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## Letter from Fred J. Traynor to Albert E. Sheets Regarding Retrial of State v. Stepp Case, June 19, 1920

Fred J. Traynor

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6-19-1920

## Letter from Fred J. Traynor to Asst. Atty. General Albert E. Sheets on State v. Stepp Case

Fred J. Traynor

(2)

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NOTARY PUBLIC

June 19th, 1920.

Mr. Albert E. Sheets,  
Asst. Atty. General,  
Bismarck, N. D.

Dear Bert:

I have just received a copy of the Supreme Court's decision in the Stepp case. I am not surprised at the decision. From the time that I learned of the contents of the memorandum decision of Judge Kneeshaw I felt that it was almost a foregone conclusion that the Supreme Court would send it back for a new trial. Where a man's liberty is at stake and the trial court intimates that he did not have a fair trial it is most natural that the Supreme Court should feel that he should have a new trial. I therefore haven't a word of criticism nor a thought of criticism of the decision of the Supreme Court.

I intend to get in touch with the parties interested in the prosecution and Mr. Grimson and if it is thought best to have the trial in the term that opens July 6th will have Grimson take it up with you to request the Supreme Court to send the remittitur down to the lower court at once so that it may go upon the calendar for trial at the July term. I think the defendant is entitled to that and will want to get it disposed of at once.

In connection with the written opinion, I wonder if Judge Bronson and the other members of the Court would think it improper of me to ask them to change the opinion, that is the wording of it, so as to avoid the use of the word "misconduct" in reference to my argument. To me that word implies deliberate and intentional wrong doing. I am sure Judge Bronson and the other members of the Court do not feel that the error that I committed was deliberately and intentionally wrong. At the time I certainly did not think or realize that I was committing error or saying or doing anything wrong. To say that I committed error that was prejudicial

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is to my mind quite different in ~~what~~ it connotes from saying that there was "misconduct" on my part. The court's decision necessarily holds that I unwittingly committed prejudicial error. That was committed by me unwittingly by reason of the evidence <sup>w</sup>alleged by the trial court which the Supreme Court now holds should not have been admitted. There was however no intentional "misconduct" on my part.

If therefore the Court can see its way clear to change the wording of the opinion in this one respect I will very deeply appreciate it.

I do not know whether it would be considered proper for me to write the members of the Court about it. So I will ask you to talk to Mr. Newton about it and if he thinks it proper you might, or he might, take it up with the members of the Court using this letter as the basis therefor.

Sincerely,

FJT/T.

