

State of the Judiciary
Chief Justice Kathleen A. Blatz, Minnesota Supreme Court
Message to the Minnesota State Bar Association
June 25, 1998, in Duluth, Minnesota

The Minnesota courts celebrate our 150th anniversary next year and we also will recognize the 100th anniversary of the juvenile court in this country. In the following year we enter the 21st century. In anticipation of these historic milestones, it is a most appropriate time to evaluate the status of our judicial system—a system which, with your assistance as officers of the court, strives to provide all Minnesotans a place to resolve their disputes economically, efficiently and expeditiously.

As a result of the extraordinary leadership of my predecessors and the labor and dedication of a generation of judges, lawyers, and court personnel I was bequeathed, in January of this year, a judiciary which is second to none in this country. It is organizationally streamlined, professionally managed, and staffed by remarkably talented and dedicated judicial personnel who competently and compassionately handle a nearly inhuman workload. There is just cause for satisfaction and pride in the Minnesota judicial system.

Recently I heard a story about a CNN reporter doing a "man on the street" interview about the status of the justice system. He asked the man to give his opinion of the justice system in one word. The man pondered for a moment and said, "good." The reporter then asked him what he would say if he could have two words. The man replied, "not good." Perhaps, if faced with that same question and given three words, we might say "not good enough." From my vantage point, the state of the judiciary is better than ever before, but our challenges are many. Today I want to focus on three critical issues for the future:

- The need to move beyond efficiency to focus on the quality of justice and the effectiveness of our justice system;
- The need to preserve and protect the independence of the judiciary; and
- The need to inspire public trust and confidence in the courts

FROM EFFICIENCY TO EFFECTIVENESS

Chief among our challenges is the sheer volume of the cases flooding into our courts. In the last ten years, the number of serious criminal cases increased by 70 percent and the number of juvenile cases doubled. There has been an explosion in drug cases with a 155 percent increase and a remarkable 60 percent increase in dependency/neglect and termination of parental rights cases. After years of no increase, for the first time last year contract and personal injury cases increased by 7 percent. Overall, as compared to a decade ago, we have 60,000 additional major cases each year to be handled by just 254 judges.

In 1997, 210,000 major civil and criminal cases, 225,000 misdemeanors, and another 100,000 conciliation court cases were filed in our trial courts. That means last year, every judge in this state on average had a workload of over 800 major cases and thousands of minor cases. Incredibly, in just a decade, because the number of judges has not kept pace with the number of cases, the workload of our trial judges has increased by 40 percent.

How have we coped with the increase? We have learned to better manage our cases and caseloads, we have established case processing time objectives, we have given every judge a law clerk and we have aggressively applied technology to our work. All of these have helped, but by far the most important means of coping has been the steadily decreasing amount of time we spend on each case. In order to handle 60,000 additional cases, judges have inevitably been forced to spend less time on virtually all cases. Even more troubling is the fact that we are spending less time on an increasingly difficult caseload.

With each passing year, Minnesota's justice system is being asked to do more to address the needs of people dealing with personal and legal difficulties that are chronic and complex. People look to the criminal justice system today to handle issues that individuals, families, communities, and societal institutions used to handle. Children out of control, aging parents whose health situations raise heart-rending questions of biomedical ethics, complicated social interactions, and substance abuse which underlies huge percentages of our cases these were not perceptible issues just a generation ago, but are commonplace in courtrooms throughout Minnesota every day.

We have become more efficient, but are we effective? That is the first issue I want to talk about today.

Chief Justice Robert Sheran in addressing this convention nearly a quarter of century ago said:

The function of a judicial system is to provide the means by which disputes and controversies can be avoided; or if not avoided, then settled; or if not settled, then resolved by judicial process which is fair, expeditious, economical, and in conformity with the law. A judicial system is not effective unless it meets all of these requirements.

We have learned to turn the wheels of justice ever faster, but have we fulfilled our function? With all we now know about the root causes of much of our litigation, have we focused sufficiently on avoiding and deterring legal problems?

For example, virtually all credible national research has shown substance abuse to be a significant factor in 80 to 85 percent of criminal cases entering our courts each year and a significant factor on the civil side as well relating to domestic and family violence, divorce and custody disputes, sexual and physical abuse, and parental neglect. After a two-year comprehensive study, the Massachusetts Supreme Court Task Force on Substance Abuse concluded:

The impact of this social problem challenges our traditional notions of the role of the judiciary. Clearly, our court system is not, nor should it be, a social service agency. Nevertheless, in accomplishing the primary mission of administering justice in criminal and civil cases, the judicial branch is obligated to serve the public with full recognition of the evolving needs of society.

The sheer volume of cases and the growing frustration of judges spinning the revolving door of justice more quickly to process an increasing number of repeat customers, demands that we try something different—and we are. Following the promising results of experiments in other states, we are testing a new case processing model that includes early intervention, prompt application of sanctions as appropriate, using the coercive power of the court to link litigants to needed treatment and social services, and continuous judicial monitoring of individual progress toward

the goal of a stable and law abiding life. I want to mention two examples of our efforts to search for a better way. Under the extraordinary leadership of Judge Kevin Burke, the Hennepin County Drug Court was initiated in January of 1997 to test a new approach to the handling of felony drug cases. Its mission is to enhance public safety and restore community health by reducing substance abuse and the cycle of related criminal activity. The drug court is specifically designed to make users and dealers quickly face the consequences of their crimes and give them help to rebuild their lives by hastening intervention and directly linking offenders with needed services.

Today drug offenders in Hennepin County are in court and into drug treatment within 18 hours of arrest. At the second appearance, usually a week later, the goal is to resolve the case, after which defendants continue to return to drug court for biweekly reviews of progress.

Recognizing that substance addiction is a chronic and recurring disorder, the drug court features continuous supervision over the recovery process for defendants as a means of first stabilizing and then rebuilding their lives. In drug court, defendants are subjected to multiple probation conditions including limited jail time, twice weekly drug testing, treatment program attendance, employment counseling, compliance with child support orders, payment of fines and costs and periodic follow-up appearances before the judge to review individual progress.

In the first year of operation, the drug court has been remarkably successful in meeting its goals. Ongoing drug screening has shown a dramatic reduction in drug use among offenders. Only 7 percent were rearrested for drug offenses. Despite a 47 percent increase in drug felony prosecutions following the introduction of the drug court, its expedited processing procedures actually reduced the number of jail bed days associated with drug arrests resulting in a quarter of a million dollar savings to the county in 1997. Today, one judge in drug court is handling fully one-third of Hennepin County's entire felony caseload. Because the model combines the coercive power of the court to connect offenders to needed treatment and services with continuous judicial monitoring of each person's progress, many drug offenders appear to be turning their lives around.

We are also engaged in a groundbreaking effort to reengineer our approach to a second area—child abuse and neglect cases. As with drug cases, child protection issues have a significant impact on our communities and on our courts. Last year, in Hennepin County alone, more than 72,000 calls were made to child protection alleging possible abuse. Of that 5,600 were investigated and just 1,200 actually made it to court. The significance of effective performance in this area is not just the welfare of the child victims. A recent Hennepin County study revealed that 95 percent of the children involved in juvenile delinquency matters had been previously involved in the child protection system. Empirically we know that crime perpetrators are child victims.

This summer we will be implementing in Hennepin, Dakota, and Clay counties a pilot program testing an early intervention, stringent timeline, and continuous judicial monitoring model for child protection cases.

In addition, we have launched a three-year pilot project in 12 counties to open child protection proceedings and records to the public. Some of these counties are very supportive, while others are not, but willing to test the concept.

Of course, the concern most frequently expressed is that children will be revictimized or exploited by the media. I don't expect that to happen. Children who are victims of abuse by strangers and whose cases go to adult court are not exposed in the media. We have been conducting orientation sessions with journalists and we have found them to be very aware of the possible repercussions for children.

Media coverage of the system gives the entire community a window into the welfare of children in general and makes it possible for opinion leaders and policy makers to address the needs of children realistically and practically. In my mind, there has never been a connection between a closed system and the best interests of children. I am confident that the more open and accountable the system is, the more conscious the community will be, and the more resources families and children are likely to receive.

The judiciary spent the last decade improving its productivity to better handle the huge influx in cases. In the next decade, we will be focusing on more effective outcomes for litigants and for the public. We will explore the application of the principles of early intervention, provision of services, and continuous judicial monitoring of individual progress in additional areas of our work such as domestic violence, community livability crimes, DWI, and juvenile delinquency. We will examine whether family group conferencing, sentencing circles, and other restorative justice strategies produce better outcomes for offenders and victims. We will work with schools and community groups to keep matters out of courts in the first instance by using teen courts, community mediation, and other alternative dispute resolution methods. And we will search for better ways of serving families and children based on our one judge/one family projects currently being piloted in three counties. We have incorporated in our judicial branch strategic plan a commitment to evaluate all new initiatives, to discard what doesn't work and to build on what does.

We need your individual help and that of the institutional bar to win public and legislative support for our focus on effectiveness and the quality of justice. We simply cannot continue to cope with rising caseloads, let alone enhance the quality of our work, without more judges, better information, and more effective coordination of support services.

INDEPENDENCE OF THE JUDICIARY

Looking to the future, our second challenge is to be vigilant in the protection of the independence of the judiciary as a third and coequal branch of government by resisting the politicization of courts and judges. Alexander Hamilton in *The Federalist* #78 wrote, "The complete independence of the courts of justice is peculiarly essential in a limited constitution." Courts must have broad citizen support to perform our institutional function as independent arbiters of the law.

Minnesota, for the most part, has been spared the political attacks on individual judges and the judiciary experienced in other states and in the federal system. But can we be far behind? In a 1997 American Judicature Society survey of state and federal judges in the 6th, 7th, and 8th federal circuits, judges responded that they perceive political attacks on the Midwest judiciary to be widespread, that they feel under increasing pressure to be accountable to public opinion, and that they are constrained by judicial ethics not to respond to political attacks on their decisions.

As American Bar Association President Jerome Shestack wrote to ABA members concerning judicial independence, "Judges can't speak out for themselves. But we can. We should. We must." In Minnesota, we in the judiciary look to a strong and vibrant state bar association for leadership in defending this cornerstone of our constitutional government and in enlisting the support of the public.

PUBLIC TRUST AND CONFIDENCE

Public trust and confidence is our third and inextricably related challenge for the future because it is essential to the maintenance of an adequately funded, independent judicial branch. 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, and the contributions it makes to the common good. In recent years, public opinion polling at the national level and in selected states has found that (1) public awareness and understanding of courts is very low, (2) the public is generally supportive of courts, (3) the more people know about the courts, the less supportive they are, (4) attitudes toward courts are linked to attitudes toward government generally, especially the federal government, and (5) the public believes that courts treat some people better than others. The level of public trust and confidence is the ultimate measure of our courts' performance and thus these survey results are of serious concern to the judiciary.

Two elements are key to inspiring public confidence: good performance by courts and effective communication with the public. As earlier mentioned, we have worked tirelessly on enhancing our efficiency and productivity in past years and are committing our future efforts to focusing on effectiveness—all of which is aimed at enhancing court performance.

To communicate more effectively about the work of the courts and our needs, we have established community outreach as one of the fundamental pillars of our long-range strategic plan for the judicial branch. Last year we launched a statewide initiative, calling on our judges and court personnel around the state to aggressively seek opportunities to speak on these issues with organizations and groups within their communities. This year, a second phase of the outreach initiative has begun and is aimed at listening and learning as well as talking.

Communication is a two-way street. This effort recognizes our need to become more responsive to legitimate criticism and to invite greater public involvement in the work of the courts. In the coming year, judges around the state will be developing ways to create this dialogue by attending community meetings, holding focus groups, and even creating citizen advisory councils for the court. The work to be done to inform our citizenry is great and our numbers are small. The assistance of the 20,000 lawyers of this state could make such a difference in reaching broader numbers of the community.

Our democratic tradition teaches us to listen to the voices of the people. Two centuries ago our forebears declared independence from England precisely because in the words of the Declaration of Independence, the English government had become "deaf to the voice of justice." Even today, the American public is not likely to trust a court system that feels foreign, bureaucratic, or autocratic. Taking these steps is aimed at making our Minnesota courts both understandable and responsive.