State of the Judiciary
Chief Justice Douglas K. Amdahl, Minnesota Supreme Court
Message to the Minnesota Bar Association
June 1986

My fellow lawyers, next September we shall celebrate the 200th anniversary of our Constitution. That document is the work product of a small group of patriots who believed, as we do, that there exists a contract between citizens and their government which sets forth the rights and duties of everyone in our society. The Constitution establishes the basic relationship between the government and the governed, and between the separate and coequal branches of the government.

I should like to focus my remarks upon the rights of our citizenry and the mission of the courts because our Constitution is a living, vibrant expression of the freedoms that it defines for everyone: it is a peoples' document. At the same time, the Constitution not only creates the judicial branch of government to define and establish the rights of people in our society, but also provides a convenient, accessible forum for the timely resolution of disputes. The courts have a contractual relationship with the people, which guarantees our populace ready access to an unbiased judicial tribunal that will scrupulously guarantee their rights and protect their liberties. This judicial process must, in addition to being impartial, ensure that disputes will be processed swiftly and economically.

As I reviewed the progress of lawsuits through the trial courts, I found that between 1980 and 1984 the number of cases filed was relatively stable statewide, with progressively greater volume in the metropolitan courts as opposed to lesser judicial business in rural areas. An analysis of 1985 filing statistics reveals a rise in both metro and rural courts.

Criminal cases filed in 1985 were up 5 percent, while civil filings rose a surprising 11 percent statewide. Criminal case filings increased in all but two districts, and in the Seventh District, which stretches from Milaca to Moorhead, criminal case filings rose a remarkable 18 percent. Also of note is that both juvenile petitions and family cases increased by 3 percent across the state.

Despite the increased caseload, case processing times in 1985 equaled or bettered the 1984 rate except for juvenile matters. Civil cases required an average of 212 days for processing in 1984, while in 1985 the courts disposed of the increased caseload at an average of 156 days – an impressive 20 percent improvement.

Our citizens should have ready access to the appellate courts, and they deserve to have their cases handled expeditiously there. We knew for many years preceding the institution of the Court of Appeals that the Supreme Court, overwhelmed by a deluge of cases that had approached 2,000 three years ago, could not provide to people the services to which they were entitled. The appeals court has served to meet this need. Since its inception, 5,709 cases have been filed with the new court, and 4,944 have been disposed; of the 765 pending cases, 77 percent are at the prehearing stage. The Court of Appeals is meeting the statutory requirement of disposing of its cases within 90 days after oral argument or final submission of briefs to decision, and nearly 60 percent of the cases have been accompanied by a signed opinion, despite the fact that in 1984 there were 2,036 filings and last year there were 2,168, a 6.4 percent increase in workload.

The Court of Appeals has far exceeded the expectations that we had for it. In the first full year of its operation, the number of case filings in the Supreme Court declined by nearly two-thirds. Nonetheless, in 1985, 748 cases were filed with the Supreme Court, a 29 percent increase over the previous year. There have been 345 new cases in the first five months of this year, or a 7.5 percent increase over the same period last year. It appears that the upward trend is continuing.

We are deciding petitions for further review approximately two months after the Court of Appeals decision and about one month after filing with our court. Approximately seven months elapses from filing a case with our court to our decision.

I am sure that you are aware that we, in effect, traded two Supreme Court justices as part of the consideration for the Court of Appeals and thus reduced our number from nine to seven. We find that seven justices is sufficient to handle our caseload, but we are also finding that the reduction from two law clerks per justice to one per justice is creating problems. We will be requesting legislative authorization for additional law clerks at the next legislative session.

How well does the judiciary in Minnesota perform its constitutional role? To answer this question, we might look at the various programs that have recently been established within the judicial branch of government to serve our needs.

For many years, delay in processing cases has been considered to be endemic in our judicial system, an unavoidable, and sometimes desirable, consequence of the so-called "law explosion". But we know now that delay can and must be rooted out if we are dedicated to effective case management and to the rights of litigants to have their cases decided expeditiously. One instance of meeting this need is the installation of guideline case processing time standards, which we have done on an administrative basis with the help of judicial and Bar leadership. For example, the standard processing time for civil jury cases is 12 months from note of issue to disposition, and 9 months for nonjury matters; for felonies and gross misdemeanors that standard is 200 days from first appearance to disposition.

When we couple aggressive delay reduction efforts with revamped case management at the local level, the results can be dramatic. In Hennepin County, the courts have installed the block assignment system and court-annexed arbitration. The results have been remarkable: while at the end of 1983 there were 4,000 civil cases pending, this figure was reduced to 2,000 at the end of 1985; the time between filing of a note of issue to disposition, which was 23 months at the end of 1983, was reduced to 7.4 months two years later. Similar improvements have been experienced in the criminal area and in conciliation court. Hennepin's time standards require that a note of issue must be filed within a year of the initial filing, and cases should be disposed within 18 months.

Last July, Hennepin County began a program of court-annexed arbitration, in which most civil cases involving claims of less than $50,000 are referred to trained lawyer-arbitrators. Sixty-one percent of these cases have been disposed on or before the hearing date, and 38 percent have involved more than the initial $50,000 ceiling. Ramsey County has instituted a family mediation program, in which any cases that would be assigned to the family court and which involve disputes regarding the distribution of property are diverted to trained mediators. The goal of this program is to resolve half of approximately 150 cases assigned to mediators. The First and Tenth Judicial Districts continue their aggressive measures to cut backlogs and process cases in a timely and effective way.

These systems may be a model for other judicial districts which are equally concerned about speeding the pace of litigation for the benefit of Minnesotans.

The symbiotic relationship between the state bar association and the Supreme Court has enabled us to fulfill the other obligations to society. One product of this close working relationship comes immediately to mind. We were all dismayed by the allegations of fraud and deceit of one unscrupulous St. Paul lawyer in his dealings with several of his clients and the intensive media coverage of subsequent events. Nothing so erodes the confidence of the public in our legal system as such charges leveled against one of our fellow practitioners. Your response to that situation was swift and thorough: the formation of a board under the auspices of the Supreme Court to collect and distribute funds to the victims of a lawyer's defalcation.

We expect financing will be achieved by increasing the annual attorney registration fee over a period of years in increments of about $20-25 in order to build a $1 million resource. We have proven our capacity to police ourselves and to let the public know that the activities of one of us do not in any way characterize our entire profession.

Yet another example of the cooperation between the bar association and the Supreme Court is the Advisory Committee on Lawyer Discipline. You may remember that at the 1984 Bar Convention in Duluth there was discussion about the desirability of conducting a study of the operation of the Lawyers Professional Responsibility Board.

That September, in response to a petition from the bar association, the Court appointed a committee, chaired by Minneapolis attorney Nancy Dreher, consisting of six lawyers and three citizens. On March 18 of this year, a public hearing was held to take testimony and to consider the reports filed by the board and the Dreher committee. The recommendations of the committee, which have been adopted by the Court, include tightening the administration of the system, requiring that a finding of probable cause as to each charge brought against the attorney must be made to sustain the charge at the hearing stage, and mandating various rule changes to strengthen procedural fairness. We believe that the close working relationship that has developed between the Dreher committee and the Lawyers Board has already borne fruit for complainants and lawyers alike: chronic delay has been arrested. For example, on January 1, 1985, there were 241 pending cases more than one year old; 15 months later, there were only 57 such cases.

The oldest and most serious cases were targeted for particular attention, resulting in more than 40 Supreme Court discipline orders in 1985. Finally, the overall backlog of complaints has been reduced from 686 on January 1 last year to 419 on March 31, 1986.

The indigent also benefit enormously from our joint efforts. Since 1981, when Congress drastically reduced federal funding for legal services indigency programs, your association has had in place a voluntary program to provide legal services to the poor, in which nearly 20 percent of active Minnesota attorneys participate. As one supplement to this effort, there is still in effect a $10 surcharge on filing fees, which enables us to maintain a permanent statewide system for legal service delivery to the needy, with a budget of more than $1 million annually. Coupled with this program is the Interest on Lawyers Trust Accounts effort, known as "JOLTA," which, since its inception in 1983, has awarded more than $4.25 million to support legal services to indigents, law-related education, and programs designed to improve the administration of justice. Furthermore, during the last legislative session, the Supreme Court received $650,000 to contract

to provide free family legal assistance to certain financially distressed farmers. This project includes a hotline and educational and support services for lawyers who are involved.

We believe that the judiciary owes a duty to the public to utilize its resources economically because every judgeship in this state costs upwards of $150,000 annually. It seems sensible to allocate judicial positions on the basis of need, and the 1985 legislature provided us with an important management tool to do so. Codified as Minnesota Statutes §2.722, subdivision 4, and known as "Sunset and Transfer," this legislation permits the Supreme Court, after consultation with lawyers and judges in the subject judicial district, to continue, vacate, or transfer judicial positions upon the death, resignation, or retirement of a trial court judge. Minnesota is the only state in the nation to have such a legislatively mandated program. To date, the Supreme Court has utilized this authority to terminate two judgeships in the Fifth Judicial District and one in the Eighth Judicial District, with a subsequent transfer of the vacant positions to the greater metropolitan area. In the Sixth Judicial District, the Court continued the judgeship but transferred it from Duluth to Carlton County.

The Court recognizes the significance of the authority granted by the legislature. We have carefully considered the workload in the counties and districts in which the vacancies have occurred. The "weighted caseload" analysis that we have employed in assisting us to make our decisions is a statistical format that considers case filings by case type, case "weights," that is, the amount of time that is required on the average to dispose of various kinds of matters, and the "judicial equivalent," a figure calculated differentially for each judicial district, and which factors in such variables as travel or "windshield" time, administrative time, time spent performing such activities as legal research, and "dead" time resulting from calendars that have folded or time spent awaiting trials to commence. We have found the weighted caseload to be extremely helpful in assisting us in making our determinations.

In addition, we have carefully considered demographic trends, on the theory that population can be one indicator of judicial needs, as well as unique factors that may exist in the locality and which may justify continuation of particular judgeships.

In fact, after utilizing the weighted caseload analysis, we have continued several judgeships in place after the incumbents have retired.

The Court is aware of the bar association's concern about this statute. Some may believe that there is inherent in the weighted caseload analysis a bias in favor of the metropolitan area. I can assure you that this is not the case. As I mentioned earlier, there is the so-called "judicial equivalent," which is a significant feature of the analysis. This figure differs for each judicial district and recognizes that judges in the rural areas have less time available in their workday to perform strictly judicial business than do metropolitan judges, primarily because of travel demands outstate. Others have claimed that the weighted caseload system is outdated and is therefore unreliable. This argument surfaced during the public hearings we have conducted so far, as well as in the legislative hearings concerning the possible repeal of the subject legislation. We have obtained funds to conduct an updated study, which will be concluded this year with the help of judges and court administrators in every district. It is also important to note that the policy committees of both houses considered the "Sunset and Transfer" legislation and voted to support its continuation.

"Sunset and Transfer" must be used judiciously, and we believe the philosophy upon which it is based. is sound: The judicial branch of government is in the best position to determine the need for judgeships which are vacated, usually by the retirement of incumbents, and to chamber successor judicial positions where they are necessary.

The courts are a natural environment for the introduction of computers. Their use in monitoring the status of cases, tracking financial information, and recordkeeping in general has been recognized in Minnesota for at least a decade. Our trial court information system, among other features, computerizes court calendars, generates notices, and communicates with other governmental agencies. By the end of the current biennium, more than 30 percent of Minnesota counties will be a part of the system.

The cost-benefit results of installing computers in the courts are extremely gratifying: one county which went on the computer network last January at a $9,500 cost had been estimated to have a $30,000-$50,000 accounts receivable balance; actually, its balance was nearly $400,000, 10 percent of which was overdue. In Stearns County, $70,000 in unexpected revenue was generated in the first six months of operation. The success of our information system has not gone unnoticed elsewhere. The 1985 Legislature authorized the Supreme Court to license the trial court information system software and recoup license fees. Recognizing the excellence of this package to meet court records needs, one Ohio trial court has purchased the rights to install it, and other counties in that state have also expressed an interest. In sum, we have designed and built a system that does not simply cost money – it generates money as well.

In my June 1984 address to you, I discussed the matter of court unification and then stated:

I sincerely hope that this burning issue can be settled finally, as no single other issue has created so much divisiveness in the judicial ranks and so severely damaged the ability of the courts to work together.

Unification of the trial courts into a single trial court has become a reality in the Third, Fourth, Seventh, and Tenth Judicial Districts. Unification is a substantial reality in the Sixth and Ninth Districts. As unification has come about, tension and dissension between the county and district courts has dissipated and has been replaced by cooperation in working toward common goals which will provide greater uniformity in the practice and procedures in the trial court and a more efficient and less confusing delivery of the judicial services to the citizens.

In my address to you in June of 1982, I said:

“The three tiers of the judiciary speak with weak voices when we speak individually, and few pay much attention. When the three tiers speak collectively, we speak quite loudly, and many give pause to listen. In recent years, the tiers have been going their individual ways, seeking to accomplish their individual goals with little, if any, regard to the other levels of the court. As a net result, the court system has been fragmented and often ineffective. It is my desire as chief justice to bring all the courts and all the judges to a recognition that we operate as a system with each of us having more common goals than individual ends.”

I am gratified to be able to report to you this day that the goal of bringing the courts together toward the common end of improving the judicial system has been largely met this past year. First, the cooperation between the trial courts which I have just related to you is an existing reality. Second, there has been a rather informal organization known as the Conference of Chief

Judges and Assistant Chief Judges which has been in existence since the Court Reorganization Act of 1977. The conference membership is made up of chief judges and assistant chief judges of the ten judicial districts of the state.

Initially, the chief judges were all district court judges and, generally, the assistant chief judges are judges of the county court. Now in all districts, even in those which have yet to be unified, we find that chief judges are as likely to be from the county bench as they are from the district bench. For the past five years, I have spent much time working with the conference of chiefs and I have watched that conference develop into a strong group which has placed statewide interests above parochial interests, looks forward to solving problems before they become major issues, and develops policies which improve the judicial process. On May 23 of this year, I signed an order formally establishing the Conference of Chief Judges. The order, which was signed with the unanimous consent of the other members of the Supreme Court, recognizes and strengthens a broad cooperation between the Supreme Court and the trial courts. I think it is unique in the judicial systems of the United States and I believe, and devoutly hope, that the citizens, the bench, and the bar will all benefit from it.

I have mentioned a number of programs and systems that have been put into place recently, most often with considerable assistance from your association, and which, I believe without exception, redound to the benefit of the citizens of our state. It is our duty in this tripartite governmental system of ours to serve the people by constantly searching for new and improved ways of streamlining case processing, by finding and eliminating procedures that are costly and time consuming for the litigant, the court, and the counsel.

My fellow lawyers, for a dozen years a chief justice has been honored to receive an invitation from your association to present a state of the judiciary message. As we near the bicentennial anniversary of our Constitution, I believe that this is a most appropriate time to evaluate the status of our judicial system which, with your assistance as officers of the court, strives to provide all Minnesotans, regardless of their economic means, a place to resolve their disputes economically, efficiently, and timely. I am both pleased and proud of the results of the cooperation of the bench and bar. I am confident that the great progress we have made in providing services to our citizens through our legal and judicial systems will continue as that working together continues.