

**STATE OF THE JUDICIARY  
ADDRESS  
2011**



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**Annual Meeting of the Wisconsin Judicial Conference**

November 2, 2011

Wisconsin Dells, Wisconsin

**STATE OF THE JUDICIARY ADDRESS—2011**  
**“Without Fear or Favor”**  
**Wisconsin Dells**  
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**Chief Justice, Wisconsin Supreme Court**  
**State Capitol, 16 East**  
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Good morning. Welcome to the Wisconsin Dells and the 2011 Wisconsin Judicial Conference.

Our thanks to the program co-chairs, Deputy Chief Judge Maxine White of Milwaukee County Circuit Court and Judge Randy Koschnick of Jefferson County Circuit Court, as well as the conference program committee.

The committee and the staff of the Office of Judicial Education have developed what once again promises to be an excellent conference.

The annual State of the Judiciary Address is the Chief Justice’s report to the judges of the state — indeed, to the state as a whole. In the past, I have taken this opportunity to herald accomplishments and to outline the challenges that we face. This year, I depart somewhat, though not completely, from that tradition.

This year, I shall not speak of court interpreters, state audits of county expenditures of state funds for court support, self-represented litigants, effective justice strategies, or other critical issues. These subjects remain challenges, and as a result, among my favorite topics. They call upon the creativity and innovations of the circuit court judges and staff, and the work of the chief justice’s office and of central staff. These subjects will be touched upon in other sessions.

This year, I shall use my time with you to speak openly and frankly about the administration of justice in this state and about the role of the judge to decide cases without fear or favor. As always, I invite questions, comments, and temperate disagreement.

This has been a difficult year — for the country, for the state, and for the courts.

The bitter divisions in the other two branches of government, both state and federal, have unleashed wave upon wave of public frustration from across the nation, across the state, and across the political spectrum. Wisconsin has been at the very center of the struggle, and the judiciary has not been spared.

A 2011 Gallup poll shows that the public is not happy with the United States Supreme Court, the symbol of the American justice system. Only 46 percent of respondents approve of the job the U.S. Supreme Court is doing — which actually sounds pretty good next to Congress’s approval rating, which stands at just 13 percent. But the fact is the U.S. Supreme Court’s rating is way down. Just two years ago, 61 percent of the American public had a favorable impression of the Court. 61 percent to 46 percent — that’s quite a drop.

Our Court has had its own problems. And they have not been hidden from public view. Regrettably, you may have had to answer questions from lawyers and the public and may have felt fallout or concern.

This is not the first time the Court has had issues or that the issues have been open to the public. In fact, the history of the Wisconsin Supreme Court — as all history — is often characterized by clashes and conflict. And the most contentious periods in the Court align, not surprisingly, with periods of strife in the state and nation. Recession and political upheaval all give rise to thorny and complex issues that land in the courts.

I often tell the story of Chief Justice Alexander Stow, the very first Chief Justice of the Wisconsin Supreme Court. Chief Justice Stow served in the 1840s both before and after Wisconsin became a state. He and his colleagues were trial court judges who occasionally convened as the Wisconsin Supreme Court to review their own trial court rulings. What could possibly go wrong?

Well, in 1849, the Supreme Court issued back-to-back decisions reversing Chief Justice Stow on rulings he had made as a trial judge in Sheboygan County. In one case, Stow’s colleagues concluded that he had imposed an unduly harsh punishment upon two men convicted of larceny. The justices ordered the men immediately freed.

The other case involved an eviction, and the justices found that Stow had erred in instructing the jury. The justices reversed Stowe’s judgment. Imagine the internal conferences!

Stow’s public reaction to these reversals was perhaps less than judicious — but very human. He announced publicly that his fellow justices were, in his view, “consummate blockheads.” I’ve little doubt the feeling was mutual.

But the new term brought a new beginning for that Court, just as it does for ours. Please know this: Each term is a new beginning.

In this new term, much of our business is business as usual. We are hearing and deciding cases, admitting lawyers, handling rules matters, including a hearing on the so-called civil Gideon proposal about the right to counsel in civil cases. We are doing the work we have been elected to do.

But there is also new business for the Court this term. That is the business of rebuilding public trust and confidence. This term the Court is convening in open, public conference, in the proud tradition of the Court and the State of Wisconsin, to examine some areas that have caused concern in the past.

We are exploring ways to work differently and better together. Each justice is committed to promoting civility and safety in our workplace and to upholding the Court's long-standing reputation for excellence.

I have made a series of proposals for change, some designed to promote a re-evaluation of long-held practices. Other justices have presented ideas. Your ideas are also welcome. Together, through open and candid discussion of ways to make the Court and the judicial system better places to work and to meet our constitutional responsibilities, we shall determine the way forward.

Civility and courtesy to litigants and colleagues are essential. But principled dissent and tempered disagreement are also essential. Indeed dissent is integral to the development of the law, and if you have any doubt look to the history of the Wisconsin Supreme Court and the United States Supreme Court.

The road will not always be smooth, but we shall find common ground. The people of Wisconsin deserve nothing less. They rely on the Supreme Court to be a place where disputes are not created but rather are resolved — openly, civilly, professionally. The public relies on us to decide cases without fear or favor in a fair, impartial, neutral and non-partisan manner, and that, as always, is our commitment.

At the September 28 open conference, the Court re-affirmed its commitment to work together in a collegial and collaborative manner.

This commitment, and our open discussions, are an important foundation for the work ahead. As we build on this foundation, we shall remain mindful of the motto of Justice Crooks' grade school in Green Bay: "Forward ever, backward never."

We look to the future, having learned from the past and resolved to do better, much better. This is our commitment to you, and to all the people of this great state. Forward ever, backward never.

I speak next about irresponsible personal attacks on circuit court judges. These attacks cannot continue to go unanswered.

During the past year, circuit court judges in this state have been subjected to smear campaigns, to personal threats and to threats against their families. These circuit court judges have stood strong in the face of threats and personal hostility.

And why have these trial judges been subjected to personal attacks? Because they have done their jobs. And certain parts of those jobs — typically, but not always — setting bail, sentencing criminal defendants, rendering decisions in highly charged civil disputes — have sparked criticism. We should expect and invite constructive criticism but the justice system cannot tolerate intimidation. Too frequently in recent years, critical comments have morphed into invective and censure, threats and attempts at intimidation.

Though we may be constrained from speaking out on individual cases, all judges, lawyers and members of the public can and must speak out against intimidation and cynical attempts to politicize the judiciary. I call upon the State Bar and community leaders to appoint a blue ribbon committee composed of lawyers and non-lawyers to come forward when judges are targeted for sleazy attacks and intimidation and when there is politicalization of the judiciary.

We salute all the trial judges across the state for their courage, for their strength and for their diligent attention to the work before them, even as they have found themselves in the eye of the storm. No judge in this State will cave in to threats. Wisconsin judges will decide cases without fear or favor. The judges will remain fair, impartial, neutral and non-partisan.

I carry this message from county to county as I meet with circuit court and municipal judges, lawyers and the public to discuss the critical needs of the court system. Unless the people of this state understand the role of the judiciary, we cannot expect the public to support a fair, impartial, neutral and non-partisan judiciary.

The judiciary is not an extension of the other two branches. The judiciary, the third branch, is not like the executive and legislative branches. The judicial branch is not and cannot be treated like a partisan political policy making branch of government.

To improve public understanding of the judge's role in our form of government, my office has begun a program entitled "Courts Connecting with Community." We have compiled a toolkit for structuring outreach programs. I encourage the circuit court judges in a county to convene a committee or use an existing committee of diverse stakeholders to plan one or more outreach programs in your county — programs designed to help us talk with and to help us listen to the public we serve.

The toolkit contains a library of materials to help build a successful outreach program — a drug court tour, a brown bag lunch with judges, a juror appreciation event, a town hall meeting — whatever might work in your community. Some of these programs may already exist in your county. But we need a sustained and coordinated effort, county by county, to reach the public, our constituents. Mass instruction is our most powerful weapon. A handout on the registration table provides the information you will need to get started on Courts Connecting with Community.

As we ask judges and court staff to do more, we understand that the judges and court staff and the people whom we serve are not immune to the effects of the economic downturn.

Like all state employees, judges and court staff have seen their paychecks shrink with increased payments to retirement and health insurance. Compensation erosion has led to scores of retirements and resignations by judges and staff. Many active judges have raised questions about retirement contributions, and we have asked a representative of the Employee Trust Fund (ETF) to be part of the conference agenda.

Furthermore, in June 2009 judges did not receive a scheduled two percent pay raise. Thus, judges continued to fall increasingly behind state lawyers in compensation.

In 2011 the judicial branch requested that the two percent be restored to judicial salaries in the 2011-2013 biennium. The administration has not recommended this increase to the Legislature's Joint Committee on Employment Relations (JCOER), which will act in the coming days.

Court staff too has taken a big hit in compensation. They had to take furlough days prior to this latest reduction in take-home pay. Individual counties have imposed additional austerity measures. Many are having trouble making ends meet.

All of this is unsettling and contributes to lower morale.

Tough economic times are casting a new light on much of our judicial work as well. It is our privilege and sometimes our burden as judges to be given an up-close view of society's ills — mortgage foreclosures, substance abuse, mental illness, and increasing domestic violence.

And yet our court system continues to lead the nation in developing creative approaches to solving society's most intractable problems. The year's accomplishments are truly amazing and we report on them in our quarterly newsletter, *The Third Branch*. Among the most recent highlights are several programs that have won major national grant funding:

1. **Evidence-based decision making.** The heart of evidence-based decision making is to reexamine what we are doing and figure out (with the help of research across the nation) what works and then use it. And to get rid of what is not effective.

This year, Eau Claire and Milwaukee won federal grants that will help them overhaul their criminal justice systems. They were two of just three jurisdictions in the entire nation selected to receive these competitive grants.

2. **Foreclosure mediation.** Rising unemployment continues to take a heavy toll on Wisconsin homeowners. Mortgage delinquencies were improving for a while, but they're again on the rise. In August, Milwaukee passed a grim milestone: a record-breaking 500 foreclosure filings in one month.

Three years ago we had no mediation programs for mortgage foreclosures. Today there are at least 19 mediation programs operating in the state, designed to help creditors and debtors.

3. **Problem-solving courts.** Ashland and Waukesha counties just won major federal grants to implement new adult drug courts, and Bayfield County has just started its own OWI court. There are presently more than 40 drug and alcohol courts operating in Wisconsin. A decade ago, there was just one.
4. The fourth and final area to highlight is the handling of **mental health issues in court.** Outagamie County received a grant to work on a collaborative project that will focus on mental health issues in the courts. This project grows from an initiative that began early in 2010, after the Council of State Governments selected Wisconsin as one of four states to participate in a national effort to improve the criminal justice system's response to people with mental illness. The Chief Justice's Wisconsin Task Force on Mental Health and the Criminal Justice System has produced a report that is being used across the state by stakeholders in the criminal justice system, including law enforcement and the Department of Corrections.

And so we celebrate the successful programs that continue to flourish in every corner of the state to promote and protect access to justice and to serve the people, in spite of tough economic times. In tough times we need these programs the most — and they would not exist without the active support and leadership of the trial court judges. Your work is making our communities safer and helping us to hold offenders accountable. It is helping to ensure that we spend every public dollar wisely, on programs that deliver.

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Our work is made more challenging by the immeasurable loss of dedicated, long-serving and highly knowledgeable judges, clerks of circuit court and court staff. More than 30 judges have retired over the last two years, and more retirements are to come. We have also mourned the passing of the following individuals whom we have lost since we last convened one year ago:

- Justice William A. Bablitch, Wisconsin Supreme Court
- Judge Dennis J. Barry, Racine County Circuit Court
- Judge Henry B. Buslee, Fond Du Lac County Circuit Court
- Judge Richard J. Callaway, Dane County Circuit Court
- Judge Terence T. Evans, U.S. Court of Appeals, U.S. District Court and Milwaukee County Circuit Court
- Judge Mark J. Farnum, Rock County Circuit Court

- Judge John E. McCormick, Milwaukee County Circuit Court
- Judge Thomas J. O'Brien, St. Croix County Circuit Court
- Judge Richard H. Stafford, Chippewa County Circuit Court

While we acknowledge the loss of hundreds of years of experience we welcome new talent to the bench:

- Judge Jeffery L. Anderson, Polk County
- Judge Daniel J. Bissett, Winnebago County
- Judge Gary L. Bendix, Manitowoc County
- Judge Nicholas J. Brazeau Jr., Wood County
- Judge Lloyd V. Carter, Waukesha County
- Judge Jeffrey S. Froehlich, Calumet County
- Judge Gregory Gill Jr., Outagamie County
- Judge William F. Kussel Jr., Menominee/Shawano counties
- Judge Michael Moran, Marathon County
- Judge Nelson W. Phillips III, Milwaukee County
- Judge W. Andrew Sharp, Richland County
- Judge Mark T. Slate, Green Lake County
- Judge Jon M. Theisen, Eau Claire County
- Judge W. Andrew Voigt, Columbia County

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I conclude as I began. I restate our commitment to promoting civility and safety in our courts; to bolstering public trust and confidence in the judicial system, and to continuing our work in improving access to justice for all in Wisconsin. Among the most difficult and important tasks is to summon our courage and our fortitude to administer justice without fear or favor and to fight back against attacks on an independent, fair, impartial, neutral and non-partisan judiciary.

My telephone number remains the same: 608-266-1885. I'm still listed in the phone book. Call me with your ideas and criticisms.