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Editorials

EDITORIALS

OUR NEW PRESIDENT

Colonel Henry Barrett Chamberlin, the first and continuing Operating Director of the Chicago Crime Commission, lawyer, author, reporter, editor, soldier, has been elected President of the American Institute of Criminal Law and Criminology to succeed the late Judge Andrew A. Bruce.

Recently I happened to pick up volume eleven of this Journal. There I noticed on page 386 an article by Colonel Chamberlin entitled "The Chicago Crime Commission—How the Business Men of Chicago Are Fighting Crime."It was based upon his address before the Annual Meeting of the American Institute of Criminal Law and Criminology at Indianapolis, September 17, 1920. This article is of historic value because it discusses the formation of the first of many Crime Commissions. Started as an arm of the Chicago Association of Commerce it began its work in January, 1919, not as a temporary citizens' committee but as a business organization charged with eternal vigilance in securing the honest and efficient administration of the criminal laws—an auditing, observing, and reporting body, permanently supported and staffed by private business concerns and entrusted with the responsibility of seeing that public officers should serve the best interests of the community.

In the decade of the nineteen-twenties similar Commissions, patterned after the parent Commission, sprang up in all large centers of population in this country. Some of these are still active but others have passed out of existence. The Chicago Commission, though its activities have been limited somewhat by the universal difficulty in raising funds, is still going in full blast. Each month there is presented to its executive board a record of public service difficult to measure but of incalculable value. And through these years of progress the mainspring of the organization has been its first and only Operating Director—Henry Barrett Chamberlin.

The issue of this Journal, referred to above, contained also an account of the formation of the criminal law section of the American Bar Association. For forty years the American Bar Association had no standing committees on criminal law and procedure. A survey of

the Reports of the American Bar Association, 1879-1919, shows that the Association as a group was indifferent to that field. However, for a number of years the American Institute of Criminal Law and Criminology, by meeting with the American Bar Association, supplied the gap in the Bar's work. For example, the 1919 Report of the Bar Association contained the Proceedings of the Institute's annual meeting, the presidential address of Hugo Pam, and the reports of five standing committees. At the 1920 meeting of the Bar Association, however, a change occurred of far-reaching importance. The American Bar Association finally took up "its share of the burden of the crime problem" by organizing a criminal law section with the Hon. Ira E. Robinson, a former President of the American Institute of Criminal Law and Criminology as Chairman, and Edwin M. Abbott, Secretary of the Institute, as Secretary and Treasurer. At this meeting, John H. Wigmore, a former President of the Institute, was made chairman of the by-laws committee, and another former president, the Hon. John P. Briscoe, served as chairman of the nominations committee. Having voted to cooperate with the activities of the American Institute of Criminal Law and Criminology in all its activities, the Bar Section launched its work which has become increasingly important, culminating in the 1933-4 general Bar program to improve the administration of the criminal law.

At this time, when problems of law enforcement are receiving the attention of all State and local bar groups, it is interesting to recall that the Institute—first organization of its nature—through its Journal and programs generally, to which our new President has made distinctive contributions, has played a major part in this development.

Colonel Chamberlin knows his field—perhaps in some respects better than any other man. He is no academician though for many years he was head of the Alumni group of Northwestern University Law School. He is no theorist though he has a surprising knowledge of scholarly works on criminology. Primarily he is a practical worker in the field though he is neither policeman nor warden. He stands at the center of a vast and complex machine in a great urban community. To him go the business men who have been robbed and who suddenly become appreciative of "efficient law enforcement," the relatives of criminals awaiting trial, labor unions combatting rival unions, informers and accusers, civic clubs with reform fever, college students who desire to gather information, political aspirants who want his endorsement, citizens who protest insurance rates, prosecutors who want records, and a host of others, all interested in some

immediate "crime problem." And they go to a man who has been kept at the vortex of this treacherous whirlpool because of his courage, honesty, and sound good sense. To head an active Crime Commission through recurrent "crime waves," "public enemy drives," wars on auto thieves, and judicial investigations; to deal with persons —head hunter or sob sister—(and to treat them both the same); to give results to the business men in goods actually delivered by proving the dollars-and-cents-value of his anti-crime activities, for fifteen long years, and then to have universal respect of all classes—that indicates the type of man he is.

President Chamberlin has been an active member of the Executive Board of the American Institute of Criminal Law and Criminology for many years and has a living interest in the Institute's research and publication program. From him we may expect wise counsel and active leadership, for in him there is combined a sympathy for research in the fields of causes of crime and treatment of the criminal as well as a broad experience in the practical operation of the machinery which the State has given us to use in the enforcement of the criminal law.

NEWMAN F. BAKER.

CRIMINAL PROSECUTION IN CANADA

Canada is separated from the United States by much more than an imaginary line on a map. The administration of the criminal law in Canada has developed so differently from our own that we should consider carefully an interesting letter received from the Hon. William Renwick Riddell, Justice of Appeal in the Province of Ontario.

Justice Riddell writes, in part, as follows:

There are in reality, only two conceptions of a criminal prosecution—the one that it is a kind of game in which the smartest man should win, the other that it is a solemn investigation by the State to determine whether a named person has been guilty of an offense. Under the first conception, the judge merely sits to see that the rules of the game are adhered to; under the other, he is an officer of the State, taking his proper share in the investigation. Of these two conceptions, we have adopted the latter.

Referring particularly to procedure in his own Province, the Justice continues:

About a century ago, we abolished the time-honored system of private prosecutors; an officer is appointed for life for each county to conduct criminal prosecutions in that county, unless a special counsel is sent for a particular prosecution, or series of prosecutions. As a rule, special counsel is sent for the sittings of the Supreme Court, while the "County Crown Attorney" is left to conduct prosecutions in the General Sessions and before the single judge, if the accused selects a trial by a judge. These appointments are made in the name of the King by the Government of the day; and the Government are responsible to the representatives of the people in the Legislature for these as for all other official acts. The appointment of the County Crown Attorney is for life; and when he assumes office, while his appointment may have been political, he drops his politics. In more than half a century in law, while I have more than once heard a complaint of undue severity in a prosecution, for

"No rogue e'er felt the halter draw
With good opinion of the law"

I have never heard so much as a suggestion of politics or political influence having any part in a criminal prosecution. Prosecuting counsel have nothing to gain by successsful prosecutions, nothing to lose by failure to convict. A criminal prosecution being an investigation, it is the duty of Crown Counsel to bring out all the facts before the trial tribunal, whether these tell for or against the accused. An unfair prosecution is reprobated by the Court of Appeal; and, where proper, a new trial is granted. In a recent case, it was laid down by the Court of Appeal:

> "It cannot be made too clear that in our law, a criminal prosecution is not a contest between individuals, nor is it a contest between the Crown endeavoring to convict and the accused endeavoring to be acquitted; but it is an investigation that should be conducted without feeling or animus on the part of the prosecution, with the single view of determining the truth": *Rex* v. *Chamandy* (1934) O. R. 208 at p. 212 per Riddell, J. A., delivering the judgment of the Court. A new trial was ordered; it was conducted properly and a conviction had which was sustained by the Court of Appeal.

Our judges are appointed for life by the Government of the Dominion on their responsibility to the representatives of the people in Parliament. Judges are generally appointed from the governing political party; but they drop their politics on appointment. There have been two cases of dismissal of judges in this Province for meddling with political questions; but the last was more than a century ago; and there has been no suggestion of such interferences since that time. Similarly, no hint has ever been given of any impropriety in the selection of our jury panels.

At the trial, the names of jurors are drawn from an urn at random; both Crown and defense have so many peremptory challenges; I have never but once known a challenge for cause, and if a challenge

for cause were made in a court over which I presided, I should not know what to do, but would have to send for books of practice. Only one thing I know about such a challenge is that the challenged juryman cannot be asked any questions; prejudice, etc., must be proved by witnesses *aliunde*. In practice, if counsel for defense sees any objections to any juryman, he mentions it to the Crown Counsel; and, if there is any real objection, Crown Counsel directs him to stand aside. I have never but once known it to take more than half an hour to get a jury, even in a murder case—that time, I had excused some of the jury, thinking we had enough without them; but the panel was exhausted, and we had to send for a juryman; and so forty-seven minutes were taken up. I notice that in our late and only kidnaping case, it took thirty-two minutes; and in the hideous case where a man was charged with coming from California to Ontario, to murder his own mother, tried this year, it took twenty-seven minutes to get a jury.

In my time, there have been, so far as I know, only three charges of what is called "The Third Degree," in other words, undue means taken by the police to obtain a confession. In one case, there was an acquittal, in another, a new trial was ordered by the Supreme Court, and in the third, the charge was on independent investigation proved to be false. And in no case was there a suggestion of politics or anything else than undue zeal on the part of the police.

We regard it as the duty of the judge to see that justice is done to the accused. He may, and sometimes should, ask questions of the witnesses; he may recall any witness for further inquiry. In his charge to the jury, he is expected to make as clear the evidence on behalf of the accused as that against him; he may express his own opinion of the facts, so long as he makes it perfectly clear that the jury is not bound by his opinion as to fact, but must find the facts on the evidence and under their oath. A case has, within the last two years, been sent back for a new trial, because the trial judge did not bring to the attention of the jury the evidence for the accused as fully as that against him.

For those who like that manner of criminal practice, that is the manner of criminal practice, they like. It may not suit others.

Justice Riddell's letter points out forcibly how two legal systems, identical in their origin, have come to express in action two very different social philosophies. Subtle imponderables, traditionally determined behavior patterns, are seen to be more powerful than statutory rule or common law decision. Juries, prosecutors, and judges all do what their communities expect and want them to do. If we in the United States are ever to develop a practice in the administration of the criminal law like that described by Justice Riddell, a long and tedious work of public education lies before us.

JOSEPH N. ULMAN.