

WISCONSIN CIRCUIT COURT ACCESS
OVERSIGHT COMMITTEE
RETENTION AND ACCURACY SUBCOMMITTEE

MINUTES

Friday, August 26, 2005
Room 415 N.W. – State Capitol
10:25 a.m. – 12:30 p.m.

PRESENT: Kathleen Murphy, District 8 Court Administrator, Chair; Attorney Larry Bensky; Robert Brick, Office of Court Operations; Robbie Brooks, CCAP; Juli Buehler, Wisconsin Broadcasters Association; Cathleen Dettmann, State Bar of Wisconsin; Carolyn Evenson, Waukesha County Clerk of Circuit Court; Peter Fox, Wisconsin Newspaper Association; Rep. Don Friske, Wisconsin State Assembly; Sheryl Gervasi, Deputy Director of State Courts; Stacy James, CCAP; John Laabs, Wisconsin Broadcasters Association; Police Chief Rick Myers, Appleton Police Department; Judge Dale Pasell, La Crosse County; A. John Voelker, Director of State Courts

1. **Introductions**

Ms. Murphy welcomed the members of the Subcommittee. She briefly went over the proposed agenda for the meeting. She explained that the purpose of this Subcommittee is to determine whether or not the current WCCA retention schedule is appropriate or if changes should be recommended and what changes should be made to improve the accuracy of the information available on WCCA.

2. **Review of Current Policy**

She gave a short explanation of the differences between Supreme Court Rule (SCR) 72 on the minimum required retention of court records and how long records are kept on WCCA. In some cases records are kept on WCCA longer than they are kept in courthouses. She further explained that, depending on the case type, once the retention time has elapsed the files are destroyed or offered to the State Historical Society. Ms. Evenson commented that an index of the cases is kept on file. Ms. Evenson further stated that in Waukesha County the files are held one year longer than SCR minimum to be sure that records are not disposed prematurely. Ms. Murphy stated that the issue of space often determines how long records are kept beyond the SCR minimum. Many counties use alternative storage options such as microfilm or electronic media as long as it meets the requirements for long-term retrievability.

She also pointed out this only applies to court records. For example, the Department of Justice keeps some of their files and information permanently. Chief Rick Myers stated that this is similar with the police department as well; the initial contact information is kept indefinitely. Attorney Larry Bensky questioned whether WCCA retains the information based on the case type of the initial charge or the disposition and Ms. Murphy confirmed that it is retained based on the initial charge. Ms. Murphy asked the group for their opinions regarding the current WCCA retention schedule and issues of data accuracy. She then started a roundtable discussion.

Mr. Fox mentioned that he feels that this website is very beneficial to the citizens of the state, however he has recognized two common complaints: 1. The system has inaccurate information, and 2. The final disposition may not resemble the initial charge and the information on the website is misleading due to that fact. Ms. Murphy asked the group if this should be considered an accuracy issue.

Judge Pasell stated that he feels it is more than just accuracy, it is how it affects the person if the original charge is on there and the casual observer does not look beyond the charge. He feels that there is a need for the public to know about these issues and questions whether or not the charges that are wrongly brought up against a person should be retained on WCCA. He feels that this would be a procedural change.

3. **Accuracy**

Representative Friske also believes that accuracy is a big issue and feels that there should be some kind of remedy in place to remove and change inaccurate information. Mr. Fox stated that he agreed with Representative Friske. He said that based on his newsroom experience he has found that people don't always read the whole story, and in respect to WCCA, they are not going to read all of the information that is on the website. They will look at what is charged on the initial page and not look into it any further. He also stated his opinion that when people mention inaccuracies on the website you have to take credibility into account.

Atty. Bensky mentioned that he has received over 100 e-mails from other attorneys and that they are overwhelmingly in favor of WCCA. He just feels that people need to be more educated about the website and then there will be less room for error. The example that he gave was in regards to a domestic abuse situation where the wrong person may be arrested. Atty. Bensky stated that he has cases like that all of the time. He feels that this problem could be difficult for the committee to solve, but his suggestion is to expand the opportunity for expungement. As an example he used Minnesota's public access website which has a link to a Petition for Expungement.

Ms. Murphy mentioned that having the petition on the site might be more within the charge for the content Subcommittee. She then stated that the retention and accuracy Subcommittee charge includes making recommendations of better ways of displaying accurate information on the site. Atty. Bensky stated that he thinks the retention policy should be uniform throughout the state and that a possible recommendation would be to display only the resulting charge on the case rather than leaving the initial charge on it.

Mr. Laabs commented that he appreciates Atty. Bensky's statement and he agrees with it. He stated that with the technological advancements there is more information available to the public and that if information is going to be easier to access, then it should be easier to understand. He feels that the information on the website should be blunt and obvious. Mr. Laabs stated that the different levels of disposition can confuse even him and that maybe there should be an explanation of what they all mean available for the people to read. Ms. Murphy stated that she could research the meanings of the different dispositions and bring it to the next meeting. Judge Pasell agreed that sometimes the information that is on the website can be accurate, but at the same time misleading to the public.

Ms. Murphy stated that this is related to the overcharging issue and the media asserts a need to know whether or not a DA is overcharging. She posed the question to the Subcommittee of whether or not someone should be able to petition the court to remove his or her name from the WCCA record for cause. Mr. Fox stated that the committee would also have to take into consideration the possibility that an individual could be "working the system". He felt it would be necessary to have some kind of reference in the file when someone contacted the court for a change in information.

Mr. Laabs repeated his interest in making the information clearer for the masses. He posed the question of how inaccuracy happens. Ms. Murphy stated that because the information on WCCA is derived from

the information on County based CCAP, inaccuracies on WCCA often stem from inaccuracy in the court record. She stated that it is very important that court record information be correct and that these inaccuracies may be easily corrected if they are brought to the court's attention. Mr. Laabs asked how an inaccuracy is discovered and Ms. Murphy answered that usually a party to the case or related person will bring it to the court's attention.

Atty. Bensky brought up the example mentioned by Representative Schneider about a judgment against a person with the same name with the incorrect person's address is listed on the website and what the person should do to get that information changed. Ms. Murphy said that the clerk of circuit court would be the best person to contact in that situation. Mr. Fox voiced the opinion that people need to take into consideration the human error factor. He stated that there are going to be errors at some point or another and that people need to be realistic about that fact. Ms. Murphy emphasized again the importance of the accuracy of court records.

Ms. Evenson mentioned that it isn't necessarily the clerk of court's fault if there is an error in a record. She stated that where interfaces are used, data is pulled from other sources and the error could come from those records. She also mentioned that when a change is made to a name, the system automatically creates an alias for that individual and some people view an alias as a negative thing. Ms. Murphy stated that the automatic creation of an alias is a system problem that needs to be discussed with CCAP to determine if a solution can be found. She did state that, by law, some changes have to go to a judge to be changed, however it is important that the process to change information be reviewed and improvements be recommended. Mr. Laabs asked if, with WCCA being easier to access, the number of inaccuracies being identified by the public gone up. Ms. Murphy said that she would assume so but she would check on it.

She then stated that the term "inaccuracy" needed to be defined. It can run from clerical error to a charge based mistaken identity. Atty. Bensky stated that he would like to see expungement in mistaken identity cases, but as Judge Pasell stated, under current law most of these cannot be expunged.

Mr. Laabs said he wanted to focus on the inaccuracies that the Subcommittee can do something about such as systemic inaccuracies and clerical inaccuracies. He said that where the error is verifiable it should be easy for people to report the inaccuracy and for necessary changes to be made. Judge Pasell commented that the current system allows the individuals to contact the clerk of court and notify them of the change that needs to be made. Ms. Murphy mentioned that on the WCCA site under FAQ's there is a contact number for the clerk of circuit court in each county. Mr. Laabs suggested that finding the contact numbers should be more user friendly than having them under the FAQ's link. Ms. Murphy stated that this would be a good issue to come back to.

Chief Myers voiced his opinion that the when people look at information on the Internet, WCCA included, they automatically assume that everything is factual. He mentioned that prior to WCCA, people had to go to the courthouse to get this information and the ones who were willing to go to the courthouse had a better knowledge of what they were looking at. Now that the masses can view the information, it is unlikely that they will verify the information they view before assuming it as fact. He also noted his concern about the multiple e-mails and letters with complaints that are being received. He stated that, until all sides of the story are heard, you should not accept what every person says as a fact. This doesn't mean that he is discrediting any of the stories; he just feels that they need to be looked into more closely.

Chief Meyers stated that, as a representative of the interests of law enforcement statewide, we absolutely must not interfere with access by all criminal justice agencies to this information. He then gave an

example of where the line has to be drawn between public access and non-public access where an indecent exposure violator, such as a peeping tom which may be a precursor to sexual assault, gets arrested and in a local community it gets plea bargained down to disorderly conduct. He doesn't believe that it is necessarily appropriate for the general public to have access to the original charge. However, the next investigator or cop that picks this same individual up needs to know that s/he was originally arrested for the indecent exposure to look for patterns. He feels that WCCA should present the information in a more user-friendly way that minimizes misunderstanding.

Mr. Laabs asked for clarification on expungement information. He wanted to know if the committee could make a recommendation to change the current statutes and laws surrounding what cases can/cannot be expunged. Ms. Murphy said yes and stated that the Subcommittee's recommendation would be made to the Director of State Courts. Mr. Laabs commented that he liked the idea of bright lining some things, but on the simpler things making a change to the law. Ms. Murphy stated that the Subcommittee should first decide what we want to do, and then identify the technical and legal barriers and recommend how they may be addressed.

Mr. Fox posed the question to Chief Myers as to why he would not want to have the initial charge mentioned on the website. Chief Myers stated that it is to keep things in perspective and in part to allow the criminal justice system to uphold the rights of an individual until a conviction is made. Judge Pasell agreed with this view. He stated that in La Crosse for example, someone who is caught urinating in public may be charged initially with indecent exposure but that later gets reduced to a lesser charge. Once this appears on the site the general public will view the indecent exposure charge as a sex crime. Law enforcement may view this offense as being a precursor to more serious sex crimes when that is unlikely. He feels that these types of situations would be cause for review of the current policy.

Atty. Bensky stated that just because a case like this would be expunged, does not mean that it is permanently wiped away. He mentioned the fact that if someone wanted to check into it further, they could get the initial police report with that initial charge and get to the underlying issue if necessary. He said the main issue here is to what extent it is broadcast to the masses. Representative Friske reminded the committee that there is a big difference in what is initially perceived when someone says indecent exposure and what actually happened. Chief Myers gave the example of a lower degree sexual assault case where it is a 17 year old and his 15-1/2 year old girlfriend in a consensual relationship and ultimately it is dismissed, but on the record it still shows that the charge was made and public can view that information. He questioned the necessity for the public to even be able to view a case of this type.

Representative Friske suggested that a possible remedy to some of the concerns would be to have a uniform procedure for corrections in each county throughout the state. Chief Myers stated that he understands the responsibility to correct a mistake is with the original source of information, but that someone needs to accept ownership of the responsibility to make sure the correction will be taken care of.

Judge Pasell asked what the policy is if the clerk says to someone that they are unable to change the information that is incorrect. Ms. Murphy answered that the judge in the county would be the next person to go to to request the change. She stated this is a case where the committee may need to recommend a procedure be put into place for individuals to go further up the court system's ladder to get their request taken care of.

Ms. Gervasi stated that she had seen some of these issues as a problem for some time. She wanted to remind the committee that the CCAP system is used as a model throughout the country, so it is not necessarily the system itself that is the problem. She also commented that on a state level the system has

become so much more than it was expected to be. She mentioned that a lot of people are using this system as an information source because it does have good data and because it is free.

Chief Myers stated that within the total system, malfeasance is not even a ripple in the water in regard to the problems with WCCA. He also stated that the court system is correctly biased toward freeing the guilty rather than convicting the innocent. He said that this is a core tenet of the criminal justice system. He stated however that these are aberrations and it isn't right to build the system around aberrations. He feels that the system should not be completely changed just because of these two minor problems.

Ms. Gervasi's final issue that she wanted to bring up was the caseload. She clarified that people need to keep in mind that just because the original charge was amended down it doesn't mean that the original charge was overcharged. Judge Pasell responded that the information on the website generally does prove to be accurate, however when it is inaccurate it can be damning to the person. He stated that, if there is going to be a procedure to correct the information, it should be based on concrete evidence, not just a complaint. He also stated that there should be discretion as to what information to change.

Representative Friske brought up the point that an employer cannot bring up any non-job related information that is found on WCCA at an interview because legally they cannot use that against an applicant. This is an example of the importance of having correct information on WCCA. Mr. Laabs commented that an employer could decide to not hire based on the WCCA record, to which Rep. Friske replied that in that case the candidate for the job does not get an opportunity to explain the record.

Representative Friske then asked for clarification on the retention schedule. He wanted to clarify that case information is kept on WCCA for 10 years even when the court does not have to keep the physical record that long. He used the example of finding something on the WCCA website that is incorrect and wanting to get the original record changed. If it is a record that the courthouse only needs to keep for five years and he checks in year six, will the courthouse have a copy? When Ms. Murphy confirmed that the courthouse does not need to keep that record, Rep. Friske suggested that the two retention schedules be kept the same. He commented that if the courthouse does not have the record on hand, then what is the basis for WCCA to have it on the website.

Ms. Murphy returned to Chief Myers comment about whether to show charges at the time the case is filed. It is possible if charges are not shown on WCCA until case disposition that some of the problems that are occurring right now might be cleared up. Ms. Murphy suggested a five minute break after she makes a couple of points and after reconvening the committee could put together the list of issues/recommendations to take back to the Oversight Committee.

Ms. Murphy's first point was that the last committee had recommended displaying disposition information at the top of the WCCA case record for clarity. She stated that she wanted to revisit that issue with the current committee because of the complexity of keeping the information understandable for the public. She was suggested that the committee try to find a simplified way of displaying this information.

Ms. Murphy recommended that the information regarding money owed to the court be kept on the site. She believes that having this information on the site gives people an incentive to pay. However, the cases are now being taken off of the system after their retention period regardless of whether there is money owing or a warrant issues in the case. Ms. Evenson mentioned this is problematic when there is somebody that the courts knows owe money, but they say, "Well there is nothing out on WCCA, prove

it.” Ms. Murphy stated that there are good reasons for longer retention based on these circumstances, but making exceptions for these types of cases is technically very difficult.

In regard to overcharging, Ms. Murphy stated that the court system can only do so much. CCAP can provide data that indicates a DA may be overcharging. But the courts cannot control the DAs. They are absolutely independent in terms of making prosecutorial decisions. Ms. Murphy brought up the fact that some mistakes are made when information filed, such as citations, are illegible. She also commented even if an arrest must be made, it won’t be on WCCA unless charged by a DA. Atty. Bensky voiced that the DAs have to learn that they don’t have to charge every time, but in his experience they have been uncooperative and charge the cases out anyway.

Ms. Murphy explained that municipal court violations are not on WCCA. She commented that this is another thing the public may not be aware of. However, Ms. Murphy stated that she would not recommend that municipal court information be put onto WCCA.

Chief Myers stated that the court record information may be technically accurate, but still results in an injustice. This is the kind of governmental issue that drives people nuts, because no one takes responsibility and the wrong never gets corrected. He commented that this is the kind of thing that erodes the public confidence in the system. He wanted to know whether or not there is an opportunity with WCCA to say, “Even though this may not technically be a court error, ultimately we have the chance to right a wrong.” Ms. Murphy said that she would agree that there needs to be some kind of mechanism and criteria to get things like mistaken identity, wrongful charging or any number of things off of the website. She stated that she had conflicting feelings as to whether the information should be completely off, whether the identity of the defendant ought to be hidden, etc. Judge Pasell stated that the criteria for removal these cases should be made with those types of cases in mind.

Representative Friske added that an expectation is created with the WCCA site that court information will be accurate and available. He stated that once that expectation is out there, any change that is made, people are going to notice. He feels that the committee needs to develop a remedy for individuals that have been wrongly identified and correcting the information on the site. However, if a remedy is developed and in place, it would raise the bar and consequently the expectations the users have of the site. He stated that this is an issue that the committee needs to be aware of. Ms. Murphy stated that there might be a problem consistently identifying inaccurate information. Judge Pasell stated that at some point the people affected would become aware of the inaccuracy.

Ms. Murphy stated that some of the problems that have been discussed may fall into the category of user education. She thinks that the Subcommittee needs to do everything possible to make WCCA accurate, clear and understandable for users, keeping in mind that all of the case information on the WCCA is a byproduct of court. She believes that a remedy is needed for people that are wrongly put on the site even though the information may be technically accurate.

Judge Pasell asked about the current notice on WCCA about whom to contact if information is incorrect. He said that his understanding is that the person would have to contact the clerk of court to have the information corrected and in some cases the court approval would be required to correct it. Ms. Murphy agreed. Judge Pasell then stated that there is nothing that says the decision would be a discretionary one on the clerk’s part. He feels that there should be something on the site that tells people what they can do if the clerk declines to make the change requested. Atty. Bensky suggested that the committee recommend a procedure for the user to follow in that scenario. Chief Myers commented that it should be a consistent procedure and Ms. Murphy commented that it should be reasonably simple for the user.

After a short break, Ms. Murphy reviewed that WCCA is consistent with the court records, so inaccuracies on the website are based on the court record whether they be factual or clerical error. She stated that there are also inaccuracies caused when the court receives incorrect information from other sources. The other part of "inaccuracy" is the need for information to be clear and understandable. This has to do with language, presentation and format.

Atty. Bensky suggested that with words that could have a negative meaning, such as alias that it should be changed to something less incriminating such as A.K.A. Ms. Murphy agreed and stated that an alias creates a double record. This is a technical issue that can be discussed with CCAP.

Judge Pasell wanted to state his opinion on expanding expungement. Right now if someone comes in at 20 years old and pleads guilty they are put on probation and after they complete probation the record is expunged. If the same person comes in and the charge is dismissed, the record is there. He said that there should be fairness and equity in these cases and based on certain criteria, that record should be expunged. Ms. Murphy clarified that consistency would be another for the committee to consider. Mr. Laabs suggested that this issue be placed under retention, rather than accuracy.

It was decided that a listing of the frequently asked questions (FAQ's) would be distributed at the next meeting. Mr. Fox mentioned that all of the times that he has visited the site he assumed that every type of court record was listed on CCAP, and that apparently this is not the case. Ms. Murphy said this is one of the problems with using a long disclaimer. There are many users that do not read the disclaimer and just click "I agree". A majority of the people on the committee acknowledged that they themselves have not read the disclaimer. Mr. Laabs suggested that maybe the disclaimer be put on each page, and Ms. Murphy stated that the Subcommittee should consider how WCCA can assure that more people will read it.

Ms. Murphy then reviewed the list of things that she plans to include in the Subcommittee's report to the Committee of the Whole and for discussion at the Subcommittee's next meeting. She will also send out the list by e-mail to Subcommittee members and they can make any changes that they feel appropriate. The issues reviewed were: accuracy, corrections procedure, clarity, correcting technical errors, consistency and fairness and the possibility of a corrections "enforcer".

Ms. Evenson requested that not only there be a procedure for the public as far as how to request changes that need to be made, but also a procedure be created for the clerks on how to make the changes. Ms. Murphy said the whole procedure should be reviewed and it the Subcommittee can recommend new procedures. Judge Pasell requested that information be collected from the clerks as to how often a change to the records is requested of them. Ms. Murphy stated that she could send an e-mail out to the clerks and request that information from them and bring it with her to the next Subcommittee meeting. Ms. Evenson predicted that it does not occur as often as you might think it would.

Mr. Laabs questioned whether or not the procedure currently in place for people to report inaccuracies is user friendly. Robbie Brooks of CCAP explained that currently the user can go to FAQ's and there is a link to each county's information to find out whom to contact. Mr. Laabs asked if it is easy to find this information and Ms. Evenson expressed her doubts about it. Ms. Murphy suggested that at the next Subcommittee meeting there be a live connection to the WCCA site so that it can be used for examples and to demonstrate what is being discussed. Mr. Laabs expressed that he does not feel that it is user friendly.

Representative Friske voiced a concern with creating a corrections enforcer. He stated that currently the clerk of circuit court is the records custodian and a "higher authority" should not change whom the records custodian would be. Chief Myers questioned how you would create the accountability without changing the way the system is currently. Ms. Murphy stated that the current system has accountability built into it. She stated that the Chief Judge has advisory and supervisory authority if necessary over the clerks of court and this could be the way to handle unsatisfied complaints. She stated her belief that the clerks are making sure to look very carefully at the requests and respond politely to them. Ms. Evenson stated that the Subcommittee might get a little concern from the clerks if they are expected to have responsibility for the inaccuracies on WCCA. Ms. Murphy clarified that the Subcommittee is not looking to make more work for the clerks or place blame on them, they are just wanting to look at where to refer the customers clerks are unable to help. Rep. Friske commented that he isn't sure if the new procedure is as much for the clerks of court as it is for the users. Ms. Evenson stated that a survey can be sent out to the clerks to find out how many and what types of changes are being requested.

Ms. Murphy commented that some of the "mistakes" that people call her about are what she would call differences of opinion. For example a complaint may state that WCCA shows there was a "hearing" on a certain day, but the caller argues that it wasn't a hearing, it was a motion. She said these are things that may not fall into the category of error. Clerks do their best to reflect in the record what has actually occurred, but a variety of CCAP activity codes may be used for the same proceeding. Ms. Evenson said that she would say from the clerks' perspective that this is a whole other direction that they could recommend the system go in with consistency on using the codes.

4. Retention

Representative Friske voiced his opinion that the WCCA retention should be consistent with the SCR. Ms. Gervasi clarified that this would require a change in the current policy of keeping records on WCCA a minimum of 10 years. Ms. Buehler stated that the counties should be consistent with one another as well. They should all follow the retention schedule. Rep. Friske stated that an attorney ought to be able to tell the client, "In seven years, this will be gone, so how much money do you want to spend on it." Mr. Laabs stated that what he would be looking for is a maximum amount of time for the county to keep the paper record. Rep. Friske stated that they should be able to keep it for that period of time, but the public needs to know when that time is over, the case is gone.

Ms. Gervasi asked if he was looking for a retention rule on WCCA or on the paper records. Chief Myers stated that if he were just talking about WCCA, then he would agree with him on that. Rep. Friske stated that he was talking about WCCA only. Ms. Murphy brought everyone's attention to the handout from the beginning of the meeting and stated that the Subcommittee is expected to recommend whether or not that WCCA retention times should be changed. She stated that any changes to SCR would have to be requested of the Supreme Court. She asked for further opinions regarding the current position of keeping records on WCCA for a minimum of 10 years. Ms. Evenson stated that she doesn't feel it is appropriate because if someone comes in looking for a record because it showed up on WCCA, they expect the record to be at the court, but it may not be there if the clerk disposed of cases right after the minimum required retention time. Chief Myers stated that if the retention for WCCA meets the same requirements, as the minimum required by Supreme Court Rule it would solve those types of problems. Ms. Murphy stated that she will provide differences in retention schedules for the next meeting. She emphasized that this was a hard fought issue in the predecessor committee.

Atty. Bensky reminded Ms. Murphy to bring in information on charging vs. disposition. Ms. Murphy stated that the SCR for minimum retention of the hard copy files is based on the useful life of the records to the courts. That is why it is a minimum. A court may decide to keep records longer, but the Supreme Court developed the rule in terms of the business needs of the court to keep those records.

Judge Pasell asked for clarification on whether or not records are kept on WCCA longer than they need to be kept in courts files. When Ms. Murphy confirmed this, he stated that he thinks that causes a host of problems because if someone wants to change the record or have clarification on an issue concerning the court record, there isn't a paper record available. Rep. Friske said that he is unsure whether there is a justification to keep the records on WCCA longer than the paper copy is kept at the court.

Ms. Murphy recognized the difference of opinion and stated that she would put that on her list of things to discuss. She commented that she and Ms. Evenson would ask the clerks about the frequency of requests for corrections and how many of them are keeping cases longer than the Supreme Court Rule minimum. Atty. Bensky mentioned another issue for the discussion list is some way for judges to be able to remove records on a case-by-case basis. Ms. Murphy stated that she will put the list together based on the Subcommittee members' comments.

The meeting was adjourned at 12:30 p.m.