improve performance in both the public and private sectors. We must ensure that the state judicial system provides options and competes effectively with the private mechanisms.

The danger exists that if we cannot compete effectively, those who can afford it will select private dispute resolution and the state court system will serve only the poor and the criminal justice system. This scenario would seriously impede our ability to attract and retain good judges and staff and provide excellent service to those who come to court. This is not the vision you and I have for the courts of the twenty-first century. Rather, we see a state judicial system that compares favorably with any private system in terms of cost, service and producing a just result.

We have to provide options to litigants, which might include:

- increased use of court-attached ADR to allow litigants a variety of ways to resolve their disputes,
- community courts that play an active role in the life of neighborhoods, galvanizing local resources and creating new partnerships to address critical community problems, such as child abuse, domestic violence, deteriorating quality of life, juvenile delinquency and gun violence, and
- restorative justice programs, a different way of thinking about the criminal justice system in which members of the community and crime victims become actively involved in confronting the offenders and helping them to repair the harm done by their criminal acts.

* * *

Even as I look ahead to the year 2020, I think back to the year 1920 when my father, uneducated, unskilled and poor, arrived in this country, the promised land for immigrants from around the world. My father, one of the many immigrants from Eastern Europe, came here seeking a just society, a society in which he could earn a decent living and participate in the community free from fear and discrimination.

My father returned to Poland in 1932, seeking a bride. He married my mother, who arrived here in 1933 pregnant with me. My mother was a wise woman—as she often reminded me. She came to the United States in time for me to be born in New York City so that, as she repeatedly told me, I could be president of the United States.

This is not an announcement of my candidacy for President. It is a reminder to myself—and I hope to you—that this country remains a land of immigrants and of the immigrant spirit. We will continue to see culture clashes, confrontations and differences in values. But our great blessing is that from these can come the energy for change and progress. Because I remember 1920, I look forward to the year 2020 with hope and confidence.

I am proud of our accomplishments this past year. I look forward to working with you all in the years ahead. Remember, I am in the phone book. Call me at 608/266-1885. I need and welcome your help as we serve the people of this great state.