

**NORTH DAKOTA STATE JUDICIAL  
INFORMATION SYSTEM PROJECT**

**INTERIM REPORT**

48185

**NATIONAL CENTER  
FOR STATE COURTS**

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JUDICIAL INFORMATION SYSTEM PROJECT

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NATIONAL CENTER FOR STATE COURTS

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## INTRODUCTION

The North Dakota Supreme Court by both constitution and statute, is the head of the state judicial system. The 1971 Legislative Assembly of the State of North Dakota adopted S. B. 2331 which, among other things, gave explicit statutory authority to the North Dakota Supreme Court to implement that court's superintending power to administer the state's judicial system. The legislative intent was to provide the judiciary with administrative direction and control. The Supreme Court has recognized the importance of adequate and accurate information and statistical data for this administrative function.

Accordingly, the Court sought and was granted a Law Enforcement Assistance Administration Discretionary Grant for systems improvement in the courts, #74-DF-08-0024. The grant enumerates five specific objectives. One of these is to develop a management information system within the judicial system of North Dakota for use by the North Dakota Supreme Court and the State Court Administrator. The development of that objective includes the following:

- "a) Objectively assessing the needs of the North Dakota judicial system through an outside consultant;
- b) Developing a data base;
- c) Creating appropriate forms for data collection; and
- d) Recommending methodology for continued effectiveness of such management information system."<sup>1</sup>

<sup>1</sup> Chief Justice Ralph J. Erickstad in a letter to Robert Holte, November 8, 1974.

On January 20, 1975, the Supreme Court signed an agreement with the National Center for State Courts to fulfill these goals. The following report meets one part of that agreement. Its primary purpose is to present an objective needs assessment of the North Dakota judicial system. This is accomplished by analyzing current work methods and procedures and by studying existing personnel and program needs. Preliminary suggestions for administrative and statutory changes, uniform procedures, and new programs are offered. Final recommendations will be made in the Master Plan.

This report also discusses the general concept of a management information system for the judiciary. The report defines a management information system and explains its usefulness to large organizations. It then sets forth the general needs for an information system in the judicial branch of state government.

The third section of the report outlines the present status of management information in the North Dakota judicial system. It follows the historical development of the present administrative structure and describes the current procedures for gathering and analyzing court management information. Finally, the problems and deficiencies of the present information system are illuminated to establish the necessity for the "needs assess-

ment," the first stage in the judicial planning process.

The next section details the specific work products and objectives of the study currently being undertaken by the National Center for State Courts pursuant to the agreement of January 20, 1975. Three work products are discussed, the Interim Report, a Statistical and Financial Reporting Module, and a Master Plan for a State Judicial Information System. This section provides the proper perspective with which to view the Interim Report and the subsequent reports.

The next section further outlines the National Center's procedures to satisfy the goals of the study. It summarizes the sources used to gather the data, the procedures for compilation and analysis of the data, and the remainder of the project's work plan.

The main substance of the Interim Report is found in section six. It contains a preliminary needs assessment. Each of the identified problem areas are discussed with a view for insuring justice. The narrative includes references to supporting documentation and national standards. General recommendations are outlined to meet the perceived needs.

The Interim Report concludes with a summary of the current findings and information on the future research areas of the project. It will also indicate the intended efforts of the Supreme Court in developing the Master Plan for the North Dakota Judicial Information System.

## THE GENERAL CONCEPT OF A MANAGEMENT INFORMATION SYSTEM

One of the most basic functions in the management of any organization is decision making. In many instances, decisions are improperly made more or less by default due to the lack of supporting information. The purpose of an information system, therefore, is to provide the information necessary to support the decision making process so that default does not occur. The information can be used to recognize that a problem exists, to evaluate the different alternatives available, and to implement a decision. A management information system, then, is an established set of procedures that specifies the data and the method of data collection for use in decision making.

Business organizations have long recognized the need for timely, accurate, and sufficient data for decision making. Information systems have been developed to forecast future markets, to develop optimal distribution and pricing systems, and to evaluate and select the best possible combination of capital investments. Information systems are used in personnel planning and placement, production and inventory management, and retail merchandizing.

Management information systems exist in government as well. Most obviously, military intelligence constitutes a complete information system. Many other organizations

have developed extensive administrative and financial information systems that track grants, compile budgets, and forecast future monetary needs. Major cities are using information systems to project and control urban sprawl through effective and planned zoning regulations. Criminal justice information systems are being developed by several state and local law enforcement organizations for crime trend analysis, criminal history compilation, inmate accounting, and defendant and probation control.

Within many state judicial systems, there is a growing recognition of the need for more timely and reliable information. The state supreme courts and their court administrators need information to recognize problems before they become acute. For example, the volume of cases handled by the judiciary is increasing each year, creating delays and evergrowing backlogs. Proper caseflow management and the elimination of these delays and backlogs demand timely information for accurate case status following and calendaring. More accurate information is required to solve many judicial problems, such as the inconsistencies in sentencing, the unevenness of judicial caseloads, and the lack of uniformity in jury selection and management procedures.

The principles of the recent Federal Speedy Trial Act (U.S. Code; 88 Stat 2076 S.754) will certainly influence state

court handling of cases. The legislation requires that by 1981 most defendants charged with federal crimes be indicted within thirty days after arrest and be brought to trial within sixty days after indictment. If these requirements are not met, in most cases the charge will be dropped with no chance of re-indictment. This schedule dictates timely and complete knowledge of the status and age of a case in order to insure justice.

A major goal for the achievement of timely justice is to develop a state judicial information system. Its purpose is to maximize the economical and effective use of available resources in the internal administration and control of the state courts. To achieve this goal, the information system developed must do the following:

- 1) satisfy the fundamental information requirements of the courts. The information needs most commonly required by the courts are case status, case flow, judicial caseload, calendaring, budgeting, and training.
- 2) provide information services necessary to other agencies and the public. Some of the agencies requiring judicial information include district attorneys, attorneys for the indigent, police departments, corrections agencies, news media, youth service organizations, the governor's office, the crime bureau, and the state legislature.

- 3) improve work methods and establish uniform state-wide procedures. This will make possible the fair and orderly administration of justice throughout the state.
- 4) establish state-wide planning at all court levels. This will reduce the duplication of developmental efforts and make better use of existing resources.

The North Dakota State Judicial Information System will include several court related administrative modules. Each module or application area of the information system will be designed to provide essential management information to the courts. Among the application modules now being considered for the North Dakota Information system are the following:

- 1) statistical reporting, including required periodic administrative reports of court activity, case status reporting, and calendaring.
- 2) financial administration and reporting, including accounting, trust and support payment administration, and budgeting.
- 3) personnel administration, including the keeping of personnel and payroll records.
- 4) training and continuing education, including the planning and scheduling of mandatory educational programs for all judicial and support personnel.

- 5) grant administration and evaluation, including accounting and assessment procedures for all non-state funded projects.

Other applications will be researched and considered as the project continues. The timing and priority of implementation of the information system application modules depend on the perceived needs of the judiciary. The final structure proposed for the North Dakota Information System will depend on the objectives and goals of the judicial system as seen by the Supreme Court, the Judicial Council, and the Judicial Information System's Advisory Committee.

## THE STATUS OF JUDICIAL INFORMATION IN NORTH DAKOTA

The North Dakota judicial system includes the Supreme Court, the District Court, County Courts of Increased Jurisdiction, County Courts, County Justice Courts, and Municipal Courts. By constitution, the Supreme Court has administrative and general superintending authority over all courts within the state. The Supreme Court requires sufficient and timely information to meet this responsibility. To date, the only comprehensive data from the courts is collected in a semi-annual report for the Judicial Council.

The Judicial Council has the responsibility to make a continuous study of the operation of the North Dakota judicial system. It may make recommendations to the Supreme Court, the legislature, and the governor for simplifying court procedures and practices to expedite the business of the courts and to improve the administration of justice. The Council is composed of all current and retired judges of the Supreme and District Courts, all judges of the County Courts of Increased Jurisdiction, two county justices, two county judges, two municipal judges, the Attorney General, five members of the State Bar Association of North Dakota, and the Dean of the University of North Dakota School of Law.

In order to fulfill its responsibilities, the Judicial Council needs extensive, accurate, and timely judicial information. Accordingly, pursuant to statute, the Judicial Council and the Supreme Court established the Office of the

Executive Secretary of the Judicial Council - Court Administrator. The Court Administrator's purpose is to assist the Supreme Court and the Judicial Council in the exercise of their administrative authority over all courts and judicial personnel in North Dakota. The authority of the Court Administrator to gather management data is derived directly from statute (North Dakota Century Code, Sections 27-02-05 and 27-15-08), the rules of the Judicial Council as amended on October 15, 1971, and the rules of the Supreme Court.

The court administrator's office now has a professional staff of four and a secretarial staff of two to carry out its administrative and information gathering functions. These primary responsibilities fall on the Court Administrator, Mr. Calvin N. Rolfson. He has three assistant court administrators (two added and financed by the grant that funds this project), and each is responsible for separate functional and administrative activities. Mr. William G. Bohn is primarily responsible for financial administration and budgeting of the state-funded portion of the judicial system. Mr. Theodore C. Gladden prepares the statistical reports for the Supreme Court and the Judicial Council. Mr. Gladden and Mr. Bohn are both charged with coordinating judicial education conferences and submitting grants for federal assistance funding programs. The third assistant administrator, Mr. Howard A. Olson,

works closely with the limited jurisdiction courts in all areas. He is presently preparing a manual establishing uniform procedures in these courts throughout the state. The funds for this program come from National Highway Safety appropriations.

Under its new administrative authority the Supreme Court has recently issued two administrative orders to improve the quality of justice in all the courts of the state. Administrative order number one established the authority of the Presiding District Judges in the six judicial districts. The second order adopted a North Dakota Code of Judicial Conduct to apply to all courts in the state. The court administrator's office should assist in establishing the administrative structure for supporting these orders.

The Judicial Council, with the assistance of the court administrator's office, has researched and supported several legislative proposals to streamline and strengthen the judicial system. Some of the topics included in these legislative proposals were mandatory continuing judicial education, salary provisions for all court levels, and a judicial qualifications commission. The Chief Justice, Associate Justices, District Judges, and the Court Administrator and his staff have testified before various legislative committees on these legislative proposals and provided resource materials for all legislators requesting it.

The Judicial Council publishes a semi-annual statistical report of court activity. Data is collected through the use of standard reporting forms submitted by judges at all jurisdictional levels and by clerks of district court. The data is compiled to reflect caseload delays and general case management throughout the state. The State Court Administrator and his staff use the report as one means of locating problems in the courts of the state.

The report, however, fails as a management tool, both for the State Court Administrator and for the local court personnel. The present data collection system is not frequent enough to monitor court activity throughout the state on a timely basis. The large volume of statistics is difficult to compile in a manageable form. There is no procedure to validate the data, and discrepancies sometimes arise between data submitted by the judges and that submitted by the clerks. The court administrator's staff tries to correct the variances where noted, not always with success. The categories on the form submitted by the clerks differ significantly from those on the judge's report form, and some of them are ambiguous. The reports have never been adequately explained to the court personnel in the state. Other than this report, information is gathered unsystematically, primarily on a need-to-know basis.

## OVERALL GOALS OF THE STUDY BY THE NATIONAL CENTER

The objectives of this project are:

- 1) to prepare an Interim Report of the informational and administrative needs of the North Dakota judicial system.
- 2) to develop a Statistical Reporting System that reflects accurate and timely case status and case flow information.
- 3) to develop a Financial Reporting System that will provide the State Court Administrator with financial data on the cash flow and budgets of all the courts in the state.
- 4) to develop a Master Plan for a North Dakota State Judicial Information System.
- 5) to establish a planning mechanism for the continual monitoring, re-assessment, and updating of the Master Plan.

The Interim Report will be presented to the legislature of North Dakota as a status report of the North Dakota judiciary. It is the results of analysis of the existing procedures and methods found within the courts throughout the state. The report contains a needs assessment of the judiciary as well as background information on the current project. It can be used by the legislature in reviewing and considering the statutory and short-term funding needs of the

judiciary. The report is also intended to be used by the Supreme Court, the Judicial Council, the State Judicial Information System Advisory Committee, and the State Court Administrator's office. After discussion, evaluation, and revision by these groups, it will provide the basis for the development of the Master Plan for the judiciary which is the final product of this project.

The Statistical Reporting System will be the first module or segment of the proposed Judicial Information System. The system will be designed to supply the information needs and requirements of the Supreme Court and State Court Administrator. The National Center will compile the report forms and associated documentation, and recommend procedures to be used in the implementation of the system. The statistics collected will be used to monitor case flow, case status and case delay at all levels of the court system. This data is essential for effective calendaring and case management.

The Financial Reporting System module of the State Judicial Information System will also be developed during the project. Although limited in scope, it will give the Court Administrator an indication of the cash flow through the judicial system as well as the size of each court's budget. This information will assist in determining if state financing or unification of the courts is necessary or advisable.

Four regional conferences are planned to initiate the implementation of the new statistical and financial reporting

systems. The purpose of the conferences is to insure that the court data to be collected is reported uniformly throughout the state. Standard reporting procedures will be explained and all data that is to be recorded will be clearly defined. It is the intention of the Court Administrator's office to provide each participant with a procedural manual that will be updated as the need and circumstance requires. The training conferences will include all local court personnel that will be responsible for actually reporting the data.

Finally, the Master Plan will serve as a planning tool for future programs and funding requests. It will identify the goals and objectives of the judiciary and will establish priorities for the development of these objectives. The Master Plan will incorporate the needs assessment compiled in the Interim Report after thorough discussion and evaluation by the Supreme Court, Judicial Council, and the Advisory Committee. Incorporated within the Master Plan will be a planning mechanism for the continual monitoring of the plan. As the judicial system changes and progresses the Master Plan will be re-assessed and updated. In this way the Master Plan, as adopted, will be a viable working document for the North Dakota Judiciary.

To support and guide this project, the Supreme Court established a Judicial Information Systems Advisory Committee. Chief Justice Erickstad appointed the committee and Associate

Justice Vernon Pederson presides over it. The committee is to define the objectives of the study, recommend priorities for the judiciary, and evaluate the results of the project. It will also recommend and support funding for continuing efforts to insure the improvement and efficient development of the judiciary. The committee includes members of the judiciary, the State Bar Association of North Dakota, the legislative and executive branches, and the private sector. A complete list of the members follows.

## MANAGEMENT INFORMATION SYSTEM ADVISORY COMMITTEE

Honorable Vernon R. Pederson, Chairman  
Associate Justice  
North Dakota Supreme Court  
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Bismarck, North Dakota 58505  
Representing: North Dakota Supreme Court

Honorable Myron H. Atkinson, Jr.  
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Mrs. Marian Barbie  
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Honorable Luella Dunn  
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Honorable Thomas D. Ewing  
Judge of the County Court of Increased Jurisdiction  
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Honorable Larry Hatch  
Judge of the District Court  
Third Judicial District  
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Mr. James Heck, Director  
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Mr. Loren Knudson  
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Montana Dakota Utilities Company  
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Mr. John S. Kolbinger  
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State Bar Association of North Dakota

Mrs. Eldore Leier  
Clerk of the District Court  
Ward County Courthouse  
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Representing: Clerks of District Court

Honorable Ralph B. Maxwell  
Judge of the District Court  
First Judicial District  
Cass County Courthouse  
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Mr. Ross McNea  
Clerk of the District Court  
Bottineau County Courthouse  
Bottineau, North Dakota 58318  
Representing: County Judges and  
Clerks of District Court

Mr. Calvin N. Rolfson  
State Court Administrator and  
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State Court Administrator's office

OBSERVERS:

Mr. Dwight Kalash  
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Mr. Tom Kelsch  
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Mr. Edwin F. Zuern  
Corrections Research Officer  
Director of Institutions Office  
State Capitol  
Bismarck, North Dakota 58505  
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## PRESENT PROJECT STATUS

After the signing of the agreement to conduct the study for the North Dakota Judiciary, the National Center project team met with the Advisory Committee to initiate the project. Discussions of the intent of the project and the goals of the judiciary dominated the meeting.

The first major task of the National Center project staff was to develop seven different questionnaires that were to be used in the study. A distinct questionnaire was developed for each court level in the state as well as one for the clerks of court. The questionnaires included many questions suggested by the Court Administrator's staff and the members of the Advisory Committee. The questionnaires were then distributed to each member of the judiciary (except the Supreme Court Justices) with a cover letter requesting their participation. The response rate was high at all levels of the judicial system. Completed questionnaires were received from 14 of 19 district court judges, 11 of 15 county court of increased jurisdiction judges, 31 of 38 county court judges, 18 of 38 county justices, and 44 of 53 clerks of district court. Nineteen questionnaires were also received from 25 selected municipal court judges.

The project staff interviewed many members of the judicial system. The team visited the Chief Justice

and all of the four Associate Justices, the Supreme Court clerk, the State Court Administrator, and his staff. Also interviewed were 16 of 19 district judges, 11 of 15 county judges of increased jurisdiction, 7 of 38 county judges, 4 of 38 county justices, 25 of 53 clerks of district court, and 14 selected municipal judges. The questionnaire preparation and other data gathering activities spanned a period of one month.

The project staff of the National Center has spent the past two months analyzing the results of the data collection and preparing this report. The preliminary conclusions from the data analysis are presented in the next section of this report. Using these results and knowledge of other judicial systems, the project staff compiled the following needs assessment, covering the major points of concern within the North Dakota judicial system. All needs identified in the following section are supported by findings from either the questionnaire responses or the interviews. We have attempted to identify supporting national standards and resources for many of them. Several of the identifiable problems can be met administratively, while others may require constitutional or statutory changes or appropriations.

Compilation and analysis of additional data will continue throughout the project. The staff of the National Center is now studying the existing statistical reporting

system in preparation for the design and development of the proposed changes. The data collected from the interviews is proving especially useful at this point. Alternative approaches to the design of the new statistical system will be presented at the April meeting of the Advisory Committee.

The permanent members of the project staff from the National Center are Mr. Lynn A. Jensen, Project Director, Dr. Theodore J. Fetter, Staff Associate and Researcher, and Mr. Mark Geddes, Staff Attorney and Acting Director of the North Central Regional Office. Other individuals who have participated as project staff are Mr. R. Hanson Lawton, former Director of the North Central Regional Office, and Mr. William Popp, Senior Staff Associate of the North Eastern Regional Office. Mr. Grant Davis, Regional Director of the South Central Regional Office, Mr. Milo Colton, Staff Associate of the South Central Regional Office, and Mr. Popp will be active members of the team during the next two months of the project.

## THE NEEDS OF THE NORTH DAKOTA JUDICIAL SYSTEM

The North Dakota judicial system has grown without the long-range planning and goals that would make the system more efficient at this point. The Supreme Court and the Judicial Council have sponsored improvements in response to the needs they perceived, but they never had the resources available to examine the entire system. Largely on the basis of the information collected in the interviews and questionnaires, the Supreme Court and Judicial Council can now more readily assess the court operations throughout the state. Using this information, the project team of the National Center has identified some of the needs and suggested possible improvements of the judicial system. In this section we outline these problems. In our final report we shall prepare a Master Plan to meet the problems, setting priorities, setting goals and time schedules, and estimating the costs involved.

### I. Programs Requiring Constitutional or Statutory Changes or Funding

Court Organization. North Dakota should consider ways to simplify and rationalize its court organization. Over half of the judges of the district and increased jurisdiction courts thought that the many existing layers

of courts were unnecessary. The organization below the district court level is complex, confusing, and not conducive to efficient judicial decision-making. County courts of increased jurisdiction exist in fifteen of the fifty-three counties. Taken by themselves, the positions of county judge, county justice and municipal judge are part-time in some counties, often filled by persons without adequate training. In some counties and cities the caseload is too small to justify separate county or municipal courts.

Many alternatives are available to the state. One fairly direct reorganization suggested frequently during the interviews and in the questionnaires was a three tier system consisting of two trial courts and an appellate court. It would maintain the present district and supreme court arrangement. However, all the lower courts would be merged into one trial court of limited jurisdiction. The number of judges in each county would depend on the population and caseload. The new trial court of limited jurisdiction would have a uniform and fixed jurisdiction. It may be able to handle a jurisdictional level that would ease caseload pressures on the district courts.

The three tier court system is usually a transitional effort at reorganization. But due to the difficulty of making changes in court structure, the system may become entrenched.

Immediate reduction in the number and variety of lower trial courts occurs, but complete uniformity in rules of procedure and administration are forestalled.

Complete unification involves the establishment of one trial court of general jurisdiction and one appellate court. The two tier court system eliminates discrepancies in the disposition of cases, particularly in the criminal area. Uniform appeal procedures are established. All cases are tried under the same rules of procedure. Jurisdictional divisions are simple and well defined. Judges and judicial officers are all selected using the same standards and qualifications.

Minnesota, South Dakota, Iowa, and Idaho have unified court systems which the North Dakota legislature and judiciary may want to consider. Several national study groups have issued standards of court organization and these should be consulted and used in connection with current opinion in North Dakota. (See American Bar Association, Standards Relating to Court Organization, Standards 1.00, 1.10, and 1.11, and National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 8.1.)

State Financing and Personnel System. Several other issues relate to court organization. They could be studied together. The first of these is state financing of the

judicial system. The real issue here is whether local governmental units can afford the cost of justice. About two-thirds of the district judges, increased jurisdiction county judges, and district court clerks favored total state financing or state payment of all salaries and operating costs. Again the North Dakota judicial leaders could study the experience of other states. Hawaii has instituted a state financing system and Michigan is considering one with the support of the governor and the judicial leaders. (See ABA Standards Relating to Court Organization, 1.50.)

There are several alternatives to total or partial state financing. First, the legislature could by statute establish standards and goals for judicial salaries, benefits, and facilities. If the counties fail to meet these standards they will be subject to state sanction or penalty. Second, the judiciary could be granted the power of special assessment. All salaries and facilities would then be financed through periodic state court assessments.

The experience of Colorado and other states shows that the judicial system could operate more smoothly under a uniform personnel system. If the state were to assume a larger role in the operation of the trial courts, a statewide policy setting the number of positions and minimum qualifications of personnel in each court would permit better management. The legislature and judicial

leaders should consider the establishment of a personnel system as part of an overall court restructuring. (See ABA Standards Relating to Court Organization, 1.42.)

Specialized Judges. Several district court judges indicated a desire to specialize, hearing many cases in one phase of the law. Divisions within the courts could be established in a reorganized and unified court system. Traditionally such specialization has included criminal, civil, juvenile, traffic, and domestic relations divisions. Juvenile matters, for example, demand significant non-legal training or experience in addition to the other qualifications required for judges. The National Center recommends that a study of the court organization issue also include this question.

The county court of increased jurisdiction could assume some of these responsibilities. The domestic relations and the juvenile area, for example, need not be handled on the district level. The court could give such cases quicker attention, since the judge is always in the county. As long as the judge is adequately qualified, no decline in the quality of justice would result. The legislative and judicial leaders should consider such realignments in the court structure.

Redistricting. It may be advantageous to realign the judicial districts in North Dakota. The figures

currently being collected by the State Court Administrator's office do not show the total workload of the district judges. Such matters as administrative appeals and time spent on each case do not appear. After the implementation of the new reporting system that the National Center will recommend in its next report, a need for redistricting may become clear. If so, the State Court Administrator should study possible realignments.

The workloads of the district judges should be equitable, and the changing of the boundary lines of the current judicial districts should be considered as one method of accomplishing this goal. Districts should not be hard and fast units but only a means to organize the activities of the trial courts. Statutory change should provide for flexibility to accommodate future change in boundary lines as circumstances and workloads require. House Concurrent Resolution 3056 which creates a new judicial Article IV of the North Dakota Constitution establishes such a flexible approach to district boundaries. If this or a similar resolution is enacted, the State Court Administrator should then periodically study population and caseload trends to determine more equitable boundaries.

Salaries and Benefits. Other recommendations do not require the long range study of the above comprehensive

ones. Of these more detailed needs the one most widely recognized concerned salaries and fringe benefits. Eighty-five percent of the judges surveyed considered their salaries too low. The salaries are causing a morale problem in some courts. Several district judges mentioned to the survey team that the practicing attorneys considered the bench a step down from the practice of law. The notion prevailed that attorneys who could not command a good income in their practice sought the judgeships. Also, county judges of increased jurisdiction believe that their responsibilities in the system are near to those of the district judges, and they would like a salary that equals or approaches their colleagues. Lower court judges and clerks of court also aspire to larger incomes. At the present time these persons are paid by their city or county and any change in this practice would probably come as part of a more comprehensive reorganization of the judicial system.

Personnel at all levels thought that their fringe benefits were inadequate. Again, the counties must address this issue, but the state leaders must be aware of it and consider it in their planning. A few district judges and county-funded employees considered their retirement plan adequate, but about seventy-five percent did not. Few persons surveyed at any level thought that their health insurance, life insurance, or other benefits

were satisfactory. (See ABA Standards Relating to Court Organization, 1.23, 1.24, and 1.43; and National Advisory Commission, Courts, 7.3.)

The court reporter's salary situation should be mentioned in connection with other salary questions. The counties now pay the district court reporters; each county in a district sends a check to each reporter within the district. The reporters receive as many as thirteen checks every payday. This situation is unwieldy, and some district judges recognized that it was difficult for the reporters to keep track of so many salary checks. The state now pays the district judge; it would not be difficult to assume the responsibility for the salary of the reporter who travels with the judge. If the state desires, it could require county reimbursement of these funds. This system would be easier for the reporters. It would not be more difficult for the counties, since instead of forwarding small amounts to each reporter, they could send the sum to the state.

Judicial Selection. Although not a question on the questionnaire, the general topic of judicial selection and retention was discussed with the judges. Thirty-three states have instituted a procedure involving a judicial nominating commission, an appointment to office, and

a periodic referendum on continuation in office.

This so-called "Missouri Plan" has replaced the general election process in these states. House Concurrent Resolution 3056 was adopted by the 1975 legislature. If approved by the electorate, it will establish a judicial nominating commission to fill judicial vacancies only.

North Dakota holds regular elections for judgeships, and the judges had mixed reactions to the issue. It is understandable that persons in office do not wish to criticize the procedure by which they obtained their office. The National Center recommends that the North Dakota judicial and legislative leaders consult the standards and consider appropriate constitutional amendment and legislation to implement them. (See ABA, Court Organization, 1.20; and National Advisory Commission, Courts, 7.1.)

Judicial Education. North Dakota should develop additional continuing education programs for personnel in the judicial system. Currently Ted Gladden is conducting a Comprehensive Judicial Education Study of all court personnel. The objective is to establish a four year cycle of training events. He is now surveying all court personnel to see what the conferences and seminars should include. The state supports training programs at present which are commendable, but it should extend its activities. Over three-quarters of the judges and

clerks surveyed were very receptive to expanded opportunities for education. Many of them, especially the newer personnel, attached a high priority to this issue. The State Court Administrator should exercise direction of the training programs for the Supreme Court, using the contributions of the members of the Judicial Council, the law school, and the state bar.

The National Center recommends in-state conferences and seminars for all new judges of the supreme and district courts. Such conferences should address the procedures and administrative practices of the particular court. All the supreme and district court judges should be encouraged to continue their legal education. They should be given the opportunity to attend out-of-state national training programs such as those offered by the National College of the State Judiciary. Consideration should be given to establishing at least one mandatory annual educational program on new legal trends and U.S. Supreme Court decisions.

All judges of the county court of increased jurisdiction, county justices, and municipal judges should be given orientation seminars upon their election. Attendance at these sessions should be mandatory, since some of these persons are not legally-trained and do not have some other court related experience. It would also be advantageous for all lower court judges to have the opportunity to attend

annual in-state conferences. The annual conferences should cover the judicial problems encountered in the lower courts and the changes in the statutes, rules, and ordinances with which they work. Senate bill 2473 recently passed by the 1975 Legislature gives the Supreme Court the authority to establish mandatory annual educational sessions for these judges. The State Court Administrator and his staff should now develop or designate the appropriate educational programs. Additional educational sessions dealing with probate matters should be developed for each judge of the county courts and county courts of increased jurisdiction. All programs must provide for the reimbursement of expenses incurred by those attending. (See ABA Standards Relating to Court Organization 1.25; National Advisory Commission, Courts, 7.5.)

Clerks of Court - Training and Selection. Some training programs are needed for the court clerks as well. In order to improve the operations of some of the local courts, the State Court Administrator must advise the clerks on the forms, procedures, and practices he recommends. New clerks should attend an orientation conference, as new judges should. In addition, a regular meeting should be established to keep the administrator and the clerks in contact. These conferences should in-

clude explanations of the filing procedures, recordkeeping, and calendaring recommendations from the State Court Administrator, and a discussion of the statistical and financial reporting forms now being designed. Such a meeting could accomplish a great deal. For example, a significant number of clerks surveyed do not follow or are not aware of the statute outlining a procedure for the destruction of court records. Clerk's conferences could point out such procedures and begin to establish uniformity in the clerks' offices throughout the state. Such a conference would also benefit the Court Administrator, since he would receive suggestions from the clerks on the statistical report and would learn what help he could give to the clerks. (See ABA Standards relating to Court Organization, 1.44.)

The legislature might consider a change in the method of selection of the clerks of court. A constitutional amendment would be required to accomplish any change. At present the clerks are elected by the voters, and they are therefore independent of the judges whom they serve. Good communication between the judge and the clerk is essential. Usually the judges and clerks achieve a good working relationship, but where they do not the operation of the court suffers.

Eleven out of the thirteen district court judges who responded to the questionnaire wanted the clerks appointed

by the judges of the district in conference. If the clerks were appointed, the judges and clerks would be more likely to work together smoothly. The judge would have more control over the operation of the district court. Clerks value their independence and point out that the district judges, not necessarily residents of the county, could appoint a person who is unqualified or unknown in the county. The public and the clerks themselves are likely to oppose any change to an appointive system because of the loss of local control.

The clerk of court is crucial to the efficient operation of the district court. If the notices are mailed on time, the records handled promptly, and the judge kept informed on the status of the cases, the court can function well. The key question for the legislature and the judiciary on this issue is how best to achieve that necessary efficiency in the clerk's offices.

Jury Selection and Instruction. The legislature should broaden the statute on jury selection procedure that now applies only to district courts. Such legislation should apply to all courts. Almost all district courts use the driver's license list and voters poll book to compile the jury selection list. The county courts of increased jurisdiction usually follow the same procedure or use the district court lists, but a few use different sources. In

the lower courts the discrepancies from this procedure are large. One court uses a list of utilities customers, and several use the real estate tax list or the telephone book. Two county justices use a personal list. Constitutional questions of randomness of selection could be raised on some of these methods. Legislation or court rule should establish one method of jury selection that would apply to all jury cases in the state.

The district court now uses patterned jury instructions, but the county courts of increased jurisdiction and county justice courts could use them as well. The state could develop jury instructions for use in the lower courts by adapting and adding to the existing district court instructions. The National Center recommends that North Dakota prepare patterned instructions for all courts that hear jury cases.

Juvenile Adjudication. The district judges now appoint juvenile supervisors and referees, but they use them in different tasks. In some courts the supervisors act as investigators and juvenile counselors, but in other courts those supervisors who are law-trained also serve as referees. Many of the referees in effect set the disposition of cases. This practice is not necessarily harmful; each judge will delegate some of his responsibilities according to his own preferences. But

if the supervisor's position approaches that of a juvenile judge, then his salary, training, and prestige should be commensurate with this responsibility. Juvenile matters should not be a neglected sideline of the work of the district court; they should be handled by competent and trained individuals, either judge or supervisor/referee. The legislature and the Supreme Court should examine the job and the qualifications of the juvenile supervisor. Seminars and conferences on juvenile law and treatment of juvenile offenders should be mandatory. Other educational requirements may be desirable, and a higher salary might improve the quality of the personnel. (See ABA, Standards Relating to Court Organization 1.26.)

In a study of the juvenile justice system the judiciary and the legislature should also consider the administrative problem raised by the dual position of the juvenile supervisor/referee. Procedural challenges may arise from a practice in which the individual who investigates juvenile matters also decides them.

A related conflict arises between the role and function of the supervisor/referee and the State Youth Authority, the State Industrial School, and the parole authority of the Director of Institutions office. Juvenile supervisors and referees in some district courts in larger urban areas carry on an extensive program of probation and parole. They may also be involved in detention facilities and diversion programs. Courts serving the less densely populated rural

areas do not provide such services and therefore other agencies must supply them when needed. In some instances such "after care" services are simply not available. Such discrepancies do not make for equal justice. The overriding issue that must be resolved is whether probation, detention, and other "after care" actions fit more properly in the judicial or the executive branch of government?

Prosecutors and Public Defenders. Many of the judges surveyed thought that the current prosecution and public defense practices should be changed. Some criminal cases are extremely complex, and justice is better served if competent, experienced attorneys present both sides of such matters. The part-time states attorneys and individually appointed defenders sometimes handle types of cases with which they are not familiar. We recommend full-time regional states attorneys and public defenders who would be specialists in criminal cases. Their salaries should be sufficient to assure that attorneys desiring to develop a specialty could seek and retain the position and that other legal matters or outside interests would not detract from their duties. The prosecutors and defenders could travel a circuit just as the district judges do, whether or not the districts are congruent. An alternative plan for a state-wide states attorney system would be to allow the

Attorney General of the state to hire and to retain with adequate pay specialized criminal prosecutors to assist local states attorneys where complex felony cases arise.

Both major national study groups recommend the regional prosecution system. Although there are no direct ABA or National Advisory Commission Standards concerning regional public defenders, many states have adopted such a system. It usually is less expensive than appointing attorneys on a case by case basis. (See ABA, The Prosecution Function, Standard 2.2 and 2.3 and National Advisory Commission, Courts, Standards 12.1 and 12.4. For defenders, see Chapter 13 of Courts and ABA, The Defense Function.)

Law Clerks. A majority of district judges surveyed indicated a need for law clerks. Some district judges have used full-time or part-time law clerks profitably, and the study team recommends that full-time law clerks be made available on a two-year contract for all district court judges who request them. The law clerks could act as a bailiff or direct the current bailiffs when needed. If the amount of legal research necessary does not justify law clerks throughout the state, some

centralized and coordinated research pool could serve many courts. Law clerks working in the state law library in Bismarck, or law students in the School of Law, or both, could be available to respond to research requests from judges throughout the state. They would prepare a legal memorandum and promptly return it to the judge.

Court Reporting. Court reporters are an important part of the judicial system and should be responsive to the judge, the Judicial Council, and the Supreme Court. The State Court Administrator should initiate a study to determine most efficient use of court reporters. The state should establish the qualifications and training for reporters. The preparation of the transcript for appeal and the physical possession of all testimony, demonstrative evidence and pleadings must be one of the functions of the courts.

Alternate court reporting systems are available and should be considered where they are needed. One-half of the district judges indicated that they sometimes had problems with finding qualified reporters and with delays in the preparation of the transcript. Many limited jurisdiction courts use electronic tape recorders. The State Court Administrator should investigate the issue

and ascertain whether a need exists for alternate reporting systems.

Clerks Manual. All the clerks of court agreed that a clerk's manual was needed. A few clerks who had occupied their position for a period of time did not need a manual for themselves, but they agreed that it would benefit new clerks. Even though many of the formal procedures are set forth in the statutes, the informal procedures followed in handling the functions in the clerk's office have never been written down. The Supreme Court should authorize a study to prepare a clerk's manual containing the statutory procedures, rules of superintendance as they are promulgated, the opinions of the attorney general, guidelines drafted by the State Court Administrator's office, recommended forms, and suggested procedures in the handling of the dockets, files, budgeting, accounting, and recordkeeping.

Judges' Benchbook. Although the State Court Administrator's office has provided deskbooks for the judges containing statutes and rules, the National Center found that almost all judges throughout the system would use a more comprehensive benchbook. This benchbook should contain succinct statements of law, with case citations, appropriate judicially-approved phrases, references to

statutes, texts, cases, law review, etc. and judicially noticeable facts. Benchbooks can be very useful to assure the parties to any legal matters that all points are covered in all litigation or prosecutions and to provide the judge with a quick resource for making decisions on the bench at a moment's notice. Specific manuals, covering probate procedures, juvenile matters, and any other special areas as needed, should be prepared, either separate from the benchbook or as a part of it.

District or Trial Court Administrators. Judges in the four most populous counties favored the establishment of district or trial court administrators. Judges in the less populous counties sought to preserve their administrative responsibilities. Many states have established trial court administrators and the change has allowed the judges to spend more of their time on their caseloads. We recommend that at least some of the heavily burdened district courts hire an administrator as an experiment. Such an experiment will be conducted in Burleigh County as soon as final approval is obtained from the Law Enforcement Council. If approved the study will show whether the position should become permanent and should help to show whether statewide application is feasible.

Facilities and Equipment. The survey team also collected information from the judges and clerks on court

facilities and equipment. The majority of respondents considered their present facilities adequate. Upon observation, the interview team saw few court facilities that were in the need of immediate repair. However, most court facilities were in older buildings that needed some improvements. Recent remodeling or construction has occurred in only a handful of locations.

Currently the counties fund court facilities. Under a comprehensive state financing system, as discussed earlier, the remodeling and new construction costs would have to be done by the state. The comprehensive facilities study currently underway within the Court Administrator's office will provide a complete audit of all court facilities in the state. Upon completion of this study, the Court Administrator and other responsible officials should begin to plan for the repair and construction of some facilities each year. Otherwise capital expenditures may be necessary in several courthouses all at once. Most of the court facilities could be modernized in the long range without great pressure if the state makes adequate plans.

Likewise, the courts had considerable equipment needs, but the cost could be spread out over several years with adequate planning. Most courts reported that they needed files, book shelves, or office machines

such as dictation equipment, a photocopier, or a typewriter. Several district courts would use microfilm equipment if it was available for permanent record storage and retrieval.

The counties also fund these equipment purchases. A few judges and clerks, however, mentioned that the counties often delayed the purchase of needed equipment. Not until the court had made its request several times did the Board of Commissioners approve the purchase. State funding, then, may be necessary in order to get all court equipment needs satisfied. The state or the counties may also want to use federal block grant or discretionary grant funds to modernize some of the court equipment and facilities in the state. The Law Enforcement Assistance Administration (LEAA) has approved such grants in many states. If so, planning and match moneys are definitely needed to insure proper cooperation and benefit for the courts. (See National Advisory Commission, Courts, 10.1.)

Law Library. The library resources available to the North Dakota judiciary vary greatly throughout the state. Judges located nearby can easily use the state law library, the School of Law's library, or the local

bar's library in the more populous counties. A few judges have built up libraries for their own courts. In many places, however, the resources are not adequate. Effective justice requires good legal research, and North Dakota should act to provide the capability for the research. The State Court Administrator should study the library needs of the judges throughout the state. The court administrator could prepare a minimum list of volumes to place in every county, or he could design a regional system of libraries.

Appellate Delay. Many states are experiencing delay in the appellate area. With the increased case-loads being thrust upon the appellate courts, several states are studying this problem. Colorado, Oregon, and Kansas have recently established intermediate courts of appeal, and Wisconsin is considering such a step. Other solutions used in other states include increasing the number of judges on the Supreme Court bench, the development of screening procedures and the enlargement of Supreme Court staffs. Full-time commissioners are being used by some states to facilitate the narrowing of issues, shortening the opinions, and allowing the courts to make per curiam decisions.

The National Center has not performed a detailed analysis of the caseload of the Supreme Court of North Dakota, but increased workloads will doubtless afflict the court in the future. As the problem begins to threaten the efficient operation of the courts, its members should consider these alternatives. (See Daniel J. Meador, Appellate Courts: Staff and Process in the Crisis of Volume, 1974.)

## II. Administrative Changes Within the Judiciary.

After surveying the operations of the courts throughout the state, the observers can recommend several changes which would not require statutory amendments. Many current procedures can be improved by order of the Supreme Court. The goal of such orders and rules should be to standardize certain important practices for all courts in the state. Not all procedures need be identical, but the key ones should follow guidelines and recommendations established for the entire state. Procedures in which constitutional issues may arise clearly should follow a standard. Many others should also particularly those which affect the ability of the Supreme Court and the State Court Administrator to manage the court system and to assist the individual court in meeting its problems. Standardization, then, should be not

an end in itself but a means to secure efficient operation of the courts.

The State Court Administrator is the central point in the management of the court system. He guides the courts, but he also represents them before the legislature and the public. He handles the external relations of the judicial branch, and he also keeps the courts aware of developments which might affect them. He issues bulletins to the local court personnel outlining new laws and bills, and he sees that the local personnel have the information and the resources necessary to conduct their operations well.

The court administrator is now able to better administer these functions with the two new staff addition. This report and the completed judicial information system project will enable him to further increase his effectiveness. However, effective administration works both ways. The judges and other non-judicial court personnel must recognize and use this focal point of court administration.

Statistical and Financial Reporting. A more informative statistical and financial reporting system is the most important administrative change that is necessary. The design of the report form and procedures is

the next part of this project. The National Center will also assist the State Court Administrator in implementing the new procedures. The judges and clerks surveyed made many valuable suggestions for changes in the current reporting form.

Uniform Scheduling and Processing. Judges in North Dakota are currently scheduling and processing their cases according to many different practices. Some courts have no backlog problem while others have. Some judges travel more than others. We believe that the scheduling problems now recognized by many of the district judges can be overcome by a standard calendaring method. Further, if the courts scheduled cases in a similar manner, the case status reports would be meaningful to the State Court Administrator, and he could identify existing or potential problems. Finally, standards for speedy trials are now established for the federal courts, and similar standards may apply in the future to state courts. If all courts continue to schedule cases in different ways, it will be impossible for the court administrator to plan a program to meet such standards. (See the Federal Speedy Trial Act (S.574) passed by the 93rd Congress last December).

The Supreme Court should set the calendaring pro-

cedures in a rule, and we recommend that the procedure be based on a date certain scheduling with the possibility of more use of pretrial hearings and the abolishment of the note of issue. The pretrial hearing would compel the attorneys to detail the status of their cases for the judge. Based on the information he receives, the judge should set a date certain for the commencement of the trial. He should permit continuances later only if the attorney convinces him that they are necessary. The Supreme Court's rule should make clear the grounds for continuances. Such a system would permit the court and the attorneys to rely on the firmness of the calendar once it is fixed.

The problem of specific instances of very old cases is related to standardized scheduling. In some courts, there are civil cases as many as eight years old and criminal cases up to six years old. Some probate cases, especially in the smaller counties, are even older. The Supreme Court should issue an order to try these old cases. In some cases the judges do not care to urge the hearing of a case, and the Supreme Court is the only body that can influence the judge. In other instances the lower court judges are unaware that they can force a hearing; here the Supreme Court

could issue guidelines or alternatives for the judge.

The probate problem probably requires a separate rule. Many of the lay county judges were concerned with the delinquency of some of the estate matters pending before the court. The new uniform probate code becomes effective July 1, 1975. This change provides the opportunity for the Supreme Court to issue a rule setting forth regular procedures to assure prompt meeting of statutory deadlines, either through the use of a "show cause hearing" or day certain calendaring of the matter. Strict exceptions should be enumerated where continuance may be allowed for attorneys who feel they cannot meet statutory deadlines. The rule should also set forth alternatives for the county judges when attorneys die or the heirs die and the estate will never be closed. The court should establish appropriate training sessions in the uniform probate code and the regular procedures to follow.

Uniform Accounting and Record-keeping. The Supreme Court should also act to standardize accounting and record-keeping in the courts. Eighty-five percent of the judges and clerks surveyed favored such standardization. If they were standard, the Court Administrator could address himself to the problems that arise in these

areas. Presently the clerks of court handle funds, process records, and keep their account books in many different ways. Those clerks who have an efficient system should be the model for those who do not; the State Court Administrator could locate the ones who do and the Supreme Court could recommend the procedures it finds the best. Standard forms would improve the management of the court system, since there the supervisory body would not have to deal with many different forms. Support payments constitute one example of such variation in procedure. The clerks interviewed strongly desired a standard method for processing the payments.

Terms of Court. By section 27-05-08.1 of the North Dakota Century Code, the Supreme Court by rule can fix the term of court. Several district judges suggested that the calendar year be considered the term of court rather than setting a number of terms each year. A continuous term for all courts would allow the Presiding Judge in each district to assign cases with much greater flexibility. The courts could hear cases as they become ready regardless of whether a judge would normally be in a particular county. The district court workload would be much easier to manage with this added flexibility.

Other Recommendations. In our interviews with the judges throughout the state, two additional points were raised which the Supreme Court and the Judicial Council should consider. First, although the district judges have the responsibility to supervise the county jails, they have no standards, guidelines, or rules with which to carry out this job. The Judicial Council should investigate this problem and draw up such guidelines. Second, several municipal judges pointed out that arrest warrants they issued were not being served throughout the county making it difficult for them to carry out their legal function.

## CONCLUSION

The above narrative merely outlines the subject areas of the judicial system which the judiciary and the legislature should study. It includes court reorganization, salaries and benefits, judicial selection, judicial education, selection and training of clerks, selection of juries, juvenile matters, regional prosecutors and defenders, law clerks and library resources, clerk's manual, benchbooks, trial court administrators, facilities, and several administrative changes to increase the efficiency of the procedures in the trial courts. We have not made detailed recommendations on most points. The Interim Report serves as a preliminary statement of the conditions of the North Dakota judicial system. It is a working document for both the National Center project staff and the North Dakota judiciary and legislature. The function of the Interim Report is to allow the judiciary to review critically the progress of the project.

The National Center will continue to investigate these issues. After the project staff has received suggestions from the Supreme Court, the State Court Administrator, and the Advisory Committee, more complete and detailed recommendations will be offered. The

statistical and financial reporting modules now being developed will be the first part of an information system that will furnish all judicial personnel with the data they need. The Master Plan when developed will incorporate the goals and objectives of the judiciary as set forth by the Supreme Court and the Judicial Council. The Master Plan will further consider the needs enumerated in the Interim Report. The National Center will prepare a planning vehicle, attach priorities, present schedules and costs, and design a method for continual updating of the plan. When the plan is fully implemented it will enable the judiciary to provide both efficient administration and more timely justice.



**END**