

**STATE OF THE JUDICIARY
ADDRESS
2019**

SCIENCE AND THE COURTS



Chief Justice Patience Drake Roggensack

Wisconsin Supreme Court

P.O. Box 1688

Madison, WI 53701

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Annual Meeting of the Wisconsin Judicial Conference

November 6, 2019

Elkhart Lake, Wisconsin

**Science and the Courts
2019 Judicial Conference**

**COLOR GUARD POSTING OF COLORS
Pledge of Allegiance
Sheriff Cory Roeseler, Sheboygan County**

Welcome to the 2019 Judicial Conference.

During this Judicial Conference, we will catch up together on advancements in our court system and projections for the future. We also will have a conversation on science, mostly neuroscience, and how an awareness of some aspects of neuroscience can assist Wisconsin courts better understand and address the complex challenges that violence and drug abuse have placed before us.

The world is changing rapidly, and that is reflected in the types of issues we meet in our courts. There are times when the problems generated through senseless violence and drug abuse cause us to be at a loss to understand how best to respond to them in a legally and socially sufficient way. There is no question that these are complex problems. They do not have one cause that is easily identified and addressed. This conference will present new ideas on causation and hopefully give us more tools to address the concerns we all face.

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

Judge John F. Foley, Milwaukee County Circuit Court

Judge Vincent K. Howard, Marathon County Circuit Court

Judge Patrick J. Madden, Iron County Circuit Court

Judge James L. Martin, Dane County Circuit Court

Judge Joseph D. McCormack, Ozaukee County Circuit Court

Judge Gerald C. Nichol, Dane County Circuit Court

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 you hear your name:

Justice Brian K. Hagedorn, Supreme Court

Judge Jeffrey O. Davis, Court of Appeals District II
Judge M. Joseph Donald, Court of Appeals District I
Judge Rachel A. Graham, Court of Appeals District IV
Judge Jennifer E. Nashold, Court of Appeals District IV

Judge Steven M. Cain, Ozaukee County Circuit Court
Judge Milton L. Childs, Milwaukee County Circuit Court
Judge Paul C. Dedinsky, Milwaukee County Circuit Court
Judge Daniel J. Gabler, Milwaukee County Circuit Court
Judge Brittany C. Grayson, Milwaukee County Circuit Court
Judge Chad A. Hendee, Marquette County Circuit Court
Hon. Beau G. Legeois, Brown County Circuit Court
Judge Emily I. Lonergan, Outagamie County Circuit Court
Judge Maureen M. Martinez, Racine County Circuit Court
Judge Scott J. Nordstrand, St. Croix County Circuit Court
Judge Brad D. Schimel, Waukesha County Circuit Court
Judge Danielle L. Shelton, Milwaukee County Circuit Court
Judge Anthony J. Stella, Jr., Iron County Circuit Court
Judge Angeline E. Winton, Washburn County Circuit Court

We look forward to working with these new judges and those who aren't new judges, but have a new position to fill. We welcome them to our Wisconsin judicial team. Please give all of the standing judges a warm welcome.

As I begin the state of the judiciary, I acknowledge my colleagues on the Supreme Court: Justice Ann Walsh Bradley, Justice Annette Ziegler, Justice Rebecca Bradley, Justice Daniel Kelly, Justice Rebecca Dallet and Justice Brian Hagedorn. I am blessed with six talented colleagues who bring their unique backgrounds and dispositions to the development of judicial decisions and the administration of the Wisconsin judicial system.

I also acknowledge our Director of Judicial Education, Karla Baumgartner, who has done a super job again for this Judicial Conference, and who has told us that she is retiring and that this likely will be her last Judicial Conference. Please join me in giving Karla a rousing thank you.

Since I began as Chief Justice in 2015, I have worked to improve the Court's relationship with the legislative and executive branches of Wisconsin government. It was my belief then, and

continues to be my belief now, that we are all engaged in serving the people of Wisconsin, although we have different roles. With that purpose in mind, we continue to work toward cooperative solutions to problems facing the people of Wisconsin whenever possible.

It has been said that "coming together is a beginning, staying together is progress and working together is success." In the last year, we have worked with other governmental entities and we were successful in our efforts to better serve the people of Wisconsin.

For example, last year I told you about working with Kelli Thompson, State Public Defender, and members of the legislature to move forward on increases in the statutory pay rates for contract public defenders. Working together, we enlisted and persuaded the legislature to make changes. We were successful. A contract public defender is now paid at least \$70 per hour, rather than at the former statutory rate of \$40 per hour, which was the rate of payment when I graduated from law school in 1980.

Proceedings in our courts showed that the counties needed additional assistant district attorneys. Criminal cases lagged in circuit court and did not move forward as they should have because district attorneys were so understaffed. The courts, the counties association, and the legislature worked together. The governor listened to us and approved 65 new assistant district attorney positions. Success again from working together.

As you know, the counties have joint responsibility with the State to fund Wisconsin's circuit courts. Circuit court judges appoint lawyers as guardians ad litem in custody disputes, in CHIPS, and in competency proceedings. Circuit courts also appoint lawyers in other matters when a court determines that a lawyer is needed and a litigant cannot afford to pay for one. The counties pay for the legal services that judges order. Sometimes payment may be recouped from the parties and sometimes not.

Each year the legislature puts a certain amount of money in the supreme court's budget that is meant to be passed on to the counties to assist in that funding. By working together, we persuaded the legislature to raise that amount by \$3.6 million for the current biennium. I know that the counties could use more, but by working together, the legislature and the governor listened to our concerns and we did make progress.

eFiling

eFiling is in the process of moving into the court of appeals. We are blessed with an excellent CCAP team lead by Jean Bousquet. The implementation of appellate eFiling has some of the same types of obstacles as CCAP encountered at the circuit courts and some that are unique to

the court of appeals. However, I am confident that CCAP will move the court of appeals into electronic filing without losing a single judge or staff member along the way. As it was in the circuit court introduction to eFiling, we will provide paper on demand. CCAP will teach, answer questions and encourage court of appeals judges and staff to become comfortable working in an electronic format.

I believe that when appellate judges try working with electronic filings, over a period of time, they will find electronically filed briefs and records very beneficial. I have given up working with paper records.

When I write an opinion, I open the electronic record and search for areas I want to review. Key word searches are so easy. After I find what I need, I highlight the record, make notes on my electronic copy about how I plan to use certain passages and then I return to discrete areas of the record to quote or paraphrase as necessary when I am writing the opinion.

It sure beats pasting yellow sticky notes all over a paper record.

Research and Justice Statistics

Last year we hired Michael Thompson as Director of Research and Justice Statistics for Wisconsin Courts. You met him at the 2018 judicial conference. He is with us today. Please say hello when you have the opportunity. Dr. Thompson will engage in many projects designed to assess whether Wisconsin courts are doing the best we can for those who come before our courts. One broad area he will consider, in many different contexts, is whether our "best practices" accomplish what we all hoped when "evidence based decision making" was implemented as the best practice.

Commercial Docket, a/k/a Business Court, Pilot Project

The commercial docket pilot project that I mentioned last year is on-going both in Waukesha County and in the 8th Judicial Administrative District. It has been very beneficial for business-related parties who proceeded in Wisconsin's commercial dockets. The judges who handle these cases have business experience and an appreciation of the need for prompt intervention, early resolution and the large community impact that commercial disputes can have.

Commercial cases typically take about 36 months to resolve in a normal docket. However, in the commercial docket many cases have been resolved in less than 12 months.

We have had some super results because of the talent and commitment of our commercial docket judges. For example, a matter involving the Northland Hotel in Green Bay was filed in

Judge Atkinson's commercial docket in Brown County. Northland Hotel opened in March of 1924 and once was referred to as the "crown jewel of Green Bay." However, it had fallen on hard times, and efforts to turn things around by creating a boutique hotel were having problems. The hotel ended up before a receiver. Undue delays could have sunk Northland Hotel for good. But, not to worry, Judge Atkinson was right there providing timely decisions so that a stall in our courts did not end up overwhelming restoration efforts. His attention made the difference. The Northland Hotel is once again open and a truly beautiful hotel, a jewel for Green Bay.

The litigants have been appreciative of the knowledge and prompt attention of the business court judges, the judges' understanding of the importance of scheduling, of promptly holding temporary injunction hearings and of regular status conferences to keep cases on track. Our only problem is that the docket is very underutilized.

Members of the business court team are working with the State Bar to present a program at the State Bar's annual meeting. We hope the program will raise lawyer awareness of the opportunity to choose a commercial docket for their business-related cases. In addition, we are doing training with our clerks of court to gain their assistance in recognizing the types of cases that should be assigned to commercial dockets. The commercial docket is a mandatory docket in Waukesha County and District 8; however permissive transfers from any other venue are permitted by petition. We appreciate the excellent work of judges who staff the pilot project and their judicial colleagues who have recognized when a case should have been filed in a commercial docket, and make the necessary referral.

We are considering expanding mandatory commercial dockets into other counties. If there are judges who have an interest in participating, please contact Judge Jim Morrison.

Child Welfare

The Children Court Improvement Project, led by Bridget Bauman and Judge Marshall Murray, continues to move forward with innovative programs to help children and families who need judicial assistance. Judge Jason Rossell has been very involved with the Judicial Engagement Team (JET) pilot that began in 2015. JET started with 3 counties and in 2018, it grew to 8 counties: Barron, Dane, Jefferson, Kenosha, Marathon, Marinette, Monroe, and Oconto now are participating.

JET is focused on safely reducing the number of children in foster care by giving individualized assistance to families involved in Wisconsin's child welfare system. JET is a multidisciplinary approach that brings together parents, children, social services and the courts. Children's and

parents' voices are heard at each court hearing, which has increased parental understanding and cooperation with the tasks necessary to safely return children to parental care.

The legislature shares our interest in providing permanence for children. Speaker Robin Vos has established the Task Force on Adoption that is considering postadoption contact agreements for parents who realize they can't properly care for their child, but would like to have some communication through the adoptive parents after the birth parents' parental rights are terminated. The Task Force is also considering how prospective adoptive parents may be given assistance that will enable them to adopt. Legislative hearings are ongoing.

Treatment Courts

Treatment courts continue to address the extraordinary loss of life through death or overwhelming disability that opioids, methamphetamine and alcohol are producing in Wisconsin. Wisconsin's statewide treatment court coordinator, Katy Burke, has been providing onsite training and support to new and existing treatment courts.

The excellent work of our judges who preside in treatment courts is critical to recovery. It can be emotionally trying work, but they are changing the future for Wisconsin residents, young and old, whose lives once were ruled by narcotic and alcohol addictions.

The main goal of a treatment court is recovery. Working together we can succeed, but to do so, commitment is critical. Participants in treatment court must change their social network and be open to addressing emotional, mental and physical health concerns. Participants achieve stabilization through treatment, support from the community and that all important component, accountability, in our treatment courts.

Our Courts

Wisconsin's circuit courts, municipal courts and tribal courts are the faces of justice to the public. They shoulder the important work of meeting the people's demands day after day, face to face. Their work is critical to the public's perception of the Wisconsin judicial system. From criminal prosecutions to civil adoptions, they touch every aspect of the need for impartial, fair and knowledgeable judicial decisions. They are doing a great job in Wisconsin.

Our reserve judges, who keep our circuit courts operating at full speed when a sitting judge must be away, are fantastic. We could not do without the skilled assistance of our reserve judges.

Judicial Salaries

Last year at the judicial conference, I explained that judges had received the first lift in a two-part raise, the second of which would soon follow. A meaningful raise in judicial salaries was long overdue.

Once again this year, after many, many meetings, we fared well with the legislature and Governor Evers in regard to increasing judicial salaries. Judges all will receive a raise in January 2020 and another raise January 2021. The raise in salary for current judges also raises the per diem for reserve judges who substitute for sitting judges. Please thank your legislators and the Governor. They recognized the hard work that judges do and they were very supportive of judicial pay increases.

David T. Prosser, Jr. State Law Library

As you know, we will be focusing on the interface between neuroscience and the courts during this judicial conference. Nationally known speakers will present differing ways to evaluate the conduct that brings people to court.

The David T. Prosser, Jr. State Law Library has collected additional resources and articles that focus on neuroscience. There are so many factors that can affect how people react to one another and to common experiences.

On October 20, the Journal Sentinel ran an article about the work of a University of Wisconsin-Milwaukee scientific team headed by Lindsay Emer. They studied the relationship between gun violence as an adult and elevated lead levels in those same people before age 6. Their study included about 70% of all births in the City of Milwaukee for the targeted dates. They found that 56% of the perpetrators of gun violence and 51% of those victimized by gun violence had childhood elevated lead levels.

In just a few minutes, our focus on Science and the Courts will begin a conversation that will help us see the intersections of science and conduct which underlie some of the challenges that are brought to us in our courts. I am excited for that conversation to begin.

New Website: laviniagoodell.com

However, I wanted you to know that Nancy Kopp, a Supreme Court Commissioner, and Attorney Colleen Ball, of the State Public Defender's office, have spent countless hours over the last year researching the life of Wisconsin's first woman lawyer, Lavinia Goodell. They are creating a digital biography of Lavinia, covering her arduous journey to be admitted to practice law in Wisconsin and her significant contributions to important social issues of her time. The

biography can be found at laviniagoodell.com, which will continue to grow as Nancy and Colleen add more materials to it.

As we celebrate the 100th anniversary of women's suffrage in Wisconsin, please join me in thanking Nancy and Colleen for their work in helping us get to know of the important work of Lavinia Goodell.

So I conclude as I began, with a warm welcome to the 2019 Judicial Conference. It is so good to stand here before our excellent Wisconsin judicial team. Let's have a super conference.