

**STATE OF THE JUDICIARY  
ADDRESS  
2009**



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**Annual Meeting of the Wisconsin Judicial Conference**  
November 4, 2009  
Milwaukee, Wisconsin

**State of the Judiciary Address:  
“What Opportunity Looks Like”**

**Chief Justice Shirley S. Abrahamson**

**2009 Wisconsin Judicial Conference  
Milwaukee, Wisconsin  
Wednesday, November 4, 2009**

Good morning. Welcome to Milwaukee and the 2009 Wisconsin Judicial Conference. Our thanks to the program chair, Judge Jeff Wagner of the Milwaukee County Circuit Court, as well as the conference program committee. The committee and the staff of the Office of Judicial Education have developed what promises to be an excellent conference.

I begin this state of the judiciary address, following tradition, by noting the changes that have occurred within our judicial family since our last conference in November 2008.

We express our sadness at the passing of the following individuals who served the people of the state of Wisconsin long and well:

Judge Steven Luse Abbott, Monroe County  
Judge Paul Gartzke, Wisconsin Court of Appeals  
Judge Charles L. Larson, Ozaukee County  
Judge Robert Miech, Milwaukee County  
Judge Eugene McEssey, Fond du Lac County  
Judge Peter Naze, Brown County  
Judge Edwin Stephan, Door County  
Judge Michael Torphy, Dane County

While there is sadness in losing colleagues there is also joy in welcoming new ones. In keeping with another tradition, the new circuit court judges had breakfast this morning with the Supreme Court Justices. I ask each new judge to stand until all the names are read.

Judge Peter Anderson, Dane County  
Judge Ellen Brostrom, Milwaukee County  
Judge Richard Congdon, Waukesha County  
Judge Craig Day, Grant County  
Judge Stephen Ehlke, Dane County  
Judge Jill Falstad, Marathon County  
Judge Julie Genovese, Dane County  
Judge James Isaacson, Chippewa County  
Judge Chad Kerkman, Kenosha County  
Judge Nicholas McNamara, Dane County  
Judge Stephanie Rothstein, Milwaukee County

Judge Amy Smith, Dane County  
Judge Kelly Thimm, Douglas County  
Judge Thomas Vale, Green County  
Judge J.D. Watts, Milwaukee County  
Judge Jennifer Weston, Jefferson County  
Judge Sandy Williams, Ozaukee County  
Judge Todd Wolf, Wood County  
Judge Gerald Wright, Sawyer County

On behalf of the entire judicial family, I say: “Welcome. May your judicial careers be rewarding to you and may you serve the people of Wisconsin well.”

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What a difference a year makes. When we last met, the financial system was in a meltdown. The state was facing an enormous budget deficit, but we could not have imagined circumstances that would force us to rescind a pay raise for judges and staff and furlough non-judicial employees.

The pundits have dubbed the financial crisis an “economic nine-eleven.” The crisis has hit each of us personally and has taken its toll on the courts, where all of society’s problems eventually land. And so we find ourselves called upon to do more with less. This is what it means to live in interesting times. And these times present us with opportunities.

At this time, we can and we must rethink, reinvent, rediscover and reshape what we do and how we do it. It will take courage and hard work. I know that we shall seize this moment to find new and better ways of helping the people whom we serve.

Judges and court staff across this great state are already leading the charge. Here are eight success stories. All demonstrate our creativity and commitment, and all foretell success in the years ahead.

### **Success story #1: Drug treatment court programs**

Four years ago, there were three drug treatment court programs in Wisconsin. Today, there are about 20. Each is unique, but they share a commitment to addressing recidivism in the criminal justice system by focusing on the treatment needs and risks of each individual.

This year there were many milestones in our drug court programs. I shall tell you about two.

First, we began to receive federal grant money for enhancement of existing court programs—good evidence that these programs are working. Racine County, Rock County and the Menominee Tribe each received \$200,000 to add needed services.

Second, both Brown and Milwaukee counties officially opened the doors of their new Drug Treatment Court programs. Under the leadership of Judge Joseph Donald, the Milwaukee court won a federal grant of \$350,000. Here is Judge Donald:

*I consider this a spectacular opportunity to refocus my energy on improving the life of drug-addicted individuals. As a judge who has presided over thousands of criminal cases I have seen more than my share of lost and forgotten souls. I can say without a doubt that anyone who comes into contact with this drug treatment court will never be considered lost or forgotten.*

The Green Bay court under the leadership of Judge Donald Zuidmulder secured \$175,000 in funding from Brown County.

Drug treatment court programs can change lives, save families and make our communities safer.

## **Success story #2: Veterans court programs**

Nearly 4,000 Wisconsin National Guard troops are scheduled to return home from Iraq in 2010. Experts tell us two things.

One: Many of those soldiers will suffer from traumatic brain injuries and post-traumatic stress disorder.

Two: Many will suppress or be reluctant to acknowledge problems. The courts must be equipped to meet the unique needs of combat veterans.

We began alerting judges to these issues and helping them to work with local veteran services offices. We sent a team from Wisconsin to Buffalo, New York in cooperation with the Office of the State Public Defender to observe the Veterans Court there.

Since that visit, La Crosse County has formed a task force of 20 people from the justice system and the VA to develop a program under the leadership of Judge Todd Bjerke, who is a veteran. The La Crosse program will focus on early intervention by having law enforcement identify veterans at the time of initial police contact.

Chippewa, Dunn and Eau Claire counties are working to develop a tri-county court program for veterans under the leadership of Chief Judge Ben Proctor.

Rock County is leading the way. Judge James Daley opened Wisconsin's first Veterans Court program there in September. The court serves veterans who are charged with crimes and who have mental health issues. Each participant is matched with a mentor of similar military background. It comes as no surprise that Judge Daley is already preparing for the next step. Here is what he told us:

*I have just communicated with presiding judges in surrounding counties to encourage them to use us as a diversion court. The VA does not have the resources to set up court programs in 72 counties, but the need is there and we want to do our best to meet it.*

Judge Daley received the Eisenberg Award from the State Public Defender Board this fall for his "positive and enduring enhancements to Wisconsin's justice system that result in a distinct improvement in the lives of others."

As we move into 2010, these Veterans Court programs will be more necessary than ever. To Judge Daley, Judge Bjerke and Chief Judge Proctor, we say thank you and we look forward to hearing about what you do next.

### **Success story #3: Foreclosure mediation initiatives**

Wisconsin is grappling with a foreclosure crisis. Foreclosure mediation programs can help lenders receive payment, help homeowners stay in their homes, and help ease the crush of foreclosure filings.

Chief Judge William Dyke in Iowa County has led the way. He brought together top-notch mediators from across the state to volunteer their time to train others. Here is what Chief Judge Dyke had to say:

*Mediation has been a benefit to the court by creating an effective means of communicating between the parties. We've had some successes and some which did not succeed, but it is important to note that mediation is an excellent way to bring the parties together.*

For a while it looked as if no one would follow Chief Judge Dyke's lead. I am happy to report that is changing.

In Milwaukee, where, as of May 2009, more than 7,500 homes were under foreclosure, Chief Judge Jeff Kremers has begun a collaboration with Marquette University Law School to address mortgage foreclosures. More than 250 homeowners immediately asked for help, and lenders overwhelmingly joined them. More than 112 cases are scheduled for mediation. In its first month, the program chalked up 36 successes. Thirty-six families will keep their homes. Thirty-six lenders will receive at least some payment. And 36 foreclosure cases will come off the docket. In one month.

And there's more: It turns out that opening lines of communication between lender and homeowner, even when the foreclosure proceeds, facilitates an orderly hand-off of the home. Milwaukee reports a substantial reduction in the number of homes that are trashed and abandoned to become a blight on the neighborhood.

Chief Judge Kremers noted another valuable result of collaborative efforts:

*Anytime the judiciary takes part in one of these programs, it seems to foster other programs. Collaborative efforts build upon themselves, and new partnerships result.*

Chief Mediator Debra Tuttle from Marquette emphasized the university's commitment to working with the courts. Marquette University Law School stands ready to assist any Wisconsin court that wishes to begin a foreclosure mediation program. Judges in Buffalo and Pepin counties, Dane County and Rock County are already in line to participate.

Thanks go to Chief Judge Dyke for having the courage and wisdom and taking the opportunity to start us on this path.

#### **Success story #4: Improving compliance with ICWA**

It is exciting to talk about new programs that show great progress. But there is also great satisfaction in seeing long-standing efforts gain traction. Our program to address compliance with the Indian Child Welfare Act (ICWA) is a case in point.

ICWA was passed into law more than 30 years ago to address an inequity in the child welfare and justice systems. Native American children were separated from their parents at a much higher rate than non-Indian children. But in Wisconsin and across the nation, implementation of this law has been difficult. And several years ago, a federal review confirmed that our circuit courts were not always compliant with ICWA requirements.

Compliance with ICWA became a key area of focus for us, and this year our federally funded Children's Court Improvement Program has made remarkable strides toward improving compliance with this federal law. We conducted training programs for judges and court commissioners in all 10 judicial districts and created new circuit court forms for juvenile cases subject to ICWA.

Next up: a new ICWA bench guide for judges and court commissioners.

Another important development: new legislation. The state Senate and Assembly unanimously passed a law codifying ICWA provisions into state statutes just two weeks ago. It now awaits the Governor's signature. Wisconsin's 11 Indian tribes and the state Department of Children and Families worked in close cooperation with Senator Bob Jauch and Representative Ann Hraychuck on these changes. With this step, Wisconsin creates WICWA—Wisconsin Indian Child Welfare Act—and becomes the 11<sup>th</sup> state in the nation to incorporate provisions of ICWA into state law.

Kris Goodwill, an attorney for the Ho-Chunk Nation and a member of the Wisconsin Commission on Children, Families and the Courts, was an important leader in this effort:

*Wisconsin Tribes hope to see and experience compliance with the ICWA and WICWA which is meant to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.*

Why is it that we and our justice system partners have managed to address issues that have been kicking around for three decades? I am glad you asked. The answer is that we are building on a strong foundation.

We began our State-Tribal Justice Forum 10 years ago at an historic meeting in Green Bay. That meeting marked a new commitment to promoting cooperation, respect, and communication among the tribal and state courts.

#### **Success story #5: The Cracker Barrel Conversations**

This year, we tried something new in state court/tribal court relations. Meetings of state and tribal court judges were held in Districts 9 and 10 to encourage dialogue about a host of issues of

concern to both the state courts and the tribal courts. These meetings were called Cracker Barrel Conversations.

The meetings included 45 circuit court and tribal court judges and staff. In the words of State-Tribal Justice Forum Chair Judge Neal Nielsen, Vilas County Circuit Court:

*It is increasingly important that the state and tribal court systems collaborate with and complement one another. One way to ensure that is for circuit judges and tribal court judges to get to know one another in a fairly informal setting and have the opportunity to discuss issues concerning court operations and jurisdiction. The Cracker Barrel conversations were successful and affirm Wisconsin's role as a national leader in state and tribal court relations.*

These conversations and our continuing work on state court/tribal court issues led us this year to develop new online forms for the discretionary transfer of cases to tribal court. Those were approved and are ready for use.

I am pleased to report that as a result of all our activities, Wisconsin state and tribal judges have become recognized as national leaders in state court/tribal court cooperation and collaboration.

#### **Success story #6: Mental health court programs**

This year, with financial backing and technical assistance from the Council of State Governments, I convened a committee of professionals in criminal justice and mental health to steer an effort to improve how the criminal justice system responds to people with mental illness. Wisconsin was one of four states selected by the Council of State Governments to receive assistance to tackle this issue.

Our steering committee is now identifying focus areas, setting goals and looking for solutions that meet three requirements: they must be cost-effective, they must be evidence-based, and they must be targeted at early intervention so that we can identify and divert people with mental illness into appropriate treatment.

This coming spring the steering committee will invite stakeholders from around the state to develop an action plan.

I am happy to report that there is already a model Mental Health Court program up and running. Eau Claire County's Mental Health Court program recently celebrated its one-year anniversary. The court is equipped to serve up to 12 defendants with diagnosed mental illness who repeatedly commit 'nuisance' type offenses. These defendants are identified early in the process and diverted into the special court program where their treatment needs are evaluated. Here's Judge Paul Lenz:

*The focus of this program is criminal defendants who suffer from a significant mental illness but are not [NGI]. NGI is a very high standard. Thus, there are a large number of defendants who, although they suffer from a significant mental illness, do not qualify for NGI treatment and do not benefit from the traditional criminal justice process.*

Eau Claire County fully funds this program and Judge Lenz has established a collaborative relationship with all the justice system partners who must be at the table to make a Mental Health Court program work.

### **Success story #7: District 7 Interpreter Pilot Program**

Ten years ago, when we started an effort to improve court interpretation, we were starting from scratch. Wisconsin had no system for training, testing or certifying court interpreters. We had no code of ethics for court interpreters and no rules governing their appointment of court interpreters. What we had, in abundance, was a lot of room for improvement.

Look how far we have come. We now train, test, certify and monitor court interpreters, for we know that doing justice requires no less. Indeed, as our immigrant population continues to grow—in 2009 to date Wisconsin has become home to 454 immigrants, mostly from Burma, Iraq and Somalia—the need for certified court interpreters will only increase.

On September 1 of this year, we launched a pilot program in the 7<sup>th</sup> Judicial District where all appointment and scheduling of court interpreters is centralized at the district level. One of our primary goals is to increase the use of certified interpreters in a more cost-efficient way through remote interpreting for shorter hearings and block scheduling. Almost two months into the project, our data shows 100% use of certified interpreters for Spanish, Hmong, Russian and ASL—which is impressive given that only one certified Spanish interpreter lives in the entire district. The program will run for two years, and then we'll assess it. If it works well, other districts that are interested may be able to replicate the program.

### **Success story #8: Evidence-based practices and substance abuse**

Our Effective Justice Strategies program under PPAC—the Supreme Court Planning and Policy Advisory Committee—is about finding better ways to address recidivism in the criminal justice system. In 2009 we saw the fruits of several years' planning as we fully implemented AIM (Assess, Inform and Measure), a program that gives judges more information about offenders' risks and needs to improve our chances of success with each individual. The pilot program fills a gap by targeting offenders for which pre-sentence investigations are not generally conducted. The pilot counties are Eau Claire, Iowa, La Crosse, Marathon, and Milwaukee. Bayfield and Dane will join soon.

On a related note, we developed a training program called *Stop the Revolving Door: Evidence-Based Responses to Drug and Alcohol Use*. More than 450 people took part in the trainings held in all 10 judicial districts. The faculty included Judges Mary Triggiano of Milwaukee County, Lisa Stark of Eau Claire County, and Michael Rosborough of Vernon County, along with a University of Wisconsin physician and staff from the Department of Corrections.

Judge Triggiano also is helping to pilot a project in Milwaukee County called Families Come First. It aims to intervene early when a woman has an infant born with drugs in his or her system or when a pregnant woman is using alcohol or drugs. The idea is to divert these women into a residential treatment facility where they can stay with their children.



Keeping the mothers out of jail and the children out of foster care can save money, but more importantly it can save families, and it can save futures. This approach was found to improve the mother's chances of staying clean, improve her ability to hold a job, decrease her criminality and lessen the problems that the children face. Here's Judge Mary Triggiano:

*Evidence-based practices have an important role in child welfare cases. We know what works and what doesn't work. And we know that judges have to be leaders in developing programs that are going to make a difference for families. This is about being smart about how we deal with people. It is about the administration of justice.*

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All of these success stories are about being smart, about focusing on helping the people who come into the courts, about improving the administration of justice. Each of us has the opportunity and the burden to serve in a leadership role in good times and in trying times. The choices that we make today will shape the legacy that we leave.

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I end this State of the Judiciary address as I have ended the others. I call for all of us to work together for the people of this great state. Let's make good use of the opportunities afforded each of us to provide the public with a fair, neutral, impartial and non-partisan judiciary. Keep in touch with your ideas and your concerns. I am in the telephone book: 608-266-1885. Let's have a great conference!