

Director of State Courts Address
Wisconsin Judicial Conference
November 8, 2006
Appleton, Wisconsin

The Chief Justice concluded her speech with what I believe is a very significant quote. “Greatness is not so much where we stand, as in what direction we are moving. We must sail sometimes with the wind and sometimes against it, but sail we must, and not drift, nor lie at anchor.” The quote is from essayist Oliver Wendell Holmes Sr., the father of one of the most influential U.S. Supreme Justices. It is a quote that I have posted on my desk to remind me of my responsibility as the Director of State Courts.

When I took on this responsibility, the wind was briskly in our face. The state was in the midst of a fiscal crisis. Judges and court personnel were experiencing increased strain as a result of reduced resources. Judicial compensation was eroding.

I think we have done a great job of keeping this organization moving in a positive direction despite the challenges we faced. However years of protecting what we have, instead of striving for what we believe is best, is putting our organization at risk of drifting. An institution as vital to society as the judiciary cannot afford to be adrift. I know that. You know that. The Supreme Court knows that.

So what can we do? What must we do both individually and collectively to keep our organization moving forward? I believe by following three general principles, we can achieve great things in the Wisconsin court system.

First Principle – Confront the Status Quo

It is human nature to keep things the same. Everyone is more comfortable in a set routine. Sometimes the status quo meets our needs. Sometimes it does not. It is at these times we need to take a risk and confront the status quo.

Let’s look at our most recent budget submission as an example of confronting the status quo. For years our approach to preparing the budget and the contents of the budget submission has generally stayed the same. In recent years the state’s fiscal crisis limited us further to the point where we were fighting hard just to maintain our small portion of state resources.

This budget is different. The budget approved by the Supreme Court includes 6 initiatives based on priorities identified, by you, through PPAC. The centerpiece of the budget is a new way to provide state payments to the counties for the operation of circuit courts.

The status quo has resulted in the amount of state support to the counties to languish. In response, some counties facing their own economic demands have reduced court system budgets at the local level. Reductions have resulted in less security, less staff, and less service.

The new financial assistance program included in our budget proposal essentially scraps the old way of providing funding to the counties. In its place we have proposed a mechanism that designates 75% of the revenue collected from the circuit court support services surcharge for distribution back to the counties. You may know that in past budgets that this surcharge has been raised substantially, but the additional revenue has been deposited in the State's General Fund.

What does this change to the status quo mean? It means a larger pool of money allocated to counties for financial support for operating the circuit courts. We have estimated that 75% of the circuit court support services surcharge could mean an additional \$12.5 million dollars annually paid to the counties. Assuming this passes as proposed, it could mean an increase of 30-36% in financial assistance for Milwaukee County and other larger counties while smaller to mid-size counties could experience increases in the 40-50% range.

It means a more direct link between court collected surcharges and payments to counties. As the court collected surcharge revenue goes up, the pot of money allocated to counties goes up accordingly. Moreover, a county may increase its pro-rate share of the available money by increasing corresponding revenue collections.

It means that the formula used to determine the allotment to counties more accurately reflects the level circuit court activity. We have proposed a revision to the statutory formula for determining county funding to include factors that better reflect the efforts of local courts.

The budget also includes:

- An initiative to establish a uniform chart of accounts to assist in assessing the cost of operating the court system;
- An initiative to provide security and safety training to courthouse personnel in all counties;
- An initiative to increase interpreter reimbursement funding to the counties;
- An initiative to increase my office's ability to provide assistance to circuit courts in the areas of pro se, alternatives to incarceration, and drug and alcohol issues; and
- An initiative to expand the availability of e-filing to all counties.

The budget is one area that we are confronting the status quo. I think Hubert Humphrey summed up my thinking on the status quo the best when he said "If there is dissatisfaction with the status quo, good. If there is ferment, so much the better. If there is restlessness, I am pleased. Then let there be ideas, and hard thought, and hard work. If man feels small, let man make himself bigger."

Second Principle - Recognize the Need for Change

If you look back over the last couple of decades, you notice that our society has been faced with unprecedented rates of change that require significant adjustment. In every field of endeavor — business and industry, government and education, science, human services, athletics and art — the challenge of dramatic and rapid change has confronted us. While technology may

be largely responsible for the pace of change, trends in areas such as demographics and economics also have contributed to change.

History has shown us that organizations that fail to recognize the need to change in response to changing times often face dire consequences. The court system is no different.

We will be facing a variety of changes in the coming months and years. While I am committed to ensuring that the court system is prepared for changing times, I can't implement change without your help. Here are changes we shall face together.

Measuring Judicial Workload

As you will learn later in the conference, an updated methodology to measure the need for judicial resources is nearly complete. There are numerous reasons why the formula needed to be updated, and these will be discussed on Friday, but the primary one is this – the Legislature is not interested in a decade old time study, with recognized deficiencies, as evidence for the need for additional judgeships. The court system has not received an additional judgeship since August 2000. It is time to change that. There are counties that desperately need an additional judge, and I want to be prepared to make that argument when the Legislature reconvenes in January. I am convinced this new study will allow us to do that. It does show that there is a need for additional judgeships in this state.

Are there risks to updating the study? Yes, as there are with any change. Individual counties will be affected differently. However, I believe as an institution, this change is necessary.

Making the Record

One of our primary business functions of our system, and of great concern to me, is the ability to make the record. For many years we have had the benefit of stenographic court reporters to meet this need. Hopefully, for most of you, this will continue to be the case for many years. To assist in that regard we will be making a variety of policy changes to improve our ability to recruit and retain stenographic reporters. For example, we will be changing our policy that limits the number of years of experience that we recognize in determining compensation levels.

Unfortunately, despite a variety of efforts, recent recruitments for official court reporter vacancies have resulted in not one applicant. The reasons for this vary, but the overriding issue is the dwindling number of court reporters. This is a trend that we cannot ignore – and we aren't.

In the past year we have experimented with the use of digital audio recording of court proceedings in 3 counties. We have learned a number of things. We have also identified a number of issues that need to be addressed before this technology can be considered for long-

term use within the system. I am in the process of appointing a committee of judges, court reporters, clerks of circuit court, and court administrators to review these issues.

I want to be clear that my objective in addressing this issue is simple – to ensure that circuit courts have the tools necessary to run their courts. My objective is not to replace stenographic court reporters. While the objective may be simple, the issue is not. This is one of most significant trends our system faces today.

E-filing

States all over the country are utilizing e-filing. For example, Colorado has over 53,000 new e-filings per month. The federal courts heavily rely on e-filing. Some might say that Wisconsin is behind in this area. I disagree. I think we have remained patient so we can implement a system that is equally beneficial to the courts and the lawyers. I think we have reached that time.

In March 2005 we initiated a pilot e-filing system in Washington and Kenosha counties in contested small claim money judgment cases. This system not only provides lawyers the benefit of filing a case electronically, it also benefits the courts by automatically entering case information into CCAP. This approach can save clerk time, can increase the accuracy in CCAP, and can allow court personnel easy access to court records.

We would be the first state to implement this integrated approach. Our budget initiative would allow us to expand this small pilot project into a statewide model for all case types. If we are provided the necessary resources, I am confident we will soon be recognized as a national leader in this area.

Leave Reporting

Some of you have legitimately questioned me on why you can't file your travel voucher electronically, why my office continues to waste 39 cents monthly to send you a slip of paper with your sick leave balance, why we continue to rely on a leave form that includes your social security number. There is no good answer to these questions, but there is one reason why these situations occur – our systems that manage this information are obsolete.

We are in the process of an extensive upgrade of these systems. You will first notice a change next year when court personnel, including judges, will be required to submit sick leave information electronically. Those paper slips with your social security number will be a thing of the past.

Change is not easy. As George Carlin told it, he once put a dollar in the change machine, but nothing changed. Change requires hard work. Change requires taking risks. Change requires taking responsibility. While difficult, there are times that progress can't be made unless you are willing to change.

Third Principle –Establish Partnerships

One subject on which the Chief Justice and I couldn't agree more is that in order to get things done you often need to partner with others inside and outside the justice system. She emphasized that point in her speech.

To illustrate our commitment to this principle I want to read to you an excerpt from the letter I submitted to the Secretary Bablitch with our budget proposal.

“The court system is just a part of a larger, interrelated justice system. Our courts become backlogged when other justice partners, particularly the district attorney and public defender offices, lack resources. To that end, the court system encourages you to support the district attorney and public defender offices' requests to be properly staffed and funded. Further, while indigent defense is a state executive, not judicial, branch function, the efficient delivery of this constitutional right impacts the fairness and efficiency of the entire court system. Therefore, we strongly urge you to update the State Public Defender indigency guidelines so that it once again can fully perform this mandated function.”

While it would be easier to concentrate on our own budget and leave others to fend for themselves in the political environment, we felt it was important as a justice system partner to communicate these concerns to the administration. We will continue to do that.

In addition to working with our justice system partners, the need to work together extends to policy makers and others that have a stake in the operation of the court system. For example, in order to push our budget initiatives through this year, we will need broad support from lawyers and county board members. To that end, I met with representatives of the Wisconsin Counties Association (WCA) and Wisconsin State Bar as the budget was being developed. I am happy to report that the WCA board of directors recently voted to support all of our budget initiatives during the upcoming budget process. As we learned in our successful push to improve judicial compensation, the more influential voices you have talking to the right people the better your chances are to succeed. This can't be one without partnerships.

I feel fortunate to be in a position to help lead this organization. I look forward to working with all of you to keep this organization moving forward. We shall not lie anchor.

As Nobel Prize winner Anatole France noted, “To accomplish great things, we must not only act but dream, not only plan but also believe.”

Thank you.