

The State of the Judiciary
Chief Justice Eric J. Magnuson, Minnesota Supreme Court
Message to the Minnesota Bar Association
2008

Thank you. I'm very pleased to join you today. It's always good to be in Duluth. I have a special affection for this area. My parents are both from Duluth, and I spent a lot of time here in my youth visiting my grandmother and other relatives.

My parents moved from Duluth to the Twin Cities, where I was raised, and then retired to Hayward, Wisconsin, an area where my father had spent a good deal of time hunting and fishing when he was young. Both of my parents are gone now, but in their later years, my sisters and I were urging them to find a "nice winter home," one that wasn't 15 miles out in the woods on a lake in the middle of northern Wisconsin. We were making some progress, thinking that they would find a spot in Florida, or perhaps Arkansas or somewhere else appealing to seniors during the coldest months of the year.

I was very excited when my father told me that he'd finally decided to get serious about finding a place. He then announced that they were looking at some really nice condos in Duluth. I suppose for a Norwegian from the Iron Range that sounded like a winter getaway.

But these are not the things that bring us together today. The job of the chief justice at this annual convention is to deliver the "State of the Judiciary" address. So here I am. As of today, I have been chief justice for two weeks, so I considered a very short speech, something along the lines of "I've only been on the job for two weeks, I don't know anything. Thank you very much." I was told that wouldn't work. I'll shoot for a little more.

I may be new to this job, but I am a 30-year lawyer. I have appeared in most every judicial district as a lawyer, and visited every district in the course of my five years as chair of the Judicial Selection Commission.

But working on the outside is different from being on the inside. I spent a great deal of time in the weeks before my swearing-in ceremony working with the court and the state court administrators' staff to become as familiar as possible with the inner workings of the judicial branch. (As an aside, between my orientation efforts and my two weeks on the job, I've learned that the job of chief justice is 50 percent deciding cases, 50 percent administration ... and 50 percent public relations. No math major would take the job.)

To better understand the court from the inside, I have also been visiting judges and court staff in each of the ten judicial districts, gathering feedback from a variety of sources and approaching it all with many questions and an open mind. My goal is to operate from what I call "360 degrees of information"—our decisions, actions, and performance are always enhanced when we are armed with accurate information from multiple, credible

viewpoints. And when those affected by decisions have a voice in the decision-making process, they take greater ownership in the results.

I don't have a 360-degree view yet—and will not for some time—but I am able to give our partners in the bar and the residents of this state an overview of the Minnesota judiciary now and where it is headed in the near future.

Here is what I have learned. The judicial branch, now fully state funded and governed by one policy body, the Judicial Council, has roughly 3,000 judges and employees spread among 99 worksites. Those judges and employees are engaged in a broad array of legal work that is extensive and complex, as well as support functions, public service efforts, and program management. Our judicial system has great strengths. And it will need those strengths to face the significant challenges ahead.

Strengths of the System

People. First, I am impressed with the caliber of women and men who work throughout the system. Not just the judges, but also the court staff and the central operations hub of the system—state court administration, which is very ably led by State Court Administrator Sue Dosal. These are talented, thoughtful, and dedicated public servants with a long tradition of identifying problems, addressing challenges, and working continuously for the improvement of the system.

I have had the opportunity to appear before courts all across the country, and in my view, one of many things that set Minnesota courts apart is the courtesy and consideration that our judges and court personnel extend to litigants and others who come before us. While we certainly are not perfect, there is a true spirit of service and a desire to help that is more than just “Minnesota nice.”

This spirit is reflected in the high ratings (80 percent) of public trust and confidence that Minnesotans express in their court system,¹ and the widespread belief (84 percent) among citizens that the courts have treated them courteously.² I think these are remarkable figures when you consider the stress that attends most encounters with the judicial system, and the low ratings many other public institutions get these days.

These figures are even more remarkable when you consider the fact that Minnesota's judiciary shoulders an annual workload that is among the highest in the country for comparable court systems. This is no accident. The high standards, ingenuity and sheer work ethic of our judges and staff are precisely what enables these results.

Every organization possesses strengths and weaknesses that are the aggregate of its individual members. Because one of our greatest strengths is our people, I believe it will be important to not just maintain, but to deepen the bonds of respect, trust, and cooperation among the men and women who make it work so well today. As I will discuss shortly, it is those people who are most at risk in the months ahead.

Innovation. Another perennial strength for Minnesota’s judiciary is the depth and scope of its innovation—particularly the innovations that support improved performance. I mentioned the courts’ governance body—the Judicial Council. After attending four meetings, it is apparent to me that the Council is a high-functioning group, striking the right balance between centralized leadership and local management input and execution.

With the Judicial Council leading the way, the courts are performing more effectively than ever before. Let me give you a couple notable examples:

Early Neutral Evaluation. The 4th Judicial District’s innovative approach to encouraging early settlement in divorce and custody litigation is yielding impressive results. The process—where the judge meets with the parties and attorneys within three weeks of the case filing, and, if needed, uses neutral evaluators in an attempt to identify and resolve disputed issues—has been shown to reduce the time, cost, and most importantly, the acrimony of the divorce process. In financial disputes, a neutral expert compiles and evaluates financial information, then offers the divorcing parties a candid assessment of the strength and weakness of each issue, and helps the parties negotiate a resolution. Judge Charles Porter, Judge James Swenson and now Judge Tanja Manrique have led this important effort. Early Neutral Evaluation is now being piloted in the 3rd and 5th districts, and in Duluth and Anoka. We are confident that it will spread further because it works. These advances could make an enormous difference if applied more broadly, since family filings make up nearly *half* of all Minnesota’s major civil cases.

Technology is also a strength for the judiciary. Information, and managing that information, underpins the entire justice system; the better the information, the better our decision-making. In the span of just two decades, Minnesota’s information systems have leapfrogged more than a century, from a time where physical pieces of paper were hand-delivered from place to place, to a time when case records are updated in court—in real time; case histories are available online in a second or two; and one can toggle back and forth between multiple documents from a laptop on the bench or in chambers.

This is all made possible by our successful completion in April of our five-year, \$30 million MNCIS project—on time and on budget.

Of course, technology for technology’s sake is not the goal. But developed and managed properly, technology can provide unparalleled tools for improved performance. Examples include “e-citations,” which allow electronic transfer from the squad car to the court record, and soon “e-complaints” from prosecutors’ offices and “e-filing” in civil cases. A process called “Auto-assess” will automate the complicated splitting of fine payments among governments, eliminating the need to calculate and post the splits by hand. Online payment of fines and fees through our public website, www.mncourts.gov, is now available in Hennepin, Ramsey, and Dakota counties and soon will expand elsewhere. And information on more than 10 million cases, dating back to the ’70s, is a few keystrokes away for anyone with a computer and access to the Internet.³

Performance Tools. One of the most exciting advances resulting from these technologies is an emerging set of tools that will help us measure and enhance administrative performance. The judicial branch has established six performance goals we aim to achieve—statewide. In their simplest terms, they involve:

- 1) access to justice;
- 2) timeliness of case processing;
- 3) integrity in decision making;
- 4) excellence;
- 5) fairness; and
- 6) creating a quality workplace environment for our employees.

I know just about every organization has a mission statement taped behind a water cooler somewhere that recites some of these themes. But what is revolutionary about Minnesota's courts is that we are now actually measuring our efforts to meet these goals in every court across the state.

For example, to measure how we are performing on timeliness of case processing, we have set objectives for clearance rates, time-to-disposition, and age of pending cases. We are working to create a top-notch work environment for our employees by, among other things, surveying extensively about job satisfaction and analyzing turnover. And we are measuring access and fairness by asking the people who come into our courts questions like: *“Was the courthouse easy to find?” “Do you believe you were treated fairly?” “Do you understand what you need to do next?”*⁴

From the national perspective, there are jurisdictions here and there that are measuring some aspect of performance, but Minnesota is one of the few places in the country where we are doing it full-scale and statewide.

The results of these performance measurements won't just gather dust on a shelf. The results will be public and will help us plan the future. New capabilities for pairing our Minnesota Court Information System caseload data with our judicial and staffing workload information are already allowing us to achieve greater efficiencies. Judges and court administrators can now determine at the case-type and county level where resources should be allocated to do the job most effectively. As a result, courts are learning from each other and when warranted, sharing staff and resources. This is the way any high-functioning organization should be operating, and Minnesotans should be very proud that their courts are leading the way in the public sector.

Drug Courts. We have 30 drug courts operating around the state right now, 12 more in the works.⁵ Some studies indicate that drug courts reduce crime by as much as one-third, getting drug- and alcohol-addicted offenders—who tend to reoffend at high rates—to undergo treatment and become law-abiding. Other studies have shown that drug courts save the taxpayers real money—between \$3,000 and \$12,000 per participant, up to six

dollars for every one dollar invested.⁶ That's money that doesn't have to be spent for prison cells, court costs, medical bills, and all the other public costs that repeat offenders tend to generate. Judges Joanne Smith of the 2nd Judicial District and Gary Schurrer of the 10th Judicial District have provided tremendous leadership in advancing this cause. Unfortunately, like our people, these and other initiatives are at risk.

Challenges Facing the System

In 2008, our strengths are substantial. But so are the challenges.

Maintaining an Impartial Judiciary. One of our greatest challenges is maintaining an impartial judiciary.

There are some who believe the risk of rank, politicized judicial elections in Minnesota is so remote that we need not tamper with the system now. But anyone who watched the most recent supreme court election right next door in Wisconsin should be deeply concerned about what it portends for us. Millions of dollars were spent by special interest groups on ads attacking the candidates for “freeing criminals” and political cronyism.⁷ Well-heeled special interests attempting to manipulate the judicial process are no longer just the stuff of fictional thrillers—it's reality.

What happens to the carefully woven fabric of public trust when even one high-profile politicized campaign occurs—as we have seen in Wisconsin—is of great concern. Perceptions of fairness, equity, and access will be dramatically undermined if the public's confidence in the courts erodes, and it takes only one big, nasty election campaign to seriously damage the hard-won public confidence our judiciary currently enjoys.

This is not an easy problem to address, but I commend the Minnesota State Bar Association for its commitment to an impartial judiciary and, of course, the Quie Commission for its work in identifying the problem and analyzing possible solutions. I want to especially recognize and thank Governor Quie for his leadership and personal commitment to maintaining a fair and impartial judiciary.

After reviewing the options, I support an approach that includes merit selection with gubernatorial appointment, and retention elections with public judicial performance evaluations. These elements strike the right balance between accountability to the electorate, and the judicial independence necessary to fulfill our constitutional mission. They also provide a mechanism to better inform the voters about the qualifications of the judges on the ballot without the rhetoric and distortion that can occur in politicized contested elections. We must continue—bench, bar, and our fellow citizens—to work for needed change.

Resources. The second challenge for the Minnesota courts involves securing adequate resources. Let me be blunt: our situation is serious. If this were a hospital room, this is the point where we would close the door, look each other in the eye, and soberly walk through our options.

So here's the diagnosis: The cuts enacted during the last legislative session, on top of the \$13 million shortfall from the previous session, plus a \$1.9 million deficit in our mandated services programs, mean that the judiciary is underfunded by roughly \$19 million. We are spreading the shortfall across the judicial system as equitably as possible, but the blunt truth is that the lack of resources will affect most areas of what the courts do. We will run the courts with a 7 percent staff vacancy rate—fewer people to do the same amount of work or more. Case processing delays are inevitable. Because of the constitutionally mandated primacy of criminal cases, civil cases will be delayed. Hours at public service windows at some locations have been shortened. Service by retired judges will be reduced. Juror compensation will be decreased and we will have to take cuts to other mandated program budgets as well.

And, the cuts to public defense budgets will exacerbate our problems—slowing criminal case processing and jeopardizing progress in the very areas we have been working on in recent years as strategic initiatives: child protection cases and drug courts.

Perhaps most distressing is the fact that those things I have described to you as the strengths of the judiciary—our performance innovations and the top-notch people who are executing them—are at risk. We are asking more and more from fewer and fewer people, and feeling increased pressure to limit our efforts to what many consider to be just the bare essentials of justice without innovation or forward thinking.

We understand that the judicial branch has an obligation to be a good partner during a fiscal crisis, but that fact in no way detracts from the absolute necessity of providing the courts with adequate funding. Under our constitutional system, the courts are a separate and coequal branch of government responsible for upholding the rule of law upon which our social and economic relationships are based. Courts perform core functions of government, such as adjudicating criminal prosecutions and resolving legal disputes and controversies in family and civil matters. It's not just the court system or its people who are impacted when the resources aren't there—it is the citizens whom we serve who will bear the ultimate consequences of reduced resources.

As we have in the past, the judicial family will roll up its sleeves and devote its very best efforts to functioning as well as possible in the face of these financial challenges. But we also have a responsibility to alert our partners, our funders, and the public when the cuts have reached to the bone—our core constitutional functions. *This* is that alert. Make no mistake, we clearly are at a tipping point.

The cuts we have already sustained are certainly daunting, but the financial picture over the next biennium—2010 and 2011—is even grimmer. The current projected deficit for our state budget that biennium is \$1 billion—and likely to grow larger given the lagging economy. If inflation is factored in, that number could more than double.

We cannot allow the next legislative session to be a repeat of the last one—further cuts cannot be sustained, and funding of our basic employee costs and targeted investments

will be absolutely essential. Our goal in the next legislative session must be to secure the resources needed to perform our constitutionally mandated function.

I want to thank personally your president, Brian Melendez, and your president-elect, Michael Ford, for all the help the Bar Association has provided to the judiciary in making the case to lawmakers about our mutual need. In the past, we have called on—and received—the bar’s institutional support. For the upcoming year, we will also need your individual and personal support. That means attorneys all around the state contacting their elected officials and explaining how local constituents will be impacted by further reductions—in your own words, using the examples of your own clients. Because ultimately, this isn’t just about funding a system; it’s about the ability of Minnesotans to receive the justice they expect and deserve—and our joint responsibility to provide it.

Today I call on each and every one of you to help make this case, and I call on our colleagues in the executive and legislative branches to join us at the table of collaboration for a fresh look at the need, the options, and the future for our state courts.

Coming Full Circle

These are daunting challenges, but in the tradition of the Minnesota judiciary, we try to look at them as opportunities for change and improvement. What bolsters my confidence are the remarkable people in our past who have faced similar challenges and prevailed. While the list is long, I want to pay tribute to three particular people who have paved the way before me.

The first is my predecessor, Chief Justice Russell Anderson—a man whose thoughtful, forward-thinking leadership style ensured that everyone feels a part of the team. Russ is a tough act to follow. And the more I learn about the challenges facing the courts, the more comfort I take from his steady, clear guidance. Because of his considerable efforts over the last 25 years, the judiciary is better poised to meet our challenges, and I aspire to follow in that same tradition of leadership.

The other two individuals to whom I must give great credit are former Chief Justice Robert Sheran and former Chief Justice Doug Amdahl. I clerked for each of these men many years ago and consider it a great honor—especially during the formative years of my career—to have learned from two people considered by many to be the fathers of Minnesota’s modern judiciary. From the unification of the courts, to the creation of the Court of Appeals, to laying the groundwork for state funding and myriad court-management advances, Chief Justices Sheran and Amdahl played pivotal roles in shaping a state judicial branch that today boasts a national reputation for excellence and innovation.

And what I love about them both is that they always gave you a straight answer. When I recently asked Doug Amdahl about his reflections on being chief, Amdahl told me: *“It’s the greatest job in the world. You will love every minute of it. And the second it’s done, you’ll say ‘Whew! I’m glad it’s over. I’ll never do that again!’”*

So here's the straightest answer I can give you today about the state of our judiciary: A quarter-century ago, Chief Justices Sheran and Amdahl had a vision for modernizing the courts—leading them toward the progress the times demanded, ultimately making them more effective than ever before. As I stand here today, a former law clerk of these legendary chiefs, with the grave responsibility of helping to prepare the judiciary for the next quarter century, I am mindful of history's affinity for full circles ... and confident, that with your help, we, too, will succeed in meeting the serious challenges facing us.

Thank you.