

State of the Judiciary
Chief Justice Kathleen A. Blatz, Minnesota Supreme Court
Message to the Minnesota State Bar Association
June 16, 2005

Thank you for that kind introduction. First, let me thank David for his superb leadership this last year. The judiciary has long enjoyed a wonderful partnership with the Bar and a close relationship with its president. David Stowman has been second to none. He has been a wonderful steady hand at the helm of this Association and a vocal advocate for the needs of the Bar, the indigent, and the judiciary. Thank you, David.

And, I'm also looking forward to working with your new President, Sue Holden. She has an excellent track record of leadership and will be a strong voice for the profession.

My past seven and a half years as Chief Justice have been a time of tremendous administrative change. On a phased-basis, we have been transforming from a confederacy of 87 county-funded court system to a single, unified, state-funded branch of government. For all of you here today and for our hundreds of thousands of court customers each year, that will mean better access to justice for all Minnesotans, and greater consistency of service, procedures and practices all around the state.

Given the transition from county funding to state funding, we are also revamping our governance structure to better support the reality of a state-funded organization. We needed a new model of decision-making to achieve our strategic goals and policies and to allocate resources at the statewide level rather than the county level. So after many months of study and input from around the state, on July 1st we are prepared to launch our new governing body, the Judicial Council.

The Judicial Council will be transparent, accountable and comprehensive. Where the judiciary used to have several administrative governing groups, we will now have just one. In fact, the Conference of Chief Judges which began in 1978, had its final meeting yesterday. Now, statewide policy-making will be done by the Judicial Council, composed of 25 members including the ten chief judges. The Chief Judges will continue to contribute to statewide policy-making and play a vital role in managing their own districts.

In addition to the ten Chiefs, the membership on this Council is a blend of elected and appointed members—judges and administrators—who come from every judicial district and every level of court—the trial court, the Court of Appeals, and the Supreme Court. Each member is expected to make decisions based on the “good of the whole,” rather than on the basis of special interests or geographic areas.

For us, this is truly an exciting and important time of change. What hasn't changed is our commitment to continue our partnership with the bar as we work to improve our service, our policies and our processes in this new era.

It was also another important year for us at the Legislature. Fortunately, funding for the courts was included in one of the major spending bills that all sides agreed on, and the governor signed

into law. So happily, court funding is not dependent on the outcome of a special session. That, in my view, is a very good thing.

While we didn't get all the funding we requested, the Legislature approved over 80% of our original request. It authorized 4 new judgeships for the fast growing 7th and 10th Districts, continued support for specialty courts such as drug courts and mental health courts and increased funding for our deserving civil legal services programs by an additional \$5 million each year.

This last item—Legal Services funding—passed in large part because of the vigilant watch kept by Jerry Lane, Bruce Beneke, and others, including your own President David Stowman. Their dedication and perseverance paid off—for all the right reasons. Legal Services is a vital part of an open and accessible court system. Our hat's off to them!

In addition to the state funding changes and the legislative package, 2005 is an important year for both the bench and the bar for another reason... and I can't comment on the current state of the judiciary without addressing it.

In the last few years, we have heard calls from certain corners about the need to alter the judiciary. But in recent months, this criticism has grown in intensity—mostly in response to a few controversial court decisions.

Surely this is not the first time in history that the role of the judiciary has been questioned. Over 200 years ago, there was vigorous argument prior to and following this country's constitutional convention about the extent and nature of the judiciary's role in government.

While it is easy for some to dismiss the judiciary's current critics as ill-informed, no less than some of our country's greatest statesmen have debated this very issue, including Alexander Hamilton, Thomas Jefferson and the man often called the "Father of our Constitution," James Madison.

Some of our most notable presidents, including Thomas Jefferson, Abraham Lincoln, Andrew Jackson, Theodore Roosevelt, and Franklin Roosevelt, all fought openly with the Third Branch.

So while we must recognize that the debate is not new, what is unique is the forum in which that debate is taking place.

Our electronic age enables messages to be transmitted to millions of individuals at a time. Bloggers, pundits, web surfers, talk radio, and cable news shows can turn perception into reality in amazingly short periods of time.

And in this electronically charged reality, the phrase "activist judge" is being used with ever increasing frequency. While it is perfectly reasonable to have a debate about whether a judge went outside the parameters of the law, it becomes unreasonable when the label of "activist judge" is applied to every judge who makes a decision with which someone disagrees.

The breadth and depth of this phenomenon came home to me in a recent conversation with one of our lawyer legislators. He told me that the term "activist judge" was bantered around frequently within his caucus—worse yet he is hearing it again and again from his rural constituents. It has become a powerful negative slogan and part of the everyday vernacular.

This 24/7 drumbeat of anti-judiciary sentiment is shaping public consciousness—in large part, I believe, because there is no other effective voice to provide an alternative view in our cherished marketplace of ideas.

We should applaud vigorous civic discourse and the competition of ideas. They are—after all—vital parts of a healthy democracy. But, the judiciary has a long tradition of refraining from political discourse because of our adjudicative role in the resolution of individual cases. And, this tradition of restraint has not equipped us to wade into the powerful currents of the information age.

Further, it is difficult to respond to sound bites that talk of “activist judges” or an “out-of-control” judiciary. Communicating the principles of a separate but co-equal branch of government cannot be done in simple slogans. But, nonetheless, we must communicate because as President John F. Kennedy once said, too many people “enjoy the comfort of opinion, without the discomfort of thought.”

We need to respond in a meaningful and understandable way. And we must be credible.

When we stand up for judicial independence, we do not mean that we believe that judges are infallible—because we are not.

Judicial rulings and jury verdicts do not stand because they are divined.

They stand because we know that they are the product of dedicated people applying the law—as they understand it—to the best of their ability.

Court rulings stand because citizens of this great country know that a peaceful and democratic society is dependent on impartial judges and juries. And, in Minnesota, they stand because, up to now, we have had a system of judicial selection that has focused more on a judge’s merit and competence and less on ideology.

In my view, the vast majority of judges do their best every day to decide cases based on the law and the facts. I am proud to be a judge, particularly in Minnesota. But we must still acknowledge that, for the profession’s most celebrated moments like *Brown vs. Board of Education*, there are also darker moments like *Plessey v. Ferguson*. And can any of us say—with certainty—how history will view today’s best-intentioned legal battles? Surely not.

Judges are human and the institutions humans create—that we create—will not be perfect—as human beings are not perfect. But I would argue that human fallibility and imperfection are not sufficient reasons to dismantle the very structure of the institution itself. And frankly, that is what some are calling for.

At the national level, prominent critics are describing our country’s judiciary as “out of control”. These and other similar views are spawning proposals for radical change at the federal level. Some suggest that judicial budgets be slashed; some would strip courts of jurisdiction; some even urge that court decisions be ignored; some would shrink or pack courts to serve their ends; and some would amend the Constitution to permit Congress to overrule judicial decisions.

These views and proposals are not mainstream, but they promote and advance the notion—now heard too often—that “all judges are activists”. We have cause to be worried.

Yet, in Minnesota, I hope and believe that this message has not yet taken root. And, we want to keep it that way. To do so, we must act.

Broad-brush attacks on the judiciary, in general, undermine both individual judges and the institution as a whole. But of much greater concern to me is the damage done to the public's trust in our judiciary and the impact that eroded trust has on the nature of our democracy. If the attacks on judges take root, the citizens of this country will be the losers. After all, judicial independence is not for the benefit of judges; it is for the benefit of the people. And it belongs to the people.

These assaults on the judiciary and the constitutional principle of separation of powers—should give us all pause. Not just because our system of checks and balances is emulated worldwide and considered the genius behind our system of government.

Not just because a strong, independent judiciary is considered a necessary ingredient in the recipe for emerging democracies.

And, not just because deference to judicial decisions has enabled us to peacefully resolve disputes for generations. We need to be concerned because a judiciary subservient to other branches of government cannot uphold an individual's rights against the stiff wind of popular will.

So we must enter into the debate to provide that other voice. While the debate should not and cannot be solely between the anonymous public at large and those of us who work in the courts, it still must include the voices of judges and lawyers. If we who are in courtrooms everyday do not fully comprehend what is at stake here, who will?

I have and will continue to speak out about this issue because of its potential impact on the future of our system of justice in Minnesota. And I will be encouraging each state judge to commit to one public engagement over the course of the next year to address the issue in whatever way he or she sees fit.

And today, I have a request of you as well. Minnesota's bar has a vital interest in this debate. We need your ideas, your voices, and your action. I will be meeting with your president, David Stowman, and your president-elect, Sue Holden, in the coming days to discuss assembling a panel of individuals from the bench, the bar, and the larger community who can spearhead, in a sustained way, effective efforts at educating the public about what is at stake and ensuring that a more informed debate about our judiciary takes place.

But you don't have to be a member of this panel or any other organized effort to help. You just need to speak up. Talk to your clients, your family, and friends about what an independent judiciary means—to them. Remind them that cases are best resolved within a system of laws and not shifting political ideology. And that disagreement with the outcome of a few cases is not sufficient reason to dismantle an entire system.

And finally, remind them that pleasing the crowds has never been what this system strives for. Within our own individual abilities, we first aim to do right and by doing right we strive to serve the law—be it our constitution, the statutes enacted by the other two branches of government, or our own case precedent. We strive to serve the law, whether we agree with it or not, and whether you are black or white, rich or poor, Democrat or Republican, Christian or Muslim. It is this

pursuit of truth and not the pursuit of what is popular—that we hope preserves the public trust in our court system.

The larger public in this state needs our leadership and our voices. Don't underestimate what is at stake. And don't underestimate the positive impact you can have as we navigate through these uncertain times. As it has been said, "the voice of one is louder than the silence of 10,000."

Thank you.