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THE PRESIDENT'S PAGE

The work of the Citizenship and Americanization committee, under O. B. Herigstad of Minot, as chairman for the last two years, has been splendid. Those who attended the last meeting of the Bar Association will remember the high grade essay on the Constitution which took first prize, read as a part of the program by the young author, Helen Pravda of Velva. This year the committee is conducting a similar contest among the grade schools on the subject, "Why Every Citizen Should Vote." The best essays from each county are being selected locally, and those from each congressional district are being judged by three judges in each district, and prizes awarded; and the best three from the State are then being judged by a final committee. This is a magnificent work for the development of American citizenship, carried on in an eminently practical manner. Last year's theoretical study of the Constitution is this year being reinforced by a study of the practical duty of taking part in government. The committee felt, wisely I believe, that the grades were the right place to conduct this educational contest.

I know of no better way of developing citizenship than by stressing this subject in practical form in the common schools. A far flung republic cannot permanently survive unless it is based on intelligent participation in government by its citizens. Universal compulsory education is its bedrock, and such education should include history and government, as well as economics. The many other movements to encourage this in the schools, such as oratorical contests on the Constitution, fostered by the newspapers, and essays on the foreign policy of the United States, sponsored by the Daughters of the Revolution, are all to be welcomed. They should be based, as I believe they are, not on fetish-worship of the Constitution or any other document or theory of government, which is properly subject to change with changing conditions, but on earnest study of the basis of government and of popular welfare. Such a study does more to combat successfully enemies of our country than any number of speeches which merely "make the eagle scream." It is constructive statesmanship.

The program for the annual meeting at Valley City is being rounded out. There will be four half hour addresses from our own members, followed by discussion. W. H. Stutsman of Mandan will give a paper on some feature of the law of grain and storage receipts; General Ritchie of Valley City on military law; Philip Bangs of Grand Forks on the Minimum Wage; and Mack Traynor of Devils Lake on Mortgage Foreclosures.

All lawyers who find themselves able to do so will wish to attend the testimonial to Judge Kneeshaw, to be held at Cavalier at 1:00 P. M. on June 26th, under the auspices of the Old Settlers Association. The State Bar Association and many local associations will be represented and will present resolutions. From most parts of the State the return trip can be made in a day. It is a pleasure to do honor to a distinguished jurist who has sat on the Bench for over a quarter of a century and gained the respect and admiration of all who know him.
—JOHN H. LEWIS, President.

 JURY TRIALS

This is the second installment of the article by John H. Wigmore in the April issue of the Journal of the American Judicature Society. Last month we published his comments on these two items: 1. De-

merits erroneously imputed to jury trial; and 2. Demerits non-inherent in jury trial. Items 3, 4 and 5 follow:

3. *Demerits Inherent but Remediable*

(a) Injustice of Verdict Due to Use of Juries in Unsuitable Cases: This is perhaps the reproach most frequently heard, the farce of using juries in complicated accounting cases, etc. But, of course, it is remediable. Bread and meat are essentials of diet for most human beings, but no dietitian ever claimed that they should be exclusive or universal. It need not even be conceded that this demerit is inherent in orthodox jury trial, or in jury trial as sanctioned by our Constitutions. Lord Mansfield used freely the special jury from special occupations. Instead of wringing our hands like helpless children about the inaptness of the general jury, why do we not take the perfectly simple step of authorizing special juries when appropriate?

(b) Injustice of Verdict Due to Requirement of Unanimous Vote for Plaintiff or Prosecution: This may or not be a demerit; careful inquiry should be made and, of course, there will be a difference of policy for the remedy in criminal and in civil cases. In any event, the demerit is remediable. A constitutional amendment may be needed but that is so for a score of conceded reforms in every State.

4. *Alleged Demerits Not True in Fact*

Several of the foregoing demerits are probably exaggerated, by the attackers, in point of fact; i. e., they do not exist in all or most regions, or they do not exist for all or most kinds of cases. The whole range of charges needs careful inquiry on the issue of fact—an inquiry which has never yet been even undertaken. But there are a few charges which can be at once placed in the present class as mostly or largely devoid of fact.

(a) Relative Expensiveness: In estimating the relative expense of jury trial and judge trial, it must be remembered that in every other modern system of law where the civil jury has not been adopted, the judge tribunal of fact is a bench court, i. e., one senior and two junior judges. These three judges require assistants, rooms, etc. It may be surmised that the relative expensiveness of the two methods might be in favor of the jury method.

(b) Delay Through Hung Juries: This, if it exists, is due to the unanimity rule. But, apart from that, some recent inquiries show that the number of such occurrences is in some places negligible. In point of fact, this charge may turn out to be unfounded.

(c) Injustice of Verdicts Due to Inexperience in Weighing Testimony: This is a frequent charge. Some of it is no doubt true in fact, especially in criminal cases; though most of that could be remedied by allowing the judge to comment on evidence. But in a large or the largest proportion of civil cases, a jury of twelve competent persons brings a valuable array of experience in human nature which counts precisely at this point. Arthur Train has a good story (in "The Prisoner at the Bar," I think) of the carpenter-juror who was able to pierce the falsity of a plausible witness but, of course, every practitioner could relate similar incidents. In weighing disputed testimony a variety of minds is imperatively needed. There is no such thing as the all-wise judge for testimony; judges have as great a variety of mind-limitations as jurors. One may guess that the verdict of a bench of twelve judges would differ from the verdict of a single judge as often as would the verdict of twelve jurors.

(d) Relative Irresponsibility: This is not often mentioned. But it has no basis. For "irresponsibility," substitute "independence." The very anonymity of a verdict, and the prompt fading away of the jurors into the community mass, gives the individual juror a mental and moral freedom to believe and to say, "That witness X is a liar," which the judge never could have; for the judge would have to write it down in his opinion, in black and white, for all to read forever.

5. *Demerits Inherent and Not Remediable*

There seems to be only one charge that belongs here:

(a) Hardship to Citizens by Attendance as Jurors: This is a different thing from the *needless* waste of time in attendance, that is remediable. This charge emphasizes the *unavoidable* sacrifice of the citizen in leaving his occupation during the two weeks of attendance, once in three or four years. (Let us assume, of course, that by reason of reforming the system, so as to meet the seasonal convenience of the citizen, the hardship has been reduced to the minimum.)

It is astonishing to find this charge expressed in the following bold nakedness: "A business magnate can't afford to abandon transactions which may involve millions to help . . . in a series of petty disputes." Well, the magnate who would express such a view to the lawyer who published it is precisely the kind of person who would say to the lawyer, if we had judge trial, "How much will it cost us to buy that judge's opinion?"

Contrast with that anti-social attitude this famous passage from Jeremy Bentham: "Were the Prince of Wales, the Archbishop of Canterbury, and the Lord High Chancellor, to be passing by in the same coach while a chimney-sweeper and a barrow-woman were in dispute about a halfpenny worth of apples, and the chimney-sweeper or the barrow-woman were to think proper to call upon them for their evidence, could they refuse it? No most certainly." All that Democracy means is symbolized in the duty of the citizen to contribute a small occasional sacrifice for the doing of justice to his fellow citizens. Military duty, witness duty, jury-duty—all stand on the same footing; and the jury-duty is the most equable in its burdens. So much, then, for the demerits of jury trial. Whatever the value of the opinions here expressed, the scheme of analysis here offered seems to afford the proper basis for a program for trial of jury trial.

REVIEW OF NORTH DAKOTA DECISIONS

Chicago Cash Store vs. Bender: Plaintiff had store at Regent. Defendant contracted to ship a carload of grapes delivered f.o.b. on cars from Shafter, California. Plaintiff contends that defendant warranted grapes would be in good condition on arrival at Regent. From a judgment for plaintiff, defendant appeals. Specifications of error involve instructions to the jury. HELD: Reversed. Where fruit is sold f.o.b. at place of production, delivery to carrier acts as transfer of title to buyer unless contrary intent clearly appears. In the instant case where undisputed evidence shows transfer of title to buyer on delivery to carrier, it was error to submit to the jury the question of place of transfer of title.—A. E. A.

George vs. Odenthal: Both parties were farmers. Plaintiff set a straw stack (old butt) on fire, after guarding against escape by burning a strip of prairie (90 feet) to a prairie road, the north, east and