

**State of the Judiciary 2005
Chief Justice Shirley S. Abrahamson
Wisconsin Judicial Conference
Tuesday, May 3, 2005
Milwaukee, Wis.**

*The Causes of Popular Satisfaction with the Administration
of Justice*

Good morning. Welcome to Milwaukee and the 2005 Wisconsin Judicial Conference. Our thanks to the program co-chairs, Justice Patience Roggensack and Judge Mary Kuhnmuensch 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, which took place in October 2003.

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

Judge Donn H. Dahlke, Marquette County

Judge James P. Jansen, Langlade County

Judge James A. Martineau, Marinette County

Judge Walter J. Swietlik, Ozaukee County

Judge Harold Wollenzien, Waukesha County

Clerk of Circuit Court Alfred Lewandowski, Portage County

Clerk of Circuit Court Evelyn Maldonado, Trempealeau County

Court Reporter Duane A. Peterson, Waushara County

Register in Probate, Kim Z. Vinet, Sauk 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 of the new judges are read. Our new circuit court judges are:

Alan Bates, Rock County

Dennis Cimpl, Milwaukee County

Gregory B. Huber, Marathon County

John S. Jude, Racine County

James L. Martin, Dane County

Neal A. "Chip" Nielsen, Vilas County

Richard G. Niess, Dane County
John P. Roemer Jr., Juneau County
Frederick C. Rosa, Milwaukee County
Jay R. Tlusty, Lincoln County
Mary E. Triggiano, Milwaukee
Paul R. Van Grunsven, Milwaukee County
Scott C. Woldt, Winnebago County
Glenn H. Yamahiro, Milwaukee County

Our judges-elect, who will take office on August 1, are:

Guy Dutcher, Waushara County
Jerome Fox, Manitowoc County
Michael T. Judge, Oconto County
Fred W. Kawalski, Langlade County
Mark McGinnis, Outagamie County
Anthony Milisaukas, Kenosha County

In addition, our state’s appellate courts welcomed new members. Justice Louis B. Butler Jr. has been an excellent addition to the Wisconsin Supreme Court and the court of appeals welcomes Judges Paul Higginbotham and Joan F. Kessler to provide outstanding service.

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Ninety-nine years ago, in August 1906, the young Dean of the University of Nebraska Law Department – a 35-year-old prodigy by the name of Roscoe Pound – addressed an American Bar Association meeting in St. Paul. His speech was entitled “The Causes of Popular Dissatisfaction with the Administration of Justice” and it electrified the room, sparking nothing less than a revolution in American jurisprudence.

On the 50th anniversary of that seminal presentation, admirers of Pound gathered in St. Paul to commemorate what Chief Justice Earl Warren in the 1960s called a “memorable and prophetic” diagnosis of the justice system’s ills.

Today, as we approach the 100th anniversary of Pound’s famous address, I propose taking a fresh look at Pound’s address with a particular emphasis on progress toward building popular *satisfaction* with the administration of justice in four areas where Pound saw strong popular dissatisfaction:

1. The necessarily mechanical operation of rules, and hence of laws;
2. The inevitable difference in the rate of progress between law and public opinion;
3. The general popular assumption that the administration of justice is an easy task, to which anyone is competent; and
4. Popular impatience with ineffective court processes.

First let me tell you a bit about Roscoe Pound. He was a Quaker, born in 1870 on what was then the frontier – Lincoln, Nebraska. His father, a judge, attempted to interest young Roscoe

in the law by presenting him with two books: *Blackstone* and a compilation of American laws. Those of us who have parented teenagers can guess how this turned out: Roscoe Pound was utterly turned off by what he read in those books and decided to become a botanist.

Pound earned a bachelor's degree in botany at the age of 17 and a master's one year later. He was a talented botanist; there is even a genus of fungi named for him: the *Roscoepoundia*. Pound did some important research on parasites of the human ear – and, somehow, immersing himself in fungi and parasites kindled an interest in practicing law. Pound passed the bar after just one year at Harvard Law School and embarked on a very busy law practice.

While practicing law, Pound earned a Ph.D. in botany. He was, as one might imagine, a tremendous worker with a phenomenal memory. His former colleagues recalled consulting him as one might consult a law book, for he was always willing to help and generally could rattle off even the most obscure citation.

Pound left private practice at age 30, when he was appointed as a commissioner of appeals of the Supreme Court of Nebraska. His role there was quasi-judicial. His task was to help the Court clean up a docket that was woefully in arrears. After a couple of years of this work, writing more than 100 opinions, he was appointed Dean of the Law Department at the University of Nebraska. And it was there that he found his calling as a teacher, a calling that he would pursue well into his 90s, mostly at Harvard Law School, where he also eventually served as Dean.

Most of what we know about Pound's personality comes from the recollections of former students. He was hot-tempered and given to occasional classroom outbursts, but he cooled just as quickly and connected with his students not only as a teacher but as a mentor and lifelong friend. Pound had a terrific wit, and a penchant for writing tongue-in-cheek dissertations that poked fun at what he saw as the tendency of lawyers and judges to do work that looked and sounded good and was utterly irrelevant.

In one of his earliest tracts, entitled “Dogs and the Law,” Pound called for “some industrious author and enterprising publisher” to produce a two-volume publication, *Commentaries on Canine Jurisprudence*, which he concluded would be infinitely preferable to a *Treatise on the Law of Dogs*, which could be counted upon to fill only one volume. He proposed that the *Commentaries* cover the rights of dogs as well as the duties and liabilities of dogs, and foresaw a lengthy discussion of two duties of dogs in particular: to abstain from barking and to abstain from biting.

As Pound poked fun at the tendency toward narrow specialization in the practice of law, he argued that the law must recognize the needs of humanity and take contemporary social conditions into account. Law and the administration of justice must evolve. But the questions are: in what direction, and at what cost?

Let's take a look at Pound's *Causes of Popular Dissatisfaction* through the lens of a new millennium and with an eye not on dissatisfaction with the administration of justice but with an eye on our successes in building *satisfaction*.

Pound's Dissatisfaction Cause #1: The necessarily mechanical operation of rules, and hence laws.

Pound called this “the most important and most constant cause of dissatisfaction with all law at all times.” Indeed, today, 99 years after Pound enumerated his causes of dissatisfaction, the Supreme Court's Planning and Policy Advisory Committee (PPAC) calls “impersonalization of the legal process” one of the key trends that the courts must address in order to maintain the trust and confidence of the people.

Pound was addressing the familiar tension between bright line rules rigidly applied achieving predictability and certainty and judicial discretion in applying rules to fit an individual case.

Building a decision-making process that accounts for individual variables while offering some degree of predictability and uniformity, Pound said, requires that judges be supplied with practical aid in two forms. First, experienced, highly trained justice system personnel – social workers, probation officers, juvenile intake workers, law clerks – to give reliable and pertinent information. Second, predictive devices to help judges select the most effective disposition for the individual offender. Let’s take a look at our progress.

The work of the Wisconsin Sentencing Commission may be moving us closer to Pound’s goal of “a reasoned employment of experience yielding a technique.” The multi-disciplinary Commission includes Milwaukee Circuit Court Judges Elsa Lamelas and Marshall Murray; Judge Patrick Fiedler of Madison; and Judge Peter Naze of Green Bay. It has been meeting for about a year and a half, and is amassing data that may guide and inform the judicial decision-making process.

About six weeks ago, the Sentencing Commission conducted focus groups with judges in three regions of the state – Milwaukee, the Fox Valley, and northwestern/west-central Wisconsin – to find the answers to three questions:

1. Would judges send offenders to substance abuse treatment programs if such programs were more readily available?
2. What types of offenders would judges feel comfortable diverting into treatment?
3. What are the components that judges would look for in any treatment program?

The focus-group judges agreed on a number of matters including that:

- meaningful and clearly effective substance abuse treatment programs would be well received and used in appropriate cases;
- treatment programs should last for months, not weeks;
- programs should be wrap-around programs, addressing the needs of the individual such as education, parenting skills, and employment training to help offenders return to productive lives in their communities;
- programs should assume that offenders will relapse before recovery and should permit graduated sanctions;
- adequate resources would be needed for consistent and constructive supervision of offenders; and
- a judge would need to receive accurate, regular information about outcomes on individual and program levels.

In enumerating the general components of a successful drug-treatment program, these judges focused on the very elements that Roscoe Pound discussed: predictive devices to guide the decision to divert; individualization to address each offender’s needs; and reliable and pertinent information to assess the outcomes not only for individuals but across the system.

We know that we must strive for a degree of uniformity in sentencing without losing sight of the fact that no one-size-fits-all solutions are available to resolve the complex problems we face. The work of the Sentencing Commission can help us achieve an appropriate level of predictability by providing the reliable information that Pound cited as key to improving judicial

decision-making, and it can also inform the debate on various issues of public policy to help us administer justice in a way that merits the trust and confidence of the people.

Dissatisfaction Cause #2: The inevitable difference in the rate of progress between law and public opinion.

Pound saw a disconnect between the law and public opinion. He called law “the government of the living by the dead.” He saw the legal system as reactive rather than proactive.

Today, the administration of the judicial branch focuses on spotting trends and addressing them as quickly as possible. PPAC is watching 31 trends, from the aging population to the increasing introduction of science and technology evidence. I shall address four of the trends and our proactive approaches:

- The rising number of self-represented litigants
- The influx of non-English speaking litigants
- Increasing volume of family issues in court
- Jurisdictional conflicts between the state courts and tribal courts

The rising number of self-represented litigants

PPAC has identified the increase in self represented litigants as one of four critical issues that will be a top priority over the next year.

The growing numbers of self represented litigants are creating new challenges for the administration of justice. In Dane County, a 2002 survey of family court filings revealed that in 60 percent of the cases, both litigants were self-represented.

Albert Einstein said, “Any intelligent fool can make things bigger and more complex. It takes a touch of genius – and a lot of courage – to move in the opposite direction.”

We must move toward simplicity in processing cases to serve the increasing numbers of self represented litigants appearing in our courts. Confusing language and complicated rules and procedures alienate litigants representing themselves in court and frustrate us all. But our concerns go beyond frustration. Judges increasingly find themselves placed in the uneasy position of having to provide explanations of law and procedures without violating the judicial code. Judges and court staff are concerned, and rightfully so, about the appearance of impropriety if they intervene too much or too little, and the balancing act becomes all the more challenging in cases where one litigant is represented and the other is not.

Across the state, judges and court staff are meeting the challenge of self-represented litigants in a variety of ways. In the Tenth District, Chief Judge Ed Brunner has built a partnership with UW-Superior and Judicare to improve services to self-represented litigants. These collaborations have led to a Foundation grant.

In the Ninth District, Chief Judge Dorothy Bain appointed Deputy Chief Judge Gary Carlson to lead an effort to address the needs of self-represented litigants in rural areas where the small number of lawyers means more potential conflicts of interest for lawyers who volunteer their time to offer free legal advice. These lawyers, or their law firms, often discover that they represent the same banks and merchants whom the litigant is attempting to sue, meaning that they cannot ethically offer assistance. To address this problem, Judge Carlson and his committee are exploring a partnership with the University of Wisconsin Extension that might allow videoconferencing with attorneys who practice in other parts of the state – essentially, virtual self-help centers.

Self-help centers are popping up in courthouses across the state and in cyberspace to offer litigants a range of services. Waukesha's Self-Help Center, championed by Chief Judge Kathryn Foster, is one of the earliest and most substantial efforts and its Web site was one of 10 chosen out of more than 900 reviewed for a national award in recognition of the wealth of information that is provided in a very understandable fashion.

The state-wide court system unveiled its own self-help site two years ago. Last quarter, that site received 14,000 hits. Not bad, but it's not nearly as popular as our forms page, which is the third most frequently visited spot on our site, after the home page and the WCCA case search page.

A year ago, I appointed former State Law Librarian Marcia Koslov as my temporary executive assistant and assigned her to lead a task force to explore statewide forms for family court litigants. Since then, a team comprised of Ms. Koslov, Judge Gary Carlson, Judge Edward Vlack of St. Croix County, Tera Nehring of the Waukesha County Self-Help Center, and Milwaukee County Family Court Commissioner Michael Bruch has worked tirelessly on this effort and has developed a set of divorce forms that will be acceptable statewide but are not mandatory. I am pleased to report that just three weeks ago, the Supreme Court unanimously approved a petition filed on behalf of the Records Management Committee to allow for the use of these forms across the state. The new forms are ready to go and will be piloted in several counties before we take them statewide. The Record Management Committee, continuing to do a great job, will keep the forms current.

Our work to find better ways to address the needs of self-represented litigants takes the form of dozens of little and not-so-little experiments across the state. Those that work, we replicate. Those that don't work, we tweak or discard and learn from the experience they have provided.

The influx of non-English speaking litigants

Ten years ago, many residents of the city of Barron, Wisconsin, might have had trouble pinpointing the nation of Somalia on a map. Today, 12 percent of that city's residents are natives of Somalia. Ten years ago, you did not hear much Spanish spoken in Green Bay. Today, the St. Norbert Abbey in De Pere reports that Hispanic families comprise nearly half of the parishioners in some local parishes; churches offer multiple weekly masses in Spanish.

According to the 2000 census, the Hispanic and Asian populations in Wisconsin have doubled since 1990 and many other immigrant populations grew, and continue to grow, at a rapid rate. A 2004 U.S. Census Bureau estimate reveals that 60,000 foreign-born immigrants have moved to our state just since 2000. During fiscal year 2005 alone, Wisconsin expects to resettle more than 3,000 Hmong and 300 other refugees, more than ten times the normal arrival rate.

The number of people appearing in our courts with language barriers – litigants, victims, and witnesses – continues to increase dramatically. When Judge Elsa Lamelas appeared before the Supreme Court to argue in favor of adoption of a code of ethics for court interpreters, she told us that she alone has had to find interpreters for Spanish, Hmong, Russian, Laotian, Vietnamese, Cantonese, Punjabi, Hindi, Arabic, Somali, and Polish. Though the impact of the influx of immigrants varies across the state, we all are affected.

The court interpreters project is one of those satisfying efforts that have yielded prompt and demonstrable results, and those results testify to hard work and diligence of all of those who have contributed to the program from the beginning.

Just look at the accomplishments: The Committee to Improve Interpreting and Translation in the Wisconsin Courts was convened in October 1999; it issued its report and

recommendations a year later; it successfully petitioned for the adoption of an ethics code for court interpreters; it designed an orientation and a certification process; it developed a roster of court interpreters for use by judges, law enforcement, and others; and when Wisconsin's fiscal crisis doomed a proposal for state funding, it secured – with the help of U.S. Senator Herb Kohl – a \$250,000 federal grant to fund an interpreter coordinator. One year ago, less than five years after we began to look at this issue, the first group of trained and certified court interpreters was sworn in.

Judge Lamelas, Judges Rick Brown and Mark Warpinski, Marcia Vandercook, Gail Richardson, Carmel Capati and others have worked tirelessly to ensure that, in Wisconsin, a language barrier will not close the courthouse doors. Five hundred people have attended interpreter training on such topics as court terminology and procedure, ethics, and interpreting skills. One-hundred-ten interpreters have passed the written portion of the certification test and are eligible to take the oral test. Forty-seven interpreters have taken the oral test for certification, and 29 interpreters (22 Spanish, 6 American Sign Language, 1 Russian) are now fully certified. In March, two Hmong interpreters took the oral certification test for the first time, and we began an important effort to translate court documents into Spanish and develop a legal glossary in Hmong.

But even as we make progress, the challenges grow. The requests we are receiving from courts around the state reflect the need to increase the interpreter pool in languages other than Spanish and Hmong.

Recruitment of new interpreters and on-going training for existing interpreters is a priority, and our federal money runs out on December 31. We have asked the Legislature to convert the interpreter manager position to GPR funding and to provide funds to continue training, testing and certifying interpreters, and translating court documents. We also have asked for funds to make interpreters available at public expense to all litigants who require them in all types of cases regardless of indigency. This proposal will bring Wisconsin courts into compliance with a federal executive order that requires recipients of federal funds to provide competent interpreters at no cost to persons of limited English proficiency.

And finally, we have requested additional funding to reimburse counties for cost increases associated with higher reimbursement rates for certified interpreters and increased demand for court interpreter services under current law and under the proposed statutory changes. These measures will ensure that our courtrooms are accessible so that no Wisconsin resident faces losing custody of his or her child, or losing his or her home, or is unable to get a restraining order because he or she cannot understand English.

Roscoe Pound maintained that the courts must meet as many of the people's expectations as courts can, as often as courts can. Meeting the expectations of the public to provide fair hearings to litigants who do not speak English is not just a goal. Due process requires no less. And we shall not fail.

More family issues in court

Pound wrote extensively on family issues in the justice system and how they could be better handled. In 1959, he offered the following insight in an article entitled "The Place of the Family Court in the Judicial System":

It has been pointed out more than once of late that a juvenile court passing on delinquent children; a court of divorce jurisdiction entertaining a suit for divorce, alimony, and custody of children; a court of common-law jurisdiction entertaining an action for necessities furnished to an abandoned wife by a grocer; and a criminal court or domestic relations court in prosecution for desertion of a

wife and child – that all of these courts might be dealing piecemeal at the same time with the difficulties of the same family.

Pound's words should be music to the ears of our La Crosse judges, who started the state's first unified family court in 1998 under the leadership of Judge Dennis Montabon and who continue to have great success with it and to offer their assistance to judges like John Albert of Dane County who hopes to begin a unified family court in Madison. Unified family courts bring all the cases involving one family into one court.

The growing involvement of the courts in the lives of dysfunctional families has raised concern among all who work with families in crisis.

A decade ago, the Children's Court Improvement Program (CCIP) – which operates out of the Office of Court Operations and is funded with a federal grant – began evaluating and working to improve the court system's ability to achieve safety, permanence and well-being for children and families.

Four months ago, an independent consultant reassessed our courts' performance in cases involving children in need of protection or services (CHIPS) in a sample of 13 counties. The consultants reviewed court files, observed court hearings, conducted focus groups, and concluded that significant strides have been made since the initial 1997 assessment and that compliance with the federal Adoption and Safe Families Act has improved markedly in the past three years. The report also lists key ways we can continue to improve, which include standardizing codes in CCAP to improve the reliability of management reports and including information on CHIPS cases for all new judges as part of the Wisconsin Judicial College.

I am pleased to announce that the Children's Court Improvement Program is beginning a new project with the Wisconsin Division of Children and Family Services. It is called the Children's Court Initiative and will establish safety, permanency, due process, and timeliness performance measures not only in CHIPS cases but also in adoption cases and in cases involving the termination of parental rights. This project will be piloted in three counties during the summer and early fall and will be fully implemented November 2005.

Improving the life of a child is no small thing. There are many judges who take a special interest in the difficult issues that bring families and children into our courthouses, but there is one person who has been and continues to be a leader in this effort and I want to single him out: Judge Chris Foley. During his tenure as presiding judge of the Milwaukee County Children's Court, Judge Foley implemented case management strategies that expedited service delivery and moved children into permanent families more quickly. Thanks to the work of Judge Foley, and former Judge Charles Schudson, the National Council of Juvenile and Family Court Judges has chosen Milwaukee as the host city for its 2006 conference. The conference will give us both an opportunity to showcase the many initiatives we have undertaken to improve the treatment of children and families in court and an opportunity to explore fresh perspectives and new ideas.

I close my discussion of this topic with Pound's 1959 conclusion on this matter:

It is time to put an end to the waste of time, energy, money, and the interests of litigants in a system, or rather lack of system, in which as many as eight separate and unrelated proceedings may be trying unsystematically and frequently at cross purposes to adjust the relations and order the conduct of a family which has ceased to function as such and is bringing up or threatens to bring up delinquent instead of upright children.

Jurisdictional conflicts between the state, federal and tribal courts

In Wisconsin, the state and federal courts share jurisdiction to decide cases involving members of Indian tribes and events that occur on tribal lands. Tribal courts have authority to act on violations of tribal criminal codes that take place on tribal land and also have broad civil jurisdiction that they commonly exercise in child protection, domestic abuse, conservation, and housing-related cases.

Reducing or forestalling unnecessary, duplicative, and divisive litigation in cases where jurisdiction overlaps has been a top priority since we convened the Federal-State-Tribal Court Forum in 1999. Wisconsin has made great strides in this arena, signing protocols between the state and tribal courts that are a roadmap for deciding which court will handle any given case. District 10, under the leadership of Chief Judge Ed Brunner, enacted these protocols in 2001; District 9 expects to enact a similar set of protocols in July at a signing ceremony that will include Chief Judge Dorothy Bain and Judge David Raasch, president of the Wisconsin Tribal Judges Association.

We believe that our protocols for determining jurisdiction are the first of their kind in the nation. I am pleased to announce that our work in this area has led to our selection as host of a national symposium on federal, state, and tribal court relations. The symposium will be held on tribal land in Green Bay this July. It is titled *Walking on Common Ground: Pathways to Equal Justice* and will focus on finding solutions that will foster respect and comity and mitigate intersystem conflicts.

This symposium will be funded by a major grant from the U.S. Department of Justice Bureau of Justice Assistance. We are working closely with Fox Valley Technical College, the National Center for State Courts, the Conference of Chief Justices and Wisconsin and national tribal judges associations on this historic event.

Dissatisfaction Cause #3: The general popular assumption that the administration of justice is an easy task, to which anyone is competent.

To maintain judicial excellence that merits the public's support we must retain experienced judges and we must be in a position to attract top-notch candidates. We also need, as Roscoe Pound explained, highly trained, skilled personnel to supplement the work of the judge.

Retention of judges and attracting judicial candidates depends on fair compensation for judges. Director of State Courts John Voelker and I have been pounding the pavement on the issue of judicial compensation. In March and April, we met with editorial boards in Appleton, Eau Claire, Fond du Lac, Green Bay, Kenosha, La Crosse, Madison, Oshkosh, Racine and Waukesha. I have spoken with the Governor and have met with legislators about this issue. John has traveled the state meeting with judges and lawyers and speaking to any community group willing to listen. We do not yet know the outcome, but we stand firm on the need to compensate Wisconsin judges fairly.

We have also tried to make judgeships more rewarding without the expenditure of money. And a few programs that work toward this end have been especially popular.

The Judicial Exchange Program continues to give judges opportunities to expand their horizons by swapping courts for a day or a week with colleagues.

Our work with national and international justice organizations has led to dozens of opportunities for our judges and court staff to participate in and teach at educational programs abroad and around the country, all without the expenditure of taxpayer money. Judges have taught in Canada, China, Mexico, the Netherlands, the Philippines, and Japan. Deputy Law Librarian Julie Tesmer has helped set up a new law library in Serbia. Court Information Officer

Amanda Todd wowed an international appellate judges conference in British Columbia with a program on media relations. Numerous judges have attended conferences and seminars across the country. The trips mean extra nights and weekends of work, but the programs have proved to be invaluable not only to the individual participant but to the entire court system. The things we learn, the ideas we bring back and implement, all enable us to improve the way we do business.

One final way we are working to ensure a healthy and stable judiciary in difficult times is the new Justice Assistance Program, created by judges for judges. This program is helping us to address the many stressors that are the normal accompaniment of a judicial career to ensure early identification and resolution of issues that may contribute to judges having problems on the job. Judge Stuart Schwartz of Dane County has been a leader in the effort to create this important program. We shall participate in the Judicial Family Institute to provide information, support, and education to judicial family members.

Finally, our program to place law students in courthouses for summer clerkships has been very well received. The students take away great experience and we benefit from the free help.

The judicial branch relies upon the trust and confidence of the people, and we'll not retain that trust and confidence without experienced, thoughtful judges on the bench and well-trained dedicated staff.

The importance of our work to shore up the job satisfaction of judges and staff cannot be overstated. Our judiciary and court staff is considered among the best in the country, and we must work hard to keep it that way.

A broad segment of the Wisconsin public continues to value the Wisconsin judicial system and judicial independence, even as the national media report those who consider judicial independence to be a problem that needs eliminating rather than a value to be preserved and protected in a democratic society committed to the rule of law.

We value judicial independence not because it protects lawyers and judges from accountability – which it should not – but because it protects the integrity of the judicial process for all persons and the rule of law – which it must. As individual judges and as an institution we must continue to uphold the enduring value of judicial independence and maintain public trust and confidence in the judicial system and popular support for judicial independence. I have no doubt we shall. As I have said numerous times, the Wisconsin judiciary understands, values and adheres to the concepts of judicial independence and fulfilling its responsibilities under the Wisconsin Constitution of providing an efficient, effective and fair system for resolving disputes.

Dissatisfaction Cause #4: Our court procedures are behind the times.

Roscoe Pound deplored wasteful and ineffective court procedures. Many of the procedures about which Pound wrote no longer exist in this state. A newer cause of dissatisfaction with the legal system is that the jails and prisons continue to fill faster than government can build them and that recidivism is high.

In the last decade, public concern and frustration over recidivism has led to the development of a number of so-called problem-solving courts. These courts vary considerably in structure and operation, but in general they attempt to address the root causes of each defendant's offenses and depend upon a close collaboration between the courts, social services and community resources.

Problem-solving courts are not to be confused with another type of court that also has appeared on the landscape, the specialty court. Specialty courts follow the traditional, adversarial court model but handle only a specific type of case. Milwaukee County has three courts dedicated to homicide and sexual assault cases, one court dedicated to gun violations, and three courts that

handle drug offenses. These courts do not provide special treatment to offenders, but they do ensure that these offenses are handled in a prompt and uniform manner.

Wisconsin has 27 teen, youth, and peer courts operating in the state. Each one represents a partnership of judges, county government, attorneys, teachers, clerks, and members of the public whose impatience with the ability of the juvenile justice system to regulate the behavior of delinquent teens led them to find viable alternatives. These courts generally operate in the evening, in borrowed space and with volunteers. In other words, they're cheap. And they have been very successful at reducing recidivism and shrinking the juvenile court docket, freeing up the court system to handle the more serious cases. J. Robert Flores, administrator of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention, said youth courts "deliver results in a significant cost-effective manner that gets the attention of both the lawmakers and the policymakers."

Drug treatment courts have caught the eye of judges looking for better ways to address addiction. There are three drug treatment courts in Wisconsin – in Dane County, where Judge Stuart Schwartz is taking the lead; in La Crosse County, where Judge John Perlich is spending his evenings meeting with drug offenders, and in Monroe County, where Judge Steven Abbott has worked hard with the able assistance of Judge Mike McAlpine to bring the court to fruition. There are also pilot projects running in Eau Claire, Pierce, and Wood counties, with Judges Lisa Stark, Robert Wing, and Ed Zappen respectively leading the charge.

Several other counties are planning treatment courts. Waukesha County is moving forward on an alcohol-treatment court under the leadership of Chief Judge Kathy Foster and the county board; Winnebago County is pursuing an alcohol treatment court with Judge Scott Woldt taking the lead; and Ashland County has begun a drug treatment court for juvenile offenders, thanks to the leadership of Judge Robert Eaton.

The classic drug treatment court model has the judge at its center. The judge reviews each case with the treatment providers, the district attorney and defense counsel, discusses each offender's progress directly with the offender, and modifies treatment or orders sanctions as appropriate. That's a lot of judge time in a system that is already shouldering a heavy load.

In an effort to identify a model that might be successful with less judge time, John Voelker and I have worked in cooperation with Chief Judge Joe Troy, the district attorney, the public defender, the treatment community, the State and Outagamie County on an application for a federal grant to be used in Outagamie County to provide mental health and drug assessments, make use of diversion and adjudication, and provide oversight to reduce recidivism. If we receive the grant and if the Outagamie County approach succeeds, we hope to replicate it statewide so that jurisdictions without the resources required for a classic drug treatment court will have an opportunity to try a slightly different approach.

Pound called jurisprudence a "science of social engineering" and viewed the justice process as a system moving toward greater efficiency, refining and improving its processes even as it serves the many and varied needs of the public. He noted that "a certain amount of experimenting, in order to find the best solution for new problems, is inevitable." Our creative judges and court staff are constantly inventing better ways to do things. We try a new approach in one county, replicate it in a group of counties, then institutionalize it. And the Wisconsin judicial system becomes more efficient and effective.

Pound said, "the law must be stable, but it must not stand still." A truly stable judicial system expects the unexpected, is prepared to be disrupted, and waits to be transformed.

The other half of the equation of keeping the judicial system current is public education. Pound decried the public ignorance of the real workings of the courts. We must communicate about our work with our many publics – court users, media, teachers, members of other branches

of government, the bar, and the general public – to build understanding of the role of the courts, the value of judicial independence, and the job of the judge. Our communications program began 12 years ago, when we followed the advice received here at the conference and hired a professional communicator. Since then, we have developed numerous programs and publications to foster connections and improve communication. Our outreach programs are being replicated across the country.

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I shall close my remarks today with the words that Roscoe Pound used in closing his 1906 speech:

We may look forward to a near future when our courts will be swift and certain agents of justice, whose decisions will be acquiesced in and respected by all.

I look forward to an outstanding conference and to working with you all in the coming year. And I remind you that I am still in the telephone book: (608) 266-1885.

I welcome your ideas and your concerns as together we serve the people of this great state.