

State of the Judiciary

Chief Justice Gerald W. Vandewalle, North Dakota Supreme Court

Message to the North Dakota Bar

June 10, 1993, in Grand Forks, North Dakota

Good morning. Members of the Bench, the Bar, President Joel Gilbertson, President-Elect Gordon Schnell, Secretary/Treasurer Ralph Erickson, Members of the Board of Governors, and Executive Director Sandra Tabor:

I am delighted to be with you this morning to continue the traditions started by Ralph Erickstad and present the State of the Judiciary message. As a primary user of judicial services, you, the members of the Bar, have a big stake in our state judiciary.

I have had the message printed. You all have a copy of it. I am not going to read it in its entirety. Despite what some of my colleagues say, I know you can read. I really am just going to use some excerpts.

People have asked me how the first few months of my term as Chief Justice have been. Well, perhaps I can best explain it by sharing with you a letter I received. It says:

"My dear friend: Perhaps you have heard of me and my nation-wide campaign against sins of the flesh. Each year for the past fourteen years I have made a tour of Florida, Georgia, Indiana, Iowa, and North and South Dakota. I have delivered a series of lectures of the evils of worldliness. On this tour I have been accompanied by my young friend and assistant Clyde. Clyde, a young man of good family and excellent background, is a pathetic example of a life ruined by excessive indulgence in things of the flesh. Clyde would appear with me at the lectures and sit on the platform wheezing and staring at the audience through worried bloodshot eyes, sweating profusely, picking his nose, passing gas and making obscene gestures while I would point him out as an example of what overindulgence can do to a person.

Last fall, unfortunately, Clyde died. A lawyer in North Dakota has given me your name and I am wondering if you would be available to take Clyde's place in the 1993/94 tour. Please respond immediately."

I must tell you that it came from my barber. Actually, we are in the process of undergoing the most significant changes ever undertaken within our court system. Trial court unification is a year and a half from being a reality. With this monumental change comes uncertainty, a cloudy future, questions on how to best proceed and, not unexpectedly, anxiety on the part of many judges who have a personal interest in the implementation. I am committed to implementing unification with as little pain as possible. "No pain-no gain" may be realistic for exercise fanatics, but if we plan and work together it need not be the process by which trial court unification is implemented.

Obviously, I need your support. We will need your cooperation, your understanding, your patience, and your constructive suggestions as we work through the implementation of trial court unification.

A little bit about the trial courts. The trial courts are in good health. Cases are routinely being disposed of within time standards that are the envy of nearly all other states. The percentage of district and county court civil cases which exceed the docket currency standards remains at less than 5 percent. Our trial judges deserve a round of applause for the manner in which they have diligently supported docket currency and I ask you to join me in giving them that round of applause.

(Applause.)

The future of docket currency, however, is another story and a cause for concern. New filings in the district and county courts have averaged an increase of 5 to 7 percent each year for the last three years. If the workload continues to increase 5 to 7 percent each year and the total number of judges is further reduced by 16 percent, as programmed in the unification law, it will be a matter of time until North Dakota joins the many other states that have a two to five year wait to get a civil case heard. I believe our legislators are reasonable and genuinely care about judicial services that we provide to our citizens. If we find more judges are needed, I am confident the Legislative Assembly will find a solution.

The Supreme Court. Joel already told you about the changes we faced in the Supreme Court. Our new colleagues have joined the court. They are in place. They are working well. The court has remained well within its docket currency guidelines recommended by the American Bar Association. Actually for 1992 our filings were down. However, if history proves true, the increase of filings in the trial court will be reflected in an increase in filings in the Supreme Court.

Thirteen months ago the tragic shooting of District Judge Lawrence Jahnke here [in] Grand Forks caused many of us to re-evaluate the need for security in our North Dakota courtrooms. One year ago this General Assembly passed a Resolution in recognition "of the serious risks faced by judges in the daily course of carrying out their duties, and more specifically, the life-threatening violent act of a litigant against Judge Lawrence Jahnke."

The Supreme Court has been offering financial assistance to the counties installing courtroom security equipment. Although we need to make our courtrooms secure, we do not need 53 trial court centers-trial centers in North Dakota. We should not expect counties to spend large sums for permanent improvement on court facilities that are seldom used. We will urge permanent improvements in those court facilities which are most heavily used and seek more modest security improvements in those facilities which are used less often.

Court funding. Our budget is through the Legislature. The Governor signed it. Overall, the 1993-95 trial court budget, excluding unification, was increased by approximately 1 percent.

The funds requested for court unification for the last six months of the biennium, and that's January through June of 1995, were appropriated by the Legislature. The Legislature also authorized continuation of the Court of Appeals for two more years but without legislative funding.

Finally, a few words on pay. The Legislative Assembly authorized a \$60 increase for employees for the first year of the biennium and a 3 percent increase for employees the second year of the

biennium if we can find it in the appropriation. They didn't appropriate any money for it. Those increases did not include judges. Judges were classified as state officials, and no state officials were given increases. That means the pay gap between North Dakota judges and judges of other states will continue to grow for the next two years. We currently rank in the bottom 4 percent of pay for state judges. We need to develop judicial pay as a priority in the Legislative Assembly.

Lawyer discipline. Joel has spoken to you a little bit about it. The number of new complaints filed against attorneys in 1992 hit a record high of 168. We supported the funding of an additional attorney to assist the Disciplinary Board in clearing up the backlog and improving the time it takes to process a complaint. The Legislative Assembly approved its request and approved funding as of July 1, 1993. The position is currently being advertised. I should tell you that I was surprised, very pleased, when they added the position. That was contrary to what they did in almost every other area. And I was even more pleased, and I shared this with Joel and Gordon and Sandi, that we were able to accomplish the additional position without trotting out all the horror stories in front of the Legislature that sometimes is needed to push their button. They were very cooperative in financing this position, and I am very appreciative that they did it.

On legislation, a-there is a piece of legislation that was passed that will permit us to help-help us in reducing the number of trial court judges to meet the number the Legislature has now prescribed. And, briefly, it provides that a vacancy will be considered to have occurred in the office of district judge if the judge declares intention not to seek re-election or if a judge fails to file a timely petition for candidacy. So that means that if one of the current judges determines not to run, we will be able to declare that position vacant if we believe it need not be filled.

Many of you over the years had occasion to work or to have some contact with Elmer Dewald, our lawyer librarian. As you know, Elmer resigned a few years ago. That position has been filled by Marcella Kramer. Marcella has done a wonderful job. She is not a trained librarian and the Court, in an effort to improve the library, is going to be filling that position and is already calling for applicants to fill the position.

Finally, I want to comment on the spirit of cooperation between the Bar and the Bench. At the suggestion of the Bar leadership, we met periodically throughout the Legislative Session. The status of pending legislation was discussed and we shared our knowledge and perceptions of the legislators' attitude. No attempt was made to change views or alter positions but there were few, if any, surprises as to the positions or the actions taken by the Bar or the Court on matters of mutual concern. I wish to publicly thank Joel Gilbertson, Gordon Schnell and Sandi Tabor for their openness and straight-forward views. They made the Legislative Session much easier for a new Chief Justice.

Yes, we can have gain without pain. The same cooperation that assisted in the last Legislative Session and enabled the creation of a Joint Bench/Bar Commission on Lawyer Discipline and Admissions can operate to simplify trial court unification. I ask for your help and support. I thank you for your part in the new direction we are headed jointly.

When I-when Sandi asked me about talking, I said, "About what?" And she said, "About the judiciary and about fifteen minutes." And I tried to come within that time.

Sandi, do I have a few minutes left? I have a few minutes left. I told her, and I know it is taking a risk, but I told her I would like to try something different. If any of you have any questions that I or my colleagues, and they are here, all except Justice Sandstrom who is ill and could not be here, I would like to take them at this time. I would like to have a dialogue with the lawyers. So if any of you have any question about anything I have said, anything I haven't said about the Judiciary, I am willing to take them within the time allotted. And if not, I'll thank you. Any questions? Bob.

MR. ROBERT O. WEFALD: In terms of law librarian what is it you expect to achieve that we are not getting from Marcella right now? I am just curious.

CHIEF JUSTICE VANDEWALLE: A screening process, Bob, of what is out there. The materials are just-we don't have enough money. We have very limited resources to purchase new acquisitions, and it is very difficult to determine what there is. We are also going to be heading away from hard cover, and that's a whole area that we need some very expert advice in. We asked the University of North Dakota Law Library people to come in. I had hoped that we could make an arrangement with them, but they recommended that we have a full-time trained Law Librarian on staff. And so that is really-those are the areas. Marcella has done a wonderful job. Those of you that have been in that library know she has done a nice job and we are appreciative of that. Anybody else have any questions? David, I knew you wouldn't let me be.

MR. DAVID L. PETERSON: Justice Levine ordered me to ask a question.

CHIEF JUSTICE VANDEWALLE: And I believe that.

MR. PETERSON: Judge, how do you know what is going to happen on the unification thing? There was a lot of discourse in the Legislative Session. Are we headed-are we looking at the possibility of backsliding on that in the next session?

CHIEF JUSTICE VANDEWALLE: On whose part?

MR. PETERSON: Legislature's part.

CHIEF JUSTICE VANDEWALLE: I am not sure we can make it with 42. I am very doubtful we can make it with 42. We may be able to cut one or two, maybe three more positions, and I think that is the bottom line without really starting to hurt, or hurt more than we can afford to. So I think we need to go in and tell them that we have made an effort. We have looked around. We have looked at some of the positions that might be on the board, and I think three is an absolute maximum, three more to go. And I am not sure what we can-if we can take that. I think if we explain it to them, they will cooperate.

We also have to take a look, and I said I wouldn't sow the seeds of dissension, but I think we need to take a look at our venue statute. If we are going to have fewer judges we simply are not going to be able to try the cases in some of these rural counties, and I am not sure that we are going to be able to call juries in some of those rural counties. There are very few people in some of those counties. We really need, I think, to take a hard look at our venue statute. So those are some of the things, David, we will be looking at. Anyone else?

MR. ROBERT WEFALD: One other question. Is the Supreme Court taking any leadership role in getting uniformity in district court and how we handle default divorce judgments?

CHIEF JUSTICE VANDEWALLE: I am not – no. Right now – this is one of the reasons, Bob, for this question and answer period is because I don't think lawyers will always tell us what is on their minds. I am not sure I knew there was a problem. So if there is, let us hear about it. And we will take a look at it. I am not sure we will do anything about it, but we will take a look at it. Anyone else? If not, thank you.