

State of the Judiciary
Chief Justice Douglas K. Amdahl, Minnesota Supreme Court
Message to the Minnesota State Bar Association
June 1988

President Kelly, other members of the administration of the Bar Association, fellow bar members, brother and sister judges:

This is the 14th time that a chief justice of the Minnesota Supreme Court has addressed the Minnesota State Bar Association at its annual conference. It is the seventh time that I have been invited to do so.

In the more than 27 years that I have been privileged to wear the robe, I have seen, and in some instances I have taken part in bringing about, many changes in the judicial system – changes in the problems and issues that the system faces and changes in the courts as they deal with those problems and issues.

One example is revealed in my files in a letter of March 17, 1961 from me to Sen. Daniel S. Feidt who was then a leader in the Minnesota Senate. The first sentence of that letter says: "Enclosed are House and Senate files for the bill to set up an administrator of the courts:' The time had come to bring the courts into the 20th century. Judges had neither the time nor, in most cases, the talent, to handle the ever-growing and increasingly complex administrative problems of the courts. From that simple beginning we now have a state court administrator, ten judicial district administrators, and 87 persons formerly known as clerks of court who are now known as court administrators because they have been trained as such. Without those administrators, progress would cease and chaos would reign.

There are four primary areas in which our system is and will continue to be significantly challenged. They are the funding of the court system, caseload management, public education concerning the judicial system, and family law.

Funding of the Courts

We have been fortunate in these past years to have a Legislature which listened carefully to our statements of the needs of the judicial system and largely granted funds to meet those needs. It funded the Court of Appeals in 1983. It has provided funds for building the new Judicial Center. It has provided for the study of the use of judicial resources throughout the state and has added judgeships where those studies indicated a need. It has funded the use of retired judges. It has increased judicial salaries to insure that qualified persons will continue to seek judgeships. It has allowed the Supreme Court to sunset and transfer judgeships to reallocate available judicial resources to meet the need for equal access to the courts by all citizens.

There has been considerable pressure for the changing of the current financing system of the courts and as a result, during the last session, the Legislature provided that the Supreme Court should establish a task force to study the control and financing of the district courts. In response to that legislative mandate, I am establishing a broad-based task force to study and report upon that subject matter.

Last year, nearly \$92 million was spent on trial court operations in the state of Minnesota. The trial courts are financed by a combination of state and county funding. The system includes 230 judges and more than 1,500 employees. Probation, public defender, guardian ad litem, victim/witness, and other programs vary in size, scope, and administrative relationship to the trial court among the various counties of the state. The complexity of this system is great and it will involve a substantial undertaking to study, understand, and make recommendations about the difficult issues of its control and financing.

The task force will comprise 17 members: myself as chair, four trial judges, four court administrators (representing the state, district, and county levels), two senators and two representatives, two Association of Minnesota Counties designees, one governor's representative, and one public member. I view the mission of the task force to be:

- 1) To serve as a fact-finding body to develop information on how the current financing system operates, including what employees and programs are covered, how much and who pays for what parts of the system, and what are the lines of authority with respect to administration and financing;
- 2) to develop alternatives to the current system of financing the trial courts; and
- 3) to evaluate the strengths and weaknesses of the current and proposed alternative trial court financing systems.

We have seen, in recent years, the addition of various assessments and surcharges to the filing fees. The concept of "users fees" has reached a certain vogue. But these fees are neither adequate nor stable enough to fund the judicial system. Furthermore, there is a moral issue here. While the surcharges may transfer some of the tax burden to the users of the system, they are a block to that ready access to the courts which has been so much a part of our legal heritage and philosophy. Public funding depends upon public support. We must insure that we do not so value our own benefit that we act to the detriment of the public. Spiraling litigation costs, abuse of filing and discovery rules, mishandling of client and guardianship account funds, all invite greater legislative control over the practice of law and over the Judiciary. The Lawyers' Professional Responsibility Board and the Board of Judicial Standards are to be commended on doing an excellent job policing attorneys and the Judiciary but the public doesn't know that. Our recent establishment of the Client Security Fund to insure reparations for clients directly injured by the dishonest acts of attorneys is a measure of our concern for the public and for the future of our profession. But the continual challenge to our control of our own profession heard in the Legislature and in public forums indicates that we are not adequately informing the public of our role, our concerns, our efforts, and our needs.

We must correct this inadequacy.

Members of the bench and bar should act in concert to define the continuing needs of the courts, to educate the public concerning the role and concerns of the courts, to establish long-range objectives for the courts, to establish alternative methods of delivering the services of the courts, and to guarantee that the quality of justice is not imperiled in times of fiscal stress. We must make an all-out effort to see that justice in Minnesota remains efficient, effective, and economical while ensuring that rights are not traded for economy or justice traded for expediency.

Caseflow Management

That is not to say that we have not already undertaken efforts to meet the challenge. In particular, we have expended notable energy in reducing and controlling trial court delay. Trial court unification, completed in September of last year, has given us increased administrative flexibility to meet our growing caseload. Case assignments within the district are now made by the chief judge and the district administrator based upon the needs of the district and not upon the jurisdictional title of the judge. That, coupled with the efforts of the Caseflow Committee of the Conference of Chief Judges to identify and reduce delays in case processing within each district, enables us to maintain high standards of case disposition without developing significant backlogs and without requiring significant additional resources.

We are continually experimenting with and expanding alternative dispute resolution methods. Hennepin County's arbitration project is joined this year by a mediation project which brings about mediation of civil disputes. This project has as its goal the reduction of judicial time spent per case, a reduction of cases awaiting trial, the reduction of litigant costs through earlier disposition, and greater litigant satisfaction. The Alternative Dispute Resolution Task Force continues to explore other methods by which the burden of the caseload upon the courts may be eased and the resolution of the legal problems of the citizens facilitated.

Tracking case progress through the courts and identification of case processing delays is a function of our State Judicial Information System (SJIS) and the Trial Court Information System (TCIF). The Legislature has been singularly supportive in these efforts by supplementing TCIS funding when the collection of filing fees, originally dedicated to funding the further development of this system, fell short of projections. The Legislature also granted the Supreme Court the authority to market TCIS software to other jurisdictions. Last year we successfully negotiated a nonexclusive licensing agreement with Minnesota-based Honeywell Bull granting the right to license TCIS to other courts and court systems in exchange for certain guaranteed royalties, and additional royalties based upon actual sales.

On March 29th of this year, after three-quarters of a century of efforts, we broke ground for the new building to be known as The Minnesota Judicial Center. Its completion will allow us to unite the Supreme Court, the Court of Appeals, state law library, Lawyers Professional Responsibility Board, the state court administrator together with staff and information system, and many other state judicial functions in a single location.

Public Education

Survey after survey confirms that a large segment of the public does not understand or appreciate in a meaningful way the protections the judicial system provides, the role it fulfills, nor the contribution it makes to the common good. One recent national survey revealed that 74 percent of those polled knew little or nothing about state courts.

For us this is a serious concern. A government which depends upon the consent of the governed, as does ours, requires a public that can give an informed consent. If we intend to propose necessary changes which will alter the manner in which the judicial system operates in order to preserve the quality of justice, we must have a public that can knowingly consider and evaluate those changes and can resolve the issues in a meaningful manner.

The creation of this Judicial Center gives us a great opportunity to educate and to inform the public of the basic principles and fundamental purposes to which the law is dedicated. To that end, the Supreme Court has created the Minnesota Judicial Center Public Education Commission, a commission which seeks to increase public understanding of the Minnesota judicial system, its functions, procedures, and fundamental principles, by developing a broad information and education program. We hope to provide a dynamic focus on the judicial system.

This is what we hope to attain -- to inform, to educate, and to animate in people an appreciation for their courts, an understanding of their judicial system, and a fundamental concern for the principles of justice so that as issues arise the public will not merely acquiesce but will support those changes which are necessary to preserve fundamental aspects of justice.

Family Law

But perhaps the area where the greatest need for public education, the greatest challenge facing the courts and the judicial system, lies is in the area of family law. The Gender Fairness Task Force, under the leadership of Justice Rosalie Wahl, has been conducting public hearings around the state and it is in the area of family law that the judicial system is most often criticized as being biased and ineffectual. It is clear from many of the comments that rights and obligations have not been adequately explained, that the process has been incomprehensible to many, and that the overall result is one of disaffection and dissatisfaction. The possibility of bias, especially in custody proceedings, is also apparent. Parties complain of unavailability and inadequacy of counsel. Mothers are most frequently awarded custody and complain of inadequate or uncollected child support. Fathers complain of lack of custody and inadequate visitation. Second families complain of legal preference for children of the first marriage. Those suffering from domestic abuse complain of inadequate protection and the unavailability of courts. We must ask ourselves why the system fails these people. The current filing rate for dissolution in Minnesota is stable at 16,700 cases a year. It has not changed significantly in the six years we have tracked it. However, in that same amount of time we have seen a 20 percent increase in support filings and a 20 percent increase in domestic abuse filings. The changes in this area arise from the same economic and social changes that have affected every other area of the courts.

Families now turn to the judicial system for aid where once they looked to other family members or their local community. Unfortunately, it is not a role to which the courts are well-suited. While the judicial system is very capable in adjudicating property settlements, it is neither capable of nor equipped to provide care or support to post dissolution families. Indeed, the adversarial process which lies at the foundation of our legal philosophy has the profound effect of institutionalizing and promoting the disagreements between the parties at a time when conciliation and mediation might prove more valuable. Delay in case disposition further exacerbates the tensions between the parties and reduces even further the possibility of an amicable accord. Allegations of domestic abuse have become part of the strategy of dissolution trials. Ultimately, children pay the price for the acrimony the parents hold and the system allows. The failure to then adequately enforce orders regarding child support, visitation, and protection leads to further anger and disillusionment with the system.

How we answer the problems that this area poses is our distinct challenge. Already we have allowed, by the rules of Family Court, the mediation of most issues raised in a dissolution proceeding. The Dakota County pilot project on support enforcement, allowing the administrative handling of requests for enforcement as well as automatic withholding in those

counties where the proposal is adopted, provides what we hope will be a more expedient and effective method of collecting support. Swift and effective enforcement of court orders, not only on support, but on visitation and protection, may have a significant effect in reducing the desire to relitigate these matters. But we, as members of both the bench and the bar, need to direct our attention not only to the procedures by which we handle these matters, but to the real social need which underlies them. We must direct ourselves in such a way that we can meet this need. We must seek answers and not content ourselves with stop-gap measures which provide short-term legal solutions to what are significant long-term social problems.

Administrative Matters

Earlier this month, the Supreme Court approved revisions of its internal operating procedures. Copies will be available later this year. In the meantime, a narrative of the Internal Procedure Rules will be published in Finance and Commerce and other legal publications within the next six weeks.

The Lawyers Professional Responsibility Board report to the court for the period ending May 31, 1988 contains some interesting information. Let me quote a portion of that report:

- The volunteer district committees have again reduced the average time for their investigations. The average age of a file in a district committee is now 1.3 months. Five years ago, the average age was between four and five months. The Ramsey County committee deserves particular commendation. On April 30, 1988, it had no files over three months old. By contrast, in 1983 and 1984, Ramsey averaged about 25 files more than three months old.
- An ABA national survey indicates that while the number of complaints against lawyers was rising in other states, in Minnesota the number had declined to less than the national average. The overall number of investigation files opened in calendar year 1987 declined notably, from 1,244 in 1985, to 1,233 in 1986, to 1,091 in 1987.

For the third year in a row, the overall total of open files on hand has declined.

- The only two files which have remained open for more than two years are pending in the Supreme Court for decision or briefing.

Another help for the attorneys is referred to in another paragraph saying: "A brochure describing and illustrating proper trust account procedures is nearly complete for mailing to Minnesota attorneys:'

These and other improvements in the handling of lawyer discipline matters have come about because of the Minnesota State Bar Association's action in the last meeting held at Duluth when it was recommended that a study be made of the disciplinary office and that study, chaired by Nancy Dreher, was thorough and resulted in some well-thought-out and, for the most part, adopted recommendations.

The Minnesota Client Security Board report, made at the end of its first year of operation, is very encouraging. Let me quote a portion:

When the board began its formal operations on July 1, 1987, it inherited 54 unresolved claims which had been made against the bar association fund, totaling over \$4 million (\$3 million of

which involved one malpractice-related claim, which was denied). Twenty-four additional claims have since been received.

The board has met on a monthly basis, to consider the claims pursuant to procedural rules adopted by the court. Forty-two old claims and 12 new claims have been resolved. By July 1, 1988, the board will have paid out over \$500,000 to claimants. No payment larger than \$50,000 has been made to any single claimant.

The board worked diligently to resolve nearly all the claims involving attorneys Mark Sampson and John Flanagan. Twenty-nine claims have been filed against Sampson. The board paid 14 of those claims in the total amount of \$315,000. Seven of the claims were denied and eight are pending. Many victims of Flanagan were able to recover from other sources, so only 12 claims were made against him. The board paid one claim for \$6,300, denied six others, and five remain pending, awaiting the outcome of related civil litigation.

The board expects to have a fund balance as of July 1, 1988, of approximately \$1,000,000. It is anticipated that there will be no further need to assess attorneys for any additional funding for the Client Security Fund in the foreseeable future.

Nine hundred eleven would-be attorneys took the Minnesota bar examination in the year ending May 31, 1988. Seven hundred sixty-two were successful for an average passing rate of 83.6 percent.

The Minnesota Board of Legal Certification has defined three specialty fields: Civil trial practice, criminal law, and real property. The Civil Litigation Section of the Minnesota State Bar was approved as an agency certified to designate lawyers as specialists in the field of civil trial practice, and the National Board of Trial Advocacy was approved to designate lawyers as specialists in the specialty fields of civil trial practice and criminal law. I am not aware of the approval of other agencies at this time.

The report of the Board of Continuing Legal Education indicates the tremendous volume of work that board is handling. In 1988, 3,078 separate courses were reviewed and 2,849 of those were approved, for a total class hour approval of 29,549.5 hours. That is an 11 percent increase in course approvals and a 20 percent increase in the total hours approved over the prior year. The increases show the increasing diversity of opportunities for Minnesota attorneys to complete their CLE requirements.

Worthy to be Called Judge

In closing, just two more subjects. On the morning after I was appointed a judge of the municipal court of the city of Minneapolis and I sat in new and unfamiliar chambers with a borrowed robe on waiting to be called to assume my judicial duties, my thoughts were centralized on my feeling of inadequacy to have so much to say about the destiny of others. As I sat there waiting, I scribbled a prayer and then I was summoned by the bailiff to begin my judicial duties. I thought no more about my scribbling until a few weeks later when one of the clerks came in and said, "Judge, I took a prayer you wrote off your desk the first day and gave it to my uncle who is an engraver and he made this engraving for you." That prayer, which has been my daily companion since January of 1961, simply says:

I pray that today I will have the
Knowledge to discover, and the
Wisdom to clarify, the legal issues:
The ability to see, and the unbiased
Mind to recognize, the true facts:
The heart to know, and the
Gentleness to understand,
The human problems: and the
Patience and logic to reach,
And the courage to declare,
The just decision.
All these things Lord, I ask that
At the close of this day my
Conscience may truly say, "Today
You were worthy to be called, 'Judge:'"

My secretary has been directed to deliver to the office of Governor Perpich, the following letter at 10 o'clock this morning:

June 17, 1988

Dear Governor Perpich:

The people of Minnesota have honored me by granting to me the privilege of serving continuously in judicial office since January of 1961. I was then appointed as a judge of the municipal court of the city of Minneapolis. In November of 1962, I became a judge of the district court in the Fourth Judicial District. In July of 1980, I became an associate justice of the Minnesota Supreme Court and on December 18, 1981, I assumed the office of chief justice.

The judicial and legal systems of Minnesota have undergone dramatic improvements since I first took the oath as a judge and my years as a judge have been challenging, exciting, and fulfilling. I am grateful for the opportunities which came to me and I sincerely hope that the citizens, the bench and the bar of Minnesota have been well-served by my tenure as a judge.

Under Minnesota law, judges are required to retire by the last day of the month in which they have reached the age of 70. Since I will reach that age on January 23, 1989, I hereby submit my resignation as Chief Justice of the State of Minnesota effective January 31, 1989.

Respectfully yours,

Douglas K. Amdahl

I hope that you, my fellow lawyers, who have shared with me this profession of which I am so very proud, will, in your assessment of my tenure on the bench, come to the conclusion that I was "worthy to be called 'Judge:'"

Thank you