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To

Rush C. Butler

President of the Illinois Association for Criminal Justice

In recognition of an unusually self-sacrificing and efficient leadership and support, the value of which can only be adequately estimated by those whom it has aided and inspired.

The Survey Committee.

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THE ILLINOIS CRIME SURVEY

EDITOR'S PREFACE

by

JOHN H. WIGMORE

EDITOR'S PREFACE

1. In performing the simple task of editing these chapters for the printer, I have made acquaintance with the facts here recorded—recorded so impartially and authentically.

It is not a pleasing record.

More than three thousand years ago, an Egyptian king caused to be made a Survey of the resources of his kingdom; in that Survey (deciphered by a Chicago scholar, the most famous living Egyptologist), recording with self-confidence the king's achievements, one passage discloses to us his ideas of some of the fundamentals by which one may test the efficiency of a system of penal justice:

"I made the land safe, so that even a lone woman could go on her way freely and none would molest her.

"I rescued the humble from their oppressors.

"I made every man safe in his home.

"I preserved the lives of those who sought my court of justice.

"The people were well content under my rule."

Alas! the recorded facts of this present Survey oblige us to admit that none of these fundamentals, as outlined by the Egyptian king, could be alleged today with truth in the city of Chicago. *Not a single one of them!* And must not a modern American city claim even a higher ideal for its measuring rod than the simple requirements of a primitive civilization?

2. If one asks, "Just what is wrong? Be concrete," it is enough to point to the Conclusions and Recommendations summarized at the end of each chapter of this Survey. They are dispassionately formed and concisely stated. They must be studied in detail.

Not everything is wrong, of course. But enough is wrong at every point to make the whole result a dismal and disconcerting picture. The main feature of what is wrong may be put into one word,—Inefficiency. No one part of the system of criminal justice works to maximum power, and most of them to less than moderate power,—Inefficiency everywhere. The Constitution's law is inefficient; the Legislature's law is inefficient; the Supreme Court's law is inefficient. The Trial Court's methods are inefficient; the Prosecuting Department is inefficient, and likewise the Police System. The Jury System is inefficient. The Probation and Parole Systems are inefficient; and with them the Prison System is inefficient.

Partly this inefficiency lies in the fixed rules and methods of law and administration; partly it lies in the personnel that exercise the powers and duties defined by the law. It might be said that not the best of laws and rules could produce adequate results with no better personnel as a whole; and that neither could the best personnel produce adequate results with these present laws and rules as a whole.

3. But if one should ask, not, What is wrong? but, *Why* is it wrong? the answer is harder to formulate.

Of course, the specific and direct causes are herein plainly stated in the summaries to each chapter,—for example, the grand jury indictment law is one such cause; poor jury service is another.

Great and small together, there are a hundred of them.

But these specific and direct causes have larger ones behind, which in turn are the cause of the causes (so to speak) or at any rate prevent the causes from being thoroughly removed.

What are those larger causes?

4. My guess is that they are all reducible ultimately to *one* prime cause; and that cause is: the Selfishness of the Ordinary Citizen (the O. C., as Arthur Train calls him).

Here is an instance: Some years ago, a certain Chief of Police (not the present one), when a friend of mine asked him why a certain desirable measure was not undertaken by him, replied thus: "I haven't had the time to get at it. *One-half of my day's time is taken up with fending off requests made by all sorts of citizens, from aldermen down, who want me to do something that I shouldn't do or to let them do something that they shouldn't do.*" No doubt every Mayor, every Judge, and every Prosecuting Officer, could also tell a similar story.

That is probably at the heart of our trouble. We all want to achieve some selfish interest—great or small, permanent or passing—in the way of favor, graft, special privilege, jobbery, law-evasion, or law-breaking, at the cost of regular law and good government. From the captain of industry all along the line to the racketeer and the gangster, we put Self first and the City last,—or not at all.

Is there, indeed, any citizen of Chicago,—or shall we say of Illinois—who can go on his knees in the Temple, as did the Pharisee and the Publican in Scripture, lay his hand on his heart, and say in good conscience to his Maker, "I have never, when I was in a tight place, *never* sought to get what I wanted by evading or breaking the law, openly or secretly, or by using favor or fear with a public official; and I have *never* failed to contribute my share of time and work in such public service as came my way; and I have *never,* as a public official, sought my own profit at the cost of the public interest"?

5. But is the spirit of Public Sacrifice—the spirit of All for One and One for All—inherently lacking in our people? There was a time when it was a notable feature of Chicago's civic life. Has it disappeared for good and all?

We do not admit that it has. We believe that it has only temporarily subsided. Perhaps it has been merely diverted by other interests. The masterful achievements and practical progress of this community in many important departments of life, since the period of the World's Fair in 1893 —the world's wonder, it was then justly deemed—have perhaps absorbed overmuch energy in the pursuit of other ideals. Thus, the ideal of civic government has suffered sadly.

But the time has surely come when all the potent energy of this community must once more be summoned away from other things, and be sternly concentrated on that single ideal—Civic Unselfishness, and thereby Governmental Efficiency.

And then, by the time of Chicago's Civic Century Celebration, our people can look out over their splendid metropolis, and truly record for posterity's edification, the possession of all, and more than all, of the fundamental elements of civic justice so confidently recited to his own glory by that famous Egyptian monarch of three thousand years ago.

DIRECTOR'S INTRODUCTION

by

ARTHUR V. LASHLY

DIRECTOR'S INTRODUCTION

1. The Illinois Association for Criminal Justice was formed as the result of a movement initiated by the Illinois State Bar Association. In July, 1925, Mr. John R. Montgomery, the President of that Association, pursuant to authority for such action given at the annual meeting of that year, formed a committee on the "Enforcement of Criminal Law." The Chairman of that Committee was Mr. Amos C. Miller, of Chicago, and the other members were selected from that city and downstate.

After holding a series of meetings over an extended period of time, the Committee recommended that in its opinion a study should be made of the administration of justice in the state, similar to those studies which had previously been made in Missouri and New York. Accordingly, a meeting was called on February 6, 1926, of various organizations in the state, including the Illinois Chamber of Commerce, the Illinois Federation of Labor, the Illinois State Bankers' Association, the Illinois Agricultural Association, the Illinois Manufacturers' Association, the Industrial Club of Chicago, the Chicago Crime Commission, the Illinois Federation of Women's Clubs, the Illinois League of Women Voters, and a number of public welfare and charitable organizations.

The result of this meeting was the formation and incorporation of the Illinois Association for Criminal Justice. A Board of Directors of seventy-nine representative men and women was selected and this Board elected the officers and formed the various committees.

The purposes and objects of the Association were defined in the By-laws:

> "The object for which it is formed is to conduct a state-wide survey of the administration of criminal justice and of the causes and conditions of crime within the State of Illinois; to initiate and secure the passage of legislation and to take such other remedial action tending to diminish crime and to improve the administration of justice as is deemed necessary or as is suggested by the findings and recommendations of such survey; and to promote and secure intelligent and efficient administration of civil and criminal justice within the State of Illinois through constructive co-operation with all officers, departments, tribunals and agencies, state, city, and county, charged with the duty of the suppression, prevention, and punishment of crime."

The Industrial Club of Chicago, largely through the efforts of Mr. Rush C. Butler (Chairman of the Association's Executive Committee) and Mr. Joseph T. Ryerson (Chairman of the Budget Committee), provided a fund of one hundred thousand dollars to conduct the survey and to promote the educational campaign following the survey.

Numerous preliminary meetings of the Survey Committee were held, at which the general outline of the work was agreed upon. The plan which was followed was adopted mainly from that initiated in the Missouri Survey

and followed in the New York Survey. The surveys in Missouri, New York, and Illinois are the only ones of state-wide scope that have been made.

It seems to me that one of the most outstanding circumstances connected with the survey was the variety of interests which were drawn together and which actually participated in the work. In addition to the State Bar Association, which initiated the movement, and the Industrial Club of Chicago, which financed it, it was actively participated in by Northwestern University, the University of Chicago, and the State University, the Institute of Juvenile Research, the Local Community Research Committee, the Chicago Crime Commission, the American Institute of Criminal Law and Criminology, the Juvenile Protective Association, and indirectly, through representatives on various committees, by the United Charities, the Juvenile Detention Home, and the School of Social Service Administration. In addition to these, the more important state-wide civic and business organizations are represented on the Board of Directors and the active committees.

From the legal profession and the universities were drawn most of the experts invited to undertake the preparation of the reports, and the following gentlemen (named more particularly hereinafter), who gave their time in research and writing reports without any compensation: Andrew A. Bruce, E. W. Burgess, Gustave F. Fischer, Albert J. Harno, John J. Healy, Ludvig Hektoen, Herman W. Adler, H. W. Singer, E. W. Hinton, and William D. Knight. Mr. Francis Hugh Miller, of the Chicago Bar, acted as contact man with, and abstracted and summarized all reports for, the Press. The members of the Survey and Revision Committees, who spent much of their time in meetings of subcommittees and of the whole committees, served without compensation. Mr. Butler and Mr. Amos C. Miller, in particular, as chairmen of committees, devoted a great deal of their time to this work in consultation and in providing contacts for the research workers; the Director is impelled by candor to record that he has never come in contact with two men who were able to keep a more even keel and to do more work in a short time with less friction or more uniform courtesy than these two.

2. Below is a statement of the several reports and their authors, together with a brief outline of the scope of each. The survey reports have been grouped under three main divisions; namely, *The Machinery of Justice, Specific Types of Offenses,* and *Organized Crime in Chicago.*

I. The Machinery of Justice

The reports under this division are:

Recorded Felonies, an analysis and general survey of twenty thousand case histories of felony prosecutions in Cook County and in seventeen downstate counties, by C. E. Gehlke of Western Reserve University, Cleveland, Ohio, who served as statistician for the survey. These cases represent all felony prosecutions begun in the several counties surveyed, in the year 1926, and also in the city of Milwaukee, Wisconsin, where the same class of cases was examined for purposes of comparison. The data compiled from the study of these cases are tabulated, the various tables showing where cases

drop out, from the preliminary hearing to final disposition. Each table is analyzed; the responsibility of judge, prosecutor, and jury in the disposition of cases is discussed; and comparisons of judicial administration in the various jurisdictions are made. This includes a comparison of all phases of judicial administration and prosecution in Milwaukee and Chicago. The results were compared with those found in reports of state-wide surveys made in Missouri and New York.

The Supreme Court, in Felony Cases, by ALBERT J. HARNO, Dean of the College of Law of the University of Illinois. In this report the decisions of the Supreme Court in felony cases for the period from 1917 to 1927 are analyzed. The decisions were classified for discussion, and after showing the number of cases affirmed and the number reversed in a series of tables, the report classifies those which were reversed as to grounds for reversal, which are: (a) violation of constitutional provisions; (b) defective pleadings; (c) erroneous instructions; (d) errors in admission of evidence; (e) variance; (f) conduct of prosecutor; (g) conduct of trial judge; (h) form of verdict; (i) insufficient evidence; (j) sundry grounds, such as remarks by bystanders, intoxication of the accused, and ineligibility of the state's attorney. Cases reversed and remanded were followed through the trial courts to which they were remanded and final disposition is shown.

The Trial Courts, in Felony Cases, by former Judge E. W. HINTON, Acting Dean of the Law School of the University of Chicago. Judge Hinton discusses the laws regulating the procedure in criminal cases and the work of the trial courts throughout the state, as indicated by an analysis of the twenty thousand felony prosecutions already referred to.

The Juries, in Felony Cases, in the Criminal Courts of Cook County, by GUSTAVE F. FISCHER, Chairman of the Jury Service Committee of the Industrial Club of Chicago. This Committee, under Mr. Fischer's direction, has for many years taken an active interest in the subject, and the report goes thoroughly into all phases of administration of the selection and service of jurors in Cook County, including Chicago.

The Prosecutor (Outside of Chicago), in Felony Cases, by WILLIAM D. KNIGHT, State's Attorney of Winnebago County. Mr. Knight discusses the duties of down-state prosecutors and the manner of their performance, based upon personal experience and observation as well as a study of case histories in the various jurisdictions, from the standpoint of prosecution.

The Prosecutor (in Chicago), in Felony Cases, by JOHN J. HEALY of Chicago, former State's Attorney of Cook County. The report contains a thorough analysis of all phases of prosecution in the city of Chicago during 1926 and 1927.

Rural Police Protection, by BRUCE SMITH of the National Institute of Public Administration, New York, an authority on state police organization. The report is based on personal contacts with sheriffs, constables, county police, private protective associations and the State Highway Police.

The Police (in the City of Chicago), by AUGUST VOLLMER, Chief of Police of Berkeley, California.

The Coroner, in Cook County, by Dr. LUDVIG HEKTOEN, the eminent pathologist, chairman of the Medical Division of the National Research

Council. The report is devoted largely to the medical aspects of the coroner's office.

The Municipal Court of Chicago as a Criminal Court, by Professor RAYMOND MOLEY of Columbia University, New York. This report is a thorough analysis of the municipal court in operation as a court of preliminary hearing in felony cases, based upon personal observation and study of a large number of cases handled in that court.

The Probation and Parole System, in five parts: the first, "History of the Probation and Parole System," by former Judge ANDREW A. BRUCE, President of the American Institute of Criminal Law and Criminology and member of the faculty of the Law School of Northwestern University; the second and fifth, "Experience with Paroles, 1917 to 1927" and "The Probation System," by ALBERT J. HARNO, Dean of the College of Law of the University of Illinois; and the third and fourth, "Prison and Parole Methods, as Effective for Rehabilitation of the Convict" and "Factors Determining Success or Failure on Parole," by E. W. BURGESS, Professor of Sociology of the University of Chicago.

Record Systems, by W. C. JAMISON, Assistant Director of Survey. The report contains a detailed analysis of the systems of keeping records pertaining to the administration of criminal justice throughout the state in felony cases, including police departments, courts, and justices of the peace, with recommendations for uniform methods of collecting and reporting criminal complaints and arrests made on such complaints, and the essential facts as to the offender arrested; for recording the facts as to disposition of criminal prosecutions by all the courts and the state's attorneys; and for recording facts pertaining to the treatment of convicts confined in state institutions, and methods for reporting such data; and for a state bureau of criminal identification and statistics.

II. SPECIFIC TYPES OF OFFENSES AND OFFENDERS

This division includes the following reports:

Homicide in Cook County, prepared by ARTHUR V. LASHLY, of St. Louis, Mo., director of the Survey. The report deals with all types of homicide in Cook County for the years 1926 and 1927, classified by grades of criminality, modes of killing, color and sex of victims, motives, and distribution as to localities and by months. The report also includes a discussion of police administration in murder cases with relation to unsolved murders, which are classified as to color and sex and mode of killing, and a comparison is made of unsolved murders and unconvicted murderers to the total of murders as well as to kinds of perpetrators. An analysis of the administration of the coroner's office in cases of felonious homicide is made. All cases of felonious homicide, in connection with which some person was charged with the offense of murder or manslaughter, were tabulated and followed through to final disposition.

The Juvenile Delinquent, prepared by the Local Community Research Committee of the University of Chicago, under the direction of a special committee consisting of JESSIE F. BINFORD, Director of the Juvenile Protective Association, Chairman; Professor EDITH ABBOTT and Professor E. W

BURGESS, of the University of Chicago; HARRISON A. DOBBS, Superintendent of the Juvenile Detention Home; and JOEL D. HUNTER, General Secretary of the United Charities. The report is in two parts: the first was prepared by CLIFFORD SHAW, of the Institute of Juvenile Research, and pertains to the quantity and distribution of delinquency and the personality of the delinquent offenders; the second was prepared by EARL D. MYERS, of the University of Chicago, and deals with the treatment of delinquents in the juvenile courts and in the various institutions in which they are confined. This report also deals with truancy and incorrigibility of school children in Chicago, a study having been made of the records in the Bureau of Compulsory Education and the Chicago Parental School.

The Deranged and Defective Delinquent, by a Committee consisting of Doctors LUDVIG HEKTOEN, above mentioned, HERMAN W. ADLER, State Criminologist, and H. DOUGLAS SINGER, eminent alienist, all of Chicago. The report was written by Dr. Singer and is prefaced by an introduction prepared by JOHN H. WIGMORE, Dean of the Law School of Northwestern University, in which he compares the lawyers' and psychiatrists' theories of crime and punishment. A long-time study was made of records in the criminal courts of Cook County, the Psychiatric Clinic of the Municipal Court of Chicago, the state penitentiaries at Joliet and Chester, the Asylum for the Criminal Insane, and the State Reformatory at Pontiac. The law and procedure in Illinois pertaining to the trial and disposition of insanity cases is discussed in relation to expert testimony and the proceedings for the treatment and commitment of insane criminals. All cases in Cook County from 1923 to 1927 in which verdicts of insanity were rendered are traced through the various stages, and the subsequent history of persons found insane, including those released by writs of habeas corpus, and subsequent mental histories of persons committed to penal institutions during the same period in cases where the issue of insanity was raised at the trial are discussed.

III. ORGANIZED CRIME IN CHICAGO

The third and final division of the survey is devoted exclusively to a discussion of this subject. The report, in twelve sections, was prepared by JOHN LANDESCO, Research Director of the American Institute of Criminal Law and Criminology, under the direction of an Advisory Committee consisting of Judge ANDREW A. BRUCE, President of the Institute, JOHN H. WIGMORE, and E. W. BURGESS, above mentioned. The introductory passages were prepared by Judge Bruce and the summary of findings, conclusions and recommendations by Professor Burgess. The report is a detailed history of organized crime over a period of twenty-five years in the city of Chicago and surrounding communities. It takes up each phase of underworld organization and operation under various heads, such as exploitation of prostitution; the rule of the underworld, dealing with syndicated gambling, beer wars and gang feuds; terrorization by bombs; racketeering; the gangster and the politician; funerals of gangsters; the gangster's apology for his criminal career, and finally, a Who's Who of Organized Crime in Chicago. The recommendations following this report contain suggestions for official and citizen action calculated to break up the alliance between crime and politics in the

city of Chicago, which has existed for so many years and has persisted despite the best efforts of the citizens to prevent it.

3. Some general conclusions which emerge plainly from the Survey may here be briefly emphasized:

Failures of justice are traceable more often to administrative defects than to weaknesses in the laws. The situation in Chicago and Cook County has largely been the result of poor administration. There seems to be no doubt, after making allowance for the maximum of inexperience and incompetence which will always be more or less in evidence in public office, and allowing for every failure of justice due to weaknesses and loopholes in the antiquated laws of criminal procedure, that no serious problem of crime exists in any community of this state, urban or rural, where the police and sheriffs, the prosecutors and the courts are all doing their duty honestly and to the best of their respective abilities. Problems of crime arise when one or more of these officials fails or refuses to do his or their duty. The need for better men and more honest, vigorous, and conscientious administration transcends the need for new legislation. We should, however, not depreciate the need of more modern codes of criminal procedure. Changes in laws made with a view to meeting modern conditions of crime and putting the state upon a more even footing with the defendant in criminal prosecutions will be a great help to honest, vigorous, and conscientious administrators of the law. But when placed in the hands of public officials who are disposed towards laxity of enforcement and leniency towards criminals, they become no more effective than the so-called obsolete criminal codes.

By far the greater number of recommendations growing out of the survey pertain to administration. The recommendations, both administrative and legislative, were made without regard to prospects for immediate adoption. Some of them look far into the future; others appear ripe for present application. Amongst the recommendations are several which, if adopted and properly administered, would insure more promptness and certainty in the apprehension and conviction of guilty felons. Comparison of judicial administration in all parts of Illinois with Milwaukee indicates that the Wisconsin laws permitting the state's attorney to charge in felony cases upon information, and authorizing the waiver of a jury by the defendant in such cases results in great speed in disposing of felony prosecutions. Effective application of the habitual offender laws now in force depends almost wholly upon adequate means for identifying criminals and obtaining their previous records. Prosecutions under these statutes are seldom begun for lack of such information. The survey recommends methods for the accumulation of such material for the benefit of parole and probation officials, police, prosecutors and courts throughout the state.

The police do not catch more than twenty per cent of those who commit felony crimes. The number who escape can only be ascertained by a comparison of the number of crimes actually committed in a given community with the number of prosecutions started in the same classes of cases. This information was not to be had anywhere in the state, except in the City of Chicago, and even there the figures of felony crimes reported to the police

were suppressed so that only seventeen per cent of complaints received in the city's forty police stations during 1927 were entered in the only official public crime record maintained by the department in the office of the secretary of police. The record of suppression of criminal complaints in 1926 was about the same. These facts were ascertained by an investigation of the complaints at each station, and a comparison of the result with the official published records of the department. Taking, for example, the number of robbery and burglary complaints found to have been lodged with the stations during 1926, the period covered by the survey, and comparing them with the number of prosecutions started, it was shown that in Chicago during that year 21,301 robberies and burglaries were actually committed, but during the same period only 4,129 robbery and burglary prosecutions were started, indicating 80.61 per cent of persons committing those offenses were never caught. Of the total number of prosecutions started, 1,177 persons charged with those offenses in 1926 were punished, and that is only 5.52 per cent of those committing these crimes. Comparison of similar records in other large cities where they are available are not greatly at variance with these figures and indicate that the weakest spot in the administration of the machinery of the law is in the detection and apprehension of criminals.

When prosecution fails, the whole judicial process fails. During the period covered by the survey, prosecution in Chicago was at a low state of efficiency. The state's attorney was a political boss and his assistants were appointed mainly on a political basis and without reference to their ability. The assistants having charge of prosecutions of felony cases at the preliminary hearing in the municipal court were particularly incompetent and indifferent. The report states that these officials "usually know nothing about the facts in the cases and are not prepared to and do not render efficient service." To this fact was largely ascribed the failure of fifty-six per cent of all cases to survive the preliminary hearing.

After the municipal election in April, 1927, the mayor, the state's attorney, the coroner, the chief of police, the sheriff of Cook County, and a majority of the judges of the criminal courts were all affiliated with the dominant political faction in the county, thus permitting a degree of cooperation between these various agencies seldom found in any large city. Their cooperation, however, did not result in greater efficiency, but rather in diminished efficiency, the report stating that "prosecution in Chicago and Cook County is generally ineffective and barren of reasonably substantial results." The records indicated that literally thousands of felons were being released outright by the prosecutor or given light punishment upon reduction of felony charges to misdemeanors and a plea of guilty in the criminal court. Some of Chicago's most dangerous criminals were the beneficiaries of this leniency. One did not have to go far beyond the results of the survey on prosecution in Cook County to find the reasons for the general state of lawlessness prevailing in Chicago in that period. The criminal who knew his way about had no fear of prosecution.

Acquittals by juries are relatively unimportant so far as the number of cases disposed of without punishment is concerned. Out of a total of thirteen thousand felony charges filed in Cook County in 1926, only five hundred

were tried by juries and one-half of those resulted in acquittals. Assuming that each acquittal is a failure of justice, which, of course, is not a fact, this would still account for only two per cent of all felony charges filed. Eighteen persons are released through the action or by the influence of the state's attorney to one person released by the jury. The failure of jurors to convict in the face of evidence clearly indicating guilt always attracts attention and adverse public comment, and it is important, therefore, that jury trials be conducted by competent prosecutors and under rules and laws providing for the procedure in such trials which give the defendant a fair trial but no improper advantage. But the fact, nevertheless, stands out that in the whole scheme of the administration of justice, the jury is not nearly so important as is popularly believed.

In the City of Chicago, organized crime presents the worst problem, and of all classes of organized criminals those who are engaged mainly in the manufacture, distribution, and sale of intoxicating liquor constitute the greatest menace. Organized criminals are mercenaries. Our reports show that the gangs of gunmen in Chicago and vicinity are bound together and maintained largely by the profits of bootlegging and gambling. It is under the bootleggers' banner that thousands of minor criminals are constantly being recruited, attracted by the ease with which enormous profits can be made. "They have not abandoned their earlier criminal operations in which they were engaged," says one of the reports, "but continue in these as sidelines. Being immune from prosecutions for their operations in the manufacture and distribution of beer and whiskey, they have been able to obtain protection from the consequences of other crimes like murder, burglary, and robbery because of their new political alliances and stronger financial position." It was the bootlegger, the "hi-jacker" and the rum runner who gave Chicago its reputation as a crime center. One would think that the supply of gunmen would be exhausted when it is remembered that some six hundred of them have perished since prohibition went into effect, but there appears to be a never failing source of recruits. If all the murders committed by gangsters in Cook County were eliminated, the murder rate in this community would be reduced to normal.

The situation is further aggravated by the fact that no one has ever been convicted or punished for a gang murder in Cook County for the period covered by the survey, indicating a complete failure upon the part of detecting and prosecuting agencies. "It is respectfully suggested," says the report on *Homicide,* "that a becoming effort by the police as a murder prevention agency would result in suppressing public gambling and wholesale liquor manufacturing and rum running, which would deprive these gangs of their main sources of revenue, and when that is done, there being nothing left to fight for, little will remain of the gang problem. In order to be profitable both of these enterprises must be conducted in the most flagrant and notorious manner. So conducted, they are as obvious to the police as to anyone else; therefore it should not be difficult to suppress them if there existed the desire to do so."

It is said in the *Organized Crime* report, "There is no blinking the fact that prohibition has introduced the most difficult problems of law enforce-

ment in the field of organized crime. The enormous revenues derived from bootlegging have purchased protection for all forms of criminal activities and have demoralized law enforcing agencies. Questions have been raised as to the practicability of the enforcement of prohibition in metropolitan cities, because of the widespread adverse sentiment. This skepticism only indicates that the enforcement of prohibition is a matter of public opinion. Once the relation between the profits of bootlegging and the activities of organized crime is clearly seen, there should be no insuperable difficulties in the way of some practical form of the control of the situation. A minimum program of prohibition enforcement in the interest of the control of organized crime might be to concentrate enforcement efforts upon the commercialization of bootlegging, especially in the hands of organized gangs. In this way the backbone of organized crime would be broken. Chicago can and should be rid of the mercenary criminal gangs that exist because of political alliances. But this cannot be successfully accomplished without frank recognition of the problem created by prohibition and the intelligence and courage to act upon this knowledge."

4. *Organized Crime.* No better illustration of the interlocking connection between bootlegging and all other forms of commercialized crime can be cited than that presented in the person of Capone, the recognized leader of the bootlegging industry in this community. He is also the boss of the gambling syndicates and of commercialized vice. Lately he has appeared as the dominant factor in the control of gangsters who are engaged in racketeering. The reports of the Survey on this latest phenomenon of organized crime in Chicago must be of great interest because of the spread of "racketeering" to other cities. The *modus operandi* is for the gangster to approach the owner of a service business, mainly those employing drivers, with a proposal to organize a combination of owners of such businesses with a view to increasing prices. The gangster at the same time undertakes to get control of the drivers' organizations. If any person thus approached refuses to come in, his place is bombed or he is otherwise threatened and intimidated until he does come in. When control of the employers and employees has been obtained, the "racketeer" then demands a subsidy in the form of dues, and the reports indicate that enormous sums of money have been taken in this way, reaching in some cases to hundreds of thousands of dollars per year. The public pays the bills in higher prices for the service.

An illustration of the way it works: One man engaged in the dyeing and cleaning business refused to come in. Bombs were placed in the suits that were sent to his establishment and they exploded when they were handled. On one occasion the driver of a truck loaded with suits to be cleaned and pressed was knocked insensible, placed in the back of the truck, covered with clothing, which was then saturated with gasoline and set on fire. He miraculously escaped death. Upon another occasion the driver of one of the wagons was "taken for a ride" and a bullet put in each knee, thereby rendering him a cripple for life. Instances of mayhem of this character could be multiplied. When this man got tired of applying to the police and the state's attorney for protection, he took the chief of the bootlegger gangsters into his company, giving him a large block of stock in the con-

cern and announced that he then had no further need of the Employers' Association or of the police department for he had the "best protection in the world." That happened about eight months ago. It is significant to note that recently the warfare against this man's business has again broken out, notwithstanding the "best protection in the world." His gangster partner is now engaged in a war with another gang and the property of the man who took the gangster in is now being attacked as an incident of this struggle.

The genesis of this new manifestation of organized crime and its connection with the other activities is related in the chapter on "Racketeering." "In 'racketeering' the gunman and the ex-convict have seized control of business associations and have organized mushroom labor unions and have maintained or raised price and wage standards by violence, and have exploited these organizations for personal profit. This entrance of the gangster and gunman into the field of industry in Chicago seems to be due to two factors; first, the agreement to control competition under any conditions is difficult, and particularly when these agreements are in violation of the law. Where a line of action is outlawed, whether the manufacture and the sale of alcoholics or gambling, or trade or price agreements, a situation is created favorable for the entrance of the gangster on invitation or upon his own initiative. Second, the gunman and the gangster with their tactics of intimidation and punishment were available to carry out strong-arm methods free from serious interference by the law enforcing agencies. This survey of 'racketeering' in Chicago discloses the extent and degree of the breakdown of our local governmental machinery. The police, the state's attorney's office, and the courts are now failing to maintain law and order in the fields of labor and business as they have failed to repress the outlawed activities of vice, gambling, bootlegging, and robbery. As a result, the gunmen and gangsters are at present actually in control of the destinies of over ninety necessary economic activities."

No doubt the report on *Organized Crime* will be the center of interest in these Survey reports and will elicit the greatest comment. Judge Bruce's introduction to that report discusses both the dark and the bright sides of Chicago's development and progress. Dr. Burgess' summary of findings and recommendations concluding the report gives a resumé of the report and some valuable comments and recommendations for follow-up action.

The recent election putting into office a new state's attorney, a new coroner, and a new sheriff, and the appointment of a new commissioner of police, will doubtless result in substantial improvement in conditions in Cook County, and have indeed already done so. But there is no telling what the future will bring. They may be unable to stamp out organized crime and break up the politico-criminal alliances, notwithstanding their best combined efforts. One may doubt the wisdom of becoming too enthusiastic about the future.

5. May it, however, be surmised that Chicago is no worse than other cities, if the facts were known? Comparison of the results of statistics on judicial administration in Chicago, New York, St. Louis, and Cleveland do not provide an adequate basis for accurately determining whether the law is being

enforced more effectively in any one of these cities than in the others. The real test, however, will be found in comparisons of control of the forces of organized crime in the large urban centers. None of the Surveys in the other jurisdictions have included any appraisal of the effectiveness of law enforcing agencies to combat the organized crime menace. Only the Illinois Survey has attempted to do that. If, however, one may properly draw upon press reports of conditions existing in the other cities, such as Philadelphia, Detroit, Pittsburgh, Los Angeles, and New York, they all point rather definitely to the existence in those cities of conditions of organized crime, which if fully disclosed, as has now been done in Chicago, would reveal conditions comparable to those existing here.

CHAPTER I

RECORDED FELONIES: AN ANALYSIS AND GENERAL SURVEY

(I) INTRODUCTION

1. Regions Covered by the Survey.

This study presents the results of a statistical analysis of what happened to 16,812 felony cases which entered the courts of twenty counties of Illinois, of the City of Chicago (tabulated apart from Cook County), and of 1,838 felony cases entering the courts of the neighboring city of Milwaukee, Wisconsin, during the year 1926. The original data were collected by enumerators employed by the Association during the summer of 1927, who went into the counties reported upon and secured the facts from the records of the courts. These facts were recorded on a schedule, a copy of which is appended to this report. The data on the schedules were transcribed to punch cards and tabulated by machine.

A glance at the map of the State will indicate that the counties selected represent the several sections of the State, as well as various types of communities, industrial, mining, agricultural, metropolitan. They range in size from Chicago, with 2,701,705 inhabitants, to Stark County, with 9,693, according to the census of 1920. They range in number of cases of felonies reported in this study from 12,543 in Chicago to 15 in Stark County. The inclusion of Milwaukee in this study was made because of its proximity to Chicago and because of the fact that it is frequently referred to as a city in which the courts are very "efficient."

Political subdivisions included in this survey, together with the population according to the U. S. Census of 1920; the number of felony cases reported in this study; and the proportion of the population living in places of 2,500 or more are presented in Table A-2.

These twenty-two political subdivisions have been grouped into eight classes, as follows:

1. Total Illinois
2. Chicago
3. Chicago and Cook County
4. Eight more urban counties
   - St. Clair
   - Macon
   - Sangamon
   - Peoria
   - La Salle
   - Rock Island
   - Kane
   - Winnebago
5. Seven less urban counties
   - Marion
   - Vermilion
   - Adams
   - Knox
   - McLean
   - Kankakee
   - Stephenson
6. Two strictly rural counties
   - Stark
   - Cumberland
7. Williamson-Franklin
8. Milwaukee

TABLE A-2. FELONIES IN RELATION TO POPULATION OF REGIONS SURVEYED

	Population	Number of Felony Cases	Percentage of Population Urban
Chicago	2,701,705	12,543	100.0
Cook County	351,312	574	97.1[1]
St. Clair County	136,520	654	67.1
Peoria County	111,710	514	71.6
Sangamon County	100,262	222	61.7
Kane County	97,499	297	75.3
LaSalle County	92,925	144	63.5
Rock Island County	92,297	181	83.6
Winnebago County	90,929	113	72.2
Vermilion County	86,162	336	54.0
McLean County	70,107	117	48.3
Macon County	65,175	168	67.2
Adams County	62,188	112	57.9
Williamson County	61,092	228	50.9
Franklin County	57,293	237	45.0
Knox County	46,727	89	56.8
Kankakee County	44,940	88	37.2
Stephenson County	37,743	82	52.1
Marion County	37,497	80	40.4
Cumberland County	12,858	18	00.0
Stark County	9,693	15	00.0
Milwaukee, Wis	457,147	1,838	100.0

The "more urban counties" showed in 1920 a population ranging from sixty to approximately eight-five per cent "urban"; i. e., living in incorporated places of 2,500 or more. The "less urban counties" ranged in this respect from about thirty-five to fifty-nine per cent. Stark and Cumberland were without any "urban" population, and hence are grouped as two purely rural counties. Williamson and Franklin Counties have attracted much attention in recent years because of certain conditions of lawlessness amounting almost to civil warfare. Chicago and Cook County are grouped because a large part of Cook County is a part of the urban community of which Chicago is the economic nucleus. Chicago is considered separate from Cook County only because of the fact that preliminary hearings are held, in Chicago, in the municipal court, and in the rest of the county in the justice of the peace courts. The trial court is the same for the whole county.

2. *Explanation of Statistical Method Used.*

The basic pattern of this survey is that of the "Disposition Table." This is a device borrowed from the "Mortality Table" of the life insurance actuary; a part of such a mortality table is here given:[2]

AMERICAN EXPERIENCE MORTALITY TABLE[3]

Age	Number Living	Number Dying
10	100,000	749
11	99,251	746
12	98,505	743
88	2,146	744
95	3	3

[1] This percentage is for all of Cook County, including Chicago; the figures for population and number of felonies are exclusive of Chicago.

[2] The legal reader may think of a mortality table in terms of the probable after lifetime of a person at any age, in connection with the problem of determining money rights for an indefinite future period. The probable after lifetime is calculated from the basic data of the table, excerpts from which are cited here. See Whipple, Vital Statistics. Second Edition, New York, 1923, Ch. XV.

[3] Ibid, p. 483.

Similarly in this study we begin with the total number of cases entering the lower court on charges of felony. This number is the equivalent of the 100,000 entering at the base year of age ten in the table just reproduced in part. In the preliminary hearing a certain number of cases are "eliminated." *By this term is meant merely that they cease to progress beyond that point as felony cases.* A few of these result in punishment, after the felony charges have been reduced to accusations of misdemeanors; a few are certified to other courts; and are lost to our reckoning. The remainder of the eliminated may be said to have "died," to carry out the analogy of the actuary's table. Subtracting the Eliminated in the Preliminary Hearing from the total entering that stage, we have left those that go on to the grand jury. Here again elimination takes place; and the remainder go on to the trial court. The eliminations in this stage of procedure subtracted, we have left those whose guilt is established, either by plea or by action of judge or jury. Probation and other modification and appeals still further add to eliminations, and after these are subtracted we have left the cases in which sentence is executed.

It must be clearly understood that "elimination" is not equivalent to escape from merited punishment. For by no stretch of the imagination is it possible to assume that all the cases entering the preliminary hearing are those of guilty persons. The aim of this study is to show exactly what happens to cases in the courts; to learn at what points eliminations are most frequent, and how the several political subdivisions differ from each other in these respects. No attempt is made in this statistical part of the survey to evaluate the efficiency of the courts or even to suggest wherein such efficiency might be found to exist. That is a matter of interpretation. What this chapter aims to do is to present the facts of a statistical nature, leaving the interpretations to other collaborators.

The word "case" as used in this study may be defined as a legal action begun by arrest and continued through (or stopped in) the several procedural stages of preliminary hearing, grand jury, and trial court; this action prosecutes a charge (which may include several secondary charges, as where a crime has several elements or degrees) which involves the commission of a specific act. Thus a defendant might be, for a single robbery, charged with robbery, assault, and larceny. This would be one case. If he committed and was charged with three robberies, these would lead to three cases. In case of a joint trial of two or more defendants for the same act, the number of cases would equal the number of defendants. This is in a sense inconsistent with the previous definition, but it is basically sound in that two or more arrests are made, and two or more persons are found guilty or not guilty; and the outcome need not be the same for all.

The statistical methods employed in this study consist mainly of simple tabulations, reduced to percentages for purposes of comparison. A few slightly more complicated methods will be introduced occasionally.[1]

[1] A word of caution is to be introduced at this point. Common sense, as well as mathematical theory, forbids us to accept as equally reliable the statistical conclusions from a sample of ten cases and from a sample of two hundred cases. If we take out of a regiment of 2,500 men two samples of ten and two hundred, respectively, we know from experience that we can estimate the average size of all the men in the regiment

(II) The General Disposition Table

3. Explanation of the Table. The General Disposition Table with its subdivisions is designated Table A. Since this table is too bulky for discussion, it has been condensed and also divided into several tables. Table A-2 shows the total number of recorded felonies by regions and populations. Table A-3 is a summary of the principal classifications of the whole Table A. The total number of all cases in each political subdivision is the base of Table A-2 and Table A-3. Tables A-4, A-5, A-6, A-7 are made up in the following manners: A-4 has as a base the total number of cases entering the preliminary hearings; A-5, the total number entering the grand jury; A-6, the total number entering the trial court; and A-7, the total number convicted or pleading guilty in the trial court. By this arrangement we are able to see clearly just what each stage of procedure accomplishes, on the basis of the number of cases entering that stage.

We shall first consider Table A-3.[1] Table A-3 is a condensation of Tables A-4 to A-8, omitting the details of the manner in which eliminations took place.

4. Percentage of All Cases Resulting in Execution of Sentence. This is the figure at the foot of the column (Table A-3). Though last to appear, it is in a sense the most important single figure in all our statistics. The reader will be struck first by the uniformity of the figures in this position. The first four columns show percentages ranging from 15.00 to 15.92, and the sixth column 14.62. Of course, certain of these uniformities are formal rather than significant. Chicago furnishes approximately seventy-five per cent of the total cases studied. It furnishes 95.6 per cent of all the cases in Cook County (as a whole). So naturally—here as elsewhere—the similarity between Chicago and Illinois as a whole, and between Chicago and Cook County as a whole, is not to be regarded as of importance.

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much more reliably from the large sample than from the small. By "reliability" we mean simply this: If we picked out a second sample of ten and a second sample of 200, the averages of the samples of ten might be very different from each other, thus giving us different ideas of the average size of the men in the regiment; whereas, the average size estimated from the samples of two hundred would probably be very close together. What has been said of averages is also true of percentages. The larger the size of the sample which is taken as one hundred per cent, the more likely are we to find little change in percentages of parts of the sample, when another sample is used. The application of these principles is obvious; not to put too much reliance on the results of calculations of averages, percentages, etc., when the number of cases is small.

In all of the tables, percentages are given to the second place of decimals. This degree of accuracy is not necessary for the actual measurement. It does, however, make it possible to reconstruct the tables of actual numbers by multiplying the base of the percentages by the percentage; in this way it is possible to get any number on the original table of actual numbers. For example. there are 16,812 cases in Illinois; 0.07 per cent are eliminated without punishment after they have been declared guilty. This amounts to 11.7684, or 12 cases, which is the number originally found in the tables.

[1] In one sense Table A-3 does not quite follow the procedure of the actuaries' "Mortality Table"; for in the City of Chicago not 12,543 cases enter the preliminary hearing, but 10,829. The difference between these two numbers is 1,714, the number of cases coming directly into the grand jury by way of "original" indictments, originating in the grand jury rather than in the preliminary hearing (see second row of Table A-4). The number of cases eliminated in the preliminary hearing is therefore given here as a percentage of *all* the cases, but not as a percentage of the cases actually entering this stage. But beginning with the grand jury the table may be said properly to be like a mortality table in the strictest sense of the term.

TABLE A-3

SUMMARIZED DISPOSITION TABLE

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL NUMBER OF CASES	16,812	100.00	12,543	100.00	13,117	100.00	2,293	100.00	904	100.00	33	100.00	465	100.00	1,838	100.00
ELIMINATED IN PRELIMINARY HEARING	7,340	43.66	6,124	48.83	6,361	48.49	667	29.09	254	28.10	8	24.24	50	10.75	319	17.36
Entering grand jury	9,472	56.34	6,419	51.17	6,756	51.51	1,626	70.91	650	71.90	25	75.76	415	89.25	1,519	82.64
ELIMINATED IN GRAND JURY	2,034	12.10	1,437	11.45	1,503	11.46	359	15.66	113	12.50	5	15.15	54	11.61		
Entering trial court	7,438	44.24	4,982	39.72	5,253	40.05	1,267	55.25	537	59.40	20	60.61	361	77.63	1,519	82.64
ELIMINATED IN TRIAL COURT	3,977	23.66	2,533	20.19	2,671	20.36	718	31.31	294	32.52	8	24.24	286	61.51	350	19.04
Guilty	3,461	20.59	2,449	19.53	2,582	19.68	549	23.94	243	26.88	12	36.36	75	16.13	1,169	63.60
PROBATION	782	4.65	510	4.07	554	4.22	176	7.67	49	5.42	1	3.03	2	.43	①501	①27.26
NEW TRIALS OR APPEALS	70	.42	47	.37	51	.39	6	.26	8	.89			5	1.08	7	.38
OTHER ELIMINATIONS AFTER GUILTY	12	.07	7	.06	9	.07	2	.09	1	.11						
Sentence executed, unchanged	2,583	15.37	1,871	14.92	1,954	14.90	365	15.92	185	20.46	11	33.33	68	14.62	661	35.96
Sentence executed, modified	14	.08	14	.11	14	.10										
TOTAL SENTENCES EXECUTED	2,597	15.45	1,885	15.03	1,968	15.00	365	15.92	185	20.46	11	33.33	68	14.62	661	35.96

①Includes 21 cases "Suspended Sentences."

The uniformity extends through the column of the eight more urban counties. The less urban and the strictly rural counties show a considerably larger proportion. Nevertheless, the slight number of cases—33—in the latter group warns us against drawing too much of a conclusion as to the meaning of the final figure for the other rural counties of the State, which are not included in our survey. Williamson and Franklin Counties fall below even the average of the State.

The question arises also as to whether some cases may not have been punished as misdemeanors in the preliminary hearing. For Illinois as a whole the number is seventeen, almost exactly one-tenth of one per cent (See Table A-4). We may therefore dismiss this as a negligible addition to the percentage of the executed sentences.

The position at which the percentage of executed sentences falls for Chicago, Cook County, Williamson and Franklin Counties, and the State is strikingly close to that of New York City; namely, 15.42.[1] It contrasts rather violently with that of Milwaukee—35.96.

5. *Eliminations in the Preliminary Hearing.* Here we have three distinct groupings: Chicago-Cook County in the first; the eight more urban, the seven less urban, and the rural counties in the second; and in the third, Williamson-Franklin; at, respectively, 48 to 49 per cent, 24 to 29 per cent, and at 11 per cent. This is in harmony with results in Missouri,[2] in that it shows a greater unwillingness outside of the large cities to eliminate cases in this stage of procedure. It is a startling fact that nearly 50 per cent of all cases and 57.47 per cent of all eliminations should fall into this class in Chicago. It indicates again the vast importance of the preliminary hearing in the conduct of felony cases in our large cities. Popular attention is nearly always centered on the trial court, though nearly 60 per cent of eliminations take place at the first stage. Contrast the small percentage (17.36) in Milwaukee.

6. *The Grand Jury Eliminations.* Here we have a very great degree of uniformity among the individual groups of jurisdiction: Chicago 11.45, more urban counties 15.66, less urban 12.50, rural 15.15, and Williamson-Franklin 11.61. The Grand Jury evidently still functions as a sifting machine of approximately equal importance throughout the various types of communities. It has by no means lost its importance, as in Missouri, and ranks with the grand jury in New York city.[3] Milwaukee shows no eliminations at this point, because of the use of the information instead of the indictment as the form of accusation.

7. *Trial Court Eliminations.* Obviously the trial court can act only on such cases as survive to that stage. It should therefore be noted that the Chicago and Cook County trial courts start out with approximately only 40 per cent of all cases; the more and less urban and rural counties with about 55 and 60 per cent; and Williamson-Franklin

[1] Report of the Crime Commission of New York State; Report of the Subcommission on Statistics, pp. 95 to 174. Legislative Document No. 94, 1927. The reference here cited is on page 111.

[2] Missouri Crime Survey, N. Y. 1926, page 275.

[3] Op. cit., p. 111.

with 78 per cent. Milwaukee having lost none in the grand jury and only 17 per cent in the preliminary hearing, naturally stands at the top. The eliminations for Chicago and Cook County are not high, slightly over 20 per cent; for the two rural counties slightly higher, 24 per cent; and for the more and the less urban counties at about 32 per cent. Williamson-Franklin, on the other hand, eliminate 61.5 per cent of all cases in this stage—over three-fifths. Milwaukee, despite a large group entering the trial court, eliminates only 19 per cent. The third aspect of this stage of procedure is found in the number of cases that are guilty. This includes, of course, all cases in which guilt is established, either by plea or by conviction. Chicago and Cook County have 20 per cent; the more and the less urban counties, 24 and 27 per cent; the rural, 36 per cent; and Williamson-Franklin only 16 per cent. Milwaukee, on the other hand, has a very high percentage, almost 64 per cent.

8. Probation Eliminations. In Illinois the use of probation seems to assume only modest proportions, though the range is considerable; from 0.43 per cent in Williamson-Franklin to 7.67 per cent in the more urban counties. Contrast these low percentages with Milwaukee's figure for probation, 27.26; over a quarter of all persons held for felonies, and, roughly, two-fifths of all the cases where guilt was established. Chicago-Cook County, with 4.22 per cent, occupies an intermediate position in the scale of Illinois groups.

9. New Trials and Appeals Eliminations. It is understood, of course, that this item may not represent the final disposition of cases.[1] Some of the cases retried or sent up to higher courts may result in punishment; but of all the cases in one year these were not disposed of at the time of securing the data, so they are counted as "eliminated" within the technical meaning of that term. Whatever the significance of this group in a qualitative respect, they are quantitatively negligbile, with only 0.37 per cent for Chicago, and the maximum 1.08 per cent in Williamson-Franklin. The smallest percentage, 0.26, is found in the more urban counties. The figure for Milwaukee is almost identical with that for Chicago.

10. Other Eliminations. Miscellaneous eliminations after guilt is established are numerically unimportant and will be considered later in the discussion of Table A-8. There also will be treated the modifications of sentence indicated in Table A-3.

(III) The Preliminary Hearing Eliminations in Detail

11. Explanation of Table A-4. Table A-4 sets forth what happens to cases in the preliminary hearing. The base of the percentages is in each jurisdiction the total number of cases less the number of original indictments; in other words, the number of cases that actually passed through the preliminary hearing stage of procedure.

[1] The ultimate disposition of some of these cases, together with other forms of elimination after guilt is established, is to be found in Tables A-81 and A-82.

TABLE A-4
CASES DISPOSED OF IN PRELIMINARY HEARING
(Base of Percentages=Total number of cases entering preliminary hearing.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL NUMBER OF CASES	16,812		12,543		13,117		2,293		904		33		465		1,838	
Original indictments	2,889		1,714		1,866		447		260		7		309			
TOTAL CASES ENTERING PRELIMINARY HEARING	13,923	100.00	10,829	100.00	11,251	100.00	1,846	100.00	644	100.00	26	100.00	156	100.00	1,838	100.00
1. Never apprehended	465	3.34	391	3.61	394	3.50	1	.05	67	10.40	3	11.54			16	.87
2. Error, no complaint	116	.83	116	1.07	116	1.03										
3. Complaint denied	35	.25	35	.32	35	.31										
4. Bond forfeited, not apprehended	73	.52	68	.63	68	.60	4	.22	1	.15					6	.33
5. Certified to other courts	116	.83	50	.46	72	.64	41	2.22	2	.31			1	.64	1	.05
6. Dismissed, want of prosecution	2,903	20.85	2,501	23.10	2,558	22.74	269	14.59	51	7.92	5	19.23	20	12.82	25	1.36
7. Nolle prosequi	882	6.33	766	7.08	801	7.12	58	3.14	17	2.64			6	3.85	32	1.74
8. Discharged	2,609	18.74	2,117	19.55	2,235	19.87	271	14.68	90	13.98			13	8.33	235	12.79
9. Reduced to misdemeanor, not punished	23	.18	12	.11	12	.11	11	.59								
10. Reduced to misdemeanor, punished	17	.12	3	.03	5	.04	7	.38	5	.78						
11. No order	25	.18	22	.20	22	.20	1	.05	2	.31						
12. Pending	8	.06	7	.06	7	.06	1	.05							4	.22
13. No record	68	.49	36	.33	36	.32	3	.16	19	2.95			10	6.41		
TOTAL ELIMINATED	7,340	52.72	6,124	56.55	6,361	56.54	667	36.13	254	39.44	8	30.77	50	32.05	319	17.36
Total going on	6,583	47.28	4,705	43.45	4,890	43.46	1,179	63.87	390	60.56	18	69.23	106	67.95	1,519	82.64
Original indictments	2,889		1,714		1,866		447		260		7		309			
Total cases entering grand jury	9,472		6,419		6,756		1,626		650		25		415		1,519	

The order in which the various dispositions are arranged follows roughly the order which these dispositions follow relative to the actual hearing. The first four, for example, call for practically no action by the court. The others are connected with the hearing in one way or another. The order of our discussion, however, will be based on the proportional importance of the several dispositions.

"Total eliminated" represents the net activity of the lower court process. Nearly 60 per cent of the Chicago-Cook County cases are eliminated, whereas, roughly, one-third are so disposed of in the other jurisdictions. This contrasts sharply with the 17 per cent in the Milwaukee hearings.

12. Summary of Chief Modes of Elimination. In the summary Table A-41 immediately following we can see how important four of these dispositions are in relation to all the dispositions of this stage of procedure.

TABLE A-41. RELATIVE IMPORTANCE OF ELIMINATIONS IN PRELIMINARY HEARING

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
1. Never apprehended.....	3.34	3.61	3.50	.05	10.40	11.54		.87
2. Dismissed, want of prosecution	20.85	23.10	22.74	14.59	7.92	19.23	12.82	1.36
3. Nolled	6.33	7.08	7.12	3.14	2.64		3.85	1.74
4. Discharged	18.74	19.55	19.87	14.68	13.98		8.33	12.79
5. Total of these four groups	49.26	53.34	53.23	32.46	34.94	30.77	25.00	16.76
6. Total eliminations in preliminary hearing.....	52.72	56.55	56.54	36.13	39.44	30.77	32.05	17.36
Percentage, item 5 ÷ item 6	93.4	94.3	94.1	89.8	88.6	100.0	78.0	96.5

From 78 to 100 per cent of all eliminations fall within these four groups. Five jurisdictions show over 93 per cent and one is almost 90. Whether the smaller proportions outside of Cook County (with the exception of the two rural counties, which have only 26 cases entering this stage) are significantly smaller than those within Cook County and Chicago is difficult to say. But they are obviously lower.

(1) When each row is regarded separately we note some wide deviations. Within row 1, *never apprehended,* the deviation is from zero to 11.54. It is impossible to conclude that increasing ruralness makes always for a greater frequency of this disposition, for the percentage in the eight more urban counties is almost zero. The question should also be raised here as to the responsibility of the court or prosecutor relative to such a class as this. That such cases are eliminated is clear, but it seems more like a result of poor police work than of any shortcomings of the court.

(2) With respect to *dismissal for want of prosecution,* it is obvious that here we have a very important type of disposition; more important in Chicago and Cook County than elsewhere, however. What this means is not clear. That prosecuting witnesses are more likely to be frightened away in

the metropolitan area than in the less urban regions may be the explanation, although here we have 19.23 per cent in the rural counties to explain, a percentage almost as high as that of Chicago; but again the small number of cases in these two counties must condition our guess.

(3) The case of the *nolle prosequi* is more obvious. Here the metropolis presents a frequency of practice obviously different from that of the other sections; this may simply represent the idiosyncrasy of a single office, —that of prosecutor of Cook County (which covers Chicago as well as the rest of Cook County). The nolle represents the almost uncontrolled power of the prosecutor and its relative frequency is roughly twice as great in Cook County as in the remainder of the State, and four times as great as in Milwaukee.

(4) The percentage of cases *discharged* is in Chicago and Cook County, as well as in the eight more urban counties, approximately equal to the percentage of cases "dismissed for want of prosecution." However, in the less urban counties it is nearly twice that figure; in Williamson-Franklin about two-thirds; and in Milwaukee it is the only important type of elimination, both nolles and dismissals being very low.

(5) Reference was made in Section 4 to the presence in Table A-4 of a small group *reduced to misdemeanor, punished; and eliminated cases.* In one sense these do not belong here, as they were punished. In another sense, however, they are eliminated; for they "cease to progress as felony cases" (see Section 2). The smallness of the group (17 cases for the whole State) makes it unimportant to add them to the totals of the "punished."

(6) Another small group is that of cases *reduced to a misdemeanor, not punished.* This group should, perhaps, be added to the "discharged." Two groups *certified to other courts* and *pending* are also doubtful as eliminations in the final analysis. But because of the difficulty and in many cases the impossibility of following cases to other courts, these must be included in eliminated. "Pending" cases were pending at the time the data were secured from the record. This is probably an indication of at least a very slow movement through the courts, for not less than five or six months had elapsed between their appearance in court and the notation on the schedules of this survey of the fact that they were pending.

(7) Certain other small groups: *error, no complaint, complaint denied, no order, no record* fall under the heading of mistakes made by someone. The first two indicate that the court thought differently from policeman or complainant as to the validity of the charge. The last two indicate failures of the court to record or to act. *Bond forfeited, not apprehended* is an indication of one of the conspicuous weaknesses of our system of apprehending and trying persons accused of crime.

Interesting as are these small, individual groups, it still remains true that they are relatively unimportant, in all jurisdictions of Illinois here studied as well as in the City of Milwaukee.

TABLE A-5

CASES DISPOSED OF IN GRAND JURY

(Base of Percentages=Total number of cases entering grand jury.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL ENTERING GRAND JURY	9,472	100.00	6,419	100.00	6,756	100.00	1,626	100.00	650	100.00	25	100.00	415	100.00		
1. Never presented	109	1.15					106	6.52	2	.31			1	.24		
2. No billed	1,628	17.19	1,344	20.93	1,388	20.54	177	10.89	61	9.38	2	8.00				
3. Indicted for misdemeanor	79	.83	37	.57	39	.58	29	1.78	11	1.69						
4. Pending	5	.05	1	.02	1	.02	4	.25								
5. No record	213	2.25	55	.86	75	1.11	43	2.64	39	6.00	3	12.00	53	12.77		
TOTAL ELIMINATED	2,034	21.47	1,437	22.38	1,503	22.25	359	22.08	113	17.38	5	20.00	54	13.01		
Total cases entering trial court	7,438	78.53	4,982	77.62	5,253	77.75	1,267	77.92	537	82.62	20	80.00	361	86.99	1,519	100.00

(IV) The Grand Jury Eliminations in Detail

13. *Explanation of Table A-5.* In Table A-5 we have a total elimination which runs for the several jurisdictions (save Williamson-Franklin) at about 20 per cent, with a total for the State of 21.47 per cent. Except in the two rural counties the group of cases "no billed" is proportionately the largest of the elimination classes, and in these two counties the total number of cases is only 25. There is, however, a notable difference in the importance of this group as between Chicago and Cook County on the one hand, and the fifteen counties more and less rural. In the former, "no bills" constitute about 92 per cent of all eliminations; in the eight more urban, 49 per cent; in the seven less urban, 54 per cent; and in the rural, 40 per cent. Williamson-Franklin show none at all.[1]

Another outstanding type of elimination is the one labeled "no record"; this is 35 per cent in the seven less urban, 60 per cent in the rural, and 98 per cent in Williamson-Franklin, of all eliminations. One other significant percentage is that for "never presented" in the eight more urban counties—6.52 per cent. These two classes, "never presented" and "no record," are indicative of some weakness or other in the handling of cases or in the recording of them. Milwaukee uses informations; hence no eliminations in the grand jury and no original indictments.

An interesting variant—small in proportion to the others—is the group "indicted for misdemeanor," which we have arbitrarily included in eliminations. "Pending" cases are quite negligible.

(V) Trial Court Eliminations in Detail

14. *Explanation of Table A-6.* In the earlier stages of procedure we have in general several types of "elimination" and only one type of "going on." Here in the trial court eliminations are of many kinds, but in addition the cases not eliminated may display a variety of modes of treatment, as is indicated in that part of the Table A-6, which is under the general heading "Found Guilty."

Taking up the eliminations in the order of their appearance in the stub of Table A-6, we note first the "never apprehended" and "bond forfeited, not apprehended." For the state as a whole these two constitute 2.41 per cent of all cases entering the trial court, and varying percentages for the several jurisdictions. "Certified to other courts" and "defendant dead" are both numerically unimportant, amounting to only one half of one per cent.

15. *Cases Nolled and Stricken.* In the four items which follow we have a much more important group of dispositions. Certain facts can be brought out more clearly by a brief summarization of these items into two groups, those in which other indictments were not used to explain the nolle or the "striking" and those in which it was presented as the reason. The most interesting facts about these four classes are, first, that they constitute roughly one-fourth of all cases entering the

[1] Of the 415 cases entering the grand jury, 309 were original indictments; and it is not customary there to make a record of "no bills."

TABLE A-6
CASES DISPOSED OF IN TRIAL COURT
(Base of Percentages=Total number of cases entering trial court.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL ENTERING TRIAL COURT	7,438	100.00	4,982	100.00	5,253	100.00	1,267	100.00	537	100.00	20	100.00	361	100.00	1,519	100.00
1. Never apprehended	87	1.17	41	.82	45	.86	31	2.45	5	.93			6	1.66	12	.79
2. Bond forfeited, not apprehended	92	1.24	72	1.45	79	1.50	8	.63	3	.56			2	.55	6	.40
3. Certified to other courts	18	.24	13	.26	15	.29	1	.08	2	.37						
4. Defendant dead	19	.26	9	.18	12	.23	3	.24					4	1.11	2	.13
5. Nolle prosequi	478	6.42	282	5.66	293	5.58	103	8.13	45	8.38			37	10.25	48	3.16
6. Nolle, acct. other indictments	115	1.55	8	.16	8	.15	69	5.45	13	2.42			25	6.93	36	2.37
7. Stricken, with leave to reinstate	511	6.87	374	7.51	392	7.46	63	4.97	35	6.52			21	5.82		
8. Stricken, account other indictments	871	11.70	690	13.85	729	13.88	105	8.29	24	4.47			13	3.60		
9. Dismissed, want of prosecution	218	2.92	206	4.12	216	4.11							2	.55	2	.13
10. Discharged by court	43	.58	28	.56	28	.53	3	.24	11	2.05			1	.28	170	11.19
11. Off call	43	.58	41	.82	43	.82										
12. Felony waived, tried by court, acquitted	293	3.94	271	5.45	293	5.58										
13. Felony waived, plead guilty, acquitted	4	.05	4	.08	4	.08										
14. Acquitted by jury	372	5.00	270	5.42	283	5.39	46	3.62	29	5.40			14	3.88	37	2.43
15. Mistrial	20	.27	6	.12	6	.11	2	.16	7	1.30			5	1.38	1	.07
16. Pending	793	10.67	218	4.38	225	4.28	284	22.41	120	22.35	8	40.00	156	43.21	1	.07
17. No record																
18. Tried by court, acquitted (Milw.)															35	2.30
TOTAL ELIMINATED	3,977	53.46	2,533	50.84	2,671	50.85	718	56.67	294	54.75	8	40.00	286	79.22	350	23.04
Found guilty																
19. Felony waived, convicted	281	3.78	266	5.33	281	5.35									4	.26
20. Tried by court, convicted off. chgd. (Milw.)															381	25.08
21. Felony waived, plead guilty, convicted	883	11.89	836	16.80	883	16.81										
22. Adjudged insane	12	.16	5	.10	6	.11	4	.32	2	.37					18	1.19
23. Plea accepted, guilty off. chgd.	949	12.75	419	8.41	453	8.62	315	24.86	136	25.32	9	45.00	36	9.98	689	45.35
24. Plea accepted, guilty lesser off.	980	13.17	723	14.51	750	14.28	157	12.39	62	11.55	1	5.00	10	2.77	16	1.05
25. Convicted off. charged by jury	299	4.02	175	3.51	184	3.50	65	5.13	31	5.77	2	10.00	17	4.71	47	3.09
26. Convicted lesser off. by jury	57	.77	25	.50	25	.48	8	.63	12	2.23			12	3.32	2	.13
27. Tried by court, convicted lesser off. (Milw.)															12	.79
TOTAL FOUND GUILTY	3,461	46.54	2,449	49.16	2,582	49.15	549	43.33	243	45.24	12	60.00	75	20.78	1,169	76.94

trial court; and second, their aggregate is uniform, outside of the seven less urban counties and the rural counties.

TABLE A-61. SUMMARY OF CASES NOLLED AND STRICKEN

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
5. Nolled	6.42	5.66	5.58	8.13	8.38		10.25	3.16
7. Stricken with leave to reinstate	6.87	7.51	7.46	4.97	6.52		5.82	
Total, items 5 and 7	13.29	13.17	13.04	13.10	14.90		16.07	3.16
6. Nolled, account other indictment	1.55	.16	.15	5.45	2.42		6.93	2.37
8. Stricken, account other indictment	11.70	13.85	13.88	8.29	4.47		3.60	
Total, items 6 and 8	13.25	14.01	14.03	13.74	6.89		10.53	2.37
Total, items 5, 6, 7 and 8	26.54	27.18	27.07	26.84	21.79		26.60	5.53

The two rural counties show no use of the "nolle" or the "stricken," and the seven less urban counties a somewhat lesser use than the rest of the state. Since these forms of disposition represent largely the autocratic power of the prosecutor over the case, they must be considered as throwing light on the degree to which this power is used. The unalloyed exercise of this power is more clearly shown in 5 and 7, and the use of the power as a result of other conditions in the form of other indictments is shown in 6 and 8.[1]

16. Relative Importance of Nolled and Stricken.

How important this group of dispositions is can be clearly shown by these facts:

TABLE A-62. RELATIVE IMPORTANCE OF "NOLLE" AND "STRICKEN"

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
(a) Nolle and stricken	26.54	27.18	27.07	26.84	21.79		26.60	5.53
(b) All eliminations in trial court	53.46	50.84	50.85	56.67	54.75	40.00	79.22	23.04
(a) divided by (b)	.50	.53	.53	.46	.40		.34	.24

[1] The question is sometimes raised as to whether figures based on cases such as the ones here used really show what is happening to the individual defendants. Do they represent approximately the proportions of dispositions which we should find if we took the *defendant,* not the *case,* as the unit of investigation? To answer this question a list of all *defendants* disposed of in Chicago during the period covered by this study was made, giving the disposition in each case. When these are totaled for the ultimate dispositions and compared with our tables based on *cases,* we get the following significant figures:

	Defendants		Cases	
	Number	Per Cent	Number	Per Cent
Total	8,969	100.00	12,543	100.00
Eliminated	7,051	78.62	10,094	80.47
Guilty	1,918	21.38	2,449	19.53
Probation	477	5.32	510	4.07
Appealed and new trials granted	43	.48	47	.37
Sentences vacated	6	.06	7	.06
Sentence executed	1,392	15.52	1,885	15.03

The differences between the percentages are seen to be comparatively small. The elimination of cases by nolle or striking, in the cases where there are other charges, are seen then to be consistent with justice equal to person and to cases.

Almost exactly one-half of the eliminations in the trial courts of the state are of this general class. Chicago and Cook County are at the top, with 53 per cent so disposed of. Then, by equal steps, we come down to 46 for the eight more urban, to 40 for the seven less urban, to 34 per cent for Williamson-Franklin, and finally to zero for the two rural counties. Milwaukee shows less than one-fourth of the trial court eliminations in this general class, which does not there include the disposition "stricken with leave to reinstate."

17. Relative Importance of Eliminations by Prosecutor.

If now we add to these eliminations another, "dismissed for want of prosecution," on the ground that if any official of the court is responsible for them it is the prosecutor, we get the following summary:

TABLE A-63. RELATIVE IMPORTANCE OF ELIMINATIONS BY PROSECUTOR

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Nolled and stricken.....	26.54	27.18	27.07	26.84	21.79		26.60	5.53
Dismissed, want of prosecution	2.92	4.12	4.11				.55	.13
(a) Total	29.46	31.30	31.18	26.84	21.79		27.15	5.66
(b) All eliminations in trial court	53.46	50.84	50.85	56.67	54.75	40.00	79.22	23.04
(a) divided by (b).....	.55	.62	.61	.46	.40		.34	.25

This increases in a notable manner the evidence for the responsibility of the prosecutor in Chicago and Cook County.

18. Eliminations by the Judge.

The next group, numbered from 10 to 13 inclusive, consists of actions by the judge rather than the prosecutor. Only one of them is numerically important, "felony waived, tried by court, acquitted," except in Milwaukee, where "discharged by the court" constitutes the largest single item of all eliminations; and to this item should be added No. 18, a disposition peculiar to Milwaukee, "tried by court, acquitted." Obviously this should be grouped with the other "court" dispositions.

TABLE A-64. ELIMINATIONS BY THE JUDGE

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
(a) Total elimination by judge	5.15	6.91	7.01	.24	2.05		.28	13.49
(b) Total eliminated in trial court.....	53.46	50.84	50.85	56.67	54.75	40.00	79.22	23.04
(a) divided by (b).....	.10	.14	.14	.004	.037		.004	.59

The high figure for Chicago and Cook County is due to the not infrequent procedure here (unused in other parts of the State), by which the felony is

waived and the case tried by the court. Milwaukee's high percentage is due to waivers of jury trial with consequent trial by judge.

19. Eliminations by the Jury. Two types of elimination are chargeable to the petit jury—acquittals and mistrials. Of course, a mistrial may be followed by a second trial in which conviction is secured, but it counts for our purposes as an elimination.

TABLE A-65. ELIMINATIONS BY THE JURY

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
(a) Total eliminated by petit jury.....	5.27	5.54	5.50	3.78	6.70		5.26	2.50
(b) Total eliminated in trial court.....	53.46	50.84	50.85	56.67	54.75	40.00	79.22	23.04
(a) divided by (b).....	.10	.11	.11	.07	.12		.07	.11

The first point of importance in this summary table is the small proportion of all cases entering the trial court which are eliminated by the jury. The second follows from the fact that roughly only one-tenth of *all eliminations* are chargeable to the jury. This has some bearing on the question of the importance of poor juries. Defective an institution as the jury may be, it functions so seldom as an eliminating agency that it seems scarcely worth while to consider remedies for the evils supposed to be associated with it. It is worth noting that in spite of a general divergence between Milwaukee and Illinois in most of the facts noted so far, we find here a very close similarity between Cook County and the Wisconsin city.

20. Cases Pending. The last item of importance among eliminations in Table A-6 is the group of cases which are pending. Here we have four distinct classes: Milwaukee, with a very small fraction (one case, in fact); the two rural counties and Williamson-Franklin, at about 40 per cent; the more and the less urban counties, at about 22 per cent (almost identical); and Chicago-Cook County with slightly over 4 per cent. These figures probably reflect the much more dilatory movement of criminal prosecutions in the country compared with the city, due probably to the short terms of court in the country, as contrasted with the continuous court sessions of Cook County.

(VI) FOUND GUILTY

21. Explanation of Table A-7. "Found Guilty" is a general classification, which includes all kinds of procedures leading to this result. In the second half of Table A-6, we showed these cases with percentages calculated on the base of all cases entering the trial court. In Table A-7 we show these same cases reduced to percentages of total guilty.

We shall first consider the second part of Table A-6.

TABLE A-7

PERCENTAGE DISTRIBUTION OF GUILTY CASES

(Base of Percentages=Total found guilty.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total found guilty	3,461	100.00	2,449	100.00	2,582	100.00	549	100.00	243	100.00	12	100.00	75	100.00	1,169	100.00
19. Felony waived, convicted	281	8.12	266	10.86	281	10.88									4	.34
20. Tried by court, convicted off. chgd. (Milw.)															381	32.59
21. Felony waived, plead guilty, convicted	883	25.51	836	34.14	883	34.20										
22. Adjudged insane	12	.35	5	.20	6	.23	4	.73	2	.82					18	1.54
23. Plea accepted, guilty off. chgd.	949	27.42	419	17.11	453	17.54	315	57.37	136	55.97	9	75.00	36	48.00	689	58.94
24. Plea accepted, guilty lesser off.	980	28.31	723	29.52	750	29.05	157	28.60	62	25.51	1	8.33	10	13.33	16	1.37
25. Convicted off. charged by jury	299	8.64	175	7.15	184	7.13	65	11.84	31	12.76	2	16.67	17	22.67	47	4.02
26. Convicted lesser off. by jury	57	1.65	25	1.02	25	.97	8	1.46	12	4.94			12	16.00	2	.17
27. Tried by court, convicted lesser off. (Milw.)															12	1.03

These figures appear, somewhat rearranged, in the following table:

TABLE A-71. CLASSIFICATION OF CASES FOUND GUILTY BY TYPE OF PROCEDURE LEADING TO DISPOSITION

(Basis of Table A-6)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Action by judge:								
19. Felony waived, convicted	3.78	5.33	5.35					.26
20. Tried by court, convicted offense charged								25.08
27. Tried by court, convicted lesser offense								.79
Total	3.78	5.33	5.35					26.13
Action on plea:								
21. Felony waived, pleaded guilty, convicted	11.89	16.80	16.81					
23. Plea accepted, guilty offense charged	12.75	8.41	8.62	24.86	25.32	45.00	9.98	45.35
24. Plea accepted, guilty lesser offense	13.17	14.51	14.28	12.39	11.55	5.00	2.77	1.05
Total	37.81	39.72	39.71	37.25	36.87	50.00	12.75	46.40
Action by jury:								
25. Convicted off. charged	4.02	3.51	3.50	5.13	5.77	10.00	4.71	3.09
26. Convicted lesser offense	.77	.50	.48	.63	2.23		3.32	.13
Total	4.79	4.01	3.98	5.76	8.00	10.00	8.03	3.22
Adjudged insane	.16	.10	.11	.32	.37			1.19
Total guilty	46.54	49.16	49.15	43.33	45.24	60.00	20.78	76.94

The several types of dispositions are grouped according to the sort of procedure which led up to them: action by the judge, acceptance of plea, action by jury, and adjudgment of insanity. Each of these groups is totaled, as well as the whole.

22. Action by the Judge. A small percentage in Chicago and Cook County are found guilty by the judge, but only after the felony has been waived. None come into this class from other parts of Illinois. Milwaukee, however, disposes of 25.08 per cent (of all cases entering the trial court) as convictions by the judge for the offense charged, and of 0.79 per cent for lesser offenses.[1]

23. Plea of Guilty. We have included here "felony waived, plead guilty, convicted," since the reason for the "conviction" is the plea. Disregarding for the present the question of whether the plea was "guilty of the offense charged" or of a "lesser offense," we have then 39.71 per cent in Chicago-Cook County, 37.25 per cent in the eight more urban, and 36.87 per cent in the seven less urban counties; 50 per cent in the two rural and 12.75 per cent in Williamson-Franklin. Note also the

[1] Wisconsin procedure permits the defendant who pleads not guilty to waive jury trial. This accounts for the large proportion of these cases.

high percentage in Milwaukee—nearly one-half of all cases entering the trial court—46.40 per cent.

24. Action by the Jury. The jury is relatively unimportant in Chicago-Cook County, increasing in importance as one goes to the more rural sections; and very low in Milwaukee. This matter of the importance of the jury will be brought up again later when the eliminating as well as convicting action of this agency will be considered.

25. Adjudged Insane. This class of cases has been included in "guilty" not because it involved punishment, but because it is not an "elimination." Milwaukee seems to use this disposition much more frequently than any of the Illinois jurisdictions. It is doubtful that there is ten times as much insanity among defendants in Milwaukee as in Chicago.

26. Relative Importance of Pleas. The relative importance of pleas of guilty of the offense charged and of pleas of guilty of lesser offense may be seen by taking only the cases in which pleas are "accepted." We note (Nos. 23 and 24) that in Chicago-Cook County the pleas to a lesser offense are almost twice as numerous as those to the offense charged (14.28 per cent to 8.62 per cent). If we add to the former those in which felony was waived, a plea of guilty entered and conviction had (16.81) the ratio of lesser to original charges is raised to 31.09 to 8.62, nearly four to one. In sharp contrast to the metropolitan figures we have a two to one ratio of original charges to lesser for the more and the less urban counties; about four to one for Williamson-Franklin; nine to one for the rural (very few cases, however) and about forty-four to one in Milwaukee.

27. "Found Guilty" on Another Basis. Table A-7 reduces the figures of the "guilty" part of Table A-6 to percentages of total guilty; and from the former we abstract the following sub-table, which is exactly the same as the immediately preceding one, save for the base of the percentages. This reveals the interesting facts that Chicago-Cook County bring 81 per cent of the guilty to that point on pleas; the eight more urban counties 86 per cent; the seven less urban, 81; the rural, 83; and Williamson-Franklin and Milwaukee, 61 and 60 respectively.

TABLE A-72. CLASSIFICATION BY TYPE OF PROCEDURE LEADING TO DISPOSITION

(Basis of Table A-7)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Total guilty	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Action by judge:								
19. Felony waived, convicted	8.12	10.86	10.88					.34
20. Tried by court, convicted offense charged								32.59
27. Tried by court, convicted lesser offense								1.03
Total	8.12	10.86	10.88					33.96

TABLE A-72—CONCLUDED. CLASSIFICATION BY TYPE OF PROCEDURE LEADING TO DISPOSITION

(Basis of Table A-7)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Action on plea:								
21. Felony waived, pleaded guilty, convicted.....	25.51	34.14	34.20					
23. Plea accepted, guilty offense charged.....	27.42	17.11	17.54	57.37	55.97	75.00	48.00	58.94
24. Plea accepted, guilty lesser offense.....	28.31	29.52	29.05	28.60	25.51	8.33	13.33	1.37
Total	81.24	80.77	80.79	85.97	81.48	83.33	61.33	60.31
Action by jury:								
25. Convicted off. charged	8.64	7.15	7.13	11.84	12.76	16.67	22.67	4.02
26. Convicted lesser offense	1.65	1.02	.97	1.46	4.94		16.00	.17
Total	10.29	8.17	8.10	13.30	17.70	16.67	38.67	4.19
Adjudged insane.....	.35	.20	.23	.73	.82			1.54

The judge has, in Chicago-Cook County, only 10.88 per cent on his score and 33.96 in Milwaukee, while the jury is at 8.10 per cent in Chicago-Cook County, 38.67 per cent in Williamson-Franklin, with three figures intermediate of 13.30, 17.70, and 16.67. Milwaukee falls far below with only 4.19 per cent of guilty arriving at that stage via the jury trial.

28. Found Guilty of a Lesser Offense.

In the next two sub-tables we revert to a question mentioned in Section 23; namely, the proportion of cases eventuating as guilty of the offense charged compared with the result "guilty of a lesser offense." In these two tables (differing from each other only in the base of the percentages employed) all dispositions, whether at hands of judge or jury, or guilty on plea, are classified on this basis of "lesser" or "original" charge:

TABLE A-73. PROPORTION OF CASES GUILTY OF LESSER OFFENSE

(Base—Total Cases Entering Trial Court)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Guilty of lesser offense:								
19. Felony waived, convicted	3.78	5.33	5.35					.26
27. Tried by court, convicted lesser offense...								.79
21. Felony waived, pleaded guilty, convicted.....	11.89	16.80	16.81					
24. Plea accepted, guilty lesser offense.....	13.17	14.51	14.28	12.39	11.55	5.00	2.77	1.05
26. Convicted lesser offense, by jury.....	.77	.50	.48	.63	2.23		3.32	.13
Total	29.61	37.14	36.92	13.02	13.78	5.00	6.09	2.23

TABLE A-73—CONCLUDED. PROPORTION OF CASES GUILTY OF LESSER OFFENSE

(Base—Total Cases Entering Trial Court)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Guilty of offense charged:								
20. Tried by court, convicted offense charged								25.08
23. Plea accepted, guilty offense charged.....	12.75	8.41	8.62	24.86	25.32	45.00	9.98	45.35
25. Convicted offense charged, by jury.....	4.02	3.51	3.50	5.13	5.77	10.00	4.71	3.09
Total	16.77	11.92	12.12	29.99	31.09	55.00	14.69	73.52

The outstanding facts of these sub-tables are found in the ratios of the subtotals of the two classes of cases. For Chicago-Cook County the ratio of lesser to original charge is 36.92 to 12.12, more than 3 to 1. For the more and the less urban counties the relationship is reversed and the ratio is slightly over 2 to 1, as is true in the case of Williamson-Franklin. But in the two rural counties it is 11 to 1 and in Milwaukee 33 to 1. In other words, only in the metropolis do we find a large proportion of persons guilty of offenses less than those originally charged.

A slightly different aspect of the case is found in the companion table immediately following:

TABLE A-74. PROPORTION OF CASES GUILTY OF LESSER OFFENSE

(Base—Total Cases Guilty)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Guilty of lesser offense:								
19. Felony waived, convicted	8.12	10.86	10.88					.34
27. Tried by court, convicted lesser offense...								1.03
21. Felony waived, pleaded guilty, convicted.....	25.51	34.14	34.20					
24. Plea accepted, guilty lesser offense.....	28.31	29.52	29.05	28.60	25.51	8.33	13.33	1.37
26. Convicted lesser offense, by jury.....	1.65	1.02	.97	1.46	4.94		16.00	.17
Total	63.59	75.54	75.10	30.06	30.45	8.33	29.33	2.91
Guilty of offense charged:								
20. Tried by court, convicted offense charged								32.59
23. Plea accepted, guilty offense charged.....	27.42	17.11	17.54	57.37	55.97	75.00	48.00	58.94
25. Convicted offense charged, by jury.....	8.64	7.15	7.13	11.84	12.76	16.67	22.67	4.02
Total	36.06	24.26	24.67	69.21	68.73	91.67	70.67	95.55

This table indicates quite clearly that in Chicago-Cook County 75 per cent of the guilty cases fall in the category of lesser charges; while in the more and in the less urban counties, and in Williamson-Franklin only 30

per cent are in this class; in the rural only 8.33 per cent; and in Milwaukee only 2.91 per cent.

(VII) DISPOSITIONS AFTER GUILT HAS BEEN ESTABLISHED, IN DETAIL

The facts on this topic are found in Table A-8. They fall under two general heads: Probation and Modifications; and New Trials and Appeals.

29. Probation and Modifications. Probation is the only important item, proportionately. It constitutes from 2.67 per cent of all guilty cases in Williamson-Franklin to 32.06 per cent in the eight more urban counties, with a top point in Milwaukee of 42.86 per cent. Chicago-Cook County and the seven less urban counties have an intermediate position, with 21.46 and 20.16 per cent, respectively. It may be said with fairness that probation is as yet not fully acclimated in the air of the rural sections, if the figures just cited are of any significance. As for the other modifications, they indicate merely the great flexibility of our system, in which justice apparently can be done at almost any time after the matter of guilt has once been settled.

30. New Trials and Appeals. Here again "eliminations" are relatively unimportant. No distinct trends from urban to rural are seen and as usual, Milwaukee shows a small proportion of eliminations.

The ultimate outcome of cases in which new trials were given, mistrials took place, and appeals were taken, has been ascertained to some degree by a check made some time after the original collection of the data appearing in the several parts of Table A. The total number of these is so small that the percentages are highly unreliable. They are given here with the warning that their paucity calls for.

31. New Trials Granted. The outstanding point about this table is the comparison of the percentage eliminated in the retrial with the percentages eliminated in all the cases passing into the trial court. It is apparent that the chances are somewhat better for a defendant on the first trial than on the second, as the percentage eliminated among all cases is generally higher than that of those eliminated on retrial.

TABLE A-81. SUMMARY OF RESULTS OF NEW TRIALS GRANTED

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Williamson and Franklin Counties
Total number	43	29	33	2	7	1
Percentage	100.00	100.00	100.00	100.00	100.00	100.00
Guilty	53.49	55.17	60.61	50.00	28.58	100.00
Eliminated	46.51	44.83	39.39	50.00	71.42	
Pending	6.97			50.00	14.29	
Total eliminated	53.46	50.84	50.85	56.67	54.75	79.22
(Table A-6)						

32. Retrials after Mistrials. Here the numbers are even smaller than in the preceding class, but as before, it is apparent that retrial holds less hope than the original trial held.

TABLE A-8

PROBATION, MODIFICATIONS, NEW TRIALS, AND APPEALS

(Base of Percentages=Total found guilty.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total found guilty	3,461	100.00	2,449	100.00	2,582	100.00	549	100.00	243	100.00	12	100.00	75	100.00	1,169	100.00
1. Probation	782	22.59	510	20.82	554	21.46	176	32.06	49	20.16	1	8.33	2	2.67	①501	①42.86
2. Term reduced	8	.23	8	.33	8	.31										
3. Sentence vacated, defendant released	12	.35	7	.29	9	.35	2	.36	1	.41						
4. Sentence vacated, tried for lesser offense, convicted	1	.03	1	.04	1	.04										
5. Sentence vacated, plead guilty lesser offense	5	.14	5	.20	5	.20										
6. New trial granted	44	1.27	29	1.19	33	1.28	3	.55	7	2.88			1	1.33	6	.51
7. Appealed	26	.75	18	.73	18	.70	3	.55	1	.41			4	5.33	1	.09
Total sentences executed, unchanged	2,583	74.64	1,871	76.40	1,954	75.68	365	66.48	185	76.13	11	91.67	68	90.67	661	56.54
Total sentences executed, modified	14	.41	14	.57	14	.54										
Total sentences executed	2,597	75.05	1,885	76.97	1,968	76.22	365	66.48	185	76.13	11	91.67	68	90.67	661	56.54

①Includes 21 cases "Suspended Sentences."

TABLE A-82. SUMMARY OF RESULTS OF RETRIAL OF MISTRIALS

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Williamson and Franklin Counties
Total number	20	6	6	2	7	5
Percentage	100.00	100.00	100.00	100.00	100.00	100.00
Guilty	55.00	83.33	83.33	50.00	14.28	60.00
Eliminated	45.00	16.67	16.67	50.00	85.72	40.00
Pending	30.00			50.00	42.85	40.00
Total eliminated	53.46	50.84	50.85	56.67	54.75	79.22
(Table A-6)						

33. *Appeals.* Only a small part of the appeals had been adjudicated when the check was made. Only two jurisdictions are mentioned. Cook County had none of these cases, so Chicago and Chicago-Cook County were identical; the eight more urban, the seven less urban, and Williamson-Franklin Counties had altogether eight cases, or 3, 1 and 4, respectively; and all these save one in the latter group were pending, and of that one there was no record. In Illinois and Chicago the six cases adjudicated were divided four and two between affirmances and reversals. The remaining twenty cases were pending (19 cases) or "no record" (1 case).

TABLE A-83. SUMMARY OF RESULTS OF APPEALS

	Illinois	Chicago
Total number	26	18
Percentage	100.00	100.00
Reversed	3.85	5.56
Reversed and annulled	3.85	5.56
Affirmed	15.38	22.22
Pending	73.07	66.66
No record	3.85	

34. *Summary of Sentences Executed.* These three rows appended at the bottom of Table A-8 give us what we might call the absolute net execution of sentence. They are secured as follows: from the total guilty are subtracted "probation," "sentence vacated defendant released," and "new trials and appeals." This gives the third row, total sentences executed. Subtracting from that figure the sum of "terms reduced," "sentence vacated, tried for lesser offense, convicted," and "sentence vacated, pleaded guilty to lesser offense," we get the total sentences executed unchanged, the first row of the three.

(VIII) SUMMARY OF THE ROLES OF JUDGE, PROSECUTOR, AND JURY

The three succeeding tables are composites, material for which has been taken from the several stages of procedure, to show the role which each of the three principal agencies of justice plays in the procedure as a whole. These percentages are all based on the total number of cases entering the machine of justice; i. e., the number entering the preliminary hearing plus the number entering as original indictments. Because of the mixed origins of these figures it was necessary to base the percentages on the one universal base,—total of all cases. They therefore represent the percentage of all cases disposed of by each of the agencies.

35. The Judge. Here, as in the case of the prosecutor, we shall consider only the eliminations. This is one-sided, but the other side is, of course, understood as the complement of the figures here presented. It should also be noted that the word "judge" is used generically. It means in the preliminary hearing the justice of the peace, the judge of the police court, or the judge of the municipal court, as the case may be, and in the trial court, the judge of that rank. It would perhaps be better to say that we are considering the judicial functions rather than the judge.

TABLE A-9. TOTAL ELIMINATED BY JUDICIAL ACTION

(Base of percentages—all cases, wherever entering)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Number of all cases	16,812	12,543	13,117	2,293	904	33	465	1,838
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Preliminary hearing:								
8. Discharged	15.52	16.88	17.04	11.82	9.96		2.80	12.79
9. Reduced to misdemeanor, not punished	.14	.09	.09	.48				
Total	15.66	16.97	17.13	12.30	9.96		2.80	12.79
Trial court:								
10. Discharged by court	.26	.22	.21	.13	1.22		.22	9.25
11. Off call	.26	.33	.33					
12. Felony waived, tried by court, acquitted	1.74	2.16	2.23					
13. Felony waived, pleaded guilty, acqtd. by court	.02	.03	.03					
Total	2.28	2.74	2.80	.13	1.22		.22	9.25
Disposition after guilty:								
1. Probation	4.65	4.07	4.22	7.67	5.42	3.03	.43	27.26
4. Sentence vacated	.07	.05	.09	.09	.11			
3. New trial granted	.26	.23	.25	.13	.77		.22	.33
Total, after guilty	4.98	4.35	4.54	7.89	6.30	3.03	.65	27.59
Grand Total	22.92	24.06	24.47	20.32	17.48	3.03	3.67	49.63
Grand Total, less probation	18.27	19.99	20.25	13.65	12.06		3.24	22.37

From this table it appears that the judicial power in Milwaukee eliminates almost 50 per cent of all cases entering the courts. The highest percentage in Illinois is that of Chicago-Cook County, and is less than a fourth,—24.47 per cent. From this point we have a gradual decline in the more and the less urban counties (20.32 and 17.48) and a very small percentage in the rural territory and Williamson-Franklin Counties. When we look at the individual types of dispositions we see that well over half (27.26 per cent) of the 49.63 per cent eliminated by judges in Milwaukee is in one type of disposition—probation. Chicago-Cook County is only slightly under Milwaukee for judge-eliminations less probation.

When we compare the subtotals of judge-eliminations in the preliminary hearing with the grand totals of all judge-eliminations we note that for every group in Illinois (except the two rural counties) the preliminary hearing eliminations are more than half of the total. In Milwaukee they are slightly over one-fourth. Judge-made eliminations are therefore small in

the trial court, except in Milwaukee. Comment has been made on the share of probation in the total result.

36. The Prosecutor.

TABLE A-10. TOTAL ELIMINATED BY ACTION OF THE PROSECUTOR

(Base of percentages—all cases wherever entering)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Number of all cases	16,812	12,543	13,117	2,293	904	33	465	1,838
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Preliminary hearing:								
6. Dismissed, want of pros.	17.27	19.94	19.50	11.73	5.64	15.15	4.30	1.36
7. Nolle	5.25	6.11	6.11	2.53	1.88		1.29	1.74
Trial court:								
9. Dismissed, want of pros.	1.30	1.64	1.65				.43	.11
5. Nolle	2.84	2.25	2.23	4.49	4.98		7.96	2.61
6. Nolled account other indictments	.68	.06	.06	3.01	1.44		5.38	1.96
7. Stricken, leave to reinstate	3.04	2.98	2.99	2.75	3.87		4.52	
8. Stricken, leave to reinstate account other indictments	5.18	5.50	5.56	4.58	2.65		2.80	
Total	35.56	38.48	38.10	29.09	20.46	15.15	26.68	7.78

The total of elimination decreases as one passes from Chicago to the eight more and the seven less urban counties and to the rural counties. Williamson-Franklin are somewhat higher but not notably so. Milwaukee's prosecutor seems to exercise relatively little power. In every case except Milwaukee, dismissed for want of prosecution (in both courts) is the largest single item of eliminations, running up to over one-half in Chicago-Cook County. The maximum use of the nolle is found in Williamson-Franklin Counties. In fact, we may generalize to the extent of suggesting that the nolle is, in general, used more as one passes from the more to the less urban regions, though this seems not to carry as far as the strictly rural counties, which show no nolles. On the other hand, their prosecutors eliminate all their cases in dismissed for want of prosecution.

The comparison of eliminations by prosecutor with judicial eliminations may prove suggestive.

TABLE A-11. COMPARATIVE ELIMINATIONS BY JUDGE AND BY PROSECUTOR

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
(a) Percentage of all cases eliminated by judge..	22.92	24.06	24.47	20.32	17.48	3.03	3.67	49.63
(b) Percentage of all cases elim. by prosecutor...	35.56	38.48	38.10	29.09	20.46	15.15	26.68	7.78
(b) divided by (a).....	1.55	1.60	1.56	1.43	1.17	5.00	7.27	.16

Throughout Illinois the prosecutor eliminates more—generally very much more—than the judges. The ratios of prosecutor-eliminations to judge-eliminations is indicated in the third row of this table.

37. The Jury Here we are considering not only eliminations, but convictions as well.

TABLE A-12. PERCENTAGES OF DISPOSITIONS OF CASES ACTED ON BY JURY

(Base, total number of cases entering trial court)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Elimination in trial court:								
14. Acquitted by jury.....	5.00	5.42	5.39	3.62	5.40		3.88	2.43
15. Mistrial	.27	.12	.11	.16	1.30		1.38	.07
Total	5.27	5.54	5.50	3.78	6.70		5.26	2.50
Found guilty by jury:								
25. Convicted off. charged, by jury	4.02	3.51	3.50	5.13	5.77	10.00	4.71	3.09
26. Convicted lesser offense by jury	.77	.50	.48	.63	2.23		3.32	.13
Total	4.79	4.01	3.98	5.76	8.00	10.00	8.03	3.22
Grand Total.....	10.06	9.55	9.48	9.54	14.70	10.00	13.29	5.72
Reduction to Base of All Cases								
Grand Total.....	10.06	9.55	9.48	9.54	14.70	10.00	13.29	5.72
Per cent of total cases entering trial court.....	44.25	39.72	40.05	55.26	59.40	60.61	77.63	82.64
Per cent of total cases which reach a jury.....	4.45	3.79	3.80	5.27	8.73	6.06	10.32	4.73

The table enumerates first the percentages of cases eliminated and convicted by the jury on the base of the number of cases entering the trial court. The second last row of the table gives the percentages which cases entering the trial court are of all cases; and by multiplying this latter figure by the grand total, we secure the last row, which shows what percentage of all cases are handled by a jury.

This percentage is low, ranging from 3.79 in Chicago to 10.32 in Williamson-Franklin. It is not necessary to repeat here what was said above as to the relatively slight importance of the petit jury. When only 4.45 per cent of all cases ever get to the jury, the advisability of great expenditure of effort to reform juries would seem doubtful.

38. Same: Modes of Disposition.

Another aspect of the situation is revealed in the following table, in which all the cases coming to the jury are taken as the base of the percentages of jury dispositions, including both convictions and eliminations.

TABLE A-13. ACTION OF THE JURY

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Total cases tried by jury..	748	476	498	121	79	2	48	87
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
14. Acquitted by jury....	49.74	56.72	56.83	38.02	36.71		29.17	42.53
15. Mistrials	2.67	1.26	1.20	1.65	8.86		10.41	1.15
Total eliminated by jury	52.41	57.98	58.03	39.67	45.57		39.58	43.68
25. Convicted of offense charged, by jury.....	39.97	36.77	36.95	53.72	39.24	100.00	35.42	54.02
26. Convicted of lesser offense by jury.....	7.62	5.25	5.02	6.61	15.19		25.00	2.30
Total convicted by jury	47.59	42.02	41.97	60.33	54.43	100.00	60.42	56.32

In this table we see that the petit jury in Chicago-Cook County eliminates nearly 60 per cent of all its cases (58.03); whereas the other groups in Illinois (barring the rural counties) are well below that figure, touching 40 and 46 per cent, while Milwaukee is at 44. Straight acquittals account for all except a small percentage, save in the seven less urban and the Williamson-Franklin groups, where they rise to the importance of 9 and 10 per cent respectively. Milwaukee is almost identical with Cook County here.

In the metropolis, however, juries are much less likely to soften the blow of verdict of guilty by admitting a lesser charge. Chicago-Cook County shows only 5.02 per cent in this group, while the eight more urban counties go up to 6.6; the seven less urban to 15.19; and Williamson-Franklin to 25.00. Milwaukee, as usual, is low on a semi-elimination. It is also interesting to note that convictions of offense charged are slightly more and slightly less numerous proportionately in the seven less urban and in the Williamson-Franklin group than in Chicago-Cook County.

(IX) Nature of the Charge, Compared as to Disposition

39. Classification of Offenses. The classification of charges used here is a modification of that recommended by the United States Census in the pamphlet entitled "Instructions for Compiling Criminal Statistics." The following arrangement shows the manner of adaptation:

Census List

1. Homicide
2. Rape
3. Robbery
4. Assault
5. Burglary
6. Forgery
7. Larceny (including embezzlement, fraud, and having stolen property)
8. Carrying weapons
9. Sex offenses except rape
10. Non-support or neglect of family
11. Violating drug laws
12. Violating liquor laws
13. Driving while intoxicated
14. Drunkenness
15. Disorderly conduct
16. Vagrancy
17. Violating traffic or motor vehicle laws
18. Violating municipal ordinances
19. Others

Survey List

1. Homicide
2. Rape
3. Robbery
4. Assault
5. Burglary
6. Forgery
7. Embezzlement and fraud
8. Larceny
9. Carrying concealed weapons
10. Sex crimes
11. Liquor
12. Miscellaneous

Beyond number 10 of the census list we have groups of offenses which are largely—though not universally—misdemeanors. While it is true that the earlier items of the list are not all felonies, still most felonies are there included. "Larceny" in the census list has been split into two classes—"embezzlement and fraud" and "larceny."

Table B-1 presents a brief summary showing the number and percentages of the several classes of charges brought against the defendants in the preliminary hearing. It does not include all cases, because of the fact that original indictments begin in the grand jury and hence are not considered

TABLE B-1

CLASSIFICATION OF CASES BY CHARGE IN PRELIMINARY HEARING *

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total cases	13,923	100.00	10,829	100.00	11,251	100.00	1,846	100.00	644	100.00	26	100.00	156	100.00	1,838	100.00
Homicide	366	2.63	317	3.00	325	2.89	29	1.59	7	1.09			6	3.85	33	1.80
Rape	687	4.93	531	4.90	560	4.98	79	4.28	32	4.97	3	11.54	13	8.33	198	10.77
Robbery	2,603	18.70	2,271	20.97	2,332	20.73	230	12.46	30	4.66	4	15.38	6	3.85	59	3.21
Assault	577	4.14	370	3.41	388	3.45	122	6.61	47	7.30			20	12.82	102	5.55
Burglary	1,588	11.41	1,191	11.00	1,236	10.98	236	12.78	78	12.11	9	34.62	29	18.59	158	8.60
Forgery	257	1.85	113	1.04	126	1.12	79	4.28	48	7.45			4	2.56	145	7.89
Embezzlement and Frauds	3,246	23.31	2,796	25.80	2,869	25.50	267	14.46	86	13.35	7	26.92	17	10.90	170	9.25
Larceny	3,921	28.16	2,707	24.98	2,871	25.52	699	37.87	291	45.19	3	11.54	57	36.54	228	12.41
Carrying Concealed Weapons	9	.07	9	.08	9	.08										
Sex Crimes	116	.83	95	.87	100	.89	11	.60	5	.77					170	9.25
Liquor																
Miscellaneous	553	3.97	429	3.95	435	3.86	94	5.09	20	3.11			4	2.56	575	31.27

here. Nor is it safe to assume that these charges remain unchanged throughout the subsequent course of the procedure. The grand jury may change the charge, due perhaps to the discovery of new facts between preliminary hearing and the grand jury hearing. For example, a case may appear first as robbery and felonious assault, which would be classed as robbery in our records; if now the victim were to die, it would become homicide, which would be regarded as the more serious offense under the circumstances. It is because of these two confusing factors that the Table B-1 is limited to charges in the preliminary hearing.

40. Frequency. Perhaps the easiest way of summarizing these relations is to study the ranks of these charges when arranged in the order of their frequencies.

TABLE B-2. CHARGES RANKING ACCORDING TO FREQUENCY

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
	A	B	C	D	E	F	G	H
Homicide	8	8	8	9	9		6	10
Rape	5	5	5	7	6	4	5	3
Robbery	3	3	3	4	7	3	6	9
Assault	6	7	7	5	5		3	8
Burglary	4	4	4	3	3	1	2	6
Forgery	9	9	9	7	4		8	7
Embezzlement and Fraud	2	1	2	2	2	2	4	4
Larceny	1	2	1	1	1	4	1	2
Carrying concealed weapons	11	11	11					
Sex crimes	10	10	10	10	10			4
Miscellaneous	7	6	6	6	8		8	1

For the state as a whole we have a clear priority for offenses against property; larceny, embezzlement and fraud, burglary, robbery; all these rank ahead of the ranking offense against the person, rape. This order remains practically the same for Chicago and the Chicago-Cook County combination: so much so that the sum of the differences between ranks of the same charge in columns A and B is only 4, and between A and C is only 2. This is due, of course, to the fact that 75 per cent of the Illinois cases are in Cook County. Between Chicago-Cook County and the eight more urban counties there is little shift—a total of rank differences of 9. Between Chicago-Cook County and the seven less urban counties, this total increases to 16. The small number of classes of charges in the two strictly rural counties makes comparison difficult. However, the comparison between Chicago-Cook County and Williamson-Franklin Counties gives only a difference total of 16. Milwaukee, however, deviates more from the type of Chicago-Cook County than other Illinois jurisdictions; the total rank difference being no less than 29.

41. Proportions of Most Frequent Offenses. The relative proportions of these various charges, rather than their rank, may be summarized briefly by ascertaining what proportion the four most numerous crimes of Illinois (larceny, embezzlement and fraud, robbery, and burglary) are of the total, for each jurisdiction.

TABLE B-3. COMBINED PERCENTAGES OF LARCENY, EMBEZZLEMENT AND FRAUD, ROBBERY, AND BURGLARY

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Larceny	28.16	24.98	25.52	37.87	45.19	11.54	36.54	12.41
Embezzlement and fraud	23.31	25.80	25.50	14.46	13.35	26.92	10.90	9.25
Robbery	18.70	20.97	20.73	12.46	4.66	15.38	3.85	3.21
Burglary	11.41	11.00	10.98	12.78	12.11	34.62	18.59	8.60
Total	81.42	82.75	82.73	77.57	71.89	88.46	69.88	33.47

Except in Milwaukee we have an overwhelming majority of all charges falling into these four categories. It is unfortunate that the number of cases is so small in the two rural counties, which quite surpass even Chicago. It has usually been believed that crimes against property were relatively more numerous in the city, and less numerous in the country. These figures discourage the belief that this is universally true.

On the other hand, we note a steady downward trend from Chicago-Cook County through the more and the less urban counties to Williamson-Franklin; which leads us to doubt the validity of the figures for the rural territory. Milwaukee is notably divergent from the type of Illinois.

Within this table itself we note that crimes of deception and stealth (the first two rows) are over half of these cases in all the groups save the two rural counties. Robbery is prominent in Chicago, but surprisingly high in the two rural counties as well. The high percentage for burglary in the latter is another abnormal figure which may be due solely to the small number of cases entering the preliminary hearing (26).

42. Crimes Against the Person.

TABLE B-4. COMBINED PERCENTAGES OF CRIMES AGAINST THE PERSON: HOMICIDE, ASSAULT, RAPE, AND SEX CRIMES OTHER THAN RAPE

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Homicide	2.63	3.00	2.89	1.57	1.09		3.85	1.80
Assault	4.14	3.41	3.45	6.61	7.30		12.82	5.55
Rape	4.93	4.90	4.98	4.28	4.97	11.54	8.33	10.77
Sex crimes	.83	.87	.89	.60	.77			9.25
Total	12.53	12.18	12.21	13.06	14.13	11.54	25.00	27.37

The totals of crimes against the persons (as they may be designated, though certain of the sex crimes other than rape are not exactly so described) are small. We find three typical figures—one around 12 per cent for Chicago-Cook County, more urban counties, and the rural; one at 14.13 per cent for the less urban, and approximately 25 per cent for Williamson-Franklin and Milwaukee. These totals are, of course, small because they represent most of the residuals after the crimes against property have been subtracted.

In Chicago-Cook County and Milwaukee rape has the largest value, and in the rural it is the only charge here listed. In the other three groups assaults are numerically most important.

43. Compared as to Disposition. In Table B-5 we have a summary disposition table of each various class of charges in each jurisdiction. There are two obvious bases of comparisons: we may compare the dispositions of the various charges in a given jurisdiction; or we may compare the dispositions of a given charge in the several jurisdictions.[1]

44. Same: Compared as to Stage of Elimination. In making the horizontal comparisons we shall use as a kind of norm the percentages in the dispositions of all cases irrespective of charge, given in the last column to the right. This is the average for all and will serve as the only standard our figures afford.

TABLE B-6. RATIOS OF THE PERCENTAGES OF MAJOR DISPOSITIONS OF EACH GROUP OF CHARGES TO THE PERCENTAGES OF THE MAJOR DISPOSITIONS OF ALL CASES, REDUCED TO INDICES
TOTAL ILLINOIS

	All Charges	Homicide	Rape	Robbery	Assault	Burglary	Forgery	Embezz. Fraud	Larceny	Carrying Conc. Weapon	Sex Crimes	Misc.
Eliminated in preliminary hearing	100	94	94	52	97	58	69	147	120	92	78	106
Eliminated in grand jury	100	44	152	156	102	85	58	85	91		143	51
Eliminated in trial court	100	152	99	113	129	114	142	74	71	225	103	187
Guilty	100	85	86	153	72	182	141	39	95	32	118	16

Considering first the "guilty" row we note a wide divergence in these indices, from 16 to 182. The charges that have a less than average percentage of "guilty," that show an index under 100, are homicide, rape, assault, embezzlement and fraud, larceny, carrying concealed weapons, and miscellaneous. Robbery, burglary, forgery, and sex crimes are above 100. There is here no clear demarcation between offenses against property and offenses against the person; both classes are found above and below the norm. The same is true of the other dispositions. There seems then to be no regularity of disposition associable with the nature of the charge. If there were, it should show up in the general table for the whole state.

This fact is what might be expected. In the first place most of these "charges" are groups of individual crimes: e. g., homicide includes all unjustifiable homicides, infanticides, all manslaughter, all murders; larceny includes common theft, grand larceny, pocket picking, shoplifting, stealing, theft. So that we do not have a single individual offense but a variety of them. Moreover, each defendant presents his own personal factors, such as his acquaintance with officers, his previous career, his age, etc. Our figures then represent an exceedingly heterogeneous set of facts. It would be unsafe to draw conclusions as to what would happen in a particular group of cases unless the constituent cases were all alike in all important respects, which

[1] It should be called to the reader's attention that Tables B-1 and B-5 do not have the same totals. The former is based on the number of cases entering the preliminary hearing under a given charge. The totals in the latter are secured by adding together the number of those guilty plus the eliminations in the three preceding stages; modifications and eliminations are added as subsidiary parts after the row labeled "guilty," and equal the total guilty. The 100 per cent at the top of the percentage column is the sum of the first four numbers in the column, from the top down.

CLASSIFICATION OF CHARGES BY DISPOSITIONS

(Base of Percentages=Total number of charges.)

Total Illinois	Homicide	Rape	Robbery	Assaults	Burglary	Forgery	Embezzlement and Frauds	Larceny	Carrying Concealed Weapons	Sex Crimes	Liquor	Miscellaneous	Total
TOTAL CASES	672	757	3,150	730	2,109	386	3,582	4,374	15	144	2	891	16,812
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Eliminated in preliminary hearing	41.23	41.08	22.92	42.33	25.37	30.31	64.10	52.75	40.00	34.02		46.13	43.66
Eliminated in grand jury	5.35	18.36	18.82	12.33	10.34	7.00	10.36	10.98		17.36		6.17	12.10
Eliminated in trial court	36.01	23.38	26.73	30.56	26.89	33.68	17.58	16.63	53.33	24.31	50.00	44.33	23.65
GUILTY	17.41	17.18	31.53	14.78	37.40	29.01	7.96	19.64	6.67	24.31	50.00	3.37	20.59
Probation and modifications	.15	3.70	2.98	2.60	9.06	12.18	2.87	7.07		6.95		.67	4.81
New trials and appeals	2.08	.79	.64		.28	.26	.34	.16		.69		.34	.42
SENTENCES EXECUTED, UNCHANGED	15.18	12.69	27.91	11.78	28.06	16.57	4.75	12.43	6.67	16.67	50.00	2.36	15.36

Chicago	Homicide	Rape	Robbery	Assaults	Burglary	Forgery	Embezzlement and Frauds	Larceny	Carrying Concealed Weapons	Sex Crimes	Liquor	Miscellaneous	Total
TOTAL CASES	567	540	2,696	461	1,433	171	2,854	2,968	15	114		724	12,543
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00		100.00	100.00
Eliminated in preliminary hearing	47.44	49.26	22.55	50.54	31.47	39.77	70.71	60.98	40.00	41.22		48.07	48.82
Eliminated in grand jury	3.00	17.41	20.40	7.81	11.10	5.26	10.55	7.31		18.42		4.56	11.46
Eliminated in trial court	33.68	16.85	24.74	25.81	21.84	33.92	11.17	14.02	53.33	20.18		45.30	20.20
GUILTY	15.88	16.48	32.31	15.84	35.59	21.05	7.57	17.69	6.67	20.18		2.07	19.52
Probation and modifications	.18	3.70	2.74	2.60	8.65	8.19	2.94	6.50		4.39		.55	4.23
New trials and appeals	1.41	.93	.63		.07	.58	.39			.88		.41	.37
SENTENCES EXECUTED, UNCHANGED	14.29	11.85	28.94	13.24	26.87	12.28	4.24	11.19	6.67	14.91		1.11	14.92

Chicago and Cook County	Homicide	Rape	Robbery	Assaults	Burglary	Forgery	Embezzlement and Frauds	Larceny	Carrying Concealed Weapons	Sex Crimes	Liquor	Miscellaneous	Total
TOTAL CASES	577	584	2,774	485	1,529	189	2,944	3,163	15	120		737	13,117
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00		100.00	100.00
Eliminated in preliminary hearing	47.31	48.12	22.96	49.28	30.67	41.80	70.18	60.45	40.00	40.00		47.63	48.49
Eliminated in grand jury	3.12	16.95	20.04	8.45	10.99	5.29	10.70	7.56		18.34		4.75	11.46
Eliminated in trial court	33.80	17.29	24.91	26.39	22.83	31.74	11.45	14.01	53.33	20.00		45.45	20.36
GUILTY	15.77	17.64	32.09	15.88	35.51	21.17	7.67	17.98	6.67	21.76		2.17	19.69
Probation and modifications	.17	3.60	2.74	2.68	8.89	7.94	3.02	6.76		5.83		.68	4.40
New trials and appeals	1.39	1.03	.72		.07	.53	.37			.83		.41	.39
SENTENCES EXECUTED, UNCHANGED	14.21	13.01	28.63	13.20	26.55	12.70	4.28	11.22	6.67	15.00		1.08	14.90

TABLE B-5—Continued

CLASSIFICATION OF CHARGES BY DISPOSITIONS

(Base of Percentages=Total number of charges.)

Eight More Urban Counties	Homicide	Rape	Robbery	Assaults	Burglary	Forgery	Embezzlement and Frauds	Larceny	Carrying Concealed Weapons	Sex Crimes	Liquor	Miscellaneous	Total
TOTAL CASES	55	100	287	140	285	115	387	811		16		97	2,293
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00		100.00		100.00	100.00
Eliminated in preliminary hearing	5.45	23.00	25.09	35.00	15.09	15.65	37.98	32.55				49.49	29.09
Eliminated in grand jury	23.64	18.00	10.10	22.14	11.23	10.44	10.08	20.72		12.50		15.46	15.66
Eliminated in trial court	38.18	39.00	37.98	27.14	29.47	40.00	42.38	22.81		37.50		26.80	31.31
GUILTY	32.73	20.00	26.83	15.72	44.21	33.91	9.56	23.92		50.00		8.25	23.94
Probation and modifications		6.00	5.23	2.86	14.74	16.52	2.58	9.62		18.75		1.03	7.76
New trials and appeals	7.27				.35			.12					.26
SENTENCES EXECUTED, UNCHANGED	25.46	14.00	21.60	12.86	29.12	17.39	6.98	14.18		31.25		7.22	15.92

Seven Less Urban Counties	Homicide	Rape	Robbery	Assaults	Burglary	Forgery	Embezzlement and Frauds	Larceny	Carrying Concealed Weapons	Sex Crimes	Liquor	Miscellaneous	Total
TOTAL CASES	10	48	46	54	157	71	172	302		8		36	904
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00		100.00		100.00	100.00
Eliminated in preliminary hearing		12.50	15.22	27.78	8.28	26.76	38.95	37.75		12.50		33.33	28.10
Eliminated in grand jury	20.00	22.92	17.39	16.67	7.64	2.82	6.98	17.22		12.50		11.11	12.50
Eliminated in trial court	40.00	52.08	28.26	46.30	36.94	26.76	41.86	19.54		62.50		38.89	32.52
GUILTY	40.00	12.50	39.13	9.26	47.14	43.66	12.21	25.49		12.50		16.67	26.88
Probation and modifications		2.08	6.52	3.70	7.01	18.31	2.33	5.30					5.53
New trials and appeals	10.00				1.91		.58	.99					.89
SENTENCES EXECUTED, UNCHANGED	30.00	10.42	32.61	5.56	38.22	25.35	9.30	19.20		12.50		16.67	20.46

Two Strictly Rural Counties	Homicide	Rape	Robbery	Assaults	Burglary	Forgery	Embezzlement and Frauds	Larceny	Carrying Concealed Weapons	Sex Crimes	Liquor	Miscellaneous	Total
TOTAL CASES		4	4		15		7	3					33
Percentage		100.00	100.00		100.00		100.00	100.00					100.00
Eliminated in preliminary hearing							100.00	33.33					24.25
Eliminated in grand jury		75.00			13.33								15.15
Eliminated in trial court		25.00	100.00		20.00								24.24
GUILTY					66.67			66.67					36.36
Probation and modifications					6.67								3.03
New trials and appeals													
SENTENCES EXECUTED, UNCHANGED					60.00			66.67					33.33

TABLE B-5—Concluded

CLASSIFICATION OF CHARGES BY DISPOSITIONS

(Base of Percentages=Total number of charges.)

Williamson and Franklin	Homicide	Rape	Robbery	Assaults	Burglary	Forgery	Embezzlement and Frauds	Larceny	Carrying Concealed Weapons	Sex Crimes	Liquor	Miscellaneous	Total
TOTAL CASES	31	21	38	51	123	11	72	95			2	21	465
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00			100.00	100.00	100.00
Eliminated in preliminary hearing	3.23	4.76	15.79	11.76	8.13	9.09	12.50	16.84					10.75
Eliminated in grand jury	9.68	38.10		17.65	3.25	27.27	6.94	22.10				4.76	11.61
Eliminated in trial court	70.96	52.38	65.79	62.75	59.35	45.46	79.17	42.11			50.00	95.24	61.51
GUILTY	16.13	4.76	18.42	7.84	29.27	18.18	1.39	18.95			50.00		16.13
Probation and modifications					.81			1.05					.43
New trials and appeals	3.23				.81			3.16					1.08
SENTENCES EXECUTED, UNCHANGED	12.90	4.76	18.42	7.84	27.65	18.18	1.39	14.74			50.00		14.62

Milwaukee	Homicide	Rape	Robbery	Assaults	Burglary	Forgery	Embezzlement and Frauds	Larceny	Carrying Concealed Weapons	Sex Crimes	Liquor	Miscellaneous	Total
TOTAL CASES	33	198	59	102	158	145	170	228		170		575	1,838
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00		100.00		100.00	100.00
Eliminated in preliminary hearing	9.09	10.10	3.39	12.75	4.43	2.76	34.71	16.67		24.12		22.96	17.36
Eliminated in grand jury													
Eliminated in trial court	48.49	21.72	23.73	26.47	5.06	6.90	20.59	13.16		17.65		23.82	19.04
GUILTY	42.42	68.18	72.88	60.78	90.51	90.34	44.70	70.17		58.23		53.22	63.60
Probation and modifications	12.12	11.11	6.78	12.75	44.31	40.69	15.88	25.44		8.82		39.83	27.26
New trials and appeals		1.01										.87	.38
SENTENCES EXECUTED, UNCHANGED	30.30	56.06	66.10	48.03	46.20	49.65	28.82	44.73		49.41		12.52	35.96

they are not. On purely theoretical grounds we might expect therefore that our results would deviate from an arbitrary norm like an average, but we could not foretell in which direction, nor how much.

On the basis of these results and analyses we shall therefore omit a similar analysis of the individual sections of this table, especially as it would give an amount of space to this topic which it does not warrant in relation to the general discussion.

45. Same: Compared as to Jurisdictions.

The vertical comparisons of the figures in Table B-5 are given in a corresponding form in the following arrangement:

TABLE B-7. RATIOS OF THE PERCENTAGES OF THE GUILTY IN THE INDIVIDUAL JURISDICTIONS TO THE PERCENTAGES IN THE STATE, FOR THE SAME CHARGES, REDUCED TO INDICES

	All Charges	Homicide	Rape	Robbery	Assault	Burglary	Forgery	Embezz. Fraud	Larceny	Carrying Conc. Weapon	Sex Crimes	Misc.
Entire state	100	100	100	100	100	100	100	100	100	100	100	100
Chicago	95	91	96	102	107	95	73	95	90		83	61
Chicago-Cook County	96	91	103	102	107	95	73	96	91		89	64
Eight more urban cos.	116	188	116	85	106	118	117	120	121		205	245
Seven less urban cos.	131	230	73	124	63	126	150	153	129		51	495
Williamson-Franklin.	78	93	28	58	53	78	63	17	96			
Milwaukee	309	244	397	231	411	242	311	562	357		239	1579

Here the base of the indices is the percentage of guilty in each charge in the whole state. At the left is the column of "all charges," to which reference may first be made. It is clear from this column that the various jurisdictions (the two rural being omitted throughout because of the small number of cases in any charge) show varying degrees of power to convict. Chicago-Cook County and Williamson-Franklin are below the grand total average, and the more and the less urban counties, together with Milwaukee, above; the latter very far above. Similarly in the other columns, these differences crop out. The relatively consistent indices for Chicago and for Chicago-Cook County are explained largely on the basis of their composing 75 per cent of all cases, though this does not hold true, of course, of all the individual charge groups. The more and the less urban are more diversified, as is Williamson-Franklin. Milwaukee's indices are high and of great divergence.

Too much reliance cannot be put on these indices, of course, because of the varying numbers of cases in the several classes. Nor is any very profound relationship established here between results of trials and locality and type of charge. On the whole this chapter must be said to be inconclusive.

(X) SENTENCES EXECUTED

46. Explanation of Table C-1 (Classified Summary).

The analysis of sentences is made in three tables: Table C, the general basic table; Table C-1, a summary of the several kinds of sentences; and Table C-2, a combination of the percentages of each major type of sentence in the several jurisdictions. Table C will be found in the appendix to this chapter, as our discussion will center about C-1 and C-2.

CLASSIFIED SUMMARY OF SENTENCES

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total sentences executed	2625	100.00	1906	100.00	1994	100.00	364	100.00	185	100.00	11	100.00	71	100.00	649	100.00
Definite term sentence	1154	43.96	954	50.05	1006	50.45	88	24.18	51	27.57	1	9.09	8	11.27	265	40.83
Indefinite term sentence	1440	54.86	938	49.21	972	48.75	266	73.08	131	70.81	10	90.91	61	85.92	305	47.00
Fined and imprisoned	918	34.97	802	42.08	848	42.53	27	7.42	35	18.92	1	9.09	7	9.86	12	1.85
Fined only	31	1.18	14	.74	16	.80	10	2.75	3	1.62			2	2.81	79	12.17
Institutions	2596	98.90	1888	99.06	1975	99.05	358	98.35	183	98.92	11	100.00	69	97.18	588	90.60

Table C-1 is made up as follows: The totals, at the heads of the columns, are composed of the "definite term," "indefinite term," and "fined only." "Fined and sentenced" includes some definite and some indefinite sentences, and hence is a duplication of parts of these two classes. The totals for institutions are not the same as the totals for sentences.[1]

Of all sentences executed only a small percentage in Illinois, or any of the separate jurisdictions are "fined only"—an average for the state of 1.18 per cent, and a range from zero in the rural to 2.81 in Williamson-Franklin. In Milwaukee the percentage is almost equal to one-eighth of the total sentences. This slight percentage in Illinois is easy to explain, in view of the fact that our cases are all chosen as felonies in the initial stages at least. Milwaukee's large use of the fine only may be related to its high figure for probation, noted in chapter one. On the other hand, we find slightly over one-third of the Illinois sentences—42.53 per cent in Chicago-Cook County —in the class "fined and sentenced."

Definite term sentences show large percentages in Chicago-Cook County (one-half of the total) and small percentages from 27.57 to 9.09 in the other portions of the state. Milwaukee is intermediate with 40.83 per cent. Just the opposite is true of the indefinite term sentences; where Chicago-Cook County stands at slightly under 50 per cent and the rest of the state runs from 70.81 to 90.91 per cent. Milwaukee is again intermediate, with 47.00 per cent.

47. Definite Term Sentences.

The outstanding fact in this group (Table C-2) is the massing of cases in the shorter sentence classes. Of all Illinois cases, 54 per cent, and as high as 86

[1] The relationship between the totals of Table C-1 and of Tables A-3 and A-6 is brought out in the following Adjustment Table, which also harmonizes the totals of cases institutionalized with cases sentenced.

ADJUSTMENT OF TOTALS OF TABLE A-3 TO TOTALS OF TABLE C-1

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
1. Total guilty (Table A-3)	3,461	2,449	2,582	549	243	12	75	1,169
2. Total probation (Table A-3)	782	510	554	176	49	1	2	501
3. 1 less 2	2,679	1,939	2,028	373	194	11	73	668
4. Insane (not sentenced)	12	5	6	4	2			18
5. 3 less 4	2,667	1,934	2,022	369	192	11	73	650
6. Adjustments[2]	42	28	28	5	7		2	1
7. Total sentences executed (same as in Table C-1)	2,625	1,906	1,994	364	185	11	71	649
8. Sent to institutions (Table C-1)	2,596	1,888	1,975	358	183	11	69	588
9. Fined only and death sentence	41	23	25	10	4		2	79
10. 8 plus 9	2,637	1,911	2,000	368	187	11	71	667
11. Less insane (not sentenced)	12	5	6	4	2			18
12. Remainder—same as 7	2,625	1,906	1,994	364	185	11	71	649

[2] Cases in which new trials, modifications, and failure to pronounce sentence necessitated a subtraction from total guilty.

TABLE C-2

PERCENTAGE DISTRIBUTION OF SENTENCES OF EACH MAJOR TYPE

	Class 1. Definite Term Sentences							
	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Strictly Rural Counties	Williamson and Franklin	Milwaukee
Total Cases (100%)	1154	954	1006	88	51	1	8	265
Under 1 year	53.90	49.05	49.80	84.09	86.28	100.00	25.00	23.02
1-4 years	40.47	45.80	45.03	9.09	7.84		25.00	67.92
5-9 years	.69	.11	.40	2.27	1.96		12.50	5.28
10-14 years	1.39	1.36	1.29	3.41				1.51
15-19 years	.43	.53	.50					
20-39 years	1.22	1.15	1.09	1.14	3.92			.38
40 years and over	1.90	2.00	1.89				37.50	1.89

	Class 2. Indefinite Term Sentences							
	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Strictly Rural Counties	Williamson and Franklin	Milwaukee
Total Cases (100%)	1440	938	972	266	131	10	61	305
Under 1 year	.07	.11	.10					.66
1-5 years	1.67	1.49	1.44	1.13	1.53	20.00	4.92	79.01
1- (6-10) years	41.32	42.22	41.67	43.98	40.46	20.00	29.51	8.20
1- (14-25) years	21.60	12.26	13.17	32.71	45.80	60.00	49.18	1.64
1-Life	3.19	3.41	3.29	4.14	.76		3.28	
2-15 years								2.30
3-20 years	25.76	34.43	33.95	11.28	6.11		4.92	3.93
3-30 years								3.93
5-25 years	.35	.53	.52					.33
5-Life								
10-Life	5.00	4.48	4.83	5.26	4.58		8.19	
14-Life	.35	.11	.10	1.50				
Death	.69	.96	.93		.76			

TABLE C-2—Concluded

	Class 3. Fined and Sentenced to Imprisonment								Class 4. Fined Only							
	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Strictly Rural Counties	Williamson and Franklin	Milwaukee	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Strictly Rural Counties	Williamson and Franklin	Milwaukee
Total Cases (100%)	918	802	848	27	35	1	7	12	31	14	16	10	3		2	79
Under $10	81.37	85.91	85.73	18.52	40.00		14.28		3.23	7.14	6.25					
$10-24	2.07	1.12	1.18	7.41	20.00											5.07
$25-49	5.34	4.86	4.95		14.29	100.00	14.28		22.58	42.86	37.50		33.33			13.92
$50-74	1.42	.50	.59	14.81	11.42				12.90	7.14	12.50	10.00	33.33			13.92
$75-99	.44	.13	.12	7.41			14.29		12.90	14.29	12.50	20.00				
$100-499	8.70	6.86	6.84	51.85	14.29		42.86	100.00	48.39	28.57	31.25	70.00	33.34		100.00	65.82
$500-999	.33	.37	.35													1.27
$1000 and over	.33	.25	.24				14.29									

INSTITUTIONS

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Strictly Rural Counties	Williamson and Franklin	Milwaukee	
Total Cases (100%)	2596	1888	1975	358	183	11	69	588	Total Cases (100%)
Joliet Penitentiary	31.62	34.54	34.48	32.96	8.74	9.09	7.25	26.36	Waupun Penitentiary
Chester Penitentiary	8.21			26.81	44.81	45.46	43.48	2.72	Industrial Home (Women)
Pontiac Reformatory	19.99	20.69	20.30	15.92	18.58	27.27	34.78	12.25	State Reformatory
Insane	.46	.27	.30	1.12	1.09			3.06	Insane
Jail	8.36	6.37	6.28	18.72	13.11		2.90	1.02	Jail
State Farm	1.20			2.79	9.84	9.09	2.90		
Workhouse	29.58	38.08	38.59		3.28			54.59	Workhouse
Geneva (Girls)	.08	.05	.05			9.09			
St. Charles (Boys)	.50			1.68	.55		8.69		

per cent in the less urban counties, are within the limit of one year; Milwaukee having only 23 per cent here. In the total under five years are 94 per cent of all Illinois cases, a figure which is fairly constant save in the rural and Williamson-Franklin groups, where the numbers are too small to be statistically significant. The figure for Milwaukee, 90.94 per cent, closely approximates it. The remainder of this sub-table shows nothing very significant save the curious emphasis on 10-14 and 20-39, and the small number in the 5-9 and 15-19 groups. The 37.50 per cent in Williamson-Franklin, in the class 40 and over, actually represents only 3 cases out of a total of 8.

48. Indefinite Term Sentences.[1] For Illinois there are three classes (Table C-2) that include a large portion of all. These are the 1 to (6-10), 1 to (14-25) and the 3 to 20. The totals for these three groups of sentences are as follows:

Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
88.68	88.91	88.79	87.97	92.37	80.00	83.61	13.77

Here we have a close uniformity, broken only by the exceptional case of Milwaukee. Milwaukee shows a high percentage (79.01) in the 1-5 grouping, which would indicate in general a lighter type of sentence; though it is obvious that nothing can be safely concluded from the data of sentence alone, if one does not know the practice of the penal authorities in discharging or paroling prisoners.

One other group of sentences to imprisonment is notable—the class 10-life, which in Illinois is 5 per cent of the total of these groups. The death sentence, as usual, is a tiny fraction of the "indefinite term" sentences, where it is located merely for convenience; only .69 per cent of the indefinite term sentences; only 10 cases out 16,812 or .06 per cent; 6 in 10,000. Even checked against total homicides (672—Table B-5) it is less than one and one-half in 100.

49. Fined and Sentenced, and Fined Only. All that is given in the first of these two sub-tables (Table C-2) is the distribution of the fines. This is, of course, inconclusive, since the length of the prison sentence is not indicated. While it would be desirable to have both these facts about the sentence revealed together, practically it would present a table almost impossibly complicated; and so only one part is revealed here. It should be remembered that all the sentences to imprisonment connected with this table of "fined and sentenced" were presented in either the first or second of the tables immediately preceding this.

Obviously no statistical reliance can be placed on the small samples in the rural, the Williamson-Franklin and the Milwaukee columns, and very

[1] A word of explanation is called for here. The term is indicated as 1-(6-10) or 1-(14-25). This is due to the fact that the individual sentences range from the lower limit (generally one) to a maximum; e. g., 1 to 2 years, 1 to 5 years, 1 to 7 years, 1 to life, or 5 to 20 years, etc. When these were grouped it resulted in the double maximum, e. g., (6-10) in the first example above. That simply means that all of the sentences ranging between 1-6 and 1-10 are there included. It is obvious that any definite evaluation of what such sentence means in actual time served would have to await a statistical study of the time served by men who have been discharged after serving such a sentence. The maximum time is kept in the table because it seems desirable to have some record of it, and not merely a minimum.

little elsewhere outside of Chicago-Cook County. In Chicago-Cook County fines scarcely rise above the magnitude of a tip to the state: 85.73 per cent of all fines there are under ten dollars. There is an apparent increase over the $10-$24 group in the $25-$49 class. But it should be remembered: first, that fines tend to group themselves about round numbers, such as 10, 25, 50, and 100; second, the changes in the size of the class intervals from $10 to $15, to $25, to $500, make the percentages (e. g., in the $100-$499 group) appear numerous when actually they are not so, for in the $100-$499 class we have a range of $400 which is 40 times the range in the first class. If you divide the percentage 8.70 by 40, you have an average per cent for each $10 group of about .22.

In the "fined only" group, where only the total for Illinois is significantly large, nearly one half of all the fines are between $100 and $500. In Milwaukee the percentage rises even higher—to 65.82 per cent, or nearly two-thirds.

50. *Institutional Distribution of Sentences (Table C-2).* From Chicago-Cook County and the eight more urban counties, Joliet draws about a third of all the cases; whereas, the remainder of the state—apparently for geographical reasons—has only small percentages; around 8 per cent. Chester draws heavily from the last three columns and moderately from the eight more urban counties. Pontiac is roughly constant through the more and the less urban, rising in the rural and in the Williamson-Franklin groups. A small total in the rural makes its figures less reliable.

Jail sentences are little used in Cook County; more used in the more and the less urban counties; and scarcely at all in Williamson-Franklin. Except in the less urban counties, the state farm draws but few prisoners. The workhouse naturally looms larger in Chicago-Cook County; nearly 40 per cent are sentenced there. For Milwaukee we find a good majority (54.59 per cent) sentenced to the workhouse; about one-fourth to the penitentiary; one-eighth to the state reformatory.

It may be noted here that while Milwaukee courts find a much larger percentage of cases guilty than courts in Illinois, they put a much larger percentage on probation (see Table A-3) and their sentences include many more "fined only." In the definite term sentences they have fewer "under one year" and more "1-4 years" than Chicago; and in the indefinite term sentences they use extensively the "1-5 year" class. And finally, the workhouse takes more than half of their cases.

(XI) Pleas Analyzed as to Dispositions

51. *Explanation of Tables D-1 and D-2.* The purpose of this chapter is to inquire into the relationship between the pleas and the dispositions of cases. The trading of a plea of guilty for a lesser sentence (not considered here) or for probation or other modification, has frequently been found to be a common practice in the trial courts of other states. Changes in plea, nearly always to guilty, and sometimes to guilty of a lesser offense, have been involved in this process.

TABLE D-1

CASES ENTERING TRIAL COURT, CLASSIFIED BY DISPOSITION, WITH THE PERCENTAGE DISTRIBUTION OF THE SEVERAL TYPES OF PLEAS FOR EACH DISPOSITION.

	TOTAL—ILLINOIS										CHICAGO									
	Eliminated		Guilty		Probation		Modification		New Trials and Appeals		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	3977	100.00	3461	100.00	782	100.00	26	100.00	70	100.00	2533	100.00	2449	100.00	510	100.00	21	100.00	47	100.00
Not guilty, Not guilty	730	18.35	643	18.58	89	11.38	5	19.23	55	78.58	575	22.69	468	19.11	78	15.29	5	23.81	37	78.72
Guilty, Guilty			359	10.37	151	19.31	2	7.70	5	7.14			70	2.86	37	7.26			5	10.64
Guilty, Guilty Lesser Offense			80	2.31	11	1.41							60	2.45	5	.98				
Guilty Lesser Offense, Same			195	5.64	48	6.14	4	15.38					127	5.19	31	6.08	3	14.29		
Total			634	18.32	210	26.86	6	23.08	5	7.14			257	10.49	73	14.32	3	14.29	5	10.64
Not guilty, Guilty	2	.05	585	16.90	208	26.60	4	15.38	5	7.14	1	.04	349	14.25	129	25.29	3	14.29	1	2.13
Not guilty, Guilty Lesser Offense	15	.38	1587	45.85	270	34.53	11	42.31	5	7.14	12	.48	1372	56.02	230	45.10	10	47.61	4	8.51
Total	17	.43	2172	62.76	478	61.13	15	57.69	10	14.28	13	.52	1721	70.27	359	70.39	13	61.90	5	10.64
Not guilty, Not arraigned	2332	58.64	①2	.06							1843	72.76	①2	.08						
Never arraigned	877	22.05									102	4.03								
Total	3209	80.69	①2	.06							1945	76.79	①2	.08						
Other pleas	21	.53	10	.29	5	.64							1	.04						

①Insane, classed with guilty.

TABLE D-1—Continued

CASES ENTERING TRIAL COURT, CLASSIFIED BY DISPOSITION, WITH THE PERCENTAGE DISTRIBUTION OF THE SEVERAL TYPES OF PLEAS FOR EACH DISPOSITION

	CHICAGO AND COOK COUNTY										EIGHT MORE URBAN COUNTIES									
	Eliminated		Guilty		Probation		Modification		New Trials and Appeals		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	2671	100.00	2582	100.00	554	100.00	23	100.00	51	100.00	718	100.00	549	100.00	176	100.00	2	100.00	6	100.00
Not guilty, Not guilty	610	22.84	493	19.09	84	15.16	5	21.74	38	74.52	56	7.80	75	13.66	2	1.14			5	83.33
Guilty, Guilty			79	3.06	42	7.58	2	8.70	5	9.80			181	32.97	97	55.11				
Guilty, Guilty Lesser Offense			64	2.48	6	1.08							13	2.37	3	1.70				
Guilty Lesser Offense, Same			132	5.11	33	5.96	3	13.04					39	7.10	10	5.68	1	50.00		
Total			275	10.65	81	14.62	5	21.74	5	9.80			233	42.44	110	62.49	1	50.00		
Not guilty, Guilty	1	.04	374	14.48	138	24.91	3	13.04	4	7.84	1	.14	131	23.86	47	26.71	1	50.00		
Not guilty, Guilty Lesser Offense	13	.49	1437	55.65	251	45.31	10	43.48	4	7.84			104	18.94	14	7.96			1	16.67
Total	14	.53	1811	70.14	389	70.22	13	56.52	8	15.68	1	.14	235	42.81	61	34.67	1	50.00	1	16.67
Not guilty, Not arraigned	1935	72.44	①2	.08							256	35.65								
Never arraigned	111	4.15									391	54.46								
Total	2046	76.59	①2	.08							647	90.11								
Other pleas	1	.04	1	.04							14	1.95	6	1.09	3	1.70				

①Insane, classed with guilty.

TABLE D-1—Continued

CASES ENTERING TRIAL COURT, CLASSIFIED BY DISPOSITION, WITH THE PERCENTAGE DISTRIBUTION OF THE SEVERAL TYPES OF PLEAS FOR EACH DISPOSITION

	SEVEN LESS URBAN COUNTIES										TWO STRICTLY RURAL COUNTIES									
	Eliminated		Guilty		Probation		Modification		New Trials and Appeals		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	294	100.00	243	100.00	49	100.00	1	100.00	8	100.00	8	100.00	12	100.00	1	100.00				
Not guilty, Not guilty	45	15.31	44	18.11	1	2.04			7	87.50			2	16.67						
Guilty, Guilty			56	23.05	12	24.49							7	58.33						
Guilty, Guilty Lesser Offense			3	1.23	2	4.08														
Guilty Lesser Offense, Same			15	6.17	5	10.20														
Total			74	30.45	19	39.77							7	58.33						
Not guilty, Guilty			78	32.10	22	44.91			1	12.50			2	16.67	1	100.00				
Not guilty, Guilty Lesser Offense	2	.68	44	18.11	5	10.20	1	100.00					1	8.33						
Total	2	.68	122	50.21	27	55.11	1	100.00	1	12.50			3	25.00	1	100.00				
Not guilty, Not arraigned	138	46.94									3	37.50								
Never arraigned	105	35.71									5	62.50								
Total	243	82.65									8	100.00								
Other pleas	4	1.36	3	1.23	2	4.08														

TABLE D-1—Concluded

CASES ENTERING TRIAL COURT, CLASSIFIED BY DISPOSITION, WITH THE PERCENTAGE DISTRIBUTION OF THE SEVERAL TYPES OF PLEAS FOR EACH DISPOSITION

	WILLIAMSON AND FRANKLIN										MILWAUKEE									
	Eliminated		Guilty		Probation		Modification		New Trials and Appeals		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	286	100.00	75	100.00	2	100.00			5	100.00	350	100.00	1169	100.00	501	100.00			7	100.00
Not guilty, Not guilty	19	6.64	29	38.67	2	100.00			5	100.00	74	21.14	450	38.49	173	34.53			4	57.14
Guilty, Guilty			36	48.00							1	.29	653	55.86	311	62.08			3	42.86
Guilty, Guilty Lesser Offense																				
Guilty Lesser Offense, Same			9	12.00									5	.43	2	.40				
Total			45	60.00							1	.29	658	56.29	313	62.48			3	42.86
Not guilty, Guilty													40	3.42	13	2.59				
Not guilty, Guilty Lesser Offense			1	1.33									11	.94	2	.40				
Total			1	1.33									51	4.36	15	2.99				
Not guilty, Not arraigned											204	58.29								
Never arraigned	265	92.66									65	18.57	①8	.68						
Total	265	92.66									269	76.86	①8	.68						
Other pleas	2	.70									6	1.71	2	.17						

①Insane, classed with guilty

TABLE D-2

CASES ENTERING TRIAL COURT, CLASSIFIED BY DISPOSITION AND BY TYPE OF PLEA, WITH PERCENTAGE DISTRIBUTION OF DISPOSITIONS FOR EACH TYPE OF PLEA

	TOTAL—ILLINOIS												CHICAGO											
	Total Entering Trial Court		Eliminated		Guilty		Probation		Modification		New Trials and Appeals		Total Entering Trial Court		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	7438	100.00	3977	53.47	3461	46.53	782	10.51	26	.35	70	.94	4982	100.00	2533	50.84	2449	49.16	510	10.24	21	.42	47	.94
Not guilty, Not guilty	1373	100.00	730	53.17	643	46.83	89	6.48	5	.36	55	4.01	1043	100.00	575	55.13	468	44.87	78	7.48	5	.48	37	3.55
Guilty, Guilty	359	100.00			359	100.00	151	42.06	2	.56	5	1.39	70	100.00			70	100.00	37	52.86			5	7.14
Guilty, Guilty Lesser Off.	80	100.00			80	100.00	11	13.75					60	100.00			60	100.00	5	8.33				
Guilty Lesser Off., Same	195	100.00			195	100.00	48	24.62	4	2.05			127	100.00			127	100.00	31	24.41	3	2.36		
Total	634	100.00			634	100.00	210	33.12	6	.95	5	.79	257	100.00			257	100.00	73	28.40	3	1.17	5	1.95
Not guilty, Guilty	587	100.00	2	.34	585	99.66	208	35.43	4	.68	5	.85	350	100.00	1	.28	349	99.72	129	36.86	3	.85	1	.28
Not guilty, Guilty Lesser Offense	1602	100.00	15	.94	1587	99.06	270	16.85	11	.69	5	.31	1384	100.00	12	.87	1372	99.13	230	16.62	10	.72		
Total	2189	100.00	17	.78	2172	99.22	478	21.84	15	.68	10	.46	1734	100.00	13	.75	1721	99.25	359	20.70	13	.75	1	.06
Not guilty, Not arraigned	2334	100.00	2332	99.91	①2	.09							1845	100.00	1843	99.89	①2	.11						
Never arraigned	877	100.00	877	100.00									102	100.00	102	100.00								
Total	3211	100.00	3209	99.94	①2	.06							1947	100.00	1945	99.90	①2	.10						
Other pleas	31	100.00	21	67.74	10	32.26	5	16.32					1	100.00			1	100.00						

①Insane, classed with guilty.

TABLE D-2—Continued

CASES ENTERING TRIAL COURT, CLASSIFIED BY DISPOSITION AND BY TYPE OF PLEA, WITH PERCENTAGE DISTRIBUTION OF DISPOSITIONS FOR EACH TYPE OF PLEA

	CHICAGO AND COOK COUNTY												EIGHT MORE URBAN COUNTIES											
	Total Entering Trial Court		Eliminated		Guilty		Probation		Modification		New Trials and Appeals		Total Entering Trial Court		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	5253	100.00	2671	50.85	2582	49.15	554	10.55	23	.44	51	.97	1267	100.00	718	56.67	549	43.33	176	13.89	2	.16	6	.47
Not guilty, Not guilty	1103	100.00	610	55.30	493	44.70	84	7.62	5	.45	38	3.45	131	100.00	56	42.75	75	57.25	2	1.53			5	3.82
Guilty, Guilty	79	100.00			79	100.00	42	53.16	2	2.53	5	6.33	181	100.00			181	100.00	97	53.59				
Guilty, Guilty Lesser Offense	64	100.00			64	100.00	6	9.38					13	100.00			13	100.00	3	23.08				
Guilty Lesser Offense, Same	132	100.00			132	100.00	33	25.00	3	2.27			39	100.00			39	100.00	10	25.64	1	2.56		
Total	275	100.00			275	100.00	81	29.45	5	1.82	5	1.82	233	100.00			233	100.00	110	47.21	1	.43		
Not guilty, Guilty	375	100.00	1	.27	374	99.73	138	36.80	3	.80	4	1.07	132	100.00	1	.76	131	99.24	47	35.61	1	.76		
Not guilty, Guilty Lesser Offense	1450	100.00	13	.90	1437	99.10	251	17.31	10	.69	4	.28	104	100.00			104	100.00	14	13.46			1	.99
Total	1825	100.00	14	.77	1811	99.23	389	21.32	13	.71	8	.44	236	100.00	1	.42	235	99.58	61	25.85	1	.42	1	.42
Not guilty, Not arraigned	1937	100.00	1935	99.90	①2	.10							256	100.00	256	100.00								
Never arraigned	111	100.00	111	100.00									391	100.00	391	100.00								
Total	2048	100.00	2046	99.90	①2	.10							647	100.00	647	100.00								
Other pleas	2	100.00	1	50.00	1	50.00							20	100.00	14	70.00	6	30.00	3	15.00				

①Insane, classed with guilty.

TABLE D-2—Continued

CASES ENTERING TRIAL COURT, CLASSIFIED BY DISPOSITION AND BY TYPE OF PLEA, WITH PERCENTAGE DISTRIBUTION OF DISPOSITIONS FOR EACH TYPE OF PLEA

	SEVEN LESS URBAN COUNTIES												TWO STRICTLY RURAL COUNTIES											
	Total Entering Trial Court		Eliminated		Guilty		Probation		Modification		New Trials and Appeals		Total Entering Trial Court		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	537	100.00	294	54.75	243	45.25	49	9.12	1	.19	8	1.49	20	100.00	8	40.00	12	60.00	1	5.00				
Not guilty, Not guilty	89	100.00	45	50.56	44	49.44	1	1.12			7	7.87	2	100.00			2	100.00						
Guilty, Guilty	56	100.00			56	100.00	12	21.43					7	100.00			7	100.00						
Guilty, Guilty Lesser Offense	3	100.00			3	100.00	2	66.67																
Guilty Lesser Off., Same	15	100.00			15	100.00	5	33.33																
Total	74	100.00			74	100.00	19	25.68					7	100.00			7	100.00						
Not guilty, Guilty	78	100.00			78	100.00	22	28.21			1	1.28	2	100.00			2	100.00	1	50.00				
Not guilty, Guilty Lesser Offense	46	100.00	2	4.35	44	95.65	5	10.87	1	2.17			1	100.00			1	100.00						
Total	124	100.00	2	1.61	122	98.39	27	21.77	1	.81	1	.81	3	100.00			3	100.00	1	33.33				
Not guilty, Not arraigned	138	100.00	138	100.00									3	100.00	3	100.00								
Never arraigned	105	100.00	105	100.00									5	100.00	5	100.00								
Total	243	100.00	243	100.00									8	100.00	8	100.00								
Other pleas	7	100.00	4	57.14	3	42.86	2	28.57																

TABLE D-2—Concluded

CASES ENTERING TRIAL COURT, CLASSIFIED BY DISPOSITION AND BY TYPE OF PLEA, WITH PERCENTAGE DISTRIBUTION OF DISPOSITIONS FOR EACH TYPE OF PLEA

	WILLIAMSON AND FRANKLIN											
	Total Entering Trial Court		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	361	100.00	286	79.22	75	20.78	2	.55			5	1.39
Not guilty, Not guilty	48	100.00	19	39.58	29	60.42	2	4.17			5	10.42
Guilty, Guilty	36	100.00			36	100.00						
Guilty, Guilty Lesser Offense												
Guilty Lesser Off., Same	9	100.00			9	100.00						
Total	45	100.00			45	100.00						
Not guilty, Guilty												
Not guilty, Guilty Lesser Offense	1	100.00			1	100.00						
Total	1	100.00			1	100.00						
Not guilty, Not arraigned												
Never arraigned	265	100.00	265	100.00								
Total	265	100.00	265	100.00								
Other pleas	2	100.00	2	100.00								

	MILWAUKEE											
	Total Entering Trial Court		Eliminated		Guilty		Probation		Modification		New Trials and Appeals	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
All cases, total	1519	100.00	350	23.04	1169	76.96	501	32.98			7	.46
Not guilty, Not guilty	524	100.00	74	14.12	450	85.88	173	33.02			4	.76
Guilty, Guilty	654	100.00	1	.15	653	99.85	311	47.55			3	.46
Guilty, Guilty Lesser Offense												
Guilty Lesser Off., Same	5	100.00			5	100.00	2	40.00				
Total	659	100.00	1	.15	658	99.85	313	47.57			3	.45
Not guilty, Guilty	40	100.00			40	100.00	13	32.50				
Not guilty, Guilty Lesser Offense	11	100.00			11	100.00	2	18.18				
Total	51	100.00			51	100.00	15	29.41				
Not guilty, Not arraigned	204	100.00	204	100.00								
Never arraigned	73	100.00	65	89.04	①8	10.96						
Total	277	100.00	269	97.11	①8	2.89						
Other pleas	8	100.00	6	75.00	2	25.00						

①Insane, classed with guilty.

The data upon which this chapter is based are to be found in two tables, D-1 and D-2. These differ only in the manner in which the percentages are calculated.

In Table D-1 all the eliminated cases which had entered the trial court are distributed in the first pair of columns among the several types of pleas, which are the vertical classes of the table. Similarly the "guilty" cases are given in the second pair of columns. The succeeding three pairs contain the probation cases, modified cases, and new trial and appeal cases, respectively. In this table the percentages are calculated on the base of the total number in each of these groups; i. e., vertically.

In Table D-2 the first pair of columns contains the sum of pairs two and three, the numbers of which are identical with those of one and two of Table D-1. Column one in Table D-2 is then the column showing the distribution of all cases entering the trial court among the several classes of pleas. In this table the bases of the percentages are the numbers in column one; percentages are calculated horizontally. This table is essentially a kind of disposition table similar to the parts of Table A-3.

52. Distribution of Pleas, Regardless of Disposition.

A glance at Table D-2 shows a five-fold grouping of pleas based on the combinations of the first and second pleas (plea at first arraignment, and at second appearance in court, if there was a second appearance). The grouping is as follows:

a. Not guilty, not guilty.
b. Original plea guilty, second plea guilty.
   aa. Guilty as charged, guilty as charged.
   bb. Guilty as charged, guilty of lesser offense.
   cc. Guilty of lesser offense, guilty of lesser offense.
c. Original plea not guilty, second plea guilty.
d. No second plea, because of lack of second arraignment.
   aa. Not guilty, then not arraigned.
   bb. Never arraigned.
e. Other pleas (scattering and very few).

53. Guilty and Not Guilty, Compared.

In the summarizing of these tables only the percentages will be given and the classes will be somewhat differently arranged from those in the basic tables.

The first summary is as follows:

TABLE D-3. PERCENTAGE DISTRIBUTION OF CASES ENTERING TRIAL COURT BY PRINCIPAL CLASSES OF PLEAS

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Total	7,438	4,982	5,253	1,267	537	20	361	1,519
Not guilty—not guilty	18.46	20.94	21.00	10.34	16.57	10.00	13.30	34.50
Not guilty—not arraigned	31.38	37.03	36.87	20.20	25.70	15.00		13.43
Total	49.84	57.97	57.87	30.54	42.27	25.00	13.30	47.93
Guilty	37.95	39.96	39.98	37.02	36.87	50.00	12.74	46.74
Miscellaneous pleas	.42	.02	.04	1.58	1.30		.55	.53
Never arraigned	11.79	2.05	2.11	30.86	19.56	25.00	73.41	4.80

Here we have, first, all cases in which not guilty is either the last or the only plea offered. The class "not guilty, then not arraigned" is one leading always to elimination, (the two cases of "guilty" in this group are cases of "insanity" classified arbitrarily with the "guilty"). A glance at the forms of disposition counted as "eliminations" in Table A-6 will reveal a large number of such forms which are consistent with a plea of "not guilty"; e. g., all the "nolle" and "stricken" dispositions. These two types of "not guilty" pleas total for the state 49.84 per cent of all cases entering the trial court. Chicago and Cook County are highest (57.87 per cent) and Williamson-Franklin lowest. It is also interesting that Milwaukee, generally at variance with Chicago, here shows a relatively high percentage, though about 10 under Chicago. The two constituent groups of pleas in this general "not guilty" group show one type of uniformity throughout the state, with the exception of Williamson-Franklin: the "not guilty-not guilty" group is always smaller (sometimes slightly more than one-half) than the "not guilty, not arraigned." Here Milwaukee deviates sharply from the Illinois norm; the relationship is reversed and the first class is almost three times the second.

The percentage of the "guilty" runs fairly uniform through Chicago-Cook County and the more and the less urban counties (at about 38 per cent); goes up to 50 per cent in the two rural counties (negligible by reason of the small number of cases); and drops to 12.74 per cent in Williamson-Franklin counties. Milwaukee is higher in this group—46.74 per cent.

The cases in which no plea was ever made, or none recorded, are 11.79 per cent for the state. In Chicago-Cook County this group is negligible; in the more urban counties is high (30.86 per cent); lower in the less urban counties (19.56 per cent); higher in the rural; and very large (73.41 per cent) in Williamson-Franklin. It is almost as small in Milwaukee as in Chicago.

54. *Guilty of a Lesser Offense.* The second summary table classifies those pleading guilty (as determined by the second plea) into two groups: those pleading guilty of the offense charged, and those pleading guilty of a lesser offense.

TABLE D-4. PERCENTAGE DISTRIBUTION OF FINAL PLEAS OF GUILTY AS GUILTY OF OFFENSE CHARGED, AND GUILTY OF LESSER OFFENSE

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Total guilty	2,823	1,991	2,150	469	198	10	46	710
Total guilty, per cent.....	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Total guilty offense chgd..	33.51	21.10	21.62	66.74	67.68	90.00	78.26	97.75
Total guilty lesser offense	66.49	78.90	78.38	33.26	32.32	10.00	21.74	2.25

Here we have three distinct groups: Chicago-Cook County with 78.38 per cent pleading to a lesser offense; the rest of the state ranging (except for rural counties) between 21.74 and 33.26 per cent; and Milwaukee at 2.25 per cent.

55. Change of Plea. The third grouping is based on the criterion of change of plea. All the cases in which final pleas were made are grouped as unchanged and changed, and these classes in turn are subdivided according to the first plea, as guilty or not guilty. The percentage unchanged is lowest in Chicago-Cook County (41.03); it rises through the more and the less urban counties to a maximum in Williamson-Franklin, where nearly 99 per cent are so classed. Milwaukee is of almost equal rank (in this respect) as the last named group. Here we have one of the few clear-cut cases of a general trend of a percentage as we pass from metropolitan to urban, to rural jurisdictions.

TABLE D-5. PERCENTAGE DISTRIBUTION OF FINAL PLEAS BETWEEN UNCHANGED AND CHANGED PLEAS

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Total final pleas made (exclusive of "others")	4,196	3,034	3,203	600	287	12	94	1,234
Percentage of total pleas	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Not guilty, not guilty	32.71	34.38	34.44	21.83	31.01	16.67	51.06	42.46
Guilty, unchanged	13.21	6.49	6.59	36.67	24.74	58.33	47.88	53.41
Total unchanged	45.92	40.87	41.03	58.50	55.75	75.00	98.94	95.87
Not guilty, changed	52.17	57.15	56.98	39.33	43.20	25.00	1.06	4.13
Guilty, changed	1.91	1.98	1.99	2.17	1.05			
Total changed	54.08	59.13	58.97	41.50	44.25	25.00	1.06	4.13

56. Final Pleas. The fourth grouping of these figures has as a base only the final pleas of guilty. The first group is that of the unchanged. Here we find a small percentage in Chicago-Cook County (10.05 per cent), a much greater in the more and the less urban (46.91 and 35.86 per cent) and an exceedingly high percentage in the remainder of the state, amounting to almost 98 per cent in Williamson-Franklin. Milwaukee also is high. The significance of the low percentage of unchanged pleas in Chicago-Cook County points to a quite general practice of making a first plea of not guilty, and then reducing it. What effect such a reduction has upon disposition remains to be seen.

TABLE D-6. PERCENTAGE DISTRIBUTION OF FINAL PLEAS OF GUILTY AS UNCHANGED PLEAS, AND AS CHANGED PLEAS

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee
Total guilty (final)	2,823	1,991	2,100	469	198	10	46	710
Total guilty (final), percentage	100.00	100.00	100.00	100.0.	100.00	100.00	100.00	100.00
Guilty offense charged, unchanged	12.72	3.51	3.76	38.59	28.28	70.00	78.26	92.11
Guilty lesser off., unchanged	6.91	6.38	6.29	8.32	7.58		19.57	.70
Total	19.63	9.89	10.05	46.91	35.86	70.00	97.83	92.81
Not guilty, guilty off. chgd.	20.79	17.58	17.86	28.14	39.39	20.00		5.64
Not guilty, guilty lesser off.	56.75	69.51	69.05	22.18	23.23	10.00	2.17	1.55
Total	77.54	87.09	86.91	50.32	62.62	30.00	2.17	7.19
Guilty offense charged, guilty lesser offense	2.83	3.02	3.04	2.77	1.52			

One of the most puzzling of the problems presented by this table is the class of pleas "guilty of offense charged, changed to guilty of a lesser offense." Of course, a man may mistakenly plead to the wrong offense, and then be given the opportunity to retract that plea in favor of another.

57. General Comments. Turning now to Table D-2, we shall consider briefly some of the outstanding facts there set forth.

It was pointed out at the beginning of this chapter that each row of this table is a miniature disposition table, in which the total number of pleas of the particular kind indicated is the base of the percentages of the succeeding types of dispositions. By comparing the percentages of any two rows in the same column, one secures some notion of the relative association of the given disposition with the given types of pleas. Looking then at the summary for all Illinois we see first several outstanding facts: (1) of those who plead not guilty both times, slightly over half are eliminated and slightly under half are guilty; (2) of those who plead guilty on the first plea none are eliminated; (3) of those who plead not guilty and then shift to guilty only a very small proportion are eliminated; (4) of those who plead guilty once and are thereafter not arraigned, all are eliminated [save two cases of insanity reckoned arbitrarily with the guilty (see Table A-6)]; and (5) of those never arraigned or pleading, all are eliminated. Obviously the latter two classes may be regarded as practically identical.

All of these results, save perhaps the first, are logical concomitants of the respective types of pleas. There is no way of deciding what the basic factors are that produce the almost even division of the "not guilty, not guilty" plea. Perhaps some light is thrown on this by the facts set forth in chapter one with respect to the several types of disposition—by jury, by prosecutor, etc.

Possibly the most significant points in this table are the results *after* guilt is established. The only numerically impressive class of dispositions is that of probation. Here the interesting fact is, that, while 89 out of 643 cases pleading "not guilty, unchanged" (or 13.84 per cent), are given probation, of those who plead "guilty-guilty," 42.06 per cent are put on probation; of those who plead "guilty," then "guilty of a lesser offense," 13.75 per cent; of those who plead "guilty of a lesser offense, unchanged," 24.62 per cent; and of those who plead "guilty" to begin with (the total of these three), 33.12 per cent are put on probation. Evidently, then, the chances of getting probation are roughly two and one-half times as great if one pleads guilty to begin with as they are if one pleads not guilty and sticks to it.

Similarly, in the next group, of those who first plead not guilty and then change the plea to guilty, 35 per cent approximately[1] are put on probation, and of those who plead not guilty and then change to guilty of a lesser offense, 16 per cent are given probation; and of these two groups together, 21 per cent are given probation. This indicates that changes in pleas are less effective than original pleas of guilty, but still about one-half

[1] The totals guilty here are almost 100 per cent and the percentages of probation given are approximately the same as if the base were 100 per cent exactly, as in the preceding classes.

more efficient than unchanged not guilty pleas in producing probation as a result.

58. Jurisdictions Compared.

Turning now to Chicago-Cook County, we find these proportions approximately retained: the "guilty-guilty" plea is slightly more effective here, as is also the "not guilty-not guilty"—17.04 per cent against 13.84 per cent in the state as a whole.

In the eight more urban counties, the "not guilty-not guilty" have less than half eliminated (only 42.75 per cent) and this plea is almost never followed by probation. On the other hand, probation is here much more generously awarded than in Chicago-Cook County to those who plead guilty originally; 47.21 per cent compared with 29.45; and the proportion of those changing the plea to guilty who are put on probation is slightly higher than in Chicago-Cook County.

With respect to all these points the seven less urban counties more nearly approximate the Chicago-Cook County pattern than those just mentioned. The numbers in the rural counties are too small to make discussion valuable.

Only one or two points stand out in Williamson-Franklin; the high percentage of "guilties" on the unchanged plea of "not guilty"; and the very slight use of probation.

Milwaukee, of course, presents marked divergences from the Illinois and Chicago-Cook County pattern. First of all, 85.88 per cent of all "not guilty-not guilty" pleas are followed by the ascertainment of guilty (cf. Chicago-Cook County 44.70 per cent). Of these "guilty" cases no less than 38.44 per cent are put on probation. But the proportions in the probation groups for original not guilty pleas are less than one-half larger than for the "not guilty-not guilty"; and the changed pleas result in a relatively high proportion of probation also—29.41 per cent as against 21 (approximately) in Chicago-Cook County. These are, of course, not unexpected results, when one considers the fact that 32.06 per cent of all cases guilty are put on probation in Milwaukee.

Of the other modifications and of new trials and appeals, the percentages are too small to be significant.

In conclusion then, it would seem safe to generalize to this extent at least: that the plea most likely to result in probation is always an original plea of guilty; next best, save in Milwaukee, a change to guilty from not guilty; and least likely, the plea of not guilty, unchanged.

In Table D-1 the sum of the column is the base of the percentages, instead of the sum of the row, as in Table D-2; in the former we can see at a glance the relative contributions of the several pleas to the given disposition.

In Illinois 18.58 per cent of the guilty have plead not guilty, unchanged; about the same per cent plead guilty as a first plea; and 62.76 per cent have changed a plea to guilty. Probation shows fewer "not guilty unchanged" pleas (11.38 per cent); more original guilty pleas (26.86); and almost the same proportion of changed pleas (61.13 per cent). Modifications for the whole state number only 26, and their percentages, therefore, are not very

significant; but the percentage distribution is not far from that of the guilty column. New trials and appeals show, of course, the largest per cent among those who plead "not guilty unchanged," but it is interesting to note that 21.42 per cent of these occurred where the plea had been guilty, first or last, and two-thirds of these were where pleas were changed.

In Chicago-Cook County the "guilty" column shows a very high percentage in the changed pleas, a low one in the original guilty pleas, and an average (based on Illinois) in the "not guilty unchanged" plea. Percentages of probation are much like the percentages of guilty. In the more urban we find the "guilty" disposition devoted largely and equally to the two major types of pleas of guilty, with 42.44 and 42.81 respectively for original and changed pleas of guilty. Probation here seems more likely in the case of the original pleas of guilty and less so in the changed pleas of guilty (62.49 to 34.67 per cent).

In the seven less urban counties, the guilty show an almost average percentage in the "not guilty unchanged" plea; less than the immediately previous group of jurisdictions in the original guilty pleas (30.45 to 42.44 per cent); and more in the changed plea group (50.21 to 42.81 per cent). In the last two classes these jurisdictions are above the average for the state in the original guilty pleas (30.45 to 18.32 per cent); and below the average on changed pleas (50.21 to 42.81 per cent). Here practically no application of probation takes place in the "not guilty-not guilty" class (1 case, 2.04 per cent), and 39.77 and 55.11 per cent for original guilty pleas and changed pleas respectively.

Williamson-Franklin Counties are quite divergent from the average; 38.67 per cent of the guilty plead "not guilty unchanged," and 60 per cent of them plead guilty originally. The changed pleas are negligible.

Milwaukee has an unsually high percentage of "guilty" dispositions in the "not guilty unchanged" pleas class; a slightly smaller percentage in the original pleas of guilty than that in Illinois; and a small percentage in the change of plea classes. It is also apparently wiser to plead "not guilty-not guilty," or to make an original plea of guilty than to change a plea if it is desired to be put on probation, as the percentages 34.53, 62.48, and 2.99 seem to indicate in that column.

(XII) Bail, Analyzed as to Disposition

59. Explanation of Table E. In Table E is presented a comparison of the percentage distribution of major types of dispositions for bailed cases and for all cases *within* the following groups: eliminated in preliminary hearing; eliminated in grand jury; eliminated in trial court; guilty in trial court; entering trial court. Due to the method of tabulating, we are unable to present a disposition table of the type of chapter one for preliminary hearing or grand jury. In these two groups we have only the distributions within the eliminations in the two stages of procedure, and not the percentage of eliminations and of cases going on to the next stage. In the trial court cases, however, we have both types of data. The last section shows the percentages of the relationship of bail to the basic problem of disposition; namely, was the case eliminated

RELATION OF BAIL TO DISPOSITION

	TOTAL ILLINOIS			CHICAGO			CHICAGO AND COOK COUNTY			EIGHT MORE URBAN COUNTIES		
	Bailed		All Cases	Bailed		All Cases	Bailed		All Cases	Bailed		All Cases
	No.	%	%	No.	%	%	No.	%	%	No.	%	%
Eliminated Preliminary Hearing:												
10. Discharged	1033	40.67	35.54	945	42.17	34.57	945	42.09	35.14	77	29.39	40.63
11. Nolle Prosequi	239	9.41	12.02	204	9.10	12.51	205	9.13	12.59	29	11.07	8.70
12. Dismissed, want of Prosecution	1127	44.37	39.55	976	43.55	40.84	979	43.61	40.21	136	51.91	40.33
13-22. Other eliminations	141	5.55	12.89	116	5.18	12.08	116	5.17	12.06	20	7.63	10.34
TOTAL	2540	100.00	100.00	2241	100.00	100.00	2245	100.00	100.00	262	100.00	100.00
Eliminated Grand Jury:												
02. No Billed	365	70.74	80.04	231	88.17	93.53	233	88.26	92.35	97	54.49	49.30
01, 03, 06. Other eliminations	151	29.26	19.96	31	11.83	6.47	31	11.74	7.65	81	45.51	50.70
TOTAL	516	100.00	100.00	262	100.00	100.00	264	100.00	100.00	178	100.00	100.00
Eliminated Trial Court:												
30-35. Nolle, Stricken, Discharged, etc.	693	42.83	56.22	522	49.81	62.69	550	50.00	62.37	89	28.90	47.77
44-46-48. Acquitted, by Jury or Court	364	22.50	16.82	311	29.68	21.52	322	29.27	21.72	21	6.82	6.41
36-43-53. Pending and other eliminations	561	34.67	26.96	215	20.52	15.79	228	20.73	15.91	198	64.28	45.82
TOTAL	1618	100.00	100.00	1048	100.00	100.00	1100	100.00	100.00	308	100.00	100.00
Guilty:												
45-47-50-52-55. Guilty Lesser Offense	430	64.47	63.59	350	74.79	75.54	371	74.95	75.29	36	31.86	30.05
49-51. Guilty Offense charged	236	35.38	36.06	118	25.21	24.25	124	25.05	24.67	76	67.26	69.22
54. Adjudged Insane	1	.15	.35			.21			.04	1	.88	.73
TOTAL	667	100.00	100.00	468	100.00	100.00	495	100.00	100.00	113	100.00	100.00
Eliminated and Guilty, Trial Court:												
Eliminated	1618	70.81	53.46	1048	69.13	50.84	1100	68.96	50.85	308	73.16	56.67
Guilty	667	29.19	46.54	468	30.87	49.16	495	31.04	49.15	113	26.84	43.33
TOTAL	2285	100.00	100.00	1516	100.00	100.00	1595	100.00	100.00	421	100.00	100.00

TABLE E—Concluded
RELATION OF BAIL TO DISPOSITION

	SEVEN LESS URBAN COUNTIES			TWO RURAL COUNTIES			WILLIAMSON AND FRANKLIN			MILWAUKEE		
	Bailed		All Cases	Bailed		All Cases	Bailed		All Cases	Bailed		All Cases
	No.	%	%	No.	%	%	No.	%	%	No.	%	%
Eliminated Preliminary Hearing:												
10. Discharged	11	34.38	35.43						26.00	47	63.51	73.67
11. Nolle Prosequi	5	15.62	6.69						12.00	15	20.27	10.03
12. Dismissed, want of Prosecution	11	34.38	20.08			62.50	1	100.00	40.00	5	6.76	7.84
13-22. Other eliminations	5	15.62	37.80			37.50			22.00	7	9.46	8.46
TOTAL	32	100.00	100.00			100.00	1	100.00	100.00	74	100.00	100.00
Eliminated Grand Jury:												
02. No Billed	35	61.40	53.98			40.00						
01, 03, 06. Other eliminations	22	38.60	46.02	2	100.00	60.00	15	100.00	100.00			
TOTAL	57	100.00	100.00	2	100.00	100.00	15	100.00	100.00			
Eliminated Trial Court:												
30-35. Nolle, Stricken, Discharged, etc.	36	34.62	43.54				18	17.14	34.62	11	57.90	73.14
44-46-48. Acquitted, by Jury or Court	14	13.46	9.86				7	6.67	4.89	1	5.26	20.57
36-43-53. Pending and other eliminations	54	51.92	46.60	1	100.00	100.00	80	76.19	60.49	7	36.84	6.29
TOTAL	104	100.00	100.00	1	100.00	100.00	105	100.00	100.00	19	100.00	100.00
Guilty:												
45-47-50-52-55. Guilty Lesser Offense	19	38.78	30.45			8.33	4	44.94	29.33	11	64.71	35.50
49-51. Guilty Offense charged	30	61.22	68.73	1	100.00	91.67	5	55.56	70.67	5	29.41	62.96
54. Adjudged Insane			.82							1	5.88	1.54
TOTAL	49	100.00	100.00	1	100.00	100.00	9	100.00	100.00	17	100.00	100.00
Eliminated and Guilty, Trial Court:												
Eliminated	104	67.97	54.75	1	50.00	40.00	105	92.11	79.22	19	52.78	23.04
Guilty	49	32.03	45.25	1	50.00	60.00	9	7.89	20.78	17	47.22	76.96
TOTAL	153	100.00	100.00	2	100.00	100.00	114	100.00	100.00	36	100.00	100.00

or guilty? Because of the importance of this question, the last section will be discussed first. The ultimate classes of dispositions have been combined into summary groups, which constitute the stub of the table.

60. *Summary.* For Illinois as a whole, for Chicago-Cook County, and the more and the less urban counties we have (Table E) a decided association of bail with elimination; e. g., in Illinois 70.81 per cent as compared with 53.46 per cent in all cases. The relation is the same, though both percentages are higher in Williamson-Franklin Counties; and it is the same, though lower, in Milwaukee. This suggests either that the cases which are weaker (from the state's point of view) are more likely to be bailed, or that the fact of bail may play a role in the determination of innocence. What this role is it is impossible, of course, to state with certainty, but it may be connected with the value of delay to the defendant.

61. *Preliminary Hearing.* The relationships may be summarized in this manner; wherever the percentage of a given disposition among the bailed cases is greater than that among all cases a plus mark (+) will be set down; where less, a minus sign (—).

TABLE E-1. ELIMINATED IN PRELIMINARY HEARING

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Milwaukee
Discharged	+	+	+	—	—	—
Nolle prosequi	—	—	—	+	+	+
Dismissed, want of prosecution	+	+	+	+	+	—
Other dispositions	—	—	—	—	—	+

Omitting the two rural and Williamson-Franklin Counties because of small numbers or no cases, we see that bail is associated in Illinois, Chicago and Cook County with a larger percentage of dispositions by "discharge" and "dismissal for want of prosecution" and with a lesser percentage of "nolle prosequi" and "other dispositions." The more and the less urban reverse this relationship for "discharged" and "nolle prosequi," but keep it for the other two, as in Chicago-Cook County. As usual Milwaukee differs.

62. *Grand Jury.* In the grand jury the percentage distribution of eliminations is of no particular importance, but is nevertheless summarized as follows:

TABLE E-2. ELIMINATED IN GRAND JURY

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Williamson and Franklin Counties
No billed	—	—	—	+	+	+
Other dispositions	+	+	+	—	—	+

The main fact here is that "other dispositions" are relatively more numerous in Chicago-Cook County and less numerous in the rest of the State. Milwaukee eliminates no cases in the grand jury, hence is absent from this table.

63. Eliminated in the Trial Court.

TABLE E-3. ELIMINATED IN TRIAL COURT

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Williamson and Franklin Counties	Milwaukee
Discharged, nolled, stricken.....	—	—	—	—	—	—	—
Acquitted by jury or court.....	+	+	+	+	+	+	—
Pending or others.....	+	+	+	+	+	+	+

Here we have an almost perfect uniformity. Throughout the various jurisdictions the eliminations by the prosecutor are less where bail is used than in the total of all cases. Acquittals by jury or court are greater in each section of Illinois, but less in Milwaukee (the only deviation in this table). "Pending" and "other" eliminations are greater in all the jurisdictions.

64. Guilty in the Trial Court.

TABLE E-4. GUILTY IN TRIAL COURT

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Williamson and Franklin Counties	Milwaukee
Guilty of lesser offense.....	+	—	—	+	+	+	+
Guilty of offense charged.....	—	+	+	—	—	—	—

"Guilty of lesser offense" reveals in Chicago and Cook County a slighter tendency (though the difference is really negligible) of bailed cases to fall into this class; correspondingly the relationships are reversed in the "guilty of offense charged." Taking the state as a whole we see almost no tendency for bail primarily to be associated with one or the other of these types of disposition. In Milwaukee, however, there seems to be a much greater association of bail with guilt of lesser degree, and less association of bail with guilt of offense charged.

(XIII) ASSIGNMENT OF COUNSEL, ANALYZED AS TO DISPOSITION OF CASES

65. Explanation of Table F. One of the questions arising from time to time in the analysis of the operation of our trial courts is that of the value of our system of assigning counsel to indigent defendants. In Table F we have a summary of the facts revealed by our investigation.

This table gives, in paired columns, by jurisdictional groups, the percentage eliminated and the percentage guilty, in the first of the two columns of each pair for the cases in which counsel were assigned, and in the second for all cases entering the trial courts. Unfortunately the data were impossible to obtain for Chicago and Cook County, save on two cases. The table represents, therefore, the results for Illinois outside of Chicago.

In every Illinois group we find the percentage of guilty cases larger in the group to whom counsel were assigned than in the total cases. Expressing the relationship of the percentage guilty (with assigned counsel) to the

TABLE F

RELATION OF ASSIGNED COUNSEL TO DISPOSITION

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	Assigned Counsel	All Cases	Assigned Counsel	All Cases	Assigned Counsel	All Cases	Assigned Counsel	All Cases	Assigned Counsel	All Cases	Assigned Counsel	All Cases	Assigned Counsel	All Cases	Assigned Counsel	All Cases
Number entering Trial Court	315	7438	2	4982	2	5253	218	1267	71	537	4	20	20	361	126	1519
Percentage entering Trial Court	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Per cent Eliminated	35.56	53.47		50.84		50.85	39.91	56.67	21.13	54.75	50.00	40.00	40.00	79.22	22.22	23.04
Per cent Guilty	64.44	46.53	100.00	49.16	100.00	49.15	60.09	43.33	78.87	45.25	50.00	60.00	60.00	20.78	77.78	76.96

percentage guilty (of all cases) in the form of ratios, we have the following summary:

Total Illinois	138 to 100
Eight more urban counties	139 to 100
Seven less urban counties	174 to 100
Williamson-Franklin	195 to 100
Milwaukee	101 to 100

(Chicago and the two rural counties are omitted because of the small numbers of cases).

Except in Milwaukee, it seems advisable for a defendant to pick his own counsel. The causes of this situation are complicated by differences in local practice. Moreover, the comparison of percentages is not quite fair, since the numbers in the second column of each pair are usually very much larger than those in the first; nevertheless, the results raise some questions.

(XIV) Time Elapsed in Relation to Disposition

66. *Explanation of Table G.* Five time intervals are considered in this study; they are calculated by days from the first to the second of the stages in each class:

A. Complaint to disposition in the trial court.
B. Complaint to disposition in preliminary hearing.
C. Disposition in preliminary hearing to disposition in grand jury.
D. Disposition in grand jury to arraignment in trial court.
E. Arraignment in trial court to disposition in trial court.

Outside of Cook County, including Chicago, it was in general impossible to find in the records the date of arraignment; therefore the intervals D and E are combined as E for these jurisdictions, and time interval C is calculated only for Chicago and Cook County.

The process of summarization is as follows: The median[1] time interval was calculated for each county, for each disposition and time interval. Because of the unreliability of the median of a small number of cases, where there were less than fifteen time intervals reported for any disposition in any county the median was not calculated.

[1] The "median" is that value above which and below which 50 per cent of the cases in any distribution fall; e. g., eleven time intervals are as follows:

Order in Which Found	Arranged in Order of Magnitude
66 days	49 days
57	57
49	62
68	64
80	66—median
81	68
85	71
62	80
71	81
64	85
86	86

Here 66 days is the median time interval: there are five cases larger than 66 and five smaller. The principal advantage of the median lies in the fact that it is uninfluenced by the size of the extreme variations. The ordinary average or mean is very sensitive to extreme variations. A single case, sufficiently divergent from the great mass of cases, can increase or decrease the mean very pronouncedly.

For the combined groups of counties the means of these medians were used, each median being weighted by the number of cases of which it was the median. The numbers of cases in these tables are not the same as those of the disposition tables, because of the omission of the data for groups under fifteen and also because the dates were not always available in the records.

67. *Time Interval A: Total Elapsed Time.*

In the "Total Illinois" row we find (Table G-1) cases eliminated in the preliminary hearing taking roughly 10.5 days; cases eliminated in grand jury approximately twice that amount; and cases eliminated in the trial court over ten times that amount. The average time interval for cases which are found guilty is 42.8 days less than for those which are eliminated. Most of the guilty cases were pleaded guilty, so that the correspondence between the figure for all guilty cases and for pleas accepted (67.90 and 66.84) is to be expected. The retarding effect of trial, as distinguished from acceptance of plea, is discovered in the figure 105.96, the median number of days for cases found guilty by a jury, and for cases in which the judge tried the case directly, 76.65.

The figures for Chicago and Cook County are very close together, and fairly close to those for the whole State, which is quite natural considering the fact that Chicago-Cook County constitute numerically a large part of the numbers for the whole state. It should be noted, however, that save for the group eliminated in the grand jury we have in the metropolitan area a slightly larger time period than in the state as a whole.

It follows from the last comparison that the remainder of the state should show considerably smaller time intervals than Chicago. This is borne out in nearly all the points of comparison. The eight more urban counties are faster in the preliminary hearing, slower in the grand jury, much faster in eliminated cases of the trial court, and slightly faster in the guilty and the various types of the guilty (acceptance of plea and trial by jury). We note also that jury trials are longer than acceptances, and acceptances are much shorter than "guilties" in general. The seven less urban counties show a very brief interval in cases eliminated in the preliminary hearing; a long period in the cases eliminated in the grand jury. This may be traceable to the delays arising from the term system of holding court. On the other hand, the group eliminated in preliminary hearing is slightly under the average for the state; the guilty group as a whole and the plea accepted group are very low. The small number of jury trials almost equals Chicago in duration of this time interval. The contrast between trial by jury cases and plea accepted cases is very marked in these seven jurisdictions. Williamson-Franklin is in general low—in some instances very low; e.g., the 6.88 in the plea accepted group. Milwaukee shows the highest time interval of all for eliminated in preliminary hearing—about half that of Chicago for eliminated in trial court, and about one-fourth in plea accepted and all guilty cases. Jury trials are much lower than in any Illinois group save the eight more urban counties. The group of cases here reported as convicted by the judge alone shows an extraordinarily small interval.

The general conclusions to be drawn from this table are (1) trials ending unsuccessfully for the state take much more time than the successful

TABLE G-1—TIME INTERVALS

TIME INTERVAL A

COMPLAINT TO DISPOSITION IN THE TRIAL COURT

	Eliminated in Preliminary Hearing		Eliminated in Grand Jury		Eliminated in Trial Court		Guilty		Plea Accepted		Convicted by Jury		Found Guilty by Court	
	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.
Total Illinois	6702	10.45	1578	23.33	3056	110.70	3413	67.90	2758	66.84	262	105.96	281	76.65
Chicago	5624	11.27	1309	18.04	2210	112.88	2437	74.35	1974	71.19	197	113.21	266	77.31
Chicago and Cook County	5857	10.90	1348	18.75	2332	113.35	2569	73.56	2082	70.48	197	113.21	281	76.65
Eight more Urban Counties	660	8.23	190	44.95	379	81.79	543	65.84	472	63.04	21	65.00		
Seven less Urban Counties	154	4.11	40	7.50	122	110.50	226	48.47	158	48.11	26	112.50		
Two rural Counties														
Williamson and Franklin	31	5.25			123	30.92	75	21.07	46	6.88	18	65.00		
Milwaukee	292	16.88			350	57.25	1149	17.22	704	15.55	49	75.00	395	23.17

ones; (2) this brevity is largely due to the predominance of pleas accepted in the guilty group; (3) trial by jury in general takes much more time than acceptance of pleas; (4) in general, speed of trial is greater outside of the Metropolis; (5) Milwaukee shows mostly short intervals, some of them remarkably short.

68. *Time Interval B: Complaint to Disposition in Preliminary Hearing.*

The outstanding fact here (Table G-2) is simply this: cases eliminated in the preliminary hearing show uniformly a greater, sometimes much greater, period in this stage than cases progressing to further stages; and there is a fair uniformity in this time interval in all the cases passing beyond the preliminary hearing. A comparison of the several jurisdictions in the median column of eliminations in the preliminary hearing shows Chicago high; down-state low, and Milwaukee very high.

69. *Time Interval C: Disposition in Preliminary Hearing to Disposition in Grand Jury.*

In Table G-3 we find no such marked difference between the time interval of the eliminated cases in the grand jury and the time interval in the subsequent classes as the one we found in the case of time interval B. In the whole State, and Chicago and Cook County, there is slight change as one passes from the first median to the successive medians. There is some difference in the eight more urban counties, but it is not nearly so marked as in the preceding time interval section (B). A still slighter difference is seen in the case of the seven less urban counties. Milwaukee has no eliminations in the grand jury and shows a roughly uniform series of medians.

70. *Time Interval D: Disposition in Grand Jury to Arraignment in Trial Court.*

Since the date of arraignment was not found outside of Chicago-Cook County, we have (Table G-4) only the figures for these two jurisdictions together with their total, here labeled "Total Illinois." These medians are quite uniform throughout, horizontally and vertically, and hence show no significant tendencies related to disposition.

71. *Time Interval E: Arraignment in Trial Court to Disposition in Trial Court.*

Here (Table G-5) we find again the marked influences of the procedure on the time interval, which was noted in the discussion under A. Cases eliminated in the trial court, in Chicago-Cook County, and the total State take over twice the time which the guilty cases consume. The acceptance of a plea is the principal factor in speeding up these guilty cases, for the jury trial slows cases down to the standard of eliminated cases. Trial and conviction by the court is seen also to be a means of expediting disposition. This tendency is slightly less in the eight more urban counties; but in the seven less urban counties the difference is greatly increased—over three to one—and in Williamson-Franklin it is nearly five to one.

The guilty cases in the more and the less urban counties show the same general tendencies as the metropolitan guilty cases, but they are much less pronounced in their range; they have also smaller intervals than Chicago-

TABLE G-2—TIME INTERVALS

TIME INTERVAL B

COMPLAINT TO DISPOSITION IN THE PRELIMINARY HEARING

	Eliminated in Preliminary Hearing		Eliminated in Grand Jury		Eliminated in Trial Court		Guilty		Plea Accepted		Convicted by Jury		Found Guilty by Court	
	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.
Total Illinois	6702	10.45	1880	2.09	1986	3.08	2397	2.05	2003	2.04	145	1.78	195	1.85
Chicago	5624	11.26	1389	1.84	1439	3.07	1823	1.79	1518	1.78	110	1.81	195	1.85
Chicago and Cook County	5857	10.89	1442	1.83	1502	3.01	1880	1.79	1568	1.77	110	1.81	195	1.85
Eight more Urban Counties	660	8.24	324	3.31	380	3.38	408	3.35	348	3.37	18	1.56		
Seven less Urban Counties	154	4.11	61	2.03	67	3.80	109	1.73	87	1.70	17	1.85		
Two rural Counties														
Williamson and Franklin	31	5.25	53	1.82	37	1.80								
Milwaukee	292	16.88			350	4.50	1151	1.98	705	1.89	49	8.83	396	3.29

TABLE G-3—TIME INTERVALS

TIME INTERVAL C

DISPOSITION IN THE PRELIMINARY HEARING TO DISPOSITION IN GRAND JURY

	Eliminated in Preliminary Hearing		Eliminated in Grand Jury		Eliminated in Trial Court		Guilty		Plea Accepted		Convicted by Jury		Found Guilty by Court	
	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.
Total Illinois			1516	18.86	1955	23.09	2380	18.81	1989	18.08	145	22.99	194	13.33
Chicago			1312	13.84	1431	15.96	1820	13.07	1516	12.91	110	13.80	194	13.33
Chicago and Cook County			1348	14.57	1491	16.18	1875	13.49	1565	13.21	110	13.80	194	13.33
Eight more Urban Counties			128	49.58	363	40.97	398	37.75	339	37.77	18	30.00		
Seven less Urban Counties			40	65.00	64	61.70	107	41.62	85	29.17	17	75.00		
Two rural Counties														
Williamson and Franklin														
Milwaukee					306	9.14	1151	7.57	705	7.04	49	14.50	396	8.21

TABLE G-4—TIME INTERVALS

TIME INTERVAL D

DISPOSITION IN GRAND JURY TO ARRAIGNMENT IN TRIAL COURT

	Eliminated in Preliminary Hearing		Eliminated in Grand Jury		Eliminated in Trial Court		Guilty		Plea Accepted		Convicted by Jury		Found Guilty by Court	
	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.
Total Illinois					2569	24.90	2571	24.71	2082	24.26	200	25.00	265	25.90
Chicago					2439	25.01	2439	24.88	1974	24.49	200	25.00	265	25.90
Chicago and Cook County					2569	24.90	2571	24.71	2082	24.26	200	25.00	265	25.90
Eight more Urban Counties														
Seven less Urban Counties														
Two rural Counties														
Williamson and Franklin														
Milwaukee														

TABLE G-5—TIME INTERVALS

TIME INTERVAL E

ARRAIGNMENT IN TRIAL COURT TO DISPOSITION IN TRIAL COURT

	Eliminated in Preliminary Hearing		Eliminated in Grand Jury		Eliminated in Trial Court		Guilty		Plea Accepted		Convicted by Jury		Found Guilty by Court	
	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.
Total Illinois					2905	59.78	3414	26.73	2758	25.15	262	57.95	280	30.43
Chicago					2185	59.30	2436	28.64	1974	27.12	197	63.57	265	29.75
Chicago and Cook County					2307	60.50	2568	28.38	2082	26.85	197	63.57	280	30.43
Eight more Urban Counties					354	40.27	545	23.06	472	21.68	21	33.38		
Seven less Urban Counties					122	64.62	226	18.76	158	18.74	26	30.33		
Two rural Counties														
Williamson and Franklin					122	97.99	75	20.85	46	5.87	18	65.00		
Milwaukee					300	11.00	1151	1.80	705	1.72	49	6.88	396	1.93

Cook County. Williamson-Franklin shows the same tendencies, but with a wide proportionate up and down swing.

In Milwaukee we find an astonishing speed within the trial court. The cases that are eliminated take 11 days; and barring jury trials, the average time interval for guilty cases is 1.7 days. It is a demonstration of the possibility of rapid court action—even in the United States.

(XV) Summary of Foregoing Analysis

72. Disposition of Cases in General.

For the state as a whole, out of every 100 arrests for felonies, 15 eventuate in a sentence which is executed. Excepting Williamson-Franklin Counties, the jurisdictions outside of Chicago show a somewhat higher ratio. Nearly one-half of all cases—44 per cent—are eliminated in the preliminary hearing; in Chicago the ratio is 49 per cent. The remainder of the state is uniformly lower in this respect. The Grand Jury in Illinois still functions as an important agency of elimination, dropping out about one-eighth of all cases, quite uniformly throughout the State. In the trial court 24 per cent are eliminated in the State as a whole; a smaller proportion in Chicago; a larger in most of the rest of the State. Probation eliminates about one case in twenty. Mistrials and appeals are numerically unimportant. In the state as a whole 93 per cent of all eliminations in the preliminary hearing are found to be cases that are never apprehended, nolled, discharged outright, or dismissed for want of prosecution. In all of Illinois 27 per cent of all cases entering the trial court are eliminated by nolles or are "stricken with leave to reinstate." The prosecutor is responsible for 55 per cent of all eliminations in the trial court (total state). The judge is responsible for 10 per cent of the eliminations in the trial court. The jury is responsible for 10 per cent of the eliminations in the trial court. Of all Illinois cases that are found or plead guilty, the action of the judge is definitive in 8 per cent; of the jury in 10 per cent; and 81 per cent of the cases plead guilty.

In Chicago 12 per cent of the cases entering the trial court are found or plead guilty of the offense charged; and 37 per cent of a lesser offense; while in the remainder of the state the proportions are roughly reversed. Considering both preliminary hearing and trial court, the judiciary in all Illinois is responsible for the elimination of 23 per cent of all cases entering by arrest; the prosecutor for 36 per cent; and only 4.5 per cent of all the cases are disposed of by the petit jury.

73. Nature of Charge in Its Significance for Disposition.

In the whole state 81 per cent of the charges made against defendants were of the four "gainful" crimes of larceny, embezzlement and fraud, robbery, and burglary; Chicago and Cook County stood slightly above this point (82 per cent); the two rural counties higher (88 per cent) and the rest of the state lower. Crimes against the person were 12.5 per cent of the total in the state as a whole, with slight variation save in Williamson-Franklin, where the proportion is doubled. There is no clearly defined trend in the relationship of charge and disposition. Taking the percentage "guilty" in the entire state for each type of offense as 100 we find that within a given jurisdiction the charges vary among themselves

somewhat extensively; but that no general trend is discoverable other than that shown between the several jurisdictions in Part 1 of this chapter.

74. Sentences. In Illinois as a whole only one per cent of the sentences are "fined only"; 3 per cent are "fined and sentenced" (to a term of imprisonment); 44 per cent given a definite term and 55 per cent an indefinite term. (The "fined and sentenced" are included in the definite or indefinite term groups; which accounts for the failure of these figures to add up to 100 per cent). Ninety-nine per cent of all sentences result in imprisonment. Definite term sentences in Illinois as a whole are 54 per cent within the limit of one year; in the less urban counties 86 per cent are of this length; 94 per cent of all in Illinois are under 5 years.

The indefinite term sentences fall to the extent of 89 per cent in Illinois as a whole within three types; those in which the minimum term set is one year and the maximum from 6 to 10 years; those in which the minimum is one year and the maximum from 14 to 25 years; and those in which the minimum is 3 and the maximum 20 years.

Life sentences (10 years to life) are 5 per cent of the indefinite sentences.

Death sentences are .69 per cent of the indefinite term sentences, if they can be so classified; and .06 of one per cent of all arrests: 10 cases in 16,812.

For Illinois about 8 per cent of the persons sentenced to imprisonment are sent to jail; 30 per cent to workhouses; 32 per cent to Joliet; 8 per cent to Chester; 20 per cent to Pontiac.

75. Pleas and Dispositions. Almost exactly one-half of all cases entering the trial court plead not guilty; the other half plead guilty. These are the ultimate pleas offered. In Chicago-Cook County the "not guilty" pleas are 58 per cent of these cases. Of those pleading guilty ultimately, in Illinois as a whole 34 per cent, in Chicago-Cook County 22 per cent, plead guilty of the offense charged; the remainder guilty of a lesser offense.

Of all final pleas 46 per cent are unchanged from the first; in Chicago 41 per cent; the remainder are changed, either from not guilty to guilty or from guilty of offense charged to guilty of a lesser offense.

The chances of being put on probation are about two and a half times as great after an original plea of guilty than after a plea of not guilty persisted in.

Changes in pleas are less effective than pleas of guilty persisted in, so far as securing probation is concerned.

76. Bail and Disposition. In the preliminary hearing, cases bailed have a better chance of elimination than cases in general, both in Illinois as a whole and in Chicago-Cook County. In the trial court eliminated cases in every jurisdiction of the state show these results: Less elimination by nolle, discharge, stricken with leave; more elimination by acquittal, or by pending; than in the cases as a whole.

Of the cases guilty in the trial court, the bailed cases guilty of a lesser offense are more numerous in the state as a whole and less numerous in

Chicago and Cook County than cases in general, and exactly the opposite is true of cases guilty of the offense charged.

77. *Assigned Counsel and Disposition.* Throughout Illinois (except Chicago and Cook County, for which there were no data) the chances of being adjudged or of pleading guilty are greater for assigned counsel cases than for all cases in general in the ratio of from 138 to 195 to 100.

78. *Time Elapsed in Its Relation to Disposition.* The average time elapsing from complaint to disposition in trial court increases with the number of stages before disposition. Cases which are disposed of in the trial court as guilty take 68 days; eliminated take 111 days. The short period for guilty cases is evidently due to the short period for pleas of guilty cases; 67 days. In general, time intervals are shorter outside of Chicago. Jury trials in general take much more time than pleas of guilty.

(XVI) Comparison of Milwaukee and Chicago

79. *Disposition in General.*

	Milwaukee Per Cent	Chicago Per Cent
Guilty	63.60	19.53
Eliminated in preliminary hearing	17.36	48.83
Eliminated in grand jury	0.00	11.45
Eliminated in trial court	19.04	20.19
On probation	27.26	4.07
Sentences executed	35.96	15.03

1. Preliminary hearing:

The same types of eliminations produce approximately the same total percentage of all eliminations in the two cities.

2. Trial court:

Of all cases entering the trial court Milwaukee eliminates 5.53 per cent by nolle (no "stricken" cases) and Chicago 27.18 per cent by nolle and "stricken" dispositions.

3. Eliminations by the prosecutor in the trial court are about one-half as important as a means of elimination in Milwaukee as in Chicago.

4. Due to a law whereby jury trials may be waived by the defendant, and trial by the judge substituted, the judge in Milwaukee is responsible for six times the proportion of elimination that the judge in Chicago is responible for.

5. The jury is about as important in Milwaukee as the jury in Chicago.

6. Milwaukee disposes of as guilty a much larger percentage of cases on the original charge than Chicago; and a much smaller percentage on a lesser charge.

	Milwaukee Per Cent	Chicago Per Cent
Original charge	73.52	11.92
Lesser charge	2.23	37.14

80. *Nature of Charge.* Milwaukee deviates more from the percentage distribution of Chicago-Cook County than does any portion of Illinois outside of Chicago. Milwaukee has 33.47 per cent of all cases in the four principal crimes against property; Chicago

82.75 per cent. Milwaukee has 27.37 per cent of all cases in the four principal crimes against the person; Chicago 12.18 per cent.

81. Sentences.

Total sentences executed:

	Milwaukee Per Cent	Chicago Per Cent
Definite term sentences	40.83	50.05
Indefinite term sentences	47.00	49.21
Fined and sentenced	1.85	42.08
Fined only	12.17	.74
Institutional commitments	90.60	99.06

Definite term sentences:

	Milwaukee Per Cent	Chicago Per Cent
Under one year	23.02	49.05
Under five years	90.94	94.85

Indefinite term sentences:

	Milwaukee Per Cent	Chicago Per Cent
One to five years	79.01	1.49
One to from six to ten years	8.20	42.22

Institution to which sentenced:

	Milwaukee Per Cent	Chicago Per Cent
Jail	1.02	6.37
Workhouse	54.59	38.08
Insane hospital	3.06	.27
Penitentiary	26.36	34.54
Reformatory	12.25	20.69

82. Pleas. In Chicago 58 per cent, in Milwaukee 48 per cent of all cases entering the trial court plead not guilty, without changing. In Chicago 79 per cent of final pleas of guilty were of lesser offenses; in Milwaukee 2 per cent. In Chicago 41 per cent of all final pleas were unchanged from the original; in Milwaukee 96 per cent. Milwaukee has been shown to use probation more than Chicago. This is borne out in the relationship between pleas and probation.

	Milwaukee Per Cent	Chicago Per Cent
Not guilty, not guilty	38.44	16.67
Guilty, guilty; guilty, guilty of lesser offense; guilty of lesser offense, unchanged—total	40.00	28.40
Not guilty, then guilty	29.41	20.70

83. Bail. In general Milwaukee shows tendencies opposite to Chicago in this matter: i. e., where Chicago shows bail to be advantageous to the defendant, Milwaukee shows the opposite.

84. Assignment of Counsel. Chicago afforded no figures on this level, hence no comparison is possible.

85. Time Intervals. In Chicago cases eliminated in the Preliminary Hearing took 11.27 days; Milwaukee 16.88 days. Trial court eliminations required 112.88 days in Chicago; 57.25 in Milwaukee. Guilty on pleas required 71.19 days in Chicago; 15.55 in Milwaukee. Guilty on trials by court took 77.31 days in Chicago, only 23.17 days in Milwaukee. In cases convicted by juries Chicago required 113.21 days and Milwaukee 75.00 days.

APPENDIX: TABLE C
SUMMARY OF SENTENCES

TOTAL FOR ILLINOIS

	Definite Term Sentences		Indefinite Term Sentences			Fined and Sentenced to Imprisonment			Fined Only		Institutions		
	No.	%		No.	%		No.	%	No.	%		No.	%
Total	1154	100.00	Total	1440	100.00	Total	918	100.00	31	100.00	Total	2596	100.00
Under 1 year	622	53.90	Under 1 year	1	.07	Under $10	747	81.37	1	3.23	Joliet Pen.	821	31.62
1-4 years	467	40.47	1-5 years	24	1.67	$10-24	19	2.07			Chester Pen.	213	8.21
5-9 years	8	.69	1- (6-10) years	595	41.32	$25-49	49	5.34	7	22.58	Pontiac Ref	519	19.99
10-14 years	16	1.39	1- (14-25) years	311	21.60	$50-74	13	1.42	4	12.90	Insane	12	.46
15-19 years	5	.43	1-Life	46	3.19	$75-99	4	.44	4	12.90	Jail	217	8.36
20-39 years	14	1.22	2-15 years			$100-499	80	8.70	15	48.39	State Farm	31	1.20
40 years and over	22	1.90	3-20 years	371	25.76	$500-999	3	.33			Workhouse	768	29.58
			5-25 years	5	.35	$1,000 and over	3	.33			Geneva (Girls)	2	.08
			5-Life								St. Charles (Boys)	13	.50
			10-Life	72	5.00								
			14-Life	5	.35								
			Death	10	.69								

CHICAGO

	Definite Term Sentences		Indefinite Term Sentences			Fined and Sentenced to Imprisonment			Fined Only		Institutions		
	No.	%		No.	%		No.	%	No.	%		No.	%
Total	954	100.00	Total	938	100.00	Total	802	100.00	14	100.00	Total	1888	100.00
Under 1 year	468	49.05	Under 1 year	1	.11	Under $10	689	85.91	1	7.14	Joliet Pen.	652	34.54
1-4 years	437	45.80	1-5 years	14	1.49	$10-24	9	1.12			Chester Pen.		
5-9 years	1	.11	1- (6-10) years	396	42.22	$25-49	39	4.86	6	42.86	Pontiac Ref.	390	20.69
10-14 years	13	1.36	1- (14-25) years	115	12.26	$50-74	4	.50	1	7.14	Insane	5	.27
15-19 years	5	.53	1-Life	32	3.41	$75-99	1	.13	2	14.29	Jail	120	6.37
20-39 years	11	1.15	2-15 years			$100-499	55	6.86	4	28.57	State Farm		
40 years and over	19	2.00	3-20 years	323	34.43	$500-999	3	.37			Workhouse	720	38.08
			5-25 years	5	.53	$1,000 and over	2	.25			Geneva (Girls)	1	.05
			5-Life								St. Charles (Boys)		
			10-Life	42	4.48								
			14-Life	1	.11								
			Death	9	96								

TABLE C—Continued

CHICAGO AND COOK COUNTY

	Definite Term Sentences		Indefinite Term Sentences			Fined and Sentenced to Imprisonment			Fined Only		Institutions		
	No.	%		No.	%		No.	%	No.	%		No.	%
Total	1006	100.00	Total	972	100.00	Total	848	100.00	16	100.00	Total	1975	100.00
Under 1 year	501	49.80	Under 1 year	1	.10	Under $10	727	85.73	1	6.25	Joliet Pen.	681	34.48
1-4 years	453	45.03	1-5 years	14	1.44	$10-24	10	1.18			Chester Pen.		
5-9 years	4	.40	1- (6-10) years	405	41.67	$25-49	42	4.95	6	37.50	Pontiac Ref.	401	20.30
10-14 years	13	1.29	1- (14-25) years	128	13.17	$50-74	5	.59	2	12.50	Insane	6	.30
15-19 years	5	.50	1-Life	32	3.29	$75-99	1	.12	2	12.50	Jail	124	6.28
20-39 years	11	1.09	2-15 years			$100-499	58	6.84	5	31.25	State Farm		
40 years and over	19	1.89	3-20 years	330	33.95	$500-999	3	.35			Workhouse	762	38.59
			5-25 years	5	.52	$1,000 and over	2	.24			Geneva (Girls)	1	.05
			5-Life								St. Charles (Boys)		
			10-Life	47	4.83								
			14-Life	1	.10								
			Death	9	.93								

EIGHT MORE URBAN COUNTIES

	Definite Term Sentences		Indefinite Term Sentences			Fined and Sentenced to Imprisonment			Fined Only		Institutions		
	No.	%		No.	%		No.	%	No.	%		No.	%
Total	88	100.00	Total	266	100.00	Total	27	100.00	10	100.00	Total	358	100.00
Under 1 year	74	84.09	Under 1 year			Under $10	5	18.52			Joliet Pen.	118	32.96
1-4 years	8	9.09	1-5 years	3	1.13	$10-24	2	7.41			Chester Pen.	96	26.81
5-9 years	2	2.27	1- (6-10) years	117	43.98	$25-49					Pontiac Ref.	57	15.92
10-14 years	3	3.41	1- (14-25) years	87	32.71	$50-74	4	14.81	1	10.00	Insane	4	1.12
15-19 years			1-Life	11	4.14	$75-99	2	7.41	2	20.00	Jail	67	18.72
20-39 years	1	1.14	2-15 years			$100-499	14	51.85	7	70.00	State Farm	10	2.79
40 years and over			3-20 years	30	11.28	$500-999					Workhouse		
			5-25 years			$1,000 and over					Geneva (Girls)		
			5-Life								St. Charles (Boys)	6	1.68
			10-Life	14	5.26								
			14-Life	4	1.50								
			Death										

TABLE C—Continued

SEVEN LESS URBAN COUNTIES

	Definite Term Sentences		Indefinite Term Sentences			Fined and Sentenced to Imprisonment			Fined Only			Institutions		
	No.	%		No.	%		No.	%	No.	%		No.	%
Total	51	100.00	Total	131	100.00	Total	35	100.00	3	100.00	Total	183	100.00
Under 1 year	44	86.28	Under 1 year			Under $10	14	40.00			Joliet Pen.	16	8.74
1-4 years	4	7.84	1-5 years	2	1.53	$10-24	7	20.00			Chester Pen.	82	44.81
5-9 years	1	1.96	1- (6-10) years	53	40.46	$25-49	5	14.29	1	33.33	Pontiac Ref.	34	18.58
10-14 years			1- (14-25) years	60	45.80	$50-74	4	11.42	1	33.33	Insane	2	1.09
15-19 years			1-Life	1	.76	$75-99					Jail	24	13.11
20-39 years	2	3.92	2-15 years			$100-499	5	14.29	1	33.34	State Farm	18	9.84
40 years and over			3-20 years	8	6.11	$500-999					Workhouse	6	3.28
			5-25 years			$1,000 and over					Geneva (Girls)		
			5-Life								St. Charles (Boys)	1	.55
			10-Life	6	4.58								
			14-Life										
			Death	1	.76								

TWO STRICTLY RURAL COUNTIES

	Definite Term Sentences		Indefinite Term Sentences			Fined and Sentenced to Imprisonment			Fined Only			Institutions		
	No.	%		No.	%		No.	%	No.	%		No.	%
Total	1	100.00	Total	10	100.00	Total	1	100.00			Total	11	100.00
Under 1 year	1	100.00	Under 1 year			Under $10					Joliet Pen.	1	9.09
1-4 years			1-5 years	2	20.00	$10-24					Chester Pen.	5	45.46
5-9 years			1- (6-10) years	2	20.00	$25-49	1	100.00			Pontiac Ref.	3	27.27
10-14 years			1- (14-25) years	6	60.00	$50-74					Insane		
15-19 years			1-Life			$75-99					Jail		
20-39 years			2-15 years			$100-499					State Farm	1	9.09
40 years and over			3-20 years			$500-999					Workhouse		
			5-25 years			$1,000 and over					Geneva (Girls)	1	9.09
			5-Life								St. Charles (Boys)		
			10-Life										
			14-Life										
			Death										

TABLE C—Concluded

WILLIAMSON AND FRANKLIN

	Definite Term Sentences		Indefinite Term Sentences			Fined and Sentenced to Imprisonment			Fined Only		Institutions		
	No.	%		No.	%		No.	%	No.	%		No.	%
Total	8	100.00	Total	61	100.00	Total	7	100.00	2	100.00	Total	69	100.00
Under 1 year	2	25.00	Under 1 year			Under $10	1	14.28			Joliet Pen.	5	7.25
1-4 years	2	25.00	1-5 years	3	4.92	$10-24					Chester Pen.	30	43.48
5-9 years	1	12.50	1- (6-10) years	18	29.51	$25-49	1	14.28			Pontiac Ref.	24	34.78
10-14 years			1- (14-25) years	30	49.18	$50-74					Insane		
15-19 years			1-Life	2	3.28	$75-99	1	14.29			Jail	2	2.90
20-39 years			2-15 years			$100-499	3	42.86	2	100.00	State Farm	2	2.90
40 years and over	3	37.50	3-20 years	3	4.92	$500-999					Workhouse		
			5-25 years			$1,000 and over	1	14.29			Geneva (Girls)		
			5-Life								St. Charles (Boys)	6	8.69
			10-Life	5	8.19								
			14-Life										
			Death										

MILWAUKEE

	Definite Term Sentences		Indefinite Term Sentences			Fined and Sentenced to Imprisonment			Fined Only		Institutions		
	No.	%		No.	%		No.	%	No.	%		No.	%
Total	265	100.00	Total	305	100.00	Total	12	100.00	79	100.00	Total	588	100.00
Under 1 year	61	23.02	Under 1 year	2	.66	Under $10					Waupun Pen.	155	26.36
1-4 years	180	67.92	1-5 years	241	79.01	$10-24			4	5.07	Indust.Home,Women	16	2.72
5-9 years	14	5.28	1- (6-10) years	25	8.20	$25-49			11	13.92	State Reform.	72	12.25
10-14 years	4	1.51	1- (14-25) years	5	1.64	$50-74			11	13.92	Insane	18	3.06
15-19 years			1-Life			$75-99					Jail	6	1.02
20-39 years	1	.38	2-15 years	7	2.30	$100-499	12	100.00	52	65.82			
40 years and over	5	1.89	3-20 years	12	3.93	$500-999			1	1.27	Workhouse	321	54.59
			3-30 years	12	3.93	$1,000 and over							
			5-25 years	1	.33								
			5-Life										
			10-Life										
			14-Life										
			Death										

ILLINOIS ASSOCIATION FOR CRIMINAL JUSTICE

Serial No._____

County_____

Schedule of Felony Case Histories

PRELIMINARY HEARING

Name.....
Docket No.....

Charge.....

Date Complaint.....192...., Date Arrest.....192....
Bailed.....Set for Hearing.....192....

Number of Continuances Defdt.....State.....

Nature of Disposition.....
.....
Date of Disposition.....192....

GRAND JURY

Docket No.....

Ind.....No. B.....Date.....192....

Indictment Charge.....
.....

TIME STUDY

Complaint to Disp. P. H. Days.....

Disp. P. H. to Disp. G. J. Days.....

Disp. G. J. to Arr. T. C. Days.....

Arr. T. C. to Disp. T. C. Days.....

Total Elapsed Time. Days.....

TRIAL COURT

Date Arraigned.....192....Docket No.....

Bailed.....Counsel Assigned.....

Number Continuances Defdt.....State.....

Trial Date.....192....Judge.....

Plea on Arraignment.....

Plea at Trial.....
Disposition:.....Date Final Disp.....192...
.....Nolle Prosequi.
.....Stricken from Docket, Leave to Reinstate.
.....Discharged by Court.
.....Discharged—Want of Prosecution.
.....Certified to Other Courts.
.....Defendant Dead.
.....Bail Forfeited, Never Apprehended.
.....Venue Changed.
.....Mistrial.
.....Acquitted, Jury Trial.
.....Plea Accepted, Guilty Offense Charged.
.....Plea Accepted, Guilty Lesser Offense.
.....Convicted Offense Charged, Jury Trial.
.....Convicted Lesser Offense, Jury Trial.
.....Other Dispositions.....

NATURE OF SENTENCE

Life.....Death.....Term.....

Institution.....

Amount of Fine.....

Probation.....Modif. of Sent.....

New Trial Granted.....Appealed.....

CHAPTER II

THE SUPREME COURT, IN FELONY CASES

By

ALBERT J. HARNO

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CHAPTER II

THE SUPREME COURT, IN FELONY CASES

1. Scope of the Chapter. The purpose of this study is to form an estimate and an appreciation of the place and influence of the Supreme Court in the scheme of the administration of the criminal law of the state. The task is delicate and subtle. To find the number of cases affirmed or reversed during a certain period, involves but a mechanical calculation, but to form an estimate of the bearing of the Supreme Court's decisions on the problem of crime calls for penetrating discriminations and keen evaluations. The task is approached with much diffidence and some trepidation. The observations that follow contain analyses of the decisions. In no sense are they offered as the final word on this subject. They are submitted with a thorough appreciation of the fact that others, with the same data, might reach different and more acceptable conclusions.

The problem, beyond certain easily made calculations, is one involving judgment—a careful balancing of values. When the Supreme Court reverses the judgment of the trial court, the action may signify that the trial court was in error, or that the prosecuting attorney blundered, or the fault may have been, principally, that of the jury, or, not unlikely, the three, or two of them, may have shared in responsibility for the error. But our study cannot end there, for thus far, it involves but the searching out and the classification of the errors assigned by the Supreme Court. The reasons expressed by the court for reversing a case are important. The next task, therefore, involves analyses of reasons, and the careful weighing of one expression of the court with others made on similar issues. Having found the rule, it becomes important to study its underlying principle and policy. Finally, a study of the effect of a decision often is of utmost consequence. The immediate bearing of a decision is upon the issues in the particular case, but its influence, frequently, does not end there, but continues to bear on the course of law administration for years, for generations, and even for centuries to come.

2. Function of the Supreme Court in Criminal Cases. In studying the decisions in criminal cases we shall be dealing, principally, with felony charges. But as a considerable number of misdemeanor cases ultimately go to that court by way of the Appellate Courts, or directly, because in them a constitutional question is involved, and as decisions in such cases affect the rights of defendants in felony, as well as misdemeanor cases, no study would be complete without considering them. The influence of the Supreme Court in criminal cases, it will be observed, is particularly dominating. By statute, writs of error in all felony cases, and in misdemeanor cases in which the construction of the Constitution is involved, are taken directly to the Supreme Court. Writs of error in other misdemeanor cases are taken to the Appellate Court. But,

even as to them, a writ of error from the Supreme Court to the Appellate Court to obtain a review of the latter court's decision, is a constitutional writ of right and must be allowed when claimed.[1]

The criminal cases heard by the Supreme Court form only a portion of its work. From a study of its opinions during the course of one year (October term 1926 through June term 1927) it was found that approximately thirty per cent of the court's decisions were devoted to the criminal law, and seventy per cent to other fields. Out of 321 cases decided that year, 98 were criminal, and 223 dealt with other subjects in the law.[2]

A substantial number of criminal cases reach the Supreme Court, but even so, that number is relatively small compared with the great number of such cases that come before the trial courts. We must not conclude from this, however, that the Supreme Court's place in law administration is correspondingly unimportant. That is not to be measured by the number of cases it passes on directly. For, as has already been observed, the influence of a particular decision transcends its particular significance. The Supreme Court speaks with authority, and trial courts, prosecuting officers and the lawyers throughout the state, must and do heed its opinions.

When a particular opinion but follows precedent, the trail having been blazed before, then the procreative powers of the court are little in evidence, but when precedents fail, then they are most conspicuous. In commenting on the serious problem that then confronts the judge, Mr. Justice Cardozo has said:[3]

> "He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others. The classic statement is Bacon's: 'For many times, the things deduced to judgment may be meum and tuum, when the reason and consequence thereof may trench to point of estate.' The sentence of today will make the right and wrong of tomorrow . . . Every judgment has a generative power. It begets in its own image. Every precedent, in the words of Redlich, has a 'directive force for future cases of the same or similar nature.' Until the sentence was pronounced, it was as yet in equilibrium. Its form and content were uncertain. Any one of many principles might lay hold of it and shape it. Once declared, it is a new stock of descent. It is charged with vital power. It is the source from which new principles or norms may spring to shape sentences thereafter."

Occasionally, the authoritative influence of the court comes into relief with sudden effect through an announcement of a change of view on a question. Such *coup de main* was accomplished when the Supreme Court reversed its position on illegal searches and seizures. For many years the court had adhered to the opinion that, in the administration of the criminal law, courts "are not accustomed to be over-sensitive in regard to the sources from which evidence comes."[4] Then came the decision in *People* v. *Brocamp*,[5] with the holding that an unlawful search and seizure violated

[1] See sections 2 and 11 of Article VI of the Constitution and section 118 of the Practice Act.
[2] See Table 2 *infra*.
[3] *The Nature of the Judicial Process* (1922) 21-22.
[4] (1891) 138 Ill. 103, 111, 27 N. E. 1085.
[5] (1923) 307 Ill. 448, 138 N. E. 728.

the provision of the state constitution, and that it constituted reversible error to admit in evidence the ill-begotten articles. With that decision, the old line of descent was broken and a new one established. The descendants generated through the latter have already passed through so many generations that some of them bear but little resemblance to the common ancestor.

3. Statistical Summaries of Rulings, Classified as to Quantity, Grounds of Reversal, Etc.

During the ten years under consideration, approximately 700 criminal cases have been before the Supreme Court. In Table 1, that follows, we show, year by year, the number of criminal cases considered by the court, the number reversed, reversed and remanded, affirmed and the percentage affirmed. In totals, during the ten year period, 410 cases were affirmed, 217 reversed and remanded and 72 reversed. The affirmances constituted 59% of the total number of cases considered. Thus, approximately three-fifths of the cases were affirmed, and two-fifths either reversed or reversed and remanded.[1]

TABLE 1. *Criminal Cases* AFFIRMED, REVERSED AND REMANDED, OR REVERSED BY THE SUPREME COURT OF ILLINOIS, *October Term 1917 Through June Term 1927*

Year	Affirmed	Reversed and Remanded	Reversed	Total	Per Cent Affirmed
1917-1918	30	9	6	45	64
1918-1919	27	12	1	40	68
1919-1920	37	17	7	61	61
1920-1921	43	21	3	67	64
1921-1922	47	32	4	83	57
1922-1923	52	21	3	76	68
1923-1924	36	21	13	70	51
1924-1925	40	32	7	79	51
1925-1926	45	19	16	80	56
1926-1927	53	33	12	98	54
Totals	410	217	72	699	59

In Table 2, we show a comparison of criminal and civil cases during a period of one year. For the year studied (that of 1926-1927), the percentage of affirmances was slightly lower than the average for the ten year period. Of the civil cases for that period, 61% were affirmed, which is slightly higher than the percentage affirmed in the criminal cases for that year and slightly higher than the average affirmed in criminal cases for the ten year period.

TABLE 2. COMPARISON OF *Criminal and Civil Cases* DECIDED BY THE SUPREME COURT, *October Term 1926 Through June Term 1927*[2]

Class of Cases	Cases	Affirmed	Reversed and Remanded and Reversed	Per Cent Affirmed
Criminal	98	53	45	54
Civil	223	136	87	61

The criticism, frequently urged, that the Supreme Court is over-tech-

[1] In Missouri it was found that during a ten-year period the affirmances by the Supreme Court of Missouri showed 56.37 per cent. *The Missouri Crime Survey* (1926) 221.

[2] The above table is approximate only as a number of cases could not be arbitrarily included.

nical in criminal cases would seem not to be borne out by the figures, unless it also is contended that the court likewise is too technical in civil cases.[1]

In Table 3, we have classified the cases according to offenses. A study of that table shows that the percentage of cases affirmed or reversed varies greatly with the crime. To compare some of the more serious crimes, we find that only 38% of the confidence game judgments were sustained in the Supreme Court, and but 42% of those involving the receiving of stolen property. On the other hand, 79% of the robbery cases have withstood the scrutiny of the court. Thus, the percentage of affirmances, in cases involving the taking of property by violence, was approximately double that where they involved the wrongful dealing with property through stealth. The percentage in the murder cases was about average. Less than half of the liquor cases were affirmed, and less than one-third of those in which contempt of court was involved.

TABLE 3. *Cases* BEFORE THE SUPREME COURT, OCTOBER TERM 1917 THROUGH JUNE TERM 1927, *Classified According to Offenses*

Offenses Charged	Total Cases	Affirmed	Reversed and Remanded	Reversed	Per Cent Affirmed
Murder	103	58	42	3	56
Manslaughter	43	25	18	0	58
Felonious assaults	27	18	8	1	67
Rape and incest	41*	27	13	2	64
Crime against children	15	9	6	0	60
Burglary	48*	28	20	3	55
Robbery	87	69	14	4	79
Larceny	56*	33	21	3	58
Embezzlement	12	7	4	1	58
Receiving stolen property	26	11	13	2	42
Confidence game	33*	13	11	10	38
Forgery	8	4	4	0	50
Perjury	8	5	2	1	63
Contempt of court	18	6	3	9	33
Conspiracy	19	15	3	1	79
Violation of liquor laws	60*	22	16	14	42
Miscellaneous	99*	60	19	18	62
Totals	703*	410	217	72	59

*Apparent discrepancies in number of cases are due (1) to the fact that some cases have different dispositions as to different joint defendants, and (2) to transference to Appellate Court for jurisdictional reasons.

In the above table, it will be observed that a heavy percentage of reversals was found in connection with the confidence game crime. The Supreme Court affirmed but 13 cases where that crime was involved, and reversed 21. Obtaining property by means of the confidence game is a purely statutory crime which appears to be spreading over the fields once occupied by other crimes. Having no exact boundaries, it has become a source of much grief to prosecutors.

In Table 4, which follows, we have made a comparison of the number of cases that have been taken to the Supreme Court, the number affirmed, reversed, or reversed and remanded, between Cook County and the rest of

[1] It should be observed that in criminal cases writs of error to the Supreme Court lie only on behalf of the defendant. The state cannot take up a case. In civil cases, either the plaintiff or the defendant may carry his case up to a higher court. As to whether this makes any difference in the percentage of cases affirmed or reversed is problematical.

the state. The two have made their offerings in nearly equal numbers. Cook County has contributed 354, and "down-state" 340. Cook County exceeds the rest of the state in the percentage of cases affirmed.

TABLE 4. *Criminal Cases Affirmed,* REVERSED AND REMANDED, OR REVERSED BY THE SUPREME COURT, OCTOBER TERM 1917 THROUGH JUNE TERM 1927, *in Cook County Compared with Rest of State*

	Cases*	Affirmed	Reversed and Remanded	Reversed	Per Cent Affirmed
Cook County	354	222	100	33	62.5
Rest of State	340	182	117	36	54.4

*Apparent discrepancy due to (1) causes transferred to Appellate Court, (2) original suits in Supreme Court.

The principal grounds assigned by the Supreme Court for the reversal of criminal cases, with the number for each separately tabulated under specific crimes, are shown in Table 5. It will be our problem to study these in detail. For the present, we may point out that *errors in the giving or refusing of instructions,* with 81 cases in which that was assigned as a ground for reversal, heads the list. A doughty coadjutor, in this tragedy of errors, is the ground, *errors in the admission or exclusion of evidence,* with 80 separate occasions in which it was assigned. Next in line, come *evidence insufficient to sustain the verdict,* with 68, *misconduct of the court,* with 35, *misconduct of counsel for the state,* with 24, and so on down the list.

TABLE 5. PRINCIPAL GROUNDS FOR REVERSAL OF CASES BY THE SUPREME COURT, 1917-1927

	Violation of Constitutional Provision	Defective Indictment or Information	Instructions: Errors in Giving or Refusing	Evidence: Errors in Admission or Exclusion	Errors in Cross-Examination	Variance	Conduct: Conduct of Prosecuting Attorney	Conduct of Court	Error in Form of Verdict	Evidence Insufficient to Sustain Verdict	Miscellaneous	
Murder	0	0	23	22	5	1	6	7	0	3	4	
Manslaughter	0	0	13	7	2	0	3	2	0	2	1	
Assault with intent to commit felony	0	1	3	2	0	0	0	2	0	2	1	
Crime against children.	0	0	1	3	1	0	1	1	0	1	2	
Rape and incest	0	0	5	6	1	0	0	1	0	3	3	
Burglary	0	1	8	5	4	0	3	3	0	7	1	
Robbery	0	1	1	5	1	2	2	5	0	5	0	
Embezzlement	0	0	2	0	0	0	0	0	1	3	1	
Larceny	0	0	8	6	3	2	2	3	1	10	2	
Receiving stolen property	0	0	4	4	1	2	2	2	0	3	2	
Confidence game, etc.	0	0	4	6	1	4	2	1	0	10	1	
Forgery	0	0	0	3	1	0	0	1	0	0	0	
Perjury	0	0	1	0	0	0	0	0	0	1	1	
Contempt of court	4	0	0	0	0	0	0	1	0	0	7	
Conspiracy	0	0	1	1	0	1	0	0	0	1	1	
Violation of liquor laws	0	12	3	4	0	1	0	2	2	7	6	
Miscellaneous	7	3	4	6	0	3	3	4	0	10	4	
Total	11	18	81	80	20	16	24	35	4	68	37	394
Per Cent	2.8	4.6	20.6	20.3	5.1	4.1	6.1	8.8	1.0	17.2	9.4	100.

(I) Constitutional Provisions, as Ground for Reversal

Constitutional questions in criminal cases have arisen in comparatively few cases.[1] But their paucity is in no way a fair appraisal of their importance. Frequently, they have been of great moment and interest. The principal constitutional questions involved, during the period studied, have been those dealing with due process, unreasonable searches and seizures and self-incrimination.

4. Due Process. The concept, firmly rooted in the common law, that all crimes necessarily involve the criminal intent, is giving way to a surge of legislation which is making various acts criminal regardless of the knowledge or intent of the offender. The state, in the maintenance of public policy, may provide, as to certain deeds, "that he who shall do them shall do them at his peril and will not be heard to plead in defense, good faith or ignorance." The policy involved has been well stated by Mr. Chief Justice Taft:[2]

> "Many instances of this are to be found in regulatory measures in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment, rather than the punishment of the crimes as in cases of *mala in se*."

The Supreme Court of Illinois, recently, has had this question before it in the case of *People* v. *Billardello*.[3] The defendant was charged with and convicted of violating section 35 of the Motor Vehicle Act which made it unlawful to have in one's possession a motor vehicle, the original engine number of which had been destroyed, removed, altered or defaced. The defendant contended that section 35 was unconstitutional; that it was arbitrary and unreasonable to subject a citizen to a "deprivation of his property and his liberty by imposing a fine and imprisonment on him for an act done without any criminal intent and in ignorance of any violation of law." In affirming the judgment of the Circuit Court, the Supreme Court said:[4]

> "The principle had been established by many previous decisions referred to in the opinions in those cases, that in the exercise of the police power for the protection of the public the performance of a specific act may be declared to be a crime regardless of either knowledge or intent, both of which are immaterial on the question of guilt."

A broad view of public policy is at the basis of the decision in the *Billardello* case. It is refreshing to read such an opinion. The law may bear heavily upon an individual occasionally, but if the greater interests of the public are thus served, the principle is easily justified that the individual should act at his peril.[5]

5. Searches and Seizures. Reference to the use of evidence obtained by unreasonable search and seizure, and to the decision in *People* v. *Brocamp*[6] has been made previously. Two

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[1] Violations of constitutional provisions have been assigned as error by the Supreme Court during the period studied in but eleven cases, see Table 5.

[2] *United States* v. *Balint* (1922) 258 U. S. 250, 252, 42 Sup. Ct. 301, 66 L. Ed. 604.

[3] (1925) 319 Ill. 124, 149 N. E. 781.

[4] Page 126 official report.

[5] To the same effect see *People* v. *Oberby* (1926) 323 Ill. 364, taken to the Supreme Court on writ of error to the Appellate Court.

[6] (1923) 307 Ill. 448, 138 N. E. 728.

questions, in the case, were involved in tantalizing confusion—one of constitutional law and the other of evidence. The defendant's home had been searched by officers without a search warrant, and articles were found which appeared to have been the very fruits of a crime. After his indictment, the defendant made a motion asking that the articles be returned to him on the ground that they had been taken from him through unreasonable search and seizure in violation of Article 2, Section 6 of the Constitution. This section reads as follows:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized."

The trial judge denied the defendant's motion, and the case proceeded; the articles unlawfully taken were admitted in evidence against him over his objection, and he was convicted. The Supreme Court held that reversible error had been committed. We quote from the opinion:[1]

> "It is very clear that the defendant's constitutional rights were ruthlessly and unlawfully violated. . . . Such action of the officers in forcibly or unlawfully and without a warrant entering the plaintiff in error's home and searching it and seizing the articles aforesaid has in unmistakable terms been condemned by the courts of this country. If an American's constitutional rights cannot be protected against ruthless and unlawful acts of the character disclosed in this record, then the constitution guaranteeing such rights is a mere nullity and our boasted rights of liberty are vain boastings . . . Our holding is that the unlawful search and seizure aforesaid violate the provisions of our State constitution."

That the seizure in the *Brocamp* case was *unreasonable,* and that it violated the Constitution there is no doubt. But does it follow that the effects seized, which apparently were the very articles with the theft of which the defendant was charged, were not admissible in evidence against him? When the articles were unlawfully seized, the wrongful act of the persons participating constituted a trespass, and the fact they purported to be acting on behalf of the state, made them no less so. The Constitution is plain thus far. But does it follow that the effects seized had lost their potentiality as evidence against the accused? On this great issue the courts, as well as others, are divided in opinion. The Illinois view has the respectable support of the Supreme Court of the United States.[2]

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[1] Pages 453, 456 official report.

[2] See *Boyd* v. *U. S.* (1885) 116 U. S. 616, 6 Sup. Ct. 524; *Weeks* v. *U. S.* (1914) 232 U. S. 383, 34 Sup. Ct. 341; *Silverthorne* v. *U. S.* (1920) 251 U. S. 385, 40 Sup. Ct. 182; *Gouled* v. *U. S.* (1921) 255 U. S. 298, 41 Sup. Ct. 261; *Amos* v. *U. S.* (1921) 255 U. S. 313, 41 Sup. Ct. 266. Various state courts take the same view. See also Atkinson *Admissibility of Evidence Obtained Through Unreasonable Searches and Seizures* (1925) 25 Colum. L. R. 11.

Probably the majority of state courts hold that the evidence is admissible. See 4 Wigmore *Evidence* (1923, 2nd ed.), sec. 2184. Harno *Evidence Obtained by Illegal Search and Seizure* (1925) 19 Ill. L. R. 303. For a discussion of the sufficiency of a

The *Brocamp* decision has generated other cases. In *People* v. *Castree*[1] a warrant had been issued to search a store building belonging to the defendant at a certain address. The entrance at that address was the defendant's dwelling. The defendant actually conducted a small store in a room of his house, but that room fronted on another street. The officers searched both the store and the residence part of his building. In the latter they found intoxicating liquor. The Supreme Court held that an unreasonable search and seizure was involved.

In *People* v. *Elias*[2] a judgment of conviction was reversed because a search warrant had been issued on the sworn complaint of the state's attorney, based on his information and belief. But, in *People* v. *Swift*,[3] a search and seizure without a warrant from the person of the defendant, who had been arrested on suspicion, was held not to have been unreasonable.

Further citations to decisions by the Supreme Court of Illinois, and to others holding to this view, could be multiplied showing the elusive and fitful status of the law on this subject. Our interest in the question bears not so much on the principle or the philosophical theory involved, intensely interesting though it is, but upon the fact that convictions are being reversed whenever such evidence is used, that because of this view of the Supreme Court the hazards appertaining to securing convictions have been increased, and that seemingly guilty persons have found this contention a convenient way out of their difficulties. The search and seizure guaranty was a bulwark raised by a people harassed by a tyrannical government. Wilkes fought for it in England, and the eloquence of Otis was "a flame of fire" on its behalf in the colonies. But that was a century and a half ago; since then the pendulum has made a complete sweep. Today some of the very bulwarks of liberty have become safe-guards for criminals. Once the cry was against governmental aggression; today it is against the very impotency of the agencies of government. After the Supreme Court's action, reversing Brocamp's conviction, the case against him was dropped. Similarly, Castree and Elias were never retried.[4]

6. Self-Incrimination. The maxim *nemo tenetur prodere seipsum*, or, as it now is expressed in constitutional phraseology, "No person shall be compelled in any criminal case to give evidence against himself,"[5] is today one of the great impediments to securing the conviction of the guilty. The maxim had its inception in the opposition to the procedure of the Star Chamber and of the ecclesiastical courts, with which it probably originated. The opposition was to "what was known

search warrant based on information and belief see Harno *Recent Illinois Criminal Cases* (1926) 20 Ill. L. R. 643. As to seizure incident to an arrest see *People* v. *Chaigles* (1923) 237 N. Y. 193, 142 N. E. 583, 32 A. L. R. 676. An extensive note on the subject may be found in 32 A. L. R. 680.

[1] (1924) 311 Ill. 392, 143 N. E. 112.

[2] (1925) 316 Ill. 376, 147 N. E. 472.

[3] (1925) 319 Ill. 359, 150 N. E. 263.

[4] The state's attorney, who succeeded the one who prosecuted the *Castree* case, commented on its further disposition as follows: "Nothing further could be done on the possession act under the holdings of the upper court. The investigator who made the buy was a free-lance investigator and he had long since moved to other parts when the case finally got back from the Supreme Court."

[5] Constitution of Illinois, Article II, section 10.

as the *ex officio* oath, . . . but in the old ecclesiastical courts and in the Star Chamber it was understood to be, and was, used as an oath to speak the truth on the matters objected against the defendant—an oath, in short to accuse oneself. It was vehemently contended by those who found themselves pressed by this oath that it was against the law of God, and the law of nature, and that the maxim *nemo tenetur prodere seipsum* was agreeable to the law of God, and part of the law of nature." [1]

The inquisitorial cast of the oath probably had its origin in a combination of circumstances in England following the Wars of the Roses. The nobility, in a large part, had been destroyed, thus removing a check upon the crown. The Tudor monarchs introduced a procedure similar to that obtaining in France. This manifested itself particularly in the treatment of persons accused of crime.

> "The accused was arrested, kept in confinement more or less close, and examined, . . . the examination being sometimes carried on . . .by means of torture. He had no counsel, apparently no right to summon witnesses, and was not allowed to know the evidence against him. This might be given at the trial in the form of depositions, for the government was not required to produce its witnesses in court. The result was that he was, or might be, given no opportunity to cross-examine them, while, on the other hand, he was himself elaborately questioned before the jury, and, in fact, his examination was the very essence of the trial." [2]

The use of the *ex officio* oath was finally brought to a culmination with the trial of one John Lilburn[3] in 1637. Subsequently the Court of Star Chamber and the Court of High Commission for Ecclesiastical Causes were both abolished by statute in 1641. "In the latter statute was inserted a clause which forever forbade, for any Ecclesiastical Court, the administration *ex officio* of an oath requiring answer as to matters penal." [4] With the abrogation of the *ex officio* oath the maxim *nemo tenetur prodere seipsum* was even more imperatively urged. In 1660 it definitely was given judicial recognition in *Scroop's Trial*,[5] where we find the court saying to Scroop in the course of the trial of the Regicides: "Did you sit upon the sentence day, that is the evidence, which was the 27th day of January? *You are not bound to answer me, but if you will not we must prove it.* Do you confess that?"

This, in short, is the historical background of the privilege against self-incrimination. It arose out of the struggles against the acts of an oppressive and tyrannical government. The great contest was in full swing when the American Colonies were being settled, and its stirring events were still fresh in mind when our first constitutions were being written. In them it found firm lodgment, presumably, as another bulwark against autocratic and high-handed governmental acts. But, as the situation was noted in our remarks concerning searches and seizures, we here again are at the far sweep of the pendulum. As said by one noted observer: [6]

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[1] I Stephen *History of the Criminal Law of England* (1883) 342.
[2] Lowell. The Judicial Use of Torture (1897) 11 Harv. L. Rev. 290, 294.
[3] (1637) 3 How. St. Tr. 1315.
[4] 4 Wigmore *op. cit.* sec. 2250.
[5] (1660) 5 How. St. Tr. 947.
[6] William H. Taft (then Secretary of War), *The Administration of Criminal Law* (1905) 15 Yale L. J. 1, 12.

"We find that these constitutional limitations adopted centuries ago in tenderness to the defendant and which have to some extent outlived their usefulness, because the reasons for their adoption have ceased to be, have been elaborated in their scope and operation, not only by the court, but also by the legislatures, because thought to be in the interest of liberty. And this has made them greater obstacles in the conviction of the guilty."

An instance of an elaboration of this constitutional provision is found in *People* v. *Spain*,[1] where the Supreme Court held:

"When a proper case arises, the constitutional provisions quoted should be applied in a broad and liberal spirit in order to secure to the citizen that immunity from every species of self-accusation implied in the brief but comprehensive language in which they are expressed . . . The security which they afford to all citizens against the zeal of the public prosecutor or public clamor for the punishment of crime should not be impaired by any narrow or technical views in their application to such a state of facts as appears from the record before us."

These words, if spoken in 1640, or, even in 1789, well would have proclaimed the cause of liberty against governmental oppression. With the criminal class as powerful and as audacious as it is today, they do not have the eloquent appeal they once had. "The danger now is, not that innocent men will be convicted, but that guilty men will go unwhipped of justice." [2]

A great impetus would be given to law enforcement if the privilege against self-incrimination could be removed from our constitutions. "I cannot see," said a noted federal judge,[3] "why a man in a public court to which all may resort, in the presence of a judge presumably bent upon justice, with a jury who certainly in ordinary cases do not lean against him, himself represented by a person employed to defend him—I cannot see why a man so situated should not be compelled to tell what he knows. The possibilities of abuse seem to me quite unreal. There are cases where they would not be, of course, e. g., in times of great public excitement, such as during war, but in normal times, I cannot agree that such a man is in danger of injustice."

The time is far distant, in all probability, when a total abrogation of the privilege can be accomplished. It is rooted too deeply for sudden upheaval. But the case of interpretation is otherwise. "So much of it lies in the interpretation that its scope will be greatly affected by the spirit in which that interpretation is approached. Much can be settled by a consideration of its historic scope, before the constitutions were made. But, after all this, the decision will constantly depend upon whether the privilege is approached with favor or with disfavor, with fatuous adulation or with

[1] (1923) 307 Ill. 283, 289, 138 N. E. 614.

[2] Storey, *The Reform of Legal Procedure* (1911), 217. Mr. Storey, at page 220, quotes the following pertinent remarks from one of Demosthenes' orations: "What is it that has ruined Greece? Envy, when a man gets a bribe; laughter if he confesses it; mercy to the convicted; hatred of those who denounce the crime—all the usual accompaniments of corruption."

[3] Judge Learned Hand in course of remarks on the *Improvement of the Technical Rules of Evidence* (July, 1923), 10 Proceed. of Acad. of Pol. Science 407, 411. See also Herbert S. Hadley, *The Reform of Criminal Procedure*, ibid, 396, 402, and Reynolds, *The Betterment of Criminal Justice*, ibid, 377, 383.

judicious appreciation." [1] The highest court of a sister state, recently, has expressed a view in accordance with these remarks, and at variance with that taken by our Supreme Court.[2] In the absence of a clear expression of other legislative intent, it said, "The field of operation of a statute which safeguards the privilege against self-incrimination should not be extended beyond the historic limits fixed by the purpose and spirit of the privilege itself."

(II) Defective Pleadings, as Ground for Reversal

When questions relative to defective indictments or informations have been raised in the Supreme Court, it frequently has expressed liberal views in affirming convictions. But in this, as it appears frequently in other connections, the court has not pursued a uniform policy.

7. Liberal Views. Section 6 of division 11 of the Criminal Code provides that "every indictment . . . shall be deemed sufficiently technical and correct which states the offense in the terms and language of the statute creating the offense, or so plainly that the nature of the offense may be easily understood by the jury." This is a liberal statute, in which the legislature, obviously, has made an effort to turn its back upon technical indictments. Consonant with the statute the court held in *People* v. *Connors:* [3]

> "An indictment for a statutory offense is sufficient if it sets forth the offense in the terms and language of the statute creating the same or so plainly that its nature may be easily understood by the jury. This court has so held in numerous cases, . . . and has more than once said that where a statute creates an offense, while indictments thereunder should contain proper and sufficient averments to show a violation of the law, 'great niceties and strictness in pleading should only be countenanced and supported when it is apparent that the defendant may be surprised on the trial or unable to meet the charge or make preparation for his defense for want of greater certainty or particularity in the charge. Beyond this, it tends more to the evasion than the investigation of the charge, and becomes rather a means of escaping punishment for crime than of defense against the accusation.'"

The court held in the *Connors* case that it was sufficient, under the statute above quoted, "to describe the offense of burglary in the language of the statute, without including the word 'feloniously.'" [4]

In another case,[5] the plaintiff in error, Joe Kargula, contended that the indictment which read, "that one Joe Clark, *alias* Joseph Swintowsky and Joe Kargula," etc., was bad because it was returned against Joe Clark under two *aliases,* and not against plaintiff in error. The court held that there was no objection to the indictment as worded. Joe Clark was not described, it thought, as having two *aliases,* and if a comma had been placed after the name Joseph Swintowsky, there could have been no objection at all. It then made the following pertinent remarks: [6]

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[1] 4 Wigmore, *op cit.,* sec. 2251.
[2] *People* v. *Ales* (1928), 247 N. Y. 351, 160 N. E. 395.
[3] (1922) 301 Ill. 249, 250, 251.
[4] See to the same effect, *People* v. *Connors* (1922), 301 Ill. 112.
[5] *People* v. *Kargula* (1918), 285 Ill. 478.
[6] Ibid, page 480.

"The meaning of the indictment is plain and unequivocal and the court did not err in overruling the motion to quash. Where the meaning of an indictment is plain and unequivocal, false grammar, wrong spelling, defective rhetoric or an error in punctuation will not render the indictment insufficient."

In *People* v. *Reed*[1] the defendant was charged with the crime of pandering. In the Supreme Court he raised a technical objection as to the use of the disjunctive *or* in the information. The court held that if there was any force in the objection it was waived by going to trial. It then continued as follows:[2]

"Section 9 of division 11 of the Criminal Code provides: 'All exceptions which go merely to the form of an indictment shall be made before trial and no motion in arrest of judgment or writ of error shall be sustained for any matter not affecting the real merits of the offense charged in the indictment.' All objections to the information were waived by going to trial."[3]

8. Technical Views.. The liberal trend of the decisions, above instanced, has had jarring interruptions, so cataclysmic, at times, that one may well wonder which way the stream flows. Such, we believe, was the effect of the decision in *People* v. *Stoyan*.[4] The defendant had *pleaded guilty* on an information filed in the Municipal Court of Chicago and had received his sentence, when he discovered that the information had in it some peculiar language. It charged that *John Stoyan,* on April 27, 1917, in the county of Cook, "did then and there with a certain instrument commonly called a revolver, . . . unlawfully, willfully and maliciously make an assault in and upon one *John Stoyan,* with intent then and there to inflict upon the person of said Thomas Korshak a bodily injury, contrary to the statute," etc.

The defendant was sentenced for an assault with a deadly weapon. The Supreme Court reversed the judgment (Mr. Chief Justice Carter dissenting) stating its views, in part, as follows:[5]

"The information in this case charges that plaintiff in error made an assault upon John Stoyan with intent to inflict bodily injury upon the person of Thomas Korshak. It cannot be presumed that the insertion of the name of John Stoyan was a clerical error, but it must be assumed that he was another and different person than the plaintiff in error although bearing the same name."

Why must it be assumed that a different person, other than the defend-

[1] (1919) 287 Ill. 606.
[2] Ibid, 609.
[3] In *People* v. *Folignos* (1926), 322 Ill. 304, 306-307, the Court said: "It is not alleged in either count that Valentino Parise or Gene Parise could read and understand the Italian language, and it is contended by plaintiff in error that this was an essential averment. We do not agree with this contention. The indictment is in the language of the statute, and it sets out in both Italian and English the contents of the letters which it is charged the accused sent to the persons threatened. He was fully informed of the charge against him and had a full opportunity to prepare his defense. The indictment is sufficient."
[4] (1917), 280 Ill. 300, 117 N. E. 474.
[5] Page 302 official report.

ant, was denoted? Why is it not plain that this was a clerical error? Is it of no point that the defendant had pleaded guilty, and that this question was for the first time raised on error? Had it been raised on demurrer or a motion to quash, there might have been some justification for the view expressed. But this man had pleaded guilty to the charge and had been sentenced, when the diligence of counsel was rewarded by finding that the prosecutor's pen had slipped in drawing the information.[1] In this study we are interested in finding how the decisions of the Supreme Court affect the administration of the criminal law. The *Stoyan* case is an example of how, by a decision, the Supreme Court may make that administration difficult. The average man, on reading this information, would have observed in it a slip, and without knitting his brows would have seen through the mistake. Exactness and clearness are desirable and at times essential in the law. But if a proposition is clear, we believe want of exactness should not be considered ground for reversal.

In *People* v. *Goldberg*[2] the court was even more meticulous in finding grounds for error in the indictment. There were fifty counts in the indictment, and the defendant was convicted under all of them. On error the Supreme Court approved of forty-nine. In the fiftieth the prosecutor had written *Holdberg* instead of *Goldberg*. Because of that, the case was reversed and remanded. The following statement taken from the opinion presents the court's views:[3]

> "It is contended by the state that as many of the witnesses pointed out plaintiff in error during the trial and said he was the man they bought intoxicating liquor from, the judgment should not be reversed because of the one count against Holdberg; that plaintiff in error was clearly proven guilty of the fifty charges, and that if the judgment is reversed on that account, under the decision in *People* v. *Gaul*, 233 Ill. 630, the entire judgment must be reversed and that injustice would be done the state, as it contended none of the other errors assigned would require a reversal of the judgment. We think this is probably true. One instruction given for the people was palpably erroneous but possibly was not of such prejudicial effect as to require a reversal. This court is desirous that justice may be done to both parties in all cases,

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[1] "Manifestly, the fault should be taken for what it really is, a clerical error, pure and simple. And the inquiry should be whether the objectionable words cannot be discarded, under the rule that 'whenever a description or averment can be stricken out, without affecting the charge against the prisoner, and without vitiating the indictment, it may on the trial be treated as surplusage and rejected.' *Durham* v. *People* (1843), 5 Ill. (4 Scam.) 172. Applying this principle, we would reject the words 'one John Stoyan' where that name is inadvertently used, and the word 'said' before the name 'Thomas Korshak,' leaving the charge phrased thus: that 'John Stoyan on etc., at etc., did then and there, with a certain instrument, commonly called a revolver, . . . unlawfully, wilfully, and maliciously make an assault *in and upon, with intent then and there to inflict upon the person of Thomas Korshak a bodily injury,*' etc. The result is by no means in the highest form of the pleader's art, but its meaning is unmistakable. In the words of *Durham* v. *People*, *supra*, the information, after this pruning, 'contains a charge of a substantive offense, specified in terms certain to a common intent.'" Comment on Recent Cases, 12 Ill. L. Rev. (1917) 555, 556.

[2] (1919) 287 Ill. 238.

[3] Page 245 official report. See also *People* v. *Berman* (1925), 316 Ill. 547 for a discussion of the sufficiency of indictments and informations.

but the forms and requirements of law must be regarded in the administration of justice, and if the officers charged with the duty of protecting the interests of the People in the enforcement of the criminal law choose to name two different parties defendant in different counts of the same indictment and ask and secure a verdict of guilty against one defendant named under all the counts in the indictment, contrary to good pleading and the law, this court cannot sustain the judgment on the ground that the defendant convicted was proved guilty of all the charges in all the counts of the indictment and would have been found guilty if he had been named as defendant in all of them. It would have been a simple matter for the state to have *nollied* the count against Holdberg and the situation then would have been relieved of the difficulty. In the condition the record is in we cannot, without disregarding the law, affirm this judgment but are compelled to reverse it."

There remains another feature in the *Goldberg* case for our attention. The People insisted that the question as to the "count against *Philip Holdberg* should have been pleaded in abatement or in some manner raised in the court below." To this the Supreme Court answered that the defendant had made a motion in arrest of judgment, and further that he had made a motion that the state be required to elect under what counts a conviction would be asked. The motion to arrest the judgment, said the court, reached every defect in the record, and the motion to elect afforded the state an opportunity to dispense with the count against *Holdberg*. "True, in making the motion," the court admitted,[1] "it was not specifically pointed out that the defendant named in one of the counts was not plaintiff in error, but counsel for the state had prepared the indictment and must be conclusively presumed to have known that plaintiff in error was named as defendant in only forty-nine of the counts."

Here again, what is apparent as a typographical error to any one but the court, to it, meant that the prosecuting officer could only have intended some one other than the defendant. Further, the procedure followed by the defendant gave him, first, an opportunity to gamble for a favorable jury verdict, and, that not having been forthcoming, then to raise a question as to the error in the indictment.

By way of comparison attention is directed to the case of *People* v. *Kuhn*.[2] The defendant, after the verdict, had objected that he had been convicted by a jury different from the one shown by the record. Specifically, one juror had been excused and another substituted in his place, but through an oversight the record omitted to enter the change. The Supreme Court held the contention did not constitute grounds for reversing the judgment. The concluding words of the opinion were as follows:[3]

"If a jury returning into court to deliver a verdict is not the same jury impaneled and sworn, it is the plain duty of any party to object to the return of the verdict by such a jury; and if he does not but chooses to speculate on the chance of a favorable verdict he should

[1] Page 244 official report.
[2] (1919) 291 Ill. 154.
[3] Ibid, 164.

not be heard afterward to make the objection that a juror acted without being sworn."

9. Negative Averments. Reference to Table 5 will show that among the principal grounds upon which the Supreme Court reverses cases, defective indictments or informations account for but 4.6%. But if this table is scrutinized carefully it will be found that twelve out of thirty-seven (32.4%) of the liquor cases were reversed on account of errors in indictments or informations. Our attention now is directed to some of those cases and particularly to certain holdings bearing on the necessity for and the sufficiency of negative averments in indictments and informations. Among the decisions to be considered are those in *People* v. *Martin*[1] and *People* v. *Barnes*.[2] In those cases it was held (Mr. Chief Justice Duncan and Justices Stone and Farmer dissenting) that in charging a violation of the Illinois Prohibition Act, it is not sufficient to aver merely that the defendant unlawfully had violated the act, but the indictment or information must also contain negative averments that the defendant did not come within any of the exceptions or provisos of the act; this notwithstanding the fact that the act itself provides that it shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented, and that it further provides in section 39 that *"it shall not be necessary in any affidavit, information or indictment . . . to include any defensive negative averments,* but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful."

Section 3 of the Prohibition Act provides:

> "No person shall on or after the date when this act goes into effect, manufacture, sell, barter, transport, deliver, furnish or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.
>
> "Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, delivered, furnished and possessed, but only as herein provided, and the attorney general may, upon application, issue permits therefor, but in case the office of commissioner of prohibition shall be created then such commissioner shall issue said permits: Provided, that nothing in this act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in government bonded warehouses."

Mr. Justice Heard, in the *Martin* case, after quoting this section, and other sections of the act including Section 39, disposes of this question as follows:

> "Where a statute defining an offense contains an exception or proviso in its enacting clause which is so incorporated with the language describing and defining the offense that the ingredients of the offense cannot be accurately and clearly described if the exception is omitted, it must be shown that the accused is not within the exception . . . If an act is prohibited except under certain conditions, the indictment

[1] (1924) 314 Ill. 110.
[2] (1924) 314 Ill. 140.

must allege the circumstances for the purpose of showing that the prohibited act constituting the crime has been done."

Mr. Justice DeYoung in the *Barnes* case, after quoting section 39 of the act, goes on to say:

> "It is not sufficient to charge an offense in the language of the statute, alone, where by its generality it may embrace acts which it was not the intent of the statute to punish. Such facts must be alleged that, if proved, defendant cannot be innocent. . . . The pleader must either charge the offense in the language of the statute or specifically set forth the facts constituting it. But where the statute creating a new offense does not describe the act or acts which compose it, the pleader is required to state them specifically. . . . Section 9 of the bill of rights provides that in all criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation against him. The purpose of this guaranty is to secure to the accused person such specific designation of the offense laid to his charge as will enable him to prepare fully for his defense and to plead the judgment in bar of a subsequent prosecution for the same offense."

It is respectfully submitted that this is not a satisfactory disposal of this section of the statute. It, further, is respectfully submitted that these two decisions thwart the expressed intention of the legislature. What is the effect of the statement in section 39 of the act that it shall not be necessary to include any defensive negative averment? After reading the majority opinions we can only conjecture. Surely the court does not mean to hold that the legislature cannot alter a rule of pleading. But if not, it would seem that the court would at least have to hold that part of section 39, dealing with negative averments, unconstitutional. But again, it has not done that. What then is the effect of section 39? The situation is paradoxical!

We turn to Mr. Justice Stone's dissenting opinion rendered in the *Barnes* case. After quoting section 39 of the act, he continues:

> "It is obvious that it was the intention of the legislature to change the rule above referred to, and if that body has the power to do so this court is bound by such change. We are referred to no section of the constitution depriving the legislature of that power. The constitutional right of one charged with crime, under section 9 of the bill of rights, to know the nature of the offense charged against him is not violated, for the reason that the indictment charges that he illegally possessed the liquor. Section 39 entitles him to a bill of particulars in a proper case. The opinion in this case does not hold section 39 unconstitutional and the meaning of its language cannot be mistaken. This court, as I view it, cannot disregard the plain legislative enactment. . . . When a defendant is charged with the unlawful sale of intoxicating liquor or the unlawful possession of the same or of such instruments, it cannot be doubted that he is informed of the nature of the charge against him. This is all that is required under section 9 of the bill of rights. An indictment meets the constitutional requirements when it, by statutory description or by other apt averments, identifies the offense."

This, it is submitted, is the correct view. Further, it is sustained by

numerous cases interpreting identical or similar statutes in various parts of the United States.[1]

The second count in the indictment in the *Martin* case alleged "that William H. Martin . . . did then and there *unlawfully have and possess intoxicating liquor, contrary to the form of the statute,*" etc. This count was insufficient said the Supreme Court. To continue in its words:[2]

> "It neither charges that plaintiff in error possessed intoxicating liquor *without being authorized by law* to possess the same, nor that he possessed intoxicating liquor with intent to violate the provisions of the Prohibition Act, but simply alleged that he possessed the same, which, of itself, is not a violation of the law. . . . *The use of the word 'unlawfully' . . . . does not have any effect inasmuch as the use of this word represents merely the conclusion of the pleader and does not state any fact from which the inference of unlawfulness would arise.*"

It would seem from this language that had the charge alleged possession of intoxicating liquor *without being authorized by law,* it would have been sufficient. But since the charge was that he possessed it *unlawfully,* that was bad.

The form and contents essential in an indictment for rape have been made uncertain in view of some recent decisions of our Supreme Court. Particularly, the uncertainty arises as to when it is necessary through a negative averment to allege that the person raped is not the wife of the person charged. An indictment for rape under the common law need contain no such allegation. Further, the view was taken in *People* v. *Dravilles*[3] that it was not made necessary, under the Illinois Statutes, so to aver in cases involving forcible rape or assault with intent to commit rape. The material parts of the Criminal Code defining rape read as follows:

> "Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of seventeen years and upwards, who shall have carnal knowledge of any female person under the age of sixteen years and not his wife, either with or without her consent, shall be adjudged to be guilty of the crime of rape; . . . provided, that every male person of the age of sixteen years and upwards who shall have carnal knowledge of a female forcibly and against her will shall be guilty of the crime of rape."

In *People* v. *Stowers*[4] it was said that, although it was unnecessary to have the indictment aver that the person raped is not the wife of the defendant in cases involving forcible rape, yet, since the second sentence of the

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[1] *Leonard* v. *U. S.* (1927), 18 F. (2d), 208; *U. S.* v. *Dwyer* (1926), 13 F. (2d), 427; *Keen* v. *U. S.* (1926), 11 F. (2d), 260; *Massey* v. *U. S.* (1922), 281 F. 293; *Davis* v. *U. S.* (1921), 274 F. 928; *Ex Parte Baldwin* (1927), 259 Pac. (Cal. App.), 119; *People* v. *Cencevich* (1923), 220 Pac. (Cal. App.), 448; *Bass* v. *Doolittle* (1927), 112 So. (Fla.), 892; *Carroll* v. *Merritt* (1926), 109 So. (Fla.), 630; *Bird* v. *State* (1927), 257 Pac. (Wyo.), 2 Cf.; *U. S.* v. *Boasberg* (1922), 283 F. 305.

That it is sufficient to allege that the defendant's acts were "unlawful," see *Adamson* v. *U. S.* (1924), 296 F. 110; *Ritter* v. *U. S.* (1923), 293 F. 187; *U. S.* v. *Illig* (1920), 288 F. 939; *Rulovitch* v. *U. S.* (1923), 286 F. 315.

[2] Pages 114-115 official report.

[3] (1926) 321 Ill. 390, 152 N. E. 212.

[4] (1912) 254 Ill. 588, 98 N. E. 986.

statute contains the words *and not his wife,* the indictment must contain a negative averment if the charge is under that portion of the statute. There is no defensible reason for this distinction excepting the worn-out old rule of criminal pleading that an indictment or information must cover every element included in the statutory definition of the crime, and all exceptions in the statute must be negatived so the indictment may correspond in all respects with the statute.[1]

The *Stowers* case, however, went on to hold that a count charging the accused *with having made an assault upon Eva Crane with intent to commit upon her the crime of rape,* was sufficient under the proviso of the statute "that every male of the age of sixteen years and upwards who shall have carnal knowledge of a female forcibly and against her will shall be guilty of the crime of rape."

The reader should compare the holding in the *Stowers* case with that in the recent case of *People* v. *Fathers.*[2] In the latter case the defendant was indicted as having *unlawfully, willfully and feloniously made an assault upon Ilea Slade, a female person under the age of sixteen years, with the intent to ravish and carnally know her.* The defendant was convicted under this indictment. On error it was held that the indictment was fatally defective. The court assumed that the accused had been indicted for an assault with intent to commit rape without force, and that the indictment was, therefore, defective because it did not contain the negative averment *and not his wife.*

The construction of the statute, requiring a negative averment in the non-force cases, and not in others, might well be doubted. From the standpoint of precedent, it can be sustained because of the wording of the statute. But was the court right in assuming that the *Fathers* indictment was one for rape without force? In the *Stowers* case a similar indictment was held sufficient under the last proviso of the statute. Is not the *Fathers* indictment likewise sufficient under that proviso? It alleged an *assault with intent to ravish.* Every assault involves an attempt to commit *violent* injury on the person of another. And the word *ravish* means to *"commit a rape upon. To carry off* (a woman) *by force. To seize and carry off by force."* [3] It is submitted, that both on authority and reasoning, the indictment in the *Fathers* case was sufficient.

10. *In General.* What, then, it may well be asked, is the test of the sufficiency of an indictment or information? Section 6 of division 11 of the Criminal Code, to which reference has previously been made, states that an indictment shall be sufficiently technical and correct which states the offense in the terms and language of the statutes creating the offense, *or so plainly that the nature of the offense may be easily understood by the jury.* It is respectfully asked, does not the court at times ignore either or both of these provisions and particularly the latter? Surely no jury could have misunderstood the nature of the offense set out in the *Fathers* case. The trend is away from the technical and legalistic pleading of the common law. Wherever statutes are being drawn or codes formulated

[1] 2 Wharton *Criminal Procedure* (1918, 10th ed.), sec. 1138.
[2] (1926) 322 Ill. 424, 153 N. E. 704.
[3] Funk and Wagnall's Dictionary.

dealing with this question, statements, similar to those in section 6, are to be found. If, notwithstanding, the ends of justice were to be better served by minute particularity in pleading, there would yet be sufficient reason for the rigid rulings. But that, it is submitted, was not the case in the decisions considered. A certain amount of particularity is desirable, but rigid exactness frequently must result in decisions barren of utility and justice.

(III) Erroneous Instructions, as Ground for Reversal

11. In General. Errors in giving or refusing instructions have accounted for over one-fifth of the reversals in the Supreme Court during the ten year period studied.[1] In approximately thirty-six per cent of the homicide cases reversed, this type of error was a material factor.

The object of the instructions is to direct the jury on the law involved in the case, but it is a well known fact that if they are numerous and involved, there is great danger they will create confusion and not enlightenment. In *People* v. *Heard*[2] the court observed:

> "Counsel presented to the court eighty-eight instructions to enlighten the jury regarding the law to be applied to the facts, the prosecutor offering forty-eight, thirty-nine of which were given, and the plaintiff in error offering forty, seventeen of which were given as tendered and nineteen of which were modified and given as modified. This was a gross abuse of the privilege of tendering instructions. Many of the instructions were stock instructions not applicable to the case; others were substantially duplicates; some did not state the law correctly, and still others were carelessly-drawn, argumentative instructions, which tended rather to confuse the jury than to enlighten them. This court has repeatedly condemned the practice of burdening the trial court with the labor of weeding out a lot of miscellaneous stock instructions in the short time available for this part of the trial. . . . The fact that the prosecutor tendered to the court these erroneous and duplicate instructions, so often and recently condemned in the opinions of this court, shows a lack of familiarity with the court's decisions and with the law applicable to the case at hand."

In *People* v. *Munday*[3] the court refused to consider alleged errors in the instructions where the defendant had offered two hundred and seventy-two instructions of which over two hundred had been refused by the trial court.

The court, frequently, has expressed its disapproval of the fact that instructions, it previously has condemned, are given over and over. In *People* v. *Clark*,[4] it said:

> "This instruction has been repeatedly condemned by this court, . . . and it seems strange that the practice of giving the instruction should not be discontinued in the Criminal Court of Cook County, where the same error has been repeatedly committed."

[1] See Table 5.
[2] (1922) 305 Ill. 319, 323.
[3] (1917) 280 Ill. 32.
[4] (1922) 301 Ill. 428, 435.

In *People* v. *Duncan*[1] the instructions alone covered twenty-eight pages of the abstract.

The grievance against bad instructions has still another side to it, and one that is frequently lost from sight. If instructions are so bad that the court feels compelled to reverse the case because of them, that, at least, labels on them the sign, *beware!* But what is the situation as to instructions which are bad, and yet not bad enough to occasion reversals? Such instructions, defective as they are, immediately become model ones and are used again and again. For has not the Supreme Court approved them? An assistant in the state's attorney's office in Cook County for years has industriously culled from the Supreme Court decisions in criminal cases *approved* instructions. The situation is disheartening. It represents an *impasse* in the law, at the blind end of which we are groping in vain for exit.

The court has recognized the principle that a conviction will not be reversed, because of errors in the instructions, if the jury could not have reached any other conclusion had the instructions been correct. This view is stated in *People* v. *Scimeni:*[2]

> "It is not necessary in order to affirm a conviction to find that the instructions are free from error. To require absolute and technical accuracy in instructions would, as a general rule, defeat the ends of justice and bring the administration of the criminal law into disrepute and contempt. It is sufficient when the instructions, considered as a whole, substantially and fairly present the law of the case to the jury."

The court has given expression to various other rules governing instructions, some of which are, that instructions must be considered as a series and not alone;[3] that bad instructions are not cured by correct ones[4] (as there is no way of telling whether the jury followed the erroneous or the correct ones); that error in favor of the defendant will not be balanced by error against him;[5] and that a defendant cannot complain of erroneous instructions he himself has offered. It follows that a bill of exceptions must contain all instructions and also state by whom they were offered.

12. Instructions as to an Alibi. One of the common defenses to a crime is that of the alibi. The court has had occasion frequently to condemn instructions involving that defense. One which informed the jury, "to render the defense of an alibi available the evidence must cover the whole of the time of the commission of the alleged crime," was held erroneous, since an accused is entitled to the benefit of alibi evidence, notwithstanding, it does not cover the whole of the time occupied by the commission of the crime.[6] In *People* v. *Braidman,*[7] a case in which accused's alibi covered the whole period, the court held an instruction erroneous which informed the jury that it was incumbent upon the defendant to so prove his alibi as to render the commission of the crime

[1] (1924) 315 Ill. 106.
[2] (1925) 316 Ill. 591, 597.
[3] *People* v. *Heard* (1923) 305 Ill. 319.
[4] *People* v. *True* (1924), 314 Ill. 89.
[5] *People* v. *Jones* (1924), 313 Ill. 335.
[6] *People* v. *Johnson* (1924), 314 Ill. 486.
[7] (1926) 323 Ill. 37.

by him impossible or highly improbable, and that unless such proof was made the defense of alibi was not available to the defendant.

A number of cases have been reversed because of instructions that the burden of proving the alibi was on the defendant. In *People* v. *Stoneking*[1] the trial court had given an instruction implying that the defense of alibi tended merely to cast a doubt on the case made by the People. Since this instruction had been disapproved of several times[2] previously, the court's language, on this occasion, condemning it is of interest:

> "This is the identical instruction discussed and criticised in *Ackerson* v. *People,* 124 Ill. 563. We there held that it is not true, as a general or a legal proposition, that the defense of *alibi* tends merely to cast a reasonable doubt upon the case made by the People. That may, and will in many cases, be the only effect of the evidence produced to sustain the *alibi.* But the defense of *alibi* controverts the guilt of the defendant, and if certainly and satisfactorily established would be conclusive of the defendant's innocence. While in theory it does not deny that the crime has been committed, it asserts that the defendant, during the whole of the time in which the crime is shown to have been committed, was so far removed from the place of its commission that he could not have participated in its perpetration. . . . Such has been the holding of this court for more than fifty years."

13. Instructions as to Self-Defense. In a homicide case, where self-defense is pleaded, to sustain that defense, must the accused have acted under a *well grounded* apprehension of danger, or is it sufficient if he was reasonably led to believe, from the facts apparent to him, that he was in danger? In *People* v. *Davis*[3] the accused sought to reverse a judgment against him for manslaughter. He had killed a man in a street fight. The defense was self-defense. Various instructions of the trial court were attacked. From among them we direct attention to the one following:

> "You are further instructed, that before a person will be justified, under the law of self-defense, in shooting and killing another, it is not enough that he is under a reasonable apprehension of danger; he must at the time have not only a reasonable, but a well grounded belief, from the surrounding circumstances, that he is in danger, real or apparent, of losing his life, or receiving great bodily harm."

The Supreme Court held this language erroneous, and properly so, since it required more than a reasonable apprehension of danger before the accused could strike in self-defense.

The trial court, no doubt, was influenced to give this instruction by the language which had been used by the Supreme Court in former cases of this nature, particularly the following taken from *Campbell* v. *People:*[4]

> "If the defendant was pursued or assaulted by the deceased in such a way as to induce in him a *reasonable and well-grounded belief*

[1] (1919) 289 Ill. 308, 313.

[2] *Miller* v. *People* (1866), 39 Ill. 457; *Ackerson* v. *People,* 124 Ill. 563; *Sheehan* v. *People* (1890), 131 Ill. 22; *People* v. *Lukoszus* (1909), 242 Ill. 101; *People* v. *Blair* (1914), 266 Ill. 70; all cited by the Court.

[3] (1921) 300 Ill. 226.

[4] (1854) 16 Ill. 17.

that he was actually in danger of losing his life, or suffering great bodily harm, when acting under the influence of such reasonable apprehension, he was justified in defending himself, whether the danger was real or only apparent." (Italics ours.)

It is quite evident that this case was brought to the attention of the Supreme Court in the *Davis* case for it answers:

"It is true that in the *Campbell* case, and in many of those which have followed, the statement is made, substantially, that if the defendant was assaulted in such a way as to induce in him a reasonable and well grounded belief that he was in danger he would be justified, but in no case has it been held that an instruction has been proper which required more than a reasonable belief in the danger. In cases in which the expression 'reasonable and well grounded' has been used, the language is that of the writer of the opinion in discussing the general principles of the law of self-defense and is not that of any instruction being considered. It means no more than a belief, reasonable in view of the facts apparent to the accused."

In cases of self-defense, the Supreme Court held, men are obliged to judge from appearances, and if they act from real and honest convictions induced by reasonable evidence they cannot be held responsible. "To require in addition to this, a well grounded belief is to require actual danger. 'Well grounded' is intended to mean more than 'reasonable.'"

The position taken by the Supreme Court is correct and accords with settled principles. The language of the opinion is clear. But habit is strong. In *People* v. *Stapleton*,[1] where a similar point was involved, the court said:

"Actual and positive danger is not indispensable to justify self-defense, but if the circumstances are such as to induce in the accused *a reasonable and well-grounded belief* that he is actually in present danger of losing his life or receiving great bodily harm he will be justified in defending himself, whether the danger is real or only apparent." (Italics ours.)

The language in the *Stapleton* case appears to have reverted back (at least partially) to that used in the *Campbell* case, but the language in the *Campbell* case had been condemned by the Court in *People* v. *Davis*. If a *well-grounded* belief requires actual danger and is more than a *reasonable apprehension*, this hyphenated word should have no place either in the court's language or in the instructions. Its use in the *Stapleton* case will only mislead prosecuting officers and trial courts in the future.

In *People* v. *Duncan*[2] the accused had been convicted of murder. The trial court had instructed, among other things, as follows:

"It must appear from the evidence that at the time of said killing the defendant was in such apparent danger that a reasonable person under the same circumstances would have been induced to believe that it was necessary or apparently necessary to kill John Grant Powell in order to save his own life or to prevent his receiving great bodily harm."

[1] (1921) 300 Ill. 471, 133 N. E. 224.
[2] (1924) 315 Ill. 106, 145 N. E. 810.

The Supreme Court found error in this instruction in that it left doubt as to the burden of proof. It is said, "The burden is on the prosecution to prove the guilt of the defendant and the defendant is not required to prove anything. It is sufficient if the evidence as to self-defense leaves a reasonable doubt as to the defendant's guilt." After disposing of this feature the court continued:[1]

> "The instruction is in error also in stating that it must appear that the danger to the defendant was such that a reasonable person, under the same circumstances, would have been induced to believe, etc. The jury are not to determine what a reasonable man would have been induced to believe, but, What did the defendant at the time and under the circumstances, acting as a reasonable man, believe? What any reasonable man may do under given circumstances is not always possible to determine. Man's reason does not always operate to produce the same result under the same circumstances. The question in cases of this character concerns the particular man, and the circumstances must be viewed from the standpoint of the defendant alone, particularly under circumstances of great excitement. In order to avail himself of the right of self-defense it is not necessary that the defendant should have acted as a man of ordinary judgment and courage or as an ordinarily courageous man. . . . It is sufficient if the circumstances were sufficient to excite the fears of a reasonable person and the defendant really acted under the influence of those fears."

It is difficult to follow the above language of the court and to find in it a distinction. It would appear the court is laying down the subjective test for self-defense as distinguished from the objective one. However that may be the discriminations made are not clear. *The jury are not to determine what a reasonable man would have been induced to believe,* but they should determine *what the defendant at the time and under the circumstances acting as a reasonable man believed.* What difference can there be between what a reasonable man under the circumstances believed, and what the defendant under the circumstances acting as a reasonable man believed? The trial court had told the jury that before self-defense could be of avail to the defendant he must have been in such apparent danger that a *reasonable man under the circumstances would have been induced to believe it was necessary to kill.* The Supreme Court held that this statement was erroneous. It then went on to say that the privilege of self-defense arises if the *circumstances are sufficient to excite the fears of a reasonable person and the defendant acted under the influence of those fears.* It is respectfully submitted that the court has made a distinction which it will have the greatest difficulty to defend in future cases.[2]

The question as to the correct rule governing self-defense cases has become even more complicated through a later statement of the court. In *People* v. *Bradley*[3] it said:

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[1] Page 112 official report.

[2] Some of the language in the comment on the *Duncan* case was adapted from a comment on that case by the writer in (1926) 20 Ill. Law Rev. 648-649.

For a note showing the confusion on the case in Illinois as to whether the objective or subjective test should be applied, see (1925) 19 Ill. L. R. 692. See also on this question the case of *People* v. *Scimeni* (1925), 316 Ill. 591, 147 N. E. 484.

[3] (1927) 324 Ill. 294.

> "In this case the killing was proved and not denied. The defense was that the homicide was committed in self-defense. If the circumstances and appearances at the time of the killing are such as to justify a reasonable man in the belief that he was in imminent danger of losing his life or receiving great bodily harm, acting under the influence of such belief from the appearances, if he kills a person so threatening him the homicide would neither be murder nor manslaughter but would be justifiable."

The language quoted is in intent and meaning that which the court expressly condemned in the *Duncan* case. We believe the Supreme Court has shown an unsteadiness in views and a lack of clarity on this important question. And if our surmise is correct, can there be any doubt that criminal trials, wherever this issue has been raised, have been disturbed throughout the state?

14. Instructions as to the Defense of Insanity.

Instructions involving insanity, frequently have been before the Supreme Court. From the standpoint of *principle* there is no phase of the criminal law more puzzling, nor one that is more unsatisfactory. The case of *People* v. *Krauser*[1] takes up this question. The defendant had been convicted of murder. In reversing the judgment of the court below,[2] several interesting questions were raised; among them that relating to the test to be applied when the defense of insanity is advanced.

The trial court had instructed that "unsoundness of mind, or affection of insanity must be of such a degree as to create an uncontrollable impulse to do the act charged, by overriding the reason and judgment, and obliterating the sense of right or wrong as to the particular act done and depriving the accused of power of choosing between them." This instruction followed the case of *Hopps* v. *People*.[3] Basing its opinion on the later case of *People* v. *Lowhone*,[4] the Supreme Court found the instruction erroneous. It said that since the *Hopps* case advances have been made in knowledge on the subject of insanity, its various types and characteristics, "and that it is now recognized that there are cases of partial insanity which may render a person incapable of knowing a particular act to be wrong, or if he can distinguish right from wrong as to a particular act he may be incapable of exercising the power to choose between the right and the wrong."

The court was of the opinion that, under the instruction given, to justify an acquittal, there was required of the defendant not only the ability to distinguish between right and wrong, but the power to choose between them and to act according to his choice. The court's language follows:[5]

> "In the *Lowhone* case the ability to judge and the power to choose are held equally necessary to criminal responsibility, and therefore the lack of either will justify a verdict of not guilty. The instruction in question states that both the knowledge of right and wrong and the

[1] (1925) 315 Ill. 485, 146 N. E. 593. Some of the language that follows was adapted from a comment by the writer in (1926) 20 Ill. L. R. 659.
[2] Farmer and Thompson, JJ., dissenting.
[3] (1863) 31 Ill. 385.
[4] (1920) 292 Ill. 32, 126 N. E. 620.
[5] Page 514 official report.

ability to choose between them are necessary to such a verdict, and it was therefore erroneous to give it."

Two separate views are stressed in the *Lowhone* and *Krauser* cases. One, the traditional conception of right and wrong evolved in 1843 in *M'Naghten's* case,[1] and the other, the comparatively new one called the *irresistible impulse.* We cannot, within the scope of this study, discuss adequately and critically the various tests that have been and that now are applied in insanity cases, but we should be missing our purpose if we did not call attention to the fact that at this point our law is quite out of keeping with scientific thought on the subject. This observation does not bear peculiarly upon the law of Illinois, but upon the law generally in English speaking countries.[2]

The question as to what is right and what is wrong is an ethical one. Conceptions as to it vary with individuals and with peoples.[3] "In the majestic roll-call of centuries and ages the eternal question of Pilatus: *'What is truth?'*—is echoed and re-echoed without the remotest hope for its universal solution. Every society has a moral code of its own, embodying rules and precepts that are *not* permanent. Things which today are considered *wrong,* tomorrow will be found on the list of customs considered *right.* Acts and deeds which yesterday were regarded as right,—today are attacked and prosecuted by the state, while its judicial machinery is engaged in the destruction of their very reminiscence." [4] Ethical principles, ever changing and chameleon hued, cannot furnish exact criteria for criminal responsibility.

Insanity is a disorder of the mind—it is "always the expression of derangement in the mode of the working of the supreme regions of the brain." To quote Mercier: [5]

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[1] (1843) 10 Clark & F. 199, 8 Eng. Reprint 718.

[2] "If I were called upon today to testify as an expert in a criminal case involving the mental state of the defendant I would undoubtedly be asked questions that were formulated more than a century ago. I would be asked, among other things, whether the defendant knew the difference between right and wrong; and I would probably be asked by means of a hypothetical question whether I thought the defendant responsible. To the psychiatrist such questions as these have the effect of making him feel almost hopeless in any attempt that he may make to be of assistance to the court and the jury. Such questions, particularly the former, the right and wrong test as it is known, represent antiquated and outworn medical and ethical concepts, which have become crystallized, in the course of time, into rules of law; whereas the question of responsibility carries with it a metaphysical implication and the more one thinks of it the more one feels quite incapable of answering it." White, *The Need for Co-operation Between the Legal Profession and the Psychiatrist in Dealing with the Crime Problem.* (1927) 52 Report of American Bar Association 497, 498.

[3] See Garofalo *Criminology* (1914), Chap. I.

[4] Brasol, *The Elements of Crime* (1927), 299.

[5] *Criminal Responsibility* (1926), 103.

"What is needed in the law (in addition to procedural reform) is a proper conception of the unified personality. Disease of the mind is disease of a unity, of the personality make-up. And so long as it interferes with a person's power to conform his conduct to the demands of the criminal law, it is immaterial whether it manifests itself *primarily,* and to the casual eye, in a crumbling of the cognitive processes of the mind, or in an abnormal functioning of the emotional processes, in impaired power of inhibition or lack of will, in all of these or in combinations of these; the diseased personality is the fact. If legal tests must needs be provided (and with the system of trial by jury the use of some tests is better than to leave the matter entirely open), they should be applied only after the general mental condition of the defendant, as manifested by his mental and environmental history, physical and mental examination, psychological-psychiatric study,—in

"Insanity is a disease or disorder—I prefer the latter term—not of this or that organ, or tissue, or part of the body, as are the diseases, which come under the purview of the general physician or surgeon, but of the whole individual who is the subject of the disorder. And it is so because the original seat of the disorder is in that central and supreme organ in which the whole individual and every part of him is summed up and represented. A man may lose his hand or his foot, his arm or his leg, and still remain the same man—the same personality. He may suffer disease of his heart or lung, of his liver or kidney, and yet his individuality—the characters which make him the man he is, not only different from other people, but recognizable as himself—remains unchanged. But when the highest regions—the governing functions—of his brain are disordered, the whole man is a changed being. If we knew him before, and now have experience of him, we are irresistibly compelled to realize that he is not the man he was. His personality is altered. We feel that we no longer know him as we did. It is useless to appeal to him in the same way. He is no longer moved by the same motives. His conduct cannot be predicted by the same rules. He has undergone a profound, a radical change of nature. He is different from his former self in much the same way as we, in our dreams, differ from our waking selves. We then find ourselves thinking, judging, feeling, acting, in ways foreign to those of our waking nature, invested with capabilities and disabilities which our waking selves know not; and the madman passes his time in a waking dream."

If then in insanity we have the disintegration of the individual and an altering of the personality, is it to be supposed that criminal responsibility can be determined by so naive a rigmarole as the right and wrong test! The irresistible impulse conception gives but little, if any, additional aid. What is needed, when the issue of insanity is raised, is a scientifically trained diagnostician instead of the present partisan conflict between experts hired by the state and the accused. The situation would be much improved if the study were made by neutral experts who have no connection with the conflict between the prosecution and the defense.[1] The findings of the experts should be reported to the court. If it is found that the accused's mind was deranged at the time he committed the deed, the extent to which the disease has progressed, and an opinion on how materially that has altered his normal reactions, should be included in the report. A still better suggestion, if it

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brief, the whole series of past social reactions of the accused as well as his conduct in the particular case under consideration,—have first been placed before the jury in an intelligent, clear, unbiased report."

Glueck, *Mental Disorder and the Criminal Law* (1925), 265-266.

[1] Attention is called to the Massachusetts compulsory examination law reading: "Whenever a person is indicted by a grand jury for a capital offense or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony, is indicted by a grand jury or bound over for trial in the superior court, the clerk of the court in which the indictment is returned, or the clerk of the district court or the trial justice, as the case may be, shall give notice to the department of mental diseases, and the department shall cause such person to be examined with a view to determine his mental condition and the existence of any mental disease or defect which would affect his criminal responsibility. The department shall file a report of its investigation with the clerk of the court in which the trial is to be held, and the report shall be accessible to the court, the district attorney and to the attorney for the accused, and shall be admissible as evidence of the mental condition of the accused." Massachusetts Acts and Resolves, 1921, Chap. 415.

were not for constitutional impediments, would be to instruct the jury to determine only whether or not the act was committed by the defendant, and if they answer that the deed was his, then to turn him over to a scientific group, including one or more persons legally trained, to determine what to do with him. The sane criminal is a menace to society. The law seems not to contemplate that the insane criminal is even a greater menace.

15. Reasonable Doubt. The Supreme Court repeatedly has condemned the practice of giving long instructions on reasonable doubt, holding that the words *beyond a reasonable doubt* are as clear as any defining language. But on those occasions when it has criticized the definitions, it generally has held that the error was harmless. It has had some difficulty in determining whether a reasonable doubt instruction should apply to each separate point or to all the evidence taken as a whole. Or, stating the problem otherwise, must the jury be convinced beyond a reasonable doubt as to each *separate* material fact, or is it sufficient if it is convinced on the *whole of the evidence?* This question was raised in *People* v. *Johnson.*[1] The defendant had been convicted of the crime of "receiving for his own gain a Ford sedan knowing it to have been stolen."[2] Among other things, the trial court had instructed:

> ". . . the law does not require that the jury shall believe that every fact in a criminal case has been proved beyond a reasonable doubt before they can find accused guilty. The reasonable doubt the jury is permitted to entertain must be as to the guilt of the accused on the whole of the evidence and not as to any particular fact in the case."

This instruction, said the Supreme Court, was wrong. We quote:[3]

> "While the law does not require proof of every fact in the case beyond a reasonable doubt, and the doubt to justify an acquittal must be as to the guilt of the accused on the whole evidence and not as to any particular fact, yet a reasonable doubt as to the existence of any particular fact necessary to constitute the crime requires a verdict of not guilty, and it is necessary to a conviction that the people should prove, beyond a reasonable doubt, every fact necessary to constitute the crime. If one such fact is not proved by the measure of proof required by law, then the crime itself is not proved so as to authorize a conviction. It is not correct to say that a reasonable doubt as to any particular fact in a case is not sufficient to justify an acquittal, without distinguishing between facts which are material and constitute a necessary element of the crime and those which are not so material and necessary."

We wonder if the Supreme Court is sound in this view. Is it not feasible that the jury might have a reasonable doubt as to one material fact standing alone, but when the light of all the surrounding facts is shed on the case, that they might well come to the conclusion that no reasonable doubt remains

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[1] (1925) 317 Ill. 430, 148 N. E. 255. See also *People* v. *Mooney* (1922), 303 Ill. 469. In *People* v. *Steinkraus* (1920), 291 Ill. 283, the Court said that if the word *incriminating* were substituted for the word *material* so that the instruction would read "It is not necessary for the state to establish each incriminating fact beyond a reasonable doubt," then it would not be in error.

[2] Some of the language that follows has been adapted from a comment on *People* v. *Johnson* found in (1926) 20 Ill. L. R. 660.

[3] Pages 435-436 official report.

as to the guilt of the accused? Dean Wigmore has summed up the situation as follows:[1]

> "It is generally and properly said that this measure of reasonable doubt need not be applied to the specific detailed facts, but only to the *whole issue;* and herein is given opportunity for much vain argument whether the strands of a cable or the links of a chain furnish the better simile for testing the measure of persuasion. The truth is that no one has yet invented or discovered a mode of measurement for the intensity of human belief. Hence there can be yet no successful method of communicating intelligibly to a jury a sound method of self-analysis for one's belief. If this truth be appreciated, courts will cease to treat any particular form of words as necessary or decisive in the law for that purpose; for the law cannot expect to do what Logic and Psychology have not yet done."

16. Miscellaneous Errors in Giving and Refusing Instructions.

The Supreme Court has held that the singling out of the testimony of one witness for comment in an instruction is error. In *People* v. *Andrenos*[2] it reversed the conviction (two justices dissenting) because the trial court had given the following instruction:

> "The court instructs the jury that the defendant may be convicted of the crime of rape upon the uncorroborated testimony of the complaining witness . . ."

The danger, said the court, is that the impression of credibility of such testimony is likely to be magnified in the minds of the jury. The court, further, has expressed the view that an instruction singling out the defendant and telling the jury that they might take into consideration his interest in the result was erroneous. The instructions, it held, should be impersonal.[3]

It is error for the trial court to state abstract principles of law not based upon evidence. Instructions of that sort, the Supreme Court has held, confuse the jury, as it cannot be expected that they will comprehend the meaning of a legal dissertation on a point not before them. Therefore, even if the statement is correct as a principle of law, it is error to give it.[4]

In the case of *People* v. *Wong*[5] the trial court had instructed the jury as follows:

> "You are not bound to take the testimony of any witness as true merely because such witness swears to certain facts, and you should not take the testimony of any witness as true, if, for any reason, his or her testimony appears to you to be untrue or untrustworthy."

The Supreme Court held that this instruction was improper and that the giving of it constituted reversible error.[6] In the words of the court:[7]

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[1] 5 Wigmore, *Evidence* (1923, 2d ed.), sec. 2497.
[2] (1926) 323 Ill. 34.
[3] *People* v. *Schuele* (1927), 326 Ill. 366.
[4] *People* v. *Bradley* (1927), 324 Ill. 294, 309.
[5] (1926) 321 Ill. 181, 151 N. E. 485. The comment that follows on the *Wong* case was adapted from a comment by the writer on that case found in (1927) 22 Ill. L. R. 16-18.
[6] See similarly *People* v. *Kranser* (1926), 315 Ill. 485, 146 N. E. 593; Cf. *People* v. *Costello* (1926), 320 Ill. 79, 150 N. E. 712; *People* v. *Considine* (1926), 321 Ill. 590, 152 N. E. 564.
[7] Page 185 official report.

"By the first clause of the instruction the jurors were informed that they were not bound to take the testimony of any witness as true merely because he swore to certain facts, and by the second the jurors were told that they should not take the testimony of any witness as true if for any reason it appeared to them to be untrue or untrustworthy. The proposition that jurors by mere caprice, or for any reason which they deem sufficient, may disbelieve a witness is not the law. They are not at liberty to determine the credibility of witnesses according to their own judgment, without regard to those considerations which are proper or necessary in making that determination. . . . The instruction given permitted the jury arbitrarily to disregard the testimony of the witnesses who appeared in behalf of plaintiff in error, and since the evidence was conflicting, the giving of the instruction constitutes reversible error."

The proposition may be taken for granted that the jurors should not decide a question upon mere caprice. But did the instruction give them that latitude? The judge said they should not take the testimony of any witness as true if for *any reason* it appeared to them to be untrue or untrustworthy. While the words *any reason* might mean caprice in a colloquial sense, the word *reason* in its correct sense means "a rational ground or motive."

It is stated in the opinion that the jury is not at liberty to determine the credibility of witnesses according to their own judgment, without regard to those considerations which are proper or necessary in making that determination. What are those considerations, and wherein do they conflict with the trial court's instructions? "The jury are the part of the tribunal charged with forming a conclusion as to the truth of the testimony offered. They are absolutely free to believe or not to believe a given witness. Once the witness is determined by the judge to be qualified to speak, the belief of the jury in his utterances rests solely with themselves. Hence the judge cannot legally require them to believe or to disbelieve any portion of the testimony."[1] When the judge declares a witness competent, it becomes the duty of the jury to consider and to weigh his testimony. They cannot arbitrarily reject it.[2] But the weight to be given the testimony and the credit to be given a witness are questions wholly for the jury.[3] As stated by the court in *Hauser* v. *People:*[4]

"The jury, in determining as to the credibility of witnesses and the value of their statements, may consider the appearance and conduct of the witnesses while on the stand. One witness may, by his frank and open manner and prepossessing appearance, convince the jury that he is truthful, unbiased, intelligent and worthy of confidence. The appearance and manner of another may indicate that he is crafty, cunning, unfair and unreliable, or lacking in judgment or discretion. That when nothing appears to the contrary the presumption is to be fairly indulged that an unimpeached witness has testified truly may be laid down as a principle derived from the experience and knowledge of mankind, but

[1] 2 Wigmore, *Evidence* (1923, 2d ed.), 1010. And see 5 Jones, *Blue Book of Evidence* (1914), sec. 901, and 6 Jones, *Commentaries on Evidence* (1926, 2d ed.), secs. 2462-2466, and see *People* v. *Thompson* (1926), 321 Ill. 594, 152 N. E. 516; *People* v. *Kilbane* (1926), 322 Ill. 190, 152 N. E. 566.

[2] *R. R. I. & St. L. R. R. Co.* v. *Coultas* (1873), 67 Ill. 398.

[3] *People* v. *Delucc* (1909), 237 Ill. 541.

[4] (1904) 210 Ill. 253, 269.

the law has no such rule which the court may lay down in the instructions to the jury."

It was well said by the court of a sister state:[1]

> "When the credit of a witness is to be passed on, each juror is called upon to say whether he believes him or not; this belief is personal, individual, and depends upon an infinite variety of circumstances; any attempt to regulate or control it by a fixed rule is impracticable, worse than useless, inconsistent and repugnant to the nature of a trial by jury."

It is difficult to see wherein the trial court committed error in the instruction quoted from the *Wong* case. Even if it were to be taken that the instruction gave the jury too much latitude, would it follow that reversible error was committed? Was the instruction so wrong that the jury was misled by it? The jury is not a body so constituted to comprehend precise distinctions. The paramount inquiry, we take it, should be whether possible injustice was done the accused. If not, what is to be achieved by reversing a case because an instruction was not legally exact?

The Supreme Court takes the position in cases where a section of the criminal code makes unlawful the attempt to do a certain act, as well as the doing of the act, that separate offenses are defined, and this is true, even though the penalty for the attempt and the consummated act be the same. Moreover, a trial court must be on guard, in giving its instruction, not to use language that will include both.

It is, therefore, error, in an instruction, to follow verbatim the language of the statute. This was the error in *People* v. *Crane*.[2] The accused had been indicted for taking indecent liberties with a child of the age of thirteen years. The trial court had instructed the jury in the language of the statute,[3] which reads in part:

> "That any person of the age of seventeen years and upwards who shall take, or attempt to take . . . . indecent liberties with a child . . . . shall be imprisoned in the penitentiary not less than one year or more than twenty years."

A verdict of guilty was returned.

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[1] *State* v. *Williams* (1855), 2 Jones L. (N. C.) 259; quoted by Wigmore ibid. See also *United States* v. *Lee Huen* (1902), 118 Fed 442.

[2] (1922) 302 Ill. 217, 134 N. E. 99.

[3] Sec. 109, Ch. 38, Smith's Illinois Revised Statutes (1921) reads as follows:

"Be it enacted by the People of the State of Illinois, represented in the General Assembly: That any person of the age of seventeen years and upwards who shall take, or attempt to take, any immoral, improper or indecent liberties with any child of either sex, under the age of fifteen years, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, or who shall commit, or attempt to commit, any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, or any such person who shall take any such child or shall entice, allure or persuade any such child, to any place whatever for the purpose either of taking any such immoral, improper or indecent liberties with such child, with said intent, or of committing any such lewd, or lascivious act upon or with the body, or any part or member thereof, of such child with said intent, shall be imprisoned in the penitentiary not less than one year nor more than twenty years: Provided, that this act shall not apply to offenses constituting the crime of sodomy or other infamous crimes against nature, incest, rape or seduction."

The Supreme Court found error in the instruction (two justices dissenting), because, it held, two separate offenses were covered within the language used, namely the taking of indecent liberties with a child, and the attempt to commit that crime. In the language of the court:

> "It is the rule in this state that the commission of a crime, and the attempt to commit the same, are separate and distinct offenses. . . . The statute under which this prosecution was brought defines more than one crime. It provides that one who shall take any immoral, improper or indecent liberties with any child of either sex under the age of fifteen years with the intent there specified shall be imprisoned in the penitentiary not less than one nor more than twenty years, and also provides that if such person shall attempt to take such indecent liberties with such child he shall be imprisoned in the penitentiary for not less than one nor more than twenty years. Under the instruction given, if the jury thought that the evidence showed an attempt to take indecent liberties but that it did not show the accomplishment of the crime, they might nevertheless have felt justified, under such instruction, in returning a verdict of guilty under a charge of taking indecent liberties though the proof showed an attempt, only."

We respectfully submit that the above is an unnecessary refinement of reasoning which tends to lose sight of the inherent merits of the case. Could not the court easily have determined whether any injustice was done the particular defendant through the conviction?

In *People* v. *Kubulis*[1] the court said:

> *"The venue must be proved beyond reasonable doubt equally with any other fact in the case,* but the instruction improperly assumes that the crime, if proved to have been committed, was committed in Kankakee County." (Italics ours.)

The defendant had been convicted of burglary and larceny.

In *People* v. *Adams,*[2] a forgery case, the court said:

> "It is next contended that the People failed to prove the venue as laid in the indictment. *The venue was a jurisdictional fact but it was not an element of the crime to be proved beyond a reasonable doubt.* If there was evidence from which it could reasonably be inferred that the forgery was committed in DuPage County that was sufficient."[3] (Italics ours.)

In *People* v. *Niles,*[4] a perjury case, it appears from the facts stated that the accused and two others, Jackson and Haskell, had been jointly indicted for larceny in March, 1919. Jackson and Haskell pleaded guilty, but the defendant, Niles, pleaded not guilty and was acquitted. In September, 1919, Niles was indicted for perjury committed in the larceny trial, and was convicted. But that conviction was set aside by the Supreme Court for errors in the instructions. The eighth one, and the court's language relative to it, has drawn our attention. It told the jury that the question for it to try was whether the defendant had testified falsely "to any matter *material*

[1] (1921) 298 Ill. 523, 528.
[2] (1921) 300 Ill. 20, 24.
[3] To the same effect see *People* v. *McIntosh* (1909) 242 Ill. 602.
[4] (1920) 295 Ill. 525, 129 N. E. 97.

in that case, as charged in some count of the indictment." In this language the Supreme Court found error. To support its decision it quoted with approval from an earlier Illinois case[1] where it was said:

> "In the first instruction the jury were directed to find the defendant guilty if he willfully testified falsely in a material matter on the trial of a cause in court, while the statute requires the false testimony, to make out perjury, to be 'in a matter material to the issue or point in question.' The defendant may have sworn falsely in a material matter and at the same time not sworn falsely in a *matter material to the issue.*"

This, we submit, presents too subtle a distinction. A *material matter in the case,* according to the view taken, is so different from a *matter material to the issue* or *point in question,* that the jury might have been misled by the instruction. The defendant, it was said, may have sworn falsely in a *material matter,* and at the same time not sworn falsely in a *matter material to the issue.* We believe the distinction is unsound. We believe the wording approved by the court could have meant nothing different to the jury than the one given. No case, we submit, should be reversed on so delicate a point.[2]

(IV) Errors in the Admission of Evidence

17. In General. In a hotly contested trial lasting over several weeks it would be surprising, indeed, if no errors were made in the admission or exclusion of evidence. The court has expressed the view, where such error is harmless and there is sufficient other competent evidence to support the verdict, and the guilt of the accused seems clear, that it will not reverse the conviction. Reference to Table 5 will show that errors in the admision or exclusion of evidence have accounted for approximately one-fifth of the reversals.

18. Confessions. In three recent instances,[3] the Supreme Court was called upon to consider the trustworthiness of confessions and the principles governing their admission. In *People* v. *Fox,*[4] Mr. Justice Thompson, after a penetrating examination of the question, stated that involuntary confessions are rejected "not because of the illegal or deceitful methods employed in securing them but because of their unreliability." Testimonial untrustworthiness being the foundation of exclusion, "it follows that the exclusion is not rested upon the privilege against self-incrimination." The aim of the confession rule is to "exclude self-criminating statements which are false, while the privilege rule excludes all statements coming within it, whether true or false." [5]

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[1] *Young* v. *People* (1890), 134 Ill. 37, 42.

[2] See comment on this case in (1921), 15 Ill. L. R. 620. And see the further case of *People* v. *Niles* (1922), 300 Ill. 458, where this accused was "tried again on the same indictment" and where "the same evidence was introduced," resulting again in his conviction. The judgment was affirmed by the Supreme Court.

[3] *People* v. *Fox* (1926), 319 Ill. 606, 150 N. E. 347; *People* v. *Costello* (1926), 320 Ill. 79, 150 N. E. 712; *People* v. *Guido* (1926), 321 Ill. 397, 152 N. E. 149.

[4] *Ibid.* Mr. Justice Duncan dissented from the opinion in this case.

[5] *People* v. *Fox, supra,* pages 615-616 official report; *People* v. *Costello, supra,* page 104 official report; *People* v. *Guido, supra,* page 411 official report. In the last case Justices Duncan and Heard dissented.

Whether or not a confession is voluntary, is a preliminary question for the court to decide "from evidence heard out of the presence of the jury." In reaching his conclusion, "it is not necessary that he should be convinced, beyond a reasonable doubt."

There is no disagreement among the authorities that the admissibility of a confession depends upon the voluntariness. But the question as to when it is voluntary is more difficult. Mr. Justice Thompson in the *Fox* case stated that the criterion to be applied is as follows:[1]

> "Generally speaking, a confession is regarded as voluntary when it is made of the free will and accord of the accused, without fear or any threat of harm or without promise or inducement by hope of reward. . . . The real question presented to the court is not whether there is evidence of threats or promises, but whether there has been any threat or promise of such a nature that a prisoner would be likely to tell an untruth from fear of the threat or hope of profit from the promise."

Similar views are expressed in *People* v. *Costello*[2] and *People* v. *Guido*.[3] The statement quoted, without doubt, represents the prevailing view. Attention is called, however, to an opinion by the Supreme Court of the United States which held that this is not a sufficient test.[4] In the words of Mr. Justice Brandeis, who wrote the opinion:[5]

> "The Court of Appeals appears to have held the prisoner's statements admissible on the ground that a confession made by one competent to act is to be deemed voluntary, as a matter of law, if it was not induced by a promise or a threat; and that here there was evidence sufficient to justify a finding of fact that these statements were not so induced. In the federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law, if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise. . . . None of the five statements introduced by the Government as admissions or confessions was made until after Wan had been subjected for seven days to the interrogation. The testimony given by the superintendent of police, the three detectives and the chief medical officer left no room for a contention that the statements of the defendant were, in fact, voluntary."

In *People* v. *Rogers*[6] the Supreme Court took occasion to express its views on the "sweating process" at times resorted to by the police to obtain confessions. The defendant had complained that he was prejudiced by the following article which had appeared in one of the Chicago daily papers during the course of the trial:

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[1] Pages 615, 616 official report.
[2] (1926) 320 Ill. 79, 150 N. E. 712.
[3] (1926) 321 Ill. 397, 152 N. E. 149.
[4] *Wan* v. *United States* (1924), 266 U. S. 1, 45 Sup. Ct. Rep. 1.
[5] Pages 14-15 official report.
[6] (1922), 303 Ill. 578.

"Cops Protest Court Ban on Confessions

"When a Chicago police official yesterday heard Judge Fitch of the criminal court had ruled he would not allow confessions of prisoners to be introduced as evidence in trials, he said 95 per cent of the work of the department will be nullified if the policy is permitted to prevail. The judge explained he was acting in accordance with a Supreme Court ruling given in the case of Nick Viano, hanged recently for murder. The court held that a confession obtained after long mental and physical fatigue should be construed as having been forced. It was pointed out by the police official that few, if any, prisoners confess except after lengthy examination. 'We are permitted to do less every day,' continued another official. 'Pretty soon there won't be a police department.'"

The Supreme Court found that no sufficient showing had been made for setting aside the verdict, since it did not appear in the record that any of the jurors had seen the article before the trial was concluded or afterwards. But in view of what was said in the item quoted the court deemed "it proper to give it further notice, although not necessary to a decision of this case." We continue in the language of the court:[1]

"The sentiment so expressed confirms a preconceived opinion of this court, or at least of several members thereof, that it has been the practice of the Chicago police in a number of cases to extort confessions from suspects arrested by them by means of what is called 'the sweating process.' . . . This sweating process has no doubt been accompanied in some cases by violence or beating of the suspect into making a confession. It is not the right of a policeman or sheriff or any officer who has the custody of a prisoner to resort to such tactics to secure a confession. . . . A confession that is forced by such tactics is under the law absolutely inadmissible against the prisoner on the trial, and in this court it is not possible for the people to sustain a judgment in any criminal case where the record shows that it was had on a confession so obtained. The practice of punishing a suspect by blows or other violence when he otherwise refuses to confess is a violation of the criminal law itself and renders a policeman subject to criminal prosecution for such conduct. . . . The legitimate way is to get out in the field where the crimes are committed and hunt up legitimate evidence against the parties who commit the crimes, and at the same time respect the constitutional and legal rights of suspects arrested for crime. . . . We can conceive of no more beastly and criminal practice than the securing of convictions in the manner indicated. No self-respecting citizen, and certainly no law-abiding citizen, can stand for such a practice after he has well studied the question. It is the most dangerous and the most uncivilized practice imaginable to allow the police to go out and arrest a man or boy upon mere suspicion that he has committed a crime and for days subject him to the sweating process and to violence until he finally gives up and confesses in order to escape the torture to which he is being subjected."[2]

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[1] *Ibid* 588-590.

[2] "During the discussions which took place on the Indian Code of Criminal Procedure in 1872 some observations were made on the reasons which occasionally lead native police officers to apply torture to prisoners. An experienced civil officer observed, 'There is a great deal of laziness in it. It is far pleasanter to sit comfortably in the

19. *Admissions of Evidence of Other Crimes.*

The admission of evidence of other crimes has been not an infrequent source of error. In the case of *People* v. *Spaulding*[1] the court states a rule when such evidence is relevant. The defendant was tried and convicted for the murder of a policeman. Evidence was introduced tending to show the disappearance of the defendant's confederate, the only eye-witness to the crime. Evidence was further admitted detailing the subsequent finding of a skeleton in a shallow grave near the isolated cottage where the defendant was hiding; also the burning of the cottage and other connected facts. On error, it was objected that this evidence was improperly received. In a searching opinion, the Supreme Court held this evidence was admissible to show that the confederate was killed to prevent his testifying against the defendant. There follows the language of the court:

> "The question is, Is the evidence relevant? Does it tend to prove any fact material to the issue involved? . . . Evidence of other offenses wholly disconnected with the offense charged is not admissible, for the reason that it does not tend to establish the fact in controversy. Guilt cannot be shown by showing that the defendant has committed other offenses, but where relevant evidence is offered it is admissible notwithstanding it may disclose another indictable offense. . . . There are many cases which hold that where the motive for the crime charged is the concealment of some other crime, either by destroying the evidence of such other crime or by killing a witness who could testify relative to it, the evidence of such motive is admissible even if it does show the commission of an extraneous crime."

The relevancy of evidence of other crimes has not always been so clear, as will be observed from a four to three decision in *People* v. *Rogers*.[2] The defendant had been convicted of taking indecent liberties with a female child. The statute[3] makes it an offense to take or attempt to take indecent liberties with a child under the age of fifteen with intent of arousing sexual desires either of such person or of such child, or both. The prosecution called twelve other girls, all under fifteen, who testified concerning improper liberties taken with them at different times and places. The admission of this evidence was held reversible error by the majority of the court. To quote from the opinion:[4]

> "Proof of separate and distinct acts of indecent liberties with other children at other times and places would not tend to show guilty knowledge or intent in the act charged. Such was shown by the act itself. It was not necessary, therefore, to prove similar offenses with other children to show guilty knowledge or intent or to show that the act charged was not an accident or mistake."

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shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence.' This was a new view to me, but I have no doubt of its truth." 1 Stephen, *History of the Criminal Law of England* (1883), 442 n.

[1] (1923) 309 Ill. 292, 141 N. E. 196.

[2] (1927) 324 Ill. 224.

[3] Smith-Hurd Revised Statutes (1927), Chap 38, sec. 109.

[4] *Supra* 233.

It appears to us that the majority of the court laid down too narrow a rule of evidence in this case,[1] and that the opinion of the dissenting justices not only is more liberal, but it permits, because it holds that evidence of other offenses can be admitted, of a truer insight into accused's guilty intent, and of the crime committed. We quote from the dissenting opinion:[2]

> "Before plaintiff in error could be legally convicted of the charge against him it was necessary for the prosecution to prove not only that he took immoral, improper and indecent liberties with the child, but also that these liberties were taken with the specific intent of arousing, appealing to or gratifying the lust or passion or sexual desires of either himself or of such child, or of both. It is well established by the decisions of this court and the courts of other jurisdictions, that where a specific intent is an essential element of a crime and the prosecution must prove this specific intent in order to secure a legal conviction, evidence of similar acts committed by the accused happening at or about the same time is relevant and competent to show such intent."

In *People* v. *Hobbs*[3] the defendant was convicted of murder by abortion. The conviction was reversed on the grounds that the trial court committed error in permitting evidence to be introduced which tended to show that the defendant had committed an abortion on another subsequent to the act charged. The Supreme Court was of the opinion, while evidence of former similar acts are admissible to show intent, a subsequent abortion, without proof of former ones, has no such tendency and the trial court was in error in admitting this evidence.

The *Hobbs* case was followed by *People* v. *Moshiek*[4] in which the defendant had been convicted of forgery. At the trial a witness had been permitted to testify to other acts of forgery committed by him and the accused, subsequent to the one charged. The Supreme Court held that the admission of that evidence was error. To quote from the opinion:[5]

> "This court in the case of *People* v. *Hobbs*, 297 Ill. 399, has definitely and finally settled the question that the evidence of the commission of subsequent crimes is not admissible for the purpose of proving guilty knowledge or intent in the absence of proof that the defendant has formerly committed a similar offense, and that his first offense must be held to be the beginning of his criminal career, and that his intent in the commission of his first offense may not be presumed from his commission of subsequent similar and distinct offenses."

We believe that the court's view on the admission of evidence in both the *Moshiek* and the *Hobbs* cases, as well as that expressed in the *Rogers* case, tends to retard effective administration of the criminal law. By proving other similar instances the endeavor is to "negative inadvertence and any other innocent explanation. It argues that the oftener a like act has been done, the less probable it is that it could have been done innocently."[6] To

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[1] See discussion, 1 Wigmore, *Evidence* (1923, 2nd ed.), secs. 216, 357.
[2] Ibid 236.
[3] (1921) 297 Ill. 399, 130 N. E. 779.
[4] (1926) 323 Ill. 11.
[5] Ibid 22.
[6] 1 Wigmore, *op. cit.* sec. 312.

this end "it is immaterial whether the instances are found occurring before or after the act charged."[1]

20. *Error in the Admission of Complaints of Children in Crimes Against Children.*

In *People* v. *Romano*[2] the defendant had been convicted of the charge of taking immoral and indecent liberties with a female child of the age of six years. The child's mother and a nine year old girl were permitted by the trial court to testify that the child had complained of the defendant's conduct. The Supreme Court reversed the judgment of the trial court on the ground that the complaint of the child was not a part of the *res gestae,* and although the court found that such statements were admitted under similar circumstances in rape cases, it held that the rule did "not extend to the crime of taking indecent liberties with a child."

We believe there is no substantial basis for a distinction in the admission of such evidence between rape and indecent liberties cases. We believe, further, that the Supreme Court might well have held these statements admissible without doing violence to our rules of evidence. Nor would the admission of this evidence have jeopardized the interests of justice. "The phrase *res gestae* is, in the present state of the law, not only entirely useless, but even positively harmful. It is useless, because every rule of Evidence to which it has ever been applied exists as a part of some other well established principle and can be explained in the terms of that principle. It is harmful, because by its ambiguity it invites the confusion of one rule with another and thus creates uncertainty as to the limitations of both."[3]

The utterances of this child, if admissible, were so on the theory of spontaneous exclamations. Such exclamations are admissible as an exception to the hearsay rule because experience has taught us that "under certain external circumstances of physical shock, a stress of nervous excitement may be produced which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock."[4] The objection that the evidence is untrustworthy, which is fundamental ordinarily with hearsay testimony, is not present in such a case. This child's utterances were spontaneous and therefore trustworthy. "It is to be observed that the statements *need not be strictly contemporaneous* with the exciting cause; they may be subsequent to it, provided that there has not been time for the exciting influence to lose its sway and to be dissipated."[5]

21. *Curing Error by Direction to Disregard.*

Occasionally, a witness will volunteer a prejudicial remark. At other times, evidence competent as to one, but incompetent as to a joint defendant, is admitted. In all such cases the attorney for the defendant should promptly object. The trial court should then immediately sustain the objection, order the remarks stricken and tell the jury to disregard

[1] 1 Wigmore *op. cit.* secs. 359, 316, and see Wharton *Criminal Evidence* (1912, 10 ed.), sec. 887.
[2] (1923) 306 Ill. 502, 138 N. E. 169. Mr. Justice Carter dissented.
[3] 3 Wigmore *op. cit.* sec. 1767. See also article by Morgan, *A Suggested Classification of Utterances Admissible as Res Gestae* (1922), 31 Yale L. J. 229.
[4] 3 Wigmore ibid sec. 1747.
[5] 3 Wigmore ibid sec. 1750.

the testimony. But is the error thereby cured? Obviously it may be so serious that it cannot be cured by the instruction to disregard. The Supreme Court had been liberal in protecting the rights of the defendant in such cases.

The case of *People* v. *Sweetin*[1] involves this question. The defendant, Elsie Sweetin, and her co-defendant, Hight, had been jointly tried for the murder of the defendant's husband. Hight confessed and implicated Mrs. Sweetin. On the trial, the confession of Hight was introduced and the jury were told to disregard it so far as it referred to Mrs. Sweetin. In holding that error had been committed, the Supreme Court said:[2]

> "While the court instructed the jury that Hight's confessions were not admissible as against plaintiff in error, such instruction could by no possibility eradicate the testimony from the minds of the jury. While theoretically the instruction withdrew the evidence from the consideration of the jury, practically the human mind is so constructed that inevitably the prejudicial effect remained therein."[3]

22. Husband or Wife Testifying for or Against Each Other.

In *People* v. *Ernst*[4] the defendant was charged with forging his wife's signature to a note. The case had an interesting history:

> "Testimony was offered by the state to the effect that plaintiff in error's wife came to the bank after the auditor had taken charge and was shown the note in question and asked whether or not the signature was hers, and that she said it was not and that she had not authorized her husband to sign it. Defendant objected to this testimony and the objection was overruled, but later, during the presentation of the state's case, the court struck out this evidence. Plaintiff in error sought to testify that he had authority from his wife to sign her name to this note, but the court refused to permit him to do so. The state also offered plaintiff in error's wife as a witness, but the court ruled that she was incompetent and that a statement made by her could not be used against him."[5]

The case came up for two hearings before the Supreme Court. After the first, Mr. Justice Stone, speaking for a unanimous court,[6] held that the judgment should be reversed and the cause remanded, among other reasons, for error committed in admitting evidence of the wife's statement to the auditor of the bank. He held further, in a well considered opinion, that both husband and wife were competent to testify in the case. The opinion concluded:

> "We are of the opinion that in this case the common law should be relaxed in so far as necessary to obtain the truth concerning defendant's authority from his wife to sign her name to the note in question. So limited, the court should have permitted the defendant and his wife to testify."

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[1] (1927) 325 Ill. 245.
[2] Ibid 252.
[3] In *People* v. *Swift* (1925), 319 Ill. 359 the situation was much the same, but as the defendant had neglected to ask for separate trial the Supreme Court refused to reverse his case.
[4] (1923) 306 Ill. 452, 138 N. E. 116.
[5] Ibid 454.
[6] *People* v. *Ernst*, docket No. 14612, agenda 43, April, 1922.

The accused not being satisfied with the court's ruling as to the admissibility of the evidence of the wife, filed a petition for a rehearing which was granted. The unexpected then happened. In the second opinion the Supreme Court held that the common law could not be relaxed and that, consequently, neither the husband nor the wife was a competent witness. In the language of the court:

> "We are confronted with a legislative enactment that 'the rules of evidence of the common law shall also be binding upon all courts and juries in criminal cases except as otherwise provided by law,' and the legislature has not otherwise made any provisions changing the rule in cases of this character. . . . If it is now thought the statute is unwise and does not rest on a sound basis of reason, we think the legislature must be appealed to, to change it. This court cannot do so."[1]

Is the court's second thought an improvement? We think not. The statute in question has no inhibition against husband and wife testifying for or against each other. It merely provides that the rules of evidence of the common law shall govern. This fairly raises the question: Was it the intention by this statute to crystallize the rules of the common law? And if not, what are the rules of evidence of the common law governing this question?

It is not questioned that the common law rule was that husband and wife were disqualified by the marital relationship as witnesses for or against each other. But the common law rule also was that a wife on her marriage submerged her legal identity. She could not make a binding contract. She was legally incapacitated to deal with property. She had few interests, if any, to protect from her husband. The law made him the over-lord. Had he forged her name, it would have been a mere idle act, and of no criminal consequences, since she could not create an obligation.[2]

Since that time statutes have quite generally conferred on the wife many, if not all, of the rights, privileges, etc., of a single woman. Our court has proudly pointed to woman's status in Illinois: "Few, if any, state legislatures in this country have gone further to secure to a wife all of her separate rights without interference on the part of the husband than has the legislature of this state."[3]

The wife now has interests in property with which not only a stranger may interfere, but her husband as well. If she now signs a note, she creates an obligation. She has become a legally responsible person with interests to protect. She is permitted to speak in court in protection of those interests, and to expose a violator of her rights. If that violator happens to be her husband, he is as to those interests much the same as a stranger. The law has endowed a married woman with legal capacity to hold property independent of her husband. This marks a decided change in the legal status of woman and presents a new problem for the common law to contemplate. Her present status has been wrought largely through statutory enactment,

[1] *People* v. *Ernst* (1923), 306 Ill. 452, 456, 138 N. E. 116.
[2] See *McLean* v. *Griswold* (1859), 22 Ill. 218; *Carpenter* v. *Mitchell* (1869), 50 Ill. 470; *Schmidt* v. *Postel* (1872), 63 Ill. 58.
[3] *Betser* v. *Betser* (1900), 186 Ill. 537, 538, 58 N. E. 249.

but this presents added reason, not less, for the common law to unbend and adapt itself to present conditions in the matter of qualifying both parties to the marital relationship as witnesses.[1]

23. Errors in Cross Examination.

Reference to Table 5 will show that 5.1 per cent of the reversals during the period studied were for errors in cross examination. It will be noted, too, that improper cross examination was urged successfully most frequently, as was the case with most of the other principal grounds for error, in homicide cases. The Supreme Court has steadfastly adhered to the policy of allowing ample cross examination and yet it has carefully kept that "legal engine" for discovering truth in its proper place. The fact that relatively few cases have been reversed for improper cross examination is most gratifying.

A few illustrations of the improper use of cross examination will suffice. In *People* v. *Sorrells*[2] the state's attorney cross examined the defendant as follows:

> "Q. 'You remember a woman named Rose Mason testifying at the inquest?' A. 'Sure.' Q. 'Rose is dead now, isn't she?' A. 'Yes, sir.' Q. 'You remember her saying she saw you going in that house that morning?' "

Although objection to the last question was properly sustained, it still, in the opinion of the court, constituted prejudicial error. To quote:[3]

> "This last question was objected to and the objection sustained, but the question was clearly prejudicial error. There was no attempt to use the testimony of Rose Mason before the coroner's inquest, but the inference was gotten before the jury that there had been a witness, now dead, who had seen the plaintiff in error go into his house, where the deceased was later found dead, during the morning of the day of the crime. There was no evidence in the record tending to show that he was in his house during that morning after first leaving it. While the court sustained the objection the damage from such question had been done. This question supplied by inference in the minds of the jury a link in the chain of circumstances not supplied by any portion of the evidence. This was reversible error."

Judgment was reversed in *People* v. *Lewis*[4] because the prosecuting officer, in cross examining the defendants, repeatedly asked of them questions regarding other indictments against them and also concerning matters tending merely to disgrace and prejudice them with the jury. In *People* v. *Moshiek*[5] the court said:

> "The state's attorney, instead of offering this rebuttal testimony if it was forthcoming, sought to discredit the testimony of Wilson by unfair and unlawful means, by asking the witness if he was not charged with forgery and if he was not guilty of forgery. There is no claim whatever, so far as this record shows, that Wilson was ever convicted of the crime of forgery or of any other felony or infamous crime."

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[1] See *Boyer* v. *Sweet* (1900), 184 Ill. 120.
[2] (1920) 293 Ill. 591.
[3] Ibid 595.
[4] (1924) 313 Ill. 312.
[5] (1926) 323 Ill. 11, 21.

In *People* v. *Johnson*[1] error was committed because the prosecuting officer had attempted to impeach his own witness. "There is no rule of evidence more firmly established," said the court, "than that a party cannot impeach a witness called by him by proving that the witness has on some other occasion made a statement different from the one he makes in court."

(V) Variance, as Ground for Reversal

24. In General. A variance occurs when the proof does not sustain the criminal charge but tends to establish something different. It is not always possible to know in advance just what the proof will show. To meet the possibility of varying evidence, different counts are allowed, and if the proof corresponds to any one of the counts (assuming, of course, that a count states a criminal offense), the case has been properly supported. At times, the proof fails to correspond to any valid count. Then the state fails because of a variance of the proof from the charge. No one would contend that a person charged with murder might be found guilty of larceny, but we shall find cases involving subtleties and where the distinctions are not so apparent. In *People* v. *Jennings*[2] the court said, "A variance to vitiate a trial must be material." But when is it material? As to that question there may be differences of opinion.

In *People* v. *Zangain*[3] the accused had been convicted of burglary. The indictment charged him with breaking and entering the "store building of James A. Hendricks and the estate of H. H. Morgan, deceased, operating under the firm name of Morgan and Hendricks." This, the Supreme Court held (three justices dissenting) was a sufficient description of the premises.

Can the estate of a deceased partner be a member of a partnership and carry on business after his death? To this question the majority of the court answer:

> "It is settled by all authority that the business of a partnership may be continued after the death of a partner, either by the original articles of co-partnership, or by parol agreement between the partners, or by the will of a partner with the assent of the other partners, or even by agreement of the surviving partners and the representatives of the estate of the deceased partner."

This being so, was it sufficient to name the estate of the deceased partner without giving the name of the legal representative heirs or devisees? On this question the majority were of the opinion that with respect to property, a partnership is "recognized as a legal entity distinct from and independent of the persons composing it." The majority conclude:

> "Inasmuch as the funds and property of a deceased partner may be continued in the business and the representatives of the estate sustain the relation of partners, and in common acceptation the estate is a partner, we do not regard it as essential that the names of those who would be entitled on the settlement of the partnership affairs should be named. The ownership of the property was sufficiently alleged."

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[1] (1924) 314 Ill. 486.
[2] (1921) 298 Ill. 286.
[3] (1922) 301 Ill. 299, 133 N. E. 783.

In the opinion of the minority, however, after the death of a partner, and before settlement of the partnership business, ownership should be laid, for purposes of indictment, in the surviving partner as the personal representative of the partnership. After the partnership business is settled,

> "the interest of the deceased partner passes to his personal representative, heir, devisee or legatee, as the case may be, and ownership should then be laid in all the individuals comprising the partnership, naming them. . . . For aught that appears on the face of this indictment the accused may have been the owner, in whole or in part, of the store building as heir or devisee of H. H. Morgan and may have had the possession of the building and the lawful right of entry."

The notion that a partnership is an entity is interesting. Both on this point and on that relating to the allegation as to the ownership of the premises the opinion of the minority is in legal strictness more nearly correct. Nevertheless the position taken by the majority should be commended. "It would have been less confusing, naturally, if the court had avowedly adopted the view that a description in popular language, even though not wholly an accurate one, would satisfy the requirements of allegation. But even as it is, the case is bound to exercise a salutary influence toward the elimination of an inviting species of unmeritorious objection." [1]

In *People* v. *Emmel*[2] the court held it was sufficient in an indictment for obtaining property by means of the confidence game to allege that the property obtained was either that of the general owner *or* of the agent in possession, and that it was sufficient to prove that the confidence game was practiced either on the owner *or* the agent.

25. The Doctrine of Idem Sonans. When a material name or word in an indictment has been wrongly written or spelled, the doctrine of *idem sonans* (having the same sound) is raised. If it is found *idem sonans* with that proved, there is no error. If the name alleged is one by which the party is usually known, even if his true name is proved to be different, there is no variance.[3] If the name alleged is of the same sound as the name proved or so near it that no one could possibly have been prejudiced, there is no error. In *People* v. *Callahan*[4] the property stolen was alleged to be that of Claude and *Elza* Mills, whereas the proof showed it to be that of Claude and *Elga* Mills. The court held that this did not constitute fatal variance. In *People* v. *Weisman*[5] the property taken was alleged to be that of the First National Bank of Marissa, *Illinois*. The proof showed the correct description to be First National Bank of Marissa. Again, the court held that the defendant was not prejudiced by the variance. In *People* v. *Estes*,[6] Charles R. Carlyle, Sr., was sworn in as foreman of the jury but the bill was signed by Charles Robert Carlyle. The court saw in that no sufficient reason for quashing

[1] Millar (1922), 17 Ill. L. R. 233, 234.
[2] (1920) 292 Ill. 477.
[3] *People* v. *Decina* (1923), 306 Ill. 260; *People* v. *Marek* (1927), 326 Ill. 11.
[4] (1926) 324 Ill. 101.
[5] (1921) 296 Ill. 156.
[6] (1922) 303 Ill. 602.

the indictment. In *People* v. *Goldberg*[1] a count making a charge against *Philup Goldberg* was held good though the defendant's true name was Philip Goldberg, but one calling him Philip *Holdberg* was fatal.[2]

In *People* v. *Belle*[3] the allegation was that the burglarized store was the property of S. Arthur Board, and the proof showed his name to be S. A. Board. In *People* v. *Jennings*[4] the building burglarized was alleged to have been a storehouse, while some of the witnesses testified that it was a meat market. In both of the above cases the variance was held to be not material.

The case of *People* v. *Novotny*[5] involved a prosecution under the confidence game statute. It was charged that the defendant had obtained money by use and means of the confidence game from Rapan *Manian,* but the evidence showed that the name was Rapan *Mananianian.* This was held to be fatal. Mananianian is no more like Manian than Browning is like Brown, said the court. Two principal reasons were given for the decision, viz., (1) a material averment (that is the name of the person defrauded) was not proved, and (2) an acquittal or conviction of wrongly obtaining money from Rapan Manian would be no bar to a subsequent trial for defrauding Rapan Mananianian. To quote from the opinion:[6]

> "While the offense of obtaining money by means of the confidence game is punished as a public crime, the particular offense charged is always the obtaining of the property of some individual, whose name therefore becomes material to the description of the offense as stated in the cases cited. Being a material averment it is necessary to be proved, and a failure to prove it is not a mere variance but a fatal lack of evidence to prove the crime charged. There is here no question of *idem sonans* . . . . Would the production of the record showing an acquittal on this indictment for obtaining the property of Rapan Manian constitute a defense to another indictment for obtaining the property of Rapan Mananianian? If it would, then an acquittal upon an indictment against Robert Brown would constitute a defense to a subsequent indictment of Robert Browning, and an acquittal of Thomas Buchan a defense to a subsequent indictment of Thomas Buchanan, or *vice versa.*"

All the circumstances in the *Novotny* case clearly indicate that no injustice was done the defendant through the conviction. He was at the trial and strenuously defended himself. He understood the nature of the charge against him. There is nothing to indicate that he was misled or confused by the charge in any way. What magic is there in a name? Is it not but one means of identification? Surely the court does not mean to intimate that an acquittal of Jones for assault on John Smith would be a bar to a prosecution against Jones for assaults he has made on *other* John Smiths. If in a second prosecution for an assault on *another* John Smith, Jones were to raise *res adjudicata,* is there any doubt that it could be shown that in the second action a different individual was involved? Equally,

[1] (1919) 287 Ill. 238.
[2] See comment on this case supra.
[3] (1923) 308 Ill. 593.
[4] (1921) 298 Ill. 286.
[5] (1922) 305 Ill. 549.
[6] *Ibid.,* 557-558.

can there be any doubt, if the defendant Novotny, after his conviction for obtaining the property from *Rapan Manian* by means of the confidence game, were to be similarly charged for obtaining the property of *Rapan Mananianian,* that he could show that he had already been convicted of that offense? We believe that, here again, the administration of the criminal law would have been promoted more effectively if the court had first inquired into the fact whether any injustice had been done the defendant through the conviction.

26. Joint Indictments. The sufficiency of an indictment against an accessory under the Illinois Criminal Code has been considered frequently by the Supreme Court.[1] The case of *People* v. *Bogue* [2] raises this question relative to an indictment for rape. Five persons were jointly indicted as principals for the rape of one woman. After their conviction, on writ of error, it was argued that this was neither legally nor physically possible, as the crime is in its nature several in its perpetration. There follows the language of the court: [3]

> "It is conceded several persons may be jointly indicted and convicted for the commission of one crime, but it is contended that when several are jointly indicted for rape of one woman, the presumption must be indulged that all but one of the parties encouraged and aided the perpetrator in committing the crime, and the indictment must so allege . . . . By our criminal code an accessory who encourages, aids and abets in the commission of a crime shall be considered as principal and punished accordingly . . . . It is necessary that the indictment charge all of the defendants with the crime, as they must all be tried together. This court has often said it is necessary that an accessory before the fact be indicted and punished as a principal, and that the usual practice is to indict as principal an accessory before the fact."

The *Bogue* case should be read in connection with the case of *People* v. *Richie,*[4] which also involved a joint indictment for rape. In that case it was said, "Apart from the statute making accessories punishable as principals, two persons cannot be jointly guilty of a crime such as rape, where by the very nature of the act individual action is essential." It is permissible "to join two or more defendants in the same indictment where they commit the same offense as principals or where they act as principal and accessory." But since, in the *Richie* case, distinct acts of rape were involved by two persons upon the same woman, it was held the indictment was bad for "an indictment charging two or more persons with the commission of a joint offense will not be sustained by proof that each committed a distinct offense."

27. Content of the Indictment. The content of a homicide indictment, which has ever been a matter of much concern to the state's attorney, can be made relatively simple if the

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[1] The Illinois Criminal Code provides: "An accessory is he who stands by, and aids, abets or assists, or who not being present, aiding, abetting or assisting, hath advised, encouraged, aided or abetted the perpetration of the crime. He who thus aids, abets, assists, advises, or encourages, shall be considered as principal, and punished accordingly." (1925) Smith-Hurd, Ill. Rev. Stats., chap. 38, sec. 582.

[2] (1925) 319 Ill. 294, 149 N. E. 750. The language relative to this case is adapted from a comment by the writer in (1927) 22 Ill. L. Rev. 18-19.

[3] Page 296 official report.

[4] (1925) 317 Ill. 551, 148 N. E. 265.

Supreme Court's suggestions in the case of *People* v. *Corder*[1] is followed. The indictment was unusually wordy. It was contended that it was uncertain because it did not specifically aver that the mortal wound from which the deceased died was the mortal wound inflicted by the defendant, and, further, that the date was not alleged in a positive averment. The language of the Supreme Court in reply is noteworthy:

> "Omitting the formal parts of the indictment, all that was necessary to make it sufficiently technical and correct was to say that on a certain day in a certain county John F. Corder 'did unlawfully, with malice aforethought, by shooting, kill Jane Hardy.'"

In an earlier case,[2] an information had been brought against the defendant for murder committed *by shooting with powder and shot from a gun.* The defendant was acquitted on that charge. Later another indictment for killing the same individual was brought against the defendant alleging that he had killed the deceased *by beating him upon the head with a gun.* On that charge the accused was convicted. The Supreme Court held that the two indictments stated different offenses, and that the acquittal on the first was no bar to the second, the prisoner never having been in legal jeopardy.

To expedite the administration of the criminal law we stand in great need of the simplification of criminal pleadings. The tendency is in that direction. The state of Michigan[3] recently has prescribed a form for an indictment for murder reading "AB murdered CD." Various other forms prescribed by the recent Michigan statute are correspondingly short. We believe, in the absence of legislation in Illinois, our Supreme Court, through its influence, could do much toward simplifying criminal pleadings. In its decisions, it might extend the excellent suggestions contained in the *Corder* case by indicating that shorter indictments in other offenses would be desirable. A suggestion from the court carries tremendous weight. Much, therefore, depends upon its leadership. The position it takes on a question can easily change the trend, not only of criminal pleadings, but of the whole law of the state.

28. Proof of Offense Differing from the One Alleged.

It is but a travesty on justice when, under the law, a guilty defendant is permitted to escape conviction because the crime he was charged with was, by a slight shade of difference, not the crime of which the evidence showed him guilty. The difference between an attempted and a consummated crime, frequently, is not measurable. So, too, it is difficult, at times, to distinguish larceny from embezzlement, larceny from false pretenses, or false pretenses from that new horror found in the Illinois criminal code, *the confidence game.* What a boon these close distinctions must be to the criminal! It is he who thrives by our serene devotion to the letter of the law and by our strict adherence to syllogistic reasoning. The close approximation of the definition of one crime to others is a patent cause for the miscarriage of justice in many cases. A few illustrations from recent cases, we believe, will bear out these remarks.

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[1] (1923) 306 Ill. 264, 137 N. E. 845.
[2] *Guedel* v. *People* (1867), 43 Ill. 226.
[3] *Michigan Public Acts* (1927), Chap. 7, Sec. 44.

In *People* v. *Gore*[1] the defendant was convicted of larceny as bailee. In the Supreme Court the conviction was set aside because the evidence tended to show him guilty of *obtaining money by the use of a false and fraudulent deed rather than larceny as a bailee.* The defendant, acting under an oral authority from others, signed the name of his principals to a written contract of sale for real property, and received, upon delivery of the deed, a check made out to him for the purchase price. The principals testified that they had not signed the deed or ratified the transaction. The defendant converted the proceeds of the check he had received to his own use. The result was that the purchasers did not get legal title to the land and the defendant had their money, which, apparently, he refused to return. On those facts a larceny as bailee charge was brought against him. To quote from the opinion:[2]

> "While the evidence establishes that plaintiff in error had an oral contract with the Bucketts to sell the property in question, there was no evidence that he was authorized to sign their name to a contract. An oral contract of agency to sell real estate does not authorize the agent to sign the name of his principal to a written contract of sale . . . . Nor was he authorized by the contract of agency to receive a check for the payment of the lots, made out in his name. The question involved in this case is whether or not plaintiff in error was bailee of a check belonging to the Bucketts. Unless he was proven so beyond a reasonable doubt, conviction of larceny as such bailee cannot stand. The fact that he may have used a false and fraudulent deed to procure money from Gost does not aid in the solution of the question. The conviction must be of the crime charged and not of some other crime. The Bucketts were not entitled to this money until they had given the warranty deed to the property in question, which they at no time did."

In *People* v. *Ingravallo*[3] the defendant falsely represented the death of the insured and demanded payment on the policy. His conviction was reversed because "the obtaining of money from an insurance company by a false representation of the facts . . . does not constitute obtaining money by means of the confidence game." In *People* v. *O'Connor*[4] a purse was taken from a drunken man. As this was not robbery, but only larceny, the case was reversed. In *People* v. *Peers*[5] the defendant was indicted for attempting to obtain money by means of the confidence game. He had insured his car after it had been wrecked and then had sent in a claim for damages post-dating the accident. He was convicted and sentenced, but on error judgment was reversed because the proof showed, not a confidence game attempt, but an attempt to obtain money by false pretenses.

The case of *People* v. *Heisler*[6] raises the distinction between the crime of abortion and that of an attempted abortion. The accused had been charged with, and convicted of the crime of murder by abortion. On a post mortem examination, the proof showed that the fœtus had decomposed within the

[1] (1926) 322 Ill. 67.
[2] Ibid 68-69.
[3] (1923) 309 Ill. 498.
[4] (1923) 310 Ill. 403.
[5] (1923) 307 Ill. 539.
[6] (1921) 300 Ill. 98.

body of the woman. The defendant's wrongful act had brought on the condition which caused the death of the woman; but, since the fœtus had decayed within the body, it was murder by attempted abortion. Had it been expelled the crime would have been murder by abortion. Because of this variance, the case was reversed. The following quotation is from the opinion:

> "In medical parlance a distinction is often made between the terms 'abortion' and 'miscarriage,' but in law, and as used in our statute, there is no ground for any distinction. The terms are synonymous. Abortion is the expulsion of the fœtus at a period of utero-gestation so early that it has not acquired the power of sustaining an independent life. . . . To cause a woman to abort or miscarry and to attempt to procure or produce an abortion or miscarriage are separate and distinct offenses. . . . This conviction of the plaintiff in error for murder by abortion would not be a bar to the prosecution of her for murder by an attempt to produce an abortion. She is charged in the indictment with murder by abortion, and the proof shows clearly that no abortion was produced. The variance between the charge and the proof is fatal."

It should be observed that the language of section three of the criminal code covers both of these offenses. It reads in part as follows:

> "Whoever . . . causes any woman . . . to abort or miscarry, or attempts to procure or produce an abortion or miscarriage, . . . shall be imprisoned in the penitentiary . . . ; or if the death of the mother results therefrom, the person procuring or causing the abortion or miscarriage shall be guilty of murder."

But there is yet another phase of this problem, viz., can a conviction for an attempt stand where the evidence establishes that the act was consummated? That it cannot is the decision in *People* v. *Lardner*.[1] The accused had been indicted for the larceny of five beaded hand bags. He had taken the bags from a show case and had placed them in the pocket of his overcoat. After some altercation he left the store, leaving this overcoat lying on another show case about six feet from the one from which the bags were taken. The bags were there discovered. The accused was found guilty of an attempt to commit larceny under section 581 of the criminal code. This section covering attempts not otherwise expressly dealt with, provides for the punishment of "whoever attempts to commit any offense prohibited by law, and does any act towards it but fails, or is intercepted or prevented in its execution."

The evidence established the fact that the defendant had taken physical control of the bags. "There was a complete severance from the possession of the owners from whom the bags were taken." The Supreme Court reversed the judgment of the trial court on the ground that the defendant was guilty of larceny and not an attempt to commit larceny. It held, further, that even though a lesser offense is included in an indictment for a higher one, and a defendant though acquitted of the higher might still be convicted of the lesser, this rule did not here apply since an essential element of an attempt is a failure to consummate the crime. There was no failure here; the crime of larceny was complete. In the language of the court:

[1] (1921) 300 Ill. 264, 133 N. E. 375, 19 A. L. R. 721 (annotated at page 724).

"The essential elements of larceny are a felonious taking by which the owner is deprived of possession and the thief acquires such possession for an appreciable period of time, although it may be only for a moment. An attempt to commit larceny is the unfinished crime. The essentials of the attempt are the intent to commit the crime, the performance of some overt act towards its commission, and a failure to consummate the crime. Whenever one intending to commit the crime of larceny does an act toward it but is intercepted, or some accident intervenes so that he fails to accomplish what he intended, it is an attempt within the statute. If there is such intent and an endeavor to accomplish the crime by some act falling short of the execution of the ultimate design it constitutes the attempt. . . . A failure to consummate the crime is as much an essential element of an attempt as the intent and the performance of an overt act toward its commission. Evidence that a crime has been committed will not sustain a verdict for an attempt to commit it, because the essential element of interception or prevention of execution is lacking. . . . When an indictment charges an offense which includes within it a lesser offense, the defendant, though acquitted of the higher offense, may be convicted of the lesser; but that rule cannot be applied to an attempt defined by the statute, because an essential element of the attempt is a failure to consummate the crime. The statute only includes a case where there is a direct, ineffectual act toward the commission of crime. If the evidence for the people proved the defendant guilty of the crime of larceny he could not be convicted for an attempt which failed."

While this is the rule relating to attempts and consummated acts, the situation must be distinguished sharply from one where the conviction is for an assault with intent to commit a crime, and the evidence establishes the act was consummated. Here, notwithstanding, the conviction stands. *People* v. *Mason*[1] presents that issue. The accused had been convicted of an assault with intent to commit rape. There was evidence tending to show that rape had been committed. In affirming the judgment of the trial court, the Supreme Court held that the crime of rape involves assault with intent to commit rape, and that the charge had been sustained, notwithstanding rape had actually been committed. The following is the language of the court:

"Counsel further contend that conviction in this case of assault with intent to commit rape cannot be sustained, for the reason that the facts show, if taken to be true, that the crime of rape, and not of assault with intent to commit rape, was proven. The test in this class of cases is whether or not the evidence shows plaintiff in error to be guilty of the crime charged, and the fact that the evidence proving him so guilty may also prove an offense of greater magnitude is not a variance between the proof and the indictment upon which the verdict is based. Proof of the crime of rape also involves proof of an assault with intent to commit rape, and though it be conceded that in this case the proof does show the crime of rape, such does not make void the conviction of the crime charged."

Although somewhat startling when placed in juxtaposition, these cases represent settled principles of law. The distinction lies between attempt and

[1] (1922) 301 Ill. 370, 133 N. E. 767.

consummated act, representing distinct offenses, and an assault with intent to commit a certain crime and the actual commission of the crime, one including the other. To be sure, it is difficult to see why an attempt to commit larceny is any less an element of the crime of larceny than an assault with intent to commit rape is an element of the consummated crime of rape. On this question Professor Millar has commented:[1]

> "An attempt, as known to the criminal law, is in no sense a constituent element of the crime itself, for there can be no punishable attempt without a failure to accomplish the object intended. . . . It is not enough to constitute a criminal attempt that there shall be a certain degree of progression along the 'iter criminis:' it must appear, in addition, that the progression had come to a full stop. Quite otherwise is the case of assault with intent to commit a crime. In offenses involving force, such as rape, the assault with intent is *per se* an element of the completed crime. The allegation of the completed crime, therefore, includes the charge of assault. In this case, it suffices to show a certain degree of progression along the 'iter criminis,' viz., to the extent of the assault, accompanied by the intent in question, without regard to success or failure of the criminal purpose: the conception of assault with intent is complete irrespective of the carrying out of the intent."

Professor Millar continued:

> "Here there is room for legislation. If the evidence fails to show the completed crime as charged, but shows a punishable attempt, the only thing, under present conditions, preventing conviction is the absence of an allegation stating the fact of failure. It is very difficult to see how this absence can work any real prejudice to the defendant. The attempt should be made a lesser included offense by statute. This was done in England by the statute of 1851, already mentioned. The provision[2] is to the effect that, if it shall appear to the jury, on the trial of any offense, that the crime charged was not completed, they may find the prisoner not guilty of the crime but guilty of an attempt to commit it . . . . Similar statutes exist in many American jurisdictions."

There is need, too, for the revision of the criminal code covering the crimes relating to property. The subtle distinctions between the various crimes there involved have become so firmly rooted in the criminal law that nothing short of legislation can adequately remedy and liberalize the situation. Kenny tells us:[3]

> "Some of these limitations would seem to us unaccountable if we did not know that they had been inspired by motives of humanity. The desire of avoiding capital punishment—and in later times that of restricting the number of offenses in which, by the old procedure in trials for felony, the accused person was denied the support of counsel and witnesses—led our mediæval judges to invent ingenious reasons for depriving many acts, that seemed naturally to fall within the definition of larceny, of all larcenous character. So extreme was the severity of the law of larceny that it exacted death as the penalty for stealing, except when the thing stolen did not exceed the value of twelve pence.

[1] Comment (1922), 17 Ill. L. Rev. 42, 43.
[2] 14 and 15 Vic. c. 100, sec. 9.
[3] *Outlines of Criminal Law* (1926, 12 ed.), 182.

> This severity was ultimately tempered by two active forces. One was what Blackstone leniently terms 'a kind of pious perjury' on the part of juries; who assessed the value of stolen articles in a humanely depreciatory manner. Thus in 1808, to avoid convicting a woman for the capital offence of 'stealing in a dwelling-house to the value of forty shillings,' a jury went so far as to find on their oaths that a 10 pound Bank of England note was worth only 39s. The other force which similarly opposed putting men to death for thefts was that ingenious judicial legislation which we have already mentioned."

In the criminal code of Canada the situation has been remedied by a broad comprehensive statutory provision[1] under the heading *theft,* that covers not only common law larceny but all other matters involving the fraudulent conversion or misappropriation of another's personal property. The provision reads as follows:[2]

> "1. Theft defined.—Theft or stealing is the act of fraudulently and without color of right taking, or fraudulently and without color of right converting to the use of any person, anything capable of being stolen, with intent,—(a) to deprive the owner, or any person having any special property or interest therein, temporarily, or absolutely, of such thing, or of such property or interest; or (b) to pledge the same or deposit it as security; or (c) to part with it under a condition as to its return which the person parting with it may be unable to perform; or (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.
>
> "2. Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.
>
> "3. The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.
>
> "4. It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting."

Such legislation, if adopted in Illinois, we believe, would have a noticeable salutary effect on the enforcement of the criminal law.

(VI) Conduct of Prosecuting Attorney, as Ground for Reversal

29. In General. The prosecuting attorney is an officer of the state, "required not merely to execute justice, but to preserve intact all the great sanctions of public law and liberty. No matter how guilty a defendant may in his opinion be, he is bound to see that no conviction shall take place except in strict conformity to the law. It is the duty, indeed,

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[1] The Criminal Code of Canada is based on the English Draft Code formulated by the English Royal Commissioners but never adopted in England.

[2] Crankshaw's *Criminal Code of Canada* (1924, 5th ed.), sec. 347.

A report of the Crime Survey Committee of the Philadelphia Law Association has recommended a revision of the Criminal Code of Pennsylvania so that "a bill for unlawfully taking the goods of another should charge that A. B. on the ..... day of ....., 192...., stole from C. D., property of the value of $..... in the County of Philadelphia. Under such a bill the jury should be allowed to convict of larceny, larceny as bailee, embezzlement or receiving stolen goods knowing them to be stolen." *Report of Crime Survey Committee* (1926), 473.

of all counsel to repudiate all chicanery and all appeal to unworthy prejudice in the discharge of their high office; but eminently is this the case with public officers, elected as representing the people at large, and invested with the power which belongs to official rank. . . . Such officers are bound to . . . . scrupulously avoid all unfairness in the presentation of the law."[1] This language, we might remark, describes the habiliments of the state's attorney when he appears for legal inspection. They are, so to speak, his formal clothes, to be worn only on special occasions. The ordinary state's attorney in action is nothing of the kind. He is a partisan as much as the counsel for the defense,[2] who, by the way, is also an officer of the court. At times the prosecuting officer is viciously combative, and, occasionally, it is feared, he presses a case unduly for conviction.

30. Improper Remarks. Frequently the Supreme Court has been obliged to criticize the conduct of the state's attorney. Usually, while condemning his improper deeds, it has affirmed the conviction if the evidence of the guilt of the defendant otherwise was clear. But, occasionally, the acts of misconduct have been regarded by the court as so prejudicial that it has deemed a reversal was warranted. In *People* v. *Bimbo*,[3] where the misdeeds of the assistant state's attorney were particularly flagrant, the court took occasion to remark:

> "The state's attorney is a sworn officer of the court, and it is his official duty to see that the defendant has such fair and impartial trial. While errors are sometimes committed by counsel through eagerness to win a lawsuit, yet there is nothing in the duty of a state's attorney which requires him to prejudice the right of a defendant to a fair trial in an eagerness to secure a conviction. . . . Argument of counsel is for the purpose of assisting the jury fairly, deliberately and impartially to arrive at the truth of the facts submitted to them for their decision, and it is highly improper for the prosecutor to do or say anything in argument, the only effect of which will be to inflame the passions or arouse the prejudices of the jury against the accused without throwing any light upon the question for decision. . . . On account of the misconduct of the assistant state's attorney the judgment of the criminal court will be reversed and the cause remanded."

In the case of *People* v. *Dabney*[4] the Supreme Court expressed a governing principle for cases of this nature. The defendant had been convicted for assault with intent to murder. Among the grounds urged for reversal, it was contended that the state's attorney had made improper remarks during the course of his argument. The following language [5] of the Supreme Court, in disposing of the question, commends itself to us:

> "The statement was clearly error and in a case close on the facts would be sufficient to reverse the judgment. The jury were required to try the case according to the law and the evidence, and what the people of the community might want in the matter had nothing to do with their duty in the case . . . . We are of the opinion, however, that in

[1] 3 Wharton *Criminal Procedure* (1918, 10th edi.), sec. 1490.
[2] See *People* v. *Russell* (1926), 322 Ill. 295.
[3] (1924) 314 Ill. 449, 454.
[4] (1925) 315 Ill. 320, 146 N. E. 166.
[5] Page 327 official report.

this case it cannot be said that but for such statement the verdict might have been otherwise. The testimony presented in the case shows the guilt of plaintiff in error, and this error is not sufficient to cause a reversal of the judgment."

Subsequently, in *People* v. *Milewski*[1] where it appears the defendant had been convicted of murder, the contention was raised, on writ of error, that the state's attorney had used improper language in his argument. In disposing of this point the Supreme Court, speaking through Mr. Justice Farmer, said:[2]

"It is possible the language used by the state's attorney might have been misconstrued by the jury, but not probable. We have repeatedly cautioned the state's attorneys against using language not justified by the record, but in this case the proof of guilt was so conclusive that the language of the state's attorney could not have prejudiced the defendant, and this is shown, we think, conclusively by the punishment inflicted."

31. Misconduct in Offering Evidence and in Cross-Examination.

The rule in Illinois is a bit confusing as to how to prove the conviction of a crime in the impeachment of a witness. In criminal cases the proof must be by the record or a duly authenticated copy of the record. This question arose in the case of *People* v. *Decker*.[3] The defendant had been indicted for the larceny and burglary of a hen roost. On cross-examination the state's attorney asked one of the defendants: "You have been in trouble of this kind before, haven't you?" and "You have had criminal charges preferred against you before?" Although objections to these questions were sustained, the Supreme Court found their damaging effect such that they constituted grounds for reversal.

The method of questioning followed in the *Decker* case has justly caused Dean Wigmore to exclaim:[4]

"Cannot state's attorneys be expected to know and to remember the elementary rules of evidence obtaining in the forum where they practice? So long as prosecuting attorneys act with unrestrained aggressiveness and untrained ignorance, it is difficult for the legislators to contemplate a reform of those excessive safeguards which now license the guilty as well as protect the innocent."

There was further error in the *Decker* case. The decision, therefore, does not depart from the established principle of the court that it will not reverse for misconduct if the evidence clearly and conclusively shows that the defendant was guilty.[5]

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[1] (1925) 316 Ill. 288, 147 N. E. 246.

[2] Page 291 official report. To the same effect see *People* v. *Young* (1925), 316 Ill. 508, 147 N. E. 425, where the Supreme Court said, page 512, official report:

"If the case made against defendants were not so overwhelmingly clear and conclusive we might be disposed to reverse the judgment for that error, but the evidence makes it conclusive that the jury could not reasonably have found any other verdict than one of guilty if the assistant state's attorney had made no reference to the defendants' failure to testify."

[3] (1923) 310 Ill. 234.

[4] Comment (1924), 18 Ill. L. R. 571. See also *People* v. *Lewis* (1924), 313 Ill. 312.

[5] See *People* v. *Beil* (1922), 322 Ill. 434, where the court said: "While the objectionable questions should not have been asked, yet upon this record it cannot be said that they were prejudicial to the plaintiff in error." See also *People* v. *Garippo* (1926), 321 Ill. 157.

But in *People* v. *Green*,[1] where evidence of conviction of an assault to commit robbery was admitted to impeach the testimony of one of the defendants, the court without mentioning its principle not to reverse where the evidence for guilt was clear, reversed the instant conviction upon the ground that a conviction for an assault with intent to rob was not admissible, since that crime was not designated as an infamous crime under the statute. We quote from the opinion:[2]

> "It is conceded by counsel for the state that under paragraph 279 of the Criminal Code . . . . the crime of assault with intent to rob is not specifically named as in the list of infamous crimes, but they contend that an assault with intent to commit a robbery is as depraved as an actual robbery, and that as the infamy of a crime depends largely on the state of mind, the crime of assault with intent to commit a robbery should be held infamous as well as the crime of robbery. We cannot so hold. Whether the crime is infamous depends not upon the common law or the court's view of its moral aspects but upon the statute, ... and as the crime of assault with intent to commit robbery is not included in the statute as an infamous crime, therefore, under the statute, evidence of Rizzo being convicted of an assault with intent to commit robbery was erroneously admitted."

It was technical error to admit evidence of the conviction of assault with intent to rob, since the statute did not name this among the infamous crimes, but was it reversible error? Had the witness succeeded in the robbery, the impeaching evidence would have been good and the instant conviction upheld, but since he failed, the evidence was bad, and its admission constituted reversible error. This, it appears to us, is standing on the bare letter of the law.

32. Some Discriminations on Propriety of Conduct of State's Attorney.

The opinion in the case of *People* v. *Heywood*[3] defines a situation where the prosecuting attorney may comment on the defendant's failure to produce witnesses. Further, it places a limitation upon proper argument of counsel. The defendant had been convicted of murder. During the course of the argument, his counsel had referred to the failure of the prosecution to bring in certain witnesses. Following this the prosecuting attorney asked the defendant's counsel why he did not bring in the same witnesses. Under those circumstances, the Supreme Court held that the retort of the prosecuting attorney was proper. It held, also, that while the scope of the argument is defined by the scope of the evidence, the prosecuting officer may draw all legitimate inferences he can from evidence. There follows the language of the court:[4]

> "It has been held that it is error to comment upon the fact that the accused has not produced witnesses who are equally accessible to the prosecution, ... but the situation in that case[5] was materially

[1] (1920) 292 Ill. 351.
[2] Ibid, 356.
[3] (1926) 321 Ill. 380, 152 N. E. 215. Comment on the *Heywood* case is adapted from a comment by writer found in (1927) 22 Ill. L. R. 7.
[4] Page 383 official report.
[5] *People* v. *Munday* (1917), 280 Ill. 32, 117 N. E. 286.

different from that presented to the court by the objection made in this case. Here the prosecutor was simply replying to a question which had been propounded by the attorney for the accused, and this he had a right to do. The court properly limited the argument to a reply to the argument of opposing counsel . . . . The prosecuting attorney has the right to draw all the legitimate inferences he can from the facts that are proven, and the accused has no right to complain that such deductions place him in a bad light before the jury."

There has ever been a vexed problem relative to the inferences to be drawn in case an accused fails to rebut evidence introduced against him. Particularly is this so where he is in an advantageous position through a superior source of information or grasp of the facts. The case of *People* v. *Sicks*[1] presents this point. The accused had been convicted of robbery. On writ of error, he contended, among other things, that the state's attorney had commented on his failure to testify. The state's attorney, it appears, had made the following statement during the course of his argument:

"Let us check up on the state's case. Mr. Rose had quite a long conversation with Sicks, and Mr. Rose testified that Sicks had a peculiar accent to his speech. He could not tell just what nationality the accent would indicate and the defense does not appear to enlighten us on this subject."

On this the court comments:

"This was legitimate argument. The state's attorney had a right to comment upon the failure of the defense to produce testimony to show the nationality of Sicks and to show that he did not speak with a peculiar accent, if such was the fact. This was one of the details of identification by the complaining witness, and we see no reason, supported by law or justice, why the state should not be permitted to comment on the fact that this piece of evidence stands in the record undenied and unexplained."

It has been held by some courts that since the prosecution has the burden of proof, no inference can be drawn from a defendant's failure to produce evidence.[2] Mr. Wigmore's answer to this contention is sufficient.[3] It is true, he states, "The burden is on the prosecution and the accused is not required by any rule of law to produce evidence; but nevertheless he runs the risk of an inference from non-production."

(VII) Conduct of the Trial Judge, as Ground for Reversal

33. Respective Functions of Court and Jury.

Trial by jury, said the Supreme Court of the United States, "in the primary and usual sense of the term at the common law and in the American constitutions . . . is a trial by a jury of twelve men, *in the presence and under the superintendence of a judge empowered*

[1] (1921) 299 Ill. 282, 132 N. E. 573.
[2] *People* v. *Streuber* (1898), 121 Cal. 431, 53 Pac. 918; *State* v. *Carr* (1873), 25 La.; An. 407; *State* v. *Hull* (1893), 18 R. I. 207, 26 Atl. 191.
[3] 4 Wigmore, *Evidence* (1923 ed.), sec. 2273.

to instruct them on the law and to advise them on the facts."[1] (Italics ours.)

In the state of Illinois, we not only have that anomaly of the law that jurors in criminal cases *shall be the judges of the law and the fact,* but the restriction on the authority of the trial court that he must not comment on the evidence or indicate to the jury what his views are. We have developed great concern that the judge must not *invade the province of the jury!* It is reversible error for the trial court to advise the jury on the facts or to comment on the evidence. In the words of our Supreme Court taken from the case of *People* v. *Filipak:*[2]

> "In all criminal prosecutions the accused persons, guilty or innocent, are entitled to a fair and impartial trial by jury. . . . The jury is charged with the duty of determining the facts, and it is not the province of the judge, in a criminal case, to express by word or indicate by conduct in the jury's hearing any opinion upon the facts. . . . The trial judge has the right to ask questions of witnesses or call other witnesses to the stand in order to ascertain the facts and elicit the truth concerning the questions at issue, but he must do it in a fair and impartial manner, without showing any bias for or prejudice against either party. . . . Jurors are ever watchful of the attitude of the judge, and any disclosure of a hostile attitude on his part toward the accused person is very apt to influence them in arriving at their verdict."

The trial court's privilege to ask questions even has been tagged with a *caveat* by the supreme court. In *People* v. *Schultz,* it said:[3]

> "The examination of witnesses is the function of counsel, and the instances are rare and the conditions exceptional which will justify the presiding judge in conducting an extensive examination. In conducting an examination of any length it is almost impossible for the judge to preserve a judicial attitude. Jurors watch the trial judge closely and generally place great reliance on what he says or does. They are quick to perceive any leaning of the court. . . . It is the duty of the judge to see that all the truth is brought out so that the jury can arrive at a true verdict, and sometimes it is necessary for him to ask a question or two to clear up the situation. It is generally better for the court to suggest to counsel the additional information he would like to have brought out and let counsel further examine the witness. When the court asks a question and secures an answer, it, of course, renders unusual prominence to that question and answer and may unduly influence the jury in their verdict. While we do not approve of the trial judge examining the witnesses, we do not find that plaintiff in error was prejudiced by the judge in this trial."

We believe that criminal law administration would be improved measurably if the provision making the jurors the judges of the law and the fact were repealed, and that it would be improved further if the trial judge were given the power to advise the jury on the facts, and to comment on the weight of the evidence. In making certain specific proposals for the reform of the law

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[1] *Capital Traction Company* v. *Hof* (1898), 174 U. S. 1, 14. Quoted in *The Law of Evidence* by Morgan and others (1927), 10.

[2] (1926) 322 Ill. 546, 554.

[3] (1921) 300 Ill. 601, 606-607.

of evidence, a distinguished committee[1] has summed up the advantages to be gained through permitting comment by the judge as follows:[2]

> "From these statements the conclusion seems justified that in actual practice the privilege of proper comment has the following beneficial effects: (1) It saves time and expense by bringing quicker verdicts, reducing the number of disagreements, and diminishing the number of new trials and applications for new trials. (2) It has an appreciable effect upon a substantial percentage of attorneys in making them spend less time in examining prospective jurors. In this connection, it is interesting to note that in England there is practically no expenditure of time in selecting a jury, and to ponder whether the privilege of comment, so vigorously used there, is not a contributing cause to this desirable end. (3) It operates to a considerable degree to induce the trial judge to pay close attention to the conduct of the trial. It is true that many judges who do not comment have a proper appreciation of the judicial function and do not neglect the performance of their duties to litigants and to the jury. But certainly the privilege of comment is an added incentive to good work."

34. Comments by the Judge.

In *People* v. *Garines*[3] counsel for the state remarked, during the course of the examination of a witness: "It is just a lot of cooked-up stuff here," and shortly after this the trial court said: "We all know what it is; we are not blind; go on, Mr. Nash." These remarks were held to be so prejudicial as to constitute one of the grounds for reversing the case. In the language of Mr. Justice Thompson:[4]

> "This remark of the court was highly prejudicial . . . . Although there may be enough evidence in a record to justify a conviction, a defendant has a right to a trial by jury and not by this court. He has a right to be tried in accordance with the law of the land, and a conviction secured in total disregard of that law cannot be sustained."

During the course of the trial in the case of *People* v. *Haas*,[5] a prosecution for taking indecent liberties with a child, the trial judge remarked in the presence of the jury, and upon the examination of the complaining witness (a child of six) as to her competency to testify: "Of course she is a child; I realize that; but I have a notion that she will come pretty near to telling the truth as some other parties." In holding that this was error the supreme court said:[6]

> "While the meaning intended to be conveyed may have been that

[1] Professor Edmund M. Morgan, Chairman, of Harvard University (then of Yale), Professor Zechariah Charee, Jr., of Harvard, Professor Ralph W. Gifford, of Columbia, Professor Edward W. Hinton, of the University of Chicago, Hon. Charles M. Hough, Judge of the United States Circuit Court of Appeals, Hon. William A. Johnston, Chief Justice of the Supreme Court of Kansas, Professor Edson R. Sunderland, of the University of Michigan, and Dean John H. Wigmore, of Northwestern University.

[2] *The Law of Evidence* (1927), 20-21.

[3] (1924) 314 Ill. 413, 145 N. E. 699.

[4] Pages 422-423 official report. For a case flagrant with improper remarks see *People* v. *Bimbo* (1924), 314 Ill. 449, 145 N. E. 651, and see *People* v. *Black* (1925), 317 Ill. 603, 148 N. E. 281.

[5] (1920) 293 Ill. 274.

[6] Ibid 277.

the witness was competent to testify, yet the ordinary meaning to be attributed to such language is that the judge who tried the case considered her a truthful witness. The question to be decided by the trial judge was whether or not the witness was competent to testify, but the law does not give him the right to express an opinion as to whether or not such witness would testify truthfully. The effect on the minds of the jury could have been none other than that the judge considered the witness to be not only a competent witness but a truthful one. This was an invasion of the province of the jury and constituted prejudicial error."

Without doubt statements by and the attitude of the court during the course of a trial can and at times do have a bearing in influencing the verdict of the jury. But even so, must it be assumed that the court's influence was inimical to the ends of justice? We already have expressed the opinion that the trial judge should be given wider latitude in expressing his views. But even under the rule as it prevails in Illinois, should not the first inquiry of the supreme court, when this problem is raised, be directed to the question of the guilt or innocence of the accused as disclosed by the whole record? What purpose can be served in reversing a case because an occasional objectionable remark by counsel or by the trial court creeps in? If the record indicates doubt as to the guilt of the accused, improper remarks might well be considered. But when there is no doubt, or the objectionable features of the remarks are slight, the interests of justice would seem best served by an affirmance of the judgment of the trial court.

35. *Limiting the Argument of Counsel.*

In *People* v. *McMullen*[1] the judgment of the trial court was reversed because, in the opinion of the supreme court, an unreasonable limitation had been placed on counsel's time for argument. The trial court had limited counsel for the accused to thirty-five minutes for argument to the jury. Quoting from the opinion:

"Any limitation of the constitutional right which deprives a defendant of an opportunity to have his counsel argue the law and the facts has always been regarded as error requiring a new trial. . . . From the nature and importance of this case, the condition of the evidence and the time necessarily required to make a fair presentation to the jury, the limit imposed was unreasonable."

Doubtless the supreme court was correct in reversing the case on this ground. It should be observed, however, that notwithstanding an accused's constitutional right to be heard by counsel, the limitation of time for argument generally is considered to rest in the sound discretion of the trial court, and a higher court, on error, should reverse only in case there has been a clear abuse of this discretion to the prejudice of the defendant.[2]

36. *Absence from the Court Room.*

In *People* v. *Chrfrikas*[3] the judge temporarily left the court room, remaining, however, within hearing distance. During this period counsel for

[1] (1921) 300 Ill. 383, 133 N. E. 328.
[2] *Samuels* v. *United States* (1916), 232 Fed. 536, 146 C. C. A. 494, Ann. Cas., 1917, A-711. See also 16 C. J. 88, where numerous cases are collected.
[3] (1920) 295 Ill. 222, 129 N. E. 73.

the state, in the course of his argument to the jury, made an improper reference to another case of a similar nature to the one in issue. The trial court immediately ordered this reference stricken. The defendant was convicted, but on error, the case was reversed and remanded (Thompson, Farmer and Stone, JJ., dissenting). Quoting from the dissenting opinion:[1]

> "This judgment is reversed solely on the grounds that the state's attorney made improper reference to the horrible killing of little Janet Wilkinson and that the trial judge left the court room during the course of the argument of counsel to the jury. We agree fully with the court in holding both acts serious error, and if the jury had anything to do with fixing the punishment and the punishment had been unusually severe, then the errors would have demanded a reversal of the judgment. As it is, we think the record shows plaintiff in error so clearly and conclusively guilty that the jury could not reasonably have returned any verdict other than one of guilty. A verdict of guilty carried with it imprisonment in the penitentiary for an indeterminate period, and the errors, therefore, ought not to be held reversible in this particular case."

With great deference, we emphasize our approval of the dissenting opinion. It more nearly complies with the insistent demands of our time to rid the law of its "red tape," and, particularly, to secure the conviction of criminals with less observance of the technicalities and niceties of the law.

(VIII) Form of Verdict, as Ground for Reversal

37. In General. Reference to Table 5 shows that defective verdicts account for the reversal of but few criminal cases. The opinion in the case of *People* v. *Quesse*[2] presents certain liberal views on this question. The defendants had contended that the verdict was too uncertain to sustain the verdict since it found them guilty as charged *in the seventh count or counts of the indictment.* The people contended that the words *or counts* were allowed to remain in the form given to the jury through inadvertence. The supreme court applied "the rule that a verdict should be sustained where the intention of the jury can be ascertained with reasonable certainty," and held that there was no basis for the contention "that it may have been the intention of the jury to return a verdict of guilty on any other count than the seventh." We continue in the language of the court:[3]

> "We are unable to see the force of the argument of counsel for plaintiffs in error concerning the insufficiency of the verdict. The test as to the sufficiency of a verdict is whether or not the intention of the jury can be ascertained with reasonable certainty. If it can be, the verdict will be sustained. . . . In applying this test a verdict is not to be construed with the same strictness as pleadings in criminal cases but all reasonable intendments will be indulged in to sustain it."

In *People* v. *Shupe*[4] the verdict found that the value of the property received by the defendants was *over $15.* This was held sufficient to sustain

[1] Ibid 230.
[2] (1924) 310 Ill. 467.
[3] Ibid 471.
[4] (1922) 306 Ill. 31.

a judgment and sentence of imprisonment in the penitentiary, as the word *over* meant *more than, in excess of*. The verdict satisfied the statute, it was held, which requires for such cases that the property "exceed the value of $15."

But in *People* v. *Valanchauskas,*[1] where the verdict read, "We, the jury, find the defendant, Stanley V. Valanchauskas, guilty of embezzlement in manner and form as charged in the indictment," and the indictment had charged him with the embezzlement of $1,000, the supreme court held that the verdict was fatally defective. Without a finding, the court held, "of the sum of money stolen the court could not determine whether the plaintiff in error had been found guilty of a felony or a misdemeanor." Can such a ruling be justified? Even the generally accepted legal view is that "a general verdict of guilty is an affirmation of the value stated in the indictment, and is, therefore, for this purpose, sufficient."[2]

The general verdict—where a jury brings in a general finding to the effect that it doth find the defendant guilty as charged—frequently causes trouble in other ways. Ordinarily it is well enough if there was but one count to the indictment, but should it contain two or more there is trouble in the offing. Such a problem was presented in *People* v. *Lawrence.*[3] The defendant had been indicted in the criminal court of Cook County in two counts. The first count charged that he kept, owned, operated, etc., a slot machine in violation of section 137f of the criminal code. The second count was similar, but charged in addition a previous conviction of the same offense. The record of the finding and judgment of the court showed merely that the court found, in general terms, that the defendant was guilty, without specifying upon which count. The judgment affixed the penalty for the second offense. This judgment was first reviewed in the appellate court for the first district and was there affirmed.[4] To review the latter judgment, writ of error was prosecuted in the supreme court. This court sustained the judgment (Duncan, C.J.; Stone and DeYoung, JJ., dissenting).

The problem presented is not free from difficulty. There are authorities to the effect that "in order to justify a sentence as for a second offense, it must appear by the verdict that the jury have found the party guilty of such offense."[5] However, a more liberal view finds support to the effect that where an indictment charges more than one crime, or different degrees of the same crime, in separate counts, a general verdict of guilty is understood to find the highest offense if there is testimony to support it.[6] In the *Lawrence* case the trial court gave a sentence which was authorized only by the second count. Since, however, the defendant's guilt was proved under that count, there was little room for uncertainty as to the nature or purpose of the penalty.

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[1] (1927) 324 Ill. 187.
[2] 3 Wharton *Criminal Procedure* (1918, 10th ed.), sec. 1686.
[3] (1924) 314 Ill. 292, 145 N. E. 384. Comment on the *Lawrence* case is adapted from a comment by the writer in (1926) 20 Ill. L. R. 648.
[4] *People* v. *Lawrence* (1924), 232 Ill. App. 341.
[5] *Maguire* v. *State* (1877), 47 Md. 485, 498. See also *Kenny* v. *State* (1913), 121 Md. 120, 87 Atl. 1109, and *Thomas* v. *Commonwealth* (1872), 22 Grat. 912 (Va.).
[6] *State* v. *Core* (1879), 70 Mo. 491; *State* v. *Nelson* (1867), 14 Rich. L. (S. C.) 169.

(IX) Evidence Insufficient to Sustain Verdict

38. In General. The supreme court frequently has expressed its reluctancy to reverse a case on the ground that the evidence was insufficient to sustain the verdict. In *People* v. *Kilbane*[1] it said:

> "Where the testimony regarding the material facts in issue is directly in conflict and irreconcilable, and its conclusion in such case of necessity depends largely upon the credit to be given the opposing witnesses, it is the peculiar province of the jury to determine on which side of the controversy the truth lies. In such case this court has no right to interpose by substituting its own opinion when the jury have honestly and according to their best light performed this duty, unless this court is satisfied, from a consideration of all testimony, that there is a reasonable doubt of the guilt of the accused."

A similar view was expressed in the earlier case of *People* v. *LaMorte*[2] in the following language:

> "Courts are reluctant to substitute their opinion for that of the jury upon controverted questions of fact, and it is only when this court is able to say, from a careful consideration of the whole of the testimony, that there is clearly a reasonable and well founded doubt of the guilt of the accused, that it will interfere on the ground that the evidence does not support the verdict."

While the foregoing statements are representative of the views of the court, it has also emphasized the view that "a verdict of guilty must be supported by evidence, and where it is apparent that the verdict is not based upon evidence proving the guilt of the accused it is the duty of the court to set aside the judgment based upon it."[3]

In the case of *People* v. *Lardner*[4] the decision was by a divided court, with the majority reversing the conviction (Thompson, Farmer and Duncan, JJ., dissenting). The conviction was for receiving stolen property—certain rugs. The majority and minority differed principally in inferences drawn from the evidence. For example, the trial court had instructed that the possession of stolen property after it had been stolen is *prima facie* evidence of guilt. This instruction, said the majority, was wrong because possession was not shown to have been conclusively and exclusively in the defendant. On the other hand, the evidence, to the minds of the dissenting judges, "clearly shows that plaintiff in error and Cæsar were acting together in all that they did and that the possession of the stolen property was joint."[5] The majority found that there was not sufficient evidence to sustain a charge that the rugs were stolen. But, said the minority, "it is our opinion that the evidence shows the rugs to have been stolen, and that the jury was clearly justified in concluding that plaintiff in error received the stolen rugs and converted them to his own use with the knowledge that they

[1] (1926) 322 Ill. 190, 194.
[2] (1919) 289 Ill. 11, 24.
[3] *People* v. *Wieland* (1924), 313 Ill. 594, 601.
[4] (1921) 296 Ill. 190, 129 N. E. 697.
[5] Ibid 195.

were stolen."[1] We wonder if the majority clearly had in mind the guiding principles announced in the *Kilbane* and *La Morte* cases.[2]

39. Evidence to Sustain an Alibi.

The probative weight of the evidence of alibi was involved in *People* v. *Stephens*.[3] The accused had been convicted for an assault with intent to murder, committed on October 29, 1918, in Aurora, Illinois. As a defense the accused introduced evidence tending to show that in July, 1918, he had been shot in the leg in Chicago by a policeman, this causing a fracture of the bone; that the plaster cast into which his leg had been placed was not removed until November 8, 1918, and that an X-ray picture of this leg was taken November 13, 1918, which photograph was introduced into evidence. Several witnesses testified that they had seen the accused in bed at different times during the months of August, September, October and November, 1918. A reputable doctor testified that he had visited the accused several times during September and October, 1918, and that he had visited him in Chicago on October, 28, 1918, just previous to the shooting, which occurred shortly after midnight October 29. These facts, in the main, were supported by the unimpeached testimony of reputable witnesses. On the other hand, several witnesses testified positively that they had seen the accused on the streets of Aurora at the time of the crime. The jury convicted the defendant and the Supreme Court affirmed the conviction (Cartwright, C.J., and Farmer and Stone, JJ., dissenting).

The dissenting opinion, after detailing the facts of this case drew this conclusion:[4]

> "Whatever justification there may have been for discrediting testimony offered by the defendant concerning the failure to recognize him when he was in Aurora after the commission of the crime, there was none as to the evidence of the alibi, and to say that upon such proof the jury could disregard the evidence would be to eliminate that defense entirely from the law."

Mr. Justice Carter, speaking for the majority, frankly admitted there was a serious conflict in the evidence and if some of the witnesses testified truly the accused was not in Aurora at the time of the commission of the crime. He found, however, that "several police officers and several disinterested persons testified positively that he was in Aurora at the time of the crime, and they identified him not only by his personal appearance but by a peculiar tone in his voice when they heard him talking in a room in

[1] Ibid 195.

[2] After the reversal in the *Lardner* case, the charge against the defendant, Lardner, was stricken with leave to reinstate, by the state's attorney. The defendant, it would appear, was not discouraged by his experiences, for we have found him appearing before the Supreme Court again on a distinct conviction in the case of *People* v. *Lardner* (1921), 300 Ill. 264. In that case he had been convicted of an attempted larceny, but the Supreme Court reversed the case because the facts showed a consummated larceny. We have commented on that case previously in this study. Again, after that reversal the charge against him was stricken. But this was not yet enough for him, for we have found him appearing once more before the Supreme Court on writ of error in *People* v. *Lardner* (1923), 306 Ill. 231. On the last occasion he had been convicted of larceny, the offense charged being distinct from any of the other charges of which he previously had been convicted. In the last case the Supreme Court affirmed his conviction.

[3] (1921) 297 Ill. 91, 130 N. E. 459.

[4] Ibid 106, 107.

the county jail. . . . On this state of the record," the court concluded, "it was peculiarly a question for the jury to decide whether or not plaintiff in error was at the scene of the crime at the time it was committed."[1]

Although the point involved was a close one, we commend the conclusion reached by the majority of the court. The alibi theoretically is a perfect defense. Yet in practice it must be scrutinized most carefully by the courts. The ease with which it is manufactured makes it ever a matter of suspicion, barely short of a complete discredit as a defense.[2] What is more, even though the witnesses for the accused were not impeached, there was here a conflict in the evidence. The credibility of witnesses and the weight of evidence, properly, was a question for the jury.

While the alibi was insufficient to justify a reversal in the *Stephens* case, it came to its own in *People* v. *Madia*.[3] Here again, the accused had been convicted for an assault with intent to murder. At the trial he had based his defense on an alibi, which was corroborated by the unimpeached testimony of his employer. Several witnesses had testified for the state. Some of the testimony tended to identify the accused as the person who had committed the crime. The court, however, found the evidence uncertain and of a general nature. In considering all the testimony of the people in its most favorable light, the court was of the opinion that the best that could be said for it was that it equally balanced that for the defense; that it did not show the defendant guilty beyond all reasonable doubt, and that, therefore, safety and justice required that the cause be tried again.

40. The Corpus Delicti. Problems relating to the *corpus delicti* commonly arise in connection with homicides, but occasionally they are to be found in other branches of the criminal law. In *People* v. *Maruda*[4] we have a case of this nature. The defendant was indicted for larceny. He had been employed as a night porter by Marshall Field & Company of Chicago at twenty-two dollars a week. The case is not clear how he first came under suspicion; at any rate he was arrested and his premises searched. There was evidence that between fifty and sixty dresses, each worth about forty dollars, were found at his home. There was further evidence that goods had been missed by Marshall Field & Company, and some of the dresses found on the defendant's premises were definitely identified as having come from that Company. Further, proof of an extra-judicial confession of the alleged theft by the accused was admitted in evidence. On those facts he was convicted.

On writ of error, the Supreme Court reversed and remanded the case on the ground that the *corpus delicti* had not been proved. In the language of the court:[5]

> "In this case it is not shown that the plaintiff in error was in possession of the property of Marshall Field & Co., or that the property of which he was in possession had been stolen from Marshall Field &

[1] Ibid 104.
[2] See Wharton *Criminal Law* (1912, 11th ed.), sec. 380.
[3] (1920) 294 Ill. 575, 128 N. E. 579.
[4] (1924) 314 Ill. 536, 145 N. E. 696. Comment on the *Maruda* case is adapted from a comment by the writer in (1926) 20 Ill. L. R. 651-654.
[5] Page 542 official report.

> Co., by evidence other than his own statement. The law is well settled that the *corpus delicti* cannot be proved by extra-judicial confessions, alone. . . . It may, however, be proved by circumstantial evidence; . . . . and an extra-judicial confession may be considered, in connection with the other evidence, to establish the *corpus delicti*, and if the evidence of other facts and circumstances so fully corroborates the confession as to show the commission of the crime beyond a reasonable doubt, may be sufficient. . . . It is not sufficient, however, in this case, because of the failure to identify the property found in Maruda's possession as that of Marshall Field & Co., and the failure to identify the property testified about on the trial as that which was found in Maruda's possession."

Originally the rule appears to have been that a conviction could be supported on the uncorroborated confession of an accused.[1] Sir Matthew Hale, however, changed this sound rule by one of his utterances. He said,[2] "I would never convict any person of murder or manslaughter unless the fact were proved to be done, or at least the body found dead." And, thus, there was introduced into the law this trouble maker to which, to make matters worse, was assigned a high-sounding Latin name—the *corpus delicti.* The doctrine is with us; no one seems to know just what it means, but it, nevertheless, clings to us like Sinbad's Old Man of the Sea, not to be shaken off, and the worst of it is, it has opened the way of escape for numerous criminals who might otherwise have paid the penalty for their crimes in the penitentiary or on the gallows.

Without the defendant's confession, very probably there was not sufficient evidence of the *corpus delicti*—that a larceny had been committed. But in the court's own language, "an extra-judicial confession may be considered, in connection with other evidence, to establish the *corpus delicti.*" But was there not other evidence? When it was shown that goods were missing from Marshall Field & Co., and fifty to sixty dresses were found in the possession of a night porter, part of which were identified as coming from Marshall Field & Co., was this not other evidence which might be considered along with the defendant's confession? The effect of the court's decision would appear to be that the confession has no probative value at all—that the crime must be established entirely by proof *aliunde.*

Dean Wigmore, in his work on Evidence,[3] questions the policy of the corroboration rule. He says:

> "No one doubts that the warning which it conveys is a proper one; but it is a warning which can be given with equal efficacy by counsel or (in a jurisdiction preserving the orthodox function of judges) by the judge in his charge on the acts. Common intelligence and caution, in the jurors' minds, will sufficiently appreciate it, without a laying on of the rod in the shape of a rule of law. Moreover, the danger which it is supposed to guard against is greatly exaggerated in common thought. The danger lies wholly in a false confession of guilt. Such confessions, however, so far as handed down to us in the annals of our courts, have been exceedingly rare. Such a rule might ordinarily, if not really

[1] 4 Wigmore *Evidence* (1923, 2nd ed.), sec. 2070.
[2] *Pleas of the Crown* (1778 ed.), 290.
[3] (1923, 2nd ed.) Vol. IV, sec. 2070.

needed, at least be merely superfluous. But this rule, and all such rules, are today constantly resorted to by unscrupulous counsel as mere verbal formulas with which to entrap the trial judge into an error of words in his charge to the jury. These capabilities of abuse make it a positive obstruction to the course of justice.[1]

(X) Sundry Grounds for Reversal

41. Remarks by Bystanders in Hearing of the Jury.

Errors in criminal cases creep in through various ways and sources, and at times, it seems, without the fault of the trial court, or the state's attorney or even the jury. In *People* v. *Kawoleski,*[2] a deputy sheriff in charge of the jury, during a recess in the trial, made the remark in the hearing of the jury, "it should not take more than two or three minutes to convict that bird." The supreme court justly denounced this conduct of the officer. It went further; it found in it ground for reversing the judgment of conviction. The following is the language of the court:

> "The error here complained of was committed by an officer of the court, was so flagrant and so manifestly intended to influence the jury against defendant, we are convinced that in fairness to a defendant tried for a criminal offense, and for the *public good,* it should be made known that this court will not approve verdicts where such means are resorted to by officers of the law to procure verdicts. Such conduct is unjustifiable in any case, and no distinction can be made between guilty and innocent parties. All defendants in criminal cases are entitled to a fair trial. We have held the law does not permit one method for the trial of guilty men and another method for the trial of innocent men."[3] (Italics ours.)

This decision illustrates how difficult, at times, it is to secure and sustain convictions. But must a case necessarily be reversed because of such an occurrence? Assuming one in which the evidence is quite conclusive, must it be reversed because of an ill-chosen remark made within the hearing of the jury? We commend the court in its position that all are entitled to a fair trial. But does a fair trial mean that the case must have been free from all error or blemish? A prisoner is entitled to a fair trial, but whether or not he has had one should well be gathered from the whole case, and not from isolated occurrences. As to whether the Supreme Court followed the principle in the foregoing cases not to reverse, even though error occurred, where the whole record discloses guilt, is not clear.

42. Intoxication of the Accused.

In *People* v. *Cochran*[4] the defendant had been convicted of murdering his wife. Among the defenses raised during the trial was the matter of the defendant's intoxication. In reversing and remanding the case, the Supreme Court said as to intoxication:

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[1] See also on the *corpus delicti, People* v. *Wulff* (1924), 313 Ill. 286; *People* v. *Hein* (1924), 315 Ill. 76. For an extended analysis of this question see the case of *State* v. *Dixson* (1927), 260 P. (Mont.) 138.

[2] (1924) 313 Ill. 257.

[3] See generally on remarks to jurors, 3 Wharton *Criminal Procedure* (1918, 10th ed.), secs. 1664, 1665, 1771, 1776.

[4] (1924) 313 Ill. 509.

"From an examination of the authorities in this and other states we are of the opinion that the true rule is, that where intoxication is so extreme as to suspend entirely the power of reason and the accused is incapable of any mental action he cannot be convicted of any crime which involves intent or malice, but that he can be convicted for committing, while in such state of intoxication, a crime which consists only of the doing of acts which are prohibited by law and in which intent, deliberation or malice is not an element."

It is true, in those jurisdictions where murder has been divided into degrees, and where to constitute murder in the first degree, a specific intent must be shown, that intoxication, even though voluntary, will negative the specific intent. But the state of Illinois has not divided murder into degrees. We follow the common law classification, and common law principles generally as to the crime of murder appertain. In the *Cochran* case the Supreme Court appears to have gone off the common law preserves, and one is just a bit alarmed as to how to confine its doctrines. The following quotation from Bishop states the common law position correctly:[1]

"The common law divides indictable homicides into murder and manslaughter; but the specific intent to kill is not necessary in either. A man may be guilty of murder without intending to take life, or of manslaughter without so intending, or he may purposely take life without committing any crime. The intention to drink may fully supply the place of malice aforethought; so that if one voluntarily becomes too drunk to know what he is about, and then with a deadly weapon kills another, he commits murder the same as if he were sober. In other words, the mere fact of drunkenness will not reduce to manslaughter a homicide which would otherwise be murder, much less extract from it altogether its indictable quality."

43. Ineligibility of State's Attorney to Practice Law.

The case of *People* v. *Munson*[2] raises the question as to whether a state's attorney not licensed to practice law is eligible to prosecute a criminal case. The defendant, Munson, had been indicted for robbery. At the trial a motion was made to quash the indictment on the ground that the state's attorney, who was prosecuting the case, was not a licensed attorney, and that, therefore, the indictment returned by the grand jury, before which body he had appeared and examined witnesses, was void. On writ of error the Supreme Court sustained the defendant's contention and reversed the case.[3] Since this decision is likely to have a far reaching effect and, since the rule it announces may become, at times, a serious impediment to law administration, we shall comment on it somewhat at length.

No contention was raised in the case as to the election of the state's attorney. The emphasis of the opinion is on the fact that he had not been licensed to practice law. Relative to the election of state's attorneys, the Illinois State Constitution provides:[4]

[1] 1 Bishop *Criminal Law* (1923, 9th ed.), 296, sec. 401.
[2] (1926) 319 Ill. 596, 150 N. E. 280.
[3] Justices Thompson, Farmer and Duncan dissented on the ground that there was no showing that the state's attorney did anything prejudicial while in the grand jury room.
[4] Sec. 22, Art. 6.

"At the election for members of the general assembly in the year of our Lord one thousand eight hundred and seventy-two, and every four years thereafter, there shall be elected a state's attorney in and for each county in lieu of the state's attorneys now provided by law, whose term of office shall be four years."

The Illinois statutes specify, among other duties of the state's attorney, the following:[1]

"To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in any court of record in his county, in which the people of the state or county may be concerned."

The statutes also provide, but under another heading:[2]

"No person shall be permitted to practice as an attorney or counsellor at law, or to commence, conduct or defend any action, suit or plaint, in which he is not a party concerned, in any county or probate court, or in any court of record, within this state, . . . without having previously obtained a license for the purpose. . . "

From these provisions, the opinion reasons, it follows that a state's attorney must be licensed to practice law. But this is a *non sequitur*. The decision places a limitation upon the powers of the electors to choose whom they will to act for them. This is done by a chain of indirect reasoning which is ever an unsafe process. The constitution does not require that the state's attorney be licensed to practice law; nor does the statute relative to state's attorneys require it. Since, however, there appears among his other duties (and it should be noted that he has duties that do not require any appearance in court) that of appearing for the People in court, he is made ineligible to perform this duty if not licensed, because another and distinct statute designates certain qualifications for attorneys and counsellors generally. It is to be noted that the latter statute bears upon a different question; it deals generally with attorneys as members of a profession and not with the qualifications of specific officers. Neither by constitutional provision nor by statute is it provided that prosecuting officers must be recruited from the ranks of those who have been admitted to practice law.

To read into the qualifications of state's attorneys, statements from the statute applying to attorneys and counsellors generally, is also to forget the common law background relative to public prosecutors. At common law, the rule was that any individual might appear before the grand jury and conduct the evidence on the part of the crown. To quote Stephens:[3]

"Indictments, as I have already shown, are, properly speaking, accusations made by the grand jury, who are called together to acquaint the court before which they are assembled with the crimes committed in their district. Anyone, however, may appear before them with a bill or draft indictment and witnesses to prove its truth. Theoretically, or at

[1] (1925) Smith-Hurd, Ill. Rev. Stat., ch. 14, sec. 5.
[2] Smith-Hurd, *op. cit.*, ch. 13, sec. 1.
[3] 1. *History of the Criminal Law of England* (1883), 293. See *In Re Day* (1899), 181 Ill. 73, 50 L. R. A. 519, on history of the power to prescribe qualifications for attorneys. And see article by Prof. Bruce, *The Judicial Prerogative and Admission to the Bar* (1924), 19 Ill. L. R. 1.

least according to the earliest theory upon the subject, the court does not look beyond the grand jury. The result is that in this country anyone and everyone may accuse anyone else, behind his back and without giving him notice of his intention to do so, of almost any crime whatever."

In the United States, while there is some difference in practice, the view is generally adhered to that the presence and participation in proceedings before the grand jury of a private prosecutor, in any other capacity than a witness, is improper. The privilege of attendance is limited to prosecuting officers.[1] It does not follow, however, that the prosecuting officer must be a licensed attorney. If, under the common law, anyone, whether an attorney or not, might appear as a prosecutor before the grand jury, on what principle can this privilege now be limited to prosecutors alone who are licensed attorneys? The American cases take the view that the privilege be restricted to prosecuting officers. But this is because of the nature of their office, and not because they are licensed attorneys. The historical background relative to the public prosecutor is distinct from that of the lawyer as a member of a profession. To say that a section of a statute, appertaining to attorneys and counsellors generally, applies to prosecuting officers is to ignore this important feature.

But assuming that the state's attorney was so ineligible that he could not have withstood a direct attack questioning his right to this office, does it follow that his part in *Munson* case was subject to be questioned by the accused? If the state's attorney was not a *de jure* officer, might not his acts still have been free from collateral attack because he was one *de facto?* The defendant was convicted of robbery. We believe this judgment was not subject to attack, because of the ineligibility of the state's attorney, unless it should appear that he was not an officer either *de jure* or *de facto.*

As to what constitutes one an officer *de facto,* there have been various definitions.[2] One by John F. Dillon, in an opinion rendered while he was a justice of the Supreme Court of Iowa, is here set out:[3]

"An officer *de facto* is one who comes in by the forms of an election or appointment, and who thus acts under claim and color of right, but who, in consequence of some informality, omission or want of qualification, could not hold his office, if his right was tried in a direct proceeding by an information in the nature of a quo warranto."

The state's attorney in the *Munson* case testified as follows:[4]

"I am A. A. Brown, and have been acting as state's attorney since November 11, 1924. I have been waiting upon the grand jury for the

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[1] 2 Wharton *Criminal Procedure* (1918, 10th ed.), sec. 1294.

[2] "An officer de facto is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law:" Lord Ellenborough in *King* v. *Corp. of Bedford Level* (1805), 6 East. 369.

"Acts done by an officer de facto, and not de jure, are good; as if one being created Bishop, the former Bishop not being deprived or removed, admits one to a benefice upon a presentation, or collates by lapse, these are good, and not avoidable . . . . For the law favours acts of one in a reputed authority, and the inferior shall never inquire if his authority be lawful." 16 *Viner's Abridgment* (1793), 114.

[3] *Ex Parte Strahl* (1864), 16 Iowa 369, 378. See also: Wallach *De Facto* Office (1907), 22 Pol. Sci. Quar. 460.

[4] Abstract of record, page 7.

March term, 1925, of this court in the capacity of state's attorney."

It would appear from the foregoing that if Brown was not an officer *de jure,* he was at least one *de facto.* On the theory that he was an officer *de facto,* there remains for consideration the validity of his acts.

The acts of a mere intruder are void. But in the interests of order and regularity, "and to prevent confusion in the conduct of public business and insecurity of private rights, the acts of officers *de facto* are not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the state or by some one claiming the office *de jure,* or except when the person himself attempts to build up some right, or claim some privilege or emolument, by reason of being the officer which he claims to be."[1] Outside of these cases the acts of a *de facto* officer are as valid as those of one *de jure.* This principle has given rise to the rule that the deeds of *de facto* officers cannot be questioned collaterally. To hold otherwise would frequently leave a community without law enforcing officers. So long as the public accepts an individual as an officer and acquiesces in his deeds, it is a salutary rule that others should not be heard to question him.[2] It appears that this feature was not urged for the consideration of the Supreme Court. If merit there is in it, it is unfortunate that it was not advanced to the end that the conviction might have been upheld.[3]

(XI) Subsequent Disposition of Cases Reversed and Remanded

44. In General. When a judgment has been given an outright *reversal* by the Supreme Court, the legal career of the case is at an end. But when a case has been *reversed and remanded,* that is, when it has been sent back to the trial court, it becomes material for further investigation. We have made a study of the subsequent disposition of a number of such cases in the belief that the facts obtained might shed some light on the administration of the criminal law. The results of our study are set out in the following Table 6.

It will be observed that out of 136 cases from Cook County reversed and remanded, but nine defendants were reconvicted. One pleaded guilty to the offense charged and four pleaded guilty to lesser offenses. Thirteen were retried and acquitted. The charges against the others were dropped for one cause or another as shown in the table. The net result was that but fourteen defendants, or 10.2 per cent, of the 136 from Cook County, received new sentences. For the rest of the state the record is somewhat better. And still, the number again sentenced after the reversals is small—thirty-two out of one hundred fifty-five, or 20.6 per cent.

The reasons advanced by the state's attorneys for so low a percentage of

[1] Cooley *Constitutional Limitations* (1903, 7th ed.), 898.

[2] *Campbell* v. *Commonwealth* (1880), 96 Pa. St. 344. The defendant had been convicted of arson. The eligibility of two of the judges who sat in the trial was questioned. The court said (page 347): "They are judges *de facto,* and as against all parties but the Commonwealth, they are judges *de jure.* Having at least a colorable title to these offices, their rights thereto cannot be questioned in any other form than by quo warranto at the suit of the Commonwealth." See also *State* v. *Gonzales* (1862), 26 Tex. 197.

[3] For a more extensive comment on this case by the writer see (1926), 21 Ill. L. Rev. 273.

TABLE 6. DISPOSITION OF CASES REVERSED AND REMANDED BY SUPREME COURT

	Cook County	Down State	Total
Retried—convicted	9	20	29
Pleaded guilty	1	8	9
Pleaded guilty to lesser offense	4	4	8
Retried—acquitted	13	10	23
Nolled by state's attorney	26	33	59
Stricken with leave to reinstate	63	24	87
Discharged by court	3	1	4
Dismissed for want of prosecution	4	13	17
Dead	—	7	7
Not apprehended	6	—	6
Bond forfeited—not apprehended	1	1	2
Escaped jail—not apprehended	—	1	1
No retrial had, prosecution abandoned	2	24	26
Pending retrial	2	9	11
No record	2	—	2
Totals	136	155	291
Summary: Convicted or pleaded guilty	14	32	46
Per cent. of total; Convicted or pleaded guilty	10.2	20.6	15.8

convictions after reversals by the Supreme Court are various. In the main they tell a convincing story of the great difficulties encountered in securing second convictions. It should be remembered that a considerable period of time necessarily must elapse between the time of the first conviction and the second trial. It is a slow process to take a case to the Supreme Court, there to wait its turn for consideration, and after the decision to make its way back to the trial court, there further to encounter the delays incident to a new trial. In the meanwhile witnesses may have died, or left the jurisdiction. The evidence, too, has grown cold. The expense involved in the first trial is a material deterrent to setting the wheels in motion for another prosecution. If the evidence originally was obtained by a defective search warrant, a new trial is very nearly impossible, for the very evidence that was material in the first conviction cannot be used in the second. One state's attorney wrote that it was difficult to secure a second conviction "for a jury gives much weight to the reversal." The chances, thus, are greatly in favor of the defendant. According to Table 6, after a reversal of conviction by the Supreme Court a defendant has six and one-half chances to one never to be penalized to any extent for the crime with which he originally was charged. Out of 291 cases studied, there were only 46 (15.8 per cent) in which the defendants were re-sentenced. In totals, out of the 291 cases, 29 were retried and convicted, 9 pleaded guilty, 8 pleaded guilty to lesser offenses, 23 were retried and convicted, and 222 escaped further prosecution.

(XII) CONCLUSION

45. Progress and Growth in the Criminal Law.

The minute analysis of cases in this study might well cause the reader to sum up its net result as a display of pedantry, rather than to find in it anything helpful to the better administration of our criminal law. Our only apology for the method followed lies in the fact that, to us, it appeared, as the study was undertaken, that but two means of

approach were possible. One shorter and perhaps more readable, through summaries and generalizations; the other, through the detailed examination of the decisions. We chose the latter because it seemed to us it responded more nearly to the purpose of the study.

All reasoning is from premises and the problem before us has been to find the premises from which the court has operated. Individuals tend to vary one from the other in their processes of ratiocination—some more, some less. The extent of the variation depends upon a variety of conditions and circumstances. The premises, and hence the conclusions, of the logician differ from those of the sociologist. The mathematician conceives his data unlike the economist and, hence, reasons not like him. Within a profession the tendency is for uniformity, but even there, a fact takes unto itself changing hues and colors, as, in turn, it is presented to the scrutiny of various individuals. Our problem, thus, has involved the finding of the starting points—the premises of the court. Naturally we have found some changing policy depending upon which member of the court wrote the opinion, and also upon which side of a particular case was most noticeably displayed to the members of the court.

Occasionally, the court has expressed liberal views and at others, it has seemed oblivious to the fact, that "the law has outgrown its primitive stage of formalism when the precise word was the sovereign talisman, and every slip was fatal,"[1] and then it has decided cases upon ancient precepts and with a deaf ear to the voice of utility and justice.

In *People* v. *Cohen*[2] the information alleged the larceny of "one dollar ($1) good and legal money of the United States of the value of one dollar." The defendant contended that this was insufficient since it was difficult to understand the nature of the offense charged. In affirming the conviction, the court said the defendant was quite justified in presenting the case to the Supreme Court in view of "earlier decisions of this and other courts when the strict rules of pleading of the common law were controlling the decisions of the courts." Today, it held, such an allegation is a "definite and certain description of a piece of money of fixed value." We continue in the language of the court:[3]

> "Great niceties and strictness of pleading should only be countenanced and supported when it is apparent that the defendant may be surprised on the trial, or unable to meet the charge or make preparations for his defense for want of greater certainty or particularity. . . . The criminal law is fast outgrowing those technicalities which grew up when the punishment for crime was inhuman and when it was necessary for the courts to resort to technicalities to prevent injustice from being done. Those times have passed, for criminal law is no longer harsh or inhuman, and it is fortunate for the safety of life and property that technicalities to a great extent have lost their hold."

Again in *People* v. *Michael*,[4] a bigamy case in which the point was raised

[1] *Wood* v. *Duff-Gordon* (1917), 222 N. Y. 88, quoted by Cardozo, *The Nature of the Judicial Process* (1922), 100.
[2] (1922) 303 Ill. 523.
[3] Ibid 525.
[4] (1917) 280 Ill. 11.

that the trial court had erroneously refused an instruction that the defendant's failure to testify should not raise a presumption against him, the court held that the refused instruction stated the law correctly and should have been given, but that this did not necessarily require a reversal of the case. It continued in the following language:[1]

> "Courts no longer adhere to the technical rule that a judgment must be reversed where the record shows that error was committed on the trial. It is, we believe, universally agreed by courts now that only error prejudicial to the complaining party requires a reversal of the judgment. Courts are not agreed, however, that if there is error apparent upon the face of the record it must be presumed to have been prejudicial unless the whole record affirmatively discloses the contrary. That appears to be the prevailing view in most jurisdictions, but there are a considerable number of respectable courts which hold that the record must not only show error but that it must also show that the complaining party was prejudiced thereby. . . . This court has held in numerous decisions that error in the admission of evidence or in the giving and refusing of instructions will afford no ground for reversal in a criminal case where the guilt of the accused was so clearly and conclusively established by competent evidence that the jury could not reasonably have arrived at any other verdict than one of guilty. . . . Where it can be seen from the record that an error complained of could not reasonably have affected the result of the trial it has been said to be harmless and not ground for reversal."

The error assigned in *People* v. *Petrie*,[2] for which the case was reversed and remanded, was that the record did not show properly that the trial court had explained to the accused, the consequences of the plea of guilty. The record, it appears, did not show this fact, but was amended to incorporate it. This amendment was based upon the affidavit of the court reporter, together with a transcript of his notes taken at the time the accused was sentenced. The Supreme Court (Carter and Thompson, JJ., dissenting) was of the opinion that this was insufficient since an amendment to the record in a criminal case is only permissible when based upon some "official or *quasi* official note, memorandum or memorial paper remaining in the files of the case or upon the records of the court and not upon the recollection of the judge or other person or upon *ex parte* affidavits or testimony after the event has occurred."[3]

To this Mr. Justice Carter, in his dissenting opinion, makes this reply:[4]

> "The adoption of modern methods has evidently supplanted the old practice of judge-made notes. They rarely are fully kept by any trial judge. Why, therefore, should the court insist upon such notes when they are often no longer made? Why should the court not give the same effect to that which has taken their place as it does to the notes of the judge, when, as everyone knows, they are as reliable, if not more so, than the judge's notes, because more complete and in greater detail?

[1] Ibid 13-14.
[2] (1920) 294 Ill. 366, 128 N. E. 569.
[3] Ibid 368.
[4] Ibid 373.

> The oath of the official reporter, as well as the recollection of the judge at the time of entering the amending order, offers a sufficient degree of accuracy and reliability in the subject matter of the amendment. I do not think it is doing violence to the language of the statute to say that the reporter's notes taken in obedience thereto is a *'quasi* official note or memoral paper,' and therefore satisfies the rule already laid down repeatedly by the courts with reference to the memorandum upon which an amendment of the record may be based."

In *People* v. *Picard,*[1] a burglary case, the indictment alleged that the accused with intent to steal broke and entered a certain "railroad freight car then and there being used by and in the possession of the Illinois Central Railroad Company, a corporation, said railroad freight car then and there being a Cudahy Milwaukee Refrigerator Line car numbered two thousand thirty-five," etc. This indictment was held fatally defective because it did not allege the ownership of the car sufficiently. If, said the court, "the Cudahy Milwaukee Refrigerator Line is a corporation it should have been so alleged, and if it was merely an association the individuals comprising the same should have been named."

Mr. Justice Carter dissented from the decision in the *Picard* case. We take occasion again to quote him, stating as we do so that we believe his opinion should have borne the approval of the whole court. He said:[2]

> "Notwithstanding the former decisions of this court on this question cited in the opinion, if the sole responsibility of deciding this question, even in the light of the former decisions, rested upon me, I should be disposed to overrule the former decisions on the ground of public policy. I agree fully with the reasoning that is frequently laid down by the courts that stability and uniformity of decisions in judicial tribunals conduce so much to the welfare and happiness of the people that when a question has once been settled and no positive rule of law has been violated or contravened and no serious detriment is likely to arise prejudicial to the public interest such adjudication ought to stand and be followed, . . . but it seems to me that it is so manifest that serious detriment to the public has arisen, and will arise in the future, by following the line of authorities holding that the omission to allege that the owner of the property burglarized was incorporated when the name of the company is set out in full, that if in rare cases the doctrine of *stare decisis* should be departed from this is one of those cases. Such a holding would in no way be injurious to those whose cases have heretofore been passed on involving this question, and I cannot see how it would in any way prejudice, in the future, the proper administration of the criminal law. On the contrary, it seems to me it might well be argued that to now change the rule and construe the statute as contended for by counsel for the state would tend strongly to uphold the proper administration of justice in our criminal courts."

The following observations by Mr. Justice Holmes not only are apropos on this subject but they should furnish guidance to both judges and lawyers.[3]

> "The training of lawyers is a training in logic. The processes of

[1] (1918) 284 Ill. 588.
[2] Ibid 593.
[3] Collected Legal Papers (1920), 181, 184.

analogy, discrimination, and deduction are those in which they are most at home. The language of judicial decision is mainly the language of logic. And the logical method and form flatter that longing for certainty and for repose which is in every human mind. But certainty generally is illusion, and repose is not the destiny of man. . . . We do not realize how large a part of our law is open to reconsideration upon a slight change in the habit of the public mind. . . .I think that the judges themselves have failed adequately to recognize their duty of weighing considerations of social advantage. The duty is inevitable, and the result of the often proclaimed judicial aversion to deal with such considerations is simply to leave the very ground and foundation of judgments inarticulate, and often unconscious, as I have said. . . . I cannot but believe that if the training of lawyers led them habitually to consider more definitely and explicitly the social advantage on which the rule they lay down must be justified, they sometimes would hesitate where now they are confident, and see that really they were taking sides upon debatable and often burning questions."

As we near the end of this study, we draw the reader's attention to the fact that though we have not hesitated to commend the court on various occasions, our observations have been largely critical. This has been but proper and natural as our object has been to point out what have seemed to us to be defects and faults in the administration of the criminal law and thus to counsel improvement. It should be observed, however, that this has been a study of the decisions for but a term of ten years. Were comparisons to be made between the period studied and one of equal duration of a half-century ago, the outstanding feature for comment, we believe, would be the noting of the progress our court has made in ridding the law of many of the legalistic restrictions and barriers common in earlier times. Let the reader observe this fact and be heartened and cheered by it. The trend of judicial decisions manifestly is toward more liberality and freedom. Our impatience is registered against the tediousness of the movement; its direction is unmistakable.

Evidence is not wanting that our judges realize the opportunity that lies within their grasp; sometimes, to be sure, but dimly, and sometimes giving expression to it only through dissenting opinions, but it persists. There is no compelling reason of logic which forces the judge to apply any one of competing rules urged upon him.[1] As the horizon widens and the perspective becomes more inclusive he realizes, as did Judge Carter, that while stability and uniformity of decisions frequently (perhaps generally) are conducive to the public welfare, cases do arise when such welfare is better promoted by departing from the doctrine of *stare decisis*. Our law is a living growing phenomenon. It moves and changes so as to comprehend new situations. This marks its vitality.[2] The Supreme Court of Illinois has never been without judges who have perceived the workings and the methods of the law. Some, indeed, have given expression and comprehensiveness to it with great clarity and force, and thus they have given luster and distinction to the court.

[1] See Cook, *Scientific Method and the Law* (1927), 13 Am. Bar. Assoc. J. 303, 308.
[2] See Cardozo, *The Growth of the Law* (1924), 66, and see another book by Judge Cardozo, *The Paradoxes of Legal Science* (1928).

46. Summary. 1. The Supreme Court passes upon but few criminal cases as compared to the total number which arise in the trial courts of the state. But the Supreme Court's place and influence in the administration of the criminal law is not to be measured by the number of cases it passes upon. The immediate bearing of a decision is upon the issues in a particular case, but the influence of a decision transcends its local significance. It becomes an authority which may shape new sentences thereafter.

2. Out of 699 criminal cases which appeared before the Supreme Court during a ten year period, 410 were affirmed, 217 reversed and remanded, and 72 reversed. Thus, 59 per cent of the cases were affirmed. The most common ground for error was in the giving or refusing of instructions by the trial court. The next principal ground, with very nearly an equal number of cases, related to the admission and exclusion of evidence. Other principal grounds upon which cases were reversed were, violation of constitutional provisions, defective indictments or informations, errors in cross-examination, variance, improper conduct of the state's attorney, misconduct of the trial court, error in the form of the verdict, and evidence insufficient to sustain the verdict.

3. *Constitutional questions* in criminal cases have arisen in relatively few cases, but in some instances they have involved questions of great import. In 1923 the Supreme Court, in *People* v. *Brocamp,*[1] abandoned its previous position on the admission of evidence secured through illegal searches and seizures, and held that the admission of evidence so secured constituted reversible error. The holding in the *Brocamp* case (and in others that followed) has made the administration of the criminal law more difficult since it has placed in the hands of the criminal an added obstructive weapon. It should be observed, however, that the view adopted has considerable public approval, and that it is supported by the decisions of the Supreme Court of the United States.

4. Where the constitutionality of a statute was attacked, under the due process clause, which made criminal certain acts regardless of the intent or guilty knowledge of those accused, the Supreme Court has upheld the statute, expressing the view that this, and similar statutes, were valid when passed in the general interests of the public welfare. We commend the court on the position it has taken.

5. The constitutional provision relating to *self-incrimination* has received from the Supreme Court a broad interpretation. The self-incrimination privilege, we believe, is an obstacle to the conviction of the guilty, and should not be extended beyond its historic scope.

6. Of the total number of cases reversed during the period studied, 4.6 per cent were for errors in *indictments or informations.* A number of opinions by the Supreme Court were found in which the court expressed itself opposed to technical pleadings. The effect of these liberal views has been considerably offset by other decisions, which appear to us to have been extremely technical. For example, in an indictment with fifty counts against Philip *Goldberg,* forty-nine were approved by the court, but since the fiftieth

[1] (1923) 307 Ill. 448.

read *Holdberg* instead of Goldberg, the case was reversed. The court, it is believed, also has taken too strict a view in holding that negative averments are necessary (notwithstanding a statute expressly states that they shall not be) in liquor indictments.

8. The court has made several very close discriminations as to *instructions* relating to *self-defense* in homicide cases. Not only are these discriminations difficult to follow, but the court has shown unsteadiness in its views. We believe that the expressions on this important question are confusing, and that they tend, when this issue arises, to make the administration of the law uncertain.

9. The law relative to the proper *instructions* to be issued to the jury on the tests of *criminal responsibility* when the issue of insanity is raised, is not in keeping with modern scientific thought and is in great need of revision.

10. The Supreme Court has reversed several convictions because of the admission of *evidence of other crimes.* We believe that the court has laid down too narrow a rule in some of the cases for the effective administration of the criminal law. The court has not sufficiently recognized the principle that proof of other similar crimes tends to negative inadvertence and innocence in the particular case in issue, and that for that purpose it is immaterial whether the instances were found occurring before or after the act charged.

11. The rule of evidence that a *husband or wife* cannot testify for or against each other is entirely out of keeping with present ideas as to the marital relation, and is not in accord with the status the law is now giving the wife. The problem calls for legislation, but in the absence of that, we believe the Supreme Court has the power to liberalize the rules of evidence through the decisions and that it would be in the interests of the public welfare for it to do so.

12. The Supreme Court has taken an emphatic stand against "third degree" methods in obtaining *confessions* from persons suspected of crime. No officer, it has said, having custody of a prisoner, has the privilege to resort to such tactics, and if a confession is so obtained, it is not admissible in evidence, and it is not possible to sustain a conviction in the Supreme Court if it appears that such improper methods were used. There is little doubt that statements often are obtained from suspects through brutal methods. The Supreme Court's position on this question is commendable.

13. When an indictment contains a material name or word which the proof shows to have been misspelled, there occurs what is known in the law as a *variance.* In determining whether it is a fatal variance the doctrine of *idem sonans* (having the same sound) is applied. If it is found *idem sonans* with the name or word proved, there is no error. Otherwise the mistake is likely to constitute ground for reversing the case. We believe that the doctrine of *idem sonans* is too technical and subtle for guidance in cases of this nature. It does not offer an adequate test upon which to predicate a judicial decision. The administration of the law would be promoted if it were abandoned.

14. The Supreme Court, in the case of *People* v. *Corder,*[1] in which the

[1] (1923) 306 Ill. 264.

indictment was unusually verbose, made the suggestion that it would have been sufficient to have alleged that on a certain day in a certain county John F. Corder "did unlawfully, with malice aforethought, by shooting, kill Jane Hardy." We believe, by that statement, the Supreme Court took a forward step toward the simplification of *criminal pleadings*. Any suggestion from the court carries tremendous weight; much, therefore, depends upon its leadership. The position it takes can well change the trend, not only of criminal pleadings, but of the whole law of the state.

15. Technical distinctions are to be found in the law between *attempted and consummated crimes*. Thus, a case was reversed in the Supreme Court because a jury found a man guilty of attempt to commit larceny, when the evidence was to the effect that the crime of larceny had been consummated. Many cases have been reversed, too, because of the technical distinctions which exist among the various crimes relating to personal property. There is great need for legislation removing the subtle distinctions between crimes. A statute which will group all the crimes as to personal property under a common heading and which will make it possible under a simplified charge to convict for all crimes involving the fraudulent conversion or the misappropriation of another's personal property, is needed particularly.

16. There exists in Illinois that anomaly in the law that the *jurors* in criminal cases shall be the *judges of the law and the fact*. There, also, is the restriction on authority of the trial court, that he must not comment on the evidence or indicate to the jury his views. We believe that criminal law administration would be improved if the provision, making the jurors the judges of the law and the fact, were repealed, and that it would be improved further if the trial judge were given the power to advise the jurors on facts, and to comment on the weight of the evidence.

17. When question has been raised as to the *form of the verdict*, the Supreme Court frequently has announced the liberal view that the "test as to the sufficiency of the verdict is whether or not the intention of the jury can be ascertained with reasonable certainty." However, in *People* v. *Valanchauskas*,[1] where the verdict read "We the jury, find the defendant, Stanley V. Valanchauskas, guilty of embezzlement in manner and form as charged in the indictment," and the indictment had charged him with the embezzlement of $1,000, the Supreme Court held the verdict fatally defective. Without a finding, the court held, "of the sum of money stolen, the court could not determine whether the plaintiff in error had been found guilty of a felony or a misdemeanor."

18. The Supreme Court has stated that it will reverse a criminal conviction for *insufficiency of evidence* only when it is able to say "from a careful consideration of the whole of the testimony, that there is clearly a reasonable and well founded doubt of the guilt of the accused."[2] This, we believe, is a sound principle to which the court should continue to adhere.

19. The court has strictly adhered to the rule that the *corpus delicti*—the fact that a crime has been committed—cannot be established by extra-

[1] (1927) 324 Ill. 187.
[2] But see *People* v. *Lardner* (1921), 296 Ill. 190.

judicial confessions, alone. In *People* v. *Maruda*[1] this question was considered at some length. The court expressed views that are open to the interpretation that a crime must be established entirely by proof other than the confession of the defendant. This would appear too narrow a construction. In fact, the rule that a defendant's confession, alone, does not suffice, is a questionable doctrine. We submit that the ends of justice would be better served by a return to the rule as it was originally in the law, viz., that an uncorroborated confession of an accused is sufficient to support a conviction.

20. In a study of the *subsequent disposition* of 291 cases reversed and remanded by the Supreme Court, it was found that but 46 defendants were punished after their cases had been reversed and remanded. Out of the 291 cases, 29 were retried and convicted, 9 pleaded guilty, 8 pleaded guilty to lesser offenses, 23 were retried and acquitted, and 222 escaped further prosecution. After a case is reversed and sent back to the trial court, a defendant has six and one-half chances to one never to be penalized to any extent for the crime with which he originally was charged.

21. We believe that the administration of criminal justice would be improved substantially if the courts would give less effort to obtaining logical certainty, and less heed to the doctrine of *stare decisis*. It is not in uprightness, but in the comprehensiveness of views, that judges fail to measure up to their responsibilities. The opinions we have reviewed bear evidence to the fact that, at times, our court has responded watchfully to the "call of other voices," but at others, it has slipped back and listened despairingly and alone to the call of logic. The court has made progress in ridding the criminal law of legal scholasticism. While this report is critical of that which still persists, the fact is noteworthy that the doctrine of *stare decisis* is being employed less frequently. More and more the tendency is to disregard technical reasoning, to overlook slight errors, and to proceed to the ultimate question—the guilt or innocence of the accused.

[1] (1924) 314 Ill. 536.

CHAPTER III

THE TRIAL COURTS, IN FELONY CASES

By

E. W. HINTON

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CHAPTER III

THE TRIAL COURTS IN FELONY CASES

For the benefit of readers not familiar with the legal machinery involved in criminal prosecutions, it may be helpful to give a brief outline of the organization of the courts and their procedure under the criminal code of Illinois.

(I) LAWS GOVERNING CRIMINAL PROCEDURE AND COURT ORGANIZATION

The rules of procedure in criminal prosecutions have been derived in the main from the English common law as it existed about the close of the eighteenth century, supplemented and modified to some extent by various statutes now collected in the criminal code.

1. *Preliminary Examination.* Ordinarily the first[1] step in a felony case is the preliminary examination or hearing before a committing magistrate. The criminal code provides that when complaint is made to any judge of a court of record, or to a justice of the peace, that a felony has been committed by the accused, the complainant shall be examined under oath, and the complaint reduced to writing. When such complaint discloses the commission of a felony, the judge or justice shall issue a warrant for the arrest and production of the accused before him for examination. At such examination the judge hears the evidence in support of the charge, and such evidence as the accused may present on his own behalf.

If the magistrate finds from such examination that a felony has been committed and there is probable cause to believe the prisoner guilty, he is required to issue a warrant of commitment, committing him to jail to await indictment in the proper court, unless the offense is bailable[2] and the prisoner offers sufficient bail. In that event the prisoner is released on a bail bond for his appearance in the trial court. If the examining magistrate does not find that a felony has been committed, or there is probable cause to believe the prisoner guilty, he enters an order discharging him from custody, or from further appearance if he has been admitted to bail pending the examination, which may be delayed for various reasons.

2. *Indictment.* An indictment is a formal criminal charge or accusation, drawn by the state's attorney and returned into court as a true bill by the grand jury after such investigation as they may be able

[1] In homicide cases there is usually a coroner's inquest before any preliminary examination of the accused is held. The coroner's inquest is not strictly a criminal proceeding, but is merely an ex parte investigation to ascertain the cause of death. In a proper case the coroner is authorized to commit the accused to jail.

[2] The Constitution, Art. 2, Sec. 7, provides that all persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great.

to make. A full grand jury consists of twenty-three jurors, but may be composed of a less number, though not less than sixteen. The concurrence of at least twelve is necessary to the finding of a true bill. The grand jury is impaneled by the trial court and charged with the investigation of criminal offenses within the jurisdiction, and especially the cases of such persons as have been committed, or bound over by committing magistrates.

The grand jury is assisted in its investigation by the state's attorney and may indict without regard to whether a preliminary examination has been held or the result of it. In a large majority of the indictments returned the defendants have been bound over on preliminary hearing.

At common law felonies were prosecuted by indictment. Misdemeanors were prosecuted either by indictment or by an information by the proper prosecuting officer. In a number of states all offenses may be prosecuted by information, thus avoiding expense and delay.

The Constitution[1] of Illinois requires all crimes to be prosecuted by indictment, except where the punishment is by fine or imprisonment otherwise than in the penitentiary. There is a proviso to the section that the grand jury may be abolished by law in all cases. The criminal code defines a felony as an offense punishable by death or imprisonment in the penitentiary. Hence, under the present law all felonies must be prosecuted by indictment. Under the proviso in article 2, section 8 of the Constitution, it is clear that the legislature has power to abolish the grand jury in toto and substitute prosecution by information in all cases. The grand jury is so necessary in some cases, where the state's attorney is unwilling to take responsibility or where the facts are impossible to discover without a secret investigation, that its total abolition would be a serious mistake. It is somewhat doubtful whether the Constitution would permit the prosecution of felonies by information so long as the grand jury is retained, though the provision that "the grand jury may be abolished by law in all cases" might well be construed to authorize such abolition in any case, for example, abolishment of the grand jury except when specially ordered by the court.

Under the exception in the Constitution misdemeanors,[2] that is, offenses not punishable by death or imprisonment in the penitentiary may be prosecuted by information. Accordingly the Criminal Code provides for the prosecution of such offenses in the Municipal and County Courts[3] on an information by the state's attorney.

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[1] Art. 2, Sec. 8: "No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger; *Provided,* that the grand jury may be abolished by law in all cases."

[2] There are, or have been, a few criminal offenses, which were not felonies as defined by the Criminal Code because not punishable by death or imprisonment in the penitentiary, but which were punishable by a forfeiture of certain civil rights in addition to a fine or imprisonment in the county jail. The Constitution has been construed as excepting such offenses as were punishable solely by fine or imprisonment otherwise than in the penitentiary. Hence offenses carrying an additional punishment must be prosecuted by indictment of a grand jury. *People* v. *Russell,* 245 Ill. 268.

[3] Apparently by legislative oversight no provision has been made for the prosecution of misdemeanors by information in the circuit courts, although such courts have jurisdiction of misdemeanor cases as well as of felonies.

3. Arraignment and Pleas. Where an indictment is returned by the grand jury a warrant for the arrest of the defendant is issued by the clerk under which he is brought before the court for arraignment—that is, to be informed of the charge and enter his plea. At this time new bail is taken for his appearance at the trial, if the offense is bailable. In default of bail the defendant is committed to jail to await trial. Before the entry of a plea[1] the defendant may attack the legal sufficiency of the indictment by demurrer or by motion to quash. If the indictment is quashed the defendant is discharged, but may be reindicted. If the indictment is sustained the defendant is required to enter a plea.

In case of a plea of guilty, the Criminal Code requires the judge to warn[2] the defendant of the consequences before finally receiving the plea. After the plea is received the judge is required to hear evidence to enable him to determine the degree of the offense and the proper punishment.

Where the offense charged in the indictment includes lower degrees or lesser offenses, the judge may accept a plea of guilty to the lower offense. For example, since murder includes all lower degrees of homicide, a defendant indicted for murder might be convicted of manslaughter; and a judge could accept a plea of guilty to manslaughter. Pleas of guilty to lesser offenses are not ordinarily received except on the recommendation of the state's attorney.

While such a disposition of a case is highly desirable to save an unnecessary trial where it becomes apparent that the defendant could not, or should not, be convicted of the graver offense, a lax prosecutor may consent to reduce the grade of the offense as the easiest way to dispose of a troublesome matter.

After the entry of a plea of not guilty the case is set for trial. A reasonable interval must be allowed to enable the defendant to prepare for trial. If he is unable to employ counsel the court must appoint counsel to represent him.

4. Changes of Venue. Under the statute a defendant in a criminal case may obtain a change of venue because of the prejudice of the judge or of the people of the county.

In case of the prejudice of the judge, the trial need not be removed to another county, but must be conducted by another judge.

Where the application is based on the prejudice of the inhabitants of the county, the state's attorney may submit counter affidavits, and the judge must determine whether there is reasonable ground for believing that the

[1] Since a plea of not guilty is frequently entered before there has been an opportunity to examine the indictment, the defendant is permitted to withdraw the plea at a later time in order to interpose a demurrer or motion to quash.

[2] Under this provision of the Criminal Code, it has been held several times by the Supreme Court that the record of the court must affirmatively show that the defendant was duly warned and persisted in his plea of guilty, and that a failure of the record to show compliance with the statute makes the judgment of conviction erroneous and subject to reversal on writ of error.

Recently in the case of Chapman, convicted of murder on a plea of guilty and serving a term in the penitentiary, one of the circuit judges held the conviction absolutely void and discharged the prisoner on a writ of habeas corpus. This discharge has been set aside by the Supreme Court.

defendant will not receive a fair and impartial trial. On such a question much is left to the sound discretion of the trial judge.

In the country circuits, where considerable time elapses between terms of court, a change of venue is not infrequently sought as a means of obtaining delay and wearing out the prosecution.

5. Continuance. Continuances of a case to a later time may be granted on the consent of both parties, or on the application of either party.

An application for a continuance is usually based on the absence of witnesses. It must be verified by affidavits, and set out the substance of the testimony which the absent witness would give, so that the court can determine its materiality, and must show that the party has used due diligence to procure the attendance of the witness, and that there is a reasonable probability of obtaining his attendance at a later time.

It has been held by the Supreme Court that since the statute does not provide for counter affidavits, they can not be received to controvert the truth of the matters set out in the application. The court has some discretion in determining whether a continuance should be granted. The state's attorney may avoid a continuance by admitting that the absent witness would testify as stated in the affidavit, which may be read as his testimony, and is subject to contradiction as in case such witness had testified in person.

6. Selection of the Jury. When the case is finally reached for trial the prospective jurors are examined under oath to discover whether they are qualified to serve. Counsel usually conduct this examination, though it may be done by the judge. At a conference of judges from various parts of the state it was stated that where the judge conducts the examination of the prospective jurors subject to such further examination by counsel as might be necessary, much time was saved, and that where the examination is left entirely to counsel, much time is frequently wasted and the proceedings dragged out beyond all reasonable limits.

Section 12, Division 13 of the Criminal Code provides that in felony cases punishable by death or imprisonment for life the defendant shall have 20 peremptory challenges, and in cases where the punishment may exceed 18 months in the penitentiary, 10 peremptory challenges. In all other cases the defendant has six peremptory challenges. The prosecution has the same number. In view of the well known fact that peremptory challenges are frequently used to get rid of the more intelligent jurors, the number allowed in serious felonies seems excessive.

Challenges for cause are based on some legal disqualification of the juror, such as that he is an alien or a non-resident or under age or that he is prejudiced. The judge determines whether the grounds of the challenge are true in fact and valid in point of law. A decision overruling a challenge for cause is subject to exception and appellate review.

The limited number of peremptory challenges must be allowed if made at the proper time.

Under the Constitution, felony cases are triable by jury as a matter of

right. There is no statutory[1] provision for trial by consent without a jury, as is done in a number of the other states.

7. Function of the Judge at the Trial. During the progress of the trial the judge decides all objections to the admissibility of evidence and to the competency of witnesses, and any claims of privilege by witness. In all jurisdictions where the common law prevails, the judge determines whether the evidence is sufficient to warrant a jury in returning a verdict of guilty, and if not he may peremptorily direct an acquittal. If the evidence is sufficient to warrant a conviction, the judge must submit the question of the defendant's guilt to the jury under proper instructions. In Illinois, however, because of the statute (Section 11, Division 13 of the Criminal Code) making the jury the judges of the law and the fact in all criminal cases, it has been held by the Supreme Court in *People* v. *Karporvitch,* 288 Ill. 268 (1919) that the judge cannot direct a verdict of acquittal but must submit the question to the jury in all cases and if the evidence is insufficient the only remedy is to grant a new trial. Similar statutes or constitutional provisions are found in Connecticut, Georgia, Indiana, Maryland, Oregon, and Pennsylvania, though in several of these states the jury is not given the free hand accorded to it in Illinois.

Both sides are entitled to argue their respective contentions to the jury, though the judge may fix a reasonable time limit. Under the Illinois statute[2] the judge is not permitted to comment on the evidence or express any opinion as to the facts. He is limited to instructing the jury as to the law governing the case, and his instructions are required to be in writing. Aside from definitions, these instructions direct the jury to find the defendant guilty if they are satisfied beyond a reasonable doubt from the evidence that certain facts are true, and to find the defendant not guilty if they are not so satisfied.

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[1] It is clear that under the existing law a felony can not be tried, even by consent, without a jury. *Harris* v. *People,* 128 Ill. 525; *Paulsen* v. *People,* 195 Ill. 507. One of the reasons given by the Court was the absence of any legal power in the court, which could not be supplied by consent. The trial of misdemeanors without a jury with the defendant's consent was sustained before there was a statute on the subject. *Garreneller* v. *People,* 17 Ill. 101. And the validity of conviction for a misdemeanor on a trial without a jury was sustained, although the statute on the subject had been declared unconstitutional on other grounds. *People* v. *Fisher,* 303 Ill. 430 (1922). Whether, under the Constitution, power could be conferred on a court to try a felony case on the defendant's waiver of a jury, has not been passed on in this state. Such statutes have been adopted in Connecticut, Indiana, Maryland, New Jersey, Washington, and Wisconsin, and their validity expressly sustained in Connecticut, Indiana, Maryland and Wisconsin. The results in Maryland and Wisconsin appear extremely good. For an elaborate discussion of such legislation, see the article by Mr. C. S. Oppenheim of the Michigan bar on "Waiver of Trial by Jury in Criminal Cases" in 25 Michigan Law Review 695 (May, 1927).

[2] In this part of the trial, the respective functions of the judge and jury under the Illinois statutes differ radically from those prescribed by the common law which still prevails in many of the other states, and in the federal courts. Under the common law it was the privilege of the judge to sum up the evidence to the jury and comment on it, and to express his opinion on the facts, provided he informed the jury that his views on the credibility of the witnesses and the weight of the evidence was not binding on them. The judge was at liberty to instruct the jury on the law either orally or in writing as he thought best. The jury had a free hand to determine the facts for themselves, but were in duty bound to accept and follow the law according to the judge's instructions. The jury had the physical power to disregard the instructions and in case of a perverse verdict of acquittal there was no remedy, since the defendant could not be retried.

8. Function of the Jury. It is the function of the jury to determine from the evidence the truth or falsity of all questions of fact involved in the guilt or innocence of the defendant. Under the Illinois Statute with reference to making the jury the judges of the law and fact, it is held that the instructions by the judge are advisory only and that the jury have the right as well as the power to disregard them though the Supreme Court approves instructions to the effect that while the jury may determine the law for themselves they ought not to do so unless they can say on their oaths that they know the law better than the court. In the case of *Juretich* v. *People*, 223 Ill. 484, the Supreme Court remarked, "The statute which makes the jury the judges of the law and the fact has often been severely criticized by the profession and justly so. Instead of reporting to the legislature to repeal it, the courts have from time to time qualified it until it has been rendered nugatory." This statute, however, furnishes an excuse for the practice of reading statutes and court decisions to the jury at great length so that their attention is frequently distracted with complicated questions of law and diverted from the problems of fact which it is their real business to determine. After the instructions have been given to the jury, they are placed in charge of an officer and kept together until they agree on a verdict, which they return in open court. In all cases where the statute does not prescribe a fixed punishment, the jury by their verdict fix the punishment within the statutory limits.

9. Motion for New Trial. After a verdict of guilty, the defendant may move the court to grant a new trial for various reasons, such as erroneous rulings by the judge in the progress of the trial or in giving and refusing instructions, or for some mistake or misconduct of the jury, or to enable him to present newly discovered evidence. The judge determines on the showing made whether a new trial ought to be granted.

In case a new trial is awarded, the verdict is set aside and a new trial had before a new jury.

10. Motion in Arrest of Judgment. The defendant may also move to arrest the judgment, that is, stay the entry of judgment, because of the insufficiency of the indictment, or the insufficiency of the verdict, or because of some other legal objection appearing on the face of the record. When such a motion is sustained the case is dismissed.

11. Bill of Exception. The various rulings of the judge before and during the trial may be preserved for appellate review by means of a bill of exceptions, which is a formal written statement of what took place, including the objections, rulings, and exceptions, authenticated by the signature and seal of the judge. It is usually made up from the stenographic notes of the trial.

12. Appellate Review. After conviction of a felony a defendant is entitled as a matter of right to appellate review by the Supreme Court on writ of error. This review is limited to errors of law disclosed by the record and the bill of exceptions. If the reviewing court finds that substantial error was committed, the conviction is set aside, and the case remanded to the trial court for a new trial. If no substantial error is found the judgment of conviction is affirmed. The Supreme Court does

not ordinarily deal directly with the problem of the defendant's innocence or guilt, but whether he has been tried and convicted in accordance with the established rules of law.

13. Insanity Inquest. Insanity as a defense to a criminal charge, like any other defense, is made at the trial and determined by the jury under proper instructions by the judge, stating the kind and degree of mental unsoundness recognized by law as sufficient to relieve a defendant of criminal responsibility.

The Criminal Code provides for an insanity hearing before the trial of the criminal charge to determine whether the defendant is so mentally deranged as to be unable to conduct his defense properly. Under the statute this preliminary sanity trial is conducted by the judge and a jury and is limited to a determination of the defendant's mental condition at that time. If found insane, the defendant is committed to an asylum until he sufficiently recovers to stand trial. If found sane, the defendant is tried on the criminal charge by a new jury. This finding has no legal effect on the defense that he was insane at the time of the commission of the alleged crime. The statute also provides for a similar hearing after conviction where it is suggested that the defendant has become so insane as to make it improper to carry out the sentence. If found insane, the defendant is committed to an asylum until he recovers. After such a commitment the defendant may again be brought before the court on the application of the state's attorney for another hearing to determine whether he has so far recovered as to make it proper to carry out the sentence. The procedure under this statute has been elaborately considered by the Supreme Court in two very recent cases.[1]

This, in brief, without going into technical details, is the general scheme under which criminal prosecutions are carried on in felony cases. The rules governing the whole proceeding are strict and many of them highly technical. Most of them originated in a much earlier period of the English common law, when the penalties for many offenses were unduly severe and the judges were accordingly disposed to make convictions difficult.

14. Courts and Jurisdiction. The criminal law is administered by a system of courts created by the Constitution and various court acts. The circuit court is the court of general original jurisdiction for all criminal cases. The state, exclusive of Cook County, has been divided into seventeen judicial circuits, each composed of several counties. Three judges are elected for each circuit. In Cook County a special criminal[2] court has been organized to which the judges are assigned from the circuit court and the superior court.

In a number of cities city courts[3] have been organized and given con-

[1] *People* v. *Geary*, 298 Ill. 236 (1921). *People* v. *Scott*, 326 Ill. 327 (1927).

[2] The judges of the circuit and superior courts of Cook County are ex-officio judges of the criminal court. These judges are assigned from time to time to hold the criminal court. The number of judges of the criminal court is not fixed by law. Generally seven judges are assigned to it, but at times the number is increased.

[3] Under the City Court Act, city courts, with concurrent jurisdiction with the circuit within the city limits, have been organized in the following cities: City Court of Alton, City Court of Beardstown, City Court of Carbondale, City Court of Charleston, City Court of Eldorado, City Court of Granite City, City Court of Harrisburg, City Court of Litchfield, City Court of Mattoon, City Court of Pana. There are a number of city courts in other parts of the state which do not in fact exercise their criminal jurisdiction.

current jurisdiction with the circuit court in criminal cases within certain territory. In each county there is a county court with criminal jurisdiction in misdemeanor cases. In Chicago the criminal jurisdiction of the county court has been conferred on the Municipal Court.

The Appellate Courts for the several appellate districts have jurisdiction to review convictions for misdemeanors.

The Supreme Court has jurisdiction to review convictions for felonies.

(II) Work of the Trial Courts

15. Scope of Survey. It has long been believed that the enforcement of the criminal law, especially in felony cases, was greatly lacking in effectiveness. From time to time there have been sensational instances of the miscarriage of justice which provoked comment and criticism in the newspapers and in periodicals. The assumed breakdown in law enforcement has been ascribed to various causes. An archaic and over-technical procedure has been blamed. The courts have been denounced as inefficient, if not worse. Most of the critics stressed the failure of juries to convict. The methods of unscrupulous criminal lawyers were thought to be a large factor, and the responsibility was placed on the appellate courts for reversals on technical grounds that seemed to have little to do with the merits. Much of the criticism was doubtless well founded. Our criminal procedure could be simplified and improved. Better and more sensible juries are greatly to be desired. Much would be gained if the lawyer criminals were disbarred. Unfortunately no one knew the facts about the ordinary criminal prosecutions in general—the daily run of cases that were not particularly sensational and rarely reached an appellate court.

To get at the facts the records were searched for all felony prosecutions in the year 1926 in twenty counties in Illinois and in the city of Milwaukee for purposes of comparison. Outside of Cook County and Chicago, one county was selected from each of the seventeen judicial circuits and two counties, Franklin and Williamson, because of the peculiar local conditions. On this basis the following counties were selected: Cook, St. Clair, Peoria, Sangamon, Kane, LaSalle, Rock Island, Winnebago, Vermillion, McLean, Macon, Adams, Williamson, Franklin, Knox, Kankakee, Stephenson, Marion, Cumberland, and Stark. These were divided into five groups:

1st. Cook County, including Chicago.

2nd. Kane, LaSalle, Macon, Peoria, Rock Island, St. Clair, Sangamon and Winnebago, all having a large urban population.

3rd. Adams, Kankakee, Knox, McLean, Marion, Stephenson and Vermillion, all having a somewhat less proportion of urban population.

4th. Cumberland and Stark, both almost entirely rural.

5th. Franklin and Williamson, having largely the same local conditions.

The results were tabulated separately for each county and then grouped for convenience. In Cumberland and Stark counties there were only 33 felony cases. Averages and percentages based on such small numbers are likely to be misleading, and for that reason are not included in this comment, but appear in the appended tables.

TABLE 1

CASES DISPOSED OF IN PRELIMINARY HEARING

(Base of Percentages=Total number of cases entering preliminary hearing.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL NUMBER OF CASES	16,812		12,543		13,117		2,293		904		33		465		1,838	
Original indictments	2,889		1,714		1,866		447		260		7		309			
TOTAL CASES ENTERING PRELIMINARY HEARING	13,923	100.00	10,829	100.00	11,251	100.00	1,846	100.00	644	100.00	26	100.00	156	100.00	1,838	100.00
1. Never apprehended	465	3.34	391	3.61	394	3.50	1	.05	67	10.40	3	11.54			16	.87
2. Error, no complaint	116	.83	116	1.07	116	1.03										
3. Complaint denied	35	.25	35	.32	35	.31										
4. Bond forfeited, not apprehended	73	.52	68	.63	68	.60	4	.22	1	.15					6	.33
5. Certified to other courts	116	.83	50	.46	72	.64	41	2.22	2	.31			1	.64	1	.05
6. Dismissed, want of prosecution	2,903	20.85	2,501	23.10	2,558	22.74	269	14.59	51	7.92	5	19.23	20	12.82	25	1.36
7. Nolle prosequi	882	6.33	766	7.08	801	7.12	58	3.14	17	2.64			6	3.85	32	1.74
8. Discharged	2,609	18.74	2,117	19.55	2,235	19.87	271	14.68	90	13.98			13	8.33	235	12.79
9. Reduced to misdemeanor, not punished	23	.18	12	.11	12	.11	11	.59								
10. Reduced to misdemeanor, punished	17	.12	3	.03	5	.04	7	.38	5	.78						
11. No order	25	.18	22	.20	22	.20	1	.05	2	.31						
12. Pending	8	.06	7	.06	7	.06	1	.05							4	.22
13. No record	68	.49	36	.33	36	.32	3	.16	19	2.95			10	6.41		
TOTAL ELIMINATED	7,340	52.72	6,124	56.55	6,361	56.54	667	36.13	254	39.44	8	30.77	50	32.05	319	17.36
Total going on	6,583	47.28	4,705	43.45	4,890	43.46	1,179	63.87	390	60.56	18	69.23	106	67.95	1,519	82.64
Original indictments	2,889		1,714		1,866		447		260		7		309			
Total cases entering grand jury	9,472		6,419		6,756		1,626		650		25		415		1,519	

16. *Elimination of Cases at the Preliminary Stage.*

During the year 1926, the period covered by the survey, a little over eleven thousand felony prosecutions were begun in Chicago and Cook County by complaints to magistrates and judges of the Municipal Court.

Nearly two thousand such prosecutions were begun in the group of eight urban counties.

During the same period some six hundred and fifty prosecutions were begun in the group of seven semi-urban counties.

About a hundred and fifty prosecutions were begun in Franklin and Williamson counties.

A little less than two thousand were begun in the city of Milwaukee.

In each of the groups a considerable number of cases failed to survive the preliminary examination. In some cases the defendant was not arrested. In others the defendant gave bail pending the examination, forfeited his bond, and was not apprehended. In some cases a "nolle prosequi" was entered by the state's attorney. A considerable number were dismissed for want of prosecution. A number were discharged by the judge at the hearing. A small number were eliminated for various reasons; such as insufficient complaint, transfers to other courts, reduction of charge to misdemeanor, and the failure to make a record of the disposition.

The results, as shown by the records, have been tabulated in detail and appear in Table 1.

For convenience in comparison, the following Summary Table 2, has been prepared of the number and causes of elimination on preliminary examination, and by the grand jury, of cases begun in each of four Illinois groups and in the city of Milwaukee.

TABLE 2. COMPARISON OF REGIONS, AS TO RESULTS AT THE PRELIMINARY HEARING

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Complaints	100.0	100.0	100.0	100.0	100.0
1. Not arrested	3.5		10.4		.9
2. Bond forfeited and not arrested	.6	.4	.1		.3
3. Nolle Prosequi	7.1	3.1	2.6	3.8	1.7
4. Dismissed for want of prosecution	22.7	14.5	7.9	12.8	1.4
5. Discharged	19.9	14.6	14.0	8.3	12.8
6. Miscellaneous[1]	2.7	3.5	4.4	7.1	.3
Total eliminated	56.5	36.1	39.4	32.0	17.4
Held to Grand Jury	43.5	63.9	60.6	68.0	82.6
Grand Jury Investigation					
Bound over to Grand Jury	43.5	63.9	60.6	68.0	82.6
No indictment	13.4	19.5	17.5	34.6	
True Bills	30.1	44.4	43.1	33.4	82.6[2]

It will be noted that the Chicago-Cook County group has the highest

[1] This heading includes insufficient complaint, transfer to other courts, reduction of charge to misdemeanor, failure to make a record and loss of record.

[2] In Wisconsin felonies may be prosecuted by information, and in fact informations were used instead of indictments.

percentage of eliminations, 56.5 per cent, more than three times those in Milwaukee. The elimination in the other Illinois groups is fairly uniform. The eight urban counties eliminate 36.1 per cent. The seven semi-urban counties eliminate 39.4 per cent. Franklin and Williamson counties eliminate 32 per cent. Milwaukee eliminates only 17.4 per cent.

It might be thought that the cases receive an extraordinarily careful sifting in Chicago and that only those most clearly indicating guilt are held to the grand jury. The results in the trial court seem to negative this explanation.

It is obvious that there is no standard by which to determine how many cases ought to be eliminated. Some complaints are made to examining magistrates without foundation in fact. Many fail for the want of evidence though the accused is actually guilty. In such a case he is properly discharged as a matter of law. But, nevertheless, there has been a real failure of justice whenever a felony has been committed and the perpetrator of it escapes prosecution.

It is fair to assume that few charges of felony are made where no felony has been committed, and hence that a considerable proportion of the elimination represents actual failures of justice, even though no fault could be ascribed to the prosecuting officers or the magistrate. The elimination in all of the Illinois groups is striking as compared with Milwaukee, and may be thought excessive. The responsibility for this result is shared by the police who make most of the complaints, by the state's attorney who prosecutes and dismisses them, and by the magistrates and municipal court judges who hear them. This phase of criminal prosecutions will be discussed in detail by other writers, and is mentioned here by way of introduction only.

17. *Elimination at the Grand Jury Stage.* When the cases of those bound over were presented to the grand jury a further substantial elimination took place. A few were indicted for misdemeanors; a number were ignored; a number were returned "not a true bill"; the balance were indicted on a felony charge. On the basis of each hundred prosecutions begun by complaints to the examining judge or magistrate, the following eliminations were made by the grand jury:

In the Chicago-Cook County group, 13.4 per cent; in the Urban County group, 19.5 per cent; in the Semi-Urban group, 17.5 per cent; in the Franklin-Williamson group, 34.6 per cent. In Milwaukee no eliminations were made by the grand jury. The cases were all prosecuted by information; and informations were filed in all of the cases bound over by the magistrates.

In what might be called the normal Illinois groups the elimination by the grand jury is surprisingly uniform in proportion to the number of cases bound over, as appears by the following tabulation:

TABLE 3. COMPARISON OF REGIONS, AT THE GRAND JURY STAGE

	Chicago and Cook County		Eight Urban Counties		Seven Semi-Urban Counties		Franklin and Williamson Counties	
Number bound over per 100 prosecutions	43.5	100.0%	63.9	100.0%	60.6	100.0%	68.0	100.0%
Indicted	30.1	69.3%	44.4	69.4%	43.1	71.1%	33.4	49.1%
Eliminated	13.4	30.7%	19.5	30.6%	17.5	28.9%	34.6	50.9%

The elimination by the grand jury of more than half the cases bound

over in Franklin and Williamson counties probably reflects peculiar local conditions.

In the other groups the elimination by the grand jury of about thirty per cent of the cases bound over probably represents in the main the judgment of the state's attorney as to whether it is worth while to indict.

The state's attorney normally dominates the grand jury, and can obtain an indictment if he wishes it on a very slight showing. In the investigation before the grand jury the state's attorney has a free hand. There are no technical rules of evidence to hamper him, and the members depend on him for the law. It would, of course, be futile to press the grand jury to indict where the evidence is insufficient to convict.

But it is at least significant that in Milwaukee all of the cases bound over result in informations charging a felony, and that the final percentage of convictions is much higher than in Illinois. The most probable explanation is that the prosecuting officers in Milwaukee are more successful in obtaining the necessary evidence.

The trial court has no control over the presentation of cases to the grand jury. The responsibility for elimination by the grand jury must rest on the state's attorney, and the officers who investigate. It should be noted, however, that in each of the Illinois groups original indictments were returned which exceeded the number eliminated.

18. Elimination of Cases in the Trial Court.

The responsibility of the trial court begins when the indictment is returned. Immediately the cases begin to disappear. Some, after giving bail, forfeit their bonds and are not recaptured. The bail bond situation will be noticed later. A few are transferred to the Juvenile Court, or to some other court on change of venue, with unknown results so far as the survey is concerned. The death of the defendant ends a few prosecutions. A considerable number are terminated by a nolle prosequi by the state's attorney for various reasons. A very considerable number are stricken from the docket with leave to reinstate. A few are entered as off the call which amounts to about the same thing as striking from the docket—the prosecution is suspended. A number are dismissed for want of prosecution, that is, the state's attorney is not able to proceed.

In the Chicago-Cook County group the foregoing eliminations dispose of a third of the indictments returned. Theoretically the court has little if any responsibility. The failure to arrest must be charged to the sheriff and the police.

The state's attorney has the unquestioned power prior to the impaneling of the jury to enter a nolle prosequi, and attempts to regulate it by law in other states have proved futile. The judge is not a prosecutor, and it is manifestly impossible for him to obtain results in a case which the state's attorney will not prosecute. The judge could refuse to strike cases from the docket, but they would never result in convictions if the state's attorney was unable or unwilling to proceed. The judge can not refuse to dismiss for the want of prosecution, where the defendant demands a trial, and due diligence has not been used to obtain the necessary witnesses for the prosecution. So far the responsibility is that of the state's attorney. Without adequate preparation and vigorous action on his part the prosecution is doomed to

TABLE 4
CASES DISPOSED OF IN TRIAL COURT
(Base of Percentages=Total number of cases entering trial court.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL ENTERING TRIAL COURT	7,438	100.00	4,982	100.00	5,253	100.00	1,267	100.00	537	100.00	20	100.00	361	100.00	1,519	100.00
1. Never apprehended	87	1.17	41	.82	45	.86	31	2.45	5	.93			6	1.66	12	.79
2. Bond forfeited, not apprehended	92	1.24	72	1.45	79	1.50	8	.63	3	.56			2	.55	6	.40
3. Certified to other courts	18	.24	13	.26	15	.29	1	.08	2	.37						
4. Defendant dead	19	.26	9	.18	12	.23	3	.24					4	1.11	2	.13
5. Nolle prosequi	478	6.42	282	5.66	293	5.58	103	8.13	45	8.38			37	10.25	48	3.16
6. Nolle, acct. other indictments	115	1.55	8	.16	8	.15	69	5.45	13	2.42			25	6.93	36	2.37
7. Stricken, with leave to reinstate	511	6.87	374	7.51	392	7.46	63	4.97	35	6.52			21	5.82		
8. Stricken, acct. other indictments	871	11.70	690	13.85	729	13.88	105	8.29	24	4.47			13	3.60		
9. Dismissed, want of prosecution	218	2.92	206	4.12	216	4.11							2	.55	2	.13
10. Discharged by court	43	.58	28	.56	28	.53	3	.24	11	2.05			1	.28	170	11.19
11. Off call	43	.58	41	.82	43	.82										
12. Felony waived, tried by court, acquitted	293	3.94	271	5.45	293	5.58										
13. Felony waived, plead guilty, acquitted	4	.05	4	.08	4	.08										
14. Acquitted by jury	372	5.00	270	5.42	283	5.39	46	3.62	29	5.40			14	3.88	37	2.43
15. Mistrial	20	.27	6	.12	6	.11	2	.16	7	1.30			5	1.38	1	.07
16. Pending	793	10.67	218	4.38	225	4.28	284	22.41	120	22.35	8	40.00	156	43.21	1	.07
17. No record																
18. Tried by court, acquitted (Milw.)															35	2.30
TOTAL ELIMINATED	3,977	53.46	2,533	50.84	2,671	50.85	718	56.67	294	54.75	8	40.00	286	79.22	350	23.04
Found guilty																
19. Felony waived, convicted	281	3.78	266	5.33	281	5.35									4	.26
20. Tried by court, convicted off. chgd. (Milw.)															381	25.08
21. Felony waived, plead guilty, convicted	883	11.89	836	16.80	883	16.81										
22. Adjudged insane	12	.16	5	.10	6	.11	4	.32	2	.37					18	1.19
23. Plea accepted, guilty off. chgd.	949	12.75	419	8.41	453	8.62	315	24.86	136	25.32	9	45.00	36	9.98	689	45.35
24. Plea accepted, guilty lesser off.	980	13.17	723	14.51	750	14.28	157	12.39	62	11.55	1	5.00	10	2.77	16	1.05
25. Convicted off. charged by jury	299	4.02	175	3.51	184	3.50	65	5.13	31	5.77	2	10.00	17	4.71	47	3.09
26. Convicted lesser off. by jury	57	.77	25	.50	25	.48	8	.63	12	2.23			12	3.32	2	.13
27. Tried by court, convicted lesser off. (Milw.)															12	.79
TOTAL FOUND GUILTY	3,461	46.54	2,449	49.16	2,582	49.15	549	43.33	243	45.24	12	60.00	75	20.78	1,169	76.94

failure. The attitude of the judge may stimulate the prosecutor to greater activities, but that is all that he can do to decrease the eliminations by the formal and informal nolle prosequi.

A number of cases are entered as discharged by the court. Cases would be so entered where the indictment was quashed for some legal defect, and possibly where the state's attorney failed to bring the case on for trial within the time required by the statute. For these causes the judge has no choice but to discharge the defendant. If the indictment is faulty, the result must be charged to the very strict and technical rules of criminal pleading, and the failure of the state's attorney to master them. The statute entitles a defendant to prompt trial and requires the court to discharge him when proper diligence has not been used on the part of the prosecution. If discharges are made on this ground, the responsibility must rest on the state's attorney.

In a few cases mistrials occur because of the failure of the jury to agree, or new trials are granted for various reasons. Such cases were not disposed of when the survey closed. A number of cases had not been brought to trial. A number of cases were tried and resulted in acquittals.

The balance resulted in convictions for some offense. The larger part of these convictions were on pleas of guilty. A comparatively small number were convicted as the result of a trial.

Table 4 gives the number of cases and the various dispositions made of them in the various county groups.

In order to present a uniform basis of comparison Table 5 has been prepared giving the disposition of the cases in each hundred prosecutions begun by preliminary examination in the various groups.

19. *Nolle Prosequi and Dismissals.* Noticing only the important eliminations (Table 5) the Chicago-Cook County group has the smallest elimination by the general nolle prosequi—1.68 per cent as compared with 3.62 per cent in the urban county group, 3.56 per cent in the semi-urban group, 3.20 per cent in the Franklin-Williamson county group, and 2.61 per cent in Milwaukee. If, however, the dismissals for want of prosecution, which are negligible outside of Chicago, are added, these two grounds of elimination become fairly uniform.

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Nolle Prosequi	1.68	3.62	3.56	3.20	2.61
Dismissed for want of prosecution	1.23			.32	.10
Total	2.91	3.62	3.56	3.52	2.71

20. *Stricken from the Docket.* Cases stricken from the docket with leave to reinstate represent practically,[1] though not theoretically, the same thing as dismissals on nolle prosequi. After a nolle prosequi or a dismissal for want of prosecution, there can be no

[1] In the Bulletin issued by the Chicago Crime Commission, February 1, 1926, the following statistics were given for the cases stricken from the docket in the Criminal Court of Cook County during 1925:

For failure to arrest	137
For failure to obtain evidence	108
On recommendation of prosecuting witness	69
For refusal of prosecuting witness to testify	23

further prosecution of that indictment. After a case is stricken from the docket with leave to reinstate, the prosecution may be revived, but in fact rarely is. They are prosecutions suspended for the same reasons that lead

TABLE 5. COMPARISON OF REGIONS AS TO RESULTS IN ALL STAGES[1]

Results per Hundred Felony Prosecutions

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Preliminary examination	100.0	100.0	100.0	100.0	100.0
Eliminated at preliminary	56.5	36.1	39.4	32.0	17.4
Held to Grand Jury	43.5	63.9	60.6	68.0	82.6
Eliminated by Grand Jury	13.4	19.5	17.5	34.6	
Indictments returned	30.1	44.4	43.1	33.4	82.6
In the Trial Court					
1. Not arrested	.26	1.08	.46	.64	.66
2. Bond forfeited and not arrested	.45	.27	.31	.32	.33
3. Transferred to other courts	.09	.05	.15		
4. Abated by death	.07	.10		.32	.10
5. Nolle Prosequi (general)	1.68	3.62	3.56	3.20	2.61
6. Nolle Prosequi account other indictment	.04	2.38	1.08	2.56	1.95
7. Stricken from docket with leave to reinstate	2.24	2.21	2.79	1.92	
8. Stricken account other indictment	4.18	3.67	1.86	1.28	
9. Off Call	.25				
10. Dismissal for want of prosecution	1.24			3.20	.10
11. Discharged	.16	.10	.93	.32	9.24
12. Pending	1.29	9.95	9.62	14.10	.05
13. Mistrial	.04	.05	.62	.64	.05
14. Tried by court and acquitted	1.71				1.90
15. Tried by jury and acquitted	1.63	1.62	2.32	1.28	2.01
16. Found insane	.03	.16	.15		.98
17. Felony waived and plea of guilty to misdemeanor	5.06				
18. Plea of guilty to lesser offense	4.31	5.46	4.96	.64	.87
19. Plea of guilty as charged	2.60	11.03	10.86	3.20	37.48
20. Felony waived and convicted by court of misdemeanor	1.61				.21
21. Tried by court and convicted lower grade offense	-				.65
22. Tried by court and convicted as charged					20.72
23. Tried by jury and convicted of lesser offense	.14	.27	.93	1.28	.10
24. Tried by jury and convicted as charged	.94	2.27	2.48	1.28	2.55
Total	30+	44+	43+	33+	82+

[1] The figures given in this table have been obtained by the following calculation: Table 4 gives the total number of cases entering the trial court, the number and percentage of cases disposed of under the various headings. Deducting the number of original indictments from the total number of indictments gives the number of cases entering the trial court from the preliminary hearing. For example, Table 4 gives 5,253 cases entering the trial court in the Cook County area. 1,866 were original indictments. Accordingly 3,387 of the indictments were for cases bound over by magistrates. The percentages of the various dispositions of all the cases applied to 3,387 gives the number of such cases so disposed of. Such numbers divided by 11,251, the number of complaints to magistrates, gives the percentage of such total disposed of in various ways in the trial court.

to formal dismissals. The percentages so disposed of for the various groups are given in the following tabulation:

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Stricken from the docket with leave to reinstate	2.24	2.21	2.79	1.92	——

The defendants permit these cases to drag along and disappear rather than force a formal dismissal, thinking that a suspended prosecution is virtually dead. The active judge may stimulate the prosecution to greater activities, but it is hard to put life into a dead case. Since the formal nolle prosequi, the formal dismissal for want of prosecution, and the striking of cases from the docket are alternative methods for dealing with the same situation, the three may be grouped together.

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Nolle prosequi	1.68	3.62	3.56	3.20	2.61
Dismissed for want of prosecution	1.24			.32	.10
Stricken from docket	2.24	2.21	2.79	1.92	
Total	5.16	5.83	6.35	5.44	2.71

If the cases "off the call," which is an entry peculiar to the Criminal Court of Cook County, are added, the total eliminations for dismissed and suspended prosecutions in Chicago-Cook County are 5.41 per cent of prosecutions begun, or about the same as in Franklin and Williamson counties, as compared with only 2.71 per cent in Milwaukee. The Chicago eliminations for these causes are twice as great as in Milwaukee; they amount to 17.9 per cent of the cases entering the trial court. In Milwaukee they amount to only 3.2 per cent.

The cases dismissed on nolle prosequi because of other indictments mean that the same man was reindicted, or that several similar indictments were pending against him, and it was not thought necessary or desirable to prosecute them all. In some cases, however, that disposition represents a compromise, under which the defendant pleads guilty to one charge and the others are dismissed. And in some instances it means a very advantageous compromise for the defendant who is allowed to plead guilty to a misdemeanor and thus get rid of several felony charges. So far as pleas of guilty to a lesser offense are involved in the matter, the trial judge has a wide discretion. So far as the nolle prosequi is entered because the pendency of other indictments makes it inadvisable in the judgment of the state's attorney to prosecute the particular case, the responsibility is entirely that of the prosecutor.

The number so disposed of formally is negligible in Chicago. In all of the other groups a substantial number of cases are eliminated on this ground.

Striking cases from the docket because of the pendency of other indictments represents an alternative to the nolle prosequi for the same reasons. The large number so disposed of in Chicago, 4.18 per cent as compared with the small number so dismissed on nolle prosequi, indicates that it is used as a substitute for the nolle prosequi. The following Table 6 gives the two forms of accomplishing the same thing.

TABLE 6. DISMISSAL FOR OTHER INDICTMENTS PENDING

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Nolle prosequi acct. other indictments	.04	2.38	1.08	2.56	1.95
Stricken from docket account other indictment	4.18	3.67	1.86	1.28	
Total	4.22	6.05	2.94	3.84	1.95

21. Discharges by the Court. The cases eliminated by discharges by the court, presumably for defective indictments or failure to bring the case to trial within the time required by the statute, are negligible in all of the Illinois groups, except the seven semi-urban counties, where it reaches 0.93 per cent. In Milwaukee it reaches the startling figure of 9.24, over nine per cent of the total cases begun.[1]

22. Pending Cases. The pending cases and the new trials were necessarily eliminated from the survey, but that does not mean that all such cases escape punishment. If the same averages hold good, they will ultimately be distributed proportionately to the various other dispositions. The probabilities are, however, that the final eliminations will be greater in this group of cases because the delay is unfavorable to conviction. The number of such cases in each of the groups is shown by the following Table 7:

TABLE 7. PENDING CASES

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Pending	1.29	9.95	9.62	14.10	.05
Mistrials	.04	.05	.62	.64	.05
Total pending	1.33	10.00	10.24	14.74	.10

The number is trifling in Milwaukee, clearly indicating that they have learned to speed up prosecutions.

Chicago-Cook County has few pending cases as compared with the other Illinois groups. The explanation lies in the fact that in Cook County the terms of court are practically continuous, while in the other groups considerable intervals elapse between the terms. In these groups a few continuances delay the final disposition of the case beyond the year.

23. Acquittals by Court and by Jury. In Illinois misdemeanor cases may be tried by consent without a jury. In Wisconsin both misdemeanor and felony cases may be tried by consent without a jury. In Chicago in a number of cases the felony charge is waived by the state's attorney and a trial is had of the misdemeanor by the court. Trials by the court resulted in acquittals as follows (Table 5):

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Felony waived and acquitted by court	1.71	—	—	—	—
Felony tried and acquitted by court	—	—	—	—	1.90[2]

[1] The writer has been informed that in Wisconsin a peculiar practice prevails in abandonment cases. A jury is ordinarily waived and a trial had before the judge, after which there is further investigation by the probation officer, and on his report and the recommendation of the prosecuting attorney a large number of defendants are discharged. They are entered on the record as discharged by the court, instead of as acquitted. The practice greatly increases the number of "discharges."

[2] This number does not include the abandonment cases which are entered as discharged.

In Chicago only 3.32 per cent of felony prosecutions initiated in the preliminary hearing are tried by the court after a felony waiver and result in 1.71 per cent acquittals, that is, acquittals in 50 per cent of the cases so tried.

In Milwaukee (Table 5) exclusive of abandonment charges, 23.48 per cent of prosecutions are tried by the court and result in 1.90 per cent acquittals. Of all cases tried by the court only eight and a fraction per cent are acquitted.

It is fair to assume that the acquittals by the court in Chicago were proper on the evidence as presented. Hence the great discrepancy between the acquittals in Chicago and the acquittals in Milwaukee must be due to better preparation and more effective prosecution in Milwaukee. The acquittal by juries varies slightly in the different groups (Table 5):

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Felony charge tried by jury and acquitted	1.63	1.62	2.32	1.28	2.01

This makes it clear that the failure to punish criminals is not due to any great extent to the faults of the jury. Out of a thousand prosecutions begun in Chicago sixteen cases resulted in acquittals on trials by jury as against fifty-one dismissed or stricken from the docket. The proportion of acquittals to the number of cases tried by jury gives a more interesting basis of comparison (Table 5):

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Number of cases tried by jury per 100 prosecutions	2.75	4.22	6.36	4.48	4.73
Acquittals	1.63	1.62	2.32	1.28	2.01

The percentage of acquittals by jury is as follows:

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Acquittals	57.0	38.4	36.4	28.5	42.5

As already seen in trials by the court the percentage of acquittals was:

Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
50.0	——	——	——	8.0

The acquittal rate in Chicago (57.0 per cent) is high as compared with the other groups, which average about 38 per cent of the cases tried. In all the groups the number of acquittals by jury is very small as compared with the number of prosecutions begun. On that basis the percentages are:

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Per cent of prosecutions resulting in acquittal by jury	1.6	1.6	2.3	1.2	2.0

It is evident that if the acquittals by jury were reduced by half it would do very little to swell the convictions, because out of the total prosecutions begun a very small percentage are tried by jury.

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Per cent of prosecutions resulting in jury trials	2.7	4.2	6.3	4.4	4.7

In fact, of the cases which reach the trial court a comparatively small per cent are tried by jury.

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Cases entering trial court per hundred prosecutions	30.1	45.5	44.1	33.3	82.6
Per cent tried by jury	9.1	9.5	14.7	13.4	5.7

The chief importance of unwarranted acquittals by juries is the psychological effect on actual and potential criminals. The sensational case, followed by an unjustifiable acquittal, has wide publicity, and encourages a well founded belief that law breaking is comparatively safe.

Improper acquittals are due to many causes. In part to the illegal practices of attorneys and to the intimidation of witnesses and jurors. The active trial judge, with the cooperation of the state's attorney, can do much to put a stop to such practices.

In many cases, if one may judge from listening to criminal trials, the jury is hopelessly confused by arguments of questions of law to them by counsel as permitted by the Illinois statute, and by the deadly written instructions which leave only one clear idea, that they must be sure beyond the shadow of a doubt as to the truth of a large number of facts before they can convict. One of the down state judges expressed the opinion that after the usual repetition and reiteration of instructions on reasonable doubt, it was surprising that jurors were ever sure of anything. Outside of Cook County the Illinois juries do about as well as could be expected. The problem of the jury in Chicago will be treated by other writers.

24. Found Insane. The number of defendants found insane by juries is small in all the groups outside of Milwaukee, varying from less than one per thousand cases to 1.5. The insanity defense has great publicity in a few homicide cases and creates the impression that a large number escape in that way.

The vexed problem of dealing with insanity and kindred defenses will be discussed by other writers.

25. Convictions by Court and by Jury. Convictions as the result of a trial furnish interesting figures for comparison with the acquittals (Table 5):

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Felony waived, tried by court and convicted	1.61	—	—	—	.21
Felony waived, acquitted by court	1.71	—	—	—	—

These figures need no particular comment. Few felony charges are waived in Milwaukee and so far as the survey discloses none in Illinois outside of Chicago-Cook County. In the latter group, this method eliminates a substantial part of the felony charges, and the acquittals and convictions on the misdemeanor charge are nearly equal, with a slight balance in favor of acquittals. No fault can be found with the court for the acquittals. Presumably on a fair trial the evidence did not satisfy the judge of the defendant's guilt. Whether the felony charge ought to have been waived in such a large proportion of cases is another matter. Where there was no

waiver, as in the other Illinois groups, the proportion of felony convictions was considerably increased. The responsibility is primarily on the state's attorney who has the power to waive the felony. The trial judge could discourage such waivers except in fairly clear cases.

Milwaukee presents striking figures for trials of felony by the court without a jury (Table 5):

Felony trials per hundred cases without a jury, exclusive of the abandonment cases	23.2
Acquitted	1.9
Convicted of lesser offense	.6
Convicted of felony charged	20.7

This is a conviction in 91 per cent of the cases tried by the court as compared with convictions in 47 per cent of the cases tried by jury. It might be suggested that the large number of trials without a jury in Milwaukee represented cases where guilty defendants took a chance on a trial by the judge instead of entering a plea of guilty in virtually a hopeless case. That may explain a part of the cases. But the pleas of guilty to a felony in Milwaukee are three times as great as the pleas of guilty to both felonies and misdemeanors in Chicago-Cook County. The result is probably due in part to the use of informations instead of indictments, thereby eliminating one source of delay and the tiring out of witnesses.

Convictions by jury run somewhat uniform (Table 5):

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Convicted of felony charged	.94	2.27	2.48	1.28	2.55
Convicted of lesser offense	.14	.27	.93	1.28	.10
Total convicted by jury	1.08	2.54	3.41	2.56	2.65

The per cent of cases tried by jury resulting in convictions is:

Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
41.7	60.2	53.6	57.1	56.3

The Chicago rate of 41 per cent of convictions in the cases tried by jury is low as compared with the average rate of 57 per cent in the other Illinois groups. The low conviction rate in Chicago is probably due to several causes. In a large city juries are not as satisfactory, and the difficulties of getting the witnesses are greater. Presumably for the same reasons the Milwaukee rate is not up to any of the Illinois groups, outside of Chicago.

The largest number of convictions in all the groups results from pleas of guilty.

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Pleas of guilty to offense charged	2.60	11.03	10.86	3.20	37.48
Pleas to lesser offenses	4.31	5.46	4.96	.64	.87
Total pleas of guilty (exclusive of felony waivers)	6.91	16.50	15.83	3.84	38.35

The great discrepancy between the pleas of guilty to felony in Chicago and the other groups, exclusive of Franklin-Williamson counties, is due in part to the extensive waiver of the felony charge in Chicago, and in part to the

fact that a much smaller number of cases reach the trial court because of the excessive elimination at the preliminary hearing and at the grand jury investigation.

The advantage in favor of Milwaukee is not so great when we take the proportion of the number of convictions on pleas of guilty to the number of cases that survived elimination at the preliminary examination and grand jury investigation and reached the trial court.

	Chicago and Cook County		Eight Urban Counties		Seven Semi-Urban Counties		Franklin and Williamson Counties		Milwaukee, Wis.	
Entering trial court..	30.1	100%	44.4	100%	43.1	100%	33.4	100%	82.6	100.%
Disposed of in various ways	23.2	77.1	27.9	63.0	27.3	63.0	29.6	89.0	44.3	54.0
Pleas of guilty (excl. of felony waivers)	6.9	22.9	16.5	37.0	15.8	37.0	3.8	11.0	38.3	46.0

On the basis of the number of cases that reached the trial court more than twice as many were disposed of on plea of guilty to felony in Milwaukee as in Chicago. The difference is probably due to two factors. In the Chicago-Cook County group the felony charge was waived in a large number of cases and the defendant allowed to plead guilty to a misdemeanor. In Milwaukee no pleas of guilty were accepted to a misdemeanor charge. If we add the pleas of guilty to a misdemeanor in Chicago, the percentage of convictions on plea of guilty becomes 39.5.

The other factor is probably the more speedy and vigorous prosecutions in Milwaukee leave little hope of wearing out the case, and guilty defendants conclude that it is better to throw themselves on the mercy of the court. The most significant single item in the Chicago-Cook County group, as well as the largest, is the number of cases in which the felony charge was waived and a plea of guilty to a misdemeanor accepted.

	Chicago and Cook County	Eight Urban Counties	Seven Semi-Urban Counties	Franklin and Williamson Counties	Milwaukee, Wis.
Felony waived and plea to misdemeanor	5.06	none	none	none	none

In round numbers fifty cases out of every three hundred indictments returned to the Criminal Court result in a plea of guilty to a misdemeanor. Every day such items as these appear in the papers:

Daily News, February 29, 1928

"CRIMINAL COURT."

"Willie Rose, murder (changed to manslaughter), sentenced to 1 to 14 years in the penitentiary; James Conlon and James Murphy, robbery (changed to petit larceny), sentenced to 1 year each in the Bridewell, by Judge Stanley Klarkowski.

"Harold Peterson, confidence game, sentenced to 1 to 10 years in the penitentiary; Jerry Zamp, confidence game, sentenced to 1 to 10 years in Pontiac reformatory, by Judge Otto Kerner.

"Mike Nudo, robbery (changed to grand larceny), sentenced to 1 to 10 years in Pontiac reformatory; Joseph Guzy and Andrew Pasturo, burglary (changed to petit larceny), sentenced to 1 year each in the Bridewell, by Judge John P. McGoorty."

Since this practice is limited to the Chicago area so far as the survey shows, it may fairly be assumed that a large proportion of these pleas do not represent real misdemeanors but rather an easy escape from punishment for felony. The responsibility must rest primarily on the prosecutor, who has the power to reduce the charge. The trial judge can only discourage the practice.

The writer has endeavored to point the probable explanation of the various figures. In many instances it is impossible to apportion responsibility between the prosecutor and the trial court. One thing is clear. In Chicago 70 per cent of the cases are eliminated before they reach the trial court. In the urban county group, 55.6 per cent. In the semi-urban group, 56.9 per cent. In the Franklin-Williamson group, 65.4 per cent. In Milwaukee, only 17.4 per cent. If we assume that the elimination in Milwaukee represents about the normal number that should be eliminated, then we are turning loose an undue number at the preliminary stage of the prosecution.

Of the cases reaching the trial court the convictions of the offense charged on trial and plea of guilty are:

In Chicago-Cook County	12.1%
In the urban counties	29.9%
In the semi-urban counties	31.0%
In Franklin and Williamson counties	14.6%
In Milwaukee	73.5%

A small number of those convicted of felony in Illinois take their cases up for appellate review, and a fraction obtain new trials. The results in appellate courts will be discussed by other writers. A considerable number of those convicted are placed on probation by the trial court, or are paroled after serving a fraction of the sentence. These problems will also be discussed in separate reports.

26. Continuances. Tables[1] have been prepared showing the number of continuances in the cases and the relation of continuances to the final disposition. Because of the varying intervals between terms of court, it is impossible to draw any satisfactory conclusion beyond the general one that delays are fatal to the prosecution. The cases promptly disposed of result in a greater proportion of convictions. The cases not disposed of promptly result in the greater number of dismissals and eliminations.

Besides regular continuances, granted on formal application or by consent, continuances are frequently obtained in Chicago by the simple expedient of failing to appear at the trial and forfeiting the bail bond, relying on the common practice of the courts to set aside the forfeiture on subsequent appearance with any sort of an excuse.

27. Bail Bonds in Cook County. The statistical record of felonies, made by the survey, included all the facts concerning bail bonds in the cases recorded. As in other states it was found that forfeiture of bail in the less urban communities is comparatively rare and the abuse of bail is restricted to highly urbanized districts. For that reason the discussion is limited to conditions in Cook County.

[1] See Chapter I, § 67, for the discussion of Time Elapsing in Procedure and Its Relation to Dispositions.

In the consideration of the following figures it should be borne in mind that they represent bail forfeitures in felony cases only, and that felony cases constitute, in Cook County, only a small proportion, about 20 per cent, of state criminal cases in which bail bonds may be given.

Incomplete records in some instances precluded our obtaining full information on the cases recorded; nevertheless, our data are sufficient to furnish a reliable index as to what is happening in the forfeiting of bail in Cook County.

In the municipal court in the City of Chicago, we obtained a record of 2,897 bonds given, of which number 295 or 10.18 per cent were forfeited. Of the bonds forfeited, 70 per cent were set aside; 26 per cent were still pending on *scire facias* proceedings, or records were incomplete; and only 4 per cent were reduced to judgments.

In the trial courts of Cook County, 1,677 bonds were recorded; of which number 240 or 14.31 per cent were forfeited. Of the bonds forfeited, 183 or 76 per cent were set aside; 16 per cent were either pending on *scire facias* proceedings or records as to the disposition were incomplete; and 8 per cent were reduced to judgments.

Combining the figures for the preliminary hearing and the trial court, we find that of 4,544 bonds given, 535 or 11.78 per cent are forfeited. Of those forfeited 72 per cent were set aside; 22 per cent were pending or records were incomplete; and 6 per cent were reduced to judgments.

28. *Same: Comparison with the City of St. Louis.*

In the City of St. Louis during a one year period, the percentage of bonds forfeited was 3.77. In contrast Cook County has a percentage of 11.78. Related to amounts rather than the number forfeited, the percentages are 2.05 for St. Louis and 10.21 for Cook County.

In the percentage of bond forfeitures set aside, St. Louis shows 57.77 and Cook County 72.57. In St. Louis the number of bond forfeitures reduced to judgment was not available, but the amount was. The percentage related to the amount was 15.24 in St. Louis, and 5.32 in Cook County.

29. *Same: The Numerical Importance of Bail Forfeitures.*

Compared to the total number of cases, a negligible percentage of cases go unpunished because of forfeited bail and a subsequent failure to apprehend. Of the 13,117 cases recorded in Cook County, only 68 in the preliminary hearing and 79 in the trial court, a total of 147, were not apprehended after having forfeited their bail; expressed in percentages, 1.12. This, however, is not the measure of the effect of forfeited bail. Every forfeiture means a delay of greater or lesser degree, with a corresponding advantage to the defendant and a disadvantage to the state. It is quite easy by means of bond forfeitures to delay a case sufficiently long to defeat it and no penalty ensues to either the bondsman or the defendant.

There are no statistics available as to the amounts actually collected. In fact, until 1927 no serious efforts were made to collect forfeiture judgments in Cook County.

In consequence the professional bondsman had a safe and lucrative

business, and the criminal with enough money to pay for the service never remained in jail to await his trial. He could delay the trial by ordinary continuances until the prosecution lost interest. Failing that, a bond forfeiture had no terrors, because it would be set aside in seven out of ten cases, and in the remote event of a judgment no unpleasant consequence would follow.

The courts were not responsible for the failure of the state's attorney to take any steps to collect the judgment. The courts were responsible for accepting bonds that were clearly uncollectible. Since 1926 the state's attorney of Cook County has taken steps to correct the bail bond farce. An investigation system has been inaugurated which ought to make it difficult for the irresponsible bondsman to qualify, and execution sales are becoming frequent.

30. Habeas Corpus. There has been much comment and criticism on the excessive use of the writ of habeas corpus in the Chicago area. The statistics are not available and hence we can only surmise as to the facts.

Under the Constitution and the statutes, the writ of habeas corpus is a writ of right which any prisoner may sue out to determine the legality of his imprisonment. The judge can not lawfully refuse the writ unless the application itself shows that the imprisonment is legal. The judges can not be blamed for issuing the writs, for it is their duty to do so. It is a matter of common knowledge that the police make spectacular raids from time to time and arrest numbers of persons without evidence on which to make a complaint to an examining magistrate. Such arrests are generally illegal and are followed promptly by wholesale liberation on writs of habeas corpus. In such cases the judge has no choice but to discharge the prisoner. Some of the judges have shown questionable zeal in issuing writs at all hours of the day or night and expediting the hearing before the police have had reasonable time to make a formal charge. It is to be regretted that such zeal is strangely lacking when it comes to the trial of the prisoner on a felony charge. The most serious abuse of habeas corpus arises when a judge of one court undertakes to set free a prisoner held under the judgment and process of a court of concurrent jurisdiction. This was illustrated in a recent case where a judge of one court undertook to pass on the commitment of a witness for contempt by a court of coordinate jurisdiction. In the Chapman case a prisoner serving a sentence for murder was liberated for a technical irregularity in the record of his conviction. The Supreme Court succeeded, in spite of many legal difficulties, in vacating the order of discharge, but not in restoring the convict to the penitentiary.

Such intolerable confusion will continue until the habeas corpus act is amended.

31. Conclusions. 1. That the prosecution in Illinois is unduly handicapped by the constitutional *requirement of an indictment* by the grand jury. The innocent citizen need not fear unfounded prosecution by information. If the state's attorney wished to prosecute him, he could easily obtain an indictment from a grand jury which he dominates.

It is not the difficulty of obtaining indictments, but the delay and consequent tiring out of witnesses called to attend repeated hearings, which

puts the prosecutor at a disadvantage as compared with the prosecutors in Michigan and Wisconsin where the information has largely supplanted the indictment.

2. That the prosecution in Illinois is at a disadvantage because felonies can not be *tried without a jury* even with the defendant's consent. The jury trial is a slow affair. Even though only a small per cent of the cases are tried by jury, the time of the court and the energies of the prosecutor are taken up with them, to the necessary delay of other cases.

3. That an excessive number of *felony charges are waived* in Chicago and the defendant permitted to plead guilty or stand trial on a mere misdemeanor.

4. That an excessive number of cases are dismissed on *nolle prosequi,* or for want of prosecution, or stricken from the docket.

5. That delays are too easily obtained either on a conventional application for a *continuance* or by a harmless *bond forfeiture.*

6. That the juries are distracted from their proper function of determining the facts by *arguments as to the law* which they are allowed to pass on.

7. That juries are confused by the type of *written instructions* commonly used in which the rule on reasonable doubt is repeated from five to twenty times.

8. That *bond forfeitures* are set aside without sufficient cause.

9. That attempts by one judge to review another's action by *habeas corpus* leads to intolerable confusion and abuse.

32. Recommendations. 1. That the legislature be asked to provide that there shall be *no grand jury* except when ordered by the court and that when no grand jury is ordered the prosecution of felony may be on information with such supplemental legislation as may be necessary to protect the defendant such as the right to demand preliminary examination. The constitutionality of such legislation authorizing prosecution of felonies by information could be tested in one or two cases without danger since the court could order grand juries in other cases until the matter was passed on by the Supreme Court.

2. That the legislature be asked to provide for a *waiver of a jury* and a trial by the court in felony cases. If there is doubt as to the constitutional validity of such legislation it could be tested in a single case.

3. That the judges be urged to discourage the practice of *waiving felony charges* except in cases where it clearly appears to the court that the waiver would result in substantial justice.

4. That the trial judges be urged to discourage the *dismissal* of cases on nolle prosequi or striking them from the docket except for sufficient cause.

5. That the legislature be asked to prohibit the *reading of statutes* and court decisions to the jury so as to avoid confusion and the distraction of their attention from the real issues of the case.

6. That the trial judges be urged to *frame their own instructions* to the jury, and to avoid unnecessary repetitions. This would not throw any considerable additional work on the judge since they could once and for all frame an appropriate instruction on the presumption of innocence and the

burden of proving the defendant's guilt beyond a reasonable doubt which could be used in all cases. In the more common crimes such as murder, robbery, etc., they could frame standard instructions that would be applicable to practically any case.

7. That the judges be urged to discourage the practice of setting aside *bond forfeitures* except on a clear showing of good faith and a meritorious excuse.

8. That the *habeas corpus* act be revised so as to prevent conflicts and confusion, and that the State be given an appeal from an order discharging a prisoner held under criminal process.

9. Much delay could be avoided if the *judges would examine the jury* with leave to counsel to supplement the examination within reasonable limits. A rule of court should be adopted to carry out this very desirable practice so as to obviate the tedious and protracted examination of jurors, which is so common at present.

CHAPTER IV

THE JURIES, IN FELONY CASES, IN COOK COUNTY

By

GUSTAVE F. FISCHER

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CHAPTER IV

THE JURIES, IN FELONY CASES, IN COOK COUNTY

1. *Foreword [by the President of the Association]*.

Ever since its organization in 1905, the Industrial Club has maintained a committee on Jury Service, which has continuously studied the subject and made reports at regular intervals in an effort to stimulate interest in jury service and to impress upon the membership of the Club the importance of performing jury duty.

When the Chicago Crime Commission was organized in 1919, it placed observers in every branch of the criminal court, who were required to make daily reports of the proceedings therein. Arrangements were made by the Commission and the committee, whereby the observers procured data on the details of jury service and included the information so obtained in their daily reports. In this way, for more than eight years there has been accumulated a mass of information on this subject, which has been available for use by the committee. It was but natural, therefore, that the committee composed as follows: Gustave F. Fischer, chairman; George A. Paddock, secretary; W. Rufus Abbott, Henry Beneke, Rush C. Butler, William F. Juergens, Marvin B. Pool, William H. Rehm, Edw. M. Skinner, and Silas H. Strawn; should be requested to prepare this report. Moreover, the members of the Industrial Club, in a very practical and public spirited way, have demonstrated their interest in the subject of Criminal Justice generally by contributing the sum of one hundred thousand dollars to defray the expenses of the entire survey.

This committee, not satisfied with the accumulated data already on hand, employed special observers, who were placed in the criminal courts during October and November, 1927, and made an additional study of records in the courts and the office of the jury commissioners, prepared transcripts of every detail of all jury trials, conducted private interviews with numerous officials and others concerned with the administration of the jury system, and sent out over ten thousand questionnaires to persons who had lately served on juries, to judges and other public officials, to lawyers and witnesses in criminal cases, to employers of large numbers of persons constantly serving on juries, and to many others specifically referred to in the report.

The report, therefore, is based upon comprehensive research and observation over a long period of time and on the long experience and rather unusual knowledge of those directing and preparing it. The findings, conclusions, and recommendations are the result of careful study and mature deliberation.

2. Relative Importance of Jury Trials.

In many of his recent addresses, the present State's Attorney (1928) of Cook County has said, "The main responsibility for any failures of justice which may have occurred in Cook County is upon the citizens themselves, because of their manifest unwillingness to accept jury service."

The records of criminal cases in Cook County hardly bear out this statement, however. Comparatively few of the thousands of cases which are commenced each year are ever prosecuted to a point where the jury is called upon to determine the guilt or innocence of the accused. This survey shows (Chapter I) that in the year 1926 there were 13,117 felony charges filed in Cook County.[1] Only 5,253 indictments were returned in those cases. Most of the others were disposed of through dismissal by, or at the instance of, the state's attorney.

Of the 5,253 cases in which indictments were filed, only 498 had been tried by juries at the time when the survey was completed in August, 1927. At that time there were still some cases pending, but, inasmuch as the longer felony cases are delayed the less likely they are to be tried, it is doubtful whether an inclusion of these cases would materially raise the percentage of cases tried. The survey, therefore, shows that only 3.8 per cent of all 1926 cases involving charges of felony ended in jury trials. Only 9.48 per cent of the indictments were tried by juries.

Although the jury, as judges of the law and facts, must in the last instance be held responsible for the adequate punishment of criminals, much depends upon the manner in which cases are presented to the jury. Efficient prosecution is absolutely essential to the punishment of crime. One important defect of the present administration is in the personnel of the state's attorney's office. Assistant state's attorneys are often young, inexperienced lawyers, who have received appointment for political favor rather than for their ability and integrity.

The system now employed in the preparation and trial of cases is also at fault. Assistant state's attorneys are commonly assigned to a single court room and take charge of all cases called in that room. Thus it frequently happens that cases are tried by attorneys who are utterly unacquainted with the evidence which they are to present and have had no opportunity to confer with witnesses until the day of the trial. The natural result of this practice is that prosecution is inefficient and unnecessary errors are committed. An assistant state's attorney should be assigned to each case upon its origin and should be held responsible for gathering the evidence, preparing the prosecution, and trying the case. Such a system would do much to eliminate the grounds upon which the state's attorney is frequently criticized; namely, that too many errors creep into the records, and that too many cases are compromised by permitting pleas of guilty of lesser crimes than those charged, followed by the assessment of wholly inadequate punishment and oftentimes by no punishment, as where the criminal is granted probation. It is wholly misleading to inveigh against "not guilty" verdicts by juries so long as the

[1] The figures quoted comprise felony charges filed in Cook County. Chapter VI, on Prosecutions, deals only with charges filed in the City of Chicago.

release of criminals by other means than acquittals by juries are in the ratio of eighteen to one, which is the record in Cook County.

It appears that under the present administration the only cases that are presented to juries in Cook County are those in which the defendant and the state's attorney are unable to strike a bargain, or those in which the crime is so shocking that nothing short of a jury trial will satisfy the public.

Notwithstanding the fact that in the recent failure of criminal law in Cook County juries have played a relatively unimportant part, the jury system is an important part of our judicial machinery. Under the administration of a diligent prosecutor a larger number of cases will be tried before juries and an adequate jury system will become a practical necessity. There is also a psychological factor which renders the jury system important, even under such lax prosecution as that which we have just experienced. Most of the cases that are tried by juries after the various weeding-out processes have taken place are cases of sufficient interest to the public to receive considerable publicity from the press. The public opinion of the whole process of judicial administration is largely determined by the results of these exceptional cases which reach jury trial. The outcome of those trials is, therefore, of immense psychological importance.

For these reasons a review of the operation of the jury system has been made, and is submitted together with suggestions for changes in the present jury system to the end that better and more satisfactory enforcement of the criminal laws of the state may be realized.

3. *Constitutional and Statutory Provisions.*

Under the Constitution of the State of Illinois, "The right of trial by jury as heretofore enjoyed shall remain inviolate."

The effect of this provision is that the right of trial by jury remains as it existed under the common law, which prescribed certain practices; the most important of which are:

(a) Twelve men must be impaneled;
(b) They must be impartial as between the accused and the public;
(c) They must be summoned from the vicinage or body of the county in which the crime is alleged to have been committed;
(d) They must concur unanimously in the verdict.

The State Constitution also provides that:

> "In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

There is some sentiment among both lawyers and laymen that the constitutional requirement of a unanimous verdict should be dispensed with in all criminal cases not punishable by death. However, it is clear that such a change in jury verdicts in civil cases should be tested out before it is tried in criminal cases. In 1912, the State of Ohio amended its constitution so as to permit verdicts in similar cases by a vote of nine to three. The present sentiment there as to the working of this change is sharply divided.

Under the statutes of Illinois the juries are made judges of both the fact and the law in criminal cases. In its adherence to this rule the State

of Illinois is almost alone. The rule is manifestly unsound: It imposes the duty of interpreting highly technical rules upon men of no technical training; it precludes all possibility of having the law applied consistently in every case and does much to prevent satisfactory review of cases on appeal; it subjects juries to undeserved criticism for blundering in a field which is strange to them; and it relieves the courts of responsibility for upholding the law.

By statute jurors in all counties of the state are required to be:

1. Inhabitants of the town or precinct, not exempt from serving on juries.
2. Of the age of 21 years and upwards and under 65 years of age.
3. In possession of the natural faculties and not infirm or decrepit.
4. Free from all legal exceptions, of fair character, of approved integrity, of sound judgment, well informed and able to understand the English language.

The statute exempts many classes from jury service. These exempt classes include many public officials, judges and clerks of courts, mail carriers, ministers of the Gospel, school teachers, physicians, pharmacists, policemen, firemen, embalmers, undertakers, and some others.

Under the present statutes only males are qualified to serve as jurymen, but the advent of women jurors seems to be inevitable although legislation to attain that end thus far has not been enacted. Suitable accommodations for female jurors in criminal cases have been provided for in a new Criminal Court Building.

The Jury Act of Illinois, of course, operates uniformly throughout the state, and the *modus operandi* which it provides for securing juries for the trial of persons charged with crime are ample. The method used in preparing the list from which juries are drawn differs in the County of Cook from the remainder of the state. The city of Chicago forms the largest part of Cook County. Because of its size, diversified industries and inhabitants, trial by jury in Cook County presents problems different from those existing in any other county of the state. The frequent complaints of miscarriage of justice in trials by jury, common in the County of Cook, do not prevail, to any serious degree at least, in other circuits of the state. Therefore, this survey of trial by jury has been confined largely to the County of Cook.

4. Administration in Cook County.

The present system of obtaining jurors in Cook County is founded on an Act of the General Assembly approved June 15, 1887, and amended by subsequent enactments. This Act provides for the appointment of a board of three jury commissioners. It requires them to prepare the jury list and describes the manner in which jurors shall be selected for service in the various courts.

The commissioners are appointed by a majority of the judges of the superior, circuit, county, and probate courts of the county. One commissioner is appointed each year to hold office for a term of three years. The successful operation of the jury system requires, above all, that the jury list shall be compiled without partiality or favoritism. This can be accom-

plished only by scrupulous discharge of the jury commissioners' duties. The Commission can easily abuse its powers; abuses are hard to detect and almost impossible to prove. Practically the only guarantee of complete jury lists is in the character of the persons serving on the Commission. The importance of carefully considered appointments should be kept constantly before the judges by whom selections are made.

The Act directs the jury commissioners to prepare a list every four years, containing the names of "all qualified electors" who are eligible for jury service, and to correct and supplement the list annually. This list is the jury list. The requirement that the jury list shall contain the names of all who are eligible for service is one that has embarrassed full administration of the Act. There is no one source from which either the names or the data necessary to compiling a complete list can be obtained. The Act should be amended to require a jury list composed of a specified minimum number of names, with suitable provisions for annual correction and alteration of the list.

Between the years 1897 and 1909 the jury commissioners used the poll lists in selecting names for the jury list. In 1909 the commissioners were judicially advised that they might use the Chicago City Directory instead of the registration lists. Since that time the jury commissioners have made up a list of "supposed electors" from the last available publications of the Chicago directory and from the poll lists of the parts of Cook County which lie outside of Chicago.

Neither the use of directories nor the use of poll lists is entirely satisfactory. Each source has advantages and disadvantages. The poll list is advantageous because all of the names which it contains are the names of electors; it is deficient in that it supplies only the names of registered electors and does not include names of qualified electors who have not registered. The principal advantages of using the city directory are that it supplies the names of many unregistered electors and that it enables the commissioners to avoid selecting the names of persons who are exempt by reason of their occupations. The disadvantages encountered in making up the jury list from the city directory are that the most recent (1923) edition is obsolete and that the directory does not indicate whether the names selected are the names of persons who are qualified to vote. In some respects both the directory and the poll lists are deficient. Neither shows whether the person whose name is selected is male or female, and it is impossible to determine from either source whether a prospective juror meets the statutory requirements as to literacy, age, or mental or physical condition.

The jury commissioners should be given greater latitude as to sources from which to choose electors for the jury list. The use of current membership lists of business, industrial, manufacturing, civic, charitable and social organizations would greatly facilitate the acquisition of a list of names and reliable addresses of electors qualified for jury service.

5. *Method of Determining Qualifications of Electors.* The qualifications of those whose names have been included in the jury list are ascertained from the answers given to a questionnaire sent out by the commissioners. The jury commissioners

supervise the examination of answered questionnaires and upon information which has been given they pass upon the eligibility of the persons by whom the answers are made.

This method is not entirely satisfactory. There are many statutory grounds for exemption, and if a reply shows the existence of one of these grounds exemption is ordinarily allowed without further inquiry. Occasional investigations into the truth of the answers would probably accomplish some improvement, particularly if the investigations were accompanied by newspaper publicity. In the following passage the statute provides for investigations of this kind, but the authority which it confers has never been exercised:

> "* * * the said jury commissioners shall also have power to summon electors to appear before them and to examine them, touching their qualifications for jury service, and each of said commissioners and their clerk and assistants provided for in this Act are hereby empowered to administer all oaths or affirmations required in the discharge of their official duties."

If the commission would personally examine all veniremen before being turned over to the court it would substantially improve the quality of juries.

6. *The Jury Box.* The commissioners are directed to select from time to time not less than 15,000 names from the jury list and to place cards bearing the names, ages, places of residence and occupations of the persons so selected in the jury box. In so far as it is possible to do so the commissioners are to select the names of persons who reside in different parts of the county and who represent diversified occupations.

7. *Drawing Petit Jurors.* Under the law the judges certify to their clerks of court the number of jurors which will be required in their respective courts. These orders are transmitted to the jury commissioners. The law requires that in filling the orders, at least two of the three jury commissioners and the chief clerk, or one commissioner, the chief clerk, and a judge, shall be present when the jurors' names are drawn from the jury box. In the absence of the chief clerk one of the other clerks may be deputized to act in his stead. The deputy clerk of court by whom the certified order for jurors is presented draws out of the jury box and counts the number of cards selected. His count is verified by one of the commissioners. The work of preparing cards and depositing them in the jury box seems to be conscientiously done, as does the drawing of the jurors ordered for the courts.

At the end of each term of court the jury commissioners ascertain the names of all persons who have served as jurors during the term. These names are checked on the jury list and are not again placed in the jury box until after all others on the list have served or have been found to be disqualified or exempt. The names of those who are qualified to serve and are not exempt, but have been excused, are returned to the jury box. A juror may claim exemption if summoned within a year of his last service.

8. Selection of Grand Jurors. From the inception of the jury commissioners' office in 1897 up to April, 1921, the jury commissioners all followed the same method of selecting jurors for grand jury service. From the replies received to their questionnaires the commissioners would select the names of persons who seemed to possess special qualifications for grand jury service. The names of the persons so selected would be deposited in the grand jury box.

In April, 1921, the state's attorney advised the jury commissioners that they were not selecting grand jurors in accordance with the statute, and instructed them to return all of the names in the grand jury box to the petit jury box and to refill the grand jury box by an indiscriminate selection from the petit jury box. The commissioners were also advised that after a panel of grand jurors had been drawn from the grand jury box a like number of names should be drawn from the petit jury box and deposited in the grand jury box. This method is now followed.

Since the adoption of the present method the grand juries frequently have been mediocre and have not had the mental capacity required for satisfactory service of this kind. Before 1921, the available grand jury was constituted of better and more intelligent citizens. The jury commissioners should again be vested with discretion in the selection of grand jurors.

9. Personnel of Juries. Some of the most important defects in the jury system manifest themselves after the jurors have been summoned for service. One of the principal reasons which has been advanced for the failure of proper and adequate punishment of criminals by juries is that juries are commonly constituted of citizens lacking in experience and intelligence, who are oftentimes corrupt and submissive to influence, sinister and otherwise. The circumstances to which this condition is attributed are:

1. The average, intelligent, eligible, citizen seeks to evade jury service.
2. Citizens best qualified by experience, training, and environment to bring in impartial verdicts are the type most often excused.

The main reasons for evasion of jury service are:

(a) Insufficient time is allowed between date of service of summons and date required for appearing in court.

(b) The idea that actual service is, in the eyes of fellow citizens, an exhibition of weakness in being unable to wield sufficient influence to be excused from service.

(c) Objectionable treatment by court officials.

(d) Loss and waste of time and pecuniary injury.

(e) Fear of injury to self and family at the hands of organized criminals, enhanced by newspaper publicity of the names and addresses of jurors and their families.

(f) Inadequate provisions for the comfort of jurors.

(g) Inability of citizens to select time of service.

10. Jury Service Statistics. During the course of our survey an analysis was made of a list of 1,333 names of men who were called for jury service during two months of 1927. The following Table 1 shows the occupations in which these men were engaged

and the number and percentage of those who served from each class:

TABLE 1. JURY SERVICE CLASSIFIED BY OCCUPATION

Occupation	Called		Served	
	Number	Per Cent	Number	Per Cent
Accountants	63	4.72	34	2.55
Appraisers	10	.75	3	.23
Brokers	18	1.35	6	.45
Buyers	24	1.80	8	.60
Chauffeurs	53	3.98	20	1.50
Clerks	134	10.05	73	5.48
Contractors	32	2.40	11	.83
Credit men	10	.75	4	.30
Executives	59	4.43	18	1.35
Farmers	14	1.05	8	.60
Foremen	51	3.83	21	1.58
Laborers	16	1.20	9	.67
Professions	64	4.80	29	2.17
Railroad men	24	1.80	9	.67
Realtors	30	2.25	13	.97
Retailers, etc.	97	7.28	30	2.25
Salesmen	263	19.73	85	6.38
Superintendents and managers	120	9.00	45	3.37
Tradesmen	242	18.15	99	7.43
Others	9	.68	2	.15
Total	1,333	100.00	527	39.53

The showing made by the above table that about 40 per cent of those summoned served, corresponds quite closely to the average figures taken from the jury commissioners' report for the last fifteen years. It is also representative of the experience of the entire year 1927.

During the year 1927, 14,300 men were drawn for jury service in the criminal court. One thousand nine hundred fourteen (over 13 per cent) of them were not found and could not be served with summons; 578 (about 4 per cent) were not summoned because not needed; and 61 were found to be exempt.

In 1927 the courts excused almost as many jurors as they retained for service. Out of the 14,300 who were drawn only 5,448 (38 per cent) served and 5,111 (35.74 per cent) were excused.

It is the practice of the jury commissioners to furnish the judges with reports showing the jury service records of the men on their venires. In October and November of 1927, 2,145 persons were drawn for service in the criminal court; 770 of them had been excused previously one or more times; 37 had obtained five or more excuses; and one of them had been excused ten times. The judges, persisting in their leniency, again excused 17 of the 37 who had been excused five times, and the man who had already avoided service ten times was again allowed to escape service. These conditions are generally known and justly create dissatisfaction on the part of those who are retained for service, as well as the general public.

One of the significant facts brought out by the survey was that 1,188 (over 8 per cent) of the 14,300 men drawn for jury service during 1927 did not appear in response to the summons with which they were served. Prob-

ably some of these were not served in due time, but many wilfully disregarded the summons. The processes of the court afford an efficient remedy for this condition. Fines for contempt and writs of attachment, if given newspaper publicity, would do much toward creating greater respect for jury summons and more prompt obedience thereto.

A printed booklet should be given to each juror at the time he is examined or notified to report for jury service, which should contain a non-technical explanation of:

1. The obligation to respond to summons, and where and to whom he should report for service, and the penalty for not doing so.
2. The nature of the work expected of him.
3. The place it has in the process of justice.
4. What the juryman's duties are in the criminal and civil sides of the court.
5. The period during which he must serve.
6. The fee to which he is entitled.
7. The hours of service and housing accommodations.

11. Excessive Drafts and Excuses.

Every year thousands of men are called to qualify for jury service. Of each thousand who respond and qualify, hundreds are compelled to report for jury service every day during a considerable period but never serve on a case. For this the community pays. Men on venires are paid for every day they are in attendance. The money paid is often not a complete recompense for the time they lose, and there is an absolute economic loss. Many a citizen becomes annoyed at the prospect of jury service, not because he is unwilling to serve, but because he fears that he will be haled into one court room after another from day to day at a financial sacrifice, without having an opportunity of serving in any case.

The waste of much time and expense to individual jurors and public officials can be avoided by reducing the number of jurors in each venire. At present sixty-five men are called for each judge for each two weeks' period of service. This number is excessive; it requires a needless number of jurors to respond because only about twenty-five of these men are retained. The system presents great opportunities for the exercise of political influence on the part of the sheriff or his deputy, the bailiff, and the judge, in excusing jurors from service. We recommend that the venire be reduced about 33⅓ per cent.

12. Length of Jury Service.

Statistics prepared in 1922 under conditions similar to those of today show that very few jurymen serve the full time for which they are summoned. They show that of 6,166 who served in the criminal court, the average number of days served by each was seven. Forty-one per cent of the jurors served from 1 to 5 days; 46 per cent from 5 to 10 days; 11 per cent from 10 to 15 days; and only 2 per cent served for longer than 15 days. These figures plainly indicate that under present conditions the average man need not fear a term of service. They show that if jurors served for the full period contemplated by the statute, it would be possible to provide sufficient

jurymen from much smaller venires than are summoned under the present wasteful method.

13. Intimidation of Jurors.

The case of *People vs. Lewis,* wherein the defendant was charged with murder, tried in the Criminal Court of Cook County in November, 1927, served well to illustrate some of the weaknesses in our administration of the jury system. It was a sensational case, and wide publicity was given to newspaper articles tending to convince the public that the trial would be long and bitterly contested and that danger to jurymen and their families might result from serving on this case. A brief statement of the facts in that case will not be amiss.

The evidence showed that on August 26, 1927, a group of about sixty junk men were gathered in a yard at Roosevelt Road and Washtenaw Avenue when some fifteen men, said to be led by the defendant, Harry J. ("Lefty") Lewis, rushed in. These men proceeded to slug, choke, and beat the peddlers. Someone fired shots and the invaders fled. When the excitement subsided Max Braverman was found on the ground, fatally wounded. An investigation by the police developed that Lewis, said to be a business agent of the Truck Drivers' and Helpers' Union, for eleven months had been attempting to induce various junk men to join a new junk peddlers' union. Prior to the day of the murder he and a smaller group had invaded the junk yard but had been driven away by a hail of stones. On the day of the murder he had returned with reinforcements and when Braverman again refused to join the new organization, attacked the peddler, and Braverman was shot.

On September 9, 1927, Lewis and others were indicted by the Cook County Grand Jury on a charge of murder. Lewis was tried separately. Immediately after the indictments were filed, witnesses began to report to the state's attorney that threats against their lives were being made over the telephone. Later, the home of a state's witness was bombed while he and members of his family were asleep. Later still, a drug store said to be owned by a deputy coroner was burned as a result of an explosion, which was laid to the friends of the defendant as a reprisal for the part the deputy coroner took in the coroner's inquest. The threats, bombing and burning caused the state's attorney to request that the trial of the case be advanced. The request was granted over the objections of Lewis' attorney. Each of the state's witnesses was given a police guard. The trial started on October 7, 1927, and the selection of a jury was not completed until November 3.

A total of 1,350 jurymen was summoned for service in the case. Of that number, 178 were returned "not found"; 192 were served but did not answer the summons; 4 were reported dead; 236 excused; 40 were out of town; and 5 were sick. This made a total of 655 prospective jurors who did not appear in the box for questioning. Six hundred and ninety-five who were called appeared, of whom 646 passed through the jury box before the necessary 12 were selected to hear the evidence. The other 37 were waiting to be called when the jury was completed. Out of 646 who passed through the jury box, 163 were excused because they claimed conscientious scruples against the death penalty; 386 were excused because they had a fixed opinion as to the guilt or innocence of the accused; 65 were excused by agreement

of counsel; and 32 were peremptorily challenged—16 by the State and 16 by the defense.

The trial continued until November 18, 1927, on which date, after a deliberation of about six hours, the jury acquitted the defendant. The defendant was acquitted in the face of the testimony of eight eye-witnesses that the defendant shot the deceased in the back while the deceased was running away. The view that the verdict would have been different if the jury had consisted of representative citizens is generally accepted. Only one out of every 112 men drawn by the jury commissioners was accepted for service, and it took nearly four weeks to select the jury. This caused not only enormous expense and loss of time, but the jury finally accepted consisted of "what was left." And there was general indignation at the verdict.

This case is cited as an illustration of: (1) the difficulties experienced in selecting a jury under the present practice; (2) the tendency of representative citizens to evade jury service by subterfuge; (3) the great advantage of the defendant which results from the elimination of representative citizens from the jury; and (4) the necessity for the law enforcing agencies in the City of Chicago to assure representative citizens of protection from personal injury or property damage in cases of this kind, if they will agree to serve as jurors.

Why would not representative citizens resort in many instances to little less than perjury to escape service? The bombing of the home of a state's witness, the explosion in the building of the deputy coroner, and the threats against other witnesses and their families were doubtless well known by every prospective juror. The daily press contained column after column of comments upon the coming trial, and freely predicted that the trial would probably last for weeks and that other bombings would take place. During the first days of the trial and before the selection of the jury had fairly started, complaints were made of threats against witnesses and their families in the corridors of the Criminal Court Building. Thus it was impressed upon every prospective juror that if he were accepted he probably would be locked up for weeks and perhaps months, deprived of contact with his family and business, and that he might suffer the fate of the witness who had a bomb laid at his door.

The juror would be fully justified in those fears. No one had been apprehended and punished for the previous acts of intimidation in the same case, and it is a fact well known to the average person that bombing in the City of Chicago is not only very popular, but also one of the safest forms of criminal violence. Seldom, indeed, is anyone convicted of the offense. Under these circumstances can one be blamed who, simply by claiming to be opposed to capital punishment, escapes all such inconvenience and danger? Except for those who may be friendly to the defendant and deliberately seek to serve, only persons of exceptional courage and patriotism, or unusual stupidity or ignorance, would be likely to voluntarily accept service as a juryman.

The present situation is one that strikes at the foundation of our Government. The existence of any political body must depend upon its power to erect and maintain adequate machinery with which to put its laws into

effect. The Braverman case demonstrates how far our administration has broken down. If the jury system is to be continued as a part of our law, the average citizen must be convinced of the ability and willingness of the state to protect those who engage in jury service.

14. Public Sentiment as to Jury Service. In 1927 a questionnaire was sent out in an effort to take the sense of the community upon certain aspects of the problems presented by the jury system. These questionnaires were sent to the following groups and numbers of persons:

All judges and other county and city officials	2,300
Officers and directors of principal banks	913
All jurymen who served during September and October, 1927	1,500
Officers of various labor organizations	450
Complaining witnesses in criminal cases	500
Retired police officers	990
Leaders in political organizations	50
Chicago lawyers	3,300
Business men not otherwise classified	575

Among jurors who had served in criminal trials an inquiry was made concerning the effectiveness of the instructions which had been given them. Many expressed the opinion that instructions seemed to be prepared and given as a mere matter of form. They were generally not regarded as being either binding upon the jury or helpful to them. The artificial language in which instructions are now couched is the result of years of technical elaboration and refinement under decisions of the Supreme Court. It is far from clear, and can be held largely responsible for the bewilderment of juries. The flexibility of the jury system which has enabled juries to relieve the rigidity of the criminal law by bringing common sense to bear upon each individual case has been one of the most desirable qualities of the system. We do not propose to sacrifice this aspect of jury trials by binding the jury with explicit directions, but we submit that the scheme of instructing juries upon the law could be made to serve the valuable end for which it was intended if instructions were to be drawn for the purpose of actually assisting the jury as well as for the purpose of making a record.

In this connection it is pertinent to notice that the survey showed that both laymen and lawyers favored oral instructions rather than the written instructions, which are now in use.

The replies which were received to the questionnaire also favored changing the statute to permit prospective jurors to select the times of year in which they are best able to serve. At present there is no way in which one can be selected for service at a season of the year when he can give up two weeks or more of his time with the least pecuniary loss. At certain times of the year it might be ruinous for a businessman to absent himself from his business, and even the services of mechanics, laborers, and clerks are in greater demand in some seasons than at others. Under the present system many citizens engaged in seasonable occupations will make every effort to avoid jury service at one time, whereas during the time when their occupations are not pressing they would be glad to serve and would find jury duty interesting and enlightening. It is believed that if prospective jurors were permitted to designate periods in which they would prefer to serve,

there might be economies and better types of juries would be obtainable.

The questionnaire sought opinions and criticisms concerning impressions which court officials made upon the minds of jurors. Inquiries were made respecting the manner of serving summons, the reception accorded to those summoned, and the treatment of jurors by court attendants and attorneys. In the following pages we have summarized the results of a study of the answers which were received.

Deputy sheriff's frequently serve jury summons by leaving them in a mail box or under the door of the juror's supposed residence. Probably many of the summons which are served in this way never reach the persons to whom they are directed. It is certain that the summons is often not received in time to enable the man to appear in court. This manner of service undoubtedly accounts for some of the comparatively large numbers who fail to respond to summons. We can see no advantage which the present system has that would not be preserved if summons were sent by registered mail, and recommend that such service be adopted.

The first impressions received by those responding to jury summons are not calculated to create a feeling of importance or dignity on the part of those summoned. Many wander about the court rooms for hours before finally locating the place where they are wanted. They are often herded together in unattractive surroundings. The attitude of those who take charge of them tends to make jurors feel that jury service is of no particular importance. We cannot expect men to approach their duty with seriousness and a sense of responsibility if the officials they meet do not themselves have such a feeling.

Those summoned should be directed to and received with ceremony in a separate room set apart for them. There should be impressed upon the jurymen the fact that they have come together for an important purpose, which is recognized by all of those with whom they come in contact.

The intelligent citizen called for jury service undergoes an experience which rarely gives him a favorable impression of our courts. He sees how easy it is for more than half of those summoned to escape serving. He sees bailiffs of courts assemble groups of jurors in an antechamber of the court room and excuse a considerable number. His impression is that these are men with "pull" or "influence," and his impression is correct. Investigation has shown that the system is loose, that it is possible for men to be excused by court attaches who have no authority so to act, and to return on the day on which the term of court closes to obtain their vouchers. There is a wide-spread traffic in jury excuses, many of which are made without personal knowledge on the part of the judge as to the nature of the excuse. The intelligent citizen notices, too, that the bailiff calls the names of many men who do not even answer. If he inquires, he finds that they did not appear in court at all and that they were excused at the request of an influential politician or the judge, or in some other manner equally irregular.

As long as judges permit the practice of excusing men who have not appeared in open court, the door is wide open for the preservation of the present practices.

Expressions of opinion as to the treatment of jurors by attorneys are to the effect that they are in varying degrees autocratic, arbitrary, and

brusque; some of them are tricky, others insulting, discourteous, disrespectful, and sarcastic, and still others offend by being too familiar. Complaint is made that lawyers are too prone to use technical expressions and are wasteful of time. A good many of those answering the questionnaire say the lawyers sometimes make the juror feel as though he were the criminal on trial, with the result that his mind is prejudiced long before any evidence is introduced and this prejudice is carried out in the jury room and reflected in the verdict returned.

The right of counsel to examine each juror touching his qualifications and fitness is not questioned, but a change of practice which would permit the court to make the preliminary examination of the juror and then preside over and direct further examination by counsel would result in the conservation of much time, and in the formation of a better opinion on the part of the juror of the importance and efficacy of the law enforcing agencies. The judge can in this manner expedite the selection of a jury without committing error prejudicial to either the people or the defendant.

Of the many opinions solicited as to the attitude of judges during trial, only 40 per cent were favorable. The remaining 60 per cent were about equally divided between those who made unfavorable comment and those who expressed no opinion at all. Unfavorable answers to these questions carry an element of personal criticism in which many persons are reluctant to indulge. The result, therefore, is rather significant. The only remedy lies in the personal efforts of the judges. Judges should ever be mindful of the fact that jurors are there to form, and really do form, an important part of the court; that as such they are entitled to courteous treatment and respectful consideration not only by the judge but by everyone in his court. The judges must conduct the proceedings in the courts with dignity and dispatch and be as mindful of the use of the time of the jurors as of their own.

Many jurors who have recently served were questioned concerning their impressions of the general atmosphere in the court room. The replies were unfavorable. This is unfortunate, for juries form a direct contact between the average citizen and the courts. The public conception of the court is gained from jurors. It is to be deeply regretted that some of the courts in Cook County have created a condition which does not impress these men with the dignity of our courts, the majesty of the law, or the certainty of justice. The court, viewed through the eyes of the average juror in Cook County, is loosely organized, poorly administered, and ineffective in results. The remedy for this condition also lies largely within the powers of the judges.

The efficiency of the jury's work depends somewhat upon the physical conditions which surround it. There is no doubt that criminal juries are now subjected to unnecessary hardships in the present quarters of the criminal court, which are inadequate in many respects. A detailed discussion of these conditions is omitted, however, because they will soon be removed when the court is installed in the new Criminal Court-house, which is to be completed in 1929.

From many interviews and long observation the conclusion is inevitable that most juries do not debate the cases on which they are sitting and few

jurors have opinions of their own. Undoubtedly, there are many compromise verdicts which are controlled by the wrong-minded jurors as often as by the intelligent and just. A partial corrective will be found in the measures recommended for raising the quality of juries. Further improvement could be accomplished if the jurors were given an understanding of their duties before hearing the evidence, and if greater pains were taken to put the case before them in an orderly and intelligible manner.

The answers to the questionnaires contain positive statements that there are dishonest bailiffs in the courts, who are under the influence of the lawyers representing criminals. In order to insure a good response to the questionnaire the identity of the citizen making the reply was not sought. It is therefore impossible to trace the statements to their source; nevertheless, the fact remains that under present conditions opportunities for reaching jurors are numerous. Many of the possibilities for tampering with juries will be eliminated by the appointments of the new Criminal Court Building. The exercise of care in the selection and control of court attaches who come in contact with jurors will remove other sources of difficulty.

The survey has demonstrated conclusively that there is a very decided tendency on the part of citizens who are most capable of making just and intelligent decisions as jurymen to evade this duty. Under the conditions already mentioned it is futile to lay at their doors all the blame for failures of justice and breakdown of law enforcement in Cook County. Rather, it is upon the officials themselves who are so unmindful of the sacrifices constantly being made by jurymen; who are so wasteful of the time of busy men; who compromise with criminals and breed in them a contempt for law; and who are so impotent in the face of threats and intimidation of jurymen that those called for service cannot depend upon the State to protect them from the threatened reprisals of criminals.

Recent developments point to an awakening of the people to these conditions and this should react favorably upon those in authority and lead to steps for the correction of many administrative evils. If this should fortunately become true, citizens may be inspired to more faithful performance of this important public service. To this end every organization of citizens should become interested in arousing the public conscience on the subject.

A juryman does his work without a uniform or military music, and in the quiet and monotony of routine peace time pursuits instead of in the excitement of war, but he is none the less a soldier. He renders a public service of paramount importance, usually at a sacrifice of time and money and occasionally at considerable risk of personal injury or property damage. He is entitled to protection while serving and his work should be regarded with the respect it deserves. Given such conditions, the average citizen will be found as willing to serve on a jury as he is to perform any other civic duty.

15. Summary of Findings.

1. Only about five hundred out of a total of thirteen thousand felony charges filed in 1926 were tried by juries, and about fifty per cent resulted in acquittals. It is, therefore, plain that the results of jury trials, while of

psychological importance in determining public opinion upon the whole process of judicial administration, is *relatively unimportant* so far as the number of cases disposed of is concerned. Assuming that each acquittal by jury is a failure of justice, which of course is not the fact, this would still account for only two per cent of all felony charges filed.

2. The administration of criminal justice will be better promoted by *increasing the minimum age limit* of jurors from twenty-one years to twenty-five years. It is probable also that women will be found as well qualified for jury service as men.

3. The successful operation of the jury system requires above all, that the *jury lists* shall be compiled *without partiality or favoritism.* Practically the only guaranty of such jury lists is in the character of the jury commissioners. The importance of proper selection of such commissioners by the judges is of the highest importance.

4. The present method of *selecting jury lists* in the City of Chicago from an obsolete city directory published in 1923 is unsatisfactory and wasteful of time and money. The use of current membership lists of business, industrial, manufacturing, civic, charitable and social organizations (of which there are over 1,000 in Chicago) and the list of registered voters in the County outside of Chicago, would be a great improvement in acquiring names and reliable addresses of electors qualified for jury service.

5. The jury commissioners should *personally examine* all electors as to their qualifications for jury service; thus saving much time of the courts and lawyers. The jury commissioners are hampered in the discharge of this duty by inadequate appropriations.

6. The *excusing from jury service* of those drawn for such service, purely as favors, and for political reasons, is a great abuse. It necessitates a drawing of an excessive number of prospective jurors, about fifty per cent more than are necessary, and thus wastes public money and the time of the courts and jurors. This results also in stripping the jury list of the more intelligent men; and in destroying the morale of those who are required to serve.

Some of the facts disclosed by the survey and forming the basis for these conclusions are:

During 1927, 14,300 men were drawn for jury service in Cook county; 38 per cent were accepted for service, 35.74 per cent were excused.

Of the 14,300 men drawn for jury service during 1927, 1,188, or over 8 per cent, ignored the summons. There is no record of any action taken by the court to enforce their attendance.

A sample count was taken of jurors drawn in October and November, 1927, in which period 2,145 persons were drawn for service in the criminal court; 770 of them had been previously excused one or more times; 37 had obtained five or more excuses; and 1 had been excused ten times. The judges, persisting in their leniency, excused 17 of the 37 who had been excused five times; and the man who had already avoided service ten times was again excused.

The average number of days served by each juror accepted is 7; 41 per cent served from 1 to 5 days; 46 per cent from 5 to 10 days; 11 per cent from 10 to 15 days; and only 2 per cent served longer than 15 days.

In the Lewis Braverman case, 1,350 jurymen were summoned; 646 passed through the box before the 12 were selected; 163 were excused because they claimed conscientious scruples against the death penalty; 386 because of alleged fixed opinions as to guilt. Many of these disqualifying answers were obviously prompted through fear of serving and their belief that the law enforcing officials were unwilling or unable to protect them. The defendant was acquitted in the face of positive and convincing evidence of guilt.

7. A questionnaire was sent to ten thousand citizens of Cook County, consisting of public officials, bankers, officers of labor organizations, retired police officers, leaders in political organizations, lawyers, a diversified list of business men, complaining witnesses in criminal cases, and to fifteen hundred jurymen who actually served in the criminal courts during October and November, 1927, from which the following information and opinions were obtained, as to *objections to jury service:*

Written instructions given to jurymen by the court are not regarded as being either binding upon the jury or helpful to them, but tending rather to bewilder and confuse the jury. Both laymen and lawyers favored oral instructions over the present practice.

The statute requiring the jury to pass upon the law as well as the facts should be repealed because the jurymen are not qualified to pass upon questions of law.

Jurors should be permitted to select the times of year in which they are best able to serve, which would result in economies and obtaining better types of juries.

The practice of deputy sheriffs in serving jury summons by leaving them in a mail box or under the door of the juror's supposed residence would be improved upon if the summons were sent by registered mail.

Many jurors wander about the court rooms for hours before finally locating the place where they are wanted, and are often herded together in unattractive surroundings. The attitude of those who take charge of the jurors leads to a feeling that jury service is of no particular importance. The experience of the intelligent citizens called for jury service provokes a decidedly unfavorable impression of our courts. Bailiffs of courts assemble groups of jurors in an ante-chamber of the court room and themselves excuse a considerable number, leaving the impression with the others that those excused have a "pull" or influence, and this impression is usually correct. It is noted also that many of the jurors whose names are called do not even answer and one is forced to the conclusion either that the juror has ignored the summons or that he has been excused without appearing, in some irregular manner.

Expressions of opinion as to the treatment of jurors by attorneys are to the effect, that they are sometimes autocratic, arbitrary, brusque, tricky, insulting, discourteous, disrespectful, sarcastic, familiar, prone to use technical expressions, and are wasters of time; that many times the juror is made to feel as though he were the criminal on trial, prejudicing his mind and influencing his verdict.

Of the many opinions solicited as to the attitude of judges during the trial, only 40 per cent were favorable; the remaining 60 per cent were about equally divided between those who made unfavorable comment and those who expressed no opinion at all. The result is rather significant when the fact is borne in mind that unfavorable answers to these questions carry an element of personal criticism in which many persons would be reluctant to indulge.

Jurors who have recently served were questioned concerning their impressions of the general atmosphere in the court room and their replies were unfavorable, indicating that in the opinion of the average juror in Cook county the courts are loosely organized, poorly administered, and ineffective in results.

The answers to the questionnaires contained positive statements that there are dishonest bailiffs in the courts, who are under the influence of the lawyers representing the criminals. In order to insure a good response to the questionnaire, the identity of the citizen making the reply was not sought. It is, therefore, impossible to trace the statements to their sources. The survey, however, shows conclusively that under present conditions opportunities for reaching jurors are numerous.

It is suggested by many of the jurors who have recently served, that each juror summoned for jury service be given a printed booklet containing a non-technical explanation of where and to whom he should report for service, the nature of the work expected of him, the dignity of the service he is rendering to the state, the period which he will probably be required to serve, the fee to which he will be entitled, and the hours of service and housing accommodations.

8. The survey finds that the *personnel of the state's attorney's office* is inadequate. Assistant state's attorneys are often young, inexperienced lawyers, appointed for political favor rather than for their ability and integrity. The system is also at fault. These men frequently are required to try cases with which they are utterly unacquainted, and have had no opportunity to confer with witnesses until the day of the trial. This naturally results in poor prosecution and many unnecessary errors are committed.

9. It is found that from the time the Jury Commission was created in 1897 until April, 1921, the jury commissioners selected persons for the *grand jury* box who were especially qualified for that important service. On the latter date the commissioners were instructed by the present state's attorney to discontinue this practice and in the future to draw grand jurors indiscriminately from the petit jury list. This has reduced the intelligence standard of grand juries. The survey finds that for this important service the members should be picked men, selected with discrimination for their intelligence, character, and permanency of residence.

16. Recommendations.

1. *Jury lists* should consist of a specified number of names, with suitable provisions for annual correction and revision. The jury commissioners should have greater latitude as to sources from which to choose electors for the list, such as current membership lists of business, industrial, manufacturing, civic, charitable, and social organizations.

2. *Jury commissioners* should personally examine electors as to their qualifications for jury service and the County Board should appropriate sufficient funds to enable this to be done.

3. The jury commissioners should return to the former practice of selecting names of men for *grand jury* service of those whom they consider particularly well qualified by intelligence, character, ability, and permanency of residence.

4. Repeal that provision of the Jury Commissioners' Act empowering them, with the approval of the majority of the judges, to appoint *deputy jury commissioners* in each voting precinct.

5. Increase the *minimum age* limit of electors to qualify for jury service from twenty-one years to twenty-five years.

6. Electors should be permitted to *select two or more terms of court* when they can most conveniently serve.

7. Provisions should be made for *term boxes* in addition to the main and grand jury box.

8. Not less than *eight thousand names* should be maintained in the main box and in the current term box, and five hundred names in the grand jury box at all times. The names of jurors who have served should not again be drawn as long as it is practicable to select others who may be qualified for service.

9. Judges should *reduce the number of jurors drawn* by one-third and grant excuses only to those who in open court present just grounds for being excused.

10. The practice of some of the judges to *delegate* to bailiffs and other court attaches the power to *excuse jurors* without hearing should be discontinued.

11. Jurors who *ignore summons* should be cited.

12. Citizens drawn for jury service should be furnished, when summoned, a *printed list of instructions,* informing them where to go, the prospective length of service, amount of fees, nature of their duties, etc.

13. *Judges* should assume the *right to examine* jurors on *voir dire* and use the power vested in them to select a jury without unnecessary delay.

14. Citizens called for jury service should be made to feel that the whole power of the state will be utilized to *protect them from personal harm* while in the performance of their duties. In no other way can the sanctity and integrity of jury trials, and effectiveness-of criminal law administration be restored in this community.

CHAPTER V

THE PROSECUTOR (Outside of Chicago) IN FELONY CASES

By

WILLIAM D. KNIGHT

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CHAPTER V

THE PROSECUTOR (OUTSIDE OF CHICAGO) IN FELONY CASES

1. *The State's Attorney and His Client, the People.*

Aside from his statutory duties as attorney for the county and for county officers, the client of the state's attorney is the State of Illinois. This fact cannot be too frequently emphasized. The analogy of the relations between a private client and his lawyer is quite applicable to the duties and responsibilities of the state's attorney to that collective client—the People. The "People," through their representatives, make laws to regulate the conduct of each member; they provide courts for hearing cases, they provide penalties for the breaking of law; but for the proper presentation of the cases involving these laws in court, and for the protection of the multitude of interests in which the public is involved, the "People" must depend upon their chosen attorney.

And, the State or the people of the State in their collective capacity constitutes a peculiarly helpless and dependent client. Laws do not enforce themselves; someone must invoke them; and when they are invoked in criminal cases and these cases come to be matters of court action, the interests of the public must be conserved. The "Public" has no effective way of watching its interests. It can exercise little "pressure"; it can only rather helplessly look on while every private interest actively and constantly seeks its own ends. It is an old adage that everybody's business is nobody's business, but in criminal matters in the courts of Illinois it is not true. "Everybody's business" there is the state's attorney's business. He must see that the public is represented. He must give it eyes, ears and a voice. He must represent it in and out of court and serve it with all of his ability, subject to the high ethical considerations always, that are imposed upon the relationship of a private client to his counsel. In this light, and with this standard of measurement, we shall in this report seek to discuss the office of state's attorney.

In determining whether a prosecution should be started, whether a case should be dismissed, whether a bargain should be made with counsel for defendant upon a plea of guilty or a reduction of charge, what degree of diligence should be used in getting evidence, summoning witnesses and seeing that they are in court at the appointed time, in disposing of or settling civil cases for the county or state, what steps he should take to collect bail bonds, whether to vigorously prosecute actions for delinquent taxes, and, in fact, perform every duty imposed upon him by law as the legal officer of the state, if the particular action before him could be determined exactly as it would be decided if the state's attorney were acting for a private client, who had paid him a fee for his services, whose important affairs had been intrusted to his attorney and whose good will and future representation the attorney valued and was anxious to retain, there would be fewer failures

of justice, less carelessness in protecting the rights of the public, more work done, a better and speedier administration of justice had, and less crime.

2. The Importance of the State's Attorney as a Public Officer—(a) Law.

The prosecutor in Illinois is a constitutional officer and is called the state's attorney. He is elected in November in each county of the state for a term of four years, taking office on the first Monday in December following his election. He is under a five thousand dollar bond. He is the legal representative of the people of the state or county and of the county officers as such in every matter of a legal nature, civil and criminal, arising in his county, prosecuting and defending as the occasion requires.

This report is concerned only with his status, duties, and powers in criminal cases. He has authority to institute prosecutions upon his own information in misdemeanor cases; felony prosecutions must be upon indictment by the Grand Jury. The state's attorney is the legal adviser of the Grand Jury; presents the evidence to that body, advises them as to the sufficiency thereof, and prepares the indictments. His control over criminal prosecutions is such that he may with the consent of the court terminate at will any criminal case commenced either upon indictment or his own information. His influence upon the Grand Jury in determining whether or not an indictment should be voted, by the very nature of the relation, is sufficient to control the action of that body in all but exceptional cases. The parole board in Illinois now usually consults the state's attorney in granting of paroles to prisoners from his county.

Prior to 1927 the court was authorized to remove the state's attorney in any case where he was absent or interested, and appoint a special prosecutor to represent the state in such case, but the Legislature of 1927 amended the statute on that subject and the Attorney General now is designated to assume the role of county prosecutor in such cases, and the Court may only appoint a local special prosecutor in the event of the Attorney General, too, being interested in the cause or unable to attend.

The state's attorney, therefore, has almost absolute control of policies and actual administration of the criminal law in the courts.

(b) Practice.

The great legal powers described above, which the state's attorney possesses, carry with them a tremendous number of powers and advantages which are incidental to them. He, of course, is looked upon as the protector of the public in all things which have to do with the enforcement of law. This is especially true in those sections of the state which are not within the boundaries of the larger cities. In these sections there is no police protection and the instinct of the citizen, when he has a serious matter to report to some public authority, is to go to the state's attorney. In this way a large amount of current information concerning real and imaginary infractions of the law and other irregular matters not necessarily illegal pass through the office of the state's attorney. He thus becomes the clearing-house for complaints and difficulties of all kinds. In many respects the influence and power which he exercises exceeds that of the judges. He is always available, whereas the judge, having duties in other counties in the

circuit, may frequently be absent. The prosecutor is more closely in touch with local current events and is more easily approached. Under the law and in practice he is more powerful than the sheriff, who is rapidly ceasing to be a law enforcement officer and is becoming an administrative arm of the court. Moreover, the state's attorney is a lawyer, perhaps possessed of more education than the average sheriff; he is, therefore, consulted more frequently by citizens who have complaints.

A factor in connection with the state's attorney which should not be overlooked is his "news value." He knows more about the unusual happenings of the community than almost anyone else and is more frequently sought by newspaper reporters than any other public official. He has favors to grant newspapers and in return can receive favors from them. He is thus very close to that source of power which, in modern life, is so potent both for good and evil—the power of the press to influence public opinion.

(c) Politics.

The state's attorney is, by the force of circumstances, compelled to take note of political factors in the life of his community. If he is willing to use the powers which we have just described, as a means for his own political advancement, he becomes a very serious factor to be reckoned with. He is in a position to grant and withhold tremendous favors, both as to quantity and quality. He is frequently very ambitious politically; as a practical politician he is usually looking at some higher office. He becomes, in a sense, the keystone of the official structure so far as this official structure is the basis of organized political power. The history of Illinois furnishes rich examples of political careers which originated and were tremendously furthered by the tenure of this office.

3. Personnel and Compensation.

A comprehensive questionnaire sent out by the survey yields a large amount of information concerning the men who hold the office of state's attorney in the counties in Illinois. The median age of the seventy-one who replied to the questionnaire was forty-one. This is a rather unexpected figure, inasmuch as the traditional belief is that state's attorneys are usually young and inexperienced in practice. This Illinois figure is in fact in sharp contrast with that found in a recent survey in Missouri, where the median age was found to be under thirty.

As to years of practice, the Illinois state's attorneys run higher than was to have been expected considering the salaries they receive. The following Table 1, is a summary of this return:

TABLE 1. YEARS OF PRACTICE BEFORE ELECTION TO OFFICE

Years	No. of Replies
1 to 4	13
5 to 9	21
10 to 14	17
15 to 19	7
20 to 24	6
25 to 29	5
30 to 34	3
35 to 39	1
Total	73
Median years of practice	10
Modal years of practice	5

This tabulation indicates that, while a large number of the state's attorneys of Illinois are rather new in the practice of law, the majority have a legal experience of ten years or more, while some have a very considerable background. No very conclusive deductions can be drawn from these figures. It is true that to elect to the office a young, inexperienced man means that the state will be represented in court by a beginner, who must match his untried hand against veterans of the profession, who represent the defense. There are ample illustrations of how this one-sided combat has had sad results for the state. But on the other hand, the young man has his reputation to make; he is vigorous and aggressive in prosecution, and may compensate in energy for what he lacks in experience.

It is probably fair to say that on the basis of the figures shown above, the state's attorneys of Illinois represent a fairly definite middle ground between youth and age and between experience and inexperience.

Of the 73 replies to the questionnaire, the educational advantages enjoyed by the state's attorneys of Illinois were shown to be as follows:

TABLE 2. EDUCATION

73 (all) had a complete common school education;
66 were graduates of high schools;
43 were college graduates;
11 more attended college but did not graduate.

As to law school training the returns were as follows:

12 did not answer the question;
3 did no work in a law school;
2 took correspondence courses only;
6 took a part of a law school course;
50 were graduates of law schools.

TABLE 3

Legal Schools	Graduated	Attended Not Graduated
University of Chicago	5	1
Northwestern University	9	1
University of Illinois	7	1
Illinois Wesleyan	6	
Chicago College of Law	1	
Kent College of Law	2	
Northern Illinois College of Law	1	
Michigan	7	
Georgetown	2	
Oklahoma		1
Valparaiso	1	2
Washington University	1	
John Marshall	1	
St. Louis University	1	
Colorado	1	
University of Cincinnati	1	
Indiana Law School	1	
Harvard Law School	2	
Yale Law School	1	
Total	50	6

The Prosecutor (Outside of Chicago) in Felony Cases

The length of service as state's attorney is indicated in the following table:

TABLE 4

Length of Service	No. of Replies
Under 1 year	1
1 year	3
3 years	32
4 years	3
5 years	1
7 years	24
8 years	1
9 years	1
11 years	5
19 years	2
Total	73

Median average..... 4 years
Modal average..... 3 years

The following salaries were received by the state's attorneys who replied to the questionnaire:

TABLE 5

Amount of Salaries	No. of Replies
$1,200.00	2
1,300.00	2
1,400.00	4
1,600.00	1
1,700.00	2
1,800.00	1
1,900.00	1
2,000.00	6
2,100.00	1
2,200.00	1
2,300.00	4
2,400.00	3
2,500.00	16
2,900.00	1
3,900.00	15
5,000.00	10
6,400.00	3
Total	73

Median average.....$2,500.00
Modal average..... 2,500.00

The present statute as to salaries of state's attorneys in this state is as follows:

"In counties not exceeding 30,000 inhabitants, $100.00 per 1,000 inhabitants and major fraction thereof in addition to the $400.00 per annum allowed by the state, provided, however, the maximum sum in any such counties shall not exceed $2,500.00 per annum."

Population of County	Annual Salary
30,000 to 51,000	$ 3,900.00
51,000 to 100,000	5,000.00
100,000 to 250,000	6,400.00
Over 250,000	10,000.00

A special act provides for an annual salary of $15,000.00 for the state's attorney of Cook County.

The statute effective for terms beginning the first Monday in December, 1928, is as follows:

"In addition to the $400.00 annually allowed by the state, the following salaries:

"In counties not exceeding 25,000 inhabitants, $125.00 per each 1,000 inhabitants and major fraction thereof."

Population of County	Annual Salary
25,000 to 30,000	$4,000.00
30,000 to 40,000	4,500.00
40,000 to 65,000	5,500.00
65,000 to 90,000	6,500.00
90,000 to 105,000	7,500.00
105,000 to 250,000	8,000.00

4. The State's Attorney and the Handling of Felony Cases in 1926.

As will be indicated in other sections of this survey, in order to determine the methods of disposition of felony cases, we have abstracted and summarized the entire work of the criminal courts in felony cases, covering the year 1926; in other words, every felony case which originated in 1926 we have copied from the records and subjected to statistical analysis. It was obviously too large a problem to take all of the cases in all of the counties of the state, consequently, we have selected a number of typical and characteristic counties. First, there was selected Cook County, including Chicago. Then eight of the counties containing larger cities were chosen; these were St. Clair, Macon, Sangamon, Peoria, LaSalle, Rock Island, Kane, and Winnebago. Another group of seven counties was selected in order to discover what, if any, differences there are between counties with sizable cities and counties which are considerably less urban in character. This group included: Marion, Vermilion, Adams, Knox, McLean, Kankakee and Stephenson. We then selected two strictly rural counties, Stark and Cumberland, with no urban population. In addition to the foregoing counties, Williamson and Franklin were included, but these were tabulated separately because not only in the character of their industrial life are they unlike the remainder of rural Illinois, but they have had somewhat serious law enforcement problems in the past few years, which would make the statistical determination of what happened to felony cases somewhat unrepresentative of normal conditions in Illinois. We have also included the City of Milwaukee, in order to get a comparison with a city outside of the state which is still near enough to serve as a fair comparison. There are certain other reasons for including Milwaukee, which are stated in other reports, which we do not consider here.

The following Table 6 shows the political subdivisions included in this survey, together with the population according to the U. S. Census of 1920; the number of felony cases in 1926 reported in this study; and the proportion of the population living in places of 2,500 or more:

TABLE 6. FELONY CASES, 1926, BY COUNTIES AND POPULATION

	Total Population	Number of Felony Cases	Percentage of Population, Urban
Chicago	2,701,705	12,543	100.0
Cook County	351,312	574	97.1[1]
St. Clair County	136,520	654	67.1
Peoria County	111,710	514	71.6
Sangamon County	100,262	222	61.7
Kane County	97,499	297	75.3
LaSalle County	92,925	144	63.5
Rock Island County	92,297	181	83.6
Winnebago County	90,929	113	72.2
Vermilion County	86,162	336	54.0
McLean County	70,107	117	48.3
Macon County	65,175	168	67.2
Adams County	62,188	112	57.9
Williamson County	61,092	228	50.9
Franklin County	57,293	237	45.0
Knox County	46,727	89	56.8
Kankakee County	44,940	88	37.2
Stephenson County	37,743	82	52.1
Marion County	37,497	80	40.4
Cumberland County	12,858	18	00.0
Stark County	9,693	15	00.0
Milwaukee, Wis.	457,147	1,838	100.0

The first question that arises is this: What happens to the felony cases which originate in the courts of these counties in a typical year? In order to simplify this process of disposition we have considered four stages in procedure, viz:

(1) The preliminary hearing,
(2) The grand jury,
(3) The trial court,
(4) The disposition of the case after determination of guilt has been had.

The following Table 7, indicates the number of felony cases entering the process of justice and shows the number eliminated or lost to law enforcement in each of the steps which we have just named.

Certain general tendencies are shown in this table. In the first place, it is clear that a majority of cases which enter the courts do not result in punishment. The proportion which does survive the whole process of justice varies from one county to another, but there is a fair uniformity in one respect—the eight more urban counties are about the same as Cook County, in that only about fifteen per cent of the cases which enter the courts ever result in execution of a sentence.

Another important fact is that a very much larger percentage of cases which are originated in the less urban counties results in the execution of a sentence; in fact, in the two strictly rural counties the proportion is about one-third. Comparing these final dispositions with Milwaukee, however, it is notable that the percentage in Milwaukee is higher than in any of the groups of counties shown in the table. It is thus apparent that there is in all parts of the state a tremendous loss in cases. We are not saying, of

[1] Inclusive of Chicago.

TABLE 7

DISPOSITION OF FELONIES, SUMMARIZED

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total number of cases	16,812	100.00	12,543	100.00	13,117	100.00	2,293	100.00	904	100.00	33	100.00	465	100.00	1,838	100.00
ELIMINATED IN PRELIMINARY HEARING	7,340	43.66	6,124	48.83	6,361	48.49	667	29.09	254	28.10	8	24.24	50	10.75	319	17.36
Entering grand jury	9,472	56.34	6,419	51.17	6,756	51.51	1,626	70.91	650	71.90	25	75.76	415	89.25	1,519	82.64
ELIMINATED IN GRAND JURY	2,034	12.10	1,437	11.45	1,503	11.46	359	15.66	113	12.50	5	15.15	54	11.61		
Entering trial court	7,438	44.24	4,982	39.72	5,253	40.05	1,267	55.25	537	59.40	20	60.61	361	77.63	1,519	82.64
ELIMINATED IN TRIAL COURT	3,977	23.66	2,533	20.19	2,671	20.36	718	31.31	294	32.52	8	24.24	286	61.51	350	19.04
Guilty	3,461	20.59	2,449	19.53	2,582	19.68	549	23.94	243	26.88	12	36.36	75	16.13	1,169	63.60
PROBATION	782	4.65	510	4.07	554	4.22	176	7.67	49	5.42	1	3.03	2	.43	①501	①27.26
NEW TRIALS OR APPEALS	70	.42	47	.37	51	.39	6	.26	8	.89			5	1.08	7	.38
OTHER ELIMINATIONS AFTER GUILTY	12	.07	7	.06	9	.07	2	.09	1	.11						
Sentence executed, unchanged	2,583	15.37	1,871	14.92	1,954	14.90	365	15.92	185	20.46	11	33.33	68	14.62	661	35.96
Sentence executed, modified	14	.08	14	.11	14	.10										
TOTAL SENTENCES EXECUTED	2,597	15.45	1,885	15.03	1,968	15.00	365	15.92	185	20.46	11	33.33	68	14.62	661	35.96

①Includes 21 cases "suspended sentences."

course, that this loss is due to inefficiency. It does, however, indicate that the state undertakes many prosecutions that it cannot complete and that a large proportion of its energy is going into fruitless prosecutions. Many of the cases which drop out are doubtless those in which the state's attorney was given no opportunity to pass upon the merits of the complaint before warrants were issued. In such cases the state's attorney should not be criticized for stopping unmeritorious prosecutions.

Analyzing the above table more closely, we immediately note that there is a very considerable difference among the groups as to the places in which cases are eliminated. In Cook County, for example, half of the cases are eliminated in the preliminary hearing, while 29.09 per cent are eliminated at that stage in the more urban counties, and 28 per cent in the less urban. The observation that one must make here is that the counties outside of Cook bring fewer cases into the preliminary hearing that are disposed of there. In the action of the grand jury it will be noted that all of the groups of counties "no bill" more cases than Cook. In the trial courts the "more urban" and the "less urban" counties are about the same in disposing of about 30 per cent of the cases, while Cook County eliminates 20 per cent; this, however, is due to the fact that a tremendous sifting out has taken place in Cook County in preliminary hearings. Probation, it will be observed, is highest in the eight more urban counties and considerably higher in both the "more urban" and the "less urban" counties than in Cook County. These differences are somewhat significant indications of the differences in the problems which are confronted by the various counties. It is probably true that the proportion of cases lost in the preliminary hearing in the County of Cook is due to a more extensive activity on the part of the police in bringing in "mere suspects," and that arrests are not made in the other counties, particularly in the rural counties, unless there is considerably more reason to suspect guilt. Under the provisions of the Criminal Code a justice of the peace is authorized to issue a warrant for the arrest of any person against whom a written sworn complaint shall be filed.[1]

The justice is paid out of fees accruing to the office under the statutes. The statute provides that in criminal cases, where the fees cannot be collected of the party convicted or where the prosecution fails, the county board shall direct that the cost of the prosecution or so much thereof as shall seem just and equitable, shall be paid out of the county treasury.[2]

Under these provisions a justice of the peace may, and often does, initiate a prosecution in a felony case upon complaint, under oath, of the injured party, without consulting the state's attorney, who is given no opportunity to pass upon the merits of the complaint. If, at the preliminary hearing, the state's attorney is convinced that the complaint has no merit, it is his duty, of course, to dismiss the proceeding or to advise the justice to discharge the defendant. In such cases the justice is entitled to have his fees paid by the county. It can very readily be seen how this situation may contribute to the beginning of many prosecutions which must subsequently be dismissed because without merit. In some counties the justices follow

[1] Sections 662, 663, Smith Hurd Revised Statutes of Illinois, 1927.
[2] Section 59, Chapter 53, Smith Hurd Revised Statutes of Illinois, 1927.

the practice of having the complaint made to the state's attorney and to issue no warrant until authorized by the state's attorney to do so. In other counties where there is a disposition on the part of the justice to deny the state's attorney the privilege of passing upon the facts before the issuing of the warrant, the state's attorney refuses to approve the cost bills in cases where warrants were issued by the justice without the approval of the state's attorney, and the county board, working in co-operation with the state's attorney, refuses to order such bills paid.

It would greatly promote the administration of justice and result in a saving of large sums of money now being paid out in costs, if the magistrates would send the complainant in felony cases to the state's attorney so that officer might have an opportunity to weigh the facts and apply thereto his knowledge of the law, not possessed by the magistrate, and to issue no warrants except with the approval of the state's attorney.

5. *The State's Attorney and the Preliminary Hearing.* In subjecting the figures which we have described above to a closer analysis, we find (Table 8) the methods of disposing of cases in the preliminary hearing.

The list of dispositions indicated in this table shows that the more important methods by which cases are eliminated in the preliminary hearing are "dismissed for want of prosecution," "nolled," and "discharged," and these three added together constitute in the eight more urban counties over six-sevenths of the cases disposed of there. It is practically the same in the other non-urban counties, and is still higher in Cook County. It is quite within reason to expect that a considerable number of cases will be "discharged" in a preliminary hearing; this method of disposition is, of course, a definite result of a definite hearing and an opinion formed by the judge of the preliminary hearing as well as by the state's attorney, that there is "not probable cause," and the number discharged in the average downstate county does not seem to be out of proportion to what might reasonably be expected. The other two items, which are almost exclusively chargeable to the responsibility of the state's attorney—"dismissed for want of prosecution" and "nolled," present another question, however. Here we have a total of seventeen percentum of cases disposed of on the responsibility of the state's attorney in the "more urban" counties and about ten per cent in the "less urban" counties. The disposing of a case for want of prosecution means, in most instances, the absence of essential witnesses. We shall later discuss this problem as it is sufficient to note here that practically as many cases are disposed of because of the absence of witnesses as through discharge after hearing. The size of these items in which the state's attorney is specifically interested raises the question of his participation in the preliminary hearing. It indicates that the preliminary hearing constitutes an important and very strategic step in the process of prosecution, and the mere fact that it is a "preliminary" hearing should not minimize its importance. Cases going into the preliminary hearing should be carefully investigated by the state's attorney. The responsibility for the bringing out of evidence should not be placed upon the sheriff nor upon the justice in the preliminary hearing. The state's attorney has a definite responsibility for prosecuting cases vigorously and for seeking continuances until

TABLE 8
DISPOSITION AT PRELIMINARY HEARING
(Base of Percentages=Total number of cases entering preliminary hearing.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL NUMBER OF CASES	16,812		12,543		13,117		2,293		904		33		465		1,838	
Original indictments	2,889		1,714		1,866		447		260		7		309			
TOTAL CASES ENTERING PRELIMINARY HEARING	13,923	100.00	10,829	100.00	11,251	100.00	1,846	100.00	644	100.00	26	100.00	156	100.00	1,838	100.00
1. Never apprehended	465	3.34	391	3.61	394	3.50	1	.05	67	10.40	3	11.54			16	.87
2. Error, no complaint	116	.83	116	1.07	116	1.03										
3. Complaint denied	35	.25	35	.32	35	.31										
4. Bond forfeited, not apprehended	73	.52	68	.63	68	.60	4	.22	1	.15					6	.33
5. Certified to other courts	116	.83	50	.46	72	.64	41	2.22	2	.31			1	.64	1	.05
6. Dismissed, want of prosecution	2,903	20.85	2,501	23.10	2,558	22.74	269	14.59	51	7.92	5	19.23	20	12.82	25	1.36
7. Nolle prosequi	882	6.33	766	7.08	801	7.12	58	3.14	17	2.64			6	3.85	32	1.74
8. Discharged	2,609	18.74	2,117	19.55	2,235	19.87	271	14.68	90	13.98			13	8.33	235	12.79
9. Reduced to misdemeanor, not punished	23	.18	12	.11	12	.11	11	.59								
10. Reduced to misdemeanor, punished	17	.12	3	.03	5	.04	7	.38	5	.78						
11. No order	25	.18	22	.20	22	.20	1	.05	2	.31						
12. Pending	8	.06	7	.06	7	.06	1	.05							4	.22
13. No record	68	.49	36	.33	36	.32	3	.16	19	2.95			10	6.41		
TOTAL ELIMINATED	7,340	52.72	6,124	56.55	6,361	56.54	667	36.13	254	39.44	8	30.77	50	32.05	319	17.36
Total going on	6,583	47.28	4,705	43.45	4,890	43.46	1,179	63.87	390	60.56	18	69.23	106	67.95	1,519	82.64
Original indictments	2,889		1,714		1,866		447		260		7		309			
Total cases entering grand jury	9,472		6,419		6,756		1,626		650		25		415		1,519	

witnesses are found, and in every way to raise the standard and quality of the prosecuting function in the minor courts.

It is, however, fair to state that the proportion of cases dismissed in preliminary hearing is considerably less in the counties which we are considering here than in Chicago, but we are still considerably over the percentage in Milwaukee. It will be noted in the Milwaukee column, in the table above, that they have reduced the "dismissed, want of prosecution" item there to something less than 2 per cent, and likewise the "nolle" item.

6. The State's Attorney and Pleas of Guilty.

It will be noted in Table 9 that of those cases which are found guilty, the proportion which goes to trial before a jury is rather small. The great majority of such cases are settled after a plea of guilty. In the nineteen counties which we considered, more than half of the cases where guilt was established were concluded by a plea of guilty to the offense charged; a considerable number of others were settled by a plea to a lesser offense.

It will be noted further that there is an interesting difference between the practice in Cook County and the practice elsewhere in the state. In the Cook County column, of those who are found guilty, 45 per cent are found guilty through the waiving of a felony charge and are in some instances convicted by the judge alone upon a trial for misdemeanor after felony waived and jury waived, and in others they plead guilty; in either event, however, it is a reduction of the charge to a lesser offense. In addition, the Cook County record shows that 30 per cent more of those who were found guilty plead guilty to a lesser offense. In other words, 75 per cent of the cases which are found guilty in Cook County are found guilty of something less than the original charge.

The record is much better than this in the other counties of the state. Here there seems to be no entry of "felony waived," but where the reduction in charge is accepted, it is done through a plea of guilty to a lesser offense. In the "more urban" counties this percentage is higher, but in the fifteen counties in the two groups, the percentage is more than twenty-five. This is in sharp contrast with the strictly rural counties and even more so with Williamson and Franklin counties, and distinctly so with Milwaukee. The fact that the Cook County record is so much more pronounced in this respect than other counties should not be taken to mean that the practice is not deserving of serious consideration, even though Cook County is larger. The Cook County record is one of the most astonishing which has ever been shown and is, in another part of this survey, subjected to serious criticism.

It is worthy of note here, that the thing that actually happens with a considerable number of cases in the counties which are considered in this report is that, after a definite charge has been made by competent authorities, after these charges have passed through the preliminary hearing, and after the grand jury has returned an indictment for the offense charged, the state's attorney has caused the charge to be reduced to something else and has settled the case in that way. This means, sometimes, that he has placed his own interpretation upon the charge, has practically set aside the

TABLE 9

DISPOSITION BY FOUND GUILTY

(Base of Percentages=Total found guilty.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total found guilty	3,461	100.00	2,449	100.00	2,582	100.00	549	100.00	243	100.00	12	100.00	75	100.00	1,169	100.00
19. Felony waived, convicted	281	8.12	266	10.86	281	10.88									4	.34
20. Tried by court, convicted offense charged (Milwaukee)															381	32.59
21. Felony waived, plead guilty, convicted	883	25.51	836	34.14	883	34.20										
22. Adjudged insane	12	.35	5	.20	6	.23	4	.73	2	.82					18	1.54
23. Plea accepted, guilty offense charged	949	27.42	419	17.11	453	17.54	315	57.37	136	55.97	9	75.00	36	48.00	689	58.94
24. Plea accepted, guilty lesser offense	980	28.31	723	29.52	750	29.05	157	28.60	62	25.51	1	8.33	10	13.33	16	1.37
25. Convicted offense charged by jury	299	8.64	175	7.15	184	7.13	65	11.84	31	12.76	2	16.67	17	22.67	47	4.02
26. Convicted lesser offense byj ury	57	1.65	25	1.02	25	.97	8	1.46	12	4.94			12	16.00	2	.17
27. Tried by court, convicted lesser offense (Milwaukee)															12	1.03

decisions of the preliminary hearing and the grand jury, and has reduced the seriousness of the charge very considerably. The answer, of course, will be made that this is done commonly in cases where it is difficult to get a conviction and the state's attorney is accepting the best he can get; however, the interpretation of the "best he can get" is left to him. Such a course may be perfectly justified in many cases, but it may also be used to excuse weak and careless prosecution. It is easier to bargain away the rights of the state in cases of this sort than to go through the effort of trying the case, and consequently the pressure will always be very great on the state's attorney to follow this easier way.

An interesting and very significant commentary upon this question is to be found in the opinion of the Appellate Division of the First Department of the Supreme Court of the State of New York in their unanimous decision in the case of People versus Gowasky and Hemerlien, 219 N. Y. (App. Div.) 19, 155 N. E. 737, 244 N. Y. 451, in which the court had before it that section of the Baumes Law providing life sentences for persons who are convicted of felonies and who have previously been convicted of committing three felonies. The Court said:

> "It is a matter of common knowledge that district attorneys frequently bargain with those charged with crime, and either under promise of immunity or acceptance of a plea of lesser degree than that for which the defendant was indicted, those deserving of extreme punishment are permitted to escape with a suspended sentence or with punishment all too inadequate for the crime committed. We deplore the tendency of some district attorneys, following the course of least resistance, thus to relax the rigid enforcement of our penal statutes. We think there has been altogether too much leniency shown in dealing with the criminal—particularly with confessed convicts. * * * During recent years the tendency has been toward leniency to those convicted of crime. Statutes have been enacted tending more and more to lighten the severity of punishment. Judicial discretion has been exercised in favor of criminals to a degree before unheard of, and those charged with the commission of crime and awaiting trial, often hardened criminals, have been admitted to bail and turned loose to continue their careers of crime. The furnishing of bail bonds has become a business, and until brought to trial the accused, through easy bail, is but momentarily halted in his professional pursuits. We have no doubt that such conditions as these were largely responsible for taking away from judges all discretion in cases of the confirmed criminal who had been four times convicted of a felony, and in the interest of public safety to prevent in such a case the exercise of discretion all too often abused. Judicial discretion in imposing punishment for crime has long been a recognized principle of our criminal jurisprudence. In theory its exercise is quite unassailable. Such discretion, however, is subject to abuse, and recent instances are not rare where it has been improperly exercised. There comes a time when discretion should end, and the Legislature, by the statute here under consideration, placed a fourth conviction of a felony as beyond the pale of judicial discretion."

This matter has also been recently stressed by the action of the president of the Chicago Crime Commission, who charged three judges of the

criminal court of Cook County with "paltering with criminals," from the fact that the three judges mentioned had, within a period of three months, ordered felony waivers in serious criminal cases. The accused judges in the hearing which followed defended the practice of waiving felonies, on the ground that it was many times justified in cases of first offenders or in extenuating circumstances, and also upon the ground that the tendency in recent years has been in the direction of leniency toward convicted criminals. It will be noted that the New York Court of last resort recognizes that tendency and deplores it. This is a matter which should receive the very earnest consideration of all prosecutors in the state, in view of the fact that so many serious crimes are today being committed with a boldness and apparent disregard for the consequences never before witnessed in the history of this country.

7. The State's Attorney and the Grand Jury.

In Table 10, set out below, we have a total elimination by grand jury, which runs for the several jurisdictions (save Williamson-Franklin) at about 20 per cent, with a total for the state of 21.47 per cent. Except in the two rural counties the group of cases "no billed" is proportionately the largest of the elimination classes, and in these two counties the total number of cases is only twenty-five. There is, however, a notable difference in the importance of this group as between Chicago and Cook County on the one hand, and the fifteen counties more and less rural.

In the former, "no bills" constitute about 92 per cent of all eliminations. In the eight more urban counties they constitute 49 per cent; in the seven less urban, 54 per cent; and in the rural, 40 per cent. Williamson-Franklin show none at all. Another outstanding type of elimination is the one labeled "no record." This is 35 per cent in the rural counties and 98 per cent in Williamson-Franklin, of all eliminations. It should be noted, however, that in Williamson-Franklin most cases are taken directly to the grand jury and customarily "no bills" are not recorded.

One other significant percentage is that for "Never presented," in the eight more urban counties—6.52 per cent. These two classes, "never presented" and "no record," are indicative of some weakness or other in the handling of cases or in the recording of them.

8. The Trial.

The public's idea of the duties of a state's attorney is, commonly, that he is engaged most of the time in the trial of cases in court. The figures obtained by this survey show that a very high percentage of all cases is disposed of before trial largely by direct action or through the influence of the state's attorney. The trial, however, is important, for most of the serious offenses are tried before a jury and the ability of the state's attorney to try his cases well is quite essential.

The prosecutor carries a heavy burden in jury trials. This was well stated in the Missouri Crime Survey, where, at page 147, it is said:

> "In the trial the prosecutor is confronted with many statutory disadvantages. The court instructs the jury in every criminal case that the burden is upon the state to prove the defendant's guilt beyond a reasonable doubt; that the defendant is presumed under the law to be innocent until his guilt is proved to the satisfaction of the jury beyond a reasonable doubt. The defendant does not have to take the

TABLE 10

DISPOSITION BY GRAND JURY

(Base of Percentages=Total number of cases entering grand jury.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL ENTERING GRAND JURY	9,472	100.00	6,419	100.00	6,756	100.00	1,626	100.00	650	100.00	25	100.00	415	100.00		
1. Never presented	109	1.15					106	6.52	2	.31			1	.24		
2. No billed	1,628	17.19	1,344	20.93	1,388	20.54	177	10.89	61	9.38	2	8.00				
3. Indicted for misdemeanor	79	.83	37	.57	39	.58	29	1.78	11	1.69						
4. Pending	5	.05	1	.02	1	.02	4	.25								
5. No record	213	2.25	55	.86	75	1.11	43	2.64	39	6.00	3	12.00	53	12.77		
TOTAL ELIMINATED	2,034	21.47	1,437	22.38	1,503	22.25	359	22.08	113	17.38	5	20.00	54	13.01		
Total cases entering trial court	7,438	78.53	4,982	77.62	5,253	77.75	1,267	77.92	537	82.62	20	80.00	361	86.99	1,519	100.00

stand. If he does not take the stand his reputation is not in issue and, though he may have served any number of terms in the penitentiary, evidence of that fact is not admissible except where the defendant is charged under the habitual criminal act. If the defendant does take the stand, the prosecuting attorney is limited in his cross-examination to matters brought out by the direct examination. It very often happens that a defendant will testify upon direct examination to such unimportant facts as his name, age and occupation. The prosecutor cannot question him on cross-examination as to a single fact concerning the manner in which the crime was committed. If the defendant did not take the stand the prosecuting attorney in his argument is forbidden by statute to make reference to the fact. But the court may instruct the jury that the fact that the defendant did not take the stand is not to be taken as any evidence of his guilt. These restrictions upon the argument of the prosecutor and the limitations upon his power of cross-examination are not understood by the jurors and they are often, as a result, greatly confused by them. Add to this confusion the charge to the jury concerning the presumption of innocence of the defendant and the necessity for the state to prove his guilt beyond a reasonable doubt, and the result is often a surprising miscarriage of justice.

"If the prosecutor, by any chance, is unfamiliar with the rules of law in respect of these matters, and in his argument or cross-examination of the defendant transgresses the prohibitions of the statutes (even though the defendant may be found guilty by the jury) the Supreme Court is compelled, under our code of criminal procedure, to reverse and remand the case on account of the error.

"The state has the closing argument. Upon the prosecutor rests the great responsibility of presenting the case to the jury in this last word before they go to the jury room. He must believe in his case and present it with sufficient force and logic to impress the jury that the defendant should be convicted, but at the same time must respect the rights of the defendant under the law and do or say nothing calculated to inflame the minds of the jury against the defendant that is not warranted by the evidence. It is a delicate task. An earnest, conscientious, able prosecutor in the closing argument can do much to prevent the many deplorable miscarriages of justice. On the other hand, many a guilty criminal has escaped either at the hands of the jury or later by the courts because of the failure of the prosecutor to measure up to this responsibility."

In addition to what was said with respect to the Missouri practice, all of which is equally pertinent to the situation in Illinois, it may be added that for the sole purpose of affecting the credibility of the defendant's testimony, if he should take the stand, he may be asked concerning his previous conviction of certain infamous crimes set out in the statute and if he denies such convictions, the record thereof will be received in evidence.

9. Disposition in the Trial Court.

In the trial court (Table 11) eliminations are of many kinds, and in the state as a whole, "never apprehended," and "bail forfeited and not apprehended" constitute 2.41 per cent of all cases entering the trial court.

The two rural counties show no use of the "nolle" or the "stricken" and the seven less urban counties a somewhat lesser use than the rest of the state. Almost exactly one-half of the eliminations in the trial courts of the

TABLE 11
DISPOSITION IN TRIAL COURT
(Base of Percentages-Total number of cases entering trial court.)

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
TOTAL ENTERING TRIAL COURT	7,438	100.00	4,982	100.00	5,253	100.00	1,267	100.00	537	100.00	20	100.00	361	100.00	1,519	100.00
1. Never apprehended	87	1.17	41	.82	45	.86	31	2.45	5	.93			6	1.66	12	.79
2. Bond forfeited, not apprehended	92	1.24	72	1.45	79	1.50	8	.63	3	.56			2	.55	6	.40
3. Certified to other courts	18	.24	13	.26	15	.29	1	.08	2	.37						
4. Defendant dead	19	.26	9	.18	12	.23	3	.24					4	1.11	2	.13
5. Nolle prosequi	478	6.42	282	5.66	293	5.58	103	8.13	45	8.38			37	10.25	48	3.16
6. Nolle, account other indictments	115	1.55	8	.16	8	.15	69	5.45	13	2.42			25	6.93	36	2.37
7. Stricken, with leave to reinstate	511	6.87	374	7.51	392	7.46	63	4.97	35	6.52			21	5.82		
8. Stricken, account other indictments	871	11.70	690	13.85	729	13.88	105	8.29	24	4.47			13	3.60		
9. Dismissed, want of prosecution	218	2.92	206	4.12	216	4.11							2	.55	2	.13
10. Discharged by court	43	.58	28	.56	28	.53	3	.24	11	2.05			1	.28	170	11.19
11. Off call	43	.58	41	.82	43	.82										
12. Felony waived, tried by court, acquitted	293	3.94	271	5.45	293	5.58										
13. Felony waived, plead guilty, acquitted	4	.05	4	.08	4	.08										
14. Acquitted by jury	372	5.00	270	5.42	283	5.39	46	3.62	29	5.40			14	3.88	37	2.43
15. Mistrial	20	.27	6	.12	6	.11	2	.16	7	1.30			5	1.38	1	.07
16. Pending	793	10.67	218	4.38	225	4.28	284	22.41	120	22.35	8	40.00	156	43.21	1	.07
17. No record																
18. Tried by court, acquitted (Milwaukee)															35	2.30
TOTAL ELIMINATED	3,977	53.46	2,533	50.84	2,671	50.85	718	56.67	294	54.75	8	40.00	286	79.22	350	23.04
Found guilty:																
19. Felony waived, convicted	281	3.78	266	5.33	281	5.35									4	.26
20. Tried by court, convicted offense charged (Milwaukee)															381	25.08
21. Felony waived, plead guilty, convicted	883	11.89	836	16.80	883	16.81										
22. Adjudged insane	12	.16	5	.10	6	.11	4	.32	2	.37					18	1.19
23. Plea accepted, guilty offense charged	949	12.75	419	8.41	453	8.62	315	24.86	136	25.32	9	45.00	36	9.98	689	45.35
24. Plea accepted, guilty lesser offense	980	13.17	723	14.51	750	14.28	157	12.39	62	11.55	1	5.00	10	2.77	16	1.05
25. Convicted offense charged by jury	299	4.02	175	3.51	184	3.50	65	5.13	31	5.77	2	10.00	17	4.71	47	3.09
26. Convicted lesser offense by jury	57	.77	25	.50	25	.48	8	.63	12	2.23			12	3.32	2	.13
27. Tried by court, convicted lesser offense (Milwaukee)															12	.79
TOTAL FOUND GUILTY	3,461	46.54	2,449	49.16	2,582	49.15	549	43.33	243	45.24	12	60.00	75	20.78	1,169	76.94

state are of these general classes. Chicago and Cook County are at the top with 53 per cent of all cases eliminated so disposed of; then, by equal steps, they come down to 46 per cent for the eight more urban counties, to 40 for the seven less urban, to 34 for Williamson-Franklin, and to zero for the two rural counties.

As stated in Chapter I, Section 19, of the survey:

> "It is important to note as shown by the table, the small proportion of all cases entering the trial court which are eliminated by the jury. Roughly, only one-tenth of all eliminations are chargeable to the jury. This has some bearing on the question of the importance of poor juries. Defective an institution as the jury may be, it functions so seldom as an eliminating agency, that it seems scarcely worth while to consider remedies for the evils supposed to be associated with it."

10. Preparation of Cases.

Under the laws of Illinois the state's attorney is permitted to engage in the private practice of law. In varying degrees, depending to some extent upon the size of the county, he gives his time to his own private law practice. The exact apportionment of time between private and public work is, of course, difficult to make. It varies from time to time in the various seasons of the year, and in accordance with the pressure of important public cases. In reply to a questionnaire submitted by the survey, the following estimates were made by seventy-three state's attorneys as to the time devoted to private practice:

Amount of Time	No. of Replies
None	14
Small per cent	11
10 per cent	3
20 per cent	1
25 per cent	10
30 per cent	1
33⅓ per cent	8
40 per cent	3
50 per cent	13
66⅔ per cent	3
75 per cent	1
80 per cent	1
Not answered	4
Total	73

Median average, 25 per cent.

The exact proportion of the time given by the state's attorney to the business of the state is, of course, important only as it is related to the larger question of whether he is able, in the time which he gives, to prepare the state's cases well. That, the state is entitled to expect and should require. It should, however, give the state's attorney an adequate salary and adequate assistance. We, therefore, asked in our questionnaire to state's attorneys, whether they need assistants. Of the seventy-three state's attorneys who answered the question, twenty-six stated they need additional help.

We also submitted in our questionnaire the following question: "Are you able to prepare your cases as well as the average defense case is prepared? If not, is it due to lack of time, facilities, or help?" The replies indicate that this question must have to some degree stirred the pride of

those who answered, because the answers were sixty-eight "yes" and five "no." Of those answering no, one said it was due to "lack of training" and four "lack of time and help." The preparation of cases, of course, involves two main problems, study of and application of the law involved and securing witnesses and other evidential material to support the fact contentions of the state. The measurement of the quality of the first of these tasks is not easy. Some light is thrown upon it by the character and results of the cases appealed. This is contained in another report of this survey and need not concern us here. The second, however, is more definitely ascertainable and will be considered in the section which immediately follows this section.

As was so well pointed out in the Missouri Crime Survey, handicapped as he is by the rules of procedure governing the trial of the case, the state's attorney should not be lacking in adequate experience, preliminary educational equipment and those qualities which make for success as a lawyer, nor should he be lacking in office facilities and such clerical assistance and the assistance of an investigator or investigators as will enable him to interview his witnesses, brief the law and do the other necessary things involved in the proper preparation and presentation of the state's case.

11. *The Problem of Witnesses.*

Certain aspects of the statistics contained in the tables set forth in preceding sections of this report are very significant in this connection. We saw that 14.59 per cent of the cases entering the preliminary hearing were dismissed for want of prosecution in the eight larger counties; 7.92 per cent in the seven less urban; 19.23 per cent in the two rural counties; and 12.82 per cent in Williamson-Franklin Counties. We saw also that in the trial court there were no cases disposed of in this way in the state, outside of Cook County (excepting two cases in Williamson County). Thus, the problem of having witnesses present in the preliminary hearing would seem to be in need of attention, but apparently after the case is once past the indictment it is well handled in the state at large.

This is in marked contrast with Cook County, where it appears that one of the fundamental problems in administering criminal justice is to get witnesses to appear and to "stick to their stories."

The state's attorney, however, is basically responsible for seeing that witnesses are summoned and that they obey the summons. Technically, this is the sheriff's responsibility, but actually it is the duty of the state's attorney, as the lawyer and counsel for the state, to see that this duty is properly performed. There should be the utmost cooperation in this respect between the two. In this connection it is pertinent to again refer to the Missouri Crime Survey for an excellent statement of the duties of the prosecutor. On pages 141 and 142 it is said:

> "He (the state's attorney) should take as great a personal interest in getting the names of witnesses who know the facts about the crime as counsel for either of the parties in a civil case. If he is unable to go on the ground himself, he should be given the necessary help to the end that immediately upon receiving a report of the commission of a felony, he or his representatives may begin at once the locating of witnesses, interviewing them and taking their statements wherever possible,

and moving for the detention of witnesses where it appears they are likely to leave the state. In no other way can the state's case be properly prepared. The delay of a very short time often results in the loss of the most vital evidence in the case, making it impossible to proceed with the prosecution. The more tardy the investigation, the less chance there is for justice to be done.

"In the greater number of cases the witnesses if seen shortly after the crime is committed are willing to make a written statement, under oath if requested, of the facts of the case within their knowledge. It is of the utmost importance to have such a statement, not only for the purpose of refreshing the recollection of the witness later, but to bind him, so far as such a statement can bind him, in order to guard against any change of his story or lapse of memory. Therefore, every effort should be made to take such statements as soon after the crime is committed as the witnesses can be located. If the witness will not come to the office he should be seen where he is available, his statement prepared in writing and signed.

"It might not be unprofitable to direct attention to the practice in the Federal Courts. The Department of Justice at Washington, of which the Attorney General is the head, supervises and frequently takes charge of the preparation of the case. Special agents trained in investigation, work up the evidence. Instances of research and running down clews to complete the case requiring several years of investigation are not rare.

"When the government announces ready for trial in a criminal case all the evidence to be had is usually ready to be presented. A high percentage of convictions and a wholesome certainty of punishments in the Federal Courts in felony cases are the result. A further consequence is the rarity of violations of the Federal Felony Statutes as compared with such violations in the State Courts. There is more respect for the Federal Courts and laws."

It is regarded as so important that the state's attorney or someone acting for him be on the ground as soon as possible after he receives notice that a crime has been committed, that many state's attorneys have been known to stay with the case continuously night and day, not excluding Sundays, for the purpose of assisting the other officials in getting every bit of evidence to be obtained while the facts are fresh in the minds of witnesses. In this way the county has often been saved the expense of a trial and a successful prosecution has resulted, where lack of such diligence would have permitted the escape of the guilty ones.

The questionnaire asked the following question on this point: "Do you make your own investigations in preparing cases on the facts, or do you rely on sheriff, police, or constables to get the evidence?" In reply nineteen said they made their own investigations, four relied upon the officers mentioned, and fifty used both methods. There is, however, in every county of any considerable size the need of having attached to the state's attorney's staff competent men to serve as investigators.

12. Nolle Prosequi. As we have indicated above, in those counties, other than Cook County, studied in this survey, about three per cent of the felony cases entering the preliminary hearing are terminated there by the entry of a "nolle prosequi" while eight per cent

of those cases which enter the trial court are disposed of in this way. The nolle prosequi is an entry meaning literally "do not wish to prosecute," which, when entered, terminates the case. While the consent of the court is necessary in order that a nolle prosequi may be valid, the discretion actually rests with the state's attorney in this state and the court has little opportunity to deny the request; consequently, such entries constitute a definite termination of the case on the basis of a decision by the state's attorney that he does not want to continue to prosecute. It is easy to see that such a power is very important, and exercised as it is in a considerable number of cases, it should be protected in every possible way from abuse. A favorite suggestion for the protection of the public against improper use of this entry is to require some official record of the reason or reasons why a nolle prosequi is entered. Such a reason, if it is sufficiently complete, would be quite adequate for a permanent record concerning the exercise of such a discretionary power. In conducting this survey we asked the state's attorneys of the state to indicate whether they required an indorsement on the court files or elsewhere of the reasons for a nolle prosequi. The replies indicate that only nine state's attorneys, of those who replied, make any such record, while sixty-four do not do so.

Another entry that is made, which has exactly the same effect as the nolle prosequi, is "stricken off with leave to reinstate," indicated usually in the court records as S. O. L. The replies of the state's attorneys indicate no record is made of a reason for this when it is entered.

While the use of the nolle prosequi is apparently not so common in Illinois as it is in some other states, it is sufficiently large to justify more care in its use, and there should not only be legislative provision for the recording of a satisfactory reason for this, but there should be more care and discretion on the part of judges to require such a record and more of a tendency on the part of state's attorneys themselves to make it than appears.

13. Relative Responsibility of State's Attorney, Judge and Jury.

In the enforcement of criminal law, particularly in that part of law enforcement which follows the apprehension of the person charged with crime, the state's attorney is the most important factor. His influence far outweighs both judge and jury—so far, in fact, that his influence is not only dominant, but conclusive. To show the relative powers of prosecutor, judge, and jury, the tables which we have shown above have been re-arranged in the following manner.

First, let us consider the power of the state's attorney in terms of the cases which are disposed of upon some exercise of his power. There may be differences of opinion upon the subject, but it is probable that a majority of those competent to judge would agree that in, at least, "nolles," "dismissed, want of prosecution," and "stricken with leave to reinstate," the state's attorney is responsible. Summarizing the dispositions under these heads (Table 12) we have the following percentages:

TABLE 12. TOTAL ELIMINATED BY ACTION OF THE PROSECUTOR

(Base of percentages—all cases, wherever entering)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee, Wis.
Number of all cases	16,812	12,543	13,117	2,293	904	33	465	1,838
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Preliminary hearing:								
6. Dismissed, want of prosecution	17.27	19.94	19.50	11.73	5.64	15.15	4.30	1.36
7. Nolle	5.25	6.11	6.11	2.53	1.88		1.29	1.74
Trial court:								
9. Dismissed, want of prosecution	1.30	1.64	1.65				.43	.11
5. Nolle	2.84	2.25	2.23	4.49	4.98		7.96	2.61
6. Nolled account other indictments	.68	.06	.06	3.01	1.44		5.38	1.96
7. Stricken, leave to reinstate	3.04	2.98	2.99	2.75	3.87		4.52	
8. Stricken, leave to reinstate account other indictments	5.18	5.50	5.56	4.58	2.65		2.80	
Total	35.56	38.48	38.10	29.09	20.46	15.15	26.68	7.78

In regard to the power of the judges the following percentages appear:

TABLE 13. TOTAL ELIMINATED BY ACTION OF JUDGE

(Base of percentages—all cases, wherever entering)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee, Wis.
Number of all cases	16,812	12,543	13,117	2,293	904	33	465	1,838
Percentage	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Preliminary hearing:								
8. Discharged	15.52	16.88	17.04	11.82	9.96		2.80	12.79
9. Reduced to misdemeanor not punished	.14	.09	.09	.48				
Total	15.66	16.97	17.13	12.30	9.96		2.80	12.79
Trial court:								
10. Discharged by court	.26	.22	.21	.13	1.22		.22	9.25
11. Off call	.26	.33	.33					
12. Felony waived, tried by court, acquitted	1.74	2.16	2.23					
13. Felony waived, pleaded guilty, acqtd. by court	.02	.03	.03					
Total	2.28	2.74	2.80	.13	1.22		.22	9.25
Disposition after guilty:								
1. Probation	4.65	4.07	4.22	7.67	5.42	3.03	.43	27.26
4. Sentence vacated	.07	.05	.07	.09	.11			
3. New trial granted	.26	.23	.25	.13	.77		.22	.33
Total, after guilty	4.98	4.35	4.54	7.89	6.30	3.03	.65	27.59
Grand Total	22.92	24.06	24.47	20.32	17.48	3.03	3.67	49.63
Grand Total, less probation	18.27	19.99	20.25	13.65	12.06	0.00	3.24	22.37

As to the jury the following figures are found. Here we are considering not only eliminations but convictions as well.

TABLE 14. PERCENTAGES OF DISPOSITIONS OF CASES ACTED ON BY JURY

(Base, total number of cases entering trial court)

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee, Wis.
Elimination in trial court:								
14. Acquitted by jury....	5.00	5.42	5.39	3.62	5.40		3.88	2.43
15. Mistrial	.27	.12	.11	.16	1.30		1.38	.07
Total	5.27	5.54	5.50	3.78	6.70		5.26	2.50
Found guilty by jury:								
25. Convicted offense charged, by jury.....	4.02	3.51	3.50	5.13	5.77	10.00	4.71	3.09
26. Convicted lesser offense, by jury.....	.77	.50	.48	.63	2.23		3.32	.13
Total	4.79	4.01	3.98	5.76	8.00	10.00	8.03	3.22
Grand Total.....	10.06	9.55	9.48	9.54	14.70	10.00	13.29	5.72
Reduction to Base of All Cases								
Grand Total.....	10.06	9.55	9.48	9.54	14.70	10.00	13.29	5.72
Per cent of total cases entering trial court.....	44.25	39.72	40.05	55.26	59.40	60.61	77.63	82.64
Per cent of total cases which reach a jury.....	4.45	3.79	3.80	5.27	8.73	6.06	10.32	4.73

Summarizing the three foregoing tables, the following comparison is possible:

TABLE 15. COMPARATIVE ELIMINATIONS BY PROSECUTOR, JUDGE AND JURY

	Total Illinois	Chicago	Chicago and Cook County	Eight More Urban Counties	Seven Less Urban Counties	Two Rural Counties	Williamson and Franklin Counties	Milwaukee, Wis.
Percentage of all cases eliminated by prosecutor	35.56	38.48	38.10	29.09	20.46	15.15	26.68	7.78
Percentage of all cases eliminated by judge.....	22.92	24.06	24.47	20.32	17.48	3.03	3.67	49.63
Percentage of all cases eliminated by jury.....	2.33	2.20	2.20	2.09	3.98		4.08	2.06

This, however, is by no means the proper comparison on the basis of actual power exercised. In many of the dispositions controlled by the judge, as for example in cases of probation, the actual recommendation comes from the state's attorney.

14. The State's Attorney and the Coroner's Inquest.

The coroner in the State of Illinois is a quasi judicial officer. His duty, in case a death has occurred which is due to causes other than natural ones, is to hold an inquest and to return a verdict indicating, on the basis of this hearing and also upon the basis of scientific medical examination, the cause of the death. This determination of cause is especially important in connection with cases where there is evidence to

indicate that the death is due to felonious homicide. In all cases of sudden death there is, in modern times, a need for careful investigation. Moreover, it is obvious that under the present coroner's system, in which incompetent persons are frequently elected coroner—persons, in fact, who have no medical and no judicial qualifications for the office—the need for careful scrutiny of the work of coroner's inquests on the part of state's attorneys is very great. The state's attorney or assistant should be present at all the inquests conducted by the coroner of the county where death is probably due to felonious homicide. If the coroner is a person of high qualifications, upon whose judgment the state's attorney can depend implicitly, it will not be so necessary; if, on the other hand, the coroner is less qualified, it will be necessary to follow his inquests very carefully. The close cooperation of the coroner and the state's attorney is, obviously, highly desirable.

In this survey the following question was addressed to the state's attorneys of the state: "Do you attend coroner's inquests where death is probably due to crime?" It may be that this question is somewhat unsatisfactory, is perhaps in the nature of a leading question, because the entire seventy-five replies were "Yes." It is fair to say that the coroner should in all cases where there is the slightest possibility of criminal action notify the state's attorney, and he should consult with the state's attorney in calling witnesses and in taking other steps for the inquest. The state's attorney's judgment should be followed in regard to the advisability of raising certain questions at the inquest. It is very frequently true that an unwise coroner's inquest will place in the record a state of facts which, in the subsequent prosecution, it will be very difficult to contend with. The entire case of the state may be prematurely exposed to scrutiny by the defendant at a coroner's inquest. It is fairly accurate to say that in most of the coroners' inquests conducted in the United States, the type of examination there conducted is more harmful than beneficial to subsequent prosecutions.

It is, of course, highly desirable that the entire coroner's system be overhauled, but pending such a remote contingency every effort should be made by the state's attorney to reduce the function of the coroner's inquest to a mere determination of the medical causes of death and to avoid a type of procedure there which suggests a criminal prosecution. There are adequate means of apprehending and trying persons who may be suspected of such a crime, without going through the wholly useless and dangerous process of conducting any examination of such suspected persons in an inquest.

15. Office Records. The replies to the questionnaires disclose the fact that a little over 50 per cent of the state's attorneys keep an office docket or record of the progress of cases. The accurate and careful keeping of such a record is most important in all counties, and particularly in the larger ones. Some state's attorneys are not provided with sufficient clerical assistance; but it is submitted that the expense of such clerical help will be well justified in time saved and in the returns which will come to a county when a careful record is kept of the fines and costs which are due the county .

A form which is used in one or two counties in the state and which has been found to be of value, is shown here:

People of the State of Illinois vs. | Nature of Complaint:

Defendant's Attorney

Date of Offense

Heard In Court. Term, 192

Married or Single

Defendant's Full Name Age

Defendant's Residence Where Employed Telephone

Wife or Husband Children

Complainant Relationship Address Telephone

Bondsman Address Telephone

Statement of Case

Witnesses

Disposition

16. Bail Bonds. It is the duty of the state's attorney in Illinois, to prosecute all forfeited bonds and recognizances. The answers to the questionnaires disclose that there does not seem to be a serious bail bond problem in the downstate counties in this state; only a few counties report uncollected bonds and the total amount due in these counties is not large.

17. Probation. In the release of defendants after guilt is established, probation is the only important item proportionately. It constitutes some 2.67 per cent of dispositions in all guilty cases in Williamson and Franklin Counties; 32.06 per cent in the eight more urban counties; 21.46 per cent in Chicago and Cook County; and 20.16 per cent in the seven less urban counties. The use of probation seems to increase as the counties increase in the proportion of urban population. The use of probation appears

to be quite limited in the smaller counties. The principle of probation has been accepted in this country as correct, and much good can be accomplished by its wise use. The opportunities for abuse, however, are abundant and there is no doubt that in many specific instances power has been abused. Designed for first offenders to save them from the stigma of actual penitentiary commitment, old offenders have too often been admitted to probation with little or no investigation as to the previous record of the applicant and with no supervision worthy of the name. Such abuses of the power have resulted in recidivism and general public condemnation of the system.

This is amply supported by the comments upon the operation of this law, made by bankers, lawyers, and hundreds of prominent citizens throughout the state who answered our questionnaire. The judges of the courts, and in so far as they influence the action of the court, the state's attorneys, would do well to limit the use of probation to those cases for which it was originally intended and to extend probation only where the previous record justifies it and where adequate and effective supervision of the probationer can be arranged. The record indicates that these considerations are more often given their proper weight in the downstate counties than in Cook County, although the proportion of cases in which probation is entered is considerably higher in the eight more urban counties than in Cook County. It is, nevertheless, established that in such counties there is better investigation and better supervision than in the metropolitan area. Better opportunities for learning the previous records and for supervision offered in the smaller communities may in some measure account for this difference.

18. Delays and Continuances. The circuit court judges of the State of Illinois were requested to give the more important reasons for continuances and delays in their courts. An unusually large percentage of the circuit judges answered the questionnaire sent to them. A number stated that there was no trouble in their courts about continuances. Principal reasons given by the judges were: (1) statutory; (2) absence of witnesses; (3) agreements of counsel; and (4) to give the defendant time to prepare his case. The comments of the judges would indicate that the matter of continuances in criminal cases is not a serious defect in the practice in downstate counties.

The following Table 16 shows the median of the time elapsing between the filing of the complaint and disposition in the trial court.

This table indicates more rapid administration in most of the stages of procedure in the downstate districts than in the metropolitan area, which in view of the conditions is quite significant. In Cook County the courts are in practically continuous session, while in many of the downstate counties court is in session only at infrequent intervals, although in the more urban counties courts are in session most of the time, except during the summer vacations. Continuances mean more delay in counties where court is infrequently held than in the larger counties. Continuances are responsible for practically all delays. The above table tends to corroborate the trend of answers to the questionnaires to judges, that there is relatively little problem of continuances in the downstate counties. The delays which

TABLE 16—TIME INTERVALS

TIME INTERVAL A

COMPLAINT TO DISPOSITION IN THE TRIAL COURT

	Eliminated in Preliminary Hearing		Eliminated in Grand Jury		Eliminated in Trial Court		Guilty		Plea Accepted		Convicted by Jury		Found Guilty by Court	
	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.	No.	Med.
Total Illinois	6702	10.45	1578	23.33	3056	110.70	3413	67.90	2758	66.84	262	105.96	281	76.65
Chicago	5624	11.27	1309	18.04	2210	112.88	2437	74.35	1974	71.19	197	113.21	266	77.31
Chicago and Cook County	5857	10.90	1348	18.75	2332	113.35	2569	73.56	2082	70.48	197	113.21	281	76.65
Eight more Urban Counties	660	8.23	190	44.95	379	81.79	543	65.84	472	63.04	21	65.00		
Seven less Urban Counties	154	4.11	40	7.50	122	110.50	226	48.47	158	48.11	26	112.50		
Two Rural Counties														
Williamson and Franklin	31	5.25			123	30.92	75	21.07	46	6.88	18	65.00		
Milwaukee	292	16.88			350	57.25	1149	17.22	704	15.55	49	75.00	395	23.17

occur, even in those places where administration is shown to be the most rapid, are serious enough, however.

From 81 to 110 days' delay from filing of the charge to elimination in the trial court without punishment, which is the record in downstate counties, may indicate the reasons why many of these cases were thus eliminated, that is, without punishment. Delay always works toward no punishment. Even those cases which are tried to juries cannot fail to be adversely affected by the lapse of 112 days before trial, which is the median in the seven less urban counties. Milwaukee presents an outstanding example of speedy administration. By far the largest number of cases going into the courts there are guilty, the record being 1149 out of 1519 entering the trial court. This includes pleas as well as convictions by court or jury. A median of 17.22 days from the date of filing the charge in the court of preliminary hearing to final conviction in the trial court is a standard to which not only the courts of Illinois, but those of other states as well may hope to attain. In this connection it should be noted, however, that nearly one-third of the cases were tried by the court after waiver of jury, which may be done in felony cases in Milwaukee. In such cases 23.17 days elapsed from the filing of the charge to trial and disposition. The jury may not be waived by the defendant in felony cases tried in Illinois, so that some of the speed in Milwaukee may be ascribed to the difference in procedure; moreover, the prosecuting attorney may there initiate felony charges upon information rather than by indictment of the grand jury, which still further facilitates the prosecution. Such a system in this state would probably add greatly to celerity of prosecution and therefore to the better administration of justice.

19. General Comment. In conclusion it should be said that public opinion in any given county can make or break the enforcement of the criminal laws in that county. Bankers wish bank robbers severely dealt with; some people wish automobile thieves severely punished; farmers want chicken thieves vigorously prosecuted; and there are those who believe that the enforcement of the prohibition law should be more vigorous than that of any other statute. Judges, state's attorneys, sheriffs, and policemen are human. The people of the county are very apt to get the kind of enforcement of the criminal laws they themselves desire. The officers having to do with law enforcement of all kinds, when they have demonstrated their ability and good faith, should have the support of the press and of the citizens generally. On the other hand, it is important that the officers of the law (and this especially applies to the state's attorneys) should interest themselves in keeping the people of the county informed as to the conditions and in trying to mold public sentiment into an attitude of upholding the law. It was Abraham Lincoln who said, "Public sentiment is everything. With public sentiment nothing can fail; without it nothing can succeed. Consequently, he who molds public sentiment goes deeper than he who enacts statutes or pronounces decisions. He makes statutes and decisions possible or impossible to be enacted." It lies within the power of every state's attorney, if he will conscientiously and energetically accept the responsibility which goes with the office, to be in truth "a molder of public opinion" in the sense that it was defined by the immortal Lincoln.

20. Findings.

1. The median *age* of the seventy-three state's attorneys who replied to the questionnaires, was forty-one. A majority of the state's attorneys have had a legal experience of ten years or more while some have a very considerable background of legal experience. All are common school graduates; practically all are high school graduates; nearly one-half are college graduates; a number attended law school who did not graduate, and about seventy per cent of those who replied are law school graduates.

2. In a great majority of the counties in Illinois, the state's attorney engages in *private practice* in addition to his work as state's attorney.

3. State's attorneys' *salaries* have been inadequate in most counties during the past few years, but they will be higher under the law which takes effect for the terms beginning in December, 1928.

4. Under a statute passed just a few years ago, each county must now furnish an *office* for the state's attorney. No statute required this prior to that time. Many state's attorneys have not sufficient assistants, clerical help, or investigators.

5. A little over 50 per cent of the state's attorneys keep an *office docket* or record of the progress of cases.

6. It is the duty of the state's attorney with the assistance of the sheriff to *obtain the evidence* and to prepare the law in every case.

7. Four hundred thirty-one out of five hundred seventy-three newspaper editors, heads of commercial organizations and bankers, of the state, answer "yes" to the following question: "Are the criminal laws *efficiently administered* and *adequately enforced* in your county by the state's attorney?" Ninety-seven answered "no" and forty-five did not answer the question.

8. In the downstate counties, *bargaining for pleas of guilty* between the state's attorney and the attorney for the defendant does not appear to be nearly as prevalent as it appears to be in Chicago and Cook County, as reflected by the acceptance of pleas of guilty to lesser offenses in Chicago and Cook County in a much greater proportion of cases.

9. A state's attorney in Illinois has more *power and discretion* in the various steps of prosecution than the circuit judges or any other officials.

10. The median *intervals of time* elapsing in the various steps of prosecuting cases in downstate counties are: in the eight more urban counties, 8 days in preliminary hearing, 45 in the grand jury, 82 in the trial court, 66 days in cases where the defendant pleads or is found guilty, 63 days on pleas of guilty alone, and 65 days when convicted by a jury; in the seven less urban counties, 4 days in preliminary hearing, 7 in the grand jury, 110 in the trial court, 48 where the defendant pleads or is found guilty, 48 on pleas of guilty alone and 112 days where convicted.

21. Recommendations.

1. Each state's attorney should keep an *office docket* or record showing the progress and disposition of each case.

2. There should be entered on the record, the *reason for a nolle prosequi* or striking a case with leave to reinstate.

3. Each state's attorney should be provided with the necessary *assistant* or assistants, sufficient clerical help, and, in the larger counties, an investigator or investigators.

4. The *coroner* should act under the direction of the state's attorney in all cases where death is due to felonious homicide.

5. Less liberality in recommending acceptance of *pleas to lesser* offenses.

6. The Circuit *judges* should exercise the power they now have to *examine the jury* subject to the right of counsel to supplement the examination within reasonable limits.

7. The following *changes in the law* would better promote substantial justice for the reason that they would assist in bringing about earlier hearings and speed up trials:

(1) Prosecution of felonies on information (instead of indictment).

(2) Have court terms each month.

(3) Permit defendants to waive jury in felony cases.

8. It is most important that the state's attorneys in the counties of the state be *men* who are straight and clean, of unimpeachable integrity, who are industrious and forceful, and who have ability, experience and standing in the community.

9. Every state's attorney should interest himself in *keeping the people informed* of the problems confronting the law enforcement officials, to the end that the people may be induced to give their support to conscientious, faithful, public officials.

CHAPTER VI

THE PROSECUTOR (in Chicago) IN FELONY CASES

By

JOHN J. HEALY

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CHAPTER VI

THE PROSECUTOR (IN CHICAGO) IN FELONY CASES

1. *Factors in the Administration of Criminal Justice.*

(a) No discussion of prosecution in Chicago can properly be introduced without at least a passing reference to the factors which enter into, and are so vitally affected by, the conduct of the prosecutor in the administration of the duties of his office. The laws of criminal procedure, the courts in which prosecutions are conducted, the juries, and the police are all tied in with and to a very marked degree are dependent upon prosecution.

No single topic of public interest is receiving greater attention at this time than the question of crime,—its detection and punishment. Many and varied articles in magazines and elsewhere deal with the question. Criminal surveys, similar to the one here presented, have been made in a number of states and, undoubtedly, more will follow. Crime commissions composed of public spirited men and women are industriously engaged in an effort to stem the criminal tide which is sweeping through our cities and our rural communities.

Causes are announced and remedies are recommended on every hand. Every suggestion of cause and every proposed remedy possess certain degrees of merit; some more and some less. But all aim in the same general direction and therefore deserve serious consideration.

Some of the writers on the subject blame the system and insist upon a drastic revision of the criminal code, hoping thereby to make conviction and punishment more easily obtainable. Many lay the blame upon the doorsteps of the jury. Others place responsibility upon the heads of the law enforcing agencies; i. e., the police, the courts, and the prosecuting attorneys. It is, of course, impossible to reconcile these divergent views so that all may stand upon the same common ground of complaint. To a certain extent, and in varying degrees, all of them are right, but to say with which body of objectors rests the preponderance of right is a more difficult matter.

Our ability to solve the riddle depends upon our ability truly to see and observe crime conditions, and this ability is limited, no doubt, to the contact and the experience which have come into our lives through the work in which we have been engaged.

(b) Treating the subject first from the point of view of those who criticize the system:

That the *criminal code* of Illinois is faulty in spots admits of little doubt and these defects should be corrected. In the opinion of the writer, the faulty spots are not of controlling effect.

One of the objections urged against the code is the oft-repeated claim that prosecutions fail or are endangered because *jurors* in criminal cases are the *judges of the law* as well as the fact. Granting the absurdity of a law

which permits a juror, untrained in the law, to set up his legal view against that of the judge, we venture to assert that few prosecutions have failed simply because of that fact. In the first place, every juror, if his attention is called to the matter at all, has pointed out to him the absurdity of permitting him to set aside the court's view of the law and impose his own. He then readily agrees, under oath, that he will take the law to be as it is stated in the written instructions of the court. In the second place, and this it seems to us is the controlling factor, the juror will render his decision according to the dictates of his own conscience and will not hesitate to reject the law given by the court, if in his opinion a verdict of guilty should not be returned. Let the defendant assert a plausible and persuasive moral defense, as distinguished from a legal defense, and the average juror will find in his favor, all law to the contrary notwithstanding. In every such case the verdict would not be different, if the law were reserved to the court and the jury simply passed upon the facts.

The real vice in permitting jurors to be judges of the law is found in the fact that it strongly tends to confuse the mind of the juror and occasions a serious and unnecessary waste of time. Lawyers for the defendant not infrequently stand before the jury for hours, and even days, reading from reported decisions not only in Illinois, but from other states of the Union. It is, of course, impossible for the average juror, untrained in the law, to intelligently follow the expressions of reviewing courts and differentiate and apply them to the facts in the case then upon trial. The net result is confusion and a wicked waste of time.

One of the bad spots in our criminal code is found in the number of *peremptory challenges* allowed to the prosecutor and the defense. These should be measurably decreased. It is absurd to allow twenty peremptory challenges to each side in a felony charge and equally absurd to allow ten challenges to each of the contestants when the charge is a misdemeanor. With three defendants charged with murder (a not unusual number), the defendants may excuse, without rhyme or reason, sixty prospective jurors. The prosecution has a like number. The difficulty of securing a jury under such circumstances is obvious and the helplessness of the court to expedite the selection of a jury under such circumstances is measurably increased.

The writer recalls a misdemeanor case in Cook County in which there were twenty-two defendants and, under the law, the parties were entitled to four hundred and forty peremptory challenges. Six months were consumed in the selection of that jury, followed by a disagreement. Absurd! Of course!

But even with so many peremptory challenges, the trial judge is not wholly powerless. By examining the jury and instructing them *en bloc* on the fundamental and general questions involved in criminal trials, he may do much to hasten the selection. On the second trial of the case last referred to, the trial judge refused to allow the dilatory tactics followed in the first trial, with the result that a jury was selected in five days.

It is, of course, impossible, within the limits of this report, to discuss all of the defects to be found in the criminal code. The point is, the defects in the system furnish the smallest reason for the breakdown of criminal justice. Honest and efficient prosecutions are bound to overcome any mere

defect in the procedural system. We must look elsewhere for our failures.

(c) Nor do we hold with those advocates of reform who would make conviction easy. In our liberty loving country the rights of the individual should always be held sacred. Theoretically every person accused of crime stands alone, with the organized force of government against him. In such an unequal combat the law has wisely established certain protective rules which make the contest a fair one. Few of these rules should be radically changed or modified, else the individual rights of the citizen may be seriously impaired or wholly lost. Conviction of crime has always been and always should be a difficult matter. The burden is on the prosecution and the life or liberty or property of the citizen should never be taken unless and until his guilt is established beyond a reasonable doubt. We are speaking now of the abstract legal questions involved in a criminal trial.

In matter of practice, the defendant not only demands and secures his every legal right, but too often goes beyond and violates the law itself in order to obtain an acquittal. Many times he is aided by the lawless skill of his counsel, who frames and fashions a perjured defense, which it is sometimes difficult, if not impossible, to destroy. Too many members of the legal profession lend themselves to such practices and build their reputations upon their ability successfully and knowingly to foist upon the court and jury a dishonest and fabricated defense; but such misconduct should be cured directly and not by indirection. Under such circumstances, the lawyer and not the system is the problem. The cure should be applied to him and not through the emasculation of the procedural rights which the defendant now properly enjoys.

Neither does a large measure of fault lie with the jury, as we shall later attempt to demonstrate in another chapter of the report.

(d) We come, then, to the *law-enforcing agencies* of the criminal code,—the officials in whose hands are placed the instruments of justice with which to battle the forces of crime. They constitute the police, the courts, and the prosecuting attorneys. Theirs is the responsibility, and as they do their work, so should they be judged. To a large extent their responsibility is a joint one and nothing approaching perfect results can be obtained unless all three forces are working with a common, honest, purpose. To an appreciably lesser extent each may function successfully in its own sphere without the active and perfect support of the other.

From this brief deduction, the conclusion inevitably follows that there will be no substantial failures in the administration of criminal justice when these three forces of government are giving effective and intelligent service.

If the writer were asked to apportion and divide responsibility between the three forces in question, he would say that the responsibility for complete success, after the defendant is apprehended, lies with all three, and the responsibility for failure should be charged against each in the following approximate proportions:

Police	20%
Courts	10%
Prosecuting Officer	70%

The low percentage of failure charged against the courts is bottomed upon the fact, based upon actual experience, that vigorous and efficient prose-

cutors will generally deter any occupant of the bench from straying far afield in the administration of justice. Even a weak and supine judge will follow the lead of the vigorous prosecutor, and it follows as a necessary corollary that an inefficient and corrupt prosecutor will, to a large extent, carry with him, not only the weak judge, but also the judge whose chief desire is to avoid strife and contention. Opposition to the prosecutor may mean political oblivion; acquiesence on the part of the weak judge enables him not only to keep his own political fences in repair, but to extend judicial favors in the matter of sentences and paroles, knowing full well that there will be no protest by the prosecutor.

Having, therefore, as it seems to us, removed some of the underbrush and dissipated some of the clouds which befog the public mind, the whole question of the administration of criminal law depends in the main upon the individual who is at the head of the prosecutor's office, and in a much lesser degree upon the head of the police department. This aspect of the matter and the reasons in support of the same will be discussed in the later pages of this report, and will be based upon statistical and other facts which are apparent to the man on the street.

2. *Power and Duty of the State's Attorney.* The office of state's attorney is created by the Constitution of Illinois. His jurisdiction is coextensive with the county in which he is elected. Under the law, as it now stands, he is the supreme authority in the prosecution of crime. Except when he is sick or absent, or personally interested in the cause or proceeding, no other officer may invade his legal functions. Generally speaking, he commences and prosecutes all actions, both civil and criminal, in Cook County in which the state or county has any interest. All prosecutions on forfeited bonds and all proceedings for the recovery of debts, fines and penalties in his county are instituted by him. He advises all other county officials on questions of law relating to any criminal or other matter in which the people of the county may be concerned. He appears in all tax proceedings against delinquent tax payers for judgment to sell real estate, and performs other and varied public duties, all of which are of far reaching public importance.

3. *State's Attorney's Staff.* To enable him to discharge the manifold duties of his office, the State's Attorney of Cook County has a large staff of assistants, consisting of attorneys, investigators, stenographers, clerks, police officers, etc. The police officers are assigned for duty in his office by the commissioner of police and their salaries are paid by the City of Chicago.

The expenses of the office for the years 1926 and 1927 were as follows:

	1926	1927
Salaries	$469,579.14	$476,712.54
Court reporters	30,990.45	33,563.40
State's attorney's fund	111,751.99	176,476.48
Office supply and expense fund	5,888.86	5,862.88
	$618,210.44	$692,615.30

The annual appropriation for the office for the year 1927 amounted to $611,477.46, which amount does not include a fund of fifty thousand dollars

for enforcing judgments on forfeited bail bonds and a deficiency appropriation for disbursements in the year 1926, of $9,934.13. Of the amount appropriated for 1927, the sum of $506,477.46 was provided for the salaries of the state's attorney, his assistants, and court reporters. His assistants number 70, besides which he has 25 clerks, 16 stenographers and 14 investigators. It is said to be the largest prosecutor's office in the United States.

4. Police Department. The basis of crime control rests primarily with the police. Theirs is the duty of crime detection and apprehension. Unless this preliminary work is effectively done, the ultimate punishment of the criminal is never fully realized.

(a) It is generally conceded that police organizations in this country have not kept pace with organized crime. This is not only true of Chicago, but applies as well to every large American city, with few, if any, exceptions. Some cities do the work better than others, but all cities do it indifferently well. No highly intelligent, and certainly no scientific, effort has been made in Chicago to increase the efficiency and crime detecting ability of the police, so as to enable them to cope successfully with the ingenious and organized forces of crime. Numerically, our police force may have kept pace with crime, but in matters of efficiency and intelligent methods of crime detection we seem to have learned little and done less.

Nor is this an indictment against any particular police force of Chicago, except as they have permitted themselves to follow in the old rut, without making any conscious and intelligent effort to lift themselves from the prevailing and continuous inefficiency of the past. On the contrary, the indictment should rather be that they are the victims of a system which has grown and developed without plan or reason. They have been left to their own devices and are working under an archaic system. In the main, they are ignorant of the highly technical manner in which police work should be done. Criticized for their inability to discover the perpetrator of a particular crime, scolded by the press and the public, and smarting under the criticism of failure, they have resorted to the "third degree" and other improper and dishonest police methods. Paralyzed in their efforts by political and other corrupt forces, the wonder is that they do as well as they do.

(b) The reason for this condition is recognized by every student of the question. Instead of being a purely crime detecting and apprehending agency, the police force of Chicago has been, through all the history of our City, the adjunct of whatever political faction happened to be in power. Its activities have been limited to the policy of the administration, instead of being governed and controlled by the letter of the law. Handicapped by the varying and vacillating policies of the administration, it is always a matter of police uncertainty as to which law shall be enforced and which violation shall go unchallenged. For many years there has been fastened upon the police department, an active or a tolerant attitude on the part of the city administration toward vice and gambling. Responding to this attitude, the police department has been demoralized and individual members have resorted to grafting and the levy of tribute, without which vice and gambling would soon be suppressed. Every sophisticated observer knows that these resorts would not be tolerated if it were not for the finan-

cial tribute which they pay to the public officials or their political satellites for protection.

That this condition does much to increase lawlessness and crime and is an important element in the prosecution and suppression of crime, has been demonstrated time and time again. Effective police suppression of vice resorts (a comparatively easy matter) would substantially lessen crime and enable the prosecuting office to devote more time and attention to the more serious crimes that result from the influences of human passion and avarice.

(c) That this condition will continue until the police force of Chicago is divorced from politics and placed upon an independent footing, must be admitted by every impartial observer. During the past fifty years, Chicago has had approximately twenty-five superintendents of police, each of whom has been appointed by the mayor, and each of whom has clearly understood that if he did not carry out the crime policy of the administration another would be appointed in his stead.

In England, Scotland Yard has had six commissioners of police in eighty-five years; Berlin has had ten in sixty-six years. There they find the man who is best fitted for the position and he is kept in office so long as his work is well done. Under such a system there is incentive to do good work —to create and improve the system and thus make effective war against the enemies of society. The average term of office of a superintendent of police in Chicago has been two years. In so short a time and with such insecure tenure of office, no superintendent of police has been bold or foolish enough to attempt to initiate a far-reaching or permanent plan of police reorganization. Following the political fortunes of the administration, he has come to be looked upon by the average citizen as a part of a political machine and is treated accordingly.

In England, France, Germany and other foreign countries, they seem to have learned the necessity of separating the police agencies from the influence of corrupt and petty politics. In those countries the sole and only business of the police is to detect and assist in the punishment of crime. In furtherance of this purpose, the police are organized on educative and scientific lines, where promotion and advancement is won by merit alone. They not only do their work efficiently, but they command the respect and possess the confidence of the people. Their testimony in court is invariably accepted as true and they have the full and undivided support of the law-abiding element of the community in which they serve. In Chicago, the testimony of a police officer is too often regarded with suspicion and the court and jury are thereby more willingly induced to accept the denial of the defendant rather than rely upon the truth of the officer's testimony. This adverse or prejudicial attitude against the testimony of the police does much to prevent conviction. It has been of slow, but steady, growth and receives its impetus from the fact that individual police officers have not infrequently been truthfully charged with having resorted to physical force and intimidation in order to induce confessions and thereby bring about convictions. Then, too, the police officer ofttimes exhibits a partisan rather than a judicial attitude in his zeal to bring about a conviction, with the result that the court and jury become skeptical of the truth of his testimony and refuse to give it credence.

(d) Every police officer should be taught he is a part of the law enforcing body; that in common with every other officer to whom is committed the enforcement of the law he is never to breach or violate its terms, and that the end, no matter how justifiable, is never to be accomplished by unlawful means. He should be, as he is, a quasi judicial officer, balancing the scales of justice evenly and fairly between the prosecution and the accused. Confessions and admissions should be fairly and honestly obtained and should be immediately committed to a paper record. When we remember that a mere promise of immunity destroys the validity of a confession, it should not be difficult to see that there is no place in modern police methods for the employment of physical force or other unlawful duress in order to force a confession. A confession so obtained is worse than useless. Relying upon its sufficiency to secure a conviction, the police abandon all effort to obtain further proof. Its rejection by the court leaves the prosecuting officer without any evidence to support the charge. The public, in the meantime, is unable to understand how a self-confessed criminal goes free. Such an educational process will doubtless be of slow growth, but with the right kind of an effort it will not be difficult to establish the same public confidence in the truth of a policeman's testimony as that which now prevails in England and other European countries.

(e) On the Continent and in England, the prospective police officer is carefully selected and undergoes an intensive criminal education. He is taught the fundamental principles of criminal law as applied to the detection and apprehension of criminals; how to take a dying declaration properly, so that it will pass muster in court; what constitutes a proper legal confession and how and under what circumstances it should be taken; how to look for and recognize clues which lead to evidence of guilt; the correct scientific formula for giving a personal description; how safely to keep physical evidence gathered at the scene of the crime or elsewhere, so that its introduction in evidence will be legally competent; etc., etc. His work is treated and regarded as a profession and he is educated in such a manner as to become its master. To develop our police force along these lines would seem to be one of the imperative necessities of the day.

In view of the millions of dollars lost each year as the result of criminal operations, it would seem to be good economy to develop, through educational methods, a police force which would bring to the performance of its work the knowledge of an expert in the detection of crime. A small commission qualified to study the police methods of England, France, and Germany, and perhaps other continental countries could intelligently formulate and report a system suitable to the needs of Chicago. To serve upon such a commission would be a post of honor and a call for patriotic service, which no good citizen could refuse. Based upon such a report, a new police organization should be created, headed by a man of force and vision, freed of political entanglements, who should be kept in the position so long as he gave good service. A force of trained police experts will do much to enable the prosecuting officer more easily and certainly to secure convictions.

5. *Felonies Prosecuted in Chicago in 1926.*

It will perhaps clarify this discussion of prosecution in Chicago if we gain some idea at the outset of the character of the crimes with which the state's attorney is concerned. It must be borne in mind that in this report no attempt is made to consider those crimes which are unsolved, but only those cases upon which charges were filed. Thousands of felony crimes are committed every year for which no one is ever prosecuted. The following Table 1 sets forth the number of prosecutions initiated on felony charges in the year 1926 and the relative frequency of prosecutions for each of the several offenses:

TABLE 1. FELONY PROSECUTIONS IN CHICAGO, 1926
(Classified by offenses)

	Number	Percentage
Homicide	567	4.52
Rape	540	4.31
Robbery	2,696	21.49
Assaults	461	3.68
Burglary	1,433	11.43
Forgery	171	1.36
Embezzlements and frauds	2,854	22.75
Larceny	2,968	23.66
Carrying concealed weapons	15	.12
Sex crimes	114	.91
Miscellaneous	724	5.77
Total, all charges	[1]12,543	100.00

By far the greater number of these cases (7,561 to be exact) was never prosecuted beyond the preliminary hearing. So it would probably be a better measure of the proportions of these various crimes upon which the greatest amount of effort is expended by the state's attorney, to consider in another table those crimes which resulted in indictments and which entered into the trial court. The following Table 2 indicates the numbers and percentages of these:

TABLE 2. INDICTMENTS IN CHICAGO, 1926
(Classified by offenses)

	Number	Percentage
Homicide	281	5.64
Rape	180	3.61
Robbery	1,538	30.87
Assault	192	3.86
Burglary	823	16.51
Forgery	94	1.89
Embezzlements and frauds	535	10.74
Larceny	941	18.89
Carrying concealed weapons	9	.18
Sex crimes	46	.92
Miscellaneous	343	6.89
Total	4,982	100.00

[1] This is the total number of felony charges filed during 1926. 10,829 of them (which does not include fugitive warrants and warrants returned unexecuted, which in 1926 number approximately 4,000 cases) were found by the records to have originated in the Municipal Court where preliminary hearings are held. The remainder, 1,714, were cases in which no record of a preliminary hearing was found in the municipal court, but upon which indictments were filed, presumably upon original presentation to the grand jury, in which cases no preliminary hearing is required.

Thus, the crimes with which prosecutions must deal, in the main, in the City of Chicago are robbery, burglary, and larceny. These three crimes constitute a vast majority of the crimes which are prosecuted.

These crimes are, of course, crimes against property and, moreover, are those crimes which are most frequently resorted to by criminals in their efforts to make a living through attacks upon society. They are, also, those crimes which represent, in the work of prosecution, the rougher side of legal work. They do not involve, usually, fine points of law. The character of investigation necessary is not always exceedingly technical; they are more simple. Cases involving embezzlement and fraud are, on the other hand, exceedingly technical and difficult to prepare. Every large prosecutor's office recognizes the distinction between the more numerous crimes of violence and those crimes which are accomplished by deceit and fraud. It is, therefore, difficult to determine with any exactness how large a proportion of the efforts of the state's attorney's office goes into these more numerous crimes, because there is no way of determining whether the cases involving embezzlement, forgery, and fraud do not take more time and effort even though they are not so numerous; however, these figures herein indicate with some clearness the proportions.

It is inevitable that comparisons will be drawn in such a report as this, between the two largest cities in the United States, New York and Chicago. It is fortunate that for New York we have statistical data concerning prosecutions, which are in many ways like those presented in this report for Chicago. In connection with the number and classes of criminal prosecutions, it is not possible to make a complete comparison, because the New York law differs somewhat from the Illinois law in many of these crimes. For example, in New York a considerable proportion of the felony prosecutions are for carrying concealed weapons, which offense is not usually prosecuted as a felony in Chicago; however, the following table indicates a comparison between New York and Chicago in regard to a number of the more significant crimes. The figures for New York are for 1925, which is the only complete year covered by the reports of the New York State Crime Commission. The method of collecting the figures and the tabulation thereof were similar in both instances, so that the comparison may be relied upon:

TABLE 3. NEW YORK AND CHICAGO, COMPARED

	Chicago, *1926*	New York, *1925*
Homicide	567	1,059
Robbery	2,696	1,489
Assault	461	4,158
Burglary	1,433	2,382
Larceny	2,968	5,622

The reader is warned not to depend upon these figures as measures of crime in the two cities. Such a use of these statistics would be entirely unwarranted. They are rather the measure of the amount of work that the prosecutors' offices in the two cities must do. Even in this respect, however, a warning should be interposed. While Cook County is under one state's attorney, the City of New York includes five counties, each of which has a

district attorney with independent powers. The figures which we are giving here include the five counties of New York City. The most interesting distinction between New York and Chicago in this table is the wide difference between the cities in the number of robberies and assaults. The New York Police Department, in presenting its annual figures, usually lumps robberies and assaults in order to provide figures which are comparable with other cities. This is due to the interpretation of New York penal statutes by the Police Department of New York City.

6. *Ten Thousand Fruitless Prosecutions.*

One day during the summer of 1927, a prisoner, who possessed a long police record as a bomber, auto thief, and hold-up man, escaped through a skylight from the prisoners' room in one of the branches of the municipal court. Subsequent search for him was in vain. This escape attracted widespread attention; it was commented upon editorially, and presumably stirred to some degree the City of Chicago. In the year 1926, however, out of 10,829[1] cases in which individuals were arraigned in the municipal court on felony charges, over six thousand were released by municipal judges. More thousands were released along the line from the municipal court to final conclusion of the resources of criminal procedure. Thus the public is stirred by the escape of one man, but the public is indifferent to the release of thousands.

It all goes to show, that after all it is the unusual that attracts attention and claims public interest; the usual run of things is unnoticed. The average citizen is hardly aware of the tremendous amount of lost energy in the administration of criminal law. He hears all sorts of explanations: juries are sentimental, criminal procedure is full of loopholes, cases are being fixed, and other charges are being made. The fact is that none of these explains the situation with any degree of clarity. The explanation lies, first, in a frank examination of the facts concerning what happens in criminal prosecution, and in a careful and detailed analysis of the dry details of these facts.

Criminal procedure is, of course, devised to give persons accused of crime every possible opportunity to escape the consequences of unfair and unlawful prosecution. We make many arrests and we have many laws defining crimes, but the percentage of those who are charged with crime who are finally found guilty and punished is surprisingly small. For the purpose of presenting this fact we can roughly divide the criminal process into three parts. The preliminary hearing in the municipal court, where the police and others bring felony charges in the first instance. Here a determination of whether there is "probable cause" to hold the defendant for further action is made. The second stage is the grand jury, where those who are held for probable cause are duly considered by the members of the grand jury, and those who, in the opinion of the grand jury, should be held for trial are indicted. The third stage is that which begins after the indictment, and in those cases in which the prosecution is completed sentence is fixed by the court. Here then we have three stages of which we shall speak frequently in the pages that follow.

[1] See footnote to Table 1.

The Prosecutor (in Chicago) in Felony Cases

There entered the courts in 1926, the year which we selected for study in the City of Chicago, 12,543 cases. Of this number 6,124 or 48.83 per cent were eliminated in the preliminary hearing. Approximately one-half, then, died in the first stage of procedure. In the grand jury another 1,437 were thrown aside, leaving 4,982 or 39.72 per cent of those cases which started on the road. Into the trial court went 4,982 indictments. The State thus filed this number of solemn felony charges, describing in the indictments the details of the crimes, the time, the place, and other circumstances connected therewith. This array of approximately five thousand cases had been inspected by three agencies which the government has provided for apprehension and prosecution of criminals; the police, the municipal court, and the grand jury. Each of these had decided that there was probable cause to think the accused guilty. In the trial court, however, 2,533 of these were eliminated by various means. There were findings of guilty, of the total number of original felony charges in 1926, in 2,449 or 19.53 per cent of the number originally charged. Thus the administration of criminal prosecution in Chicago is effective in one case in five. For every five cases that are initiated, one results in a finding of guilty.

Now this is not the entire story, as we shall see before we complete this report. Of 2,449 findings of guilty, all do not result in punishment; 510 result in probation; new trials are granted; a few additional means of final escape are available; and the final net result of the machinery is the execution of 1,885 convictions, or slightly over 15 per cent of the grist of cases which began.

This is the story of the enforcement of law in the City of Chicago. It means in solid numbers that out of 12,543 prosecutions for serious crimes, 10,658 result in no punishment. The public gets excited over the sole individual who, by a burst of physical energy, escapes the toil of the law by climbing through a skylight, but fails to note the failure of the 10,658 prosecutions wherein the defendants were solemnly charged with major offenses but returned to the streets unnoticed. Here is a fact which the average citizen should ponder long and earnestly. It may be said, of course, that among the ten thousand thus liberated, many, perhaps most, were not guilty. This, however, might be said of the gentleman who escaped through the skylight. Neither had he been judged guilty, he had not even been held to the grand jury. His escape meant little more to the state in the way of actual subsequent menace to society than any one of the 6,124 who were in 1926 released by the municipal court. It may also be said that he had a record; he was a bad man; therefore, the public was more interested in him than in many others who passed through the toils of the law. But we shall present facts subsequently in this report to indicate that many of the ten thousand who went free are bombers, murderers, robbers, burglars, rapists, desperate men, whose presence is a constant threat to organized society and the security of property. This enormous loss of motion in criminal cases is the first salient fact in the administration of justice. In calling attention to it we are at this point making no charges of corruption or inefficiency against the individual ranks of those who operate the machinery which society has created to protect itself. We are considering the thing in the mass. If any charge is to be made upon the basis of the facts which we have presented in

the foregoing paragraphs, it is simply this, that society has a curiously ineffective way of protecting itself.

For the benefit of the more sophisticated reader, who is at this point considering the fact that the City of Chicago is perhaps no worse than other cities in this respect, that America generally is operating its criminal law machinery without appreciable result, it ought to be said that we are not, in this report, attempting to arrive at nice comparisons among cities. This business of enforcing the criminal law is no race for comparative honors among different communities. Chicago is no less in need of serious and immediate improvement in the administration of the criminal law just because other cities are bad. We are attempting to consider the case on the basis of what is being done and what might be done.

7. *Elimination of Cases in Preliminary Hearing.*

In the City of Chicago 10,829[1] cases entered the preliminary hearing in 1926. These cases were disposed of in the manner indicated in the following Table 4:

TABLE 4. DISPOSITION OF CASES IN PRELIMINARY HEARING

	Number	Per Cent
Total cases entering preliminary hearing	**10,829**	**100.00**
Never apprehended	391	3.61
Error, no complaint	116	1.07
Complaint denied	35	.32
Bond forfeited, not apprehended	68	.63
Certified to other courts	50	.46
Dismissed, want of prosecution	2,501	23.10
Nolle prosequi	766	7.08
Discharged	2,117	19.55
Reduced to misdemeanor, not punished	12	.11
Reduced to misdemeanor, punished	3	.03
No order	22	.20
Pending	7	.06
No record	36	.33
Total eliminations	6,124	56.55
Remainder—Bound over to grand jury	4,705	43.45

In discussing the fate of cases in the preliminary hearing on the basis of the above table, it is not necessary to consider at any length a number of the dispositions indicated. For example, the reduction of charges to "misdemeanor," "no record," "pending," "certified to other courts," and "no order" involve a comparatively small number of cases and therefore we need not spend much time on them. Charges "reduced to misdemeanor" means that an original felony charge, in the opinion of the municipal judge or the state's attorney, is properly a misdemeanor and is disposed of as such on its merits. This is apparently a way of correcting an obvious error in the charge and does not occur frequently; consequently, we may dismiss it without comment.

"No record" means that the files were incomplete and in our investigation we were unable to determine the disposition of the case.

The seven cases indicated as "pending" were not disposed of at the time the investigation was made.

[1] See footnote to Table 1.

Seventy-two cases were "certified to other courts," which means that after the complaint was filed the court discovered that due to the age of the defendant or to some other circumstances the case properly belonged elsewhere, either in the Juvenile Court or in some other jurisdiction. This does not happen frequently, because the police usually refrain from bringing a charge against anyone wanted by other authorities, and the case, therefore, would not come within the scope of our study.

"No order" means that for some reason the state does not wish to prosecute to a final conclusion but is unwilling to strike the case from the docket entirely.

"Never apprehended" means that a complaint was made, a warrant was issued, but the police or other arresting officer was unable to take the accused into custody. This need not detain us long because in a consideration of the responsibility of the prosecuting officer for the various items in this study it can scarcely be charged that he is to blame for such a result.

It will be noted that one hundred sixteen cases are lost because of "error, no complaint." In the state wide study which this survey has attempted, we found that this disposition appears only in Cook County and in the City of Chicago. It is, according to the authorities, a way of indicating the dismissal of a case where the complainant applies for a warrant and after a hearing it is determined that his complaint is groundless. It would seem, therefore, to be about the same sort of a disposition as a straight charge with a subsequent dismissal. If it really were an error, the case should be continued until the proper charge is filed, and then the original case dismissed. There would seem to be grave doubt as to the wisdom of dismissing the case outright and an alert prosecutor would certainly object to such a disposition.

"Complaint denied" is found also only in Cook County and the City of Chicago, which also means that the complainant has had a hearing and it is decided that his complaint is groundless. The same comment that we made above in connection with "error, no complaint" applies here. It seems that there is an unnecessary multiplication of dispositions here, when simple dismissal would suffice.

"Bond forfeited, not apprehended" means that the defendant who has been in custody of the court has been released upon bond, and when he has failed to appear for trial the bond has been forfeited.

We now come to the really serious aspects of the administration of criminal justice in the preliminary hearing. It will be noted above that a total of 5,384, or half of the cases which enter the preliminary hearing are terminated there by three kinds of disposition: "discharged," "nolle prosequi," [1] and "dismissed, want of prosecution." In all of these the state's attorney has a responsibility which is equal to that of the court itself. Thus, in any consideration of the activity of the state's attorney these dispositions are present. At this point, however, in our discussion we shall content ourselves with a simple explanation of what they mean and in a subsequent paragraph we shall call attention to the significance of dismissing half of the

[1] A "nolle prosequi" is a dismissal of the charge upon motion of the state's attorney and is entered after he has decided, either before or after the presentation of evidence, that the state has no case.

cases brought into the municipal court through these methods. The case is "discharged" when, after the presentation of evidence by the State and occasionally by the defense, the court decides there is not "probable cause" and that the defendant should not be held for action by the grand jury. Technically, this differs in a marked way from "dismissed, want of prosecution," because presumably in the latter case evidence has not been presented at all and there is no action for the court to take except to dismiss the case. In practice, however, it may mean many things. It is sometimes due to the absence of witnesses or the failure of witnesses to offer testimony. In practice also it means that in many instances the municipal judge uses this method of ridding the court of a case when in reality he has heard evidence and has decided that it was inadequate.

8. *Elimination of Cases in the Grand Jury.*

There are two ways in which cases get to the grand jury. The first and most common method is through action of the court of preliminary hearing. When a defendant is bound over to the grand jury by the municipal court in Chicago, the case proceeds directly to the grand jury. The other method is by the presentation of evidence directly to the grand jury by the state's attorney. Many cases are taken directly to the grand jury by the state's attorney and they are, in consequence, issued by the grand jury as "original" indictments. As we saw in the preceding section of this report, a total of 4,705 cases were bound over to the grand jury by the court of preliminary hearing. In Table 5 which follows, we are considering these as the only cases which were considered by the grand jury, in determining percentages, but at the end of our table we are adding the 1,714 original indictments which emerged from the grand jury, which did not go through the preliminary hearing. There is no record, on the basis of the information which we have, to indicate the total number of cases presented directly to the grand jury. All we have are the indictments which came from such original presentations.

TABLE 5. ELIMINATION OF CASES IN THE GRAND JURY

	Number	Per Cent
Total cases bound over to Grand Jury by preliminary hearing	**4,705**	**100.00**
No bill	1,344	28.56
Indicted for misdemeanor	37	.78
Pending	1	.02
No record	55	1.17
Total eliminations	1,437	30.53
Remainder—Indictments returned (cases from preliminary hearing)	3,268	
Original indictments	1,714	
Total	4,982	

No explanation will be needed for the table shown above except for the item "no record." This means that there was nothing to indicate what had happened to the defendant, who was bound over for action by the grand jury. This may mean a complete loss of the case because of defective administration. It may simply be a defect in the record. In any event, it means that fifty-five cases which were bound over from preliminary hearing

to the grand jury vanished into thin air so far as written record is concerned. If it is possible for cases to become completely lost in the records when a search such as was instituted in this investigation was made, it is perhaps pertinent to ask at this point whether or not it indicates that in the hurried and sometimes chaotic process of administration cases are completely lost. In any event, it points to the vital need of more adequate record keeping.

Nearly thirty per cent of the cases introduced in to the grand jury through preliminary hearing were "no billed." This is a fairly definite responsibility resting upon the state's attorney. Theoretically, of course, the grand jury is a free agent, sifting out the charges made against citizens of the community, and when they consider that there is adequate reason to believe that a crime has been committed and they think they know who committed it, they return definite charges or "indictments." This is the theory, but the fact is that the grand jury is subject, in an enormous degree, to the influence of the state's attorney.

Every prosecutor knows, and every intelligent person who ever served on a grand jury knows, the prosecuting officer almost invariably completely dominates the grand jury. Usually, he or his representative is the only person present in the session of the grand jury who is familiar with the law. He is accorded the right to interrogate witnesses; he may to a large extent determine the witnesses who shall be summoned. This is a completely effective power, because when an indictment fails to be returned in a given case, it is usually because there is not sufficient evidence, and if the state's attorney is not sufficiently diligent in producing the necessary witnesses an indictment can scarcely be expected. Thus he may exercise a powerful and conclusive and irrevocable power of veto without anything to interfere at all, simply by failing to produce the witnesses necessary to convince the grand jury that an indictment should be returned. He can usually determine the order of the cases to be considered. He can, by the phrasing of his questions, elicit the type of information which he wants the grand jury to hear. If a lay member of the grand jury attempts to explore the recesses of a case on his own account, the state's attorney can easily, if he so desires, make the efforts of such an amateur appear to the other members of the jury as fruitless and pointless. He can usually awe most of the members of the grand jury by his superior knowledge of the criminal law. His domination of the sessions is practically complete. The grand jury usually degenerates into a rubber stamp wielded by the prosecuting officer according to the dictates of his own sense of propriety and justice.

We have said enough to indicate that the state's attorney in Cook County is probably responsible to an overwhelming degree for the fact that practically one out of three cases which enter the grand jury from the preliminary hearing, are "no billed." Technically, "no bill" means that no true bill of indictment is returned. It ought to be added further that a true bill of indictment must be signed not only by the foreman of the grand jury but also by the state's attorney, and without his signature a true bill cannot come into existence. This final flourish of authority, however ministerial and perfunctory it may actually be, is a fitting climax to the "grand inquest," which has in fact become a secret tribunal wherein the state's attorney is practically judge, prosecutor, and administrator.

9. Elimination of Cases After Indictment and Prior to Sentence.

The cases which survived the ravages of the preliminary hearing and the grand jury in Chicago in 1926 and entered the criminal court on the basis of definite indictments number approximately five thousand. Of these, only about one-eighth were ultimately found guilty of the crime charged in the indictment; many of them fell by the wayside and were released; others were found, or pleaded, guilty of a lesser offense.

In the trial court, which we are now considering, procedure is much more complicated. Resistance of the accused to the prosecution is definitely accentuated and the activity of the state's attorney more definitely pronounced; moreover, the number of ways in which a case may be disposed of in this stage is much larger and requires much more explanation. Consequently, our consideration of this stage of procedure will necessarily be somewhat detailed. We shall begin by showing in Table 6 the disposition of the cases which had gone as far as indictments:

TABLE 6. ELIMINATION OF CASES AFTER INDICTMENT

	Number	Per Cent
Cases entering criminal court on indictment	**4,982**	**100.00**
Dispositions:		
Never apprehended	41	.82
Bond forfeited, not apprehended	72	1.45
Certified to other courts	13	.26
Defendant dead	9	.18
Nolle prosequi	282	5.66
Nolle account other indictments	8	.16
Stricken with leave to reinstate	374	7.51
Stricken with leave, account other indictments	690	13.85
Dismissed, want of prosecution	206	4.12
Discharged by court	28	.56
Off call	41	.82
Felony waived, tried by court, acquitted	271	5.45
Felony waived, plead guilty, acquitted	4	.08
Acquitted by jury	270	5.42
Mistrial	6	.12
Pending	218	4.38
Total eliminated	2,533	50.84
Felony waived, tried by court, convicted	266	5.33
Felony waived, plead guilty, convicted	836	16.80
Adjudged insane	5	.10
Plea accepted, guilty offense charged	419	8.41
Plea accepted, guilty lesser offense	723	14.51
Convicted offense charged by jury	175	3.51
Convicted lesser offense by jury	25	.50
Total guilty	2,449	49.16

10. Never Apprehended.

The forty-one cases involved are presumably those instances where an indictment was returned against a defendant and he was not subsequently arrested. This is not a serious problem, because often an indictment is returned in spite of grave doubts as to the ability of the authorities to locate the person in question.

11. Bond Forfeited, Not Apprehended. This whole question is involved in the problem of bail, which we shall consider in connection with another report. It is, however, a very serious fact that in seventy-two instances prosecution was avoided by the simple expedient of forfeiting bail. The forfeiture of bail is particularly and markedly serious because the individuals concerned are probably guilty and so completely realize the danger of opposing their prosecution that they are willing to take this means of escape.

12. Certified to Other Courts. In a few cases persons under indictment are transferred to other courts, for the most part presumably courts of similar jurisdiction in other counties or states. It is, of course, the responsibility of the state's attorney to see that in case the other prosecutions fail, these persons are brought back for trial on their indictments in Cook County.

13. Nolle Prosequi. One of the most striking examples of the exercise of power of the state's attorney is that of entering a nolle prosequi. We have already seen how it operates in the preliminary hearing, but its significance in the trial court is much greater, because in these instances the state's attorney has presumably decided because of his acquiescence in the indictment that the person in question ought to be prosecuted, and in entering a nolle prosequi he indicates that his mind is changed on the subject.

This method of abandoning a prosecution may be exercised for a number of perfectly justifiable reasons: the indictment may be deemed by the prosecutor to be fatally defective; witnesses for the state may disappear beyond hope of recall; or the defendant may be convicted in another court or on another charge in the same court.

In some states the nolle prosequi may be entered entirely upon the responsibility of the prosecutor; in others consent of the court is necessary. In all states where it is permitted, however, the approval of the court becomes a mere formality in all but most unusual cases. That this is a most important power and one which may be and unquestionably is used improperly is shown by the large number of statutes in various states which are aimed at the strict regulation of its use. In Pennsylvania, the written consent of the court is required; in many states written reasons must be given by the prosecutor, while in others strict penalties are specially provided for entering a nolle pros. in pursuance of a corrupt agreement. In New York, the entry was abolished by act of the legislature. In spite of every evidence in the law that the nolle prosequi is legally intended to be exercised only in unusual cases, it is in fact used with the utmost freedom. The following Table 7 assembles, for comparative purposes, the record of nolle prosequis in a number of typical jurisdictions:

TABLE 7. NOLLE PROSEQUI, COMPARED FOR OTHER URBAN JURISDICTIONS

	Cleveland, 1925		St. Louis, Oct. 1923 to Oct. 1924		Hennepin Co., Minneapolis, 1923		Fulton Co., Atlanta, 1921		Chicago, 1926	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
Indictments or informations returned	1,110	100.0	1,000	100.0	1,024	100.0	2,180	100.0	4,982	100.0
Terminated by nolle prosequi	126	11.3	102	10.2	293	28.6	285	13.0	290	5.8

The free use of the nolle prosequi is severely criticized in the Missouri, Cleveland, and Georgia surveys of Criminal Justice. It is not always apparent on the face of the court record that the prosecutor has adequate reason for his action. The Cleveland survey suggests that there be required reasons with public notice for entering the nolle prosequi. Such measures may not prove effective however. They are already required in some jurisdictions and are met by purely perfunctory statements such as "insufficient evidence" or "witnesses missing," which permit precisely the same abuses that the requirement was intended to prevent. In New York, where the formal nolle prosequi is abolished, the court may "upon the application of the district attorney, and in furtherance of justice, order an action, after indictment, to be dismissed." This provision was expected to serve as a substitute for the abolished nolle prosequi but was intended, according to the Court of Appeals, to be "seldom exercised." The spirit of this admonition is hardly observed in New York, because in 1925 a total of 11.2 per cent of cases were dismissed either on motion of the district attorney (2.35 per cent) or on motion of the defendant's counsel (8.85 per cent). The cases dismissed on motion of the defendant's counsel include, of course, a large number which the district attorney does not contest. The proportion thus dismissed is about the same as the proportion of the nolle prosequis in other states. The practice exists although the name is gone.

It will be observed from the preceding comparative figures (Table 7) that the nolle prosequi is used much less frequently in Chicago than in other comparable jurisdictions; in fact, the proportion is only about half of that which is common elsewhere. This indicates merely that the state's attorney in Cook County has accomplished the purpose of the nolle prosequi through other means rather than using it directly. Perhaps this is due to the fact that the nature of the nolle prosequi is becoming better known to the public and newspapers are more likely to call attention to this entry and to charge the state's attorney with the responsibility therefor. In other words, public opinion is becoming sufficiently well informed so that the prosecutor is as certainly blamed for the nolle prosequi as a jury is blamed for an acquittal. This, of course, will result in a less frequent use of the entry and there is every evidence that its use is being curtailed in a marked degree throughout the country. This should not be any cause for rejoicing but should merely call attention to the fact that the state's attorney is using other means just as effective for terminating prosecutions, but is using them under external forms which do not fix the responsibility upon him. A number of these we have already discussed, but several will appear in subsequent paragraphs.

14. Stricken, with Leave to Reinstate.

As is indicated in Table 6 above, quite a considerable number of cases entering the criminal court is stricken from the docket with leave granted to the state's attorney to reinstate at his will. A total of 374 were disposed of in 1926 in this manner. This is a practice which prevails in a number of the counties of the State of Illinois, but is much more pronounced in Chicago than elsewhere. It is, however, a practice that does not appear in many other states, particularly in those states for which we have reliable information. It is theoretically a way of suspending action in a

felony case with the possibility of future action in the event new evidence warrants such action, but in actual fact it means the termination and death of the prosecution in question, because such cases are seldom reinstated. It is, in fact, another way of accomplishing the extermination of a case without assuming responsibility for such a final termination as a *nolle prosequi.* Perhaps it is too extreme to say that it is a mere screen for a *nolle prosequi,* but such a designation would not be far from the truth.

15. *Stricken, with Leave to Reinstate, on Account other Indictments.*

This method of disposition is not so serious, because the person in question is definitely accounted for in some other way. It is probably safer than a *nolle prosequi* because if the new prosecution fails, the old one can easily be revived.

16. *Dismissed for Want of Prosecution.*

On this account, 206 cases, or nearly five per cent of the total cases (Table 6) entering the trial court stage, are terminated. There is no need to draw conclusions as to whether this number is larger or smaller than it should be. It is, however, quite considerable if one bears in mind that included in the two hundred six cases may be dangerous criminals, who have been brought to this stage of prosecution by rather difficult methods. It is appropriate, however, to call attention to the enormous responsibility of the state's attorney in such cases as these. He is not supposed to be a mere trial lawyer, in such cases it is his duty to see that witnesses are present and that they offer testimony in a proper manner. The attorney in a civil case is supposed to see that his witnesses are present. He has not, according to any reputable standard of ethics, discharged his responsibility to his client if he is content merely to accept the return of a sheriff or other court officer that the witness is not to be found. But the difficulty of checking up any lack of diligence or activity on the part of the state's attorney in such cases as these illustrates how completely the public is at his mercy. If the state's attorney is delinquent in such cases and by his inaction permits witnesses to remain away from prosecution in cases in which they are vital assets of the state, and if he permits them to be coerced into remaining away by threats or other means well known to Chicago's underworld, there is no public agency that can discover his shortcomings. A single case would require extensive investigation, and to investigate two hundred six cases, which seems to be the extent to which this takes place in a single year, would be practically impossible.

This matter of getting witnesses out of the way by persuasion or intimidation has become very serious in Chicago. There is no more certain method of defeating the case known to defense strategy. There are so many ways by which this can be done, with comparative safety, that astute and unscrupulous defenders of criminals and the friends and aids of the defendant are apparently resorting to it with increasing boldness and effectiveness. Two recent cases are typical of this situation.

In the Lewis-Braverman case, a racketeer killing, the home of the chief witness for the State was bombed shortly before the trial with the obvious purpose of intimidation.

In the Rongetti case, where the defendant, a physician, was charged with murder by abortion, one of the main prosecuting witnesses, a nurse, testified that the agents of the defendant had threatened to ruin her reputation by charging that she had lived in a state of adultery with two colored men, and even produced the men who said they were willing so to state although it was untrue. Other witnesses were kidnaped and threatened with death if they appeared. So great was the fear of these witnesses, that one of them, when finally located, stated she would rather commit perjury and go to jail than to testify against the defendant. The judge presiding in this case gave the people of Chicago an excellent demonstration of the actual power of the court to control a situation of this kind. He directed a successful search for the absent witnesses, had them brought into court, continued the trial, and went thoroughly into the question of responsibility for the flagrant efforts which had been made to obstruct justice. He assured the witnesses that the court would protect them, and they all finally gave very damaging testimony against the defendant, as a result of which he was convicted and sentenced to death. After the verdict, the inquiry into the intimidation was renewed by the court. A prominent practitioner of criminal law was charged by the witnesses with very grave misconduct in the case and upon trial for contempt of court was convicted and sentenced to three months in jail. The question of the finality of this sentence is now pending in the Appellate Court.

Throughout this case, which was a prominent one, the two assistant state's attorneys, who were prosecuting, labored with great diligence, industry, and ability to assist the court in its efforts to protect the witnesses and get at the facts of their intimidation. The conduct of the court and prosecutors in this case may very well be set up as an example of that which might be, but is not, done in the hundreds of cases disposed of every year in Cook County because the witnesses are not present.

Some other specific instances of notorious gangsters and crooks escaping prosecution by this means will hereafter be noted and discussed.

17. Off Call. These forty-one cases (Table 6) were taken off the active docket but may be put back at any time. It is very rare, however, that they are reinstated. This method differs fundamentally very little from "stricken, with leave" cases and is simply another way of avoiding taking the responsibility of a *nolle prosequi.*

18. Felony Waived. There are four groups of cases shown in Table 6 in which the notation "felony waived" is entered. We shall consider this in some detail in a subsequent paragraph because these cases include such a very large percentage of all of the cases that enter the criminal court, that they constitute a significant and important way of terminating prosecutions.

One thousand, three hundred and seventy-seven of the 4,982 cases in which indictments were returned were permitted to shrink to the proportions of a misdemeanor and were thereby disposed of as misdemeanors. This number accounts for approximately twenty-five per cent of all of the cases in which indictments were returned. They were, as the table indicates, disposed of in four ways. There were trials by the court in which 271 cases

resulted in acquittals and 266 resulted in convictions. There were, also, 840 pleas of guilty in which, of course, the court proceeds to fix the legal penalty. The table, however, indicates that four of these cases were acquitted after a plea of guilty, which is an unexplainable irregularity, either in the records of the court or in the proceedings which were followed in the cases. We include these cases here exactly as they were found in the court records although either the entry or the procedure was not in accordance with the law.

19. *Acquitted by Jury.* Two hundred seventy cases, or 5.42 per cent, were acquitted by juries (Table 6). As we shall indicate later, this number sinks into insignificance in comparison with the number of cases disposed of in other ways. The insignificant part that the jury plays in the administration of criminal justice is nowhere more clearly shown than in this item. There are also six cases in which "mistrials" or jury disagreements resulted which need not concern us here.

20. *"Only a Preliminary Hearing!"* Not long ago in one of the criminal branches of the Chicago Municipal Court a preliminary hearing in an embezzlement case was in progress. A corporation was appearing as the complaining witness against a former salesman, who was charged with several cases of embezzlement. Apparently there had been no preliminary conference at all between the assistant state's attorney and the complaining witnesses. The assistant state's attorney attempted to elicit an admission from the defendant, through questions that were obviously inadmissible. Thereupon, the assistant state's attorney said to the judge, "Well, this is only a preliminary hearing." But the judge pointed out that probable cause must be shown in a legal manner, and continued the case to permit the state's attorney and the complaining witnesses to confer and reach a decision as to the nature and quality of the case which was being presented.

This incident gives a fair picture of conditions as they exist in the handling of preliminary hearings by the state's attorney's office. The cases are not well prepared, witnesses are almost never interviewed before their appearance, the assistant state's attorneys who are present appear to have the attitude represented by the remark which we have just quoted. In their opinion it doesn't matter much—"It's only a preliminary hearing."

Let us, in order to see how serious this contemptuousness toward preliminary hearings really is, recall the figures which appear on the preceding pages. Of the 10,829 felony cases entering the preliminary hearing in the City of Chicago in 1926, 6,124, or 56.55 per cent, did not go beyond; in other words, almost sixty per cent of the cases entering the preliminary hearing were finally disposed of at that point. Either the police have been arresting too many innocent persons or more than half of the work of the police in enforcing the law in serious crimes is thus wiped out in this stage of procedure. It is therefore of great importance to examine in some detail the nature of the judicial proceeding which looms so large in the enforcement of law in Chicago.

Preliminary hearings in the City of Chicago are conducted by the Municipal Court. This court operates in fourteen active criminal branches

scattered throughout the city. At these branch courts there is present, of course, the municipal judge in charge, who is assigned to that court by the chief justice, and representing the state are assistant state's attorneys and also assistant city prosecutors, except in the Harrison Street Court, where two assistant state's attorneys are located. The state's attorney's office is represented by one assistant in each branch. The law department of the city is also represented by one assistant city prosecutor.

The *assistant state's attorneys* in charge in these preliminary hearings are usually drawn from the lower ranges of the salary grades in the state's attorney's office. Their salaries run from two to three hundred dollars a month. They are, therefore, the less experienced and confident members of the staff. Oftentimes, especially in the outlying branches of the court, they are selected with reference to their own political bailiwicks. This assistant seems chiefly interested in filling out a form report which he mails to the state's attorney's office at the end of the day's work. This blank form has space for the name of each defendant, the number of the case, the charge, and the disposition. When a defendant is bound over to the grand jury the assistant is required to fill out what is called a "hold over" sheet. This provides for the name of the defendant, the date of offense, a brief story of the crime, the name of the judge, and a list of witnesses. In filling out these forms an occasional painstaking assistant will fill out the blank in a comprehensive manner, while others are careless and lax. An examination of these sheets indicates that some of the assistants scarcely rise above the literacy grade, and, added to this, are so meager in the information which they record that the reports are scarcely usable at all.

In observing the conduct of cases in the Municipal Court, it requires careful observation to determine whether the assistant state's attorney is there as a clerk, reporter, prosecutor or casual visitor. He is usually seen lounging against the bench engaged in conversation with every passer-by, careless, unimposing, undignified, and indolent—surely a sorry way for the peace, honor and dignity of the State of Illinois to be represented in court.

About the only concern that some of these assistants seem to have in the cases which are passing in review is to get the name of the defendant, the number of the case, and the charge on the form which is lying on the desk before him. He permits the judge to put most of the questions. He conducts very few examinations. Only occasionally does he address a question to the witness, and one is never able to feel that the real proceeding which is taking place is an inquisition of those accused of crime by the state so that the presiding judge may decide whether there is "probable cause." The state's attorney's position seems to be that of a clerical officer, who is merely keeping track of cases which his office may subsequently be required to prosecute. He shows no familiarity with the cases, in fact, he is probably entirely ignorant of these cases until they are brought before him in this manner and even then he shows no disposition to overcome this initial handicap of acquainting himself with the facts of the case. The answer to this statement will probably be that he will not be expected to try the case, that his duty is finished when he reports that there is such a case and that other state's attorneys will be required to get information concerning the case at hand.

It is not too much to say, in summing up what we have just outlined, that the presence of the assistant state's attorney in the preliminary hearing is merely perfunctory, and in actual fact there is no prosecution worthy of the name in the preliminary hearing at all.

Most of these assistant state's attorneys are required to devote only the short time which is actually consumed in disposing of the daily hearings in court, after which they are free to follow their interests. Many of them maintain law offices and conduct a private practice. The average time which he gives the state is about two hours a day except in the very busy branches. He must, of course, for political reasons, listen to a considerable amount of special pleading in private from friends of defendants, lawyers, politicians, and others. Everything that he hears in this way is presumably on the side of the defense. In fact, practically all of the pressure that is placed upon him is inspired by the defense. No one, unless it is a representative of some person, company, or civic body, having a special interest in prosecuting the case, ever interviews him in behalf of the forgotten and neglected "State."

All of this means that prosecution, so far as there is any in the preliminary hearing, must be conducted by the *police*. The police officer usually signs a complaint, the evidence of which is merely a formal charge. If the policeman suffers from forgetfulness or is subject to pressure from some source favorable to the defendant, the case fails. Every police officer is ex officio bailiff for the municipal court and is empowered to serve subpoenas and other process of the court. When he reports that he cannot locate certain witnesses, his word is usually accepted and no other investigation or check is made.

As we have indicated above, a great number of the cases which fail in the preliminary hearing are terminated by three kinds of dispositions; "discharge," "nolle prosequi," and *"dismissed, for want of prosecution."* The largest item here is the latter; twenty-three per cent of the cases which enter the preliminary hearing are dismissed because of want of prosecution. "D. W. P." is the refrain one hears with monotonous repetition throughout the session of a criminal branch of the municipal court. While such an order is the action of the court, the entire responsibility for such dismissal is upon the prosecutor, for if there is no prosecution, the court is powerless to proceed with the case. There are cases where the prosecutor, too, is unable to prosecute, because of the absence of witnesses, but where the record shows, as this one does, that this is the most popular method of terminating cases without any punishment, the conclusion must be that in the vast majority of such cases the dismissal represents unwillingness, rather than inability, of the prosecutor to prosecute.

There is no use glossing over the situation as it exists. The underworld and friends of the underworld know that *less difficulty is experienced in getting a case out of the way* in *the preliminary hearing than in any other stage of prosecution.* It is a poor and ineffective "fixer" who permits his case to get into the more difficult stages of the grand jury proceedings and the trial court stages. The place to get cases out of the way quietly and unobtrusively and painlessly is in the preliminary hearing; consequently, the underworld exercises all sorts of efforts to prevent cases from being prosecuted.

The *intimidation of witnesses* is something so common in Chicago that every reader of the newspapers must be thoroughly familiar with it. The underworld is able, of course, when intimidation fails, to pay liberally for a witness to remain away from a preliminary hearing. This is accomplished very easily, there being generally no check up and no investigation. In addition to intimidation or bribery, there may be restitution, which is commonly resorted to. It may be also that there are conditions existing in the courts with lax work by the clerks, bailiffs, and police officers in locating witnesses, in delivering subpoenas, in dating these documents, which may have a great deal to do with the loss of cases. Moreover, the very confusion that exists in some of the court rooms, particularly in the Harrison Street Court, would indicate that only the most alert and sophisticated witness could possibly hear the case being called amid the hubbub and tumult that is present in the court. He might be present and hear the case called but be unable to make his way through the crowd which is always present there. Instances have been known where friends of the accused have surrounded the prosecuting witness or engaged him in conversation in such a manner as to prevent his hearing the case when called, and when he finally becomes oriented to his surroundings, the case is dismissed and the defendant is at liberty.

To conclude, the whole proceeding in a preliminary hearing is a *mockery of law administration.* The dockets are badly congested, the physical equipment and atmosphere of court rooms are usually bad, the sessions of the court are generally limited to the first half of the day, and proceedings are most informal. The rules of evidence are dispensed with to such an extent that proceedings are marked by hearsay and other incompetent forms of testimony. The judges are reduced to the most crude and irregular methods of deciding whether a given witness is telling the truth. One may find a judge who believes in the infallibility of the condition of the palms of the defendant's hands, and if the defendant claims that his occupation is that of cook or waiter and his palms show that he is used to handling heavy packages, he is immediately judged a perjurer, and one is constrained not to blame a judge for resorting to any expediency, when he is compelled to act as judge and prosecutor at the same time; but, nevertheless, the needs of justice are not well served by such informal expedients.

It is of commanding importance that criminal prosecution in its preliminary stage should be conducted by efficient and industrious prosecutors, who should be fully acquainted with the facts and who should carefully supervise the entire matter, from its inception until it is finally terminated or has been taken over for further action by other branches of the prosecutor's office.

21. Bond Forfeitures in Preliminary Hearings.

It is not infrequently charged in the public press and elsewhere, that men accused of crime frequently escape conviction by permitting a temporary forfeiture of bond. The *modus operandi* is said to be substantially as follows:

On the date set for trial the defendant fails to appear, and thereupon his bond is forfeited. The prosecuting witnesses then depart from the court without knowledge of what the subsequent developments in the case may be.

Shortly after the forfeiture, defendant's counsel comes into court with his client and moves that the forfeiture be set aside, which application is usually granted. Thereupon the case is set for trial for a future day. At the time of the entry of such order, the prosecuting witnesses and the arresting officers are not present, since such applications are always made without notice to anyone connected with the prosecution, except as the state's attorney, who is present in court, is, of course, advised of the application and the resulting order. Obviously, it then becomes the duty of the state's attorney to take such steps as may be necessary to secure the presence of the prosecuting witnesses at the future date of trial. It has been openly charged that many of these cases become "lost" so far as the prosecuting witnesses are concerned. Receiving no notice of the new date of trial, they fail to appear, whereupon the defendant becomes entitled to and secures an order of dismissal. The charge is also made that runners and fixers familiar with court procedure arrange, by corrupt or other means, to juggle the records and files so as to prevent further prosecution.

In order to trace this condition, so far as the records disclose, we have obtained from the docket of the Bond Court, a list of such cases covering a particular period of time. Every felony case contained in the docket from May 1, 1927, up to and including January 1, 1928, in which a bond forfeiture was vacated or a *scire facias* dismissed or nonsuited, was listed. It will be noted that although the docket of the Bond Court starts in May, 1927, it includes several cases prior to that year. These are cases in which no action had been taken until the formation of the Bond Court, at which time an effort was made to include all pending cases from prior years. The records dealing with the disposition of these cases are in a state of confusion; many of the files were incomplete or had been misplaced, so that in some instances we have been unable to determine the final disposition of the felony case. The method of procedure adopted was to search first the municipal court criminal files and dockets, then the *scire facias* files, and in addition thereto we have had an assistant of the municipal court clerk's office assisting us in tracing cases we were unable to find.

During the period mentioned, a record was taken of sixty-seven defendants against whom felony complaints had been filed and whose bonds had been forfeited. These cases do not by any means constitute all the cases in which bonds were forfeited, but are those in which the forfeitures were later set aside or the *scire facias* proceedings dismissed or nonsuited. Complete information as to the disposition of the felony cases against fifty of these defendants follows:

Discharged by court	15
Nolle prosequi	2
Dismissed, want of prosecution	20
In custody in another state	1
Pending in municipal court	1
Held to grand jury	11
Total	50

The record of the proceedings, as far as we were able to trace them, against the remaining seventeen defendants are so incomplete and uncertain as to show no definite and final disposition of the cases except that in one case the defendant was held over to the grand jury.

22. *What Does It Mean in Chicago to Be "Guilty?"*

There are two ways in which prosecutions for felonies in Chicago are reduced; they are reduced not only in number but in size. As we have seen, the reduction of the number of prosecutions by various methods of disposition is very high, but there is another kind of reduction, i.e., of the charge, which is equally serious and important and does not diminish the number of prosecutions, but which permits a dissipation of law enforcement from a brave promise of force at the beginning to a feeble achievement at the end. This, it seems to us, is one of the most serious questions involved in the administration of criminal justice in Chicago. The *state is not making good on its prosecutions.* Either it is "bluffing" in the charges that are originally brought and pressed against criminals, that is, charging persons with more serious crimes than they should be charged with, or it is permitting the strength of the defense and the complementary feebleness of prosecution to whittle down the force of law administration to a mere fragment of its basic seriousness.

In order to show this we begin (Table 8) with the tabulation of those cases in which guilt was established after indictment was returned:

TABLE 8. FATE OF THOSE FOUND GUILTY

	Number	Percentage
Total number of indictments returned, 1926	4,982	
Total number of these ultimately found guilty	2,449	100.00
Felony waived, tried and convicted	266	10.86
Felony waived, plea of guilty	836	34.14
Adjudged insane	5	.20
Plea of guilty of offense charged	419	17.11
Plea of guilty of lesser offense	723	29.52
Convicted of offense charged by jury	175	7.15
Convicted of lesser offense by jury	25	1.02

This tendency to plead guilty is no abject gesture of confession and renunciation; it is a type of defense strategy. The defense often bargains with the prosecuting officer for the best possible terms by way of a lesser sentence in return for a plea of guilty. The defense benefits by this in that he is saving expense and the uncertain outcome of a trial. The prosecutor is able, moreover, to claim that every plea of guilty represents a conviction and to show great numbers of convictions in comparison with acquittals by juries.

This tendency toward adjustment of cases by pleas is very common throughout the United States. The following figures indicate the tendency in a number of jurisdictions:

TABLE 9. PLEAS OF GUILTY IN SEVEN JURISDICTIONS, COMPARED

	Total Pleas		Pleas of Guilty		Pleas of Not Guilty	
	No.	%	No.	%	No.	%
New York City, 1925	5,622	100.00	3,508	62.40	1,977	35.16
Cleveland, 1925	1,066	100.00	686	64.35	380	36.65
St. Louis, Oct., 1923, Oct., 1924	1,000	100.00	585	58.50	415	41.50
Hennepin County (Minneapolis)	731	100.00	608	81.80	123	18.20
Fulton County (Atlanta)	1,083	100.00	476	43.95	607	56.05
Milwaukee	1,433	100.00	713	49.58	725	50.42
Chicago	4,880	100.00	1,978	40.53	2,902	59.47

"Guilty," in the administration of criminal law as in other uses of the term is relative. To be found guilty or to plead guilty to a crime may mean to be guilty of the crime which the defendant actually committed, or to a much less important crime, which is, by the discretion allowed the law enforcement officials, substituted for the original charge. One may be charged with robbery, a very serious crime, but finally be found guilty of petty larceny, a relatively unimportant crime. Thus the meaning of the term "guilty" must be carefully analyzed in order to evaluate the quality of law enforcement in the City of Chicago. When we come to such an analysis we find the most appalling difference between the charges which are originally made against defendants and the crimes of which they are finally found guilty. This is a serious problem involved in the administration of prosecution in Cook County.

The following Table 10 shows the disposition of those cases which were originally felony charges and which were found guilty by juries or which pleaded guilty:

TABLE 10. DISPOSITION OF GUILTY CASES

	Number	Per-centage
Total number of felony charges resulting in finding of guilty..	2,449	100.00
Felony waived, tried by judge, convicted of misdemeanor.....	266	10.86
Felony waived, plea of guilty, convicted of misdemeanor.....	836	34.14
Plea of guilty of offense charged, accepted.....	419	17.11
Plea of guilty of lesser offense, accepted.....	723	29.52
Convicted of offense charged by jury.....	175	7.15
Convicted of lesser offense by jury.....	25	1.02
Adjudged insane.....	5	.20

It will be observed from this tabulation that there are *many ways of being "guilty."* One may be permitted to plead guilty to a lesser offense or, what is about the same thing, to secure from the state a waiver of the felony charge and to plead guilty to something else. The state may also waive the felony charge and the defendant can be tried by the court for misdemeanor. The jury also may reduce the felony to a misdemeanor as they did in 25 cases. Thus it will be observed at a glance that when, after the enormous loss of felony cases, which we have described throughout the various stages of procedure, the defendant has actually reached the point where his guilt has been determined, in most cases he is not found guilty of that with which he was originally charged. In order to make this point very definite, we have rearranged the items in the table above to show those which were found guilty of the original offense charged and those which were found guilty of some lesser offense:

TABLE 11. GUILTY OF LESSER OFFENSE

Total number of felony charges resulting in finding of guilty.		**2,449**
Plea of guilty of offense charged, accepted.....	419	
Convicted of offense charged by jury.....	175	
Total number found guilty of crime originally charged.....		**594**
Felony waived, plea of guilty, convicted of misdemeanor.....	836	
Felony waived, tried by judge, convicted of misdemeanor.....	266	
Plea of guilty of lesser offense, accepted.....	723	
Convicted of lesser offense by jury.....	25	
Adjudged insane.....	5	
Total number found guilty of lesser crimes than those charged		**1,855**

Thus it will be seen that of 12,543 felonies charged, 10,094 were eliminated and only 2,449 convicted.

Of these convicted, 1,855 were convicted of lesser offenses than the ones originally charged. From the 594 convicted as charged in the indictment, we must make deductions (Table 12):

TABLE 12. NET RESULT OF GUILTIES AS CHARGED

Total convicted as charged		594
Probation	173	
Other modifications	4	
Appealed and reversed	2	
New trials resulting in acquittals or convictions for lesser offenses	21	
		200
Total punished for offense originally charged		394

In connection with the cases noted above as appealed or receiving new trials, it should be stated that at the time of the survey definite information was lacking as to the final disposition of twelve appealed cases and one in which a new trial was granted. It will, therefore, be seen that of 12,543 felony prosecutions, only 394, or 3.13 per cent, were finally punished for the offense originally charged in the indictment. Of these, 249 were punished on pleas of guilty and 145 as the result of jury trials.

23. Total Convictions Classified as to Lesser Offenses.

If, as we have just indicated, the overwhelming majority of persons who are charged with crimes in Chicago are not punished for the crimes named in the original charges, it becomes of much more importance to consider the crimes for which they are finally punished than the crimes of which they are charged. In order to set forth this situation in its most vivid form, we have prepared Table 13, which table shows the offenses named in the original charges, the total convicted, the number convicted of a lesser offense, and the exact offense of which these persons were convicted. Thus at a glance it is possible to determine what crimes are being punished in Chicago and what form this punishment is taking. While the table explains itself, certain outstanding facts should be noted. In the first place, the crimes in which lesser offenses are accepted are for the most part the crimes involving property. The crime which is most frequently reduced is robbery. Burglary and larceny are close behind, while homicide, rape and other sex crimes, in which property is not involved, are more frequently punished in accordance with the original charge. This in itself is a significant index to the tendencies which endanger the strict enforcement of the criminal law in Chicago. In these property crimes there are probably more interests involved in exerting influence and pressure for the lessening of the charge. There is, moreover, less moral stigma attached to these crimes and therefore less public danger of criticism if the prosecutor reduces the charge. In other words, an outraged public opinion is likely to be stirred by the reduction of a homicide charge, but after a burglary or robbery has been committed few people will feel them-

TABLE 13

TOTAL CONVICTIONS OF LESSER OFFENSES

	Total Cases	Total Convicted	Total Convicted Lesser Offense	Insane	Manslaughter	Plain Robbery	Burglary in Daytime	Attempted Burglary	Assault to Rape	Indecent Liberties	Contributing to Delinquency	Grand Larceny	Larceny from Person	Receiving Stolen Property	Petit Larceny	Attempted Larceny	Making Checks to Defraud	Obtaining Money under False Pretenses	Assault with Deadly Weapon	Assault to Do Bodily Harm	Plain Assault	Driving Auto without Owner's Consent	Malicious Mischief	Carry Concealed Weapons (Misdemeanor)	Attempt to Commit a Crime
Homicide	567	90	31	2	27														2						
Rape	540	89	62						1	1	58									1	1				
Robbery	2696	871	720	1		263						244	9		191				5		7				
Assaults	461	73	54	1															25		22				6
Burglary	1433	510	416				10	9				73		9	292	7						2	2		12
Forgery	171	36	16												1		1	3							11
Embezzlement and Frauds	2854	216	140									2			105			32							1
Larceny	2968	525	394	1											380	8						5			
Carrying concealed weapons	15	1	1																					1	
Sex offenses	114	23	11								10										1				
Liquor																									
Miscellaneous	724	15	10												4			2					4		
Total	12543	2449	1855	5	27	263	10	9	1	1	68	319	9	9	973	15	1	37	32	1	31	7	6	1	30

selves outraged, with the exception perhaps of the innocent victims, if petty larceny is substituted for robbery.

Among the crimes to which the original charges are reduced, it is significant to note that petty larceny is the most frequent representative of such favor. Of the 1,855 felony charges which are reduced to a lesser offense, 973 are finally punished as petty larceny. It should be noted further, that of the total of 2,449 convictions in Chicago, 973, or about two-fifths are found guilty of petty larceny, a crime which, according to the statutes of Illinois, involves the theft of property of the value of "fifteen dollars or less" and prescribes punishment "in the county jail or sentenced to labor in the workhouse of the county, city or town where the conviction is had, or on the streets or alleys of the city," for a term "not exceeding one year and a fine not exceeding one hundred dollars."

Thus the full force of the punishment for law breaking in Cook County appears to best advantage. If law enforcement is to be reduced to such a petty gesture as this table indicates, there should be slight wonder that criminals choose to ply their dangerous trade under such conditions. When robberies, which are charged according to the police, in 871 cases come down finally to punishment for petty larceny, grand larceny, or even plain robbery, it is absurd to talk about punishing for robberies or driving robbers from the city. Law enforcement under such conditions becomes a farce and travesty upon justice. One final set of facts should be stated in order to show how, in cases where convictions are had to the original offense, mitigation of the force of legal punishment is still enjoyed by offenders.

24. Pleas and Probations. Almost conclusive evidence of the tendency which we have already described as "bargaining" for pleas of guilty is contained in a simple correlation of the various kinds of pleas and the proportion of cases which are placed on probation after pleading guilty. The purpose is to indicate whether there is greater tendency to grant probation in cases where persons plead guilty than where persons do not plead guilty and force the state to the trouble and expense of a trial. Therefore, the following series of statements indicate the facts in this connection:

1. Of the 468 who are found guilty after a plea of not guilty, 78, or 16.7 per cent, receive probation.
2. Of the 419 who are convicted after a plea of guilty as charged, 166, or 39.6 per cent, receive probation.
3. Of the 1,559 who are found guilty on a plea of guilty of a lesser offense, 266, or 17 per cent, receive probation.

These figures indicate conclusively that a defendant's chances of probation are enormously increased if he pleads guilty to the offense charged. Presumably, probation will not be granted when the state has already permitted a reduction of the charge which is, of course, in line with the logic of events; but if he is willing to plead guilty to the offense charged he is granted probation in nearly forty per cent of the cases. This is, therefore, another way of lessening the effectiveness of law enforcement and is almost definitely indicative of a process of bargaining between defendants and prosecution, to the great advantage of the defense.

25. The Plea, the Prosecutor, and the Jury, Compared as to Responsibility.

At a public meeting held in the City of Chicago recently (1928), the state's attorney stated that in his opinion the failure of the administration of justice was due largely to the refusal of good citizens to serve on juries. He is quoted as saying, "Police, prosecutor, and judge can do their utmost; but if the jury lets a criminal go unwhipped, the blame cannot be placed on the officials who tried to convict him . . . . The great responsibility rests upon the citizenry, the men who serve as jurors and the men who believe in the enforcement of the law but are willing to let somebody else assume that duty." From this statement we are to assume that trials by jury are a significant, perhaps a predominant, feature in the administration of the criminal law. The refusal of the good citizen to meet the obligation of jury service is one of the reasons most generally assigned for failure in the administration of criminal justice. This charge has been given such frequent public repetition as to be now generally accepted as the principal cause for the escape of criminals from punishment.

Before passing to a discussion of this generally accepted, but erroneous, conception of the part played by juries in the trial of criminal cases, we desire to point out what we conceive to be a most unfair burden placed upon jurors under our present system.

Every citizen called for jury service in our criminal courts is confronted with the appalling possibility of being locked up for an indefinite time, dependent upon the length of the trial in which he is called to serve. It is, of course, true that jurors are locked up only in the more important cases, and then only when one side or the other makes the request; but the prospective juror can never know but that the case in which he is then called may be the one which calls for a "locked up" jury. Such "imprisonment" may be for days or weeks, or even months. During that time the juror is continuously kept away from his family and business, except that during court intermissions he may see and talk with his family and business associates, but then only in the presence and hearing of the bailiff of the court. Even such visitations are limited and may not be indulged except at infrequent intervals and upon necessary and important occasions.

Accepted by both sides and necessarily considered to be a good and worthy citizen as a result of such selection, he at once becomes an object of suspicion, to be constantly guarded and watched so as to prevent the exercise of improper influence upon him by evilly disposed persons.

Contrast the position of the imprisoned juror with that of the average defendant who stands before the bar of justice solemnly charged with crime. Being out on bail, as he frequently is, he comes to court at ten o'clock in the morning from his home or his office; during the noon adjournment he lunches leisurely at a place of his own selection; and reappears in court at the afternoon session unattended and unwatched. Not so with the members of the jury, who are called to pass upon the question of his guilt or innocence; they go where they are taken, carefully guarded and watched by two court bailiffs, and they receive whatever the particular hotel in which they are housed may have to offer. At the close of the afternoon session, the

defendant is again at full liberty until the next morning. On Saturday and Sunday and during any intervening holiday he is also excused from attendance because the court is not usually then in session.

Selected because of his integrity and honesty, the juror is, nevertheless, under our present system, constantly guarded and watched and denied the same measure of liberty which even the probably guilty defendant enjoys. And the pity of it all, from the viewpoint of the public interest, is the fact, that the more intelligent the prospective juror may be, the more quickly does he recognize the danger of being locked up and it then becomes comparatively easy for him to avoid service by pleading a prejudice that will result in his being excused. The less intelligent and therefore the less desirable juror from the standpoint of the prosecution fails to realize his predicament until he is fairly caught, when it is too late to escape the legal fate to which he has unwittingly committed himself. Is it any great wonder that good citizens, facing such a contingency, resort to conscientious scruples or other legal excuses in order to escape jury service?

It is probably true that until the common public standard of honesty has been raised, it will still be necessary in the more important criminal trials to resort to the method now in vogue. We may hope, however, that the day is not far distant when we may safely rely upon the integrity of the juror without treating him differently from the judge or other public official who is called upon to decide important public questions.

But, trials by jury are not significant or predominant features in the administration of criminal law. They have long ceased to be important factors in the administration of criminal justice in Chicago and other largely peopled centers. The final determination of cases exercised through the discretionary powers of the prosecutor greatly overshadows and greatly outnumbers the results obtained through trial by jury.

A recent study of the crime situation in St. Louis, Missouri, shows that of the total charges which were made in felony cases, 49.64 per cent were finally terminated by the prosecutor without the intervention of a jury, while only 7.84 per cent were submitted to the consideration of a jury for disposition. Of the cases so submitted, jury convictions were obtained in 111 cases and acquittals resulted in 83.

In the City of Chicago, for charges filed in the year 1926, the following Table 14 shows the proportion of cases terminated by the prosecutor and the jury, respectively:

TABLE 14. PROSECUTOR AND JURY, COMPARED

	Number	Percentage
Total felony charges	12,543	100.00
Eliminated by prosecutor by way of dismissal	4,827	38.49
Eliminated by juries	276	2.19
Convicted by juries	200	1.59
Other dispositions	7,240	57.73

Even if it should be conceded that there was a failure of justice in every case in which the jury found the defendant not guilty, which is, of course, most highly improbable, it would still result in a negligible number of failures to be charged against the jury. Their percentage of failure would

be at most 2.19 per cent of the whole number of felonies charged and more likely less than one per cent.

It is doubtless true that the verdict of acquittal sometimes results from prejudice or sympathy, or even corruption, but such instances are rare compared with the large number of cases which annually pass through our criminal courts. During a four years' experience in the state's attorney's office, the writer knows of but one attempt to corrupt a jury—and even that effort failed due to the honesty of the approached juror, who promptly informed the court of the attempted bribery, and in that case the defendant was found guilty and served a term in the penitentiary. In this same connection, and based upon the same experience, while the writer has known of numerous instances in which the jury acquitted when in the opinion of the prosecutor a different result should have been reached, yet in every such instance it was not difficult to vindicate the verdict of the jury, either because of a reasonable doubt of guilt or the natural prejudices which sway and influence the judgment of the average man under certain conditions, or because of some other fact or circumstance in the particular case. It should also be borne in mind that the prosecutor is many times possessed of information which under the rules of law may not be submitted to the jury. This, together with his more intimate association with the witnesses and parties to the prosecution, tends to make him more or less a partisan and leads to a conclusion which may not always be as sound as that reached by an impartial jury.

Of the 12,543 felonies last referred to, 2,449, or 19.53 per cent, resulted in convictions; in 80.75 per cent, or 1,978 of the latter number, convictions were obtained on pleas of guilty; and the remaining 471, or 19.25 per cent, were found guilty as a result of trial by court or jury. In the 476 cases submitted to trial by jury, a verdict of guilty was found by the jury in two hundred cases.

To put the situation somewhat differently, the statistics show that of the 12,543 felonies charged and brought into court, 4,982 resulted in indictments by the grand jury, and of this number the petit jury was called upon to consider and pass upon 476 cases, in which they acquitted 270, convicted 200, and in six instances mistrials resulted.

To say, therefore, that the processes of criminal justice, with their attendant results, are based upon jury trial, is to speak of *what happens in less than one case out of ten.* From this brief summary of the statistical facts, it is clearly evident that *trial by jury in Chicago is relatively unimportant.* While justice may be hampered, it does not break down because of the failure of good citizens to serve as jurors.

26. Specific Examples of Unsatisfactory Prosecutions in 1926.

The foregoing sections of this report are very largely based on mass statistics of prosecutions in Chicago. They are impressive only in so far as they indicate general tendencies. We have refrained throughout the discussion from mentioning specific examples because, after all, the quality and character of the work done by a public official should be determined not by the individual, perhaps isolated examples, but by what he does in the mass. However, in any statistical

study a great deal is lost by the fact that large numbers of cases, considered in quantity lots, do not convey to the average citizen the real significance of the cases involved. For example, it is much more forceful to discuss what happens in a given homicide case than to say merely that there were four hundred homicides in Chicago in a given year. In order to illustrate definitely what the various items which we have discussed in the preceding sections of this report actually mean, we have carefully selected from the masses of cases which were abstracted in our study, a number which illustrate certain methods of work in the courts and in the state's attorney's office in the City of Chicago. These we shall classify under a number of significant headings.

The fact is that not only great numbers of cases in Chicago are being dismissed for reasons that seem to be insufficient, but in many of these instances dangerous enemies of society are being released to continue their evil practices. Not only these, but men with established criminal records, who are obviously dangerous to the peace and security of the community, receive such slight punishment as to be wholly out of keeping with the importance of the crimes which they committed. It is this that seems to go to the heart of the problem of criminal law enforcement in the City of Chicago. We are not making the criminal law actually reach those who are violating it with any degree of certainty or severity. Of course, one can conceive of a plausible excuse in the case of crimes which are not solved and in which no arrests are made—perhaps the police are unable to make these arrests—but when individuals are actually caught by the police and when their guilt is in a fair way to being established, it is a very serious difficulty in law administration if they are permitted to plead guilty to some minor offense, and in consequence receive only a trivial, unimportant, punishment. This, it seems, gives notice to the criminal population of Chicago that the criminal law and the instrumentalities for its enforcement do not really mean business. This, it would seem, is a pretty direct encouragement to crime.

27. Same: Pleas to a Lesser Offense.

The statistical evidence presented in this report indicates quite clearly that the most serious loss of force and energy in the prosecution of felonies in Chicago comes from the practice of accepting pleas to a lesser offense. The extent to which this practice has grown is perhaps the most serious indictment which can be leveled against the state's attorney's office. We have already indicated the seriousness of this practice in quantitative terms. It remains, however, to indicate by a number of selected examples the significance of the practice.

The fact is that through this convenient way of getting rid of prosecutions many serious crimes committed in Chicago, in which the guilty person is obviously caught, are permitted to pass with only a slight punishment. In many cases this slight punishment is administered to professional criminals, whose records indicate that they are a menace whenever they are at large; but in spite of this fact they are permitted to return to their own ways after a short term in a house of correction. The practice of accepting pleas to a lesser offense so commonly is not only unwise on the face of it, because of the light way in which serious crimes are punished, but in many instances

the process is illogical on its very face. For example: A dangerous criminal, with a previous record, holds up a citizen at the point of a gun and robs him of all he has on his person, but by agreement with the state's attorney and the court he pleads guilty to petit larceny and is punished for this crime. The illogical manner of this method of disposition is obvious. The serious offense of robbery with a gun is the real crime that has been committed. If the defendant is to be prosecuted at all it should be for the crime of which he is guilty. By reducing the charge to the unimportant one of petit larceny, the state's attorney is in effect saying to the defendant: "You are charged with highway robbery, a felony carrying a severe penalty of imprisonment in the penitentiary for a long term of years, but if you will agree that you have stolen property worth $15 or less, we will punish you for petit larceny and forget that you robbed a man by threatening him with a gun."

It might seem to the uninitiated that this is a process of refusing to punish a person for a crime which has been committed by creating a new crime of smaller degree. It is, however, a practice which is commonly followed in the City of Chicago. The lack of logic of the process would be excusable, because, after all, nice distinctions in law and logic are not in themselves things of value. It is, however, serious that through this process of legerdemain dangerous criminals are permitted to develop an attitude toward the public which holds in utter contempt all attempts to restrain their pernicious activity. Lack of space forbids a detailed statement of the facts of hundreds of cases in the records of the Chicago Crime Commission, but the following examples will quite clearly indicate the nature of this practice.

Case X.

In this survey our attention was called to this case by the fact that a defendant was arrested in 1926, and four separate charges of conducting a confidence game were made. All four of these charges were nolle prossed. It is not our intention to criticize this act because we have not the necessary facts, but an investigation of the record of the man concerned in this case indicates that in 1924 he was indicted with four others for stealing an automobile, the value of which was seven hundred dollars; three of the other defendants were permitted to plead guilty to petit larceny and were sentenced to six months in the house of correction; thus, the legal fiction was set forth that a car which was considered by at least three persons of sufficient value to be worth stealing was, in the eyes of the law, worth only fifteen dollars and these defendants were permitted to escape the consequences of their act with a slight sentence of six months in the house of correction. As to the defendant concerned in this case, the court waived the felony charge and tried him for the offense of petit larceny and found him not guilty.

Case XI.

In this case we have in our records for the year 1926 six charges; four of robbery and one larceny of an automobile. In the larceny of an automobile the case was transferred to the Boys' Court where it was dismissed for want of prosecution. Three of the robbery charges are pending, while in the fourth the defendant was permitted to plead guilty to a lesser offense

and was sentenced to the house of correction for one year. The facts in the case indicate that the defendant was one of a gang of criminals who had been robbing Standard Oil filling stations. There was a positive identification, but the defendant escaped with this slight sentence of a year in the house of correction.

28. Same: Intimidation of Witnesses.

It is a fact which is common property in Chicago, that important witnesses in criminal prosecutions, which involve professional criminals, are constantly being subjected to intimidation by the underworld, of which the defendant in the given case is a member. Threats to life and property are made, oftentimes property is actually destroyed, bombs are thrown, physical violence is practiced, and other methods well known to the underworld are used to keep witnesses from performing their public duty in criminal prosecutions. The point in question here is not to point to the fact of intimidation, which, of course, everyone will join in condemning, but to the casual manner in which the state's attorney permits cases in which he ought to know that there is a taint of intimidation to be terminated without heroic and complete efforts to bring such witnesses to the bar of justice. Ample evidence could be adduced as to the nature and quality of such intimidation, but the following cases, taken from the records of the Chicago Crime Commission, indicate this quite early:

Case I.

This man is on the list of dangerous criminals prepared by the police department for the Chicago Crime Commission. His criminal record extends back to 1921. In most of the cases where he is involved witnesses fail to appear against him. In 1926 nine robbery charges were filed against him and in 1927 two charges of assault to rob, and in none of these cases was any conviction obtained. One was nolle prossed, five were stricken off with leave to reinstate, two were no billed by the grand jury, two discharged in the court of preliminary hearing, and one resulted in acquittal after jury trial.

In one of the robbery cases listed above, the defendant was identified by four victims of a hold-up in which he participated. The hold-up occurred at 9:25 a. m. in a well lighted room; the defendant was wearing no mask; the witnesses had him under observation for eight minutes; but later they failed to appear against him.

Case II.

This defendant had three indictments voted against him in September, 1919; two being for robbery and one for assault to murder. He was acquitted after a jury trial on one robbery charge on April 19, 1920; the other robbery charge was nolled; the charge with assault to murder was stricken off with leave to reinstate. He again appears in the court records on May 18, 1926, when a charge of larceny was nolle prossed in the preliminary hearing. In the robbery charges noted above, a bank messenger was held up and about thirty-seven thousand dollars taken by two robbers. When the case went to trial the witnesses, who had positively identified the defendants in the preliminary hearing, testified they were mistaken in their

identifications. It is reported that the brothers of the defendant had deposited eighty thousand dollars in the bank which was robbed, to influence the attitude of the bank officials in the prosecution of the case.

Case III.

The record of this person extends back to 1916, he being paroled from the Pontiac Reformatory on July 24 of that year. In September, 1926, he was indicted for murder, and in April, 1927, this case was stricken off with leave to reinstate. The defendant with two others was charged with having entered a cigar store at 3:15 a. m. and attempting a hold-up, during the course of which the proprietor of the store was shot three times, from the effects of which he died three days later. One of the chief witnesses for the prosecution, a cab driver, was murdered before the case came up for trial; other witnesses for the state seem to have disappeared. On November 1, 1927, this person was indicted for rape, which case is now pending.

Case IV.

On November 2, 1921, an indictment was voted for burglary. When the case came to trial, the felony charge was waived and the defendant found guilty of petty larceny and put on probation April 4, 1922. On June 18, 1926, he was indicted for manslaughter and the indictment was nolled June 25, 1927. The facts in the manslaughter case noted above appear to have been as follows: The defendant's brother was beaten up by someone and the defendant set out to get even. It would appear he struck the first one he saw, with his fist, the blow resulting in the death of the one attacked. He was found guilty by a jury, of manslaughter, but a motion for a new trial was granted by the judge, who said he did not want it on his mind that he had sentenced the defendant to the penitentiary on the evidence submitted, and three months later the case was nolled. The brother of the deceased recommended this action be taken. It has been intimated that a civil settlement entered into the dismissal of this case.

Case V.

On July 13, 1921, this defendant was indicted for attempted larceny and was acquitted in October, 1921. The facts in the case are as follows:

The defendant and another person unlocked and entered a lumber yard at 1:30 a. m. and were caught in the act by the night watchman, who testified at the trial. The defendant set up the defense that permission had been obtained from the owner to use his truck for a moonlight picnic. Two police officers, who went to the owner's home, were told that the accused had been given no such permission. The owner of the lumber yard although subpoenaed failed to appear at the trial. No attempt was made to require his presence in response to process. On the facts as presented, the court found the defendants not guilty, saying, "Defendants say they had permission. The owner is not here to say they did not." A charge of burglary was filed against this defendant in December, 1926. The case went to trial in the criminal court March 4, 1927, at which time the felony charge was waived and the defendant pleaded guilty to petty larceny and was put on probation.

29. Same: Restitution to Prosecuting Witness.

It is perfectly obvious that restitution is being substituted for the punishment fixed by law in the case of serious crimes, and that courts and prosecuting attorneys, and perhaps the police, are permitting cases to be thrown out of court, in which the prosecuting witness has been satisfied by some act of restitution.

Wholly aside from the legal aspects of restitution, it is very evident that in cases where a dangerous criminal is involved, the public interest should be sufficiently protected too. After all, the public is party to a crime and the future safety of the public is not assured simply because a professional and unreformed criminal is permitted literally to "buy off" the victim. In the cases which follow, taken from the records of the Chicago Crime Commission, evidence of such restitution is quite apparent, and the state's attorney, and in some degree the court, is deeply at fault in permitting cases in which such a taint is present to escape prosecution.

Case I.

On April 17, 1926, he was arrested and twenty charges of confidence game were filed against him. Of the twenty charges nine were dismissed for want of prosecution in the court of preliminary hearing; on five charges he was discharged by the court of preliminary hearing; and in two cases the records were incomplete; four cases resulted in indictments and the cases were dismissed for want of prosecution in the criminal court. Three additional charges of confidence game were lodged against this defendant on May 5, 1926, two of which were dismissed for want of prosecution in the court of preliminary hearing; in the other he was held to the grand jury, which returned a no bill. In the cases noted, the charges were instigated by one of the larger banks of this city. The bank's representative stated to the prosecuting officials that the defendant had made restitution and whatever action the state took was satisfactory to the bank. On this statement, all the above cases were dismissed for want of prosecution. The defendant pending the outcome of the criminal cases was released on a bond signed by a surety, who upon investigation stated that he knew nothing whatever about the bond. Further investigation disclosed that a well-known professional bondsman, who has been in trouble several times, apparently had conducted all negotiations for the defendant.

Case II.

Three indictments were filed against this defendant in 1922; one on January 16, charging larceny, which was stricken off with leave to reinstate in July of that year. An indictment charging burglary was voted April 6, 1922, and an indictment charging forgery was voted September 7, 1922. On the burglary charge, the defendant pleaded guilty to petty larceny and received a sentence of three months in the house of correction and the forgery charge was stricken off with leave to reinstate when this conviction was obtained. In the burglary charge noted above, the defendant burglarized a sister's home and took property amounting to about two hundred dollars. In the forgery case the defendant forged the name of a clothing company's cashier to two checks for $165 each. The sister promised to make these

checks good. The defendant again appears in the records of the courts in 1926, when he was indicted for robbery. This case was stricken off with leave to reinstate in February, 1927, with the notation that there was no prosecuting witness.

Case III.

This man has a long criminal record. In February, 1920, he received sentence to one year in the house of correction for carrying concealed weapons. On May 17, 1920, he was indicted for robbery, which case was dismissed for want of prosecution. On May 24, 1920, he was indicted for robbery, which case was dismissed for want of prosecution. In February, 1922, he was indicted for robbery, convicted, and sentenced to the penitentiary on March 6, 1923. After this conviction a new trial was granted and the defendant pleaded guilty to grand larceny, receiving a sentence of one to ten years in the penitentiary. On May 18, 1925, he was indicted for confidence game. The felony was waived and the defendant pleaded guilty to petty larceny, receiving a sentence of one year in the house of correction. In this case the prosecuting witness testified that he had paid the defendant $207 for which the defendant was to get him, the complaining witness, a job, which the defendant never did. The court informed the defendant that he would recommend a pardon at the end of four months if the defendant made restitution. In January, 1926, two charges of robbery were filed against the defendant, both of which resulted in indictments. On one of the indictments the felony was waived, the defendant pleaded guilty to petty larceny and received a sentence in the house of correction and was fined one dollar, whereupon the second indictment was stricken from the docket with leave to reinstate.

Case IV.

In June, 1919, this person was indicted for embezzlement but the charge was nolled in February, 1921. In September, 1926, the defendant was arrested and confidence game charges were filed against him. Three indictments for forgery were returned against him, which were later stricken off with leave to reinstate on the grounds of insufficient evidence. The secretary of the corporation filing these complaints signed a statement saying that full restitution had been made and the organization had no desire to prosecute.

30. *Same: Dismissed for Want of Prosecution.*

As we have noted in the preceding discussion of statistics for the year 1926, this notation appears at the conclusion of a very large number of felony prosecutions in the City of Chicago. As we also indicated, cases seem to be disposed of under this head with a great deal of reckless abandon. When these cases pass through the mill of justice no one seems to be strictly responsible for producing the necessary witnesses, and such cases are, for the most part, disposed of without definitely fixing responsibility on either the state's attorney or the police. The fact is that the state's attorney is responsible for the prosecution of his cases not only in law, but in accordance with the dictates of any sound public policy. It is true that the police are often at fault in producing witnesses, but there is no excuse for the casual, careless attitude on the part of the state's attorney

which is shown in the records of the Chicago Crime Commission gathered in the course of observation in the courts. Over and over again dangerous criminals, presumably professional criminals, appear with some serious charge against them and if witnesses are not present, the assistant state's attorney weakly, and apparently without any deep sense of responsibility, permits these cases to die. The seriousness of this is indicated, of course, in the records of the men concerned, and a few of these records are shown below as gathered at random from the Crime Commission records above referred to.

Case I.

Six larceny complaints were filed against this woman in March, 1926. Three were nolled in the preliminary hearing and three indictments charging grand larceny were returned in April, 1926, on which the defendant was dismissed for want of prosecution in June, 1927. There were three other defendants involved in these cases, two women and one man. It was a case of shoplifting. The three women defendants took several coats and dresses, which action was noticed by the storekeeper, who followed them and had them arrested. The man in the case drove their automobile and waited outside the stores while the women worked inside. When the case came up at the preliminary hearing, the prosecuting witnesses failed to appear and the judge sent a patrol wagon to round them up; two of the witnesses could not be found. On the testimony, reluctantly given, of the witnesses brought in by the police, the defendants were held to the grand jury. The judge conducting the preliminary hearing said, "These girls have been in the penitentiary and the house of correction on several occasions and none of them should be on the streets to-day." He also said that he had been approached in an effort to have the case fixed.

Case II.

In August, 1926, nine charges of confidence game were filed against this defendant; two of the cases were dismissed for want of prosecution in the preliminary hearing, and he was held to the grand jury on the remaining seven. The grand jury no billed four of these cases and returned indictments in three. On one of the indictments a plea of guilty to petit larceny was entered and the defendant was sentenced to serve one year in the house of correction; the other two were stricken off with leave to reinstate. In the case for which sentence was imposed, the defendant passed a worthless check of fifty-five dollars. When arrested he offered two hundred dollars to the officer for his release.

Case III.

In June, 1924, an indictment for assault to murder and an indictment for robbery were returned against this case. The first was stricken off with leave to reinstate and the second was nolle prossed on account of insufficient evidence. In November, 1924, he was indicted for arson, which case was stricken off with leave to reinstate, on the grounds that insufficient evidence was returned. In 1926 three charges of larceny were filed against him; two of which were dismissed for want of prosecution in the preliminary hearing,

and in the third he was discharged by the court after the presentation of the state's evidence.

Case IV.

In 1926 seven charges of confidence game were filed against this man. Four of them were dismissed for want of prosecution in preliminary hearing. In the other three he was held to the grand jury, which returned three indictments, and when the defendant went to trial he pleaded guilty of the offense charged and was placed on probation by the court.

Case V.

In July, 1926, four charges of robbery were filed against this defendant and three indictments were voted charging robbery, the other case being dismissed for want of prosecution in the preliminary hearing. When these cases came to trial, the gun and robbery counts were waived by the state and the defendant entered a plea of guilty to grand larceny. The defendant, on three separate occasions, had held up three men. The judge suggested to the complainants that as the defendant was the father of two children and as it appeared that it was his first offense, probation should be granted, which action the court took.

31. Same: Probation Improperly Granted.

Probation has, of course, become a regularly recognized and proved method of dealing with certain types of offenders. When it is used with care and discrimination it unquestionably can produce very marked results. It lends itself, however, in many instances, to very undesirable practices. For example, the expressed or implied promise of probation to a defendant merely because he pleads guilty to the offense charged is a most improper practice. The willingness of the defendant to plead guilty should have nothing to do with the determination as to whether he should be put on probation. The determination whether he should be put on probation or not should be made only after a careful examination of his record, of the environment to which he wishes to return, and his general mental attitude toward his conduct. These are things which a well-equipped probation department should provide for the court before a decision as to probation is made. It is not the purpose of this report to go into the details of how probation is managed in the City of Chicago, but in the study of unsuccessful prosecutions which we have made, it has become increasingly evident that probation is granted in instances which are very doubtful and that probation is being misused as merely another means of reducing the force of the penalties prescribed by law. In many instances persons with long and formidable criminal records are placed on probation, apparently for no reason except their willingness to plead guilty to the offense charged. This simply means that such persons are returning to their former habits and from the standpoint of their effectiveness as criminals the state is no better off than it would have been had the culprit never been caught. In fact, the state, after going to the trouble and expense of preparing a case against the individual, tosses away its advantage and the fruits of all its labor by ill-advised probation. As we have indicated in a preceding section of this report, about twenty per cent of those who are found guilty in Chicago are placed on

probation. There is no marked tendency in this direction. The criticism which can be made is in individual cases.

A few cases by way of illustration of the unsatisfactory uses to which probation is put in Chicago follow:

Case XXXI.

This defendant was charged in 1924 and also in 1925 with larceny. In both cases he escaped with a "stricken with leave to reinstate" disposition. He was then sent to Pontiac from Du Page County for another offense. Our investigation finds him charged in 1926 with grand larceny. He pleaded guilty to this and was placed on probation. It is not very reasonable to expect a person with a record such as this to yield even to the most effective probation system.

Case XXXII.

This person apparently was before the courts of Chicago in 1925 on a charge of grand larceny. He pleaded guilty to petit larceny and was placed on probation. Four months later he was dismissed from probation. In 1926 our investigation finds him charged three separate times with burglary. In the first case he was dismissed in preliminary hearing. In the second case he was permitted to plead guilty to a lesser offense and was sent to the house of correction for one year. The third charge was then stricken off with leave to reinstate. If a case in which probation is granted turns back to evil ways so quickly, it would seem that a plea to a lesser offense should not be accepted but that the full force of the law should be administered.

These cases are typical and might easily be multiplied in numbers. They are sufficient, however, to illustrate the thought behind the criticism made.

32. *Summary of Findings.*

1. The state's attorney, the mayor, and the police in Chicago, the sheriff of Cook County, the coroner, and a majority of the judges of the courts belong to or affiliate with the same *political faction* in Chicago and Cook County. This permits of perfect harmony and cooperation between the state's attorney and all other agencies for the administration of justice. In the face of this fact, prosecution in Chicago and Cook County is found by the survey to be ineffective and barren of reasonably substantial results.

2. The state's attorney of Cook County has repeatedly stated in answer to critics of his administration that failures of justice in Chicago are due to *evasions of jury service* by representative citizens. Complete refutation of that statement is found in the foregoing report. Only 3.79 per cent of all felony charges brought into court are tried by juries, and the record shows that eighteen persons are released by the action or through the influence of the state's attorney to one person released by the jury.

3. The practice of the state's attorney in *compromising with criminals* and agreeing to a reduction of the character of charges from a grave offense to a petty offense has become so prevalent in Cook County that the criminal population has become contemptuous of the law and fear of punishment is

no longer a deterrent of crime. Some of the facts upon which this conclusion is reached are:

Three hundred thirty-eight charges of murder were filed in Chicago in 1926 and *55* convictions obtained for that offense. The original charge of murder was reduced and convictions obtained of lesser offenses in 28 cases as follows: to manslaughter in 27 cases; and to assault with deadly weapon, a misdemeanor, in 1 case. Two defendants were found insane. Eleven cases were pending. The defendants in the remaining *242* cases were discharged without any punishment.

Two hundred twenty-nine charges of manslaughter were filed, each representing a killing. Only *4* were convicted of that offense. The original charge of manslaughter was reduced to assault with a deadly weapon, a misdemeanor, and the defendant convicted of that offense in 1 case. Eleven cases were pending. The defendants in the remaining *213* cases were discharged without any punishment.

There were *2,696* robbery charges filed in the City of Chicago in 1926. The offense of robbery is "the felonious and violent taking of money, goods, or other valuable things from a person by force or intimidation." Convictions of the offense charged were obtained in but *151* cases. The charge of robbery was reduced to misdemeanor and convictions obtained for the misdemeanors in the following instances: to petty larceny in 191 cases; to assault with a deadly weapon in 5 cases; to plain assault in 7 cases. The original charge of robbery was reduced and convictions obtained of a less serious felony offense in the following instances: to plain robbery in 263 cases; to grand larceny in 244 cases; to larceny from person in 9 cases. All of these felonies, however, carried much lighter sentences than that imposed for robbery while armed. One was found insane. Thirty-seven cases were pending. The defendants in the remaining *1,788* cases were discharged without any punishment.

One thousand four hundred thirty-three charges of burglary during the same period resulted in convictions on the original charges in but *94* cases. The charge was reduced from burglary to misdemeanors in the following cases: to petty larceny in 292 cases; to attempt at larceny in 7 cases; to driving auto without owner's consent in 2 cases; to malicious mischief in 2 cases; to attempt to commit a crime in 12 cases. The original felony charge of burglary was reduced and convictions obtained of a less serious felony offense in the following instances: to burglary in the daytime, 10 cases; to attempt at burglary in 9 cases; to grand larceny in 73 cases; to receiving stolen property in 9 cases; all carrying a much lighter sentence than the offense originally charged. Eleven cases were pending. The defendants in the remaining *912* cases were discharged without any punishment.

Of *2,854* felony prosecutions for embezzlements and frauds, only *76* resulted in convictions on the original felony charge. The charge was reduced from embezzlement and fraud to misdemeanors in the following cases: to petty larceny in 105 cases; to obtaining money under false pretenses in 32 cases; to attempt to commit a crime in 1 case. The original felony charge of embezzlement and fraud was reduced and convictions obtained of a less serious felony offense in the following instances: to grand larceny in 2 cases. Forty-eight cases were pending. The defendants in the remaining *2,590* cases were discharged without any punishment.

There were *2,968* prosecutions for grand larceny, which brought convictions for the offense charged in but *131* cases. The charge of grand larceny was reduced to misdemeanor and convictions obtained for the misdemeanors in the following cases: to petty larceny in 380 cases; to attempt at larceny in 8 cases; to driving auto without owner's consent in 5 cases. One was found insane. Forty-five cases were pending. And the defendants in the remaining *2,398* cases were discharged without any punishment.

One hundred fourteen prosecutions for various felony sex offenses resulted in a total of *12* convictions for felonies and a reduction of the original felony charge to misdemeanors in 11 cases, 10 of which were for contributing to delinquency and 1 for plain assault. One case was pending. The defendants in the remaining *90* cases were discharged without punishment.

In *540* charges of rape, there were but *27* convictions for that offense. The charge of rape was reduced to misdemeanor and convictions obtained for the misdemeanors in the following instances: to contributing to delinquency in 58 cases; to indecent liberties in 1 case; to assault to do bodily harm in 1 case; and to plain assault in 1 case. The original felony charge of rape was reduced and conviction obtained for the less serious felony offense of assault with intent to commit rape in 1 case. Eight cases were pending. The defendants in the remaining *443* cases were discharged without punishment.

Out of *724* prosecutions on miscellaneous felony charges, convictions for felonies resulted in only 5 cases, and a reduction of the original felony charge to misdemeanors in 10 cases. Thirty-three cases were pending. The defendants in the remaining *676* cases were discharged without punishment.

Of *12,543* felony charges filed in the City of Chicago in 1926, *2,449* were found guilty of some offense; 1,978, or 80.75 per cent of those convicted were found guilty on pleas of guilty; and 1,559 or 78.81 per cent of all pleas of guilty were pleas to lesser offenses than the original charge, many of them to misdemeanors. Those pleading guilty to lesser offenses or found guilty of lesser offenses after a trial were 1,855 or 75.74 per cent of all convictions. Only *594* were convicted of the offenses charged, but of these 200 escaped punishment as felons through probation, other modifications of sentence, new trials and appeals, so that *394* or only *3.13* per cent of the total felony charges filed were finally punished for the offense originally charged in the indictment. Of these, *249* were punished on pleas of guilty, and *145* as the result of jury trials. It is found that even after the reduction of charge preceding the plea of guilty, in cases noted above, the defendant received probation in *266* or *17* per cent of the cases. Probation, however, was more readily granted where the defendant was willing to plead guilty to the offense charged. In *419* cases where convictions resulted after a plea of guilty as charged, *166* or *39.6* per cent received probation. In 78 cases probation was granted after convictions resulting from trials by the judge or by the jury.

These facts warrant the conclusion that bargaining for pleas of guilty by reduction of charge and promise of probation is so extensively practiced in Chicago that the significance of law enforcement is reduced to the min-

imum, and that, compared to the number of charges for serious major crimes, the number actually receiving adequate punishment is negligible.

4. The prosecution of felony cases in preliminary hearing in the municipal court of Chicago is mainly in the hands of *incompetent and indifferent assistant state's attorneys,* who know nothing about the facts in the cases and are not prepared to and do not render efficient service. To this fact may largely be ascribed the failure of 56.55 per cent of all cases to survive the preliminary hearing.

5. The practice of assistant state's attorneys, in the municipal court, of not following up cases in which *bond forfeitures* occur and failing to have state's witnesses present where such forfeitures are set aside and the felony case is reset for a preliminary hearing, in many cases results in needless failures of prosecutions.

6. One of the most serious of all reasons for the escape of dangerous criminals from prosecution and punishment is the *dismissal of felony charges for want of prosecution.* Twenty-two per cent of all persons charged with felonies are released on this account. "Want of prosecution" usually means that the witnesses are not present. Intimidation of witnesses is a growing evil in Chicago. In the usual run of cases no real effort is made by the state's attorney or the court to procure attendance of such witnesses and punish those guilty of intimidation. A refreshing example of what might be, but is not, done in every such case was given in the recent case of State vs. Rongetti, a prosecution for murder by abortion. The two assistant state's attorneys in charge of the prosecution and the judge of the court in which this case was tried are to be commended for the stern and effective measures taken to bring before the court and obtain the testimony of witnesses who were absent on account of intimidation, and the subsequent action taken to punish those responsible for the obstruction of justice. If the state's attorney's office and the other judges of the criminal courts would follow the precedent set in this case, the intimidation of witnesses would cease.

7. There is found to be a wide-spread practice on the part of *victims* of crime to *compromise with the criminal* by accepting *restitution,* and of the state's attorney to thereupon dismiss the criminal charge. This results in convincing the criminal that the only offense of which he can be guilty is that of "getting caught," and if "caught," the only punishment he need fear is giving up some or all of the fruits of his crime.

8. It is found to be a common practice of the state's attorney in Cook County, in felony cases, to *waive the felony;* that is to agree not to prosecute on the felony charge if the defendant will plead guilty to a misdemeanor and take a short term in jail or a fine as punishment. Over 800 cases were handled in that manner in 1926 and some criminals with long records of major crimes escaped with practically no punishment at all, yet in each of these cases the state's attorney takes credit on his record for a conviction.

9. The state's attorney of Cook County is one of the most influential leaders of the dominant political party; his assistants are mainly *political appointees.* On account of the amount of patronage at his command, the large sums of money appropriated to his use—exceeding one-half million

dollars per year—and the important personal and property rights involved in the administration of the duties of his office, he has many opportunities to build up a political following. The present incumbent (1920-1928) has neglected none of these opportunities, but devotes a large amount of his time and energies to political activities. This has a tendency to diminish the judicial character of his official acts. It is inevitable in such circumstances that his duties as public prosecutor will often conflict with his interests as an active political leader; moreover, when political considerations outweigh efficiency and ability in the selection of assistants, efficient, capable service can hardly be expected of such appointees.

10. It is found that the action of the state's attorney in Cook County in entering nolles, strikeoffs, and other *forms of release* results in the discharge of such large numbers of persons charged with felony crimes, without any punishment, as to be out of all proportion to an effective administration of justice. The courts are inclined to permit the state's attorney an unlimited discretion in dismissing charges, without considering or questioning the propriety of such action, and no complete record is made of the reasons for such action.

11. The record of the escape of criminals by the simple expedient of *forfeiting bonds* is deplorable. The record of forfeited bail bonds which have not been collected, is even worse. In so far as it is the duty of the state's attorney to guard against such escapes and to take all necessary steps to collect forfeited bail bonds, his administration has been an almost complete failure.

12. While it is doubtful if any considerable number of miscarriages of justice can be traced solely to the statute giving the *jury power to judge the law* as well as the facts, it seems certain that in actual practice it strongly tends to confusion and delay. Lawyers for the defendant frequently consume hours and even days reading to the jury from the reported decisions in Illinois and other states, which is permitted under this statute. It seems obvious that the judge and not the jury should be required to differentiate and apply these decisions to the facts of each case.

13. It is found that the outstanding defects and weaknesses in prosecution in Cook County are *administrative;* the more important of which have been pointed out in the preceding findings. While changes in the criminal code, if properly administered, would tend to speed up trials, yet there would be no improvement unless the prosecuting officials were faithful and efficient in the performance of their duties, and additional laws or amendments to existing laws would of themselves give no relief. If the present laws were so administered, there would be little necessity for any changes, so far as prosecution is concerned. In any event most of such changes can not be considered from the standpoint of prosecution alone, but should relate to all phases of procedural law. The subject of amendments to the code should be taken up by a separate body of lawyers, laymen, and legislators, appointed by the governor, to co-operate with the Association in the preparation of amendments for which there may appear to be an urgent demand.

The Prosecutor (in Chicago) in Felony Cases

33. Recommendations.

1. *Elect to the office of state's attorney* an efficient, incorruptible, and industrious lawyer, who will devote his entire time to the performance of his duties and whose conduct of the office will be as free from partisan politics as any other judicial officer.

2. Provide a *sufficient number of assistant prosecuting officers* in the criminal branches of the municipal court to insure a careful and comprehensive investigation of every felony charge before trial.

3. Appoint as such assistants, *lawyers of ability and standing.*

4. The state's attorneys and the courts should use the power they have to stamp out the practice of the *intimidation of witnesses.*

5. The state's attorney and the courts could reduce the number of *bond forfeitures* to a minimum if proper care is exercised to get solvent responsible sureties on bail bonds and take the required steps to enforce collection of judgments in forfeited bail cases.

6. The state's attorney should put the public interest above the private interests of victims of crime in *restitution cases.*

7. Courts should require state's attorneys to file a written motion setting out in full the *reasons for dismissing* or striking off criminal cases.

8. *Reorganize the police force* of Chicago by providing a comprehensive and efficient system for the detection and prevention of crime.

9. Establish *court rooms* for the criminal branches of the municipal court to conduct the business of the court with the same dignity and decorum as that which prevails in the criminal courts, and impress upon the courts and assistant state's attorneys the necessity of treating preliminary hearings with the same careful consideration and attention as in the final trial courts.

10. Organize in the state's attorney's office a *record system* which will reflect a brief history of each case handled by that office, which will show final disposition and the reasons therefor, where the nature of the order would seem to require the giving of reasons.

CHAPTER VII

RURAL POLICE PROTECTION

By

BRUCE SMITH

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CHAPTER VII

RURAL POLICE PROTECTION[1]

1. *In General.* The rural police agencies of Illinois are of wide variety. They comprise the sheriffs and deputy sheriffs, aided when necessary by special deputies and the *posse comitatus;* the constables of the townships and the police of the smaller incorporated towns; detectives employed from time to time by prosecutors; regularly organized county police operating under the direction of the sheriff; the state highway police; and in grave emergencies the Illinois National Guard. In addition to the foregoing, there are privately supported bank guards or vigilance committees organized under the auspices of the Illinois Bankers' Association, together with a considerable variety of smaller associations formed for protection against horse thieves, chicken thieves, and offenders against the law generally. It is doubtful whether any other state possesses so many different kinds of public or quasi-public police agencies, or places as many full time, part time, and emergency police officers at the command of public authorities. And yet there seems still to be a persistent demand for the creation of additional police bodies and for increases in the number of those already in existence.

There are certain obvious causes for this dissatisfaction with existing rural police facilities. Some of these are of nation-wide extent. The rapid extension of hard surfaced roads, in which the state of Illinois has been a leader, has brought many of the characteristics of urban civilization into rural districts which until recent years were remote and relatively inaccessible. The professional criminal has found that a new and inviting field awaited him. He has discovered vast areas lying outside of municipal boundaries which are not protected by regular police patrols. Improved means of transportation have brought the cities to the rural districts and the criminal element has followed almost as a matter of course.

Because of the rudimentary nature of rural police forces, it is still impossible to determine the exact volume of criminal acts committed in rural areas. Criminal complaint statistics concerning them simply do not exist. It is possible, however, to measure with a fair degree of accuracy, the number and incidence of homicides throughout practically all of the United States. The following Table 1 presents the situation during the last four years for which figures are available.

TABLE 1. COMPARATIVE RURAL HOMICIDE RATES, 1922-1925

(Number of Homicides per 100,000 Population; based on Mortality Statistics of the United States Census)

	1922	1923	1924	1925
Rural Portions of Registration States:				
White	4.8	4.1	4.2	4.2
Colored	23.3	24.2	22.2	25.5
Rural Portions of Illinois:				
White	6.2	5.0	4.9	5.2
Colored	77.1	55.5	61.8	51.4

[1] Survey made in December, 1927.

It will be observed that during the period covered, the rural white homicide rate in Illinois was almost 25 per cent higher, and the homicide rate among negroes more than two and one-half times that of the country as a whole. While these figures are notable in that the Illinois rate is consistently higher for each of the years covered, it is impossible to draw large conclusions from them concerning the efficiency or inefficiency of rural police agencies. However, they seem to indicate the need for more rural police service, or better rural police service, or both.

Inasmuch as the state is already covered by a vast mosaic of public police agencies serving every kind of jurisdiction, from the township and small incorporated town to the state at large, effort should here first be directed toward determining the manner in which these multiform agencies may be adapted to the crime problem with which they are confronted.

2. The Sheriff and His Aides.

Historically, the office of sheriff in Illinois is directly descended from the Norman sheriff of medieval England. Its origins may be traced to a time when the English kings were seeking to build up a powerful local instrument to offset the political strength of the barons and other hereditary nobility. The English sheriff quickly became the king's viceroy in all matters relating to the shires. From this it naturally followed that the sheriff was invested with extensive powers of a legislative, judicial, and administrative nature. Among his functions he was charged with presiding at the local courts, with command of the *posse comitatus,* with the apprehension and custody of offenders, the collection of taxes, and raising levies for the king's army. As century followed century, the royal power gradually waned and with it declined the powers of the sheriff. In the country of its origin, the office today is largely of a ceremonial nature, most of its functions having one by one been shorn away. In the United States, however, many of its early characteristics still adhere. In a sense, it may be said to have arrived at a state of arrested disintegration.

Under the Illinois Constitution, the sheriff is popularly elected for a four year term and is ineligible to succeed himself.[1] He is charged with maintaining the peace, with the execution of both civil and criminal process, custody of the jail and its inmates, and in a few cases, with the collection of taxes. In the performance of these functions, the sheriff is usually assisted by deputies and in times of emergency by special deputies authorized by the circuit court. There are a few counties which provide no regular deputies at all. Most of the others have but one deputy sheriff and a mere handful provide for more than four. Special and part time deputies, however, exist in considerable numbers. In other words, the manifest scheme and plan of the sheriff's office is still that which prevailed in the medieval English county.

It is clear that the sheriffs of Illinois are not and probably never will be an adequate police force. The method of selection prescribed by the constitution renders it extremely unlikely that men with police qualifications will be chosen. Their ineligibility to succeed themselves automatically terminates their official service at the end of four years, and destroys any

[1] Article 10, section 8.

continued usefulness which they might have acquired through actual experience. The number of full time deputies is nowhere very large, and the wide range of their duties necessarily diverts their attention from the enforcement of the penal laws. The opinions of sheriffs of 61 Illinois counties indicate that in most cases the deputy sheriffs devote not more than one-half of their time to criminal work, and that in a number of counties little or no time is so spent.

It should be understood that this fact does not necessarily involve any disparagement either of the sheriffs or their deputies. The fault, if there is a fault, probably lies in the nature and constitution of the sheriff's office. Originally intended as the chief executive officer of the county, the sheriff has been saddled with a highly miscellaneous group of functions. It is easy to understand how his attention might become divided and diffused. As the custodian of the jail and its inmates, as caretaker for the county court house, with his responsibility for serving civil process, and in some cases for collecting taxes, it is but natural that the preservation of the peace and the apprehension of offenders should become a minor feature in the performance of his daily tasks. Even the simpler forms of criminal identification have been neglected by all but a handful of the sheriffs. The small number of full time deputies makes crime repression through uniformed patrols clearly impossible. At the very best, these cannot hope to do more than make an arrest after an offense has been committed. Facilities for criminal investigation are lacking.

Viewed as a police agency, the office is little more than a monument to an historic past. Study of its development will long provide the focus for an understanding of our instruments of criminal justice, but the time has now definitely arrived when it may confidently be stated that the sheriff's office has lost touch with all but the most elementary requirements for dealing with rural crime. Since the sheriff has become so closely articulated with almost the entire range of local administration, there is little that can be done to increase his value and efficiency as a police officer. But, however inactive he may become in that role, there will be times of great stress and emergency when the sheriff, as head of the "power of the county," will be thrust forward into a position of real importance and prominence. The recent history of Illinois bears eloquent testimony to this fact. Recurrent disturbances in the southern tier have repeatedly overwhelmed the sheriffs who were charged with repressing them. In one instance, the adjutant general has vigorously attacked the efficiency and courage of certain local authorities in the following terms:

"The deplorable and disgraceful conditions which developed in this county and which made it necessary to send military forces into this county may be charged to a continued disposition on the part of the inhabitants of Williamson County to disregard the requirements of duly constituted law. However, the direct cause for sending troops was due to the laxity, inefficiency, and cowardice of the local officials and their inability to enforce and maintain law and order, and thereby afford protection to life and property."[1]

[1] Biennial Report of the Adjutant General, Illinois, October 1, 1922, to September 30, 1924, p. 41.

The same authority regrets the inability of the state to effect the removal of local officials who have proved themselves unwilling or incapable of performing their duties impartially in the interests of law and order.[1] The only power of removal now exercised by the governor with respect to the office of sheriff is in those instances where prisoners are taken from the custody of the sheriff and lynched.[2] It is submitted that the same recourse may be extended to cover all cases in which the sheriff is negligent in the maintenance of order. But such expedients, though necessary, are of negative character, and do not serve to increase the day-to-day value of the sheriff as a peace officer.

3. Township Constables.

Another characteristic rural police agency is represented by the constables of the townships. The early history of this office is closely intertwined with military affairs and with martial law. The Norman marshals, predecessors of the constable, held positions of great dignity and were drawn for the most part from the baronage. The military functions of the constable lingered for several centuries, and probably helped to sustain the office. When these finally disappeared, the constable was already declining in official importance and public esteem. Reduced at last to an abject subservience to the justice of the peace, the English constable ceased to exercise any considerable influence in the repression of crime. The rural constable in the United States has followed a similar course.

The Illinois Constitution[3] provides that these shall be elective officers. Not less than two nor more than five are chosen for each township. The elective term is four years.[4] While the mode of selection thus prescribed is manifestly ill-adapted to secure capable policemen, it is doubtful whether a change to the appointive method would materially improve the situation. Intensive studies in other states indicate that the office of constable has degenerated to such a point, so far as the repression of crime and the apprehension of offenders is concerned, that it might just as well be abolished. The opinions of Illinois sheriffs seem to confirm this general conclusion. From a total of 61 returns, it appears that the constables of 56 counties are altogether inactive in criminal work. In two counties they are credited with generally useful activity, and in the remaining three, the situation was not sufficiently definite to warrant a conclusion. In any case, it must be clear that the constable cannot be relied upon materially to aid the sheriff, nor to offset the constitutional weakness of that office as a police agency. The constable has almost ceased to function, and remains now chiefly as a reminder of a time when his English predecessors were selected by lot or by "house-row."

4. Recent Rural Police Developments.

The conclusions thus far drawn with respect to the sheriff and constable are generally recognized and have been reflected in legislative action. Since it is manifestly impracticable to develop the rural sheriff into a professional police officer, and the part-time constable has for long ceased

[1] Biennial Report of the Adjutant General, Illinois, October 1, 1922, to September 30, 1924, p. 47.
[2] R. S. Chap. 38, Sec. 517.
[3] Article 6, Sec. 21.
[4] R. S. Chap. 76, Sec. 1.

to be a restraining influence, there is a pronounced tendency towards the creation of new police bodies to deal with rural crime.

The state's attorneys were among the first to feel the need for special police assistance. In their preparation of the state's case, they frequently find it necessary to have recourse to experienced criminal investigators. If these are not provided by public authorities, they must be sought elsewhere. Prosecutors have therefore been impelled from time to time to employ private detectives and others on a temporary basis. The advent of prohibition seems to have accelerated the demand for special prosecutors' detectives, with the result that about one-half of the counties now engage the services of private detectives from time to time. The number so employed is never very large, in most cases being confined to one or two investigators at a time, and apparently never exceeding four in number.

There is no disposition in this report to criticize the practice. The problems facing the prosecutors are recognized, and it is conceded that they have turned to the only means of assistance open to them. It cannot, however, be too emphatically stressed that the employment of private detectives does not and cannot satisfy the requirements of public justice. These private investigators are subject to only temporary discipline, and owe no loyalty to the state authorities during the frequent and extended intervals when they are not on the state's attorney's payroll. Since they are usually engaged for work on particular cases, there is little or none of that continuity of investigation which characterizes city, county, and state detective bureaus. They perform no regular patrols and therefore exercise no repressive influence. Whatever their utility may be to the state's attorneys under prevailing conditions, it is clear that they do not provide an answer to the rural police problem.

5. County Police. Another alternative consists in the maintenance of a uniformed county police force. The outstanding example of the use of this method in Illinois is to be found in Cook County, which by reason of its urban character throws an especially heavy burden upon the time-honored police agencies. The sheriff's highway division in that county averages about 80 officers and men, and the annual cost of its maintenance is in the neighborhood of a quarter of a million dollars. A somewhat similar practice on a much smaller scale has been adopted in a very few of the rural counties from time to time, but is generally confined to the employment of one or two motorcycle officers who work under the direction and control of the sheriff.

Although this device has been resorted to in so few instances that large conclusions concerning its success or failure are difficult to draw, there are sound reasons for believing that it does not meet all of the requirements for rural protection. The only manner in which such county police forces can now be organized, consistent with the laws of the state, is by constituting them as integral parts of the sheriff's force. In other words, they are little more than uniformed deputy sheriffs. Moreover, in the vast majority of rural counties their numbers would necessarily be so limited that a rigorous police discipline would be exceedingly difficult to maintain. Training facilities are entirely lacking, and their tenure is largely dependent upon the quad-

rennial displacement of the sheriff. It is submitted that the development of a professional police body under such circumstances is manifestly impossible.

6. Private Protective Associations.

Perhaps the best indication of the inadequacy of rural police agencies is to be found in the rise and growth of citizens' protective associations. These have been organized as a means by which private citizens might defend their lives and their property from attack.[1] The most common type of such association now operating in Illinois is that represented by the bank guards or vigilance committees organized under the auspices of the Illinois Bankers' Association.

The conditions which brought them into existence were altogether extraordinary. During the year 1924, there were 73 bank burglaries, robberies, and attempts, representing attacks upon about 4 per cent of the total number of banking institutions, with losses aggregating about $350,000. The situation in some counties was even more serious. In St. Clair County, two years ago, there were weekly attacks upon local banks which continued over a period of several months. It appears that none of these were the work of local rural offenders, the gangs coming for the most part from Williamson County, East St. Louis, and St. Louis. Some of the smaller banks began to assume the appearance of fortifications. To the traditional vaults, alarms, and time locks were added armor plate, bullet proof glass, rifles and shotguns. The tellers and officers of these banks have become accustomed to carrying revolvers and automatic pistols on their persons.

This was the situation when the bank guards were organized, beginning on April 1, 1925. The bankers' councils of about 80 counties have designated five or six men in each town for appointment by the sheriff as special deputies. These are directly responsible to the sheriff and receive no compensation. Thus far, over 3,200 men have been recruited and have been equipped with sawed-off shotguns and rifles.

The repressive influence exercised by these associations has been most striking. The rapid decline in bank attacks and resulting losses is depicted in the following Table 2:

TABLE 2. ATTACKS ON ILLINOIS BANKS, 1924-1927, WITH RESULTING LOSSES

(*as reported by the Illinois Bankers' Association*)

Period	Number of Attacks	Reported Loss
1924[2]	73	$347,945.10
1925—January 1—March 31[3]	15	241,643.20
April 1—December 31	25	61,390.82
1926	16	46,330.94
1927—January 1—December 10	15[3]	15,000.00[4]

Smaller associations for protection against horse thieves and chicken thieves have also appeared. While not so numerous nor so active as the bank guards, their very existence is significant as indicating the current necessity for citizen participation in police work. This report does not

[1] Organized under authority of R. S. Chap. 32, secs. 361 ff.

[2] Periods antedating organization of the first bank guards.

[3] Twelve of these were in towns having less than 900 population. Only four occurred in counties where bank guards had been organized. The total loss in these four cases was trifling.

[4] Estimate as of December 10, 1927.

deprecate the formation of such bodies as a civic duty or as a business necessity, but the failures of criminal justice, implicit in their very existence, are too clear to be avoided.

7. State Highway Police. Township and county police agencies having proved to be inadequate to the task of rural patrol, it became necessary to create still another police force. In 1921, the state department of public works and buildings was authorized by law to appoint "a sufficient number" of state highway patrol officers to enforce the provisions of the motor vehicle law.[1] In conformity with this statute, the state highway police was organized May 1, 1922, the force consisting at that time of a chief and eight patrolmen. Its activity was confined to the protection of the state highway system from overloaded trucks and the apprehension of intoxicated and reckless drivers. With the gradual enlargement of the force, however, it became perfectly obvious that it should be invested with general police powers.

In 1923, the legislature accordingly passed an act authorizing the director of public works and buildings to appoint not to exceed 100 state highway police.[2] By its terms, all members of the force are to be appointed without reference to civil service, but are required to possess the physical and mental qualifications for private in the United States Army. The compensation of patrolmen is limited to $1,800 per annum, plus such uniforms and equipment as the department of public works and buildings may provide.

The most significant feature of this act was the grant of general police powers to members of the force. It remained their special duty to enforce the motor vehicle law and to patrol the highways in rural districts. Added to this, however, was a broad and general grant of the same powers now exercised by municipal police forces and sheriffs, with the proviso that these powers should extend throughout the length and breadth of the state. By 1925, the state highway police had advanced to another stage of development. The state was now divided into 12 districts with a sergeant in command of each, and the force was increased to 90 officers and men. At the present time, it consists of 1 chief, 12 sergeants, 142 patrolmen, and 6 mechanics.

Such, in briefest outline, is the history and development of the Illinois State Highway Police. That its actual functioning and administration may be fully understood, a more detailed treatment is necessary.

8. Same: Management of Personnel. In its management of personnel, the state highway police has not advanced at a rapid rate. Like most state police bodies, it has been relieved of the irritating and deadening restrictions of civil service control. The way has been opened for it to free itself from the old tradition surrounding police patronage, and thereby to set a new and shining example for police administration in Illinois. This opportunity has been neglected. At the very outset of the selective process, admission to the force is confined to those aspirants who can secure the endorsement of local political leaders.[3] From the eligible list thus compiled the director of public works and buildings

[1] LL. 1921, p. 571.
[2] LL. 1923, p. 562.
[3] Personally communicated.

makes appointments subject to an examination by the state superintendent of employment and to a character investigation conducted by the chief. Appointments to fill vacancies are made from among the applicants of the district where the vacancy occurs. The residence qualifications thus imposed have a far reaching influence. If recruits were drawn from the state at large, it might be viewed as an unnecessary restriction. To seek them only on the patrol "beat" where a vacancy exists artifically narrows the field of choice, and makes the ultimate selection turn chiefly on questions of local patronage.

Promotions and dismissals are made on the basis of a "merit system" which has been developed by the department. It consists of a systematic award of "merits" for superior police work and of corresponding "demerits" for breaches of discipline. The system has several peculiar features. In the first place, the police officer's record of merits and demerits may be inspected only by the patrolman directly involved. This element of secrecy is difficult to understand, particularly as any value which may attach to such a merit system usually depends upon its full acceptance by the members of the force as an accurate reflection of their relative efficiency. Furthermore, demerits for breaches of discipline may be offset by continued good behavior over a given period, the length of such period depending upon the number of demerits which have been accumulated.

Such peculiarities in the system might be viewed as detracting from its value. It may fairly be questioned, however, whether this or any similar cut-and-dried device for personnel control has ever yielded brilliant results. The relations between officer and subordinate, and between the policeman and the public, are far too complicated to lend themselves to measurement by any formula. The police administrator must necessarily always be concerned with the justice of his dealings with the rank and file. Reduction of those relations to an arithmetical basis does not and cannot automatically register the equities of any given situation.

9. *Same: Disciplinary Action*

Maintenance of discipline, through dismissal, is a function exercised exclusively by the chief. This procedure deserves unqualified approval. In the course of the last five years, over 30 patrolmen have been dismissed for cause and four others with unsatisfactory police records have resigned. An examination of the reasons assigned for dismissal discloses that in each case they have been not only adequate, but of so serious a nature as clearly to justify and demand such action.

For although the rate of dismissal in the state highway police is high by comparison with most municipal police bodies, it is relatively low when compared with the turnover of state police forces. If the discipline of a police organization is to be maintained, it is essential that the highest standards of public and private conduct shall be exacted from the rank and file. The following excerpts from merit system bulletins issued by the chief indicate the clemency exercised in administering discipline.[1]

[1] These excerpts represent all bulletins charging "demerits" against members of the force for the twelve-month period ending November 30, 1927.

Merit System Bulletin No. 146

Under date of December 1, 1926, I credited thirty (30) demerit marks to the record of a patrolman for insubordination, which charge consists of neglecting to mail his daily report cards to either Springfield or Kankakee offices, also neglecting to send in bills covering his expenses for the past two months, after having been repeatedly instructed and warned regarding the matter.

Merit System Bulletin No. 176

Under date of December 31, 1926, I placed fifteen (15) demerit marks against the record of a patrolman for neglecting to mail his daily reports according to instructions. This officer did not mail his reports for fifteen days, then mailed them all in one day. I trust this will be a lesson to other officers that the rules of the Department must be complied with.

Merit System Bulletin No. 202

Under date of February 25, 1927, I placed thirty (30) demerit marks against the record of a patrolman for violation of Department rules, which charge consisted of being employed at another position while employed as a state highway patrol officer. When I questioned him regarding the matter he denied it but later admitted it was true.

Merit System Bulletin No. 203

Under date of February 25, 1927, I placed thirty (30) demerit marks against the record of a patrolman for disobeying the orders of his sergeant. I instructed his sergeant to call all his officers out and search for a couple of bodies. The sergeant advised me that when he asked the officer to join in the search he flatly refused to carry out his orders.

Merit System Bulletin No. 237

Under date of April 16, 1927, I placed thirty (30) demerit marks against the record of a patrolman upon recommendation of his sergeant for disregarding the instructions given him; for repeatedly lying to the sergeant, together with refusing to fulfill his duties as a state highway patrol officer.

Let this be a lesson to the officers who do likewise as they will be treated accordingly.

Merit System Bulletin No. 253

Under date of April 30, 1927, I placed thirty (30) demerit marks against the record of a patrolman, upon recommendation of his sergeant, for conduct unbecoming an officer.

Merit System Bulletin No. 254

Under date of May 9, 1927, I placed thirty (30) demerit marks against the record of a patrolman, upon recommendation of his sergeant, for neglect of duty and disobedience.

Merit System Bulletin No. 255

Under date of May 9, 1927, I placed twenty (20) demerit marks against the record of a patrolman, upon recommendation of his sergeant, for disobedience.

Merit System Bulletin No. 256

Under date of May 1, 1927, I placed thirty (30) demerit marks against the record of a patrolman for leaving the state on two different dates, without securing the permission from his superior officers. This action was taken upon recommendation of his sergeant.

Merit System Bulletin No. 397

Under date of November 30, 1927, I placed twenty-five (25) demerit marks against the record of a patrolman for insubordination and violation of department rules.

From the foregoing bulletins, the conclusion may safely be drawn that disciplinary penalties imposed in the state highway police force are not unduly severe. This is but natural. For if political influence can secure the appointment of an applicant, it can usually protect him from the disciplinary consequences of his acts. Even a stern discipline, however, and a most rigorous weeding out of ineffective or undesirable members, cannot offset the palpable weaknesses in the system of selection now employed. The elimination of an undesirable applicant before appointment, or shortly thereafter, probably has more value in maintaining the morale of such a body than the most unrelenting system of disciplinary penalties.

10. Same: Training. The matter of police training has been entirely neglected by the state highway police. After the applicant has secured the necessary political support and has satisfied the requirements of the state superintendent of employment and the chief highway patrol officer, he is presumed to be ready for the exacting duties of patrol. At all events, he is provided with a uniform, badge, gun, and means of transportation, and proceeds to the performance of his duties.

Yet no lesson of American or foreign police administration could be more clear than that the making of the policeman has only begun when he receives his warrant of appointment. The training which he must receive must be both of a theoretical and a practical nature. An intensive training course for the recruit should include study of the penal laws and of the statutes controlling criminal procedure; the use of police weapons; self-defense; the rules and regulations of the police force; the extent and limitations of the policeman's powers and his relationship to the public. These do not in themselves qualify the recruit for police duties, but if he has been rigorously drilled in their meaning and importance, he may be placed on patrol with a larger degree of confidence than is now possible.

The failure of the state highway police to provide such training facilities is difficult to explain in the light of their general adoption by municipal and state police forces. It may be that the policy of the department in this respect has been controlled chiefly by practical considerations. The fact that members of the force are designated to serve in the districts where they permanently reside has probably made it appear to be rather difficult to collect them at a central point for purposes of training. But whatever the reasons for failure to provide such training, the future course of the department should be abundantly clear. It is recommended that the state highway police take immediate steps to establish a training course of not

less than two months' duration, not only for those who may hereafter be recruited but also for those now in service.

11. *Same: Uniformed Patrol.*

There is another result of the practice of permitting patrolmen to serve in the immediate vicinity of their residences. It arises from the fact that the police officer is required from the very nature of his duty to exercise a restraining influence which is unwelcome to those at whom it is directed. Recognizing this, most state and municipal police forces have taken care to assign policemen in districts remote from their residences, and to transfer them with sufficient frequency to insure that they shall not come to be on too familiar terms with the people of the locality which they serve. The necessity for training a policeman to view the performance of his duties as a public rather than as a private matter, presents one of the difficult problems of police administration. Thus far, the problem has been substantially solved in only a few instances; a solution is rendered well nigh impossible by the policy now followed by the state highway police.

Here again it is difficult to say to what may be attributed the current practice of this force. As already stated, the highway police originated as a small body of men who were empowered solely to enforce the provisions of the motor vehicle and highway laws. Thus at the outset there was no compelling reason for frequent transfers or similar safeguards. The growth of the force, both in numbers and in police power, has doubtless raised pressing questions of adjustment. In the solution of such problems the very substance of some of these underlying questions may have been overlooked. Another possible explanation lies in the undisputed fact that local political patronage has in no small degree controlled the destinies of the force.

That the state highway police are no longer solely concerned with motor vehicle and highway violations is indicated by the fact that in the year 1927 approximately one-fourth of all arrests made by members of the force were for offenses lying outside of these two categories. But the same figures demonstrate quite as conclusively that the force has not yet attained a maximum efficiency in this respect. A comparison of the arrest records of the Illinois force with those of other state police bodies shows that the latter are consistently more active in making apprehensions for felonies and major misdemeanors.[1] In some cases this disparity is exceedingly pronounced. Thus, the New Jersey state police, (with a force somewhat smaller than that of Illinois), makes twice as many arrests, and four times as many arrests if motor vehicle cases be excluded from the computation.

The origin and tradition of the Illinois force is also reflected in the policies followed with respect to uniformed patrols. Attention is still directed almost exclusively to patrol of the state highway system. It is on the paved roads of course that motor vehicle and highway violations assume the gravest proportions. On the other hand, the experience of state police forces demonstrates that some of the most effective rural police work may be done on untravelled byways, serving remote and obscure communities. In other words, these police agencies plan their patrols with reference to

[1] In reaching this conclusion due allowance has been made for variations in the size of the several forces.

people rather than with reference to paved roads. The regular appearance of a uniformed police officer has the same quieting influence in a rural hamlet that it has among the teeming millions of a great metropolis.

The organization of the Illinois state highway patrol also leaves something to be desired. At the present time the state is divided into 12 inspection districts, each commanded by a sergeant and served by 6 to 17 patrolmen. Although it is stated that the sergeants are in charge of their respective districts the fact remains that individual patrolmen report daily by mail, directly to the chief highway patrol officer. Since the latter is without clerical or other assistance of any kind in his home at Kankakee, it is clear that the supervision which he can exercise over 160 officers and men is of the most rudimentary nature.

There seems to be but one solution. The state of Illinois and the state highway patrol force are both too large to permit immediate supervision from a single headquarters. Decentralized organization of the force therefore becomes necessary. If the state were divided into not exceeding four troop areas with a captain or lieutenant in charge of each, and with sergeants under their command performing routine duties of patrol supervision, the energies of the chief highway patrol officer might be released for larger undertakings than those with which he is now concerned.

If any such redistribution of the force should be carried out, it is recommended that the new district lines be made to follow county boundaries wherever feasible. The present policy of cutting across county lines greatly increases the number of county jurisdictions with which the force in any given district must deal. If the state highway patrol is to turn its attention more and more to the suppression of grave offenses, it must recognize that cooperation with courts, prosecutors, sheriffs, and coroners will become an increasingly important part of its work. Naturally, that task of cooperation will be less burdensome if the number of county jurisdictions with which a given troop has to deal is not artificially increased.

A policy of frequent transfers for the rank and file will be not merely desirable but absolutely essential. Adoption of such a policy would have the most far reaching effect upon the force as now administered. It would involve sharp reductions in the salary scales of officers and men and the provision of free subsistence and quarters by the state. Out of this major change, however, would arise a flexibility which the force does not now possess. It would be possible to shift patrol forces in such fashion as to give every nook and corner of the state a greater degree of uniformed police protection. Existing contacts between state highway patrolmen and local political figures would be broken, the force would become a state agency in fact, and not a disjointed instrument presided over by a remote figure residing in Kankakee.

12. Riots and Riot Duty.

There is one serious consideration which bars the way to fulfillment of this program. Organized labor, in Illinois as in a number of other states, is strenuously opposed to any highly developed and mobile state police body.[1] This opposition is not based upon any unwillingness to see the criminal laws enforced

[1] "Any police system which is not directly responsible to and under the control of the people in the particular community where that system operates is a menace to free institu-

in rural districts, but upon a belief that a statewide police agency which is susceptible of being moved as a body with military precision is a menace to civil liberty and will be employed for policing, and perhaps for breaking, industrial strikes. The appearance of such an armed and mounted force is declared to be a challenge to the fighting instinct of the workers, and to result in acts of violence which the strike leaders deplore.

There is no reliable evidence that any of the state police forces have been brought into existence for the special purpose of dealing with industrial disputes. It is contended, however, that several state police forces have in fact frequently been used for this purpose, and that the superficial similarity of some of these forces to military organizations has lead to gross violations of civil rights during industrial disturbances. An adequate treatment of the many complex considerations surrounding these questions is probably beyond the power of any single report, but certain facts drawn from Illinois experience may serve to throw light upon the main issue.

It is provided by law that in the event of rioting or disorder, the sheriff, aided by his deputies and such special deputies as may be necessary, shall take charge.[1] But if the sheriff finds that he cannot cope with the situation he may call upon the governor "and such military force as may be deemed necessary." If the sheriff neglects or refuses to demand such state assistance, the coroner, the mayor of the city, or the county judge may do so.[2]

The provisions of law governing the use of the National Guard are to the following effect. Whenever there is a riot or threat of riot "it shall be deemed that a time of public disorder and danger then exists, and it shall be the duty of the governor thereupon to order such military or naval force as he may deem necessary to aid the civil authorities in suppressing such violence." The military force thus provided "may arrest without process and hold in custody until (by order of the commander in chief) such persons shall be discharged from custody or delivered over to the civil authorities." It will be noted that this provision effectively sweeps away traditional civil rights in the disturbed area. Its effect is further strengthened by explicit authority to the commanding officer to use "such force as he may deem necessary to suppress riots, disperse mobs, restore peace, and execute the law," and also by the provision that "orders from civil officers to any military or naval commander shall specify only the work to be done or results to be attained, and shall not include the method to be employed, as to which the military or naval officer shall exercise his discretion, and be the sole judge as to what means are necessary."[3]

The foregoing excerpts make it clear that the use of the National Guard on riot duty virtually displaces civil authority in the disturbed area. The extent to which the Guard has actually been employed for the suppression

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tions and dangerous to the best interests of the people as a whole. I am, therefore, opposed to the establishment of a state police system in any form for the reason that any such state system is destructive to the principle and practice of local self-government." (The State Constabulary Bill; Statement of Victor A. Olander, Secretary-Treasurer, Illinois State Federation of Labor; October, 1921; p. 13.)

[1] R. S. Chap. 38, sec. 525.

[2] R. S. Chap. 38, sec. 529.

[3] R. S. Art. XXII, Chap. 129, secs. 194-196.

TABLE 3: RIOT DUTY PERFORMED BY ILLINOIS NATIONAL GUARD, 1917-1926

Location	Period Dates	Days	Present for Duty
	1917		
E. St. Louis	May 29-July 24	57	About 2 regiments of infantry
Bloomington	July 6-July 10	5	1 troop of cavalry
Springfield	August 7-September 17	11	1 regiment of infantry
Chicago	September 6-Sept. 22	17	4 companies of infantry
Mount Vernon	December 16-Dec. 20	5	1 company of infantry
	1919		
Chicago	July 28-August 9	13	6 regiments of infantry
	1920		
Kewanee	April 14-April 23	10	2 battalions of infantry 2 sections of machine gun company
West Frankfort	August 5-October		1 regiment of infantry
	1922		
Clinton	July 8-July 19	12	136 officers and men
	July 19—July 25	7	157 officers and men
	July 25-August 7	14	237 officers and men
	August 7-August 30	24	108 officers and men
	September 1-Sept. 21	22	About 54 officers and men
Bloomington	July 9-July 19	11	284 officers and men
	July 19-July 25	7	337 officers and men
	July 25-August 9	16	266 officers and men
	August 9-August 30	22	252 officers and men
	September 1-Sept. 22	23	68 officers and men
Joliet	August 7-September 18	43	469 officers and men[1]
	1923		
Tamms	July 27	1	33 officers and men
Hillsboro	August 11-August 27	17	308 officers and men[2]
	1924		
Williamson County	January 8-January 20	13	89 officers and men[2]
	February 8-April 3	55	231 officers and men[2]
	August 30-September 30	32	34 officers and men
	September 30-Nov. 24	56	75 officers and men[1]
Mound City	July 22-July 23	2	53 officers and men
	1925		
Herrin	January 24-Jan. 29	6	37 officers and men
	1926		
Herrin	April 13-April 24	12	35 officers and men
	April 13-April 17	5	51 officers and men
	April 13	1	49 officers and men
	April 23-May 8	16	66 officers and men
	May 3-May 19	17	49 officers and men
	May 7-May 22	16	51 officers and men
	May 22-June 5	15	52 officers and men
	June 5-June 19	15	48 officers and men
	June 19-July 3	15	36 officers and men
	July 2-July 14	14	36 officers and men

of riot and disorder is indicated in Table 3. From this table it would appear that military force has in fact been used on riot duty on many occasions. The customary arguments against the use of civil authorities, such as the state police, are thereby deprived of some of their effect in this state. But quite aside from any such consideration, the fact remains that the state must take responsibility for maintaining order. The laws establishing orderly processes are state laws, and even the local officers who are sworn to execute them are frequently held in certain aspects to be state officers. The question therefore is, what public authority shall be provided to meet such emergencies when they arise?

[1] Maximum number on duty at one time.
[2] Daily average for period.

Local police forces probably offer the ideal instrumentality for this purpose, since if they are used, the element of invasion of the community by an armed force is lacking; but a casual examination of the table will show that in most cases the National Guard has been used in communities which did not and could not maintain an adequate professional police force. In such communities, a situation may frequently arise, and has in fact frequently arisen, which has required the intrusion of state authority. That authority has thus far been represented by the National Guard. While it is not the intent of this report to take a position favorable to the use of armed force by either state or local authorities, it is submitted that legal restrictions upon the use of forcible measures can be more readily applied in the case of civil authorities than in that of a military body such as the National Guard.

Illinois may profit from the experience of other states by setting up safeguards surrounding the use of state police in riot duty. Attention is directed especially to the Massachusetts provision requiring that the state police "shall not be used or called upon for service in any industrial dispute unless actual violence has occurred therein, and then only by the governor."[1] It is believed that this provision represents the full effective limit to any such restriction. For the fact may as well be recognized that while a police force requires careful provision for its democratic control, the means employed to that end should be concerned with the organization of the force and the discipline of its personnel from top to bottom, rather than with arbitrary limitations upon its powers as a peace maintaining agency.

13. *A Constructive Program.*

The general bearing of the foregoing pages is to this effect: Rural crime in Illinois seems to have assumed grave proportions, especially in certain sections. The time-honored agencies for rural crime repression have either avoided all responsibility or have been overwhelmed. Use of the National Guard in aid of the civil authorities has often been necessary. The state highway patrol, grown from small beginnings, has become involved in local politics and has not as yet made crime repression and the apprehension of felons a major part of its work. Nevertheless, this body represents the obvious point of departure for any consideration of possible programs.

To reorganize and redistribute the state highway patrol along the lines suggested above, however important such details may be, would not go to the root of the trouble. The force would still remain a minor adjunct of the department of public works and buildings. It would still be tied in fact, though not in law, to the same narrow concepts of police duty, and it would still be tied to its unfavorable traditions of the past seven or eight years.

A close scrutiny and analysis of all the elements of the problem leads to but one conclusion. Adequate protection for the rural districts will require a trained and mobile force of state police, operating under a single administrative head who should be responsible to the governor alone. The administrative head of such a body should be assured of official tenure during good behavior but his removal should not be subject to judicial review. He should be vested with complete control over the internal administration of

[1] Massachusetts Acts, 1921, Chap. 22, sec. 89a.

the force, to be exercised under rules and regulations approved by the governor. The end and aim throughout should be to provide a trained and disciplined body which shall at all times be subject to civil authority, which through frequent patrols may tend to repress criminal acts, and through assistance rendered to state's attorneys, sheriffs, and coroners may serve to increase the effectiveness of these local instrumentalities concerned with criminal justice.

The fulfillment of such a program will involve a distinct break with the past. It will require abolition of the state highway police, and creation, in its stead, of a new entity as an executive arm of the governor. The experience of some hundreds of years has demonstrated how little can be accomplished by seeking to build upon unsound police foundations.

CHAPTER VIII

THE POLICE (in Chicago)

By

AUGUST VOLLMER

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CHAPTER VIII

THE POLICE
(IN CHICAGO)

1. *Foreword.* [*By the Chairman of the Survey Committee.*]

One of the most important problems confronting the Survey Committee at the outset of the survey of the administration of criminal justice in Illinois was the police department of the City of Chicago. The department has for years been a storm center around which has raged conflict after conflict, precipitated by the efforts of politicians to control the police for their own nefarious purposes. That the department has been used as a political pawn through successive municipal administrations, with few exceptions, for a number of years is well established by the report on *Organized Crime*.

On April 15, 1927, when the survey was launched, a new municipal administration had just been inaugurated. Mayor William Hale Thompson had succeeded William E. Dever, and a new chief of police, Michael E. Hughes, was appointed on April 14, 1927.

Shortly thereafter a complete reorganization of the department occurred. Numerous transfers were made and the usual number of officers sent to the "sticks." Captain Stege, Captain Murphy, and others, who had splendid records of distinguished service over a long period in the department, were tried by the Civil Service Commission upon charges, some of which were exceedingly flimsy, and all of these officers were dismissed from the force.

Chief Hughes then reorganized the department by reviving the old commissioner system, which had been discarded years before. This was recognized as a move to centralize control of the department and, judging from past experiences, it was at once concluded that there was deep significance to be attached to the move, in view of the fact that Mayor Thompson had been elected upon a "wide-open" platform; that liquor manufacturers and purveyors, and professional gamblers had rushed back into Chicago from the outlying parts of Cook County where they had been forced to go during the Dever administration, and had established syndicated liquor running and open gambling in many parts of the city.

There were many evidences that the department was demoralized; that there were distinct and well known alliances between the police and underworld celebrities; that gambling and liquor running were not to be interfered with, and that it was risky for any police official to exercise any initiative on his beat or in his district without specific orders from headquarters. There was the closest political alliance between the prosecutor, the sheriff, the police, the mayor, and many of the judges of the courts, and they, together, completely dominated the political affairs of the city and county. It was demonstrated early in the survey that the office of state's attorney was being used extensively for political purposes and many habitual offenders and dangerous criminals were being released with little or no punishment.

In view of these rather obvious surface indications, the committee was confronted with the question of whether the ordinary survey of police organization and methods would be of any practical value, but recognized the necessity for expert counsel before making this preliminary decision. The committee then sought the advice of August Vollmer, chief of police of Berkeley, California, who by reason of his enlightened and scientific methods of police administration in his own city and his work in reorganizing the police departments of the cities of Los Angeles and Detroit, and of Havana, Cuba, as well as his writings and addresses upon the subject, is probably the most highly rated police administrator in this country. He has, in fact, an international reputation.

Chief Vollmer came to Chicago in February, 1928, and spent some time looking over the situation. In the end he wrote a report setting out his conclusions and making certain suggestions as to what had to be done before any relief could be expected. This report was not, at the time, published. Since it was submitted, Chief Hughes has been deposed and two elections have demonstrated conclusively the determination of the people of Cook County to repudiate all of the politicians responsible for intolerable conditions of crime and laxity in law enforcement. Captain Stege was brought back and reinstated by the new chief, Russell, and there are many other evidences that an effort is being made to rid the department of the factors which, in 1927 and the first half of 1928, were responsible for its demoralization.

Chief Vollmer's comments and conclusions are interesting in the light of subsequent events, and we take pleasure in presenting them.

2. Political Factors. Some of the conclusions regarding the police department contained in the final report of the (Chicago) civil service commission police investigation of 1911-1912, are as follows:

> "From the evidence obtained by it, the Commission reiterates the conclusions arrived at in its preliminary report, with added conclusions, as follows: (a) that there is, and for years has been, a connection between the police department and the various criminal classes in the City of Chicago; (b) that a bipartisan political combination or ring exists, by and through which the connection between the police department and the criminal classes, above referred to, is fostered and maintained; (c) that to such connection may be charged a great part of the inefficiency—disorganization and lack of discipline existing in the department; (d) that aside from such connection inefficiency also arises through faults of organization and administration."

From the foregoing it is clear that the factors which have contributed to the demoralization and inefficiency of the police force of Chicago have been of long standing. The efforts made at that time to better conditions, as well as later sporadic attempts, have done little to ameliorate the deplorable situation mentioned in the Civil Service Commission's report. It would be a simple matter at this time to satisfy the people supporting the Illinois Association for Criminal Justice by suggesting remedies for some of the police organization defects, but we would be remiss in our duty and would

only be dealing with symptoms and not with the fundamental causes of police inefficiency.

It has been made known to the public, through the columns of the press and through previous investigations, that the factors responsible for a demoralized force lie without the department. Until these factors are removed it would be farcical to undertake the selection and training of personnel, force organization and distribution, equipment, records, and statistics. Moreover, attempts to clean up a police department by brass band tactics and clamor for a new police executive are nothing more or less than the tools of crafty politicians and mere gestures, which do not strike at the root of the evil or contribute one whit to better police service; in fact, such tactics serve further to demoralize the force.

It is commonly known that demoralization is traceable to the low standard of entrance requirements, inadequate preliminary training and absence of training for sergeants, detectives, and commanding officers. The force is further demoralized by the constant changing of department policies in regard to law enforcement; also the brief tenure of office of the chief executive, and the constant shifting of line and administrative officials. The men in the ranks know that if they perform their duties properly during one administration, the next administration will penalize them for such zeal and initiative by transfer to the "sticks" or demotion. Lack of support by prosecuting officers and the courts also adds to the demoralization and creates in the minds of policemen the attitude of "what's the use?" Especially when they view the successful operations of the professional bondsman and crooked attorneys who appear for guilty defendants.

But, the chief cause of demoralization is the corrupt political influence exercised by administrative officials and corrupt politicians. Even the ward leaders exercise a baneful influence and have the power to compel precinct captains to do their bidding. Zeal, initiative, confidence in their brother officers, enthusiasm for their work, devotion to duty are all destroyed, and even the habits and moral character of some of the members are affected by the measures and agencies previously mentioned.

There is no denying the fact that the great majority of the members of the police force of Chicago would prefer to render efficient service if they were permitted to do so, and among their ranks may be found some of the most skillful, intelligent men in the police service in this country.

To overcome the forces which are organized to break down the administration of justice, it is imperative that the unity existing between vice and crime be destroyed. This may in a short time be accomplished by setting up separate forces for combatting each of these well organized groups. Links that connect the gambler, bootlegger, prostitute, criminal, bond broker, crooked lawyer and politician must be broken and each link in the chain given individual attention and individually attacked. The old parable of the bundle of sticks illustrates this point admirably. Separately, they are easily broken, but when bound together they defy a giant's strength. A comparatively few men, with sufficient under-cover allowance, directed by a forceful and incorruptible leader, can overwhelm the allied army of the gamblers, bootleggers, prostitutes, drug fiends, and their leaders and supporters, pro-

vided, of course, that they have the moral support and backing of the community and administration leaders. Incidentally, responsibility can then be easily traced when this particular unit of the government fails to wage a successful campaign against these social parasites. A properly organized, trained, and equipped police department, charged with the responsibility of preserving the peace and protecting lives and property, unhampered by traffic and vice duties and commanded by competent police executives, can drive the criminals out of the city or force them to engage in more honorable occupations; moreover, the renewed demoralization of the force, previously mentioned, would not be easy and the officials could not fail to command the respect of the people they serve.

A survey should comprehend a thorough investigation of each of the separate organizations—their various political affiliations, their contacts with other branches of the municipal and county governments, their contacts with the invisible government, and every other element that contributes either directly or indirectly to defective administration. Such an investigation should be so thorough as to insure the detection and elimination of the incompetent and dishonest members of the several branches; otherwise, the results will be negative.

Any proposed reorganization plan would be useless so long as the police administrators are not free from the dominating influence of corrupt politicians. Chicago police officials are victims of a political system and as long as the system remains their inefficiency will continue; it cannot be otherwise.

3. Police Personnel. Trained and intelligent policemen of good character give courage to law-abiding citizens and furnish a nucleus around which they may rally to control the lawless element. A comparatively small body of such men is a strong deterrent against lawlessness and effectively curtails the efforts of antisocial individuals who have a distorted conception of their responsibility to the group.

Weakness of a police organization, improperly recruited, contributes greatly to the indifference and apathy of the public and frequently encourages potential offenders to become habitual criminals. Higher standards of physical and entrance requirements of police must be established. Whatever may be achieved in remedying police defects must be done through enlisting the services of intelligent men of excellent character, who are sufficiently educated to perform the duties of a policeman.

As a first step in any plan to ameliorate conditions, it is necessary to keep out, rather than weed out, undesirable persons. Preventive measures are vastly cheaper and more effective than the installation of complicated machinery to correct personnel defects. Besides, an unsatisfactory policeman weakens the moral fiber of his associates and destroys public confidence in the police. The police organization suffers in reputation and society pays the bill when policemen are dishonest, brutal, stupid, or physically or temperamentally unsuited. Arbitrary, unnecessary exercise of police powers, harshness, and cruelty produce crime, anarchy, and kindred social and political ills.

Examinations by psychiatrists would assist in stopping these unsatisfactory persons at the recruiting vestibule. Mental peculiarities or abnormal-

ities, either inherent or acquired, should be detected through the preliminary examination and the possessors thereof rejected. These specialists will otherwise contribute to successful police administration through their understanding of the traits of character, motives, interests, aptitudes, dispositions, attitudes, ideals, limitations, and potentialities of the persons who are finally selected. Indeed, careless procedure in promotional examinations has resulted disastrously in the past. Deserving officials have been overlooked in the search for leaders and experts, while unsatisfactory men were placed in responsible positions, and through their incompetency brought discredit on the entire organization. Each individual differs from every other in mental make-up and in training. Capitalization of these variations of human qualities is essential in order that men may be placed where they will find pleasure in their work and are afforded an opportunity to give the community the best that is in them. Shrewd experts are required to conduct the affairs of business concerns. To an even greater degree do police departments demand a higher grade of intelligence and experts. Oftentimes the technical and important task of policing a city is placed in the hands of incompetents, who are unable to respond to the numerous calls made upon them for efficient service and common sense interpretation of the laws. Their stupidity, helplessness, and frequent lack of moral courage contribute to the contempt in which police departments are held by the average citizen. No mental measure scheme has been perfected; nevertheless, the result obtained in the army during the late war, and in educational and industrial institutions, justifies the use of mental tests to determine whether or not applicants for positions on the force are mentally endowed adequately to discharge their duties.

4. Civil Service Examinations. Undoubtedly, the present civil service examinations have had a tendency to weed out some of the mentally unfit. But it is necessary to supplement the educational examination by the use of tests to determine the mental fitness of the candidates. When we consider that there are many unintelligent and uneducated men employed in occupations involving no risk of occupation or life, with less arduous and more regular hours of employment, who receive nearly twice as much compensation and enjoy many more opportunities for advancement, and when we further take into consideration the hypercritical and unsympathetic attitude of the public toward policemen, and the widespread unwillingness to cooperate with them or lend a willing hand in their endeavors to enforce the law, we can understand some of the reasons why some of the better class of men hesitate to enter the police service. Even supposing that an equitable basis of pay were possible and that other obstacles are overcome, the present method of selecting police is not conducive to an efficient administration of police affairs, and as long as candidates are thus selected, police departments and their members will continue to be criticized.

Where is there a business concern that compels applicants for various vacancies in the organization to submit to the same physical and mental examination in which the janitor, clerk, salesman, engineer, superintendent, and manager are all compelled to answer the same questions, measure up to the same physical standards of health, height, age, sex, and all commence

their employment at the same occupational level and at exactly the same pay? Where is there a concern that limits the selection of men to fill technical positions to employes holding inferior positions in the same establishment? What are some of the qualities that some of the candidates ought to possess to successfully perform police duties?

Dr. Hans Gross, an Austrian magistrate, in his work entitled "Criminal Investigation," says, "The services of the investigating officer are great and his labors are full of interest, but rarely, even among specialists, is full credit given to the difficulties of the position. An investigating officer must possess health, vigor of youth, energy, alertness, and extensive acquaintance with all branches of the law. He ought to know men, proceed skilfully and possess liveliness and vigilance. Tact is indispensable; true courage is required in many situations; and he must be always ready in an emergency to risk health and life. He must be able, moreover, to solve problems relating to every conceivable branch of human knowledge." Dr. Gross has partially described the qualities of a successful, modern policeman. Today a very superior quality of intelligence is an absolute requirement. A policeman's perceptions must be very keen; nothing should escape his attention; and a lively imagination, excellent memory, and accurate reasoning and judgment are demanded at all times. His fidelity and loyalty to the department and the city he serves must be great enough to resist the constant temptations that beset him. Truthfulness, honesty, and definiteness of purpose are demanded in all of his dealings with the public. No matter how tantalizing or abusive the individual or crowd may be, the policeman, under all circumstances must have complete control of his emotions and never lose his temper. To command the respect of others the officers must be mentally, morally, and physically clean at all times; neat in dress and general appearance; with an inherent desire for what is good, for truth and candor, and abhorring everything that he would resent in an accusation made by another; never tolerating in his own inner consciousness what he would fear or blush to have known by friends or foes; adding dignity to his profession by the pride he takes in doing his work without hope of reward other than the satisfaction of doing his duty whenever and wherever demanded. Many discouragements are met with in the attempts of policemen to settle differences between people. Constant interference by ignorant or misguided citizens, with their plans for public betterment, and the numerous failures attending their efforts to solve all kinds of problems and surmount obstacles of every description, indicate the need for a vast amount of perseverance and patience. Without these virtues a policeman is a vocational misfit.

The World War taught us many lessons; one of which was the necessity for obtaining men fit to fight on the other side of the waters. Guided by wise counsel and profiting by the experience of our Allies, army and navy leaders enlisted the services of the greatest minds in the fields of medicine and psychology, who, after holding numerous consultations with the officials and spending days and nights studying the problem in the field and laboratory, finally submitted a plan for the examination of conscripted men and officers. Suffice to say, the plan had a two-fold purpose: First, the elimination of the unstable and the unsatisfactory; second, the recognition of desirable material for service in the army and navy. Men were required to run

the gauntlet of medical specialists; all parts and processes of the body were examined and tested for defects and diseases; specialists in mental and nervous disorders rejected those with apparent faults and held for further examination those with latent symptoms of deficiencies. The intelligence of the embryo soldier was tested by special intelligence group tests. A card with all information as to the previous occupations of each soldier accompanied his service record in any transfers from one branch of the army or navy to another. Thus, each commander knew what each man under his command could do, from polishing a diamond to caring for horses, without calling the man to headquarters.

If a similar method of selection was adopted by civil service examiners, it would be reasonable to believe that such misfits as the stupid, hot-headed, sullen, cranky, lazy, slovenly, and unreliable would seldom, if ever, receive police appointments; moreover, technical examinations should be held to determine the fitness of candidates for special positions in the department and the physical requirements might be modified in these cases. No examination should be so inflexible as to prevent utilizing to the best advantage a policeman's knowledge, interest and special abilities. It is a well recognized fact in the police service that the civil service paper examinations can never absolutely determine the fitness of the candidate for promotion. In the last analysis it is the world's tests that actually count.

Therefore, there should be established in the police department a merit file for each member and a monthly record kept of his performances from the day he enters the service until he severs his connection therewith. In this file should be kept letters of commendation from outside sources and from superior officers. Credit should be given for meritorious and faithful service. The merit file should also contain the rating score of the individual. This rating would be the opinion of the superior officers who have had an opportunity to observe his conduct while attached to their command. The rating scale should be similar in character to the one employed by the United States Army during the war, which was a man to man comparison. Detroit has improved on this rating scale somewhat, and Dr. O'Rourke, of the United States Civil Service Commission, has also prepared a valuable rating scale.

5. *Police Training.* A glaring defect in the police system is a neglect to promptly prepare recruits for police service. The recruit after a brief month's training becomes a full-fledged policeman; so his real education is acquired only in the school of hard knocks. If he is not killed, sent to jail, or discharged in the first ten years, he may develop into a passable policeman. This method of preparing policemen for service is so faulty nothing further need be said here concerning it.

A police department should maintain an up-to-date school for training policemen authorized and empowered to enforce laws and ordinances intended for the public protection. Dealing with all types of behavior problems and confronted, as they frequently are, with every conceivable difficulty, policemen should have knowledge of the fundamental principles underlying human actions, more especially those conduct disorders which are designated as criminal or contrary to law and order. Considering the many subjects to be mastered, a minimum of three months' training is required, and if possible, this should be extended to six months.

Training should consist in instruction in police procedure, which would include the police rules and regulations and general orders of the department; how to patrol their posts and perform the duties incident to beat patrol; instructions as to how various thieves work, including house, room, store, office, and loft thieves; how to make brief notes and the general use of a policeman's notebook; how to establish police and fire lines and how to act at parades during traffic congestion. They should be taught what action they are required to take at the scene of an accident or riot, and how to conduct themselves in all emergencies. Instruction should cover the functional duties of each branch of the police service, also how to assist these functional units and how to cooperate with other law enforcement branches of the government. All tricks of the wrestler and boxer should be taught, in order that the policeman may know how to handcuff the offender and protect himself against the criminal. This ought to include special instruction with regard to disarming the prisoner and his subjugation without too much violence. Since the policeman is called upon frequently to assist in rendering aid to the injured, a thorough course in first aid is required, including antidotes for poisons and temporary bandaging of the seriously injured. Rules of evidence, the laws of arrest, and all criminal acts should be specially stressed, and at the same time the court procedure should be sufficiently dwelt upon in order that the recruit may know what his rights and duties are as an officer of the court. He should receive instruction in how to direct others; how to restore order where there is confusion; and how to make investigations and report thereon; what evidence to preserve and the method of marking evidence so that it may be introduced into court. He should also be instructed how to take dying statements and statements of witnesses; how to develop and preserve latent finger-prints; and how to describe the general characteristics of the individuals so that they may be promptly identified; in other words, considerable information should be transmitted to the individual concerning modern identification methods. This would also include not only the individual but his method of operation. The use of firearms, military exercises, police administration, criminal identification, and drills, including calesthenics, should be a part of every recruit's education.

Promotional courses should be established and schools for sergeants and commanding officers should be constantly maintained. If possible, a university extension curriculum should be developed with a view, first, to a broad preparation for police work, and second, to provide for specializations in the divisions of the police service. Sociology, abnormal psychology, police administration, advanced law, military science, statistics, forensic ballistics, advanced criminal identification and investigation, and, in fact, all sciences that are related to police service must be incorporated in the curriculum. Technical courses should be given by experts in the police service, and should include the *modus operandi* of the racketeers, gunmen, safe-blowers, burglars, auto thieves, pickpockets, bunco men, and other well known types of criminals. Without advanced training the commanders are unable to render satisfactory service to the people they serve. Frequently they become nothing more than additional patrolmen and parade around the streets in conversation with the men they are supposed to direct. The same holds true of the admin-

istrative executives. In many cases the men are willing to do, but are without the knowledge to perform their duties in a satisfactory manner.

Finally, it should be mentioned that more time should be given to the development of police morale. Training in morale should begin in the recruiting school and continue throughout the officer's career as a member of the department.

6. *Divisional Organization.* No plan for organization can be constructed to meet the need of every city. Actual crime conditions and police hazards existing within individual units must be known. Accurate studies must be made of crime; charts, graphs, tables, and maps showing the who, what, when, where, and why must be carefully prepared. Guided by such information a solid foundation may be erected for effective police organization.

Territorial units, however, should not be too large in area or population. The officers, to serve their sections effectively, must be intimately acquainted with and responsible for conditions existing within the district assigned to them for protection; moreover, these men must establish friendly connections with the respectable and law-abiding members and have close acquaintance with the criminal element and potential offenders residing within the boundaries of their respective divisions. Responsibility cannot be fixed where the territory or the police problem is too large for division commanders to control. When the numerical strength of a police division becomes unwieldy, discipline is difficult to maintain, morale declines, corruption flourishes, vice and crime gain a strong foothold, and efficiency is impaired. Again, in police units that are too large in area the time consumed in transmitting messages and emergency calls to policemen on beats increases in proportion to the number of officers that are on duty and available for service. Since speed is essential if criminals are to be apprehended and crime reduced, a department's ability to accomplish the purpose for which it was organized is in inverse proportion to the time and distance that station houses are removed from the people they serve.

Of course, division lines in many cases must be irregular, due to local conditions; such, for example, as differences in racial, industrial, and social conditions. Certain neighborhoods have peculiar problems, which require men of special ability and training, as well as a lifelong acquaintance with people residing in the section. Obviously, it is better to continue in command of such a section one who has knowledge of police methods that have been successfully employed for keeping the peace and protecting the lives and property of the inhabitants.

7. *Staff Organization.* The many duties imposed upon the police have compelled department heads to allocate to certain groups of individuals highly specialized duties, with the result there are now a number of very important functional divisions in the police department, including, by way of illustration, the detective, traffic, vice, record, and identification units. The territorial divisions, functional divisions, and administrative branches of the department cannot function efficiently unless the members of the administrative staff attached to a police executive's office are well trained and are specialists in their particular fields. The staff

officers are, in fact, the heart of the organization and if they are weak, corrupt, or unfitted for their positions, department morale rapidly declines.

The police department, however, as at present organized must of a necessity fail. Assuming that it were possible to induce men of superior intelligence and training to accept police positions and that these men were perfectly organized and equipped, the police department would always be inefficient as a crime preventive agency as long as it was burdened with the duties incident to traffic control and regulation, and the responsibilities associated with the suppression of vice. Protecting lives and property and preserving the peace of a community is a huge task. Apparently it is believed to be an unimportant and small responsibility, and the legislative bodies continue to heap innumerable duties upon the police, until they are loaded to the breaking point.

Traffic and vice regulation and control hamper progressive police executives. Traffic should be handled by a separately organized body of men, whose whole time and thought will be given to the solution of that problem; and the control of vice should be placed in the hands of a distinct organization, with power to enforce all laws relating to prostitution, gambling, and the use, possession, or sale of narcotics or intoxicating beverages. Notwithstanding arguments to the contrary, the control of traffic, vice, and crime presents entirely different types of situations even though they appear to be closely related, and until vice and traffic are operated apart from the regular crime control organization, we may expect a continuance of police inefficiency.

8. Same: Commercialized Crime and Politics, as Affecting Staff Organization.

There is always an indolent, unscrupulous and parasitic group in every community, which desires to live comfortably without effort, including thieves, prostitutes, gamblers, bootleggers, narcotic users and peddlers, professional bondsmen and shyster lawyers. Their ranks are further strengthened by the "down and outers" and those who are physically or mentally incapable of competing with others for an honest existence. This so-called underworld, though comparatively small, wields a powerful influence in every election, through willingness on the part of those who derive profit from vice, either directly or indirectly, to pay enormous sums of money for protection of their questionable interests. A political leader who has their confidence and financial and political support occupies a strategic position in the fight for political control. The better class of citizens, divided on political issues, which frequently are political smoke-screens, has its attention focused on the issues and overlooks the character of the political leader. After a successful campaign has been waged by these political crooks, it is a common practice to appoint a new chief of police. Press reports and photographs fill the columns of newspapers with stories and pictures concerning the marvelous improvements that are to follow in social conditions; big police shake-ups are widely advertised, until the news gatherers run out of boost material. Meanwhile, gamblers, prostitutes, and criminals of every description, far and near, learn through their subterranean channels that everything is all "fixed" and stampede to the city for the purpose of harvesting an easy crop. Honest policemen discover that the machinery is against them and demoralization of the department begins. Worthy or efficient

officers are placed in inferior posts or they may be assigned to time consuming, but unimportant, tasks. Weak or corrupt officers are transferred to vice districts, or given command of vice controlling units with power to select their subordinates. Conscientious officers are framed, demoted, discharged, or, as is the common practice, are sent out to the "sticks." Factional fights take place within the department and this, coupled with general disrespect for the police executive, prevents the police department from functioning properly. When the police morale is shattered, the city is at the mercy of the crooks. Respectable police officials hate vice assignments and detest duty in a vice infested district even when the conditions are favorable to the enforcement of laws relating to vice; but when the city is controlled by crooked politicians, the situation becomes intolerable.

Protecting life and property and preserving the peace are the primary duties of the police and the less they are burdened with vice and traffic control, the more successfully will they perform these duties. This is one reason, at least, why vice and traffic control should be detached and new departments created to deal with these subjects. Another cause for such a divorce is the corrupt influence that vice control has upon the police. Finally, and most important, the power to dominate police departments, now exercised by the political crooks, will be considerably curtailed because responsibility for non-enforcement of vice repression laws can be definitely traced to an individual or a group; at any rate, and in all cases, upon an individual in connection with a regular police branch of the government.

9. *Same: Traffic Control.*

Traffic control is now regarded as a separate and distinct type of service and the men who are assigned to duty with the traffic division are seldom, if ever, called upon to perform other police duties. There are never enough men in the traffic division to satisfy the public, with the result that not only are patrolmen taken off their beats and placed on fixed traffic posts, but every patrolman is commanded to give attention to traffic violations. Despite the efforts of the police to promote safety on the public highways and regulate the flow of traffic on the highways, accidents appear to increase in proportion to traffic volume. The many thousands of arrests that have been made by the traffic officers for unimportant violations of the traffic laws have accomplished little except to cause endless trouble for police executives. Vehicle operators resent having their names placed upon the public arrest book. They are opposed to the many regulations. Occasionally, because they have been arrested for trifling traffic law violations, some of the community's best citizens become actual enemies of the police organization and hinder these officials in their efforts to prosecute criminals or prevent crime. A large share of the executive's time is consumed listening to the excuses of traffic offenders with whom he may be acquainted, and to the entreaties of well-intentioned and influential persons, to say nothing of the time consumed in listening to the complaints of the merchants in the various sections of the community. Failure to square traffic tags results in loss of support for the police, for the reason that the persons who supply them with information, if they and their friends are not excused from appearing in court, refuse to assist in the future. Excusing offenders results in a contempt for all traffic offenses, with consequent disrespect for all other laws. In fact, through

lack of scientific training the average police executive cannot cope with the traffic situation intelligently; and what is more important, the subject occupies so much of his thought and attention that he is unable to do justice to his other work.

Detaching vice and traffic functions from the regular police organization and setting them up as separate and distinct governmental units is not without precedent. The federal branch of the government has one division for narcotics and another for prohibition enforcement. The Treasury Department has its secret service agents; the Post Office Department, its post office inspectors; the Department of Justice, its agents; all having separate duties and all performing their duties satisfactorily. The government does not require the secret service agents, the post office inspector, or department of justice agents to enforce the provisions of the Harrison or Volstead Acts or, in fact, to have anything to do with the enforcement of these laws. If it did, these excellent and profoundly respected law enforcing officials would soon lose caste with the people and ultimately become corrupted and demoralized.

Accordingly, it is recommended that as a first step in an organization plan, vice and traffic control be separated from the police department and that heads of these units be under the direction and control of the mayor, either directly or indirectly, through separate commissions. The executive head of the department charged with the responsibility of suppressing crime in the community, should be appointed for an indefinite period and not be removed from office without cause and only after a public hearing.

10. *Signal Methods.* Even though the personnel of the organization is composed of the right type of officers and the organization plan is as near perfect as circumstances will permit, if the policemen are to serve effectively, they must be equipped with the tools of their profession. This important item has apparently been overlooked. First in importance for the protection of a community is an up-to-date signal system. Speed is essential in these days of rapid transportation and especially in view of the fact that the most dangerous type of criminal always operates in automobiles and a minute lost in responding to an alarm means that the police are miles behind the crook in his race for liberty; moreover, calls for police aid demand immediate attention or a life may be lost or valuable property gone forever.

A modern signal system provides the means whereby police stations may be kept in constant touch with police on the streets. The signaling devices that are now being offered are comparatively inexpensive and are so constructed that it is possible at any time of the day or night to call one man, or a group, or the entire force. Signal lights or horns should be located at equi-distant points, about a mile or a quarter of a mile apart in residential sections, and at every street corner in congested areas. Police alarm boxes permit the officer to respond promptly to the commanding officer's call for assistance. The teletype is a marked improvement in the communication work in the police department, and alarms are rapidly dispatched to the different police stations; but here they end for the reason that the desk sergeant or commanding officer of the station has no means at the present

time of communicating with the man on the beat. Without signaling devices a department is sorely handicapped.

Foot patrolmen experience difficulty in responding to alarms in residential sections, even where they do observe signals intended for them. Patrol beats are large, and by the time the foot patrolman reaches the box in response to the signal, he would be too weak to do effective work; hence the automobile patrol is rapidly displacing foot patrol in residential and semi-residential sections in the more advanced cities. In fact, in New York, the automobile patrolman is used in the downtown sections to a very large extent. Experience in automobile patrol has proved that one man in an automobile can do more effective work than two foot patrolmen, and in emergencies, especially where automobiles are used in connection with the commission of serious crimes, the auto patrolman is worth a dozen foot patrolmen. Rapid communication with and rapid transportation of officials is a primary requisite in modern police organization.

11. Records, Reports and Statistics.

Before energy is expended to improve police procedure, it will first be necessary to collect reliable statistical data. We hear on all sides that crime of one type or another has increased; that cities are overrun with gunmen; that delinquency has reached such enormous proportions that national safety is in danger. The police are the sole possessors of such facts as are available concerning crime conditions in this country, but these facts have never been intelligently compiled, prepared, evaluated, or interpreted. Correct figures concerning the actual amount of crime committed can be obtained only from police records and this involves: (1) willingness and ability on the part of police officials to supply the data; (2) the use of standard crime complaint forms; (3) the use of standard officers' report forms; (4) the use of standard classification of crimes; (5) compilation of standard police statistics.

Commitments to institutions are a false index to crime conditions, because they may be variously interpreted. The number of arrests made by police officials is also subject to the same criticism. Consequently, the only dependable data upon which safe conclusions may be based are the actual number and kind of complaints received by law enforcement officials. Some departments now publish reports containing tables showing the number of major crimes reported during the year; some include comparative tables; and one department shows the number of cases cleared up during the year. Here, it will be observed, is a nucleus around which may be built a standard annual police report form, which may be valuable in determining what the actual crime situation is.

With regard to the use of complaint and record forms, it is certain that difficulties will be encountered at the beginning, but with care, patience, and energy these may be overcome. Forms which have been used for years are not easily discarded, even though the officials would be willing to cooperate. Police officials having become used to one form do not accept changes kindly, and success in the use of forms depends very largely upon the man who handles the individual cases. Other obstacles encountered would be the necessity for readjustment of the office routine; clerks must devise new

filing schemes and methods for compiling police information. Lastly, we must not forget the need of expert clerical help and thoroughly trained statisticians.

Generally speaking, the police reports do not show how many crimes against persons, property, morals, and public peace are committed; how many cases are cleared up; how, when, why, and with what means they are committed; or what the relation of arrests is to these crimes. One arrest may clear ten to fifty records of robbery, while ten arrests may clear but one. How can we ever know whether the number of crimes is increasing or decreasing and whether or not there were more criminals operating in 1928 than in 1918, or any other period, until such time as police statistics are made uniform? At the 1922 Convention of the International Association of Chiefs of Police, the records committee submitted to the members attending the conference, a recommendation that standard forms prepared by them be adopted; their report received the unanimous endorsement of the delegates present. With the use of these forms, the administrative branch of the police department would receive daily, monthly, and annual reports, also graphs, charts, and maps showing actual conditions within the city. With correct information before them the executives are enabled to direct men under their command more intelligently than has been done in the past; strategic points may be protected and officers may be detailed for duty during the hours their services are most needed. Without such information the police executives are helpless.

12. *State Bureau of Police, for Coöperation.*

Police executives have learned, since the advent of the automobile, and perhaps long before then, that no department is sufficient in itself and that every department is more or less dependent upon the other. Professional criminals do not always remain in the same community and where they move about from place to place, their apprehension and conviction is indeed uncertain. Effectiveness of the police is impaired through lack of coordination; each unit being obliged to operate independently of others without the aid and experience of their fellow workers. Executives discover, often too late, that the professional migratory crook has outwitted the officials of an entire state. Investigating crime and apprehending criminals is no longer a local matter, because the criminals of today, and especially the more dangerous type, do not confine their activities to a particular city, county, or state, and this is especially true in these days of rapid transportation. No one city or county can afford to maintain the equipment and personnel necessary for a complete supervision of crime, nor would it be possible for the separate political units to conduct a complete coordinated system for criminal identification, because it is practically impossible for cities and counties to duplicate criminal records in sufficient numbers to furnish each of the several departments with copies of their local records.

This weakness in our police systems may be remedied by the creation of a State Bureau of Criminal Identification and Investigation, conducted by a sufficient number of trained employees to carry out the purposes of a state bureau.

Such purposes may be briefly outlined as follows:

1. To assist peace officers in their efforts to suppress crime by furnishing to them information leading to the identification and apprehension of criminals.

2. The collection of information, reports, and data of and concerning complaints of crimes committed or suspected to have been committed, such data relating to such crimes to comprise the history of the case and the legal steps taken in connection therewith, and all proceedings ancillary thereto, from the inception of the complaint to the discharge of the defendant, either upon hearing or upon expiration of term of sentence.

3. Publication of a bulletin which would contain: (a) photographs, descriptions, *modus operandi,* handwriting, and other information helpful to police officials in curtailing the operations of murderers, bandits, burglars, and other antisocial members of society; (b) police news such as modern methods of police organization and administration, improvements in identification and record systems, approved standardized police record forms, interpretation of the laws, scientific discoveries valuable to police officials, criminal statistics, results of studies made of the causes of crime, modern methods devised for the prevention of crime.

4. Collection of data concerning the cost of crime; such information to include expenditures for equipment used by law enforcement officials, salaries, betterments and improvements, maintenance of penal or correctional institutions, losses of individuals and corporations by theft or damage through criminal acts, protection insurance, such for example as burglary, auto theft, hold-up, and forgery insurance; also cost of maintenance of private police service.

5. Install and operate approved systems of identification, including fingerprints, handwriting, photographs, special marks, *modus operandi,* and any other system of identification that may be subsequently discovered.

6. To keep a record of property stolen, lost, found, also pledged or pawned.

7. Maintain a scientific laboratory for the examination of material sent to the bureau by peace officers for the purpose of solving crimes or for the use as evidence in trials.

8. Prepare statistical reports for police officials and the daily press, detailing and interpreting the facts which are ascertained from the reports received at the bureau.

The California State Bureau and the Minnesota State Bureau may be cited as examples of the more modern type of central clearing-house for police records.

Even assuming that municipalities are willing to bear the expense, it would be impossible to maintain a complete pawnshop record file, for the reason that duplicate copies of the entire pawnshop record of the state would not be available. Filing such records and identifying stolen property is an important branch in the work of a state bureau. Through such records millions of dollars of stolen property have been restored to lawful owners during the past few years. Incidentally, descriptions of the individuals who sold or pledged the articles were obtained from the pawnshop and second-hand stores and clews thus obtained subsequently led to the arrest of the

offenders. It must be noted that no municipality or county is able to care for the criminal records of a state, and even though they were, it would be necessary for every city and county to make records of each individual in sufficient numbers to supply separate bureaus. Professional criminals are but a very small part of the population of a state; their activities are not always confined to any particular locality. This migratory tendency of the modern criminal presents a serious problem to peace officers; however, when their *modus operandi* is forwarded to the state clearing-house their identities can quickly be established through the records that are on file in that bureau, and an alarm can then be sent to all departments with a result that apprehension can be made more certain. The state bureau serves the purpose of bringing together in one office information useful to every police official in the state, and provides the means for a homogeneous organization instead of isolated and poorly functioning police units.

Police executives are not unmindful of the difficulties that beset them in their fight against the crooks. They have at all times since the inception of their national police organization insisted that the various police departments of this country could not function properly unless supported by a state central clearing-house and a national clearing-house for the reception and dissemination of criminal information.

13. Recommendations.

1. *Divorce of Police from Corrupt Politics.* The fundamental cause of the demoralization of the police department is corrupt political influence, the department being dominated and controlled for years by such influence. Until this condition is removed, there is little hope for any substantial betterment.

2. *Reorganization as Related to Personnel of Force.*

(a) Rigid selection of personnel, with the present civil service examination supplemented by psychiatric tests to determine the mental fitness of the candidates.

(b) A police school for the recruits, with at least three and preferably six months instruction.

(c) A promotional course for officers eligible for promotion to higher rank.

(d) Advanced and specialized training for division commanders.

(e) Maintenance of a merit record for individual officers and training in morale.

3. *Reorganization as Related to Administrative Changes.*

(a) A chief of police to be appointed for an indefinite period, and removable only for cause after a public hearing.

(b) Small divisional areas.

(c) Separation of vice and traffic duties from the police force.

(d) Establishment of a signal system.

(e) More extensive use of the automobile patrol.

(f) Collection and compilation of reliable statistical data.

(g) A state bureau of identification and investigation.

CHAPTER IX

THE CORONER (in Cook County)

By

LUDVIG HEKTOEN

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CHAPTER IX

THE CORONER
(IN COOK COUNTY)

1. *History.* In the administration of criminal justice, determining the cause of death and other expertly scientific investigations play an essential part. In Illinois all deaths from unknown or suspected undue causes are investigated by the coroner. On the coroner rests the duty of ascertaining the cause of death in cases that subsequently may become the subject of consideration by courts of justice, and consequently it is of interest to inquire into the manner in which this important duty is discharged, particularly in the growing urban district of which Chicago is the center.

Prior to 1889 the postmortem examinations required by the coroner of Cook County were made by the county physician. Under Coroner Henry L. Hertz in 1889, a new post, that of coroner's physician, was created and a pathologist appointed with the rank of deputy coroner. Still further important changes in the conduct of the coroner's office were brought about in 1912 by Coroner Peter M. Hoffman, who held that office for a longer time than usual. A chemical laboratory was established; the keeping of record books and inquest files was improved, and a medical advisory committee to the coroner was formed to recommend competent candidates for coroner's physicians and to advise in other matters. At this time there were three physicians on the coroner's staff. Between 1912 and 1919 five additional physicians were added. Of this number of eight, one had died and another resigned, leaving six coroner's physicians on the staff. For eight years Coroner Hoffman retained in service his staff of physicians with few changes. Most of the physicians appointed by him were experienced pathologists. Five were engaged in the teaching of pathology during their period of service as coroner's physicians, two each at Illinois and Northwestern and one at Rush Medical College. As evidence of the interest of most of these physicians on the coroner's staff in their work and in advancing medicolegal knowledge, it may be mentioned that during the years 1919 and 1920 they produced and published some fourteen scientific papers on medicolegal subjects.[1] This period may be said to represent the highest point of efficiency yet reached by the office of coroner in Cook County.

Following a vicious attack in 1919 on the coroner's office by one of Chicago's daily newspapers there began a decline in the efficiency of the medical service by that office. Unfortunately some of the coroner's physicians appeared to be the main object of criticism. The medical advisory committee formed to assist and advise the coroner was allowed to lapse. Competent pathologists, acting as coroner's physicians many years, were

[1] Report Concerning the Work of the Coroner's Office of Cook County, Chicago, Ill., by Edward H. Hatton, prepared under the auspices of the Committee on Medicolegal Problems of the Division of Medical Sciences, National Research Council, p. 15.

summarily dismissed without good reasons and during the past seven years some twenty new appointments following other dismissals have been made (see table). Of the old staff only the coroner's chemist now remains.

During the administration of Coroner Wolff, Dr. E. R. LeCount, a pathologist of international reputation and for thirty years a teacher of pathology at Rush Medical College, was discharged as a coroner's physician, after thirteen years of faithful service, on the unfounded and unverified charge that he had unnecessarily mutilated a body while performing an autopsy. For the most part he had been assigned to the County Hospital, a very important post as the County Hospital naturally handles many "pick-up" cases of which adequate history often is lacking and in which violence may be suspected. In such cases, as in all medicolegal cases, thorough examination is essential if the results are to be of definitive value. About one-third of the coroner's cases are said to come through the County Hospital and autopsies there have averaged from 60 to 80 a month. Dr. LeCount was replaced by a doctor, then president-elect of the Illinois Medical Society, whose specialty is pediatrics, and who voluntarily resigned from the position as a coroner's physician after a few weeks of service.

2. Qualifications of Present Staff. Of all the later coroner's physicians (see Table 1) it unfortunately must be said that they have had practically no training or experience for the work for which they have been appointed and that with the exception of the chemist not a single one so far has shown any tangible indication of being interested in any real sense in medicolegal work.

At the present time (June, 1928) no member of the staff of coroner's physicians holds a position as hospital pathologist, and only one holds a teaching position in a medical school, and this is in the department of internal medicine. One appointment made in the last few years was of a man of unsavory reputation as a physician, this information being available in the records of the American Medical Association before the appointment was made. Another appointment was of a man of whom the American Medical Association had no record at all as being a licensed physician in any state.

3. Handling of Autopsies. In general, deaths reported to the coroner's office of Cook County have been handled in three ways:

(1) By *inquest without autopsy* and without the assignment of a coroner's physician to the case. This appears to be the usual procedure in deaths that result or appear to result immediately from railway, street car, automobile, or other accidents; also in cases of later death following gross injuries and in which there apparently is no question as to the diagnosis of the attending physician. If, in a case of this kind, the deputy coroner finds that an autopsy is necessary, the hearing may be postponed until the results of the autopsy are available.

(2) In a second group of cases a coroner's physician is assigned with the general instruction to issue a *death certificate without inquest* provided the circumstances on investigation appear to warrant this course. This group concerns for the most part cases in which death from apparently natural causes has taken place without medical attendance. In such cases

TABLE 1

QUALIFICATIONS OF CORONER'S PHYSICIANS, 1921-1927

Name	Year of Birth	Place and Year of Graduation in Medicine	State License to Practice	Membership in Medical Societies	Service as Physician to Coroner's Office	Remarks
Badzmierowski, M. K.					Dec. 16, 1927	
Bartizal, John Frank		Northw. '23		Yes	Apr. 1, 1927, to Sept. 10, 1927	
Benson, Axel Ferdinand	1873	Illinois '10	1910		Mar. 15, 1924, to Apr. 1, 1925	Coroner of Henry County, 1916–22
Brand, E. Thomas	1883	Wash. Univ. St. Louis '08	1908		Dec. 10, 1927, to Dec. 14, 1927	
Burmeister, Wm. H.	1882	Mich. '07	1912	Yes	1912 to 1925	Pathologist to St. Joseph's Hospital
Eastman, Louis Kent	1896	Loyola '17	1917		Apr. 1, 1925, to Feb., 1926	
Epstein, Samuel S.	1890	Chi. Coll. Med. and Surg. '14	1914	Yes	Apr. 17, 1927 to	
Foley, Thos. P.	1882	Northw. '08	1908	Yes	Dec. 16, 1925, to Oct. 1, 1927	
Goltra, John Nelson	1859	Coll. Phys. and Surgs., N. Y. '87	1919	Yes	Dec. 1, 1921, to Feb. 15, 1926	
Goodman, Jacob Abraham	1889	Northw. '12	1912	Yes	Dec. 16, 1925, to Dec. 9, 1927. Jan. 3, 1928, to	
Green, Abraham Chester	1886	Northw. '10	1910	Yes	Sept. 16, 1927, to Dec. 12, 1927	
Handmacher, Walter					Dec. 16, 1927	
Hatton, Edw. H.	1876	Rush '12	1912	Yes	1916-1923	Prof. Pathology Northwestern Dental School
Janda, Chas. Ladislaus	1897	Loyola '22	1922	Yes	Sept. 11, 1927	

TABLE 1—Continued

QUALIFICATIONS OF CORONER'S PHYSICIANS, 1921-1927

Name	Year of Birth	Place and Year of Graduation in Medicine	State License to Practice	Membership in Medical Societies	Service as Physician to Coroner's Office	Remarks
Krafft, Jacob Carl	1874	Long Island '99	1901	Yes	Aug., 1924, to Nov., 1924	
Klopper, Zanville David	1871	Jenner '08 Illinois '10	1908	Yes	Feb., 1926, to Apr. 1, 1927	
Lynott, Wm. A.					Dec. 16, 1927	
Lange, I.						Laboratory Assistant
Lecount, Edwin R.	1868	Rush '92	1893	Yes	1911 to 1924	Prof. Pathology Rush Medical College
McNally, Wm. Duncan	1882	Rush '21	1921		June 1, 1913	Chemist
Mosley, Elmer Wm.	1884	Northw. '11	1911	Yes	Aug. 9, 1927	
Porges, Irving Angel	1882	Illinois Coll. Phys. & Surgs. '03	1903	Yes	June, 1923, to June, 1926. Oct., 1926, to	
Reinhardt, Henry G. W.		Rush '97	1897		1911 to Aug. 8, 1927	
Simonds, James Persons	1878	Rush '07		Yes	1918 to Dec. 15, 1920	Prof. Pathology Northwestern Univ.
Springer, Joseph	1867	Chi. Coll. Phys. and Surgs. '96			1911 to Dec. 10, 1927	
Smith, Robert A.	1880	Rush '03	1903	Yes	Dec. 16, 1927	
Trainor, Morgan Lewis	1885	Chi. Med. '21	1921	Yes	June 6, 1926, to July 1, 1927	
Van Paing, John Francis	1886	Ill.	1914		Dec. 15, 1920, to Mar., 1922	
Woeckner, A. A.					Nov., 1924, to Jan., 1925	
Zolla, Norman	1888	Chi. Coll. Med. and Surg. '16	1916	Yes	Feb., 1923, to Apr., 1924. Feb., 1926, to Apr., 1927	

the physician may decide whether an autopsy is or is not required. It may be discovered that death did result from injury or other unnatural cause, or the physician may find that he can not determine the cause of death without the aid of some sort of laboratory tests. In such a case an inquest may be held later.

(3) The third group includes cases in which the information at hand plainly indicates that the *inquest must be preceded by an autopsy* to determine the exact cause of death. As the autopsy is made the physician decides whether it is advisable to have any laboratory examination made, and if so he removes material suitable for the type of examination required.

From this brief summary it is obvious that the work of the coroner's physician can not be entrusted safely to others than competent and reliable pathologists. We note that an autopsy is indispensable in all cases in which it is necessary to determine the cause of death as fully as possible. Here nothing can take its place. For this reason, law and custom sweep aside all objections when an autopsy is indicated for legal purposes. In medicolegal work, the highest standards of completeness of examination and of reliability of observation are demanded because, in the effort to determine the cause of death, it is essential that no potential factor be overlooked or neglected. Frequently, the autopsy is of great value in showing conclusively that certain conditions, whether suspected or not, are not present in a given case. It unfortunately is the case that under the coronarial system, as illustrated so strikingly by the present practice in Cook County, medicolegal autopsies are only too commonly entrusted "to inexperienced physicians whose examinations are incomplete and untrustworthy." A bungling and incomplete autopsy may do great harm by failing to disclose the true state of affairs and thus lead to wrong conclusions. A badly done autopsy can not be undone. The ordinary practicing physician does not have the knowledge and experience essential properly to conduct autopsies for forensic purposes because they require special training, interest and experience. It is highly significant, too, of the failure to recognize his responsibilities, that up to the present time no coroner of Cook County has set up even a minimum required standard for the manner and extent of the routine autopsies by his physicians or for the recording of the results. Each physician, no matter what his qualifications or experience, is left to his own discretion in this important matter, which is, in most countries, subject to stringent official regulation.

The coroner's office does not issue any systematic reports of its work. Reliable and comprehensive reports at regular intervals would be of great value. The records of the coroner's office contain significant information, not otherwise easily obtainable, about the deaths in Chicago and Cook County from violent or unnatural as well as obscure causes, and this information should be made public. From the study of the facts that accumulate from year to year, results of importance to the public welfare could be drawn and the regular issuance of reports inevitably would tend to raise the standards of the work of the office especially in its expert phases.

"Keeping the office of coroner in politics makes it impossible to secure the quality of expert service required. No competent expert can be induced

to subject his work or his professional career to the uncertainties of partisan politics," is the outstanding criticism of the coroner system brought out in a survey of crime conditions made in Cleveland in 1921.[1] In Cook County, Illinois, the coroner, not only is politically elected every four years, no special training being required of him for his important work, but his staff of physicians not chosen from a civil service list, is appointed by the coroner without guarantee that adequate competency will insure uninterrupted service. Furthermore, pressure may be brought to bear upon the manner in which the physicians do their work. Probably no group has had a stronger influence in this respect than the undertakers. "As many autopsies are made in undertakers' morgues, a constant pressure is being applied, either to reduce the number of autopsies made, or to limit the extent of the autopsy. In instances where the coroner's physician cannot be influenced, individual undertakers, groups of undertakers, or committees from the undertakers' association have gone to the coroner or deputy coroner with their complaints. This form of pressure on the coroner's physicians was at one time, at least, a constant source of embarrassment to conscientious men."[2] The attitude of the dominant association of undertakers in Chicago in regard to autopsies for medicolegal or other purposes does not indicate a high sense of social responsibility.[3]

In his report of a survey of the coroner's office of Cook County, made in 1926 under the auspices of the Committee on Medicolegal Problems of the National Research Council, Dr. Edward H. Hatton states that, "there are as many types of autopsies made by the Cook County coroner's staff as there are physicians. It may be said that in the years 1925 and 1926 no complete autopsy, in the scientific sense of the term, was made, that is an autopsy in which the findings at the section table are verified by further systematic histological (microscopic) and bacteriological examinations." He groups the examinations as follows:

(a) Abdominal only, used largely for the purpose of inspecting the stomach contents and lining in order to rule out the likelihood of poisoning.

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[1] Part V of Criminal Justice in Cleveland, Cleveland Foundation Survey, "Medical Science and Criminal Justice," by Herman M. Adler, M.D. Sec. "Crime Detection by the Coroner's Office."

[2] "Report Concerning the Work of the Coroner's Office of Cook County, Chicago, Illinois," by Edward H. Hatton (formerly a coroner's physician in Cook County), page 28. Prepared under the auspices of the Committee on Medicolegal Problems of the Division of Medical Sciences, National Research Council, Washington, D. C., 1926.

[3] In 1923, the council of the Chicago Medical Society adopted the following resolution in regard to undertakers and autopsies:

"WHEREAS, A real obstacle in the way of obtaining permission to make autopsies is the more or less open opposition by many undertakers who advise against granting permission for various pretended reasons, a favored one being that 'the body cannot be embalmed after autopsy'; and

"WHEREAS, Certain other undertakers offer willing and helpful co-operation with physicians in securing autopsies, and announce that they can 'assure the relatives that the body will look just as lifelike and be preserved just as long as though no autopsy had been held,' it is

"RESOLVED, That the Council of the Chicago Medical Society records its hearty approval of the enlightened policy in favor of autopsies, recommends its prompt adoption by undertakers in general, and urges on the members of the Chicago Medical Society to insist on their inherent right, in the interest of the advancement of medical knowledge, to receive co-operation, and not antagonism, from undertakers in seeking permission to make autopsies."

Such an incision also permits inspection of the pelvic organs, liver, spleen and kidneys.

(b) Trunk examinations, which consist of an extension of the abdominal incision to include the chest-wall and allows the examiner to include in his examination the heart, the great vessels, the lungs and the linings of the chest cavities. This latter type of examination is the one most frequently made by examiners in Cook County.

(c) Examinations made of injured regions for the location and removal of large foreign bodies and for determining the effect of injury, the extent of stab wounds, and the pathways of bullets. Often the examination is carried no further.

(d) More or less complete autopsies, including the head and, much more rarely, the neck region. The head and neck regions are rarely opened except in cases where there is some very evident reason for doing so. Even in murder cases where it seems quite obvious that a complete autopsy should be performed, there is a tendency to abbreviate the amount of work done.

Dr. Hatton further states, "The organs, tissues and materials to be examined are brought to the laboratory by the physicians, by police officers, and occasionally by members of the staff other than the physicians. It is supposed that all specimens will be brought in within sealed containers which are supplied to the user by the laboratory, thereby insuring the cleanliness of the container and the lack of opportunity for contamination. This rule, however, is not always observed, and in too many instances organs are brought in wrapped up like so much beef-steak, or in containers often unsealed, and of questionable cleanliness. In many such instances it is very doubtful that the legal identification of such specimens has been properly guarded. No question concerning the identity of specimens after they reach the laboratory has arisen."

4. *Management of the Chemical Laboratory.* The chemical laboratory has for fifteen years been under the continuous direction of Dr. William D. McNally, a skilled chemist. The chemical examinations asked for appear to be made promptly, and considering the amount of work done in the laboratory, which includes also routine work associated with the testing of chemicals, drugs, food supplies and fuel used in the county institutions, there seems to be no ground to question the general accuracy of the results. At present the work of the coroner's chemist is the only part of the medical or scientific examinations of the coroner's office of Cook County that approaches in reasonable degree the completeness and reliability such examinations must reach to fulfill the requirements of criminal justice. Microscopic examinations of organs appear to be made occasionally in the chemical laboratory under the direction of the chemist who, however, is not a trained pathologist.

5. *Reports of Cause of Death.* In many instances the chemist and physician together prepare the final statement concerning the cause of death in order to avoid unnecessary contradictions; but when contradictions do occur they are not always reflected in the verdict of the coroner's jury.

Physicians' statements of examinations usually covering less than one page of legal size paper, written in most instances in long hand, as stenographic service is seldom furnished, are made as brief as possible. They consist in general of four parts:

(1) An introduction, containing the physician's name, the name and identification of the dead person, the date, and place of the autopsy. (2) A brief description of the outside of the body, with the chief items of identification such as height, color of hair, etc. (3) A brief description of the condition of organs within the body. (4) The opinion as to the cause of death in terms that should correspond as nearly as possible to those in the International List of Causes of Death.

As may be seen from the copies of various doctors' reports following, essential items in the identification marks of the body are often omitted, "Probably," Dr. Hatton states, "because of hurry to go on to the next case, or because the statement was not written in the presence of the body, and the physician's memory is confused.

"Often the description of external and internal parts of the body are combined in such manner that it is difficult to tell whether or not the body was opened. This may be the result of carelessness, or it may be intentional. As a result of this practice, the term 'post-mortem examination' has come to have a rather doubtful meaning (when applied to the work of the coroner of Cook County).

"In the third place, the description may be not only brief, but also indefinite. While this may be the result of carelessness, yet such a practice provokes the suspicion that this is done purposely in order that statements or testimony given later may not be hampered by too much detail in this original statement."

Obviously statements of this general type are of doubtful value as legal documents and worthless in a scientific sense. Certainly statistics based on such reports have no significance whatever.

Reports 1, 2 and 3 illustrate some of the defects in reports by coroner's physicians referred to by Dr. Hatton.

Report 1.

DOCTOR'S STATEMENT BLANK

AT AN INQUEST UPON THE BODY OF
HELD AT
COUNTY OF COOK, STATE OF ILLINOIS, PERSONALLY APPEARED
WHO BEING SWORN ACCORDING TO LAW, DEPOSES AND SAYS: MY NAME IS *Norman Zolla*, I RESIDE AT CHICAGO AND AM BY OCCUPATION CORONER'S PHYSICIAN.

I have this day the 6th of February, 1926, performed a post-mortem examination upon the body of a white man, aged 33 years, height about 5 ft. 8 in., weight about 160 lbs., smooth-shaven, identified to me by his

wife, Louise Peppe as that of Charles Peppe, 2905 Princeton Avenue, at 2904 Wentworth Avenue.

Inspection reveals a laceration of right parietal region, with a skull fracture. The right cheek showed a bullet wound of entrance covered with powder, was deflected and made its exit through the skull. Another bullet wound of entrance in left axillary region mid-line near axilla, another wound of entrance at the navel and two flesh wounds of left arm above and below elbow. (2)

Upon opening the body I found the pleural and abdominal cavities filled with clotted blood. The right lung was punctured as was the left. I removed one bullet from the left side of abdomen anteriorly. And another bullet from the left arm. Both are Cal. 32 Steel-jacketed.

In my opinion death was the result of shock, hemorrhage and injury, due to gun-shot wounds. NORMAN ZOLLA, M. D.

Comment: Without an examination of the inside of the skull it hardly seems safe to conclude that the bullet which entered the right cheek was deflected and made its exit through the skull. The bullet may have lodged in some part of the head. No attempt is made to trace the course of the bullet found in the left side of the abdomen or of the bullet that entered in the left axillary region. The question whether all the bullet wounds were made by the same revolver is not determined.

Report 2.

DOCTOR'S STATEMENT BLANK

AT AN INQUEST UPON THE BODY OF *William Devine About 50 Years Old* HELD MARCH 8, 1926, AT 743 N. CLARK STREET, COUNTY OF COOK, STATE OF ILLINOIS, PERSONALLY APPEARED

WHO BEING SWORN ACCORDING TO LAW, DEPOSES AND SAYS: MY NAME IS *Zan P. Klopper*, I RESIDE AT 556 ROSCOE AND AM BY OCCUPATION A PHYSICIAN AND SURGEON.

Upon viewing upon the body of the named above, I found the following:

According the external signs, the body appears to be about 4 days dead, and no external violence of any kind—and about all the internal findings I found that he died of internal hemorrhage of the brain.

Resp. OSCAR WOLFF, Coroner.
ZAN P. KLOPPER, M. D., Deputy Coroner.

Comment: How could the physician know that there was internal hemorrhage of the brain in a dead body without examining the brain? It is too obvious to need comment that it is not possible to tell anything about the conditions of the organs of a dead body without examining them. This simple, fundamental fact is neglected regularly by the present physicians in the coroner's office of Cook County, and the neglect affects disastrously the results of their autopsies from all points of view, legal, scientific, statistical, and reduces or destroys the value of the testimony based on such results in the trials of criminal and civil causes.

Report 3.

DOCTOR'S STATEMENT BLANK

AT AN INQUEST UPON THE BODY OF
HELD AT
COUNTY OF COOK, STATE OF ILLINOIS, PERSONALLY APPEARED
WHO BEING SWORN ACCORDING TO LAW, DEPOSES AND SAYS: MY NAME IS *Norman Zolla*, I RESIDE AT CHICAGO AND AM BY OCCUPATION CORONER'S PHYSICIAN.

I have this day, the 14th of February, 1926, performed a post-mortem examination upon the body of a white male aged about 25 years, identified to me by Mr. A. B. Perrigo, of 3913 Cottage Grove Ave., as that of Leland M. Hirsch.

Inspection reveals a bullet wound of entrance in the thigh about the junction of the upper and middle theids. A bullet wound of exit is seen on the back of the thigh, straight through.

Upon opening the thigh, I found the blood vessels ruptured and hemorrhages into the muscles.

In my opinion death was the result of shock, hemorrhage and injury due to gun-shot wound of thigh. NORMAN ZOLLA, M. D.

Comment: Without knowing from actual examination that all the internal organs, including the brain and the organs of the neck, were free from serious disease or diseases, the conclusion that death resulted from shock, hemorrhage and injury due to gun-shot wound at the thigh remains open to attack.

Examination of reports on file in the coroner's office by coroner's physicians of autopsies made in 1927 also corroborate fully Dr. Hatton's charges. Such reports fall so far short of modern standards that they are practically worthless in establishing the cause of death for any purpose and consequently, to say the least, must be of doubtful value as the basis for evidence in criminal trials. Not a single record of a thorough and complete autopsy according to accepted standard methods could be found. The important task of conducting the medicolegal autopsies of a huge metropolitan district has been entrusted wholly "to inexperienced physicians whose work is incomplete and untrustworthy." How often the true cause of death is missed no one can tell.

6. Summary. An assistant district attorney in New York County, Joseph Du Vivier, has described the failure of the coroner system to meet modern requirements in the following words, which appear to have wide applications:

"A dispassionate study of the office leads one to the inevitable conclusion that it is an institution of government wholly unsuited to the needs of the present day. It is obviously expensive and clearly insufficient. In some cases it is positively dangerous thus to entrust untrained men with important work. In a word, I know of no better illustration of the saying of Goethe that—'Nothing is more terrible than active ignorance.'

"The coroner does nothing that must not be done over again. No reliance can be placed on anything that he has done, nor can he be trusted to do anything right. Every case in which there may be criminal responsi-

bility must be watched. The body of the deceased is barely cold, before the experienced prosecutor begins to guard against the probable mistakes of the coroner—the shifting of the furniture of the scene of the crime, the unskillful handling of witnesses, the insufficient identification of the body at the autopsy, the careless identification of the bullet, or knife, or poison, or the clothes worn by the deceased; the danger of newspaper publicity, the observance of the technical requirements of an ante-mortem statement, the injury from unguarded and unrestricted cross-examination of the people's witnesses and the many dangers in every homicide case of importance."[1]

Recent reports and surveys in other states emphasize the urgent need of a more efficient way of carrying on the medical duties now entrusted to the coroner's office. Conscientious and able observers recommend that the medical duties of the coroner should be entrusted to a medical examiner, selected on the basis of merit. Medical men in general support this plan for the solution of the coroner problem as they see it.

In certain states the office of coroner has been replaced by that of medical examiner. This was done in Massachusetts as long ago as 1877. In 1915 the legislature abolished the coroner's system in New York City by an act that created the office of Chief Medical Examiner, "a doctor of medicine and skilled pathologist and microscopist," appointed by the mayor from civil service lists, subject to removal for cause. The chief examiner and his staff, appointed by him, are on fixed salaries, certain assistants being permitted to engage in private practice also. The chief medical examiner reports the facts in all suspicious deaths that he investigates to the district attorney. So far the new system in New York City has worked well and it may be regarded as pointing the way for the future. Recently the system in New York City has been adopted by the legislature of New Jersey as applicable for counties with a certain population.

In Illinois, and especially in Cook County, there is immediate need for radical improvements in the conduct of the medical and scientific work of the coroner's office. As now conducted the coroner's office of Cook County falls far short of its possibilities for service. On account of the poor work of the coroner's physicians the community is not receiving the aid that medical knowledge can give it in the field of criminal justice. But in Illinois any radical change from the coroner system does not seem feasible without changing the state constitution.

Experience indicates, however, that in the hands of a competent, energetic and progressive coroner, the office with modernized modifications can meet fairly adequately the needs of the population it serves. The essential requirement is that the *coroner's physicians be appointed on a professionally expert rather than political basis.* The coroner appears to have the power to make such appointments and to place the medical and other expert work of his office in thoroughly competent hands. If disinterested advice were wanted in regard to appointments of coroner's physicians or other matters of a medical nature, it could be obtained without difficulty. There are, for instance, representative medical organizations in the county that willingly

[1] The Abolition of the Office of Coroner in New York City, The New York Short Ballot Organization, New York City, 1914.

would respond to requests for such assistance (Chicago Medical Society, Institute of Medicine, Chicago Pathological Society).

7. Recommendations (Adopted by the Committee on Medicolegal Problems of National Research Council, Washington, D. C., 1926).

1. That the office of *coroner be abolished.* It is an anachronistic institution which has conclusively demonstrated its incapacity to perform the functions customarily required of it.

2. That the medical duties of the coroner's office be vested in the office of *medical examiner.*

3. That the office of medical examiner be headed by a scientifically trained and competent *pathologist,* selected and retained under civil service, and compensated by a salary which will attract men of real scientific training and ability.

4. That the office of medical examiner be provided with the services of a *staff competent* in toxicology, bacteriology and the other sciences necessary in the scientific investigation of causes of deaths, and with adequate modern scientific equipment. Wherever possible these specialists should be members of the medical examiner's staff selected and retained under civil service at adequate compensation.

5. That in addition to the medical duties of the coroner's office there should be vested in the medical examiner's office in all urban centers the duty of furnishing to police, prosecutor and courts expert *medical assistance* at every stage in the investigation, prosecution and disposition *of criminal cases of every description.* This is a step far in advance of current American practice. Without it the effective prosecution of criminal offenses and the scientific treatment of offenders will continue to be merely a pious wish.

6. That in *non-urban territory* medical examiner districts be organized with a medical examiner's office for each district, and that legislative provision be made for co-operation between these nonurban offices and those of the most convenient urban office, so that the facilities of the latter may in proper cases be available to the former. This would require a detailed study of the needs of each district, and very carefully framed legislation.

7. That the *non-medical duties* of the coroner's office be vested in the appropriate *prosecuting and judicial officers.* Ultimately the offices of police, prosecutor and medical examiner should be coordinate departments of a bureau of criminal justice under an official whose functions are indicated by the title, "Minister of Justice." It is realized that this ultimate objective is perceived only by men of unusual vision, but until it is not only envisioned but also realized, the administration of criminal justice in this country will not be satisfactory to laymen, or to jurists, or to scientists in physical and mental medicine.

8. That there should be developed, at least in larger urban communities, properly equipped *medicolegal institutes under the control of the medical examiner.* They should be affiliated, so far as practicable, with public hospitals, medical schools and universities.

CHAPTER X

THE MUNICIPAL COURT OF CHICAGO

By

RAYMOND MOLEY

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CHAPTER X

THE MUNICIPAL COURT OF CHICAGO

1. Introduction. The purpose of this report is to consider the Municipal Court of Chicago in those aspects which concern criminal cases with particular reference to its preliminary jurisdiction in felony cases. We ignore except in a few special particulars the civil jurisdiction of the court. In this connection it should be borne in mind that the criminal business of the court is a minor part of its interest. Less than a third of its judicial personnel is engaged in the disposition of criminal cases.

There are in addition certain other limitations to this report. We are not attempting to set forth in any detail the innumerable provisions in statutes, ordinances and rules of court which govern the vast administrative and judicial mechanism which the court has developed. Such an objective can best be attained by special treatises and studies formulated in an atmosphere less involved in a grave public emergency than the present. We have attempted here to consider the court only as it is an agency charged with responsibility in the disposition of cases which involve serious crimes and consequently dangerous professional criminals. After a careful consideration of the legal basis of the court, of the business disposed of by the court, of the manner in which this business is handled, of the qualifications and antecedents of the judges who transact this business and of the background upon which these judges operate, the present problem of the court emerges with striking clarity. It can be stated here in a few words.

On paper the Municipal Court of Chicago is one of the most interesting and important creations of jurisprudence in America. Its influence upon the development of judicial institutions in this country has been incalculable. The administration of the court by the present chief justice has been in the main a remarkable achievement. The personnel of the court in its first years was good. In those days the court was full of men of promise and of no inconsiderable ability. The years have taken a heavy toll, however. The quality of personnel has steadily declined. The majority of the judges now sitting are fitted neither by experience, education, nor, what is more important, sufficient professional standards to discharge with credit the great responsibilities and powers which they possess under the law. The court is full of incompetence, of political influences, of lamentable laxness in meeting an unprecendented tide of crime. In the hands of such a staff the court, technically well organized and full of possibilities for good, yields a sorry product. It is a clear demonstration of the fact that no matter what may be the theoretical advantages of the structure of the court, a personnel so lacking in quality will operate it badly.

The materials upon which this report is based have been collected at intervals during the period of a year. For the most part the statements of facts and conditions are as they were found when the field work of the survey was made, which was from November, 1927, to February, 1928.

Acknowledgment should be made here to Chief Justice Harry Olson for patience and courtesy in placing the facilities of the court at our disposal.

2. *History, Organization, and Criminal Jurisdiction.*

In November, 1904, the voters approved a constitutional amendment which permitted the creation by statute of a Municipal Court in Chicago. At that time Chicago had a curious assortment of courts with confused and often conflicting jurisdictions. It had a county court with one judge and a jurisdiction involving insanity proceedings, taxation, and elections, a probate court with one judge, courts of general trial jurisdiction called the Circuit and Superior Courts with twenty-six judges altogether. The latter had general civil jurisdiction and criminal jurisdiction in cases involving felonies. The inferior civil and criminal jurisdiction of the city was vested in fifty-four Justices of the Peace. It is unnecessary to say that the Justice of the Peace system was not only wholly unable to cope with the amount of business which came to its attention but was susceptible to grave abuses. The justices were not elected, as in most other jurisdictions in the United States, but appointed by the judges in the Circuit and Superior Courts. This was a fairly satisfactory feature but any benefit that might come from this mode of election was lost on the criminal side by the fact that those justices that sat as police court judges were designated for this work by the mayor at the suggestion of aldermen. Politics, crime, and the judiciary were thus closely linked together. The Municipal Court was created largely to take over part of the work of the Circuit and Superior Courts, which were then seriously overloaded, and to eliminate the scandalous conditions of the justice courts in small civil and criminal cases. The court was given a part of the civil jurisdiction of the Circuit and Superior Courts and all of the jurisdiction of the old justice courts.

In 1905 the legislature passed an act creating the Municipal Court of Chicago. It gave this new court jurisdiction in contract cases concurrent with the Circuit and Superior Courts within the city's boundaries, and in tort actions jurisdiction over cases involving not more than one thousand dollars. It transferred all of the civil and criminal jurisdiction of the justices of the peace to the new court and thus abolished these anachronistic survivals. It provided twenty-seven new judges, including one chief justice, and it provided that these judges should serve for terms of six years. These judges were to be elected by the voters of the city.

A strong centralization of power was provided in the court by the creation of the office of chief justice, whose duties will be presently described. It was provided that there should be meetings of the judges over which the chief justice should preside, and that the court, through its judges, should have wide power in making rules of procedure for its own guidance. The Municipal Court is by statutory enactment a court of record.

In the beginning, jurisdiction was conferred upon it to extend to "all classes of cases, civil or criminal, at law or in equity, by transfer from other courts." This seemed to give the court power to try felony cases and it started to exercise such power. But in the case of Miller v. The People (230 Ill. 65) it was decided that this power to try felony cases

could not be exercised. Jurisdiction in felony cases, therefore, was and is limited to preliminary examinations. It also has jurisdiction of misdemeanor cases and violations of city ordinances as well as quasi-criminal actions, such as bastardy cases, proceedings for the prevention of crime, proceedings for the arrest, examination, commitment, and bail of persons charged with criminal offenses, and all proceedings pertaining to searches and seizures of personal property by search and search warrants.

Municipal Court trials are by the court without a jury, or with a jury on demand of the litigant, and are official in the sense that there can be no trial de novo in another court. Appeals are taken direct to Appellate and Supreme Courts in Illinois. At the present time, by a recent action of the legislature, the number of judges has been increased to thirty-seven. The chief justice and also associate justices are elected for terms of six years with provision for the election of twelve associate judges every two years. The salary of the chief justice is fifteen thousand dollars and associate judges ten thousand dollars. There is provision that a justice of the court must be at least thirty years of age, a citizen of the United States, and must have resided in Cook County and there been engaged in active practice as an attorney or in the discharge of duties of a judicial office for five years preceding his election. He must be a resident of the city of Chicago.

The law provides for the separation of the work of the court into branches and vests with the chief justice the large powers of determining what these branches shall consider. The character of these branches changes from time to time but there are usually about seventeen criminal branches and the remainder civil. Of the criminal branches, twelve are unspecialized courts in the various Municipal Court districts into which the city has been divided and the remainder specialized courts located in the court houses. There are special branches handling traffic cases, domestic relations cases, and bail bond matters. There are also the Morals Court and the Boys' Court. In 1926 a branch was created called the Delinquency Branch to which are assigned sex offenses formerly heard in the domestic relations branch.

The Boys' Court is not considered in detail in this report because it has recently been subjected to a very detailed study by the United States Children's Bureau, the report of which is presumably to be made public. An advance copy of the report has been available to the author of this report and with its general conclusions we are in substantial agreement.

For convenience in describing the various branches of the Municipal Court of Chicago which deal with criminal cases, let us divide them into two groups. First, what we may call the headquarters courts which are located in the city hall and court house and which perform certain specialized functions. The second group includes the district courts established throughout Chicago and dealing with a general line of criminal cases. The following tabulation indicates the number of each of these branches, the name commonly attached to the court, and the number of felony cases disposed of in each of these branches during the year ending December 4,

1927. We can in this way see at a glance the relative importance of these courts in the trial of felony cases:

TABLE 1. BUSINESS OF BRANCH COURTS, 1927

Branch Number	Name of Court	Felony Cases Disposed of in 1927
1	Bail Bond	...
3	Quasi-Criminal, etc.	5
8	Bastard and Delinquency	359
10	Domestic	10
19	Perjury and Vagrancy	60
20	Morals Court	25
22	Boys' Court	3,532
25	Fillmore Street (4001 Fillmore St.)	953
27	Harrison Street (625 S. Clark St.)	2,345
28	Des Plaines Street (120 N. Des Plaines St.)	808
29	East Chicago Avenue (113 W. Chicago Ave.)	605
30	West Chicago Avenue (731 N. Racine Ave.)	542
31	Maxwell Street (943 Maxwell St.)	755
32	Town Hall (3600 N. Halsted St.)	1,238
33	Shakespeare Avenue (2138 N. California Ave.)	1,104
34	Wabash Avenue (4802 Wabash Ave.)	1,273
35	Stock Yards (811 W. 47th Pl.)	597
36	Grand Crossing (834 E. 75th St.)	1,049
37	Pekin (2700 S. State St.)	909
38	South Chicago (8855 Exchange Ave.)	629

3. The Chief Justice and His Powers. When the Municipal Court was established one of its most striking innovations was the creation of a chief justice vested with large powers to superintend the administrative work of the court. This conception of a judicial superintendent was probably more a result of the influence of business methods upon the thinking of those who created the court than any idea of embodying the traditional power of a chief justice as it had been known in the State Supreme Courts and in the Supreme Court of the United States. In fact, the powers of the chief justice of the Municipal Court of Chicago are much more striking and significant than those of the head of any of the state or federal courts of the United States up to the time when the Chicago court was established. His chief powers are thus described in the language of the Act creating the court:

> "The chief justice, in addition to the exercise of all the other powers of judge of said court, shall have the general superintendence of the business of said court; he shall preside at all meetings of the judges, and he shall assign the associate judges to duty in the branch courts, from time to time, as he may deem necessary for the prompt disposition of the business thereof, and it shall be the duty of each associate judge to attend and serve at any branch court to which he may be so assigned . . . . The chief justice shall also superintend the preparation of the calendars of cases for trial in said court and shall make such classification and distribution of the same upon different calendars as he shall deem proper and expedient. Each associate judge shall at the commencement of each month make to the chief justice, under his official oath, a report in writing of the duties performed by him during the preceding month, which report shall specify the number of days' attendance in court of such judge during such month, and the branch courts upon which he has attended, and the number of hours per day of such attendance."

Thus the chief justice has two significant powers. He may assign the associate judges to duty in the branch courts, and he also controls the calendars and may make such classification and distribution of cases as he deems necessary. In addition, he is empowered to require the judges to submit reports to him. These two powers enable him to create new branches of the court by the simple method of assigning certain classes of cases to a certain judge and to distribute judicial personnel in whatever way he desires. He has, in addition, the very important power of indirect coercion over the judges by requiring from them reports as to their work and by having the power himself to publish the results of such reports.

Summing it all up, while he is not able to secure the removal of an objectionable judge, and, of course, is not able to control the selection of new judges, he is able to exercise strong coercive power over the judges. He may, if he so desires, assign a judge to very unimportant work; he may prevent judges from securing assignments which will be of assistance to them politically; he may bring indirect pressure upon judges by the publication of reports. The power of assignment is therefore exceedingly significant. It is a fact to be taken for granted that certain judges are able to do certain types of work exceedingly well and a wise chief justice may draw upon this exceptional ability in ways very helpful to the general business of the court. He may, moreover, assign weak judges to branches where their frailties may bring about no very serious consequences to the community.

In any attempt to reach a general conclusion as to the net achievement of the present chief justice as administrative head of the court since its beginning more than twenty years ago many factors must be passed in review. There have been and are, as we indicate in this report, many instances of inefficiency, weakness, and bad taste in the work of individual judges. The chief justice may under the law, and does in actual fact, terminate or mitigate such undesirable conditions by the use of his powers. There are limits to the exercise of his powers, however. The judges are not of his selection nor does their retention rest within his discretion. He may assign them at will, but he must in practice assign to something. With the declining caliber of personnel with which he has had to deal, it is increasingly difficult to find sufficient good judges to cover the more important assignments. He must, moreover, in the exercise of his powers limit himself because it is necessary to retain some degree of harmony in the official family. A majority of judges may embarrass him seriously in the administration of the court because the judges have as a body certain important powers. Finally, there are the limitations imposed upon any administrative officer by his inability to know all that is going on throughout a large organization. Considering these factors, and at the same time balancing the good and the bad in the work of the criminal arms of the court, only one conclusion is possible as to the value of the contribution of the present chief justice.

It is to be said in favor of the present chief justice, that he has exercised his large powers as chief justice of this court with very remarkable skill and force. In spite of the general breakdown of the administration of criminal justice in the city of Chicago, the Municipal Court has probably

survived with less discredit than most of the other agencies of law enforcement, due to the high standards and vigilant watchfulness of the present chief justice. It should be said, in addition, that he has been an able exponent of the idea of judicial reform in municipalities throughout the United States. He has, through writing and speaking, performed a distinct public service to other states and cities.

4. Felony Dispositions in the Municipal Court. The Municipal Court of Chicago disposes of more than 10,000 felony cases annually. The number of felonies disposed of in the Municipal Court has risen from 7,721 in 1908 to 17,042 in 1927. The survey made an analysis of the cases tried in 1926 in all of the courts and found that 10,829 entered into preliminary hearing in the city of Chicago. These cases were disposed of in the ways indicated in the following table:

TABLE 2. DISPOSITION OF CASES IN PRELIMINARY HEARINGS IN CHICAGO

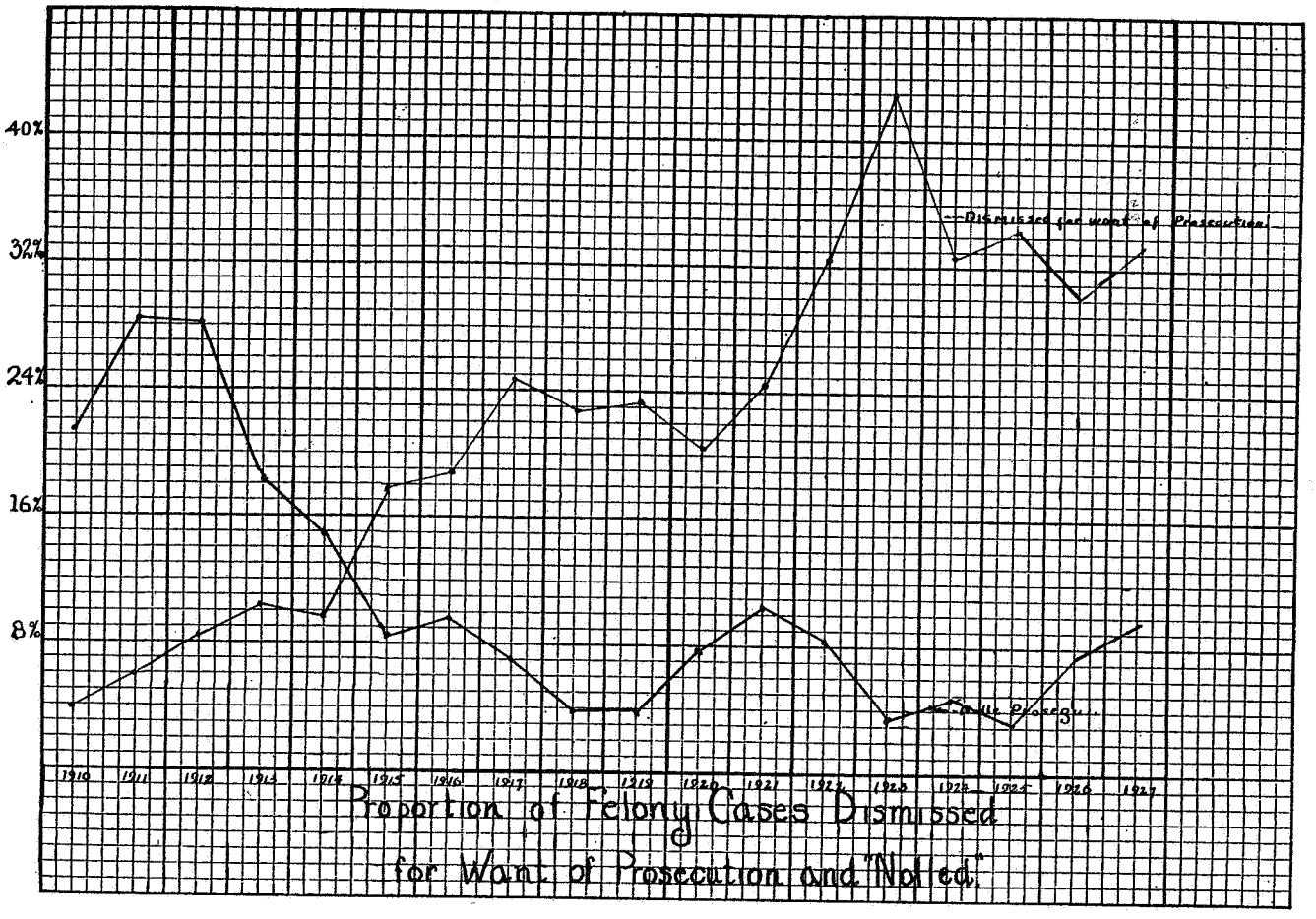
	No.	Pct.
Total cases entering preliminary hearing	10,829[1]	100.00
Never apprehended	391	3.61
Error, no complaint	116	1.07
Complaint denied	35	0.32
Bond forfeited, never apprehended	68	0.63
Certified to other courts	50	0.46
Dismissed, want of prosecution	2,501	23.10
Nolle Prosequi	766	7.08
Discharged	2,117	19.55
Reduced to misdemeanor, not punished	12	0.11
Reduced to misdemeanor, punished	3	0.03
No order	22	0.20
Pending	7	0.06
No record	36	0.33
Total eliminations	6,124	56.55
Remainder—Bound over to Grand Jury	4,705	43.45

It will be noted in this table that the important methods of disposition are "Dismissed, Want of Prosecution," "Discharged," and "Nolle Prosequi."

5. Same: Dismissals and Discharges. The first of these dispositions is a form which has come to be used increasingly in the past few years. It means, technically, that witnesses for the prosecution are not available and that the case is dismissed on that account. It is technically to be distinguished from the disposition called "discharged" because a case which is discharged has presumably been presented with the supporting evidence on the side of the prosecution and the judge has decided that the evidence does not warrant the defendant to be bound over to the grand jury. The fact is, however, that the formula "D. W. P." is apparently being used to end many cases where some evidence is presented but in which the judge does not consider the

[1] In the course of the survey, 12,543 felony cases were recorded in the City of Chicago for the year 1926; 10,829 of them (which does not include fugitive warrants and warrants returned unexecuted, which in 1926 number approximately 4,000 cases) were found by the records to have originated in the Municipal Court where preliminary hearings are held. The remainder, 1,714, were cases in which no record of a preliminary hearing was found in the Municipal Court, but upon which indictments were filed, presumably upon original presentation to the grand jury, in which cases no preliminary hearing is required.

TABLE 3.


40%
32%
24%
16%
8%
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
Dismissed for want of Prosecution
Nolle Prosequi
Proportion of Felony Cases Dismissed
for Want of Prosecution and "Nolled"

evidence sufficient. It is probably not a mis-statement to say that the terms "D. W. P." and "discharged" are used with little distinction. The real responsibility for most of the cases dismissed on this account rests upon the state's attorney's office because it is practically impossible, if not legally so, for the judge to take the case in his own hands when no vigorous attempt is made by a prosecution to secure the binding over of the defendant. The "Nolle Prosequi" is an entry asked for by the prosecutor and subject to the approval of the judge. It is formally an act of judicial discretion but really an exercise of the power of the prosecutor.

A very interesting bit of evidence indicating the tendency of judges and other law enforcement officers to shift responsibility by changing the names under which things are done is indicated by the above graph (Table 3), which shows the relative importance of two of the methods of disposition which we have just indicated, "dismissed, want of prosecution" and "nolle prosequi." The graph shows clearly that the use of "nolle prosequi" has declined very rapidly since the court was first established and that the use of "D. W. P." has very distinctly grown. This probably means a disposition on the part of the state's attorney and the judges to avoid taking public responsibility for the "nolle prosequi" which has become increasingly better known to the newspapers and the public at large and which, on account of various misuses of this means of disposition, has come to be associated with judicial incompetence. The graph indicates the tendency on the part of law enforcement officers to do the same thing under a different name and to accomplish the same purpose without exposing themselves to criticism on the part of the public.

It will be of interest to assemble in the following Table 4 the percentage of felony cases disposed of in various ways throughout the life of the court. It will be seen that the percentage of cases "discharged" does not vary to any considerable extent. There is, however, a decided increase in the number which are "dismissed for want of prosecution" and a decrease in the "nolle prosequis." The table also indicates that the proportion of cases which are bound over to the grand jury has varied to no considerable extent in the course of the years.

TABLE 4—DISPOSITION OF FELONY CASES, BY YEARS

	1910 %	1911 %	1912 %	1913 %	1914 %	1915 %	1916 %	1917 %	1918 %
Dismissed, want of prosecution	3.9	5.9	8.2	10.2	9.6	17.9	18.8	24.7	22.8
Nolle Prosequi	21.2	28.3	28.1	18.3	15.0	18.6	9.7	7.1	3.9
Discharged	32.6	27.8	22.9	29.3	32.0	20.2	29.0	25.1	8.0
Held to Criminal Court	42.3	38.0	40.8	42.2	43.4	43.3	42.5	43.1	65.3

	1919 %	1920 %	1921 %	1922 %	1923 %	1924 %	1925 %	1926 %	1927 %
Dismissed, want of prosecution	23.1	20.5	24.6	32.5	43.1	32.7	34.4	30.2	33.9
Nolle Prosequi	3.9	7.7	10.5	8.1	3.3	4.9	4.8	7.4	9.9
Discharged	46.0	29.2	23.8	22.1	23.4	25.4	18.2	19.9	17.7
Held to Criminal Court	27.0	42.6	41.1	37.3	30.2	37.0	42.6	42.5	38.5

6. *Judicial Personnel.* The outstanding conclusion which an observer is likely to reach in connection with the Municipal Court of Chicago is that which we have stated in the introduction to this report. It is simply this, that the Municipal Court of Chicago is

provided with an almost ideal form of organization, on paper most efficient; but that unfortunately the quality of judicial personnel is such that, even with an active, honest and capable chief justice and a number of good associate justices, the personnel of the court is on the average so unsatisfactory that the product is not what it should be. This conclusion we have reached not on the basis of mere casual impressions but as near as is conveniently possible by careful measurement of the facts. It will, perhaps, be useful to describe in some detail the methods which we employed in reaching the conclusion which we have just stated.

In beginning the preparation of this report a "Personnel Schedule" was prepared containing space for facts concerning each of the judges who have, during the entire life of the court, served in judicial positions. This schedule contained spaces for the following information:

Name:
Date of election or appointment and termination of service:
Dates of birth and admission to the bar:
Nationality: (if born in United States)
Nationality of parents:
Common school, higher, and legal education:
Religion:
Public offices held:
Party affiliation:
Character of legal practice before election:

The above information was in large part secured for all of the judges who served, numbering in all 104.

In tabulating and summarizing the results of this inquiry, we have attempted to answer not only the question as to the qualifications of these judges in accordance with the facts collected, but to compare the judges who held office during the early years of the court with those who have been appointed or elected in recent years. Through this method we shall be able to arrive at some conclusion as to the all-important question of whether we are getting better judges or poorer ones within recent years. We have taken January 1, 1917, as the dividing line.

In distinguishing between the two groups of judges we have included in one group all judges who took office prior to January 1, 1917, and in the second group all those who have taken office since then. In the tables which follow we indicate the first group by the term "Before 1917," And the second group "1917 and After."

7. Same: Ages. The first interesting difference between the judges who attained the bench before 1917, as compared with those who became judges after that year, is a sharp contrast in ages. The following Table 5 indicates the ages of the judges in the two groups. The age taken in all cases is the age at election or appointment to the bench.

TABLE 5. AGE OF JUDGES

Before 1917			*1917 and After*		
Age	No.	Per Cent of Total	Age	No.	Per Cent of Total
Under 34	2	3	Under 34	5	12½
35 to 39	12	19	35 to 39	10	25
40 to 44	19	30	40 to 44	8	20
45 to 49	15	24	45 to 49	7	17½
50 to 54	7	11	50 to 54	7	17½
55 to 59	5	8	55 to 59	2	5
60 and over	3	5	60 and over	1	2½
Total	63	100	Total	40	100

The result here is exactly as would have been expected. There are many reasons that may be assigned for this difference, but probably one of the most significant ones is the fact that there is greater tendency for judges to ascend to the bench in these days as the result of holding some minor political position rather than through long service as practicing attorneys. Consequently, progress through various stages of political office holding is much more rapid than the older method of service at the bar and promotion to the bench. One is entitled to his own opinion as to the desirability of youth on the bench. It may be that a young man will prove a more effective judge than an older man of the same ability in spite of the younger man's lack of experience. Perhaps, however, the majority opinion of the more competent members of the legal profession would favor the age range of the group belonging to the period before 1917.

8. *Same: Education and Experience.* A majority of those judges who have held office in the Municipal Court have never attended college. In the group before 1917, 32 of the 64 attended some college for some period of time. This does not mean that they were graduated and our records do not show how many received degrees. Of those who have attained the bench in 1917 and after, 14 of 40 attended college. A great majority attended some type of law school. Fifty-six of the 64 who served before 1917 attended law school and 38 of the 40 since then have attended law school. It will be interesting here to indicate the law schools which are reported as the schools attended by the judges. The following Table 6 is a tabulation of the reports:

TABLE 6. LAW SCHOOLS ATTENDED BY JUDGES

Before 1917		*1917 and After*	
Chicago College of Law	11	Chicago Kent College of Law	8
Chicago Kent College of Law	11	Northwestern University	8
Union College of Law	10	Chicago College of Law	7
Northwestern Law School	8	Illinois College of Law	5
Lake Forest University	6	John Marshall Law School	3
University of Michigan	6	Hamilton College of Law	2
Columbia Law School	2	University of Chicago	2
Harvard Law School	2	Lake Forest University	1
Bloomington Institute	1	Loyola University	1
Catholic University of America	1	Notre Dame University	1
Columbian Law College	1	New York University	1
Georgetown Law School	1	Ohio Northern University	1
Illinois College of Law	1	Union College of Law	1
University of Iowa	1	University of Illinois	1
University of Wisconsin	1	University of Michigan	1
Washington University	1	Webster College of Law	1
Yale University	1		

In regard to experience at the bar prior to election or appointment as judge the problem is somewhat difficult. It cannot be said of course that a lawyer is in active practice simply because he has been admitted to the bar. The best we can do is to indicate the number of years that elapsed between admission to the bar and elevation to the bench. In this connection, the number of years which elapsed between admission to the bar and elevation to the bench in the group of judges before 1917, the median number is 17, and those who served after 1917 had only 15.5 years as a median. The median term of service on the Municipal Bench of those who served before 1917 was 6, while the median term of those serving after has been 3. These figures, however, are not important because of the fact that so many judges are now serving their first terms. In regard to party affiliation, 23 Democrats and 20 Republicans were within the group before 1917, and since 1917, 29 Republicans and 11 Democrats have been elected or appointed.

9. *Same: Rating by Bar.* It will be observed that this information, while it yields certain interesting facts concerning the qualifications of the judges considered, is not a completely satisfactory way to determine the ability of the municipal judges. It will be said, and it is perfectly true, that it is possible for a poorly educated person to become a good judge and that there are certain advantages in youth on the bench. We have attempted in a general way, therefore, to go beyond these fact questions and to seek some light as to the opinions of those best qualified to judge the ability of Municipal Court judges. In this respect also, we have observed the distinction between the judges who served before 1917 and those who have served since. We have sought the advice on this point of many persons, including lawyers, who have known intimately many of the judges of the Municipal Court during its entire existence. The result of these inquiries indicates conclusively that there has been a very definite decline in ability on the bench in the second period, that is, since January 1, 1917.

In addition to a very considerable personal inquiry, we submitted to three very well informed persons with large experience and knowledge of conditions in the Municipal Court of Chicago, cards with the names of all of the 104 judges who have served since the inception of the court. These cards were in the following form and the three persons chosen were asked to rate each judge in accordance with the conditions indicated on the card.

CONFIDENTIAL

Rating of Municipal Court Judges

Name of Judge:

	High	Medium	Low
Legal ability			
Courage, integrity and independence			
Remarks			

It will be noted that this questionnaire recognizes two types of judicial virtues, the first of which is knowledge of the law and ability to apply it.

The second quality recognized is that of courage, integrity and independence. It seemed to us that this questionnaire called for an estimate of the two kinds of ability which the average citizen considers when he selects a judge.

The following Table 7 indicates the general combined estimate of the three persons who filled out the questionnaire:

TABLE 7. RATING BY BAR MEMBERS

Total No. Judges			Legal Ability						Courage, Integrity, Independence					
			High		Medium		Low		High		Medium		Low	
Years	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1906-17	64	100	30	46.9	31	48.4	3	4.8	31	48.4	30	46.9	3	4.7
1917	40	100	5	12.5	26	65.0	9	22.5	9	22.1	24	60.0	7	17 5

The conclusion which one must draw from this table is very clear. We seem to be getting less legal ability and less courage, integrity and independence in the past few years. Whereas the early judges were practically all average or better, the subsequent judges are, in an overwhelming majority, low or average. High legal ability among the old judges was many times more frequent than among the new ones. In courage, integrity and independence, the old judges rate twice as favorably. We can thus venture, on the basis of this composite of opinions concerning the judges, that we have secured since 1917 less than half as much ability as before. The conclusion arrived at through this method would probably be confirmed by most of the reputable members of the bar in Chicago who have known conditions for twenty years or more.

Summing up all we have said concerning the personnel of municipal judges we are forced to the conclusion that we are getting poorer judges from the standpoint of ability, courage and independence. We are getting more political judges and younger judges. We are getting judges whose experience at the bar has covered fewer years.

10. *The Housing and Decorum of the Branch Courts.*

It would be very useful and probably very salutary if the voters of Chicago could know at first hand the appearance of the courts to which they look for the administration of their laws. It is one thing to see the operation of a court through the medium of uninteresting and somewhat perfunctory court reports, but, to know what sort of service is being received, the courts themselves must be viewed as they are operating in actual practice. In preparing this report we have felt that it might serve a useful purpose to the people of Chicago to set forth in some detail the impressions of observers who have visited the courts and have seen them in actual operation. Our conclusions on this point are not based upon single visits but are the result of a number of visits by different members of the staff. We shall consider these courts in the order of their importance, that is, in accordance with the number of felony cases which they try per year.

Harrison Street Court, 625 South Clark Street.

This is, next to the boys' court, the most important branch of the criminal court. As we have indicated in Table 1, it disposed of 2,345 felony cases in 1927. It handles all of the cases arising in police districts 1, 1A, and the Traffic and Detective Bureaus. It draws its business from an area extending from Kinzie Street on the north to 22nd Street on the south and from the lake to the south branch of the Chicago River. It thus takes in the loop district. The number of cases on daily call will vary from 150 to 300. Many of these, of course, are for vagrancy and many for very unimportant misdemeanors.

It is housed most inadequately considering the amount of business that it must dispose of. When the court is in session in the morning the room is crowded almost to suffocation. The noise is very great. On one side of the room is a runway fenced in by wire which, in a very inadequate way, separates the prisoners coming from their cells from the people in the room. There is no reason why communication cannot be carried on between prisoners and visitors and articles passed through from the latter to the former. The section before the bench is jammed with policemen, lawyers, bondsmen, reporters, detectives, visitors, curious and genuinely interested—men, women, and children, young and old, rich and poor, vicious and innocent. The bailiffs during the entire session of the court go through ineffective motions of seeking a better order. They are constantly rapping for order and pleading with the mob to move back from the bench and open the way to the bull pen.

Benches are provided for those who have legitimate business in court but usually no one is sitting on them. For self protection and in order to see and hear better, people prefer to stand. The smoke is always thick. There is much laughing, loud talking, whispering and expectorating. At times the noise rises to almost deafening proportions, due to the shuffling about and the loud shouts of the bailiff and the pounding of the gavel and the remarks of the bystanders and the efforts of the judge to elicit information from reluctant witnesses. It is probable that many cases are dismissed for want of prosecution because the complaining witness fails to hear the case called. In the ante-room and court room are posted many warning signs stating that no loitering will be permitted and that persons found guilty of violating this order will be prosecuted, but we have failed to see any indication of the actual enforcement of this rule.

Town Hall Court, 360 North Halsted Street.

This court room occupies a part of the second floor of the Town Hall Police Station. The room is clean and well lighted. The arrangement of the room is quite satisfactory. In our visits to the court room a fairly good order was being maintained and every evidence was present of a genuine attempt on the part of the judge to maintain such order as would enable justice to be administered properly.

Shakespeare Avenue Court, 2138 North California Avenue.

This court draws from one of the largest areas, from an area of about 42 square miles, and includes several police precincts. The court itself is housed in the 25th police precinct station. The court room is well lighted, clean and fairly well appointed. The order, however, is very unsatisfactory. A noisy and disorderly crowd was present.

Grand Crossing Court, 834 East 75th Street.

This court room is located in the building which also houses the 6th precinct police headquarters. The business coming into this court is not great and order and decorum are fairly well maintained.

Pekin Court, 2700 South State Street.

This court derives its name from the building which it occupies, the old Pekin Theater. The court room is the interior of the old theater. The wooden balcony still remains and the judge's bench is located upon what was formerly the stage of the cabaret. In the orchestra now sits the clerk and what was once the box office of the theater is now the private office of the judge. In spite of this grotesque interior the officers of the court were maintaining fairly good order and a considerable amount of business was being transacted without much difficulty.

Des Plaines Street Court, 120 North Des Plaines Street.

This is located on the second floor of an old but well preserved stone front building. It draws its business from a part of Chicago full of cheap lodging houses and hotels. One therefore sees in the court room the offenders belonging to the most hopelessly useless class of society. The amount of business with which this court is compelled to deal is not great and the court room was in a fairly good order.

East Chicago Avenue Court, 113 West Chicago Avenue.

The building in which this court is located is fairly satisfactory. It is also a police precinct headquarters. The court room was clean but dingy with age. While the business in this court is not large many very serious cases are heard.

West Chicago Avenue Court, 731 North Racine Street.

This court draws its business from an area largely inhabited by immigrants. The court room, when observed, was full of people, most of them speaking languages other than English. There was little in the room to inspire respect for American institutions on the part of the immigrants who were present. There was noise and disorder.

11. Prosecution in the Municipal Court.

In each of the criminal branches of the Municipal Court, there is at least one assistant state's attorney and one assistant city prosecutor. In the branches where the volume of work is heavy there are two assistant state's attorneys. The assistant state's attorneys are assigned to the Municipal Court because the state's attorney has jurisdiction in all matters where the State of Illinois is the plaintiff, including felonies and misdemeanors, and should be represented in the trial at all stages. The city prosecutor has jurisdiction over all city cases including violations of the city code.

As is briefly indicated in the report (*ante,* Chap. VI) on "Prosecution in Chicago," the work of the assistant state's attorneys who are assigned to the Municipal Court is perfunctory and careless in the extreme. The salaries of these men are from $200 to $300 a month. They are therefore the least experienced members of the staff. They are usually assigned to those branches of the court which are located in their own

political strongholds. The duty which each assistant seems to feel acquits his responsibility is to fill out a form report which contains the name of each defendant in a felony case, the number of the case, the charge, and the disposition. When a defendant is bound over to the grand jury the assistant is required to fill out a somewhat more detailed sheet. As is indicated in the report on prosecution to which we have already referred, "an examination of these sheets indicates that some of the assistants scarcely rise above the literacy grade, and added to this are so meager in the information which they record that the report is scarcely usable at all." The assistant state's attorney is usually lounging against the bench engaged in casual conversation with every passer-by, careless, unimposing, undignified and indolent. He permits the judge to put most of the questions. He contributes very little to the process of determining whether a crime has been committed.

The assistant state's attorneys give practically no time to the preparation of cases. The first time he comes in contact with a case is usually when it is called by the clerk. The assistant at this time usually picks up the complaint and attempts to extract testimony from witnesses whom he has not seen before. This, of course, places him at a decided disadvantage and seriously impairs the interests of the state while the defendant is, in all important cases, represented by counsel presumably prepared both as to the law and facts. It is thus obvious that the state is poorly served in the preliminary hearing and undoubtedly many cases which might result in the successful prosecution of important criminals are lost at this stage because of faulty work by the representative of the state's attorney's office.

In order to give point to this charge of incompetence and carelessness let us consider briefly what actually happened in a number of courts which were visited by representatives of the survey.

In the Harrison Street Court where so many serious charges are heard and where inevitably so many dangerous professional criminals are made defendants in preliminary hearings, it would seem that the need for alert and vigorous prosecution should be at its greatest. On the occasion of a visit of the representative of this survey to this court the assistant state's attorney was leaning on the judge's bench much in the manner of a barroom loafer. About all that he seemed capable of uttering was to mumble occasionally, "Go ahead, officer," "Tell us about it," "Shoot," "Hurry up." A slight colloquy between the judge and this assistant prosecutor indicated his utter lack of legal knowledge and, moreover, his contemptuous and careless attitude toward his work.

In the hearings which the representatives of the survey attended at the Des Plaines Street Court, the judge was acting in the capacity of judge, jury, prosecutor and defense counsel and the assistant state's attorney seemed to be perfectly contented to eliminate himself from the proceedings.

On the other hand, in two of the courts the assistant state's attorney seemed to be somewhat more active.

In misdemeanor cases and in violation of city ordinances the city is supposed to be represented by an assistant city prosecutor. These individuals seem to be still less competent than the assistant state's attorneys. During an entire morning in the Harrison Street Court, with scores of cases passing through the mill, the assistant city prosecutor scarcely uttered a

word except to ask the officer to "Tell us about it." The same thing was true of the East Chicago Avenue, and Town Hall, the Des Plaines Street, the Pekin and the Shakespeare Avenue Courts. At the West Chicago Avenue Court the total work performed by the city prosecutor seemed to be limited to one case. Standing at the corner of the bench with one elbow perched on the judge's bench and his right foot trying to get a hold in some grill work two feet above the floor, with thumb in armhole of vest, he muttered to the officer in the case, "Well, tell us about it." After that case he was through for the day. He had arrived at the court room apparently at about 12:45 and departed within forty minutes.

The examples which we have given above indicate the fact that while the city of Chicago is paying the salaries of men in various branches of the Municipal Court to represent the State of Illinois and the City of Chicago in criminal cases, the services which they give amount to practically nothing. The function of sending to the state's attorney's office a record of the case could just as easily be performed by the clerk of the court. The attitude of both the assistant state's attorneys and the assistant city prosecutors is that the police are to be compelled to make the prima facie cases without assistance from them. In fact, it would seem that they are there in many cases to make it difficult for the police to operate and their continuous "show me" attitude must be discouraging to conscientious police officers in the face of almost insuperable odds to bring about the prosecution of criminals. No person familiar with the facts and in his right mind has any doubt about what these persons are appointed to do. They are there in the interest of the political machine to get votes and they look upon their casual duties in the court room as a tiresome but fortunately brief interlude in a day of political activity. This is best illustrated by an incident which was observed in one of the courts. A group of about twenty-five Armenians charged with disorderly conduct was haled before the bar of justice and was discharged. The arresting officer looked toward the assistant state's attorney who gave him a meaning smile in reply while the judge was questioning one of the witnesses. As if uttering the thought that was foremost in the minds of all those present the officer grunted, "There isn't a vote in the whole damn crowd."

12. The Gentlemen for the Defense.

Many of the branches of the Chicago Municipal Court seem to tolerate a condition in connection with attorneys for the defense, which is more serious even than the lack of prosecution which has already been described. It seems to be customary for certain lawyers to assume a proprietary attitude toward defense cases. These privileged characters come to the court daily, deposit their coats and hats immediately upon arrival and participate in the activities exactly as if they were paid attendants. They solicit business very largely through the assistance of clerks, bailiffs, assistant prosecutors, and occasionally through the judges themselves. They also mingle freely among the unfortunates who are haled before the court and get business first-hand. The continuous presence of such a permanent defense lawyer in the court room means that pleasant and sometimes profitable relationships are established between him and

court attaches. Such lawyers have been known to divide the profits from their activities with the kindly officers who throw business to them. In fact, it is stated on good authority that occasionally such a privileged position in a given branch court is paid for by the lawyer, either on a percentage basis or as an initial fee, for the privilege of preying upon the victims of that particular neighborhood. The names of such men who operate in a given court are not difficult to secure—in fact the survey has practically a complete list of the "regulars."

In the Harrison Street branch one may observe practically every day at least half a dozen attorneys who appear in the majority of cases wherein defendants are represented by counsel. They are commonly known as "regulars" and their hats and coats are left some place about the building and it is apparent that there must be some sort of understanding among the attorneys, the lock-up keeper, the police, the bailiffs, and the professional bondsmen. It is easy to observe many cases where defendants are still in custody, being brought in from the police station, but nevertheless are promptly represented at the trial by one of the "regulars." These defendants are probably unable to pay more than a couple of dollars but the attorneys in question freely accept this as the work of defending them is light and the attorney is present anyhow. While direct evidence is probably not easy to obtain it may be ventured that there is some kind of connection between those lawyers and those responsible for the custody of the defendants.

The criminal branches of the Municipal Court have at least one and some have two or three of these "regular" attorneys. Harrison Street has about seven. The ease with which they secure favors in a given court and the greater degree of success which they seem to have in their cases indicates the presence of what may be a well defined "ring" within certain courts, or what may be a less definite, but nevertheless potent, understanding between them and the officials of the court. Where such a "ring" is in existence the defense lawyer holds his status by giving favors, if not money, to those who assist him. While we realize that we are now speaking plainly, we are certain of the presence of such arrangements. When a vacancy occurs in a "regular's" position in a given court, a new attorney is admitted if he meets with certain requirements. In a certain instance a proposition was made by certain officials in the city to a young lawyer and the assurance was given that the cases in which he was interested would not be vigorously prosecuted, provided he accepted the status. He was told that no "split" was necessary but from time to time he would have to take care of the lock-up keeper and the bailiffs. It was also said that he would have to be acceptable to the bondsmen who operated in that court.

It is difficult to determine how much these "regulars" make in fees. It is certain, however, that most of them make a very good living. Many of them do not even maintain a Loop law office but make their headquarters at the police station and the court room, thus cutting down overhead. Altogether we have in the presence of these men an unofficial but well defined occupation, regular in the sense that the relationship is not similar to that of an ordinary lawyer and his client but is a sort of continuous operation within the limits of one court. He thus becomes as definitely a part of the court machinery as the bailiff, the clerk, the prosecutor, or the judge.

The presence of these men and the dubious relationships which they have with court officials suggests a condition which is dangerous and reprehensible in the extreme. It is probable, however, that the situation cannot be met by direct negative action. In other words, it might be possible to drive out of the court room certain of these parasites but their function would be fulfilled in some other way. We may as well face the fact that these men are fulfilling a necessary function in the court but in a very objectionable manner, and under a status that is highly undesirable.

It is quite possible that some modified form of the public defender system would be helpful in ridding the Municipal Court of the undesirable aspects which we have described. An office might be created under the jurisdiction of the chief justice to defend the indigent and to institute a system of inspection throughout the branches of the court for the purpose of eliminating the solicitation of business by certain lawyers also to advise all defendants as to their rights and duties in the employment of counsel and the compensation thereof.

13. The Bail Bond Branch Court.

On April 1, 1927, there was established a bail bond branch of the Municipal Court. Its purpose was to eliminate fraudulent bonds and to establish a bureau or clearing-house through which all bonds would pass. It was made a rule of the Municipal Court by a vote of two-thirds of the judges that all bonds presented to them for acceptance would first have to clear through the bond clerk's office and bear the approval of that office as evidence that the title was investigated and that the bond was a good, sufficient, and legal bond.

It is the practice now that all bonds for felony and sex cases and the more important misdemeanors wherein the people of the State of Illinois is the complainant, clear through this office. The quasi-criminal and city violations should also, but many do not. The proceedings on a bond forfeiture in a city case are handled by the city prosecutor.

Prior to the establishment of this court, the municipal court judges approved bonds and relied solely on the statements contained in the schedule of application. They had no way of determining in whom the title rested covering the property named in the schedule, or whether the property had been scheduled in other bonds, over and above the owner's equity. Before the inception of this branch the clerk's office kept a defendant's docket on bond forfeitures and also published a "black list." At that time all bond forfeitures were sent to the office of the state's attorney for scire facias and judgment.

Now the system in force is as follows:

The courtroom occupies a room in the City Hall where there are two deputy clerks, one of whom accepts applications for bonds, checks his black list record, and enters the surety on a docket sheet which is placed in an alphabetically arranged docket. If the surety has signed before, a sheet will be in the docket so that the clerk can determine at a glance, on how many other bonds the same property was scheduled by the same surety. After the entry of necessary details on the record sheet, the other clerk checks the title in the office of the recorder of deeds to verify the owner, date of purchase, and amount of consideration. If title is in name of the

signing party a rubber stamp impression is placed on the schedule indicating that on a certain day the schedule was examined and the title verified and it is then signed by the deputy clerk and is ready for the judge's signature and acceptance.

When a bond forfeiture occurs the clerk in the branch court is instructed to send the copy of the complaint to the main office and it, together with the bond, is sent to the bond court which, within forty-eight hours after the forfeiture, issues a scire facias returnable in court in fifteen days. On the return day, whether the surety is served or not and in the absence of the surrender of the defendant or a legal defense, a judgment is entered against the surety and defendant and execution issues immediately. About ninety per cent of the judgments entered are default judgments. After the execution is served the surety often works harder to apprehend the defendant, and in many cases surrenders him in open court, pays the clerk's costs, and has the judgment vacated.

The Chicago Title & Trust Company has a representative make a daily check of the judgments and enters them on record against the property.

Since the opening of court (April 1, 1927) 576 scire facias have been issued but no judgments have been collected. At this writing, February, 1928, the figures in money judgments are not available.

The clerks state that on an average of 125 bonds pass through the office weekly and in the same period of time about 25 scire facias are issued. There are only about five cases on each day's call and the judge devotes the balance of his time to hearing civil suits. The assistant state's attorney has little or nothing to do during the greater part of the day. The deputy clerks above referred to are the only attaches who are kept busy.

There are between eighteen and nineteen hundred names on a list of disqualified bondsmen, including all sureties who have had bond forfeitures from 1918 to December 24, 1927. At the present time scire facias are being issued and judgments entered against those persons named on the list, who heretofore have not had judgments placed against them. The Municipal Court at this writing has proceeded as far as the letter "L" and plans thus to proceed until a judgment is rendered against all the names on the list.

In an interview with Judge "F.," then judge of that court, the representative of the survey asked whether or not the establishment of this court tended to eliminate the so-called crooked bond. He replied, "We don't have any bad bonds and never did have many. I don't believe the hue and cry that is going on about Municipal Court bonds is well founded. Oh, yes, occasionally we find that the title is in joint tenancy and only one party has signed the schedule or where a party has bought some property on a contract and the title does not appear in his name."

He then said in reply to a question as to the cooperation of the other judges in having bonds referred to this branch for investigation and approval: "Well, I would say yes—oh, now and then a judge will accept a bond without having it investigated; for instance, supposing my next door neighbor comes to me and asks me to accept his schedule. Why, there is no harm in that, as I know all about him. I would say there are a few scattered cases of judges accepting bonds, but no evil has come of it."

His opinion was asked concerning a central bond bureau, consolidating city, state, and federal bond departments, and he stated he was in favor of such a consolidation, however, it might entail much detail work in working out such a plan. If such a procedure were adopted he recommended the state's attorney's office for headquarters and supervision.

He stated there is still one weak link in the present system in the Municipal Court and that is, at present they have no way of determining the value of the property scheduled and the clerks are compelled to accept the statement of the surety as to the value and amount of encumbrance of the property. He further said that no charge should be made for such service, as there is no excuse for it in law, but that sufficient funds should be appropriated and that such work be assigned to the bailiff of the court who would employ investigators to assess the value of the property and file a report with the clerk.

The conclusions from these observations are:

1. The bond branch court of the Municipal Court is only as strong as its weakest judge. As soon as one judge fails, neglects, or refuses to use the bond court and accepts a bond not approved by this branch, then the purpose of this branch court fails. To cite an example: An examination of some complaints, recently sent to the scire facias department of this court for action, revealed the name of "A" who is in the black list, although worth probably one-half a million dollars. Investigating, it was discovered that in a certain case one "S." was charged with violation of Section 2655 (disorderly conduct). A bond was supplied signed by the defendant, and accepted by Judge "H." A bond forfeiture occurred on December 15, 1927. The defendant therefore has escaped punishment, a judgment will be obtained against "A." against whom many such judgments are now pending; the cost and expense of this procedure is paid by the taxpayers. This could have been avoided if the judge referred to his black list, upon which the name of "A." appears, even though he didn't require the bond to clear through the bond court. While it is true the case involved only a minor offense, it is probable that the same procedure would have been followed by this judge had the offense been robbery with a gun, for either the judge failed to use the tools with which the court supplies him at great expense, or he was willing to take a chance on "A.," an habitual offender in bond forfeitures. And it is safe to say that Judge "H." is not the only offender. About 125 bonds clear through the bond court in a week—the figure is negligible compared to the number of arrests made by the police in a week—and it is fair to say that fifty per cent of the persons arrested are admitted to bail. Therefore the question arises as to the method of accepting the bonds that never reach the bond court.

2. Nothing is done in this branch to verify the authenticity of the bond. A form letter, such as used in the state's attorney's bond department, should be sent to each surety named in a bond advising a bond was signed in his or her name and if it was not proper immediately to notify the bond court.

3. With a failure, such as we have described, on the part of judges to cooperate with the bond court, there will of consequence be many forfeitures. A forfeiture, however, is merely a gesture if some agency does not vigorously

press the forfeiture to its conclusion and, wherever possible, bring about a sale of the property in order that the city or state may realize upon its rights. After forfeiture the duty of following up the case rests with the state's attorney in state misdemeanors or felonies. The confused and inadequate records of bonds and bond forfeitures make it impossible to determine the present amount of forfeitures not reduced to judgments, and judgments uncollected.

14. Routine of the Clerk's Office.

Mr. Charles H. Krimbill, assistant chief deputy clerk in charge of criminal department of Municipal Court, has served a period of twenty-one consecutive years, or since the inception of the court. Prior to 1906 he was connected with the Criminal Court clerk's office for 19 years, making a total of forty years. He is not under civil service rule or eligible for any pension and has served under the various political administrations. Mr. Krimbill is held responsible by the clerk of the court for the administration of the various criminal branches.

A case originates in the court by the filing of a complaint, either by a police officer or a citizen. If arrests are made by police officers, each one must be represented by a formal complaint, if the case is to go to court, the form of complaint depending on the character of the offense. The clerk in the branch court then makes up what is called the half sheet, a number is assigned to the case and it is placed on the daily call sheet for disposition. After this the complaints are sent to the main office and the records on felony and misdemeanor cases are copied into dockets becoming the official records of the court, and the complaints on quasi-criminal cases, such as violations of city ordinances, are not docketed.

The daily sheet is made up in quadruplicate. The original is kept by the clerk in the branch, orders entered, and at the close of the day is sent to the main office of the clerk and made the official record of the court. One copy is placed upon the judge's bench and he enters his orders and dispositions thereupon. At the close of the day's business the judge should place his sheet in an envelope and send it to the main office of the clerk for verification of the clerk's sheet. This is not a rule of the court, and few of the judges follow the practice. In cases where judges do send in their sheets they are bound and retained for about a year, after which time they are destroyed. To require judges to send their sheets to the clerk's office would be a preventive against venality on the part of deputy clerks in the branches. It would require a two-thirds vote of the judges, and should be referred to the chief justice as many judges refuse to surrender their sheets. The third copy of the daily sheet is sent to the city controller's office for audit and check. The fourth copy is retained in the branch of the court for ready access and reference.

There is a provision on the daily call sheet for the distribution of fines and costs. All fines are paid to the deputy clerk in the branch and taken to the main office with other records, the same day. In the absence of the judge's sheet, the record of the deputy clerk must be taken as correct for there is no way to verify it.

When a fine is paid, the clerk is supposed to write a receipt for the

money, using an automatic machine which makes triplicate receipts, one copy is retained in the machine, another kept by the clerk, and the original to the person paying the fine. These receipts are serially numbered. The clerk enters on the daily call sheet the serial number of the receipt applying to every fine paid. The roll of carbon receipts is taken from the machine and sent to the clerk's office where from time to time they are checked and audited. All figures and records are checked by an auditor for the clerk of the Municipal Court, an auditor for the chief justice, and one from the city controller's office. If the judge were required to send in his daily sheet, in a separate envelope, and allow no one to see it after the completion of the call, it would have a tendency to discourage venality on the part of the clerks, for if a discrepancy did occur between the records, the word of the judge would carry. Under the present system there is no way of determining if the clerk's sheets are authentic, as to amount collected, distribution of money, length of sentence. In short, there is no check-up on the clerk. The clerk in the court makes out the mittimus on House of Correction sentences, and this too could be reduced by the clerk without any discovery. Orders of continuance, nolle prosequis, dismissal for want of prosecution are all subject to change by a dishonest clerk without much chance of detection. It has been known to happen in the past that a case has been set for trial a day earlier than the day fixed by the judge and entered on the clerk's sheet. The case would then appear on the call on the day set by the clerk, the case called, and no prosecuting witnesses appearing the defendant would be discharged for want of prosecution. Of course, a new warrant could issue, but the people eventually become disgusted and weary of continually coming to court and lose faith in the administration of justice. Inquiry was made of assistant state's attorneys and others connected with the Municipal Court, and the consensus is that it all depends on the judge. Political privileges, political patronage, political systems are responsible for conditions in the Municipal Court. The clerks are all in politics, usually captains of precincts in their wards. The judge realizes that much is expected of him in the way of granting political favors thereby gaining the favor of the workers in the political machine and many votes on election day. What is really meant by "it all depends on the judge" is that if a judge is strict, stern, honest, insistent on a "clean court room" free of fixes, there will be little to criticize in this branch. It is impossible for the judge not to know about queer practices in his court and if they exist, they are carried on with his tacit acquiescence.

Often due to the judge's lack of ability, his laziness, his indifference, the bulk of all of the administrative work of the court is thrown upon the shoulders of the court clerk, thereby vesting him with much power and authority. Such things as arraigning the prisoner, advising him of his constitutional rights, the waiver of jury, the protection of the record, the legality and sufficiency of the complaint, etc., are left to the clerk. These are duties which should be performed by the judge. Often many prisoners are released from the House of Correction on writs of habeas corpus because of errors in the record. The deputy clerks are instructed not to bother with jury waivers, arraignment, etc., as that is part of the judge's job and to enter on

record the orders of the judge. If he fails to instruct the clerk to enter pertinent orders, then the judge is to blame and not the clerk.

Prior to the system of keeping all cash bail in the main office of the clerk, it was the practice for each branch court clerk to retain the money and make return to the person entitled, and this produced many complaints and opportunities for venality on the part of the clerk. At the present time the deputy clerk in the branch court has nothing to do with cash bail, as it never enters his hands. This latest procedure has done much to stamp out evil practices that surrounded this phase of the procedure.

15. Conclusions and Recommendations— (a) Housing of Branch Courts.

It is probable that the housing of the city courts will be quite adequate when they are relocated in the new Criminal Court building. In fact, they are located so much more fortunately now than the branch courts that the contrast is distinctly great. The housing of certain of the branch courts leaves much to be desired. Especially is this true of the Harrison Street Court where we have at once an unfortunate combination of the most inadequate quarters with the most serious congestion. A proper administration of justice under such conditions as prevail here is an impossibility. Immediate relief is desired. The same is true of at least one-half of the branch courts.

> *It is recommended that* a joint committee of judges and members of the Board of Aldermen be properly provided with funds by the city council for determining the engineering and architectural problem involved in providing adequate quarters for the criminal branches of the Municipal Court not now housed in the County building or at Eleventh and State streets. In fulfilling this objective, there should be appointed as advisory members of this committee of judges and aldermen, representatives of public associations and agencies with interest in the general problem. Whether, as is suggested by certain of the judges, it will be best to locate the branch courts in buildings other than police stations is a matter seriously to be considered by this committee. The final difficulties may prevent the accomplishment of this except perhaps in the case of one or two court rooms. It should be noted in connection with this matter that the statute provides "That such branch courts shall be held at such places . . . . as may be provided for that purpose by the corporate authorities of said city for the holding of said branch court procured for that purpose by said judges within the district in which the same is located and at such place may hold said branch court until a suitable place therefor be furnished by said corporate authorities."

(b) Order and Decorum.

We have indicated in the body of this report the fact that most of the branch courts present an appearance of disorder and confusion which not only results in giving the appearance of complete lack of care and dignity but what is more serious, makes it possible for an occasional miscarriage of justice to take place. The disorder and lack of decorum which characterizes the hearings in court is a matter for which the judge is unquestionably responsible. The judge has assigned to him sufficient assistants to make it

possible to maintain a better condition in court. The fact that he does not is simply due to the fact that those who frequent the courts in the city of Chicago have apparently ceased to expect proceedings in court to possess any measure of dignity or order at all. In spite of the confusion, the judge has at his beck and call members of the police force, clerks, bailiffs, and to some degree assistant state's attorneys and prosecutors. None of these, as we have indicated, are at all overworked.

> *It is recommended that* the chief justice issue requests to all judges sitting in the branch courts that an immediate attempt be made to improve order. In case this attempt is not effectively made, the lax judges should be removed from the criminal bench completely and such judges appointed as will enforce such order and decorum as will bring to the courts the appearance of effectiveness that they deserve. It should be added here that slight physical readjustments in some of the courts will help a great deal, such as the use of rails and other means of handling the crowds which are in attendance.

(c) The Clerk's and the Bailiff's Offices.

The law provides that the office of clerk and the office of bailiff of the Municipal Court shall be filled by election. This definitely puts both of these important arms of the court into partisan politics, and there is ample evidence that the influence of politics has greatly injured the effectiveness of these agencies. There is no question of determination of policy in either of these offices. They are and should be servants of the court to permit it to function as efficiently as possible. Their present status permits the head of each office to build up in his own interest or in the interest of a political faction with which he is associated, a vast machine with hundreds of employees scattered throughout the city. His political obligations take his own thought, time, and attention from his work, and the result is a large expenditure of funds for which no adequate return is secured.

> *It is recommended that* steps be taken to determine the best legal methods for changing the method of selecting the chief clerk and the chief bailiff of the Municipal Court. That statutory enactments be made changing the method of selection and placing these two offices under the jurisdiction of the chief justice of the court who should appoint both of them and under proper civil service regulations select all of their subordinates.

(d) Less Haste and More Speed in Proceedings.

The indescribable confusion which results in many of the court rooms is largely due to the fact that judges and other attaches seem anxious to reduce the period of their working day to a minimum. It is no uncommon sight to see a group of six or eight court room attaches sitting in complete idleness in the morning waiting for the judge, and then when the judge arrives to see this group assume an attitude of haste and confusion in order to carry through the bulk of the cases quickly. There is no very good reason for this except in a few instances, the cases can be scattered out over more hours in the day and adequate time be given for the examination of witnesses

and a clear presentation of the cases on both sides. It, of course, will be objected that this will compel policemen to spend more hours in the court and break into their day still more seriously, but a proper adjustment of the calendar of cases will enable a policeman to know with greater definiteness what hour in the day he is likely to be needed.

It is recommended that a committee of judges cooperate with representatives of civic organizations in devising a consistent plan for the ordering of business in these courts in such a way as will permit justice to be administered with celerity but without the indecent haste that now characterizes the work. It should, moreover, be noted that the city has the right to expect its salaried judges to devote more hours in the day to their new work and efforts should be made to enforce at least by the operation of public opinion, a compliance with this general principle.

(e) Wide Differences in Judicial Policies.

The need for strong control in the office of chief justice is nowhere better illustrated than in the statistics which indicate the method of distribution of cases in accordance with the judge who happens to be sitting on the bench. There is a distinct fluctuation in the policy of various judges from one to the other. For example, a certain judge sitting in preliminary hearings in 1927 held for the criminal court only 10 per cent of the cases which came before him. Another judge who sat in the same court and who also heard a great number of cases held 48 per cent of his cases. The total percentage of all judges sitting in 1927 was about 40 per cent. It should be added that another judge held to the grand jury less than 20 per cent of the cases coming before him. It is, of course, a fact that there will be considerable variation in the type of cases coming before a given judge, but this variation is not sufficient to account for the wide differences between the average of all the judges and the particular judges whose percentage is so low. Such surprising deviations from the normal suggest that unquestionably certain judges should be excused from the criminal bench entirely.

It is recommended that the chief justice scrutinize these records and where a judge departs in a marked degree from the normal, he be used in some other division of the work of the court unless strong reasons are present for such deviation.

16. Partisan Politics, the Ultimate Problem.

All of the foregoing recommendations could presumably be achieved if the court could be protected from the devastating influence of partisan politics. In the last analysis a court is as good as the ability, the courage, and the political independence of its judges make it. We have shown how sadly these qualities have diminished during the past ten years of the court's existence. We should, therefore, be inviting a very serious trifling with our problem if we should insist upon the accomplishment of secondary objectives when the main objective remains untouched. Such civic interest as is possible in Chicago, and there are apparently definite reasons for hope in a renaissance of activity, should direct itself to deliver-

ing, so far as it is humanly possible, the Municipal Court from the blighting influence of machine politics.

The extent to which the court is influenced by partisan politics has been shown in various ways within recent months. For example, on April 20, 1928, the *Tribune* secured information to the effect that on that day no less than sixteen out of thirty-seven judges were absent from the city attending conventions of the two parties in Springfield. The names of these judges were published and, so far as we know, no attempt has been made to deny this. There has been in the United States a fine tradition to the effect that while judges are supposed to possess the quite proper right of retaining their interest in public affairs, that active participation in party machinery is not compatible with the best interests of the bench. It is well known that certain judges of the Municipal Court operate definitely as political leaders and bosses in their own communities. Certain ones go beyond this and perform definite activities in behalf of certain well known city-wide political machines. It is not stretching the truth to say that positions on the municipal bench have become to some extent semi-sinecures for the retainers of the feudal lords of Chicago politics. Considering this, and also considering the fact that there is a definitely established relationship between the underworld and some feudal lords, it is not strange that there should be extended to the lords of the underworld privileges and favors by the judiciary of the city. This, of course, constitutes a condition which no self-governing community can long endure.

An unusually frank and conscientious judge of the Municipal Court spoke rather freely to one of the members of the staff of the Survey and indicated quite clearly the difficulties which a judge faces because of the political character of his office. He stated that it is always very difficult for a judge to fail to listen to the requests of political leaders for leniency for political defendants. He said that the office is obviously a political one and his continuance in office depends upon his political prestige with his organization. He cannot always close his ears even though he wants to do the right thing. The judge's failure to go along with the undesirable element sometimes spells his doom for the forces of darkness are "powerfully organized." The better people are not organized and forget very quickly the judge's efforts to do what is right. In conclusion, he said, "After all the human element plays a big part and it is only human for a man to have a desire to continue on the bench and at the present time it resolves itself into a situation of the survival of the strongest."

This statement sums up the whole problem. As matters political now stand, a judge must either yield to influences of a very dangerous if not improper character or risk his official position. Some are able to keep their self respect and because of their extraordinary strength with the voters keep their jobs. Others refuse to yield and find themselves thrust from office. Still others, not strong enough to withstand political pressure, and not courageous enough to face the consequences of loss of official position, yield unwillingly. A still different group, apparently growing larger every term, does not want to maintain high standards. The members of this latter group are themselves a part of the machine. To an increasing extent the Municipal Court is coming to harbor, not only judges who take orders from

political machines, but judges who are a part of the organization itself. A sort of Greshams law is in operation, therefore, which is driving out into private practice men of courage, legal standing and ability in favor of politicians. The presence of the defects that we have described also explains the fact that many able men who might otherwise seek the bench are prevented from doing so.

In order to restore the balance, it will be necessary for the city of Chicago, through the efforts of private and semi-private organizations, to participate actively in judicial elections. The methods by which this can be done are best exemplified by the system that operates in the city of Cleveland where the Bar Association attempts to relieve judges of the courts, who have been approved by a poll of the Bar Association, from all responsibility in conducting their campaigns. It seeks, so far as it is able, to keep on the bench judges of ability and to see that when a vacancy occurs a proper effort is made to secure worthy lawyers as candidates. This burden should not be carried by the Bar Association alone. It should be shared by all civic organizations in the city. It may be taken for granted that certain of the better newspapers will gladly participate in a joint movement in the next election to improve the quality of the bench.

CHAPTER XI

THE PROBATION AND PAROLE SYSTEM

By

ANDREW A. BRUCE, E. W. BURGESS, AND ALBERT J. HARNO

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CHAPTER XI

THE PROBATION AND PAROLE SYSTEM

PART A

HISTORY OF THE SYSTEM IN ILLINOIS

1. The Function of the Board of Paroles.

A widespread misapprehension exists concerning the functions of the Illinois Board of Paroles and a general tendency to believe that, whenever the board takes any action after a prisoner has been convicted and sentenced, it is more or less an interloper and unjustifiably interfering with the discretion and judgment of the trial judge.

The fact remains, however, that, even in all cases of crime—even misprision of treason, murder, rape, and kidnapping, for which a definite term of imprisonment is imposed, the board, under the statutes, of necessity must take some action and must accord the prisoner a hearing. The board, in the final analysis, is the real sentencing body and to all intents and purposes acts and functions in the capacity of an assistant judge.

In all crimes except misprision of treason, murder, rape, and kidnapping, Section 796 of Chapter 38 of the Revised Statutes of Illinois, expressly states that the sentence—

> "Shall be a general sentence of imprisonment and the courts of this state imposing such sentence or commitment shall not fix the limit or duration of such imprisonment. The term of such imprisonment or commitment shall be for not less than the minimum nor greater than the maximum term provided by law for the offense of which the person stands convicted or committed. It shall be deemed and taken as a part of every such sentence, as fully as though written therein, that the term of such imprisonment or commitment may be terminated earlier than the maximum by the Department of Public Welfare, by and with the approval of the governor in the nature of a release or commutation of sentence or commitment."

Even in the excepted crimes, that is to say, misprision of treason, murder, rape, and kidnapping, Section 795 of the same statute seems clearly to contemplate that the board shall not only have, but, in proper cases, shall exercise the power to parole; but only after the expiration of twenty years in the cases of persons who have been sentenced for life; and in the cases of persons who have not been sentenced for life, not until after the expiration of the term of the minimum sentence provided by the statute for the crime and for which the trial court might have sentenced the prisoner if it had chosen to do so instead of for the longer term, and provided that one-third of the sentence actually imposed has been served. The statute is clear and cannot be misunderstood.

Though there was at one time and no doubt still exists a school of criminology, the disciples and followers of which taught that every sentence should be definitely and precisely fixed by the judge and explicitly carried out, and yet another school, the partisans of which progressed a step farther and maintained that the legislature itself should definitely establish a tariff

of penalties for the various crimes without allowing any discretion either in the trial judge or in a Board of Paroles, nevertheless, neither of these hypotheses have, at any time, been adopted by the legislature of Illinois.

Even before a system of paroles was inaugurated and in the days when a gubernatorial pardon was the sole means of obtaining executive clemency, a discretion was reposed in the trial court and, in all cases except murder and treason, a maximum and a minimum penalty was enacted by the legislature between the limits of which the trial judge and often the trial jury were permitted to act.

We should, at the outset, bear in mind the fact that the Board of Paroles is, after all, the least of the factors which can be sought for indulgence and leniency in the administration of the criminal laws. We must ever remember that, notwithstanding the creation of the board, the pardoning prerogative of the governor still exists and this prerogative includes the power to grant a conditional pardon which may take the form of a parole, and can only be controlled by reasonable legislative provisions relative to the method of applying therefor. We must also recognize the widespread use of probation.

2. Pardons, Paroles and Probation, Distinguished.

A *pardon* is the remission by the power entrusted with the execution of the laws of the penalty attached to a crime. The right of pardoning is co-extensive with the right of punishing. "In a perfect legal system," says Beccaria, "pardons should be excluded, for the clemency of the prince seems a tacit disapprobation of the laws." In practice the prerogative is extremely valuable, when used with discretion, as a means of adjusting the different degrees of moral guilt in crimes or of rectifying a miscarriage of justice.

A *parole* is the act of releasing or the status of being released from a penal or reformatory institution in which one has served part of his sentence on condition of maintaining good behavior and remaining in the custody and under the supervision of the institution or some other agency approved by the state until a final discharge is granted.

Probation is usually granted by the trial judge and not by an administrative board. It is similar to parole but it differs from a parole in that the latter is preceded by part of a sentence served in a penal or reformatory institution, while in the case of probation the execution or imposition of the sentence is suspended.

3. Prerogatives of the Governor.

The history of Illinois began in 1718 when it was a part of the French Domain. In 1765 and by the treaty of Paris the territory was ceded by France to Great Britain and became a possession of the Colony of Virginia. In 1787, and after the cession by the State of Virginia of its western territories to the United States, it was made a county in the Northwest Territory. From 1800 to 1809 it was a county in the Territory of Indiana. In 1809 it was made a separate territory. In 1818 it was admitted into the Union as a state. On its admission into the Union a constitution providing a form of government was adopted. This constitution was superseded in turn by the constitution of 1848. The constitution of 1848 was superseded in turn by the constitution of 1870. It is under this third constitution, or the constitution of 1870, that the state now operates.

In early territorial days and from the time of the adoption of the Federal Constitution until January 23, 1811, the pardoning power in Illinois was vested exclusively in the President of the United States and manifestly included all of the prerogatives of the English King, who had been looked upon as the fountainhead of all justice and who could exercise clemency both before and after conviction, and under whatever condition he desired to impose. This power included the right to issue conditional pardons; to commute and remit sentences and evidently also included the power to place upon probation and to parole, for a parole is, after all, nothing more or less than a conditional pardon or a remission or commutation of the sentence, and probation is merely the definite or indefinite suspension of a penalty.

On January 23, 1811, however, and under a provision of questionable constitutionality it was—

> "enacted by the governor and judges of Illinois, and is hereby enacted by the authority of same that the governor of the territory aforesaid, shall have power to remit fines and forfeitures and grant reprieves and pardons except in cases of impeachment."

This was the condition of affairs until the admission of the Territory of Illinois into the Union as a state and the adoption of the constitution of 1818, when by Section 5 of Article 3 of the new constitution the power—

> "to grant reprieves and pardons after conviction except in cases of impeachment is vested in the governor."[1]

This power is still possessed by the chief executive. That it includes the power to grant parole in the form of a conditional pardon is admitted and conceded by Section 796 of Chapter 38 of the Revised Statutes of Illinois which, although providing for the indeterminate sentence and for the functioning of the parole board (in those days the Department of Public Welfare), expressly provides that the board shall act—

> "by and with the approval of the governor in the nature of a release or commutation of sentence or commitment."

Though, also, in the Constitution of 1848 another innovation was made and the clause was made to read—

> "grant reprieves, commutations and pardons after conviction, subject to such regulations as may be provided by law as to the manner of applying for pardons,"

and this provision was reenacted in the constitution of 1870 and is still in force, the qualification must be reasonably construed and can relate only to the method of application and not to the power.

The legislature cannot deprive the governor of his prerogative. The law-making body can concern itself solely with the enactment of reasonable provisions in regard to the form or nature of the application for executive clemency and the hearing thereon. That body cannot impose time limits except such as are reasonably necessary for an intelligent hearing. It cannot,

[1] By this constitution more was done than to name the repository of the pardoning power. It provided that the power should only be exercised after conviction. Formerly the ancient prerogatives of the English King and the prerogatives of the President of the United States in the cases of offenses against the National Government embraced and still embraces the power to anticipate the conviction and to pardon the act or offense before trial.

for instance, without the acquiescence of the governor, provide or authorize the Board of Paroles to provide that no hearing shall be had and no pardon nor parole be granted until after the expiration of a minimum sentence of one year, or even six months, for the power of the governor is to pardon after conviction, and subject only to such regulations as may be provided by law "as to the manner of applying for pardons."

The legislature, it is true, as a part of the original sentence, can create, as it were, a new parole, probation or conditional pardoning body which, if it chooses to act and to grant leniency, may act as an assistant to the trial judge and provide for a reduction of the maximum term of incarceration upon condition of supervision, but even then, if it refuses leniency, the judgment of the board may be absolutely overruled by the governor in the exercise of his constitutional prerogative to grant reprieves, commutations, and pardons after conviction.

4. The Various Theories of Criminal Punishment. Many and various theories and hypotheses of criminal punishment have existed from immemorial time, and since the history of Illinois begins in 1718, almost all of these theories have been inherited by us and have been reflected in our jurisprudence.

In the main, five theories of the purpose of punishment may be noted:

(1) Retaliation or retribution
(2) Expiation
(3) Deterrence
(4) Reformation
(5) Protection of society.

Perhaps the last mentioned theory is the most satisfactory. Protection of society, indeed, embraces all of the others. There can be no protection to society without a reformation of the criminal so that when he is once more returned to the community, as inevitably he must be, he will no longer engage in the perpetration of antisocial acts. No reformation can usually be accomplished without, at least, some fear of the inevitable consequences of recidivistic back-sliding, and in many cases the perpetration of similar crimes by the potential offender cannot be effectively prevented except by a similar fear of those inexorable consequences. No real reformation can be accomplished without some actual or desired expiation.

A sane and efficacious system would provide that the criminal should, if possible, make good to the individual the loss that the criminal act has occasioned. The atavistic tendency and propensity in man to the instincts of revenge and vindictiveness being still so strong and overpowering, to prevent lynching and self-redress, some element of punishment, some element of retaliation, must be involved so that the injured individual may feel that, to a certain extent, his personal desire for revenge has been satisfied through the action of the state.

Primitive punishments were at first evidently imposed from personal motives on the part of the chief or monarch and in order to vindicate his power. Later they were imposed in order to prevent the individual from taking the law into his own hands; to prevent, in short, the carrying out of the theory of an eye for an eye and a tooth for a tooth. Later the

theory of public injury was adopted. In some nations, especially among the ancient Hebrews (and the law of the Hebrews has played an important part in the formation of our American thought and in the creation of our American laws) there was the underlying idea of a theocracy. The criminal code was contained in the Ten Commandments. Disobedience to this code was considered a contempt of God, himself. Not only was a criminal looked upon as a sinner and deserving of punishment but the crime was regarded as a blot on the reputation of the tribe or nation, which had to be obliterated. The criminal was regarded as a contagious disease germ in the body politic which was liable to contaminate the whole tribe. A surgical operation must be performed and not only he, himself, but his whole family, who were presumed to be next in order of contagion and to have in their inheritable blood the fatal disease, must be ruthlessly exterminated. When Akan sinned, he and his whole family were destroyed.

There, too, was the theory of expiation. There had to be some evidence of national or tribal contrition, some sacrifice which might wash away the sin. What could be more natural than that the criminal and his family should constitute the sacrifice. The expiation, however, was desired not for the sake of the criminal but for the sake of the tribe or of the nation.

There, too, was everywhere evident a theory of predestination which eliminated all pity, all desire or hope of reformation and which would have been fatal to our modern theories of probation and parole. This was apparent, not only in the ancient Hebrews but in the Scotch Calvinists who were so largely represented among our early settlers. All the world, according to the Scotchman, was divided into the saved and the damned, with the comfortable qualification that the Scotchman had been preordained for everlasting salvation. If a man sinned it was proof abundant that he belonged to the outcast class. Even though he had been once numbered among the congregation of the kirk, his crime merely demonstrated that he had been wrongly classified; that he was not of the native Scotch breed.

In the development of the American laws, all these influences have had their part. There has been a curious but not an unnatural mingling of the ideas of expiation of the sin, revenge for the injured, a warning to would be offenders, and in recent years the protection of society and the reformation of the culprit.

5. Same: Modern Tendencies of Theory. During the Middle Ages the theory of punishment alone seems to have been relied upon and the brutality of those codes as compared with those of the Hebrews is very noticeable. Among the ancient Jews we find seven classes of offenses which were punishable by death, and torture was not tolerated. At the time of Elizabeth there were over three hundred capital offenses and in the times of the Georges, over one hundred. Self protection and personal revenge had been taken from the individual and the power of the central government had been established, but the law that was administered was the law of revenge.

For a long time the English judges had been in the practice of minimizing the severity of their blood-thirsty criminal codes by allowing the plea of the so-called "benefit of clergy" which permitted them to waive, in certain

instances, the capital penalties, and for a short time prior to 1764 the practice of individualizing the punishment of criminals prevailed upon the continent of Europe under which no arbitrary penalties were fixed but the nature of the sentence was left to the discretion of the judge. To this practice, however, there were many objections, not the least of which was that the sentences for the same offenses were often radically different and their severity or lack of severity not only depended largely upon the benignity or absence of benignity on the part of the magistrate, but opportunities for corruption were claimed to be afforded.

Similar objections, indeed, have been made against the prevalent American practice of fixing by legislative mandate a maximum and a minimum sentence between the limits of which the trial judge may act, and the disparity of the sentences which are usually imposed under such a practice has been one of the strongest arguments for the creation of Boards of Parole.

(a) The So-Called Classical School of Penology.

About the year 1764, therefore, we find the rise of the so-called Classical School of Penology, among the principal disciples of which are enrolled the names of Beccaria, Rousseau, Montesquieu, and Voltaire. Like the Hebrew and the Calvinistic schools, the followers of this school adhered to the doctrine of free will and individual responsibility and of punishment rather than reformation. They taught that the individual calculates pleasures and pains in advance of action and regulates his conduct by the results of his calculations. Consequently, it was necessary to make criminal acts painful by attaching to them a punishment which should be entirely definite and which would be adequately sufficient to make the pain derived from the penalty exceed the pleasure and reward which had been afforded by the commission of the offense. This school likewise taught that in order that the punishment might be calculated, it should be the same for all individuals regardless of age, mentality, social status or other conditions. Responsibility, semi-responsibility, or lack of responsibility was not considered. There should be a fixed and definite punishment and that punishment the same in all instances.

Though advocated by many, the theories of this school have never been put in practice in Illinois. Even, indeed, in the years of our greatest severity of punishment and before the acceptance of the theory of the probation and the parole, we left some discretion in the trial judge as to the severity of the punishment to be inflicted. At the time when flagellation was in vogue the number of lashes was fixed at from one to a hundred, and the exact number to be inflicted was left to the determination of the magistrate.

(b) The Neo-Classical School.

Next followed the so-called Neo-Classical School which, like the Classical, recognized the theory of free will and personal responsibility, but sought to exempt from punishment when it was demonstrated that the will of the culprit was atrophied or interfered with by inherent conditions which rendered its exercise impossible. Children under the age of ten, and those under the age of fourteen where there was a proof of ignorance or of inability to differentiate between right and wrong, were exempted from liability as

were also idiots and lunatics. However, very little solicitude was manifested for the inebriate as far as the proof of the crime was concerned, though the codes sanctioned the reposing of discretion in the trial judge to determine what the actual penalty should be, provided such penalty was within the maximum and minimum provided by the statute, and to this end, allowed proof of extenuating and mitigating circumstances.

Nowhere, however, in either the Classical or Neo-Classical Schools was there, seemingly, any thought of reformation and no provision made for probation and parole. What was sought to be arrived at was the guilt of the prisoner and the basic thought seems to have been that the protection of society could be obtained by the expedient of punishment and of making crime unprofitable.

(c) The Positive School of Penology.

We next encounter the so-called Positive School of Penology which taught that criminals are born and not made and that punishment was unseemly and futile. The exponents of this theory admitted that precaution against such offenders should be taken and conceded the right of self-protection to society. Their emphasis, however, was placed upon segregation and reformation rather than punishment or intimidation. Their thesis was that usually advocated by the modern psychiatrists who, however, do not entirely disapprove of punishment but insist upon the individualization of each particular case.

(d) The School of Modern Penology.

Next follows what may be termed the School of Modern Penology. This group of thinkers is in accord with the positivists in the belief that the old conceptions of insanity and mental deficiency, and therefore of criminal responsibility, were too limited and that there is at least a medium of truth in the theory of the existence of mental diseases and uncontrollable hereditary impulses which makes the commission of crime almost inevitable. In a large measure the disciples of the school agree with the policy of individualization and segregation. They do not, however, discard the theory of punishment, and, except in the cases of diseases mentioned, they recognize the Classical and Neo-Classical idea of free will and of individual responsibility.

The modern penologist reflects the New as opposed to the Old Testament influences. He places no little emphasis on the story of the thief upon the cross and of the woman taken in adultery, and he is firmly convinced of the possibility of repentance and of reformation. He admits that the culprit should be punished but believes that he is able to atone for his sins and an opportunity should be given him to do so. He, therefore, believes in the policies of probation and parole and in the theory that no insane man should be executed, since, at the last minute, every one should have an opportunity to make peace with his Creator. The school does not believe in punishment for punishment's sake but in punishment as a means of reformation and as a warning to others. Some of its members admit that some concession should be made to the primitive desire for revenge in order

that resort may not be made to self-help and lynch-law. Most of its members believe in life imprisonment rather than capital punishment. Though many interest themselves in the matter of parole out of sympathy for the prisoner, many more, and perhaps a growing number, base their support on the fact that sooner or later the convict must inevitably be returned to society and society can only be protected by the insistence upon a limited period of supervision and control.

6. The Policy of Punishment in Early Illinois.

Until recent years the so-called Neo-Classical School of criminological thought seems to have been dominant in America and it prevailed in Illinois in a much brutalized form at the time of its admission into the Union. This is evidenced by a perusal of the Revised Codes of Illinois of 1827, in which we find no provision for probation and parole. Though some discretion was allowed the judge as to the term of imprisonment and the number of lashes to be inflicted, there seems to have been but little recognition of the defense of mental deficiency and extenuating circumstances.

Murder was punishable by death and rape by not more than one hundred stripes and imprisonment for not more than ten years. For arson, a penalty was inflicted of not more than one hundred lashes on the bare back and imprisonment not exceeding three years; for burglary not less than fifty nor more than one hundred lashes, a fine of not more than one thousand dollars, and imprisonment not to exceed three years; for robbery a fine not exceeding one thousand dollars, not less than fifty nor more than one hundred lashes, and imprisonment not exceeding three years; and for larceny a fine of not less than one-half the value of the thing stolen, not more than one hundred lashes, and imprisonment for a term not exceeding two years.

This code well illustrated the theories of the Neo-Classical School. In it there was no solicitude for the welfare of the criminal; no suggestion of any mental or physical deficiencies which might have been conducive to his criminality. It was a code of severe punishments which were remitted only in the case of the insane and feebleminded, and children under the age of ten years.

Following the classical and neo-classical ideas it sought to intimidate and yielded to the impulse of revenge. The lash, except in what might be called the politer crimes and in those which the members of the legislative body might themselves conceivably commit, such as the embezzlement of public funds, was the chief instrument of punishment. The terms of imprisonment were short as compared with those of more modern times, and this fact in itself negatived the idea of any inclination on the part of the state to reform the criminal or to inaugurate any system of parole. It is only fair to add, however, that the severity of the code, the short terms of imprisonment which made reform impossible, and the use of the lash in lieu of imprisonment, may have been the result not so much of cruelty as of the fact that in the new and almost wild territory of Illinois there were few if any jails and the difficulties attending imprisonment were very great.

7. The Reaction Against Excessive Severity; the First State Penitentiary; and the More Humane Criminal Code of 1833.

So far we have considered the earlier history of Illinois and a criminal law which was marked for its severity. Between 1827 and 1833, however, not only does there seem to have been a reaction on the part of the neighborly and (in all times and in all countries), fundamentally sympathetic and human frontiersmen, but the thought of the outside world seems to have been felt, the result being a marked change in the legislative attitude toward crime and toward the criminal. Even before flogging as a punishment for crime was forbidden by law, it is quite clear that in many instances the courts refused to impose the penalty and when imposed the officers of the law refused to inflict it or mitigated its severity as much as possible.

By far the most prominent exponent of the new penology was John Reynolds, Governor of the State of Illinois from 1830 to 1838, at one time a member of Congress, and characterized by John J. Thompson in an article on page 48 of volume 6 of the Illinois Law Quarterly as "the rough diamond of early Illinois statesmen." To Reynolds, at any rate, credit is due for the passage of the act of February 18, 1837, which provided for the establishment of the first state penitentiary at Alton, and for the passage of the more humane criminal code of 1833. Prior to this time the only prisons in Illinois were county jails and even those were not to be found in all of the counties. The erection of the penitentiary made possible longer terms of incarceration and the abolition of flogging and other barbarous punishments.

The criminal code of 1833 abolished flogging as a punishment for crime and lengthened the terms of imprisonment. Murderers, as before, were punished by death as were also those who were convicted of the crime of treason. Rape was punished by confinement in the penitentiary for a term of not less than one year and which might extend to life. Arson of any dwelling or mercantile or public building was punishable by a term of imprisonment for not less than one nor more than ten years, and arson of other buildings for a term not exceeding two years and a fine not exceeding one hundred dollars. The penalty imposed for burglary in the night time was a term of not less than one nor more than ten years; for robbery, confinement in the penitentiary for not less than one nor more than fourteen years; for larceny, confinement for not less than one nor more than ten years; for embezzlement by a public servant, a term of not less than one year nor more than ten years; for counterfeiting, confinement for not less than one nor more than fourteen years; for bigamy, a fine not exceeding one thousand dollars and imprisonment in the penitentiary not exceeding two years; for adultery, a fine of not more than five hundred dollars, or imprisonment of not more than one year; and for fornication, a fine not exceeding two hundred dollars and imprisonment not exceeding six months. Persons under the age of eighteen years were to be confined in the county jails except in cases of robbery, burglary or arson, for the perpetration of which crimes they were sent to the penitentiary.

The act of July 1, 1833, does not seem to have contemplated any system of parole or of probation, or the indeterminate sentence. Though the very

term penitentiary presupposes repentance and reformation, the reformation of the prisoner is not specifically dwelt upon and humanity appears to have been the only incentive of the statute.

8. The Era of Reform, after 1847. After the year 1847 there was decided evidence in Illinois of the influence of the humanitarian and democratic revival which was world-wide in its origin and of which the movement for the abolition of slavery in America was but a part. Crime came to be looked upon by an increasing number of persons as a symptom of moral disequilibrium and the criminal as a person of limited responsibility. Oliver Wendell Holmes had written "the best way to train a child is to begin with his grandfather." Lacassagne had given expression to the thought "there are no crimes, only criminals." Studies had been made of criminal propensities, a notable later example of which is Dugdale's "Study of the Jukes." In his Utopia, Sir Thomas Moore had long since uttered the bitter complaint that society "first made criminals and thieves and then punished them." Bulwer had expressed the thought that "society has erected gallows at the end of a lane instead of guide posts and direction boards at the beginning."

Studies in heredity and environment had convinced many that the reformatory held the greatest promise of achievement; that no system, however remarkably devised, would ever succeed in totally obliterating criminality, but that at least some possibility existed in inculcating new motives, and, if not reforming the criminal entirely, making him less dangerous to society upon his release.

Men, such as Archbishop Whately, had protested against the severe punishments inflicted in the British penal colonies. Maconochie, the superintendent of a penal colony in the Norfolk Islands, had established a system which allotted a prescribed number of marks to every convict, depending on the nature and character of his offense, and which he was required to redeem by good behavior before a ticket of leave was granted to him. Flagellation was gradually coming to be abolished throughout the civilized world. Men and women were beginning again to read the principles of "The Social Contract" and the writings of Montesquieu, Voltaire, Diderot, Turgot and Condercet, David Hume, Adam Smith, Tom Paine, Jeremy Bentham, and the Italian, Beccaria. Montesquieu had written, "As freedom advances, the severity of the penal law decreases." Romilly, Beccaria, Howard and Elizabeth Fry had all spoken and labored. Sir Walter Crofton in his Irish system, had inaugurated a grading and classifying system. Whately, Combe, and the two Hills had advocated the indeterminate sentence, and Marsangy a parole system. Montesanos and Obermeyer had placed emphasis on productive labor.

In America the Philadelphia Reformers and the Society of Friends had laid the foundation for a humaner criminal jurisprudence. In Connecticut and Rhode Island the Christian reformer, Henry Bernard, had pleaded for the criminal children of the poor.

Sympathy was in the atmosphere—the New Testament had overcome the Old Testament. What was true in the world at large was true in the State of Illinois.

9. *The First State Reform School, and the Beginning of Paroles.*

In an act of March 5, 1867, we find a provision for the creation of a reform school "for the discipline, education, employment, and reformation of juvenile offenders and vagrants in the State of Illinois (Cook County excepted, there being a reformatory already established there) between the ages of eight and eighteen years."

And in Section 17 of this act, we find perhaps the beginning of the parole system in the State of Illinois, though the act provided for little more than an enforced indenture or apprenticeship under the form of a ticket of leave.

10. *A System of Parole for Juvenile Offenders.*

The Act of 1867 was followed a number of years later by an Act of June 18, 1891, which provided that—

> "Sec. 16. The said board of managers shall have power to establish rules and regulations under which prisoners within the reformatory may be allowed to go upon parole outside of the reformatory building and enclosure, but to remain while on parole in the legal custody and under control of the board of managers and subject at any time to be taken back within the enclosure of said reformatory; and full power to enforce such rules and regulations to re-take and re-imprison any inmate so upon parole, is hereby conferred upon said board, whose order, certified by its secretary and signed by its president with the seal of the reformatory attached thereto, shall be a sufficient warrant for the officer named in it to authorize such officer to return to actual custody any conditionally released or paroled prisoner, and it is hereby made the duty of all officers to execute said order the same as ordinary criminal process: Provided, that no prisoner shall be released on parole until the said board of managers shall have satisfactory evidence that arrangements have been made for his honorable and useful employment, for at least six months while upon parole, in some suitable occupation."

As far as juvenile offenders are concerned, the Act of June 18, 1891, is our most important enactment. It definitely established a parole system as far as male juvenile offenders were concerned.

11. *The Abolition of the Use of the Lash, and the Substitution of Solitary Confinement.*

We have seen that in the year 1838 and during the incumbency of Governor Reynolds the use of the lash as an instrument of punishment for the original crime was abolished. It was not until 1867 that its use as a means of prison discipline was discontinued. Prior to 1867 the punishment was frequently and mercilessly inflicted, but we have serious doubts as to the authority of the warden, since, although in the Act of 1833 nothing was said concerning flagellation as a means of prison discipline, in the prior Act of January 6, 1827, the powers of the warden were defined and those powers did not include the use of the punishment mentioned. This Act provided:

> "Sec. 13. The said warden and other officers, agents, and servants, shall each of them have power to order any convict to solitary confinement, for misbehavior, refractory conduct, idleness, negligence in performing their daily task, impertinent or improper language, or breach of any of the rules and regulations; and shall immediately report the same

to the said warden, and the warden shall punish such convict therefor, by solitary imprisonment, for any term not exceeding thirty days, or may discharge the said convict from the imprisonment ordered by the said warden, officer, agents, or servants."

After 1867 there could be no doubt of the invalidity of the practice, and on page 30 of the Session Laws of that year and in Section 37 of Chapter 81 of the Statutes of 1868, we find the following provision:

"It shall not be lawful in said penitentiary to punish any convict by whipping in any case whatever. If, in the opinion of the Warden, it shall be deemed necessary in that case to inflict unusual punishment, in order to produce the entire obedience or submission of any convict, said Warden shall have power to punish said convict by solitary confinement in a dark cell and by deprivation of food except bread and water until such convict shall be reduced to submission and obedience."

In an Act of July 1, 1871, this section was amended so as to strike out every reference to solitary confinement and merely to provide:

"Section 37: It shall not be lawful in said penitentiary to use any cruel or unusual mode of punishment or to punish any convict by whipping whatever,"

and this wording has been retained in Section 37 of the chapter on penitentiaries of our revised statutes up to the present time.

12. The Abuse of the Punishment of Solitary Confinement.

Although the legislature authorized the punishment of solitary confinement, we believe the solitary confinement as now imposed at Joliet, or what the prisoners term "stringing up," is improperly inflicted. There the practice has prevailed of compelling recalcitrant men to stand often for twelve hours a day with intervals of a half hour for meals with their hands projecting through the bars of the cell securely bound, and in some instances this punishment has been continued for as long as thirty days. That this is a cruel punishment there can be no question, and though there has always been some dispute as to what the term "cruel or unusual" as used in our statutes and in our constitutions really means, we have no doubt that it would be considered cruel and unusual by the Supreme Court of Illinois. The purpose of the punishment, it is candidly stated, is "to break" the prisoner and it certainly accomplishes the result if long continued. It leaves to be returned once more to society at the end of his sentence a crippled and brutalized man. There is no man living who can stand erect, under the conditions described, for even ten days without serious injury to his physical condition, to say nothing of the deleterious effect upon his mind.

There can be no doubt that in the original statutes the legislature spoke of solitary confinement in the then general and accepted sense of the term which was isolation merely, unaccompanied by torture. It expressly stated what should be the other elements of discomfort and these were confinement in a dark cell and deprivation of food except bread and water.

It is true that the statutes of 1867 were amended by the Act of July 1, 1871, in which nothing was said concerning solitary confinement, and the legislature was content to provide in Section 37 that—

"It shall not be lawful in said penitentiary to use any cruel and unusual mode of punishment or to punish any convict by whipping whatever."

The Act of 1871 must be construed, however, in the light of what happened before. It prohibited cruel or unusual modes of punishment, and since prior to 1871 "stringing up" had not been authorized and had been considered as cruel, it must be considered as cruel or unusual under the later statutes.[1]

In any event we do not believe that such a practice results in furthering prison discipline. There is a sense of fair play and sympathy for the under dog which, in the minds even of convicts, makes a martyr and not a culprit of a man whom they believe to have been mistreated. Furthermore, we have not in all instances been sufficiently judicious in the selection of our prison guards and our prison wardens, and we have too often placed our convicts at the mercy of ignorant and brutalized men. Prison punishments are usually inflicted because of the complaint of a guard. It is, in fact, often considered ruinous to discipline not to uphold and substantiate the guard and not to place full credence in his complaint. Too often the complaints against prisoners are made from mere personal vindictiveness or from the desire to exercise and to manifest authority which is the prevailing vice of the ignorant man. We realize, of course, that many of the prisoners are desperate characters and have to be dealt with as such. There is reason, however, in all things.

That such treatment is effective as a punishment, there can be no question, but of its efficacy as a means of reformation and as applied to a person who must inevitably sooner or later be returned to the community either as a parolee or at the expiration of his sentence, there is, at least, some doubt.

13. The Good Time Allowance. By an act passed February 23, 1863, allowances for good time were provided for by the legislature, and this policy was continued in an act of March 19, 1872, and remained a part of the law of Illinois until July 1, 1925. The allowances provided for by the act of 1872 were as follows:

Term to be Served if Full Time is Made:

1st year—11 months
2nd year— 1 year and 9 months
3rd year— 2 years and 6 months
4th year— 3 years and 2 months
5th year— 3 years and 9 months
6th year— 4 years and 3 months
7th year— 4 years and 9 months
8th year— 5 years and 3 months
9th year— 5 years and 9 months
10th year— 6 years and 3 months
11th year— 6 years and 9 months
12th year— 7 years and 3 months
13th year— 7 years and 9 months
14th year— 8 years and 3 months
15th year— 8 years and 9 months
16th year— 9 years and 3 months
17th year— 9 years and 9 months
18th year—10 years and 3 months
19th year—10 years and 9 months
20th year—11 years and 3 months
21st year—11 years and 9 months
22nd year—12 years and 3 months
23rd year—12 years and 9 months
24th year—13 years and 3 months
25th year—13 years and 9 months

[1] The punishment of solitary confinement was probably not specified in the Act of 1871 merely on account of the fear that, if mentioned, it might be deemed the only method of punishment authorized.

By an act approved June 25, 1925, however, the act of 1872 was substantially repealed and in its place was substituted a provision that—

> "The Department of Public Welfare is authorized and directed to prescribe reasonable rules and regulations for diminution of sentences on account of good conduct of persons heretofore and hereafter convicted of crime who are confined in the state penal and reformatory institutions."

Under this provision the members of the Board of Parole, who have now succeeded to the powers of the Department of Public Welfare, have adopted a regulation in which they have substantially approved of the policy of the statute of 1872. In this practice we believe the Board has acted wisely. There can indeed be no doubt that the hope of a good time allowance does much towards maintaining the morale of the prisoner and in making him subservient to prison discipline. Even at the time when the flat sentence method prevailed in Illinois, we are prepared to believe that in many instances the penalties were excessive. Under the indeterminate sentence law when a man is sentenced to a term of from one to ten or one to twenty years, as the case may be, and the actual period of his incarceration is to be determined by the Board of Parole, no harm whatever can come from letting him believe that good behavior on his part may induce the board to consider his parole at an earlier period than they would if he should be refractory.

14. The General Adult Parole Acts of 1895, 1897 and 1899.

Although there was a general revision of the criminal code on March 27, 1874, followed by two acts relating to the hiring out of convicts, passed on June 16, 1871, and March 25, 1874, no more attention seems to have been paid to the question of parole until June 22, 1893, when a state home for Juvenile Female Offenders was created and a partial parole system similar to that established for boys in the Act of May 5, 1867, was provided for. This provision, however, was more in the nature of a plan for indenturing or securing the adoption of the girls than strictly one of parole.

In 1895, however, and largely, we believe, through the influence of Governor John P. Altgeld, we find a General Adult Parole Act which was made applicable to the penitentiaries at Joliet and Chester, and although this act, when first introduced in the Assembly, applied to misdemeanors only, it was amended before passage against the protest of Senator, then State's Attorney, Charles Deneen and others, so as to include all felonies excepting treason and murder. On June 10, 1897, it was further amended and manslaughter and rape were added to the excepted crimes.

Under this act the Board of Prison Management functioned as the Parole Board.

15. The Indeterminate Sentence.

In the Act of 1897 also, and in order that the parole system might be effective, a provision for an indeterminate sentence was added for all crimes excepting treason, murder, manslaughter, and rape, the statute decreeing that the court—

"shall not fix the limit or duration of the sentence and the term of imprisonment of any person so convicted, and sentence shall not exceed the maximum term provided by law for the crime for which the person was convicted and sentenced, making allowance for good time as now provided by law."

Under this act the power of parole was again vested in the Board of Prison Managers but it was provided that from and after 1897 the State Board of Pardons, if then created, should exercise these powers.

Habitual Criminal Exception.

There was also a section to the effect that the provisions of the act should not apply:

"so far as they concern his parole to any person over 21 years of age convicted and sentenced to a penitentiary in this state who may be shown, upon his trial, to have been previously sentenced to a penitentiary in this or any other state or county, but such person shall be held and considered as an habitual criminal and shall be required to serve the maximum sentence provided by law for the crime for which he has been convicted, less the good time which he may earn by good conduct as now provided by law."

Provision for Fixed Minimum Sentences.

In an Act of April 21, 1899, there was still another revision or amendment and some important changes were made. The first of these was in relation to the indeterminate sentence which the prior acts had left entirely indefinite as to the minimum time to be served. Section 1 of the act of 1899 provided that in all felonies except treason and murder—

"The court imposing such sentence shall not fix the limit or duration of the same, but the term of prison shall not be less than one year, nor shall it exceed the maximum term provided by law for the crime for which the prisoner was convicted, making allowance for good time as now provided by law."

Repeal of the Habitual Criminal Exception.

In this act, also, was a general repealing section which repealed the Acts of 1895 and 1897, including the habitual criminal provision of the Act of 1897, and thus left even the habitual criminal subject to the indeterminate sentence and to parole.

By an act of June 25, 1907, however, the act of 1899 was itself repealed, and it would now seem that not only is the habitual criminal act of June 23, 1883, still in operation, but that the parole laws have no application thereto.

Recognition of the Continued Existence of the Governor's Pardoning Prerogative.

It is noticeable also that in the act of 1899 there is a recognition of the fact that, if sought to be applied as a part of the pardoning power, a

system of paroles would have been an encroachment upon the prerogatives of the governor, the sole jurisdiction in such matters seemingly being vested by the constitution in that officer. The act, therefore, made the parole or the eligibility to the parole a part of the sentence and expressly provided that—

> "nothing in this act shall be construed as impairing the power of the governor to grant a pardon or commutation in any case."

These acts were the beginning of the parole policy in the State of Illinois.

16. The First State Board of Pardons and Paroles. As we have seen, the Constitution of Illinois, though vesting in the governor "the power to grant reprieves, commutation and pardon after conviction, for all offenses except treason and cases of impeachment," contains a provision that such power shall be exercised "subject to such regulations as may be provided by law relative to the manner of applying for pardons." Though, therefore, the pardoning power of the governor undoubtedly includes the power to issue a conditional pardon which may take the form of a parole, and although this power as an ultimate right cannot be taken from him, opportunity is furnished for the establishment of an inferior board to which the applications for both pardons and paroles shall first be made and which can formulate reasonable rules and regulations in relation thereto.

By an act of May 31, 1879, the legislature required applications for reprieves, commutations and pardons to be in writing and to be accompanied by statements prepared by the judge and the prosecuting attorney. It also required public notice be given of these applications.

By an act of June 15, 1895, provision was made for a general parole system under the control of the Prison Board. By an act of June 10, 1897, it was provided that from and after July 1, 1897, the State Board of Pardons, if then created, should function in the place of the Prison Board. Contemporaneously therewith, by an act of June 5, 1897, a State Board of Pardons was created "to consist of three persons, not more than two of whom shall belong to the same political party, to be appointed by the governor by and with the advice and consent of the senate" and section 5 of the act provided that:

> "All petitions and requests for pardons and commutations shall be addressed to the governor as heretofore, and, as to form, accompanying statements, publication of notices, etc., shall be governed by the act of May 31, 1879, entitled 'An act to regulate the manner of applying for pardons, reprieves and commutations,' except that the three weeks' notice provided in that act to be given shall have reference to the hearing before the Board of Pardons, and not the governor; and every such petition or request shall, before its actual presentation to the governor, be filed and kept in the office of the Board of Pardons for the preliminary action of said board as contemplated by this act."

17. The Creation of the Department of Public Welfare in 1917; and of the New Parole Board in 1927—(a) The Legislation Prior to 1917.

In the early history of the state, although there was no recognition of the parole in the statutes, the power was, no doubt, exercised in certain cases by the governor under his constitutional power to grant pardons, reprieves and commutations and which, no doubt, included and still includes the power to parole, which is, after all, merely a conditional pardon or commutation.

Later in 1879 and under the constitutional provision that the legislature might make rules as to the method of applying for pardons, a statute was passed which provided that all applications should be in writing and accompanied by statements from the judge and the prosecuting attorney. Later still, in 1895, while the pardoning power was still vested exclusively in the governor and before any subsidiary board of pardons and paroles had been created, a system of paroles was provided for, which was to be exercised by a Board of Prison Commissioners to be appointed by the governor by and with the consent of the senate.

Then on June 5, 1897, a Board of Pardons was provided for, to consist of three persons, who also had to be appointed by the governor, by and with the consent of the senate, and a few days after, on June 10, 1897, another act was passed which amended the act of June 25, 1895, and took the power of parole from the Prison Board of Commissioners and vested it in the new State Board of Pardons just created.

(b) The Creation of the Department of Public Welfare in 1917.

This was the situation until July 1, 1917, when the Civil Administrative Code was passed, the Department of Public Welfare created, and the Board of Pardons and Paroles made a subdivision thereof. Under this act the former Board of Pardons was abolished and a new Board of Pardons and Paroles was created as a subdivision of the Department of Public Welfare, the nominal head of which was the director of public welfare, and whose active and operating officer was the superintendent of pardons and paroles. Who should compose the other members of the board, if any, was not clearly stated. Presumably the members were to be chosen from the personnel of the Department of Public Welfare, though we believe this practice was not always followed.

The Department of Public Welfare was composed of an assistant director of public welfare, an alienist, a criminologist, a fiscal supervisor, a superintendent of charities, and a superintendent of prisons. To this board, or to its subdivision, was entrusted the power of passing upon and recommending both pardons and paroles.

(c) The Act of 1927 and the New Board of Paroles.

In 1927, however, a radical departure was made, and by a bill approved July 6, 1927 (Laws of Illinois, 1927, page 844), the Civil Administrative

Code was amended so as to add to the clause relating to the Department of Public Welfare, the words:

> "The Parole Board shall consist of the supervisor of paroles, who shall be chairman, and nine other members,"

and by adding to the act a new section which provided that—

> "Sec. 13, p. 54a. The Parole Board created by this act shall exercise and discharge all the rights, powers and duties heretofore vested in the Department of Public Welfare in granting paroles to persons sentenced or committed for crime or offenses, but the supervision and after care of persons so paroled shall remain in the Department of Public Welfare. The action of a majority of all the members of the board shall be the action of the board and no parole shall be granted except upon the concurrence to be recited in the records of the board. In consideration of any parole, said board shall consider and give weight to the record of the prisoners' conduct kept by the superintendent or warden."

The changes made by the act of 1927 were sweeping. Though they left the original Board of Pardons unchanged, they created an entirely separate and distinct Board of Paroles which was to be composed of the supervisor of paroles and nine other members.

As far as pardons were concerned the board, as before, was to be composed of the director of the Department of Public Welfare, the superintendent of Pardons and Paroles, and some or all of the other members of the Department of Public Welfare; viz., the assistant director of the Department of Public Welfare, the alienist, the criminologist, the fiscal supervisor, the superintendent of charities, and the superintendent of prisons.

As far as paroles were concerned, a new board was created, composed of the superintendent of pardons and paroles and nine other members who could be appointed by the governor and did not necessarily need to occupy any other office in the Department of Public Welfare. For this board, also, a separate appropriation was made.

It is to be remembered that both of these boards sit in an advisory capacity merely, and though their recommendations have uniformly been recognized by the governor, the governor is not necessarily bound thereby, since the pardoning power is vested in him by the constitution and the parole is merely a conditional pardon.

18. The Cost of Parole.

As we have before seen, the legislature of 1927 made of the Board of Paroles a separate and independent body, but, though it also made its chairman the superintendent of paroles, left in the Department of Public Welfare as a whole the care and supervision of the parolees after they had been released from the penitentiary. It, in fact, made of the Board of Paroles a semi-judicial body and entrusted to it the power of passing upon and granting parole, but left to the department the care and custody and supervision of the convict after he had been released. For the furtherance and maintenance of the Board of Paroles, it made an appropriation of $349,800 for the biennial period, and to the parent Department of Public Welfare, and for the supervision of the parolee, it granted the sum of $2,991,876 for the same period of time.

We are of the opinion that these appropriations were wisely made and

were in the interest of economy since either an adequate system of parole had to be provided for and financed or new penitentiaries had to be constructed. We glibly talk of long sentences of imprisonment but we seldom think of the staggering cost to the community of these sentences. Mr. Clabaugh told the truth when he stated to the members of the legislature in 1927 that they were confronted with the choice of either appropriating for and making efficient the system of the indeterminate sentence and of the parole or of expending nearly forty millions of dollars during the next ten years in the erection of and maintenance of penitentiaries and reformatories.

On July 1, 1926, there were 5,796 persons confined at Joliet, Chester and Pontiac. On July 1, 1927, this number had increased to 6,342. Everyone knows that the number of criminals who have been actually caught, tried, and convicted form but a trifling percentage of the number who commit crimes. Not only in Illinois but in every state in the Union we are rapidly coming to realize the inefficiency of our police methods and of our systems of criminal trial and prosecution and there can be no doubt that in the coming years these methods will be greatly improved. If they are improved, thousands of additional persons will be arrested and convicted, and the populations of our penitentiaries and reformatories will be correspondingly increased. Even as things now are, an increase of but one year in the actual period of incarceration would involve the erection of, at least, two penitentiaries the size of Joliet.

Commitments to Joliet, Chester and Pontiac between June 30, 1926, and June 30, 1927, numbered 3,373. On June 30, 1927, there were already in Joliet 2,882 prisoners; in Chester 1,824; and in Pontiac 1,636. These are the figures given on April 18, 1927, and in June the number must have been fully as great. All of these institutions are overcrowded to such an extent that their proper management is greatly interfered with and the proper training of their inmates is practically impossible.

In order that room may be made each year for the 3,373 new convicts, (and that number will increase as time goes on), at least 3,373 persons must be released from our institutions, or new institutions must be built to provide for the increase. These are facts which must be confronted, and they have been acknowledged in other states. Even in Minnesota it has been estimated that an increase of but one year in the average penalty would involve the erection of a new penal institution.

Every prisoner in our penitentiaries also involves a cost to the state for supervision and maintenance. What this cost actually is it is difficult to determine, for the statistics in regard to these matters are unreliable. The estimate at Sing Sing for the year 1926 was $382.90 for each man, or a total of $559,806.97 for the 1,562 inmates.[1]

In Illinois the estimate for the year ending June 30, 1926, was $286.49 per capita at Joliet; $263.63 at Southern Illinois; $274.36 at Illinois State Reformatory; $476.29 at the Woman's Prison; and $347.12 at the Illinois State Farm. According to these figures, if we take the estimate at Joliet for the year 1926 as a basis, the yearly cost of the 3,373 persons who would

[1] See report of George W. Alger on the "Board of Paroles of New York" (J. B. Lyon Co., Albany, 1926).

have to be provided for in the new penitentiaries would amount to $966,340.77.

The advantage of the parole system is that, although the prisoner is not released from supervision until the maximum term of his sentence has expired, he is not required to be confined in the penitentiary but is able to earn his living without any charge to the state except his small per capita of the overhead expense of the Board of Paroles.

19. *Justification for the Indeterminate Sentence and the Parole.*

The wisdom of the policy of the indeterminate sentence and the parole, if properly administered, is now almost universally recognized, not only in America, but throughout the civilized world. The policy can no longer be classed as a product of unenlightened sentimentalism.

In 1922 only four states of the American Union were without either the indeterminate sentence or the parole system. In 1925 the laws of forty-six of the forty-eight American states made definite provision for the release of prisoners on parole, only Mississippi and Virginia having no such laws.

In 1925 also, the International Prison Commission, meeting in London with fifty-three nations represented, adopted a resolution favoring the indeterminate sentence and the parole laws and recommending their adoption to the governments of the civilized world.

The policy of parole is fundamentally humane, but the fact of its humanity does not militate against its profitableness and its practicability, nor the measure of protection that it affords to society. It has been these elements of public protection rather than the welfare of the individual prisoner which have led to its general acceptance. It has been adopted indeed more as a means of supervising and controlling the conduct of the prisoner after his release from the penitentiary and minimizing the possibility of his returning once more to the paths of crime, than for the purpose of reducing his term of imprisonment. As administered by Mr. Clabaugh, it certainly has not reduced the terms of imprisonment to a lower level than would have prevailed if the flat sentence method had been adhered to by the legislature.

20. *Same: Necessity of Adequate Supervision.*

If adequately administered, the policy of releasing prisoners on parole serves both to protect society and to benefit the individual prisoner. The indeterminate sentence is necessary to its successful operation. It needs honesty in its administration, and ample financial support. Above all it needs the same divorcement from so-called practical politics which usually is accorded (though not always of late in Chicago) to our public schools, and likewise our public hospitals and state institutions of higher learning.

21. *Same: Failure of of the Flat Sentence Policy.*

The demand for the parole system arose from the fact that in the great majority of cases, in all cases in fact, except where the death penalty or life sentence was imposed, the convict sooner or later had to be returned to society, and the prison system as originally administered and the practice of looking upon the penitentiary as a place of

punishment merely and at the end of that punishment turning the prisoner loose without any further supervision or even protection, had proved a failure.

We had punished, it is true, and no doubt we had furnished object lessons to other potential offenders, but only too often we had returned to society brutalized and discouraged men and women who were incapable and often undesirous of adapting themselves to the requirements of their new freedom and who, therefore, not only returned once more to careers of crime, but became teachers and missionaries of the art.

We became convinced that reformation as well as punishment was necessary and that in order to assure that reformation and to enable the convict once more to take his place among the ranks of the honest workers, some measure of supervision and some measure of protection should be afforded to him after his release from the penitentiary. This supervision would be difficult under any fixed penalty system, as, after the sentence had been served, legally speaking the crime had been atoned for and we had no right to further control the culprit. We could, however, provide for an indeterminate sentence. We could sentence an offender for a term of from one to ten or one to twenty years. We could put it in our power to release him at the end of a year or a few years, and in crimes such as the larceny of $20.00 or $30.00 surely a year would be sufficient. But we could also still retain control over him and keep him under parole until the expiration of the ten or twenty years. By this means we could not merely supervise his conduct but we could protect him from the annoyances of the police, who only too often, hound a man with a record so that it is impossible for him to obtain or keep employment.[1]

22. *Same: The New System Not Popular Among Criminal Classes.*

It is a mistake to confound the indeterminate sentence and the parole with the absolute pardon and to imagine that a prisoner who is released upon parole is ipso facto free from all punishment. Legal restraint and legal supervision are a restriction upon liberty and to that extent a punishment, and, though released from the walls of the penitentiary, the convict is still under the control of the law and is deprived of his liberty. At any moment, and until the termination of the period of his maximum sentence, he may be rearrested and returned to the penitentiary if his parole be violated. He is not a free man.

The real fact is that the indeterminate sentence is not popular with the professional criminal classes. When fixed sentences alone are imposed the criminals rely not merely upon the probability that perhaps a lesser plea

[1] During the past year there has prevailed an unfortunate practice in Chicago of weekly arresting every ex-convict or person with a criminal record, even though no offense can be charged against him, for what is called supervision and to enable persons who complain of burglary and other offenses to possibly identify someone out of the herd that is incarcerated.

This practice, of course, makes it impossible for any ex-convict to retain or even to obtain permanent employment, as employers naturally desire the services of such persons at their plants and factories and not in the police stations.

In such a case the only protection that the ex-convict possibly has is the protection which is afforded by the parole officers who are the guardians of such persons and have the right to call the police to account and to put a stop to the practice.

will be accepted, but on the kind-heartedness of the individual judge and on the appeal that may be made to him by family and in many instances political influences. When they are confronted with an indeterminate sentence, they know that their release from incarceration is contingent upon their own behavior and a more thorough investigation of the causes which led to the commission of the crime. The discipline of imprisonment under the indeterminate sentence is more severe since the prisoner must always be on his guard and be sedulous to obey all regulations.

When the sentence is fixed and determinate, except so far as good time allowances are concerned, it matters not what the prisoner's conduct may be. So, too, usually at the trial and almost always where a plea of guilty is entertained, there is no inquiry into or an opportunity to investigate the prior conduct of the defendant, his past crimes, or his associates. Under a system of paroles, if properly administered, all of these matters can be and are inquired into and constitute determining facts on the question of the duration of the convict's period of incarceration, and when, if at all, it would be safe to return him to society.

23. Length of Indeterminate Sentences.

It is an interesting fact that (contrary to the usual understanding) in recent years the periods of incarceration which have been required by our Board of Paroles have been longer than those which were formerly imposed under the flat sentence practice and much longer than those which are usually imposed in the federal courts where the indeterminate sentence does not prevail.

Section 262 of Chapter 38 of the Revised Statutes of Illinois (Cahill 1927), for instance, provides a punishment of not less than one year nor more than twenty years for forgery of any bank bill or promissory note, and in Section 793 of the same chapter the indeterminate sentence section provides that no definite term shall be fixed but the sentence shall be from one to twenty years. Under the federal statutes the maximum penalty for forging a postal money order, which is certainly quite a serious offence, is five years or a fine of $5,000 or both, and under this statute and in taking a random view of the federal dockets for the northern District of Illinois, we find a sentence in 1911 of 2½ years; in 1915 of 24 hours; in 1919 of 2 years; in 1919 of 18 months; in 1921 of 9 months, and in 1925, one of 4 months, one of 30 days and one of 60 days.

Under the indeterminate sentence laws of Illinois the minimum penalty would be one year and the maximum would be twenty. The Board of Paroles could not parole the offender until the expiration of the first year. Even then it would not release the prisoner from punishment or supervision, but would consider him under parole and liable at any time to be returned to the penitentiary until the expiration of the twentieth year.

24. Defects in the Fixed Sentence Plan.

One justification for the fixed sentence plan is the assumption that, since a main purpose of punishment is the deterring of others from committing a similar offense, the potential criminal would fear the fixed rather than the indeterminate sentence. This assumption, however, has not been proved. We are firmly of the opinion that not only does the professional criminal fear the indeterminate more than the fixed sentence,

but that most criminals either act upon impulse or rely upon their chances of escaping detection. Almost eighty-five per cent of our crime, indeed, is committed by boys and youths between sixteen and twenty-five years of age, and youth acts upon the impulse and is reckless of the consequences. The corruption and favoritism in our political life also has led thousands to believe that in any event the local politicians will take care of them.

The assumption also that the trial judge is in a position to determine properly the length of the sentence is hard to justify. To a limited degree it may be true in the country districts, where the judges know intimately almost every permanent resident within their jurisdiction. As far as these residents are concerned, the judges are able to form some estimate of the real facts and of the real culpability of the criminal and, therefore, of the measure of punishment that should be imposed. Generally, however, they do not possess this knowledge in regard to transients and non-residents, and it is rarely if ever possessed by the judges in our great cities, especially in the so-called police courts where the culprits are only too often herded through without ceremony and with the speed that is used in our slaughter houses and packing plants.

Even if punishment is the only desideratum, it is therefore quite apparent that in many instances the sentences imposed will be either too long or too short. If the theory of punishment and the reformation of the offender is the motive, and the fact is recognized that, in the great majority of cases, the prisoner must sooner or later be returned to society, it is quite clear that as far as possible he should be trained and reformed, and when released from the penitentiary or from the prison, should be a "safe risk" and not a future danger to the community, and this being the case, a proper measure of punishment and of the term of imprisonment is of the utmost importance.

It is a noticeable fact, indeed, and one of no little significance, that in spite of our present day clamor for more drastic penalties and for longer terms of imprisonment, the records which have been so carefully compiled by Professor Burgess disclose a larger proportion of men and boys who have made good on parole after a short period of incarceration than those who have been confined for longer periods of time.[1]

The same conclusions were also reached by Miss Helen Leland Wytmer in a study of paroles in the state of Wisconsin which was conducted at the request of the State Board of Control and published on page 384 of Volume 18 of the Journal of the American Institute of Criminal Law and Criminology.

If the idea of reform is entertained at all it must be very clear that the trial judge cannot anticipate in advance the reformatory effect of the man's incarceration. So, too, any system which places the discretion entirely in the trial judge must result in glaring inconsistencies and in a rankling sense of injustice which will be disastrous not merely to reformation and to prison discipline but to the respect for the law itself which, above all others, the convict should be made to feel.

No one who has had any experience in or any knowledge of our penitentiaries has failed to observe that it is the square deal which appeals most

[1] Those imprisoned for two years furnish the best record on parole.

to the criminal and which is the most potent factor, not only in reformation, but in the willingness to yield to prison discipline. If a convict discovers that he has been arbitrarily sentenced to a term of ten years for an offense for which his cellmate has only been sentenced to two, he will, in most instances, be not only an unruly prisoner, but an anarchist when returned to society.

The theory of the indeterminate sentence and of the parole system is not punishment merely, but reformation by training accompanied by a punishment so severe that other persons will be warned against committing the same offense. It punishes the convict to vindicate society and as a warning both to himself and others. But it also realizes that the convict will sooner or later be restored to the community and it seeks to so reform and to so control his conduct after release that he will not again return to crime.

25. *Indeterminate Sentence and Parole Favored by the Committee if Adequately Provided for and Properly Administered.*

The committee, then, is of the opinion that the system of the indeterminate sentence and of the parole is preferable to that of the flat and definite sentence, but to this statement and conclusion, it wishes to make an emphatic qualification—that it is only preferable if it is properly administered.

Parole involves discretion and supervision. It necessitates officers who shall be properly trained and who shall be free from political influences. It necessitates men of judgment and intelligence. It necessitates a force sufficient in number to cover the field. It necessitates time and opportunity for study and investigation. It necessitates the proper administration of our penitentiaries and reformatories. It necessitates the intelligent co-operation of the police after the prisoner has been released. It involves adequate appropriation. It involves honesty.

26. *Problem of Parole Not Yet Solved in Illinois.*

Nowhere in America have we as yet provided all of the requisites and made a really efficient administration possible. "The interested public," says Miss Jane Addams, "has assumed that all is well because a good law has been passed and put into operation and no one pays any further attention to it." In many instances we have had honesty, but in practically none have we had an adequate force, adequate appropriations, and sufficient freedom from political control. Since the last session of the legislature we have gone farther in Illinois than, perhaps, in any other state. We have, at any rate, made larger appropriations which have made it possible for the employment of a larger and more intelligent force. We have not, however, divorced the system from the influence of politics and the danger of political control. Before us is a magnificent opportunity. We have laid the foundations and we should make them sure.

On being asked what she thought of the experiment of prohibition in America, a distinguished English woman recently answered that she did not know because, as far as she had been able to learn, the system had never been satisfactorily administered or tried, and the same thing is true of the parole system in America.

With the one exception of Illinois, the legislative appropriations have been ridiculously small and the number of employes provided for has been

entirely inadequate. The last session of the Illinois legislature was generous, but it failed to save the system from the handicap of partisan politics.

To this aspect we now must turn.

27. Partisan Politics and the System of Probation and Paroles.

The Act of July 6, 1927, accompanied as it was by a large appropriation, was a landmark in American jurisprudence and has given much hope for success in the future. However, it still left the system radically defective. It did not go far enough in providing for the new board. It did not provide for a rotation in office which would guarantee it against political domination. It imposed limitations on the activities and freedom of the board which can find no justification in public expediency. It greatly improved the old system by the creation of a new and practically independent Board of Paroles. It was radically wrong, however, in limiting the activities of the board to the granting and refusing of paroles, and in denying to it, as an independent body, the supervision of the parolee after he had been released from the penitentiary and the parole had been granted.

It is true that the chairman of the Board of Paroles is also the supervisor of paroles and as such is entrusted with the supervision of the parole officers and of the paroled convicts. He has, however, no power either to appoint or to discharge these officers and employes save, and in so far as the governor and the Department of Public Welfare may consent.

It is indeed quite clear that the Board of Paroles should have exclusive charge, not only of the act of paroling, but of the management and training of the parolee. The success of any parole system depends entirely upon the wisdom and justice and intelligence that it shows, not only in the granting or refusing of the parole, but in the care of the convicts after they have been released from the penitentiary. The parole officer is one of the most important units in the system. He should not be the political agent or political appointee of any governor or of any political board.

The subordinate parole officers, therefore, who are entrusted with the duty of watching and protecting the paroled prisoner, should be responsible to the Parole Board and the Parole Board alone, and the Parole Board itself should as far as possible be non-political.

If these parole officers and investigators are appointed by the governor or any political organization or department, and if their office is considered a reward for political services, not only will they be half efficient; not only will they at all times be liable to corruption, but three-fourths of their time will be spent in obtaining votes for their chief or for the members of their political organization rather than in watching over and caring for the parolees. Even, as is now perhaps often the case, the parolee himself will be led to believe that it is his duty to aid the political fortunes of his custodian and of his benefactor, and to do what he can to obtain votes from his associates, often in the underworld, for these persons.

We have not, indeed, to go far afield to find illustrations of these influences. It is a matter of common knowledge that the game wardens of many of our states have been merely political agents and have been counted upon to help in the election of governors and even United States senators. These men, however, have been entrusted by the law merely with the pro-

tection and care of wild animals, while the parole officers are entrusted with the protection of society and the care and custody of the lives and fortunes of American citizens.

The Board of Pardons and Paroles, in short, should, as far as possible, be removed from politics and should be as independent as are the faculties of our state universities. It should have entrusted to it, not merely the duty of passing upon and granting or refusing the parole, but of the supervision of the convict while on parole. To it should be entrusted the control and appointment of its own servants and employes. It should have the power of discharging a dishonest or incompetent parole officer without the necessity of asking permission of any other political body or of any other political officer.

28. Same: Political Officers Generally.

What is true of our subordinate parole officers and agents is true of all others who are connected with the system, and if we are to have a system of probation and parole which shall be effective and properly administered, it is absolutely essential that not only these parole officers, but the wardens and guards of our penitentiaries and prisons, the members of our pardoning and parole boards, and even our judges themselves, be, as far as possible, removed from politics.

If, in the past, our probation and parole systems have been wrongfully used by our courts (and although there has been, no doubt, much exaggeration and much unjust criticism in this respect, there can be no doubt that in many instances they have been wrongfully used), the fact is clearly traceable to our political system and to the fact that in the past, and especially in our great cities, our judges have been but political footballs, and their tenure of office, to a large extent, has been dependent on the vote of the underworld. They may have had a seeming independence; they may not themselves have directly appealed to that underworld for support, but they have only too often been at the mercy of the politicians and ticket makers who, in only too many instances, are political factors merely and solely on account of the fact that they can control that vote.

29. Same: Danger of Partisan Political Appointments.

If the members of our Boards of Paroles and Pardons are appointed for political reasons and personal service they will be considered merely as cogs in a great political machine, and the temptation to listen to political arguments will always be present. We do not say that in the past these arguments have been generally listened to, or that they have been listened to in any particular case. We do know, however, that they have been made. We have even found them in writing and in, at least, one parole record, a letter to the board from a member of the legislature to the effect that he, the writer, was himself a candidate for office, that the primary or other elections were near at hand; that the friends of the prisoner for whom he was interceding were numerous, and represented a dominant national group; that they frequently called upon him and had been led to believe that he was their friend and was all powerful; that he had to have the votes of these people on election day; and if the board would see fit to grant the application, it would not only be an act of mercy,

but would materially help the writer in the coming election, and in doing so, would further the cause of dominant political factions.[1]

If these statements can be found in writing, how much oftener have they not been orally made, and we must remember that, not merely does political pressure often tend towards the improper granting of a parole or the improper granting of probation, but towards their improper refusal. Though, for instance, a bankers' association, a surety companies' association, or any other of the organizations which so often protest against the granting of probation and paroles, seldom raise the political question or make political threats, the influence in politics of these organizations is apparent, and no candidate for political office desires to incur their hostility or opposition.[2]

30. Same: Partisan Politics and Our Penitentiaries.

We have before referred to the subordinate parole officers, and what we have said concerning them equally applies to the wardens and officers of our penitentiaries and to our prison guards. If a system of paroles is to be effective, every effort should be made to reform the prisoner and he should be treated with the greatest intelligence and humanity, although, of course, there is and should be an element of punishment in all prison sentences. Prisons, in short, should be looked upon not merely as places of punishment, but as educational institutions, and as much care should be taken in the selection of a warden and the selection of the inferior officers and of the prison guards as is shown in the selection of the principals and teachers of our public schools and of the presidents and faculties of our state universities.

We are dealing with actualities and not with theories, for with rare exceptions and even with the greatest severity of punishment, the term of imprisonment will sooner or later come to an end and the prisoner will be returned to mingle with the common citizenship. This will be the fact even though no parole is granted or applied for, and if an application for parole is made, much must depend upon his behavior in prison and upon the influence which prison discipline has had upon him. The warden and the guards alone can properly administer that discipline and properly report upon that behavior. The warden and the guards alone can influence that behavior. They must not merely be policemen, therefore, but they must be leaders and teachers. Their estimates of the prisoners must be intelligent and fair and they must themselves be sufficiently intelligent to make those estimates.[3]

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[1] It is only fair to the board, however, to state that in this case no leniency was afforded.

[2] This constant pressure upon the political candidate to use his influence in obtaining pardons, probation and paroles is everywhere apparent, especially among the newer immigrants in the city of Chicago where there is a belief that such solicitation is justifiable. Many of them, indeed, have come from sections of the old world where the only means of obtaining justice is an appeal to and often a purchase of official influence.

[3] In a report submitted to the National Crime Commission on "Pardons, Parole, Probation, Penal Laws, and Institutional Correction" (1927), by Louis N. Robinson, we find the following:

"The fact that imprisonment can and should be made a more effective discipline is provoking an unusual and widespread discussion of prison personnel. In England, it has been customary to appoint as wardens, or governors as they are called in that country, army or navy officers who know something of the knack of handling men in groups. Wardens of this type have succeeded in maintaining good discipline and are for the most

31. Same: The Prison Guard.

Under present conditions our wardens and prison officers are often appointed solely for political reasons, with little regard to their qualifications, and the position of prison guard is not only given as a political plum, but is so poorly paid that few men of ability will accept it.

The position of the guard, indeed, is well nigh intolerable. His salary is ridiculously low and far less than that which can be earned by even the most incompetent mechanic. His hours of labor are very long—sometimes sixteen hours a day, and he himself is virtually a prisoner. His isolation is cruel, as under the rules which exist at Joliet, at any rate, he is not allowed to converse with the prisoners. He is chiefly engaged in watching idle men and our criminal neglect has allowed almost eighty-five per cent of the inmates to be idle. He, himself, is usually ignorant, and he gets into the habit of believing that his chief duty is to report infractions of the rules rather than to guard against them. He has to make a showing, as it were, and too often the inexperienced prisoner (we say inexperienced because usually the confirmed criminal has learned to size up the guard and is his superior in mentality) is the victim of the guard's own discontent and isolation. It is on the reports of these guards, nevertheless, that the punishments

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part successful and honest administrators. It is, however, pretty much agreed now by everybody that the present notion that imprisonment can be used for alteration of character demands wardens of another cast of mind, men not so much interested in maintaining discipline as in developing the best side of each individual prisoner. In Germany, warden after warden has said to me that he could not make the term of imprisonment what the people of the country now wished it to be unless he was given guards and other assistants of greater intellectual capacity who could understand something more than locking and unlocking cell doors. One warden said: 'I provide lectures for the prison staff but most of it, I fear, goes over their heads.' High officials in the government are perfectly aware of the situation, but insist that higher salaries will have to be paid in order to attract men of more ability and that can not be done until Germany is more fully recovered from the economic consequences of the war. Murchison speaks of a certain prison in the United States where the inmates averaged nearly a hundred per cent higher in the Alpha test than did the guards of that same prison. In view of this fact, the question may properly be asked: 'Whose character, guard's or criminal's, will be changed by contact in this prison?'"

Yet in the same report we find the following:

"The second thing that impresses the visitor to European prisons is the existence in the care and treatment of prisoners of a standard of care steadily and faithfully maintained. Our constantly shifting personnel, the almost complete absence of any known qualifications for guards and officers and the unthinkable muddle with respect to prison labor which altogether make impossible the development of a definite standard of care and treatment of prisoners in the United States, are difficulties which if not wholly unknown in prison administration in European countries, are of far less importance and in no way nullify what I have said with respect to the existence of a definite standard of care and treatment that is steadily and honestly maintained from year to year wholly unaffected by changes in the balance of power as between the various political parties within a given country. To throw out the entire staff of a prison from the warden down to the lowest guard simply to make places for the friends of the incoming administration, and to have this process repeated over and over again as has been done in many of our states, is a thing utterly abhorrent to the European's notion of public administration or of proper public protection of society from crime. All prison officials from the highest to the lowest who are faithful and suitable for the work can look forward to advancement and to a secured position from which they can not be ousted except for genuine fault or neglect of duties. I do not mean to imply that their system is ideal from every standpoint; the important thing is that they actually do what they profess to do. There is no such gap between ideals and practice as one finds in the United States."

In 1898 Japan organized an academy for the study of prison discipline where officers in actual prison service had to attend a six months' course and candidates for the service had to attend a twelve months' course of six lectures a day.

are based; good time is allowed or disallowed and, in a large measure, the Parole Board acts. Their personal friendships and personal enmities are all-controlling. Their likes and dislikes often have a tragic influence.

Our prison guards are among the most important of the officers who are connected with the system of paroles. They should be carefully selected. They should not be political appointees, neither should they hold their offices by political favor. Their hours of service should be reasonable and their salaries adequate.

32. Same: Idleness as a Preparation for Freedom.

Can we reasonably expect any large measure of reformation and preparation for a future life of freedom when, by criminal neglect or equally criminal cowardice and selfishness, we allow eighty-five per cent of our convicts at Joliet to pass their time in idleness? Would any man believe that two or ten years spent in idleness under the constant scrutiny of a guard who, himself, is little more than a prisoner, is a proper means of training and of education? Can this man be expected to make good on parole or, if not paroled, after his term has expired?[1]

The Board of Paroles has no responsibility for, or control over, the conduct of our prisons. Yet it has to deal with the finished prison product. Every deficiency in prison management, therefore, makes its task the more difficult.

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[1] In a report submitted to the National Crime Commission on "Pardons, Parole, Probation, Penal Laws, and Institutional Correction" (1927), by Louis N. Robinson, we find the following:

"I cannot stress too strongly the fact that I saw no idleness in European prisons, this in great contrast to what is painfully visible in many of our great prisons and in nearly all of our local county jails. In England and in Germany, strange to say, where between one and two million free men are out of work in each country, the prisoners were all at work. It is true that the work was often conducted in a manner comparing very unfavorably as to efficiency with work carried on in the free world outside. Old types of machines were in use and much work that could be done by machine methods was performed by hand. The essential thing to remember, however, is that work of some kind was found for each and every prisoner able to be out of bed. By the public, the work was viewed from two angles: it was both a part of the penalty for crime and at the same time a necessary humanitarian condition of shutting a man away from his fellows. In all countries visited, this second reason for work in prisons had so far penetrated the public conscience that work was offered as a matter of course even to men awaiting trial."

PART B

EXPERIENCE WITH PAROLES, 1917 TO 1927

33. The Supervisor's Office, 1917 to 1927.

In 1917 the Legislature of the state of Illinois created the Department of Public Welfare. In this legislation, the then existing Board of Pardons was abolished,[1] and the "rights, powers and duties" [2] formerly vested in it were assigned to the newly created department.[3] Specifically, as to paroles, provision was made for a supervisor of paroles whose duty it became by law to serve under the Director of Public Welfare.[4] The effect of the legislation was to place the principal responsibility of the parole administration in the state on one man—the supervisor.

Shortly after this new plan was launched it became evident that, so far as parole administration was concerned, in a prison system so complicated as it is in Illinois, with its many prisoners whose cases fall under the provisions of the Parole Act, that the supervisor had too heavy a responsibility placed upon him for one officer to well carry. To alleviate the situation somewhat, three persons were appointed to act as assistants to him and to sit with him in the hearing of cases. These assistants were not appointed pursuant to any statutory authority and their opinions were only advisory.

The relief given to the supervisor through their appointment, although materially helpful, was yet inadequate to make it possible for him to cope with the situation. He and his assistants were unable to hear the cases of all prisoners who were good parole prospects. Adequate consideration was not even given to such cases as came before them. The result was that the prisons were congested and those who were paroled were little short of being "guessed out of" prison. In a series of questions propounded by us to Mr. Hinton G. Clabaugh, Supervisor of Paroles, he was asked:

> "Q. As a matter of procedure, do you and other members of the board read the record? That is, all the material in the jackets,[5] before a case is heard?
>
> "A. We do now in every instance.
>
> "Q. What was the practice previously?[6]

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[1] Smith-Hurd, Ill. Revised Statutes (1927), Chap. 127, Sec. 35.

[2] "The Department of Public Welfare shall have power: . . . 9. to exercise the rights, powers and duties vested by law in the board of pardons, its secretary and other officers and employees." Smith-Hurd, *op. cit.*, Sec. 53.

[3] Smith-Hurd, *op. cit.*, Sec. 3.

[4] Smith-Hurd, *op cit.*, Sec. 4, 5.

[5] The "jackets" are the envelopes containing the data concerning the prisoners. Each prisoner has an envelope bearing his number. In it are to be found more or less of the following: a record sheet, statements by the trial court and the state's attorney, mental health report, letters written on behalf of or against the prisoner, and statements, more or less complete, concerning the history of the prisoner and of the crime. In making this study we digested the material in many of these "jackets."

[6] Meaning previous to the changes made by the 1927 Illinois General Assembly, particularly those relating to the personnel and control of the parole board.

"A. The practice previously was to read the state's attorney's statement and the synopsis of the case. But you can appreciate that some of the files are very voluminous. Some cases take weeks to try and there is a large record to review.

"The practice previously was supposed to be the same as it is now, they were supposed to read it all, but it is inconceivable that the organization that they had could do that.

"Q. Under the previous system how much time, on the average, did you give to each prisoner as he appeared before you to make an oral statement? Five, ten or fifteen minutes?

"A. Sometimes two or three minutes. There was not very much to consider. The prisoner would come in and he would be asked whether he was innocent or guilty. If he said he was guilty, he would be asked a few questions and that was all. Other cases might be a little more prolonged, but very little time was given to the prisoners. They could not give much time and get through with their work."

34. Condition of the Records. Since the "jackets" contained the principal available data upon which the supervisor acted in granting or refusing parole, it was important for us to study the contents of many of them. We found the material in them in utter confusion. No effort had been made to file in orderly sequence and no list or inventory was kept with the "jackets" of the documents and papers they contained. All the material was merely jammed in together, and, although dates were stamped on the papers, no effort was made to file in order of time. Frequently we found the "jackets" tremendously bulky, filled with letters from relatives, friends, political personages, lawyers, and physicians—lengthy petitions signed literally by the members of whole communities, and various other items, all addressed to the supervisor, urging parole. With these there often was a sprinkling of letters opposing parole. Included also were found statements drawn by the trial judge and the state's attorney, mental health reports by the psychiatrist, and reports of hearings given the prisoner by the supervisor and his assistants. Often it took us a day, sometimes two and even three days, to disentangle the mass of material in one of these "jackets," to rearrange it, and to read and digest it.

35. Powers of the Supervisor. Prisoners are committed to the state penitentiaries, or to the state reformatory, either under a fixed penalty or the indeterminate sentence. The fixed or definite penalty is imposed in four crimes, viz., misprision of treason, murder, rape and kidnaping. In all other cases the sentence is indeterminate.[1] The percentage of the total number of prisoners admitted to the prisons and the state reformatory on whom is imposed the indeterminate sentence varies between eighty-five and ninety per cent. The balance are given definite sentences. Both groups are subject to the parole law,[2] but by far the greater

[1] Since some of the penalties specify minimum and maximum limits, e. g., larceny where the penalty is one to ten years, it would be more accurate to designate these "indefinite" sentences. Others are truly indeterminate, e. g., robbery while armed, where the penalty runs from one year to life.

[2] Sec. 801, Chap. 38, Smith-Hurd Statutes (1927) contains the following language relating to crimes for which a definite penalty is prescribed:

"Persons sentenced for life may be eligible to parole at the end of twenty years; persons not sentenced for life but sentenced for a definite term of years shall not be

part of the time of the parole supervisor and his assistants was consumed with the indeterminate group. Since in all indeterminate penalties a minimum time limit is set (the minimum in most cases is one year) it became the duty of the supervisor to give a hearing to all prisoners when that period was reached. He had the power to grant parole when the minimum was served or at any intermediate time up to the maximum. Further than that he could not go; his discretion operated between those limits, but on reaching the maximum service the prisoner was entitled to release by law.[1]

It is obvious that wide discretionary powers resided in the supervisor.[2] No court ever was confronted with such a responsibility. Into his bailiwick, in fact, was poured the sentenced convict from all courts dealing with felony cases in the state. In April, 1927, when we visited the institutions, there was confined in the penitentiaries at Joliet and Menard, and in the reformatory at Pontiac, a total of 6,316 prisoners; if to that number we add 800 boys that were confined at St. Charles and 459 girls confined at Geneva, both of which groups were under his parole jurisdiction, this number is swelled to 7,575.

The responsibility imposed on the supervisor and the labor required of him by such numbers was too heavy. It was resulting, as has already been pointed out, in superficiality. It further was bringing about a serious congestion in the prisons.

36. The Prison Population.

The following Table 1 shows the prison population on April 12, 1927, and the capacity of each of the institutions named:

TABLE 1. PRISON POPULATION, 1927

Institutions	Population	Capacity
Illinois State Penitentiary (Joliet)	2,876	2,838
Illinois Southern Penitentiary (Menard)	1,832	1,600
Illinois State Reformatory (Pontiac)	1,608	1,500
St. Charles School for Boys	800	800
State Training School for Girls (Geneva)	459	436
Total	7,575	7,174

In addition to those mentioned is the Illinois Woman's Prison at Joliet which, in April, 1927, had confined in it 76 women prisoners. This prison has 100 cells and seemed less crowded than the others.

At the time the men's prisons at Joliet were being visited, the old prison had but 215 prisoners who were occupying cells to themselves, the new prison had 213. The other 2,448 prisoners were paired, two to a cell. It is unwise to place more than one prisoner in a cell. It is difficult to estimate the bad and lasting influence an older criminal may have upon a younger one who is locked with him in the intimate contact of a small cell. That

eligible to parole until he or she shall have served the minimum sentence provided by law for the crime of which he or she was convicted, good time being allowed as provided by law; nor until he or she shall have served at least one-third of the time fixed in said definite sentence."

[1] Where the penalty is from one year to life, there, of course, is no maximum on the reaching of which the prisoner is legally entitled to release.

[2] Under the law as changed by the 1927 General Assembly, a Board exercises the functions formerly performed by the Supervisor.

it is a serious problem there is no doubt. But even more so are the obnoxious resulting evils of sex perversion which are common in our prisons. Sanitation also is a problem. We found this to be particularly so at Menard where the housing question was even more acute. It there had become necessary to erect as many as 100 temporary cells in the cell house, each of which was occupied by two prisoners. Ninety-six cells actually had three prisoners crowded into each of them. At Pontiac we found that 240 new cells had recently been installed, each of which was filled, two to a cell. Forty-one boys were crowded into a vacant room over the captain's office and 55 cells each were occupied by three persons.

At Joliet we went over the active file of all the male prisoners then in the prisons at Joliet. Each of the cases was discussed more or less at length with prison officials whose contact with the prisoners had been close. Frequently in the course of the work a prisoner was called before us and questioned. Particular attention was given to the cases of such inmates, who, because of their long period of imprisonment, seemed entitled to hearing before the supervisor, or who, because of the slightness of their participation in the crime for which they had been convicted, coupled with good prison behavior, seemed good parole risks. Similar studies were made at Menard and at Pontiac. It is our conviction that, at the time these studies were made, from one-fourth to one-third of the prisoners in the penitentiaries and in the reformatory were at least worthy of serious consideration for parole.

One member of the committee which made this study visited all of the institutions. He began his investigations with the belief that paroles were granted all too frequently. He now is of the opinion, shared also by the other members of the committee, that it was not the frequency of parole that brought just criticism so much as the lack of a careful sifting and a choosing of parole prospects together with a lack of careful supervision after parole.

37. The Parole Board Created in 1927.

The bad situation relative to paroles, particularly in its reflexes upon the prisons, and its effects upon the public mind, had become in the spring of 1927 a matter of serious concern. It was a realization of this situation that caused Honorable Hinton G. Clabaugh, the supervisor of paroles, to launch a vigorous program before the general assembly. He contended, among other things, that too much power and responsibility was vested by the law in one man—the supervisor. To remedy this, he proposed a parole board consisting of a chairman and twelve other members appointed by the governor with the consent of the senate; he urged that the state must appropriate more liberally for parole administration, and he proposed giving the board the power to require attendance of witnesses at its hearings by subpoena. In all of these matters Mr. Clabaugh had our express support.

The general assembly responded by passing these measures, except the power to subpoena (the bill for which failed to pass the house), substantially as Mr. Clabaugh had proposed them.[1] In the matter of granting paroles, which had heretofore been vested in the department of public welfare, the

[1] The appropriation for parole administration was increased approximately from $350,000 for the biennium to $1,466,200.

general assembly by a legislative act approved in July, 1927, provided for a parole board, this to consist of the supervisor of paroles, who was made chairman of the board, and nine other members.[1] A new section, 54a, was added to the civil administrative code, reading as follows:[2]

> "The parole board created by this act shall exercise and discharge all the rights, powers and duties heretofore vested in the department of public welfare in granting paroles to persons sentenced or committed for crime or offenses, but the supervision and after care of persons so paroled shall remain in the department of public welfare. The action of a majority of all the members of the board shall be the action of the board and no parole shall be granted except upon the concurrence of a majority of all of the members of the parole board, such concurrence to be recited in the records of the board. In consideration of any parole said board shall consider and give weight to the record of the prisoners' conduct kept by the superintendent or warden."

It will be observed that under this act the supervision and after care of persons paroled remain in the department of public welfare. Under the law the supervisor of paroles, working as an officer in the department of public welfare is responsible for the supervision and after care of parolees. This officer, therefore, works in a dual capacity, that of supervisor of paroles in which he is responsible to the director of public welfare, and that of chairman of the parole board, which by statute has taken over the "rights, powers and duties" relative to paroles, formerly vested in the department of public welfare. The board has no power relative to the supervision and after care of parolees. The supervisor of paroles, as such, has appointed an agent who is designated as the "state superintendent of supervision" to whom the details of the after care and supervision of parolees has been assigned.

38. Procedure of the Parole Board.

Under section 5 of the Illinois sentence and parole act it is the duty of the department of public welfare (now vested in the parole board) "to adopt such rules concerning all prisoners and wards committed to the custody of said department as shall prevent them from returning to criminal courses, best secure their self support and accomplish their reformation."[3]

Relative to the work of the new parole board, Mr. Clabaugh, its chairman, in answer to questions put to him by us, has given the following description:

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[1] Laws of Illinois (1927), Sec. 846. The salary of the supervisor was fixed by Statute at $7,000 per annum and the salaries of the nine members of the board at $5,000 each.

[2] Laws of Illinois (1927), Sec. 850.

[3] Sec. 5 continues as follows: "Whenever any person shall be received into any penitentiary, reformatory or other institution for the incarceration, punishment, discipline, training or reformation of prisoners or wards of the state, the said Department of Public Welfare shall cause to be entered in a register the date of such admission, the name, nativity, nationality, with such other facts as can be ascertained of parentage, education, occupation and early social influences as seem to indicate the constitutional and acquired defects and tendencies of the prisoner or ward, and based upon these, an estimate of the present condition of the prisoner or ward and the best possible plan of treatment. The said department shall carefully examine each prisoner or ward when received and shall enter in a register kept by it the name, nationality or race, the weight, stature and family history of each prisoner or ward, also a statement of the condition of the heart, lungs, and other principal organs, the rate of the pulse and respiration, the measurement of the chest and abdomen, and any exisiting disease or deformity, or other disability, acquired or inherited; upon the register shall be entered from time to

"We have taken the parole board out of departmental management and made an independent statutory board. It now requires the affirmative action of six members of the board of ten before any person can be released. The nine members of the board are divided into three subcommittees, three men sitting three days a week constantly at every institution.[1] That subcommittee refers to all the facts available, and in some instances causes an independent investigation to be made on the outside by investigators that have been provided for in the new appropriation. Then these three subcommittees report to the general board once a month, and that board then reviews, again sitting as a committee of the whole, the recommendations of the subcommittee, so in that way we get first an independent, unbiased report from our own subcommittee, who are not interested either for or against a prisoner; then the whole board reviews the subcommittees' work and acts upon it.[2] Once the board acts that is final and it is not subject to review."

The entire board meets once a month and acts upon the subcommittees' recommendations. A reporter attends every general and every subcommittee meeting. When the chairman of the subcommittee makes his report to the entire board, a stenographic copy of the proceedings, including all testimony, is presented together with a brief and the subcommittees' recommendation. Each case is reviewed by the whole board and voted upon. The new board was created by an act approved in July, 1927. After that some time was lost in making the appointments. Notwithstanding this delay and the further delay incident to the board's orienting itself to its new work, fifteen hundred cases had been disposed of by December 1, of that year.

39. Regulations Adopted for the Board's Action.

The board has adopted the following rules governing the parole of prisoners confined under the indeterminate sentence:

"A subcommittee of the parole board first examines a prisoner shortly after he has been received and the record is preserved for future consideration when the prisoner is again heard after having served the minimum sentence. No formal petition is necessary, and no advertising is required, as the prisoner is brought before the board by virtue of the rules.

"Before a prisoner will be paroled, his mental condition and institutional record must be satisfactory and the board must be satisfied that he is desirous of leading a better life, and that society will not be injured by his release. The board takes into consideration the crime, the past life of the prisoner, the probabilities of his never again violating the law, the adequacy of his punishment, his conduct while in prison, and all other

time minutes of observed improvement or deterioration of character and notes as to the method and treatment employed; also, all alterations affecting the standing or situation of such prisoner or ward, and any subsequent facts of personal history which may be brought officially to the knowledge of the department bearing upon the question of parole or final release of the prisoner or ward. And it is hereby made the duty of every public officer to whom inquiry may be addressed by the Department of Public Welfare concerning any prisoner, to give said department all information possessed or accessible to him which may throw light upon the question of the fitness of said prisoner or ward to receive the benefits of parole or to be again placed at liberty."

[1] Reference is to institutions at Joliet, Menard and Pontiac.

[2] We have read several hundred of the subcommittees' reports and have found them good, though, at times, brief and lacking in discrimination.

matters that in any way bear upon the question of the public welfare, as well as that of the prisoner.

"The board requires a prisoner to furnish names of reputable business and professional men who knew him for some years before his conviction and who can attest to his former good character, so far as it relates to his honesty, industry and sobriety.

"Friends of a prisoner can best aid him by procuring letters as above indicated from persons who knew the prisoner prior to his conviction, and who will take an interest in his welfare after he is released. When an order is made for the parole of a prisoner, the question of employment is in the hands of the supervisor of paroles and the superintendent of supervision and all correspondence in regard to his parole should be addressed to the latter, Springfield, Illinois, or to the parole officer at the institution where the prisoner is incarcerated.

"It must not be understood when the case is passed over or continued to a certain time, that the prisoner will then be paroled, as this will depend largely upon his conduct and such information as the parole board may have received since his last examination.

"If, at any time, prior to the date to which any case has been continued, the board is satisfied that the prisoner should be paroled, its former order can be revoked and parole authorized.

"Paroles granted under this act shall be for the maximum time for which the prisoner was sentenced under the following terms, to-wit:

"The first year the prisoner must report to the superintendent of supervision monthly; second year, every sixty days; the third and fourth years, quarterly; the fifth year semi-annually and thereafter annually. At the end of the fifth year the prisoner shall be eligible to a hearing before the parole board on an application for final discharge. Petition for out-of-state parole transfer may be made at any time.

"No prisoner who becomes a parole violator under this act shall be eligible to a second parole until he has served two years, without good time allowance, after being declared a violator.

"All second-parole violators will serve a minimum of an additional five years in custody before another parole will even be considered.

"Evidence tending to sustain or disprove the grounds upon which an application for parole is based will be received and considered in connection with the application."

Reference previously has been made to the distinction between the indeterminate and the definite sentence. Among the major crimes, definite penalties are meted out only for four crimes, viz., misprision of treason, murder, rape and kidnaping. Section one of the parole act provides as to these that persons sentenced for life may be eligible to parole at the end of twenty years; persons not sentenced for life but sentenced for a definite term of years shall not be eligible to parole until he or she shall have served the minimum sentence provided by law for the crime of which he or she was convicted, good time being allowed as provided by law, nor until he or she shall have served at least one-third of the time fixed in said definite sentence. Relative to the parole of those prisoners holding definite sentences the board has adopted the following rules:

"All applications for parole under this act shall be governed by the rules controlling applications for pardon.

"Paroles granted under this act shall be for the maximum time for

which the prisoner was sentenced, under the following terms, to-wit:

"The first year the prisoner must report to the supervisor of paroles monthly; the second year, every sixty days; the third and fourth years, quarterly; the fifth year semi-annually; and thereafter annually. At the end of the fifth year the prisoner shall be eligible to a hearing before the parole board on an application for final discharge. Petition for out-of-state parole transfer may be made at any time.

"Application for parole under this act will be considered upon a proper showing by the prison records that the petitioner has observed the prison rules faithfully and that he has made such reformation that he will not again become a menace to society or a public charge.

"No prisoner will be released on parole under this act until proper arrangements have been made for his profitable employment as governed by the statutes made and provided in other parole cases.

"No prisoner who becomes a parole violator under this act shall be eligible to a second parole until he has served two years, without good time allowance, after being declared a violator.

"All second-parole violators will serve a minimum of an additional five years in custody before another parole will even be considered.

"Evidence tending to sustain or disprove the grounds upon which an application for parole is based will be received and considered in connection with the application."

Among the questions propounded to Mr. Clabaugh by us was the following stated with his answer:

"Q. On what principally do you base your judgment in granting or refusing a parole? The material in the jacket, personal impression, or what?

"A. A combination of all the facts and circumstances. First, the man's history; his education; his apparent mentality; his physical condition; his attitude towards discipline and toward society, as evidenced by his institutional record. In addition to that, his former habits; his associates; the environment under which he grew up; all the facts and circumstances relating to the man's history before he committed the crime, so far as it is available to us, his commission of the crime and his conduct since and while being punished; and his learning of one or more useful trades while confined. His attendance at school or church in the institution, and finally our own conclusion after talking to the prisoner in great detail and examining him several times before he is given a final parole. It is very rarely the case that we talk to a prisoner less than three or four times now before he is given his final parole, so your question is a hard question to answer. It is the net collected judgment of the ten men after reviewing all the facts and circumstances with reference to the individual. In other words, we try to fit the punishment and the scheme of reformation to the individual and not the crime after the inmate or the prisoner has served what is believed to be a reasonable punishment, as a deterrent to others, or other would-be criminals, for the crime committed."

40. *Official Statements of Trial Judges and State's Attorneys: Their Value.*

Under section six of the parole act, it is provided that in all cases, whether the sentence be definite or indeterminate, it shall become the duty of the judge before whom a prisoner was convicted, and also the state's attorney of the

county in which the conviction took place, to file a statement with the clerk to be transmitted to the Department of Public Welfare.[1] This statement, the Act goes on to provide, shall contain the facts and circumstances constituting the crime or offence of which the prisoner was convicted, together with all the other information accessible to them in regard to the career of the prisoner prior to the time of the commitment of the crime of which he was convicted, relative to his habits, associates, disposition and reputation, and any other facts and circumstances which may tend to throw light upon the question as to whether he is capable of again becoming a law-abiding citizen.

Our investigations have led us to believe that no recommendations, evidence or other material that come before the parole board have greater influence with it than the statements concerning prisoners from the trial judges and the state's attorneys. The views expressed by them as to the prisoner's guilt, his disposition, his habits, his associates, and as to the probability of his reform, are treated with great respect.[2] Because of the importance of these statements to the board, we have paid particular attention to them in reviewing the material in the "jackets." We have found them, as a whole, quite inadequate in measuring up to the statutory requirements. Occasionally we discovered that no statement had been sent up at all, this notwithstanding the mandate of the statute, above quoted, that "it shall be the duty" of these officers to file such a report. Invariably, when one was inclosed, it was found to be a statement signed by the trial judge and the state's attorney jointly. The immediate facts of the crime ordinarily were covered, but rarely anything concerning the career of the prisoner "relative to his or her habits or associates, disposition and reputation." The statements seldom contained facts and circumstances which might tend to throw light upon the question as to whether the prisoner was "capable again of becoming a law-abiding citizen."

In a flagrant "gun-holdup" case, reduced to plain robbery on a plea of guilty, the statement was "as far as our records show defendants have no previous record." Yet an investigation of the police records showed that those defendants had just previously been engaged in a series of holdups, in some of which they had been indicted. This case arose in Cook County, where it hardly is to be expected that the judges, or the state's attorney, know much of the history of the prisoner, and yet it is strange that so conspicuous a case could go unnoticed. The barest investigation would have disclosed that the case involved "holdup" men of the most dangerous type.

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[1] Since the establishment of the parole board these statements properly are furnished to it.

[2] The following is a question asked by the Committee of Mr. Clabaugh and his reply:

"Q. What assistance do you derive from the statements by trial judges and state's attorneys?

"A. Very great assistance where the statement is complete, but I regret to say in many instances in the past the statement would show something like this:

"'Defendant entered plea of guilty to grand larceny; term one to ten years.' This might be one of a series of Yellow Cab holdups, and yet that would be all that would be said, whereas another statement might give us complete details and information. Some of the statements are very valuable and a very great improvement has taken place in the last year. State's attorneys and judges are now giving us more information and we are trying to work in closer co-operation with the prosecutors and the courts in order that we might have that information."

Often there appeared a lack of consistency in the statements made. In a burglary and larceny case, coming from southern Illinois in which a plea of guilty of simple larceny was accepted, the trial judge and the state's attorney signed a joint statement to the effect that this man's habits were bad, that his reputation was bad and that he was a dope fiend, yet less than nine months later the state's attorney wrote the supervisor of paroles:

> "If the conduct of ———— ———— No. ————, sentenced for grand larceny in the circuit court of ———— County, Illinois, at the Sept. term, A.D. 1925, is satisfactory, I would have no objection to his parole."

In another case where the conviction was for the crime against children, the trial judge and the state's attorney wrote:

> "The defendant because of the despicable nature of the offense should be kept in a state institution until he is cured. . . . the community in which he lives is much incensed, and rightly so, over the affair."

Nine months later the state's attorney wrote the supervisor:

> "I am satisfied if he were returned to this community a great deal of opposition would be created and I fancy some disrespect to the criminal law would result in the community. However, I do not wish personally to stand against this prisoner's parole, as I have no venom against him. It is, therefore, a matter in the hands and in the discretion of the parole board."

One year after the prisoner's conviction, the trial judge wrote stating he had known the prisoner for a number of years and had always considered him a good man. He then continued:

> "I was under the impression that when he was sentenced he would probably be out within about 11 months, and now feel that this man has received his punishment in full, and a parole after 12 or 15, or at the most 18 months, would be justice to him and also to the people at large in his community and county."

At about the same time, the state's attorney again wrote calling attention to the fact that the prisoner was quite ill and then continued:

> "I do not feel that ———— would receive any greater deterrent from again committing the offense for which he stands committed by being kept longer in prison. From what I know of his nature I believe he has been cured. It would therefore seem to me that with the knowledge contained in this letter the parole board could very properly revise its ruling made in October, ————, meeting, aforesaid."

41. *Same: Replies of the Judges.* We addressed an inquiry to a number of the trial judges of the state reading as follows:

> "Ordinarily do you become acquainted with such facts connected with the crime and the criminal as you believe will be beneficial to the division of pardons and paroles?"

Fifteen judges answered. Seven replied that they did become familiar with such facts, and eight said they did not. Of the judges who wrote that

they became acquainted with the facts which they believed would be of use to the parole board, three were from Cook County and four from "down-state."[1] And of those that did not, three were from Cook County and five from "down-state."[2]

Another inquiry addressed to the judges was: "Do you make up a statement for the division, or is this left largely to the state's attorney?" Two replied that they made up their own statements and thirteen that it was left to the state's attorney, with possibly an addition now and then by the court.[3]

42. Same: Replies of the State's Attorneys.

Letters were also sent to state's attorneys and twenty-three replies were received. Eighteen answered that they ordinarily became acquainted with such facts connected with the crime and the criminal as they believed would be useful to the board; five said they did not. All said they believed it a desirable feature for them to furnish such statements, and all said they gave the board the benefit of all they knew about the criminal.[4]

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[1] The following answers are typical:

"I endeavor to become acquainted with all the facts in every criminal case and I file a statement of the full facts known to me in every conviction.

"While I sat on the criminal bench I made my report each Saturday, as usually on that day the sentence was imposed on all the criminals that I sentenced that week. I did this invariably and believe it should be done by all judges. In that report I gave them all the information that I possessed."

[2] One judge wrote:

"In districts with large population and much criminal business, I do not think the courts become acquainted with sufficient facts concerning the criminal as to be of any benefit to the division of pardons and paroles. In such districts, the court must necessarily depend largely upon the state's attorney's information to make up his statements."

Another wrote:

"Ordinarily I do not become acquainted with all such facts connected with the crime and the criminal as I believe would be beneficial to the division of pardons and paroles, and am compelled to rely largely upon the statement of the state's attorney. But where I am informed of other matters which I believe the department should have it is my practice to make up a separate statement or report. In pleas of guilty the court generally has little, if any, information as to the nature of the offense, and even where a case is contested the court learns nothing officially except the circumstances of the particular crime itself. The prisoner's past record, family life, environment, associations, habits, and all such things are unknown to the court. But the state's attorney, through his investigators has means of ascertaining them, and, in my opinion they should be embodied in every statement made by the state's attorney."

[3] One judge wrote:

"Statement is left to the state's attorney. He is about the only source of the court's information. I look over the report of the state's attorney and if fair and full enough I countersign it."

The following reply is typical:

"The preparation of a statement to the division of pardons and paroles mentioned in this interrogatory is largely left to the state's attorney. In a great percentage of the cases in which a plea of guilty is accepted, the judge has no means whatever of learning the facts of the case or the prisoner's history, except as it is given him by the state's attorney. This situation makes it imperative for the judge to rely upon the statements of the state's attorney."

[4] The following is a typical reply:

"I think a full report as indicated by this question should be furnished by the state's attorney if it could be done. The facts surrounding the crime can generally be furnished but the social history of the prisoner is very hard to get and as a general thing, cannot be furnished correctly. I always furnish as good a statement as I can find but I realize as a general thing it is not what it should be."

Another wrote:

"I do so because the statute requires it. I make a full and complete statement. I

43. Estimate of the Work of the Board.

There can not be any doubt that the situation in the administration of paroles has improved materially since the creation of the parole board by the last general assembly. The previous system was defective in that the supervisor was unable to function over the whole field; the task was too extensive and difficult. The new board, on the whole, appears to be functioning smoothly and well. The hope is expressed that the members of the board will become earnest students of penology and the purpose and function of the parole. The parole in connection with a prison term is the most scientific method for the release of prisoners yet devised. In the hands of intelligent persons who understand its purpose, it functions well, but in the hands of others it not only is ineffectual, but is likely to be a menace to the public welfare. This fact should be realized not only by those who administer the parole laws but as well by the public at large.

The time is past when society is willing to execute criminals for all sorts of crimes. The agitation is on to do away with all capital punishment. So, too, it would be impossible today to administer the criminal law if all felonies were punished by life imprisonment. The point is, whether we like it or not, and no matter how harsh some may think convicts should be treated, the great body of our prisoners serve only for a short period, after which they are again released into society. This is true of definite or flat penalties for a term of years; it is not peculiar to the indeterminate sentence and the parole. And since the great majority of our prisoners sooner or later are released, can there be any gainsaying to the proposition that, not for sentimental reasons, but for public safety and the general welfare, it is desirable to make use of every means within our power to salvage and prepare them for the life of freedom that is to come? Imprison the convict? Yes. Work him hard? By all means, but make the work sanitary and instructive. Teach him a trade, educate him, make him work up to the limit consonant with good health, but exact all this with the intelligent purpose in view that we are preparing him to take his place in society. After his prison period, he should not be released unconditionally, but paroled, and supervised well during his readjustment. Then if the observation is that he is not adaptable he can be returned to prison. This is not a gospel of sentimentality; it is not coddling the prisoner, but it is an effort to deal with this problem intelligently and scientifically.

This is the great problem that faces the new board. It is beginning its work well, and its insight, no doubt, will improve as time goes on. It is our impression from the reading of the subcommittees' recommendations as to the prisoners, that, in the main,[1] the members have the essential

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can not conceive a situation in which the board could arrive at a proper conclusion without such statement, and furthermore without a complete statement of the facts by a disinterested party, who knows the facts and is unprejudiced."

[1] Here and there a report lacked discrimination; e. g., the committee recommended the denial of parole stating, "We feel that this boy should have a substantial lesson to the end that he will learn that he cannot do the things that he has been doing so flagrantly."

As to one prisoner for whom parole was recommended it was said: "He is a young man, barely of age, and his offense consisted of stealing of $20 worth of chickens in company with ..... who had previously done time in the penitentiary and who is again in this institution doing a second term. The former's release was recommended by the prosecuting witness and the state's attorney of the county from which he came.

principles of parole well in mind. The suggestion respectfully is offered, first, that the board members give to the great problem their common sense judgment, and secondly, that they become thorough students of the theory of parole. If they combine the two, the opinion is ventured that their common sense will guard against impracticable theory, and that the mastering of the theory will materially enrich their judgment.

44. Recommendations to the Board.

We found that the data before the board often are very scanty. It is not safe to rely upon a judgment formed after the short interviews given prisoners before the board. There is, to be sure, the material in the "jackets," but this too often is of no material aid. To carry out the spirit of our statute of paroles, the board needs to draw on information from various sources.[1] Before it forms a judgment on parole of a prisoner, it should know his history; it should have information concerning his family life, his associates, his work habits; the facts concerning his crime and career as a criminal; it should have the benefit of the observations concerning him of the prison officials,[2] of the mental health officer and the prison physician, and, finally, before release on parole, it should know definitely where he is going when paroled.[3]

The greatest difficulty in the past has been experienced by the supervisor

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In view of all the circumstances, we think this is a parolable case, and accordingly we have entered such an order."

[1] The statements made by the superintendent of the reformatory at Pontiac, as a rule, were very helpful. A member of this committee had the privilege of sitting through a meeting of the superintendent and his staff at the reformatory and to observe how these statements were made up.

[2] Section 54a, of the Parole Act, which created the new board provides: "In consideration of any parole said board shall consider and give weight to the record of the prisoner's conduct kept by the superintendent or warden."

[3] The following is a series of questions we asked Mr. Clabaugh stated with his answers:

"Q. Before a prisoner is paroled, do you require a sponsor for him, in all cases?
"A. Yes, sir.
"Q. What method do you have for checking whether or not the sponsor is reliable? I have heard a great deal about dummy sponsors.
"A. We check every one now.
"Q. What method do you use?
"A. We find out who the sponsor is; what likelihood the man will continue there and that the sponsor will continue taking a real and genuine interest in him. In the old days a fellow who had absolutely no qualifications for an automobile mechanic would be paroled to a garage man who promised to pay him $40.00 a week. He would hold his job for two weeks and be paid. There was no intention of keeping him. Now we try to check not only the sponsor and his promise of a job, but the boy's capacity to fill the job **satisfactorily.**
"Q. Is that done by personal interview?
"A. By letters and personal interviews both.
"Q. By going and looking over the establishment?
"A. Yes, sir.
"Q. When a prisoner is paroled, is the parole agent given a history of him, his crime, his worst habits and the like?
"A. Yes, he is now.
"Q. Was that done in the past?
"A. In a modified way, yes. Now, we give everything we know to the fellow.
"Q. His entire record follows him?
"A. Yes, because he can better then know how to handle the parolee if he knows all about the individual, and he would know what precautions he would have to take; whether he was a sex pervert or accidental offender. In the old days they used to give him a synopsis of the history, but none of the details."

in getting a past history of the prisoner. That data he (now the board) must have. The man's past throws light on what he is now, and this in turn lights the way to forecast his future. In short, to form a judgment on whether a man is a good parole risk, the supervisor (now the board) must know his past. The trial judges' and state's attorneys' statements are of help, but, as has been pointed out, they are often too scanty.[1] With more funds at its disposal than formerly, the board should put skilled investigators on the job to get this information. We commend this to the board as an essential feature supplementing the other material it has at its disposal.

The board works under a material handicap with reference to obtaining data and information in that it cannot subpoena witnesses nor compel the production of records, papers and documents. It should be borne in mind that great discretionary powers over the liberties of others is vested in it. Some of the indeterminate sentences run from one year to life, and under these the board has such wide scope to its action, that it may parole the prisoner after a year's confinement, or it may keep him imprisoned during the rest of his life, or it may parole at any intermediate period. With such great responsibilities and powers, all legitimate avenues of obtaining information which might assist it in making up its judgments should be opened to it. And yet it cannot subpoena a witness, or compel the production of a document, even though the testimony of a particular witness or the production of a document might be vital to the forming of an intelligent impression.

To remedy this situation, a bill was introduced at the last general assembly proposing to amend and revise the parole act and, among other things, to add section 9½ to the act, which section proposed to give to the board the power to issue subpoenas and subpoenas duces tecum.[2] The bill failed to pass.

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[1] It should be observed that while Section 6 of the Parole Act provides that it *shall* be the duty of the trial judge and the state's attorney to furnish these statements, the attorney general has ruled that the admission of a prisoner to the penitentiary could not be refused on account of such statement not being furnished.

[2] The full context of Section 9½ as proposed was as follows: "All hearings of the parole board shall be public except when in the opinion of the board, justice may require secrecy. The chairman and members of the parole board shall have the power to administer oaths, and the board shall have power to subpoena and examine witnesses, and issue, in the same manner as in equity cases in the circuit court, subpoena duces tecum requiring the production of such books, papers, records, and documents as may be evidence of any matter properly before the board in relation and pertinent to the granting or termination of the parole of any person, subject to its supervision, within the provisions of this Act. Service of such subpoenas shall be made by any sheriff, or constable, or other person in the same manner as in cases in the circuit court. In case any person so served shall wilfully neglect or refuse to obey any such subpoena, or to testify, the chairman may at once file a petition in the Circuit Court of the County in which such hearing is to be heard, or has been attempted to be heard, or in the Circuit or Superior Court in Cook County, setting forth the facts of such wilful refusal or neglect, and accompanying said petition with a copy of the citation, and the answer, if one has been filed, together with a copy of the subpoena and the return of service thereon, and may apply for an order of court requiring such person to attend and testify, or produce books and papers, before the board, at a specific time and place. Any Circuit Court of the State or the Superior Court of Cook County, or any judge thereof, either in term time or vacation, upon such showing shall within proper judicial discretion order such person to appear and testify, or produce such books or papers, before the board at a time and place to be fixed by the court or judge. If such person shall wilfully fail or refuse to obey such order of the court or judge, without lawful excuse, the court shall punish him by fine or by imprisonment in the county jail, or by both such fine and imprisonment, as the nature of the case may require and may be lawful in cases of

We believe that this power should be granted to the board and we recommend that a similar bill be introduced at the next session of the legislature.[1]

45. Lesser Pleas and Pleas of Guilty: Their Relation to Parole.

It is a popular belief that the modern jury is responsible for a substantial part of the so-called miscarriage of justice in criminal cases. It is not within the province of our work to discuss the responsibility of the jury other than to direct attention to the fact that a substantial portion of our criminals, who are sentenced, never appear before a jury at all. (See chapter I, sec. 23, chapter III, sec. 25, *ante*). Penalties are inflicted frequently upon pleas of guilty. This would seem quite as it should be—the guilty criminal, knowing himself to be so and seeing the uselessness of further opposition, throws himself upon the mercy of the court—but, as so often happens in the administration of criminal laws, things are not as they seem. The fact is, there is involved in the matter of pleas of guilty one of the most astounding features in the story of crime.

When the plea of guilty is found in records, it is almost certain to have in the background, particularly in Cook County, a session of bargaining with the state's attorney. If the prisoner is charged with a severe crime, which for some reason or other he does not care to fight, he frequently makes overtures to the state's attorney to the effect that he will plead guilty to a lesser crime than the one charged. Thus if the charge is murder, where the

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contempt of court. Every witness attending before the board at any hearing shall be entitled only to such compensation for his time and attendance and payment of traveling expenses as is or shall be allowed by law to witnesses attending such courts, which shall be paid by the board if requiring on its own initiative, such testimony or evidence. The board may issue a dedimus potestatem directed to any commissioner, notary public, justice of the peace, or to any other officer authorized by law to administer oaths, to take depositions of persons whose testimony may be deemed by the board necessary to any such hearing. Such dedimus potestatum may issue to any part of Illinois, or to any other state, or any territory of the United States, or to any foreign country. The board shall have the power to adopt reasonable rules to govern the issue of a dedimus potestatem, the taking of such depositions and the payment of all expenses thereof."

[1] Fourteen trial judges answered the inquiry put to them: "You will find inclosed Senate Bill No. 375. Would you kindly read it and then give us your opinion of it? Do you approve or disapprove of it, and why?" Eight approved the bill, four were opposed and two were indefinite in their replies. One judge wrote: "Senate Bill No. 375 would do away with the haphazard system heretofore applied if faithfully complied with and meets with my approval, if we must keep on with the parole law."

Opposed to this view another wrote: "I think Senate Bill No. 375 is wholly unnecessary. I disapprove of it for that reason. It appears to be intended for a basis for giving the defendant a new trial before a tribunal not a court. There is ample provision in the law as it now stands."

And still another presented the following view: "Strike out the following language in lines 1 and 2 of Section 9½, to-wit, 'except when in the opinion of the board justice may require secrecy.' At the end of said Section 9½ the following be added, 'The state's attorney of the county from which the applicant for parole was sentenced shall be given at least ten days' notice of such hearing, and he shall be privileged to attend the same for the purpose of resisting the application, if he deems it advisable for the public good to do so. Every state's attorney attending before the board at any hearing shall be entitled to receive a warrant drawn upon the state treasurer for an amount equal to his necessary and actual traveling expenses in going to and returning from such hearing.'"

punishment is death or a flat penalty anywhere from fourteen years to any number of years or life, the effort often is made to have the crime reduced to manslaughter, where the penalty runs from one to fourteen years (formerly one year to life), or to assault with intent to commit murder, where the penalty is one to fourteen years. These approaches, particularly in Cook County, often are made through another person called a "fixer." This sort of a person is an abomination and it is a serious indictment against our system of criminal administration that such a leech not only can exist but thrive. The "fixer" is just what the word indicates. As to qualifications, he has none, except that he may be a person of some small political influence.

Overtures with the "lesser plea" are commonly employed in "gun hold-up" (robbery while armed) cases where the penalty before the meeting of the last legislature was from ten years to life (now one year to life). In such cases it is common to find pleas of guilty to plain robbery, where the penalty was from three to twenty years (now one to twenty years). Or the plea may be guilty of grand larceny with a penalty running from one to ten years. Finally, it is not uncommon to find pleas to petit larceny in such cases where the punishment is a sentence to the workhouse or jail for a period not to exceed one year and a fine not exceeding $100.

We found many cases in which the plea accepted, and the punishment inflicted, seemed trivial in comparison to the magnitude of the crime committed. One example is here given. The defendant, so the facts showed as in the statement of the trial judge and state's attorney, had held up at the point of a gun the driver of a truck load of silk valued at from $27,000 to $30,000. This crime therefore was robbery while armed, the penalty for which, at the time it was committed, was from ten years to life. Notwithstanding this fact a plea of guilty for petit larceny was accepted and the sentence imposed was one year, definite, and a fine of one dollar.

The following is a statement of the case signed by the state's attorney, by his assistant, and concurred in and signed by the trial judge:

"In re: ——— — ——— { Indictment No. ———
{ Petty larceny.

"The above named defendant was sentenced to Pontiac for one year and $1.00 fine on a plea of guilty to petty larceny on the ——— of ——— by his Honor ——— ——— ———, one of the judges of the criminal court of Cook County. The facts in the case are as follows: ——— ———, ——— ———, Chicago, who was a driver for the ——— ——— ——— ———, on the ——— of ———, 1925, about 11:15 p. m. was driving a truck on Fulton Street between Paulina and Wood Streets loaded with bales of silk. Defendant, with others, drove up alongside in an automobile and got on the running board of the truck. He intimidated ——— with a revolver and told him to follow the automobile. After going a short distance he ordered ——— to get off the truck and get into the automobile. They drove to 54th and Trumbull Avenue, where both ——— ——— and ——— were put out of the automobile and both the truck and car drove away. The truck contained about 30 bales of silk

valued at $900.00 a bale. Defendant was subsequently identified and pleaded guilty as noted above.

Respectfully submitted,

_____

State's Attorney

By (signed) _____ and _____

Assistant State's Attorneys.

"I hereby concur in the above statement of facts as set forth by the state's attorney. (Signed) _____,

Trial Judge."

Several circumstances are responsible for the "lesser plea."[1] It permits of wider range of penalties within which a prisoner can be sentenced. The dividing line between grand and petit larceny is at $15.00. If a prisoner has stolen $16.00 worth of property, and this was his first offense, it may be proper to permit him to plead guilty to petit larceny.[2] In the second place,

[1] A trial judge wrote to the committee:

"Some criticism has been indulged concerning the judges by those who are ignorant of the facts when the judges have permitted prisoners to plead guilty to a lesser of several offenses which might be charged. There are generally several counts in an indictment, one charging the graver offense and others charging lesser offenses. It very often appears, when prisoners are called for trial, that either through their attorney or themselves they recognize their guilt of a lesser offense but deny guilt of the graver offense; and in some cases they even admit their guilt of the graver offense, but because of youth, or because it is the prisoner's first offense, he throws himself upon the mercy of the court and offers to plead guilty to the lesser offense rather than to stand trial for the graver offense. I have uniformly, in such cases, talked with the state's attorney concerning the facts, and with the prisoner, and with relatives of and witnesses for the prisoner, and thus determined whether or not, in my judgment, the ends of justice would be met by allowing the prisoner to plead to the lesser offense. I am sure this course is in the interest of justice. If every prisoner indicted in Cook County should demand a trial and insist upon that demand, our county jails would be overcrowded and more guilty prisoners would go free than is the case today. In every such case I have uniformly looked into the evidence of the state by reading the state's documents, which would show what evidence it possessed, and in many instances I have recommended the lesser plea to the prisoner, not only for the prisoner's sake, but for the sake of the state. To illustrate: The penalty for robbery with a gun is from ten years to life in the penitentiary. The penalty for robbery without a gun is from three to twenty years in the penitentiary. The law prescribes that if any one of a group of men committing a robbery has a gun, then all are guilty of robbery with a gun. The facts, however, generally show that where four or five young men commit a robbery, one, two or three may have guns, while the others do not have guns. Some of them are stationed as lookouts, others chauffeurs, and so on. In such cases it very frequently happens that those who are not the ringleaders in such a robbery offer to plead guilty to robbery without a gun and take the lesser penalty of three to twenty years. In most instances where it is the first offense of the prisoner, I have permitted this plea to be entered and sentenced the prisoner to from three to twenty years. In my judgment, such a sentence is just as effective as the sentence of ten years to life. In this way there is no question about the conviction, as might arise before a trial by a jury, and the prisoner is sent to the penitentiary for a minimum term of three years or a maximum term of twenty years; and the parole board can then determine whether or not the prisoner should be released at the end of three years or should be kept for a greater period of years, even up to twelve or fourteen years. The same thing is accomplished by accepting the lesser plea as would be accomplished if conviction was had on the graver charge."

[2] The following question was asked by the Committee of the state's attorneys: "Please indicate justifying circumstances for the acceptance of the lesser plea. Your reasons for the practice would be greatly appreciated." There follow a number of replies which are typical of the others received:

"For the past 4 years law violations have increased not less than 40 per cent in the more thickly populated counties, and no additional help is employed by county boards; one man can not properly try cases, investigate witnesses, and get cases in proper shape for trial. As an illustration, in our county, we handle 400 to 500 cases per year, without

the state's attorney may have a weak case, and rather than risk it with the jury he permits the prisoner to plead guilty to a lesser offense. Again, the state's attorney is an extremely busy officer in some communities and the acceptance of pleas to lesser offences is a way of disposing of cases rapidly. Further, the state's attorney is a political officer and it behooves him to make something of a record in convicting criminals. If the records show many convictions, this is good for public consumption. Finally, it offers a means, in the larger centers, for bargaining with the politician who has interested himself on behalf of the prisoner.

46. Same: Extent of This Practice. A study made by the Committee April 26, 1927, of all the prisoners in Pontiac showed that out of a total of 1637 inmates then present, "lesser pleas" had been accepted for 571 who had been sentenced on the basis of such pleas. Of the 571, 104 came from down-state and 467 from Cook County. The following Table 2 shows the crimes and the distribution by counties.[1]

47. Same: the Problem for the Parole Board. The "lesser plea" presents a knotty problem for the parole board. When the facts show that the crime clearly was robbery while armed for which the penalty was one year to life (formerly ten years to life), and the prisoner was sentenced on a plea of guilty of larceny for which the penalty is one to ten years, what should be the attitude of the board? Should it ignore the actual crime committed and deal with the prisoner only on the basis of the legal crime for which he was sentenced, or should it take the facts of the crime into consideration and reason that the "gun hold-up" convict is more likely to be a dangerous risk on parole than a mere thief? It cannot confine this prisoner for more than ten years under the sentence, to be sure, but should it weigh the facts of the actual crime against the prisoner and, other things being equal, make this prisoner serve nearer his maximum than the ordinary thief confined under the same sentence?

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an assistant state's attorney and without any assistance in interviewing, and keeping track of witnesses, and due to dilatory motions and other unavoidable reasons, cases are prolonged, witnesses intimidated, bought, and interest lost so that when cases are brought to trial the state's attorney has no means of knowing what results are obtainable, and as a result, in the majority of cases, is embarrassed by the fact that he has not sufficient evidence to obtain convictions."

"If in larceny, the value of the property stolen barely exceeded $15.00, and the defendant had previously been of good reputation and also youthful, and it became apparent to me that he now saw the error of his ways and would not repeat the offense, I would not hesitate in recommending to the court that the defendant be allowed to enter a plea of guilty to petit larceny and take a jail sentence instead of being thereafter disgraced as a felon."

"The way I look at it, the state's attorney's job is to get people in the penitentiary, house of correction or jail and I do not think it makes any particular difference what the crime is called that they are sent there on. In my judgment, it is the certainty of punishment and not the severity that counts, especially when this is coupled with quick action."

"Considering the uncertainty of jury trials, the strict rules of evidence, the conception of many jurymen as to what constitutes 'reasonable doubt,' the possibilities of appeal and the probabilities of error in the record, together with an inducement to other persons to take the same course prompts me many times to 'give them a break' and take a plea of guilty to a lesser offense."

[1] We were assisted in this study by Mr. C. O. Botkin, recorder at the Illinois State Reformatory.

TABLE 2. PRISONERS SENTENCED ON LESSER PLEAS.

Counties	Robbery Armed to Plain Robbery	Robbery Armed to Larceny	Robbery Armed to Petit Larceny	Plain Robbery to Larceny	Plain Robbery to Petit Larceny	Burglary to Larceny	Burglary to Receiving Stolen Property	Burglary to Petit Larceny	Murder to Manslaughter	Larceny to Petit Larceny	Burglary to Attempted Burglary
Adams	1										
Alexander	1										
Boone	1										
Cass							2				
Coles						1					
Cook	188	161	6	13	1	61	2	1	15	14	4
Du Page		1									
Fayette	1										
Ford								1			
Franklin						4					
Henry	1										
Jackson	1					3					
Jefferson	2										
Jersey	3								1		
Kane	1	2				2					
Kankakee	1										
Knox	1					1					
Lake	1										
La Salle	4										
McLean	6					1			1		
Madison	2					5					
Massac						1					
Menard						3					
Morgan	1										
Peoria	1					1					
Piatt	1										
Pope	1										
Randolph	3					1					
Rock Island	2										
Saline						3					
Sangamon	1								1		
St. Clair	15					2			1		
Stephenson	2										
Vermilion	6					1					
Washington	4										
Winnebago		2									

We believe that the actual circumstances of the crime should be weighed by the board as it weighs all other facts concerning the prisoner.[1] Any fact that is material on the question whether the prisoner is a good parole risk is proper for consideration by the board. It should be free to consider all the facts connected with a prisoner's past life, for so only can it act intelligently in forecasting the likelihood of his succeeding on parole and afterwards. This is not trying cases anew to determine guilt; it is laying up knowledge with which to act intelligently for the protection of the public.

48. Same: Action of the State's Attorney in Securing Pleas of Guilty.

We found that occasionally serious problems have arisen between the board and the state's attorney and even the trial judge over representations made to a prisoner when his plea of guilty was secured. As has been pointed out previously, the board very properly welcomes recommendations and statements of opinions relative to the prisoner and it gives much weight to them. A recommendation to the board should be differentiated, however, from a promise to the prisoner or an intimation to him that if he pleads guilty he will be released, or is likely to be released, after a specified period of confinement. The latter is objectionable. For the state's attorney or the trial judge to make such representations is encroaching definitely upon the jurisdiction of the board. It is just this feature, i. e., the determining of the period a prisoner is to be confined, which is the peculiar function of the board. It is its duty to study the prisoner's case and to *release him only when it believes him to be a good parole risk*. Further, it must perform its functions with an eye to disciplinary problems in the prison. Let it once become known that, other things being equal, some prisoners are being released earlier than others, the morale, and there is such a thing even among prisoners, of the other inmates is lowered.

One case will suffice to illustrate. Three boys were sentenced to Pontiac on a penalty of from one to twenty years. Eight months after their imprisonment the state's attorney wrote the superintendent of the reformatory as follows:

"Prior to sentence Judge ———— and I agreed that on a plea of guilty we would recommend parole on the minimum time, providing,

[1] The following question was put by a member of this committee to a number of state's attorneys: "Assuming a situation where a lesser plea has been accepted, for example, a manslaughter plea where the facts indicated murder, do you believe it properly within the province of this division of pardons and paroles to take these facts into consideration in fixing prisoner's sentence?" Twenty-two replied, 17 said that these facts should be considered, 3 said they should not and 2 were indefinite. One, typical of the replies received from the majority, wrote: "I believe the parole board in fixing the prisoner's sentence should be governed by the facts in the case rather than by the offense to which the prisoner has entered his plea of guilty."

Another view was expressed as follows:

"I don't think the division of pardons and paroles should consider anything only what is before them in reference to the prisoner's plea. If the papers say manslaughter, that is what he has been convicted of and that is the thing that should be considered. It is for courts to say what a party is guilty of and no one else."

Fourteen trial judges answered a similar question. Of these 13 were emphatic that the board should consider all the facts of the crime notwithstanding the lesser plea. One was opposed.

of course, that the boys, or any one or more of them, had conducted themselves in a manner to warrant parole."

A few days later he addressed the following letter to the board:

"Each of these boys come from families which are unquestionable and above reproach, and the parents in each case rendered to me and other officials all possible service in having the boys relate their offenses in detail, and sanctioned the method of sentencing them to a reform school, and the parents made restitution of all the money gotten by the boys immediately after their sentence. Previous to the time of sentencing the three, the circuit judge, myself as state's attorney, and the parents held a consultation relative to the possibilities of reforming the boys, and after discussing the details in particular with the boys, it was the opinion of all concerned that one year in Pontiac would be sufficient punishment to cause them to realize their mistake, and it was agreed between us, myself as state's attorney, Judge ————, presiding judge, and the parents that we would recommend a parole at the end of one year period."

The day following the last letter from the state's attorney, the trial judge wrote to the board:

"I am informed that the state's attorney has already written a letter recommending their release. If the conduct of these prisoners has been satisfactory I recommend their release on parole."

Four months later the trial judge wrote once more:

"I desire to renew my recommendation that these young men be released on parole if their conduct as prisoners has been satisfactory. Considering their youth and the fact that they have already served 13 months, it is my opinion they have learned a lesson and that they will profit by their imprisonment if given a chance by release on parole."

The interpretation put on the negotiations, before the boys were sentenced, is shown by the following letter from a firm of lawyers representing one of the prisoners. This letter was written about the time the one last quoted from the trial judge:

"After a long consultation the state's attorney agreed that under all the circumstances one year would be sufficient punishment, and if we saw it that way he would write a strong letter to the board of pardons and paroles at the expiration of one year, recommending the release of these boys, and Judge ———— at the same time stated he would do the same. In this situation we recommended to our client that plea of guilty be entered and same was entered."

Then followed a letter from the chief of police stating:

"At the time we had these boys in court they pleaded guilty and I understand were told at that time if they would make good at Pontiac the public officials would do what they could to get them paroled in a year. I think they ought to have the benefit of this promise."

Another attorney representing one of the boys wrote about the same time:

"At the time these boys were indicted I was representing the ———— boy. I allowed him to plead guilty. In fact, I advised him to plead guilty from the strength of conversation with the trial judge and

state's attorney. They told me they would recommend a parole for these boys at the end of 11 months if their behavior was good. They also advised me they had never known of any case wherein the parole board had disregarded a joint recommendation from the state's attorney and the presiding judge. I feel that the state of Illinois will do these boys a great injustice if they do not admit them to parole now that more than one year has elapsed, and I most strongly urge you to grant this request."

And still another attorney who represented the third boy wrote:

"Would not the bad effect of an apparent breach of good faith by the people of the State of Illinois be so bad as to more than offset the possible advantages or desirability of further punishment? I cannot help but feel you will agree with me in saying that if the boys have in good faith tried to make good in the reformatory, then the state should in good faith try to carry out that to which the state's attorney and the trial judge pledged them in so far as they had the power to pledge them."

This case caused a great deal of misunderstanding between the board on the one hand and the trial judge and the state's attorney on the other. We believe that all this would not have occurred had there been a clear understanding of the functions of the board. So that the board may not be embarrassed, it is desirable that no representations be made to a prisoner concerning the time of his confinement other than the legal limits of his sentence, and certainly there should never be a representation to him that, if he plead guilty, he might expect to be released at the minimum or any other period short of the maximum with the possible exception that he might expect allowances for good behavior within prison. In the administration of the law various officers must work elbow to elbow; effective work can be done only if each recognizes and respects the functions of the others.

PART C

PRISON AND PAROLE METHODS, AS EFFECTIVE FOR REHABILITATION OF THE CONVICT

49. Statute Provision. "In consideration of any parole said board shall consider and give weight to the record of the prisoner's conduct kept by the superintendent or warden." This is not only a provision which aids the prison or reformatory in disciplining its inmates, by holding out the parole as a reward, but a requirement that the board and the supervisional administration take into consideration, first, the behavior of the person while under observation in the prison. This report, therefore, includes a study of the methods of Illinois State Reformatory at Pontiac, the Illinois State Penitentiary at Joliet, and the Southern Illinois Penitentiary at Menard, from the point of view of assisting the ultimate rehabilitation of the criminal.

50. The Illinois State Reformatory at Pontiac. The Illinois State Reformatory at Pontiac accepts commitments of boys and young men between the ages of sixteen and twenty-six. The importance of training and instruction for a population of this age-level has been taken into account in the plan of the institution. There is not only a separate school building for academic instruction, but some of the shops are designated as "schools."

In the case records, studied by the committee, of inmates about to appear before the parole board, very little reference, if any, is made of the work and school progress of the particular inmate. The officials in charge of each shop should be able to give detailed and specific reports of the accomplishments of the youths, their diligence and aptitude.

51. Same: Occupational and Training Opportunities. The following shop schools are listed in the daily employment report: Bakery, blacksmith, carpentry shop, masonry, printing, painting and glazing, shoe making, tailoring, tinsmithing. These are classed as "trade schools." All inmates are required to put in half a day in school and the other half day at work at one of the shops, either in the productive or non-productive classification. If a youth, however, has finished the eighth grade prior to coming into the institution or within the reformatory, he may be assigned to a full-time job.

Chief among the prison industries, in which 301 inmates are employed on a half-day basis, is the upholstered-furniture shop. This shop produces for the market, and not for state use or for institutional maintenance. An experienced factory superintendent is in charge. Between fifteen and twenty sets a day, composed of a davenport and two chairs, of the overstuffed type, are produced here. Work in this shop is conducted on a strictly industrial basis. Everybody is busy here and there is little "soldiering" and no "busy-work." Here is an industry, working on a business basis, in a reformatory institution, in which the youths can learn operations in every way similar to those in a factory in the same line in the outside world. Much has been said about the resistance of manufacturers and unions to prison manufacture

for the market. There has been no opposition, so far as we know, from any quarter to this arrangement. This enterprise is not an ideal opportunity for learning a trade because the product is highly specialized. But all of the work can be classified as semi-skilled and all of the workers learn operations which they can utilize in a factory after release on parole.[1]

The printing shop employs fifty-nine full-time inmates. The superintendent of printing, who is in charge of this shop, was formerly engaged in the publication of three or four country newspapers and conducted a job printing shop, which is usually part of the publishing business in a country town. There is a bindery in connection with the printing plant. All of the work produced is for state use. The shop is continuously busy and gets a sufficient variety of work to afford the necessary variety of instruction in the training of a journeyman printer. Undoubtedly the inmate who has sufficient schooling to fit him for this trade, and who is not temperamentally unfitted for the printing business, could become a journeyman printer if given the opportunity (a) to master all of the processes carried on in the shop and (b) to perform a sufficient variety of printing jobs. The shop, however, is not organized primarily as a school shop but as a production shop. It would be unfair, however, not to mention the advantages to the youth employed in this reformatory shop. In the first place, the printing plant here actually offers an unusual opportunity for the youth who is eminently fitted for it, who fortunately comes into the shop at a time when he can be promoted from operation to operation, and when the variety of work is such that he can gain a sufficiently wide experience. As an interesting occupation, regardless of apprenticeship experience, the printing shop ranks high at Pontiac.

The tailor shop employs fifty full-time and seventy-one alternating half-time men. It is in charge of a man who was formerly engaged in the custom tailoring business and is a master of his trade. The shop is completely and modernly arranged and equipped. The instruction includes all operations, even to the hand-tailoring of complete suits, overcoats and caps. Power cutting machines and sewing machines are used. The best feature of the shop is that the workers are moved from operation to operation and can progress to the completion of journeymanship. For instance, such men as are engaged in power sewing machine operations in the manufacture of shirts and overalls are later permitted to work on "dress-out" suits and overcoats to be worn by inmates when discharged, and upon clothing for officers. In this trade as in the printing trade, academic work and shop work are not correlated. It need not be assumed that there is nothing for a custom tailor to learn in school.

Heavy shoes, called "brogans," for use within the institution at Pontiac, are manufactured on one style and last, and by so simple a method that it does not require the use of the main machines utilized in a shoe factory manufacturing a general line for the market. The shop is not arranged to parallel such a factory. Inmates who can afford to buy better shoes are

[1] The records of the committee show, for example, that a young man who learned to be a shipping clerk in this furniture factory is very fortunately placed in the same sort of work in Chicago.

permitted to purchase their own from the outside if they choose. In the shoe-manufacturing business the machinery is, by and large, not owned by the manufacturer but leased from a single company for use everywhere in the United States. For learning purposes it would be fortunate if this inmate demand for better shoes were supplied by the inside shop on a purchase basis. The additional machinery could be leased in order to give the youths an opportunity to learn the trade. As it is, this shop employs sixteen full-time and twenty-seven alternating half-time inmates who are learning a type of shoe making that approximates that of the cobbler rather than learning a shoe factory trade.

The machine and blacksmith shops are dependent for their work upon the repair jobs which occur as mishaps in the operation of the plant. There is no continuous production and little opportunity for learning a trade. The machine shop is not equipped with the machinery necessary for learning the trade. In the blacksmith shop, which employs eleven men in the morning and eighteen in the afternoon, there were two boys actively engaged. In the tin shop there were ten at work in the morning and nine in the afternoon. Two were making covers for garbage cans. One of them was putting a crimp (marcel wave) on a garbage can cover with a crimping machine. The others were idle. In the electrical shop the inmates were idle. Several of the boys there were taking the course in electricity from the International Correspondence School, and one was actively engaged during the visit of the committee in producing a working drawing of the lighting system of one of the cellhouses. Masonry, carpentry, painting and glazing are listed among shop schools. A total of fifty-five full-time and thirty-two alternating half-time youths are employed in these shops. There is no brick or stone building construction in process at present, nor is there a project room where bricklayers' learners are taught by the project method the various "bonds," the reading of blue prints, estimating, etc. Carpentry, painting and glazing are not methodically taught or learned.

52. Same: Non-productive Occupations.

The occupations listed as non-productive are also classified as "schools." Among these occupations, which are used solely in the daily service of the institution, are some in which the ordinary work affords the learning, partially or completely, of a trade.

Of this category, the work in the barber shop is an outstanding example. Every inmate at Pontiac, as at other penal institutions, must be shaved and have his hair cut in the barber shop. This gives a continuous supply of work to the barbers, who, except for the manager, are inmates. The shop is so conducted that it parallels the work of commercial barber shops. Very close care is exercised here to keep separate shaving cups for such inmates as are known to have infectious or contagious diseases. This strictly enforced rule is of value to the learning barber. With the amount of work there is no idling on the job. Twenty-one full-time and twenty-five alternating half-time men are employed.[1] Academic school work could be offered to barbers,

[1] The committee has studied at least two paroled men whose first job on parole was that of barber, both of whom learned their trade here. Both of these men saved their money, bought cars, and are now cabmen in their own rights. They are also married and have attractive homes.

relating to sanitation, shop management and shop-accounting. Since the training is effective, the operations learned and the skill attained ought to be a factor in parole consideration and placement, if specified in the record.

The bakery is sanitary and systematic in its operations, approaching more nearly a modern bread factory than a neighborhood bakery. Here an inmate can learn to be a bread baker for which in urban centers there is a demand. Provided the inmate is shifted from process to process, it is even possible to place him after parole in a baker shop which has a line of pastries and other products in addition to bread-baking. There are ten full-time and twelve alternating half-time men assigned to the bakery.

Truck farming, care of cattle and chickens and hogs, are in charge of a specialist, with two gardeners, a dairyman and a poultryman as assistants. The boy coming from farm work has the opportunity to learn much of large-scale agriculture, animal husbandry, of hot-house work and dairying, which his home training did not afford him. Thirty-nine full-time men are assigned to the farms.

Band, vocal quartette and other musical instruction for entertainment within the institution is intensively conducted. Youths can attain here a musical training valuable to them in earning a living upon release. Entertaining, waiting on officers, or clerking in the various offices provide opportunities to come to the notice of officers and to gain favorable recommendation. In the instrumental music division are listed ten full-time and sixty-two half-time men.

In the clerical jobs, which inmates call "politician jobs," certain special privileges naturally exist by the very conditions of close association with officers and the requirements of the work. All staff officers and some of the subordinate officers have inmate help for every type of duty and develop, from those who have aptitude and power of application, clerks of accuracy and reliability.

The cooks in the officers' and warden's quarters, as well as the waiters, occasionally have the opportunity to learn these occupations to a craftsmanly degree. Cooks in the inmates' kitchens and all of the kitchen help are less fortunate unless they are to be employed in military service, large contracting camps, etc. The kitchens are conducted on a sanitary basis and if cleaning and sanitation are valuable in this trade then there are valuable elements in their training. Most of this work is "kitchen police" or scullery work. One branch of the commissary division is the dietitian's department; it is likely that a few youths could learn something about balancing of diets, rationing of meals, and commissary accounting. There are eleven full-time clerks, eighteen cooks and waiters in this division.

The librarian employs jointly with the chaplain about sixteen full-time inmates. The contact of these boys with the chaplain affords them the opportunity to read books and do interesting work, as well as to become closely acquainted with these officers. The books in the library are not accessioned, catalogued, classified, advertised, or circulated according to modern library methods. This provides clerical work but no library training.

The power plant consists of a boiler room, equipped with automatic stokers, furnishing steam power and heating, an engine room with three

engines connected with generators for the transformation of steam into electricity, propelled by belt transmission, an ice machine furnishing pipe refrigeration, etc. There is no instruction given to the youths in the fire room about fuel. The fireman and oiler are specialized at their jobs of watching the gauges and oiling. The inmates working in the fire room need have and acquire no skill. Their work is to shovel coal into an automatic stoker. This, of course, eliminates the opportunity of learning how to keep up a fire, as in hand firing, and the work impresses one as useless when one reflects that the addition of an overhead carrier would eliminate shoveling into the stoker. It is labor, however, and gives steady occupation. Occasionally the plant may turn out a practical fireman and oiler.

The engineer in charge of the power plant had been an academic instructor in the school at Pontiac and has had some experience as stationary engineer in addition. The plant could be used for turning out a number of stationary engineers per year and others as assistants, oilers or first-class firemen, if the problems of the power plant were taken up, tests and problems concerning fuel, B.T.U., combustion, expansion of metals, problems in the electric generator, problems of steam, etc., were introduced. There are many ready courses which, placed in the hands of even a mechanic of intelligence, would convert this day-labor into schooling, if the laboratory value of it were appreciated.

Photography, in connection with the fingerprint and Bertillon systems, the work of "dressing in" and receiving, are all carried on in one department. Fragments of occupations applicable in the outside world can be learned here.

What is listed as miscellaneous work, jobs on the lawn, conservatory, yard, or laundry, shoveling coal, trucking, entail the heaviest labor. Or it may be a purely vain assignment with little or nothing to do—another word for "unassigned." In this classification several hundred young men are employed who can hardly be said to be learning anything from their work. Occasionally, by way of promotion, one may be shifted to driving a truck, or to more work affording some training opportunities. Most of it, however, is just labor, irregular, arbitrary, and unequal.

53. Same: Summary of Occupational Opportunities.

There is admittedly a great deal of idleness at Pontiac—unassigned men, idleness on the job, over-manning and "busy-work" assignments. All of these phases of idleness are not conducive to "character-building" so much emphasized in the progressive merit system. It gives the idle inmate a feeling of futility and waste. He develops a contempt for so rigid a disciplinary system directed toward no objective and producing so little. The reformatory officials are constantly faced with this problem, but cannot be held responsible for it. The installation of more industry is a function of centralized departments and divisions in Springfield. The officers at the reformatory are engaged in defined jobs of routine business administration, guarding, and disciplining.

There is great inequality of learning; some assignments afford the learning of a skilled trade, others of a semi-skilled set of factory operations, others mere work and no training but having the advantage of keeping the inmate occupied; still others bear the names of skilled trades and are neither steady

work nor training. All are uncorrelated with the schooling. Many could be instructive but are not. Placement in employment by the Parole Board should conserve the fractional or complete training, but it does not do this. In the staff meeting and in the records transmitted from the institution to the Parole Office which is to supervise the man on parole, there is very little if any analytical listing of the accomplishments of the individual in learning a trade. The processes learned by the man should be listed. Men engaged in occupations which keep them busy and interested are seldom reported for infractions of rules.

Industries could be introduced with less resistance from the respective markets if a pay basis could be worked out, taking into account the cost of keep and institutional maintenance prorated per man. The pay incentive, though only second in importance in those work assignments affording training, is of primary importance in the productive jobs offering no advantage or opportunity for learning.

While the labor unions are continually referred to as "opposition" to the systematic introduction of opportunities for labor, there is no evidence at the present time that they have been called into conference on the concrete problems or shown satisfactory solutions thereof. All controversies could be adjusted if the issue be not avoided but is clearly raised, and all parties in interest called in to solve the problem. Much help can be obtained from the experiences of state after state in working out vocational education, apprenticeship, and related problems in the world outside of penal institutions. Joint boards or committees of labor officials, employers, merchants, and the vocational educator and industrial manager could be called upon to help solve the problems of pay and training in the reformatory. The creation of incentive would humanize the institution.

54. *Same: Academic School.* If these shops are really schools, then the academic school should utilize the material of the shops to make work interesting and the work in the shops should be arranged in progressive steps for the learner, correlated with progressive steps in the school. Furthermore, to be real shop schools, blackboards should be placed in each shop and problems explained as they arise. Considering the overmanning of all the shops, and the availability of idle men, this would not interfere with production at all. The learning element would probably be the highest kind of incentive.

At Pontiac, in contrast to Joliet and Southern Illinois Penitentiaries, there is a special school building with ten large rooms in it. The whole aspect of this building is that of a town high school of the last generation. Every inmate who has not finished the eighth grade must attend, except those in indispensable jobs.

The committee was interested in the adaptability of the inmate of Pontiac for school work and learned that only occasionally is a pupil dropped because he cannot learn. While intelligence tests and achievement tests are given every inmate at some time during his confinement there is no attempt made to grade inmate pupils according to these tests. Incoming pupils are, however, given arithmetical tests by the principal.

At the time of the visit of the Committee there were 732 inmates attend-

ing the school alternating on a half-day basis, distributed through the ten rooms. Ten teachers are in charge of the instruction but—and here lies the main difficulty—a considerable number of these are really hired as guards and do guard duty after school and on Sundays and holidays. To assume that their qualifications are those for guards rather than for teachers would be, generally speaking, fair; and it must be borne in mind that guards are politically appointed.

The instruction is all from text books having no relation to the problems of the trade shops. A single teacher stands at the head of the class and the method used is that characterized as "lock-step education," which is very wasteful, even more for adults than for children. Adult education in night schools, part-time schools and continuation schools, in correspondence courses, has been worked out to a much finer degree of adjustment to the problem than at Pontiac.

In view of the availability of modern methods in adult education it is evident that little thought has been given the problem of adult education in this academic school. It cannot be said that the fact of low-grade teachers is entirely at fault, because of three considerations:

1. Whoever can teach out of a grammar-school text book can usually be adapted to teaching (a) by the individual method, and (b) from lessons in which the material in academic work applies to the shop.

2. The skilled mechanics in the various shop schools could be called upon to help in teaching, as it is fair to assume that many or most of these could not have arrived at the mastery of their trade without understanding printed material about it.

3. The assignment of inmates of advanced education as subordinate instructors capable of mastering the practical system suggested is not out of the question.

A chaplain has encouraged a considerable number of inmates—about sixty—to take correspondence courses. While he has secured a special concession as to price, the inmate who can afford to pay for and is ready to take a correspondence course is the exception. Correspondence work has a marked weakness, namely, that comparatively few men can carry one of these courses to completion, working alone and without occasional help and advice.

In spite of all of the weaknesses of the school, there are considerable numbers of inmates who gain a great deal by way of review and others who learn; some conserve their previous education, others progress farther by the work of Pontiac.

55. Same: The Library.

The school is only for those who have not finished the eighth grade. Less than half of the inmate population is in school. For the other half, the library is the principal service furnished by the institution for intellectual stimulation or further learning.

The American Library Association, with offices in Chicago, is a clearing house of information in the library field. Workable arrangements might be made between Pontiac and the libraries of the state, of various cities and private libraries, by which collections can be loaned and returned. Library

schools would probably cooperate by sending advanced students to help in recataloging and modernizing the system and in training available help.

At Pontiac the librarian is institution telegrapher, weather recorder, and assistant to the chaplain. He censors the institutional mail and searches packages for contraband goods and weapons. He is also general secretary of the Reformatory Y. M. C. A. While he is very familiar with the books on his shelves, he is not a trained librarian. Young men capable of good library work are to be found among the inmates, but they are not properly trained. It is not surprising then that this library is in a rut, considering the possible demand that could be created within the institution. Few inmates have direct access to the library. A system of ordering from lists and returning by messenger is in use. The catalogues are mere lists of titles. The books are, many of them, second-raters or antiquated, and do not suggest accessioning related to life interests or the possibility for continuous, progressive reading in any single field. Much remains to be done in relating the library to the life in the school and in the shops. Both as to general cultural reading and as to applied, practical reading, the library is lacking.

56. *Same: Recreation.* Recreation at Pontiac is described in detail in a special report which the committee has recently received, December 17, 1927, from the recorder of the institution.

"We have daily play periods in the summer months beginning in May and lasting as long as the weather permits, usually sometime in late October or November. Each boy is allowed forty-five minutes of outdoor play daily during which baseball, indoor-ball, basket-ball, hand-ball and other outdoor games are played. We have intramural baseball and indoor-ball leagues composed of shop teams. On Saturday afternoons the entire inmate body is allowed to gather on the playground. Usually at this time there is a ball game played between two shop teams in an elimination tournament arranged by the athletic director. Occasionally an outside ball team is brought in to play our first team. Two and a half hours is about the usual length of a Saturday afternoon play period. On Sunday morning the boys are allowed to walk around the parade ground adjoining the playground for about forty-five minutes. At ten o'clock devotional services are held in the chapel. The institution band plays while the boys march into the chapel hall. There is always some special music on Sundays, sometimes a vocal quartette made up of inmates, the institution orchestra or it might be some singer or lecturer from outside.

"During the winter months we have picture shows on Saturday afternoon. Last week we showed 'Tin Hats' and the week before that 'Slide, Kelly, Slide.'

"From November 1st until the following May we have Y. M. C. A. services on Sunday afternoon. All of the boys who have attained grade 'A' are entitled to membership. Any boy who is a member of the 'Y' may prepare a subject and give a talk at these meetings. The 'Y' has an inmate secretary whose duty it is to arrange the program for each meeting. Songs are sung by the boys, individually and collectively, and music is furnished by the I. S. R. orchestra.

"At Christmas time we have a vaudeville show which usually consists of about seven or eight acts. Heretofore we have always used what talent we could find in the institution."

The lack of a gymnasium seems to entirely eliminate physical training and sport in the winter months. It must be remembered that the inmates are between sixteen and twenty-five years of age upon commitment, living in cellular confinement.

To promote outdoor physical recreation in the winter it would only be necessary to flood certain intramural areas for skating, for instance, or to introduce a game in which large numbers can participate, like push-ball. The absence of winter outdoor recreation is a serious problem under the conditions. Prison pallor must have some physical and psychological co-relatives of importance and it is very evident.

57. *Same: Administration and Discipline.* The institution accepts commitments between the ages of sixteen and twenty-six. Murderers are not committed here. The courts may sentence boys over ten years of age to Joliet for certain felonies, instead of sending them to either the Pontiac reformatory or the St. Charles School for Boys.

Procedure. The sheriff brings the inmate "within the enclosure" of the institution, delivers him to the record clerk and presents the mittimus to him.

1. Once the new inmate's commitment has been registered through the presentation of the mittimus to the record clerk, the receiving officer takes charge of him. In his department the new inmate is undressed of his street clothing; he receives a hair cut and bath, a de-lousing, and changes into prison uniform. The photograph, Bertillon, and fingerprint registration follow.

2. The cellhouse keeper then assigns him to a permanent cell in the north cellhouse.

3. Physical examination follows. The physician gets the inmate's physical history and observes infectious and contagious diseases.

4. Another interview with the recorder follows. At this time he gets an account of the crime, some information about the family, previous criminal record, etc.

5. The superintendent of the school next interviews the inmate and gives him a brief examination, oral and in writing, for the purpose of grade classification and placement in the school.

6. The assistant superintendent interviews the man with a view to placing him in proper work. It consists merely of sufficient questioning to disclose if there is any occupational experience in the history of the newcomer which would be immediately useful to the institution.

7. Either the assistant superintendent or the captain explains the rules of the institution and the Progressive Merit System. He is given a little rule book which he keeps in his pocket, entitled "Rules Governing Inmates of the Illinois State Reformatory." The inmate then enters upon his routine of life and occupation in the institution.

Unless he commits some infraction of the rules, unless some special ability or skill leads to his selection for some duty outside of his routine, the new inmate does not again come to the notice of the members of the staff

until he has reached the highest grade "A," which in the ordinary course of the Prison Merit System, takes six months or over to accomplish.

In all of the case records studied from Pontiac there is a useful orientation statement contained in the "Summary of the Staff." This summary is dictated by the superintendent and is the result of a meeting daily in his office. Present in this staff meeting are the superintendent, assistant or second superintendent, the recorder or record clerk, a chaplain, the psychiatrist, and the chief medical officer.

This meeting is held for the purpose of examining and appraising each inmate with a view of preparing a recommendation to the Parole Board prior to its hearings. The inmates, judging from their behavior before the staff, consider the occasion one of grave import; and the opportunity is utilized also for morale-building and as a form of treatment for reformation.

The summary of the *staff conference* is a valuable document for the Parole Board. If it were supplemented by direct and independent investigation by the Parole Board of the conditions involved, in the reformatory life, and a social investigation of the conditions leading up to the criminal career, it could be given even greater weight. There is, however, this apparent basic failing. If the occupations, training, schooling, reading, were effectively carried on, progress and good behavior could be measured in terms of these rather than the present progress in a vacuum of good behavior, meaning mere tractability. The behavior record, if devoid of infractions of the rules, is given great weight. The conditions are not such as would bring out, with equal or greater weight, progress along training, schooling, reading and recreational activities. The school superintendent, the shop instructor, the recreational director, are not included in this staff meeting.

Routine in an over-crowded reformatory means routine meals, routine work (interesting or uninteresting), routine drill, routine baths, routine shaves and hair-cuts, uniforms, and routine changes of clothing, routine turning out of the lights at night—and every motion of life is routine and under written or oral regulation, minute and rigorous.

The cellhouses are over-crowded; a considerable number of cages are used and farm hands on the semi-honor basis are sleeping in an over-crowded, open dormitory, not in cells. These cells were originally intended for a single person and they are now used by two or three. The cells are equipped with running water, with washing and with toilet facilities. The cages, provisional open dormitories and other places used for dormitory purposes, not originally intended as such, are not equipped with these plumbing facilities. With the over-crowding and the necessarily strict routine, with the enforced partial or total idleness and the general lack of incentive, a great many problems of discipline arise as homo-sexuality, escapes and plotting to escape, fighting and insolence, threats or attacks upon officers. The position of guard is an undesirable one, from the point of view of hours of labor and holidays and monotony. The guards are politically appointed and untrained; their job of watching twelve hours a day over a large group of youths becomes very trying.

In the contacts of reformatory life where these youths feel the sympathy for each other engendered by a common adversity, friendships develop.

These are lasting and, in informal conversation with ex-convicts, their knowledge of each other's whereabouts in a metropolis and their close information about facts and changes occurring in the institution a number of years after their departure, prove first, the rapidity and thoroughness of communication, and second, the lasting relations and ties between youths who have served in Pontiac.

Pontiac develops popularities and sentiments, followings and oppositions, even though the inmates are under restraint. Segregation must first be physical: the individual limitation of contacts between certain classified groups according to their histories, habits, and attitudes; and a second type of segregation should take place if the wholesome interests were enriched and multiplied. It is, therefore, a matter of general agreement that as there is no marked segregation the institution may be a locus of further criminal infection. Figures upon parole violation and recidivism bear this out.

Infractions of rules by inmates, some minor and some that would be considered crimes in the outside world, are correlated with certain cell guards and certain jobs. The shops having the most interesting work turn in very few reports against inmates. Living under constant watchfulness and restraint, certain groups develop an attitude of mischief and small infractions, thefts of food for instance, furnish a diabolic thrill and subject matter for excited conversation. Every official at Pontiac admits if normal activities were more interesting less punishing would be necessary.

Three members of the *medical staff*, the chief, his assistant, and the head nurse, have had long years of experience, maintain a creditable hospital and are alert in the introduction of the new methods of their profession. From the point of view, however, of the inmate, the staff is extremely watchful of malingering. With little else to engage their attention and thought, inmates think a good deal about their ailments; but it is questionable whether there is much effort to escape the rigors of prison life by feigning illness. Ordinarily the sick cells to which the inmate is assigned do not afford greater comfort or greater sociability or better food. Only in the most pressing cases are inmates hospitalized in the hospital proper. What would happen if the men who report on sick call could sit down while waiting, quietly conversing, instead of standing up in line at attention and maintaining silence?

In the *chaplain's office* at Pontiac there is considerable individual interviewing, and for those boys who possess a marked talent or training as performers, for example, musicians, this is headquarters. The chaplain's office makes thorough studies of the inmate's religious status and affiliations. These studies serve to acquaint the chaplain with the background and the social history of the inmate. Every effort is made to give the inmate those satisfactions that come from the opportunity to practice one's own traditional religion. The chaplain meets many individually and takes up their worries and problems. There is a greater value in the opportunity to speak freely to an older person in the institution and many who are not church-going avail themselves of the counsel and advice of the chaplain's office. Among the ex-inmates is an Italian young man who was a singer in the quartette, and another who was a clerk in the chaplain's office, who valued their con-

tact with him highly. Both of them are completely rehabilitated, married, and have good homes. Both of them feel they were fortunate in being sent to Pontiac at that particular point in their criminal careers.

The *psychiatrist* at Pontiac is known as the "Mental Health Officer" and is under the state criminologist. He devotes only half of his time to the work here at Pontiac, where he has his residence near the reformatory. Among the papers which the Parole Board receives from the institution is the psychiatrist's report. This always contains a certain amount of social data as well as the psychiatrist's classification of types of mentality and personality. The psychiatrist often adds a prognosis as to feasibility of parole for the inmate in question.

The *Parole Office* at Pontiac has purely documentary contacts with the individual inmate. After the docket has been prepared for any sitting of the Parole Board, the parole officer notifies the state's attorney who prosecuted the particular inmate coming up for parole, the judge, and the complaining witness. These are formal notifications and are intended to give these interested parties an opportunity to recommend or protest the parole of the inmate. Before an inmate is released on parole certain documents must be on file including the application for parole signed by a prospective employer, a notice to the prosecuting attorney of the county to which the parolee is destined, and a letter from the parole agent at the point of destination, stating that he has investigated the sponsor. The parole officer at Pontiac forwards certain forms to be filled out, containing certain meager information about the parolee, to the parole officer or agent in charge of supervision. He also mails out at the time the parolee leaves, his photograph, Bertillon measurements, and other identification data on the reverse side. Another form attests the parolee's arrival at his destination—copies of monthly reports of parolees are forwarded by the parole agent, and are filed; these are again very meager in information. They are countersigned by the sponsor and give the days employed, unemployed, and the earnings. Other forms have to do with the delinquency of the parolee, notice of failure to report, and the warrant in case a parolee violates. The parole officer is engaged mainly in the upkeep of this file of documents, and he does this thoroughly. He has only slight contact with the parolee as a person; in other words, the contact is almost entirely documentary, for the purpose of complying with the law's requirements concerning parolees. The parole office also compiles monthly and annual reports which are statistical and are required by the parole division.

58. Same: Conclusion. No statement in the preceding discussion should be construed as implying that the standards for academic and industrial training at Pontiac are lower than average for the reformatories of the United States. On the contrary, they are, in all probability, higher. But that is not the point which the committee desires to make. The outstanding fact is that the practical opportunities for education in school subjects and in a trade are not nearly utilized to

the extent that they could and should be if our state reformatory is to do its part in the rehabilitation of the criminal and in his restoration as an industrially competent and therefore in all likelihood a law-abiding member of society.

59. Illinois State Penitentiary at Joliet.

The Illinois State Penitentiary at Joliet seems at first sight an entirely different institution from the State Reformatory at Pontiac. While the range of ages at Pontiac for youths when paroled is 17 to 32 years, and of Joliet is 17 to 81 years, this is a real and important difference. Youth is more susceptible to reformation than age and the physical plant and plan of administration should take that into account. But the fundamental problems of work, education, recreation, and discipline are present at Joliet quite as much as at Pontiac.

The employment history of an adult before his entrance into prison would be an important indication of the feasibility of a man for parole. Is he a skilled craftsman, semi-skilled or unskilled? How permanently was he employed? Is he a casual laborer, a floater from job to job? How well can he account for his means of support?

In the cases prepared for the Parole Board by the office of the penitentiary at Joliet was a form entitled "Instructions to Prisoners," upon which the inmate may record his employment history prior to imprisonment. Frequently this form was not contained in the jacket or file; in other cases the form was incompletely filled out. Only seldom did we find a history which would even approximately account for the years between the date the inmate left school and the date of imprisonment. Rarely were these statements of employment history verified by the official through direct contact or correspondence, nor was the actual work specified beyond the general terms "laborer," "clerk," "machine shop."

The inmate fills out this form or is aided by inmate "wing-writers." Little is done to impress the inmate with the importance of this information as a basis of parole. Little aid is given him by skilled questioning before writing down the information, in order that it may give a clear idea as to his occupational experience, either as a basis for judgment by the Parole Board or as a suggestion to the parole supervisors as to his possibilities for a job after release on parole. When an inmate is released this employment record is not forwarded to the parole supervisor for use of the agent who is to have the task of keeping the parolee employed.

Even if the previous employment history is not available, or is incomplete and unverified, the period of imprisonment ought to yield information upon (a) work habits; and (b) skill and experience exhibited or gained in the institution. It was, therefore, necessary to examine into the conditions of daily employment of inmates within the institution, in order to learn (a) to what extent habits of industry are fostered or developed in prison; (b) to what extent a man does or can learn a trade there; (c) to what extent habits of industry and employment enter into the markings of the Prison Merit System and the recommendations of inmates for parole by the officials to the Parole Board.

60. Same: Occupational Opportunities.

The writer and one member of the committee visited all of the industries and later interviewed officials as to work in prison. We made an effort, first, to list the industries and to ascertain the number of men employed in each; second, to determine the extent of employment and of idleness in the total prison population. The productive industries at Joliet are under the local supervision of a superintendent of industries. He is, however, not officially in a position to plan and install new industries nor to increase materially the volume of output. Those functions are in the hands of the legislature and of centralized departments and divisions at Springfield—the Department of Public Welfare, the Division of Sales, etc.

The following list of the productive industries at Joliet and of the number employed was verified by the Superintendent of Industries:

1. The stone quarry employes about three hundred men. The stone is furnished free of charge, for highway purposes, by requisition of the highway commissioner of a township upon the Division of Highways at Springfield. According to law this stone from the Joliet quarry cannot be sold.

2. The shoe shop manufactures shoes for use in state institutions. The shop could efficiently employ about seventy men. However, about one hundred and twenty-five men are employed. This accounts for the men standing about in idleness.

3. Wood furniture. About two hundred and eighty men are assigned to this shop, but it would work efficiently with one hundred men. An additional twenty men are employed in the repair of furniture.

4. Fiber shop. About three hundred men are employed in making furniture out of woven fiber which at one time replaced reed work. The demand for fiber furniture seems to be decreasing. The fiber shop can be kept fairly busy, as little machinery is used and therefore more men can be assigned to this shop without the problem of increasing equipment and machinery. Since both the fiber and wood furniture are manufactured for the open market, the limitations on the development of the work lie in the small market for the product.

5. A new shop for the manufacture of dining-room suites for the open market is under construction at the New Prison that may employ about two hundred men. There is very little objection from manufacturers or labor unions against this enterprise.

The superintendent has accounted here for the employment of about one thousand men, a large proportion of which were vain assignments, without actual labor.

In addition to assignments to employment in productive industry there are the usual assignments by the deputy warden to the stewards and sanitary department, plant maintenance work, clerical work, etc. These again are over-manned and much soldiering on the job exists.

The farm, which is under the jurisdiction of the New Prison, employs only about eighty-one men. The disorderly conditions reported to have existed under the former deputy warden explain why only six men are now entirely on the honor system, remaining there day and night; the others are returned to the prison at the end of each day. The honor farm seems to

have been discarded as an idea, but the objections stated were such as need not have condemned the idea, provided changes in internal discipline and selection of inmates for the honor farm could have been made. All of the farm work at penal and reformatory institutions of the state is necessarily outside of prison walls, and can be carried on in a satisfactory way provided selection of inmates for the honor farm and discipline are properly conducted.

Within the New Prison there is also, of course, the usual work in the steward's and sanitary department. The shoe factory is located here. There is also a limited amount of fiber furniture work and the manufacture of clothing for use within the prison. Several mechanical shops employ not more than half a dozen men each, who are engaged in repair work in wood and metal.

Counting the idle time of those assigned to work and those totally without assignment, one can speak in round figures of the idleness of two thousand men at Joliet—two thousand men congregated in one spot and supported by the taxpayers. This support is necessarily increasingly expensive, not only due to the great increase of prison population but also due to the added expense per man. For the parole division it means not only that in most cases men are not being improved in preparation for freedom, but also that as workers they degenerate. The warden, the deputies, the psychiatrist, and others strongly regretted and condemned the idleness of so many men.

The shoe shop and the quarry are both considered punishment by the men.

In general there is no incentive to work, in part because there is no payment of wages. However, a good work record in prison might earn a man better markings in the Prison Merit System, and an earlier release. This would hold true if there were not so many unassigned men and women on soldiering jobs who can make the same record, if tractable. The markings differentiate little between the two classes. Speaking about the attitudes of men toward work in prison, the Superintendent of Industries said:

> "There is one class that does not want to work. There is a second class of fellows who would work if it were not for the agitation against work by the first group. There is a third class of fellows who want to work."

Sometimes a man is detailed to duty in which he is personally in contact with the staff officials, as waiter, porter, room attendant, clerk in some office. This is especially likely to happen if he has some special skill like that of barber, cook, tailor or cabinet-maker—skill brought with him from the outside world which he can use in personal service of the officers. In such jobs a good man comes to the notice of the staff officers much more easily than if he were ordinarily working in the cellhouse, in the inmates' dining room, in one of the shops or in the quarry. Here there is an incentive to work since it may result in a favorable recommendation to the Parole Board. In the exceptional jobs entailing interesting work there are few reports of misbehavior.

The problem of learning a trade at Joliet Penitentiary presents real

difficulties. It is immediately obvious that an institution releasing five or six hundred men per year, with a population of around three thousand, must have a greater volume of work and a greater variety of trades and occupations than has Joliet if trade-learning is to be a factor in the life of an inmate. At it is, there is the difficulty of funneling this large number of men into the few existing industries. Nor do work operations in prison industries in Joliet prepare men for occupations in the outside world.

There is the usual amount of mechanical interest and talent among the men. The men use this interest and skill in making articles of contraband, or trinkets and toys under the greatest difficulty. A museum containing articles confiscated by the guards would be a convincing evidence of the abiding creativeness of men under the most adverse conditions.

In the administrative offices, which are also greatly over-manned with inmates, men of every type of training and intelligence can be found for all types of duty. Our experience with ex-convicts free to speak has taught us that convicts develop an interest in worthwhile work, are proud of their work, become loyal to it and revolt against disloyalties to the institution, waste of the state's funds and unfitness and inefficiency of the state's officers when these occur or come to their notice. Craftsmen and even professional men are to be found among the convicts for practically every need of the institution.

The admissions and discharges prior to the war were about five hundred incoming and five hundred outgoing yearly. At present the incoming exceed the outgoing men by about two hundred. Congestion may be considered from the point of view of available industry. The opportunities for work are not increasing in proportion to the commitments of men. The problem of idleness is becoming more acute.

The Superintendent of Industries is keenly aware of the mounting problem of idleness and believes that there should be sufficient industries to employ all convicts on the basis of a normal working-day.

The officials of the prison are agreed that there should be some basis of payment for work done, and that prisoners should be allowed their earnings above cost and overhead. The cost of unproductive labor and overhead should be prorated as prison-keep. The Superintendent of Industries is of the opinion that it would be possible to determine piece rates that could be established for most of the productive work in the prisons; that comparative flat rates could be established for occupations where piece rates are impractical.

The law governing prison labor and earnings is the main obstacle at the present time in the way of any plan of wage payment. This law provides that prisoners cannot be paid wages until the prison shows net earnings which can be prorated. Under current conditions the prison never would show earnings; in fact, it is a heavy expense to the state and, under the present law, the prison conditions cannot be changed.

Room in which to carry on industries is a second need. Several fires within the last decade have destroyed available buildings. The population has more than doubled since 1920. The building program has not kept pace with the need.

The problems of the introduction of sufficient industry, pay, vocational guidance and training require for their solution: (1) legislation, (2) a survey of the resources by way of man-power, skill and training among convicts in this prison, and (3) the creation of committees in which employees, organized labor and employers, as well as wholesale and retail merchants, the economist, and vocational educator are represented. Special committees should be organized especially for industries under consideration for introduction into the prison.

It is certain that the individual employment history, verified and taken specifically as to experience, not only in industries generically named but in individual operations within an industry and additional experience gained outside of work, which can be utilized in work, should be listed carefully by an expert for every convict. This can be immediately introduced. The information gained about men with regard to their work-habits, by the officers of a prison, can at once be used by the Parole Board in its hearings.

61. Same: The School and the Library.

The school at Joliet is under the direction of a chaplain and is attended voluntarily by such inmates as have not finished the seventh grade. The teachers are inmates. With the exception of one, none has had teaching experience of any kind. This man taught in an elementary school and had had experience only with children.

Very little instruction is given beyond the fourth grade. The seventh grade class has an attendance of about ten—otherwise attendance is mainly in the classes from the first to the fourth grades and is very small. The teaching is blackboard and lockstep method; there is very little individualization of instruction. All of the classes are held on the top floor of the west wing cellhouse in a single large room, with schoolroom desks, most of them too small for the adult occupants. The noise is great when seven classes are in session at one time and the teachers talk from the blackboard, instructing the whole group at once. In attendance the illiterate Negro is the largest single element.

No intelligent, analytical approach has been made to this problem of adult education. Provided that inmate teachers have to be used, it is certain that the inmate population can provide better teachers. Most of the teaching is characterized by an intelligent man there as "farcical." A properly systematized school would have a greater attendance.

No argument can be used for the maintenance of an inefficient school when one considers that cell instruction could be arranged for those who are assigned to full-time work. The administration is fearful of the night school because the inmates would have to be moved through the yard in the dark, although we are not convinced that this would entail grave danger. With so much idleness, instruction could be arranged for all qualified men desiring instruction at some time during the day.[1]

The library is also in charge of the chaplain. There is a circulation of 48,000 books per year, or an average of sixteen books per man, and a resource of 38,000 volumes, according to the librarian. The interest in books is very active, not only at Joliet but at the other penal institutions, and

[1] Compare with the situation at Southern Illinois. Sec. 68.

the inmates who read not only appreciate the privilege of this pastime in their cells but usually men read more in prison than as free men.

The catalogue is a mere printed list of titles which gives the inmate in his cell very little forecast of the contents of the books. There have been no new accessions to the library for seven years. The librarian said that he had begged Bibles from the churches and that a supply had been furnished by the Christian Scientists.[1]

The fact that no new accessions have been made to the library for seven years needs to be supplemented with the statement that the needs of the library have not been effectively stated.

There is a censorship of books. The librarian reads all books purchased by inmates and forwarded to them directly by the publishers. A few of the inmates have both funds and sufficient interest in excellent reading to purchase the best of new books. These books are not added to the library but can be circulated by the inmates from cell to cell. The censorship is limited to books deemed by the librarian to be stimulating sexually or criminally suggestive.

62. Same: Chaplain. The chaplain's office does not keep records of the problems which arise in the lives of inmates which they bring to this office for solution. For those who have avowed a certain change of attitude under the influence of the chaplaincy there is no recorded follow-up after they leave the institution as, for example, by correspondence with the clergyman of his particular faith in the community for which the discharged inmate is destined.[2]

The Protestant chaplaincy at Joliet seems to be burdened with too many specialized occupations, each one requiring some technical training. Librarian, schoolmaster, recreation director, social worker—all of these duties are directed by a chaplain. The introduction of some trained help in these occupations would reveal opportunities of service now unexplored and would add little to the expense of the prison.

The Catholic chaplaincy is very strictly defined as to the specific function in the institution through its own hierarchical organization. Although a great deal of its information is subject to privileged communication, the chaplains are available for consultation on certain problems though no access to their data is permissible.

63. Same: Recreation. The promotion of recreation does not engage the specific attention of any officer at Joliet. The movies once a week are about all the recreation to be reported. A baseball game in the proper season at the New Prison has a very limited participation and a spectatorship limited only to New Prison inmates.

There is no proper equipment for sports, recreation, or exercise, or any leisure time program at Joliet. The outdoor space within the walls might be used for this purpose but there is a lurking fear, from a disciplinary point of view, of the concentration of numbers of convicts in any open space. When men are moved from one point to another within the prison it is always with lockstep and under heavy guard.

[1] See suggestions for improvement of Library at Pontiac, Sec. 55.
[2] Contrast with the chaplain's office at Pontiac, Sec. 57.

The New Prison experiment of allowing a baseball game with the inmates as spectators has brought no dire results and there is room for the proper experimentation with the use of the open space for recreation at the Old Prison.

64. Same: Administration and Discipline.

All new prisoners are delivered by a sheriff from the county of origin to the authorities at Joliet. The presentation of the mittimus to the chief clerk of the prison in exchange for a receipt for the prisoner completes the technical transfer.

Procedure: 1. The chief clerk makes the first records, files the original mittimus.

2. He then turns the prisoner over to the receiving and discharging officer who fills out more forms with data required by the prison.

3. The Identification Bureau then photographs the prisoner in the dress and condition in which he arrived.

4. The prisoner is then taken to the bath house, where he bathes and is de-loused as a precaution against jail infection.

5. He is then "dressed" in prison garb, the barber clips his hair and shaves him.

6. The identification officer then photographs him in prison garb, takes his fingerprints and Bertillon measurements.

7. He is then conducted to the unassigned prison gallery and assigned a temporary cell.

8. He is examined by the mental health officer (psychiatrist). He is examined by the other medical officers, is vaccinated for smallpox and given blood tests.

In the course of the psychiatrist's examination and incidental to the mental examination he takes a personal history of the inmate, which he keeps in his files.

9. The chaplains, Catholic and Protestant, hold interviews with the new inmates.

10. In reading the rules governing the prison the deputy warden delivers a lecture with the assistance of the psychiatrist. At this time the deputy warden learns something about the occupational history of the man, with a view to assignment.

The *recorder's office* has on file in orderly fashion such information as is required by the prison administration and the state statistician. This recorded information has some value for individual study, but it must be remembered that it is not obtained with a view of getting a complete social, occupational, and educational history, as well as a criminal history from the inmate which is verifiable in the outside world. In comparison with Pontiac and Southern Illinois Penitentiary there is less information reduced to record which would be helpful to the student or the Parole Board interested in the individual criminal as a person.

The *Identification Bureau* is very complete; has ample quarters, especially at the New Prison; the filing systems of fingerprints and the exchange of information with certain centralized bureaus is thorough. The Parole Board "jackets" do not always contain this criminal record of the inmate

and since it is as reliable as it can be (until the centralized clearing bureaus become more inclusive), it is a valuable contribution to the history of the man being considered for parole, or for parole supervision.

Behavior. Under the Progressive Merit System, good behavior gains a great deal for a man in point of reduction in time and in privileges and assignments. Conversely, infractions of the rules may involve punishment which would be considered heavy in the outside world, not only solitary confinement on bread and water, but also "hung up" which really means handcuffed to the barred door. Reductions in grade on serious infractions may involve a considerable loss of time. A prisoner can earn about ten months and fifteen days out of a three-year "setting" by maximum good behavior.

The new prisoner is required to attend a lecture at a meeting of the staff of the penitentiary. The staff is composed of only two members and the stenographer-secretary. The members are the psychiatrist and the deputy warden. With this preparation the inmate begins his life beset with rules, regulations, restraints, and restrictions, and is expected not only to know what is right but is expected to be so impressed that he would habitually follow the rules. The lecture method, without a printed booklet or card, seems confusing when too much is presented at one time. These rules could very profitably be made a part of the instruction given through the school and all prisoners required to learn by the question-and-answer method, which would assure the instructor that everyone has not only heard but has learned every rule.

Infractions of rules are reported by the guard or cellkeeper "rudely scribbled on a piece of paper." This report in itself constitutes the entire evidence against him. What he gets by way of hearing depends a great deal upon his own experience and ability in facing the deputy's court.

The staff, composed of deputy warden, the psychiatrist, and the stenographer-secretary, passes upon demotions. This action is based upon the original rudely scribbled report from the guard to the deputy. In every instance considered for demotion the inmate has already been subjected to solitary confinement. The entire evidence against the man consists of this report from the guard. The man is not called before the staff nor is the officer who reported him.

The reports here, as at Pontiac, accumulate in certain departments of work and under certain cellhouse keepers or guards; others have fewer reports. At the New Prison the deputy has had a longer acquaintance with the inmates and holds his own court without the staff. More mitigating circumstances occur to him because of this intimate knowledge of the persons. In contrast to Pontiac, there is no staff meeting including the wide range of officers devoted to the service of hearing the individual inmate and considering his case, both for a readjustment within the institution and for recommendation to the Parole Board.

Following is a list of infractions reported by the guards to the deputy in a twenty-four-hour day: crime against nature, fighting on gallery, assaulting inmate with iron bar, signalling to another man in line, fighting in shop with inmate, talking in line, hollering, talking back to an officer, insolence to officer in office, contemplating escape from quarry, escaping from quarry,

wasting bread—throwing around yard, laughing and talking to men in quarry while in line, fighting in cellhouse (inmate had bar in his hand), talking in chapel on Sunday, having contraband food, fighting in kitchen.

A glance at the infractions gives the impression that disorderly conduct in prison includes in many instances minor misconduct which would only vaguely indicate how a law-abiding man would behave on the outside. Many a man with a long criminal record may have a good record in prison, in fact, a spotless record in prison, as wardens and others will attest. However, a record of repeated, grave infractions is indicative of disorderliness and lack of self-control. The prison record based mainly on behavior as reported by the prison guards is a picture of the tractability or tact of the prisoner more than it is of his progress toward reform. "The old-timer knows the ropes."

With the prevalence of idleness and the absence of vital occupational interest, this great mixture of recidivists and first offenders, city gangsters and farm boys, highly intelligent and illiterate, constitutes a difficult administrative problem. The authorities feel that discipline has to be rigorous. There has to be a constant watchfulness for conspiracy, since the escape calls for more newspaper publicity than any improvement in the prison administration. The life of the guard, except for his privilege of leaving at night after his twelve-hour shift, is in many instances more unpleasant than that of the convict; in the evening when the convict reads the guard must watch.

The *guards* are politically appointed, untrained for their work by even an institutional school of instruction, with no assurance of tenure or pension, underpaid, many physically unfit for the crises, inexperienced in prison conditions; many of them called "hayseeds" by the finished Chicago criminal.

Segregation of prisoners according to types—the first offender from the professional and habitual criminal, the segregation of the homo-sexualist, the metropolitan gangster—is difficult with the prison congestion and with the circular prison plan of the New Prison. However, Joliet has two separate plants; between the new and the old prisons some experimenting could be done with segregation. An improvement in those activities, which we have called vital, positive interests, could result in a segregation by interests, selections to be made by the trained officers in charge of these activities.

The *psychiatrist* as at Pontiac is under the Division of Criminology and is not, except in an advisory capacity, subordinate to the prison administration.

At his first interview with the inmates he gives both mental and psychiatric examinations. After the administration of group tests, he segregates the obvious mental defectives for further examination. In his reports, contained in the individual file of the prisoner, there is considerable social data in addition to his psychiatric and mental classification. However, these social data, which are often quite valuable, are not further investigated; they are drawn entirely from the interview with the man, for the purposes of psychiatric classification. These psychiatric classifications are in themselves too technical for a lay board.

In the management of the inmates he has no means of independent

investigation. The deputy merely chooses to send the case to him when it occurs that the psychiatrist might solve a disciplinary problem. He studies these cases and makes recommendations; he does no more than recommend. Due to lack of accommodation for psychopathic cases he can recommend the assignment of a man to the idle room. He may recommend a readjustment in the treatment of the man under the prison rules, but he admits that there is very little flexibility and possibility of readjustment under the conditions and the type of official cooperation.

Formerly he would observe problematical cases independently and make recommendations to the deputy, but this he had discontinued because so little attention was paid to his recommendations.

The psychiatrist makes no recommendations concerning employment of men on parole or parole supervision, because he had been told by the Parole Board not to make any recommendations.

The work of the psychiatrist in scientific research is valuable.[1] Within the prison his work could be of greater value in management and in parole if supplemented by a thorough social investigation; and even at present, if the managing officers heeded the recommendations.

Since the incumbency of Hinton G. Clabaugh, the psychiatrist attends all meetings of the Parole Board Committee at the institution; and no paroles have been granted since July, 1926, unless the mental and physical conditions were satisfactory to the psychiatrist and the prison physician. In doubtful cases, the chairman has, at his own expense, engaged outside medical attention.

The *medical officer* examines all new arrivals, vaccinates against smallpox, but does not inoculate against typhoid, since he deems the danger of typhoid in the prison at a minimum.

The physical condition of an inmate does not enter into the consideration for parole. The report on physical condition is not included in the file. It has only been brought to bear in cases where a dying inmate had petitioned to be released from prison in order to die at home. Under proper parole supervision the parolee would receive some advice as to medical treatment in the locality of his parole when such problems are indicated in his record. In other instances a man under treatment would be retained in prison for a longer period in order to complete his treatment; this would be of especial importance where the diseases are infectious or contagious.

The medical officer seems to have become engrossed in problems of discipline, referring frequently to his partisanship for very rigorous disciplining and to his handling of obstreperous men. This might be studied as an example of institutionalization and loss of professional detachment.

The *parole officer* is not charged with the function of correlating all the information possessed by officers and departments of the prison and compiling it in preparation for the hearing of an inmate by the Parole Board. At Joliet, in contrast to both Pontiac and Menard, there is a strict separation between the function of the parole office and the administration. The work of the parole officer does not begin in any case until the board has issued

[1] In its statistical study the committee found the data in the psychiatrist's report of real value.

its order for the parole. The parole officer then begins to gather the substantiating documents necessary and required by law and regulation covering the movement of the man out of prison to the locality of his parole. The contact of the parole officer with the parolee may be said to be almost entirely documentary. His function there does not even extend to the carrying on of the correspondence with the outside world in preparing the data for the Parole Board, for instance, the forms eliciting recommendations and protests. This work is in the hands of the recorder or clerk of the prison. The parole officer does not participate in any advisory capacity with the officers in the management of the prisoner nor does he have access to the prison files. His office is outside of the prison gate, but within the Administration Building. He considers himself an outsider.

65. *Same: Recommendations to the Board.*

What connections have we found between a good employment record at Joliet, skill acquired within the prison walls, and placement in employment after parole? The superintendent of industries stated that he was never asked to make recommendations to the Parole Board, that men seldom used outside skill acquired in prison, that no system had been formulated or put into operation for placing men, either by the prison or by the Parole Board. He had placed several men in his score of years at Joliet, and some of them had failed. The individual parole officer might also place a man among employers of his acquaintance, but no systematic study of the training and fitness, no record of his industry and progress in prison work, was made or forwarded to the Parole Board.

66. *The Southern Illinois Penitentiary at Menard.*

The Southern Illinois Penitentiary at Menard has an inmate population composed largely of farmers and miners. The professional and habitual criminals are not as large an element there as at the State Penitentiary at Joliet. Many men are committed from the rural counties to Menard for what would be considered small misdemeanors in metropolitan centers. The prison inmates return to towns and open country. It is not to be assumed, however, that the prison is devoid of the hardened criminal and the gangster from the mining regions and from small industrial cities.

67. *Same: Occupational Opportunities.*

More than one-half of the prison population is employed in two quarries, each with its own crusher, one inside the wall and one outside the wall. The product of one of the quarries, as at Joliet, cannot be sold but is furnished to counties for road-building purposes, while that of the other is sold on the open market. All new men are assigned to the quarries except those apparently physically unfitted for such heavy labor.

The detailed personal history for each man enables the officers who are much better acquainted with the individual inmate than at the other institutions, to select for lighter work those of slighter build; those of intelligence and training for jobs in offices; and skilled farmers who can be trusted for the honor system. When men come in as criminal associates—a gang, in other words—an effort is made to disperse them by assigning them to different work and cells far apart.

One of the quarries is becoming exhausted and the quarry work, even with two quarries, could be conducted efficiently with 350 less men than are at present assigned to the work. The futility of using 1,043 men in the quarry, so many men that they are in each other's way, when rough-breakers, steam shovels, dump cars are available, is obvious to anyone. Any work is preferable to the idleness of 1,043 men, but why not introduce industries?

There are fewer vain, "busy-work" and soldiering assignments here than in other institutions, but the idle time that could be conserved would amount to one-third of the inmate manpower of the institution.

Second to the quarries as the leading industry is clothing manufacture, which employs seventy-five men. Ample opportunity is given the inmate to learn the operations of the clothing trade carried on by factory methods.

The overall factory in the same building employs about forty-seven men. Because the sewing of overalls is not a man's occupation in the outside world, there is little or no opportunity here for a young man to learn a trade.

The knitting factory manufactures about one-third of its product for the open market and two-thirds for institutional use, provides a lighter occupation, and employs about fifty-two men.

A brick yard with an output of about 2,000,000 bricks a year employs forty-six men and keeps them occupied as laborers.

Under a single roof in a shop building all on a single floor are the carpenter, paint, blacksmith, electrical and auto-repair shops. There is no lathe work in the machine shop but there is considerable bench work. All of the usual repair work for the institution is carried on in this shop. It is possible to attain considerable manual skill and to do interesting work here. Men without previous training can become very good handy men in the repair of many kinds of machinery and in wood-work. With an outlook toward training for farm labor the handy man with a good deal of manual skill is more adaptable than even the finished mechanic with skill at operating machine tools. In this building about 166 men are employed.

The farm and garden industry (including truck-farming and the lawns and gardens about the institution) employ about 107 men.

The cattle, hogs, and chickens are all cared for by trusted inmates of the prison, some of whom sleep outside of the prison walls and others who work outside during the day and return to the prison at night. Before a prisoner is allowed to go out on a trust task of this nature he signs an honor pledge.

A large farm is worked by inmates, where garden products and grain are raised. The scale and method of the farm work, the use of farm machinery, the quality of animals and products, are a store of practical training useful to anyone returning to the home farm. For the man who will return to a town the work is instructive, healthful, and interesting. If an inmate is fortunate and is transferred to work outside the wall the combination of ample occupation with the honor system provides a good basis for judgment on a man's character.

Only at Southern Illinois Penitentiary do the inmates boast about their institution.

The power plant, steam laundry, ice plant, pork house, all furnish additional occupation with more or less value as instruction. Some of this work, supplemented by school instruction applied to the work, can be made a form of vocational training. The usual opportunities in supplying the daily needs, barber, the officers' kitchen, hospital and dispensary, library work, clerical work, auto truck driving and the business and administrative offices, all have some value as experience provided the proper selection of man and job is made and the work is arranged with a view to learning and progress.

68. Same: The School and the Library.

Especial thought and analysis have been given to the problem of the organization of the school for academic and cultural education at Southern Illinois Penitentiary. A schoolmaster has been engaged who has analyzed the school problem after classifying the prison population for the purpose of instruction. His analysis of the feasibility of schooling for adult prisoners eliminates any lurking impression that prisoners lack the intelligence to profit by education. His observations with regard to education as a factor of treatment are enlightened and to the point.

He finds that the teaching problem in school is not difficult; that discipline in the schoolroom is negligible as a problem. Some of the illiterates in the institution, who number 33 per cent of the whites and 53 per cent of the colored, show some resistance to going to school; but in the process of analyzing their school problem the schoolmaster discovers that this resistance is due to lack of progress, which is in turn due to defective eyesight, defective hearing, poor home conditions during childhood and lack of compulsory-education-law enforcement in the home community. Such physical defects as have a bearing on this resistance to schooling can be adjusted and immediately selected for treatment; resistive attitudes socially caused wear away as soon as the pupil enjoys progress.

The school is organized at present to take care of the most urgent needs, those of the illiterate and near-illiterate. The fact that these are adults is taken into consideration in the approach and method; a great deal of the system is entirely individualized, the texts when used are such as have been written for adults and other supplementary material is furnished by the schoolmaster.

Having surveyed his problem he selected from the inmate population his material for his teacher-staff; these are men with considerable high school education, full high school education or more. Much of the work is cell instruction.

Into the process of arranging his school the library has entered as a factor, and with the creation and stimulation of cultural needs, he is constrained to vitalize the library. Since all school attendance, except for illiterates, is voluntary, he has advertised the school among the inmates by a direct letter entitled "Educational Activities."

Most important is his observation that the school has thus far been conducted without disruption of the prison discipline and that he has found the officers of the prison highly cooperative with his plan.

69. Administration. The routine of induction is similar at Southern Illinois Penitentiary to that of the other penal institutions:

Procedure. 1. Upon arrival in the custody of a sheriff the new prisoner is taken to the guard hall, where the first door is locked behind him. The sheriff presents his mittimus to the record clerk, receives his receipt and immediately a face sheet and six other entries are made.

2. The prisoner is then taken to the identification bureau where his fingerprints, a photograph in street clothing, the Bertillon measurements and scars and marks are taken.

3. The prisoner is shaved and shingled, his civilian clothing is stored, he is given a clean suit of prison clothing, with a bath and de-lousing.

4. The physical examination follows.

5. He is taken back to the clothing house and dressed in gray.

6. In the meantime the cellhouse keeper has received a report of the number of new arrivals and has reserved a cell in the gallery for this prisoner until he is assigned out.

7. All men are assigned to quarry work at the beginning. Only in rare cases, as, for instance, when it is desirable to separate criminal associates, does a man escape assignment to the quarry. Young, likely men are marked down for the tailor shop and knitting shop and are assigned there as soon as a vacancy occurs. Assignment for work includes a comprehensive individual interview.

In connection with this assignment, the first interview is a vigorously conducted and carefully managed questioning and cross-questioning process, which brings out the entire life history and social situation of the prisoner. It goes into his family, social, and economic conditions through life. It is conducted by the deputy warden and his close knowledge of the individual prisoner is an element in his management of men. He is, of course, the most active in the field of personnel management in the prison. Other officers frequently refer to these life histories and, if supplemented by some independent investigation by the Parole Board, it is the most valuable of documents. Not infrequently one of these life histories is more than a thousand words in length.

Behavior. With this knowledge about the individual man, routine disciplinary measures, the progressive merit system, penalties, including solitary confinement and demotions take on a coloring of specific individual treatment. In the hands of a trained specialist this first interview and examination would take on a wider scope, and it is very likely that the deputy warden will in time ask for an assistant especially for this work.

Physical exercise is a lesser problem in an institution where by far the largest number of men are employed outdoors. The profits of the canteen, which sells to inmates, support the institution baseball games and the movies.

Recreation. Baseball games for the entertainment of inmate spectators, as well as for participation of a large number, are the principal features of the recreational program in season. Except for the weeks of rain the baseball season extends over a period of seven months of the year. Quartettes, chapel singing, instrumental music, the band, are developed within the institution and we met several men who had learned to read music in prison.

The recreational problem, so far as participation is concerned, and considering the amount of free time, would still need development. A trained person in charge of this work could develop a much larger program with greater variety and greater participation and spectatorship.

Movies as attractive to the staff officers as to the inmates are arranged to entertain every inmate in the institution during the winter season.

70. Same: Discipline. Here, as at the other institutions, the progressive merit system, the markings and demotions, are in the hands of the prison staff which administers punishment. The committee attended both the court and staff meetings. The rules of the prison, instead of being read to the new inmate, are printed on a card and posted in every cell; in fact, each new inmate is given a fresh card to hang up in his cell. This printed card is effective with the large majority of prisoners and its presence in the cell leads even the illiterate to try to find aid in mastering it.

The rules for the government of convicts, also the progressive merit system, are almost identical with the rules at Joliet. Jointly with the assistant warden, and usually in the presence of one or two captains of the guard, each case is considered for demotion. The remarks made about each case show that someone of the officers in the room knew each inmate individually, and frequently stated something in mitigation. The policy seems to be to give violators punishment and solitary confinement rather than serious demotion.

The tension between guard and officers on the one hand, and convicts on the other hand, is not so great at Southern Illinois Penitentiary as at Joliet. The fact that only a small fraction of the population does not understand English, that it is, generally speaking, a fairly homogeneous group, that there are fewer plotting leaders, and that the fear of conspiracy and escape is not as alive in the minds of the officers and guards as at Joliet, must be considered. But the knowledge which the officers at Menard have of their men gives a power of control which reduces the necessity of relying alone on punishment. This knowledge of the inmates by the officers should be made available to the Parole Board and is more valuable than the markings of the progressive merit system.

The punishments at Menard are more graded and varied than at Joliet. When a man has committed a violation of the prison rules he is reported by the guard to the deputy. The inmate is questioned thoroughly about the offense; the deputy takes into consideration the previous behavior of the man in the prison and allows for lack of information in the newcomer or the illiterate. He may let a man off with an admonition; he may take away the privilege to go to the show or the privilege card, which includes permission to write, permission to see friends and the ration of tobacco, or he may give the man solitary confinement; beyond that it is up to the staff as to demotion, and even at that point many mitigating circumstances enter in. All punishments are made a matter of record.

Men are called before the staff when they are promoted in grade. Each promotion is handled separately, allowing for any comments from the officers present before the final record of promotion is made. Men are placed in

grade C upon first entering the institution. The promotion from grade C to grade B takes place after the man has been in prison three months, providing there are no violations. The man is called before the staff and asked the following questions: You are here three months. How are you getting along? Any complaints to make or questions to ask? Are you being treated all right? Where is your wife? Have you any children? Where is your home now? Your charge was such-and-such a crime; did you plead guilty? Were you guilty? Did you live on a farm?

Some of these questions are asked with a view to aiding a man in his problems of home life, others as a basis for selection of men for the honor system on the farm. The question with regard to guilt is seldom answered with the surly "bum rap." The whole effort is to build up morale in prison. No man is demoted without being called before the staff.

The operation of a large farm system at Southern Illinois Penitentiary requires the employment of a number of prisoners outside of the prison walls. These live in farm houses located at or near the work-assignment outside of the walls. Other farm gangs are turned out for the day's work and return in the evening to sleep in the cell house. But every man employed outside of the walls is considered a trusty. Before his assignment is made the deputy warden takes into consideration all he has learned about the man. He talks to him individually. He ascertains that the man desires to be on the farm and appreciates the opportunity; that he fully recognizes it is a compensation for his good behavior. He reads the honor pledge to him and makes sure that he has understood it. He then asks the man to sign the pledge. Compared with quarry work this is a great reward for good behavior and is a real incentive.

The warden at the Southern Illinois Penitentiary follows a custom which is characteristic of his prison administration. After his evening meal he retires for a period to his office to hold court, a court which is peculiarly not for disciplinary purposes. Convicts are informed that if they have any special difficulties or problems which they wish to discuss with the warden they are permitted to report to him at this evening session. Each man is granted an interview in privacy. The warden, unarmed and unguarded, receives the man. The committee has attended this session and found that the business affairs of these men on the outside, family matters and advice with regard to procedure in connection with parole form a large part of the subjects taken up individually in this court. The warden has the friendly manner of the country banker talking to his client.

Medical office. The same personal knowledge and understanding which pervades every phase of administration exists in the hospital. There does not seem to be an equal fear of malingering here as at the other institutions. While the doctor does not sit in the staff meeting he frequently visits men in solitary confinement and often makes remarks about men under punishment which introduce certain mollification of their punishment. The continual contacts of the various officers, including the doctor, during the day's duty, result in a great deal of mutual understanding. One need not look for the type of staff meeting which is held in Pontiac but the same result—conference and mutual exchange of ideas—is gained here through informal contacts.

Here as at the two other institutions, a medical report should be retained in the documents presented to the Parole Board, for the advice of the board in cases where men should be retained within the prison to finish treatment and of the parole supervision in that a man's physical condition has a bearing on the kind of labor he can or cannot do.

The psychiatrist, who devotes about half of his time to Pontiac and half to service at Southern Illinois Penitentiary, examines all inmates who are about to appear before the Parole Board for determining the length of the sentence. A psychologist gives mental and achievement tests. The number of prisoners makes necessary very hurried work. By the time the particular inmates have come up for examination they have already been in the institution for at least a period of several months.

The psychiatrist can recommend psychopathic cases to the "crank gang," which is an idle group, the time of which is given over to light exercise and rest. It comprises both the physically and the mentally unfit who are not violent. The violent are locked up, but the congestion at the Chester State Hospital for the Insane makes the transfer of the definitely insane from Southern Illinois Penitentiary to its next door neighbor—Chester Hospital for the Insane—as difficult as a transfer from Joliet or Pontiac.

71. Conclusion. Congestion is the great problem at Southern Illinois Penitentiary from several points of view, chiefly those of hygiene, discipline and occupation. The cellhouses at Southern Illinois Penitentiary are overcrowded to the extent where about sixty-six men must sleep three in a cell, two in a bunk, and one on the stone floor of the cell.

There is a system of cages in use, iron cages, which are not built in but placed in the open corridors. These cages are, of course, even less private than the cells, as the occupants can be viewed from three sides in all stages of dress and undress and all conditions of intimate privacy. The bucket system is in use. However, in the regular cells the bucket is placed through a trap door into a flue in the wall through which air circulates. Air pipe connections ventilate this space. The pipes are so arranged that a man in a lower cell cannot shut off the cell about him; in other words, there is a separate air pipe running to each cell.

It must be emphasized, however, that at Menard there is a wholesome type of convict in the first offenders sent to the penitentiary on what would be considered very slight offenses in the metropolitan centers; and that here is also the gangster from East St. Louis and Williamson County and other centers of organized crime. Segregation, therefore, is as necessary at Southern Illinois Penitentiary as anywhere else.

The committee was impressed by the fact that policies and methods of prison administration differ for each institution and even between the Old Prison and the New Prison at Joliet. There is no evidence that the centralization of penal and reformatory administration in the department of public welfare has resulted in standardization of disciplinary administration in the different institutions. Indeed, the committee does not believe that institutions of such different character and population would necessarily be better governed under a rigid system of uniform state-wide administration.

72. Purpose of Parole Supervision.

The laws of our state definitely provide for the rehabilitation of the criminal. The department of public welfare is required to adopt such rules and regulations concerning all prisoners and wards committed to its custody as "shall prevent them from returning to criminal courses and best secure their self-support and accomplish their reformation."

The department of public welfare (now the parole board) is given great latitude in the establishing of rules and regulations for parole, under which prisoners in the penitentiaries and in the reformatory and other penal and reformatory institutions may be released from the institutional enclosure and remain in the custody and under the supervision of this department of the state. The department must, however, have made or shall have satisfactory evidence that arrangements have been made for the honorable and useful employment of the paroled man in some suitable occupation and also for a proper and suitable home, free from criminal influences.

The law gives the department almost unlimited power of supervision over the parolees. All prisoners and wards are considered only temporarily released while in the parole status. During this period they are technically in the legal custody of the officers of the department of public welfare and are considered as "remaining under conviction for the crime or offense for which they were sentenced by the court." They are subject to be taken and returned within the enclosure of the institution from which they were released upon any violation of the rules and regulations made by the department.

The law does not definitely limit the length of time which the paroled man must remain under parole supervision. It requires the department to keep in communication with all parolees and it may set any length of time as the parole period, except that it must not recommend for discharge anyone who has not served more than six months under parole. It may discharge a parolee when he has given reliable evidence that he will remain at liberty without violating the law and that his final release is not incompatible with the welfare of society.

Parole is a method of supervision of those released from penal and reformatory institutions and not a method of escaping incarceration. All inmates of penal institutions, excepting those who died while incarcerated, must at some time be released into society. The parole law provides a means by which criminals can be supervised for a period after release.

In discussing the functions of parole in the rehabilitation of the criminal we are interested mainly in the criminal as a person and in the equipment he has for life, his physical make-up, his attitudes, his habits, his training and experience. We are interested in his complete life-history, because we wish to conserve his useful experience and to prevent the recurrence of criminality.

73. Prison Records for Parole Supervision.

The forms for parole work are substantially the same at Joliet, Menard, and Pontiac. The Parole Office at the institutions had merely a documentary contact with the parolees, in order to satisfy the statutory requirements.[1] Aside from these documents there are reports in

[1] See foregoing secs. 57 and 64.

statistical form accounting to the Central Office at Springfield for the movement of men out of the institution, and for violators and violations of parole; while on parole, copies of the monthly report (which is again formal and very short) of the individual paroled man to the parole agent supervising him are forwarded to the parole officer at the institution from which the parolee was released. This serves as a basis for the statistical reports.

If the parolee is to be given supervision as to home and employment, as to associates and habits, in order to prevent his return to criminal life, then the supervising parole agent needs to receive as much as possible of the data gained by observation of the man by officials of the prison—disciplinary, occupational, physical, mental, recreational, religious. But in practice such data are not furnished. Only three forms are forwarded by the institution to the parole office or agent at the locality where the man's problem of rehabilitation is to be worked out.

The three forms are first, (a) a copy of the face sheet of the man's past record, made upon his arrival in prison. The facts on the face sheet turn out, in many respects, to be taken in a perfunctory, formal way in the routine of induction. The copy of the face sheet which contains the data upon which the parole agent must work is on a loose-leaf form which can be carried by the agent in a book in his pocket. If the facts on the face sheet were the result of complete, verified data, even such as exist in the prison record, this form would serve its purpose well enough. (b) The next form is a printed card intended for the office files, and is a repetition of the same information from the same source. (c) Finally, there is an identification card which, when filled in completely by the identification officer, serves all purposes of identification (apprehension by police of cases of violation). These three forms are all that the parole agent has as a basis for beginning his work with the man.

The parolee himself receives a mimeographed letter informing him about the required reports which must be made monthly the first year, quarterly the second year, every four months the third, semi-annually the fourth, and, finally, only one report required the fifth year.

Let us compare this meager material with the data available within the prison about the individual parolee. First of all, the statute expressly provides that the department of public welfare (properly through the subordinate division of parole supervision) must arrange for suitable employment and home. All that the form affords is a one-line space, within which can be entered a word with regard to the parolee's conduct in prison. The more important questions are: Has he been a good worker? Has he exhibited any skill? Has he learned, fractionally or completely, some occupation? Such information would indicate to the parole agent or office where to begin to look for employment, and what past experience to conserve. Not a word about that.

The inmate has been physically examined or treated, and has a record of sickness or health within the institution. There may be problems of advice with regard to continuing treatment or with regard to the avoidance of certain occupations in certain physical conditions. This type of action should be based on the medical record. The medical record is available at the institution, but not a word from it in the information supplied to the parole officer.

The same would hold true with the psychiatric and psychological data, gathered with fullness by expert hands, which remain on file at the institution, and by which, in the delicate work of rehabilitation of the man, the supervising parole office has never benefited.

It is not to be assumed that because of suppression by prison regulations a great deal cannot be gathered about the personal history and personality of the inmate. The statistician of this committee was greatly aided by inmate assistants in discovering a great deal about the cases which he had to tabulate and classify; from their contacts with other inmates they gave a volume of supplementary information which was verifiable by the officials in close contact with the same persons. But not a word of this comes to the attention of the parole officer. Then, too, the librarian, the chaplain, and the schoolmaster all have observations which, properly weighed, are valuable in parole supervision.

Prisoners and inmates often develop reading habits. Some of them become interested in courses of study and, especially at Pontiac, become interested in wholesome recreational activities. Some become interested in church affiliation; others disclose talent and interest in certain forms of art.

These aptitudes would be the solution, in many cases, of the problem of preventing the return of the paroled man to gang or criminal social groups. Parolees are, by and large, young, and much constructive work can be done.

The committee wishes, at this point, to recommend the introduction of a trained person who will gather a complete, written case-history of all the available data within the prison or reformatory about the individual paroled inmate. Such history would supplement and vitalize the formal record, which loses every possible utility when it remains in prison or in the institution instead of being in the hands of the supervisory office or agent who has the problem of rehabilitation. The gathering of data with regard to the criminal as a person should begin as soon as he is committed, both the data in prison as well as those to be gathered outside of prison, and should be as valuable to the parole board as to the supervisional staff.

74. Employment on Parole.

One of the conditions of granting parole is that employment has been secured by the division of parole supervision or that it has evidence that a bona fide employment has been arranged. According to the form the employer becomes a sponsor and in this application for sponsorship promises to keep a parolee steadily employed at a specified sum per month as long as his services are satisfactory. He agrees to report to the institution or its representative when the services become unsatisfactory. Further, he promises to take a friendly interest in the parolee; to counsel and direct him; to report to the division of parole supervision any absence from work, low or evil associations or any violation of the conditions of his parole, to see to it that the parolee forwards his monthly reports. This application must be approved by a judge or clerk of court, or some other known character.

In rural communities where the arrival of a new man is noticed, and where his behavior or actions are observed and quickly come to the knowledge of the neighbors and the sponsors, this plan would very likely work out well.

In the metropolitan centers or in the industrial town of 50,000 or more, this plan would not work so well; the parole office or agent who must find

employment has never seen the man, knows nothing about his qualifications. Nowhere, whether it be metropolitan center or rural community, is there a specialized placement department or bureau within this division. In the city the individual parole officer, depending largely upon his activity and the breadth of his acquaintance, occasionally places one in employment. By and large, these jobs are of the heavy labor type, stock yards, shoveling coal, freight houses, etc.

The division of parole supervision is seldom asked to find employment for a man prior to release. The inmate stirs about through the mail trying to get his friends to arrange for someone to agree to be his sponsor.

The investigation of the employer and the nature of the employment in cases where employment had been arranged by the friends of the prisoner is often formal and a formal letter is written in answer to the request for investigation in order merely to comply with the statute; without knowing the prospective employee and parolee, and having so little as a matter of record, it is fairly difficult and almost without basis to investigate a job for him.

Often the employment was not bona fide, the employer making the agreement as a mere matter of charity. The wages paid parolees are in many instances much lower than the market value of the labor, because it is difficult to place an ex-convict. But most employment is not such as involves trust, and the employer could very possibly hire the same man without knowing of his criminal record, and be satisfied with his labor at market value.

Since the incumbency of Mr. Hinton G. Clabaugh the "charitable" sponsor has been abolished; in his stead there must always be a bona fide employer. Mr. Clabaugh had listed in his budget a sum for the organization of an employment department. This item was stricken from the budget, although it is probably the most important provision asked by him. For this department properly handled would conserve the investment made by way of early schooling, other training, and prison training in finding work for the parolee. It could place young men with a view to finishing apprenticeships; establish relations with organized employers and organized labor for the purpose of carrying on intelligent employment work. It could keep efficient follow-up records of the employment experience of men in their charge, and could place and replace men bearing the stigma of a criminal record, so that within the five years provided for supervision under the parole rules a young man, if capable, could work out the career of an honest, self-supporting man; and this is again a requirement of the statute.

While on parole the parolee fills out only a brief monthly report in regard to his employment and earnings and reasons for not working if unemployed.

75. Supervision on Parole.

The problem of employment is not the only problem. Although the statute prescribes the prevention of the return of the parolee to bad associates in the large community, there is nothing on record, and very little other evidence, that the parole supervision goes into the leisure-time activities of the parolee; nor is there anyone at present in the division of parole supervision trained in the work of program-making and in directing a rehabilitation case through the

maze of problems that enter into the life of a man while he is making his way up from criminal society into legitimate society.

A metropolitan parole office should have, first, all the available data properly interpreted from the institution. Secondly, there should be an investigation department—and this not a detective department having to do alone with the cases of arrests of parolees in the courts, but a department which would make a complete sociological investigation, a life history containing the schooling, employment, leisure-time data, about the man to be supervised. It should give a detailed account of the family and the history of this man in his family; in his neighborhood; in the gang; in his community. A good history of this man, even if taken from the man himself, is often when completed a revelation to the man, and the very knowledge of himself leads to self-analysis and an effort at personal reorganization. In addition, within such a history would be found all the resources by way of family, friends, employers, neighbors, etc., that the supervising officer and the man could employ in a genuine rehabilitation.

An accumulation of such histories would be a valuable archive for the general study of the parole problem and the causes of crime. It should include, of course, all the relations with the law, and would be more complete than the criminal record of an identification bureau, because it would bring in all the contacts with juvenile court, detention home, parental school, industrial school, juvenile courts, boys' courts, and municipal courts, and many other contacts of this kind in the life of the parolee. It would serve to separate for treatment the professional criminal, the habitual criminal, the first offender, and the gangster. It would aid by way of discovery of interests, aptitude, and abilities, which should be activated to lead the parolee to further study, training, recreation and moralization.

In charge of the case-work within the office there should be a specialist who would not only supervise the relations between the officers and the parolee, but would establish cooperative relations with all the social agencies of the city, taking into consideration all the problems that can occur in the life of a man and his family. All the parole officers at present engaged, if their experience and their best specialized aptitudes were analyzed, could be assigned to some of the specialized lines of work, while the new officers added to the force could be selected with a regard for this new and more complete vision of the whole problem.

76. Same: Parole Supervision of Delinquent Children from the State Training School for Girls at Geneva.

A recent opinion of the attorney-general (August 30, 1927) with regard to the commitments under the juvenile court act, in which he refers to Chapter 23, Smith-Hurd Revised Statutes, 1925, definitely eliminates the Parole Board from the function of paroling inmates from the School for Girls at Geneva and the School for Boys at St. Charles. In the matter of parole supervision this opinion creates overlapping, confusion, controversy, and division of authority, because, as a matter of fact, special parole agents, two women who are on the payroll of the division of parole supervision, have been supervising paroles from this institution in Cook County for several years, and in the other counties of the state the

parole agents charged with adult parolees have been cooperating in the supervision of juvenile parolees from state institutions.

The supervision of delinquent girls in a city like Chicago should be close, efficient, and versatile. The assumption of the institution at Geneva is that all its parolees become and are fitted to become house-servants, with the lady of the house as sponsor. This kind of sponsorship would work out very well if it were possible to analyze thoroughly the home situation and keep a close, direct contact over long distances with these sponsors.

It has occurred within the experience of the Cook County office that these sponsors chosen by the institution are often doubtful as good sponsors, and more often good enough persons as people but not as sponsors. It is possible to study thoroughly the problem involved in this situation between the parole sponsors of girls from Geneva and the institutional supervision, as well as their relations with the girls, because these two women are trained workers and keep adequate records written in full—complete social case-histories. These women are the only agents in the Cook County office of the division of parole supervision who do keep such records, and their problems are the more easily analyzable for this reason.

The Committee finds this confused situation of division of authority over the same girl parolee between the institutional supervision and that of the parole agents subversive to the interests of the parolee. A little girl delinquent has very often paid for her delinquency with her health. To suppose that even the wisest of superintendents could, while engaged upon her duties conducting an institution for four or five hundred delinquent girls in a rural community distant from the city, give close attention to the supervision of these delinquents scattered over the entire area of a great metropolitan center is certainly over-optimistic. The same can be said of the supervision of the delinquent girl placed in a farmhouse one hundred or one hundred fifty miles away from the institution.

The institution's policy of placing all the girls paroled from it into household work is the more regrettable when one considers that Geneva has an excellent academic school and many phases of good industrial and commercial training in addition, which bring to the surface many latent abilities in the girls. Some of these could be conserved if proper arrangements were made for employment which would allow for the continuation of school and training in the evening hours and on a part-time basis in the case of the girl in the city. Also, some of the girls come from the institution prepared to do other than housework to much better advantage, and proper placement work would conserve what the school has given them, as well as accomplish the intent and letter of the statute.

Further, the present women parole officers in charge of these girls, if given ample clerical help and trained assistants, would be capable of carrying on this work in the metropolitan area if the division of paroles and the Parole Board had the proper authority.

Objection that children should not be supervised out of the same office with adult parolees has long ago been met and overcome: (1) because special officers have been assigned, with no other duties; (2) because the child parolee is not asked to come into the office but is dealt with entirely

at her home or at her work; under the present conditions the two are almost always at the same address. The exceptions occur when after investigation a girl is paroled to her own home and secures employment outside it.

If the supervision is more adequate and placement can be made more diversified and more suitable by the parole agents close at hand within the locality of the parole, then the granting of paroles should be in the hands of the Parole Board, the chairman of which is also the supervisor of paroles. It would then be possible to establish a close correlation between the condition of the parole agreement and the parole supervision.

77. Same: Parole and Supervision of Commitments to St. Charles.

The same opinion of the attorney-general applies in the same way to cases from the St. Charles School for Boys.

Two men with long experience in the home problems of boys from St. Charles, one of whom has also had experience in public employment work on a large scale, are assigned to the work of supervising boys from St. Charles. Here again there is an overlapping and division of authority; the granting of paroles is done by the institution. The officers are under double orders, but on the payroll of the division. What intensifies the problem here is that they have to deal with the type of boys on their way to becoming professional criminals. They are indeed at the kindergarten beginning of the criminal career, but the officers are experienced in recognizing the cases as such. Due to the many escapes from St. Charles, usually by stolen automobiles into Chicago, these two officers are kept busy, frequently day and night, running down "escapes." They have very little time, therefore, to give to the supervision of employment, schooling, recreation, and the social life and health of these boys—usually from broken homes.

The committee has made rather detailed studies of both the Geneva School for Girls and the St. Charles School for Boys, and has found in them much that is of great merit as schools for growing boys and girls. The committee regrets that the investment, which is rather large per boy or girl, is often lost because the metropolitan area is a far different medium of life than the simplified, regulated, wholesome living of these institutions. Upon this boy and girl problem of supervision, the best intelligence, ample man-power, and energy should be directed.

78. Same: Reorganization of Parole Supervision.

The 1927 legislature granted an appropriation comparatively adequate for the purpose of parole supervision. The supervisor of paroles is now in a position to reorganize completely the work of parole supervision if given sufficient authority by the department of public welfare.

The recently installed superintendent of parole supervision has statewide supervision of the parole offices and officers, and looks after the relations between the division and the department of public welfare with all its ramifications. Under him certain specialists should be employed, to be in charge of technical problems and the proper training of new men. At present, not only the meagerness of records and the spread of activities per officer and the case-load immediately suggest a perfunctory operation of

parole supervision, but one glance at the office, with its only clerk, a young man, for all the work of supervision in the Chicago office, with its four counties, is convincing evidence that the work is now in only a rudimentary stage.

If the supervision is formal, merely a matter of receiving formal reports, then violation is brought to the attention of the division of parole supervision only when the police have arrested a parolee on a new charge or he has been convicted by a court. The Parole Board, according to the statutes, has a right to declare a parolee a violator regardless of conviction for a new crime.

When a man is arrested a warrant can be issued by the Parole Board for his return to the penitentiary, and this warrant cannot be recalled unless the Parole Board has held a hearing in the parolee's case. The more the supervision is perfunctory, the more violation is based on conviction for a new crime. When the parolee is returned for a hearing on violation, the supervising parole agent forwards a letter to the Parole Board. With proper case method, there should be a sufficient case history of the experience of the office or parole agent with the man in supervising him.

Our observation of these letters from the parole agent leads us to remark that they contain very little data of this nature, and that they are confined almost entirely to the crime committed while on parole, or to the accusation of a new crime.

A great many violations also are purely technical violations, in that a man has left the locality in which he had agreed to serve his parole, or has left the state; formerly the apprehension and return of these fugitives took up a great deal of time and attention, and increased the traveling expenses of parole agents.

79. Length of the Parole Period.

Formerly it was customary in the Division of Paroles for every parolee, provided he was not re-committed by the Parole Board for a violation, to receive his discharge from parole at the end of one year under supervision.

Since the incumbency of Mr. Hinton G. Clabaugh, the rules of parole supervision require a five-year supervisional period, with at least monthly reports during the first year and a gradual relaxation until the fifth year, when there is only one report.

The period for parole supervision has been very wisely left indefinite by the statute, which gives the Division of Parole Supervision and the Parole Board power to consider the facts of each case in determining the length of supervision; this would be essentially individual treatment.

Our experience with parolees is that the properly placed parolee, engaged in a legitimate occupation and living a law-abiding and wholesome life—and of these there are many—does not chafe under the length of parole supervision. The professional criminal is a deadly enemy of the entire parole system, which is its greatest recommendation.

The statute sets no other limitation upon the board's determination of the period of parole, excepting "such evidence as is deemed reliable and trustworthy that he or she will remain at liberty without violating the law, and that his or her final release is not incompatible with the welfare of society."

In the past, with the perfunctory supervision and formal meager records, the question of discharge was surrounded with politics, and even corruption at times. The accumulation of the kind of record prescribed by the statute, by officers technically fitted to do work of this kind, would stand as a public safeguard against arbitrary, political, or corrupt discharges.

The parole period should be not a matter of perfunctory supervision and formal report. The parole officer, if properly selected and fitted for his work, should be in a position to bring in the parolee who has not heeded his orders and advice, regardless of whether he has committed a new crime. Under these conditions also the board could support the officer and require observance on the part of the parolee of the terms and conditions of his release.

If the behavior of the parolee were found to be unsatisfactory, and other methods had failed, he would be brought in for hearing before the Parole Board, for a reprimand, warning or recommitment.

The interest of the parole officer, however, would not cease at this point, and he would make constant efforts to facilitate the execution of warrants for violators. All available information would be furnished to the officer serving the warrant, whether he be a parole officer, sheriff, or policeman.

The period under parole supervision is not definitely fixed by law, and should not be definitely fixed by regulation. A continuance of supervision of intensity answering the needs of the individual case should be assured in all cases where there is any uncertainty as to the permanency of the readjustment of the parolee. Parolees found upon review to be in an undesirable position—economically, physically, mentally, spiritually, or socially—should not be recommended for discharge, but rather should remain the object of continued parole effort.

Previous to the discharge by the Parole Board a summary of the history of the parolee, the contributory factors in his delinquency, his reactions to supervisional treatment, and the subjective and objective results should be presented as the basic data to the Parole Board. Upon these data the period of supervision and the recommendation for the discharge should be based.

We have no parole system in any state in the Union which we can hold up as a model and example for Illinois; the last three paragraphs concerning period of parole and proper discharge are suggested by a report of probation work in the Court of General Sessions in New York City, where proper supervision of probationers (not parolees) seems to be an accomplished fact. The recommendations then are not entirely visionary.[1]

[1] The absence in this report of any discussion of the services of the Central Howard Association and of other private agencies engaged in the after care of paroled men is due to no lack of appreciation of their work, but to the fact that this study is limited to the field of public agencies.

PART D

FACTORS DETERMINING SUCCESS OR FAILURE ON PAROLE

80. Different Types of Paroled Men. Two widely divergent pictures of the paroled man are, at present, in the minds of the people of Illinois. One picture is that of a hardened, vicious, and desperate criminal who returns from prison, unrepentant, intent only upon wreaking revenge upon society for the punishment he has sullenly endured. The other picture is that of a youth, perhaps the only son of a widowed mother, who on impulse, in a moment of weakness, yielded to the evil suggestion of wayward companions, and who now returns to society from the reformatory, determined to make good if only given a chance.

Individual paroled men can, of course, be found to fit either of these descriptions, but a detailed study of the records of 3,000 men paroled from the Illinois State Penitentiary at Joliet, the Southern Illinois Penitentiary at Menard, and the Illinois State Reformatory at Pontiac showed that the great majority of men and youths were to be found somewhere between these two extremes. In fact, it was possible to classify these 3,000 men into four classes: (1) the first offender; (2) the occasional offender; (3) the habitual offender; and (4) the professional offender.

There are those who have committed only one or two offenses, or the *first offender.* There are those who have engaged in several crimes during a short period before their first apprehension, or have lapsed into delinquency only a few times over a long period, or the *occasional offender.* Then there are those men like the alcoholic, the gambler, the drug addict who, in spite of repeated punishments, continue their criminal operations or get into difficulty with the law, or the *habitual criminal.* Finally there is the specialist in crime who makes of it a vocation and even a career and depends upon it for a livelihood, the *professional criminal.*

81. Same: First Offenders and Other Types. What proportion of the men placed on parole from Illinois penal and reformatory institutions are first offenders, occasional offenders, habitual offenders, and professional offenders? The answer to this question has an important bearing upon parole and its administration.

TABLE 3. PAROLEES, AS TO TYPES OF OFFENDERS WHEN PAROLED, CLASSIFIED BY INSTITUTIONS

Three Thousand Paroled Men from the Illinois State Penitentiary, from the Southern Illinois Penitentiary, and from the State Reformatory Classified by Type of Offender

	Joliet	Menard	Pontiac
First offender	506	655	514
Occasional offender	317	274	347
Habitual offender	145	70	115
Professional offender	24	1	21
Insufficient data	8		3
Total	1,000	1,000	1,000

A study of Table 3 shows at once that over one-half the men in all three institutions are classified as first offenders and that the next largest group is that of the occasional offender. At Joliet only one-seventh of the men paroled are designated as habitual offenders and at Pontiac and Menard only one out of every nine and fourteen is so assigned. Finally out of three thousand men in all three institutions only forty-six, all told, were definitely termed professional criminals!

Table 4, which gives the totals and percentages for all three institutions by types of offenders, demonstrates even more strikingly the large proportions of first and occasional offenders, totalling 87.1 per cent of the total number. The question may well be raised why the proportion of habitual and professional offenders is so small, totaling only 12.5 per cent of the total number of paroled men.

TABLE 4. PAROLEES, AS TO TYPES OF OFFENDERS, CLASSIFIED BY TYPES

Total Number and Percentage by Type of Offender of Three Thousand Men from the Three Illinois State Penal and Reformatory Institutions

Type of Offender	Men Paroled from the Three Institutions	
	Number	Per Cent
First offender	1,675	55.8
Occasional offender	938	31.3
Habitual offender	330	11.0
Professional offender	46	1.5
Insufficient data	11	.4
Total	3,000	100.0

Table 5 on the criminal record of the prisoner previous to his present commitment may be used as a check upon the classification by types of offenders.

TABLE 5. PAROLEES, CLASSIFIED AS TO PREVIOUS RECORD

Previous Criminal Record of Three Thousand Men Paroled from the Illinois State Penitentiary, from the Southern Illinois Penitentiary, and from the Illinois State Reformatory

Previous Criminal Record	Men on Parole from				
	Joliet Number	Menard Number	Pontiac Number	All Institutions Number	All Institutions Per Cent
No previous record	490	666	541	1,697	56.6
Industrial school record only	18	26	127	171	5.7
Record of fine or probation only	29	8	117	154	5.1
County or city jail record	202	43	155	400	13.3
State reformatory record	105	87	44	236	7.9
State penitentiary record	156	170	11	337	11.2
No data			5	5	.2
Total	1,000	1,000	1,000	3,000	100.0

This table indicates that over one-half (56.6 per cent) of the men in the penal and reformatory institutions of Illinois have no previous criminal history so far as shown by their records. In addition are those, or 24.1 per cent, whose past punishment record was merely that of industrial school,

workhouse, fine or probation. Only 19.1 per cent [1] have recorded against them previous commitments to penitentiaries and reformatories. So far as the facts in this table may be taken at their face value they corroborate the earlier finding that only a minority of the men paroled from Illinois penal and reformatory institutions are habitual and professional offenders and that the great majority are first and occasional offenders and to that extent fit subjects for parole supervision looking towards rehabilitation.

The first and occasional offenders, totalling 87.1 per cent of the men paroled, probably deserved an opportunity to make good. The habitual and professional criminals, totaling together only 12.5 per cent, were not such "good risks" for rehabilitation. The question may be asked why so small a number of habitual and professional criminals are found in the prison population. Is it because of their relative freedom from apprehension and conviction? Do the majority of professional criminals remain at large in the general population, while first and occasional offenders crowd the penal and reformatory institutions to overflowing?

82. What Proportion of Paroled Men Make Good?

"What proportion of men make good on parole?" is a question that is often asked.

Non-violation of parole is not exactly the same as "making good" on parole. By "making good" is implied the restoration of the person as a law-abiding member of society, gainfully employed in a legitimate vocation. By non-violation of parole is meant that the person has not been apprehended in the violation of any parole regulation or of any law. In other words, he has observed at least the letter of his parole obligations and has not been apprehended for a new offense.

In order to find out the relative proportion of parole violators and non-violators, the Committee undertook an extensive survey of the records of 1,000 men paroled from the Illinois State Reformatory at Pontiac, 1,000 men paroled from the Illinois State Penitentiary at Joliet, and of 1,000 men paroled from the Southern Illinois Penitentiary at Menard.

These three thousand cases had all been released from the penitentiary or the reformatory at least two and one-half years when the study was made, since the thousand cases from each institution comprised consecutive numbers of those released from parole, dating backward in time from December 31, 1924. The majority of the men whose records were studied had therefore been at large in the state for from three to five years when the study was made and many of them from three to six years. The majority of these men were under parole for one year after their release from incarceration. Sufficient time had elapsed, therefore, to determine violation of parole and,

[1] This percentage of 19.1 per cent for these three institutions of inmates with previous penitentiary and reformatory records is very close to 20 per cent recidivism for these same institutions in 1921-26 in *Statistical Data Supporting Special Report and Recommendations on the Parole System of Illinois,* by Hinton G. Clabaugh, April 27, 1927. The question may be raised whether or not this distribution of different types of criminals among paroled men is representative of the entire penal population. Figures taken from "The Report of the Statistician for the Department of Public Welfare for 1926" indicate that, during the period covered by this study, nine out of every ten men leaving these three institutions were paroled. Of the 3,206 men released from Joliet (1924-25), Menard (1923-25) and Pontiac (1924-25), 89.4 per cent were placed on parole, 9.3 per cent were discharged, and 1.3 per cent were pardoned or had their sentences commuted.

if a follow-up study could have been made, to ascertain how large a number returned to a criminal career after the period of parole had expired.

Table 6 shows the percentage of men who had observed and who had violated parole regulations.

TABLE 6. PAROLE VIOLATORS, COMMITTEE'S STUDY

Percentage of Men Paroled from the Illinois Penal and Reformatory Institutions Who Were Parole Violators and Non-Violators

Institutions	Violators Per Cent	Non-Violators Per Cent
Pontiac	22.1	77.9
Menard	26.5	73.5
Joliet	28.4	71.6
All institutions	25.7	74.3

These percentages of violation of parole for this period are much higher than those we are able to find in printed reports. For example, a comparison may be made with the percentages of success and failure upon parole as published in the Biennial Report of the Division of Pardons and Paroles, 1922-24;[1] the period covered by the study of the committee was substantially, although not exactly, the same (Table 7).

TABLE 7. PAROLE VIOLATORS, OFFICIAL REPORT, COMPARED

	Percentage of Paroled Men Violating Parole			
	Pontiac	Joliet	Menard	All Institutions
Biennial Report, 1922-24	16.3	18.8	20.4	18.8
Committee's Study, 1922-24	22.1	28.4	26.5	25.7

These figures from the Biennial Report cannot be reconciled with the published figures for the same years for those returned to prison for violation of parole given by the statistician of the Department of Public Welfare (Table 8).

TABLE 8. PAROLE VIOLATORS, PUBLIC WELFARE REPORT, COMPARED

Number and Percentages of Paroled Men Violating Parole as Compared with the Number of Men Paroled or on Parole, 1922-24

		Returned to Institution		Defaulters at Large		Total Violators	
	On Parole	No.	Per Cent	No.	Per Cent	No.	Per Cent
Biennial Report	3,629	366	10.5	280	7.7	646	18.8
Statistician's Report	3,752	593	15.8	—	—	—	—

The significant contrast in these two reports is the statistician's finding of 15.8 per cent instead of 10.5 per cent of men returned to institutions as violators of parole. In fact, he reports a percentage one-half again as large as that reported by the Division of Pardons and Paroles.

The inference that the figures of the Biennial Report are too low is

[1] "Comparison of 'Make Good' and 'Failed,'" pp. 7, 9.

confirmed by a tabulation submitted to the committee by Mr. W. E. Barrere, parole officer at Pontiac (Table 9).

TABLE 9. PAROLE VIOLATORS, PONTIAC REPORT, COMPARED

Percentage of Men Paroled from Pontiac Violating Parole Classified by the Returned and At Large for the Years 1922-24

	Percentage Returned	Violators At Large	Total Paroled
Biennial Report	9.4	6.9	16.3
Barrere Report	16.5	4.0	20.5

The conclusion is inescapable that the published figures in the Biennial Report cannot be substantiated. It is highly advisable that the Parole Board, and indeed all other organizations dealing with the treatment of crime, submit before publication their annual statistical report for examination and auditing to a statistical expert or competent committee. This is necessary in order to obtain public confidence in the validity, not only of the figures, but of the method of analysis employed.

83. What Does "Making Good" Mean?

So far the rather colorless entry "no violations reported" has been used instead of the more significant phrase "making good on parole." In what does "making good" actually consist? Does it mean merely the negative report of the observance of the letter of parole regulations and of refraining from crime until discharged from parole? Obviously it should mean more than that. "Making good" means a change of attitude, often of associates, which manifests itself in securing regular legitimate employment and in participating as a wholesome member of the community in its different activities.

In this study, cases of individual paroled men were found who maintained a spotless parole record but when discharged almost immediately resumed the activities of a criminal career. Of the 1,000 men paroled from Pontiac 221 were declared parole violators, leaving 779 who presumably fulfilled the conditions of parole. Yet, in a period of from two to four years after discharge from parole, at least 82, or 10.5 per cent, of those discharged from parole had been apprehended and nearly all incarcerated for new offenses, according to reports received by the recorder at Pontiac, from other penal institutions and identification bureaus.

Mr. C. O. Botkin, the recorder at Pontiac, stated that in his judgment these recorded cases of commitments to institutions after the expiration of parole represent at best only about one-half of the actual number. For example, only twenty-two of these cases were committed to institutions outside of Illinois.

It seems conservative to estimate that at least 35 per cent of the men discharged from the Illinois State Reformatory at Pontiac have failed to make good either on parole or after parole within three to five years of the time they were paroled. This conclusion should provide further argument for a reorganization of our penal and reformatory institutions in the interest of the rehabilitation of the criminal as well as for a system of effective parole supervision over a sufficiently long period, as the five years now in force.

84. Major and Minor Violations of Parole.

The distinction should be made between major and minor violations of parole. A man is declared a parole violator if he commits a new offense. This may be termed, then, a major violation. He may be considered a parole violator if he fails to make his monthly report, or makes a trip out of the state without permission, or disregards any of the rules for his conduct prescribed in the parole agreement. Such violations as these, as well as any reason which under the previous administration led to a continuance of parole at the end of twelve months, may be defined as a minor or technical violation.

Statistics from Pontiac, Joliet, and Menard indicate that there are nearly as many parole agreements violated on minor and technical as on major grounds (Table 10).

TABLE 10. PAROLE VIOLATORS, MAJOR AND MINOR VIOLATIONS

Comparison by Institutions of the Number of Minor and Major Violations of Parole

Parole Agreement Violated	Individual Institutions			All Institutions	
	Pontiac	Joliet	Menard	Number	Per Cent
On minor grounds	83	112	133	328	10.9
On major grounds	138	172	132	442	14.7
Total	221	284	265	770	25.6

It is evident that technical violations are not as serious as committing new offenses. Yet slight infractions of the parole agreement must be given attention if graver consequences are to be prevented. Indeed, increasing efficiency of parole supervision is likely to be accompanied by an increase in technical but a decrease in major violations of parole. The public should be prepared for a sharp rise in the percentage of parole violators under the recent plan of increasing the period of supervision from one to five years. Technical violations might well be expected to increase five-fold, but the final result should be a decrease in the actual number of crimes by paroled men.

The public, or a large part of it, has held the parole system responsible for all crimes committed by paroled men, even after the expiration of the parole period. This extension of the time of parole is in one sense an answer to this implied criticism, and at the same time provides a real protection to the paroled man who is trying to "make good," sometimes against great odds.

85. Factors Making for Success or Failure on Parole.

Is it possible to find out the factors that make for success or failure on parole? The members of the Parole Board, the superintendents and the staff of the different institutions, and the parole officers all are convinced from their experience that differences in personality of the men and differences in factors in their background are related to the success or failure of the man to abide by his parole agreement. The committee, therefore, undertook to find out:

1. What specific facts about the man and his past history as stated in the record could be related to the fact that he had, or had not, violated parole?

2. What, if any, additional facts significant in the light of his record on parole might also be secured?

At the time this study was undertaken all the paroled men had been released from confinement in the State Penitentiaries at Joliet and Menard and the State Reformatory at Pontiac for at least two and one-half years, and in a considerable proportion of cases for as many as four or five years. Consequently, more than sufficient time had elapsed to determine their record on parole.

The observation or violation of parole was compared with the following twenty-two facts as entered in the materials in the records: (1) nature of offense; (2) number of associates in committing offense for which convicted; (3) nationality of the inmate's father; (4) parental status, including broken homes; (5) marital status of the inmate; (6) type of criminal, as first offender, occasional offender, habitual offender, professional criminal; (7) social type, as ne'er-do-well, gangster, hobo; (8) county from which committed; (9) size of community; (10) type of neighborhood; (11) resident or transient in community when arrested; (12) statement of trial judge and prosecuting attorney with reference to recommendation for or against leniency; (13) whether or not commitment was upon acceptance of lesser plea; (14) nature and length of sentence imposed; (15) months of sentence actually served before parole; (16) previous criminal record of the prisoner; (17) his previous work record; (18) his punishment record in the institution; (19) his age at time of parole; (20) his mental age according to psychiatric examination; (21) his personality type according to psychiatric examination; (22) psychiatric prognosis.

86. Same: Offense Named in the Indictment.

The general public is inclined to the belief that certain offenses are indicative of more vicious tendencies in the criminal and would, by their very nature, forecast failure upon parole. Murder and certain sex offenses, for example, arouse the most intense feelings of abhorrence and are charged with the most severe penalties. The tabulation of offenses in relation to record on parole gives the astonishing results shown in Table 11.

TABLE 11. PAROLE VIOLATIONS IN RELATION TO GENERAL TYPE OF OFFENSE

General Type of Offense	Violation Rate by Institutions — Pontiac Per Cent	Joliet Per Cent	Menard Per Cent
All offenses	22.1	28.4	26.5
Larceny	23.2	29.3	24.7
Robbery	12.6	29.7	20.5
Burglary	26.3	36.2	33.0
Fraud and forgery	24.2	42.4	38.3
Sex offenses	11.1	18.3	14.8
Murder and manslaughter	27.3	9.0	15.6
All other offenses	20.0	11.1	7.4

At all these institutions men convicted of sex offenses, murder, and manslaughter show a relatively low rate for violation of parole while those convicted of fraud, forgery, and (except for Pontiac) burglary have dis-

proportionately high rates for violation. This seems to indicate either that some groups of offenders are given unusually careful parole supervision, or else that they are more susceptible to reformation than those prone to other forms of delinquency.

87. Same: Number of Associates in Crime Resulting in Conviction.

In a large proportion of cases the crime for which the man was convicted was not committed by one man but by two or more men. In Pontiac, out of one thousand cases, the delinquent has no comrade in his crime in 368 cases, one comrade in 375 cases, two comrades in 169 cases, three comrades in 63 cases, four comrades in 13 cases, and five or more comrades in 12 cases. In Menard out of one thousand cases, the offender had no associate in his crime in 659 cases, one associate in 181 cases, two associates in 117 cases, three associates in 25 cases, four associates in 13 cases, and five or more associates in 5 cases. In Joliet out of one thousand cases, the convict had no confederate in 558 cases, one confederate in 226 cases, two confederates in 120 cases, three confederates in 43 cases, four confederates in 22 cases, and five or more confederates in 31 cases.

The most significant finding from a consideration of the relation of parole violation to number of associates was the high violation rate (except for Menard) where the offender had no associate, and the surprisingly low violation rate for all three institutions when the convict had three or more associates. For example, where the delinquent had four or more associates the violation rate is only 4.0 per cent for Pontiac, 11.1 per cent for Menard, and 13.2 per cent for Joliet, as compared with 31.3 per cent for Pontiac, 28.1 per cent for Menard and 32.1 per cent for Joliet when the offender is a "lone wolf." The Pontiac figures showing that 632 out of 1,000 cases involved one or more persons indicate the role of the groups, or gangs, in the delinquency of youth. These facts indicate the importance of the study of the criminal not only as an individual but also in his gang and other group relationships.

88. Same: National or Racial Origin.

For each of the three institutions, violation of parole was compared with the national or racial origin of the prisoner as determined by the country of birth or race of his father. The largest single group was that of the native white of native parents, or 527 at Pontiac, 643 at Menard, and 350 at Joliet. The group second in size was the Negro with 152 at Pontiac, 216 at Menard, and 201 at Joliet. The remainder was distributed among the other nationalities and races with 321 at Pontiac, 141 at Menard, and 449 at Joliet. All institutions seemed to show the tendency to find the smallest ratio of violations among more recent immigrants like the Italian, Polish and Lithuanian, and to disclose the highest rate of violation among the older immigrants like the Irish, British, and German.

89. Same: Parental Status and Marital State.

The records of 823 men at Menard give 504 from disrupted homes and only 10 from stable, well-organized families. Of the 894 men at Joliet, 524 left home at an early age to make their way in the world; an additional 342 came from broken homes; and only 17 had

had an experience of the average wholesome American family, as far as could be inferred from the records. There is real need of securing additional data upon family relationships. The percentages of violations of men coming from "broken homes" were higher than the average, while the percentage of those coming from the better type of home was significantly lower.

At all institutions the single men constituted the largest individual group. At Pontiac their numbers were overwhelming, constituting 851 to 127 married men, 21 divorced or separated, and 1 widower. At Menard the single men have a plurality instead of a majority with 420 representatives, the married men are nearly as large a group with 397, those divorced or separated number 113, while the widowers total 69. Joliet reports 478 single men, 392 married men, 70 men divorced or separated, and 59 widowers. Both Menard and Joliet show a violation rate higher than the average for single men, and lower than the average for married men. At Pontiac, on the contrary, the married youths exhibit a slightly higher rate of parole violation than the average.

90. *Same: Type of Offender.* The four main types of criminals have already been differentiated. This violation rate is much lower for the first and occasional offender than for the habitual and professional criminal, and considerably below that of the occasional offender (Table 12).

TABLE 12. TYPE OF OFFENDER IN RELATION TO PAROLE VIOLATION

Type of Criminal	Violation Rate by Institutions		
	Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All criminals	22.1	26.5	28.4
First offender	15.8	21.4	17.0
Occasional offender	24.2	32.5	36.0
Habitual offender	39.1	51.4	48.9
Professional criminal	52.4		41.7

The run of the figures clinches the point that the first offender is a "better risk" than the occasional offender, and the occasional offender is a "better risk" than either the habitual or professional criminal. Moreover, the larger proportion of the first and occasional offenders are technical and minor violators of parole, while the great majority of violations among habitual and professional criminals are the result of detection in new crimes. Table 13, parole violators from Joliet, will illustrate this significant point.

TABLE 13. MINOR AND MAJOR VIOLATIONS OF PAROLE FROM JOLIET

Type of Criminal	Per Cent of Violation		
	Minor	Major	Total
All offenders	11.2	17.2	28.4
First offenders	9.3	7.7	17.0
Occasional offenders	14.5	21.5	36.0
Habitual offenders	11.0	37.9	48.9
Professional criminals	4.2	37.5	41.7

It is evident from Table 13 that the proportion of serious violation of parole is five times as great among habitual and professional criminals as among first offenders, while the percentage of minor violations among

professional criminals is less than half that of first offenders. In other words, the professional criminal tends to obey the technicalities of parole agreement much better than the first offender, but he is five times as liable to continue in the criminal career.

91. Same: The Criminal as a Social Type. The attempt was made to determine the social type into which each person would fall as gangster, farm boy, recently arrived immigrant, drunkard. This was not a classification appearing on the records, but was derived from the history of the man and his offense as contained in the record. This method of differentiating social types gave some highly significant comparisons (Table 14).

TABLE 14. SOCIAL TYPE IN RELATION TO PAROLE VIOLATORS

Social Type	Violation Rate by Institutions		
	Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All persons	22.1	26.5	28.4
Hobo	14.3	46.8	70.5
Ne'er-do-well	32.8	25.6	63.0
Mean citizen		30.0	9.5
Drunkard	37.5	38.9	22.7
Gangster	22.7	23.2	24.1
Recent immigrant	36.8	16.7	4.0
Farm boy	11.0	10.2	16.7
Drug addict	4.3	66.7	83.3

When criminals are classified by social type, wide differences in the rate of parole violation occur. The farm boy and the newly arrived immigrant both seem disposed to make satisfactory adjustments under parole. But the hobo, the ne'er-do-well from the city (Joliet statistics), and the older drug addict, all are liable to become parole violators. The gangster, interestingly enough, has a parole violation rate a little under that of the average. This fact suggests that special effort directed toward persons of this type might not be so unavailing as is popularly believed.

92. Same: Place or Residence. Of the 1,000 youths in Pontiac, 430 were temporary or permanent residents of Cook County and 570 of the remaining counties of Illinois at the time of their commitment. At Menard inmates had been committed for the most part from the southern part of the state. Of the 1,000 Joliet cases, 609 had been sentenced in Cook County and the remainder in general from the other northern counties. In classifying the 3,000 paroled men by the size of the community in which they had lived before commitment to the institution, no significant variation from the average in percentage of violation was discovered except a uniformly low rate for those whose homes had been in the open country. For those with homes on the farm only 12.5 per cent from Pontiac, 14.6 per cent from Menard, and 9.3 per cent from Joliet became parole defaulters.

About one-fourth of the 1,000 men from each institution (222 from Pontiac, 272 from Menard, and 253 from Joliet) were transients in the community in which the crime resulting in their conviction took place. The

parole defaulter rate was smaller than the average for actual residents of the community, being 14.1 per cent for Pontiac, 19.0 per cent for Menard, and 23.7 per cent for Joliet, but much larger for transients convicted of crime, or 24.3 per cent for Pontiac, 46.0 per cent for Menard, and 41.1 for Joliet.

The material in the records was not so satisfactory for determining the type of neighborhood where the man lived at the time of his arrest. It did seem important to find out, however, whether an inmate of a prison whose last place of residence was a residential neighborhood would be a "better risk" under parole supervision than one whose last dwelling place in civil life had been in the criminal underworld or along the "Main Stem" of Hobohemia.

TABLE 15. TYPE OF RESIDENCE IN RELATION TO PAROLE VIOLATORS

Type of Neighborhood in Which Prisoners Reside	Violation Rate by Institutions		
	Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All neighborhoods	22.1	26.5	28.4
Criminal underworld	42.3	45.5	38.1
Hobohemia	21.4	48.4	52.9
Rooming house district	45.8	34.6	38.7
Furnished apartments	28.6		20.0
Immigrant areas	25.0	26.1	25.9
Residential district	17.8	14.2	22.3

It is apparent from this Table 15 that the neighborhood of last residence previous to commitment is an important index on whether or not a man will make good or fail when put on parole. Hobohemia and the criminal underworld do not, it seems, fit a man to take his place as a law-abiding member of organized society.

93. Same: Factors Involved in the Trial and the Sentence.

The statute requires that the trial judge and state's attorney shall file with the Parole Board a written statement concerning the circumstances of the crime and the character and associates of the convicted criminal. In more than half of the cases of men committed to Menard and in over three-fourths of the cases sent to Joliet and Pontiac, the statement of the trial judge and the state's attorney is purely factual; in the remainder they either enter a recommendation for leniency in the granting of parole or protest against it. That this statement should be given consideration by the Parole Board may be seen by comparing the violation rate of recommendations and protests as 16.9 per cent compared with 46.7 per cent for Pontiac; 23.7 per cent as compared with 27.6 per cent for Menard, and 16.4 per cent as compared with 31.2 per cent for Joliet.

Except for certain crimes where the law provides a flat sentence as in treason, murder, rape, and kidnapping, the sentence is indeterminate and provides for a minimum and a maximum period of imprisonment. But whether the sentence is for a definite or indeterminate period, the parole law applies and it is therefore possible to compare the rate of violation under different types of sentences.

TABLE 16. TYPE OF SENTENCE, AS RELATED TO PAROLE VIOLATION

Type of Sentence	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All sentences	22.1	26.5	28.4
Flat sentence	16.7	13.0	4.8
From 1 to 5 years	31.6	25.9	33.3
From 1 to 10 years	24.0	26.3	29.8
From 1 to 14 years	20.0	30.7	33.8
From 1 to 20 years	24.2	31.3	34.6
From 3 to 20 years	14.3	20.0	24.1
From 1 year to life		2.4	18.2

The striking conclusion to be drawn from Table 16 is the low violation rate for flat sentences and (except at Pontiac) for the heavier penalties of three to twenty years and of one year to life. These findings correspond to the other surprising discovery that murderers and sex offenders, who receive flat sentences, have only a small proportion of their number among the parole violators.

More significant, perhaps, than the sentence imposed is the sentence served. Since all the men included in this study of 3,000 cases had been released on parole, it was possible to compare the actual time served in prison or reformatory with the percentage violating the parole agreement.

TABLE 17. RELATION BETWEEN TIME SERVED IN PRISON TO PAROLE VIOLATION

Number of Years Served	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All periods of years served	22.1	26.5	28.4
Under 1 year	10.7	21.3	14.5
1 year but under 2 years	22.0	23.2	20.8
2 years but under 3 years	20.1	27.9	25.2
3 years but under 4 years	32.1	29.4	37.9
4 years but under 5 years	43.5	37.5	37.6
5 years but under 8 years	46.2	43.0	37.3
8 years and over		25.0	39.5

In general, the finding to be derived from Table 17 is that the longer the period served the higher the violation rate. A larger proportion of habitual and professional criminals serve longer terms than do first and occasional offenders, according to a special analysis of figures giving this comparison which was made for those released from Joliet. Nevertheless, it would seem to be good policy for the Parole Board in fixing the length of sentence for the first and occasional offender to keep in mind the relation of the duration of the sentence to making good on parole.

94. Same: Previous Criminal Record and Parole Violation.

Facts upon the man's previous criminal history were derived from the statement of the trial judge and the state's attorney, from information furnished by the prisoner to the recorder and the psychiatrist at the institution, and from reports furnished the recorder from local and federal bureas of identification. Out of the 1,000 men at each institution there was no report of a past criminal history in 541 cases at Pontiac, 666 cases at Menard, and 490 cases at Joliet (Table 18).

TABLE 18. PREVIOUS CRIMINAL RECORD, IN RELATION TO PAROLE VIOLATION

Previous Record	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All persons	22.1	26.5	28.4
No criminal record	16.3	21.2	15.9
Industrial school record only	37.0	46.2	27.8
Fine or probation only	16.2	12.5	24.1
Workhouse or jail record only	31.0	25.6	46.5
Reformatory record	34.1	37.9	39.0
Penitentiary record		39.4	37.8

At both Menard and Joliet a previous reformatory and penitentiary record show high rates of parole violation, while the lack of a criminal record exhibits a lower violation rate.

95. Same: Previous Work Record. The records in most cases contained sufficient information to allow the classification into "no work record," "casual work," "irregular work," and "regular work." Under casual work was entered the intermittent labor of unskilled workers. In the majority of cases irregular work is that of skilled workers who were not steadily employed. Regular work record referred to those who were reported to have a history of steady employment (Table 19).

TABLE 19. PREVIOUS WORK RECORD IN RELATION TO PAROLE VIOLATION

Previous Work Record	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All persons	22.1	26.5	28.4
No previous work record	28.0	25.0	44.4
Record of casual work	27.5	31.4	30.3
Record of irregular work	15.8	21.3	24.3
Record of regular work	8.8	5.2	12.2

The very low percentages of parole violation for men with a record of regular employment is eloquent in its testimony to regular habits of work as a factor in rehabilitation.

96. Same: Behavior Record in Prison. Although the work record before and during imprisonment has not had much weight in determining fitness for parole, the punishment record in the institution has always received great attention. The relation of the punishment record in prison to reaction to the conditions of parole is a subject of vital interest to all concerned with the theory and practice of penology (Table 20).

TABLE 20. PRISON PUNISHMENT RECORD IN RELATION TO PAROLE VIOLATION

Punishment Record	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All inmates	22.1	26.5	28.4
No punishment recorded	17.0	20.0	18.6
Demerit	(*)		30.4
Solitary confinement		41.9	52.4
One or two demotions	27.2	34.3	35.9
More than two demotions (or in Pontiac and Joliet to Grade E)	33.1	33.3	47.1

*Only two cases, insufficient for calculation of percentage.

At both penitentiaries the inmates who were punished by solitary confinement had an unusually high violation rate, particularly in comparison with the low violation rates of those without recorded punishments. The figures do not, of course, give a final answer to the question whether the violation of parole is a manifestation of the same antagonistic attitude toward rules and regulations as against prison discipline, or whether the recipient of severe punishment within the institution, embittered, is thereby animated with a deeper enmity against society.

97. Same: Age When Paroled. The prison population as a body is a group of young men. Even when paroled the average age of our 1,000 Joliet men was only 34.7 years, of our 1,000 Menard men only 33.9 years, and of our 1,000 Pontiac youths only 21.6 years.

TABLE 21. AGE AT PAROLE IN RELATION TO PAROLE VIOLATION

Age When Paroled	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All ages	22.1	26.5	28.4
Under 21 years	17.7	25.0	16.7
21 to 24 years	23.1	23.3	23.3
25 to 29 years	31.2*	30.7	28.9
30 to 39 years		28.4	33.2
40 to 49 years		22.1	23.2
50 years and over		23.1	22.0

*The 154 cases on which this per cent figure is based contains two cases 30 years of age and over.

The youngest and the oldest have the lowest violation rates according to this analysis. This finding bears out the double contention first, that the youth who has impulsively embarked on a career of crime is more amenable to supervision than the more experienced criminal of twenty-five and thirty years, and second, that the older man of forty and over is beginning at last to learn the lesson "that crime does not pay."

98. Same: Intelligence and Personality as Factors. Illinois enjoys the honor of having been the first state in the Union to establish the position of state criminologist. Under his direction the mental health officer at Pontiac, Menard, and Joliet gives the mental and psychiatric examination of the inmates. A diagnostic summary of this examination together with a statement by the mental health officer of the probabilities of success or failure of the inmate upon a return to the community is entered in the material that comes to the Parole Board for consideration. From these records it was possible to correlate the findings on general intelligence, personality type, and the psychiatric prognosis with the rate of violation of parole.

It was through the work of Dr. Herman M. Adler, State Criminologist, in an examination of the population of Illinois penal and reformatory institutions, that the first conclusive demonstration was made that the proportion of those of inferior intelligence in the criminal and delinquent group is no larger than in the general population. So, while inferior mentality can no longer be given as one of the major causes of crime, it is of interest to

determine how men of different intelligence levels react to supervision upon parole (Table 22).

TABLE 22. INTELLIGENCE, IN RELATION TO RATE OF PAROLE VIOLATION

Intelligence Rating	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All persons	22.1	26.5	28.4
Very inferior intelligence	24.3	25.0	21.3
Inferior intelligence	14.7	27.1	23.4
Low average intelligence	22.4	23.2	31.4
Average intelligence	17.1	23.5	32.0
High average intelligence	19.8	40.0	24.1
Superior intelligence	26.8	34.8	16.7
Very superior intelligence	9.5	40.0	23.8

The most significant finding from this analysis is, probably, the indication that those of inferior intelligence are as likely, perhaps more likely, to observe their parole agreement than are those of average and superior intelligence. In a study, *Comparison of the Parole Cases, Parole Violators and Prison Population of the Illinois State Penitentiary during the Year 1921,* Dr. David P. Phillips, mental health officer, called attention to the fact that although those of inferior intelligence constitute 28.6 per cent of the prison population of Joliet, they comprise only 15.6 per cent of those paroled and likewise only 15.5 per cent of the parole violators. Since these two independent studies give the same result, namely, that parole violation is no more frequent—if as frequent—among those of inferior than among those of higher intelligence, it would seem that inferior mentality should no longer constitute a barrier to the granting of parole.

Although less and less emphasis is being given to inferior mentality as a cause of delinquency and crime, more and more attention is being paid to the study of the personality of the individual offender. Herein lies the interest in the classification of personality type by the mental health officer (Table 23).

TABLE 23. PSYCHIATRIC PERSONALITY TYPE IN RELATION TO PAROLE VIOLATION

Personality Type	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All persons	22.1	26.5	28.4
Egocentric	24.3	23.5	38.0
Socially inadequate	20.0	24.7	22.6
Emotionally unstable	8.9	(*)	16.6

*Number of cases insufficient for calculating percentage.

The figures from Joliet, and to a lesser degree from Pontiac, seem to indicate that the paroled man with egocentric personality pattern faces the great difficulty in social readjustment. Curiously enough the emotionally unstable seem to have the least difficulty of keeping a clean record under supervision.

From the results of these examinations and from other data, the psy-

chiatrist makes a prognosis as to whether or not in his judgment a man is likely to succeed or to fail upon his return to civil society. His recommendation wherever feasible was classified under the terms "favorable," "doubtful," or "unfavorable" as to the outcome (Table 24).

TABLE 24. PSYCHIATRIC PROGNOSIS OF OUTCOME ON PAROLE

Psychiatric prognosis	Violation Rate by Institutions — Pontiac Per Cent	Menard Per Cent	Joliet Per Cent
All persons	22.1	26.5	28.4
Favorable outcome	14.8	21.4	20.5
Doubtful outcome	17.6	28.1	51.4
Unfavorable outcome	30.5	33.8	49.2

For Pontiac and Joliet, the psychiatric prognosis gives highly satisfactory results. Compare the low percentage of violation where a favorable outcome had been predicted, 14.8 per cent at Pontiac and 20.5 per cent at Joliet, with the high rate of violation where an unfavorable outcome had been indicated, as 30.5 per cent at Pontiac and 49.2 per cent at Joliet. The explanation for the poorer correlation of expectation and actual findings at Menard is in all probability due to the fact that the Southern Illinois Penitentiary has only the part-time services of a psychiatrist, and that therefore the individual examinations must be hurried. Since at present the mental health officer is the only person at the prisons and reformatory making a scientific study of behavior, it is certainly a minimum program that each institution be provided with the full-time services of a psychiatrist.

99. Same: Records as a Basis of Prediction.

This survey of the records of our penal and reformatory institutions reveals what a mass of detailed information is available about their inmates. It has indicated also what a real bearing this record of facts has upon the question whether or not a man will succeed on parole. Certain data are not as complete and as accurate as they might be, particularly those dealing with family, group, and neighborhood relationships. Provision should be made for rounding out this material into a complete picture of the man in his social setting.

There is new and pertinent material to be secured. The record of work and the school progress of the inmate within the institution may well receive the same careful attention that is now given to the punishment record. A program of industrial education when introduced will bear directly upon fitness for parole. Then, too, the report of a careful investigation of the situation in which a man is to be placed under parole supervision will give added indication of the probabilities of a successful outcome.

Finally, there can be no doubt of the feasibility of determining the factors governing the success or the failure of the man on parole. Human behavior seems to be subject to some degree of predictability. Are these recorded facts the basis on which a prisoner receives his parole? Or does the Parole Board depend on the impressions favorable or unfavorable which the man makes upon its members at the time of the hearing? Or does influence, political or otherwise, enter into the decision?

100. *Influence Versus Merit in Parole Administration.*

"We have set up this policy that each case will be judged on its own individual merits, and that no prisoner should be kept in a day longer, nor be let out a day earlier, regardless of the influences brought to bear."[1] "No political influence of any kind shall be permitted to operate for or against a prisoner."[2]

These two statements clearly setting forth the ideal of parole administration held by the Parole Board were made by its chairman in answer to questions asked by the Committee. This official pronouncement of the policy of the new Parole Board is in sharp contrast with the popular conception, widespread less than two years ago, of the parole system as a catspaw of politics.

What was the explanation of the deep-seated distrust of the parole administration then held by a large and influential part of the public? Are there, as many believe, or are there not, forces "behind the scenes," that attempt to manipulate and subvert the just and regular course of administration? Is it possible, or is it impossible, to drag these hidden, subversive forces into the light, so that the public may know them for what they are, and so be able to grapple with them in the open?

The committee does not propose in this study to review the scandals of past parole administrations which have already been aired in political campaigns and in the newspapers. At the same time, it will not sidestep a consideration of those facts bearing on the parole of prisoners solely on merit, or partly or wholly on account of influence.

Accordingly, the committee has not made a study of selected spectacular cases, nor sought to obtain legal evidence of corrupt practices. But instead of that it has made an intensive study of the average run of cases in the records and supplemented that by an attempt to find out from a small group of men discharged from parole their experience with the courts and with the Parole Board. It should be kept in mind that practically all of the cases included were under the previous parole administration.

The findings in these two studies are not presented for their statistical importance (the relatively small number of cases would preclude that) but for the light which they throw upon the whole situation of the prisoner, his family and relatives, their friends, in relation to the actualities of politics and government.

101. *Same: Influence as Revealed by Records.*

A thorough examination of the many documents in each record convinced the members of the committee that over half of the prisoners had little or no influence to exert. While in many cases the jackets in which the records were kept were stuffed with letters and often petitions, and while relatives, friends, lawyers, and prominent politicians were recorded in attendance at the hearing of the Parole Board, one-half the jackets contained only the formal papers required by the statute or by the rules of the institution or of the board, and large numbers of

[1] *In Re Division of Pardons and Paroles.* Statement of Hinton G. Clabaugh upon interrogatories propounded by Albert J. Harno, October 28, 1927, p. 70.
[2] *Idem.*, p. 77.

prisoners had no one to appear for them at the hearings. It is well to remember that a large proportion of the prisoners have little or no influence which they can marshal in their behalf.

It is natural for relatives like mother, father, sister, and brother to write letters and to make appeals and to appear before the Parole Board. In many cases, the records indicate that the activity of the family went no farther. Then other records show that neighbors, friends, and the former employer of the prisoner make their appearance generally by letters or by appearance at the hearings. Finally, a large number of records reveal the activity either of a lawyer evidently employed on the case, or of a prominent politician at work on the case.

All of these efforts on the part of relatives and friends are natural enough and many of them are quite legitimate. It is in the interest of justice to bring all available information to bear upon every case. But there is abundant evidence in the records that the efforts of those who are induced to champion the cause of the prisoner are often placed upon other grounds than those of the facts.

The most usual and the least objectionable of these side issues is the appeal for sympathy for a gray-haired mother, or pregnant wife, or a family that needs the support of the prisoner. The blame for the crime may be variously placed on "bad associates," "mental deficiency," "white mule," or the "adventurous spirit of youth."

Where sons of leading families in the community are imprisoned as a consequence of their pursuit of thrilling adventure, very great pressure may be exerted upon the Parole Board. Letters are to be found in the file from the prosecuting attorney, the trial judge, prominent officials and personages in the local community, and often even a written request for leniency from the prosecuting witness. In all this the tireless efforts of a shrewd and powerful attorney are to be seen. Where the prisoner is a member of a labor union, the pressure may be quite as great.

Not at all infrequently the prisoner is represented at the hearings of the Parole Board by a state representative or a state senator. His presence raises two vital questions. Is the member of the state legislature retained by the prisoner and his family because of his ability as a lawyer or because of his political prestige? Is he depending for his success before the Board upon his ability to bring out new facts and to make a clearer reinterpretation of old facts, or upon the favorable impression of his position and reputation? No one answer can be given which will fit all situations.

In a few cases letters on behalf of prisoners from influential persons, some even of national and international reputation, addressed to the governor of the state were included in the record. These had all been referred without recommendation to the chairman of the Parole Board. Judges, not infrequently, write or appear before the Parole Board on behalf of some prisoner and plead the "poverty of a widowed mother" or the disability of a father as an additional argument for speedy parole. In one case where a state representative and a judge were both active in behalf of the prisoner the record

indicates a series of robberies where the loot was disposed of to a "fence" with strong political protection.

In the majority of cases reviewed by the committee there was little or no influence exerted for the prisoner. In many cases powerful pressure was exerted and the Parole Board had not yielded ground. In several cases the chairman was able by a frank statement of the purpose of the indeterminate sentence and of parole with application to the facts in the particular case to convince the representatives of the family of the justice of the action of the board.

102. Same: Influence Against the Prisoner.

It is generally assumed that the force of influence, personal and political, is always exerted on behalf of the prisoner. That is quite true in regard to individual cases. In any given case the only pressure upon the Parole Board *against* the prisoner, aside from the protest of the trial judge and the state's attorney, and occasionally the prosecuting witness or victimized firm, is likely to come from some organization like the Crime Commission, protective organization, or insurance companies against burglary and robbery.

But there is a more powerful influence than any ever exerted for any given prisoner that may be thrown against the most meritorious case up for parole. And this is the tremendous force of public sentiment.

For the last several years, public opinion aroused by the flagrant and outrageous manifestations of organized crime has become firmly set against leniency toward the criminal. The effect of this attitude of the public upon the entire administration of criminal justice has nowhere been better worded than in a statement[1] made before the Parole Board by Judge Harry M. Fisher in behalf of a first offender to whom as judge he had denied probation:

> "Last year (1922) was a very difficult one for the judges sitting in the criminal court. The newspapers were full of accusations against everybody—the police, the judges, the state's attorney, in short, against every agency dealing with criminals. There was a crime wave and the public mind was so aroused that it literally demanded revenge. The judges were put in the position where they could not consider both the interest of society and of the individual. It was either a question of ignoring public demand, or yielding to it, and I confess that I came to the conclusion that even at the risk of doing an injustice to the individual who committed a wrong it was better, in view of the public state of mind, to heed the demand, for not to do so might lead to further disrespect for the entire judicial system and for the law itself . . . ."

What Judge Fisher says about the effect of public sentiment applies not only to the courts but also to parole administration. The committee found in the records many more cases of first offenders who were given maximum sentences, difficult to explain except on the basis of the influence of public clamor, than of habitual and professional criminals who were given less than the maximum on other than apparently meritorious grounds.

[1] For full address see *Institution Quarterly*, Sept., 1923, 44 ff.

103. The Courts and Parole in the Eyes of the Discharged Prisoner.

The testimony of the man discharged from parole is not as favorable to the administration of the indeterminate sentence and parole as are the parole records. An examination of over twenty more or less detailed life-histories of ex-paroled men selected at random indicate a widespread belief among them and their friends and relatives that money and political influence are effective in securing paroles.

This testimony of ex-paroled men should not be taken as demonstrating the improper use of money for the purpose of influencing the Parole Board. They manifest, however, a belief of ex-prisoners and their families that influence is effective. They probably are indicative also of the exploitation of clients by not overscrupulous lawyers. They reveal more than anything else the human side of the pressure to which politicians and the Parole Board alike are subjected.

The main conclusion drawn by the committee from this social rather than legal evidence is the imperative need of freeing the Parole Board, so far as it is humanly possible, from the pressure of these natural and persistent forces of family and friendly interest. The Board in its appointment of its personnel, its organization, and in its acts should be above all suspicion.

104. Testing Parole Administration.

But what tests may be applied to the conduct of parole administration in order to determine how far its decisions are guided by the merits of individual cases, or how far they are shaped by political expediency?

At no time was parole administration so savagely attacked in Illinois as in the six-year period 1921-26. The charge was made that the Parole Board was responsible for the crime wave by turning hundreds of criminals loose into the communities of the state.

A tabulation made from the figures provided by the "Fifth Report of the Statistician for the Year Ending June 30, 1926," quite clearly demonstrates that the proportion of paroled men to prison population is in recent years the lowest at any time in the history of the parole system in Illinois.

TABLE 25. QUANTITY OF PAROLE RELEASES, CLASSIFIED BY YEARS

Four-Year Term	Per Cent of Paroles Granted to Prison Population
1897-1901—John R. Tanner	31.1
1901-1905—Richard Yates, Jr.	31.2
1905-1909—Charles S. Deneen	30.1
1909-1913—Charles S. Deneen	33.0
1913-1917—Edward F. Dunne	33.4
1917-1921—Frank O. Lowden	36.6
1921-1925—Len Small	29.1
1925-1926—Len Small	26.1

Table 25 shows that the proportion of paroles to prison population reached its high point in 1917-21 and has since then receded. It also may indicate that, while habitual and professional criminals remain at large in the community, first and occasional criminals have been retained unduly long periods in imprisonment in response to public clamor.

A second test of the Parole Board inheres in the rules and policies which it adopts to govern its hearings and its decisions. Public hearings are a first and indispensable requirement for making merit, rather than influence, the basis of its action. The public naturally and rightly withdrew its confidence in the previous administration when it resorted to secret hearings. The present administration is to be commended for its adherence to the principle of public hearings.

105. Same: Time Served, Classified by Types of Offenders.

A third test of parole administration might be made by comparing the indeterminate sentences with the actual length of time served by different types of offenders in the penitentiaries and reformatories of the state. Table 26 permits the application of such a test to the terms fixed by the previous administration for the 1,000 men paroled from Pontiac in 1923-24.

An analysis of Table 26 gives some astounding results. It makes the reader bewildered as to the basis used by the previous administration in fixing sentences. It is true, in the main, that the median term of sentence is higher for the habitual and the professional offender than it is for the first and the occasional offender, but the range of terms served seems, with a few exceptions, not to differ radically from one group to another. One of the most astonishing results is that the median term served of 12.7 months for the indeterminate sentence of 1 to 20 years (largely for burglary) is actually much lower than for the shorter indeterminate sentences of 1 to 5 years, 1 to 10 years, and 1 to 14 years. The other astounding result is that the sentence of 3 to 20 years for plain robbery bulks far larger for the first offender than any other sentence at Pontiac, even 1 year to life, in time actually served. Yet the parole violation rate for this group is only 12.6 per cent as compared with a violation rate of 26.3 per cent for burglary (1 to 20 years) and 23.2 per cent for larceny (1 to 10 years).

TABLE 26. TIME SERVED, CLASSIFIED BY TYPES OF OFFENDERS

An Analysis of Actual Number of Months Served According to Different Types of Offenders in Comparison with the Nature of the Indeterminate Sentence for Men Paroled from Pontiac, 1923–24

Nature of Indeterminate Sentence	Months Served, by Type of Offender: First Offender		Occasional Offender		Habitual Offender		Professional Offender	
	Range	Median	Range	Median	Range	Median	Range	Median
1- 5 years.....	11-30	18.0	11-29	22.0	16-39	24.0		
1-10 years.....	11-54	15.5	11-67	21.1	11-89	29.5	17-99	38.0
1-14 years	11-54	19.3	11-62	27.0	12-93	42.0		
1-20 years	11-58	12.7	11-75	22.2	11-67	29.0	11-54	37.0
3-20 years	30-54	33.2	30-54	35.5	30-54	38.0	30-43	42.0
1-life	11-54	18.0	41-59	51.5	49-63	56.0		

These figures entirely justify the state legislature at its last session in changing the sentence of 3 to 20 years for plain robbery to 1 to 20 years as sponsored by the chairman of the parole board.

The table raises the question whether the administration of parole cannot be raised above the level of guess work and placed upon a scientific basis. More than honesty and good intentions on the part of the members

of the Parole Board are needed in order to realize the policy adopted of deciding each case on its merits. Is it possible to apply scientific methods predicting the behavior of the prisoner when released upon parole?

106. Can Scientific Methods Be Applied to Parole Administration?

Many will be frankly skeptical of the feasibility of introducing scientific methods into any field of human behavior. They will dismiss the proposal with the assertion that human nature is too variable for making any prediction about it.

But in the analysis of factors determining success and failure on parole some striking contrasts have already been found. For example, although the violation rate for the 1,000 youths paroled from Pontiac is 22.1 per cent it is less than half that among those with a regular work record prior to imprisonment (8.8 per cent); among the emotionally unstable (8.9 per cent); very superior intelligence (9.5 per cent); where sentence served is less than one year (10.7 per cent); among boys from farms (11.0 per cent). It is double this average rate where the youth lived before arrest in the criminal underworld (42.3 per cent) or in a rooming house (45.8 per cent); if the judge and prosecuting attorney protest against leniency (46.7 per cent); if he has served a sentence of five years or over (46.2 per cent); if he was brought up in an institution instead of a family (50.0 per cent); and if he is a professional criminal (52.4 per cent).

Do not these striking differences, which correspond with what we already know about the conditions that mould the life of the person, suggest that they be taken more seriously and objectively into account than previously? These factors have, of course, been considered, but in a commonsense way so that some one or two of them have been emphasized out of all proportion to their significance.

It would be entirely feasible and should be helpful to the Parole Board to devise a summary sheet for each man about to be paroled in order for its members to tell at a glance the violation rate for each significant factor. The summary of two cases is given below in order to make clear the feasibility of comparison between Youth A, already at 20 a professional criminal, and Youth B, a lad of 17, who is a first offender. The percentages given in Table 27 are taken from the Pontiac tables on factors determining success or failure on parole.

It is quite apparent that the chances are quite high that Case A will not succeed on parole, while Case B is a very good risk. Case A and Case B are, of course, extreme cases, but for that very reason they prove that predictability is feasible. The prediction would not be absolute in any given case, but, according to the law of averages, would apply to any considerable number of cases.

The value of this summary sheet, Table 27, with violation rates for significant factors will no doubt be appreciated. The question is sure to be raised if it is not possible so to combine those factors that are favorable with those that are unfavorable to success on parole that a prediction rate of expectancy of success or failure on parole could be worked out.

TABLE 27. EXPECTANCY FACTORS, TWO CASES COMPARED

Significant Factors	Violation Rate — Case A	Violation Rate — Case B
General type of offense		
Robbery	—	12.6
Burglary	26.3	—
Parental and marital status		
Both parents living	—	15.2
Married at time of commitment	23.6	—
Criminal type		
First offender	—	15.8
Professional offender	52.4	—
Social		
Farm boy	—	11.0
Gangster	22.7	—
Community factors		
Resident in community where arrested	14.1	14.1
Residence in open country	—	12.5
Residence in underworld	42.3	—
Statement of trial judge and prosecuting attorney		
Recommended leniency	—	16.9
Protests against leniency	46.7	—
Previous criminal record		
No criminal record	—	16.3
Reformatory record	34.1	—
Work record previous to commitment		
No work record	28.0	—
Regular work	—	8.8
Punishment record in institution		
No punishment	17.0	17.0
Intelligence rating		
Average	—	17.1
Superior	26.8	—
Psychiatric personality type		
Egocentric	24.3	—
Psychiatric prognosis		
Favorable	—	14.8
Unfavorable	30.5	—

Because of the practical value of such an expectancy rate the committee was interested in finding out how these various factors might be combined so as to give more certainty of predictability than any factor taken separately.

Accordingly, twenty-one factors were selected by which each man was graded, in comparison with the average for the 1,000 cases, upon the probabilities of making good or of failing upon parole. Since there were twenty-one factors it was theoretically possible for a man to be in a more favorable group than the average on all twenty-one factors, or upon twenty factors, or upon nineteen factors, and so on down the scale to having a better position than the average upon three factors, upon two factors, upon one factor, and upon no factor. Actually for Joliet several men were found to have a record above the average on all twenty-one factors, and, in fact, the 1,000 cases had men distributed in all groups except the lowest two, that is, with one factor or no factor above the average. Table 28 is submitted as indicating the expectancy rate for nine groups of men paroled from Joliet based on the actual violation rate in the twenty-one factors selected.

TABLE 28. EXPECTANCY RATES OF PAROLE VIOLATION AND NON-VIOLATION

Points for Number of Factors Above the Average	Number of Men in Each Group	Expectancy Rate for Success or Failure — Per Cent Violators of Parole — Minor	Major	Total	Per Cent Non-Violators of parole
16-21	68	1.5	—	1.5	98.5
14-15	140	.7	1.5	2.2	97.8
13	91	5.5	3.3	8.8	91.2
12	106	7.0	8.1	15.1	84.9
11	110	13.6	9.1	22.7	77.3
10	88	19.3	14.8	34.1	65.9
7- 9	287	15.0	28.9	43.9	56.1
5- 6	85	23.4	43.7	67.1	32.9
2- 4	25	12.0	64.0	76.0	24.0

Similar tables were prepared for Menard and for Pontiac with comparable results.

The group with 16-21 favorable points is composed of those whose summary sheets have the highest proportion of factors favorable to success, just as the group with only two to four favorable points is made up of those with the largest number of factors unfavorable to success in their summary sheet. It is to be noted that the highest group consisting of 68 men contains only 1.5 per cent who on the basis of past experience would be expected to violate their parole, while in the lowest group the expectancy rate of violation is 76 per cent.

The practical value of an expectancy rate should be as useful in parole administration as similar rates have proved to be in insurance and in other fields where forecasting the future is necessary. Not only will these rates be valuable to the Parole Board, but they will be equally valuable in organizing the work of supervision. For if the probabilities of violation are even, it does not necessarily mean that the prisoner would be confined to the penitentiary until his maximum was served, but that unusual precautions would be taken in placing him and in supervising his conduct. Less of the attention of the parole officers need in the future be directed toward those who will succeed without attention and more may be given to those in need of assistance.

The table of expectancy rates of violation and non-violation of parole is submitted as illustrative of the possibilities of the method and not in any sense as in a form adapted for immediate use. Indeed, the method needs to be still further refined and then applied to from 3,000 to 5,000 cases for each institution in order to obtain an adequate statistical basis for the accurate working of satisfactory expectancy tables.

Then, too, an additional caution should be given. Although statistical prediction is feasible on the basis of data now accessible, exclusive reliance should not be placed on this method. There is still room for more intensive and sympathetic study of individual cases. The scientific study of human behavior is still in its infancy. Our prisons and reformatories should become laboratories of research and understanding into the causes of the baffling problem of the making and unmaking of criminal careers.

With the Parole Board, in cooperation with the Department of Public Welfare, is placed the great responsibility of securing the protection of society through the rehabilitation of the criminal. That objective can only be obtained by placing the administration of the penal and reformatory institutions and of the parole system on a professional basis and by the introduction of scientific methods of treatment.

PART E

THE PROBATION SYSTEM

107. Purpose and Scope of Probation, Contrasted with Parole.

Probation and parole often are confused. Probation is granted by the court, and is applied to an offender under a suspended sentence without sending him to a penal or reformatory institution. Parole, in Illinois, is granted by the Parole Board. It denotes the conditional release of a prisoner after confinement. In probation the *sentence is suspended,* conditioned on good behavior. In parole the *release* is conditioned on good behavior.[1] The Illinois probation system is not administered by the Department of Public Welfare and the Parole Board (as is parole), but is wholly under the control of courts. Probation has an important place in the administration of our criminal law. And since, as we shall point out shortly, more criminal offenders are admitted to probation and are so at liberty, than are on parole, it becomes desirable that the public become acquainted with the function of probation, its place in our law, and its advantages and defects.

The Illinois Probation System Act is entitled "An Act providing for a system of probation, for the appointment and compensation of probation officers, and authorizing the suspension of final judgment and the imposition of sentence upon persons found guilty of certain defined crimes and offenses, and legalizing their ultimate discharge without punishment." Section one provides that "all courts having criminal and quasi-criminal jurisdiction shall have power[2] to deal in the manner hereinafter provided with all

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[1] "Release on *probation* and release on *parole* have substantially the same meaning. Both imply a certain clemency by which an offender is released before he has the right by the letter of the law to demand his release; and in both cases the release is granted to test the offender and with the belief that he will abstain from crime. By accepted usage, however, the two words have distinctly separate meanings. *Probation* is applied only to persons released before imprisonment and then committed to the care of a probation officer. This may occur before sentence, the sentence being suspended, or after sentence, the execution of the sentence being suspended; but, in every case, before the offender is committed to prison. *Parole,* on the other hand, is applied to persons committed to prison under an indeterminate sentence, or its equivalent, and released at some point between the minimum and maximum limits of the sentence." Smith, *Criminal Law in the United States* (1910 Russell Sage Foundation) 88-89.

[2] A state's attorney has written us that it is his opinion that the Probation Act was repealed by the Parole Act. His view follows:

"I have always maintained that the Parole Act of 1917 automatically repealed the Probation Act, but as the state cannot sue out a writ of error or appeal, and the defendant would be foolish if he raised the question, I know of no way it could be considered by an upper court except by mandamus to the lower court to expunge its order, releasing on Probation. It will be seen that the latter part of Section 15 of the Parole Act specifically states, 'And all parts of laws not in *harmony* with the provision of this Act are hereby repealed,' and as Sections 1 and 3 of the same Act *compel* the court to sentence the defendant to some reformatory institution, they cannot comply with that Act if defendant is released on probation. In the interpretation of laws apparently in conflict with each other, it is my understanding that the Act last passed will only be treated as repealing the former or such parts of it as are in direct conflict with the latter act, and in comparing these two acts it seems apparent to me that when the Legislature passed the Parole Act they intended to curtail the power of the court to release on probation and put the right of such release directly up to the Department of Public Welfare."

offenders, whether adult or juvenile, brought within the jurisdiction of said courts, respectively, for any of the offenses hereinafter specified.[1]

Section two limits probation to certain offenses. It reads in part as follows:

> "Any defendant, not previously convicted of a crime, greater than a misdemeanor, petit larceny and embezzlement excepted, who has entered a plea of guilty or has been found guilty by the verdict of a jury or by the finding of a court of a violation of a municipal ordinance or of any criminal offense except murder, manslaughter, rape, kidnapping, willful and corrupt perjury or subornation of perjury, arson, larceny and embezzlement, where the amount taken or converted exceeds two hundred dollars ($200) in value, incest, burglary of an inhabited dwelling house, conspiracy in any form or any of the acts made an offense under the election laws of this state, may, in the discretion of the judge hearing the case, after entry of judgment, and nothing remains to be done by the court except pronounce sentence, be admitted to probation according to the provisions of this act."[2]

108. Trial Court's Discretion. It will be observed that the courts have wide powers in the granting of probation, and that each court acts separately and is governed, in the main, only by its discretion. Certain limitations and conditions only need be observed. Important restrictions were expressed in the language above quoted. Section three provides that "before granting any request for admission to probation, the court *shall* require the probation officer to investigate accurately and promptly the case of the defendant making such request, to ascertain his residence and occupation and whether or not he has been previously convicted of a crime or misdemeanor, or previously been placed on probation by any court." Such are the mandatory provisions of the statute—all else is discretionary and suggestive.

Section three contains the suggestion that "the court *may, in its discretion,* require the probation officer to secure in addition information concerning the personal characteristics, habits and associations of such defendant, the names, relationship, ages and conditions of those dependent upon him for support and education and such other facts as may aid the court as well in determining the propriety of probation, as in fixing the conditions thereof." And later in the same section occurs this important language, which, we take it, goes to the very heart of the theory of probation: "Application for release on probation may, in the discretion of the court, be

[1] Section one continues as follows: "but that this Act shall not be construed as limiting or repealing an act entitled 'An Act to regulate the treatment and control of dependent, neglected and delinquent children,' approved April 21, 1899, in force July 1, 1899, or the acts amendatory thereof, or as restricting the jurisdiction conferred by said act."

[2] Section two has the following proviso:

"Provided, that in the case of a violation of 'An Act to provide for the punishment of persons responsible for or directly promoting or contributing to, the conditions that render a child dependent, neglected or delinquent, and to provide for suspension of sentence and release on probation in such cases,' or of 'An Act making it a misdemeanor to abandon and willfully neglect to provide for the support and maintenance by any person of his wife, or of his or her minor children, in destitute or necessitous circumstances,' the defendant in the discretion of the court may be released on probation whether or not he previously has been convicted of a crime or has made request for probation."

granted if it shall appear to the satisfaction of the court both that there is reasonable ground to expect that the defendant may be reformed and that the interests of society shall be subserved."

109. Judges' Views on the Probation System.

Believing that no one is better qualified to pass an opinion on the efficacy of probation than the trial judge who administers the act, we addressed an inquiry to a number of judges in various parts of the state reading as follows: "What is your opinion of the Illinois probation (bench parole) system? Is it a desirable adjunct to the administration of the criminal law?" Fifteen replies were received. Thirteen expressed themselves heartily in favor of it. No one was opposed to it. Two were indefinite in their replies. The probation system has been in operation in Illinois since 1911 and it is instructive, indeed, to read the comments of the judges, some of whom have been serving during a major portion of the time since the Act was passed.

A Chicago judge wrote, "I most emphatically believe in probation." A "down-state" judge replied that in his judgment probation "should be extended" as it is a "desirable adjunct to the administration of the criminal law." The following is a typical reply:

> "I think the bench parole is all right. I feel that I have accomplished a lot of good by using this system. Great care should be exercised, however, in the selection of the probation officer."

A Chicago judge wrote:

> "I approve of the probation system and believe it a desirable adjunct to the administration of the criminal law. It would be very helpful to the trial judge if there were no such probation in the law as it requires him to exercise care and attention to extraneous matters very often in order to adequately determine whether or not the law in this regard should be exercised in behalf of the defendant. But I know of no better forum in which to entrust this question than the court before whom this case has been tried and who is familiar with the facts and circumstances involved."

A "down-state" judge replied:

> "I am a firm believer in the Illinois probation system. My experience shows me that it is the producer of many beneficial results. It has great advantages over the parole system. It can only be applied to first offenders and is most frequently applied to those who have never had the lock of a prison door turned upon them. A great majority of the persons I have released on probation have been under twenty-one years of age. I have been on the bench long enough to see some of those whom I have released develop into first class citizens. I believe that the subsequent conduct of at least seventy-five per cent of probationers proves the value of the probation law. Under the parole system as it has been administered since its adoption, I am of the belief that at least seventy-five per cent of parolees are no better than they were before they were paroled."

110. *State's Attorneys' Views on the Probation System.* The same inquiry was sent to a number of state's attorneys. Twenty-three replied. Of these, twenty gave their opinions that the probation system was a desirable adjunct to the administration of the criminal law in this state. Two thought not, and one was indefinite. One, who disapproved of it, wrote:

> "The Illinois probation system under which the trial court releases certain defendants on probation is of doubtful value. It creates a great deal of dissatisfaction among defendants charged with the same class of crime to permit certain defendants to escape with no punishment. I believe it should be abolished."

Indorsements of the probation system by some of the state's attorneys were not so unqualifiedly favorable as those of the judges. One state's attorney was of the opinion that probation "usually works out with bad results." He thought the law should not be repealed but "judges should enforce conditions." Another wrote that it is a "good law but in some instances much abused." Still another thought it "desirable when used with discretion." Most of the answers, however, were in approval. One replied:

> "In my opinion, the Illinois probation system is the means of saving to society a great many young and first offenders, who, without the intervention of the system, would be totally lost to and become a burden upon society. It is, to my mind, a very desirable adjunct to the administration of the criminal law."

Another wrote:

> "I am strongly in favor of a system of bench probation and believe it to be a valuable adjunct to the administration of criminal law if the same is not abused. As we have administered the same in our county only a negligible proportion of defendants who are released on probation have since committed other offenses and it has been the means of starting many young offenders on the right road without the damaging handicap of 'ex-convict' to carry with them. Incidentally, bench probations have resulted in restitution being made to many victims of crime." [1]

111. *Extent of Use Made of Probation.* A comparative study of the prevalence of probation in the various jurisdictions of the state disclosed the fact that it is quite commonly resorted to in dealing with offenders in some jurisdictions and most infrequently in others. In Cook County we found that for the period of five years, from 1922 to 1927, there were 2,633 probations from the Criminal Court, and for the same period 23,189 persons were admitted

[1] Another state's attorney replied as follows:

"Bench probation system is one of the best reclamation laws we have ever had but the duration of probation should be extended 5 years, giving the court discretionary powers to place the violator on probation for any term from 1 to 5 years."

One wrote that "about 80 per cent have made good in this locality," and still another replied:

"The probation system as administered in our county is a very valuable adjunct to the administration of the criminal law. I thoroughly believe in it as now administered in this county."

to probation from the Municipal Court, making a total of 25,822 for both courts. During the same five year period, 2,205 prisoners were paroled to Cook County from the penitentiaries and the reformatory. Thus, the number of probationers in Cook County greatly exceeded the parolees. In fact, the offenders admitted to probation by the Criminal Court alone is greater than the total number of prisoners paroled to Cook County, and, if to the probation list are added those from the Municipal Court, there were over ten times as many. It is apparent that the administration of probation in Cook County is one of utmost importance. Further consideration will be given this subject later in this report.

Table 29, that follows, shows a study of 3,461 cases in Illinois in which persons pleaded guilty to or were convicted of crimes. Of that total, it shows the number and percentage for the state admitted to probation; the total and the probation number and percentage for Chicago, and similar calculation for various other parts of the state. It shows also a study of 1,169 cases from Milwaukee, Wisconsin, and the number and percentage granted probation there.

It will be observed that out of 3,461 prisoners found guilty in Illinois, 782 or 22.59 per cent were admitted to probation. Of the total number, 2,449 were from Chicago, and there 20.82 per cent, slightly less than the average for the state, were given probation. As this district was increased to include all of Cook County, the percentage of probationers increased to 21.46 per cent. Outside of Cook County, in eight of the more urban counties, we found the highest probation percentage (32.06) in the state. In two strictly rural counties only one prisoner in twelve was admitted to probation and in the counties of Williamson and Franklin, only two in seventy-five, or 2.67 per cent. By way of comparison, Milwaukee, Wisconsin, showed a substantially higher probation percentage than any of the districts studied for Illinois. The tabulations in Table 29 show the flexibility of the probation system in Illinois, and also its variableness. They fairly show, too, that the scheme of probation and the possibilities in it as a working part of our criminal administration, have not been explored in some parts of the state.

We addressed an inquiry to various judges in the state reading: "Approximately what per cent of persons who are found guilty or who plead guilty in your court are placed on probation?" The answers received bear out the statistics in Table 29, and give us some additional information. One answered "possibly one in twenty." Another replied that from five to ten per cent were so admitted from his court. In one jurisdiction between two and three per cent only were given probation; in another ten to fifteen per cent; in still another sixty-six and two-thirds per cent, and finally, in one jurisdiction very nearly every one who could qualify for probation under the law was admitted.

These comments, as well as the calculations we have presented in Table 29, evidence the wide discretionary scope within which the courts operate in administering our probation system. There is no precedent (as there is in judicial decisions) that binds, there are no rules that govern, and there is no common head that directs for uniformity. The diversity in probation administration thus brought to light exposes both a weakness and a strength

TABLE 29

PROBATION PERCENTAGES OF THOSE FOUND GUILTY

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total guilty	3,461	100.00	2,449	100.00	2,582	100.00	549	100.00	243	100.00	12	100.00	75	100.00	1,169	100.00
Probation	782	22.59	510	20.82	554	21.46	176	32.06	49	20.16	1	8.33	2	2.67	501	*42.86

*Includes 21 cases "suspended sentences."

in the system. The weakness lies in the fact that probation appears to depend largely upon the perspective and the temperament of a particular court. The strength, in that the courts are not hampered by rules, but are given free scope to exercise individual judgment as each case arises.

112. Conditions Required for Admission to Probation: Preliminary Inquiry.

For the successful administration of a probation system two fundamental features must be guarded zealously. First, great care and discrimination must be used in designating for probation only those offenders who are likely to profit by it and for whom probation promises to promote the public welfare. The other feature involves the supervision of the probationer. Supervision will be discussed later, our immediate attention will be given to the first proposition—that of admission to probation.

The Illinois Statute states the aim of probation clearly when it provides that application for release on probation may (in the discretion of the court) be granted if it shall appear to the satisfaction of the court both that there is reasonable ground to expect that the defendant may be reformed and that the interests of society shall be subserved. Two features are stressed by this language—the interests of society and those of the individual. The statute is mandatory in providing that before any request for admission to probation is to be granted, the court shall require the probation officer to investigate accurately and promptly the case of the defendant making such request, to ascertain his residence and occupation and whether or not he has been previously convicted of a crime or misdemeanor, or previously been placed on probation by any court.

Important as are these directions of the statute, they are no more so than the language that follows. The court *may* in its discretion, the statute continues, "require the probation officer to secure in addition, information concerning the personal characteristics, habits and associations of such defendant, the names, relationship, ages and conditions of those dependent upon him for support and education and such other facts as may aid the court as well in determining the propriety of probation, as in fixing the conditions thereof." This language is so important that we feel it should be made obligatory instead of permissive. If the court lacks insight into the defendant's habits, his environment, his associations and his temperament and personal characteristics, it has no basis upon which to project probation. Proceeding with information short of that is likely to be mere guess work and to result in detriment to the public interests. Probation, as well as parole, presupposes insight into those matters.

In the course of our study we found that all too frequently the courts act without preliminary investigations. In Cook County it was discovered, through careful inquiry and checking, that many judges (not all of them) do not require a preliminary investigation of the probation applicant even as to those features of the statute which are mandatory, to say nothing of those which are discretionary.[1] The result is that frequently offenders of

[1] In the report of the chief probation officer for Cook County for 1925-1926, at page 7, the following paragraph appears: "When a person is found guilty of a violation of law in either the Municipal Court of Chicago or the Criminal Court of Cook County, and an application is made on behalf of the defendant for probation, the court sometimes

vicious habits and of weak or twisted mentality are given probation when there is no likelihood that they will profit from it and even when they are, because of inferior mentality or morbid propensities, incapable of appreciating the privilege that had been conferred on them.

One judge from Cook County wrote to us, "Persons are admitted to probation without sufficient knowledge as to their environment, disposition and antecedents." Another Cook County judge replied:

> "Too much pressure is put on judges by friends, relatives, lawyers, business associates and social workers. Too often probation is recommended and allowed in order to collect restitution, attorney's fees and expenses of prosecution incurred by complaining witness. Corporations are the worst offenders in this respect. Defense attorneys often use it as a means to collect fees and go far afield to get influence to work."

A state's attorney from "down-state" wrote that probation "is abused in some instances for political advantages"; another thought the courts "are imposed on at times." One state's attorney in his reply pointedly said: "The court is subject to, and lends itself to, pressure, political, social and otherwise." From a different part of the state came a reply expressing a like opinion. The main defect in probation, he wrote, "is a possibility that a court might be involved by political or other reasons." To the same point another replied, "It can be abused by being used to further political or personal prestige." And still another wrote that probation "causes too much trouble to convict and punish, especially if the presiding judge is a politician and apt to listen to petitions signed by local people of prominence, asking mercy for the defendant." "I had," said he, "two such cases where the judge released the defendants without even a plea, and each of them were under three distinct indictments."[1]

113. Same: Pleas of Guilty to Lesser Offense.

In addition to the frequent non-observance of the conditions of the statute relative to preliminary investigations before probation, we have found other instances where its dictates had not been followed. Section two of the probation act, previously quoted, limits the offenses in which probation can be granted. The specifically excepted crimes are murder, manslaughter, rape, kidnapping, willful and corrupt perjury or subornation of perjury, arson, larceny and embezzlement where the amount taken or converted exceeds two hundred dollars in value, incest, burglary of an inhabited dwelling house, conspiracy in any form, and offenses under the election laws of the state. In a study of the records of Cook County for a period of six years we found many instances where probation had been granted apparently contrary to the statute.

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orders the department to make an investigation of the defendant for the purpose of ascertaining, as far as possible, the eligibility of the defendant for probation, and the probability of reformation." From the same report (at page 23) it would appear that during that year 4,986 offenders were admitted to probation in Cook County without investigation before probation and only 476 were investigated.

[1] We wish to emphasize by these comments that frequently there are defects in the administration of the law and that at times the real purposes of probation are lost from sight. We do not wish to give the impression that such conditions as the comments expose are universal or even general. Many courts are doing splendid work with probation.

We found also another practice which was commonly employed. Frequently when a crime was charged for which probation was not permissible under the statute, a plea of guilty to a lesser offense, and one for which probation was permissible, was accepted by the court, and following that the defendant was admitted to probation. Such action is open to the inference that the "lesser plea" was received for the purpose of bringing the offender under the probation act. The crime of rape is one for which probation is not allowed. We found forty-three rape cases in which probation had been granted. Out of this number six were admitted to probation on the original charge, apparently in direct violation of the statute. In the remainder of the cases pleas to lesser offenses (falling under the probation act) were accepted.

Manslaughter is an excepted crime. We found one instance in which probation was allowed a defendant who appears to have been guilty of that offense. Conspiracy is another excepted crime, yet we found thirty-four conspiracy cases in which probation had been granted. One instance was found where probation had been granted in perjury, another excepted crime. Probation commonly was allowed in burglary cases irrespective of the fact that burglary of an inhabited dwelling is among the excepted crimes.

We found three hundred seventy-two burglary charges in which lesser pleas were accepted as follows: Forty-two of grand larceny, one of malicious mischief, two hundred ninety-eight of petty larceny, twenty-six of receiving stolen goods, one of daytime burglary, three of attempted burglary and one of attempted larceny. All were followed by probation.

Another crime, excepted by the statute from those in which probation can be granted, is larceny where the amount taken or converted exceeds two hundred dollars in value. In the period studied, we found eight hundred three grand larceny charges in which probation was granted to the offenders. Of this number, three hundred nineteen were admitted to probation on the original charge. Although the records were not clear, it is fair to assume that the amount involved in these cases was less than $200 and that therefore probation was properly allowed. But in four hundred eighty-four cases, pleas of guilty to lesser offenses were taken and probation subsequently granted. Further, there were four pleas of guilty to receiving stolen goods, four hundred fifty-five to petty larceny, and twelve to driving a car without the owner's consent.

Similarly, embezzlement, where the amount exceeds $200, is excepted from the operation of the probation act. Here we found that out of one hundred forty-three cases, fifty-one offenders were granted probation after a "lesser plea" had been accepted. In forty-nine there were pleas to petty larceny, and in two, grand larceny.

Comment has been made elsewhere in this survey on the evils of the "lesser plea" in its bearing on paroles. We have found its imprint even more marked in the matter of probation. The conviction cannot be escaped that in Cook County, for the most part, criminal administration has ceased to be a legal matter of the trial and conviction of offenders, but has become a highly specialized system of jockeying and bargaining. While at times the interests of justice might require that an offender be given the benefit of a

"lesser plea" where the evidence against him is weak, or where his mora guilt appears less than the bare facts of the crime might indicate, there seem to be no justifiable excuse for such wholesale reductions as one encounters it Cook County. We do not assert that pleas to lesser offenses were taken in all cases (or even in any of them) for the purpose of admitting offenders to probation, but we do contend that such practices give rise to strong inferences that those were the facts. As to those cases in which probation was granted in direct violation of the dictates of the statute, there can be only one position, and that is to condemn such action in positive terms. The fear is expressed that often the probation act, instead of being a law which tends to further the public welfare, has become merely an additional bit of machinery for manipulation by both the criminal and the law enforcing agencies.

The following question was asked by us of a number of state's attorneys: "What relation do you find exists, if any, between pleas of guilty and applications for probation?" Several answered that they saw no connection, some answered that it was slight. That the possibility of probation is an incentive to the defendant to plead guilty is indicated in the following reply:

> "The number of men that plead guilty and make application for probation is greater to a slight extent than those who are found guilty and make application for probation. It is a matter of general knowledge in this county among the lawyers and criminals that a man must really be entitled to probation before he gets it, so that applications here for probation are not made simply as a matter of course. I believe that a man's chances of release on probation in this county are less if he is found guilty than where he pleads guilty. If he testifies and it is apparent that he has testified falsely he is never released on probation."

Another stressed this feature even more:

> "We very rarely have a plea of guilty to any serious offense unless the defendant has a very reasonable chance to be put on probation, and, in my opinion, I think the great majority of pleas of guilty are induced by the opportunity or hope in a release on probation."

One attorney wrote that in his opinion in "some instances pleas of guilty are prompted by the belief that the offender will get probation." Among some, he said, "It may even be an inducement to commit crime, believing and feeling that if caught, probation may be granted." In one jurisdiction, "a majority of first offenders enter a plea of guilty with a hope of being placed on probation." This usually is done, states the prosecuting officer, "on the advice of counsel who intercedes for the criminal." From another jurisdiction the state's attorney wrote, "I find that in nearly every case the criminal will plead guilty if he is promised probation. Probation," he adds, "is no punishment, the vicious criminal treats it as a joke, and the other kind do not need it." And finally, one, more cynical than the rest, replied that it is "merely a dodge and if the defendant fails to get probation he almost always will ask leave to withdraw his plea of guilty and enter his plea of not guilty,

and then take his chances with the jury, and if convicted will then ask for probation."[1]

114. Probation Supervision: the Personnel.

It was observed earlier in this study that one of the fundamentals upon which probation, as well as parole, depends is supervision. The probation law makes it possible, within certain limitations, to release the offender on good behavior. He thus escapes the prison stigma. This fact should mark an upward trend in his deportment. But, notwithstanding, he stands as a man who has been adjudicated a criminal, and the influences which tend to cause a person, who once has indulged in crime to continue in it, still bear on him. He has lost social cast with better members of the community; it is difficult for him to find employment, and likely as not he has formed associations which tend to draw him back into the mesh of crime. It is the function of the probation officer to guide him and to assist him to a position of stability in the community. The probation officer, therefore, is an important cog in the administration of the system.

Section nine of the act provides that the circuit court of each of the several counties in the state *may* appoint a probation officer to act as such for and throughout the county in which he shall be appointed. The language of the section continues: "The circuit court of any county *may* appoint such number of additional probation officers for such county as the court *may* deem to be necessary or advisable: Provided, the number of probation officers to be appointed for any county shall in no event exceed one for every fifty thousand inhabitants or fraction thereof." In any county in which there are five or more probation officers, the circuit court *may* appoint in addition a chief probation officer.

Any reputable person of twenty-five years of age or upwards may be appointed probation officer. His statutory duties are stated in section twelve. Among others, they are to make investigation previous to probation, to report to the court concerning the previous convictions of the defendant or previous probation, to preserve complete records of cases investigated, *to take charge of and watch over all persons placed* on probation during such period as the court may prescribe, to give to each probationer full instructions as to the terms of his release upon probation, and to require from him such periodical reports as shall keep the officer informed as to his conduct.[2]

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[1] The following are typical replies received from judges to whom a similar inquiry was put:

"Pleas of guilty often depend upon whether or not the chances of probation are good or not."

"None directly. Prisoners in jail frequently get advice in jail from other defendants, bailiffs and lawyers as to the attitude of the judge on probations. I have often found that stories told by defendants are suggested by other defendants. I do not accept pleas of guilty on condition that probation be given. Frequently I insist that a case go to a jury if it appears to me that a prosecutor, social worker or others are interfering in order to obtain probation."

"The hope for probation frequently influences the plea of guilty."

[2] Section four of the Act states the conditions of release on probation: "Release on probation shall be upon the following conditions: (1) That the probationer shall not, during the term of his probation, violate any criminal law of the State of Illinois, or any ordinance of any municipality of said state. (2) That if convicted of a felony or misdemeanor, he shall not, during the term of his probation, leave the state without the consent of the court which granted his application for probation. (3) That he shall make a report once a month, or as often as the court may direct, of his whereabouts,

The wide discretionary powers given the courts by the probation act here are again in evidence. The court *may* appoint a probation officer, it *may* appoint additional officers, and it *may* appoint a chief probation officer. It is desirable not to bind the hands of important officers with rules, but the freedom of the courts in matters relating to probation, in this particular, has again resulted in a wide variety of action. In some jurisdictions no probation officer at all has been appointed; in others a *part time* officer, who carries on a business along with his probation work, gives spasmodic attention to the community's probationers. The complaint is widespread that the officers are underpaid and that competent people are seldom secured. Cook County with its complex system, as usual, presents a problem of its own.[1]

It was supposed that judges were comparatively free from political maneuvers, and that they would exercise great care in the selection of probation officers, therefore, the appointment of such officers was placed by the act with them. According to the statute the judges employ and discharge, and the county commissioners supply the funds. The events of the last sixteen years (the period the statute has been in force) have demonstrated, at least in Cook County, that the judges are not out of politics, and that occasionally they lapse into worldly and profane pursuits. Cook County has a chief and forty probation officers. Some of these, we have found, are faithful to their tasks, but others are mere time-servers who owe their appointments to some political personage. The chief, in the main, is one in name only. He does not employ and he cannot discharge. If an officer

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conduct and employment, and furnish such other information relating to the conditions of his probation, as may from time to time be required by rule or order of court, to the probation officer under whose charge he has been placed, and shall appear in person before the court at such time as the court may direct or the rule of court provide. (4) That he shall enter into a bond or recognizance in such sum as the court may direct, with or without sureties, to perform the conditions imposed, which shall run to the People of the State of Illinois and may be sued on by any person thereunto authorized by the court for the use of the parties in interest as the same may appear.

"And the court may impose any one or more of the following conditions: (1) That he shall make restitution, or reparation, in whole or in part, immediately or within the period of probation to the person or persons injured or defrauded. (2) That he shall make contribution from his earnings for the support of those dependent upon him subject to the supervision of the court. (3) That he shall pay any fine assessed against him as well as the costs of the proceeding, in such installments as the court may direct during the continuance of the probation period."

[1] The chief probation officer of Cook County outlines some of the activities of his department relative to supervision as follows (pages 6-7 Report 1925-1926): "This department is organized along the lines of similar departments in all the large cities in the country. The city and county is divided into districts as compact as possible with due regard to transportation lines, and an officer assigned to each district. Each supervising officer gets to be known as the probation officer in that district and it is his duty in the course of his supervision to aid his probationers and their families whenever they need it, whether it is charity, aid during sickness, help in getting a job, straightening out family tangles or anything else which appears to him to be necessary to do in the interest of his people. Some of the officers are required to be in court during part of each day for one-half of each month, and the other half is spent in supervision. Some are in court all day and have few if any under supervision, and some have no court and do nothing but supervision. Each officer having cases for supervision is expected so far as possible to call at the home of each of his probationers at least once in each month and to make a daily written report showing the calls made and such information as they get in regard to each case and these reports are type-written by the stenographers into the history of each case. Any information obtained by any officer in court with reference to *any* probationer is brought to the office, called to the attention of the proper officer and also written up in the record of the case."

is too lazy and declines to go out on an assignment, his only recourse is to report his case to the judges, and relief from that quarter is not always forthcoming.

How the judges control the situation is illustrated by the spectacle of the municipal court judges meeting in solemn council and dismissing through action taken at that meeting thirteen probation officers. Such proceeding can be nothing short of detrimental to administration of probation. It had all the indicia of a political move. No doubt, some of the officers deserved to be ousted for inefficiency, but the matter of the competency of the officers dismissed appears not to have weighed in the action of the judges.[1]

115. Same: Comments of Judges.

We turn again to the comments we have received from various judges in the state. One judge, who favored probation, laid the emphasis on the personnel of those administering the law, stating: "My experience in the Juvenile Court causes me to state that the results obtained will depend almost entirely upon the character, education and ability of the persons employed to put them into effect, and in order to get such persons those giving the examinations should be persons highly qualified to understand the needs." An occasional judge thinks that in his jurisdiction "cases on probation are supervised in a very satisfactory manner," others are critical, some denounce supervision as a failure, and in a few jurisdictions there is none at all.

In answer to the specific question: "In your opinion, is the criminal on probation properly supervised," one wrote "as a rule he is not." A judge from Cook County, which has an organized system of supervision, gave it as his opinion, "because of the inadequate number of agents the criminals on probation in Cook County are not properly supervised." This judge was also of the opinion that "persons are admitted to probation without sufficient knowledge as to the environment, disposition and antecedents." Another judge answered cryptically: "I do not believe the supervision amounts to a row of pins, but it draws out hundreds of thousands of dollars of the honest tax-paying people." He ended up by stating, "We have city, county and state probation departments in this city (Chicago), each overlapping the other, each accumulating valueless records and constantly increasing the expense of their maintenance."

The comment was general that the supervising officers are underpaid. The range in the various jurisdictions of the state is from nothing, in those where no provision is made for supervision, to a salary of $200 a month for

[1] One of the Chicago daily newspapers for December 13, 1927, carried the following account of this meeting: "Eight judges bolt caucus; 13 employees fired. Eight Democratic municipal judges yesterday bolted a meeting of the jurists, charging that the Republican judges had held a private caucus and oiled the machinery for getting control of the probation department of the municipal courts. The Republican judges remained at the meeting, held in the chambers of Chief Justice Harry Olsen, and by vote ousted thirteen probation officers, many of them veterans in this service. The charge that the election was a sham, since decisions had been made at a Republican caucus, was voiced by Judge John J. Rooney. He was followed from the chambers by judges Peter H. Schwaba, Joseph Burke, Francis Allegretti, Francis Borelli, Philip J. Finnegan, Matthew D. Hartigan, and Frank M. Padden. Probation officers who failed to be re-elected were: John Burk, Margaret Clagsens, John C. Fleming, Blanche Gilmer, Julia Gleason, Alma Hufmeyer, John T. Kelley, Louis Levy, E. R. Novak, Louis Ory, S. J. Peterson, John P. Ready, and J. A. W. Rees. The new ones thus far named are: Charles Agnew, Myrtle Danielson, Marguette Franke, Lillian Kensch, Anna Melin, Abe Nisberg, J. M. Parker, Frank Thompson, John Uberlein, A. C. Westergaard, and Paul Young."

the officers (aside from the chief and his assistants) in Cook County. In a rather thickly populated county near Chicago, provision is made for one officer at a salary of $500 a year. A judge from that jurisdiction comments, "which would be inadequate if he was called upon to supervise many cases." One judge favors the probation system but adds, "My only objection to it at the present time is that it affords inadequate salaries for persons employed to supervise probation." Another commented more fully as follows:

> "A probation officer for the circuit court in each county at reasonable compensation should be provided for by law. Under the present statutory provisions there is no fixed compensation. The county boards do not make an average allowance of one hundred dollars per annum for the services of a probation officer of the circuit court. Counties ordinarily have a probation officer who is appointed by the county court and is engaged in looking after delinquent and dependent children. Such officer is usually a woman without any qualification for looking after probationers of the circuit court."[1]

116. Violation of Conditions of Probation.

The offender is released on probation subject to conditions specified by the act. Section four provides:

"Release on probation shall be upon the following conditions:

"(1) That the probationer shall not, during the term of his probation, violate any criminal law of the state of Illinois, or any ordinance of any municipality of said state.

"(2) That if convicted of a felony or misdemeanor, he shall not, during the term of his probation, leave the state without the consent of the court which granted his application for probation.

"(3) That he shall make a report once a month, or as often as the court may direct, of his whereabouts, conduct, and employment, and furnish such other information relating to the conditions of his probation, as may from time to time be required by rule or order of court, to the probation officer under whose charge he has been placed, and shall appear in person before the court at such time as the court may direct or the rule of court provide.

"(4) That he shall enter into a bond or recognizance in such sum as the court may direct, with or without sureties, to perform conditions imposed, which shall run to the people of the State of Illinois and may be sued on by any person thereunto authorized by the court for the use of the parties in interest as the same may appear.

"And the court may impose any one or more of the following conditions:

"(1) That he shall make restitution, or reparation, in whole or in

[1] The following are typical replies from prosecuting officers: "One placed on probation has not been properly supervised as a general proposition due to the fact that we have no probation officer and usually the person to whom the offender is paroled is interested to the extent that he does not wish to turn the fellow in, but in view of the fact that we have admitted very few to probation I think that the system has not been abused."

"Believe supervision of probationers varies considerably, considering the efficiency of probation officers, and is a matter which can not be regulated by statute. If the courts are careful to appoint energetic efficient probation officers and the State the same type of parole agents, the supervision of probationers and parolees should both be satisfactory."

It should be observed that the prosecuting officers in their answers were more outspoken that supervision is not adequate. Frequently the replies were "by no means," "positively no" and "absolutely not."

part, immediately or within the period of probation to the person or persons injured or defrauded.

"(2) That he shall make contribution from his earnings for the support of those dependent upon him subject to the supervision of the court.

"(3) That he shall pay any fine assessed against him as well as the costs of the proceeding, in such installments as the court may direct during the continuance of the probation period."[1]

Section six of the act outlines the procedure to be followed in case a probationer is reported for a violation. Upon the report of a probation officer or other satisfactory proof of violation by the probationer the court *may* revoke and terminate the same and issue a warrant for his arrest. This warrant runs throughout the state and may be served by any probation officer in the state or any officer authorized to serve criminal process. When the probationer is brought before the court for violation the court *may* enter a rule that the probationer show cause why his probation should not be terminated, judgment entered, and sentence imposed upon the original conviction. If the court, when the probationer is brought before it, is of the opinion that the interests of justice do not require the imposition of sentence and that the probationer should be recommitted to the care of the probation officer, it *may* discharge him from arrest and *may* again place him under the care of the officer, subject, however, to the maximum limitation of probation. But should the court be of the opinion that the interests of justice require that sentence be imposed, it becomes its duty so to do. In computing the period

[1] When an offender is placed on probation in Cook County he is given a card reading on one side as follows:

"STATE OF ILLINOIS

..... s.s. ..... Court

To .... 192..

In order to give you an opportunity to reform without punishment the Court has placed you on probation for the period of ..... year ....., in the care of a Probation Officer.

YOU MUST OBSERVE THE FOLLOWING CONDITIONS:

1. Obey all court orders. This includes the payment of costs, restitution, or contribution, when ordered by the court.
2. You must not violate any Criminal Law of the State of Illinois or any ordinance of any Municipality of said State.
3. You must not, during the term of your probation, leave the State without the consent of the Court.
4. Report promptly to your Probation Officer as required on the back of this card. Work regularly, keep good company and indulge in no bad habits.

If any of these conditions are violated, you will be surrendered to the Court for sentence."

The reverse side of the card reads:

"PROBATION OFFICE
COOK COUNTY

1128 Court House

CHICAGO

You are required to report at the Probation Office once each month on the day here indicated, during your probation period. Probation Day ..... of each month. Notify the Probation Office immediately of any change in your address. Failure to comply with these instructions will result in your surrender to the Court. Office hours, 9 a. m. to 5 p. m. Mondays, 9 a. m. to 8 p. m.

for which the violator is to be confined, the statute provides, the time between his release upon probation and his return to custody shall not be taken to be any part of the term of his sentence.

The probation period, it is provided by the act, shall not exceed six months in cases of violation of a municipal ordinance, and one year in case of other offenses. When the probation period has been served, it becomes the duty of the probation officer to report to the court on the conduct of the probationer, and the court may then discharge him from further supervision, or the court may extend the probation period not to exceed six months if the offense involved was the violation of a municipal ordinance, and not to exceed one year in other offenses.

117. Probation Results: in General. We have tabulated some statistics from Cook County, running over a period of years, giving impressions concerning probationers on their discharge as to whether they were satisfactory, doubtful or unsatisfactory risks. These statistics we have taken from the records and reports of the chief probation officer. The period studied was from October 1, 1921, to September 30, 1926. Table 30 shows that during that period a total of 24,126 probationers were discharged by the courts, and that out of that number according to the classifications of the Probation Office, 876 were regarded as doubtful risks, and 4,439 as unsatisfactory. Further, 276 were sent to the House of Correction and 28 to the penitentiaries or the reformatory. A total of 18,395 were classified as satisfactory. Table 31 shows the division by courts.[1]

TABLE 30

Record of Probationers Discharged during the period from October 1, 1921, to September 30, 1926, by *all courts* according to years and the results as given by the officers in charge of each case.

Year	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
1921-1922	2,868	94	733	—	—	15	3,710
1922-1923	3,638	167	815	53	6	26	4,705
1923-1924	3,656	143	687	61	8	25	4,580
1924-1925	4,288	227	1,022	108	6	18	5,669
1925-1926	3,945	245	1,182	54	8	28	5,462
Total	18,395	876	4,439	276	28	112	24,126

TABLE 31

Record of Probationers Discharged during the period from October 1, 1921, to September 30, 1926, showing those received from the Criminal Court of *Cook County* and those received from the Criminal Branches of the Municipal Court of *Chicago*.

	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Criminal	1,829	44	597	18	29	13	2,532
Municipal	16,566	832	3,773	321	3	99	21,594
Total	18,395	876	4,370	339	32	112	24,126

We draw the reader's attention to the fact that such tables as the above are helpful but cannot be wholly accurate. They give only the probation

[1] The figures in these tables and those that follow show some slight discrepancies.

officers' impressions and judgment as to the probationers discharged. Positive and accurate information cannot be had in matters of this kind, since, to have that, it would be necessary to gaze into the future with the magical powers of a soothsayer. Further, all the persons discharged are not likely to remain in the same jurisdiction for a long period, and while a search might be made through the finger print records of the Federal Bureau of Criminal Investigation, yet not all offenses are there catalogued.

118. Same: Men. In Table 32, that follows, there is recorded the impression of the probation results for men discharged by the Criminal Court of Cook County during a period of years from October 1, 1921, to September 30, 1926, listed according to offenses. In the main, the tabulations carry their own story. We note for the attention of the reader that among the more frequent crimes, robbery showed but 16 per cent of doubtful or unsatisfactory cases; larceny 28 per cent; embezzlement 29 per cent; burglary 32 per cent, and the confidence game the high percentage of 42.

TABLE 32—MEN

(Criminal Court of Cook County)

Probation results of *men discharged* during the period from October 1, 1921, to September 30, 1926, according to *offenses* for which probation was granted.

Offenses	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Abduction	2	—	—	—	—	—	2
Adultery	2	—	—	—	—	—	2
Assault	51	3	7	1	2	—	64
Assault and battery	3	—	2	—	—	—	5
Assault to murder	7	—	2	—	—	—	9
Assault to rob	7	—	2	—	1	—	10
Assault with deadly weapon	1	—	—	—	—	—	1
Attempted burglary	46	1	18	—	2	—	67
Attempted confidence game	—	—	1	—	—	—	1
Attempted larceny	2	—	—	—	—	—	2
Attempted robbery	9	2	3	—	—	—	14
Bigamy	6	—	2	—	—	—	8
Burglary	253	3	104	5	8	2	375
Carrying concealed weapons	1	—	—	—	—	—	1
Confidence game	94	5	61	—	3	1	164
Conspiracy	—	—	1	—	—	—	1
Contributing to delinquency	42	—	2	—	—	—	44
Disorderly conduct	4	—	—	—	—	—	4
Drawing check with N. S. F.	1	—	—	—	—	—	1
Driving auto without owner's consent	1	—	—	—	—	—	1
Embezzlement	63	2	23	—	1	—	89
False pretenses	16	—	6	—	—	—	22
Forgery	19	1	5	—	—	—	25
Larceny	312	10	104	2	3	3	434
Grand larceny	165	2	50	2	2	1	222
Petit larceny	360	8	130	7	6	3	514
Malicious mischief	5	—	7	—	—	—	12
Nonsupport	2	—	2	—	—	—	4
Receiving stolen property	68	—	8	—	—	1	77
Robbery	103	1	18	1	—	1	124
Violation of city ordinances	1	—	1	—	—	—	2
Violation of motor vehicle laws	4	1	—	—	—	—	5
Violation of prohibition laws	2	—	—	—	—	—	2
Other offenses	62	1	18	—	—	—	81
Total	1,714	40	577	18	28	12	2,389

In Table 33 are listed similar records for the Municipal Court of Cook County. Here the portion of cases recorded as doubtful, unsatisfactory or having House of Correction, penitentiary or reformatory involvements, is 22 per cent. This should be compared with Criminal Court statistics of Table 32 where the percentage was 28.

TABLE 33—MEN

(Municipal Court of Chicago)

Probation results of *men discharged* during the period from October 1, 1921, to September 30, 1926, according to *offenses* for which probation was granted.

Offenses	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Abandonment	—	—	1	—	—	—	1
Adultery	56	5	9	—	—	—	70
Assault	440	8	67	7	—	4	526
Assault and battery	45	1	6	—	—	—	52
Assault with deadly weapon	32	2	4	—	—	—	38
Assault to rob	11	2	2	—	—	—	15
Attempted burglary	2	—	—	—	—	—	2
Attempted larceny	7	—	1	—	—	—	8
Attempted robbery	3	—	1	—	—	—	4
Carrying concealed weapons	803	32	78	1	—	3	917
Concealing mortgaged property	2	—	—	—	—	—	2
Confidence game	49	2	24	2	—	1	78
Contributing to delinquency	358	20	55	4	—	—	437
Contributing to dependency	67	6	10	2	—	2	87
Disorderly conduct	4,956	249	842	98	1	30	6,176
Driving car while intoxicated	53	1	1	—	—	—	55
Driving car without owner's consent	2	—	1	—	—	—	3
Embezzlement	5	1	—	—	—	—	6
False pretenses	180	10	96	6	—	1	293
Fornication	48	5	14	1	—	—	68
Indecent exposure	7	—	—	—	—	—	7
Inmates disorderly house	54	10	22	2	—	—	88
Keepers disorderly house	82	9	35	2	—	—	128
Larceny	2,534	106	685	38	1	20	3,384
Grand larceny	2	—	1	—	—	—	3
Malicious mischief	68	1	25	2	—	1	97
Nonsupport	1,198	100	564	105	—	10	1,977
Obtaining goods on false pretenses	2	—	—	—	—	—	2
Receiving stolen property	161	4	14	—	—	—	179
Robbery	—	—	1	—	—	—	1
Running gambling house	3	—	—	—	—	—	3
Gambling offenses	40	—	1	—	—	—	41
Selling mortgaged property	3	—	1	—	—	—	4
Violating misc. city ordinances	129	4	21	—	—	—	154
Violating motor vehicle laws	1,232	45	148	17	1	4	1,447
Violating park ordinances	12	1	3	—	—	1	17
Violating prohibition laws	831	36	83	1	—	2	953
Violating misc. ordinances	43	1	7	—	—	1	52
Other offenses	126	6	30	2	—	—	164
Total	13,646	667	2,853	290	3	80	17,539

TABLE 34—MEN

(Criminal Court of Cook County)

Probation results of *men discharged* during the period from October 1, 1921, to September 30, 1926, according to *judges* who granted probation.

Judges	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Barnes	10	—	2	—	—	—	12
Barrett	13	—	2	—	—	—	15
Brentano	1	—	1	—	—	—	2
Brothers	29	—	—	—	1	1	31
Caverly	25	—	11	—	—	—	36
Cook	6	—	10	1	—	—	17
Crowe	9	1	5	—	—	—	15
David	70	2	34	—	—	—	106
Dever	15	—	3	—	—	—	18
DeYoung	3	1	5	—	—	—	9
Eller	20	—	1	1	—	—	22
Fisher	62	3	25	—	2	—	92
Fitch	38	1	7	—	—	1	47
Foell	13	—	2	—	—	1	16
Friend	60	1	13	1	—	—	75
Gemmell	12	—	4	—	—	—	16
Gridley	2	—	1	—	—	—	3
Hebel	20	2	5	—	1	—	28
Holdom	15	—	4	—	—	—	19
Hopkins	81	3	31	1	—	1	117
Hurley	51	2	7	—	1	—	61
Johnston	14	—	10	—	—	—	24
Kavanaugh	43	—	15	1	1	1	61
Kersten	191	8	109	—	3	1	312
Lewis	28	—	17	—	—	—	45
Lindsay	100	1	34	2	1	1	145
Lynch	45	—	19	3	1	—	68
McDonald	22	2	3	—	—	1	28
McGoorty	33	2	11	1	1	—	48
McKinley, M. L.	136	5	36	—	4	2	183
Miller	27	1	6	—	1	—	35
O'Connor	10	—	2	—	—	—	12
Pam	67	—	34	2	—	—	103
Rush	15	—	1	—	—	—	16
Sabath	4	—	2	—	—	—	6
Scanlan	28	—	8	—	1	—	37
Steffen	17	—	6	1	—	—	24
Stewart	—	—	1	—	—	—	1
Sullivan, J. J.	125	2	24	—	1	—	152
Sullivan, P. L.	49	—	7	—	1	—	57
Swanson	46	1	15	—	—	1	63
Taylor	6	—	1	—	—	—	7
Torrison	1	—	—	—	—	—	1
Thompson	8	—	1	—	—	—	9
Wells	31	—	8	1	—	—	40
Williams	68	—	19	2	1	1	91
Wilson	38	2	11	—	1	—	52
Windes	4	—	—	—	—	—	4
Zeman	3	—	4	—	—	—	7
Total	1,714	40	577	17	28	12	2,388

TABLE 35

(Municipal Court of Chicago)

Probation results of *men discharged* during the period from October 1, 1921, to September 30, 1926, according to *judges* who granted probation.

Judges	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Adams	913	46	257	42	—	6	1,264
Allegretti	275	10	72	6	—	3	366
Anderson	2	—	—	—	—	—	2
Barasa	138	1	22	6	—	—	167
Bedinger	4	—	2	—	—	1	7
Borelli	309	25	44	4	—	2	384
Bugee	453	14	61	5	—	4	537
Burke	296	15	100	13	—	5	429
Campbell	34	—	8	—	—	—	42
Carpenter	—	—	1	—	—	—	1
Carrier	57	—	12	—	—	—	69
Caverly	21	—	2	—	—	—	23
Chapman	9	—	—	—	—	—	9
Cook	16	—	4	—	—	—	20
Crabtree	8	1	3	—	—	—	12
Curran	243	14	35	3	—	2	297
Doyle	77	1	26	1	—	—	105
Eberhardt	153	2	37	2	—	—	194
Ehler	120	5	16	—	—	—	141
Eller	187	5	18	1	—	—	211
Fetzer	497	25	57	5	—	1	585
Finnegan	178	8	25	3	—	—	214
Fisher	111	7	35	2	—	—	155
Fitch	25	—	2	2	—	—	29
Fort	2	—	—	—	—	—	2
Fry	1	—	1	—	—	—	2
Gemmill	117	6	20	3	—	—	146
Gentzel	353	11	35	2	—	3	404
George	45	2	7	2	—	—	56
Gilster	80	2	13	2	—	—	97
Gordon	9	—	—	—	—	—	9
Graham	2	—	1	—	—	—	3
Grover	2	—	1	—	—	—	3
Gualano	1	—	1	—	—	—	2
Haas	645	34	168	7	—	7	861
Hamlin	67	6	30	1	—	—	104
Harris	80	6	14	5	—	—	105
Hartigan	29	—	9	—	—	1	39
Hayes	565	29	104	8	—	4	710
Hazen	3	—	—	—	—	—	3
Heap	64	3	11	1	—	—	79
Helander	845	44	152	29	1	5	1,076
Hill	4	—	—	—	—	—	4
Holmes	183	14	36	5	—	1	239
Huey	4	—	—	—	—	—	4
Immenhausen	138	13	32	—	—	—	183
Jacobs	467	12	59	4	—	1	543
Jarecki	3	—	5	—	—	—	8
Jonas	483	19	132	20	—	—	654
Jones	1	—	—	—	—	—	1
LaBuy	256	11	28	4	—	1	300
Lauker	5	—	1	—	—	—	6
Laughlin	2	—	—	—	—	—	2
Lawler	2	—	2	—	—	—	4
Lupe	119	9	23	9	—	2	162
Luster	79	7	15	1	—	1	103

TABLE 35—Continued

Judges	Satis-factory	Doubt-ful	Unsatis-factory	H. of C.	Pen. or Pontiac	Dead	Total
Lyle	66	9	29	—	—	3	107
McCarthy	175	13	48	2	—	2	240
McKinley	418	7	93	4	1	1	524
Miller	6	—	1	—	—	—	7
Moran	3	—	6	—	—	—	9
Morgan	796	65	288	41	1	4	1,195
Nauert	5	—	—	—	—	—	5
Newcomer	128	6	46	5	—	2	187
O'Connell	330	8	27	—	—	—	365
Olson	5	—	1	—	—	—	6
Orr	12	—	—	—	—	—	12
O'Toole	56	2	15	1	—	—	74
Padden	47	3	17	1	—	—	68
Peden	11	2	9	—	—	—	22
Prindiville	121	2	21	2	—	1	147
Richardson	295	17	60	4	—	1	377
Reed	1	—	1	—	—	—	2
Rooney	70	6	8	—	—	—	84
Schulman	370	20	48	1	—	2	441
Schwaba	573	29	73	6	—	8	689
Smith	1	—	—	—	—	—	1
Stewart	23	—	9	—	—	—	32
Sullivan, D. W.	67	2	12	1	—	—	82
Sullivan, F.	19	1	5	—	—	—	25
Swanson	8	1	5	—	—	—	14
Trude, D. P.	592	39	143	12	—	4	790
Trude, S. H.	378	13	95	7	—	2	495
Viner	4	—	1	—	—	—	5
Walker	201	6	33	4	—	—	244
Ward	8	1	4	—	—	—	13
Weaver	34	2	8	1	—	—	45
Wells	31	2	4	1	—	—	38
Williams	10	4	2	—	—	—	16
Total	13,646	667	2,851	291	3	80	17,538

119. Same: Women. In Tables 36 and 37, that follow, similar tabulations are made for women probations, according to offenses, as were made for the men in Tables 32 and 33. Approximately only 20 per cent of the women discharged after probation by the Criminal Court were regarded as bad risks. The reader should compare this with the tabulations in Table 32 for the men where the results showed 28 per cent. Table 37 dealing with women discharged from the Municipal Court, shows a bad risk percentage of 28. The percentage in Table 33 of men discharged from the same court was but 22. Thus the Criminal Court showed the highest percentage of satisfactory cases for the women and the Municipal Court for the men.

The probations from the Criminal Court in the larceny cases for the men as tabulated in Table 32 showed 27 per cent doubtful and unsatisfactory. The percentage for the women given probation on larceny from the same court tallies exactly. In the probation of women from the Municipal Court after the crime of larceny the portion of bad risks is 26 per cent. Unsatisfactory results particularly were registered for cases involving disorderly conduct (28 per cent), keepers of disorderly houses (34 per cent), and inmates of disorderly houses (48 per cent).

TABLE 36—WOMEN

(Criminal Court of Cook County)

Probation results of *women discharged* during the period from October 1, 1921, to September 30, 1926, according to *offenses* for which probation was granted.

Offenses	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Abortion	1	—	—	—	—	—	1
Assault	3	—	—	—	—	—	3
Bigamy	2	—	—	—	—	—	2
Burglary	1	—	—	—	—	—	1
Carrying concealed weapons	1	—	—	—	—	—	1
Confidence game	4	—	5	—	—	1	10
Contempt of court	3	—	—	—	—	—	3
Contributing to delinquency	1	—	—	—	—	—	1
Embezzlement	4	—	—	—	—	—	4
False pretenses	1	—	—	—	—	—	1
Forgery	7	—	—	—	—	—	7
Larceny	14	1	5	—	—	—	20
Petit larceny	36	3	8	1	1	—	49
Grand larceny	6	—	2	—	—	—	8
Receiving stolen property	17	—	1	—	—	—	18
Robbery	8	—	1	—	—	—	9
Other offenses	6	—	—	—	—	—	6
Total	115	4	22	1	1	1	144

TABLE 37—WOMEN

(Municipal Court of Chicago)

Probation results of *women discharged* during the period from October 1, 1921, to September 30, 1926, according to *offenses* for which probation was granted.

Offenses	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Adultery	57	9	15	—	—	—	81
Assault	87	3	9	—	—	—	99
Assault with attempt to rob	2	—	—	—	—	—	2
Assault and battery	5	—	—	—	—	—	5
Assault with deadly weapon	3	—	—	—	—	—	3
Carrying concealed weapons	15	1	—	1	—	—	17
Confidence game	5	—	—	—	—	—	5
Contempt of court	1	—	—	—	—	—	1
Contributing to delinquency	73	6	13	3	—	1	96
Contributing to dependency	82	2	23	4	—	1	112
Disorderly conduct	521	40	157	6	—	—	724
Driving auto while intoxicated	1	—	—	—	—	—	1
Embezzlement	3	—	—	—	—	—	3
False pretenses	48	1	20	1	—	—	70
Failed to pay hotel bill	1	—	—	—	—	—	1
Fornication	41	4	9	—	—	—	54
Gambling offenses	3	—	—	—	—	—	3
Inmates disorderly house	171	18	138	5	—	2	334
Keepers disorderly house	87	9	37	1	—	3	137
Larceny	493	18	160	4	—	3	678
Petit larency	836	32	255	4	—	6	1,133
Malicious mischief	4	—	1	—	—	—	5
Patrons disorderly house	4	—	4	—	—	—	8
Receiving stolen property	39	—	2	—	—	—	41
Soliciting	52	7	36	1	—	—	96
Violating misc. city ordinances	22	1	7	—	—	—	30
Violating motor vehicle laws	20	2	1	—	—	—	23
Violating prohibition laws	213	8	15	1	—	1	238
Other offenses	31	5	19	—	—	1	56
Total	2,920	166	921	31	—	18	4,056
		562					

TABLE 38—WOMEN

(Criminal Court of Cook County)

Probation results of *women discharged* during the period from October 1, 1921, to September 30, 1926, according to *judges* who granted the probation.

Judges	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Barnes	1	—	—	—	—	—	1
Barrett	1	—	—	—	—	—	1
Bugee	—	—	1	—	—	—	1
Caverly	4	1	—	—	—	—	5
Cook	1	—	—	—	—	—	1
David	1	—	—	—	—	—	1
Dever	1	—	—	—	—	—	1
Eller	2	—	—	—	—	1	3
Fisher	4	—	1	—	—	—	5
Fitch	1	—	3	—	—	—	4
Foell	1	—	—	—	—	—	1
Friend	2	—	—	—	—	—	2
Gemmell	4	—	—	—	—	—	4
Gridley	1	—	—	—	—	—	1
Hebel	2	—	—	—	—	—	2
Holdom	—	—	1	—	—	—	1
Hopkins	5	—	1	—	—	—	6
Hurley	3	—	1	—	—	—	4
Johnston	1	—	—	—	—	—	1
Kavanaugh	2	—	1	—	—	—	3
Kersten	10	1	4	—	—	—	15
Lewis	1	—	1	1	—	—	3
Lindsay	1	—	2	—	—	—	3
Lynch	4	—	1	—	—	—	5
McDonald	3	—	—	—	—	—	3
McGoorty	4	—	2	—	—	—	6
McKinley	5	—	—	—	—	—	5
Miller	3	—	—	—	—	—	3
Pam	6	—	2	—	—	—	8
Rush	1	—	—	—	—	—	1
Scanlan	1	1	—	—	—	—	2
Steffen	7	—	—	—	—	—	7
Sullivan, D. E.	3	—	—	—	—	—	3
Sullivan, J. J.	7	—	1	—	—	—	8
Sullivan, P. J.	3	—	—	—	—	—	3
Swanson	2	—	—	—	—	—	2
Wells	8	1	—	—	—	—	9
Williams	6	—	1	—	1	—	8
Wilson	3	—	—	—	—	—	3
Total	115	4	23	1	1	1	145

TABLE 39—WOMEN

(Municipal Court of Chicago)

Probation results of *women discharged* during the period from October 1, 1921, to September 30, 1926, according to *judges* who granted the probation.

Judges	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Adams	79	1	15	2	—	1	98
Allegretti	14	2	4	—	—	—	20
Anderson	3	—	—	—	—	—	3
Barasa	17	—	2	—	—	—	19
Bedinger	1	—	1	—	—	—	2
Borelli	67	1	12	—	—	—	80
Bugee	60	5	16	—	—	—	81
Burke	35	4	15	—	—	—	54
Carrier	6	—	1	—	—	—	7

TABLE 39—WOMEN—Continued

Judges	Satisfactory	Doubtful	Unsatisfactory	H. of C.	Pen. or Pontiac	Dead	Total
Caverly	5	—	—	—	—	—	5
Chapman	2	—	—	—	—	—	2
Cook	15	2	5	—	—	—	22
Crabtree	1	—	—	—	—	—	1
Curran	21	—	2	—	—	—	23
Eberhardt	145	4	71	3	—	—	223
Ehler	25	1	4	—	—	—	30
Eller	32	1	5	—	—	—	38
Fetzer	122	6	17	—	—	1	146
Finnegan	42	1	8	—	—	—	51
Fisher	17	2	3	—	—	—	22
Fitch	5	—	—	—	—	—	5
Fort	2	—	—	—	—	—	2
Gemmell	42	4	10	—	—	1	57
Gentzel	52	3	5	1	—	—	61
George	12	—	3	—	—	—	15
Gilster	2	—	2	—	—	—	4
Haas	193	9	66	3	—	—	271
Hamlin	13	1	11	—	—	—	25
Harris	25	1	17	—	—	1	44
Hartigan	21	1	4	—	—	—	26
Hayes	204	4	74	—	—	2	284
Hazen	1	—	—	—	—	—	1
Heap	61	6	26	—	—	—	93
Helander	23	2	17	1	—	1	44
Holmes	48	5	14	1	—	2	70
Immenhausen	150	17	110	—	—	—	277
Jacobs	58	2	11	2	—	—	73
Jonas	6	—	3	—	—	1	10
Hill	1	—	—	—	—	—	1
LaBuy	25	6	4	—	—	—	35
Lane	1	—	—	—	—	—	1
Lupe	12	—	1	—	—	—	13
Luster	2	—	—	—	—	—	2
Lyle	41	2	15	—	—	—	58
McCarthy	28	1	10	—	—	—	39
McKinley	27	1	7	—	—	—	35
Morgan	75	6	19	5	—	1	106
Moran	1	—	—	—	—	—	1
Newcomer	42	2	12	—	—	1	57
O'Connell	31	—	3	—	—	1	35
Olson	4	—	1	—	—	—	5
O'Toole	16	—	8	—	—	—	24
Padden	57	3	28	2	—	1	91
Prindiville	71	—	11	1	—	1	84
Richardson	147	7	34	—	—	—	188
Rooney	32	4	5	—	—	1	42
Schulman	124	7	36	—	—	—	167
Schwaba	79	9	17	—	—	—	105
Smith	1	—	—	—	—	—	1
Stewart	25	—	4	—	—	—	29
Sullivan, D. W.	12	—	4	—	—	—	16
Sullivan, F.	22	—	10	—	—	—	32
Swanson	2	—	—	—	—	—	2
Trude, D. P.	219	26	91	4	—	2	342
Trude, S. H.	109	4	23	3	—	1	140
Viner	1	—	2	—	—	—	3
Walker	47	3	11	2	—	—	63
Ward	7	1	1	1	—	—	10
Weaver	4	—	—	—	—	—	4
Wells	14	—	3	—	—	—	17
Williams	10	—	1	—	—	—	11
Total	2,918	167	917	31	—	19	4,052

120. Same: Comments of Judges and State's Attorneys.

We now turn to comments received from judges in various parts of the state. The inquiry was made of them, "About what proportion of the persons on probation are apprehended violating probation or committing new crimes?" To this a down-state judge replied: "20 per cent. In other words, my experience for the past five years indicates that 80 per cent of probationers make good." Another thought, "about one in four." Still another placed it at 25 per cent. One, possibly more pessimistic, wrote, it is "impossible to state, but it is a very great per cent." Another replied, "I am advised that more than 80 per cent of the prisoners placed on probation profit by the experience and that less than 10 per cent are apprehended violating probation." Finally, one judge wrote in his jurisdiction "not over 3 per cent violated."

A similar inquiry was addressed to various state's attorneys. One replied, "about 20 per cent in this locality" violate. Another gave his opinion, "in this county about twenty-five per cent should be" apprehended for violations. One state's attorney wrote that in his jurisdiction "about one-half of those on probation violate." The impression of another was that "many persons violate the probation and are apprehended violating other laws."

The general comment from prosecuting officers in down-state counties bespoke the success of probation. One wrote "less than 10 per cent" violate. The estimate of another was that "less than fifteen per cent of our probationers have not made good." Another placed the proportion of unsatisfactory cases at five per cent. One wrote that in his county there had been only "two or three violations in nearly seven years." Another found that about 3 per cent violated in his county, and one wrote "in my county the per cent has been small because of the strict requirements necessary to be shown before probation is granted."

121. Summary and Findings.

1. The Committee found that there is a widespread misunderstanding and misinformation in the general public about the history, purposes, operation, and results of the indeterminate sentence, parole and probation in Illinois.

2. The Committee finds that parole arose as a redefinition by legislative action of the Governor's power of pardon and commutation of sentence, and differs from a pardon in being a conditional release under supervision for a certain period after leaving the penal or reformatory institution. Since the introduction of parole, the number of pardons has declined until in the year ending June 30, 1926, only eight were granted.

3. The Committee finds that the strongest argument for the indeterminate sentence and parole consists in the protection for society it affords, not only through the opportunity for reformation of the criminal under supervision, but through its use as an instrument to return the parole violator to the penitentiary without the delays and technicalities of court procedure.

4. The actual time served by the criminal in penitentiaries and reformatories is longer under sentences fixed by the Parole Board than when flat sentences were fixed by the courts. Under the system of parole since 1897, the period of incarceration in the Illinois State Penitentiary at Joliet has

increased from 1.9 to 2.6 years; in the Southern Illinois Penitentiary at Menard from 2.0 to 2.4 years; in the Illinois State Reformatory at Pontiac from 1.5 to 2.1 years.

5. The critics of parole would substitute longer sentences for the parole system. But if the average time served were increased one year, this would require the immediate construction of new penitentiaries and reformatories, and an addition to the present expenditure for maintenance of approximately $1,000,000 to $1,500,000.

6. The Committee finds that there is a general distrust on the part of the public of the freedom of the Parole Board from political influence. The Committee finds that any such general belief on the part of the public or among the paroled men themselves is detrimental to the best workings of the Parole Board.

7. The Committee finds that prior to the amendment of 1927 to the Civil Administrative Code Act of 1917 the placing of the sole power of administering paroles upon the Supervisor of Paroles was too great a burden of responsibility, and that he was provided with inadequate assistance and funds to cope with the situation of over 7,500 men, women, boys, and girls in the two penitentiaries, reformatory, and the two training schools under his parole jurisdiction. The cases coming before the Parole Board were too numerous (1,531 in 1926) to receive sufficient consideration. The staff of officers supervising men on parole was too small to give the degree of oversight contemplated by the statutes. As a consequence, a large number of persons, estimated by the Committee at from one-fourth to one-third of the inmates of the penitentiaries and reformatory, remained in these institutions whose cases demanded immediate serious consideration for parole.

8. The legislative changes of 1927 proposed by the Honorable Hinton G. Clabaugh, the Supervisor of Paroles, were designed to deal with this emergency. The measures enacted into law made provision for establishment of the Parole Board with nine members in addition to its chairman, the granting of the power of parole previously held by the Supervisor of Paroles to this Board, and a greatly increased appropriation for parole administration. The measure proposing to give the Board the power to require attendance of witnesses at its hearings by subpoena passed in the Senate but failed in the House. Other important measures sponsored by Mr. Clabaugh were enacted into law.

9. Under its present administration the Parole Board of nine full-time members besides the chairman are divided into three sub-committees which sit three days out of each week at the different institutions in order to secure all facts for or against parole on every case coming up for action. The Board meets once a month to review the work of the sub-committee and to act upon it.

10. The Committee finds the present administration has strengthened the term of parole supervision by extending it from one year to five years with the requirement that the paroled men report to the supervisor of paroles, monthly during the first year; bi-monthly during the second year; every three months during the third and fourth years; semi-annually the fifth year; and annually thereafter unless finally discharged after a hearing by the Parole Board.

11. The work of the new Parole Board in the short period of its existence merits the indorsement of the Committee by its grasp of the theory and the practice of parole, by its plan of reorganization, and by its adherence to the principle of open hearings adopted at the beginning of the Clabaugh administration. The new Board in its work, however, is still hampered by the scantiness of the information about the applicant for parole, which is now provided from other sources, by its lack of power to subpoena a witness, by the indirect nature of its control over the personnel of the supervisional force, and by the uncertainty of the tenure of office on the part of the members of the Parole Board.

12. The Committee is of the opinion that the Parole Board does not have in its work the full cooperation of the courts as contemplated by the statutes. A careful study of parole records showed that the official statement of the trial judge and the state's attorney seldom contained anything concerning the career of the criminal "relative to his or her habits, associates, disposition and reputation" as required by law.

13. A study made by the Committee of all the prisoners present in Pontiac on April 26, 1927, or 1,637, showed that 60.4 per cent of all inmates from Cook County as compared with only 12.0 per cent from down-state had been sentenced on the basis of the acceptance of lesser pleas.

14. Occasionally serious problems arise between the Parole Board and the state's attorney and even the trial judge over representations made to a prisoner when a plea of guilty is secured. It is obvious that any representations by the state's attorney and the trial judge that in consideration of a plea of guilty, the Parole Board will release the prisoner at the minimum of his sentence, are due to a mistaken conception of the relation of the court to the Parole Board and find no sanction in the statute.

15. The Parole Act of 1917 specifically states that "it shall be the duty of the Department of Public Welfare to adopt such rules concerning all prisoners and wards committed to the custody of said department as shall prevent them from returning to criminal courses, best secure their self-support and accomplish their reformation." The prevention of return to a criminal career, industrial training, and reformation are stated in the law as the criteria by which to judge the administration of the state's penal and reformatory institutions, and of parole supervision.

16. The Committee finds on the basis of an inspection of the Illinois State Penitentiary at Joliet, the Southern Illinois Penitentiary at Menard, and the Illinois State Reformatory at Pontiac that in none of these institutions is the work definitely organized so as to realize its possibilities for the industrial training of the men. Idleness was prevalent in all three places, conspicuously at Joliet, largely because of the great excess of men over the normal number suited to the physical and industrial plant.

17. Except at Southern Illinois Penitentiary little evidence was found of an attempt to vitalize the education afforded by the prison school in terms of the needs and interests of different types of inmates. Particularly noticeable was the lack of coordination between the school work and what industrial training might be secured out of occupational activities.

18. In all three institutions, the library enjoys a large circulation of books among the inmates, in spite of the inadequate number and inferior

quality of the books, and the lack of standard modern library methods of listing, cataloguing, and circulating now in vogue.

19. The Committee was favorably impressed by the beneficial influence exerted by the administrative officers and professional men like the physician, the psychiatrist, the schoolmaster, and the chaplain upon those inmates with whom they came in close contact. The Committee was unfavorably impressed by the type of men selected for prison guards and by the fact that appointment to these positions largely depends upon political influence. In the opinion of the Committee many of the problems of prison discipline arise out of the reaction of the inmates against the crude and often brutal methods of handling them employed by men untrained and often temperamentally unfit for this work.

20. Particularly in view of the great amount of idleness, the provision for recreation is entirely inadequate except perhaps during the summer months at Pontiac.

21. The Committee finds in the reports furnished the Parole Board by the institutions on each inmate eligible for parole no inclusion of his health examination or of his school progress or of his work record in the institutions, although all these have a direct bearing upon determining parole.

22. In the judgment of the Committee the present staff for parole supervision is too small and its personnel, for the most part, without the training required for dealing with essential aspects of the rehabilitation of the paroled man, as the skilled investigation of family backgrounds, type of associates and neighborhood conditions, before parole is granted; adequate employment placement; specialized supervision of difficult cases; and constant friendly contact with the paroled man to insure observance of the conditions of parole.

23. By an intensive study of a limited number of paroled men, the Committee is convinced that the properly placed paroled man does not chafe under supervision, even when its length is extended from one to five years. The professional criminal, however, is the deadly enemy of the entire parole system, which is its best recommendation.

24. Of the 3,000 youths and men paroled from Pontiac, Joliet and Menard, on the basis of the information available in the parole record 55.8 per cent were first offenders, 31.3 per cent were minor and occasional offenders and only 11.0 per cent were classed as habitual offenders and 1.5 per cent as professional criminals. In other words, the first and occasional offenders, totaling 87.1 per cent of the men paroled, probably deserved an opportunity to make good. The habitual and professional criminals, totaling together only 12.5 per cent, are not such "good risks" for rehabilitation. So far as can be determined, 56.6 per cent of the 3,000 paroled youths and men have had no previous criminal record and only 19.1 per cent have had either reformatory or penitentiary records. The remainder, or 24.1 per cent, have had industrial school or jail records or have been fined or placed on probation.

25. The Committee finds that it is unable to substantiate the statistics of success and failure under parole made under the previous administration. It is only proper to state that while statistical comparisons were not practicable for the years 1926-1927 by the method approved by the Committee,

the evidence available indicates a decline both in the number of men paroled and in the percentage of parole violations.

26. In its statistical study of 3,000 paroled men the Committee found that it was possible to determine certain factors making for success or failure on parole. For Joliet 71.6 per cent are not reported as violators of parole, while 28.4 per cent are so reported, while for Menard 73.5 per cent are not classed as violators of parole, while 26.5 per cent are so classed. For Pontiac 77.9 per cent of paroled men were non-violators, while 22.1 per cent were violators. The percentages of violators and non-violators of parole were found to be directly correlated with certain factors making for failure or success on parole. Certain factors are correlated with "making good" on parole, and certain other factors with "failure" on parole. Were the records more accurate, it is certain that higher correlations would be secured. Under the new procedure of the Parole Board, more information will be available, particularly because of the extension of the period of parole supervision from one year to five years.

27. The Committee was also interested in determining how soon after release from the institution the violations of parole occurred, on the part of parole violators. In all institutions the largest proportion of all violations occurred during the first month, 12.5 per cent for parole violators from Joliet and 21.8 per cent for parole violators from Menard. Indeed, in the first four months 43.5 per cent of the total parole violations for Joliet and 55.0 per cent for Menard had already occurred. These facts indicate the importance of especially careful supervision during the first months on parole.

28. A study of the granting of parole since the enactment of the Parole Act by the different four-year periods corresponding to the administrative term of the Governor shows that the proportion of paroles to prison population reached its high point in 1917-21 and has since then receded.

29. Finally, the Committee was desirous of determining whether or not a scientific basis for the granting of paroles could be secured on the basis of reliable predictions of the violation or non-violation of parole. The Committee made a study of 1,000 Joliet cases and found that by combining the different factors favorable or unfavorable to success on parole, the paroled men could be divided into nine groups with the following probability of violation of parole.

EXPECTANCY RATES OF PAROLE VIOLATION AND NON-VIOLATION

	Number in Group	Parole Violation Rate Per Cent	Parole Non-Violation Rate Per Cent
Group A	68	1.5	98.5
Group B	140	2.2	97.8
Group C	91	8.8	91.2
Group D	106	15.1	84.9
Group E	110	22.7	77.3
Group F	88	34.1	65.9
Group G	287	43.9	56.1
Group H	85	67.1	32.9
Group I	25	76.0	24.0

This table indicates that this method of predicting parole violation can be of real service to the Parole Board in deciding the advisability of parole and to the Division of Parole Supervision in determining the nature and degree of supervision desirable for each paroled man.

30. Wide approval is given to the principle of probation by the judges and prosecuting officers of the state. Since those officers have been in positions to observe intimately the operation of the system—its defects as well as its strong features—their testimony particularly is pertinent.

31. Probation is employed as a method of release of offenders on good behavior. We found the jurisdictions of the state varying considerably in the application of the probation law. In one jurisdiction practically every offender, who was able to qualify under the law, was given probation, and in another sixty-six and two-thirds per cent were so admitted. On the other hand, the percentage in some jurisdictions was negligible. In Table 29 we have shown a variance from 32.06 per cent admitted to probation in eight of the more urban counties to 2.67 per cent in Williamson and Franklin counties.

32. We gave attention to the prevalence of probation in Cook County and found there that over a period of years from 1922 to 1927 a total of 2,633 offenders were admitted to probation from the Criminal Court and 23,189 from the Municipal Court, making a total of 25,822 for both courts. For the same period but 2,205 were paroled to Cook County from the penitentiaries and the reformatory.

33. We have stated it as our opinion that a thorough investigation of the antecedents of an offender before probation is essential to good administration. Consonant with this the Probation Act provides, "before granting any request for admission to probation, the court shall require the probation officer to investigate accurately and promptly the case of the defendant making such request." Notwithstanding, it was found that this feature commonly is being disregarded by the courts. This is true in Cook County particularly, where, according to the report of the chief probation officer, during the course of one year, 4,986 offenders were admitted to probation without preliminary investigation, and but 476 were investigated.

34. There is some evidence that political influences enter into the consideration of probation, but, on the whole, there seems to be little of that. We discovered, however, that political considerations, at times, weigh heavily in the matter of employing and discharging probation officers. The inference is strong that such considerations were uppermost when, at a meeting of the municipal judges of Cook County, thirteen probation officers were discharged.

35. The statute bars from probation those offenders who have committed murder, manslaughter, rape, kidnaping, willful and corrupt perjury or subornation of perjury, arson, larceny and embezzlement, where the amount taken or converted exceeds two hundred dollars ($200) in value, incest, burglary of an inhabited dwelling house, conspiracy and acts made an offense under the election laws. We found that instances were not uncommon in which the courts had granted probation in offenses excepted by the statute. We found, also, that the records frequently showed that the courts had accepted pleas of guilty to lesser offenses when the crimes

charged were among those offenses excepted by the statute. We cannot know what prompted the courts in accepting "lesser pleas." The inference is strong, however, that these pleas were taken to bring the offenders within the benefits of the Probation Act.

36. Supervision is of the essence of probation. The kind of supervision that is given depends upon the personnel of the officers and upon the sufficiency of the force employed. We found here again great variance among the jurisdictions of the state. Some made no provision for supervision, others had some individual employed who gave part time to the work, and still others had the work well in hand with a full-time officer in charge or, in some of the more populous jurisdictions, with a force at work. In general, with some marked exceptions, the personnel of the supervising force was not high. Want of careful discrimination in the selection of officers and inadequate salaries were responsible.

37. Considerable difference was discovered among the counties of the state in the results obtained from probation. It is very difficult even to approximate satisfactory conclusions on this point. Many factors enter which are difficult to measure. In some jurisdictions it was claimed that the probation violations were negligible, in others it was frankly admitted that they were heavy. Naturally that would be true, for the success of the system depends on the careful sifting of probation risks and upon the kind of supervision given. And that, as we have already seen, varies over the state.

38. The Probation Act gives wide discretionary powers to the courts. The courts *may* grant probation. Since this is discretionary, and with little by way of standards to go by, probation is common in some jurisdictions and not in others. The court *may* appoint probation officers, and again, since this is discretionary, there are to be found probation officers in some jurisdictions and none in others. This, in fact, has resulted in such lack of uniformity in the various jurisdictions of the state that we have found it very difficult to arrive at any satisfactory conclusions.

122. Recommendations. 1. That the system of indeterminate sentence and parole be continued in Illinois.

2. That the Parole Board should be taken out of politics as nearly as possible under our form of government. The members appointed should hold office for definite terms which should expire at different times and in such manner as to free the Board from the pressure of political influence. With a Board of nine members as at present a term of office of nine years would permit the expiration of the term of office of one member each year. In appointments to the Parole Board the statute should provide that one member be a lawyer, one member a physician or psychiatrist, one member a sociologist or professional social worker, one member an educator, one member an employer and one member a representative of labor.

3. That the members of the Board should seek to become serious students of the principles underlying parole and of the application of science to parole administration.

4. That the power to administer oaths and to require attendance of

witnesses by subpoena and subpoena *duces tecum* should be given the Parole Board.

5. That the trial judge and the prosecuting attorney give the Parole Board the full measure of cooperation contemplated by the statute in supplying information on "the habits or associates, disposition, and reputation" of each prisoner.

6. That the courts, especially in Cook County, give consideration to the problems arising out of the increasing practice of accepting lesser pleas than the original offense named in the indictment. When, however, a plea to a lesser offense than the one charged has been accepted and the facts appear that the offense committed was the one charged, the Parole Board should take this into consideration in determining the inmate's period of imprisonment as it would any other material fact bearing on his imprisonment and his parole.

7. That prosecuting officers and other law enforcing agencies should be extremely careful not to make promises or overtures to a prisoner relative to the possible length of time he will be kept in confinement by the Parole Board before his parole. Such promises can only have the effect of causing misunderstanding between such agencies and the Board and they are embarrassing to the Board.

8. That a determined effort should be made to reconstruct our prisons and reformatory, both in their physical plant and in their administration so that the necessary training, education, and recreation be provided to prepare prisoners for parole. Since this is a responsibility placed by law upon the Department of Public Welfare, the Committee respectfully suggests that it give its immediate and serious consideration to these questions. The suggestion is further made that a well-trained expert in industrial education and vocational guidance and a professionally equipped recreational director be employed by the Department of Public Welfare to cooperate with the superintendent and staff of the different institutions in making and carrying out a plan for the reorganization of the industrial, educational, and recreational activities of the institution. The suggestion is made that the Department of Public Welfare give serious consideration to the establishment of a plan of wage payment in order to provide incentive to the inmate in the formation of work habits.

9. That a plan of classification be adopted under which the prisoner would be given treatment and guidance as his case requires. This would necessitate the employment of experts, but would not necessarily involve more expense than the present system is costing. The psychiatrist is the only expert in criminology at present employed; his work should be supplemented by a sociologist or professionally trained social worker to study the prisoner's behavior in its group relationships, and by an expert in industrial education and a recreational director as suggested in previous recommendation.

10. That a plan for the segregation of the inmates according to the likelihood or possibility of their reformation be worked out and put into operation in these institutions.

11. That the principle be recognized of placing only one man in a cell,

and that this be carried out so far as practicable, particularly in the case of the individual prisoner who shows vicious tendencies. The crowding of three human beings into a cell should be positively condemned.

12. That the material on the prisoner now available in the files of the Parole Board should be enlarged to include reports of physical examination, school progress, and work record in the institution as well as a fuller past history of the prisoner with data upon his family, conditions in his neighborhood, his associates, his membership in gang or criminal groups, the causes and circumstances of his delinquent career.

13. That with the authority recently given the Parole Board to have full possession of its records, the parole officer at the institution or other agents of the Board be given the duty of arranging the materials upon each inmate in the files, and of making records of the contents of files in orderly sequence of the material filed. This would expedite the review of records and increase the efficiency of the work of the Parole Board.

14. That provision be made for the employment of trained investigators, such as professionally trained sociologists and social workers, working under the Parole Board. The duties of these investigators should be to gather facts upon the social history of the criminal. The same or other investigators should make thorough inquiries relative to the environment the paroled man is likely to go into upon his parole. This investigation should be made prior to parole and should have a material bearing upon his parole.

15. That since supervision has not been intelligent nor effective in all cases, the staff for supervision should be chosen of persons trained for the different divisions of the work who are likely to show progression and insight in this field instead of being merely political hangers-on. There should be an assurance of tenure of office to these persons so that their terms would not be closed with each new administration.

16. That since an employment department is an almost indispensable part of an adequate program of parole supervision, the State Legislature be asked to provide the funds necessary for its establishment.

17. On the basis of its findings the Committee recommends that the Parole Board seriously consider the placing of its work on a scientific basis by making use of the method of statistical prediction of the non-violation or violation of parole both in the granting of paroles and in the supervision of paroled men. One competent statistician could compile the necessary information from the records and still further develop the accuracy of prediction by this new method.

18. That the Parole Board, as well as all other organizations dealing with the problem of crime, submit before publication its annual statistical report to a statistical expert or competent committee for analyzing and auditing the same. This is necessary in order to obtain public confidence in the validity, not only of the figures, but of the method employed.

19. We believe that probation is correct in principle and that there should be no thought of abandoning it.

20. Investigation before probation is vital, and any practices to the contrary must be condemned.

21. The granting of probation in violation of the express provisions of the statute must be condemned. Further, while the acceptance of pleas to lesser offenses than charged is at times justifiable, such practice, if commonly employed to bring offenders within the Probation Act, must be condemned.

22. Supervision should be given in all jurisdictions where there are probationers. No community should seek to avoid that responsibility. Further, supervising personnel must be improved. This can be done only if the appointing and discharging features are taken out of politics. The tenure of the officers should be made secure and higher salaries should be paid.

23. We recommend that careful consideration be given by the courts, and if necessary, by the Legislature, looking to a reform of the conditions of the granting of probation in order to correct existing abuses.

24. We recommend that the courts, with whom now is lodged the power to grant or withhold probation, take cognizance of the marked lack of uniformity in various parts of the state in the application of the Probation Act, and that through conference and study the effort be made to evolve common standards.

25. In order to unify and standardize the work of probation administration, we recommend that the supervision of persons on probation be placed by law along with the supervision of persons on parole, under a central state agency.

123. Conclusion. The Committee wishes to express the opinion that in the wisdom of its legislation on the indeterminate sentence and parole, Illinois is not surpassed by any other state, and that in the generosity of its appropriation for parole administration, for which the legislature for 1927 is to be commended, it is now possible more than in any other state in the Union for an adequate parole system to be developed and maintained. The Parole Board and the Department of Public Welfare in cooperation with the police, the courts, and the penal and reformatory institutions of the state, have a unique opportunity for taking the next great forward step in the constructive solution of the crime problem through the rehabilitation of the criminal.

The Committee repeats its conviction that the indeterminate sentence and parole laws should be continued, but that their administration can and should be improved both by the placing of the work of the Parole Board on a scientific and professional basis and by further safeguards against the constant pressure of political influence.

The Parole Board should enjoy the standing and independence of the Supreme Court of Illinois in order to discharge fully its equally great responsibility, and the compensation of its members should be the same as that of the judges of the Supreme Court in order to attract and to hold men and women of the highest qualifications. Parole has not yet had a fair trial in Illinois or elsewhere. The Committee appeals to the Legislature and to the people of Illinois to give it the conditions most favorable for its success.

Chapter XII

CRIME RECORD SYSTEMS

By

W. C. Jamison

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CHAPTER XII

CRIME RECORD SYSTEMS

1. General Lack of Record Systems. Before any intelligible analyses can be made of the functioning of the agencies concerned with crime, it is necessary to have accurate information. In Illinois, as in other state criminal surveys, the survey has demonstrated the need for more adequate crime statistics. In Illinois, Missouri and New York where state-wide surveys have been made, the commissions found it necessary to make detailed statistical compilations before they could proceed with their work. Such compilations are expensive proceedings and of necessity are limited to selected areas. While the geographical limitations do not of themselves affect seriously the reliability of the conclusions drawn, yet it is obvious that definite information from every county in the state would afford a more complete, if not more reliable, factual basis.

2. Records of Complaints of Offenses. The first serious defect in the statistics is that there are not available data as to the actual number of crimes reported to have been committed. In Chicago there is admittedly a wide discrepancy in the crimes reported to the police and the figures issued by the police department. Estimates of the number of reports of crimes not given out by the police run as high as fifty per cent. Chicago, however, is not unique among cities in this respect; the practice is general. And as a rule, in the rural counties, no attempt whatever is made to record the number of criminal complaints.

Under these circumstances the crime commissions have had to start in the police departments after the arrest is made, or in the courts after a prosecution has been started, and their statistics, therefore, deal almost exclusively with the administration of criminal justice.

It is submitted that before an adequate plan for the control of crime is possible, something must be learned of the actual amount of crime. How many crimes are committed each year and of what nature? Where are they most numerous? No one knows with certainty, for no data are available.

3. Records of Criminal Proceedings. Judicial statistics likewise, until very recently, were practically non-existent and even now are available only for comparatively small areas. In 1922 the American Institute of Criminal Law and Criminology said:

> "The annual reports of the Committee on Statistics of the Institute have shown that no city nor state in our Country now publishes adequate criminal statistics for the guidance of the public, the legislature and executive officials. The contrast between our ignorance or loose guesses and the instructive statistics issued in England and on the Continent is discreditable, and our lack of knowledge retards intelligent and efficient progress. The police, the public prosecutor, the judiciary and the general public alike suffer and are all, particularly the public, subject to being misled by self-deceived or unscrupulous individuals or news-

papers. We believe that the dilatoriness, inefficiency and costliness of the Criminal Courts could not have continued had their defects been clearly revealed by proper, annually-published records."

In late years crime commissions have undertaken surveys of the administration of criminal justice in several cities and states. Chicago, Cleveland and Baltimore, among other cities, maintain crime commissions, which from day to day collect and compile data on conditions in their respective communities. Missouri led the way in crime surveys on a comprehensive state-wide basis and was followed by New York and Illinois. Some states have crime surveys in progress and contemplation, and in others commissions have been, and are, engaged in a recodification of criminal laws.

These commissions have proceeded upon the theory that the people desire to establish an effective control of crime and criminals. Each has recommended various changes in laws and administrative methods, and each has also recognized the fact that one fundamental need is an adequate body of statistics compiled annually for each state, that would truly reflect crime conditions within the state. With that information at hand the whole problem could be envisaged and adequate remedies applied.

It has been recognized that three things would have to be known; namely—

1. The volume of crime.
2. Who commits these crimes?
3. How are the offenders being dealt with?

The problem is succinctly stated in the Tentative Program of the Committee on Uniform Crime Records of the International Association of Chiefs of Police, as follows:

"In general, it may be said that criminal records and statistics have three major phases. These are concerned with the collection, compilation, and distribution of (1) facts relating to the crime itself, (2) facts relating to the offender, (3) facts relating to the functioning of the agencies of criminal justice."

4. Lack of Uniformity and Centralized System: (1) Outside of Cook County.

It should be recognized at once that such information is not easily obtained. In Illinois, for criminal law enforcement each county is a unit. Within the county function justices of the peace, coroners, sheriffs, constables, city police, county courts, circuit courts, and state's attorneys. In some counties the situation is further complicated by the establishment of city courts, and in addition the State Highway Police operate over the entire State.

Each of the agencies enumerated functions independently of the other. Occasionally we find wholehearted cooperation among all officials, but more often we encounter a feeling of indifference, if not of active opposition. Each official has his own set of records. Usually they have no relation whatever to the records of other officials. Such a condition is perfectly natural, because there is no one officer to supervise and control these related agencies. Each county is in much the same situation as would be a department store without a head, or a corporation with branch offices in several cities with no controlling and supervising main office. It does not take

much imagination to visualize the confusion that would exist in such a department store or corporation. Nor does it require any imagination to visualize the confusion of records in most counties.

In the counties surveyed, there was no uniformity in record systems save those kept by *justices of the peace.* In each instance we found the justice kept a bound docket book, alphabetically indexed, in which was recorded the name of the defendant, the charge, and the disposition of the case. If the case was dismissed the reason appeared, and if the defendant was bound over to the grand jury a transcript was filed with the circuit clerk. In some cases we found the justices' dockets incomplete in that they failed to indicate the final disposition of the cases. Further investigation disclosed that in the majority of these cases the state's attorney had taken the case to the grand jury and had indictments or "no bills" voted and then did not have a formal entry made to clear the docket in the justice court.

As a class the *state's attorneys* are lax in keeping their records. Replies to a questionnaire indicate that about fifty per cent keep a docket. This percentage was not sustained in the counties surveyed, as we found only five, or about twenty-five per cent, kept any adequate office docket of the progress of cases. All keep some sort of a case file, but usually it contains only copies of pleadings, motions, and miscellaneous papers, and does not show the progress of the case through the courts. The state's attorneys also are negligent in failing to see that the action of the grand jury in each case is reported to the clerk. Indictments are, of course, so reported, but the "no bills" occasionally are not.

There is another class of cases that is not recorded. We refer to those cases which are bound over in the preliminary hearing and which, for some reason, the state's attorney does not present to the grand jury.

In making our statistical compilations these cases are shown as "never presented to the grand jury" or as "no record." In the first instance we were able to determine from the state's attorney that he had not presented these cases to the grand jury; in the second, we could obtain no information whatever as to the disposition of the case after the bind-over by the court of preliminary hearing. Here is a weakness that should at once be corrected. It is too easy to lose a case under these conditions. In the group of eight "more urban counties," 6.52 per cent of all cases coming up from the preliminary hearing were "never presented," while the "no record" group ran as high as 12.77 per cent in Franklin-Williamson, and 6.00 per cent in the group of seven "less urban counties."

The *circuit clerks* use a variety of methods to record their criminal cases. In the fifteen downstate counties on which we have complete reports, ten have a separate index for civil and criminal cases; five do not. Ten file the civil and criminal case papers separately, and five do not. But of the latter, all use a different colored wrapper to distinguish the civil and criminal cases. This use of vari-colored wrappers is frequent, even where the civil and criminal cases are filed separately. All keep dockets. Some are bound; some use loose leaf. Some are kept in alphabetical order; some are numerically arranged by the case number. In most instances we could get from the docket the charge, the pleas, dates of continuances, dates of trial, the judge presiding, the final disposition, and the name of the sureties if the

defendant was on bond. In some instances this information had to be obtained through other records. That the records, even though they may be scattered, are complete is evidenced by the fact that we obtained the status of every case recorded in our study that reached the trial court. The case papers in the counties surveyed are given a permanent number and filed accordingly. Upon the wrapper usually appears the defendant's name and the charge only.

In the collection of *fines* there is a variety of procedure. In eleven of the fifteen counties the clerk collects the fines; in two, the state's attorney; and in two others, the sheriff or clerk, or the state's attorney or clerk.

It is usually a difficult matter to trace *bail bonds* and, if forfeited, the subsequent proceedings. In some counties the bonds were found in bundles in the safe of the clerk. Some, not many, kept a separate recognizance and bond record. In some instances the bonds were filed with the case papers and in others the state's attorneys had them. When forfeitures occurred some clerks indexed and docketed the case in the civil index and dockets; others used the criminal index and docket. In most cases it was necessary to go through the minutes of the court in order to trace the record.

The *sheriffs and jailers* keep their prison record usually in a bound book. In about half the counties surveyed it was not indexed. In the book appear the names of the prisoners; the charges against them; the sentence, if any; the date confined and the date released.

5. Same: (2) Cook County. In Cook County the record system is so involved that a detailed discussion is prohibited by lack of space.

The vast majority of the cases arises in the municipal court, and a detailed statement of their handling of the records appears in the chapter of this Survey on "The Municipal Court of Chicago as a Criminal Court." Cases bound over by the municipal court and cases initiated by the state's attorney on direct presentment to the grand jury are recorded in a grand jury docket. They also appear in the regular criminal docket, alphabetically indexed, of the clerk of the criminal court. The "no bills" are indexed separately. Tracing cases would be greatly expedited by a further subdivision of the indexes now in use.

What is needed in Cook County is a simplification and unification of the records used. There seems to be a quite unnecessary number of books to search through in order to trace cases to their final conclusion.

6. Requirements of an Adequate System. In accumulating crime statistics on a state-wide basis, the "facts relating to the crime itself" will be most difficult to obtain, for the reason that crimes may be, and are, reported to several different officials. The complaint may be lodged before a justice of the peace with a request for the issuance of a warrant; it may be made directly to the prosecutor, who, if no warrant is issued, usually does not notify the sheriff or police; it may go to the sheriff; or to the chief of police. In some instances these several officials make an adequate record; in most cases they do not. Even where records are made, there is no uniformity in the description of the crime or the suspect, and rarely is the information communicated to other county officials.

"Facts relating to the offender" are on a more adequate basis in many counties of Illinois. Police departments in many cities have worked out very comprehensive systems for the recording of facts on arrests; such as the color, sex, nativity, age, and occupations of persons arrested. Many are using the finger print system and taking advantage of the facilities afforded by the Division of Identification and Information maintained by the Department of Justice at Washington, to obtain the previous criminal history of the one arrested. There is a lack of uniformity in the records kept, however, that should be remedied.

In counties largely rural in character very little information is obtainable and adequate provision for detailed records is necessary.

"Facts relating to the functioning of the agencies of criminal justice" are more easily obtained. The problem resolves itself into the methods to be employed for the collection and compilation of data obtainable from existing records in courts and the offices of the state's attorneys, and a standardization of records.

The need for complete and standardized records cannot too strongly be emphasized. Practically every county has a different recording system. In many we find a multiplicity and confusion of records with a resultant increase in the amount of time employed in making repetitive entries. In others, the records are so incomplete that the tracing of the progress of a case through the courts becomes a matter of difficulty. It is recognized that more complete records are required in some counties than in others, and that it would be a mistake to attempt to prescribe rigid regulations for all counties. However, certain basic information is required, which may be summarized as follows:

General Scheme for Crime Records

1. Number and nature of crimes reported.
2. Number of arrests made.
3. Data as to persons arrested.
   a. Nativity.
   b. Color.
   c. Sex.
   d. Age.
   e. Married or single.
   f. Residence.
   g. Previous criminal record.
4. Number of warrants applied for.
   a. Number of warrants refused.
   b. Number of warrants issued.
5. Number of misdemeanors tried.
   a. Number of cases dismissed by prosecutor.
   b. Number of cases dismissed by court.
   c. Number of cases punished.
   d. Nature of punishment.
   e. Execution of such punishment.
6. Number of preliminary hearings held.
   a. Number of cases dismissed by prosecutor.

b. Number of cases dismissed by court.
c. Number of cases punished as misdemeanors.
   (1) Nature of punishment.
   (2) Execution of such punishment.
d. Number of cases bound over.

7. Number of cases bound over in preliminary hearings and
   a. Presented to grand jury "no true bill" returned.
   b. Number of indictments returned by grand jury and filed in circuit court.
8. Dispositions in circuit court.
   a. Change of venue.
   b. Dismissed by prosecutor.
   c. Dismissed by court.
   d. Acquitted by jury.
   e. Bond forfeited defendant at large.
   f. Other dispositions freeing defendant without punishment.
   g. Punished.
      (1) After trial by jury.
      (2) On pleas of guilty.
      (3) Number of cases in which felony counts were waived or charges reduced.
   h. Nature of punishment.
   i. Mitigations of punishments by trial courts.
   j. Execution of punishment.
   k. Number appeals allowed.
9. Disposition of cases appealed.
   a. Number affirmed.
   b. Number reversed.
   c. Number reversed and remanded.
10. Facts concerning prisoners.
   a. Nationality.
   b. Color.
   c. Age.
   d. Sex.
   e. Family status.
   f. Education.
   g. Occupation.
   h. Residence.
   i. Previous criminal record.
   j. Crime committed.
   k. Length of sentence.
   l. Date admitted.
   m. Date released.
   n. Manner of release.

With these data available the question of compiling them on a state-wide basis arises. This would probably be most easily effected by providing a state officer to whom the county law enforcement officials, the clerks of the appellate and the supreme courts, and the heads of the penal institutions

would report at stated intervals. Such an officer should be a statistician eminent in his profession, and he should be appointed by and be responsible to the Governor.

7. Identification Records. Adequate means of criminal identification should also be provided in Illinois. In this State there is no central bureau from which police officers, sheriffs, and the heads of our penal institutions may obtain information in regard to persons held in their custody. Many of the apprehending officials make use of the Division of Identification and Information of the United States, but the majority do not.

Identification and apprehension of criminals is not a matter of local concern. The criminal today moves rapidly from point to point of attack, and his apprehension should not be left solely to the officers of the county in which the crime has been committed. Experience in other states has demonstrated that state bureaus of identification have a deterrent effect upon the operations of the professional criminal. The professionals are not inclined to operate in states where they are reasonably sure to be apprehended, identified, their previous records brought to light, and adequate punishment assessed. A state bureau also aids in the more rapid apprehension of those who violate the law and brings the law enforcement officials into closer and more effective cooperation.

If such a bureau is established, it should be organized under an executive responsible to the Governor of the State. It should be empowered to adopt and use the most complete and systematic methods of identification of criminals, including the Bertillon method, finger print system, modus operandi system, or such other system or systems as it might adopt from time to time. At this bureau should be filed records containing information concerning persons confined in the state penal institutions; persons who have been, or who may hereafter be, convicted within the state for felony or attempted felony, or for the violation of any laws of the State of Illinois; all persons in prison for the violation of any military, naval, or criminal laws of the United States of America, and all well-known and habitual criminals, whenever procurable.

Sheriffs, chiefs of police, and police officers in authority in incorporated villages or towns should be required to furnish the bureau daily copies of finger and thumb prints on standardized cards, and photographs when deemed essential, and comprehensive descriptions of all persons arrested who, in the best judgment of such officers, might be wanted for serious crimes or who might be fugitives from justice, or in whose possession might be found property reasonably believed by such officers to have been stolen by them, or who might possess burglar's tools, burglar's keys, or explosives reasonably believed to be used for unlawful purposes. They should in like manner furnish such information for those persons arrested who, at the time of arrest, have in their possession concealed firearms or other deadly weapons, or paraphernalia used in the counterfeiting of money or bank notes. These provisions should not apply to persons arrested for the violation of city or county ordinances or other trivial offenses.

8. Recommendations. The Illinois Association for Criminal Justice believes (1) that for the proper control of crime and criminals a fundamental need exists for continuing accumulation of state-wide criminal statistical data; (2) that eventually there should be established by legislative act a state bureau of criminal statistics and identification, which should be empowered to standardize all records having to do with criminal law enforcement and to collect, compile, and periodically publish all data concerning the volume of crime, the criminal, and the administration of justice; (3) pending the establishment of such a bureau, the Illinois Association for Criminal Justice and the Chicago Crime Commission, in collaboration with sheriffs, chiefs of police, state highway police, circuit clerks, state's attorneys, the attorney general, judges of the municipal, county, city, circuit, appellate and supreme courts, and the Department of Public Welfare, should devise ways and means for the collection, compilation, and distribution semi-annually of the data set forth above.

It likewise believes that any effort to prescribe by statute what record forms shall be used in each county would be unwise. It, therefore, recommends:

A meeting should be called to which should be invited the officers set forth above. At this meeting a representative committee or committees should be designated to consider and make recommendations for—

a. A uniform method and forms for the reporting of criminal complaints in each county.
b. A uniform method and forms for recording arrests made on such complaints, and all essential facts as to the offender so arrested.
c. A uniform method and forms for recording the facts as to the disposition of criminal prosecutions by—
   (1) Justices of the peace,
   (2) County courts,
   (3) Municipal Courts of Chicago,
   (4) City courts,
   (5) Circuit and Superior courts,
   (6) Appellate courts,
   (7) Supreme Court,
   (8) State's attorneys.
d. A uniform method and forms for recording the treatment of convicts confined in state institutions.
e. A method for collecting and compiling these data so recorded in a form suitable for distribution throughout the state semi-annually.
f. A system of state criminal identification.

PART II

SPECIFIC TYPES OF OFFENSES AND OFFENDERS

CHAPTER XIII

HOMICIDE (In Cook County)

By

ARTHUR V. LASHLY

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CHAPTER XIII

HOMICIDE (In Cook County)

1. *Introduction.* It seems altogether fitting that a survey of criminal justice in Illinois should devote some space to a separate study of Homicide in Cook County.

Murder in Chicago during the last few years has been a never failing source of news; moralists have deplored, speakers have ridiculed and scathingly condemned, humorists have indulged in their best jokes, and the "movie" scenario writers and producers have reaped a golden harvest all at the expense of the good name and reputation of the second city of America. Yielding place only to New York in population and conceded to be the fastest growing and one of the most progressive of the larger cities in America, Chicago is in bad standing before the country.

A canvass of the public utterances of prominent men throughout the nation and of press comment from one seaboard to the other discloses a unanimity of condemnation which, for bitterness and invective, has probably never before been equaled. One would expect denunciation no more harsh, nor criticism less tempered by reason and understanding, if Chicago were in a state of war with the balance of the country. Nor is it limited to this country. The bad name has traveled around the world. An analysis of the charges in the blanket indictment upon which this community has apparently been tried and convicted in the world forum of public opinion indicates that they are numerous and some are of long standing; but the principal complaint is its crime record, and more specifically its record of gang murders and bombings.

The bomb, as a gang weapon, has been used sporadically for years, but has only become really popular since the summer of 1927. As a means of intimidation it has no equal. It has been used effectively by extortionists, the so-called racketeers, who resort to all manner of force and violence to terrorize their victims into joining mushroom trade organizations and combinations of small business concerns. Liquor and gambling syndicates have used the bomb to warn competitors against territorial encroachments. Disappointed liquor, vice, and gambling racketeers, who had been receiving protection but had it withdrawn and given to others, have bombed the homes of those to whom they trace the double-cross. And in the primary campaign of 1928 in Cook County the bomb was used as a political weapon to intimidate voters and candidates for public office. A United States senator and a judge of the Circuit Court had their homes bombed and the lives of their families were endangered.

But no one was killed; nor has any recent bombing in this community resulted in the loss of life. While the bomb, so far, has proved more bark than bite, it has done much to confirm and aggravate the bad reputation of Chicago as a gang center and crime ridden community.

That reputation owes its origin, however, to gang murders. The weapons which have made Chicago infamous are the machine gun, the

pistol, and the sawed-off shotgun. These weapons leave death in their trail, and it is with human killing this report is concerned. These killings, of course, are a serious reflection upon the law enforcing agencies and no one will be heard to deny that they constitute a grave menace to the peace and dignity of the city and state. As advertised to the world, however, the citizens of Chicago going about their daily tasks and visitors coming to the city on business or pleasure are actually in danger, while upon the streets, of being killed by gangsters' bullets. Nothing could be more absurdly untrue. In the two years last passed only two innocent bystanders were killed in Cook County and neither was killed by gangsters. When gangsters kill, they kill each other. Occasionally a gangster kills a policeman, but more often policemen kill gangsters. The tables and maps in this report, showing the places where murders are committed, indicate that they are confined largely to certain small areas such as may be found in every large city—places to be avoided.

Gang killings, of course, are spectacular, mysterious, and dramatic; they possess all of the elements of intense human interest and therefore have great news value. Plays have been written and "movie" scenarios woven around Chicago's gangs, and there has been so much exploitation of these events that when a Chicago gunman's weapon "barks" its echo is heard around the world; while if the same weapon were discharged in any other city in the country it would hardly be heard around the block. It is a fact that there was a substantial reduction in gang killings during 1927. While such crimes have been reduced, there has been a slight increase in other murders, the details of which will presently be discussed.

It is also true that there have been no convictions in gang murders in Chicago during the period covered by this analysis—1926 and 1927. Such crimes, however, are seldom solved in any large city. The gang code of silence even to the grave, and the swift capital punishment inflicted by gangland itself upon informers, makes it difficult in the ordinary gang killing to get sufficient facts to identify the killer. Moreover, the public clamors but feebly for the punishment of a gang killer who has not only disposed of an actual or potential murderer, but has usually imposed upon himself the death penalty, which will sooner or later be executed by the friends of his victim. Thus the situation, in a way, adjusts itself. There is a sort of rough justice about the process that lulls into a state of indifference the average citizen who reads about it in the newspaper. While the failure to detect gang murderers and bring them to justice in Chicago and elsewhere is evidence of a lame and halting police administration, yet so long as the gangsters only kill each other the public is not likely to get very badly excited about it.

The report which follows was prepared with a view of presenting a detailed picture of homicide in Cook County, showing the places where persons are killed, the causes of death, the motives which led to the killing, the color and sex of victims, and of the killers, and the effectiveness of the authorities in solving cases of felonious homicide and punishing the offenders.

2. Agencies Dealing with Homicide.

Three agencies of government are brought prominently into operation in homicide cases; namely, the police and sheriff, the coroner, and the state's attorney. The sheriff, the coroner and the state's attorney are county officers.

It should be stated, perhaps, for the benefit of the reader who may be unfamiliar with the facts, that Chicago is a city in Cook County and that the county officials, including the coroner, have jurisdiction in the city as well as in the county outside of the city. The police of the city of Chicago, however, have no authority outside of the city, as the policing of the county area is left to the sheriff and his deputies, including the county highway police, and in the incorporated communities to their local police. The records of the Police Department of the City of Chicago, therefore, contain only those deaths which occurred within the city limits. The estimated population of Chicago for 1926 was 3,625,446, and in 1927, 3,771,473; while in Cook County, outside of Chicago, the population is estimated at approximately 500,000. The whole of Cook County is, in fact, very closely linked with the city and for our purposes it is difficult to separate homicides in the county from those committed in the city. Very often the person killed in the city will be taken into the county, where the body is found. This is undoubtedly true of gang killings. The figures in this report were made up by fixing the scene of the crime as the place where the body was found, although it is possible, of course, that some of the killings ascribed to the county actually occurred in the city.

(a) Police

Since by far the larger number of deaths in Cook County occur in the City of Chicago, it is pertinent to examine the methods of the police in this first step to investigate the causes of death. The police department employs a criminologist who is a physician and whose duty it is to accompany the homicide squad when the police are called to the scene of a murder. Briefly, the procedure is as follows:

When "homicide" is flashed through the police switchboard, it is relayed to the detective bureau, and the homicide squad, accompanied by the criminologist, is immediately dispatched to the scene. Measurements are made, the body examined, pictures taken, and, when possible, finger-prints are observed and examined. An effort is made to locate witnesses and wherever possible statements and affidavits are obtained. When, in the opinion of the captain or lieutenant in charge of the homicide squad, the assistance of the state's attorney's office is required, that office is notified and an assistant state's attorney is assigned to the case. This, however, is rarely done as the police officials take the position that they are better able to handle a witness in the average case than the assistant state's attorney. The task of gathering the evidence and rounding up the witnesses for the coroner's inquest is left entirely to the police.

In many cases the police will file a charge of murder or manslaughter in the municipal court against the person or persons indicated by their investigation as guilty of an offense, merely in order to hold the accused until the coroner's jury verdict is returned. As will hereafter appear, in many

such instances the person against whom the charge is filed is exonerated by the coroner's jury, whereupon it is the usual practice to dismiss the charge and drop the prosecution. In some cases, however, a prosecution is pressed notwithstanding the coroner's verdict. The homicide squad which first handles the case works on it while the evidence is fresh. It is more or less an emergency force working on the case while it is still hot, but if an arrest is not made at the time or shortly thereafter, it is considered an unsolved or uncleared case which is charged against the district in which the death occurs, and it then becomes the duty of the commanding officer of that district to continue the investigation. About three or four times a year a "chaser" is sent out from headquarters to every station that has uncleared homicide cases, which prepares a list of such cases together with a statement of what progress, if any, has been made, and a recommendation of what further action should be taken. This usually stirs up renewed action on the case and an officer is sent out to interview witnesses, the family of the deceased, etc., in an effort to solve the crime. Where an arrest is made the case is followed through the coroner's office, the municipal court, the grand jury, trial court, and to final disposition.

An individual file is kept by the police department, containing all statements, records, affidavits, reports, photographs, charts of the scene, exhibits, including firearms, bullets, and clothing, all of which are available to the state's attorney's office if there is a prosecution.

(b) The Coroner

The coroner is theoretically the least important of all of the agencies provided by law for dealing with homicide cases so far as the binding effect of his action is concerned, for his duties are largely perfunctory and the verdict of his jury merely advisory and limited to a determination of the causes of death.

Neither the police, the state's attorney, or the grand jury is bound by the findings of the coroner's jury and the verdict is not admissible as evidence in civil suits for the purpose of establishing personal liability or a defense to a suit where a death is charged, or for the purpose of establishing any other issue between private litigants. In practice, however, the coroner's verdicts are a very potent factor in the determination of many important questions. The medical examination by the medical deputies is often conclusive, as is shown by Chapter IX of this Survey relating to that subject. The jury invariably includes in the verdict not only the cause of death, but undertakes also to determine, in the first instance, the question of whether a crime was committed, the character of the crime and who committed it, if the killer is known, and will often order the release of persons in custody charged with the killing, on the ground that the killing was justifiable or that there was no evidence to hold the accused. This is an assumption of the prerogatives of the police and prosecutor which would not be nearly so significant were it not for the fact that the police and prosecutor in criminal cases are inclined to accept the coroner's verdict as final, not only with respect to the cause of death, but also as to whether due to felonious, accidental, or excusable homicide.

In 376 deaths in 1926 and 1927, charges of murder or manslaughter were

filed by the police against 401 persons who were released upon an exonerating verdict by the coroner's jury (Table 14); and of all cases of "justifiable homicide" according to the coroner's verdicts, only 59 were followed by a charge lodged by police against the exonerated persons. The psychological effect of a verdict of accident in an automobile death is sufficiently strong upon the uninitiated to induce settlements of civil damage suits, and on the other hand, a verdict of murder in a case of death by automobile—although no one was ever punished for murder in such a case—is sufficient to cause the driver to be held as for a serious charge, possibly without bail, or required to give heavy bail and to employ counsel.

The tendency of coroner's juries, controlled as many of them are by the politically appointed deputies, to include in their verdicts findings which are foreign to the fundamental function of that body has not escaped the attention of the press and public of Chicago, as is evidenced by numerous complaints of the administration of the coroner's office, running through the record of local current events during recent years. One of the judges of the municipal court recently made this statement from the bench in commenting on a verdict of exoneration:

> "The coroner's office has no right to pass upon the merits of a murder case. A coroner's jury sits only as a court of inquiry to decide the cause of death. If the coroner's jury would confine themselves to their legal powers there would be more effective prosecution in these murder cases."

As soon as a body is discovered, the coroner's duties are prescribed in the statute as follows:

> "As soon as he knows, or is informed, that the dead body of any person is found, or lying within his county, supposed to have come to his or her death by violence, casualty, or any undue means, he shall repair to the place where the dead body is and take charge of the same and forthwith summon a jury of six good and lawful men of the neighborhood where the body is found or lying to assemble at the place where the body is, at such time as he shall direct, and upon view of the body to inquire into the cause and manner of the death."[1]

The practice is to remove the body to a local undertaker's rooms and hold the inquest there. In most cases of felonious homicide more than one hearing is held. These hearings are conducted by deputy coroners. The juries are selected by the deputy coroners. The statutory provision requiring "six good and lawful men of the neighborhood" is construed in practice as such men as the deputy coroners may select, so long as they reside in Cook County. The jurors are paid one dollar each per hearing. The average jury in Cook County is made up of men who seek the service for the money there is in it. Two hearings a day are the average for any one juror, although some jurors have served on as many as 12 inquests in one day. What actually happens in practice is that the deputy coroner selects some members of each jury from political hangers-on, who attach themselves to the particular deputy to whom they owe their appointments and go about

[1] Chap. 31, Sec. 10, Smith-Hurd Revised Statutes, 1927.

with him from one hearing to another, so long as they are in his favor. Frequently, as many as five hearings are held of one inquest, the proceedings being adjourned from time to time.

In the month of January, 1928, thirteen deputy coroners were conducting inquests; 447 inquests were held; and 918 jurors were used, 168 of whom served at more than one inquest. One hundred served from 2 to 9 times; 14 served from 10 to 19 times; 26 served from 20 to 29 times; 22 served from 30 to 39 times; 5 served from 40 to 49 times; and 1 served from 60 to 69 times. The statute authorizes the coroner to use substitute jurors after the hearings have commenced, not to exceed three in each case, where the jurors first selected die, move from the state, or for other sufficient reasons. The records show an extensive substitution of jurors. Frequently not one juror will remain sitting throughout all of the hearings in one inquest. In one case, selected at random from the records of the coroner's office, 6 men served at 4 hearings, and 6 other men served at 1 hearing. In another case, 1 juror sat at 5 hearings; 4 sat at 4 hearings; 1, at 3 hearings; 1, at 2 hearings and 4, at 1 hearing. In another, 3 jurors sat at 2 hearings and 6 jurors sat at 1 hearing.

Every time a new juror comes into a case it is necessary for the reporter-stenographer to read from his notes the evidence adduced at previous hearings. The reporter is paid fifty cents a page for his transcripts, which he transcribes from his notes on each hearing. Some of the transcripts show that some of the testimony thus read to the subsequent jurors was repeated in the transcript, obviously for the purpose of increasing the reporter's compensation.

The use of regulars, or "Fridays" as they are termed, as jurors, may save the time of citizens in the various communities where inquests are held, most of whom would serve at considerable loss, yet the practice cannot fail to result in verdicts of deputy coroners rather than verdicts of juries. These deputies are all political appointees, there being no civil service regulations. The coroner, being elected, is necessarily in politics, and it is inevitable that his appointees should be selected for political considerations rather than fitness for the office.

(c) The State's Attorney

The police are on hand at every inquest, and in fact, the whole burden of assembling the evidence and presenting it is upon them. The state's attorney's office, in the average run of cases, has no representative at the inquest. Occasionally, in a case of great public interest, an assistant state's attorney is present. Such occasions are rare. It is submitted that this is most unfortunate for the state. The adverse interest is practically always represented, and although the deputy coroner does most of the questioning and the proceedings are informal, and cross-examination of witnesses is not permitted, counsel for the accused is allowed, upon request, to question witnesses, and it often occurs that by artful leading questions a witness is put on record about the facts in a murder case in a light he never intended. When later at the trial in the criminal court he is confronted with the cold record of his answers to these questions at the coroner's inquest, the witness may be so effectively impeached, however unjustly, as to seriously impair

the prosecution. If the state's attorney were present these very common occurrences might be wholly avoided. Indeed, it is hard to square efficient administration of prosecution in homicide cases with the practice of ignoring the inquest.

The inquest is the first hearing had wherein the facts of the killing are recorded. The hearing is usually held the next day after the body is discovered and the facts are still fresh in the minds of the witnesses. To the testimony elicited at this hearing should be applied the legal knowledge of the prosecutor in determining whether a prosecution should be started, regardless of the coroner's verdict. To this failure of the prosecutor to be on hand at this tremendously important initial step in homicide cases may well be ascribed the amazing discrepancy between the number of homicides committed and the number of persons punished therefor.

3. Sources of Data of Homicide. For the ensuing analysis of homicides in Cook County, including the city of Chicago, for the years 1926 and 1927, the records in the office of the coroner of Cook County were examined to obtain these facts relating to the death of the deceased and the causes thereof. But the investigation did not stop there. The records of the police, state's attorney, and the courts were examined in each case of death to determine the cases in which prosecutions had been started. The unsolved cases were developed by this process. Where it was found that a charge had been filed or the facts presented to the grand jury, the investigation continued until each case had been disposed of. If the prosecution resulted in conviction and punishment, the nature thereof is shown. Cases which were disposed of before punishment were noted and the method of disposition recorded.

The period covered by the analysis (1926 and 1927) was selected for the purpose of drawing whatever comparisons might appear significant between the homicide record for each of the two years. In May, 1927, the municipal administration of the City of Chicago was changed and some rather drastic changes in policies were made, both with respect to police, which are municipally controlled, and also the crime policy of the administration, which it was thought might be reflected in the homicide figures. The same prosecuting officials and, with a few exceptions, the judges of the courts and other court officials were the same during both years. As it turned out, there were exactly the same numbers of murders in 1927 as in 1926. These figures are at variance with those heretofore published, official and unofficial, based on coroner and police records, but this is explained in part by the fact that the record upon which this report is based is taken as of the date the death occurred and is for the calendar years, whereas the coroner's records are for the fiscal year from December, to December, and tabulated as of the date of the coroner's verdict. Thus the coroner's reports contain cases in the 1926 record where the death occurred in 1925 and omitted from the 1927 record deaths which actually occurred in 1927 but the verdicts were not returned until 1928. An example of how the coroner's method of recording homicides may lead to erroneous results is the killing of Assistant State's Attorney William H. McSwiggin, and two companions, by gangsters in April, 1926. These were probably the most notorious murders in the

history of Cook County, but they were not included in the coroner's tabulation and report of murders of 1926, for the reason that the coroner's jury has never returned a verdict in those cases.

It is a matter of common knowledge that no reliable data can be obtained on the general run of the volume of felony crimes committed. Many such crimes are never reported to the police and no one except the victim and the criminal ever learns anything about them. Other such crimes are reported to the police and are suppressed or reported as crimes of lesser degree than were actually committed. This is not possible, however, in homicide cases. In every such case there is a body or what remains of it, and sooner or later it is discovered. It is next to impossible to completely destroy every part of a human body. In 1898[1] a man killed his wife in the city of Chicago and so completely dissolved her body in a sausage vat that there remained only a small sesamoid bone, which, together with two rings identified as having been worn by the victim, provided the basis for a successful criminal prosecution, which landed the criminal in the penitentiary. Instances wherein the murderer is able so completely to get rid of the chief bit of evidence against him are, however, rare.

4. *What Is Homicide?*

Before attempting a discussion of the various classes of homicides as fixed by the verdicts of coroner's juries, it may be well to point out some of the possible misconceptions concerning the meaning of the term "homicide."

In its broadest sense, "homicide" is defined in law as the killing of one person by another, but is popularly and erroneously understood to be limited to murder, and murder in turn is immediately associated in the mind of the average person with machine guns, sawed-off shotguns, pistol fights, pay roll robbery holdups and gang warfare. This is especially true of killings in Chicago. Homicide may perhaps best be described as the destruction of the life of one human being by the act, procurement, or culpable omission of another. It is either justifiable or excusable and, therefore, lawful; or it is felonious homicide, as in cases of murder and manslaughter. We are not concerned in this report with "excusable homicide" or, as it is sometimes termed, "homicide by misadventure," as that classification includes all forms of accidental killings, upon many of which coroner's inquests are held, but no crimes are involved.

5. *Homicides, 1926, 1927, Classified by Grades of Criminality.*

The lieutenant of police in charge of the record bureau makes his own classification of each case of homicide in Chicago and determines the motive, independently of the coroner's office and other agencies. If, however, from the facts and circumstances a case appears to be murder and is so classified by the chief of this department, and the trial in the criminal court results in a verdict of "not guilty," the case is taken out of the murder class and placed in the class of justifiable homicides. A comparison of the police classifications of homicide cases with those in the office of the coroner of Cook County discloses some marked differences. Inasmuch as the classification in the office of the coroner is for the whole unit of Cook County, including Chicago, and appears to be

[1] *People* v. *Luetgert*, not reported.

less affected by outside considerations than the police classification, we have taken the coroner's classifications as the basis for this study.

There are five general classes of homicides according to coroner's verdicts, which are considered in this report. They are "murder," "manslaughter," "undetermined abortion," "undetermined violence," and "justifiable homicide." We have further divided these classifications into two additional classes; namely, "automobile manslaughter" and "police killings." The following table is based upon that classification:

TABLE 1. HOMICIDES, 1926, 1927, CLASSIFIED BY GRADES OF CRIMINALITY

	1926	1927	Total
Murders	380	380	760
Manslaughters	44	18	62
Auto manslaughters	127	123	250
Undetermined abortions	28	30	58
Undetermined violence	56	29	85
Justifiable homicides	61	73	134
Killed by police	43	46	89
Total	739	699	1,438

Ordinarily, "undetermined abortion," "undetermined violence," and "justifiable homicide" (including police killings) would not be included in a discussion of the homicide record, but were included in this study for the following reasons:

"Justifiable homicides," as in cases of self-defense, are included for the reason that such killings are prima facie unlawful and require a finding by some constituted agency of the justification which purges the act of its unlawful character. In many instances, however, there are differences of opinion as to what constitutes justification, and a verdict of justifiable homicide by the coroner's jury is sometimes nullified by the police or grand jury, who file charges against the killer notwithstanding the coroner's verdict, in which event the killing may be found to have been murder or manslaughter.

"Police killings" in the line of duty are shown separately from the class of justifiable homicides to emphasize the difference in the characteristics of each, although the coroner's juries have found all killings by police in Chicago and Cook County, during the period of this study, to be justified, and these verdicts have been taken as final. There have been no prosecutions in such cases.

The classes of "undetermined abortions" and "undetermined violence" would not ordinarily be included in this report, but it was found that in some of these cases prosecutions were started notwithstanding the verdict of the coroner. The verdict of "undetermined abortion" is rendered in cases where the facts show that an abortion has been committed, but it could not be determined by the jury whether by the deceased herself or by instruments in the hands of another. The class "undetermined violence" includes cases where the evidence showed that the body of the deceased bore marks of violence but the jury was unable to determine from the evidence whether the wounds were inflicted by another or were received as the result of an accident, as by a fall. The verdicts in each of these classes are in effect open verdicts

as to the cause of death, but are, nevertheless, expressive of suspected foul play and leave the way open for further detective work.

Deaths by automobile, found by the coroner's verdict to be due to manslaughter, have been separated from the other manslaughter cases for the reason all such cases are due to culpable negligence and there is a very fine line of distinction between an accident and a crime in such cases. Such deaths are usually excluded altogether from consideration in homicide statistics. The record shows that there came before the coroner's juries in 1926 a total of 889 cases of death by automobile, of which 598 were found to be accidental deaths, 144 open verdicts, and the remainder were classified as murder or manslaughter. In 1927 the coroner's juries considered a total of 987 such cases, of which 746 were found to be accidental deaths, 92 were open verdicts, and the remainder either murder or manslaughter. Coroner's verdicts of murder in automobile killings were found in 22 cases in 1926 and 27 cases in 1927.

6. *Homicides Classified by Modes of Killing.*

The homicide record is made up of all manner of causes of death. The following Table 2 was prepared with a view of showing the relative frequency of the different methods of killing persons in this community, not only in murder cases but in other classes of homicides as well.

The most outstanding fact shown by Table 2 is the heavy proportion of deaths by shooting in all classes of homicides. In murder cases, other than automobile, infanticide, and abortion, which classes are separately considered, 73 per cent in 1927, and 77.31 per cent in 1926 were gun murders. These percentages were substantially affected by gang killings, all but a few of which were by shooting. Twenty-four per cent of gun murders in 1927, and 30.6 per cent in 1926 are classified as gang killings. Included in the figures in the above table are deaths by abortion, infanticides, drowning, asphyxiation, poisoning, etc. All such deaths have gone into the previously published murder records for Cook County, to swell the enormous total, without any explanation; but it is obvious that a distinction should be made between deaths by shooting, stabbing, and other forms of violence, and deaths due to abortion, infanticide, other non-violent means, and by automobile through culpable negligence.

7. *Murder by Automobile.*

It will be noted in Table 2 that the coroner's jury found verdicts of murder in 22 automobile killings in 1926, and 27 in 1927. There is a serious question whether any vehicular death should be rated murder. Certainly there has never been a successful prosecution for murder in such a case in this county. It would be necessary to show that the driver had a clear view of the deceased and did actually see him, but nevertheless deliberately ran him down with the intention of killing him, and this state of facts seldom exists in such cases.

Examination of the transcripts of testimony taken before the coroner's juries in these cases discloses that in each instance the driver was unknown and failed to stop, and this is likely the reason for the finding by the jury that a murder had been committed. It will be noted, however, that in the year 1926 the coroner's juries in automobile deaths returned verdicts of manslaughter in 127 cases and in 1927 in 123 such cases. The transcripts

TABLE 2

HOMICIDES 1926, 1927, CLASSIFIED BY MODES OF KILLING

	Shot		Cut or Stabbed		Struck by Blunt Instrument		Poisoned		Asphyxiated		Burned		Drowned		Beaten in Fight		Infanticide		Abortion		Fall		Automobile		Strangulation		Skull Fracture		Beaten and Kicked		Blow and Violence Undetermined Means		Miscellaneous		Total		Grand Total
Year	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26	27	26 & 27
Murder	242	235	45	52	17	18	3	3		3		1		2	4	2	29	19	16	12	1	1	22	27	1	2				1				2	380	380	760
Manslaughter	7	5	9	6	2	1									9	5				1											17		44	18	62
Auto Manslaughter																							127	123									127	123	250
Undetermined Abortion																			28	30													28	30	58
Undetermined Violence	2	3								1											2	5			1	1	28	10			21	9	2		56	29	85
Justifiable Homicide	46	58	9	13	3										3	2																	61	73	134
Killed by Police	43	46																															43	46	89
TOTALS	340	347	63	71	22	19	3	3	0	4	0	1	0	2	16	9	29	19	44	43	3	6	149	150	2	3	28	10	0	1	21	9	19	2	739	699	1438

in 39 of these cases in 1926, and 60 in 1927, also indicate that the driver was unknown and failed to stop, and it is difficult to find any good reason why in some cases there was a verdict of murder and in others a verdict of manslaughter. A reasonable and fair consideration of these cases justifies the conclusion that they were all in the culpable negligence class and should, therefore, be rated manslaughter and in no such case should a verdict of murder have been returned by the coroner's jury.

8. Infanticide. Infanticide cases are also to be distinguished from murder by violence because of the peculiar circumstances of such cases. The English classification of this offense is limited to the killing of a new-born child by its mother before she has fully recovered from the effects of childbirth, and infants aged one year and under, killed under circumstances which would not bring it within the above definition of infanticide according to the Infanticide Act of 1922, are included in the record of "murders." An examination of the testimony before the coroner's juries in Cook County in all of these cases shows the child to have been newly born. In most instances the bodies were found outside of a building, usually in an ash pit, garbage can, upon a railroad track, and at other places in the streets and alleys, although two were found in department stores and one in an elevated train. This precludes the probability of guilt of the mother. Death was caused in some cases by neglect and in others by some act of violence, such as strangulation or a blow upon the head. There were no colored children in this class.

9. Abortion. Deaths by abortion, also by reason of the peculiar circumstances of every case, are usually distinguished from other unlawful deaths, and properly so. The element of voluntary submission to the operation by the deceased is involved in every case and some of the sting of criminality is thereby removed from the act; moreover, the practice appears to be so wide-spread among certain classes of persons who desire to be relieved of the physical suffering and the responsibilities of childbirth, that it is difficult to attach the same degree of culpability to the act of abortion that is associated with the act of shooting or stabbing another. A notable instance to the contrary, however, is found in the recent trial and conviction for murder by abortion of a prominent physician in the city of Chicago. The jury assessed the death penalty. This is the first case of its kind on record in Cook County. There was evidence of peculiarly aggravating circumstances, which no doubt influenced the verdict of the jury. The Supreme Court reversed the jury's verdict and the defendant was given a new trial which resulted in a conviction for manslaughter and a sentence of 1 to 14 years in the penitentiary.

10. Undetermined Violence. That class of deaths included in Table 2 under the head of undetermined violence—56 in 1926, and 29 in 1927—were caused, it will be noted, mainly by skull fracture and other forms of blows upon the head or body. An examination of the transcripts of the testimony before the coroner's juries in these cases indicates quite plainly in each of them that the coroner's jury was

TABLE 3

HOMICIDES CLASSIFIED AS TO COLOR AND SEX OF VICTIMS

(1926 and 1927)

	MALES						FEMALES						TOTALS				TOTAL		GRAND TOTAL
	White		Colored		Indian and Chinese		White		Colored		Indian and Chinese		Males		Females		Both Sexes		1926 and 1927
	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	
Murder	217	214	84	84		6	58	53	21	23			301	304	79	76	380	380	760
Manslaughter	20	10	14	5			6	2	4	1			34	15	10	3	44	18	62
Auto Manslaughter	74	91	12	9			35	22	6	1			86	100	41	23	127	123	250
Undetermined Abortion							24	25	4	5					28	30	28	30	58
Undetermined Violence	43	22	7	5			5	1	1	1			50	27	6	2	56	29	85
Justifiable Homicides	34	28	27	39		1		2		3			61	68		5	61	73	134
Killed by Police	30	32	13	14									43	46			43	46	89
TOTALS	418	397	157	156	0	7	128	105	36	34	0	0	575	560	164	139	739	699	1,438

amply justified in raising the inference that death was due to foul play and thereby putting the cases in the class of those which should be further investigated with the view of detecting the guilty person. It will later be noted in connection with the discussion of judicial administration in homicide cases that prosecutions were started in some cases where the coroner's juries returned verdicts of undetermined violence, but there were no successful prosecutions. About the only comment that can be made upon these deaths is that no one was punished therefor.

11. Justifiable Homicides. In the class of justifiable homicides, 90 per cent of such deaths in 1926, and over 97 per cent in 1927, were by either shooting or stabbing, a very heavy percentage being gun deaths. An examination of the transcripts of the evidence before the coroner's juries shows that most of these cases were due to fights, and the deceased being the aggressor, the jury exonerated the killer on the ground of self-defense.

12. Killed by Police. There were 43 persons shot by the police in 1926 and 46 in 1927. In the majority of these cases the testimony in the coroner's inquests indicated that the policemen were fully justified in killing the deceased. The large majority were killed while in the act of committing crime. Some notorious gangsters are in the list. In others it would seem that the police were hasty and there might be some doubt as to the justification, but in every such instance the coroner's jury returned a verdict of justifiable homicide and no prosecutions resulted. From this we may conclude that the police of the City of Chicago incur no hazard by shooting to kill within their discretion.

13. Homicides Classified as to Color and Sex of Victims. Table 3 was prepared with a view to classifying homicides as to color and sex of victims.

14. Colored Victims. In considering the relative number of colored and white persons killed, it should be borne in mind that the colored population is approximately five per cent of the total population in Chicago and Cook County. The percentage of colored victims, however, is relatively much greater. The following table of percentages of colored victims in all classes of homicides, related to the total number of persons killed in 1926 and 1927, is compiled from Table 3.

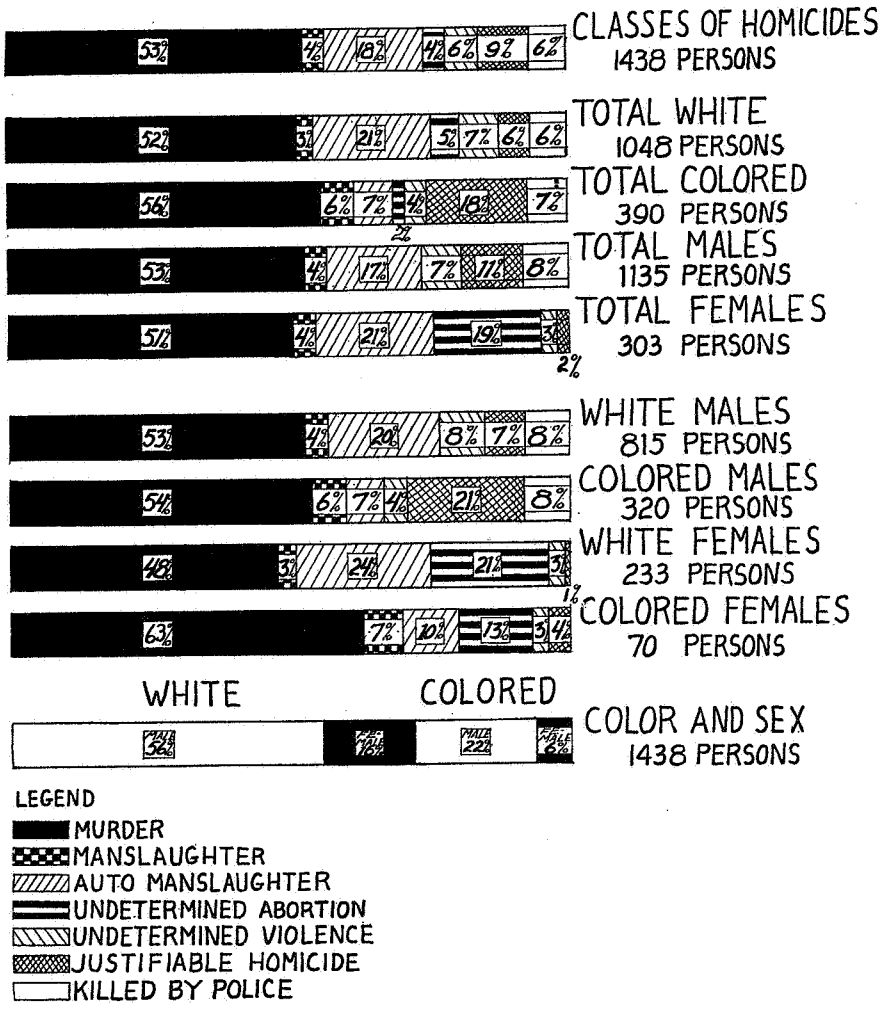
TABLE 4. PERCENTAGES OF COLORED VICTIMS TO TOTAL NUMBER KILLED

	1926 Per Cent	1927 Per Cent
Murder	27.63	28.16
Manslaughter	40.91	33.33
Automobile manslaughter	14.17	8.13
Undetermined abortion	14.29	16.67
Undetermined violence	14.29	20.69
Justifiable homicide	44.26	57.53
Police killings	30.23	30.43

The following chart, Table 5, is designed to present in graphic form the facts disclosed by the foregoing table.

TABLE 5. CHART COMPARING VICTIMS AS TO COLOR AND SEX

HOMICIDES CLASSIFIED, 1926-1927



In explanation of this chart, attention is called to the fact that a total of 1,438 cases of homicide for the years 1926 and 1927 are considered with reference to a classification of the various degrees or kinds of homicide related to white and colored male and female victims. Fifty-six per cent of all persons killed during that period were white males; 16 per cent white females; 22 per cent colored males; and 6 per cent colored females. Of this number 53 per cent were classified as murder; 4 per cent manslaughter; 18 per cent automobile manslaughter; 4 per cent undetermined abortion; 6 per cent undetermined violence; 9 per cent justifiable homicide; and 6 per cent killed by police. The remaining parts of the chart are the detail of the total number of cases, divided between the various classes of persons, and require no further explanation.

15. Modes of Killing as Related to Color and Sex. The following chart, Table 6, more graphically portrays the relation of modes of killing to distribution between colored and white males and females in murder cases in 1926 and 1927.

Exactly the same percentage of the total colored males and colored females murdered were shot, and the same is approximately true of deaths by stabbing, being 27 per cent in the case of colored males and 25 per cent in the case of colored females. This is contrasted with 71 per cent deaths by shooting of white males, which is due to the large number of gang killings of white men. As between white and colored, this chart indicates practically the same percentage of gun deaths, the predominating feature of the comparison being that 89 per cent of all deaths of colored persons were accomplished by either shooting or stabbing. Of the total number of murders in 1926, 63.68 per cent were shot and 11.84 per cent cut or stabbed, as against 61.84 per cent shot in 1927 and 13.68 per cent stabbed.[1]

16. Motives. The classification of murders as to the motive which led to the killing has been attempted on the basis of the facts elicited at the coroner's inquests and from an examination of the

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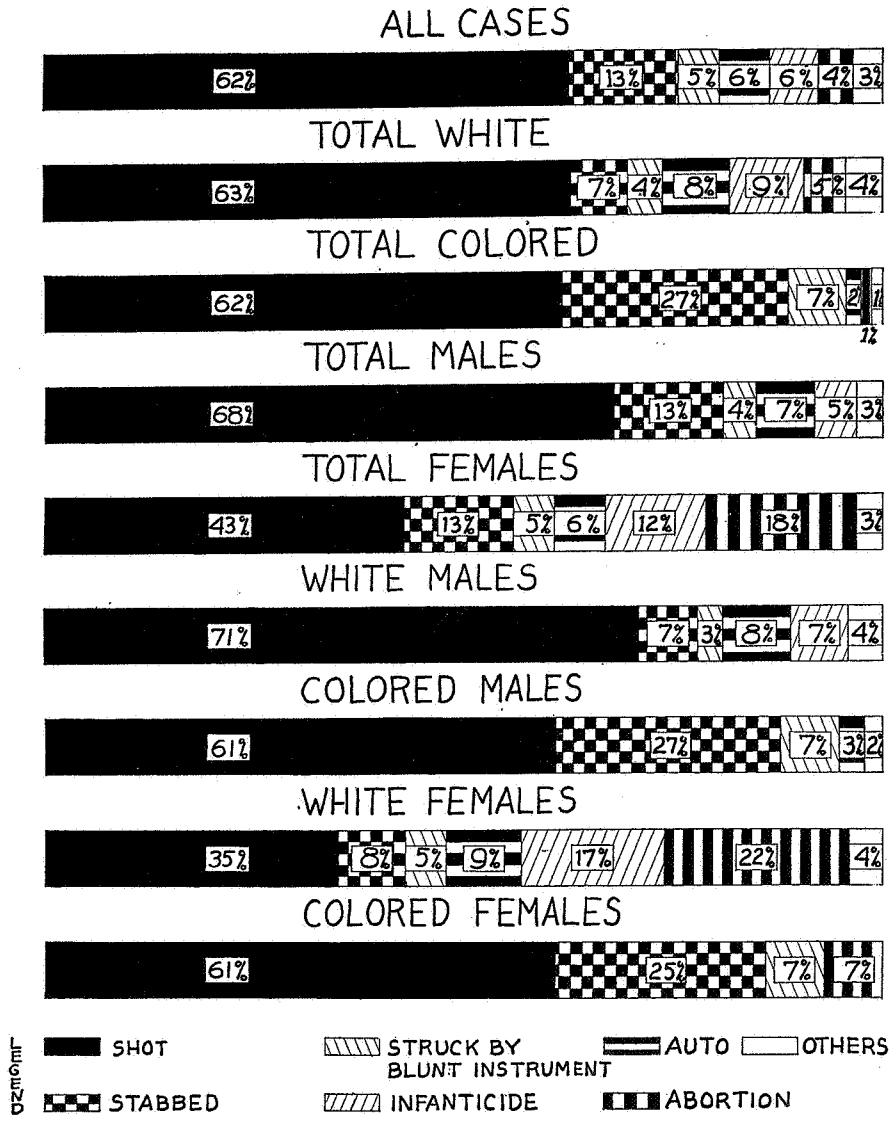
[1] *Carrying Concealed Firearms.* In connection with the heavy proportion of deaths by shooting in all classes of homicide, it is deemed appropriate to direct attention to the practice of carrying concealed weapons in Chicago.

This offense is a misdemeanor, except in cases of ex-convicts who have within five years prior to the act of carrying concealed firearms been convicted of certain crimes of violence, in which cases it is a felony. Only nine prosecutions for felony were started in Chicago in 1926, the period covered by the survey; however, during the same year, 1,358 prosecutions were started in the municipal court for misdemeanors and 1,710 in 1927. If an increase in the number of such misdemeanor crimes is any indication of increase in the volume of such crimes, the record shows an increase of 47 per cent from 1924 to 1927.

There is much leniency shown in prosecutions in the municipal court of these cases. Some of the judges of such courts have been releasing persons charged with carrying concealed firearms where the testimony showed that the weapons were in the automobile driven by the defendant, and in other cases where it is shown that the concealed weapons were discovered on the defendant after arrest and search, the defendant has been released on the ground that his constitutional immunity from illegal search and seizure was violated. The practice of carrying concealed firearms is prevalent in Chicago and there is undoubtedly a direct connection between this situation and the large percentage of felonious homicidal deaths by shooting.

TABLE 6. CHART OF MODES OF KILLING AS RELATED TO COLOR AND SEX

CAUSES OF DEATH IN MURDER, 1926-1927



records in the homicide bureau of the Chicago police department. The result is shown in Table 7 for both years:

TABLE 7. MURDERS, 1926 AND 1927, CLASSIFIED BY MOTIVES

	1926	1927
Gang killings	74	56
Italians	39	35
American	19	8
Colored	2	—
Chinese	—	3
Others	14	10
	74	56
Abortions	16	12
Infanticides	29	18
Automobiles	22	27
Jealousy	31	23
Domestic (husband or wife)	32	23
Husbands killed	9	4
Wives killed	23	19
	32	23
Revenge	14	23
Police officers, deputy sheriffs, watchmen killed on duty	11	9
Unknown motive	13	30
Girl thrown from automobile	1	—
Victims of moron	1	2
Killed by insane persons	6	5
Killed by father, not insane	—	1
Killed by mother, not insane	—	3
Killed for insurance	2	—
Victim of rape	1	1
Innocent bystander killed	—	2
Victims of hold-ups	37	34
Altercations and brawls	90	111
Total	380	380

17. Gang Murders. Some explanation of the manner in which these classifications by motive were made is probably in order, for there is always room for differences of opinion, especially as to what constitutes a "gang murder."

The figures in the foregoing table showing "gang killings" include every death which, from the facts and circumstances shown by the evidence at the coroner's inquest and by memoranda in the police department, clearly pointed to the murder as having been committed by some member of a band of organized criminals and in accordance with gang methods of disposing of their enemies. Thus a few were listed as the victims of a so-called labor war, three were Chinese killed in a flare-up of a Tong war according to the police theory, and the others (by far the largest group) were members of the forces of rival liquor and gambling syndicates. The police classification is considerably at variance with these figures. Figures given out by the police of Chicago for 1926 reported 24 "gang war" victims, 2 "blackhand," and 6 "labor war" murders, a total of 32 during that year, whereas our

investigation discloses 45 such killings in the same area. In 1927 the police report shows "gang war" 6, "Tong war" 3, "blackhand" 1, and "labor war" 5, a total of 15. Our classification places responsibility for 37 murders in the city of Chicago for that year upon members of gangs.

The gang murder is usually attended by identifying characteristics: the victim is shot, the body is riddled with bullets or shotgun slugs, and is sometimes found in an isolated spot. Some of these murders, however, have been committed in broad daylight in public places, witnessed by numerous people, and the identity of the victims as members or employees of liquor or gambling syndicates, coupled with the surrounding circumstances indicating that they had been lured to the spot where they were killed, serves to definitely establish the motive. The "blackhand" classification adopted by the police, as distinguished from gang murders, would seem to be erroneous. While blackhand methods have been employed by rival gangs, the real motive behind all such killings is definitely known to be liquor and gambling gang wars (see Chapters XVI and later, of this Survey).

The division of gang and non-gang murders in the city and the county for 1926 and 1927 is shown as—

	1926	1927
Gang Murders:		
City	45	37
County	29	19
Non-Gang Murders:		
City	283	296
County	23	28
Total	380	380

There are several facts to be noted in connection with Table 7. Probably the most outstanding one is that gang killings were reduced in 1927 nearly 25 per cent from 1926, while the increase in other types of murder was six per cent in 1927 over 1926. In connection with the reduction of gang murders in 1927, however, it should be stated that of the 23 murders in 1927 laid to the motive of revenge, and 30 in the same year classified as motive unknown, there were in all likelihood some killings which, if the facts were known, would put them in the class of gang murders. The fact that more Italians than all other nationalities combined were killed in gang murders will occasion little surprise. The members of that race more than of any other, appear to be more active in the liquor and gambling gang wars.

18. Other Motives—(a) Murders by Abortion. The detail of murder by abortion—16 cases in 1926 and 12 cases in 1927—appears from the following table to be:

	1926	1927
By midwife	9	5
By physician	7	7
	16	12
Married:		
White	11	7
Colored	1	1
Single:		
White	3	4
Colored	1	—
	16	12

These figures show a marked predominance in white married females, doubtless representing that very small proportion of a large number of very common instances in which resort is had to this dangerous expedient.

(b) Murderers Killed on Spot.

One white murderer and two colored, in 1926, and three white and two colored, in 1927, were killed on the spot by citizens who witnessed the murder.

(c) Murderers Suicides.

Murderers who were suicides were:

	1926	1927
White	10	15
Colored	—	5
Chinese	—	1
	10	21

(d) Domestic Quarrels.

So much is made of killings of husbands by their wives, in the columns of the daily press, that the fact as shown in Table 7, that there were more than four times as many wives killed by husbands in 1927 as there were husbands killed by wives, is rather interesting, and the record is very little different for the previous year.

(e) Altercations and Brawls.

Another item of interest in Table 7 is the large increase in deaths due to altercations and brawls. Intoxication was the moving cause in practically every one of these cases. Liquor was easier to get in 1927 than in 1926 and this is one of the results of that condition.

19. *Murder—Distribution by Months.*

The seasonal fluctuations and distribution of murders classified as to gang and non-gang murders for the period of this investigation is shown by the following Table 8:

TABLE 8. MURDERS CLASSIFIED BY MONTHS, 1926-1927

	Gang killings		Non-gang Killings		Total Gang	Total Non-gang	Total Killings		Grand
	1926	1927	1926	1927	Killings	Killings	1926	1927	Total
January	6	2	28	27	8	55	34	29	63
February	5	2	21	32	7	53	26	34	60
March	9	8	21	28	17	49	30	36	66
April	12	3	27	29	15	56	39	32	71
May	2	6	24	14	8	38	26	20	46
June	5	9	20	29	14	49	25	38	63
July	8	10	21	22	18	43	29	32	61
August	9	3	27	13	12	40	36	16	52
September	3	2	18	29	5	47	21	31	52
October	4	2	41	39	6	80	45	41	86
November	5	4	21	22	9	43	26	26	52
December	6	5	37	40	11	77	43	45	88
Total	74	56	306	324	130	630	380	380	760

Aside from the decrease of gang murders in 1927, mentioned above, the significant facts of the above distribution of murders by months, it may

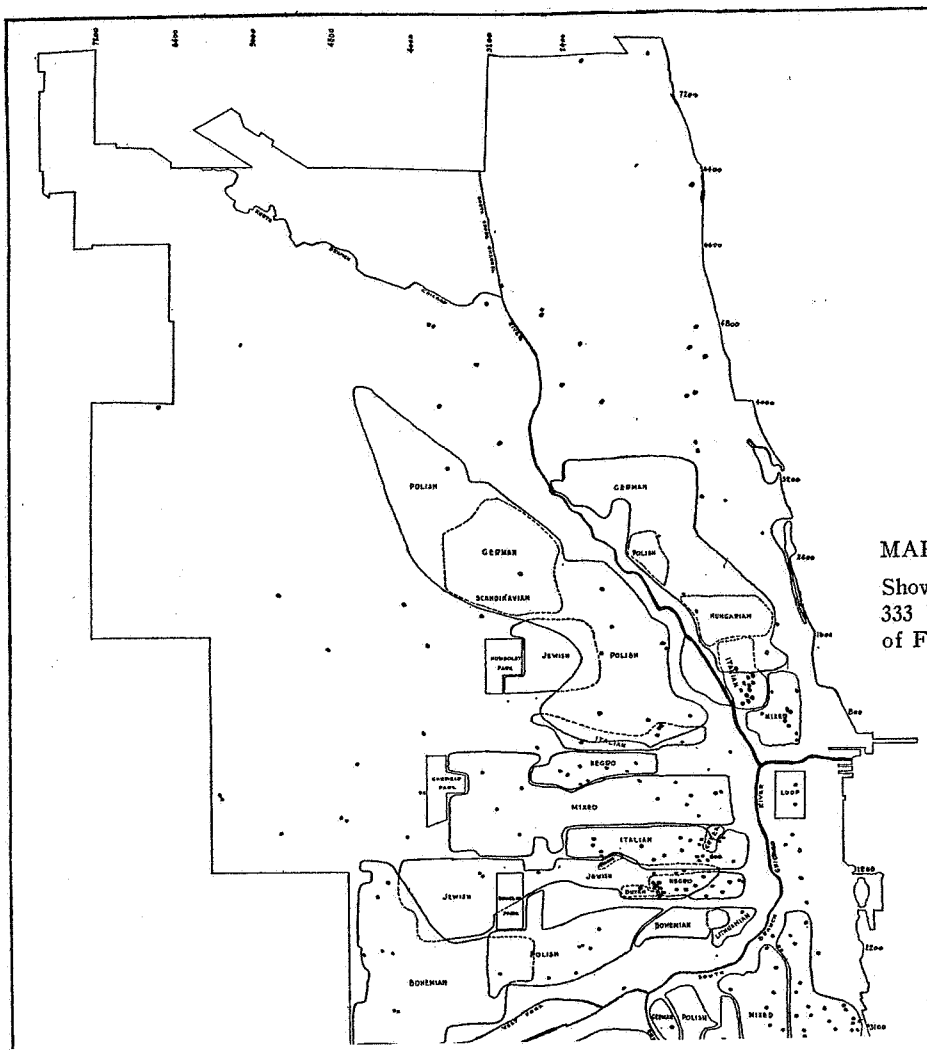
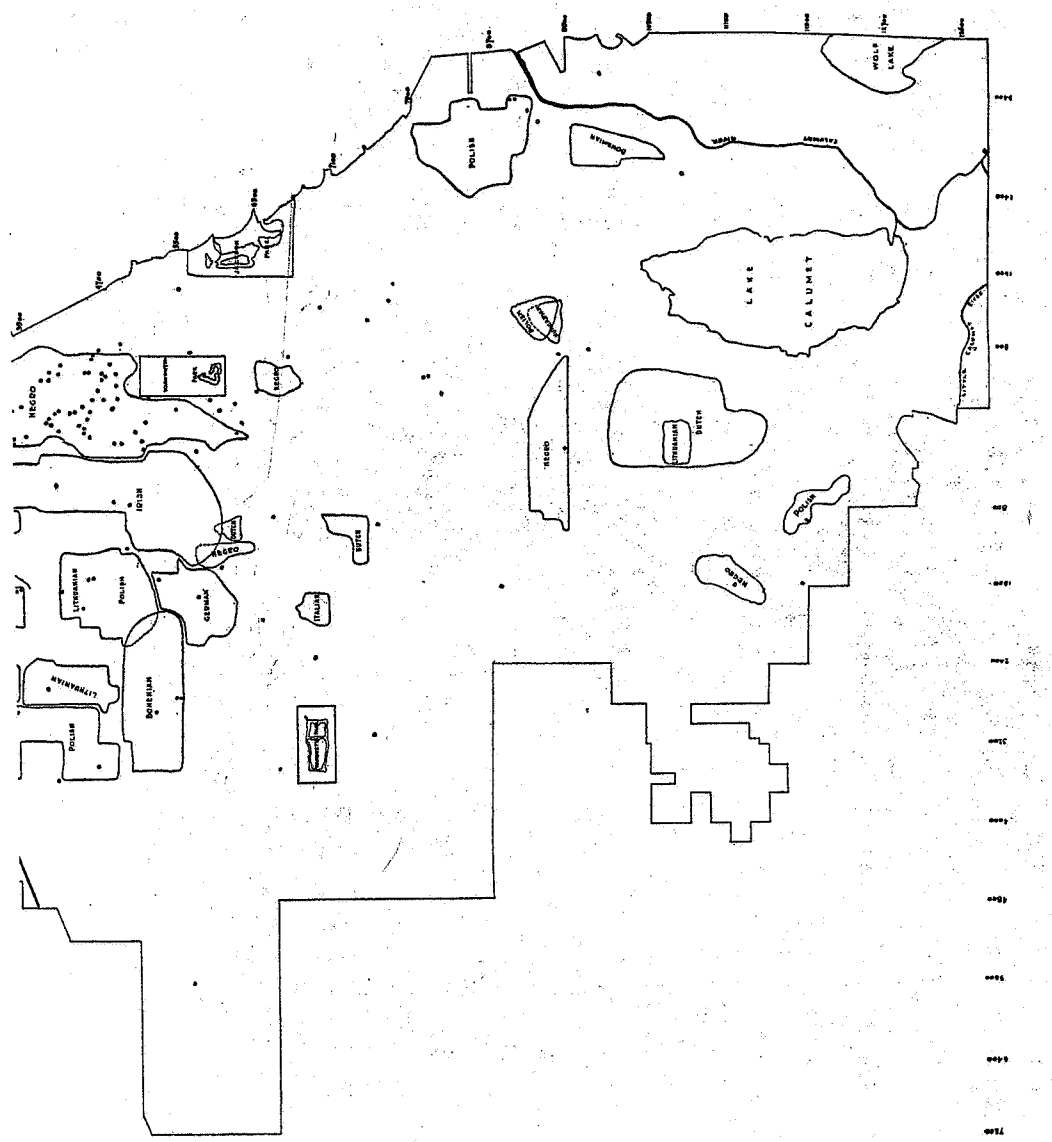


TABLE 9

MAP OF CITY OF CHICAGO

Showing Location of Each of 333 Murders in 1927 and Areas of Foreign and Negro Population


LAKE CALUMET
WOLF LAKE
POLISH
NEGRO
GERMAN
ITALIAN
BOHEMIAN
LITHUANIAN

be stated, are chiefly the excess number of gang killings in May, June and July of 1927 over the same period in 1926. This was due to the war between the rival gangs who were fighting it out for supremacy in the city of Chicago, the prize being the control of the so-called gambling, liquor, and vice syndicates. That was largely confined to the county area in 1926, during the Capone-McDonnell feud in which McSwiggen, assistant state's attorney, was killed, there being ten more such murders in the county in that year than in 1927. The issues in the campaign preceding the municipal election in 1927 were largely confined to whether or not Chicago should be a wide-open town. The voters answered this question in the affirmative, and the result was heralded far and wide as a victory for the group of politicians who favored a liberal policy for the administration. This drew the organized criminal forces from the county back into the city from which they had been largely excluded by the previous administration, and during the months of May, June and July there was considerable fighting between rival gangs to secure control of the valuable liquor and gambling privileges.

Shortly after the election of Mayor Thompson in April, 1927, on a so-called "liberal" platform, William Allen White wrote an article for Collier's in which this shrewd prophecy was made:

> "The City Administration and the County Administration at the moment are friendly. The entire legal machinery of Chicago and Cook County is in the hands of one group of politicians. It is inconceivable that this group will permit homicide to prevail in Chicago when by systematic blackmail—also highly remunerative—homicide may be prevented. We have come to a stage in the enforcement of prohibition in our great cities when it is necessary for a community to choose between wholesale homicide following uncontrolled bootlegging and wholesale bootlegging under blackmail without the homicide."

This is just what happened. The cessation of hostilities in August, as a result of an agreement reported to have been made between the predominant rival gangs and the controlling politicians, marked a decisive decline in the number of such deaths. There have been several flare-ups since then, caused every time by breaches of agreements as to territorial limits. The only other fact of interest in the above table is that October and December appear to be the months in both years when murder is most prevalent. The increase in the latter month is due to the holiday season, when cases of drunkenness and brawls are more numerous.

20. *Murders Classified by Localities (Chicago, 1927).*

There are in every large city certain localities that are recognized as places to be shunned because of the character of the neighborhood. The chances of a stranger being robbed or slugged are greatly enhanced in such localities. This is true in Chicago. The accompanying map, Table 9, shows that murder in this city is confined to a few comparatively small areas.

Table 10 shows further the distribution of all kinds of murders in 1927, classified as to motives and related to population and racial characteristics of each area.

TABLE 10

MURDERS IN CHICAGO
1927

CLASSIFIED BY MOTIVES AND RACIAL CHARACTERISTICS IN RELATION TO POPULATION AND POLICE DISTRICTS

Pol. Dist.	Population	Racial Character	All Murders	MOTIVES												
				Gang Killings	Abortions	Infanticides	Vampire Autos	Jealousy	Domestic (Husband or Wife)	Revenge	Police, Etc., Killed on Duty	Killed by Insane Persons	Innocent Bystander Killed	Victims of Holdups	Altercations and Brawls	Motive Unknown
1	6,573	American	2	1		1										
1A	16,946	American-Negro	12	1		1	1	2		1	1				5	
2	104,135	Negro-Mixed-American	18			1				1	1			1	14	1
2A		Negro-Mixed-American	27		1		1	2	1	3			1	3	13	2
3	130,013	Negro	46			2		3	6	1				10	22	2
4	89,469	American	4					1	2					1		
5	143,149	American-Negro	5				2		1						2	
6	86,373	American	2											1		1
6A	18,370	American-Negro-Polish-Hungarian	5				3									2
7	57,036	American-Polish	4				1			1					2	
8	27,138	American	3	1						1	1					
9	74,024	American-Dutch-Polish-Lithuanian-Negro	3	1											1	1
10	83,904	American-Negro	4				1			1		1			1	
11	142,658	American-Dutch-German-Negro	3		1			1							1	
11A	109,691	American-German-Italian	8	1	2							2		2		1
12	60,381	Irish-Polish	7	1		1		1						2	2	
13	130,671	Bohemian-Polish-Lithuanian-German	6			1				1				2	1	1
14	59,206	Lithuanian-Mixed-Polish-Irish-German	4	1						1				1	1	
15	63,509	American-Mixed-Polish-Lithuanian	6	3	1							1			1	
16	57,578	Italian-Negro-Greek-Dutch	35	8	1	1		1	3	2	1			3	13	2

TABLE 10—Concluded
MURDERS IN CHICAGO
1927
CLASSIFIED BY MOTIVES AND RACIAL CHARACTERISTICS IN RELATION TO POPULATION AND POLICE DISTRICTS

Pol. Dist.	Population	Racial Character	All Murders	MOTIVES												
				Gang Killings	Abortions	Infanticides	Vampire Autos	Jealousy	Domestic (Husband or Wife)	Revenge	Police, Etc., Killed on Duty	Killed by Insane Persons	Innocent Bystander Killed	Victims of Holdups	Altercations and Brawls	Motive Unknown
16A	33,641	Bohemian-Lithuanian	1							1						
17	174,426	Polish-Irish-Italian-Mixed-Negro-Dutch	14	4			1		2	1		2		1	2	1
18	135,621	Bohemian-Jewish-Polish	7	1			1	2				1			2	
19	27,922	Mixed-Negro	7		1			1		1					3	
20	70,184	Mixed-Negro	11	1				3	1					1	4	1
21	207,804	American-Jewish-Mixed-Bohemian	12	1		1		1				2		1	3	3
22	115,578	Polish-Italian	10	3			3	1						1	2	
23	118,813	Polish-Jewish-American-Italian	4	1		1		1							1	
24	187,260	American	5				2			2		1				
25	174,280	Polish-German-Scandinavian-American	4	1		1		1						1		
26	99,304	American-Polish	2				1									1
27	113,874	American	1				1									
27A	203,693	American-Polish	8		2	1	4							1		
28	49,329	Mixed-Italian-American	18	4	1	1		1		1			1	3	6	
29	92,724	German-Hungarian-Italian-American-Polish	5	2					3							
30	81,536	German-American-Swedish-Polish	5		1	1	1		1						1	
31	120,909	American	6	1		1		1	1						2	
32	102,470	American	3				1				2					
33	128,945	American	3		1	1					2					
34	72,336	American	3									1			1	
Totals	3,771,473		333	37	12	16	24	23	22	19	8	11	2	34	106	19

In the contiguous area, consisting of police districts four to eleven inclusive, beginning at the eastern and southern boundaries of the so-called black belt, and including practically the whole south end of Chicago, containing over seven hundred thousand population, 33 persons were killed, of which 21 were by crimes of violence.

Likewise to the north of the loop and in the heavily populated residential districts along the north shore, from Division Street to the city limits, containing a population of six hundred thousand, there were 25 murders in 1927, of which 15 were crimes of violence. Four of these were policemen killed by persons chased into this territory by the police.

On the northwest side, north of Kinzie Street and west of the North Branch of the Chicago River, north and west to the city limits, a contiguous area containing a population of approximately one million persons, 24 murders were committed in 1927, of which 11 were crimes of violence.

In police district No. 16,[1] which embraces the territory described as the near southwest side, inhabited by Italians, Greeks and Negroes, 35 murders, 8 of which were gang killings and 21 others murder by violence, were committed in 1927, whereas immediately to the south in district No. 16A, inhabited by a settlement of Bohemians and Lithuanians, only 1 murder, classified as revenge, was committed during the same period.

In the district containing the famous "Loop," the heart of downtown Chicago, one gangster was found slain and a one day old infant was found in a department store. These are the only murders recorded in that area in 1927.

The heaviest murder rate for any contiguous area is that south of Sixteenth Street and east of South State Street, continuing south to the south end of Washington Park at Sixtieth Street, and west of Cottage Grove Avenue, known as the black belt, inhabited largely by Negroes. In this area, containing a population of about two hundred fifty thousand, 103 murders were committed in 1927, of which 54 were the result of altercations and brawls; 14 were victims of hold-ups; 5 were violent deaths, motive undiscovered; 6 were violent deaths, motive revenge; 7 husbands or wives killed; 7 deaths due to jealousy; and 1 gang death; a total of 94, or 91 per cent, deaths by violence.

In one police district in this area 46 deaths occurred, 44 of which were due to violence, mainly to shooting and stabbing. This district has a population of 130,000, practically all of which consists of Negroes.

The area north of Chicago Avenue, west of Michigan, south of Division, and east of the river, containing a population of about fifty thousand Italians and mixed races, contains the famous "death corner" at Milton and Oak Streets. Eighteen murders were committed in this area in 1927, 4 of which were gang killings, 6 altercations and brawls, and 3 victims of hold-ups.

[1] Refers to old Police District numbers.

Just to the west of that area and across the river is an area with a bad record of violent murders. The population is a little over one hundred thousand, consisting mainly of Italians and Poles, with ten deaths, three of which were gangsters, three brawls, and one hold-up victim.

Of the total of 333 murders in the city of Chicago in 1927, 230 were by known violence, and this does not include 11 deaths by insane persons, 19 for revenge, and 19 motive unknown, most of which were deaths by violence.

An examination of the accompanying map and Table 10 in connection therewith discloses that murders of violence are most prevalent in the negro and Italian settlements. It has already been shown that gang murders are predominant among Italians. An examination of the transcripts of evidence taken at coroner's inquests points conclusively to intoxication as the principal cause of deaths in the negro communities, listed under the head of altercations and brawls. Ten cent craps games in combination with an overdose of bootleg gin provides the set-up for most of these killings. Jealousy and domestic quarrels follow as a close second as the motive for deaths among Negroes, also induced, in most instances, by intoxication.

21. *Police Administration in Murder Cases.*

Up to this point only facts pertaining to the deceased in homicide cases have been considered. It is logical to consider next the steps taken by the authorities to apprehend and punish those guilty of unlawful homicide. The first of these steps leads to the police department and other detecting and apprehending officials. The most important fact to be determined in attempting to measure the effectiveness of the detecting and apprehending officials is the number of unsolved homicides. In another part of the report will appear a discussion of police administration in connection with homicides of lesser degree than murder, confining this section to an analysis of the efforts of the police to cases where the coroner's juries returned a verdict of murder.

22. *Same: Unsolved Murders.*

Unsolved or uncleared murder is murder in which no charge has been filed and no arrest made after a finding by the coroner that a murder has been committed. In many of these cases the coroner's jury named the slayer and ordered his arrest and presentment to the grand jury, but no arrest was ever made and no one presented. In others, the coroner's verdict was murder by unknown persons and the identity of the slayer was never established. In a few instances it was found that the killer was not known to the coroner's jury but a charge was later filed by the police against some person in such cases. Following is a table (No. 11) of unsolved murders in Cook County for 1926 and 1927, classified as to color and sex of victims and as to causes of death, from data procured by following through records of coroner, police, prosecutor, grand jury, and municipal and criminal courts:

TABLE 11

UNSOLVED MURDERS, CLASSIFIED AS TO SEX, COLOR, AND MODE OF KILLING

1926 and 1927

	GRAND TOTALS 1926-1927			Total Killed		MYSTERIES				Named by Coroner. No Prosecution		Unknown to Coroner. Prosecuted by Police	
	Total Killed	Mysteries				1926		1927					
	100%	No.	%	1926	1927	No.	%	No.	%	1926	1927	1926	1927
WHITE MALES:													
Shot	304	138	45.42	155	149	77	49.67	61	40.94	9	21	14	18
Stabbed	31	9	29.03	16	15	7	43.75	2	13.13		1		1
Struck by Blunt Instrument	14	8	57.14	8	6	3	37.50	5	83.33		1		
Auto	34	30	88.23	13	21	12	92.30	18	85.71	1			1
Poison	4	1	25.00	2	2			1	50.00				
Strangled	1	0	0.00	1									
Gas	3	0	0.00		3								
Burned	1	0	0.00		1								
Infanticides	29	28	96.48	18	11	17	94.44	11	100.00				
Beaten in Fight	3	0	0.00	3									
Beaten and Kicked	1	1	100.00		1			1	100.00				
Fall	2	1	50.00	1	1	1	100.00						
Drowned	2	2	100.00		2			2	100.00				
Unknown	2	1	50.00		2			1	50.00				
TOTAL WHITE MALES	431	219	50.81	217	214	117	53.91	102	47.66	10	23	14	20
WHITE FEMALES:													
Shot	39	4	10.26	20	19	3	15.00	1	5.26	2	1	1	1
Stabbed	9	0	0.00	5	4								
Struck by Blunt Instrument	5	1	20.00	2	3			1	33.33				
Auto	10	7	70.00	5	5	4	80.00	3	60.00				1
Strangled	2	2	100.00		2			2	100.00				
Poison	2	0	0.00	1	1								
Infanticides	19	19	100.00	11	8	11	100.00	8	100.00				
Abortion	25	1	4.00	14	11	1	7.14			1			3
TOTAL WHITE FEMALES	111	34	30.63	58	53	19	32.76	15	28.30	3	1	1	5
COLORED MALES:													
Shot	103	14	13.59	55	48	4	7.27	10	20.83	10	13	1	1
Stabbed	46	2	4.35	19	27	1	5.26	1	3.70	4	7	1	
Struck by Blunt Instrument	11	2	18.18	5	6	1	20.00	1	16.66		3		
Auto	5	5	100.00	4	1	4	100.00	1	100.00				
Beaten in Fight	3	0	0.00	1	2						1		
TOTAL COLORED MALES	168	23	13.63	84	84	10	11.90	13	15.47	14	24	2	1
COLORED FEMALES:													
Shot	27	0	0.00	12	15					5	4		
Stabbed	11	0	0.00	5	6						1		
Struck by Blunt Instrument	3	0	0.00	2	1					1	1		
Abortion	3	1	33.33	2	1	1	50.00						
TOTAL COLORED FEMALES	44	1	2.27	21	23	1	4.76			6	6		
OTHER MALES:													
Shot	4	1	25.00		4			1	25.00				
Struck by Blunt Instrument	2	0	0.00		2								
TOTAL OTHER MALES	6	1	16.67		6			1	16.67				
GRAND TOTALS	760	278	36.58	380	380	147	38.68	131	34.47	33	54	17	26

Attention is first called to the last two columns of the above table headed "Named by coroner, no prosecution" and "Unknown to coroner, prosecuted by police." The figures of these two classes were not considered in arriving at the percentages of unsolved killings, but were included in this table for the reason that they were obviously more closely related to the purpose of this table than to any other. Strictly speaking, the first, "Named by coroner,

no prosecution," should properly be included in the unsolved murder class, for while there was a person named by the coroner in each case and it was, therefore, solved to at least that extent, yet there was no arrest and no prosecution, and the murder, therefore, remains uncleared.

The other class, "Unknown to coroner, prosecuted by police," is just the converse of that situation. The murder was an unsolved one so far as the coroner's jury was concerned, but the police record was cleared by an arrest and prosecution in each of those cases. The percentage of successful prosecutions in such cases will be found to be negligible in other tables, hereafter to appear, and so, while none of these cases was ever cleared by conviction, the responsibility therefor is upon the process of prosecution and judicial administration and not upon the police.

23. Same: Unsolved Murders Related to Color and Sex.

The above table presents some very interesting facts. The culprits were caught in 86.37 per cent of cases where negro men were murdered as against 50 per cent of murderers of white men. When a colored woman is murdered, the slayer is apprehended in 97.73 per cent of the cases; whereas, if the white female infants killed and listed under infanticides are eliminated from consideration in determining the percentage of mysteries in cases of white women killed, it will be found that the result is practically the same as in the case of white men killed.

24. Same: Unsolved Gun Murders.

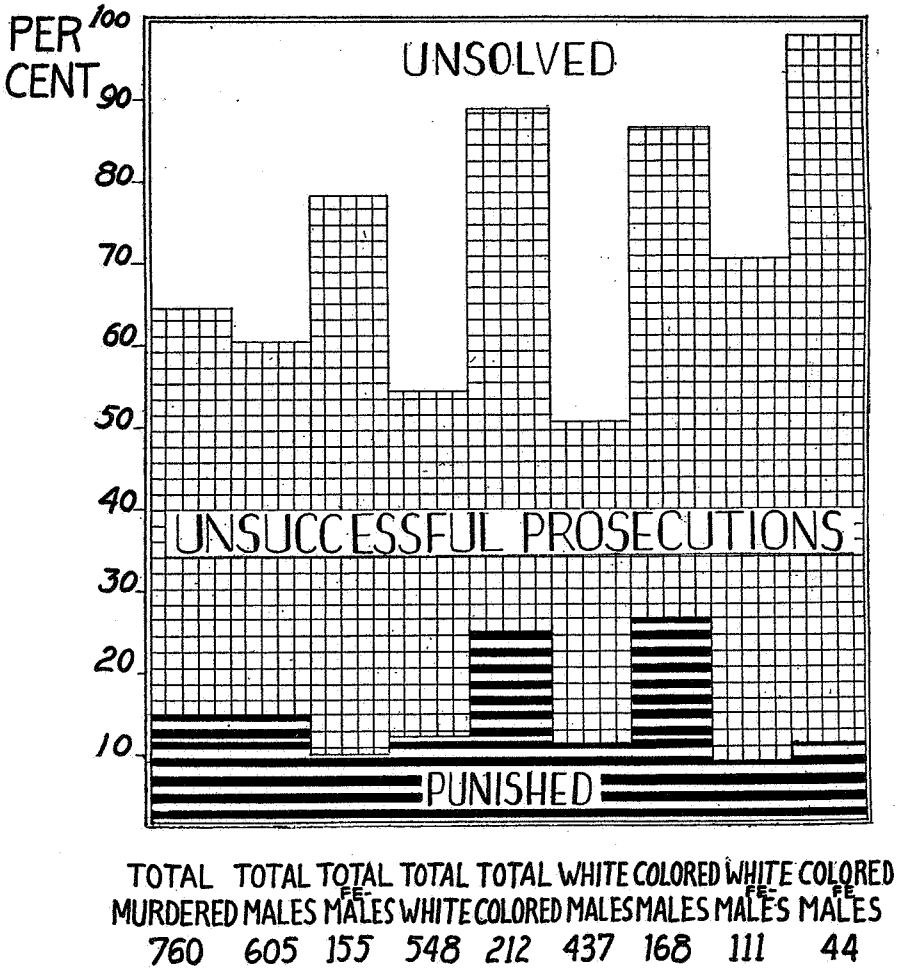
Gun murders of white men were unsolved in a little less than one-half of such cases in 1926 and a little over 40 per cent in 1927. Thirty-two per cent of all gun murders in both years were unsolved. As is shown in the other tables on causes of death, this result is materially affected by the number of gang murders which were all by shooting. In 1926 there were 45 gang killings in the city of Chicago, 32 of which were unsolved. In the same year there were 29 deaths in the county areas, all of which were unsolved. In 1927 there were 37 gang murders in Chicago, of which 27 were unsolved, prosecutions being started in 10 cases. During the same year, in the county area, 19 gang murders occurred, of which 16 were unsolved. In the cases of gang murders where prosecutions were started, taking them out of the unsolved class, there were no convictions resulting from any of such prosecutions, so all of them may well be rated mysteries.

25. Same: Unsolved and Unconvicted Murders Charted in Comparison with Total Murders.

The chart, Table 12, was designed to show more graphically the same facts set out in Table 11, the main portion of the figure showing the relative proportion of mysteries and unsuccessful prosecutions, compared to those punished in the total number of murder cases in 1926 and 1927. The unsolved cases are classified by causes of death.

TABLE 12. UNSOLVED AND UNCONVICTED MURDERS, COMPARED WITH TOTAL MURDERS.

MURDER, 1926-1927



26. Murders Classified as to Kinds of Known Perpetrators.

The color and sex of perpetrators of murders (exclusive of all other classes of unlawful homicides), so far as they are known, is set out in Table 12-A, classified as to principals, exclusive of accessories and restricted to one killer for each murder.

TABLE 12-A. UNSOLVED MURDERS, CLASSIFIED BY CAUSES OF DEATH

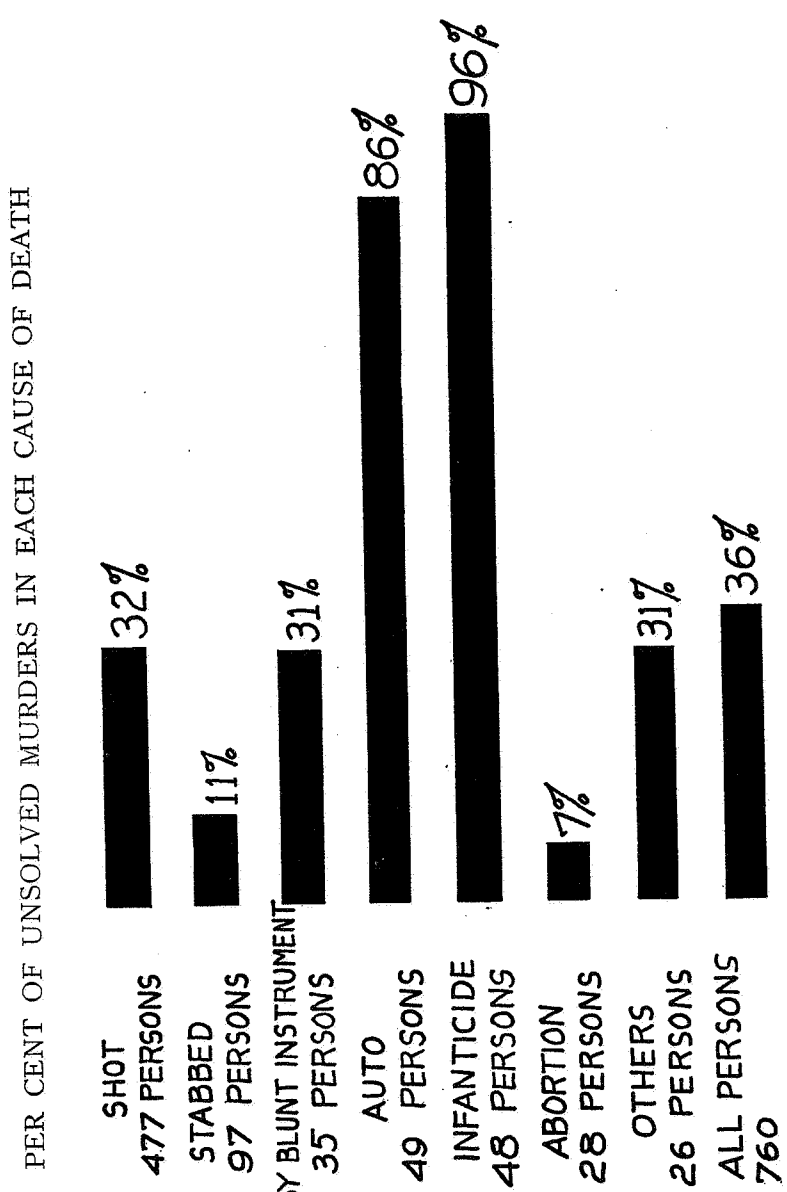


TABLE 13

COLOR AND SEX OF KNOWN PERPETRATORS OF MURDERS

(Classified by Principals, restricted to 1 killer for each crime)

(1926-1927)

VICTIMS	MALES						FEMALES						TOTAL			
	White		Colored		Indian and Chinese		White		Colored		Indian and Chinese		Males		Females	
	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
White Males	65	71	12	9			9	11					77	80	9	11
Colored Males	11	9	50	54			1		10	7			61	63	11	7
Indian and Chinese Males		1				4								5		
White Females	27	29	1				10	5					28	29	10	5
Colored Females	2	1	16	19		1			2	2			18	21	2	2
TOTALS	105	111	79	82		5	20	16	12	9			184	198	32	25

The above Table 13 shows that white men killed 76.83 per cent of white men victims, while colored men killed 73.24 per cent of colored men victims. White men killed 14.08 per cent of colored men victims, while colored men killed 11.86 per cent of white men victims. Seventy-seven and seventy-seven hundredths per cent of white women were killed by white men and 81.39 per cent of colored women by colored men. The instances of white men killing colored women and colored men killing white women are negligible. White women killed 20 white men and 15 white women in the two year period, a ratio of four to three, while colored women during the same period killed 17 colored men and four colored women, a ratio of four to one. The table shows that white men killed twice as many white men as white women and that colored men killed three times as many colored men as colored women. On the other hand white women killed 1⅓ times as many white men as white women and colored women killed four times as many colored men as colored women.

27. Judicial Disposition of Homicides Charged by Police.

It has previously been stated that in certain cases the police department in the city of Chicago has filed charges in the Municipal Court in homicide cases, in which the persons charged were later exonerated by the coroner's juries. Each of these cases represents a death for which the police sought to hold some person or persons responsible for the killing, which action by the police was later nullified by the verdict of the coroner exonerating the person charged. None of these cases have been included in the total of homicides (Table No. 1) which have previously been considered in this report. The following Table 14 shows the number of such deaths and the number of persons charged by the police in each of the classes of murder, manslaughter, and automobile manslaughter, classified according to the charges filed by the police and the disposition of the charges in the municipal court, grand jury, and trial court.

TABLE 14. HOMICIDES CLASSIFIED AS TO CHARGES FILED BY POLICE, EXONERATED BY CORONER, AND LATER DISPOSITION BY COURT

Disposition	Murder		Manslaughter		Auto Manslaughter		Total		Grand Totals
	2 cases, 2 principals	7 cases, 9 principals and accessories	20 cases, 20 principals	17 cases, 32 principals and accessories	130 cases, 133 principals and accessories	200 cases, 205 principals and accessories	152 cases, 155 principals and accessories	224 cases, 246 principals and accessories	376 cases, 401 principals and accessories
	1926	1927	1926	1927	1926	1927	1926	1927	1926-1927
Juvenile Court for mental test	..	..	..	1	..	..	..	1	1
(A)									
In preliminary hearing	2	9	17	31	125	200	144	240	384
Nolled	..	..	4	20	16	47	20	67	87
Dismissed, want of prosecution	..	..	1	..	30	25	31	25	56
Discharged	2	9	12	11	79	126	93	146	239
Error, no complaint	..	..	..	..	..	1	..	1	1
Complaint denied	..	..	..	..	..	1	..	1	1
(B)									
By Grand Jury	..	..	2	..	6	4	8	4	12
No Billed	..	..	2	..	6	4	8	4	12
(C)									
In Trial Court	..	..	1	..	2	..	3	1	3
Dismissed, want of prosecution	..	..	..	..	1	..	1	..	1
Acquitted	..	..	1	..	..	1	1	1	2
Probation on plea of guilty to assault with deadly weapon	..	..	..	..	1	..	1	..	1
Total	2	9	20	32	133	205	155	246	401

The above Table 14 shows that during the year 1926 and the year 1927 the police filed charges in 376 cases of death which were regarded by them as felonious homicide, charging 401 persons for such deaths as principals and accessories. In each of these cases the coroner's jury exonerated the person charged; 384 of the 401 persons thus charged were released in the Municipal Court, which is the court of preliminary hearing in felony cases, in the manner set out in the table; 12 went to the grand jury and were no billed; 2 were acquitted upon trial; 1 case was dismissed for want of prosecution in the trial court; 1 was certified to the Juvenile Court for mental test and lost from our further consideration; and 1 pleaded guilty to assault with a deadly weapon and was admitted to probation. Thus the record stands one hundred per cent releases in such cases, if the single case of probation is to be rated a release.

28. Same: Unknown to Coroner, but Later Charged by Police.

The following Table 15 is designed to show the number of persons named by the coroner and ordered held and those cases in which the coroner's jury found that a homicide had been committed by unknown persons and the police later identified and lodged a charge against some person. The table, therefore, shows all classes of homicide cases in which the verdict of the coroner's jury indicated that someone should be held and excludes altogether those shown in the preceding Table 14 as charged by the police and exonerated by the coroner.

TABLE 15. TOTAL PERSONS CHARGED IN HOMICIDE CASES, 1926-1927

Murder	701
Manslaughter	59
Auto manslaughter	203
Undetermined abortion	13
Undetermined violence	15
Justifiable homicides	59
Killed by police	—
Total	1050

The principal feature of this Table 15 is the fact that although a very considerable percentage of homicides, including murder, running as high as fifty per cent in some classes, are never solved, yet there are any number of cases where there are multiple defendants for a single death, and this is reflected in the above table, showing 1,050 persons charged out of 1,438 homicides committed, as shown in Table 1. The disposition of charges against these persons will next be considered.

29. Same: Judicial Disposition of Murder Charges, in Detail.

The following Table 16 was prepared from data collected first in the coroner's office and then through records of police, prosecutor, and the various courts to determine the disposition of cases filed against persons named as principals and accessories in murder cases for the years 1926 and 1927, classified as to color and sex of the accused.

TABLE 16

DISPOSITION OF PRINCIPALS AND ACCESSORIES NAMED BY CORONER OR BOOKED BY POLICE IN MURDER CASES

(1926 and 1927)

	TOTAL ALL CASES		ALL CASES				WHITE MALES				COLORED MALES				INDIAN AND CHINESE MALES				WHITE FEMALES				COLORED FEMALES			
			1926		1927		1926		1927		1926		1927		1926		1927		1926		1927		1926		1927	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
No Record of Arrest or Prosecution	113	16.12	46	12.89	67	19.53	22	11.46	29	15.51	20	17.26	33	30.56					4	12.50	4	14.28			1	8.33
Turned Over to Authorities of Other Counties	2	.29			2	.58			2	1.07																
Dead	46	6.56	18	5.04	28	8.16	12	6.25	16	8.56	3	2.59	8	7.41			1	12.50	3	9.38	3	10.72				
Preliminary Hearing:																										
Nolle	21	3.00	11	3.08	10	2.92	2	1.04	7	3.74	6	5.18	1	.93					1	3.13	2	7.14	2	11.76		
Dismissed, want of Prosecution	10	1.43	5	1.40	5	1.46	4	2.08	5	2.67													1	5.88		
Discharged	58	8.27	25	7.00	33	9.62	20	10.42	28	14.97	2	1.73	3	2.77					1	3.13	2	7.14	2	11.76		
Bond Forfeited	3	.43	1	.28	2	.58	1	.52	2	1.07																
Grand Jury:																										
No Billed	88	12.55	49	13.73	39	11.37	24	12.50	19	10.16	15	12.94	8	7.41			2	25.00	9	28.13	9	32.14	1	5.88	1	8.34
Trial Court:																										
Certified to Juvenile Court	6	.86	5	1.40	1	.29					4	3.35	1	.93					1	3.12						
Nolle	7	1.00	4	1.12	3	.88	2	1.04	1	.53	1	.87	2	1.85					1	3.12						
S. O. L.	37	5.28	25	7.00	12	3.50	15	7.81	8	4.28	6	5.18	3	2.77					1	3.12			3	17.65	1	8.33
Pending	42	5.99	11	3.08	31	9.04	10	5.21	18	9.63			9	8.33					1	3.12	1	3.58			3	25.00
Tried and Acquitted	114	16.26	70	19.61	44	12.83	36	18.75	20	10.70	23	19.84	10	9.26			4	50.00	6	18.75	4	14.28	5	29.42	6	50.00
Guilty	153	21.82	87	24.37	66	19.24	44	22.92	32	17.11	36	31.06	30	27.78			1	12.50	4	12.50	3	10.72	3	17.65		
TOTALS	701	100.00	357	100.00	343	100.00	192	100.00	187	100.00	116	100.00	108	100.00			8	100.00	32	100.00	28	100.00	17	100.00	12	100.00
Sentenced To:																										
Death	10	1.43	9	2.53	*1	.29	6	3.13	*1	.53	2	1.73							1	3.13						
Joliet	121	17.25	62	17.36	59	17.20	26	13.54	28	14.97	30	25.87	29	26.85			1	12.50	3	9.37	1	3.58	3	17.65		
Pontiac	15	2.14	13	3.64	2	.59	10	5.21	2	1.07	3	2.59														
Insane Asylum	4	.57	2	.56	2	.58	2	1.04	1	.53											1	3.57				
House of Correction	2	.29	1	.28	1	.29					1	.87	1	.93												
Probation	1	.14			1	.29															1	3.57				
TOTALS	153	21.82	87	24.37	66	19.24	44	22.92	32	17.11	36	31.06	30	27.78			1	12.50	4	12.50	3	10.72	3	17.65	0	0.00

*Appealed and Pending.

30. *Same: Found Guilty.* Comparing dispositions in 1926 with 1927, we find that in 1926, 24.37 per cent of all persons charged with murder were found guilty of some offense as against 19.24 per cent in 1927. These figures were slightly affected by the fact that in 1926, 3.08 per cent, and in 1927, 9.04 per cent of cases were pending when the survey was completed. That fact, however, should not change the percentage of guilty, because it is unlikely, after the cases were delayed, that there would be any greater percentage of guilty when those cases were finally disposed of than of those cases which were already disposed of.

(a) Guilty, as Related to Color and Sex.

It is interesting to note that 116 colored men as against 192 white men were charged with murder in 1926, and 108 colored to 187 white in 1927. This is out of all proportion to the ratio of population of the respective races, which is 5 per cent colored and 95 per cent white. It should also be noted that of the total number of colored and white men charged in 1926 with murder, 31.06 per cent of colored men were guilty as against 22.92 per cent of white men. In 1927 the disparity was even more pronounced, being 27.78 per cent colored men guilty to 17.11 per cent white; and when it comes to paying the penalty, 13.54 per cent of white men were sentenced to Joliet as against 25.87 per cent colored in 1926, and 14.97 per cent white to 26.85 per cent colored in 1927. Sentences to Pontiac Reformatory, which are sought in preference to the penitentiary at Joliet, show three whites to one colored sentenced to the favored institution. Insanity as a defense to murder is exclusively a white man's plea; no colored man in these years was successful in establishing the defense of insanity.

31. *Same: Arrested, but No Charge Filed.* Of 380 murders committed in 1926, the culprits were named in 235 cases, and 357 persons were accused as principals or accessories in such cases as compared to 251 cases out of 380 murders in 1927, where the culprits were named and 343 persons accused. In the remainder of the cases the assailants were unknown. One hundred thirteen persons of a total of 701 persons named by the coroner or by the police for murder had no charge filed against them. In some of these cases the coroner's jury named the culprit but he was not apprehended by the police; in others, the name of the culprit was not disclosed to the coroner's jury, which merely returned a verdict of "Murder, apprehend unknown," and the police later booked some person for the offense as was later disclosed by the police records, but no charge was ever filed against that person. It was necessary to include these cases in this record because the coroner's jury found that a murder had been committed. It could not be said such cases were unsolved because either the police or the coroner had named the killer in such cases and therefore they are included in this record of judicial administration.

32. *Same: Disposed of Without Punishment.* Ninety-two cases were terminated in the court of preliminary hearing without punishment; 88 were no billed in the grand jury; 114 of the remainder were tried and acquitted; 42 were pending at the time the survey was concluded, leaving 153 guilty of some offense, though not

necessarily of the offense of murder with which they were charged. Eighty-seven of those guilty were for murders committed in 1926, and 66 for murders committed in 1927. The percentage of guilty in 1927 is affected to a greater extent by the number of cases pending in that year, and allowing for this variance the percentage of guilty in 1927 would probably in the end be found approximately the same as in 1926. As to the pending cases in 1926, it is unlikely that the final disposition thereof would show a greater percentage of convictions than of those disposed of, because the longer such cases are pending, the less chance there is to obtain convictions. The percentage of guilty in both years is 21.82 per cent of all cases.

33. Same: Sentences Pronounced on Guilty.

The concluding section of Table 16, showing the number and character of sentences pronounced upon those who were found guilty, is interesting.

There were nine death sentences pronounced in cases of murder committed in 1926, and one in 1927. The one in 1927 was pending on appeal at the time the survey was concluded, so there were no death sentences executed in 1927 for murders committed in 1927. There were eight death sentences executed in 1926 in Cook County, and although the above record does not disclose it, there were actually three hangings in Cook County in 1927. This record does not disclose that fact for the reason that two of the deaths by hanging in 1927 were for sentences pronounced in 1927, but for murders that occurred in previous years, and one was in execution of a sentence pronounced in 1926 for a murder in a previous year.

The fact that there was only one death sentence pronounced in 1927, and it was appealed from, indicates that there will be few death sentences executed in 1928. In 1910 and 1911 no persons were hanged in this county. In 1912 there were five; in 1913-14, none; in 1915, one; in 1916 and 1917, none; in 1918, four; in 1919, three; in 1920, eight; in 1921, ten; in 1922, one; in 1923, one; in 1924, two; and in 1925, three.

By far the greater number of persons whose sentences were executed for murders committed in 1926 and 1927 were sent to the State Penitentiary at Joliet; 121 or 17.25 per cent of all cases receiving this sentence; 15 or 2.14 per cent were sent to the Boys' Reformatory at Pontiac; 4 were found insane and sent to the state asylum for the criminal insane at Chester; 2 sent to the House of Correcton, and 1 given probation.

34. Same: Disposition of Charges Growing Out of Gang Murders.

Included in Table 16, but not separated from the other cases, are thirteen cases of gang murders in the city of Chicago in 1926, and ten cases in 1927, as well as three cases in the county in 1927, which are excluded from the list of unsolved murders for the reason that in such cases some court action was taken.

The record of thirteen cases in the city in 1926 shows that in one case the named defendant was tried and acquitted. In another, four defendants were named, two of whom were tried and acquitted, and two stricken off the docket by the state's attorney. In another, two defendants named were both discharged in the preliminary hearing. In one case three persons

were named as principals, who were tried and acquitted, and six named as accessories, all of whom were discharged in the preliminary hearing. In another case three defendants named were tried and acquitted. In another, two defendants were named; one tried and acquitted, one dischargd in preliminary hearing. In another, one principal and one accessory were named, the case against the principal being no billed by the grand jury, and that against the accessory being stricken off the docket by the state's attorney. In another case three defendants were named, all of whom were discharged in the preliminary hearing. In another, two defendants were named by the coroner's jury but no prosecution resulted. In another, one defendant was named and was discharged in the preliminary hearing. In another, three defendants were named, all of whom were discharged in the preliminary hearing. In another, one principal and two accessories were named, the case against the principal being no billed by the grand jury and that against one of the accessories nolle prossed by the state's attorney, while the other was killed before the trial. In the last case one person was named and discharged in the preliminary hearing. It has already been stated that of the 29 gang murders in the county area in 1926, all of them were unsolved; no person being named or charged.

Of the ten cases of gang murders out of 37 in the city in 1927, in one case four persons were charged; one of whom was tried and acquitted, two stricken from the docket by the state's attorney, and one discharged in the preliminary hearing. In another, two principals were charged and both cases nolle prossed. In another case one person was named and discharged in the preliminary hearing. In another, two persons were named as accessories, the cases against both of whom were no billed in the grand jury. In another case one person was named and discharged in the preliminary hearing. In another case one person was charged, was tried, and acquitted. In another, two persons were named, tried, and acquitted. In another, three were named, two of whom were tried and acquitted, and the case against the other no billed by the grand jury. In another, six persons were named, two of whom were discharged in the preliminary hearing, while the other cases were stricken from the docket by the state's attorney. In the final case, one person was named and was discharged in the preliminary hearing.

Three cases out of nineteen gang murders in the county area in 1927 resulted in the following dispositions: in one case the person named was shot and killed before trial; in another three were named by the coroner's juries but never arrested; and in the other case one person was named by the coroner's jury but the case was no billed when presented to the grand jury.

Thus the record stands at one hundred per cent no punishment in gang murders in the city and county for 1926 and 1927.

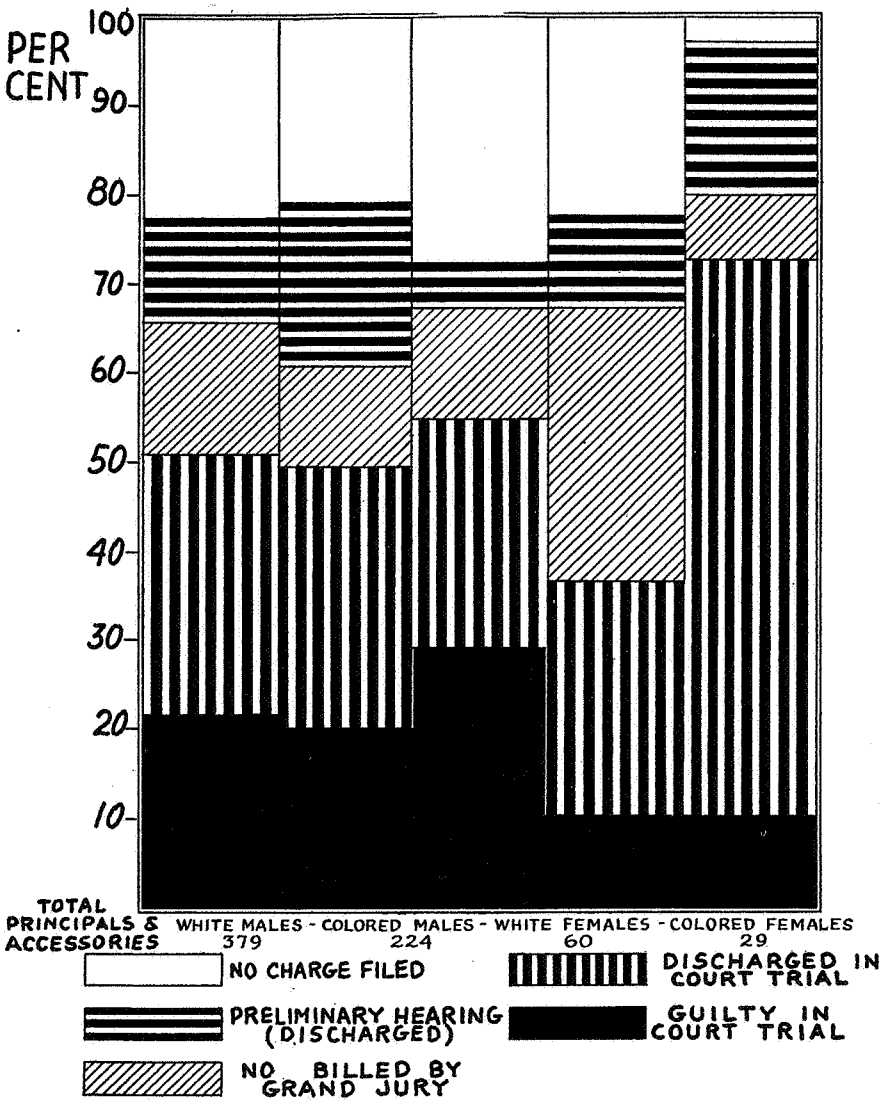
35. *Same: Disposition of Murder Cases, Summarized.*

The following chart (Table 17) presents the results of judicial administration in murder cases, as set out in Table 16, in a more graphic form.

TABLE 17.

MURDERS

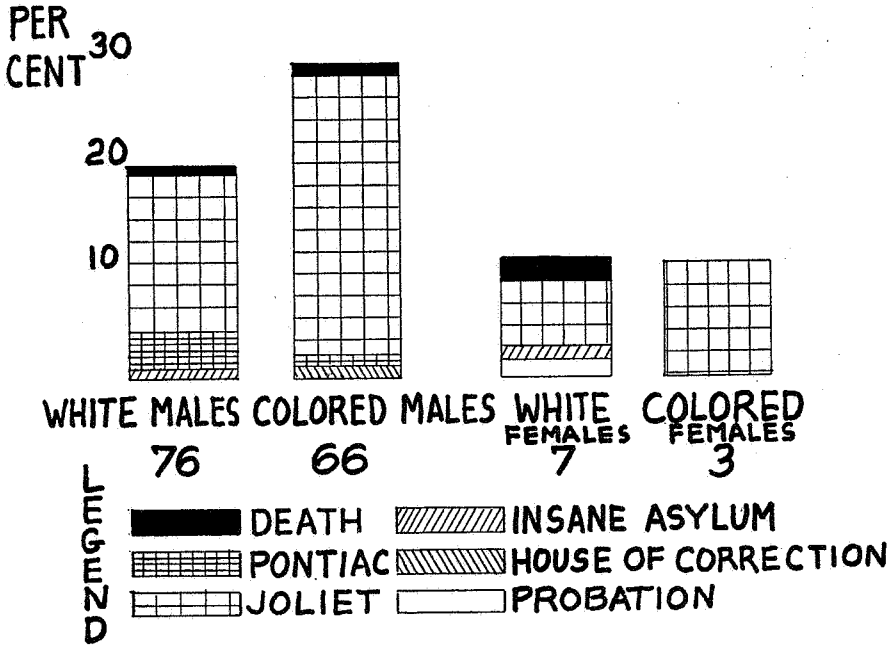
DISPOSITION OF CHARGES AGAINST PRINCIPALS AND ACCESSORIES, 1926-1927



The above chart indicates the disposition in each class of 701 principals and accessories charged in murder cases, classified as to color and sex. The top section of each bar indicates the percentage of each class which were named by the coroner or booked by the police, but in which no charges were filed. The next indicates the percentage discharged in the preliminary hearing and the next the percentage "no billed" by the grand jury; the next the proportionate number discharged in the trial court; and finally, at the bottom, the proportionate number in each class guilty and sentenced, shown in percentages related to the total number of persons involved. Table 17-A presents an amplified detail of sentences pronounced.

TABLE 17-A.

NATURE OF SENTENCES
OF GUILTY PERSONS



36. Same: Disposition in Homicide Cases Other than Murder.

There remains the disposition of principals and accessories named by the coroner and booked by the police in homicide cases other than murder in 1926 and 1927. The following Table 18 shows the record of such dispositions.

TABLE 18

DISPOSITION OF PRINCIPALS AND ACCESSORIES
NAMED BY CORONER OR BOOKED BY POLICE
IN OTHER THAN MURDER CASES
1926-1927

	GRAND TOTAL		ALL CASES				MANSLAUGHTER				AUTO MANSLAUGHTER				UNDETERMINED ABORTIONS				UNDETERMINED VIOLENCE				JUSTIFIABLE HOMICIDE			
			1926		1927		1926		1927		1926		1927		1926		1927		1926		1927		1926		1927	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
NO RECORD OF ARREST OR PROSECUTION	33	9.45	19	10.44	14	8.38	4	11.11	4	17.39	14	11.97	10	11.62									1	5.00		
DEAD	1	.29			1	.60							1	1.16												
PRELIMINARY HEARING																										
Nolle	15	4.30	2	1.10	13	7.78			1	4.34			4	4.65			1	11.11					2	10.00	7	17.95
Dismissed, want of Prosecution	4	1.15			4	2.40			1	4.34							2	22.22							1	2.56
Discharged	41	11.75	9	4.95	32	19.16	1	2.78					2	2.33	1	25.00	6	66.67	4	80.00	2	20.00	3	15.00	22	56.41
GRAND JURY																										
No Billed	157	44.98	84	46.15	73	43.71	18	50.00	8	34.80	60	51.28	51	59.31	1	25.00					8	80.00	5	25.00	6	15.39
TRIAL COURT																										
Bond Forfeited	1	.29			1	.60							1	1.16												
Certified to Juvenile Court	2	.57			2	1.20							2	2.33												
Discharged by Court	2	.57	2	1.10			2	5.56																		
Nolle	15	4.30	12	6.59	3	1.80	2	5.55			7	5.98	3	3.49	2	50.00							1	5.00		
S. O. L.	15	4.30	14	7.69	1	.60					13	11.11	1	1.16									1	5.00		
Dismissed, want of Prosecution	8	2.29	6	3.30	2	1.20					6	5.13	2	2.33												
Pending	7	2.01	2	1.10	5	2.99					2	1.71	5	5.81												
Tried and Acquitted	34	9.74	23	12.64	11	6.59	5	13.89	6	26.09	14	11.97	3	3.49									4	20.00	2	5.13
Guilty	14	4.01	9	4.94	5	2.99	4	11.11	3	13.04	1	.85	1	1.16					1	20.00			3	15.00	1	2.56
TOTALS	349	100.00	182	100.00	167	100.00	36	100.00	23	100.00	117	100.00	86	100.00	4	100.00	9	100.00	5	100.00	10	100.00	20	100.00	39	100.00
SENTENCED TO																			1	20.00			3	15.00	1	2.56
Joliet	12	3.43	9	4.94	3	1.80	4	11.11	2	8.70	1	.85														
Pontiac	1	.29			1	.60							1	1.16												
House of Correction	1	.29			1	.60			1	4.34																
TOTAL	14	4.01	9	4.94	5	3.00	4	11.11	3	13.04	1	.85	1	1.16	0	0.00	0	0.00	1	20.00	0	0 00	3	15.00	1	2.56

Comparisons of the number of persons charged with the number of persons killed in such cases are as follows:

	1926		1927	
	Persons Charged	Persons Killed	Persons Charged	Persons Killed
Manslaughter	36	44	23	18
Auto manslaughter	117	127	86	123
Undetermined abortion	4	28	9	30
Undetermined violence	5	56	10	29
Justifiable homicide	20	61	39	73

The above figures will illustrate the reason why we have included in this report cases where the coroner's jury returned verdicts of undetermined abortion, undetermined violence, and justifiable homicides. There was a fair percentage of prosecutions started by the police upon the implied invitation in the verdict in these cases for further efforts on the part of the police department to detect and apprehend, and for the prosecutor to prosecute, any persons who may have been found by the police to have committed an offense in connection with these cases. The results of prosecution even in those cases where the coroner's juries found verdicts of manslaughter and automobile manslaughter are disappointing.

In connection with the automobile manslaughter verdicts, it should be remembered that in a very large percentage of deaths caused by automobiles, the coroner's jury returned a verdict of accidental death, and those cases where a verdict of manslaughter is returned represent the judgment of the coroner's jury that the driver was guilty of culpable negligence, causing the death of the deceased. Out of 117 such cases in 1926, only one person was found guilty, and of 86 such cases in 1927, one person was found guilty; two of such cases in 1926, and five in 1927, were pending at the time the survey was concluded. All of the others went free in the manner indicated in the above table. Of 36 persons named in other manslaughter cases in 1926, and 23 named in 1927, the large majority of which were in cases of deaths by shooting, only four were guilty in 1926 and three in 1927. A much larger percentage was found guilty in cases where the coroner's verdict was justifiable homicide. Out of 20 such cases in 1926, three were found guilty, and of 39 in 1927, one was guilty. No convictions were had in charges filed in 1926 and 1927 where the coroner's verdict was undetermined abortion. Of the five persons charged in cases where the coroner's verdict was undetermined violence, in 1926, one was found guilty, and of the ten such cases in 1927, none were guilty.

Of the fourteen guilty in all classes of homicides, other than murder, for the two year period, twelve went to Joliet, one to Pontiac, and one to the House of Correction. In manslaughter cases the chances are nine to one that there will be no punishment. For all classes of unlawful homicides in Cook County for the two year period in other than murder cases, this record shows that the chances of no punishment are twenty-five to one.

37. *Summary of Findings—(1) Total Homicides.* This report covers all homicides in Cook County, including Chicago, in the years 1926 and 1927. Fourteen hundred thirty-eight cases were considered, of which 739 were in 1926 and 699 in 1927. The cases were selected according to verdicts of coroner's juries and

were divided as follows: murder, manslaughter (including automobile deaths), abortion of undisclosed origin, violent deaths of undetermined motives, and cases, including killings by police officers, in which the coroner's jury found the death to be justified and the defendants were released. In addition to the foregoing cases, 376 instances of homicide were picked up where the police had filed charges of murder or manslaughter against the killers, but the coroner's juries thereafter exonerated the persons held and they were released.

There were 380 verdicts of murder found by coroner's juries in 1926, and exactly the same number in 1927. Three hundred twenty-eight of the murders in 1926 were in the city of Chicago and 52 in Cook County outside of Chicago. In 1927, 333 murders were committed in Chicago and 47 in the county area outside of the city.

(2) Distribution of Murders, City of Chicago, 1927.

Included in the report are maps and tables showing the location of each of 333 murders committed in the city of Chicago in 1927, related to the total of population and character thereof in each district. By far the greater number of violent deaths occur in the Negro and Italian settlements. In the great residential sections of Chicago, containing a total population of over 2,500,000 persons living in contiguous areas, 104 persons were murdered; 65 were murders of violence, including 12 hold-ups and 14 gang killings. In contrast with these figures, in the so-called black belt, consisting mainly of Negroes, with a total population of whites and Negroes not exceeding 250,000, there were 104 murders committed, of which 91 per cent were by violence; and in one police district of small area, containing but 57,500 population, consisting largely of Italians, 35 murders were committed, 8 of which were gang killings and over 90 per cent of which were by violence. In the famous "Loop," the heart of the downtown business district, two murders were recorded; one classified as a gang killing, and the other infanticide, the latter being an instance of a one day old infant being found in a department store.

(3) Modes of Killing.

Of all classes of homicides, 73 per cent in 1926, and 67 per cent in 1927, were by violence, exclusive of deaths by automobiles. Sixty-three per cent of such violent deaths in 1926 and 74 per cent in 1927 were by shooting. The next in the order of importance is by cutting or stabbing.

(4) Automobile Deaths.

Coroner's inquests were held in 1,876 cases of automobile deaths in 1926 and 1927. Thirteen hundred forty-four were found to be accidents, and 236 resulted in open verdicts and no prosecutions were had. In 330 cases, the police arrested the drivers, all of whom were later exonerated by the coroner's juries and released. In 203 cases the drivers were charged with manslaughter, but in 24 of such cases no charges were ever filed and no prosecutions started, leaving 179 cases prosecuted for manslaughter. In 49 cases the coroner's juries ordered the driver held for murder. No convictions for murder were obtained. Two drivers were convicted of man-

slaughter in the two year period, one of whom was sent to the Joliet Penitentiary, and the other to the Pontiac Reformatory.

(5) Colored and White.

The colored population in Chicago and Cook County is approximately five per cent of the whole, yet the colored race furnished 27.63 per cent of murder victims in 1926 and 28.16 per cent in 1927; and 30.5 per cent of all persons killed by police were colored. More white men were killed by Negroes than Negroes were killed by whites. A much higher percentage of colored murderers are caught than of white murderers. In over fifty per cent of the cases the murderers of white men are never apprehended; in 86.37 per cent of male colored murders, the perpetrators are apprehended; and in 97.73 per cent of colored female murders the killers are caught.

A much higher percentage of colored murderers are convicted than of white, the ratios being 31.06 per cent of colored men convicted as against 22.92 per cent of white men convicted in 1926, and 27.78 per cent colored convicted as against 17.11 per cent white convicted in 1927. Punishment is meted out against colored men murderers in approximately 10 per cent more instances than in cases of white.

Insanity as a defense to murder is exclusively a white man's plea.

(6) Motives.

One hundred eleven murders in 1926 and ninety in 1927 can be appropriately ascribed to professional criminals.

Ninety murders in 1926, and 111 in 1927, were due to altercations and brawls, largely confined to Negroes and induced in most instances by intoxication.

It is regarded as likely that most of the 45 murders in 1926, and the 30 in 1927, due to abortion and infanticide, were committed by habitual offenders. All of the abortion murders were performed either by professional midwives or physicians. The names of the persons charged by the coroner's juries in these cases run through the testimony at coroner's inquests in the majority of cases of undetermined abortion. A large majority of these deaths occurred in hospitals to which the patients were sent after the illegal operation had been performed, and it is one of the most difficult crimes to discover. It is certain that in every one of the infanticide cases the mother of the child could not have been in physical condition to commit the murder herself, and most of these cases may be properly ascribed to persons who for one reason or another were interested in disposing of the bodies of illegitimate children. None of the murderers in these cases were ever apprehended.

Aside from automobile deaths, rated as murders by coroner's juries, the remainder of the cases is made up largely of crimes of passion: jealousy, domestic difficulties, rape, etc.

The deaths of police officers, deputy sheriffs, and watchmen, killed on duty, may well be included in murder by professional criminals, although the evidence in these cases as to the actual identity of the murderer is not sufficient to include them in that class.

Murders by morons were three in number, the murder being committed

in pursuit of unnatural sex desire. Eleven deaths were caused by violently insane persons. Two persons were poisoned, the motive being to enable the murderer to collect the insurance on the deceased. Two innocent bystanders were killed, and one girl thrown from an automobile by her escort. Ten murderers in 1926, and 21 in 1927 committed suicide. There were more than four times as many wives killed by husbands as there were husbands killed by wives.

(7) Gang Murders.

There were 74 gang killings in Cook County in 1926 and 56 in 1927, a reduction of approximately 25 per cent. Gangsters committed 27.3 per cent of all gun murders. There were nearly as many gang killings in the area outside of the city of Chicago in 1926 and 1927 as all other murders combined in that area; the record being 48 gang murders and 51 others. The percentage of gang murders in the city of Chicago, related to all murders, was 13.5 per cent in 1926 and 11 per cent in 1927. Fifty-three per cent of gang murder victims in 1926 and 65 per cent in 1927 were Italians. Approximately ten per cent of murder victims in each of the years 1926 and 1927 were victims of hold-ups largely ascribed to members of gangs.

Wholesale bootlegging and gambling are directly responsible for practically all Cook County gang murders. Gang murders are less in evidence when bootlegging and gambling are syndicated with political protection. The personal security of citizens of Chicago and visitors to the city, who stay out of the proscribed areas as indicated in the foregoing report, are little endangered by the activities of gangs, the record showing that gang murder victims are themselves gangsters.

No one has ever been convicted or punished for gang murders in Cook County in 1926 and 1927.

(8) The Coroner.

Coroner's juries are selected by politically appointed deputies and many of the jurymen are "regulars," wholly under the domination of the deputies appointing them. The verdicts of coroner's juries directed by politically appointed deputies are treated as final in the vast majority of cases. A verdict of exoneration by the coroner's jury is usually accepted as final by the police.

Except at an occasional inquest of unusual publicity value, the state's attorney of Cook County has no representative at coroner's inquests.

(9) Judicial Administration.

Ten hundred and fifty persons were charged in 1,438 cases of homicide committed in Cook County in 1926 and 1927; 701 persons were charged with murder in 780 murders committed; and 36.05 per cent of all murders during 1926 and 1927 were unsolved by the police.

Dispositions of persons charged as principals and accessories in murder cases show 21.82 per cent convicted, of which ten received the death penalty, nine in 1926 and one in 1927. An appeal had been taken and was pending at the time the survey closed from the single death sentence pronounced in 1927. The record shows 79.08 per cent of all convicted persons were sent to

Joliet Penitentiary; 9.80 per cent, to the Pontiac Reformatory; 2.62 per cent, to the Asylum for Criminal Insane at Chester; 1.30 per cent, to the House of Correction; and 0.66 per cent were admitted to probation.

The disposition of principals and accessories in homicide cases other than murder and including manslaughter shows 4.01 per cent convicted; of which 85.70 per cent were sent to Joliet Penitentiary; 7.15 per cent, to Pontiac Reformatory; and 7.15 per cent, to the House of Correction.

In manslaughter cases other than automobile deaths, seven out of fifty-nine persons charged were convicted. In automobile manslaughter cases, two of 203 persons charged were convicted.

Eighty-nine persons were killed by the police in 1926 and 1927, all of which killings were held to be justifiable homicide, and no prosecutions were started.

In 134 cases of death by violence in which coroner's juries found verdicts of justifiable homicide, 59 persons were prosecuted notwithstanding the coroner's verdicts, resulting in four convictions and sentences to the Joliet Penitentiary.

(10) Comments on Special Features.

The situation in Cook County with respect to automobile killings is a most interesting one.

With practically every car on the road covered by insurance, which wholly or in great measure relieves the driver from the threat of a money judgment against him if he drives his car recklessly and kills another with it, the only restraining influence left upon reckless drivers is that of fear of criminal prosecution in death cases. The prospect of being punished for culpable negligence need deter no reckless driver in this county.

Intoxicated drivers of automobiles are becoming increasingly numerous as anyone who constantly drives an automobile can testify. Such a person is as dangerous, and more so, than a drink-crazed man running amuck with a gun. His car is a lethal weapon, more deadly than any other, to persons within its range. There are many sober drivers also who apparently have little regard for human life. This record shows practically complete failure upon the part of the authorities to protect the lives of persons who are at the mercy of these criminals. In the face of safety measures being constantly stressed by all manner of citizen agencies and the press, this type of homicide is increasing, and so far as the deterring influence of punitive measures successfully invoked are concerned, further increases may reasonably be expected.

As has been shown in other reports of the survey, the practice is prevalent of compromising with criminals by dismissing criminal cases upon restitution being made in robbery and theft cases. This also applies to criminal charges growing out of automobile killings. The settlement of civil liability and dismissal of criminal charges is of frequent occurrence. This is probably the largest single factor in the general results of unsuccessful prosecutions in these cases.

Probably the most outstanding feature of the whole homicide record, as disclosed in the preceding pages, is the part played by the gangsters. Murders have been greatly increased by the members of rival gangs killing each

other, but there is no evidence that the personal security of citizens is to any serious extent endangered by gang wars. It must be conceded, however, that the growing power and boldness of these outlaws, coupled with the fact that they seem to be above the law, is a matter of the utmost significance.

That feeling of security of person and property through protection by the law enforcing agencies, which is so necessary to the peace of mind and well being of the people of any community, is not promoted by the spectacle of a large force of gunmen hired by professional criminals engaged in lawless enterprises of great magnitude making and enforcing their own laws at the point of the gun. The fact that they discipline their own forces and suppress competition by murder, mayhem, and intimidation, without intervention by the authorities, is of vastly greater significance than the increase in the murder rate due to gang killings. The gang is more powerful than the police. The natural result of this condition is that the law of force should be extended to legitimate lines of business as a substitute for the law of the land. Over ninety legitimate business enterprises are dominated by gangsters.[1]

In the last analysis this will lead to a state of affairs which no civilized community can endure. At the doors of those who have contributed to this condition must be laid the blame for the damage to Chicago's good name. While the gangsters have not done the people of Chicago any dis-service by killing each other, yet they and those who are allied with them have committed a much graver offense than the murder of any number of gangsters, when they robbed Chicago of its good name and lowered its standing among the cities of America.

The restoration of the prestige and good reputation of this great city will depend upon the ability of its people to restore the supremacy of the law. Any successful steps taken in this direction presupposes good faith and honest purpose upon the part of the police, the prosecutor, and the courts.

The number of unsolved murders, including gang killings, points conclusively to the necessity for better detective work in the police department.

The meager results which are obtained in the way of convictions in homicide cases is conclusive evidence of the weakness in the prosecutor's office as well as of the police in gathering and presenting the evidence. It is respectfully suggested that a becoming effort by the police as a murder prevention agency would result in suppressing public gambling and wholesale liquor manufacturing and rum running, which would deprive these gangs of their main sources of revenue, and when that is done, there being nothing left to fight for, little will remain of the gang problem. In order to be profitable both of these enterprises must be conducted in the most flagrant and notorious manner. So conducted, they are as obvious to the police as to anyone else; therefore it should not be difficult to suppress them if there existed the desire to do so.

38. Recommendations.

1. The number of unsolved murders in 1926 and 1927 points directly to the necessity for more efficient methods in the detection of crime.

2. If public gambling and wholesale liquor manufacturing and dis-

[1] See Chapter XXIII of Organized Crime.

tribution were suppressed, thus depriving organized gangs of their principal sources of revenue, the gang murder problem would be solved.

3. The state's attorney should be represented at every coroner's inquest where death is probably due to crime.

4. The coroner's office should be reorganized with politics in the background.

5. The administration of justice in homicide cases is definitely crippled by the practice of police and state's attorney of accepting as final the verdicts of exoneration returned by the coroner's juries. Such verdicts are merely advisory and should constitute no excuse for failure to present the case to the grand jury notwithstanding such verdicts, where the facts point to the guilt of the killer.

6. The practice of the coroner and his deputies of carrying regular jurors of a class who seek the service for the insignificant compensation of one dollar per hearing should be discontinued and jurors should be selected in each case as provided by law, from citizens "of the neighborhood where the body is found or lying." The present practice gives too much opportunity for deputies to influence verdicts.

7. It is essential that greater diligence be exercised by police and prosecutors in apprehending and vigorously prosecuting automobile drivers guilty of culpable negligence resulting in death. In no other way is the growing death list due to negligent and drunken motorists likely to be curbed.

8. Coroner's jury verdicts of murder in deaths by automobile serve no purpose except to improperly increase the advertised number of murders in Cook County and thereby create a false impression with respect to the actual murder rate, and it is recommended that the practice be discontinued.

9. If more care and supervision were given to the maternity cases in charge of midwives and to lying-in establishments, there would probably be fewer cases of infanticide.

10. The predominance of shooting in all forms of homicide points to the necessity for a more stringent enforcement of the laws against carrying concealed weapons, and for legislation similar to that recently enacted in New York and other states, increasing the penalties for this offense and regulating the transportation, sale, and possession of firearms.

11. The small number of convictions obtained and punishments assessed in murder and manslaughter cases indicates a serious weakness in prosecution, which can only be corrected by more vigorous methods of securing evidence and presenting the cases in court.

CHAPTER XIV

THE JUVENILE DELINQUENT

By

CLIFFORD SHAW AND
EARL D. MYERS

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CHAPTER XIV

THE JUVENILE DELINQUENT

PART A

QUANTITY OF DELINQUENCY IN COOK COUNTY

In the following report an attempt is made to bring together certain statistical and case materials relating to the problem of juvenile delinquency in Illinois. Throughout the study the primary purpose has been to present as objective a picture of the situation as possible with the materials that were available, with the hope that a more satisfactory method for the treatment of the delinquent child may thus be developed.

The first part of the report is concerned with the numerical extent of delinquency, the geographical distribution of places of residence of juvenile delinquents, and the distribution of offenses by police districts. In the second part statistics relating to the social status—age, nationality, religion, types of offenses, number of offenses and number of appearances in court—of offenders are presented.

1. Numerical Quantity, in General.[1]

The following statistics, upon the numerical extent of juvenile delinquency in Chicago and Cook County, have been compiled from the records of the Juvenile Court and the monthly reports of the juvenile police probation officers assigned to the various police stations in the city. Statistics compiled from these sources are necessarily incomplete, since they pertain only to those offenders who have been apprehended and either brought to court or adjusted by the police probation officers without court action.

It is well known that there are offenders, even some who persistently engage in delinquent practices, who are never known to the police or the Juvenile Court authorities. Furthermore, in some communities certain types of offenses are so prevalent that there is very little intervention on the part of the police. This is especially true in certain districts contiguous to railroad yards where stealing from freight cars is more or less accepted by the community and police. It is obvious that in such districts the number of cases brought to court or handled by the police is only a small proportion of the total number of children actually engaged in delinquency. It is known, also, that there are apprehended offenders whose names are omitted from the police records and a much larger number who are never brought to court because of the intervention of friends and relatives. In view of these conditions it is apparent that the following statistics are, at best, only partial indices of the extent of juvenile delinquency in Chicago and Cook County.

The numerical quantity of delinquency may be based either upon the

[1] The author is greatly indebted to Mr. Henry D. McKay for his assistance in the preparation of tables presented in this study.

number of cases of delinquency or the number of individuals known to be engaged in delinquent activities. Since an individual may be brought to police stations or to the court many times during the year, the number of cases will always exceed the number of individuals. Thus it should be remembered that the statistics presented in this study pertain to cases rather than individuals.

2. Number of Cases. We shall present first, as an index of the extent of juvenile delinquency in Chicago, the total number of cases[1] of alleged delinquency investigated by the police probation officers each year. These cases constitute the most inclusive series available for statistical study, since they include practically all cases brought to court, most of the cases known to the private agencies, as well as a large number of young offenders who have not appeared in the court. It is true that some children not seriously delinquents are included in this series of cases, yet a careful study of the records indicated that even many of these children presented serious behavior problems.

TABLE 1. NUMBER OF CASES OF ALLEGED DELINQUENCY OF BOYS AND GIRLS INVESTIGATED BY POLICE PROBATION OFFICERS 1910, 1920-26

Year	Number of Cases Investigated	Number Per 10,000 in Total City Population	Number of Cases Adjusted Out of Court	Per Cent of Cases Filed to Bring into Court	No. of Petitions Filed to Bring into Court	Per Cent on Which Petitions Were Filed to Bring into Court
1910	10,009	45.8	———	———	———	———
1920	16,488	61.0	14,316	87.1	2,132	12.9
1921	15,611	56.5[2]	13,641	87.0	1,970	13.0
1922	16,110	57.1[2]	14,372	89.2	1,734	10.8
1923	16,004	55.5[2]	14,149	88.4	1,855	11.6
1924	16,640	55.6[2]	14,544	87.4	2,096	12.6
1925	17,758	59.3[2]	15,927	89.7	1,831	10.3
1926	19,566	64.2[2]	17,922	91.6	1,644	8.4

Table 1 shows the total number of cases of alleged delinquency of boys and girls investigated by the police probation officers in 1910 and each year between 1920 and 1926, the number of cases per 10,000 total city population, the per cent of cases adjusted out of court, and the per cent of cases on which Juvenile Court petitions were filed. It will be observed that the number of cases per 10,000 total city population increased 15.2 (45.8 to 61.0) during the period from 1910 to 1920. Because of the inadequacies of the police records it is impossible to determine whether this increase was due to changes in the policies and activities of the police or whether it indicates that there was an increase in the number of behavior problem children in the city during that period.

The absolute number of cases handled by the police in 1926 showed an increase of 3,078 over 1920. From the standpoint of child welfare this increase presents a rather serious problem, since it is not infrequent that the

[1] Refers to the total number of complaints alleging delinquency investigated by the police probation officers.

[2] United States census estimates.

experience of being brought to a police station, although only for a minor offense, is a rather critical experience in the life of the child.

Looking again at Table 1, it is interesting to note that only approximately 10.0 per cent of all the cases of children handled by the police are brought into court. Thus, approximately 90.0 per cent are disposed of by the police without court action. As the total number of cases has increased, the per cent of cases brought into court has decreased, falling as low as 8.4 per cent in 1926. Of the 19,566 cases of alleged delinquency in 1926, 1,644 were brought to court and 17,922 were disposed of by the police outside of court.

3. Number of Cases Brought Into Court.

A more conservative index of the numerical extent of juvenile delinquency is the total number of cases[1] of delinquent children brought to the Juvenile Court each year. These cases have been restricted, especially during very recent years, to more serious offenders over twelve years of age, as we shall see later. Consequently, a large number of cases of delinquent children under twelve, although they may have been brought repeatedly to police stations on serious charges, will not be included in our statistics of court cases. From a study of the records of the police probation officers it was found that a large number of children as young as eight and nine years of age had been involved in numerous instances of stealing, although they had never been in court. It was not unusual to find cases of children who had a record of delinquency extending over a period of two or three years prior to their first appearance in court. From our study of the records of offenders between seventeen and twenty-one years of age (Boys' Court cases) it was found that in many cases the offender had a long juvenile delinquency record in police stations, although he had never been brought to the Juvenile Court. In the light of these conditions it is apparent that the number of cases of delinquent children brought to court in a given year represents only a fraction of the total number of cases of serious delinquents known to the police.

Table 2 shows the total number of cases of delinquent children brought to the Juvenile Court each year from 1900 to 1927 and the number per 10,000 in the total Cook County population. Although there have been marked fluctuations in the number of cases brought to court from year to year, no consistent increase or decrease is revealed. The number of cases per 10,000 total population ranges between 11.9 and 5.6. The highest number occurred in 1905 to 1907 and 1914 to 1919. The number of male cases ranges from 4.0 to 9.8 and female from 0.6 to 2.5. The ratio of males to females is usually about 3 to 1.

It is impossible to account for all the fluctuations in the number of cases brought to court from year to year. The increase in the number beginning 1905 was due, in part, to the change in the Juvenile Court law which was made in that year extending the Juvenile Court age from sixteen to seventeen for boys and to eighteen for girls. It is probable, also, that the

[1] Refers to the number of final court orders rather than the number of individual children.

increase beginning in 1914 was due, to some extent, to the increase in the number of probation officers. At that time the number of probation officers was increased from 53 to 76, an increase of 43.4 per cent over 1913.

TABLE 2. TOTAL NUMBER OF CASES AND NUMBER OF CASES PER 10,000 IN THE TOTAL COOK COUNTY POPULATION BROUGHT TO THE JUVENILE COURT ON PETITION ALLEGING DELINQUENCY EACH YEAR FROM 1900 TO 1927

Year	Number of Cases			Number of Cases per 10,000 Population[1]		
	Total	Male	Female	Total	Male	Female
1900	1,450	1,339	111	7.9	7.3	.6
1901	1,204	1,075	129	6.4	5.7	.7
1902	1,608	1,427	181	8.2	7.3	.9
1903	1,817	1,586	231	9.1	7.9	1.2
1904	1,901	1,547	354	9.2	7.5	1.7
1905	2,473	2,018	455	11.6	9.5	2.1
1906	2,595	2,131	464	11.9	9.8	2.1
1907	2,512	1,973	539	11.2	8.8	2.4
1908	2,168	1,651	517	9.5	7.2	2.3
1909	1,816	1,352	464	7.7	5.7	2.0
1910	1,636	1,161	475	6.8	4.8	2.0
1911	1,803	1,320	483	7.3	5.3	2.0
1912	1,642	1,105	537	6.5	4.4	2.1
1913	1,956	1,363	593	7.5	5.2	2.3
1914	2,916	2,259	659	11.0	8.5	2.5
1915	2,912	2,326	586	10.7	8.5	2.2
1916	2,786	2,192	594	10.0	7.9	2.1
1917	3,007	2,328	679	10.5	8.1	2.4
1918	3,036	2,306	730	10.4	7.9	2.5
1919	3,402	2,647	755	11.4	8.9	2.5
1920	2,550	1,912	638	8.4	6.3	2.1
1921	2,415	1,754	661	7.7	5.6	2.1
1922	1,906	1,330	576	6.0	4.2	1.8
1923	1,815	1,283	532	5.6	4.0	1.6
1924	2,707	2,079	628	8.2	6.3	1.9
1925	2,513	1,963	550	7.4	5.8	1.6
1926	2,265	1,671	594	6.6	4.9	1.7

4. Number of Cases Committed to Institutions. A third and more conservative index of the extent of delinquency is the number of cases of delinquent children committed to correctional institutions by the court. This number, of course, will always be only a small fraction of those brought to police stations and the court.

Table 3 shows the total number of cases of delinquent children committed to correctional institutions each year by the Juvenile Court and the number per 10,000 in the total Cook County population. Here again the number of cases fluctuates somewhat from year to year, but without a consistent increase or decrease. The number per 10,000 total population ranges from 5.0 to 1.8. The number of male cases ranges from 3.6 to 1.3 and of female cases from 1.4 to 0.4. The ratio of males to females varies widely from year to year.

[1] Rates for other than census years calculated from unofficial estimates of Cook County population based on the Federal Census.

TABLE 3. TOTAL NUMBER OF CASES AND NUMBER OF CASES PER 10,000 IN THE TOTAL COOK COUNTY POPULATION COMMITTED TO INSTITUTIONS FOR DELINQUENTS BY THE JUVENILE COURT EACH YEAR FROM 1900 TO 1927

Year	Number of Cases			Number of Cases per 10,000 Population		
	Total	Male	Female	Total	Male	Female
1900	635	559	76	3.4	3.0	.4
1901	761	662	99	4.0	3.5	.5
1902	833	685	148	4.3	3.5	.8
1903	917	727	190	4.6	3.6	1.0
1904	859	630	229	4.2	3.1	1.1
1905	1,074	770	304	5.0	3.6	1.4
1906	799	541	258	3.7	2.5	1.2
1907	847	547	300	3.8	2.5	1.3
1908	772	497	275	3.4	2.2	1.2
1909	673	437	236	2.9	1.9	1.0
1910	741	487	254	3.1	2.0	1.1
1911	847	608	239	3.4	2.4	1.0
1912	611	379	232	2.4	1.5	.9
1913	685	468	217	2.6	1.8	.8
1914	810	522	288	3.0	1.9	1.1
1915	726	463	263	2.7	1.7	1.0
1916	620	410	210	2.2	1.5	.7
1917	748	469	279	2.6	1.6	1.0
1918	781	495	286	2.7	1.7	1.0
1919	1,155	854	301	3.9	2.9	1.0
1920	856	641	215	2.8	2.1	.7
1921	874	638	236	2.8	2.1	.7
1922	597	445	152	1.9	1.4	.5
1923	604	436	168	1.8	1.3	.5
1924	858	702	156	2.6	2.1	.5
1925	901	700	201	2.7	2.1	.6
1926	935	724	211	2.7	2.1	.6

5. *Foregoing Totals Compared.* The following Table 4 is presented to indicate the ratio between the three groups of cases that have been used to determine the numerical extent of delinquency. This table shows the total number of police cases, court cases, and cases committed each year from 1920 to 1927, and the number per 10,000 total population. It is clear that the ratio between the three groups of cases is rather constant, varying but slightly during the six year period. Roughly, the ratio between the three groups of cases is 20 to 3 to 1.

TABLE 4. COMPARISON OF TOTAL NUMBER OF POLICE CASES, COURT CASES, AND CASES COMMITTED TO INSTITUTIONS WITH NUMBER OF CASES PER 10,000 TOTAL POPULATION FOR EACH YEAR FROM 1920 TO 1926

Year	Total Number of Cases			Number of Cases per 10,000 Total Population		
	Police	Court	Committed	Police	Court	Committed
1920	16,488	2,550	856	61.0	8.4	2.8
1921	15,611	2,415	874	56.5	7.7	2.8
1922	16,110	1,906	597	57.1	6.0	1.9
1923	16,004	1,815	604	55.5	5.6	1.8
1924	16,640	2,707	858	56.6	8.2	2.6
1925	17,758	2,513	901	59.3	7.4	2.7
1926	19,566	2,265	935	64.2	6.6	2.7

From the statistics presented in the preceding tables it is obvious that the numerical extent of delinquency in a given community will depend upon the criterion used. In this study three groups of cases have been presented as indices of the numerical extent of delinquency in Chicago and Cook County. It is safe to assume that these groups of cases represent different degrees in the seriousness of delinquency.

Inasmuch as the police probation officers are in immediate contact with the community, and are the first to deal with the delinquent, it is probable that the group of police cases more nearly approximates the actual numerical extent of delinquency even though it may include cases of behavior difficulties that are not in the strict sense of the word of a delinquent character. It has already been indicated that the court cases are limited to the more serious offenders. It is probable, also, that the number of cases brought to court is determined to some extent by the policies of the police and court authorities. Such factors as the policies of the court, the attitudes of the judge, and the facilities for institutional care tend to limit the number of cases committed.

6. Geographic Location of Delinquencies.[1]

Any comprehensive research into the factors contributing to juvenile delinquent behavior necessitates a knowledge of the social and cultural surroundings or background in which the child lives and in which his problems of conduct have arisen. From this point of view the community, the family, the gang, the play group, and the school, each with their local customs and traditions, must become the object of intensive investigation. In other words, the particular social world to which the child belongs must be understood before a knowledge of his problems can be gained. For it appears that a child's behavior always arises with reference to a world of defined objects towards which he has feelings of fear, prejudice, shame, pride, hate, and love.

As a first step in the general study of the social and cultural background of the delinquent child it is important to determine the geographic distribution of places of residence of delinquents in the community in question. By this means the problem is immediately localized, attention is focused upon the areas of concentration, and the way is prepared for an intensive analysis of the particular social world to which the delinquent belongs.

In view of the marked economic, social, and cultural differences between the various communities of Chicago, it was assumed that wide variations in the number of delinquents among the different communities of the city would be found. With this point in mind, spot maps showing the distribution of places of residence of large series of cases of delinquent children were prepared. Three series of delinquent boys (approximately 9,000 individuals in each series) and one series of 2,085 delinquent girls have been used for this purpose. Since the three series of male cases show approximately the same distribution, it will be sufficient for this survey to present only one of them.

[1] The author wishes to express his indebtedness to his collaborators, Leonard S. Cottrell, Jr., and Fredrick M. Zorbaugh of the Institute for Juvenile Research, for their assistance in the preparation of this section of the study. This section is part of a larger study which is being made by the Institute for Juvenile Research.

7. Residence of Delinquent Boys. A map (Table 5) was prepared, showing the distribution of places of residence of the 9,243 boys who were brought into police stations on complaints alleging delinquency in 1926. Each spot represents the place of residence of one boy. It will be observed immediately that there are areas in which the spots are decidedly concentrated as contrasted with other areas in which they are very sparsely distributed. A more careful study of the map will indicate that the areas of greatest concentration are adjacent to the "Loop" and contiguous to the large industrial districts near the Chicago River, the Union Stock Yards, Calumet Lake and South Chicago.

Taking the "Loop" as a focal point, the areas of greatest concentration fall within a zone surrounding the "Loop" and having a radius ranging from three to six miles. Surrounding the areas of greatest concentration is a marginal zone of relatively fewer spots, and blending into the large outer zone in which the spots are few, except for the small areas of concentration in the district surrounding the Lake Calumet and South Chicago industrial regions.

After completing the basic map the number of delinquents in each mile square area of the city was noted and the ratio of delinquents to the total number of boys in the same age group was computed. This ratio is referred to in the study as the *rate of delinquents.* It is simply the per cent of delinquents in the total number of boys of similar age, computed upon the basis of mile square unit areas. Table 6 (Map 2) shows the *rate of delinquents* in each mile square area of the city for the series of cases plotted on Map 1.

According to this map the rate varies widely among mile square areas, ranging from 26.1 to 0.0. Very striking differences in rate occur even in areas contiguous to each other. For example, in the two areas immediately north of the "Loop," the rate varies from 25.6 to 3.2. A careful examination of the map will indicate many other similar variations in the rate in areas adjacent to each other.

When the rate is represented along lines radiating from the "Loop," Table 7 (Map 3), a very striking gradation in the rate from the "Loop" to the boundary of the city is revealed. In the case of each radial the highest rate occurs in the first mile area adjacent to the "Loop," where it ranges from 21.5 (radials IV, V, and VIII) to 26.6 (radials VII and VIII). The rate in the first mile along radials I, II and III is 25.6. With the exception of radials VI, VII and VIII, there is a continuous decrease in the rate toward the boundary of the city. Along these radials the high rate continues out much farther than it does along the other radials. In the case of radial VIII, the rate drops very low in the fifth, sixth, seventh and eighth mile areas, and rises again in the areas farther out.

8. Residence of Delinquent Girls. A basic map (Table 8, Map 4) was prepared to show the distribution of places of residences of 2,085 delinquent girls who were brought to the Juvenile Court during a five year period. It was found that the distribution of female offenders to population parallels rather closely that of male

offenders. Here again the greatest concentration occurs in the areas that surround the "Loop" and the large industrial districts.

Table 9 (Map 5) shows the *rate of female delinquency* in each mile square area of the city for the five year period. The rate fluctuates widely, even among areas adjoining each other. For the city as a whole the rate ranges between 7.0 and 0.0.

Table 10 (Map 6) shows the *rate of female delinquents* in mile square areas along radial lines. The highest rate is found in areas surrounding the "Loop" and decreases rather continuously toward the city limits, as in the case of male delinquents. The rate in areas adjacent to the "Loop" ranges from 3.8 to 7.0 and from 0.0 to 1.0 in areas near the city limits. The same irregularities are observed along radials VI, VII, and VIII as were indicated in the case of male delinquents.

It is extremely significant that the variations in the rate of delinquents show a rather consistent relationship to different types of community background. Thus the area in which the highest rate is found is the area of deterioration surrounding the "Loop." This area is characterized by marked physical deterioration, poverty and social disorganization. In this area the primary group and conventional controls that were formerly exercised by the family and neighborhood have largely disintegrated. Thus delinquent behavior, in the absence of the restraints of a well organized moral and conventional order, is not only tolerated but becomes more or less traditional.

Surrounding the area of deterioration there is a large area of disorganization, populated chiefly by immigrant groups. In this area of confused cultural standards, where the traditions and customs of the immigrant group are undergoing radical changes under the pressure of a rapidly growing city and the fusion of divergent cultures, delinquency and other forms of personal disorganization are prevalent. In this area the rate of delinquents ranges roughly between 20.0 and 8.0 in the case of males, and from 4.0 to 2.0 in the case of females.

In the outlying exclusive residential districts of single family dwellings and apartment buildings the rate of delinquents is invariably low. With few exceptions the rate in these districts falls below 2.0.[1]

The manner in which the rate of delinquency reflects the community background may be best illustrated by referring to a particular radial. For example, the rate of male delinquents along radial VIII (Map 3) ranges from 23.0 to 26.6 in the area of deterioration near the "Loop," while it drops to less than 2.3 in the rather exclusive residential areas of Kenwood, Hyde Park, Woodlawn and South Shore, and rises again to 7.0 in the areas adjacent to industrial centers of South Chicago.

It should be pointed out that the rate of delinquents in a given *nationality* or *racial group* varies widely with different sections of the city. Thus, in the negro district the rate of male delinquents varies from 26.6 in the area of greatest deterioration near the "Loop" to 10.5 in the more exclusive residential area five miles from the "Loop." In the same areas the rate of female

[1] For a more complete statement concerning types of areas, see R. E. Park and E. W. Burgess, *The City*, pages 50-53.

TABLE 5

(MAP 1)

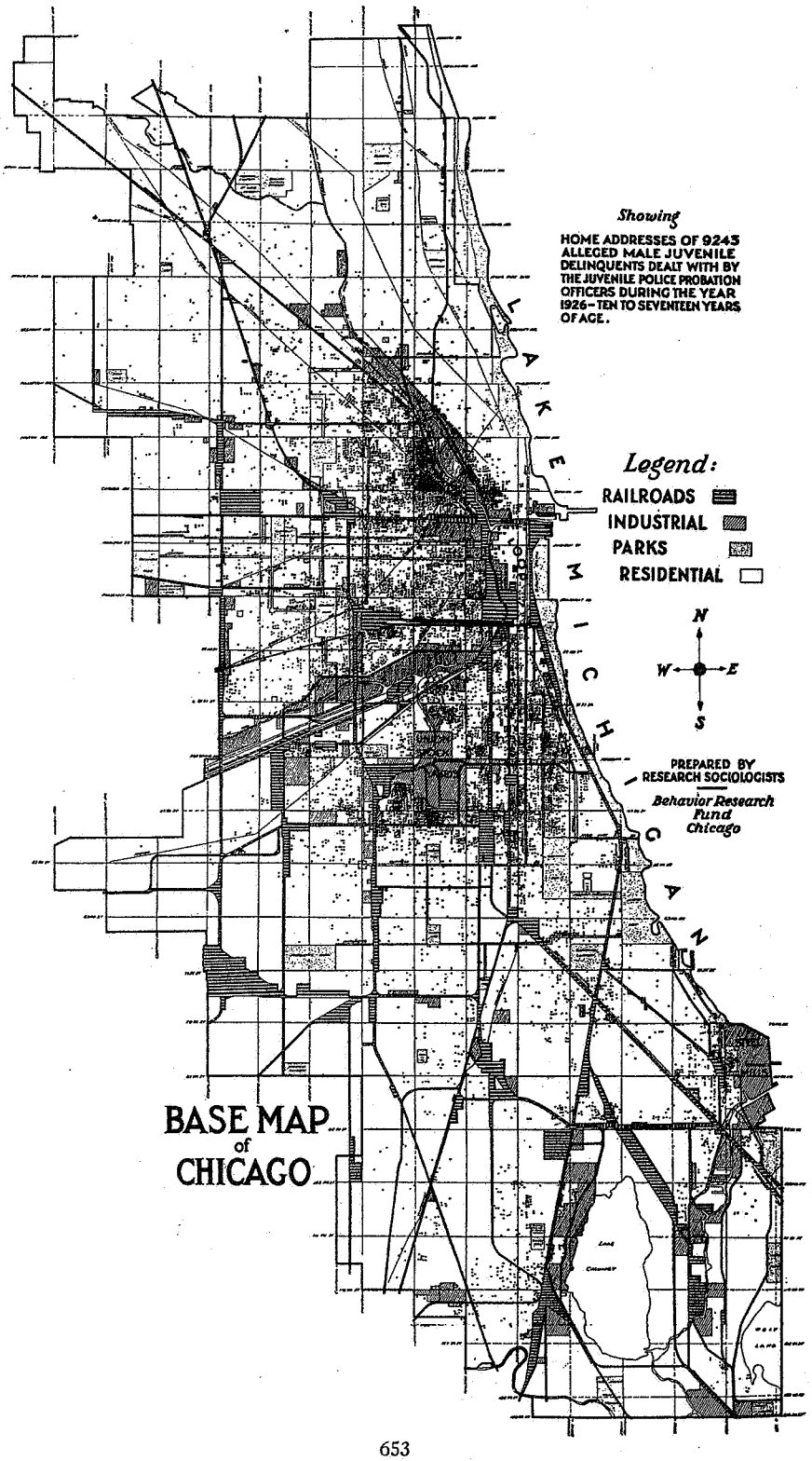

Showing
HOME ADDRESSES OF 9243 ALLEGED MALE JUVENILE DELINQUENTS DEALT WITH BY THE JUVENILE POLICE PROBATION OFFICERS DURING THE YEAR 1926 – TEN TO SEVENTEEN YEARS OF AGE.
Legend:
RAILROADS
INDUSTRIAL
PARKS
RESIDENTIAL
N
W
E
S
PREPARED BY RESEARCH SOCIOLOGISTS
Behavior Research Fund Chicago
LAKE MICHIGAN
BASE MAP of CHICAGO

TABLE 6

(MAP 2)

SHOWING PERCENTAGE OF ALLEGED MALE JUVENILE DELINQUENTS IN THE TOTAL 10 TO 17 MALE POPULATION DEALT WITH BY POLICE IN 1926—BY MILE SQUARE AREAS

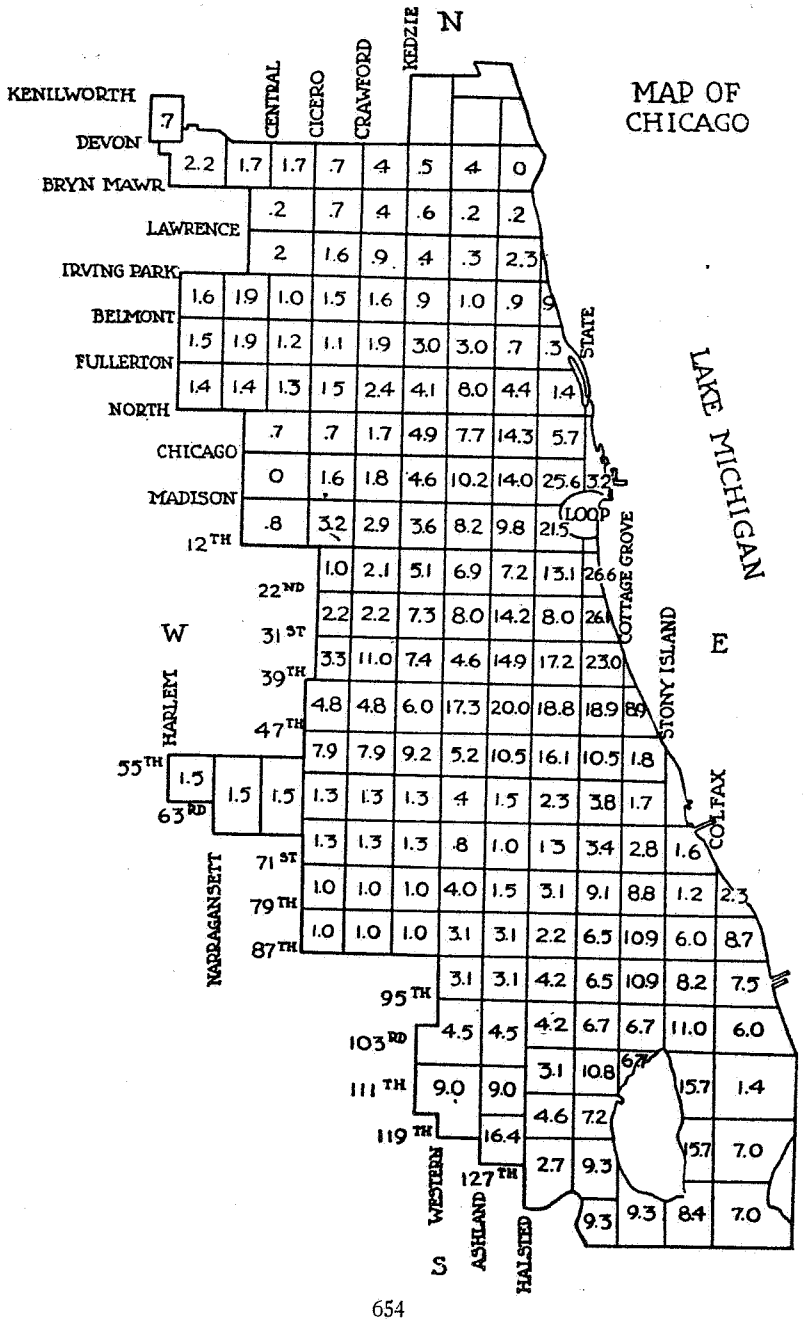


TABLE 7

(MAP 3)

SHOWING PERCENTAGE OF ALLEGED MALE JUVENILE DELINQUENTS IN TOTAL 10 TO 17 MALE POPULATION DEALT WITH BY POLICE IN 1926—BY MILE SQUARE AREAS ALONG LINES RADIATING FROM THE "LOOP"

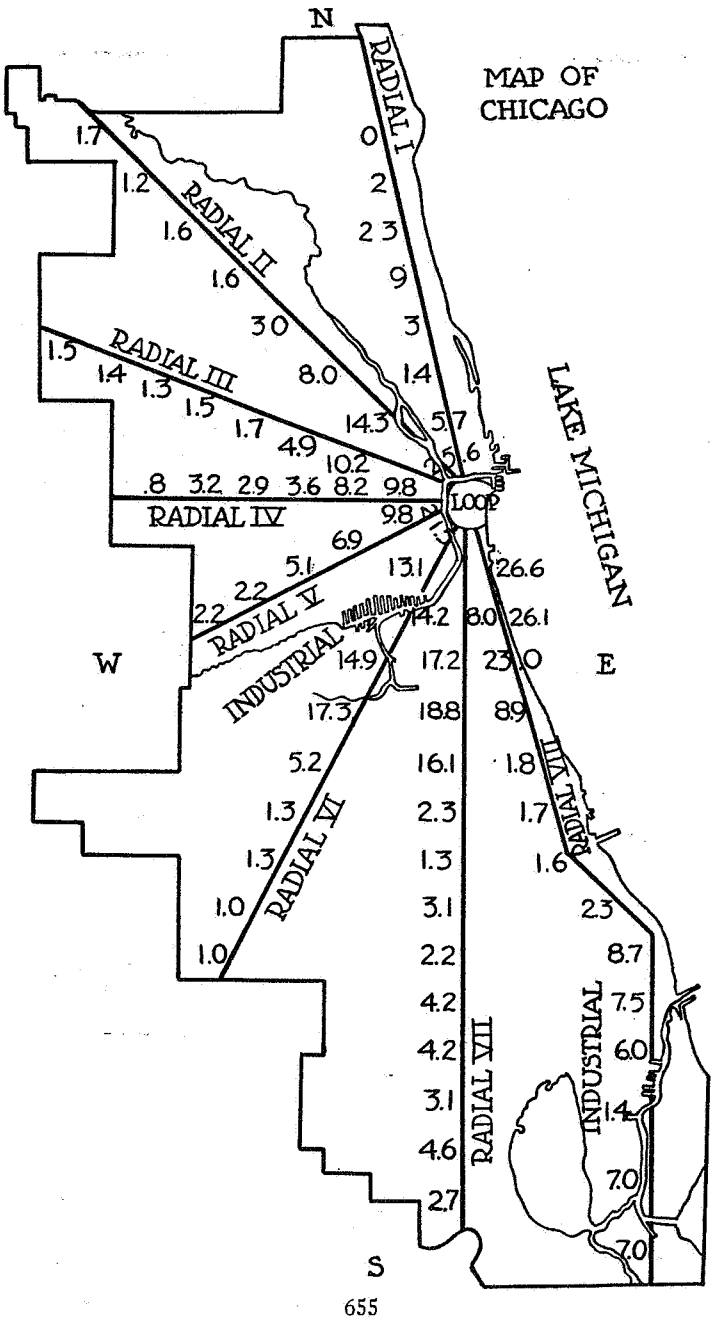


TABLE 8

(MAP 4)

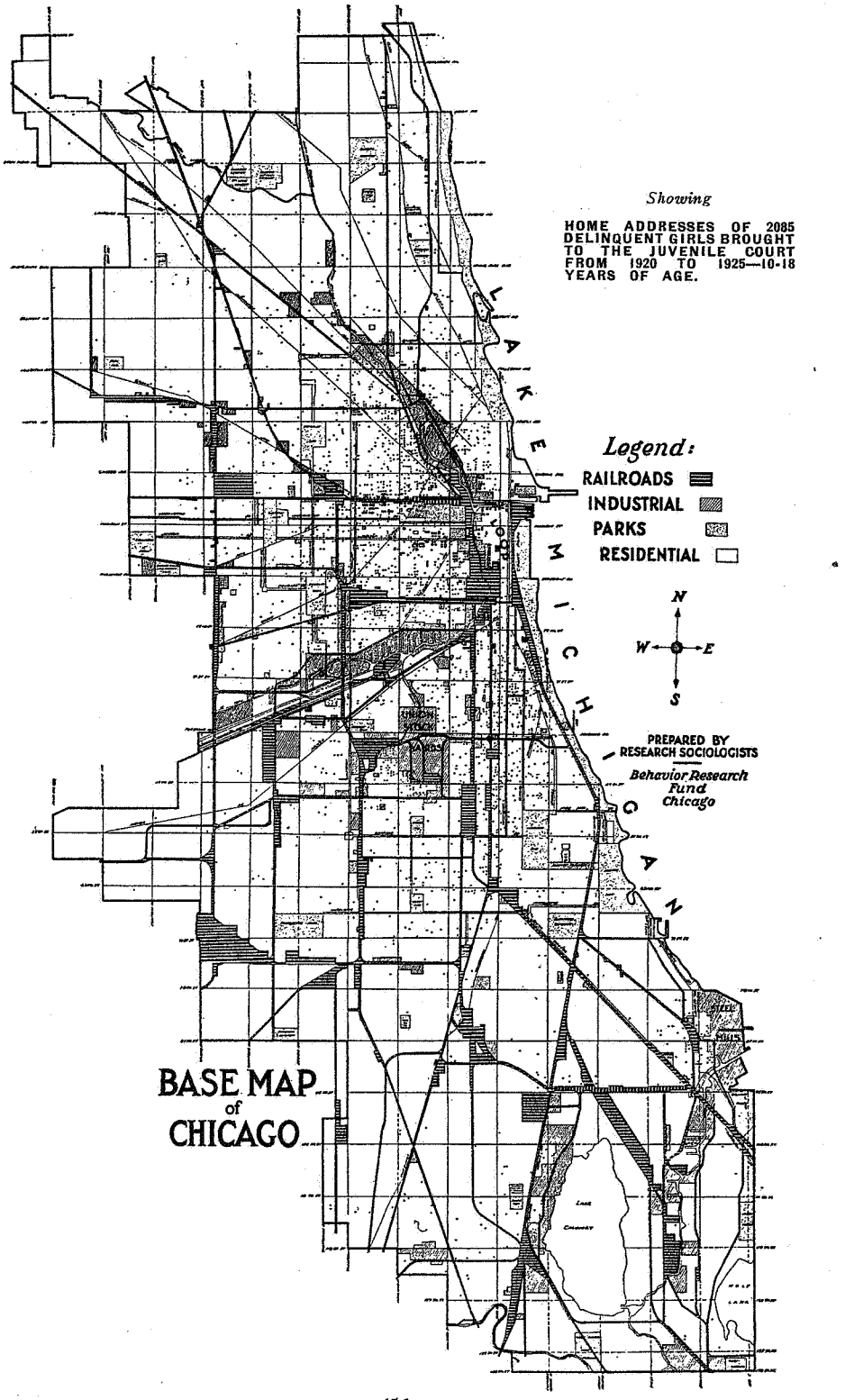

Showing
HOME ADDRESSES OF 2085 DELINQUENT GIRLS BROUGHT TO THE JUVENILE COURT FROM 1920 TO 1925—10-18 YEARS OF AGE.
Legend:
RAILROADS
INDUSTRIAL
PARKS
RESIDENTIAL
N
W
E
S
PREPARED BY RESEARCH SOCIOLOGISTS
Behavior Research Fund Chicago
LAKE MICHIGAN
BASE MAP of CHICAGO

TABLE 9

(MAP 5)

SHOWING PERCENTAGE OF FEMALE JUVENILE DELINQUENTS IN TOTAL 10 TO 18 FEMALE POPULATION BROUGHT TO COURT IN FIVE YEAR PERIOD—BY MILE SQUARE AREAS

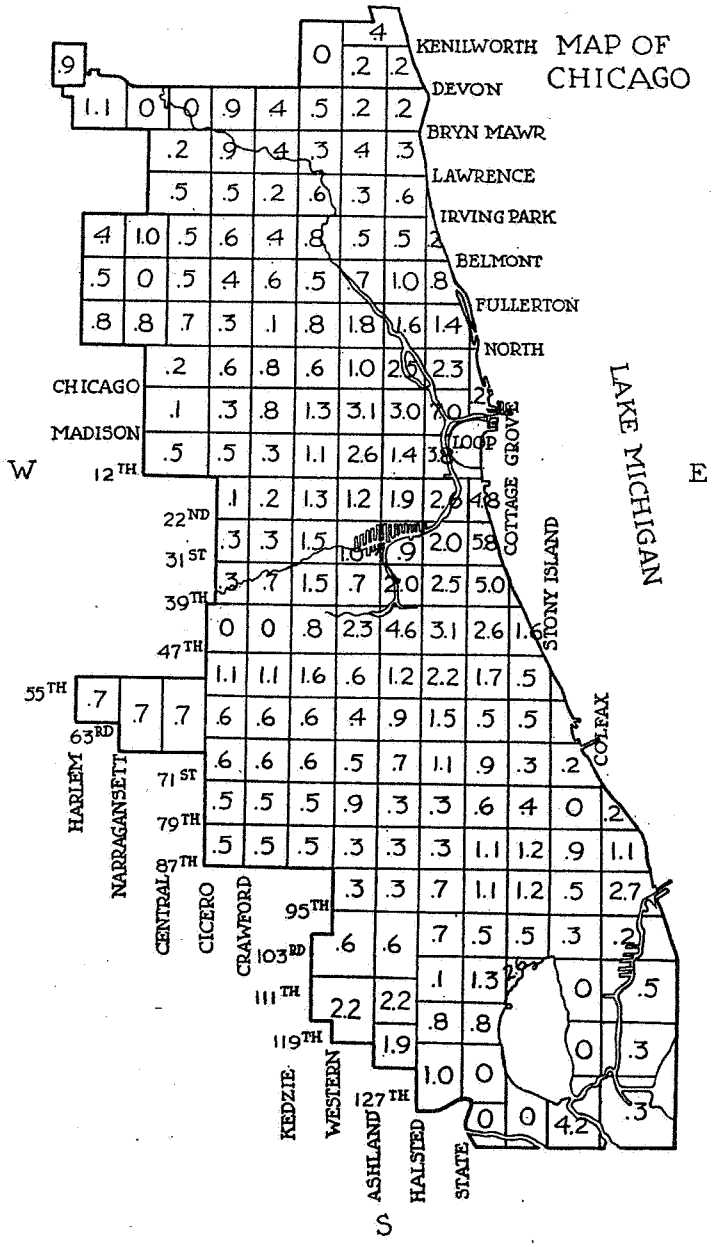
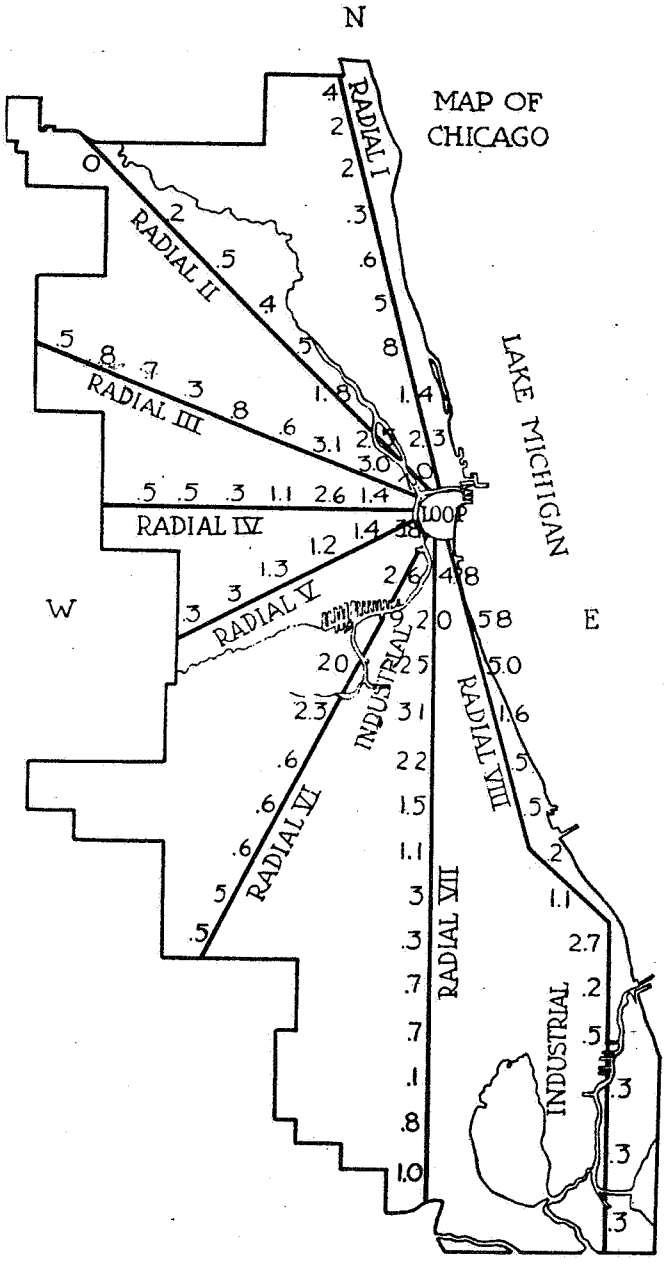


TABLE 10

(MAP 6)

SHOWING PERCENTAGE OF FEMALE JUVENILE DELINQUENTS IN TOTAL 10 TO 18 FEMALE POPULATION BROUGHT TO COURT IN FIVE YEAR PERIOD—BY MILE SQUARE AREAS ALONG LINES RADIATING FROM LOOP



delinquents varies from 4.8 to 1.7. In a similar manner, the rate in a given foreign language group varies with different sections of the city. This fact seems to suggest that delinquency is more definitely related to certain types of areas than it is to the particular nationality or racial group that occupies the area at a given time.

From this study it is clearly revealed that juvenile delinquency in Chicago is decidedly concentrated in areas surrounding the "Loop," and in certain outlying industrial areas, like Packingtown and South Chicago. These are areas of poverty, bad housing, and physical deterioration. It is in these areas that one finds high rates of school truancy and adult crimes. Thrasher, author of "The Gang," found decided concentration of boys' gangs in these areas of delinquency. The outlying residential communities of single family dwellings and high-class apartment buildings produce relatively few cases of delinquent children.

9. *Distribution of Delinquencies by Police Districts.*

In addition to the distribution of delinquents by places of residence (See Maps 1—6) it is important to determine the areas in which delinquent activities are most prevalent. It is well known that the delinquent does not always commit his offenses in the immediate neighborhood in which he lives. As a general rule, the delinquent's first offenses occur in the vicinity of his home, but, as he grows older, becoming more experienced and known to the police as a criminal character, the geographical range of his activities is greatly expanded.

In a study of adult offenders a map showing the distribution of places of residence indicated that the areas having the greatest concentration were located adjacent to the "Loop" and the large industrial centers, and thus corresponded with the areas having the highest rate of juvenile delinquents. On the other hand, a map showing the places where adult offenses were committed, showed concentrations in the "Loop" and other business centers, along main thoroughfares, and in the residential districts of high economic status. A comparison of these two maps revealed that adult offenders usually commit their crimes outside of the community in which they live.

Table 11 (Map 7) indicates the number of complaints alleging delinquency per square mile based upon the cases dealt with by the police in each police district of the city in 1926. Since, in a majority of cases, the child is picked up by the police in the district in which his offense is committed, Map 7 may be assumed to represent, roughly, the distribution of places where juvenile *offenses are committed.*

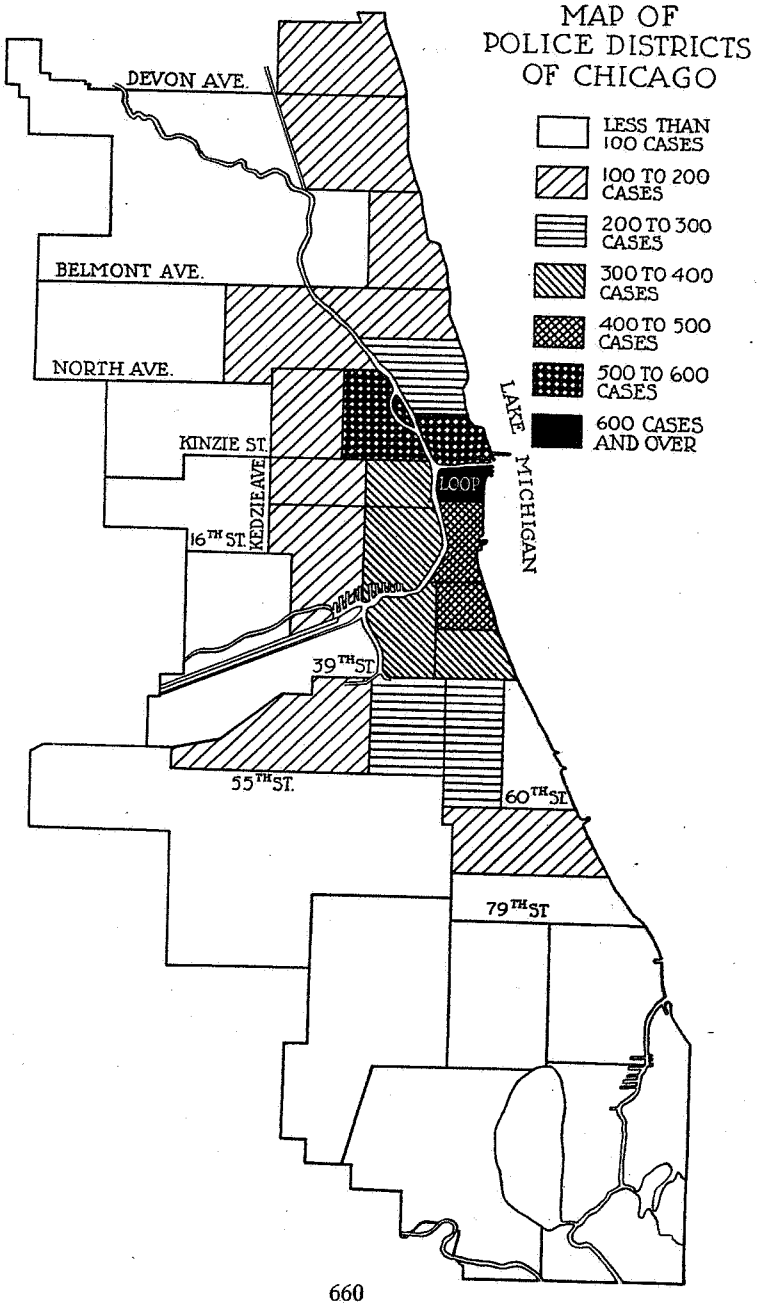
According to Map 3, the greatest concentration of offenses occurs in the "Loop" and districts adjacent to it. The localization of cases in these districts stands in sharp contrast to the outlying districts. The district having the highest number of cases is the "Loop," the area of greatest mobility and business activity in the city. The second highest number occurs in the districts contiguous to the "Loop," where the number ranges from 300 to 600. In adjoining districts the number ranges between 100 to 300. The latter districts include many of the residential communities of high economic status. In the outlying districts the number drops below 100.

It is realized that many valid objections may be directed against the

TABLE 11

(MAP 7)

SHOWING NUMBER OF COMPLAINTS ALLEGING DELINQUENCY PER SQUARE MILE INVESTIGATED BY JUVENILE POLICE PROBATION OFFICERS IN 1926—BY POLICE DISTRICTS



method of determining concentration of offenses on the basis of a geographical unit. One would naturally expect to find a larger number of cases in the areas adjacent to the "Loop" because of the greater density of population in these areas. Due to the absence of population statistics for the police districts, and the balance of a resident population in the "Loop," it was not practicable to determine the rate on a population basis. The rates presented in Map 7, although ignoring the variation in density of population, give a rough indication of the areas in which offenses are most prevalent.

PART B

PERSONALITY OF DELINQUENT OFFENDERS

It is quite generally acknowledged that there can be no adequate control of the problem of delinquency except on the basis of a knowledge of the factors that produce delinquent behavior. At the present time our knowledge of the causes of delinquency is far from adequate. The person who is faced with the practical problem of dealing with delinquents and criminals finds surprisingly little information in the literature that is helpful in the solution of the problem. It appears, therefore, that one of the immediate tasks is to accumulate a body of knowledge which may be used to formulate more satisfactory methods for the detection, custodial care, and adjustment of offenders.

This section of the study is devoted to a consideration of certain general features of the problem of delinquency in Chicago. Such factors as the types of offenses, the age distribution, the nationality, the religion, the number of appearances in court, and the like, are considered. These factors have been studied in the cases brought to court each fifth year during a twenty-five year period. When studied in this manner they throw light upon certain general tendencies in the situation in Chicago and suggest clues for further research into the causes of delinquency.

10. *Delinquency and the Community.* In the study of the distribution of places of residence of delinquents it was revealed that certain areas of the city produce a disproportionately large number of the delinquents who are brought to the police station and the Juvenile Court. It was pointed out, also, that the rate of delinquency showed a rather consistent relationship to the type of community background, being consistently high in the areas of deterioration and low in the residential areas of single family dwellings and apartment houses. These findings seem to suggest that the problem of delinquency is to a certain extent a community problem. In other words, delinquent conduct is involved in the whole social life and organization of the community. This is a phase of the problem which has been greatly overlooked, both in the study of the causes of delinquency and in the treatment of the offender.

The study of detailed life histories of delinquents reveals that the experiences and behavior trends of offenders reflect the culture and spirit of the community in which they have lived. It is interesting in this connection that certain types of offenses are more prevalent in certain areas and have become more or less traditional in the life of the community.

11. *Delinquency as Group Behavior.* In a study of 6,000 instances of stealing, with reference to the number of boys involved, it was found that in 90.4 per cent of the cases two or more boys were known to have been involved in the act and were consequently brought to court. Only 9.6 per cent of all the cases were acts of single individuals. Since this study was based upon the number of boys brought to court, and since in many cases not all of the boys involved were caught and brought to court, it is certain that the percentage of group stealing is therefore even greater than 90.4 per cent. It cannot be doubted that

delinquency, particularly stealing, almost invariably involves two or more persons.

Another interesting finding revealed in this study was that the number of boys involved tends to vary with the type of offense and the chronological age of the participants. For example, in instances of petty stealing in the neighborhood, there were usually five and six participants, most of whom were very young offenders; whereas, in instances of holdup, a more highly specialized type of offense, there were usually only two or three boys involved, most of whom were older and more experienced delinquents. It seems that as the delinquent grows older and becomes more specialized in a particular form of delinquency, the number of his associates decreases.

It should be pointed out that delinquency frequently becomes an established social tradition in certain gangs, and is transmitted from the older members to the younger. It is not infrequent to find gangs in which the requirement for membership is participation in the delinquent activities of the group. In such groups the member who has demonstrated his ability in delinquency or who has "done time" in one of the correctional institutions will have prestige and will play a leading role in the life of the group. To understand the delinquent behavior of a member of one of these gangs it is necessary to know the traditions and social values of the group. The conduct of the individual member cannot be understood, much less effectively treated, except in relation to the life of the group of which he is a part.

12. Diffusion of Delinquent Patterns of Conduct.

From a study of life histories of delinquents it appears that delinquent patterns, particularly those of stealing, are transmitted from one individual to another and from one group to another in much the same manner that any cultural form is disseminated through society. This process of transmission takes place largely through the medium of social contacts.

It has already been mentioned that traditions of stealing become established in certain gangs and even in certain families and are transmitted through social contact from one member to another. The boy who participates in the life of a delinquent gang naturally assimilates the prevailing patterns of behavior in his group, thus becoming a delinquent. It is not infrequent that one encounters cases in which an experienced delinquent introduces a form of stealing into a non-delinquent group, thus involving the entire group in delinquency. The idea of stealing is not only transmitted but the particular technique used in committing the act is transmitted as well.

13. The Delinquent and His Social World.

The foregoing considerations lead quite naturally to the assumption that if the delinquent is to be adequately understood and adjusted it will be necessary to study his behavior in relation to the situation in which it occurs. Any effort to deal with the delinquent as a separate entity, apart from the social and cultural world in which his behavior trends have arisen, necessarily neglects important aspects of the situation.

14. Age Distribution of Delinquents.

Table 10 shows the age distribution in the cases of male and female delinquents who were brought to court each fifth year from 1900 to 1925. It is indicated that the percentage of boys under 13 and girls under 14 has rather consistently decreased during this period. Thus, the court in later years has increasingly tended to deal with the older age groups. The girls' cases are somewhat more concentrated in the older age group than the boys.

A much more significant study in connection with age distribution would be with reference to the chronological age at the time of first offense. It is quite certain that many careers of adult delinquency have had their origin during the pre-adolescent period. It is not infrequent to find cases in which the first experience in delinquency has occurred as early as the eighth or ninth year.

TABLE 12. AGE DISTRIBUTION OF CASES OF DELINQUENT CHILDREN BROUGHT TO COURT EACH FIFTH YEAR FROM 1900 TO 1915, BY PERCENTAGES

	Boys						Girls					
Date	1900	1905	1910	1915	1920	1925	1900	1905	1910	1915	1920	1925
Total No. Cases		2,018	1,161	2,326	1,912	1,963	111	455	475	586	638	550
Age												
8 and under	.9	1.2	—	—	—	—	—	.2	—	—	—	—
9	3.3	2.6	.8	—	—	—	—	1.3	.6	—	—	—
10	7.5	4.8	2.4	3.0	1.9	.9	1.8	0.9	.8	1.2	.6	—
11	10.1	8.3	3.5	5.1	4.5	2.8	.9	2.2	1.5	2.5	1.1	.4
12	15.4	12.6	7.7	8.5	9.5	6.7	4.5	5.9	2.9	2.6	2.4	3.4
13	15.8	15.9	14.5	11.2	14.3	13.2	12.6	8.8	7.8	5.1	7.4	7.3
14	22.3	17.1	20.6	19.7	20.7	20.6	31.5	13.0	14.3	15.3	17.2	18.7
15	22.1	23.2	23.2	24.2	26.0	28.2	33.4	30.6	24.0	19.5	23.0	24.3
16	2.6	13.4	26.3	27.5	22.8	27.4	12.6	22.6	23.0	27.3	29.5	29.3
17	—	0.9	1.0	.8	.3	.2	.9	14.3	23.6	25.8	18.3	16.4
18 and over	—	—	—	—	—	—	1.8	.2	1.5	.7	.5	.2
	100	100	100	100	100	100	100	100	100	100	100	100

Table 13 shows the age distribution of the 9,243 *males* and 929 *females* who were brought to police stations as alleged delinquents in 1926. It is interesting to note that 31.3 per cent of the males and 13.0 per cent of the females are under 13 years of age. This seems significant when compared with the court cases for 1926 (Table 14), where it will be observed that 10.4 per cent of the males and 3.8 per cent of the females are under that age. This difference indicates rather clearly the tendency on the part of the police to deal with younger children outside of court, and to bring into court only the older offenders. According to Table 13 the cases of males and females are concentrated in the older age groups from 14 to 18 for girls and 12 to 17 for boys.

TABLE 13. AGE DISTRIBUTION OF ALLEGED MALE AND FEMALE DELINQUENTS INVESTIGATED BY JUVENILE POLICE DURING THE YEAR 1926 BY NUMBER AND PERCENTAGES

	Male		Female	
Age Group	Number of Individuals	Per Cent	Number of Individuals	Per Cent
8 and under	250	2.7	3	0.3
9	213	2.3	3	0.3
10	499	5.4	43	4.6
11	730	7.9	36	3.9
12	1,202	13.0	36	3.9
13	1,303	14.1	91	9.8
14	1,691	18.3	169	18.2
15	1,608	17.4	198	21.3
16	1,571	17.0	215	23.1
17	176	1.9	6	14.0
18	—	—	—	0.6
Total	9,243	100.0	929	100.0

15. Types of Offenses. The following tables present a very general classification of offenses and tend to show rather interesting tendencies in the court cases. There have been so many changes in classification of offenses in the court cases during the last twenty years that any classification upon the basis of more specific offenses for that period would be misleading. The classification of cases of stealing is fairly specific and reliable. It is obvious that the other two categories are very general, including a great variety of offenses.

TABLE 14. PERCENTAGE OF EACH OFFENSE IN TOTAL NUMBER OF CASES OF DELINQUENT BOYS BROUGHT INTO THE JUVENILE COURT DURING EACH FIFTH YEAR SINCE 1905

Offense	1905	1910	1915	1920	1925	1926
Total No. of Cases	2,018	1,161	2,326	1,912	1,963	1,671
All stealing	47.2	56.2	68.3	69.4	71.6	71.8
Incorrigibility	25.3	23.2	16.7	17.1	19.1	19.9
All others	27.5	20.6	15.0	13.5	9.3	8.3
All offenses	100.0	100.0	100.0	100.0	100.0	100.0

Table 14 shows the percentage of each offense in the total number of cases of *male* delinquents brought to court each fifth year from 1905 to 1925 and in 1926. It will be observed that the percentage of "stealing" cases increased from 47.2 in 1905 to 71.8 in 1926, an increase of 24.6 per cent. The percentage in the "incorrigible" group decreased from 25.0 in 1905 to 19.9 in 1926, and in the group of "all other" from 27.5 to 8.3 per cent during the same period. These fluctuations have been due in part to changes in the classification of offenses and to the fact that the cases brought to court have tended to be restricted to more serious cases of stealing. The less serious offenses are now handled almost entirely by the police without court action.

Of the total 9,243 alleged delinquent boys who were brought into police stations in 1926, 45.4 per cent were charged with stealing; 40.2 per cent with incorrigibility (this includes truancy from home and school, difficulties in the home, malicious mischief, and the like); and 14.32 per cent in all others.

TABLE 15. PERCENTAGE OF EACH OFFENSE IN TOTAL NUMBER OF CASES OF DELINQUENT GIRLS BROUGHT INTO THE JUVENILE COURT DURING EACH FIFTH YEAR SINCE 1905

Offense	1905	1910	1915	1920	1925	1926
Total No. of Cases...	455	475	586	638	550	594
Stealing	14.5	15.4	8.9	10.2	6.2	8.1
Incorrigibility	80.0	76.4	87.4	87.6	87.8	89.6
All others	5.5	8.2	3.7	2.2	6.0	2.3
All offenses 100.0		100.0	100.0	100.0	100.0	100.0

Table 15 shows the percentage of each offense in the total number of cases of delinquent girls brought to court each fifth year from 1905 to 1925 and in 1926. It will be observed that the percentage of "stealing" cases has decreased from 14.5 to 8.1 in this period. The "incorrigibility" group, which includes all sex offenses, has remained consistently high during the period.

When Table 15 is compared with Table 14 it will be observed that the percentage of cases in the "stealing" group is approximately nine times more in the case of boys than in the case of girls.

Of the total 929 alleged delinquent girls brought to police stations in 1926, 24.3 per cent were charged with stealing; 75.0 with incorrigibility (including sex delinquencies); and 0.7 in all others.

16. Number of Appearances in Court.

Table 16 shows the percentage of male and female delinquents brought to court for the first time, and the percentage having previously been in court from two to nine times, for each fifth year from 1905 to 1925. The large percentage of recidivists, both for girls and boys, is indicative of the seriousness of the cases dealt with by the court.

According to Table 16, the percentage coming into the court for the first time in the male group decreased from 64.3 in 1905 to 46.4 in 1925, and in the female group the percentage decreased from 75.9 to 60.5 in the same period. The percentage of those brought to court each year who had had previous court appearances correspondingly increased from 35.7 to 53.6 for males and from 24.1 to 39.5 in the case of females during the same period.

This marked increase in the percentage of recidivists appearing in the Juvenile Court may in part be due to the tendency of the court in recent years to deal more especially with the more serious offenders.

The table further indicates that throughout the entire period the percentage of males brought to court for the first time has been consistently lower than in the case of females. On the other hand, the percentage of male recidivists, particularly those appearing in court three or more times, has been much higher than in the case of female recidivists.

17. Racial Origin of Delinquents.

Table 17 shows the nativity of the fathers of male delinquents, expressed in percentages of the total number of cases brought to court and classified by racial origin, for each fifth year from 1900 to 1925. The total male population of juvenile court age (10-17) is not taken into account here and, consequently, the table should not be construed as representing this rate of delinquents in the different racial groups.

TABLE 16. NUMBER OF TIMES DELINQUENT CHILDREN WERE BROUGHT TO COURT—PERCENTAGE FOR EACH FIFTH YEAR FROM 1905 TO 1925

Times in Court	1905	1910	1915	1920	1925
MALE					
	100.0	100.0	100.0	100.0	100.0
First time	64.3	55.5	53.7	55.6	46.4
Second time	18.9	23.2	19.2	20.9	25.1
Third time	9.6	11.8	12.0	11.3	14.5
Fourth time	4.1	5.8	8.1	6.7	7.6
Fifth time	2.0	2.7	3.9	2.7	3.6
Sixth time	0.8	.7	1.7	1.2	1.0
Seventh time	.3	.3	1.0	1.1	1.0
Eighth time	—	—	.3	.4	.4
Ninth time	—	—	.1	.1	.2
Tenth time	—	—	—	—	.2
Total appearing more than once	35.7	44.5	46.3	44.4	53.6
FEMALE					
	100.0	100.0	100.0	100.0	100.0
First time	75.9	72.8	62.6	67.9	60.5
Second time	17.8	20.0	24.8	20.5	21.3
Third time	4.4	5.7	8.0	7.0	9.3
Fourth time	1.7	1.5	3.6	2.6	5.3
Fifth time	.2	—	.5	1.4	1.8
Sixth time	—	—	.3	.6	.2
Seventh time	—	—	.2	—	.9
Eighth time	—	—	—	—	.2
Ninth time	—	—	—	—	—
Tenth time	—	—	—	—	—
Total appearing more than once	24.1	27.2	37.4	32.1	39.5

TABLE 17. NATIVITY OF THE FATHERS OF DELINQUENT *Boys* EXPRESSED IN PERCENTAGES OF THE TOTAL NUMBER OF CASES CLASSIFIED BY RACE ORIGIN DURING EACH FIFTH YEAR SINCE 1900

Nativity of Father	1900	1905	1910	1915	1920	1925
Total Number of Cases Classified	1,035	1,828	1,123	2,215	1,829	1,910
American—White	16.0	19.0	16.5	16.5	23.0	21.7
American—Negro	4.7	5.1	5.5	6.2	9.9	17.1
Austrian	0.1	0.3	0.9	1.3	0.8	2.2
Canadian	0.9	1.0	1.1	0.8	0.3	0.6
Czechoslovakian	4.6	4.3	5.5	3.0	2.2	2.8
English	2.0	1.9	2.1	1.7	0.7	0.6
French	1.7	1.0	1.2	0.5	0.2	0.1
German	20.4	18.5	14.5	11.0	6.3	3.5
Hungarian	0.3	0.3	0.4	0.6	1.4	1.2
Irish	18.7	15.4	12.3	10.7	6.1	3.1
Italian	5.1	8.3	7.9	10.1	12.7	12.8
Lithuanian	0.1	0.3	1.1	2.9	2.2	3.9
Norwegian	0.1	2.0	0.9	0.9	0.3	0.1
Polish	15.1	15.7	18.6	22.1	24.5	21.9
Russian	3.5	.0	6.2	6.2	4.3	4.4
Scotch	1.4	1.1	0.4	0.9	0.2	0.1
Swedish	3.7	3.6	2.0	1.9	2.0	0.4
Others	1.6	2.2	2.9	2.7	2.9	3.5
Total	100.0	100.0	100.0	100.0	100.0	100.0

According to Table 17 it is indicated that of the 1,035 cases of *male delinquents* dealt with by the court in 1900, the highest percentages, 20.4 and 18.7, are to be found in the German and Irish groups, respectively. The percentage in these two national groups consistently decreased to 3.5 and 3.1, respectively, in 1925. This decrease is probably due in part to the fact that most of the Germans and Irish no longer live in the areas of disorganization and delinquency. Although some have continued in delinquency and have later been classified as white Americans, it is not improbable that this decrease represents an actual decrease in the rate of delinquency in these groups.

Of equal consistency, but opposite in tendency, is the marked increase in the percentages of Italians and Poles, the former having increased from 5.1 in 1900 to 12.8 in 1925, and the latter from 15.5 in 1900 to 21.9 in 1925, after having apparently reached its peak in 1920 when it constituted 24.5 per cent of the cases. Thus the German and Irish groups have over a span of twenty-five years given way to the Italian and Polish groups. This is undoubtedly due in a large measure to the fact that the Italians and Poles constitute the most recent immigrant groups (excepting the Negro), and, as in the case of their predecessors, have been attracted by low rents to the areas of deterioration where social disorganization and delinquency prevail.

While these changes have been taking place the percentage of the White American group, although showing an increase of 5.7 per cent (16 per cent in 1900, 21.7 per cent in 1925), has remained relatively constant. The increase may in part be due to the fact that many of the German and Irish have, during this period, become American. The American Negro group showed a marked increase from 4.7 per cent in 1900 to 17.1 per cent in 1925. This undoubtedly reflects the great influx of the Negroes, especially during the years following the war.

Table 18 shows the race origin of cases of female delinquents, expressed in percentages of the total number of cases brought to court and classified by race origin, for each fifth year from 1900 to 1925. It will be observed that in general, the same situation prevails here as in the case of Table 16. It should be noted, however, that the percentage of males is much higher than the percentage of females in the Italian group. The percentage of female cases in the Negro group increases more gradually in the case of females than in the case of males.

18. Religious Affiliation of Delinquents.

Tables 19 and 20 show the percentages of each religion in the total number of cases of male and female delinquents brought to court each fifth year from 1906 to 1926. It will be observed in the instance of both sexes that the percentage of cases in the Jewish, Catholic, and Protestant groups has remained fairly constant during the period.

Very interesting tendencies may be observed to be taking place when the white and Negro Protestant groups are compared. The percentage in the white group has decreased from 30.0 in 1906 to 12.9 in 1926 in the case of males, and from 41.1 to 22.5 in the case of females. On the other hand, the percentage in the Negro group has increased from 3.7 to 20.3 and 7.1 to 20.1 for males and females, respectively.

TABLE 18. NATIVITY OF THE FATHERS OF DELINQUENT *Girls* EXPRESSED IN PERCENTAGES OF THE TOTAL NUMBER OF CASES CLASSIFIED BY RACE ORIGIN DURING EACH FIFTH YEAR SINCE 1900

Nativity of Father	1900	1905	1910	1915	1920	1925
Total Number of Cases Classified	108	397	457	564	620	534
American—White	20.3	24.7	19.0	16.9	22.9	23.4
American—Negro	11.0	5.8	8.1	13.8	20.7	18.2
Czechoslovakian	.0	4.5	4.2	3.2	2.1	3.7
English	3.4	2.0	4.4	2.3	1.3	1.5
French	.0	2.5	1.7	2.1	0.3	0.4
German	22.9	18.9	19.7	17.5	9.5	4.7
Irish	14.4	10.8	7.4	6.4	6.0	2.1
Italian	.0	2.8	2.6	4.8	5.3	4.3
Lithuanian	0.8	0.3	0.7	1.2	3.5	5.1
Norwegian	.0	4.0	2.2	1.1	0.2	0.7
Polish	16.1	14.3	18.0	19.0	16.0	19.1
Russian	0.8	1.0	4.2	3.2	1.9	2.6
Scotch	1.7	0.3	1.7	0.4	0.2	1.1
Swedish	6.0	3.3	1.7	3.7	1.6	1.3
Others	2.6	4.8	4.4	4.4	8.5	11.8
Total	100.0	100.0	100.0	100.0	100.0	100.0

TABLE 19. PERCENTAGE OF EACH RELIGION IN TOTAL NUMBER OF CASES OF DELINQUENT BOYS CLASSIFIED BY RELIGION IN EACH FIFTH YEAR FROM 1901 TO 1926

	1900-01[1]	1906	1911	1916	1921	1926
Total Number of Cases Classified	1,954	1,955	1,278	2,170	1,738	1,623
Catholic	58.7	58.0	63.4	63.9	66.1	62.3
Protestant	36.4	33.7	30.2	27.8	26.1	33.2
White	(31.6)	(30.0)	(24.4)	(20.1)	(14.9)	(12.9)
Negro[2]	(4.8)	(3.7)	(5.8)	(7.7)	(11.2)	(20.3)
Jewish	4.9	8.3	6.4	8.3	7.8	4.5
Total	100.0	100.0	100.0	100.0	100.0	100.0

[1] Includes both male and female delinquents and dependents.
[2] In this table all Negroes have been classed as Protestant.

TABLE 20. PERCENTAGE OF EACH RELIGION IN TOTAL NUMBER OF CASES OF DELINQUENT GIRLS CLASSIFIED BY RELIGION IN EACH FIFTH YEAR FROM 1901 TO 1926

	1900-01[1]	1906	1911	1916	1921	1926
Total Number of Cases Classified	1,954	423	457	587	656	573
Catholic	58.7	48.0	50.7	54.5	56.9	55.7
Protestant	36.4	48.2	43.6	40.2	39.2	42.6
White	(31.6)	(41.1)	(33.5)	(29.0)	(23.9)	(22.5)
Negro[2]	(4.8)	(7.1)	(10.1)	(11.2)	(15.3)	(20.1)
Jewish	4.9	3.8	5.7	5.3	3.9	1.7
Total	100.0	100.0	100.0	100.0	100.0	100.0

[1] Includes both male and female delinquents and dependents.
[2] In this table all Negroes have been classed as Protestant.

It should be remembered that these tables do not take into account the changes in the total population of the different religious groups considered. It may be that the increase in the percentage of Negro cases merely reflects the increase in the Negro population rather than any increase in the volume of delinquency in that group itself. It is nevertheless significant that the percentage of cases in the white Protestant group shows a consistent tendency to decrease.

The white Protestants, most of whom are native born, have in the process of the growth of Chicago, gradually moved out of the area of deterioration where the rate of delinquency is high. The Negro, on the other hand, because of his lower economic status, has tended to move into the area of deterioration near the "Loop," thus supplanting to a certain extent the white Protestant population in this area. The increase in the percentage of the Negro cases brought to court may be due to some extent to the type of area in which this racial group is forced to live. In this connection it should be borne in mind that the rate of delinquency in the Negro group varies with the type of community background, as was indicated in connection with Map 2.

19. Extent of Juvenile Delinquency Outside of Cook County.

A survey of the sources of information pertaining to juvenile delinquents outside of Cook County revealed that the criteria of delinquent behavior, the methods used in detecting and dealing with offenders, and the practice with reference to the question of keeping records, vary so widely from one county to another that an accurate and complete study of the extent and nature of delinquency could not be made from the records now available. A complete and reliable study would involve an intensive investigation of the towns and cities in each county within the state. Obviously it has not been possible to make such a study in the limited time alloted to the survey.

The records of the police, save for a few of the larger cities, are of little value for statistical purposes. In the first place, the activities of the police in connection with the detection and handling of juvenile delinquents differ markedly from county to county. In some counties practically all delinquents are handled by the police, as contrasted with other counties in which only a small proportion of the cases have contact with the police. In some of the small towns delinquents are dealt with directly by the probation officers or representatives of civic or religious organizations. In many of these cases no records are kept. In counties where cases are handled by the police as a routine practice, there were many instances where no records were kept and a larger number where only records of the more serious offenders were made.

Likewise, the records in the courts are of very little value for a statistical study, since the function performed by the court in juvenile cases is highly variable among the counties of the state. In some counties the court is used only in cases where commitment is deemed necessary, while in other counties a large proportion of the children known to be delinquent are brought to court. Thus, the records in one county showed that one-third of the cases

were committed while those in another county showed that every delinquent brought to court had been committed.

In the light of these findings it was apparent that statistics based upon the records of the police and courts in the several counties of the state would be very incomplete. It was clear, also, that any comparison of the number of delinquents in the different counties based upon statistics compiled from the available records would be misleading. Thus it was felt that the number of individuals committed to the state correctional institutions in a given period was the best information available to make a comparative study of the numerical extent of delinquents in the 102 counties in the state.

Table 21 shows the number of boys committed to St. Charles (the State Industrial School for Boys), the number of girls committed to Geneva (the State Industrial School for Girls), and the total number committed to both institutions from each county during the five-year period (1922-1926). The rate of commitment was computed to show the relation between the number of cases committed and the population. This relationship is presented (Table 21) in the form of the number of boys committed per 10,000 in the 10 to 18 male population, the number of females per 10,000 in the 10 to 18 female population, and the total commitments per 10,000 population in the 10 to 18 male and female population. This table also shows the rank in rate of commitment of each county, for both males and females. According to this table the total committed per 10,000 population shows wide variations, ranging from 150.7 to 0.0; 184.2 to 0.0 for males, and 117.2 to 0.0 for females. It should be noted that the ratio between the male and female rates fluctuates markedly. Thus Cass County has a high rate (154.3) for males and a low rate (7.7) for females, whereas in Coles County the reverse is true, 42.6 for males and 92.3 for females. Richland County has a rate of 107.4 for males and 0.0 for females.

Cook County with the largest number of commitments (774 males and 214 females) ranks forty-eighth in rate of commitment for boys and seventy-sixth for girls. This is in part explained by the fact that the Cook County Juvenile Court commits delinquents to several institutions. There are other factors which influence the rate of commitments, namely, in some counties there are no institutions for dependent and semi-delinquent children; consequently many of these children are committed to St. Charles and Geneva. Some counties, Cook County in particular, have several institutions for dependent and semi-delinquent children. In these counties it is the practice to commit only more serious offenders to St. Charles and Geneva. The variation in the policy of the court where delinquent cases are heard and the difference in the standards of the community which determine what is or what is not delinquent behavior are other factors which determine in part, the fluctuation in rates from county to county.

Maps 8 and 9 (Tables 22 and 23) present the rate of commitment to St. Charles *(boys)* and Geneva *(girls)* in each county of the state for the five-year period. The figures on the map are the number of commitments per 10,000 population, the decimal having been dropped. These

TABLE 21

SHOWING NUMBER OF JUVENILE DELINQUENTS, COMMITTED TO STATE INSTITUTIONS, TOTAL MALES, TOTAL FEMALES; TOTAL NUMBER PER 10,000 IN TOTAL 10 TO 18 POPULATION, MALES PER 10,000 IN 10 TO 18 POPULATION, FEMALES PER 10,000 IN 10 TO 18 FEMALE POPULATION, AND RANK IN RATE OF COMMITMENT. BY COUNTIES FOR FIVE-YEAR PERIOD (1922-1926)

COUNTY	NO. OF JUVENILES COMMITTED			NO. COMMITTED PER 10,000 IN 10 TO 18 POPULATION			RANK IN RATE OF COMMITMENT	
	To Both Institutions	To St. Charles (Males)	To Geneva (Females)	To Both Institutions in 10 to 18 Population	To St. Charles in 10 to 18 Male Population	To Geneva in 10 to 18 Female Population	To St. Charles	To Geneva
1 Adams	24	7	17	29.5	17.2	41.7	80	27
2 Alexander	54	33	21	150.7	184.2	117.2	1	2
3 Bond	7	7	0	26.3	52.6	0.0	33	X
4 Boone	0	0	0	0.0	0 0	0 0	X	X
5 Brown	6	3	3	44.1	44.1	44.1	41	24
6 Bureau	18	10	8	26.4	29.4	23.5	61	48
7 Calhoun	0	0	0	0.0	0.0	0	X	X
8 Carroll	3	2	1	11.7	15.6	7.8	82	82
9 Cass	21	20	1	81.0	154.3	7.7	3	84
10 Champaign	43	32	11	50.4	75.0	25.8	19	42
11 Christian	16	8	8	26.0	26.0	26.0	69	41
12 Clark	7	4	3	19.7	22.5	16.9	74	63
13 Clay	22	15	7	71.9	98.0	45.8	10	22
14 Clinton	4	3	1	10.0	15.1	5.0	85	88
15 Coles	38	12	26	67.4	42.6	92.3	44	5
16 Cook	988	774	214	25.1	39.3	10.9	48	76
17 Crawford	9	6	3	22.2	29.6	14.8	59	67
18 Cumberland	7	6	1	32.3	55.4	9.2	31	81
19 De Kalb	12	6	6	27.2	27.2	27.2	67	39
20 De Witt	10	4	6	24.8	27.8	41.8	65	26
21 Douglas	7	4	3	22.6	25.8	19.3	71	54
22 Du Page	16	12	4	17.2	38.0	12.7	50	70
23 Edgar	22	9	13	54.2	44.4	64.1	40	10
24 Edwards	1	0	1	6.4	0.0	12.8	X	69
25 Effingham	11	11	0	33.7	67.4	0.0	25	X
26 Fayette	11	8	3	23.2	33.8	12.7	54	71
27 Ford	22	15	7	88.6	120.9	56.4	5	13
28 Franklin	90	59	31	93.3	122.3	64.3	4	9
29 Fulton	25	8	17	32.6	20.9	44.4	76	23
30 Gallatin	5	3	2	21.3	25.6	17.1	72	62
31 Greene	16	7	9	45.1	39.5	50.8	47	19
32 Grundy	10	6	4	31.4	37.7	25.2	51	44
33 Hamilton	19	13	6	63.0	86.2	39.8	14	28
34 Hancock	12	7	5	28.8	33.6	24.0	55	46
35 Hardin	1	0	1	7.1	0.0	14.2	X	68
36 Henderson	1	0	1	6.3	0 0	12.6	X	72
37 Henry	20	15	5	29.8	44.7	14.9	39	66
38 Iroquois	7	4	3	12.1	13.8	10.4	88	79
39 Jackson	27	21	6	83.7	65.1	18.6	27	56
40 Jasper	5	4	1	17.3	27.7	6.9	66	85
41 Jefferson	37	24	13	73.8	95.7	51.8	11	17
42 Jersey	4	3	1	20.1	30.2	10.1	58	80
43 Jo Daviess	1	0	1	3.2	0.0	6.4	X	86
44 Johnson	4	2	2	17.4	17.4	17.4	79	61
45 Kane	56	31	25	38.9	43.1	34.7	43	32
46 Kankakee	40	21	19	60.9	63.9	57.9	28	12
47 Kendall	4	2	2	28.3	28.3	28.3	63	37
48 Knox	18	12	6	28.0	37.4	18.7	52	55
49 Lake	52	26	26	51.8	51.8	51.8	34	18
50 La Salle	54	41	13	37.0	56.2	17.8	30	58
51 Lawrence	11	9	2	29.4	48.2	10.7	36	77

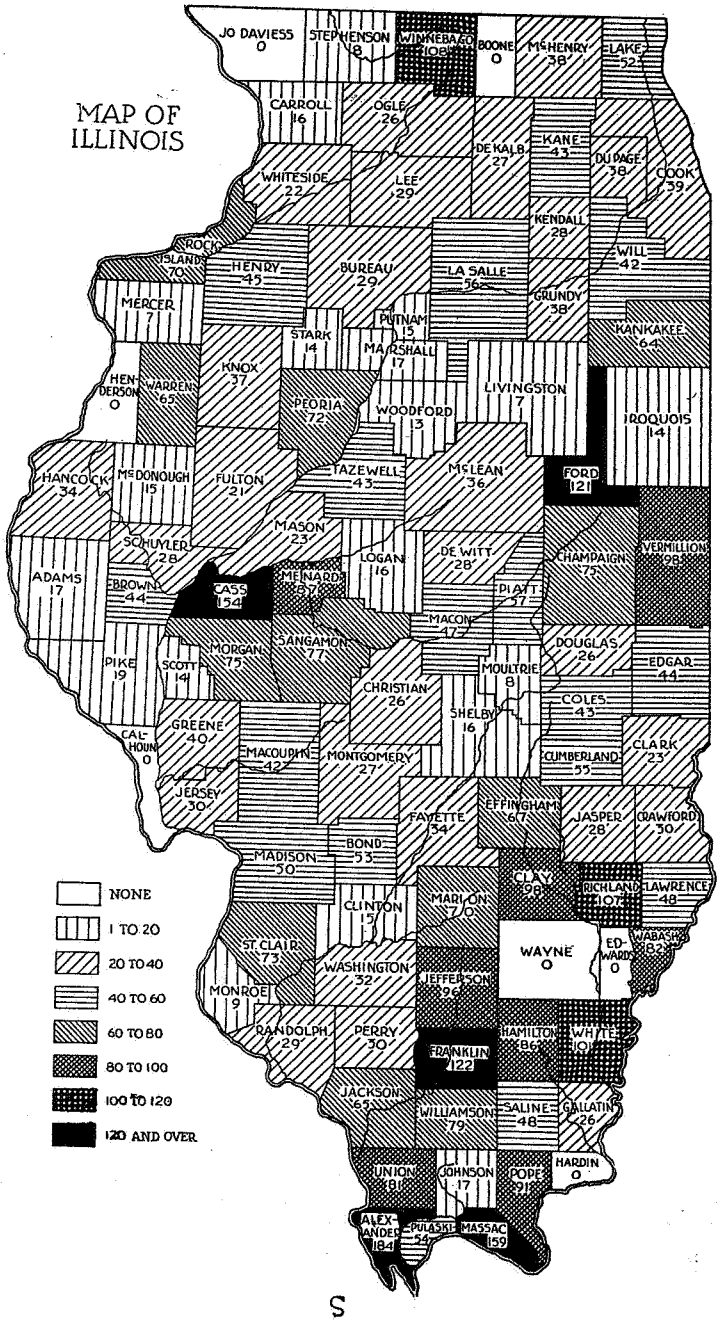
TABLE 21—(Continued)

SHOWING NUMBER OF JUVENILE DELINQUENTS, COMMITTED TO STATE INSTITUTIONS, TOTAL MALES, TOTAL FEMALES; TOTAL NUMBER PER 10,000 IN TOTAL 10 TO 18 POPULATION, MALES PER 10,000 IN 10 TO 18 POPULATION, FEMALES PER 10,000 IN 10 TO 18 FEMALE POPULATION, AND RANK IN RATE OF COMMITMENT. BY COUNTIES FOR FIVE YEAR PERIOD (1922-1926)

COUNTY	NO. OF JUVENILES COMMITTED			NO. COMMITTED PER 10,000 IN 10 TO 18 POPULATION			RANK IN RATE OF COMMITMENT	
	To Both Institutions	To St. Charles (Males)	To Geneva (Females)	To Both Institutions in 10 to 18 Population	To St. Charles in 10 to 18 Male Population	To Geneva in 10 to 18 Female Population	To St. Charles	To Geneva
52 Lee	13	6	7	31.6	29.1	34.0	62	33
53 Livingston	9	2	7	15.2	6.8	23.7	95	47
54 Logan	6	4	2	11.7	15.5	7.8	83	83
55 Macon	35	22	13	37.1	46.6	27.5	38	38
56 Macoupin	25	20	5	26.0	41.6	10.4	46	78
57 Madison	60	41	19	36.7	50.1	23.2	35	50
58 Marion	39	22	17	61.6	69.5	53.7	24	15
59 Marshall	4	2	2	17.4	17.4	17.4	28	16
60 Mason	7	3	4	26.8	23.0	30.6	73	36
61 Massac	24	18	6	106.3	159.4	53.1	2	16
62 McDonough	4	3	1	9.8	14.6	4.9	86	89
63 McHenry	13	10	3	24.8	38.1	11.4	49	75
64 McLean	42	18	24	41.8	35.8	47.8	53	20
65 Menard	19	8	11	103.5	87.1	119.8	13	1
66 Mercer	4	1	3	14.2	7.1	21.2	94	53
67 Monroe	1	1	0	4.6	9.2	0 0	91	X
68 Montgomery	13	9	4	19.4	26.8	11.9	68	74
69 Morgan	22	17	5	48.3	74.6	21.9	20	52
70 Moultrie	1	1	0	4.2	8.4	0.0	92	X
71 Ogle	11	5	6	28.5	25.9	31.1	70	35
72 Peoria	122	51	71	85.9	71.8	99.9	22	3
73 Perry	11	6	5	27.9	30.5	25.4	57	43
74 Piatt	19	7	12	76.9	56.7	97.2	29	4
75 Pike	5	4	1	11.9	19.1	4.8	77	90
76 Pope	8	8	0	45.5	90.9	0.0	12	X
77 Pulaski	12	7	5	46.1	53.8	38.4	32	30
78 Putnam	1	1	0	7.6	15.2	0.0	84	X
79 Randolph	11	7	4	23.2	29.5	16.8	60	64
80 Richland	12	12	0	53.7	107.4	0.0	7	X
81 Rock Island	82	40	42	72.0	70.2	73.7	23	7
82 Saline	29	16	13	43.6	48.1	39.1	37	29
83 Sangamon	85	58	27	56.2	76.7	35.7	18	31
84 Schuyler	3	3	0	14.1	28.1	0.0	64	X
85 Scott	1	1	0	6.8	13.6	0.0	89	X
86 Shelby	7	4	3	14.4	16.5	12.3	81	73
87 Stark	4	1	3	27.9	13.9	41.8	87	25
88 St. Clair	140	74	70	68.8	72.7	68.8	21	8
89 Stephenson	6	2	4	11.7	7.8	15.6	93	65
90 Tazewell	21	13	8	34.8	43.1	26.5	42	40
91 Union	18	14	4	52.3	81.3	23.2	16	49
92 Vermilion	106	55	51	94.7	98.3	91.2	9	6
93 Wabash	14	10	4	57.4	82.0	32.8	15	34
94 Warren	17	10	7	55.6	65.4	45.8	26	21
95 Washington	6	5	1	19.1	31.9	6.4	56	87
96 Wayne	5	0	5	12.1	0.0	24.2	X	45
97 White	22	18	4	62.0	101.5	22.5	8	51
98 Whiteside	11	6	5	20.4	22.2	18.5	75	57
99 Will	41	29	12	29.8	42.2	17.5	45	59
100 Williamson	75	42	33	70.6	79.0	62.1	17	11
101 Winnebago	91	60	31	81.8	107.9	55.7	6	14
102 Woodford	2	2	0	6.4	12.8	0.0	90	X

TABLE 22. SHOWING NUMBER OF DELINQUENT BOYS PER 10,000 IN THE TOTAL 10 TO 18 MALE POPULATION COMMITTED TO THE ST. CHARLES SCHOOL FOR BOYS—BY COUNTIES

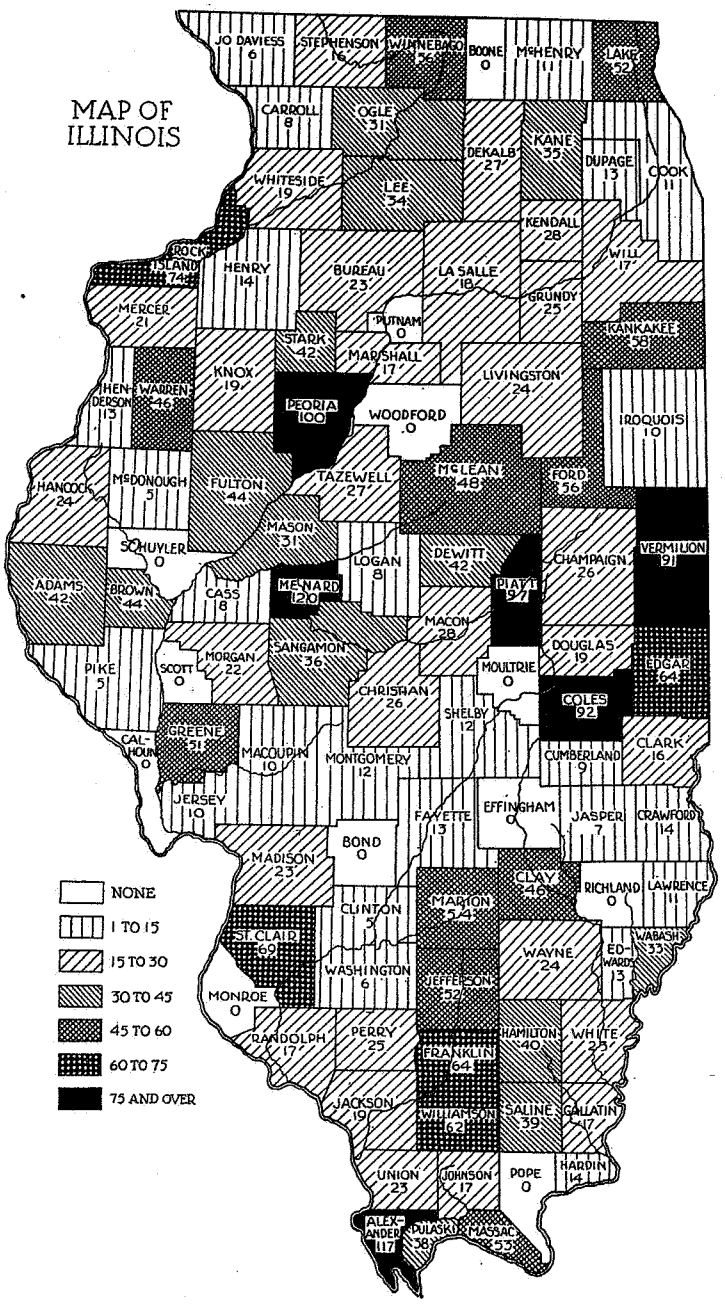
(MAP 8)



S

TABLE 23. SHOWING NUMBER OF DELINQUENT GIRLS PER 10,000 IN THE TOTAL 10 TO 18 FEMALE POPULATION COMMITTED TO THE GENEVA INDUSTRIAL SCHOOL FOR GIRLS—BY COUNTIES

(MAP 9)



maps show clearly that the rate of commitment varies widely among the counties, even in counties contiguous to each other.

In spite of the many factors that influence the rate of commitment there is some correlation between this rate and the percentage of population classified as urban in the last federal census. On the basis of this classification, twenty-five out of the 102 counties of the state are rural. Out of these twenty-five counties, nineteen have rates of commitment to St. Charles, and eighteen have rates of commitment to Geneva that are below the median for the state. Out of the seven counties which committed no boys to St. Charles, four are rural, and out of the twelve that committed no girls to Geneva, seven are rural.

The coefficient of correlation between the percentage of urban and rate of commitment to St. Charles (Cook County was excluded in this computation) is $r = +.37$, while the correlation between percentage urban population and rate of commitment to Geneva (Cook County excluded) is $r = +.39$.

PART C
TREATMENT OF DELINQUENTS
(I) IN COOK COUNTY

20. The Juvenile Court. The Cook County Juvenile Court is the oldest children's court in the world. The period of nearly thirty years[1] since its founding through the pioneering effort of a large group of socially minded citizens has been sufficiently long to test the adequacy of the separate court idea, and to build up a coordinated machinery, centering in the court, for dealing both remedially and preventively with the problems of children. In the beginning the primary purpose of the juvenile court was to protect children from the formal procedure of the criminal courts and to make more effective earlier procedure for treating dependent children. Since that time the court has been given certain administrative functions which consume great amounts of time, and, therefore, tend to limit its effectiveness in caring for delinquent children. This limitation is by no means an insurmountable one, and the court has worked out adjustments in its organization which are designed to overcome it.

The questions concerning the treatment of delinquents in Cook County which this survey seeks to answer are: (1) Are present agencies and practices adequate to the situation? (2) If not, wherein do their weaknesses lie? (3) By what means may the situation be remedied?

In the past thirty years a number of agencies and institutions have grown up and old ones have made adjustments in the interest of the delinquent child. These agencies with the dates of their founding are as follows:

Serving Cook County

The Cook County Juvenile Court.....1899
The Chicago Parental School.....1902
The Bureau of Compulsory Education.....1890
The Division of Child Study in the Chicago Public Schools...1902
The Chicago and Cook County School for Boys[2].....1916
The Juvenile Psychopathic Institute[3].....1909
The House of the Good Shepherd.....1867
The Chicago Home for Girls.....1865

Serving the entire state

The St. Charles School for Boys.....1901
The State Training School for Girls at Geneva.....1893

But these agencies and institutions have developed or remained as essentially unrelated units. True, the Juvenile Court is a center through which delinquent children pass and to which they are referred when one or another agency fails to effect a change in the child's conduct. But it is only a center of dispersal; not of coordination and continuous planning. This

[1] The Cook County Juvenile Court was established in 1899.
[2] This school was an outgrowth of the John Worthy School in the City House of Correction established in 1899 and which was, in turn, an outgrowth of an earlier school for boys in the County Jail, established in 1893.
[3] Now the Institute for Juvenile Research, since 1917 under the State Department of Public Welfare. Privately financed from 1909-1914; by the county from 1914-1917.

fact will become clearer and clearer as we proceed to describe as accurately as possible the operation of the court and of the other agencies in Cook County which deal with delinquent children, to evaluate the results of treatment, and on the basis of findings, to suggest measures which look toward more effective service in the prevention and treatment of delinquency.

21. Same: Organization of the Court.

The Cook County Juvenile Court is a branch of the Cook County Circuit Court. For a number of years previous to the summer of 1927, it had been presided over by two Circuit Court judges. At the annual meeting of the Circuit Court judges last summer, it was decided that the court should be reorganized. Judge Mary M. Bartelme was made sole judge of the Juvenile Court, and was given two referees to assist her by conducting preliminary hearings and making recommendations. It is necessary under this regime for the judge to sign the orders in all cases coming before the referees, as well as those which she herself hears.

The chart (Table 24) shows the way in which the court is organized.

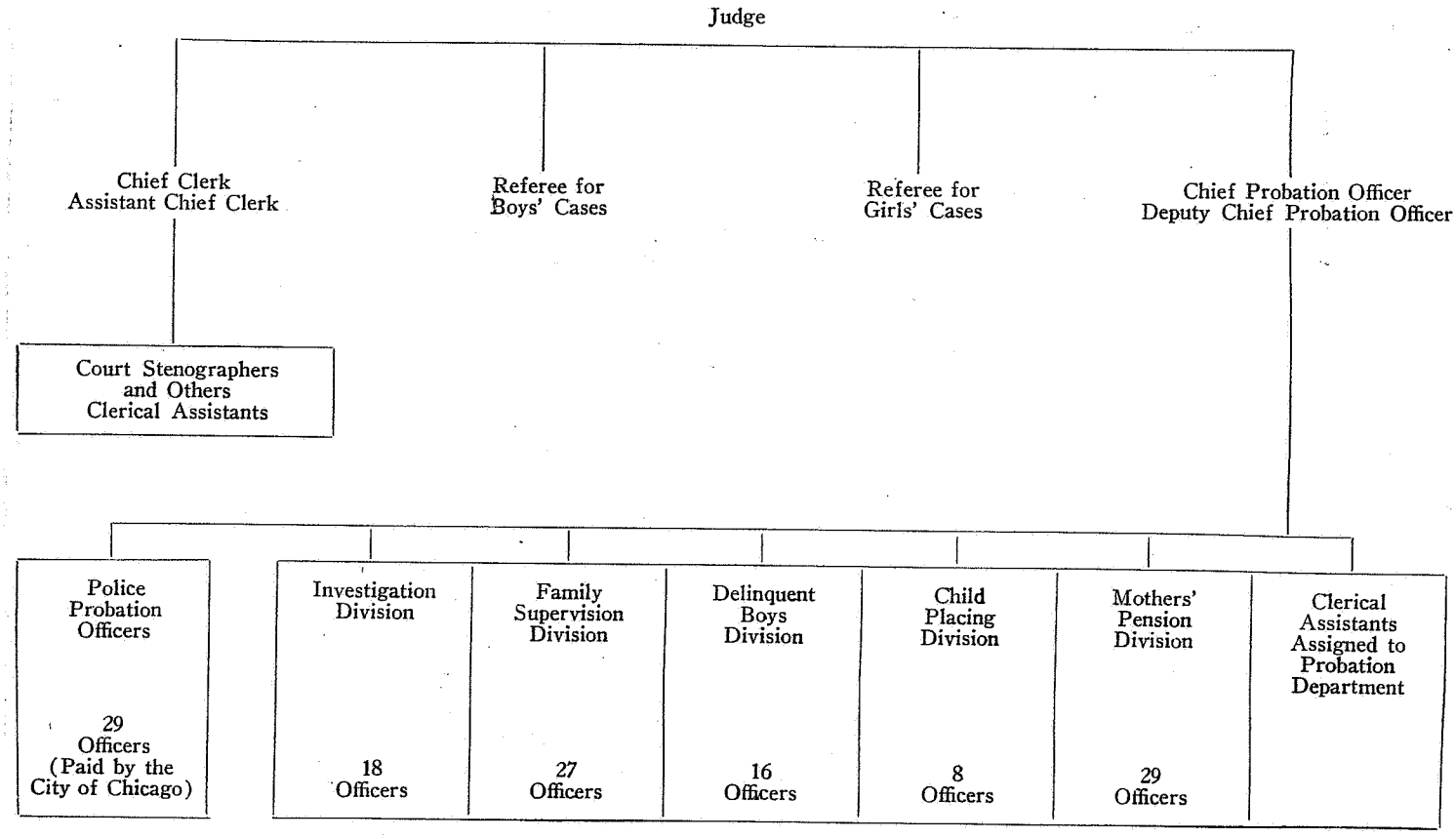
The court is housed in a separate building, located at the corner of Roosevelt Road and Ogden Avenue. This building was completed in 1923, and is admirably equipped for carrying on the work of the court. In the rear of the court building is the large Juvenile Detention Home.

22. Same: Procedure of Complaint and Arrest.

In the early days of the court, before funds had been provided for the payment of salaries to probation officers, the Police Department of the City of Chicago assigned a certain number of police officers to do probation work with delinquent boys. With the development of a paid staff of probation officers, these police officers have been retained and are known as police probation officers. There are twenty-eight such officers. They are assigned to police districts, and it is they who file most of the delinquency petitions in the court. It is their duty, when a complaint is brought or an arrest of a juvenile made within their district, to investigate the case, decide whether or not a petition shall be filed, and whether the child shall be allowed to go home or detained in the Juvenile Detention Home. If a petition is filed the police probation officer prepares the case and presents it in court. During the fiscal year ending November 30, 1926, 2,265 delinquency petitions were filed in the court. During the calendar year, 1926, the police probation officers filed 1,644 such petitions. In addition, there were 17,922 cases in which complaints were made, but in which petitions were not filed. Thus many were brought to the attention of the police more than once during the year.

The police probation officers therefore adjust unofficially more than eight times as many cases as they bring before the court. Most of the men have been on the police force for a good many years. A few have become specifically interested in delinquent boys and have asked to be assigned as police probation officers. Others confess they were "just assigned," or as one cryptically put it, "just shoved into it." In one of the districts where the number of delinquents is very high, the officer said he was assigned because he was too old to fill any other position in the police department.

TABLE 24. COOK COUNTY JUVENILE COURT ORGANIZATION CHART



Police probation officers are on duty from 8:00 a. m. to 5:00 p. m. This is the portion of the day in which the smallest number of arrests is made, except, of course, during the hours just before dawn. Thus, a majority of the children brought to police stations in Chicago are first seen by the desk sergeant who decides whether they shall be detained either at the police station or in the Juvenile Detention Home, or sent home until morning, when they are expected to return to see the police probation officer. In a recent study of admissions to the Cook County Juvenile Detention Home, by Miss Savilla Millis,[1] there appears a table indicating the numbers of children brought into police stations at specified hours during the month covered by her study. Table 25 indicates, in addition, the hourly average of cases:

TABLE 25. JUVENILE COURT CASES, CLASSIFIED BY DAILY HOURS

Period	Number	Hourly Average
7:00 a. m. and before 6:00 p. m.	168	15:28
6:00 p. m. and before 10:00 p. m.	91	22:75
10:00 p. m. and before 12:00 midnight	69	34:50
12:00 midnight and before 3:00 a. m.	56	18:66
3:00 a. m. and before 7:00 a. m.	36	9:00
Not reported	53	——
Total	473	——

Obviously, if it be assumed that police probation officers perform a valuable service by adjusting cases out of court and giving a sort of preliminary hearing in the police station, they ought to be on duty during the hours when most of the children are brought in. The eight hours between 6:00 p. m. and 2:00 a. m. appear to be the ones when this is most necessary. Besides, the child needs the services of such an officer more definitely at night than during the day.

When the children in the City of Chicago are sent to the Juvenile Detention Home, they are taken, except in very rare cases, in the patrol wagon. The police departments of some of the outlying towns and cities in Cook County use other means. For example, Cicero children are usually sent with the "flivver squad." It is the testimony of Lieutenant Donohue, the officer in charge of police probation officers, that girls are almost never accompanied by a woman when brought to the Juvenile Detention Home in a patrol wagon. Boys are also transported together with older men and with girls. In this then, as in other phases of police activity in dealing with delinquent children, the minimum safeguards of morals and character are not always observed. Policemen are not social workers; and the treatment of delinquent children, from the moment of the discovery of delinquency, is a delicate task of personal and social readjustment.

23. Same: Juvenile Detention Home.

The Cook County Juvenile Detention Home is one of the largest of its kind in America. During the fiscal year December 1, 1925, to November 30, 1926, 9,246 children were admitted, of whom 7,115 were alleged delinquents. The fact that only 2,265 delinquency cases were disposed of

[1] Millis, Savilla, *A Study of the Admissions to the Juvenile Detention Home of Cook County*, p. 102.

by the court in that period, and, further, that many of these were never taken to the Detention Home, indicates that probably between two-thirds and three-fourths of the alleged delinquents brought into the Detention Home during last year were released without a hearing. The immediate responsibility for this condition lies principally with the police of the city of Chicago, who consider the Detention Home in much the same category as a jail. The result is a population described by the superintendent of the Detention Home as "a great mixture of tremendously varying children, held for a variety of rather unnecessary and unidentified purposes, most of whom stay too long and each of whom adds to the complexity of the problem of handling, constructively and sanely, this already socially complex situation."[1] Let it be said in justice to the police that they can scarcely be blamed for the attitude they assume. The architecture of the institution with its high stone wall and barred windows definitely suggests to the person on the outside that the place is a prison. The sanguine hopes of Chief Probation Officer Moss in 1919, just after the bond issue for the erection of the court and Detention Home buildings had been approved, were not realized in the plan and construction of the Detention Home. "The Cook County Juvenile Court," said Mr. Moss, "always has set standards for the world, and these new buildings should be a monument typifying the community's ideal for the care of childhood."[2]

Members of the staff of the Detention Home are appointed by the Board of County Commissioners from eligible lists prepared by the Cook County Civil Service Commission. The present superintendent was selected through a competitive examination prepared by a special committee of citizens appointed by the civil service commission. On January 24, 1928, there was a total of ninety-seven employees in the home. Forty-five of them were certified civil service people, while fifty-two were temporary appointees. Such appointments almost always mean that appointees are chosen primarily because of some minor political influence. Here, as in practically all institutions for the care and training of children, the great importance of having trained, skillful persons as subordinate members of the staff has not been realized.

24. Same: Hearing in Court.

Hearings in the court are informal. In delinquency cases they are merely an attempt to learn facts both concerning the circumstances of the specific acts complained of and concerning the habits, circumstances of life, and general character of the child. The purpose of the hearing is not to establish guilt or innocence, but to secure facts which will form a basis for intelligently recommending corrective treatment for the child. Hearings before the referees are held in their offices, and nobody is present except those immediately concerned with the case. Hearings before the judge are in a small court room, and may be said to be public, though very few people are admitted, and the attempt is made to limit attendance in the court room to persons who have specific business in the court.

In making provision for referees, the Circuit Court judges made legal training the only specific prerequisite. The selection of referees was

[1] *Annual Report of the Cook County Juvenile Court and Detention Home,* 1926, pages 68-69.
[2] Ibid, 1919, page 7.

fortunate in that both persons chosen are sincere, faithful, and eager to do what is best for the children who come before them. It is possible, however, that more eminently skillful persons might have been secured on the basis of a careful merit test conducted very much as examinations for chief probation officer and superintendent of the Detention Home have been. In any event, totally apart from the qualifications of the present referees, such a merit test insures the selection of well qualified persons, whereas direct appointment by the Circuit Court judges may or may not result in the choice of the best persons available.

25. *Same: Probation.* *(a) The Staff.* The mainspring of every juvenile court is its probation service. However judicious, however painstaking, however skilled and inspired the judge may be, failure and incompetence in the probation department mean ineffective juvenile court work.

An important Supreme Court decision in Illinois in 1912[1] declared probation officers to be judicial officers and that therefore they could not constitutionally be subject to civil selection. Such an interpretation proved advantageous to the Cook County Court. Judge Pinckney, who presided over the court at that time, was not willing to assume complete responsibility for the selection of probation officers. He therefore instituted the practice, and his successors have followed it, of requesting a committee of citizens to prepare and conduct a competitive examination, and present an eligible list from which appointments are made. Social work executives, members of university faculties, people prominent in civic affairs have made up the committees. Thus, the real work of selection has been transferred from a relatively incompetent and inadequately informed public body to a highly skillful, well informed group of citizens. The probation staff is therefore carefully chosen on the basis of a quite rigid merit test. The minimum requirements for the position are indicated by those set in an examination advertised under date of March 2, 1925. They are:

Education: Four years of high school, or its educational equivalent.

Experience: One year of professional service in a social work agency of recognized standing, or one year of training in an accredited school of social work, including supervised field work, or a Bachelor of Arts degree.

The minimum age for the position is twenty-three.

The candidates were graded on three items: (1) a written examination on the Theory and Practice of the Juvenile Court; (2) experience; (3) an oral examination largely to give the examiners an opportunity to evaluate the personal qualifications of the candidates.

Since the examination is competitive, and only the upper group are appointed, the qualifications of the officers chosen are considerably above the minimum.

(b) Visits. In order to evaluate the work of the probation department in its treatment of delinquents assigned for supervision, a group of 168 current cases (88 boys and 80 girls) was read during November and December of 1927. Six factors were considered as indices of the character of the service rendered. Those six factors are: (1) length of time between

[1] 256 Ill. 616, *Witter* v. *The County Commissioners of Cook County*, et al.

assignment of case and first visit by probation officer; (2) length of periods between the initial visit and subsequent visits; (3) previous contacts of the child with the court; (4) completeness of social investigation; (5) the plan of treatment; (6) the procedure of the officer in attempting to work out the plan. The cases read include a small sample from twenty-four officers handling girls' cases, and fourteen officers having boys under supervision. Among the cases of a given officer, selection was purely random. The findings have been checked against two sets of standards. The first are the standards set by the Children's Bureau Committee in 1921.[1] The second are those set up in 1919 by Chief Probation Officer Moss for the Cook County Court.[2]

The Children's Bureau Committee did not specify a period within which the first visit should be made. Mr. Moss laid down the rule that a first visit should be made within one week after the case was assigned. It would seem that the sooner definite contact can be established the better, both for the child and for the officer.

In the cases studied it was found that in only 22.5 per cent of the girls' cases and 22.61 per cent of the boys' cases was the initial visit made in less than one week, and that in 55 per cent of the girls' cases and 58.33 per cent of the boys' cases no visit was made until two weeks or more had elapsed. The average period between assignment and the initial visit was, for the girls' cases, 26.67 days, and for the boys, 25.4 days. Of the entire group of 168 cases, only seven were visited on the day of assignment.

Concerning the frequency of visits to probationers, once contact has been established, Mr. Moss said: "The Division Head shall specify the minimum number of visits on each case per month, and how frequently the child itself should be seen." This implies a visit at least once in every month, and seems to point toward more frequent visits for most cases. The Children's Bureau Committee set the standard at a visit at least every two weeks "except in very rare cases."

In the cases studied, there were involved a total of 963 periods between visits. Only 28.87 per cent of these were periods of fifteen days or less, and if one very exceptional case in which there appear forty-three periods of less than six days be discarded, the percentage falls to 25.54. That is to say, approximately three-fourths of the probation work being done falls below the minimum set by the Children's Bureau Committee in the matter of frequency of visits. The percentage of periods over thirty days for all of the cases was 41.85, and almost 10 per cent were longer than sixty days.

Space does not permit detailed summaries of the other items studied. Suffice it to say that approximately 60 per cent of the cases had been in contact with one or another branch of the Juvenile Court on one or more previous occasions. The social investigations, save for ten or twelve notable exceptions, had been reduced to a minimum of routine information covering home conditions, school record, circumstances surrounding the act complained of, nationality and language of parents, mental and physical defects.

[1] *Juvenile Court Standards,* Children's Bureau Publication No. 121.
[2] *Report of the Chief Probation Officer,* Cook County Juvenile Court Report, 1919, page 10.

In some twenty cases this routine information was noticeably scanty. It is the testimony of several of the officers connected with the court (some of them probation officers) that in some instances social investigations are written up without a home visit, and sometimes entirely from an interview with the child. It is not suggested that this is the usual, or even frequent, procedure. That it can occur even in a small number of cases indicates the need of some more adequate provision for maintaining high standards in the matter of social investigation before hearing.[1]

In some cases officers were doing very excellent work in constructing and carrying out a definite plan for the children under their supervision. In a surprisingly large number, however, the plan of the probation officer did not go beyond an attempt to keep the child within the specific limits designated by the judge as the conditions of probation. Approximately 60 per cent of the cases read were in this latter group.

The situation as described above obviously calls for explanation. Are the probation officers of the Cook County Juvenile Court an inefficient, malingering group whose interests are elsewhere than with the children for whom they assume responsibility? Or do the conditions of their work make it impossible for them to achieve the standards set by authorities in the matter of effective probation service? The latter seems much more nearly accurate.

(c) Duty-Load. The first item, and probably the most significant, is the case count of the officers. Let it be remembered that the standards of the Children's Bureau Committee were established on the basis of a maximum case load of fifty. On November 30, 1927, only four of the fourteen men officers and three of the twenty-four women officers whose cases were read were carrying less than fifty cases. For the men officers, the average number of families involved in cases under special supervision and on probation was 48.14. In addition to these, they had an average of 8.21 current complaint cases, and an average of 10.8 cases on which social investigations were made during November.[2] The average for all types of cases was 67.15, the lowest number for any officer being 39, and the highest, 113. For the women officers, the average of families in cases involving special supervision and probation was somewhat higher (55.83) due to the larger proportion of dependency cases on their lists. Their responsibility for social investigations was much less, however, due to the fact that this work is done very largely by the Investigation Division. The average for all cases for the women officers was 66.67, the lowest number for any officer being 33, and the highest, 106.

A second factor is that of the completeness of the record. The analysis of probation service was of necessity based upon the contents of the record. Therefore, if the record did not contain a statement of all that was done

[1] For a complete statement of the Children's Bureau Committee on Juvenile Court Standards concerning social investigation, see: *U. S. Children's Bureau Publication* No. 121, pages 4-5.

[2] Edwin J. Cooley, Chief Probation Officer of the Court of General Sessions of New York City, has recently set up the following standard for preliminary investigation service: "A probation officer assigned exclusively to this investigating duty should not be required to make more than twelve preliminary investigations a month." Cooley, Edwin J., *Probation and Delinquency,* page 324.

upon the case, our information is, to that degree, inaccurate. Two things conspire to make it difficult for the officers to keep their records complete and up to date. One is the lack of time and the other the lack of clerical service. Whereas the standard for stenographic service in both the United Charities of Chicago and of the Jewish Social Service Bureau is one typist to every three field workers, the Juvenile Court has only one typist to every five field workers. Dictation is, therefore, taken on the typewriter rather than in shorthand. This means, of course, that the record is made as soon as the material is dictated, but it also means that dictation must be slower. Each officer has two fifty-minute dictation periods per week, and an additional period during about four in every five weeks. A few of the officers have typewriters, and prefer to type their own records rather than to prepare their notes and dictate to a typist.

Add to the heavy case load, the time spent in court, the difficulties under which records are prepared, and the farther fact that there is in the probation department no system of case work supervision, and one can scarcely charge that negligence and inefficiency on the part of the staff are accountable for the shortcomings in probation work in the Cook County Juvenile Court.

(d) Repeaters. Certain questions are asked over and over again concerning the experiences of children who come before the court as delinquent. How many come back to the court? How many times do they come back? What proportion are placed on probation? What proportion are committed to institutions? How many of those committed have previously been on probation or under supervision of the court? How many are committed to more than one institution? How many are committed upon their first appearance in Court? How many, once released from an institution for delinquents, and, again appearing in court, are given non-institutional treatment?

In order to answer these questions the Juvenile Court records of an unselected group of 1,000 boys now 17 years of age or over, and 500 girls, now 18 years of age or over, were analyzed. In all but a very few of the cases studied, the first contact of the child and the court occurred since 1920. Since the records studied cover the entire period from the first contacts of the children with the court until they have passed beyond juvenile court age, they may be considered as representative of the experience of children who have come before the court during the past seven years.

Table 26 shows the number of cases among the thousand boys and the five hundred girls in which a specified order appears one or more times. Certain differences in the treatment of boys and girls appear at once. Whereas the number of boys committed to one or another of the three schools for boys was equal to 84.3 per cent of the total group, the number of girls committed was only 41 per cent of the entire group. However, when necessary deductions are made for the cases in which two or more types of institutional treatment appear, the percentage of individual boys who were committed to one or more institutions is 55.3; of the girls, 38.8. On the other hand, 69 per cent of the girls were on one or more occasions placed on probation from the court as against 48.7 per cent of the boys. The

discrepancy in the proportion of boys and girls placed on probation is counterbalanced to a degree by the much larger number of boys who were placed under "supervision." Forty-four and seven-tenths per cent of the boys spent a period under supervision, while only 27.6 per cent of the girls were thus treated. This, however, probably reflects only a difference in policy on the part of the two judges who sat in the court during the period under consideration. It was the practice of Judge Victor P. Arnold during his years as judge in the Juvenile Court, rather than to enter a definite order placing a boy on probation, to continue his case for a period of from two to four months under "special supervision." This really amounts to a period of probationary supervision, and in the minds of some of the probation officers, calls for more careful guidance and help than does an official probation order. If to the percentages of those placed on probation there are added the percentages of the groups placed under supervision, the total for the boys' cases is 93.6 per cent and for the girls, 96.6 per cent. Probationary treatment, therefore, seems to have been given in about an equal proportion of cases among boys and girls.

TABLE 26. JUVENILE COURT CASES, CLASSIFIED BY COURT ORDERS

Summary of Court Orders entered in the cases of 1,000 boys, now 17 years or more of age, and 500 girls, now 18 years or more of age, giving numbers and percentages of cases in which a given order was entered one or more times.

Court order	Number of cases in which each order appears		Percentage of cases studied in which order appears[a]	
	Boys	Girls	Boys	Girls
Dismissed	80	63	8.0	12.6
Continued generally	332	68	33.2	13.6
Legal guardian	83	82	8.3	16.4
Supervision	449	138	44.9	27.6
Probation	487	345	48.7	69.0
Chicago Parental School	230	15	23.0	3.0
Chicago and Cook County School for Boys	410	—	41.0	—
St. Charles School for Boys	203	—	20.3	—
House of the Good Shepherd	—	101	—	20.2
Chicago Home for Girls	—	35	—	7.0
State Training School for Girls	—	54	—	10.8
Released from probation	361	239	36.1	47.8
Released permanently	319	119	31.9	23.8
Miscellaneous	14	6	1.4	1.2
Total	2,968	1,265		

[a] The percentages given are of the total cases, 1,000 boys and 500 girls, not of the number of cases in which a given order appears.

Tables 27 and 28 indicate the distribution of all orders entered in the cases studied. It is interesting to note that of the seventy boys who appeared before the court only once, 71.43 per cent were fifteen or sixteen years of age (41.43 per cent were sixteen). Of the seventy-one girls who made only one court appearance, however, the percentage in the two upper years of juvenile court age is only 36.23.

The question raised by the high percentage of boys fifteen and sixteen among those in whose cases only one court order was entered, is whether or not, as a well known lecturer and writer in the field of crime recently

asserted, the best way to insure a boy's coming back to court is to take him into court the first time. Certainly the boy who appears in court only once is not the very young one who is "scared" by his experience, and ceases his delinquencies. As a comparative check, the ages at the time of their first court appearance of the first one hundred, alphabetically, of those who had three court orders to their credit were computed. Thirty-five per cent were under fourteen; twenty-eight per cent were fourteen; twenty-six per cent were fifteen; and eleven per cent were sixteen. One would, of course, expect relatively few boys of sixteen in this group, because of the obvious factor of time, since on reaching seventeen they are no longer of juvenile court age.

TABLE 27. JUVENILE COURT ORDERS, CLASSIFIED AS TO BOYS

Summary of court orders entered in the cases of 1,000 boys, now 17 years of age or more, classified by order and number of orders in each case.

Number of Court Orders	Total	Miscellaneous	Dismissed	Legal Guardian	Supervision	Probation	Chicago Parental School	Chicago and Cook County School for Boys	St. Charles School for Boys	Continued Generally	Released from Probation	Permanent Release
Total	3,254	14	84	85	496	554	257	453	214	383	373	341
One	70	0	7	0	0	0	9	1	12	41	0	0
Two	628	0	9	22	95	107	14	75	33	92	99	82
Three	825	1	23	22	148	160	62	108	41	39	136	85
Four	568	5	16	12	80	89	54	94	50	66	42	60
Five	550	2	13	14	80	94	47	84	41	64	51	60
Six	258	2	4	6	40	36	36	40	17	34	15	28
Seven	182	3	4	5	21	40	18	24	9	25	19	14
Eight	80	0	2	2	15	10	9	14	4	13	5	6
Nine	63	1	6	1	11	13	5	7	5	6	4	4
Ten	30	0	0	1	6	5	3	6	2	3	2	2

TABLE 28. JUVENILE COURT ORDERS, CLASSIFIED AS TO GIRLS

Summary of court orders entered in the cases of 500 girls, now 18 years or more of age, classified by orders and number of orders in each case.

Number of Court Orders	Total	Miscellaneous	Dismissed	Legal Guardian	Supervision	Probation	Chicago Parental School	House of the Good Shepherd	Chicago Home for Girls	Geneva	Continued Generally	Released from Probation	Permanent Release
Total	1,363	6	67	87	147	399	15	112	35	54	71	247	123
One	71	0	6	0	2	4	8	0	5	17	29	0	0
Two	380	0	23	1	29	124	3	17	11	13	12	116	31
Three	402	2	11	42	51	114	2	31	12	11	13	64	49
Four	204	1	7	22	26	65	1	20	3	7	2	29	21
Five	180	2	10	11	24	56	0	25	3	4	8	26	11
Six	54	0	4	2	10	15	1	6	1	1	3	7	4
Seven	28	0	3	3	1	9	0	6	0	1	0	3	2
Eight	24	1	2	3	1	7	0	4	0	0	2	1	3
Nine	0	0	0	0	0	0	0	0	0	0	0	0	0
Ten	20	0	1	3	3	5	0	3	0	0	2	1	2

The number of recidivists is indicated by Tables 27 and 28. In 93 per cent of the boys' cases the court entered two or more orders, while three or more orders were entered in 61.6 per cent. Among the girls, only 85.8 per cent returned for a second order, and only 47.8 per cent received three or more court orders. In more than one-third of the boys' cases (34.1 per cent) the court made four or more definite dispositions. Among the girls, this

percentage is only 21. Whatever else one may conclude from these facts, it is apparent that a great deal of time and effort of the Cook County Juvenile Court is taken up with the so-called "repeater."

(e) Sex.

TABLE 29. JUVENILE COURT ORDERS, CLASSIFIED AS TO VOLUME AND SEX

Summary of court orders entered in the cases of 1,000 boys, now 17 years or more of age, and 500 girls, now 18 or more years of age, giving number and percentage in which specified numbers of orders were entered.

Number of Court Orders	Number		Percentage	
	Boys	Girls	Boys	Girls
One	70	71	7.0	14.2
Two	314	190	31.4	38.0
Three	275	134	27.5	26.8
Four	142	51	14.2	10.2
Five	110	36	11.0	7.2
Six	43	9	4.3	1.8
Seven	26	4	2.6	0.8
Eight	10	3	1.0	0.6
Nine	7	—	0.7	0.0
Ten	3	2	0.3	0.4
Total	1,000	500	100.0	100.0

TABLE 30. JUVENILE COURT CASES, CLASSIFIED AS TO MULTIPLE COMMITTALS AND SEX

Table showing for 1,000 boys, now 17 years or more of age, and 500 girls, 18 years or more of age, the number who were committed to two or more institutions.

Boys		Girls	
Chicago Parental School and Chicago and Cook County School for Boys.	81	Chicago Parental School and House of the Good Shepherd.....	1
Chicago Parental School and St. Charles School for Boys.....	20	House of the Good Shepherd and Chicago Home for Girls.....	2
Chicago and Cook County School for Boys and St. Charles School for Boys	75	House of the Good Shepherd and State Training School for Girls..	5
Chicago Parental School, Chicago and Cook County School for Boys and St. Charles School for boys..	57	Chicago Home for Girls and State Training School for Girls.....	3
Total	233	Total	11

In a previous paragraph, sec. 25, sub-sec. D, it was indicated that 55.3 per cent, or 553 of the 1,000 boys studied had been in one or more institutions one or more times, and that 38.8 per cent, or 194 of the girls had had institutional experience. These 553 boys accounted for a total of 924 institutional commitments, whereas the commitments of the 194 girls total 216. Tables 29 and 30 present a rather marked contrast in the proportion of boys and girls who were committed to two or more institutions. Translated into percentages, 23.3 per cent of the boys and 2.2 per cent of the girls had experience in two or more institutions. Of the number committed, those who were sent to two or more institutions number among the boys, 42.13 per cent and among the girls, 5.66 per cent. Whatever the causes, these comparisons indicate that whereas the correctional schools for boys pass

their problems on to the next institution in over 40 per cent of the cases, the schools for girls almost never do.

(f) Place of Committal.

Tables 31, 32, and 33 record an attempt to answer certain questions concerning the sequence of treatment accorded by the court. Since Chicago Parental School does not receive children who are technically delinquents, it seemed a more enlightening procedure to leave that institution out of consideration in compiling the data for these tables.

The total number of boys committed either to Chicago and Cook County School for Boys or to St. Charles, or to both, was 481. Of this number, as indicated in Table 31, 232, or 48.44 per cent, had previously spent a period either on probation or supervision or both. It appears (Table 32) that 132 boys were committed to one of the correctional schools upon their first appearance in court. The remaining 117 had had at least one previous court order entered other than probation or supervision. In most cases, these orders were a general continuance, commitment to Chicago Parental School, or the appointment of a legal guardian. Thus 349, or 72.72 per cent, of the boys committed to the two schools for delinquents had undergone some other form of treatment by order of the court before they were sent to the school. This leaves a considerable group, 27.28 per cent, whom the court saw fit to commit without attempting some less drastic form of treatment.

TABLE 31. JUVENILE COURT CASES, CLASSIFIED AS TO COMMITTAL PRECEDED BY PROBATION

Table showing among 1,000 boys, now 17 years or more of age, and 500 girls, now 18 years or more of age, the numbers of those committed to institutions who had previously been on probation or supervision from the court.

Institution	Total	Previous Supervision	Previous Probation	Previous Supervision and Probation
Chicago and Cook County School for Boys	124	49	34	41
St. Charles School for Boys	39	14	18	7
Chicago and Cook County School for Boys and St. Charles School for Boys	69	25	23	21
Total Boys' Cases	232	88	75	69
House of the Good Shepherd	39	12	17	10
Chicago Home for Girls	5	3	0	2
State Training School for Girls	24	3	19	2
House of the Good Shepherd and State Training School for Girls	2	—	2	—
Chicago Home for Girls and State Training School for Girls	—	—	—	—
Total Girls' Cases	70	18	38	14

The treatment sequence among the girls, in so far as probation, supervision, and correctional school commitment are involved, varied quite markedly from that found among the boys. The total number of girls committed to one or more of the correctional schools was 180. Seventy of these, or 38.89 per cent, had been previously on probation, under super-

vision, or both. This is almost 10 per cent less than among the boys. One hundred three, 57.22 per cent, of the girls sent to correctional schools were committed upon first appearance in court. This is in contrast to the 27.28 per cent among the boys. For only 7 of the girls committed, had the court prescribed some form of treatment other than probation or supervision before committing to a correctional school. Whereas, then, 72.72 per cent of the boys committed had been given some previous type of treatment by the court, this percentage among the girls was only 42.78.

TABLE 32. JUVENILE COURT CASES, CLASSIFIED AS TO COMMITTAL FOLLOWED BY PROBATION

Table showing among 1,000 boys, now 17 years or more of age, and 500 girls, now 18 years or more of age, the numbers of those committed to institutions for delinquents who were subsequently placed on probation or supervision from the court.

Institution	Total	Subsequent Supervision	Subsequent Probation	Subsequent Supervision and Probation
Boys' Cases:				
Chicago and Cook County School for Boys	58	17	25	16
St. Charles School for Boys	9	3	4	2
Chicago and Cook County School for Boys and St. Charles School for Boys	3	2	—	1
Total boys' cases	70	22	29	19
Girls' Cases:				
House of the Good Shepherd	62	1	55	6
Chicago Home for Girls	12	—	12	—
State Training School for Girls	5	—	4	1
House of the Good Shepherd and Chicago Home for Girls	1	—	1	—
House of the Good Shepherd and State Training School for Girls	1	1	—	—
Chicago Home for Girls and State Training School for Girls	—	—	—	—
Total girls' cases	81	2	72	7

TABLE 33. JUVENILE COURT CASES, CLASSIFIED AS TO INITIAL COMMITTAL FOLLOWED BY PROBATION

Table showing among 1,000 boys, now 17 years or more of age, and 500 girls, now 18 years or more of age, the number whose initial court order was commitment to an institution for delinquents, specifying the number subsequently placed on probation or supervision from the court.

Institution	Total	Subsequent Supervision, Probation or Both		Others
		With Second Commitment	Without Second Commitment	
Boys' Cases:				
Chicago and Cook County School for Boys	106	10	10	86
St. Charles School for Boys	26	2	4	20
Total boys' cases	132	12	14	106
Girls' Cases:				
House of the Good Shepherd	54	7	26	21
Chicago Home for Girls	25	3	5	17
State Training School for Girls	24	—	2	22
Total girls' cases	103	10	33	60

(g) Supervision. To what extent does the court make use of probation and supervision in the cases of children who have served a period in one of the correctional schools? Table 31 indicates the answer to this question as applied to the cases studied. Let it be noted that the figures do not mean the same thing for the boys' as for the girls' cases. Both of the correctional schools for boys provide persons to supervise boys on parole. This service is not provided by the two privately controlled schools for girls. Hence, a good many girls are placed on probation immediately upon their release from the House of the Good Shepherd or The Chicago Home for Girls. This probation period is, therefore, a period of after-care supervision. In the boys' cases, subsequent probationary treatment is usually accorded because of some further delinquency. Seventy of the boys, or 14.55 per cent of the institutional group, were placed on probation, under supervision, or both, at some time after release from a correctional school. The percentage of institutional cases among the girls thus treated was found to be 45.

26. Chicago and Cook County School for Boys.

In addition to the State School for Boys at St. Charles there is available for the Juvenile Court of Cook County, the Chicago and Cook County School for Boys. This school was opened on October 2, 1916, to take the place of the John Worthy School, which had been operated for a long time by the Chicago Board of Education inside the City House of Correction. The John Worthy School was, in turn, an outgrowth of a school for boys established in 1893 in the Cook County Jail, and maintained by the Chicago Women's Club.[1] The school is located outside the city limits of Chicago on a 75-acre tract of land lying within the Village of Riverside. The capacity of the institution is 129.

(a) Purpose. The primary function of the school is to provide for delinquent boys of juvenile court age, who, in the judgment of the court, will profit by a brief period of institutional training. It was the belief of those who were responsible for founding the school, that psychiatrist, psychologist, and social worker working together with teacher, house father and mother, and other members of the staff, could do much toward reshaping the habits and attitudes of delinquent boys. A behavior clinic was therefore projected as the central element in the school's program, about which other activities were to revolve. That is to say, there were two things which seemed completely inadequate in the former institutional facilities at the court's disposal for dealing with delinquent boys. One was the obvious thing of unsatisfactory and demoralizing housing. That the City House of Correction is not a suitable place for the detention and training of boys between the ages of 10 and 17 needs no proof. The second thing was not so obvious, but much more important; viz., the lack of provision for skilled diagnosis of the child's conduct and for carrying out treatment based upon that diagnosis. This second thing was to have been provided in the behavior clinic. The original appropriation for buildings and equipment was made in 1915. Before the work was well begun prices both of labor and building materials rose to such heights that two of the projected dormitory-cottages were never

[1] For a complete statement concerning the antecedents and history of the school, see Hirsh, Elizabeth, *A Study of the Chicago School for Boys*, pp. 3-13.

built. The building which had been planned as a behavior clinic and receiving ward was transformed into a kitchen and dining room, with a dormitory-cottage unit on the upper floor. Thus, in the interest of economy, the one element in the program of the school as planned which held out the hope of success through skillful and scientific procedure was set aside.

As the school was finally organized, the person on the staff who is responsible for planning the program of training for each boy is an elementary school principal assigned as superintendent of the school. If a school principal is a skillful diagnostician of behavior problem children, and of situations out of which delinquency arises, and can prescribe successfully both a course of training and after care which results in the satisfactory adjustment of the boy in his environment, it is a gift of the gods and not the result of professional training. The school principal's training is designed to fit him for the administration of a day-school for normal pupils; not to carry out a project in specialized social service and habit and character retraining.

The Chicago and Cook County School for Boys, then, is not the sort of institution which the people who planned it intended it should be. This should be borne in mind in evaluating the facts which follow.

(b) Time of Detention. Legally there is neither a maximum nor a minimum time which boys must stay at the school. Practice has, however, fixed a theoretical minimum of three months, with further time added if the boy's record is not good. This theoretical minimum has not been maintained, due to the large number of commitments and of parole violations. In his 1927 report, Superintendent George B. Masslich says: "The length of stay here is determined more largely by the need of a free bed than by the progress of the training which we have begun. Character is of slow growth—it cannot be hurried. There is need for composure and perserverance—whereas the actual effect is that of interruption and unrest."[1]

In his 1926 report, after commenting upon the large number of boys recalled for violation of parole he says: "This necessitates cutting down the average length of stay a little more than six weeks." [2]

Thus the actual period of training is exactly half as long as the minimum time a boy is supposed, by common consent of court and superintendent, to remain at the school. It is to be noted that the six weeks' average is computed on the basis of official action and does not include the large number who leave the school as runaways for long or brief periods.

This very rapid turnover is indicated by some figures for the calendar year 1925:[3]

Original commitments	462
Recalled by court for violation of parole	111
Recalled without court action for violation of parole	384

(c) Parole. The total number of parole violators for the year exceeded by 33 the original commitments. The number of parole violations appears to have been increasing rather than decreasing during 1926, for Superin-

[1] Report of the Superintendent for the year ending June 30, 1927, p. 19.
[2] Report of the Superintendent for the year ending June 30, 1926, p. 8.
[3] Report of the Superintendent for the year ending June 30, 1926, p. 8.

tendent Masslich goes on to say: "Boys are often recalled for violation of parole without another court hearing. There were 384 such cases in 1925, and at the present rate there will be a hundred more than that in 1926." [1]

In addition to this very rapid official turnover, there is an amazing amount of informal leave-taking and returning at the school. The writer, in September, 1926, tabulated from the daily record sheets of the school the population movement for the first eight months of that year; the following Table 34, indicates the results:

TABLE 34. POPULATION MOVEMENT AT CHICAGO AND COOK COUNTY SCHOOL FOR BOYS DURING THE FIRST EIGHT MONTHS OF THE YEAR, 1926

Month	Committed	At Large	Returned	Recalled	Paroled
January	48	61	42	16	56
February	49	36	38	11	63
March	46	46	32	22	53
April	26	59	49	31	55
May	39	69	42	11	36
June	48	64	46	25	34
July	28	72	50	16	37
August	20	65	43	19	21
Total	304	472	342	151	355

Three of the captions in Table 34 need strict definition. The term "at large" includes all cases of boys who have left the grounds of Chicago and Cook County School for Boys without specific permission or order, or who have failed to return to the school either from work, from an errand, from high school, or from a visit at the appointed time. The caption "returned" indicates that a boy has, either voluntarily or under persuasion or police effort, come back from "at large." "Recalled" refers to boys who have been called back to the school for breach of parole. Recommitments are listed in the "committed" column. Thus the boys sent by the court because of parole violation are not separately listed since the day to day record did not give the reason for recommitment.

This Table 34 brings to light a few significant ratios. The ratio between paroles and recalls is approximately two and one-third to one. Thus for every seven boys paroled three were recalled for breach of parole. When there is added to this number another group of paroled boys who are committed to St. Charles, having been apprehended for some serious offense, or having been paroled several times, and having failed each time to make good, the ratio of failures to successes becomes still higher. In 1926 there were 135 such cases.[2]

(d) Escapes. If half of the boys committed to the school, under the influence of the training received, were paroled and never returned to the courts but became law-abiding, useful citizens, probably one would have only words of commendation for the work done. The ratio between recalls and paroles, however, by no means tells the whole story. Perhaps the most striking thing revealed by the table is the extremely large number of informal

[1] Ibid., p. 8.
[2] Report of the Superintendent for the year ending June 30, 1927, p. 19.

departures from the school. Assuming the first eight months of 1926 to be a reasonably accurate index of the ebb and flow at the school, the accumulated excess of runaways over returns would, in the course of a year, total 195. This excess of runaways over returns is, for the period studied, slightly greater than two-fifths (42.76 per cent) of the total number of commitments.

This does not mean that 42.76 per cent of all boys committed escape and are never apprehended. If, however, it is assumed that boys committed and boys recalled run away in equal proportions (and the records show no striking difference between the two groups in this respect) the excess of runaways over returns is equal to 28.57 per cent of the total additions to the population of the school.

Thus, boys arriving at Chicago and Cook County School, either committed, recommitted, or recalled, have better than a one to four chance of missing whatever training, and escaping whatever penalty, attaches to a period of residence there.

Superintendent Masslich insists that it is natural for the boys to want to run as soon as they are released from the atmosphere of force and coercion to which they are subjected by police and court, and that he is "losing no sleep" over the matter of runaways. The apprehension and return of so large a number of runaway boys does, however, absorb a great deal of time and effort on the part of parole officers, police, Juvenile Detention Home officials, and, when new offenses are committed while at large, of the court. Members of the staff at the school offer a number of suggestions in an attempt to characterize and account for the runaways. These suggestions resolve themselves for the most part into two general misapprehensions: (1) There are a few boys who run away again and again. They are chronic runaways and are the ones who account for most of the cases of "at large." (2) The runaway situation really is not as serious as it looks, because most of the boys are gone only a few hours or over night and are picked up or return alone.

A count of the cases of "at large" on the part of the first hundred boys, listed alphabetically, resident at Chicago and Cook County School on September 11, 1926, shows the following facts. The numbers that follow, when they apply to individuals, may be considered as percentages of the school's population. Sixty-six cases of "at large" are reported on the part of forty-seven boys. Thirty-five boys had run away once, six had gone twice, five had left the school three times, and one had four departures to his credit. In twenty-three cases the boy had stayed away one day or less, while in twenty-nine instances he had been absent for a week or more. Thirteen cases appear in which the boy was gone more than one day, but less than one week. In the twenty-nine cases when the boy was at large for a week or more, the length of the period of absence in days in the order in which the cards appear in the alphabetical file are: 17, 11, 41, 100, 100, 15, 93, 23, 14, 99, 14, 13, 18, 18, 10, 20, 14, 9, 57, 58, 24, 8, 7, 17, 17, 25, 12, 19, 40. This sample of 100, includes, of course, only the boys who do not make a permanent getaway.

Some tabulations from the records of 100 boys resident at Chicago and Cook County School on September 1, 1923, compiled by Miss Elizabeth Hirsh, a student in the Graduate School of Social Service Administration

of the University of Chicago, present further evidence concerning the runaway situation at the school.[1]

TABLE 35. DEPARTURES FROM THE CHICAGO AND COOK COUNTY SCHOOL FOR BOYS, CLASSIFIED BY CAUSE

	Number of Departures
Ran away[1]	53
"At large"[1]	50
Not reported[2]	88
Placed on farms	3
Sent to camp	1
Paroled	119
Released by Juvenile Court	4
Released by Chicago and Cook County School for Boys	1
Total	319

[1] The items "at large" and "ran away" both indicate absence from the school without permission.

[2] Probably most of the 88 departures listed here were runaways.

TABLE 36. DEPARTURES, CLASSIFIED AS TO REPETITION (SCHOOL FOR BOYS)

Number of Departures	Number of Boys
One	26
Two	19
Three	15
Four	12
Five	14
Six	5
Seven	5
Eight	1
Nine	1
Ten	1
Total	99

(e) Management. Three things seem primarily responsible for the chaotic situation in this school. They are: (1) The limitations of plant and staff imposed in the interest of economy. (2) The very brief period for which commitments are made. (3) The uninteresting and inadequate program at the school.

A fourth factor which serves as a sort of general limiting condition is that of triple responsibility and dual control. A brief statement concerning this seems necessary for the sake of clarity. The City of Chicago paid for all of the buildings at the school except the School Building. The Board of Education of the City of Chicago built the school building, and, from 1916 to 1925, paid all salaries. The County of Cook assumed responsibility for all maintenance items except the upkeep of the school building which was maintained by the Board of Education. This system of operation was not based upon any written agreement. It continued under an oral understanding except for the actual bond issues and trust deed to the land. On December 22, 1924, the Board of Education passed a resolution expressing dissatisfaction with the heavy load of expense which the school entailed,

[1] Hirsh, Elizabeth Frances, *A Study of the Chicago and Cook County School for Boys* (unpublished thesis), pp. 71 and 76.

and stating their intention, after January 1, 1925, of contributing no more to the Chicago and Cook County School for Boys than the amount necessary to educate an equal number of normal pupils in the Chicago public schools plus the amount allowed by the state for the education of children presenting particular problems. The Cook County Board of Commissioners countered with an offer to assume a considerably larger share of the maintenance cost than they had previously done. An agreement by joint resolution was finally reached on May 22, 1925, in which the three municipal corporations involved reached the following agreement to continue in effect through the year 1930.

> "FIRST: The City of Chicago shall construct and erect such additional building or buildings as shall be required or necessary to house the juvenile delinquents confined at said institution, and shall pay all special assessments assessed against the realty described in the deed above mentioned.
>
> "SECOND: The Board of Education of the City of Chicago shall appropriate, pay and provide for the teaching force and educational requirements of each and all juvenile delinquents confined at said institution, together with a superintendent, family instructors, assistant family instructors, parole officers, cooks, farm hands, and shall furnish all educational supplies and text books, and shall maintain the school building erected by it.
>
> "THIRD: That the County of Cook shall appropriate, pay and provide for all supplies, consisting of food and clothing, and shall furnish heat, water and light, and such other requirements as are necessary to properly provide for the maintenance of the school children and the employees of the institution, and shall maintain all buildings erected by the City of Chicago, and shall appropriate, pay and provide for engineers, firemen and watchmen."

The future of the school, then, so far as present arrangements are concerned, does not extend beyond December 31, 1930. Consequently those responsible for the planning and administration of the school are placed in a position which makes impossible any program of expansion or reorganization until a more or less permanent program for control and maintenance is agreed upon.

(f) Treatment of Boys. Items (1) and (2) have been discussed. There remains only item (3). Factors (1) and (2) have a direct and definite effect upon the progress of the school. However, within the limits imposed by budget, equipment, and necessity for admitting boys from the court, the program at the Chicago and Cook County School presents very definite inadequacies. A few brief statements will serve to describe the more important features of the school's activities.

(Admission) Boys are taken from the Juvenile Detention Home in the school truck by one of the family instructors. Upon arrival, they are taken into the office where they are assigned to cottages by the superintendent's secretary. The office boy is then sent to the various cottages with lists of the boys assigned to each. The family instructor in charge of each cottage then either goes in person to the office and gets his charges, or sends one of the boys to escort the new arrivals to the cottage. Boys usually arrive in the late afternoon. The following morning the superintendent meets the new boys as a group and tells them certain things about the routine of the

school, what is expected of them, and that their conduct will determine the length of their stay. Each boy then goes to the appropriate schoolroom and begins work.

The obvious lack here is of any vital personal contact with each incoming boy. The only knowledge the superintendent can have concerning the individual boy's problems he gets from the record of the juvenile court. The time and effort involved in a personal interview with each boy would not be very great, and would be of tremendous value both to the superintendent and the boy. With something less than 500 new admissions per year, such interviews would average only about nine or ten per week.

(Academic Program) The prescribed course of study for Chicago Elementary schools is followed in the regular classroom work. In addition there is one manual training teacher and a science teacher in charge of a small tinker shop and science laboratory. This latter is very meagerly equipped. There is a special room for backward pupils in charge of a very competent woman. School hours are from 9 a. m. to 3:15 p. m. with the usual recess period at 10.30 and the noon hour at 12.

Since the length of stay at the school is so brief, little can be attempted in the matter of special education. It would seem, however, that a considerable amount could be accomplished by the introduction of some materials definitely designed to meet the interest of the boys. Reading, language and arithmetic afford perhaps the best opportunity for some modified subject matter. For example, boys of fourteen and fifteen years of age somewhat retarded in reading ability could probably learn to read more successfully, using subject matter which bore some relation to their lives and interests than by reading the fairy stories designed for children three and four years younger than they.

(Recreation) The school has no recreation director. The boys are free to play from 3:15 to 5:30 and from 6:15 to 8:00 each day. It is only within the past year that any effort has been made toward directing the play of the boys. Previously, on sunny, dry, days the boys played aimlessly at whatever they chose to enter into except for an occasional trip to the swimming hole or the movies, chaperoned by one of the family instructors. After school in inclement weather all of the boys were sent together into the gymnasium where a veritable bedlam prevailed until supper time. At the suggestion of one of the family instructors this practice was abandoned. Each cottage group now has a portion of the period in the gymnasium. Since there are only three cottages, the play period is sufficiently long, and the procedure is much more orderly. The use of leisure time is so important in the shaping of character that in a correctional school it appears well-nigh criminally stupid to permit play hours to be spent in so aimless a fashion.

(Work) There is a considerable amount of work which must, of necessity, be done outside the cottages, gardening and farming on the fifty acres of cultivated land, shoveling coal from cars and in the power house, keeping the grounds in order, and assisting in the dining room and kitchen involve no small amount of effort. This work is done either by permanent details of boys over 14 who have completed the 7th grade or by temporary details recruited from the classrooms of the school. Aside from his share

of effort in keeping the dormitory and school building in order, no boy is compelled to do any work, unless as punishment, in which case he is compelled to do some obviously unnecessary work such as scrubbing a floor which has just been scrubbed.

Both temporary and permanent work details are voluntary. The principal incentive offered, apart from avoiding classroom attendance, is the accumulation of merits which counterbalance demerits incurred because of bad behavior or ineffective work in cottage or classroom. When a temporary detail is needed, the person wanting help (farmer, engineer, cook) sends word to the office that a certain number of boys are needed for a certain task. The secretary or superintendent sends the message on to one or another of the classrooms. The teacher then calls for volunteers. If enough are not found in one classroom, the quota is made up in one of the others. Provision for work and training of a definitely vocational character are greatly needed.

(g) Release and After-Care. The majority of the boys committed to the Chicago and Cook County School for Boys leave the institution on parole. A few are released by the Juvenile Court upon attaining the age of seventeen. For the supervision and after-care of paroled boys, the Board of Education employes six parole officers. They are appointed through the City Civil Service Commission. One of them spends most of his time at the court and Detention Home, leaving five to do the actual field work. The parole agents are not trained social workers. The educational requirement for the position is merely a grammar-school training, while the experience requirement is only that of some practical experience in handling boys. Parole officers do not become acquainted with the boys for whom they assume responsibility until after the boy has left the school. It was the unanimous statement of the parole officers interviewed that so much of their time was consumed in apprehending and returning runaways that very little time was left for constructive effort.

27. Private Institutional Care for Delinquent Girls.

For many years, two private institutions in Chicago have played a most important part in the treatment of delinquent girls. They are: The House of the Good Shepherd and The Chicago Home for Girls. The former takes only Catholic girls; the latter, except for an occasional pregnant Catholic girl, and a few Jewish girls, takes only Protestant. Because each receives a considerable share of its population through commitment by the Juvenile Court on petitions alleging delinquency, no picture of the treatment of delinquents in Cook County would be complete without a discussion of these institutions.

Their importance appears at once upon examining the following Table 37, which shows the numbers of delinquent girls committed over a ten year period to the three institutions, the State Training School at Geneva, The House of the Good Shepherd and The Chicago Home for Girls.[1]

[1] The figures in this table are taken from the *Annual Report of the Cook County Juvenile Court*, 1926, p. 40.

TABLE 37. JUVENILE COURT COMMITTALS, CLASSIFIED AS TO INSTITUTIONS

Institution	Year									
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
State Training School.....	85	97	115	84	50	48	27	26	48	59
House of the Good Shepherd	137	145	147	100	132	76	88	86	99	100
Chicago Home for Girls.....	57	44	39	31	54	28	53	44	54	52
Total	279	286	301	215	236	152	168	156	201	211

From the table it appears that during the ten year period 1917-1926, 50.34 per cent of the girls committed as delinquents were sent to the House of the Good Shepherd, 20.68 per cent to the Chicago Home for Girls, and 28.98 per cent to the State Training School for Girls at Geneva.

28. Same: The House of the Good Shepherd.[1] The House of the Good Shepherd in Chicago is one of a large number of houses throughout Europe and America. They are maintained and administered by the Order of Our Lady of Charity of the Good Shepherd. The mother house of this order is in Angers, France, and stands at the head of the order. Between the mother house and the local houses stand the provincial houses, which exercise certain controls over the local houses. For example, the provincial house furnishes nuns for the local houses, while the Mother Superior is chosen directly by the mother house in France.

The aim of this order is "to provide a shelter for girls and women of dissolute habits, who wish to do penance for their iniquities and to lead a truly Christian life, and to secure children from danger before they have fallen or have been stained by serious crime."[2] Both voluntary penitents and those committed by parental or civil authority are received. In addition to the three vows of poverty, chastity, and obedience, the sisters of the order take a fourth vow, "to work for the conversion and instruction of penitents." However, there are certain sisters of the order who are called Touriere Sisters, who are not cloistered, and who do not take the fourth vow. They perform the necessary duties outside the cloister, attend the door, etc. The vows of the order are renewed every year for five years before they become perpetual.

The Chicago house was established upon the request of the Bishop of the Diocese of Chicago in 1867. The House of the Good Shepherd is not, however, under the jurisdiction of the Diocese of Chicago, since the order is an independent one, the mother house being directly under the Holy See.

The staff of the House of the Good Shepherd consists of forty-five nuns. Each of these has, before her assignment to regular duty, spent a novitiate of two and one-half years in the provincial house at St. Louis. The training period is divided into two parts. The first year and a half are spent in "intensive spiritual training," and the remaining year in work with the girls

[1] Unless otherwise indicated, all statements concerning the House of the Good Shepherd are taken from an unpublished manuscript by Miss Bessie Weibel. Miss Weibel's information was secured from the records of the Juvenile Court and from numerous conversations and observations at the House of the Good Shepherd.

[2] *Catholic Encyclopedia,* Volume VI, p. 647.

under the supervision of older nuns. If during the years of her novitiate, any novice proves to be unsuited for the work of the order, she either leaves voluntarily or is dismissed. Thus, the staff is a trained one. The efficiency of the training might be questioned, just as might the whole theory upon which the institution is founded, namely, that character can be transformed through a course of spiritual training whose efficiency depends upon specific religious beliefs. Certainly the theory upon which the program at the House of the Good Shepherd is organized is not the modern one of skillful individual diagnosis and treatment. Certainly, too, the cloistered nun cannot but be out of touch, and, to a degree out of sympathy, with much that enters into the lives of the girls for whom she cares.

At the House of the Good Shepherd there is no upper age limit. The lower limit is eight years. The entire population is separated into two divisions, the senior and junior. The names applied to the divisions are somewhat misleading, since age is not a factor in classification. The senior division is made up of girls who have been sexually immoral, and the junior division of those who have not, regardless of age. However, since the sex delinquents are usually the older girls, this basis of classification does affect a substantial separation according to age. There were, in November, 1927, one hundred eighty girls in the senior division, and one hundred sixty-five in the junior division. The programs in the two divisions are quite different. In the senior division there is less schooling, more work, and less recreation than in the junior division.

The activities of the senior division center about the laundry and the shop where lampshades are made. Girls under sixteen, and those over sixteen who choose to do so, and who improve their time while there, attend school two hours per day. The rest spend seven and one-half hours per day in regular employment. About forty girls, on account of their health, do light work in the laundry or make silk lampshades for a firm outside. Of the other 140, about two-thirds are employed in the laundry where work is done on a commercial basis for private families and for the Edgewater Beach Hotel. The rest do house-cleaning and work in the kitchen and dining room.

Though discipline is strict, it cannot be called severe. The respect which most of the girls have for all nuns is an important aid toward good behavior. When disciplinary problems arise, they are dealt with by withholding privileges and by assessing "bad marks," which result in further deprivation of privileges. The rules of the order strictly forbid slapping and confinement alone in a room as a means of punishment. Disciplinary measures are similar in both divisions.

In the junior division, all girls attend school three hours per day and work in the sewing room three hours, with an additional forty-five minutes in the sewing room for those over twelve years of age. Within the junior division there is a still further division in the sewing rooms. Those over twelve are in the "junior" sewing room. Outside firms furnish materials which are made up into hand embroidered table runners, luncheon sets, handkerchiefs, etc. They also do a great deal of crocheting, some making of artificial flowers, and occasionally other work such as tying strings to

small tags, or making small yarn ornaments for women's coat collars. All of the work is sold, and helps to maintain the institution.

The House of the Good Shepherd gives no after care to released girls. The Big Sisters often assist girls who have been released, and a good many of those committed by the Juvenile Court are upon release placed under the supervision of a probation officer. The decision as to whether a girl shall or shall not be placed on probation after her release rests with the deputy chief probation officer, who considers all of the data available in making a decision. Girls who are eighteen, or nearly eighteen, are not placed under a probation officer for after-care supervision. Girls of thirteen and fourteen are usually given supervisory care. For the ages between thirteen and eighteen, other factors are the deciding ones.

29. Same: The Chicago Home for Girls.[1]

This institution was granted a charter on February 16, 1865, as the Erring Women's Refuge for Reform. Its purpose as stated in the charter is "the relief and protection, care and reformation of such erring females as either voluntarily place themselves under the care of the refuge, or are so placed by their parents or guardian, or by a municipal corporation, or otherwise according to law."[2] The institution has a board of trustees who have in charge all financial affairs, and the management of all properties, endowments, etc. About 64 per cent of the home's income is from real estate and capital investments. The policies of management are vested in a board of managers of thirty-four women. It is they who employ the superintendent, decide, through an admissions committee, upon matters of admission, and determine matters of general administration.

The immediate program and policies of the home are the responsibility of the superintendent. The present superintendent had considerable experience in work with girls in institutions before her appointment at the Chicago Home for Girls some six years ago. The staff, in addition, consists of an assistant superintendent, physician, probation officer, nurse, playground worker, kitchen supervisor, laundry supervisor, night supervisor, three matrons, and, on part time, a dentist, pediatrician, and eye, ear, nose, and throat specialist. The staff within the home have not had specific training for their work, but seem to be quite sympathetic. Their numbers are so small that the superintendent can keep in very close touch with them.

The capacity of the home is seventy-six, and it is usually filled to capacity. A majority of the girls are committed by the Juvenile Court, a few by the Municipal Court, and a few upon the request of parents or guardian.

The routine at the home, when compared with similar institutions, is a very easy one. The time of rising is one hour later than at the House of the

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[1] Unless otherwise indicated, all statements concerning the Chicago Home for Girls are taken from an unpublished manuscript by Miss Mona Volkert. Miss Volkert's information was secured from the records of the Juvenile Court, the Annual Reports of the Institution, and from conversations and observations at the Home.

[2] *Charter,* The Erring Women's Refuge for Reform, Sec. 2.

Good Shepherd, and work ceases an hour and a half earlier in the evening. School attendance is limited to a half-day rather than the full day of children outside. The school is a branch of the Lucy Flower School, and the quality of work done, both in elementary, commercial, and high school seems to be very good. No work is done on a commercial basis. Girls are given training in sewing, cooking, and laundry work, but the products of their work are consumed inside the home.

The principal feature in the discipline and management of Chicago Home for Girls is the system of self-government. It is quite elaborately organized, and very closely supervised by the superintendent. Through its channels girls are deprived of privileges for misconduct, failure to observe rules, etc. Miss Embree, the superintendent, considers the self-government scheme particularly valuable in developing self-reliance, social responsibility and group loyalty. Its advantages are greater and its difficulties less in a small group such as that at the Chicago Home for Girls than in a larger institution. Considerable emphasis is placed upon religion, chapel service being part of the daily routine, and a mid-week religious service conducted every Wednesday evening.

The superintendent is the only person who deals directly with the girls in an attempt to bring about character changes. Girls are forbidden to talk of their past, except with the superintendent. Matrons are not allowed to read the girl's Juvenile Court records, nor are they told anything of the specific behavior difficulties of their charges. A great deal of emphasis is placed upon personal conversations with the girls. These seem, however, to be conducted somewhat planlessly, and depend for their value upon the chance skill of the superintendent.

A brief excerpt from Miss Volkert's paper suggests much concerning the attitude and methods employed in dealing with the girls.

> "The meals of the staff differ from those of the girls in quality as well as in variety. The staff members, for example, have cream whereas the girls have whole milk, the staff members have a cooked vegetable and a salad for dinner whereas the girls usually have two cooked vegetables. The superintendent thinks it very important for the girls to realize that their age and experience do not qualify them for the same quality of meal as that served to the staff members. She believes that an important factor in the delinquency of many of these girls is that their parents and other superiors have treated them as equals; part of her treatment, therefore, is to make them realize that they are 'only children.' When girls occasionally complain of receiving inferior food she points out to them that as a child she did not share meals prepared for her father, and that as they grow older and more experienced, their time will come also."

The Chicago Home for Girls, like the House of the Good Shepherd, has no provision for after care of released girls. The visiting committee of the board of managers does some sporadic visiting, but their work is by no means adequate. The probation officers of the Juvenile Court, as in the case of girls released from the House of the Good Shepherd, sometimes assume supervision.

30. *Truancy and Incorrigibility of School Children in Chicago.*

Although the Juvenile Court law of Illinois sets a definite minimum age of ten years before which no child can be declared delinquent, there is no magic in the mere attainment of age ten. The beginnings of delinquency may appear at any age between one and ten, and probably do appear much earlier than ten in most cases. The school is the first community agency to assume continuing supervision over the child. Between six and ten the home and the school are the two institutions normally responsible for the conservation of the child's character. If the home completely breaks down, some private or public child-caring agency may come in to care for the children. If the school, however, fails to give adequate attention to the conduct problems which present themselves while children are in school, or are supposed to be in school, the responsibility rests with the community, and, more directly with those to whom the community delegates the responsibility of planning and operating the educational program. It must be remembered that much of the truant and so-called "incorrigible" conduct of school children is chargeable to the school program and to the teacher, quite as much as to the child. In other words, a great many of the behavior problems of school children first arise as a more or less normal reaction within the situation as it exists. The tremendous importance of checking and correcting tendencies toward misconduct and delinquency as soon as they appear is a thing upon which everybody is agreed. The methods by which this is to be accomplished, however, afford a basis for very serious disagreement. To the misbehaving and truant child, the school system of the city of Chicago has given wholly inadequate attention.

Upon the Juvenile Court records of a surprisingly large number of delinquent children appear reports of truancy from school, or of serious misbehavior in school. Among a group of 168 cases of delinquent children under probationary supervision by court officers during November and December, 1927, nearly 70 per cent (70.83 per cent among the boys and 66.67 per cent among the girls) of those whose records contained a statement concerning truancy had been truant. An analysis of an unselected group of 1,000 Juvenile Court cases of boys who have now passed beyond Juvenile Court age, revealed the fact that 230, or 23 per cent of them, had been committed, usually early in their careers, to the Chicago Parental School. This represents only those who were committed as truant or incorrigible. It indicates nothing concerning the much greater number whose behavior symptoms included truancy or incorrigibility.

31. *Same: The Bureau of Compulsory Education.*

The Bureau of Compulsory Education does not keep chronological case records of the contacts of officers with children. Hence, no analysis of their work similar to that made of probation in the Juvenile Court[1] was possible. Permission could not be gotten to carry on a field study of cases. Therefore our data concerning the treatment of truancy cases in the schools of Chicago are very incomplete.

[1] Sec. 25, sub-sec. b.

Annual reports and records of the Chicago Parental School, annual reports of the superintendent of compulsory education, observations in Juvenile Court during truancy hearings, and a body of opinion gathered from the judge of the Juvenile Court, from the former chief justice of the court, chief probation officer, former chief probation officers, superintendent of the Juvenile Detention Home, superintendent of the Chicago Parental School, heads of divisions in the probation department of the Juvenile Court, social work executives, clinical workers with behavior problem children, and university professors who have made specific studies of truancy in Chicago, serve to throw considerable light upon the situation.[1]

One thing seems certain. Judged by any standards acceptable to professional groups in the field of social service, the work of the division of compulsory education is hopelessly inadequate. This appears to be chargeable principally to three things. The first of these is the limited concept which the Board of Education has of the functions of a Bureau of Compulsory Education; the second, the lack of insight and understanding of the possibilities of the work on the part of the immediate administration; and the third, the extremely inadequate requirements necessary to qualify for the position of truant officer. These factors are all part of a larger situation, namely, political control, which always means payment of pre-election promises with jobs. And, let it be noted further, that the jobs most likely to go to incompetent persons are those in which nothing more concrete than human welfare is likely to suffer.

The first of these factors manifests itself in failure to provide machinery for any service except that specifically provided by law.[2] The negative connotation of the term Bureau of Compulsory Education is suggestive of the work of the bureau. A somewhat larger measure of imagination would suggest the importance of insuring a program of positive and preventive treatment rather than mere law enforcement.

The second factor is evidenced by a number of things. First are the repeated assertions on the part of the superintendent of compulsory education that truancy can be cured by adding more truant officers to the staff, and by expansion of the Parental School. "Our greatest need," said Mr. Bodine in a recent statement, "are more truant officers; an increased capacity at the Parental School; and at least four home investigators at the Parental School to supervise paroled minors and obviate many returns of violators."[3] That is to say, recognizing the failure of the present program, more of the same thing is recommended. The suggestion that there be "four home investigators" to supervise approximately eight hundred children on parole seems to indicate that nothing more than a bare minimum of service is contemplated. A second element in the situation is the type of information required in presenting cases of alleged truant and incorrigible children in the juvenile court. Specific notes were taken on a series of sixty-five cases appearing in the juvenile court during December, 1927. Thirty-nine of these were

[1] See, for a comprehensive discussion of compulsory education in Chicago, Abbott, E., and Breckenridge, S. P., *Truancy and Non-Attendance in the Chicago Schools* (1917).
[2] See Cahill, *Illinois Revised Statutes*, 1927, Chap. 23, Secs. 298-301; Chap. 122, Secs. 164-175, 301, 5.
[3] *The Chicago Parental School Review*, O. J. Milliken, Editor (1927), p. 9.

heard on original truancy petitions, while the remainder were either continuances from a previous date, or presented problems of some other sort. For the thirty-nine truancy cases, the officers of the Bureau of Compulsory Education presented to the court only the barest minimum facts. They included the specific dates, usually only two or three days, upon which the child was definitely "charged" with truancy, the other dates on which the child was absent, the date on which a *warning notice* was sent to the parents, and some such statement as this: "The mother is here. She says she sent the child to school every day, and didn't know he was absent until she received the warning notice." Upon such information, the judge, according to the statute, is expected to act.[1] Repeated attempts on the part of juvenile court officials to induce the Bureau of Compulsory Education to secure and present social data of the sort required in other types of cases have thus far failed. The situation, administratively, is an anomalous one. The law requires a court to act upon information presented by a body of officers over whom the court has not the remotest control. When the executive in charge of these officers fails to cooperate with the court by attempting to meet standards which are acceptable to the court, either the court must act upon information which includes only the bare minimum of facts demanded under the statute, or force the issue by refusing to hear cases of alleged truancy and incorrigibility without a previous social investigation. Some of the officials and friends of the court feel that the latter course is justifiable under existing circumstances.

The truant officers are chosen by the city civil service commission upon the basis of competitive examinations. No educational requirement is necessary to qualify for the position, nor is there any requirement of experience in social service or kindred activity. The superintendent of compulsory education, in an interview with the writer on November 3, 1927, said that the examinations during recent years have become somewhat more exacting, and that in practice the average education of the officers is "about high-school graduation." The salaries paid these officers range from $145.00 to $195.00 per month for the regular officers, with three bonded officers receiving $215.00 per month. These rates are sufficiently high to attract persons with more adequate training and experience than are secured. The present staff of truant officers numbers 116.

32. Same: The Chicago Parental Schools.

Every Illinois city of 100,000 population or over is required to maintain one or more truant or parental schools to which truant and incorrigible children may be committed either by the county or circuit court.[2] Chicago maintains a Parental School for Boys with a capacity of 300, and one for girls with a capacity of about 30. Jurisdiction under the law is vested, as indicated above, in the juvenile court, which is a branch of the Cook County circuit court. From 500 to 600 children are annually committed to these schools. During the fiscal year July 1, 1926, to June 30, 1927, a

[1] Cahill, *Illinois Revised Statutes*, 1927, Chap. 122, Sec. 169.
[2] Cahill, *Illinois Revised Statutes*, 1927, Chap. 122, Sec.164.

total of 607 was committed.[1] During the same period, 286 were returned for violation of parole, 817 paroles were granted, and 35 were discharged because of age.[2]

On February 23, 1927, there were at the Parental School for Boys exactly 300 boys. The superintendent, from the records, found that 133 of the 300 had previously spent one or more periods at the school. Seventy-four were there for the second time; forty-nine for the third; six for the fourth; and one each for the fifth, sixth and seventh times.

(II) OUTSIDE OF COOK COUNTY

33. The County Courts and Probation.

Jurisdiction under the Illinois juvenile court law is vested in the county and circuit courts in all counties having a population of less than 500,000. In towns and cities of 3,000 or more population city courts may be organized. These were granted concurrent jurisdiction with county and circuit courts in 1927.[3] This includes all counties except Cook. Since a detailed field study of all of 101 counties was impossible, the questionnaire method was used, supplemented by field observation and study in seventeen counties. The counties in which the field study was made are: Peoria, Knox, Monmouth, Mason, Sangamon, Morgan, Macoupin, Madison, St. Clair, Marion, Franklin, Williamson, Alexander, Christian, McLean, Kankakee, and McHenry. Between September 1, 1927, and January 20, 1928, schedules were returned from 95 of the 101 counties. The six counties not reporting were LaSalle, Pope, Tazewell, Wabash, Whiteside, and Will.

The work of the 95 courts presents an extremely uneven picture. The quality of service these courts render very nearly covers the complete range of possibilities. Thirty-four counties have no probation service, while 40 have only part-time probation officers, leaving only 21 in which there is at least one full-time probation officer. In the 95 counties there was a total of 76 probation officers, of whom 28 were giving full time to probation work with juveniles, and 40 were giving only part-time. More than a third of the part-time officers did not indicate the way in which time not spent in probation work was occupied. Among those who did, four were also adult probation officers, two were sheriffs, three were charity workers, one worked half time for the Illinois Children's Home and Aid Society, one was truant officer and police matron, another was truant officer and deputy sheriff, one was a constable, one was in newspaper work, and one claimed the rather liberal function of handling "mothers' pensions, blind pensions, and anything necessary for the betterment of the community."

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[1] Figures submitted by O. J. Milliken, superintendent, Chicago Parental Schools.

[2] The statute provides (*Illinois Revised Statutes,* Chap. 122, Sec. 169) that the jurisdiction of the Parental School ceases when the child reaches sixteen years of age.

[3] Smith-Hurd, *Illinois Statutes,* 1927, Chap. 37, Sec. 344a.

The length of time the various counties have had probation service for juveniles is summarized below:

Total	95
None	34
1 year	2
2 to 5 years	13
6 to 10 years	11
11 to 15 years	12
16 to 20 years	8
21 to 25 years	2
Over 25 years	2
Not specified	11

Thus, the fifty counties reporting the period since first a probation officer was introduced give evidence that the probation idea has been growing very much more rapidly in the last half of the period since the passage of the juvenile court law than during the first half. The rate in the latter period appears to be approximately three times that of the earlier one for the introduction of juvenile probation officers into the county courts.

Three rather crude indices of the efficiency of probation service in the counties having probation officers emerge from the answers contained in the questionnaires. They are: (*a*) In what proportion of the cases disposed of was there a social investigation by the probation officer prior to the court hearing? (*b*) What proportion of cases were given probationary treatment and what proportion were committed to institutions? (*c*) What proportion of those committed had previously been on probation or under supervision from the court?

(*a*) *Social Investigation.* The following Table 38 indicates the disposition of all cases as reported for the 95 counties.

TABLE 38. DISPOSITION OF DELINQUENCY CASES IN 95 ILLINOIS COUNTIES, JANUARY 1 TO JUNE 30, 1927[1]

	Total	Boys	Girls
All dispositions	1,338	790	548
Special supervision	262	135	127
Probation	302	202	100
St. Charles	155	155	—
Geneva	113	—	113
Pontiac	35	35	—
Lincoln	99	47	52
Dixon	26	15	11
Released from probation	71	34	37
Continued generally	112	60	52
Other dispositions	163	107	56

[1] Since all figures are for six months only, they should be multiplied by two to get an approximate figure for the year.

Analysis of the data on the schedules reveals the fact that 1,208 of the 1,338 cases disposed of were in the 61 counties having one or more probation officers, leaving only 130 cases in the remaining 34 counties. In order to arrive at an approximation of the actual number of cases investigated prior to hearing, it was necessary to separate those counties in which there were more social investigations than court dispositions. These were fourteen in number,

reporting a total of 139 social investigations in excess of the cases heard in court. The total number of investigations for all of the counties was 1,072. Thus, deducting the 139 cases which were not heard in court, there remain 933, or 77.23 per cent of the total cases heard, in which there had been made a social investigation by the probation officer. For the 95 counties the percentage of social investigations prior to hearing is only 69.73.

(b) Probation and Committal. The second question cannot be answered with complete accuracy, since the terms "probation" and "special supervision" are obviously interpreted differently in different counties, some counties having no probation officer reporting cases placed on probation. The best that can be done is to indicate the crude percentages from the totals submitted. Supervisory treatment, reported either as "probation" or "special supervision," was ordered in 42.15 per cent of the cases, and institutional commitment in 31.98 per cent. This represents a substantial gain for probationary supervision as opposed to institutional commitment in Illinois counties outside Cook, when compared with the percentages for 62 counties in 1918, reported by Miss Evelina Belden.[1] Miss Belden's figures showed only 28 per cent given probationary treatment and 46.9 per cent committed to institutions.

(c) Repeaters. Of those committed to institutions, only 26.87 per cent were reported as having previously been on probation or under special supervision from the court. This small percentage is probably chargeable in part to incompleteness in the records of the probation offices and courts, in part to the conservatism of the courts and their reluctance in placing children on probation who seem at all unlikely to make good, and, probably in no small measure, to effective, painstaking supervisory work on the part of probation officers.

34. Same: Detention Before Hearing.

Arrest and a subsequent appearance in court as an alleged delinquent are highly dramatic experiences for every child who passes through them. Because of this dramatic quality, everything connected with these experiences assumes exaggerated significance in the mind of the boy or girl. Thus, the period between arrest and hearing is a highly important one. It is a period of uncertainty when much may be done either to make or mar the character of the child. In this period, therefore, if the child is placed with older persons who are experienced in delinquency and crime, many of whom are mentally ill and morally perverted, he is almost certain to come out very much worse off than before. If, on the other hand, he is placed amid wholesome surroundings, among other children, or in a boarding home, he is at least saved from positive degradation at public expense.

No sane person who has ever visited any number of American county jails would recommend them as places of detention for children. The same is true of police stations. The blunt testimony of one probation officer describes the usual situation in Illinois: "The County Jail," he writes, "is a very poor place to detain delinquents as there are only two rooms, the men's ward and the women's ward. When we have any cases like this we put

[1] Belden Evelina, Courts in the United States Hearing Children's Cases, *U. S. Children's Bureau Publication* No. 65.

the boys in the men's ward and the girls in the women's ward." Most jails and police stations are filthy, vermin infested, unventilated holes, whose adult population represents the worst in the community.[1] The citizens of counties in which no other provision for detention is made can scarcely be considered otherwise than jointly guilty of contributing to the delinquency of children.

Of the 95 counties reporting, only 15 indicated the use of any place other than county jails and police stations for the detention of alleged delinquents. Six of these have a detention home within the provisions of the Illinois Statute.[2] Eight of them use boarding homes, either for part or for all of the children in need of detention. One court has a special arrangement with a private institution for the care of part of its cases. Sixty-six of the 95 counties reported definitely concerning detention. In 35 of these no delinquents had been detained during the period covered. In 26 cases, the question was not answered, and in three, it was indicated that no adequate record was available. Table 39 indicates the numbers detained in the 31 counties classified according to sex and place of detention.

TABLE 39. PLACES OF DETENTION, OUTSIDE OF COOK COUNTY

Place of Detention	Numbers Detailed		
	Total	Boys	Girls
County jail	88	61	27
Police station	42	29	13
Special place of detention	51	24	27
Total	181	114	67

The majority of these were detained for periods of from one day to one week, although nine were held for a month or more, and 50 for periods of one week to one month. Thirty-three of this last group were detained in county jails, 2 in police stations, and 15 in a special place of detention.

In the seventeen counties visited, not one police station was found in which an accurate record of the ages of persons brought into the station was kept. Hence, no data could be gotten concerning detention in police stations. A few chiefs of police attempted to recall, with the aid of scanty and imperfect records, the cases of juveniles detained, but after a few minutes gave up the attempt. In thirteen counties, a quite complete jail record was available. The numbers of boys and girls detained during 1927 classified according to age and period of detention are recorded in Tables 40 and 41. It is significant that, although the law in Illinois specifies that no child under 12 years shall be detained in any jail or police station,[3] 33 boys and one girl under 12 were detained for periods varying from a few hours to over two months. The one girl was eleven and was kept in jail for 68 days before being committed to the State Training School at Geneva.

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[1] For a detailed discussion of the jail situation, see Fishman, J., *Crucibles of Crime* (1923), and Abbott, E., "Why the One-Hundred-One County Jails in Illinois Should be Abolished" (pamphlet).

[2] Laws of Illinois, 1907, page 59.

[3] Cahill, *Illinois Revised Statutes*, 1927, Ch. 23, Section 334.

TABLE 40. BOYS' JAIL DETENTIONS, CLASSIFIED AS TO LENGTH OF TIME

Table showing the numbers and ages of boys sixteen years of age and under detained in county jails in thirteen Illinois counties during 1927 indicating periods of detention.

Age	6	7	8	9	10	11	12	13	14	15	16
Less than one day..... 34	—	—	2	3	2	5	3	3	3	5	8
One day and less than one week.....149	—	—	1	1	6	4	7	14	32	35	49
One week and less than two weeks.... 38	1	1	—	1	1	1	3	8	7	6	9
Two weeks and less than one month.. 34	—	—	—	—	2	1	2	4	4	10	11
One month and less than three months 24	—	—	—	—	1	—	2	1	3	7	10
Three months and less than six months 6	—	—	—	—	—	—	—	—	—	1	5
Over six months..... 2	—	—	—	—	—	—	—	—	—	—	2
Total 287	1	1	3	5	12	11	17	30	49	64	94

TABLE 41. GIRLS' JAIL DETENTIONS, CLASSIFIED AS TO LENGTH OF TIME

Table showing the numbers and ages of girls seventeen years of age and under detained in county jails in thirteen Illinois counties during 1927 indicating periods of detention.

Age	11	12	13	14	15	16	17
Less than one day ..... —	—	—	—	—	—	—	—
One day and less than one week..... 24	—	1	2	5	2	6	8
One week and less than two weeks..... 5	—	—	—	—	1	3	1
Two weeks and less than one month.... 10	—	1	—	3	3	2	1
One month and less than three month.. 6	1	—	—	1	2	1	1
Three months and less than six months 1	—	—	—	—	—	—	1
Over six months..... —	—	—	—	—	—	—	—
Total 46	1	2	2	9	8	12	12

Only four of the counties visited have juvenile detention homes. They are: Sangamon, Knox, Peoria, and St. Clair. In Sangamon County, the records did not distinguish between delinquents and dependents. For the other three, Table 42 indicates the numbers of alleged delinquents detained during 1927, classified according to sex and period of detention:

TABLE 42. JUVENILE HOME DETENTIONS, CLASSIFIED AS TO LENGTH OF TIME

Table showing the numbers and periods of detention of boys and girls alleged to be delinquent in the juvenile detention homes of three Illinois counties during 1927.[1]

	Total		Peoria		Knox		St. Clair	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Less than one day.....	19	29	14	4	4	10	1	15
One day and less than one week.....	124	78	84	54	4	12	36	12
One week and less than one month...	60	36	24	30	—	2	36	4
One month and less than three months.	8	8	4	8	—	—	4	—
Three months and less than six months	1	—	—	—	—	—	1	—
Over six months.....	—	—	—	—	—	—	—	—
Total	212	151	126	96	8	24	78	31

[1] In Peoria County, the only detailed figures available were for the six months' periods, August 1, 1927, to January 31, 1928. In Knox County accurate records were kept only for the last half of 1927. In each case, the figures given above are double the number for the six months in which records were kept.

Adequate attention to the matter of detention and adequate probation service go hand in hand. In the absence of a probation officer, somebody else must decide whether or not a child alleged to be delinquent shall be detained awaiting hearing or sent home, or, indeed, whether a petition

shall be filed at all. Most often a police officer makes such decisions, unless the child be taken directly before the judge for a preliminary hearing. In only four of the 95 counties reporting is there any special organization in the police department or sheriff's office for dealing with delinquents. Therefore, most children falling into the hands of the police receive totally unspecialized treatment. With a probation officer on the case as soon as complaint is made, the treatment can be planned in the interest of the child. No great amount of effort would be required to make possible the securing in every community of one or two boarding homes where children could be kept at very small cost awaiting the final decision of the court. But one can scarcely expect that this will be done by the judge or police officer.

35. Same: Hearings in Court. In her study of Courts Hearing Children's Cases in 1918,[1] Miss Evelina Belden set up as one of the minimum standards for juvenile court work, separate hearings for children's cases. Sixty-seven of the 95 counties studied have separate hearings. Twenty definitely do not. In seven cases the question was not answered, and in one, it was indicated that there were separate hearings sometimes.

More important than the matter of separate hearings are those of whether or not hearings are public and where they are held. Fifty-six counties reported public hearings only. In twenty, all hearings are held in chambers. In eleven instances, some hearings are public and some in chambers. The question was unanswered in seven of the questionnaires, and in one it was specified that hearings were "semi-public."

The court room is used, either exclusively or for part of the cases, in 72 counties. Sixty-one counties hold all hearings in the regular county courtroom. In eighteen counties hearings are held either in the judge's chambers, state's attorney's office, supervisors' office, probation office, a small court room, or in a "private room." In the 11 counties where both the court room and some other place are used, the other place is, in 7 cases, the judge's chambers; in three, the county clerk's office; and in one, the probation office.

In practically all progressive courts hearing children's cases, the formalities of ordinary court procedure, including jury, counsel, and the taking of testimony under oath, have been dispensed with. The courts of Illinois have been slow to discard these formalities. The oath and the attorney seem still to be considered essentials in judicial procedure in many places. In 78 of the 95 counties, all testimony is taken under oath. In eight, the oath is not used at all, and in one, it is used only part of the time. No answer to this question was entered on eight of the schedules.

The number of counties in which children are usually represented by counsel is considerably smaller. Thirty-six counties submitted definite figures concerning this item. During the six months included in the report, a total of 172 cases were represented by counsel in the 36 counties. Forty-five counties, of which number 18 reported no cases at all for the period, had no cases represented by counsel. Nine did not answer the question; two reported "very few;" one answer was "yes," and one, "all by guardian *ad litem*."

[1] U. S. Children's Bureau Publication, No. 65.

Five counties only reported any cases tried by jury. The total number of cases was seven. In six instances the question was unanswered, and in one it was reported that there was "no record," leaving 83 counties from which there was a definite report of no trials by jury. What the procedure would have been in the eighteen counties having no delinquency cases during the first six months of 1927 can only be conjectured.

The practice of releasing children on bail, although not in keeping with the spirit of the juvenile court, has by no means disappeared in the courts of Illinois. Only 10 counties definitely reported any cases of release on bail during the first half of 1927, the total number of cases reported being 29. It is probable that the reports at this point were very incomplete. The records of the county jails in thirteen of the seventeen counties visited showed both the age of prisoners and the method of release from jail. In these thirteen counties, 64 boys and two girls of juvenile court age were released from jail on bond in 1927. In one of the counties the probation officer stoutly maintained that there was such close cooperation among all of the courts and other officials, that she positively knew that in no cases had children of juvenile court age been released on bail. The jail records revealed 18 such cases—the largest number in any county visited. In another county, an assistant in the state's attorney's office, who filled in the schedule, after indicating on the questionnaire that no children were released on bail during the period covered, wrote: "If held at the city jail of . . . , we generally are successful in having business men or relatives give good bond for the boy's appearance, and also we provide for proper supervision of the child in the meantime." Although the record on the jail book is only a partial one, many persons being released on bond without entering the jail at all, and although our figures are for only a few counties, the wide distribution of these counties makes it seem fair to assume that they are representative of the situation in the state as a whole.

To the question, "Are truant and incorrigible children in the schools treated as delinquent in your court?" the answers were as follows: In sixteen instances the question was not answered. Forty-seven answers were "yes" and twenty-nine "no." Three schedules contained the statement that incorrigible children were treated as delinquent, while truants were not. In general, it seems safe to conclude that before a child is committed as delinquent because of conduct in school or truancy from school, his behavior must be of a sort which would be considered delinquent if indulged in outside of school.

In communities where courts hearing children's cases are not furnished with adequate probation staffs, much can be accomplished through the use of the sympathetically intelligent volunteer. In order to ascertain the extent to which the Illinois courts were making use of this expedient, the question was asked, "Do volunteers (such as social workers, teachers, ministers, members of civic organizations) function in your community by accepting delinquent children for supervision, by request of the court? Describe briefly." On 16 schedules the space for answer was blank. The answer was "yes" in 36 instances, and "no" in 42. One answer was "very few." Of those who answered "yes," only 16 specified anything concerning the persons

who acted as volunteers. Teachers, clergymen, social workers, Knights of Columbus, Y. M. C. A., physicians, a "Lady Lawyer," Kiwanis, Rotary, Lions, Optimist Clubs, Women's Clubs, service clubs, one mayor, a scoutmaster, a seminary student—these make up the group, except for one county in which it is specified that "good citizens" selected by the court render such service. As is always the case with volunteer service, it is sporadic, uneven, and disorganized. Yet, if properly safeguarded and inspired by the court, volunteers can be of inestimable service in dealing with delinquent children. This seems to be the situation in a dozen Illinois counties.

36. St. Charles Schools for Boys: General Description.

It was in keeping with the spirit of the Juvenile Court Law that there should be a separate institution to which boys of juvenile court age could be sent, and that this institution should take the form of a boarding school. Such a school was provided for by statute in 1901,[1] and received its first boys in December of 1904.

The school is situated on a 1,200 acre tract of land three miles southwest of the village of St. Charles. The location of the buildings is a very attractive one, on a rise of ground some two or three hundred yards off Lincoln Highway. Housing is provided on the cottage plan, with units accommodating between 40 and 50 boys each. The population of the school at the end of 1925 was 751, and was reported to the writer on November 15, 1927, as about 800.

Delinquent boys between the ages of ten and seventeen may be committed to the school by the Juvenile Court of Cook County or by the County or Circuit Court of any of the other Illinois counties. Commitments are for purely indefinite periods, although common consent and practice seems to have fixed the minimum stay at sixteen months. Boys may remain at the school until they have reached the age of twenty-one unless sooner released at the recommendation of the managing officer.

The program of St. Charles School for Boys involves academic, industrial, and military training. In 1926, fifty-two trades were taught.[2] In few cases does the industrial training fully fit the boy for competent work in a given trade outside. It has, however, been sufficient in many instances to give entrance to trades in which boys have developed into skilled and capable workmen. The print shop and the wood-working shop probably do this more satisfactorily than most of the other shops. The farm affords very valuable experience to a large share of the down-state boys in agriculture, horticulture, and dairying. If more systematic instruction were given, the value to the boys would be materially increased.

The academic program consists of the work of the regular eight grades prescribed by the Illinois Elementary School Course of study, with additional training in commercial subjects. Because of the very uneven schooling and uneven abilities of the boys sent to St. Charles, it has been necessary to introduce, in addition to the regularly graded rooms, four special rooms. Two of these are for the badly retarded boys, and two are opportunity rooms

[1] Illinois Laws, 1901, pages 68-72.
[2] Randall, Evelyn H., *The St. Charles School for Delinquent Boys* (unpublished thesis), page 54.

where older boys whose school achievement has been uneven, can give special attention to the subjects in which they are weak. Boys attend school half days during eleven months in the year. The present principal (Major William J. Butler) says that the quality of the academic work is somewhat lower than in elementary schools outside.

In August, 1927, Colonel Frank D. Whipp, managing officer of the school, was transferred to the superintendency of the Illinois State School for the Deaf at Jacksonville. In his place Major William J. Butler, then stationed at the Arsenal in Springfield, was appointed acting managing officer. Those who were interested in the removal of Colonel Whipp from St. Charles alleged among other things that he was much too lenient in discipline. Whatever the merits of these accusations, Major Butler told the writer of this report, in a conversation on November 15, 1927, that he was sent to St. Charles for the purpose of establishing more rigid discipline at the school.

The three forms which this more rigid discipline assumes at St. Charles are: (1) military discipline, (2) corporal punishment, (3) re-classification of boys in cottages. Each of these methods will be described briefly.

37. Same: Military Discipline.

Military drill has been one of the activities at St. Charles for a long time. Under Major Butler, this aspect of the school's life has been greatly emphasized. The military staff, in addition to Major Butler, consists of a captain, a first lieutenant, two second lieutenants (one of them Major Butler's son), a sergeant and a corporal. Military discipline and the requirements of military courtesy have been extended to all members of the staff. School principal, house fathers, and other non-military officers salute the managing officer upon entering his office and address him as "Sir." The boys are expected to march at attention to and from school and work, and to keep their clothing in as nearly military order as is possible; i.e., coats must be buttoned, sleeves rolled down and buttoned, shirts buttoned at the throat, etc. They are expected to observe the rules of military courtesy toward military officers and toward the flag which are demanded of members of the United States Army. On November 15, 1927, Second Lieutenant Butler delivered in the presence of the writer a lengthy lecture to the boys in the assembly hall on the subject of *military courtesy.* After telling them in detail when, where, and under what circumstances they were and were not expected to come to attention and to salute, he ended by saying that everybody would be expected to observe the rules he had laid down. "If any of you just *can't* learn these things," he concluded, "we'll build a bull pen out here on the grounds and put you in it until you do learn. This is not a threat. It's just a statement."

On the afternoon of the following day a group of larger boys was walking across the grounds toward one of the farm cottages. The writer was the only adult within hearing distance. One of the boys said to another, "Button up your coat." The reply was, "Who says I've gotta button my coat?" The first boy responded, "Why, he said yesterday, *'By God,* you've got to keep your *coat* buttoned.' "

Drill periods are from 4:30 to 5:30 p. m. three days per week, with

special drills on Saturday and Sunday afternoons. In inclement weather, or when the grounds are soft and wet, drill is dispensed with.

Regulation bugle calls order the daily activities at the school. Reveille is at 5:30 a. m. and taps at 8:30 p. m.

38. Same: Corporal Punishment.

For the three offenses which Major Butler considers most serious, escape, immorality, and serious insubordination, the strap is applied. For lesser offenses, some other type of punishment is used. For example, a member of the staff of the school told the writer of one instance. On the night of November 14, 1927, several boys were put in a coal car and ordered to shovel coal all night as punishment. Some of them ran away.

When and how much a boy shall be strapped is determined in cases of insubordination by the house father. The boy has no appeal. In cases of running away and immorality, the offense is covered by a definite rule. For a time an attempt was made to use a military court to decide upon the innocence or guilt of a boy accused of misconduct, and to assess punishment. This was found to be too cumbersome and was abandoned. Major Butler spoke several times in conversations on November 15 and 16, 1927, of the way in which boys often fix their own punishment for a given offense. In one of these conversations he said, "Beyond any question, if you get to a boy at once, he will name his own punishment, and it will do him good."

During the early months of Major Butler's regime, all whippings were administered by a disciplinary officer who, in company with the (military) officer of the day, went to each cottage each evening after supper and whipped any boys who had been reported earlier by the house father, or for whom the house father requested punishment at the time.

On the evening of November 15, 1927, Major Butler gave permission to the writer to accompany the disciplinary officer and the officer of the day on their rounds. The major went with us to Harding Cottage, the receiving cottage where new boys are assigned and where runaways are returned. Here there were five boys who had run away and who had been returned in the course of the day. These boys were lined up by the house father and marched down to the basement. It happened that Captain Leach was in the cottage on an errand. He went down with the rest of us. In the basement between ten and twenty boys were working. Some were putting soiled clothing into large laundry bags, while others were painting woodwork. These all remained and witnessed the procedure.

The disciplinary officer asked each boy in turn if he thought he deserved to be punished. Knowing that he was to receive it in any event, each answered in a timid affirmative. The next question was, "How much do you think you ought to have?" Four of the boys gave the answer, "Twenty licks," the number prescribed by rule. One larger boy attempted to fix his punishment at fifteen strokes. The disciplinary officer looked at him as if amazed and said, "What! Do you think you deserve less than this little fellow?" (indicating a diminutive colored lad). "He took twenty. Don't you think you ought to get as much as he did?" "Yessir," responded the boy very weakly. Twenty licks were soundly laid on. The small colored boy referred to, took his punishment without a whimper. All of the others,

though they made a valiant attempt, were forced to cry out. Major Butler reached down and shook hands with the colored boy and said, "I want to congratulate you on the way you took your punishment. That's the way I like to see a boy take his lickings."

The strap used is made of heavy harness leather. It is approximately two feet long and three inches wide. One end is shaped to fit the hand and is reinforced. The reinforcement extends part way down the strap, thus making the throat partially rigid. The boys are made to stoop over, keeping their knees rigid. Their shirts and undershirts are pulled up so that not more than two thicknesses of cloth are between the skin and the strap. The strap is laid on across the buttocks.

At another cottage three boys had been implicated in a smoking episode. One had found some tobacco, a second had taken it and given it to a third who had smoked it. They were let go with a very definite promise of the strap if the offense was repeated.

At the last cottage visited a fine looking lad of almost seventeen, who had been a lieutenant in the regiment, and was about ready for parole, had broken the rule against smoking. He had repeatedly promised not to smoke, but had been caught doing so.

He was asked, "Do you think you deserve to be punished?"

The answer was, "Yes."

"How much do you think you ought to have?"

"Fifteen ought to be about right."

At this point the house father interposed with a statement that after the boy had learned he was to be punished he had been found hiding behind a bench in the basement when he was supposed to be scrubbing, and that at another time he was not in line when he was supposed to be. He gave it as his opinion that the boy deserved twenty licks. The disclipinary officer then told the boy very sternly that the house father was "boss" and that whatever he said was law. Thus, in this case also, the boy's attempt to fix his own punishment was overruled. The twenty licks were vigorously laid on. In this cottage all boys were sent upstairs before the punishment began. When it was over, the disciplinary officer gave the boy a brief lecture to the effect that he was a pretty poor specimen. "How do you expect to get along on the outside if you act this way?" To this the boy protested that he had been punished for smoking and that on the outside he could smoke and not cause any trouble.

"I did promise to stop smoking, and I tried to. For five weeks I didn't smoke, and then I was tempted to smoke."

The reply was that punishment had been given not for smoking, but for breaking the rules. The disciplinary officer returned to the office, laid down the strap and lighted a cigar.

A subsequent visit to the school on April 23, 1928, revealed the fact that punishments, corporal and otherwise, are very much more severe than they were in November. The half basement under the bakery has been made into a guard house, or "jail." There are three rooms in this place; one good-sized outer room where the jailer and his assistants are stationed, a slightly smaller room, with an iron-barred door where most of those confined in the

jail are kept, and a small room, with no outside wall, reserved for those whose punishment is particularly severe. In the larger jail room were about fourteen or fifteen boys. Neither cots nor mattresses are provided. Boards have been nailed together and are laid down on the concrete floor. Each boy is given two blankets for his comfort while sleeping. All of the boys in jail were barefoot. To make identification easy in case of escape, two swaths had been cut with barber's clippers through each boy's hair, meeting at right angles on top of the head. The length of stay in jail varied. One case was reported in which a boy had been kept 32 days. The acting managing officer said that the usual stay was about a week or two.

Most of the boys in jail had been strapped before being locked up. Again, the amount of punishment varied. One boy said he had received 28 licks. The jailer told the writer that the usual practice was to give a certain number of licks (differing in relation to the assumed seriousness of the boy's misconduct) for the first offense. For each subsequent offense, the number given is double that administered on the occasion just preceding. In answer to the question: "How many do you sometimes give?" the answer was, "Well, we gave one boy 75 today."

The whipping is no longer done by one person, but is in charge of one of the military officers, and is administered either by a member of the military staff or by the jailer. Although no whippings were witnessed at the time of the last visit to St. Charles on April 23, 1928, reports indicated an increase in both the number of strokes given a boy and in the vigor of the strokes when compared with November 15, 1927.

Within the small room mentioned above—a room probably 6 by 9 feet —four boys were confined. They were said to be particularly vicious, had been immoral, had run away, assaulted guards, etc. In each corner of the room is an iron pipe attached to the floor and ceiling. These boys were handcuffed to the pipes, and were kept thus manacled night and day. These boys have two blankets, but have to sleep on the concrete floor. The jailer said that boys were usually handcuffed here for ten days. One case however, was reported by a former employee in which two boys had been handcuffed to the pipes for three weeks for the offenses of homosexuality and running away. A fifth boy had his hands thrust through the bars of the jail door and handcuffed together. Since he could not sit or lie down he was probably released from that position at night.

In the large outer room, a number of boys, probably 15 or 18, were standing, about-facing the wall, with their hands behind their backs as punishment.

The principal value of corporal punishment is alleged to lie in its preventive effects. Yet from August 1, to December 31, 1927, 220 boys committed acts for which they were whipped, and from November 1, 1927, to April 23, 1928, 101 escapes were recorded on the official chart in the corridor of the administration building. Seven boys had escaped from the jail.

39. Same: Re-Classification. There are fourteen cottages in the central group. The boys are classified in these cottages according to their conduct records. The "vicious" are to be separated from those who are "just bad." The "vicious" are the immoral.

A survey of the conduct records of the boys was made as a basis for reclassification.

Boys are divided into four groups. Within each group, separation is made on the basis of size. There is one cottage for large, one for small and one for medium-sized boys. Group number one contains the "vicious," number two is a probationary group, number three is for boys who have successfully passed the probationary period, and number four for the trusties. Group number one is characterized by "very plain fare and very strict discipline." In number two, the fare is quite plain, but not as plain as in number one, and discipline is somewhat less strict. In number three things are quite comfortable, and the boys have a good many privileges. In number four everything is just as nice as the major can make it. This classification was not entirely completed on April 23, 1928, but was in process of completion.

40. Same: Personnel. The employees at St. Charles are, supposedly, under civil service. However, no examination has been held for some time, and a great many officers are temporary political appointees. Their previous occupations do not, in many cases, bear any relation to their duties at the school. One bartender, one saloonkeeper, one professional boxer, one race track tout, one hotel "bell-hop," one elevator operator, two druggists, one laundryman, one policeman—these are a few of the occupations of recent house fathers and other employees in the St. Charles School for Boys.

41. The State Training School for Girls at Geneva: General Description. The Illinois State Training School for Girls was established by statute in 1893 [1] and given the official title of "The State Home for Juvenile Female Offenders." The first home of the institution was at 3111 Indiana avenue in Chicago. This was occupied from January 1, 1894 to May 5, 1895, when the first of the present buildings were completed and occupied. The location of the school is ideal. The buildings are situated on high ground overlooking the Fox River just south of the village of Geneva. They are constructed of yellow brick. The administration building, cottages, teachers' residence, and gymnasium are ranged about in a large circle. Inside the circle are the school buildings, Protestant chapel, and hospital receiving ward, and as well, directly behind the administration building, a small building used as a meat room, ice-making plant, and having on the upper floor at one end, a small apartment for the resident physican and her son. Northwest of the circle of cottages are the barns, silo, hog-house, and a house for the men who do all of the heavy work about the institution. Directly west of the circle are the garage, root cellar and greenhouses. At the southwest corner of the circle is a large old farmhouse which is occupied by the families of the head farmer and the chief engineer.

Commitments to the institution are for periods of "not less than one year nor beyond the age of twenty-one years." [2] Delinquent girls between the ages of ten and eighteen may be committed either by the County or

[1] Illinois Laws, 1893, pages 119-123.
[2] Cahill, *Illinois Revised Statutes*, 1927, Ch. 23, Sec. 287.

Circuit Courts of Illinois. Almost all commitments are made by the Cook County Juvenile Court or by the County Courts outside Cook County, acting under the Juvenile Court Law. The length of stay at the school is determined by a number of factors. The program is so arranged that a girl can, by diligent application and unusually good conduct, be eligible for parole in one year. Very few girls, however, are able to do this. Some girls stay as long as three or four years. Many of the girls are venereally infected. None of these are permitted to leave the school until the disease is well beyond the infectious stage. For girls who have gonorrhea, twelve clean slides in series are demanded before it is considered safe to release them. In general, a grade of at least eighty-five per cent in deportment and efficiency for twelve months is demanded in order to qualify a girl for parole. This is not, however, a hard and fast rule. There are, in fact, very few hard and fast rules enforced at Geneva. The rule of careful individual attention seems to be the one most employed.

The population of the school is usually between 400 and 425, of whom 100 are colored. The girls are segregated on the basis of color, two cottages being occupied by the colored girls. In the cottages for white girls, each has a separate room, while in the colored cottages some of the rooms are shared by two girls. On January 5, 1928, the superintendent of the school told the writer that in the white cottages there were from 22 to 34 girls per cottage, while in the cottages for colored there were 50 per cottage.

The daily program at the school is as follows:

Daily Program

6:00	Rise
6:30	Dining room, girls prepare tables for breakfast
7:00	Breakfast
7:30 — 9:00	Dormitory work
9:00—12:00	School
7:30—12:00	Detailed work on campus
12:00	Dinner
12:30 — 1:00	Free time
1:00 — 4:00	School
4:00 — 5:00	Play
1:00 — 5:00	Detailed work on campus
5:00	Supper
5:30 — 6:00	Free time
6:00 — 7:00	Study hour
7:00 — 8:30	Play, orchestra practice, etc.
9:00	Retire

Girls who attend school in the morning work in the afternoon and vice versa.

An honor pennant is awarded each month to the cottage having the highest rank in general deportment and efficiency. Girls with an average of 85 for two consecutive months are eligible to membership in the Girl Scouts, of which there are eight troups, quite active with their programs. One evening a week is devoted to a community sing out-of-doors or in the chapel. There are movies every two weeks in winter and dances in summer. Special

programs, pageants, plays, etc., are prepared for holidays. The school consists of the eight elementary grades, first year high school, commercial, industrial, sewing and domestic science classes. Girls take the regular Kane County eighth grade examinations, and receive elementary school diplomas just as do other school children in the county.

The industrial and sewing departments include the making of comforters, rugs, pillow cases, window curtains, aprons, underwear, hats, and all wearing apparel used by the girls except shoes and sweaters. In addition, work in the general laundry, the garden, dairy, greenhouse, general kitchen, bakery, and about the cottages employs the time of the girls while not in school or at play. The girls are moved from one department to another until they have received every branch of training offered by the school.

42. Same: Discipline. Matters of discipline, always difficult in a correctional school, are handled quite effectively at Geneva. No corporal punishment is permitted, nor are physical restraints used. Cases of extreme irritability, over-excitement, or hysteria are taken at once to the resident physician whose usual method of treatment is one or another of the forms of hydrotherapy. The thousand and one petty forms of misconduct in which the girls engage are handled by the matrons and teachers.

The treatment is usually at first only a reduction of deportment grade, which affects eligibility for Girl Scout membership and for parole. If it continues, this is followed by deprivation of privileges—an evening in the living room, a dance, or a dessert. The matrons and teachers also talk with the girls attempting to gain their confidence, and to help them if they can. Treatment is always on an individual basis.

Homosexuality, both the milder variety, which is content with writing "mash notes" or petting a bit, and the more virulent forms, which seek elaborate physical expression, is a source of no small amount of annoyance to the matrons and the superintendent. One of the colored matrons said that it is the one thing which they cannot control. One of the kinds of homosexual manifestation which is particularly difficult is that between colored and white girls. Colored girls are segregated from white. Frequent "crushes" occur and when they do, the writing of what are known among the girls as "honey notes" begins. The colored matron referred to above said they wrote "the filthiest, nastiest stuff you can imagine." Mrs. Ball said that in every case in which colored and white girls became attached to each other, the colored girl is considered the male, and is called "daddy" or sometimes "uncle." In a few cases, there has been worked out in the correspondence of the girls a whole family relationship with other colored girls being "brother," "nephew," "uncle," etc., to the white girl, with the female relatives on the white side.

In addition, there appear a good many cases of homosexuality within the white and the colored groups. It is the experience of the present superintendent that in every case in which a girl begins a homosexual affair, her efficiency and deportment in school, cottage, and industrial room all suffer. In some instances this marked falling down has been the clue which led to the discovery of homosexual activity. Upon the discovery of homo-

sexual behavior, a girl is taken immediately out of school and is kept away from all group contacts. Personal conferences are had with her. She is given plenty of exercise, often a diet which has some of the richer foods removed, and an attempt is made to build up interests which will be substitutes for homosexual activity. Reading, sewing, some sort of handicraft work are encouraged as aids toward sublimation.

Girls found planning or helping to plan escapes are given individual attention. It sometimes seems wise to transfer them to another cottage. In any event, a matron and superintendent have a conference with the girl and try to get her back into adjustment. Privileges are withheld in most cases.

Runaways who have been gone more than twenty-four hours are sent to the disciplinary cottage. This, Wallace Cottage, is used as a place of intensive training for a carefully selected group of girls who seem to need such attention. In addition to runaways, girls who are totally unable to get on with their cottage group are usually assigned there. The matron in charge of the disciplinary cottage is a woman of mature years and long experience in dealing with delinquent girls. Her methods are probably not thoroughly scientific, but they are based upon careful, painstaking, individual work with each girl. Certainly a period of weeks spent in this cottage, with plenty of work to do, a great deal of time in which to "meditate," and a great many conferences with a woman who is sympathetic and skillful in interpretation and understanding seems vastly more likely to effect a character change than is application of some ready made rule of punishment. Only the superintendent has authority to send a girl to the disciplinary cottage. No matron or teacher, therefore, can threaten a girl with a period there. The girls are all aware that the matron or teacher who attempts such a thing cannot carry it into effect. The value of such an arrangement is that it places responsibility for discipline squarely upon the people who have the girls in charge.

43. Same: Personnel. The superintendent is chosen by political appointment. The present superintendent has had long experience as a teacher and school principal. She is therefore very well fitted for her work. There is, however, no guarantee that with either a change in the political situation or a vacancy for some other reason, her successor will not be chosen totally apart from any real fitness for the work. Furthermore, political appointees are under obligation to those who appoint them, and must work for the interests of those persons. The subordinate members of the staff are chosen through the state civil service commission. On March 3, 1928, the superintendent reported a total of 34 matrons employed, of whom 33 were certified civil service appointees. Though civil service ordinarily makes for relative permanence of tenure, at Geneva a large number of matrons come and go each year. However, a good many have been at the school for periods of from five to fifteen years. During the fiscal years ending June 30, 1926 and June 30, 1927, respectively, there were appointed, 29; resigned, 27; appointed, 33; resigned, 29; discharged, 1.

44. Same: Movement of Population.

Table 43 following is indicative, in some measure, of the general effectiveness of this school.

TABLE 43.

Table showing movement of population at Illinois State Training School for Girls for the fiscal years ending June 30, 1926, and June 30, 1927.

	Total	1926	1927
Committed	488	254	234
Paroled	329	209	120
Recalled for parole violation	45	27	18
Recommitted	3	0	3
Ran away	108	37	71
Returned from running away	87	34	53
Discharged	465	248	217

The number recalled for parole violation is quite small, and the excess of escapes over returns is in no sense high. The number of re-commitments is negligible, only three in two years.

45. Release and After Care.

Except in rare cases, boys and girls leave the correctional schools on parole. The statute as drawn seems to indicate that the legislature intended that the Division of Pardons and Paroles should grant paroles from St. Charles and the Illinois Training School for Girls in the same fashion as from the prisons and reformatory. The law concerning St. Charles reads as follows:

> "Any male person between the ages of ten and sixteen years may be sentenced and committed under an Act entitled, 'An act to revise the law in relation to the sentence and commitment of persons convicted of crime or offenses and providing for a system of parole and to repeal certain Acts and parts of Acts therein named,' approved June 25, 1917, in force July 1, 1917, as the same is or may be amended, to the St. Charles School for Boys, for any and all crimes and offenses instead of the penitentiary or county jail, in the discretion of the court, subject to all the terms of said Act. (Added by act approved June 28, 1919, p. 242)" [1]

The law applying to the State Training School for Girls except that the ages are "from ten to eighteen" is precisely the same as that applying to the St. Charles School.[2]

The act referred to in the statute cited above places responsibility for making rules concerning the operation of parole with the Department of Public Welfare. In the summer of 1927 the superintendent of Pardons and Paroles, who is the officer within the Department of Public Welfare who makes rules governing parole, planned to take over the matter of granting paroles from the correctional schools. Some discussion arose, and an opinion was sought from the attorney general. He gave it as his opinion that the granting of paroles from these schools was the province of the superintendent and managing officer rather than of the Division of Pardons and Paroles. This seems appropriate in view of the fact that the guardianship of the minors under their care is lodged with these officers.

[1] Smith-Hurd, *Illinois Revised Statutes*, 1927, Ch. 23, Sec. 238.
[2] See Smith-Hurd, *Illinois Revised Statutes*, 1927, Ch. 23, Sec. 267.

The regular agents of the Division of Pardons and Paroles supervise parolees from the correctional schools. In the Chicago district two men are assigned to look after the parolees from the St. Charles School and two women give after-care service to girls released from the State Training School. In the rest of Illinois the parole agents (all men) render this service for all parolees from prison and reformatory as well as the training schools.

Permanent release is granted by the committing court in many cases, upon the petition of the managing officer or superintendent, or, on petition of some other person. Upon the attainment of age 21 release is automatic, since the schools have no jurisdiction beyond that age.

"The unplanful and almost chaotic procedure of the present in dealing with delinquency and crime," say Healy and Bronner, "is perfectly obvious to any student of the subject. Very frequently and at any stage, what is done has strange irrelevance to anything that has been done before or in many cases, to what is likely to be the outcome." [1] This characterization is strikingly appropriate to the existing situation in Cook County. The boy, whose delinquencies begin with truancy and continue through a series which take him successively through the experiences of the parental school, supervision, probation, The Chicago and Cook County School for Boys, and finally to St. Charles, has been subjected to treatment by a series of disjointed agencies fed by the Juvenile Court but otherwise (except for probation and supervision) organically unrelated. This very lack of organic relation is an invitation to each of the agencies to pass their troublesome cases on to the next. A sort of hierarchy of evils has been built up with a general continuance at one end and St. Charles and Geneva at the other. At each stage the next more drastic type of treatment gives to probation officer or superintendent a sense of security, and, apparently, of sublime faith in the efficiency of the next agency.

The case of a Polish boy, whom we will call Walter Ostrowski, serves to illustrate the way in which this group of uncoordinated agencies operate.

Arrest and first court appearance

Walter was born on Christmas day, 1908. He first came to the Juvenile Court in September, 1920, having been arrested with two other boys on the charge of burglarizing a store. In the course of the hearing, it was revealed that Walter had been habitually truant from school. Since he was not yet twelve years of age, the judge was unwilling to send him to one of the correctional schools for delinquents. He therefore continued the case, with a request that a petition alleging truancy be filed, in order that the boy might be committed to the Parental School.

The school authorities step in

The original petition alleging delinquency was filed by a member of the Chicago Police Department, assigned as police probation officer. Truancy petitions, however, are entered by officers of the Bureau of Compulsory Education, upon complaint of a school prin-

[1] Healy, W., and August Bronner, *Delinquents and Criminals, Their Making and Unmaking,* 1927, page 225.

Meanwhile in the Detention Home

cipal. It was therefore necessary to hold Walter in the Juvenile Detention Home until a probation officer notified the truant officer in the district in which Walter lived of the action of the court, the truant officer notified the prinicpal, the principal made a complaint alleging truancy and the truant officer filed a petition asking the court to commit to the Parental School. This involved seventeen additional days in the Juvenile Detention Home, having already spent five days there awaiting a hearing. On October 15, 1920, Walter entered his second institutional experience, for certainly twenty-two days in the Cook County Juvenile Detention Home must be considered an institutional experience.

To the Parental School

Summary thus far

In order to reach the Parental School, (and let it be remembered that it was not because of doubt in the mind of the court, but purely because of administrative organization) Walter was arrested by a policeman employed by the City of Chicago, detained for 22 days in an institution operated by the Cook County Commissioners, heard by a Circuit Court judge sitting under the Juvenile Court Law, proceeded against, meanwhile, by an officer of the Bureau of Compulsory Education of the Board of Education of Chicago, again heard by a Circuit Court judge, sitting under the Compulsory School Attendance Law, and committed to an institution operated by the Board of Education and administered through the office of assistant superintendent in charge of special school.

Second Court and Detention Home Experience

On February 13, 1922, Walter with three older boys, stole a Ford sedan in Chicago Heights, and drove back to Chicago, having "bummed" a ride to Chicago Heights on a freight train. This time he was held in the Detention Home eleven days, and because of his age and the fact that he had been led on by older boys, the case was continued under special supervision. His behavior was good for several months, and on June 7, 1922, he was placed on probation.

Special Supervision

Probation

More trouble and another Continuance

On August 9, 1922, Walter was again brought into court with three companions, charged with two burglaries, one on August 1, and another on August 3. The case was continued, and the boys released to their parents. On September 11, 1922, Walter's case was again heard. The police probation officer reported that since his continuance on August 9, he had been involved in four more burglaries. This time he was committed to St. Charles School for Boys, and passed under the administrative control of the superintendent of charities of the state department of public welfare. Age 13 years, 9 months.

To St. Charles

Transferred to another Division

Walter was released from St. Charles about January 1, 1924, and placed for after-care supervision under one of the agents of the division of pardons and paroles of the state department of public welfare. On May 20 he was again in court, having committed two

Violates Parole

more burglaries. He had worked for a while in a bakery, but quit he said, because it was too hot in the oven room.

Goes back to St. Charles

He was returned to St. Charles for parole violation. Walter was kept at St. Charles for about three months, and again paroled. On September 16, he was

More Burglaries

brought into court with four new burglaries to his credit. The court apparently decided that nothing was to be gained by another period in St. Charles so this

Chicago and Cook County School for Boys

time he was sent to the Chicago and Cook County School for Boys. He had now come back again under the administrative direction of the Division of Special Schools of the Board of Education of Chicago.

One year and one month after his commitment to Chicago and Cook County School for Boys, Walter again appeared in court (October 16, 1925). This time he had committed three burglaries and stolen a Ford

To St. Charles once more

car. He was committed to St. Charles School for Boys. Age 16 years, 9 months. Before his release from St. Charles he had passed beyond juvenile court age.

This brief summary of the experiences of one boy tells a story by no means unusual in the records of the Cook County court. Indeed, if the 1,000 cases which we studied are typical, slightly over one-fifth of all the boys whom the court finds delinquent go through experiences very similar to Walter's. To the unbiased reader, Walter's story must appear as a game of "passing the buck." Having been brought in as a burglar at the age of eleven, he was, in the terminology of the court, "given chance after chance to make good," until, at the age of almost seventeen he was sent for the last time by the Juvenile Court, as a burglar, to St. Charles. His official police record included seventeen burglaries and two cases of larceny of automobiles. His record of court orders included four institutional commitments, one return for parole violation and one period under supervision followed by probation—all on the ground of burglary or larceny of an automobile.

III—FINDINGS AND RECOMMENDATIONS

The inclusion of the study of the extent of juvenile delinquency in a study of criminal justice rests upon two main considerations. The criminal careers of adult offenders have their origin, almost without exception, in early childhood and adolescence. Therefore, the skilled and sympathetic treatment of the behavior difficulties of children should be the best method for the prevention of crime in the youth and the man.

46. The Findings. The findings of this study may be briefly summarized as follows:

1. *The volume of juvenile delinquency is large.*

In 1926, 19,566 cases of alleged delinquency of boys and girls were investigated by police probation officers. Of these, 17,922 or 91.6 per cent were adjusted by the police probation officers themselves, leaving only 1,644 or 8.4 per cent upon which petitions were filed to be brought into court. This number of cases of alleged delinquency investigated by the police was the

highest for any year of which there is record. At the same time the proportion adjusted outside of the court by the juvenile police probation officers is also the highest for the period from 1920 to 1926.

2. *Juvenile delinquency is not scattered evenly over the city but tends to concentrate in areas of deterioration.*

A series of maps for different years spotting the location of the residences of both male and female juvenile delinquents exhibits a massing of the cases in the neighborhoods surrounding the "Loop" and in certain outlying industrial areas like Packingtown and South Chicago. There are several districts in Chicago where over half the boys between the ages of ten and sixteen inclusive have been in the police station one or more times during the year. These are the areas of poverty, of bad housing and of neighborhood deterioration. The residents of settlements and workers in clubs and playgrounds in these neighborhoods would be the first to point out how inadequate is the present provision of recreational institutions in these neighborhoods. The facts secured in the study covering a period of years show conclusively that the type of neighborhood, rather than the nationality or religion of the parents, is correlated with the distribution of juvenile delinquency in Chicago.

3. *The group is an important factor in juvenile delinquency.*

This is especially evident in stealing, where in nine-tenths of 6,000 cases studied, two or more boys, known to have been involved, were brought into court. The traditions and the codes of boys' gangs emphasize as desirable qualities in their members, ability in delinquency and a record in one of the correctional institutions of the state. The boy who is a member of a gang cannot be effectively treated except in relation to the life of the group of which he is a part.

4. *The public school is not at present adequately equipped to study and to treat the problems of child behavior.*

Although there are in existence in the schools divisions of Child Study, Vocational Guidance, and Compulsory Education, and although there are special schools for unusual and handicapped children, they are now working largely in independence of one another. They are four separate administrative units, each doing an incomplete service, and all overlapping to a greater or lesser degree.

The Division of Child Study examines children referred by school principals, either as conduct, mental, defective, or educational problems. The Division of Child Study is handicapped by an inadequate staff. Because there are physicians on the staff, this division has been compelled to give the required physical examination to all teachers in Chicago public schools.

It is the testimony of Dr. D. P. MacMillan, head of this division, that from two-thirds to three-fourths of all information secured concerning children referred for examination is secured by telephone. Once examination is made and recommendation entered, the child study division has no more to do with the case until the child becomes troublesome again. Unspecialized teachers in "special rooms" is one of the handicaps in this work. On

November 1, 1927, Dr. MacMillan told the writer that with one exception he had examined as a child every notorious Chicago criminal who had recently been before the public through the newspapers. He also stated that in practically all of these cases facilities for carrying out his recommendations had not been available.

If the child is absent without excuse, or is incorrigible, the Bureau of Compulsory Education is called in. If the child is committed to the Parental School, he is then under the general administration of the assistant superintendent in charge of special schools. If he applied for a working certificate, he must go to the Bureau of Vocational Guidance to get it; but if he fails, while working, to go to continuation school, the Bureau of Compulsory Education is again called upon to deal with him.

It is because of this chaotic condition that reorganization, coordination, and reinterpretation of functions and responsibilities seem so important.

5. *At present police officers rather than social workers make the investigations in the great majority of complaints against children.*

The police assigned to this work have had no special training for it. All these juvenile police probation officers are men, although nearly one thousand cases of girls, which often involve sex offenses, are annually investigated by them. The officers at present keep only personal notes on cases, and make a monthly statistical report, instead of keeping a permanent record, which would be especially valuable in the treatment of repeaters. Children, at present, are often needlessly detained in the Juvenile Detention Home, in close association with others awaiting action on their cases. Children, whether charged with petty or grave offenses, are frequently transported to the Juvenile Detention Home in patrol wagons instead of being conveyed by street car or automobile.

6. *The record of the Juvenile Court is to be highly commended, but its efficiency can be still further increased.*

The Juvenile Court of Cook County is not only the oldest in the United States, but it is distinguished by its succession of able and devoted judges, by its relative freedom from political influence and by its increasingly great service to the children of the community. In fact, its work has expanded so rapidly that at present the clerical force is too limited to adopt the Federal Children Bureau's system of record keeping; its probation officers carry too heavy a case-load for the individualized treatment of problem cases; and no adequate provision has been made for effective planning and supervision of the case work. The referees of the court are appointed at present by the judges of the circuit court without the safeguards of competitive examination which have been thrown around the selection of the chief probation and the deputy chief probation officers.

7. *Institutional treatment of delinquency in Chicago and Illinois has yet to demonstrate its value in a program of reformation.*

As the Chicago and Cook County School for Boys now operates, its functions are very limited. Conditions at the St. Charles School for Boys have reached a crisis and demand radical treatment. The Geneva Training

School for Girls has during the past seven years steadily improved in efficiency of administration and in the morale of its inmates. Physical equipment at both the St. Charles School for Boys and the State Training School for Girls is fairly adequate. The effectiveness of any correctional school depends, in final analysis, upon the personnel of the staff. The present method of selecting superintendent and managing officer is that of political appointment. For subordinate members of the staff, civil service is theoretically in operation. Particularly with reference to St. Charles, this operates in such a way that politics plays a considerable role. Civil service requirements are so low that persons can qualify without either training for or experience in any work remotely similar to that demanded at the school.

Problems of discipline at the State Training School for Girls are more sympathetically and intelligently dealt with than at St. Charles where the present program is one of coercion, repression, and severe punishment for offenses which are considered serious. No avenue now exists, except voluntary organization and protest, by which this, or any other problem likely to arise, can be remedied. The matter of disciplinary practice, then, is only an illustration of the way in which these two school are essentially isolated from the possibility of effective control by an enlightened public opinion.

8. *In Illinois outside of Cook County the work of the juvenile courts and of probation falls below standards necessary for effective treatment of juvenile delinquency.*

Four main findings are derived from the data presented concerning conditions outside Cook County: (a) complete lack of uniform minimum standards of court or probation work; (b) the dominance of politics in the choice of probation officers; (c) overlapping of jurisdiction in juvenile cases; (d) the liberal, and often illegal, use of the county jail as a place of detention for children of juvenile court age.

Of 95 counties of the 101 down-state counties from which reports were secured, only 21 have a full time probation officer; 40 have only a part-time probation officer; leaving 34 counties without any probation services.

47. Recommendations. In the light of the above summary of findings, the following recommendations are made:

1. *Fundamental Changes in Treatment Necessary.*

The volume and distribution of juvenile delinquency demonstrates the necessity of group and community, as well as individual, treatment of juvenile delinquency.

2. *Program of Community Treatment for the Prevention of Delinquency.*

The concentration of delinquency in certain areas of the city is evidence of the significance of community factors in causing juvenile delinquency. A thoroughgoing program for the treatment of juvenile delinquency should include:

a. A family income sufficient to maintain at least the minimum standard of living required for the health and social efficiency of the different members of the family.

b. A housing plan in the interests of the families of small wage-earners.

c. A recreational plan which would provide additional playgrounds and recreational centers in the delinquency and gang areas of the city.

d. A plan for the protection of children against exploitation by street traders and other forms of child labor and a demoralization by certain types of performances of commercialized recreation recognized by all as unsuitable for small children.

e. Reorganization of recreational, educational, and vocational work with boys and girls in ways to make it more effective in the prevention and care of juvenile delinquency.

f. The integration in each community of the work of existing agencies like settlements, clubs, playgrounds, in a unified plan for the treatment of delinquency.

These recommendations are in line with much of the present effort of the Chicago Council of Social Agencies, the different charities of the city, forward looking employers, the Housing Commission, the Recreational Commission, and the Juvenile Protective Association. In supporting these agencies engaged in bettering social conditions and thereby preventing juvenile delinquency, the public should realize that crime and delinquency are, in large part, a product of rapid and disorderly city growth.

Above all, present programs of community treatment should be made the subject of impartial and careful research. The experimental study of two different areas now being undertaken by the Chicago Boy Scouts for the purpose of testing the efficiency of its program is commended as a healthy indication of the willingness of an organization to change an established program as a result of ascertainable findings. The proposed study of the treatment of juvenile delinquency by social and recreational agencies in an area on the lower northwest side is also indorsed. Through studies such as these, progress will be made in the construction of a sound program of community treatment.

3. *Group Treatment of Juvenile Delinquency.*

The findings on the importance of the group factor in juvenile delinquency demonstrates the urgent need for the recognition of the method of group treatment as well as of individual treatment. Recreational agencies should be encouraged in undertaking experiments in gang treatment and in recording the measure of success and failure resulting from these efforts.

4. *The Development of a Comprehensive Program for Child Study and Guidance in the Schools.*

All studies in this field emphasize the importance of the early detection and the early skilled treatment of behavior problems of children. The school is the natural and logical institution to make this provision for child study and guidance. The Board of Education now maintains a division of child study, a division of vocational guidance, a division of compulsory education and a division of special schools which also has charge of a small staff of visiting teachers. It is recommended that the Board of Education give serious consideration to the introduction of a unified program of child study

and guidance in order to discharge efficiently the following importan functions:

a. To make provision for the scientific study and treatment of th behavior difficulties of school children.

b. To secure all necessary social data upon the relation of the family, th play group, and the neighborhood to child delinquency.

c. To train teachers in the public school to detect the early beginning of behavior difficulty and to cooperate in the treatment recommended by the child study centers.

d. To make special provision for the examination and treatment of difficult cases in the public schools and in the Chicago Parental School.

e. To recommend commitment to the Chicago Parental School, as in cases of truancy, only after all other treatment has proved ineffective.

f. To correlate the work of child study with that of vocational guidance, it is recommended that the Superintendent of Schools appoint a commission to make a further study as a basis for determining a plan for the reorganization and coordination of the above functions of child study and guidance.

5. *Social Workers Rather than Police Should Make the First Investigation.*

The first contacts of the juvenile delinquent with the law and its agencies are often the crucial ones in the determination of his future career. Therefore, it is recommended that the police officers of the City of Chicago be relieved of the duty of investigation and decision concerning the detention, release, and the filing of petitions in delinquency cases and that all complaints be referred to the probation department of the Juvenile Court. It is further suggested that the judges of the Circuit Court be requested to consider and to recommend for adoption to the county commissioners an appropriation of $75,000 for the additional probation officers required to carry this recommendation into effect.

Five changes in the investigation and treatment of children brought into police stations are recommended for immediate adoption, pending the adoption of the foregoing recommendation:

a. That cases of girls be referred to the Investigation Division of the Juvenile Court, since the police probation officers are men, and girls in trouble obviously need the aid and advice of a woman.

b. That the practice of transporting children to the Juvenile Detention Home and court in patrol wagons be discontinued, and that instead, they be taken on the trolley or elevated trains or in police motor cars, accompanied by plain clothes officers. All girls should be escorted by women officers.

c. That, whenever possible, children be not placed in the Detention Home in order to avoid the possibility of unfortunate contacts from even this slight degree of institutional experience.

d. That a system of records be installed in each police station and a duplicate set be maintained in the Juvenile Court to consist of a card index of all cases investigated. The record should be kept for individual cases and provide for recording the following information: name and address of alleged

delinquent; names of parents, their nationality and occupation; date of birth of child; offenses charged; disposition of case. The use of a blue card or flag is recommended to indicate at a glance repeaters.

6. *The Work of the Cook County Juvenile Court.*

The Cook County Juvenile Court merits, from many different standpoints, its present position of influence and service in the community. The following recommendations should enable the court to perform even more effectively its important work in the treatment of juvenile delinquency:

a. That referees be chosen by the judge of the Juvenile Court, on the basis of competitive tests, in the same manner as the chief probation officer is now chosen. That formal legal training be not required as a necessary qualification for the position of referee. The outstanding referees of juvenile courts in the United States are not lawyers but psychologists and trained social workers.

b. That the judges of the Circuit Court be requested to consider and to recommend to the county commissioners for adoption, a new classification and rating of probation officers, making provision, in addition to the existing classes, for at least five case-work supervisors and a superintendent of case-work supervision. This would necessitate the appropriation of approximately $25,000.

c. That the staff of officers be increased to the point where no officer will be responsible for the supervision of more than fifty children at any one time as recommended by the committee on Juvenile Court Standards of the Federal Children's Bureau. When officers are doing both investigation and supervision, one social investigation per month may be considered equivalent to three supervision cases.

d. That one typist be provided for each three field workers and two additional record clerks employed. This will require an additional sum of about $18,000 and make feasible the adoption of the Children's Bureau system of records which is recommended.

e. That a statistical record of individuals as well as cases be kept and published in the annual report of the Juvenile Court.

7. *Institutional Treatment.*

The committee recommends as a policy the use of institutional commitment only as a last resort. In the carrying out of this policy it makes the following recommendations:

a. That the Chicago and Cook County School for Boys be reorganized as an adjustment center offering opportunity for study and individual redirection.

b. That the appointment of the heads of both St. Charles School for Boys and Geneva Training School for Girls be placed under adequately safe-guarded civil service or selected by a competitive test prepared by a citizens' committee appointed by the governor. Since the standards for the appointment of subordinate employees at these institutions are too low for effective work, higher qualifications be demanded in the selection of all employees.

c. That the state criminologist be requested to establish psychiatri clinics at each institution for scientific study of the personality problems o the inmates and as a basis for dealing with organization and administratio of work, education, discipline, and length of time in the institution.

d. That the work and schooling of the boys at St. Charles be develope so as to provide well-rounded educational training of value upon their retur to civil life.

e. That the law providing for the commitment of delinquent childre to the State Training Schools for Delinquents (Smith-Hurd, Illinois Revise Statutes, 1927, Chapter XXIII, sections 235, 238 and 267) be amended s that no child under the age of ten years shall be committed to the stat training school.

f. That the law also be revised so that upon petition showing cause b the superintendent at the St. Charles School for Boys the cases of boy seventeen years and over "may be re-heard by the committing court and, i the court's discretion, transferred to Pontiac."

8. *Parole Supervision.*

That the number of parole officers caring for children released from St. Charles and Geneva be increased in order to secure adequate social treatment. The parole officers should be trained social workers and should be selected by a competitive examination under civil service. This recommendation is in conformity with the findings and recommendations of the study of pardons, parole, and probation.

9. *A State Probation Commission.*

That there be established in the State Department of Public Welfare a Division of Juvenile Probation. The duties of the division shall be (a) to give aid and advice to courts and probation officers concerning probation; (b) in counties where there is no probation service to establish contact with county supervisors and the court concerning the work, in an attempt to establish thorough, high-standard probation service throughout the state and (c) to secure monthly reports from probation officers and prepare a careful annual report concerning probation work in the state, which report shall be published in the annual report of the Department of Public Welfare.

The officers of the division shall be a supervisor and an assistant supervisor. Both the supervisor and assistant supervisor shall be college graduates. The supervisor shall have had at least five years' experience in probation o other closely allied professional child welfare work, and the assistant supervisor at least three years such professional experience.

The committee finally suggests that a copy of this report be submitted t the various public bodies and private agencies whose consideration and action is necessary to put into effect the above recommendations.

CHAPTER XV

THE DERANGED AND DEFECTIVE DELINQUENT

By

H. DOUGLAS SINGER

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CHAPTER XV

THE DERANGED OR DEFECTIVE DELINQUENT

INTRODUCTION

(BY JOHN H. WIGMORE)

1. *The Status of the Psychiatrist in the Criminal Court.*

The invocation of psychiatry's aid in the criminal trial court is a novelty of very modern times. In Cook County, the Juvenile Court's use of Dr. William Healy's advice goes back to 1908, when the Juvenile Psychopathic Institute of Chicago was founded by Mr. and Mrs. William T. Dummer of Chicago, with Dr. Healy as director.

In 1909, a National Conference on Criminal Law and Criminology (called by Northwestern University School of Law to celebrate its 50th anniversary) resulted in the foundation of the American Institute of Criminal Law and Criminology; and the report of one of its first Committees (on a "System for Recording Data Concerning Criminals"), mainly drafted by Dr. Healy, and published in January, 1910, advocated "the advantage of such work in connection with a trial court." Upon the recommendation of Chief Justice Olson, the proposal of this committee was immediately adopted in the Municipal Court of Chicago. About the same time, Major Edward King (Medical Corps, U. S. A.) had begun using similar methods in the Disciplinary Battalion of the Army at Fort Leavenworth. Since that time, general recognition of their worth and necessity has spread gradually into all parts of this country.

The scope of the investigation of the Illinois Association for Criminal Justice has been limited to law enforcement. An intelligent study of the fundamental causes of crime and of criminal behavior is also needed; but the Association did not regard its purpose or its duty as including that task. Therefore, in this Chapter on the use of psychiatric advice for the disposition of the deranged or defective delinquent, no attempt has been made to discuss causes of crime nor the various theories as to those causes. The report, therefore, does not attempt to set forth or to discuss those portions of the work of the Psychiatric Laboratory of the Municipal Court of Chicago or the Juvenile Research Institute which are directed towards the diagnostic detection and the segregation of the mentally unfit as potential criminals; it only deals with those portions of their work which relate to the trial and disposition of the offender after the crime has been committed.

In a survey of the present kind, the object is to ascertain the extent to which crime in Chicago appears to involve deranged and defective delinquents, the amount and method of use now made of psychiatric advice in the trial courts, and the improvements, if any, in method and scope that may yet be needed.

At this point, obviously, something will depend upon the theory adopted as to the purpose of the criminal law in relation to legal responsibility of deranged and defective persons. One theory may attribute an extensive place to this analysis of the offender's psychic condition, and therefore to

the role of the psychiatrist; another theory might attribute a very different place.

Today, theories differ. There is a theory of the extremist psychiatrists; and there is an orthodox theory of the criminal law; and there are intermediate theories; for neither psychiatrists nor lawyers all agree among themselves. This is not the place to evaluate the various theories, nor to ventilate the differences between schools of psychiatry. But, for appreciating the general background of the whole transition period of today, in Chicago as elsewhere, the two most opposing theories must here be briefly described. An appreciation of them will better enable the reader to judge of the various needs or demands for using psychiatric advice in the improvement of criminal justice in this state.

(a) The Theory of the Extremist Psychiatrists.

The first passage is quoted from an address before the Criminal Law Section of the American Bar Association, in 1927, by Dr. William A. White (Superintendent of St. Elizabeth's Hospital in Washington, D. C.), whose eminence as a psychiatrist has long been recognized:

> "The psychiatrist, in his contact with the legal machinery, finds that the methods of procedure are such as to make it well-nigh impossible for him to mobilize his knowledge in any useful way for the assistance of the courts in dealing with the individual problems that come before them. He has come to feel that the criminal law and methods of legal procedure are based upon concepts which are largely obsolete from his point of view, and that penal methods as they at present exist are quite inadequate to deal with problems of human behavior. The common factor that runs through the whole problem of crime and its various manifestations is the psychology of the individual offender, and the law with its emphasis upon the act rather than the actor he feels has failed to give this factor adequate consideration. * * *
>
> "As the psychiatrist looks at the problems of the criminal law, he feels very definitely that the law and the practice that has grown up under it have originated in the perfectly human desire for vengeance as directed against the offender, and that punishment, which is its main objective, is meted out in response to this underlying motive. And so it has come to feel that the remedies upon which the law seems to repose its faith are hangovers, as it were, from old religious and moral ideas that have survived their period of usefulness in this twentieth century civilization. * * *
>
> "Criminal law, we believe, needs to change its point of view from that directed to the individual offender as a morally perverse person who ought to be punished to the welfare of society. It needs to be socialized. * * *
>
> "If my conviction is correct, and I believe it has ample support, that the whole scheme of the criminal law, founded as it is on a belief in the adequacy of punishment, has its ultimate sources in vengeance, is it not worth while, and is it not time, to examine this system and see whether punishment alone is likely to be longer adequate under present social conditions as we see them developing? * * *
>
> "In a word, my view is that we should free ourselves from the magic spell of words as successfully as we are free from the magic

spell of the ashes of a blind cat, such words as 'insane' and 'criminal,' and search ways and means to protect society from the dangerous and the antisocial; and having done this, to further develop ways and means for turning back into society, when this is possible, social units that are capable of more efficient and socially valuable functioning.

"I have spoken about the vengeance motive back of the criminal law and of punishment as an outcome of this motive. I have indicated that one of the serious defects of the present system is that this motive still functions, but under a disguise, namely, the disguise of deterrence, which makes it seem like something else. If one really knew the personality of the average criminal, how pitifully inadequate it was to cope with the situation in which he found himself and how logical and understandable his conduct under all the circumstances of the situation really was, it would be very difficult to get oneself into a state of mind that permitted the severity of punishment which the law often requires. * * *

"All of which results in the general proposition that I believe that at the present writing the methods of criminal courts are not calculated to accomplish very much in either preventing crime or reforming criminals; that to take the next step forward methods will have to be developed that are more like the methods in some of our juvenile courts; that the inquiry into a given individual case will have to take into consideration as far as possible all the attendant circumstances and the various ramifications, individual, family and social, not only of the crime, but of the remedial efforts as well; that vengeance and punishment, in fact, all moral issues, should be discharged from consideration so far as their emotional results in vengeance and punishment are concerned; that antisocial conduct should be considered as dispassionately as a broken leg; and that the individuals who cannot get along in the community should be dealt with not as morally guilty but as liabilities from which the community has a full right to protect itself, but toward which the community also has certain responsibilities."

And on another occasion (Journal of Criminal Law and Criminology, 1923, XIV, 62) the same eminent authority thus concisely states his view:

"Strangely, and for what reason I know not, the expert who is not permitted to say that the defendant is sane or insane, because that sacred duty resides with the jury, is permitted to say whether in his opinion the defendant was responsible or irresponsible at a certain time. . . . .

"The principles which I advocate are that the criminal, and not the crime, should be made the matter of prime consideration, and that the sentence, or better, the decision of the court, should be calculated to *cure the social illness* as it has been shown to exist in the conduct of the defendant. All cases of pneumonia are not treated alike just because the disease happens to be pneumonia. The patient is treated and allowances have to be made for age, previous condition of health, of resistance, etc. The patient is treated, and not the disease; and it is as illogical to sentence the person who has committed a certain offense to a specific term of imprisonment as it would be to decide, when a patient is admitted to the hospital, the day upon which he shall be discharged."

Another summing up, for the psychiatrist, is found in the presidential

address of Dr. Charles W. Burr (professor of mental diseases in the University of Pennsylvania) at the annual meeting of the Eugenics Research Association, in 1925:

> "Psychiatrists contend that the legal definitions are arbitrary, unscientific, and untrue. They maintain that criminality is a state of mind, that there are a certain number of people who, either because of inherited or congenital twists in mental makeup, or from acquired disease, are so unlike the rest of the community in which they live, that they are asocial and hence criminal; that there are people who can not be taught a sense of duty toward their fellows, people who are morally color blind; that a man may be a criminal and yet never commit a crime, because his environment is such that he can satisfy all his desires without coming in conflict with the law, and finally, that putting to one side the question of free will in normal people, the criminal is so controlled by emotional impulse that reason plays a very minor part in his life.
>
> "To the psychiatrists, therefore, the criminal's act is of secondary importance; his mental make-up impelling him to it is the primarily important thing which stamps him as belonging to a species mentally unlike his fellow men. *The act is, therefore, merely a symptom to be interpreted.* In law, the act itself is the thing which makes the man a criminal. * * *
>
> "From still another point of view, law and psychiatry are antagonistic. Law today maintains (it gave up the notion of vengeance long ago) that the purpose of punishment is to deter others, to keep the criminal out of mischief forever or for a time and to give him an opportunity to think over the wisdom of changing his mode of life. The thoroughgoing psychiatrist maintains the criminal is an abnormal man, who should be treated as a patient and when, as is usually the case, the abnormality is congenital and the result of heredity, there is no hope of cure; when it is the result of acquired disease, the outlook is a little better. * * *
>
> "My conclusions are: That man is an emotional animal rather than a reasoning one, that he possesses a social instinct (bound up with the moral sense) which is the foundation stone of civilization, that the moral sense is potentially present in all normal children, that wise education and good environment can strengthen it by training, and bad environment, save in the highest types, can and does destroy it, that the criminal, in the very restricted meaning of the word as used by the psychiatrists, is either born without capacity to develop the social instinct and the moral sense, or has lost them by disease, and that such criminals, though not responsible, should be segregated for life, or, if they are of the type that murder or commit rape, should be executed because they are a menace to the state and to the race."

The practical application of extremist views, in criminal trials, may be seen in the findings at the Loeb-Leopold trial in Chicago in 1924, of the four psychiatrists called by the defense, Dr. William A. White being one of them (Journal of Criminal Law, etc., XV, page 371, 279):

> "We could draw no other conclusions from *Leopold's* abnormal phantasy life, his delusional development of notions about himself, his defective or deteriorated judgment which has not permitted him to see the pathological absurdity of mixing up phantasy and real life; his

repression and misplacement of emotional life; his abnormal urge towards activity and search for the experience of new mental and physical sensations; his disintegrated personality to the extent that he has shown an essential and abnormal lack of foresight and care even for his much beloved ego—we can draw no other conclusions from the above than that Leopold is and was on the twenty-first day of May, 1924, a thoroughly unbalanced individual in his mental life. * * *

"It is evident from the foregoing that in *Loeb's* case we are dealing with an adolescent who in his development has manifested a markedly pathological divergence or split between his intellectual and emotional life, so that while he may be considered mature intellectually, he is decidedly infantile in his capacity for reacting to the ordinary situations of life with normal, appropriate emotions. His whole behavior in connection with the Frank's case before and after its occurrence and up to the present moment, indicates a degree of callousness which is wholly incomprehensible except on the basis of a disordered mentality.

"The opinion is inescapable that in Loeb we have an individual with a pathological mental life, who is driven in his actions by the compulsive force of his abnormally twisted life of phantasy or imagination, and at this time expresses himself in his thinking and feeling and acting as a split personality, a type of condition not uncommonly met with among the insane.

"We therefore conclude that Richard Loeb is now mentally abnormal and was so abnormal on May 21st, 1924, and, in so far as anyone can predict at this time, will continue, perhaps with increasing gravity, as time goes on."

(b) The Theory of the Moderate Psychiatrist.

The attitude of the moderate psychiatrist towards criminal justice has been excellently set forth in the following passage by Dr. H. Douglas Singer, the eminent psychiatrist to whom this portion of the present Survey was assigned:

"Criminal justice is concerned with the regulation of human behavior in conformity with standards that are expressed in the law. Violations of law may occur as the result of many different causes; in all of them the state of mind of the violator is an important factor. This is true whether the motive for the crime is ignorance, cupidity or insanity.

"So long as the law was concerned only with 'making the punishment fit the crime' there was no need to take into account the *causes* for a crime. Recognition that acts of a criminal nature may sometimes be the outcome of mental disease was embodied in the law, and there then arose the necessity for devising means to determine, when a doubt arises, whether a person accused of crime is sane. Knowledge of mental diseases and their recognition is a highly specialized branch of medicine and is acquired only from long training and experience such as is not contained in the general medical curriculum. Consequently, courts have sought the advice and assistance of experts in this field when the possibility has arisen that some criminal act is the outcome of mental disease.

"Medical science has gone far beyond the study and recognition of the grosser forms of mental disease, which are those that used to be labeled insanity. As a result of investigations of human behavior in health and disease physicians have been led to recognize that there are many forms of disordered or unusual behavior, other than that

called insanity, which demand scientific study for their understanding and treatment. Among these come much of what is called crime. The more recently acquired knowledge in this field has not yet been absorbed by the law. One consequence is that the courts and the psychiatrist in some respects talk a different language. The psychiatrist speaks of criminal behavior as abnormal or disordered behavior and is able frequently to throw light on the mechanisms of its causation as well as to recognize and forecast something of its course and outcome. To the jurist who recognizes only the alternatives of sanity or insanity, statements such as this seem to indicate that the psychiatrist regards all crime as evidence of insanity.

"These misunderstandings necessarily minimize the value of the expert to the court. If he endeavors to formulate in his opinion the views he holds of the abnormality of criminal behavior he is liable to be understood as trying to relieve the criminal of his just deserts. Even though such opinions are entirely honest and might, if heeded, result in far more effective disciplining of the offender, they serve at present, as the law now stands, only to introduce confusion and distrust. Until scientific progress has become sufficiently established to bring about modifications in the law, the psychiatrist who would be of service must use the language of the law. This does not mean that he should not endeavor to educate the public with the object of securing the adoption of changes that seem to him desirable. The law has been built up gradually on the basis of experience; its seemingly unnecessary restrictions and formalities are founded on objections and injustices that may not be obvious on the surface. They cannot lightly be cast aside.

"To the psychiatrist the term insanity has come to mean only the legal or social aspects of a mental disease. He no longer uses the term in a medical sense. In medical parlance the statement that a person is insane means that the disease of his mind is such that he is in need of commitment.

"To most persons without special training the conditions labeled 'insanity' constitute a definite entity, the existence of which can be detected and demonstrated by the application of specific tests. There are, however, many different forms of mental disease and no specific tests of sanity are available or even possible. The conduct, words, thoughts and feelings of persons with mental disease are merely distortions and exaggerations of those of persons who are mentally well. No specific line can be drawn between normal and abnormal behavior; what is normal under one set of circumstances may be abnormal under another. It is only when the distortions or exaggerations become extreme that they are labeled mental disease.

"The situation with regard to mental disorders that are less obviously describable as mental disease is naturally even more indefinite and open to differences of opinion. It is from this group that come the cases which give rise to criticism of experts in the administration of justice. Some psychiatrists believe that disease or defect in some part of the body will eventually be found underlying all these disorders; others contend that a sufficient explanation is present in faulty training and habit formation. All agree, however, that certain mechanisms and a more or less consistent evolution of much criminal behavior can be recognized and that conclusions can be drawn as to remedial measures and outcome. When the physician is asked to state merely whether a

man is sane or insane it can readily be understood that there is every opportunity for differences of opinion.

"It may be conceded at once that the criminal law has been evolved to deal with the type of behavior that is called crime, regardless of the views of physicians as to causes and treatment. That it has not been completely successful is obvious. Society has been brought to realize that criminal acts are sometimes the result of disease and much effort has been expended in attempts to formulate exact definitions of such disease. Even though society tacitly recognizes that 'crooks' differ from the average person, it still has not openly reached the conclusion that criminal behavior is abnormal behavior.

"The distinction that is made between an act that shall be called crime and one (possibly exactly similar in kind) that results from disease is that the former is *wilful* misbehavior, outcome of *an abandoned and malignant heart,* whereas the latter is *not chosen* because it is the result of disease. This distinction is expressed in the legal concept of *responsibility,* a concept that has no counterpart in medicine. An insane man is said by the law to be not responsible because his conduct is controlled by disease; a sane man is responsible because he chooses to act in the way he does. The physician does not concern himself with such abstractions—his concern lies in trying to determine why the man committed the act and how to remedy it. He wonders why the courts do not think in the same way and cease to worry about free will and responsibility. But the definitions of insanity adopted by the courts are not concerned with the nature of the disease that is present; they deal only with the question whether the person at the time of the offense had sufficient mind (1) to know that the act was wrong, and (2) to be able to choose the right and refrain from the wrong. In the eyes of the law a man may be sane with respect to one transaction and insane with regard to another. This is confusing to a physician. But it is to be remembered that the courts deal with one transaction only and have endeavored to prescribe the standards by which the question of sanity or insanity as regards this particular act can be answered.

"From a practical point of view, does it make any real difference whether we label a man responsible or irresponsible? Would it be not equally pragmatic to hold everyone responsible for his acts, whether sane or insane, and then to adopt measures that will: (1) insure society against further criminal acts on the part of this person; (2) establish clearly that society cannot, for its own protection, tolerate such acts regardless of the reasons back of them, and (3) rehabilitate the offender if that is possible? These purposes are all that are hoped for from punishment; the introduction of the mythical concept of responsibility merely clouds the issue.

"Thus, from the psychiatrist's point of view the question is not one of abolishing responsibility, but of ignoring it, and of planning treatment to fit the offender rather than his offense."

(c) The Orthodox Theory of the Criminal Law.

The possible purposes of the criminal law as a system have been defined under four heads: (1) The theory of *deterrence of the multitude;* (2) the theory of *disablement of the individual offender;* (3) the theory of *cure to the individual offender;* and (4) the theory of revenge or *retribution on the individual offender.*

(1) The theory of *deterrence of the multitude.* This is the primary and essential function of the criminal law. By its penalties, it aims to repress crime in mass. This aim is not concerned with the individual offender now caught and in court; otherwise, it would be *ex hypothesi* entirely a failure, for *he* was in fact not deterred. This aim concerns the multitude who have *not yet* offended. Its degree of success is measured by the ratio between actual offenses and possible offenses.

This theory controls the logic of most parts of criminal law and procedure. Its application to the deranged or defective offender is noted below (sec d). Here is to be emphasized merely that it is supposed to operate solely by its *threat of penalties* for prohibited acts, and that it is directed to the *multitude at large.*

This latter aspect is the one that is always forgotten by the extremist-psychiatrists. But it is nevertheless the primary and essential aim. Without it, the criminal law system would cease to be what it is, even if it retained the other aims.

(2) The theory of *disablement of the individual offender.* This and the other two theories turn to the individual offender, now caught and before the court. Obviously the deterrence aim has failed, for him, and thus the other aims now come into play. The criminal law system, having caught him, and having the machinery for the other purposes, now proceeds to apply them to *him.* All three of the other aims are also accepted by the criminal law, but as subordinate ones, to be effected so far as possible.

The *disablement* theory required that this particular offender be disabled from repetition of his offense, if he appears likely to repeat it. This means confinement, short or long, fine, great or small—a warning only, perhaps—but not death. Death is called for by the deterrence aim only; i. e., as a threat to the multitude of potential committers of similar intolerable deeds. But the offender's psychic condition may need psychiatric advice, as to the measure needful for disablement.

(3) The theory of *cure of the individual offender.* This aim, also, the criminal law accepts, though as subordinate. It is here that modern criminal law has progressed far beyond the older criminal law. The laws permitting indeterminate sentence, parole and probation, rest on the theory of cure. It is here also that the psychiatrist and the sociologist come most prominently into the foreground, as necessary advisers of the court and the prison authorities.

It is here also that appears the confusing conflict between the dictates of Aim 1 (deterrence of the multitude) and Aim 3 (cure of the individual). For Aim 3 may be satisfied with a mild warning, or with a committal to better family surroundings, or with hospitalization, etc. And yet Aim 1 may be totally defeated thereby, if the multitude of potential offenders, on observing this mild "treatment," loses its fear of the unpleasant threat of the law, and takes courage to do similar antisocial deeds.

This conflict-point between the two aims has become increasingly frequent with the spread of modern psychiatric and sociologic science. It has caused too many thinkers to forget all about the requirements of Aim 1. And yet that aim *must* be achieved by the criminal law; else the community

will become the prey of the undeterred self-seeking aggressor (in all ranks of life); for every community always contains a fair percentage of wilful egocentric persons who would live by the club or by chicanery if they dared to.

This conflict between the dictates of the two aims is an ever-present problem for the criminal law, in modern times. It cannot be escaped. Human skill in the legislature and on the bench being limited, we can not hope to attain a perfect solution. Often we find merely a muddle. But at least those who do thinking on the subject should realize just what the problem is.

(4) The theory of *retribution,* once prevalent in the most primitive periods, is now long discarded. Some psychiatrists seem to think that it still is maintained by the law. They are in error,—at least as to the *professed* theory of the criminal law.

Nevertheless, though this theory is not and never could again be *per se* the sufficient basis of any part of the criminal law, all experienced observers know that this feature—retribution—does serve as a useful by-product of criminal justice. Sir James Stephen once wrote, "The criminal law is in part a system of licensed revenge." What he meant was this: When a mean dastardly act does injury to a helpless victim, the natural sentiment of the family and the neighborhood demands retribution on the doer. But law and order, after centuries of effort, have succeeded in prohibiting any action of self-redress based on this sentiment. None the less, it is there, as a fact, in too many cases. And it will break loose and defy the law, unless occasionally it gets gratification. Whenever, therefore, the criminal law imposes a penalty, under its own Aim 1 together with Aim 2 and Aim 3, then this Aim 4, though *not professed or accepted by the law itself,* may seem to the family and the neighbors to be given effect. Thus they go home with their crude moral sense of retribution gratified. Their instinct for self-redress is allayed.

As a by-product only, therefore, it is undeniable that Aim 4 at times does render a useful service in keeping the community peaceful.

(d) Same: Application to the Deranged or Defective Offender.

Going back then to the primary Aim 1 (deterrence of the multitude), we must ask, What are its logical dictates as to the deranged or defective offender?

The deterrence aim is effected by the constant threat of a penalty for a specified act. Now concrete analogy is often more illustrative than any amount of abstract exposition. For an analogy to the criminal law's threat, let us take the case of *robbers in a church.*

On a Sunday morning, at 11:30, a congregation of 300 persons is quietly seated within a church. Suddenly, at the church entrances, appear two professional robbers pointing automatics at the congregation. "Don't move. Let each one singly leave his seat, file by us and drop his coin and his watch into this basket, by the door. Any one who calls out or leaves the room or draws a weapon will be shot." What happens? The vast majority, of course, sense the inevitable and gradually do as ordered.

But there are two or three "abnormal" classes of persons in the congregation. (1) In the first place, there are some young children, who never

saw a pistol fired, but realize that there is terror in the air. They cry out and are shot down. (2) In the next place, there may be a blind man, who also misunderstood the words of the robbers and thought that the congregation was being dismissed. He rises and starts to find his way out. He is shot down by the robbers. (3) In the third place, there are two or three hysterical women; they understand perfectly what is happening, but cannot control their nervous inhibitions, and they burst into shrieks. They are shot down by the robbers. (4) And in the fourth place, there are a few cool and daring men, who as the procession begins to file past the basket, take a chance and break for the door, hoping to escape the vigilance of the robbers. They, too, are shot down.

The result is that the congregation is speedily cowed and submits. Now, comparing those four classes of persons, there is a difference between the cases of the first three and the fourth. All four killings are of course illegal and immoral, from the point of view of the law and the community. But the first three seem to us particularly cruel and sad. The little children were mentally incapable of understanding the danger; the blind man was in the same plight; and the hysterical women simply could not hold in. To all those three classes, *the robbers' prohibition and the threat meant nothing.* They were incapable of acting according to its dictates. How cruel, then, to kill them! On the other hand, the bold men who tried to escape and give the alarm knew perfectly well what the prohibition was, knew what the penalty was to be, and took their chance. They were heroes. But the moral attitude of the robbers in shooting them does not excite the same horror.

Turning then to the criminal law, we start with the proposition that its Aim 1 is *repression*—repression of the multitude from doing specified acts. But it follows logically that three classes of persons, being incapable of acting in accord with the threat, should not be penalized, because it would be futile; viz., first, children too young to understand the threat; secondly, adults mentally incapable of understanding it; and thirdly, adults understanding it, but incapable of controlling their inhibitions. Now obviously no rational system of repression would expect to impose its penalties on those three classes of persons. Nor does the criminal law expect to.

But the three classes differ between themselves in certain respects affecting the penal law:

(1) Children, being immature, require different treatment by the law in its Aim 2 (disablement of the individual) and Aim 3 (cure of the individual). Hence, juvenile courts, etc., etc.

(2) Adults, not capable of understanding the law's prohibition, give rise to two great questions.

In the first place, the acts forbidden by the criminal law are sometimes intrinsically immoral acts, sometimes not; e.g., murder and rape are (by universal opinion) immoral; but peddling without a license and using the national flag for advertising are not or may not be. Hence, in the latter class of prohibitions—so-called police measures—the offender's mental or moral innocence is often by the law (in all countries) deemed immaterial; the act itself is penalized, regardless of intent. So that the immunity for persons not capable of understanding the prohibition applies naturally only to for-

bidden acts having a moral basis. Hence, the current orthodox legal definition of insanity, as incapacity to distinguish between right and wrong, is logical.

In the second place, this definition of insanity has become the battle-ground between psychiatry and the law. Psychiatry defines insanity, etc., very differently. Enough here to point out (recalling the analogy of the robbers in the church, and the repression aim of the criminal law) that the criminal law is perfectly logical (in a broad sense) in using this definition, because it would be irrational if it did not exempt from its repressive threats those who were incapable of understanding the purport of the threat. Conversely, if they understand it, the repression threat answers its purpose.

(3) Adults who understand but are incapable of controlling their inhibitions, represent an exception that has found acceptance by the criminal law in recent times only. But it presents a problem of its own. Theoretically, it is sound enough. But practically it is readily counterfeited. Moreover, the shading off between that ordinary "uncontrollable" anger which any of us might feel but could and should control, and that psychically irresistible impulse of the diseased mind, is hard to distinguish. So that this exemption gives rise to notorious instances of "failures of justice," like the recent Remus case in Ohio.

In both the foregoing classes of persons, then, the theory of the criminal law is logical enough, when the fundamental aim of *repression* is kept in mind. But the totally different classification of psychic disorders by the psychiatrist for therapeutic purposes, and the possibilities of practical abuse of any legal definition, have led naturally to controversy, confusion and ineffective administration.

(4) As to the fourth class of persons—the bold defiant adult, who understands the prohibition, appreciates the threat, but is ready to take the risk—those are the persons as to whom the criminal law has no scruple. By making an example of them, it accomplishes its great Aim 1, the repression of the rest of the multitude.

Recurring to the analogy of the robbers in the church, the relative success of this repression aim can be figured out. If the robbers should miss their aim on the first few men who tried to escape, and if more men, less bold, should then take courage to try also for escape, or if the robbers' guns fail to work and the robbers lose much time trying to put the guns into action, there may soon be a stampede of many in the congregation and the robbers' repression system breaks down, partially, at least.

So, too, with the criminal law. *Speed* and *certainty,* as all agree, are the prime requisites to its efficacy. The constant and obvious escape—whether by delay or by uncertainty—of those offenders who would naturally be made examples of, will give courage to the other potential offenders. To that extent the criminal law "breaks down."

But in the church incident there would always be a large majority of timid or indifferent persons who would not try to escape. So, too, in any community at large, the great majority are always too timid or too cautious or too law-abiding to attempt to break the criminal law, even when it functions poorly with actual law-breakers. In short, so long as a system of

criminal laws and courts is openly and regularly operating, the repression aim is being effected, even though more or less imperfectly. The so-called "break-down" at various places or times, should never induce us to forget that the repression aim of the criminal law—its fundamental one—is always silently operating in some valuable degree, upon all of us, who never are haled into court.

The foregoing outline of the respective attitudes of psychiatry and criminal law will assist in judging how far the use of psychiatric advice for the trial courts of Illinois in dealing with abnormal psychic types can be improved and extended.

(I) Law and Procedure in Illinois

2. Scope of a Psychiatric Examination.

To many persons a psychiatric examination has come to be understood as the application of a set of tests by which the mental age is measured. It is extremely doubtful whether tests of this kind have any value in the study of persons above school age; even in children the tests are not relied on alone to determine the presence of feeblemindedness. When used at all these tests constitute only a minor feature in any psychiatric study. Indeed, it seems to have been proved that, with such tests, convicts in a penitentiary rate about the same on an average as the average of persons in the communities from which they come.

A psychiatric examination is a study of the kind of behavior shown by the person under study. How has he reacted to circumstances throughout his life? This is discovered by a scrutiny of his life story as given both by himself and by others and includes the conditions he has had to meet as well as the manner in which he has met them—his school, home, work and play life; his interests, ambitions, hopes, fears and the way in which he has dealt with them; his manner of expressing emotion, his balance and poise; his habits and associations. His manner of behaving at the time of the examination is studied by investigating his memory and appreciation of the facts of the world around him, his emotional responses, thoughts and conclusions in response to situations placed before him by means of questions and requests for action.

The direct observations of the man himself are supplemented by the stories told by relatives, friends and others who have had opportunities to observe him at various stages in his career and under various conditions. This serves not only to establish the facts but also to check the statements of the man himself as to their validity and significance.

The two features outlined are by far the most important part of the examination. In addition, it is desirable to study the functions of the body organs, particularly of the nervous system; consideration is given also to the history of the family from which the man is descended with the object of discovering evidences of faults in the stock. These phases of the examination, however, can never establish the fact of insanity; they can offer only a possible explanation for its existence, if present, and some clues as to the nature of the disease.

This brief summary of the nature of a psychiatric examination is given

not only with the purpose of removing some misconceptions, but also to serve as a foundation for outlining in a later section the facilities needed by the expert if his opinions are to have the full weight of which they are capable. It may be pointed out further that the time and facilities needed for an examination vary with the nature of the case and the purpose of the study. The fact of insanity can often be detected in a brief examination; if this is to be followed, however, by recommendations for treatment and a forecast of the probable outcome of the disease much more detailed study is required. It is not the obvious examples of mental disease that give rise to spectacular trials; these concern cases of less well defined behavior disorder that belong popularly in the category of criminality—in which, as stated, many psychiatrists see a real mental deficiency of some kind—or cases in which the accused man endeavors intentionally to sham the behavior of a person suffering from a serious mental disease. These will often demand much more prolonged study if justice is to be served.

3. *Sources of Information.* One of the great difficulties that has confronted this committee is the fact that no special records have been kept of cases in which the mental condition of persons charged with crime has been questioned. It has been necessary, therefore, to search for them through various channels. Much was learned from the files of the Chicago Crime Commission which were placed freely at the service of the committee. Through the courtesy of the state's attorney, the committee was allowed to examine the records of payments made for the services of alienists and through them to learn the names of many defendants and docket numbers of cases in which the sanity of the defendant had been investigated. With this information it was possible in many cases to discover further details by studying the files in the office of the Crime Commission.

Valuable assistance has also been rendered by the superintendent of the Cook County Psychopathic Hospital, Dr. F. J. Gerty, who not only placed all records at our disposal and assisted in search for material needed, but also met with the committee and gave useful suggestions for further investigation.

The managing officers of the state hospitals at Chester, Chicago, Elgin, Kankakee, Dixon and Lincoln have also cooperated fully in supplying information concerning patients who have been committed to the institutions.

The officers of the Institute for Juvenile Research, including Dr. Paul Schroeder of the headquarters staff, Dr. Walter B. Martin, mental health officer at Joliet, and Dr. David P. Philips, mental health officer at Pontiac, St. Charles and Geneva, have supplied detailed figures and information without which many of the facts could not have been compiled.

The committee is also indebted to Judge Arnold of the Juvenile Court, and to Judges Olson and Trude of the Municipal Court for valuable suggestions and advice. Other material has been supplied from the records of the clerks of the Municipal and County courts. Free use has been made also of reports of the Juvenile, Municipal and Criminal Courts and of the Institute for Juvenile Research.

The committee is also indebted to the officers of clinics in various cities for information concerning their work, much of which has required a great

deal of work for its compilation. These are acknowledged individually in the text of this report.

4. Definition of Insanity.

The relations of psychiatry to the administration of justice are necessarily close. Both are concerned with the regulation of human behavior. When the subject is discussed, the first and sometimes the only thought that arises is that insanity is used as a defense for crime. In addition, however, to determining whether a person accused of crime is sane in a legal sense, the psychiatrist is insistent on the recognition that there are forms of mental disorder which are not insanity but which are capable of definition and require special consideration in the determination of treatment that is needed. In other words, the psychiatrist recognizes that a small proportion of persons who commit criminal acts are legally insane and need purely medical treatment in a special type of hospital; others who are not insane in this sense need special treatment in institutions of penal or correctional character. Furthermore, he contends that psychiatric methods will aid in deciding whether and when probation or parole should safely be granted. Consequently, it is necessary to consider our subject under various headings according to the stage in the trial, the nature of the offense, the age of the offender and the type of the mental disorder. Unfortunately, the facts available are in many particulars incomplete, largely because of the absence of routine psychiatric examinations and partly because of the lack of records and of time for investigation.

The first and principal topic of our study concerns the determination of the sanity of persons charged with crime.

In Illinois, the legal *definition of insanity* as it relates to the commission of crime is that the person, at the time of the offense, had not sufficient mind either (1) to know that the act was wrong, or (2) knowing it to be wrong, to be able to choose the right and refrain from the wrong. The second part of this definition—the power of choice—is a comparatively recent addition and is not included in the definition of insanity in use in some other states. It has sometimes been hailed as evidence of a great advance in the legal understanding of mental diseases; unfortunately, however, it has not carried with it the machinery necessary to make it practically useful. This phase of the definition leads to many differences of opinion, for the reason that many students of behavior regard all acts as the outcome of inherent or instinctive tendencies together with habits of reaction that have been acquired through experience. Since a man cannot select his inheritance and has little to say about the environment in which circumstances place him and from which he acquires his habits of behavior, such a view leaves little to the question of choice.

From a medical viewpoint, that is to say the treatment of the faulty behavior, such considerations are of little import. When the social relationships are in question, however, they are of the greatest significance. Under existing conditions in relation to the determination of insanity there would be less difference of expert opinion if the second phase of the definition was omitted.

5. *Determination of Insanity.* Under the law, the determination whether a man accused of crime is sane or insane is a question of fact for a jury, composed of persons who are presumably entirely ignorant of mental diseases and their recognition, exactly as is the testimony of witnesses to facts surrounding the alleged crime.

In Illinois, a person accused of crime is assumed to be sane only until a prima facie doubt of his sanity has been raised. Once this doubt is injected the assumption of sanity ceases and it becomes the duty of the prosecutor to establish the sanity of the accused beyond a reasonable doubt. If, after hearing all the evidence, the jury is not morally certain that the prosecution has proved the defendant sane at the time when the act was committed, it is the duty of the jury to find the defendant insane and therefore not guilty.

The determination of insanity becomes especially difficult when it is alleged to have existed only at the time of the crime and to have disappeared when the defendant comes under observation. Examination at the time of the existence of the alleged disease is not possible and the diagnosis must rest on a history of what happened. In almost every instance this defense is offered when there is no question that the defendant committed the offense and that he did so in a moment of passion, even though there is evidence of premeditation and planning in advance.

When examination is possible, it is usual to call experts to study the accused and testify as to their findings and the conclusions they reach. Under the law, however, any citizen can testify that he believes a defendant insane. The only requirement is that he must first detail to the jury the facts of observation on which he bases this opinion. The expert is subject to the same conditions in regard to his examination of a defendant. The expert differs from a lay witness in that he is allowed to give reasons for his opinion and is also allowed to base an opinion on an assumed state of facts.

6. *Selection of Experts.* Insanity being a complete defense for crime, an accused person has the constitutional right to introduce such evidence as he can secure to establish his insanity, which means that he is not guilty. He has therefore the right himself to employ experts and submit their testimony to the jury. Since the burden of proving sanity, once a doubt has been raised, is on the prosecution, the state's attorney has also a right to introduce expert testimony in rebuttal of a defense of insanity. The prosecutor, however, is at the disadvantage that the defendant may himself or through counsel refuse to submit to an examination by experts for the state on the constitutional grounds that such examination by proving him sane might tend to incriminate him. When such a refusal is made, and it has been frequent, the prosecutor must wait until the evidence by which the defense expects to establish insanity has been introduced before learning the facts and must rebut them, if possible, by observation of the behavior of the defendant in court, by cross examination of the experts, if any, employed by the defense, and by evidence from others who may have had an opportunity to observe the accused and who are willing to testify. Under those circumstances, the opinions of experts employed by the prosecution must be based entirely on the facts testified to at

the trial. Should the defendant refrain from taking the witness stand the information to be gained from observing him directly is extremely meager.

To meet this situation, and also to secure advice as to the procedure to be followed, the state's attorney has on several occasions of which we have been able to learn, employed experts to study the accused as part of the investigation of the crime prior to indictment. The cases were those of Loeb and Leopold, Sam Vinci, Harold Croarkin, and one other in which no indictment was returned. This procedure has been approved by the courts and offers a possible solution of the difficulty in securing examinations.

The established procedure is that the prosecution and defense each select experts to represent them at the trial. This has led to the criticism that the opinions so secured are liable to be partial and prejudiced. Consequently, there has been agitation, in which the experts themselves have joined, for the development of some method for securing services of experts in a nonpartisan manner. Whatever method is adopted, however, none can abrogate the right of the defendant to employ his own experts. It is claimed that the weight attached by a jury to the opinions of witnesses selected in a nonpartisan manner would be greater than that accorded to partisan witnesses in the case of a disagreement.

The principal efforts in Illinois have been directed toward the appointment of impartial commissions. In some instances they have been appointed by the presiding judge; sometimes the members of the commission have been of his own selection, sometimes at his request by the Chicago Medical Society (these commissions served without remuneration which is manifestly unfair). In one such instance the committee appointed by the medical society had to report only that the accused (Russell Scott) refused to see them. In another, in which a commission was appointed by the judge with the consent of both sides, the defense refused to accept the findings and appealed to the Supreme Court on the basis that the court did not allow them to cross examine the members of the commission (Geary case).

In some cases a commission has been appointed by agreement between the prosecution and the defense, each side selecting one member and these two selecting a third. An agreement of this kind at least renders it more probable that the accused will submit to examination. When there is considerable doubt of the fact of insanity, however, an agreement is not likely to be reached and the defense will prefer to employ only experts of its own selection.

There is also no assurance that the members of a commission will agree in their opinions, any more than may the judges of the Supreme Court. In this connection it may be pointed out that the prosecution has to establish sanity beyond a reasonable doubt; disagreement between the members of commission would be liable to leave such a doubt in the minds of a jury necessitate a verdict of insanity. This is liable to be regarded as a hand by the prosecutor, though this objection would have little validity if were taken to insure that all members of the commission were qualifie serve as experts.

Even in Massachusetts, where it has been provided by statute that capital cases and under some other conditions an examination shall be m

by experts appointed by the Department of Mental Diseases (an official body corresponding with the Illinois Department of Public Welfare), the accused has successfully refused to submit to examination and has, in a few instances, claimed his constitutional right to avoid incriminating himself. A similar measure has been suggested for adoption in Illinois, but so far nothing has been done.

In some states provisions have been made for the study of persons accused of crime, whose sanity is in question, in special hospitals, as at Bellevue Hospital in New York. In Cook County, the county judge has ruled that he is prohibited by law from receiving at the county psychopathic hospital persons who are charged with crime.

From the discussion it seems doubtful whether the commission method of examination, even though it has some advantages, offers a satisfactory remedy for the acknowledged defects in the method of selecting experts. Until substantial changes are made in procedure, which will be discussed in a later section of this report, it appears probable that the selection of experts by both sides will remain the customary procedure.

7. Qualifications of Expert Witnesses. An expert is a person who, as the result of special study and experience in the subject under consideration, is entitled to speak with authority in regard to it. It is the province of the presiding judge, when an objection is raised that a witness purporting to be an expert is not in fact an expert, to determine whether the witness is so qualified. The determination of this important point under existing circumstances, therefore, does not arise until the trial is in progress. This means that the qualification of the expert to speak as such is not determined until all examinations have been made and the case has been prepared with, perhaps, this particular opinion as one of the chief links in the chain of evidence.

The judge will consequently hesitate to rule out the testimony of any man offered as an expert provided there is some basis for allowing that he may have had opportunity for special experience, and will prefer to leave the jury to decide which of opposing experts is deserving of greater consideration. The jury, being ignorant of the qualifications necessary, is far more likely to be governed by the appearance and assurance of the witness than by his real knowledge of his subject. The man who is ignorant is far more likely to be emphatic and to be governed by popular beliefs that would appeal to a layman than is the real expert who will often appear to be uncertain because he knows the limitations of his science. Though physicians recognize that graduation in medicine does not imply expert knowledge in psychiatry, this is not generally appreciated by men in other walks in life.

Nevertheless, if the courts are to receive real assistance from the services of experts, their qualifications are fully as important as their integrity. It, therefore, seems important that some means should be devised whereby the qualifications of experts can be determined, in advance of their employment by either side or by the court, by some agency familiar with the requirements. The qualifications necessary can readily be standardized with sufficient latitude to admit all kinds of training and experience.

That this matter is in need of consideration is well shown by a survey of the qualifications of physicians who have served in the capacity of experts in the courts of Chicago. It had been hoped that the committee would be able to secure the data on this point from the testimony of the physicians themselves in court. The state's attorney willingly consented to allow access to such records as he had, but it was found impossible to locate the transcripts of the testimony taken in the trials even though it was known that such transcripts were in existence. Recourse had to be had, therefore, to such information as is available in the directory of the American Medical Association.

The committee has secured from the records kept by the Crime Comsion and by the office of the state's attorney a list of thirty-nine physicians who have testified as experts in Cook County. Six of these are from outside the state and can be accepted at once as fully qualified experts.

(a) Of the thirty-three local physicians, *fifteen* are members of the Chicago Neurological Society, the only local society devoted exclusively to work in nervous and mental diseases. Four of these fifteen have devoted themselves to practice and research in the field of diseases of the nervous system rather than to mental diseases. These four men graduated from first class medical schools in 1884, 1891, 1895 and 1899 respectively, and their special field of practice has necessarily brought them experience in the diagnosis and treatment of mental diseases. Each of them would unquestionably be accepted on the basis of this experience as an expert. The remaining eleven members of the Chicago Neurological Society who have testified have had special experience in psychiatry as well as in neurology which entitles them to consideration as experts; the dates of graduation ranged from 1879 to 1914.

Of the fifteen members of this society, three have had no rank in a college of medicine as teachers; eight have had the rank of professor, three of associate professor, and one of assistant professor. These are all indicative of acceptance by the medical profession of expert knowledge. Six of the fifteen belong to no other special neuropsychiatric society; five were members of the American Neurological Association, and six of the American Psychiatric Association; some belonged to other special societies. All have contributed articles to the literature of mental and nervous diseases.

(b) A group of *nine* physicians, mostly younger men, who are not members of the Chicago Neurological Society, are, or have been, members of the staffs of state or other hospitals for mental diseases.[1] Three of them are members of the American Psychiatric Association. As would be expected from the fact that employment in these hospitals is full time, most of these physicians have no teaching position in a medical college. One has

[1] In estimating the value of experience in a state hospital, it must be remembered that the superintendent of such a hospital is sometimes appointed for purely political reasons from the ranks of general physicians who have never had experience of special kind, though others have worked in the hospitals for more or less long periods. The duties of the superintendent are largely executive and do not indicate that there is special psychiatric knowledge. Hence it is important to realize that the character of the work and experience within a state hospital is in need of investigation before it is considered as qualification for an expert.

the rank of associate professor; two (no longer employed in state hospitals) are associate and assistant (both below the rank of assistant professor), respectively, in a department of mental and nervous diseases in a medical college.

It is probable that most of those in this group would be considered qualified.

(c) The third group, also of *nine* physicians, contains the names of men who have not had special training or experience. None of them belong to any special society and none has a teaching position in a medical college. Two, graduates of first-class schools, are devoting themselves to practice in nervous diseases but have had no special training. One is a surgeon and another a general physician in good standing; both have stated that they have no special experience in mental diseases (both were appointed for a special examination by a judge). Two have specialized in industrial litigation and have been engaged in work that has been found unethical by the American Medical Association. These two and another man, who is in general practice, offer as their claim to special experience the fact that they have served on commissions appointed by the county judge in insanity hearings—hearings in which not more than a few minutes are devoted to each case and that only to hearing what other people have to say about the patients. Another physician has been allowed to testify in two cases, in spite of the fact that he has said he is not a psychiatrist and that his only experience with mental diseases was acquired as an orderly in the hospital of a penal institution in which he was himself serving a sentence.

8. Stage of Proceedings for Raising the Question of Insanity.

The question of insanity may be raised at various stages in the course of a trial after indictment.

1. *At the time of arraignment.* The law recognizes that an insane man may not have sufficient mind to plead guilty or not guilty to a charge against him. The issue may be raised through a petition filed by the attorney for the accused or on the initiative of the court. When the judge is satisfied that the question is properly raised he is required to impanel a jury to determine whether the defendant is in fact insane and unable to plead and prepare a defense. At such a hearing the question of guilt or innocence of the charge is not considered; if found insane, the accused is sent to a hospital for mental disease until he has fully recovered when he must return to the court to stand trial. This procedure is not used frequently in Illinois, the court often preferring to have the question of sanity at the time of the alleged offense determined as well as that of sanity at the time of the trial. We have been able to find four instances among the cases during the past five years.

2. *As a defense for the crime.* This is the most frequent use of the plea of insanity and the issue is raised during the trial of the issues involved in the alleged crime after a plea of not guilty has been entered. Since an insane man cannot plead, this is tantamount to a claim that the defendant was insane at the time of the crime but is now sane, at least for the purpose of pleading not guilty (a plea of guilty acknowledges responsibility and sanity). Under these circumstances the jury is required to determine not

only whether the defendant committed the act charged in the indictment, but also whether he was then sane; if they find that he was then insane they must also determine whether he has since fully and entirely recovered his sanity. A verdict of insane at the time of the offense but sane at the time of the trial is equivalent to an acquittal; the defendant is released. If he was insane at the time of the offense and also at the time of the trial the verdict is not guilty and the defendant is sent to a hospital for mental diseases there to be detained until he recovers, when he will be released by the ordinary process for releasing such persons from such hospitals. A verdict of guilty carries with it the decision of the jury that the accused was sane at the time of the crime.

As suggested in the last paragraph, the defense attorneys do not always contend that their client, who is alleged to have been insane at the time of the offense, is sane at the time of the trial even though they may refrain from using his insanity as a means to avoid pleading to the indictment. The latter means a postponement of the trial on the issue of guilt until recovery of the defendant; if found insane at the time of the crime the defendant is relieved from all further court action.

3. *After a verdict of guilty.* A verdict of guilty implies sanity at the time of the crime. The plea may then be raised that the defendant has become insane since the verdict and before sentence has been pronounced or after sentence and before its execution. Again the law requires that a jury be impaneled to determine this point; at the hearing it must be shown not only that the convict is insane at the time of the hearing but also that the insanity has arisen since the verdict was rendered. If the defendant is found insane at this time he must be sent to a hospital to remain until he has recovered when he must be brought back to court for sentence or for execution of a sentence that had previously been pronounced.

We have found no instance of a plea of insanity after verdict and before sentence. In the cases of Loeb and Leopold who had pleaded guilty and had thereby acknowledged sanity and responsibility, a plea of mental deficiency of some vague kind that was not insanity was offered for the purpose of showing mitigation of the crime and securing mitigation of the sentence. Judges have, however, on their own initiative, often requested examination of persons who have pleaded guilty or have been found guilty by a jury before pronouncing sentence, particularly when probation has been in question. We have discovered forty-seven examples of such requests and there have undoubtedly been more.

Our list contains six examples of a plea of insanity after verdict and before execution of sentence; in all the plea was made to avoid a death penalty.

4. *During detention in the penitentiary.* A prisoner in a penal institution may also be alleged to have become insane. This is the only occasion in criminal procedure in Illinois on which a jury trial is not required by law. A convict in a penitentiary can be transferred to the state hospital for the criminal insane at Chester on the order of the prison physician. He must be returned to the penitentiary when he has recovered.

9. State Hospitals Used for Committal. The state hospital for the criminal insane at Chester receives only men. All women found insane must, therefore, be sent to one of the other state hospitals. The statutes provide that men found not guilty, but insane, of six types of offense must be sent to Chester. These offenses are: murder, attempt to murder, rape, attempt to rape, highway robbery and arson. Presumably, men found to have committed other types of crime may at the discretion of the court be sent to other state hospitals.

(II) Extent of Psychopathic Conditions in Persons Tried

10. Verdicts of Insanity in Cook County, 1923-1927. From the various sources detailed in the opening paragraph of this section of the report we have found the names of 165 persons charged with crime in Cook County during the years 1923 to 1927, inclusive, whose mental condition has been questioned in one way or another. The facts have been tabulated for convenience of reference. In some instances we have been able to learn nothing further than that a physician was consulted; in some, while the nature of the charge and the verdict are known, the stage in the proceedings at which this consultation took place is not known. In some cases we have been unable to learn even the nature of the alleged crime.

In Table 1 are shown the total number of trials for offenses of various kinds during the four years 1924 to 1927 with the frequency with which a verdict of insanity was returned. It should be noted that the year 1923 is not included in this table.

Table 1. Criminal Court Findings of Insanity Among All Defendants in the Years 1924-1927

	Convictions (Including Persons Placed on Probation)										
	Murder		Assault to Murder		Rape and Assault to Rape		Other Crimes		Total		No. of Defendants
	No. of Cases	Insane	No. of Cases	Insane	No. of Cases	Insane	No. of Cases	Insane	No. of Cases	Insane	
1924	79	3	58	1	54	0	1,506	3	1,697	7	3,051
1925	80	5	78	1	96	1	2,205	9	2,459	16	3,995
1926	70	1	47	2	78	0	1,652	0	1,847	3	3,352
1927	108	2	63	0	90	3	2,155	9	2,416	14	4,292
Total	337	11	246	4	318	4	7,518	21	8,419	40	14,690[1]
	Percentages of Those Found Insane										
1924		3.80		1.72		0.00		0.20		0.40	
1925		6.25		1.28		1.00		0.41		0.65	
1926		1.43		4.25		0.00		0.00		0.16	
1927		1.85		0.00		3.33		0.41		0.58	
Total		3.26		1.63		1.26		0.28		0.47	

[1] Of the 6,271 defendants found not guilty or discharged, three were found insane at the time of the crime (homicide) and sane at the trial. Adding these to the number of convictions, the percentage of those found insane in homicide cases is increased to 4.11 and of the total to 0.51. The numbers of those found insane in the table refers only to those who were sent to a hospital for mental diseases.

It is of interest to note from the figures in this table that, contrary to general opinion, the question of insanity is not limited to capital offenses; twenty-one persons were found insane in the four years who were charged with crimes other than murder and rape. This number would undoubtedly be much increased, however, if psychiatric examinations were made as a routine. The findings of insanity at the prison shown in a subsequent section amply demonstrate this point.

II. Procedural Stages, Verdicts, and Later Status, for Insanity Issues, 1923-1927.

Table 2 contains three parts. In the first part is shown the stage in the criminal proceedings at which the question of the mental state of the accused was raised; in part 2 are shown the verdicts reached in the 165 cases in which this question is known to have been raised; in part 3 the status of the persons found insane is shown as of date March 1, 1928.

TABLE 2. STAGES AND RESULTS OF INSANITY ISSUES, 1923-1927

Part 1	1923		1924		1925		1926		1927		Total		Grand
Stage of Hearing	I	S	I	S	I	S	I	S	I	S	I	S	Total
At time of pleading..	0	0	1	0	1	1	0	0	2	0	4	1	5
During trial	8	3	4	4	9	6	3	3	7	3	31	19	50
At time of crime and since recovered	0	0	2	0	0	0	0	0	1	2	3	2	5
After verdict and before sentence ...	0	0	0	2[2]	0	0	0	0	0	0	0	2	2
After sentence and before execution ..	0	0	0	0	1	1	0	0	0	1	1	2	3
At request of judge, usually after plea or trial and before sentence	0	2	0	9	3	20	0	7	1	5	4	43	47
Cases in which the facts are not known[1]	4		12		9		12		16		53		53
Total with facts known	8	5	7	15	14	28	3	10	11	11	43	69	112
Total all cases.....	17		34		51		25		38				165
Part 2 Verdicts in These Cases													
Insane	12		7		16		3		14				52
Guilty	3		16		26		15		15				75
Not guilty	2		6[3]		5		4		1[3]				18[3]
Not known	0		5		4		3		8				20
Total	17		34		51		25		38				165
Part 3 Present Status of Those Found Insane	C	O	C	O	C	O	C	O	C	O	C	O	
Still in hospital.....	4	0	5	1[4]	8[5]	1	3	0	7	3	27	5	32
Dead	1	1	0	1	2[6]	0	0	0	0	0	3	2	5
Escaped	0	1	0	0	0	0	0	0	0	0	0	1	1
Discharged	1[7]	0	0	0	1[8]	1[9]	0	0	0	0	2	1	3
Not known	1	3	0	0	0	3	0	0	4	0	5	6	11
Total	7	5	5	2	11	5	3	0	11	3	37	15	52

[1] In the majority of instances these were probably examinations made at the request of judges before sentence.

[2] The cases of Loeb and Leopold who pleaded guilty and therefore sane; mental

In this Table 2, part 1, "I" and "S" represent, respectively, a finding of insanity and sanity; in part 3, "C" and "O" indicate, respectively, Chester and Other State Hospital.

Comments.—In forty-three cases in which a verdict of insanity was returned and in which the facts have been learned, there are only four in which the prosecution opposed the verdict. In thirty-nine instances (91 per cent) the experts employed by the prosecution concurred in the diagnosis of insanity and so testified at the hearing.[1]

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defect was offered in mitigation of the crime.

[3] Three found not guilty because insane at the time of the crime though sane at the trial.

[4] Remanded back to the hospital after a hearing on a writ of habeas corpus.

[5] One man was remanded back to hospital twice after hearings on writs of habeas corpus issued by different judges.

[6] One man, found insane after being sentenced to death for a murder, was returned to the criminal court as sane on a writ of habeas corpus ad subjiciendum; he committed suicide in the county jail.

[7] This man, who had previously been in a state hospital as insane, was released on a writ of habeas corpus after five months in the Chester State Hospital; the hospital record at the time of discharge was "unimproved."

[8] This man was discharged by special order to the custody of the State Department of Institutions of Tennessee.

[9] This man was discharged from the Kankakee State Hospital after a residence of five months as "not insane."

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[1] In the four exceptions, three (two of them women) defendants were found to have been insane at the time of the commission of a homicide and sane at the time of the trial. These were the cases of Fiori Garippo and Sylvia Vorak, in 1924, and of Catherine Gulbransen, in 1927; in each, experts for the prosecution expressed the opinion that the defendant was sane at the time of the offense.

The fourth exception was that of Russell Scott, August 23, 1925; he was found to have become insane after the pronouncement of a death sentence for the crime of murder, in spite of the testimony of experts for the state, and was sent to Chester. In 1926 he was pronounced sane by three psychiatric officers of the State Department of Public Welfare; on the basis of this evidence a writ of habeas corpus ad subjiciendum was secured by the state's attorney and Scott was returned to the Criminal Court of Cook County, May 25, 1926. By advice of counsel he refused to submit to an examination by a commission selected at the request of Judge Kavanaugh by the Chicago Medical Society and consisting of three psychiatrists who served without remuneration. At a hearing in June he was found sane by a jury. The Supreme Court, on a writ of error, ordered a new trial. Before this was held, Scott committed suicide in the jail.

In one case—Buddy Jones, charged with robbery—the defendant was found insane at the time of pleading, mainly because he had previously been in a hospital for the insane and was acting queerly. The judge had previously asked that the man be examined though the report had not been returned at the time of this hearing. The psychiatrist reported that, in his opinion, the man was feigning insanity. The previous commitment (in another state) was after an offense similar to that with which he was now charged and he had escaped from the hospital within a few days. He stated that he did not remember leaving the hospital but came to himself when some miles away without knowing how he came to be there and also discovering that he had ten dollars in his pocket, the source of which he did not know. After the hearing when he was pronounced insane he was overheard by the jailer boasting to another prisoner that he had succeeded in deceiving the judge. The finding of insanity was set aside and the man was found guilty and sentenced to Joliet. The mental health officer at the prison reports that this man appeared to be insane when he reached the prison and is still insane after the lapse of eighteen months. He would have been transferred to the Chester hospital if there had been room for him.

In the case of Ernest Holt, who had been found guilty of murder and sentenced to death, a plea of insanity arising after the sentence led to an examination by a commission appointed by the court; as the result of this it was reported that the man was probably epileptic, with the consequence that the sentence was commuted to life imprisonment.

12. Subsequent History of Those Found Insane. In the time available, we have been able to learn the present status (end of February, 1928) of forty-one of the persons found insane during the five-year period and sent to hospitals for mental diseases. These results are tabulated in part 3 of Table 2. Thirty-two (78 per cent) are still in the hospitals; five are dead; three have been discharged, and one has escaped.[1]

13. Same: Release by Writs of Habeas Corpus. During the five years 1923 to 1927, eleven writs of habeas corpus have been issued for persons confined in state hospitals on mittimus orders from the Criminal Court. Of these, five concerned persons included in the list of fifty-two found insane during the same period. Among the eleven writs, eight were for persons sent from Cook County and three from other counties; ten of the hearings were before judges in the Criminal Court of Cook County and one in Bloomington, McLean County. The last was on April 25, 1924, and the man was remanded back to the Chester Hospital; a second writ was issued in Chicago, by Judge Williams, on July 17, 1924, and this man was then released (Asa E. Burger).

The outcome of the nine other hearings was: six were released as not insane; three were remanded back to the hospital. One of the men released (George Sanger) was immediately arrested by federal officers. The judges who issued the writs in Cook County were: J. J. Sullivan, two—both released; De Young, one—released; Williams, three—all released; Hurley, one—released; David, one—remanded back to Chester; McKinley, one—remanded back to Chester. We were unable to find the name of the judge in the tenth Cook County case (Anna Pecoulis), but the patient was remanded back to the Elgin State Hospital.

The four writs for persons included in our statistics were for Arthur Alexander, August 24, 1923, who was released by Judge Hurley as already recorded; Anna Pecoulis on April 17, 1925, and George D. Shaw for whom two writs were issued on August 27, and December 19, 1926, respectively. The two last named patients were remanded back to the hospitals.

In addition to these, the state's attorney secured the issuance of a writ of habeas corpus ad subjiciendum in the case of Russell Scott, as has already been detailed.

Comment.—Under the law of Illinois, release on a writ of habeas corpus—the decision that the person has recovered his sanity—is a matter to be decided by the judge who issues the writ. In every instance, in a criminal procedure, the law requires a jury to determine whether an accused

[1] Of the three who were discharged, one was released on the order of Judge Timothy D. Hurley of Chicago after a hearing on a writ of habeas corpus; he had previously been in a state hospital and was charged with robbery; the release took place five months after he was sent to Chester and the hospital record on his discharge was that his mental condition was "unimproved." One man, by special order, was deported to Tennessee in the care of the Commissioner of State Institutions of that state. The third man, charged with murder, was released after five months by the managing officer of the Kankakee State Hospital as "not insane."

The one record of escape was from the Elgin State Hospital. This man was charged with attacking a girl, aged 12 years, and escaped twice from the hospital; on the second occasion he was not apprehended.

person is insane; a judge alone, even when advised by the hospital physicians that the man is still insane, can declare that he has recovered his sanity and can restore him to liberty.

14. Subsequent Mental History of Persons Committed to Penal Institutions, 1923-1927.

If mental disorder is an important factor in the causation of crime it would be expected that such disorders would appear in evident form in the penal institutions. With this in view we have secured from the mental health officer at the Joliet penitentiary, an officer working under the direction of the state criminologist, a report of mental conditions among prisoners in that institution. Dr. Martin has cooperated fully and has summarized for us the results of examinations he has made since he became mental health officer in May, 1923. We are deeply indebted to him for the trouble he has taken in providing the data. These cover the period from May, 1923, to March, 1927.

Of the 2,565 consecutive admissions during that period, approximately 1,700 persons have been studied in detail. The selections of the prisoners for examination have been made on the basis of the need for reports to the Board of Pardons and Paroles; all convicts showing obvious signs of mental disturbance, either in the form of psychoses or of behavior difficulties, have also been studied; the routine omissions have been of prisoners who have long terms to serve and who will not come up for consideration by the Parole Board and can therefore wait until time is available. The statistics will therefore contain on the one hand the more obviously mentally disturbed and will also omit some of those who have been convicted of more serious crimes and who might be expected to show more serious mental disturbances.

Among the 1,700 persons examined, only 34, or 2 per cent, were found to have no demonstrable abnormality. This does not mean, however, that 98 per cent should be considered as insane or as not belonging in the penitentiary. Even though many of them are reported to be suffering from psychoses, the great majority are not considered as in need of transfer to a state hospital—in other words, though mental abnormality is recognized, this is regarded only as a question for consideration in deciding how to handle the man in the prison and as a factor to be considered in regard to the advisability of parole.

The facilities for securing histories of the prisoner before conviction are limited practically to the story told by the man himself. The prison does not avail itself of the facilities afforded by clearance of the Cook County cases through the social service exchange; it has no social service workers through whom such information could be secured from friends and acquaintances.

The accompanying Table 3 presents the findings in the 1,700 examinations made of prisoners admitted between May, 1923, and March, 1927.

As regards the results of intelligence tests (ratings of mental age) the findings with the convicts parallel closely those with the men examined for the army during the World War. The median age on leaving school is 14; on going to work is 15; on leaving home is from 16 to 17; all these compare with those of the average child. The median school grade reached

is the seventh. These results indicate that intelligence deficiency is not an important factor in the cases of the men who reach the penitentiary when regarded as an average.

TABLE 3. MENTAL CONDITION OF CONVICTS, 1923-1927

The presence of psychoses:		
At the time of admission:		
Still present	45	
Now recovered	5	
Within a year of admission:		
Still present	15	
Now recovered	7	
More than one year after admission:		
Still present	12	
Now recovered	0	
	—	84
Grossly psychopathic persons (including schizophrenic and paranoid personalities):		
Without behavior problems in prison	79	
With behavior problems in prison	47	
With psychotic episodes	15	
Homosexual (before going to prison)	23	
Convicted of sexual crimes	20	
Alcoholics with deterioration	35	
Drug addiction with psychosis	1	
Drug addiction without psychosis	15	
	—	235
Epilepsy:		
With psychoses	5	
Without psychoses	6	
	—	11
Paresis	9	
Cerebrospinal syphilis without psychosis	23	
	—	32
Psychoneuroses (chiefly anxiety states)	13	13
	—	—
Total		375

These figures indicate only the more striking types of abnormality and constitute 22 per cent of those examined.

Of the 72 prisoners said to be "now suffering" with psychoses, four have been transferred to the Chester State Hospital, one to the Kankakee State Hospital (he had served the minimum term of his sentence), nine are in observation cells awaiting vacancies in the Chester State Hospital which is much overcrowded, three have committed suicide and one died. The other 58 are not in need of commitment, but are doing some work in the prison and can be cared for there with special supervision by the mental health officer. It should be noted that 12 have recovered from psychoses in the prison.

The total number of definite psychoses is only 84, or 5 per cent of those examined, and of these 18 (1 per cent of those examined) were deemed in need of transfer to a hospital.[1]

[1] Among the men with psychoses in this list are several whose sanity had been in some way questioned during the proceeding against them in Chicago. Eight of these fall in the group of those who were considered insane when received at the prison. One (Walter Krauser) is now in the Chester hospital. Two (Frank Mallo and Buddy Jones) are in observation cells and would be transferred to Chester if there were room. The second of these two is the man who has been referred to as having been sent to Joliet after it

15. Same: Prisoners Admitted Prior to May, 1923.

In addition to the examinations of prisoners who were admitted during the period this committee has had under survey, Dr. Martin supplied also some results of examinations made in the past four years of men who had been in the prison since before May, 1923. From more than 1,000 such examinations he has selected 126 examples of more severe types of mental abnormality which he tabulates as follows:

TABLE 4. MENTAL CONDITION OF CONVICTS, BEFORE 1923

The presence of psychoses:		
At the time of admission:		
Still present	2	
Now recovered	0	
Within a year of admission:		
Still present	0	
Now recovered	0	
More than a year after admission:		
Still present	30	
Now recovered	6	
	—	38
Grossly psychopathic persons:		
No behavior problems in prison	7	
With behavior problems in prison	40	
With temporary psychoses	10	
Homosexual psychopaths	6	
Convicted of sexual crimes	8	
Alcoholics with deterioration	2	
Drug addicts	0	
	—	73
Epilepsy with psychosis	1	
Epilepsy without psychosis	0	
	—	1
Paresis	3	
Cerebrospinal syphilis without psychosis	5	
	—	8
Psychoneuroses	6	
	—	6
Total		126

16. Same: Psychoses at the Illinois State Reformatory at Pontiac, Ill.

The mental health officer at Pontiac, Dr. David W. Philips, who also spends part of his time at the Illinois Southern Penitentiary, Menard, Ill., has furnished us with a list of all prisoners at Pontiac who have been found to be suffering from psychoses since 1923. Some of these prisoners had been

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was reported that he was shamming; he has maintained an attitude of inaccessibility and odd behavior in the prison now for a year and a half. Five others (Harry Thomas, Sam Rosen, F. A. Potenza, John Meisner and Harold Croarkin—all convicted of murder) were found to have a psychosis at the time of admission but to be not in need of commitment to a hospital.

Among those who developed a psychosis within a year after admission to the prison are two whose sanity was questioned before being sent to Joliet. One of these is Richard Loeb who developed a psychosis following an attack of measles but has since recovered; the second is Orin Dobert or Doherty who was convicted of a crime against nature and is now awaiting transfer to Chester.

In the list of those showing gross psychopathic traits, though not insane, are Nathan Leopold—classed as a psychopathic person with severe behavior difficulties in prison, and Sam Vinci, an epileptic who has had transitory psychotic states that must be ascribed to the epilepsy.

admitted long before 1923 and the list contains none of the names that appear in our list of persons charged with crime in Cook County in whose cases the question of insanity was raised.

The total number of psychoses during the five years was 66. Of these persons, nine were sent to the Chester State Hospital and nine to other state hospitals. Two are now under special observation in the hospital of the reformatory as there is no room for admission to Chester. The remaining 46 patients are working in the reformatory under the special supervision of the mental health officer or have been released from the institution; this last group includes 26 names.

The diagnoses of 22 psychoses observed during the year 1927 are:

TABLE 5. MENTAL CONDITION OF PRISONERS AT PONTIAC, 1927

	No. of Cases
Dementia præcox	13
Manic-depressive psychosis	1
Situational psychoses	2
Syphilis of the nervous system	3
Chronic epidemic encephalitis	2
Mental deficiency with psychosis	1
	22

Of these 22, three have been sent to Chester, one to Anna State Hospital and two are now in the hospital ward of the reformatory.

In response to specific inquiry concerning transfers to an institution for the feebleminded, Dr. Philips wrote that the only cases he was able to find were three, all in the year 1926. Two were sent to Lincoln and one to Dixon.

Information concerning the social history of prisoners received from Cook County, constituting over one-half the receptions at Pontiac, is obtained from the Bureau of Social Service of Cook County, Department of Jails, from the court record and from a blank filled out by the state's attorney which is called "Information to the Parole Board." The cases are not cleared through the Social Service Exchange. No information is received from the laboratory of the Municipal Court in cases in which the prisoner has been examined there.

(III) PROFESSIONAL OPINION AS TO IMPROVEMENTS IN LAW AND PROCEDURE

17. *Opinions of Judges: Value of Expert Testimony.*

A questionnaire was sent to the judges of the Superior, Circuit, and Municipal Courts in Chicago, and to the judges of the Circuit Courts throughout the state. The total number sent out was approximately 134. Twenty-four replies were received, three of them without answers to the questions. All questions were not answered in all twenty-one of those giving replies. The replies, small as is the number, are highly instructive; they illustrate extremely well the great divergence of understanding and opinion concerning the views held by psychiatrists; they convey also clearly the dissatisfaction of the judges with conditions as they now exist.

The questions were grouped under five main headings and the answers may be analyzed under those heads. Following this will be given abstracts from some of the replies which seem to the committee of special significance.

Value of Expert Psychiatric Testimony.

Six answers state that expert testimony as now given has value; seven assert the contrary; two say seldom, and three express doubt. The consensus of opinion, therefore, is opposed to present methods. The reasons given for this attitude are mainly that the testimony can be bought. One judge is inclined to blame, not the honesty of the witnesses, but the method whereby the alienists answer only questions propounded in such way as to favor the side for which they appear.

With regard o the possibility of improving methods, thirteen of eighteen replies are in the affirmative, four are doubtful, and one is negative. The last reply is from a judge who sees in the psychiatric viewpoint only an effort to evade punishment. The only concrete suggestions for improving methods are: (1) by asking the expert to make practical suggestions; (2) if the evidence is more honestly and intelligently given, and (3) if the law is changed.

18. Same: Qualifications of Psychiatric Experts.

Four returns failed to answer this question. The definite suggestions contained in the remaining seventeen are: (1) two years in psychology and two years in psychiatry; (2) five years practice in medicine and five years in psychiatry; (3) the qualifications should be passed on by a state board of competent examiners or by a local medical society. More indefinite suggestions are: knowledge and experience; general reputation and known standing; training in medicine and psychiatry; highest integrity and most expert knowledge in psychiatry; practical enough to know that the test of responsibility for crime should be "if the criminal was never suspected of being insane *before* the *crime* that should be the chief factor in judging whether he is insane after the crime"; that in addition to a knowledge of psychiatry the expert should at least "be possessed of some knowledge of the law." One judge suggests that the opinions would have more weight if the qualifications were explained to the jury in eighth grade English.

Since, under present methods of procedure, the trial judge is required to determine whether a witness is qualified to speak as an expert, it is especially instructive to find that the judges themselves have devoted so little consideration to the qualifications required. The only point on which there is substantial agreement seems to be that of integrity.

19. Same: Selection of Psychiatric Experts.

No uniformity of opinion as to the manner of selecting experts is expressed. The principal suggestions are: by the medical profession; by the state, county or some agency other than the parties interested; by the court (six replies) with agreement of counsel or without from a list furnished by a medical society, or from alienists available to the court; by a commission created by statute, as in Massachusetts. One judge advises that a permanent appointment should be made after an examination

by a state board of qualified examiners. No reply was given on three returns.

20. Same: Remuneration of Psychiatric Experts. No reply was given in four returns. The replies received all agree that payment should be made by the state or county, from public funds, so that the expert is beholden to neither side. The only stipulation is that the remuneration should be reasonable. One judge points out that a law is necessary to permit payment of experts by the state or county.

It is from the answers to the questions concerning the selection and remuneration of experts particularly that one learns of the strong feeling that experts are biased by the fact of employment and pay by a party to the suit. A desire to be relieved of this type of criticism is expressed fully as strongly by the replies received to a questionnaire sent to members of the Chicago Neurological Society.

21. Same: Presentation of Expert Testimony. *When the expert has examined the accused.*—Only four replies were received to this question, the purpose of which was possibly not fully understood. One answer advises that the expert should testify under the usual rules of evidence with latitude to cover observations, tests, conclusions and opinions; one suggests only that the expert should testify to his examination regardless of whether favorable to the state or to the defendant; a third advises cross examination by both sides; the fourth expresses the opinion that the testimony has little value because the expert will testify in favor of the side employing him, apparently ignoring the fact that unless he would so testify the attorney for that side would not offer him as a witness.

22. Same: The Hypothetical Question. In spite of the controversy to which this subject has given rise, only six replies were received. Of these, one advises that the hypothesis should include a history of the case and the results of examination by court experts, the defense being allowed an equal number of experts. Another was not in favor of testimony under such circumstances as the "questions and answers are usually arranged, decided upon and paid for in advance." One reply was to the effect that this method should not change the testimony in the least. One judge wrote at length to point out that the hypotheses used by the two sides are often so different that experts could hardly avoid coming to different opinions from the facts presented to them; he advocated the submission of one hypothesis to all experts. Another excellent suggestion was, "Let each side submit a question on its theory—giving the expert plenty of time to study it before taking the stand. Let each side cross examine." One judge answered by saying that he is not in favor of a law that permits a jury to find the acused insane at the time of the act and sane at the trial, this being the principal occasion for the use of the hypothetical question.

23. Same: Purpose of a Psychiatric Examination.

Of twelve replies to the question whether the respondent agreed that the principal value of a mental examination lay in determining the treatment or punishment to be awarded to the accused if convicted, ten replied in the affirmative and two in the negative.

Six replies were made to the further question as to whether an examination had other values. Two of these were, "None as far as the administration of justice is concerned." One reply, by a judge who had replied "No" to the preceding part of the question, was that the order of values is: responsibility, treatment, punishment, and as a guide in future cases of similar offenses. The other answers recognized the mental examination as of value in determining measures of prophylaxis and education.

These replies, therefore, show substantial agreement that the main purpose of a psychiatric examination is to determine the disposition of the offender if found guilty of the offense charged against him.

24. Same: Psychiatric Examination as an Aid to Determining Probation.

Of sixteen replies, ten assented that a mental examination is an aid to deciding on probation; two said that it might be of value (one supplementing this by adding "in indicating the amount of supervision necessary"); two were, "No," though one judge said that he asked for such assistance frequently; one was, "Very little," and another, "I hardly think so."

Fourteen replies were made to the question whether mental examinations were requested in cases in which probation was under consideration. Seven were in the affirmative, one was, "Not often," and one, "Once or twice"; six were in the negative. Of the last, one said that if he could appeal to an unbiased body he would not hesitate.

Concerning the method of providing such assistance there was no close accord in nine answers, though most agreed that a change in the law is necessary. Three suggestions were made for a psychiatric clinic in connection with the court. One judge proposes that every child over the age of 14 should be examined at special institutions established by the state—this to be followed by such provision as is necessary; this, in the opinion of this judge, would eliminate crime. One judge "would never seek advice, as experts would excuse all crime by mental conditions and history of environment instead of recognizing the value of punishment;" another stated that provisions for such examinations should be made "not at all." One suggested that questions should be submitted to experts by both sides as in the presentation of a hypothetical question.

25. Same: Some Instructive Comments.

Judge Frederick A. Hill of the Circuit Court, Joliet, writes as follows:

"I am not in favor of the law which permits a jury to say that a crime was committed but that the accused was insane and has since recovered and results in his discharge without punishment or restraint of any kind.

"My opinion may be of no value and perhaps is contrary to medical views, but I do not think this question of mental responsibility has much,

if any, place in determining the question of guilt. And I am of the same opinion as to the question of insanity as it is usually presented. If a person is of such a mental capacity as to be irresponsible for one act it would seem to me to be likely to recur. Courts and juries should determine merely *whether the crime was committed by the accused.* A study of the reasons, mental and otherwise, is undoubtedly of value after conviction for the purpose of determining place of confinement, treatment, length of confinement, degree of restraint, advisability of parole, etc. If the court had power to fix punishment and place of confinement, evidence of this character might well be presented to the court after verdict and before sentence; but under the law, as it is at present in Illinois, most sentences are indeterminate and if we could have the right kind of a parole board, they would be best fitted to determine all those active questions with the aid of psychiatrists as well as the history of the person and other things.

"In capital cases when insanity is pleaded, the law might well provide that if the jury finds the defendant guilty but insane at the time of the commission of the act the death penalty shall not be inflicted but the defendant be sentenced for an indeterminate period to the hospital for the criminal insane, there to be kept until it is determined in some satisfactory way that there is complete recovery and assurance that he can thereafter control his impulses and conduct."

In spite of the doubt expressed by Judge Hill, this comment accords so closely with the views of psychiatrists and is expressed so lucidly that we have quoted it in full. Conversations with other judges have convinced us that Judge Hill is not alone among his colleagues on the bench who hold the same views, even though they have not been embodied in the answers to this questionnaire. This committee is inclined to regard this fact as evidence that the time is rapidly approaching when some agreement can be reached between the jurist and the psychiatrist on this important matter in the administration of justice and the prevention of crime.

Another instructive commentary is given by Judge A. E. Somers of the First Circuit. It emphasizes strikingly the difficulties with which the courts are confronted. If the facts are as quoted it would raise the question of the eminence of the psychiatrists employed. The judge writes:

"You will probably observe from the foregoing that I give but little weight to statements of psychiatrists as it has heretofore been practiced. Either the science has not yet been sufficiently developed or some radically different rules are applied by different individuals claiming to be psychiatrists.

"As an example: I had a case recently before me where a young man, 22 years of age, was charged with a serious crime. Each side called two eminent psychiatrists. The two called by the defendant stated that the mentality of the defendant was about that of an 8 years old child, while the two called by the prosecution stated that his mentality was above the normal man of 22 years. In fact, they stated that he was shrewd and alert and much above the average of one of his age.

"In such cases, what are we to do?"

26. *Opinions of Physicians: Qualifications of Experts.*

A questionnaire was sent to all members of The Chicago Neurological Society, to which most physicians specializing in psychiatry in this district belong. It should be noted, however, that some of the members of this society specialize in nervous diseases and have taken no special training in the subject of psychiatry, though it is true that every neurologist will be called in consultation in cases of mental disease as well as of nervous disease. A few physicians and surgeons have become members of the society because they are interested in the subject in some way, though they may not consider themselves experts in this field. A few questionnaires were sent to physicians who are not members of the society, but who are known to be practicing in this field. The society exercises considerable care in the admission of members, requires the presentation of some work in the neuropsychiatric field as a condition for membership and scans closely the general reputation and standing of candidates.

The total number of blanks sent out was 57. The number of replies received was 36, 63.1 per cent of the total. Among the replies, five were returned unanswered, three with the statement that the respondent, though a member of the society, was not a psychiatrist, and two without explanation. The following analysis, therefore, is based on thirty-one replies.

Twenty-five of the respondents stated that they had had court experience ranging in number of cases from 1 to 300. Six had had no such experience. Analysis revealed no striking differences in the replies made by those with experience from those without experience; the two have consequently been combined.

Qualifications of Expert Psychiatrists.

Thirty-one replies were received. The need for experience in a hospital for mental diseases, either public or private, was stressed by twenty-five (83 per cent); the length of this experience necessary was indefinite in the majority of answers, but the definite answers favored from 3 to 5 years. Nine answers advised special postgraduate instruction, usually in addition to the special hospital experience, and again the duration was usually indefinite; specific answers favored from 2 to 3 years. Scattering suggestions advised some legal training and experience in medical social work; one advised three months as a prison physician. The importance of general reputation and standing in the psychiatric field, as shown by membership in state and national psychiatric societies and by rank in teaching institutions, was emphasized by several.

The principal outcome of these answers is the recognition by physicians that special training and experience as well as reputation are important guides to the determination of fitness to serve as an expert in court. They also suggest that it is possible to lay down certain standards which can be used as a guide in determining that a man is qualified to speak with authority.

27. *Same: Selection of Experts.*

Twenty-eight answers were received to the question as to the desirable method of selecting experts, one of which was too indefinite to be of value. Sixteen of the remaining twenty-seven (59 per cent) advised the

establishment of a special panel of men qualified to serve as experts, the most favored method of forming the list being through the advice of a special neuropsychiatric medical society or by a local general medical society (The Chicago Neurological Society or the Chicago Medical Society in Cook County). In some instances it was proposed that the court should select experts from this list; in others that the selection should be made by the medical society, and in still others that the men on the list should serve in rotation as occasion arose. Five advised that the court should select the experts without specifying that this selection should be made from a special accredited list. Five recommendations were made for the formation of a commission when the need for expert assistance arises; in three instances this was to be chosen by the attorneys for the prosecution and the defense with a third selected by the court; the other two advised selection of one expert by each of the attorneys, these two to agree on a third or the third to be named by a medical society.

Though the methods recommended vary, it is striking that all recommendations tend to a selection that will render the findings nonpartisan or a matter of agreement between the two sides and thus avoid the criticism that medical testimony is purchased or biased. Several physicians comment bitterly on the discredit placed, whether justly or unjustly, on the profession by present methods and there can be no question from these responses that the psychiatrists would welcome some change in procedure that would remove the stigma.

28. Same: Presentation of Expert Testimony.

a. *After examination of the accused.*—Seven returns gave no answer to this question and others showed a failure to grasp the meaning intended by the committee. Ten answers advise that the report should be made in writing. Two express the wish that it could be made possible to avoid cross examination which, the respondents consider, tends to confuse the issue. One asks that yes and no answers be dispensed with and two object to the specific question of sane or insane as being unmedical. One advises that the expert should hear all the testimony, in addition to his examination, before making a report. Two recommend only that the report should be full and unhampered by questions or legal objections. One striking answer is that the report should be presented to the judge and not to a jury, though subject to cross examination, and adds, "It is ridiculous to debate a scientific problem before a jury, which should be required to determine only whether the offense was committed."

b. *When no examination has been possible.*—No answer is made to this question in six returns. Seven answers are to the effect that no opinion is justified on the basis of a hypothetical question. Eight advise a written report after hearing all the evidence. Another recommends, as in the first part of this question, that the report should be made to a judge and not to a jury. Three advise that a hypothesis should be constructed after consultation between the attorneys and experts for both sides, and one advises that it should be propounded by the court.

The chief outcome of the answers to this question is the expression of opinion that the expert should be allowed to make a full statement of his

findings and opinion in a manner to which he is accustomed in his ordinary practice of medicine.

29. *Same: Purpose of a Psychiatric Examination.* All returns contained an answer to the categoric question whether the principal value of the psychiatric examination is for the purpose of deciding on the treatment of the accused if he is found to have committed the offense with which he is charged. Of the thirty-one replies, twenty-four (77.4 per cent) are in the affirmative; one is "not necessarily," and six are in the negative. Of the last it may be said that some respondents have misunderstood the question, thinking that the term "treatment" does not cover segregation from society and possibly punishment; two point out that the good of the community is paramount; one suggests that the mental examination is of value in determining the need for permanent segregation; another places the determination of treatment as secondary to "interpreting the personality" and is tantamount to an affirmative answer; of the remaining two, one places "determination of responsibility" before treatment and the other advises leaving the question of treatment to the jury, giving no other value for a psychiatric examination. Two of those who replied "Yes" to the question added a proviso that treatment includes punishment.

From this analysis it may be said that at least twenty-eight of the thirty-one (93.5 per cent) answers regard the prime purpose of a psychiatric examination as the determination of the treatment to be applied, or the disposition to be made of the accused if convicted.

With regard to other values of mental examinations, none was given in eleven replies, fourteen mentioned research and educational possibilities, and two gave the value of assisting in determining legal responsibility.

30. *Same: Facilities Needed for an Examination to Help in Deciding Whether Probation Should Be Granted.* Replies were received in all blanks that had been filled out. In all, the foundation is given as a thorough examination which in many is specified as including physical, mental, psychologic and laboratory studies. The purpose of the question, however, was to discover to what extent special facilities, outside of the examination of the man himself, are required. Seventeen answers stress the need for a good history; thirteen ask for social service aid, and thirteen recommend institutional observation. One advises at least one week in a psychopathic hospital; one advises "for most cases 3 months" in such a hospital; one reply is to the effect that the insane should not be placed on probation and the question evidently has not been understood.

31. *Same: Temporary Insanity.* The answers indicate a substantial agreement that temporary insanity does not exist in the absence of some more prolonged disability. Three returns contained the categoric negative; two stated "if momentary, no," and one said "practically no." Twenty-five answers were "Yes."

Under the conditions mentioned in which temporary insanity may occur are:

Intoxications, especially alcohol	16
Short manic-depressive attacks	9
Epileptic conditions	17
With psychopathic personality	6
With post-traumatic constitution	2

Mention is made also of cerebrospinal syphilis (non-paretic), exophthalmic goiter, hysteria and migraine. One reply speaks of violent emotional outbreaks as coming under this head; another says, "Violent periodic temper outbreaks should not be claimed as excuse (for crime) unless the claimer is willing to recognize the probability of future similar outbreaks and submit to institutional care for life;" another states that temporary insanity does not include such hypothetical states as insane for a few hours or days preceding, during, and following the commission of a specific act.

None of the conditions mentioned as a basis for shortlived attacks of mental aberration is a merely temporary state, except in the instance of intoxications, either alcholic or due to some infection. In all others there will have been evidences in the history of previous behavior or in the results of a physical examination that will lie outside the actual outbreak at the time of the crime.

32. Same: Additional Comments. In addition to comments on the unsatisfactory conditions that now obtain in regard to psychiatric work with the courts and a desire to see them remedied, a few other suggestions are made which, if nothing more, indicate the desire of physicians to do better work. Two mention the need of observation of an accused man in a special institution in which the personnel has been trained for psychiatric work. Two deplore the presentation of medical testimony to a jury and advise that the jury should decide only whether the accused is guilty or innocent; they also advise that the disposition of the offender should be determined by the court after consultation with experts. Another significant remark in one reply is that "abolition of capital punishment would do away with all difficulties."

33. Massachusetts Practice. Impressed by the "almost inconceivably futile, cruel and wasteful" procedure employed in ascertaining the mental responsibility of persons accused of crime, Dr. L. Vernon Briggs, of Boston, in 1920 drafted a law providing for routine examination by an impartial commission or board of persons accused of serious crimes in a book entitled "The Manner of Man that Kills." This bill was introduced into the legislature and after much rough sledding became a law in 1921. The law has been twice amended in 1923 and 1925, and as thus amended reads as follows:

> "Whenever a person is indicted by a grand jury for a capital offense or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony, is indicted by a grand jury or bound over for trial in the superior court, the clerk of the court in which the indictment is returned, or the clerk of the district court or the trial justice, as the case may be, shall give notice to the department of mental diseases, and the department shall cause such person to be examined with a view to determine his mental condition and the existence of any mental disease or defect which would affect his criminal responsibility. The department shall file a report of

its investigation with the clerk of the court in which the trial is to be held, and the report shall be accessible to the court, the district attorney, and to the attorney for the accused."

An important difficulty that was encountered in the administration of the law was found to lie in the failure of the clerks to report cases to the department of mental diseases. In 1925, a clause was inserted making neglect of the clerk to report cases punishable by a fine of not more than $50. This did not remedy the defect and in 1927 the law was again amended to place the responsibility of reporting cases on the probation officers, as the Probation Department has centralized criminal records of court cases in Massachusetts.

In commenting on this law and its operation before the Section on Economic and Social Problems of the American Association for the Advancement of Science at the meeting in Philadelphia, December 29, 1926 (Yale Law Journal, March, 1927), Dr. Sheldon Glueck pointed out that the act eliminates objectionable features present in all other state legislation on the subject. The law requires *routine* examination of *all* offenders of this type; the examinations are made by a *neutral, unbiased agency* (the Department of Mental Diseases of Massachusetts has its nearest counterpart in Illinois in the State Department of Public Welfare), and the examinations are made *"before trial and before it is decided whether or not to resort to the frequently abused 'defense of insanity.'"*

Operation of the Law.

At a Conference on Reduction of Crime called by the National Crime Commission in Washington, November 2 and 3, 1927, Dr. Winfred Overholser, director of the Division for the Examination of Prisoners, Massachusetts Department of Mental Diseases, presented the following facts concerning the practical operation of the law (Chapter 415, Acts of 1921, as amended, Chapter 331, Acts of 1923, and Chapter 169, Acts of 1925).

From 1921 to October 15, 1927, 505 persons accused of felony have been reported. Of these, 123 have not been examined.[1]

[1] Twenty-five of these non-examinations of persons have been reported during the year 1927 who were found not to come within the provisions of the act because they had either no previous record or were convicted of a misdemeanor only or were indicted for homicide of less than capital grade. "The most significant reason for failure to examine was inability to locate because the accused had been released on bail, a reason which obtained in nearly one-half the cases missed. Another reason has been the imposition of sentence before examination could be made. This reason existed in about one-fifth of the cases not seen.

"An obstacle which has been encountered in only the rarest instances has been the opposition of the accused or his counsel to the examination. The cooperation of counsel, in fact, has been one of the outstanding features of the operation of the law, despite the gloomy predictions of those who claimed that the constitutional rights of the accused were being infringed and that the prisoner would not submit to the examination. In some instances, indeed, in which the prisoner was disinclined to interview the psychiatrists, his lawyer has instructed him to submit to the examination. It is significant, too, to note that the refusals occurred in the earlier days of the Act, and that with increase of familiarity with the provisions and purposes of the statute has come an increasing degree of cooperation on the part of defense attorneys. The fact that such cooperation exists goes to prove that the law is being fairly administered, and that its operation is certainly not grossly inimical to the defendant."

Of the 382 persons examined there were:

201 indictments for first degree murder
6 indictments for second degree murder or manslaughter
(these examinations were made before it was decided that these offenses do not come within the provisions of the law)
175 with 240 indictments, including:
22 sex offenses
73 larceny
70 burglary
29 robbery
14 assault to rob or kill
32 other indictments.

Against the 123 persons not examined, there were 131 indictments divided as follows:

16 homicides
8 sex offenses
43 larceny
32 burglary
10 robbery
6 assault to rob or kill
16 other offenses.

The mental examinations resulted in reports concerning the 382 persons examined as follows:

31 insane
34 mentally deficient or "defective delinquent"
12 psychopathic personality
8 borderline conditions in which the persons were recommended for observation in a hospital.

Total 85, or 22 per cent

The remainder were reported as having no demonstrable mental abnormality.

Thirty of the 31 reported as insane were sent to a state hospital. One, in spite of the report, was found sane and was sentenced to prison for manslaughter. Within a few months he was found insane at the prison and was transferred to the hospital for the criminal insane. In most cases the commitment was made without the formality of a trial, the criminal charge being "filed." In others the prosecutor preferred to dispose of the case finally and a pro forma hearing was held at which an instructed verdict of insane was rendered in less than an hour.

Massachusetts, like New York, has provided special institutions for the care of defective delinquents. In spite of this, only eight of those found by the commission to belong in this group were sent to these institutions. The others were dealt with in traditional manner. Some were sent to the House of Correction; others were given terms varying from 5 to 7 years

to from 20 to 26 years in the state prison. There is no special provision for psychopathic personalities and these were consequently dealt with in the penal institutions. It is worthy of note, however, that the opinions expressed by the examiners, if heeded, would have placed most of these persons under restraint for an indeterminate period and probably for life.

The total number of persons who refused examination on constitutional grounds was eight.

It will be noted that approximately 8 per cent of the persons examined were found to be insane. The data are not comparable with the figures we have collected for Illinois. Yet it may be pointed out that the finding of insanity, by the expensive methods used in Illinois, in persons indicted for murder, was made in only 4.11 per cent. Among the prisoners sent to Joliet during nearly four years, 50 were recognized as being insane at the time of their admission to the prison. The conclusion seems justified, therefore, that the procedure in Illinois is far less efficient. That it is also far more costly, to say nothing of the waste of time and of the unnecessary subjection of some insane persons to a prolonged court battle, is shown by the fact that the fees for the examination of the 382 persons in Massachusetts under the operation of this Act have totaled $3,056.

The results of the operation of the law indicate further that there is need, in addition to the examination, of provisions in the criminal law for the disposition of those found to be suffering from mental disability. In Illinois, where the majority of sentences are more nearly indeterminate, that is to say, the maximum sentence is life imprisonment, there would be fewer difficulties on this score, though some modifications would still be advisable. A finding of psychopathic personality or defective delinquency means that the person is, for pathologic reasons, incapable of behaving in a socially acceptable manner; he is the essential recidivist. Regardless of the gravity or triviality of the charge against him at the moment he needs permanent segregation whether in prison or in some special institution.

34. The New California Law.

The state of California has amended its criminal law as concerns the pleading of insanity in a somewhat drastic manner. This law is now before the Supreme Court. If found constitutional the law will have far-reaching effects. The important changes in the penal code are:

Chapter 677. Section 1016 as amended. There are five kinds of pleas to an indictment or information:

1. Guilty
2. Not guilty
3. A former judgment of conviction or acquittal of the offense charged
4. Once in jeopardy
5. Not guilty by reason of insanity.

Section 1026—a new section. When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, he shall first be tried as if he had entered such plea or pleas only, and in such trial he shall be conclusively pronounced to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by

reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury, in the discretion of the court. In such trial the jury shall return a verdict that the defendant was sane at the time the offense was committed or that he was insane at the time the offense was committed. If the verdict or finding be that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed, the court, unless it shall appear to the court that the defendant has fully recovered his sanity, shall direct that the defendant be confined in the state hospital for the criminal insane, or if there be no such state hospital, then that he be confined in some other state hospital for the insane; if, however, it shall appear to the court that the defendant has fully recovered his sanity, such defendant shall be remanded to the custody of the sheriff until his sanity shall have been finally determined in the manner prescribed by law. A defendant committed to a state hospital shall not be released from confinement unless and until the court which committed him, or the inferior court of the county in which he is confined, shall, after notice and hearing, find and determine that his sanity has been restored. In the event such hearing is held in the county from which the defendant was committed, notice as ordered by the court shall be given to the district attorney of said county. If such hearing is held in the county where the defendant is confined, notice as ordered by the court shall be given to the district attorney of said county and also to the district attorney of the county from which said defendant was committed. Nothing in this section contained shall prevent the transfer of such person from one state hospital to any other state hospital by proper authority."

The chief purpose of this law is to separate the question of sanity from that of guilt and it provides that the latter issue will be tried first. It does not, however, remove the decision on the sanity of the accused from a jury, a procedure that, even if desirable, is not constitutionally possible. The law also makes important provisions concerning the release of persons, who have been found insane at the time of the commission of the offense, from the hospital. The relation of this to a hearing on a writ of habeas corpus is not discussed. It should be noted also that the procedure differs from that in Illinois in the fact that the sentence and penalty are fixed by the judge. In Illinois, in capital offenses, the punishment is fixed by the jury.

35. *Canadian Practice.* An example of the closest cooperation between the courts and the Provincial hospitals for the insane is afforded by the practice for the determination of insanity in criminal cases in the Province of Manitoba, Canada. Information concerning this procedure was secured through a personal interview with Dr. Alvin T. Mathers, Director of the Psychopathic Hospital at Winnipeg. Dr. Mathers very kindly, in response to a letter of inquiry, came to Chicago to give this information. It is to him very largely that the present successful cooperation in Manitoba is due. Dr. Mathers besides being the director of the Psychopathic Hospital is Provincial Psychiatrist and has one advantage in addition to his official position which he has held for many years; he

is also a justice of the peace and can administer oaths and compel the attendance of witnesses.

In regard to murder cases, only ten persons charged with murder have been found insane in the past ten years. If the sanity of a defendant is questioned before or during trial, the defense and prosecution alike use the services of the psychopathic hospital. Dr. Mathers is notified and may, with the consent of the court which is never refused, appoint two physicians to serve with him as a commission; the two latter are paid a fixed fee by the court. Dr. Mathers serves in his official capacity without extra fee. The accused is kept under observation as long as may be necessary. The report of the physicians is made in writing to the court and to the attorneys for both sides. The commissioners testify either for the Crown or for the defense, according to the conclusions they reach. No other expert has been called in the past ten years. The courts are rigid concerning the qualifications of experts; at least three years of post graduate psychiatric experience is required and preference is given to men who have had jail experience.

The sentence in practically all cases of murder when the defendant is found guilty and sane is death. The evidence, however, in all such cases is reviewed by the Department of Justice of the Dominion Government before execution. At this time an examination for sanity may be requested and carried out in the Psychopathic Hospital.

The Provincial Court will at times go even to great expense to bring out facts that might tend to show the defendant insane. Dr. Mathers cited one instance when the Court paid the expense necessary to bring certain witnesses to Winnipeg from California.

In addition to capital offenses, numerous examinations are made of persons charged with lesser offenses when the question of mental capacity is raised. At least one such person is examined at the hospital each week, sent in from the magistrate or police courts. As evidence that the insane are sorted out at the time of the trial, Dr. Mathers stated that only two prisoners have been sent from the penitentiary to the psychopathic hospital in the past ten years (there is no special hospital for the criminal insane).

(IV) Psychiatric Assistance in the Courts of Cook County

36. The Juvenile Court: History and Organization.

The work of the Juvenile Court has been studied by another committee of the Illinois Association for Criminal Justice and will be considered here only in relation to its medical aspects. This committee has adhered rigidly to the specific subject allotted to it for survey —that of the medical aspects of the administration of justice—and has refrained from discussing the causes and prevention of crime; no scheme of administration, however, can be satisfactory that ignores prophylaxis. An ounce of prevention is worth a pound of cure. Though this is generally conceded, it is striking that millions of dollars are spent annually to deal with the consequences of crime and practically nothing to prevent it. It is in this field, particularly, that medical and psychiatric science can be of the greatest aid to the courts.

Without entering into a discussion of the causes of crime, it can be said

that the facts presented in the reports of the various committees appointed by this association establish clearly that a large proportion of habitual criminals enter a career of crime at a very early age. Judge Trude, in the Twelfth, Thirteenth, and Fourteenth Annual Reports of the Municipal Court for the years 1917 to 1920, inclusive, p. 114, stated that of 6,000 cases in the Boys' Court in seven and one-half months, "at least fifteen per cent of those charged with misdemeanors are repeaters." From this group he selected for study at the psychopathic laboratory, "guided mainly by the file records," 257 boys of whom 111 (43 per cent) admitted records in the Juvenile Court.

These facts alone are sufficient to indicate the importance of the work of the Juvenile Court. Many of the "repeaters" present mental characteristics, even at Juvenile Court age, which are capable of recognition with proper psychiatric study. Recognition is the first step toward the provision of measures designed rationally to: (1) protect society from delinquent activities that are liable to become increasingly serious with advancing age of the offender, and (2) remedy, if that is possible, the deficiencies discovered.

It is not intended to suggest that every delinquent child, even those appearing before the Juvenile Court, is a potential habitual criminal; such a statement would be absurd. Every child must learn socially accepted behavior; all social restrictions have been evolved to regulate and control conduct that is founded on innate or natural and normal animal desires; every child, if untrained, would be delinquent in relation to social rules.

The prime purpose of the statements is to emphasize the fact that some children are defective in some qualities that are needed for learning how to behave in a social manner and may be described as born criminals; others fail to learn because of faults in their training. If the judge of the Juvenile Court is to meet adequately the demands made of him, it is obviously essential that he be provided with every known facility for learning the nature of the offender as well as of the offense. There is nothing in the nature of the latter that will indicate the ability of the offender to learn better behavior on probation or in special schools or the liability that he will commit further delinquencies; this can be learned only from a study of the offender himself and of all the circumstances surrounding him. This knowledge is fundamental for the protection of society and is in no sense sentimental.

The needs for this service in the Juvenile Court were recognized in 1909 by a group of private citizens who, under the leadership of Mrs. W. T. Dummer, provided the means for the establishment of a demonstration clinic in connection with the Juvenile Court and maintained it for five years. The clinic was organized under the direction of Dr. William Healy who had the assistance of Dr. Augusta Bronner as psychologist, and of a social worker and a stenographer. The clinic demonstrated its value and in 1914 was taken over by Cook County, under the auspices of which it continued with the same staff until 1917. Drs. Healy and Bronner then resigned to take up similar work at Judge Baker Foundation in Boston. Dr. Herman M. Adler then assumed charge of the clinic for six months, when he was appointed Criminologist to the State Department of Public Welfare.

37. Same: The Institute for Juvenile Research.

The work of the clinic was continued with some difficulty during the war, subsequent to which Dr. Adler organized a state institute, known first as the "Juvenile Psychopathic Institute"; this title was changed in 1920 to the "Institute for Juvenile Research." This institute is maintained by the state and though its headquarters are in Chicago it has connections with similar work throughout the state. Dr. Adler has also supervision of mental health work in the state penal, correctional and educational institutions. The Institute for Juvenile Research is therefore in no sense a Cook County Institution.

Under these circumstances, a cooperative arrangement has been entered into between the State Institute for Juvenile Research and the Juvenile Courts of various counties. Under this arrangement, the county provides quarters and some routine assistants while the Institute furnishes expert psychiatric assistance and advice. In Chicago, the county provides a psychologist and two stenographers; the institute provides a psychiatrist who spends Monday, Wednesday and Friday afternoons of each week at the Juvenile Detention Home, a psychologist and two psychiatric social workers. General medical examinations of an extremely superficial character are made by a county physician in the cases of children admitted to the Juvenile Detention Home; these constitute only a proportion of the children brought before the Juvenile Court.

The Institute for Juvenile Research does not undertake the routine examination of children brought before the court; it is interested largely in the court cases as material for study and research. Cases are referred to the clinic at the Detention Home from four sources: (1) the Judge of the Juvenile Court; (2) police officers; (3) probation officers, and (4) social agencies referring cases to the Juvenile Court. At the present time approximately 500 children are examined annually at the clinic in the Detention Home. Other children examined at the request of the court are seen at the headquarters of the Institute.

38. Same: Juvenile Examinations, 1924, Classified.

In estimating the proportion of delinquent children brought before the Juvenile Court who are submitted to examination by the Institute for Juvenile Research, the accompanying table, compiled from a report made by the Institute to the Judge of the Juvenile Court on May 24, 1926, presents the number of examinations made during a period of six months. These refer only to children who were held in the Detention Home. These are compared with the annual report of the Juvenile Court. The latter, however, covers a period of one year and it has not been possible to separate the cases belonging to the six months reported by the Institute; consequently, the comparison is probably not entirely accurate.

In order to make the figures more comparable the number of examinations at the Institute have been multiplied by two, except when this would make the total larger than the total number of cases in the court. Boys and girls are given separately.

TABLE 6. CHILDREN EXAMINED AT JUVENILE RESEARCH INSTITUTE, 1924

Delinquency Charge	Total No. of Children in court in year 1924		Twice the total number of those examined in six months of 1924		Percentage	
Boys						
Sodomy	2		2		100	
Manslaughter	3		3		100	
Larceny (mail boxes)	4		4		100	
Disorderly conduct	9		9		100	
Homicide	1		1		100	
Rape	12		8		67	
		31		27		87
Obtaining money under false pretenses	8		4		50	
Immorality	19		4		22	
Incorrigibility	424		86		20	
Robbery	68		12		17	
Forgery	17		2		12	
		536		108		20
Larceny (unclassified)	373		36		10	
Larceny of auto	389		34		9	
Assault	75		6		8	
Malicious mischief	55		4		7	
Larceny from railways cars	58		4		7	
		950		84		9
Burglary	522		18		3	
Arson	3		0		0	
Drunkenness	1		0		0	
Attempted suicide	1		0		0	
Carrying concealed weapons	22		0		0	
Receiving stolen property	8		0		0	
Larceny of auto tires	5		0		0	
		562		18		3
Feebleminded cases	82		82		100	
	2,161		319		15	
Girls						
Robbery	5		5		100	
Disorderly conduct	1		1		100	
Carrying concealed weapons	1		1		100	
Larceny (unclassified)	40		30		75	
Immorality	176		74		42	
Incorrigibility	379		30		8	
		602		141		23

Of twenty-six other girls charged with drunkenness, malicious mischief, obtaining money under false pretenses, forgery, arson, larceny of autos, murder and assault—none were examined.

Study of the accompanying table shows that examinations are made: (1) of all boys charged with crimes of violence and sex; (2) of one of five boys charged with immorality, incorrigibility, robbery, or obtaining money under false pretenses; (3) of one of ten boys charged with larceny, assault, or malicious mischief; (4) of only a few of those boys charged with other offenses such as burglary, drunkenness, receiving stolen property, etc.; (5) of all girls charged with robbery, disorderly conduct, or carrying concealed weapons; (6) of eight of ten girls charged with larceny; (7) of four of ten girls charged with immorality, and (8) of one of ten girls charged with incorrigibility.

Taken together, these figures indicate that somewhere between 15 and 20 per cent of all children charged with delinquency are examined at the

clinic. The examinations are a model of thoroughness and close cooperation is maintained with the probation department. The general procedures followed in all cases may be outlined as an indication of the type of work such a clinic performs.

39. Same: General Procedure.

(1) Social investigation by a probation officer. The officer (not a police officer) investigates the family situation and the neighborhood life of the child. He uses for this purpose an outline prepared by the clinic which has proved so valuable that it has been adopted for general use by the probation officers of the Juvenile Court for all cases, whether referred to the clinic for study or not.

(2) Investigation by a psychiatric social worker. The worker supplements the report of the probation officer by securing a detailed history from parents or guardians of the child to obtain a consecutive account of the child's development and family relationships from birth to the present time. Histories were obtained in 80 per cent of children referred in the year 1927. "In this way many irregularities in physical and mental development, parental care and social influences were uncovered." (Annual Report of the Institute for Juvenile Research, Dec. 1, 1926 to Nov. 30, 1927).

The social worker also interviews workers from other agencies that have had contact with the child or its family (discovered by clearing the case through the Social Service Exchange), teachers in school, private physicians or other medical agencies that have had contact with the child and with officers, teachers and recreational workers at the Detention Home. She also consults with workers in the Juvenile Court.

(3) Psychologic Examination. All children are given general tests for intelligence. In 30 per cent of the cases this is supplemented by performance tests, in 20 per cent by tests for educability, and in a small group (1 per cent) by vocational tests.

(4) Medical Examination. This is a search for physical defects or abnormalities "which so frequently produce behavior problems in children. If glandular disorders or serious abnormalities are found which require even more technical examination, the child is referred to a strictly medical clinic."

(5) Psychiatric Examination. The child is interviewed by the psychiatrist with the object of securing his story of his difficulties, his emotional reactions and his attitude toward himself, toward others and toward his own difficulties.

(6) Staff Conference. The results of all previous investigations are discussed at a conference of the staff of the institute, with the probation officer and other workers interested in the case. As a result of this conference recommendations are made.

40. Same: Social Supervision and Treatment.

When a child is placed by the court on probation the plan of supervision is discussed with the probation officer, who may also consult with the social service department of the Institute from time to time as problems develop. This consultant service is still in process of development and modifications are being made to meet the needs of the court officer in his study and supervision of the child. In addition, a limited

number of children are placed directly under the supervision of workers of the Institute. These are selected because of the complexity of the problems involved or because of their importance in research. In the year 1927 twenty children were handled in this way.

Feebleminded Cases. When children are brought before the Juvenile Court on a petition alleging feeblemindedness, the judge appoints a commission consisting of a physician and a psychologist who at this time are members of the Juvenile Court Branch Staff of the Institute. This commission examines the children and reports to the court with advice as to treatment and a program of training.

Throughout the history of the clinic the emphasis has been on the detailed and exhaustive study of a few children rather than making an attempt to see a large number of cases. It is believed that this method is the best means toward contributing to a final understanding of delinquency and crime. Since it will always be impossible to meet all the demands for assistance, thoroughness of study and validity of result must characterize the further development of the clinic.

In the same report from which the last paragraph is quoted the Institute asks for additional workers, psychiatric social workers and a psychologist and two additional probation officers. The present quarters at the Detention Home are said to be inadequate.

41. *Same: General Medical Examination of Juveniles.*

It is generally conceded that physical defects and abnormalities are important factors in determining the behavior of children in many cases. Superficial examinations are made of all children admitted to the Juvenile Detention Home and also of a portion of those brought before the Juvenile Court who are not admitted to the Home. These examinations are made by a county physician who gives the mornings of each day to this work.

This committee has made no direct study of this problem and the statements made here are quoted from a report of an investigation, made at the request of the Judge of the Juvenile Court by Mr. John E. Ransom, which was placed at the disposal of the committee by the judge.

Many children who are admitted to the Detention Home are not brought before the court and many children brought before the court are not admitted to the Home. The following figures for the year 1924 indicate the approximate number of such children.

Alleged delinquents admitted to the Juvenile Detention Home	6,081
Alleged delinquents in Juvenile Court	2,707
Alleged dependents admitted to the Juvenile Detention Home	1,202
Alleged dependents in Juvenile court	2,310
Total in Detention Home in 1924	7,283
Total in Juvenile Court	5,017

The number of children that figure in both groups—and hence the total number of children concerned—was not ascertained.

The purposes which may be served by the medical examination of children admitted to the Juvenile Detention Home are three: (1) to detect communicable disease; (2) to discover acute conditions calling for treatment

during detention, and (3) to discover chronic conditions and defects which should be remedied but which do not need immediate attention.

Mr. Ransom remarks: "Except in relation to syphilis and gonorrhea . . . . the present system of examination is fairly adequate for the first two of the above mentioned purposes. For the detection of chronic diseases not demanding immediate attention but calling for eventual correction, the examining system is decidedly inadequate. In the first place, not enough time is given. On one day 25 children were examined in 13 minutes. On another day, 27 were examined in 17 minutes. On a third day, 25 minutes were given to the examination of 25 children.

"In the second place, the conditions observed are rarely considered in relation to past medical history and, in the few exceptional instances, only in connection with what the child himself knows and gives."

The records are also inadequate and inaccessible. "If one wishes to know the results of the examination of a given child, he must first ascertain the date of his admission to the Juvenile Detention Home and then look in this book (a book in which the nurse enters the findings of the physician) for the records of the examinations on the day following that date. If a child has been admitted several times, the facts concerning his physical condition on the several occasions are scattered through this record book as above indicated."

Venereal Diseases. "With occasional exception, the most serious problem that confronts the Juvenile Court and the Juvenile Detention Home is that of gonorrhea in girls. In 1924, of 2,079 alleged delinquent boys, 33, or 1.6 per cent, were charged with sex offenses; of 628 girls, 176, or 28 per cent, were before the court for alleged immorality. Certain data indicate that the court has to deal annually with from fifty to seventy-five girls who have gonorrhea. Syphilis is so rarely found that it does not constitute a problem.

"The present procedure provides that at the time of admission to the Juvenile Detention Home, a vaginal smear shall be taken in the case of every girl. This is done by the nurse on duty at the time the girl is admitted . . . . The smear is examined microscopically by the attending physician the following morning. According to reliable medical opinion, this smear taken from the vulva is an insufficient basis for a negative in so far as gonorrhea is concerned. A genital examination by a physician, with a smear from the cervix, if indicated, is much more satisfactory.

"Naturally, the fact that a girl has a venereal infection is given serious consideration by the judge in making a disposition of the case. At present, in most instances, the only data available at the time of the hearing bearing on the matter of venereal infection, is the record of microscopical examination of a smear, such as 'gonococci found in smear; local treatment advised.' "

Recommendations. The recommendations made by Mr. Ransom, which appear to this committee fully justified by the facts he cites, may be quoted in full:

1. "The physical examinations should be more carefully made. This involves giving more time to this phase of the work.

2. "The examinations should be private. This means that only one child at a time should be admitted to the examining room. A nurse may assist the examining physician as he or she may see fit.

3. "Girls should be examined by a woman physician. An arrangement by which the assistant city physician, who has certain duties in the Juvenile Court, could be made an assistant attending physician of the Juvenile Detention Home would make this possible.

4. "The findings and recommendations of the examination of each child should be recorded in duplicate on special forms provided for that service. The original (in case of Juvenile Detention Home examination cases) should be kept on file in the Detention Home Dispensary during the period of residence of the child in that institution. When he or she is discharged from custody it should be filed with the other documents in the case. The duplicate, which should be on paper of some distinctive color, should also be kept in a temporary file in the Juvenile Detention Home. In case the child is to have a hearing in the Juvenile Court, this duplicate form should be turned over to the court and made a part of the child's Juvenile Court history. Should the child not become a Juvenile Court case, this duplicate may be destroyed at the time the original is permanently filed. In case of examinations made in the Juvenile Court Dispensary, the same procedure should be followed with the exception that the original copy of the examination report should be filed with the child's Juvenile Court record and the duplicate kept on file in the dispensary for such period of time and for such uses as the nurse in that department may find expedient.

5. "On readmission to the Juvenile Detention Home, the records of previous examinations of a child should be taken out of file and made available for the attending physician at the time of examination.

6. "In case a child is released from the Juvenile Detention Home without going through the Juvenile Court, the Juvenile Detention Home should inform the parents or guardian by letter as to the findings and recommendations of the examining physician.

7. "Whatever disposition the Juvenile Court may make of the case of a child, his parents, or whatever other person or institution is to have custody of him, should be informed by the court by letter as to the findings and recommendations of the examining physician.

8. "For children placed on probation or under supervision of the court, the probation officers should use their best efforts to see that the recommendations of the examining physician are carried out. Heads of the probation departments should keep careful check on this phase of the work of their officers.

9. "Some better arrangement should be developed for the taking of children from the Juvenile Detention Home to hospitals and clinics. The Detention Home should have some member of its own personnel detailed for this work.

10. "Dental examinations should be made of all children noted by the examining physician as having decayed teeth. This should apply to children examined in the Juvenile Court as well as to those examined in the Juvenile Home. The examining dentist should fill out or dictate to a clerk his part of the examination report and his findings and recommendations should be passed on to parents, etc., in the same manner as are those of the examining physician.

11. "If possible, the dental work of the Juvenile Detention Home should be made a part of the service of the Cook County Dental Clinic. The committee of the Chicago Dental Society which is directing this work could determine what should be the nature and scope of the dental service in the Juvenile Detention Home. A full time dentist who would be a member of the staff of the Cook County Dental Clinic could be secured for the salary now paid for part time of the Juvenile Detention Home dentist and assigned to service in the home. His work would thus be under the supervision of the supervising dentist of the Cook County Clinic."

As stated in another section of this report, the most serious problem confronting the Juvenile Court and Juvenile Detention Home is that of gonorrhea in girls. The next five recommendations deal with this problem.

12. "Make the diagnosis and treatment procedure in the Juvenile Detention Home adequate. All girls admitted to the Juvenile Detention Home should be examined by a woman physician, as above indicated. (This is in accordance with the recommendation of the Children's Bureau). Whenever indicated, this examination should include a vaginal examination sufficiently thorough to determine the presence of any existing gonorrheal infection. This examination should be made within twenty-four hours of the time of admission and should not be postponed until the consent of a parent has been obtained. However, no other observation concerning genital conditions except those relating to this disease need be noted. Girls who have gonorrhoea and do not need to be sent to a hospital for treatment should be given treatment in the Juvenile Detention Home under the direction and supervision of a physician. If a woman physician is provided, as suggested in Recommendation No. 3, as an assistant attending physician, she should have charge of this treatment work.

13. "Have adequate medical and social data available for the judge at the time of the court hearing. The medical statement should be in writing and signed by the physician making the diagnosis and administering the treatment.

14. "Send a full statement of medical findings and recommendations to the institution to which each diseased girl is sent.

15. "For girls placed on probation or under other supervision to live in their own or other private homes, see that all persons concerned are thoroughly informed concerning the necessary safeguards to prevent others from becoming infected and the importance of the girl receiving adequate treatment until cured. This information and advice should be imparted by a physician. The probation officer should keep herself informed concerning the progress of the treatment and should take whatever steps are necessary to insure the child keeping under treatment. Failure on the part of the parents or other custodian to fully cooperate in this particular should be promptly brought to the attention of the court. The record should be sufficient to be informative as to the progress of the treatment.

16. "A few lectures by competent medical authorities on the significant aspects of gonorrhea and syphilis may well be arranged for the probation officers.

17. "Boys found to have gonorrhea and who are to be kept for a time

in the Juvenile Detention Home should receive treatment from a genito-urinary specialist. This could perhaps be arranged through cooperation with the Department of Health or by the Illinois Social Hygiene League."

42. Same: Juvenile Research Institute Assistance Outside of Chicago.

The Institute for Juvenile Research is under the direction of the Criminologist of the State Department of Public Welfare. The Division of the Criminologist in this department undertakes three classes of work: (1) psychiatric work in the following state institutions; the penitentiaries at Joliet and Menard, the Reformatory at Pontiac, the Hospital for the Criminal Insane at Chester, the School for Boys at St. Charles and the School for Girls at Geneva. (2) Certain extramural services: (a) Cook County Juvenile Court and Detention Home Branch; "The Oaks," a Cook County School for Educable Borderline Defectives; (b) the Lower North Side Child Guidance Clinic; (c) The South Side Child Guidance Clinic; (d) the LaSalle-Peru Township High School Bureau of Educational Counsel; (e) the Glenwood Manual Training School; (f) the Mary Crane Pre-school and Nursery School Branch; (g) State Service Visiting Clinics at Springfield, Champaign-Urbana, Tri-City Family Welfare, Aurora, Elgin, Rockford, Freeport, Herrin-Marion, Bloomington, and Joliet. (3) The headquarters work. Here are examined children referred by various private social and public agencies, physicians and others. Here also are seen a few children referred by schools that receive delinquents from the Juvenile Court; the Chicago Parental School, the Chicago and Cook County School for Boys, the House of the Good Shepherd, and the Chicago Home for Girls. At the headquarters also is a research department maintained by private endowment.

To carry out this work, exclusive of the research work, the Institute has in addition to the director, Dr. H. M. Adler, 7 psychiatrists, 10 psychologists and 10 psychiatric social workers, a woman general physician, and laboratory and clerical assistants.

The phases of the work of the Institute concerned with the penal institutions and the reformatory have been considered in connection with the report on adolescent and adult offenders. At this point consideration should be given to the psychiatric work in connection with children who come into relations with the Juvenile Court. The special branch at the Juvenile Detention Home and Juvenile Court has already been discussed. There remain for consideration the work in connection with the state schools for Boys and Girls at St. Charles and Geneva, respectively, the special school known as "The Oaks," the Parental School, the Chicago and Cook County School for Boys and the two private schools for girls—the House of the Good Shepherd and the Chicago Home for Girls.

(a) With regard to the four last named schools, the Institute has no direct relations. Children referred by these schools are examined only on request. The calendar of the institute is so crowded with cases that appointments for examination must be made for six weeks or two months ahead. Consequently few such examinations are made. During the year July 1, 1926, to June 30, 1927, no cases were referred from the Chicago Parental School; during the preceding year eight cases were referred. The Chicago

and Cook County School for Boys referred one case in each of the two years. None were referred by the House of the Good Shepherd; the Chicago Home for Girls referred 34 in 1926 and 17 in 1927. These four schools deal with more or less serious cases of truancy and delinquency and recidivism is frequent. Children on release from the schools return to the conditions under which they previously became delinquent. Many children who are sent to St. Charles and Geneva have previously been in one or more of these schools.

There is obvious need of scientific study in the cases of many of these children if anything is to be gained from the residence at the schools. This problem belongs to the county and not to the state. The fact that the Institute for Juvenile Research, a state institution, has officially accepted responsibility for expert psychiatric examinations of some children brought before the Juvenile Court, however, probably operates to inhibit the establishment of county machinery to carry out routinely the work that is needed. The county officials can fall back on the assumption that the institute is doing all that is needed.

(b) *The Oaks School.* This school was established in 1926 to provide special training for delinquent children who are retarded mentally but are capable of education. It was initiated through the efforts of Judges Arnold and Bartelme of the Juvenile Court, Judge Henry Horner of the Probate Court, Judge Jarecki of the County Court and Mr. Anton J. Cermak, President of the Board of County Commissioners. The school at present receives only boys. The school was opened on Jan. 5, 1927, and there have been admitted altogether 57 boys, 30 of whom were still present at the close of the fiscal year, Dec. 1, 1927.

The selections for admission are made on the basis of examinations made by the Institute for Juvenile Research and look especially to the educability of the boy. Thirteen boys have been dismissed and admitted to other institutions—7 to correctional institutions and 6 to schools for the feebleminded; 14 have been returned to the community, of whom 7 are making satisfactory adjustments and the remaining 7 have not been delinquent though the adjustments are not entirely satisfactory.

This school is still in an experimental stage, but is an excellent illustration of the possibilities that can arise from cooperation between medicine and the courts.

(c) *St. Charles School for Boys and Geneva School for Girls.* Psychiatric work in these schools is directly under the state criminologist. There is no resident mental health officer and the studies are made by the psychiatrist who performs this function at the Pontiac Reformatory, the Illinois Southern Penitentiary at Menard and in some other extramural work of the Institute for Juvenile Research. Group intelligence tests are given to all children entering the schools and special interviews with the psychiatrist are afforded to selected children.

Of sixty interviews at St. Charles in 1926 with forty-nine boys, the following recommendations for treatment were made.

Commitment to an institution for the feebleminded	16
Commitment to a state hospital	3
To be studied further	6
Require closer supervision	12
In need of medical treatment	1
Will probably adjust well on parole	8
Period in school should be extended	3
	49

These figures indicate the nature of the reasons for the examinations —mental defect or disease and questions of parole. The psychologic examinations are utilized in determining the kind of schooling or vocational training needed.

At Geneva the institute has maintained, since April, 1926, a resident psychologist and visits are made by a psychiatrist at intervals of from four to six weeks. Seventy-six interviews were held by the psychiatrist in 1926, ten of them being re-examinations. The recommendations made were:

Commitment to an institution for the feebleminded	19
Will probably adjust well on parole	15
Need further training along lines indicated	22
Continued treatment in school and advice as to subsequent placement	11
	67

43. Psychiatric Service at the Cook County House of Correction and the County Jail.

Sentences are served both at the Cook County House of Correction (the old Bridewell) and the County Jail. Neither institution has a medical officer trained in psychiatry. Psychiatric examinations at the jail are made only on an order from the court.

The House of Correction has a good hospital for the care of medical and emergency cases brought in by the police. In addition to a resident staff consisting of a principal medical officer and internes, there is a consulting staff subject to call.

Many years ago, the consulting psychiatrist, Dr. Sidney Kuh, made regular visits at weekly intervals and trained some of the guards to note and report to him evidences of mental abnormality among the inmates. In this way he was able to detect many cases of mental disease and, with considerable difficulty, succeeded in having some of the patients transferred to the psychopathic hospital.

The present psychiatric consultant, Dr. Harry Hoffmann, visits the hospital whenever called. The facilities for observation of patients suspected of mental disease are extremely bad, these patients being relegated to the old portion of the building in which light and ventilation are quite inadequate.

Little attention is paid to mental abnormalities, though outstanding cases are segregated and sometimes transferred to the psychopathic hospital. To secure a transfer it is necessary to secure a writ of inquisition or a pardon from the mayor in cases under municipal sentence or from the governor in state cases.

The records are extremely meager and incomplete. The only record even of cases sent to the psychopathic hospital is a book in which are recorded the date of discharge, the date of admission, the name of the patient with sometimes his age, the sentence he is serving or the fine he is working out, his

institution number, the disposition (to psychopathic hospital) which is often not filled in and the diagnosis which is occasionally recorded. As stated, all cases are not entered; even a superficial search at the psychopathic hospital revealed the names of persons who had come from the House of Correction that were not entered in this book.

This book contained the names of 45 persons from the beginning of 1926 to March, 1928. Thirty-two of these persons were found to have been received at the psychopathic hospital; one other name was merely John Doe and could not be identified. It is possible that the misspelling of names may account for some of the other failures to discover them at the hospital, but it is also probable that some were not sent there.

Little is to be gained from this phase of the survey beyond the demonstration that there is real need of psychiatric service at the House of Correction.

Dr. Hoffmann on his own initiative has taken the matter up with the Institute of Medicine which has promised to cooperate with him in an investigation with the purpose of making definite recommendations to the county authorities and the officers of the House of Correction, both of whom have promised every assistance.

44. The Criminal Court: Summary of Facts Already Presented.

One striking fact is the absence of any statistical review of the work of psychiatrists in the Cook County (Superior) Criminal Court. The data published by the court do not separate out cases in the trial of which the mental condition of the defendant has been investigated; they do, however, show the number of those who have been found insane, and these figures have been used in this survey. To obtain data concerning the frequency with which defendants have been examined for their mental condition it has been necessary to use various avenues of approach, already detailed, and it is probable that all instances have not been discovered. In some cases it has been learned that a psychiatrist has been called, though, in the time available, we have not been able to discover any other data—the reason for the examination, the stage in the proceedings at which it was made and sometimes even the charge against the person whose name was learned.

There are various reasons for this difficulty. In many cases a judge has requested an examination, not with the thought that the defendant was insane, but to secure information to aid him in deciding whether probation should be granted. Reports on such examinations would be given only to the judge and would not appear in any record of the proceedings. It is probable that the majority of the cases in which the facts are not known belong in this category.

The large proportion of cases in which examinations were made at the request of the court (47 of 112 in which the facts are known) is worthy of note. As already stated it is probable that many of the 53 in which the facts are not known also belong here.

It is also noteworthy that the finding of insanity is not limited to persons charged with capital offenses as is often thought. In most cases, however, examinations of persons charged with other offenses are made at the request

of the judge. Of 138 cases in which the nature of the charge has been learned, murder or attempt to murder comprised 48.6 per cent, rape and other sex crimes 11.6, robbery and larceny 29.7, and other crimes 10.1 per cent.

From various sources we learned the names of 165 persons who were examined as to their mental condition during the five years 1923 to 1927. In the same period, 52 defendants were found to be insane. (The total number of defendants in the *four* years 1924 to 1927 was 14,690).

This cannot be regarded as excessive use of the plea of insanity, especially when it is realized that certainly 47 and probably nearly 100 of 165 examinations were requested by the court and not by the defense attorney.

Under the present method of procedure, the request for an examination is left to the recognition by laymen that there is something odd about the behavior of the defendant; sometimes it is raised because a defense of insanity offers the only hope of escaping a death penalty. Such chance or policy-directed consideration of the mental state of defendants is not fair to the accused and leads to popular distrust.

That this method of selection of those to be examined fails to detect all cases of insanity in defendants is evidenced by the fact that in the four years 1924 to 1927 fifty persons have been found insane when received at the penitentiary, even though the majority of them have been found suitable for care in the prison.

Though impartial or bipartisan commissions have been used, the most frequent method for determining the mental condition of a defendant now in use is by each side selecting its own experts. Sometimes the prosecution is refused the opportunity to make an examination.

Even under these circumstances, agreement between experts for the prosecution and defense occurs much more frequently than is generally known. In 43 of the 52 cases in which a verdict of insanity was returned and in which we have been able to learn the facts, the psychiatrists for the prosecution concurred in the diagnosis of insanity and so testified at the hearing in 39 (91 per cent). This means that there has been a disagreement between the experts on the two sides in only 26 of 65 hearings. Yet the consequence of this disagreement is so sensational that these cases completely overshadow those in which an agreement is reached.

As the answers to the questionnaires sent to judges and psychiatrists demonstrate, the members of both professions condemn the system almost unanimously.

Another outstanding fact is that the qualifications required for service as a psychiatric expert are not standardized and men are allowed to testify who have no right to the designation of expert. Judges hesitate to exclude the testimony of a man offered as an expert, even when it is clear that he cannot qualify.

The figures given demonstrate that, in the great majority of cases, a finding of insanity means almost as secure imprisonment as one of sanity. We have only one record of escape in the five-year period and that from the Elgin State Hospital. There is a greater chance of release through a hearing on a writ of habeas corpus; in granting such releases the judge issuing

the writ acts entirely on his own responsibility; he sometimes ignores the opinions of officers of the state hospital in which the man has been confined.

Under the law a person accused of crime cannot be tried while he is insane. Yet the great majority of those found insane are tried, the issue of insanity being raised only during the trial; presumably the defense counsel hopes to establish that the defendant was insane at the time of the alleged crime but is sane at the time of the trial, though he does not openly state this. The situation would be materially changed if, when insanity is to be alleged as a defense for the crime, it should be necessary first to establish sanity and consequently sufficient mind to plead and stand trial. If found insane at the time of the plea, the defendant would not be tried on the issues of the crime until he had recovered sanity; consequently he would not merely be released from the hospital when declared sane but would be returned to the court to stand trial.

Failure to recognize insanity when present does not mean that the person convicted will be required to serve a sentence in the penitentiary. Theoretically, he can be transferred to a hospital for mental diseases, though, practically, the hospital for the criminal insane is so crowded that no patients can be transferred. The attorney general has ruled that, under the law (which is quoted in the section dealing with the municipal court), the other state hospitals are prohibited from receiving any person against whom there is a criminal charge. The only way in which a prisoner can be transferred to one of these hospitals, unless he has completed his minimum sentence, is by first securing a pardon.

Except in the case of capital punishment, therefore, failure to recognize insanity in a defendant should make little difference. It is necessary, however, that provision of adequate kind be made to care for convicts with mental disease. The principal objections to disregarding the question of sanity, unless the accused himself raises the issue, are that an insane man may be compelled to go through the ordeal of a trial, and both state and defendant are put to considerable unnecessary expense of time and money.

The principal question arises when the death penalty may be inflicted. Homicide is by far the most frequent offense that leads to a question of sanity, undoubtedly because of the death penalty. Insanity was found by juries in 4.11 per cent of murder cases and in only 0.36 per cent of all other crimes. This does not justify the conclusion that a greater proportion of murderers are insane than of persons who commit other types of crime; it probably means nothing more than that the issue is raised more frequently in the homicide cases. It seems at least probable that abolition of capital punishment would automatically abolish the contested insanity hearing.

Another feature in need of consideration is that of the method in which the expert gives his opinion. The answers to the two questionnaires demonstrate much dissatisfaction. The expert is not allowed to use his judgment in deciding what facts in the story of the life, behavior and heredity of the examinee are true. He is required to accept as true the facts given to him and to combine them with the results of his examination of the defendant if he has had opportunity to make one. Whether he obtains the facts in a hypothetical question submitted to him in court or through the story told

him—frequently fragmentary and sometimes highly colored with the views of the informant—at the time of his examination, he rarely has at his disposal in reaching a conclusion all the facts available.

The data given, incomplete as they are in some respects, together with the results of the questionnaire sent to judges and to psychiatrists, establish beyond question that the present system of psychiatric study of persons charged with crime is unsatisfactory and inadequate as well as being costly. The outstanding features in need of correction are:

1. The chance (or choice) method of raising the question of insanity.
2. The method of selecting experts in psychiatry.
3. The method of determining the qualifications of experts.
4. The lack of adequate provision for the care of convicts who are found to be insane and in need of special treatment.

In addition, it may be pointed out that the judges by their requests for examinations of persons convicted of crime, as well as by many of the replies in the questionnaire, recognize the need of facilities for studying the criminal to determine how he should be dealt with, especially whether he should be granted probation.

Lastly, serious consideration should be given to the advisability of abolishing capital punishment; the advantages to be gained by expediting trials and eliminating most of the delays due to contests over insanity, apart from all other consideration, might be sufficient to turn the balance in favor of foregoing the small number of executions actually carried out.

45. *The Municipal Court of Chicago.* Thanks to the breadth of vision and energy of Chief Justice Harry Olson, the Municipal Court has a laboratory devoted to the study of the mental condition of persons brought before the court. This section of the survey, therefore, deals mainly with the work of that laboratory.

The laboratory was opened in April, 1914, and has been continuously under the direction of Dr. William J. Hickson. It is housed in the City Hall and receives persons for examination not only from the branches of the court, but also from other social agencies. It has nothing to say in the selection of the material for study.

The laboratory is maintained in part by the Health Department of the city, which at present pays the salary of the director. Other employes are paid from the funds of the court. In addition to the director there are at present four assistants, who perform intelligence tests and serve as clerks. No social workers are employed directly by the laboratory. One assistant, Mrs. William J. Hickson, a trained psychologist, has been present since the opening of the clinic and served for the first year without remuneration.

Reports from the municipal court are made annually, and are sometimes issued as a combined volume for the preceding triennium. These contain reports of the work of the psychopathic laboratory. A special report of the work of the laboratory was issued to cover the triennium May 1, 1914, to April 30, 1917, the first three years of its existence. A copy of this report was loaned to the committee by Chief Justice Harry Olson. It outlines briefly the history of the laboratory, gives statistical studies of the work

accomplished, details the methods of study and the tests in use, and cites numerous illustrative cases.

With regard to the aims and purposes of the laboratory it is said: "The work of the laboratory has been not only of a practical but also of an experimental or research nature." Further, "The practical workings of the laboratory include diagnoses, both mental and physical, with reports of the same to the judges who sent the cases. The medical examinations are both clinical and laboratory as the case demands." Then follows a statement of the types of mental tests used, which include "the world test which we try to evaluate in all our cases, the most adamant test of them all, an assaying crucible of highest value, which consists of the evaluation of the reactions of our cases to their environment, a checking up of their capability of adjustment, their failures and successes at home, in school, at work, etc."

In other words, the aim of the laboratory at its inception was a study of the persons sent to it by the courts in the manner customary in every behavior clinic—a study of the man himself and an investigation of his past history. Conforming to the same standards, stress is laid on the importance of maintaining accurate and detailed records.

The statistical data cover "three years and 4,447 cases." There are some errors in calculation and the facts are not all tabulated; the statement is made, however, that the report was put together in haste and under great difficulties. The figures are of interest and may be quoted as an indication of the need of the service of a clinic of this kind. The laboratory has nothing to say concerning the selection of persons for study which is made by the judges of the various branches of the municipal court. The findings, therefore, are in no sense representative of the general run of persons brought before the court; the examinees have been selected for the reason that they presented obvious signs of possible mental disorder, signs that were obvious to judges and others without special training in psychiatry. Under these circumstances one would expect to find a large proportion of mental disorder and defect.

In comparing the reports from the laboratory of the municipal court of Chicago with those from other clinics, some individualities in the use of terms will be observed. Two of these will be discussed briefly, not in a spirit of criticism, but with a view of understanding the conclusions reached.

In the reports from the laboratory, the mental age level, as determined by intelligence tests, is used as a primary basis of classification. The terms used are in the main conventional. A new term has been introduced—"sociopath"—which, from statements contained in the reports, apparently indicates a mental age level between 12 and 16. By most other testers, this range is included within the realm of "adequate" intelligence, or, in other words, within the limits of average or normal intelligence.

The title "dementia præcox" also is used in a manner that makes some differences. This fact is recognized in the reports from the laboratory as shown in the following quotation (Twelfth, Thirteenth and Fourteenth Reports, December 2, 1917, to December 5, 1920, inclusive, page 38): "The term 'dementia præcox' is especially unfortunate, but we employ it because of the standard meaning in European clinics where this disorder was first

classified. Its derivation is unfortunate, and it had come to have a different meaning in American use. We have employed it, in part, for lack of any better term." As used in the reports, this term is apparently synonymous with a marked tendency to criminal behavior, and the fact is stressed that criminals thus labeled show an emotional defect or loss of interest; they are not affected by the suffering and damage they cause as a person would be who experienced the average degree of feeling.

To most psychiatrists (and this committee does not agree that there is a marked difference between American and European practice) the diagnosis dementia præcox does not carry the connotation of criminal behavior; criminal acts are only occasional in this disease. From our present point of interest this may be regarded largely as an academic difference; the use of names does not involve disagreement in the conclusion that society needs some provision for dealing with the type of person so labeled. At present the only facilities are those of the penal or correctional institutions, an association that necessarily follows from the connection with crime. This committee does not agree, however, that the proper place for segregation of these persons is in the state hospitals.

46. Same: Psychopathic Laboratory Data, 1914-1917.

Of the 4,447 cases (the total is given differently in different places) that form the basis of the report of 1917, 3,259 are tabulated and are derived from the different branches of the court as follows:

Boys' Court	2,025
Morals Court	710
Domestic Relations Court	266
Bastardy cases	66
Police Courts	192
	3,259

The distribution of these cases according to mental age rating is shown in the following table, together with the frequency of the occurrence of behavior types that are labeled, respectively, dementia praecox and psychopathic constitution. In many instances these were also complicated by alcoholism, drug addiction and various nervous diseases, as well as by epilepsy in 25 cases.

TABLE 7. BEHAVIOR TYPES AND INTELLIGENCE RATINGS GIVEN BY THE LABORATORY

	No. of Cases	Dementia Præcox	Psychopathic Constitution
Average intelligence	319	136	45
Borderland sociopath	246	70	23
High and mid grade sociopath	183	76	27
Low grade sociopath	250	122	58
Borderland moron	58	36	14
High grade moron	1,614	547	101
Middle grade moron	422	128	16
Low grade moron	162	31	10
Imbecile	4	—	—
Idiot	1	—	—
Total	3,259	1,146	294

The mental age definitions for the groups below the borderland moron are

given as: high grade moron from 10.1 to 12; middle grade moron from 9.1 to 10; low grade moron from 7.1 to 9; imbecile from 3.0 to 7.0; idiot below 3.

Translating these figures into more usual terms for such statistics and including the average and borderland sociopath as adequate intelligence, the other two sociopath groups and the borderland moron as inferior intelligence, and the remaining groups as feeblemindedness, the figures, with percentages, will read as follows:

TABLE 8. REARRANGEMENT OF FIGURES OF TABLE 7

	No. of Cases	Per Cent	Dementia Præcox	Per Cent	Psychop. Constit.	Per Cent
Adequate intelligence	565	17.3	206	36.5	68	12.0
Inferior intelligence	491	15.0	234	47.6	99	20.0
Feebleminded	2,203	67.6	706	32.0	127	5.7
Total	3,259	99.9	1,146	35.1	294	9.1

From these figures it is clear that the cases selected for examination at the laboratory were particularly those with obvious deficiency in intelligence in the main; there is no reason, however, to assume that study of all cases passing through the Municipal Court would give results very different from those with persons in the penitentiary or in the general population. The total number of persons passing through the Municipal Court in these years is not given.

Regrouping these cases according to the particular branches of the court from which they were sent to the laboratory:

TABLE 9. LABORATORY RATING OF PERSONS FROM DIFFERENT BRANCHES OF THE MUNICIPAL COURT

	No. of Cases	Inferior Intellig.	Feeble-minded	Dementia Præcox	Psychop. Constit.
Boys' Court	2,025	274	1,385	656	111
Morals Court	710	121	487	274	75
Bastardy cases	66	8	41	10	5
Domestic Relations Court	266	54	171	112	64
Police courts	192	34	119	94	39
Total	3,259	491	2,203	1,146	294

The report contains no statistical statement of the recommendations made by the laboratory nor of the actual disposition made by the courts of the persons studied. The comments interspersed throughout the report, however, lead to the conclusion that the laboratory advises internment in a special institution in the vast majority of cases. On page 165 it is said: "We have committed as high as ten cases a day." (The average daily attendance at the laboratory would be less than five if 4,447 persons are seen in three years). On page 167: "The only practical solution we see at present for the treatment of these cases after they are recognized is farm and industrial colonies, as extensive as possible, built on the order of detention camps." (This recommendation should be considered in connection with the number of escapes from the state hospitals by persons committed from this laboratory which are reported later). On page 168 the director says: "For the majority of cases it will mean for life, but there is a certain percentage of the higher grade cases that after a certain number of years might be examined by a

board of psychiatrists to consider parole." Furthermore, "There is a small but sufficiently numerous group, however, that will justify another line of treatment; this is the light borderland type who only occasionally succumb to delinquency, who might be redeemed to socio-economic usefulness when encouraged and advised by properly trained social workers."

47. Same: Subsequent Reports of the Laboratory.

Subsequent to the report of 1917 just analyzed, there have been apparently no detailed reports of the work of the psychopathic laboratory. The committee has had access to two later triennial reports, one covering the years 1917 to 1920, kindly furnished by Judge Daniel P. Trude, and the other for the years 1921 to 1924, inclusive, furnished by the clerk of the Municipal Court.

In the former, it is said, "One of the outstanding facts to be noted at this time is that the earlier report (that of 1914 to 1917) appears to have fully covered the entire field." Insistence is made that "in every case complete examination is made, embracing physiological, neurological, anthropological, hereditary and environmental data. In every case complete written records are made and preserved. Every record is signed by the director. No report is submitted to a judge which is not authenticated by the director, who remains at all times responsible for every report. This plan has been followed from the first day. *There has been no informal reporting, no whispering to judges, no guessing, no evasion of personal responsibility.*" (Italics by this committee).

In this report, also, the director stresses the fact that "there have been thirty or more instances of killing by young men who were at some previous time examined after committing lesser offenses, and found to be of the potentially dangerous type, namely, a combination of low intelligence and abnormal activity." Yet we have been unable to find that this prognostication was ever transmitted as a warning to the courts or to the institutions to which the persons were sent.

Some further light is thrown on the meaning of the term dementia præcox as used in the laboratory. A combination between dementia præcox and defective intelligence is given as "the criminal type, or at least the potentially criminal type."

In this report, also, Judge Trude has analyzed the work of the Boys' Court from December 2, 1918, to August, 1919. He points out that the real problem of this court is the repeater or recidivist who becomes the criminal of the future. He says that "at least fifteen per cent of those charged with misdemeanors are repeaters. Of the six thousand cases in the Boys' Court during my assignment there I selected 287 cases which appeared to call for laboratory investigation." This selection was guided mainly by the file records. "Dr. Hickson's report shows that mental defectiveness must have been the underlying cause." Judge Trude reaches the important conclusion: "Finally, the improvement of the existing penal system, which now appears essential if any real progress is to be made in protecting society from its irredeemable offenders—long continued restraint of defective delinquents—is nothing more nor less than the creation of a special protective environment which will at once protect society from the habitual criminal and protect him from the consequences of his own acts, if unrestrained."

Dr. Hickson then gives an analysis of 285 cases sent for study by Judge Trude of an exactly similar nature to that in the report previously analyzed. He, however, gives a classification of mental defectiveness into two groups which clarify to some extent the terms he uses. It should be pointed out, however, that the groups of Juvenile and Adult Paresis, Senile Dementia, and Manic-Depressive Insanity are of very minor importance in the total figures given.

Intelligence Defect		Affective or Emotional Defects
1. Juvenile and Adult Paresis		1. Manic-depressive insanity
2. Senile Dementia		2. Dementia præcox
3. Feeblemindedness		
a. Idiot	(mental level 1 to 3 years)	a. Paranoid
b. Imbecile	(mental level 3 to 7 years)	b. Katatonia
c. Moron	(mental level 7 to 12 years)	c. Hebephrenia
d. Sociopaths	(mental level 12 to 16 years)	d. Simple Schizophrenia

In the report to the end of 1924, it is said, "There has been no change in the operation of the laboratory and no new findings of a scientific nature beyond those previously reported. Results have been uniformly corrobative of the findings first reported. Studies of heredity continue to illustrate the correlation betwen defective stocks and delinquency."

On page 178 of this report a brief excerpt is given from a promised publication dealing with the socio-economics of crime and criminals. Tabulations of the intelligence ratings for 825 persons who had followed different occupations are given. Of this number 563 or 68.25 per cent were committed to institutions as feebleminded or insane. The director also deplores the fact that "the demands made on the laboratory for the examinations of cases have been so great that it has practically engrossed the entire time and energy of the staff, leaving little over for research work."

While the work of the laboratory as recorded establishes beyond question the need for its existence, the results that have been published fail to show the practical consequences that have followed from its operation. This committee has endeavored to follow up the findings and disposition by the courts in a group of cases at the psychopathic laboratory, but has been hampered by inability to secure adequate data for the purpose. Until recently, no record has been kept in the Municipal Court of the names of persons sent to the laboratory nor of the recommendations that were made as the result of the examinations. From the clerk of the court it was learned that no written reports are sent to the court from the laboratory; all reports of cases are made by telephone and consist only of certain recommendations, which are of three kinds: recommended for admission to the County Psychopathic Hospital, recommended for admission to the Lincoln State School, and returned to the court with a report; in regard to the last group we have been unable to find in any instance that any further report was made to the

court. In no instance is there a statement of the diagnosis; in some it was said that the examinee was not committable even though he may have had some mental inferiority.

As the result of the publicity that followed examination at the laboratory of alleged gangsters on the request of police officers, the clerk of the Municipal Court has, since October 22, 1927, maintained a record of all persons sent from the various branches of the court to the laboratory for study. From this source we secured a list of all examinees from October 22, 1927, to March 9, 1928. The outcome to date for those examined during the two months November and December, 1927, was investigated. But the number of cases studied is admittedly small, and may, as Dr. Hickson has objected, be far from expressing accurately the facts that would come to light if a larger number was followed up. We, therefore, have not attempted to draw any conclusions from the data of this brief period.

The facts learned, however, do indicate the advisability of follow-up work; only in this way can the laboratory and the public learn the value of the examinations made and plan constructively modifications that may be needed to render the service more effective. This committee recommends, incidentally, that when the laboratory is enlarged and provided with more assistance, as is urgently needed, means be provided for following up the careers of persons who have been examined and thus learning the results that accrue from the recommendations made by the laboratory.

We here set forth merely the figures gleaned from the records of the above brief period.

TABLE 10. PERSONS SENT TO THE PSYCHOPATHIC LABORATORY FROM THE MUNICIPAL COURT BRANCHES, OCTOBER 22, 1927, TO MARCH 9, 1928

October 22 to 31	35
November	74
December	80
January	118
February	97
March 1 to 9	35
	439

If this proportion is maintained it would mean that approximately 1,100 persons are sent to the laboratory by the court in a year.

TABLE 11. TOTAL CASES IN THE MUNICIPAL COURT DURING NOVEMBER AND DECEMBER, 1927

	New Cases				Cases Disposed of			
	Prelim. Hearing	Quasi. Crim.	Crim.	Total	Prelim. Hearing	Quasi. Crim.	Crim.	Total
November	17,566	2,167	5,929	25,662	2,228	20,007	8,429	30,734
December	13,004	1,630	4,644	19,278	1,344	13,163	4,111	18,618
	30,570	3,797	10,573	44,940	3,572	33,170	12,540	49,352

During this same period 154 persons were sent for examination to the psychopathic laboratory. The branches of the court, and other agencies, from which these persons were sent were:

	Cases	Per Cent
Morals Court	4	2.6
Domestic Relations	8	5.2
Boys' Court	24	15.6
Police Courts	101	65.6
Jury Courts	3	2.0
Social Service Department of Domestic Relations Court	2	1.3
Other agencies[1] (persons against whom there was no charge)	9	5.8
Unknown	3	2.0
	154	100.1

[1] Among other agencies were: Narcotic Division of Federal Court, 1; Juvenile Court, 1; private agencies, 5.

It is of interest that the proportions from the different branches are markedly different from those in the first report of the laboratory. The figures given there (May 1, 1914, to April 30, 1917) were:

	Cases	Per Cent
Morals Court	947	20.7
Domestic Relations	1,275	27.9
Boys' Court	2,025	44.2
Police Courts, etc.	329	7.2
	4,576[1]	100.0

[1] In the body of the report the total number is given as 4,447, and the total in the table as 4,486.

The recommendations made to the courts by the laboratory in the 154 cases were:

	No. of Cases	Per Cent
Psychopathic Hospital	111	72.1
Lincoln State School	7	4.5
Returned to Court with a Report	36	23.4
	154	100.0

From this it will be seen that commitment as insane or feebleminded was advised in 76.6 per cent of the cases.

Actual disposition in the 154 cases:

Sent to the Psychopathic Hospital	101
Not sent, though recommended	10
Sent to Lincoln or Dixon	4[1]
Unknown (mainly dealt with by the courts)	39
	154

[1] Two of these are still awaiting a vacancy at Lincoln.

Of the 101 persons sent to the Psychopathic Hospital, some were committed and others discharged as not in need of commitment. The figures are:

Committed as insane:		
Placed in care and custody of relatives or friends	5	
Sent to Chicago State Hospital	10	
Sent to Kankakee State Hospital	12	
Sent to Elgin State Hospital	19	
Placed in Veterans' Bureau Hospital	1	
		47
Discharged as not insane		54
		101

The proportion of those sent to the Psychopathic Hospital who were committed is 46.5 per cent; the proportion committed of those who were

recommended by the laboratory for commitment is 42.3 per cent; the proportion of the total number of persons examined at the laboratory who were committed as insane is 30.5 per cent.

At first glance it may seem of little importance that more than one-half of the persons sent to the Psychopathic Hospital for commitment from the laboratory were not there found committable. The serious feature of this situation lies in the fact that in order to be received at the Psychopathic Hospital it is necessary for any criminal charge to be dropped. The law states:

> "Chap. 85. Section 13. Jurisdiction over the persons of insane persons not charged with crime is vested in the county court."
>
> "Chap. 85. Section 30. Nothing in this act shall be construed to apply to insane persons, or persons supposed to be insane, who are in custody on a criminal charge."

This has been interpreted by the judge of the County Court of Cook County and by a ruling of the attorney general of the state as prohibiting the reception at a county psychopathic hospital of any person against whom a criminal charge is pending. Under this ruling, if a man is sent to the psychopathic hospital and is not committed as insane he cannot be held or punished for a criminal offense; in order to secure admission to the hospital all charges must be reduced to misdemeanors, and the usual offense that stands against those sent to the hospital is disorderly conduct.

The law defining insanity, Chap. 85, paragraph 1, also is specific in excluding mental deficiency that has existed from early years and simple epilepsy. The clause reads:

> "A person shall be considered to be insane who by reason of unsoundness of mind is incapable of managing and caring for his own estate, or is dangerous to himself or others, if permitted to go at large, or is in such condition of mind or body as to be fit subject for care and treatment in a hospital or asylum for the insane: Provided, that no person idiot from birth, or whose mental development was arrested by disease or physical injury occurring prior to the age of puberty, and no person who is afflicted with simple epilepsy shall be regarded as insane."

Since the primary basis of classification adopted by Dr. Hickson is that of mental deficiency from birth, it is not surprising that many persons sent by him to the psychopathic hospital are found by the county court not committable. The releases from the state hospitals of those who are committed indicate that the court leans to a liberal interpretation of the statute in favor of commitment when possible. The state hospitals are grossly overcrowded with patients concerning whose insanity there can be no doubt; unquestionably this is a factor in leading them to release patients whose mental condition not only does not comply with the legal definition but also constitutes a detriment to the proper care and treatment of patients who belong there properly.

That the finding that persons sent to the County Psychopathic Hospital from the Municipal Court laboratory are not committable is a practical problem is well illustrated by a report sent to Judge Helander by Dr. F. J. Gerty,

Superintendent of the Psychopathic Hospital, in response to questions raised by the judge concerning the release of persons sent from his court. There were 48 cases in the list, but 4 of the persons involved had not been sent to the hospital. Of the remaining 44, 23 were adjudged insane in the County Court; 19 of these were sent to state hospitals and 4 were placed in the custody of some friend.

The data cited suggest that from 1,100 to 1,500 persons are selected annually by the judges of the Municipal Court for examination at the laboratory. It is not possible to reach a conclusion concerning the exact number of persons from which these selections are made, but it is probably in the neighborhood of 25,000. Excluding cases in which for any reason the accused is discharged or the case is dismissed (together these constitute more than two-thirds of all cases brought before the Municipal Court of which there are about 300,000 annually), and excluding also those cases that are dealt with by the imposition of fines (some of these persons are sent to the House of Correction to work out the fine), there remain, in round numbers, approximately: 2,500 cases in the Boys' Court; 4,000 in the Morals Court; 1,500 in the Domestic Relations Court; 15,000 in the Police Courts, annually. Approximately 3,500 cases are transferred to the Criminal Court of the county, 4,000 persons are placed on probation, and the remaining 15,500 cases result in sentences to the House of Correction or the County Jail.

From the data cited, it appears that commitment as insane is advised in approximately 75 per cent of persons examined at the laboratory. This proportion is extremely high when compared with the recommendations reported from the Recorder's Court of Detroit (6 per cent), from the Municipal Court of Philadelphia (2 per cent) and from other clinics of this type. The findings at the Chicago clinic indicate either: (1) that the selection of cases for examination is made with great accuracy and acumen, or (2) that the diagnoses and recommendations are very greatly colored by the personal views of the director as to the need of commitment.

That the judges of the court have accepted the findings of the laboratory is evidenced by the fact that of 111 persons recommended for inquisition at the psychopathic hospital, 101 (91 per cent) were actually sent there.

Examinations made by the attending staff of the county hospital resulted in the recognition of some degree of mental abnormality in 88 per cent of the cases sent from the laboratory; only 47 per cent of them, however, were found insane; twelve of the 101 were discharged as without mental abnormality. Judging from a letter addressed by the superintendent of the hospital to Judge Helander, it appears that the county court leans strongly to compliance with the recommendations from the Municipal Court laboratory when this is in any way possible. This appearance is borne out by the fact that of fifty-three persons committed to the state hospitals five were discharged as not insane and at the end of a year only nineteen were still in the hospitals.

Another fact of importance is that nearly 25 per cent (thirteen of fifty-three) had escaped from the hospitals by the end of a year. The state hospitals are greatly overcrowded and it is apparent that there is some

laxity of supervision; it should be noted that of 288 consecutive persons committed to these hospitals during the same period, persons who had not been through the municipal courts, 27 (9 per cent) had escaped at the end of a year. These facts suggest that many of the persons who are committed as a result of recommendations from the laboratory of the Municipal Court cannot be adequately cared for in the state hospitals.

One principal fact that stands out from this survey, then, is that the laboratory maintains standards for commitment which it has failed to adapt to meet the legal situation in spite of fourteen years of experience with the interpretation of the statutes governing commitment for insanity by the county court and the officers of the state hospitals.

The judges of the Municipal Court, Judge Trude in particular, and the director of the laboratory, have justly stressed the importance of scientific handling of the cases that come before the Boys' Court. It is from this group that come those in danger of committing serious crimes later. Yet the number of persons sent from this branch has fallen greatly since the laboratory was opened. During the first three years, the cases from this court constituted nearly 44 per cent of the total studied at the laboratory; in the two months of 1927 surveyed by this committee (the number is admittedly small), they formed only 16 per cent.

Only 8.3 per cent of the Boys' Court cases resulted in recommendations for commitment as insane. Of the police court cases, on the other hand, 88.3 per cent had this outcome. In the main, the latter were minor offenses (alcoholism constituted the principal factor in 35 per cent), though some of them had been repeated a number of times. Many of the charges in the Boys' Court cases were of more serious nature and the dangers of future offenses were often great.

In the majority of the cases from the Boys' Court (nearly 80 per cent), including all those with more serious charges, the examinee was returned to the court "with a report." We have been unable to learn that any report was sent other than that the person was not committable. In spite of this, the official reports of the laboratory reveal diagnoses of feeblemindness with dementia præcox and psychopathic constitution as frequently in cases from the Boys' Court as from other branches.

Hence, one must conclude that the laboratory does recognize the need of dealing with cases from the Boys' Court in a manner different from that adopted in police court cases, and does not advise commitment.

The laboratory, as far as could be learned, apparently offers no advice of a constructive character from its studies in these Boys' Court cases. If this conclusion is correct, one can understand why there has been a reduction in the number of persons sent for examination from this branch of the court.

It is presumably for the type of person who is sent from the boys' branch of the court that the laboratory has recommended the establishment of special institutions. The director has said in his report that, in most cases, care in such an institution should be continued for life. This committee agrees that provisions should be made, either in a special institution or in a special division of an existing penal institution. Little is to be

gained by recommending commitment to state hospitals, which have failed to hold many of those who have been committed. Furthermore, it is evident that for some reason (probably, mainly because a person under criminal charges cannot be received at the psychopathic hospital) the laboratory does not advise commitment to a state hospital in most cases from the Boys' Court, in spite of the fact that the diagnoses given in the statistical tables of the reports from the laboratory are apparently identical with those made in the cases of persons sent to the laboratory from other branches of the court.

48. Same: Summary. In commenting on the operation of the laboratory, this committee desires specifically to endorse the need of maintaining a psychopathic clinic in connection with the Municipal Court and to recommend enlargement of its scope and facilities. Its origination and establishment by Judge Olson was a big step forward, and has been copied in other cities.

The laboratory in its later reports has given out only the most general statements of its findings and recommendations. This committee failed to secure from the laboratory on request any statement beyond a general one concerning the frequency of mental deficiency in those examined.

No reports of the results of examinations, except as regards committability, are sent to other agencies (the county psychopathic hospital, the state hospitals, the prison, the reformatory or the house of correction) to which examinees may subsequently be sent. No follow-up is made of the patients or of the results of recommendations except such as comes from the reappearance of an examinee at the laboratory.

Even the reports to judges of the Municipal Court are no longer made regularly in writing and have not been for some years; the telephoned report expresses only an opinion on the committability of the examinee and in this, as already stated, the laboratory apparently maintains its own standards and disregards the provisions of the statutes.

Throughout its history the laboratory, in spite of requests for more help, has been undermanned and insufficiently provided with funds. Failure to secure more recognition is undoubtedly due, in part at least, to failure to cooperate with other agencies and to face the practical side of its work. It is obvious that little of practical value in the administration of criminal justice is gained by examining persons accused of crime unless at the same time consideration is given in the reports made to the practical facilities available for treating the abnormalities found. It helps little to advise that persons should be committed to an institution when this is not possible under the law.

The laboratory has apparently been consulted little in a service which appeals to this committee as the one of greatest importance. This concerns the problem of deciding when probation should be granted. The results of a psychiatric examination would frequently, in the opinion of most judges, be of great value to the court in deciding this difficult question. Such an examination, necessarily, must be much more than the making of an intelligence test; indeed, data thus secured are of far less importance than those secured by any other phase of a psychiatric examination.

That this is accepted as a highly important function of a clinic of this

kind is amply demonstrated by the reports of the work of other clinics. The value does not end with the determination of the advisability of probation, but is carried over into assistance in the actual supervision of the probationer.

(V) Recommendations

49. (A) Improvements in the Present System. In making recommendations for changes in the existing method of providing for the psychiatric study of persons charged with crime this committee has endeavored to adhere to practical considerations and as far as possible to existing laws. A logical solution of the problem as a whole is possible only with drastic changes, constitutional as well as statutory, for which public opinion is not yet prepared. The recommendations, therefore, will be divided into two parts, the first dealing with changes that can be fitted into existing conditions with comparatively minor changes in the law, and the second with a more complete plan that must await much educational effort and thoughtful study. The latter is put forward with the purpose of laying a foundation for a goal toward which to work and not with the expectation that it can now be adopted.

It is necessary to deal separately with criminal and quasi-criminal charges or misdemeanors. This distinction conforms practically with the cases disposed of by circuit and superior courts on the one hand, and by the Municipal Court on the other, though there is some overlapping in jurisdiction.

Furthermore, capital punishment introduces an element into a trial for certain crimes which sets these apart from the great mass of court procedure and leads to special efforts to secure mitigation of the sentence. It is in these cases, particularly, that a defense of insanity is most often used; it is also in these cases that a finding of insanity is of the greatest practical importance because of its effect on the penalty involved. Hence, there is justification for special consideration in these cases.

50. Same: The Criminal Courts. *Capital Offenses.*—The measures recommended are:

(a) *Routine examination, before arraignment,* of all persons charged with a capital offense, by experts employed by some state authority having no official connection with the trial of criminal cases.

This can be secured by the passage of an act similar to the Briggs Act (Mass. Acts, 1921, Chap. 415, as amended by Mass. Acts, 1923, Chap. 331, and Mass. Acts, 1925, Chap. 169) of Massachusetts. The Illinois State Department of Public Welfare would take the place of the Massachusetts Department of Mental Diseases.

It would operate throughout the state.

The report of the experts employed by this body should be made in writing to the court, the prosecutor and the defense attorneys. The experts should be placed on the witness stand by the court, present direct testimony as to findings made at the examination and the opinions arising therefrom in answer to questions by the court, and be subject to cross examination by both sides.

If the accused person is found insane at the time of the examination he should not be tried on the issues of the alleged crime but should, when the finding of insanity is affirmed by the jury, be detained in a hospital for mental diseases (preferably in one for the criminal insane) until he has recovered—a fact of which the court should be notified by the managing officer of the hospital after a conference of the staff of medical officers. This would obviate hasty or ill-considered release on a writ of habeas corpus, as recovery from the insanity, however determined, would mean return to the court of original jurisdiction for trial on the issues of the crime.

When, for any reason, examination of the accused is refused or when it is alleged that he has recovered from an insanity that existed only at the time of the crime, the case should be tried on the issues and the experts of the state department should be furnished in some satisfactory manner with all facts established by the evidence to be added to the results of examinations that have been made, if any, before taking the witness stand or expressing an opinion on the mental condition of the accused.

Similarly, when the accused is found sane at the time of the examination by the state experts, the latter should be furnished with all facts brought out at the trial before expressing an opinion as to the mental state of the accused at the time of the alleged crime and before being placed on the witness stand.

(b) Provision should be made for *observation of the accused* when necessary in a special division of the jail or in some specially designated hospital under the charge of attendants trained in the care and observation of persons afflicted with mental disease.

(c) Provision should be made whereby the physicians for the state department can secure an *adequate history* of the life and social adjustments of the accused so far as they are available.

(d) No physician should be permitted to testify as an *expert,* whether employed by the state department or by the prosecutor or defense attorneys, unless, before the trial, it has been established to the satisfaction of the court that he has qualifications that comply with a definite standard. This standard could be established by a qualified board of examiners or by some neuropsychiatric authority such as the Chicago Neurological Society.

(e) Adequate facilities are needed for the *secure hospital care* of those found insane. The existing hospital for the criminal insane receives only men and is not only too small but also lacking in facilities for medical treatment and even sanitary housing. Since this hospital is required also to receive convicts found insane in the penitentiaries, it would be an advantage to have it located within easy access of the prisons.

(f) Provision of a special institution, of a type similar to the Disciplinary Barracks of the United States Army, is needed for the care of persons found guilty of crime (regardless of its nature) who present anomalies of behavior of the type described as *psychopathic personality* or psychopathic constitution. It is to this group that belong the persons described as habitual criminals or recidivists; they constitute difficult problems in any institution to which they may be sent; they are now to be found in prisons, reformatories, schools and houses of correction, state hospitals

and feebleminded schools. This could if desired be established as a special division of the penitentiaries.

(g) Special provision also is needed for the safe care of the type of person described in Massachusetts and New York as *defective delinquent;* in these persons there is a combination of some degree of feeblemindedness with the behavior anomalies classed as psychopathic personality. This group could be provided for in association with those in group "f" by suitable subdivisions, or in a special institution.

(h) The *maximum term* of all sentences (exclusive of capital punishment) for a felony should be life imprisonment; variations in the minimum sentence are not important in this connection.

51. *Same: Non-Capital Felonies.*

(a) The number of cases coming under this category makes *routine examination before arraignment,* though desirable, at present almost impracticable. Trial in such cases, also, is not so serious an ordeal as when the death penalty is in question; most such trials are quite brief. With conviction, also, there is opportunity for extended study and observation of the accused through which insanity or other mental abnormality can, with suitable provisions, be recognized and dealt with appropriately.

When there is obvious reason to believe that a defendant may be insane or when the defense proposes to introduce insanity as a defense in the trial, the court should have authority on receiving proper notice to refer the case to the state department of criminology for examination as provided in cases of capital offenses, with identical provisions for the procedures to be followed. This seems to us preferable to the provisions of the California law (the constitutionality of which is now before the Supreme Court) according to which the question of sanity is heard after guilt has been determined. Much is gained by separating the two hearings (guilt and mental responsibility), but it seems improper to try a man who may be insane.

(b) Outside the question just considered, the principal problem that comes before the court in cases in which the defendant is found guilty (provided all sentences are indeterminate with a maximum of life imprisonment) is that of the *advisability of probation.* Consideration of probation should be limited to certain classes of offenders—for example, those who have not previously been convicted of a felony and those who have not been previously convicted of a misdemeanor more than once.

Before being placed on probation, all persons found guilty of a felony should be examined psychiatrically. For this purpose it would be well to establish a *clinic in connection with the court.*

Reference to the clinic would be routine and automatic.

The clinic should be provided with facilities for investigating the life and social history of examinees as well as for making all necessary medical and psychometric studies. Reports of its findings with diagnoses and forecasts of future behavior and reaction to supervision should be made in writing to the judge alone. When the person is denied probation and is sent to a penal or other institution, copies of the findings should be sent to the institution.

The clinic should have close relations with the probation department,

not only for the purpose of assisting in the supervision but also for advising and planning its character.

This clinic could serve also, when needed, for the advice of the police and preparation department of the prosecuting attorney with regard to the mental condition of suspects and witnesses in connection with crime.

(c) Persons not released on probation but sentenced to a penal institution—whether jail, house of correction, reformatory or prison—should be *examined as a routine at the institution* to which they are sent and provisions are needed for making these examinations. The state prisons and reformatory have mental health officers, though the service is inadequate; the Bridewell and jail have no such assistance. This service should be intimately related to the parole machinery and the information it secures from its studies and observations should be the most important factor in determining release.

Transfers by commitment to special institutions for the insane, the psychopath, the defective delinquent, and the feebleminded should be made possible whenever indicated by these studies. The needs for these institutions have already been indicated.

52. *Same: Quasi-Criminal Offenses.*

The Municipal Court of Chicago already has a psychiatric clinic; it should be enlarged and made more practically useful to the court. Questions of committability, judging from the experience reported by similar clinics elsewhere, should constitute only a small part of the work of this clinic.

The enormous number of persons dealt with in this court precludes the possibility of routine examination and necessitates some method of selection of cases for examination, which should be as automatic as possible.

Here, again, this committee believes that the most valuable service to be rendered concerns advice that will aid in determining for or against probation and in prescribing the conditions of the supervision needed. The number of persons now placed on probation is approximately 4,000 yearly. The present staff of the psychiatric laboratory is insufficient for the examination of this number, even if the personnel were selected with the nature of the work clearly in view. The general plan and personnel of the medical clinic of the Philadelphia Municipal Court appeals to us as an excellent guide to what is needed.

Bearing in mind the close relations between the House of Correction and the Municipal Court, it seems to us that there is a good opportunity for building up a cooperative service with the Municipal Court clinic and the hospital of the Bridewell.

In addition to the problems of probation, the question of previous convictions should also be a criterion for determining the need for psychiatric study. With this should be provided the possibility of indeterminate detention in special institutions for psychopathic persons and defective delinquents. The actual standards requiring examination in the clinic should be determined by statistical studies of the size of the problem and the facilities of the clinic that can be made available. Cooperation with the probation officers, if selected for merit and not for political affiliations, would probably

help materially in the work of the clinic without adding greatly to its personnel.

The essential features for improvement seem to be:

(a) The furtherance of work designed to make the fullest use possible of the means for supervision in the community;

(b) Provision for the safe detention of those who by reason of real mental abnormality cannot make acceptable adjustments in social life;

(c) Cooperation with other public agencies that will place the information possessed by one at the service of the others;

(d) Cooperation in the definition of standards of committability in conformity with existing laws and their practical operation.

53. Same: The House of Correction and County Jail.

The study that it has been possible for this committee to make in the time available has been entirely inadequate to justify any detailed recommendation concerning the medical service of the Bridewell and the county jail. It has served only to establish the fact that conditions are particularly bad and that there is urgent need of improvement. The principal recommendation, therefore, is that more detailed study should be made in these institutions. The task is large, as the admissions to the Bridewell alone numbered more than 18,000 in the year 1927.

54. Same: The Juvenile Court.

To supplement the work now being done by the Institute for Juvenile Research, there is need of the employment by the county of full time psychiatrists and psychologists sufficient in number to provide for the routine examination of all children brought before the court by reason of delinquency and truancy. This clinic should cooperate with the Compulsory Education Bureau of the city schools and with the probation department in the supervision of children released from the Parental School, the Chicago and Cook County School for Boys and the two schools to which delinquent girls are sent. The medical examination of children in the Detention Home and at the Juvenile Court requires more time than is now given to it, and a reorganization of methods.

55. Same: Outside of Chicago.

The recommendations made in this section are comparatively easy of solution in larger communities like that of Chicago. They present many difficulties in judicial circuits in which the volume of work is not sufficiently great to require the service of a full time clinic. This could be met by providing for traveling clinics and for cooperation between adjoining jurisdictions. In some communities, too, there could well be a fusion between the psychiatric work in connection with the criminal and the quasi-criminal courts.

Another difficulty concerns the problem of securing adequately trained psychiatric experts. This can best be met by securing the cooperation of medical schools and universities in training men for this type of work. Cooperative arrangements for temporary assistance could also be made with state hospitals, prisons and other institutions—the local authorities furnishing the more routine and less expert assistants and the state supple-

menting this with more highly trained consultants. This type of cooperative work has been satisfactorily operated in connection with the Juvenile Court of Cook County where the county provides the less expert workers and the State Institute for Juvenile Research furnishes psychiatric experts.

56. (B) Radical Reorganization of System. (a) Felonies.

From the point of view of public security it makes little difference whether a crime is committed by a sane or an insane person.

The chief difference concerns the liability to commit further crime. It seems reasonable to assume that the greater liability exists with persons who have some mental abnormality. It is, therefore, with this class that the greatest strictness should be observed. Nevertheless, it is with this class at present that the greatest chances are taken.

The courts are crowded with cases involving persons who have repeatedly committed crimes and who are no sooner released from prison than they are again arrested charged with a new crime. Most of these persons have something fundamentally wrong with them which is not capable of cure.

With these considerations in mind, it seems logical to conclude:

(1) Questions of responsibility, mental or otherwise, should play no part in the determination of guilt. The sole question put to a jury should be, "Did this person commit the offense with which he is charged?"

In the great majority of cases this is easily answered. Pleas of guilty are far more frequent than convictions.

(2) Conviction should automatically carry with it an indeterminate sentence of which the maximum is life imprisonment.

(3) Every person convicted should be studied psychiatrically and medically to determine:

(a) What treatment is needed to rehabilitate this person if it is possible?

(b) Where can this treatment be administered with prime regard to protection of society?

Should the convict, in accordance with any specific restrictions that may be adopted, be suitable for consideration of probation he should be brought before a judicial board and the results of the examination made should be presented.

(4) Release from custody should be determined only by study of the convict and not on the basis of any rule of thumb based on the nature of the crime committed.

57. Same: (b) Misdemeanors and Delinquencies.

All offenses of a quasi-criminal nature, including delinquencies during juvenile court age, if repeated should lead to sentences that are as indeterminate as those for felonies. Release again should be granted only on the basis of appropriate evidence that social adjustment is possible.

Probation should be determined in a manner similar to that for felonies.

58. Same: (c) Machinery Needed.

To carry out the procedures outlined there would be necessary:

(1) One or more clearing houses with suitable subdivisions for proper segregation according to sex, age, and kinds of persons, where the examinations after conviction would be conducted.

(2) An ample number of institutions equipped for different forms of treatment suitable for the insane, the psychopathic, the defective delinqent, the feebleminded, and those in need of correctional education—all under the control of a central authority to whose care every convicted person is entrusted. Transfers should be made from one institution to another when and as needed. The correctional institutions should provide varying accommodations in accord with the amount of responsibility permissible to the prisoner.

(3) A board of probation and parole, entirely free from politics, and composed of judges and psychiatrists of the highest caliber obtainable.

CHAPTER XVI

INTRODUCTION

By

ANDREW A. BRUCE

CHAPTER XVI

INTRODUCTION TO SURVEY OF ORGANIZED CRIME

The survey of organized crime deals with the principal sources of the crimes of violence in the city of Chicago. It discloses a startling and amazing story of the interlocking interests of gambling, bootlegging, vice, and politics. Back of this organized crime and this organized corruption is syndicated vice, syndicated gambling, syndicated prostitution and syndicated liquor selling. Back of all this is the philosophy and the environment which creates youthful criminals, for the criminal career is progressive and usually the first offense was but a gesture of boyhood and comparatively trifling in its nature. A crime is but a rebellion against organized society and the laws under which organized society has chosen to be ruled and governed. A criminal career is a misdirected career; usually there is to be found some fundamental reason for this rebellion and for this misdirection. The survey or special study of organized crime not only portrays the extent of this rebellion, but gives an insight into some of the causes.

Not the least of the disclosures that have been made are those of the permanence of the reigns of the lords of the underworld and the introduction of the capitalistic system into their operations. There are combinations in restraint of trade even in the gambling, the vice, and the liquor businesses, and a central control and stabilization of prices is everywhere being sought and accomplished. The illegal liquor business furnishes a stable means of livelihood for many of our confirmed robbers and burglars, and these captains of the underworld have been able to rally to their support the suffrages of a large portion of our population. By becoming political powers, they have been able not only to secure immunity for themselves, but in a large measure to make our city government itself a partner in crime. Their feudal tenure of office and their Warwick-like power to make and unmake political candidates and to control the policies of the city government has been astounding. The careers of the captains of our professional gunmen have been much longer than those of any of our political representatives, our mayors, our chiefs of police, or even of our college presidents. During the last twenty-five years but one chief of police has been able to retain his office for more than two years, and even he was deposed at the end of four years. Administrations have come and administrations have gone, but the overlord of vice has still continued in power. Protest after protest has been made, reform ticket after reform ticket has been promoted, but so far no radical change has been made and, although some of the underlings have been tried and convicted, the captains of crime have gone unwhipped of justice, and in the recent beer wars and bombings in Chicago not one leader has been convicted. Mont Tennes, who made himself a gambling king by his monopoly of direct news from the race-tracks, reigned and defied decency for more than a score of years. Tim Murphy, but for a brief imprisonment in the penitentiary for robbing a mail train, would have gone unpunished, and, although he was ultimately murdered, it was not because of his crimes

but because he was suspected of having double-crossed his former associates. Al Capone, the vice syndicatist, for a long time has been a leader among us.

Crime and the reign of the captains of crime have entered the field of otherwise legitimate business. The "racketeer" is merely a captain of gunmen and a man who undertakes by force to accomplish and guarantee the trade regulations and the freedom from competition in the lesser industries, which in the higher and wealthier callings are accomplished by means of the trade association and by the "gentlemen's agreement." He is a captain of the gunmen whom organized vice and organized gambling and liquor selling have brought among us and have maintained.

We have tolerated in Chicago a medieval feudal system. We have our war lords. We have had our small armies of mercenaries. These armies have been recruited by the gambling, the vice, and the liquor interests, but their services may be obtained by anyone who will pay the price. Vice, gambling, and liquor selling can hardly call on the public for protection, but often the gambler and the liquor seller is the victim of the "hi-jacker" and himself needs defending. He always desires to rid himself of competitors and of obnoxious rivals. He, therefore, hires mercenaries and these mercenaries have been allowed to be maintained because a large number of our policemen have been bootleggers or connivers with bootleggers, and only too often public officers have profited from the lawlessness which they have protected.

For many years, indeed, Chicago has been under the domination of the underworld. For many years Chicago has tolerated vice and now the underworld and vice have it by the throat. We have complained of crime; we have preached the gospel of a respect for the law; yet we have exhibited to our youth the spectacle of policemen in full uniform acting, not only as customers of, but often as partners in our brothels, our gambling houses, and in liquor selling. For all this the public is responsible; for the public has allowed it to exist.

These are the facts. This is the dark side of Chicago. The measure of crime in Chicago is the measure of its social selfishness, of its public indifference, and of its public corruption. Yet, they do not tell, nor does the survey of organized crime tell, the whole story of Chicago. If the measure of crime in Chicago is the measure of its corruption, the salvation of Chicago will lie in its fundamental integrity. This hope this very survey evidences. It has been fearlessly and scientifically conducted. It has not hesitated to tell the truth; and in the fact that the public-spirited citizens of Chicago are willing to have the truth told and to face it, lies the city's best hope of redemption.

The critic and the historian, also, would be unfair, indeed, and would lack in the true scientific spirit if he only saw and was content merely with disclosing what the survey of organized crime has disclosed. No one has the right to condemn Chicago without at the same time realizing and giving due credit for what Chicago has achieved and without realizing the greatness of the problems that have been hers. Every student of public affairs must realize that the prevalence of crime in Chicago and in America is in a large measure *due to our very newness and to our very democracy.* To a certain extent it is due to our very altruism. Crime is the problem of adolescent

youth and the failure to properly deal with crime is nearly always a weakness of an adolescent city and of an adolescent nation. *There has always been crime upon the frontier.* The main trouble with Chicago is that it is too young and that it has grown too fast.

It is absurd to seek to compare Chicago with the city of London, or to compare America with any European nation. In London there is a cosmopolitan population with a common history, a common tradition and, in a large measure, a common religion of a thousand years. America is not only a nation, but a nation of nations. This is especially true of Chicago.[1] Next to New York, perhaps, it is the greatest melting pot of America. Not only is it the meeting place of the east and of the west, of the north and of the south, but two-thirds of its population were born on foreign shores or are the children of the newly arrived immigrant. It, too, has a difficult negro problem which confronts no city of the old world. There are reasons why there are more murders and assaults and more race and gang conflicts in Chicago than there are in any European capital. In Europe, the races are segregated into nations and states and principalities. While in Europe, therefore, race conflicts take the form of wars, in America, they constitute breaches of the peace and criminal offenses; they take the form of gang murders and assaults and they come into the criminal courts. The government of London, also, and the political structure of London are the growth of centuries. Chicago was born but yesterday, and sprang to manhood overnight. It has no ancient traditions. The growth of Chicago has been

[1] According to the 1920 census, the nationalities in the city of Chicago were divided as follows:

		Percentage
American	642,871	23.80
Polish	319,644	11.81
German	285,216	10.55
Russian	230,668	8.55
Swedish	154,051	5.72
Irish	145,919	5.40
Italian	129,815	4.80
Czechoslovakian	116,115	4.30
Negro	109,458	4.05
Austrian	72,531	2.69
English	67,907	2.51
Canadian—Other	62,006	2.30
Hungarian	61,847	2.29
Norwegian	53,891	2.00
Lithuanian	43,274	1.60
Danish	29,450	1.09
Greek	27,017	1.00
Scotch	26,094	0.96
Jugo Slavian	22,211	0.82
Dutch	22,163	0.82
Roumanian	11,644	0.43
French	11,379	0.42
Swiss	8,662	0.32
Belgian	7,900	0.29
Canadian—French	6,039	0.23
Indian, Chinese, etc.	3,078	0.11
All others	30,855	1.14

Since 1920, the population has increased by nearly 500,000 people; that is to say, by the addition of a city as large as Minneapolis. The number of Negroes has increased from 109,000 to nearly 160,000.

too rapid for the proper formulation of its governmental structure. Its business men have been too engrossed in their avocations to study its political and social needs. Not only is this the case, but we are handicapped by our very system of government. The Constitution of Illinois was made for a rural and not for an urban community, and Chicago has everywhere been handicapped by a denial to it by the Legislature of the measure of self-government which is absolutely necessary to a great metropolitan center. Our criminal machinery, also, was not devised for urban exigencies.

As we suggested before, the growth of Chicago has been too rapid for the proper coordination and formulation of its governmental structure. In 1840 its population was 4,470; in 1860, it was 109,260; in 1880, it was 503,185; in 1900, it was 1,698,575; in 1920, it was 2,701,705; and in 1928, it was 3,150,000. In the eight years intervening between 1920 and 1928, we added to our population 448,000 people. That increase alone would represent the population of many of our largest American cities. Not only is this the fact, but Chicago is the stopping off place of a continent. It is not only the industrial center, but the pleasure seeking center of a vast inland empire. It is a city of colossal wealth. "Wheresoever the carcass is, there will the eagles be gathered together," and not only the restless pleasure-seekers come to Chicago, but the cutthroats and the thieves of a continent. The pay roll of a manufacturing or business establishment in a small town and the deposits of a bank in a small town are far less attractive to the robber than the pay roll or the deposits of the Chicago institutions. The pay roll and deposits in Chicago, in fact, mount up into the billions. With the exception of the city of New York, Chicago furnishes the richest field for plunder that is to be found in the United States. In ninety-three years Chicago has grown to be the third largest city in the world. The bank clearings of the Chicago district for the year 1927 amounted to the enormous sum of $35,958,216,000.00. Is it to be wondered that the robber is to be found among us?

Chicago is a city of marvelous paradoxes. It is a city of 1,060 churches and of numerous other religious organizations. It is a city of universities and of theological institutions. It is a city of libraries, parks, and playgrounds. It is a city of magnificent altruism. Its chief defect has been in its very energy, its very industry, and its very democracy. It has welcomed to its streets the people of every community and has sought to provide for them on a large scale. As in all new cities, its industries and its industrial development have been absorbing. Its business men have furnished employment to millions and have established institutions for the culture of millions, but they have had little time for the engrossing world of politics. They are charitable towards the people of the slums, but they do not understand them nor the problems that are theirs. They have left these people to the control of the often corrupt politician. They have had too much of the usual and sublime American optimism, too much of the feeling that all is well with the world. They have been engrossed in every thing but in government. While they have given millions for education and for charity, they have failed to provide for their own police department.

Not only is the population of Chicago very great, but it extends over an area of 208.6 square miles and it has around it a vast suburban area

to which its criminals go and from which they often originate, yet its police force is entirely inadequate. London, with its homogeneous population, has one policeman for every 175 people. Rome has a policeman on every street corner. Chicago, however, has only one policeman for every 900 people. Of these policemen, a large number are engaged in traffic duty, and it is to be remembered that the automobiles in Chicago largely outnumber those which are to be found in London. Not only are these things true, but governmentally Chicago is at a disadvantage. We in Chicago, and especially the members of our State Legislature, have failed to realize that, to a large extent Chicago, to the criminal, is a frontier city and that to Chicago come the reckless, the disappointed, and the criminal classes that formerly went to the newer areas of the west. Now that the American frontier, to which the reckless and the lawless, as well as the industrious and the enterprising alike went, has vanished, our great metropolitan centers have become the Meccas for the adventurous of all kinds.

In the immense wealth of these cities are to be found the counterpart of the gold mines of the west. To these cities come the immigrant, who formerly, to some extent at least, was attracted by the free lands of the public domain. In these cities he is crowded and forgotten and finds none of the comradeship which is so common among the pioneers. Now, too, that freedom has come and the gospel of opportunity has everywhere been preached, thousands of Negroes have come to us from the rural centers of the south and have given to us a rapidly increasing population, whose natural home is in the fields and not in the streets and congested quarters of a great city, and who lack the guardianship and advice of their white masters and friends.

Industrially, artistically and educationally, Chicago is one of the wonders of the world. The ability that is shown in the management of its industries is amazing. The knowledge that is to be found in its universities cannot be ignored. University men, as a rule, however, have been scholars rather than administrators; though at times they have thought wisely, they have had but little influence in the affairs of government. To a very large extent Chicago is an overgrown village. With the machinery of a village and a combination of ward, township, and county government, it is attempting to govern a city of over three million inhabitants, a suburban area of a million more, and a daily list of visitors numbering into the hundreds of thousands. It is everywhere handicapped by the fact that it is after all but a subordinate municipality, governed in many things by the Legislature, deprived of the right of self-government in many material matters, and subject to the restrictions of a constitution which was created for an agricultural state and with no idea that within the boundary of Illinois would be situated a great metropolis. There was also no thought of the racial problems that would confront this metropolis. Few dreamed that in that metropolis there would be, as there is today, a great cosmopolitan population, one-third of whom were born in Europe. Few would have dreamed that in that population there would have been a rapidly growing negro element which now numbers approximately 180,000. Few would have dreamed that Chicago was to become the great distributing point and the great railroad center of a continent. Even the wildest of dreamers failed to envision the

enormous wealth that would be Chicago's and the lodestone that that wealth would afford to the common criminals and the still more dangerous corruptionists.

Chicago is a city of marvelous paradoxes. It is a city of the slums and of the river wards and of the lake front and of Michigan boulevard. To it have come and prospered the well-to-do. To it have come hundreds of thousands of the poor of Europe who, in most cases, have arrived without friends and without money. In its slums and river and railroad wards have congregated the native-born "downs and outs" of a large part of the American continent. It is a noticeable fact that in these less favored areas, in these abiding places of the transients and of the "downs and outs," and of the newly arrived immigrant, are to be found the breeding places of the gangs, of the Mafia, and of the professional criminal.

But the problem of Chicago is the problem of America, herself. At the gates of America and at the gates of Chicago, is the inscription:

> "Give me your tired, your poor,
> Your huddled masses yearning to breathe free,
> The wretched refugee of your teeming shore.
> Send these, the homeless, tempest tossed, to me;
> I lift my lamp beside the golden door."

This is the noblest expression of our democracy. We are glad that it was written; we are glad that in a measure its promise has been fulfilled. Our only fault has lain in our exuberant optimism, in our giving of an altruistic invitation without counting the cost, or providing for a reception committee; in our assumption of a magnificent duty, but a tendency to believe that all that was necessary was to assume, in our blind belief, that somehow or other things would work out well without our watchfulness, and that all we had to do was to develop our industries so that the poor might be employed, and maintain our schools so that the poor might be educated. We have entertained a fatuous belief that the rule of the good, the wise, and the great would always be among us and that a quiescent and self-absorbed moral and industrious class would control our politics and be a match for the ever active and well informed corruptionist. We have failed to realize that a universal suffrage has given the ballot to all, and that the corrupt politician can mass and control the votes of the uninformed so as to perpetuate himself in power. We have been content to build churches and libraries without seeing that they are occupied. The favored classes have manned and directed our industries, provided lavishly for public education, contributed as no other people have done for every charitable cause, but they have lived in the suburbs and have kept themselves aloof. We have failed to face our democracy. We have seen its wondrous possibilities and its magnificent altruism, but we have failed to realize and to confront its tremendous problems.

The problem of crime is the problem of youth. Every criminal career has its beginning. One of the chief merits of the Survey of Organized Crime lies in the fact that it does not merely portray the operations of the adult desperado and master criminal, but discloses to us the environments and the neighborhood social philosophies which, when they were mere boys,

started these outlaws upon their careers of crime and which frequently have made it possible for them to obtain and to maintain political power and immunity from punishment. It shows the importance of environment. It gives us a glimpse into the inner life and ideals of the railroad and the river wards and of the dwelling places of the nomads and of the strangers who are within our gates. It shows us something of the origin of the street gangs and of the youthful criminal, and how foolish it is to expect such an environment to produce a moral and law-abiding youth, possessing the right theories of life and of success, when everywhere around him he sees official lawlessness and vice in the saddle; when he sees his hardworking father laboring for a few dollars a day and accumulating nothing, and the bootlegger and the gambler riding in limousines. It shows the necessity of getting down to fundamentals. If we would control crime in Chicago, we must control the thoughts and the aspirations and the ambitions of youth and the moral and social atmosphere and outlook of the districts and localities where our criminals are trained and nurtured.

As long, however, as organized crime exists; as long as our courts fail to properly function and our prosecuting agencies are paralyzed, so long will the philosophy of crime be among us. The survey on organized crime presents an appalling picture of corruption and criminal domination. It discloses the facts as they are. As long as crime is organized and efficient, and the administration of justice is unorganized and inefficient, so long will crime be a problem in the community.

CHAPTER XVII

THE McSWIGGIN ASSASSINATION AS A TYPICAL INCIDENT

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CHAPTER XVII

THE McSWIGGIN ASSASSINATION AS A TYPICAL INCIDENT

1. *Scope of the Inquiry.*

In any approach to the study of organized crime in Chicago, certain topics soon emerge to view in the shape of queries, which require to be answered.

The ensuing chapters furnish the material for answering. The principal queries are as follows:

(1) Why have grand jury investigations and police drives failed time after time to crush organized crime? What is the reason why gang rule has successfully defied every attempt to suppress it?

(2) Why has gang warfare over the profits of beer running and whiskey distribution, with its startling toll of the lives of gunmen, not resulted in the extermination of gangsters?

(3) What is the role of bombing as a method of intimidation and control in black hand, labor, racial, and political conflicts?

(4) Just what is the basis of the relation, if any, between gangster and politician? Does the immunity of the gangster and the gunmen from punishment rest upon graft, corruption and intimidation, or upon neighborhood influence?

(5) What are the different types of organized gangs in Chicago, and what place and power do they possess in their own neighborhoods?

(6) What does a "Who's Who of the Gang in Chicago" disclose about the career of gangsters and the fortunes of criminal gangs?

(7) How does the gangster look at his own life and what apology for it has he to make to society?

(8) If previous methods of crushing organized crime have failed, are there any feasible methods of control?

But, before presenting the mass of facts that show the various aspects of organized crime and supply the answers to these questions, it is necessary to draw a picture of a typical incident in that part of the crime world. The reader can then see for himself how these questions necessarily arise and demand answers. For this purpose, the McSwiggin assassination, in 1926, serves admirably. Most of the aspects of organized crime are displayed in this typical incident.

The killing of McSwiggin dramatized to the public the relation between criminal gangs and political organization. The work of the coroner's jury and of the six grand juries, futile as they were in solving the murder of an assistant state's attorney and his two gangster companions, did throw a flood of light upon the world of organized crime and its sinister attempts at controlling elections, public officials, and even the courts.

2. Theories of Why McSwiggin was Killed.

On April 27, 1926, at 8:40 p. m., William H. McSwiggin, an assistant state's attorney of Cook County, was one of three men killed by machine-gun bullets in front of the saloon at 5613 West Roosevelt Road, in the incorporated town of Cicero, lying just west of the Chicago city limits. Doherty and Duffy, his slain companions, were known gangsters.

In the four months from January to April, there had been twenty-nine killings ascribed by the police and newspapers to the booze war. In the preceding four years, over two hundred such murders had occurred—"Gangsters killing gangsters, a good way to get rid of them." But this was the assassination of an energetic young public official in the most important office for law enforcement—no longer gangsters killing gangsters, but an attack upon the state.

A climax in the murderous activities of gangland had been reached. Intense interest was focused upon the question, "Who killed McSwiggin?" Public excitement and indignation were intense; columns of newspaper space were devoted to the topic for weeks. Every edition carried clues, new angles, and developments. To concentrate public attention upon the material issues, the *Chicago Daily News,* on April 28, presented three questions: (1) What was McSwiggin, a prized deputy of the state's attorney's office, doing in the company of notorious gangsters? (2) Who were Duffy and Doherty, his murdered companions? (3) What were the motives and affiliations of the killers?

Everyone seemed to have a different theory of the triple murder. Set down one after another they present a curious picture of defense reactions of public officials and speculations upon whether any alliance existed between the leaders of the underworld of organized crime and the murdered official. These theories may be grouped under three general heads:

1. *Killed by accident or design in the performance of official duty.*—Robert E. Crowe, the state's attorney, Gorman, his first assistant, and Judge William V. Brothers, presiding judge of the Criminal Court, believed that McSwiggin was a martyr, killed in the performance of his duties in revenge for his fearless prosecutions; that he was with gangsters at war with gangsters at the moment, but his hobnobbing was for the purpose of gathering material information for cases he was engaged in prosecuting; that the killing of McSwiggin was accidental, the killers not identifying him; that he was either getting evidence in the Durkin case [1] or investigating for the chief of police. It was also suggested by these officials as an alternative, that McSwiggin was shot in revenge for his energetic prosecution of the Scalise-Anselmi case.[2] On the last named theory, of course, the gangsters who killed the official knew that he was in the car.

2. *Slain inadvertently or deliberately as an incident of the beer war.*—Joseph Z. Klenha, the mayor of Cicero, pronounced the killing an incident of the beer war then raging between rival gang factions. The slayers, he believed, were the same men who had recently used the machine-gun in

[1] A famous murder case then pending.

[2] Another famous gang murder case in which gangsters had killed policemen in a running gun battle.

another gang attack, and that they did not identify McSwiggin; that the killers were after the O'Donnells.[1] "But," he asked, "why was Assistant State's Attorney McSwiggin in that crowd?" Captain John Stege, of the Detective Bureau, also favored the theory that the killing was an incident of the beer war and that the gangsters who killed McSwiggin did not identify him.

A certain section of the press ascribed the murder to revenge by a bootlegger of the north side, recalling a killing which occurred the night before the triple murder. The names of two prominent gang leaders were brought into the affair—"Scarface" Al Capone, a notorius gang leader who later became the acknowledged king of the underworld in Chicago, and Hymie Weiss, of the old Dion O'Banion liquor gang on the lower north side of Chicago. A local newspaper advanced the theory that Capone had killed McSwiggin mistaking him for Weiss. Capone was interviewed. He denied it in the following language:

> "Of course, I didn't kill him. Why should I? I liked the kid. Only the day before he got killed he was up to my place and when he went home I gave him a bottle of 'scotch' for his old man. I paid McSwiggin and I paid him plenty, and I got what I was paying for."

A variation of the mistaken identity theory was that the three men were killed by their own comrades to divert suspicion from themselves, in reprisal for tipping off the police about the activities of the McErlane-Saltis south side gang.[2]

The beer war theory has persisted the longest and is apparently supported by the most authentic information. It was quite definitely established that the word had gone out several weeks previous to the murder of McSwiggin that the Capone gang was no longer the approved beer concessionaire of Cicero; that the power to protect had been shifted to the O'Donnell Brothers, who, to convince the saloon-keepers of the authenticity of official sanction for this change of policy, took McSwiggin with them on the fatal night as proof. McSwiggin was, however, believed to have been unaware of the plans of his beer gangster associates. The Capone gangsters heard of this invasion into their territory, according to this theory, and sent out their killers to murder the O'Donnells, not knowing that McSwiggin was with them.

3. *Murdered with underworld friends for their part in the then recent primary election.*—This theory ascribed the killing to the efforts of the various gangs to reach out for election spoils. Duffy was a Crowe precinct worker and Doherty was a member of a gang that was known to have worked for Crowe. The day before the murders, Duffy, Myles O'Donnell, Hirschie Miller, and Terry Druggan[3] were present at the Election Commissioners' canvass of the April primary vote, wearing the badges of authorized watchers of the Crowe-Barrett machine. Subsequent investigations into vote frauds at that election were conducted by four special grand juries.

The *Chicago Daily Tribune,* which was one of the most influential factors

[1] Leaders of a liquor gang, who will be frequently mentioned in the succeeding pages.
[2] A notorious gang of beer runners on the south side, which still flourishes.
[3] Also notorious gangsters and bootleggers.

in the subsequent investigations in the effort to solve this mystery, favored this theory.[1]

The murder was characterized by the persistence of public demands for its solution. The different theories advanced excited and even fascinated the people of Chicago, for the settled belief took root that the solution of the killing of McSwiggin would answer all puzzling questions of gang warfare, beer running, the alliance between the underworld leaders and politicians, and the immunity of criminal gangsters from punishment. From first to last, seven juries (a coroner's jury, five special county grand juries, and a Federal grand jury) investigated the many different angles presented by these theories.

3. The Inquiries of a Coroner's Jury and Six Grand Juries.

While the public shock of the killing was still at its height, Coroner Oscar Wolff[2] impaneled a special coroner's jury of six prominent citizens to investigate the death of McSwiggin. Coroner Wolff announced that he chose these men to insure public confidence in the inquest: John R. Noel, president of the Noel State Bank and chairman of the Committee of Fifteen, a reform organization; Willoughby Walling, president of the Morris Plan Bank and widely known as a philanthropist; Willys W. Baird, real estate; William Marshall Ellis, real estate; O. O. Frisbie, a manufacturer; and Robert H. Hunter, insurance.

4. The Coroner's Jury.

Coroner Wolff was then hostile to State's Attorney Crowe, but a little later became one of his strongest adherents. The possibility of a clash in authority between the coroner and the state's attorney became imminent because State's Attorney Crowe had incurred the displeasure of the coroner by claiming that vital evidence which should have been kept secret had been disclosed at the coroner's inquest. The coroner appointed John J. Healy, a lawyer of standing and formerly state's attorney (1904-08) as counsel for the coroner's jury, but Mr. Healy refused to serve.

The first session of the jury was held in secret, with special care to exclude reporters, because the coroner said he wished to keep interested gangsters from obtaining any information which might aid them in defense. On May 1, twenty witnesses were subpoenaed to appear, the most prominent among them being Judge William V. Brothers, who had presided at the trial of the gangsters Anselmi and Scalice.

Prior to his appearance he had twice conferred with his political chief, Mr. Crowe. While the session was secret, Judge Brothers released his testimony to the newspapers:

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[1] On August 6, 1926, the *Chicago Daily Tribune* published the following editorial: "Throughout the four months of grand jury investigation there has run the opinion that McSwiggin was killed because of what happened in Cicero on election day. On primary day election, April 13, two weeks before the killing of McSwiggin, Capone had dominated Cicero in the intimidation of voters and in the counting of votes."

[2] Coroner Wolff's inefficiency and alliance with the underworld elements in the political affairs of Cook County later became so well established that when he ran for re-election in November, 1928, he was overwhelmingly defeated, his opponent, Dr. Bundesen, receiving over one million votes, the largest ever recorded for a municipal or county officer.

"The coroner's jury wanted to know why I would not let Attorney Patrick O'Donnell introduce at the Scalise-Anselmi trial the information which he now claims could have prevented the McSwiggin murder.

"I merely told them I knew at the first trial that O'Donnell wanted to introduce evidence showing that certain police officers at the Maxwell Street Station made regular collections at the office of the Genna Brothers.[1] As these officers were not concerned in the trial, I refused O'Donnell the privilege of bringing it before the jury.

"At the end of the trial I gave O'Donnell a chance to read his evidence before me with the jury out of the court. He refused, and the trial went on without its introduction into the record."

The coroner's jury then adjourned to May 4, when the inquest was resumed in secret, although the newspapers carried the story of the session. A list of names of saloon-keepers found in the effects of Duffy, who was killed with Doherty and McSwiggin, had disappeared. The Oak Park police had found it in Duffy's effects; the Cicero police said they had turned it over to Mr. Crowe, who denied knowing anything about the list, which was later discovered in the coroner's own files. It was said to have been placed there without the knowledge of anyone in authority.

Captain Stege of the Chicago detective force told the jury of the account of the murder by the only eye-witness, Mrs. Bach, who lived above the Madigan saloon; she had seen neither victims nor slayers, and he testified that she said:

"It was daylight still and I saw a closed car speeding away with what looked like a telephone receiver sticking out of the rear window and spitting fire."

The coroner's physician testified that the bullets indicated that the three men were not killed in the car but while they were walking west on Roosevelt Road.

On May 6, Coroner Wolff turned over to Attorney-General Carlstrom, special prosecutor of the first special grand jury, about thirty cases of gangsters whom he had accused of unsolved gang killings; but the state's attorney took no action according to Wolff. While the special grand jury voted some indictments in these cases, none of them were ever convicted and none of them had to do with the McSwiggin murder. On May 7, Coroner Wolff invited Joseph Roach of Terre Haute, Indiana, who had become famous by sending one hundred forty-seven public officials and gunmen of Terre Haute to prison, to come to Chicago as special state's attorney for the inquest. His arrival on May 27 was attended with much publicity, but the coroner's jury met and decided to adjourn indefinitely until evidence could be assembled for their consideration.

Apparently no evidence was ever assembled, for the coroner's jury disappeared from view until December 31, 1926, seven months later, when it reconvened upon the urgent request of the insurance companies, who could pay no claims on McSwiggin's death until the coroner's jury returned a verdict. It adjourned immediately for a further continuance, and the case progressed no farther.

On March 4, 1928, it was announced that the final session of the

[1] Leaders of a powerful band of liquor gangsters.

coroner's jury, appointed two years before to hold an inquest into who killed McSwiggin, would be held on March 7. But, a very small item in the newspapers of March 7 announced the postponement of this final meeting until May 7, because of the absence of a member of the jury of six prominent business men. No verdict has ever been returned in the case.

5. The First Special Grand Jury.

"It will be a war to the hilt against these gangsters."

This was the proclamation of State's Attorney Crowe immediately upon the news of the murder of McSwiggin. Men who knew practical politics, however, were skeptical. Indignation was burning at white heat at "Chicago's Anarchy." Prominent club women led a movement of protest against the murder of McSwiggin as a product of the breakdown of public justice. Ministers' associations were proclaiming their failure to get the cooperation of public officials in the suppression of vice and crime. Civic leaders, the most prominent of them Harry Eugene Kelly, then president of the Union League Club, shared this distrust of the state's attorney's declaration. Immediately they made vociferous demands for a special grand jury to investigate the murder. Mr. Kelly suggested that an independent fund be raised, contending that if a grand jury had to depend upon Mr. Crowe or the County Board for funds, it would be hampered by politics and incapable of free and unbiased action.

> "I have nothing against Mr. Crowe personally," Kelly said, "but obviously he is unfit to go into the 'beer racket' because it is mixed up all down the line with politics. He is not only a capable politician but is the head and front of a powerful faction known as the 'Crowe Wing.' He is the directing head of a faction organized for politics, and politics only. Therefore, the citizens cannot expect Mr. Crowe to prosecute the kind of an investigation this city requires."

Mr. Crowe answered this by a formal statement in which he claimed that the people of Cook County elect their state's attorney and do not intend him to delegate his powers to "self-appointed investigators." He called the civic leaders notoriety seekers and appealed to the people for moral support and sympathy. He said:

> "Under the law the people of Cook County select their state's attorney. They do not delegate his powers to self-appointed investigators.
>
> "I am engaged in the investigation of the most brazen and dastardly murder ever committed in Chicago. Selfish notoriety seekers, who are called by some newspapers 'civic leaders,' have started a backfire on the state's attorney of this county, while he is engaged in this arduous and not entirely safe duty. I appeal to the law-abiding men and women of this county for their moral support and sympathy in this crisis; and I appeal to these officious meddlers, that if they have any information to present it to me; if they can be of any assistance, to cooperate with me, and cease giving aid and comfort to gangsters by attempting to divert my attention from the task in hand."[1]

[1] Crowe pursued the same tactics when there was an insistent public demand for a special grand jury to investigate election day violence at the primary election of April, 1928. He sought to prevent such an investigation by having his adherents on the County Board refuse an appropriation for a special grand jury, but the citizens raised the funds by popular subscription.

Mr. Kelly retaliated with a statement in which he reminded Mr. Crowe that the people of this state had also provided for the appointment of a special state's attorney when the incumbent and his office should be involved in a controversy of this kind. Mr. Crowe took action and petitioned Judge William V. Brothers, member of his own political faction, for a special grand jury. Crowe intended to take charge of the prosecution, however. The petition was granted on April 30, 1926. Again the critical Mr. Kelly and other civic leaders declared Crowe's action just a "political gesture." They pointed out that a special grand jury, presided over by Mr. Crowe, would be precluded from investigating Mr. Crowe or his office in determining the underlying causes of the threefold murder. Nor would Mr. Crowe, they believed, being a powerful political leader, allow a grand jury to determine the connection between politics and beer running gangs in Chicago and Cook County.

Mr. Crowe then called on Attorney-General Carlstrom, who consented to undertake the direction of the grand jury. Mr. Kelly predicted that Mr. Carlstrom would not have a free hand: "Mr. Crowe has not turned over the investigation to Carlstrom, nor does he appear to intend to do so. He has simply invited the attorney-general to assist him." Thus Mr. Crowe frustrated by the movement for a special investigation and a special investigator.[1]

Under the broad instructions of Judge Brothers to the special grand jury to scrutinize all causes of crime, Mr. Carlstrom had the opportunity to divert the investigation to the scandals uncovered by the killing of Deputy Warden Klein at Joliet and to the administration of the Governor's Pardon and Parole Board. Mr. Crowe and Mr. Carlstrom filled many news columns with their discoveries of a syndicate for the sale of pardons and paroles. They gave out the names of notorious criminals who had been paroled, and claimed that the crime conditions of Chicago were caused by paroled convicts. The parole scandal, which engaged the time and attention almost exclusively of the first special grand jury, was dropped without the voting of a single indictment.

Some time was devoted to voting indictments in cases of gangster killings presented by Coroner Wolff, but these indictments never came to trial.

The remainder of the time was spent in hearing of witnesses in the McSwiggin murder. More than two hundred saloon-keepers, most of them from Cicero, testified. They were forced, it was said, to tell from whom they bought their supplies and the names of those who afforded them protection. This information was not given out to the newspapers nor turned over to the Federal Grand Jury, then also in session on the Cicero beer trade.

By May 5, the newspapers learned that the police "had no more actual evidence as to the motives of the shooting and the identity of the killer than they did when it happened." Of the forty-five witnesses who had testified on the same day, no one could tell about the McSwiggin murder.

[1] Of this the *Tribune* of May 1 said:
"Thus, by his two moves, that of summoning a special grand jury and engaging the aid of Mr. Carlstrom, Mr. Crowe believed he had checkmated his critics. He appeared confident that with one grand jury digging into the gunmen, the chances for creation of another would be nil and that those who have been calling for a special state's attorney will not assail the ability or fairness of Attorney-General Carlstrom or charge that he is a member of the same political faction as a man who fought his nomination."

On that day, therefore, the news was released to the *Tribune* that secret warrants had been issued for the arrest of Al Capone, openly suspected of complicity in the murder. According to the *Tribune,* it was the state's attorney's claim that he had established to his satisfaction that Capone had in person led the slayers of McSwiggin.

Capone, however, was very difficult to find. Raids were made on all his haunts. His brother John was arrested but denied knowing his whereabouts. It was reported that Capone had barely escaped the police in New York. It was later reported that Capone and a dozen henchmen were hiding in the woods of northern Michigan, and a squad was sent to follow up this tip, but found no Capone. In fact, the police were unable to find "Scarface" Al until he thought it the proper time to be taken.

On May 27, a month after the murder, following some very incisive editorial attacks on Mr. Crowe and the first special grand jury, the O'Donnell brothers, who had been with McSwiggin in the car, were captured and taken to the state's attorney's office. Their attorneys went immediately into Judge David's court with a petition for a writ of habeas corpus. Judge David declared it was about time the state's attorney's office obeyed the law. He reprimanded Captain Shoemaker and asked by what right he took the men to the state's attorney's office after arresting them. Many persons "in the know" believed "Klondike" and Myles O'Donnell permitted themselves to be arrested May 27 according to a prearranged plan, after having had a month to concoct their stories.

Taken before the grand jury, the O'Donnells refused to testify. Mr. Crowe then haled them before the court and threatened them with contempt of court if they did not talk. Upon the advice of their counsel they told, on May 28, what was hailed as the real story of the killing of McSwiggin, James Doherty and Thomas Duffy. They said they were with McSwiggin before the murder; that he was brought to their house afterward, wounded or dead; but they were not with him at the moment of the killing. Although the O'Donnells were notorious bootleggers and Doherty was a saloon-keeper, McSwiggin, they said, was accompanying them into Cicero to recover a bullet-proof vest purchased for the use of labor leaders. After refusing to testify and being forced to testify under threat of contempt of court, their testimony was of no value, for they did not reveal the murderers of McSwiggin nor the details of their war with Capone.

There was another highly intriguing clue. The three men had been killed by machine-gun fire. Machine-guns had only been introduced into gang warfare in Chicago a few months before. If the source of these machine-guns could be discovered, possibly the murderers could be traced. Alex Korecek, a hardware dealer, had earlier appeared before the grand jury and after admitting that he had sold machine-guns to a "John" and a "Charlie," failed to identify John Capone and Charles Fischetti of the Capone gang and begged not to be forced to disclose his customers for fear of his life. On June 3, he was again brought before the grand jury and testified that he had sold Thompson machine-guns to Charlie Carr, manager of the "Four Deuces," a house of prostitution said to be owned by Capone. He had sold these under duress. He had obtained them through a Valparaiso firm.

The McSwiggin Assassination as a Typical Incident

While the first special grand jury did not discover the murderers of McSwiggin, Doherty and Duffy, it uncovered at every turn the conditions of organized crime in Cook County. Ending the labors of a month, the special grand jury, on June 4, presented a report which was drafted with the assistance of Attorney-General Carlstrom and his aid, Harry Ash. Highlights of this report are quoted as follows:

(1) "A conspiracy of silence among gangsters and intimidation of other witnesses after a murder has been committed, immediately operates and there is an element of fear involved because anyone who does aid the public officials by giving facts is very likely to be 'taken for a ride.' It is clear to us from what we have heard during the past five weeks in the grand jury rooms, that the prosecutors and the police have a most difficult task.

(2) "The McSwiggin Case. William H. McSwiggin, an assistant state's attorney, was shot April 27, 1926, in Cicero. It appears from the evidence that he went to the saloon of James Doherty with his friend Duffy for the purpose of locating the last of a number of bullet-proof vests which had been stolen, in which service he was endeavoring to assist a personal friend, namely, Mr. Albert Dunlap, a reputable citizen and authorized representative of the manufacturers of the article, to recover a valuable piece of property. We find no evidence whatsoever indicating cupable conduct on the part of McSwiggin, either in being at the place where he was killed or in the company with which he was then found. He was twenty-six years of age, was very active and successful in the prosecution of gang murderers, knew the persons suspected of holding the stolen property and personally sought to recover it for its owner. We find no evidence for the whispered criticism leveled against him or the state's attorney's office.

(3) "Notwithstanding every effort has been made to solve the murder of William H. McSwiggin, it has been impossible for the jury to determine guilt or to ascertain the guilty parties in that case. Silence and sealed lips of gangsters make the solution of that crime, like many others, thus far impossible. McSwiggin was upon a legitimate errand at a time when one gang fired upon another gang, and we think that the murderers had no knowledge of the identity or position of the young man who was in the automobile and who became their victim.

(4) "Reform Organizations. Self-appointed, self-styled reformers, organized apparently for the purpose of securing satisfactory remuneration for individuals and often actuated by purely political motives are a detriment and not a help.

(5) "The Chicago Crime Commission has shown itself to be a powerful aid in the handling of the crime situation and should be encouraged and liberally supported.

(6) "Baseless and pernicious criticisms by groups of persons or by newspapers when actuated by malice or political motives only result in aiding and encouraging crime and criminals. And it is deplorable that prominent citizens in public life make criticisms which are published in the press, as in the cases of Mr. Harry Eugene Kelly and Coroner Oscar Wolff, which statements when

called before the grand jury they failed in any manner to substantiate.

(7) "Pardon and Paroles. We believe that vicious administration of the pardon and parole laws has been one of the great contributory elements in making the present existing condition.

(8) "We recommend that the attorney-general, the state's attorney, and the police officials continue the investigation now in progress with the hope that evidence may eventually be discovered that may lead to the apprehension and punishment of the murderers of the late William H. McSwiggin."

The grand jury made no mention of any alliance between crime and politics, which made the existence and operation of gangs possible. Their findings as to the causes of crime follow:

"It appears to us that the causes for the gang may be summarized as follows:

1. Profits obtainable from illegal traffic in beer and alcohol;
2. The ease with which deadly weapons are obtainable at small cost, and the light penalties for their possession;
3. Wide-spread violation of the Volstead Act.

"On the whole, a review of the years past gives no special occasion for alarm at the present moment. Crime, in volume and type, wheels and rotates in cycles. In the last thirty or forty years there have been periodical outbursts of gang activities in the criminal groups. The one through which we are now passing has been peculiarly vicious and has produced many murders by gangsters because the stakes played for have been great. Gang after gang has been wiped out by internecine warfare. Remnants of gangs have fled the city and the situation is well enough in hand to encourage the hope that there will be no outbreak on any such scale as in the recent past."

6. The Federal Grand Jury Indicts Capone and the O'Donnells.

While State's Attorney Crowe's grand jury was in session, primarily to consider the solution of the McSwiggin mystery, a Federal Grand Jury was busy investigating prohibition violations, with possible bearings on the murders of Duffy, Doherty and McSwiggin. United States District Attorney Edwin A. Olson, in charge of this Federal Grand Jury, was of the Deneen faction. Chief Svoboda, of the Cicero police, and Joseph Klenha, president of the village board, were summoned to appear.

Federal agents had seized a stock of beer samples stored in the basement of the Cicero City Hall. It had been reported that immediately after the triple slaying, Cicero policemen had visited every saloon in the village and collected beer samples. According to the information given the Government on May 22, the police had told the saloon owners:

"There is going to be a big investigation. Don't tell anybody anything. If you open your faces, these samples go to the prohibition office and your prosecution under federal statutes is certain."

The Federal Grand Jury, on May 27, returned two indictments, naming the leaders of the two rival beer gangs, the Capone gang and the O'Don-

nells, charging conspiracy to violate the prohibition law. Those in the Capone gang who were indicted were: Al Capone, Ralph, his brother, Frank Smith, Charles Fischetti and Peter Payette. The O'Donnell gangsters named were: William (Klondike), Myles, and Barnard O'Donnell, and Harry Madigan, the owner of the saloon where McSwiggin and his companions were killed.

On July 28, Capone surrendered voluntarily to Federal agents. He was released on bonds and now, two and one-half years later, the Federal indictments against Capone and the O'Donnells are still pending.

7. The Second, Third, and Fourth Special Grand Juries Investigate Vote Frauds.

The public disgust with the work of the first special grand jury, the caustic editorial comment of newspapers, and the continued public fury about the murder served as a threat that civic leaders might now grasp the opportunity for an inquiry independent of the state's attorney. Immediately, upon the expiration of the first grand jury on June 4, Mr. Crowe petitioned Chief Justice Lynch to impanel a second special grand jury to investigate vote frauds in the April primary. A petition had been filed by Municipal Judge Daniel B. Trude (a Deneen adherent and opponent of Joseph P. Savage of the Crowe-Barrett faction in the primaries of the previous April 13) with Judge McKinley of the Superior Court, asking for a recount of the primary election ballots. He charged that Savage, a special protege of Crowe and one of his assistants, had been nominated for County Judge by means of fraud and intimidation.

Mr. Crowe's move for a second special grand jury to take up vote frauds and further inquire into the McSwiggin case again forestalled the possibility of an independent investigation of the McSwiggin murder and of election frauds as well. Judge Lynch appointed former Judge Charles A. McDonald, vice-president of the Foreman Trust & Savings Bank, with full power of state's attorney and, it was said, without consultation with Mr. Crowe. The second special grand jury investigation rapidly came to an impasse under the leadership of McDonald. It went out of existence[1] July 4 and a new grand jury was impaneled at the request of special State's Attorney McDonald to investigate vote frauds.

The most sensational events in the life of the third grand jury were: (1) the report that Edward Moore, precinct committeeman of the thirteenth ward and purchasing agent of the Sanitary District, was present when the McSwiggin shooting occurred. He was brought before the grand jury and denied that he had been present. (2) The surrender of Capone to Federal officers at an appointed place on the Illinois-Indiana state line on July 29. His testimony follows:

"I'm no 'squawker' but I'll tell you what I know about this case. All I ask is a chance to prove that I had nothing to do with the killing of my friend McSwiggin.

"Just ten days before he was killed I talked with McSwiggin. There were friends of mine with me. If we had wanted to kill him,

[1] The life of a special grand jury is one month, after which another must be selected if the investigation under way is to be continued.

we could have done it then and nobody would have known. But we didn't want to; we never wanted to.

"Doherty and Duffy were my friends too. I wasn't out to get them. Why, I used to lend Doherty money. I wasn't in the beer 'racket' and didn't care where they sold. Just a few days before that shooting, my brother Ralph and Doherty and the O'Donnells were at a party together."

Capone declared that he left Chicago after the murder because he feared the "cops" would shoot him on sight. He said he had been in Chicago until a month before he had surrendered; but he added that at all times he had been in touch with his friends, waiting for word for the proper time to come back. Like the O'Donnells, Capone was not captured but returned, as it appeared, at his own convenience.

He was officially exonerated of any complicity in the murders, on July 29, and dismissed by Chief Justice Lynch when Assistant State's Attorney Gorman withdrew the charge. Gorman declared that the warrant charging Capone with the murders was issued on hearsay evidence and that the police had no legal evidence for the charge. He was re-arrested on a charge of conspiracy in connection with election frauds, only to be discharged when all the indictments for election frauds voted by these special grand juries were cancelled because the primary law was declared unconstitutional by the Supreme Court.

A fourth grand jury was impaneled in August. Some new testimony was introduced on August 3 by two sixteen year old Cicero boys who were playing near the scene of the killing. They ran to the scene and saw two men come out of the saloon from which the two victims had just emerged. This was contradictory to previous testimony that there was no one in the saloon at the time of the shooting and that no one came out. Harry Madigan, the owner of the saloon, and Michael Wendle were recalled to the stand, but their testimony was not divulged.

The bartender of Madigan's saloon testified that McSwiggin and his two companions were in the saloon and that two strangers in overalls came in at the same time. They did not do the shooting but they picked up the bodies. A Capone gangster, Will Heeney, was picked up. He established an alibi and was released after a three-hour grilling. Edward Moore, Crowe-Barrett committeeman, already mentioned, was again called to the stand and again denied that he was present at the shooting. Others, like Joseph Klenze, were arrested merely because they were Capone gangsters, and were released on habeas corpus petitions presented by Capone's lawyers.

The interlocking interests of gambling, bootlegging, vice and politics were exposed to the grand jury when cancelled checks were discovered which had passed between "racketeers" and public officials in Cicero. These checks were discovered in raids on "The Ship," "The Stockade," and "The Hawthorne Smoke Shop," gambling and vice dens owned by Capone. Through these checks Mr. McDonald learned that several years before, Capone had entered into an alliance with public officials which allowed him to operate with immunity. Among these checks were some from Louis La-Cava and Mondi, of the Capone gambling syndicate. The president of the

bank, Alfred Pinkert, testified that he knew neither the makers nor the receivers of the checks.

State's Attorney Crowe testified before the grand jury August 29, that he did not know who killed McSwiggin and substantiated his innocence of this knowledge by reminding the jury that he had offered a five thousand dollar reward for this information. He expressed the belief that the killings were committed by gunmen imported from either New York or Detroit, and that, in fact, most of the gang murders had been committed by imported gunmen.

On August 5, Judge McDonald ordered the opening of the Cicero ballot boxes in the hope that some clues would be found there. Mr. McDonald said:

> "Judges and clerks may be compelled to testify against bosses to save themselves from jail. If we can get them to talking about election crookedness, we will get them talking about the spoils of election. If, as we believe, the stakes in that election were beer privileges, we may be able to prove it. If we can prove that, we can create a situation in which many will be willing to tell on each other to save themselves. And if the underlings ever start confessing we may get the murderers of McSwiggin."

On August 25, the fourth grand jury announced the voting of twenty indictments, involving forty election judges and clerks of the forty-second ward.

The fourth grand jury was side-tracked into the hearing of evidence on the murder of "Mitters" Foley by Joe Saltis and "Lefty" Koncil, as an incident of the beer war. This grand jury indicted them; they were tried in the criminal court; two eye-witnesses identified them; and the trial jury acquitted them. Intimidation of witnesses was assigned as the reason for the acquittal in the report of the special prosecutor.[1]

The fifth special grand jury was impaneled immediately after the fourth jury was automatically disbanded on September 2. In making his request for a new special grand jury, McDonald told the court that he was then

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[1] Final report of Charles A. McDonald, special prosecutor:

"A number of unusual and significant circumstances arose both prior to and during the progress of the trial against the said Saltis and Koncil.

"Prior to the trial two of the state's important witnesses disappeared, the immediate members of their families either refusing or being unable to give any information or clue as to their whereabouts.

"After the selection of the jury and the introduction of some of the state's evidence, one of the jurors selected to try the case became violently insane, necessitating the discharge of the entire jury and the selection of another in its stead.

"During the progress of the trial and immediately after the selection of the first jury, one Hymie Weiss, a notorious character in this community, was murdered in North State Street, a short distance from the Criminal Court Building where this trial was in progress. One of the counsel for the defendants, who had just left the court room, was also shot and wounded at the same time and place. In the possession of the said Hymie Weiss was found a list of the jurors selected to try the case, as well as the identical copy of the list of the state's witnesses that had been furnished counsel for the defendants by order of court.

"In addition to these significant facts, certain of the state's witnesses testified to having been threatened with violence in the event they testified against the defendants, and of having been approached with offers of bribery for either withholding their testimony or testifying falsely."

in a position to know who was responsible for the murder of McSwiggin. The evidence was not at hand, but obtainable. With reluctance Judge Lynch ordered the impaneling of a fifth special grand jury. Judge William J. Lindsay succeeded Thomas Lynch as Chief Justice who swore in the fifth jury, instructing it to give its entire attention to the unsolved murder. The jury adjourned immediately, subject to recall as soon as McDonald and his assistants should find any evidence. It was reported two new clues were discovered and two new witnesses, one a woman, whose identities were kept secret. Mr. McDonald said:

> "It is necessary to keep the names of these witnesses secret. The moment any of the witnesses learn that they are wanted they disappear, or are even killed."

Sergeant Anthony McSwiggin, of the Police Department, father of the murdered William, named four notorious gunmen as the slayers of his son:

> "Scarface" Al Capone, underworld boss of Cicero;
> Frank Rio, one of the bodyguard of Capone;
> Frank Diamond, Capone gunman;
> Bob McCullough, suburban beer runner.

He insisted that he had positive inside information, which he had given to the proper authorities. He named Edward Moore and Willie Heeney as material witnesses. He charged that these men had flashed the information to Capone that McSwiggin, Duffy and Doherty were in Cicero just prior to the killing. Prosecutor McDonald said:

> "I know who killed McSwiggin, but I want to know it legally and be able to present it conclusively. Neither Sergeant McSwiggin nor anyone else has at any time given me or my assistants the name of any one witness who would appear before the grand jury and identify Al Capone or any other person as the murderer.
>
> "When the suspect Heeney gave himself up recently, he was questioned in the presence of Matthew Zimmer, Deputy Superintendent of Police, Chief William Shoemaker, Sergeant McSwiggin, Mr. O'Brien, Attorney Lloyd Heth and myself. All present, including McSwiggin, agreed that no information sufficient to book Heeney on a criminal charge or to present to the grand jury was obtained from him.
>
> "Moore was called before the grand jury, signed an immunity waiver, and testified fully as to his whereabouts the entire day and night of the murder, and gave the names of the people with whom he spent the evening. Moore's statement that he was in a public downtown restaurant at the time was verified by investigation."

The fifth grand jury has never met since that first day. All of the primary election fraud indictments voted by McDonald's grand juries were nullified by the decision of the Supreme Court holding the Primary Act unconstitutional.

8. Organized Crime and the Paralysis of Justice.

While the coroner's jury and six grand juries did not obtain the legal evidence to prove who killed McSwiggin, the McSwiggin case marks the beginning of intense public interest in organized crime.

The McSwiggin Assassination as a Typical Incident

The theories of the killing of McSwiggin, presented by public officials to the newspapers, revealed conditions as they were in Chicago. All the theories in some way or other involved gang war over beer. The most persistent theory was that the O'Donnell-Capone beer war was the motive. The list of principal witnesses summoned by the special grand juries, the coroner's jury, and the Federal Grand Jury would suggest that was the underlying theory of all of the juries. The election fraud theories also involved gang war, with the gangs reaching out for beer privileges as the stakes of the election. To an interviewer Capone countered the accusation that he had killed McSwiggin with: "I paid McSwiggin and I paid him plenty. I got what I was paying for." He intended to disprove any motive in the killing, but he admitted the payment of graft.

The cardinal feature of the rule of organized crime, the paralysis of justice, was expressed in the report of the first grand jury:

> "A conspiracy of silence among gangs and intimidation by threats to murder witnesses make it almost impossible to solve the killing of gangsters by their rivals and of innocent bystanders."

After conducting five grand juries, all struggling to clear the McSwiggin murder, McDonald said:

> "It is necessary to keep the names of these witnesses secret. The moment any of the witnesses learn that they are wanted, they disappear, or are even killed."

The courts had to release the principal witnesses on habeas corpus because neither the police nor the prosecutors could make them talk. Prosecutor McDonald had to admit: "I know who killed McSwiggin, but I want to know it legally and be able to present it conclusively."

While the prosecution of Joe Saltis was denounced by the press as an evasion, it illustrated to Special Prosecutor McDonald, to the grand jury, and to the public, that even if the evidence is obtained, at whatever cost, against a gangster chief, even when there are witnesses brave enough to identify him as the murderer, in court, the prosecution fails because the trial jury in the criminal court is manipulated by the gang.

9. Conclusion. The killing of McSwiggin dramatized to the public the relation between criminal gangs and the political machine. It is true that the coroner's jury and six grand juries were of no avail in solving the murder of an assistant state's attorney and his two gangster companions, but their findings did convince the public of the existence and power of organized crime—a power due in large part to its unholy alliance with politics. The very failure of the grand juries in solving the mystery of McSwiggin's death raised many puzzling and disturbing questions in the minds of intelligent citizens about the reasons for the breakdown of constituted government in Chicago and Cook County and its seeming helplessness when pitted against the forces of organized crime.

It is with these underlying questions that the present report deals. Any adequate program for dealing with organized crime in Chicago must be based on a thorough understanding of the origins and development of criminal gangs and with their organization, activities and political alliances.

CHAPTER XVIII

THE EXPLOITATION OF PROSTITUTION

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CHAPTER XVIII

THE EXPLOITATION OF PROSTITUTION

1. *Organized Vice: The 1910 Committee of Fifteen.*

The killing of McSwiggin in 1926 focused attention upon Al Capone as the gang chieftain at war for the overlordship of gangs in Chicago. The grand jury investigations, futile as they were in determining the murderers of McSwiggin and why he was killed, disclosed the sinister power of criminal gangs. The constituted authority of organized government seemed thwarted or manipulated by the invisible hand of the gang, deciding the election of officials and even thwarting the functions of the police and courts. Later events served only the more completely to demonstrate the power of organized crime.

This condition gives rise to the following queries:

1. How has organized crime reached its present position of power?
2. How has organized crime persisted in spite of successive drives against it by all law enforcing agencies?
3. What is the basis of the influence of gangs that enables them to resist, defy, control or evade constituted authority?

These can only be answered by an historical survey of origins and growth of organized crime. For example, the power of Al Capone cannot be understood without the knowledge that he was a lieutenant of Colosimo in the Twenty-second Street levee district and later a lieutenant of Torrio, the beer baron.

Organized crime is not, as many think, a recent phenomenon in Chicago. A study of vice, crime and gambling during the last twenty-five years shows the existence of crime and vice gangs during that period and how they have become more and more highly organized and powerful.

A score of years ago Clifford Roe, a prosecuting attorney, revealed a system of procuring and transporting girls for the Van Bener and Colosimo syndicates of the south side levee, operating between New York, Milwaukee, St. Louis, and Chicago. John Torrio, manager of "The Saratoga," and Sam Hare, manager of "The Victoria," both Colosimo dives, were arrested with Van Bener. The latter was later convicted under the White Slave Act, but the evidence was not strong enough to convict Torrio and Hare.

During Torrio's meteoric rise to overlordship of vice, booze and gambling, culminating in his retirement as a reputed millionaire, many myths about him have been current. It seems that he was brought from the Five-Point Gang of New York as bodyguard to Colosimo in 1918, when the levee king was threatened by "blackhanders." Al Capone, also known as Al Brown, like Torrio, is a Five-Pointer from New York, brought here as gunman bodyguard to Colosimo just prior to the latter's death. Legend makes him a hero of the Lost Battalion of the 77th Regiment in the World War, where, it is asserted, he earned the round scars on his left cheek. His history in the underworld, however, reveals him as a manager of Colosimo houses in

the south side levee, where in a knife fight he gained the scars which gave him the sobriquet of "Scarface Al." Capone became senior lieutenant to Torrio upon the death of Colosimo, and with Torrio rose to the position of contender for the overlordship of the underworld of Chicago.

The resistance of vice to governmental control, the internal organization of gangs required in conducting large scale, illegitimate business, and the persistence of these leaders through years of gang war and prosecution, is most clearly revealed in the history of the south side rings, the school in which both Torrio and Capone were trained for their leadership for at least twenty years.

Through the agitation of the local Federated Council of Churches and other citizens' organizations, Chicago became conscious of the flagrancy of its vice during the first decade of this century. In 1909 these forces succeeded, by agreement with its sponsors, in suppressing the New Year's ball of the First Ward. This was the annual underworld orgy, given by Alderman Michael Kenna (Hinky Dink) and Alderman John Coughlin (Bathhouse John), bosses of the First Ward, for the purpose of retaining control of prostitutes and criminals of the First Ward Levee[1] for political purposes and for political funds.

In 1910 the agitation against the segregated vice district led Mayor Fred A. Busse (Republican) to appoint the first Committee of Fifteen to study vice conditions and to recommend a plan of action for dealing with the levee. This committee, the predecessor of the present Committee of Fifteen, composed of ministers, physicians, students of social conditions, lawyers, and business men, recommended the abolition of the segregated vice district. During the Busse administration the south side vice levee was subjected to many raids, which, according to the newspapers of that day, only proved the futility of raids; but on the west side, "Mike de Pike" Heitler,[2] levee king, built up an organization.

In 1911, Harrison (Democrat) was reelected for a fifth term, succeeding Mayor Busse. Very soon thereafter, John E. Wayman (Republican), state's attorney, began grand jury investigations into the south side vice trust. Mayor Harrison temporarily closed some of the trust houses of the Twenty-second Street levee. When the indictments against members of this trust were invalidated, because the grand jury had listened to evidence other than that submitted in the grand jury room, reformers openly doubted the sincerity of Wayman's prosecution. Wayman ordered a sudden abolition of the segregated area, sent detectives in to make wholesale raids, which threw the levee into confusion. They were accustomed to police raids, but raids from the prosecutor's office baffled them. As a counter attack, the levee bosses ordered a veritable horde of women, some in silks and plumes and others in kimonos and walking skirts, to go to the residence districts and ring every door bell and apply for lodgings. The parade attracted a mob of followers. They rang every bell and were turned down at every door. With the levee closed, they presented a distressing problem. Even Dean Sumner, of the

[1] A term commonly applied to river ward districts.
[2] One of the persons charged by a 1928 special grand jury with election day violence and bloodshed.

Committee of Fifteen, had to admit that sudden abolition was a mistake. The vice trust had, for the moment, checked the anti-vice campaign.

An article by Miss Kate J. Adams on October 29, 1912, after a visit to the levee for the purpose of rechecking the dives of the syndicate, after years of experience with them, gives a list of the south side vice trust of that day. The same group had persisted for many years, and all the living members are in illegitimate business today:

> *James Colosimo,* since deceased, was "king" as he had been for some time during the earlier Harrison administrations and during the Busse administration. He owned a dive at Armour Avenue and West Twenty-first Street, a combination saloon and house of prostitution.
>
> *Ike Bloom* and *Solly Friedman* owned Freiberg's, as they had for nine years previously and for many years later, under the name of "The Vienna" and "The Midnight Frolics." Lately his name has been associated with "The Plantation," a black-and-tan cabaret.
>
> *Jakie Adler* and *Harry Hopkins* were owning and managing the "Silver Dollar Saloon," a resort on South Dearborn Street between Twentieth and Twenty-first Streets. Adler is known today for his activities in syndicated vice and gambling and beer gang feuds and as an associate of Al Capone. As this is written he is managing "The Midnight Frolics."
>
> *"Jew Kid" Grabiner* was an active owner and manager of vice and gambling resorts in the "trust" as he is today.
>
> *Harry Cusick* and *Jack Cusick* were as active in the trust's vice resorts as they are today. Harry Cusick has been known lately as a keeper of roadhouse dives. He and his wife were later convicted of pandering and sentenced to the penitentiary, but were pardoned by Governor Small before they began to serve time. Lately, Harry and Jack Cusick have been partners of Al Capone in Cicero gambling and vice. Jack Cusick, during the recent absences of Al Capone, has been the reputed manager of his affairs.
>
> *"Dago" Frank Lewis* ran one of the "trust joints" then and is known today as a member of the gambling and vice syndicate.

Other notables of the Colosimo vice syndicate were:

> *Andy Craig,* divekeeper and bondsman, who had risen from a clumsy pickpocket to the head of the "Pickpockets' Trust," and was once important enough in politics to have his picture removed from the rogues' gallery, where, in addition to pickpocketing and dive-keeping, his record was not untainted with robbery.
>
> *John Torrio,* then young and a manager of one of Colosimo's dives, has since risen to overlordship in the beer "racket" and retired wealthy, leaving Al Capone as his successor.
>
> *Sam Hare,* lately a roadhouse and gambling "joint" owner; Ed Weiss and Louie Weiss; Ed Little; Roy Jones; Bob Gray; and John Gordon.

The ownership of two hundred better known houses of the district was reputed to this trust by Miss Adams, who made this comment:

> "The trust collects from each of the houses and pays for arrangements with the police and for political contributions. It regulates competition. The famous Everleigh Club was closed because it was a rival of

> Freiberg's of the trust. After the closing, Freiberg's quadrupled its business. The houses are required to patronize certain grocery stores in the immediate vicinity, to take out all their insurance in a company represented by a powerful politician. Three doctors are especially endorsed by the trust. Cab drivers receive a percentage on money spent by customers they bring to a house."

Miss Adams' estimate was about two hundred cadets in South Dearborn Street and Armour Avenue between Eighteenth and Twenty-second Streets, shortly before the clean-up by Wayman. Among these cadets were gunmen, pickpockets and criminals. The keeper of the house got one-third of the girl's fees and the cadet often got the rest.

2. The Morals Squad of 1913.

The Wayman "drive" produced some results. Inspector Edward McCann was convicted of bribe taking from resort keepers and was sentenced to Joliet. Inspector John Wheeler and Lieutenant John R. Bonfield were suspended after a trial, on vice graft charges, before the police trial board, and Chief of Police McWeeney was removed from office on November 3, 1913, by Mayor Harrison, because he had failed to close notorious dives. He was succeeded by James Gleason. A state vice commission, under Lieutenant-Governor Barrett O'Hara, was set to investigating the white slave traffic in Chicago, and it made further discoveries of police graft. The Business Men's Morals Committee was complaining bitterly about the invasion of residential neighborhoods by vice.

Mayor Harrison then created the office of Second Deputy Police Commissioner in 1912 and appointed Major Funkhouser, who assumed his duties in March, 1913, with the announced intention of divorcing the police from politics. Major Funkhouser was empowered to investigate vice conditions and prosecute as a civilian, independently of the chief of police. He appointed W. C. Dannenberg as morals inspector and chief of the morals squad. In November, 1913, in spite of Wayman's raids, in spite of the removal of Chief McWeeney and the appointment of Chief Gleason, the south side levee was opened and its vice houses were running full blast.

Second Deputy Dannenberg's warfare on vice caused the Twenty-second Street Levee to organize for aggressive defense. They developed a system of cadet informers that kept the disgruntled divekeepers advised of the movements of the morals squad men. Within a year they threatened Dannenberg's life. Through an ex-policeman they tried to bribe him. His exposure of the offer ($2,200 per month) for the protection of the Twenty-second Street Levee alone, gave evidence of the profitableness to the police of the old segregated district.

Funkhouser's fight on protected vice reached an acute stage in April, 1914, when an investigator attached to his staff was beset by levee gangsters and knifed.[1]

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[1] A contemporary news account described the incident:

"The assault occurred immediately after Dannenberg had brought charges against certain policemen for protecting resorts in the south side levee. He was at the same time trying to get evidence in the murder of a man named Henagow in Roy Jones' saloon at 2037 South Wabash, one of the syndicate resorts. By the aid of the regular police, Jones had succeeded in hushing up the murder for several hours. Roy Jones' cafe, where

At this time reformers and the press were expressing their satisfaction with the effectiveness of the morals squad against the Twenty-second Street Levee. Some saloons and houses had been closed, action was begun against big property owners in the vice district, and special attention was being given to the spread of vice into residential areas. It seemed that the trust was actually losing its fight.

On the evening of July 15, 1914, occurred a second murder, this time a sergeant of the morals squad. A gang of levee hoodlums centered around two morals squad policemen, shouting derision and threats and making menacing gestures. A volley of revolver shots followed. When the smoke had cleared away and other policemen ran up to investigate, they found Stanley Birns, one of the detective sergeants dead, shot through the heart; the other was taken to the hospital with a bullet wound in one leg. At the coroner's inquest the levee characters tried to explain away the killing on the theory of jealousy between Funkhouser's men and the regular police. Major Funkhouser testified at the inquest:

> "The rulers of the district have threatened to 'get my men' time and time again, so last night they followed two of my men after a raid and threw bricks at them. The other two detectives ran up to see my men draw their guns and the fight was on." [1]

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the tragedy occurred, was one of the most notorious resorts in the levee district. Its license had been revoked and restored by Mayor Harrison. Edwin Sims, then United States District Attorney, and Shelby Singleton, Secretary of the Chicago Citizens' Association, demanded of Chief Gleason the reason why gunmen and other vicious characters were not driven from the city instead of being afforded police protection. The attack upon Dannenberg's man was a warning to Funkhouser and the officers of the Morals Division."

[1] The *Tribune* of July 18, 1914, in explaining the motive for the shooting of Birns, gives a complete description of the combination between politics and the vice trust which paralyzed the police and which emboldened the levee bosses to resort to murder in their fight against the new Morals Division. The new Morals Division was actually effective and was exposing the paralysis of Captain Ryan's men:

"There are three reasons why the tragedy of the levee could not have been avoided. First, is Alderman 'Hinky Dink' Kenna . . . who is the boss and absolute overlord of the First Ward. The levee exists because it is by the denizens of the levee that he rolls up the voting power which causes such men as Carter Harrison and Roger Sullivan to consult with him as a political peer, and County Judge Owens to have him as a trimmer.

"Second, is 'Bath-house' John Coughlin, the junior partner of the 'Hink' in representing the First Ward in the City Council. The 'Bath' is powerful by the reflected glory of the 'Hink,' who can make or unmake him. But he is useful to the more delicate Mike Kenna in that he is willing to rub elbows with that powerful source of votes and revenue—the red-light district. It is the common suspicion of almost everyone who keeps in touch with civic affairs that the 'Bath' is the real man behind Freiberg's Dance Hall, although Ike Bloom is the ostensible proprietor and manager. It is Freiberg's that goes on undisturbed when raids are made all about the district.

"Third, is Captain Michael Ryan of the Twenty-second Street Police Station. He is the Chief of Police of the First Ward. The 'Hink' put him there. The 'Hink' and the 'Bath' keep him there. He has been denounced as either notoriously corrupt or incompetent. But Funkhouser, Dannenberg, Gleason, and Hoyne, himself, cannot budge Ryan from that station. They have all tried and failed.

"When State's Attorney Wayman closed the levee, there was one set of dividing lines he could not touch. They were the lines marking out the police district. They are there now and the district is as much segregated as it ever was. Within this district Captain Ryan's instructions to his subordinates are their only instructions—they are the instructions carried out. Chief Gleason and First Deputy Schuettler may send the Funkhouser squads and the Dannenberg squads down into the district to make raids, but they cannot force Ryan to make raids. And no matter how many raids they make and

Maclay Hoyne, a Democrat, as was also Mayor Harrison, came into office December 1, 1912, announcing a policy of non-interference with conditions which he considered strictly the duty of the police to suppress or regulate. After the knifing of a morals detective and the shooting of Detective Birns two years later, he reversed his policy and began a grand jury investigation, exposing the relations between the vice ring and the political working crew of the First Ward.

Hoyne revealed an astonishing array of precinct committeemen and captains of the First Ward holding jobs as bailiffs, jail guards, and as minute clerks, as well as in other capacities in the courts, the sheriff's office, the county treasurer's office, the county jail and the Bridewell—especially in positions where they can be of help to the "boys" when they get into trouble. Some of the political lieutenants maintained only "suitcase residence" in the ward and lived in good residence sections. Some of them were located in public offices where they were in a position to inform the divekeepers of projected action. Minna Everleigh, one of the notorious Everleigh sisters, whose place had been closed in order to favor Freiberg's, testified that she had paid over one hundred thousand dollars to the vice lords in her day, and that she had contributed three thousand dollars to the Kenna-Coughlin fund, used to defeat the bill in the legislature forbidding the sale of liquor in disorderly houses. She also told of a hushed up murder in Weiss's saloon.

Hoyne found that "three rings are ruling in the south side levee, which have been collecting money from the little fellows and splitting it with the police and politicians." The first and largest of these rings was the Colosimo-Torrio outfit. At the head were "Big Jim" Colosimo, the "brains," and his friend and clerk, John Torrio. Colosimo ostensibly ran a restaurant and never needed to leave it because Torrio did all the outside work. Working with this gang was Maurice Van Bener (convicted by the federal authorities in 1909 under the White Slave Act). Since 1909 Torrio had advanced from the position of the minor divekeeper to first lieutenant of Colosimo. Julius and Charlie Maibaum headed one of the other rings, and the Marshall Brothers bossed the third. Ed Weiss had gone in with Maibaums. Jakie Adler and Harry Hopkins were operating still other places in the Maibaum syndicate. Jakie Wolfsohn was with the Maibaums also, in charge of "Buxbaum's." Harry Cusick and Grabiner, with Judy Williams, John Gordon and the Rothschilds, chose to be independent of the three syndicates. Each of these syndicates operated a string of saloons in the proximity of,

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how they show Ryan up, he is still on the job, in complete control of his precinct lines. . . . In other cities the one 'ring' has been found to be a clique of gambling kings who ruled the situation; in Chicago the 'ring' is extended to the formation of a complete wheel.

"Ryan is the hub. His plain clothes policemen, his confidential men, are the spokes, and sections of the rim are the 'Big Four' or the 'Big Five' as conditions happen to be at the time, the dive owners and keepers controlling strings of saloons and resorts that travel along without interruption.

"But more important than any or all of these parts—the one thing without which the wheel could not revolve—is the axle, and this axle is the 'little fellow' to every denizen of the district, or 'Hinky Dink.' Men in uniform in Ryan's district are told to keep their eyes straight ahead, ignoring what is going on behind doors and windows, and watching only for disturbances on the street. They are told to do police duty as if the social evil did not exist around them."

or connected by passages with, clandestine flats and houses of prostitution. The names of their saloons and addresses would show that, with slight changes of ownership among the old owners, the same places are running at this time after much the same fashion they have always been run.

Jakie Adler and Maurice Van Bener, on July 23, 1914, were taken into custody by the state's attorney's men, in preparation for indictments against them as participants in the levee plot to rid the district of Dannenberg's raiders. Adler was said to know all the facts about the gunmen and the shooting.

For the first time in his entire career "Big Jim" Colosimo was locked behind the bars in a police station for half a day. With him was his brother-in-law, Joseph Moresco. State's Attorney Hoyne had believed them to be the ringleaders in the gunmen's plot to assassinate Dannenberg, the morals inspector, which ended in the killing of Sergeant Birns of the police force, and had them arrested.

While gang murders were fewer at that time than today, the prosecution of these cases against the leaders of organized crime followed the same patterns and produced the same results. No one was convicted or punished. The prosecution for the murder of Detective Birns failed because Colosimo, Moresco, Adler, Van Bener, and Roxie Vanilli who was supposed to have fired the shot, would not testify. No indictments were returned. The prosecution of Franche, alias "Duffy, the Goat," for the murder of Henagow in the ring-controlled saloon of Roy Jones, ended like the Joe Saltis case and the "Lefty" Lewis case of recent months. Franche was first tried and sentenced to hang. "Little slips in the defense and technical omissions," the court held in granting a new trial, "operated to the disadvantage of the defense." It was a blow to the prosecution, because witnesses had to be brought from "all ends of the continent." Upon the second trial, the defendant was acquitted on the ground of self-defense, even though witnesses testified that his victim had his arms straight down at his side when Franche shot him through the heart.

Three temporary victories were scored for the reform:

(a) The *Examiner* announced that Coughlin and Kenna had been read out of the Democratic party; *this was not for long.*

(b) On complaint of Harriet Vittum and other club women, Ike Bloom's license for Freiberg's was revoked; *it was reissued in a short time.*

(c) Captain Michael Ryan, whose power to protect the levee transcended any interference by police chiefs, was transferred out of the district and Captain Max Nootbaar succeeded him.

Immediately upon the arrival of Captain Nootbaar at his new post, Ike Bloom came in to make a deal. The captain refused his overtures and, enraged, removed Ike Bloom's picture which had been hanging in the squad room of the Twenty-second Street police station for many years.

3. The Thompson Administration, 1915. William Hale Thompson (Republican) was inaugurated as mayor on May 15, 1915, while Maclay Hoyne (Democrat) continued as state's attorney. Charles C. Healey was appointed chief of police on April 26, 1915, succeeding Gleason. Within the first year, Corporation Counsel

Ettelson handed down a liberal opinion with regard to the one o'clock closing law. Guests could remain as long as they liked, but resorts were not permitted to sell drinks to them after one o'clock. Under this interpretation the owners considered the "lid off" the one o'clock closing law. Ike Bloom's license for Freiberg's was reissued to him via the Hop Ling Company, a dummy. Weiss's Bristol Cafe in Englewood was closed on December 30, and opened on January 13, 1916—the license was revoked and restored within two weeks. The license of the Blue Ribbon Cafe was revoked. Jones' place was running. To the outside observer, the standard upon which these revocations and restorations were based would seem dubious.[1]

At the same time that vice was masquerading behind cabarets, dancing clubs and "Loop" hotels, it was spreading farther south than the old Twenty-second Street Levee. Complainants of Chief Healey and Captain W. P. O'Brien of the Cottage Grove Avenue station brought the information that Thirty-first and Thirty-fifth Streets were nearly as lively as Twenty-second Street ever dared to be. Saloons were confined to Cottage Grove, Indiana Avenue, Thirty-first and Thirty-fifth Streets, while buffet flats flourished in many blocks between State Street and the lake and Twenty-second and Fifty-first Streets. A colored official in court said, "Theoretically, there is no segregated vice district in Chicago. There is a segregated district in the 'black belt' which is a menace to all respectable Negroes in the locality. The scum of Chicago's white population infests the district to consort with negro women, who are dominated by white libertines."

Citizens and policemen of the Stanton Avenue district agreed to cooperate to stop the transplanting of the First Ward red-light district to the Second Ward. Captain Ryan told this joint group of police and citizens that Grand Boulevard between Thirty-fifth and Thirty-ninth Streets was more troublesome than any other section; that a sergeant in a vice squad and a morals inspector were threatened with death, and Captain Ryan himself had received warnings. It became known that an overlord of the First Ward Levee was "fixer" in the new tenderloin and was settling with the people down town.

Henry M. Hyde in the *Tribune* of January 14, 1916, disclosed the scattering of the inmates of the old red-light district and the superficial change of the dives to all of the new forms. He stated that the scattering appeared greater because as the women moved into residential areas they were often

[1] In February, 1916, the *Herald and Examiner's* investigators made the following observations:

"They say the levee is dead. Perhaps it is, but the ghost of the levee is stalking about the streets and alleys of the south side, manifesting unmistakable desires for resurrection. In the early morning hours, along Thirty-first Street near Indiana Avenue, Freiberg's, Buxbaum's, and the Bristol, three of the most notorious of rendezvous in Chicago's history, have been restored either to their original owners or figureheads clearly identified with them. . . .

"Thus we see the cabaret evil in sections of the city is the illegitimate heir to the old vice rule. People who prospered when practically licensed prostitution was permitted in Chicago, now find remuneration and familiar employment in some of the cabarets. Old foes reappear with new faces. Instead of the old segregated levee district, here is vice in all of the 'Loop' hotels and in many of the cabarets and dance halls. The girls and boys who were taught corruption in so-called restaurants are ruined just as thoroughly as were their predecessors in undisguised houses of prostitution."

made to move frequently, giving the impression of a much larger movement. Mr. Hyde disclosed *the earliest venture into suburban areas of members of the old Twenty-second Street Levee ring. These were the precursors, later to be followed by the Torrio-Capone vice, beer and gambling ring in Burnham, Cicero, Stickney, etc.*[1]

Samuel P. Thrasher, superintendent of the Committee of Fifteen, when asked in regard to the problem, stated: "All the old vice promoters who can get into the cabaret business are in it today and their cabarets are used as recruiting stations for the promotion of vice."

Mayor Thompson was making efforts to reduce the position of Second Deputy of Police, which Major Funkhouser held, to a point where it would be of little consequence. The *Daily News* and other newspapers contended for the maintenance of the office. A protest became city-wide among club women, civic leaders, and ministers.

In March, 1916, Francis D. Hanna, morals inspector, was discharged. Next came the withdrawal of patrolmen assigned to Major Funkhouser's

[1] "With the abolition of the red-light districts and the masquerading of vice in cabarets, hotels and dancing clubs, what has become of the former vice lords who ruled the levee? Kate Adams, in October, 1916, said that the 'vice trust' still lives and that its members today are in control of Chicago's vicious cabarets.

"Ike Bloom is still manager of Freiberg's dance hall and cabaret.

"The Colosimo restaurant and cabaret is conducted by Jim Colosimo, who owned and managed several resorts on the south side line. His chop suey restaurant and bar, with rooms above, was a second headquarters for the vice interests, Freiberg's being the first. His resort, over which Mrs. Colosimo resided, was 2106 Armour Avenue. He also owned and managed the 'Brighton' at 2000 Armour Avenue.

"Johnny Torrio, now with 'Jew Kid' Grabiner at the Speedway Inn, was interested with Joe Adduci in the resort at 113 West Nineteenth Street. Torrio and Adduci were known to the underworld as Colosimo's lieutenants. The Friars' Inn Cabaret is owned and managed by George Silver, whose license at the northeast corner of Randolph and Dearborn Streets was revoked because the place harbored immoral women. In the old levee days, he was interested in the 'Olympia' at Seventh Street and Wabash Avenue.

"The Fountain Inn Cabaret at Sixty-third Street and Halsted is conducted by Ed Weiss, and his nephew Louis. These men formerly operated the 'Capitol,' a saloon and resort at 132 West Twenty-second Street, and the old 'Buxbaum's' at Twenty-second and State, later known as the West Catering Co. It is persistently rumored, though vigorously denied by the Weisses, that they are the owners and silent managers of 'Canary Cottage' on Cottage Grove Avenue.

"The McGovern Brothers' Cabaret and resort at 666 North Clark Street has just been closed by an injunction obtained by the Committee of Fifteen. Formerly the McGoverns conducted a notorious place on North Clark Street, opposite the old American Theater. The Columbia Cafe and Cabaret, Ogden Avenue and Van Buren Street, is conducted by 'Dago' Frank Lewis, who was a leading light in the old vice ring. He managed a resort known as the Ivy Hotel, at 2000 South State Street. He also managed the 'Mint' at Twentieth and Armour. Jaky Adler, another member of the old vice trust, is in the cabaret business at Burnham. He has the 'State Line Bar and Cabaret' at 4 Goslin Street, and another place at 14 Goslin Street. In the old levee days he and Harry Hopkins conducted the 'Silver Dollar' at 2020 Dearborn Street.

"The Speedway Inn, 8 Goslin Street, Burnham, is managed by 'Jew Kid' Grabiner, who used to have a resort at 2106 Dearborn Street.

"Charlie West's cabaret at 539 South State Street is conducted in connection with the saloon at that number. In the past, evidence of commercialized vice has been found in this saloon.

"Dineen's cabaret, 518 South State Street, is managed by the same Dineen who conducted a notorious place at the corner of Harrison and State Streets some time ago. The Garden Cafe is managed by Jack Jordan, known in vice circles as the husband of Georgia Spencer. Georgia Spencer's resort was at 54 West Nineteenth Street, and Jordan had a saloon and resort at 2006 Wabash Avenue.

"The Cottage Buffet and Cabaret, 12 Goslin Street, Burnham, is managed by Joe De Frier, who, with Bob Gray, conducted a resort at 2106 Dearborn Street."

office. The expenses of investigators were cut by the comptroller, who said, "We are trying to make friends. We have to have friends if we are going to build up a machine." On March 22, 1916, Mr. Hanna handed the following report to Mayor Thompson:

1. There is not a uniform enforcement of the laws and ordinances relating to moral violations.
2. High grade houses of prostitution operate without police interference.
3. Prostitutes who get high prices are not arrested.
4. Most of the cases brought into the morals court are the cheap cases —the majority of them are poor negro women.
5. Experienced prostitutes ask for jury trials, thus getting away from the Morals Court, and when their cases are called in the Jury Court, waive a jury and take a bench trial. They are tried ex parte, do not appear in court, are represented by capable counsel, are never seen by a judge, are not vigorously prosecuted by the police, often are represented as first offenders, and escape with very low fines. A reasonable inference is that there is collusion between the police, bondsmen, lawyers and defendants.
6. Keepers of resorts, assignation hotels and rooming houses are vigorously prosecuted in some police precincts and in other precincts are never arrested.
7. There has never been a real clean-up of men who live from the proceeds earned for them by prostitutes.

Pressure was being brought to bear upon Chief Healey by the morals inspector, Mr. Funkhouser, and by Mrs. Merriam, and other reform leaders to investigate police graft. Chief Healey began an inquiry into graft charges and in a short time the state's attorney's office took charge of the inquiry. Disgruntled dive-keepers first exposed two petty politicians as collectors of graft money, who in turn exposed Paul Schoop. The latter turned state's evidence, and in a very short time Mr. Hoyne announced that he would ask indictments against certain political leaders and officers as the higher-ups in an almost city-wide vice graft ring. The mayor revoked the saloon license of Paul Schoop.

Hoyne's graft charges included vice, principally on the near north side. It occurred to investigators, therefore, to have a glance at the old south side levee which, it seemed, was prospering since Funkhouser's power had been shorn by withholding an adequate appropriation for his morals division. They found Colosimo at his old stand; "Dago" Frank Lewis on Twentieth Street; Ed and Louis Weiss on Twenty-second Street and Dearborn Street; the Marshall Brothers and Zellen on Twenty-second and State Streets; Ike Bloom was running Freiberg's under the name of "Old Vienna"; and so on down the line.

In the course of his investigation into collection rings, Hoyne looked into the Sportsmen's Club. He charged that dive-keepers, gamblers and saloon-keepers joined the club under promise of immunity from raids and prosecution for violating the law. Although the club had collected one hundred thousand dollars for life memberships, it had thirty judgments against it in the Municipal Court. "If the club could not pay its debts," Hoyne asked, "is it only a political gesture?"

Mayor Thompson started a graft investigation of his own through the Police Civil Service Commission, headed by Captain Coffin, which turned the glare of publicity away from Hoyne's activities.

Captain W. P. O'Brien of the south side "black belt" was suspended and turned state's witness in Hoyne's graft inquiry. The captain had written Chief Healey about a list of dives, which he now submitted to Hoyne, which were infested with prostitutes who carried on with riotous gayety at all hours of the night in the "black belt." He described the unspeakable conditions of immorality. Chief Healey had not replied. O'Brien had actually received orders from Chief Healey not to disturb certain dives because of their political influence. He further testified that Chief Healey had objected because certain captains were running to reform organizations. He said he wanted this stopped; that he did not care anything for reformers; that he was boss of the police department and proposed to be boss until the end of Thompson's term.

The outstanding feature of the entire affair seemed to be the unequal enforcement of the law—playing favorites with the rich cafe owners and those supported by powerful politicians. The small saloon-keeper could not get his license back if he did not pay $250 graft. Chief Healey was placed under arrest and released on $20,000 bonds signed by three powerful politicians.

In January, 1917, a notebook containing the names of shady hotels and the rates of weekly graft was found in the pocket of Lieutenant White of the Lake Street station by Hoyne investigators. The rates were $150, $75, $50 and $40 per week. Then there were pages devoted to a list of houses of ill fame, transient houses, gambling "joints," and Greek places. These items were indicated as "the chief's places." This graft went to the chief without a split. Other places were marked "three ways," which was said to mean that Costello, Skidmore and "Mike de Pike" Heitler were beneficiaries. There was another page devoted to saloons, showing that these bars could violate the one o'clock and Sunday closing laws if a certain sum of money was paid each week. On top of this list was another which was headed by this notation, "Can't be raided." This list included gambling houses, crap "joints," dives and shady hotels. There was another list headed, "Can be raided"; and this was taken to mean the places which had not "cashed in."

Other indictments voted were against Costello and "Mike de Pike" Heitler, his confederate as collector; Sergeants Walsh and Barry of Lake Street station; and Alderman Oscar de Priest of the "black belt." Senator John Broderick and William Skidmore (lately of the Berch, Moran, Zuta syndicate and the pickpockets' bondsmen) were mentioned in the testimony.

Prosecutor Hoyne, on October 18, 1917, made public a list of seventy-seven places on the south and west sides that were running at the time and most of which could be recognized as old dives.

Herman F. Schuettler was appointed chief on January 11, 1917, succeeding Healey, who was on trial. First Deputy of Police Westbrook submitted a list of one o'clock violators and dives to the chief of police, who passed it on to the mayor with a recommendation that licenses be revoked. Mayor Thompson promised to act and the cabaret owners started court pro-

ceedings to enjoin him from acting. The police, with the cooperation of reputable cabarets, promised a clean-up of the dive resorts.

The office of the second deputy had been made ineffective earlier in the Thompson administration by withholding the appropriation, by the removal of Hanna, and by the withdrawal of patrolmen assigned to duty in the morals division of the police department. In June, 1918, the Thompson administration determined to eliminate Major Funkhouser. Acting Chief of Police Alcock led the attack by calling in women of the old red-light district as witnesses. While Funkhouser and his assistant were on trial before the police trial board, the council finance committee stopped the appropriation entirely of Funkhouser's office and he was thus completely eliminated and the office abolished.

Hoyne's investigation of the police in October, 1919, was not the only one in progress. The Police Civil Service Commission, under Captain Coffin, brought charges against Captain Cronin and some of his subordinates for conditions in the Warren Avenue district. Coffin showed that many dives were open. Cronin, in his own defense, quoted a large list of raids he had made and the number of women arrested.

A new reorganization plan of the police was proposed with three deputy commissioners, north, south and west. Hoyne opposed this because it would sink the police department further into politics and because it legalized the wide practice of issuing police stars to private citizens. The Bill passed without the deputy commissioner and police star features, but the vital thing remained—the chief of police was given supreme power. Therefore, Chief Garrity, who had succeeded Schuettler on November 25, 1918, called his captains before him and told them that each one of them would be held responsible for crime and vice in his district.

4. *The Murder of Colosimo, 1920.*

The *Daily News* of May 12, 1920, carried the following:

"The murder of James Colosimo, vice lord on the south side since 1912, on May 11, 1920, marks the ending of one epoch and the beginning of another in the history of vice in Chicago. Ever since the ousting of Major Funkhouser as second deputy in 1918, and the perfecting of the Thompson-Lundin machine, things gradually began to pick up in the old Twenty-second Street district on the south side. The old levee never was dead; it was simply slumbering. With its awakening came the war for power—power to collect money from disorderly houses, to give jobs to henchmen, to gain immunity. For years First Ward politics had been ruled by a bipartisan agreement. Alderman Kenna, the boss of the ward, made Frank Brady the Republican leader of the district. Then Brady became one of the leaders of the City Hall organization and according to reports, decided some months ago to succeed Kenna as the real 'boss' of the ward. Labor complications, political complications, vice complications began to put 'pep' into Twenty-second Street. Eddie Coleman, right hand man of Brady, determined to control the handbooks of the Twenty-second Street district. Old-time followers of Kenna were put out of business and Coleman's men set up in business. Three weeks ago Eddie Coleman was murdered. This murder was seen as a political gesture.

"Italians form a large part of the First Ward voting population, and Colosimo and his lieutenants had controlled this vote for Alderman

Kenna for years. Brady and his aids saw the need of a rival organization among the Italians, it was said, and prepared to build up a new set of leaders. Several months ago new faces were seen along Twenty-second Street. Frank Chiaravalotti took over a cigar store and poolroom which had long been the principal hang-out of gunmen and other underworld characters. He was a relative by marriage of Colosimo and friendly with him, although they were political enemies. He became an intimate of "Big Tim" Murphy, Mike Carrozzo and others who aspired to political leadership under Brady. The murder of "Moss" Enright came along to complicate things politically. The men charged with this murder were Murphy, Carrozzo and Cosmana Chiaravalotti, and a defense fund of $35,000 was raised. Colosimo, recognizing race ties, became the custodian of the $35,000, which was to be used to save the men who were fighting him for political leadership among the Italians. It was rumored there were some difficulties about the defense fund of $35,000 and that Colosimo made several efforts to sidestep."

Another theory about the shooting of Colosimo was that it was his wife's revenge for casting her aside.

No one was prosecuted for the murder. Important witnesses were frigtened away; such Italians as would furnish information asked that their names be suppressed.

"The fortune of Jim Colosimo was difficult to locate; estimated at about one-half million dollars, only $40,000 in diamonds was found, and the dwindling of the fortune was ascribed to his paying tribute to the 'Black Hand.' "[1]

5. The Daily News Exposé, 1920.

As the fall elections in 1920 approached, the *Daily News* wanted to learn which of the two candidates, Michael J. Igoe, the Democrat, or Robert E. Crowe, the Republican, the vice districts supported. A reporter made a tour of inspection of the city's chief vice thoroughfares, beginning at the "Loop" and going south, west and north. He found Crowe's posters in the windows of all the notorious resorts in all parts of the city.

In his annual report of May 7, 1920, Mr. Thrasher, superintendent of the Committee of Fifteen, said:

"If corrupt politics would leave its hands off the police department and Chief Garrity were given a fair chance, I believe the department would function effectively."

An exposé by the *Daily News* of conditions in the "black belt" vice district in May, 1921, resulted in some raids by the police.

In his report of May, 1921, Mr. Thrasher said that vice was on the decrease in the city and commended State's Attorney Crowe and Chief of Police Fitzmorris. The report finds the injunction law effective:

"The injunction law is the most effective weapon that can be used against vice promotion. Owners do not want their property tied up for a year against its use for any purpose, nor do they want a record of an injunction against it, even though the injunction may be vacated by a bond conditioned that the owner will keep it free from immorality."

[1] *Daily News*, May 18, 1920.

In October, 1921, the *News* devoted many columns to an exposé of the vice conditions in the Eighteenth Ward on the west side. It pointed out that, fostered and protected by City Hall politicians, crooked policemen and police officials, Chicago's old west side levee district has been running wide open for many months. It estimated the amount collected in graft by the politicians at one million dollars and stated that a certain City Hall politician was so grasping that when a gambling house or resort became prosperous he demanded a half interest.

James K. Fleming, Lundin-Thompson ward committeeman, and Senator George Van Lent were the political powers in the Eighteenth Ward affairs. The former was head of the William Hale Thompson Eighteenth Ward Club. In this ward there were two separate graft rings, one in the Warren Avenue police district and one in the Des Plaines Street police district. The latter ring was headed by Izzy Rothchild, formerly of the Twenty-second Street Levee.

The familiarity of some of the names in this west side graft ring obviates any necessity for long explanation:

> *Jack Zuta* is still an overlord in the far west side, and in 1928 was of the faction of Berch, Moran and Zuta, with the Aiello brothers as armed forces fighting Lombardo and Capone for what seemed to be a city-wide vice and gambling syndicate;
>
> *Max Wagman,* who had done a "hitch" in Joliet as a fence for stolen goods, in 1921, is now back in the Zuta district running the Monroe Hotel and several other resorts on West Monroe Street near Kedzie;
>
> *"Dago" Frank Lewis* will be recognized readily as of the old levee district in Twenty-second Street.

The *Daily News* published an interview between an investigator who represented himself as an aspirant to the privilege of keeping a resort on the west side and Carasso, "Dago" Frank's partner, explained to him just how much he would have to pay the "coppers" and how much of that would go to the two leading politicians of the district and what the dues were to join the Political Club, which was really a protection ring. A list of large gambling houses, resorts and liquor selling cabarets of the Eighteenth Ward was included in this exposé. The list contains twenty-nine such places, all on the west side. The names of Zuta, Frankie Pope, Wagman, "Dago" Frank Lewis, Jack Lynch, one of the Marshalls, and others who were to figure in the gambling-bombing war of 1927, appear among resort keepers and gambling house keepers. Police raids followed this exposé and added new locations not listed; perhaps unprotected. The Cook County Grand Jury returned indictments against three shady hotel keepers on the west side, two Greeks and one Jew, whose names had never appeared before nor later in an underworld exposé.

In August, 1922, ten months after the *News* exposé, *Tribune* investigators found vice flourishing on the west side with hardly a door man to give them any difficulty. The *Tribune's* south side investigation found among many other hotels and resorts the "Four Deuces" on Wabash Avenue running on a large scale and wide open.

In December the *Daily News* resumed its exposé. The efforts were now devoted to the "black belt":

> "The lawless days of the famous 'red-light' district when the demi-monde and the professional gambler, under the appraising eye of the police, were once more restored in the south side negro belt, where Lundin-Thompson political followers were in absolute control."

The police could find the intruders very easily, but not the "joints" protected by Jackson. William Bass, Negro gambling king, operated several gambling houses in the neighborhood. Captain Enright was now in command in this police district and the *News* called it: "Without a doubt this district is the foulest spot in Chicago. Black and tan cabarets, buffet flats, soft drink saloons, and every form of vice are flourishing."

6. The Crowe Grand Jury Investigations, 1922.

In August, 1922, Dr. Bundesen began to quarantine with placards houses of prostitution where venereal disease had been found. The practice of sending diseased prostitutes for treatment to a hospital was considered a great improvement in the control of vice over the old method of arresting, releasing on bond, and fining, only to turn the infectious prostitutes out onto the streets to ply their trade.

In 1922 State's Attorney Robert E. Crowe broke with Mayor Thompson, offering as explanation the "moral issue":

> "On a moral issue as to whether I could protect the decent men, women and children of this county I was prepared not only to quit Mayor Thompson, but, by God, I was prepared to quit my wife on that issue. Any man that is interested in protected gambling and protected vice and protected prostitution I refuse to travel along with, politically or otherwise."

Immediately thereafter he started and continued until the 1923 April elections a series of grand jury investigations into politically protected vice.

Chief Justice Michael McKinley received a series of letters describing the workings of a west side graft ring, giving the rates of the graft and the amounts the girls had to pay the police. Ten women inmates of the Lawndale Hospital testified in January, 1916. The efficiency with which syndicate "joints" are operated was described by a nineteen-year-old girl, including a system of schooling and perversion conducted by a Negress for young girls entering houses of prostitution. The women testified that some of the investigators for the Committee of Fifteen were accepting graft. The facts emerged that the syndicates had special attorneys who appeared for all their girls in the Morals Court.

In February, 1923, it was learned and made public by the vice investigators that profits of vice in Chicago amounted to $13,500,000 a year, part of which went to the police. The system by which "fixed" police "tipped off" resort keepers, and the police discriminations against unprotected resorts, which were very frequently raided, was exposed. Dr. Philip Yarrow explained that for five hundred brothels there had been about a thousand raids in one year, at the rate of only two raids a year. Other private citizens testified that their complaints to the police were of no avail against dives in the proximity of their homes or shops, because of police protection.

Chief Justice McKinley of the Criminal Court threatened to take direct judiciary action, disregarding the prosecutor or the police in cases about

which he had received letters of complaint. As soon as the state's attorney heard of the judge's intention he took immediate action under the Kate Adams' Law against seventy-five keepers of disorderly resorts. It was noticed, however, that certain of the most notorious resorts were missing from the list even though evidence was received against them.

At the same moment Chief of Police Fitzmorris issued his memorable "Vice Picket" order, whereby police were stationed at the known resorts where vice was open and rampant. Two resort keepers immediately filed suits for injunctions against Chief of Police Fitzmorris in the Superior Court, asking for orders preventing the stationing of police at the entrance to suspected disorderly houses. Judge Denis E. Sullivan issued an injunction restraining the police from interfering with the conduct of the Normandy Hotel, 500 North Clark Street, on the ground that "a man's home is his castle" and there ought to be due process of law instead of picketing by the police—"a court cannot become a party to unlawful confiscation of property, which is a fact in stationing police on the premises."

For the moment Fitzmorris' blockade by the police picket method was actually effective, according to a report filed with Chief Justice McKinley by Miss Jessie Binford, director of the Juvenile Protective Association. The proprietors of the closed houses followed a policy of watchful waiting, confident that the lid was only a temporary policy to satisfy the demands of reformers, as experience had proved to them so often in the past. At least they believed that it would be removed after the April election.

The dive-keepers, however, were disappointed in expecting the lid to be lifted after the election. The Thompson forces were defeated and William E. Dever was the people's choice for mayor.

7. The Dever Administration, 1923.

Mayor Dever had promised to keep the lid on during his administration, and it was largely due to this promise and the people's newly aroused sentiment to clean up the city, that former Mayor Thompson was defeated. Captain Collins was appointed Chief of Police. The first raid was on the "Four Deuces," 2222 Indiana Avenue, which had remained open in order to test the strength of the new chief. In May one hundred arrests had been made in a further series of raids by Chief Collins. These were all on the west side and the raids on disorderly and gambling houses were continued throughout the summer of 1923.

Miss Jessie Binford submitted a report of a survey made in May:

> "There is no doubt that a sincere, energetic effort has been made to minimize commercialized vice in Chicago. Nightly raids inaugurated by Chief Collins have played havoc with the vice ring and broken a majority of the more notorious resorts and driven others to cover. The Collins' drive was at first thought to be a temporary purity move for political purposes. In the underworld the appointment of Collins was lauded, but as time passed and his apparent desire to clean the town and keep it clean had reached the underworld, their ranks have been badly shattered. Indecent dancing in the black and tan cafes and a noticeable increase of street soliciting still exist, but they are normal reflexes of the drive against the resorts and can undoubtedly be fought later. The action of Judge McKinley and that of the administration

forces has stopped the vice ring for the time being, but to keep the town clean it is necessary for us to have a special vice department in the police force, not only to handle raids but for investigations and the constant checking that is necessary to keep conditions as clean as they are. The minute there is a let-up in the police activity, the vice ring will take advantage of it and things will be back where they were four months ago."

In 1924 the policy of the previous year was continued. The "lid" was kept on by Mayor Dever and Chief Collins and there were no important developments concerning vice during that year.

By April, 1925, there had been some relaxation of the picket system, but there had been a wholesale migration of old-time levee bosses to the suburbs. "Mike de Pike" Heitler was running the Burr Oak Hotel on the edge of Blue Island. (He had twice been sentenced to Leavenworth for white slave trafficking and prohibition law violations). Harry and Alma Cusick, of the Twenty-second Street Levee, were running a resort at One Hundred Nineteenth Street and South Paulina. Other resorts conducted by the old levee bosses were: Moonlight Cafe at Chicago Heights; The Speedway, in Burnham, which was booming; The Coney Island Cafe next door, which was running wide open.

Chief of Police Collins turned his attention again to the Twenty-second Street Levee district and ordered raids on Thirty-first Street, on South State Street and on Federal Street. The chief's clean-up order resulting in these raids came when he learned that Al Capone had reopened his vice and gambling interests in the Twenty-second Street district. And again in October, 1925, raiders from headquarters cleaned out the Twenty-second Street district. In 1926 the same vigilance continued and this year was entirely free from exposés by newspapers or by grand jury investigations.

In March, 1927, a series of raids into the "black belt" before the mayoralty election caused Alderman R. R. Jackson bitterly to assail the city administration and the police department. He said the city administration was using the police department to terrorize voters in the territory. "Isn't it peculiar that the police waited four years and until three weeks from the mayoralty election to make the sensational raids?" he asked.

8. The Second Thompson Administration, 1927.

Thompson was elected to a second term, succeeding Dever in May, 1927, on a wide open town platform, and by the summer of 1927 his campaign promises seemed in a fair way of being fulfilled.

According to a report submitted to the Board of Directors of the Juvenile Protective Association by Miss Jessie Binford, on July 23, 1927, vice conditions in Chicago were again flourishing and were becoming steadily worse, and promised to surpass vice conditions which existed in Chicago preceding the 1921-22 grand jury investigations. The report stated that the most open vice district was along North Clark Street from the river to Chicago Avenue, and along the old levee district of Federal Street from Seventeenth to Twenty-second Streets. The towns outside the city were also scored as spots for vice and gambling. Disorderly houses around Twenty-second and State Streets were doing a good business. In one block it was reported that one hundred girls were employed in the business, most of them being under

twenty years of age. West Madison Street around the Haymarket Theater was reputed to have a great deal of organized vice, as well as Federal Street between Seventeenth and Twenty-second Streets. Some of the largest resorts were in Stickney and other suburbs. However, with the Thompson regime some of the old levee characters slipped back into the city and a true picture of the conditions of organized vice was given in the *Daily News* of July 25, 1927, while the war of bombs and terrorism was raging between the Moran, Berch, Zuta and Aiello syndicate and that of Al Capone. The same article further revealed the existence of wide open conditions of vice.[1]

In August, 1927, conditions in the First Ward were never worse, according to residents who had stuck it out through administrations, good and bad. Vice, booze, and gambling were said to be rampant in the south end of the district while vice had crept into the "Loop."[2]

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[1] "While close political associates of Mayor Thompson are busily denying the 'big boss' knows what's going on, a gambling, booze, and vice combine headed by powerful politicians and reaping a golden harvest exceeds, in the opinion of the old-timers, the returns during the 'open town' days of the two former Thompson administrations. Disorderly houses sprang up like mushrooms under the protecting wing of the ward politicians and members of the General Assembly shortly after the mayoralty election in April, and operated for two months without interference, on the strength of political pull rather than an outlay of cold cash. Then came an order to close up. Gradually the city began to open up again until at the present time no particular section is immune from the money hungry racketeers. Open vice appeared in the 'Loop' and demands by viligant organizations for police action brought little change. As an example of the power of the syndicate it is charged that 'street walkers' have been shooed off Michigan Avenue as far south as Twelfth Street with the idea of enhancing the dive conducted by the notorious Harry Cusick and 'Scarface' Al Capone at 516 South Wabash Avenue."

[2] The *Chicago Daily News* of August 2, 1927, contained the following resumé of conditions:

"Harry Cusick, convicted panderer, who was snatched from a 'stretch' in the penitentiary by a gubernatorial pardon, is operating a disorderly hotel at 516 South Wabash Avenue. This hotel, despite the repeated and vigorous protests of business men in the neighborhood to Chief of Police Hughes, continues to run without serious interference. Male 'ropers' on the street ballyhoo the place like a barker at a street carnival. Dennis Cooney is the undisputed overlord of the ward, the right-hand man of Kenna. No matter which political party has been in power, at no time during the past seventeen or eighteen years have Cooney's political connections interfered with his control of vice, booze and gambling. His influence reaches into the South Clark Street and Cottage Grove Avenue police stations as well as the detective bureau. His pay roll includes professional reformers, prohibition agents, and politicians of high and low standing. The underworld salutes him as 'Duke.'

"Cooney's immunity is definite, investigations of the records in the Morals Court reveal. After a busy session chopping up disorderly houses and putting vice to rout in the West Madison Street district, where there is no overlord with Cooney's political affiliations and business system, the City Hall vice squad has frequently moved back into the First Ward to spend the early morning hours celebrating at Cooney's expense. While in other wards the Capone-Cusick mob, by the exercise of a reign of terror, has been able to 'muscle in,' the Kenna-Cooney combine, with its strong political and police connections, has presented too sturdy an opposition.

"Cooney's headquarters are at 2138 South State Street, better known as the 'Rex,' one of the worst dives of its kind in Chicago. On the first floor is a saloon at which intoxicating liquors are dispensed openly. One flight up is a cabaret in which entertainers mix congenially with the patrons. Gunmen, dope peddlers and hunted criminals frequent the place, yet it is here that the city police, plain clothes and uniform, do their celebrating. Arrests are never made at Cooney's. In connection with the cabaret is a disorderly house that never closes. On the busiest of three eight-hour shifts, upwards of forty girls are to be found in the place. Outside in the street are two police sergeants, Coleman and Benniecki, who have been assigned to the corner of Twenty-second and State Streets for many years. It is their assignment to humor and protect any City Hall politician

9. *Summary.* This survey of organized vice provides an all too brief and inadequate survey of events that are notorious in the memory of most of the citizens of Chicago. These same events taken separately are generally more or less unintelligible, but when arrayed in an historical sequence their meaning becomes clearer. While a more detailed and exhaustive study would doubtless be required to answer all the questions that might be raised about commercialized vice in Chicago, the data as presented seem sufficient to establish the following points:

(1) Organized vice as a form of law-breaking is more deeply rooted in the social and political order in Chicago than is generally recognized.

(2) The crusades against vice, even when they succeeded in achieving the objectives at which they aimed, as in the abolition of the segregated vice district, do not seem to have extirpated the social evil; they have, however, driven it deeper into the community life, where it tends to find concealed forms of expression.

(3) Indeed, the effects of reforms designed to bring about change may place new opportunities for political corruption in the hands of vice and other law-breaking elements.

(4) Politicians often capitalize public sentiment against an evil and divert it to the purposes of factional politics. Reform becomes a means of winning elections rather than an agency for correcting abuses. Under present conditions, vice lords, gamblers and law-breakers play as active a part in elections as any other element in the community. As they become a part of the political organization that can be relied upon, they invariably exercise an undue influence on the people who represent them in politics. Law enforcement under these circumstances tends to become a sham. Resorts protected by political influence are allowed to run, while other places are repeatedly raided.

(5) Under these conditions the police, whose natural impulse it is to enforce the law, become cynical and corrupt.

(6) Every new administration, whether liberal or reform, is likely to disturb the previously existing arrangements between officials and law-breakers. Changes of administration, therefore, tend to inure to the advantage of the abler and more experienced law-breakers. In Chicago, evidence has been presented showing remarkable continuity and persistency of both major and minor personalities in organized vice over a period of twenty-five years. Indeed, there has been something like a royal succession from Colosimo to Torrio, and to Capone.

(7) Finally, with the coming of prohibition, the personnel of organized vice took the lead in the systematic organization of this new and profitable field of exploitation. All the experience gained by years of struggle against reformers and concealed agreements with politicians was brought into service in organizing the production and distribution of beer and whiskey.

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who might get unruly in the place, but to bounce a black-jack on the derby of any stranger who might complain about the service.

"Ralph Brown is Cooney's lieutenant who is in charge of the 'Four Deuces' at 2222 Wabash Avenue. This place was kept tight during the Dever regime. 'Ike' Roderick, professional bondsman, Joe Grabiner, known as the 'Jew Kid,' 'Dago' Frank Lewis, Harold Levy, Henry Finkelstein, companion of 'Schemer' Drucci, when he was killed by the police, 'Bozo' Fogarty and Bill Lewis are among Cooney's henchmen."

CHAPTER XIX

THE RULE OF THE UNDERWORLD

TENNES AS A VICE CHIEF

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CHAPTER XIX

THE RULE OF THE UNDERWORLD

TENNES AS A VICE CHIEF

1. Syndicated Gambling.

The complete life history of one man, were it known in every detail, would disclose practically all there is to know about syndicated gambling as a phase of organized crime in Chicago in the last quarter century. That man is Mont Tennes.

He was avowedly a real estate man, for a period the owner of a cash register company, and for more than a score of years the proprietor of the General News Bureau, controlling the wires for the gathering and dispensing of race-track news in Chicago and principal parts of the United States. Repeated exposés have always found him in control of strings of handbooks and gambling houses in Chicago and other urban centers.

The ramifications of his deals to form gambling rings or to complete the monopoly of gambling, his alliances with and wars of violence against competitors, would involve the name of every gambler of any consequence in Chicago for this period. His control over politicians and officials for purposes of protection for himself, his associates and subsidiaries, or control over the police to gain immunity or even to use police raids for the destruction of competitors and enemies; his experiences as defendant prosecuted in state and federal courts and in civil suits brought by crushed or disgruntled gamblers, exhibit a marked continuity despite changing policies of destruction, connivance or regulation with changing governmental administrations and changing officials—state's attorneys, mayors and police chiefs; a persistence in the face of spasmodic reform agitations, newspaper exposés and investigations of grand juries and courts, federal and state, and of municipal authorities. All of these phases of the continuity of organized gambling unfold in the life of this powerful overlord and disclose the reaches of organized crime as well.

The professional gambler is less despised than the vice boss. Gambling as a pastime is less opprobrious than commercialized vice. The newspaper eulogies on the death of William Tennes, the brother of Mont and his partner in gambling, as well as the large number of friends of all classes who mourned his death, would bear this out.

Within organized gambling, however, many of the characters and all of the patterns of violence and anarchic warfare have been developed. Since gambling is illegal, it cannot exist except by defeating the law, which is accomplished partly by influencing elections through contributions to campaign funds or by the bribery of officials. As it is an illegitimate business, gamblers cannot come into court with clean hands in order to settle disputes with regard to their property rights; therefore, within the last quarter century, disputes have been resolved by bombing, killing and arson. Gambling factions retain and support bombers and gunmen, whom they mobilize for action in times of gang war.

2. Gambling in Chicago Twenty-five Years Ago.

Three rings or syndicates controlled the gambling business in Chicago in the early years of this century. Mont Tennes, known as the king of the north side, maintained his headquarters in a saloon at Center Street and Sheffield Avenue and owned several other saloons and a string of race-horses.

James O'Leary, the chief gambler of the south side, was located at 4183 South Halsted Street, still a gambling center today though its founder has been dead two years. He conducted and controlled several gambling houses and handbooks, some of which were located in the "Loop." The principal personages in his south side syndicate were said to be Frederick T. "Bud" White, Harry Perry, Charles Smith and "Blind John" Condon, also supposed to be associated with Tennes.

In the "Loop" the control of games and handbooks was reported to be largely in the hands of Aldermen Kenna and Coughlin, Tom McGinnis, Pat O'Malley and John F. O'Malley. On the west side Alderman Johnnie Rogers was reported to be king.

The north, south, and west factions, although supreme in their own territory, cast envious eyes upon the "Loop" district as the most fertile field in which to reap a golden harvest from gambling enterprise. The attempts to encroach upon the downtown district led to a war between the various factions, which included bombing, slugging and other forms of destruction and intimidation.

During the earlier Harrison administrations gambling suffered little disturbance; but an epidemic of retirements of gambling chiefs occurred in July, 1904. Assistant Chief of Police Schuettler, who for twenty years diligently raided Tennes' establishments, stated that Mont Tennes would be put out of business in a few days and that all gamblers were quitting as a series of indictments were impending. James O'Leary had announced his retirement two weeks before, after a raid by the police at 4183-89 South Halsted Street. Even then these retirements were characterized by the newspapers as "repeated swan songs which have been sung for the benefit of the police authorities."

Following the announcement of Tennes' retirement to go exclusively into booking at the race track, there was a raid at 123 North Clark Street, one of his chief places. Within a month a newspaper exposé disclosed Tennes at all his old stands, and one raid followed.

During the Dunne administration, 1905-07, there was little activity in suppressing gambling. But in the first months of the Busse administration, 1907-11, the Tennes gambling house at 123 North Clark Street was raided. The raid was typical; twenty-one men were arrested; others escaped. Joseph Moore and John Newton were booked as keepers; never was Mont Tennes booked as keeper. The syndicate bondsman, George Murray, immediately furnished two hundred dollar bonds for each prisoner. The case never came to trial, but Chief of Police Shippy expressed satisfaction at the raid. How familiar his words sound:

> "I will stop gambling in Chicago or I will run all of the gamblers out of the city. Show me or my men where there is gambling and it will

be immediately stopped. My men report that everything is quiet now.

"I have tried to discover evidence against certain well known gamblers who, I suspect, are operating policy shops, but thus far I have not succeeded."

Tennes' four north side saloons and his cigar store at 123 North Clark Street were raided on the average of once a week. As soon as the police went away with a wagonload of men he would open up again.

At this time Tennes, with the exception of Jim O'Leary, was the most extensive gambling operator in Chicago. He established hundreds of small handbook agencies. In the main, he was strong enough to work as an independent, outside of political connections. He was reported to be forming a combination with McGinnis of the "Loop" syndicate to work against the O'Leary-White-Smith-Perry crowd that was operating a floating poolroom ship on Lake Michigan, called the City of Traverse.

With a wide-open town and profits of millions of dollars in sight, the gambling magnates of Chicago began waging war for supremacy. The richness of the prizes overturned the habitual caution and furtiveness of the trust gamblers who were reaching for them. Open bookmaking under the supervision of the rings could be found in every section of the city. Faro and roulette, which had been stamped out by the elder Carter H. Harrison and for fourteen years barred from Chicago, returned with the Busse administration.

With the election promise by the victors of a practically open town, the big gamblers were unable to restrain the haste and avarice of the smaller set, and warfare resulted.

The warfare centered on Tom McGinnis of the First Ward, of the "Loop" ring. He was denounced by Tennes and O'Leary as tricky and untrustworthy and they asserted their henchmen did not do business through him. McGinnis attempted to extend his dominion into the territory allotted to O'Leary and Tennes after the last election, and their subordinates retaliated.

Tony Brockman was recognized as the only independent gambler in the "Loop" section. The friendship of Brockman with city officials and his political strength caused the guardians of the "trust" to hesitate at the raids which were the lot of Kennedy and Karr, 290 North Clark Street, and others who refused to come in or quit. The instigation of raids by gambling syndicates and the making of raids by a friendly and corrupt police organization upon gambling houses and places maintained without the permission of the syndicate have always been a successful means of crushing the competitors of the syndicate.

On the west side, Tennes had a subordinate ring composed of John A. Rogers, John Gazzola and Patsy King. There were some independents there, too, for instance, Gintler and Fisher, who were backed by William Soeffler. O'Leary and Tennes never interfered with Gintler and Fisher. Rogers and Gazzola were at 344 and 523 West Madison Street. Open handbooks were numerous along the street as far west as Paulina and Madison. Adolph Stein had his betting saloon, where the orders would be called by a megaphone so that they could be heard out on the street. O'Leary at 4183 South Halsted

Street, who had operated furtively during the Dunne administration, upon the election of Busse again put up the big decorated blackboard.

Andy Craig, former pickpocket and ex-convict, prominently mentioned in vice operations, was the downtown clearing house of the McGinnis books at 383 South State Street.

The boss gamblers were quarreling over territories and the division of spoils, and an uproar, such as Chicago had never experienced before, was anticipated by patrons and promoters of the games of chance. The opening event in the gambling war occurred when Mont Tennes was waylaid by a slugger while walking with his wife and was badly beaten. There were people around at the moment, but no witness could be procured in gang sluggings then, as today. It was reported that the slugger called Tennes a welcher and that the motive was revenge.

After the attack Tennes pictured his real and fancied danger in an interview with a reporter of the *Chicago Evening American* on June 18, 1907.

> "I am a marked man. A price has been set upon my life and I am more liable to be assassinated than Alfonso, the Spanish King.
>
> "This man was merely an underling of others. The attack was a careful plan to injure me more or less seriously. The published accounts of the affair convince me that someone was interested in spreading false information concerning the assault.
>
> "In the first place, my assailant did not call me a welcher or make any remark before striking me. I know from my business in the last year that no one could have any such motive for revenge. The closing of the Dearborn Park poolroom is the real motive of the attack, which is concealed under the explanation that the assailant was a disgruntled customer.
>
> "The other quotations: 'You will get more than that some day' and 'He'll be going to his own funeral if he isn't careful,' are in perfect harmony with the wishes of the Dearborn Park combination, who ascribed their suppression in Indiana to me.
>
> "No such threats were made at the time and probably the men in this combination are the only ones who wish me such fatal luck."

The Dearborn Park poolroom in Indiana had been conducted by the O'Leary-Smith-White-Perry group during the winter months, while the City of Traverse could not operate on the lake.

3. The Bombing War of 1907.

Mont Tennes had secured control of the wires carrying racing news from the race tracks, thus laying the basis for the monopoly of gambling. It is significant that three out of six bombs were directed at Tennes:

> Bomb No. 1, in July, 1907, was exploded at 2623 South Michigan Avenue, the home of Blind John Condon, an associate of Tennes. The front was damaged; there was no loss of life because the occupants were at the rear of the house at the time.
>
> Bomb No. 2 was exploded in the basement of the saloon on Clark and Kinzie Streets belonging to John F. O'Malley, of the "Loop" ring.
>
> Bomb No. 3 was planted at the door of the Tennes garage in the rear of his home at 404 Belden Avenue. Tennes, true to the code of silence, shielded his enemies. "It was the practice of some mischievous boys who set off a cannon cracker." Like Reid and Mr. Fitzmorris of today, he

said, "I know of no one who would wish to murder me or wreck my property." The police had various theories about it. It was a war of extermination between big gamblers in Chicago. The probable alignment was Tennes, O'Malley, Condon and McGinnis on one side; and O'Leary, White, Smith and Perry on the other.

Bomb No. 4—The resort of James O'Leary (August 14), at 4183 South Halsted Street, was bombed.

Bomb No. 5—(August 19) The second attempt was made upon Tennes' home at 404 Belden Avenue. It was a dynamite bomb, thrown into Tennes' yard after ten o'clock at night. It tore away a hole a foot deep in the sod, shattered the windows and screens in the Tennes house and the houses around. His wife and four children were just retiring and the explosion brought them rushing downstairs. Groups of neighbors, huddled in front of the Tennes' home, suggested that Mr. Tennes hire special police. With his usual affability Tennes said, "I have no anxiety for myself and family, my one concern is for my neighbors."

Bomb No. 6—The third bomb aimed at Tennes (September 26) exploded at the rear of the Western Cash Register Company store, which he used as a blind for his gambling enterprise at 123 North Clark Street. No one was injured. The detectives took no notice of the gambling room at the rear of the cash register company as they walked in and out of it looking for evidence, but a reporter for the *Record Herald* collected racing sheets for that day which showed the results of Gravesend, Latonia and Hamilton.

Mont Tennes was found at his home but did not seem to be at all alarmed over the latest night attack. "Too bad, too bad," he said musingly; "so they have attacked me again, have they?"

"Do you suspect who the guilty persons are?" he was asked.

"Yes, of course I do," he answered, "but I'm not going to tell anyone about it, am I? That would be poor business."

"Is there any poolroom in or near the premises?"

"Oh no," he said. "What do you think, that I am running a big cash register store as a blind? I say now there's nothing to it. No more of that business for Tennes."

"You know nothing about a poolroom on the premises?"

"I do not," he said emphatically.

The state's attorney and the chief of police were not stirred into activity by the bombing outrages; it was a deep mystery to them that only gamblers were being bombed. Nothing was done by way of curbing gambling. If the police had been protecting gambling it might be an inconvenience to harass the gamblers and have them tell about the protection. Acting Chief of Police Schuettler admitted the failure of police to capture bombers. Chief of Police Shippy said, "It looks as if there was a big gamblers' war on in Chicago. I still maintain, however, that there is no gambling worthy of the name in existence here at the present time."

The police theory was that an outside blackmail gang was trying to intimidate the gamblers in Chicago into paying tribute. This is similar to the recent killings in the beer war, when a theory of out-of-town gunmen was frequently introduced.

The home of former Sheriff James Pease was bombed—the comment

was that the handbook kings desired to draw the attention of the public to the activities of the sheriff and constables in protecting race track handbooks and to intimate that the sheriff was involved in corrupt practices, a similar comment to that made after the bombing of the home of the former Chief of Police Fitzmorris in 1928.

On the evening of September 24, the Forest Park distributing office of racing news for the Mont Tennes system in Chicago was bombed.

On September 28, 1907, as a result of the public sentiment aroused against the bombing outrages, subpœnas were issued to compel the appearance of the gambling kings before the grand jury, which was making an investigation into the bombing war. A glance at the list of names of those subpœnaed on the first day would suggest that the prosecutor, John J. Healy, had the City of Traverse quarrel in mind.

John F. O'Malley, who with Tennes was purported to be in command of the gambling system of the city;

Harry Perry, who formerly was one of the owners of the gambling ship, the City of Traverse;

Social Smith, who was also one of the owners of the City of Traverse;

James O'Leary, the stockyards gambling promoter;

John R. Condon, the racetrack owner and silent partner in handbook projects.

After hearing the testimony of only one witness, a detective, the state's attorney made the following declaration:

"The investigation will continue for several days. We will make a clean sweep, and from the evidence that we already have obtained, it is safe to say that the inquiry will be productive of results."

Independent gamblers, Bud White, Ed Brennan and John Rogers, were questioned as to whether or not political influence had forced them out of the gambling business. Evidence in the possession of the state's attorney indicated:

That Mont Tennes was king of the gambing ring, which State's Attorney Healy, it was alleged, expected to show was operating with enormous profit in violation of the law and with the knowledge of Mayor Busse and Chief of Police Shippy;

That Mont Tennes was dictator over hundreds of Chicago bookmakers, who were permitted to run poolrooms without interference from the police;

That the police knew of the existence of many poolrooms and had daily evidence of operations;

That Mont Tennes bought from what was known as the Payne Telegraph Service of Cincinnati the daily returns on races from the tracks throughout the country;

That these returns were sent by telegraph to an office in Forest Park, near Harlem, where a switchboard was installed by the Chicago Telephone Company;

That the returns from the Payne Service were relayed by telegraph to this telephone switchboard, which was a trunk line containing from forty to forty-five wires;

That racing information was distributed through this trunk line to

bookmakers who paid Tennes for the service at rates from fifty to one hundred dollars daily, the rate varying in accordance with the extent of the daily report. Some bookmakers got running reports of races, which were called off by an announcer in the poolrooms through a megaphone. Others got only "flash" returns of results, telling what horses ran first, second and third;

That Mont Tennes paid the Payne System three hundred dollars a day for exclusive control of this service in Chicago;

That the Payne System was run by John Payne, formerly a telegraph operator who organized the company after the Western Union Telegraph Company had been compelled by Miss Helen Gould, one of its principal stockholders, to cease carrying race results;

That there was protection from the city administration over favored gamblers, and the gamblers to be protected were designated by Mont Tennes, who had among his aids and advisors Jim O'Leary, John Condon and others;

That no gambler or gambling promoter could secure race returns by telephone or telegraph unless he paid Tennes for the service and that the income from such receipts was split up among the members of the ring controlled by Tennes;

That all poolroom owners or operators turned in to the Tennes combine fifty per cent of their business; that is, fifty per cent of the total transactions daily. The Tennes syndicate paid half the money lost to betters who won from the bookmakers and received fifty per cent of the net receipts after the racing sheets were balanced each day;

That Tennes had agents who made the rounds of the subscribers frequently, checking up the sheets, distributing the syndicate's share of the money due and collecting. For the purpose of looking after these poolrooms, Tennes had half a dozen automobiles equipped with calliope whistles. The calliope whistle is distinct in character, and whenever a collector neared a poolroom he signalled his approach with the whistle. Lookouts were waiting and if any reason existed why the collector should not enter the poolroom he was side-tracked until the danger passed;

That blind telephones were installed in poolrooms by the Chicago Telephone Company and charged for at rates in excess of the rates provided for in the ordinance. That such telephones were listed only in the offices of the Chicago Telephone Company and were never used except for the transmission of race news which came from the Forest Park switchboard;

That certain detectives were grafting by placing bets on horses with handbook-makers without actually putting up the money. If the horse won, the detective collected the amount of the bet; if the horse lost, the detective said nothing and neither did the handbook-maker;

That a man of the name of Horace Argo was Tennes' agent and that all of the business of Tennes was conducted by Argo, who was the go-between of Tennes and other gamblers;

That it was an understood thing among the gamblers that when they took the syndicate's system of racing information they would receive protection.

The hopes of the citizens of Chicago were high, that, with all this information, something was to be done at last to stop the bombing outrages and to drive organized gambling out of the city by the conviction of the kings of gambling.

On the same night after his appearance as a witness before the grand jury the saloon of John Rogers at 345 West Madison Street was bombed. The bomb was intended to intimidate Rogers, an independent gambler, outside of the Tennes' combination. The police never cleared up this bombing and Rogers advanced the usual "joker" theory. No convictions followed.

4. *The Contempt Action Against Horace Argo.*

Horace Argo became known as the financial manager of Mont Tennes when the latter succeeded in perfecting his gambling combine during the Busse administration. In a grand jury investigation, Prosecutor John J. Healy directed a series of questions at Argo. Argo stood on his constitutional rights and refused to answer the questions put to him by the prosecutor.

"You understand what you are doing, Mr. Argo, when you refuse to answer questions put to you before this body?" After a moment's reflection, Mr. Healy asked again: "Have you ever paid to politicians, policemen or other persons, sums of money for immunity from raids or other interference with Mont Tennes' handbook business?" Argo answered: "I maintain my original position. I will have to refuse to answer that question, Mr. Healy."

In 1908 John E. W. Wayman succeeded John J. Healy as state's attorney. Of the same political faction as Mayor Busse, Wayman was inactive as to the gambling and vice.

But, the gambling war continued, the gambling house of Brennan, a witness before the grand jury, was bombed, as well as the headquarters of Smith and Perry on State Street. Later, the same year (in October), Brennan's place was bombed again. Other bombings were ascribed to the efforts of independents to break into the "Loop" gambling, Tom McGinnis' territory, during the Republican Convention period.

5. *The Rise of Tennes to a National Position.*

January 1909 found Tennes in absolute control of race track gambling and handbooks in Chicago. Then a bomb at O'Malley's, at Polk and Clark streets, excited public interest in gambling. It was observed Tennes was flourishing in spite of the Wayman crusade, and the booming business in his gambling house at 125 Clark Street was exposed. Tennes bought a residence in his wife's name in the exclusive Edgewater district.

Mayor Busse called Assistant Chief Schuettler into his private office and ordered him to "get" Tennes. Immediately, Schuettler raided the Tennes handbook at 40 Dearborn Street and later Manning and Bowes at 321 South State Street. An obscure man was booked as keeper. Then the Chicago *Daily News* charged that certain officials of the Chicago Police Department knew with certainty the men conducting the dynamite bomb gamblers' war, that the chief officials did not want to arrest these men for fear the inside story of police protection of racing gambling would become public.

After this exposé Mayor Busse said that he did not know of the existence of protected gambling and that he was very anxious to have the facts. Unlike the usual "it is rumored" or "it is claimed" or "it is said," the *Herald Examiner* on June 30, 1909, printed the following news item as the inside facts:

"Mont Tennes' determination to monopolize the gambling privileges of Chicago is responsible for the reign of terror the bomb-throwers inaugurated in this city two years ago.

"Exclusion of every other gambler from the field had been Tennes' plan of campaign since he became the dominating figure in the handbook and dice and card games that thrive under the very eyes of the police, and the bombs have been the answers of his antagonists to his attempts to force them out of business."

When a bomb was exploded at the Southern Whist Club on May 31, 1910, it was recalled that there had been no bombing since December, 1909, when the Frontenac Club was bombed. This was the period of the truce in which Tennes had completed his monopoly of the handbook business in Chicago. A misunderstanding about the division of the winnings, when a business man dropped twelve thousand dollars in one night in a high stakes game at an exclusive gambling house owned jointly by Tennes and McGinnis, resulted in the placing and the finding of a bomb big enough to wreck the building. Then, on May 31, the Southern Whist Club was blown up; the truce was over and the war was on again.

6. *The Chain Store System Applied to Gambling.*

Within two weeks prior to the Whist Club bombing, Tennes had managed to regain all his old strength in the handbook field. He monopolized the race returns telegraphed to Chicago by the Payne Racing Service of Cincinnati, and established in various parts of the city a line of thirty poolrooms, including the following:

Poolroom at 119 South La Salle Street, room 33, telephone Main 3495;
Poolroom, second floor, rear, over saloon at 110 Fifty-first Street;
Handbook in saloon conducted by Dick Wells, Wabash Avenue and Monroe Street;
Poolroom, second floor, hotel building at Forty-seventh and State streets;
Poolroom, at 263 West Chicago Avenue (opposite Chicago Avenue Police Station);
Poolroom, 121 North Clark Street, second floor, over Tennes' saloon; telephone Randolph 906;
Handbook in saloon of O'Connor and Righeimer, at Clark Street near Randolph;
Poolroom at 135 Center Street;
Poolroom for women at Lang's Saloon, at 4522 State Street;
Poolroom at 95 East Washington Street, Room 25, telephone Central 7096;
Poolroom in partnership with Barney Zacharis, in the Open Board of Trade, La Salle Street near Van Buren;
Poolroom, frequented chiefly by boys and young men, at 1820 Wabash Avenue;
Poolroom at Twenty-third Street and Cottage Grove Avenue;
Poolroom for women at Toney and Singleton's saloon, on Twenty-eighth Street next to alley "L";
Handbook in Daley's saloon at Twenty-sixth Street and Cottage Grove Avenue;
Poolroom for women, at Arlington saloon, Indiana Avenue and Thirty-first Street;

Poolroom and string of handbooks scattered through the west side in partnership with John Gazzolo, at Ada and Madison streets;
Poolroom near old Somerset Hotel, Twelfth Street and Wabash Avenue.

Many raids followed, seemingly aimed at the smash-up of the city-wide syndicate; raids even on central stations where the race returns were distributed by telephone. Tennes merely put in new telephones and restored the service the next day. His workmen were busy making additional connections and enlarging the premises at 121 North Clark Street.

Then rumors circulated that Tennes intended to retaliate on his enemies by police raids. Within a day or two a bomb was placed that rocked the block roundabout Tennes' Clark Street poolroom. Incidentally, the explosion destroyed the wires of the Central Telephone Exhange and worked havoc to many of the telephones over which Tennes conducted his racetrack betting. That bomb was the answer of the opposition, the McGinnis crowd, to Tennes who had threatened counter raids.

The Tennes ring at this time established systematic exclusion. Anyone wishing to enter the gambling business had to apply to this ring. The man and the location would be investigated, the leading gamblers in the city would be asked to approve the applicant, and if disapproved he would be placed upon the "dead list."

It was suggested that the names of perpetrators of the latest bombings could possibly be found on the "dead list," which was locked in Tennes' safe. With newspaper pressure, Schuettler raided what was reputed to be Tennes' main clearing-house, on the third floor of the building at 125 North Clark Street. Tennes' agents were arrested, telephones, furniture and gambling paraphernalia destroyed. Records of bets found in the room showed the names and locations of Tennes' alleged agents.

Tennes' own chain of gambling agencies was distributed in the "Loop" and in the south side territory according to this list. The other gamblers, who were subscribers to his service and who had to pay him weekly for it, would very likely object to Tennes' "direct to the consumer" business.

"Strauss," said to be an agent at Van Buren Street and Wabash Avenue;
"Fisher," said to be William Fisher, a Blue Island Avenue handbook agent;
"Stahl," said to be Fred Stahl, agent at Twenty-second Street and Indiana Avenue;
"Maple," said to be an agent at Maple and North Clark Streets;
"D. Foley," saloonkeeper and alleged agent, 14 South Halsted Street;
"Sim," said to be Simon Tuckhorn, Wabash Avenue and Harmon Place;
"Meyer," said to be an agent at Milwaukee and West North Avenue;
"Wurster," said to be an agent on Washington Street between Dearborn and Clark Streets;
"I," said to be Tennes' own private record;
"Phil," said to be either Phil Green, Thirty-first Street and Indiana Avenue, or Phil Wexler, Harrison Street and Wabash Avenue;
"Shep," said to be an agent at Fifty-first Street and State Street.

The chief of police extolled the cleverness of the police in ferreting out this central clearing-house.

"The men who conducted the raid are my best men. They have kept right after the place and finally found it."

Assistant Chief Schuettler, directing a charge on gambling, again promised to drive Tennes out of Chicago:

"Some people look upon Tennes as a king, but he will have to cease operations. It is true that we have been after him for some time and have never been able to get the 'goods' on him personally, but it is also true that if we keep arresting his agents he cannot afford to do business. That is just what we intend to do. Tennes must quit Chicago. It may take some time to accomplish his downfall, but it will come in the long run."

Two days later Judge Fake of the Harrison Street Police Station held that the evidence secured by the police in the clearing-house raid was faulty, and the chief of police apologized to the public by saying that the men who conducted the raid were *green* men. In the height of the raid they had been his *best* men. The newspapers then characterized the raid as the "purest poppycock;" the police had raided a dummy clearing-house set up for the purpose of the raid.

With this and other adverse publicity, the police again warbled the swan song for Tennes as they had done in 1904. The chief of police announced that Tennes had experienced such great losses within a year as would cause his retirement in the near future; race-tracks had been abolished in many parts of the United States and his business had therefore decreased from sixty to seventy thousand to five or six thousand dollars a day, but his expenses were practically the same; he was refusing large bets and chose to play "pikers" (small betters) only, because they are consistent losers. The chief threatened constantly to harass him with raids and to continue arresting his agents, though he admitted Tennes was hard to catch. "We don't care how we put the gamblers out of business, just so long as they get out and stay out."

But business as usual was found in the Tennes' gambling houses on November 30, 1909, and Judge Fake of the Harrison Street Police Station called attention to the ability of the police to get evidence on little gamblers, but only faulty evidence on the big ones. It was discovered, too, that Tennes was now a partner in the Dearborn Park Pavilion in Indiana, with Tom McGinnis and Bud White, former enemies. The bets were taken on the north side and the "pay-off" took place on the Indiana side, which Governor Marshall soon stopped.

Several other raids occurred in February of 1910. That Schuettler's raids upon Tennes' establishments within the city were probably effective and actually disturbed Tennes is indicated by the fact of his removal to suburban locations like Forest Park and Dearborn Park. A third location was at South Chicago Avenue and East Seventy-first Street, where Tennes had actually to "horn" his way in by purchasing the consent of the neighboring owners at prices ranging from one hundred to fifteen hundred dollars. About sixty property owners, with seventy-two hundred feet of frontage, gave the necessary consent for Tennes to secure a saloon license.

7. Police Reorganization, 1910 and 1927.

The reorganization of the police department led to Schuettler's elimination from the command of the gambling supervision. Responsibility for conditions in their districts was transferred to police inspectors and captains. As this new plan was later abolished and then reinstated in 1927 by the Thompson administration, it is of great interest to note what effect this inspector and captain system had in 1910, as expressed in a *Tribune* article of June 12, 1910:

> "An order promulgated through the police department is indirectly responsible for the 'wide-open' gambling now prevalent in Chicago.
>
> "Under shelter of the order making police inspectors and captains responsible for conditions in their districts, bookmaking revived immediately and notoriously.
>
> "The control of gambling has been taken from Assistant Chief Schuettler, and the divisional officers of the department are reveling in professions of ignorance of gambling which, in some instances, is being carried on under the noses of policemen in uniform.
>
> "Recently Mont Tennes was bold enough to taunt a police official about his success in nullifying the honest efforts of the police.
>
> " 'Hello there, what's become of your raiding brigade?' chuckled Tennes over a telephone wire one afternoon."

It seems that this shifting of responsibility to the captains in each district from the shoulders of the chief of police, his cabinet, the police department as a whole, the mayor and his cabinet, is a phenomenon which takes place whenever the crime situation in Chicago reaches a point where it becomes very distasteful to the heads of the administration to assume responsibility for it.

It is significant to compare this police order of 1910 with the new commissioner system of police administration inaugurated in 1927 by Chief of Police Michael Hughes. Under this system—

> ". . . . deputy commissioners will serve as intermediary officers between Hughes and his captains, each having supervision over a district. Instead of transmitting orders directly to the captains, the orders will go through the deputy commissioners, acting as staff officers.
>
> "The effect of this new system is to shift responsibility for crime from the chief of police to his deputy commissioners, and will probably result in the same state of affairs that existed after the police order of 1910." [1]

Stimulated by publicity which had been occasioned by three civil suits brought by losers in various Tennes' gambling houses in 1910, the police made several raids, but in these raids they would overlook an entire floor of a building and leave expensive paraphernalia untouched while tearing up some playing cards. In the following months printed cards announcing faro games within the "Loop" were being freely distributed on the streets, the solicitors assuring the customers that these were Tennes' places. Investigators found these places crowded with men. Dice and faro games were

[1] *Tribune*, December 23, 1927.

going on. The police reorganization seemed to loosen the restraint upon Tennes.

8. The National Wires. Of greater interest than futile raids was the struggle between the Payne Service and the Tennes service for national control of racing news service. The Payne Service protested that Tennes was trying to get a monopoly:

> "If he succeeds," it was said, "he will charge every handbook and poolroom of the country an exorbitant price for information from the tracks of America and Mexico. Every-day places which get information through our offices are visited by police 'tipped off' by agents of Tennes. We are fighting Tennes fairly but he insists on having the whole thing and seems to want a renewal of the gambling war."[1]

In 1911, the struggle between the Payne News Service in Cincinnati and the Tennes General News Bureau had attracted such nation-wide attention that a national investigation was conducted to determine the legality of the service. Although the Interstate Commerce Commission finally decided the transmission of race results was legal, many interesting facts concerning betting in Chicago were brought to light.

Harry Brolaski, a former gambler who had turned investigator, submitted to Congressman Mann, who was then chairman of the Interstate Commerce Commission, a list of fourteen persons said to be associated with Mont Tennes and operating the handbook establishments. Mr. Brolaski's list of persons who operated the Tennes gambling headquarters follows:

Mont Tennes, who controlled the wire service at Chicago for race gambling news;
Horace Argo, interested with Tennes;
Tennes and Wagner, pool-room at 260 State Street;
Tennes and Wagner, pool-room at 170 Madison Street;
Dave McGowan, pool-room at 464 State Street;
Clifford's Hotel, handbook, Englewood Avenue and Halsted Street;
Bud White, pool-room at 116 Monroe Street;
Swan's Hotel, handbook, Sixty-third and Cottage Grove Avenue;
Tooney and Singleton, handbook, Twenty-eighth and Wabash Avenue;
George Snyder, handbook, 5900 State Street;
Sam Tuckhorn, handbook, 23 Quincy Street;
Julius Canfield, handbook, Adams Express Building;
McGinty and O'Brien, handbook, 84 Adams Street;
Pat O'Malley, handbook, State Street, opposite Masonic Temple;

[1] The *Herald and Examiner* for February 9, 1910, contained the following description of the operations of Tennes' race news service:

"The service is to supply handbooks and poolrooms throughout the country with racing information, such as entries, odds, jockeys, scratches and results. He now controls the service from the Juarez, Mexico, and Jacksonville, Florida, tracks, while the Payne News Service, affiliated with Martin and Company of Denver, Colorado, has a monopoly on the racing information from the Oakland track. Tennes and his partner, Horace Argo, who was indicted about two years ago with other gamblers, are said to be affiliated with Timothy, James, and Joseph Murphy of St. Louis, Missouri.

"The Murphy brothers are said to be backed by Tennes, who is said to have a corps of 'secret service' men who follow employees of the Payne News Service about Chicago to learn where they are operating, then notify the police.

"John Hasket, employed by the Payne News Service, is fighting Tennes, who is said to have more than fifty agents in Chicago."

Finnegan Brothers, saloon, handbook, Halsted and Sixty-first Street;
Barney Coffey, handbook, Halsted and Sixty-third Streets;
Elite Buffet, handbook, 3030 State Street;
Wagner and Company, handbook, 2318 Indiana Avenue;
Pat O'Malley, pool-room, Clark and Polk Streets;
Ike Bloom, handbook, 30 East Twenty-second Street;
Grogan's pool-room, 118½ Eighteenth Street;
Riley and Rohn, handbook, 154 Dearborn Street;
Barbershop, handbook, 636 North Clark Street.

Chairman Mann doubted the veracity of Brolaski's information because Chief of Police Steward had characterized Brolaski as a "four-flusher." The accusation proved later to be false. Three days later the captain of police raided Tennes' saloon on Clark and Ontario Streets and again arrested an underling as keeper.

In April, 1911, Carter H. Harrison, Jr., Democrat, was elected to succeed Fred A. Busse, Republican, as mayor. Under the spoils system, John McWeeney became chief of police.

9. Rebellion and Submission of Tennes' Lieutenants.

After the election of Harrison in 1911, there was a general understanding among the sporting element that the police were not going to interfere with handbooks or poker games. Gamblers from other parts of the country came to Chicago for easy money. Mont Tennes was in control of the wire service. At Seventy-first Street and Cottage Grove Avenue the central clearing-house was in operation; many pool-rooms were being turned into full-fledged gambling houses with dice, cards and roulette. A new syndicate was scouting for possible and probable locations. Among its promoters were Tom McGinnis, Ed Wagner, Doc Rafael, John Gazonna and Sig Cohen. The gamblers promised to open several houses where the patron could name his own game and his own limit. In the "Loop" there was a game in practically every block. Games had been started in some "Loop" hotels, with solicitors ("cappers," "ropers" and "touts").

Superintendent of Police McWeeney had placed the gambling responsibility upon inspector Nicholas Hunt, head of the Detective Bureau.[1]

Mont Tennes put out his scale of protection prices. Here are the prices for which gamblers could get the service of the syndicate headed by Tennes:

Pool-rooms—40-50 per cent of the win.
Roulette—40 per cent of the win.
Faro—50 per cent of the win.
Craps—60 per cent of the win.

Twenty-five gambling houses were running wide open in the "Loop" seven days a week, in June, 1911. By August these had increased one hundred per cent.

10. The National Trust.

The dispute growing out of the competition between the Payne News Agency and the Tennes syndicate (General News Bureau) stirred up an investigation by the attorney-generals of three states, who were learning about the ramifications

[1] *Herald and Examiner,* June 19, 1911.

of the gambling syndicates of which Mont Tennes of Chicago was the leading genius. Details of a combine which had its grip on the police of twenty American cities, enforced its dictations with dynamite and reaped a harvest of over a half million dollars annually were coming to light. Eighteen telephone and telegraph companies were involved.

Mont Tennes had risen from king of the Chicago Gamblers to czar of all the race track gambling in the United States and Canada. He then had ninety pool-rooms in Chicago, paying $3,600 weekly. In New York he furnished service and received payment from seventy pool-rooms, averaging a total of $4,000 a week. The following cities were reported to have Tennes' service at the approximate amounts paid for the service each month:

Detroit	$ 400	Muncie	$ 193
Louisville	750	San Francisco	1,800
West Baden	400	St. Louis	1,000
Salt Lake	125	New Orleans	100
Baltimore	125	New York	3,000
San Antonio	62	Albany	1,000
Toledo	100	Cincinnati	415
Buffalo	963	Pittsburgh	700
Terre Haute	25	Oklahoma City	105
Norfolk	80	Indianapolis	400[1]
Cleveland	300		

[1] *Chicago Examiner,* August 9, 1911.

Tennes had by this time developed an organization which operated avowedly only as a racing news distributing service and less openly as a handbook syndicate. At this time Tennes was assisted in his work of managing his organization by Horace Argo, Henry C. Eckebrecht, Timothy Murphy, who had become his partner, and William Kennedy who for ten years intermittently had been an organizer for Tennes and placed his handbooks.

II. The Civil Suits of Gambler vs. Gambler.

On August 27, 1911, Timothy Murphy brought suit against Mont Tennes for an accounting and a dissolution of the General News Bureau. He charged that he was a partner with Tennes in the Bureau and that Tennes wrongfully withheld about thirty-five thousand dollars. In brief, Murphy charged:

> "That there were three hundred gambling rooms, from pool-rooms to faro and roulette layouts, operating in Chicago; that the income amounted to more than half a million a day; that Mont Tennes was the operator of gambling news service with Chicago as its center and radiating all over the United States; that Tennes secured power through a system of persecution; that the Payne race-track system and others were put out of business by dynamite bombs and the torch; race-tracks and even private residences being fired or dynamited in the war of extermination; and that pool-rooms in Chicago which failed to subscribe to the service were closed down by the police." [1]
>
> "That pool-rooms which subscribed to another service were raided

[1] Note how this method works through the years. For example, on July 16, 1927, about sixteen years after this charge made by Murphy, the Empire News Company asked a federal injunction to restrain the police from illegally raiding and wrecking its offices. The concern charged that the raids were inspired by Mont Tennes.

by the police; that Tennes had told him that he had spent twenty thousand dollars in the past mayoralty election; and that Tennes' men stole news from the race-tracks in Canada in violation of the Miller Bill, and sent news into the United States."[1]

Murphy submitted the financial accounts of the News Bureau as furnished him by Tennes, showing that all collections in Chicago were paid to a man named Caldwell. Caldwell, according to Murphy, was the name Tennes used to cover up his system of levying tribute on the gamblers. According to Murphy:—

"Tennes has two clearing-houses for his handbooks and pool-rooms in Chicago. One is in Room 21, 21 North La Salle Street. Here, every morning, the book-makers report to get the day's entries and settle the previous day's business.

"When the police are going to raid any of Tennes' branches, a telephone message comes to these headquarters. Immediately the operators send out word to the pool-room men all over the city to get under cover.

"By the time the police arrive, either the place is empty or, if it is so arranged, one or two men may be there to be taken in. Under these conditions George Murray, the former constable, is sent to bail them out. That is his regular business and the purpose of his employment.

"In the afternoon, Room 411, Imperial Building, becomes the clearing-house where John Morelock and H. L. Argo send race news to the pool-rooms and handbooks and where all bets are received and registered. There are ten telephones, both Bell and Automatic, used to send out this news, and leased wires which connect with cities in other parts of the country."[2]

The statement just given sufficiently indicates the coercive and predatory methods by which Tennes had gained his ascendency in the news distributing business.

On August 29, 1911, Harry Brolaski filed suit against Tennes in the Circuit Court for twenty-five thousand dollars, and Timothy Murphy, Tennes' partner, filed a second suit on August 30 (in addition to the dissolution suit) for damages based on statements by Tennes concerning Murphy. It was expected that scores of gamblers, forced into court as witnesses in the suits of Murphy vs. Tennes and the damage suit by Harry Brolaski, would complete the exposure of Chicago's gambling syndicate.

"When these suits are tried," said Murphy, "I will force Tennes to show his own connection with the following evils: organized gambling, the pool-room and handbook monopoly, wholesale police bribery, systematic dynamiting of rivals' property, double-crossing his associates in the gambling business."

One of the witnesses gave an interview to the Chicago *American:*

"Tennes is only a small part of a big system," said the witness. "Tennes is reputed to be the head of a big pool-room and handbook trust. A trust like that is only one section of a larger monopoly which

[1] Facts which the United States Government had tried to secure in the investigation previously mentioned.

[2] *Tribune,* August 27, 1911.

controls all kinds of organized evil in Chicago, looks after the police protection and keeps its members from being convicted if they happen to be arrested. In fact, there are two or three separate book-making trusts in Chicago and each one has equal rights under the 'system.' This 'system' also takes in vice resorts and certain varieties of thieving."

Chief of Police McWeeney then issued a statement in which he declared that police protected gambling did not exist in Chicago. To this statement Harry Brolaski replied: "I've got evidence to go before the grand jury and secure the indictment of police officials for collecting eighty-five dollars weekly graft from three protected gambling houses."

Pool-rooms at this moment were operating wide open in spite of the publicity given them by the litigation.

One of the few statements regarding gambling made by Tennes himself appeared at this time in the Chicago *Herald and Examiner*. He made it in justification of his own position and in answer to previous adverse publicity which he credited to his former partners with whom he was in litigation. He said:

"Tim Murphy, who was eliminated from my race news service because his methods were dishonest, is the man behind the charges published in the *Examiner* today. He can't hide his identity and he can't hurt my race news service by any attack he makes on me.

"Tim Murphy came to me a year ago last December and told me he had connections all over the country that would make possible the use of the Payne Service out of Cincinnati. Payne had been furnishing the race track news in 1907, when the famous blunder on the race won by the horse Grenesque at Fort Erie was put over, costing pool-room men a fortune through a mistake in the announced closing odds. I was anxious to get away from the Payne Service and believed there was a profitable field for me to start an opposition bureau.

"So I took Murphy at his word and put in five thousand dollars for a half interest. By the time the money was spent I discovered Murphy had very little to offer. We reached a new agreement whereby I was to further back the business with additional funds and he would relinquish his interest in the enterprise and go on a salary if he failed to make good in a specified time.

"I put him in charge of our business outside of Chicago. You need go no further than his handling of the New York service to judge the situation. He reported to me that he had let that end of the business to a man named Chapman for a price of nine hundred dollars a week. Later his own brother, James Murphy, who was connected with our service in New York, voluntarily told me that Tim Murphy actually was 'Chapman' and that he was 'taking down,' really stealing, the difference between the nine hundred dollars paid in and what he was collecting.

"In the West he held out seven hundred dollars. This, with the twelve hundred dollars that I had actually established he had held out on me on the New York proceeds, I deducted in our final settlement from what was coming to him. Much more of the same thing came to my attention and a year ago I told him that in the future he would hold a ten per cent interest in the business, draw a ten dollar a day salary, and if profits showed in the business he could have the five thousand dollars he claimed to have sunk originally in the business, but that he could no longer be the manager.

"This proposition he rejected. He undertook an opposition business and fell down in three days. Then, at a conference in Saratoga, after he had tried to shoot his brother, James Murphy, he agreed to my terms.

"It was after this he began circulating stories that I was responsible for the gambling bomb outrages in Chicago and elsewhere and various race-track fires. The whole gambling world knows that every bomb and every fire has had some disgruntled outsider back of it, anxious to get on a pay roll somewhere. Maybe Murphy knows more about it than I do. I never had knowledge of such a crime in my life.

"For the last three months he has been trying to undermine my service. He figured on getting the service on the Butte races, but I got it too and he found himself with no one to serve and with a costly service on his hands. Since then he has been romping around the country interviewing governors and attorney-generals of various states, trying futilely to begin proceedings against me.

"He started business within the last two weeks and fell down. The latter part of last month he sent out a statement to the pool-rooms in Chicago and throughout the country. This is what he said: 'Guess you heard the bulletin Tennes sent out about my not getting Butte, which was a big lie, as I had the privilege and only pay two hundred dollars and fifty dollars a day expense for reporter and messages. I am going to give some wrong winners if he steals my service. So beware, as I would not like to see you get hurt.'

"I didn't have to steal his service and Murphy was the only one hurt by this attack. It is just one of a dozen yelps he has let out." [1]

Contrary to the explanation of Murphy, Tennes ascribes the bomb outrages to a gang of blackmailers or to disgruntled excluded gamblers.

12. The Civil Service Investigation.

By the time the three suits were brought against Mont Tennes by Murphy and Brolaski, the Civil Service Commission made an important investigation into bribery charges against certain police officials. It is remarkable that the name of Tennes is rarely mentioned in this inquiry, which ended in the discharge of several police officials, yielded some valuable information, but hampered gambling operations very little. This investigation, begun in September, 1911, was aimed at Chief McWeeney and at least five police inspectors, and was based on charges of political graft arising from gambling on Labor Day at Comiskey Park where the Gotch-Hackenschmidt wrestling match was held.

Evidence brought before the Commission involved members of the department in all sorts of graft, ranging from "shaking down" lawless saloonkeepers to levying tribute upon owners and keepers of resorts and gambling houses.

Information given to the Commission disclosed a vice trust of three big politicians and three lesser ones. Three well defined districts were alleged to exist, each in charge of one of the three overlords:

First: Hinky Dink Kenna, Alderman of the First Ward and ruler of every resort from Madison Street south to Sixty-third Street;

Second: James A. Quinn (Hot Stove Jimmy), reputed to be the dispenser-in-chief of all privileges from the river to Wilson Avenue;

[1] *Examiner*, August 30, 1911.

Third: B. J. Grogan (Barney), known everywhere in the underworld as the distributor of concessions on the west side.

The three lesser men were: Thomas Carey, Stockyards district; Frank W. Solon, Second Ward; Emanuel Abrahams, west side saloonkeeper, ruler of the Nineteenth Ward gambling.

A slush fund was raised among the gambling and vice chiefs of Chicago to forestall the civil service investigation and to buy off the prosecutors, according to William Wheelock, one of the prosecutors.

Various means of stopping the prosecution of the first policemen to be tried were employed. Bombs were thrown, witnesses were offered bribes, and the characters of witnesses were defamed. An attempt was made to embarrass the Commission by preventing the passage of a ten thousand dollar appropriation ordinance for the investigation. More bombs were exploded and then Prosecutor Wheelock of the Civil Service Commission received a warning on September 23.

Next came Chief McWeeney's move. He issued new gambling orders, but queerly enough, these were against slot machines in which "children wager pennies for candy," and a second order forbidding gambling with dice for drinks and cigars. These orders are of the same sort as the action taken by Commissioner Michael Hughes[1] in 1927, after the bombing of the Fitzmorris and Reid homes.[2]

A sophisticated critic made the following remark immediately after these two orders were issued:

> "If the chief is endeavoring by his order to 'get back' at the bomb-throwers, he has made a mistake. It is not the saloon and cigar store keepers who have been throwing bombs in this town. It is the handbook operators and regular gamblers who, in spite of the chief's order, were just as busy yesterday as they were at the time roulette was being played at the White Sox Ball Park."

Harry Brolaski, plaintiff against Tennes in one of the suits, received a bomb warning with the demand that he leave Chicago lest he be killed. There were some raids on minor pool-rooms, but the ring-controlled handbooks ran without interference. Mr. Wheelock, the prosecutor in the civil service hearing, ventured the supposition that "police grafters get too much tribute from the ring to order a complete cessation of gambling." An old-time gambler philosophizes thus: "You can't scare these old-timers with a police investigation. They've never seen one yet which was on the square, and it will be the surprise of their lives if this one proves to be."

McClelland, the first policeman tried, was adjudged guilty by the commission and was ordered discharged. His superior, Lieutenant William Walsh, was the next to be tried. Numerous policemen came to the aid of Walsh with testimony that no gambling had been going on at the ball park though the Commission had evidence that four games were in active operation only 150 feet from some forty or fifty bluecoats at the ticket window.

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[1] Hughes resigned in 1928, apparently forced out by insistent demands for his removal by the public.

[2] See Section 21.

Only the central station detectives said they had seen any gambling. As a result of their testimony, thirty *blind* policemen were also tried.

Most impressive in this civil service trial were the contradictions between Chief of Police McWeeney and Assistant Chief Schuettler. The chief testified before the commission on August 16, 1911: "There is no gambling in Chicago and the police do not 'tip off' raids." A day later Schuettler on the stand declared there was gambling in Chicago and raids were "tipped off." He believed that if the police department exerted an honest effort it could put the gamblers out of business.

Ben R. Hyman, member of the White-Smith-Perry syndicate, testified before the commission: First, that all raids made by the police are done under instructions from the protected ring for the purpose of driving competitors out of business; second, that the raids on places "in on" the combination were merely pretended; third, that some of Schuettler's raids were made on dummy switchboards set up for the purpose of helping the police make a search, while the actual switchboards were unmolested.

Then Harry Brolaski, a man of many roles, gambler, confidence man and reformer, appeared before the Civil Service Commission. He involved the highest officials of the police department, and prominent politicians were smeared with suspicion in his testimony. Brolaski charged that he had entered into a conspiracy with Chief McWeeney, Inspector Nicholas Hunt, Ben Hyman and Tom Costello to prey upon gamblers and other underworld *entrepreneurs.* The conspiracy was hatched prior to Chief McWeeney's appointment as chief. Hyman was to coach McWeeney and Tom Costello was to do the same for Hunt, who was brought downtown and placed in charge of the first division, which controlled the "Loop." Brolaski himself was to go out on the lecture platform as a reformer. He proceeded to read the lists of opposition gambling houses and resorts before church societies and to give them as wide publicity as possible. The conspirators rented an office in the Fort Dearborn Building and compiled a complete card index of the underworld. The City of Chicago, he claimed, paid the office rent and the expenses of the investigation. The following politicians, police officials, and levee characters were mentioned in Brolaski's recital: Alderman Hinky Dink Kenna; Alderman Bathhouse John Coughlin; Tom Carey, south side politician and gambler; Chief McWeeney; Inspector John Revere; Inspector Hunt; Lieutenant Ben Reed; Ben Hyman; Tom Costello; Mont Tennes; Mike de Pike Heitler; Tom McGinnis, lieutenant of Kenna, and Assistant Chief Schuettler.

He testified that a scale of prices was standardized by this outfit with monthly assessments as follows: saloons open all night, $50; all night saloons with music, $75; crap games, $50; poker, $25; resorts selling liquor, $100.

The big gamblers, including Tennes, came through the civil service investigation unscathed. A few small-fry policemen were made "the goat" for the higher police officials—a public sacrifice to righteous indignation.

Meanwhile, more bombing had been going on. Two bombs were aimed at Kennedy's home. Kennedy was both organizer for Mont Tennes and secretary to John Broderick and the legislators under fire in the Lorimer election scandal. He had also conducted a gambling house at 729 West

Randolph Street for Mont Tennes, and later had quarreled with Tennes about a fifty dollar race bet. A week later Kennedy went to State's Attorney Wayman to give information concerning gambling, whereupon two of Tennes' lieutenants visited Kennedy. "The boss says if you cough up you will get into trouble." About a week later Kennedy received a telephone call warning him, and the two bombs followed. Kennedy then went to work for Murphy.

In the early part of December Timothy Murphy, John Murphy and Harry Brolaski, the plaintiffs in the three suits brought against Tennes in an interstate fight against him and his General News Bureau, reached an understanding with King Tennes. Tennes is said to have given John Murphy a job at a good salary for "laying down" on further reform movements. Before closing the treaty of peace with his rivals, who were trying to establish a rival news bureau, Timothy Murphy signed and mailed a letter to Governor Marshall of Indiana and other governors and prosecuting officers of the states where he had lodged gambling complaints against Tennes. The statement ran: "I made the charges against Tennes through a spirit of revenge and for the purpose of building up a business of my own." The letters were said to bear the date of Saturday, December 16, 1911, when the final terms of the agreement with Tennes were made by the Murphy brothers. According to an interview given out by Governor Marshall, Murphy followed up his letter with a telegram: "Have discovered principal charges false." The governor announced that the cases against the Telephone Company supplying service to the General News Bureau would be dropped because the company had voluntarily cancelled its contract for this service.

13. The Quiet Years—1912 to 1916.

On January 31, 1912, the police department undertook a three months' investigation of itself. A plot was unearthed in which Mont Tennes and the gambling trust had tried to bribe Assistant Chief Schuettler and his gambling squad. Charles Barrett, then assistant state's attorney, was prepared to go before the grand jury and seek indictments against four men, all prominent gamblers and associates of Mont Tennes. In fact, it was asserted that a systematic plan had been followed by these men within the last six months to subsidize every member of the squad, twenty in number, and tie their hands in such a way as to make war on the gambling powers of Chicago an impossible task.

Warrants, charging two alleged lieutenants of Mont Tennes with attempted bribery of Jeremiah Laughlin of the gambling squad, were issued by Judge Walker. The amounts of the bribe offers were picayune, five dollars in return for police immunity. The names were fictitious, but soon thereafter Ephraim Harding and George Murray, bondsmen of the Tennes' syndicate, were arrested, charged with bribing Detective Laughlin. The latter reported the affair to Assistant Chief Schuettler and to W. W. Wheelock, Prosecutor for the Civil Service Commission. On April 19, 1912, evidence was presented to the grand jury in the bribery case of George Murray and Ephraim Harding for an attempt to bribe Detective Jeremiah Laughlin.

When the case was called Detective Laughlin, Major James Miles of the Civil Service Commission, and Howard Williams, an investigator, were

summoned, but their evidence was not prepared so the case was postponed and later died.

Tennes continued to prosper and the newspapers carried accounts of some large real estate ventures he had launched on the far north side.

In June, detectives raided one of Tennes' clearing-houses, arresting four men taking bets over the telephone and booking one of them as keeper. In July it appeared that Tennes had reorganized his handbook centers so that a raid would only yield a small number of men and not expose the main establishment. There were other small raids of this kind. In September Tennes, again in complete control of the news service from race tracks, was able to shut down all handbook gambling in Chicago long enough to make the bookmakers come to certain terms in regard to his fees. Meanwhile the sports of Chicago crowded his large poolroom in Lake County, Indiana, near the state line.

The year 1912 ended in peace for the gamblers. Maclay Hoyne, Democrat, was elected to succeed Wayman as state's attorney, and with the mayor and the state's attorney on the same side of the political fence, the friction between the two offices was removed and gamblers were not molested.

In 1913 one of the famous "crime waves" occurred and Chief of Police McWeeney was finally forced to resign on October 24, 1913. On November 3, James Gleason was appointed chief of police. The year 1913 was one of quiet for Tennes and the gambling fraternity.

In February of 1914, detectives from the chief's office wrecked a dozen or more offices of Tennes' agents and men were arrested for taking bets. There were five other raids later, each of them netting a numbr of men and gambling paraphernalia, as well as money placed as bets. Ephraim Harding always appeared as bondsman and no one seems to have suffered from these raids except the telephone company, whose telephones were always torn out.

14. The City Council's Crime Commission of 1915.

On October 13, 1914, Edward W. Altz, investigator for the City Council's Crime Commission, revealed that gambling flourished in Chicago. He further stated that one man controlled seventy-one handbooks and was known as "king of handbook operators." It could have been no other than Mont Tennes. Others who tried to enter the business as "bookies" could not survive. Altz stated that a police sergeant was "tipping off" raids from the central office. As a result of this testimony all the handbook gambling in Chicago was shut down by a telephone order to "lock up."

Altz made public a list of thirty out of some three hundred places where he said bets could be placed. His assistant had not succeeded in discovering the main clearing-house but had listened in on a tapped wire running to the Madison Street branch. This subsidiary clearing-house was in charge of a deputy bailiff of the Municipal Court at Harrison Street police station. Mr. Altz then described a numeral code used in transmitting the winners.

> Altz testified that Mont Tennes controlled the handbook business in Chicago. "Some of the gambling is on the square and some of it is not. One of the difficulties of the business is that the telephone operators employed tip off races to outsiders before the information reaches the

central clearing-house. In this way more than one handbook has been ruined (wire tap). The profits are generally known among the gambling fraternity to run into millions. It is said more than one million dollars are paid for wire service in a year."

"Have you discovered any evidence that the police are connected with handbook operations?" asked Alderman C. E. Merriam, Chairman of the Crime Commission.

"I have received information," said Altz, "but have not verified it, that the police receive fifty dollars a week for each handbook operated and that in return officers at police headquarters 'tip off' contemplated raids and other valuable information."

Following is a list of places at which bets could be placed, according to Altz:

Blackstone Cafe, Lake Avenue and East Fifty-fifth Street;
John Broderick's saloon, 732 West Madison Street;
Joe Burke's saloon, 78 West Harrison Street;
Kerwin's saloon (Drexel Cafe), Thirty-ninth and Cottage Grove Avenue;
Room 509 Nicoll Building, South Clark and West Adams Street;
Saloon on south side of Fifty-eighth Street, just west of the elevated tracks;
Flanagan's saloon, East Twenty-second Street and South Wabash Avenue;
Dennis Foley's saloon, Thirty-first and State streets;
Fountain Inn, West Madison and Dearborn streets;
2032 West Madison Street—Charles Fry and Ed Ford operate handbook and clearing-house;
Frill Brothers, 552 South Fifth Avenue;
W. & W. Cigar Store, 50 East Twenty-second Street, handbook operated in rear room;
George Graham's saloon, 5514 South State Street;
Thomas McKoon, 4009 West Twelfth Street;
Moffett's Barber shop, 636 North Clark Street;
Monroe Athletic Club, 76 West Monroe Street;
Newman's Cigar Store, 28 East Twenty-second Street;
Oakwood Hotel, Seventy-first Street and Cottage Grove Avenue;
Perfecto Bar, West Washington Street and North Fifth Avenue.

Despite Tennes' repeated claim that he was only a newspaper man distributing sporting news, Altz named him as the "brains" of a huge handbook syndicate.

In a statement by Hoyne, Schuettler, who was now first deputy superintendent of police, was mentioned in connection with the failure of police to suppress the gambling activities of Mont Tennes. Schuettler's defense was that his gambling squad had been taken away from him and that he had tenaciously raided Tennes' places, "raided his clearing-house and arrested his men." He claimed that if ever a human being persecuted Tennes it was he, and that if Tennes succeeded in escaping, the judges and the state's attorney's office were to be blamed. It may have been true that Schuettler's men repeatedly raided Tennes' places, but in the most important raids evidence seems always to have been insufficient.

Tennes was advised of Schuettler's statement. Entirely unperturbed,

he said: "For the life of me, I cannot see why Schuettler or anyone else could get into a controversy over me. Why, I haven't been in the gambling game for years. I'm not a handbook maker. I'm a newspaper man." This was Tennes' story and he consistently stuck to it.

In an interview that evening, Hoyne said:

> "I do not care to make any charges against any police officials that I cannot back up, and I have no quarrel with Mr. Schuettler. He and I have been friends for more than fifteen years."

During the mayoralty campaign, prior to the election of April, 1915, gambling ran wide open and Mont Tennes' business flourished unmolested. William Hale Thompson, Republican, was elected mayor in 1915 and Charles C. Healey was appointed chief of police. Thus, as was the case during the first part of the Harrison administration, the mayor and the state's attorney were on opposite sides of the political fence, except that now the mayor was the Republican and the state's attorney was the Democrat.

Despite this fact, 1915 was a very quiet year, a state of conditions desired by all law violators. Public opinion was not aroused. Tennes, in addition to his metropolitan gambling business, was conducting a large pool-room, together with Charles J. Moertel at Bellewood, Illinois. The place was immune because the "boss was in right."

For a few days Tennes' business was stopped because the secret code had been discovered and published. Anxious betters were turned away because the wires were closed down. The police then admitted they had known for two years that Tennes' information was being transmitted in code. They regretted that the code had been published because the police *might* have used this knowledge to locate the central clearing-house. The telephone company could not give the police the desired information because it was against the federal law. Then Schuettler stated: "One hundred thirty-eight arrests were made for gambling in the "Loop" and the Harrison police district; 129 of these arrests had been fined one dollar and costs." Schuettler suggested that one hundred or two hundred dollars for attaches would be sufficient to make the handbook men quit. The police again predicted that the reign of Tennes as gambling king was coming to a close; that powerful old gamblers were coming back to wage war against him during the winter; the old "swan song" to console the public. Tennes' reign had been reported waning or ended often before when the police had to face the facts of open gambling. A little later, the same four large handbooks were raided in the "Loop" and fifty men arrested. Tennes was reported to be a partner in interest, but was not among those arrested.

15. The Graft Exposés of 1916, 1917 and 1918.

In August of 1916, during the campaign period preceding the elections for the state's attorney's office, the Thompson administration was threatened when the civil service commission began to investigate charges that slot machines were being operated unmolested in certain districts.

The slot machines were manufactured by the Mills Manufacturing Company, but the profits, it seemed, were being divided between politicians. The Sportsmen's Club also was uncovered as a medium for accepting graft

for gambling as well as vice. It was charged that the club had been used by City Hall politicians as a weapon to drive into its membership lists all persons doing business with the City Hall, including handbook makers, saloonkeepers, gamblers and owners of vice resorts. It was also charged that only a small portion of the twenty-five thousand dollars collected for life memberships during 1916, at one hundred dollars each, had gone into the club treasury. Charges were made by Hoyne that life memberships were nothing more than "protection money paid to the city administration by the *polite* outlaw." The mayor's name appeared on letterheads of the club and was the bait used in selling these life memberships. The following were a few of the names on the membership list:

Handbook Men:
Mont Tennes;
Raymond Tennes, Mont Tennes' son;
James V. Mondi, 738 S. Dearborn Street;
John J. Lynch, 732 W. Madison Street;
Tony Brockman, 36 W. Randolph Street;
John A. Karr (Karr & Kennedy), 837 N. Clark Street;

Slot Machine Manufacturers:
Herbert S. Mills, head of Mills Novelty Company;
Robert Jackman, Grant Hotel;
O. D. Jennings, 2901 Indiana Avenue;
Frank B. Buzzin, former chief investigator in the city attorney's office;

Saloonkeepers:
David Lewisohn, Congress Cafe;
James Colosimo, 2126 S. Wabash Avenue;
George Silver, 20 N. Dearborn Street;

Miscellaneous:
Henry Seligman, attorney for the club and also for Tennes' bookmakers;
Chief of Police Healey;
Captain Morgan Collins.

Much evidence of bribery and corruption was disclosed by the Civil Service Commission and the grand jury which was convened to investigate the charges against the public officials involved, and the Sportsmen's Club itself was soon forgotten. Joseph Smith and William O'Brien, police captains, were suspended for failure to suppress vice and gambling in their districts. Mont Tennes figured in the testimony of an investigator for the Law and Order League, as the owner of places where he could easily place bets. The Civil Service Commission's action in suspending the police was generally considered a scheme for drawing attention away from Hoyne's investigation of the political graft ring, but he proceeded with vigor to expose rotten conditions existing and permitted to exist. Hoyne was not after the small fry in the police department. On October 13, 1916, he secured warrants for the arrest of Chief of Police Charles C. Healey, whom he charged with malfeasance of office.

Maclay Hoyne was reelected as state's attorney in 1916 despite the fact

that only a year before a Republican mayor had been elected. He pressed his charges after the election. On January 16, 1917, indictments were voted against eight men, the chief of police, captain of police and two sergeants of the Lake Street station, chiefs in vice, gambling and crime, politicians and crooked bondsmen:

Charles C. Healey, chief of police;
Tom Costello, alleged graft collector for Healey;
Mike de Pike Heitler, confederate of Costello;
Billy Skidmore, third member of graft ring, saloonkeeper and gambler;
Tom Newbold, proprietor of the Normandie Hotel and one of the men who admitted paying graft;
John Walsh, patrol sergeant at West Lake Street Police Station;
Willie Weinstein, former partner of Newbold;
Steve Barry, detective sergeant at West Lake Street Police Station.

The indictments accused the men of bribery and graft. At the trial evidence was introduced to indicate that a gigantic graft ring, composed of high public officials, existed. The "big three" of the graft ring were said to be Chief of Police Charles C. Healey, Captain Tom Costello, and William Skidmore. Tennes' name at no time during the grand jury or during the civil service investigation appeared among gamblers in the bribery ring. As a result of his indictments, Chief of Police Healey was suspended from his office and later retired. He was not convicted. Herman F. Schuettler was appointed by Mayor Thompson to succeed him.

16. The Landis Inquiry of 1916. The Chicago Law and Order League, on July 21, 1916, furnished the information that gambling was virtually licensed at the Hawthorne Race Tracks and that Mone Tennes, concessionaire-in-chief, had obtained his rights by payment of ten thousand dollars to the Jockey Club. Captain Collins of the Central Station raided supposed headquarters and found little evidence. Sheriff Traeger took personal charge of his deputies at the track and found and published the names of the agents who were operating for Tennes. On July 21, 1916, the sheriff's deputies found no "bookies," but newspaper reporters had no trouble finding them. The Illinois Jockey Club denied that Mont Tennes or any other "bookies" had any agreement with them and called the charge a lie. The Club said that it had hired sixty Pinkerton detectives to help suppress gambling and was most willing to accept any further suggestions to get results.

A month later the Chicago *Daily News*, August 30, 1916, published an exposé of handbooks operated without police interference and asked two questions: "Does Tennes control the police department?" and "Who is being paid, and how much?" Mont Tennes again appeared as king of the bookmakers, and the *Daily News* asserted that he was personally interested in twenty handbooks, eight of which were in the "Loop." Some of the firm names under which Tennes' handbooks operated were given:

Murphy, Skinner and Tennes;
Collins and Tennes;
Wagner, Devine and Tennes;
Sam Cohn and Tennes;

Grace and Tennes;
Cleary and Tennes;
Sullivan and Tennes.

The occasional handbook raids, it was asserted, took place only where someone had been trying to run a book without subscribing to Tennes' race track service. A "high police official" was quoted as follows:

> "It is just as necessary for a handbook or a gambling house to pay for protection as it is for a saloon or restaurant to pay for a city license. Any 'joint' which is not paying for protection is promptly raided and closed. If a place is running, everybody is satisfied that it is paying."

The payment of protection, it was stated, was made either in political service or in cash.

Of all previous exposés, investigations and prosecutions by all the state and local agencies, public and private, none had ever succeeded in bringing into court Mont Tennes and his immediate associates or revealing the complete internal organization and operations of the ring as did Judge Kenesaw Mountain Landis of the United States District Court. F. W. Sells and Fred Stall, partners in a saloon at Twenty-third Street and Indiana Avenue, had been called for examination in connection with the bonds of some alleged blackmailers. They finally admitted that they received bets on horses and that they got the results of the races by calling Main 1858 and speaking to Ephraim Harding or Charles Felteys. During the next few days evidence was unearthed by Judge Landis that professional gamblers, well organized and strongly financed, were operating in Chicago with apparent immunity. The following names were disclosed: General News Bureau; Mont Tennes; John Morelock, manager of the News Bureau; Ephraim Harding, a Tennes' lieutenant; Henry C. Eckebrecht, Tennes' business secretary; Horace Argo, who figured in the contempt suit previously given; William Tennes, Mont's brother.

This investigation began at the head; the principals were subpœnaed to appear before Judge Landis. On October 2, 1916, Tennes, himself, appeared without subpœna, and was surrendered by his special counsel, Clarence Darrow, on whose advice he refused to answer incriminating questions. But the other witnesses, battered and driven out of their cover of bad memory and ignorance, divulged startling information. From the lips of Tennes' "inside" bookkeeper came the admission that Tennes owned twelve or fifteen handbooks in various parts of Chicago; that they and dozens of others were supplied with information from a secret central bureau in the Germania Hotel on Wabash Avenue, managed by William Tennes; that their receipts were collected daily by Ephraim Harding and turned in to Tennes' office; that this money was banked in the name of the bookkeeper, and all transactions were in currency; that a ten thousand dollar sinking fund was kept in a leading bank as a "bank roll" behind these handbooks. The General News Bureau, the racing information agency of which Tennes owned sixty-five per cent, made from twenty thousand to twenty-five thousand dollars a month profit and kept no books or written memoranda of any kind, as determined from several witnesses' reluctant admissions. A twenty-five thousand dollar defense fund had been raised for George Irwin,

the fugitive alleged blackmailer, before he decamped, and men associated with gambling enterprises contributed most of this "pot," as stated by A. C. Jones, one of Irwin's bondsmen, himself a former race horse owner.

From many directions streams of information came flowing in to Judge Landis. The Citizens' Association sent the court a list of more than forty handbooks, operating more or less openly throughout the city. The list was extended by "tips" from disgruntled and excluded gamesters from sorrowing wives and mothers of losers. It was evident that the "books" nearly always won.

Thousands were deposited weekly to Tennes' swelling balances in several banks under several names. Along with race betting it appeared there were several side lines—baseball, poolrooms and craps. Judge Landis pledged himself to "go through" for the purpose of driving the malodorous "straw bond" business out of the federal courts. The courtroom was crowded with familiar figures of every phase of the city's sporting and crime life. Surveying this crowd, Judge Landis observed: "I wonder what manner of people those are who can spend a whole day here listening to a case." He became curious as to the character of patrons of handbooks. He was informed that lawyers, doctors, writers, waiters, chauffeurs, and business men were among the customers. The judge added:

"And sometimes a person from the underworld?"
"Yes," said the witness, "some might drop in."
"Pimps and thieves and thugs?" queried the judge.
"Possibly so," replied the gambler.

Ephraim Harding, who was a willing witness the first day, became suddenly deaf and dumb, much to the displeasure of the court.

Then Harding and the Tennes' bookkeeper, Henry C. Eckebrecht, sentence by sentence, were led through the Citizens' Association list, all the other lists and single "tips," and one by one they admitted that most of the places listed were either run by Tennes or run in close associaion with Tennes' string.

Tennes alone was obdurate. Though the court spoke in friendly terms, Tennes insisted upon his constitutional right not to incriminate himself. He testified that his real estate business was on the square; that his News Bureau was law-abiding; that he had been in California and had just returned; and that Eckebrecht, his bookkeeper, took care of his real estate business.

Then the proceedings took the form of an inquisitorial arraignment of Tennes with regard to his gambling business. The judge wanted to know if Eckebrecht handled funds for Tennes which did not originate in the real estate business. He asked him about the fund in the First National Bank; he asked him if the money came from handbooks. Tennes repeated a single answer, "I refuse to answer. It might incriminate me." The judge ordered Tennes to the seculsion of the jury room, indicating that he expected to call him again.

Henry C. Eckebrecht, bookkeeper in Mont Tennes' office and a relative, was the only witness to talk frankly. He alone admitted that Mont Tennes

was engaged in the gambling business. He first testified as to Tennes' real estate business, with an office under the name of Tennes and Tennes, at 604 Straus Building, and that he had seen him the same morning prior to taking the stand. He then revealed that he took in the money for handbooks. The number of directly owned handbooks (fifteen) which sent in money from bets were located "all over town." Eph. Harding collected from the individual handbooks and brought the money to Eckebrecht. The witness then identified Eph. Harding in the court room and admitted that Mont Tennes was his boss. Eckebrecht received the money daily from Mont Tennes and deposited it in his own name at the First National Bank. This account was seven or eight years old. It was not his money but Tennes'. The real estate money was kept in the name of the North Shore Real Estate Company. The court then established, through the witness, that Eph. Harding collected the bets from the "bookies" and brought the money in to Eckebrecht and that the latter drew money from the bank to pay the losses of the "bookies" through Eph. Harding. The orders were telephoned out by William Tennes and A. M. Walsmith from the Germania Hotel at Wabash Avenue and Thirty-third Street. William Tennes, a brother of Mont Tennes, got the information and gave it to Walsmith, who telephoned out. He did this each day for the "bookies." Eckebrecht finally admitted that it was the General News Bureau which gave William the "flash" before the races and flashed the winners after the races. Then Eph. Harding drew the currency from Eckebrecht and went around to the "bookies" and paid them.

William Tennes then testified, corroborating Eckebrecht in that he got the information from the General News Bureau. This was transmitted to him by an automatic telephone.

Horace E. Argo, partner of Mont Tennes in the General News Bureau, was located and testified: that the General News Bureau was located in the Manhattan Building; that he owned twenty per cent; Mont Tennes, sixty-five per cent; and John Morelock, the manager, owned the other fifteen per cent; that the business of the bureau was sending baseball and track news, including names of jockeys, scratches and probable odds in advance of races, and results. He said that the profits were from fifteen to twenty thousand dollars a month. He claimed that no accounts were kept. Morelock was difficult to handle, as were his employees who adopted the same tactics, saying that they did not know to whom they were telephoning or why.

William Tennes, Eph. Harding and Morelock were at first very evasive and reticent about the list of subscribers and handbooks. It was difficult to establish through Eph. Harding his connections with William Tennes.

B. E. Sunny, president of the Chicago Telephone Company, on the stand gave out some of the list of subscribers, and Mr. Tracy, of the same Company, explained that the automatic service was preferred by gamblers because it afforded greater secrecy.

Clerks testified that the bets handled by the syndicate in Chicago averaged from six to seven thousand dollars a day, with resulting profits of four to five thousand dollars a month. In addition, the bureau netted Tennes from fifteen to twenty thousand dollars a year. Detailed figures of the operations of the Tennes syndicate showed that the net profits amounted to approxi-

mately seventy-five thousand dollars a year. About ninety per cent of this amount went to Mont Tennes himself. As to the out-of-town collections from nation-wide operations, Morelock testified that they amounted to twenty thousand dollars per month against three thousand dollars from Chicago. Eph. Harding described how he or Eckebrecht or Bud Langford went daily to Room 417 at the Adams Express Building and settled by money their accounts with out-of-town handbooks.

Below is a list of handbooks owned by Tennes in other cities, giving the name of the manager and the amount contributed weekly to the bureau:

San Francisco	Joe Walsh	$500
San Antonio	Dan Breen	80
Oklahoma City	Oats	120
Detroit	Falk	
West Baden	Harry Romaine	400
Cincinnati	George Rise	425
New Orleans	St. Bernard Social Club	
Berkeley	Branch of San Francisco	

The following are lists of local "books," the first obtained from William Tennes and the second secured from Joseph Thoney, investigator for the Citizens' Association, showing the handbooks owned by Tennes or getting his service, or operated independently, and the name of the police captain in the district:

First Precinct—(Captain Morgan Collins)

Address	*Proprietor*
219 S. Dearborn Street, Room 744	Tom Evans
189 N. Clark Street, Cigar Store	Alex Word
215 N. La Salle Street, Cigar Store	Mat Crowley
175 N. Clark Street, Saloon	Hudson
180 N. Clark Street, Astor Hotel	Sam Cohen
22 W. Quincy Street, Room 608	Big Dutch
115 S. Dearborn Street, Room 418	Wagner & Devine
Crilly Building, Room 714	Collins
35 N. Fifth Avenue, third floor	Grace
12 N. Clark Street, Saloon	Pat Reagan
120 N. State Street, Room 43	Jones
145 N. Clark Street, Room 307	McNichols
114 W. Madison Street, basement	
Commerce Building, Room 225	Cleary
12 W. Van Buren Street, second floor	Sullivan
225 N. Fifth Avenue, Cigar Store	Adam Amberg

Second Precinct—(Captain Ryan)

738 S. Dearborn Street, Cigar Store	
743 S. Clark Street, Saloon	Pat O'Malley

Fourth Precinct—(Captain W. P. O'Brien)

2222 S. Wabash Avenue	Sol Van Praag
28 E. Twenty-eighth Street, Saloon	Shingleton

Eleventh Precinct—

723 E. Thirty-ninth Street, Cigar Store	Tom Burns
4020 Cottage Grove Avenue	Langford
5903 S. State Street, basement	Schneider

Fifth Precinct—(Captain S. K. Healy)
3433 S. State Street .....Tennes & Jones
2237 Cottage Grove Avenue.....Sell & Stall
Nineteenth Precinct—(Acting Captain Charles Atkinson)
4189 S. Halsted Street .....O'Leary
Twenty-seventh Precinct—(Captain Max Danner)
743 W. Madison Street, over Lynch's Saloon..
1640 W. Madison Street, Cigar Store.....Shemansky
1809 W. Madison Street .....Raggie
Twenty-ninth Precinct—(Captain W. H. Westbrook)
3114 W. Madison Street .....Tennes & Lynch
Thirtieth Precinct—(Captain Matthew Zimmer)
3932 W. Madison Street, rear Cigar Store.....Tennes
4007 W. Lake Street, Cigar Store.....Walsh
Thirty-second Precinct—(Captain Michael Gallery)
2800 W. Chicago Avenue, Saloon.....Harnet
Thirty-eighth Precinct—(Captain William Russell)
636 N. Clark Street, rear of poolroom.....Garvey
743 N. Clark Street .....Tennes & Fries
837 N. Clark Street, Cigar Store.....Karr & Kennedy [1]
Forty-first Precinct—(Captain James O'Toole)
2547 Lincoln Avenue, Cigar Store.....Tennes

Morelock's list of the clients of the General News Bureau outside of Chicago, and the amounts they paid in September for the bureau service, one month prior to the Landis inquiry, follows:

Louisville	$ 750	San Francisco	$1,800
West Baden	400	St. Louis	1,000
Salt Lake	125	New Orleans	100
Baltimore	125	Albany	1,000
San Antonio	62	New York	3,000
Toledo	100	Cincinnati	415
Buffalo	963	Pittsburgh	700
Terre Haute	25	Oklahoma City	105
Norfolk	80	Indianapolis	400
Detroit	400	Muncie	193
Cleveland	300		

The September expenses were:

Tolls and wires	$5,175.91
Salaries	3,350.75
Information	4,200.00
Miscellaneous	4,511.00
Total	$17,237.66

No analysis was given of the items "Information" and "Miscellaneous," nor was anything said about the recipients of the amounts under these two items. It is significant to note that the list of out-of-town subscribers given by

[1] Karr and Kennedy were the largest handbook operators in Chicago, according to Thoney, in 1916. Today, twelve years later we find them doing business at the same place. 515 W. North Avenue was credited to Alderman Bauler. He denied at this time, as he had previously, that he was a "bookie" or was financially interested in a handbook.

Morelock in court was exactly the same as published five years before, August 9, 1911.[1]

The Citizens' Association claimed that there was a revival of gambling after Mayor Thompson's inauguration, handbooks were being operated with the connivance of the police, and someone "higher up" was receiving money to protect the professional gamblers. Mont Tennes, who controlled racing gambling in Chicago, was charged with paying large sums for protection. It was asked, "Who is receiving this?" A raid or two followed on small places. The press again took up the scent. The *Daily News* of October 5, 1916, charged the administration with "permitting Mont Tennes and his gambling to go on because of cash in hand paid;" that the police pleaded helplessness and the mayor innocence, and that together this was a confession of incompetence. Mont Tennes' system was called a "crew of sure thing betters." Judge Landis was quoted as having told Tennes that his profits were covered with dirt and slime because young men were being made criminals.

On October 5, 1916, Federal Judge Landis requested the cooperation of the Illinois Bell Telephone Company, which operated the Automatic Telephone Company system. He could take no further steps because the interstate transmission of sporting news is not a crime and local gambling is not within the jurisdiction of the Federal Court. No action was taken by the state authorities. Thus the Federal inquiry came to naught.

17. The Retirement of Tennes and the Rise of Al Capone (1917-1928).

In January, 1917, Schuettler and his men conducted a number of destructive raids upon large handbooks in a drive against gambling resorts. The newspapers featured the havoc and destruction wrought, and listed the addresses of the resorts and the names of the proprietors:

Mont Tennes.....743 N. Clark Street;
Mike de Pike Heitler.....28 N. Halsted Street;
Mike de Pike Heitler.....1807 W. Madison Street;
Sol Van Praag.....2222 S. Wabash Avenue;
Dan Kinnally.....2153 Thirty-first Street;
Connors & Company.....Basement of 637 N. Clark Street;
Karr & Kennedy.....837 N. Clark Street;
Louis Shemansky.....1646 Madison Street;
Bradley & Lynch.....542 W. Madison Street.

Although the newspapers published the names of the proprietors only patrons and alleged keepers were arrested. Tennes could not be caught.

Tennes, at this time, transferred a large block of real estate to his son, Ray. One deal alone amounted to one hundred, sixty-three thousand dollars.

In March, after a raid on Tennes' news agency in Room 51, 303 West Chicago Avenue, James W. Breen, assistant corporation counsel, obtained a warrant against Tennes on charges of distributing gambling literature and conducting gambling houses. This case did not come up in court until the following year.

[1] See Section 10.

Tennes as a Vice Chief

During the years of the World War, public attention was diverted from gambling. Gambling patronage was at a minimum. After the war there seemed to be less opposition to handbook gambling. In October, 1917, Captain Gleason raided a place ascribed to Mont Tennes, at 743 North Clark Street. In August, 1918, it was reported that Mont Tennes and his associates lost thousands of dollars by the betrayal of their cipher code. On November 25, 1918, John Garrity was appointed chief of police by Mayor Thompson, to succeed Herman Schuettler as acting chief. Nineteen Hundred Nineteen was a quiet year in the fight against gambling. In April, 1919, Thompson was reelected as mayor of Chicago.

In the spring of 1920, in a Senate judiciary hearing relating to the Sterling-Sims Bill to prohibit the interstate transmission of race betting information, Howard C. Barker, of New York, superintendent of the Society for the Prevention of Crime, testified (May 10, 1920) that Chicago was the center of race track gambling in the United States, because a system of trunk lines running all over the country was located on the top of one of Chicago's skyscrapers.

Contemporaneously with this Senate investigation on May 12, 1920, it was charged that the Chicago handbook syndicate had "cleaned up" several hundred thousand dollars the previous Saturday on a "long-shot" winner in the Kentucky Derby; that Chicago was again overrun by handbooks boasting protection. The report gave four hundred thirty-one South Dearborn Street as the mysterious office of the General News Bureau, using five trunk lines. It gave Mont Tennes as the owner, but the principal feature of the most recent arrangements was this: "Since the advent of the Thompson administration it has been freely whispered that Mont Tennes has been forced to surrender a large interest in the Bureau to politicians."[1] Ephraim Harding was still his associate and Tennes was still operating the string of handbooks as a side-line to the news bureau.

In November, 1920, Robert E. Crowe, Republican, was elected state's attorney to succeed Maclay Hoyne, and Charles Fitzmorris was appointed chief of police by Mayor Thompson.

Michael Hughes was then chief of detectives and promised to prosecute gamblers under the Illinois Criminal Code rather than under the Municipal Code, because the penalties were by far more drastic. Then raids followed. A "big haul" was made at 17 South Clark Street, handbook of Mont Tennes, and one hundred inmates were taken. The raid was sensational, with axes, and breaking down of doors and furniture. The state's attorney's office in turn raided Jim O'Leary's ancient gambling stronghold in the stockyards district and the state's attorney demanded the grand jury indictment of Mont Tennes. A great deal of evidence was secured and State's Attorney Crowe avowed that the war was on the square. "They all look alike, no matter what their political complexion may be," he stated. "Some of our best known gamblers do not seem to be convinced, even now, but nobody is immune. The only way they can escape is to close shop. Otherwise it'll be closed for them."

[1] *Chicago Daily News*, May 12, 1920.

18. Crowe's War on Gambling.

Crowe's campaign, which "shook the foundations of national handbook gambling and spread panic through the Chicago gambling brotherhood," [1] was followed by the indictment of Mont Tennes, described as the alleged chief of the national racing handbook syndicate; J. L. Morelock, manager of the General News Bureau, 431 S. Dearborn Street, which was said to be the central station for dissemination of handbook information; James O'Leary; James Ledwell, brother-in-law of O'Leary; Martin Berlin, resort keeper; "One" Ryan, resort keeper; and Abe Cooper, resort keeper associated with the Tennes ring. Tennes was in Florida, but his associates claimed that the General News Bureau was "a legitimate organization for the dissemination of sporting news."

On March 27, 1922, the men indicted on February 24, 1921, went on trial. Tennes was represented by three able attorneys, among them former State's Attorney Maclay Hoyne. The case against Mont Tennes, Morelock, Cooper, and Argo was nolle prossed because the prosecution had not been able to show that the defendants had conspired to operate horse-race betting books. Thus ended another "gambling drive" which had been inaugurated with a great show of vigor and relentlessness.

Ephraim Harding, formerly a partner of Tennes, committed suicide. He died a poor man. He had been living on an allowance from Tennes for three years during his sickness. At this time Tennes gave every indication of having accumulated a large fortune. His financial standing is reflected in a single deal on April 11, 1923, when he purchased for $390,000 the northeast corner of Sheridan Road, Broadway, and Devon.

19. Dever and the Closing of Gambling Resorts.

In April, 1923, William E. Dever, Democrat, was elected to the office of mayor and Morgan Collins was appointed chief of police to succeed Fitzmorris.

The news was spread through the gambling fraternity that a new combination headed by Tennes was in the process of formation and would renew operations on a large scale.

Within the first year of his incumbency in office, Chief of Police Collins closed two hundred downtown handbook "joints" that were estimated to produce $364,000 per year for Mont Tennes. Collins did this quietly. Occasional raids provoked talk, but he made few threats or announcements. At the moment he came into office, gambling was centralized in the "Loop" district. A year later the gambling business was disclosed as absolutely dead. "You'll find a 'cheater' here and there, but these fellows can't establish themselves in one place long enough to make it pay." At this period the leaders of the old Twenty-second Street levee, now established in the west suburban area, branched into gambling with great success in Cicero and Berwyn. Al Capone was overlord with such old heads as James Mondi, La Cava brothers, "Three Fingered" Jim Murphy from the West Madison Street levee, Frankie Pope, "the millionaire newsboy, a gambler and the son of a gambler;" and the Cusicks of the Twenty-second Street levee, as members of the suburban syndicate.

[1] *Chicago Daily Tribune.*

Despite the raids, Mont Tennes himself, of course, was never arrested. He always had the defense that he was the dispenser of sporting news. Tennes' national service remained the same. The principal receiving station was then on the second floor of an old hotel building at Wells and Kinzie Streets. The office was as busy as an important relay station in a commercial telegraph system. Later, the principal office was in the Otis Building on Madison and La Salle Streets, in the heart of the "Loop," still under the name of the General News Bureau. But raiders went after his clients without mercy.

Then came the "swan song." Nine months later, Tennes' retirement from race-track gambling was widely announced; that he had sold out to Jack Lynch, for a number of years leading figure in the same field. Tennes was reported to have lost five hundred thousand dollars on his race books, but other observers connected Capone's "clean-up" of five hundred thousand dollars on horse racing in a few years with the retirement of Mont Tennes.

On November 19, 1924, Robert E. Crowe was elected to succeed himself.

The period under Collins is known in the underworld as the "time when graft was taken from the politicians and given to the police." They place Schuettler's raiding campaign periods in the same category.

20. New Methods of War.

Two types of gambling warfare have already been observed—destruction of property by bombing, and the police raids inspired by a competing ring upon its competitor. With the advent of prohibition and its mobilization of large forces of gunmen, a new type of attack was introduced—the daylight robbery, unsolved and unprosecuted.

The first notable robbery of this kind occurred on August 21, 1925. Bandits raided the race book operated by Jack Lynch and Mont Tennes, the largest gambling establishment in the "Loop." So Tennes had not retired. The bandits lined up nearly thirty book-makers, sheet-writers, clerks, and customers, and escaped with money and jewelry valued at fifteen to twenty-five thousand dollars. The bandits were acquainted with the establishment, as they actually called people by name in commanding their victims during the hold-up. They were pursued through the "Loop" streets from 120 South Clark Street, and the chase was thrilling as it took place during the most crowded hour of the day. Thousands viewed the pursuit, hundreds knew of the robbery, yet after fifteen minutes the police had thrown a veil of secrecy over the whole affair. One traffic policeman incurred the displeasure of a superior by attempting to gather information for a reporter. No report of the robbery was made, either to the Central Station or to the detective bureau. Nothing more about the robbery appeared. Tennes and the police had no desire for publicity; Tennes, because he was illegally engaged in the handbook business, and the police, because they feared that publicity would disclose the long immunity Tennes had enjoyed.

21. Thompson and the Wide-Open Town.

The death of William Tennes, and later of Edward Tennes, brothers of Mont, were the only glimpses of the old king to appear in 1925 to 1927. During these years, in the main, gambling was suburban with the chieftainship in the hands of the Capone syndicate. With the reelection of

Thompson for a third term in April, 1927, upon a wide-open policy, suburban gambling as well as vice suffered a great decrease in business. As one gangster put it, "Who's going to go out there when I can find anything I want right here in the city?" In circles close to Capone, it was well known that he had contributed substantially to the Thompson campaign. At any rate, Capone who had operated just outside the city during the Dever administration, immediately after the election of Thompson returned to his old haunts in the old levee district and established headquarters at the Metropole Hotel.

Alphonse Capone, Barney Bertsche, Bugs Moran, and a host of other gangsters and "racketeers," who first came into prominence as the distributors of liquor concessions, found that with such weapons as bombs, sawed-off shotguns, machine-guns, and the threat of being "taken for a ride," they need not confine themselves to the "beer racket" and the distribution of beer privileges. Accordingly, a powerful syndicate was formed. To this syndicate every gambling house keeper, handbook owner, vice resort keeper, and beer runner had to contribute a percentage of the income derived from their enterprises, or risk being blown up or "taken for a ride." Just what division was made of the tribute levied and collected from those purchasing concessions from the syndicate cannot be stated. The protection and immunity enjoyed by the syndicate members was almost conclusive indication that certain public officials and politicians were receiving their share of the booty from the syndicate.

> "Two rival 'mobs,' which, besides owning and operating a majority of the places, have 'muscled in' on a forty per cent basis on nearly every independent operator of any significance, are monopolizing the concession privileges by means of the same system of terror that made the beer business so highly explosive.
>
> "They have opened headquarters downtown, where quaking road-house proprietors and dive-keepers who, because of past political performance, had hoped to do some quiet cheating unmolested, are given to understand it is good business to count in the hoodlums on a partnership percentage. The 'divvy,' they are told, takes care of everybody—the 'mobs' and the 'law.'" [1]

The north side "mob" was ruled by Barney Bertsche with Big George (or "Bugs") Moran and Frankie Frost, and were later joined by the Aiello brothers of whom there are nine. The south side "mob" was under the control of Capone. Tennes was selling his service in both territories, and outsiders who tried to sell the same type of service found themselves bucking the syndicate.

Such an outsider was the Empire News Company. It had been suffering raid after raid, its equipment and telephones were destroyed by the police, when finally, on July 15, 1927, it obtained a temporary injunction from Judge James A. Wilkerson, restraining the police from interfering with its business. This victory on the part of a new competitor gave Tennes some concern. "Last night," said a news item, "it was reported that Tennes was

[1] *Chicago Daily News*, June 20, 1927.

hastening back from his summer home on Eagle River, Wisconsin, to take part in a conference today that may bring peace in the tangled situation. Barney Bertsche, Alphonse Capone, the Cicero gambling overlord; and representatives of the Empire Service are expected to be present.

This condition in earlier days brought war with numerous bombings and attempts on the lives of principals of the past, and it was generally recognized that another war could be expected. The new service was furnishing its "dope" at from $25 to $30 per week. Tennes, with the advantage of a monopoly, had gradually raised his rates until they had reached $100 to $125 a week, with an average around $75. It was estimated that at least two hundred purchased the service in and around Chicago, making the gross intake $15,000 a week. The Empire Company (the intruder) was able to get a considerable number of customers so Tennes hurried back to the city to protect his business of $750,000 a year.

Betting was virtually legalized when on June 13, 1927, a state statute approved the pari-mutual. July, 1927, Terry Druggan tried to test the pari-mutual by filing injunctions against several race tracks. He further charged a conspiracy to monopolize racing in violation of the Interstate Commerce Law in the shipping of race horses. By the time the petition for the injunction came up for an argument, the racing season closed and the matter was dropped. It gave race tracks a great deal of publicity.

By August, 1927, the gambling war was imminent. It was expected the war would be more deadly than the beer wars. It was reported that influential politicians, occupying important posts in the city administration, helped guide a gambling syndicate composed of powerful gangsters. Estimates of the profits of politicians from protection to gambling establishments ran over a half million dollars a month.

Jimmie Mondi had waxed wealthy during the last few years in Cicero in the Capone syndicate, and was now reputed to be a millionaire. He was recognized as spokesman in gambling matters for Al Capone and Jack Cusick. The latter was at 16 South Clark Street, in the heart of the mercantile district, the central office of the new gambling trust. Due to the unrest, Mondi was conducting personally a great many conferences with gamblers whom he had summoned to his quarters. They could continue in business with a guarantee of no police interference at a flat twenty-five per cent of their earnings. Small joints would be forced to hand over a flat weekly assessment. In the colored district Dan Jackson, Republican Committeeman in the "black belt," was associated with Mondi. Mont Tennes himself was known as an associate.

Capone had been driven from the city according to police reports, in December, 1927, and was finding shelter only with difficulty in other cities. Now the gamblers learned that Capone had contributed to the Thompson campaign fund. Not only gamblers were in rebellion against Mondi at this time, but politicians, because he was charging the same twenty-five per cent, even though politicians "fronted" for the game.

The houses of Fitzmorris, the city comptroller and former police chief, and of Dr. W. H. Reid, were bombed on January 26, 1928. The following quotation from the *Daily News* is of interest:

"Two bombs intended to wreck the homes of Charles C. Fitzmorris and Dr. William H. Reid, two of the stalwarts of the Thompson administration, early today were interpreted in gambling circles as a protest from the followers of Al Capone against the recent reorganization of protected gambling in Chicago, whereby Capone went out and more favored individuals came in.

"The bombings, evidently carefully planned as to time, were touched off only three minutes apart.

"The bombings were quickly followed by statements from both Mr. Fitzmorris and Dr. Reid disclaiming any knowledge of or even theory as to any possible motives for the outrage.

" 'What can I say? Who would do a thing like that?' said Mr. Fitzmorris as he surveyed the wreckage within his home. 'I have absolutely no theory—the thing is a mystery to me. I will say that I have absolutely no affiliations or connections with any gambling factions or gambling places. There are, of course, some gamblers who harbor a grudge against me for what I did to them when I was chief of police. But I don't know who would harbor a grudge deep enough to inspire a thing like this.'

" 'I don't believe the bomb was intended for me at all,' was the assertion of Dr. Reid. 'I have my theory as to whom it was meant for. I can't imagine why anyone should wish to perpetrate a thing of that sort against me.' " [1]

Later the homes of Lawrence Cuneo, secretary to State's Attorney Crowe, and the undertaking establishment of Municipal Judge Sbarbaro were bombed. When the home of Cuneo, brother-in-law of Crowe, was bombed, soon after the bombing of the establishment of Judge Sbarbaro, the mayor and his cabinet, as well as Mr. Crowe, the prosecutor, went into seclusion with an armed guard at their homes. Commenting upon it editorially, the *Daily News,* (February 23, 1928) said:

"Now that leading city and county officials of this community are in a state of siege, with police details guarding their homes against assaults by bomb-throwers, the long-continued farce of law enforcement which does not enforce manifestly must have the curtain rung down upon it.

"The suspicion that the assaults on representatives of the city administration and on representatives of the state's attorney's office indicate that secret dealings with persons in authority help to explain the prosperity of some gamblers and some booze runners, and the notable vicissitudes of others is too wide-spread to be dissipated by mere disclaimers. For if the law enforcing agencies of this community have no moral reason for fearing the foes who strike at them so viciously why do they not strike back with all the force of outraged virtue armed with all the powers of orderly government?"

It was now discovered that Frankie Pope had moved to the city and opened two large establishments on Clark and Diversey, which he was conducting with the old Cicero personnel. A little later, Barsoti, who had never been in the gambling business before, opened in close proximity. Bombings followed which were interpreted as mutual.

[1] *Daily News,* January 26, 1928.

Tennes as a Vice Chief

During the absence of Al Capone from Chicago, his interests were in the hands of Antonio Lombardo,[1] an ardent Democrat, while the Aiello Brothers, Republican adherents, were known to represent the armed forces of the north side "mob." At the moment of this writing Capone has returned to Cicero, which is again wide open. The leaders of both sides are not venturing forth without bodyguards and are watched every minute of the day and night, even though a truce is on. Civilians of importance, not only of Chicago, but from other cities, have tried to effect a permanent peace between the two armed forces. Recently, when a banquet was given for the purpose of arriving at such a peace, it was discovered that the cook who prepared the meal for the banquet was approached by one of the factions with a large offer to poison the leader of the other faction. The next day, even though a nominal peace had been established, the police discovered a machine-gun nest in a house opposite the home of one of the leaders.

It is questionable whether Tennes has actually retired from the field of handbook gambling. If he has retired, it has not been due to the fact that he has suffered losses in his business, but rather to the ascendancy of the gunman, the "hi-jacker," the bootlegger, and the "racketeer" in the world of gambling in Chicago as well as in politics. It was a question of either continuing the handbook business and paying extortion money for the privilege to gangsters who have assumed the role of overseers so far as the distribution of concessions for illegal activities are concerned, or of getting out. Tennes, presumably, preferred the latter.

[1] Since this was written, and on September 8, 1928, Lombardo was shot down at Madison and Dearborn Streets, in broad daylight, in the presence of thousands of persons, but Capone still survives. The slayers of Lombardo were not caught.

CHAPTER XX

THE RULE OF THE UNDERWORLD

TORRIO AS OVERLORD

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CHAPTER XX

THE RULE OF THE UNDERWORLD

TORRIO AS OVERLORD

1. *Brewing and Beer Running, the Golden Future.*

John Torrio, the protege and successor of Colosimo was born in Italy, in 1877, and is now fifty-one years of age. The organization of large scale illegal business in vice, supported by political influence, bribery, and violence, had been a matter of lifelong training for Torrio when, upon the death of Colosimo, the mantle fell upon his shoulders.

Torrio already was known both by politicians and gangsters as safe and level headed. At the funeral of Colosimo, conspicuous in the throng, which included judges, politicians, city officials, cabaret singers, gamblers, and waiters, were members of the Colosimo vice ring, and Torrio was an honorary pall-bearer. At this time Torrio was known as boss of the suburban town of Burnham, where he owned the Burnham Inn in a community of resorts and gambling dens. Ike Bloom owned the Arrowhead Inn, a suburban resort which he later sold to Colosimo before the latter's death. Jakie Adler and the Cusicks, and others of the Twenty-second Street Levee had moved to the southern and western suburbs as early as 1916.

The death of Colosimo occurred in the same year that the Eighteenth Amendment and the Volstead Act came into effect; and Torrio turned his attention to the organization of the contraband business of manufacturing beer and of distributing it by convoy through the streets of the city. In connection with his organization of metropolitan beer running, he extended direct rulership over the other west suburban towns.

2. *The Occupation of Cicero.*

Torrio took possession of Cicero, a western suburb, in 1923.

In addition to the vice and gambling houses in Burnham he had established several resorts in Stickney. Then he originated the scheme of making the town of Cicero a base for the operations of beer distribution and gambling. In the fall of 1923 he installed a vice resort on Roosevelt Road in Cicero. But Torrio was not without competition in his occupation of Cicero. Eddie Tancl, a Bohemian who was born and bred in the old Pilsen district, had risen to popularity as a prize fighter and because of his many acts of charity among poor Bohemians was very popular in Cicero at this time, and was conducting a cafe there. Tancl was killed by James Doherty, a Torrio gangster.[1]

Torrio opened his resort without protection. The Cicero police raided it. Torrio moved the same resort to Ogden and Fifty-second Avenues, and the police wrecked it.

Through the influence of Torrio, Sheriff Hoffman ordered a raid on all slot machines in the suburb. Thus Torrio made it known that if he couldn't

[1] One of McSwiggin's slain companions.

import prostitutes others couldn't have slot machines. After a few days the slot machines started going again and Torrio, Capone, and their followers moved into Cicero. Somewhere an understanding had been reached. The "mob" came in strong. They opened gambling houses, peddled beer, but did not bring prostitutes into Cicero again. Stickney and Forest Park and other places in the county were utilized for vice operations which were developed on a large scale. In the suburbs Torrio, Capone, his first lieutenant, La Cava brothers, and Mondi assisted by Frankie Pope, Joey Miller (Italian), Jimmie Murphy, the Cusicks, and Charlie Carr managed a business which included vice, beer, and gambling.

Torrio and his lieutenants used intrigue and bribery and succeeded in controlling elections. The officials were actually under their thumbs—not only the village president, but every official, including the chief of police. Lauterbach's "The Ship" and "The Hawthorne Smoke Shop" operated apparently without opposition from Joseph Klenha, the village president, or his police chief, Theodore Svoboda, Sheriff Hoffman, or State's Attorney Crowe.

Federal officials, intent upon raiding the saloon concessions, always found the places "tipped off."

3. The Metropolitan Operations.

The *Daily News,* commenting on this situation, said:

> "Under the graft system that flourished while Thompson was mayor of Chicago, Torrio's power increased. He had a finger in the gambling pie and his beer running business was organized in those pleasant times. He was the reputed owner of several breweries when Mayor Dever up-ended everything with his beer crusade."

In his city-wide operations in beer, Torrio is first heard of as the real beer boss of the south side. He took over the big West Hammond Brewery (known also as the Puro Products Company) and began running beer at regular rates of fifty dollars a barrel, including protection. He had a monopoly in Woodlawn and all precincts south to the Indiana State line, and enjoyed official favor in the Stockyards and the New City districts. In Englewood, where Captain Allman, Commander of the Police, did not touch graft, Torrio had an even chance. Allman could not be transferred because he was in high favor with the Englewood business men.

In Englewood, and to some extent the Stockyards and the New City districts, the O'Donnells were developing a small but growing beer running business. This is not the same family as the O'Donnells who figured in the McSwiggin killing in Cicero. For brevity we will designate this family of Steve, Walter, Thomas and Spike as the "South Side O'Donnells," and the others as the "West Side O'Donnells."

4. The O'Donnells Intrude.

The South Side O'Donnells were not, however, in a position to challenge Torrio successfully. Thus matters stood when the city administration changed and the old Thompson machine went out in 1923. The transfer of authority caused a revolution in the underworld; the old system of protection was destroyed. None could be sure he was "in" anywhere; therefore competition was free and easy.

The South Side O'Donnells made use of their opportunity. They sold a better beer than did Torrio and began to "cut in" heavily in the Stockyards and the New City districts. Torrio, seeing his business wane, retaliated by cutting prices. He put out his beer at ten dollars less a barrel. The O'Donnells retaliated by terrorizing saloon-keepers who bought other beer than theirs.

Torrio's rise invited envy and competition but he knew how to deal with them. On September 7, 1923, Jerry O'Connor, tough young south side gangster, was shot dead. O'Connor was a "pal" and agent of the four O'Donnells. On the fatal night he was with Steve, Walter, and Tommy O'Donnell threatening and slugging saloon-keepers for buying beer from John Torrio. At the saloon of Joseph Kepka, 5358 South Lincoln Street, they encountered a Torrio gang. The lights went out; pistols roared; everyone scattered. When police arrived they could find no one who knew about the shooting. Two were arrested, but their lawyers started habeas corpus proceedings which were entirely unnecessary, because Chief Morgan Collins had no reason for holding them and freed them instantly. Many people knew the story, more especially the saloon-keepers and bartenders, but they would not tell.

On September 17, 1923, George Meegan, 5620 Laflin Street, and George Bucher, 5611 Marshfield Avenue, were killed. Both men were considered dangerous because they threatened to reveal the murderers of Jerry O'Connor. Crowe began a "relentless investigation of the beer war." Torrio was now reputed as the "brains" of the biggest beer running syndicate in the country. He surrendered, in company with his attorney, Michael Igoe, to the State's Attorney and was to be grilled concerning beer running in general.

5. *"Hi-jacking" and Gang Warfare.*

Morrie Keane and William Egan, invaders of Torrio territory, one night in December, 1923, started from Joliet at midnight to drive three truck-loads of beer to Chicago. At a lonesome stretch of the road, called "The Sag," they were stopped, it was later charged, by McErlane, Torrio gunman, and his "hi-jackers." After the beer had been turned over to some highway policemen, Keane and Egan were forced into McErlane's car. Their bodies, filled with bullets, were later found by the road side.

McErlane was arrested, held by the state's attorney in the Sherman Hotel, and then released.

Under pressure, State's Attorney Crowe laid the case before the grand jury. An indictment was voted. Long delays followed. Months afterward, an assistant state's attorney went into court and nolle prossed the case. McErlane left town a free man.

In this investigation it emerged that Walter Stevens, Daniel McFall, and Frank McErlane were leading Torrio's armed forces in the disputed territory. Walter Stevens, the dean of Chicago gunmen, at this moment was wanted for the killing of an Aurora policeman. He had served time in Joliet. It was known that he was a favorite of Governor Small for services rendered to him in his trial at Waukegan. McFall and McErlane were indicted in 1923 for the double killing of gangsters Meegan and Bucher, but

the indictments were later nolle prossed. McFall and Red Golden were associates of Stevens and were also wanted for the murder. Torrio had developed powerful influence, as illustrated by his success in securing the pardon from Governor Small of Harry Cusick and his wife, Alma, convicted panderers. He was high in the esteem of the Thompson-Lundin machine. Frank McErlane is still in power in that district and recently, with Joe Saltis and Tim Murphy,[1] succeeded in nominating John "Dingbat" Oberta state senator and electing him ward committeeman.

6. *Police Persecution of the Enemies of Torrio.* Torrio's enemies, the O'Donnells, had all been jailed at one time or another during this beer investigation, and two of them were indicted. Torrio had been unmolested and the police professed to be unable to find Stevens. The O'Connor killing was laid to Dan McFall, a Torrio man. McFall was arrested, but released on bail and became a fugitive. Red Golden, named as McFall's accomplice, was released after questioning and disappeared.

7. *Brewery Ownership.* Torrio, owner of the West Hammond Brewery, later purchased the Manhattan Brewery, and was said to be worth millions. He boasted that he "owned" police captains and other officials.

Harry Cusick was serving as downtown "pay-off" man for Torrio and had an office in the "Loop," where he paid Torrio money to police officials who were protecting the vice ring.

The operations of the Torrio syndicate on the south side were disclosed in the investigation into the deaths of Jerry O'Connor, Meegan, and Bucher, which showed the dealings with the retailer and the war for territory.

On October 19, 1923, just a few weeks after these killings, the Puro Products Company (The West Hammond Brewery) was on trial in the Federal Court in proceedings to close it for one year under injunction. From this trial we learn more about Torrio's expanding ownership of breweries. Testimony revealed W. R. Strook, a former United States Deputy Marshal, as one-half owner of the concern, and Timothy J. Mullen, an attorney, as holder of one share of the stock. Mullen, according to the Federal agents, was attorney with an interest in the Bielfeldt Brewery at Thornton.

The Puro Products Company was bankrupt in 1915. Then came prohibition and a turn in its financial tide, when Joseph Stenson acquired it in October, 1920. In October, 1922, Torrio bought it, and seven days later turned the lease over to the Puro Products Company. The presence of Stenson, a brewer in the days before prohibition, and these transfers of ownership prior to the hearing on the injunction, should be noted as a feature in our examination of brewery ownership later. Torrio and Strook pleaded guilty and were fined $2,000 and $1,000, respectively; and the company $2,000.

Torrio departed with his family on a European sightseeing jaunt that was to end in Italy, where he had purchased a villa for his mother. It was intimated that he took with him more than a million dollars' worth of

[1] Later killed by gangsters.

negotiable securities and letters of credit. He was reported to have the beer concession to all syndicate resorts; to own West Hammond, Manhattan, and Best Breweries; to be a silent partner in several others. His pay roll during the fall of 1923, when beer running was at its then zenith, was said to be twenty-five thousand dollars a week. He carried a gun when he felt like it, but never, as far as is known in Chicago, did Torrio use that gun. When trouble came, those who took care of Torrio were in turn taken care of when their cases came to court.

8. Controlling of Elections.

Six months later Torrio came back to Chicago. He slipped unostentatiously into the city and summoned his veteran adherents to meet him in a south side rendezvous.

County Judge Edmund K. Jarecki, conducting an investigation of bloodshed and riots in the April, 1924, election in Cicero, was interested in Torrio's return. Up to the day of the election, 123 saloons in Cicero had been serving beer put out by Torrio's breweries. For six years the same faction had been in control of Cicero's politics and its saloons. The election brought no change in administration. Democrats charged that the breweries sent into Cicero scores of gunmen who cast ballots and manipulated revolvers. During one of the gun-play episodes, Frank Capone, one of Torrio's closest lieutenants, was shot to death by Sergeant William Cusick's squad from the detective bureau. The night before election there was a Torrio clan gathering. Frank Capone and his brother, Scarface Al, better known as Al Brown, owner of the notorious "Four Deuces" Saloon at 2222 South Wabash Avenue, were present. Judge Jarecki thought that Torrio had instructed the Capone brothers to act as his emissaries in directing the riots in Cicero.

After Frank Capone's killing, Torrio met Scarface Al in the Capone home. Probably others of the gang were present. The meeting or sessions following the shooting of a Torrio lieutenant usually have to do with matters of vengeance. Every saloon in Cicero was directed to pull down the blinds and to remain in a quasi-closed condition until after the excitement had passed. At the inquest over the body of his brother, Scarface Al testified. After a glance had passed between Capone and Charles Frischetti, a companion of Frank when he was killed, Capone announced that he had nothing to say.

9. Metropolitan Beer King.

The Sieben Brewery raid, a month later, was the complete disclosure of Torrio's power as the metropolitan beer king, flanked on one side by the mobilized gangster chiefs of the entire city and on the other by business partners, who were pre-Volstead brewers, by public officials, and the police.

On the morning of May 19, 1924, after a carefully planned campaign, a police squad under the direct command of Chief Morgan Collins and Captain Matthew Zimmer (without a betrayal in advance of an intention of immediate action) swooped down upon the Sieben Brewery and found thirteen truckloads of beer ready to be convoyed through the streets of the city; the convoy, composed of gang leaders, was arriving in touring cars. As each car arrived the police placed the gangsters under arrest.

While all of the captured gave aliases, the leaders were recognized, of course. John Torrio, Dion O'Banion, and Louis Alterie were among them,

and probably Hymie Weiss. Dion O'Banion was then prince of the north side gang, composed of safe-crackers and gunmen of note. Louie Alterie was the chief of the Valley Gang, which under the leadership of Paddy the Bear Ryan had thrived for a quarter of a century. Alterie had succeeded Terry Druggan and Frankie Lake, who were in turn the successors of Paddy the Bear Ryan.

Chief of Police Collins did not turn the prisoners over to Robert E. Crowe, Prosecutor. He announced that other raids would be made if this one failed to frighten the beer runners out of business. Asked why he turned these prisoners over to the Federal Government, he answered: "District Attorney Olson has promised us prompt cooperation. That is why the case was turned over to him for prosecution. It was a police raid, pure and simple, but the prosecution will be handled by the Government."

Torrio obtained freedom soon after his arrival at the Federal Building, by peeling $7,500 off a roll he carried. The same roll brought freedom, at five thousand dollars, for James Casey. O'Banion did not have the "five grand" demanded of him as bail, nor could Alterie produce one thousand dollars; the others, at one thousand dollars also, each had to wait for bondsmen to appear. Curiously enough, Torrio did not bail them out, but William Skidmore and Ike Roderick, professional bondsmen, whose names have been associated both with gambling and vice, came to release them.

At this time Thomas Nash was attorney for the O'Banion gang. Later he was attorney for its enemies, the Genna gang, in the memorable Anselmi-Scalise case.

The chief of police, himself, tore the insignia from officers who were supposed to have been on duty at the brewery beat and were absent during the raid.

O'Banion, lieutenant of Torrio, had proved his power when he wriggled out of three tight legal holes that same year, prior to the Sieben Brewery raid,—the shooting of Dave Miller, chief of the Jewish gangsters; the "hijacking" of a truck-load of whiskey with Dapper Dan McCarthy; and the Carmen Avenue murders in which Two Gun Doherty was killed. All these cases had been nolle prossed by the State's Attorney, Mr. Crowe.

Torrio, O'Banion, Alterie, Nick Juffra who was among the earliest bootleggers to be prosecuted and already had a record as a bootlegger, and thirty-four others, including four policemen, were indicted. Torrio, himself, was a second offender,[1] and would be subject to a sentence of five years on a conspiracy charge alone.

10. *The Gold Coast Brewer and the Underworld Chief.*

It was the general understanding of city and government officials that Torrio and O'Banion were the real operators of the Sieben plant, with a politician and a "fixer" back of them sharing in the profits and distributing the graft, but that in this case, as in the Puro Products case, a pre-Volstead brewer was involved in the ownership. It seems that pre-Volstead brewers, who remained in the business, had called

[1] See Section 7.

these gangsters in to do their convoying and to "front"[1] for them in case of a "fall."[2]

Torrio brought O'Banion, the most daring and brilliant of the Combine's gunmen, from safe-blowing to liquor leadership. O'Banion soon earned a sizable "split" for himself. He had eyes "on better things" when he was killed, November 10, 1924.

Walter Stevens, Dan McFall, Dan McCarthy, Louis Alterie, Earl Weiss, Scarface Al Capone—all are, or were, subordinates in the crime syndicate, some of them important enough to be profit sharers, some mere hired men. They all danced when Torrio and his colleagues moved the strings—gangsters, gangleaders, and politicians.

Somehow, Torrio had found a way to keep the forces of the state's attorney's office away from his gunmen, and the raiding squads of Sheriff

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[1] Take the brunt of the law if discovered.

[2] Charles Gregston analyzes this alliance between pre-Volstead brewers and their new gangster partners as follows:

"John Torrio and a Chicago brewer are the twin kings of commercialized crime in Cook County today. They are the men back of the O'Banions and Druggans, the guns and the gangs. They are the organizers, the directors, the 'fixers' and the profit-takers. Torrio is absolute in the field of vice and gambling; the brewer is king of the 'beer-racket.' They work together and the others, with a few exceptions, work for them.

"A strange pair: Torrio is a native of Italy, a Tammany graduate, a post-graduate pupil of the late 'Big Jim' Colosimo. His colleague is the youngest of four brothers who were rich brewers before prohibition. While Torrio was learning the tricks of ward politics in New York and the rewards of sin in the old Twenty-second Street district, and later in Burnham, his twin king of crime was living pleasantly on what is called the 'Gold Coast,' the son of a wealthy and established family. A common genius for organization brought them together soon after prohibition had ushered in the new era of crime through which Chicago is passing.

"They have made organized crime pay tremendous dividends. The brewer's earnings, from the syndicated beer 'racket' he works under political protection, have been reckoned at $12,000,000 a year since 1920. Nobody has ever risked a guess at the clearings of the many-sided Torrio.

"They are joint rulers of the underworld today. No one can run beer in Chicago without first seeing and paying the beer king. No one can cut in on the gambling 'racket' without Torrio's sanction. Immune from prosecution themselves, the two kings of crime can count on the law as well as their own gunmen when they want an intruder driven out. And they have the power to protect their henchmen from prosecution when murder becomes necessary, as it sometimes does. And the brewer is so completely above the law, so thoroughly protected from prosecution, that it is unsafe to mention his name, though the police and the prosecutors of crime know quite well who he is.

"Beer running offered Torrio a splendid opportunity. He had developed a machinery for 'fixing' the law and he had gangsters at his service; stepping up from vice and gambling to beer was easy and natural. Simultaneously the brewer was dabbling in violation of the Eighteenth Amendment. His brothers are said to have been frowning on his ventures, but their warnings weren't heeded.

"Natural attraction brought the pair together and their dovetailing abilities put crime on its new basis. Gunmen were lured away from the risks of highway robbery and safe-blowing to get into the far more lucrative business of peddling beer and driving out competitors. Breweries were leased from their despairing owners and reopened. Cheating saloon-keepers, thousands of them, found it easy to sell beer profitably after paying the syndicate $50 a barrel or more, and $35 easily covered the cost of production and the expense of 'fixing' the public officials, policemen and prohibition agents.

"The brewer knew the methods of modern business and applied them to syndicated beer running. Torrio knew gangsters and recruited them. Thus Druggan and Lake were drawn away from the hoodlum activities of the Valley Gang into a 'racket' that made both of them rich beyond all their dreams. Working breweries for the combine, they soon were riding in expensive cars, dressing like millionaires and living in fashionable neighborhoods."—*Daily News,* November 17, 1924.

Hoffman out of his dives. Under public pressure sporadic raids were made, resulting in temporary and often momentary stoppage of operations.

11. The Outcome of the Sieben Case. A retrospect of the Sieben Brewery case three years after the indictment shows that thirty-eight men were indicted, including pre-Volstead owners, brew-masters, and brewery workers, laborers and truck drivers, and policemen as well as gangsters. Four months after the raid, pleas of guilty were entered for eleven of the defendants, and the O'Banion case was dismissed on account of his death by murder. John Torrio was sentenced to nine months in the Du Page County Jail and five thousand dollar fine; Ed O'Donnell, eight months in the Kane County Jail and two thousand dollar fine; Nick Juffra, six months in the De Kalb County Jail and two thousand dollar fine; Joseph Warszynski, three months in the De Kalb County Jail; Joseph Lanenfeld, three months in the Kane County Jail; Richard Wilson, two hundred dollar fine; George J. Murphy, two hundred dollar fine; Arthur Barrett, two hundred dollar fine, and Jack Heinan, two hundred dollar fine. Warszynski and Lanenfeld were two of three negligent policemen assigned to the Sieben Brewery. District Attorney Edward A. Olson on the same day dismissed the cases of twenty-one other defendants. Among these were minor gangsters, two policemen, one politician, and the pre-Volstead owners.

On January 31, 1925, the judgment against Nick Juffra was vacated. Juffra was the most persistent offender of all the early beer runners. He had been arrested twenty-four times between the advent of prohibition and the Sieben Brewery case. The case of George Frank, the brew-master, was not heard until March 20, 1925. He then entered a plea of guilty and received a sentence of three months in the Lake County Jail and a three thousand dollar fine. The case of Louie Alterie still stands undismissed and unprosecuted, three years after.

12. Immunity and Political Connections. Dion O'Banion enjoyed an amazing immunity from prosecution, although Police Chief Collins had accused him of responsibility for twenty-five murders. He was a Torrio man.

Terry Druggan and Frankie Lake were immune until they later became entangled in the toils of the Federal Government.

Frankie McErlane, the most brutual gunman who ever pulled a trigger in Chicago, went scot free when, in the interests of Torrio he and Dapper Dan McCarthy had exercised their talents for murder.

13. Qualities of Leadership. The story of a midnight "hi-jacking" not only illustrates the level headedness which made it possible for Torrio to command the allied gun chiefs of Chicago, but also throws some light on the elements of the continuous warfare which resulted when Torrio's prestige was destroyed through the unwillingness of Mayor Dever and Chief of Police Collins to deal with him. It is a contrast of the expediency of the seasoned leader against the childish irresponsibility of his young lieutenant.

Two policemen held up a Torrio beer squad on a west side street one night and demanded money. By telephone, over a wire which had been tapped by the police, the convoy gangsters reported this to Dion O'Banion.

O'Banion replied, "Three hundred dollars? To them bums? Why say, I can get 'em knocked off for half that much." Scenting trouble, police headquarters sent rifle squads to prevent murder if O'Banion should send killers after the "hi-jacking" policemen, but in the meantime the beer runner went over O'Banion's head and put the problem up to Torrio, "The Big Boss." He was back on the wire in a little while with a new message for O'Banion: "Say Dionie, I just been talking to Johnny and he said to let them cops have the three hundred. He says he don't want no trouble."

Such was the difference in temper that made Torrio all-powerful and O'Banion just a superior sort of "plug-ugly." Torrio was shrewd enough to keep out of needless trouble. When murder must be done it was done deftly and thoroughly, as in the case of O'Banion himself, who was shot in his florist shop on November 10, 1924, supposedly by the Gennas, Torrio followers; and of Big Jim Colosimo, Meegan, and Bucher. O'Banion, on the other hand, learned his methods from such practitioners as Gene Geary, convicted slayer, who was sent to Chester as insane, and Louis Alterie and Nails Morton, his "pal."

O'Banion first became friendly with them when he was Gimpy O'Banion, a singing waiter in the old McGovern place at North Clark and West Erie Streets. O'Banion had been a choir boy at the Holy Name Cathedral. The singing of songs, especially Irish sentimental songs, always won over the brutal Geary.

O'Banion, Alterie, Yankee Schwartz, Earl (Hymie) Weiss, and others of the Torrio following, had techniques unlike Torrio's quieter, "brainier" methods which made him boss.

14. The Waning of Torrio's Prestige.

To bear out the statement that the armed forces of Torrio were composed of the alliance of gun chiefs of Chicago, we list below some of the names:

Dion O'Banion	Dan McFall
Terry Druggan	Louie Alterie
Frankie Lake	Hymie Weiss
Frank McErlane	Scarface Al Capone
Dapper Dan McCarthy	The Genna brothers
Walter Stevens	The West Side O'Donnells

In the Sieben Brewery case the prestige of Torrio was injured, because it was conclusive evidence that Mayor Dever and Chief of Police Collins were not under his control. Likewise, there was a concurrent weakening of his power over his gangs when the Genna and O'Banion feud began with the murder of O'Banion. Then Torrio himself was wounded by gun-fire; when he recovered he actually welcomed the jail sentence, and safety. The Dever onslaughts upset the underworld regime and destroyed the equilibrium. The beer wars followed.

15. Conclusion.

The career of John Torrio epitomizes an important stage in the development of organized crime in Chicago. Trained as a lieutenant of Colosimo, he was thoroughly versed in the technique of dealing with gangsters and politicians. As a manager of resorts under Colosimo he had survived all the crusades against vice and had

learned how to utilize to full advantage the control of suburban villages like Burnham as open and unmolested centers for outlawed enterprises.

The four years following Colosimo's death (1920-1924) witnessed the steady rise of Torrio to a position of dominant leadership in the underworld of organized crime, a leadership which came to a sudden end with his arrest and conviction in the Sieben Brewery case. In this short period, which coincided with the introduction of constitutional prohibition, Torrio applied all that he had learned in his years of apprenticeship, to the organization on a city and country-wide basis of the new business of bootlegging. The general plan of conducting criminal business enterprises as outlined by Torrio, and which with modifications made by Capone still persists, may be summarized as follows:

1. The operation of pre-prohibition breweries was engineered by Torrio with the connivance of officials and sometimes with the participation of brewery owners. With the improvement of prohibition enforcement the old-time brewery now plays a minor role in the illegal manufacture of alcohol.

2. Criminal business enterprises, like vice, gambling, and bootlegging, were carried on under adequate political protection. Torrio's power rested, in large part, on his ability to insure protection to his fellow gangsters. Immunity from punishment appears to be an almost indispensable element in maintaining the prestige and control of a gangster chief, as indicated by Torrio's retirement after serving his prison sentence.

3. Torrio was unusually successful in securing agreements among gangsters by the method of an orderly assignment of territory for bootlegging operations. Yet certain gangster groups, like the South Side O'Donnells, were not included in these arrangements, and some gangster chiefs, like O'Banion, chafed under Torrio's generalship. Torrio's victory over open enemies like the O'Donnells was in part due to ruthless warfare and in part to police activity against his rivals to which his own gangsters were largely immune.

4. The scheme of orderly cooperation between gangsters engaged in bootlegging which came into existence during the Torrio regime, was disrupted before his retirement by the incoming of the Dever administration which destroyed the previous arrangements for political protection.

5. Bootlegging, because of its enormous profits, naturally became the main illegal business enterprise promoted by Torrio and his fellow gangsters. But with political protection they continued to carry on and to extend the field of operation of vice and gambling enterprises.

6. Torrio was quick to perceive the importance of taking advantage of the fact that the metropolitan region of Chicago falls under many different municipal governments. He not only utilized the suburban villages which he already controlled in the metropolitan region of Chicago as centers for bootlegging, gambling, and vice, but he extended his control over other outlying communities. Cicero, as well as Burnham, River Forest, and Stickney, became notorious as completely controlled for the purposes of organized crime.

With the retirement of Torrio, Al Capone, his chief lieutenant, became the principal contender for the position of leadership of the forces of organ-

ized crime. While Capone has not as yet succeeded in securing the position of uncontended supremacy held by Torrio, he has profited by the experience of the latter. He has, for example, endeavored to detach himself from first-hand participation both in criminal activities and in gangster feuds. He has taken extraordinary precautions to protect himself by an armed force of body-guards against attacks by enemy gangsters. Capone has entered new fields of organized crime like business "racketeering" and has even attempted something like an inter-city federation of the activities of organized crime. And finally, he has adjusted the operations of his criminal enterprises more carefully than did Torrio to meet the exigencies of changes in the political situation.

CHAPTER XXI

THE BEER WARS

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CHAPTER XXI

THE BEER WARS

1. Origins. In the period immediately after prohibition, the former legitimate owners of breweries sought to dispose of their plants. Gangsters were often the purchasers of these breweries or else "fronted"; i. e., assumed ownership in order to face the rigors of the law, for the legitimate owners of breweries and distilleries which continued to run in disregard of the statute.

On February 23, 1923, it was reported that a gigantic conspiracy to control the sale of beer in Chicago had been uncovered. Torrio had, since 1922, already secured ownership or control of three breweries.[1] At the same time another group of men, headed by Terry Druggan and Frankie Lake, late of the Valley Gang, always lieutenants in charge of armed forces in the Eller elections of the Twentieth Ward, also began to come into ownership of breweries. They first purchased the George Hoffman Brewery—the transfer came through the hands of Richard Phillips, who had been a partner in Colosimo's Cafe, after the latter's death. Later Frankie Lake and Terry Druggan were operating five breweries with Joseph Stenson, former co-partner in the Stenson Brewing Company,—The Gambrinus, the Standard, the Hoffman, the Pfeiffer, and the Stege Brewing Companies. There was no war between Terry Druggan and Frankie Lake and John Torrio. They received their protection from the same sources under the first two administrations of William Hale Thompson and they controlled the same orderly organization of beer running.

Then Dever's administration came, with a genuine attack upon bootlegging as well as upon gambling and vice, and the consequent break-up of the feudal city-wide organization of crime and vice and politics. The system of the orderly allotment of territories and protection that had grown up under the Thompson administrations was suddenly destroyed. Even Torrio himself was not powerful enough to ward off arrest in the Sieben Brewery raid already described. Consequently, "the union of each for the good of all" under the leadership of Torrio was over. It was followed by "The war of each against all," in which the chief lieutenant of Torrio, Al Capone, became the leading contender for the overlordship.

The beer war started when the Spike O'Donnells on the south side tried to invade the territorial rights of the Saltis-McErlane gang, established under the Torrio rule.

During the four years prior to October, 1926, the years of the greatest activity for the control of the booze and beer business in Cook County, two hundred fifteen gangsters murdered each other. The police during these same four years, in literally running battle, killed one hundred sixty beer feudists and gangsters. Within the city limits of Chicago forty-two men were slain in the booze war during the ten months subsequent to January

[1] See Chapter XX. *Torrio as Overlord.*

1, 1926. Within Cook County, for the same period, the total reached fifty-four. Neither of the latter figures includes sixty other deaths which were the result of frays with policemen.

2. The South Side Beer War.

The campaign of the Saltis-McErlane group was first against the Spike O'Donnell brothers; later against the Ralph Sheldon gang, which split from the Saltis-McErlane gang. The catalogue of the principal casualties in the south side war follows:[1]

CATALOGUE OF CASUALTIES IN THE SOUTH SIDE BEER WAR

Sept. 7, 1923	Killed: Jerry O'Connor, O'Donnell slugger engaged in holding beer trade in line by slugging. Killed by Torrio gang.
Sept. 17, 1923	Killed: George Meegan and George Bucher, of Spike O'Donnell gang, for threatening to disclose who killed Jerry O'Connor. Indicted: Oct. 30, 1923—Frank McErlane, Thomas Hoban, and Daniel McFall.
Sept. 18, 1923	Killed: Tony Raymond, victim of south side beer war, possibly Saltis victim.
Dec. 1, 1923	Killed: Thomas (Morrie) Keane, carrying beer from Joliet breweries. The first "take 'em for a ride" murder. Police theory, "hi-jacking" by McErlane gang. Wounded: William Egan—"hi-jacking." Indicted: Jan. 12, 1924—Frank McErlane, Joe Saltis, Willie Channel, Johnny Hoban, Ralph Sheldon, and Willie Neymoth. Case nolle prossed, April 9, 1924.
Dec. 5, 1923	Killed: Dominic Armato, killed as one who may have taken part in the Keane killing.
Dec. 18, 1924	Killed: Homer Finch, by Spike O'Donnell's gang. Was roadhouse owner; possibly *stick-up*.
	On May 4, 1924, occurred the murder of Thaddeus Fancher, for which McErlane was later tried. Frank Cochran, the state's main witness, was murdered. After a notable legal contest, McErlane was acquitted. The same year, November 28, in a "hi-jacking" foray in Los Angeles, McErlane was held for a shooting and slugging. These two events are considered extrinsic of the beer war in Chicago.
July 4, 1924	Killed: Alfred Deckman, slugged by Walter O'Donnell, who on July 23, 1924, was charged with murder. "Identification indefinite."
Dec. 19, 1924	Killed: Leo Gistinson and Jack Rappaport; killed in revenge for Foley shooting.
April 17, 1925	Shot: Walter O'Donnell, while "sticking up" a roadhouse. Died May 9.
July, 1925	Killed: George "Big Bates" Karl, by Saltis-McErlane gang.[2]

[1] Interspersed with the actual beer war killings it has been necessary to bring in the other killings for which McErlane was tried, in order to bring all the episodes into proper perspective.

[2] Karl and Dickman were associates of Saltis-McErlane and it was said that the first was killed for his roll, $12,000, and the second for having knowledge of the murder.

August, 1925	Killed: William Dickman. "Knew too much."
Sept. 26, 1925	Attempt to kill: Spike O'Donnell, by Saltis-McErlane gang.
Oct. 4, 1925	Raking by machine gun fire of the Ragen Colts Club House, Sheldon headquarters, by Saltis gang. Killed: Charles Kelly, mere hanger-on; Wounded: Thomas Hart, shot in right leg, mere hanger-on.
Oct. 13, 1925	Killed: Ed Lattyak, Sheldon gangster; by Saltis gang.
October, 1925	Police were seeking the two McErlanes in the International Harvester Company robbery and murder.
Oct. 16, 1925	Attempt to kill: Spike O'Donnell, by Saltis-McErlane gang.
Oct. 22, 1925	Killed: Pasquale Tolizotte, member of Spike's gang; by Saltis gang.
Nov. 16, 1925	Wounded: Joe Saltis mysteriously wounded in gun battle with O'Donnell gang; shoulder wound.
Dec. 3, 1925	Killed: Dynamite Joe Brooks, a peddler of "alky;" Edward Harmening, County Highway Policeman, independent; killed by Saltis-McErlane gang.[1]
Feb. 10, 1926	Wounded: William Wilson and John (Mitters) Foley, Sheldon ally.
April 15, 1926	Killed: Frank De Laurentis and John Tuccello, Sheldon gangsters, independent, cutting in on the McErlanes. McErlane sought by the police.
July 20, 1926	Attempt to kill: Vincent McErlane.
July 23, 1926	Killed: Frank Conlon.[2] Vincent McErlane, brother of Frank narrowly escaped death; the crime was charged to Mitters Foley. Sheldon threatened to kill Saltis if he dared to kill Foley; two days later Foley was killed.
July 29, 1926	Attempt to kill: Walter Stevens.
Aug. 6, 1926	Killed: John (Mitters) Foley, of the Sheldon gang, by Saltis gang. Thomas Foley corroborated revenge motive on the part of Joe Saltis; witnesses identified Earl (Big Herb) Herbert, Frank (Lefty) Koncil, and John (Dingbat) Oberta. Indictments returned August 11, 1926; Saltis and Koncil captured; witnesses disappeared August 22, 1926. Trial—October 6, 1926.
Oct. 11, 1926	Killed: Earl (Hymie) Weiss and Paddy Murray. Wounded: Attorney W. W. O'Brien, Sam Peller and Benny Jacobs. This machine-gunning was attributed to the Capone gang after the failure of the first attempt at peace between that gang and the allied Saltis-McErlane-O'Banion (Weiss) gang.
Oct. 19, 1926	Bombing: Joseph Kepka's saloon, 4801 Honore Street. The bomb was attributed to Kepka's failure to contribute to the defense fund of Joe Saltis.

[1] It is probable that the split with Sheldon occurred at this time because Brooks was a friend of Sheldon's. No attempts made to kill Sheldon after the break with Saltis-McErlane.

[2] On August 19, 1926, Vincent McErlane was captured and questioned with regard to the murder of Conlon. On Sept. 15, 1926, Vincent McErlane and Peter Gusenberg, of the O'Banion gang, were arrested for the Grand Trunk train robbery. *This is the first indication of an alliance between the O'Banion gang and the McErlane gang.*

Nov. 9, 1926	Saltis and Koncil found "not guilty."
Mar. 11, 1927	Killed: Lefty Koncil and Charles "Big Hayes" Hrubec. Crime charged to either Sheldon or the O'Donnell brothers.
Nov. 3, 1927	McErlane acquitted in Indiana.

The Saltis-McErlane gang seem to have been pursued most energetically by Captain John Stege. Upon the election of Thompson, in 1927, Stege was removed from the force by a dubious civil service trial. It is widely believed that Joe Saltis was the chief influence behind this discharge.[1]

3. The West Side Beer War.

On the west side the dispute over territory was between the Klondike O'Donnell brothers (the West Side O'Donnells) and Al Capone, the trusted lieutenant of John Torrio, later himself in complete command when Torrio went to jail. The first of a series of murders was involved in the expansion of the west suburban territory and its defense.

The Genna brothers had organized the home industry of distilling in the Taylor Street district (Little Sicily). Their large family was in command of a further intimate group of co-villagers from Marsalla, Sicily, and important politically through their patronage and strength in the Unione Siciliana. In the struggle for supremacy, after the retirement of Torrio, over the booze collecting and distributing rights, the Genna brothers of the west side fought the O'Banion gang on the north side. Between the Gennas and Capone there were many lasting ties—the Gennas had grown up under the protectorate of the old Torrio overlordship; there were racial affiliations and obligations, though Capone is a Calabrian.

With the murder of Dion O'Banion the west side beer war began. Later the raising of the defense fund for Scalise and Anselmi, which was a phase of this war, involved the murders of wealthy Italians and the collectors of the fund. It is fair to conjecture that all of these wealthy Italians had profited by the booze trade with the Gennas and were obligated to contribute to the fund.

Al Capone was in command of the armed forces for the Torrio interests in their expansion in the west suburban area, which he later defended against incursions by the Klondike O'Donnell brothers. Still later he participated in the war for the booze supremacy between the Genna brothers and the O'Banion gang.

CATALOGUE OF CASUALTIES IN THE WEST SIDE BEER WAR

Apr. 1, 1924	Killed: Frank Capone, in an election battle with the police squad as a phase of the control of elections in the west suburbs.
May 8, 1924	Killed: Joseph Howard, for "talking out of turn" in Capone affairs regarding Capone killings.
Nov., 1924	Killed: Eddie Tancl, popular Bohemian cafe owner in a Bohemian community.

[1] Captain Stege was later reinstated in August, 1928, upon the retirement of Commissioner Hughes and the appointment of Commissioner Russell, and was made Deputy Commissioner in charge of the Detective Bureau.

Nov. 10, 1924	Killed: Dion O'Banion, safe-blower, florist, "hi-jacker" and bootlegger, chief of the O'Banion gang of the lower north side, politician.

Opening of the Genna-O'Banion series of killings.

Jan. 12, 1925	Attempt: On the life of Capone. Wounded: Sylvester Barton, chauffeur. Reprisal for O'Banion killing.
Jan. 24, 1925	Attempt: On the life of John Torrio; wounded almost fatally. Torrio served out his sentence in Waukegan and left for Italy soon after.
Mar. 7, 1925	Kidnapped and slugged: Arthur St. John, editor, who was conducting a war of publicity against Capone interests in Cicero.
May 26, 1925	Killed: Angelo Genna, while being chased in auto by Capone gang.
June 13, 1925	Killed: Michael Genna and Policemen Harold Olson and Charles Walsh. Scalise and Anselmi captured. Earlier in the same morning Michael Genna and those in his car had been engaged in a shooting affray with members of the O'Banion gang.
July 8, 1925	Killed: Anthony Genna, shot from ambush.
July 10, 1925	Killed: Tony Campagna.[1]
July 15, 1925	Killed: Sam Lavenuto.[1]
July 15, 1925	Killed: James Russo.[1]
Jan. 10, 1926	Killed: Henry Spingola,[2] brother-in-law of Angelo Genna.
Jan. 24, 1926	Killed: Augustino and Antonio Moreci;[2] for refusing to make second contribution to fund.
Feb. 15, 1926	Killed: Orazzio Tropea, supposed collector for the Anselmi-Scalise fund; killed almost on the spot where Henry Spingola was killed.
Feb. 21, 1926	Killed: Vito Bascone.[3]
Feb. 23, 1926	Killed: Eddie Baldelli.[3]
March 7, 1926	Killed: Tony Finalli.[3]
Mar. 19, 1926	Killed: Samuzzo Amatuna, who had been engaged in a grim effort to rally the forces of the Genna brothers, now depleted, and to stabilize the chaotic booze production and trade of the Genna brothers. He was the fiance of a girl in the family of Michael Merlo (deceased leader of the Sicilians).
Apr. 27, 1926	Killed: William McSwiggin, assistant state's attorney, James Doherty, and Thomas Duffy. McSwiggin accompanied members of the Klondike O'Donnell gang on the west side, who were engaged in warfare with powers of Cicero.

[1] Independents who made "alky" in Capone territory.

[2] The Moreci brothers and the Spingolas were of wealthy Italian families and the best available information yielded a theory that they were killed because of their refusal to contribute to the Scalise-Anselmi defense fund. Other deaths during this period were identified as those of collectors of the fund.

[3] Collectors for Anselmi-Scalise fund, killed in revenge for killing of Spingola and Morecis.

May 21, 1926	Killed: Cremaldi, an Italian booze peddler on the "Gold Coast," out of his territory.
July 17, 1926	Wounded: Joseph Novello.
Aug. 10, 1926	Gun battle: On Michigan Avenue; Vincent Drucci of the O'Banion gang, attacked by Capone gangsters; shot it out. Really an attempt at hold-up. Drucci had large bank roll.[1]
Aug. 20, 1926	Killed: Joseph Nerone (Spano, the Cavalier); said to be revenge for the killing of Anthony Genna, or possibly for breaking in on Capone's Chicago Heights territory.
Sept. 20, 1926	Attack: Hawthorne Hotel, Capone headquarters, raked by machine-gun fire by the north side gang; reprisal for O'Banion killing.
Oct. 11, 1926	Killed: Hymie Weiss, leader of the O'Banion gang; and Paddy Murray; at the south corner of the Cathedral, across the street from O'Banion headquarters; to break up the Weiss-Saltis alliance. Wounded: Sam Peller, Benny Jacobs and W. W. O'Brien. The latter was the attorney for Joe Saltis in the case then pending for the murder of Mitters Foley. Weiss had an exact copy of the information regarding the first jury, which had been completed. The episode bespeaks the antagonism of the Capone-Genna gang to the alliance between the O'Banions and the Saltis-McErlane gang.

4. The Truce. The meeting took place at the Morrison Hotel on October 21, 1926, with a complete representation of the leading gangs of Chicago. Vincent Drucci and Big George Moran represented the north side gang; Eddy Vogel, Julian "Potatoes" Kaufman, Frank Citro and Peter Gusenberg joined their interests with Drucci and Moran. Klondike O'Donnell and his brother Myles, of the west side, participated in the conference. Capone, representing Torrio interests, had a representative there, perhaps Antonio Lombardo. Ralph Sheldon, enemy of Saltis-McErlane, was present. Maxie Eisen appeared as mutual peacemaker. Drucci and Moran took the responsibility for securing the approval of Saltis and McErlane, then in jail. The conditions of the peace were that each gang was to stay in its own territory.

The north side gang, with Drucci as chieftain, controlled the territory from the lake on the east and north to the suburbs, on the south and west from the river to the Wisconsin line; each took the exclusive beer and whiskey rights for both wholesale and retail trade and revenues from small gamblers.

Joe Saltis and Ralph Sheldon divided the south side of Chicago, extend-

[1] The first attempt at peace occurred immediately after this machine-gun battle. Antonio Lombardo emerged for the first time as a representative of the Capone interests. He attended a meeting in the Morrison Hotel, at which it was said a police official was present, and made overtures to Hymie Weiss, who insisted that he wanted the attackers of Vincent Drucci "placed on the spot." The refusal of Capone was followed by the masterly plan to establish a machine-gun next door to the headquarters of the O'Banion gang, which resulted in the casualties on October 11, 1926.

ing south from the river to the Indiana line and from the lake on the east to the townships on the west. Sheldon's position was strengthened by the partisanship of Capone and the fact that Saltis and McErlane were incarcerated.

Capone land included the far west side and the western suburbs.

The truce seems to have held so far as the war of the leaders was concerned, but in the establishment of the exclusive rights in each territory, considerable individual sniping and murder continued through the remainder of the period of the Dever administration and to the present day.

Jan. 6, 1927	Killed: Theodore Anton, "The Greek," manager of the Hawthorne Hotel, in which Capone headquarters were located. Wanted to retire.
Mar. 14, 1927	Killed: Alphonse Fiori, Genna henchman. Attempt on the life of Capone at Hot Springs, Arkansas; ascribed to Vincent Drucci in reprisal for the Weiss killing.
Apr. 4, 1927	Killed: Vincent Drucci, by the police on election day, while being driven to the station for questioning.
May 3, 1927	Found dead: John Costenaro, saloon-keeper in Cicero, who had disappeared on January 3; tried to be independent.
July 27, 1927	Killed: Frank Hitchcock, saloon-keeper and distiller, competing with Capone in Burnham.
Aug. 10, 1927	Killed: Anthony K. Russo and Vincent Spicuzza; small manufacturers of "alky" in Aiello territory.
Sept. 9, 1927	Bombed: A distillery said to be owned by Anselmi and Scalise, probably one of the Genna interests or possibly explosion by gas.

The death of Drucci further disorganized the north side gang and while Bugs (Big Joe) Moran has attained leadership, he did not go into action until after the beginning of the gambling war during the present Thompson administration when, allied with the Aiello brothers and Bertsche and Ed Zuta, he carried on the war against the Capone-Lombardo interests.

5. *Guerrilla Warfare.* At this time there is a period of comparative quiet, but peace in the beer war did not come from extermination in the struggle of "gangster killing gangster," as many predicted. Indeed, the peace arranged by the chieftains, while it seems to have settled the major points of disputes over territory among the gang leaders, did not and probably could not prevent many conflicts arising among their followers and especially with independent operators. Consequently, the present period of peace might be more accurately described as one of guerrilla warfare. Killings still continue, but they are either reprisals against individual intruders into the territory of a syndicate or they represent some shifting of power in underworld organization.[1]

[1] One reason why wholesale casualties have not exterminated gangsters may be gained from a description of the present organization and activities of one syndicate in the alcohol traffic as reported in the *Daily News* of March 24, 1928. This article not only indicates the enormous profits of the illegal traffic in alcohol and the large

6. Summary. The extraordinary phenomenon of gang war and gang peace in a modern American city shocked not only the people of Chicago and the United States, but the nations of the world. Few persons, even in Chicago, realize the powerful nature of criminal gang organization, the extent of their political alliances, and the enormous amount of profits from beer-running and booze distribution. Our survey of the beer war leads to certain outstanding findings:

1. The solidified and politically protected organization of former vice lords and younger gunmen and gangsters under the leadership of John Torrio for the manufacture and distribution of alcoholic beverages disintegrated under the prohibition enforcement policy of the Dever administration and the beer war broke out.

2. In the war of rival factions which followed, the gang code of silence and personal vengeance rather than legal redress was so compelling that of the two hundred fifteen murders of gangsters during four years of armed strife, only a handful of arrests and no convictions were secured by the law enforcing agencies. But the police, forced apparently to resort to shooting

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number of gangsters who find employment in it, but it also discloses the situation in which conflicts arise between rival syndicates:

"An alcohol traffic of more than $2,000,000 a year is controlled by the Guilfoyle-Winge-Kolb syndicate on the near northwest side.

"The alcohol traffic, the pet project of *Martin Guilfoyle, slayer of Peter Gentleman,* for net profits, now overshadows the prosperous beer business built up by Al Winge, former police lieutenant, and his ally, Matt Kolb.

"The syndicate's sales, supervised generally by Guilfoyle, are in direct charge of Joey Fisher, who has been active in the 'alky racket' since the Volstead law went into effect. Sales Manager Fisher has a staff of high-pressure salesmen that rises, when business is good, to more than fifty men.

"Fisher's headquarters are at 2009 Division Street, first floor; telephone Brunswick 4943. Daily his salesmen appear at this spot or a distributing point at 3448 Fullerton Avenue, to listen to the current price on alcohol.

"When something of importance is to be said, Mr. Guilfoyle calls his henchmen to his personal headquarters in a building on the northeast corner of Kedzie and Chicago Avenues.

"The quaint expression 'Check your gun at the door' is not a matter for joking on visits to the Guilfoyle headquarters. When the peddler, saloon-keeper or other caller appears, he enters the barroom, steps behind the bar and there checks his gun.

"They troop out of the bar and up the Kedzie Avenue entrance where Guilfoyle is waiting to receive them. A few 'wise cracks' from various hoodlums, then Guilfoyle clears his throat, calls the meeting to order, and the peddlers and saloon-keepers listen respectfully while the 'big shot' has his say.

"The subject of more than one of these meetings has been the activities of Lewis and Max Summerfield, rival alcohol 'racketeers,' sole thorn in the syndicate's side.

"The Summerfields, old-timers on the northwest side, had things pretty much their own way prior to Guilfoyle's advent in the alcohol business. Guilfoyle's organizing ability, Sales Manager Fisher's high-pressure staff, and the Kolb-Winge prestige cut in on the Summerfield's business sadly.

"Stubbornly they fought the syndicate and paid for and got such police protection as they could, and they are still operating in a small way. Repeatedly at these meetings Guilfoyle has warned his henchmen to boycott the Summerfields:

" 'You'll only get into trouble if you play with the Summerfields,' Guilfoyle tells his men. 'Don't use their stuff. Don't have anything to do with them. We'll run them out of the district yet.'

"After one of these 'pep' meetings a few months ago, pineapple tossers descended on the Summerfield headquarters at 1910 Milwaukee Avenue. An explosion resounded through the district and the Summerfield headquarters was in need of considerable repair.

"The police rushed up, made their customary investigation and announced to a waiting world that they were confronted with another 'bombing mystery.' "

it out in running battle, succeeded in killing one hundred sixty gangsters during this same period.

3. While the heavy casualties of the beer war did not lead to the extermination of gangsters, as many law-abiding citizens optimistically expected, they did induce the leading gangsters, for different reasons, to agree to peace terms which defined the territory within which each gang or syndicate might operate without competition and beyond which it should not encroach upon the territory of others.

4. The huge stakes of beer running and whiskey distribution, providing not only enormous profits for gang leaders but a large number of high salaried positions for an army of minor gunmen and gangsters, are, in large part, the explanation for the survival and the growth of beer and whiskey syndicates in spite of the heavy mortality risk of this business.

5. The fact remains for the serious consideration of all the friends of law and order, that even under the very adverse conditions with the federal and city authorities united in a strenuous policy of law enforcement, and with a bitter internecine war between rival factions, the underworld groups and syndicates for traffic in liquor maintain operations on a large, if not increasing, scale, in defiance of the laws of the State of Illinois and the Constitution and laws of the United States.

If this condition were an isolated phenomenon limited to the enforcement of the national prohibition law, it might be explained on the basis of the failure of the Eighteenth Amendment and the Volstead Law to command the support of the majority of citizens in a metropolitan and cosmopolitan city like Chicago. Two facts, however, prevent us from accepting this conclusion. In the first place, other cities have not experienced so violent a disorder in the enforcement of prohibition. In the second place, this defiance of law and order by the gunman and his immunity from punishment by the orderly processes of law are not limited in Chicago to the field of prohibition; on the contrary, they extend into many and diverse situations. This rule of the gangster and gunman in many different fields and their methods of professional violence may best be understood by a rapid survey of bombing and the bomber.

CHAPTER XXII

TERRORIZATION BY BOMBS

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CHAPTER XXII

TERRORIZATION BY BOMBS

1. Purposes. The bomb, timed to give the bomb-thrower ample chance to escape in his fleet automobile, makes furtive destruction safe.[1]

The old-fashioned cannon-cracker used thirty years ago by competitors to expose gambling houses, and its successor, the bomb filled with nuts, nails and deadly missiles, in the Italian quarter, have been improved upon by modern explosives, less dangerous to life but more destructive to property, according to Lieutenant Make Mills, bomb expert for thirty-one years, of the Chicago Police, who laments the difficulties of police and prosecution in combatting bombers.

Bombing, combined with window smashing, slugging and shooting, has become a profession practiced by specialized crews or gangs. Their apprehension is made difficult by the quick get-away provided by the automobile. Their conviction, should they fortunately be caught, is very difficult because of terrorization of witnesses; the habeas corpus which forestalls the securing of information; lawyers retained at large fees, often crooked, using political influence and bribery and every loophole of the law; the disappearance of material witnesses after indictment, or change of testimony by those appearing, because of bribery or intimidation; the law's delays and repeated continuances tiring out the witnesses, who live in constant fear while the law drags. Gangsters are able to raise defense funds, often enormous, as the sinews of war against constituted authority.

A study of over three hundred cases of bombings in the last quarter century seems to justify the following classification by motive: gambling wars, "black hand," political bombing, inter racial conflict, labor union ("direct action"), and merchant association ("racketeering"). Instead of discussing bombings in general, the analytical approach, class by class, discloses many problems, social and economic, in the normal life of our city, which underlie the use of terrorism as a means. In presenting history, evidence, interpretation or explanation for each problem, the outstanding fact appears that other cities having the same problems are free from bombing. *Why?*

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[1] The slight degree of risk in comparison with the high degree of destructiveness of bombing is vividly stated in an unsparingly condemnatory editorial in the *Herald and Examiner* of December 4, 1925:

"Bombing may not be the most vicious of our crimes of violence, but it is certainly the most dastardly. It is possible to maintain a certain semblance of respect for the burglar who risks his life, or for the pickpocket who risks his liberty, but the bomber is an utter outcast from humanity. He is a beast who lurks in ambush and never destroys unless he feels himself absolutely safe. The bomber goes out for blood and destruction with the intention of risking nothing. The business of the Special Grand Jury and of the state's attorney and of the chief of police is to show that there is risk in the business. It is too much to hope that any bomber on conviction can be hanged, but the consensus of opinion remains, nevertheless, that hanging is too good for them."

2. Gambling War Bombing. Gambling war bombing has already been treated in detail in Chapter XVIII. While there are periods, as in 1907 and in 1928, when the bombings are so frequent and the motives so evident that they are definitely gambling wars, there has been intermittent bombing in gambling since 1901.

The bomb is used in disputes over territory, to intimidate witnesses, to expose to the press and the public the existence of gambling establishments in order to embarrass the police, to force a percentage of profits, and to expose the participation of public officials in gambling graft. Never has there been a conviction of gambling bombers. The indications during the gambling war in 1907 and at other times are that in this field specialized gangs of bombers are hired and that the police know who the bombers are.

3. "Black Hand." "Black Hand" is extortion by letters containing threats. Following are typical examples of letters written for the purpose of extortion. They are anonymous, signed "Black Hand" or "La Mano Nera," indicating the amount, the time and place for the delivery of the money.

This note was sent to Anthony Marino, 852 Gault Court, after his six-year-old boy was kidnapped:

> "We took your boy from your house this morning at ten o'clock and he is in good care with us now. All we want is five thousand dollars and the boy will be sent back. If you value your boy's life, don't miss this. Give your money to some friends who will pass the house. Don't forget."
>
> (Signed) "La Mano Nera"

Here follows the letter received by George C. Bour, 6840 Euclid Avenue, a real estate dealer, with offices at 2004 East Seventy-first Street:

> "You got some cash. I need $1,000.00. You place the $100.00 bills in an envelope and place it under a board at the northeast corner of Sixty-ninth Street and Euclid Avenue at eleven o'clock to-night. If you place the money there you will live. If you don't, you die. If you report this to the police, I'll kill you when I get out. They may save you the money but they won't save you your life."
>
> (Signed) "Black Hand"

The following letter is extremely polite, which is characteristic of Latin ways and diplomacy. It was written by Joseph Genite, who was arrested in a raid on a "black hand" arsenal, 1001 South Racine Avenue, where dynamite, sawed-off shotguns and revolvers were found:

> "Most Gentle Mr. Silvani:
>
> "Hoping that the present will not impress you much, you will be so good as to send me $2,000.00 if your life is dear to you. So I beg you warmly to put them on your door within four days. But if not, I swear this week's time not even the dust of your family will exist. With regards, believe me to be your friends."

Undoubtedly the Sicilians, who compose the overwhelming majority of the Italian population of Chicago, have been victimized by the "black hand" in Sicily, and the Sicilian immigration has brought with it men who were

experienced in perpetrating this form of crime. It is not necessary to review the history of organized crime in Sicily under the name of the "Mafia." The central point is that from the same provinces and villages in Sicily has come immigration to various cities in the United States. In some American cities, the practice of extortion by the "black hand" method, including not only the threatening letter but bombing and murder, has thrived; in others there was a similar beginning but in time the practice has decreased and finally has been wiped out. Milwaukee is now free of bombing and mystery murders in its Italian community, which were common there until a few years ago.

In the study of the "Black Hand" in Chicago, over three hundred cases have been considered, which have occurred in the last twenty-five years. The "black hand" operations are limited almost entirely to the Sicilian neighborhoods on West Taylor Street and vicinity, on Grand Avenue and vicinity, on Oak Street and vicinity, and in the little Italian neighborhood on the south side, Wentworth Avenue.

The police call every mystery murder in the Italian community (murders in which no information is forthcoming) a "black hand" murder. If the police succeed in discovering a threat by letter for the purpose of extortion, followed by either a bombing or a killing, it is more definitely "Black Hand." No disclosure in any court has established a "black hand" society of national or international proportions. The fact is that "black hand" is only a method, a *modus operandi*. It may be a method used by an individual or a small group of four to ten people, or it may be a method of the traditional Camorra and Mafia which emerges when the large group aids in the defense of apprehended criminals.

If, in late years, bombing and murders have not been ascribed to "black hand," it is not because threats of extortion have not been common, but because the *modus operandi* has been changed and the threats do not come by letter. One of the probable reasons for the present rarity of the threat by letter is that the perpetrators lay themselves open to prosecution in the Federal Courts, which have occasionally succeeded in convicting such criminals. In Sicily, where telephones are even now rare, the threat was usually communicated by letter. In the earlier days it was thus in Chicago. The letter has partly disappeared because other ways of communication have become as available.

4. Same: Extent of the Problem.

The "Black Hand" was discussed most intensively in the first decade of this century, both in Chicago and in the United States. As early as 1907 a society was formed to combat the "Black Hand" and its sinister activities in various American cities. The "White Hand" Society, composed of Italians, had as its object cooperation with the police and the law. In Chicago it was supported by the Italian Chamber of Commerce, the local Italian newspaper and several Italian and Sicilian fraternal orders. A thorough campaign was launched to rid the country of the "black hander," whose parasitic means of livelihood was blackening the good name of his worthy countrymen. These crusaders employed detectives to hunt out the lair of the extortionists and to place this information at the disposal of the police. Investigators were sent to Italy and Sicily to dig into the past histories of notorious "black

handers," with a view toward deportation, on the ground of illegal entrance into this country.

The Italian Consul Guido Sabetta, who was very active in this work, and Chief of Police Shippy were threatened. Stephen Malato was the attorney of the Society.

As a result of its investigation, the White Hand Society published a booklet showing saloon dives in the Italian colonies of the large American cities as the breeding places of "black hand" crime. It was explained that:

> "In these colonies, undisturbed by the local authorities, and showing indifference to every provision of the law, are certain saloons which are retreats for the worst elements of the Italian population; those who are generally known as the authors of crime. The difficulty of extraditing these undesirables and the differences between the police systems of Italy and of the United States are also held responsible for crime among the Italians."

A series of fresh bombings in widely scattered parts of the city caused the White Hand Society to intensify its efforts to stamp out this scourge. The Society narrowed its work to cooperation with the police department, as it was a difficult task for the ordinary police officer and the detective, familiar only with American conditions, to identify and suppress the criminal gangs in the foreign colonies. The vigilant assistance of such a Society as the White Hand was expected to prove of great value. In explaining the audacity of the "black handers," the leaders of the Society called attention to the influence of certain vicious and lawless saloon-keepers in the Italian district. These saloon-keepers had learned to take an active part in ward and precinct politics, to court and obtain the favor of the bosses and the "ward heelers." One of the results of these affiliations was the "let alone" policy toward them by the police department. To remedy this situation the Society recommended that more Italian policemen be added to the force. These were to be posted in the Italian areas to supplement the existing force in its efforts to track down the extortioners. Stephen A. Malato actually succeeded in securing indictments and convictions in certain cases; as for example, in tracking down Vincenso Geraci, who had by threats of violence attempted to extort a large sum from Dr. Cutrera.

The White Hand Society seems to have remained dormant after its campaign to get some Italians appointed on the police force. In 1910 it again became active, which resulted in Dr. Joseph Damiani, president, and Dr. C. Voleni, former president of the White Hand, being marked for death, because of their persistent efforts to eradicate the "Black Hand" organization. Since then little is heard of it.

A conversation with Stephen Malato recently corroborated the oft repeated statement that in his observation of thirty-five years in Chicago, the "black hand" has never been more than the method of small groups of criminals, loosely organized, and not a formal, large society of any proportions.

That the White Hand Society did not succeed in wiping out "black hand" operations is evidenced by the following lists—the first published March 17, 1911, in an article in the Chicago *Daily Tribune*. It gives the

unsolved murders in the Italian quarters of the city for the year 1910 and until March, 1911, as follows:

For the Year 1910

Jan. 6 Ben Cinene, 60 years old; shot while in his bed, at 500 Oak Street.
Jan. 27 Phillipi Pemovario, 35 years, stabbed; 456 North Peoria Street.
Feb. 7 Joe Loverde, 26 years, shot while in his home; 1117 Milton Street.
Mar. 17 Carmelo Crapie, 37 years, found with throat cut and knife sticking in neck, in a rear room of his store; 1101 Larrabee Street.
Apr. 24 Vincenzo Conetzara, 38 years, shot while in his saloon; 913 Gault Court.
Apr. 26 Gartano Disolvo, 26 years, shot twice and stabbed while in front of his home; 1108 Gault Court.
May 1 John Landani, 31 years, shot while in front of his home; 1075 Vernon Park Place.
June 5 Phillipi Caralano, 39 years, shot; Sixteenth and State streets.
June 29 Dominick Lomano, nine months old, killed in his mother's arms by a stray bullet intended for Griffa; suspected man escaped.
June 29 Tony Griffa, 36 years, shot; 904 Townsend Street.
June 29 Leonardo Belleliva, 47 years, shot; 853 Gault Court.
Aug. 15 Joseph Gelino, 24 years, shot while in his home; 905 Aberdeen Street; suspected man arrested, tried, and acquitted for lack of evidence.
Aug. 21 Dominco Dineas, 40 years, stabbed four times; 867 Sedgwick Street; in quarrel forced by man who escaped.
Aug. 21 Amilio Faliano, 27 years, shot; 742 Ewing Street; in same manner.
Aug. 28 James Rivella, 22 years, shot while at Polk and Jefferson streets; in same manner.
Sept. 4 Peter Gambino, 48 years, shot; 564 DeKoven Street; same manner.
Sept. 13 Phillipi Partaloni, 36 years, shot; 878 Gault Court.
Sept. 25 Tony Armond, 35 years, beaten to death at 4635 South Paulina Street.
Sept. 27 Sam Faticotta, 54 years; stabbed in Sebor Street, in altercation with a man whose name he refused to divulge.
Oct. 2 Dario Brizzolari, 35 years, beaten to death while passing between Forty-first and Forty-second Streets.
Nov. 1 Pascalo Quercha, 42 years, shot while at 929 South May Street; in altercation with man who was arrested and acquitted for lack of evidence.
Nov. 27 Paul Monina, 23 years; 1230 Penn Street.
Nov. 27 Charles Sagliona, 28 years, shot; same manner, same place; no arrests.
Dec. 4 Alfonso Testo, 43 years, stabbed; Mather and Jefferson streets.
Dec. 5 John Kampa, 30 years, stabbed; 1524 Milwaukee Avenue.

1911

Jan. 21 Carmelo Tumminia, 40 years, shot; Elm and Sedgwick streets.
Jan. 29 Guiseppi Abita, 24 years, shot; 1021 South Paulina Street.
Feb. 3 Pasquale Laventure, 22 years, shot; 942 Hope Street.
Feb. 17 Vincenzo Subio, 49 years, shot; 501 Oak Street.

Feb. 20 Vito Cappitelli, 33 years, shot in provoked altercation, at Washington and Union streets. Murderer escaped.
Mar. 9 Tony Dema, 40 years, shot in altercation; 265 Alexander Street; no arrests.
Mar. 13 Pasquale Marcadnaro, shot; 807 West Taylor Street.
Mar. 14 Antonio Dugo, shot; 500 Oak Street; by bullet which first passed through the body of Phillipi Manicalsco.

On June 2, 1915, a review of "black hand" activities appeared in the *Record-Herald:*

"Five persons were shot in May alone. In 1911 the dead numbered forty; in 1912, thirty-three; in 1913, thirty-one; in 1914, forty-two."

The following are shootings reported from January to May, 1915, which were all ascribed to "black hand":

Jan. 5 Frank Marino, 2247 West Grand Avenue; shot by Frank Minnine, 602 North Curtiss Street, who battled with detectives, then said that Marino and he were the "Black Hand."
Mar. 24 Frank Monaco, 520 Hobbie Street; fired upon twice by man carrying sawed-off shotgun, but escaped uninjured. Had received letters demanding five hundred dollars.
May 2 Fannie Baceiventi, seven years old, slain by revolver bullet fired at Joseph Cutea, 827 Milton Avenue. An hour later when Cutea returned he was shot down by sawed-off shotgun. He recovered.
May 4 Detective Sergeant Joseph McGuire shot in leg by friend of a prisoner he was taking to police station.
May 20 Vincent Falsule, 910 Cambridge Avenue (old Gault Court), shot in back and thigh from ambush, a block from his home.
May 27 Frank Mezzatesta, 1226 Frontier Street; shot in head and shoulder in daylight, at Elm and Larrabee streets.

The throwing of bombs, which resulted from not heeding demands made in threatening letters, in the first five months of 1915, follows:

Jan. 4 Tony Costello, received bomb in mail, but it failed to explode.
Jan. 14 Frank Cuccia's home and saloon, at 876 Townsend Street, blown to pieces. Genevieve Cuccia, 14 years old, hurt when buried beneath debris.
Jan. 25 Michael Ballagala's home, at 827 Gilpin Place, damaged slightly by bomb exploded in front.
Feb. 11 Mrs. Antonio Locascio's building, at 940 Milton Avenue, fired and police found two bombs in basement.
Apr. 6 J. B. Roti's wholesale market, at 920 West Grand Avenue, blown to pieces and windows in vicinity shattered. Frank Roti, brother of owner, was president of Western Savings Bank, which failed.
Apr. 8 Joseph Coco's home and market, at 2262 Wentworth Avenue, wrecked and he and his family were blown out of bed.
Apr. 26 Joseph Maldeno's building, at 1016 South Morgan Street, blown up at midnight.
Apr. 26 Bomb blew out doorway in building at 1150 West Grand Avenue, where C. Cirrincione had grocery.

May 6 John Jarbotlo's home, at 2312 West Ohio Street, wrecked; adjoining structure damaged.
May 13 Mrs. John Miller's home, at 1016 Milton Avenue, wrecked.
May 16 Michael Deddo's building, at 613 South Racine Avenue, blown to pieces.
May 20 Peter Carosillo's building, at 2603 West Chicago Avenue, dynamited.

An article in the *Daily News,* May 25, 1913, acquaints us with the annual profits of the "Black Hand":

"In the first ninety-three days of this year, 55 bombs were detonated in the spaghetti zone. Not one of the 55, so far as can be determined, was set for any reason other than the extraction of blackmail. A detective of experience in the Italian quarter estimates that ten pay tribute to one who is sturdy enough to resist until he is warned by a bomb. Freely conceding that this is all guess work, then 550 men will have paid the Mano Nera since January 1. The Dirty Mitt never asks for less than $1,000. If a compromise of $200 was reached in each of the 550 cases, 'Black Handers' profited by $110,000 in 93 days. That's an average of $1,111 a day, which is fair profit for the expenditure of five two-cent stamps, a dollar's worth of powder, and 15 quarts of wood alcohol chianti, that being the usual ratio. Perhaps these figures are inaccurate in detail, but they are conservative enough en masse. Well informed Italians have never put the year's tribute to the 'Black Hand' at less than half a million dollars."

Bomb-throwing as a hand-maiden of "black hand" helped in reaping a rich yearly harvest in cash from the citizens of this community. But that is not all. Aside from the tribute levied and the destruction of much property, the "black hand" outrages in Chicago decreased the value of real estate in the district where the extortionists operate. Bernard P. Clettenberg, real estate dealer and former alderman, explained the reason:

"I, personally, have no doubt that the 'black hand' killings have decreased the value of property, and I believe the police could have done more than they have. But proving is another question. Sooner or later some lawyer will attempt it and if he succeeds the bond of the chief of police may be brought to the foreground.

"These outrages started eleven or twelve years ago. Years ago the residents were Swedish. Many of them tailors. They made clothes for the ready-made dealers. The competition was keen. In order to beat the system, one tailor hired Italians. Finally the Swedes were driven out.

"The Italians are very thrifty and they began buying the property. By a miracle, it often seemed to me, they would pay off the mortgages.

"Then came along the 'Black Hand.' They went after everyone who owned property, until the Italians are now trying to sell. I sold a place at $9,500 on May 4. The purchaser paid $4,000 in cash. On May 19 he got his first 'black hand' letter demanding money. Others followed. He wanted me to take the property back. He has since moved away and I don't know where he lives."

A summary of the operation and effect of the "black hand" in Chicago was given in a statement by Rocco de Stefano, the attorney for James

Colosimo, after the latter was murdered. He said that the "black hand" in Chicago:

"(1) Terrifies Italians so that none dare testify;
"(2) Keeps Italians from buying property lest they be suspected of having money and thus be 'black handed';
"(3) Causes banks to refuse loans on property in the Italian district;
"(4) Kidnaps judges of election and through terror prevents identification of kidnappers;
"(5) Kidnaps young girls and forces them into marriage with young gangsters—then coerces the girl's parents to support the unwilling bride and her gangster husband."

5. Same: The Trials of the "Black Hand" Cases. A month after the conviction of Geraci, July 30, 1909, in the case prosecuted by Malato, a young Sicilian was arrested as a suspect in a plot to extort four thousand dollars from Joseph Macaluso, a steamship agent living at 382 Clark Street, whose home had been bombed on April 12, 1909. Carlino was acquitted by a jury on account of insufficient evidence on the charges of extortion and bomb-throwing. He maintained that he was a mere mediator between the "Black Hand" and the victim.

About the same time the case of Joseph Bertucci, a "black hand" murderer, came to trial (June 22, 1909). Bruno Nordi, indicted with Bertucci, was on the witness stand about to testify against his co-defendant. A stranger entered the court room, waved a red handkerchief at the witness and fled. Detectives Longebardi and Bernacchi were dispatched after the stranger, but no trace of him could be found. Nordi refused to answer any questions asked by the prosecutor. Nordi's wife also refused to testify, and the trial was adjourned. He claimed that he was afraid he would be killed if he testified, and it was assumed that he was threatened by the man who signaled with his handkerchief. The detectives were unable to apprehend the mysterious person who fled from the court room.

In the Cinene killing, January 8, 1910, silence ruled the tongues of witnesses and relatives who were in a position to know the murderers and the motive of the killing. According to one sergeant attached to the Chicago Avenue Station, "All the reply I could get was 'Me don't know.'" A son-in-law of the victim shrugged his shoulders and replied negatively to all questions put to him by the police. The sergeant remarked:

> "These people won't bring the police any information. They say, 'What's the use? It won't bring the dead man to life.' It is safe to say, however, that within three months there will be another killing and the dead man will be one of the three assassins of Cinene."[1]

As early as November, 1909, the police department, in an effort to get at the instigators of bombing plots, met a stone wall of silence when searching for information which would lead to the bombers. The victims refused to identify or give any details of an affair which took place before their eyes, so great was the fear of the law-abiding element of Italians.

[1] *Record Herald,* January 8, 1910.

6. Same: Phillipelli Resists—A Glimpse of a "Black Hand" Gang.

The paying of tribute was probably wide-spread and the instances of Italians who persistently refused fairly rare. Joseph Phillipelli was one who refused the demands of extortioners and he was killed on April 12, 1909. Though fatally wounded, he managed to hold one of his assailants until police arrived. The captive gave his name as Tony Baffa. During the same evening, James Arrigo, a wholesale fruit dealer, was the target of gun-fire while in his home at 100 Larrabee Street. Tony Baffa, the captive, was an Italian boy, eighteen years of age, who had lived in America only about three years. Three months after the killing of Phillipelli he confessed and described the organization and activities of a little "Black Hand" ring. Its name was ironically "Lo Giusto," translation of which is "The Just." He gave the names of five members—Antonio, Rafaelo and Pasquale Nudo, and Giuseppe and Ernesto Caro. After he had received a threat, Phillipelli followed the practice of never stepping out of his house without carrying his infant child in his arms as protection, knowing that the "Black Handers" would not fire at it. The five waited for three months and then decided to do away with him in spite of the child in his arms. They sent Baffo to kill him and promised him money, counsel and other aid. Due, however, to the activities of Detective Longobardi, these friends, in fear of arrest, stayed away from the county jail. This apparent neglect induced Baffa to confess. His confederates were arrested, finger-printed and measured, but were never prosecuted.

Detective Longobardi and his partner, Bernacchi, because of their energetic pursuit of "Black Handers," were waylaid and slashed on the wrists while warding off a stiletto attack. This occurred (March, 1910) while the entire press of the nation was concentrated upon the death of Petrosino, the detective of international fame who went to Italy to study the Camorra and was killed there. His death established the conclusion that the Camorra was international.

Following a general denunciation of the Italians, in March, 1910, Attorney John DeGrazia rose in defense of Chicago Italians and berated the Chicago newspapers for bringing into disrepute the whole Italian populace because a few acts of violence had occurred in Italian areas. He also alleged that blackmailing was more prevalent among other nationalities, and in addition stated that it had never been shown that there existed any such criminal organization, composed exclusively of Italians, as the newspapers alleged with such certainty. This is similar to a declaration made by Guido Sabetta, Italian Consul in Chicago, who stated several years ago:

> "There is no such thing as a 'black hand' organization. I was for some time stationed in the Sicilian district of my country, in the locality most often accused of harboring 'black hand' organizations. I never heard of such a body there."[1]

This particular form of defense, made by Italian popular leaders, recurs whenever there is a great public stir about murders among Italians. It is, of course, untrue that Italians are all "Black Handers." By and large, the

[1] *Record Herald*, March 26, 1910.

community was victimized. The accusations against the whole group bring out these defenders who rise to leadership when they decry the persecution of the group.

7. Same: The Futile Raid.

Throughout 1909 there were several bombings which did not come to the point of arrest and trial. In January, 1910, after great public criticism, the police made a spectacular raid in Little Italy, arresting one hundred ninety-four Sicilians. This sudden raid was the result of the mysterious death of Veneditto Cinene, sixty years old, who was shot while in bed at his home at 500 Oak Street. The neighborhood believed that Cinene was a police stool-pigeon. The entire number arrested were taken in five saloons around Oak and Milton streets. Cinene's own son was serving a twenty-five year sentence for burglary, in which he had attempted to kill a policeman. Within twelve hours all of the 194 were released. The raid was a failure. The police did not succeed in establishing a connection of any of those arrested with any current crime. Saloon-keepers and "ward-heelers" were the only ones who profited in money and popularity by securing the releases.

Two days after the assassination of Cinene one of his neighbors, Mr. Joseph Noto, received threats, and a week later a grocer at Halsted and Grand Avenue received a threatening letter. In a carefully laid plot one of the extortioners, Cristino Moffor, nineteen, was caught. He named Gustantino Lonero as a partner. Nothing more came of this arrest.

A month later the explosion of a bomb at the grocery store of Mr. G. Biumeforddo, at 903 Gault Court, upon his refusal to pay tribute, caused renewed activity by the police with raids and prompt discharges. Detectives Patrick Quinn and John A. Wren, of the Chicago Avenue Station, were the target of a shooting, for which Caramello Morici and Tony Morici were held as assailants. They were supposed "Black Handers." Nothing came of this case.

Two weeks later four Italians were arrested as the alleged ringleaders of the "Black Hand" organization which had been in existence for twenty years. They were charged with extorting fifteen thousand dollars from south side Italians. They gave their names as Charles Morstazze, 45 years; William Lorengoni, 48 years; John Morrissi, 62 years; and R. Romacetti, 20 years. All gave bond and promptly disappeared.

In April, 1910, two more killings occurred in Gault Court.

8. Same: The Purchase of Paroles.

On the heels of these continued failures to carry prosecution to a conviction and the general knowledge that even the White Hand Society had practically given up because of threats, came the information that large sums of "Black Hand" money had been used to procure the release on parole of three of five extortionists sent to Joliet Penitentiary. They were released at the end of eleven months' service. Dr. C. Voleni, former president of the White Hand Society, said that the men had been provided with immense sums of money, which was spent like water by the lawyers and conspirators, with the result that no "Black Hand" men, convicted by the White Hand Organization, remained behind the bars long.

Dr. Joseph Damiani, the president of the White Hand Society, said

that the members were so discouraged by the lax administration of justice that they were refusing to advance further money to prosecute men arrested on their complaints.[1] He declared that the few witnesses who risked their lives by testifying were now at the mercy of the "Black Handers." Both the paroled men and the erstwhile prosecuting witnesses now lived in the congested tenement district on the north side, known to the police as "Little Hell."

An editorial in the Chicago *Record Herald* commented upon the statement of the officers of the White Hand Society on March 20, 1911, as follows:

> "It is doubtless true, as prominent members of the White Hand Society say, that our uncertain, slow and clumsy machinery of justice—including pardons—is in some degree responsible for the audacity of the brigands who are terrorizing law-abiding Italians. To see criminals convicted of murderous conspiracies and released after a few months at the instance of mysterious influences is hardly to conceive a wholesome respect for law and order.
>
> "Still, it must be recognized that the police, the prosecuting officials and even the courts, face a most difficult situation in dealing with imported species of crimes committed by recent arrivals in alien colonies, that are isolated by mental and physical habits from the American community. To suppress crime effectually you must understand its psychology and pathology and its environment. The difficulties of the police in detecting and comprehending Italian criminals may be illustrated by an actual instance. A murder was committed here in Chicago and the detectives, native and Italian, were set to work on the case. They succeeded in learning who the murderer was, but in spite of nets and traps, weeks passed in a vain hunt for him. Finally an Italian detective saw the 'wanted man' leave the home of the brother of the murdered man. That home had been the criminal's refuge for weeks. When the police summoned the brother to explain the strange affair he declared that the murderer had been wounded and that he and his family had shielded and nursed the wretch back to life in order to 'kill him' and thus duly and personally avenge the death of the beloved brother.
>
> "This sort of story would astonish one in a melodrama; what are practical policemen in real life to make of it? How could it have occurred to them to look for the criminal in the home of the victim's own devoted brother?
>
> "Thus alien ways, alien notions, alien psychology of crime, punishment and revenge, complicate terribly the situation created by the lawless Italian bands."

Threats, tributes and vengeance continued. Paul Figaro's dry goods store at 1025 Larrabee Street was bombed within two hours after the time he had been instructed to deposit three thousand dollars at a designated place. It was the second bombing in five months.

Carmello Marsala's butcher shop was bombed and nine persons injured, at 834 Gault Court on January 19, 1911. The police made an arrest at this time and announced that they had rooted out the extortioners. Gianni

[1] *Record Herald,* March 18, 1911.

Alonzi was convicted, but bombs continued. Artizo Stoanis' drug store at 1001 Larrabee Street was shattered by a bomb immediately after this announcement.

Anthony Dugo and Phillippi Maniscalco were killed on March 14, 1911. A suspect was arrested a week later, but nothing came of it. Another killing at "death corner," Oak and Milton streets, added to the swollen lists of marked men. Tony Gathios of 1008 Gault Court was the last of four victims in one week, killed by a mysterious assailant called the "black hand."

9. Same: Federal Prosecution.

The most probable reason for the disappearance of the *modus operandi* designated as "black hand," is due to the fact that in using the mails, extortioners lay themselves liable to prosecution by the Federal Government.

On September 1, 1910, Groacchina Battaglia was sentenced to Leavenworth for four years and four months.

Nicholas Carrozzo, Frank Cozza and Tony Paul were arrested after Carrozzo received marked bills used as a trap, from Dominico Jagulli, 813 South Clinton Street, on February 17, 1913.

On May 27, 1915, two men who threatened Antonio Petrone, 1507 West Ohio Avenue, were caught after picking up the package containing the marked bills. One of them confessed he wanted the money badly to go back to Italy. This was probably only an alibi in order to shield the real bosses of the gang.

On June 2, 1915, Luigi Anello was arrested after he received from Jacomo Monichino $250 in person. On Anello's person was found an unmailed letter addressed to Monichino. He was arrested by Sergeants Gentile and Polcaster.

On June 7, 1915, federal authorities arrested Paul and Pietro Mennite. They were assisted by Antonio Petrone, 1407 West Ohio Street, who a month before also helped in the arrest of two other "black handers."

On April 13, 1919, two Italians, who gave as their names Joseph Anzalone, 517 West Oak Street, and Dominic Catalina, 508 Hobbie Street, were arrested by police after they procured ten revolvers in a hardware store of Bullard and Gormley. Lieutenant Michael Hughes announced that he expected to link the murder of Nicholas Cinffo, 2227 Bissell Street, on December 19, 1918, with these men.

On April 16, 1919, Frank Cutsia and James Scardina were arrested and held on five thousand dollar bonds, for charges of blowing up the home of Andrea Russo, and for writing a letter demanding fifty thousand dollars. Handwriting experts claim that the letter was written by one of them.

The method used in capturing the extortioners was to follow the instructions in the letter received. Usually the men marked the bills placed in the envelope, box or package, as directed in the letters. Then the victim went to the spot indicated in the letter while a group of hidden detectives surrounded that spot. When the extortionists came along to take the package, they were seized. This trap succeeded in many instances in Chicago.

About the same time inspectors of the post office discovered "Black Hand" operations among other than Italians, as, for instance, the case of two wealthy Syrian rug dealers, who were victimized by Dr. Alfred Gelbert.

Judge K. M. Landis, on April 21, 1911, gave Alongi the maximum sentence, five years in the Leavenworth Penitentiary and $1,000 fine, for writing threatening letters to Marsala demanding five hundred dollars on the penalty of losing his life, after which a bomb explosion occurred at Marsala's home on January 18, 1911. The judge imposed the penalty only for the use of the mails. He had no jurisdiction over the bombing. In the course of this trial Judge Landis received many threats. In February of the following year (1912) the same judge sentenced Salvatore Scassia to four years in Leavenworth Penitentiary for sending "black hand" letters. Scassia pleaded guilty in an attempted extortion of two hundred dollars.

The next case of a "black hand" clique was rounded up by the Chief of Postal Inspectors Germer, in June, 1923. Mr. Germer effected the capture of the clique through a letter received by Giorgio Arquilla, 8348 Cottage Grove Avenue, which demanded ten thousand dollars.

10. Same: Bombing as an Organized Crime.

That the making of bombs is not an unskilled business, though extortion is occasionally the work of an individual unskilled in the preparation of bombs, was demonstrated in a raid made by Riccio Bernacchi, Longobardi and De Vito, on what they called the "Clearing-house of Black Handers," at a grocery store at 908 Sholto Street. Anthony Loungara, proprietor, and another were arrested. With them were seized bombs, dynamite fuses, percussion caps, and other explosives.[1] The most important discovery was the list of one hundred fifty names of persons who, it was alleged, had contributed sums to a fund to be used in the defense of Joseph and Carmelo Nicolosi, then on trial in Judge Honore's Court, charged with kidnapping Angelo Marena from his parents at 852 Gault Court.

11. Same: Summary of Conclusions.

This rapid survey of "black hand" bombing in Chicago seems to disclose the following points:

1. "Black Hand" is extortion, using the anonymous threatening letter. It existed and exists in Sicily. The victims, in fear of death, refuse to talk or aid the police in prosecution.

2. The law-abiding Italians are convinced, through experience, of the futility and danger of giving the police information. Year after year they have witnessed the failure of justice in prosecution and the visitation of vengeance upon those who aid the law.

3. The conspirators are often powerfully connected politically or can use bribery, can "fix" juries and officials, and can intimidate witnesses.

4. In the Federal Courts the jurisdiction is limited to penalties for the use of mails for the purpose of extortion. Since Judge Landis convicted a number of "black handers" who were effectively prosecuted, the practice of extortion by mail has ceased and little more is heard of "black hand," but extortion by violence or gun and the bomb has not ceased.

5. It is the purest banality to excuse the nefarious, bloody practices and wide-spread tribute paid by the victims, by the historical explanation that blackmail and the conspiracy of silence are old-world traits transplanted. These practices originated in Sicily under conditions which were very similar

[1] *Tribune,* October 11, 1911.

in the cardinal features to the conditions which the Italian found under John Powers and other politicians who would go to any length to paralyze the law and secure the release of any criminal for money or political following. In Sicily, too, the Mafia controlled elections, and the law was so ineffectual against the operations of the society that the people dared not trust themselves to its protection, but suffered in silence, no matter how heavy the burden that was thrust upon them. Should a Mafia member commit a murder and be arrested, it was the duty of its politicians to bribe the jury or overawe it to find a favorable verdict. A prosecuting witness suffered loss in property or his life was taken. This was the condition described in the literature about Sicily at the period when the immigration to America began and while it was at its height. In some American cities where the law is effectual, the "black handers" have ceased to operate. We use the word "Mafia" here, because the "black hand" *modus operandi* was also used by it in Sicily.

Extortionist methods may spread throughout a society.

> "In the cities the Mafia is so conducted that its members can live well without working. It has developed blackmailing almost to the degree of an art. It draws a profit from every trade in which a Sicilian is interested. At an auction sale, even the intending purchaser is informed by a significant looking man that someone else wants the property, but if he will pay a certain price in the interests of the poor he can have it. He must buy off the Mafia."[1]

In Chicago there has developed a pattern like the Mafia among groups, such as "Racketeer" organizations and trade associations, which did not import the pattern as an old-world trait. Not only has the extortionist thrived among Italians in Chicago, but other national groups to whom violence was very foreign have developed methods of extortion. What conditions in Chicago have favored the rise, spread and persistence of extortion by violence as an aspect of organized crime?

12. Political Bombing: The Powers-D'Andrea Feud.

John Powers, alderman, had been the ruler of the old Nineteenth Ward since 1888. He began his political career with a constituency predominately Irish, but the invasion of the Italians continued until they held the majority of votes in the ward in 1916, when Anthony D'Andrea made his first real public appearance. The Italians were becoming conscious that the time was ripe for one of their own national origin to become alderman.

An intermediate stage in this conflict of racial or national succession is one of conflict among factions of the invaders, divided between those who have joined their interests with the established group that preceded them in the area and those who are for succession of the invading group, now grown sufficiently large and powerful to dominate.

D'Andrea was the candidate who opposed James Bowler, the junior alderman and tool of Powers, for the Democratic nomination for alderman in February, 1916. Two years before, he had sought the office of County

[1] *Record Herald,* September 15, 1912.

Commissioner, as a Democrat, but was defeated. During the campaign the fact emerged that D'Andrea had served a term in the penitentiary for counterfeiting. He had been pardoned by President Roosevelt through the influence of a former pupil whom he had instructed in foreign languages, for D'Andrea was a linguist and had studied for the priesthood in Palermo, Sicily. Because of this conviction his opponents tried to induce the Election Board to have his name removed from the ballot; but the board held that it was not within its province, that such action could only be taken through a *quo warranto* proceeding after election or by an injunction proceeding to restrain the board from placing the candidate's name on the ballot. D'Andrea, to prove his own stable status and to contradict the defamatory charges made against him, said: "I have been, since the pardon, the president of one of the largest Italian societies of Chicago, and three or four years ago was elected president of the Italian Colonial Committee of the Italian Societies of Chicago, and am now enjoying the proud distinction of being president of the International Hod Carriers' Union."

On February 21, 1916, Frank Lombardi, a political leader in the Nineteenth Ward, who was active in his opposition to D'Andrea, was shot dead in a saloon at 1120 Taylor Street. Lombardi's daughter maintained that her father was killed because he had dared to head a determined fight against D'Andrea, "who had long lorded it over a fear stricken ward, too afraid of his power to cross him." The newspapers were favorable to the theory that it was D'Andrea's political faction that was responsible for the murder.[1]

The above account of the killing of Lombardi furnishes an early instance of the weapon of homicide in political wars. This method of intimidation was used by an organization sponsoring an Italian candidate in a community predominantly Italian, against a man who had built a strong machine by corruption, intimidation, and apparent generosity. Neither of the assailants was apprehended and so never prosecuted.

D'Andrea was unsuccessful in this campaign; Bowler backed by Powers and his machine was too powerful to be beaten by an organization so recently developed. Between this defeat and the next campaign, D'Andrea added to his labor dominion by becoming business agent for the Macaroni Manufacturers' Union and interested in the management of the unions of Sewer Diggers, Tunnel Workers, and Water Pipe Extension Laborers.

In October, 1919, D'Andrea ran for the Democratic nomination for representative in the Constitutional Convention from the Democratic Second District, against Senator Francis A. Hurley. A dispute arose over the tally of a precinct in the Nineteeth Ward, and after listening to the evidence,

[1] The *Chicago Daily Tribune* commented upon D'Andrea's record as follows:

"Anthony D'Andrea is the same Antonio D'Andrea, unfrocked priest, linguist, and former power in the old 'red-light' district, who in April, 1903, was released from the penitentiary after serving thirteen months on a counerfeit charge.

"D'Andrea's name has also been connected with a gang of Italian forgers and bank thieves who operated at one time all over the country. At the time of his arrest and conviction, D'Andrea's brother, Joseph D'Andrea, was president of the Sewer and Tunnel Miners' Union. Joseph D'Andrea, a labor leader who was accused of having introduced the peon system of extorting money from Italian laborers, was shot and killed a few years ago in a labor quarrel over the construction of the new Union Station in Canal Street. Antonio D'Andrea succeeded his brother as head of the union."

Judge Pinkney ordered the vote of this precinct disregarded, which gave the election to Hurley. The Citizens' Association had started an inquiry and brought in fifty-six voters whose names appeared on the poll lists as having voted and who swore that they had not gone to the polls. Their names had been voted for them.

D'Andrea was then elected president of the Unione Siciliana, one of the strongest organizations of foreign groups in America.

In March, 1920, Powers was offered the committeemanship of the Nineteenth Ward. In a speech declining the office he urged the ward organization to give its support to Anthony D'Andrea, his one-time political opponent for the office. Powers, himself, emphasized the overwhelming Italian population in the ward, which was then about eighty per cent of the total, as the reason for an Italian for ward committeeman. It was a bid for the support of D'Andrea by peaceful means and is ample proof that Powers valued D'Andrea's support and appreciated his strength. The Supreme Court of Illinois made void the election for committeeman, therefore D'Andrea did not long retain the ward committeemanship and Powers regained it.

On September 28, 1920, a bomb was exploded on the front porch of Alderman's Powers' former actual, now official, residence at 1284 McAllister Place.

After the primaries D'Andrea announced his non-partisan candidacy for alderman of the Nineteenth Ward, to oppose John Powers. The election, which took place on February 22, 1921, was preceded by numerous bombings and killings. D'Andrea had gained enormous strength and Powers had reason to fear his activities. D'Andrea had worked himself into the labor unions, was the leader of the Italian organizations, had contributed substantially to the election campaign fund the prior November, and, probably as a result, had been given the privilege of selecting the Democratic clerks and judges of election—a concession formerly held by Powers.

On February 7, 1921, a bomb was placed in a meeting hall at 854 Blue Island Avenue, while a meeting was in progress in the interests of D'Andrea. Five of the three hundred persons who had crowded into the hall were severely injured.

D'Andrea immediately attributed the bombing to politicians. Powers stated, that, as far as he knew, politics had nothing to do with the affair. He said: "Why only last Saturday D'Andrea and I sat down together for two hours in the Sherman House and agreed to conduct a clean-cut campaign. There was to be absolutely no mud-slinging and no gunmen on election day or any other time. We shook hands and parted the best of friends."

As in the case of the recent bombings in 1928 of the homes of United States Senator Charles S. Deneen and Judge John A. Swanson, candidate against Robert E. Crowe in the primaries of April, 1928, the Crowe interests claimed that the Deneenites had bombed themselves, so Alderman John B. Bowler claimed that the bombing of the D'Andrea meeting was executed by D'Andrea interests in order to discredit Alderman Powers. He said: "Alderman Powers' political opponents knew that we were sending a letter

through the ward today referring to the recent bomb outrage at his home, 1284 McAllister Place, and executed the bomb outrage last night to offset the effect of that letter." Alderman Bowler also charged that imported gunmen were conducting a systematic campaign of terrorism throughout the Nineteenth Ward; that lives of city officials had been threatened; that political and labor workers had been repeatedly slugged; that attempts to hold meetings had caused the terrorization of owners of halls; and that certain private homes had been guarded day and night to prevent their destruction by explosion. He added:

> "Conditions in the Nineteenth Ward are terrible. Gunmen are patrolling the streets. I have received threats that I was to be 'bumped off' or kidnapped. Alderman Powers' house is guarded day and night. Our men have been met, threatened and slugged. Gunmen and cut-throats have been imported from New York and Buffalo for this campaign of intimidation. Alderman Powers' forces can't hold meetings except under heavy guard. Owners of halls have been threatened with death or the destruction of their buildings if they rent their places to us. It is worse than the middle ages."

On February 18, 1921, the home of Joseph Spica, 1028 Newberry Avenue, was bombed. His son-in-law, who was living with him, was a political lieutenant of D'Andrea. Later in the campaign a bomb was set off to destroy the headquarters of the D'Andrea faction. Just as in 1928, the reward gesture followed. Powers offered a two thousand dollar reward for the arrest of the bombers. No such reward has ever been collected.

Powers defeated D'Andrea by 435 votes and there were charges and counter-charges of stealing votes. A hearing before County Judge Frank Righeimer settled the matter in favor of the incumbent, John Powers.

This was not the end of violence. Old accounts had to be settled. On March 9, 1921, Paul Labriola, Municipal Court Deputy Bailiff and loyal supporter of John Powers, was shot at West Congress and Halsted Streets. A short time later Harry Raimondi, another faithful adherent of Powers, was given the same treatment. D'Andrea denied complicity in the deaths, although some of his associates in the D'Andrea organization were held as suspects by the police. Samuel (Samuzzo) Amatuna first came into print as a suspect for these two killings. He was killed five years later, after he had risen to leadership of the bootleg interests, while trying to rally the disorganized forces of the Genna gang, depleted by murder after murder. Frank Gambino (Don Chick) was indicted with him, as well as Angelo Genna. The latter was actually tried for these two murders and was acquitted. The D'Andrea-Labriola-Raimondi incident caused Chief of Police Fitzmorris to issue a sweeping combination transfer and suspension order, which moved seven hundred twelve members of the police department around on the city's checkerboard, and changed the entire personnel of the police of the Nineteenth Ward.

The "bloody Nineteenth" continued to be an armed camp, despite the changes in police administration. D'Andrea and his supporters were receiving warnings and threats over the telephone. Police cars were stationed at their homes. Squads from the Detective Bureau made wholesale raids on

henchmen of both Powers and D'Andrea. A week after the funeral of Labriola and Raimondi, D'Andrea announced that he had decided to sever his connections with Nineteenth Ward politics, but the war continued. Two stolen autos with armed men toured the ward one day, creating terrorism. The gang in one of the autos peppered a crowd gathered in front of a pool-room, with slugs from a sawed-off shotgun. Adherents of the D'Andrea faction seemed to be the targets of the invaders. A shooting affray in a grocery store at 1029 South Newberry Avenue, owned by friends of Powers, occurred a week later.

On May 11, 1921, the climax of the political war was reached when D'Andrea was made the target of a sawed-off shotgun. Police immediately expressed the belief that D'Andrea was shot by political terrorists in revenge for the deaths of Paul Labriola and Harry Raimondi, adherents of Alderman Powers. Threatening letters forecasting D'Andrea's assassination were found. They were received by a tenant living in the same building with the D'Andrea family. One letter read:

"He killed others. We are going to do the same."

(Signed) "Revenge."

Another:

"You are to move in fifteen days. We are going to blow the building up and kill the whole D'Andrea family. He killed others and we are going to do the same thing. We mean business. You'd better move and save many lives."

When the recipient showed these letters to the police, prior to the killing of D'Andrea, they looked upon them as practical jokes and refused to take any action.

Stephen Malato, after a talk with D'Andrea on his deathbed, said: "From my little talk with D'Andrea I am satisfied he was shot by expert killers. I wouldn't say they were imported. It wasn't their first job of the kind."

William Navigato, former member of the legislature and personal friend of D'Andrea, was convinced that the assailants were imported gunmen. He also said, "If they find the men who tried to murder D'Andrea, they may find the same paid gunmen who murdered Jim Colosimo."

Powers, naturally, attributed D'Andrea's death to labor troubles, but the explanation was a defensive one. The definitely known partisanship and position of the victims before and after the D'Andrea killing and their activity in politics would determine beyond a doubt that this was a political war—a feud which was an outgrowth of Powers' tactics in seeking to hold a ward which had become an Italian constituency and demanded Italian succession to political office.

The funeral of D'Andrea was suitable for royalty. Like Colosimo's, a great many public officials were honorary pall-bearers. He was refused services in the cathedral, but his own brother, a priest, was allowed to officiate.

Coroner Peter M. Hoffman opened the inquest over the body of Anthony D'Andrea before a jury which he believed to be threat-proof, but, after several continuances, the usual verdict was returned—with due sol-

emnity it was recommended that the murderer, or murderers, be apprehended and held to the grand jury. One and one-half columns of space were devoted to the impaneling of the jury and what it expected to do. One-eighth of a column was all the space given to the feeble results of the investigation.

The climax of the Nineteenth Ward political feud had been reached in the slaying of D'Andrea. He was one of the two central figures in the war. However, the feud remained to be fully evolved. The killing of three followers of D'Andrea provided the denouement of this story.

> "The strongest theory for the killing of Laspisa was the knowledge he had of the killers of D'Andrea. He had taken D'Andrea home in his car the night the latter was killed; the assailants were provoked to silencing him forever."[1]

On July 22, 1921, Andrew Orlando, another friend of D'Andrea, was killed, and on August 15, 1921, Joseph Sinacola was killed in the presence of his two children, in front of his home at 725 South Loomis Street. It was then learned that Sinacola and Laspisa together had sworn to avenge the death of D'Andrea.

The Powers-D'Andrea political feud is given as an example of political bombing. It is not to be assumed that a full account has been given of every death or attempted homicide in this struggle,[2] but here have been traced the principal actors and victims in this tragic political war.

13. Same: Race Rivalry and Political Succession.

The bombing war in the political struggle of the Nineteenth Ward is symptomatic of the invasion of a racial group into the geographic territory of another and its efforts at self-determination and succession to political power. Long after the ward was overwhelmingly Italian, the Irish leader of the preceding group tried to retain the political power, while the Italian group fought for succession. It is true that D'Andrea used the same methods as Powers, but it is also true that only a D'Andrea, willing to use force without stint or limit, could rise to leadership in the situation against the use of fraud, the connivance and protection of politics, and the highly developed qualities of "ward heeler" leadership which John Powers possessed along with the availability of protected, armed partisans. We use the term "the struggle for self-determination"—it was nothing short of that. That is why the Italians made D'Andrea a national-group hero, as manifested in his royal funeral.

Bombing is not, however, always associated with political emancipation of an insurgent immigrant group. In Milwaukee, the Italians, coming from the same villages and provinces and settling in similar proportion in an area near freight depots, displaced the Irish who were their predecessors as railroad workers. An Irishman had been alderman from this ward for about as long a period as John Powers. In contrast to Powers, this alderman gained the reputation of "watchdog of the city treasury"; he became presi-

[1] *Tribune,* June 25, 1921.

[2] In an unpublished manuscript, filed in the *Chicago Evening American* reference room, many more names and incidents can be found.

dent of the City Council many years ago and has remained in this office continuously. There, too, the Italians have asserted themselves and have been rising in public service and in business. Their alderman helped them rise. He fought for good streets and excellent school facilities, combined with a social center building and natatorium in his ward. Political violence, fraud and connivance have never been employed and the leadership of the Italians has been subject to other conditions of natural selection. Therefore, at present, the Italian leaders are of a superior type there.

14. Political Bombing and a Popular Uprising. Bombs, transcending the limited area of politics in a foreign neighborhood, became the deciding element in the memorable primary election of April 10, 1928.

Judge John A. Swanson, candidate of the Deneen faction for the office of state's attorney, began early in the campaign to demand an explanation for bombings at the homes of Fitzmorris, a member of Mayor Thompson's cabinet; of Dr. Reid, supporter and close friend of Thompson; of the undertaking establishment of Judge Sbarboro, an administration leader; and at the home of Cuneo, brother-in-law to Robert E. Crowe as well as his secretary. This demand brought the issue of the use of the bomb in organized gambling and in the inter-organization of the gambling ring with politics to the center of public attention.

Beginning with a flimsy organization, the Deneen faction was fighting the greatest machine the city had ever seen, controlling, through the alliance of Thompson, Crowe and Small, practically all the state, county and city offices with their jobs and patronage.

In the death, in the midst of the campaign, of Joseph F. Haas, county recorder, a powerful member of the Deneen faction, who was a candidate for renomination, the Deneen forces suffered a disaster. This office controlled about six hundred jobs and was the mainstay of Deneen patronage. A struggle between the factions followed for the filling of the unexpired term and the candidacy for the vacancy. County Judge Jarecki wanted to appoint Harry E. Hoff, brother-in-law of Haas, but the Crowe-Thompson machine, greedy for this plum, had control of the County Board. At first Joseph P. Savage was suggested for the office; then the attempt was made to appoint John Jaranowski, county commissioner, the Crowe candidate for the office; and failing in this because of a law prohibiting it, Mrs. Jaranowski was chosen to fill the unexpired term.

The Deneenites, frantic over their loss, issued a call for Senator Deneen to return from Washington to lead the campaign.

The assassination of Joseph Esposito (Diamond Joe) on the night of March 21, 1928, was the second disaster of the campaign. Esposito had been a staunch friend and supporter of Senator Deneen. While he was a master in the political methods of the Italian ward, he was at the same time a beloved leader, a charitable compatriot, loyal to his family, his church, and his friends. In a previous primary he was the only Deneen candidate to be elected ward committeeman in the entire city.

The Crowe-Thompson faction, through the office of the state's attorney and the chief of police, attempted to give a sinister significance to the per-

sonal relations of Diamond Joe by publishing clues which would involve him as a protector of bootleggers. These clues served as a means of temporary confusion, but they proved futile and the fact remained that he was the opponent of Joseph P. Savage, favorite of Crowe for the ward committeemanship, and that he was assassinated after the time limit for the filing of another candidacy in opposition to Savage had expired.

At the solemn high mass in the very large Catholic church at Roosevelt and Blue Island, the edifice and the streets around it for blocks were filled to overflowing with mourners standing in rain and sleet. Father Breen intoned the sentiment of the mourners when he said:

> "The dastardly deed, for which Chicago is known, has again been committed. This is no place for hate—only for love. But four million educated people will rise in their wrath to protest against this condition."

The morning after the Esposito funeral, the nerves of Chicagoans were again unstrung by the news of the bombings, twenty-eight minutes apart, of the homes of both Senator Deneen and Judge Swanson. These bombings could have no other but political implications and all factions agreed on that. The Crowe-Thompson faction made the classic blunder of Chicago politics when, after these bombings, true to the usual pattern in the bombings of ward politics, Mr. Crowe issued the following statement on March 27, 1928:

> "I am satisfied that the bombings were done by leaders in the Deneen forces and by the same people responsible for the bombings of the homes of the Rev. Elmer L. Williams and Czarnecki, and were done mainly to discredit Mayor Thompson and myself. They realize that they are hopelessly defeated and in a desperate attempt to overcome their tide of defeat they are resorting to these dangerous tactics."

A similar public statement was made by Thompson. Arthur Evans in the Chicago *Tribune* commented thus:

> "The callous, cynical note in this led to public exasperation. The ordinary citizen, his sympathies excited by the bomb, was incensed to read in an adjoining column the claims of the Thompsonites that the Deneenites had perpetrated the outrages themselves."

Again, true to the pattern of violence in ward politics, Crowe offered the same type of futile reward which throughout the history of bombing in Chicago has never been collected—ten thousand dollars for the discovery of the bombers. The reward mounted to sixty-five thousand dollars when Thompson and his cabinet added five thousand dollars a-piece.

On April 6, the Chicago Crime Commission, which had been friendly to Crowe, issued an open letter to Crowe, as follows:

> "TO THE VOTERS OF COOK COUNTY:
>
> "The Chicago Crime Commission, believing that State's Attorney Crowe is inefficient and unworthy of his great responsibility to maintain law and order in Cook County, and that his alliances are such as to destroy public confidence in his integrity, recommends to the citizens that he be defeated for renomination."

The news of these political outrages gained national and international

momentum and the Chicago press published world-wide comment derogatory to Chicago. The police and the prosecutor admitted their failure to discover the bombers after the early clues dwindled. The bombings transcended all other issues in the public mind—the traction bill, the seventy-eight million dollar bond issue included—and "Pineapples and Plunder" had become the basis of the campaigning. It was "pineapples" that turned the campaign. In the election the Deneen faction, almost without an organization, achieved an overwhelming victory over the most powerful machine Chicago ever had. It was purely a revolt, an uprising of the people, expressing themselves through the ballot. The birth of "Moral Chicago" was hailed throughout the world.

The Twentieth Ward, long famous as a hotbed of crooked politics, contributed the most startling item of post-election news. Morris Eller, the recognized leader of the ward and candidate for sanitary trustee and ward committeeman under the Thompson-Crowe banner, was opposed for the first time by a colored resident of the ward for the position of ward committeeman. Attorney Octavius Granady, the Deneen candidate who had the temerity to question the absolute rule of Eller, went down under a shower of lead after the polls had closed on April 10. The ward is in the state of becoming predominantly Negro. Granady was the first colored man to come before the colored residents of his ward with a plea for political equality. He was the first casualty in the war for racial succession.

Immediately after the election Judge Daniel Trude, in co-operation with the Cook County Bar Association (the colored lawyers' bar) was busy getting statements from witnesses who had seen the killing. Acting on the information thus obtained, the Chicago Bar Association launched a drive for the calling of a special grand jury to investigate the vote frauds of the April 10, primary as well as the preceding elections. The Chicago Crime Commission almost simultaneously issued a public statement denouncing affiliations of several of the criminal court judges with crime and politics and, after numerous hearings, with Judges Eller[1] and Klarkowski testifying before a special tribunal composed of fellow members of the bench, the matter of the Granady killing was gone into in detail.

The special grand jury investigation demanded by the bar association, with the attorney-general and his special assistants in charge, was hampered through the refusal of five of the county commissioners, four of whom were political friends of Crowe, to vote funds. Successful efforts were made to raise these funds by voluntary subscription. Five special grand juries were impaneled and a large number of indictments were returned.[2]

15. *Interracial Bombing.* The interracial bombing war was the result of the same movement of political invasion and succession; but the invaders were more marked by physical characteristics and divided by deeper prejudices than were the Irish and Italians. Between the Irish and Italians there was a deep national and language-group con-

[1] A son of Morris Eller.

[2] Morris Eller and his son, Superior Court Judge Emanuel Eller, were indicted by the special grand jury. As this is written their cases are still pending, untried. Morris Eller was defeated for Sanitary District Trustee at the election November 6, 1928, by an overwhelming majority.

sciousness, solidified by the persistent overlordship of Powers and the Irish; between the Negroes and the whites there was the age-long race prejudice which exacerbated the other factors; namely, the traffic in real estate, unionizing of colored labor, unemployment after the war, congestion of population, poor transportation, lack of school facilities, housing and living conditions. "Unquestionably this movement was encouraged by unscrupulous dealers in real estate, both white and colored, who were interested mainly in the profits to be derived."[1]

Economic losses were suffered by the white people when the invasion of a single Negro family into a white block depreciated the property value; the white tenants scattered and in time the population of entire blocks changed from white to colored. The recession of the whites lowered the value of the property; the advance of the blacks raised it again to the profit of realtors.

The importation of colored labor from the south, congesting the south side residence district, caused ill feeling and friction. The labor situation was a war condition, taking thousands of young men from the factories and shops for war service. Labor was needed and employers turned to the south as their source of supply. "Nevertheless, it was unfortunate that Negroes in large numbers and unacquainted with northern ways were induced to come or did come to the city of Chicago, without some adequate steps being taken to properly house and care for them."[2]

The planlessness with which immigration in general has been received in large urban centers may be said to be a fundamental cause of all problems in immigrant areas. The conflict in the stockyards area between the dominant group employed in the packing houses and newcomers who gradually displaced them, is at present shifted to Polish versus Mexican. It was especially dramatized for us on August 9, 1927, when a member of the Stagg gang was killed by a Mexican as an outgrowth of the threats of the Stagg gang to attack all Mexican pool-rooms in the neighborhood of Forty-seventh and Ashland streets.

The migration of the Negro northward during the war affected other cities as well as Chicago; yet in Chicago we have not only these bombing wars to check the geographical extension of the "black belt," but the race riot of 1919. The coroner's jury's report after the riots, which began on July 27, and lasted for five days, states:

> "Five days of terrible hate and passion let loose cost the people of Chicago thirty-eight lives (fifteen white and twenty-three colored), wounded and maimed several hundred, destroyed property of untold value, filled thousands with awful fright, blemished the good name of our city, and left in its wake fear and apprehension for the future.
>
> "Race feeling and distrust reaches far back into the history of the past. While new, perhaps, to Chicago, other cities and communities have tasted of its frightfulness, and yet race antagonism in itself rarely gets beyond bound and control. The real danger lies with the criminal and hoodlum element, white and colored, who are quick to take advan-

[1] Coroner's report, 1918-1919.
[2] Ibid, page 22.

tage of any incipient race riot conditions to spread the firebrands of disorder, thieving, arson, loss and murder, and under the cover of large numbers to give full sway to cowardly, animal and criminal instincts."

16. *Same: The Availability of Terrorists in Chicago Produces Terrorism.*

The grand jury received testimony that race hatred and race rioting was fostered in social-athletic, political clubs, which were numerous on the south side and were the rendezvous of the gangsters, protected by their politician friends.

On April 2, 1920 the *Daily News* reported that the race crisis in Chicago had become more instead of less critical. Out of a total of one hundred twenty-two bombings in the city of Chicago between January 21, 1918, and March 11, 1919, the records of the police show twenty-eight of these bombings as direct outgrowths of race feeling. In these twenty-eight instances inquiries by the police revealed the fact that matters connected with real estate as related to colored people as tenants or owners of property were the issue which brought about direct action and overt acts. In the following thirty cases, the bombs were directed against Negroes:

5- 4-1918—4539 Vincennes Avenue, colored families against whose residence white residents objected.
5-25-1918—4529 Vincennes Avenue, small damage.
9-24-1918—4527 Vincennes Avenue, whites objected to residence among Negroes.
10- 3-1918—4141 Berkeley Avenue, owned by Jerry Anderson; no Negroes in vicinity.
3-20-1919—Binga Realty Office, 4724 South State Street; Binga is a colored banker and community leader. May have been due to labor trouble because of non-union janitors.
3-20-1919—4041 Calumet Avenue, some damage.
4- 1-1919—J. E. Yarbrough, 4212 Ellis Avenue, owner a colored man who recently bought property.
4-20-1919—4722 Indiana Avenue, Negro realty office.
5-29-1919—4807 Grand Boulevard, house guarded, bomb thrown on roof.
5-18-1919—4807 Grand Boulevard, West Harrison, traveling lecturer. rented property from W. Austin, a white realty man from the north side.
5-29-1919—4957 Wabash Avenue.
6- 1-1919—W. B. Austin, 103 Bellview Place, window broken. Rented property at 4807 Grand Boulevard to W. Harrison, a Negro.
6-13-1919—5006-08 Calumet Avenue.
6-13-1919—5143-45 Prairie Avenue.
12- 4-1919—5922 South Park Avenue, Binga's residence; was offered thirty thousand dollars for this residence, which he refused.
12- 6-1919—454 East Forty-seventh Street, Hobbs and Grubbs, realty firm, suspected of renting to colored.
12-12-1919—E. J. Coleman's home, wealthy realty man; sold building to Negroes. Sister attempted to put out bomb. Seriously injured.
12-28-1919—4404 Grand Boulevard, Ernest Clark.

2- 1-1920—103 Bellview Place, W. B. Austin, rented to Negroes.
2- 2-1920—4722 Calumet Avenue, doors locked to prevent escape of residents; damage one thousand dollars; Negroes moved in recently.
2-10-1920—3632 Grand Boulevard, Mrs. W. D. O'Brien, sold building to Appomatox Club; windows broken.
2-12-1920—South Hamlin Avenue, Alexander Gibbons, one thousand dollars' damage; said to have sold real estate to Negroes in white localities.
2-12-1920—4406 Grand Boulevard, small damage.
2-16-1920—Binga residence, bomb failed to explode.
3-11-1920—Moses Fox's home, sold property to Negroes; one thousand dollars' damage.
4-27-1920—4331 Vincennes Avenue, Creed Hubbard, five hundred dollars' damage; police say motive was to check steady influx of Negroes into district.
9-16-1920—Powell Wilkinson, 5223 Indiana Avenue, small damage.
10-12-1920—4930 Calumet Avenue, owned by Samuel Lukor, five thousand dollars' damage.
10-16-1920—4119 Lake Park Avenue, attempt to scare away Negro residents; slight damage.
12-10-1920—2601-09 Calumet, sidewalk wrecked, patients in hospital routed. Henry Turner White held by police for discrepances in his statements.
2- 4-1921—423 East Forty-eighth Street, six hurt; policeman fired at fleeing bombers but failed to stop them.
5- 7-1921—701 East Fiftieth Street, building recently bought by colored; St. Xavier College girls thrown into a panic.
7-14-1921—423 East Forty-eighth Place, Negro district; Patrol Sergeant James Tucker, a Negro, was hurt.
10-22-1922—1058 W. Fourteenth Street, Isadore Mishelski.
10-27-1922—1135 West Fourteenth Street, pool hall, recently purchased by Negro; bomb prevented from exploding by night watchman.
11- 9-1923—3200 Ellis Avenue, former residence of Alderman Oscar DePriest; one thousand dollars' damage.
10-22-1924—4914 Washington Park Court, only Negro in locality; wrecked house of Mrs. Costello, white, also.

Upon plotting on a base map of Chicago each of the above cases of race bombing, it will be seen that twenty-seven out of the total of thirty-eight bombings occurred in the territory bounded by Twenty-sixth Street on the north, Sixtieth Street on the south, Cottage Grove Avenue on the east, and Wentworth Avenue on the west. In terms of percentages, 70 per cent of the cases have been staged within an area of approximately twenty-one square miles. At present the Negro is established in most of this district. The exodus of whites continues as well as the increase of blacks. Within the last three years there has been, practically, peace with occasional local outbursts or individual cases of conflict. The "black belt" has become quite as rigidly a designated area for Negroes as if it had been provided by law. The same segregation occurs in other cities through a process of organization among whites by mutual understanding, and without violence.

17. Labor Union Bombing: The Building Trades War.[1]

The background events, conditions and factors in the labor dispute in the building trades resulting in a bombing war beginning in March, 1922, are given by Royal Montgomery, in his "Industrial Relations in the Chicago Building Trades:"[2]

> "The approximate balance of power maintained between the organized contractors and organized workers from 1911 to 1921 was rudely shattered by the events following the wage arbitration of the latter year, and for a time the dominant force in the Chicago building trades was neither the Building Trades Council nor the Building Construction Employers' Association, but a 'Citizens' Committee' composed of persons divorced from any direct interest in the construction industry—a sort of Posse Comitatus, as someone has said. A disagreement concerning a proposed reduction of the minimum wage for the skilled trades from $1.25 to $1.00 an hour, and for the unskilled group from $1.00 to 70 cents an hour, was the immediate cause of the conditions between 1921 and 1925, but beneath this surface and immediate cause lay a series of circumstances and a range of practices, some of them having their origins as far back as the beginning of the twentieth century. The Landis arbitration and the events following it should be considered in the light of these background events and conditions.
>
> "(1) Building industry stagnant, housing shortage acute, rents advancing, yet promoters unwilling to go ahead with building.
>
> "(2) Wage-scale in 1919 20 per cent lower in purchasing power than the 1914 level.
>
> "(3) Strikes follow. In 1920 employers granted horizontal wage-scale of $1.25 to skilled trades.
>
> "(4) Associated Builders (one employers' organization) demand a decrease of 25 per cent, ascribing building shortage to high wages. Tumult follows.
>
> "(5) The Dailey Commission in 1921 gives wide publicity to the combination of materials men, contractors and union leaders as the cause of building shortage.
>
> "(6) The general open-shop drive of 1921 and the gains it made when certain unions refused to abide by the terms of the award of 1921.
>
> "(7) The 25 per cent reduction when submitted to referendum of unions in January, 1921, was voted down.
>
> "(8) A general lockout, May 31st, despite existing contracts; unions ask for a parley. Kenesaw Mountain Landis was chosen as arbiter. Work resumed at the old rates.
>
> "(9) Judge Landis insisted on going into both wages and rules, an unexpected action, because he believed some of the agreed conditions to be 'unlawful' though some of the rules were custom,—the slow growth

[1] Mr. Victor Olander, secretary of the Illinois Federation of Labor, raised certain objections in regard to the accuracy of certain facts in the material on "racketeering" and labor union violence and brought in Mr. Steve Sumner, Mr. John Fitzpatrick, Mr. E. N. Nockels, Mr. John Clay, and others to confer with us. Three conferences took place in Mr. Olander's office on the points in question. The exchange of views was advantageous and certain modifications of the text were considered, but no final decision was reached. The urgency of going to press and the absence of Mr. Olander from the city prevented further conferences, so that only a few changes have been made in the text on the author's responsibility.

[2] University of Chicago Press, September, 1925.

of years, and insists on a 'new uniform' form of agreement, to which the employers quickly agreed."

The building industry in Chicago, Judge Landis said, had become rotten with manipulative combinations, uneconomic rules and graft, which caused the stagnation of building. His new form was to break the backbone of closed shop regulation as well as exclusive employers' combinations.

Montgomery's article resumes:

"The situation created when Judge Landis rendered his award was practically without parallel in the history of the Chicago building trades. The unions and contractors had entered arbitration proceedings in order to settle a dispute concerning reduction of the minimum wage for skilled workers from $1.25 to $1.00 an hour and for unskilled workers approximately 30 per cent.

"Neither side had expected any such drastic developments as the restoration of differential wage scales, a reduction of the wage scale in a majority of the trades below that which the contractors had offered to pay, a rewriting of the Uniform Agreement in accord with the laws and bias of the arbitrator, an implied dictum that wage scales should be maxima instead of minima as theretofore, and the imposing of a certain ethical obligation upon contractors dealing with unions that had withdrawn from the arbitaration, to employ members of these organizations upon no basis other than that which the arbitrator had declared 'would be fair and just.' Business agents generally, as might have been expected, condemned the Landis award, and at the same time considerable disposition was manifested by a no negligible portion of the contractors to forget the new working rules written into the joint agreement, to take advantage of the lower wage scales when possible, but to pay as much as the dollar an hour they had offered the workers (the difference being represented by 'premiums') when necessary, and to get back to the old basis as soon as possible.

"The Building Trades Council officially ratified the award on October 1, 1921, in spite of the opposition led by Harry Jensen of the Carpenters' District Council. The representatives of seven trades that had not been parties to the arbitration when the award was rendered—the Sheet Metal Workers, the Plasterers, the Painters, the Elevator Constructors, the Glaziers, the Fixture Hangers and the Carpenters—voted against acceptance and they were joined in their opposition by the delegates from the Plumbers' Union. The system of representation in the Building Trades Council, whereby the smaller unions were given representation out of proportion to their membership, was all that saved the award from repudiation by the entire council—if, indeed, an impartial tabulation of the votes at this meeting would have indicated a ratification.

"Repudiation by the unions:

"Other unions, in the meantime, were repudiating the Landis award. The original seven who were not parties to the arbitration when the award was rendered have always been 'anti-Landis.' They were joined in October by the plumbers. The lathers, cement finishers, composition roofers, slate and tile roofers and hoisting engineers followed the example of the plumbers in repudiating the award. These unions, together with the seven that had not been parties to the final

arbitration and those that later were declared 'outlaw' and their trades put on the open-shop list, comprised considerably more than half of the mechanics and laborers in the Chicago construction industry. With many contractors making no secret of their lack of enthusiasm over the Landis award, with unions constantly repudiating it, with 'premium' wages becoming the rule in certain trades, with a very open disposition on both sides to ignore certain of the Landis working conditions, with the 'good' unions that had accepted it finding that in this case virtue was its own reward and its only reward, and with the international officers of the unions with which the Chicago locals were affiliated, urging in some cases a no-quarter fight against the entire award, it looked for a time as though the Landis award might become little more than an award on paper.

"The Citizens' Committee:

"To meet this situation and make the Chicago construction industry '100 per cent Landis' there was formed the Citizens' Committee to enforce the Landis award—the first organized and large-scale intervention in the affairs of the Chicago building trades by parties outside the industry. The committee was organized under the auspices of the Association of Commerce, with the support of many architects and bankers, and its membership was made up of persons having no direct interest in the construction industry, however much interest some of them may have had in the issue of the open versus the closed shop. A program was announced by the committee, the main points in which were:

"Encouragement and protection for Landis employers and unions; sale and use of materials free from arbitrary restrictions, direction of public sentiment against non-Landis unions and contractors, open-shop protection and encouragement, the outlawing of unions not agreeable to the Landis award, placing them beyond the pale of any peaceable negotiation."

18. Same: Psychology of Building Trades Graft.

Because it is difficult to understand how honest workmen (and in "racketeering," legitimate business men) resolve to carry on campaigns of terrorism and destruction, the following exposition of the internal organization of unions and the interlocking factor between union and contractor graft is quoted from Montgomery:

"Helpful in explaining such graft as has been prevalent in Chicago building trades is an understanding of the attitude of both contractors and union officials toward such practices. The self-justification of the contractor who is a party to graft transactions is simple. Building construction employers, like the rest of mankind, are rationalizing creatures; they justify the means if it attains what is from their viewpoint a good or necessary end. Others pay graft money; the contractor who does not will be unable to get workers, his place may be bombed and his personal safety endangered.

" 'Others do it, so I have to,' says the contractor who figures an extra amount for 'strike insurance.' Nor is the attitude of union members more difficult of explanation. The business agent who consistently collects graft money is generally unrepresentative of the rank and file; but once in office, business agents tend to remain there. Like all politi-

cians, they build effective organizations. Also, the rank and file are likely to be indifferent toward the 'side activities' of the agent so long as steady work and good wages are forthcoming. Illustrative of the indifference of many of the members is the fact that the average attendance at meetings of some unions is not more than 15 or 20 per cent of the total membership and seldom more than 50 per cent on election nights. Such crooked business agents as there have been have been tolerated because they have delivered the goods and a tradition has grown up that what they 'get on the side' is theirs. Most of the members realize also that the complexities of collective bargaining make the retention of a specialist necessary. The business agent is a necessary institution and the most efficient agent is the one who has been in the game longest. Materialistic considerations dictate that he be retained even if his methods of personal enrichment do not meet with the hearty approval of a majority of the membership. Nor can one ignore the fact that force—force without stint or limit—may have been resorted to occasionally when an agent has been in danger of losing his position."

As a result of the foregoing conditions, a state of war between the Citizens' Committee for the Enforcement of the Landis Wage Awards and the Building Trades Council ensued. The Building Trades' Council then was composed of building trades unions which had revolted against the Landis scale of wages. Some of these trade unions accepted and operated under the Citizens' Committee and others were revolting in May, 1922. It was the campaign of terrorism, launched by this latter group under the "direct actionist" leaders of the Building Trades Council, which caused bombings, sluggings, murders, and incendiary fires in Chicago in 1922 and later.

An early report of the bombing campaign in the *Herald and Examiner* of May 11, 1922, is as follows:

"The first reprisals conducted against the actions of the Citizens' Committee for the enforcement of the Landis wage awards took the form of slugging. Later, bombing was employed. It was not until after the eighth bomb had been exploded that the significance of the campaign became apparent.

"Bomb No. 9 was touched off on March 15. A week later No. 10 wrecked a south side restaurant. Then an open war was declared between the Citizens' Committee and the 'outlaw' unionists, who heard that for every man working on a Landis award that was slugged two 'outlaw' unionists would be slugged.

"Later bombings became more frequent, their full meaning not becoming very apparent until after the house of Alderman Charles Agnew, 40 East Elm Street, was exploded by a terrific bomb. This bomb, however, was meant for R. R. Donnelley's home, one of the leaders in the Citizens' Committee.

"Bomb No. 11 was exploded on April 5, in the basement of the Gordon Apartment Building, Seventieth Street and Oglesby Avenue. No. 12 came three days later in the furniture factory of Anthony Kalamantianos, 6308 South St. Lawrence Avenue, which is another Landis award concern. Nos. 13 and 14, touched off two days later, partially wrecked the homes of H. P. Reger, 5416 Harper Avenue, and Henry O'Callaghan, 167 North Lorel Avenue. Both men were Landis award contractors.

"No. 15 wrecked the front of the Parise Restaurant, 11560 Front Street, Kensington, which was in the process of reconstruction under the Landis wage scale; this occurred on April 12, just two nights after Nos. 13 and 14 were exploded. On April 26, No. 16 shook the west side when a dynamite blast was set off in a new apartment building at 1230-34 Jackson Boulevard, a Landis award contract.

"No. 17 was touched off three days later, blowing out the front of the Sharp-Partridge Company plant at 2263 Lumber Street.

"Nos. 18 and 19, portions of the 'night of terror' program staged Tuesday night, were touched off at the Tyler and Hippach glass factory, 366-400 West Ohio Street, and the Cuneo-Henneberry plant, 445 West Twenty-second Street."

The above article is an account of the situation as it existed until May, 1922.

A complete list of all the bombing outrages in the building trades, compiled from all contemporary newspaper accounts available, follows:

Date	*Place*	*Remarks*
3-21-1922	Plant of the Edmunds Manufacturing Company at 2016 Washburne Avenue	—Citizens' Committee issued a defiance of the "Convict led" element in the building trade. Council predicted a reign of terror. Detectives looking for President Harry Jensen of the Carpenters' Union, who was suspected of being the author of the bombing.
4- 1-1922	Brick building, 1378 East Sixty-third Street, owned by George Kuffan	—Refused to pay a fine of $250, demanded by a man for his employment of Landis Award men.
4- 6-1922	52-apartment building under construction at 2344 E. Seventieth Street	—Charles Johnson, owner and contractor, fired union men and employed Landis Award men instead; $1,000 damage.
4-10-1922	Henry O'Callaghan's home, 167 N. Lorel Avenue	—The O'Callaghan Brothers' firm had been employing Landis men.
4-10-1922	Henry P. Reger's home, 5416 Harper Avenue	—Paid Landis scale to laborers working on his buildings under construction in Woodlawn and Hyde Park.
4-12-1922	Parise restaurant, 11560 Front Street, Kensington	—Second bombing; first one was on March 20. Building Trades men employed under Landis Award.
4-25-1922	Newly constructed building, 1230 W. Jackson Boulevard, owned by G. R. Stevens Printing Company	—Built under Landis Award; $3,000 to $4,000 damage.

Terrorization by Bombs

Date	*Place*	*Remarks*
4-29-1922	Office of Sharp-Partridge & Company, 2263 South Lumber Street	—L. E. Partridge announced a week before that he would operate according to the Landis Award.
5- 4-1922	Room 428, Otis Building, 10 S. LaSalle Street, occupied by Citizens' Committee.	—Bomb thrown by an agitator opposed to the activities of the Citizens' Committee.
5- 9-1922	Garage of Tyler and Hippach Company, 623 Orleans Street	—There was a strike there at the time because the firm wanted to operate under the Landis plan.
8- 2-1922	Rear of Grossman shoe store, 911 E. Sixty-third Street	—Building was recently finished and painted by non-union men.
8- 2-1922	Apartment building at 259 West Sixty-sixth Street	—Recently decorated under the Landis Award contract.
8- 3-1922	Interior of Tenth Church of Christ, Scientist, 5640 Blackstone Avenue	—Church was decorated under the Landis Award.
12-23-1922	Two newly finished houses, 5905 and 5909 West Sixteenth Street	—Landis Award carpenters, lathers and roofers employed.
10-18-1923	House at 1046 West Fourteenth Street	—$2,000 damage; Landis Award carpenters employed to repair the stairway.
3-19-1925	Unfinished apartment at South Boulevard and Harvey Street	—Bankruptcy of the contractor, Kurt R. Beak, is the cause.
4-27-1925	Offices of Rising Decorating Company, 527 S. Peoria Street	—Operated under the Landis Award.
10-18-1925	Rooming house, restaurant and barber shops, 1916 Homer Street	—$1,000 damage; Landis Award workmen lived in the building.

19. Same: "The Law" and the Union Terrorist.

Constituted authority did not overtake violence in the Building Trades war until the shooting on May 9, 1922, of a policeman, Thomas Clark, which occurred while he was walking his beat in front of the factory of The Tyler-Hippach Company at 623 Orleans Street. A little later the same day, Terrence Lyons, acting police lieutenant, head of a "flivver" squad, was killed while trying to stop three men in an automobile who, it was suspected, were the murderers of Clark.

By order of the state's attorney, wholesale arrests followed. Among

those arrested were Big Tim Murphy; Fred (Frenchy) Mader; Cornelius (Con) Shea; known as the "Big Three," alleged to be the power behind the police murders; Dan McCarthy, known as "Dapper Dan," a gangster whose name occurs in bootlegging and other operations; and John Miller, an unknown in crime; and twenty-seven others.

A battle over writs of habeas corpus followed and these were granted to all except the "Big Three" and John Miller.

On May 27, 1922, the "Big Three" were released on bonds of one hundred fifty thousand dollars on condition that they would not leave Illinois. Thomas Carey, a millionaire brick manufacturer, went surety for Mader and Murphy. He was also bondsman at this time for a total of ninety persons charged with criminal conspiracy. This suggests the combination between material men in the building trades and trade union chiefs. On June 12, 1922, Con Shea, Dan McCarthy, and Mrs. John Miller (indicted with her husband, John Miller) were admitted to bail of $75,000 each. This type of defendant can raise any amount of bail.

In the battle over the amount of bond, Judge Taylor on June 16, 1922, ordered the prosecution to state its case against the "Big Three," and Assistant State's Attorney Godman made the following statement:

(1) That the defendants were accessories before the fact;

(2) That the defendants were members of the conspiracy, which had for its object the establishment of a reign of terror in Chicago;

(3) That as a result of their activity in the conspiracy certain unlawful acts were committed.

Judge Taylor ruled that all the defendants were to be tried jointly.

The defense was most ably represented—Attorney Charles E. Erbstein for Mader; Attorney James J. Barbour for Murphy; Attorney John M. Dickinson for Miller; Attorney John Enright for Shea; and Attorneys Frank Comerford and James R. Quinn for McCarthy. The state, too, had special prosecutors—Elwood Godman and Judge Fred Fake aided State's Attorney Robert McMillan. The judge was T. Taylor, Jr.

It required a venire of thirteen hundred to choose a jury.

The opening statement was made by Assistant State's Attorney Godman in the case against the "Big Three," Daniel McCarthy, and John Miller. The state was prepared to prove the following charges:

(1) That Murphy and Mader had been willing to "iron out" the difficulties between the recalcitrant unions which had rejected the Landis Award and the employers, for a payment of from seventy-five thousand to one hundred thousand dollars;

(2) That Mader personally led raids upon buildings being constructed under the Landis Award, in which workers were beaten up;

(3) That McCarthy gave Smash Hanson, known as a labor slugger, several sticks of dynamite with instructions as to how it should be used;

(4) That the election of Mader as head of the Building Trades Council was accomplished through trickery and intimidation, with the aid of strangers sitting in the hall in company with Murphy;

(5) That all the men were guilty of murder as charged in the indict-

ment, and that they had instituted a reign of terror in which the murder resulted.

When John Miller took the stand he told of a twelve-hour grilling and brutal torture by the police—the third degree had been used on him. His attorney, who had been appointed by the court to defend him, told the jury that he would seek to prove four things about Miller:

(1) That he was the driver of the car on the night Lieutenant Terrance Lyons was killed;

(2) That he drove under fear of his own life, with a revolver pressed to his neck by the man who did the actual killing;

(3) That he was not a conspirator;

(4) That he had never seen any of the other defendants before the time he met them in court when the trial began.

His testimony tended to prove the above four points.

On August 2, 1922, the case against Con Shea was dropped because the prosecutors admitted that they had insufficient evidence against him.

Murphy's defense, made by Senator Barbour, can be characterized by the following quotation:

> "Murphy cannot be held for actions of others. When a man driving on the street is interrupted by a police officer, the man in the car, alone, is responsible. His associates, whether in business or crime, are in no way responsible for a crime committed by him."

The case against Murphy was nolle prossed because of insufficient evidence.

In the cases of Mader, McCarthy and Miller, the jury was deadlocked for fifty-nine hours. The last ballot showed:

Mader	Guilty 8; not guilty 4
McCarthy	Guilty 8; not guilty 4
Miller	Guilty 9; not guilty 3

It was a fruitless effort to convict men whom public opinion held to be notoriously criminal, and this was borne out in part by the ballots of the hung jury. Mr. Crowe, in announcing that the case would be brought up for a second trial, promised further action in labor violence: "I am going to keep the special prosecutors who have been working on these cases and we are not only going to make every effort to get the present case on trial, but we are also going ahead with all the other labor cases."

In the second trial, which opened on October 9, 1922, the state had no new witnesses nor new evidence, and the new trial began in the court of Judge Oscar Hebel. The state presented a transcript of the evidence of the first trial, but in spite of this the trial continued for almost two months. There were certain unavoidable delays. On November 26, the jury returned the following verdict:

Fred Mader	Not guilty
Daniel McCarthy	Not guilty
John Miller	Guilty; 14 years imprisonment

On the first ballot Mader and McCarthy were decided not guilty. Two other ballots followed and a compromise was reached, whereby Miller was given fourteen years in the penitentiary, the minimum sentence upon conviction for murder. The deliberations took one hour.

While the following quotation is not a matter of evidence, it sounds typical of the attitudes toward the due process of law. After the judge had pronounced sentence and retired from the court, Mader and McCarthy both rushed to shake hands with Miller, and are quoted as saying:

> "We're sorry. That's the penalty of being a 'man.' If you had told the police the labor unions hired you to bomb buildings you would be a free man and there would be a noose around our necks."

Miller was persuaded to be satisfied with the fourteen-year sentence. Mrs. Margaret Miller, his wife, was released when the state nolle prossed the charges which connected her with the bombing conspiracy and knowledge of the police murder. The state was unable to convict any of the "Big Three." Miller was an underling. Murphy, Mader, Shea, and McCarthy added another court victory to the long list—they "beat a mighty big rap."

For the sake of emphasis, brief reference is made to some of the testimony by state's witnesses, which offers a glimpse of the inside working of labor union politics when direct action is the necessary or preferred program. Harry (Smash) Hanson, on the stand in Judge Taylor's court, told of the efforts of Fred Mader to have Umbrella Mike Boyle shot, to get him out of the labor game; of his own shooting of Isadore Braverman at Mader's instigation, and of his acquittal later; of the storing of dynamite in the office of the Building Trades Council and the efforts to extort large sums for settling building trades troubles.

20. *Same: Psychology of the Direct Actionist Labor Leader.*

Steve Sumner, the business agent of the Milk Drivers' Union since its formation in 1902, is an esteemed character in labor circles. In October, 1917, when the milk drivers were expressing great dissatisfaction with the wage scale, which was being held at a pre-war level by the contract with the distributing companies, Steve Sumner, then a veteran nearly seventy years old, when asked what steps the milk drivers would take, answered with emphasis, "I am not old enough to predict what action the milk drivers are going to take." In the union meeting he pointed out that the existing contract called for only twenty-one dollars per week, and encouraged the men to discontinue that wage rate as soon as it could be done without violating the existing contract. In another speech at a pre-strike meeting he said:

> "I hopped on and off a milk wagon for twenty-one years and I used to figure on only four hours a day for sleep. I'm against slavery of the booze bottle and the beer bottle as much as any other kind of slavery. I understand Hoyne says I have been slugging. I defy anybody to show up any slugging I ever did, unless they'd call it slugging for me to go into a saloon and kick out any milk driver I found drinking. Buttermilk and milk is all I drink. Tea and coffee are dope and I don't drink them. That's why some of the boys call me 'Buttermilk Steve.'"

In May, 1918, a demand for increased wages was submitted to the employers. A short lockout followed (or perhaps it might better be called a cessation of business for no effort was made to hire non-unionists), lasting

a couple of days, during which a settlement was negotiated. The driver's pay check was increased nine dollars per week (an increase of over forty per cent).

"Injunctions are outrageous and un-American. The nerve of these pups, we elect them and they turn on us." This was the basic sentiment of direct action, expressed in emphatic words by Steve Sumner in 1916, for the utterance of which, on October 22, 1918, the Supreme Court of Illinois confirmed the order of Judge A. Baldwin, committing him to jail for sixty days on a charge of contempt of court. Sumner had been sentenced on this charge two years previously, when during the Garment Workers' strike he had allied himself with their cause and expressed the above dictum. When he went to jail he was seventy years of age. Judge Baldwin released him after Sumner wrote him a letter of apology.

But in August, 1921, a jury returned indictments against Steve Sumner, et al., after hearing the testimony of some sixty witnesses. The bills named Sumner, William Near, a fellow business agent of a Milk Drivers' Union, Robert Fritchie, the president, and Louis Misch, the secretary-treasurer. The charges were conspiracy to boycott, to intimidate, to extort, and to commit malicious mischief in restricting the delivery of milk. When the trial was called, the chief witnesses were missing and the cases had to be dropped for lack of evidence.

21. The "Strong Arm" Gangs: The Sweeney Gang.

Up to this point bombing has been treated in its various manifestations in gambling wars, "Black Hand," political conflicts, racial and nationality succession, and labor union tactics, but there is evidence that bombing in and of itself has become a business in Chicago. Two cases are presented which establish the existence of professional bombing gangs or crews that will undertake any job for pay.

Andrew Kerr was a member of Local 402 of the International Union of Steam and Operating Engineers. He was arrested in the early part of 1921, after the bombing of four laundries, which followed the calling off of an engineers' strike in November, 1920. May 19, 1921, he made a confession to the chief of police in which he named prominent bombers and those who hire or contract for bombing, slugging, intimidation, coercion and the direct methods of labor unions. The men named and taken into custody of State's Attorney Crowe's office were:

James Sweeney, 2730 West Polk Street, alleged generalissimo of the city's bombing forces, who Kerr claimed was either directly involved in or had intimate knowledge of all bombing outrages in Chicago in the past year;

Henry Bartlett, 1510 West Polk Street, known to dynamiters as "Soup," underworld parlance for nitro-glycerine;

Albert Peterson, 2015 North Spaulding Avenue, business agent of Local 401 of the Engineers' Union and instigator of bombing and slugging;

Thomas J. Corcoran, 1260 Cuyler Avenue, business agent of Local 402 of the Engineers' Union and treasurer of the International Joint Labor Board; instigator of violence;

Sam Gibson, a member of Local 402, known to police as a dangerous

radical; a member of the I. W. W., alleged participant in bombing and slugging;
Joseph Bangora, alleged slugger and driver of the automobile used by the dynamiters on their bombing expeditions;
Charles Borigun, a suspect who was seized when found in the company of the principals;
Charles Busch, a suspect who tried to bribe the detective who arrested him;
Cornelius Shea, a notorious labor leader, who directed the teamsters' strike years ago, was being sought by detectives at the time, for he was also named by Kerr. He was alleged to have helped Sweeney plant a bomb Wednesday night. He was active in the Engineers' strike and had considerable quantity of explosives which made him welcome to Sweeney.

In the confession Kerr admitted that he personally acted as an intermediary between the union officials and the bombers and sluggers, and had also participated in a number of bombing and slugging excursions.

James Sweeney's Strong Arm Gang had its "hang-out" at the corner of Harrison and Halsted streets. They would accept any job of bombing for pay—they were in the *bombing business*. Sweeney, Shea and another man bombed the Schreiber Laundry and had also received a list of twenty-five persons in all parts of the city to be slugged. Harry Bartlett, known as "Soup," from the name for nitro-glycerine in underworld argot, was the assistant of James Sweeney, but was discharged later "when he got to drinking and talking too much." Charles Borigun, Joseph Busch, and Joseph Bangora were aids of Sweeney. Cornelius (Con) Shea, according to Kerr, had been a bomber since he was sixteen years old. Shea was now an old man; only recently had he begun operating for the union. Kerr said that he was the messenger boy, the "pay-off," who went along on slugging and bombing expeditions to see that the union was not cheated, and he received fifteen dollars a week strike benefit for this work.

Following the arrests of the men named, except the elusive Con Shea, they were questioned by Chief of Detective Hughes; and James Sweeney admitted that he and Shea would undertake "any kind of a job."

New complaints were added against the same men by the Imperial, Beehive, and Mechanics laundries, which were bombed, according to Kerr, on the orders of the Stationary Engineers' Union officials. The Chicago Laundry Owners' Association brought pressure upon the police to prosecute.

More light on the workings of the Sweeney gang of bombers, which can be employed to undertake "any kind of a job" at any time, was given by Harry (Soup) Bartlett, who also confessed to the state's attorney. He said:

> "I met Kerr about two months ago at Van Buren and Halsted streets. Sweeney and I were talking on the corner and then Kerr came up and started to talk to us. I have known Sweeney for about a year and a half. At the time this happened Sweeney was a teamster and I a chauffeur for the Mid-City Express Company. Kerr, Sweeney and I bought a couple of shots (drinks) together. This time we were together about fifteen minutes. About a week later while I was hanging around the corner, Kerr came up and talked to me. We didn't do business then, but two weeks later he told Sweeney and I about a slugging job at

the Lincoln Hand Laundry, 5400 Broadway. He said that he would see that we would get the money for the job. Sweeney, myself and the chauffeur for the automobile, and a man the union sent along, went out on the job. The union always furnished the car and chauffeur. After we came back and told Kerr that we did the job he paid us sixty-five dollars while we were in the auto. We were then driven to Halsted and Madison or Halsted and Van Buren."

All of the men named in Kerr's confession, except Shea and Busch, were placed on trial. It is difficult to understand why these two men were excepted. James Sweeney and Harry Bartlett were given separate trials from the others. The jury on November 5, 1921, found Sweeney and Bartlett "guilty of procuring and having dynamite in their possession." They were convicted and sentenced to three to twenty-five years by Judge McKinley. On March 17, 1922, the jury returned a verdict of "not guilty" for the other men charged with bombing several laundries during the Engineers' strike in 1920 and 1921. The names of those acquitted were Albert Peterson, Samuel Gibson, Thomas Corcoran, Charles Borigun and Joseph Bangora.

22. *Same: Joseph Sangerman's Bombing Crew.*

In the latter part of November, 1925, Fred Wamquist, Joseph Avanzio and Mrs. Lena Schrock Rice were caught in the act of planting a bomb at the store of Peter Descourguez, 3639 Fullerton Avenue. Following their capture, startling revelations ensued disclosing the complex ramifications of the so-called "bombing trust."

Joseph Sangerman was a manufacturer of barbers' supplies. He was the man of money and brains, the directing genius of the bombing trust, the contractor of bombing. His confession gives the names of the group of bombers which operated for the bombers' union and could be hired to frighten, intimidate and destroy little and independent groceries, delicatessen stores, bakeries, butchers and other tradesmen, in order to force them to obey the dictation of "racketeer" union leaders.

Fred Wamquist, Joseph Avanzio, Mrs. Rice, Louis D'Andrea, Jack Davis and George Martini, whose real name was Matrisciano, were the actual bombing crew hired by Sangerman, who never went on bombing trips. As an officer in the barbers' union, his specialty at first was the hiring of bombers to discipline barber shop owners who did not work in agreement with barbers' rules, but finding that his gang could "turn a trick" effectively and escape detection, he began to accept commissions in other fields. He would point out to the bombing crew the place to be bombed and would settle with them on the price to be paid for the job.

The returns for a bombing for the entire group were as low as fifty dollars and as high as seven hundred. Martini was the star bomber. The following bombings, with locations and rates, give some insight into bombing as a business:

$400 for the bombing of a barber shop in the Cadillac Hotel;
$200 for the wrecking of another barber shop in the Park Ridge Hotel;
$150 for the explosion at the Red Wing Barber Shop, 126 West Chicago Avenue.

The grand jury on December 1, 1921, voted true bills on definite evidence of bombings at 723 West Fourteenth Street, 2534 South Western Avenue, 126 West Chicago Avenue, 2670 Lincoln Avenue, and 2136 Wabash Avenue. Judge Lynch set the bail for those held for trial as follows:

George Martini	accused 6 charges	bonds	$150,000
John David	accused 5 charges	bonds	125,000
Joseph Sangerman	accused 4 charges	bonds	100,000
Louis D'Andrea	accused 3 charges	bonds	75,000
George W. Mills	accused 2 charges	bonds	50,000
Frank Schiro	accused 1 charge	bonds	25,000
Mrs. Lena Rice	accused 1 charge	bonds	25,000
Mike Abbinanti	accused 1 charge	bonds	25,000

Lena Rice was placed on probation. Joseph Sangerman died before a court could convict him. Martini, who was never apprehended by the police, was killed by the guns of officers of the barbers' union. James Rango was arrested but not tried for the killing. Joseph Avancio, Fred Wamquist and Jack Davis pleaded guilty to the charge of malicious mischief and were sentenced to the penitentiary for a term of one to ten years.

In his investigation of the Sangerman gang, Mr. Crowe discovered the system of victimizing owners of small businesses:

> "Gangsters now control various so-called business organizations. Any who will not join are bombed. After they are members they pay heavy penalties for incurring the displeasure of their gangster bosses. They are fined at every excuse. Powerful ones in organizations dictate prices, employees and quantity of production to the weaker ones."

And Mr. Crowe announced[1] his discoveries of "racketeer" campaigns:

1. Hirchie Miller, west side gang leader, indicted on charges of conspiracy, intimidation and assault to commit murder.
2. David Halper, indicted on charges of being one of four men that kidnapped and beat three employees of the Barnett Levin Bakery.
3. The following men were indicted in connection with protective associations of milk dealers, battery dealers, shoe repair men, barbers, bakers, tailors, and cleaners and dyers:

Steve Sumner, business agent of the Milkwagon Drivers' Union; Henry Buerger and Frank Boyda, business agent's assistants; Henry Dobizanski and Andrew Zurawski. The charge is the bombing of a dairy owned by Mrs. Jaroez, 1751 West Huron street, after she had refused to join a milk dealers' association.

Samuel Rubens, Alfred Boris, Charles Goldstein and Henry Beyers, charged with punishing cleaners and dyers not "right" with the association.

Charles Carrao, Philip Vinci and Emmet Flood; the latter was formerly an organizer of the American Federation of Labor. These men direct the policies of the Fruit and Vegetable Dealers Association.

Joe Frickles, owner of a battery shop, and Edward Gierun; threatened Wernes, a business rival of Frickle, and later bombed Wernes' shop on August 13, 1925.

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[1] *Daily News,* December 1, 1925.

William Carrio and Mike Grecco, accused of window smashing.

4. Herman Linneman, chairman of the Chicago Master Barbers' Association, who was named by Mr. Crowe in his bombing investigation. Linneman was reported to have jumped into the lake to end his life after he was named by Mr. Crowe.

5. Frank A. Scalfaro, business agent of the Master Barbers' Association; indicted on grounds of threats upon John Bevaque, owner of a barber shop at 38 North Dearborn Street.

6. Frank Schiro, proprietor of a barber shop at 4 North Market Street, indicted for having a hand in bombing.

7. Mike Abbinanti, a barber union's business agent; indicted with George Martini.

8. Following an investigation on December 5, 1925, the following members of the executive committee of the Retail Cleaners' Association were named as having a hand in bombing: Ruben Goldberg, Sam Harris, Michael Edelhart, Morton Swee, William Jennings, John Jones, Ben Hirsch and Matt Gross.

Others reported to have been named by the grand jury were: Abraham Gompolski and Max Eisenstein, leaders in the Jewish Master Builders' Association; F. A. Avery, president of the Automobile Associated Trade; Ben Rice, Joseph Masselo, Henry Belcossette, Rocco Belcossette and Tony Perrota, who are all lesser lights in protective associations.

9. Officials and members of the executive board of Retail Grocers and Delicatessen Stores Business Men's Association were named in a true bill charging conspiracy. They were: Philip Goldberg, Louis Becker, Max Drozdowitz, Jack Fox and Joseph Clancy. They controlled all the small stores in the west side through threats.

George Cizinankas was also named on a charge of bombing with intent to kill. He bombed the home of his wife, Mrs. Eva, 1915 W. Nineteenth Street, because of family difficulties.

10. More members of the Retail Cleaners' and Dyers' Association were indicted for charges of intimidation by bombs of M. Becker to raise the price of cleaning and dyeing. The persons named were:

James Gorman, Inside Cleaners' Association; John Skahlen Novelty Cleaners and Dyers; Otto Fellinger, 6827 Merrill Avenue; Adolph Roth, 2417 South Western Avenue; William W. Horcher, 7132 South Chicago Avenue; Charles Bernal, 5119 South Halsted Street; Allan Heald, 7159 Stony Island Avenue; John Clay, president of the Laundry, Cleaners' and Dyers' Association; Benjamin Abrams, Inside Cleaners' and Dyers' Union; and William Jennings of the executive board of the Cleaners' and Dyers' Association.

This bombing trust had been conducting a campaign of destruction against churches, residences, stores, and barber shops. Organizations that wanted rivals put out of business or undesirables frightened out of the neighborhood, or the maintenance of prices of retail trades, could hire these bombers.

23. *Same: Life History of a Terrorist.*

George Martini, whose real name is Matrisciano, was the son of a Neapolitan immigrant, a barber, first on Halsted and Eighteenth Streets, and later on Taylor Street west of Racine. He was an only son, among many daughters. At the age of sixteen he shot and killed William Gregory

in front of a west side theater and was sent to Pontiac for that in 1911. He followed crime as a career for fourteen years. In this group of bombers he manufactured the bombs, most of which were made of black powder, but he always had in his possession at least two sticks of dynamite, and while he was living as a fugitive from justice in the rooming house district on the west side and slinking home to his mother or to his wife on South Ashland Avenue near Taylor, he always had his hand on his blue steel Spanish automatic. He conceived his role in terms of operatic melodrama. He cherished a picture of himself, clipped from a newspaper, in which he is called "terrorist." He was killed while sitting in an automobile belonging to the Hardware Dealers' Association, in which line many bombings had occurred; and while he was dodging arrest under the many indictments for bombings while a member of the Sangerman gang, his wife was receiving a weekly allowance of sixteen dollars from the Barbers' Union.

The understanding between him and the remaining members of the crew who were in jail after Sangerman and Mrs. Rice were released was that Martini would raise funds with which to "fix" the case, and though he feared to come near the jail, there were always gangsters committed and others released from jail who constantly carried messages of encouragement to those in jail. Martini had a long experience with the "fixing" of cases. His death was really ascribed to his ambition to become, by coercion, the chief officer of the Barbers' Union in place of Frank Rango and James Rose. He probably wanted command in order to be able to raise the fund which Rango and Rose refused him.

Rango's brother-in-law, Capo, was arrested with others when the home of Rosenberg, Democratic Ward Committeeman, was bombed. Bombing was, therefore, not a strange occupation in the family.

The deep regret of Martini's mother was that she had only one son and there was no one to avenge George.

24. Summary of Conclusions. The reign of violence in Chicago is not limited to the underworld operations of organized vice, gambling and bootlegging. During the last thirty years bombing has been a method of warfare in different conflict situations, as the struggle of an immigrant group like the Italian to obtain political offices held by such powerful bosses as John Powers; the conflict between white and Negro; and the struggle between labor unions and employers.

Two chief points stand out when all these different fields of bombing are considered together:

First of all, the general pattern of events is the same for all:

(a) Bombing as a method of intimidation in a conflict situation, generally of group against group;

(b) The difficulty of apprehending the persons guilty of the bombing;

(c) The immunity, often, from arrest, of the criminal when known; frequent dropping of prosecution if arrested; and the almost invariable failure to convict when prosecuted.

Secondly, the appearance of the same individuals in the different fields of bombings indicates the interlocking nature of a complete system of

organized violence. This is most marked in the rise of the "Strong Arm" gangs or professional bombers, ready to serve as paid retainers in any cause requiring their services. The presence and availability of these gunmen, bombers, and gangsters gives part of the necessary background for understanding their entrance in recent years into a new field—the field of business. The transformation of gunmen, bombers and gangsters into "racketeers" was sometimes at their own initiative, but often upon invitation to solve a problem in competitive co-operation with which many groups of small business men were unsuccessfully struggling.

CHAPTER XXIII

"RACKETEERING"

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CHAPTER XXIII

"RACKETEERING"

1. *What is "Racketeering?"* [1]

"Racketeering" is the exploitation for personal profit, by means of violence, of a business association or employees' organization. A "racketeer" in business has been concretely described as follows:

> "A 'racketeer' may be the boss of a supposedly legitimate business association; he may be a labor union organizer; he may pretend to be one or the other, or both; or he may be just a journeyman thug.
>
> "Whether he is a gunman who has imposed himself upon some union as its leader, or whether he is a business association organizer, his methods are the same; by throwing bricks into a few windows, an incidental and perhaps accidental murder, he succeeds in organizing a group of small business men into what he calls a protective association. He then proceeds to collect what fees and dues he likes, to impose what fines suit him, regulates prices and hours of work, and in various ways undertakes to boss the outfit to his own profit.
>
> "Any merchant who doesn't come in or who comes in and doesn't stay in and continue to pay tribute, is bombed, slugged or otherwise intimidated."[2]

2. *Wide Extent of "Racketeering" in Chicago.*

The number of "rackets" has rapidly increased in the past few years in Chicago. On December 10, 1927, Mr. F. L. Hostetter of the Employers' Association of Chicago circulated the following report to a large list of Chicago business men, in which he charged that conspiracies by "racketeers" existed between business associations and trade unions:

> "Conditions are becoming such in Chicago that any man who dares to oppose certain kinds of 'racketeers' or refuses to pay tribute to them is in actual physical danger.
>
> "Given below is only a partial list of the 'racketeering' schemes which flourish in the city. How many others there may be, about which we do not yet have knowledge, one can only guess. Certainly this list should be enough to cause you to think and to think seriously."

He then lists twenty-three separate lines of business in which "racketeers" are said to be in control or are attempting to control, as follows: window cleaning, machinery moving, paper stock, cleaning and dyeing, laundries,

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[1] Mr. Victor Olander, Secretary of the Illinois Federation of Labor, raised certain objections in regard to the accuracy of certain facts in the material on "racketeering" and labor union violence and brought in Mr. Steve Sumner, Mr. John Fitzpatrick, Mr. E. N. Nockels, Mr. John Clay, and others, to confer with us. Three conferences took place in Mr. Olander's office on the points in question. The exchange of views was advantageous and certain modifications of the text were considered, but no final decision was reached. The urgency of going to press and the absence of Mr. Olander from the city prevented further conferences, so that only a few changes have been made in the text on the author's responsibility.

[2] *Chicago Journal of Commerce*, December 17, 1927.

candy jobbers, dental laboratories, ash and rubbish hauling, grocery and delicatessen stores, garage owners, physicians, drug stores, milk dealers, glazers, photographers, florists, bootblacks, restaurants, shoe repairers, fish and poultry, butchers, bakers, and window shade men.

3. *A Pressing Problem of Modern Business.*

What, if any, is the function of the "racketeer?" What problem of modern business and industrial life has led to his appearance? Is he a parasite or does he perform a service? The background for the answer of these questions can be obtained, perhaps, by the reading of the following case, picturing the economic condition under which the "racketeer" gains a foothold in the business world.

"In 1922, in a nearby city, there was a meeting of the president of a jobbing firm dealing in cigars and tobacco with about a dozen subjobbers who bought from the jobber and sold to grocery stores, drug stores, and cigar stores. The meeting was heated, evidence had been gathered that some subjobbers who carried their stock in auto trucks had been cutting prices on cigarettes and tobacco. The margin of profit to the jobber, subjobber, and retailer was very small on cigarettes and tobacco and the wholesaler tried to persuade these subjobbers to stick to a fixed price-list. He pointed out that although each of them had agreed again and again to maintain the prices to the retailer, repeatedly there had been lapses. A month or two later he showed a visitor the by-laws of an association composed of all the wholesalers in the city and all the subjobbers, for the purpose of maintaining prices and uniform conditions of credit to the retailer.

At this time the Reynolds Tobacco Company, manufacturers of Camel cigarettes, was not favorable to this association. Its policy was to create, through advertising campaigns, a demand so great that every jobber and every subjobber in the country was forced to carry their product. Stores had to have Camel cigarettes. It was, therefore, more rigid than other cigarette manufacturers in dealing with jobbers. The wholesalers carried its product with a certain reluctance. The Reynolds Company then began to appoint jobbers of its own. Prior to the rise of the Reynolds Company, a place on the regular list of jobbers was a highly esteemed privilege; it meant the making of a merchant. The new men chosen by the Reynolds Company were from the ranks of subjobbers, with here and there a persistent price cutter. The old jobbers refused to sell them the other cigarettes, and no man can be a jobber of only one brand of cigarettes. The Reynolds Company had taken upon itself the marketing of a cigarette, disregarding the approved jobber and price maintenance. The wholesalers then eliminated some of the price cutters from their list of customers or would sell to them irregularly, claiming that their stocks were depleted. They also made credit conditions more difficult for them.

The prosecution of the wholesalers under the anti-trust laws by the attorney general followed. The jobbers and the manufacturers who benefited by price maintenance were fined and the association was broken up.

Even though it had been destroyed, however, the old approved jobbers continued to do business and probably continued to avoid

"cutthroat" competition. It is also more than probable that the manufacturers interested in maintaining prices aided the approved wholesalers to cover their losses through price cutting by secret rebates. (These losses were incurred through the loss of customers to price cutters; both the jobbers and the subjobbers dealt with the retail trade. The wholesaler had two methods of distribution, one through his hired drivers and the other through the subjobber.)

Two years after the dissolution of this association the wholesalers reported that they had no more trouble with the price cutters because they had cut prices until they eliminated each other from business.

While the vigorous effort to stabilize the market by bringing the subjobbers into line was going on, this jobber came to Chicago to find out how Chicago wholesalers handled the matter of price maintenance. One of the Chicago jobbers exhibited a card from a union organizer, who proposed to organize the drivers and maintain prices through the Drivers' Union. He explained that these organizers can use drastic measures. Violence was distasteful to the out-of-town wholesaler and he thought it would not work in his city.

This was an early example of a problem in business and the rise of what is now called "racketeering" to meet it.[1]

Whether by violence or by effective mutual understanding, the stabilization of the market is highly desired in established business. In the case of the agreement in the tobacco business, a mutual understanding was not only difficult to effect by peaceful means but it was illegal, exposing the participating merchants to prosecution under the Sherman anti-trust act. The gangster undertakes to effect by illegitimate means what is a normal tendency in legitimate business.

The outlawing of these mutual agreements in business places the efforts toward stabilization in a class with the brewery after prohibition, when the legitimate brewer invited the gangster in to do his beer running. And in the same class is the labor union when it calls in the known "direct actionist." In other instances, the use of violence occurs either where there is no other cohesion, as in the organization of unskilled laborers, or where, by the method of injunction, the courts have made the usual tools of collective bargaining impossible. Regardless of our partisanships, both the anti-trust act and the injunction rule are the prohibitions of certain normal negotiations in the effort to stabilize either the labor or commodity market, and in this sense these efforts become outlawed. As outlawed activities they join gambling and vice in the use of violence where not only the stabilization but all rights cannot be settled in court, and conflicts ensue.

After an examination of the literature on combines, price agreements in other countries, Dr. Edwin E. Witte, legislative librarian of the state of Wisconsin, writes:

> "It would seem that no country, other than the United States, has a law like our Sherman anti-trust act. Canada, New Zealand and Argentina, however, have laws which, in broad terms, prohibit monopolies and restraints of trade and provide machinery for their abatement. In

[1] Personally communicated.

European countries there are no general anti-trust laws, and on the contrary the legal theory appears to be that combinations are beneficial and ought to be encouraged. Since the World War, however, there has been a pronounced form of legislation against profiteering, and in some countries against other combinations deemed to be inimical to the general welfare. In Germany a special type of court has been created to deal with the problems of restraint of trade and industrial combinations.

"With regard to the restraint upon trade unions by injunctions, the British trades disputes act of 1906 was a law to free organized labor from all of the restrictions under the restraint of trade doctrine, the conspiracy doctrine and all other common law theories preventing organizations from performing all of the acts which are lawful when done by individuals. This act was the most liberal law in relation to organized labor ever passed in any country and, of course, proved entirely satisfactory to organized labor. It has never been entirely satisfactory to the British employers, and last year (1927) this act was amended to place some restrictions upon the conduct of labor combinations in labor disputes similar to those which exist in this country. These did not include, however, anything about restraint of trade. Even now labor unions in England are entirely free from any doctrine that combination in restraint of trade is unlawful."

Violence in connection with labor disputes is almost unknown in England. In May, 1927, there was a general strike throughout England, affecting particularly all industries and all organized workmen. In this great strike there was not a single life lost and not over a half dozen cases of assaults.

Whether in this country under these same laws and injunction rule, merchants desiring to stabilize the market or trade unions in their efforts to maintain collective bargaining turn to violence, depends on the availability of gunmen willing to undertake the work. The same laws prevail in the city where the tobacco merchants engaged in price fixing, but they refused to consider violence because "it wouldn't do" in their city.

The "racketeer" does not always impose himself upon an industry or an association. He is often invited in because his services are welcome, as will be seen later. In order to show the operations of "racketeering" in business, only four cases will be presented: (a) The Laundry Associations of Chicago; (b) Cleaners and Dyers; (c) The Food Dealers; and (d) The Bootblacks. These are, however, fairly typical of the plan of organization and direct action of "racketeering" in Chicago.

4. The Laundry Associations.

Through the courtesy of Walter J. Walker, until recently assistant state's attorney making a special investigation of the "rackets," we have a basis of fact for the laundry situation in Chicago and the part Simon J. Gorman plays in it.

Simon J. Gorman, frequently referred to as the czar of the laundry business of Chicago, and as its chief "racketeer," was originally the business agent for the Cook County Horseshoers' Union.

"Racketeering"

There are five different laundry associations operating in Cook County:

Under agreement with the Laundry and Dye-house Drivers' and Chauffeurs' Union, Local 712, International Brotherhood of Teamsters.

1. The Chicago Laundry Owners' Association;
2. The Chicago Wet and Dry Laundry Owners' Association;
3. The Chicago Linen Supply Association;

(1, 2, 3 — Allied Laundry Council)

4. The Chicago Hand Laundry Owners' Association;
5. The Laundry Service Association of Chicago.

The first three of these associations elect representatives to the Allied Laundry Council. The same three associations work under an agreement with the Laundry and Dye-house Drivers' and Chauffeurs' Union, Local 712, International Brotherhood of Teamsters. The fourth organization, the Chicago Hand Laundry Owners' Association, employs practically no drivers; it is composed of the small fry, with very little capital invested, who receive dirty laundry in bundles brought by the customers to their stores and send their work to wet wash laundries; upon its return they iron it and return it to the customer when he calls for it. The Chicago Laundry Owners' Association, doing finished work, has always opposed these little fellows "who can start up with nothing." The fifth organization, the Laundry Service Association of Chicago, operates on an open shop basis. Most of the members employ drivers who have no union affiliation, but some members employ union drivers without having a working agreement with the union.

5. *Same: The Chicago Laundry Owners' Association.*

Gorman has been labor secretary of the Chicago Laundry Owners' Association at a salary of $7,500 per year. He had no specific duties and it is also alleged by his opponents in the association that he was put on the pay roll merely to obtain his good will, so he would refrain from attacking any member of the Chicago Laundry Owners' Association. Gorman was later dismissed, but the Chicago Laundry Owners' Association is a member of the Allied Laundry Council, which Gorman controls. The Laundry Owners' Association maintains a cost finding committee which determines standard prices to be charged for the wholesale work on the basis of poundage. Each member is supposed to charge the prices set forth in the chart covering the findings of the committee. The association states that the union deals with any price cutting laundry because it deprives the drivers of a livelihood through the loss of commissions.

The methods used by Gorman are many. Recently he has interested the Laundry Owners' Association and the other two members of the council in a movement to check the city council's zoning efforts, which would restrict the building of laundries in any section of the city other than the industrial area. For this purpose he is raising a fund and the members of the Laundry Owners' Association are divided upon the question of paying or not paying ten thousand dollars to Gorman.

6. Same: The Chicago Wet and Dry Laundry Owners' Association.

The Chicago Wet and Dry Laundry Owners' Association have been making inroads upon the business of the Chicago Laundry Owners' Association, who were the first in the field.

The condition which the "racketeer" was called upon to adjust is best illustrated by the earlier situation in the wet wash business. At the time this association was formed there was a great deal of price cutting, stealing of drivers and "hi-jacking" of bundles among them. Gorman, because of his reputation for direct action, was looked upon as a man who could stop this; and he did. Through his power in the union he had drivers called out on strike and collected fines.

The president of the association claims to be a figurehead, inferring that the association is completely controlled by Gorman. If any protests against Gorman issue from members of this association, it is because consolidation among competitors has taken place, thus diminishing the need for a "strong arm" boss. Some of the stronger members of this association have been organizing corporations and establishing large wet wash plants in exchange for the routes of the "little fellows." To the extent of this consolidation they have diminished the need for a disciplinarian of competitors. Of course, Gorman's domination is not easy to shake. This is true of all the "racketeers" in all organizations. It is difficult to play with coercion and violence without becoming its victim.

An ally within the association is Morris Hectman, who is a co-partner with Gorman in one laundry establishment which they together own and operate. The Chicago Laundry Owners' Association feels that the Chicago Wet and Dry Laundry Owners' Association is not only making business inroads upon it but that as members of the Allied Laundry Council the latter betrayed the former in that they made a separate agreement with the Drivers' Union and through Gorman made a better deal.

7. Same: The Chicago Linen Supply Association.

The Chicago Linen Supply Association, the third in the Allied Laundry Council, is composed of members who own their own linen and supply it to offices, barber shops, restaurants, etc. This association, as a member of the council, works in full agreement with the Drivers' Union. Gorman replaced their original president with a man by the name of Hoiles, one of his own supporters. Later he placed a man by the name of Tice, formerly business agent of the Drivers' Union, as secretary of the Chicago Linen Supply Association, displacing the man who was opposed to him. This gave Gorman not only the control of this third association but control in the Allied Laundry Council.

8. Same: The Chicago Hand Laundry Owners' Association.

The Chicago Hand Laundry Owners' Association are "little fellows" who send their work to large wet wash laundries and upon return iron it, return it to the customer and collect. They do a "drop" trade, which means that the customer drops his bundle at their store and comes in to get it.

This organization was originally formed by Hirschie Miller as an aid

in organizing the inside laundry workers. In this instance Gorman was not invited in, but the Laundry Owners' Association sent him to take these "little fellows" in hand, relieving Hirschie Miller. But Gorman has not worked to the entire satisfaction of the Laundry Owners' Association, because he has permitted new "little fellows" to start as long as they did not open places of business too near association members. He was always partial in designating wet wash laundries to receive the work from these "little fellows" to the exclusion of certain other wet wash laundries. He then permitted a group of hand laundrymen to establish a new wet wash laundry (a new competitor for the "big fellows"). In this new wet wash laundry he took a fair size amount of stock as his share.

The conditions which Gorman imposes upon these hand laundries are: (a) ten per cent of their wash bill; (b) such hand laundries as do not join Gorman's Chicago Hand Laundry Owners' Association cannot have their work done in a wet wash laundry belonging to Gorman's associations. Such hand laundries as have resorted to open shop wet wash laundries for their work have suffered smashed windows, slugging of their drivers, and other indignities.

9. *Same: The Laundry Service Association of Chicago: The Open Shop Group.*

The Laundry Service Association of Chicago is the organization of a small group of open shop wet wash laundries, yet to a degree they do every type of work. Early in 1927 this association was approached with the proposal of joining all other laundry associations in Chicago in raising laundry prices twenty per cent. For various reasons this open shop group refused, and twelve of their drivers were slugged. The sluggers were arrested but never convicted.

10. *The Allied Laundry Council.*

The Allied Laundry Council is composed of representatives from the Chicago Laundry Owners' Association, the Chicago Wet and Dry Laundry Owners' Association and the Chicago Linen Supply Association. It has for its purpose the handling of matters of common interest to the three associations.

From the above description of the activities of these associations, their objects and methods, and the position of Gorman in the council, interlocked with the employees' organizations, Gorman is properly called the czar of the laundry industry of Chicago.

He has been questioned by the state's attorney's office and released, but specific charges of graft in connection with calling strikes and of bombing, slugging and intimidation have been made against him. His political influence is great. Gorman's salary from the Chicago Wet and Dry Laundry Owners' Association alone (which is one of five) is said to be eighteen thousand dollars per year. His income is augmented by his commission from the hand laundrymen, and he controls the defense funds raised in the Allied Council.

Gorman is not only interested in the laundry industry, but in other enterprises as well. It is charged that he dominates the Candy Jobbers' Association, now under federal investigation growing out of the slugging of a man who refused to join it. According to the state's attorney, the

Candy Jobbers' Association has been using terrorism to compel candy jobbers to join at an initiation fee of two hundred fifty dollars. Other special assessments are regularly levied and failure to "go along" with the organization has brought threats of death. The federal government claims jurisdiction to try these men not only for the terroristic methods but for conspiracy under the Sherman anti-trust act. True bills have been returned against forty-five officers and members, including Simon J. Gorman. The methods most generally used in places where violence is impractical have been those used in Chicago in addition to violence. Lists of candy jobbers are submitted to manufacturers with the demand that the manufacturers only sell to members in good standing. Espionage is employed to discover price cutters.

Some of his antagonists in the laundry industry desire to replace Simon J. Gorman with a man named A. M. Schaffner. When Mr. Hostetter of the Chicago Employers' Association heard of this he sent a letter to all the laundry owners, setting forth the criminal record of Mr. Schaffner. The letter follows:

"February 8, 1928.

"Dear Sir:

"An announcement that the Illinois Laundrymen's Protective Association opened its offices on January 27, 1928, has come to our attention. A. M. Schaffner is shown as the secretary of this organization, which is to 'promote the best interests of the laundry industry and to effectuate sound business principles among its members.'

"We feel that Chicago Laundrymen should be made acquainted with some facts regarding this 'secretary,' and present for your consideration the police record of this man, as furnished us by the Bureau of Identification:

"Record of Abe Schaffner.

"October 26, 1910—Sentenced by Judge Kavanaugh to one year in the House of Correction. Charge—Burglary.

"January 9, 1914—Sentenced by Judge McDonald to nine months in the House of Correction. Charge—Larceny. Sentenced by Judge McDonald to nine months in the House of Correction. Charge—Larceny. (The above terms to be served concurrently.)

"June 30, 1915—Sentenced by Judge Mahoney to thirty days in the House of Correction and fined one hundred dollars and costs. Charge—Assault with deadly weapon.

"September 9, 1918—Sentenced by Judge Zieman to the Joliet Penitentiary. Charge—Robbery while armed.

"May 24, 1924—Tried before Judge Lewis on a robbery charge. Verdict—Not Guilty."

"(Signed) G. L. Hostetter,
Executive Secretary."

11. Cleaners and Dyers. The retail cleaners and dyers formed the Retail Cleaners' and Dyers' Association. The members are not the owners of dye-houses but the stores to which the individual brings his clothing for cleaning and dyeing. For a long time a bitter conflict has been going on between independent cleaners and dyers and this Retail Cleaners' and Dyers' Association.

To conduct an independent cleaning and dyeing establishment it became necessary to be a protege of Hirschie Miller, of the Miller family gang, involved with Dion O'Banion in the booze trade and known for its ability to "beat raps." When Hirschie Miller established the Acme Cleaners and Dyers Company at 2832 North Clark Street, it was bombed and an attempt was made on his life.

"Those fellows who shot at me and those fellows who bombed my place were working for the Master Cleaners' and Dyers' Association. I've been threatened time and again. If it wasn't for Hirschie Miller they would be charging $2.50 to clean and press a suit instead of $1.50. Can you figure out why a city like Milwaukee has three hundred cleaning and pressing establishments while Chicago has only one hundred? It's because this association has throttled the town."

Later one of his drivers was beaten and a truck load of garments was stolen April 19, 1924.

Nicholas Georgson, a disabled ex-service man, a proprietor of a cleaners' and dyers' establishment at 1170 East Fifty-fifth Street, gave some interesting testimony against the organizers of the association.

"I am still disabled, but can conduct my business. About a year ago I was told I had better join the union. I said I couldn't afford it. I did go to a meeting and saw men fined from fifty to two hundred dollars for various things. One man was fined fifty dollars for not closing promptly at the given hour. Another was fined one hundred fifty dollars for criticizing one of the officers.

"They wanted twelve dollars dues from me. I didn't give it to them. A short time later all of my windows were broken. Last summer two men came again and they said: 'Leave it to us, we'll take care of you if you don't join.' Again my place was wrecked and my customers frightened away."

Georgson identified Sam Rubin as the one who last warned him. Rubin told the detectives that he had never been a cleaner or dyer but gave as his qualifications for business agent for the association, "I'm a good convincer."

Sam Rubin and Harry Beyer were indicted by a special grand jury for bombing and window smashing of a list of places, and were released on bonds of twenty-five thousand dollars each.

Morris Becker, president of a cleaning and dyeing company which operates a chain of stores and a plant, testified before the grand jury as follows:

"I was introduced to Mr. Rubin by my foreman. I said, 'Oh, you are the Mr. Rubin I hear so much about.' He said, 'Yes, and you will hear a great deal more. I want to tell you something—you are going to raise prices.'

"'The Constitution,' I replied, 'guarantees me the right to life, liberty and full pursuit of happiness.'

"He said, 'To hell with the Constitution. I am a damned sight bigger than the Constitution.'

"In that same spot a dynamite bomb was thrown three days later. A few days later Abrams came to the store and I said, 'I want you to understand that these are our prices and we will stick by them.'

"He replied, 'If you do, Becker, you're going to be bumped off.'"

He was then visited by Arthur Berg, secretary of the association, and asked to contribute five thousand dollars to a fund to be used in maintaining prices in cleaning. Berg said, "I'm getting all of them to put up five thousand dollars apiece."

Fifteen more members of this association were indicted; Rubin, Beyer and two others, held especially for terrorism, were released on bonds aggregating more than one-half million dollars, which suggests the extent of support they could muster. When the case was called for trial, M. Becker and Theodore Becker "could not produce evidence sufficient to convict the defendants of the crimes charged, and a verdict of 'not guilty' was returned in fifteen minutes." The attorney for the defense was no less a personage than Clarence Darrow.

Of late, the Master Cleaners' and Dyers' Association, composed of the owners of cleaning and dyeing plants, has come under the scrutiny of state and federal officials.

Recently an attempt was made to burn to death two drivers of the Central Cleaners' and Dyers' plant at 2705 Fullerton Avenue. The atrocity of this attack is unique. They first beat the driver and his partner into senselessness, then threw him into his truck, piled with clothing, poured gasoline on the clothing and set fire to it. One of the two men fled, but the other received serious burns and was only rescued by passers-by. This case is mentioned because it is current—April 21, 1928.

Walter G. Walker, assistant state's attorney, states that Samuel Weiss, a confessed "racketeer," admitted that officers of the association had procured him a job with the non-member concern and directed him to place acids in the cleaning vats to destroy clothing.

Several weeks previous to this latest slugging, Mr. Walker learned that this same concern had lost fifteen thousand dollars because explosives had been sent to their plant in bundles of clothing. They were the recipients of "exploding suits."

The latest development in the cleaning and dyeing business is the entry of the most dreaded gangster as stockholder in the business enterprise. The knowledge that he is financially interested serves as protection against the violence of the "racketeer" who has organized the industry for price maintenance and for exclusion of new competition. In announcing the fact that Al Capone had become a partner in the newly incorporated Sanitary Cleaning Shops, Inc., Mr. Morris Becker, the independent cleaner and dyer who had refused to submit to the "racketeering" tactics of the association, said:

> "I have no need of the police or of the Employers' Association now. I now have the best protection in the world."

The callousness of this statement and the implication of complete breakdown in the machinery of the law aroused the press of Chicago to a unanimous protest. Said the Chicago *Daily Journal* of May 28, 1928, under the headlines "Capone Wars on Racketeer—Independent Cleaners Boast Gangsters Will Protect Where Police Failed":

> "What police have been attempting unsuccessfully for months to do—stop racketeering among the cleaners and dyers of Chicago—today

became the chore of Al Capone, vice lord and 'big shot' among the gangsters.

"The formidable Alphonse has become a principal partner in the Sanitary Cleaning Shops, Inc., under the sponsorship of Morris Becker, a cleaner and dyer for forty-two years. The concern has a large plant now nearing completion at Prairie Avenue and Sixty-third Street.

"Boasts of Protection.

"In a statement given out by the Employers' Association of Chicago, Becker boasts that he now has 'the best protection in the world' against the racketeers, who according to his charges, have menaced his business by bombs and violent intimidation.

"He predicts that the entry of Capone and his cohorts into the business will put some long-delayed fear into the hearts of the Master Cleaners and Dyers, an association he declares responsible for the present unhealthy state of the business.

"Walter G. Walker, recently an assistant state's attorney, and now counsel for the Employers' Association, announced that papers of incorporation have been taken out, giving Capone, Jack Gusik, and Louis Cowen, Capone's professional bondsmen, a $25,000 interest in the Sanitary Cleaning Shops.

"Cleaners' Lawyer Warned.

"Max Krauss, attorney for the Master Cleaners and Dyers, went to verify Capone's connection with the new enterprise and was instructed not to 'monkey' with the concern, according to G. L. Hostetter, Secretary of the Employers' Association.

"The feud among the cleaners and dyers has been marked by several outbursts of violence, the most recent being the attack on drivers of the Central Cleaners' and Dyers' Association and the burning of their trucks. As long ago as last December Becker wrote State's Attorney Crowe, charging that gunmen had been employed to stifle competition and maintain the exorbitant prices set by the Master Cleaners and Dyers.

"The Employers' Association has received ninety-six complaints of racketeering in the last six months, according to Mr. Hostetter. Indictments have been returned only to be stricken off for want of prosecution, he charges, and independents have been driven from the field.

"Terms Police Aid Futile.

"To meet these conditions by legal means has been found impossible, according to Mr. Hostetter. 'Those involved are almost unanimous in advocating a policy of fighting fire with fire as the only effective solution.'

"Presumably, Mr. Capone will provide the pyrotechnique for the independent cleaners and dyers. Neither State's Attorney Crowe nor Police Commissioner Hughes see any cause for interference on this score.

" 'I can't stop a man from talking,' remarked Commissioner Hughes, commenting on Becker's vaunt that he got protection from Capone where the police failed him.

" 'Every complaint made to the state's attorney by Becker has been presented to the grand jury,' was Mr. Crowe's statement."

The *Tribune* made the following editorial comment:

"Crime and Corrupt Politics.

"Revelation of the employment of professional gunmen in the cleaners' and dyers' trade as a measure of competitive strategy ought

to shock this community into a determination to put an end to the official and political corruption which makes it possible. We have here a situation as shameful as that created by the Camorra and Mafia in southern Italy. We held our hands up in holy horror of Italian conditions. They have been cured. It is time the decent citizenship cured ours, as it can swiftly and thoroughly.

"Corrupt politics is responsible for our outrageous crime conditions, and corrupt politics is the result of indifferent or gullible citizenship. Our voters have let themselves be misled by false issues and rallied like sheep to follow wind-bags, while wolves and foxes preyed at will. There is intelligence and character enough in the community to put an end to that."[1]

12. Food Dealers. Maxie Eisen, organizer of three Hebrew associations of food dealers—the Hebrew Master Butchers' Association, the Master Bakers of the Northwest Side, and the Wholesale and Retail Fish Dealers' Association—first appears in criminal annals in 1919. At that time he was indicted for a felony, but this charge was changed to petty larceny and he was sent to the House of Correction for six months. During the special grand jury investigation in December, 1925, impaneled to smash the "bomb trust," he was indicted for throwing a stink-bomb into the meat market of Isaac Herbert. When the case was called, nine months later, the prosecuting witness had died.

A letter at that time, addressed to the Chicago *Tribune* by the National Association of Retail Meat Dealers, indicates clearly that this organization is local and sporadic:

"So that you will understand the situation, there have been formed from time to time sporadic attempts by various persons to organize so-called 'Master Butchers' Associations,' but none of these attempts have been under the authority or sanction of either the National Association of Retail Meat Dealers or the other organization we represent."[2]

In the same month the Real Estate Owners' Association appealed to State's Attorney Crowe for relief. This association has property holdings aggregating five million dollars in the Lawndale and Garfield Park sections. Its officers complained that a band of "renegade labor leaders" had caused a depreciation of fifty per cent in their property values by their practice of restricting the number and type of stores in the district to eliminate competition and protect the prices of their members.

The activities of these "racketeers" are confined to the small dealers of their own race on the northwest side. Illiterate and ignorant of the law, the victims are easily impressed by bravado and meekly submit to methods of extortion, intimidation, bombing and murder.

On January 26, 1926, Eisen was indicted for throwing kerosene into the stock of David Elkins, a fish dealer. He was tried but found "not guilty." Witnesses were intimidated.

His methods of terrorism were again manifested in April, 1927, in a suit filed by the United Kosher Sausage Company for one hundred eighty

[1] *Tribune,* May 29, 1928.
[2] *Tribune,* December 6, 1925.

thousand dollars against the Kosher Meat Pedlers' Association, charging that Maxie Eisen, president of the association, had caused poisons to be hurled into sausage stores which obtained their supplies from the United Kosher Sausage Company. Federal Judge Wilkerson granted an injunction restraining Eisen from this practice.

On December 18, 1926, Maxie Eisen was shot as he was entering his home. At the time he did not ascribe the assault to any labor difficulty and said he did not know who was responsible for the shooting. On March 12, 1927, however, Benjamin J. Schneider, a real estate dealer, living at 2839 Palmer Street, was shot and killed. An investigation of this shooting disclosed that at the time Maxie Eisen was shot Mr. Schneider confided to Captain Stege of the Detective Bureau:

> "Maxie Eisen has been shot in the arm. He thinks I shot him. I had nothing to do with it, but I am getting threats. If anything happens to me before I can get out of Chicago, look for Eisen."[1]

In fact, Eisen is czar in the fish market and on market days he can be found there doing the supervising for the members of his association, intimidating and threatening the dealers who are not members.

On February 3, 1927, Herman and Louis Stein, two brothers having a fish market on Roosevelt Road in the 3900 block, were leaving the Randolph Market when they were approached by Maxie Eisen and his business agent, Max Granat. They were told that they could peddle fish no longer, the city permit they had meant nothing, and there were too many in the business for all of them to make a living. A warrant was issued for the arrest of Eisen and Granat by Judge Padden in the Racine Avenue Court. They were indicted and released on bonds of four thousand dollars each. Reprisal quickly followed, however, for with apparently no fear of the law, Eisen visited the shop of the Stein Brothers on April 26, kicked over several barrels of herring and shot Herman in the leg. He was again indicted, charged with assault with a deadly weapon. The complaining witnesses were afraid to identify the criminal. The case was dismissed for want of prosecution.

On May 29, 1927, after an automobile chase at sixty miles an hour, Maxie Eisen and Jack Cito were caught and charged with carrying concealed weapons. The police found two loaded revolvers in a secret compartment of the Cadillac car they were driving. On June 16, they were acquitted; the judge decided they were not carrying concealed weapons "on their persons."

Sam Trabush, a Jewish butcher operating a small shop at 1224 South Kedzie Avenue, was a member of the Poultry Dealers' Association. He did not approve of some of their methods of price-fixing and when told by Maxie Eisen that he must ask thirty-eight cents a pound for chicken, he remonstrated, saying that he thought the price too high considering the wholesale price. He later sold a chicken to a woman, who was a spy for the association, for thirty-five cents a pound. In a very short time two members of the association came to him and fined him fifty dollars for violating rules. He refused to pay the fine. He was threatened but still refused to pay, and on

[1] *Tribune*, March 12, 1927.

October 8, Eisen and Jack Cito, known as "Knuckles," found him in front of the store of his brother-in-law and beat him into insensibility with the butt of a revolver and an iron bar, causing a wound in his head that required sixteen stitches. Eisen and Cito were locked up and it was felt that now some definite action could be taken against these criminals. They were indicted and charged with assault with intent to kill. The members of their organization quickly rallied to their assistance and a fund, reported to be ten thousand dollars, was raised for their defense. Repeated attempts were made to induce the family of the plaintiff to drop the prosecution. They threatened to bomb the shop. Finally, Eisen said to Mrs. Sam Trabush, "I should have killed your husband when I had a chance." The case was tried before Judge Harry B. Miller. Myer Zimmerman, brother-in-law of Mr. Trabush, in whose shop the assault took place, testified:

> "Trabush was standing in front of the store when a car drove up. Two men got out, one carrying a revolver. Both started to run in Trabush's direction. Trabush ran—they caught him in the store, knocked him down with the butt of a gun and stood over him, beating him with their fists and revolver butt until I thought he was dead."[1]

On January 17, 1928, a verdict of "not guilty" was handed down in this case. One of the witnesses for the state had repudiated his testimony.

13. The Bootblacks. Guerilla warfare among rival bootblack associations affords an interesting study in "racketeer" methods.

Gust Stavrakas, head of the Bootblacks' Protective Association, used all the aggressive "racketeer" methods in his domination of the bootblacks. The bombing of the shoe shop in the fashionable Cooper-Carlton Hotel, however, proved his undoing. On December 11, 1927, the shoe shop of Gust Chatas in the Cooper-Carlton Hotel was bombed. When interviewed, Chatas said that John Perponas and he were members of the Bootblacks' Protective Association of which Gust Stavrakas was the head. Perponas was called upon to remit twenty dollars back dues, but refused, saying:

> "Why should I pay when Chatas is going to open a shop in my territory? Our rules do not permit competition."
>
> "Well, you pay up. Then if Chatas opens this place you let me know and Chatas will be bombed," Stavrakas is declared to have decreed.[2]

Stavrakas, according to Chatas, visited him with Perponas and warned him that he would be bombed if he persisted in opening his shop, but Chatas disregarded the warning.

Two days later, December 15, 1927, Gust Stavrakas and Peter Voulgavis, business agent of the association, were tried before a jury in Judge David's Court, charged with conspiracy and malicious mischief in connection with intimidation and violence directed against shoe shops whose owners were not members of this association, found guilty and sentenced to one to five years in the penitentiary, and fined a thousand dollars.

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[1] *Journal*, January 12, 1928.
[2] *Tribune*, December 14, 1927.

"Racketeering"

The testimony of William Feylactos, 502 East Forty-third Street, at the trial of Theodore Speropoulas, head of the Bootblacks' Protective Union, who was charged with malicious mischief in connection with the breaking of the glass in the windows of Feylactos' shop, October 17, 1927, gives an interesting insight into the tactics used in this war among the bootblacks. Mr. Feylactos, who was in the shop at the time the window was broken, testified as follows:

"I have a shoe repairing and shining shop at the above address. I knew the defendant, have known him since June 14, 1925. He was business agent for the Bootblacks' Protective Union, affiliated with the American Federation of Labor. On April 28, 1927, he was discharged by the union and he tried to start another union. He took the charter of the Bootblacks' Protective Union from the office at 748 South Halsted Street and kept it. He tried to force the members to go with him but they didn't want him. We took out another charter under the name of the Bootblacks' Protective Union of Illinois, and the defendant went around and tried to get members to go to his side and some of them did. Then in August he put pickets around the place of one of our members at State and Division streets. He put a second picket at Wilson Avenue and Pete Bennet's place. We went out there and stopped the picket at Wilson Avenue.

"A week later he came to my store and wanted to put a picket at my place. I told him he could put a picket there if he wanted to because I belonged to the Bootblacks' Union of Illinois. He stayed around there then and said, 'I will get you later.' That was in the last part of August. On October 17, 1927, about 2:15 a. m., a window was broken in my place. I heard the noise and got up and went to the front of my place. When I went back to get my keys he got away and I didn't see which way he went.

"About 2:20 a. m. I called the police at the Forty-eighth Street station. They sent two detectives and I told them about it and what kind of a car he had, which was a two-door Ford sedan, and I described his clothes. I told the police to follow him before he got home.

"About 4:30 a. m. it came to my mind to call his home. His wife answered the phone and when I asked if he was home she said he was not in yet. I called the police department and told them what I had learned.

"The president of my organization, Gust Stavrakas, found the defendant's car in front of the defendant's home, 3217 Grenshaw Street, without license. That same morning Stavrakas' windows had also been broken.

"On October 17, 1927, I took out a warrant against the defendant at the Forty-eighth Street station. I didn't see him until after he was arrested and he then got a continuance at the Forty-eighth Street station until November 2. After he got the continuance, two men, whose names I don't know, came to me and hit me twice and when they hit me they said, 'We'll show you how to take out a warrant.' "

Evidence was introduced showing that victims were compelled to pay large sums of money, far beyond their means, to ward off attacks by gangsters.[1]

One shoe repair man, Vasilios Trikas, of 4702 North Kedzie Avenue,

[1] Case No. 45728—Municipal Court, Judge Schulman; testimony in court.

said he had paid dues regularly to one group and then had his windows broken nine times by a rival organization. The case was brought to trial before a jury in Judge Schulman's court and the defendant was discharged.

14. The "Lefty Lewis" Case. The killing of Braverman brought to light glaring weaknesses in the machinery of criminal justice, the power of organized crime and the indignation of the public when aroused by the press.

Max Braverman, a junk peddler with a family of five, was killed by a bullet, supposedly by Harry J. (Lefty) Lewis, on August 26, 1927, in a vacant lot near a "junk row" on the west side. The killing was the climax of a disagreement between the junk peddlers and Lewis when the former refused to continue to pay dues which they considered as tribute to Lewis, who they claimed did nothing for them.

Peddlers get the junk at its source from various parts of the city and sell it to jobbers, who keep small quarters for the junk and who sell it whenever the market is favorable or when they have no room for new supplies. The wholesalers usually have large space for vast accumulations and they sell to manufacturers who use salvage material in their new products. The teamsters are employed by the wholesalers to haul the paper from warehouse to the tracks, etc.

It appeared that Lewis had also organized the small jobbers of junk and was playing one against the other in order to keep both in line. But another angle, which had never received much attention, is the claim that "higher ups" were behind the whole scheme, with Lewis but a pawn. One of the junk peddlers in an interview said:

> "They (the organizers) were not satisfied and in order to increase their revenues, directed the retailers to reduce the price of rags from $2.00 to $1.75 a bale of one hundred pounds."[1]

A junk dealer, aware of the entire state of affairs, said:

> "It (the trouble with Lewis) started some time ago when some of the wholesalers wanted to break their contract on paper sales and they asked the Teamsters' Union to call a fake strike, which was done. The teamsters were paid and the contracts were broken, but that was the start of the movement to organize us.
>
> "If the union could control us, it could control the source of the rag supply for the paper companies and put any company out of business it wanted out. It could ruin any firm.
>
> "But to control us, the junk dealers, the organizers of the union had to control the peddlers. When they had the peddlers under their orders they could tell them where to sell their junk and where not to sell it, and could keep us from buying and could keep us from selling.
>
> "Under this arrangement they could take forty thousand dollars or more a month out of our business. But they had to have all those branches of the business under their domination. In that way the union boss would be the boss of a two million dollar a month business, telling dealers and wholesalers from whom to buy and how much to pay, and take from us whatever we could stand. It meant ruin for all of us and

[1] *Journal, September 28, 1927.*

though many of us got beaten and hurt, we had to quit the Teamsters' Union."[1]

The peddlers were organized as a branch of the Teamsters' Union, although they were in reality independent merchants.

The police picked up five suspects and began a hunt for Lewis. Lewis, however, could not be found until he was ready to surrender to the police some days later. This is the regular and recognized procedure for all gunmen of any recognized importance.

Deputy Coroner Joseph Dorfman, who conducted the inquest, later witnessed the burning of his drug store at Roosevelt Road and Independence Boulevard, set on fire by a bomb.

On September 27, the home of Louis Newman, 1553 South St. Louis Avenue, (the main witness for the prosecution), was bombed. The *Tribune* started a "bomb fund" to reimburse Newman for the loss suffered by the explosion. The press of the next day carried the following words by Crowe:

"This bombing is the most flagrant attempt to subvert justice that I have ever seen. My entire staff will be ready to cope with this outbreak. I will handle the Braverman case personally."[2]

Chief of Police Hughes added:

"We are going to get at the bottom of this bombing if possible. It's the worst kind of intimidation and I am going to stop it."[3]

And Chief Justice Brothers said:

"The thing to do is to find the bomber and give him 'appropriate treatment.' "[4]

The bomb had the effect of bringing Crowe before Judge Brothers with a motion for an advancement of the trial date. The motion was granted by Judge Brothers, who added, "Some effort must be made to bring unusual cases to a speedy trial so as to teach those planning criminal acts that they cannot monkey with the courts."[5] And meanwhile the city witnesses the spectacle of housewives doing their shopping with policemen as escorts and junk peddlers following their calling with the police as guards. Thirty-six policemen were assigned to protect the witnesses.

On September 30, Crowe held a conference with the fourteen witnesses for the state. At the conclusion he said, "If we can find a jury willing to do its duty, I feel confident that the state will be able to present a case which should make Lewis the first customer for the electric chair."[6] The selection of the jury started on October 6. By November 3, after fourteen hundred had been called and 758 veniremen had passed through the box, a jury was finally selected which "had no conscientious scruples against the death penalty and which had not been influenced by the newspaper accounts of the killing."

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[1] *Tribune*, September 28, 1927.
[2] *Herald and Examiner*, September 28, 1927.
[3] *Herald and Examiner*, September 28, 1927.
[4] *Herald and Examiner*, September 29, 1927.
[5] *Journal*, September 29, 1927.
[6] *Tribune*, October 1, 1927.

Events ran smoothly for the first few days of the trial, and it was not until Benjamin Katz was confronted with questions read from a typewritten sheet in the hands of Attorney Short that Crowe called Captain Pilkington of the Marquette station and demanded to know how certain statements made to police by state witnesses on the day of the killing got into the hands of attorneys for the defense. This coup on the part of the defense left an impression on the jury and was probably one of the reasons for the "not guilty" verdict. It explained why every witness had practically the same story to tell. The same treatment befell Max Lurye when Attorney Short confronted him with statements made at the time of the killing. In answer to Crowe's objections Attorney Short retorted:

> "What's all the shooting for? We have copies of all the statements made by the state's witnesses in this case and we will use them to show that they have changed their stories of the shooting to fit the state's theory in this case."[1]

On November 14, Lewis took the witness chair and began to relate his side of the story. When he told of being attacked by the junkmen and of being beaten over the head, he passed before the jury and allowed them to feel the bump on his head caused by blows. At another time he rolled up his trousers to show the jury his burned leg. Lewis hinted that Newman, one of the state's star witnesses, was the one who really fired the fatal shot, for it was he who, revolver in hand, had fired several shots at Lewis and his group. Lewis also added that he had served three years for a Missouri robbery, although by the time he so informed the jury, that body was already well aware of the fact.

In their final appeals to the jury, Assistant State's Attorney Harold Levy painted a picture of a vicious and ruthless ex-convict who killed in cold blood and pleaded for the jury to give Lewis the same consideration that the latter gave Braverman. The defense pictured Lewis as a poor man who had made one mistake but who had since then devoted his life to the service of others. Short pointed to the fact that the state's witnesses were junk peddlers as a reason for disbelief in their stories, saying:

> "A jury of women would acquit Lewis before convicting him on the testimony of junk men. Your wives have had occasion to have dealings with peddlers. They know how much their word is to be accepted. Their business is founded upon falsehood. These witnesses have changed their stories three times."[2]

After being out six and one-half hours, five and one-half of which were spent in convincing a lone juror to change his mind, the jury handed in its verdict of "not guilty." Three ballots were cast. Various statements were attributed to the jury, nearly all of which tended to show that the state had built up a case which did not look reasonable in the eyes of the jury. They scored Crowe for refusing to submit the original statements made by the peddlers after the killing.

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[1] *Herald and Examiner*, November 9, 1927.
[2] *Tribune*, November 18, 1927.

The acquittal of Lefty Lewis called forth different reactions in the three groups affected. Among the peddlers and their friends in the immigrant community arose the feeling that American justice is weaker than the force of violence. The gunmen and gangsters were confirmed in their belief in their own immunity to punishment. The public at large, dazed and confused at the outcome, began to realize the power and ramifications of organized crime.

15. Conclusions. In "racketeering," the gunman and the ex-convict have seized control of business associations and have organized mushroom labor unions and have maintained or raised price and wage standards by violence, and have exploited these organizations for personal profit. The rule of violence now controls scores of business fields, according to Mr. Walter G. Walker, formerly of the state's attorney's office.

This entrance of the gangster and gunman into the field of business and industry in Chicago seems to be due to two factors:

1. *A situation of cutthroat competition among small business enterprises.* Agreement to control competition under any conditions is difficult and particularly when these agreements are in violation of the law. Where a line of action is outlawed, whether the manufacture and sale of alcoholics, or gambling, or trade and price agreements, a situation is created favorable for the entrance of the gangster, on invitation or upon his own initiative.

2. *A tradition of lawlessness and violence in Chicago.* The gunman and the gangster with their tactics of intimidation and punishment were available to carry out "strong arm" methods, free from serious interference by the law enforcing agencies.

This survey of "racketeering" in Chicago discloses the extent and degree of the breakdown of our local governmental machinery. The police, the state's attorney's office and the courts are now failing to maintain law and order in the fields of labor and business, as they have failed to repress the outlawed activities of vice, gambling, bootlegging and robbery. The gunman and gangster are, at the present time, actually in control of the destinies of over ninety necessary economic activities. Al Capone, overlord of organized crime in the Chicago region, now a stockholder in a business enterprise, insures it "the best protection in the world."

CHAPTER XXIV

THE GANGSTER AND THE POLITICIAN

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CHAPTER XXIV

THE GANGSTER AND THE POLITICIAN

1. Introduction. The relation of the gangster and the politician becomes most obvious to the public on election day. Post-election contests and recounts expose the election frauds committed by the gangsters in behalf of the politicians. The manipulation of election by machine politicians with underworld assistance is an old practice in the river wards of Chicago and has been gradually spreading to other districts. But, election frauds do not disclose the entire picture of the reciprocal relations of politician and gangster.

Residents of the so-called bluestocking wards frequently receive the erroneous impression that if the ballots in the river wards were freely cast and honestly counted they would show a majority against the ward boss, his henchmen, and his gangster allies. Nothing could be farther from the truth. Even if all the election frauds committed in the recent primary of April 10, were disclosed, the extent of the fraudulent vote would not greatly exceed twenty thousand votes. What needs to be appreciated is the element of the genuine popularity of the gangster, home-grown in the neighborhood gang, idealized in the morality of the neighborhood. An understanding of the element of genuine leadership and loyal following may be gained from a study of the Ragen Colts and the morality of the Yards.

2. The Ragen Colts. The Ragen's Athletic and Benevolent Association is chosen as the first example of the gang in politics because it has a continuous history during a period of over thirty years. It began as a baseball team, "The Morgan Athletic Club," with Frank and Mike Ragen as star players.

As early as 1902 the social and athletic activities of the Morgan Athletic Club included fully equipped amateur football, baseball, and rugby teams of high standing in their respective leagues. An annual minstrel show and ball attracted very wide participation of members and large audiences of non-members. Their annual picnics were events in neighborhood life. Boxers, runners, wrestlers of repute were developed in the club gymnasium. Among the one hundred sixty members in good standing can be found some who have since achieved high position in business. The advertising in the program of the annual ball is an evidence of the community support which this group received from business and professional men in every line in the neighborhood. Frank Ragen was then, and remained for many years afterward, president of the club. The appreciation of the work of Frank Ragen in developing the club, as well as his natural talent for this kind of recreational work, is expressed in many printed eulogies by the officers and members.

Later its name was changed to "The Ragen Athletic Association," with Frank Ragen as president. It became the mainstay of his political organization when he rose to prominence as county commissioner; but underwent internal difficulties when the Democratic party split into the Harrison and

Sullivan factions, with Ragen on the Harrison side and O'Toole, the alderman, on the Sullivan side; and was disbanded recently (in 1927) as a formal organization. Its traditions, however, its feuds, and the solidarity of the old comrades continued. The Duffys have inherited the athletic tradition of the Ragen Colts, and while members have been divided by participation in opposite factions in politics and membership in competing beer running gangs, the ties of friendship as well as the enmities still remain. Beyond and below the formalities of organization, persist the neighborhood religious and racial ties, ties from childhood up.

3. *Same: "Hit Me and Yow Hit Two Thousand."*

In 1908 the club changed its name from "The Morgan Athletic Club" to "The Ragen Athletic Association," and their teams were known as Ragen Colts. The change in name was decided upon after a picnic given by the club in the old Santa Fe Park had ended in a riot, and Frank Ragen was elected president. Members were recruited from the youth of the stock-yards district, and ranged in age from eighteen years to over thirty.

In the days before machine-gun politics, the knuckles of the club members made themselves so felt that, in the words of a member, "When we dropped into a polling place everyone else dropped out." The club was credited with settling the political fate of many candidates for the city council and the state legislature. The motto of the club was said to be, "Hit me and you hit two thousand." This newer generation of Irish were the sons of Irish laborers in the packing houses and stock-yards. Their Americanization made them averse to the plodding, seasonal, heavy and odoriferous labor of their parents, beset with the competition of wave upon wave of immigrants who poured into the area and bid for the jobs at lesser wages. The Irish, although increasingly in a minority, maintained control of ward and precinct organization of "pull" and patronage.

4. *Same: Dances and Social Affairs.*

When Ragen was County Commissioner, the Ragen Club gave its annual mask ball in March, 1915, at the Coliseum Annex. Society and club women were engaged at this time in a campaign against special bar permits for dances. Several women, representing the Political Equality League and other women's organizations, visited the affair as investigators. In their report to Mrs. Charles E. Merriam they made sensational statements about the conduct of those present:

> "There was debauchery and drunkenness and all sorts of indecent dancing, and at two o'clock in the morning boys and girls were drunk in the dance hall. The costumes of the women, some of them old, or at least not young, included baseball uniforms, pajamas, little girl or little boy costumes. The affair had the usual vulgarity we have decried in dances with special bar permits.
>
> "The relation between politics and these dances is clearly seen. When these dances are given by politicians and under their protection, I don't see what we can do to fight the special bar permit. It shows a connection between politics and the underworld of Chicago.
>
> " 'It was horrible' said one investigator. 'The longer they danced the more indecent they acted. I saw policemen several times stop couples

from acting improperly. Mr. Ragen was at the bar and in the dance hall. He walked up and down, visiting with everybody.' "[1]

Similar charges by the Juvenile Protective Association were made concerning the New Year's Eve party of 1917. F. P. Smith, financial secretary of the Colts, denied that the party was conducted in anything but an orderly manner. It quite likely was conducted in as orderly a manner as all the dances of that district. He said:

> "More than five thousand people attended the affair and minor disturbances, which are bound to arise in any assembly of such size, were handled efficiently by the officers of the club without the necessity of calling the police.
>
> "The club had the statements of reputable citizens, who were present, that the dance was conducted in an orderly manner. He stated that the club was about to take the necessary steps to defend itself against the unjust charges of the Juvenile Protective Association."[2]

The Ragens have always drawn their following from the "back-of-the-yards" district south of Forty-third Street to about Sixty-third Street. During the race riots they became the sentinels of the frontier of the white race against the spread of the colored race. The excitement of fighting and the altercations with police and militia would probably have been sufficient to engage their activities even though the members of the club had not been animated by racial animosity.

5. Same: The Race Riots.

While the memorable coroner's jury was investigating the casualties of the race riots there was evidence that many or perhaps most of the whites doing the rioting were members of political clubs. The Ragens emphatically denied this, as Mr. Frank Ragen does today. Several negroes testified that on the night the riot started a crowd of Halsted Street youths became involved in an argument with a colored man. According to the testimony the youth said:

> "Remember it's the Ragen Colts you're dealing with. We have two thousand members between Halsted and Cottage Grove, and Forty-third and Sixty-third streets. We intend to run this district. Look out."[3]

Patriotism for the United States is a potent sentiment among the Ragens. Five hundred Ragen members went into the United States armed forces during the war. Jimmie O'Brien, president of the club, said that while the riots were going on the organization had thousands at their quarters listening to a musical program. The organization was thinned out by enlistments in the army and the vacancies were filled up with a lot of young men who "raised Cain and worse," said Mr. O'Brien, who very likely had tried to attract the members away from engaging in the riots. Militia men in charge of the district of the race riots were harassed by hoodlums in the neighborhood. who hooted them and threatened to take away their guns and invade the negro district. It was difficult to prove that any of these hoodlums arrested were members of the Ragen Colts, and the police released them.

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[1] *Herald and Examiner,* March 22, 1915.
[2] *Daily News,* January 10, 1918.
[3] *Daily News,* August 2, 1919.

6. Same: Factiousness. Following the race riots Alderman O'Toole, the Sullivan leader, took the opportunity to have all cabarets and clubs in the district closed, including the Ragen Colts. Clubs favorable to Mr. O'Toole were reported to have remained open. The Ragen Colts Club was not the only political club engaged in the race riots and afterwards closed. The Our Flag Club at 613 West Thirty-seventh Street decided to run in defiance of the order. Altogether, the clubs that were closed claimed a membership of seven thousand. The Our Flag Club was raided three times. Nearby was the Pelican Club, running openly. They defied the police with messages like the following, "The Pelican's open; come over and arrest us." But nobody came. The order closing the clubs in the riot district, if issued to prevent further rioting, was evidently not impartially enforced.

7. Same: A Play Group. The Ragens were always ready for a bit of "rough-housing." One member came into a gathering of the Colts with a handbill announcing a lecture by Eli Ericcson, spreader of anti-papist propaganda, for January 31, 1922. Naturally, a crowd of members of the Ragen Athletic Club were present at the lecture. The meeting was broken up before it really started, and for several evenings afterward the Ragens kept close watch to see if Ericcson would make another attempt, to give them another opportunity for rowdyism. Joseph Brooks, later a casualty of the beer war, was then twenty-one years old. He was arrested and fined, while his three companions were released.

Frank Ragen has repeatedly announced through newspapers that he was through with the Ragen Athletic Club, but the loyalty and admiration of its members for him has persisted. He made such an announcement in 1922. Since the split with O'Toole he had had a great deal of trouble in bailing out the members and in helping them fight their cases. For six months the club was dark before Hugh Mulligan reorganized it and the Colts started out to gain a reputation. Mulligan is now at the head of the Chicago Asbestos Workers' Union.

Aside from their social affairs and their star teams in outdoor sports, they have maintained for many years a building fitted with considerable athletic equipment, parlors, and a pool and billiard hall. While they were at Fifty-second and South Halsted the improvements and appointments amounted to about twenty thousand dollars.

8. Same: Repercussion of the Beer War. In 1922, due to the numerous raids consequent upon beer running murders, the Ragen Athletic Club secured an injunction restraining the police from promiscuous raiding of the club house. The injunction, however, did not keep Lieutenant William O'Connor and his squad from forcing an entrance on December 15, 1922, after Ray Cafferty locked the door against them. The police were attracted to the place through a Ford car without a license and similar to one which had shortly before been used by gunmen on the west side who fired at two policemen. Eight Ragen Colts men were taken into custody.

Another such raid occurred on June 22, 1923, when four other Ragen Colts were arrested on suspicion that they were the men who fired on two

policemen, corroborated by the discovery of two sawed-off shotguns and bloodstained handkerchiefs in the car, which was later found to be a stolen one.

9. *Same: Election Violence.*

Ragen members could be secured to do "strong arm" work in the elections in other districts as well as the stockyards area. Hugh McGovern with John and Harry Madigan and John O'Brien kidnapped a Cicero clerk of election by the name of Joseph Rice and held him prisoner in a West Harrison Street saloon. The plaintiff charged kidnapping and assault to kill. The history of the trial of these four men is an interesting sidelight on the administration of the law. True bills were voted by the April grand jury in 1924. The case did not come up for trial until June, 1926. Critics of State's Attorney Crowe, who was elected in the primaries of 1924 when so much violence was used in the elections, accused him of purposely shelving this case along with others that grew out of the 1924 elections. Just before the case was due to come to trial a new assistant prosecutor was assigned to it, in place of the one who had been familiar with the case from its inception. The case was closed July 1, 1926, after the jury had been out forty minutes. The men were acquitted of the charge although the defense had offered no closing argument and the assistant prosecuting attorney in charge had made only a brief summary of the case for the state. The prosecuting witness, who had positively identified his assailants as McGovern, the Madigan Brothers, and O'Brien two years before, refused in 1926 to say that these four were the kidnappers, and it was generally understood that it was for fear of his life.

10. *Same: Criminal Colts: Hugh McGovern.*

Hugh McGovern was one of the most prominent criminals of the Ragen Colts, so far as can be judged by newspaper publicity. His activities were varied, ranging from gunning to gambling, and petty larceny. In March, 1925, his record showed seven arrests but only one punishment, and that was a fine for petty larceny. In January, 1927, he was fined one hundred dollars by Judge Fairbanks on a concealed weapon charge. These two fines are the only records of punishment for McGovern.

On March 8, 1926, he was identified as one of the attackers of James Thomas, colored. In a dying statement Thomas told the police he had been lured to the rear of the Ragen Club building by the promise of drinks and there he was attacked and fatally wounded. He was shot twice, stabbed several times, dragged into an automobile when his assailants thought him dead, and dumped on the corner, where he was picked up unconscious by the police. The police raided the Colt Clubhouse but found it deserted. Blood spots on the floor corroborated Thomas' story. Before he died Thomas identified Hugh McGovern and David (Yiddles) Miller as his assailants. Yiddles also has a long police record. As a pickpocket he boasts of his stand at the county jail.

In the fall of 1926 McGovern, accompanied by George McMahon and Thomas Johnson, set out for Mexico to establish a gambling firm. During a stop-over in San Diego, California, McMahon was murdered. The police arrested McGovern and Johnson, charging that they killed McMahon in a quarrel over the spoils of a robbery. They were acquitted of the murder.

Immediately following the verdict, charges were made that McGovern and Johnson had paid the state's attorney who prosecuted the case forty thousand dollars for securing the acquittal, and the state's attorney was eventually convicted of accepting the bribe.[1]

11. Same: Internal Feuds Due to Beer War.

The organization of the Colts developed internal feuds when individual members joined opposite beer running gangs in the beer war. Hugh McGovern, Thomas Shields and many lesser Colts were lieutenants of Ralph Sheldon. Dynamite Joe Brooks and Ed Harmening were affiliated in business with the Klondike O'Donnell gang, enemies of Sheldon. There was a constant pirate warfare between these two "mobs."

Prior to his departure to California, McGovern, still under surveillance for the killing of the negro, James Thomas, was seized with two other Colts, William Brooks and Thomas Shields, after a bullet, fired from the Ragen Colts club house, had narrowly missed Dr. William Borrelli.

Upon his return from California, McGovern, on January 5, 1927, was arrested in connection with the killing of Hilary Clements, found riddled with bullets. To afford an opportunity for questioning, he was arrested on a disorderly conduct charge, but was dismissed later by Judge Borrelli, a brother of Dr. Borrelli. Police were unable to connect McGovern with the murder of Clements, although he was the last one seen with the dead man. McGovern admitted that he was with Clements the night of the killing, but denied he had anything to do with the killing.

Besides being a Ragen Colt, McGovern was a lieutenant of Ralph Sheldon, who was at this time at war with the Saltis-McErlane beer gang. McGovern was entangled with another mysterious murder. He was arrested March 14, 1927, with a James Clements when they shouted to a group of prisoners held as suspects in the slaying of Lefty Koncil. Hugh's brother was probably among the prisoners. James Clements, police believed, was really John L. Clements, brother of Hilary, in whose death Hugh was suspected.

The last incident to date in Hugh McGovern's story was an auto wreck on May 16, 1927, in which Mrs. Julia Corbett was killed. He and Mrs. Corbett were found in the car, which smashed a lamp post. McGovern was unconscious when found and after reviving him the police took him to the Maxwell Street station where he refused to give any information about two companions, a man and woman, who fled after the crash. Cards found in the back seat of the car indicated that the man was Danny Stanton, "pal" of Dynamite Joe Brooks. The post struck by McGovern's car was on the north side of the street. He was driving east at high speed. This led to the theory that he might have been striving to get away from underworld enemies. McGovern was exonerated of all responsibility for the death of Mrs. Corbett.

12. Same: Joseph (Dynamite) Brooks.

Another notorious member of the Ragen Colts was Joseph (Dynamite Joe) Brooks, a saloon-keeper and member of Klondike O'Donnell's gang, who was located at Seventy-first and California Avenue during

[1] *Daily News*, October 8, 1926.

the beer war. Brooks was apparently immune from punishment although not from arrest. Brooks and Harmening were killed in the beer war.

Just prior to the killing, on October 3, 1926, a machine-gun attack from the roof of a shed across the alley in the rear of the Ragen club house, was interpreted as an attempt of the Capone gang upon the lives of these two men. The target was Dynamite Joe, but he escaped unhurt by diving through a window. Instead, Charles Kelly was torn to pieces and several men were injured. Other theories appeared in the newspapers:

(a) Intimations that the shooting was the answer to an attempt to assassinate Spike O'Donnell a short time previous.

(b) On November 16, 1925, Sheldon's cigar store near West Sixty-third Street and South Ashland Avenue was bombed and Brooks and Dan Stanton were believed to have been the "pineapple tossers."

(c) On November 27, 1925, two policemen, James Carroll and James Henry, were shot in a gun battle in Thomas McKeon's saloon, 5253 South Halsted Street. The shooting was ascribed to the beer feud between Sheldon and O'Donnell.

13. Same: The Leader's Sentiment for the Club.

It seems that the Shields' affair was the final episode in the life of the formal organization of the Ragen Colts. On August 4, 1927, the twelve remaining members met and decided to disband the organization and sell the club house. Although Frank Ragen had announced that he had severed his connections with the club in 1922, he issued the following statement in 1927 when the club was finally disbanded —an obituary and a testimonial to the Ragen Athletic Club:

> "There is no denying that there was a rough element among the members, but it should be remembered that the club was an active force for good in the stock-yards too.
>
> "Many needy persons who were helped by the club can testify to that. The club treasury was always open to persons in need, and the individual members were always ready to open their pockets to the poor. The south side won't forget soon the many Christmas festivals the club held for the poor children.
>
> "At one time we had a membership of three thousand. When the United States went into the war, 1,100 Ragen Colts immediately enlisted in the army and navy, and the record of those boys for bravery was high.
>
> "In the world of athletics, too, our boys made a fine record. One old Ragen Colt is Hugo Bezdek, now the famous coach of the football team at Penn State. I could cite many others who became well known in the athletic world. I think these things should be recalled in writing the obituary of the club."

The intimate relations of members and the elements of personal charity, the helping of a member in need without questioning what the need is, is typical of all the political organizations.

14. The Morality of the "Yards."

Chicago is a vast and complicated community. It is divided into areas widely separated from one another in economic status, customs, and standards. The social distance between the "Gold Coast" with its old families, and "Back-of-the-Yards" with its recent immigrant settlers, is tremendous. Their

inhabitants live as if in two different worlds. So different have been their rearing, experience, and outlook that the leading citizen of the lake front and the aspiring gangster of packing-town find it difficult to understand each other. Neither statistics nor formal records, and not even the newspaper, give these different worlds the knowledge of each other, necessary for a common public opinion, an opinion that is able to sustain the laws and secure their energetic enforcement. Crime to a certain degree is a natural and more or less inevitable consequence.

The following document[1] is an intimate close-up picture of a kind of political meeting that is never adequately reported in the newspaper:

"A testimonial banquet to John (Dingbat) Oberta, by the William J. Nellis Post of the Veterans of Foreign Wars, brings together a representation of all the phases of life of the stockyards district and an expression of its complex psychology.

"The banquet is held at School Hall, Forty-eighth and Honore streets, on Thursday, March 15, 1928. A primary election is impending and John Oberta is candidate for two offices, ward committeeman and state senator. The hall itself has been built by the Bohemians and remains as a symbol of their highly developed sense of communal organization, for it was a Sokol in its day, a combined community house and recreation center. The Bohemians have moved on, as others before them and after them, and the banquet has few Bohemians present. Every inch of wall space, the stage, the columns and the gallery are hung and draped with red, white and blue bunting in wheels, butterflies, shields and arches, work of volunteer enthusiasts who have spent several days decorating.

"It is a young crowd, with only here and there the white head of a proud mother. There are sisters and wives, all young and conservative in appearance, not the packing house worker but rather the type of clerical and stenographic help. This is the Americanized group from the stockyards, a sort of middle class, who have gained a step in the social ladder above their packing house parentage.

"There is one trait of 'Yards' culture that one must not forget. Regardless of what opportunities the boys grasp to work their way up, their family life is wholesome, irrespective of nationality. The boys are holding the banquet in their own neighborhood, and they bring no lewd women to rub elbows with their mothers, wives and sisters. Family life is the cardinal virtue. You may know another Dingbat Oberta, but they know the "Johnnie" whose sisters sit at the main table. By his efforts he has supported his widowed mother and raised his orphaned sisters. There is the emancipated woman too, Kitty Mulhall, City Hall attache, frequently seen in the office of the chief of police helping out stockyards friends, important in the campaign when she moved her activities to the Sherman House as a part of the mayor's entourage. She is there, as vivacious as an Irish colleen can be. She calls herself the "sweetheart of the Veterans of Foreign Wars," in the full page complimentary advertisement on the back of the evening's printed program.

"At first glance it looks like a banquet of mechanics and storekeepers. Looking closer at the faces, one recognizes at the head of the

[1] Report by guest at banquet.

first table the frequently photographed face of Tim Murphy. He is genial and social. Everybody about him is exchanging conversation with him and there is a great deal of hearty laughter as he turns from side to side and calls across to his many friends. One thousand hands and five hundred voices render a storm of ovation to the big Pollack, Joe Saltis, as he enters to take the seat across from Tim Murphy. And Tim and Joe, flushed with the happiness of the occasion, exchange friendly greetings. Farther down the main table one recognizes Maxie Eisen, famous 'merchant racketeer'; Sexton and Wills, of 'direct action' fame (C. F. Wills representing the Cook County Wage-Earners' League). There is Leonardi, whose connections in Springfield and elsewhere make him a great friend in need. There is Michael A. Ruddy, running for state representative under the same auspices as Oberta, those of Saltis, McErlane and Murphy.

"There are merchants of the neighborhood: the owner of an ice cream factory, the undertaker, saloon-keepers, radio men, and Jewish 'gents' furnishers.' At the principal table, along with the chieftains themselves, are more 'strong-arm' men from the window cleaners', steam rollers', and other 'direct action' unions. There is a sprinkling of policemen as guests, of neighborhood prize-fighters, and then there is a table occupied entirely by veterans of the war and their women folk.

"Patriotism, with flags, fife and drum, with oratory and song, is the sweeping motif of the feast. Disfigured in action and blinded in one eye, Nierenberg, state commander of the Veterans of Foreign Wars, pours out silver-tongued oratory, proclaiming the munificence of Dingbat Oberta toward forgotten veterans still bed-ridden a decade after the war, in the hospitals of the state. Oberta sends them cake and 'smokes' and boxing shows. He has not forgotten them.

"Tim Murphy is the leading speaker of the evening. At the mention of his name an explosive ovation follows and continues as he rises to step over the table to the speaker's table. By this time the feast has been consumed, waiters have poured out glass after glass of real beer —and let no one doubt its reality while Joe Saltis is there. The audience rises. Tim Murphy stands head and shoulder over the five hundred gathered. He is arrayed in conventional black; his small eyes sparkle out of his long red face with its lantern jaw. There is the one-sided smile that comes from a mouth battered crooked back in the days when knuckles counted in the stockyards district.

" 'I'm glad to be back here with you where I was raised, around Halsted and Forty-seventh, back here where a man is a man, where I know all of you. There may be some newcomer here and I might as well tell you that I am forty-seven years old and I have made many a speech around here. Fourteen years ago I ran for the legislature and was elected. I later went to Washington with a Congressman from this district, who was the best two-handed 'trigger' that ever lived around here. I don't care what the newspapers say about me or Joe Saltis or Johnnie Oberta, we never done any harm to anybody around the stockyards. You probably know us from the newspapers. I have been picked up, many's the time, for 'funny' larceny and concealed 'ideas.' (Great applause.) I even served three years in Uncle Sam's boarding house. (Overwhelming applause.) And I want to tell you that even there the men are ninety per cent good.

" 'Take Johnnie—you see how he helps the boys that were wounded in the big fight. Who else would help them? They come to the stock-

yards where anybody is ready to lend a helping hand. Vote for Johnnie Oberta and vote for Mike Ruddy, people who know you and are with you every day.'

"Tim knows the vernacular of the stockyards, although his business associations have carried him high into the sphere of proper English and he now lives in Rogers Park. He is genuinely popular; his humor, aided by his own hearty laugh, produces great merriment. And after all, most of his 'rough stuff' involved the organization of unskilled labor to get raises in pay and to insure greater security in their jobs to neighborhood wage-earners. What if he did hold up a United States mail train—with so confusing a spectacle as the due process of law, who knows whether they had the right man? Certainly a great many 'wrong' men are free and a great many 'right' men are in prison.

"Oberta himself speaks, after entering to the martial strain of a mounted guard with a fife and drum corps in a triumphal ovation. The president of the Nellis Post, Mr. Goldberg, presents him the honorary medal and certificate, a distinction only before accorded to President Coolidge and Vice-President Dawes. He expresses great sympathy for the disabled veterans in the hospitals; he has done what any man of means was called upon to do, he could not serve himself because he began early to support his family, but he has not forgotten the boys who have fought for him; he is ready to help anybody. 'Just try me.' In appearance he is a well groomed collegian with patent leather pompadour and glistening white teeth. His English, though limited, is grammatical, like that of an eighth grade orator.

"A priest rises to say a few words and the hall is in perfect silence. He does what the clergy can do in a community where there is a great deal of what is bad—he lauds as exemplary the good deeds of Oberta."[1]

Four leading sentiments color the morality of the stockyards; family solidarity, revolutionary labor heroism, patriotic national heroism, and unconditional mutual aid without hesitant criticism or question, against any danger, whether it be constituted authority or from rival gang interests. As for the law, it is believed to be often an ally of the exploiter or a tool of the enemy gang. The "racketeer" is the example of success under grim conditions. He retains his popularity because he is loyal to the neighborhood's morals. In industrial relations, as in bootlegging, or "racketeering," he promotes the interests of himself and his fellows "by every means, in any manner."

Of late years there has arisen what seems to be a totally mercenary gang, not of the neighborhood, which controls elections for the profits of illegitimate or contraband commerce. It is from this standpoint that the Capone gang in Cicero and the O'Banion gang in the Forty-second Ward are studied and compared, and the elements of their strength and weakness analyzed.

15. The Capone Gang. An election in 1924 marked the triumph of the Torrio forces over Cicero, which was formerly disputed territory. Torrio had at first attempted, without political protection, to open a vice establishment, which was closed by the Cicero authorities. Torrio then retaliated by having the slot machines raided, and

[1] Since this was written Big Tim Murphy has been assassinated.

finally established gambling places which were seldom interfered with by village authorities, sheriff or state's attorney.

In April, 1924, Capone entered Cicero for the Torrio interests in the midst of the April election. For years the organization, headed by Joseph Z. Klenha, president of the village board, had controlled the town. The government was the result of a bipartisan arrangement, the elections were decided between a "Citizens' " and a "People's" ticket. This year (1924) the Democrats decided to place a separate ticket in the field.

16. *Same: Pre-Election Preparation.*

Trouble started when Election Commissioner Czarnecki scratched over three thousand names of Republican voters from the register list. Czarnecki discharged large numbers of clerks, watchers and judges, and others were appointed by him in their places. Beer runners, anxious to win control of beer supplies in Cicero away from Torrio, aligned themselves on the side of the Democrats. The Torrio-Capone gang and their followers became active and, after a reign of terror, the Republican ticket was elected. The Monday night preceding the election gunmen invaded the office of William K. Pflaum, the Democratic candidate for clerk, beat him and shot up the place.

17. *Same: The Gangsters' Busy Day.*

Automobiles filled with gunmen paraded the streets, slugging and kidnaping election workers. Polling places were raided by armed thugs and ballots taken at the point of the gun from the hands of voters waiting to drop them into the box. Voters and workers were kidnaped, brought to Chicago and held prisoners until the polls closed. Stanley Stanklevich, 1528 South Fifteenth Avenue, a Democratic worker, was among the first kidnaped. He was held a prisoner in a basement until eight o'clock. Michael Gavin was kidnaped and found shot through both legs; he was imprisoned with eight others. Seventy patrolmen, two for each of the thirty-five precincts, five squads from the detective bureau and nine flivver squads, were deputized by Judge Jarecki and rushed to Cicero to drive the gunmen to cover.

The climax of the reign of violence was a gun battle between Capone gunmen and the squad. The machines carrying the police had just passed the polling place when three men appeared and opened fire with pistols. The policemen blazed back with shotguns and rifles. Approximately fifty shots were fired when one man fell, dead, and another was wounded. The dead man was Frank Capone, brother of Scarface Al. The wounded man was Dave Hedlin.

After the death of Frank Capone, an investigation was made of the numerous "gun toting" permits held by gangsters. It developed that the permit of Frank Capone was signed by Justice George Miller, who was among the justices summoned by Crowe to his office in 1923 to learn where the gangsters were getting their revolver permits. The lists were gone over and the Capones' permits revoked. At the inquest for Frank a second permit was introduced, signed by Justice Emil Fisher, of Cicero, for the purpose of self-protection.

Al's brother was given a spectacular funeral. The coffin was silver-

plated and the flowers were said to have cost more than twenty thousand dollars. The floral decorations were arranged by Dion O'Banion, then still a comrade under the overlordship of Torrio. Among the mourners were several who later became bitter enemies, and others whose presence illustrated the fraternalism of leading gangsters, regardless of their specialty—Earl Weiss, Julian (Potatoes) Kaufman, of the O'Banion gang, Mike Carruzzo, labor terrorist, "pal" of Tim Murphy, Diamond Joe Esposito, and others. Thus we have an example of the gangster not merely as the hired Hessian, but the gangster arriving at the position of political boss.

18. The Strictly Business Gang. The Capone gang is an organization of professional gangsters. It differs from the Ragen Colts in that it is not an outgrowth of a neighborhood play group. The Capone gang was formed for the business administration of establishments of vice, gambling and booze. Although many of these establishments are reported as owned by Capone, closer examination shows that they have separate owners but are under the political and physical protection of Capone and his gang. For instance, the actual ownership of "The Ship" was known in Cicero to be La Cava Brothers, Mondi, and three-fingered Jimmie Murphy. Another Capone gambling house was known to be owned by Frankie Pope, the millionaire newsboy. A house of prostitution in Stickney, however, was actually owned by Al Capone and managed by Charlie Carr, who had formerly managed "The Four Deuces" for him.

19. Occupational Skill and Apprenticeship. In the business administration and in the gambling house occupations, skill and experience are required. Ropers,[1] friskers,[2] door men, stick-men,[3] bankers,[4] shills,[5] specialists in roulette, faro, poker and chuck-a-luck, price men, telegraphers, "bookies," etc., are all occupations requiring a certain apprenticeship and knowledge of the psychology of the customers. Above all, most of the occupations require the handling of money or tokens representing money which can be cashed in. An expert vigilance over this personnel, paid by the day, the satisfying of customers, the stimulation of participation on the part of the onlookers who have a certain inertia about getting into the game, require experience. In Cicero though Italians acquired ownership, the most expert specialists in management were still Irish, taken over from the gambling houses of the previous generation.

Young gangsters consider it a special opportunity to rise in the gambling

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[1] "Ropers" are agents who solicit or direct patronage to a resort.

[2] A "frisker" is an employee stationed at the entrance who examines patrons for concealed weapons.

[3] A "stickman" draws in the dice with a curved stick instead of his hand, in order to have the dice in full view of all players before they are handed to the thrower.

[4] A "banker" takes in and pays out money; he must observe the game with a skilled eye in order to make fair payments of odds.

[5] "Shills" are those who play with the house's money but appear to be patrons. Some are excellent character actors. Their prime function is to keep a game going, as an ongoing game will more quickly attract patrons to participate. It is difficult to overcome the inertia of the onlooker unless there is an ongoing game to attract him. The odds of the game favor the largest number of hands. If three shills play in a poker game against a real patron, the odds are prima facie three to one against the patron.

"racket." For instance there is young Mopsie. Not more than three years previous he began as a roper. He was youthful and small of stature, not especially neat, had a hoarse, rough voice. He would mix on the street with idlers or anyone he could approach and interest in making a visit to the gambling house. His judgment was somewhat immature and frequently he would "rope" the wrong man who was a total loss of time. In such an instance the old hands gave Mops the "horse laugh."

Three years later, young Mops was managing "The Ship," a department store of gambling in Cicero. He was handling large amounts of money, was directing a considerable personnel. He now wore elegant apparel, had learned to modulate his voice, and was business-like in every movement. During conversation with a stranger he was guarded constantly. Like Joey Miller before him, he had become a youthful manager, supervising specialists years older than himself and doing it with a skill in the handling of money and workers and in the vigilance over subordinates, equal to that of an efficient assistant cashier in a large bank. For this opportunity he needed not only ability but connections which would assure the owners of his reliability. His brother, Big Mops Volpi, has been for years one of the trusted bodyguards of Al Capone, and prior to that had been a trusted man of Diamond Joe. Because of his youth, older syndicate managers would drop in during the busy hours and help young Mops out, as well as advise him. Charlie Carr was one of these mentors.

Aside from the skilled jobs, the syndicate has always had its standing army of gunmen which could be augmented in time of trouble and reduced to a few bodyguards and watchmen in the establishments in time of peace. In the Capone "mob" these were recruited from among known, reliable, quick-trigger men from all over the city and from outside the city; but the dominant element among these was always Italian and always men with a reputation tried and true.

20. The O'Banion Gang. The O'Banion gang is a feudal group of professional gunmen formed to exploit the business of crime, but unlike the Capone gang, its members are of many nationalities rather than predominantly of one racial group.

Just prior to the election of November, 1924, the newspapers stated that the big Republican boss feared the result of his ticket in two localities—one a river ward of Chicago which had gone against him before; the other in Cicero. At the instance of the election board, composed of Chairman Fred V. McGuire, Henry Lipsky and Anthony Czarnecki, Chief Collins assigned an extraordinary force of detectives to assist the fraud prevention bureau of the election board in "flying" squads, who would dash wherever needed in the thirty-six automobiles retained for the purpose. The detective bureau was to contribute two or three rifle squads to work around the river wards and the west and south side "badlands." A staff of 250 detectives, private investigators and assistant state's attorneys, to be headed by John Sbarbaro and Joseph P. Savage, two of Crowe's assistants, were to assemble at the prosecutor's north side office on the morning of the election.

21. *Same: Gangster Suasion.*

Dion O'Banion electioneered the river ward in his own peculiar fashion. After the kidnappings, sluggings, and threats of death and after the votes had been counted, there was reason for rejoicing in the headquarters. Crowe had won by a large margin, receiving 9,192 votes in the Forty-second Ward. His opponent, Michael Igoe, a Democrat, and Hope Johnson, running independently, received 5,106 and 353 votes, respectively. The *Tribune* described the election in the following manner:

> "Recently O'Banion has come more and more into the open with his toughness, after ostensibly reposing for a year within the perfumery of his flowers. Just before election he lined up some two hundred gangmen to work for certain sections of the Republican ticket in the Forty-second Ward. To get everybody in a proper frame of mind to obey his election day orders, he wandered into saloons and with easy nonchalance would cut loose with a couple of guns—not at anyone or anything in particular, but just to show he was a 'hard boiled' florist.
>
> "On election day O'Banion led his gang and helped the normally democratic ward to go three to one Republican. He got into fights and a dozen of his followers were arrested. He got them out quickly and kept working in his own fashion."

Carmen Vacco, city sealer, a few months after the election stated that O'Banion once had boasted to him that he had turned the Forty-second Ward from Democratic to Republican and had been the directing force back of the landslide.

22. *Similarities and Differences in Business Gangs.*

The O'Banion gang is similar to the Capone gang in that it is a union of adults for business purposes, each having served his earlier apprenticeship and having established his reputation in his own neighborhood. As in any other occupation, a man may start as a neighborhood entrepreneur and as he grows, his undertakings take on a wider area of activity; he makes more connections and gains the city-wide confidence of men in his profession. Very often the widening of a criminal's underworld acquaintance and mutual confidences occur through his contacts in the reformatory and penal institutions.

Safe-cracking, burglary, and robbery require no large scale organization for usual operations; men associate themselves in pairs and threes for the particular job. Many of the O'Banion gangsters came from these occupations. They were not unknown to each other. O'Banion and Drucci had been associated in the Powers Warehouse burglary and in the Parkway Tea Room safe-blowing. O'Banion and Weiss were associated in the safe-blowing of a typographical union, and Vincent Drucci and Frank Gusenberg were associated in the Harlib Jewelry robbery. Dapper Dan McCarthy seems to have had only labor slugging experience, while Nails Morton and Julian Kaufman's careers began as gamblers catering to the aristocracy among criminals. They probably operated more frequently together than the records show, but these occasional, changing partnerships for single projects are characteristic in this type of crime. Of course, connections with powerful fences, who take in and dispose of the loot, and with politicians and "fixers" are as necessary here as in any other field of crime.

Furthermore, the O'Banion gang lacked the racial cohesion which bound together the dominant element in the Capone gang. O'Banion was Irish; Nails Morton was Jewish; Vincent Drucci was an Italian and Hymie Weiss was a Pole, etc. The following comments were made by a Capone gangster at the time of the machine-gunning of Hymie Weiss and his companions after he had refused to make peace:

> "Do you suppose anybody could lay plans for weeks in advance and establish a machine-gun nest that close to Capone's headquarters to get him?
>
> "In the first place, Capone's men are loyal to him. They are willing to lay their lives down for him at any time.
>
> "In the second place, he is never without a bodyguard. I was away from him for a while and tried to come in to see him. I had to pass a double line of his men and was not allowed to come in until after Mops, who knew me well, got permission. Capone himself had a small gun sticking out of a vest pocket and a clip for the same automatic showing out of his other pocket.
>
> "Once I saw him sitting in a restaurant, the Garden of Italy, his regular eating place, near the Hawthorne Hotel. While he was eating his men were scattered along the bar and out into the street. An automobile was parked at the curb with a driver in it. A lady asked to see him. He gave permission and received her with courtesy, but every bodyguard looked her over carefully and the driver started the engine of the machine. It was running every minute while Capone was talking with her."

The organization of this armed force, its morale and its loyalty is typical of the discipline imposed by Capone, developed out of his long experience in organizing large-scale vice and gambling. Capone has survived many of the O'Banion type of gang chieftains. Perhaps it is for this reason.

23. Election Frauds. During primaries and elections, the evidence of the alliance of gangster and politician has again and again become a public scandal. The mutuality of their services is not difficult to discover. The gangster depends upon political protection for his criminal and illicit activities. He, therefore, has a vital business interest in the success of certain candidates whom he believes will be favorably disposed to him. The politicians, even the most upright, have a lively sense of the active part played in politics and elections by underworld characters. The gangsters and their allies always vote and bring out the vote for their friends, but the church people and other "good" citizens stay away from the polls, except for presidential elections and those occasional local elections, like the April 10, 1928, primary, when the issue of good citizenship versus organized crime was dramatically staged.

Election frauds are one of the ways in which gangsters and gunmen have repaid politicians for favors received. Fraudulent voting has been a perennial problem of municipal study in Chicago, and repeated investigations have been made. Only a summary is given here of the history of election frauds in Chicago. It is sufficient, however, to show the conditions responsible for the rise and persistence of election frauds and the failure of attempts to eliminate them.

An examination of vote fraud investigations since 1900 discloses the following facts:

(1) The geographic area within which vote frauds occur is limited and can be traced on the map of the city.

(2) The authorities over the election machinery, the county judge, the election commission, and the state's attorney's office, repeatedly carry on the same conflicts around the same legal points, arising out of duplication of function and overlapping and division of authority.

(3) The partisanship of the County Board of Commissioners determines its action in appropriating funds for special investigations.

(4) The encumbent state's attorney always opposes and impedes the appointment of special prosecutor and special grand jury to investigate election frauds if possible: (a) by efforts to stop the County Board's appropriation; (b) by efforts to gain priority in the appointment of a favorable special prosecutor and a favorable grand jury. Repeatedly there have been two or more special grand juries investigating vote frauds at the same time.

(5) The encumbent state's attorney tries to capture the services of the attorney general, who is in a position to take charge of as many grand juries as are in the field at any given time.

(6) When the dominant party is in the process of splitting into factions and factional bipartisan alliances occur, there is great activity in vote fraud investigation, with all the jockeying and maneuvering to capture the control of election machinery and prosecution and to secure advantageous publicity. This activity has seemed more often, in the past, to have as its aim factional advantage in political battle rather than the impartial suppression of vote frauds.

(7) The actual frauds that can be legally proved are committed by underlings. They refuse to testify as to the identity of their superiors in the conspiracy and it is, therefore, always impossible to convict the "higher-ups." The underlings under the gag of silence are usually sentenced for contempt of court by the county judge. Where prosecution is undertaken in a criminal court, it fails in a large number of cases because of lack of evidence. The political bosses furnish the money and attorneys to fight the cases, but they are seldom or never implicated by the testimony.

(8) The earlier centers of vote frauds were the areas in which dives, saloons, "flops," and rooming houses abounded, and the homeless or transient man was available in large numbers as purchaseable votes. This area was increased by the new immigration into territories dominated by political manipulators of the previous generations. Later, foreign leaders were developed under the tutelage of the earlier crooked politicians. In all of the foreign districts there have always been great numbers of immigrants who would stand aloof from politics because of what they regard as "low-down" local leaders and their crooked methods. The registration and the voting in these wards has always been small compared to the total population, and largely limited to the controlled vote. When racial or national group consciousness can be awakened through conflict situations, the politician can turn out a large number of legitimate votes.

(9) The young of the immigrant groups, beginning with the child at play

in the street, were assimilated uncritically into all of the traditions of the neighborhoods in which they lived. Street gangs were their heritage, conflict between races and nationalities often made them necessary—conflict and assimilation went on together. The politician paid close attention to them, nurturing them with favors and using them for his own purposes. Gang history always emphasizes this political nurture. Gangs often become political clubs.

(10) Through every investigation the most constant element is the connivance of the police, witnessing and tolerating the vote frauds and resisting investigation by refusing to give testimony. Through it all is the evidence that the police defer to the politician because of his power over their jobs.

(11) Slugging and intimidation of voters is a chronic complaint through this entire period. With the advent of bootlegging arose the new phenomenon of the armed wealthy gun chief becoming the political boss of an area.

(12) While every fraud ever committed has been practiced within the last eight years, it can also be said that within the last few years there has been the most effective, impartial fight upon vote frauds through prosecution. For this, civic agencies, supported by private funds, and an honest county judge, impartially driving toward the objective of clean elections should be accredited; the more emphatically because of the disadvantages of the chaotic governmental machinery which the prosecution has to employ and the odds against them in fighting the most powerful political organization in the history of Chicago.

24. Same: The Technique. The technique of vote frauds during the entire period can be analyzed and listed under three heads: (a) irregular practices of election officials; (b) irregular activities of party workers; and (c) proceedings subsequent to the announcement of the election returns.

A. Irregular Practices of Election Officials.

1. Padding Registration Books.
   (a) The insertion of fictitious names in the register to enable fraudulent voters to vote those names on election day.
2. Abuse of the Suspect Notice Provision.
   (a) Deliberate failure to send notices to irregularly registered persons, fictitious names and other names suggested by independent canvassers.
   (b) Mailing notices to legal voters hostile to the machine on the expectation that they will neglect to answer the notice and consequently be barred.
3. Substitution of Election Officials.
   (a) A scheme by which the duly appointed election official is either kidnapped from the polls or intimidated into remaining away, so that a "machine" worker conveniently at hand is given the appointee's place in the polling place. The selection of the new official is made by the judges at the polling place.

4. Failure to initial ballots.
   (a) The intentional omission of the election officials' initials from the ballots handed to voters known to be hostile to the "machine," thus invalidating the ballot.
5. Short-penciling, double marking.
   (a) A trick whereby the election officials counting the ballots furtively fill in crosses opposite names left blank by the voter, or by double marking invalidate the vote cast by the voter. Double marking is a trick by means of which a vote cast is invalidated by marking a cross opposite the name of the opposing candidate for the same office. Since this can occur even with the *bona fide* voter, there is little chance of detection.
6. Transposition of Totals on the Tally Sheet.
   (a) The apparently innocent and entirely plausible error of transposing the totals of votes with the benefit of the error going to favored candidates.
7. Alteration of Totals on the Tally Sheet.
   (a) The doctoring of totals while watchers are supposedly present during the count at the polling place.
8. Wholesale Changes on the Tally Sheet.
   (a) In the more notorious wards totals are inserted without regard to the number or distribution of votes cast. This requires the connivance of the entire staff and party watchers.
9. Substitution of Tally Sheets.
   (a) The substitution of the original sheet marked under the observation of the watchers for a false one marked by "machine" workers in accordance with instructions from party bosses.
10. Substitution of ballots.
   (a) The opening of sealed envelopes containing the ballots after they have left the polling place and the substitution of false ballots marked in accordance with the instructions of party bosses.

B. The Irregular Activities of the Party Workers.

1. Registration.
   (a) Non-resident vagrants registering under fictitious names and addresses.
   (b) Making false statement as to length of residence at correct address.
   (c) *Bona fide* voters of one precinct registering in another as a favor to some political boss in exchange for favors.
   (d) The actual housing of colonized vagrants for at least thirty days in order to conform with the lodging house law. This enables the ward bosses legitimately to control a large number of actually fraudulent votes.

2. Pledge Cards.
   (a) The use of pledge cards, obtained before election day, to determine the desirability of unregistered voters to party interests, and if found favorable, the precinct boss somehow manages to have the names inserted after the registration books have been closed.
3. Ballot Box Stuffing.
   (a) Inserting a bundle of ballots already marked into the ballot box before the opening of the polling place.
   (b) Raids on polling places by armed thugs and the stealing of ballot boxes before the count begins.
   (c) The intimidation of election officials during the counting of the ballots while fraudulent ballots are being added.
   (d) The wholesale stealing of a large block of ballots before the opening of the polling place. These ballots are marked and later mixed with the valid ballots at counting time.
4. Irregular Voting.
   (a) Chain system—stringing. The first of a string of voters is given a marked ballot to take into the polling place and place in the ballot box. He brings out with him the blank ballot given him by the clerk, which is again marked by a party worker on the outside and given to the next "stringer" voter, *ad infinitum*.
   (b) Voting for former residents who have left the precinct since registration.
   (c) Voting for registered voters who fail to vote.
   (d) Voting for registered voters who do not appear at the polling place until shortly before closing time. These voters are then refused the right to vote on the ground that they have already voted.
   (e) Removing ballots from the polling place avowedly for the use of bed-ridden voters, but actually for purposes of fraudulent marking.
   (f) Armed sluggers intimidating legal voters into leaving the polls without voting.
   (g) Shooting up of polling places and driving voters from the polls.
   (h) The purchase of votes by faction leaders, both from those who control the repeaters and from those counting the ballots.
5. Kidnapping of Workers.
   (a) This is resorted to when the party worker becomes too loud in his protest against the "machine" in the manipulation of ballots or he is known to be an important, uncompromising worker for the opposition; also so as to instill fear into the opposing party so that their workers will refuse to come out for their faction at future elections.

6. Open Conflict of Workers.
   (a) When both factions employ thugs to control the polling place, open warfare sometimes takes place when the thugs of one faction resist the fraudulent practices of the other faction.
7. Liberation of Arrested Workers.
   (a) When the police do make an arrest of a fraudulent voter, the latter is usually released, either by armed thugs at the point of a gun, or by deputized bailiffs of the municipal court placed at the polls to insure order, or by a judge who is actively engaged in politics who holds court at the polling place or on the sidewalk, and frees the fraudulent voter by judicial process.
8. Control of the Police.
   (a) Forcing the police to do the bidding of the ward boss under threat of demotion or on the promise of favorable mention to supervisors. Usually the policeman is called away from the polls on a ruse while the fraud is being committed. This leaves the police blameless.
9. Murder.
   (a) The deliberate assassination of party workers and political candidates of opposing factions where it is evident that such candidates are certain of election.
10. Support of Business Enterprises.
   (a) The owners of business profiting by the patronage of the gangs of hoodlums are required to furnish automobiles for the transportation of these fraudulent voters. Once the "hoodlum" is seated in the automobile, he can show little resistance to gangster persuasion.

C. Proceedings Subsequent to the Announcement of Election Returns.

1. Recounts.
   (a) As a means of settling factional disputes and to discredit the opposing faction.
   (b) As a means of keeping the ballots from those seeking to have a recount made by the election commissioners.
   (c) As a means of keeping the ballots from special grand juries investigating ballot frauds.
   (d) Refusal by the custodian of the ballots to surrender them to the opposing faction or to the grand jury until compelled to by court order.
2. Opposition of the State's Attorney.
   (a) Opposition in the impaneling of a special grand jury.
   (b) Opposition in the appointment of a special state's attorney.
3. Opposition by the County Board.
   (a) Refusal to appropriate funds for a special grand jury or special state's attorney.
   (b) Injunction in the name of a taxpayer to enjoin the use

of funds by the special state's attorney, already appropriated.

(c) Refusal of the County Board to appropriate additional funds for the continuance of the vote fraud prosecution.

4. Quashing Indictments.
   (a) After the indictments have been secured and the funds are exhausted, it is found that the indictments are faulty because of some technicality.

5. Challenging the Jurisdiction of the County Court in the Handling of Vote Fraud Prosecutions.
   (a) Appealing convictions obtained by the County Court.
   (b) Obtaining writs for the release of convicted vote manipulators but applying to the Circuit or Superior Court with a consequent clash of judges over jurisdiction. The disappearance of the convicted persons pending an appeal to the Supreme Court.

The long continued and prevailing nature of vote frauds in the river wards is indicated by the nicknames by which persons engaging in the various specialized activities are designated:

1. *Stringer.* One who votes by the chain system.
2. *Stinger.* An armed hoodlum who sometimes by threats and sometimes by "floater" methods casts as many as one hundred ballots in one day.
3. *Floater.* An amateur but usually homeless purchased voter, who votes many times during the day, going from precinct to precinct.
4. *Repeater.* One who votes several times in the same precinct under fictitious names or in place of voters who fail to appear.

The repeated difficulties rising out of the election machinery and the technique of frauds, as listed above, are susceptible to correction and specialists in elections should be set to work to improve the election machinery and eliminate election frauds.

25. Conclusions. It will not be so simple or so easy a matter to disrupt the friendly relations of politician and gangster. The documents on the Ragen Colts and the testimonial banquet to John (Dingbat) Oberta show this fact unmistakably. These documents were selected from many others to indicate forms of neighborhood sentiment and standards of morality in the areas of vote frauds, far different from those of the lake front residence districts.

In the Dion O'Banion and Al Capone gangs is found a different and more sinister form of relation between the gangster and the politician. Neighborliness and friendly relations recede to the background. Operations in crime and political protection from its consequences are no longer local but city-wide. Immunity is no longer obtained by friendship, but from graft. Organized crime and organized political corruption have formed a partnership to exploit for profit the enormous revenues to be derived from law-breaking.

CHAPTER XXV

FUNERALS OF GANGSTERS

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CHAPTER XXV

FUNERALS OF GANGSTERS

1. *The Funeral of Colosimo, 1920.*

The funerals of gangsters have invariably attracted wide attention, partly because of the great pomp with which they are celebrated and partly because of the extraordinary variety of persons—gunmen, politicians, and people prominent in public life—which there assemble to assist in the ceremony. These ceremonies are at the same time an exhibition of the wealth and the influence of the men themselves, and a revelation of the intimate relations between politics and crime.

The funeral of no man in Chicago ever brought together, in all probability, as complete and picturesque a representation of the Chicago that lies outside of the "Gold Coast" as that, in 1920, of James (Big Jim) Colosimo, overlord of the old levee district. Among the honorary pall-bearers were aldermen, judges, congressmen, noted singers of the Chicago Opera Company, leaders of his immigrant group and his associates in underworld activities. Thousands of Chicagoans read with astonishment of the manifestations of personal friendship of the thousands who joined the funeral procession. The scene was described by one newspaper under the headline "Levee Says Goodbye to Big Jim":

> "Jim Colosimo was buried in Oakwood Cemetery today with a huge cortege—one thousand members of the First Ward Democratic Club, headed by John Coughlin and Michael Kenna, led the procession. Behind the hearse was Dale Winter and Rocco de Stefano, in a closed car.
>
> "The ceremonial which had been held at the house was brief and very simple. The Rev. Pasquale de Carol, a Presbyterian minister, delivered a prayer. When it ended, Alderman Coughlin knelt at the casket and recited the 'Hail Marys,' several hundred mourners chiming the responses. The alderman pronounced the words of prayer for the dead.
>
> "The Apollo Quartet sang the hymns. They had just finished when Dale Winter, leaning on De Stefano, came swaying down the stairs. As the band played 'Nearer My God to Thee,' Jim was carried to the hearse.
>
> "Five thousand mourners saw their friend borne away. The procession went through the heart of the district where the name of the dead had been a power, less and less sinister as the years rolled by.
>
> "When the hearse arrived opposite the cafe it slowed to a halt, resting for ten minutes.
>
> "Among the men present, besides the pall-bearers, were Mike Fritzell (later a friend of Druggan), Ben Zellin, Tom Chamales of the Green Mill Gardens.
>
> "At the cemetery a eulogy was delivered by De Stefano, Colosimo's attorney and life-long friend.

"Next Tuesday the vault containing the private papers will be opened and the size of the estate determined."[1]

Two agencies in the community stand aloof from this general public interest in the funerals of underworld characters. Because of fundamental principles, both refuse to approve the glorification of the gangster or underworld chieftain. The first of these is the Roman Catholic Church. Father Philip F. Mahany has written[2] the following interpretation of Cardinal Mundelein's refusal of Christian burial to gangsters:

"His Eminence makes it plain to his pastors that any gangster who, because of his conduct, is looked upon as a 'public sinner' or who by his refusal to comply with the laws of his church regarding attendance at church services and Easter duty (reception of the Sacrament of Penance and Holy Communion during the Easter season), such a man is to be refused Christian burial.

"Therefore it cannot be assumed that the fact of one's being a gangster or bootlegger is alone the cause of his being refused Christian burial, for each individual case must be considered. If there is a doubt as to his giving public scandal, etc., by reason of his position in life, the Cardinal counsels that simple rites be observed at his funeral."

In the case of Colosimo the situation was confusing. As he had risen to power he had formed relations with men in all stations of life. His many-sided friendships and alliances were mixed, good and evil. The Church, in denying him burial in a Catholic cemetery, made its position clear. Archbishop Mundelein issued an order to Father Hoban, Chancellor of the Arch Diocese, "forbidding him from permitting" the body to be buried in a Catholic cemetery or brought into a Catholic church. It was pointed out in the press that Colosimo had not, in his manner of living, abided by the rites of the church, and by divorcing Mrs. Colosimo and marrying Dale Winter, had broken one of the church's sacred canons.

The second of the two great agencies to insist upon a somewhat antiquated definition of public morality was the press.

"Vice King Funeral.

"Following the body of Big Jim Colosimo to the grave today will move a cortege which should interrupt the complacent thought of Chicago. Three judges, eight aldermen, an assistant state's attorney, a congressman, a state representative, and leading artists of the Chicago Opera Company are listed as honorary pallbearers, as well as gamblers, ex-gamblers, dive-keepers, and ex-dive-keepers.

"A cavalcade such as moved behind the funeral car of Cæsar is to pay homage to the memory of the man who for more than a decade has been recognized as the overlord of Chicago's underworld. Such tribute from men set up to make and enforce our laws, to a man who in much of his life was a law unto himself, is more than the tribute of friendship. It is a tribute to power, regardless of the source or justice of that power.

"Jim Colosimo ruled his world. Out of his rule came sudden death

[1] *Chicago American*, May 15, 1920.
[2] A statement prepared for this study.

to him. Raised to the throne of the half world, he was a maker and breaker of political aspirations. His methods were ruthless, considering the law only in so far as to avoid its penalties. The penalty which came to him was not of the law but of the kingdom which he had built up, yet it brings to his grave a concourse notable for its lights and shadows.

"It is a strange commentary upon our system of law and justice. In how far can power, derived from the life of the underworld, influence institutions of law and order? It is a question worthy of the thoughtful consideration of those entrusted with the establishment of law and order and of those dependent on and responsible for such trust."[1]

A newspaper reporter of the Chicago *American* on May 14, 1920, contributed this explanation from his observation of Colosimo's personal influence and political power:

" 'No matter what he may have been in the past, no matter what his faults, Jim was my friend and I am going to his funeral.'

"These and similar words were heard today from the lips of hundreds of Chicagoans. They were to be heard in the old Twenty-second Street levee district, over which Jim for so many years had held undisputed sway, they dropped from the mouths of gunmen and crooks, while many a tear ran down the painted cheek of women of the underworld.

"They were heard from many a seemingly staid business man in loop skyscrapers and from men famous and near-famous in the world of art and letters, who had all mingled more or less indiscriminately with the other world which walks forth only at night. All these classes, hundreds of each, will be present at the funeral."

2. Same: Its Significance.

The reporter's story puts the emphasis upon friendship. Colosimo was a great friend and established many friendships among all ranks. These friendships were personal relations. *Political power in a democracy rests upon friendship.* A man is your friend, not merely because he is kind to you, but because you can depend upon him, because you know that he will stick and that he will keep his word.

Politics in the river wards, and among common people elsewhere as well, is a feudal relationship. The feudal system was one that was based not on law but upon personal loyalties. Politics tends, therefore, to become a *feudal system.* Gangs, also, are organized on a feudal basis—that is, upon loyalties, upon friendships, and above all upon dependability. That is one reason why politicians and criminal gangs understand one another so well and so frequently enter into alliances with each other against the more remote common good.

The editorial writer puts his emphasis upon the fact that the rule which Colosimo established and maintained was a rule outside of and antagonistic to the formal and established order of society. This charge is undeniably true, for it is an undoubted fact that friendship, which is one of the most amiable and commendable of human characteristics, frequently does under-

[1] *Tribune*, May 15, 1920.

mine the more formal social order. Idealists are notoriously not good friends. No man who is more interested in abstractions like justice, humanity and righteousness than he is in the more common immediate and personal relations of life, is likely to be a good mixer or a good politician.

The city of Chicago, if we look at the map, is clearly divided into two regions, the east side and the west side—the lake front and the river wards. On the lake front are idealists and reformers, and in the river wards party politics based on friendly relations. This contrast between the two sides of the city, with their different social systems, is part of the problem of the interlocking relationships of crime and politics; and the repeated failures of the public in its attempts to break the alliance is an indication of the extent and persistence of these relations. In the practical work-a-day world in which Colosimo lived, the clear line of demarcation between right and wrong, as defined by law and public policy, did not exist.

Politics, particularly ward politics, is carried on in a smaller, more intimate world, than that which makes and defines the law. Government seeks to be equal, impartial, formal. Friendships run counter to the impartiality of formal government; and, vice versa, formal government cuts across the ties of friendship. Professional politicians have always recognized the importance, even when they were not moved by real sentiment, of participating with their friends and neighbors in the ceremonies marking the crises of life—christenings, marriages, and deaths. In the great funerals, the presence of the political boss attests the sincerity and the personal character of his friendship for the deceased, and this marks him as an intimate in life and death.

It was the practice of John Powers, throughout half a century, to attend the funerals in his ward, to send flowers, and to pay the expenses of the poor. When Samuzzo Amatuna was killed in the booze war, his attempt to save the "alky-cooking" industry for the Italians who engaged in the business, at a time when it was very dangerous to assume leadership, gained him a great following. He had saved little for himself in the business because he was liberal with the profits. John Powers was one of the early arrivals at the funeral, and as he stood on the front porch his neat small figure arrayed in the most proper apparel, with his gray head and white mustache, attracted the attention of the multitude in the streets; and in the crowds at the cemetery it was often repeated that, according to the Italian custom, he had "kissed Samuzzo twice," once in the home and the second time at the cemetery. The politician needs to be conversant with all the social ritual and he assists in the ceremonies with propriety and grace. It would be wrong to assume that he is devoid of genuine sentiment and that his life-long intimate relations with the neighborhood population, sharing their common adversities, does not entail a genuine friendship, but public appearances are of great value to the politician and "one vote is as good as another."

3. Dion O'Banion's Funeral.

Dion O'Banion was buried without benefit of clergy, because of the order of the church—even though in the advance publicity of the funeral it was mentioned that Dion had been Father O'Brien's altar-boy at the Holy Name Church for four years.

Funerals of Gangsters

"Bury O'Banion Without Benefit of Clergy.[1]

"Dion O'Banion to be buried today without benefit of clergy. It was admitted by friends that every effort had been made to have his funeral services conducted in some church.

"There was to be a six-piece orchestra; who would conduct the services was not known last night. O'Banion belonged to no fraternal organization which could be called upon to hold the ceremony.

"Flowers came to the chapel in truck-loads. So many came that wreaths and baskets were stored in back rooms after the walls of the golden lighted little room with its stained windows were lined and only an aisle was left down the middle of the room.

"There was a huge wreath from the Teamsters' Union; a basket of roses bore the card of Al (Scarface) Capone, and another sunburst of chrysanthemums flowing from a basket was from David Jerus."

Other prominent Chicago clergymen, as for instance Dr. Thompson, expressed fear that the hero worship of O'Banion would have a demoralizing effect upon the youth of Chicago, and Dr. A. J. McCartney thought the incident indicative of something wrong with the whole system of criminal restraint and procedure.

"In Ten Thousand Dollar Casket Dion Lies in State.

"Dion O'Banion lay in state in the chapel of the Sbarbaro Undertaking Rooms at 708 North Wells Street in a ten thousand dollar casket. It was the 'best money could buy.' Its designers in Pennsylvania sent it to Chicago in a special express car that carried only the casket for freight.

"O'Banion was thirty-two years old when killed.

"For four years Dion had been Father O'Brien's altar boy at the Holy Name Church."[2]

George P. Stone in the Chicago *Daily News* reported the following about notables attending the wake:

"Pals Bury O'Banion as 5,000 Pack Street.

"Many notables who did not attend the funeral proper were at the wake last night. Alderman Dorsey Crowe, in whose political campaign O'Banion was active just before his death, was at the wake. So were Judges Burke, LaBuy, Schulman, O'Connell and Borrelli of the Municipal Court, and former Judge Barasa."

But the criticisms of the church and the press again did not deter a great throng from attending the funeral, regardless of what their motive may have been.

"Chieftain Is Borne to Cemetery in Regal Rites.

"Thousands and thousands lined sidewalks, stood on fire escapes and on roofs, as the twenty-four automobiles full of flowers, the one hundred twenty-two funeral cars, the scores of private cars, and the hearse carrying the ten thousand dollar silver and bronze casket rolled slowly by.

"Traffic was halted for twenty minutes along east and west streets

[1] *Tribune,* November 4, 1924.
[2] *Tribune,* November 3, 1924, by Maureen M'Kernan.

in the loop, shortly before noon. This has few precedents, as funerals are forbidden to pass through the loop district except by special permit. Two motorcycle policemen from Stickney, Illinois, led the procession from the parlors to Jackson Boulevard, inasmuch as Chief Collins had refused a city escort. However, the mourners had a permit from the West Park System, so that as soon as the procession reached Jackson Boulevard it was met by a squad of West Park motor policemen who cleared the way ahead.

"The Rev. Father Patrick J. Malloy, of St. Thomas of Canterbury Church said a few simple prayers in Latin and then in English over the grave and the body.

"The police announced that it had learned that the band over which O'Banion had leadership had decided to maintain its organization. There was to be no individual leader, but the members would be ruled by the council form of government, the council consisting of Louis Alterie, Dapper Dan McCarthy, Max Eisen, Vincent Drucci and Earl Weiss."[1]

The funeral of Dion O'Banion set a new record for ostentatious display. There can be no doubt that the magnificence, the large attendance, and the publicity of these last rites tended to glorify the life and daring deeds of the gang leader, even beyond the limits of the world in which he lived. Uale, the New York gangster chieftain, is said before his murder to have repeatedly expressed the wish for a funeral that would surpass in lavish display that of his reputed sworn enemy, O'Banion. His desire was granted. The beautiful silver casket in which the remains of Uale reposed was said to have cost fifteen thousand dollars, and New York was scandalized by the numbers in attendance at the funeral.

4. The Funeral of Nails Morton, the Community Hero.

Often the leader of a criminal group is a local community hero because he is identified with some activity or cause in which the people of the locality have a common interest. This is often the case among immigrant colonies in Chicago. The funerals of Samuzzo Amatuna and Nails Morton show the way in which an immigrant group glorifies its representative, even when he may also be a criminal.

Samuzzo Amatuna was but a young man of twenty-six when he was killed. He was known for several years as a gunman. He had participated in enforcing labor rules and demands and had been held by the police in several murder cases, but he was also known as charitable and strongly nationalistic. He had been an intimate of Diamond Joe and of the Merlo family. Just prior to his death he became engaged to a young lady of that family. Merlo had been a highly respected leader of the Italians, a figure in politics, and a dispenser of popular justice, and he had used his power to control such of his following as were quick to resort to the gun and to restrain them from using it.

The Scalise-Anselmi case was pending at the time Amatuna was killed. While to the general public this case was one in which bootleggers and politicians engaged in a battle resulting in certain deaths, the closer national group saw in it a war between Irish and Italian for the control of an industry

[1] *Herald and Examiner*, November 15, 1924.

as illegitimate for one as for the other. The Irish had captured the government, the public officials were Irish and there were several hundred crooked police sharing the profits of the Italian bootleggers. The general correctness of this last statement was corroborated by Chief Collins himself, who made wholesale transfers immediately after this affair. Making and selling booze is not regarded in most sections of Chicago as immoral, even if it be illegal. Furthermore, the nationalist group was consolidated by the attacks flung at it by the prosecution through the newspapers. These attacks reflected upon the whole people. The net result was the feeling that between those of our own blood and strangers we would rather have our own reap the harvest. There was resentment in the group because Amatuna had been denied the mass and burial in a Catholic cemetery, and every effort was made to have the order changed, with a final measure of success when Father Luige was permitted to say a simple prayer in the street alongside the church, and as much effort was exerted finally to allow the body, after several days delay, to be buried in Mount Carmel Cemetery.

The funeral of Nails Morton illustrates the gangster's role as defender of his nationals. It indicates also that in a metropolis the same individual may have several personalities, one for each separate world in which he participates. "To one set of acquaintances he is a gallant soldier; to another, a dauntless defender of his race; and to the police a notorious gangster."

Nails Morton was not killed in action, as a gangster by gangsters, but died by falling from a horse. "His death caused genuine grief among his loyal friends. Fellow gangsters, at a loss to express their feelings except through revenge, kidnaped the horse and solemnly 'bumped him off.'"

The following article, reporting the funeral of Nails Morton, appeared in the *Daily News* of May 15, 1923:

"Tribute to Nails Morton
Five Thousand Jewish People Attended the
Funeral Acclaiming Him Protector.

> "Funeral services this afternoon brought dramatically to light a phase of the gang chieftain's character that few outsiders knew while he was alive. Five thousand Jews paid tribute to Morton as the man who made the west side safe for his race. As a young man he had organized a defense society to drive 'Jew baiters' from the west side. Speakers at the brief services extolled Morton for his work for his race and for his gallantry in the World War. The other side of the career that ended was not mentioned."

There were religious, fraternal, and military services, with Rabbi Julius Levi, the Elks, and Morton's former "buddies" of the One Hundred Twenty-third Infantry officiating. Officials of the city, state, and federal government attended. Hundreds of dollars worth of flowers were sent to the chapel by friends.[1]

A memorial service was planned by friends, marking the first anniversary of Morton's death.[2] The printed announcement carried the names of Rabbi

[1] *Herald and Examiner*, May 15, 1923.
[2] *Daily News*, May 9, 1924.

Felix A. Levi, Rev. John L. O'Donnell, Gen. Abel Davis, and Captain Ed Maher. Attorney Frank D. Comerford was to deliver the principal address. Others to participate were Jacob Epstein, Sol. P. Roderick, Morton Kallis, Earl Weiss, Max Eisen, Terry Druggan, Frank Lake, John Torrio, Dan McCarthy, Dave and Hirschie Miller, Izzie Rothchild, and "Lovin' Putty" Annixter. This announcement offended Gen. Abel Davis, who refused to take part in the memorial service and characterized this movement as a mistake. On May 13, 1924, the *News* carried the following story of the statement of Gen Abel Davis:

"Rips Glamor out of Gunman's Memorial.
Gen. Abel Davis Calls Nails Morton Scheme Mistake.
Backers Postpone it.

"Davis said that he thought 'they are making a mistake in flaunting the man's record in the faces of decent citizens.' He refused to take part in the program and the meeting was postponed.

"The incongruous associations in the membership list of the proposed association suggest the life that Morton lived. To one set of acquaintances he was a gallant soldier, to another set a dauntless defender of Jewry, and to the police a notorious gangster with the slaying of two policemen charged against him."

In the case of Nails Morton it was not the church that refused to sanction the celebration of the anniversary of the gangster's death, but a prominent personage in his cultural group. The effect, however, was to define the situation and to make clear to his followers the distinction between good and evil as the public defined it.

Unless the slain gangster is identified with service to the immigrant group of which he is a member, the participation of the community in the funeral services may be slight. This was the situation in the case of "Bummy" Goldstein, a young Jewish gunman, who was shot a week or so later. There were bootleggers, gunmen and politicians at the funeral and there was some good spoken of him, but the community participated very little. Some elderly men came into the funeral parlor to hold a prayer service, but there was a chasm between the youthful gangsters and the older conservative people. The gangsters gave the elderly men a cold reception and they went away. An old man who sat beside the coffin reading Psalms was told to go. In fact, an undertaker, long established in business in the Jewish community, had refused even to accept Goldstein's body for burial. There was no resentment felt by the gangster group—in fact, the youths deemed themselves emancipated and considered the religious ceremonials as old fogyism.

5. *Recent Decline of Display.*

The earlier Genna funerals, those of Angelo and Mike, were examples of the display of pomp which is intended to impress the antagonists with a sense of power. The funeral of Tony, as a spectacle, was unimpressive, even though he, too, had a very expensive casket and the family itself did all it could for him. There were two theories as to why Tony's funeral was a "flop." The first was that a police order had prohibited an ostentatious funeral. The second was that Tony had incurred the hatred of the Italian "alky-cooking" industry. He had effected a transition in the industry from

household production to factory production; he had substituted alcohol recooking for distilling from mash. Distilling from mash was done on a small scale and produced about one gallon of alcohol to every ten gallons of mash. The mash still could be traced by its smell and Federal warrants could be issued on evidence of the smell. Recooking produced really double its volume in alcohol because even one hundred per cent proof means fifty per cent alcohol. Tony had told the neighborhood cookers, "I don't need you. I can hire a man for fifteen dollars a day to sit by and smoke his pipe, watching the still, and he can produce as much 'moon' as all of you put together." Tony Genna had incurred the unpopularity of the capitalist who displaces household industry by a factory method.

The decline in display in gangster and underworld funerals can perhaps best be appreciated by reference to the following lists of the notables present at the wake or the funerals of ten of the underworld leaders of Chicago during the last seven or eight years:

Big Jim Colosimo, shot May 11, 1920.

Honorary Pallbearers

Alderman M. Kenna
Moe Ottheimer
George Burman
John Irwin
Judge B. Barasa
Judge J. K. Prindiville
Michael Igoe
Congressman J. W. Rainey
Congressman Thomas Gallagher
Judge J. R. Caverly
Hon. Louis Behan
Sol. Van Praag
James Carr
Adolph Gassman
William McLean
James Mackay
George Silver
Ike Bloom
John Torrio
Mike Potzin
Allessandro Moggi
Dr. J. C. Hanmore
Dr. A. M. De Vault
A. Serrietella
J. H. Adler
Andrew Craig
Harry Kavanaugh
Dwight McKay
Mike Merlo
Francis Borrelli
Joseph Esposito
Maestro Gracomo Spadoni
Francisco Daddi
Tito Ruffo
Alderman J. O. Kostner
Alderman Dorsey Crowe
Alderman George E. Maypole
Alderman Timothy Hogan
Alderman John Toman
Alderman John Powers
Alderman James P. Bowler

Active Pallbearers

Dr. Peter Furno
Rocco De Stefano
State Senator John Griffin
Patrick O'Malley
Alderman John Coughlin
Frank Camilla
Charles Castello
John Buddinger
John Vacco
Ike Roderick

Among Those Present

Mike Fritzell, later friend of Druggan
Ben Zellin
Tom Chamales of "Green Mill Gardens"

Anthony D'Andrea, shot May 11, 1921.

Honorary Pallbearers

Judge Joseph Sabath
Judge George Kersten
Judge R. H. Miller
Judge D. F. Marchett
Judge Kirkham Scanlan
Judge H. M. Friend
Judge D. S. Morrell
Judge D. M. Brothers
Judge P. L. Sullivan
Judge F. S. Wilson
Judge O. M. Lorrison
Judge J. A. Swanson
Judge L. Jacobs
Judge J. W. Brien
Judge J. K. Prindiville
Judge Bernard Barasa
Judge George Holmes
Judge W. L. Morgan
Judge J. Schulman
Judge Hugo Stewart
Judge William Fetzer
Attorney W. Navigato
Attorney G. Spatuzza
Attorney Thomas Nash
Attorney Ben J. Short
Attorney M. Ahern
Attorney D. Barone
Attorney J. Priore
Attorney Francis Borrelli
Attorney Stephen Malato
M. Rosini
N. Pape
S. Insalato
J. Zappina
V. Chisesi
H. Tiffo
G. Crapple
F. DeBartalo
V. Pace

Active Pallbearers

Stephen A. Malato, special prosecutor for the state
Diamond Joe Esposito
Peter Russo, leader in Unione Siciliana
Otto Anerino, representing the Hod Carriers' Union
Peter Fasco, representing the Hod Carriers' Union
Joseph Maresechi
Carmen Vacco, city sealer

Funeral cortege was about two and a half miles long.
About eight thousand people attended.
Flowers estimated at eight thousand dollars.

He was forbidden the last rites of the Catholic Church, but his brother, a priest, was allowed to give a very short sermon.

Dion O'Banion, killed November 10, 1924.

The following notables did not attend the funeral but were at the wake:

Alderman Dorsey Crowe
Judge Burke
Judge La Buy
Judge Schulman
Judge O'Connell
Judge Borrelli
Former Judge Barasa

Among truckloads of flowers were some from The Teamsters' Union, Scarface Al Capone, and David Jerus. Rev. Father Patrick J. Malloy, of St. Thomas of Canterbury Church, spoke at the grave.

Funerals of Gangsters

Angelo Genna, killed May 26, 1925.

Pallbearers

All of them members of the Unione Siciliana.

Tony Abbatto	Frank Coppola
Joe Piazza	Paul Agate
M. Aratzio	Vito Cash
Biogo Accabodi	Joe Gondolpha

In the front ranks of mourners:

State Senator John T. Joyce
Alderman John Powers
State Representative William V. Pacelli
State Representative Charles Coia
City Sealer Carmen Vacco
Diamond Joe Esposito
Mike Carrozzo
Al Capone was also present.

Three hundred cars in which were people and thirty cars containing flowers were in the procession. The funeral cost was estimated at one hundred thousand dollars. Casket of solid silver with name in gold letters. No ceremonies at the church because it was a murder case but Father Bifoletti, of the Holy Guardian Church, officiated at the cemetery.

Mike Genna, shot June 13, 1925.

Buried with secrecy. Captain Stege announced that squads of detectives would be on hand to seize every criminal or suspect who might appear to watch the passing of the youngest of the dread Gennas. No mourners; no flowers; no attendants except the undertaker.

Tony Genna, shot July 8, 1925.

Denied rites of Catholic Church; no lavish display; hasty burial without even a prayer; unhonored, little mourned; few flowers.

James and Sam Genna fled after Tony's death. Pete believed to be in Italy. James killed January 11, 1926.

Samuel (Samoots) Amatuna, shot November 9, 1925.

Body taken to Pogallo, Sicily, his native village, for burial.

Hymie Weiss, shot October 11, 1926.

Pallbearers were all school friends from St. Malachy's School. Last rites of Catholic Church denied. The following sent flowers:

Mrs. and Mr. Joe Donovan
Pat Mondane
"The Colonel"
Sally and Leo Ziv
Mr. and Mrs. A. Cohen

Costly cars of mourners had signs, front and rear:

John Sbarbaro for Municipal Judge
Joe Savage for County Judge
King-Eller-Graydon, Sanitary District Trustees

Among those present were:

Eisen	Cocky Doers
Kaufman	Leo (Nebo) Weiss (no relation to Earl Weiss)
Gusenberg	
Drucci	Marty Dwyer
Big Ed Vogel	Larry Dowd
Puggy White	Chinks
Whitey Marlowe	Jack Peoples

Police squads were at the funeral to arrest gangsters, but Drucci, Eisen and Moran have no fear.

Vincent Drucci.

Among those who attended the wake were:

James (Fur) Sammons
Bennie Jacobs
Gusenberg brothers

Among those who attended the funeral were:

Al Capone	Dapper Dan McCarthy
George Moran	Joe and Mrs. Saltis
Maxie Eisen	John Oberta
Frank and Pete Gusenberg	Frank McErlane
Potatoes Kaufman	

Mrs. Dion O'Banion consoled the widow.
Denied rites of Catholic Church.
Military rites, five pallbearers were in uniform.

Big Tim Murphy, shot June 26, 1928.

Pallbearers

John McDermott	James O'Neill
Frank Hughes	Harold Spencer
Daniel Higgins	John McGuire
Joseph McCarthy	M. Scott

Seven hundred to one thousand people in attendance; no one of prominence. John Oberta among his friends and mourners. Twenty automobiles in the cortege; five cars piled with flowers. Two thousand five hundred dollar steel casket trimmed with silver. Denied church rites; buried in unconsecrated plot in Holy Sepulchre Cemetery.

A survey of the notables in attendance at gangster funerals clearly shows the declining number of public officials in attendance as well as decreasing ostentation. The effect of the present popular uprising against the alliance of organized crime and politics is shown most unmistakably in the recent funeral services for Big Tim Murphy.

6. *Passing of Tim Murphy.* On June 26, 1928, at 11:10 p. m., Big Tim Murphy fell before the machine-gun fire of an enemy car which drew up before his house in West Rogers Park after a mysterious ringing of the door-bell, which called him to the front lawn.

The headlines announcing his assassination pushed the Democratic Convention off the front page. For the following two nights traffic police were

stationed at corners two blocks east and two blocks west of his house to direct the hundreds of automobiles that sought to approach his house during the wake. Automobiles were parked for five blocks along his own street, Morse Avenue, and for two blocks each way on the cross streets of that area. Men, women, and children stood in double and triple line from six until after ten o'clock both evenings, progressing slowly into the house to view the body, six feet and three inches, in a simple silver and steel casket surrounded with costly and ornate floral display, in the parlor of the Murphy home. His brothers-in-law, the Diggs brothers, directed the procession in the front door and out through the rear into the yard equipped as a playground for children.

West Rogers Park is a new neighborhood. Middle class mechanics and business men own individual and duplex homes, surrounded with lawns and gardens. Tim was a good neighbor—the people of his neighborhood, including the children, knew him well. He liked to be neighborly and he liked to "fool around" with children. While his body was being removed from a nearby funeral parlor, children came rushing from their play. Excitedly one of them asked, "Who is that?" "That's Big Tim." And even the children remained silent.

There had been an incursion of successful bootleggers into West Rogers Park. These were liberal neighbors; they would gather in the basement recreation room of a bootlegger politician and would invite friends there to partake of the cold barrel of beer which is always on ice, and to listen to Tim's banter and "gags." There had been no objection to these new neighbors because they were not objectionable in their neighborhood. Mrs. Murphy was a good church member in the neighborhood parish and had become acquainted with hundreds that attend the church. The priest, confident of the wholesomeness of his neighborhood, had inveighed against "racketeers;" he was the most conscious of the invasion.

Three years in Leavenworth penitentiary had changed the "racketeer" world considerably, just as it would change any other phase of fast moving Chicago life, and Tim Murphy had lost his hold because others had moved up into his place. Since his release, therefore, he had been trying many "rackets" because he was not settled in any. Thus, when his career was so shockingly ended there was a confusion and multiplicity of motives ascribed. Joseph Aiello, of the Aiello Brothers, had bought a house almost around the corner from Tim Murphy. It was known that during the absence of Capone, a homeless exile in southern and western cities, according to the chief of police, Tim Murphy had accepted the command of the "strong arm" force attending the Capone interests. The Aiello brothers, now his neighbors, were supposed to be bitter enemies. It was of this phase that West Rogers Park was most conscious. The neighborhood had Americanized the Aiello name and was buzzing with expectations of another murder in the neighborhood in the "Ay-leeo" family. The Aiellos were attached to the north side syndicate, according to the newspapers—the Bertsche-Moran-Zuta gambling, vice and booze syndicate. During the past year there had been bombing war between the Capone interests and the former syndicate. Twenty-three days later an Aiello was killed.

The police did not give as much weight to this phase as to other motives. There was the killing of Maurice (Moss) Enright about nine years ago, who had given Tim Murphy his start in labor union "racketeering." While Tim was the most important labor union "racketeer," he was not the pioneer. Con Shea and later Moss Enright have priority to the claim.

Statements by Mr. Walker of the Employers Association, special prosecuting attorney investigating "rackets," recently discharged by Mr. Crowe, alleged that Tim Murphy had tried to "horn into" the cleaning and dyeing "racket," now dominated by "strong arm" men, and that his aggressiveness had left no alternative than to eliminate Tim by the gun. This angle, too, has dwindled except that one man, John Hand, was held under bail bond because of his connections with the leaders in the cleaning and dyeing organizations and is known to be a business agent of the Candy Jobbers' Union.

It is well known in Chicago that Tim was a chief among "racketeers," but the extent of his influence cannot be appreciated until one hears how many union and merchant association "racketeers" have been made by Tim. While he was at his height, dozens of "strong arm" business agents claimed to be friends of Tim; dozens of them thrived under the long shadow of Tim Murphy's prestige as terrorist and politician, for Tim had been a legislator, secretary to a congressman, and a sergeant-at-arms in Congress. He had "beaten raps" at memorable trials, typical for the spectacular failure of the law. There was one "rap" he could not beat entirely and that is the Polk Street Station robbery of April 6, 1921. It has turned out queerly that the ace investigator for the Federal Government, who had prosecuted him for the Pullman robbery of August 20, 1920, is himself now serving time for a mail robbery. While Tim's friends used this as evidence that he was framed, it cannot be denied that it injured his prestige, because the power to "beat raps" is the backbone of the prestige of a gangster chief.

One theory for the killing of Tim Murphy, which is reported to have been corroborated by his mother at the last session of the coroner's inquest, was that he had demanded the return of some of the money contained in the loot of a railroad robbery and that the person who had held this money for safe-keeping refused to return it.

Tim Murphy's funeral was unattended by officials and politicians of importance. With the onslaught that the newspapers have been making upon the alliance of organized crime and politics, it was expected that the press would make capital of the presence of personages. The few important officials that paid their respects came to the wake, singly, late at night. At the funeral the old back-of-the-yards friends were the only politicians of importance. Johnnie Oberta, Mike Ruddy and Kitty Mulhall were there and wept for Tim. Perhaps that is what Tim meant when he said, "Back of the Yards a man's a man." Risking the adverse publicity, these were the few who stood by him. Such was the precaution of politicians and gangsters, that the tags on the floral tributes were removed and no outsider had an opportunity to know who sent them. The church refused every form of funeral service. An old friend, Kenny, the undertaker from back-of-the-yards, recited the Lord's Prayer. Tim was buried in the Holy Sepulchre Cemetery.

7. The Uale Funeral in New York City, 1928. While the funeral of Tim Murphy showed the effects of the pitiless publicity which has been given to the connections between crime and politics in Chicago; Brooklyn, New York, furnished a record-breaking funeral when on July 5, 1928, Frank Uale, Brooklyn gunman chief, politician, bootlegger and neighborhood philanthropist, was buried, according to his wish, with greater pomp and ceremony than Dion O'Banion. His casket cost fifteen thousand dollars, exceeding O'Banion's by five thousand dollars. There were tons of flowers, the floral tribute being estimated at fifty thousand dollars; ten thousand mourners and two hundred fifty automobiles.

Newspaper writers, who have been interested in establishing the national and international ramifications of organized criminals, laid the murder to Capone interests of Chicago. Uale, alias Yale, was reputed the killer of both Colosimo and Dion O'Banion. Other statements described him as the contractor for Chicago killings by New York gunmen. While the New York police have not solved this murder, it has been followed by a series of gang killings there, also unsolved.

Uale was typified as the "Robin Hood of Brooklyn;" he lived by the gun and died by it. He was also called the "god-father of one thousand children." A mass was celebrated for him at St. Rosalia's Catholic Church in Brooklyn, where the church attitude toward gangsters is not as sharply defined as under Cardinal Mundelein's orders in Chicago.

8. Conclusion. The funeral of a great underworld chieftain like Colosimo clearly reveals the nature of the friendly and human relations out of which the alliance of crime and vice with politics develops. In the hour of death, personal ties are disclosed, which in life were concealed. Judges and other politicians who refrain from attendance at funerals will be present at the wake, as was the case at the deaths of O'Banion and of Tim Murphy. The definition of disapproval upon the careers of gangsters and other underworld leaders has been applied by both the church and by newspaper editorials. The last two or three years have, in fact, witnessed a decline in ostentatious display at funerals. But this evidence of the declining glory of gang heroes is to be attributed not merely to the edict of the archbishop, nor to the outraged protests of editorial writers; it is the effect of the growing popular movement against the inter-relations of crime and politics.

But the most powerful factor of all in the decline in the popular participation in funerals is, in all probability, the profound change that is taking place in the nature of the relations of organized crime and machine politics. The old basis in friendly relations is being superseded by a cash nexus. Political protection for the powerful financial interests of organized crime is coming to rest less and less upon friendship and more and more upon pecuniary considerations. But to the extent that friendly relationships and neighborhood connections still remain the bond that cements relations of gangster and politician, they will continue to find expression at the wake and at funerals as long as human nature remains human nature.

CHAPTER XXVI

THE GANGSTERS' APOLOGIA PRO VITA SUA

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CHAPTER XXVI

THE GANGSTER'S APOLOGIA PRO VITA SUA

1. Psychology of the Gangster.

The gangster's defense of his mode of life arises only when he comes in contact with the legitimate outside world. Only then does he become conscious of a conflicting way of living. In his own group, on the contrary, he achieves status by being a gangster, with gangster attitudes, and enhances his reputation through criminal exploits. His contacts with the police and the courts and his successive confinements in the corrective, reformatory and penal institutions, beginning with the Juvenile Detention Home, then in turn the Industrial Training School, the reformatory and the penitentiary, gain him the prestige of a veteran in his group. His return from the State Reformatory at Pontiac or from the penitentiary at Joliet is the occasion of sympathy and rejoicing from his gang brothers. The bitterness engendered within him by punishment and the feelings of revenge nurtured by his mutual association with other convicts have more deeply impressed upon him the psychology of the criminal world. Then, too, the stigma which society places upon him as an ex-convict identifies him the more with the underworld.

Usually the gangster is brought up in neighborhoods where the gang tradition is old. He grows up into it from early childhood in a world where pilfering, vandalism, sex delinquency and brutality are an inseparable part of his play life. His earliest relation with the law is with the policeman on the beat, who always has something on the little gang, and "copper hating" is the normal attitude. A series of extracts from the life history of a gangster [1] shows how the boy naturally absorbs gang attitudes:

> "When we were small we used to watch the older boys and we joined in the same things when we were a little older. There was crap-shooting, pilfering, and rough-housing among them. On election nights or Hallowe'en, we would burn fences or wagons or anything else we could get our hands on which would make a fire. The little fellows would steal potatoes to bake on the fire. One time we burned an old patrol wagon.
>
> "We never could be friendly with the cop because we were always in wrong. We always got out of his way quickly with a warning cry, 'Jigger, the cop.'
>
> "For instance, we would always steal iron from back of the foundry and sell it to peddlers to get our money for shows.
>
> "The truant officer came to the house often, but I was never taken up for truancy."

[1] "Life and History of a Gangster," a document specially secured for this study.

2. *Autobiography of a Gangster: Childhood Period.*

This same man, now an ex-convict from Joliet, has been a gambler, pimp, shoplifter, burglar, and stick-up man. But his criminal career began in early childhood.

"I shot craps as early as I could understand dice, and saw crap-shooting in the alley before that time. When my brother Charlie was driving for the Express Company he sometimes gambled his whole pay away.

"I think this was my earliest remembrance of the 'law;' when I was six years old my oldest brother, Charlie, was arrested by detectives, just before he got the rap at the John Worthy School. I can remember a thundering knock at the door and two big detectives came in. It was about two o'clock in the morning. They made Charlie dress in a hurry. While Charlie was dressing, my mother was getting me to ask the detectives questions in English."

Among the children of the neighborhood no shame attached to stealing. "Copping" was a part of their play life. Going "on a bum from school" and pilfering went together.

"Later, we always went to shows in a gang and would yell and holler and get put out. Sometimes after we were put out we would throw bricks at the back door of the picture show. We liked 'the thrillers.' The nickel shows in those days had a good many shootings and killings.

"We used to 'hitch' the street cars to Lincoln Park. The boys would steal bottles of milk off the porches, maybe a few would steal rolls from the store and in that way we would get our lunches. I don't remember that I ever asked my mother for carfare or lunch. She would be likely to say, 'If you want to eat, come home to eat.'"

Naturally, any mother would be averse to her little boy in the primary grades of a school on the west side starting off for Lincoln Park with a gang of small boys, but the gang made possible this most tempting of adventures.

The parents of this future gangster were Italian immigrants. The father, a laborer for the same industrial establishment for nearly thirty years, also had a news stand on the street corner near the plant. This was tended during workings hours by his small sons who stole pennies and nickels from the income. The mother not only cared for nine children in a little back-yard shanty near the railroad tracks on De Koven and later Farquar Streets, but also "carried bundles on her head." Twenty-five years ago the finishing of clothing was largely the work of Italian women in their own homes. The task of providing the necessaries of life was tremendous for both father and mother. The situation was made more acute by the virtues of the parents. The mother toiled constantly, as she does today, to keep a clean house. Both parents were thrifty. Toiling so hard to make ends meet,[1] they grudged the spending of pennies for pleasure.

[1] After a score of years their determined thrift has actually accomplished their ambition. They now own a house about two miles west of their original home on Bunker Street, after a series of westward moves. The young children, brought up in

Without the gang, life would have been grim and barren for these children. Only in rare instances, unless the family moves away, does a boy escape from the demoralizing influence of the neighborhood and the gang.

3. *Same: A Jail Record.*

Growing up in the gang life is not "a bed of roses." One spends when flush, and when "broke" is in danger of a fall. Arrested without money and with no friends ready at hand, one is likely to be convicted. There are the cousins or friends in politics, but even they, as small fry, cannot "fix" without money. Employment at legitimate occupations is occasional, if not rare, and very often arranged as a convincing blind for criminal occupations.

> "I used to be a messenger at night for a telegraph company. That gave me a chance to wear a uniform so that I would not be picked up when prowling around. With another boy I would go in for burglary. One of us would go up in the elevator with the elevator man while the other 'jimmied' the show-cases and cabinets in the cigar stand in the lobby. While I was a messenger I used to send or bring line-loads to the levee and we would steal from stores and hotel rooms and sell to the girls in the burlesque shows on South State Street.
>
> "Very early I would be picked up on the downtown streets, selling papers at night, and I was well acquainted at central police station. Often they took me to Detention Home to stay over night and I made fast friends with the matron. If I would shoot my money away in craps I would go to the Detention Home and stay over night and tell my parents the next day that I was picked up by the police. The next day I would make up the loss, selling papers or stealing."

Out of the gang at the school came the fast friends and the acquaintances of later life who have made their mark in the criminal world. This man can recall famous forgers, leading gamblers, burglars, labor racketeers, and many notorious criminals in every form of criminality, who were neighborhood boys in his own gang.

The above extracts and notes from the autobiography of a criminal have been introduced to show why most gangsters have no apology to make for their criminal careers. The life histories of other gangsters also corroborate

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the neighborhood of their present house, have no delinquency record, not even a truancy record, whereas, of the four sons who lived their childhood in the gang area, from Canal Street to Racine, three have records of some kind of delinquency or crime and one has turned out well.

The one son who is an outstanding success, displayed an aptitude for drawing while still in grammar school. One teacher became intensely interested in him, called the parents' attention to his talent and encouraged the boy to pursue this interest. A great deal of his time was spent in sketching at home, isolated from the gangs. When he graduated from this grammar school this teacher secured a job for him in a large firm doing a great deal of advertising. The manager of the Chicago branch noticed the boy's sketching and persuaded him to take an art course in a reputable night school. When this manager first spoke of this plan, the boy's immediate question was: "Will they take a guy from Bunker Street in an art school?" and the second remark was, "Where can my dad get the dough to send me?" The Bunker Street boy's esteem of himself and of his opportunities was low. After attending the art school for one year he was transferred by the firm to the main office in another city and of late years he has risen to the position of a traveling advertising sales manager.

In speaking to the other boys about him they said, "He was lucky he got away from home so soon."

"Do you mean the home or the gang?"

"I mean the gangs around the home."

the conclusion arrived at by the famous French criminologist, Gabriel Tarde, that certain individuals become criminals in much the same way that other persons become policemen.

The gang youth does make comparisons between getting a job and going into a "racket," but from the standpoint not so much moral as of practical considerations. He takes as his pattern the men in the neighborhood who have achieved success. His father, although virtuous in his grime and squalor and thrift, does not present as alluring an example to him as do some of the neighborhood gangsters. The men who frequent the neighborhood gambling houses are good-natured, well-dressed, adorned and sophisticated, and above all, they are American, in the eyes of the gang boy.

The following case indicates the prevailing attitudes toward the various types of "rackets" as compared with regular employment by youths in an Italian neighborhood:

> "When an ex-convict returned to Chicago from Joliet four years ago at the age of twenty-five, one of his first observations was that bootlegging had made many of his neighbors rich. 'Every Wop has got a car in front of his home.' Young hoodlums had been given opportunities in various rackets through connections and influence with resourceful chiefs—one was a gambling house manager, others were employed as a bootleg convoy, another was running a successful 'fence' for stolen goods and others held political jobs. He discussed with his friends the chances of securing a legitimate job while he remained on parole. One of them finally asked him: 'Do you really have a yen [1] for being a poor working sap?' His ironic answer was, 'Yes, my father worked as a laborer for twenty-seven years. He is all worked out now and his boss is going to pin a medal on him.' " [2]

Where the choice of a young man is between a low paid job as an unskilled laborer and good wages for driving a beer truck, a stigma is soon attached to legitimate employment. The conspicuous expenditures and lavish display of the *nouveau riche* of the underworld confuse and pervert the traditional standards and values of even the law abiding persons in the community.

> When Angelo Genna was buried, an Italian woman and her Bohemian daughter-in-law were discussing the funeral. "Did you go to the funeral?" asked the older woman. "No, I didn't," said the daughter-in-law. "I had to attend to the baby, but they sure say it was some funeral. I was to a party with Mrs. Genna a couple of weeks ago and she wore an ermine coat and she was one sparkle of diamonds. Well, I thought, if you're gonna be straight, you're gonna be poor." "But," said the old lady, "you see they get bumped off." "But they like to get bumped off, like this fellow in this house," said the younger one. Later a criminal member of this family was asked about this danger of being "bumped off" and he said, "It's fun to live a marked man," and then went on to tell about the clever precautions and loyalties which his chief had established against the dangers of too sudden an end.[3]

[1] "Yen"—a longing for; ambition.
[2] From a life history secured specially for this study.
[3] Adapted from notes on an interview obtained for this study from the family of a criminal gangster.

As intimated in the above case, the risks of an illicit or criminal career are calculated and, in certain cases, due precautions taken. Or the risk itself becomes an added attraction for adventurous young men. This confusion in community standards in regard to the respective merits of legitimate and criminal occupations is generally not clarified by the gangster's first experience with the law. Both with the police and with the courts, the young delinquents center their attention upon the technique of getting "another chance." The most interesting aspect of a criminal career is the "crazy quilt" formed by the due process of law in relation to the criminal.

> After a summer of shop-lifting and burglary, which netted in one haul about nine hundred silk shirts, a young chap of Boys' Court age was arrested in a department store with a stolen bathing suit in his possession. He appeared before a court and told the judge he was too poor to buy a bathing suit. The judge released him with a lecture and gave him the bathing suit. At another time he was picked up by a policeman in company with two others. There was evidence of burglary, but they were still of Boys' Court age. The judge asked the boys if they knew Mr. Gelapi. The boys answered, "Yes, we know Mr. Gelapi." The judge explained that Mr. Gelapi called up by telephone with regard to their case, and said that he was from Artie Quinn's Gambling Place on North Clark Street. "I know Artie Quinn," the judge added with fervor; "I went to school with him;" and the boys were dismissed.[1]

4. Protection by Friends.

The experienced criminal or the boy brought up in gang culture approaches his "trouble with the law" as a matter which can be met in a thousand ways—there are friends and "fixers," perjury, bribery and intimidation. There is a certain behavior which befits a man of character in his society. He must give no information about his friends, he must not believe the police when they say that his friends have "squealed"—that is a usual method of causing associates to weaken. From the stories he has heard from childhood up he knows that he may have to stand a beating or the excruciating Third Degree, but in his mind he knows it is an experience that will bring him the plaudits of his group, just as a young soldier does under the baptism of fire. If he is convicted, he was not given a chance—it was a "bum rap." This "bum rap" may mean either that he was "framed," or he may be entirely guilty of the charge but he finds a reason why he was discriminated against, because both in his own career and that of his friends there have been instances of equal guilt with no punishment or lesser punishment as a result. This might extend to the most serious of crimes.

Sometimes, as in the following case, after a long period of immunity, a gangster is convicted because his own political "pull" was not as great as that of the man whom he had robbed.

> In a long criminal career beginning in early childhood a young man is arrested for a stick-up. He uses his customary influence through a high public official in the county and its fails. It is one of those misfortunes in a criminal career. He has had a "fall." In discussing this situation he makes no attempt to explain that he was innocent of the

[1] Quoted from a document secured for this study.

charge, but goes into long details of how factionalism in politics had brought about a break between his protector, a county official, and another influential public official, who is a friend of the man who was robbed. He was not punished for his guilt. Rather, he was the victim of competition between the two factional leaders. In this test of their comparative strength his fortunes as a criminal were at stake. He does not deny his crime, nor those of his brother, who is a foremost leader of a notorious criminal gang.[1]

The world of the gangster is one in which the burglar is convicted and the "fence" retains the goods. Indeed, the "fence" may be an important figure in the neighborhood's political life. The gangster grows to consider the world a place in which everyone has a "racket" but the "poor working sap," because as he looks around he finds ample customers for his loot, ample police protection for money, and almost anything in his world can be "fixed." The underworld knows in advance when a certain "rap" will be beat. In several important cases, bets were placed prior to the verdict by the jury.

5. *The Gangster's Defense.*

It is not until the gangster comes into contact with persons outside of the underworld that he gets his first sense of the necessity of justifying his behavior. The following case is typical of the reaction of bewilderment on the part of young gangsters when asked to explain their criminal careers and the disposition to find a defense in the rationalization "that everyone is doing it:"

> When a youthful criminal with a long history of offenses from earliest boyhood was asked his own opinion about the causes of his own criminality, he was baffled at first. But later he came out with the answer, "Who around here hasn't a record?"[2]

The next tendency of the youthful gangster is to make invidious comparisons between the opportunities for success in a criminal versus a "legitimate" career. He contrasts the "easy money" and the "good times" of the gambler, beer runner, "stick-up artist" and "con man" with the low wages and long hours of "the poor working sap." He speaks in flowing admiration of the power, the courage, the skill, the display and the generosity of the outstanding gang leaders. His glorification of the life and the characters of the underworld is complete evidence of the absence of any feeling of inferiority or shame about his own criminal aspirations. The following statement by a gambler and confidence man is representative of the attitudes of the majority of criminals:

> "The men of the underworld are the brainiest men in the world. They have to be, because they live by their wits. They are always planning something, a 'stick-up,' a burglary, or some new 'racket.' They are constantly in danger. They have to think quicker and sharper than the other fellow. They have to 'size up' every man they meet, and figure out what 'line' to use on him. The leading men of the underworld can move in every circle of society. They are at home in Chinatown, along the 'main stem,' in gambling dives, or in the best hotels

[1] Notes from the life history of a gangster secured for this study.
[2] Adapted from an interview with a criminal gangster obtained for this study.

and the 'Gold Coast.' When they have a lucky 'break' they can live like millionaires; when their money is spent they plan new schemes."[1]

When the gangster becomes moralistic in defense of himself, he presents an array of facts to prove his claim that everybody has a "racket." He begins with the police. The gangster is situated where he observes the policeman as the beneficiary of his earnings. At times these exactions by the police become so heavy that he finds himself in a situation where he actually is working for the police.

"I don't mind one man getting a little graft, but now we have four men, four sets of them come one after another. I would be glad if they left me a quarter (meaning one-fourth of his proceeds)."

The gangster points to his "fences," men who dispose of his stolen goods. These "fences" are often men of wealth and respectability in the eyes of the gangster. The politician in the neighborhood where the gangster lives grafts on the criminals when they need "political pull" and uses them for the purpose of fraud and intimidation, as in elections. The gangster does not exaggerate when he says that he has never seen a straight election. His own gang fellows, once given even the minor jobs where they have entree to big politicians and holders of public office, become rich on the basis of the graft they receive for information, favors and protection.

In prison he may be associated for the first time with the defaulting banker or the unscrupulous promoter of dubious ventures. In this way, he sees the seamy side of big business. The more intelligent of his play-fellows in the gang may have worked up from thieves of accessory automobile parts to "fences" for accessories and even for automobiles, and now operate on a large scale, living their daily lives among society people, that is, the people of ordinary respectable status. Others may have gone into the selling of stock in general, stocks which are not listed in the stock exchange or approved by the Blue Sky Laws and the margins between selling short without a basis or selling stocks which may never pay and those which may pay, are only very vague.

In making comparisons between himself as a criminal with grafting police and politicians, the gangster feels his own superior virtue. The best statement of this universal attitude of the underworld has been perhaps best expressed by Al Capone in an interview as follows:

"There is one thing worse than a crook and that is a crooked man in a big political job. A man that pretends he is enforcing the law and is really taking 'dough' out of somebody breaking it, even a self-respecting 'hood'[2] hasn't any use for that kind of a fellow. He buys them like he would any other article necessary in his trade, but he hates them in his heart."[3]

In defense of his own criminality, when brought face to face with the righteous, the criminal becomes highly moralistic. He may deem the function

[1] Extract from an interview with a gambler and confidence man.
[2] "Hood" underworld abbreviation of "hoodlum."
[3] Quoted from an interview with Patricia Doherty in an article in the Cosmopolitan Magazine.

of his gang that of protecting the interests of his national group or neighborhood. When a certain west side gangster was told that there were no Jewish gangsters in Milwaukee, his first question was, "Do the Jews get pushed around much in Milwaukee?"[1] The attitude of gangs to protect the community's safety against hostile foreign groups in the race conflict has been the basis of the status of gangsters among the law-abiding people in the neighborhood. Around Davey Miller and his gang, including Nails Morton, there is a tradition of defenders of the race. It is the defense of the Jews against the Poles. But there are innumerable homelier every-day incidents of which the following is an instance:

> "A young Jewish workman was frequently attacked by gangsters on his way to his shop. He went into Davey Miller's place, told him his story, and Davey Miller assigned two of his gangsters to accompany the young man to his work. The attacks ceased to occur after the Irish gangsters near the shop observed the companions of their victim—the erstwhile lone Jewish workman."[2]

6. *Gangsters' Sacrifices for Loyalty.*

The large size "racketeer," the big-timer, feels he has a function to perform. He is engaged in violence in connection with labor organization; he points out the instances where the "racketeer" has taken a forlorn or unorganized group and has brought them to a state where they command desirable wages. As one gangster said:[3]

> "They sent 'Quizzy' (Quesse) up. Before he took hold of the janitors there were men begging for room to sleep in so that they would fire the boiler at night. Look at them now. They get salaries of three hundred to four hundred dollars a month and are given apartments to live in."

In the Anselmi-Scalise case, almost the entire Italian group in the city was consolidated in support of these men who were bootleggers and who were accused of killing policemen, on the basis of the inflammatory and prejudicial remarks made against them by the prosecution.

Even the bootlegger and the beer runner are defended by his fellow gangsters and by the sporting world, in addition, as men who are performing a valuable function in society. They may even be extolled with admiration for their bravery in risking their lives in service for their customers. The following statement was made by a man thoroughly familiar with these areas of life in the city where the worlds of gambling, crime, sport and politics overlap:

> "If he is a beer distributor or a bootlegger he doesn't make or sell the stuff for himself, he furnishes it to others who want the pleasure of drinking. The only time I ever saw the facts told fairly in the press was when Red Shannon was killed down in Florida. The Miami newspapers came out with a black border and they gave the life of Red Shannon and the risks he took against the coast guard to bring in genuine imported whiskey for the pleasure of all of us."

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[1] From an interview with a Jewish gangster secured for this study.
[2] From an interview secured for this study.
[3] An interview with an investigator for this study.

"Yes," the interviewer objected, "but they 'bump' each other off, and a life is a life."

"Very well, but they choose that life. They choose to fight their own battles and bury their own dead."[1]

7. Is the Gangster Remorseful?

Many law-abiding citizens, when they try to picture themselves in the place of the criminal, imagine him constantly tortured with the pangs of remorse. It is difficult for them to believe that the gangster is seldom, if at all, conscience stricken because of his crime. In four years' association with criminal gangsters, the writer encountered little or no remorse among Chicago gangsters. The following cases indicate the nearest approaches to remorse on the part of the criminal.[2]

A student of criminology invited an ex-convict to attend the Symphony Concert and later the opera at Ravinia (a suburb of Chicago) one Sunday afternoon. This former criminal had served several prison terms and had entered his life of crime after a preferred career in the military service; he was on the one hand a church-goer and a scholar, and on the other, a "con-man" and "jail-bird." Upon first acquaintance and for many weeks thereafter this man always tried to minimize his career as a criminal and would lay the offenses which had been proved against him to drink. On this Sunday afternoon, in the leisure between the symphony concert and the opera, the student suddenly turned upon his "con-man" friend and said, "You are trying to prove to me that you are a drunkard. That doesn't interest me. I am interested in criminology. What interests me is the criminal." This turned the tone of the conversation. There had been the church, music, and art, as well as pleasant associations during the day, which probably brought on a certain tone and memory which recalled to him the wholesome life. He had heard an especially good sermon on the commandment, "Thou shalt not covet thy neighbor's wife." He began by telling about the sermon and later he said in a tone laden with remorse, "I have not been punished for the little I stole, but for breaking this commandment." It developed that his work as a "con-man" always involved first a triangular relation with some married woman and it was only after a scandal had already been exposed that the woman would take courage to have the checks, drawn by this man, rejected, and he would then be convicted on a plea of guilty. According to his statement, he would plead guilty in order not to have a trial and bring shame upon the famous name of his family.

Another instance of remorse is that of the president of a labor union which had taken to direct actionism. It is probable that after the direct actionist gained control in the union, the president was a mere figurehead. When the evidence of the violence by way of destruction of property was disclosed, this president committed suicide, leaving a note to his wife insisting that he had always been a good man.

"I tried all my life to live honest and upright. You and all my friends know this—I could never stand the disgrace of being connected

[1] An interview with an investigator for this study.
[2] Cases specially secured for this study.

with a matter like this, although I am innocent. One day in jail before I was bonded out is enough for me. Now after twenty-nine years of life, with the best woman in the world, I have to go."[1]

These are two instances of remorse. In the first case that of a man coming from a highly respectable group, in a society without a criminal culture. But he had sunk into devious ways, and was definitely disgraced by dishonorable dismissal from an honorable service. His plight was mainly and basically due to the fact that he was a very proud and popular man but could not keep up the enormous expense which was necessitated by his exceptional social opportunities. In prison and out, he always sought to escape the association of criminal society, for no one hates the ordinary criminal more than this man does. Yet his remorse was not for his crimes of stealing, but for his sin of adultery.

The other case is one of remorse by a man who was not a criminal at all, certainly not an habitual or professional criminal. There had been a change of policy in unionism with the increasing restraint placed upon the functions of collective bargaining through injunction, and direct action was the only way out. Before he could realize it, the president was culpable for a situation over which he had little or no control. He had never been anything but a law-abiding, hard working man. Once in the clutches of the law, he could imagine nothing but prison and disgrace. His life had come to an impasse.

Neither of these two cases, then, represents remorse for his crimes on the part of the criminal. Can any case be found in which the gangster feels remorse? Certainly he feels remorse, not for his crimes, but for being caught and convicted. Remorse arises when the efforts and defenses for escape from prosecution are blocked and one reaches an impasse. As long as there is practical hope, then in one's own mind there is a continual surging of possibilities of action, until the final sentence has been pronounced. Even then thought runs through the unused alternatives and to the failures that were merely adventitious. Within the friendly group interested in one's case, there is a stirring about, great amount of discussion, rumor, argument and counter-argument about means that can be used and about resources that can be marshalled which are a counterpart of the surging thoughts in the mind of the victim in the hands of the law. Remorse arises far more frequently in a city where due process of law is effective and the bulwarks of the law are without a breach. When there is nothing to be done about one's trouble, the thoughts turn inward in a self-appraisal. A man mopes about his troubles and remorse follows. The remorse of the gangster is not based on his original guilt for the crime, but in a mistaken maneuver or a mistaken choice of friends or misplaced confidence.

There is a meaning to the fact that three times as many felons confess the offense as charged (without a lesser plea) in Milwaukee as in Chicago.[2]

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[1] *Chicago Tribune,* December 1, 1925.

[2] Chapter I. Recorded Felonies, a statistical analysis by Dr. C. E. Gehlke, Table A-71.

8. Gangsters' Mutual Loyalty. Although the criminal gangster is untroubled about his crimes, he is stirred to the depths of his feelings and sentiments by any charge of personal treachery to his friends. Betraying a comrade is the only crime in the underworld for which its members are one and all likely to feel genuine remorse.

The cases of Charles (Limpy) Cleaver and of Timothy (Big Tim) Murphy show how deep seated is the resentment against disloyalty to one's fellows.

> "With large teardrops rolling down into the deep furrows in his hardened face, Charles 'Limpy' Cleaver, on trial before Federal Judge James H. Wilkerson as the principal defendant in the $133,000 Evergreen Park mail robbery, today charged William Donovan, one of his alleged accomplices and government star witness, with wholesale murder and robbery. 'Sure he will squawk, and plenty,' Limpy almost shouted to a *Journal* reporter after the morning session. 'He will do a lot of squawking about me, the dirty lying dog.' He rubbed his eyes with a rough palm. '. . . ., they're calling me the brains of them jobs. I never had any brains because if I did I wouldn't know a rat like him. Him and Willis Jackson were the guys with the brains. They pulled some of the biggest robberies in Chicago.' "[1]

Captain Shoemaker, chief of detectives, admitted he had advised Cleaver to confess, but that the defendant said he valued his reputation too highly to do that and would go to the penitentiary "like a man and not like a rat." Instead he applied this most insulting epithet of the underworld vocabulary to a fellow defendant.[2]

While Tim Murphy was in prison at Leavenworth, Frank Conovan, released from the same penitentiary, accused Murphy of being a stool-pigeon. "Even his old pals, sent down with him, give him the cold eye when they meet him. Cosmano and Peter Gusenberg have only looks of scorn for the old leader. He bears no confidence. The rest brand him as a possible stool-pigeon because he is too friendly with the guards."

In answer to Conovan, Big Tim, in his Leavenworth cell, wrote a letter in which he defied "any prison rat" to call him a stool-pigeon. He said further in the letter: "That's a lie. Cosmano and I are the best of friends. He has been transferred to my cell, even, and we are together. If I have got any enemies at all in the penitentiary, they are stool-pigeons."[3]

9. Do Gangsters Reform? If the gangster does not feel remorse, what are the motives that lead to his reform? This question assumes that many criminals forsake the life of crime and turn to law-abiding pursuits. All students of criminology are aware that this change in behavior frequently occurs. There are many reasons for it with different individuals, but the main consideration seems to be the conclusion that *crime does not pay.*

Often the criminal upon his release from the state reformatory or the state penitentiary attempts to follow a law-abiding life. He frequently suc-

[1] *Journal,* July 26, 1928.
[2] *Tribune,* July 27, 1928.
[3] *Daily News,* November 3, 1923.

ceeds, even against great odds. But many ex-convicts find the difficulties in the way of reformation almost insuperable.

> While on parole one ex-convict tries going straight alone. The struggle is grim and not unmixed with some petty criminality. A parole scandal arises. He is picked up by the police on a queer charge of indecent exposure while dressing in his rooms. The case is pending in the police court. The time is shortly before an election. He gets continuance after continuance until after the election on the promise that he will do *everything* for certain candidates in the election. The case is finally stricken from the records, but meanwhile a warrant has been issued by the Parole Division, which cannot be revoked. He is in jail for several weeks. He is then taken to Joliet and held idle and unassigned waiting for a parole hearing. The hearing is held and he is found not guilty. The papers releasing him are delayed. His writing privileges are limited under the regulations of the prison. He finally reaches a friend who inquires about the papers. They have been held in someone's desk while he was waiting daily and hourly for his release. While he is in prison he breaks out with boils. When he comes out, he has trouble again finding a job. Finally he finds a job not very distant from the protection of his gang interests. As far as his friends achieve success it is success in underworld occupations, and these successes are free from pursuit by the law.[1]

The forces operating against the return of a gangster to a law-abiding life can be seen in a different setting in the next case. Here the youth, although profoundly moved by the death of his father, has a vivid sense of his inability to extricate himself from the factors that have shaped his career.

> Untrained, the school period wasted through truancy and delinquencies, working intermittently at blind alley jobs or never having worked at all, a gangster, at the moment in a very solemn mood because of the very tragic death of his father, was conversing with a visitor who had come to console the mother. The family was left in difficult straits and this gangster was the oldest of the children. Naturally, the visitor asked what he was doing and what he intended to do, because without question the young man was stricken with grief and appalled by the poverty around him. Earlier in the conversation he had told of his exploits helping to run beer under Dion O'Banion when he was only eighteen years of age and of the toughness and courage of some of his neighborhood "pals." When he was confronted with his responsibility for the bereaved family, he thought for a moment very despondently and then said, "Well, what kind of a job can I get? Who'll give me, with a record, a job?" And then he added, "It is better to be in prison than poor and free."[2]

A third case shows how powerful a factor in the return to a criminal career is the assistance and kindness of old associates in crime. Their aid is frequently given with more human sympathy than is the more formal help extended by welfare agencies. This contact with old acquaintances in the

[1] From a case secured for this study.
[2] From notes by an investigator for this study.

underworld not only places him under obligation to them, but prevents him from carrying out his purpose of reformation.

> When a gangster came out of Joliet with the intention of going straight, the various social and public agencies for the supervision and uplift of the ex-convict made their efforts to secure him a legitimate job, but during the rather depressed summer season all of them failed. At the same time his gang, brothers of old acquaintances, noticed his shabby prison "dress-out" suit and the misfit sweater vest, and invited him to come to their homes for a suit. Others contributed "fins," "sawbucks," and "double sawbucks"[1] as philanthropy to tide him over, and finally, through more important criminals, whose acquaintance he made in Joliet, he gained access to a great gangster chief who gave him a permanent job in one of his many outlaw enterprises.[2]

10. Gang Standards Versus the Law.

When an individual gangster reforms, it is not from feelings of remorse for his misdeeds, but because he finds from his own experience that crime does not pay. But the criminal gang as a going concern strives so far as it is able, to make crime both profitable and safe. This is seen not only through its activity in electing its picked candidates and in employing lawyers with reputations as "fixers," but in its resort to violence to insure the freedom of its own members when they become enmeshed in the web of the law.

The gang not only has its own code which governs the conduct of its members, but it even goes so far as to impose it upon outside society. In recent years in Chicago, the public has become familiar with the bold practices of criminal gangs in terrorizing witnesses and in exacting the death penalties upon them and upon members of the gang who are suspected of having given information to the police. An inside view of the attitudes and codes of a notorious criminal gang shows how a closely knit group develops its own standards and is outraged and puzzled by the attempts to deal with them according to the law.

Several youths belonging to this notorious criminal gang held up the clerk of a shady hotel located in a disreputable area. During the holdup, the gunman on guard at the hotel exchanged shots with one of the youths. In this duel the watchman was killed and the young gangster wounded. The wounded youth was taken by his gang fellows in a machine to a hallway and left there. Three hours later, when he was almost exhausted, they picked him up again and took him to a hospital. They allowed this lapse of time probably through fear of apprehension, because they knew the police would likely immediately search all of the hospitals upon hearing that one of the gang was seriously wounded.

> At the hospital he received the best medical attention. While the arm was stripped of the entire bicep muscle and the shattered bone was exposed, every effort was made to save it. The boy endured the treatment with great patience and the arm was saved from amputation finally. During the hospitalization period, which extended over months, he had

[1] A "fin" is five dollars; a "sawbuck" is ten dollars; and a "double sawbuck" is twenty dollars.

[2] Data from the life history of an ex-convict secured for this study.

a constant flow of visitors with gifts of fruit and cigarettes. Boys brought their own radio sets—he had three or four different sets at work in his room. They arranged to avoid taking him to the House of Correction Hospital by having deputy sheriffs on alternating watches, whose salaries they paid to the county. With an especially constructed frame supporting the arm, he was taken to a court and bail bond was set at over twenty thousand dollars. The bail bond was arranged in cash. The hours during hospitalization were passed in fleet conversation about "jobs" and "raps," and gossip about gang friends. As soon as he became a little better, the boys would bring up his girl friends who were admirers of the young gangster.[1]

There was but one difficulty in the way of beating the "rap." A taxicab man insisted upon standing up as a prosecuting witness. One day his doorbell rang and as he stepped to the door a shower of shotgun slugs ended his upright citizenship.

In this gang there are periods when trouble upon trouble engulfs certain members. These become the subject of highest interest, with all the resources of the gang bent towards discovering the weakest places in the law's machinery and making the defense moth-proof. The influence of these boys is far-reaching. While the deputy sheriffs were on guard over the boy in the hospital, they tried in every way to ingratiate themselves with the gang. There had been a change in sheriffs and a Democrat was elected, who later died. During the short period while the change was considered an accomplished fact, the deputy sheriffs feared that they would be displaced in their jobs, and the young gangsters reassured them that they would use their influence with the most powerful of the gangsters, who were friends of the new sheriff, to retain the jobs of the deputies.

There was one rift in the normal order of the gang's relations. A certain fellow was widely advertised, even in books, as the leader of this gang. Queerly, when on a job with his gang fellows, others would get into trouble but he was never apprehended and would walk around scot free. On the night of the catastrophic holdup he had not acted in a very manly way when he allowed the wounded youth to remain so long without aid, and bit by bit the gang began to suspect that the leader had turned policeman or informer to the police. He incurred the stigma of "the rat" and the hatred of the gang. One night it was reported that this leader had been shot in the back by a policeman who caught him trying to strip a car. Not one of the gang attended either the wake or the funeral, and within the gang it has always been accounted for as one of the typical bluffs of the police—this claim that "they got him." He had turned informer and the gang claims he got his due at the hands of the gang.

Those members of the gang that have been punished by conviction and sentence—one boy who returned from the reformatory and another from Joliet—have never quite recovered from the puzzling outrage of their fate. In their speculations of how it came about, there is always an increasing number of possible factors as to who could have been the enemy or who

[1] Adapted from a document secured especially for this study.

could have been the "squealer," or what the ulterior motives might have been for him or the prosecution that they were actually sent up.

Among the members of this gang there is no remorse for their depredations, no regret for their intimidation and even murder of witnesses who dare to testify against them. On the contrary, they form a group dominated by the gangster's code of loyalty, engaged in relentless war upon society and upon all those who seek to see that justice is enforced upon them. The welfare, standards, and laws of organized society evoke no response in their hearts and minds. They seem to have no conception of justice, of laws, and of courts, except as some external superimposed system of oppression which they must by hook or by crook obstruct and evade.

11. Conclusion. The picture of the gangster presented in this chapter differs widely from the current descriptions of him, whether those of soft-hearted sentimentalists or of hard-headed realists. When allowed to speak for himself, he is seen to be neither an innocent youth led astray by bad companions but ready to make good if given a chance, nor a hardened and vicious individual who has deliberately and vindictively chosen to wage war on society.

The story which he gives of his own life shows him to be a natural product of his environment—that is, of the slums of our large American cities. These slum areas have been formed in the growth of the city. They have been ports of first entry for each new wave of foreign immigration. These slum areas inhabited by national groups, as well as industrial areas like back-of-the-yards, are subject to the constant misfortune of the drawing off and moving away of the legitimately successful people. The constant ambition that grows with the rise of the people is to get out into the better districts of the city. As the successful families move away they leave behind the unsuccessful, laboring foreigner, who is not accepted as a model for the children and youth in their process of Americanization. But there also remain the gangster and politician chief, who become practically the only model of success.

It follows that the gangster is a product of his surroundings in the same way in which the good citizen is a product of his environment. The good citizen has grown up in an atmosphere of obedience to law and of respect for it. The gangster has lived his life in a region of law breaking, of graft, and of "fixing." That is the reason why the good citizen and the gangster have never been able to understand each other. They have been reared in two different worlds.

The stories which the gangsters tell of their own lives should enable the good citizens to deal more intelligently and therefore more effectively with the problem of organized crime. In the first place, it will enable the public to realize how deep rooted and widespread are the practices and philosophy of the gangster in the life and growth of the city. In the second place, an understanding of this should make possible a constructive program that will not content itself with punishing individual gangsters and their allies, but will reach out into a frontal attack upon basic causes of crime in Chicago.

CHAPTER XXVII

A WHO'S WHO OF ORGANIZED CRIME IN CHICAGO

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CHAPTER XXVII

A WHO'S WHO OF ORGANIZED CRIME IN CHICAGO

1. *Mode of Compilation.*

Our study of the history of organized crime disclosed the persistence and the continuity of *leadership* in the organization of vice, gambling, booze, and crime, often in syndicate and interlocking forms. Names like Mont Tennes, Al Capone, Barney Bertsche and Harry Cusick recur through the years and often appear in more than one of these fields. These facts early suggested the value of making a card catalogue of criminals in Chicago and selecting from these a certain number of the more active, successful, and prominent for a *Who's Who of Organized Crime in Chicago.* It was also believed that a card catalogue of criminals would provide material for a statistical analysis of certain of the facts and factors in organized crime.

In selecting the names of criminals for the card catalogue, it was decided to put the emphasis upon present and recent rather than past criminal activity. The following available sources of information were consulted:

1. Every name appearing in the criminal news of Chicago newspapers for a period of one year was listed, the stories clipped, classified and filed, and the names catalogued.

2. The names of criminals entered in the daily police bulletins were also classified and catalogued.

3. From the current news the names of gang leaders were noted and their gangs traced through the newspaper archives for twenty-five years. This method yielded not only the names of those affiliated with the leaders, but the names and activities of conflicting gangs or syndicates and leaders.

4. The life histories of the leaders in their gang settings were compiled, and geographical locations of the gangs, as well as the motives for conflict and cooperation, were traced.

5. For a period of three and a half years, first-hand contacts were established wherever possible with both leaders and followers in gangland. A collection of a limited number of life histories of gangsters who were also ex-convicts, fairly well distributed over the city, was also assembled.

6. From the Crime Commission of Chicago twenty-six hundred probation records furnished names, which were classified and added to our catalogue.

7. From the Illinois Association for Criminal Justice, one hundred names, selected for their use of the habeas corpus, were obtained and added to the list.

The catalogue contains approximately seven thousand names. It is not claimed that this card catalogue of criminals is complete. Captain John Stege, as chief deputy of the Detective Bureau under Chief of Police Morgan Collins, stated that he had compiled a list of approximately eighteen thousand criminals during a four-year period. This larger list of characters known

to the police was probably not complete. But, our card catalogue of seven thousand names may be taken as fairly representative of recent criminal activity in Chicago.

Out of these seven thousand records, four hundred names were selected for the *Who's Who of Organized Crime.* The first consideration was the persistence of the name appearing in current news through a considerable period of the twenty-five years covered by the historical studies. The second point was the position of the man in criminal news and criminal history, his importance, prestige, or notoriety. From the standpoint of organized crime, the affiliation of a person with a gang was also a main factor in his selection. The killing of a man in gang warfare attracted wide newspaper publicity, and in the theorizing of newspaper and police investigations following the death, gang affiliations and motives for the gang conflict came to the surface. The individuals considered as killed in gang warfare were carefully traced for previous histories, for affiliations and for indications of motives and causes.

2. Same: Incompleteness of the Police Department Records.

Finally, this list of the four hundred men most persistent, most notorious, and most clearly affiliated with organized crime was cleared through the Bureau of Identification of the Police Department and the office of the secretary of police. The Identification Bureau files contain:

(a) Records of conviction of a felony in Cook County. This is subject to human lapses and mistakes.
(b) An occasional record of a conviction in a federal court.
(c) Frequent, but not regular, records of the conviction of a man with a record in Cook County by a court in another county in Illinois.
(d) Records received through exchange with bureaus of other cities and with the National Bureau, of convictions in other states. In spite of the increasing efficiency of this system of exchanging records, it cannot be said that these so-called foreign records are complete for every man registered in the Chicago Bureau who previously or subsequently established a record elsewhere.

There is no established rule or law by which one can determine whether the bureau would have a record or not. From the point of view of the legal process or due process of law, there are records for men of whom there is no information of criminal activity except their arrests. If we were to consider the following list of steps in the due process of law—

Arrest,
Discharged in police court,
Dismissed for want of prosecution,
Bound over,
Bond forfeited—fugitive,
No bill,
True bill,
Nolle prosequi,
Stricken off,
Lesser plea,
Guilty plea on the original charge,

Cause affirmed on appeal,
Reversed and remanded,
Final acquittal,
Probation,
Fine,
House of Correction,
County Jail,
Pontiac,
Joliet,
Foreign prisons,
Parole,
Commutation,
Violation of parole,
Violation of probation—

the police record of the process on any charge might end with an entry in any one or more of these columns, under any of these headings, without giving the result of logical previous or subsequent steps. This is true of the summary sheet showing the man's previous record, with a more detailed exposition of the facts of the crime in the case for which he is held at the given date. The history of the disposition of each case could be given more completely, especially for Cook County cases.

The right of the bureau to take the record of a man, even though there is no charge against him, when he is a notorious criminal or a man whose identity is valuable for the detection of crime, is not limited by law. Under the energetic efforts of Captain Shoemaker, for instance, many records of notorious, dangerous criminals, both powerful and influential, were taken even though they were so protected politically or so stationed with regard to legal evidence against them that the due process of law could not touch them.

While there is no law or regulation against bringing a man to the Identification Bureau for registration, the person has certain rights at common law and under the statutes. We find, therefore, that resort to habeas corpus or admission to bail may snatch a case from the hands of the police before the individual is examined and recorded in the Identification Bureau. When probation follows conviction, probationers are allowed to leave the court without being taken to the bureau. A man may be repeatedly arrested, the number of arrests reaching as high as fifty; he may even have been fined; and yet never have been brought to the bureau. Cases turned over by the police to the federal government usually escape registration at the Identification Bureau, as well as those of Chicagoans arrested by the federal authorities. Arrests made by the sheriff of Cook County are free from examination by the bureau. Suburban arrests in the county, even those whose independence from Chicago is merely a matter of governmental formality, do not come under the authority of the Bureau of Identification.

Finally, bringing a man to the bureau remains in the discretion of the policeman who makes the arrest. This is the most important limitation upon its activities. With a quarter of a million arrests per year, using the dragnet method and the raid very widely, it would be too much to demand that everyone be registered, finger-prints and pictures taken and filed. About sixty thousand people are brought to the Bureau of Identification in a year. When finger-prints are taken, compared with those in the files, and no

previous record found, the prints taken are kept for a year and later thrown out.

Still, with the freedom from legal restraint which the bureau enjoys, it would be reasonable to expect that the records of notorious criminals, gang members and gang chieftains, and of other professional criminals, would be found to be in the bureau. Since the importation of gunmen and the geographical mobility of certain types of criminals are facts well known, it would be fair to expect not only the finger-prints to be on hand for the notorious criminal, but that exchanges have been made and out-of-state or foreign records filed. Our experiences show that the actual files are far short of the expectation, and that the weakness is due to the failure of the Detective Bureau to bring such men to the bureau. The exceptions to this practice are Chiefs of Detectives Shoemaker and Stege.

Further, in the Juvenile Court, the Boys' Court, and the St. Charles School for Boys, regardless of the gravity of the crime committed or the length of the criminal activity of the individual, the finger-print records are not taken, filed, or exchanged with the Identification Bureau; even though, upon his first conviction in the criminal court it is known that a particular criminal has had a long police record and a long criminal record in the Juvenile and Boys' Courts, such histories are not traced. While it is abhorrent to record as a criminal a young delinquent, who through mischief has fallen into the hands of the law, or even one who has made the grave mistake in early youth, yet there would be no moral wrong involved in retracing the record of a young criminal in the criminal court to the Juvenile and Boys' Courts records when such records would establish a professional criminal history. Two examples would serve to establish the justice of this point of view:

(1) William Colash, at present twenty-one years of age, has been seven times an inmate of St. Charles, has a long police record, is known to have killed a jailor in an escape from an Iowa jail, but he has no record in the Identification Bureau. If he had been committed to Pontiac, then the Reformatory's Identification Bureau would have furnished the Identification Bureau of the Chicago Police Department with a record, but he has never been sent to Pontiac and has never been convicted in a criminal court in Cook County.

(2) Aaron Moshiek has a long police record for forgery, beginning in childhood. He has been in the Juvenile Court and the Boys' Court numerous times. His bureau record is short, and does not indicate his lifelong specialization as a professional forger.

3. *Defects of Method in the Police Records.*

The Bureau of Identification record is but one reflection of the immunity of certain types of criminals, organized with money and political influence, as discovered by all of the reports in the Survey. If the Survey record were more complete, it would even more glaringly reflect this condition, which is not due to the police alone, but to the failure of *all* of the institutions for criminal justice.

The bureau is in the hands of identification experts. The methods of police identification, anthropometric, photographic, and finger-print, are highly developed. Captain Evans and several of his subordinates are experts

in this field. But this bureau is, and perhaps all identification bureaus in the United States are, very distant from and almost devoid of scientific methods for the study of their own archives after they are accumulated. The individual is treated as an individual, and while policemen, both in the Bureau and out, acquire a great deal of valuable knowledge in the detection of criminals, little of this is collected. For instance, individual policemen know from memory outstanding criminal families; but there is nothing in the record to indicate that a long known pickpocket is the son of another pickpocket who has also been known to the police as a pickpocket with a long record, nor that two women brought in as pickpockets were the wives of two notorious pickpockets. As to gang affiliation, each person is treated as an individual; for the individual crime associates may be mentioned, but nothing is compiled by taking out the record for a given crime and the records for all associates and grouping them as a basis for a possible operating gang. Further, the bureau is doubtful as to whether the addresses given are correct for the criminals. We know, from additional data about the individual and the gang, that he is a member of, for example, the *Forty-twos,* and that if the address is not exactly correct in the bureau records, it is in the proper vicinity.

A good deal of what appears in the newspapers is taken by the reporters from the police officers at the time of the arrest; yet there is no clipping file kept at police stations because newspaper accounts are not an official record; and the official records are very lean and have many lapses in them. The knowledge gained by the policeman about a district or about a type of criminal is not gathered and accumulated in files. With the repeated shake-ups in territories the criminal remains versatile, while the policeman is constantly coming in green with no accumulated data which can be handed on.

In the office of the secretary of police the statistical method is used in tabulating the records. The annual reports are an example of the results of these tabulations.

The spotting of maps for certain types of criminals as a basis for police policy has not been used as a method. To illustrate what the value of map spotting of criminals would be, we give this example: if the records of pickpockets of Chicago, which are usually comparatively complete, were taken as they are and spotted on a map, it would be discovered that most of them originated in what is now the Twentieth Ward, with all the consequent conclusions that follow. For instance, Chicago pickpockets are mainly Jewish. The analytical charts of bootleg gangs disclose their territorial nature.

4. *Who's Who in Vice and Gambling.*

The clearing of the four hundred selected names of the *Who's Who,* through the Identification Bureau, netted valuable information, which was abstracted and entered for purposes of comparison upon analytical charts. In the vice and gambling group a list of names was traced, which names were later classified under three headings: (A) those who had Identification Bureau records; (B) those who should have Identification Bureau records because of information from other sources regarding indictment or even conviction; (C) those who have no Identification Bureau records. Although the following names are chosen from vice and gambling, there is

a sufficient proportion of them also in booze to show the interlocking interests and directorate of these three enterprises. The list as classified follows:

A. Record in Identification Bureau.

Vice	*Gambling*	*Booze*
	Arnstein, Nicky	
Bertsche, Barney	Bertsche, Barney	
Bertsche, Joe	Bertsche, Joe	
Heitler, Mike	Heitler, Mike	
McGurn, James	McGurn, James	
Mangano, Lawrence		
Pope, Frank	Pope, Frank	

B. No Record in Identification Bureau, but Other Record of Conviction.

Vice	*Gambling*	*Booze*
Craig, Andy		
Cusick, Harry	Cusick, Harry	
Cusick, Jack		
Grabiner, Joseph		
Grogan, Barney	Grogan, Barney	Grogan, Barney
Lewis, Frank	Lewis, Frank	
Lynch, Jack	Lynch, Jack	
Miller, Dave	Miller, Dave	Miller, Dave
Miller, Harry		
Miller, Hirschie	Miller, Hirschie	Miller, Hirschie
	Miller, Max	Miller, Max
Patton, John	Patton, John	
Quinn, Arthur		
Skidmore, William		
Volpi, Anthony	Volpi, Anthony	

C. No Record in Identification Bureau, nor Other Record of Conviction, but Notorious in These Activities.

Vice	*Gambling*	*Booze*
Adler, Sam	Adler, Sam	
Bloom, Ike		
	Anixter, Julius	
Capone, Al	Capone, Al	Capone, Al
Capone, John	Capone, John	Capone, John
Capone, Ralph	Capone, Ralph	Capone, Ralph
Carr, Chas.	Carr, Chas.	Carr, Chas.
Cohen, Sam	Cohen, Sam	
Cooney, Dan	Cooney, Dan	
Coughlin, John	Coughlin, John	
Hare, Sam	Hare, Sam	
Harris, Sam		
Heitler, Joseph "Dutch"		
Jackson, Charles	Jackson, Charles	
Jackson, Dan	Jackson, Dan	
Kenna, Michael	Kenna, Michael	
Roderick, Ike		
	Lazarus, Isadore	
Zuta, Jack	Zuta, Jack	
	O'Leary, James	
	Tennes, Mont	

5. *Same: Group A—Leaders Not Fully Recorded in Police Records.*

Upon examination of the available Identication Bureau records (ten only) of leaders and close associates in vice and gambling (Group A, above), only Mike de Pike Heitler and Lawrence Mangano were found to have records of prosecution for activities in vice and gambling. The other eight have records which initiated *prior* to their entry into the latter occupations—initiated or accumulated in the days of their direct activity in crimes of violence and crimes against property. These men's full records, individually, are as follows:

1. *Jack McGurn,* whose real name is James Gebardi, a gunman associated for several years as bodyguard of Capone, was brought in on the order of Captain Shoemaker especially for the purpose of registering his fingerprints and initiating a record for future reference. He had no previous record. According to the system, it is proper to assume that these fingerprints were exchanged with the Central Bureau at Washington, and even though McGurn came from New York, he had no previous record there.

While there are the many limitations enumerated, this case illustrates that the police department has a way of registering known gunmen, retainers in vice, gambling, and booze, on general principles for future reference. The case of Jack McGurn, as well as other known gunmen who have no records, is corroborative of an observation made by a student in the heyday of gambling in Cicero, when on a certain occasion several attaches of a gambling house were laid off "because there are too many guys around here with records." At this time the managers were expecting police raids.

A year or more after this registration, Jack McGurn was injured on two occasions in machine-gun attacks which were ascribed to gambling war motives. The record taken at the time of the registration *makes no reference to the activities* in which he is engaged. The effort is concentrated upon physical identification. His occupation is given as chauffeur. It is also to be noted that he was not at that time a syndicate leader. His importance is due to his association as a subordinate with Capone.

2. *Barney Bertsche,* frequently mentioned within the last year as a member of the north side gambling syndicate, began accumulating a criminal record in 1885. He served time in Pennsylvania, in Wisconsin, in Tennessee, in Paris, France, and in Joliet. The charges were all for picking pockets or "con game." A pardon from the Governor of Tennessee in 1892 and a commutation in 1915 in Illinois indicate that he has been capable of significant efforts for securing his own liberty. He is now a man in the sixties. In spite of the charges of violence and bombing against the large-scale gambling syndicate of which he is the most prominent member, he has never been harassed by the law since he has entered his present activities. The last difficulty with the law recorded in his record was the conviction in 1912 and his commitment to Joliet in 1914 on a charge of "con game" for conducting the clairvoyants' trust in Chicago. Bertsche made a strenuous fight, took the case to the Supreme Court on appeal, was released on a writ of supersedeas after he was in the penitentiary, and his sentence was finally commuted by Governor Dunne. As to his record in the Identification Bureau,

we state with special emphasis that it was initiated prior to his rise to an important position in gambling, and *no entries have been made on it since.*

3. Barney Bertsche's brother, *Joseph Bertsche,* who has worked under three aliases and whose name has been associated frequently with Barney's in gambling operations, has been tried in Chicago in 1915 for burglary of a safe, along with associates, and was found not guilty. In Allegheny County, Pennsylvania, in Cleveland, in Pittsburgh, in Detroit, and in Indianapolis he has operated as a burglar, and has been picked up on vagrancy as a suspicious character in Milwaukee. He has been tried and convicted of burglary in several of these cities; he has also been pardoned by the Governor of Pennsylvania in 1899. In 1927 he was sentenced to a four-year term and a five thousand dollar fine for the robbery of a mail truck in Cincinnati in 1921, and is now safely in a penitentiary. This conviction is *not recorded in the Identification Bureau record,* but is a matter of newspaper history. His record *does not include any of the vice and gambling activities* and was initiated in his earlier burglary and robbery days. He is at present about fifty-four years of age.

4. *Frankie Pope,* of recent wide publicity as operator of a gambling house in the disputed north side territory, formerly widely known as an associate of the Capone syndicate in Cicero, has an Identification Bureau record in 1919, 1920 and 1921, for robbery and conspiracy. All the charges against him have been stricken or dropped. There are *no charges against him for gambling activities.*

5. *Michael Heitler,* known as Mike de Pike, for many years a vice lord in the Des Plaines Street district, has an Identification Bureau record which is an outstanding contrast to all the other important characters in vice and gambling. It was initiated in 1916 when he was sentenced to Leavenworth for conspiracy in the violation of the Mann Act, by the United States Court in Chicago. He has been tried and fined as a keeper of a disorderly house and the keeper of a gambling house in Chicago. The contrast lies in his Identification Bureau record for convictions for the activities in vice and gambling, in which he has been a chief for many years. The newspapers also report one sentence by the Federal Court for violation of the Volstead Act in 1923, but this does not appear in his Indentification Bureau report.

6. *Nicky Arnstein,* associated with Tim Murphy and Wertheim in the De Luxe gambling house on the north side (the most fashionable in Chicago), was registered at the bureau when he was tried and sentenced for conspiracy to dispose of stolen bonds. This was a federal charge. He received a two-year sentence and was fined ten thousand dollars. Once his record was initiated, exchange with New York City showed that in 1915 he had been sentenced to Sing Sing for two years and ten months from New York City, for obtaining money under false pretenses, and again in 1925 he was arrested in New York City on a charge of grand larceny. There is no set rule to determine under what circumstances or in what types of cases the United States Government brings defendants in criminal cases to the bureau.

7. *Lawrence Mangano,* age thirty-five, was prosecuted for pandering, in 1912, and the charge was stricken off in 1913. Prior to that date he has one sentence to the House of Correction of six months and a fine of three

hundred dollars and costs, on June 14, 1911. Between 1913 and the present date there is one arrest for receiving stolen property in 1921. He was bound over on twenty-five hundred dollar bond, but the record does not state the outcome. In 1922 he was fined twenty-five dollars and costs as the keeper of a disorderly house. About the same date he was bound over on two charges of burglary and one of larceny on ten thousand dollar bond, but the record does not state the outcome of the case. In September, 1928, he was given considerable space in the newspapers in connection with the bombing of the home of Captain Luke Garrick of the police precinct in which a gambling house operated by Mangano is located, at 522 South Halsted Street, known as the Minerva Athletic Club. This bombing occurred after a raid of the gambling house.

8. The meager records of *Al Capone* and his *two brothers, Ralph* and *John,* are discussed later under the subject of "Meager Records in Bootlegging."

6. Same: Groups B and C, Leaders not Recorded at all in the Police Records.

Aside from the few records discussed above for men engaged in vice and gambling, there are other men very important in organized crime, who, according to newspaper and other information, should have records in the bureau, but who have none. Some of them have been indicted and convicted on various charges. All of them have been prosecuted. For instance—

1. *Harry Cusick,* important in the Capone syndicate in vice, gambling, and booze, is known to have been convicted as a panderer. It is true that he received a pardon from the governor of the state while his conviction in the lower court was pending on appeal. The only explanation that can be made for the absence of a record in this case would be that habeas corpus and bail bond proceedings snatched him from the hands of the Identification Bureau repeatedly during the operation of the due process of law. The case of Harry Cusick, from the time of its first hearing before Judge Fisher in the Criminal Court, through the Appellate Court, and while awaiting the decision of the Supreme Court, was in process for one and one-half years. Governor Small's pardon came while it was pending in the Supreme Court. For a year and a half after the conviction in the lower court, the opportunity was always open to register Cusick in the bureau.

2. *Andy Craig* is reputed to have risen from a pickpocket, fence, and later a prosperous bondsman in the Harrison Street district to importance in the vice syndicate. Newspaper articles, as for instance in the Chicago *Herald* of December 13, 1903, trace his entire evolution up to the point of his becoming an important factor in the vice syndicate and a professional bondsman and politician, yet there is no record for him in the Identification Bureau. At one time there was a newspaper report of a dispute over the removal of a record after he had become prosperous.

3. The notorious *Miller brothers,* famous in vice, gambling, booze, politics, and gang warfare in the Ghetto, have been prosecuted at various times. *Hirschie Miller* and Nails Morton were tried twice for the killing of two policemen in the Beaux Arts Club. They were acquitted, but no record is to be found for Hirschie Miller. *Max Miller* was tried for a killing in Max

Eisen's resort on West Division Street. In the same altercation Chickie Hadesman was wounded. There is a record for Hadesman but none for Max Miller. It is true that Miller was acquitted and that it was a battle among gangsters. *Harry Miller,* while a member of the police force, was involved in the narcotic traffic. He has no record.

4. *Dago Frank Lewis,* also of the south side gambling and vice syndicate, has been indicted for bookmaking. There is the possibility, too, that he is the man who served a Pontiac term in his youth; yet he has no record in the bureau.

5. *Johnny Patton,* the boy mayor of Burnham, with a probable early record of probation and arrests as part of the Capone booze and vice syndicate, is not on record.

6. *Prince Artie Quinn,* lifelong gambler, fence, and recently indicted in the vote frauds investigation, has no record.

7. *Skidmore* is another example of the same kind, connected with police graft investigations into crooked politics and graft collections in vice and gambling, reputed pickpockets' bondsman.

8. *Mops Volpi,* bodyguard of Al Capone for several years and formerly of Diamond Joe Esposito, has no record. His reputation as a reliable gunman is well established. Just prior to the final peace among the Capone-Genna forces on the one hand and the O'Banion forces under the chieftainship of Hymie Weiss on the other, an earlier attempt at peace had failed because Hymie Weiss wanted Mops Volpi "put on the spot" for certain of his exploits with the machine-gun. He was indicted and acquitted in 1920 for a murder, and in the same year a charge of receiving stolen property was stricken off. There is no record of Mops Volpi.

7. *Who's Who in Bootlegging.*

The names of one hundred twenty-six bootleggers, prominent in the newspapers and in the historical study of the beer wars, were selected for clearance through the Identification Bureau. For these, eighty-three records were found. All the facts on these records were charted.

The first and most striking observation that can be made about bootleggers is the almost *total absence of a record* of arrest or prosecution for violation of the liquor law. The federal prosecutions, as has already been stated, are not recorded with regularity because the federal government does not bring its arrests to the Identification Bureau for identification; it seldom forwards to the bureau information with regard to the fate of the individual arrested in the due process of law. It occurs, therefore, that on the entire chart there is only one entry in the case of one of the foremost bootleggers of Chicago, of a fine of five hundred dollars and costs and sixty days in the House of Correction (which he did not serve) for violation of the liquor laws.

A glance at the chart, which tabulates the records of these individuals by offenses, immediately discloses that robbery, murder and assault to kill, burglary, grand larceny, and kidnapping characterize the criminal careers of famous bootleggers who have previous criminal records.

The same chart indicates the types of punishment to which these individuals have been subjected, and inversely is a picture of their immunity. Very few of their cases are dismissed for want of prosecution. In consider-

ing this chart it should be emphasized that the bureau records are weak in recording arrests. There is no definite rule that every person arrested must be registered in the records of the bureau. While occasionally arrests are shown on the record, even though there was no subsequent prosecution of any kind, the overwhelming number of records of any particular case against a particular man may begin at any point in the due process of law. Occasionally, in extreme cases of omission, the only record is a conviction, without even recording the charge.

The arithmetical average age of the first crime committed by seventy-three of the eighty-three bootleggers, for whom the records give ages, is twenty-three years. The arithmetical average present age for these seventy-three bootleggers is thirty-five years. The span between the two average ages is twelve years. If the records of the Juvenile Court and the Boys' Court were consulted, the average age of the first crime committed by these bootleggers would fall much lower, but even in the cases of men of established criminal record, the records of these earlier courts, where their criminal careers were first developed, are not consulted and are not a part of the Identification Bureau records.

Five out of the eighty-three were charged with kidnapping in election frauds, which is a suggestion of their activities on election day; thirty-one out of the eighty-three have been charged with robbery, and several have been charged more than once; twenty-eight out of the eighty-three have been charged with murder or assault to murder, many of them more than once; twenty-five of the eighty-three have been charged with grand larceny; twenty-two have been charged with burglary, some of these more than once. Having gained an impression of the character of criminal careers of bootleggers, it is well to remember that the span between the present age and at the time of the first crime recorded is twelve years, which means that these criminal careers were established before prohibition.

The dates of recent crimes indicate that the robber, murderer, burglar, and thief in bootlegging has not ceased his previous criminal occupations. Indications are that he selects more profitable enterprises in the same line, but continues even though he is in the beer trade.

The bootlegger-criminal is born in Chicago, with few exceptions, and even in those exceptional cases usually his first crime was apparently committed in Chicago. Eleven of them have been charged with carrying concealed weapons. There is a widespread impression that pickpockets have gone into bootlegging and have ceased previous operations, but there is only one such case on record of a Chicago man and one of an out-of-town man who came to Chicago late in his criminal career and here engaged in "con game," extortion, robbery, and murder. Only two bootleggers have been charged with extortion. It seems that evidence is very difficult to obtain of the practice, deemed to be widespread, of "horning in" on the profits of the traffic in alcohol.

8. Same: The Bootlegger's Immunity from Justice.

What characterizes the penal record of these eighty-three bootleggers? *First,* there is a marked absence of dismissals for want of prosecution—only three cases for two persons. Since the record in police court is only seldom entered, it is reasonable to think that subsequent to the

arrest large numbers of their cases do not even reach a police court trial. As soon as they are arrested they are released on bond or habeas corpus and are not taken to the bureau and no record is made.

Second, in the cases recorded as "bound over" the most outstanding fact is the great disparity in the amount of bonds for the same crime. Bond forfeitures are only fairly frequent among bootleggers for various other crimes. Fugitives from justice, presumably men out on bond, combined with the column of "bonds forfeited" will produce a larger proportion; viz., twenty-five per cent of them have forfeited bonds or are fugitives from justice.

Third, "no bills," for crimes classified under the main classifications which characterize these careers, have been a factor in twenty per cent of these careers.

The outstanding fact in the termination of the cases is that they are either stricken off or in an overwhelming number of cases given a light fine and costs for felonies. Fines are almost entirely for disorderly conduct or carrying concealed weapons, but considering the nature of the charges which characterize their careers, these disorderly conduct charges may be assumed either to be lesser pleas or else the only charge upon which police had evidence sufficient for conviction.

The House of Correction sentence is two-fifths as frequent as the fine, even considering the character of the crime. The record of a fine or a sentence is not followed up to the extent of making certain whether or not the fine was paid or the time served in the House of Correction.

Sentences to the County Jail are one-third as frequent as those to the House of Correction, and one-seventh as frequent as fines.

About one-fourth of the eighty-three cases have been sentenced to Joliet at some time or another in their careers, but this gross figure is subject to several considerations. The very first glance will reveal the names of men whose cases were later reversed, remanded, and dismissed. Secondly, several of these terms were served in the early careers of these men. There are also names of men who have served the very minimum of time under the sentences and names which figured in the pardon and parole scandal publicity. On the other hand, there are names of men who have served time in federal penitentiaries, of which terms there is no record in the Identification Bureau.

Eleven of the eighty-three have Pontiac sentences in their records—about half as many as have Joliet sentences. Some of the names are duplicated. There are about as many probations in their records as there are Pontiac sentences. Some of the identical names are sprinkled about in all of the columns representing penalty. For thirty-three Pontiac and Joliet sentences, there are fifteen violations of parole. Parole violation repeaters are frequent. The records show that while on parole they continue the same character of crime as that for which they were originally committed. They also indicate that violation of parole may be used as a lesser penalty than would result from going on trial for the new offense.

9. *Same: A List of Leading Bootlegger Criminals with Meager Police Records.*

Many of the gangsters notorious in the press have meager records in the Identification Bureau. Very often these are records for charges which were stricken off or had otherwise fallen by the wayside at some point in the due process of law early in the career of the man. Some meager records of notorious gangsters and gangster leaders are a tribute to the insistence of Chief of Detectives Shoemaker that the Identification Bureau be made a means of effective aid if, and when, the great gangster is wanted. The securing of the records of these highly influential terrorists and wealthy bootleggers and gamblers, when there is no legal evidence against them, is beset with danger and requires courage. The list, undoubtedly, is a step in the right direction. The Identification Bureau ought to be even more conscious of what is going on in the city, even though the law seems to catch in its meshes, and to hold, only the minor gangster. The remarkable fact is not that the records are meager and ought to be long, but that these gangsters, prominent in organized crime, appear in the records at all.

Albert Anselmi and the associate or accomplice tried with him for the shooting of two policemen in 1925 were closely associated with the Genna brothers in the liquor business—the cooking of alcohol and the distribution of alcohol. At the time Scalise and Anselmi were under indictment for the killing of these two policemen, a record was taken of them at the bureau. It is assumed that when a record is taken finger-prints are exchanged, and neither of these men had any record anywhere in the United States. The friends of Scalise and Anselmi, who were fighting loyally for them at the time of the trial, were, many of them, reputable people and they insisted very earnestly that these men were not criminals. They are examples of merchants or capitalists in a contraband business who must protect themselves by carrying a gun. Their friends meant that they were guilty of no other crime than bootlegging prior to the killing of these two policemen. They were finally found not guilty.

Of the nine *Aiello brothers* and their numerous cousins by the same name, there is only one of record. He was arrested in Pittsburgh as a pickpocket suspect in 1918; he was then a man of twenty-seven years of age. On November 20, 1927, he was brought in at the time of the gambling war in which the Aiello brothers were the armed forces for the north side syndicate in dispute with the Capone interests and others. It may be that the Aiellos have entered these syndicates through the bootlegging business. They were able to obtain and furnish sugar in the bootlegging business when that began. From that they tried to expand and participate in these syndicates. It may be that the Aiellos were engaged entirely in legitimate business prior to their entry into the bootlegging via the furnishing of sugar.

John Burns, alias Klenza, Hawthorne Hotel, Capone gunman, has only been in the bureau once on general principles. That was on September 19, 1916. He was probably registered in connection with the McSwiggin case. He was at that time only twenty-four years of age and the fact that the main activities of Capone were in Cicero may account for the lack of any record during the three years from 1921 to 1924, when this man could have accumulated a record. One indictment

in a booze investigation about the time of this registration in the bureau might explain the reason for his registration.

Joseph Bolton, known to the press as one of the Bolton brothers, beer bosses in the territory around Ashland and Taylor avenues, participants in syndicated gambling in the same vicinity and, of late, patrons of the Forty-two gang, served a term at Pontiac for robbery nine years ago. He was paroled, violated parole, was returned and discharged. Seven years ago he was arrested on general principles but with no consequence. Since the Volstead era there is not a scratch against him.

Al Capone's record at the Identification Bureau was taken in 1925 after the shooting of Torrio which he survived. It is likely he was brought in then more for the purpose of information and because they thought he had a motive. Again, during the McSwiggin investigation he was wanted at the bureau. That is recorded and no more, though the histories of vice, gambling, and booze, as well as the current facts place him at the top of a pyramid in every form of terrorism, whether it be in contraband or legitimate lines, or in "merchant racketeering."

Ralph Capone, brother of Al, associated with him in all the branches of vice, gambling, and booze, reported frequently to be the keeper of a disorderly house, was only arrested once in Chicago and turned over to La Grange, Illinois, for carrying a gun. That was in December, 1923. The very curt entries are: "1-30-28, arrested as vagrant in New Orleans; 6-1-26, arrested on general principles and for carrying concealed weapon"; yet in the last entry there is the whole story of the effort of all the institutions and agencies of justice to establish the facts around the killing of McSwiggin; but that is not mentioned. He was indicted in July, 1926, by a federal grand jury for violation of the prohibition laws, which indictment together with seventy-three others, including his brother Al, was dismissed, and the prosecution admitted that there was not sufficient evidence to carry a conviction. Not only his importance in organized crime in Chicago, but the fact that there was an indictment is absent from this short record.

John Capone, the youngest of the brothers, was fined five dollars and costs for disorderly conduct in 1922, but it served to record him in the bureau.

Frank Cramer, also of the Saltis group, who is only about twenty-seven years of age, has a meager record but a telling one. Four years ago he was given probation for one year on a larceny charge, and in 1928 he was again given a probation for larceny reduced to petty larceny by Judge Eller. He is a minor member of the gang, but seems to be able to "beat his raps." If the record were a record of his criminal activities and not only an identification record, it is not likely that, having begun at the age of twenty-six years to establish a career of crime, he allowed four years to elapse before he committed another larceny. Immunity both for his activity in the Saltis gang and for his own enterprise is more probable.

Nick Cramer (Kramer), fifty-six years of age, known for several years to have been associated with Joe Saltis, was wanted by the police when Saltis and Oberta were tried for the murder of Mrs. Foley and was then a fugitive from the city, has recently been arrested and the police are holding him at present as a fugitive in the case of that murder. He had no previous record in 1926 when he was brought into the bureau by Shoemaker only for the purpose of registration.

George Druggan, brother of Terry Druggan, now twenty-seven years of age, was brought into the bureau in September, 1926, on general principles. He is a small-time gangster and hoodlum. During all of the summer of 1927 a case was pending against George Druggan for the violent slugging of a man. He has assaulted a license inspector with a baseball bat and broken his limbs when he demanded a license of him. (The license inspector was fifty-four years of age). He was indicted. There were eighteen continuances in the case and finally a jury acquitted him. The record in the bureau was initiated on general principles in September, 1926, and even though there was this subsequent arrest and indictment and long prosecution prior to the acquittal, there was no further entry made in the case nor is there any previous record.

Frank Foster, close associate of the O'Banions, one of the earliest of bootleggers, importer and carrier of Canadian whiskey, brother of John Citro, who at one time was a close associate of Samoots Amatuna, according to the newspaper reports, was indicted for murder in 1924, which was later stricken off, and he was again indicted in the election frauds in 1926. The Identification Bureau records indicate only a disorderly conduct charge in 1920, two days in the House of Correction and a fine of one hundred dollars and costs for driving an automobile while intoxicated in 1925.

John Gennaro, also of the Capone gang, age thirty-four, at the age of twenty served a year in the House of Correction for robbery. The plea was changed to larceny. At the age of twenty-four he was taken in a robbery with a gun, and nothing more is said. Since then there is nothing against him except his association with Capone.

Ben Jacobs, partner of Sam Pellar who was wounded when Hymie Weiss fell before machine-gun fire at the corner of the Cathedral opposite the O'Banion headquarters, was recorded at the bureau in 1926 when it was suspected that he and his partner, Sam Pellar, put Hymie Weiss "on the spot." He then gave his occupation as investigator. He was wanted before the coroner but there were no consequences, as in all gang killings. Eleven years before the day when the third of the O'Banion dynasty fell, Ben Jacobs was held on a charge of manslaughter and found not guilty. Of the activities of Jacobs and Pellar as lieutenants and disciplinarians in charge of elections for Eller, there is nothing in the Identification Bureau record.

Nick Juffra, also associated with O'Banion, known as one of the earliest of bootleggers, recently prosecuted under the Volstead Act and arrested during the famous raid of the Sieben Brewery, has only one entry against him aside from the contempt entry for which he was sent to jail at Rockford when Torrio, Druggan, and Lake suffered the same mortification. The entry prior to bootlegging was a small fine of ten dollars and costs for obtaining money under false pretenses. Who would surmise this man was an O'Banion gangster!

Julian (Potatoes) Kaufman, de luxe gambler and son of a wealthy commission merchant, has been associated with important gangsters, notably those of the old O'Banion gang, as a receiver of stolen property, but has been important in general organized gambling and has been mentioned frequently after murders charged to O'Banion gangsters. As to his record, the Identification Bureau has only one charge for receiving stolen property, for which he was indicted and the case was later nolle

prossed. It is a meager record for a man so frequently sought and so prominently mentioned in organized crime.

Joseph La Cava, of the wealthy and notorious La Cava brothers, associated in business with Capone in the Cicero syndicate and later syndicates in gambling under the Thompson administration, was brought into the bureau only for registration in 1926. An indictment under the Volstead Act does not show on the bureau record because it was under the federal jurisdiction. In 1928 he was held during the gambling war bombing but nothing happened. Again the only reason his record is in the bureau is the energy of Shoemaker and his appreciation that gangsters, though influential, should be recorded in the bureau.

Frank Lake, partner of Terry Druggan, who rose from a fireman to millionaire brewer and race horse owner, whose many difficulties with federal law have filled hundreds of columns of newspaper space, known early in his life to have been for a period in charge of the pickpockets in the Maxwell Street police area, has only one entry in the records. It was made when he was sentenced to one year in the county jail by Judge Wilkerson for contempt of court after his breweries were raided.

Vincent McErlane, brother of Frank McErlane of the same gang, is comparatively a young man, age twenty-eight years. He was brought into the Detective Bureau in 1926 on the order of Shoemaker, merely to be recorded and photographed. Twice the same year he was fined for carrying concealed weapons. Otherwise he had no previous record.

Jack McGurn, long known as an associate of Capone, in a glaring limelight when during the Aiello-Capone war he was wounded while on the northside, has no criminal record whatever. The only reason he is registered is the energetic effort of Shoemaker to keep famous gangsters recorded for future reference and use.

Harry Madigan, the saloonkeeper in the Capone territory, at or near whose saloon McSwiggin was killed, has a record only for election activities of gangsters—eight charges of assault to kill and kidnapping, stricken off two years later. Election activities may be the only criminality he engages in aside from his delivering illicit beer, or his place may be a political headquarters.

Of the west side *O'Donnells, Miles* has no record except one fine for toting a gun in 1926 about the time the McSwiggin grand juries were concerned with these O'Donnells.

William O'Donnell, the notorious Klondike, chief of the west side O'Donnell gang, has only one item recorded in the Identification Bureau for the entire period of his operations in bootlegging. That was a federal charge, the whiskey burglary of the Morand Brothers' Warehouse. The Identification Bureau records are not completed to the extent of showing that he actually served time and was later paroled for this offense. At that time a previous record indicated only one little incident and that was that he was found not guilty of larceny by Judge Zeman seven years previously.

Sam Pellar emerged into prominent newspaper publicity when he was arrested as one of a party with Hymie Weiss when the latter and Patrick Murray were killed by machine-gun fire in front of the Cathedral. This, along with other knowledge, fixes him clearly as an O'Banion gangster. He was arrested then because of the possibility that in the turmoil Sam Pellar shot the other two and that they were not killed by the machine-gun fire. The bureau probably expected to glean from

him further information. He was indicted recently for assault to murder in the Loesch vote fraud investigation as one of the gangsters active in the twentieth ward in the primary election of April 10, 1928. It is definitely established that he is both an O'Banion gangster with political connections, and definitely in organized crime. Aside from this arrest after the killing of Weiss, his previous record is very meager. Under the name of James Burns he was arrested for vagrancy in Indianapolis on January 5, 1923. Under the name of John Eastwood he was arrested in Birmingham, Alabama, on suspicion. The record does not specify the nature of the suspicion. On June 10, 1928, he was wanted by Captain Shoemaker, and that is of record.

Dan Stanton is to this day important in the Sheldon-O'Donnell-Stanton faction, which is continuously engaged in warfare with the Saltis-McErlane faction in beer running on the south side. Only one charge is recorded against him—an indictment for a murder which was later nolle prossed in 1924. No previous or other record is shown.

Patrick Sullivan, of the Saltis gang, was brought into the Detective Bureau in 1926 and it was discovered through the Identification Bureau records that twenty years earlier he had been charged with burglary. Although Sullivan is a known gunman he has not suffered much harassment from "the law."

James Vinci was himself of the important Vinci brothers' gang of bootleggers on the southwest side. He has a short record which includes fourteen years in the penitentiary for murder, which was reversed and remanded by the Supreme Court in 1920. In 1922 he was arrested for carrying concealed weapons.

Sam Vinci, of the Vincis of the southwestern side, whose murders and reprisals became common knowledge through the press when one of the brothers killed Minatti during a session of the coroner's inquest into the death of another brother, was sentenced to one day in the county jail and was fined twenty-five dollars and costs for larceny, once in his life, according to the record. He was held for the murder of Minatti. The brothers were originally James, Sam, Philip and Michael. Michael and James have been killed in booze warfare and Philip was the invalid brother who committed the murder in the coroner's inquest. A glance at the record of Sam would suggest only that in his early twenties he ran afoul of the law on a minor offense. Bureau records give very little hint of the importance of a man in gangland. Of the four brothers, two have no records at all.

10. *Same: Bootlegger Criminals with No Police Record.*

More remarkable than the meager records of lifelong important gangsters is the *absence of records* for gangsters, just as important, who have been indicted or convicted. Here are some of them:

Louis Alterie, of the Valley and O'Banion gangs, burglar and robber prior to prohibition, associated with O'Banion both in the liquor business and in gang warfare on the one hand, and with O'Banion and other gang members in robbery and burglaries on the other, at no time had a record at the bureau.

Of the six famous *Genna brothers,* whose newspaper histories are full of numerous crimes—burglary, murders, histories on the Mafia style—organizers of the household alcohol industry among the Italians

after prohibition, aside from automobile thieving and the terrorization of women witnesses—of these only *Angelo* has a record. By comparing Angelo's record with the newspaper history, it is possible to characterize him as a gunman, murderer and "fence," but it would be impossible to gain even an inkling of his magnitude, his power, his wealth, and his influence, and even then the record would show no convictions. "Not guilty" and "stricken off" mark the few items. Captain Shoemaker was not backward in making an entry on the record that they actually caught Angelo with the goods stolen in the Sandag Jewelry store robbery. (It was a famous robbery). Angelo never served time. He was sentenced for a year and a day at Leavenworth when he intimidated a woman witness against him in a Mann Act charge, but somehow he never served. This information is not a matter of bureau record; the newspapers relate it.

Martin Guilfoyle, boss of the booze and gambling syndicate in the West North Avenue police district, has been frequently mentioned in the newspapers as the murderer of Peter Gentleman, famous gunman. Our data do not show how far his prosecution went in this case, but he has no record. The same can be said for the *Kolb brothers,* although both of these have been indicted. *Al Winge,* the police officer, who with the Kolb brothers is an associate of Guilfoyle, has no record.

The *McDermott brothers,* important politicians "back-of-the-yard," have been indicted under the Volstead Act, but the facts have never been recorded in the bureau.

Daniel McFall and *William (Gunner) McPadden,* of the Ragen Colts, widely reputed gunmen, wanted in several murders, active in beer after prohibition, have no records.

In the case of *George Mack,* the newspaper history records a Joliet sentence and parole. He was again wanted in the Sieben Brewery raid, but there is no Identification Bureau record.

David X. Meyers, a Druggan-Lake man who received a sentence to probation in 1921, has no record.

Joe Montana, chief of the Melrose Park bootlegging ring, recently indicted with a large number of his co-villagers, including the officials, has no record. Montana was formerly of the Genna gang.

Bernard O'Donnell, of the west side family, indicted in the Tancl killing, has no record.

Walter Quinlan, reputed as the killer of his chief, Paddy, The Bear, Ryan, of the Valley gang, killed in turn by Paddy, The Fox, son of Paddy, The Bear, known as pickpocket and thief for many years, has no record.

Louis (Big Six) Smith, "dope" peddler and professional killer, once associated with Capone as gunman, later sunk to a lower level as destructive "racketeer," has no record.

Julius (Yankee) Schwartz, indicted in 1926 for vote frauds, imported by Davy Miller from New York as gunman, who later was the cause of the shooting of O'Banion by Miller, has no record.

Edward Vogel, associate of Capone in gambling and indicted for violation of the Volstead Act, known as a syndicate operator, has no record.

John (Dingbat) Oberta, at present ward committeeman and candi-

date for state senator of the thirteenth ward (September, 1928), was tried with Joe Saltis for the killing of Mrs. Foley, but has no record.

In the list of bootleggers having no record, there are some important politicians, syndicate chiefs, gunmen, associates of big brewers, and others whose newspaper histories indicate that a record is warranted. A considerable number of them have served prison sentences; others have served jail sentences; others have been indicted for murder; and others for violation of the Volstead Act. One or two have served probation. Many of them have been wanted for killings. All of them are known to the public and the press as criminals. A slight exception might be made for three or four of the important politicians, because their prominence in politics outweighs their criminal reputations.

An explanation should be given for the cases of those who have gone through indictments and even sentences of various kinds, who are known to be operating on a large scale, or who were associated with chiefs, who have no records. The bureau's own explanation is that these criminals have not been brought in for registration or that they have been snatched out of the hands of the bureau when brought in. The methods by which lawyers keep clients with money out of the hands of the Identification Bureau have already been mentioned several times. Political influence is probably a factor in this failure. Other means can be brought to bear upon the arresting policeman. By and large, the absence of earlier records upon a man's career prior to bootlegging is due to the fact that the cases have probably fallen by the wayside in the police court, the cases being dismissed or reduced and punished by small fines.

The following are prominent gangsters in bootlegging whose names have been in the limelight in gang wars, who have no records and upon whom no data indicating that they have ever been indicted or convicted have been attained by this study:

Of the *Aiellos* it may be said, that they have never been apprehended or prosecuted for either bootlegging or gang war crimes, but the Aiellos have, until recently, been in legitimate business. Still more recently they have been supplying sugar on a large scale to wholesalers, but finally fell out with their erstwhile partner, Tony Lombardo, over control in the bootlegging industry and control of political power, leading to the murders of several Aiellos, some of them cousins of this family, and finally to the murder of Lombardo.

Ecola Bardella, known as the "Eagle," may have been a terrorist among Italians prior to his assassination, but because of his connection with Italians it is evident that no evidence was gathered against him. The same may be said of *Dominic Cinderella* and *Frank Cremaldi,* both of whom are dead.

Doherty and *Duffy,* who were killed with McSwiggin, may have engaged in no other criminal activities but those connected with the traffic in beer and would therefore have no records. John Dougherty, alias John Duffy, was a hoodlum who became involved with O'Banion after the killing of a woman by the name of Exley. He had dabbled in booze, was a drunkard himself, but while his death caused a great deal of newspaper comment, he was probably a hoodlum of low standing and consequently of little or no importance.

Morris Dunn was killed in the south side beer war, as was Duffy, but nothing more is known of either of them except that they were beer runners.

Bummie Goldstein, a west side gunman and alcohol distributor, was very young when he was killed. He had gone from helping his father on his junk wagon into the distribution of booze. The several difficulties he had with the law were probably in the vicinity of the Maxwell Street station where he wielded considerable influence.

Patrick Harding, a middle-aged saloonkeeper and a Capone man, who was formerly associated with Torrio, has probably remained a saloonkeeper and would, therefore, have no record.

It is not necessary to prolong the analyses of all the names on this list. The remaining individuals with reputations in bootlegging also have no records, but quite reasonably so. They are likewise bootleggers, conveyors of booze who carry guns, and post-Volstead saloonkeepers. Some of them have been killed, but we have no information to show that they have gone through the due process of law at any time to the extent that would make the absence of a record a question, or that a record is warranted by a crime other than bootlegging.

Harry C. Hassmiller
Frank Herbert
Frank Hitchcock
John Hoban
Edward Kauffman
George (Big Bates) Karl
Morris (Chick) Keane
Harry La Salle
Richard La Salle
William (Rags) McCue
George Meeghan
Phillip Piazzo
Edward Tancl

This analysis of the records in the Identification Bureau of gangsters prominent in organized crime, is meager partly because of their immunity from arrest, indictment, and conviction, but partly also because of the consideration shown to them on account of their prestige, political influence and their financial ability to command the services of shrewd and indefatigable lawyers. It is evident that only in a handful of cases have any except the minor *functionnaires* in the bootlegging industry been put to the inconvenience of arrest and examination in the Bureau of Identification, and that few of the booze and beer magnates of the prohibition era have experienced conviction and sentence for their participation in the violation of law.

11. Lack of Police Records of Criminal Gangs.

Included in the *Who's Who of Organized Crime* were the names of members of the various notorious criminal gangs in Chicago. With the coming of prohibition, these gangs turned to bootlegging and soon became involved in wars with each other, broken by short periods of comparative peace, over the profits of the control of the making and the distribution of whiskey and beer. The records in the Bureau of Identification make possible an analysis of these different criminal gangs in terms of their immunity from registration as well as from arrest, conviction and sentence; of the types of crime with which they have been charged and sometimes convicted; of the age of the members of the gangs; and of their geographical distribution.

Analytical charts covering the above points were made for the following criminal gangs: the Al Capone gang, the Valley gang, the Sheldon gang, the Saltis-McErlane gang, the O'Banion gang, the Klondike O'Donnell gang, and the Forty-two gang. Brief summaries of these charts follow:

The Al Capone Gang

Of the thirty-three men reported by the press to have been affiliated with Capone as partners, bodyguards, or lieutenants, only seventeen have records. Of these seventeen men, six have records for robbery. All of them have been charged more than once with felonies. Three have served in Joliet and Pontiac for robbery. Four have House of Correction sentences against them, and of these four, one has also a prison sentence. Three of them have been sentenced for receiving stolen property. The same three have been charged with burglary. There is only one man of the seventeen who has ever been charged with pandering. There is a mere suggestion in the analysis chart of arrests for kidnapping; otherwise the records are very meager. Four out of the seventeen have only meager records, their fingerprints having been taken for identification purposes, and that is all. Most Capone men have no records whatever.

The chart would indicate that the addresses given are scattered over wide areas of the south and west sides of the city. None of them has ever lived on the north side.

The Valley Gang

Of fifty-three Valley gangsters, only fourteen have records. Of the fourteen, three belong to one family. Out of the fourteen there is only one Pontiac and no Joliet commitment record. There are three county jail records. Only four individuals have been sentenced to terms in the House of Correction; one man four times. In several cases fines have been imposed, indicating that lesser pleas for burglary and robbery are changed to petty larceny. What characterizes this chart especially is that burglary and robbery are the main crimes of members of the gang, which are often changed to petty larceny.

The Sheldon Gang

Of twenty Sheldon gangsters, records for fourteen were found. Five have served in Pontiac and Joliet, two of whom have violated parole. The charges against Sheldon men have been characterized by robbery, murder, election kidnapping, some burglary and a little labor slugging. There is the same suggestion of the seeking of lesser pleas resulting in fines, and the same names appearing in the fines and the House of Correction columns again appear in the prison and reformatory columns. They have their share of *Stricken Off, Nolle Prossed,* and *No Bill.*

For the Saltis-McErlane, O'Banion, and Klondike O'Donnell gangs a single chart was made because there were too few records for each gang to accumulate enough data for conclusions individually for each gang.

The Saltis-McErlane, O'Banion, and Klondike O'Donnell Gangs

These gangs may be discussed together. A comparison of the Saltis, McErlane, the O'Banion, and the Klondike O'Donnell gangs makes evident certain general similarities, although there are also wide differences. The crimes, for instance, of the O'Banion gang were out-

standingly those of burglary, while the Saltis-McErlane gang was characterized by prosecution for murder. Both gangs are equally marked by robbery, fines for disorderly conduct (really, carrying concealed weapons), and contempt charges. The last two offenses are common to all four gangs. While there is a sprinkling of larceny in the youth of their members, and other crimes, there are few House of Correction sentences as compared with fines, and still fewer county jail sentences. There are four times as many prison sentences as there are reformatory commitments, and very few out-of-state prison sentences. The violation of paroles is about one-third of the number paroled, and the proportion of prison escapes equals that of the violation of paroles.

The average age of the gang members for the earliest crimes on record is twenty-four, and the average present age is thirty-three years.

The Saltis-McErlane, O'Banion, and Klondike O'Donnell gangs are almost exclusively Chicago born men. The O'Banion gang is recruited from the widest territorial distribution as well as national distribution. The west side O'Donnells were also recruited from the north, south and west sides. The members of the Saltis-McErlane gang stay well in the territory of their beer distribution—west of Halsted on the south side to the city limits.

The Forty-two Gang

The neighborhood criminal gang, the Forty-two's, is characterized by the youthfulness of its members. Their average age at the time of the first felony recorded in the Identification Bureau is eighteen and the average present age is twenty-three. Their addresses are close together, except as occasionally a boy stays away from home and gives the homeless man area on Madison Street as residence. All of their addresses, with the exception of two, could be included in a square mile.

Of thirty-two members, twenty-two had records in the Identification Bureau and most, if not all, of the other ten very likely have records in the Juvenile and Boys' courts.

The nativity, whenever it is given, is generally Chicago, with New York as a poor second.

The types of their crimes differ with their ages. For the older boys, robbery is the main crime; for the younger boys, larceny is the main crime. There is a considerable sprinkling of rape charges among them. That this is a play group is indicated by the many charges of disorderly conduct and of motor vehicle violations. There is nothing on the analytical chart to indicate that these boys have gone into bootlegging of late.

Fines for disorderly conduct are frequent and appear as lesser pleas for larceny and other offenses. Seventeen House of Correction sentences and two jail sentences are recorded for the twenty-two boys. Six have been sentenced to Pontiac and three are now in Joliet. One has served in an out of state prison. There is little granting of probation and only one violation of parole. The members of this gang are very active, and while the penalty columns of the chart give comparatively many fines and incarcerations, this is hardly a representation of all their criminal activity.

The Juvenile Court records would be more useful in the case of the Forty-two gang than in the case of any other gang. Compared with the other older gangs that lack the neighborhood setting, the members are much younger in age, they are much more restricted in territory of residence, and certain phases of their criminality suggest the play group.

12. Same: Characteristics of Criminal Gangs.

The following conclusions may be derived from a comparison of these summaries of analytical charts on the records of criminal gangs:

1. Members of criminal gangs that enter the business of bootlegging do not give up other forms of crime.

2. On the contrary, the members of these gangs continue to engage in the same types of crime in which they have already specialized.

3. On account of the prestige and power of the gang, its members tend to secure immunity not only from punishment for bootlegging, but for these other crimes as well.

4. In all cases where it was practicable to secure a comparison of ages, it was evident that gang leaders and their lieutenants are seasoned criminals, ranging in age from the late twenties into the early forties.

5. The lack of immunity from punishment of the youthful gang of the Forty-two's is in marked contrast with immunity enjoyed by criminal gangsters engaged in bootlegging.

6. With the exception of the Valley gang and the Saltis-McErlane gang, the facts of this analysis confirm an earlier conclusion of the study, that the older criminal gang is no longer a neighborhood group but rather a retinue of mercenaries held together by need of protection and expectation of profits.

7. There is evidence, however, that criminal gangs control wide areas in which they enjoy a monopoly of the bootlegging privileges.

13. Criminal Occupations.

In addition to the grouping by membership in criminal gangs, it was also feasible to classify other persons in the "Who's Who of Organized Crime in Chicago" in certain well defined criminal *occupations*. The bureau records, if studied methodically and cumulatively, even in their present form yield valuable information with regard to criminal occupations and the personalities engaged in them. Analytical charts were, therefore, made of (1) pickpockets and confidence men, (2) labor racketeers, (3) merchant racketeers, (4) auto thieves, (5) mail and pay roll bandits and safe-blowers.

14. Same: Pickpockets and "Con" Men.

In this group are twenty confidence men and twelve pickpockets. Of the twenty confidence men, the average age at the time of the first crime is twenty-nine, and the average present age is forty. The pickpockets begin their careers very young and constitute the youngest occupational group in the bureau. They average twenty-two years in age at the time of the first crime recorded and seem to stay in the same occupation much longer, as the average present age of pickpockets is forty-three years. Few pickpockets are born in Chicago. They are immigrants from Russia and New York, and nearly all of them are Jews. Chicago pickpockets are overwhelmingly from the Ghetto. Confidence men are mainly Anglo-Saxon, with a sprinkling of Jews and others.

Only two non-Jewish pickpockets and one Jewish pickpocket have ever been charged with robbery. Both confidence men and pickpockets adhere very closely to their own occupations. The few that have digressed have engaged in robbery in their early careers.

Both pickpockets and confidence men travel very widely, and of the sentences to prisons for thirty-two pickpockets and confidence men together, there are recorded twenty-nine sentences to foreign prisons widely spread over the United States. Their arrests and the other entries in the due process of law enforcement are just as widely distributed in many cities in the United States, for both groups.

Pickpockets are more often discharged from police court than any other occupational group. Confidence men's cases are much more likely to be bound over. Pickpockets and confidence men are just as likely to forfeit bond and be fugitives from justice for a long enough period to return and have their cases stricken off. Confidence men have more cases in the "stricken off" column because their cases are more frequently bound over. Pickpockets are more often petit larceny offenders; the confidence men are more likely to receive lesser pleas to petty larceny. The pickpocket is less likely to plead guilty on a charge than is the confidence man; is more often acquitted if brought to trial; but the confidence man is admitted to probation much more frequently.

Because of their propensity to travel, pickpockets are frequently given a certain number of hours to leave the city. This is also true because the amounts of their thefts are small and the penalty is light; it would cost more to keep them than to ship them.

While confidence men are seldom fined, pickpockets are often fined, both for the original crime and on disorderly conduct charges where the evidence is not sufficient.

Pickpockets seldom get probation, since they are seldom bound over; confidence men often secure it. While the confidence men get the probation, the pickpocket may get a suspended sentence.

Confidence men as well as pickpockets receive House of Correction sentences. Seldom do either go to the county jail.

Forgers, who combine their work with confidence men, may start their criminal careers early and some of the confidence men have served early terms as forgers in Pontiac. Naturally, confidence men have more Joliet sentences than pickpockets, and both are more likely to have served out-of-state prison sentences than any other group. They are fair parole risks, but are likely to be repeaters for the same crime after the parole period is over.

Confidence men and pickpockets use more aliases per man than other criminals, and that is because they can pass more easily under an alias as strangers in other cities. When they return to Chicago they go back under the original name because the police know them here. In the long records a man begins with a name which is always held to be his right name; he gyrates through a series of aliases, finally returning to the original name as he spends his later years in Chicago.

15. *Same: Labor "Racketeers."*

Of twenty-six "racketeers," the average age of the first crime is twenty-four years; the average present age is thirty-four; the span is ten years. There is a mixture of Irish, Jewish, Italian and German. Their residences are scattered everywhere in the city, in every type of area, with a sprinkling of the first-class hotel. They give occupations, then, more frequently than other

criminals; viz., that of business agent, and often that occupation for which they are business agents. Their nativity is scattered for nationality, as indicated by their names.

Robbery, murder, conspiracy, and malicious mischief, which is really bombing, characterize their criminal careers. Fines and House of Correction sentences are their leading penalties in the few cases in which arrest ends in trial or trial in conviction. There are few prison and only one reformatory terms. There is a sprinkling of out-of-state commitments. They have considerable parole violation for the number paroled. The fines are mainly for the same nature of crimes—for carrying concealed weapons, conspiracy, disorderly conduct (which probably represents slugging). Several of them have served House of Correction terms, but mainly in their youth, for larceny.

16. Same: Merchant "Racketeers."

Business agents for trade associations, not subordinates but chiefs, are likely to have meager records unless they have established a record prior to becoming "racketeers." Each meager record contains a single item that would characterize the business—conspiracy, malicious mischief, gun-toting or assault to kill; and without exception, the record ends either with the admission to bail bond or when the case is later stricken off. If there are two items on a record, the other item is likely to be for a robbery, ending in a small fine or a short term in the House of Correction, or a burglary reduced to petty larceny. One or two cases have Joliet terms, which were served prior to going into the "racket."

Considering the continuous activities of "racketeers" in the fish business, in the food and fruit store business on the west side, or among the junk dealers or garage men, the record of punishment for the outstanding men for actual terrorism in "racketeering" is very meager.

17. Same: "Racketeers" with No Records.

There are more "racketeers" by far who have no records than there are those who have even scanty records for "racketeering." Among those without records we recognize *Gust Stavrakas,* of the Bootblacks' Union, who has been given a jail sentence. Another is *John Miller,* sentenced for building trades bombing, but who has no record. *Mike Gavin,* big union boss among the teamsters and truck drivers, not affiliated with the American Federation of Labor, master of Lefty Lewis, has only a single charge of gun-toting. *Simon J. Gorman,* arch "racketeer" in the organization of the laundry industry, does not have a scratch against him on the records.

The conclusion is unmistakable that the business of "racketeering," involving terrorism either first-hand or hired, carries with it little risk of punishment. Where there are records for "racketeering" activities, they do not end in penalty. Some great "racketeers" have no records at all.

18. Same: Auto Larceny.

Of the forty-five outstanding criminals in *Who's Who* specializing in automobile larceny, there is a great mixture of nationality. Although they are overwhelmingly Chicago born, those born out of the state or in foreign countries are from many states and from many nationalities. The average age at which the first crime is recorded in the bureau is twenty-two, and this would be much lower except for a few middle-aged men in the group. The indication

of the low average age at first crime is that this is a boy's occupation. This age, too, would be lowered materially by the inclusion of Juvenile and Boys' Courts' records. The span between the first crime and the average present age (twenty-six years) is six years. The addresses are scattered in all parts of the city.

This group of forty-five names includes leading robbers and gunmen. Larceny naturally is the most frequent charge which involves auto thieving. Charges of burglary and carrying concealed weapons are comparatively light. Lesser pleas are frequently accepted. There is a great disparity in the amount of fines for the same offenses. The chief matter of interest is that the automobile thief is quite frequently also a robber.

In penalties for automobile larceny there are few cases in the "stricken off" column, a great many lesser pleas, very few on the original charge. The total number in the column for acquittal is next in size to the "stricken off" column, but fines for disorderly conduct, for larceny, for speeding and for petty larceny are many. House of Correction and county jail terms are many. There are few Pontiac and Joliet sentences and still fewer sentences in out-of-state prisons; few violations of parole or probation.

19. Same: Mail, Pay Roll Bandits, and Safe-blowers.

From a limited number of histories of railroad robbers, a first characteristic may be noted —the railroad robber is in most cases a safe-blower. If the record is of any magnitude, it involves the blowing of locks and safes. Bank burglary is also a feature and is related to the other because it always includes safe-blowing.

Careful planning, inside affiliations, and a master brain figure in railroad robberies. The gang of bandits always includes one or two men of very high intelligence who do the planning, and frequently also a novice or two. They may call in as allies local gunmen with political influence.

The accounts of railroad robberies, though few in the Identification Bureau, are rich in material, because information has been exchanged with the federal government, where comparatively complete reports are made. Railroad robbers and bank burglars generally operate over wide geographic territories and stick very closely to the trade of burglary and robbery of trains, although there are local burglars and safe-blowers, like the old O'Banion gang, whose members almost without exception were born in Chicago, who never carried on activities anywhere else. Local bandits are better able to defend themselves successfully in the courts and to gain practical immunity from punishment; they are locally acquainted. Their records for heavy penalties are much shorter than the records of the nation-wide railroad robbers and safe-blowers, because the latter are prosecuted by the federal government.

The ages of railroad and bank bandits are comparatively advanced. They equal those of pickpockets and confidence men on an average.

20. Same: Summary.

The above analysis of specialized criminal occupations included operations as different as pickpocketing, confidence games, merchant and labor "racketeering," auto larceny, and mail, bank and pay roll banditry. Certain of these activities are highly individualized—the criminal carries them on as a lone wolf—

like pickpocketing and forgery; while others involve criminal gangs like the various forms of banditry. Yet they are all included in a listing of criminals in "Who's Who of Organized Crime in Chicago," because they all involve more or less of organization for protection, if not for the disposal of the stolen booty. Even the pickpockets, whose operations are the most highly individualized, are practically all members of one immigrant group, live in the same neighborhoods, and have a social world of their own.

Except for the youths engaged in automobile larceny, the facts point toward taking up a given criminal occupation and following it as a trade.

The risk of punishment in all these criminal professions seems far greater outside the community in other states than at home. This shows the importance of local acquaintance and political influence in securing protection and immunity from the penalties of the law.

21. Conclusion. For certain forms of organized crime in Chicago, only the underlings receive punishment, and almost without exception, petty punishment. The men higher up, the criminal overlords who reap enormous profits, go almost, if not scot free. These forms of crime exploited by criminal profiteers are (1) bootlegging, (2) gambling, (3) vice, and (4) labor and merchant "racketeering." At present the risk incurred of prosecution and conviction in conducting these illegal operations is very small.

The leading gang chiefs in the "Who's Who of Organized Crime in Chicago" are seasoned veterans in crime. The bootlegging chiefs turned from other forms of crime and vice upon the coming of prohibition, attracted by the ease with which enormous profits could be made. The analysis of their careers through the medium of the records in the Bureau of Identification shows that upon taking up bootlegging they have not abandoned the earlier criminal operations in which they were engaged, but continue in these as side lines. Immune from prosecution for their operations in the manufacture and distribution of beer and whiskey, they have been able to obtain protection from the consequences of other crimes, like murder, burglary, and robbery, because of their new political alliances and stronger financial position.

The work of the Bureau of Identification, valuable as it is in the identification and apprehension of criminals, can be made even more valuable. It should become the center of continuous research upon the different forms of crime, the various methods of criminal operation, the divergent criminal types, and upon factors underlying both the geographical distribution of criminal gangs and their members, and also the nature and technique of their criminal organization. Further research and continuous and complete records are necessary if any large sized urban community is to protect itself against the forces of organized crime and political corruption.

CHAPTER XXVIII

SUMMARY AND RECOMMENDATIONS

By

E. W. BURGESS

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SUMMARY AND RECOMMENDATIONS

1. *A Survey of Facts, the Necessary Basis for a Program of Crime Control.*

The killing of McSwiggin, the youthful assistant state's attorney, with his gangster companions by other gangsters, aroused the citizens of Chicago and focused public attention on organized crime. The question, "Who killed McSwiggin?" was not legally settled by the evidence secured. But the newspaper reports of the amazing disclosures before successive grand juries served to convince the public upon three points: (1) that crime was organized on a scale and with resources unprecedented in the history of Chicago; (2) that the leading gangsters were practically immune from punishment; and (3) that the position of power and affluence achieved by gangsters and their immunity from punishment was due to an unholy alliance between organized crime and politics.

The series of events in the two and one-half years that have elapsed since the murder of McSwiggin have only deepened the conviction of the public as to the correctness of these conclusions. Striking evidence of this reaction was seen in the popular uprising in the April, 1928, primary and in the county election in November of the same year.

Public belief in the existence of organized crime and its political affiliations may be sufficient for crusades against crime and the winning of primaries and of elections, but it is not adequate as a basis of a permanent policy and an effective program of crime control. All intelligent readers of newspapers in Chicago know that for years there has been a succession of exposés of crime, of vice, of gambling, of bootlegging and of graft, and likewise a series of crusades against these evils, with little or no permanent effect.

The basic assumption of the present study, therefore, is that an adequate program of crime control must be based upon the facts secured from a detailed account and subsequent analysis, first, of the history of organized crime and of the crusades against it; and second, of the conditions in Chicago which nurture criminal gangs and foster alliances between gangsters and politicians.

Newspaper accounts of crime news were found to be the best source of materials for the historical study of crime in Chicago. The day by day reports of crime and vice for the past twenty-five years were systematically collected, compared and classified. When this material was finally organized, it presented a consistent and coherent picture of the origin, growth, and ramifications of organized crime under the conditions of life in a modern metropolitan community. But what is more, it disclosed significant facts which must be taken into account in drawing up recommendations in the formulation of any thorough-going program of crime control.

2. The Capital Facts. (1) There exists in Chicago, today, *an underworld system of control* which enforces its decrees by bombs and murder. Its history, traced for twenty-five years in this study, discloses its various interlocking manifestations in commercialized vice, gambling, bootlegging, and gang crimes.

(2) This extra-legal government has no formal organization, but is best described as a *feudal system* held together by powerful leaders, by intense personal loyalties, by the gangsters' code of morals, by alliances and agreements with rival gangster chiefs, and by their common warfare against the forces of organized society. This gangster form of organization is feudal also in the sense of "feud," not alone against society but between gangs. Loyalties are intense because of the life and death significance of the ties that bind members of the gang together.

(3) The *overlordship of the underworld,* during these twenty-five years has been held in something like a royal succession, first, by Big Jim Colosimo, a friend of politicians and chief of the south side levee up to 1920; then, at his death, by his chief lieutenant, John Torrio, who organized rival gangsters into a city-wide bootlegging syndicate (1920-1924); and after his retirement by his right hand man, Scarface Al Capone, who as head of the dominant faction of gangsters has consolidated commercialized vice, gambling, and bootlegging and even certain branches of "racketeering" into an extremely profitable system of protected exploitation (1924-). During this same time one man, Mont Tennes, has secured and maintained his position of dominance in the gambling fraternity by his control of the direct news from the tracks.

(4) The highly successful careers of these four powerful personalities are matched by our findings on the *persistency of the careers of minor personalities.* The same addresses of vice, gambling, and bootlegging resorts and the same names of their keepers recur over and over again in the history of organized crime in Chicago and Cook County.

(5) During this same twenty-five year period there have been thirteen chiefs of police. Only one chief of police, Morgan Collins, served four years, although for the last six elections mayors have been chosen for a full four-year term. This constant shifting of commissioners of police in the mid-term of the mayor's tenure of offic has been the result, almost without exception, of charges of incompetence or graft. The conclusion is inescapable that frequent changes in the office of police commissioner, due in the first place to political changes in administration, and secondly, to the recognized breakdown of the police department as a law enforcing agency, make of it an *ineffective organization in the war against organized crime.* Commissioners of police come and go, mayors succeed mayors, state's attorneys are supplanted by their successors, but the leaders and followers in the ranks of organized crime remain the same. It is also true and a part of the same situation that the police force and its traditions remain and the political organization and its loyalties remain.

(6) This *persistency and continuity in the personnel of organized crime* explains in large part the failure of the many exposures of vice, gambling, bootlegging, and graft, and of a series of earnest and determined civic

solution. Only in the case of the strike has the public demanded a recognition of its interest and an open discussion of the merits of the dispute.

(11) In elections and in gangster funerals the real nature of the *alliance* or the community of interests *between the gangster and the politician* is most clearly discerned. Primaries and elections show the mutuality of services: the politician affords protection or immunity from prosecution, the gangster rallies his friends for legal as well as fraudulent voting. Election frauds have again and again been under investigation during the last twenty-five years, but no effective comprehensive attempt has been made to eliminate frauds. The different tricks employed by gangsters have been analyzed and classified in this study and methods of preventing their use can readily be devised. A more intimate picture of the "friendly relations" of politician and gangster is revealed by the funerals of gangsters. Here the gangster is seen in his role as popular hero and benefactor of the people. The decline in ostentatious display in recent years at gangster funerals is due in part to the growth of public disapproval, of which newspaper condemnation and the edict of the archbishop against church burial is both cause and effect. But it is also found that the old type of friendly relations between gangster and politician is fast being replaced by alliances based upon financial considerations.

(12) Life histories of criminals secured for this study were used not only to check the materials obtained from other sources, but also to find out how the *gangster* looks at his own life. They show that *he is a product of his surroundings* in the slum areas in the same way in which the good citizen is a product of the lake front environment. While the good citizen has grown up in an atmosphere of obedience to the law, the gangster has lived his life in a region of law breaking, of graft, and of "fixing." Because they have been reared in two different worlds, they have never been able to understand each other. The stories which the gangsters tell should enable good citizens to deal more intelligently and therefore more effectively with the problem of organized crime. When the public once realizes how deep rooted and widespread are the practices and philosophy of the gangster, it will not be content with merely punishing individual gangsters and their allies, but will be moved to make a frontal attack upon the basic causes of crime in Chicago.

(13) From a card catalogue of seven thousand names of men active in the various fields of organized crime, a list of the four hundred most prominent was selected for a "Who's Who of Organized Crime in Chicago." When the names of these seasoned criminal characters were cleared through the Identification Bureau, certain conclusions were definitely established. In the first place, the *leading criminal profiteers* in bootlegging, gambling, vice, and labor and merchant "racketeering" *run little risk of prosecution* and conviction in conducting these illegal operations. Underlings occasionally receive punishment, almost without exception, of a minor kind. In the second place, it was found that the vice lords and other criminal chiefs who turned bootlegger magnates with the coming of prohibition *have not abandoned their original activities,* such as murder, burglary, robbery, gambling, and vice, but still engage in these with the additional protection afforded by their new political alliances and stronger financial position. In the third place, it was

shown that the strongest *criminal gangs* are losing their neighborhood character and are increasingly *becoming mercenaries' retainers,* held together by need of protection and expectation of profits. From these records the inference can readily be drawn that while neighborhood criminal gangs can rely only on the influence of the local politician, mercenary criminal gangs have understandings with the highest sources of protection in the county, the city, and certain of the nearby towns and villages. There was also evidence that these criminals' gangs control wide areas in which they enjoy a monopoly of the bootlegging privileges.

(14) The clearing of these four hundred names through the *Bureau of Identification* provided an opportunity of testing its efficiency as an instrument in the control of organized crime. There can be no doubt that this Bureau is an indispensable institution in protecting society from the criminal. Its record system was, however, devised to deal with the individual criminal and not with the gangster and the new forms and manifestations of organized crime.

3. Conclusion. The final and summary conclusion of our study is that the control of organized crime is always, in the last analysis, a *problem of public opinion.* Organized crime always seeks to commercialize and to exploit human nature. Society through legislation and other measures strives to protect its citizens against wayward impulses that are destructive of human happiness and social order. Public opinion in our largest American cities seems ever to fluctuate between endorsement of a wide-open town with little or no enforcement of the laws regulating personal conduct and reform supported by crusades.

Crusades arouse public sentiment against some existing abuse or disorder, but they are so sweeping in character that they are usually only temporarily successful and a reaction sets in against them. One reason for the failure of crusades against crime and vice is that they seek to endorse some general policy of law enforcement. They are seldom or never based on a study of the problem. What is needed is a program that will deal with the crime problem in detail and consecutively, that is by analyzing the crime situation into its different elements, by taking up each crime situation separately, and one by one working out a constructive solution. This is only the application of business methods and scientific procedure to the study and solution of the crime situation. The order of the selection of individual crime situations for specialized treatment would depend upon many factors, such as existing conditions, the given state of public opinion, and the relative efficiency of available methods of control.

The wave of public sentiment that is aroused by the crusade needs direction, otherwise it is dissipated and lost. Public sentiment is a great force if properly directed. But direction requires fact finding and research. Public opinion as expressed at the ballot box gives a public official a mandate to act, but it requires more wisdom than the public usually possesses to direct his activity.

A permanent policy and program of law enforcement cannot be based upon crusades but must rely upon the creation of a public opinion that is informed upon the actual workings of organized crime and political machines.

Newspapers render a valuable service in giving relatively accurate day by day reports of crime. But the vivid accounts of current events in the newspapers do not give their readers the balance and perspective necessary for formulating a permanent policy and program. The present study has indicated how, in the past, *crusades against crime have repeatedly failed* although public opinion had each time been inflamed to white heat.

4. Recommendations. The following recommendations are accordingly based upon the conclusion that the crux of the crime problem lies in its relation to public opinion:

1. To cope with the problem of organized crime through honest and efficient law enforcement, the police department, the judges and the courts, and the state's attorney's office must be sustained by the constant force of intelligent public opinion.

To be intelligent, the public must have a continuous supply of reliable information both upon the work of these law enforcing agencies and upon the course of developments in the crime situation. Current newspaper accounts of crime news are insufficient for this purpose. Nor can reliance be placed exclusively upon the reports of their own work given out by law enforcing agencies. These are desirable and necessary, but they must take their places in a larger scheme of crime accounting.

It is necessary to devise and institute *a comprehensive plan of fact finding and reporting to provide the public with authentic information* upon the efficiency and integrity of its law enforcing agencies, upon the activities and practices of criminal gangs and gangsters, and upon crime in all its manifestations.

2. The plan as outlined here attempts to define and to extend the activities of existing agencies interested in crime control, so far as they involve the field of investigation and reporting.

(a) *A uniform system of records* for crime reporting should be established for all law enforcing agencies and placed in a central bureau in charge of a competent statistician of standing in his profession, as recommended in the report on Record Systems made for this Survey.

(b) The work of the *Bureau of Identification* should be enlarged to include a complete record upon every criminal, including pertinent material on organized crime, as, for example, membership in what gang, type of criminal activity, and criminal trade-marks. The Bureau of Identification should serve as the eye and the memory not only of the detective bureau, but of the prosecuting attorney and the court. While the previous criminal record of a person charged with a crime does not and should not have a bearing upon deciding his guilt or his innocence, it should be in the hands of the judge and the prosecutor as of material assistance in determining admission to probation or acceptance of lesser pleas. It should also be before the Parole Board in its determination of the time to be served in prison before release on parole.

(c) *The Chicago Crime Commission* has for years operated as the chief citizen law enforcement agency in Cook County and has done a splendid service in planning measures for increased efficiency in administration, stimulating public officials in the performance of their duties, educating its

members and contributing to the formation of an intelligent public opinion by imparting information of actual crime conditions and the problems of law enforcement.

(d) The *Committee of Fifteen* and the *Juvenile Protective Association* have specialized in the field of law enforcement with signal success, the former having been responsible for the breaking up of segregated commercialized prostitution in the city of Chicago, and the latter being a strong factor in every effort to prevent and suppress conditions contributing to juvenile delinquency.

(e) A research and crime accounting organization, not involved in crusades for law enforcement, should be charged with the responsibility of making *regular reports to the public* on the status of the crime situation and the efficiency of the work of official law enforcing agencies. These reports should be made at regular intervals and should be in the simplest statistical form consistent with accuracy. The organization selected for this service should have the entire confidence of the community and should be as free as humanly possible from the charge of control by any political faction or any organization promoting any special program.

(f) *Research institutions,* like universities through their social science departments, law schools and medical schools, the Institute of Criminal Law and Criminology, and the Behavior Research Fund *should be given adequate funds* for studies in criminology. Upon these institutions must be placed the chief reliance for basic, long-time studies and publications in the conditions and causes of organized crime. In the meantime, law enforcing agencies and private organizations interested in law enforcement may secure valuable assistance by securing the co-operation of these research organizations in the prosecution of individual studies and surveys. The citizens of Chicago and other large American cities should realize that many of the attempts to control crime, both in its individual and organized forms, must of necessity be makeshifts until the biological, psychological and sociological sciences secure a more fundamental understanding of forces moulding human nature and society. The science of criminology is only in its beginnings. Most of the research in the past has been based upon studies of men in prisons, but little study has been made of the behavior of the criminal in his own environment in the gang and the neighborhood. In fact, more studies have been made of the criminal than of crime. Further research in this field is imperative.

3. While the organization of intelligent public opinion through a comprehensive plan of criminal accounting and research is stressed as the primary solution required for the control of crime, and particularly organized crime, certain *additional measures* are also recommended which should go far in the improvement of existing conditions:

(a) The lack of full participation on the part of many *immigrant communities* in general public opinion is only matched by the ignorance of the native American of the lake front neighborhoods of conditions of life and thought in the river wards. More effective measures than in the past should be introduced to break through this lack of comprehension. At present the police and the public seem to hold the entire Sicilian colony responsible for

any outrage committed by a single Sicilian. This attitude could not exist if there were understanding and friendly relations between immigrant communities and the outside American public. Civic organizations should have representatives of these immigrants in their membership and should be certain to have their spokesman represented in the discussion of all problems bearing on crime. The police department might profit from the experience of other cities as well as from its own recent success in solving a spectacular crime in giving trustworthy policemen of a given national origin further scope in dealing with crime in immigrant neighborhoods of their compatriots, especially where they have the support of law-abiding elements.

(b) Any program of organized crime must deal with the control of *boys' gangs,* from which criminal gangs most frequently originate. F. M. Thrasher in his book "The Gang," and C. R. Shaw in his report on "The Nature and Extent of Juvenile Delinquency," for this survey, find that the gang thrives in the slum areas of Chicago where there is inadequate provision for the recreational and vocational interests of the boy. The problem of the gang and its relation to crime constitutes a challenge to the public schools, the settlements, and our other welfare agencies. It is recommended that these organizations unite in a determined constructive effort to control boys' gangs and so prevent this source from which criminals and gangsters are recruited.

(c) The facts of *bombing and "racketeering"* show the professional bomber and gunman employed in a variety of fields where conflicts are solved by violence and intimidation rather than by peaceful means. The causes of conflict should be discovered in each of these fields by undertaking special studies and, if possible, pacific methods introduced to settle interracial conflicts, political contests, labor and industrial disputes. A system of *boards of conciliation and arbitration* should be set up in which merits of the conflict would be brought out into the open and a settlement made in view of all interests including that of the public. In the case of merchant "racketeering" our study seems to indicate that the basic condition favorable to the entrance of the gunman is the present legal prohibitions against making trade agreements. It is recommended that serious attention be given to the removal, with provisions to safeguard public interests, of these prohibitions against the legitimate co-operation of merchants and the protection of their individual and collective interests. The recognition of the probable desirability of this action does not, however, condone the existing state of lawlessness and disorder in certain businesses and enterprises in Chicago, from which other large cities are entirely free.

(d) One cause of the inefficiency of the police department of Chicago is its *control by politics and politicians.* A study should be made as the basis for a plan of reorganization of the police department, so as to make of it an efficient instrument for law enforcement.

(e) The analysis in this study of all the different known varieties of *election frauds* indicates that measures may easily be taken to reduce them to a minimum. When this is done the political influence of the gangster will be greatly reduced. Only measures that secure mutual understandings between immigrants and the larger American public will undermine and finally destroy the hold of the gangster upon his local neighborhood.

(f) While the original sources of the gangster's power lie in his own neighborhood, the overlords of vice, gambling and bootlegging have taken full advantage of the complexity of county, city, town, and village government in the *greater Chicago region.* Crime control can no longer function with a system of administrative machinery which has been rendered obsolete by the growth of the city and the new means of rapid transportation like the automobile. Problems of health and recreation as well as organized crime demand the organization of a municipality of the metropolitan Chicago. The consolidation of the City of Chicago and Cook County is a practical first step.

4. There is no blinking the fact that *liquor prohibition* has introduced the most difficult problems of law enforcement in the field of organized crime. The enormous revenues derived from bootlegging have purchased protection for all forms of criminal activities and have demoralized law enforcing agencies. Questions have been raised as to the practicability of the enforcement of prohibition in metropolitan cities because of the widespread adverse sentiment.

This skepticism only indicates that the enforcement of prohibition is a matter of public opinion. Once the relation between the profits of bootlegging and the activities of organized crime is clearly seen, there should be no insuperable difficulties in the way of some practical form of the control of the situation.

A minimum program of prohibition enforcement in the interests of the control of organized crime might be to concentrate enforcement efforts upon the commercialization of bootlegging, especially in the hands of organized gangs. In this way the backbone of organized crime would be broken. Chicago can and should be rid of the mercenary criminal gangs that exist because of political alliances. But this cannot be successfully accomplished without frank recognition of the problem created by prohibition and the intelligence and courage to act upon this knowledge.

5. This study shows that *no one agency* can cope with the range of problems presented by organized crime in gambling, commercialized vice, bootlegging and gang activities. The diversity of the problems require the specialized handling of the Crime Commission, which stimulates the efforts of law enforcing agencies and the permanent interest of special groups.

But in addition to the efforts of the Crime Commission, some way should be found of coordinating its efforts with the other organizations in order to avoid duplication and to insure cooperation. Coordination will perhaps best be secured, not by the amalgamation of these organizations as has been proposed, but by provision for an organization that will specialize upon fact finding, crime reporting, and the making of special studies as occasion may require. This organization should not be tied up with any special policy or program, but should be disinterested in order to insure public confidence in its findings and reports. It would seem that the Illinois Association for Criminal Justice is the best qualified of existing organizations to assume this function. The undertaking of this service would be a natural and logical sequence of the survey which it is now bringing to completion.

The importance of this service cannot be overestimated. No one today knows how much crime there is in Chicago or in any other large city in this

country. No one knows the total cost of crime to the community. Yet these facts are essential to any adequate program of crime accounting. To develop intelligent public opinion in the field of crime control there is just the same need of getting exact and accurate information as in the fields of fire prevention and public health. And just as great improvement in crime prevention and control may be expected from systematic and continuous reports on crime conditions and law enforcement as have resulted from similar publicity measures in the field of public health.