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## Announcements (Report on the Progress of the Criminal Law Referendum)

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Hugh Evander Willis is Professor of Law in the Indiana University School of Law. He graduated from Yankton College with the A. B. degree in 1897, receiving the A. M. in 1899 and the LL. D. degree in 1925. He received his legal training at the University of Minnesota, taking the LL. B. degree in 1901 and the LL. M. degree in 1902. While continuing his practice in part he taught law in the University of Minnesota from 1902 to 1913, being an Assistant Professor in 1906 and Professor of Law in 1910. He was Dean and Professor of Law in Southwestern University Law School from 1913 to 1915, and Professor of Law at the University of North Dakota from 1917 to 1922, being also Dean of that law school, 1920 to 1922. Since 1922 he has been Professor of Law at Indiana University. He was Commissioner on Uniform State Laws for North Dakota from 1919 to 1922. He is a member of the Indiana State Bar Association, American Bar Association, and the American Law Institute. He is a frequent contributor to legal periodicals. Among his published books are: *Principles of the Law of Contracts*, 1909; *Principles of the Law of Damages*, 1910; *Farmer's Manual of Law*, 1911; *Cases on Bailments and Public Callings*, 1913 (Second Edition, 1923), *Law of Social Justice*, 1918; *Introduction to Anglo-American Law*, 1926.

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 ANNOUNCEMENTS

## A REPORT ON THE PROGRESS OF THE CRIMINAL LAW REFERENDUM

President Pickens, in compliance with the resolution of the Indiana State Bar Association which was adopted at the last annual meeting, submitted to the members of the Association last month certain proposals for the improvement of the administration of criminal justice in Indiana. The letter of submission fixed January 6, 1927, as the date for balloting to close. Nevertheless, ballots and statements of opinion continue to swell the files, already numbering several hundred pages. Local and district bar associations are discussing the proposals at their meetings, and are sending in resolutions and tabulated votes. Practical comment and concrete illustrations from leading lawyers, judges and prosecutors all over the state are being considered and filed.

The committee's object was to put before the bar certain definite proposals, together with some plain reasons for and against such proposals. Leaders of the bar are responding with equally definite approval or rejection, and with equally plain reasons stated. A leading lawyer in the north end of the State closes his letter with this paragraph:

"With these observations you will understand why I vote no on a number of the proposals. I must, however, add that the referendum cannot have anything but a wholesome effect. It is a step along right lines to develop not only thinking, but the expression of opinions on the part of the bar. It has my most cordial endorsement."

An able and experienced judge at the other end of the state sends his ballot, in which he voted yes on twenty-eight of the thirty-four proposals, and he encloses a valuable five-page commentary, which he introduces in these words:

"Please excuse this scribbled note, but I have just got out of the hospital and have not access to a typewriter and am so much interested in some of the proposed changes that I want to comment on some of them."

From the central part of the state another judge of high standing also votes yes on twenty-eight of the proposals and closes his letter with these words:

"I take this opportunity to congratulate you and the rest of the committee on your good work. Keep at it until we get the thing done."

An Indianapolis lawyer, who for many years has been among the leading lawyers at both the civil and the criminal bars, sends his ballot recording a favorable vote on twenty-one of the proposals, together with a strong twelve-page statement of his reasons. A prominent South Bend lawyer writes a concrete twelve-page explanation of his rejection of about half of the proposals. Another leading lawyer of the same city approves twenty-eight proposals. One former judge of the Supreme Court votes yes on thirty-two of the thirty-four proposals; another votes yes on twenty-five. A former United States District Attorney votes yes on twenty-seven proposals.

Limitations of space prevent mention of additional significant ballots, except for three. One eminently respected circuit judge of eighteen years' experience on the bench votes yes on twenty-nine proposals, rejecting five, including the one to give the trial judge power to comment. Another outstanding Circuit Court judge votes yes on twenty-six of the proposals. Still another, whose record as an able and thorough lawyer, prosecutor and

judge covers a period of forty years; votes yes on thirty-one of the proposals and no on the remaining three.

One prominent lawyer and writer says, "I have approved of all the enclosed proposals with one trifling exception as being better than nothing at all, but I confess that I regard them as wholly inadequate; they will hardly scratch the surface of the solid mass of iniquity in our criminal procedure which has been heaped up and solidified by generations of neglect until it has become the surest possible protection for crime."

In sharp contrast to all of the preceding views are the following statements from two attorneys whose ballots record a straight no on each and every proposal. "I think the Bar of Indiana should not be stampeded by the newspapers, magazines, commissions, reformers, lawyers who have been defeated on account of some particular provision and others who want to tinker with the law." The other says, "I am unalterably opposed to tearing down that which has taken one hundred years to build, particularly those things built upon experience, and am likewise opposed to the enacting or enactment of a lot of fool notions."

Nineteen members of one county bar association have signed and submitted a resolution, in which they "view with alarm the attempted program of the committee of the State Bar Association, seeking to make drastic and wholly unwarranted changes in the basic principles of our jurisprudence and procedure . . . during this period of destructive frenzy now sweeping this country. . . . Without entering into any argument as to the demerits of the proposal . . . we hereby pledge ourselves as an Association, and as Individuals, to do all in our power to defeat the purpose of the committee, and to preserve our American Government and Institutions in the whole of their Constitutional vigor."

Another of the few straight "No" ballots comes from a prominent lawyer of the same city as the lawyer whom we have quoted first in this report. The accompanying letter is very courteous but very emphatic. We quote from it, as follows: "I have voted no on every one of them because I sincerely believe we have gone to seed on the thought of amending laws and especially the Constitution of the State and of the United States. In my opinion we are living in an age that we are almost entirely ruled by newspaper clamor; the courts in many instances are so weak as to be catering to popularity in the newspapers. The basic principles of Liberty have been entirely forgotten. . . ."

It is readily seen that a large and valuable supply of fact and opinion regarding criminal law and procedure is being accumu-

lated for the committee. As to the specific results of the Referendum, four of the thirty-four proposals are considered eliminated, by decisive negative votes, from submission to the Legislature.

The most decisive rejection, by votes and statements, is the rejection of proposal No. XXXII, by which the committee submitted, without recommendation, the suggestion that the trial judge be restored to his common law powers to comment upon the evidence.

The next proposal eliminated is No. XII, by which the committee submitted, also without recommendation, the suggestion that change of venue from the county in capital cases be discretionary with the court.

The next proposal voted down is No. XXXIII, suggesting legislative action establishing a State Crime Commission. Most of the lawyers declare "against any more commissions," even if non-salaried.

The next recommended proposal, now rejected by a very narrow margin, is No. XIV, to reduce the number of peremptory challenges. The reason most commonly given is the influence of secret organizations.

The remaining thirty proposals, now standing approved by the bar, now rank in the following order of approval (See December *Indiana Law Journal* for a more complete and accurate statement of the proposals) :

1. Number XXIX. To pay prosecutors a reasonable salary.
2. Number VI. To strengthen the conditions and the collection of criminal bonds.
3. Number XXV. To strengthen the conditions and collection of stays of execution.
4. Number XXVI. To require criminal appeals to be taken in 180 days.
5. Number XXXVI. To change age limits for the Reformatory and the Penitentiary.
6. Number XVII. To enact a criminal witness interstate reciprocity statute.
7. Number XXXVII. To improve insanity defense procedure by requiring the court to appoint disinterested experts to advise jury.
8. Number XXX. To end option in convict to serve his sentences concurrently.
9. Number IX. To avoid quashing of indictments for lack of certain technical terms.
10. Number XIX. To give the State equal rights with defendant in taking depositions.

11. Number VII. To simplify forms of indictments.
12. Number X. To avoid reversal on ground that the record shows no formal plea of "not guilty."
13. Number V. To permit charge by affidavit, except treason and murder, when Grand Jury is in session.
14. Number II. To take from jury right to determine the law.
15. Number III. To hold a special election on constitutional amendments. (In the *Law Journal* article, this number, III, is used for the Lawyers Qualification amendment—which the Association favors.)
16. Number XXXV. To modify the indeterminate sentence law.
17. Number XXXIV. To establish a Criminal Identification Bureau.
18. Number XXVII. To give trial court wider discretion in admitting a previously convicted defendant to bail on appeal.
19. Number XXIII. To make more clear the "reasonable doubt" instructions.
20. Number IV. To place responsibility on defendant for perfecting his appeal promptly, from city court or justice court.
21. Number XXI. To make the defendant's statement of defense come before opponent's evidence, as in a civil case.
22. Number XVIII. To permit the jury to consider, and to permit comment on the defendant's refusal to testify in his own behalf.
23. Number VIII. To allow joinder in one indictment of counts for distinct felonies and misdemeanors arising in same transaction, with full discretion in court to compel State to sever and to elect.
24. Number XX. To give court discretion in granting separate trials to defendants jointly indicted for a joint felony.
25. Number XXII. To prevent the defense from shutting off the final closing argument by the State.
26. Number XXXI. To permit the court to order payment by the State of witness fees in criminal cases.
27. Number XXIV. To refuse defendant discharge after three terms of court unless defendant has requested trial within one year after arraignment.
28. Number I. To permit the Legislature to modify petit jury system.
29. Number XI. To require an earlier filing of affidavit for change of judge.
30. Number XIII. To require an earlier filing of affidavits for continuances, where possible.

The committee extends its thanks to the lawyers of Indiana for their generous response to the Referendum. It regrets that it has no funds, and therefore cannot supply local bar Associations with additional copies of the December Indiana Law Journal article, or with other printed matter, as requested.

On January 15, the Board of Managers approved for submission to the present session of the general assembly all of the above proposals except the proposals numbered xxxii, xii, xxxiii, xiv, viii, ix, xx, xxii, and xxiii. The proposals calling for constitutional amendments will be submitted to the general assembly, but separately from the general statutory recommendations of the Association. The Board of Managers adopted a conservative policy. This is an indication to the legislature that the Association officially is acting advisedly and conservatively. The Board does not wish to prejudice any of the omitted proposals, and considers that individuals who are interested may wish to submit some of the omitted proposals to the general assembly. Proposals vii and xix may be deferred pending consideration of some of the constitutional questions involved in drafting an effective statute; and the enactment of proposal xxix is complicated by constitutional restrictions, and by a lack of data on which to base a salary scale and to prescribe duties and qualifications.

Members of the general assembly are showing a strong interest in the proposals being submitted to them by the State Bar Association. It appears that the law-makers, as well as the Indiana bar and the general public, are ready to support a sanely progressive policy. There is promise of progressive consideration by the assembly of, at least, the submitted proposals, numbering approximately twenty. There is promise also that definite suggestions from the active bench and bar will continue to come to the state bar committees which are permanently interested in improving the criminal code. These facts should help Indiana at least to keep abreast of New York and Missouri and Minnesota and the other states which also are engaged in the continued improvement of their respective criminal codes.

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