

The District Attorney: His Temptations

By ARTHUR TRAIN.

I DO not for an instant believe that any New York prosecutors in chief have been susceptible to the influence of hard cash in matters of public duty. One, or possibly two, within living memory, although not in this century, may have borrowed rather freely from their assistants who disliked to be unobliging, and some of the notes given in exchange may still remain outstanding, but, after all, it was a family affair and the assistant doubtless "owed his salary," as they used to say, to the favor of the borrower. I take no stock whatever in stories of jury fixing; and I am confident that our Judges are above suspicion. But it is easy to see what a demoralizing effect the mere suspicion that the District Attorney was conducting his office for the benefit of his friends or political supporters would have upon those whose business properly brought them there. Yet so insidious is the effect of power that it is difficult for a young assistant to avoid adopting an attitude of absolutism toward the applicants for justice who line the benches outside his door and crowd about his desk—all the more so owing to the inherited idea on the part of most of them that justice is something to be bought. This is so ingrained that I used to have great difficulty in refusing the presents brought openly to my office, or surreptitiously to my home, by grateful complainants to whose enemies I had succeeded in having administered the Occidental equivalent to the Oriental bastinado or bamboo cage. If I refused a Kurdistan carpet or a Manchurian shawl the giver's face would instantly register the conviction that I had sold out to the other side. One Syrian "bishop" brought an entire van load of objects of art to the house, and I had a hard time to get rid of him. There was a shabby Spanish grandee who tried to force an ivory inlaid guitar upon me. Tom Lee, the "Mayor" of Chinatown, kept the entire office force supplied with death dealing cigars and their stomachs lined with sharks' fin salad. And there was a really beautiful young woman who threw her arms about my neck and held me in a close embrace out of gratitude for my having sent her husband to the penitentiary. I have no doubt that similar incidents oc-

cur even to-day in most cities with a foreign born population.

A prosecutor can hardly be blamed for feeling that he is a sort of All Highest when he is surrounded, on the one hand, by ignorant suppliants for his grace, who regard him as a Little Father; by sycophantic subordinates, cheap politicians and court officers who tell him that he is the greatest little man on earth; by bootlicking shyster lawyers and his own hired process servers and lictors, and, on the other—and by no means the less dangerous—by the many distinguished members of the bar, influential business men and bankers, holders of high public office and women of social prominence who find his career romantic and interesting, who listen eagerly to his narratives of crime and criminals and all of whom are glad to be on friendly terms with one who may at any moment prove highly useful.

Sops to Prosecutor's Vanity.

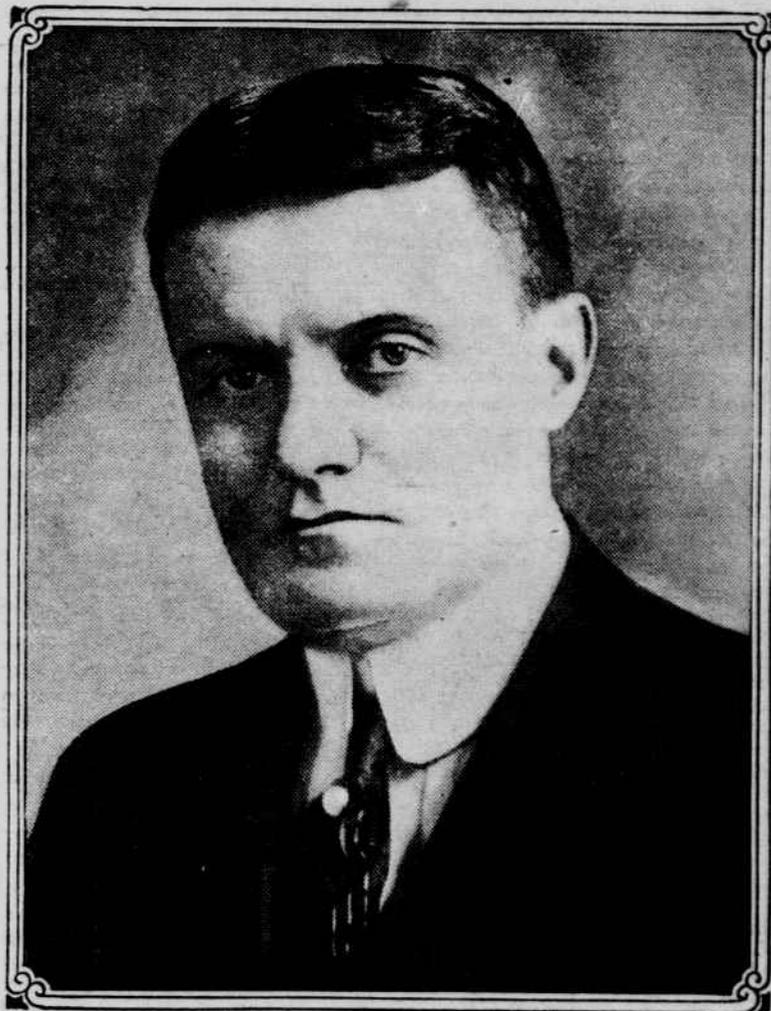
The very fact that comparatively few people come into contact with the criminal law and that most lawyers avoid the practice of it surrounds the District Attorney with an atmosphere of mystery. His word "goes" much further than that of somebody whose statements can be more easily checked up. He can blast and blight an enemy by a skillful innuendo, or he can put him in a totally unfair and prejudicial position from which no explanation, however sound or truthful, can for the time being extricate him. His words in court are, to a large extent, privileged. If he wants to "pigeonhole" or "smear" a case he can do so in such a way that no one can prove it; and he can obscure the true nature of any official act with such a smoke screen of technicalities that few dare even criticize it.

In a word, his office is the most valuable political asset in the community for his party or for himself, for he can annihilate his enemies and exalt his friends, disclose or conceal abuses as may be most expedient and pose as a champion of the people and an enemy of the politicians even when in a "receptive" state of mind or in actual negotiation with the bosses.

It is much harder for a country prosecutor, or the District Attorney of a small city, who very likely has a personal acquaintance with the defendant or his family, to withstand pressure to drop a

case or "go easy" than for his metropolitan brother, who, save for the unseen conduits holding the political wires, is apt to be a stranger to all parties concerned. From such experience as I have had I should be inclined to believe that the administration of justice was conducted on a far higher

picked in advance as foreman and in spite of his objections was pitchforked into the job. So far all had gone as per schedule. Unfortunately for those in charge of the arrangements the man in question, having once put his hand to the plow, declined to turn back, and the jury, refusing to



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Charles Seymour Whitman, Ex-Governor of New York, District Attorney 1910—1914. His most conspicuous case was in connection with the Rosenthal murder.



William Travers Jerome, District Attorney 1901—1909. The most conspicuous case during his tenure of office was the Thaw trial.

plane in the city than in the rural districts—certainly in New York.

But how is a prosecutor, who sincerely wishes to be impartial, to avoid being made use of? Suppose not long before an election his boss sends an emissary to him with concrete evidence tending to establish a technical or even a substantial criminal offense on the part of an influential office-holder of the opposite party? If he is satisfied that a crime has in fact been committed it is his duty to act; yet the motive animating those behind the prosecution cannot be misinterpreted. What is he to do? In some cases the attack takes the form of a request for an "investigation" or "John Doe inquiry" into the conduct of a city department or public office, in the hope of starting a scandal or landing some politician. This, of course, he can properly refuse, and should. As everybody knows, these "investigating" Grand Juries are apt to become great nuisances, the only result of their deliberations often being to subject the taxpayers to large bills for the services of expensive experts and counsel. Sometimes, although not often, they really accomplish something.

Whitewashing by Jury.

Some years ago, a hullabaloo having been raised on the eve of an election over the conditions prevailing in certain parts of Manhattan, it was proposed by certain astute leaders of the political organization responsible for the city government to institute one of these Grand Jury inquiries for "whitewashing" purposes. It was pointed out that, the life of the Grand Jury being but a single term, or roughly thirty days, it would be impossible for it in such a short space of time to get any real evidence. The inquiry would serve to quiet public clamor and the jury, after going through the usual motions, would adjourn with some sort of a "presentment," assuring the confiding citizenry that all was well and urging them to be of good cheer. A man of prominence was hand-

be discharged against its will, constituted itself a permanent body and unearthed such a mass of evidence as not only to prevent any "whitewashing" whatever but, on the contrary, to put the politicians badly by the ears.

There is no office, not even that of Governor of the State, or of Mayor, that so lends itself to self-aggrandizement and self-advertising as that of District Attorney. It can be made a stepping stone to almost any other and higher place. It can be a continuous performance far more thrilling than any detective story, melodrama or feature film, and the public can be readily educated up to the point when it demands a new reel every day. A fierce light beats upon the District Attorney's office. The successful, or sometimes even the unsuccessful, prosecution of a *cause celebre* will make its incumbent famous from one seaboard to the other.

The reputation that comes from the performance of a duty well or bravely done is the just reward of any office holder. But the temptation to concentrate all one's attention upon the finding and exploitation of sensational cases may be very great—particularly if the prosecutor is himself a skillful trial attorney and expects in person to hear the applause of the multitude and to feel the laurel upon his own brow. His gravitation toward this *decensus in Averno* is facilitated by the ambition of the police and the eagerness of the press for startling news. Now, a District Attorney who prosecutes in person even only the most important trials, provided he gives the time to preparation that such prosecutions require, has little time left for anything else. Can he be much blamed for delegating the detail work of his office to others in order that a notorious murder shall not go unpunished and the majesty of the law made a laughing stock?

The District Attorney who is seeking fame rather than that inner consciousness

Continued on Following Page