William Mitchell Law Review

Volume 19 | Issue 3 Article 1

1993

Reflections on the Future of the Minnesota Court of Appeals

Paul H. Anderson

REFLECTIONS ON THE FUTURE OF THE MINNESOTA COURT OF APPEALS

THE HONORABLE PAUL H. ANDERSON†

Patrick Henry said he knew of no better way to judge the future but by the past.[1] The history of our court is short, but it has a solid foundation. It is one of only two state appellate courts without a backlog.[2] It is a court that works. The next decade's challenge will be to build on this foundation, to refine and develop what we have, to anticipate future problems, and to react fairly and swiftly. If those of us who are part of the court take this approach, the court will continue to function effectively in the face of society's problems and demands.

The judicial system and the court of appeals, like the society they serve, confront problems and demands from many sources. These problems and demands will neither abate nor end during the next decade. Therefore, we must remain vigilant in order to guarantee fair and equitable treatment to the citizens of Minnesota. This effort will take place in a public environment, which Derok Bok, former president of Harvard University, noted is less trusting and less optimistic than it was just a few decades ago.[3]

When we face the task of meeting the demands society places upon us, we must recognize and appreciate our limitations. We are on the receiving end of society's problems; the court frequently deals with parties who cannot or choose not to follow society's rules or who have failed to resolve problems by themselves. In this context, we must remember that we have a limited ability to deal effectively with all the problems

† Chief Judge, Minnesota Court of Appeals; B.A. 1965, *cum laude*, Macalester College; J.D. Minnesota 1968, University of Minnesota Law School. The author wishes to express his appreciation to Cynthia L. Lehr, Chief Staff Attorney, Minnesota Court of Appeals, who contributed ideas and material for this article, and to express his appreciation to Dean E. Raths and Rene D. Panelli, law clerks to the Chief Judge, 1992-93, for their assistance in editing this article.

1. GORTON CARRUTH & EUGENE EHRLICH, AMERICAN QUOTATIONS 273 (1988).

2. Arthur S. Hayes, *Minnesota Court Eliminates Case Backlog*, WALL ST. J., June 8, 1992, at B1.

3. *See* Derek Bok, *Reclaiming the Public Trust*, CHANGE, July-Aug. 1992, at 18.

society asks us to solve. To prevent disillusionment and to retain the public trust in the judicial system, we must clearly communicate what we can and cannot do effectively. From this perspective point, I examine the future of the court of appeals and its role in the Minnesota judicial system.

I. A Solid Foundation

The primary objective for the next decade will be to maintain the court's tradition of providing efficient, inexpensive, and sound appellate review. An intermediate court of appeals must provide a forum to obtain prompt review of district court and agency proceedings and to correct errors that have occurred. Our responsibility is to ensure that all parties have access to the appellate courts, and we must issue consistent, well-written decisions, stating the law as applied by the court and explaining the court's reasoning.

We face these challenges in the context of being a high volume court. In 1992, the court of appeals disposed of 2311 matters.[4] The median time for disposition of a case was 158 days from the date of filing.[5] Regular three-judge panels heard 1515 cases and many other cases at Special Term;[6] 168 of these cases were heard on thirty-four separate dates at seven different locations in greater Minnesota in cities such as Rochester, Owatonna, New Ulm, Litchfield, St. Cloud, Bemidji, and Duluth.[7] The court of appeals is a court of statewide jurisdiction and is committed to holding hearings around the state. In 1993-1994 the court hopes to hold additional outstate hearings at Crookston and at area law schools.

Seventy-three percent of the cases filed ended at the court of appeals.[8] The Minnesota Supreme Court granted review of

4. Court of Appeals Case Flow: 1988 through 1992 (unpublished internal court document, on file with the Clerk of the Appellate Courts, 25 Constitution Avenue, Saint Paul, MN 55155).

5. *Id.*

6. Number of Cases Per Month/Per Panel for 1992 (unpublished internal court document, on file with the Clerk of the Appellate Courts, 25 Constitution Avenue, Saint Paul, MN 55155).

7. 1992 Greater Minnesota Hearings (unpublished internal court document, on file with the Clerk of the Appellate Courts, 25 Constitution Avenue, Saint Paul, MN 555155).

8. 1992 Petitions for Review for Court of Appeals Cases (unpublished internal court document, on file with the Clerk of the Appellate Courts, 25 Constitution Avenue, Saint Paul, MN 55155).

only four percent of the remaining twenty-seven percent of the cases.[9] These statistics confirm that the court of appeals hears appeals in a timely fashion, eliminating the concern that the court would merely be an additional, intermediate stop adding to the delay of finality.

The court of appeals has accomplished this objective even though it has significantly fewer judges than initially allocated, based upon the number of case filings.[10] The court has dealt with increasing caseloads by pioneering new case management techniques while continuing to deliver on its promise of oral argument when properly requested, written decisions explaining the reasons for each disposition, hearings in greater Minnesota, and rendering of opinions within ninety days of hearing.

II. Issues Facing the Court of Appeals and the Judiciary

What issues will challenge the court of appeals in the next decade? Five areas present the most compelling issues: criminal law and the problem of violence, family law, maintaining access to the judicial system, developing and incorporating technology, and meeting the needs of an increasingly diverse society.

A. Criminal Law and the Problem of Violence

Our society continues to seek judicial solutions to criminal activity, such as drug abuse, gang-related offenses, violent crime, sex offenses, and drunk driving. As penalties for these and other crimes increase, society must expect more litigation and appeals dealing with issues such as prison conditions, the impact of past conduct on sentencing for a new offense, the proportionality of sentences to the crimes committed, and challenges to the adequacy of appointed counsel.

The "population bubble" that is causing the state budget for school funding to increase has also affected the judicial system. Juvenile and young adult offenses will rise as the population

9. *Id.*

10. Minn. Stat. § 480A.01(3) (1988). Until 1990, the statute stated that "the normal number of judges of the court of appeals shall be one judge for every 100 cases in that average." *Id.* The 1990 amendment eliminated the references to a set number of judges tied to an average case load. Minn. Stat. § 480A.01(3) (1992).

bubble of sixteen to twenty-five-year-olds passes through the judicial system. If these offenders receive lengthy prison sentences as a result of mandatory minimum and repeat offender statutes, our criminal court docket will increase. In addition, prisons will become more crowded, and government will have to invest greater sums in education, vocational training, and other programs to prepare prisoners for their eventual return to society. As the number of offenses punishable by life without parole increases, the demand for and the cost of prison medical care will become more of an issue. If the past is a guide, all of these issues will come before the court of appeals.

The indeterminate commitment of violent sex offenders as psychopathic personalities requires the judiciary to reconsider the interplay between state hospitals and correctional facilities. We have an obligation to protect society and vulnerable patients from these offenders. Also, we must adequately treat offenders committed to the state hospitals because of their inability to control violent sexual behavior.

Increasingly, the United States Supreme Court is returning constitutional questions to the states. More than ever, we must interpret legislative enactments, police conduct, and criminal issues under our state constitution. We will need to develop a coherent approach to state constitutional analysis, to minimize charges that the analysis is driven by the desired result rather than logic, reason, and justice.

Finally, the court system must struggle to balance retribution, rehabilitation, and the prevention of future crimes, while at the same time respecting the defendants' rights to due process at every stage.

B. Families and Children

In the past decade, the number of marriage dissolutions has increased. The courts must deal with paternity issues, foster care, grandparent petitions, interstate custody disputes, enforcement of foreign child support orders, termination of parental rights, property division, and all of the other pressures and issues that confront the family in crisis.

Jurisdiction over family law matters often continues for years, resulting in the same family appearing before the court many times. In many vital ways, the adversarial system has not

effectively served the parties. Often children become pawns in the dispute, and the litigation consumes the parties' assets. Courts must provide leadership to assess when and what changes are necessary so that disputes are resolved in a manner that best serves the parties' interests.

Disrupted home life and increased family pressures inevitably involve more juveniles in the criminal justice system. We must devise and implement methods to break the cycle of violence and the disruption of families that destroys our children's future. Domestic violence and abuse touch too many lives, and the continuing cycle that has remained untreated in the past will require time, effort, and imagination to break.

In the meantime, the courts often out of necessity assume the duty of protecting child and adult victims. Prompt intervention, thoughtful judicial responses, and continued follow-up can greatly aid the recovery process and assist family members to make positive life changes.

C. Access to the Judicial System

As attorney fees increase and parties face uncertain financial circumstances, more litigants are unrepresented by counsel. Litigants appearing pro se have differing education and cultural backgrounds. At a time when court budgets are tight and caseloads are expanding, pro se litigants require more individualized attention from the courts and court employees.

Counties balk at payment of in forma pauperis transcripts, briefing, investigative, and other expenses that are often required for an adequate defense. If we are to retain trust and confidence in the judicial system, we must work even harder to meet the needs of all who require its services by guaranteeing that economic factors alone are not a bar to access to the system. In this regard, we must be open to change and willing to experiment with alternative methods of delivering our services.

D. Technology

Technology is a double-edged sword for the judicial system. While technology increases efficiency and enhances case management, it also increases the complexity of the issues the courts must decide.

The court maintains a strong technological infrastruc-

ture, thus enabling the court to keep on top of its caseload. Personal computers, local area networks, interactive video, technology-driven case management techniques, and computerized research are now part of our everyday life. Cases are tracked and monitored at every stage of the appellate process to insure efficiency and to allow dissemination of information to litigants and legal counsel in a timely fashion.

Technology has also created complex legal issues involving sophisticated technical evidence. Modern technological advances will continue to challenge the court in applying legal precedent and in fashioning an analytical structure for future developments. Education of judges in these areas is a must. We cannot afford to do "business as usual" while the legal and business communities move ahead.

E. Serving an Increasingly Diverse Society

We who serve on the court cannot be blind to the racial, ethnic, and cultural composition of the society served by our legal system. We must learn to recognize and to appreciate the benefits that come with cultural diversity.

Minnesota has moved forward in recent years by making the judiciary itself more representative of the state's diversity. In June 1993, the Minnesota Supreme Court released its task force study on the effects of racism in our legal system.[11] This report provides insight into the issue of diversity in the court system.[12] Prospectively, the Task Force's report will also help us to recognize and to understand how racial attitudes and cultural differences affect the delivery of justice. Our challenge will be to use these insights to better serve the needs of all the people who use the courts.

IV. Judicial Cooperation and Governance

The Minnesota judiciary has experienced two major changes during the past decade: the creation of the Minnesota Court of Appeals and the combination of the lower courts into one district court system with judicial district governance and administration. Both developments have improved the quality and the efficiency of the judicial system. These developments have

11. Minnesota Supreme Court: Task Force on Racial Bias in the Judicial System (1993).

12. *Id.*

fostered an increased awareness that all judges are part of one system, one team. We need to work together to accomplish our internal and external goals.

Appellate courts must understand and appreciate the critical role the district court judges play in making the system work. The court of appeals has already taken steps to better this understanding. During my tenure on the court, I have made it a priority to attend judicial district meetings, and I will continue to do so on a regular basis. Information has been freely and candidly exchanged at these meetings, and I have conveyed these comments to the judges of the court of appeals.

The court of appeals has recently established a liaison system whereby one or more of the judges of the court will serve as a liaison to each of the judicial districts. As chief judge of the court of appeals, I have put a high priority on being active in the Conference of Chief Judges and the InterCourt Committee. I have placed an increased emphasis on communicating to district court judges those district court actions that cause problems for litigants in the court of appeals. This investment is amply rewarded by eliminating any unnecessary appeals.

V. Written Opinions and the Delivery of Services

In the broadest sense, Minnesota citizens are the court of appeals' customers; however, litigants, attorneys, and district court judges are the chief consumers of our product. What is our product? It consists of two main facets: (1) the written product we produce in the form of opinions and orders, and (2) the service we provide as judges and staff to those who appear before us. Litigants, attorneys, and district court judges expect timely processing of appeals, courteous treatment from judges and court staff, well-reasoned and consistent opinions, and decisions that provide a clear precedent for future cases. Success at these goals is essential for building confidence and trust in the court of appeals. Hence, these objectives will continue to demand the court's attention in the future.

A. Written Opinions

Well-written and consistent opinions play an essential role in the proper functioning of an intermediate appellate court. Recently, former Judge Don Burnett of the Idaho Court of Appeals succinctly stated:

> Judges are professional writers. We are paid not merely to decide cases but to explain our decisions in writing. A well-crafted opinion is the quintessence of our work. Yet many of us neglect our writing skills. We think it is enough to reach appropriate results in the ever growing number of cases before us. Even this modest goal will prove elusive, however, if we muddle our thinking, or befog the minds of our readers, with bad writing. . . .
>
> . . . [E]ffective communication is not merely icing on the cake of appellate decision making; it is an indispensable part of each judge's responsibility. We know the value of clear expression.
>
> We know that obscurity and legalese are bad for the courts. They create the impression that judges shroud sloppy thinking in an imperious mystique. We also know that failure to communicate is bad for the administration of justice. Our opinions cannot provide guidance if trial judges, lawyers and legal scholars fail to understand them. But there is another reason—more subtle, and perhaps more important—why appellate judges must write clearly. It is that thought and expression are interconnected.
>
> . . . .
>
> Clear expression, then, is not merely a linguistic art. It is the testing ground of ideas. Through the discipline of putting our thoughts into words, we determine whether our thinking is sound.[13]

On high-volume courts, a frequent concession to getting the opinion out is a low priority on writing well-crafted opinions. The high volume and ninety-day deadline restrict the time available to craft opinions well. Nevertheless, as Judge Burnett states, the well-crafted opinion is the "quintessence of our work" and the "best testing ground for the soundness of our thoughts."[14] For these reasons, an immediate goal of the court of appeals is to improve the quality of its opinions. As part of this process, the judges of the court recently participated in a seminar with a prominent judicial writing instructor to improve our writing skills. Exercises such as this will be a regular practice of the court in the future. We intend to build on these and similar experiences to strengthen our written product and to renew our commitment to concise, well-reasoned opinions.

---

13. Don Burnett, Ret. J., *Appellate Opinions: The Discipline of Clear Expression*, 5 ABA REMAND 4 (1989).

14. *Id.*

B. *The Question of Consistency*

Like many practicing attorneys, prior to my appointment, I believed that the court of appeals rendered inconsistent opinions. One of my aims, upon being appointed, was to confront this issue. Though I have not resolved the issue to my complete satisfaction, I have discovered some insights worth sharing.

First, the problem is in part reality and in part perception. Some of the court's opinions appear to be inconsistent. This is an inherent risk of a sixteen-member court that sits in three-judge panels.[15] I believe, however, that the problem is more perception rather than reality. In each case that comes before us, we must apply the proper standard of review. Often, the applicable standard of review is whether the district court abused its judicial discretion. In these cases, the court of appeals affords the district court broad discretion. While the court of appeals may have reached a different result under de novo review, the result is that the body of law created can appear disjointed as a result of differing standards of review.

When the cases are read with the appropriate standard of review in mind, the perceived inconsistency disappears. For this reason, members of our court often recommend that parties look more to court reversals rather than court affirmances for guidance, because affirmances often turn on the issue of abuse of discretion.

Second, it is to the litigant's advantage to maintain that our opinions are inconsistent for the purpose of review by the supreme court. Many petitions to the supreme court allege that the case requires review because its result is inconsistent with other court of appeals opinions. Most of these allegations, however, do not survive the supreme court's scrutiny, as evidenced by the low number of successful petitions for review.

Third, we are still a young court, not yet ten years old. During the past decade, the court of appeals has developed an extensive body of case law. Because of change and evolution supreme court doctrine and legislative enactments, some in-

15. It is worth noting that, because of its central location and its rotation of panels, our court of appeals has a significant advantage in attaining consistency over other jurisdictions where the intermediate appellate court is geographically decentralized.

consistency is not only inevitable but predictable. However, as the court matured, the frequency of such results decreased.

We are an active functioning court with sixteen different judges, all of whom are independent thinkers with differing theories of jurisprudence. We will continue to show variations in our jurisprudence. The goal is to minimize these variations.

A partial solution to this dilemma is education and heightened awareness. When I speak to district court judges and attorneys, I raise this issue and request that they forward to me examples of inconsistent opinions. Remarkably, I have received very few in response to my requests. Of those that I have received, many are distinguishable. Those that raise legitimate inconsistencies are circulated to the judges to increase their awareness of situations where inconsistencies arise.

Heightened awareness will minimize both the real and perceived problem. I have also put a top priority on internal review of opinions to minimize inconsistencies. Finally, in those cases where inconsistencies in court of appeals opinions surface, the supreme court may provide further review.

C. Civility and Tone

I have been an attorney since 1968. Most of my practice has been in the metropolitan area. During my years of practice, one of the major disappointments I have experienced is the decrease in civility among attorneys and between the bench and the bar. This concern is shared by others. United States Supreme Court Justice Sandra Day O'Connor recently made this point in a convocation address to the students at Wake Forest University.[16] In her address, she expressed her concern that confrontational tactics are contributing to a decline in professionalism and to public dissatisfaction with the legal system. She likened the confrontational tactics to those of actor Sylvester Stallone's fictional renegade war hero John Rambo.[17] She stated: "We don't need to look at legal arguments as a battle or a siege. . . ."[18]

Minnesota Supreme Court Justice John E. Simonett expressed a similar concern when he spoke at the Judicial Con-

16. *Nation Briefing "Rambo Tactics" Called Needless*, ST. PAUL PIONEER PRESS, Apr. 4, 1993, at 6A.
17. *Id.*
18. *Id.*

ference of the Federal Eighth Circuit in Minneapolis on July 23, 1992. Justice Simonett stated that "lawyering is a profession of civil governance and . . . civility of manners is not a sign of weakness in an advocate, but a measure of true competence and effective representation."[19]

The judiciary plays a crucial role in preserving and promoting civility in the legal profession. The judiciary should be civil at all times in its dealings with those who come before it. Our capacity to manage conflict appropriately provides a model for society. As I look to the future, I intend for the court of appeals to assume a leadership role in this area. I believe that in the past, through the tone of our orders and our demeanor, our court has not sent a clear message to the bar that we place a high value on these attributes. In the future, by our actions and words, we will send a clear message that we deliver a high level of professional courtesy and civility.

IV. Other Issues

As I look to the future of the court of appeals, there are other issues that will potentially face the court. One of these issues is the bi-annual discussion of combining the Minnesota Court of Appeals and the Workers Compensation Court of Appeals. It is virtually impossible to predict whether the legislature will choose this course, and the court has little impact on the ultimate decision. We can only keep the court of appeals efficient, effective, and technologically current so that, if the merger does happen, it can be accomplished with a minimum of problems.

Another issue relates to the court's action as its caseload continues to grow, potentially surpassing the court's capabilities of coping effectively with the increase. During this present period of tight budgets and cutbacks, additional judges are not anticipated. The focus is on making the system function as efficiently as it can with our current resources. If the caseload should continue to increase, however, it is important that we maintain a credible position with legislative and executive decision makers on whether to add judges. We should not shy away from making a request for additional judges if that is what the court of appeals needs to function effectively.

19. *1992 Judicial Conference*, 11 Eighth Cir. Jud. News, Fall 1992, at 2.

V. CONCLUSION

I have briefly looked at the factors that I believe will shape the court of appeals and the judiciary over the next decade. I say with experience and confidence that the court of appeals works. The court is maturing; some areas need refinement and development. We are well-positioned to face the challenges that are inevitable during our second decade. The infrastructure exists to do the job.

I do, however, have a real concern that many of the future problems are not inherently "legal" but, rather, are societal. In the past, society has placed a heavy burden on the legal system and has looked to the courts to lead the way in solving the tough issues of our society. In 1984, Justice Simonett expressed his concern about the burden when he said that the law is being asked to perform a function it was never designed to perform.[20] To expect too much from the courts will inevitably result in a loss of trust and confidence in the judicial system.

A primary goal in the years to come will be to educate the public about what the judiciary can and cannot do in dealing with society's problems. Few of society's problems can be "cured" by the courts. However, we have a definite role to play and are uniquely suited to the task of learning from experience, foreseeing the implications of our decisions, and making difficult choices, while remaining fully accountable for every decision. That is why the court of appeals and the judicial branch of government will always play a crucial role in our diverse society. As a strong and independent judiciary, we can deliver on the guarantee that, under our Constitution and legal system, everyone is equal, everyone is guaranteed the same opportunity, and everyone will be treated fairly.

20. Honorable John E. Simonett, *Meditation on the Limits of Law*, II J. LAW & RELIGION 1, 3 (1984).