

STATE OF THE JUDICIARY

ADDRESS

2020

THE COURAGE OF WISCONSIN COURTS



Chief Justice Patience Drake Roggensack

Wisconsin Supreme Court

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Annual Meeting of the Wisconsin Judicial Conference

November 5, 2020

ZOOM, Wisconsin

**The Courage of Wisconsin Courts
2020 Judicial Conference**

**AMERICAN FLAG IN SUPREME COURT HEARING ROOM
Pledge of Allegiance
Marshal Tammy Johnson, Wisconsin Supreme Court**

Welcome to the 2020 Judicial Conference to you all.

During this conference, we will have a conversation about the courage of Wisconsin courts — the judges who preside in them and their staffs. They have met and overcome the challenges presented by COVID-19, and have enabled Wisconsin courts to serve the people in spite of the pandemic.

It has been said that courage is not the absence of fear, but the willingness to be present and respond in spite of fear. My favorite definition of courage is simply, “grace under fire.” Our courts have shown courage, again and again, whatever definition you choose.

We also will explore together core legal issues such as Fourth Amendment expectations and First Amendment challenges as well as technology's effects on Wisconsin courts. We will discuss issues relating to personal security of judges and court personnel.

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 those problems in a legally and socially sufficient way. There is no question that we are facing 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:

Hon. Richard T. Becker, Washington County Circuit Court
Hon. Bernard (Ben) Bult, Marquette County Circuit Court
Hon. William Foust, Dane County Circuit Court

Hon. Warren A. Grady, Ozaukee 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:

Justice Jill J. Karofsky, Supreme Court

Judge Maxine A. White, Court of Appeals District I

Judge Kori L. Ashley, Milwaukee County

Judge Larisa V. Benitez-Morgan, Kenosha County

Judge Brett R. Blomme, Milwaukee County

Judge David D. Conway, Dane County

Judge Jack L. Dávila, Milwaukee County

Judge Jacob B. Frost, Dane County

Judge Sandra J. Giernoth, Washington County

Judge Rebecca A. Kiefer, Milwaukee County

Judge Benjamin J. Lane, Chippewa County

Judge Jack A. Melvin III, Waukesha County

Judge Reyna I. Morales, Milwaukee County

Judge Suzanne C. O'Neill, Marathon County

Judge Jonathan D. Richards, Milwaukee County

Judge Jane M. Sequin, Marinette County

Judge Katherine V. Sloma, Shawano/Menominee Counties

Judge Kristine A. Snow, Dodge County

Judge Christine L. Taylor, Dane County

Judge Nia E. Trammell, Dane County

Judge Mario D. White, Dane County

We look forward to working with these new judges and with 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 these judges a warm Wisconsin 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 Rebecca Dallet, Justice Brian Hagedorn and Justice Jill Karofsky. 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 new Director of Judicial Education, Morgan Young. This is her first Judicial Conference. Please join me in giving Morgan a warm welcome.

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.

This year our efforts resulted in legislation that was approved by the Governor creating 12 new judgeships, with four new judges to be elected in April 2021, four in April 2022 and the final four in April 2023. The legislation gave the Director of State Courts authority to name the counties in which they will be placed. Many people worked very hard to accomplish this, but we owe Justice David T. Prosser a special thank you for all his efforts and advice in getting the necessary legislation accomplished.

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 together with other governmental entities, and we were successful in our efforts to better serve the people of Wisconsin.

COVID-19

In what seems like years ago, — sort of like a once-upon-a-time story, — we were without COVID-19; the courts were functioning well and serving the public in a timely manner.

Then came February 2020 with COVID-19. Many of COVID's effects came to roost on the courts and the people of Wisconsin. As February turned into March, it began to become apparent that we had a dangerous predator among us. This was a predator that we could not see, but who was very real and who would not be easy to manage.

We were concerned about how Wisconsin courts could continue to meet the needs of the people of Wisconsin in safety — safety for the judges, staff and for all participants in judicial proceedings. Initially, the Supreme Court shut down all in-person proceedings. We then convened a statewide taskforce, chaired by Diane Fremgen, Director of Court Operations, to identify specific problems and to discuss how to address them. We prepared a report that set out how Wisconsin courts could be opened safely.

We decided to move to virtual proceedings whenever possible. Luckily, we have Judge Randy Koschnick on our team. He quickly secured Zoom licenses for all courts, and Wisconsin judges began to hold remote hearings on matters for which in-person proceedings were not required.

But then there was the issue of jury trials to which some persons had a right. The circuit court judges collected information on how to protect judges, staff and participants at in-person proceedings in their individual counties. They filed plans that were approved by the chief judges of their administrative districts before they were activated. Masks, hand washings and sanitation of courtroom facilities became the norm. When COVID-19 began to increase its troubling effects on our newly opened courts, chief judges of Wisconsin's administrative districts approved withdrawing some of the permissions given earlier.

County Boards moved in to help courts support constitutional rights of litigants. For example, Marinette County converted its county board room into a new, larger courtroom specifically designed to help address COVID-19's effects on court proceedings. As Judge Morrison explained, Marinette County tore down the board room and created a space where Marinette Circuit Court judges could comfortably and safely seat 14 jurors and have a room for juror deliberation. The county's cooperation was critical to circuit court success. Our thanks to Wisconsin counties; they were right there when we needed them.

Luckily, we have judges and staff who have a lot of personal courage and dedication to their service of the public. We also have very creative judges.

For example, Judge John Anderson, of Bayfield County, who held Wisconsin's first post-COVID jury trial, conducted voir dire and jury selection in the Washburn High School gymnasium. He obtained assistance from retired physicians, who questioned each potential juror and took each person's temperature as they arrived for jury service. Judge Anderson, his staff, the volunteer physicians and each prospective juror was masked. The clerk's office screened witnesses as they arrived. The jury trial was presented to the public through Zoom transmissions. The trial progressed and the jury reached its verdict.

Judge Morrison, of Marinette County, talked to the owner of the movie theatre across from the courthouse and requested permission to conduct voir dire and jury selection there. The owner agreed so the movie theatre, which can comfortably and safely seat 110 people, became part of the trial's location. As in Bayfield County, potential participants had their temperature taken and all potential participants as well as Judge Morrison and his staff were masked. The public was able to see the proceedings via Zoom. The jury reached its verdict.

Wisconsin has conducted 258 in-person jury trials in cases ranging from criminal charges, to mental commitments, to CHIPs and TPRs and to personal injury claims since the COVID-19 challenge began. That is an extraordinary record. In addition to those trials, Wisconsin courts have conducted zoom hearings on a daily basis for many types of legal issues and claims. We have been “open for business.”

Efiling

Efiling is moving into the court of appeals. We are blessed with an excellent CCAP team led 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.

Here are some of the current eFiling highlights:

- All programming for appellate eFiling and Supreme Court eFiling are done with the exception of pre-appeal motions;
- As of November 2, all four Court of Appeals districts have begun accepting voluntary eFiling for all case types;
- All appellate judges and staff attorneys have been trained and are using their dashboards for access to electronic cases and documents — this is great timing with the pandemic and work from home since they now have all the case documents at their “electronic” finger tips;
- Since eFiling began in the appellate courts, more than 320 cases and more than 1100 documents have been filed electronically;
- The Clerk’s office has scanned or uploaded more than 7200 additional documents to make these cases “fully” electronic;
- CCAP has worked closely with the State Public Defender and the Department of Justice to ensure a smooth transition for them and to ensure the eFiling system and procedures work well for their offices; and,
- Attorneys will be able to file electronic documents that contain bookmarks and perhaps hyperlinks for judges/justices to quickly navigate within a document as well as to access statutory reference, case law or other “linking information.”

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 whenever I can obtain electronic documents.

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

The commercial docket pilot project that I mentioned last year has been expanded. It is now on-going in Dane County, Waukesha County and in the 2nd and 8th Judicial Administrative Districts. 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.

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 2020, it has grown to 9 counties: Barron, Dane, Jefferson, Kenosha, Marathon, Marinette, Monroe, Oconto and Outagamie are participating.

Recently, JET assisted Dane County parents reunite with their two children. The children had been in out-of-home placements for several years. The parents had both substance abuse and stability issues. However, through repeated individualized parental interactions with professional personnel Dane County provided, and close court supervision, the family has been safely reunited.

The Children Court Improvement Project also has provided webinars for those involved with child welfare issues. For example, webinars on the Wisconsin Indian Child Welfare Act (WICWA), Child Safety Decision-Making, and Minor Guardianship Legislation have been provided.

Treatment Courts

COVID-19 has provided additional challenges for Wisconsin's 98 treatment courts. However, treatment courts in Wisconsin have done an exceptional job of continuing to provide excellent

support, programming and accountability during times of uncertainty and isolation. Wisconsin treatment courts have transitioned to virtual hearings, treatment, self-help and supervision meetings. Many courts have seen an increased level of consistent attendance at court hearings and treatment services. They also have had to adjust protocols for drug/alcohol testing, behavior responses to violations, and incentivizing participants for their successes.

Although COVID-19 has challenged judges to find new ways to connect with participants, Wisconsin is blessed with creative judges. As an example, Judge Bitney of Barron County's treatment court has begun using music as a way of connecting. He permits participants to suggest a song or video for use at an upcoming proceeding. Participants send the song or video to the coordinator for screening to ensure it is appropriate for court. If their suggestion is chosen, the participant introduces it at the proceeding and shares why it's special to him and/or what message in the song resonates with her. Participants can share how it has helped their recoveries. Others attending the zoom proceeding, as well as Judge Bitney, can support those positive connections.

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

Wisconsin 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.

A recent adoption conducted by Judge Rossell in Kenosha County made extraordinary use of a zoom adoption proceeding. The adoption was the fourth adoption for this family that also includes three natural-born children. The immediate family was in the courtroom, as one would expect. However, 65 additional friends and family attended the adoption on zoom, with one person attending in Kenya, Africa. It was a very joyful event for all.

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

Closing

COVID-19 has challenged Wisconsin courts, but through the courage of the women and men who serve in those courts, we have prevailed over COVID. The results we have obtained in Wisconsin have far exceeded what other states have accomplished in the face of this pandemic.

For example, a September 7th op-ed piece in the Los Angeles Times chided California courts, which were doing very little during the pandemic, and the writer lauded Wisconsin courts. That article said, "For our democracy to survive, we must do better. It's not a moonshot. In Wisconsin, court leaders saw the coming impact of the pandemic and responded by boosting webcast access for courts to hold proceedings online and training staffers in using technology. The state had a remote court system up and running three weeks after its governor issued a stay-home order."

So many efforts, so much cooperation among various parts of Wisconsin's courts — all so that others' needs are served. Although COVID makes our work challenging, the responses have been very inspiring. The thanks for all that has occurred goes to all of you and each of you, collectively and individually.

As I was thinking about that and getting ready for our conference, I was reminded of a beautiful poem I read recently. I would like to share it with you; it goes like this:

"When this is over, may we never again take for granted

A handshake with a stranger

Full shelves at the store

Conversations with neighbors

A crowded theater

Friday night out

The taste of communion

A routine checkup

The school rush each morning

Coffee with a friend

The stadium roaring

Each deep breath

A boring Tuesday

Life itself.

When this ends

may we find

that we have become

more like the people
we wanted to be
we hoped to be
and may we stay
that way — better
for each other
because of the worst."

Laura Kelly Fanucci

So I conclude as I began, with a warm welcome to the 2020 Judicial Conference. It is so good to be with our excellent Wisconsin judicial team, if only on Zoom. Let's have a super conference.