

State of the Judiciary
Chief Justice Gerald W. VandeWalle, North Dakota Supreme Court
Message to the Legislature
January 7, 2015, in Bismarck, North Dakota

Introduction

Lieutenant Governor Wrigley, Speaker Belter, Governor Dalrymple, members of the Legislative Assembly, State executive officials, my judicial colleagues, the district judges, surrogate judges, and supreme court justices, and other friends. Thank you for the privilege of appearing before this Joint Session of the Sixty-fourth Legislative Assembly of our great State.

Most of us learned, or should have learned in school, that in 1215 at Runnymede near Windsor Castle, King John of England sat under a tree and signed the Magna Carta, the Great Charter. That document is the foundation of Constitutional rights and liberties and is the foundation of law that the entire court system of the United States relies on even today. Among the principles laid out in the document is the concept of due process. Due process is the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including the right to fair hearing before a fair and impartial court with the power to decide the case. It encompasses the principle that the state must respect all of the legal rights that are owed to a person. It is a constitutional guarantee that all legal proceedings will be fair and that the application of laws will not be unreasonable, arbitrary or capricious.

This is the 800th anniversary of that signing and while attending a meeting of the executive committee of the Conference of Chief Justices in Washington, DC in November, it was my privilege to view one of the four remaining original copies of this document issued by the Royal Chancery. It was on loan to and displayed at the Library of Congress. That was shortly after Veterans Day when we honor our veterans who preserve and protect those liberties.

It was a stirring and emotional moment to be in the presence of this document, and to share with several my colleagues from around the nation, these words from that document:

No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgement of his peers or by the law of the land. To no-one will we sell or deny or delay right or justice.

These concepts of due process have been the guide by which I have endeavored to direct the North Dakota Court System in the years I have been privileged to serve on the Court and as its administrative head. They are the touchstone by which we measure our worth as a court system.

Need for Additional Judges and Staff

As you may have anticipated, this is the segue into the portion of this address in which I am asking for resources that cost money. I have made no secret of the fact we need additional help. In the past 10 years, the caseload in our courts has increased dramatically, particularly in the oil-impacted counties. In these counties, it is easy to see the connection to increased population,

increased business activity, and increased law enforcement. In other areas of the state, most notably Burleigh and Morton counties, it has been more of a gradual increase, yet one that is so persistent that these two counties are now home to the most active courts in the state.

The lack of judges and court staff affects entire communities. Those charged with crimes sit in jail longer while they wait for their day in court and a judgment of guilt or innocence. This is disruptive to their own lives and those of their families; it is hard on the alleged victims and the witnesses who wait to testify, and it costs the counties thousands of dollars in incarceration costs. But criminal cases, while a majority in the court system, are not the only cases. Without an adequate number of judges and staff, children wait to learn if they will remain in foster care or return home; adults wait in uncertainty for divorces to be finalized and issues of child custody and property division to be decided; businesses wait for contracts to be interpreted and enforced, and thousands of dollars go into trust accounts until heirs and mineral rights issues can be adjudicated.

The rule of law depends on courts being available in a timely manner and without additional resources we are losing the ability to meet on a timely basis the needs of those who come to the court for help. The lack of resources, particularly in the criminal arena, has led to a system of 'conveyor-belt justice' where hearings are too often run by script and concluded in less than five minutes. We are requesting 4 additional judges and 15 additional court staff to meet the growing needs in Burleigh, Morton, Stark, McKenzie, Ward and Williams Counties.

As an aside, if the economy in North Dakota does slow down, experience has shown there is even greater demand on the courts when businesses fail, crime increases and the stresses on families result in more family law cases. In any event, should our need for judges diminish, last session you restored the authority of the court to eliminate judgeships when a vacancy in that office occurs and there is no need for the position in any location in the State.

Racial and Ethnic Justice

Due process is just an empty promise if we focus only on touching the constitutional bases without giving any thought to how our processes affect the lives of the people who come before us. To live up to the promise inherent in the concept of due process requires constant and vigorous review of our work. Four years ago, we undertook a long and thorough look at how we handled cases involving racial and ethnic minorities and found that we had room to improve. One of the ways we are addressing this is with a proposal to expand the very successful Youth Cultural Program to Cass and Ramsey counties.

This program directs services specifically to Native American children who are charged with a delinquent act and the program is currently available in Burleigh and Morton counties. Also, this past biennium, we have undertaken a review of how we are handling cases subject to the Indian Child Welfare Act. This Act is an important federal requirement to ensure that Native American children are not being unduly removed from their families and communities.

The studies have pointed out areas where we need to improve compliance and we are committed to making those improvements.

Self-Help Center

Last biennium, you gave us funds to establish a legal self-help center. The program is up and running and busier than one might have imagined. The program provides direct support for callers, as well as indirect support through our website, brochures, and forms. The program is intended to serve a growing and underserved population -- those that cannot afford a lawyer but make enough money that they are not eligible for free or reduced-fee legal services. It would be ideal if every litigant were represented by counsel but the reality is many people choose to represent themselves and many more simply cannot afford to hire an attorney. There are a number of reasons why people might legitimately lose in court but economic inability to access the law should not be one of them. We are proposing an addition to the staff so we can provide more assistance to more people.

Guardianship Pilot Project

During the biennium, I established a workgroup to study guardianship issues. This workgroup is ably chaired by District Court Judge Cynthia Feland. The group has been hard at work studying the national probate court model standards for guardianship as well as the report on guardianship that the legislature commissioned two years ago. The workgroup submits several recommended statutory changes for your consideration this session. Those changes are intended to clarify the guardianship process, and more importantly, to safeguard the interests of those who are subject to guardianship proceedings.

In addition to the statutory changes, the workgroup has proposed a pilot project that would allow the court to monitor guardianships more closely. We do not have to look very far to see instances where those who are charged with the grave duty to protect the most vulnerable have instead taken advantage of them. This pilot project would provide the resources to investigate suspicious financial activity and to do follow up on the physical well-being of wards after the guardianship has been in place for a time.

Interdisciplinary Committee on Problem-Solving Courts

Nearly everyone is familiar with drug courts and the phenomenal success they are able to achieve. Right now, they are the only problem-solving court we have in North Dakota but there are also problem-solving court models for domestic violence, mental health and veteran's courts. All of these courts use non-adversarial processes and team-based decision making to help people change their lives.

To work, they need resources and participation from a wide range of public and private entities. We have introduced legislation to establish an interdisciplinary committee on problem-solving courts that is modeled after the interdisciplinary juvenile justice advisory board that has helped make North Dakota a model state for juvenile justice. We believe it is imperative that problem-solving courts be fully supported so their funding is stable and their survival is not dependent on the interest of any one person. To achieve that end, we need to have everyone at the table working toward the same goals.

Supreme Court Construction

In previous appearances before you I have mentioned the need for additional space for the Court and, in particular, the administrative side of the Court. The Governor has included \$40 million in

the budget for the remodeling and expansion of the Liberty Memorial Building. We ask your support for the project as proposed. The Supreme Court has a long-ago history with this classically beautiful building. We were original tenants in the building, occupying the 2nd floor along with the state library. We remained there until the court moved to the 2nd floor of the new state capitol in 1934. At the time the Liberty Memorial Building was erected in 1924, plans were made to build a Temple of Justice to house the Supreme Court which would be matched in exterior design to the Liberty Memorial Building. This future home of the Supreme Court was never built and I think I can safely say that after 91 years, it is not likely ever to be built. Accepting that, it seems fitting that the court return to Liberty Memorial Building and make it our permanent home.

In Recognition

I want to take a minute to recognize the efforts of my colleagues on the supreme and district court benches. Nowhere is there a harder working and more dedicated group of people. The citizens of North Dakota are well-served by the many men and women who have dedicated so much of their lives to public service, as well as those who have recently made the decision to join them on the bench. I thank recently retired Justice Mary Maring and retired judges Joel Medd, Donald Jorgenson, Sonja Clapp, Jack Paulson, and William McLees. I note with sadness the recent passing of District Court Judge Karen Braaten. I also thank the surrogate judges who so ably stepped in when, because of our thin ranks, a judge's illness could have dramatically slowed the justice system.

Finally I also recognize and thank those legislators, members of the executive branch and public members who serve on our court committees and lend their expertise to our deliberations as we strive to make our courts more accessible and responsive to our citizens.

Conclusion

Lieutenant Governor Wrigley, Speaker Belter, Governor Dalrymple and members of the Legislative Assembly, I thank you again for the opportunity to speak to you this afternoon. In closing, while I am pleased to report that the North Dakota Judicial System is successfully meeting its obligations and satisfying its purpose, we do need your assistance to maintain and even improve on our role in our democratic republic. So I am most grateful for your good will and your willingness to work together with the judicial branch to provide the citizens of our beloved State of North Dakota, the system of justice which they so richly deserve and to which they are entitled under the principles which flow from the Magna Carta.