THE SUPREME COURT OF MINNESOTA
SAINT PAUL, MINNESOTA 55155

June 23, 1978

Dear Senator:

Enclosed you will find a copy of the State of the Judiciary message delivered to the Minnesota State Bar Association today, Friday, June 23, 1978. Any comments and suggestions for a similar statement for 1979 will be appreciated.

Yours very truly,

Robert J. Sheran
Chief Justice

RJS:cd
Enclosure

# STATE OF JUDICIARY MESSAGE 1978

The powers of government, as everyone knows, are to be exercised by three independent and equal branches of government: legislative, executive, and judicial. Within constitutional limitations, the responsibility for determining long-term state policies and providing the resources needed to sustain the other branches of government rests with the Legislature. It is for this reason that an annual or biennial statement to the Legislature concerning the affairs of the judicial branch of government seems worthwhile. This is the practice in about half of the states, not including Minnesota. Until the most appropriate forum for a public statement concerning the condition of the judicial branch of government is afforded, this opportunity to speak indirectly to the general public and their representatives in the Legislature is appreciated sincerely. We are grateful for the opportunity to deliver the fourth annual "State of the Judiciary" message to the Minnesota Bar Association in convention assembled.

In a democratic society committed to the belief that all men are created equal and therefore equally entitled to "Life, Liberty, and the pursuit of Happiness," conflict is inevitable. Conflicts between individuals and between individuals and the state generate disputes and controversies. It is the function of our system to provide the means by which these disputes and controversies can be avoided in whole or in part; 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.

As our system has become more complex and our citizens more aware and assertive of their rights, recourse to the courts for resolution of human problems has increased dramatically. The judicial branch of government must respond in effective ways to this need if the directive embodied in Article I, § 8, of the Minnesota Constitution from its adoption in 1858 is to be fulfilled:

> "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."

In general terms: Notwithstanding the increasing volume of litigation coming to the courts of this state we have been able to discharge our responsibilities with reasonable dispatch. The "time lag" in dispute resolution has not been critically exacerbated. A number of reasons afford explanation. Increased interest in effective court administration has produced innovative methods for dealing with the situation. Educational programs for judges and lawyers involved in the process have helped. Increased attention to the fundamental importance of state courts in the Federal-state relationship has been a factor. Additional resources, particularly in the form of staff assistance, have been made available. Perhaps most important of all, an elevated sense of professional responsibility has been delineated and accepted. The Court Reorganization Act of 1977 has been adopted by the Legislature and, to a significant degree, implemented. But, as the details of this message will demonstrate, much

remains to be done if we are to keep things on an even keel--even more if we are to achieve the level of performance which the people of our state expect and deserve. In greater detail, the situation is this:

## TIME DELAYS

Although we are looking forward to receiving improved caseload data, the information which we have gathered thus far indicates that the metropolitan courts have been able to maintain relatively current calendars. For the most part, even with the valuable assistance of retired judges and judges assigned from outstate areas, the average time for bringing a civil case to trial has continued to increase. This results from the continuous increase in case filings and the emphasis upon speedy trial in criminal cases. All judicial districts have been encouraged to increase the interchangeability of the county and district benches to provide additional judicial resources to cope with this problem.

## DISTRICT COURT DELAY TABLES

### CIVIL JURY CASES

| County | 1977 Terminations Per Month | Total Cases Pending 12/31/77 | Delay Months | Change From 1976 |
|---|---|---|---|---|
| Hennepin | 124.3 | 1962 | 15.8 | -4.5 |
| Ramsey | 122.9 | 1566 | 12.7 | -1.9 |
| Anoka | 16.2 | 248 | 15.3 | +2.3 |
| Washington | 13.3 | 42 | 3.2 | +1.9 |
| St. Louis (Duluth) | 17.2 | 234 | 13.6 | +6.3 |
| Dakota | 20.4 | 221 | 10.8 | -4.0 |

CIVIL COURT CASES

| County | 1977 Terminations Per Month | Total Cases Pending 12/31/77 | Delay Months | Change From 1976 |
|---|---|---|---|---|
| Hennepin | 524.1 | 1157 | 2.2 | -0.2 |
| Ramsey | 94.2 | 863 | 9.2 | -1.6 |
| Anoka | 5.3 | 122 | 23.0 | -19.1 |
| Washington | 9.3 | 22 | 2.4 | +21.6 |
| St. Louis (Duluth) | 141.4 | 119 | 0.8 | +1.1 |
| Dakota | 17.4 | 82 | 4.7 | -2.8 |

Anoka, Washington, and St. Louis Counties have reduced the average time required to process jury cases. Washington and St. Louis have also reduced the delay in processing court cases, while Anoka has experienced a dramatic increase in the average time required to process a court case. The judges of the district have devoted special attention to this problem early in 1978. Hennepin and Ramsey Counties have both experienced increased delays in processing civil court and jury cases. Only Washington County has been able to achieve the goal of reducing both court and jury delays to less than 6 months.

SUPREME COURT CASELOAD

The Supreme Court caseload has continued to increase dramatically. In 1977, 1042 matters were filed with the Supreme Court, a 14% increase compared with 1976 filings. This sharp increase represents a continuation of the present nationwide trend of bringing more cases before the courts.

The number of matters disposed of by the court in 1977 was 854, compared to 833 in 1976, a 3 percent increase in dispositions. Special matters, writs and motions, now comprise a substantial part of appellate practice.

In 1977, 433 special matters were considered by the court, an increase of 18% over the 1976 volume. Early disposition through the summary affirmance procedure and settlements obtained at prehearing conferences have allowed the court to remain relatively current in processing the caseload.

In 1977 the Supreme Court managed to reduce the time required to process an appellate case in spite of the rising caseload. Processing time was reduced from 14.9 months in 1975 and 1976 to 14.3 months in 1977. The court hopes to reduce this processing time to 13 months or less in the coming year.

However, the substantial increase in filings is straining our resources in spite of our efforts to shorten the procedures for certain types of cases. We recommended last year that the legislature establish an intermediate court of appeals. We renew that recommendation. The Supreme Court must have sufficient time to consider in depth the most important legal issues. A writ procedure making appellate review discretionary with the Supreme Court or an intermediate appellate court must be established to divert those cases which raise issues having only minimal precedential value. We should decide within the next year which of these solutions is to be preferred.

## THE MEDIA AND THE COURTS

Last year we noted an interest by representatives of the news media in establishing procedures for allowing direct electronic recording of court proceedings. During the past year a committee of our court composed of Justices Otis, Peterson, and Todd worked with a joint committee of the Minnesota Bar Association and media representatives chaired by

David Donnelly. These two groups developed guidelines which would be used in the State Supreme Court to experiment with camera, video and audio recordings of appellate proceedings. Those guidelines are as follows:

1. At the discretion of the Court, proceedings of the Supreme Court held in its courtroom may be broadcast by television or radio, and may be photographed, if in compliance with the provisions of these rules.

2. Cameramen, technicians and photographers covering a proceeding will avoid activity which might distract participants or impair the dignity of the proceedings; will remain seated within the restricted areas designated by the Court; will observe the customs of the Court; will conduct themselves in keeping with courtroom decorum; their dress shall not set them apart unduly from the participants in the proceeding.

3. All broadcast and photographic coverage shall be on a pool basis, the arrangements for which must be made by the pooling parties in advance of the hearing. Not more than one (1) ENG camera producing the single video poolfeed shall be permitted in the courtroom. Not more than two (2) still-photographic cameras shall be permitted in the courtroom at any one time. Motor-driven still cameras shall not be used.

4. Exact locations for all camera equipment within the courtroom shall be determined by the Court. All equipment shall be in place and tested 15 minutes in advance of the time the Court is called to order and shall be unobtrusive or hidden. All wiring shall be safely and securely taped to the floor along the walls.

5. Existing courtroom lighting shall prevail. Other lighting devices are prohibited.

With the consent of counsel the court has allowed direct media coverage in three cases on an experimental basis. The Bar Association will be asked to consider the issue of direct media coverage of court proceedings at the appellate and trial levels. We know that it is technically possible to record appellate court proceedings unobtrusively. We believe that each court must consider the merits of direct recording of

its proceedings in light of the necessity for preserving a fundamentally fair forum for its litigants. Our court will decide in the near future the desirability of making the recording procedure a regular part of our operation.

The Supreme Court will be interested to know the views of this convention on the question of media coverage of trial court proceedings. For our part, we are willing and ready to cooperate in efforts to inform the general public in an accurate way about the functions of our judicial system. Mere inconvenience will not be a deterrent. Fairness to litigants and the integrity of the judicial process should be the only limiting factors.

## SUPREME COURT STUDY COMMISSION ON THE MENTALLY DISABLED AND THE COURTS

Last year, I expressed concern for the need to define and protect the legal rights of the mentally disabled. With a grant from the LEAA, the court has formed a commission to study these issues. The Commission is composed of interested lawyers, doctors, citizens, and legislators. Supreme Court Justice Rosalie Wahl is serving as the court's liaison to the Study Commission on the Mentally Disabled and the Courts.

The Study Commission has begun holding public hearings to gather information and determine issues of concern involving the mentally disabled who are brought in contact with our court system. It is the purpose of the hearings to solicit comments and suggestions on the rights of the mentally disabled from consumers, treatment professionals, attorneys and others.

The Commission will further analyze the testimony from the public

hearings to determine areas for concentrated study. This is an important first effort to examine empirically an area long ignored.

To date, the Commission has directed the staff to conduct an empirical study of judicial commitment in Minnesota, focusing on the roles and adequacy of counsel and court-appointed examiners in the commitment process. This study will include observations of commitment proceedings, a record review, questionaires and interviews. At present, there are no statistics on numbers of commitments, cost of proceedings, adequacy of protection of rights, or uniformity of procedures.

The Commission plans to submit a written report of the findings and recommendations to the court by June 1979.

## JUDICIAL PLANNING COMMITTEE

The Supreme Court reappointed members to the Judicial Planning Committee (JPC) in December 1977. The membership has been expanded to 21 persons and provides for more community involvement. Five legislators also sit as ex officio members. A staff has been assembled under the direction of the State Court Administrator.

In addition to its responsibilities involving the adjudication portion of the LEAA program for the State of Minnesota, the JPC during the past year has undertaken comprehensive planning activities and studies concerning current issues which impact upon the courts of the state.

The JPC has been designated by the Supreme Court as the agency to conduct a study, mandated by the 1978 legislature, of the court referee and judicial officer positions in district and county courts and of the advisability of establishing consolidated family court divisions

in Hennepin and Ramsey Counties. At the request of the Judicial Council, the JPC has begun a study of the public defender systems in the state and will make recommendations [within one year] for improvement in the administrative and financial structures of the system. The JPC is currently surveying trial court facilities to determine future efforts to bring the facilities in which our courts operate up to an acceptable standard. The committee also serves as the advisory board for personnel and financial studies being conducted through the office of the State Court Administrator.

Over the next year the JPC will begin the major task of developing a long-range plan for improving the state court system, as well as prosecution and defense functions. Policies will be adopted which reflect what is important for a well-functioning court system; problems will be analyzed; priorities and goals will be set; and programs to implement needed changes will be developed. It is hoped that this effort will allow all courts to focus on needed improvements and to gain the support necessary to accomplish those changes. It is clear that the courts must plan for the future as well as respond to current pressures.

## BOARD ON JUDICIAL STANDARDS

The Board on Judicial Standards is the mechanism for dealing with complaints about judges. Seventy-three grievances were received during 1977. Since the creation of the Board in 1971, four grievances were received in 1972, thirty-four in 1973, fifty-four in 1974, forty-one in 1975, and fifty-three in 1976. During 1977, sixty-two grievances originated from litigants, four from lawyers, two from government

agencies, two from enforcement agencies, one from the judiciary, two from other third parties. The grievances concerned twenty-three district judges, thirty-six county judges, seven municipal judges, five judicial officers, one referee, and one justice of the peace.

The Board conducted fifty inquiries and nine investigations. Judges were requested in thirty-three instances to relate their version of an event or situation as part of a response to a matter before the Board. Five judges, upon request, appeared before the Board. Of the nine investigations, three concerned allegations of an alcoholic problem, two concerned allegations of physical and mental problems, one concerned an allegation of practicing law while a judge, one concerned an allegation of inappropriate conduct off the bench and two concerned allegations of poor judicial temperament. Two judges who have an alcoholic problem and one judge who was slow in issuing orders are being monitored by the Board. Four cases are being investigated.

Three judges were reprimanded. One was privately censured. Two judges resigned while their cases were being investigated.

During the course of the year the court has considered changing certain aspects of the procedure by which judges are disciplined. Justice John Todd has worked on a committee of the American Bar Association on Judicial Discipline and Disability Retirement. He has been an invaluable resource in advising us on the considered judgments of the ABA committee.

In 1978 we secured passage of legislation which would allow us to amend our Judicial Disciplinary Rules so that they would be in accord with the recommendations of the ABA committee, which were adopted in February 1978 by the Board of Delegates in New Orleans. Our court will

hold a hearing on proposed amendments to our procedure on June 29, 1978.

The proposed new rules governing disciplinary proceedings before the Board on Judicial Standards generally maintain the procedural format of the existing rules. Proceedings are normally initiated by a complaint, followed by investigation, a probable cause determination, response from the judge, public hearing, recommendation for discipline, and Supreme Court review. Much of the language of the new rules along with a number of entirely new provisions are taken directly from the recently published ABA Standards Relating to Judicial Discipline and Disability Retirement. The proposed Minnesota rules do, however, retain certain portions of the existing rules and include language intended to clarify and reorganize portions of the ABA standards. The most salient features of the proposed new rules include the following:

-- The extent of the Board's personal and subject matter jurisdiction is specifically stated.
-- Complainants and members of the Board and its staff are made immune from suit.
-- Grounds for imposing disciplinary sanctions are enumerated.
-- Confidentiality provisions of the existing rules are to some extent curtailed.
-- The process for preliminary screening of complaints is more clearly defined.
-- Provision for taxation of costs is included.
-- Provisions concerning medical privilege and involuntary retirement are included.

## LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

The Lawyers Professional Responsibility Board has been established by the Minnesota Supreme Court to fulfill the constitutional responsibility of the court to supervise the conduct of members of the legal profession in the State of Minnesota. The Board, its Director, and staff perform three basic functions:

1. Prompt and thorough investigation of complaints of unethical conduct lodged against Minnesota attorneys, pursuant to the rules adopted by the Minnesota Supreme Court in the Code of Professional Responsibility.
2. Conducting hearings before Board Panels in those cases in which discipline appears to be warranted, and presentation of the most serious cases by the Board's Director and staff in public disciplinary proceedings before the Minnesota Supreme Court.
3. Issuance of formal ethics opinions by the Board on matters of general interest to the public and bar, and the rendering of informal opinions by the Board's Director and staff to attorneys and members of the public who pose specific problems of legal ethics.

During 1977, 634 complaints were received by the Board, most of which were investigated initially by one of the twenty district bar association ethics committees. The Board's revised rules, which became effective in 1977, provide for an expedited investigation of complaints. Approximately half of all complaints are fully investigated and concluded within sixty days of receipt of the complaint.

Also for the first time during 1977, all complainants against attorneys were notified of their right to seek review of the Board's disposition of any complaint by the Minnesota State Attorney General. During the first year of experience under this rule, more than 90 percent of the complainants accepted the Board's determination and did not seek review by the Attorney General. Of the matters reviewed by the Attorney General to date under the terms of the new rule, no additional discipline has been sought by the Attorney General in any case. While no claim can be made that every person is perfectly satisfied as to the outcome of their complaint, it does appear that the Board is effectively discharging its duty to investigate all complaints filed by the public and to issue or recommend appropriate discipline when called for.

By its Order dated April 14, 1978, the Minnesota Supreme Court amended the provisions of the Code of Professional Responsibility relating to attorney advertising. The amended rules greatly expand the type and form of advertising now permitted by attorneys. In essence, any form of public communication may now be used by an attorney as long as the communication does not contain false, fraudulent, misleading or deceptive statements or claims. Although experience is limited thus far, it is encouraging to note

that most attorneys who have elected to advertise have done so in a responsible and accurate fashion.

The Court is pleased to state that the participation of non-lawyer members on the district ethics committees and on the Lawyers Professional Responsibility Board continues to be an invaluable feature of the disciplinary process. Minnesota was a pioneer state in appointing lay members to its attorney discipline board, and a recent amendment to the Court's rules, effective May 11, 1978, will increase the lay membership on the board to eight out of twenty positions. The perceptive insights added by lay Board members strengthen the overall system of professional responsibility in this state.

## CONFERENCE OF CHIEF JUDGES

The Court Reorganization Act passed by the Legislature in 1977 is being implemented by judicial and administrative personnel throughout the state. The legislation provides for an administrative structure guided by the Supreme Court in concert with the State Court Administrator and the Conference of Chief Judges. The Conference, composed of the Chief Justice of the Supreme Court and the chief judges and assistant chief judges of the ten judicial districts, was created to provide counsel to the Chief Justice, the Supreme Court, and the State Court Administrator on matters relating to judicial business and court administration. The conference first met in July 1977 and continues to meet regularly.

Since its inception, the Conference has considered the following important topics:

(1) Utilization of judicial manpower in the districts to reduce case backlogs;

(2) Functions and responsibilities of district administrators;

(3) Methodology for the collection of accurate data regarding the volume and flow of judicial business in Minnesota courts;

(4) Rules for the internal operation of the Conference, including subcommittee structure;

(5) Redistricting of judicial districts;

(6) Policy relating to vacations and quasi-judicial business.

The effective administration of a state-funded court system requires a central authority authorized to establish policies with statewide application. The Conference of Chief Judges is intended to serve as a counterforce which will emphasize legitimate local concerns. The conviction is that analysis of our problems from these two different perspectives will bring about the best results. The process will succeed or fail depending on our ability to recognize that each court is an indivisible part of a statewide system created to serve the needs of the general public.

## DISTRICT ADMINISTRATORS

The administrative business of the various local courts is now being coordinated by newly appointed district administrators. During the past year the judges of the state conducted a nationwide search to locate knowledgeable, effective district administrators. Applicants from across the country were interviewed in each district. Screening committees were established, and the chief judge in each judicial district recommended a district administrator to the Supreme Court.

After careful consideration and consultation with the judges in the districts, the Supreme Court approved the following administrators:

| | |
|---|---|
| Esther S. Feldman | First Judicial District |
| Gordon M. Griller | Second Judicial District |
| Donald Cullen | Third Judicial District |
| Jack M. Provo | Fourth Judicial District |
| Ruth Steel Eppeland | Fifth Judicial District |
| Stuart A. Beck | Sixth Judicial District |
| James P. Slette | Seventh Judicial District |
| A. Milton Johnson | Eighth Judicial District |
| Dennis E. Howard | Ninth Judicial District |
| F. Dale Kasparek, Jr. | Tenth Judicial District |

These administrators are working with the judges and clerks of court in each district to improve the speed with which cases are brought to trial and to develop administrative procedures to support the various court processes.

Projects range from monitoring and scheduling the district court appellate process to devising and implementing jury selection plans. The administrators are identifying scheduling problems and securing additional judicial, clerical and physical resources to alleviate case delays. We anticipate significant improvements in the administrative support of our system in the next several years due to the efforts of the clerks of court and administrators.

Every effort has been made to reserve as much administrative authority as possible to each of the ten judicial districts in the state. The Chief Judge of each of these districts has the primary

responsibility for effective judicial administration in such district. This responsibility can be discharged effectively if, but only if, an adequately trained district court administrator is delegated the necessary authority to put state and local policy decisions into effect.

## SUPREME COURT COMMITTEE ON TRIAL COURT REDISTRICTING

Laws 1977, Ch. 432 ("Court Reorganization Act of 1977") Minn. St. 2.722, subd. 2, provides that the Supreme Court, with the consent of a majority of Chief Judges, may change boundaries and numbers of judicial districts, except second and fourth districts.

A committee to study redistricting began meeting in September 1977. The committee is composed of Justice Lawrence Yetka (chairman), Laurence Harmon, Representative Gordon Voss, Senator Robert Tennessen, Judge Harold Schultz, and County Court Judges, including all assistant Chief Judges. The committee seeks to develop an "ideal" redistricting plan to restructure county court districts in order to facilitate the use of judicial manpower to dispose of litigation expeditiously with a minimum of judicial travel.

The committee has advised the chief and assistant chief judges and district administrators to submit redistricting plans for committee approval. They have encouraged local meetings to develop plans for submission to the committee. The committee in turn holds public hearings in the affected locality, inviting the bar, media, and public. The first hearing was held on June 9 in Benson, Minnesota, to consider the proposal of the eighth district.

The deadline for submission of proposals is July 4.

Public hearings will be held before Labor Day.

Plans will be submitted to the Conference of Chief Judges and the Supreme Court in the fall.

## SUPREME COURT OFFICE OF CONTINUING EDUCATION FOR STATE COURT PERSONNEL

The Minnesota Supreme Court's Office of Continuing Education for State Court Personnel has continued to assist in maintaining the professional competency of the judges, prosecutors, defenders, and other court support personnel serving Minnesota.

Courses offered by this office this past year have included:

-- a Judicial Writing Workshop attended by Minnesota and North Dakota judges;

-- a Court Reporters' Medical Terminology Seminar, attended by 167 shorthand reporters;

-- a DWI Prosecution Seminar for 88 county and city attorneys;

-- a course on personnel selection and supervision for district administrators and clerks of courts;

-- and a course on courthouse security for bailiffs, sheriffs, and clerks of court.

Just this past weekend (June 16 and 17) Minnesota judges and sentencing guidelines commission members met for a two-day workshop to discuss sentencing guidelines, their implementation and impact upon the criminal justice system. Pursuant to recent legislation, sentencing guidelines will be formulated to take effect May 1, 1980.

Deserving of special mention is this office's course on criminal

trial advocacy, known as the Minnesota Institute of Criminal Justice. With the 52 students in attendance this summer, the Institute will have graduated 148 judges, prosecutors, and defenders from a 16-day intensive program designed to improve their ability to try criminal cases. I take special pride in mentioning this Institute which, when coupled with the other educational offerings available to Minnesota judges and lawyers to meet our Continuing Legal Education requirement, enable us to maintain and improve our ability to provide quality, professional legal services to Minnesota citizens.

I have mentioned only a few of the 16 courses attended by more than 1800 persons that the Office of Continuing Education for State Court Personnel has conducted or assisted in conducting during the past twelve months, thus contributing over 220 hours of continuing legal education for judges and lawyers.

Before leaving the subject of continuing legal education, I would like to express our Court's appreciation to all those who have participated on the faculty for the various CLE programs offered to members of the bar; a service often provided without monetary compensation.

## STATE JUDICIAL INFORMATION SYSTEM

In response to the need for accurate, objective and comprehensive information regarding the movement of the caseload and the allocation of judicial resources in the Minnesota courts, we have developed and are implementing the State Judicial Information System (SJIS).

SJIS is fundamentally different from the present system. It requires clerks of court to submit case transaction reports rather than summary caseload data for criminal, civil, probate, and family court

cases. In short, SJIS will track these cases as they move through the judicial system. By monitoring the progress of individual cases and retaining that information in automated files, we shall be able to compile reliable caseload management information for all courts in the state. The provision of this kind of management information will improve the administration of justice in Minnesota by supporting informed decisions made by the legislature, Supreme Court, State Court Administrator, the District Courts, and finally the Clerks' offices in each of the various counties.

SJIS will produce limited management reports in the last quarter of 1978, including individual case tracking information from district and county courts covering gross misdemeanors, felonies, civil, probate and family cases. All other types of cases (e. g., traffic, juvenile, conciliation court) will continue to be collected in summary form. In mid-1979 we shall begin individual case tracking of misdemeanor, juvenile and possibly conciliation court cases. Late next year, after we have had approximately one full year to build and maintain our automated case record files, we shall be able to produce complete management reports reflecting the movement of cases and the allocation of judicial resources in the Minnesota courts.

To date our progress in the implementation of the State Judicial Information System has been good. We are collecting data from six of the ten judicial districts of the state. I wish to recognize the efforts of the clerks and administrative staff of the Minnesota courts whose enthusiastic, responsive efforts are a determining factor in the success that we are experiencing in this undertaking.

After fiscal year 1979, we anticipate that SJIS will cost approximately $450,000 per year to operate. About one-third of this cost will be for data processing; the remainder will go to data collection and training efforts.

Admittedly, SJIS is not inexpensive. We know that the courts in Minnesota cost the taxpayers in excess of $40,000,000 annually; SJIS represents slightly more than one percent of that amount. When one considers the costs of the entire system of justice, including law enforcement, courts and corrections, as well as the fact that the judiciary is the indispensable element in making justice accessible to the citizen, a management system that enables us to measure the performance of the courts is a necessity.

In the interest of using tax money wisely we have merged the developmental aspects of the SJIS with two other projects: the Weighted Caseload Study and the Court Records Management Study. This integrated approach has enabled a staff member of the information systems office to visit each county in the state, allowing direct contact with a broad base of local trial court personnel. During each visit the staff is learning and documenting the various court record-keeping practices followed in each county throughout the state, enabling us to devise new and better ways of keeping court records so that the accuracy and accessibility of court records systems can enhance the management of the caseload. The court records management study will help us develop sound court records management standards, including archival storage, that will eventually be implemented statewide.

Another project we have undertaken in conjunction with the

implementation of the SJIS is the Weighted Caseload Study. The purpose of this study is to help us develop analytical tools to be used in interpreting the information collected by means of the State Judicial Information System.

Weighted caseload analysis represents one of the more prominent techniques employed in the thoughtful interpretation of management information produced on the operation of the courts. The goal of the study is to develop, in a well organized and logical manner, a system of statistically measured judicial workloads through the application of mathematical weights to standardized work units. The State Judicial Information System will enable us to collect accurate information; the Weighted Caseload Study will help us to interpret the information collected in a meaningful way.

## PERSONNEL AND FINANCIAL STUDIES (NCSC)

Laws 1977, Ch. 432, requires the State Court Administrator to prepare uniform personnel standards relating to non-judicial court employees and submit standards to the legislature by June 30, 1978, and to promulgate and administer uniform requirements for court budgets.

To fulfill this obligation the State Court Administrator has contracted with National Center for State Courts for a personnel inventory and practices study and a study of budgeting practices leading to the development of uniform statewide personnel and budget standards.

The study will determine numbers, types, and costs of trial court personnel; develop recommended standards (recruitment, promotionary evaluation, in-service training and discipline) for non-judicial personnel; and survey recommended standards for local budget preparation practices.

Work began October 1, 1977. Reports will be submitted by August 31, 1978. The basic recommendation will be that the judicial branch of government should establish a comprehensive personnel administration system covering all judicial support personnel upon the assumption by the state of personnel expenses. In the absence of state funding, the judiciary should standardize the qualifications, classifications, and salaries of clerks and deputy clerk positions in district and county courts.

Another recommendation will be that the office of the State Court Administrator should establish and publish minimum qualification requirements for each non-judicial position. Employees of the courts should be selected on the basis of bona fide job-related criteria (e. g., academic preparation, relevant experience, proficiency). The SCA should establish and implement uniform statewide personnel record keeping procedures to be made applicable to all units of the judiciary.

## SENTENCING GUIDELINES COMMISSION

## APPELLATE REVIEW OF SENTENCES

During the 1978 session the legislature passed a sentencing guidelines bill which is likely to have a significant impact upon the courts of Minnesota. The act establishes a nine-member sentencing guidelines commission which is charged with the responsibility of promulgating sentencing guidelines for the district court on or before January 1, 1980. Justice George M. Scott has been assigned to serve as a member. The guidelines will establish the circumstances under which imprisonment is reasonable and a presumptive fixed sentence based on offense and offender characteristics. Once the sentencing

guidelines are adopted, the district court is required to explain any deviation from the sentencing guidelines. The defendant and the state are given the right to appeal to the Supreme Court from any sentence imposed or stayed. Our court is as yet uncertain of the impact which this additional responsibility for review will have on our caseload, but it is likely to be substantial. We will be considering the methodology for handling these appeals so that they receive due consideration without detriment to our regular civil and criminal caseload. This additional responsibility and volume further emphasize the need to relieve the Supreme Court of the problems caused by volume.

## ABOLITION OF MINNESOTA REPORTS

Our court in 1978 sponsored legislation which will allow us to phase out the publication of Minnesota Reports. After a lengthy study of the procedure by which the opinions of our court are released and published, we have concluded that the litigants and the public will receive decisions more quickly if our procedure is revised. By abolishing the publication of Minnesota Reports, we hope to reduce the time before release of an opinion as well as the cost to the taxpayer without sacrificing the quality of an opinion.

## BOARD OF LAW EXAMINERS

In 1977 the Board of Law Examiners examined 880 applicants, 741 or 84.2 percent of whom were successful. Four applicants were denied permission to take the examination as they did not meet the requirements of the Rules for Admission to the Bar. The appeal of one of these applicants is pending in the Supreme Court at the present time and raises issues concerning the law school accreditation process and the

criteria for admission to take the bar examination.

In addition to applicants for examination, the Board reviewed 38 applications of attorneys admitted elsewhere for admission in Minnesota without examination, pursuant to Rules VIII and IX. Twenty of these were recommended for regular admission to the bar, and seven were recommended for limited licenses as set forth in Rule IX. Subsequently four of the limited licensees were recommended for regular licenses. The remaining seven applicants were advised that they would be recommended for admission only upon successful completion of the bar examination.

The February 1978 examination on Ethics was a multiple choice test on the Code of Professional Responsibility. In July 1978, Administrative Law will replace Personal Property as an examination subject.

It is of fundamental importance that we, the members of the judiciary and the legal profession, continue to provide such safeguards as we are able to insure that the persons we license to practice law are well qualified and competent to protect the rights of those they represent. Justice Fallon Kelly will continue as representative of the Supreme Court in this area. We appreciate the diligency and dedication of the members of the Board of Law Examiners in the work which has been assigned to them.

## CONTINUING LEGAL EDUCATION

A second method by which the court has sought to encourage the competency of counsel is through its mandatory continuing legal education program. Mandatory continuing legal education has been

adopted in five states; Minnesota, Iowa, Wisconsin, Washington, and North Dakota. In our state during the program year July 1, 1976-June 30, 1977 about 900 courses, sponsored by approximately 180 sponsoring agencies, have been approved. These courses varied from 1-hour presentations to extensive schools of a week's duration or more. Typically the short courses are bar association sponsored, frequently being a part of an annual meeting or other function, while the longer, more intensive courses are sponsored by governmental or private groups, such as the National Institute for Trial Advocacy. These generally are directed at special areas of the law.

The approved courses total about 9750 hours of credit, that total being broken down as follows:

| Subject Area | No. of Hours |
|---|---|
| Corporate & Securities | 470 |
| Criminal Law | 165 |
| Estate Planning | 150 |
| Family Law | 35 |
| Law Office Management | 40 |
| Probate | 92 |
| Professional Responsibility | 55 |
| Real Estate | 107 |
| Taxation | 390 |
| Trial Practice | 379 |

The balance of the material dealt with other specialized areas or with broad general substantive or procedural areas of the law. About 1800 hours were presented within the State of Minnesota, approximately 1250 of these being held in the Twin Cities area, slightly over

400 north of the Twin Cities, and about 140 in the southern part of the state.

Periodically a list of approved courses has been published in the Bench and Bar so that the general bar membership is kept apprised of the approvals; additionally about 100 lawyers receive monthly mailings of the current approvals. Bench and Bar has also been helpful in publicizing notice of the end of the reporting period so that lawyers are reminded of their reporting obligations. Notices were also published in The Hennepin Lawyer, the Northwestern Advance Sheets, and Interchange.

While most courses are well planned and executed, some are not. More effort should be spent in ensuring the quality of the programs and avoiding overlap and duplication of programs. Sponsoring agencies should cooperate and exchange information about course plans to ameliorate the duplication problem.

## FEDERAL-STATE JUDICIAL RELATIONSHIPS

The traditional lines of demarcation between the federal courts on the one hand and the state courts on the other need revision.

The assumption that state court systems are prejudiced and provincial and that federal courts are needed to protect nonresidents from unfair treatment cannot be justified. The extension of the jurisdiction of state courts over nonresidents resulting from state and federal interpretation of "long-arm statutes" has already brought a significant number of diversity cases to the state courts in situations where the amount in controversy is less than $10,000, and the litigants are being treated fairly without regard to whether they are or are not residents of the forum state.

Diversity jurisdiction now entertained by the federal courts where the amount in controversy exceeds $10,000 should be returned to the states, as recommended by such authorities on judicial administration as Chief Justice Warren E. Burger, who, in his 1977 report to the American Bar Association at Seattle, said:

> "* * * I would strongly urge that Congress totally eliminate diversity of citizenship cases from the federal courts. * * * I urge you to give full support to the elimination of diversity jurisdiction from the federal courts without further delay."

Although the American Bar Association refused to endorse this proposal, Congress has taken some action to eliminate diversity jurisdiction. H. R. 9622, which abolishes diversity jurisdiction except when the litigation is between United States citizens and either aliens or foreign states and the amount in controversy exceeds $25,000, passed the House of Representatives on February 28, 1978, by a vote of 266 to 133. The Senate counterpart, S. 2389, is currently before the Subcommittee on Improvements in Judicial Machinery. Hopefully, it will be considered and passed by the Senate shortly.

The elimination of diversity jurisdiction would transfer nearly one-fifth of the federal district court filings from the four federal district court judges in Minnesota to the more than 200 state court judges. I believe that we are prepared to accept responsibility for this litigation which, because it involves questions of state law, is well within the area of competence of Minnesota's trial judges.

Of course, the relief provided to the federal courts by the

elimination of nearly one-fifth of their cases will necessarily place increased burdens on our state court system. The additional expense incurred by the states as a result of this transfer should be -- and I think will be -- shared by the federal government. The proposal that a National Institute of Justice be established by the United States Congress to implement revenue sharing in support of state court systems may be the method by which this can best be accomplished.

Whatever the method, the state court systems must preserve their identity and independence. Federal programs with respect to the treatment of juveniles; drug control; the services of expert mediators for complicated disputes; experimental programs with national implications designed to improve the administration of justice -- these are efforts which will increasingly become matters of joint concern to the federal government and the legal profession of the several states. Mechanisms for the free interchange of information and resources, such as the National Center for State Courts, must be extended and supported.

The refinement of federal-state judicial cooperation was one of the subjects discussed in depth at the National Conference of Chief Justices and State Court Administrators held in Minneapolis-St. Paul on July 31 to August 3, 1977. I am deeply grateful to the Minnesota Bar Association for its assistance in making this Conference a success.

## STATE LAW LIBRARY

The State Law Library contains an estimated 200,000 volumes and has a staff of nine persons. More than 90 percent of the book budget is spent on maintaining continuations such as law reports, statutes, and periodicals. According to a recent study on law book inflation,

the cost of continuations in law libraries nearly doubled between 1974 and 1978. During this same period the Library book budget has increased only 25 percent. Therefore it has been necessary to cancel some continuations and to limit the purchase of new textbooks.

The primary users of the Law Library are the Supreme Court, the Attorney General's staff, the Legislative staff, and the various state departments. Use by the legal profession and the general public continues to grow. For example, library statistics show that 38 percent of the reference questions now come from private attorneys and law libraries, and 31 percent from the general public or public libraries. Questions are received from throughout the state.

The Law Library has entered cooperative arrangements with other libraries to share resources and to avoid duplication of materials. In addition, the Law Library is sharing the use of an OCLC computerized cataloging system with other Capitol area libraries. This will enable the library to change from the present homemade classification system to the Library of Congress classification. The result should be increased efficiency with increased services to library users at a lower cost.

The Law Library continues to operate from two locations. The facilities at 117 University Avenue are presently inadequate, however remodeling of the building is scheduled to begin soon. When completed the Library will be relocated to the third floor. The new area will be a substantial improvement over the present space. Long range plans continue to be the consolidation of the collection in the Capitol.

## UNFINISHED BUSINESS

There are a number of problems with which the legal profession of this state continues to be concerned which should be rechecked annually. They include:

1. Rules of Criminal Procedure

The Rules of Criminal Procedure appear now to have general acceptance. Recurring problems in some areas--access to criminal court proceedings by representatives of the news media, for example --persist. We have experienced some difficulty in according pretrial review upon appeals by the state without unduly delaying trial on the merits. But the precedents and procedures which have come out of these difficulties should reduce these problems in the future. On the whole, I think it can be said that the administration of criminal justice in this state has been significantly advanced by the adoption of the Rules.

2. Rules of Evidence

The newly adopted Rules of Evidence seem also to be working well. The absence of requests for review of evidentiary rulings suggests that the broad discretion accorded by the Rules of Evidence to the trial court works.

3. Delivery of Legal Services

During the past year, attention has been directed once again to the assertion that most people are unable to afford legal services at times of catastrophy. To the extent that this charge is based on fact, it is an unacceptable state of affairs. It is the duty of a "learned profession" to make essential services available to those who need them. The Minnesota Bar Asssociation is to be commended for the

concept which underlies the work of its "Delivery of Legal Services Committee." The development of prepaid legal services plans such as University Student Legal Services, for the 50,000 students attending the University of Minnesota, is to be encouraged. The extension of methods by which legal services are made available to the indigent at public expense is to be commended. But, in candor, we must acknowledge that our efforts in this direction to date have not kept pace with the problem.

4. Dispute Diversion

Diversion of disputes and controversies from the courts by way of voluntary arbitration; neighborhood dispute resolution mechanisms; the employment of mediation to deal with problems occurring in family situations; the correct structuring of priorities in efforts to control criminal activity are areas of concern which have not been effectively resolved. At the same time, we are encouraged by the fact that Minnesota has taken a position of national leadership in dealing with the resolution of minor claims.

We are encouraged to feel that judges and attorneys involved with the administration of criminal justice in this state are becoming increasingly alert to the standards developed by the American Bar Association project on Standards for Criminal Justice. The leadership which Justice Walter Rogosheske has given to this historic undertaking makes it imperative that we in Minnesota implement these standards in every possible way.

Finally, in considering methods of diverting disputes and controversies from courts already overburdened, the importance of

"preventive law" must not be overlooked. Our proper concern for the improvement of the skills of trial lawyers should not obscure the fact that most of the 8,000 lawyers in this state are seeking to anticipate and avoid potential litigation or other legal crises by counseling clients in their law offices. We recognize that their success in doing so will depend in considerable measure upon the clarity with which legislation is written and the quality and stability of the decisions rendered by the courts. In the words of Professor Louis M. Brown:

> "More legal decisions are made in law offices by lawyers than are made by all the trial courts in the land. For example, should a going business become a partnership or a corporation? What should go into a will? Is it OK to sign this contract?"
>
> "You can't ask those questions of a judge. You don't file a lawsuit to get a decision. The place you get a legal answer for these kinds of questions is a law office."

We take this occasion to emphasize the worth and dignity of "preventive law" and our indebtedness to legal academicians and practitioners who seek to improve our professional skills in these areas. At the same time, we note the remarkable progress which is being made here in Minnesota to develop improved methods of instruction for lawyers engaging in trial practice.

## CONCLUSION

While the worth of the judicial branch of government and the legal profession must in the end be tested by the measure in which we serve the general public, the responsibility of keeping our judicial system and profession abreast of the times rests primarily with those

of us who have been educated and trained as lawyers and judges. The beginning point for us is to recognize that we have both the privileges and the obligations which are intrinsic to membership in a learned profession. This means that analysis and assessment of the responsibilities of the judicial branch of government are continuing and endless duties. Looking back on the four-year period which has gone by since the first of these messages was given to the Minnesota State Bar Association in 1974 encourages one to feel that significant achievements and progress are possible, by combining voluntary action with governmental direction. I am hopeful and confident that this progress will continue during the year ahead, and that we will continue to find the ways and means to combine tested forms and new methods to resolve the changing problems of a changing world.