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Editorials

EDITORIALS

Herman M. Adler
1876-1936

This Journal and the science of Criminology generally is heavily indebted to Dr. Herman M. Adler who recently in Berkeley, California, reached the end of an extraordinarily constructive career. Immediately on graduating from the Columbia University Medical School in 1901 his attention turned particularly to psychiatry. He became Chief of Staff of the Boston Psychopathic Hospital and Assistant Professor of Psychiatry in Harvard University.

In 1917 Governor Frank O. Lowden of Illinois completed his reorganization of the public services of the state and created the office of State Criminologist. Dr. Adler was the first incumbent of this office, and in this capacity his organizing ability, his wisdom as a counsellor, his forceful way of setting forth his ideas in speech and in writing, and his scientific outlook all conspired to make him a great figure.

During his residence in Illinois, 1917 to 1930, when he became Professor of Psychiatry in the University of California, Dr. Adler was an Associate Editor of this Journal and he made important contributions to its pages.

PLURAL TRIBUNALS

> "Gratiano speaks an infinite deal of nothing, more than any man in all Venice. His reasons are as two grains of wheat hid in two bushels of chaff: you shall seek all day ere you find them, and when you have them, they are not worth the search."—*The Merchant of Venice, Act I, Scene I.*

In a paper submitted to the editors of the Journal of Criminal Law and Criminology, the author presents for the rubbish heap the system of judge and juries as they are at present constituted as being but two bushels of chaff. When the bushel containing the present jury system is emptied he would place therein as the grain of wheat, a jury of psychiatrists and scientists dominated by the psychiatric point of view. For the second bushel of chaff, representing the sys-

tem whereby a single judge presides over the trial of a criminal case, he would substitute a grain of wheat symbolic of a system of "plural tribunals" proposed by him. Since these and similar suggestions advanced for the correction of evils, real and imaginary, in the administration of criminal justice are typical of the recommendations so often made by the laity, the editors have chosen to devote some space to the criticism of the paper to which reference has been made.

Cloaked as his exposition is, in "brilliant generalities" it is difficult to determine whether his two grains of wheat are to be kept separate and apart as alternative substitutes for the present system or whether both grains are to be placed in one bushel as a single substitute for the present method of trying criminal cases. In other words, is it proposed that (1) a single judge preside over a jury of scientists and psychiatrists or (2) that a plural tribunal preside over a jury composed of laymen as we find it at present or (3) that a plural tribunal preside over a jury composed of scientists and psychiatrists?

The author's philosophical and sociological reasoning in support of either (or is it all) of his proposals is fallacious in that he places too much credulity in the corruptibility, dishonesty and partiality of judges and an abounding gullibility in the incorruptibility, integrity and impartiality of men learned in the social and physical sciences. In countless cases where the mental condition of a defendant is in dispute and in cases where the authenticity of documents is in question, we find an equal number of scientists in the form of alienists or handwriting experts testifying for the defendant and for the state. The opinion testimony of the one group in a given case is usually diametrically opposite that of the other. One or the other group is honestly mistaken, or one group or the other has received a price for perjury. Can men of science on the witness stand be expected to act differently from men of science in the jury box? The answer is that there would be as many honest mistakes and as much corruption as is found in a jury of laymen.

It appears that the author assumes that the lay jury in a criminal case is forever confronted with profound problems in science or problems in which knowledge of psychology, psychiatry, anthropology or sociology would assist him and his fellow jurors in reaching a proper verdict. This may be true in an inquiry into the mental status of a prisoner, but in the vast majority of cases this question is not raised and the jury is called upon merely to determine whether John Doe, robbed Richard Roe, or burglarized his home, or stole his automobile

or violated some other provision of the criminal code. In Illinois and presumably in all the other states the jury is the judge of the facts in a case and cannot concern itself with the propriety of the law or with"—a woeful lack of basically scientific criteria of right and wrong." The legislature in the proper exercise of its functions defines all crimes "criteria of right and wrong" and fixes the penalties. If a scientific criteria of right and wrong is imperative, it should be defined and established by the legislature and should not be dependent upon the caprice or interpretations of a judge or jury, however constituted.

It cannot be his contention that counsel for the defense be deprived of the right to question veniremen upon matters touching their qualifications to serve as jurors in a particular case. It cannot be denied that J. Arlington Forceps, an eminent scientist, would be no less prejudiced than John Citizen against the defendant charged with robbery, where both had been victimized by gunmen and put in fear of their lives on the day preceding the call for jury service. Is he then prepared to supply the hundreds of scientist-veniremen who would be required before a single jury is selected and sworn to try a case? This is not uncommon. Visualize then the vast number of scientist-veniremen necessary to be questioned in four or five such cases where juries are being sought in each case at the same time.

As to the injustices sometimes caused by a judge's partiality by reason of friendship or the relationship to one or another of the parties in a criminal case or through submissiveness to public clamor or through obedience to political dictation, in Illinois, as is undoubtedly true in other states, the defendant, where these influences upon the judge are known to him and he wishes to protect himself against them, may upon petition secure a change of venue. Likewise, in Illinois, where the state seeks to protect itself against such influences, the prosecutor may demand that the case be tried by a jury though the defendant seeks to waive a jury and submit his cause to the judge alone for trial. Where these influences are not known to either the state or the defendant a plural tribunal of a thousand judges could not protect the rights of the litigants if, within the suggestion, a unanimous vote is required to acquit or convict.

We are in accord with the author's suggestion that the judiciary be independent of political entanglements and that the remuneration of judges be such as to place them above corruption for monetary gain.

It is hoped that after he has more fully acquainted himself with

actual criminal trial practice and with the theories, reasons and histories behind the jury system and rules of evidence in criminal cases our contributor may in the future suggest a practical and sound substitute for the present method of administering criminal justice. His present suggestions in the main are not acceptable. No man will trade the most emaciated of his cattle for a skeleton.

CONTRIBUTING TO PUBLIC SECURITY

Gratifying is the report of conditions and accomplishments presented at the seventeenth annual meeting of the Chicago Crime Commission. Both Commission and community have reason to be proud of the outstanding contribution to public security that has been made. It is probably fair to say that without the persistent and fair-minded observations of the actual operation of the machinery of the law in criminal matters, its courageous and disinterested criticism and its illuminating reports of facts, no such change as it can now record could have been achieved.

"If Chicago," says the Chicago Tribune editorially, "no longer suffers a reputation for lawlessness which, in spite of exaggeration, it largely deserved, if life and property are as safe today in this city as in any other great city in the country, and safer than in most, if our law enforcement has been substantially improved in vigor and expedition; much of this advance is to be credited to the Chicago Crime Commission."

Outstanding in the report for 1935 is the fact that all records were broken for speed in the administration of the criminal courts. This celerity is due primarily to the efficient cooperation of the felony branch of the municipal court, the state's attorney, the public defender and the judges. The excellent condition of the dockets, indicates marked improvement as regards pending cases. This is chiefly due to the fact that numerous criminal complaints are now disposed in the felony branch of the municipal court and that indictments are returned only in the most important cases held to the grand jury. This analysis in no way suggests a letting down of effort on the part of officials charged with the administration of criminal justice, but rather a very practical method of dealing with the criminal problem to the end that substantial justice may be done promptly. It is one answer to the old criticism of the law's delay. Apprehending, prosecuting and judicial authorities have exhibited the finest kind of cooperation in an apparently unanimous determination to bring about a greatly improved condition in the criminal courts.

In 1935 there were 2,011 indictments returned as against a high of 4,592 in 1928 and a low of 2,833 in 1934.

There were 191 indictments pending at the close of 1935 as against a high of 1,965 in 1928 and a low of 382 in 1934.

A study of the statistics in the office of the Commission from 1922 to 1935 inclusive, discloses that in 1929 the judges of the criminal court spent 11,752½ hours on the bench; that 5,061 cases were disposed and 1,160 defendants were tried by juries. This activity was the result of the Commission's demand in 1928 that bartering with defendants, as represented by 1,172 felony waivers, be stopped.

The greatest advance in the Commission's war on crime is reflected in the total number of sentences to penal institutions. The tabulations dealing with this phase disclose that since 1928, judges and other officials have finally reached a determination to combat crime with severity rather than sentimentality and unjustified leniency. In 1934 a total of 1,848 defendants were sentenced to the penitentiary as against 455 in 1923. The total of 1,025 sentenced in 1935 is relatively an increase when it is borne in mind that there were only 2,309 cases disposed last year as against 3,799 the year before.

There were but 350 felony waivers in 1935 as against a high of 1,772 in 1927 and a low of 451 in 1934.

Probation was granted in 316 cases in 1935, during which year 1,025 were sentenced to penal institutions as against a high of 840 released on probation in 1931 and a low of 310 in 1923 when only 455 defendants were sentenced to the penitentiary.

Jury trials numbered 438 in 1935 as against 1,160 in 1929, but this smaller number is not an indication of inactivity, because since the right of defendants to waive juries on a plea of not guilty has been in vogue and the inauguration of the public defender system in the criminal courts, more defendants waive juries.

As to violent crimes in Chicago considerable improvement was evident during 1935. Gang murders dropped to 10 from a high of 76 in 1926. This is gratifying, particularly so when the community could reasonably expect an increase in crime because of abnormal economic conditions over a period of years.

In 1930 verdicts of murder by coroner's juries numbered 383 in Cook County. In 1935 the total was 230.

In 1932 there were 22,791 burglaries reported to the police department in Chicago. In 1935 the figure was 17,331.

In 1932 there were 15,943 robberies reported to the police department. In 1935 but 9,531.

Analyzing the 191 indictments pending at the close of the year it is found that 45 charge robbery; 33 larceny, of which 24 involve the theft of an automobile; 13 burglary; 13 conspiracy, etc.; and 14 murder. The rest represent some thirty-six various criminal charges.

It is plainly evident from a study of the records and reports written by Chicago Crime Commission observers, that all of the officials concerned with the administration of criminal justice, have, during the past year, tried to improve that administration despite innumerable handicaps which can be removed only by constitutional amendment and through legislative action. It is apparent that judges have realized that crime cannot be fought by mere preachments from the bench. It is also apparent that they have realized that each one of them can do much individually to make collective action effective. The most encouraging sign is the fact that there is increasing cooperation between all agencies. There is still much to be done but the continuing improvement since 1928 augurs well.

Until the Commission was organized, attempts to deal with the criminal situation were spasmodic. Good people tired easily, but complained vociferously. They evaded jury service and they lacked intestinal stamina. Organized irresponsibility flourished because organized responsibility failed to do its duty. The criminal is always on the job. Unless somebody opposed to crime stays on the job all the time, the criminal will win. The purpose of the Chicago Crime Commission is to stay on the job all the time.

By staying on the job all the time the Commission has been able to watch the operations of all agencies concerned in the administration of criminal justice. It has not tried by word alone to correct all the evils of crime which have been accumulating throughout the centuries, but it has endeavored by act to encourage all officials to the end that crime may be minimized.

In the last analysis the basic and controlling factor has been the character of the membership of the Commission and its outstanding leadership. If the followship measures to the standard, the advance of this adventure in citizenship cannot be halted. The Chicago Crime Commission and Frank J. Loesch have become almost synonymous terms, while service under this banner is the mark of soldiers of the common good, the insignia of useful citizenship.

The work of the Chicago Crime Commission is a long war on many fronts. Vigorous offenses are followed by weary sieges, by inexplicable lulls, by excursions and alarms. The need is always to be ready, and to heed the words of St. Luke, "When a strong man armed keepeth his palace, his goods are in peace."