

Critical Issues:  
Planning Priorities for the Wisconsin Court System

Fiscal Years 2006-2007 and 2007-2008

**Revised Final Report**

Submitted to the Wisconsin Supreme Court by the  
Planning and Policy Advisory Committee

May 2006

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## **Critical Issues: Planning Priorities for the Wisconsin Court System**

### *Summary of Recommendations*

The Planning and Policy Advisory Committee (PPAC), based on the report of its Planning Subcommittee, recommends that the Supreme Court give the following issues its top priority in the upcoming biennium:

- Assistance to self-represented litigants
- Courthouse security
- Treatment and prevention of alcohol and drug dependency
- Alternatives to incarceration

Mindful of budget constraints that severely hamper new initiatives in our courts, and hopeful of devising policy objectives that might actually be concluded entirely within the planning time-frame, PPAC also was prepared to recommend that the Supreme Court consider a list of more discrete, more programmatic budget-neutral initiatives. However, as PPAC considered the items that might make up such a list, two things became apparent: First, many of the initiatives we contemplated were subsumed within one or more of the topics listed above. Second, focussing attention on initiatives that did not advance the four causes listed above, we thought, might significantly hamper the progress that needs to be made in those four areas. In other words, secondary goals would displace goals that deserve primary attention. Accordingly, no secondary list is presented.

Four themes pervade the discussion of the initiatives listed above. First, **budget constraints**. As we define new priorities for the court system, we recognize that our courts struggle to obtain enough resources to meet existing goals. And in the case of a number of counties around the state, Milwaukee County being a prominent example, threatened budget cuts may prevent the courts from meeting even basic objectives. Our recommendations assume that basic operations cannot be neglected in favor of new initiatives, that changes to the court system that depend on increased funding will also require strong justification, and that the Supreme Court can be counted upon as a constant advocate of adequate funding of all courts. Against a cloudy financial backdrop, we believe our best hope for achieving the court's mission is to prioritize the four issues we have identified. Tackling these four priorities, we believe, will produce greater gains for our constituents, and meet even more pressing threats to our mission, than pursuing other objectives on which our limited funds can be spent.

Second, **technology**. PPAC recognizes the critical role that technology will play in the fulfillment of the mission of the courts. But technology is not listed among the

four recommended priorities – because technology is a tool that should be brought to bear in addressing each priority.

Third, **outreach** to the communities we serve. Like technology, outreach is a useful tool for addressing each of the concerns listed above, and it was the centerpoint of the discussion between the Supreme Court and PPAC at its November, 2005 joint meeting. We believe significant gains can be made, through a disciplined and routinized program of judicial outreach at all levels of the court system, with the goal of cultivating better understanding of our challenges and limitations among our users, as well as a constituency for change to support those initiatives we deem attainable. In reaching out to others, we also need to do a better job of communicating among ourselves. The Planning Subcommittee’s survey demonstrated that many within the court system are unaware of initiatives already undertaken to address issues that concern them.

Fourth, it should be explicitly recognized the degree to which our success in reaching our objectives depends on **collaboration** with others who are not formally part of the court system – lawyers, state and local agencies of government, social service providers, and others. Indeed, unless deliberate efforts are made to build support among these collaborators for the initiatives we recommend, we do not believe they can be achieved.

As in all good contests, honorable mention must be made of topics that, while serious and significant to our mission, are nevertheless not as important as the four priorities listed above. Our report addresses these items as well.

### ***Report***

PPAC’s Planning Subcommittee, commissioned in 2000, began its third two-year meeting cycle in February 2005. The subcommittee’s overall goal is to prioritize the critical issues facing our courts, and recommend ways of addressing them.

This report addresses the following topics:

- The four issues that deserve the Supreme Court’s top priority over the next biennium
- Other planning issues that deserve mention
- The origins of the Planning Subcommittee
- The methodology underlying this report
- Future tasks for the Planning Subcommittee

## **FOCUSING ON THE FUTURE: FOUR CRITICAL ISSUES**

After considering all of the issues confronting courts, PPAC identified four issues on which the Supreme Court should focus resources over the next biennium. Each issue is explained in this section, including information concerning related activities within the system, and objectives to be achieved when addressing the issue. PPAC considers the issues of relatively equal rank; they are not reported in any particular order.

In addition, listed under each issue are one or more specific measures of success that will indicate progress toward addressing the issue. As much as possible, the measures of success place a priority on measuring results rather than efforts. In some cases a process rather than a result may be identified. When no adequate information exists to measure progress on an issue, recommendations are made for collecting the information in the future.

### **A. ASSISTANCE TO SELF-REPRESENTED LITIGANTS**

#### **Discussion:**

The operating principle on which our courts are founded is that parties approach the court as adversaries represented by attorneys who know the steps. For a long time we have been challenged by what to do with people who cannot afford to hire an attorney or who want to handle their cases themselves. The challenge will not go away, and evidence indicates a trend toward even greater numbers of litigants choosing or being forced to represent themselves.

Respondents to the survey conducted by the Planning Subcommittee (for more on the composition of the survey, its respondents and our successful experience with it, *see* page19), taken as a whole, ranked self-represented litigants the number one concern facing the court system. Although not every group of respondents ranked this topic number one, four of the five largest groups comprising more than 70% of the respondents (attorneys, judges and court commissioners, court staff and clerks of court) ranked this concern either first or third.

While it is fair to view this as a concern, this situation provides us with an opportunity as well. If we can make it possible for self-represented litigants to use the courts effectively and efficiently, and to resolve disputes that, if unresolved, affect the community, we will have met the highest aims of government and, in the process, we may bolster a public constituency for the courts.

#### **Objectives:**

The court system, in partnership with others, such as bar associations, should:

##### **1) Enhance decision-making resources**

Make available the means, including written materials, on-line information (such as the checklist on the Supreme Court website), over-the-counter information and

*pro bono* professional advice, by which litigants can make confident, intelligent decisions for themselves about whether to represent themselves. The court system should take care to assure the bar that efforts to assist self-represented litigants are not designed to persuade potential clients not to use the services of lawyers.

2) Increase attorney supply

Repair the SPD eligibility standards governing appointment of criminal defense lawyers for the indigent (this topic received widespread comment from those who responded to the Planning Subcommittee's survey); in addition, bolster the ranks of *pro bono* lawyers, legal services lawyers, unbundled service providers and private bar referral lawyers. Deploy judges to lead the effort to recruit more *pro bono* lawyers by encouraging attorneys to participate and by assisting in programs that train attorneys to participate. To support judges in this effort, time should be set aside at the judicial conference to train judges in the *pro bono* obligations of lawyers and what judges can do to encourage lawyers and to inform judges of available *pro bono* programs and opportunities.

3) Develop self-help service centers for every county

Provide a central, highly visible, user-friendly exchange under the roof of the courthouse, or accessible virtually from an easy-to-locate place outside the courthouse (public libraries, community centers, etc.), where litigants can learn what the courts are able to do (and perhaps more importantly, what the courts are not able to do) and what they need to do to navigate through a court proceeding (as well as what they are better off having a lawyer do for them). Self-help centers should inform individuals of the realistic risks of seeking assistance from the courts without legal representation and on the responsibilities of a litigant in terms of procedure, presentation of evidence to support a claim, and decorum.

4) Develop standard, easy-to-understand forms/instructions

Facilitate the development of legally sufficient forms and instructions for specific court actions in an understandable and friendly format, preferably an interactive format that requires a litigant merely to answer questions one-by-one rather than be confronted by a multi-part form and lengthy instructions, e.g., an on-line, interactive colloquy that automatically generates the necessary forms in a wide variety of kinds of cases.

5) Offer additional judicial and staff training

Train court staff under the auspices of SCR 70.41 (Assistance to Court Users) in order to make self-represented litigants more knowledgeable users of the courts. Also, develop on-going training opportunities for judges and court staff that include techniques that can be helpful in meeting the challenges presented by self-represented litigants. These programs include sensitivity instruction on the unique perceptions and anxieties that self-represented litigants bring with them when they come to the courts.

6) Create effective administration/evaluation procedures

Ensure judges and court administrators have the ability to monitor and evaluate the management of *pro se* litigation. As part of this objective, update the current case management system to track cases in the Wisconsin courts to determine whether the number of unrepresented litigants is increasing or decreasing, and where. Utilize this information as one way to determine the effects of the above objectives and to coordinate efforts around the state to address the needs of self-represented litigants.

7) Partner with other organizations

Encourage cooperation with county bar associations, appropriate State Bar of Wisconsin committees, Wisconsin law schools, civil legal services providers, libraries, librarians, technical colleges and others on related issues and projects. This should include the Bar's Legal Assistance committee, Lawyer Referral and Information Services committee, and the Local Bar Relations committee.

**Measures of success:**

The court system, in partnership with others, should accomplish the following within the next two years:

- 1) In every county a self-represented litigant will have ready access to materials or individuals to guide the litigant in deciding whether to represent himself or herself, as well as ready referral to lawyers able to represent the litigant in court.
- 2) All counties have developed a specific program to train clerk of court staffs and enhance the information provided under SCR 70.41, or have participated in training conducted by the Director's office.
- 3) At least one county in each Judicial District has deployed self-help form completion software on-line and at a computer available in the courthouse with the help of a trained assistant for litigants invoking basic procedures in family court, including divorce, child custody, and post-judgment relief.
- 4) All counties have available some type of self-help center or forms completion assistance.
- 5) 80% of circuit court judges and family court commissioners are trained in techniques for managing litigation involving self-represented litigants.
- 6) 50% of counties measure the level of satisfaction of self-represented litigants.
- 7) The information system can readily identify and generate ad hoc reports concerning cases involving self-represented litigants. The Director of State Courts Office regularly monitors this data to determine trends and whether these

cases are increasing or decreasing in the state courts; and shares this information with the State Bar of Wisconsin.

- 8) The Director of State Courts Office has developed cooperative relationships with some or all of the organizations mentioned in Objective #7 above. Court system personnel have been appointed as liaisons to appropriate external committees to cooperate and collaborate with these organizations on related issues and projects.
- 9) The Supreme Court has obtained a sponsor for a bill to raise SPD eligibility standards to a reasonable level and has committed lobbying resources to urge the Legislature and the Governor to enact the bill into law.

**Related activities:**

- Various legal forms from counties available in the self-help section of the court system's website
- Statewide Task Force on *Pro Se* Divorce Forms
- Records Management Committee Forms Project
- *Pro Se* Advisory Group
- District 9 and 10 *pro se* litigation projects
- Milwaukee and Waukesha counties' cooperative effort re: on-line, interactive form generation in family court proceedings
- Retaining a statewide coordinator within the Director's office to coordinate court system efforts regarding unrepresented litigants and meeting the objectives above
- State Bar of Wisconsin's Legal Assistance committee
- State Bar of Wisconsin's Lawyer Referral and Information Services committee
- State Bar of Wisconsin's Local Bar Relations committee
- State Bar Access to Justice Study

## **B. COURTHOUSE SECURITY**

**Discussion:**

Periodic courthouse shootings and other violence in public places reminds us and our constituents of the safety threats to those who work in, use and visit courthouses. It is fortunate that the violence is not more frequent, however, infrequent violence does induce complacency. It would be one thing if a deliberate, cost-benefit public policy decision were made that it was simply too expensive to secure courthouses against disgruntled litigants, belligerents in family court, warring gangs, abusers pursuing spouses and partners at their workplaces, angry ex-employees, jailbreakers and others, and that policymakers were willing to take the risk and accept the consequences. But when a lack of security is the result of inaction by those who are responsible, then violence in the courthouse threatens not only lives but also the legitimacy of those who left the courthouse vulnerable.

Furthermore, insecurities about the safety of our courthouses can undermine the core of the courts' mission. Court users who regard courthouses as unsafe can hardly be expected to advocate effectively for their rights and may avoid the courthouse altogether.

Responses to the Planning Subcommittee's survey leave the clear impression that security is of pressing concern to those who work in and regularly visit our courthouses and that respondents perceive that not enough is being done to improve security. This concern ranked second overall and was ranked either first or second by judges, court commissioners, clerks of court and court staff. The survey responses suggest that many believe the third branch is complacent about security.

If a bloody incident were to take place in a Wisconsin courthouse, demanding scrutiny would likely to be brought to bear at several levels within the court system, from the presiding judge to the local chief judge to the Supreme Court and the Director. To the extent that a lack of security is the result of a lack of resources requested from but denied by others, the image and independence of the third branch might survive such an attack. But if the third branch were to be considered blameworthy for the bloodshed by virtue of its own failure to identify threats, prepare to meet them and request the appropriate resources from the Legislature and the Governor, from county boards and county executives and from law enforcement, the legitimacy and independence of the third branch might be counted as additional casualties.

**Objectives:**

The court system should:

1) Revise SCR 70.39

SCR 70.39 sets forth certain security measures that individual counties and judges are encouraged, but not required, to deploy. The security measures listed in SCR 70.39 do not appear exhaustive or state of the art; they were issued before September 11 and before the advent of most of the heightened security measures with which the public is now familiar. Security and facilities committees in each county are required to report regularly, but not all do, and the scope of their reports does not match the scope of current challenges to courthouse security. The sense of the Planning Committee is that the reports of those committees are not widely distributed or are regularly ignored or that the committees themselves are more or less moribund. The standards promulgated by SCR 70.39 were intended to be part of a dynamic process of review that would lead to more evolved standards. *See* 70.39(13)(a). However, the original standards have never been amended. PPAC should undertake a comprehensive review of how well the standards have worked to date, how many of them are in fact implemented in the courthouses of the state, whether the standards should be modified or supplemented and whether the local review process needs to be strengthened to insure that security upgrades keep step with evolving security challenges. A

comprehensive review by itself might catalyze security upgrades in many counties.

2) Conduct regular, rigorous audits of courthouse security by security professionals

The court system does not employ a systematic means of testing the security of our individual courthouses to determine whether in fact best practices recommended by PPAC and the Director's office are being followed, or whether in fact there are security lapses. A regular program of security audits conducted by professionals familiar with the threats typical of courthouses and other public spaces, as well as large workplaces, would spur improvements to security, raise the profile of the Supreme Court's effort to assure its constituents that security is taken seriously, and, in and of itself, raise security awareness.

3) Identify the principal threats to courthouse security and improve security as necessary to meet them

The impression one gets about talking to some constituents about security is that courthouses are not secure because they cannot meet the kinds of threats against which other public facilities, such as airports, are secured. But the threats that weigh most heavily on the minds of our constituents may not be the threats about which we should be most concerned. Terrorist attacks, for example, are not as likely to occur in a Wisconsin courthouse as a violent attack by a vengeful litigant in a family court. To aid court administrators, to educate our constituents, and to provide an objective measure of our progress in securing our courthouses, the court system should articulate plainly the security risks that courthouses should be prepared to meet.

4) Train all who work in courthouses on recognizing threats and evacuating to safety

Security has as much to do with peace of mind as with hardening structures and tightening access to courthouses. There is some peace of mind in knowing that defensive measures, such as screening stations at all entrances, have been installed in the courthouse. But there may be still more to be gained by enrolling courthouse workers themselves in the security plan. Workers who are trained in observing the telltale precursors of courthouse violence and in safe and effective means of alerting authorities and evacuating may achieve a certain level of confidence in their personal security that they lack now. The Third Judicial District, for example, has trained many courthouse workers courtroom by courtroom and office by office (particularly in Waukesha County) on particular techniques for spotting violence before it erupts and then on how to react without compromising personal safety. A program like this can be taught at every courthouse, but it needs to be mated with a capacity and discipline to teach and re-teach and re-teach the techniques so that they will be remembered when needed. A concomitant effect of such a discipline is that courthouse workers will readily recognize that their security is a high priority for the court system.

- 5) Develop an expertise among law enforcement officers in courthouse security  
Securing courthouses would seem to be a challenge that falls naturally to local law enforcement agencies. However, local law enforcement agencies have not taken the lead in this field. It is possible that the lack of leadership on this issue is the result of a lack of expertise. Law enforcement officers are specially trained to meet particular needs in our communities, such as domestic violence and detecting drunk driving, but not courthouse security. The Supreme Court should use its leadership authority to urge the law enforcement community to develop the requisite expertise comprises just such a need, for example, by approaching technical colleges to create a certification in courthouse security for law enforcement officers. Developing an expertise among law enforcement and then working with law enforcement as partners might make the courts more effective in persuading the Legislature and county boards to fund the upgrades necessary to secure our courthouses.
- 6) Fund Assessments and Demonstrations of Improved Courthouse Security  
Many of the changes necessary to secure our courthouses require funding – retaining consultants to assess security, perimeter security and monitoring, metal detection, restricted access, badging, hardening structures in courtrooms, and others. In our current regime of court funding, the Supreme Court cannot be expected to shoulder all of these costs. Nevertheless, the Supreme Court can be expected to lead the campaign for such changes, and particularly changes to meet a uniform expectation of security across the state. One way to lead more effectively would be *demonstrate* what it takes to improve security to a minimum level, and to demonstrate that security can be accomplished without unduly burdening the efficiencies of our courts or the many functions our courthouses serve. The Supreme Court should request that the Legislature allow the Court to earmark a portion of the court support services surcharge for a fund to assess courthouses around the State and fund security improvements on a demonstration basis.
- 7) Prepare to defend a comprehensive plan  
For the sake of the accountability of the court and its legitimacy as the administrator of the state court system, the Supreme Court must be prepared to explain, in the likely event that serious violence will revisit a courthouse somewhere in Wisconsin, that everything reasonable within the Court's power has been done to secure courthouses – that in every county an appropriate effort has been made to adopt perimeter screening against weapons, to ensure adequate staffing levels, to implement appropriate training of sheriff's deputies, bailiffs, security personnel and other courthouse workers – and that to the extent violence occurs, that it was not for lack of leadership, insight, planning or preparation at the topmost levels of the court system.
- 5) Extend outreach  
Among the issues that justices, judges and other court system leaders must be discussing routinely with the public are the incidence of courthouse violence, the

need to fund logical measures such as perimeter security, threat assessment and adequate bailiff staffing levels, and the reasons why our courthouses are not as secure as we would prefer. The Supreme Court and PPAC should recruit able communicators from within our ranks and assign a program of contacts with our constituents to raise and inform an awareness among our constituents of our needs, our limitations and our ideas for improving courthouse security.

**Measures of success:**

The court system, in partnership with others, should accomplish the following within the next two years:

- 1) Every state or county courts employee will personally participate in training, such as Waukesha County's training, to (1) identify the precursors of courthouse violence; (2) alert the appropriate authorities; and (3) evacuate courtrooms and offices safely and effectively.
- 2) PPAC will reactivate its Facilities and Security Committee and assign it the task of revising SCR 70.39.
- 3) PPAC will publish a plainly-stated list of the most likely threats to the safety and security of those who work in, use or visit a courthouse in Wisconsin.
- 4) 50% of all county courthouses will have undergone a professional security threat assessment and will have developed a plan to address any lapses identified in the assessment.

**Related activities:**

- County Security and Facilities Committees commissioned under SCR 70.39
- Annual reports to PPAC of such committees, as required by 70.39(3)(e)
- Courthouse security legislation advocated by the Conference of State Court Administrators
- Federal grants available for upgrading courthouse security

## **C. ALCOHOL AND DRUG DEPENDENCY**

**Discussion:**

At the scene of a tragedy, the community naturally looks to those in authority for solutions or explanations. The court system finds itself, whether it chooses to or not, in such a position at the scene of what is perceived in our communities as one of the most serious social tragedies we confront: alcohol and drug abuse. The widespread and manifold effects on our society of dependency on alcohol and drugs need little elaboration. Nor need it be gainsaid that the younger our children begin drinking or experimenting with drugs, the greater the likelihood of a lifetime of dependency.

The communities we serve are looking for solutions and they naturally look to courts, for it is in courtrooms that those effects so often come to light – in cases of divorce, drunk driving, truancy, drug possession and dealing, theft, ChIPS, sexual assault, embezzlement, child neglect and failure to support and many others.

Professionals in the field of alcohol and drug treatment might readily conclude that judges are not qualified to solve such problems. Further, we in the court system understand how court-administered treatment programs can soak up available resources. In some treatment models, a single judge is assigned only a fraction of the number of cases circuit court judges are expected to manage. Many counties have experimented with intervention programs, some with considerable success, only to see the program fold when funding sources dried up or those spearheading the project moved on.

Our stakeholders, however, do not share these views. Three of the four largest groups of respondents ranked this issue in the top five, and on a cumulative basis, it was ranked the fifth most significant concern overall. Thus, whether we like it or not, our constituents look to us for solutions.

This topic is currently being studied by PPAC in conjunction with the efforts of the Alternatives to Incarceration Committee, but the view of the Planning Subcommittee is that these issues deserve more direct attention.

**Objectives:**

The court system should:

1) Identify Wisconsin programs that work

Comprehensively assess the results of intervention programs operating in various courthouses around the state, including drug and alcohol treatment courts, pretrial monitoring programs, judicial oversight of probation supervision, and other programs that may have made a measurable difference to the incidence or consequences of alcohol and/or drug dependence. Among the items such an assessment might evaluate are: (a) the effectiveness of drug treatment courts, for these courts require an inordinately great share of our limited resources; (b) the particular difference, if any, that results from the participation of a judge in the intervention program, as opposed to a court commissioner, as opposed to nonjudicial officers; (c) the costs to county and state government, if any, that are alleviated by more effective court intervention, such as the costs of jailing, supervising probation, treating victims, supporting broken families, etc.; (d) whether any particular techniques employed successfully in specialized courts would be effective if wielded by a judge or court commissioner presiding over an ordinary caseload; (e) whether sufficient resources exist in various locales around the state to support such programs, such as drug and alcohol testing facilities, group therapy programs, residential treatment centers, and the like; and (f) the extent to which programming for minors (for example, assessments of whether a

given individual is dependent) is hampered by the confidentiality of juvenile court records. Then the results of all such assessments should be made available through regular reports to all judges, court commissioners, court administrators and court staff and by selectively encouraging jurisdictions that lack effective programming to adopt it.

2) Identify national programs that work

In judging how best to allocate our limited resources, careful consideration also should be given to programs operating elsewhere in the nation that may not yet have been attempted or tested in Wisconsin.

3) Promote programs that work

The court system should replicate in as many counties as possible those programs that have made a measurable difference in curbing alcohol and/or drug dependence. Among the steps that will be necessary are identifying judges, court commissioners, court administrators and court staff who will make a passionate commitment to the success of the program, as well as identifying volunteers to relieve those who have been long involved in promoting, crafting and operating such programs.

4) Extend Outreach

Among the issues that justices, judges and other court system leaders must be discussing routinely with the public are the incidence of alcohol and drug dependence and its consequences for children, families, schools, workplaces and neighborhoods. The Supreme Court and PPAC should recruit able communicators from within our ranks and assign a program of contacts with our constituents to raise and inform an awareness among our constituents of our needs, our limitations and our ideas for addressing alcohol and drug dependence. These opinion-makers need to better educate the public about what courts can and cannot accomplish, or at least about what resources are needed to meet the expectations that our communities have of courts in this field.

**Measures of success:**

The court system, in partnership with others, should accomplish the following within the next two years:

- 1) PPAC has formed an Alcohol and Drug Dependency Committee to plan, develop and conduct the comprehensive assessment outlined in Objective 1. The Committee will render its report to PPAC before the end of the biennium.
- 2) The Director's Office has surveyed all counties in Wisconsin to determine which counties, if any, have received DHFS/OJA grants under the so-called Roessler Bill, 2005 Wisconsin Act 25. The survey results have been shared with PPAC's Alcohol and Drug Dependency Committee for evaluation.

- 3) The Director's Office has developed a package of talking points and reference materials for judges to use in the outreach efforts described in Objective 4.

**Related activities:**

- Ad hoc committee formed by Judge Bruner to study drug treatment courts and use of CCAP information by treatment court providers
- Association of Drug Treatment Professionals
- Drug and/or alcohol treatment courts in various counties

## **D. ALTERNATIVES TO INCARCERATION**

**Discussion:**

Wisconsin's overcrowded prisons and burgeoning corrections budget have captured the attention of our constituents, and have led to a recurrent suggestion that courts lead the study of alternatives to incarceration. The urgency of this issue seems to be propelled further by the sense of many that a disproportionate number of ethnic and racial minorities are incarcerated. This issue was ranked most important by a wide margin by respondents who identified themselves as attorneys and other government employees, and was also highly ranked by judges and commissioners, by respondents who identified themselves as interested citizens and by private agency representatives. On a cumulative basis, it was ranked third overall in importance.

Some suggest that the increase in incarceration is a natural reaction of judges, who must stand for election, imposing harsher sentences to win the favor of the electorate (or, at least, to avoid being accused of being soft on crime, and, as a result, vulnerable to a challenge). Others accuse legislators of a similar motivation for imposing stiffer and stiffer criminal penalties. At the same time, the growth of the prison population and associated costs may result in increased pressure on the judiciary to modify or regulate sentencing practices to ease or shift the rate of incarceration.

PPAC has been hard at work on this issue since 2004, focusing on four major topics: problem solving courts, criminal justice collaborating councils (which, among other things, study jail conditions before jail expansions are approved), other alternatives (such as electronic monitoring and day reporting centers), and risk assessment.

**Objectives:**

The court system, in partnership with others, such as bar associations, should:

- 1) Coordinate the efforts of the Alternatives to Incarceration Committee with the Work of the Alcohol and Drug Dependency Committee Proposed Above. Care should be taken not to unnecessarily duplicate efforts, not to allow worthy initiatives to fall between the cracks. Both these committees have an interest in

assessing the performance of drug treatment courts, for example, but the work need not be done twice.

2) Implement Recommendations of PPAC Alternatives to Incarceration Committee

As the committee's working groups develop initiatives, they should receive the prompt attention of PPAC and the Supreme Court. The AIC Committee should study, if it is not presently doing so, suggestions which surfaced in response to the Planning Subcommittee's survey: mandatory drug treatment in lieu of incarceration, community service options, victim offender mediation, diversion programs (for low level offenders as well as for the mentally ill and for substance abusers) and empowering a court to supervise and collect restitution without burdening the probation department (freeing up probationary resources to help others avoid incarceration). If the AIC Committee recommends the formation of criminal justice collaborating councils in every county, then PPAC should devise means of supporting counties in this effort.

2) Work with the Sentencing Commission

Develop sentencing ideals that suggest what sentences *ought* to be imposed in given circumstances rather than developing sentencing norms driven by an aggregate of sentences that actually have been imposed.

3) Extend Outreach

Among the issues that justices, judges and other court system leaders must be discussing routinely with the public are the high cost of incarceration, the objectives of incarceration, the careful ways in which judges exercise sentencing discretion before deciding to incarcerate, the limited options available to judges at sentencing, the budget limitations on probation as an alternative to incarceration, and the alternatives that the courts and others are exploring. The Supreme Court and PPAC should recruit able communicators from within our ranks and assign a program of contacts with our constituents to raise and inform an awareness among our constituents of our needs, our limitations and our ideas for addressing the cost of corrections, the benefits to offenders and to their communities of incarceration alternatives, and the effect of incarceration on ethnic and racial minorities.

**Measures of success:**

The court system, in partnership with others, should accomplish the following within the next two years:

- 1) PPAC and its Alternatives to Incarceration Committee have completed a study of this issue and PPAC has made concrete recommendations to the Supreme Court together with objective measures of success.
- 2) PPAC and the Sentencing Commission have studied together and either recommended or rejected sentencing guidelines based on the philosophy described in Objective 2.

- 3) The Director's Office has developed a package of talking points and reference materials for judges to use in the outreach efforts described in Objective 3.
- 4) A session at the judicial conference has been dedicated to educating judges about the progress being made in this field, informing them about alternatives they might consider in their own sentencing and case management practices, and equipping them with facts they should know when confronted with questions or criticisms relating to incarceration.

**Related activities:**

- PPAC Alternatives to Incarceration Committee

## **OTHER PLANNING THEMES**

PPAC's Planning Subcommittee also identified planning themes above and beyond the four most critical issues discussed above. Each of these themes is important to the overall effectiveness of the Wisconsin court system, but not as important as the four priorities listed above. These themes are briefly described in this section. They are not reported in any particular order, except that the list begins with issues that have been identified as top priorities in previous reports.

### **1. Funding Constraints**

This was one of the four priorities identified in the last planning cycle. While a statewide budget crisis is no longer looming, nevertheless severe spending constraints exist, open positions remain unfilled and out-of-state travel is still not permitted. In some counties, severe budget cuts have been threatened and in many counties staffing needs are going unmet. Local projects and equipment requests have been put on hold or scaled back. Courts are engaged in some of the efforts that were previously identified to attack this issue, such as identifying measures for increasing collections by clerks of court and identifying redundancies and activities that do not advance the courts' mission, however, more efforts need to be made to circulate know-how on successful strategies that have allowed some counties to maintain essential resources and funding.

As matters stand currently, the court system finds itself in the middle of a budget tug-of-war between State and county governments. Regardless of the source of the court's funding, however, it cannot be disputed that the courts' funds are inadequate. To alleviate these cross-pressures, and to refocus the debate on the level of the courts' funding rather than merely its sources, it is imperative that the Supreme Court follow through on its goal of developing a responsible, accountable funding formula that allocates costs efficiently and equitably between the State and the counties. In particular, the Court should (1) urge the Legislative Council to undertake a formal study of the issues framed in the February, 2004 report of the PPAC Subcommittee on Court Financing; and (2) implement the cost reporting and auditing recommendations made in that same report.

2. **Making the Court Record**

This was another of the four priorities identified in the last planning cycle. The shortage of court reporters reported two years ago has not been alleviated; if anything a greater shortage looms. But the Director of State Courts has shown a firm commitment to retain and support our current pool of reporters and some measures are being tested for making a record in the absence of stenographic court reporters. While it remains to be proven whether these substitute measures can be as effective as court reporters, these measures may be the only realistic alternative to the Legislature's unwillingness to pay what is necessary to attract new reporters to the ranks. PPAC is aware of no new initiatives in this field, and because the topic seems to have been thoroughly studied, PPAC cannot recommend that this issue receive the same attention as the other priorities listed above.

3. **Fees and Collections**

This was the third of the four priorities identified in the last planning cycle that did not make the cut this time around. Because adequate steps are being taken to stem the rising tide of new court-imposed fees and surcharges, and because no new initiatives have been discovered, this item does not need the priority attention it was given previously.

4. **Language Barriers**

Because of the large numbers of litigants and other court users who do not speak or write English well enough to communicate in our courtrooms, this issue remains significant (and was one of the four priorities recommended by PPAC in its 2002 report). However, because efforts to address this issue continue to have substantial momentum, the issue does not need to preoccupy the court's attention for progress, including improved funding, to continue in this area.

5. **Availability of Reserve Judges**

The complaint heard most often from circuit court judges who responded to the Planning Committee's survey was of a lack of reserve judges. This issue appears for the first time among the most pressing issues recorded by the Planning Subcommittee. The system has cut back significantly on its reliance on reserve judges in order to produce budget savings. With fewer reserve judge resources, trial court judges must shoulder an even heavier, more stressful load as they try to balance their caseloads with administrative responsibilities and judicial education.

6. **eFiling**

So many court systems across the country employ electronic filing that it will soon become expected of Wisconsin courts as well. However, this objective should not be sought merely for sake of image or pride. If as a result of the implementation of eFiling, litigants essentially make the record as they make their submissions to the court, Clerks of Court offices may realize substantial efficiencies, efficiencies that will enable the re-assignment of staff resources to other initiatives mentioned in this report. Further, the savings and conveniences

realized by court users may win greater adherence among them to other technology initiatives on which courts wish to embark. Two eFiling pilot projects are underway, in Kenosha and Washington counties. In the course of studying eFiling, the court system also should review the challenges of, and opportunities that may be made possible by, scanning hard-copy filings and storing and making such filings available electronically.

7. **Videoconferencing**

Videoconferencing is another technology that may produce real savings in the courts if fully implemented. To expand the use of videoconferencing to the maximum degree reasonable, however, certain procedural rules need revision and judges need training in how to exercise their discretion to accommodate videoconferencing. PPAC is currently studying these issues. PPAC recently issued *Bridging the Distance 2005: Implementing Videoconferencing in Wisconsin*, a guide to implementing a videoconferencing program, technical information on equipment and use, tips on evaluating the effectiveness of a program, and a comprehensive resource directory of videoconferencing contacts throughout the state.

8. **Privacy**

As we do more court work on-line and offer increased Internet access to court-related data and personal information, we may find it difficult to guarantee the security or appropriate use of private information. The Director's office is already working to devise guidelines for public dissemination of court records and articulate its rationale to the public.

9. **Politicization of Judicial Elections**

Wisconsin has been fortunate to avoid the kinds of election tactics that demean the image, perceived integrity and independence of the entire bench. But PPAC sees no inherent reason why tactics that have proven appealing to some in other states won't appeal to some here. Solutions being incorporated in the Model Code of Judicial Ethics, after years of development and debate, may be obsolete even before they can be approved. One measure for our court system to consider is whether to inoculate against viral campaign tactics with a dose of the truth: Provide voters with uniform, reliable and objective information about judges at election time, including objective judicial performance evaluations.

10. **Profusion of Municipal Courts**

Taken as a whole, municipal judges are respected and respectable, and their motivations cannot be questioned. Further, they are trained regularly by the Office of Judicial Education. Our survey revealed that many are grateful for the contributions made by municipal courts to reducing the caseloads of the circuit courts. Yet only about half of the state's municipal judges are attorneys; those who are not may not grasp as fully our understanding of judicial independence and an appreciation of the fundamental role it plays in our judicial system. Judicial independence is acutely put to test in those municipal courts that were

launched primarily to augment municipal revenues. If judicial independence is compromised in even a few of our courts – and particularly in those courts where so many of our citizens have their only personal experience with a judge – the image of the judiciary as a whole suffers. Chief judges are unclear about their capacity and authority to properly monitor and supervise municipal court judges

To protect the image and integrity of all judges, the Supreme Court should continue to develop uniform qualifications for municipal court judges and uniform operating standards for municipal courts as well as empower chief judges to more closely oversee the establishment, development and performance of municipal courts. Further, PPAC should study whether to recommend a law license as a minimum qualification to serve as a municipal judge (and, of course, whether proficient judges currently in office should be grandfathered under such a provision). In addition, the court system should encourage municipal courts to electronically record their operations so that their operations can be reviewed and managed through CCAP.

**11. Diversity Issues**

A lack of understanding and appreciation of the backgrounds of court users and court personnel of different races threatens to undermine the credibility of the courts. Racial bias is an explanation too often given by litigants for an adverse decision or for unsatisfactory treatment of court users. This issue of public trust and confidence, if unaddressed, may result in more individuals to go outside the court system to settle disputes. The Supreme Court should develop a regular program of training judges and court staff to be more aware of and appreciate the diversity of those who use our courts, and in particular to more finely tune empathy for the individual circumstances of those who use the courts.

**12. Impersonalization of the Court System**

Increasing judicial workload and case backlogs make it difficult for court personnel to take the time to personalize the legal process. Litigants feel they are being “herded” through the system.

## **BACKGROUND**

The Planning and Policy Advisory Committee (PPAC) was created to advise the Supreme Court and the Director of State Courts in the director’s capacity as planner and policy advisor for the judicial system.<sup>1</sup> PPAC developed the first court system strategic plan entitled *Framework for Action* in 1994. *Framework for Action* was the result of months of meetings that focused solely on the development of a strategic plan. The following mission statement was developed for the court system:

*The mission of the state court system is to protect individual rights, privileges, and liberties, to maintain the rule of law, and provide a forum*

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<sup>1</sup> Supreme Court Rule 70.14

*for the resolution of disputes that is fair, accessible, independent, and effective.*

Since 1994, PPAC has met annually to review and update the original plan in light of this mission. However, the results of these updates have been primarily used to provide a “to do” list for PPAC, not a blueprint for fundamental decisions for the organization. In order to strengthen the overall planning function of the committee, PPAC established a planning subcommittee in 2000, and the subcommittee held its first meeting in February 2001. The 11-member subcommittee established a planning cycle that is aligned with the biennial budget process to enable the biennial budget to reflect the court systems priorities, wherever possible. This plan is the third planning document developed under the planning subcommittee structure.

### **PPAC PLANNING SUBCOMMITTEE METHODOLOGY**

The planning process began with a review of issues confronting courts as reported by the National Center for State Courts as well as in the popular press and in trade journals. The committee itself deliberated over more than thirty different trends and issues confronting courts and tentatively prioritized them. Considerable thought went into devising priorities that might be attacked without significant budget impacts.

After tentatively prioritizing the issues, the Planning Subcommittee worked to gather the views of other judges, court commissioners and court administrators, as well as the views of a larger circle of court stakeholders. At first it seemed that the task of gathering these views would be abbreviated, because this year the Planning Subcommittee accelerated its schedule in order to produce a report at an earlier stage in the Supreme Court’s budget deliberations. (In earlier years, this report was published in May, but in this cycle the Planning Committee altered its schedule in order to be able to produce a report in February.) But then the Planning Subcommittee had a brainstorm (credit goes mainly to Erin Slattengren): the job of surveying court constituents could be simplified, and at the same time the circle of those surveyed could be expanded, if those to be surveyed could be directed simply to respond to a single survey on-line in a central location.

Thus, this year’s surveying was a significant departure from past practice. In past planning cycles, survey tools were administered group-by-group in hard-copy form, sometimes catch-as-catch can, among circuit court judges on one occasion and court commissioners on another and DCAs on another and select groups of lawyers on another, and so on. This year, these steps were accomplished in one virtual fell swoop with a tool made available on-line with participants linked to the survey by eMail invitation. Further, invitations were broadcast widely, to pick up even more data from those with a stake in the future of the courts. Among those included within the broader circle who had not previously been surveyed were prosecutors, public defenders, law enforcement associations, and social service agencies. The process taken as a whole proved to be a significant return on the Supreme Court’s investment in its website and electronic mail infrastructure, as well as a more profound fulfillment of PPAC’s mission to channel the views of court system stakeholders to the Supreme Court and the Director’s office.

The Planning Subcommittee estimates that more than a thousand judges and justices, circuit court judges, court administrators, clerk's office employees, court reporters, attorneys, social service agency representatives and law enforcement officers were invited to participate. In all, the Planning Subcommittee received responses from 587 participants. About 26% of the respondents identified themselves as clerks of court or their employees or other court administrators and staff, 23% of the respondents identified themselves as attorneys, 22% of the respondents judges and court commissioners, and about 13% other governmental and private agency employees. Others identified themselves as court users, observers, interested citizens and others.

### **PPAC PLANNING SUBCOMMITTEE METHODOLOGY**

In the course of trying to spell out priorities for the Supreme Court, PPAC and the court system, the Planning Subcommittee formulated four tasks it intends to accomplish to enhance the planning process for future planning cycles:

- 1) **Issue a report card, and issue it sooner.** Accompanying PPAC's recommendations are certain objective measures of success. As part of its duties, the Planning Committee has assessed whether the Supreme Court, PPAC and the court system have met those objectives and has reported its assessment along with its report on future priorities. As a result, the planning process went forward without a clear understanding of whether previously-recommended priorities had been met. The Planning Subcommittee's view is that this report card, so to speak, will be much more effective in keeping the system honest, and much more useful to the planning process itself, if it is issued nearer the beginning of the planning process rather than at the end.
- 2) **More frequent surveying.** Having witnessed the ease of surveying using the Supreme Court's website and the tremendous amount of useful data that was collected, the Planning Subcommittee is considering whether to collect data on discrete planning issues on a regular basis, rather than inviting users to complete a more comprehensive survey on a one-time basis. Regular surveying may accomplish a secondary effect – reminding court users and those within the court family that issues of concern to them continue to receive the Supreme Court's attention.
- 3) **Self-evaluation.** With three planning cycles under its belt, it is appropriate that the Planning Subcommittee study the planning process itself, and in particular assess whether the planning process makes a difference to the Supreme Court, to PPAC, to the Director's office and to the court system and whether the process can be modified to make it more effective. Using the experience of PPAC's Alternatives to Incarceration Committee, which was handed a broad topic with little direction or refinement of the issues to be studied, the Planning Subcommittee intends to evaluate how PPAC initiatives are launched and whether there is a way to give PPAC study committees more direction at their

outset so as to expedite their work. Studying this process, the Planning Subcommittee believes, will shed light on the Planning Subcommittee's own process of launching recommendations for the court system.