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THE STORY OF A COUNTY PROSECUTOR: A REVIEW*

Henry M. Bates†

DURING the later years of the last century the writing about law began to undergo a profound change. Generally speaking, prior to the period indicated it had been largely a statement of what the law was supposed to be as found in legislation and, in Anglo-American countries particularly, in the decisions and opinions of courts. Relatively, it was dogmatic, technical, often too general to be of much use in particular cases and gave a very imperfect picture of the law as actually administered.

In 1906 Roscoe Pound read before the American Bar Association his paper "The Causes of Popular Dissatisfaction with the Administration of Justice."¹ It was a paper of profound significance which has made, and is still making, history. It brought before the bar of the country the vital importance of finding out what the law is likely to be as actually administered. Among the many legal scholars who have been greatly influenced by that paper was Raymond Moley. In his book *Politics and Criminal Prosecution* he quoted from Dean Pound's address "Law in Books and Law in Action" as follows:

"... But if we look closely, distinctions between law in books and law in action, between the rules that purport to govern the relations of man and man and those that in fact govern them, will appear, and it will be found that today also the distinction between legal theory and judicial administration is often a very real and a very deep one."²

During this same period many other books seeking to express a realistic view of the law in action were published and particularly this was true in the field of criminal law. Among those which may be mentioned as offering much to the thoughtful student of American institutions, are the following: *Politics and Criminal Prosecution* (1929) and *Our Criminal Courts* (1930) by Raymond Moley,

*TROUBLE-SHOOTER; The Story of a Northwoods Prosecutor. By Robert Traver (pseudonym)—L.L.B., University of Michigan; member, State Board of Law Examiners. New York: Viking Press. 1943. Pp. 294. \$2.75.

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¹ 29 REP. A. B. A. 395 (1906).

² Pound, "Law in Books and Law in Action," 44 AM. L. REV. 12 (1910).

Criminal Law in Action (1934) by John B. Waite, *Criminal Justice in America* (1930) by Roscoe Pound, *Crime, Criminals and Criminal Justice* (1932) by Nathaniel F. Cantor. A special aspect of the criminal law in action is depicted in an interesting book called *Science for the Prosecution* (1930) by Julius Grant.

These and other books, many articles in the law reviews and the numerous crime surveys which were made during the same period, notably the Cleveland crime survey, the report of the Crime Commission in Chicago, the Missouri crime survey and the extensive studies by Sheldon Glueck, have served to fasten the attention of the bar and to some extent that of the public upon the subject happily expressed by Dean Pound as "law in action."

A vivid and refreshing story of the criminal law in action in a sparsely populated county is significantly entitled "*Trouble Shooter: The Story of a Northwoods Prosecutor*" by "Robert Traver." Robert Traver is a pseudonym for John D. Voelker, who recently finished his tenth year as prosecutor of Marquette County, Michigan. Mr. Voelker will probably be astonished to find his book introduced here by reference to the books mentioned above. For it is quite clear that he had no thought of writing a treatise, or even a systematic essay upon the administration of criminal justice. Rather his book is a vivid, colorful and extremely frank relation of many of his experiences as county prosecutor. In the story of his dealings with the countless and varied problems which came before him, his consultations with those in trouble, some because they had been wronged and others because they had done wrong, as well of course as in the trial of cases which he prosecuted, one finds an unproclaimed but sound and growing conception of the opportunities, not only for the performance of duties, but of genuine service to his community and to the many individuals with whom he dealt. As Mr. Voelker says in his foreword, the prosecutor in most states

"is elected by the people on a party ticket. He must be, therefore, first of all a lawyer, then a politician—though sometimes I am dubious about the validity of this sequence. Lastly, if he will be an able prosecutor and still stay in office, he must also be something of a student of black magic.

"But magic or no magic, it is the prosecutor's duty to enforce observance of the criminal laws; to bring charges against those who break them; and, as a representative of the people, to proceed against these persons at their trials. Where he is elected by and for a county, as is generally the case, he is also its adviser and

civil representative. But by far the most important of his duties are those he discharges in the field of criminal justice.”³

Again he writes:

“Contrary to the prevailing notion, however, a county prosecutor’s most intimate contacts with the people, his most genuinely moving experiences, do not always occur in the dramatic glare of the courtroom. For it is in his office that he gets really to know his people. To it, in an unending line, tramp the foolish and the wise, the fox and the lamb, the wronged and the wrongdoer, the arrogant and the bewildered, the informer and the reformer. And always, in every prosecutor’s office in America, there is the steady shuffle of the poor—the wretchedly, hopelessly poor. And what shall any man tell *them?* . . .”⁴

The chapters which follow for the most part are the story of particular experiences in his office and in the courtroom. The casual reader would certainly be interested primarily in these stories. They are vivid, fresh and frank. They reveal that this prosecutor did not conceive of his job as a series of man hunts. He was actuated by the belief which seems clear and irrefutable that he was but one factor in the administration of justice. He was not seeking to pile up convictions, nor apparently did he go into any case without conscientiously attempting to find out whether the defendant was really guilty of the act charged and, if so, whether there were ameliorating factors in the life of the person under consideration. He must have had hundreds of complaints brought to him which, when investigated, seemed to afford no justification for charging the alleged wrongdoer with crime or misdemeanor. In such cases he wrote letters—“magic letters.” He made many adjustments between warring individuals, one or both of whom had engaged in violent acts or at least had threatened them. “The wretchedly, hopelessly poor” who shuffled before him found a firm officer of the law, sternly seeking the truth, but one who as a human being was governed where possible by sympathy and understanding.

To Voelker’s broad and human conception of his job as prosecutor, “Judge Belden,”⁵ to whom he pays a beautiful tribute, must have contributed greatly.

Many of Voelker’s experiences are told with gusto and a high degree of literary skill and, what is more important, an understanding

³ Page 9.

⁴ Page 11.

⁵ In real life, the Honorable Frank A. Bell, Judge of the Twenty-fifth Judicial Circuit of Michigan.

of the currents of human emotion and thinking that ran below the surface facts. One of the best of these stories, perhaps, is entitled "Busy Fingers" and tells of the trial of a murder which occurred in the state penitentiary. Both the victim and the man indicted were fellow prisoners. There was a dramatic finale when the defendant suddenly turned on the state's principal witness, another prisoner, and by skilfully questioning him completely demolished his story. The reader is left in little doubt that the state's principal witness was the real murderer. But Voelker, with true artistry, leaves that for the reader to find out for himself.

In a capital chapter, "A Jury of Your Peers," there is a sound and understanding estimate of the value of the jury in the administration of criminal justice. Without political rant or dogmatism, the question is put squarely up to the reader whether there is any better device for interposing between the defendant and the prosecuting state a body of average citizens. The question has been often asked, but never satisfactorily answered.

Voelker was prosecutor in a county predominantly agricultural and mining, and his problems were concerned of course largely with human conduct as are those of a city prosecutor, nevertheless he had to deal with many situations for the most part quite unlike those commonly occurring in a large city. Voelker had had a taste of city life and practice, though his city practice was on the civil side. Somewhat against his own judgment he went to Chicago and was employed by a large and very able law firm for two years. But the comparisons which he makes are not favorable to the city court and practice or to city life. Speaking of the work of the city prosecutor, he says:

" . . . With his vast force of assistants, investigators, ballistic experts, technicians, detectives, informers, and common flatfoots, the big city prosecutor is more of an executive, kept busy planning and directing the energies of his aides. . . .

"Your prosecutor in the less populous areas must be something like the rural doctor—a 'specialist' in all things. Seldom does he taste the heady wines of wide publicity, and often he is without any help. . . . even today he must often gather his own evidence, track down his own witnesses, and in any event prepare his own cases and try them. . . . He must stand ready to try cases ranging from neighborhood squabbles to first degree murders."⁶

⁶ Pages 10-11.

The courts in Chicago made an equally unfavorable impression upon Mr. Voelker. He admits that by temperament and early life he was perhaps unfitted to take a fair view of most of the courts in Chicago or any other large city. But most experienced lawyers who have practiced in city courts will not think the following comment by Mr. Voelker is lacking in foundation, for unfortunately in some cities, of which Chicago is one, there has been a lamentable decline in the quality of the judicial personnel during the last three or four decades. Mr. Voelker says:

“After practicing law in a large city, where I found that too goodly a portion of the bench is made up of politicians, eccentrics, exhibitionists—a curious assortment of benchthumpers, mountebanks, and just plain shysters—it was a refreshing and dignified experience once again to practice before such a man [as Judge “Belden”]. He is wise, he is patient, he is simple, tolerant, and kindly—a fine lawyer and a gentle man. He abhors pomposity, bombast, and fake.”⁷

Reference was made earlier to the frankness with which the author of this interesting book has discussed his experiences. Unpleasant as some of the passages are, most of them at least seem to be essential to giving the true picture of the situation being described. That the author's dominating characteristic is one of fineness and a very unusual understanding of human nature becomes abundantly clear as one reads the book. It should be important to anyone interested in human conduct, for it is a revealing document, narrative in form, often dramatic, with touches of irresistible fun and humor, and yet suggestive in more than one chapter of the inevitability of Greek tragedy. No young lawyer could read the book without pleasure and without acquiring an increased realistic understanding of criminal law in action.

⁷ Page 43.