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CLERK OF THE SUPREME COURT
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STATE OF NORTH DAKOTA

From: Vance Gillette
To: [\(SUP\) Clerk of Court Office](#)
Cc: [Freshet Collective](#); [Renee Zakhar](#)
Subject: Comment on Attorney rule (pro hac vice) & DAPL cases
Date: Sunday, October 1, 2017 8:18:01 PM

Background. Over 700 persons were charged with criminal offense, over the DAPL pipeline. The state brought in police from across the U.S. under a federal law. DAPL brought in their private police (goon squad) aka Tiger Swan - direct from IRAQ and the middle east. Not enough attorneys were available and citizens requested a new rule. The NDSC approved a rule that allows out of state attorneys to appear in state cases (pro hac vice), to represent persons in criminal cases over the DAPL oil pipeline. Some state judges now oppose the rule and misstate the facts and overlook the big picture. Many persons - criminal defendants - still lack representation and the Morton County court system continues to process cases now through 2018.

I write to express reasons why the rule should continue.

1. Many persons charged are poor and lack the means to hire an attorney. They have a constitutional right to an attorney.
2. Some state judges have disapproved attorney representation for some indigents, which denies their right to counsel. Simply, the judges deny counsel to supposedly save money.
3. Groups such as FRESHET Collective and Water Protectors Legal Collective provide or pay for "outside" attorneys to represent criminal defendant charges in 'protest cases.'
4. A NLG (national lawyers guild) jury study showed a high bias (70 % plus) against the so called water protesters. This indicates a conservative or redneck racial attitudes against Indians and others who exercised their First Amendment rights, to protest over the DAPL oil pipeline. The jury study exposes racial attitudes in the Bismarck - Mandan, ND area are highly prejudicial against Indians and others.

The jury study – coupled – with the state court judges stand/attitude against providing attorneys for Dapl criminal defendants is a factor to look at. It appears the district judges, all white persons, appear hostile to minority and other defendants. North Dakota may get the reputation as the "Selma of the Deep South."

5. The district judges are mainly ex-prosecutors, who favor the state, by habit and personal prejudices.
6. The present system is 'rigged' against the DAPL Criminal defendants.

A. First, the charges are mainly for "rioting" in the middle of cow pastures south of Mandan, ND. The charges are weak and do not fit the alleged offense. No matter, the Morton County sheriff and prosecutors charge ahead on criminal cases. The use of DAPL's private goon squads, that caused arrest, smells bad.

B. The prosecutors in Morton County are using tactics that amount to prosecutorial misconduct. E.g. in several cases charges were dismissed when trespass etc could not be proven. Then, the prosecutor added NEW, Multiple charges with more or serious possible jail sentences.

The prosecutors also had arrest warrants issued against DAPL water protestors – while other persons charged in Morton County on misdemeanors are not jailed, but are issued a Summons to appear. This misuse of arrest warrants, adds up to bad faith prosecution - and violation of the ND rules of professional conduct. Overall, the prosecutor tactics are designed to coerce guilty pleas.

C. Add in a biased jury pool, and ex-prosecutors/judges – now opposing attorney representation for defendants – and you have a recipe for an unfair trials in North Dakota.

For these reasons, the rule allowing outside attorneys in appear in criminal cases should not be repealed.

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cc: FRESHET