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Ideal Trial Judges

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IDEAL TRIAL JUDGES

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Judges may think that this article should be by a member of the judiciary rather than a practicing attorney. To such, I do not agree.

It is only natural that one, when elevated to the bench, automatically becomes a member of that select fraternity, the judiciary. The movement from the arena to the bench, so to speak, is calculated to change the new judge's psychological attitude as to proceedings in the courtroom. It is this very happening that should be to a major extent avoided.

The trial lawyer, uninfluenced by judicial fraternalism, is by far better suited to speak on this subject because he is an advocate acting for and against litigants before the court. This continuing experience keeps him at all times alerted to problems of attorneys and litigants, whereas the judge who does not have this close contact with the facts, the law and the litigants involved in the case being tried cannot in the beginning see the whys and wherefores of happenings, and must acquaint himself with such as the trial progresses. This sometimes requires patience and latitude of inquiry.

What is said here is not new to lawyers and judges generally. We, however, as lawyers and judges alike, are interested in the promotion of the general welfare, and movement should always be toward the "ideal".

Knowing and seeing undesirable happenings are not necessarily followed by corrections so as to avoid the repetition of such. This is where action of the judge becomes necessary. He, in the conduct of the court, occupies a position from which he can get results that will "speed the cause" toward the "ideal".

Occasionally, one might say, fortunately, rarely, one runs into a trial judge who is utterly unfitted and not suited for the job, temperamentally and otherwise. It is this type that tries the patience and souls of all lawyers. In seeking to cover his inadequacies, like Tom who put in his thumb, he seeks to call attention to his prowess by using the power of the court, which is great, to show his authority. Just what to do with such a judge is anybody's guess. I suppose one would not go wrong in just doing all he could, not to be in contempt and in so doing endeavor to make a record for appeal.

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It is my considered opinion that the trend toward the ideal trial judge is as great today as the trend toward procedure productive of substantial justice. As a matter of fact, the two go hand in hand.

The purpose of all lawsuits is substantial justice. The trial judge is the hub of the wheel around which the spokes of evidence turn.

The purpose of the rules of evidence is an orderly and expeditious trial. In the application of such rules the trial judge is supreme until overruled by an appellate court.

The purpose of our jury system is to have the jury find what the facts are under the guidance of the trial court's instructions.

The time was when highly technical objections to offers of evidence, violative of a rule of evidence usually forced the trial judge to sustain such objections under penalty of committing reversible error. The trend in recent years has been rapidly to the contrary. The ideal trial judge, unless prevented jurisdictionally or by some mandatory statute, will not permit a technicality to defeat justice.

The ideal trial judge seeks to have the witness give evidence in a manner most understandable. To this end, the modern trend is to direct the attention of the witness to the incident in litigation, show that he was there and when and who was present, and then be requested to tell what he saw and heard. Scientific tests have indicated that the spontaneous narrative is more accurate and uninfluenced by suggestion. Such narrative, when finished, should be amplified by the question and answer method.

Just here the ideal judge not only has the right, but the duty to interrogate the witness on such points deemed necessary for a full disclosure. It is possible some question has not been asked by the attorney for either side, due to fear of the effect of unknown answers. The policy against leading questions by counsel has no application in general to the judge whose office is to get the facts. But, the judge should keep in mind the main object—substantial justice—and when it is apparent that some fact for some reason is not being brought out, he should not hesitate, by proper questions, to bring this fact to the attention of the jury no matter which side it hurts or favors. The judge, experienced in presiding over trials and in observing lawyers in the conduct of their cases, may readily understand why some question has not been asked by the attorneys, but the jury may want the answer to this very question, and this answer might be determinative of the case

in the interest of substantial justice. Such question should be asked and answered. If not by counsel, then the court should elicit the answer. The jury should not be left guessing.

Some judges, not the ideal type however, not due to corrupt motive necessarily, are prone to do and say things in the conduct of a trial, that indicate to the jury more confidence in the ability of a lawyer on one side or the other. This is positively wrong, and could well defeat substantial justice. The judge might be correct or he might not be in his opinion of the qualification of the respective attorneys, but in either event this should not be indicated to the jury. The rights of the litigants should not be determined by relative qualifications of the attorneys, *if it is possible to avoid such.*

The experienced, capable trial lawyer much prefers to have as an antagonist one of like experience and capability than a smart, young, inexperienced lawyer. The experienced lawyer in such a situation is in the position of a first class fast ball pitcher pitching to an inexperienced but husky batter. He hesitates to bear down for fear he will hit the batter, give him his base and perhaps hurt him. On the other hand, if he throws an easy over-the-plate ball, the batter may land on it for a hit. In either event, he labors under a handicap.

The trial judge is regularly confronted with cases in which the young lawyer appears. They are coming out of law school and beginning the practice every year. The problem is a present one in our courts. The ideal trial judge recognizes this and can do much to prevent happenings that will defeat substantial justice. The need for ideal trial judges is great today in order to make the machinery of progress function.

When a young, inexperienced attorney appears, a real problem arises for both experienced counsel and the court. The inexperienced attorney invariably will ask questions obviously subject to objections that should be sustained. Such objections when repeatedly made and sustained could cause a jury to feel that the young lawyer was being treated unfairly, or it might cause the jury to feel that the young lawyer's case had no merit. Just what the experienced trial lawyer or the ideal judge should do in the interest of substantial justice is always a problem.

It has been my experience that it is dangerous to "show up" the young lawyer, who, if he is smart, and he usually is, even the inexperienced one, in argument can make much of his in-

experience which is already apparent to the jury and thereby get consideration for his client through sympathy far beyond what the evidence warrants.

I have observed that the experienced trial lawyer has a sympathetic and kindly feeling for the young lawyer; the same is true of the court; they have all been through just such experiences as the young lawyer is now going through. The ideal trial judge under such circumstances should, when it becomes apparent that such a situation is developing, call a recess to chambers and instruct the young lawyer on the points arising upon which it obviously appears he needs such instructions. This is a practice that is growing and it should. This is in the interest of substantial justice.

I remember as a young attorney appearing in a case in a Louisiana Parish, where the old Napoleonic code in a great measure was in vogue. The case involved about $35,000 worth of crude oil in tanks. My client was a friend of my family, and for this reason I had been employed, and with the understanding, of course, that I would associate an experienced lawyer in Louisiana to try the case. It was my business to line up the evidence. It was a jury trial. I had the witnesses on hand on the day set for the trial. There were four who came from distances ranging from 250 to 300 miles away. Associate counsel on the morning of the day the trial was set was stricken with an acute attack of appendicitis and was in the hospital. This was the situation when the case was called. The judge was kindly and understanding. He readily announced he would continue the case if desired. But he went further. He said opposing counsel was an outstanding member of the bar and very fair; and that he would understand I was not qualified under the Louisiana statutes and rules of procedure; but that with the approval of opposing counsel, he would aid in seeing that my evidence went in properly. Opposing counsel was agreeable to this. I was still fearful, but my client who so far had been subjected to so much expense said, lets' go to trial, and we did. The case went along smoothly. I won before the jury on a close question of fact. This I might not have done, had I not been a young, inexperienced lawyer. Perhaps substantial justice was not done in this case. What should a judge do under such circumstances?

I had an experience as an experienced lawyer while United States District Attorney in a case in which an inexperienced lawyer ap-

peared for a defendant which presented this problem. The lawyer who appeared for the defendant is no longer inexperienced. But in this case this problem was presented to both the court and counsel. Judge Vogel, now of the Court of Appeals, was the District Judge. The main problem was presented on the offer of evidence of a character witness. The young lawyer was not familiar with the methods of presenting such evidence which, as all experienced lawyers know, is simple and easy to follow. But this inexperienced attorney in his zeal for his client undertook to go far afield in his examination of a character witness. Finally, objection was made and sustained. Questions were urged and counsel insisted that he had the right under authority which he was ready to show the court to present the evidence as he was seeking to present it. The court courteously used every means at hand to impart to the attorney the proper procedure. The attorney was insistent and displayed law books which he claimed sustained him; he was told flatly by the court that the law was settled on this point and that he had no such right. The impression was definitely created in the minds of the jury, I believe, that the young lawyer was not getting a fair shake. There was a verdict against the government, which I believe was one of the most perfect cases for conviction that I ever tried.

In a case like this, what is the court and counsel going to do? It's a tough nut to crack so as to give even handed justice to both sides. To have let the young attorney wander all around in a manner in which he was seeking to do would have been bad. To not to do so also was bad as the results showed.

The ideal trial judge in the interest of orderly procedure will require opposing attorneys to address their remarks to the court and not each other. The courtroom during a trial is no place for opposing attorneys to engage in across the table arguments. Any thing said or done may be objected to, to the court, in the same way that an offer of evidence may be objected to; unseemly scenes will be avoided by strict enforcement of this rule. A judge who becomes lax in the enforcement of such a rule can quickly lose control of the trial. Such happenings are always regrettable and contribute nothing to substantial justice.

When opposing attorneys or any attorney insists upon such tactics, the ideal judge will not explode from the bench. But he will call the attorneys to chambers outside the presence of the jury and firmly state what he wants done or not done. A failure

on the part of the attorneys or attorney to observe such admonition should result, in the presence of the jury, to such action on the part of the trial judge as he at the time deems fitting. Any attorney who now violates such rule does so under the penalty of being, in the presence of the jury, dealt with as the court deems proper.

The ideal trial judge is slow to interfere with attorneys in their arguments to a jury. But when an attorney is obviously, and obviously intentionally, going outside the record to bring into his argument facts that are calculated to influence the jury on some material issue that are not in the record in fact or by inference from the facts, will, without objection from opposing counsel, stop such argument and accompany such action with an admonition to the jury to the effect that such argument has no foundation in fact and should not be considered by them.

Of course, if no objection is made and the trial judge does not act, the general rule is that such argument is not reversible error. But when an attorney has deliberately overstepped the evidence in this way, opposing counsel should not be required to object. To do so might prejudice the jury against his client. The ideal judge will act without objection.

The ideal trial judge gives careful consideration to requested instructions. The attorneys have naturally devoted more time and thought to the case than the judge. What the judge says carries great weight, and it should. This makes it important that the judge's instructions should as fully and fairly give the applicable law as possible. While a refusal to give some requests, even though sound law, may not be reversible error, yet some such requests may more fully and fairly give the law than as given under the stereotype instructions of the court, which generally cover the points sought to be covered by the special request. The ideal trial judge in recognition of the fact, if such be the case, in the interest of substantial justice, will give such requests. This does not mean that such requests should be given, so to speak, upon the slightest provocation. Some lawyers are prone to have a way of just spouting requests to give the court, and should in the interest of substantial justice, be turned down. Too much law sometimes, like too many cooks, spoils the broth.

The ideal trial judge when requests are refused, realizes that unless exception to such refusals are taken, such rejections are not assignable as error. When the jury has been instructed, the

court retires to chambers for the purpose of letting the attorneys take exceptions to the insructions as given and the rejections. Of course, exceptions to instructions as given should be specific and point out just what is excepted to. Under the rules specifications as to rejections are also required, both Federal and State. But the reasons for such specifications is not so real. And the trend is toward dispensing with such reasons unless the court calls for such. The ideal trial judge, should he want a specification, should so indicate. Or, in case he does not, should indicate such to be the case. All of this to avoid unnecessary encumbrance of the record in chambers with specifications of reasons, and on appeal with points or assignments of error as to alleged infractions.

The ideal trial judge indulges the presumption that no lawyer is seeking special privileges from the court until that presumption has been overcome by words or conduct indicating the contrary. If and when this comes to pass, he will treat with such attorney at a distance that will protect the court from unseemly happenings. Nothing is more conducive to respect for the administration of law, than confidence in and respect for the trial judge. He is the one the people see and know, not the appellate judges. On the other hand, lack of confidence in and respect for the trial judge, creates a fearful undermining of respect for the administration of law.

Now, I am about to say something that may create controversy among lawyers. But what I say is based upon contact with judges in all courts, from the Justice of the Peace to the Justices of the United States Supreme Court.

It is my considered opinion that judges as a rule are prone to drift into a life of seclusion; into a fraternity of themselves. In other words, they get in the habit of maintaining an association with the public and lawyers that has to do mainly with contacts in court and in chambers. When court adjourns, it is home or to the privacy of the hotel room they go. The general public likes to meet and talk with the judges. To my way of thinking such contacts are helpful to the administration of law. It keeps the judge in touch with the public and what's going on and the general talk that goes on and it keeps the public in touch with a person upon whom they are inclined to look with some degree of awe. He is somebody we read about, we hear about, but for some reason we don't meet as we do other people.

The ideal trial judge, to my way of thinking, is one who so conducts himself in the court room that his presence anywhere

among decent people gives no cause for criticism, but on the other hand, adds to his stature as a member of the judiciary, and the above board practice is calculated to stop wonderment as to what the judges do when they are not on the bench.

After all, the judge is nothing but a lawyer. Before he went on the bench he did what other lawyers did. His likes and dislikes were the same as other members of the bar. To change one overnight and make a recluse out of him is hard on the judge and not good for the people .

The ideal trial judge, as a rule, is just a good, average lawyer, who knows the problems of lawyers and who knows lawyers; who has worried with clients over their problems; who has enjoyed associations with people in all walks of life; who is familiar with small as well as major problems common to the people, and who, when he goes on the bench, does not become a recluse; and this goes for all judges.

In the legal profession specialization is necessary more than ever before. Industry is bigger than ever before. Incomes are big and growing bigger, tax problems are acute and growing more difficult and intricate every year. The peoples of the world are getting closer and closer to each other. International problems are many and greater, and the need for international lawyers is commensurately great.

Close in importance to the use by lawyers of expert witnesses is the necessity for trial judges under the rules of evidence in the exercise of judicial discretion to pass upon the qualifications of and necessity for an expert.

Of course, it is elementary that evidence to be admissible as opinion evidence from an expert must be as to something that the jury can be made to better understand. If the jury is as capable of forming an opinion on the evidence as the expert, such testimony is inadmissible. But in this era of technology and scientific progress, there is much on which the average man needs enlightening. The ideal judge in the interest of substantial justice will lean toward latitude in passing on such offers of evidence.

But with it all we have our jury system intact, which is our guarantee against the loss of freedom so long as our courts are presided over by the right kind of trial judges backed up by the right kind of appellate courts.

With all of this specialization in the legal profession, the need for the trial lawyer has not lessened, but grown greater. Some

think this not true. Nothing has happened in the midst of all this growth and expansion in this era of progress to prevent the real trial lawyer with the use of the experts that are available in all lines of endeavor from effectively functioning in the trial of jury cases. And to guarantee the continuation of our great breastwork of protection, the jury system, the trial judge as the "keeper of order" is essential.

One judge I would like to mention as an ideal judge. Judge John Caskie Collet[1] of the Eighth Circuit who departed this life on December 5, 1955. It so happens that I met him in North Dakota at a time when he was serving under assignment of the presiding judge of the Eighth Circuit in the capacity of a District Judge in the State of North Dakota. Well do I remember when I first met Judge Collet, in the early 1940's at Minot, North Dakota. I was the United States Attorney in charge of the prosecution of some four conspiracy cases—conspiracies to violate the Frazier-Lemke Bankruptcy Act under which the conciliators in connection with unlawful organized solicitation of farmers for bankruptcy were charged with misrepresentation and fraud in obtaining and filing petitions in bankruptcy. Due to a misunderstanding of the law and purposes of that act, at that time there had grown up in North Dakota a very definite resentment against the United States Government on account of these prosecutions. When Judge Collet, under assignment of the presiding judge of the Eighth Circuit, came to North Dakota, he came with full knowledge of this situation. The first case was tried at Minot, North Dakota. And well do I remember when the case was tried. It was begun in a crowded court room in which the atmosphere was charged with resentment toward the United States Government, as I said, due to a misunderstanding of the facts, the law and the purposes of the act.

I remember well at the outset of this case, Judge Collet's examination of jurors on their voir dire and how in the course of such examination, veritably speaking, in just a few minutes the tension was eased; I felt much better; the rumbling ceased. You could feel it. The dignity of the court and the majesty of the law reigned supreme in that crowded court room. The court's examination of the jurors emphasized the even handling of justice, and he did it again and again in his peculiarly adroit but unmistakable manner, and when this examination was finished, it was plain to

1. Deceased.

be seen that the effects of an organized program of propaganda, intended to create the impression that these cases were persecutions, had been wiped out. There were convictions. Nothing unseemly happened inside or outside the court room. The court then moved to Bismarck where three other cases of like nature were tried with like results. This was an amazing accomplishment with the state of feeling as it had been before Judge Collet's arrival. Fairness, firmness and proper diplomacy had sustained the dignity of the court and the majesty of the law.

It so happened that I was honored by being made a member of the committee appointed by the United States Circuit Court for the preparation and presentation of appropriate resolutions at the Memorial exercise held on the 7th day of March, 1956, at St. Louis, Missouri.

During this memorial occasion, Judge Stone of the Eighth Circuit, referring to the visit of Judge Collet, to which I have just called attention had this to say:

"During the latter years of the last war, there developed, in North Dakota, a situation involving the enforcement of the Frazier-Lemke Act which resulted in a number of federal indictments of farmers and others. This aroused bitter resentment which was speedily fanned into what became really an incipient insurrection. This grew quite menacing. The local District Judge, very properly disqualified himself and it became my duty to assign an outside judge to try these sensitive cases. After fully explaining the situation to Judge Collet, I asked him to accept the assignment. With no slightest pause, he took this ugly mess, where a less courageous man might have hesitated.

"After he returned from trial of all of these cases—some resulting in convictions and some acquittals—I received three letters. One was from the Local District Judge (now an honored judge of this Court), and one from Mr. Lanier, the United States Attorney who prosecuted the cases, and one from the principal attorney for the defendants. Each letter praised Judge Collet in highest terms and I want to read you a quotation from the letter I received from Mr. Francis Murphy, who was the main counsel for the defendants, and who was looked to by the people who were so much aroused to look after what they thought were the public interests. This was from Mr. Murphy's letter:

'I have just completed trial of a number of cases before Judge Collet assigned to this District. I know that I express

> the opinion of all of the members of the bar who have had the privilege of appearing in a court presided over by Judge Collet when I say that his appearance here is very greatly appreciated. We of this State learned from him something about the proper method of administering justice and conducting the trial of cases. I sincerely hope that he will be assigned to this District again in the future.' "

The trial judge in his associations, contacts and duties is so encompassed about with requirements to make sudden off-the-cuff decisions, that he is more likely to err than an appellate court. The appellate judges do not have to make such sudden decisions. The trial judge for this reason is more likely to err than appellate judges. While the trial judge desires, as he should, not to err, the ideal trial judge will think more of what substantial justice is than how it will affect his record as a judge. If he errs on a close question toward the side of substantial justice, the appellate court, with due deliberation, if the error warrants, may so find and take responsibility, after due consideration, for the contrary opinion.

The trial judge, in other words, blazes the trail through the forest of allegations and counter-allegations, charges and counter-charges and conflicting evidence to finally reach the destination, a jury verdict. The appellate judges examine this trail to see if there have been detours, and if so, were such detours prejudically erroneous to the extent of requiring a modification or reversal of the lower court's action.

There is no doubt that lawyers oftentimes in trial of cases blow their tops in a way that moves the judge to blow his. This is where the ideal judge shows his stuff. I am using, just here, some crude language, but such occurrences can be best be described by the use of such language. Firm, level-headed reprimands are the order of the day, to be followed, if necessary, with disciplinary action. The day is past when such exhibitions are permitted. The time was in many jurisdictions when lawyers felt that they were not earning their money without a personal altercation with opposing counsel.

It was told on Bob Taylor some 50 odd years ago, later a governor of Tennessee, that when he was a young and physically fit lawyer, he was employed to represent a mountaineer client in the mountains of east Tennessee in a Justice of the Peace Court. The lawyer on the other side, an experienced member of the

bar, found that young Bob was opposing him and called him to his office. There he said, in substance: "Young man, let's save some expense by hiring jointly a livery rig and going together to the mountain top". To this young Bob was agreeable. Driving up the mountain the old lawyer said, in substance: "What our clients want is action; so when we get going in the trial I'll lay down a principle of law and you doubt it, and I'll call you a liar and we will have a friendly fight". Young Bob did not see where he would suffer and agreed. The time came, the lie was passed, and the fight was about to begin, when young Bob's client threw him aside with the words, "I hired you to do my legal fighting, get out of the way". The client then proceeded to beat the h . . . out of the older lawyer.

Progress, fortunately, has made obsolete such methods. Decorum and courtesy have taken the place of technicalities and prearranged dramatics.

I recall now a District Judge of this state whom I first met in the fall of 1923; that was the year I arrived in North Dakota. This judge has passed on to his reward, and I know he has it coming. Substantial justice was his motto. He had been County Judge of Wells County, North Dakota, when a vacancy occurred on the District Court of the Fourth Judicial District and he was appointed. My first case in North Dakota was before this judge at his first term of court in the Fourth Judicial District at Carrington, North Dakota. Judge Fred Jansonius[2] was the judge. I was representing some guarantors on a note to the Juanita State Bank, then under receivership. I had come from Tennessee, a quasi-common law state; my knowledge of North Dakota statutes was limited; I might say to the statutes involved in the case on trial and to a certain extent as to these statutes. The case got under way. Opposing counsel was George Thorpe[3] and Pat Kelly[4]; then of Minneapolis, formerly of Carrington, North Dakota, an able and finished trial lawyer; and Thorpe, who at the time was a leading trial lawyer of this state. The case had not gone far until I decided that if these lawyers were fair specimens of the North Dakota Bar I would have tough opposition in my new field of endeavor.

I think I can make the point I want to make without going into details. My newness in the state was known to Judge Jan-

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sonius as were the capabilities of opposing counsel. It was a jury case. Many of the jurors were known to opposing counsel, if not in person, by reputation; and unknown to me. In the course of this trial, several times the judge as unostensibly as possible came to my assistance on procedure and statutory questions. When the proof was all in, the case was settled and never went to jury.

Here was a judge who had recognized back in 1924 that the real purpose of a trial was substantial justice.

An example of judicial consideration and calculated courtesy came out of the Supreme Court of this state in my first appearance before that tribunal, I believe in 1924.

The court, as I recall, then consisted of Christianson[5], Nuessle, Birdzell, Bronson[6] and Robinson.[7] I believe Christianson was Chief Justice. Having been brought up under quasi-common law pleading and being new to the statutory pleading of this state I was impelled from habit to use to a great extent common law verbiage and form. My complaint, to say the least, was rather unusual in a statutory state.

In the course of the argument, to this court, opposing counsel took occasion to refer to my pleadings as being antiquated and verbose. I was naturally embarrassed. I knew this was true insofar as this state was concerned, with its progressive, statutory pleading. The court could see this. Knowing that I had just shortly been admitted to the North Dakota Bar, Judge Christianson had this comment to make from the bench, "A complaint in this kind of case in this state, if good under the common law, is abundantly good here." I think this statement on the part of Judge Christianson is practically verbatim. It lifted me from the slough of Despond.

One might think from what I have said that strict decorum in the court room bars the use of repartee that is provocative of mirth. This is not so. There are times when a lawyer lays himself open to such, yes, even to the extent of its being the best for all parties concerned.

I recall a case in which I had no part as an attorney. On opposing sides were Judge W. S. Lauder[8] of Wahpeton and Russell D. Chase[9] of Jamestown. It was a jury trial. The courtroom was crowded at Jamestown. Judge J. A. Coffey[10] was presiding. An offer of evi-

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dence was made by Chase and objected to by Lauder. In support of his objection, Judge Lauder, a rough and tumble trial lawyer, vehemently, in language that would not be permitted by the courts of today, excoriated Chase for making such an offer. Without going into the merits of the objection, I think I can make my point by giving what Chase did and said. To begin with, Chase was a natural humorist. He was about 6' 1" tall, a fine specimen of physical manhood, big brown eyes and handsome. He stood up behind his table, looked the court room over, the jury and then the court. I thought he was about to give Lauder h . . . . He did nothing of the kind. He simply said: "For pity sake", and sat down. The court room roared, the jury joined in, and the court smiled and said, "let's proceed". There was nothing the ideal judge could do in such a situation as had developed, except what he did do. So we can see, the court room after all is not a dull, uneventful place. In fact, it is a stage at all times set for unexpected happenings.

Finally, and most important in North Dakota under the Federal and State Rules of Civil Procedure, the ideal trial judge with less expense, less delay and less confusion can make an end to litigation.

Long, drawn out litigation and prolonged arguments of counsel in the presence of the jury, often times over many matters that can be disposed of quickly in pretrial conferences, would, not only "speed the cause", but would also make a record more intelligible to a jury, all of which would contribute greatly to substantial justice.

"Speeded" action on all interlocutory matters, motions for judgments non obstante veredicto, and new trials, certifications of records on appeal and such matters, would move a case without delay to an appellate court. Then, if the appellate court without delay hears and determines such appeals, the good work of the trial courts are not without avail.