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Announcements

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ANNOUNCEMENTS.

GENERAL RECOGNITION OF THE WORK OF THE INDIANA STATE BAR ASSOCIATION FOR THE IMPROVEMENT OF THE CRIMINAL LAW

The work of the Indiana State Bar Association in the enactment, in the General Assembly of 1927, of statutory amendments for the improvement of criminal law in Indiana, has been widely recognized throughout the United States. As the *Indiana Law Journal* devoted its pages to promoting the success of that work, so it now records the deserved recognition which the State Bar Association's successful program has won.

In the recently published report of the Fiftieth Annual Meeting of the American Bar Association, at pages 461 to 476, is the report which was presented at the Buffalo meeting to the Section of Criminal Law and Criminology on "Activities of Bar Associations and Legislatures in Connection with Criminal Law Reform," by Dean Justin Miller, of the School of Law of the University of Southern California, the chairman of the section. Dean Miller indicates that there will be made each year hereafter a similar report for each state of the activities of state bar associations in the field of criminal law reform. The report is based on answers to letters to attorneys-general and to presidents of bar associations in all the states. The report covers the last two years.

From five states no answers were received. Answers from thirteen states indicated no important activity by either bar associations or legislatures. Ten states reported that state and local bar associations had been inactive in this work. Three states reported some bar association activity, but no legislative

activity. In thirteen states commissions for the survey of crime conditions or for the revision of the criminal law have been created. In ten states minor revisions have taken place, namely, in Colorado, Florida, Idaho, Kansas, Missouri, Montana, Pennsylvania, South Dakota and Texas.

As Dean Miller remarks, "It is interesting to note, however, that in Missouri, where a fine survey was conducted, almost no legislation followed." The Missouri movement was backed by an excellent survey committee, an extensive organization, and funds estimated at sixty-five thousand dollars. Reasons for the legislative failure, which may be only a temporary failure, are variously attributed to some alleged suspicions of motives, to misunderstandings, and to opposition from certain professional defense lawyers; but the principal reason given is the failure of the State Bar Association to support and to lobby the proposed measures through the Missouri legislature.

The honor roll of five states in which "more or less extensive revision of the code of criminal procedure was accomplished at the last session of the legislature" is given as follows: "California, Indiana, Michigan, Minnesota and New York."

California's record is outstanding; more than fifty measures were put through the legislature by an active state bar committee and an alert district attorneys' organization. To be named next after California and with the other three progressive states of the honor group is not only distinctive recognition for Indiana, but is, in particular, due recognition of the Indiana General Assembly of 1927, and of the Indiana State Bar Association, under the leadership of President Pickens. It may be remarked that Dean Miller's standing in criminal law practice, teaching and reform entitles his statistics and conclusions to authoritative weight.

Principal new Indiana statutes mentioned in the report are: reduction of time for criminal appeals; establishment of bureau of criminal identification (for which the state bankers' organization also is to be credited); better regulation of bail bonds; sterilization; and extension of the use of the affidavit to the time while the grand jury is in session. The report gives extensive recognition to the Indiana practice of initiating prosecutions by affidavit, and mentions the general tendency in other states away from the requirement that felony prosecutions be commenced only by indictment, a requirement which still persists in about half the states.

A second publication recognizing Indiana's new legislation in criminal law is the *American Bar Association Journal*, issues of

November and December, 1927. The *Journal* comments upon the new Indiana statutes in regard to the bureau of criminal identification, bail bonds, affidavits for continuance, offenses involving automobiles, burglar tools, gas bombs, and machine guns; and interstate reciprocity of process for witnesses in criminal cases.

A third publication containing comment upon Indiana's new criminal law provisions is the *Journal of the American Institute of Criminal Law and Criminology* for November, 1927. This article is largely the report of Dean Miller, to which reference has been made herein.

This general recognition of Indiana's new legislation is entitled to due appreciation; and this is true also of the current comment of Indiana lawyers and judges to the effect that some of the new statutes are proving very valuable, from the standpoint of promoting both justice and economy. But probably no one in Indiana would say that the administration of criminal justice in the state can not be further improved. A study of the new statutes of California and of Michigan and of other states, and the reports of their operation, indicate that continued activity of the State Bar Association and of other organizations along these lines is necessary. Particularly the ground won must not be lost. Every legislator in the 1929 General Assembly should refuse to vote for repeals or other measures in regard to criminal procedure until the State Bar Association, through its responsible officers, has examined and approved the proposal. Non-statutory committees which are now doing for Indiana the work of a State Crime Commission will help to keep the state in the front rank of the states which are actively engaged in improving criminal justice.

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THE FUTURE PUBLICATION OF APPELLATE COURT DECISIONS

Under an order dated February 23, 1928, the Appellate Court has prohibited publication of opinions handed down from the court from and after that date in any cases which are pending or may be pending before the Supreme Court. Through the courtesy of the Appellate Court the *Journal* will continue to receive the opinions as soon as they are handed down and will give brief digests of them in the *Docket* in keeping with our

practice hitherto. Since these opinions, however, are not published, it is assumed that they will not be available as precedents for the courts to cite in later decisions or for lawyers to cite in their briefs. Thus the *Law Journal* will not publish any Recent Case Notes or Comments upon decisions of the Appellate Court until these decisions are released for publication in keeping with the order of the court referred to above.

Our readers will recall that hitherto we have commented upon decisions of the Appellate Court that were pending on petition to transfer to the Supreme Court. This is in keeping with the universal practice of legal periodicals elsewhere. Even though these decisions of the Appellate Court may be subject to later consideration on appeal, they continue to be precedents and to influence other decisions pending their final disposition. Thus in the case of *Funk v. Bonham* (151 N. E. 22) the Appellate Court itself cited this case as an authority in two later opinions. (*Hurst v. Reeder*, 157 N. E. 101, and *McCoy v. Buck*, 157 N. E. 456.)

Our readers will perhaps recall that there was an announcement dealing with a similar matter last year (2 *Ind. L. Jour.* 322). In that announcement the case of *In re Daugherty* (299 Fed. 620) was referred to by way of illustration. When that case was decided by the Federal District Court and when the case itself was pending on writ of error before the Supreme Court, legal periodicals all over the country took occasion to comment upon that decision, nearly all of these comments being unfavorable. At a later date the Supreme Court reversed the district court (1927, 47 Sup. Ct. 319), setting forth in its opinion many of the arguments that were used by writers in legal periodicals in criticism of the lower court's opinion. It does not appear, however, that counsel on either side in that case or that lawyers generally took exception to the propriety of commenting on the decision, although the case was then being heard before the Supreme Court of the United States. It is universally recognized by the judges of our federal and state courts as well as by the reputable members of the bar that such professional criticism of a published opinion of any court is entirely proper even though review of the case in a higher court is then pending.

We are glad to state that in no instance have counsel in the particular cases questioned the right to make professional comment upon a published decision, where writers in our *Law Journal* have commented upon decisions of the Indiana courts. It may be added incidentally that some few lawyers who have taken occasion to criticize this practice seem to indicate by their

attitude that they regard each case decided by the courts as the personal affair of the litigants and their attorneys; and consequently that they resent any comment of a professional character that is not part of the briefs regularly filed in the higher court itself. In keeping with the general practice to the contrary, it will be felt that this attitude does not do credit to the lawyers themselves nor does it imply a just respect for the distinguished courts of this state. It will be readily seen that in criticizing an opinion rendered in a case that is subject to appeal, the criticism is not aimed at the final decision in that case, considered as a question of victory or defeat for the parties involved; nor does it have any application to that plane of thought where counsel regard litigation as their own private affair. Such criticism of a pending case is directed at the principles of law in the decision itself, inasmuch as that decision has been published and is used by the courts and by counsel in this and other states as a precedent in later cases which may also be decided before final decision is rendered in the pending case. For instance, would any one criticize a text writer for making professional comment upon a certain decision in the course of writing his treatise, merely because that decision was subject to later review in other courts? If this were true no text writer could comment upon any case until its final disposition, and all of our great treatises on the law, repeatedly praised by the courts themselves, would be improper books for the first two or three years after their publication.

MEETING OF THE AMERICAN BAR ASSOCIATION

To the Indiana State Bar Association:

Gentlemen:

The undersigned committee to whom was referred the question of transportation to the meeting of the American Bar Association, beg leave to report that we have investigated the various routes together with the several accommodations offered by each; we find that the two principal routes which will be employed by persons from our State in going to Seattle, are the Northern Pacific and the Great Northern. Both of these routes go over the C. B. & Q. from Chicago to St. Paul. The Great Northern offers as a side trip, Glacier National Park. Each of these side trips may cover from three to five days. The railroad and pullman fares from Chicago to Seattle and return are the same over both routes.

Your committee are constrained to believe that the Yellowstone Park route will appeal more favorably to those who may desire to go upon this trip, and we therefore recommend that arrangements be made to secure special car to accommodate our members over the Northern Pacific line, leaving Chicago either upon the 15th or 16th of July, depending upon the length of time desired to be spent at Yellowstone National Park.

We recommend that our party leave Chicago at 10:30 A. M., July 16th, which will give us four days in Yellowstone National Park, entering at Cody, and leaving at Gardner.

The expense for this side trip, while in the park, will be \$47.50 for each person. This will be less if the parties stop at lodges instead of hotels. Either of the routes mentioned will bring the party into Seattle on the 23rd, in time for the meeting.

Return may be made over either the Northern Pacific, the Great Northern or the Canadian Pacific. Parties who desire to go down the coast visiting Portland, San Francisco and Los Angeles, may do so by paying \$18.00 extra railroad fare.

It is contemplated that on the trip out, the party will have a special car. If any members of the party desire to take in Glacier National Park, they will be enabled to do so on their return trip by coming back over the Great Northern.

Railroad fare over either route from Indianapolis, and return, will be \$95.70 from Chicago and return, \$86.00, pullman extra. If parties desire to return via Los Angeles and San Francisco, \$18.00 will be added to the railroad fare.

Respectfully submitted,

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