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Editorial Comments

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EDITORIAL COMMENTS

ECONOMY IN JUSTICE

By JOSEPH J. HEMPHLING

A bill, introduced at the last legislature in Indiana, proposing to increase the salaries of the circuit and superior court judges, from \$7,500 to \$10,000 a year, was defeated. Perhaps only a few may have been concerned with the death knell of such legislation but it should have a deep seated significance to all of us.

There are countless numbers who will insist that the three branches of government, the legislative, the executive and the judicial, are all equally and vitally important in the conduct of our nation, and rightly so; but, that no one particular department heavily outweighs the importance of the others. In theory they are correct but actually the judiciary of this country is the main spring of our liberty and freedom of action. The fathers of our Constitution had not this purpose in mind when they created our form of government but time, conditions and judicial legislation have altered the aspect of the theorem with the result, if we will only acknowledge it, the judiciary is a veiled form of autocracy, in the main judiciously exercised.

The courts constitute the basic determinant of society and are the one steady influence in our democracy, without which popular government would wrack itself to pieces. They were created because we could not live in society without them; law and order would be chimerical in their absence. The courts are the final reliance of the people for the redress of wrongs and for the establishment of their rights. Hamilton says in the *Federalist*, "The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse; no direction either of the strength or of the wealth of

society. It may truly be said to have neither force nor will, but merely judgment-----" There is no contradiction of this being true in Hamilton's age but we recognize that with the growth of this country the responsibility of the courts have increased with the result that the mandates of the judiciary affect our whole social structure. The great preserving, protecting and maintaining guardian of government has been, and is, and will continue to be the courts of our country.

We do not fully comprehend the value and merit of our judiciary or realize its potency and position in our social life. Neither do we honor it with our approval or pay it the homage it rightfully deserves. There has been in recent times a gradual erosion of faith, confidence and respect in our courts. As Charles Evans Hughes says "Justice must deny as well as award, and her temples are always echoing the cries of dissatisfaction." It is a natural result that many, not understanding the intricacies of the law, will voice their disapproval at the outcome of certain prominent litigation and that the losing party generally feels that he is entitled to fairer consideration.

There is not the slightest grounds for impugning the impartiality of the judges in our courts. They are not guided by the murmurings of popular appeal nor by political dictation. Each cause is decided on its merits according to the law applicable to each issue. Much of the criticism is intemperate and unintelligent yet we cannot deny that it is an insidious menace. The people of this country should feel, and be justified in their belief, that they can go to the courts for the adjudication 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. If the people's faith in our courts is so feeble that they may be seduced from fealty to those institutions the whole theory of our government is wrong and ruinous.

We cannot create perfect institutions because we are not perfect ourselves, nor can we expect that the judiciary will not err. The courts are not infallible and often pass erroneous judgment, but this condition when it arises is alleviated by our system of appeal. The courts of this country, being charged with the most important duty to mankind, are conscientious

and faithful to their trust, but composed of humans and subject to the idiosyncrasies of life they are not invulnerable to mistake.

We are appalled with news items in our public press of bribery of public officials in every other department of the public service, but the judges who can be bribed with money in the discharge of their judicial duties are so rare as to be real curiosities. Legislators may go astray and executives may plunder but there are few instances in which the dignity of the robe has been soiled. The bench has been preserved without scandal and corruption through the integrity of its members. At this writing the judiciary has asserted its impartiality in committing to confinement one of our barons of wealth exemplifying that no man is powerful enough to ignore its dictates.

Froude declared that "justice without wisdom is impossible." Judges should be more learned than witty; and more advised than confident. The old adage, which many of our nefarious politicians would have us believe, that the office seeks the man, is a fiction and the truth is, that in our present system the man must seek the office. Eminent and learned lawyers should be encouraged to seek a career upon the bench. They should not be discouraged and pauperized by the meager salaries now paid. Under the present salaries we offer no inducement, except that of public honor, which at best is a fleeting position, to attorneys of the highest character; men who have won distinction for their knowledge in the legal world and have well earned the confidence of the people not only in their profession but in the private walks of life.

The meager salaries extended to our judges coupled with the short duration of the office and the chance of re-election depending upon the political fancies of the people does not justify an attorney with a lucrative clientage in entering upon such a speculative career or leaving a remunerative practice. Pennsylvania has taken the initiative and her example should be followed. The tenure of office of the judge of the common pleas court is ten years and the salary is ten thousand dollars per year. We need only investigate the able decisions of those courts and the result is obvious.

Judge William H. Eichorn in an address delivered before the Indiana State Bar Association proposed that the terms of judges be extended to ten years; that they be elected at a separate election at which no other officers participate, and that no party emblem grace the ballot, removing such elections out of partisan politics and increasing the salaries of the judges. Judge Eichorn's utterances should be considered and acted upon if the dignity and intelligence of the courts are to be maintained.

The salaries tendered our judges do not nearly approach in proportion the salaries paid the executives in our industrial life, yet we are not agreed that the management of a private corporation is as vitally important as the assaying of our social life. A comparative study of the salaries of the judiciary of Canada and England with the salaries of the judiciary in our country discloses the regretful fact that the yearly stipend of our sister and mother countries are in excess of the salaries offered the judges in our prospering states.

The necessity of maintaining the high standard of the judiciary, as well as common decency, demands that the salaries of the judges be made commensurate with the duties and the position which they occupy. It is pitiful that this nation, the wealthiest in the world, whose ends are devoted to justice, should pay its judicial officers salaries so penurious that only those able and learned lawyers who are willing to sacrifice their personal gain for a position of honor will offer themselves to the public for selection.

The legislature will pass bills increasing the tax on gasoline in order to raise funds for the building of highways, when pressure is brought to bear by the contractors, for the convenience and pleasure of the citizenry, but the judiciary, without any highly paid lobbies, and subject to the inferior whims of the legislators will continue to interpret the ever-increasing legislation, enduring the economy platform that the public is informed is being carried out, because they are estopped from voicing their needs which would expose them to the darts and arrows of public opinion.