State of the Judiciary
Chief Justice Douglas K. Amdahl, Minnesota Supreme Court
Message to the Minnesota State Bar Association and Manitoba Bar Association
June 11, 1987, in Winnipeg, Manitoba

Chief Justice Monnin, Mr. Williams, Mr. Thomas, Mr. Brink, Mr. Pollack, Mr. Pemberton, fellow lawyers and judges and others here assembled:

We meet in our sister nation of Canada with him we proudly share a common parentage in English law. This is the 13th time a Minnesota chief justice has been honored with an invitation to address the Minnesota State Bar Association on the state of the Minnesota Judiciary. It is the sixth time I have been so privileged. It is an historic first time that my Canadian counterpart, the Hon. Alfred Monnin, and I meet to share judiciary messages with each other and with our joint associations. From the field at Runnymede, where the Magna Carta was adopted, we are the heirs to a common idea, a political and legal philosophy that held that subjects have certain rights against the authority of the sovereign and that authority is subject to law. We share the evolution of that idea through the Petition of Rights of 1628, the Habeas Corpus Act of 1679, and the English Bill of Rights of 1689. Indeed, it was in defense of that idea that we in the United States assumed a separate course from England slightly more than 200 years ago.

Having assumed such a course, our forefathers were obliged to devise a new framework for a system of government. They used as a model those documents that constitute the British Constitution, those embodiments of that common idea. But if was the fullest expression of that common idea, evolved over these hundreds of years, that capped that framework, in words written bolder than all the others, "We the People ...: · Two hundred years ago we expressed our faith in the ability of a people to govern themselves, holding that the authority of the sovereign was derived from the governed.

The system to exercise that authority was based on a theory of a mixed government in which three branches, legislative, executive, and judicial, operated as checks upon each other.

The Judiciary then sits as a coequal branch of our state government, in stewardship to the people. It is the proper role of the Court not merely to provide a forum for the protection of rights and the guarantee of liberties of the people of the state, but to do so in such a way as to make those rights and liberties meaningful: to see that justice is delivered effectively, efficiently, and economically. This then is an accounting of our stewardship.

The 1987 Minnesota Legislature listened carefully, and sympathetically, to our recitation of needs and, despite a difficult almost overwhelming state economic situation, provided the judicial branch with the funds and authorization necessary to properly meet its responsibilities to the citizenry. We have been provided with the tools we need. Now, we must use those tools efficiently. If we fail in carrying out our duties, the fault is that of the judicial system, not the Legislature.

Among the things the 1987 Legislature provided to the judicial system are:

• One new judgeship for the Court of Appeals with necessary staff. The appointment of Fred Norton, present speaker of the House of Representatives of the state of Minnesota, a longtime legislator and respected lawyer, to fill the newly created judgeship on the Court of Appeals is a welcome one. His track record indicates that the bench, the bar, and the citizens will be well served when he dons his judicial robe on July 1, 1987.

• Funds for the employment of retired judges to assist the Court of Appeals.

• Twenty-one new judgeships for the district court. These judgeships will be filled over a period of four years with the first five new judges beginning their judicial duties on July 1 of this year. Three of those are assigned to the 4th Judicial District and one each will be assigned to the 1st and 10th judicial districts.

• Funds for the employment of retired judges to assist where needed in the trial courts.

• In 1983, the Legislature granted us $100,000 for a study of court facility needs. In 1984, the Legislature assigned a site and authorized $400,000 for design competition for a new Judicial Center. In 1985, the Legislature granted us $2.45 million for working drawings and site preparation studies for our new building. The 1987 Legislature authorized construction of the first phase, that is, the new construction of the Judicial Center, and provided $32.5 million in bonding for such construction.

In 1989, we will seek about $9 million for the remodeling of the present Minnesota Historical Society building which is to be, in effect, the main entrance and information center for the Judicial Center as well as the location of the Workers Compensation Court of Appeals, the Tax Court, the clerk of the appellate courts, and the various Supreme Court boards.

The new Judicial Center will house the Supreme Court; the Court of Appeals; the Workers Compensation Court of Appeals; the Tax Court; the state court administrator, staff, and computer systems; the State Law Library; the Lawyers Professional Responsibility Board; the clerk of the appellate courts; the Board of Continuing Legal Education; the Board of Law Examiners; the Board of Legal Certification; and other court-related activities.

Chief Justice Rehnquist of the United States Supreme Court has agreed to be the principal speaker on October 21, 1989, during a three-day series of events dedicating our new Minnesota Judicial Center.

Additionally, the Legislature provided funding for bringing into our computerized information systems program the 5th and 8th judicial districts as of July of this year and the 3rd and the 9th districts at the end of next year.

Minnesota is a state in the process of dramatic change. A growing urban population with a strong business and technological drive contrasts sharply with a troubled rural economy and an iron mining industry, once a vital part of our community, that has almost completely disappeared, leaving hundreds without jobs.

Times of such economic stress and dislocation lead to an increase in litigation as people struggle to deal with drastic changes in their lives. We have seen, in the last two years, civil case filings increase by 23 percent. By way of example, filings in support actions have risen by 18.5 percent and nearly 1,600 more domestic abuse cases were filed in 1985-86 than in 1983-84. The Legislature's addition of aggravated DWI offenses to the list of gross misdemeanors has caused gross misdemeanor filings to double since 1982. Case processing times, of which we had such cause to be proud only two years ago, have begun to increase as this burden of litigation falls upon the courts.

But the courts are able to respond. We are fortunate in Minnesota to have an administrative tool that allows us to see such changes and enables us to plan and reallocate resources before the courts are overwhelmed and the cause of justice is delayed or denied. The State Judicial Information System (SJIS), which I discussed at length in my 1985 address, continues to provide valuable information for planning, not only on a general level but on a local level. With its companion project, the Trial Court Information System (TCIS), a comprehensive automated local recordkeeping system, SJIS provides administrators with detailed information on the movement of cases within the judicial system, enabling quick identification of problems and enhancing the quality of our response. That the Legislature continues to fund these projects (and has extended the TCIS project to 56 counties of the state) is an expression of its faith in the value of these tools.

But, ultimately, SJIS and TCIS remain tools. How well we use them, and act on the information they provide, remains the responsibility of the courts.

And I am pleased with the manner in which the trial courts have assumed that responsibility, for they are the courts which must respond most directly to the citizens of our state.

It is a truism that courts are slow to change; one of their proper if unarticulated roles is to provide stability and a measured tread to social change. But courts must ultimately be able to change, to meet the needs of a changing society. Our trial courts have demonstrated that ability.

If I were asked to focus on the key events of this year within the Judiciary, two would be events occurring within the trial courts.

First, I am pleased to announce that not only will the unification of our trial courts into a single district bench be complete in September of this year, but also that (just yesterday) the two associations representing them, by mutual resolution, formed a single organization. No issue has been more troublesome or so severely damaged the ability of the courts to work together in the last ten years than the unification problem. I trust that this final act of merger will make unification a reality and foster a spirit of cooperation and collegiality among the judges of this Court. Unification gives any judge the jurisdictional ability to hear any civil or criminal matter. It promotes greater efficiency among the trial bench and gives the courts an increased administrative flexibility. That it was accomplished on a voluntary basis is commendation to the care our judges have for the business of judging and their ability to transcend parochial concerns.

Second, the Conference of Chief Judges, which assumed greater responsibility for administering the trial courts last year under the able guidance of its chairman, the Hon. John J. Weyrens and its vice chairman, the Hon. Lawrence Collins, has shown itself able and willing in its reconstituted form to confront the problems facing the trial courts and to provide the guidance and governance they need.

The May 23, 1986, order creating the Conference of Chief Judges provided in part: "The Conference of Chief Judges will place the welfare of the entire statewide trial court system above the interests of the individual judicial districts in all of its deliberations and decisions."

The Conference has done an exemplary job of following that directive and subordinating parochial interests to the good of the system.

The Conference comprises chief judges and assistant chief judges of the ten judicial districts. Each is selected to the position by the judges of the district. The Conference is divided into four committees, each of which has unique responsibilities. In this past year, the administration committee has considered a myriad of diverse issues, among them the problems created by unification, including the size of election districts.

The Caseflow Committee continually studies case-time processing standards and is monitoring a major statewide delay reduction project which will identify delay problems on a district level and propose solutions suited to the local district. The Caseflow Committee also guided the most recent weighted caseload study to successful completion last February.

The Personnel Committee has undertaken a comprehensive study of the personal structure of the courts. As most of you from Minnesota no doubt no, we have essentially a three-tiered employment and funding structure within the court system. What you may not have reflected upon is the consequence of such a structure. Although judges have all been state employees since 1977, the majority of our support personnel in the court administrator's office are county employees. In between are judicial district employees, the district administrator and his or her staff, who are paid by the counties but on a district-wide pro-rata basis. Questions of supervision, responsibility, liability, and representation have arisen frequently in the last two years as each political unit six to define or limit the nature of its relation to these employees. Finding answers to those questions is the task of this committee.

The Legislative Committee is responsible for presenting the legislative recommendations of the Conference and the trial courts to the Legislature. The most significant piece of legislation presented by this committee this year was our request for an additional 20 judges. The committee, working with the state court administrator's office, the legislative committees and representatives and the judges' associations, and with the able help of the Bar Association, using data gathered by SJIS and the data from the newly authorize weighted caseload analysis successfully justified our entire request to the Legislature. It was a splendid piece of cooperation and demonstrated again the effectiveness the judiciary has when it speaks with a single voice.

While the Conference bears the responsibility for developing policies to strengthen and improve the administration of the trial courts, the chief justice and the Supreme Court remain ultimately

responsible for the effective administration of those courts and are vested with a variety of statutory duties to carry out that charge. Among those provisions is Minn. Stat. § 2.722, subd. 4, the "Sunset and Transfer" law, which authorizes the Supreme Court to transfer judgeships among districts according to demonstrated need.

That need is demonstrated by the use of a weighted caseload analysis. The analysis is designed to provide an objective measure of the number of judges necessary to dispose of the caseload in a given jurisdiction based on the time required on average for judges to conclude cases of varying types. Having originally concluded the study in 1980, the Court requested and received funds from the Legislature in 1986 to conduct an updated weighted caseload study. That study ran from September 8 through November 7 of 1986. It involved all judges in the state and incorporated nearly 11,000 judge-days. It represents the most comprehensive and complete data ever available on judicial activity.

We have most recently used this analysis to transfer several judgeships from greater Minnesota to the metropolitan districts. Some of you may believe that these decisions were unnecessary and inappropriate. I hope to persuade you that they were not.

Judicial resources are paid for by the citizens of our state. We must compete for funds as any other division of the state does. Judicial resources are limited by the amount of funding that is available. It is our duty, my duty as chief administrator, to see that those resources are used as wisely, effectively, and efficiently as possible. It is not a duty that I or the Court take lightly. I too would enjoy nothing more than an overabundance of judges to handle the work in our state, but such a hope is neither a practical nor an economic reality. A decent respect for the basic concept of justice demands that all citizens, insofar as possible, have equal access to the courts of our state. Without the use of sunset and transfer, the concept of equal access is endangered, absent a level of funding which the Legislature has shown little inclination to consider.

Accessibility is a problem to rural communities that lose a resident judge, but it is also a problem to urban communities that suffer a severe shortage of judges. We must not look at the problem in a simplistic or parochial fashion. We cannot afford to do so. We must, instead, view the limitation of our judicial resources as a challenge to both bench and bar to create innovative solutions. We already allow the use of retired judges, and this year asked for and received substantial increases in legislative funding for that purpose. In addition, districts are reviewing possible reorganization of current judicial assignments and we are considering the use of electronic facsimile transfer machines and of resident retired judges for the issuance of warrants and restraining orders in counties not served by resident judges.

The Legislature's authorization last month of 21 new judgeships takes us a long step forward toward meeting our actual judicial resource needs statewide. Yet, these judgeships are to be phased in gradually over a four-year period and will not keep pace with the exploding caseloads of the metropolitan areas of our state. While these additional resources ease transfer pressures now, they do not eliminate our need for the ability to deploy judicial resources to accommodate changing workloads in the future.

One of the more promising possibilities to lessen the burden cost and delay of litigation in the courts is' the use of alternative forms of dispute resolution. The bar association last year took the initiative to request the formation of a joint bench and bar Alternative Dispute Resolution Task Force to study the growing field of alternative dispute resolution. Already some 30 or more programs are in place. It is the responsibility of this task force to assess the promise of these programs for resolving disputes more efficiently, at less cost, and with greater satisfaction to the parties while ensuring that these processes guarantee fundamental fairness among the parties and promote the goals of effective and efficient justice.

Hennepin County, which already has a pilot program on arbitration for civil cases under $50,000, has been selected as the site for another pilot project, adopted by the Legislature, which will apply several alternative dispute techniques including mediation, arbitration, summary jury trials, and “mini-trials” to civil cases over $50,000. The state court administrator is required to report to the Legislature on the results of this project. I am anticipating that the task force will be of a men’s help in evaluating that program.

The Rules of Family Court, adopted by the Supreme Court in October of last year and made effective January 1 of this year, grant all courts the authority to mediate any issues arising during a dissolution proceeding. It is our profound hope that mediation of these issues will reduce the acrimony that so often accompanies dissolution litigation so that hearings, trials, and appeals will be reduced; so that the constant relitigation of custody and support issues will cease; and so that children will no longer be pawns in a litigious process. The Conference has adopted standards for the certification of mediation training to help assure that those offering to mediate are qualified to serve.

Mediation has also been extended to farmer-lender disputes and the Legislature has authorized the expenditure of $850,000 for each of the next two fiscal years to expand such farm mediation programs.

Justice is served not only by how our institutions respond to problems but how we, as individuals and professionals, respond to them. We may be justifiably proud, both bench and bar, of our service to the citizens of our state. Over 2,200 lawyers participate in voluntary programs to provide the poor with legal services. Permanent statewide funding of non-volunteer services is maintained by a $10 surcharge on filing fees. Additionally, the Interest on Lawyers Trust Accounts program (or IOLTA) distributed more than $1.7 million last year, of which more than $1.2 million was spent on programs to provide legal services to the poor.

We also undertake the serious responsibility of disciplining ourselves. Minnesota has traditionally supported a strong professional responsibility system. Recent changes in the rules have greatly strengthened our system. We have also put in place a client security fund, supported by what we believe to be a one-time assessment of all practicing lawyers, to the end that any client who is directly injured by any dishonest active any lawyer shall be reimbursed for his or her loss.

I would like to conclude my remarks with some reflections upon the nature of our constitutional form of government. A few years ago, the Minnesota Supreme Court was handling nearly 2,000

appeals. It had indicated in at least one case (In re Appeal of O'Rourke, 220 N.W.2d 811 (1974)) that appeal as a right was not guaranteed by the state constitution. As a matter of policy the Court rarely denied the right to appeal, but the burden was becoming overwhelming. Median decision times exceeded a year. The Court was faced with a crisis. It could not follow its policy and still do justice to the citizens it was created to serve.

But when approached by the Court, with the aid of this association, the citizens amended the constitution to create a Court of Appeals, in effect guaranteeing to themselves a right to appeal in a forum empowered and designed to handle such matters.

The changes made possible by the constitutional amendments of 1983 have reduced by nearly half the amount of time from filing to disposition in the Supreme Court and have changed the manner of disposition in most cases from summary to opinion. Although filings for further review have increased by nearly 33 percent in the last two years, we are much more confident of the quality of justice that our citizenry receives.

The heroic task undertaken by the Court of Appeals, under the able leadership of Chief Judge Peter Popovich, continues today. Faced with filings of nearly 2,100 cases a year, that court consistently maintains a pending workload of less than 800 cases and disposes of its cases within an average of 180 days. But that problem could not have been addressed had not the constitution been a flexible document capable of change at the behest of the governed. That same flexibility was built into our federal Constitution 200 years ago.

It is particularly significant that we should meet here, for some of the debates and the processes which took place in our country in 1787 have been renewed in Canada with the adoption in 1982 of the Canadian Charter of Rights and Freedoms, a document which limits the powers of the federal and provincial governments to impinge on certain protected liberties and grants to Canada a method of amending its Constitution without resort to the Parliament of the United Kingdom. The debate in which Canada is engaged should have a familiar ring.

It is not my intention to comment on the content of that debate. Any solutions must be uniquely Canadian, as ours were uniquely American. What is significant to all of us is that such debate never end. A government that is dedicated to the fullest expression of individual freedom in an orderly society and which derives its authority from the people it governs must remain a vibrant living thing. We have seen how that central expression "We the People. . . " has taken on a more fundamental meaning to us than it had for our forefathers. The Constitution required amendment by the Bill of Rights to preserve those basic liberties which we now take for granted; the state of servitude was not abolished until the Constitution was amended in 1870 following a long and difficult civil war; and it was not until 1920 that the most fundamental right in a democracy, the right to vote, was extended to women. But beneath the debate the Constitution remains the foundation, the living root which allows us to grow to a more perfect expression of government, as our fellow lawyer Abraham Lincoln has characterized it, ". . . of the people, by the people, for the people. . ."