CHAPTER III

THE TRIAL COURTS, IN FELONY CASES

By

E. W. HINTON

CONTENTS OF CHAPTER III

(I) Laws Governing Criminal Procedure and Court Organization

(II) Work of the Trial Courts

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.

---

[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.

---

[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.