CHAPTER V

THE PROSECUTOR (Outside of Chicago) IN FELONY CASES

By

WILLIAM D. KNIGHT

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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.