



1929

Citizen and Judiciary

North Dakota Law Review

[How does access to this work benefit you? Let us know!](#)

Follow this and additional works at: <https://commons.und.edu/ndlr>

Recommended Citation

North Dakota Law Review (1929) "Citizen and Judiciary," *North Dakota Law Review*. Vol. 6: No. 4, Article 5. Available at: <https://commons.und.edu/ndlr/vol6/iss4/5>

This Note is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

here suggested the court could say with good reason that the scope of the plaintiff's duty comprehended just such a risk as that of another traveler crowding the center of the road at the moment of passing, and that the duty of reasonable speed was to eliminate just such risks from highway travel. . . The factor of capacity to pay plays a large part. . . The risks of traffic harms are so great under the best conditions and so easily shifted by insurance, that the courts reflect the general feeling that the operator of one vehicle who by its mismanagement interferes with that of another ought to bear the risk despite the fact that the person hurt may also be an offender in some other particular. The tendency toward insurance for all traffic harms without reference to fault is reflected more and more in traffic decisions. Since such harms are inevitable and cannot be apportioned with precision on any basis of fault, both good administration and good economics would require that they be adjusted on some more practical basis. . . The acceptance of such a viewpoint takes much of the load off legal theory and permits a tolerance towards the articulation of judgment which is not greatly disturbed by the fear that the integrity of any particular brand of legal theory is thereby threatened."

CITIZEN AND JUDICIARY

In the February issue of the Los Angeles Bar Association Bulletin Judge Yankwich has a well-written article on the above subject, from which we clip a few short paragraphs:

"Ultimately our liberties are wrapped up in the persons of those who come in conflict with the law. If these rights are denied them, they cease to exist for us all. And if the judge does not protect the accused in these rights—and secure them for him—no one will.

"Prosecutors are interested chiefly in records of conviction. Few (the exceptional ones only) are interested in the *manner* in which convictions are secured. It is the province of the trial judge to supervise *the manner* of conviction. For the prosecutor's trampling on the rights of the accused—for his misconduct—the judge is held responsible. If there is a reversal for such misconduct, it is the judge's judgment, following the verdict, which is sacrificed on the alter of the prosecutor's vanity or incompetence. And the commonwealth is the sufferer. The judge, by living up to his true function, by *upholding the rule of law*, helps the commonwealth."

Quoting Judge Benjamin Cardozo (*The Nature of the Judicial Process*, page 140) the article says: "The judge is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion, informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains;" and this is followed by the statement of Zechariah Chaffee Jr., (*The Inquiring Mind*, page 265) which reads: "The problem of the judiciary is, therefore, not the selection and easy removal of judges on a political

or class basis, but the question what methods will make it easier to place men of this legal and ultra-legal power on the bench, and after they are there will enable them to keep in continuous fruitful contact with the changing social background out of which controversies arise."

LOCAL BAR MEETINGS

Cass County held its monthly Bar meeting March 1st, at which Prof. Viesselman of the University Law School was the guest speaker.

The Stutsman County Bar sponsored a Lincoln-Washington dinner program February 22nd. President Kvello was the principal speaker. Others on the program were: J. A. Coffey, Mrs. P. W. Lanier, Mrs. C. S. Buck, S. E. Ellsworth, F. G. Kneeland, Ben Johnson, R. D. Chase and Mrs. A. W. Aylmer. C. S. Buck presided as toastmaster. Future plans specify this as an annual event, with invitations to the general public.

The Fourth Judicial District, which was organized some three or four years ago, and immediately put on a "slumber party," will be revived on the 18th of April at Bismarck. President Kvello has made arrangements to be present, and he will be the principal speaker. Among the indicated questions for discussion will be that involved in a definition of the practice of law. This matter, it will be recalled, was taken up at one of the annual meetings of the Association several years ago, resulting in the presentation of a bill to the Legislature, which that body declined to adopt as law.

V. E. Stenerson, in charge of local organization work in the Ward County territory, writes: The lawyers of Ward County have for many years had a very active county bar association. Monthly luncheons are held by the association at Minot, the sessions being well attended and thoroughly enjoyed. The good feeling existing between the lawyers of this county is apparent at these monthly meetings. At the request of the Committee of the State Bar Association on Local Organizations, the Ward County Bar Association is attempting to form a district organization of the members of the Bar residing in the northwestern part of this State. At a recent meeting of the Ward County Bar, C. E. Brace of Minot was appointed Chairman of the committee for the purpose of making arrangements for a meeting of all the attorneys in this part of North Dakota, with the idea of perfecting such a district organization. This meeting will be called later in the year when road conditions are better for travel. James Johnson of Minot is acting President of the Northwest District Association and J. C. Miller of Minot is Secretary. It is the hope of those interested in this district organization that meetings may be held at least twice a year. The district organization will not, however, supersede the Ward County Bar Association, which will continue to be active in its local field.

HEARSAY'S BORDERLAND

Charles T. McCormick, Dean of the University of North Carolina Law School, has a very instructive article in the Yale Law Journal for February, dealing with the Borderland of Hearsay, or, as he states the problem, "Does apparent belief translated into action stand in any better case as respects the hearsay rule than apparent belief translated into statements?"