

State of the Judiciary
Chief Justice Peter S. Popovich, Minnesota Supreme Court
Message to the Minnesota Bar Association
June 30, 1990

Mr. President, Mr. Attorney General, distinguished judges and members of the bar, ladies and gentlemen.

It is always a pleasure to come together with this group at the annual convention of the Minnesota State Bar Association and to have this opportunity to share with you some thoughts on the state of Minnesota's judiciary. Let me begin by noting several highlights of the judicial system in Minnesota at the appellate and trial court levels.

Since the creation of the Court of Appeals, the appellate caseload has become manageable and cases are processed more quickly. Last year filings in the Supreme Court reached a new high since the Court of Appeals was created in 1983 to relieve the Supreme Court of the bulk of the appellate workload. In 1989, 959 new cases were filed in the Supreme Court. Despite the steady increase in new case filings each year, the Supreme Court has been able to keep the number of pending cases relatively constant.

Over the past five years, the Supreme Court has made significant headway in reducing its median case processing time. From 1984 to 1989, median time to disposition dropped from 420 days to 122 days.

At the Court of Appeals in 1989, 2,067 cases were filed and 1,362 written opinions were issued. The Court of Appeals strictly adheres to its 90-day time limit for decisions and, indeed, has consistently averaged fewer than 70 days from filing to disposition for the issuance of opinions since its creation in 1983. Nonorals accounted for 190 cases and oral arguments were heard on 183 cases; the median processing time was 125 days in 1988 and 152 days in 1989.

An important development in 1990 is the completion of the new home of the state's judiciary this summer, with a move-in date scheduled in August. In the first phase, the building will house the Minnesota Supreme Court, the Court of Appeals, the State Law Library, and the State Court Administrator's Office. The building was designed to complete the Capitol Mall as it was envisioned by architect Cass Gilbert.

All these offices currently are in seven locations throughout the Twin Cities. Bringing them together in one location is expected to provide the most cost-effective and convenient service to the public and the legal profession.

To meet the public's long-term needs, the judicial center has three courtrooms, an auditorium for legal and judicial education, and the State Law Library.

At the trial court level last year, 2.2 million cases were handled in Minnesota's trial courts. While the numbers of minor case filings—traffic, misdemeanor, petty misdemeanor, conciliation—remained relatively stable in 1989 over the previous year, major cases continued to increase. Serious cases accounted for 9 percent of the caseload and took 77 percent of court time.

Although the backlog continued to increase in major case types last year, it grew at a slower pace than the previous year due to more efficient case processing.

Six Major Priorities

Over the past two years we have been articulating six major priorities of the Minnesota judiciary. They are:

Reducing Delay. We have made a system-wide commitment to reducing delay by moving cases through the judicial system swiftly. Citizens deserve not only a fair but a speedy resolution to matters that disrupt their lives. The time standards adopted by the Conference of Chief Judges for the trial courts are a commitment to public responsiveness. More than 8,000 new cases were added to the pending inventory despite the fact that, overall, last year, the trial courts processed cases faster and, in some districts, were able to dip into the backlog.

Increased Use of ADR. In appropriate cases, alternative dispute resolution methods offer a viable alternative to traditional litigation. Continued experimentation with alternative ways of resolving disputes is imperative.

Citizens deserve our best efforts to find the most expeditious, cost-effective ways of settling problems they are unable to work out on their own. The Alternative Dispute Resolution Task Force has made a major contribution to this effort.

State Financing of Trial Courts. A successful pilot project in the Eighth Judicial District is proving that this is an idea whose time has come. State financing, rather than reliance on the county property tax base, is the way to assure that citizens receive equal treatment and service wherever they live in the state.

Public Education About the Judiciary. The courts belong to the people. Children, youth, and adults should be knowledgeable about the operation of the courts so that they understand the impact the courts have on their daily lives.

The court information office has reached more than 40,000 school children and their parents with a consumer guide to the courts; 1,000 individuals and organizations with a videotape on the courts; and more than 100,000 visitors to the Capitol with basic information.

A series of seminars in every judicial district in the state is educating the media and the courts on mutual concerns. Public education about our legal system will build the support necessary to maintain and enhance it. The Court Information Office arranged for the chief justice to appear on a live television call-in show that was seen by approximately 200,000 viewers throughout the state in 1988 and 1989.

Efficient Management Consistent with Due Process. Continued funding for technology is necessary to aggressively manage cases, expedite procedures, and cut costs. The public deserves the best that technology has to offer—and that we can afford—to address all of our concerns about delay and backlog and to ensure both effective and efficient court operations. Minnesota was the first state to use FAX machines for court work and our Trial Court Information System software is being marketed nationally.

Increased Judicial Resources. Despite our many gains in efficiency, more judges are needed to serve the public on the trial court benches in areas of increasing population and caseload levels. The Legislature turned down our request for 12 more judges in the 1990 session. However, we laid the groundwork for the 1991 session.

Expediting Justice

The central initiative for the 1990s is expediting justice: moving cases through the court system in the most efficient way consistent with the principles of due process.

The old adage that "justice delayed is justice denied" is such a guiding force in molding my priorities for the court system that no speech I give would be complete without it. It is the same message I have given in every one of the more than 150 speeches I have given since I joined the Supreme Court in 1987.

Reducing delay means eliminating the time beyond what is necessary to prepare for and conclude a particular case. I'm not suggesting that we cut corners, sacrifice quality, or threaten legitimate preparation and processing. Based on an active partnership between the bench and the bar, the legal system is attacking the unnecessary waiting time.

As a system, we are concentrating the full force of our efforts on those cases that exceed the recommended timing guidelines adopted by the Conference of Chief Judges. Cases that are older than two years constitute backlog and, as such, are the first priority of the case management plans developed by each judicial district.

Caseflow management encompasses the processes and resources necessary to efficiently drive a case from filing to disposition, whether that disposition is by settlement, guilty plea, dismissal, trial, or other method. It is more than scheduling cases and assigning judges. The essential elements of effective case management include:

- Court supervision and control of cases from the time of filing the first document to final disposition.
- Setting and adhering to the time objectives established for disposing of cases.
- Early intervention and scheduling the events of litigation.
- Early identification of complex litigation that requires special administrative attention.
- Clear and firm trial-setting policy that minimizes continuances and rescheduling.

Using these goals as a framework, each district has adapted the latest research and technology available in Minnesota to develop a case management plan suited to the unique characteristics of the district. Judges throughout the state have engaged in a concerted effort to identify the barriers to expediting justice within their particular districts and to put in place improved procedures for every case type. We need your support, patience, and flexibility in this effort.

Even a cursory review of the types of cases that come through the courts underscores the importance of expediting justice. These are urgent societal problems that need immediate attention.

The courts cannot cure this litany of ills but, as a system, it can be both a remedial force and a deterrent force.

Research conducted nationally and in Minnesota shows that in the crucial area of criminal law, for example, the prospect of swift court action is a major factor in reducing recidivism. Providing enough judges where needed means quicker access and resolution.

National research indicates that a high percentage of all persons arrested test positive for drugs at the time of arrest. In Minnesota, too, many of the major criminal cases involve drugs or drug-related crime. During the period 1984 to 1989 major criminal cases—felonies and gross misdemeanors—in Minnesota's trial courts increased by 35 percent. The metropolitan areas of this state have been hardest hit with an increase over the past five years ranging from 33 percent to 60 percent.

The judiciary has taken a number of steps to deal with the influx of drug-related cases. These initiatives include judicial education, case management, and the exploration of sentencing options. The judiciary is committed to seeking new ways to address this increase as effectively and efficiently as possible, consistent with fairness and justice.

However, innovative approaches and the incorporation of efficient case management practices are not sufficient if we do not have enough judges to implement them. To ensure that public needs are met the judiciary needs support for 13 additional judgeships in the First, Second, Fourth, Seventh and Tenth judicial districts.

The judiciary needs the support of the bar to educate the Legislature on the needs of the legal system. The bench and the bar in Minnesota have a long tradition of working together to meet public needs.

Some recent examples include the hard work of the Local Rules Committee. The bar has been seeking more consistency in local rules so the Supreme Court formed a task force of judges and lawyers that is working toward more uniformity. This is an enormous task that requires monthly meetings and a great deal of preparation. The end result will be one set of rules that will replace the civil trial book, the code of rules, and the existing local rules. We all owe a debt of gratitude to this task force.

The Alternative Dispute Resolution Task Force is another group of lawyers and judges that is making a major contribution. The Bar Association approved the task force report at its midyear meeting with some amendments. The task force incorporated most of those amendments and the Supreme Court recently approved the report. The task force urges the Minnesota Legislature to authorize, and the Supreme Court to adopt, rules governing alternative dispute resolution statewide.

The Gender Fairness Task Force, made up of judges, lawyers and laypeople, also produced a report whose recommendations are being followed up on with the guidance of its implementation committee. The implementation committee was successful in getting two bills passed in the recent legislative session. One calls for the development of domestic abuse prosecution plans in ten pilot prosecutor offices and another implements several recommendations in the family law area. The Supreme Court has revised the codes of judicial conduct and professional responsibility and is working to make gender neutral court rules, documents, and forms as recommended by the task force. Training for judges and court personnel in gender bias concerns has begun in earnest.

The courts are no place for discrimination. In our ongoing effort to be self-analytical and self-policing in this regard, we are forming a taskforce on racial and ethnic bias in the court system.

The State Financing Task Force has done a tremendous amount of work that has been very beneficial in launching the Eighth District pilot project which has transferred the entire cost of

court operations in that district to the state. The pilot project is proceeding along very nicely and we expect to have a successful report to the Legislature in 1991. The transfer of two other categories of trial court costs will occur later this year.

Case management has been another area in which the bench and the bar have collaborated well. In several districts, local lawyers and judges have worked hand-in-glove to develop innovative delay reduction plans in an effort to meet statewide timing objectives for case processing.

Areas for Improvement

The state judiciary in Minnesota is good, but we have more work to do in three important areas.

Public confidence in the judiciary starts with confidence in judges. Our court information office has made public education about the courts a top priority. Judicial evaluation is another way to win the support of the public for a judiciary that is self-analytical and self-managing. The funding must be found to finance the judicial evaluation pilot project and move ahead with this important initiative.

Another aspect of earning public support is public education through media access to the trial courts. I want to encourage the bar to look at the experiences of 44 other states that allow cameras in the courts and evaluate ways that Minnesota's legal community could be more open to the public through the media. We do have media coverage in both appellate courts.

We also want to improve the relationship between the legal community and the Legislature in equipping the judiciary to meet the changing needs of the public. The doctrine of separation of powers is deeply rooted in political and constitutional theory. It insulates the judiciary from external pressures and protects the ability to make unpopular decisions and it preserves the rule of law.

Lawyers are the best spokespersons for the court systems' needs in serving the public. I want to encourage more communication with the Legislature about those needs.

And I believe that the judiciary should have expanded opportunities to provide judicial impact statements on proposed legislation affecting the court system so that the Legislature can make informed decisions.

Conclusion

The 1990s is a watershed decade in the Minnesota court system that will set the tone for the next century. We will either allow problems of significant proportions to occur or we will work aggressively to keep ourselves on a path that will maintain our system as one of the best and most responsive to the public.

Now is the time to take control of our problems, rather than allowing them to shape us. We have an excellent working relationship among the executive, legislative, and judicial branches of government. Our history has demonstrated that together we can address the challenges we face.

I am asking that each and every one of us recommit ourselves to a partnership between bench and bar that continues the process of improving and strengthening the court system—of anticipating public needs and meeting them in the most efficient and cost-effective way that we can.