



1930

A Distinguished Group

North Dakota Law Review

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is best for the world at large? As a matter of fact, under present conditions, wrongful convictions have become so rare as to justify no argument. Out of the half million who have entered our prisons during the past 10 years, not 10 were later proved innocent.

By enforcing the death penalty, England has almost emptied her prisons of major felons, and almost abolished murder. The scaffold presents an abhorrent sight. The white face of a murdered man being carried into his home presents one many times more terrible. We will have to choose one or the other.

Apropos, also, of the present legislative situation, we add to the foregoing article a reprint of our editorial in the November, 1928, issue of Bar Briefs:

In discussing capital punishment in this State, it is frequently assumed that North Dakota has abolished that punishment in all cases. As the lawyers know, however, this is not true, for the statute (Section 11110a1) says: "Provided, that if a person shall be convicted of murder in the first degree while under such life sentence he may be punished by death."

Should it not be borne in mind, then, that this proviso was put into the law for a purpose? What was that purpose, if it was not protection to the men in charge of the state penitentiary? And if that was the purpose, then we have a right to assume that the members of the legislature believed that the proviso would act as a deterrent to the commission of such crimes within the walls of the penitentiary. Hence, if capital punishment is deemed a deterrent under those circumstances, would it not be a deterrent under ordinary circumstances; in fact, would it not be more of a deterrent to the commission of a first crime than a deterrent to the commission of a second, third or fourth?

The point was well presented at the annual meeting (1928) that so long as the individual is deemed, under the law, to have the right to take life as a matter of self-defense, there is no just ground for denying society the right to take life for the same reason. In other words, it was argued that the taking of life in cases of first degree murder was not by way of punishment, but by way of protecting society against other crimes of a similar nature, by the same individuals or by others.

There is another consideration, however, and this point was not argued at the annual meeting. It is this: If the members of the legislature considered it necessary to protect, by the overhanging threat of capital punishment, the officials and employes of our penitentiary, who are always well armed, and, supposedly, always on guard, should not society exercise the same care in protecting the ordinary citizen, who is prevented from carrying weapons by law, and who is scarcely ever on guard against the criminal?

A DISTINGUISHED GROUP

When the district court of.....county convened Monday, Judge, the venerable jurist, presided, and the attorneys who presented the cases for the consideration of the judge and jury were, and, whose long and distinguished legal service has shed lasting luster upon the county bar.

The outstanding merit of the county bar is that its most prominent members have been permanently attached to it for almost a generation. During the years, and decades may be used as the units of computation, the county bar has been augmented by the presence of,,,, and, all able and conscientious and eager to combat with the venerable jurists on any and all phases of legal practice. Regardless of these valuable acquisitions, the original members of the..... county bar remain its dominating force. The longevity of the..... attorneys is unusual. Their loyalty to is remarkable.

During the last 10 years, the personnel of the business men has undergone radical changes, and only a few of the pioneers have survived the ordeal of economic changes and adjustment. But during all this confusion and elimination, the county bar in remains intact. The attorneys are the most unique legal aggregation in the state. Today they are giving legal aid and advice to the children of the pioneers whom they counseled a generation ago.

During these many years of shifting prosperity and depression, their wisdom and reliability have been amply tested, and today they constitute the most valuable and honored citizens of

(Note—The foregoing editorial was submitted by one of the “original members” referred to, with the request that we print it in the form above. His comment was: “a mental curiosity—a strange twist of the otherwise normal mind of a layman of ordinary intelligence.”)

DISCIPLINARY FUNCTIONS

In the further consideration of the proposals of the Legislative Committee at the 1930 annual meeting (Recommendation 4, Page 118 of the December, 1930 issue of Bar Briefs), attention is directed to some principles that seem fundamental.

The final disposition of all matters of discipline ought to remain in the Supreme Court. It should be the court of last resort, as in all other matters of procedure. It should not, however, be burdened with even the semblance of executive or administrative or trial duties. It should act, with respect to disciplinary matters, just as it acts with respect to civil and criminal causes, as a court of appeal. Nearly every investigation of complaints against attorneys is embarrassing to those charged with the duty of making the investigation, and the respect most lawyers entertain and desire to retain for the members of our Supreme Court ought to be sufficient inducement to relieve those members of any duties that are other than judicial.

Whether the original jurisdiction should be placed in the hands of the Bar Association or the Bar Board, therefore, appears to be the only matter upon which there could or should be much argument. Most of the complaints are made directly to the Bar Association, probably due to the fact that few laymen know of the existence of the Bar Board. In fact, there are some lawyers who do not yet know that the license fee is payable to the Bar Board instead of to the Association. If that