

## JOURNAL OF THE HOUSE

## Fifty-fifth Legislative Assembly

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Bismarck, January 7, 1997

The House convened at 9:00 a.m., with Speaker Timm presiding.

The prayer was offered by the Rev. Robert Nordvall, Charity Lutheran Church, Bismarck.

The roll was called and all members were present except Representative Rennerfeldt.

A quorum was declared by the Speaker.

**MOTION**

**REP. BERG MOVED** that HB 1129 be returned to the House floor from the **Industry, Business and Labor Committee** for the purpose of withdrawal, which motion prevailed. Pursuant to Rep. Berg's motion, HB 1129 was withdrawn.

**MOTION**

**REP. FREIER MOVED** that the absent member be excused, which motion prevailed.

**MOTION**

**REP. FREIER MOVED** that the House be on the Ninth order of business and at the conclusion of the Ninth order, the House stand in recess until 1:45 p.m., to receive the Senate in Joint Session and at the conclusion of the Joint Session, the House stand adjourned until 9:00 a.m., Wednesday, January 8, 1997, which motion prevailed.

**FIRST READING OF HOUSE BILLS**

Reps. Clark, Kunkel, Wardner and Sens. Nalewaja, O'Connell, Wogsland introduced:

**HB 1169:** A BILL for an Act relating to American sign language as an elective at the high school and postsecondary level.

Was read the first time and referred to the **Education Committee**.

Reps. Wald, Jacobs, Kempenich and Sens. Goetz, Krauter, Urlacher introduced:

**HB 1170:** A BILL for an Act to amend and reenact sections 61-24.3-01 and 61-24.3-18 of the North Dakota Century Code, relating to issuing and repaying bonds for the southwest pipeline project; to provide a continuing appropriation; and to declare an emergency.

Was read the first time and referred to the **Appropriations Committee**.

Reps. Wald, Wardner and Sen. Goetz introduced:

**HB 1171:** A BILL for an Act to amend and reenact section 40-18-06.1 of the North Dakota Century Code, relating to municipal court clerks.

Was read the first time and referred to the **Political Subdivisions Committee**.

Reps. Wald, Carlson, Freier and Sens. Naaden, Solberg, Urlacher introduced:

**HB 1172:** A BILL for an Act to amend and reenact section 20.1-03-11 of the North Dakota Century Code, relating to gratis and preferential landowner licenses to hunt big game and wild turkeys.

Was read the first time and referred to the **Natural Resources Committee**.

**THE HOUSE RECONVENED** pursuant to recess taken, with Speaker Timm presiding.

**JOINT SESSION**

**REP. FREIER MOVED** that a committee of two be appointed to escort Lt. Governor Myrdal to the rostrum, which motion prevailed. Speaker Timm appointed Reps. Gorder and Nottestad to such committee and Lt. Governor Myrdal was escorted to the rostrum.

**SPEAKER TIMM INTRODUCED** Lt. Governor Myrdal to the Assembly and turned the gavel over to her.

**REP. FREIER MOVED** that a committee of two be appointed to escort the Honorable Edward T. Schafer, Governor, to the rostrum, which motion prevailed. The Chair appointed Sen. Naaden and Rep. C. Johnsen to such committee and the Honorable Edward T. Schafer, Governor, was escorted to the rostrum.

**LT. GOVERNOR MYRDAL INTRODUCED** Governor Schafer to the Assembly.

**SEN. WATNE MOVED** that a committee of two be appointed to escort Chief Justice Gerald W. VandeWalle to the rostrum, which motion prevailed. The Chair appointed Sen. Traynor and Rep. Skarphol to such committee and Chief Justice VandeWalle was escorted to the rostrum.

**SEN. CHRISTMANN MOVED** that a committee of two be appointed to escort the Justices of the North Dakota Supreme Court to the rostrum, which motion prevailed. The Chair appointed Sen. Schobinger and Rep. Grosz to such committee and the Justices were escorted to the rostrum.

**LT. GOVERNOR MYRDAL INTRODUCED** Chief Justice Gerald W. VandeWalle to the Assembly.

**STATE OF THE JUDICIARY MESSAGE**  
Message by Chief Justice Gerald W. VandeWalle

I thank you for this opportunity to appear before you. I have prepared a written judicial message. I do not intend to read it word for word to you but I ask that you use it for future reference.

In 1993 and 1995, I began the State of the Judiciary message talking about court unification. This year, 1997, is no different. Six years ago the Fifty-second Legislative Assembly adopted legislation absorbing county courts into the district court effective January 1, 1995. This far-reaching legislation, known as court unification, provides for reducing the number of trial judges from 53 in 1991 to 42 by 2001. We currently have 46 trial judges, seven less than when the legislation was enacted.

Unification has provided dollar savings to the taxpayers and a simplified judicial system for the people of North Dakota. At the end of the 1993-95 biennium, the judiciary returned a savings of \$415,591.00 to the general fund as a result of eliminated judgeships. We anticipate \$212,000.00 will be similarly returned at the end of the current biennium.

There is a growing belief that judicial service will drop below acceptable levels if reductions continue. This view is being expressed by county officials, lawyers, judges, and even some of you. The numbers expressing concern increases with each reduction. We lack the empirical data to establish the number of judges required to provide the level of judicial service the people of North Dakota and you, as their elected representatives, expect. Without data, I am unable to give you an opinion as to whether the number 42 is correct or a greater or lesser number is required. We intend to correct this data vacuum over the next two years and provide specific documented recommendations to you in January 1999.

Case numbers alone can never be used to compare workload. A rural judge who must travel can never hear as many cases as an urban judge who can sustain a high volume of cases by remaining in one location. Complex cases require more judge involvement. The accepted method of solving this workload issue is to conduct a weighted caseload study. The judiciaries of North Dakota and South Dakota are jointly working to request a federal grant to have such a study conducted by the National Center for State Courts. I appreciate the letters of support, Governor Schafer, Senator Wayne Stenehjem, and Representative Bill Kretschmar, have written in support of that application. The grant will cover most of the dollar cost with the state's share primarily labor costs. This study should effectively and accurately measure the workload of judges and their respective districts and counties. Each category of cases will be measured to determine how much judge time is required to complete the case. Cases will then be assigned a weight factor. Weighted cases will be used to determine workload. Travel time required for rural judges will be factored in as well as other special factors that affect productivity.

Two years ago, I spoke to you of the need for an administrator whose focus is directed solely to the trial courts. You were supportive and authorized and funded a director of trial court administration in the current biennium budget. Circumstances have altered our original proposal and I believe it is important to summarize the change to you.

After conducting a nationwide search and interviewing the initial candidates, it became apparent that the job and the geographical distribution of the work was greater than anticipated. The Council of Presiding Judges recommended that the work be shared by two individuals, as assistant directors of trial court administration, responsible to the Council of Presiding Judges, but serving at the pleasure of the chief justice. Ted Gladden, an experienced North Dakota trial court administrator, who had been working in Minnesota for the last four years as a trial court administrator, was hired to fill the position funded by the Fifty-fourth Legislative Assembly.

Greg Wallace, the personnel director in the state court administrator's office, was hired for the other position.

This year we will see the completion of a statewide information system that combines various computer hardware technologies and is capable of meeting the needs of the most sophisticated users. If you haven't already seen it, I invite you to visit the Supreme Court's WEB page developed by Justice Dale Sandstrom in his spare time as a labor of love and with no cost to the state. This technology provides Supreme Court opinions to interested parties within a day or two of their release. Proposed rule changes and the court's calendar are also available on the WEB. This service has won acclaim from within North Dakota and from around the world.

Docket management and case scheduling are tied into the system via the Uniform Court Information System (UCIS). We are obtaining more accurate and reliable data as we move to replace our old case reporting system developed in 1975.

With the hiring of a computer programmer in 1995, the programming cost to the judiciary has been reduced. I am pleased to report this system is a success--a rarity in this day and age of computer programming failures, delays, and bloated budgets.

Before I leave the subject of office automation, there is one additional initiative that should be of interest. Shortly, we will be undertaking a programming initiative to enter criminal judgments into a computer in the courtroom with direct entry into UCIS. These criminal judgments will be in a format that is compatible with the State's Attorney Management System (SAMS) developed by the Attorney General's Office. We believe this is a first step to the statewide sharing of computer data and will eventually lead to direct access of criminal case information by law enforcement officials and others with a need to know.

North Dakota has the lowest rate of crime in the nation, but we are not immune from criminal activity. Despite our low rate of crime, the costs for indigent defense continues to rise. The increase in costs is reflected in our budget. I make no specific recommendation to you now, but I suggest the time is coming when together we must examine whether a public defender office should be established to provide legal defense to indigents. I am not so naive as to believe government will necessarily do it more cheaply or do it better, but in view of the costs under the present contract system and the concern that we will lose competent contract counsel, we must begin to examine alternatives.

Akin to indigent defense, yet substantially different in some respects, is the delivery of civil legal services to the poor. The court, in conjunction with the Bar, created a Joint Committee on Delivery of Civil Legal Services to the Poor. That committee proposes a bill to appropriate State funds for this purpose. These services have been provided by a combination of programs, notably the legal aid program, the various organized pro bono programs of the State Bar Association, and the pro bono efforts of individual lawyers. In 1989, you authorized ten dollars to be included in the fee for filing all civil cases, except small claims actions to be used for civil legal services for the poor. Moneys generated by this fee have been of great assistance.

However, the federal government has severely cut the funds available to the Legal Services Corporation, which helped fund such legal aid programs as Legal Aid of North Dakota, North Dakota Legal Services, and the UND Legal Aid Association. Those programs are vital to the delivery of legal services to the poor. Since the cutback in federal funds, the programs can no longer operate without additional revenue. The added efforts of the Bar and individual lawyers are simply not enough.

Senator Darlene Watne serves as one of the appointees of the Chief Justice on the Joint Committee on Delivery of Civil Legal Services to the Poor. The committee, at my request, prepared a thoughtful proposal for improving access to civil legal services for the poor. Please consider with care the proposal for some added assistance.

There has been considerable writing and study throughout the nation about the need for jury reform brought to the public's attention in the aftermath of the O.J. Simpson trial. We are committed to study jury reform in North Dakota and to undertake the study using a cross section of interested parties. Changes will be initiated only after study and the opportunity for public input.

The 1995 Legislative Assembly directed study of alternate dispute resolution programs and provided \$20,000.00 for staffing. Thereafter, the Supreme Court adopted Administrative Order 6 establishing a Joint Bench and Bar Committee. The initial report outlined study methodology and includes an outline of the topics covered in the first four meetings of the committee. Copies of the report are available upon request to Keithe Nelson, State Court Administrator. That study is ongoing.

Two years ago, I referred to the fact that the level of domestic violence in North Dakota is unacceptable - particularly in a state that, as we should, takes great pride in our low crime rate. My perception is that the level of domestic violence has not abated, but rather has actually increased. I need not outline for you the recent violent deaths reported in the media that appear to arise out of domestic violence. Most, if not all, present efforts are, because of necessity and because of the ever-increasing numbers, directed to the victims. But those of us not involved in the direct care of victims should attack this abuse to get at its root cause.

Too often, when sitting on the Pardon Board, we see the victims cry and tremble when a proposal to release a perpetrator is before us. The victim rightly fears that once released the abuser will seek them out. Too often we read or hear in the media that an abuser released on bail and under order not to approach the victim again abuses and sometimes even takes the life of the victim. Convicted abusers do not receive life sentences. They will be released and we should attempt to assure that when released they will not abuse again. Even better would be a program whereby potential abusers and their victims can seek help before the violence escalates. I am not so gullible to believe we will totally eliminate domestic violence, but can't we do better than we are? I urge a unified effort at all levels, local and state, involving all of us, public and private, executive, legislative, and judicial, to develop a strategy to attack and hopefully resolve this problem.

The North Dakota Commission on Gender Fairness in the Courts has completed its study and will release a final report this month with publication in the North Dakota Law Review.

I have had the opportunity to review portions of a draft copy of the study. I wish I could report we are perfect and there is no gender bias in the courts, but, not surprisingly, that is simply not the case. On the other hand, we are not hopeless. Parts of the report reflect great sensitivity. Other parts reveal our flaws. With publication of this report, our problem areas are identified and we can now focus on solutions. I fully expect an implementation committee will be appointed and changes in our way of doing business will occur. Gender bias education and sensitivity training will be a part of our judicial education courses for years to come.

It seems only logical that the clerks of court should be a part of the judicial branch of government. Historically, of course, the clerks have been elected county officials whose salaries are set by state law and paid by the county and whose duties are prescribed by state law but whose work is essentially done for the judicial branch. Recognizing the illogical structure, the Legislative Assembly, in 1989, enacted legislation that provided counties the option of seeking state funding for the clerk of district court. Because of a lack of funds and various other reasons, we have not proposed funding to implement that law although we were again requested to do so this year. We support the integration of the clerk of court into the judicial branch. That step of course means an assumption of costs by the state. Before we make a proposal, there are many issues that must be resolved.

I am aware the Legislative Assembly in recent years has not established study committees with nonlegislators as members. However, after our experience with the process of unifying the trial courts and the resulting unhappiness over funding, allotment of fees, and delivery of service, I propose a broader study committee. Because the clerks of court, the county commissioners and the district judges have the reservoirs of knowledge concerning the operation of the clerk's office, I am recommending your favorable consideration of a study resolution that would establish a committee comprised of legislators, a representative of the Clerks' of Court Association, a representative of the County Commissioners' Association, and one representative of the District Judges' Association.

The study may lead to a consideration of trial centers. We are not now prepared to gauge the direct and indirect effects of such a move on our citizens and on local government and those impacts should be known and considered in any further restructuring of the system.

I have listed in the written report for your consideration other legislation which we have proposed and that legislation of which we are aware proposed by others.

We are thankful for your recognition of the need to improve judge's salaries and we appreciate the increase granted in 1995. After considering various proposals and after much discussion--and some dissension--the Judicial Compensation Committee of the Judicial Conference recommended that the Supreme Court include salary increases of 4% and 4% for judges in our budget. The Court has done so. Recognizing the salary position of our judges not only nationally, but more significantly compared to other public professionals within our state, we believe the increases are modest and most surely justified. I say that with some trepidation after two years ago when, reading the comments in the press, one would assume the only topic I discussed in the State of the Judiciary was salary.

We also commend to you the changes in the retirement program recommended by the interim Employee Benefits Programs Committee. We are grateful for your continued support of this program.

The constitutional amendment revising the executive branch article the legislature proposed in 1995 was approved by the electorate in June 1996 and will become effective July 1, 1997. One of the effects of the new article is to eliminate the Board of Pardons and return to the governor the exclusive authority to grant pardons. After 96 years, the chief justice will no longer serve on the Pardon Board.

I note for the record what you already know. Since I spoke with you last, my colleague and good friend, Beryl Levine, retired from the Court. We miss her. Our loss is tempered by our newest colleague--and friend--Justice Mary Maring, who we welcome to the Court.

I also publicly acknowledge the support and good will of my colleagues and friends, Justice Herbert Meschke, Justice William Neumann, Justice Dale Sandstrom, Justice Mary Maring, and the Council of Presiding Judges, the trial judges, and the employees of the judicial branch. Without their positive affirmation, the position of the chief justice would be a pleasureless one indeed. With their support, and I hope confidence, the position, while challenging, is enjoyable. I also publicly acknowledge the cooperation and positive contributions of the Bar Association, its first woman president, Becky Thiem, and its talented executive director, Sandi Tabor.

In closing, I quote from the words of one of our living former presidents, Jimmy Carter, whose other words and acts I may forget, but these words I will not forget. He said, "The law is not the private property of lawyers, nor is justice the exclusive province of judges and juries. In the final analysis, true justice is not a matter of courts and law books, but the commitment in each of us to liberty and mutual respect."

I am also mindful of Supreme Court Justice Thurgood Marshall whose words, although referring to judges, really speak to all of us in government. He said, "We must never forget that the only real source of power that we as judges can tap is the respect of the people."

On behalf of the judicial branch, I pledge to work with the legislative and executive branches of government to earn that respect. Thank you.

#### **MOTION**

**REP. FREIER MOVED** that the address of Chief Justice VandeWalle be printed in the Journal, which motion prevailed.

#### **MOTION**

**REP. FREIER MOVED** that the Joint Session be dissolved, which motion prevailed.

**LT. GOVERNOR MYRDAL DECLARED** the Joint Session dissolved.

The House stood adjourned pursuant to Representative Freier's motion.

**ROY GILBREATH, Chief Clerk**