

Involving Individual Citizens with Courts and Tribunals: Initiatives in the United States and Canada

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We, in the Midwest of the United States, have been very anxious for dialogue and communication with Canadian judges and court staff. We view Canada as having similar problems as the United States and we hope to learn from you.

Why are we talking about citizen or public participation in the administration of justice? This is a major topic in the United States. The chief justices of all 50 states have discussed public outreach at their meetings. They are holding national meetings on this issue, as are the American Bar Association and American Judicature Society. Many of the chief justices are elected, as I am, but many are appointed, as you are.

Even in our federal courts, which have always been somewhat more removed from the people than are the state courts, the judges are talking about public understanding and support of the courts. So why are we emphasizing this issue? Do we have a problem with public trust and confidence? My answer is—probably not at this moment. The polls indicate that the United States Supreme Court is held in very high regard, even after *Bush v. Gore*. Even as the country is split 50/50 on the election and 50/50 on favoring or not favoring the Supreme Court opinion, public trust and confidence in the US Supreme Court is very high. That is very good news for all of us, because the public tends to lump courts together. It doesn't fully understand the difference between the US Supreme Court, the Wisconsin Supreme Court and the trial courts. A court is a court, and too often we are all painted the same, in a black robe. Many people think that I am Ruth Bader Ginsburg or Sandra Day O'Connor.

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In my own home state, Wisconsin, if you went out and conducted a poll, the poll would show that the judiciary is held in very high regard. In my non-random, non-scientific polls, judges in Wisconsin get about a 98 % approval rate. People trust their local judiciary and their local judges. It doesn't mean that they like all of our decisions—they don't. It doesn't mean that they don't think we can improve—they think we can improve, and we can. But it means that the public has high regard for the judiciary as an institution and individual judges in the local community.

So why are we concerned? For two reasons. First, we want to maintain that kind of public trust and confidence in an era in which most Government institutions do not have the trust and confidence of the public. The public does not seem to hold the legislative and executive branches in high regard. If you are part of the Government, as judges are, you tend to soon get painted with the same brush of distrust in which the executive and legislative branches are held. This distrust of Government will travel, I think, to the judiciary.

Second, the reason I think we have to be concerned is because the emphasis in the business community is on service. You are our customer, we are serving you, and if things aren't right, come to the complaint department and we will fix it. The American public is getting accustomed to this emphasis on customer service. The American public will expect service from courts that emphasizes consumers' needs.

When I first came on the court in 1976, I continued my practice of making public speeches. One of my colleagues much older than myself, a long-time trial judge and a long-time appellate judge, said, "Don't do it. It is a big mistake to let the people know that there is a human being in that black robe. It is better to wrap yourself in the black robe and let them think that you are not necessarily of flesh and blood. If you are of flesh and blood, you can make mistakes. You are only human." That was not and is not my view. Remember the "Wizard of Oz." The Wizard was behind the screen and when the screen was dropped, you saw a scared person back there. I don't want to be that "scared person." I don't want the judiciary to be that "scared person." I want the judiciary to be able to stand up for what it is, an independent branch of Government, not taking orders from the legislature or executive, and rendering fair and impartial justice, regardless of public opinion polls or other extraneous matters. I may not be right, I may make errors, but I am going to be as fair and impartial as I possibly can. I may make mistakes, which I hope I don't, but the people will still have faith and confidence in me and in my role as

a judge if they understand my role and understand my commitment to impartiality.

Meeting the public is not only important for educating the public but educating ourselves. We must listen. We must listen to the public's perspective. The people have something to offer. Lawyers hate to hear this: just because you didn't go to law school, and just because you are not a judge, doesn't mean you don't know anything. A lot of people without a legal education are very smart. Sometimes we, as lawyers and judges, forget that important piece of information. The people have a lot to offer. The more narrow we become, the more isolated we become from the people we are supposed to serve, the likelihood of us missing the mark and not doing a good job increases significantly.

From my perspective, there are three aspects of public participation that we should be talking about. First, outreach; lawyers and judges talking with the people. I think we can start with very young people. Talk about our roles, explain what we do, and ask them about their perceptions and how they think we should be changing.

Second, input; getting non-lawyers into the courts, not as litigants, but to help us perform our role—get non-lawyers involved in the appointments of judges, lawyer discipline, judicial discipline, bar examinations in the United States, and volunteer organizations in the courts system. Bring them in. We need their input.

The third aspect of citizen participation, as I see it, is that we, in the judiciary, have to find ways of communicating with the executive and judicial branches on issues of mutual concern, yet maintain our independence. The judiciary is an independent branch of Government, but a branch of Government that co-operates in a variety of ways with the other two branches, because we all have the same goal: namely, working for the people of the province, the state and the country.

Public outreach and public input have risks. How many of you think that judges should be out in the community encouraging citizen participation in the administration of justice and also bringing people into the court in advisory roles to help administer the justice system? How many of you don't? The house is divided.

The reason I ask the question is because we all know that a judge is supposed to be impartial and is supposed to conduct himself or herself to minimize the risk of conflict with judicial obligations. I am reading from the canon of judicial conduct, which governs my conduct. I am to act impartially. I should do nothing that casts reasonable doubt on my capacity to act impartially. I am not to demean the judicial office. I should do nothing to interfere with the proper performance of judicial duties.

Yet, here I am advocating that you go out and reach out to the public. What happens? The public will ask questions. Canada doesn't have capital punishment, I assume. Neither does my state; most states do. As soon as there is a horrible crime in my state, some legislator gets on the platform and wants to enact a law adopting capital punishment. Then I run for election. Even if I am not running for election I speak about some topic that is not too controversial and then invite questions and answers. I always have questions and answers because, as I say, my job as a judge is to listen. That is what judges do: listen.

What is the first question from the audience? "What do you think about capital punishment ... abortion ... prison without parole?" Don't I think that all non-resident aliens of the Mideast should be detained, preferably without trial? These are hot topics in the United States. People are going to ask these kinds of questions. I explain that I don't make the law—I interpret it. The legislature decides on capital punishment. Does that mean I have nothing to say? No, there's much to say. I remind them that how I feel personally about capital punishment is irrelevant. I also tell them that capital punishment will increase the cost of administering justice. The response to questions should be educational. If I could not sit impartially on a death case, I can't be a judge. I must recuse myself from that case. In my responses, however, I should not do anything to jeopardize my sitting on a case that might come up. It is important in outreach that I explain my obligations as a judge and what I can, cannot and should not talk about. And there is great dispute about what judges can and should discuss publicly.

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The outreach programs that are available across the United States differ somewhat from state to state and even within a state. Many of the programs are run by an individual judge. A particular judge has a particular interest in a particular matter or a particular means of communication and just develops it. The program then moves from that small community to a region and then to the state and then via either the Internet or programs such as this, the program becomes national or international. We borrow from each other vigorously. We don't feel that we have to "re-invent the wheel." We take someone else's "wheel," slap on the name of our jurisdiction, make a few changes and then we call it our own. Some of the things that I am going to talk about may have started in our state or may have started in another state; it doesn't make much difference.

One thing you can do, without a leader and without directions and without funds, is to go out and make speeches. You can speak at your children's school, at your university or law school, at your service club or your neighbor's service club. And one speech leads to another invitation unless, of course, you bombed. The best kinds of speeches are interactive. Engage your audience. I swear in members of the audience as judges. I tell them that I am going to give them a fast course in judicial decision-making. Then I give them the case of *Landlord v. Tenant*. The tenant has one small goldfish named Tootsie. The ordinance says if you live in an apartment house of more than three families, "NO PETS ARE ALLOWED." You don't have to go to law school to understand the facts or law. It is a simple law and all people should understand it. Now you are the judge, and is "Tootsie" the goldfish a pet? I explain the court structure to them, divide the audience into thirds, then I take the case to the trial court, then the first appeals court, and then to the highest appellate court. This is an important case because fish are a billion-dollar business and more people own fish than any other animal. I go through the judicial process of interpreting a law and applying it to the fact situation. We talk about statutory interpretation. We look at the dictionary; we look at legislative intent; we discuss whether to look at legislative history, etc. I ask the audience to vote whether "Tootsie" the goldfish is a pet, on the basis of the legal principles we develop. They are to vote on the basis of the law, not on whether they are a landlord or a tenant, not on whether they are Republicans, Conservatives, Democrats, liberals or judicial activists. By the time they finish, I say to them, how many of you think that "Tootsie" is a pet and should be evicted? They never all agree. This exercise is a way of telling them that decision making is difficult, that

laws are not always clear, that judges fill in the cracks. If they can't agree whether "Tootsie" is a pet, it is understandable why judges do not necessarily agree about complex issues in securities law or tax law, or due process or equal protection, much more complicated issues. The audience leaves talking about the issues, and sometimes they call me later or send me newspaper clippings about pet cases.

Another outreach program we have developed is called "Justice on Wheels." It takes about eight hours to drive from one corner of Wisconsin to another. The Supreme Court sits in Madison, in the southern part of the state. So we take the Supreme Court out on the road and sit in another community at a local courthouse. Wherever we visit, we do press conferences explaining how the Court works and answer questions. We meet with citizen groups and bar members. We invite everybody into the courtroom, including school classes. We usually fill every seat in the courtroom and often have overflow crowds. We are on TV (cameras are always allowed in the trial courts and in the appellate courts in Wisconsin). This Justice on Wheels program is very effective in telling people about the Court. Justice on Wheels not only promotes understanding of the Supreme Court but also gives great support to the local judiciary, the local trial judges.

We also do something we call judicial "ride-alongs." We invite legislators, state and local, one at a time, to sit on the trial court bench with the judges for a morning. The legislators are intrigued at the diversity of cases. Sometimes their experience even stimulates amended laws. One legislator heard a case in which a youngster wanted to change his name from his biological father's name to his stepfather's, but he couldn't because the father had disappeared. The law requires the father's approval. The legislator asked, "Who drafted that dumb law?" Well, he had. At least, he voted for it. It's a good law, but it didn't work for this child. The law had to be amended to take care of cases in which the father could not be reached.

We also have a Wisconsin courts web page which is widely used.

We have seminars with the media to discuss mutual problems. I do a press conference with the Madison media every two or three years and ask the reporters, "What can we do to help you cover our courts better?" They would like to sit in the conference room. I say, "No, you are not going to sit in the conference room. Now let's be reasonable." They wanted advance notice of when a decision was going to be handed down. They didn't have to know what the decision would be, but they wanted to

know when it was going to be handed down so that they could get their materials in order. In effect, they would write the whole story, except the bottom line, and think of whom they would call to complete the story. So we now announce a couple of days in advance which opinions will be released. It doesn't cost us anything, and it has been a very effective technique. We get better coverage because the reporters are not surprised. The reporters also say "don't bunch the cases." Instead of handing out ten in a day as before, I now spread the decisions out so that we release them over a series of days. That helps the media write better stories and the cases get better coverage. More people read what the media writes than what I write.

I often visit newspapers when I travel around the state. They really like you to just touch base with them. They may not have any questions but they want to feel that they are "in the loop." We tend to keep talking about the same things because the newspaper people keep changing. I don't know about Canada but if reporters in our jurisdiction are there two years, that is a long time, and then they move on to other things. It is a continual process to educate them about how the courts work.

We have sentencing seminars with the media because sentencing is where judges have the most interaction with the media: Judges do not like the headline—"Judge Soft On Crime, Guy Only Got 250 Years." We again try to do interactive programming. We do a vignette about a tough case. Maybe a case where you have an upstanding citizen who drives while intoxicated and kills somebody. The driver is a single mother who has three children, is a good person, and is having a crisis in the family. No doubt about it that she was drunk; no doubt about it that the driving is a crime; no doubt about it that three innocent people were killed. What is the judge going to do with the case? We have the journalists sentence the driver. We tell them what their options are. The journalists are usually much less harsh in sentencing than the judges are. The journalists learn firsthand of the difficulties that judges face. We also try to educate the judges how to sentence in terms of making a sentence more understandable to the public, more understandable to the media.

Another one of our programs is called "Court with Class." We invite every high school in the state to come to Madison to hear oral argument. If the class agrees to come, we send the class copies of the briefs and other materials on the case ahead of time. A justice meets with the class at lunch to talk about, not the case, but the process the Court uses.

We also do a teachers' institutes annually to help teachers teach classes on the court system. The teachers find the institute very useful because we emphasize interactive techniques to use with their students.

We have numerous other outreach programs. They are usually administered by our court public information officer. Here are some examples.

We have receptions at the courthouse. We appear on radio and TV shows. We put out self-help materials on our web site and in hard copy. We try to meet with various groups, but we are very careful that we are not partial to any particular group. For every group there is a counter group, a group that has a different view, and we deal with all of them also.

We have 5,000 volunteers across the state in a whole variety of programs. They monitor guardianships, they visit with children who have had difficulties and they see if court's orders are being enforced. For example, if there are custody issues and a child is not supposed to visit with a particular parent except under supervision, the volunteers oversee those visits.

We try to determine whether our courts are operating well by using focus groups, exit interviews, questionnaires, polls, surveys. We are even thinking about suggestion boxes in some courthouses. The Department of Revenue has a suggestion box. It doesn't ask if you want to pay your taxes; it asks, how were you treated in your dealings with the Department? It can be very frightening for staff and judges to find out how the public feels they were treated. In the United States, students are asked to evaluate the faculty at the end of a course. Is that common in Canada? Yes. Very frightening. Maybe out of 90 students, 5 say you are the worst professor they have ever had. Even if 85 say you range between OK and good, you don't care about the 85 who say you are OK. You care about the 5 that say you were terrible. You grieve about it and it hurts, but it is very important to find out how we are doing. It doesn't mean that the 5 are right; it may mean they are somewhat right.

We include non-lawyers on every court committee or task force. Indeed about one-third of the membership of every court committee is composed of lay people.

We meet in open session with legislative committees. Has that ever been tried in Canada? The first time we met with a legislative committee everybody was very nervous. Meetings have turned out fine. Everybody was very polite, regardless of how they felt about issues, and we had very good discussions on matters of mutual interest. We also just had the first ever seminar for judges, legislators, and staff about how courts interpret statutes. It was very successful and it is being copied elsewhere.

I have attempted to give you a brief overview of some of the many programs in Wisconsin. Other states have similar programs. More details about these programs are available on our website and various other websites. No one need reinvent the wheel.