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MATTERS TO BE CONSIDERED BY THE MINNESOTA CRIME COMMISSION

CALVIN L. BROWN²

HOWEVER earnestly and faithfully we may proceed in the matters to come before us, and in furtherance of the objects sought to be accomplished by the governor in the appointment of the Minnesota Crime Commission, we neither hope nor expect to stem the tidal wave of crime now sweeping over the state,—over the United States,—and the world over. Our presence here, engaged in the work of devising ways and means to bring the outlaw to speedy trial and conviction, followed by prompt sentence to prison, will not be felt by that element, and none thereof will run to cover because we are thus engaged. The lawlessness of the present day is unprecedented and with a boldness never before experienced in the state. The old professional robber and bandit has been joined by the younger element, mere boys, who in boldness have outdistanced the old offender in recklessly, if not wantonly, shooting and killing their victims even though unnecessary to effect their own safety and escape. Many of these have been apprehended, convicted and sent to prison, while perhaps the greater number have succeeded in escaping detection, and go about the streets with heads erect, on the lookout for some new venture. We do not expect to check this, and it must go on until the wave runs its course.

¹Remarks by Chief Justice Brown, Chairman, at the opening session of the Minnesota Crime Commission, named by Governor J. A. O. Preus, June 3, 1922, at Saint Paul, Minnesota.

²Chief Justice, Minnesota Supreme Court.

But it is believed that the commission may do much in suggesting improvements in our present criminal procedure, by eliminating requirements of no material value either to the state or to accused; many of which substantially handicap the state in the prosecution and enable the accused person to prolong the proceedings through the courts upon technical grounds and thus delay the day of final judgment, in the meantime being permitted to go at large on bail. Many technical requirements of the law of procedure are available for this purpose which lawfully may be dispensed with by proper legislation; the courts cannot ignore them, except to a certain extent after trial and a verdict of guilty returned; in that situation the courts in this state as well as many other states, look to the evidence to test the verity of the verdict, and if it be found clearly supported by the proof, errors and omissions during the trial which do not deny or essentially impair a constitutional or substantial right of the accused are brushed aside as without prejudice to him. Of course no right given by the constitution can be taken from a defendant, or materially impaired by statute; but ordinary methods of procedure are within legislative control, and may be changed from time to time as that body may deem expedient and proper.

We have at present an abundance of statutory law on the subject, and there is no occasion to do more than to remove by amendment some of the worn out requirements,—those not suited to present conditions, and tend only to prolong unnecessarily the due administration of the criminal laws. And in suggesting changes and modifications we should move cautiously and with due deliberation.

Some matters of substantive law, in respect to the suppression of crime and the punishment of offenders have been brought to your attention by Governor Preus;—a brief reference to which may be made. They are as follows:

1. The delay in bringing criminals to justice.
2. More effective methods in the apprehension of criminals should be provided.
3. The establishment of a state constabulary as a counter move to repel lawlessness upon the public highways, and to facilitate the capture of that class of criminals who can afford an automobile in furtherance of their ends.
4. The propriety of increasing the penalty for a crime where an automobile is used in its commission.

5. Restricting the right of bail after conviction, and
6. Whether carrying of firearms should not be prohibited.

These points suggest important matters, and should receive due and proper attention. The first relates to the delay in bringing criminals to justice. That there is a delay, in many instances an unusual delay, must be and is admitted; it exists and is not disputed. One factor causing the delay is the necessary compliance with the forms of procedure required by the constitution and the laws of the state, and observance of which in all criminal prosecutions cannot be dispensed with. But forms of procedure and their observance, not technically but substantially, are just as important in the administration of criminal law as the law itself. If not followed and applied chaos would follow and mob violence result, as often occurs in some parts of the country, even in Minnesota.

STATE CONSTABULARY

The proposed state constabulary is an important subject and has been well explained by Governor Preus. There may be some difficulties in the way of this proposal which unless carefully guarded against, may result disastrously to that as a plan in aiding in the capture of outlaws in the outlying districts of the state. There can be no friction, or feeling antagonistic to the plan from within, or between the officers of the counties outside the large cities and the state forces; any plan which will create possible conflict as to superior authority between the state constabulary and the local officers will work a serious obstacle to favorable results. A conflict of authority between officers of the law is a far greater menace to contemplate than the occasional escape of a thief.

RECORD OF CRIMINALS

The matter of a bureau for the record of known criminals no doubt has its value in the detection and apprehension of criminals. It will receive proper attention.

INCREASE OF PENALTIES

The matter of increasing the penalty of all crime where an automobile is made an agency in the commission thereof is worthy of special thought. But it may be remarked that it is not so much the penalty or the term thereof which deters the criminal. That does not disturb him. What will throw terror into him and his

kind is the fear of an unrelenting pursuit by the officers of the law, his capture and speedy trial and conviction; the question uppermost with him is, to use a street expression, "Can I get away with it?"

BAIL AFTER CONVICTION

The matter of bail after arrest and pending the trial is fixed by the constitution and cannot be denied. Whether it shall be allowed after trial and conviction rests with the legislature. It has been provided for in this state, and an application has generally been granted in bailable cases. Under our present statutes either the trial judge or justice of the supreme court may admit to bail pending an appeal. Whether the right to so grant bail after conviction should be taken away must rest with the legislature. But there is one thing that can with propriety be done, and that is to limit the authority to grant bail on appeal to the trial judge; the matter should not be vested in a member of the supreme court at all. They know nothing of the case when the appeal is taken, and are in no position to judge of the propriety or impropriety of granting an appeal for bail. The record in the case does not reach the supreme court until about the time the appeal is called for argument, and the act of a member of that court in granting bail is perfunctory and an arbitrary exercise of statutory authority, without knowledge of the facts which should be known to enable intelligent action in the matter. So that the right to grant bail pending an appeal should be left exclusively, in my judgment, with the trial judge, who is familiar with the facts of the case and in better position to act.

This in a general way covers the matters suggested by the governor. But closely related thereto are some other subjects to which I beg the privilege of making brief mention. The first has reference to our criminal procedure, and the delay in prosecution.

CRITICISM OF COURTS

The courts of the state are not open to criticism for this delay, whatever it may be. The trial judges of the state are entitled to credit for the part taken by them in the administration of the criminal laws. Their work as a rule is promptly and expeditiously dispatched and the criminal calendars in all save the more populous counties are cleared from term to term.

The crime centers are found in the large cities of the state, where opportunities for lawlessness and facilities for escape are

plentiful. There congregate that element in large numbers, forming bands of three or four who work in conjunction, one serving as a lookout to warn of approaching danger. I believe the great majority of those committing crimes in those centers are apprehended and made to suffer the penalty prescribed for the offense committed. But there is delay in securing convictions, not owing to any dereliction on the part of the courts or public officials, but because of the large volume of crime and the consequent congested condition of the criminal calendars; facilities for the speedy and prompt trial of indictments are at times inadequate; the courts are in session all the time, save during the summer vacation, busily engaged in the work presented to them, while the criminals are also constantly at work, furnishing additional material which accumulates faster than the courts can put it through the hopper in the due course of procedure.

There are at this time over three hundred criminal cases awaiting trial in Hennepin County; the number is much smaller in Ramsey as well as in St. Louis County. In most of the cases the defendants are out on bail and, of course, in no hurry for trial. And it is very probable that before many of them are reached in their order on the calendar the witnesses will have scattered and gone beyond the reach of a subpoena, resulting no doubt in the failure of the prosecution, a result attributable to the lack of court facilities and not to any failure of duty on the part of the prosecuting officers. In the situation thus presented, and there will be no substantial change in the near future, it is likely that the legislature will soon be called upon to create an additional court for the large centers with jurisdiction co-extensive with that of the district courts, but limited to criminal matters only.

THE RULE OF REASONABLE DOUBT

In a recent public address at St. Paul the president of the American Bar Association, Hon. C. A. Severance, discussed to some extent the matter of reforms in criminal procedure, in the course of which he suggested certain specific changes which he thought might well be brought about.

1. That the rule requiring the state to establish the guilt of the accused by evidence beyond a reasonable doubt be abolished, and the preponderance of the evidence, the rule applicable to civil actions, adopted in its place; 2, that the state be given the closing address to the jury; and 3, that the law be so amended as to per-

mit the state to call the accused for cross-examination, as in civil actions. Coming from such high authority the matters suggested are worthy of special attention by the commission.

The rule of reasonable doubt is created by statute, G. S. 1913, Section 8508. It is applied in all criminal prosecutions in this and other states. It requires a greater weight of evidence than in civil actions, where the preponderance rule prevails. The rule may be changed by an amendment of the statute if deemed expedient and advisable.

ARGUMENTS TO JURY

The right to the closing argument in a criminal prosecution is given the defendant by the statute. In most of the states it is given to the prosecution. Repeated efforts have been made to bring about a change in this state, but without success; the legislature has declined to make it. Whether another effort will meet the same fate as others cannot be foretold.

CROSS-EXAMINATION OF DEFENDANT

The state can be given the right to call defendant on the trial for cross-examination only by an amendment to the constitution, wherein by section 6 of article 1, it is declared that no person accused of crime shall be compelled to be a witness against himself. The protection thus given an accused person is fundamental and was intended to guard against a return of abuses practiced in olden times under former standards of criminal procedure. It is doubtful whether a change could be brought about. There was a time in this state when the accused was not permitted to be a witness at all, in his own behalf or otherwise. Such was the old rule in other states. The theory of it was that a person accused of crime could not be expected to tell the truth, and rather than permit him to go on the witness stand and perjure himself to effect his acquittal, thus to heap sin upon sin, he was by law commanded and compelled to remain silent. That was a rather harsh rule. It was changed in this state by statute in 1868, and since then an accused person may become a witness in his own behalf, or remain silent, as he shall elect. He cannot be compelled to take the stand and if he elects not to do so, no comment on his failure to testify by court or opposing counsel is permitted. That restriction might well be removed, provided, that when defendant takes the stand his cross-examination be by statute limited to the subject matter of the particular case, and not extended over his life history.

IMPANELING JURIES

It is just as important that we have men and women of character and fitness serve upon the trial jury, as that we have men of character and fitness on the bench. The general policy of the officers charged with the duty of selecting the list of available persons for jury service has been to name those thus qualified. But when it comes to impaneling a jury for the trial of a particular action, the tendency has been to select those thought by the attorneys to be favorable to their sides of the case. Jurors called are subjected to the most searching inquiry by the attorneys, particularly in criminal causes, and often offended by the class of questions put to them. It has frequently taken days and weeks to select a jury in a criminal case, much to the annoyance and great inconvenience of the jurors selected to serve; for those chosen early in the proceedings are required to remain in the jury box for days listening to the humdrum questioning of those subsequently called. This situation has driven many men of character and active business life to shun jury service, and whenever possible to secure a release from the trial judge. The same situation will soon be presented when women become more frequently called for that service; they too will seek to avoid it and in the main for the same reasons. The right to interrogate the jurors as to their qualifications, has always been extended to the attorneys in this state; this by a practice grown up in the trial courts and not by statute. It has been claimed by those who have given the matter serious attention, that the practice has outgrown itself, and become the cause of long delay in the trial of criminal cases, as well as to have driven high class citizens from jury service. The criticism has merit, and a departure from the practice in this respect may well be made. A change has been advocated by a committee of the American Bar Association lately at work on the subject of law reform at Chicago. But no concrete remedy has been offered.

THE REMEDY

I believe there is a remedy, and will ask the privilege of the commission to present it for consideration in the form of a proposed amendment to our statute on the subject of challenging jurors. In a word the change to be proposed will be to take from the attorneys altogether the right to interrogate jurors as to their bias, prejudice, or fitness for service, and impose the duty ex-

clusively upon the trial judge, under such statutory directions as will insure a full and complete examination of each juror called and challenged. Such is the practice in Massachusetts, New Hampshire and other eastern states, and my information is that it works well in practice. It can be established in this state by an appropriate amendment to our statute. With the examination in the hands of the court the selection of a jury will proceed without the long delay now often experienced and with the sole object of getting a fair minded set of men and women in every case; rather than one believed to be partial to one side or the other.

THE WRIT OF HABEAS CORPUS

The writ of habeas corpus is one of the most ancient of our common law prerogative writs, available to the citizen in defense of his personal liberty. It comes to us from centuries of use in England and is protected by the constitution of the several states, including Minnesota, wherein it is declared that the privilege of the writ shall never be suspended save in the time of rebellion or insurrection.

It is curious to note that originally and for two hundred years or more prior to the sixteenth century, the writ was employed exclusively as a judicial method of getting people into jail or prison; the function now served by the commitment issued by the courts of today for that purpose. But in the evolution of judicial procedure during the later centuries the writ became firmly established as one of liberty, and to get people out of prison when unlawfully detained therein. The change is said to have had its origin during the reign of King Charles II, and to release from prison some members of the English parliament who were confined therein on the order of the king.

In this country the writ with that limited scope has frequently been misused and the privilege abused. It is often applied by those convicted or accused of crime with the sole view and purpose of postponing the day of trial and punishment and circumventing the authorities in their efforts to secure a speedy and expeditious hearing. Men ordered by the governor of the state in extradition proceedings to be returned to a state demanding them on a charge of crime committed therein, have been able by the use of the writ to hold the matter in abeyance and frustrate a return of the accused to his home state for trial for months at a time. About two years ago a man was indicted in Minneapolis

on the charge of conspiracy to violate the prohibition law. When arrested and taken into court he pleaded guilty and was sentenced to a term of two years in the federal prison at Leavenworth, Kansas. He did not take the sentence kindly, and by means of the writ of habeas corpus and dilatory appeals succeeded in keeping the officers at bay for over two years. He was finally taken to Kansas and placed in prison and at last accounts was working the writ in that state in further and final efforts to circumvent the law.

It seems hardly necessary to say that a judicial process that can be so employed to escape jail for two years by a convicted person, after having pleaded guilty to the charge against him, contains some defect which ought to be removed.

TREATMENT AND PUNISHMENT OF JUVENILE OFFENDERS BETWEEN THE AGES OF SIXTEEN AND TWENTY YEARS

For ages prior to recent times the policy of the law-making authority in all countries, in respect to the criminal law, has been studied effort to make the punishment fit the crime; and the efforts have been quite generally successful. Murder is divided into three degrees and a punishment imposed commensurate with the enormity of the act causing death. Manslaughter, a crime of the same class, is also divided into degrees and the punishment graduated to meet the character of the act or acts constituting the offence. Robbery has three degrees, and the punishment fixed to correspond to the element of wickedness ascribed to each degree. Larceny is likewise graded. A theft of twenty-five dollars under certain circumstances constitutes petit larceny, punishable by a jail sentence. The theft of over twenty-five dollars under the same circumstances constitutes larceny in the second degree, and is punishable by a term in prison. Many other crimes are also graded with punishment to fit the circumstances of each grade. Further reference to them is not necessary. That has been the policy of the law for centuries, and has perhaps for its support the predominant element of vengeance. But there has come in recent years a change; there has arisen a tendency, in many states, which has found expression in statutory enactments, to change the law and to make the punishment fit the individual, rather than to fit the crime of which he was convicted. This change is found in our indeterminate sentence law, the probation, the suspended

sentence and the parole system for dealing with and treating the young offender.

The probation and suspended sentence laws, as well as the parole system have been challenged in some quarters, and a demand made that we return to the system which took no special account of the mentality of the offender when not reaching the point of insanity. The commission may well speak upon this subject, and express itself in the final report to be made. The great merit in the suspended sentence law, and the parole system, is found in the effort thus put forth to save the young man or young woman from a life of crime, and by considerate and helpful treatment place them in a condition mentally to lead a proper life in the future. The propriety of abandoning those efforts may be seriously doubted. The vengeance of the law may well be tempered with the humane efforts connected with and the basis of the parole system.