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Some Present Day Problems of the Bench

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SOME PRESENT DAY PROBLEMS OF THE BENCH

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The matter that I shall present to you will have to do not so much with the problem of conducting the business of a court as with some of the problems that the court has to deal with in the conduct of its business. You will observe that the subject limits me to Some Present Day Problems of the Bench.

The other subject discussed has had to do with some of the difficulties of the court of review, but what I shall have to say will be with reference to the circuit court, and perhaps quite general.

The courts, of course, constitute one of the important departments of our government.

It can not be correctly asserted, perhaps, that any one of the three general departments of our government is of any higher importance than the others. The courts, however, comprising the judicial department, are the final reliance of our citizens for the redress of wrongs and for the establishment of their rights. When all else fails, they feel, and should be justified in the belief, that they can go to the courts for the settlement of their controversies with the assurance that impartial justice will be promptly administered. It is indeed unfortunate when the people for any reason lose confidence in their courts or in the Judiciary.

It may be said that the courts of Indiana have, as a whole, always merited the confidence and respect of the people of the State.

We have been subjected to a good deal of ridicule by persons outside the State because of the very unusual provision of our State Constitution concerning the admission of persons to practice law. Attention is frequently called to the fact that while ordinarily a statute or a constiutional provision relating to the qualifications necessary to entitle any person to engage in any professional pursuit prescribes the minimum qualifications which

* An Address delivered by Judge Eichorn before the Indiana State Bar Association. See p. 270 for biographical note.

an aspirant must possess, our constitution, in its provision relating to lawyers, prescribes the maximum qualifications which may be required.

"Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." (Art. 7, Sec. 21.)

This provision would not, by its terms, *prevent* persons who do not possess these qualifications from being admitted.

We are proud of the fact, however, that, notwithstanding the limitation fixed by its constitution, Indiana numbers and has numbered amongst the members of its legal profession many eminent lawyers, and amongst the judges chosen from their ranks, many very able judges. Decisions of our courts are cited and followed, in many instances, by courts of other jurisdiction. The bar of the state should exert itself to maintain, and strengthen the standing, dignity and ability of courts so that they may continue to command and merit the confidence and respect of our citizens.

Under the present method of electing judges, they are the creatures of partisan politics. It is the popular notion that they are not always able to withstand partisan influence in the conduct of the affairs of their courts.

The framers of our constitution wisely provided: "That the general assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction by an election to be held for such officers only, at which time no other officers shall be voted for." (Art. 2, Sec. 14.)

The general assembly has never seen fit to provide for such separate judicial elections, due probably to the expense that would be incurred thereby. If the terms of judges were extended to ten years; if the nomination of candidates for judicial office were made otherwise than by political conventions, and if they were then elected at a separate election at which no other officers were voted for, and without having any party emblem at the top of the ticket or any party label attached, the courts so officered would undoubtedly take a higher rank in the opinion and esteem of the people.

We would gain something of the same result by selecting our judicial candidates otherwise than by political party conventions, and by then electing them upon a separate ballot to be supplied and voted at the regular election, but without a party emblem or a party label. The voters would then vote for the person instead of voting a rooster or an eagle, an elephant or a

donkey. Is it not time to quit voting for a menagerie and vote for men?

The principal duties and functions of the courts have been the same from their original creation as a separate, coordinate, department of government.

When Indiana, in 1831, had seven circuits and its circuit judges received the munificent salary of $700 per year, when its court of review consisted of a Supreme Court of three judges who each received an annual salary of $700, it was their province as it is now, to "interpret the law" and to apply the established principles of law to the facts of the different causes brought before them.

Many and striking changes, however, have taken place in the problems with which the judges are confronted. These changes are particularly marked in the last two decades. Not many years ago the dockets of many of our courts were crowded with actions arising out of industrial accidents.

The according of a fuller measure of social justice to employes led to the creation of an Industrial Board, with jurisdiction to handle and adjust causes involving accidents resulting in injuries to employes, whether negligence was involved or not, and, as a result, this class of cases has almost entirely disappeared from the circuit and superior courts.

Many other problems, however, have taken their place. Some of the new problems do not properly fall into the class of judicial acts, but are rather of an administrative character.

In connection with taxation, courts are charged with the responsibility of appointing members of the Boards of Review, and also of levying the inheritance tax in decedents' estates; they appoint some of the members of the library board; they appoint a county board of charities to supervise local charities and charitable institutions; they appoint boards of children's guardians, and juvenile probation officers and they are required to make the commitments to the School for Feeble-Minded Youth, to the Epileptic Village and to the hospitals of the State for the care of the insane. In most of the circuits, the judge has to pass upon every feature of the administration of decedents' estates.

The fact that these numerous and varied duties are assigned to the judges of our courts evidences the esteem in which they are held in respect to being impartial and acting conscientiously for the public good. Judges of circuit courts throughout the State will probably agree that by far the most important and engrossing problems which have been imposed upon the circuit

courts in recent years are those arising out of the work of the Juvenile Court.

In every county of the State, except those containing a city with a population of 100,000 or more, the circuit court is also a juvenile court, and the judge is clothed with all the powers and required to discharge the duties of judge of the Juvenile Court.

The jurisdiction of this court extends to "all matters relating to children, including juvenile delinquents, truants, neglected and dependent children, children petitioned for by the boards of childrens' guardians, and all cases wherein the custody and legal punishment of children is in question." This jurisdiction is made exclusive, and this court is always open. In an earlier day these added duties might not have been very onerous, but social changes have taken place in recent years as a result of which the juvenile court work requires a substantial part of the time and energy of the circuit judge.

It is not my purpose to try to trace the changes or to account for the result. It is interesting, however, to note that it has been many years since an Indiana lawyer has been called upon to draw articles of indenture under which a child was bound to another to learn a trade. Children are emancipated from the moment they are capable of earning their first farthing, and in many cases—too many, by far—the parental discipline and control and parental care are required to be exercised by boards of childrens' guardians, probation officers and juvenile courts.

The Board of Childrens' Guardians and the probation officer, being appointees of the court and answerable to it, the judge is required to be constantly in touch with their work, which is administrative, with the result that he is required to assume the responsibility of the important duties of this entire department.

As a whole, the work of the juvenile courts has been, and is being well done. Many more juvenile cases are being handled each year now than were ever handled before, but the total number of commitments to the Indiana Boys' School was only ten greater in 1927 than in 1901, and was less than in 1925 and in 1926, and the total number of boys in the school on December 31, 1927, was sixty-five less than on December 31, 1901, and less than at the end of each of the preceding three years. The total number of girls committed to the Indiana Girls' School in 1927 was less than in any of the preceding four years.

These facts indicate that notwithstanding the increase of our urban population, and the growing laxity of parental care and control, this court and its agencies are succeeding in preventing

juvenile delinquency and crime without committing so many children to institutions.

However, to accomplish this result, much of the time and attention of the circuit judge is taken from the work for which the circuit courts of our state were created, and we hear complaints of crowded dockets and delay in disposing of legal business, and have a constant demand for the creation of Superior Courts.

Would it not be better, and the practice of a wise economy to create a system of separate juvenile courts, with several counties comprising a circuit, and that judges possessing special qualifications for this class of work be elected or appointed to preside and to have charge of the machinery of such courts, and of the probation work? Under such a plan even better results should be obtained and the judges of the circuit courts would be left untrammelled in the discharge of the duties for which their courts were created.

Another of the problems of the circuit judge is the handling of adult criminals and misdemeanants. In dealing with these, his first duty is judicial. His first contact with them is when they are charged and brought before him. If, upon their trial, they are convicted, or, if they plead guilty to the offense charged, then it becomes his duty to determine whether they shall be compelled to serve the sentence which the law prescribes or whether sentence shall be suspended.

Very liberal provisions are made by the laws of this State for the suspension (except in certain classes of the more serious offenses) of sentences, whenever the court "shall find and determine that such person has committed the offense for which he or she has been convicted under such circumstances as that, in the judgment of such court, such person should not suffer the penalty imposed by the law for such offense if he or she shall thereafter behave well, or whenever such court shall find and determine that by reason of the character of such person, or the facts and circumstances of such case, the interest of society does not demand or require that such person shall suffer the penalty imposed by law if he or she shall thereafter behave well."

There has been considerable criticism of this law since its first enactment in 1907. Its operation was, to some extent, unsatisfactory due to the fact that there has been in most instances no proper supervision of persons who were under suspended sentence.

A law was enacted by the last legislature providing for adult probation, and for the appointment in each county of adult probation officers, and making it possible to maintain a close supervision over those whose sentences have been suspended.

It is to be hoped that wherever the provisions of these statutes may be properly applied it will be done.

Crime is a terrible and a very heavy tax upon the people of the state. The commitment of convicted persons to prison, while it must be done in most instances, adds an increased burden. Not only must they be housed and fed, but many others must be employed to guard, discipline and care for them.

The population of both the State prison and the reformatory have more than doubled in the last twenty-five years, and both of these institutions and the State farm are filled to their capacity.

There are prisoners in each of these institutions, and persons are constantly being sentenced to each of them, whose sentences might well be suspended, and who with proper supervision under suspended sentence, at much less expense than in an institution, could be made to support themselves and their families, instead of having both themselves and their families supported by the state, and could be prevented from committing any further offenses against society.

These are a few of the more important problems with which the courts must deal. But not the courts alone are charged with their solution. The bar has always been a very potent force in shaping public sentiment, and the responsibility is also ours to see that an enlightened public sentiment will help to bring about conditions that may remedy and finally correct many of our social evils.