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The Work of the Trial Courts in Indiana

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During the past few years the average citizen has been paying serious attention to the activities of many branches of government. When times were such that he was able to work, earn a comfortable living and accumulate some property, he was less interested. Today he is turning the spot light on the business of our courts. Many drastic changes have in recent years been made in many departments of our government, and I am convinced some of these changes are of a permanent nature. The good parts should be retained and the undesirable parts should be thrown aside, regardless of whose brain-child they may be. When we examine the functioning of our courts, we find that the changes in practice and handling of business have been few.

The matter of delay in getting cases tried and disposed of is vitally important. New laws and new rules of court will afford little relief. The responsibility lies, to a great extent, with the courts and the lawyers. If the judge assumes the attitude that it makes no difference to him whether the case is tried in May or September, that attitude will be indirectly reflected by the lawyers practicing at that bar. If both sides agree that the case should be continued, there is little left for the court to do. The parties' desires, it is true, should be considered. The action of the parties in thus agreeing leaves the case on the trial docket and probably disrupts the trial calendar. Continuances under those circumstances must be left to the lawyers involved.

A judge of a circuit made up of two or more counties is confronted with problems that make early trials nearly impossible. By the time he is well organized and is making progress in one county the term is ended and the cases are left until a new term is opened. The practice of getting the case put over until the next term is one with which we are all familiar.

The reasons for terms of court when one county constitutes a circuit, no longer exist. I am aware of the fact that some of our practicing lawyers still desire terms of court, for the purpose of having definite vacation periods, during which they will not be called into court. I know of no trial judge who would not accord a lawyer a reasonable opportunity to take care of other business or to have time off for recreational purposes.

It is the serious contention of many well-informed citizens that our courts should operate continuously. If terms of court were abolished, then there would be no sound reason why the courts should not operate at least fifty weeks in the year. In case there was not enough business to keep the court busy fifty weeks in the year, then, of course, more than two weeks could be set aside for vacation. How many places of business in your respective communities shut their doors during July, August and part of September each year? It has been said that the weather prevents the trial of cases during those months, but the average lawyer is working at his office during that period. Few of the lawyers with whom I am acquainted take more than two weeks off each year for a vacation. Elect a lawyer to the bench, and by

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virtue of the terms of his court, he takes two and three and sometimes four months' vacation away from the bench. If a judge has many cases under advisement, it is possible that he may use his vacation to work on those cases. The human tendency is to not work very energetically between terms of court.

The present law relative to change of venue from the county in criminal cases gives to the court sufficient discretion as to whether a request should be granted. Even though it is discretionary, we frequently find changes of venue granted in misdemeanor cases, where no good reason exists for granting the change. This is a failure of the judge to do his duty and not an indictment against the present statute. So long as our law remains as it is in civil cases, relative to a change of venue from the county, a court is helpless.

Most courts have rules requiring the application to be filed within a certain period, but those rules are set aside by the lawyer or litigant who "just this moment" learned for the first time of the reasons why a change should be requested.

If the average taxpayer knew that a court may be put to the expense of having a jury in court, with no other case to try, and a delay be gained by the filing of an application at that late date, he would demand that the law be changed in the next session of the legislature. Agreements are frequently made for the continuance of a case under the threat of a request for a change of venue. It is difficult to find a serious necessity for a change of venue from the county, in a case that is not triable to a jury. If the party does not want the case tried before the regular judge, then the way is open to secure another judge. There are counties where there are three or more courts operating and if you will investigate you will find that there is a sufficient number of cases, which have been transferred to other counties, and are taking the time of the courts of the other counties, which would really result in the first county mentioned having four instead of three courts.

It might be said that if all the cases filed are to be tried in the county where they are filed, dockets would be more congested than they now are. The answer, of course, is, make it possible to send the judge with a clear docket to the county with a congested docket, as is done in many of the sister states. The expense of following the case to another county is in many instances an unbearable item.

If a human life has been taken and an indictment is returned by a grand jury, you frequently find the case is being tried by some of the newspapers, especially those newspapers of the large cities.

In the first place, the public reads that suspicion points its finger to some individual; next, the officers will locate and arrest him. He is arrested, and then you read about the supposed evidence against him. A statement may be obtained, and that statement may find its way in the newspapers. Some prosecuting attorneys permit interviews and the statements are made that sufficient evidence has been obtained to secure a verdict of death. If the individual has employed a lawyer, the latter may then give to the newspapers the theory of his defense and how he will prove his client innocent.

With all of this pre-trial publicity, an attempt is made to select a jury without opinion regarding the guilt or innocence of the party charged. Many of the reading public by this time have a desire to attend the trial. Some court rooms have been so filled with spectators, standing and sitting, in all parts of the court room, that the participants were prevented from moving about in the discharge of their duties. If those present are opposed to the one being tried, the latter finds himself in very unpleasant surroundings. Trial judges are in such cases confronted with serious problems in connection with what may happen in the court room.

Those who are unable to actually attend the trial may read in some newspaper the testimony of each witness, with comment on the weight of the evidence, or that one side was dealt a damaging blow by the testimony of a certain witness. The remarks of the court may be reported. If the lawyers have engaged in a word battle over some phase of the case, that incident will be related in detail.

In addition to all of these details, some zealous reporter may have been permitted to take photographs of the defendant, important witnesses, the lawyers, the jurors and the trial judge, and these are reproduced for the benefit of the public.

Permit the average member of the jury to read such articles and when the case is concluded it will be extremely difficult for him to definitely determine whether what he remembers actually came from the sworn testimony or from the newspaper. The jury may be instructed, of course, to not read any articles pertaining to the trial, but we realize that these men are human. Even while the jury is deliberating, you frequently read that it is reported the jury stands eight to four for conviction. After the jury has returned a verdict, the inquiring reporters will write an article on the jury vote, and some of the things that took place in the jury room.

There are two trials in such cases: one is by the newspapers and the other is by the court. The orderly procedure of a lawsuit is in this manner seriously hampered. Justice in many cases is miscarried, as a result of a trial by the newspapers. Regardless of how good the jury may be the general atmosphere of the court room and the community plays an important part in the effect upon the jury. It is conceded that the newspapers generally speaking in the rural communities cooperate with the courts much more than the newspapers of the large cities.

The courts now possess ample power and authority to correct the abuses of offending newspapers. The trouble is our judges are placed on the bench by popular vote, and no judge has any desire to incur the enmity of a powerful newspaper. Trials in Federal Courts are not interfered with and the main reasons are that the tenure of the judges is secure and no newspaper is going to take the chance it otherwise would take in a state court.

There was a recent exception to trial by newspaper in Federal court, in the trial of some notorious kidnapers. Photographs were used and wide publicity was given of the details of the proceedings in the press covering the whole country. It was reported that the office of the Attorney General of the United States had granted this extraordinary privilege to the newspapers for the purpose of centering the public attention on what the Federal Government was doing against the kidnapers.

As a result of this interference, many sound-thinking citizens charge that our jury system is breaking down. Many states now permit the trial of capital cases by a court, without a jury, and it is a fact that defendants for whom trial by jury was once supposed to be a sacred right are now willing to renounce it.

On the other hand, there are those who are alarmed when even a suggestion is made that the press should be regulated insofar as it may interfere with the administration of justice. Such regulation would seek to accomplish the same general results that are accomplished in England and the British Dominions by the action of the courts themselves.

In England the newspapers are prohibited by law from publishing anything concerning the case other than a verbatim report of the proceedings in open court. They prohibit commenting, either editorially or otherwise, upon the evidence until final judgment, and they forbid, under penalty of removal and imposition of fine, any prosecuting officer from expressing or suggesting

for publication any opinion as to the guilt or innocence of an accused person, or from disclosing the proceedings of a grand jury or from publishing any evidence in his possession bearing upon the case which he is prosecuting.

The large newspapers are not agreed on this important question. The world's greatest newspaper has editorially said: "The Tribune advocates and will accept drastic restriction of this preliminary publicity. The penetration of the police system and the courts by journalists must stop. With such a law there would be no motivation for it. Though such a law will be revolutionary in American journalism, though it is not financially advisable for newspapers, it still is necessary. Restriction must come."

For your imagination, suppose a regulatory bill were to be introduced in the next session of our legislature. The newspapers' lobby would take the legislative chambers with military precision. The treatment of the trouble would only be symptomatic, because trial by newspaper is only an indication of an inherent weakness of our state judicature—the injection of politics into the administration of law.

In fairness to all newspapers, it is my opinion that there is not intentional interference. The great majority of the newspapers have high standards, and their main purpose in dealing with these subjects is to uphold the law, the dignity of the courts, and to cooperate with the lawyers and the courts.

I desire to bring before you a small detail of practice in the trial of cases before juries. The effective trial lawyer recognizes the necessity of making a good impression upon the jury as soon as possible after the members come into the court room.

The next step is to object at the earliest opportunity to some action of the opposition or to the admissibility of evidence and in support of the interposed objection, give to the jury as much of the case as possible. Sometimes short speeches are made by way of objections. The other side is not to be outdone in this matter, so the jury is given an opportunity to hear the answer.

It is not unusual for counsel to contest with each other in these matters, not only as to length of speech but also in earnestness and loudness. Frequently lawyers on each side are talking at the same time. An attempt is made not only to advise the court and the jury, but also the spectators. This practice leads to confusion. The court reporter naturally is unable to take down all that each one says if the lawyers and the court are all talking at the same time.

This may be corrected to a great extent by the court requiring the lawyers to step forward to the bench and there in a tone of voice audible only to the court and the reporter, present their respective views. Under that arrangement usually only one talks at a time, the chaff is eliminated and the real legal pertinent reasons for the objection are placed in the record without the jury hearing a speech from each side.

The trial moves along more smoothly. The court ends the day less irritated. This is an important item, for the reason that most mistakes are made when the court has become irritated. The case is tried more quickly. Frequently we find the jury being repeatedly sent to the jury room while a legal question is argued. If the suggested practice is followed many cases may be tried without the necessity arising to send out the jury. I am aware that questions do come up when counsel should be allowed the opportunity of presenting their views in a loud and unrestrained voice. These cases are easily recognized and the opportunity should, of course, be granted.

If the lawyers are not so restricted, the average member of the jury, at the end of the hearing of evidence, is unable to definitely tell whether what he heard came from a witness while sworn, or from one of the attorneys, while making an objection or arguing with the opposition.

As a profession we seem to be securely tied to precedent. Through our associations, local and state, we should be able to correct many of our difficulties. The public eventually will demand and procure corrections, if we do not take the necessary steps. I now know of one organization with a large membership that has as one of its objectives in its legislative program, the "immediate reform of court procedure to insure swift justice." This organization is not made up of lawyers.

Put trial courts to work fifty weeks each year, make continuances less easily obtainable, correct the change of venue from the county abuse, eliminate politics from the courts, and then let the judges realize that the public expects and demands from them a type of service free from unreasonable attack, and a new day in trial work will be here.