

State of the Judiciary
Chief Justice Ralph J. Erickstad, North Dakota Supreme Court
Message to the Legislature
January 8, 1991, in Bismarck, North Dakota

Good afternoon: I thank you, Lieutenant Governor Lloyd Omdahl, Speaker Ronald A. Anderson, Governor George Sinner.

I am very pleased and honored to be invited to speak to this Joint Session of the Fifty-second Legislative Assembly.

I appreciate that among those who are present today are my colleagues on the Supreme Court, leaders of the Republican and Democrat caucuses of the House and Senate, committee chairs, other members and staff of the Fifty-second Legislative Assembly, officers, chairpersons and members of the North Dakota Judicial Conference, Chief Presiding Judge and members of the Council of Presiding Judges, chairpersons of the Supreme Court advisory committees, officers, members, and Executive Director of the Board of Governors of the State Bar Association, chairs of the District and the County Judges Associations, President and members of the State Bar Board, state officials and other distinguished guests, as well as other citizens of North Dakota including members of some of our families. I thank you all for your presence and interest in the judiciary.

As this is the ninth time that I have been privileged to address a joint session of the Legislature on the State of the Judiciary, I realize that some of you may think some of the things I say today are repetitious of what I have said before, but I hope that you will bear with me with the realization that a significant number of you are serving as legislators for the first time.

On December 31, 1992, the Lord willing, I will complete my third, ten-year term as a member of the Supreme Court of our state and my fourth term as Chief Justice. When you convene in a joint session in January of 1993 I will not be here to speak to you in this capacity, nor will I likely be a member of the Supreme Court. I may, if I am appointed, function as a surrogate judge on occasion in 1993 and for some time thereafter.

It behooves me, therefore, to speak as honestly, forthrightly, clearly, convincingly, and wisely as I can if I am to convince you to do what I believe to be in the best interests of all the people of our state.

The interim between last session and this session of the Legislature has been difficult for most of us. With some parts of the state having suffered three years of drought, with the decreased oil production and the referral of the three major tax measures, it became necessary for the Director of the Office of Management and Budget to reduce the funds available to the three branches of government by 9.1 percent. This amounted to a reduction in the budget for the judiciary of our state of approximately two million dollars. Recently, because of the improvement in the economy resulting from some good rains in June, some increased oil activity from horizontal drilling and from the Persian Gulf crisis, the director was able to restore to our judicial budget 2 percent of that 9.1 percent.

I am pleased to report, through some very serious belt tightening, which included serious restrictions in travel within the state and even more restrictions in travel outside of the state for most of our personnel, restrictions on expenditures for training until the latter part of this biennium, curtailment of most equipment purchases until the latter part of this biennium, severe restrictions in face-to-face meetings of judicial committees until the latter part of this biennium, and the filling of only the most crucial vacancies in employee positions for a significant period of time, both at the district and the supreme court level, we have been able to continue to perform judicial services. Unless we have some expenses such as could occur through lengthy and costly jury trials. we expect to reach the end of the biennium with all of our bills paid and with a respectable, positive balance

On July 1, 1990, there were 10 positions (10 of 115 positions - 9% of staff positions) within the districts not filled, and six positions (6 of 42 positions - 14% of staff positions) within the Supreme Court not filled.

I am pleased to report that we have recently filled the vacancy created by Larry Spears' resignation. Please see pages three and four of my printed remarks.

Although our trial courts are in good health, the judiciary has been subject to criticism as a result of suggestions by some Judges and others that there are too many trial court judges in North Dakota. That may be true at the moment because of the downturn in the economy, but it was only a few years ago that people from both the east and the west and I might even say from the central, sought our support for more district judges in their areas.

I would be much more concerned if we had too few judges and if our citizens were languishing in overcrowded jails awaiting trial or sentencing, or if our civil courts were so backlogged that our people had to wait five or more years just to get to court to have their civil cases decided and then had to wait long periods of time thereafter to have their appeals decided as is the case in some parts of our country. Witness the statement of Chief Justice Malcolm Lucas of California in his first address to the legislature in which he said: "In Los Angeles, the time for a civil case to get to a courtroom is down to three and one-half years from almost five years – a sizeable improvement for just two short years of effort."

Our people wait nowhere near that amount of time for a case to be heard and to be decided.

Our docket currency standards contained in Administrative Rule 12, particularly parts (a) and (b) of Section 2, and Sections 2A, 3A, and 4A are pertinent. I will not take your time to discuss them, but you will find them at pages five and six of my printed message.

Our presiding judges are careful not to waive the time limits unless justification exists, and I, as Chief Justice, have never waived any of the docket currency time limits without the concurrence of a majority of our court.

Our system of keeping track of trial court cases is working, and with computerization of the system, in the future we will be even better informed of the health of our judiciary.

Now let me get back to the issue of the number of district judges. Basically, because of demand from our people, the number of district judges has been increased from 16 originally to 27 since I

became a justice in 1963. With an upturn in the economy, the need for judges would increase again.

We need a measure of historical perspective and a realistic view of the future in evaluating suggestions for any sudden and severe changes in the number of trial court judges.

If too many full-time, law-trained judges is a problem, it is from a judicial standpoint, a problem most states would like to have.

To illustrate, if we were to strive to reach the national average in the judge per person ratio, our reward would be a serious downgrading in the quality of the delivery of judicial services in our state, especially in the rural parts of our state. With that as a consequence, I doubt that there would be many in this room who would seek that objective.

As a present, practical matter, what we need, to be able to make necessary adjustments, is authority within the judiciary to decide whether or not vacancies in trial court judgeships should be filled, and the authority to decide where the vacant judgeships should be located if filled, based upon shifting and changing needs. The Judicial Conference Ad Hoc Commission on Unification and the interim Budget Committee on Government Administration have recommended such legislation relative to the district courts. Please see Section 2 of Senate Bill 2027 [Appendix II]. I urge your support of this legislation.

Now let me speak briefly as to the numbers of county courts Prior to H.B. 1060 which was passed in 1981, we had 17 County Courts with increased jurisdiction with judges who were law-trained and full-time, approximately 36 county courts without increased jurisdiction with judges who did not need to be law-trained but who were full-time and functioned basically as probate judges, and approximately 36 county justices who were, for the most part, law-trained but only part-time.

In 1978, the Legislative Committee of the Supreme Court, chaired by Harry Pearce of Bismarck (who is today general counsel of General Motors), recommended to an interim committee of the Legislature a proposal, after much study, discussion, and seven redrafts, which became H.B. 1066 in the 1979 Session of the Legislature. House Bill 1066 contained two alternatives. One alternative called for the creation of 29 associate district judgeships in lieu of the then existing three-leveled county court system with its many and varied judgeships, and the other alternative called for the creation of 29 additional district judgeships in lieu of the then existing three-leveled county court system. Those judgeships would have been assigned to districts whose boundaries would have been determined by the Supreme Court on the basis of workload and other needs. This bill passed the House with a very slim margin and was killed in the Senate, by persons from rural counties, one of whom said we do not need nor want an Ayatollah Khomeini in North Dakota.

In the interim between 1979 and 1981, Representative Dean Winkjer of Williston chaired a Legislative Council committee which worked out a compromise which satisfied the county commissioners and was encompassed in H.B. 1060 which is law today with slight amendments over time H.B. 1060 created a single level county court system, which today includes 26 full-time, law-trained judges. The number of judges and the areas in which they serve, and within

limits the salaries they are paid, are determined by the county commissioners in each county judge district.

Sometime following the close of the last legislative session, the chair of the Judicial Conference appointed an Ad Hoc Commission on Unification which was chaired by Judge Lawrence A. Leclerc of Fargo, which commission has been expanded from time to time to broaden its membership. Please see Appendix III for the membership.

This commission has reported periodically to the interim Budget Committee on Government Administration of the North Dakota Legislative Council, chaired by Representative Richard Kloubec of Fargo, and its recommendations have been included in Senate Bill 2026 of the Legislative Council. Please see Appendix IV for the pertinent parts of that bill.

But now I am ahead of myself. Let me take you back in time to a meeting of the judges of the Supreme Court, the Presiding District Judges, a representative of the chair of the Judicial Conference, the chair of the District Judges Association, and the chair of the County Judges Association, which was held in Medora October 4-5, 1990. At that meeting, after the features of the Ad Hoc Commission's proposal for consolidating the trial courts were considered and discussed, it was concluded that there was not sufficient agreement within the judiciary for the successful passage of the proposal on consolidation in the 1991 Session of the Legislature. Accordingly, action was taken to encourage the Ad Hoc Commission to request of the interim Budget Committee on Administration of the Legislative Council that it not introduce legislation providing for consolidation of the trial courts until the 1993 Session of the Legislature. It was hoped that in the interim, through further study and compromise, a bill could be prepared that would receive the support of a greater number of County Judges, district judges, practicing bar, county commissioners, general public, and of course, ultimately, you members of the Legislature, as well as the Governor of this state.

Senate Bill 2026, in ultimately making all trial court judges district judges, would gradually reduce the number of judges, which now number 53 in total, to 42 by January 1999. On January 1, 1995, all judges of county courts would become interim district judges and the office of county court judge would be abolished. Each former county judge would serve in the capacity of interim district judge until December 31, 1998, or until elected a judge of the district court, whichever occurred first. See especially Section 90 of the bill. It would initially revise the current seven judicial districts in the state into eight judicial districts with four of the districts centering around Grand Forks, Fargo, Bismarck, and Minot. It would provide no assurance to either the district or the county judges that they could continue to perform duties consistent only with their current responsibilities. See Appendix IV for pertinent parts of the bill.

Notwithstanding the past lack of consensus on the part of members of the judiciary, I was encouraged that there now might be a possibility that a consensus could be reached that could resolve some of the issues, as the Judicial Conference, at its recent meeting in Bismarck on the 20th of November, passed a resolution establishing a court consolidation coordinating committee to attempt to work out a compromise. Please see Appendix V. This committee was designed to incorporate the diverse preferences and views of all the persons and interests most involved and affected by the Ad Hoc Commission's proposal. With this umbrella committee functioning as a mechanism somewhat similar to your conference committees within the legislative branch, I

hoped we could reach an accord that would not only be progressive and beneficial to all concerned, but would be fair to those who have sacrificed their law practices and dedicated their lives to the judiciary for the benefit of the people in their counties and districts. Please see Appendix VI for amendments to S.B. 2026 the county judges hope to incorporate.

Incidentally, since my written remarks went to the printer, the Coordinating Committee has met twice and Judge William Neumann, as co-chair of that committee, has drafted proposed amendments to Chapter 27-07.1, N.D.C.C., relating to county courts and other provisions of the Century Code. This morning, after considerable debate, the Judicial Conference voted in favor, by a divided vote, of the Legislative package submitted by the Coordinating Committee, as a first step toward eventual consolidation of the trial courts. I might say parenthetically that unless the judiciary unites behind that package there is probably a slight chance that we will see any changes in the system that the judiciary is now functioning under. So when you realize it passed by less than 10 votes, 21-29, it means that unless the judiciary gets behind that package there will likely be no legislation because judicial people know legislators and they are from all over the state. I will not attempt to summarize that package at this time, but it will be made available to you as soon as possible.

Another recent development in this now fast-breaking scenario is the report entitled, "A Basis for Consensus on a Single Trial Court of General Jurisdiction in North Dakota", a service of the North Dakota Consensus Council, Inc., dated December 27, 1990, with a proposed bill draft and commentary. This could be valuable as resource material and pertinent for any discussion, but particularly for the future.

Irrespective of what action you take relative to the consolidation of the trial courts, which action is likely to require the expiration of some period of time, there are some things that need to be done now in fairness to the county judges: (1) In accord with the resolution of the Association of County Commissioners, the minimum salary of all county judges should be set at \$56,000 per year as of January 1, 1992, and \$57,500 per year as of January 1, 1993. (2) In addition, the salaries of county judges should be increased the same percentage as district judges' salaries are increased beyond the base salary increase just referred to. (3) County judges should be provided medical, hospital, and retirement benefits by the counties at the level provided state employees with the cost to be borne by the counties.

If you incorporate these recommendations into state law during this session of the Legislature, some of the current inequities which fester in the system will be eliminated and the end result will be improved judicial services throughout the state. I sincerely urge your support for these objectives.

The Salary and Retirement Committee of the Judicial Conference, chaired by Justice VandeWalle, has recommended, and the Judicial Conference has approved, a request of the Legislature that district and supreme court salaries of judges and justices be increased by the same percentage each year of the coming biennium as requested by the Board of Higher Education for the faculty of the University of North Dakota and North Dakota State University.

While I am speaking of judges' and justices' salaries, it is appropriate that I urge you to support salary increases for our employees, both at the district and supreme court level. We urge you to

provide salary increases at least equivalent to the salary increases that have been recommended by the Governor for employees within the Executive Branch, which I understand to be 4 percent for the biennium with a minimum of \$50 per month. In light of the increase in the cost of living of almost 10 percent according to the consumer price indexes since the last session of the Legislature, this requested increase cannot be considered other than justifiable.

The North Dakota Supreme Court continues its heavy caseload. Pages 13 and 14 of my printed message contain the details.

In summary, in 1989, each justice prepared over 4 1/2 opinions per month every month, in addition to special concurring opinions, dissenting opinions, and administrative tasks, while sharing responsibility for approximately 18 other opinions per month. This opinion production compares favorably with the other highest appellate courts in this country.

Pages 14 and 15 of my printed message describe committee efforts in conjunction with appellate court docket currency standards.

From January 1, 1990, to November 29, 1990, the average time that elapsed in our Supreme Court from oral argument to the signing of a written opinion (combining the civil and criminal cases) was 63 days. This compares favorably with the time recommended for such an interval by the standards relating to appellate courts of the American Bar Association which cite (for both civil and criminal cases) a target of 60 to 90 days, depending on the complexity of the case, for writing an opinion, plus 30 additional days for dissents and special concurrences, for a total of 90 to 120 days. Much of the time involved in an appeal is the time required by the court reporters in preparing the transcripts of the testimony, and the time required by the lawyers in preparing the written briefs prior to oral arguments in the appellate court.

Notwithstanding that all seem to agree that we have a good record in disposing of cases in our court promptly and thoughtfully, we have decided to monitor our appellate court caseload for a period of time to determine whether or not our court could benefit from the adoption of appellate court docket currency standards.

There are many other things about which I could speak in which the judiciary has been involved since my last report to you but it would take too much of your valuable time for me to orally report upon those activities. I do hope, however, that you will find the material contained in the addendum at the end of this message helpful to you in conjunction with your services as legislators.

If you take the time, which I know is scarce, to read this material, I think you will become as convinced as I am that we have made progress in our continuing efforts to improve the judicial system. Progress has been made that could not have been made without the cooperation of countless people, both within the judicial system and outside of it. We especially appreciate the fine support we have received from you in the past and we look forward to working with you in the future.

Just as freedom and justice are not free, justice is not easily attainable, nor is it enduring without continuous effort and personal dedication on the part of those who serve the justice system and those who would uphold and preserve it.

We extend to you our best wishes for success in this legislative session, and, in conclusion, we invite you to join our people who are waiting to visit with you and to serve you coffee and cookies down the hall just outside of the Supreme Court courtroom in the Judicial Wing immediately following my remarks. As always, we look forward to meeting with you in person. We hope that your presiding officer will graciously grant you a recess for that purpose.

I thank you very much.