



1973

## Special Session for the Purpose of Paying Tribute to the Late Honorable Luther E. Birdzell

North Dakota Supreme Court

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*In the Supreme Court  
for the State of North Dakota*

SPECIAL SESSION  
*For the Purpose of Paying Tribute  
To the Late*

**Honorable Luther E. Birdzell**

SUPREME COURT CHAMBERS

*State Capitol Building  
Bismarck, North Dakota  
September 10, 1973  
10:00 A. M.*

HONORABLE RALPH J. ERICKSTAD  
— PRESIDING —

Bismarck, North Dakota  
September 10, 1973

The Supreme Court of the State of North Dakota convened at 11:00 a. m. this 10th day of September, 1973.

Present: The Honorable Ralph J. Erickstad, Chief Justice; the Honorable Obert C. Teigen, the Honorable Harvey B. Knudson, the Honorable William L. Paulson, the Honorable Robert Vogel, Associate Justices; Luella Dunn, Clerk.

Now the following proceedings are had:

JUSTICE ERICKSTAD:

At this hour, 11:00 a. m., on this day, September 10, 1973, we convene this Court in remembrance of the Honorable Luther E. Birdzell.

The Honorable Leslie Bergum will now lead us in prayer.

MR. BERGUM:

Most gracious God, we humbly ask for Thy divine presence in this hour of memorial. We give Thee thanks that we have been permitted to live in time and in place where the fundamental law of the land provides for a free and independent judiciary.

We thank Thee, too, that the pioneers saw to it that the Constitution of our own State incorporated the similar articles.

We are grateful for those who have invested their lives in the study and practice of the law and some are teachers and others have been selected to preside over courts of competent jurisdiction even to the highest courts of our land. Here and now we record our gratitude for the life and work of Luther E. Birdzell. His years as a teacher at the University Law School where young men were being prepared for services. His years here on the bench of the highest court in our State contributing to the legal history of North Dakota.

We thank Thee for the activity that followed after he left us and the very important part to be played in the business of the Bank of America.

May Thy blessings abide upon his family who are with us after witnessing the departure of their father into that unseen realm. Wilt Thou have Thy spirit impart unto them comfort and guidance and a sense of thanksgiving

and pride that their father left them such a heritage.

And now it is our prayer that we as citizens and the host of citizens who surround us may have a higher regard for the courts of our land and that they may lend their strength and support for any improvement of our judicial system that they may contribute to better service for ongoing generations.

We thank Thee for this hour and we pray this prayer in the name of one who was upon this earth for a few quick years and who once said to his critics, "I have come not to destroy the law but to fulfill it." Wilt Thou help us to fulfill the law. Amen.

#### JUSTICE ERICKSTAD:

Thank you very much, Mr. Bergum.

We welcome all who are present for this occasion and invite you to join us in the Conference Room at the close of this session so that we may meet and visit with each of you personally.

We are especially honored today by the presence of the President of the State Bar Association, Mr. Alan B. Warcup, of Grand Forks, who will present a Memorial on behalf of the State Bar Association.

Mr. Warcup.

#### MR. WARCUP:

May it please the Court, Members of the Birdzell family and friends. Luther E. Birdzell was elected to the Supreme Court of North Dakota in 1916 shortly before he became thirty-six. He resigned that office effective November 1, 1933, having commenced his final periodic term as Chief Justice of the Court September 1, 1933, and having served on the Court continuously from 1917. The last opinion he wrote for the Court appears to have been filed October 31, 1933 in *Anderson versus Fargo*.

Judge Birdzell was well endowed physically; his stamina was extraordinary, his health the best, and he was widely known for the common sense, friendly and pleasant approach he always made. Born in Champaign County, Illinois, December 1, 1880, the third of the four sons of Mr. and Mrs. E. A. Birdzell, he grew and was educated in the country town of St. Joseph, convenient to the law school of the University of Illinois, from which he received the degree of Bachelor of Laws in 1903. After practicing law a few months in Chicago he accepted employment teaching law at the downtown law school of the University of North Dakota in Grand Forks.

On December 27, 1904, in Illinois, he married Bessie Leda Perring. During the years the Birdzells lived in Grand Forks the young professor was active both in and out of the old Clifford Building Law School classrooms and offices. He served on the Carnegie Public Library Board, the local school board, and as adviser to law student groups organizing a chapter of Phi Delta Phi Legal Fraternity. Interested and active in political matters, a Democrat with progressive leanings, he received a John Burke appointment to chair the State Tax Commission, that service was performed on a two year leave-of-absence basis.

During his successive terms to service on the Court, Judge Birdzell was chairman of the World War I State Exemption Board, a body which met frequently to deal with draft hardship cases. He affiliated with Bismarck Lodge No. 5 A. F. and A. M., was a charter member of Kiwanis, and was active in the State Historical Society and as an instructor for law classes sponsored by the American Bankers Association.

Although his own health was almost flawless, his family suffered normal amounts of illness. He was devoted to his mother, his wife, and family of four sons and one daughter. All of the children were North Dakota born and, with the exception of the fourth son, North Dakota grade and high school educated. Three of the children were high school valedictorians; all five were holders of college and university degrees in their chosen fields of professional endeavor. When one son suffered a nearly fatal mastoid infection, the Judge doubled as chief nurse and around-the-clock watchman to save a boy who later earned his law degree *Magna Cum Laude* and now is a member of the Bar in California and New York.

Into this family establishment in the fall of 1933 came an offer to take part in creation of a federal system of insuring bank deposits. A appointment as the first General Counsel of what became the Federal Deposit Insurance Corporation followed resignation from the Court. In collaboration with many in the F. D. R. Administration—including former North Dakota lawyer, then Comptroller of the Currency, J. F. T. O'Connor—and members of committees of Congress, the needed Act was drawn and passed and approved. The work of the new legal department increased steadily, and its counsel met hundreds of new co-workers and friends, among whom was the Chairman of the Board of the Bank of America, Mr. A. P. Giannini.

Early in August, 1940, Mr. Giannini announced that Judge Birdzell had become associated with the Bank of America as Vice President and Senior Trust Officer, effective August 5. The chairman was quoted in the press as follows:

"For some time past we have been endeavoring to persuade Judge Birdzell to join our organization, feeling that he was by character and training the ideal man for the post of Senior Trust Officer of an institution like the Bank of America, which handles the estates of thousands of people over the entire State of California. It is a job which calls for the highest of integrity, a comprehensive knowledge of all phases of law and banking, good judgment, with special emphasis on safety."

The family moved to San Francisco. Eventually the Birdzells bought a residence in Palo Alto. The Judge was actively engaged in his duties with the Bank during the ten years ending with 1950, and continued in touch with bank people as a consultant until he was injured in an auto accident in 1958. The years with Bank of America included much travel on business and some opportunities to renew North Dakota connections. In 1948 the University of North Dakota conferred on him the Degree of Doctor of Laws. A heart attack in 1965 slowed the life pace some; the Judge continued to live at his Palo Alto home in touch at all times with members of his family and friends. He greatly enjoyed occasional trips by car or train to San Francisco and Bank of America Center.

On February 2, 1973, he was admitted to Stanford Hospital for treatment. He died there February 23. Chapel services attended by family and friends were conducted by Reverend Robert S. Vogt of Pleasanton, California, at Palo Alto. Entombment was at Alta Mesa Memorial Park.

Surviving are four sons, Robert A. of Bismarck; Doctor John P. of Crown Point, Indiana; L. E. Jr., of Greenwich, Connecticut; Floyd Douglas of Arlington, Virginia; nine grandchildren and five great-grandchildren.

## JUDGE ERICKSTAD:

Thank you very much, President Warcup.

We are fortunate also today in having the presence of an old friend who knew Justice Birdzell in the many phases of his distinguished career.

At this time we welcome Miss Catherine E. Morris, who is one of the first women to be admitted to the Bar of this State. Miss Morris.

## MISS MORRIS:

Chief Justice, Associate Justices, Members of the Birdzell family and friends. Since Judge Birdzell left the State of North Dakota about forty years ago it is a little difficult to dwell on his activities during that time.

The words spoken here this morning covering his professional career have been so well said on behalf of Judge Birdzell that I am not able to add anything to the splendid memorial that we have just heard of this fine gentleman.

However, I knew him and was personally acquainted with Judge Birdzell during the time of his residency in the City of Bismarck since during most of that time he lived on the same street where I lived and during most of those days everyone in Bismarck knew each other. I walked past his home daily on my way to work and he passed my home on his way to his duties in the State Capitol during his ten years as Chairman of the State Tax Commission and Supreme Court Judge.

He was tall and stately and dignified and we all looked upon him in high esteem and respect.

He was devoted to his wife and family, was a beloved husband and dutiful father and was considered a family man.

Judge Birdzell was born on a farm in Illinois and lived there throughout his boyhood. He enjoyed his activities about a farm and the usual adventures of children living on a farm.

His first venture in a profession was teaching a country school. When he applied to the local school board to teach the country school the board seemed reluctant at first to employ him because there were a number of children who were considered unruly and hard to control. After looking him over the board decided to hire him and his record was successful in managing the most difficult of youngsters.

During his residency in Bismarck he enjoyed the activities of the members of his family and looked forward to venturesome new gadgets to try out with his children, some of which ended in disaster.

He was curious about some of the workings of the early automobiles and planes, most of which were quite new in the early part of the century. He never missed an opportunity to learn something of their inner workings.

On a vacation trip to Yellowstone in the 20's he ventured forth to become friendly with some of the native bears but he was fortunate enough to escape what might have been a disastrous experience.

When he retired from the Supreme Court and went to Washington in 1933 he lived at the famous Lafayette Hotel which has just recently been demolished. He worked hard and long hours in preparing the Federal Deposit Insurance Corporation Banking Act which followed the period of many bank failures throughout the United States.

He became well acquainted with practically all of the congressmen in Washington through his experience as General Counsel of the Federal Deposit Insurance Corporation in Washington and his contacts with A. P. Giannini, Chairman of the Board. He became associated with the Bank of America and he had a colorful career which called for the highest of integrity, a comprehensive knowledge of all phases of law and banking in which he was well qualified.

Following his ten years of service with the Bank he was given the following citations by his fellow associates:

"You have won the heartfelt gratitude and appreciation of each of your associates in the Bank of America. We are grateful for the privilege of knowing you, grateful for the opportunities we have had to work with you, grateful for the wisdom, sound judgment and imagination which has invariably characterized the advice with which you have always been ready to help us in the solution of our problems, whether personal or professional. Jurist, educator, able adviser, legislator, administrator, pioneer advocate and counselor, epicure, gourmet, reconnoiter and bon vivant and with all a gentleman, a scholar, we are proud to know you and honored to be your friends."

Judge Birdzell suffered an unexpected heart attack in 1965 and the medical profession considered it severe enough that he could not possibly live. However, he had the determination and the fortitude and he made a remarkable recovery and continued in his advisory capacity.

He liked people and he kept in touch with former associates and friends. He kept abreast of the times and was always interested in what was going on.

He enjoyed playing bridge as late as 1971. He traveled to Washington in November of 1970 and enjoyed renewing friendships with former associates in the Federal Deposit Insurance Corporation.

I saw him when he visited in Bismarck in January, 1971, coming here from San Francisco by plane by way of Denver and I marvelled at his alertness and keen memory.

In April of 1972 at the age of 91 he flew back to Illinois and was alert, interested and enjoyed every phase of the trip.

He was not only a competent lawyer and an outstanding judge, he was a man of integrity. He conducted himself with honor and distinction and had the respect of the bench and the bar. He always did his best but was never quite satisfied that his best was quite good enough.

In his career he contributed to the happiness and well being of countless people. He was strong physically, morally and spiritually. He exerted beneficial influences on his children, his co-workers and friends which will live on through the years.

I think that we all will feel that he left a memorial in this wonderful building. He was the one who suggested that the hole be cut in the wall so that there could be a view to the beautiful Memorial Hall and I think that it has been something that will live as long as the building here and will be a real credit and memorial to Judge Birdzell.

I thank you.

## JUDGE ERICKSTAD:

Thank you very much, Miss Morris. Before closing this session of our Court we wish to thank all of you who by your presence have made this session meaningful. We especially thank the President, Alan B. Warcup, Catherine

E. Morris, and Attorney General Bergum for their contributions this morning.

We wish to acknowledge especially the services of Mrs. Luella Dunn who is in charge of all arrangements and her reception committee Catherine Fox, Joan Eckroth, Rosaleen Fortune, Mary Austin, Eveleen Klautt, Irene Springan, Mary Lee, Donna Fischer, and Lorna Bender. We thank you all.

That these proceedings may be recorded and copies thereof be forwarded to the members of the family, I invite an appropriate motion at this time.

JUDGE PAULSON:

Mr. Chief Justice, I move that the proceedings be spread upon the minutes of this Court and that a copy thereof be sent to the members of the family of Justice Luther E. Birdzell.

JUDGE TEIGEN:

Mr. Chief Justice, I second the motion and I, Mr. Chief Justice, move the previous questions.

JUDGE ERICKSTAD:

The previous question has been called for. All those in favor signify by saying Aye. (Response was unanimous).

All those opposed signify by the same sign. (No response).

The motion is carried unanimously.

Personally, and on behalf of all the other members of our Court, I extend our sympathies to John, Luther, Floyd and Robert and to their children, family, to Justice Birdzell's many other friends and loved ones, some of whom are present and some of whom could not be present.

I would like to especially recognize those who are present who were former students of Justice Birdzell. The students whom Justice Birdzell taught at the University of North Dakota School. I have some of those names. I don't know if all of them are present. I know some of them are present. I know that Clyde Duffy is present. I see him in the audience. I don't know. I will read the rest of the names so I do not miss anyone. Judge Kelsch is also here, a former student. I don't know if Mr. E. T. Conmy is present, if anyone is here on his behalf or Mr. Owen or Mr. Henry G. Owen. Mr. Points called us this morning and explained that he could not make the necessary airplane contacts to be here and regrets that he can not be here. Mr. Stormon, if he is here we wish to recognize him also.

Now, at this time with the reminder that we would like to meet each of you in the Conference Room following the close of this session I would like to call on former Attorney General Leslie R. Bergum to please lead us in the closing prayer. (A closing prayer was had).

JUDGE ERICKSTAD:

The Court will now be in recess until 2:30 p. m.