



1931

A Rejoinder

North Dakota Law Review

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Recommended Citation

North Dakota Law Review (1931) "A Rejoinder," *North Dakota Law Review*. Vol. 8: No. 4, Article 2.
Available at: <https://commons.und.edu/ndlr/vol8/iss4/2>

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A REJOINDER

The columns of Bar Briefs are always open to members of the Association, and we welcome contributions, provided they are kept within a reasonable length. The author of the following evidently disagrees with our editorial expressions of last month:

"North Dakota is a small place. We are pretty apt to have justice here because the officers, courts and juries are not too busy to remember they are dealing with human lives in each instance, and to give our laws and verdicts an individual application.

"Justice cannot be blind and dogmatic or played with unvarying rules with real justice to the offender or the offended and somewhat abstract public. I have been prosecuting attorney here for about three terms and while I assume no actual responsibility for the actual sentences received by our criminals my recommendations are always made upon an individual basis under all the surrounding circumstances and are nearly always followed by my respected Judges. I am glad to say the punishment is not always the same. The point I make is North Dakota courts and juries know their people.

"I don't pretend to know the facts in the cases you have cited proving our 'Administrative Imperfections' but I have a vivid imagination. Take the bootlegger who received a three day sentence. We know, in the first place, he was dead broke; that the government had called him to Fargo without consulting his desires in the matter; isn't it possible he had been illegally searched? Or that it was a case of mistaken identity? Or that the U. S. Attorney knew the evidence was unavailable or insufficient? Or that the man had no overcoat or mittens or possibly was physically in no condition to 'bum' his way back home? Now, we have heard a little something about 'Government Red Tape.' What would a human (e) Judge and prosecutor do under such circumstances to get him railroad fare? If a three day sentence removed the obstacles, Hurrah! for all concerned! Right this minute I have an old man 73 years of age in jail for six months for selling one pint bottle of beer he made himself. Aren't we an awful crowd? Yes, but this man was arrested for the first time in his 49 years of residence in this county because he was too proud to ask for Public Aid. He was selling beer to minors and had to be stopped and taught a lesson. He had 28c in his pocket when arrested. We all thought it would be better to give him a sentence which would carry him thru the winter than to turn him loose in November, for he is a widower without a relative in the country. He is a social problem rather than a criminal guilty of 'moral turpitude' or an 'habitual offender.' Oh, we send them to the penitentiary in liquor cases. But when we do they are indeed guilty of 'moral turpitude' and we know it.

"Judgment of \$6,000 for a fractured leg? A fractured bone in pain is likened unto a toothache. Possibly the injury was intentionally inflicted; punitive and even exemplary damages may be in this amount? Who should say not rightfully? Not a supreme court, or they would also reduce the verdict, and nobody has a right to criticize a verdict until it has been to the court of last resort. Now \$5,000 for loss of life. Possibly the man was killed just barely negligently enough to convince a jury of liability and they may have known as some of mine have known that a small judgment would not be appealed but would be paid, whereas

a larger judgment could never have been collected. Juries are smart in such matters and often look to the actual results of their verdicts rather than to follow the rules prescribed, mortality tables, earning capacities, etc. This may not be very defensible legally but there is a taste of justice in it. Five years for one bigamist and sixteen months for the other? What are their ages? Maybe the first had a lovely wife and seven splendid children, was educated, mature, and was discovered living in luxury at Palm Beach, while his family were dependent on his home city? While the other bigamist was arrested by a spiteful wife who probably deserved to be abandoned in the first instance if a man's tale of woe sounded as appealing in Court?

The District Judge is the safety valve in the administration of Justice; would that his powers in all criminal matters as regards sentence were unlimited in either direction. As I have seen District Judges function in North Dakota I am forced to admiration and I thank God I live in a State small enough so that the Judges are not rushed and have time to know their criminals individually. If you don't know what I mean visit Federal Court in Minnesota and watch men 'sent away' by 'rule' as I have.

"What you call administrative imperfections I call small community justice."

LAWYERS AS "NO" MEN

A Minneapolis Fuel Company circulates a monthly magazine, in the February issue of which the following appraisal of lawyers appeared:

"The reason why lawyers collect so much money from corporations is that they are 'No' men. Successful lawyers usually serve a dozen or more clients. Thus they are independent, because the loss of a single client will not be a financial catastrophe. Further, they are detached from the details of their clients' businesses.

"This independence and detachment qualify them as excellent advisers. The president of a company calls and says, 'What do you think of this?' and outlines a plan of consolidation, a sales policy, or a new financial structure. Instead of the usual flattering compliment of staff associates, the average lawyer will immediately advance a dozen reasons why whatever is suggested should not be done. He will counsel caution; suggest bankruptcy, government lawsuits, and the penitentiary.

"If the client is still determined to proceed, the lawyer will say, 'Well, let me think it over.' In a couple of weeks, if he considers the scheme really workable and advisable, he will grudgingly give his consent, but only after he has had the satisfaction of forcing his client to answer a dozen pertinent questions, all of which are calculated to let a little air out of the bubble of enthusiasm.

"How most of us hate lawyers and their gloomy forebodings! We'd fire anyone else who had so little faith, such slight admiration of our ability and judgment. But the lawyers are usually men of intellectual vigor, trained in the art of domination. Because they tell us and bankers and railroad presidents where to get off, we should be grateful to them."—Contributed.