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Public Defender Plan

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ernors and mayors, such a step would be utterly futile. Appointments so made have kept the level of fitness at the same low state, or made it worse. 2. Another suggestion has been that appointments be made by an elected commission of lawyers. That would hardly be effective as the blighting hand would be laid on the commission. 3. Yet another is the limitation of expenditures at elections, which seems advisable but would hardly go to the root of the evil. 4. An effective method would be by a separate election for judicial offices in which there should be no party emblem, but the candidates named in alphabetical order. 5. Better still, before nominations the list of names considered by the parties should be submitted to the Bar Association for a declaration from them as to fitness and character. Who, better than the members of their own fraternity, knows the worth and merit of a member suggested for promotion to the bench?"

We believe that Judge Cohen offers *the* solution to the defects in *the system*; but we may be wrong; and we admit, of course, that it may take more than an average amount of courage to face what he characterizes as the basis of the individual lawyer's fear, "injury to some innocent client to whom the lawyer owes the utmost fidelity"; but we submit, with almost equal certainty, that if Judge Cohen is right it will require a yet larger amount of courage for any court or the public to face the deliberate, righteous judgment of a united Bar. We need not apologize. We certainly should not equivocate. And, eventually, we shall be heard.

PUBLIC DEFENDER PLAN

The arguments in favor: 1. That the office would be more economical to the county than the present system of paying individual fees; 2. An able Public Defender would in more instances give an adequate defense to an indigent prisoner than does the general run of assigned counsel; 3. The defendant would be assured of good preparation as to the law as well as to the facts; 4. A distinct saving of time to the county would result; 5. There would be a tendency on the part of the Public Defender to sift the deserving cases from the undeserving; 6. The diligent Public Defender would aid the indigent prisoner in obtaining a minimum sentence by entering a proper plea of guilty when the same should be entered; 7. Fewer unscrupulous and perjured offenses would be committed in court; 8. The general standing or tone of the criminal courts, and of attorneys, is raised in communities wherever the Public Defender system has worked successfully.

The arguments against: 1. Due to the great volume of business, the Public Defender would become hardened to such a degree that unless a defendant's story was clearly one which would acquit him, the Public Defender might become indifferent to the justice of each case; 2. The Public Defender would not show the same degree of enthusiasm which is shown where a young lawyer or older lawyer is assigned to defend a particular case; 3. The Public Defender is too prone ofttimes to discount the story given him by the defendant; 4. Resulting from indifference, discounting of stories and lack of enthusiasm, comes the suggestion on the part of the Public Defender to indigent prisoners that they change their plea from "not guilty" to "guilty"; (New London County, Connecticut, records show that nine

out of ten indigent prisoners plead guilty, and that in twelve years there have been but four acquittals); 5. The advent of the Public Defender means a new political job; whether this is good or bad is debatable, but the general opinion seems to be that the new job means new patronage, favors and corruption; 6. Creation of the office of Public Defender would result in a majority of cases being prosecuted and defended by the same set of men because of the fact that the Prosecutor and the Public Defender would in many cases act together.

PRESIDENT INVITES DISCUSSION

President Traynor is quite insistent that the rank and file of the Association comment upon the proposals advanced by him in Bar Briefs. By way of encouraging those who may be reluctant to express their views publicly, we take the following from an address by Frank E. Atwood, Judge of the Supreme Court of Missouri, concerning the President's views on opinion-writing. Judge Atwood said: "One of the most active fields of investigation today is that of judicial thinking. Not whether judges do think, for I believe it is now conceded that they do after a fashion, but how they think. It was a canny observer who said to a newly elected judge: 'Give your decision—it will probably be right; but don't give your reasons—they will almost certainly be wrong.' That advice is all right for trial judges, but it merely accentuates our difficulties. We not only have to give our reasons in writing but are expected to state enough facts for the *alleged* reasons to be understood. Even if the Legislature did not require this I believe you lawyers would. Most of our decisions are probably right, but, if this bit of judicial advice and motions for rehearings mean anything, many of our opinions are almost certainly wrong. . .

"Many of those who come up on law points really want us to adjust the law to fit their cases and to that extent unsettle it and in a sense render it less certain. . . and what do we do about it? . . . Our answer will have to be much like that of Judge Roy Bean, the self-constituted Justice of the Peace who forty years ago dispensed justice along the Rio Grande and was known as 'the law west of the Pecos'. Among other social adjustments undertaken by him . . was that of granting divorces in rather promiscuous fashion. . . An inspector finally mustered enough courage to tell him that he had no such jurisdiction, and was immensely relieved when, instead of shooting him, Judge Bean calmly replied: 'Well, maybe I don't—but I do!' "

OVERCROWDED PROFESSION

Statistics recently gathered in 47 states and the District of Columbia, to which must be added the Indiana estimates, show that 17,288 candidates took the bar examinations in the year 1927-28. 9,114, 52.7% of these, passed. This total was brought to 9,731 by the addition of 617 who were admitted on law school diplomas in thirteen states. The next year, 1928-29, 9,290 were admitted on examination and about 600 on diploma, constituting 50.7% of the candidates. For the year 1929-30 the number of candidates increased to 19,830. 46.4% passed, to which were added 567 admitted on diploma, making the total of additions 9,860.