INTERIM REPORT

Select Committee on The Judicial System

February 26, 1975

INTERIM REPORT

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I. INTRODUCTION

The following report is submitted to the Minnesota Legislature for its consideration and information on behalf of the Judicial Council's Select Committee on the Judicial System. We would like to emphasize that, in the interest of serving the 1975 session of the Legislature and the subsequent time constraints this places upon the Committee and its staff, we are submitting an interim report. Steps are being taken to incorporate Committee recommendations into the format of proposed legislation. The Committee will continue to meet, to consider issues of concern to Minnesota's court system and, perhaps, to make additional recommendations. When this supplementary work is completed, a final report will be issued which will include any further recommendations and necessary refinements and elaboration.

II. MAJORITY REPORT

A. Background

In the spring of 1974 the State Judicial Council[1] began studying recent suggestions for structural revision of the Minnesota court system. Bills were introduced in the 1973-1974 Legislature which would have effected systemic changes in both the structure and administrative operation of our courts. These sweeping changes collectively assumed the title of "court unification."

"Court unification" soon became a catch-all term for many varieties of court reform. Little comment, however, had been made on how "court unification" would respond to needs specifically identified to exist in the Minnesota court system.

Chief Justice Robert J. Sheran encouraged the Judicial Council to create a broadly based committee to sort through the many previously identified needs of our court system and to recommend appropriate legislative action. Thus the Judicial Council sponsored the creation of the Select Committee on the Judicial System; and with a grant from the Governor's Commission on Crime Prevention and Control, the Chief Justice was asked to appoint to the Select Committee representatives of diverse points of view. The Select Committee on the Judicial System, then, consisted of the following members from all levels of the Bench, the Bar and representatives from numerour public groups:

Hon. Elmer L. Andersen
Rep. Tom K. Berg, District 56B
Hon. Charles E. Cashman, Steele County Court

Thomas Conlin, attorney, St. Paul
William J. Cooper, President, Minnesota Citizens for Court Reform
Peggy Gross, League of Women Voters
Gene W. Halverson, past-president and representative of the Minnesota State Bar Association, Duluth
James Harper, attorney, Duluth
Rep. Neil S. Haugerud, District 35A
Hon. Harvey Holtan, 5th Judicial District
Hon. Charles C. Johnson, Blue Earth County Court
Robert W. Johnson, Anoka County Attorney
Hon. James H. Johnston, Hennepin County Municipal Court
C. Paul Jones, State Public Defender
Hon. Allan R. Markert, Ramsey County Municipal Court
Edward G. Novak, Commissioner of Public Safety
David Roe, President, Minnesota AFL-CIO
Hon. Bruce C. Stone, Hennepin County District Court
Jon Wefald, Commissioner of Agriculture
Hon. Lawrence R. Yetka, Associate Supreme Court Justice and Chairman of the Judicial Council, was appointed to chair the Select Committee

The Select Committee was supported by a research staff. Austin G. Anderson, formerly Minnesota attorney and Regional Director of the National Center for State Courts and now Director of the Institute for Continuing Legal Education at the University of Michigan School of Law, was appointed Project Director for the Select Committee. Susan C. Beerhalter, formerly a research associate for the National Center for State Courts who participated in the Minnesota District and County Court Surveys, and Steven J. Muth, attorney, who assisted Austin G. Anderson in the developmental stages of the Continuing Education program for State Courts Personnel prior to the appointment of the program's permanent director, were appointed research associates. Eleni P. Skevas, formerly a courts specialist for the Governor's Crime Commission and now a University of Minnesota law student, performed additional research activities.

The staff commenced work in July collecting and preparing literature for the Committee to study. A study of major court reform efforts throughout the United States was produced and much documentation of specific court reform attempts was made available to the Committee. Studies of the present court system in Minnesota, the District Court Survey and the County Court Survey produced by the National Center for State Courts in which were identified problems in our present judicial system, were reviewed in detail by the Committee.

The Committee at its first meeting on August 18, 1974, heard from representatives of the Kansas and Colorado court systems, where recent court reform has taken place, and Committee members were given reports and documents including the American Bar Association's Standards on Court Organization, the Minnesota studies by the National Center for State Courts, a 1942 Minnesota Judicial Council report on court unification, the bill introduced in our 1973 Legislature calling for court unification, and many other documents national in scope.

The Select Committee held over seven full days of hearings between August 18, 1974, and its most recent meeting on January 22, 1975. The Committee decided at its first meeting that while it would study recommendations made by the American Bar Association and other national groups, and while it would review court reform efforts in other states, the intent of Committee deliberation would be to define problems in our own court structure and recommend changes tailored to meet our specific needs.

With this background, and after many hours of intense and open discussion, the Select Committee, at its January 22nd, 1975, meeting, made the following recommendations for the improvement of our present court structure and administrative operation of the courts.

B. Recommendations to Date

The Committee felt that changes should be made in the operation of our courts, but that these changes should not at this time effect a consolidation of all trial courts into a single level trial court. Thus the Select Committee recommends retention of the two-tiered trial court consisting of the County Court and the District Court. The office of Justice of the Peace would, however, be abolished.

Since it was felt that at present the State is not utilizing judicial manpower to maximum efficiency, it was recommended that the jurisdiction of all judges be statewide jurisdiction within the respective County and District Court. Continuous terms of court would be established throughout the State. Then, to pave the way for optimal use of judicial manpower, the Chief Judge of each Judicial District in the State would be given broad assignment authority over all judges in the Judicial District. The Chief Judge could, by specific assignment, direct a County Court Judge to hear any matters within the jurisdiction of the District Court and a District Court Judge could be assigned to hear matters within the exclusive jurisdiction of the County Court. An assignment

made by the Chief Judge could be appealed by an aggrieved judge to the Supreme Court. Transfers of judges between the Judicial Districts would be made by the Chief Justice, and the transferred judge would then become subject to the general assignment authority of the Chief Judge into whose District the transfer was made.

The state courts would be organized in judicial districts and the ten districts would be retained as presently constituted. The Committee recommended, however, that Hennepin and Ramsey each would be fixed judicial districts, but that the Supreme Court, with the advice of the Judicial Council or Judicial Conference, could change in size or number the other eight present judicial districts. The Supreme Court would also be given authority to reconstitute County Court districts within each larger Judicial District and to establish residency and chambers requirements for all judges.

The Select Committee recommends furthermore that all judges be paid by the state and that all judges in the state be paid the same salary by the state. Counties could supplement this state wage with legislative approval. A county salary supplement would be permitted, acknowledging higher cost of living areas.

The Committee also recommends that only persons licensed to practice law in the state would be eligible to be a judge in Minnesota. The five remaining lay County Court judges would be retired at the expiration of their present terms.

Foremost on the minds of Committee members was the proper administration of the court system. The recommendations above

were intended to complement the Committee's recommendations for administrative changes, the absence of which the Committee felt would prohibit delivery of a higher quality of justice to the citizens of Minnesota. Administrative recommendations are intended to form an integrated administrative structure that serves present needs and meets existing problems; however, if future needs dictate great structural revision of the courts, the recommended administrative structure is designed to adapt to such revision with little change.

The administrative recommendations of the Select Committee are as follows:

Administration

§1. CHIEF JUSTICE. Subd. 1. Administrative Authority. The Chief Justice shall exercise general supervisory powers of the court system. These powers shall include (1) supervision of the court system's financial affairs, program of continuing education for judicial and nonjudicial personnel and planning and operations research, (2) serving as chief representative of the court system and as liaison with other governmental agencies and the public and (3) general superintendence of the administrative operations of the court system.

Subd. 2. Authority to delegate. The Chief Justice may designate individual judges and committees of judges to assist him in the performance of these duties.

§2. CHIEF JUDGES. Subd. 1. Appointment. In each Judicial District the Supreme Court shall appoint a Chief Judge who may be a Judge of County, District, Municipal or Probate Court.

Subd. 2. (a) Administrative Authority. In each Judicial District the Chief Judge, subject to authority of the Chief Justice, shall exercise general administrative authority over all courts within the Judicial District.

(b) The Chief Judge shall make assignments of Judges to all cases within the District. A Judge aggrieved by an assignment may appeal the assignment to the Supreme Court.

(c) When temporary caseload requires transfer of a Judge from one Judicial District to another Judicial District, the Chief Justice shall make such a transfer. The transferred Judge shall be subject to assignment powers of the Chief Judge of the district to which transfer was made.

Subd. 3. Appointment of Clerks of Court. The Chief Judge of each district shall appoint the Clerk of Court for each county within his/her Judicial District by selecting from among nominations submitted by the District Administrator after consultation with all Judges serving that county. In Hennepin County, where the office of Clerk of Court has been replaced by that of Court Administrator pursuant to MS488A.025, the Court Administrator shall be appointed by

this process.

Subd. 4. Bimonthly Meetings; Judicial Conference Agenda. The Chief Judges shall meet at least bimonthly for the consideration of problems relating to judicial business and administration. After consultation with the Judges of their district the Chief Judges shall prepare in conference and submit to the Chief Justice a suggested agenda for the yearly judicial conference.

§3. STATE COURT ADMINISTRATOR. Powers and Duties. Subd. 1. The Court Administrator shall, under the supervision and direction of the Chief Justice, have the powers and duties prescribed by this section.

Subd. 2. The Court Administrator shall examine the administrative methods and systems employed in the offices of the Judges, Clerks, Reporters, and Employees of the courts and make recommendations, through the Chief Justice for the improvement of the same.

Subd. 3. The Court Administrator shall examine the state of dockets of the courts and determine the need for assistance by any court.

Subd. 4. The Court Administrator shall make recommendations to the Chief Justice relating to the assignment of Judges where courts are in need of assistance and carry out the direction of the Chief Justice as to the assignments of Judges to counties and districts where the courts are in need of assistance.

Subd. 5. The Court Administrator shall collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the Chief Justice and to the respective houses of the legislature to the end that proper action may be taken in respect thereto.

Subd. 6. The Court Administrator shall prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto.

Subd. 7. The Court Administrator shall collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith.

Subd. 8. The Court Administrator shall obtain reports from Clerks of Court in accordance with law or rules adopted by the Supreme Court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make reports thereof to the Supreme Court of this state and to the respective houses of the legislature.

Subd. 9. The Court Administrator shall formulate and submit to the Judicial Council of this state and to the respective houses of the legislature recommendations of policies for the improvement of the judicial system.

Subd. 10. The Court Administrator shall submit annually, as of February 1, to the Chief Justice and the Judicial Council, a report of the activities of the Court Administrator's office for the preceding calendar year.

Subd. 11. The Court Administrator shall prepare standards and procedures for the recruitment, evaluation, promotion, in-service training and discipline of all personnel in the court system other than Judges and judicial officers.

Subd. 12. The Court Administrator shall promulgate and administer uniform requirements concerning records, budget and information systems and statistical compilation and controls.

Subd. 13. The Court Administrator shall attend to such other matters consistent with the powers delegated herein as may be assigned by the Supreme Court of this state.

§4. DISTRICT ADMINISTRATOR. Subd. 1. Appointment; Term. A District Administrator shall be appointed for each of the judicial districts. A District Administrator may serve more than one judicial district. The administrator shall be appointed by the Chief Judge with the advice and approval of the Judges of that judicial district and shall serve at the pleasure of the Chief Judge.

Subd. 2. Duties. Such administrator shall assist the Chief Judge in the performance of his administrative duties and shall perform such additional duties as are assigned to him by law and by the rules of the court.

Subd. 3. Staff. The District Administrator shall have

such deputies, assistants and staff as the Judges of the district deem necessary to perform the duties of the office.

Subd. 4. Liaison. The District Administrator shall assist the Supreme Court, the Chief Justice, the State Court Administrator, the Chief Judge of the district and other local and state court personnel in (1) the development of and adherence to standards and procedures for the recruitment, evaluation, promotion, in-service training and discipline of all personnel in the court system, other than Judges and judicial officers; (2) the development of and adherence to uniform requirements concerning records, budget and information systems, and statistical compilations and controls; (3) identification of calendar management problems and development of solutions; (4) research and planning for future needs; (5) development of continuing education programs for judicial and nonjudicial personnel; (6) serving as liaison with local government, bar, news media and general public; (7) establishment of a court community relations program including identification of court related public information needs and development of a grievance procedure to settle administrative complaints not related to a specific judicial determination and (8) communication of policy, procedure, relevant rulings, legislative action, needs, developments and improvements between and among county, district and state court officials.

Subd. 5. The District Administrator shall serve as secretariat for meetings of the Judges of that district.

§5. JUDGES MEETINGS. Subd. 1. All of the Judges of a district shall meet in conference at least twice a year at the call of the Chief Judge to consider administrative matters and rules of court and to provide advice and counsel to the Chief Judge of the district.

Subd. 2. All of the Judges of the State shall meet at least once a year in Judicial Conference at the call of the Chief Justice.

C. Individual Comments from the Majority

Those members of the Select Committee on the Judicial System supporting the majority report are: The Hon. Lawrence R. Yetka, Chairman, Elmer L. Andersen, Thomas M. Conlin, William J. Cooper, Peggy Gross, Gene W. Halverson, James Harper, Hon. Harvey A. Holtan, Robert W. Johnson, C. Paul Jones, Edward G. Novak, David Roe, Hon. Bruce C. Stone, and Jon Wefald.

State representatives Tom K. Berg and Neil S. Haugerud were recorded as not voting.

The following members of the Committee, in supporting the majority report, made these additional comments:

Mr. William J. Cooper:

"I support the majority report of the Select Committee as a very progressive step toward court reform. I, however, would have preferred a step-by-step plan for a single-tiered trial court in Minnesota, and I hope that future study will be addressed to the merits of a unified trial court."

Hon. Harvey A. Holtan:

"Centralization in government over the past thirty years has been a disaster. The trend since the early Sixties has been toward decentralization so as to promote efficiency and economy in government and to compel the government to become more responsive to the needs of the people.

"The centralization to be created by the recommendations of this report must be carefully watched."

C. Paul Jones:

"Provision should be made to insure rotation of District Court judges throughout the district for trial court proceedings."

Hon. Bruce C. Stone:

"I concur in the report of the Committee with the observation that it is not to be taken in any measure to alter the two-tier trial court system that has been so successful in Minnesota, both at County and District Court level. A vast majority of the district judges of this state are of the opinion that no one has demonstrated that alteration of this system would be an improvement over the existing system or that it would improve the quality or promptness of justice."

III. MINORITY REPORTS

A. Report of the Hon. Charles E. Cashman

The Interim Report of the Select Committee on the Judicial System is opposed on the grounds that it is lacking in concept and unworthy of a group identified as a Select Committee having held meetings over a seven month period. The recommendations in the report are not the result of careful planning with long-range objectives but instead represent an expedient compromise with sound judicial administration and a surrender to judicial reactionism and trepidation.

Retention of the existing two-tiered trial court system even with the minor changes proposed by the Committee will perpetuate all of the problems inherent in any two-tiered system.

At the first meeting of the Select Committee its goal as abstracted by the Committee's staff was stated to be the

> "...development of an outline of a model judicial system for Minnesota and submission of an interim position paper with appropriate legislative proposals to state court leadership and the legislation..."

It should be apparent that the Interim Report falls far short of this goal.

By reason of its very title in addition to its stated goal it would seem the Select Committee has the duty to recommend the very best judicial system for the State of Minnesota. The court system recommended as a model by virtually every study on court organization both within and without the State of Minnesota is the complete consolidation of a states' multiple courts having

varied jurisdiction into one single-trial court staffed by a single class of judges. Such a Unified Court System is recommended by the following:

1. American Bar Association (Standards Relating to Court Organization)
2. National Advisory Commission on Criminal Justice Standards and Goals (Report on Courts--standard 8.1)
3. National Conference on the Judiciary (1971)
4. American Judicature Society
5. Judicial Administration Committee of Minnesota State Bar Association (continuously since 1960)
6. Minnesota Citizen's Conference on Courts (1970 Consensus Statement)
7. Minnesota County Judges' Association
8. Various Minnesota District, County and Municipal Court Judges as well as Minnesota citizens interested in Court improvement (testimony submitted to House and Senate Sub-Committees on Court Unification)

In contrast to the near unanimous support for complete unification there appears to be no study that recommends the adoption of the multi-leveled trial court excepting in the way of compromise.

Court Unification is not, as the Interim Report states, a catch-all term for many varieties of court reform. Court Unification means one thing and that is, simply, one trial court staffed by one class of judges. Many states have attempted to unify their courts but, with the exception of the District of Columbie, all have fallen short of that goal. The "obstacles" to unification in those states that have attempted court reform are identical to those now being encountered here in the State of Minnesota. These "obstacles" are:

1. Alleged differences in quality between judges of the District Court and judges of the Courts of Limited Jurisdiction.

2. The possible increased difficulty in attracting experienced attorneys to the bench in a court having jurisdiction over traffic, misdemeanors, juveniles, small claims and other matters now confined to the Courts of Limited Jurisdiction.

3. The reluctance of District Judges to face the prospect of assignment to divisions hearing matters now handled by the Courts of Limited Jurisdiction.

The common denominator of these obstacles is the notion that much of the litigation in our courts today is demeaning and of lesser importance. The extent to which these notions persist is directly related to the amount of opposition to court unification.

While many believe there is a difference in the quality of judges of the District Court compared with judges of the courts in the state having limited jurisdiction, there has, nevertheless, been no factual substantiation of that belief. The fact remains that most of the work handled by the District Court is very similar to that handled by the County and Municipal Courts. In addition, rules of evidence and procedures are the same in all three courts. The Report on Courts prepared by the National Advisory Commission on Criminal Justice Standards and Goals states:

> "the lower Courts handle 90 percent of all criminal prosecutions in the nation."

If County and Municipal Court judges are indeed less competent as a class than District Court judges, then a disservice is being done to the people of the State of Minnesota by perpetuating a system that has created such a situation. In the final analysis, however, County and Municipal Court judges believe they are as

qualified as District Court judges whether such qualifications be measured by law school education, experience as attorneys or experience as judges.

It has been said that a single-level trial court would make it difficult to attract experienced attorneys to such a bench. Resolution of this problem, if indeed it is one, depends simply upon court administration. In the event of court unification it is reasonable to expect that judicial assignments will be based not on seniority or influence but rather on ability, special talents, and workload requirements. The suggestion that newly appointed judges would be arbitrarily assigned to undesirable work should be regarded as an insult to the integrity of the Chief Judge having assignment responsibility. It can also be argued that if Courts of Limited Jurisdiction are abolished the matters currently heard by them may no longer be deemed to be undesirable assignments.

Perhaps the greatest obstacle to court unification is the concern among many District judges that they may be required to perform "lesser" judicial duties in a single-level trial court. To the extent that this attitude is representative of the present District judges, it is clear that the present bifurcated trial court system has created an elitist hierarchy of judges to whom the more common problems of the citizens who elect them are demeaning and a waste of their judicial expertise. The resolution of this problem again is simply a matter of good administration by the Chief Judge of the District and as a consequence is probably more fancied than real.

Identifiable problems existing in the two-tiered trial Minnesota court system today are:

1. Duplication of Courtroom facilities resulting in the disuse of courtrooms, offices and physical equipment in a large number of counties for most of the year.

2. Duplication of judicial manpower necessitating the presence of two or more judges at a given county seat to accomplish judicial work that would easily be performed by one Judge.

3. The complete waste of judicial manpower expended in what is appropriately termed windshield time, that is, time spent by a judge in an auto traveling hundreds of miles between court assignments. This is an affliction of most District Courts and some County Courts. It is inefficient, expensive and wasteful as well as hazardous to the physical well-being of the Judge. In addition, it is grossly inconvenient to lawyers and litigants who are often obliged to pursue the judge from county to county.

4. Duplication of court records, causing added and unnecessary expense to lawyers and the public.

5. Duplication of litigation resulting from the arbitrary and unrealistic limits on jurisdiction between courts, for example, a County Court does not have jurisdiction to enforce the custody provisions of a District Court marriage dissolution decree involving the same litigants before the County Court in a juvenile proceeding to terminate parental rights. Examples of this absurdity are endless.

6. The virtual non-existence of communication and interaction between Judges of County and District Courts as well as of County and Supreme Courts resulting from the caste or hierarchist arrangement of the existing judicial system.

7. Disparity in caseloads between the District Court and Courts of Limited Jurisdiction.

8. The neglect of the lower court system as evidenced by inadequate facilities and supportive staff (see Minnesota County Court Survey pages, 73-74) combined with variations in judicial salaries not based on workload, responsibility or cost of living.

9. The arbitrary transfer of judicial business from the

District Court to the County Court without regard to good judicial administration, the circumstances or workloads of the courts involved or an evaluation of the best interest of the general public.

10. Serious morale problems in all courts of the state due to incessant tampering with the judicial system and the perpetuation of a judicial caste system or pecking order.

The Select Committee thus far has not addressed itself to any of these identifiable problems. Clearly the recommendations contained in the Interim Report fail to provide a solution to these problems. It is true the recommendations purport to provide increased flexibility in the existing system by proposing equality in judicial salaries with the same paid by the state and authorizing the interchange of judges between the District, County and Municipal Courts. Flexibility however, is greatly inhibited by the requirement that the exercise of jurisdiction beyond that presently existing in a court shall be on specific assignment only. Such an arrangement will necessarily be cumbersome, expensive and stifling to flexibility. Furthermore, it is naive to believe that the legislature will equalize judicial salaries without a greater change in the structure of the courts and the regularly assigned work of each. The Interim Report recommendations may well be counter-productive in that they tend to further subordinate the Courts of Limited Jurisdiction to the District Court and infuse administrative personnel at a level where they are unlikely to be responsive to local circumstances and needs.

The ABA Court Organization Standards (pp. 9-10) contains the

following statement:

> "The consequences of maintaining two separate trial courts have been generally adverse. These consequences include: reduced flexibility in assigning Judges and other court personnel in response to shifts in workload; complexity and conflict in processing cases between courts, particularly between the preliminary and plenary stages of felony cases; and unnecessary emphasis on hierarchial rank among judges and other court personnel. Perhaps most important, the differentiation of the trial court of limited jurisdiction expresses an implicit differentiation in the quality of justice to be administered. It induces a sense of isolation and inferiority among the judges and court personnel who are called upon to perform one of the judiciary's most difficult and frustrating tasks--individualizing justice in the unending stream of undramatic cases that constitute the bulk of the court system's work."

The Report on Courts prepared by the National Advisory Commission on Criminal Justice Standards makes the following statement (pp. 161):

> "The lower courts handle about 90 percent of all criminal prosecutions in the Nation. Thus, the courts that are lower, minor, and inferior in nomenclature, financing, facilities, rehabilitative resources and quality of personnel conduct the overwhelming majority of all criminal trials and sentencings.
>
> Lower courts, moreover, are important qualitatively as well as quantitatively. Typically, they deal with defendants with little or no criminal history. Often the offenders are young and their antisocial behavior has not progressed beyond the seriousness of misdemeanors. Even when the offender is older a first offense often is charged or later is reduced to a misdemeanor. Consequently, lower courts can intervene at what may be the beginning of a pattern of increasingly serious criminal behavior, and help prevent the development of long-term criminal careers.
>
> The enormous crime-control potential of the lower courts is underscored by the fact that 80 percent of the major crimes of violence committed in the United States are committed by youths who have been convicted of a previous offense in a misdemeanor court."

One could go on indefinitely quoting findings from numerous other reports all to the same effect. It should be apparent that

the existing Minnesota system as well as that proposed by the Interim Report are definitely sub-standard from every standpoint.

Significantly, a unified single-level trial court in Minnesota would provide a solution to each of the enumerated identifiable problems either by actual elimination or maximum reduction of those that persist. The most attractive aspect of the unified court is the simplicity and clarity of its structure. Clearly it is the ultimate in court organization and thus its adoption will dispense with the need for further court reform. Unification will maximize flexibility and provide full utilization of judicial manpower as well as courtroom facilities throughout the state. It will engender judicial interaction and competency and it will dispel morale problems within the judicial system.

Similarity of work presently handled by the District, County and Municipal Courts should make adoption of the unified court system in Minnesota a relatively simple one. The upheaval in moving from the existing system to a unified court would not begin to approach that which occurred in the Minnesota Court System upon the adoption of the County Court Act in 1971.

Despite the complete absorption of one court and the assumption of concurrent jurisdiction with another, all in areas completely unrelated to the jurisdiction of the then existing Probate-Juvenile Court, the transition of a County Court was effected quickly and without difficulty. The Minnesota County Court Survey prepared by the National Center for State Courts makes the following comments (page 6):

"It is to the credit of judicial personnel within the system that the majority of problems associated with the rapid implementation of a new and far-reaching system have been resolved so quickly."

This experience coupled with the Limited Jurisdiction Courts' amenability to change and adaption is demonstrative of the relative ease with which the complete unification of the courts in Minnesota could be accomplished.

Through the better use of judicial manpower it can be argued that court unification would be less costly than maintenance of the present system. Savings would be achieved by the elimination of much travel expense presently being incurred by judges and staff and maximum use of courtroom facilities releasing courthouse space for other purposes and dispensing with construction of duplicate facilities. In any event, it should be apparent that court unification necessarily will provide maximum return to the citizen for the tax dollar spent. In view of these circumstances it may well be asked if the government is going to build courthouses, staff them with trained capable people and establish elaborate administrative systems to coordinate their function, why not make all courts full-service courts.

The Minnesota Supreme Court is presently considering Rules of Criminal Procedure for all of the trial courts in the State. These rules, scheduled to take effect on July 1, 1975, involve substantial changes in present criminal law and procedure. Rule 1.02 reads as follows:

"These rules are intended to provide for the just, speedy, determination of criminal proceedings. They shall be

construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay."

To this end, the new rules eliminate the Preliminary Hearing conducted in County and Municipal Courts under present law by combining the same into what is identified as an Omnibus Hearing to be held in the District Court within seven (7) days of the defendant's initial appearance in that Court. The purpose of the new rules as expressed in Rule 1.02 is worthy indeed, however, its accomplishment is entirely dependent on the day to day availability of the District Court within each County of the State inasmuch as virtually all of the newly defined criminal proceedings are to be conducted in the District Court. Under the existing two-tiered Minnesota Trial Court System, even with modifications as proposed by the Select Committee Majority Report, the District Court is not and necessarily cannot be available in each County of the State on a day to day basis since there are only forty-one (41) District Judges serving the eighty-five (85) counties outside of Hennepin and Ramsey Counties. It should be apparent then that the new Criminal Rules are not likely to work, and perhaps may even break down, under the existing system even with proposed modifications. On the other hand, the new Rules are perfectly suited to a one-tiered trial court as provided for in a Unified Court System. Indeed, the new Rules virtually demand Court unification as proposed in this Minority Report.

Some comment should be made relative to the membership of the Select Committee and its method of procedure. Both were

generally unsatisfactory. The Committee was overbalanced with members from the Metropolitan area having no experience with, or in, the County Court System. Very little time was spent with materials relating to County Court operations. As a consequence, the Committee proceeded with little knowledge or understanding of of the County Court System even though this Court handles a major part of all litigation arising within the State. The vagueness of the Interim Report should be sufficient evidence of this deficiency. Perhaps more importantly, the Committee failed to adopt Rules of Procedure nor did it adhere to any accepted form in its meetings making it difficult to determine what action had or was being taken by the Committee. As a consequence of this haphazard procedure, what was thought to be a final position at one meeting was, without notice, completely reversed at the next meeting. Had an Interim Report been prepared after the Committee's December, 1974, Meeting, as was indeed intended, then this report would have been the majority report rather than a minority report since at that meeting a resolution was adopted calling for a unified trial court in Minnesota having simply a trial division and an appellate division. At the January, 1975, Meeting this action was ignored and despite strenuous objection, the Committee proceeded to the compromise described in the Interim Report.

The Interim Report undertakes to sanction the practice of a salary supplement by certain counties classified as metropolitan and attempts to justify the same on the basis of an asserted higher living cost in such area. It is respectfully submitted that

the Select Committee did not take any action on this matter and in fact really did not discuss the same. The assertion that living costs are higher in metropolitan areas is challenged on the grounds that there is no documentation whatsoever of such a condition. There is considerable evidence available that food, clothing, housing, real estate taxes or any other ingredient in the cost of living are in fact higher in many non-metropolitan areas than elsewhere. Present law provides for a District Judge's salary supplement in counties having a population in excess of 200,000 rather than in the metropolitan area generally. Any attempt to justify a higher cost of living based on metropolitanism is in reality an exercise in futility due to the spreading nature of the metropolitan area and the metropolitan aspects of certain outlying areas of the state. It is submitted that the real reasons for the present county salary supplement are among the following:

1. Extensive travel and corresponding expense reimbursement provided to all District Judges except those in Hennepin and Ramsey Counties.

2. Greater visibility of the rural area judges in contrast to counterparts in the metropolitan area occasioning more public scrutiny and resistance to higher salaries in the rural areas.

3. Cohesiveness of metropolitan area judges as a group resulting in substantially more legislative and professional clout.

4. A tendency to, and more acceptance of, higher pay rates (for the same work) in the metropolitan area generally.

5. The arbitrary but unsubstantiated assumption that judges in the large counties have more work and must deal with problems of greater complexity.

County salary supplements are contrary to good judicial administration in that they tend to preserve the caste system existing within any judicial system which is not completely unified. In any event, the Interim Report appears to be inconsistent in proposing the same salary for all judges while sanctioning salary supplements in certain counties thereby precipitating disparate salaries within the judicial system. A well administered court system should have all judges sharing the court workload on an equal basis and receiving the same compensation. At best any salary differential should be based on years of experience and not where the judge happens to live.

To summarize, this minority report rejects the recommendation of the Interim Report and urges the adoption of a Unified Court System in Minnesota having a single-level trial court staffed by judges of equal status and compensation.

B. Report of the Hons. Allan R. Markert and Charles C. Johnson

By reason of its very title in addition to its stated goal it would seem the Select Committee has the duty to recommend the very best judicial system for the State of Minnesota. The court system recommended as a model by virtually every study on court organization both within and without the State of Minnesota is the complete consolidation of a states' multiple courts having varied jurisdiction into one single-trial court staffed by a single class of judges. Such a Unified Court System is recommended by the following:

1. American Bar Association (Standards Relating to Court Organization)

2. National Advisory Commission on Criminal Justice Standards and Goals (Report on Courts--standard 8.1)

3. National Conference on the Judiciary (1971)

4. American Judicature Society

5. Judicial Administration Committee of Minnesota State Bar Association (continuously since 1960)

6. Minnesota Citizen's Conference on Courts (1970 Consensus Statement)

7. Minnesota County Judges' Association

8. Various Minnesota District, County and Municipal Court Judges as well as Minnesota citizens interested in Court improvement (testimony submitted to House and Senate Sub-Committees on Court Unification)

In contrast to the near unanimous support for complete unification there appears to be no study that recommends the adoption of the multi-leveled trial court excepting in the way of compromise.

Court Unification is not, as the Interim Report states, a catch-all term for many varieties of court reform. Court Unification means one thing and that is, simply, one trial court staffed by one class of judges. Many states have attempted to unify their courts but, with the exception of the District of Columbia, all have fallen short of that goal. The "obstacles" to unification in those states that have attempted court reform are identical to those now being encountered here in the State of Minnesota. These "obstacles" are:

1. Alleged differences in quality between judges of the District Court and judges of the Courts of Limited Jurisdiction.

2. The possible increased difficulty in attracting experienced attorneys to the bench in a court having jurisdiction over traffic, misdemeanors, juveniles, small claims and other matters now confined to the Courts of Limited Jurisdiction.

While many believe there is a difference in the quality of judges of the District Court compared with judges of the courts in the state having limited jurisdiction, there has, nevertheless, been no factual substantiation of that belief. The fact remains that most of the work handled by the District Court is very similar to that handled by the County and Municipal Courts. In addition, rules of evidence and procedures are the same in all three courts. The Report on Courts prepared by the National Advisory Commission on Criminal Justice Standards and Goals states:

> "the lower Courts handle 90 percent of all criminal prosecutions in the nation."

If County and Municipal Court judges are indeed less competent as a class than District Court judges, then a disservice is being done to the people of the State of Minnesota by perpetuating a system that has created such a situation. In the final analysis, however, County and Municipal Court judges believe they are as qualified as District Court judges whether such qualifications be measured by law school education, experience as attorneys or experience as judges.

It has been said that a single-level trial court would make it difficult to attract experienced attorneys to such a bench. Resolution of this problem, if indeed it is one, depends simply upon court administration. In the event of court unification it is reasonable to expect that judicial assignments will be based

not on seniority or influence but rather on ability, special talents, and workload requirements. The suggestion that newly appointed judges would be arbitrarily assigned to undesirable work should be regarded as an insult to the integrity of the Chief Judge having assignment responsibility. It can also be argued that if Courts of Limited Jurisdiction are abolished the matters currently heard by them may no longer be deemed to be undesirable assignments.

Perhaps the greatest obstacle to court unification is the concern among many District judges that they may be required to perform "lesser" judicial duties in a single-level trial court. To the extent that this attitude is representative of the present District judges, it is clear that the present bifurcated trial court system has created an elitist hierarchy of judges to whom the more common problems of the citizens who elect them are demeaning and a waste of their judicial expertise. The resolution of this problem again is simply a matter of good administration by the Chief Judge of the District and as a consequence is probably more fancied than real.

Identifiable problems existing in the two-tiered trial Minnesota court system today are:

1. Duplication of Courtroom facilities resulting in the disuse of courtrooms, offices and physical equipment in a large number of counties for most of the year.

2. Duplication of judicial manpower necessitating the presence of two or more judges at a given county seat to accomplish judicial work that would easily be performed by one Judge.

3. The complete waste of judicial manpower expended in

what is appropriately termed windshield time, that is, time spent by a judge in an auto traveling hundreds of miles between court assignments. This is an affliction of most District Courts and some County Courts. It is inefficient, expensive and wasteful as well as hazardous to the physical well-being of the Judge. In addition, it is grossly inconvenient to lawyers and litigants who are often obliged to pursue the judge from county to county.

4. Duplication of court records, causing added and unnecessary expense to lawyers and the public.

5. Duplication of litigation resulting from the arbitrary and unrealistic limits on jurisdiction between courts, for example, a County Court does not have jurisdiction to enforce the custody provisions of a District Court marriage dissolution decree involving the same litigants before the County Court in a juvenile proceeding to terminate parental rights. Examples of this absurdity are endless.

6. Disparity in caseloads between the District Court and Courts of Limited Jurisdiction.

7. The arbitrary transfer of judicial business from the District Court to the County Court without regard to good judicial administration, the circumstances or workloads of the courts involved or an evaluation of the best interest of the general public.

The ABA Court Organization Standards (pp. 9-10) contains the following statement:

"The consequences of maintaining two separate trial courts have been generally adverse. These consequences include: reduced flexibility in assigning Judges and other court personnel in response to shifts in workload; complexity and conflict in processing cases between courts, particularly between the preliminary and plenary stages of felony cases; and unnecessary emphasis on hierarchial rank among judges and other court personnel. Perhaps most important, the differentiation of the trial court of limited jurisdiction expresses an implicit differentiation in the quality of justice to be administered. It induces a sense of isolation and inferiority among the judges and court personnel who are called upon to perform one of the judiciary's most difficult and frustrating tasks--individualizing justice in the unending stream of undramatic cases that constitute the bulk of the court system's work."

The Report on Courts prepared by the National Advisory Commission on Criminal Justice Standards makes the following statement (pp. 161):

> "The lower courts handle about 90 percent of all criminal prosecutions in the Nation. Thus, the courts that are lower, minor, and inferior in nomenclature, financing, facilities, rehabilitative resources and quality of personnel conduct the overwhelming majority of all criminal trials and sentencings.
>
> Lower courts, moreover, are important qualitatively as well as quantitatively. Typically, they deal with defendants with little or no criminal history. Often the offenders are young and their antisocial behavior has not progressed beyond the seriousness of misdemeanors. Even when the offender is older a first offense often is charged or later is reduced to a misdemeanor. Consequently, lower courts can intervene at what may be the beginning of a pattern of increasingly serious criminal behavior, and help prevent the development of long-term criminal careers.
>
> The enormous crime-control potential of the lower courts is underscored by the fact that 80 percent of the major crimes of violence committed in the United States are committed by youths who have been convicted of a previous offense in a misdemeanor court."

One could go on indefinitely quoting findings from numerous other reports all to the same effect.

Significantly, a unified single-level trial court in Minnesota would provide a solution to each of the enumerated identifiable problems either by actual elimination or maximum reduction of those that persist. The most attractive aspect of the unified court is the simplicity and clarity of its structure. Clearly it is the ultimate in court organization and thus its adoption will dispense with the need for further court reform. Unification will maximize flexibility and provide full utilization of judicial manpower as well as courtroom facilities throughout the state. It will engender judicial interaction and competency and it will dispel

morale problems within the judicial system.

Similarity of work presently handled by the District, County and Municipal Courts should make adoption of the unified court system in Minnesota a relatively simple one. The upheaval in moving from the existing system to a unified court would not begin to approach that which occurred in the Minnesota Court System upon the adoption of the County Court Act in 1971.

Despite the complete absorption of one court and the assumption of concurrent jurisdiction with another, all in areas completely unrelated to the jurisdiction of the then existing Probate-Juvenile Court, the transition of a County Court was effected quickly and without difficulty. The Minnesota County Court Survey prepared by the National Center for State Courts makes the following comments (page 6):

> "It is to the credit of judicial personnel within the system that the majority of problems associated with the rapid implementation of a new and far-reaching system have been resolved so quickly."

This experience coupled with the Limited Jurisdiction Courts' amenability to change and adaption is demonstrative of the relative ease with which the complete unification of the courts in Minnesota could be accomplished.

Through the better use of judicial manpower it can be argued that court unification would be less costly than maintenance of the present system. Savings would be achieved by the elimination of much travel expense presently being incurred by judges and staff and maximum use of courtroom facilities releasing courthouse space for other purposes and dispensing with construction of

duplicate facilities. In any event, it should be apparent that court unification necessarily will provide maximum return to the citizen for the tax dollar spent. In view of these circumstances it may well be asked if the government is going to build courthouses, staff them with trained capable people and establish elaborate administrative systems to coordinate their function, why not make all courts full-service courts.

The Minnesota Supreme Court is presently considering Rules of Criminal Procedure for all of the trial courts in the State. These rules, scheduled to take effect on July 1, 1975, involve substantial changes in present criminal law and procedure. Rule 1.02 reads as follows:

> "These rules are intended to provide for the just, speedy, determination of criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay."

To this end, the new rules eliminate the Preliminary Hearing conducted in County and Municipal Courts under present law by combining the same into what is identified as an Omnibus Hearing to be held in the District Court within seven (7) days of the defendant's initial appearance in that Court. The purpose of the new rules as expressed in Rule 1.02 is worthy indeed, however, its accomplishment is entirely dependent on the day to day availability of the District Court within each County of the State inasmuch as virtually all of the newly defined criminal proceedings are to be conducted in the District Court. Under the existing two-tiered Minnesota Trial Court System, even with modifications as proposed by the Select Committee Majority Report, the District Court is not

and necessarily cannot be available in each County of the State on a day to day basis since there are only forty-one (41) District Judges serving the eighty-five (85) counties outside of Hennepin and Ramsey Counties. It should be apparent then that the new Criminal Rules are not likely to work, and perhaps may even break down, under the existing system even with proposed modifications. On the other hand, the new Rules are perfectly suited to a one-tiered trial court as provided for in a Unified Court System. Indeed, the new Rules virtually demand Court unification as proposed in this Minority Report.

To summarize, this minority report urges the adoption of a Unified Court System in Minnesota having a single-level trial court staffed by judges of equal status and compensation. The Report on Courts (page 165) states:

> "No state has achieved a true one-level trial court;... standard 8.1 recommends a system of unified trial courts in which all criminal cases are tried in a single level of courts...only by such action the commission believes can the criminal justice system attract well-qualified personnel and supporting services and facilities to handle less serious criminal prosecutions."

If resistance to change is too great so that Minnesota cannot at this time become the first state to accomplish the ultimate in court organization thus necessitating compromise, then in the alternative it is recommended that the County and Municipal Courts be extended the same jurisdiction as the District Court with judges' salaries of all trial courts being equal and paid by the state.

C. Report of the Hon. James H. Johnston

The Committee has not recommended the most important need, which is to allow all trial judges of the state to join together in one trial court.

Figures and studies now before the Committee, compiled by its able and excellent staff, show the need for change of our present system. The present recommendation for assignment of judges will not accomplish maximum efficiency of judicial manpower without the most basic change, a single trial court level.

I favor the retention of the administration of courts at the local level, with power in the Judicial Council to make appropriate changes in operations where needed. In addition a Chief Judge of a district should be selected by his fellow judges, and the appointment of a court administrator for the district should be made by the majority of the judges of that district and serve at their pleasure. A state court administrator should be appointed and serve at the pleasure of the Judicial Council.

IV. FOR FUTURE CONSIDERATION

This interim report of the Select Committee is written to be of use to the Legislature without great delay and before the Legislature is far into its current session. The Select Committee recognizes, however, that additional matters must be considered before its work under its present grant is completed.

The staff of the Select Committee, with the consultant firm of Arthur Young and Company, are currently conducting a study of all state court nonjudicial personnel and a study of revenues and disbursements for the entire court system in calendar year 1974. As the results of these studies are analyzed, the Select Committee will meet to discuss further recommendations.

The result of these studies and any further recommendations of the Select Committee will be included in the Committee's final report to the Legislature.

FOOTNOTES

[1] The Judicial Council currently has the following membership: Hon. Douglas K. Amdahl, Chief Judge, Hennepin County District Court; Hon. Robert E. Bowen, Hennepin County Municipal Court; Hon. Charles E. Cashman, Steele County Court; Edward Coleman, attorney, Anoka; Thomas Conlin, attorney, St. Paul; James D. Mason, attorney, Mankato; John French, attorney, Minneapolis; Hon. Robert B. Gillespie, Chief Judge, 10th Judicial District; James Harper, attorney, Duluth; C. Paul Jones, State Public Defender; Richard E. Klein, State Court Administrator; Norman Perl, attorney, Minneapolis; Hon. Robert J. Sheran, Chief Justice, Supreme Court; Hon. Lawrence R. Yetka, Supreme Court, Chairman.
(Note: At its January, 1975, meeting, the Council supported the expansion of its membership to 15 by the addition of four legislators, two from the House of Representatives and two from the Senate.)

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Minnesota. Select Committee
on the State Judicial Syst
Interim report

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