STATE OF MINNESOTA

IN SUPREME COURT

C9-85-1506

In re Eighth District
Judicial Vacancy

PETITION FOR REHEARING

Sixteenth District Bar Association
and
Twelfth District Bar Association

Petitioner.

TO: The Supreme Court of the State of Minnesota

The petitioner, Sixteenth District Bar Association and Twelfth District Bar Association, requests rehearing by the Supreme Court of the above-entitled matter upon the following grounds:

1. In its decision filed November 30, 1990, the Supreme Court failed to consider whether Minnesota Statute 2.722, subd. 4, the "sunset and transfer" law, is unconstitutional as applied. See Appendix A, Brief in Support of the Continuation of the Office of District Judge Made Vacant as a Consequence of the Retirement of the Honorable Richard A. Bodger, Chambered in Swift County, filed by the Sixteenth District Bar Association, pages 5 - 14; and see Appendix B, partial hearing transcript of argument on constitutional issues by JoEllen Doebbert on behalf of the Association.

In its brief, Petitioner Sixteenth District Bar Association requested the Court to consider the constitutionality of the sunset and transfer law on two bases: 1) The sunset and transfer law is unconstitutional as applied to this judgeship because termination of the district judgeship constitutes an unconstitutional abolition of a district judge's office during his term in violation of Minnesota Constitution Article VI, Section 4; and 2) Termination of the district judgeship in Swift County deprives the Eighth District electorate of the elective franchise.

The Court is obligated to address the constitutional issues, unless the Court continues the judgeship in Swift County. Continuation of the judgeship in Swift County would not abolish the Eighth District judgeship during the current term of office and would not deprive the Eighth Judicial District electorate of meaningful suffrage.

2. The Court failed to consider the district's concerns in regards to access by its citizens, especially those of Swift County, to the judiciary. See tape of October 29, 1990 hearing within the Court's possession; Appendix A, pp. 20 - 27; and Appendix C, Brief in Support of the Continuation of the Judgeship Having a Vacancy as a Consequence of the Disability Retirement of Hon. Richard A. Bodger, Judge of District Court, at Benson, in Swift County. Specifically, the district raised concerns about the impact on the poor, the elderly and the abused in an area of the state not served by public transportation; the impact of shifting the burdens of time and travel onto litigants, attorneys and onto local government personnel in order to find a judge to meet legislatively-imposed deadlines; and the impact on local and neighboring communities of having no chambered judge in an area the size of the seven county metro area.

The Court's review of this evidence upon rehearing would reveal that the citizens of the Eighth District, especially Swift County, but also neighboring counties without chambered judges which have relied upon the Swift County judge in the past, will be denied effective judicial administration and adequate access to

justice if the judgeship is not continued in the Eighth District and chambered in Swift County.

3. The Court overlooked the seriousness of removing the last chambered judge in the county. The importance of this is underscored by the institutional promise made by then Chief Justice Douglas K. Amdahl to the Legislature in 1986 at a hearing on the proposed repeal of the "sunset and transfer" law. See Appendix A, pp. 34 - 35 and Appendix C, p. 6. Chief Justice Amdahl said:

> In the three situations I have described, a resident judge remained chambered in the county in which the vacancies arose. That fact alleviated the judges' concern about access to judges by law enforcement personnel and the public in general.
>
> We have not yet been faced with a situation that would involve a vacant judgeship where the transfer would result in removing the only sitting judge from that county.
>
> I can assure you that if this condition were to appear, the Supreme court would be extremely concerned about access to remaining judicial resources.

Minnesota House of Representatives Judiciary Committee, February 26, 1986.

In previous decisions, the Court's concern about removing the last chambered judge from a county -- and its impact on access to justice -- was evident. See Appendix A, p. 34, citing orders of the Court dated April 14, 1987 and June 20, 1986. In its decision filed November 30, 1990, the Court failed to consider the impact of removing the last chambered judge from Swift County and by doing so overlooked the seriousness of this change in precedent and stated policy.

For these reasons, petitioner seeks an order of the Court granting rehearing of the above entitled matter.

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A

STATE OF MINNESOTA
IN SUPREME COURT
C9-85-1506

In re Public Hearing on Vacancy
in a Judicial Position in the
Eighth Judicial District

BRIEF IN SUPPORT OF THE CONTINUATION OF THE OFFICE OF DISTRICT JUDGE MADE VACANT AS A CONSEQUENCE OF THE RETIREMENT OF THE HONORABLE RICHARD A. BODGER, CHAMBERED IN SWIFT COUNTY

October 22, 1990

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> In the United States, the state trial court is the key to preserving individual rights and maintaining the fragile and vital balance of power between the society or state and the individual. These courts set the tone for other government institutions and for the private sector. While state appellate and federal courts decide some high visibility cases, and while citizens more often encounter limited jurisdiction courts, it is the general jurisdiction courts in each county that are the guardians of constitutional protection, the rule of law and principles of equity.

"Time to Justice: Caseflow in Rural General Jurisdiction Courts," Rural Justice Center. March, 1990, p.3.

1. Our District: Geography and Demography.

For the Court to fully appreciate our arguments and our judicial need, it must first become familiar with the geography and demography of our district.

By metropolitan standards, the Eighth Judicial District is a large district. The boundaries of the district encompass an area 3.13 times greater than the area of the seven county metropolitan area of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. (Appendix 1). Given good weather, it requires three hours to drive from end to end. (Appendix 3). Nonetheless, it is the least populous of the 10 judicial districts. It employs the fewest lawyers. And it has the fewest judges. Indeed, as this court has already observed, it is the only district in the State already served by less than one judge per county. See Order of June 20, 1986 at 9.

By metropolitan standards, the seats of government in the area are small. With the exception of Willmar (population 15,895), Montevideo (population 5,845), Litchfield (population 5,924), and Morris (population 5,367), no county seat in the district has a population exceeding 4,000 persons. If one discounts the institutional population drawn to Morris by the University of Minnesota, there is no city in the north half of the Eighth District (The Sixteenth District of the Minnesota Bar Association) having a population in excess of 4,000.

Population is sparse in the district, averaging only 20.2 persons per square mile. (The state average is 51.2 persons per square mile.) (Appendix 13) The population is also predominantly rural in the most literal sense. Sixty six percent of all residents of the Eighth Judicial District live outside of the city limits of the county seats. (Appendix 2).

On average, Eighth District residents are older than populations elsewhere in the state. This is due in part to the fact that eighteen percent of the district population is age 65 or older, as opposed to twelve percent statewide. (Appendix 13) They are also considerably less affluent. Indeed, statewide average household income exceeds the district average by fifty percent, and average metro area income exceeds the district household income by ninety percent. (Appendix 13) As will be noted later, all of these demographic characteristics influence this court's ability to oversee "effective" judicial administration within the district.

2. Minnesota Statutes Section 2.722 Subd. 4: History, Authority, and Constitutional Considerations.

a. Legislative History.

The past decade has not been kind to much of the area served by the Eighth Judicial District. Economic difficulties in the mid-1980's precipitated the failure or contraction of many farms, businesses, and institutions, and the populations of most counties in the district have waned. To the extent that this diminished population may be considered by the court in this proceeding, it is an irony indeed that the "sunset and transfer" law was born in a "smoke filled room" at the very height of the farm crisis. See, e.g., Minnesota Laws 1985, Chapter 5.

Minnesota Statutes Section 2.722, subd. 4, the statute commonly called the "sunset and transfer" law, was enacted in 1985 as a part of the $1.1 billion dollar appropriations bill which funded virtually all State Agencies for the 1985-1986 biennium. Minnesota Laws 1985, Special Session Chapter 13. The amendment was never proposed as a bill in the 1985 House of Representatives and was given no committee hearing in that body whatsoever. The law has since withstood one constitutional attack on due process, among other, grounds. Order of October 5, 1985. Nonetheless, we must agree with one State Representative that the law is of "dubious legislative pedigree." See letter to Chief Justice Popovich from State Representative Sylvester Uphus dated October

19, 1990.

Concerns about pre-enactment process deficiencies and a what was perceived to be a rigid judicial adherence to the Weighted Caseload (WCL) study generated a 1986 attempt to repeal the "sunset and transfer" law. See 1986 House File 1797. The bill was amended by the House Judiciary Committee to function as a moratorium on the implementation of "sunset and transfer" following a presentation by then Chief Justice Amdahl. Nonetheless, the moratorium on "sunset and transfer" did pass the House Representatives by a vote of 74 to 48. See 1986 Journal of the Minnesota House of Representatives, p. 6,999. However, the companion bill was not passed by the Senate and, unlike the "sunset and transfer" law, the provisions of House File 1797 did not make their way into an unrelated conference committee report.

b. Authority.

The pertinent portion of Minnesota Statutes Section 2.722, subd. 4 reads as follows:

> When a judge of the district, county, or county municipal court dies, resigns, retires, or is removed from office, the supreme court, in consultation with judges and attorneys in the affected district, shall determine within 90 days of receiving notice of a vacancy from the governor whether the vacant office is necessary for effective judicial administration. The supreme court may continue the position, may order the position abolished, or may transfer the position to a judicial district where need for additional judges exists....

To the extent permissible under the Minnesota Constitution, the "plain words" of the statute authorize the Supreme Court to terminate a judicial office in one district and certify a vacant

position in another district without further legislative action. See Section 2.c., infra. However, the authority to "abolish or transfer" may not be exercised until the Court, "in consultation" with local judges and attorneys, has "determined" that the vacant office is not "necessary for effective judicial administration."

It must be emphasized that a finding of no district need for the vacant office is the threshold for any action, other than continuation, under the statute. This threshold must be distinguished from any form of balancing a "greater" need of one district against a "lesser" need of another. The plain words of the statute do not authorize such a "need balancing" application of the statute, and, when giving testimony on the proposed repeal of "sunset and transfer," former Chief Justice Amdahl gave an institutional promise that it would not be so applied. He said,

> I wish to underscore a fundamental principle that has guided us. We have not yet, nor will we in the future, transfer judges from districts where they are needed to other districts where there are greater needs. (emphasis added)

Minnesota House of Representatives Judiciary Committee, February 26, 1986.

The plain words of the statute, together with Justice Amdahl's comments, make it quite clear that the vacant office of Eighth District Judge must be continued unless the court finds it to be utterly unnecessary to "effective" Eighth District judicial administration.

c. Constitutional Considerations

i. The Sunset and Transfer Law is unconstitutional because termination of the district judgeship in the Eighth Judicial District would constitute an unconstitutional abolition of a district judge's

office during his term.

The judicial power of the state is vested in a supreme court and a district court. Minnesota Constitution, Article VI, Section 1. Article VI, Section 4 of the Minnesota Constitution provides,

> The number and boundaries of judicial districts shall be established in the manner provided by law but the office of a district judge shall not be abolished during his term. There shall be two or more district judges in each district. Each judge of the district court in any district shall be a resident of that district at the time of his selection and during his continuance in office. (emphasis supplied).

This provision prohibits the abolition of a particular district judge's office during his term of office. The term of office for all judges, including district judges, is "six years and until their successors are qualified." Minn. Const., Article VI, section 7. There is no similar prohibition on the abolition of a supreme court justice's office during his term, but the Constitution does require one chief judge and at least six but no more than eight associate judges.

As noted, the Constitution leaves to the Legislature the decision as to number of judicial districts in the state and their boundaries, but prescribes a minimum of two district court judges in each district. It is significant, too, that the people adopted a Constitution which sets forth in the same section both a prohibition on the abolition of a district court judge's office during his term and the grant of power to the Legislature to create judicial districts. The Sixteenth District Bar Association contends that it was not serendipity which placed these clauses in

the same sentence of Article VI, Section 4. Rather, it goes without saying that the word "district" is used for a reason when describing a "district judge." Simply put, the office of a district judge is unique to his district and such office cannot be eliminated during his term of office under Article VI, Section 4 of the Minnesota Constitution.

Furthermore, the framers' wisdom in describing general jurisdiction judges as "district judges," where they hold office in their districts during their term of office, forecloses the potential of a very serious threat to our system of separation of powers. The framers' drafting obviates the mischief which could be done if any authority -- be it governor, legislature, or court -- possessed the power to dispense with a district judge's office during his term, either by shipping him to the far reaches of the state because of a "bad" decision or by purging his position because "there are just too many judges." Thus, the Constitution has safeguarded the independence of the judiciary by providing that district judges hold office in their districts and by providing that district judges' offices shall not be abolished during their terms.

The sunset and transfer law, Minn.Stat. 2.722, subd. 4, permits the abolition, continuation, or transfer of a vacant judicial office following consultation with judges and attorneys in the affected district and upon a determination of need for the position. The Supreme Court's duty under the statute is to determine whether the vacant office is "necessary for effective

judicial administration." Once this determination is made, the Court has the power to abolish the office if it is not necessary for effective judicial administration, to continue the office if it is necessary for effective judicial administration, or to transfer the office to a judicial district "where need for additional judges exists."

The Association respectfully contends that the sunset and transfer law is unconstitutional as applied to district court judges. The Minnesota Constitution has vested the judicial power of the state in the supreme court and the district court. The district court cannot be disposed of by the Legislature because it is a constitutionally created court. Likewise, district court judgeships cannot be abolished during a district judge's term of office, as the Constitution proscribes such action. Furthermore, as argued supra, it was not sheer whimsy which provided the basis for the constitution's framers' use of the words "district judge" and "judicial district." Rather, this provision underscores the framers' apparent concern for maintaining an independent judiciary.[1] Their words must be given their plain meaning and should not be ignored.

It is upon this authority which the Association argues that the district judgeship made vacant by the medical retirement of

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[1]Section 4 of Article VI is but one provision which carries out the framers' obvious intention to create a system of separation of powers. See, e.g., Article III (division of power among three branches); Article VI, section 6 (prohibition on holding non-judicial office); Article IV (legislative branch); and Article V (executive branch).

the Honorable Richard Bodger of Swift County cannot be either abolished or transferred at this time because Judge Bodger's term of office does not expire until 1992. To remove this judgeship from the Eighth Judicial District during the current term of office would be to abolish the office, as the office of district judge belongs to the Eighth Judicial District and to no other. To say that the office of "district judge" really only means "general jurisdiction judge" is to abrogate the clear intent of the framers and the plain words of the Constitution. Therefore, it is respectfully submitted that the Supreme Court is without power to remove this judgeship from the Eighth Judicial District prior to 1992, regardless of the manner in which the removal is performed, that is by abolition, termination, or transfer. The Constitution requires the Governor to appoint a successor to the Bodger judgeship within the Eighth Judicial District.

The statute's use of the word "position," rather than "office," should not be used as a means of escaping the constitutional reality that a district judge holds "office" for a specified term. The position of district judge is an elective office, not another full time equivalent (FTE) position which can be transferred from place to place without certain legal requirements having been met. Indeed, the "office" of a district judge continues until its abolition. The term of a district judge's office is six years, and, despite a vacancy in the office, the "office" continues until the end of the six year term. See also Black's Law Dictionary, 5th ed. ("Term...A fixed period;

period of determined or prescribed duration... The word in a legal sense means a fixed and definite period of time which the law prescribes that an officer may hold an office.")

The provisions of the sunset and transfer law are also unconstitutional in the manner in which they have been applied. The statute gives the Supreme Court three options: it can continue the position in place, it can abolish the position altogether, or it can transfer the position to a district where there is a need for additional judges. To date, the Supreme Court has not announced that it has "abolished" a district judge position. It has, however, "terminated" judicial positions on several occasions. See, e.g., Order of October 4, 1985; Order of November 20, 1985; and Order of April 14, 1987.

The Court has "terminated" positions where it has determined that they are not "necessary for effective judicial administration" and thus need not be "continued" in the affected district. While the opposite of "continue" is "discontinue," it is argued that the statute provides only two options for the court if it chooses to not "continue" the position: it must either abolish it or transfer it.

We have already argued the applicability of the Constitution to this statute relative to the abolition of a district court office during the six year term of office. It is clear, therefore, that the outright abolition of the Judge Bodger seat by the Supreme Court pursuant to the sunset and transfer law would be illegal. Thus, the Supreme Court cannot abolish the Swift County judgeship.

The words "abolish" and "terminate" have been used interchangeably by the Legislature when describing an end to a particular judgeship. For example, Chapter 487 of Minnesota Statutes provides for the "termination" of "the office of a [county] judge...at the expiration of the judge's term" if the "efficient administration of justice" requires it. Minn.Stat. s. 487.01, subd. 6. Another subdivision of the same section allows for the reduction in the number of county court judges when the "judicial business" of a county court permits it. It further states that "[t]he office of any judge shall not be terminated until the expiration of the term of the judge." Minn.Stat. 487.01, subd. 7.

The Legislature used the word "abolish" later in the statute to eliminate two county court judgeships (one in Carver County and one in Scott County) and add two district court judgeships in the First Judicial District. Minn.Stat. s. 487.03, subd. 6. Thus, the Legislature has used the words "terminate" and "abolish" interchangeably when referring to a particular judgeship.[2] The word "abolish" is also used in the Minnesota Constitution to apply to a particular office of district judge. Minn.Const. Art.VI, s.4 ("the office of a district judge shall not be abolished during his term").

The Minnesota Supreme Court has chosen to use the word

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[2]It is noted that the Legislature has also used the word abolish when it has chosen to eliminate an entire class of judges. See, e.g., Minn.Stat. 487.08 (judicial officers); Minn.Stat. 489.01 (court commissioners).

"terminate" when describing the elimination of a particular judicial position in a judicial district pursuant to Minn.Stat. 2.722, subd. 4. Thus, the Supreme Court's action to terminate a district judgeship can only be construed as abolishing the judicial position. See, e.g., Black's Law Dictionary (Terminate: "to put an end to;" abolish: "Put an end to.") In the instant case, such action would not be permitted by the Constitution.

The effect of the Supreme Court's "termination" of judicial positions in past cases, however, has been to place the office in suspended animation until the Supreme Court "transfers" the judicial position and the Governor appoints in the manner provided by law. See, e.g., Order of October 4, 1985. The Court has exercised its power to transfer judicial positions to other judicial districts. In one case, the Court terminated the judicial position in one district and transferred the position to another judicial district in the same order. Order of April 14, 1987. The plain language of the sunset and transfer law would seem to dictate that where the Court determines that a position is not needed for "effective judicial administration," and thus should not "continue" in that district, that the Court must either abolish the position or transfer it. The Court has 90 days to make its determination and certify a vacancy to the Governor.

As applied in the case of Judge Bodger's seat, however, transfer of the office to another judicial district at this time would violate Article VI, Section 4 of the Minnesota Constitution. The Sixteenth District Bar Association contends that any removal -

- whether by abolition or transfer -- of the district judgeship from the Eighth Judicial District prior to 1992 would be unconstitutional.

ii. Abolition or transfer of a district judge's office during his term would deprive the electorate of the franchise and violate the Constitution.

Abolition of a district judge's position or transfer of the position from the judicial district in which his office exists during his term of office would deprive the electorate of the right to a duly elected office holder. The constitutional prohibition against abolition of a district judge's office during his term of office, not only safeguards the independence of the judiciary, as discussed supra, it preserves the substance of one's vote, i.e., the assurance that once one's ballot is cast, the elective office belongs to the people and not to the government.

When a person votes in an election, the process affords him or her a voice in selecting a public official to serve the public good in some capacity. In this respect, judges are no different than legislators or governors. Judges perform a valued public service unlike any other. In particular, district judges, who have general jurisdiction over civil and criminal cases, are on the front lines of our judiciary enforcing our constitutional rights, the rule of law and principles of equity.

To say that the government has the power to snatch the very essence of democracy -- the elective office -- from the grasp of the electorate during the elected person's term of office is to

say that the people are not protected by the Constitution. It is to say that our Constitution means nothing. It is to say that the people are powerless and have no guardian to protect them from the tyranny of government.

But this is the very result which could be wrought by exercise of the sunset and transfer law at this point in time. Whether the act is to abolish the district judgeship or to transfer it, the Eighth Judicial District voters' right to meaningful suffrage would not be protected. The Constitution compels but one result: continue the district court judgeship in the Eighth Judicial District.[3]

3. The Court's Task: Accomplishing Effective Judicial Administration.

The Supreme Court has not specifically defined the phrase "effective judicial administration." The Court has made clear, however, that it means more than "the time actually spent by the state's...judges in handling judicial...business." Order of June 9, 1986, at LVII. Over the five year history of the sunset and transfer law, Minn.Stat. 2.722, subd.4, the Court has consistently sought information from the affected judicial district relative to the consequences of removing a judge from the district, including

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[3]It may be asserted that since the position is vacant and subject to appointment by the Governor, that the people no longer have an elected official which is their's alone. Such a view neglects the fact that the office is constitutionally protected during the term of office. Furthermore, the Governor is required to fill any vacancy that may arise in order that the people are served without interruption.

such concerns as access by law enforcement, social agencies, attorneys and litigants. See, e.g., Order of June 20, 1986, at 10.

The Supreme Court's starting point for determining "effective judicial administration" has consistently been its Weighted Caseload Study (WCL). The Supreme Court has said,

> The WCL does not measure intangibles, such as efficiency of judges or districts or levels of justice delivered. Rather it measures the time actually spent by the state's ... judges in handling judicial and quasi-judicial business.

Order of June 9, 1986, In re Second Judicial District, L, LVII.

The purpose of the public hearing process is to learn from the affected district what could happen if the judge were to be removed from the district, concerns which may not be quantifiable and which may not be reflected in the statistical analysis. In describing the public hearing process implemented by the Supreme Court, the Court in its Executive Summary to the 1986 WCL said,

> Information supplemental to the WCL is sought to address issues not adequately covered by the WCL, such as access to judges by law enforcement agencies, social agencies, attorneys, and litigants. While the WCL can calculate how much judicial work there is to be done in a particular jurisdiction, it may not adequately predict the consequences of removing a judgeship from a jurisdiction. It is only after the public hearing is held that the Court decides whether to certify, transfer, or abolish a judicial position.

Id. at 10.

In its order of April 28, 1986, wherein the Supreme Court rechambered a judge from St. Louis County to Carlton County in the Sixth Judicial District, the Court recognized the importance of access by the citizenry and rejected the argument that all the judges of the Sixth Judicial District should be chambered in

Duluth:

> 1. Judges should be accessible to law enforcement personnel throughout the district, 2. centralization of judges in one city in the district is inefficient and wasteful of the judges' time, and 3. such action deprives citizens in each of the current chambered locations of a resident judge who is aware of and reflects the diversity of interest and experience in the locality.

Order of April 28, 1986, 385 N.W.2d LII, LXIII.

The Court has attempted to supplement its objective measure of judicial need with its own "access adjustment." The access adjustment is used in areas where surplus judges have been determined to exist according to the WCL study. The access adjustment

> takes into account the location of and the need for judges within smaller assignment districts within the judicial district. It represents an attempt to provide an optimum distribution of judicial resources so that the required number of judges is matched as closely as possible to the workload of the judicial district.

Order of April 14, 1987, In re Vacancy in 5th Judicial District, 402 N.W.2d No. 3, LXIX, LXXII.

According to the Supreme Court's Research and Planning liaison, Wayne Kobbervig, the access adjustment was developed to accomplish "access to justice." The technique cannot be quantified, according to Mr. Kobbervig, because it is a purely subjective consideration. The purpose of the adjustment is to take into account other factors, such as travel distances between county seats. (Teleconference between Wayne Kobbervig and one of the authors, October 12, 1990.) The apparent result of using the Court's access adjustment is to place judge chambers in strategic

locations so that distances between court houses served by a single judge are not intolerable.

The Sixteenth District Bar Association applauds the Supreme Court's emphasis on access to the judiciary. Access, however, may mean different things in different parts of the state. In densely populated areas, meaningful access may mean having one's case processed in a reasonable period of time. While this aspect of access is also important in a rural area, the geography of access is also of utmost concern. Access becomes meaningless if the only judge available is two counties away, say 75 miles distant, you do not own a car, and bus service is non-existent.

By expressing its concern about access to justice, the Court has properly avoided the serious problems which a focus on efficiency alone could produce. One expert explained that,

> Case processing is no longer viewed as a means to an end; instead, it appears to have become the desired goal. Quantity has become all important; quality is occasionally mentioned and then ignored. Some commentators regard deliberation and the writing of opinions as an obstacle to efficiency. Proponents of management may be forgetting the quintessential judicial obligations of conducting a reasoned inquiry, articulating the reasons for decision, and subjecting those reasons to appellate review -- characteristics that have long defined judging and distinguished it from other tasks.

"Managerial Judges and Court Delay: The Unproven Assumptions," Judges Journal, Vol 23, No.1 (Winter 1984), p.9, 55.

By acknowledging that a statistical study cannot account for all the objectives of justice for which a system of judicial administration must be responsible, the Court has attempted to accomplish the statutory command that "effective judicial administration" requires a certain level of judicial resources in

a given district.

As noted earlier, the weighted case load study measures nothing more than demand for judicial service at the courtroom door. It supports a specific distribution and redistribution of judges based exclusively upon the demand so identified. Distribution of judicial resources based solely upon demand is an economic argument. Although the subject has been given little discussion in economic terms in prior "sunset and transfer" decisions, such an analysis is incomplete without some discussion of the nature of the services provided by the judicial system, and the inevitable consequences of distribution of judicial resources based upon raw demand.

It is axiomatic that Government provides certain services that the market itself is unable to deliver in an equitable fashion. Services which may be used by one person without interfering with the use of the same service by another person are known as "pure public goods." See, Pierce, Allison, and Martin, Economic Regulation: Energy, Transportation and Utilities, at 31. (1980) Examples of such "public goods" include national defense, police or fire protection, public roads and, of course, the judiciary.

Governed only by market demands, the supply of public goods will tend to be influenced by "the known inefficiencies of private monopoly." Id. at 32. One such inefficiency might be a tendency to provide service in densely populated areas exhibiting a concentrated demand for the service while neglecting the delivery of service in low demand areas.

By way of analogy, it might be conceded that construction and maintenance of roads in portions of our district may be more costly per user mile than in heavily traveled arteries. Nonetheless, the roads are built, repaired, and plowed in a manner adequate to assure the safe passage of anyone who may seek to travel here. It would be ludicrous to suggest that snow plowing budgets across the state should be based upon highway user miles. Although accurately reflecting "demand", such a measure would seriously compromise the safety of anyone undertaking travel in our district between the months of November and April.

We of the Sixteenth District Bar Association contend that justice is its own form of safety. Like safety, it should not be compromised in one location simply to meet the raw judicial demand of another.

True need for judicial services is determined by a less market oriented demand -- demand in terms of quantity of cases (persons in need of a judge) and demand in terms of meeting deadlines and emergencies which have no quantitative aspect. Put another way, need is determined not merely by sheer numbers of cases, but by the requirements of law and of justice. The law imposes deadlines upon the courts with regards to certain kinds of cases. The reasons for these deadlines are many, but essentially they are founded upon the principles of due process and maintenance of personal liberty.

Persons in need of protection call on the courts daily for assistance -- whether it is a battered woman, an abused child, or a harassed minority. These persons need immediate assistance and

their right to protection -- as it has been defined by the Legislature -- cannot be delayed lest their rights be denied. The public's need for protection by the courts is also demanded in every hamlet. Law enforcement cannot act to protect the public without meeting certain legal requirements mandated by the U.S. Constitution, some of which demand judge time, for example search and arrest warrants. Where a judge cannot be found to meet this demand, though it be but one request, the public is not served.

The notion that available judicial resources must be effective under the law, as opposed to efficient, is a salient point of the sunset and transfer law. Webster's Unabridged Dictionary defines "efficient" as "producing the desired effect or result with a minimum of effort, expense or waste;" "effective" is defined as "producing a definite or desired result." The economics of delivering judicial resources to the public is not the overriding concern of the law. Rather, as the Supreme Court has so eloquently stated, "[o]ur overriding concern is that all citizens of the state have equal and adequate access to judicial resources." Order of April 14, 1987 at LXXIV.

4. The Importance of Access to Citizens of the Eighth Judicial District.

Because of their size and accessibility, rural courts can serve the Constitution and their communities in the finest tradition of American jurisprudence. Because of their ties to the community, low volumes and personal knowledge of the parties, rural courts can fashion more just and relevant solutions than can courts in larger jurisdictions. But rural courts cannot fulfill the promise of "equal justice under law" without appropriate support and attention.

"Rural Courts: An Agenda for Action," National Conference on the Judiciary on Rural Courts, p. v.[4]

a. Geographical access in the Eighth District.

As noted earlier, the population of the eighth district is truly rural in character. If the court elects to terminate the judicial office currently chambered in Swift County, fully 72 percent of the district population will then live outside of those cities having sitting judges. (Appendix 2) Since public transportation is virtually non-existent within the district, road conditions and the mechanical fidelity of one's automobile often factor heavily into whether or not court appearances may be held as scheduled. To the extent that the already formidable distances each person, including judges, attorneys, law enforcement personnel, defendants, and witnesses must travel would be increased by the loss of a judge, the uncertainties and scheduling frustrations resulting from unpredictable impediments to travel are also certain to increase.

In connection with "geographic access" it should also be noted that area public defenders are already expected to appear in two to three counties per day. Given the distance between courtrooms, it is not uncommon to find that when one court runs late, another must wait. Such a situation promotes neither effectiveness or efficiency.

b. Shifting the burden of travel onto others.

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[4]A report published by the sponsors of the conference, the National Judicial College, the Rural Justice Center, and the Peter Kiewit Foundation.

In 1986, the Court was persuaded by the argument of those testifying at the hearing that

> a further reduction of judgeships would result in false economies in requiring four and five persons to take the time and incur travel costs in order to find an available judge outside of the county in which the matter is filed. Persons who wish to avail themselves of the judicial process should have reasonable access to judges, whether or not there is a resident judge in the county. Litigants, witnesses, law enforcement personnel, and court services employees, among others, should not with regularity be required to travel inordinate distances to have their judicial business transacted.

Order of June 20, 1986, at LXIX.

The Sixteenth District Bar Association concurs with the Court's view that burdens of time and travel should not be placed upon litigants and public servants. As noted in the many supportive letters received by the Court relative to the retention of the Bodger judgeship, the shifting of such burdens is of great concern not only to those who must travel but to the taxpayer as well.

c. Access for those in poverty

It is the experience of the undersigned and many other local practitioners that public defender and legal assistance clients have less to spend on cars and repairs than do their more affluent neighbors. Many also live on marginally maintained township roads. While both car failure and drifting snow may be viewed by a judge or prosecutor as a legitimate reason for failure to appear in court, it is not uncommon for all involved to wait in vain for a client or defendant who, because he or she has no telephone, has been unable to notify the court of his or her

inability to appear.

Access to telephones cannot be assumed within the eighth district. A surprising number of low income persons simply do not have telephones. For example, fully forty percent of all Pope County households receiving the services of a social worker are without a telephone. See Letter in file from Pope County Attorney Bruce Obenland addressed to this Court and Dated October 22, 1990.

While it is impossible to quantify the precise number of persons without a telephone, the reasons for this phenomenon are readily apparent. The thirteen county seats within the district are served by thirteen separate local access telephone areas (LATAs). There are also multiple LATAs within the several counties. (For example, Pope County alone is served by six separate telephone companies, each having its own access area.) Since long distance charges are incurred on all but the most immediately local calls, many low income persons find that the expense of a telephone simply outweighs its utility. (No pun intended.)

Given a significant number of households without telephones, short notice communications, such as cancellation and rescheduling notices, between low income persons, their attorney, and the court, are often impossible if not accomplished in person. Scheduling disruptions are inevitable if fewer judges must travel more to accommodate certain statutory deadlines for a static number of criminal, juvenile, and civil commitment cases. As this occurs, the administrative frustrations of dealing with persons not having a

telephone are bound to increase, as are the consequences to those with whom the court and attorneys are unable to communicate.

d. Domestic abuse victims

For victims of domestic abuse, access to a judge could mean the difference between life and death. See Appendix 10, St. Paul Pioneer Press and Dispatch, October 21, 1990 Usually their resources are limited, often fleeing with whatever possessions they can carry. If they are lucky, they are able to leave with the family car. A recent study by the Rural Justice Center indicates that there is a correlation between having a full time judge and a victim's willingness to follow through with an order for protection. Kathryn Fahnestock, Rural Justice Center. This confirms the Supreme Court's thoughtful comment in its Order of April 14, 1987, that "time is of the essence" in certain matters such as domestic abuse.

e. Law enforcement access

The authority given this court under the "sunset and transfer" law reflects a concern for "effective" use of judge time. In keeping with that concern, this court should consider the judicial inefficiencies that may result when law enforcement access to judges is restricted. If the mechanics of securing a search warrant become burdensome or inordinately time consuming, the process becomes a disincentive for good police work. Questionable warrantless searches become the subject of time consuming evidentiary motions at best, and acquittals of guilty persons at worst. Granted, it may occasionally be possible for peace officers

to secure a warrant via facsimile transmission, but court FAX facilities are rarely available at any time other than normal working hours. Additionally, most judges still prefer an opportunity to observe demeanor when issuing warrants. Given these circumstances and a near universal lack of FAX facilities in judge's homes, it remains likely that Law enforcement personnel in Counties with no chambered judge may be obliged to drive a minimum of an hour for an emergency warrant. Such a situation is unacceptable for effective law enforcement.

In addition to the acquisition of warrants, there are a substantial number of juvenile, criminal, and civil procedures which require hearings within a specified time. Counties, through their respective attorneys and agency personnel, play a significant role in the execution of these proceedings. Proceedings involving the confinement of a juvenile or proposed chemical dependency or mental illness Civil Commitment patient must be commenced, at the most, within 72 hours following confinement. See, e.g. Minnesota Statutes Sections 260.172, 253B.07, subd. 7. These initial hearings are followed by hearings within eight and fourteen days respectively, and commitment patients must be examined by a qualified psychological expert (who must also be available for the hearing) in the interim. When children are removed from the home in Juvenile and Child Protection matters, the County must, of course <u>try</u> the case within 30 days or face dismissal.

Civil Committment, Juvenile Delinquency, and Child in need of Protection proceedings invariably involve appearances by one or

more County social worker, and commonly involve appearances by one or more peace officers. If no judge is available, the county must either dismiss its petition or first locate an available judge somewhere in the district and then travel, attorney, social worker, deputy, and all to a location where a judge has been scheduled. This situation is already occuring with some frequency within the Eighth District. Although impossible to quantify, one to two hours of idle time per each trip detracts substantially from the efficiency of a county social service, law enforcement, or attorney's office. To the extent that any reduction in judge hours might cause this situation to occur more frequently, the State is simply shifting the financial burden of judicial administration on to County budgets already shackled by levy limits.

At least one County's budget records do reveal an impact that appear to be directly associated with the loss of a resident Judge. The Pope County Sheriff's budget reflects a thirty eight percent increase in the amount spent annually for overtime pay between 1984 and 1989. It also reflects a fifty percent increase in the amount spent annually for fuel and maintenance within the same time period. Although the increases may have been subject to other influences, these budget observations make this much clear: The same four Deputies are now spending a great deal more time on the road than they did when a County Judge was chambered here in 1984, and the County is footing the bill.

Court service personnel also stand to be profoundly affected by any additional reductions in judge time. As judge time in a

given county dwindles, violation hearings must be scheduled either at a time or location more distant than would be desireable. As suggested by Chief Appeals Court Judge Wozniak when speaking to the Douglas County Bar association this past summer, swift justice is "effective" justice. If the consequence of probation violations is delayed, it is less effective as a deterrent to future violations. And, of course, future violations require additional judge time. Thus, cutting back on available court time may create a greater "demand" that might be reflected in the next weighted case load, but it hardly promotes administrative efficiency in the long term.

f. Impact on Attorneys and their clients

The Sixteenth District Bar Association is also concerned that pro bono services could suffer if the burdens of time and travel were enhanced by the loss of a judgeship in the Eighth District. See, e.g., letter to the Court from Michael J. McCartney, dated October 19, 1990. The Bar opposes any threat to the performance of pro bono services by its membership.

Furthermore, our Association is concerned that the loss of a judgeship and the attendant increase in travel may impact a client's decisions as to the filing and settling of cases. Already rural clients incur costs which their urban counterparts do not. For example, it is the rule and not the exception in out-state Minnesota that one pays long distance charges when calling another town, even though the town may be five miles distant. If clients must incur additional charges for their attorney's mileage and

travel time, then these factors can influence whether to file a case or not. Likewise, such factors in smaller cases often make the difference as to the filing or settling of law suits.

5. The WCL does not fully account for differences between urban and rural communities.

a. Travel time spent by judges.

During the WCL survey period of 1986, judges across the state were asked to keep track of the time they spent traveling from their chambers to other courthouses. This raw data was then factored into a classification scheme which divided counties into three categories: those with more than 15 judges, those with three to 15 judges and those with zero to two (0 - 2) judges. 1986 Minnesota Weighted Caseload Study, p. 26. This scheme was considered valid by the Court, as there existed "greater variation between the groups than within any given group." Id. The Court's results show that for judges chambered in counties with zero to two chambered judges, said judges spend an average of 31.5 minutes per day traveling between courthouses. Id. at 27. Counties with more chambered judges travel less. Id.

i. The Sixteenth District Bar Association urges the Court to utilize actual driving time by each judge in the state when factoring travel time into the calculation of "judicial need."

An analysis of the actual October, 1990, Eighth District judicial work assignment reveals that the 31.5 minutes suggested by the WCL grossly understates travel time needs within this

district. Prior to Judge Bodger's retirement, district judges other than those sitting in Willmar were driving one hour per day, and two judges were averaging nearly 2 hours per day. (Appendix 8) The corresponding reduction in court time available for counties not having chambered judges is significant. (Appendix 6) While a one hour average may not seem significant when applied to district judges but, district wide, this means that 9 hours of district judge time are consumed by driving each and every work day of the year. Given a 7.5 hour work day as assumed by the WCL, more than one judicial position is regularly consumed by the geographic demands of the district. This formidable amount of road time will inevitably increase dramatically if Judge Bodger's position is not continued.

ii. The Sixteenth District Bar Association urges the Court to revise its classification scheme for averaging judge travel time.

In the alternative, the Sixteenth District Bar Association urges the Court to revise its WCL classification scheme for averaging the time spent by judges on the road. The Rural Justice Center has defined a "rural court" as one having "fewer than two fulltime general jurisdiction judges ... located, generally, in a county with a population of fewer than 60,000 people." National Conference, supra. According to Maurice Geiger, of the Rural Justice Center, the categories employed by the Minnesota Supreme Court do not fairly account for the differences, especially in terms of time spent traveling, between counties with

two chambered judges and those with one or none. His experience with rural courts shows that the critical breaking point is one judge, not two.

Thus, the initial two categories within which travel time is averaged should be 1) less than two judges and 2) more than two judges, and not 1) zero to two judges, 2) three to 15 judges, etc., as employed in the Minnesota WCL. The reason is this: in most rural counties, like those of the Eighth District, the people are served primarily by one judge. If the chambered judge is not there at the time, due to service elsewhere, recusal or vacation, the county must find a second judge to take care of the business at hand. Bringing in a second judge always takes time. When you have two judges chambered in a county, the need for yet a third judge is considerably lessened when recusals, illnesses, or brief vacations occur. But in counties with one chambered judge, there is no "spare tire." Thus, the initial breaking point in a classification scheme which attempts to average rural judges' travel time must be "less than two judges," not "zero to two" judges as in the Minnesota study.

In the Eighth Judicial District, 12 of 13 counties are served by less than two chambered judges.[5] All 12 counties are averaged in the WCL with counties of up to two resident judges, even though none of the twelve counties have two chambered judges. Thus, the Sixteenth District Bar Association urges the Court to revise its

[5]Only Kandiyohi County has more than one resident judge.

WCL classification scheme to reflect a more realistic appraisal of Eighth District judges' travel time.

Finally, the Bar urges the Court to adjust the survey data, which was acquired during the months of September and October of 1986, to account for such natural impediments to travel such as severe winter conditions, which occur during at least four months of every year. As noted, the Bar believes that its recommendation of actual travel time, which assumes an average speed of 45 miles per hour and accounts for winter travel impediments, is the most accurate measure of a judge's road time.

b. Judge is not always the "critical path" to effective judicial administration and case processing.

The WCL analysis averages the amount of time that it should take a judge on particular types of cases from filing to conclusion. These "case disposition" times, or "case weights," were obtained by applying the raw data acquired during the 1986 survey period and averaging them statewide.

The Sixteenth District Bar Association is concerned that the statewide averaging of case disposition times does not adequately reflect some basic differences between rural and urban or population-dense areas. The averaging of case disposition times assumes that the judge is the "critical path" to efficient disposition of cases by all courts. Such is not always the case in rural areas, where delays and dead time can be caused by the unavailability of a key player due to the realities of rural

practice.[6]

The jockeying of the judge's schedule with those of part-time prosecutors, part-time public defenders, and a limited number of psychologists and other experts will naturally cause scheduling problems. Often, rural, part-time public defenders must be in one county seat in the morning and another in the afternoon. The part-time prosecutor, who also counsels the county board, may have to be at the county board meeting all day when the judge is in town for traffic court. Dead time arises not merely when settlements are reached and the judge is two hours away from the nearest "back up" jury trial, but when a criminal defendant's car breaks down 20 miles from town and cannot get to court. Quickly scheduling a court hearing during dead time often is futile, unless both attorneys work in the county seat and their clients have telephones and are in relative proximity to the court house. Even then, some crucial ingredient to the case recipe may be missing.

The Association understands that many of these differences are difficult to account for in a standardized formula. But it is important to our membership that the Court is aware of the realities of rural practice. We urge the Court's thoughtful consideration of these differences.

6. Effective Judicial Administration in the Eighth Judicial District.

There were three counties in the Eighth District lacking

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[6]Maurice Geiger, Rural Justice Center.

chambered judges prior to Judge Bodger's retirement. Proportionately, the Eighth District was then tied with the Ninth District for the most counties lacking chambered judges (23.0 percent for the eighth district, 23.5 percent for the ninth.) Loss of the judge chambered in Swift County would raise this proportion to 30 percent with four contiguous counties in the district lacking a chambered judge.

In the aggregate these four counties, Big Stone, Lac Qui Parle, Pope, and Swift encompass 31 percent of the land area within the district and they are home to 26% of the district population. (A-1), (A-2)

Transportation logistics alone which might be associated with access to the judiciary within such a block of counties are formidable. It is significant that the four counties are nearly identical in aggregate area to the entire seven county metropolitan area comprised of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties. (A-1) It is more certain than speculation to suppose that the attorneys, county officials, law enforcement personnel and citizens of the inner city would find judicial access unreasonably restricted if they were required to look to such places as Buffalo, Elk River and Cambridge for the nearest available judge. Such a hardship is no greater than will be imposed upon the citizens of one quarter of the Eighth District if the vacant judicial office is not continued.

It is perhaps in recognition of the access problems caused by physical distances that this Court has been reluctant to abolish

or transfer judicial offices in Counties with no access to a second judge. Indeed, the Court has established a precedent in not taking the only chambered judge from a county. In 1987 it said:

> [P]lacement of a judge in each county will allow both the efficient utilization of judicial resources and adequate accessibility to judges by the citizens of those counties.
>
> * * *
>
> We share the concerns expressed in the public hearings relative to the need for access to judges and the importance of a resident judgeship to our communities.

Order of April 14, 1987, In Re Fifth District Vacancies, at LXXIII -LXIV.

Furthermore, the Court has already expressed its concern about the lack of even one judgeship per county in the Eighth Judicial District. In its Order of June 20, 1986, the Supreme Court noted that

> if one or both of these vacancies were to be terminated, the already substantial number of counties without resident judges would increase accordingly.
>
> * * *
>
> The Eighth Judicial District is the only district in the state in which there are fewer judges than there are counties in the district; with twelve judges and thirteen counties. Four of the thirteen counties -- Big Stone, Traverse, Lac Qui Parle and Pope -- do not have a resident judge.

Order of June 20, 1986 at LXI, LXIII.

The Court's action in the Fifth Judicial District reflects Justice Amdahl's earlier assurance to Representatives of less populous areas that the Court would have serious reservations about a proposal to remove the last chambered judge from any County.

In the three situations I have described, a resident judge

> remained chambered in the county in which the vacancies arose. That fact alleviated the judges' concern about access to judges by law enforcement personnel and the public in general.
>
> We have not yet been faced with a situation that would involve a vacant judgeship where the transfer would result in removing the only sitting judge from that county.
>
> I can assure you that if this condition were to appear, the Supreme Court would be extremely concerned about access to remaining judicial resources.

Minnesota House of Representatives Judiciary Committee, February 26, 1986.

In order to accomplish effective judicial administration and access to justice in the Eighth Judicial District, the Association urges the continuation of the district judgeship in the Eighth Judicial District.

7. Conclusion

Objective data shows that travel time alone already occupies time in excess of one, full-time judge in the Eighth Judicial District. We can only speculate how much more time will be spent traveling in order to fill the ".6 judge" needed in Swift County if the district were to lose the Judge Bodger seat. The actual time a judge spends on the road must be factored into the "judicial need" computation. The objective data show that the Eighth Judicial District has access to two fewer judges due to travel time alone.

Legislatively-imposed deadlines, emergencies, and geographic realities prevent meaningful access when a judge is not available in the county. When a judge is not chambered in the county, access

is diminished. The burdens of time and travel should not be shifted onto law enforcement, social agencies, litigants and attorneys. Not only does the rural, local taxpayer assume the increased cost, but the poor and elderly of the Eighth Judicial District bear a disproportinate burden of cost and physical access.

Population and case filings cannot be the only guide to determining "effective judicial administration." If such were to be the case, then rural areas facing population decline must prepare their citizens for the unenviable status as second class citizens in the scheme of justice in MInnesota. While we understand and appreciate the need for perhaps additional judges in more population dense areas, such judgeships should not be gained at the expense of a rural citizen's access to the courts.

The constitutional considerations outlined in this brief strike at the heart of our most precious democratic traditions: the right of the people to vote for elective office and not have that right diminished by the elimination of the office prior to the end of the term of office; the right of the people to be secure in the knowledge that a judge's independence will not be trampled by the other branches of government. In a democracy such as ours, these fundamental principles must be preserved.

We respectfully submit these concerns and arguments for your thoughtful consideration.

SIXTEENTH DISTRICT BAR ASSOCIATION

By: _____
JoEllen Pfeifle Doebbert

By: _____
Belvin L. Doebbert

Eighth Judicial District Land Area

Compared with Seven County Metropolitan Area

	County (Acres)	Area (Sq.Mi.)	No Judge Area	No Judge Area (Proposed)
BIG STONE	316501.00	494.53	495.00	495.00
CHIPPEWA	370269.00	578.55		
GRANT	356000.00	556.25		
KANDIYOHI	497292.00	777.02		
LAC QUI PARLE	492800.00	770.00	770.00	770.00
MEEKER	382891.00	598.27		
POPE	459520.00	718.00	718.00	718.00
RENVILLE	621129.00	970.51		
STEVENS	355355.00	555.24		
SWIFT	475592.00	743.11		743.00
TRAVERSE	363462.00	567.91		
WILKIN	472001.00	737.50		
YELLOW MEDICINE	481686.00	752.63		
TOTAL	5644501.00	8819.53	1983.00	2726.00
% OF TOTAL			22.48	30.91
HENNEPIN	354255.00	553.52		
RAMSEY	101032.00	157.86		
WASHINGTON	254868.00	398.23		
DAKOTA	365190.00	570.61		
SCOTT	225900.00	352.97		
CARVER	226810.00	354.39		
ANOKA	272640.00	426.00		
TOTAL	1800695.00	2813.59		

Proportion of eighth district area currently without judge chambered in county. (percent)	22.48
Proposed proportion of eighth district area without judge chambered in county. (percent)	30.91
Eighth district area currently without chambered judge as percent of seven county metropolitan area.	70.48
Proposed contiguous eighth district area without chambered judge as percent of seven county metropolitan area.	96.89
Number of square miles by which seven county metropolitan area exceeds area of proposed contiguous eighth district area without chambered judge.	87.59
Ratio of total eighth judicial district area to area of seven county metropolitan area.	3.13:1

Data Source for county land area: **1989-1990 Minnesota Legislative Manual.**

Eighth Judicial District Population Distribution

	County Population		No Judge Popul.	No Judge Popul. (pending)	Co. Seat Population		
BIG STONE	6284.0		6284.0	6284.0	2550.0		
CHIPPEWA	13201.0	13201.0			5845.0	5845.0	5845.0
GRANT	6241.0	6241.0			1358.0	1358.0	1358.0
KANDIYOHI	38587.0	38587.0			15895.0	15895.0	15895.0
LAC QUI PARLE	8911.0		8911.0	8911.0	2212.0		
MEEKER	20780.0	20780.0			5924.0	5924.0	5924.0
POPE	10736.0		10736.0	10736.0	2523.0		
RENVILLE	17607.0	17607.0			2802.0	2802.0	2802.0
STEVENS	10630.0	10630.0			5367.0	5367.0	5367.0
SWIFT	10701.0	10701.0		10701.0	3656.0	3656.0	
TRAVERSE	4463.0	4463.0			1969.0	1969.0	1969.0
WILKIN	7512.0	7512.0			3909.0	3909.0	3909.0
YELLOW MEDICINE	11653.0	11653.0			3451.0	3451.0	3451.0
TOTAL	167306.0	141375.0	25931.0	36632.0	57461.0	50176.0	46520.0
% OF TOTAL		84.5	15.5	25.9	34.3	30.0	27.8
					65.7	70.0	72.2

Data Source for county populations: U.S. Bureau of the Census as published bythe Minneapolis Star Tribune on August 24, 1990.

Data Source for city populations: 1989-1990 Minnesota Legislative Manual.

Mileage From Chambers to Other Eighth District Court Houses

	Big Stone	Chippewa	Grant	Kandiyohi	Lac Qui Parle	Meeker	Pope	Renville	Stevens	Swift	Traverse	Wilkin	Yellow Medicine
Bodger	42.0	33.0	55.0	32.0	45.0	60.0	30.0	56.0	25.0	0.0	61.0	97.0	39.0
Boylan	74.0	40.0	87.0	0.0	62.0	28.0	47.0	24.0	57.0	32.0	93.0	129.0	38.0
Buchanan	74.0	40.0	87.0	0.0	62.0	28.0	47.0	24.0	57.0	32.0	93.0	129.0	38.0
Christopherson	68.0	12.0	95.0	38.0	41.0	66.0	69.0	26.0	65.0	39.0	107.0	135.0	0.0
Collins	44.0	53.0	30.0	57.0	49.0	85.0	28.0	92.0	0.0	25.0	36.0	72.0	65.0
Davison	36.0	83.0	36.0	93.0	63.0	127.0	60.0	122.0	36.0	61.0	0.0	36.0	107.0
Lindstrom	74.0	40.0	87.0	0.0	62.0	28.0	47.0	24.0	57.0	32.0	93.0	129.0	38.0
Reuther	72.0	119.0	42.0	129.0	98.0	144.0	82.0	151.0	72.0	97.0	36.0	0.0	135.0
Stafsholt	72.0	83.0	0.0	87.0	79.0	102.0	40.0	111.0	30.0	55.0	36.0	42.0	95.0
Ward	47.0	0.0	83.0	40.0	29.0	68.0	63.0	39.0	53.0	33.0	83.0	119.0	12.0
Weyrens	102.0	68.0	102.0	28.0	97.0	0.0	62.0	52.0	85.0	60.0	127.0	144.0	66.0
Zeug	86.0	39.0	111.0	24.0	68.0	52.0	71.0	0.0	92.0	56.0	122.0	151.0	26.0

Data Source for mileage: Official Eighth Judicial District Mileage Chart

Round Trip Travel Time From Chambers to Other Eighth District Court Houses

	Big Stone	Chippewa	Grant	Kandiyohi	Lac Qui Parle	Meeker	Pope	Renville	Stevens	Swift	Traverse	Willcin	Yellow Medicine
Bodger	1.9	1.5	2.4	1.4	2.0	2.7	1.3	2.5	1.1	0.0	2.7	4.3	1.7
Boylan	3.3	1.8	3.9	0.0	2.8	1.2	2.1	1.1	2.5	1.4	4.1	5.7	1.7
Buchanan	3.3	1.8	3.9	0.0	2.8	1.2	2.1	1.1	2.5	1.4	4.1	5.7	1.7
Christopherson	3.0	0.5	4.2	1.7	1.8	2.9	3.1	1.2	2.9	1.7	4.8	6.0	0.0
Collins	2.0	2.4	1.3	2.5	2.2	3.8	1.2	4.1	0.0	1.1	1.6	3.2	2.9
Davison	1.6	3.7	1.6	4.1	2.8	5.6	2.7	5.4	1.6	2.7	0.0	1.6	4.8
Lindstrom	3.3	1.8	3.9	0.0	2.8	1.2	2.1	1.1	2.5	1.4	4.1	5.7	1.7
Reuther	3.2	5.3	1.9	5.7	4.4	6.4	3.6	6.7	3.2	4.3	1.6	0.0	6.0
Stafsholt	3.2	3.7	0.0	3.9	3.5	4.5	1.8	4.9	1.3	2.4	1.6	1.9	4.2
Ward	2.1	0.0	3.7	1.8	1.3	3.0	2.8	1.7	2.4	1.5	3.7	5.3	0.5
Weyrens	4.5	3.0	4.5	1.2	4.3	0.0	2.8	2.3	3.8	2.7	5.6	6.4	2.9
Zeug	3.8	1.7	4.9	1.1	3.0	2.3	3.2	0.0	4.1	2.5	5.4	6.7	1.2

Assumptions:
-Distance as established in Official Mileage Chart
-45 miles per hour average speed.

Note:
The 45 mile per hour speed was selected for the following reasons:
-Travel in excess of 55 miles per hour is illegal.
-Travel invariably includes some travel through municipal areas.
-Travel is frequently slowed by weather, train crossings and other unpredictable events.
-Time is required to get to and from parking areas, use rest room, fill fuel, etc.

Non-Driving Time Available for Judicial Business Per Judicial Workday.

	Big Stone	Chippewa	Grant	Kandiyohi	Lac Qui Parle	Meeker	Pope	Renville	Stevens	Swift	Traverse	Wilkin	Yellow Medicine
Bodger	5.6	6.0	5.1	6.1	5.5	4.8	6.2	5.0	6.4	7.5	4.8	3.2	5.8
Boylan	4.2	5.7	3.6	7.5	4.7	6.3	5.4	6.4	5.0	6.1	3.4	1.8	5.8
Buchanan	4.2	5.7	3.6	7.5	4.7	6.3	5.4	6.4	5.0	6.1	3.4	1.8	5.8
Christopherson	4.5	7.0	3.3	5.8	5.7	4.6	4.4	6.3	4.6	5.8	2.7	1.5	7.5
Collins	5.5	5.1	6.2	5.0	5.3	3.7	6.3	3.4	7.5	6.4	5.9	4.3	4.6
Davison	5.9	3.8	5.9	3.4	4.7	1.9	4.8	2.1	5.9	4.8	7.5	5.9	2.7
Lindstrom	4.2	5.7	3.6	7.5	4.7	6.3	5.4	6.4	5.0	6.1	3.4	1.8	5.8
Reuther	4.3	2.2	5.6	1.8	3.1	1.1	3.9	0.8	4.3	3.2	5.9	7.5	1.5
Stafsholt	4.3	3.8	7.5	3.6	4.0	3.0	5.7	2.6	6.2	5.1	5.9	5.6	3.3
Ward	5.4	7.5	3.8	5.7	6.2	4.5	4.7	5.8	5.1	6.0	3.8	2.2	7.0
Weyrens	3.0	4.5	3.0	6.3	3.2	7.5	4.7	5.2	3.7	4.8	1.9	1.1	4.6
Zeug	3.7	5.8	2.6	6.4	4.5	5.2	4.3	7.5	3.4	5.0	2.1	0.8	6.3

Assumptions:
- -Distance as established in Official Mileage Chart
- -45 miles per hour average speed.
- -Each Judicial Day is 7.5 hours. (To be consistent with Weighted Case Load Study.)
- -Each Judicial Day begins and ends at chambers.
- -Round trip driving time (See A-4) is subtracted from Judicial Day.

Travel Adjusted Judicial Time Scheduled for Eighth District Counties in October of 1990

	Big Stone	Chippewa	Grant	Kandiyohi	Lac Qui Parle	Meeker	Pope	Renville	Stevens	Swift	Traverse	Wilkin	Yellow Medicine	TOTAL
Bodger	0.0	18.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	127.5	0.0	0.0	0.0	145.6
Boylan	0.0	0.0	0.0	120.0	0.0	25.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	145.0
Buchanan	0.0	0.0	0.0	135.0	0.0	12.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	147.5
Christopherson	0.0	13.9	0.0	11.6	45.4	0.0	0.0	12.7	0.0	0.0	0.0	0.0	45.0	128.7
Collins	33.3	0.0	0.0	0.0	0.0	0.0	25.0	0.0	75.0	0.0	0.0	0.0	0.0	133.3
Davison	23.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	11.8	14.4	7.5	0.0	0.0	57.3
Lindstrom	0.0	0.0	0.0	150.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	150.0
Reuther	0.0	0.0	11.3	0.0	0.0	0.0	0.0	0.0	8.6	0.0	23.6	90.0	0.0	133.5
Stafsholt	12.9	0.0	37.5	7.3	0.0	0.0	57.2	0.0	0.0	0.0	0.0	0.0	0.0	114.9
Ward	0.0	105.0	0.0	0.0	18.6	0.0	0.0	0.0	0.0	12.1	0.0	0.0	7.0	142.7
Weyrens	0.0	0.0	0.0	0.0	0.0	90.0	0.0	41.5	0.0	0.0	0.0	0.0	0.0	131.5
Zeug	0.0	0.0	0.0	0.0	0.0	41.5	0.0	90.0	0.0	0.0	0.0	0.0	0.0	131.5
Total	69.8	137.0	48.8	423.9	64.1	169.0	82.2	144.2	95.4	153.9	31.1	90.0	52.0	1561.4
% of 1 Position	0.4	0.9	0.3	2.6	0.4	1.1	0.5	0.9	0.6	1.0	0.2	0.6	0.3	9.8

Assumptions:
- Distance as established in Official Mileage Chart
- 45 miles per hour average speed.
- Each Judicial Day is 7.5 hours. (To be consistent with Weighted Case Load Study.)
- Each Judicial Day begins and ends at chambers.
- Round trip driving time (See A-4) is subtracted from Judicial Day.
- Work is assigned as set forth in original October, 1990, Official Schedule.
- Each Judicial day is given the travel adjusted time value established in A-5.

Miles Traveled by Eighth District Judges Per Four Weeks

	Mileage	Non-Willmar Mileage	
Bodger	198.0	198.0	
Boylan	224.0		
Buchanan	112.0		
Christopherson	960.0	960.0	
Collins	752.0	752.0	
Davison	1596.0	1596.0	(Mileage projected
Lindstrom	0.0		from two to
Reuther	744.0	744.0	four weeks)
Stafsholt	1580.0	1580.0	
Ward	330.0	330.0	
Weyrens	832.0	832.0	
Zeug	832.0	832.0	
Total	8160.0	7824.0	
Average	680.0	978.0	

Assumptions:
- Distance as established in Official Mileage Chart
- 45 miles per hour average speed.
- Each Judicial Day is 7.5 hours. (To be consistent with Weighted Case Load Study.)
- Each Judicial Day begins and ends at chambers.
- Round trip driving time (See A-4) is subtracted from Judicial Day.
- Work is assigned as set forth in original October, 1990, Official Schedule.

Average Daily Driving Time Per Judge and Percentage of Workday Remaining Available for Judicial Business

	Daily Wind Shield Hours	Non Willmar WS Hours	% non-road time available	% non Willmar non RT available
Bodger	0.2	0.2	91.0	91.0
Boylan	0.2		90.6	
Buchanan	0.1		92.2	
Christopherson	1.1	1.1	80.4	80.4
Collins	0.8	0.8	83.3	83.3
Davison	1.8	1.8	71.6	71.6
Lindstrom	0.0		93.8	
Reuther	0.8	0.8	83.4	83.4
Stafsholt	1.8	1.8	71.8	71.8
Ward	0.4	0.4	89.2	89.2
Weyrens	0.9	0.9	82.2	82.2
Zeug	0.9	0.9	82.2	82.2
Total	9.1	8.7		
Average	0.8	1.0	84.3	81.7

Assumptions:
- Distance as established in Official Mileage Chart
- 45 miles per hour average speed.
- Each Judicial Day is 7.5 hours. (To be consistent with Weighted Case Load Study.)
- Each Judicial Day begins and ends at chambers.
- Round trip driving time (See A-4) is subtracted from Judicial Day.
- Work is assigned as set forth in original October, 1990, Official Schedule.

Rep. Sylvester Uphus
District 15A
Pope, Stearns Counties

Minnesota
House of
Representatives

COMMITTEES: AGRICULTURE; ECONOMIC DEVELOPMENT; TAXES; TRANSPORTATION

October 19, 1990

The Honorable Peter S. Popovich
Chief Justice of the Minnesota Supreme Court
Care of the Clerk of Appellate Court
Room 245 Minnesota Judicial Center
25 Constitution Avenue, St. Paul, MN 55155

Re: File C9-85-1506

Dear Judge Popovich:

I am writing to request an opportunity to speak on behalf of those of my constituants residing in the Eight Judicial District at the "Sunset and Transfer" hearing scheduled for October 29, 1990.

During my tenure with the legislature, I have frequently supported legislation designed to bring judicial proceedings concerning those confined under our juvenile, criminal, and civil commitment laws to a swift conclusion. Both justice and human decency require that the deadlines built into these laws be strictly observed.

It is my belief that these laws were enacted with the legislature's full knowledge and understanding that the timelines imposed by the legislature might cause inconvenience in the scheduling of other judicial matters.

38962 County Road 26, Sauk Centre, Minnesota 56378
State Office Building, St. Paul, Minnesota 55155
House Fax (612) 296-1563
(612) 296-5185

These laws were also enacted in the context of separate county and district judicial systems. County Courts had "exclusive" jurisdiction over matters of incompetency when the "Minnesota Commitment Act" was enacted in 1982. County Courts also had "exclusive" jurisdiction over all juvenile matters at the time. I am certain that I was not alone in assuming that law enforcement and social service personnel would continue to have immediate access to county judges in order to meet these strict demands when I voted on the enactment and amendment of those laws.

My assumption was incorrect.

The merger of County and District courts became complete in about 1987, and the County Courts originally assigned the administration of those acts no longer exist in non-metropolitan Minnesota. The total number of judges available to this district has begun to diminish. (We already have five fewer judges than we did approximately decade ago.) The eighth district now includes three counties already have no resident judge. Yet, based on one ambiguous statute of dubious legislative pedigree, The Supreme Court of our State has required the people of this very rural district to show why there should not now be four counties within the district without judges.

This is the second "sunset and transfer" hearing held in the eighth judicial district.

The first was held immediately following the enactment of the "sunset and transfer" law in the 1985 Special Session.

At the time, the Supreme Court's new found authority was something of a surprise to many of us.

You see, the sunset and transfer language was never introduced as a bill, and the concept was given no hearing in any committee of the House of Representatives prior to enactment in 1985.

Instead, it was incorporated into a Special Session appropriations bill authorizing biennial spending for all state departments in sum of one billion, one hundred sixty four million, five hundred twenty six thousand, six hundred ($1,164,526,600.00) dollars. It goes without saying that the merits of an obscure amendment to Chapter 2 of the Minnesota Statutes was not the driving force behind passage of this bill.

Given concern both about the lack of public input on the "sunset and transfer" law and a projected raid on the rather limited judicial resources of the eighth judicial district, I joined Representative Terry Dempsey in authoring a 1986 bill to repeal the "sunset and transfer" law. House File 1797 was heard by the Judiciary Committee of the Minnesota House of Representatives on February 26, 1986, and testimony was given by a number of judges, including then Chief Justice Amdahl. At that meeting, Justice Amdahl assured representatives of less populous areas that the "Sunset and Transfer" authority would not be used to transfer rural judicial positions away from counties having only one judge. His statement was as follows:

> "I wish to underscore a fundamental principle that has guided us. We have not yet, nor will we in the future, transfer judges from districts where they are needed to other districts where there are greater needs.
>
> In the three situations I have described, a resident judge remained chambered in the county in which the vacancies arose. That fact alleviated the judges' concern about access to judges by law enforcement personnel and the public in general.
>
> We have not yet been faced with a situation that would involve a vacant judgeship where the transfer would result in removing the only sitting judge from that county.
>
> I can assure you that if this condition were to appear, the Supreme Court would be extremely concerned about access to remaining judicial resources.

Chief Justice Amdahl also promised the committee that the Court would work with the Legislature to refine the "weighted case load" study. Following this presentation, the committee amended the bill so that it instead became a moratorium on the "sunset and transfer" language pending an update in the weighted caseload and further legislative review. House File 1797 subsequently passed the House of Representatives by a vote of 74 to 48.

It distresses me that it is now 1990, and there still have been no non-adversarial public hearings regarding the merits of the weighted case load study and its proper application to the allocation of judicial resources. It should also concern the Court, since I believe that the vote on House File 1797 represents something less than universal support for the tremendous weight accorded the caseload study by the Court in past "sunset and transfer hearings."

In the present instance, the Court is faced with a decision as to whether Swift County should lose its only judge. Should that happen, fully 25% of the people residing in the eighth judicial district will be living in Counties not served by a judge.

It is my sincere hope that you will consider the very rural nature of the eighth judicial district and the special problems that this rural character presents for judges, law enforcement personnel, public agencies, attorneys, and most importantly, the public. If you give fair consideration to these problems, I am confident that you will honor the promise of Chief Justice Amdahl and continue judge Bodger's judgeship within the eighth district.

Sincerely,

Sylvester Uphus

Hard choice for battered women: A violent home or no home at all

LISA RYCKMAN ASSOCIATED PRESS

NEW YORK

Cindy's husband roused their sleeping 12-year-old son at midnight. "You're the first one that's going to die," he said.

That night, Cindy and her three kids left the beatings, the threats, the daily violence of her crazy-jealous husband forever. After 16 years of marriage, of control so complete she lost herself, Cindy found the courage to face freedom.

"I thank God I'm free," said Cindy, who didn't want her real name used for fear her husband will find her. "I'm home, with my kids."

The two-bedroom apartment they share is an experiment in independence for battered women, believed to be the first of its kind in the nation: permanent homes with social services downstairs. Six women and their children have moved in, and eight more are coming.

There are at least 4 million Cindys each year in America, according to the National Coalition Against Domestic Violence. Every 15 seconds, a woman is beaten. Every six hours, a woman is murdered by her husband or boyfriend.

Still, women stay with their abusers, because a violent home often seems better than no home at all. And that is the choice.

The sad truth is that battering causes homelessness. A Victim Services Agency study showed that 35 percent of women living in city homeless shelters were there to escape men who beat them.

"In order to protect yourself and care for yourself, you have to let go of everything: friends, family, furniture, clothing," said social worker Olosunde Johnson, who is helping these women face the future. "Things that you love, that have emotional value to you. And you have to walk out and leave that. And there's something wrong with that."

Cindy left, and lived in a shelter for battered women, one of 1,700 serving 20,000 cities nationwide. The National Domestic Violence Hotline receives 108,000 calls a year, about one-third of which request shelter. But the need far outstrips the available space.

A Los Angeles County grand jury found last year that 90 percent of the battered women and children who sought safety were turned away. In Washington, D.C., eight out of every 10 women are told there is no room. Advocates believe the situation is similar in New York, Chicago and other big cities.

"And then, after 90 days, you have to be uprooted again. This is victimization after victimization," Johnson said. "It just keeps eating away at the women and the children. 'Who am I?' is a question that comes up. 'Who am I?'"

The victimization stops at the glass doors on a residential street in Brooklyn, the ones that lead to these 16 apartments. Permanent homes, ones the women and their children leave of their own free will and return to, feeling safe.

"This man used to tell me when to go to bed, when to take a bath, when to get up, five minutes to go to the store, and after five minutes, there would have been a beating or a fight," Cindy, 33, said. "Now it's just me and the kids. Nobody to say, 'No, you can't go, or if you go, I'm going to hit you.' And it's wonderful."

Advocates say this permanent housing, which cost $1.7 million over 18 months to develop, is the logical conclusion in the evolution of services for battered women. In the early '70s, people would open their private homes for abused women and their kids. Emergency shelters followed, where women could stay for up to three months.

It soon became clear that it took more than 90 days to reorder a life. So transitional housing was born, which allowed stays of a year or 18 months.

Even that was not enough. The economy was changing; living costs were soaring in big cities like New York, and the result was that during the 1980s, battered women were increasingly returning to the men who abused them simply because they couldn't afford not to.

"And the thing that was different was housing," said Lucy Friedman, executive director of Victim Services Agency, the independent, non-profit group that created the housing with the Urban Coalition. "It got down to going back to an abusive partner or going to a welfare hotel."

Now these women are home for good. The social services, provided by Johnson, will be here for 18 months. There is a support group for the women and another for their children. Johnson works on getting child care, enrolling the kids and the women in school; helping them achieve their career goals.

Johnson's desk is in the basement, but her heart is with the women. She's been there, and that helps her maintain her faith that these women will come as far as she has.

"It also helps me in identifying what's going on with them, even when they're unable to identify it," she said. "And it helps me to love them, even when they're unlovable."

Sometimes Jennifer gets that way, comes downstairs acting like a fool. Leaves the tidy, three-bedroom apartment she shares with her two daughters and young son, and vents some of the anger and depression that comes of growing up abused with 10 brothers and sisters, then being abused for two years by a crack-addicted husband, and being a crack addict herself.

MCCARTNEY LAW OFFICE
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BRECKENRIDGE, MINNESOTA 56520-0071

218/643-1454

October 19, 1990

MICHAEL J. MCCARTNEY*+
ALSO ADMITTED:
*TEXAS, NORTH DAKOTA

GLORIA MATZ
LEGAL ASSISTANT
FAX: 701/642-2911

Clerk of the Appellate Court
Room 245, Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

RE: Eighth Judicial District Judicial Retirement

Dear Clerk:

I should like to be heard at the Hearing on October 29, 1990, in Benson, Minnesota, promulgated by Order of the Court dated September 28, 1990.

A brief summary of my presentation follows, in narrative fashion.

For 13 plus years I have practiced with an office in Wilkin County, Minnesota. At the time that I initially began my country trial practice, we had the luxury of a full-time county court and a district court circulating to Breckenridge approximately two days per week on average. In addition, we had a retired county court judge available for coverage on vacation and illness periods.

At this time, we understand that the total judicial availability here in Wilkin County is approximately two to two and one-half days per week. With the potential for a loss of another judge in the Eighth District because of Judge Bodger's effective retirement on October 31, 1990, I know that Wilkin County will be more severely and significantly affected than others.

I have discussed the issue of access to the Courts here in Breckenridge with all four local attorneys who practice in Breckenridge. In addition, and perhaps unknown to the court and the system, 19 lawyers practice at Wahpeton, North Dakota, merely across the river from Breckenridge. Nine of those 19 are licensed in the State of Minnesota, and I believe that I have been in District or County Court with all of the lawyers who have not been licensed in the State of Minnesota, at least at one time by virtue of association with local counsel on cases. Each of them are also concerned with the loss of the availability of contact with the court.

We frankly understand that the real culprit in a situation such as this is the stinginess on the part of the legislature in its willingness to commit additional resources statewide and in particular for the growth areas of judicial need in the metropolitan cities. However, it is my strong position that justice cannot be totally equated with an economic decision for efficiency. Indeed, all judges don't operate on the same efficiency level, nor should they. The diversity and complexity of general jurisdiction judgeships in the country must not be overlooked in the weighted caseload analysis.

I was the recipient in 1990 of the Northwest Minnesota Legal Services Judicare Panel award in which I was recognized for service to indigent clients and with pro bono work. It is my strong position that I will not be able to serve the poor with the same quality nor with the same quantity that I would have had in the past if indeed the position is eliminated from the District. Just the other day I was required to travel to Wheaton, Minnesota to present a Petition in a domestic abuse act matter and return to Breckenridge, some 75 miles. The necessity was caused as a result of there being no court in Breckenridge, and none in Elbow Lake nor any other county closer that Swift County, at Benson. Benson, I might add, is 90 miles from Breckenridge. Other places in the Eighth District are even further, including Litchfield, which I believe is approximately 150 miles from Breckenridge.

As a result of the distances involved and the expense associated with travelling those distances, I must tell Minnesota poor I cannot help them even if I wanted to. That may not bother a large corporate client or a multi-national dealing with the metropolitan judicial system. But it pains me significantly that I must explain to a citizen of this state that access to the courts is no longer available.

I am also local counsel for the Independent School District No. 846 at Breckenridge, a Medical Center and Nursing Home, the City of Campbell, Minnesota and various commercial enterprises. In my discussions with the leadership in all of these organizations, they are appalled at the absence of availability in their times of need to the court system that will be imposed if there is further deterioration in judicial numbers.

I most respectfully request an opportunity to present orally before the court on this matter. I look forward to any questions that the Chief Justice or other members of the court might have.

Very truly yours,

MICHAEL J. McCARTNEY
FOR THE FIRM

MJM/pb
pc: Ms. JoEllen Doebbert

OFFICE OF THE
POPE COUNTY ATTORNEY
30 EAST MINNESOTA AVENUE
GLENWOOD, MINNESOTA 56334

(612) 634-4583

COUNTY ATTORNEY
Bruce D. Obenland

ASST. COUNTY ATTORNEYS
C. David Nelson
Belvin Doebbert

October 22, 1990

The Honorable Peter S. Popovich
Chief Justice of the Minnesota Supreme Court
Care of the Clerk of Appellate Court
Room 245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: CO90-466

Dear Judge Popovich:

I am writing on behalf of my constituents in Pope County to support the continuation of the judicial position recently vacated by Judge Richard Bodger. Loss of another Judge within the district will result in increased County expenses, and will almost certainly frustrate the prosecution of many Civil and Criminal matters. It is also likely to create a hardship for a significant number of the indigent persons who become involved with the court system.

As prosecutor, my first concern is for effective law enforcement. That means doing things right. If the mechanics of securing a search warrant become burdensome or inordinately time consuming, the process becomes a disincentive for good police work. Questionable warrantless searches become the subject of time consuming evidentiary motions at best, and acquittals of guilty persons at worst. Granted, it may occasionally be possible to secure a warrant via facsimile transmission, but court FAX facilities are rarely available at any time other than normal working hours. Additionally, most judges still prefer an opportunity to observe demeanor when issuing warrants. Given these circumstances and a near

universal lack of FAX facilities in judge's homes, it remains likely that Law enforcement personnel in Counties with no chambered judge may be obliged to drive a minimum of an hour for an emergency warrant. This is simply unacceptable for effective law enforcement.

In addition to the acquisition of warrants, there are a substantial number of juvenile, criminal, and civil procedures which require hearings within a specified time. The County through its attorney and agency personnel, plays a significant role in the administration of these proceedings. Proceedings involving the confinement of a juvenile or a patient for proposed chemical dependency or mental illness Civil Commitment proceedings must be commenced, at the most, within 72 hours following confinement. See, e.g. Minnesota Statutes Sections 260.172, 253B.07, subd. 7. These initial hearings are followed by hearings within eight and fourteen days respectively, and commitment patients must be examined by a qualified psychological expert (who must also be available for the hearing) in the interim. When children are removed from the home in Juvenile and Child Protection matters, the County must try the case within 30 days or face dismissal.

Civil Commitment, Juvenile Delinquency, and Child in need of Protection proceedings invariably involve appearances by one or more County social workers, and commonly involve appearances by one or more peace officers. If no judge is available, the county must either dismiss its petition or first locate an available judge somewhere in the district and then travel, attorney, social worker, deputy, and all to a location where a judge has been scheduled. This situation is already occurring with some frequency within the 8th district. Although impossible to quantify, one to two hours of idle time per trip detracts substantially from the efficiency of the county social service, law enforcement, or attorney's office. (It might also be noted that the 25% of the total county law enforcement capacity, 50% of the case workers, and 33% of the Pope County Attorney's staff are effectively idled while this is occurring.) To the extent that any reduction in judge hours might cause this situation to occur more frequently, the State is simply shifting the financial burden of judicial administration on to County budgets already shackled by levy limits.

Pope County budget records do reveal an impact that appears to be directly associated with the loss of a resident Judge. The Sheriff's budget reflects a thirty-eight percent increase in the amount spent annually for overtime pay between 1984 and 1989. It also reflects a fifty percent increase in the amount spent annually for fuel and maintenance within the same time period. Although the increases may have been subject to other influences, they make this much clear: The same four Deputies are not spending a great deal more than they did when a County Judge was chambered here in 1984, and the County is footing the bill.

If loss of judicial access is expensive and inconvenient to the County, it inevitably creates a hardship for the rural low income persons who comprise the majority of the persons who come before our court on a day to day basis. It may be difficult enough for a person named in CHIPS petition or proceeding for termination of parental rights to secure transportation to the local county seat, without expecting that person to appear in foreign county simply so that the court may comply with a statutory deadline. We have no public transportation, and automobile breakdowns are, in my experience, epidemic among low income patrons of the judicial system. In addition, communication by telephone is frequently impossible. Records of the Pope County Family Services indicate that fully 40% of all households to whom a case worker is assigned simply do not have a telephone, and a high proportion of such cases have some degree of court involvement.

Finally, it is not just the indigent who suffers form the loss of judge time. Domestic matters, such as child support and even simple dissolutions become delayed. Protection orders become more difficult for vulnerable persons to obtain. And simple civil matters, such as contract disputes, get rescheduled on short notice more and more often to make way for mandatory hearings.

Given the difficulties we in this county already fact in obtaining access to judge simply to comply with the law, it is clear that the loss of another judge would impair the effective administration of justice in Pope County.

Accordingly, it is respectfully urged that the Judicial position be continued.

Sincerely,

NELSON AND OBENLAND

By:_____
Bruce D. Obenland
Pope County Attorney

BDO\kb

cc: Pope County Board of Commissioners
Gerald E. Moe, Pope County Sheriff
John V. DeMorett, Director,
Pope County Family Service Department
William T. Boyle, Pope County Auditor
H\JUDGE.100

Eighth District Residents: Age and Income

	Median Age	Proportio over 65	Density	Median Income- Married Couples
BIG STONE	36.6	20.5	15.5	18842.0
CHIPPEWA	32.8	17.8	25.6	20912.0
GRANT	37.8	21.4	13.1	17747.0
KANDIYOHI	29.4	13.8	46.9	23629.0
LAC QUI PARLE	35.5	19.3	13.7	19086.0
MEEKER	31.3	16.1	33.0	21000.0
POPE	35.1	19.0	17.5	17353.0
RENVILLE	32.5	17.3	20.7	20508.0
STEVENS	27.7	14.1	20.2	21847.0
SWIFT	32.8	17.5	17.4	18145.0
TRAVERSE	37.8	20.6	9.6	19062.0
WILKIN	30.6	15.6	11.3	23763.0
YELLOW MEDICINE	33.3	18.3	18.0	20861.0
AVERAGE	33.3	17.8	20.2	20211.9
STATE	29.2	11.8	51.2	30547.0
DIFFERENCE	4.1	6.0	-31.0	-10335.1
STATE TO DISTRICT RATIO				1.5
METRO AREA				37561.0
METRO AREA TO DISTRICT RATIO				1.9

Data Source: Minnesota State Planning Agency, Demographer's Office

Note: Population figures are from 1980 census. Income figures are from 1986

B

Partial Transcript of Remarks

by JoEllen Pfeifle Doebbert

at Public Hearing, October 29, 1990

* * *

It is the position of the 16th District Bar Association that the office of district judge now made vacant by the retirement of the Honorable Richard A. Bodger, belongs to the 8th Judicial District and cannot be removed -- either by abolition or transfer -- prior to the end of Judge Bodger's term which expires in 1992. To remove the office from this district at this point in time would surely violate Article VI, Section 4 of the Minnesota Constitution.

The Bar also contends that removal of this position from the 8th Judicial District would render meaningless a citizen's right to vote in this judicial district.

Article VI, section 4 of the Minnesota Constitution tells us several things:

First: it permits the establishment of judicial districts and provides that the Legislature shall specify the manner in which the number and boundaries of judicial districts shall be determined.

Second: it refers to the judges who shall serve the district court as district judges.

Third: The constitutional section states that there shall be at least two district judges in each judicial district.

Fourth: it requires that each district judge shall be a resident of the district

in which he was selected and must remain a resident during his continuance in office.

Fifth and finally: the provision specifies that a district judge's office shall not be abolished during his term of office.

It is significant that the same section of the Constitution which grants power to determine the number and boundaries of judicial districts also specifies the residency requirements and minimum number of district judges in each judicial district.

In fact, the Constitution's prohibition on the abolition of a district judge's office is found in the very sentence in which power is conferred to create and determine the number and boundaries of judicial districts.

Thus, the office of a district judge belongs to the judicial district in which the office exists, at least during the district judge's term of office.

Removal of this office from the 8th Judicial District during the current term of office, that is, prior to 1992 when the current term of office expires, would violate Article VI, section 4 of the Minnesota Constitution, which prohibits the abolition of a district judge's office during his term.

More specifically, the provision of the sunset and transfer law which authorizes this court to abolish or transfer this judicial position during the middle of Judge Bodger's term of office is unconstitutional. The Court's only constitutional option is to continue the position in the Eighth Judicial District.

Our second argument, too, is founded upon constitutional principles. The people of the great state of Minnesota have been granted the right to vote by Article VII of the Minnesota Constitution. That same Constitution prescribes the term of office for a variety of elected officials, including governor, legislators and district court judges.

The constitutional prohibition against abolition of a district judge's office during his 6 year term of office preserves the substance of a citizen's vote. It assures that once the ballot is cast, the elective office belongs to the people and not to the government. To say that the government has the power to snatch the very essence of democracy -- the elective office -- from the grasp of the electorate during the elected person's term of office is to say that the people are not protected by their Constitution.

The sunset and transfer law permits the removal of the elective office from a judicial election district even though the term of office has not yet expired. The right of 8th Judicial District voters to meaningful suffrage is in danger if their interests are not safe guarded by this Court.

The constitutional protection of the term of a judicial office exists to safeguard both the elective franchise and an independent judiciary. To honor these principles, Judge Bodger's office must be certified as vacant in the 8th Judicial District.

* * *

STATE OF MINNESOTA

IN SUPREME COURT

C9-85-1506

C

In re Public Hearing On Vacancy
in a Judicial Position in the
Eighth Judicial District

BRIEF IN SUPPORT OF THE CONTINUATION OF THE JUDGESHIP HAVING A VACANCY AS A CONSEQUENCE OF THE DISABILITY RETIREMENT OF HON. RICHARD A. BODGER, JUDGE OF DISTRICT COURT, AT BENSON, IN SWIFT COUNTY

October 24, 1990

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ACKNOWLEDGEMENTS

We wish to acknowledge the assistance provided by the District Administrator's office and by the Supreme Court's Research and Planning Office, in providing much of the weighted caseload and other statistical information used in this Brief.

We also wish to thank all of the members of the Committee on the Courts of the Twelfth District Bar Association for their ideas and assistance in the preparation of this Brief, and all the other members of the Association who assisted.

INTRODUCTION

> When a judge ... retires ... , the supreme court, in consultation with judges and attorneys in the affected district, shall determine ... whether the vacant office is necessary for effective judicial administration.
>
> --Minnesota Statutes 2.722, subd. 4(a).

A judicial vacancy will occur as a consequence of the disability retirement of Judge Richard A. Bodger, effective October 31, 1990. Judge Bodger's chambers are at Benson, in Swift County. Minnesota Statutes 2.722, subd. 4(a), prescribes procedures for determining whether a judicial position which is vacated by the retirement of an incumbent judge should be continued, abolished or transferred.

The Eighth Judicial District is served by 12 judges. It is a multi-judge/multi-county district. It is the only district in the state which has more counties than it has judges. It is also the only multi-county district in the state which has only one county with a caseload sufficient for the chambering of two or more judges in the county. It is comprised of 13 counties in west central Minnesota. Its counties are Big Stone, Chippewa, Grant, Kandiyohi, Lac qui Parle, Meeker, Pope, Renville, Stevens, Swift, Traverse, Wilkin and Yellow Medicine. It is a roughly triangular-shaped district, covering 8,848 square miles. The western edge is comprised of five counties along the state border with North and South Dakota. The eastern-most county is Meeker County. Its county seat, Litchfield, is 66 miles from Minneapolis. The southern border is Yellow Medicine and Renville Counties. Their county seats are Granite Falls and Olivia, respectively. The northern-most county is Wilkin County. Its county seat is Breckenridge. The district runs approximately 102 miles east and west, and 151 miles north and south. The distance between the farthest county seats, Breckenridge and Olivia, is 151 miles. Swift County is in the core of the district. It is surrounded by six of the 13 counties of the district. Three of those surrounding counties have no chambered judge. If this judgeship is not

continued, four adjoining counties would be left without a chambered judge. Moreover, this would split the district in half, creating substantial problems of citizen access and judicial administration.

It is the position of Twelfth District Bar Association that the judgeship at Benson is necessary for adequate citizen access and effective judicial administration in Swift County and in the Eighth Judicial District. The position should be retained.

This judgeship should be retained for the following reasons, which are discussed in detail in the remainder of this Brief: (1) Based on the weighted caseload analysis, there is a need for a judge chambered at Benson, in Swift County; (2) Eighth Judicial District has judicial needs which are not fully taken into account in the weighted caseload analysis; (3) The loss of this judicial position would be detrimental to judicial access in Eighth Judicial District; (4) The loss of this judicial position would be especially detrimental to judicial access in Swift County; (5) The position should be retained, at Benson, because of the need which exists in Swift County and in adjoining counties without a chambered judge; and (6) Eighth Judicial District wants and works for quality judicial services, and the loss of this position would work a loss of justice in Eighth Judicial District.

POINT 1: BASED ON THE WEIGHTED CASELOAD ANALYSIS, THERE IS A NEED FOR A JUDGE CHAMBERED AT BENSON, IN SWIFT COUNTY

> The Eighth Judicial District is the only district in the state in which there are fewer judges than there are counties in the district ... .
>
> --In Re Eighth District County Court Vacancies, Order of June 20, 1986.

A. Weighted Caseload Analysis.

The weighted caseload analysis for the period 1985 through 1990 shows that Swift County needs a chambered judge. The need for 1986 was .8; 1987, .7; 1988, .7; 1989, .7; and year ending 6/30/90, .6. See Table 1.

Table 1. Weighted Caseload Analysis of Judicial Need, Eighth District Counties, 1986-1990

County	Chambered Judges	Judicial Need 1986	1987	1988	1989	Yr. End 3/31/90	Yr. End 6/30/90
34 Kandiyohi	3	2.0	1.9	2.0	2.4	2.4	2.5
47 Meeker	1	0.9	0.9	1.0	1.0	1.1	1.1
65 Renville	1	0.9	0.9	0.9	0.8	0.9	1.0
12 Chippewa	1	0.8	0.7	0.8	0.7	0.7	0.7
76 Swift	**1**	**0.8**	**0.7**	**0.7**	**0.7**	**0.6**	**0.6**
61 Pope	0	0.6	0.6	0.6	0.6	0.6	0.6
75 Stevens	1	0.5	0.5	0.6	0.5	0.5	0.5
87 Yellow Medicine	1	0.5	0.5	0.5	0.4	0.4	0.5
84 Wilkin	1	0.4	0.5	0.4	0.4	0.4	0.5
37 Lac qui Parle	0	0.4	0.4	0.4	0.4	0.4	0.4
26 Grant	1	0.4	0.4	0.3	0.3	0.3	0.3
06 Big Stone	0	0.3	0.3	0.3	0.3	0.3	0.3
78 Traverse	1	0.2	0.2	0.2	0.3	0.2	0.2
DISTRICT TOTAL	12	8.8	8.6	8.5	8.8	8.9	9.0

Source: WCL Judicial Need 1990, 16-Oct-90, p. 4.

We submit that whenever the weighted caseload analysis shows that a county has a need of .5 or more, effective judicial administration should normally call for having a judge chambered in the county. See, e.g., In Re Fifth District Judicial Vacancies, Order of April 14, 1987. An exception could be if there are strong reasons supporting the chambering of a judge elsewhere. We know of no such strong reasons in this case. It does not promote effective judicial administration to have other judges come in to cover a county which has a judicial need of .6, as Swift does. To do so creates delays, inconveniences, confusion and expenses that simply do not promote the efficient delivery of legal services and reasonable access to the courts. In this case, of the 13 counties needing the chambering of the 12 judges of the district, Swift County ranks 5th in terms of need. See Table 1. Moreover, there is no chambered judge in three of the adjoining counties. This makes it impossible for the judicial need in Swift County to be taken care of by judges

chambered in those particular adjoining counties. Based on its judicial need, Swift County should have a chambered judge.

B. Access Adjusted Need.

For districts which the weighted caseload analysis shows as having a surplus of judicial positions, a further analysis is undertaken to determine access adjusted need within the district.

> This analysis, known as the "access adjustment", takes into account the location of and the need for judges within smaller assignment districts within the judicial district. It represents an attempt to provide judicial availability to the citizens of the area as well as to provide an optimum distribution of judicial resources so that the required number of judges is matched as closely as possible to the workload of the judicial district.

In Re Fifth District Judicial Vacancies, Order of April 14, 1987. See also 1986 Minnesota Weighted Caseload Study Executive Summary, Minnesota Supreme Court, Office of the State Court Administrator, Research & Planning Office, March, 1987, p. 9. As we understand it, this is largely a subjective analysis, based upon a review of what the judicial needs are in the counties of the district and how the counties could be combined into primary assignment areas to meet those needs. With the adoption of this access adjustment in 1986, Swift County was determined to need a chambered judge. Id., p. A-3. Between 1986 and August 22, 1990, the access adjusted need continued to be for a judge chambered at Benson in Swift County. See WCL Access Adjustments to Judicial Need 1990, 22-Aug-90, p. 6. This is shown in Table 2.

We agree with the long-standing access adjustment that calls for a judge to be chambered in Swift County. We urge this Court to retain this judgeship.

In October of 1990, the Court's research staff re-reviewed the weighted caseload analysis data for the year ending June 30, 1990. It changed the long-standing access adjustments of the counties of the Eighth Judicial District so as to eliminate the access adjustment which would call for chambering a judge in Swift County. See WCL Judicial Need 1990, 16-Oct-90, p. 4. We have reviewed the Weighted Caseload access adjustments shown on the 22-Aug-90 and the 16-Oct-90 data sheets, for the various judicial districts and their individual counties. We find that only the Eighth Judicial District was changed at that time as to its access adjustments.

Table 2. Weighted Caseload Access Adjustments to Judicial Need 1990, Eighth Judicial District

County	Chambered Judges	Judicial Need 1986	1987	1988	1989	Yr. End 6/30/90	Access Adjustment
06 Big Stone	0	0.3	0.3	0.3	0.3	0.3	0
26 Grant	1	0.4	0.4	0.3	0.3	0.3	1
61 Pope	0	0.6	0.6	0.6	0.6	0.6	0
75 Stevens	1	0.5	0.5	0.6	0.5	0.5	1
78 Traverse	1	0.2	0.2	0.3	0.3	0.2	1
84 Wilkin	1	0.4	0.5	0.4	0.4	0.5	0
SUBTOTAL	4	2.4	2.5	2.5	2.4	2.4	3
12 Chippewa	1	0.8	0.7	0.8	0.7	0.7	1
34 Kandiyohi	3	2.0	1.9	2.0	2.4	2.5	2
37 Lac qui Parle	0	0.4	0.4	0.4	0.4	0.4	0
47 Meeker	1	0.9	0.9	1.0	1.0	1.1	1
65 Renville	1	0.9	0.9	0.9	0.8	1.0	1
76 Swift	**1**	**0.8**	**0.7**	**0.7**	**0.7**	**0.6**	**1**
87 Yellow Medicine	1	0.5	0.5	0.5	0.4	0.5	1
SUBTOTAL	8	6.3	6.0	6.3	6.4	6.8	7
DISTRICT TOTAL	12	8.8	8.6	8.5	8.8	9.0	10

Source: WCL Access Adjustments to Judicial Need 1990, 22-Aug-90, p. 6.

Since the August and the October analyses used the same data, for the year ending June 30, 1990, the conclusion is inescapable that the significant factor leading to the changed access adjustment was the unexpected disability retirement of Judge Bodger. The June 30, 1990 access adjusted weighted caseload data show a need for a chambered judge in Swift County, as analyzed before his retirement announcement. Obviously, the same need for a chambered judge still exists after his announcement as existed before his announcement. Since its inception, the Supreme Court has championed the weighted caseload analysis as an objective analysis of the actual need for judicial positions in the state. Others, especially including the Legislature and the Governor's

office, have relied upon the accuracy of the weighted caseload analysis and the integrity of its analysis by the Court and its staff. If the Court accepts this dubious staff manipulation of the access adjustment for Swift County so as to achieve the termination of this judgeship, it will undermine the integrity of and public confidence in the weighted caseload analysis. It would be unfortunate if the Court were now to undercut its primary tool in assessing judicial need and in allocating judicial resources.

The Court should look to and apply the long-standing access adjustment for Swift County that calls for chambering a judge in Swift County. It should not sanction the recent change made by its staff, occasioned by Judge Bodger's retirement announcement, to discontinue this judgeship at Benson.

Retaining this judicial position is also consistent with the position which the Supreme Court, by Chief Justice Amdahl, took before the Legislature in 1986. Chief Justice Amdahl testified at a hearing held by the House Judicial Committee on February 26, 1986. His statement at the hearing included the following:

> I wish to underscore a fundamental principle that has guided us. We have not yet, nor will we in the future, transfer judges from districts where they are needed to other districts where there are greater needs.
>
> In the three situations I have described, a resident judge remained chambered in the county in which the vacancies arose. That fact alleviated the judges' concern about access to judges by law enforcement personnel and the public in general.
>
> We have not yet been faced with a situation that would involve a vacant judgeship where the transfer would result in removing the only sitting judge from that county.
>
> I can assure you that if this condition were to appear, the Supreme Court would be extremely concerned about access to remaining judicial resources.

Testimony of Chief Justice Amdahl, as quoted in letter dated October 19, 1990 from Rep. Sylvester Uphus, Dist. 15A, to Chief Justice Popovich, at p. 3.

C. Impact of Prairie Correctional Facility.

The weighted caseload analysis presents historical data. The decision on whether to retain a judgeship must, of necessity, look to the future. For this reason, the Court often supplements its weighted caseload analysis with

additional important information, such as demographic information, in reaching its decision on whether or not to retain a judgeship. See, e.g., In Re Eighth District County Court Vacancies, Order of June 20, 1986 (demographic trends applied in deciding chambering).

The necessary governmental approvals have been granted for the construction of a prison facility at Appleton, in Swift County. In its first phase, it will be a 494 bed medium security prison. Plans call for a doubling of capacity within two years of completion of the first phase. The bond closing is scheduled for October 30 and 31, 1990, with construction to commence shortly after that date. The prison is expected to open in February, 1992. The City of Appleton and the prison developer have researched the question of whether the prison will result in state court litigation. Based on the experience of other prisons, and the experience of the Washington County Court Administrator, the City has been advised to expect a substantial amount of litigation in the District Court of Swift County as a result of this prison facility. This is expected to include two or three civil suits each month by inmates of the facility. It will also include a number of other kinds of cases, including those involving smuggling and writs of detainer, plus dissolution of marriage and other family law matters, and other back-home problems which prisoners bring with them. Given the Washington County experience of approximately one case for every five inmates each year, plus the experience elsewhere indicating 25-30 inmate vs. facility suits per year, we should expect that the facility will result in about 125-130 new District Court cases per year, plus additional Conciliation Court cases. The facility will also create 150 new jobs. A number of these can be expected to be filled by persons moving into the county from outside the district. Having the facility, and the population to serve it, will also create other employment indirectly, with the additional case filings which the added population will generate. (The foregoing information in this paragraph was provided by attorney John W. Riches, II, of Appleton.)

In view of the significant impact which the new prison facility will have on the caseload of Swift County, it would not be advisable to take this judgeship away from Swift County. With the existing caseload in the county, the long-standing access adjusted need for chambering a judge in the county, the fact that Swift County and three adjoining counties would not have a

chambered judge if this position is terminated, and the effect which the prison will have, this judgeship should be retained and chambered at Benson, in Swift County.

POINT 2: EIGHTH JUDICIAL DISTRICT HAS JUDICIAL NEEDS WHICH ARE NOT FULLY TAKEN INTO ACCOUNT IN THE WEIGHTED CASELOAD ANALYSIS

> The fact that four counties are without resident judges accounts for the significant amount of travel required of the judges of the district. ...
>
> The increase in intra-district travel is primarily due to the loss of two judgeships since the weighted caseload survey was conducted in 1980. The removal of the two judgeships increases the travel requirements of the 12 judges who have remained to at least some degree not currently accounted for by the weighted caseload analysis.
>
> ...
>
> We find it reasonable to conclude that Eighth District judges who are lacking particularly in law clerk support are unlikely to be as productive as judges in other districts who have such support.
>
> --In Re Eighth District County Court Vacancies, Order of June 20, 1986. [Note: With the rechambering of one judge, the district now has three counties without a chambered judge.]

A. Travel Needs.

The Eighth Judicial District consists of 13 counties in West Central Minnesota. It has a disproportionate number of counties with a low population. See Table 3. This, of course, is a major factor in the relatively low number of case filings and weighted case units for the district. However, the fact remains that the district has 13 counties, all of which must be provided timely judicial services for the dispensation of justice, despite the distances involved and the peculiar geography of the district.

Table 3. Population of Counties in Minnesota's Judicial Districts

District	No. of Counties	Under 10,000	Dist. %	10,000 -20,000	Dist. %	20,000 -40,000	Dist. %	Over 40,000	Dist. %
1	7			1	14.3%	2	28.7%	4	57.1%
2	1							1	100.0%
3	11			3	27.3%	4	36.4%	4	36.4%
4	1							1	100.0%
5	15	3	20.0%	6	40.0%	5	33.3%	1	6.7%
6	4	1	25.0%	1	25.0%	1	25.0%	1	25.0%
7	10			2	20.0%	5	50.0%	3	30.0%
8	13	5	38.5%	6	46.2%	2	15.4%		
9	17	6	35.4%	6	35.3%	2	11.8%	3	17.6%
10	8			1	12.5%	3	37.5%	4	50.0%

Source: U.S. Bureau of the Census, Preliminary 1990 Minnesota County population results, as published in Star Tribune, August 24, 1990, p. 7B.

The Eighth Judicial District has 13 counties, but only 12 judges. It has three counties without any chambered judge, and 8 counties with only 1 chambered judge. No other district has such a large proportion of its counties in either category.

Unlike other districts, the Eighth Judicial District does not have multiple trial centers, and no large center at all, where efficiencies in handling the district's judicial caseload can be obtained. It has no county with two chambered judges, only one county with three chambered judges, and no county with more than three chambered judges. No other district in the state has a pattern of caseload distribution as fragmented as that found in the Eighth Judicial District. See Table 4.

Each of the district's judges has to cover more counties and travel longer distances than do the judges of any other district. It is impossible for the district to obtain the same efficiencies as are found in those districts where two, three or more judges are chambered in a single county. While the weighted caseload analysis attempts to compensate for the differences which arise, it does so based on averages. Unfortunately for the district and the

way its needs are looked at, the district is at the wrong end of these compensating averages. The result is that its needs exceed the compensating factor which is allowed. Table 4 helps illustrate this problem (for those who can follow what it shows).

Table 4. Number of Chambered Judges in the Counties of Minnesota's Judicial Districts

		Counties with Number of Chambered Judges Shown								Percent of Counties with Number of Chambered Judges Shown						
Dist.	Ctys.	0	1	2	3	4-5	6	7	8-71	0	1	2	3	6	7	8+
1	7		1	4	1				1		14.3	57.1	14.3			14.3
2	1								1							100.0
3	11		6	2	2		1				54.5	18.2	18.2	9.1		
4	1								1							100.0
5	15	2	10	2	1					13.3	66.7	13.3	6.7			
6	4	1	1	1			1			25.0	25.0	25.0				25.0
7	10		6	1	2		1				60.0	10.0	20.0	10.0		
8	13	3	9		1					23.1	69.2		7.7			
9	17	3	9	4	1					17.6	52.9	23.5	5.9			
10	8		3	1	2			1	1		37.5	12.5	25.0		12.5	12.5
State	87	9	45	15	10	0	2	1	5	10.3	51.7	17.2	11.5	2.3	1.1	5.7

Source: WCL Judicial Need 1990, 16-Oct-90, pp. 2-4.

Every judge of the district regularly travels to at least one neighboring county. The reality of all of this is that the judges of the district must travel considerably more than predicted (and thus allowed) in the weighted caseload analysis in order to provide the judicial services needed in each county. The District Administrator's office indicates that the mileage of the 12 judges of the district was 203,229 for the 21 months of January 1989 through September 1990. This translates into an average of 9,678 miles per judge per year. At 197 working days per year, this is 49 miles per judge for each working day. Since travel time has to include getting to and from the vehicle, and since one's average speed will inevitably be less than the speed limit of 55 mph, it seems fair to assume that this is at least one hour of travel time per judge per working day. However, the weighted caseload analysis assumes that an adequate amount of travel time is 32 minutes for nine

of the judges, and only 22 minutes for the three judges chambered in a county with 3-15 judges.

The district clearly has travel needs which are not currently fully accounted for by the weighted caseload analysis. The loss of an additional judgeship would only increase the need which the remaining judges would have to travel within the district to provide timely justice in each of the 13 counties of the district.

B. Support Services.

Law clerk support services are better than they were in 1986. The law clerk services are still less than that of some other districts. The district now has one law clerk for every two judges, as provided by law. However, we understand that the Seventh District, by special law, has one law clerk for each of its judges, and that the Fourth District has two law clerks for each of its judges. This enables these judges to be more productive than our judges can be, yet it is is not taken into account in the weighted caseload analysis.

Only three of our judges have court reporters. We understand that elsewhere most judges have court reporters. We believe that the lack of court reporters is also an impediment to the productivity of our judges not taken into account in the weighted caseload analysis.

C. Forfeited Vacation Days.

A number of the judges have forfeited vacation days to which they were entitled. The Court Administrator's office indicates that in 1990 the judges forfeited a total of 46 vacation days, and that this involved 10 of the 12 judges of the district. Our conclusion from this is that the district has a need for judicial services beyond that predicted in the weighted caseload analysis, and that the judges have deemed it necessary for them to work to serve the judicial needs of the district rather than to take vacation days to which they are entitled.

The district has judicial needs which are not fully taken into account in the weighted caseload analysis. These needs should be given adequate consideration in determining whether to retain the judicial position.

POINT 3: THE LOSS OF THIS JUDICIAL POSITION WOULD BE DETRIMENTAL TO JUDICIAL ACCESS IN EIGHTH JUDICIAL DISTRICT

> Most persuasive, however, are the access problems posed by the location of the particular vacancies in question. Removal of the position from Yellow Medicine, where there is a need for 0.6 judges, would leave nearly the entire western border of the district without a resident judge.
>
> ... This decision is reached primarily because of the geographic and resulting judicial access considerations involved ... .
>
> --In Re Eighth District County Court Vacancies, Order of June 20, 1986.

Eighth Judicial District already has three counties, Big Stone, Lac qui Parle and Pope, without a chambered judge. This is 23.1% of the entire district. No other district has such a high proportion of its counties without a chambered judge. See Table 4, above.

This Court is faced with a decision as to whether Swift County should now lose its only judge. If that happens four of the district's counties, or over 30% of its counties, will be without a chambered judge.

We are talking about the judicial access needs of real people here. At the present time, 15.5% of the district's population lives in counties without a chambered judge. If the Swift County position is also terminated, more than one out of five of the district's population will live in a county without a chambered judge. See Table 5. This is an exceptional percentage. While we have not calculated it out for the other districts, we are confident that no other district comes close to having this proportion of its populace living in counties without a chambered judge.

The loss of this judicial position would leave four adjacent counties, Big Stone, Lac qui Parle, Swift and Pope, without a chambered judge.

This would totally split the judicial distrit in half. See Figure 1.

Swift County is at the core of the Eighth Judicial District. Six of the remaining 12 counties of the district adjoin Swift County. See Figure 1.

Table 5. 1990 Population, Counties of Eighth Judicial District, With Percentage of Population in Counties Without a Chambered Judge

County	Population	Percent of Population Living in Counties Without a Chambered Judge
Big Stone	6,284	
Lac qui Parle	8,911	
Pope	10,736	
SUBTOTAL	25,931	15.5%
Swift	10,701	
SUBTOTAL	36,632	21.9%, if position taken
Chippewa	13,201	
Grant	6,241	
Kandiyohi	38,587	
Meeker	20,780	
Renville	17,607	
Stevens	10,630	
Traverse	4,463	
Wilkin	7,512	
Yellow Medicine	10,630	
TOTAL	167,306	

Source: U.S. Bureau of the Census, Preliminary 1990 Minnesota County population results, as published in Star Tribune, August 24, 1990, p. 7B.

Benson, the county seat, is the most centrally located county seat in the district. This can be seen in Figure 2, a district map and mileage chart. This becomes quite clear from a review of the distances shown for the total distance from each county seat to the remaining county seats. The total mileage from Benson to the other county seats is 575 miles. Morris is the next most centrally located county seat, at 633 miles to the remaining county seats. Five of the 12 remaining county seats are within 40 miles of Benson, another two are within 50 miles of Benson. See Table 5.

Because of its centralized location, Benson is almost ideally suited for having a chambered judge. Does the reverse hold true? That is, is Swift County so located that access is easily provided from the other counties of the

Figure 1.

EIGHTH JUDICIAL DISTRICT, SHOWING EXISTING COUNTIES WITHOUT A CHAMBERED JUDGE AND SWIFT COUNTY

Key: Continuous line - Existing counties without a chambered judge
Dotted line - Swift County

Source: Minnesota Highway Map used

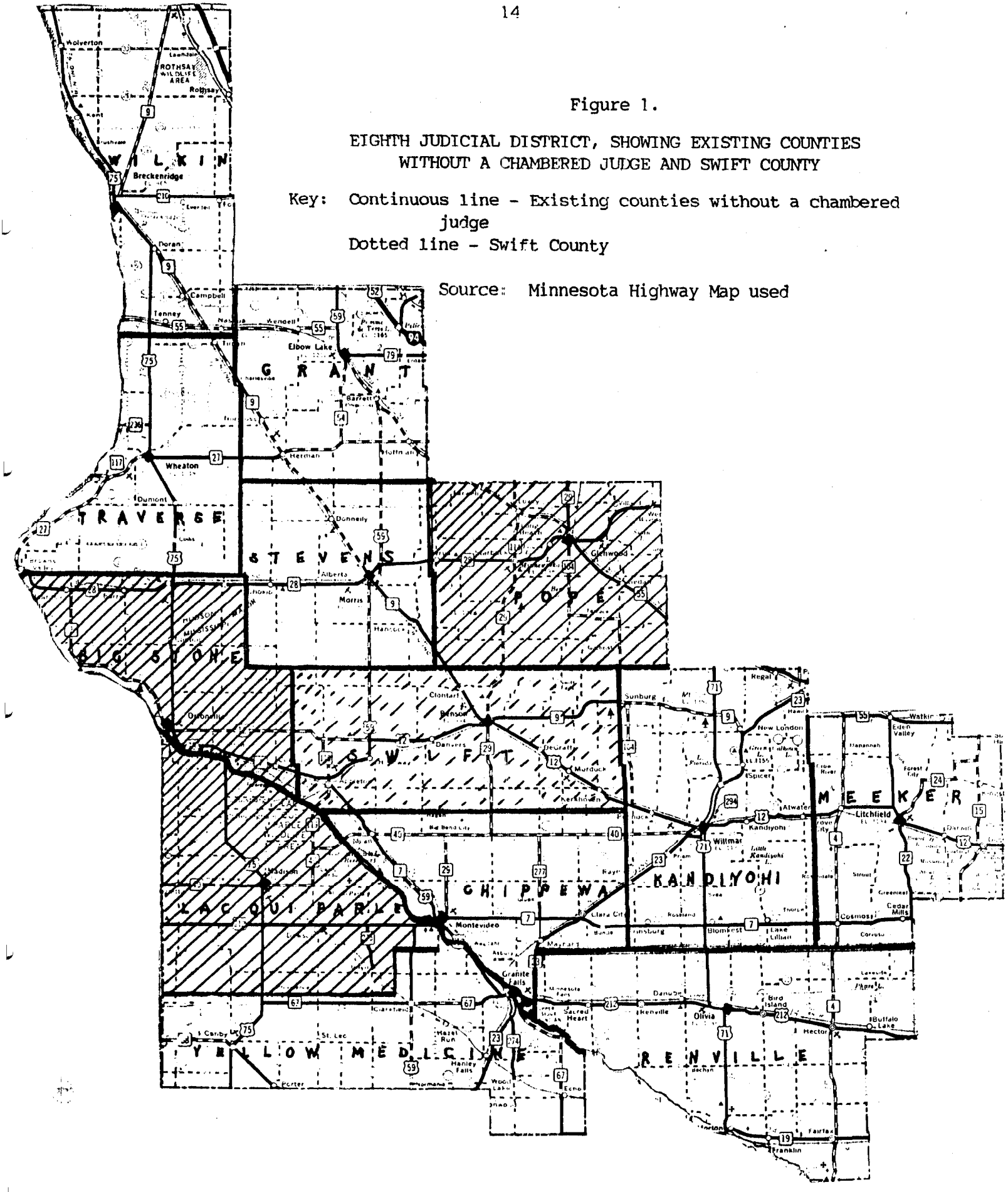
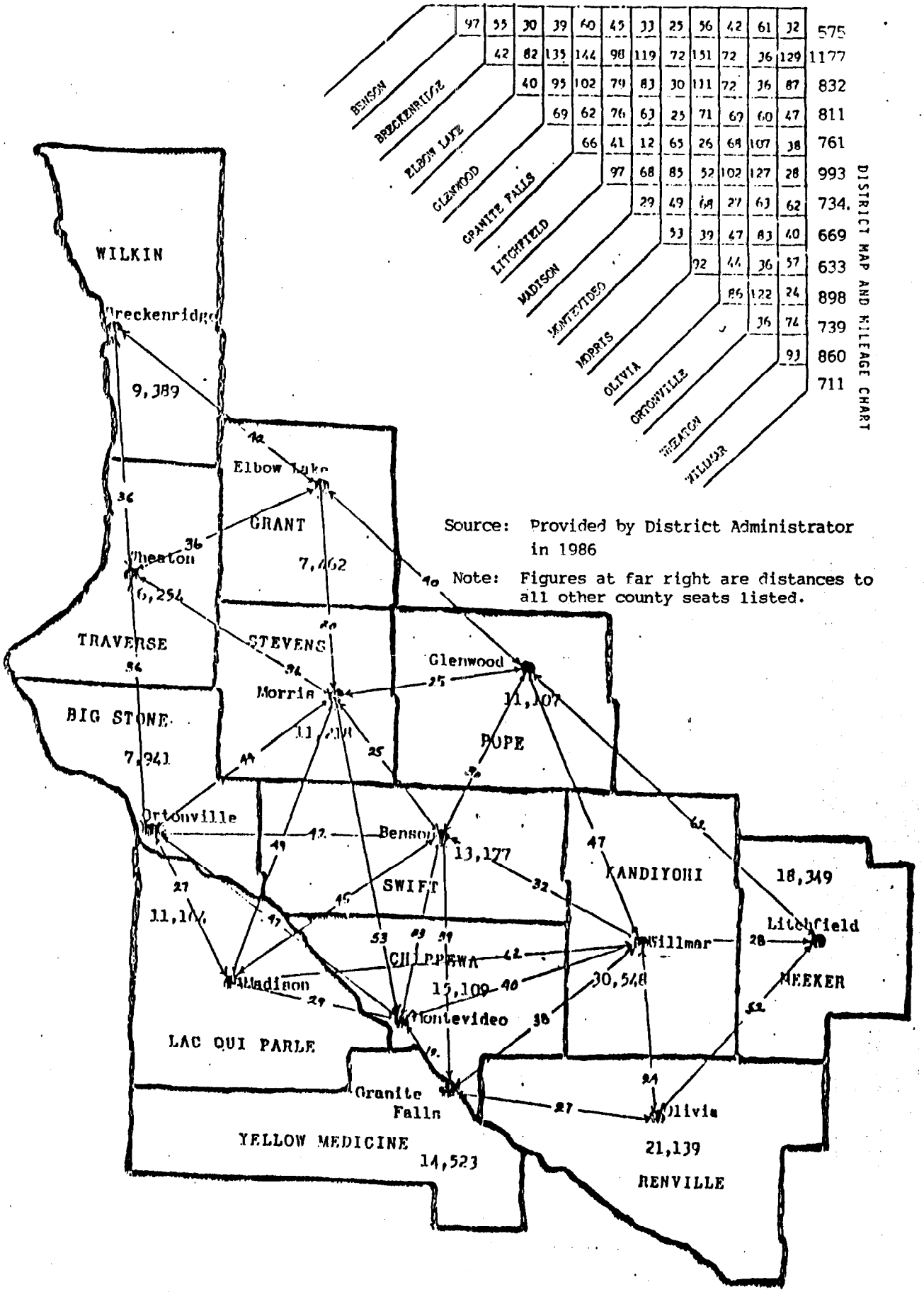


Figure 2.

DISTRICT MAP AND MILEAGE CHART



Source: Provided by District Administrator in 1986

Note: Figures at far right are distances to all other county seats listed.

district? No, it is not. This is because judicial access for Swift County cannot be provided at all from three of its adjoining counties, Lac qui Parle, Big Stone and Pope. Each of those three counties is without a chambered judge.

In considering the question of judicial access within the district, a special concern of this Court should be not to make access more difficult in the counties, Big Stone, Lac qui Parle and Pope, which are currently without a chambered judge. To take away a judge in a county adjoining them would make their judicial access more difficult for the myriad of emergency legal problems for which law enforcement, criminal defendants, domestic abuse and family law and general civil litigants need prompt access to a judge. Since Big Stone and Lac qui Parle Counties border another state to the West, and Pope County borders another district to its North and East, loss of this judicial position would have an especially negative impact upon judicial access in those three counties.

Benson is in a good location for maintaining judicial access in Big Stone, Lac qui Parle and Pope Counties. It is 42 miles from Ortonville, 45 miles from Madison, and only 30 from Glenwood. See Table 5.

Because judges may have conflicts or may be removed, or may otherwise be unavailable where regularly assigned, other judges must sometimes cover areas other than their primary areas. The present allotment of 12 judges, and the travel distances involved, do not allow them to do so well. Fewer judges will only make it worse.

Termination of this judgeship will not allow effective judicial administration or sufficient judicial access within the district. There is no other judicial district of this state where judicial access is so seriously impaired, whether in terms of adjoining counties without a chambered judge or in terms of such a high proportion of counties without a chambered judge.

As noted in an editorial in the Montevideo American-News,

> The losers will be rural residents who need speedy justice in matters of protection orders in domestic abuse cases, lawyers needing to get bail set for their clients and law enforcement officials who need to get warrants or bring their arrested individuals into court.
>
> Our judges will be spending an inordinate amount of time on the road. Rural Minnesota needs the same access to judges as the metro areas of the State. Justice will best be served by appointing a new judge to Benson.

Montevideo American-News, October 18, 1990, editorial, p. 2A.

Because of the access difficulties which already obtain in the district, we submit, as was argued by a number of persons in 1986 and noted by this Court, that

> a further reduction of judgeships would result in false economies in requiring four and five persons to take the time and incur travel costs in order to find an available judge outside of the county in which the matter is filed. Persons who wish to avail themselves of the judicial process should have reasonable access to judges, whether or not there is a resident judge in the county. Litigants, witnesses, law enforcement personnel, and court services employees, among others, should not with regularity be required to travel inordinate distances to have their judicial business transacted.

In Re Eighth District County Court Vacancies, Order of June 20, 1986.

Deadlines for criminal, juvenile and commitment proceedings assume that law enforcement and social service personnel have ready access to a judge in their county. That is not always correct.

It is a false economy to save the cost of continuing this judgeship by transferring onto the backs of the taxpayers and litigants of this district the substantial costs that they will incur by not having this judgeship. Poor people will be hurt the worst by this lack of access.

This false economy is especially unwise in view of the low per capita income levels in the district, and especially in Swift County, whose taxpayers and litigants will be most seriously affected. According to the latest statistics we found available, for 1986, only one of the district's 13 counties has per capita personal income above the state average of $14,992. The remaining 12 have per capital personal income below the state average. Swift County is one of the lowest in the district, and in the state, at $11,400. It ranks 64th in the state, out of 87 counties. See Table 6.

Whether travel is by other judges into the county or by travel of attorneys, law enforcement officers and others to where a judge is found, judicial access will be seriously impaired. Because of the judicial access concerns which apply, this judicial position should be retained.

Table 6. 1986 Per Capita Personal Income
for Counties of Eighth Judicial District,
Showing Those Above and Those Below State Average

County	State Rank	County Per Capita Personal Income Above State Average	Below State Average
Big Stone	56	$ 12,004	$
Chippewa	43	12,572	
Grant	11	14,797	
Kandiyohi	50	12,363	
Lac qui Parle	39	12,636	
Meeker	47	12,403	
Pope	72	10,848	
Renville	31	13,135	
Swift	**64**	**11,400**	
Stevens	36	12,709	
Traverse	6		16,173
Wilkin	12	14,739	
Yellow Medicine	51	12,285	
State		**$ 14,992**	

Source: Fiscal Facts for Minnesotans, Minnesota Taxpayers Association, March 1989, Table 2-3: Per Capita Personal Income and Number of Households, by County, using data from Survey of Current Business, U.S. Department of Commerce, Bureau of Economic Analysis, April 1988.

POINT 4. THE LOSS OF THIS JUDICIAL POSITION WOULD BE ESPECIALLY DETRIMENTAL TO JUDICIAL ACCESS IN SWIFT COUNTY

> We share the concerns expressed in the public hearings relative to the need for access to judges and the importance of a resident judgeship to our communities.
>
> --In Re Fifth District Judicial Vacancies, Order of April 14, 1987.

The taxpayers and litigants of Swift County will be most affected if this

judgeship is not retained. Since 1986, the weighted caseload analysis has shown a judicial need of .6 to .8 judge. As discussed at Point 1, above, of the 13 counties of the district, Swift County ranks 5th in terms of judicial need. Yet, it would have no chambered judge.

The cold, impersonal weighted caseload statistics, and the judicial assignment configurations drawn on maps, cannot show the devastating effect which the loss of this judicial position will have upon citizen judicial access and judicial administration in Swift County. If this position is lost, the magnificent, old Swift County Courthouse will stand, but adequate citizen judicial access will be lost and good judicial administration will be impaired.

As this Court has noted, "Issuance of arrest and search warrants, temporary restraining orders, and domestic abuse orders can be matters in which time is of the essence." In Re Fifth Judicial Vacancies, Order of April 14, 1987. These matters often need immediate action. They do not well await the next time that a visiting judge holds court in the county. Sometimes they will not await the next day, and must have the attention of a judge overnight, on the weekend, or on a holiday. In this case, not only is it likely that no judge will be available in Swift County when these kinds of need arise. A judge may not be available in Big Stone, Lac qui Parle or Pope County as well, since those counties have no chambered judge.

The problem will be an especially time consuming and costly one for law enforcement. Swift County has a modern jail. To meet the time limits for court appearances, its law enforcement officers will all too often now have to take prisoners to another county for bail hearings. The county attorney will also have to do the same.

The Swift County Jail houses not only prisoners from Swift County. It has prisoners from other counties as well, most notably Pope and Stevens Counties, both of which do not have a jail. Their law enforcement officers will all too often have to go to Benson to pick up a prisoner, and then transport the prisoner to another location where a judge is holding Court.

The bail hearing problem in Swift County, and in all of the district's counties as fewer judges attempt to cover the same number of counties, is not just one for law enforcement. It is especially troublesome from the standpoint of defendants. The time limits which apply are maximum limits. When possible, a defendant should always be taken before a judge earlier. In

fact, a writ of habeas corpus or other remedy may be appropriate if a law enforcement agency deliberately holds a prisoner in jail even though a judge is available earlier. If this judicial position is terminated, the inevitable result will be that persons arrested for crimes will be held longer than they now are, as law enforcement will, whenever possible, wait until there is a judge in the county or nearby rather than transport defendants longer distances to get them before a judge sooner.

In civil cases, when a judge is not available at Benson but is available in another county, it will be necessary, in a greater number of cases than at the present time, for the parties, their counsel and witnesses to travel to another county where the judge is located in order to be heard. This should be of special concern in Swift County, with its low per capita personal income. See discussion at Point 3, above.

It might be argued that facsimile transmission, during the day, gives access to a judge in any county where the judge is sitting, and that at other times a telephone gives access to a judge at home. This is true for some matters. For many matters they are weak and inferior substitutes for a personal appearance. For those matters for which immediate or prompt access is needed, such as issuance of search warrants and bail hearings, they either are not appropriate or are so inadequate as not to be useful substitutes.

The citizens of Swift County, and of the district, deserve to have fair access before the District Court, especially for those matters, such as bail hearings, domestic abuse orders, child protection matters, and family law restraining orders, for which immediate court hearing is needed. These citizens also deserve to have a court system to which their law enforcement officers and prosecutors can have ready access for matters requiring urgent or prompt attention, such as the issuance of search warrants and the setting of bail for prisoners. These needs will not be served if this judicial position is terminated. These needs will be served if this judicial position is retained.

POINT 5. THIS JUDICIAL POSITION SHOULD BE RETAINED, AT BENSON, BECAUSE OF THE NEED WHICH EXISTS IN SWIFT COUNTY AND IN THE ADJOINING COUNTIES WITHOUT A CHAMBERED JUDGE

> Strict application of the weighted caseload results would allow this court to terminate both positions and make the subsequent availability of judges to Murray and Jackson counties an administrative problem to be solved through the establishment of new judicial assignment patterns within the district. But we have heard extensive arguments about accessibility of judges ... and we share those concerns.
>
> ... Given the relative judicial need among these three counties, placement of a judge in each county will allow both the efficient utilization of judicial resources and adequate accessibility to judges by the citizens of those counties.
>
> --In Re Fifth District Judicial Vacancies, Order of April 14, 1987.

This Court does not follow a rigid and mechanistic application of the weighted caseload analysis when special concerns merit the retention of a judgeship. Order Continuing Judicial position in the Fifth Judicial District, Order of September 30, 1987. Starting with its 1986 decision in this district, In Re Eighth District County Court Vacancies, Order of June 20, 1986, it has looked at access and other practical issues in the affected counties and their surrounding areas. When access or other needs justified it, this Court has retained judicial positions even though the weighted caseload analysis showed the entire district to have a surplus of judges. Thus, in its June 20, 1986 Order applicable to this district, it retained two judicial positions because of a number of special circumstances, with its primary reasons being the geographic and resulting judicial access considerations involved in the two vacancies in question. In Re Eighth Judicial District County Court Vacancies, Order of June 20, 1986.

The following year, the Court issued an Order retaining a judicial position in Houston County in the Third Judicial District, and cancelling a public hearing it had set on the position. It did so on the basis of weighted

caseload study results which indicated a need for the position in Houston County. In Re Public Hearing on Vacancy in Judicial Position in the Third Judicial District, Order of February 13, 1987. The Court did not attach a Memorandum to its Order. We find from a review of the applicable weighted caseload statistics that Third Judicial District had a judicial need of 19.6 in 1986 and 19.8 in 1987. It had at least 22 judges during that time. Houston County, however, had a need for 0.9 judge in 1986 and 0.8 judge in 1987. WCL Judicial Need 1990, 16-Oct-90, p. 2. Because of that county's need for judicial services, the Court retained the position despite the surplus in the district.

Two months later, a decision was issued on two vacancies in the Fifth Judicial District. One was in Murray County. The other was in Jackson County. One of the judges in the district also requested rechambering from Cottonwood County to Jackson County. The weighted caseload analysis showed a surplus of more than two positions. The Murray County judgeship was retained. The Jackson County judgeship was filled by the transfer of chambers. The resulting Cottonwood County vacancy, where two judges had been chambered in the same county, was terminated and transferred to another district. The Court emphasized the importance of access to judges and the importance of a resident judgeship to our communities. It also emphasized that issuance of arrest and search warrants, temporary restraining orders, and domestic abuse orders can be matters in which time is of the essence. Cottonwood County needed only .6 judge, not its complement of two. Jackson County needed .6 judge, and Murray County needed only .4 judge. Yet, for reasons of accessibility, the Murray County judgeship was still retained. In Re Fifth District Judicial Vacancies, Order of April 14, 1987. The current weighted caseload analysis shows Swift County to have a need for .6 judge, with the need as high as .8 over the past few years.

In September, 1987, the Court, without hearing, retained a vacancy in Blue Earth County in the Fifth District. It did so, in part, because of concerns raised at the prior hearing regarding accessibility of judges, placement of judges within the district, the removal of judges from an economically troubled area and the need of an adjoining county, Nicollet County, for additional judicial resources, even though the district and Blue Earth County itself had surplus judicial resources. Order Continuing Judicial

Position in the Fifth Judicial District, Order of September 30, 1987. Subsequently, the Nicollet County need was addressed by the rechambering of a judge. Earlier this year, after another hearing, a position in Blue Earth County was terminated and transferred to another district. In Re Fifth District Judicial Vacancy, Order of July 13, 1990. In Eighth Judicial District there are three counties, Big Stone, Lac qui Parle, and Pope, which do not have a chambered judge. All of them adjoin Swift County. Swift County needs .6 judge, according to the weighted caseload analysis. It would be left without a chambered judge if this judicial position is terminated.

In May of 1988 the Court again continued a position in Mower County, without hearing, even though the weighted caseload analysis still showed Third Judicial District to have a judicial surplus. The need in Mower County was for two judges. By continuing the position, the county retained both judges it needed. Order Continuing Judicial Position in the Third Judicial District, Order of May 25, 1988.

Finally, in 1989 two positions in Third Judicial District were retained, one half-time judicial officer position was ordered terminated when it becomes vacant, and two judges were rechambered. The district had 22.5 judicial positions. It needed 20.5, with an access adjustment of 21. This decision left the district with one surplus position. The Court found a need to use this opportunity to correct imbalances in the distribution of judicial resources in the district, and emphasized that problems of distances and traveling difficulties justified keeping one of the judgeships which could have been terminated. In Re Judicial Transfer and Vacancies, Third Judicial District, Order of May 11, 1989.

The clear policy of this Court has been to retain a judgeship when there is a need for it in the county where the position is chambered, or for judicial access in an adjoining county, even though the weighted caseload analysis shows the entire judicial district to have a surplus of judges. This policy applies in the present instance. Swift County has only one judge. It needs a judge for access to the courts. Its weighted caseload judicial need is for .6 judge. This is as much, or more, than the need of other counties in the state where the Court has retained judgeships in order to preserve access. There are three adjoining counties without a judge. Terminating this position will further erode judicial access in those counties. Filling this position will help maintain judicial access in those counties.

POINT 6: EIGHTH JUDICIAL DISTRICT WANTS AND WORKS FOR QUALITY JUDICIAL SERVICES, AND THE LOSS OF THIS POSITION WOULD WORK A LOSS OF JUSTICE IN EIGHTH JUDICIAL DISTRICT

> It is the expectation of the court that the continuation of the two judgeships in question and the redesignation of chambers as set forth herein will place the district in a stronger position to cope with the demographic shifts and workload changes occurring within the area and to improve the accessibility to judicial services throughout the district. Given the retention of these two judgeships we trust the district will shortly implement an effective plan for the liberal cross assignment of its judges to better utilize its judicial resources to serve the public. The elimination of distinctions between the county and district courts, particularly in geographical dispersed areas such as the Eighth District, is the best solution for increasing the productivity of individual judges and for insuring adequate access to the judiciary thoughout the district.
>
> --In Re Eighth District County Court Vacancies, Order of June 20, 1986.

Over the years, the bench and bar of this district have worked to achieve quality legal services in the Eighth Judicial District.

In the early 70's, rural District Court judges in the state didn't have law clerks. The three District Court judges of the Eighth Judicial District saw the need. They funded a law clerk through a federal grant program to improve the quality of criminal justice. Their experience with a law clerk helped provide the impetus for the current state law making law clerks available in all judicial districts of the state.

In the mid-1970's, Eighth Judicial District and Fifth Judicial District became the first rural judicial districts in Minnesota with a District Administrator.

More recently, Eighth Judicial District led the way in seeking and obtaining the first multi-district computer center in the state.

Presently, it is working closely with the Supreme Court on a pilot project which provides state funding of the district's judicial services.

Through the intervening years, a number of other actions have been taken within the district to improve judicial services. In 1978, it voluntarily relinquished the services of two County Court judges assigned part-time in Grant County because of a greater need for their services elsewhere in their County Court District, in the Seventh Judicial District. It has over the years operated under at least three reorganization plans that each time improved judicial services and access in the district. Under the old County/District Court system, it used liberal cross-assignments, and later went to blanket cross-assignments. When the last reorganization plan was adopted, neither the former District Court judges nor the former County Court judges attached any conditions as to what kind of cases they would or would not hear. For a number of years the entire district has been a single assignment district, so that any judge of the district can hear a case anywhere in the district.

Faced with the possible loss of two judgeships in 1986, the bars of the Twelfth and Sixteenth District Bar Associations united in their opposition to loss of either position. Law enforcement officers, county commissioners, legislators and many other interested persons worked with the bench and bar of the district to retain the two judgeships. A comprehensive brief was submitted by 12th District Bar Association that emphasized access-related issues. All of these efforts were important in demonstrating the need for the retention of both positions.

We are again facing the possible loss of a judgeship. Again, important issues pertaining to access and judicial administration are present, as well as other issues.

Swift County is at the core of the district. Loss of its judgeship will split the district in half, as we will have four adjoining counties from the western border of the district to its eastern border without a chambered judge. All three counties without a chambered judge adjoin Swift County. Access in those counties will be further impeded if this judgeship is not retained. Swift County needs, according to the weighted caseload analysis, the services of .6 judge. If the position is lost, it will have no chambered judge. With this need, and with the lack of a chambered judge in three adjoining

counties, it will not have adequate judicial access. Access in the remainder of the district will be impaired as the then remaining 11 judges spread themselves even further to cover the judicial needs in all 13 counties while still meeting the relatively heavy workload of Kandiyohi, Meeker and Renville Counties.

CONCLUSION

> If, after applying the weighted caseload analysis to a judicial district or to an assignment district therein, a determination is made that there is an overabundance of judicial resources, the burden shifts to the locality to demonstrate compelling reasons for the continuation of the judgeship in question.
>
> ... We find that the burden has been met. ...
>
> --In Re Eighth District County Court Vacancies, Order of June 20, 1986.

As can be seen from the foregoing discussion, there are compelling reasons for the retention of this judgeship. Most of these reasons center upon problems of access for the district, and especially for Swift County and the three adjoining counties without a chambered judge. The new prison at Appleton will create judicial needs that do not exist now and that thus are not taken into account in the weighted caseload analysis. This judicial position is needed for adequate citizen access to the courts and for efficient judicial administration.

We respectfully request that the vacancy occasioned by the disability retirement of Hon. Richard A. Bodger be continued in Eighth Judicial District and chambered at Benson, in Swift County.

October 24, 1990

TWELFTH DISTRICT BAR ASSOCIATION