CHAPTER VI

THE PROSECUTOR (in Chicago) IN FELONY CASES

By

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CHAPTER VI

THE PROSECUTOR (IN CHICAGO) IN FELONY CASES

1. *Factors in the Administration of Criminal Justice.*

(a) No discussion of prosecution in Chicago can properly be introduced without at least a passing reference to the factors which enter into, and are so vitally affected by, the conduct of the prosecutor in the administration of the duties of his office. The laws of criminal procedure, the courts in which prosecutions are conducted, the juries, and the police are all tied in with and to a very marked degree are dependent upon prosecution.

No single topic of public interest is receiving greater attention at this time than the question of crime,—its detection and punishment. Many and varied articles in magazines and elsewhere deal with the question. Criminal surveys, similar to the one here presented, have been made in a number of states and, undoubtedly, more will follow. Crime commissions composed of public spirited men and women are industriously engaged in an effort to stem the criminal tide which is sweeping through our cities and our rural communities.

Causes are announced and remedies are recommended on every hand. Every suggestion of cause and every proposed remedy possess certain degrees of merit; some more and some less. But all aim in the same general direction and therefore deserve serious consideration.

Some of the writers on the subject blame the system and insist upon a drastic revision of the criminal code, hoping thereby to make conviction and punishment more easily obtainable. Many lay the blame upon the doorsteps of the jury. Others place responsibility upon the heads of the law enforcing agencies; i. e., the police, the courts, and the prosecuting attorneys. It is, of course, impossible to reconcile these divergent views so that all may stand upon the same common ground of complaint. To a certain extent, and in varying degrees, all of them are right, but to say with which body of objectors rests the preponderance of right is a more difficult matter.

Our ability to solve the riddle depends upon our ability truly to see and observe crime conditions, and this ability is limited, no doubt, to the contact and the experience which have come into our lives through the work in which we have been engaged.

(b) Treating the subject first from the point of view of those who criticize the system:

That the *criminal code* of Illinois is faulty in spots admits of little doubt and these defects should be corrected. In the opinion of the writer, the faulty spots are not of controlling effect.

One of the objections urged against the code is the oft-repeated claim that prosecutions fail or are endangered because *jurors* in criminal cases are the *judges of the law* as well as the fact. Granting the absurdity of a law

which permits a juror, untrained in the law, to set up his legal view against that of the judge, we venture to assert that few prosecutions have failed simply because of that fact. In the first place, every juror, if his attention is called to the matter at all, has pointed out to him the absurdity of permitting him to set aside the court's view of the law and impose his own. He then readily agrees, under oath, that he will take the law to be as it is stated in the written instructions of the court. In the second place, and this it seems to us is the controlling factor, the juror will render his decision according to the dictates of his own conscience and will not hesitate to reject the law given by the court, if in his opinion a verdict of guilty should not be returned. Let the defendant assert a plausible and persuasive moral defense, as distinguished from a legal defense, and the average juror will find in his favor, all law to the contrary notwithstanding. In every such case the verdict would not be different, if the law were reserved to the court and the jury simply passed upon the facts.

The real vice in permitting jurors to be judges of the law is found in the fact that it strongly tends to confuse the mind of the juror and occasions a serious and unnecessary waste of time. Lawyers for the defendant not infrequently stand before the jury for hours, and even days, reading from reported decisions not only in Illinois, but from other states of the Union. It is, of course, impossible for the average juror, untrained in the law, to intelligently follow the expressions of reviewing courts and differentiate and apply them to the facts in the case then upon trial. The net result is confusion and a wicked waste of time.

One of the bad spots in our criminal code is found in the number of *peremptory challenges* allowed to the prosecutor and the defense. These should be measurably decreased. It is absurd to allow twenty peremptory challenges to each side in a felony charge and equally absurd to allow ten challenges to each of the contestants when the charge is a misdemeanor. With three defendants charged with murder (a not unusual number), the defendants may excuse, without rhyme or reason, sixty prospective jurors. The prosecution has a like number. The difficulty of securing a jury under such circumstances is obvious and the helplessness of the court to expedite the selection of a jury under such circumstances is measurably increased.

The writer recalls a misdemeanor case in Cook County in which there were twenty-two defendants and, under the law, the parties were entitled to four hundred and forty peremptory challenges. Six months were consumed in the selection of that jury, followed by a disagreement. Absurd! Of course!

But even with so many peremptory challenges, the trial judge is not wholly powerless. By examining the jury and instructing them *en bloc* on the fundamental and general questions involved in criminal trials, he may do much to hasten the selection. On the second trial of the case last referred to, the trial judge refused to allow the dilatory tactics followed in the first trial, with the result that a jury was selected in five days.

It is, of course, impossible, within the limits of this report, to discuss all of the defects to be found in the criminal code. The point is, the defects in the system furnish the smallest reason for the breakdown of criminal justice. Honest and efficient prosecutions are bound to overcome any mere

defect in the procedural system. We must look elsewhere for our failures.

(c) Nor do we hold with those advocates of reform who would make conviction easy. In our liberty loving country the rights of the individual should always be held sacred. Theoretically every person accused of crime stands alone, with the organized force of government against him. In such an unequal combat the law has wisely established certain protective rules which make the contest a fair one. Few of these rules should be radically changed or modified, else the individual rights of the citizen may be seriously impaired or wholly lost. Conviction of crime has always been and always should be a difficult matter. The burden is on the prosecution and the life or liberty or property of the citizen should never be taken unless and until his guilt is established beyond a reasonable doubt. We are speaking now of the abstract legal questions involved in a criminal trial.

In matter of practice, the defendant not only demands and secures his every legal right, but too often goes beyond and violates the law itself in order to obtain an acquittal. Many times he is aided by the lawless skill of his counsel, who frames and fashions a perjured defense, which it is sometimes difficult, if not impossible, to destroy. Too many members of the legal profession lend themselves to such practices and build their reputations upon their ability successfully and knowingly to foist upon the court and jury a dishonest and fabricated defense; but such misconduct should be cured directly and not by indirection. Under such circumstances, the lawyer and not the system is the problem. The cure should be applied to him and not through the emasculation of the procedural rights which the defendant now properly enjoys.

Neither does a large measure of fault lie with the jury, as we shall later attempt to demonstrate in another chapter of the report.

(d) We come, then, to the *law-enforcing agencies* of the criminal code,—the officials in whose hands are placed the instruments of justice with which to battle the forces of crime. They constitute the police, the courts, and the prosecuting attorneys. Theirs is the responsibility, and as they do their work, so should they be judged. To a large extent their responsibility is a joint one and nothing approaching perfect results can be obtained unless all three forces are working with a common, honest, purpose. To an appreciably lesser extent each may function successfully in its own sphere without the active and perfect support of the other.

From this brief deduction, the conclusion inevitably follows that there will be no substantial failures in the administration of criminal justice when these three forces of government are giving effective and intelligent service.

If the writer were asked to apportion and divide responsibility between the three forces in question, he would say that the responsibility for complete success, after the defendant is apprehended, lies with all three, and the responsibility for failure should be charged against each in the following approximate proportions:

Police	20%
Courts	10%
Prosecuting Officer	70%

The low percentage of failure charged against the courts is bottomed upon the fact, based upon actual experience, that vigorous and efficient prose-

cutors will generally deter any occupant of the bench from straying far afield in the administration of justice. Even a weak and supine judge will follow the lead of the vigorous prosecutor, and it follows as a necessary corollary that an inefficient and corrupt prosecutor will, to a large extent, carry with him, not only the weak judge, but also the judge whose chief desire is to avoid strife and contention. Opposition to the prosecutor may mean political oblivion; acquiesence on the part of the weak judge enables him not only to keep his own political fences in repair, but to extend judicial favors in the matter of sentences and paroles, knowing full well that there will be no protest by the prosecutor.

Having, therefore, as it seems to us, removed some of the underbrush and dissipated some of the clouds which befog the public mind, the whole question of the administration of criminal law depends in the main upon the individual who is at the head of the prosecutor's office, and in a much lesser degree upon the head of the police department. This aspect of the matter and the reasons in support of the same will be discussed in the later pages of this report, and will be based upon statistical and other facts which are apparent to the man on the street.

2. *Power and Duty of the State's Attorney.* The office of state's attorney is created by the Constitution of Illinois. His jurisdiction is coextensive with the county in which he is elected. Under the law, as it now stands, he is the supreme authority in the prosecution of crime. Except when he is sick or absent, or personally interested in the cause or proceeding, no other officer may invade his legal functions. Generally speaking, he commences and prosecutes all actions, both civil and criminal, in Cook County in which the state or county has any interest. All prosecutions on forfeited bonds and all proceedings for the recovery of debts, fines and penalties in his county are instituted by him. He advises all other county officials on questions of law relating to any criminal or other matter in which the people of the county may be concerned. He appears in all tax proceedings against delinquent tax payers for judgment to sell real estate, and performs other and varied public duties, all of which are of far reaching public importance.

3. *State's Attorney's Staff.* To enable him to discharge the manifold duties of his office, the State's Attorney of Cook County has a large staff of assistants, consisting of attorneys, investigators, stenographers, clerks, police officers, etc. The police officers are assigned for duty in his office by the commissioner of police and their salaries are paid by the City of Chicago.

The expenses of the office for the years 1926 and 1927 were as follows:

	1926	1927
Salaries	$469,579.14	$476,712.54
Court reporters	30,990.45	33,563.40
State's attorney's fund	111,751.99	176,476.48
Office supply and expense fund	5,888.86	5,862.88
	$618,210.44	$692,615.30

The annual appropriation for the office for the year 1927 amounted to $611,477.46, which amount does not include a fund of fifty thousand dollars

for enforcing judgments on forfeited bail bonds and a deficiency appropriation for disbursements in the year 1926, of $9,934.13. Of the amount appropriated for 1927, the sum of $506,477.46 was provided for the salaries of the state's attorney, his assistants, and court reporters. His assistants number 70, besides which he has 25 clerks, 16 stenographers and 14 investigators. It is said to be the largest prosecutor's office in the United States.

4. Police Department. The basis of crime control rests primarily with the police. Theirs is the duty of crime detection and apprehension. Unless this preliminary work is effectively done, the ultimate punishment of the criminal is never fully realized.

(a) It is generally conceded that police organizations in this country have not kept pace with organized crime. This is not only true of Chicago, but applies as well to every large American city, with few, if any, exceptions. Some cities do the work better than others, but all cities do it indifferently well. No highly intelligent, and certainly no scientific, effort has been made in Chicago to increase the efficiency and crime detecting ability of the police, so as to enable them to cope successfully with the ingenious and organized forces of crime. Numerically, our police force may have kept pace with crime, but in matters of efficiency and intelligent methods of crime detection we seem to have learned little and done less.

Nor is this an indictment against any particular police force of Chicago, except as they have permitted themselves to follow in the old rut, without making any conscious and intelligent effort to lift themselves from the prevailing and continuous inefficiency of the past. On the contrary, the indictment should rather be that they are the victims of a system which has grown and developed without plan or reason. They have been left to their own devices and are working under an archaic system. In the main, they are ignorant of the highly technical manner in which police work should be done. Criticized for their inability to discover the perpetrator of a particular crime, scolded by the press and the public, and smarting under the criticism of failure, they have resorted to the "third degree" and other improper and dishonest police methods. Paralyzed in their efforts by political and other corrupt forces, the wonder is that they do as well as they do.

(b) The reason for this condition is recognized by every student of the question. Instead of being a purely crime detecting and apprehending agency, the police force of Chicago has been, through all the history of our City, the adjunct of whatever political faction happened to be in power. Its activities have been limited to the policy of the administration, instead of being governed and controlled by the letter of the law. Handicapped by the varying and vacillating policies of the administration, it is always a matter of police uncertainty as to which law shall be enforced and which violation shall go unchallenged. For many years there has been fastened upon the police department, an active or a tolerant attitude on the part of the city administration toward vice and gambling. Responding to this attitude, the police department has been demoralized and individual members have resorted to grafting and the levy of tribute, without which vice and gambling would soon be suppressed. Every sophisticated observer knows that these resorts would not be tolerated if it were not for the finan-

cial tribute which they pay to the public officials or their political satellites for protection.

That this condition does much to increase lawlessness and crime and is an important element in the prosecution and suppression of crime, has been demonstrated time and time again. Effective police suppression of vice resorts (a comparatively easy matter) would substantially lessen crime and enable the prosecuting office to devote more time and attention to the more serious crimes that result from the influences of human passion and avarice.

(c) That this condition will continue until the police force of Chicago is divorced from politics and placed upon an independent footing, must be admitted by every impartial observer. During the past fifty years, Chicago has had approximately twenty-five superintendents of police, each of whom has been appointed by the mayor, and each of whom has clearly understood that if he did not carry out the crime policy of the administration another would be appointed in his stead.

In England, Scotland Yard has had six commissioners of police in eighty-five years; Berlin has had ten in sixty-six years. There they find the man who is best fitted for the position and he is kept in office so long as his work is well done. Under such a system there is incentive to do good work —to create and improve the system and thus make effective war against the enemies of society. The average term of office of a superintendent of police in Chicago has been two years. In so short a time and with such insecure tenure of office, no superintendent of police has been bold or foolish enough to attempt to initiate a far-reaching or permanent plan of police reorganization. Following the political fortunes of the administration, he has come to be looked upon by the average citizen as a part of a political machine and is treated accordingly.

In England, France, Germany and other foreign countries, they seem to have learned the necessity of separating the police agencies from the influence of corrupt and petty politics. In those countries the sole and only business of the police is to detect and assist in the punishment of crime. In furtherance of this purpose, the police are organized on educative and scientific lines, where promotion and advancement is won by merit alone. They not only do their work efficiently, but they command the respect and possess the confidence of the people. Their testimony in court is invariably accepted as true and they have the full and undivided support of the law-abiding element of the community in which they serve. In Chicago, the testimony of a police officer is too often regarded with suspicion and the court and jury are thereby more willingly induced to accept the denial of the defendant rather than rely upon the truth of the officer's testimony. This adverse or prejudicial attitude against the testimony of the police does much to prevent conviction. It has been of slow, but steady, growth and receives its impetus from the fact that individual police officers have not infrequently been truthfully charged with having resorted to physical force and intimidation in order to induce confessions and thereby bring about convictions. Then, too, the police officer ofttimes exhibits a partisan rather than a judicial attitude in his zeal to bring about a conviction, with the result that the court and jury become skeptical of the truth of his testimony and refuse to give it credence.

(d) Every police officer should be taught he is a part of the law enforcing body; that in common with every other officer to whom is committed the enforcement of the law he is never to breach or violate its terms, and that the end, no matter how justifiable, is never to be accomplished by unlawful means. He should be, as he is, a quasi judicial officer, balancing the scales of justice evenly and fairly between the prosecution and the accused. Confessions and admissions should be fairly and honestly obtained and should be immediately committed to a paper record. When we remember that a mere promise of immunity destroys the validity of a confession, it should not be difficult to see that there is no place in modern police methods for the employment of physical force or other unlawful duress in order to force a confession. A confession so obtained is worse than useless. Relying upon its sufficiency to secure a conviction, the police abandon all effort to obtain further proof. Its rejection by the court leaves the prosecuting officer without any evidence to support the charge. The public, in the meantime, is unable to understand how a self-confessed criminal goes free. Such an educational process will doubtless be of slow growth, but with the right kind of an effort it will not be difficult to establish the same public confidence in the truth of a policeman's testimony as that which now prevails in England and other European countries.

(e) On the Continent and in England, the prospective police officer is carefully selected and undergoes an intensive criminal education. He is taught the fundamental principles of criminal law as applied to the detection and apprehension of criminals; how to take a dying declaration properly, so that it will pass muster in court; what constitutes a proper legal confession and how and under what circumstances it should be taken; how to look for and recognize clues which lead to evidence of guilt; the correct scientific formula for giving a personal description; how safely to keep physical evidence gathered at the scene of the crime or elsewhere, so that its introduction in evidence will be legally competent; etc., etc. His work is treated and regarded as a profession and he is educated in such a manner as to become its master. To develop our police force along these lines would seem to be one of the imperative necessities of the day.

In view of the millions of dollars lost each year as the result of criminal operations, it would seem to be good economy to develop, through educational methods, a police force which would bring to the performance of its work the knowledge of an expert in the detection of crime. A small commission qualified to study the police methods of England, France, and Germany, and perhaps other continental countries could intelligently formulate and report a system suitable to the needs of Chicago. To serve upon such a commission would be a post of honor and a call for patriotic service, which no good citizen could refuse. Based upon such a report, a new police organization should be created, headed by a man of force and vision, freed of political entanglements, who should be kept in the position so long as he gave good service. A force of trained police experts will do much to enable the prosecuting officer more easily and certainly to secure convictions.

5. *Felonies Prosecuted in Chicago in 1926.*

It will perhaps clarify this discussion of prosecution in Chicago if we gain some idea at the outset of the character of the crimes with which the state's attorney is concerned. It must be borne in mind that in this report no attempt is made to consider those crimes which are unsolved, but only those cases upon which charges were filed. Thousands of felony crimes are committed every year for which no one is ever prosecuted. The following Table 1 sets forth the number of prosecutions initiated on felony charges in the year 1926 and the relative frequency of prosecutions for each of the several offenses:

TABLE 1. FELONY PROSECUTIONS IN CHICAGO, 1926
(Classified by offenses)

	Number	Percentage
Homicide	567	4.52
Rape	540	4.31
Robbery	2,696	21.49
Assaults	461	3.68
Burglary	1,433	11.43
Forgery	171	1.36
Embezzlements and frauds	2,854	22.75
Larceny	2,968	23.66
Carrying concealed weapons	15	.12
Sex crimes	114	.91
Miscellaneous	724	5.77
Total, all charges	[1]12,543	100.00

By far the greater number of these cases (7,561 to be exact) was never prosecuted beyond the preliminary hearing. So it would probably be a better measure of the proportions of these various crimes upon which the greatest amount of effort is expended by the state's attorney, to consider in another table those crimes which resulted in indictments and which entered into the trial court. The following Table 2 indicates the numbers and percentages of these:

TABLE 2. INDICTMENTS IN CHICAGO, 1926
(Classified by offenses)

	Number	Percentage
Homicide	281	5.64
Rape	180	3.61
Robbery	1,538	30.87
Assault	192	3.86
Burglary	823	16.51
Forgery	94	1.89
Embezzlements and frauds	535	10.74
Larceny	941	18.89
Carrying concealed weapons	9	.18
Sex crimes	46	.92
Miscellaneous	343	6.89
Total	4,982	100.00

[1] This is the total number of felony charges filed during 1926. 10,829 of them (which does not include fugitive warrants and warrants returned unexecuted, which in 1926 number approximately 4,000 cases) were found by the records to have originated in the Municipal Court where preliminary hearings are held. The remainder, 1,714, were cases in which no record of a preliminary hearing was found in the municipal court, but upon which indictments were filed, presumably upon original presentation to the grand jury, in which cases no preliminary hearing is required.

Thus, the crimes with which prosecutions must deal, in the main, in the City of Chicago are robbery, burglary, and larceny. These three crimes constitute a vast majority of the crimes which are prosecuted.

These crimes are, of course, crimes against property and, moreover, are those crimes which are most frequently resorted to by criminals in their efforts to make a living through attacks upon society. They are, also, those crimes which represent, in the work of prosecution, the rougher side of legal work. They do not involve, usually, fine points of law. The character of investigation necessary is not always exceedingly technical; they are more simple. Cases involving embezzlement and fraud are, on the other hand, exceedingly technical and difficult to prepare. Every large prosecutor's office recognizes the distinction between the more numerous crimes of violence and those crimes which are accomplished by deceit and fraud. It is, therefore, difficult to determine with any exactness how large a proportion of the efforts of the state's attorney's office goes into these more numerous crimes, because there is no way of determining whether the cases involving embezzlement, forgery, and fraud do not take more time and effort even though they are not so numerous; however, these figures herein indicate with some clearness the proportions.

It is inevitable that comparisons will be drawn in such a report as this, between the two largest cities in the United States, New York and Chicago. It is fortunate that for New York we have statistical data concerning prosecutions, which are in many ways like those presented in this report for Chicago. In connection with the number and classes of criminal prosecutions, it is not possible to make a complete comparison, because the New York law differs somewhat from the Illinois law in many of these crimes. For example, in New York a considerable proportion of the felony prosecutions are for carrying concealed weapons, which offense is not usually prosecuted as a felony in Chicago; however, the following table indicates a comparison between New York and Chicago in regard to a number of the more significant crimes. The figures for New York are for 1925, which is the only complete year covered by the reports of the New York State Crime Commission. The method of collecting the figures and the tabulation thereof were similar in both instances, so that the comparison may be relied upon:

TABLE 3. NEW YORK AND CHICAGO, COMPARED

	Chicago, *1926*	New York, *1925*
Homicide	567	1,059
Robbery	2,696	1,489
Assault	461	4,158
Burglary	1,433	2,382
Larceny	2,968	5,622

The reader is warned not to depend upon these figures as measures of crime in the two cities. Such a use of these statistics would be entirely unwarranted. They are rather the measure of the amount of work that the prosecutors' offices in the two cities must do. Even in this respect, however, a warning should be interposed. While Cook County is under one state's attorney, the City of New York includes five counties, each of which has a

district attorney with independent powers. The figures which we are giving here include the five counties of New York City. The most interesting distinction between New York and Chicago in this table is the wide difference between the cities in the number of robberies and assaults. The New York Police Department, in presenting its annual figures, usually lumps robberies and assaults in order to provide figures which are comparable with other cities. This is due to the interpretation of New York penal statutes by the Police Department of New York City.

6. *Ten Thousand Fruitless Prosecutions.*

One day during the summer of 1927, a prisoner, who possessed a long police record as a bomber, auto thief, and hold-up man, escaped through a skylight from the prisoners' room in one of the branches of the municipal court. Subsequent search for him was in vain. This escape attracted widespread attention; it was commented upon editorially, and presumably stirred to some degree the City of Chicago. In the year 1926, however, out of 10,829[1] cases in which individuals were arraigned in the municipal court on felony charges, over six thousand were released by municipal judges. More thousands were released along the line from the municipal court to final conclusion of the resources of criminal procedure. Thus the public is stirred by the escape of one man, but the public is indifferent to the release of thousands.

It all goes to show, that after all it is the unusual that attracts attention and claims public interest; the usual run of things is unnoticed. The average citizen is hardly aware of the tremendous amount of lost energy in the administration of criminal law. He hears all sorts of explanations: juries are sentimental, criminal procedure is full of loopholes, cases are being fixed, and other charges are being made. The fact is that none of these explains the situation with any degree of clarity. The explanation lies, first, in a frank examination of the facts concerning what happens in criminal prosecution, and in a careful and detailed analysis of the dry details of these facts.

Criminal procedure is, of course, devised to give persons accused of crime every possible opportunity to escape the consequences of unfair and unlawful prosecution. We make many arrests and we have many laws defining crimes, but the percentage of those who are charged with crime who are finally found guilty and punished is surprisingly small. For the purpose of presenting this fact we can roughly divide the criminal process into three parts. The preliminary hearing in the municipal court, where the police and others bring felony charges in the first instance. Here a determination of whether there is "probable cause" to hold the defendant for further action is made. The second stage is the grand jury, where those who are held for probable cause are duly considered by the members of the grand jury, and those who, in the opinion of the grand jury, should be held for trial are indicted. The third stage is that which begins after the indictment, and in those cases in which the prosecution is completed sentence is fixed by the court. Here then we have three stages of which we shall speak frequently in the pages that follow.

[1] See footnote to Table 1.

The Prosecutor (in Chicago) in Felony Cases

There entered the courts in 1926, the year which we selected for study in the City of Chicago, 12,543 cases. Of this number 6,124 or 48.83 per cent were eliminated in the preliminary hearing. Approximately one-half, then, died in the first stage of procedure. In the grand jury another 1,437 were thrown aside, leaving 4,982 or 39.72 per cent of those cases which started on the road. Into the trial court went 4,982 indictments. The State thus filed this number of solemn felony charges, describing in the indictments the details of the crimes, the time, the place, and other circumstances connected therewith. This array of approximately five thousand cases had been inspected by three agencies which the government has provided for apprehension and prosecution of criminals; the police, the municipal court, and the grand jury. Each of these had decided that there was probable cause to think the accused guilty. In the trial court, however, 2,533 of these were eliminated by various means. There were findings of guilty, of the total number of original felony charges in 1926, in 2,449 or 19.53 per cent of the number originally charged. Thus the administration of criminal prosecution in Chicago is effective in one case in five. For every five cases that are initiated, one results in a finding of guilty.

Now this is not the entire story, as we shall see before we complete this report. Of 2,449 findings of guilty, all do not result in punishment; 510 result in probation; new trials are granted; a few additional means of final escape are available; and the final net result of the machinery is the execution of 1,885 convictions, or slightly over 15 per cent of the grist of cases which began.

This is the story of the enforcement of law in the City of Chicago. It means in solid numbers that out of 12,543 prosecutions for serious crimes, 10,658 result in no punishment. The public gets excited over the sole individual who, by a burst of physical energy, escapes the toil of the law by climbing through a skylight, but fails to note the failure of the 10,658 prosecutions wherein the defendants were solemnly charged with major offenses but returned to the streets unnoticed. Here is a fact which the average citizen should ponder long and earnestly. It may be said, of course, that among the ten thousand thus liberated, many, perhaps most, were not guilty. This, however, might be said of the gentleman who escaped through the skylight. Neither had he been judged guilty, he had not even been held to the grand jury. His escape meant little more to the state in the way of actual subsequent menace to society than any one of the 6,124 who were in 1926 released by the municipal court. It may also be said that he had a record; he was a bad man; therefore, the public was more interested in him than in many others who passed through the toils of the law. But we shall present facts subsequently in this report to indicate that many of the ten thousand who went free are bombers, murderers, robbers, burglars, rapists, desperate men, whose presence is a constant threat to organized society and the security of property. This enormous loss of motion in criminal cases is the first salient fact in the administration of justice. In calling attention to it we are at this point making no charges of corruption or inefficiency against the individual ranks of those who operate the machinery which society has created to protect itself. We are considering the thing in the mass. If any charge is to be made upon the basis of the facts which we have presented in

the foregoing paragraphs, it is simply this, that society has a curiously ineffective way of protecting itself.

For the benefit of the more sophisticated reader, who is at this point considering the fact that the City of Chicago is perhaps no worse than other cities in this respect, that America generally is operating its criminal law machinery without appreciable result, it ought to be said that we are not, in this report, attempting to arrive at nice comparisons among cities. This business of enforcing the criminal law is no race for comparative honors among different communities. Chicago is no less in need of serious and immediate improvement in the administration of the criminal law just because other cities are bad. We are attempting to consider the case on the basis of what is being done and what might be done.

7. *Elimination of Cases in Preliminary Hearing.*

In the City of Chicago 10,829[1] cases entered the preliminary hearing in 1926. These cases were disposed of in the manner indicated in the following Table 4:

TABLE 4. DISPOSITION OF CASES IN PRELIMINARY HEARING

	Number	Per Cent
Total cases entering preliminary hearing	**10,829**	**100.00**
Never apprehended	391	3.61
Error, no complaint	116	1.07
Complaint denied	35	.32
Bond forfeited, not apprehended	68	.63
Certified to other courts	50	.46
Dismissed, want of prosecution	2,501	23.10
Nolle prosequi	766	7.08
Discharged	2,117	19.55
Reduced to misdemeanor, not punished	12	.11
Reduced to misdemeanor, punished	3	.03
No order	22	.20
Pending	7	.06
No record	36	.33
Total eliminations	6,124	56.55
Remainder—Bound over to grand jury	4,705	43.45

In discussing the fate of cases in the preliminary hearing on the basis of the above table, it is not necessary to consider at any length a number of the dispositions indicated. For example, the reduction of charges to "misdemeanor," "no record," "pending," "certified to other courts," and "no order" involve a comparatively small number of cases and therefore we need not spend much time on them. Charges "reduced to misdemeanor" means that an original felony charge, in the opinion of the municipal judge or the state's attorney, is properly a misdemeanor and is disposed of as such on its merits. This is apparently a way of correcting an obvious error in the charge and does not occur frequently; consequently, we may dismiss it without comment.

"No record" means that the files were incomplete and in our investigation we were unable to determine the disposition of the case.

The seven cases indicated as "pending" were not disposed of at the time the investigation was made.

[1] See footnote to Table 1.

Seventy-two cases were "certified to other courts," which means that after the complaint was filed the court discovered that due to the age of the defendant or to some other circumstances the case properly belonged elsewhere, either in the Juvenile Court or in some other jurisdiction. This does not happen frequently, because the police usually refrain from bringing a charge against anyone wanted by other authorities, and the case, therefore, would not come within the scope of our study.

"No order" means that for some reason the state does not wish to prosecute to a final conclusion but is unwilling to strike the case from the docket entirely.

"Never apprehended" means that a complaint was made, a warrant was issued, but the police or other arresting officer was unable to take the accused into custody. This need not detain us long because in a consideration of the responsibility of the prosecuting officer for the various items in this study it can scarcely be charged that he is to blame for such a result.

It will be noted that one hundred sixteen cases are lost because of "error, no complaint." In the state wide study which this survey has attempted, we found that this disposition appears only in Cook County and in the City of Chicago. It is, according to the authorities, a way of indicating the dismissal of a case where the complainant applies for a warrant and after a hearing it is determined that his complaint is groundless. It would seem, therefore, to be about the same sort of a disposition as a straight charge with a subsequent dismissal. If it really were an error, the case should be continued until the proper charge is filed, and then the original case dismissed. There would seem to be grave doubt as to the wisdom of dismissing the case outright and an alert prosecutor would certainly object to such a disposition.

"Complaint denied" is found also only in Cook County and the City of Chicago, which also means that the complainant has had a hearing and it is decided that his complaint is groundless. The same comment that we made above in connection with "error, no complaint" applies here. It seems that there is an unnecessary multiplication of dispositions here, when simple dismissal would suffice.

"Bond forfeited, not apprehended" means that the defendant who has been in custody of the court has been released upon bond, and when he has failed to appear for trial the bond has been forfeited.

We now come to the really serious aspects of the administration of criminal justice in the preliminary hearing. It will be noted above that a total of 5,384, or half of the cases which enter the preliminary hearing are terminated there by three kinds of disposition: "discharged," "nolle prosequi," [1] and "dismissed, want of prosecution." In all of these the state's attorney has a responsibility which is equal to that of the court itself. Thus, in any consideration of the activity of the state's attorney these dispositions are present. At this point, however, in our discussion we shall content ourselves with a simple explanation of what they mean and in a subsequent paragraph we shall call attention to the significance of dismissing half of the

[1] A "nolle prosequi" is a dismissal of the charge upon motion of the state's attorney and is entered after he has decided, either before or after the presentation of evidence, that the state has no case.

cases brought into the municipal court through these methods. The case is "discharged" when, after the presentation of evidence by the State and occasionally by the defense, the court decides there is not "probable cause" and that the defendant should not be held for action by the grand jury. Technically, this differs in a marked way from "dismissed, want of prosecution," because presumably in the latter case evidence has not been presented at all and there is no action for the court to take except to dismiss the case. In practice, however, it may mean many things. It is sometimes due to the absence of witnesses or the failure of witnesses to offer testimony. In practice also it means that in many instances the municipal judge uses this method of ridding the court of a case when in reality he has heard evidence and has decided that it was inadequate.

8. *Elimination of Cases in the Grand Jury.*

There are two ways in which cases get to the grand jury. The first and most common method is through action of the court of preliminary hearing. When a defendant is bound over to the grand jury by the municipal court in Chicago, the case proceeds directly to the grand jury. The other method is by the presentation of evidence directly to the grand jury by the state's attorney. Many cases are taken directly to the grand jury by the state's attorney and they are, in consequence, issued by the grand jury as "original" indictments. As we saw in the preceding section of this report, a total of 4,705 cases were bound over to the grand jury by the court of preliminary hearing. In Table 5 which follows, we are considering these as the only cases which were considered by the grand jury, in determining percentages, but at the end of our table we are adding the 1,714 original indictments which emerged from the grand jury, which did not go through the preliminary hearing. There is no record, on the basis of the information which we have, to indicate the total number of cases presented directly to the grand jury. All we have are the indictments which came from such original presentations.

TABLE 5. ELIMINATION OF CASES IN THE GRAND JURY

	Number	Per Cent
Total cases bound over to Grand Jury by preliminary hearing	**4,705**	**100.00**
No bill	1,344	28.56
Indicted for misdemeanor	37	.78
Pending	1	.02
No record	55	1.17
Total eliminations	1,437	30.53
Remainder—Indictments returned (cases from preliminary hearing)	3,268	
Original indictments	1,714	
Total	4,982	

No explanation will be needed for the table shown above except for the item "no record." This means that there was nothing to indicate what had happened to the defendant, who was bound over for action by the grand jury. This may mean a complete loss of the case because of defective administration. It may simply be a defect in the record. In any event, it means that fifty-five cases which were bound over from preliminary hearing

to the grand jury vanished into thin air so far as written record is concerned. If it is possible for cases to become completely lost in the records when a search such as was instituted in this investigation was made, it is perhaps pertinent to ask at this point whether or not it indicates that in the hurried and sometimes chaotic process of administration cases are completely lost. In any event, it points to the vital need of more adequate record keeping.

Nearly thirty per cent of the cases introduced in to the grand jury through preliminary hearing were "no billed." This is a fairly definite responsibility resting upon the state's attorney. Theoretically, of course, the grand jury is a free agent, sifting out the charges made against citizens of the community, and when they consider that there is adequate reason to believe that a crime has been committed and they think they know who committed it, they return definite charges or "indictments." This is the theory, but the fact is that the grand jury is subject, in an enormous degree, to the influence of the state's attorney.

Every prosecutor knows, and every intelligent person who ever served on a grand jury knows, the prosecuting officer almost invariably completely dominates the grand jury. Usually, he or his representative is the only person present in the session of the grand jury who is familiar with the law. He is accorded the right to interrogate witnesses; he may to a large extent determine the witnesses who shall be summoned. This is a completely effective power, because when an indictment fails to be returned in a given case, it is usually because there is not sufficient evidence, and if the state's attorney is not sufficiently diligent in producing the necessary witnesses an indictment can scarcely be expected. Thus he may exercise a powerful and conclusive and irrevocable power of veto without anything to interfere at all, simply by failing to produce the witnesses necessary to convince the grand jury that an indictment should be returned. He can usually determine the order of the cases to be considered. He can, by the phrasing of his questions, elicit the type of information which he wants the grand jury to hear. If a lay member of the grand jury attempts to explore the recesses of a case on his own account, the state's attorney can easily, if he so desires, make the efforts of such an amateur appear to the other members of the jury as fruitless and pointless. He can usually awe most of the members of the grand jury by his superior knowledge of the criminal law. His domination of the sessions is practically complete. The grand jury usually degenerates into a rubber stamp wielded by the prosecuting officer according to the dictates of his own sense of propriety and justice.

We have said enough to indicate that the state's attorney in Cook County is probably responsible to an overwhelming degree for the fact that practically one out of three cases which enter the grand jury from the preliminary hearing, are "no billed." Technically, "no bill" means that no true bill of indictment is returned. It ought to be added further that a true bill of indictment must be signed not only by the foreman of the grand jury but also by the state's attorney, and without his signature a true bill cannot come into existence. This final flourish of authority, however ministerial and perfunctory it may actually be, is a fitting climax to the "grand inquest," which has in fact become a secret tribunal wherein the state's attorney is practically judge, prosecutor, and administrator.

9. Elimination of Cases After Indictment and Prior to Sentence.

The cases which survived the ravages of the preliminary hearing and the grand jury in Chicago in 1926 and entered the criminal court on the basis of definite indictments number approximately five thousand. Of these, only about one-eighth were ultimately found guilty of the crime charged in the indictment; many of them fell by the wayside and were released; others were found, or pleaded, guilty of a lesser offense.

In the trial court, which we are now considering, procedure is much more complicated. Resistance of the accused to the prosecution is definitely accentuated and the activity of the state's attorney more definitely pronounced; moreover, the number of ways in which a case may be disposed of in this stage is much larger and requires much more explanation. Consequently, our consideration of this stage of procedure will necessarily be somewhat detailed. We shall begin by showing in Table 6 the disposition of the cases which had gone as far as indictments:

TABLE 6. ELIMINATION OF CASES AFTER INDICTMENT

	Number	Per Cent
Cases entering criminal court on indictment	**4,982**	**100.00**
Dispositions:		
Never apprehended	41	.82
Bond forfeited, not apprehended	72	1.45
Certified to other courts	13	.26
Defendant dead	9	.18
Nolle prosequi	282	5.66
Nolle account other indictments	8	.16
Stricken with leave to reinstate	374	7.51
Stricken with leave, account other indictments	690	13.85
Dismissed, want of prosecution	206	4.12
Discharged by court	28	.56
Off call	41	.82
Felony waived, tried by court, acquitted	271	5.45
Felony waived, plead guilty, acquitted	4	.08
Acquitted by jury	270	5.42
Mistrial	6	.12
Pending	218	4.38
Total eliminated	2,533	50.84
Felony waived, tried by court, convicted	266	5.33
Felony waived, plead guilty, convicted	836	16.80
Adjudged insane	5	.10
Plea accepted, guilty offense charged	419	8.41
Plea accepted, guilty lesser offense	723	14.51
Convicted offense charged by jury	175	3.51
Convicted lesser offense by jury	25	.50
Total guilty	2,449	49.16

10. Never Apprehended.

The forty-one cases involved are presumably those instances where an indictment was returned against a defendant and he was not subsequently arrested. This is not a serious problem, because often an indictment is returned in spite of grave doubts as to the ability of the authorities to locate the person in question.

11. Bond Forfeited, Not Apprehended. This whole question is involved in the problem of bail, which we shall consider in connection with another report. It is, however, a very serious fact that in seventy-two instances prosecution was avoided by the simple expedient of forfeiting bail. The forfeiture of bail is particularly and markedly serious because the individuals concerned are probably guilty and so completely realize the danger of opposing their prosecution that they are willing to take this means of escape.

12. Certified to Other Courts. In a few cases persons under indictment are transferred to other courts, for the most part presumably courts of similar jurisdiction in other counties or states. It is, of course, the responsibility of the state's attorney to see that in case the other prosecutions fail, these persons are brought back for trial on their indictments in Cook County.

13. Nolle Prosequi. One of the most striking examples of the exercise of power of the state's attorney is that of entering a nolle prosequi. We have already seen how it operates in the preliminary hearing, but its significance in the trial court is much greater, because in these instances the state's attorney has presumably decided because of his acquiescence in the indictment that the person in question ought to be prosecuted, and in entering a nolle prosequi he indicates that his mind is changed on the subject.

This method of abandoning a prosecution may be exercised for a number of perfectly justifiable reasons: the indictment may be deemed by the prosecutor to be fatally defective; witnesses for the state may disappear beyond hope of recall; or the defendant may be convicted in another court or on another charge in the same court.

In some states the nolle prosequi may be entered entirely upon the responsibility of the prosecutor; in others consent of the court is necessary. In all states where it is permitted, however, the approval of the court becomes a mere formality in all but most unusual cases. That this is a most important power and one which may be and unquestionably is used improperly is shown by the large number of statutes in various states which are aimed at the strict regulation of its use. In Pennsylvania, the written consent of the court is required; in many states written reasons must be given by the prosecutor, while in others strict penalties are specially provided for entering a nolle pros. in pursuance of a corrupt agreement. In New York, the entry was abolished by act of the legislature. In spite of every evidence in the law that the nolle prosequi is legally intended to be exercised only in unusual cases, it is in fact used with the utmost freedom. The following Table 7 assembles, for comparative purposes, the record of nolle prosequis in a number of typical jurisdictions:

TABLE 7. NOLLE PROSEQUI, COMPARED FOR OTHER URBAN JURISDICTIONS

	Cleveland, 1925		St. Louis, Oct. 1923 to Oct. 1924		Hennepin Co., Minneapolis, 1923		Fulton Co., Atlanta, 1921		Chicago, 1926	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
Indictments or informations returned	1,110	100.0	1,000	100.0	1,024	100.0	2,180	100.0	4,982	100.0
Terminated by nolle prosequi	126	11.3	102	10.2	293	28.6	285	13.0	290	5.8

The free use of the nolle prosequi is severely criticized in the Missouri, Cleveland, and Georgia surveys of Criminal Justice. It is not always apparent on the face of the court record that the prosecutor has adequate reason for his action. The Cleveland survey suggests that there be required reasons with public notice for entering the nolle prosequi. Such measures may not prove effective however. They are already required in some jurisdictions and are met by purely perfunctory statements such as "insufficient evidence" or "witnesses missing," which permit precisely the same abuses that the requirement was intended to prevent. In New York, where the formal nolle prosequi is abolished, the court may "upon the application of the district attorney, and in furtherance of justice, order an action, after indictment, to be dismissed." This provision was expected to serve as a substitute for the abolished nolle prosequi but was intended, according to the Court of Appeals, to be "seldom exercised." The spirit of this admonition is hardly observed in New York, because in 1925 a total of 11.2 per cent of cases were dismissed either on motion of the district attorney (2.35 per cent) or on motion of the defendant's counsel (8.85 per cent). The cases dismissed on motion of the defendant's counsel include, of course, a large number which the district attorney does not contest. The proportion thus dismissed is about the same as the proportion of the nolle prosequis in other states. The practice exists although the name is gone.

It will be observed from the preceding comparative figures (Table 7) that the nolle prosequi is used much less frequently in Chicago than in other comparable jurisdictions; in fact, the proportion is only about half of that which is common elsewhere. This indicates merely that the state's attorney in Cook County has accomplished the purpose of the nolle prosequi through other means rather than using it directly. Perhaps this is due to the fact that the nature of the nolle prosequi is becoming better known to the public and newspapers are more likely to call attention to this entry and to charge the state's attorney with the responsibility therefor. In other words, public opinion is becoming sufficiently well informed so that the prosecutor is as certainly blamed for the nolle prosequi as a jury is blamed for an acquittal. This, of course, will result in a less frequent use of the entry and there is every evidence that its use is being curtailed in a marked degree throughout the country. This should not be any cause for rejoicing but should merely call attention to the fact that the state's attorney is using other means just as effective for terminating prosecutions, but is using them under external forms which do not fix the responsibility upon him. A number of these we have already discussed, but several will appear in subsequent paragraphs.

14. Stricken, with Leave to Reinstate.

As is indicated in Table 6 above, quite a considerable number of cases entering the criminal court is stricken from the docket with leave granted to the state's attorney to reinstate at his will. A total of 374 were disposed of in 1926 in this manner. This is a practice which prevails in a number of the counties of the State of Illinois, but is much more pronounced in Chicago than elsewhere. It is, however, a practice that does not appear in many other states, particularly in those states for which we have reliable information. It is theoretically a way of suspending action in a

felony case with the possibility of future action in the event new evidence warrants such action, but in actual fact it means the termination and death of the prosecution in question, because such cases are seldom reinstated. It is, in fact, another way of accomplishing the extermination of a case without assuming responsibility for such a final termination as a *nolle prosequi.* Perhaps it is too extreme to say that it is a mere screen for a *nolle prosequi,* but such a designation would not be far from the truth.

15. *Stricken, with Leave to Reinstate, on Account other Indictments.*

This method of disposition is not so serious, because the person in question is definitely accounted for in some other way. It is probably safer than a *nolle prosequi* because if the new prosecution fails, the old one can easily be revived.

16. *Dismissed for Want of Prosecution.*

On this account, 206 cases, or nearly five per cent of the total cases (Table 6) entering the trial court stage, are terminated. There is no need to draw conclusions as to whether this number is larger or smaller than it should be. It is, however, quite considerable if one bears in mind that included in the two hundred six cases may be dangerous criminals, who have been brought to this stage of prosecution by rather difficult methods. It is appropriate, however, to call attention to the enormous responsibility of the state's attorney in such cases as these. He is not supposed to be a mere trial lawyer, in such cases it is his duty to see that witnesses are present and that they offer testimony in a proper manner. The attorney in a civil case is supposed to see that his witnesses are present. He has not, according to any reputable standard of ethics, discharged his responsibility to his client if he is content merely to accept the return of a sheriff or other court officer that the witness is not to be found. But the difficulty of checking up any lack of diligence or activity on the part of the state's attorney in such cases as these illustrates how completely the public is at his mercy. If the state's attorney is delinquent in such cases and by his inaction permits witnesses to remain away from prosecution in cases in which they are vital assets of the state, and if he permits them to be coerced into remaining away by threats or other means well known to Chicago's underworld, there is no public agency that can discover his shortcomings. A single case would require extensive investigation, and to investigate two hundred six cases, which seems to be the extent to which this takes place in a single year, would be practically impossible.

This matter of getting witnesses out of the way by persuasion or intimidation has become very serious in Chicago. There is no more certain method of defeating the case known to defense strategy. There are so many ways by which this can be done, with comparative safety, that astute and unscrupulous defenders of criminals and the friends and aids of the defendant are apparently resorting to it with increasing boldness and effectiveness. Two recent cases are typical of this situation.

In the Lewis-Braverman case, a racketeer killing, the home of the chief witness for the State was bombed shortly before the trial with the obvious purpose of intimidation.

In the Rongetti case, where the defendant, a physician, was charged with murder by abortion, one of the main prosecuting witnesses, a nurse, testified that the agents of the defendant had threatened to ruin her reputation by charging that she had lived in a state of adultery with two colored men, and even produced the men who said they were willing so to state although it was untrue. Other witnesses were kidnaped and threatened with death if they appeared. So great was the fear of these witnesses, that one of them, when finally located, stated she would rather commit perjury and go to jail than to testify against the defendant. The judge presiding in this case gave the people of Chicago an excellent demonstration of the actual power of the court to control a situation of this kind. He directed a successful search for the absent witnesses, had them brought into court, continued the trial, and went thoroughly into the question of responsibility for the flagrant efforts which had been made to obstruct justice. He assured the witnesses that the court would protect them, and they all finally gave very damaging testimony against the defendant, as a result of which he was convicted and sentenced to death. After the verdict, the inquiry into the intimidation was renewed by the court. A prominent practitioner of criminal law was charged by the witnesses with very grave misconduct in the case and upon trial for contempt of court was convicted and sentenced to three months in jail. The question of the finality of this sentence is now pending in the Appellate Court.

Throughout this case, which was a prominent one, the two assistant state's attorneys, who were prosecuting, labored with great diligence, industry, and ability to assist the court in its efforts to protect the witnesses and get at the facts of their intimidation. The conduct of the court and prosecutors in this case may very well be set up as an example of that which might be, but is not, done in the hundreds of cases disposed of every year in Cook County because the witnesses are not present.

Some other specific instances of notorious gangsters and crooks escaping prosecution by this means will hereafter be noted and discussed.

17. Off Call. These forty-one cases (Table 6) were taken off the active docket but may be put back at any time. It is very rare, however, that they are reinstated. This method differs fundamentally very little from "stricken, with leave" cases and is simply another way of avoiding taking the responsibility of a *nolle prosequi.*

18. Felony Waived. There are four groups of cases shown in Table 6 in which the notation "felony waived" is entered. We shall consider this in some detail in a subsequent paragraph because these cases include such a very large percentage of all of the cases that enter the criminal court, that they constitute a significant and important way of terminating prosecutions.

One thousand, three hundred and seventy-seven of the 4,982 cases in which indictments were returned were permitted to shrink to the proportions of a misdemeanor and were thereby disposed of as misdemeanors. This number accounts for approximately twenty-five per cent of all of the cases in which indictments were returned. They were, as the table indicates, disposed of in four ways. There were trials by the court in which 271 cases

resulted in acquittals and 266 resulted in convictions. There were, also, 840 pleas of guilty in which, of course, the court proceeds to fix the legal penalty. The table, however, indicates that four of these cases were acquitted after a plea of guilty, which is an unexplainable irregularity, either in the records of the court or in the proceedings which were followed in the cases. We include these cases here exactly as they were found in the court records although either the entry or the procedure was not in accordance with the law.

19. *Acquitted by Jury.* Two hundred seventy cases, or 5.42 per cent, were acquitted by juries (Table 6). As we shall indicate later, this number sinks into insignificance in comparison with the number of cases disposed of in other ways. The insignificant part that the jury plays in the administration of criminal justice is nowhere more clearly shown than in this item. There are also six cases in which "mistrials" or jury disagreements resulted which need not concern us here.

20. *"Only a Preliminary Hearing!"* Not long ago in one of the criminal branches of the Chicago Municipal Court a preliminary hearing in an embezzlement case was in progress. A corporation was appearing as the complaining witness against a former salesman, who was charged with several cases of embezzlement. Apparently there had been no preliminary conference at all between the assistant state's attorney and the complaining witnesses. The assistant state's attorney attempted to elicit an admission from the defendant, through questions that were obviously inadmissible. Thereupon, the assistant state's attorney said to the judge, "Well, this is only a preliminary hearing." But the judge pointed out that probable cause must be shown in a legal manner, and continued the case to permit the state's attorney and the complaining witnesses to confer and reach a decision as to the nature and quality of the case which was being presented.

This incident gives a fair picture of conditions as they exist in the handling of preliminary hearings by the state's attorney's office. The cases are not well prepared, witnesses are almost never interviewed before their appearance, the assistant state's attorneys who are present appear to have the attitude represented by the remark which we have just quoted. In their opinion it doesn't matter much—"It's only a preliminary hearing."

Let us, in order to see how serious this contemptuousness toward preliminary hearings really is, recall the figures which appear on the preceding pages. Of the 10,829 felony cases entering the preliminary hearing in the City of Chicago in 1926, 6,124, or 56.55 per cent, did not go beyond; in other words, almost sixty per cent of the cases entering the preliminary hearing were finally disposed of at that point. Either the police have been arresting too many innocent persons or more than half of the work of the police in enforcing the law in serious crimes is thus wiped out in this stage of procedure. It is therefore of great importance to examine in some detail the nature of the judicial proceeding which looms so large in the enforcement of law in Chicago.

Preliminary hearings in the City of Chicago are conducted by the Municipal Court. This court operates in fourteen active criminal branches

scattered throughout the city. At these branch courts there is present, of course, the municipal judge in charge, who is assigned to that court by the chief justice, and representing the state are assistant state's attorneys and also assistant city prosecutors, except in the Harrison Street Court, where two assistant state's attorneys are located. The state's attorney's office is represented by one assistant in each branch. The law department of the city is also represented by one assistant city prosecutor.

The *assistant state's attorneys* in charge in these preliminary hearings are usually drawn from the lower ranges of the salary grades in the state's attorney's office. Their salaries run from two to three hundred dollars a month. They are, therefore, the less experienced and confident members of the staff. Oftentimes, especially in the outlying branches of the court, they are selected with reference to their own political bailiwicks. This assistant seems chiefly interested in filling out a form report which he mails to the state's attorney's office at the end of the day's work. This blank form has space for the name of each defendant, the number of the case, the charge, and the disposition. When a defendant is bound over to the grand jury the assistant is required to fill out what is called a "hold over" sheet. This provides for the name of the defendant, the date of offense, a brief story of the crime, the name of the judge, and a list of witnesses. In filling out these forms an occasional painstaking assistant will fill out the blank in a comprehensive manner, while others are careless and lax. An examination of these sheets indicates that some of the assistants scarcely rise above the literacy grade, and, added to this, are so meager in the information which they record that the reports are scarcely usable at all.

In observing the conduct of cases in the Municipal Court, it requires careful observation to determine whether the assistant state's attorney is there as a clerk, reporter, prosecutor or casual visitor. He is usually seen lounging against the bench engaged in conversation with every passer-by, careless, unimposing, undignified, and indolent—surely a sorry way for the peace, honor and dignity of the State of Illinois to be represented in court.

About the only concern that some of these assistants seem to have in the cases which are passing in review is to get the name of the defendant, the number of the case, and the charge on the form which is lying on the desk before him. He permits the judge to put most of the questions. He conducts very few examinations. Only occasionally does he address a question to the witness, and one is never able to feel that the real proceeding which is taking place is an inquisition of those accused of crime by the state so that the presiding judge may decide whether there is "probable cause." The state's attorney's position seems to be that of a clerical officer, who is merely keeping track of cases which his office may subsequently be required to prosecute. He shows no familiarity with the cases, in fact, he is probably entirely ignorant of these cases until they are brought before him in this manner and even then he shows no disposition to overcome this initial handicap of acquainting himself with the facts of the case. The answer to this statement will probably be that he will not be expected to try the case, that his duty is finished when he reports that there is such a case and that other state's attorneys will be required to get information concerning the case at hand.

It is not too much to say, in summing up what we have just outlined, that the presence of the assistant state's attorney in the preliminary hearing is merely perfunctory, and in actual fact there is no prosecution worthy of the name in the preliminary hearing at all.

Most of these assistant state's attorneys are required to devote only the short time which is actually consumed in disposing of the daily hearings in court, after which they are free to follow their interests. Many of them maintain law offices and conduct a private practice. The average time which he gives the state is about two hours a day except in the very busy branches. He must, of course, for political reasons, listen to a considerable amount of special pleading in private from friends of defendants, lawyers, politicians, and others. Everything that he hears in this way is presumably on the side of the defense. In fact, practically all of the pressure that is placed upon him is inspired by the defense. No one, unless it is a representative of some person, company, or civic body, having a special interest in prosecuting the case, ever interviews him in behalf of the forgotten and neglected "State."

All of this means that prosecution, so far as there is any in the preliminary hearing, must be conducted by the *police*. The police officer usually signs a complaint, the evidence of which is merely a formal charge. If the policeman suffers from forgetfulness or is subject to pressure from some source favorable to the defendant, the case fails. Every police officer is ex officio bailiff for the municipal court and is empowered to serve subpoenas and other process of the court. When he reports that he cannot locate certain witnesses, his word is usually accepted and no other investigation or check is made.

As we have indicated above, a great number of the cases which fail in the preliminary hearing are terminated by three kinds of dispositions; "discharge," "nolle prosequi," and *"dismissed, for want of prosecution."* The largest item here is the latter; twenty-three per cent of the cases which enter the preliminary hearing are dismissed because of want of prosecution. "D. W. P." is the refrain one hears with monotonous repetition throughout the session of a criminal branch of the municipal court. While such an order is the action of the court, the entire responsibility for such dismissal is upon the prosecutor, for if there is no prosecution, the court is powerless to proceed with the case. There are cases where the prosecutor, too, is unable to prosecute, because of the absence of witnesses, but where the record shows, as this one does, that this is the most popular method of terminating cases without any punishment, the conclusion must be that in the vast majority of such cases the dismissal represents unwillingness, rather than inability, of the prosecutor to prosecute.

There is no use glossing over the situation as it exists. The underworld and friends of the underworld know that *less difficulty is experienced in getting a case out of the way* in *the preliminary hearing than in any other stage of prosecution.* It is a poor and ineffective "fixer" who permits his case to get into the more difficult stages of the grand jury proceedings and the trial court stages. The place to get cases out of the way quietly and unobtrusively and painlessly is in the preliminary hearing; consequently, the underworld exercises all sorts of efforts to prevent cases from being prosecuted.

The *intimidation of witnesses* is something so common in Chicago that every reader of the newspapers must be thoroughly familiar with it. The underworld is able, of course, when intimidation fails, to pay liberally for a witness to remain away from a preliminary hearing. This is accomplished very easily, there being generally no check up and no investigation. In addition to intimidation or bribery, there may be restitution, which is commonly resorted to. It may be also that there are conditions existing in the courts with lax work by the clerks, bailiffs, and police officers in locating witnesses, in delivering subpoenas, in dating these documents, which may have a great deal to do with the loss of cases. Moreover, the very confusion that exists in some of the court rooms, particularly in the Harrison Street Court, would indicate that only the most alert and sophisticated witness could possibly hear the case being called amid the hubbub and tumult that is present in the court. He might be present and hear the case called but be unable to make his way through the crowd which is always present there. Instances have been known where friends of the accused have surrounded the prosecuting witness or engaged him in conversation in such a manner as to prevent his hearing the case when called, and when he finally becomes oriented to his surroundings, the case is dismissed and the defendant is at liberty.

To conclude, the whole proceeding in a preliminary hearing is a *mockery of law administration.* The dockets are badly congested, the physical equipment and atmosphere of court rooms are usually bad, the sessions of the court are generally limited to the first half of the day, and proceedings are most informal. The rules of evidence are dispensed with to such an extent that proceedings are marked by hearsay and other incompetent forms of testimony. The judges are reduced to the most crude and irregular methods of deciding whether a given witness is telling the truth. One may find a judge who believes in the infallibility of the condition of the palms of the defendant's hands, and if the defendant claims that his occupation is that of cook or waiter and his palms show that he is used to handling heavy packages, he is immediately judged a perjurer, and one is constrained not to blame a judge for resorting to any expediency, when he is compelled to act as judge and prosecutor at the same time; but, nevertheless, the needs of justice are not well served by such informal expedients.

It is of commanding importance that criminal prosecution in its preliminary stage should be conducted by efficient and industrious prosecutors, who should be fully acquainted with the facts and who should carefully supervise the entire matter, from its inception until it is finally terminated or has been taken over for further action by other branches of the prosecutor's office.

21. Bond Forfeitures in Preliminary Hearings.

It is not infrequently charged in the public press and elsewhere, that men accused of crime frequently escape conviction by permitting a temporary forfeiture of bond. The *modus operandi* is said to be substantially as follows:

On the date set for trial the defendant fails to appear, and thereupon his bond is forfeited. The prosecuting witnesses then depart from the court without knowledge of what the subsequent developments in the case may be.

Shortly after the forfeiture, defendant's counsel comes into court with his client and moves that the forfeiture be set aside, which application is usually granted. Thereupon the case is set for trial for a future day. At the time of the entry of such order, the prosecuting witnesses and the arresting officers are not present, since such applications are always made without notice to anyone connected with the prosecution, except as the state's attorney, who is present in court, is, of course, advised of the application and the resulting order. Obviously, it then becomes the duty of the state's attorney to take such steps as may be necessary to secure the presence of the prosecuting witnesses at the future date of trial. It has been openly charged that many of these cases become "lost" so far as the prosecuting witnesses are concerned. Receiving no notice of the new date of trial, they fail to appear, whereupon the defendant becomes entitled to and secures an order of dismissal. The charge is also made that runners and fixers familiar with court procedure arrange, by corrupt or other means, to juggle the records and files so as to prevent further prosecution.

In order to trace this condition, so far as the records disclose, we have obtained from the docket of the Bond Court, a list of such cases covering a particular period of time. Every felony case contained in the docket from May 1, 1927, up to and including January 1, 1928, in which a bond forfeiture was vacated or a *scire facias* dismissed or nonsuited, was listed. It will be noted that although the docket of the Bond Court starts in May, 1927, it includes several cases prior to that year. These are cases in which no action had been taken until the formation of the Bond Court, at which time an effort was made to include all pending cases from prior years. The records dealing with the disposition of these cases are in a state of confusion; many of the files were incomplete or had been misplaced, so that in some instances we have been unable to determine the final disposition of the felony case. The method of procedure adopted was to search first the municipal court criminal files and dockets, then the *scire facias* files, and in addition thereto we have had an assistant of the municipal court clerk's office assisting us in tracing cases we were unable to find.

During the period mentioned, a record was taken of sixty-seven defendants against whom felony complaints had been filed and whose bonds had been forfeited. These cases do not by any means constitute all the cases in which bonds were forfeited, but are those in which the forfeitures were later set aside or the *scire facias* proceedings dismissed or nonsuited. Complete information as to the disposition of the felony cases against fifty of these defendants follows:

Discharged by court	15
Nolle prosequi	2
Dismissed, want of prosecution	20
In custody in another state	1
Pending in municipal court	1
Held to grand jury	11
Total	50

The record of the proceedings, as far as we were able to trace them, against the remaining seventeen defendants are so incomplete and uncertain as to show no definite and final disposition of the cases except that in one case the defendant was held over to the grand jury.

22. *What Does It Mean in Chicago to Be "Guilty?"*

There are two ways in which prosecutions for felonies in Chicago are reduced; they are reduced not only in number but in size. As we have seen, the reduction of the number of prosecutions by various methods of disposition is very high, but there is another kind of reduction, i.e., of the charge, which is equally serious and important and does not diminish the number of prosecutions, but which permits a dissipation of law enforcement from a brave promise of force at the beginning to a feeble achievement at the end. This, it seems to us, is one of the most serious questions involved in the administration of criminal justice in Chicago. The *state is not making good on its prosecutions.* Either it is "bluffing" in the charges that are originally brought and pressed against criminals, that is, charging persons with more serious crimes than they should be charged with, or it is permitting the strength of the defense and the complementary feebleness of prosecution to whittle down the force of law administration to a mere fragment of its basic seriousness.

In order to show this we begin (Table 8) with the tabulation of those cases in which guilt was established after indictment was returned:

TABLE 8. FATE OF THOSE FOUND GUILTY

	Number	Percentage
Total number of indictments returned, 1926	4,982	
Total number of these ultimately found guilty	2,449	100.00
Felony waived, tried and convicted	266	10.86
Felony waived, plea of guilty	836	34.14
Adjudged insane	5	.20
Plea of guilty of offense charged	419	17.11
Plea of guilty of lesser offense	723	29.52
Convicted of offense charged by jury	175	7.15
Convicted of lesser offense by jury	25	1.02

This tendency to plead guilty is no abject gesture of confession and renunciation; it is a type of defense strategy. The defense often bargains with the prosecuting officer for the best possible terms by way of a lesser sentence in return for a plea of guilty. The defense benefits by this in that he is saving expense and the uncertain outcome of a trial. The prosecutor is able, moreover, to claim that every plea of guilty represents a conviction and to show great numbers of convictions in comparison with acquittals by juries.

This tendency toward adjustment of cases by pleas is very common throughout the United States. The following figures indicate the tendency in a number of jurisdictions:

TABLE 9. PLEAS OF GUILTY IN SEVEN JURISDICTIONS, COMPARED

	Total Pleas		Pleas of Guilty		Pleas of Not Guilty	
	No.	%	No.	%	No.	%
New York City, 1925	5,622	100.00	3,508	62.40	1,977	35.16
Cleveland, 1925	1,066	100.00	686	64.35	380	36.65
St. Louis, Oct., 1923, Oct., 1924	1,000	100.00	585	58.50	415	41.50
Hennepin County (Minneapolis)	731	100.00	608	81.80	123	18.20
Fulton County (Atlanta)	1,083	100.00	476	43.95	607	56.05
Milwaukee	1,433	100.00	713	49.58	725	50.42
Chicago	4,880	100.00	1,978	40.53	2,902	59.47

"Guilty," in the administration of criminal law as in other uses of the term is relative. To be found guilty or to plead guilty to a crime may mean to be guilty of the crime which the defendant actually committed, or to a much less important crime, which is, by the discretion allowed the law enforcement officials, substituted for the original charge. One may be charged with robbery, a very serious crime, but finally be found guilty of petty larceny, a relatively unimportant crime. Thus the meaning of the term "guilty" must be carefully analyzed in order to evaluate the quality of law enforcement in the City of Chicago. When we come to such an analysis we find the most appalling difference between the charges which are originally made against defendants and the crimes of which they are finally found guilty. This is a serious problem involved in the administration of prosecution in Cook County.

The following Table 10 shows the disposition of those cases which were originally felony charges and which were found guilty by juries or which pleaded guilty:

TABLE 10. DISPOSITION OF GUILTY CASES

	Number	Per-centage
Total number of felony charges resulting in finding of guilty..	2,449	100.00
Felony waived, tried by judge, convicted of misdemeanor.....	266	10.86
Felony waived, plea of guilty, convicted of misdemeanor.....	836	34.14
Plea of guilty of offense charged, accepted.....	419	17.11
Plea of guilty of lesser offense, accepted.....	723	29.52
Convicted of offense charged by jury.....	175	7.15
Convicted of lesser offense by jury.....	25	1.02
Adjudged insane.....	5	.20

It will be observed from this tabulation that there are *many ways of being "guilty."* One may be permitted to plead guilty to a lesser offense or, what is about the same thing, to secure from the state a waiver of the felony charge and to plead guilty to something else. The state may also waive the felony charge and the defendant can be tried by the court for misdemeanor. The jury also may reduce the felony to a misdemeanor as they did in 25 cases. Thus it will be observed at a glance that when, after the enormous loss of felony cases, which we have described throughout the various stages of procedure, the defendant has actually reached the point where his guilt has been determined, in most cases he is not found guilty of that with which he was originally charged. In order to make this point very definite, we have rearranged the items in the table above to show those which were found guilty of the original offense charged and those which were found guilty of some lesser offense:

TABLE 11. GUILTY OF LESSER OFFENSE

Total number of felony charges resulting in finding of guilty.		**2,449**
Plea of guilty of offense charged, accepted.....	419	
Convicted of offense charged by jury.....	175	
Total number found guilty of crime originally charged.....		**594**
Felony waived, plea of guilty, convicted of misdemeanor.....	836	
Felony waived, tried by judge, convicted of misdemeanor.....	266	
Plea of guilty of lesser offense, accepted.....	723	
Convicted of lesser offense by jury.....	25	
Adjudged insane.....	5	
Total number found guilty of lesser crimes than those charged		**1,855**

Thus it will be seen that of 12,543 felonies charged, 10,094 were eliminated and only 2,449 convicted.

Of these convicted, 1,855 were convicted of lesser offenses than the ones originally charged. From the 594 convicted as charged in the indictment, we must make deductions (Table 12):

TABLE 12. NET RESULT OF GUILTIES AS CHARGED

Total convicted as charged		594
Probation	173	
Other modifications	4	
Appealed and reversed	2	
New trials resulting in acquittals or convictions for lesser offenses	21	
		200
Total punished for offense originally charged		394

In connection with the cases noted above as appealed or receiving new trials, it should be stated that at the time of the survey definite information was lacking as to the final disposition of twelve appealed cases and one in which a new trial was granted. It will, therefore, be seen that of 12,543 felony prosecutions, only 394, or 3.13 per cent, were finally punished for the offense originally charged in the indictment. Of these, 249 were punished on pleas of guilty and 145 as the result of jury trials.

23. Total Convictions Classified as to Lesser Offenses.

If, as we have just indicated, the overwhelming majority of persons who are charged with crimes in Chicago are not punished for the crimes named in the original charges, it becomes of much more importance to consider the crimes for which they are finally punished than the crimes of which they are charged. In order to set forth this situation in its most vivid form, we have prepared Table 13, which table shows the offenses named in the original charges, the total convicted, the number convicted of a lesser offense, and the exact offense of which these persons were convicted. Thus at a glance it is possible to determine what crimes are being punished in Chicago and what form this punishment is taking. While the table explains itself, certain outstanding facts should be noted. In the first place, the crimes in which lesser offenses are accepted are for the most part the crimes involving property. The crime which is most frequently reduced is robbery. Burglary and larceny are close behind, while homicide, rape and other sex crimes, in which property is not involved, are more frequently punished in accordance with the original charge. This in itself is a significant index to the tendencies which endanger the strict enforcement of the criminal law in Chicago. In these property crimes there are probably more interests involved in exerting influence and pressure for the lessening of the charge. There is, moreover, less moral stigma attached to these crimes and therefore less public danger of criticism if the prosecutor reduces the charge. In other words, an outraged public opinion is likely to be stirred by the reduction of a homicide charge, but after a burglary or robbery has been committed few people will feel them-

TABLE 13

TOTAL CONVICTIONS OF LESSER OFFENSES

	Total Cases	Total Convicted	Total Convicted Lesser Offense	Insane	Manslaughter	Plain Robbery	Burglary in Daytime	Attempted Burglary	Assault to Rape	Indecent Liberties	Contributing to Delinquency	Grand Larceny	Larceny from Person	Receiving Stolen Property	Petit Larceny	Attempted Larceny	Making Checks to Defraud	Obtaining Money under False Pretenses	Assault with Deadly Weapon	Assault to Do Bodily Harm	Plain Assault	Driving Auto without Owner's Consent	Malicious Mischief	Carry Concealed Weapons (Misdemeanor)	Attempt to Commit a Crime
Homicide	567	90	31	2	27														2						
Rape	540	89	62						1	1	58									1	1				
Robbery	2696	871	720	1		263						244	9		191				5		7				
Assaults	461	73	54	1															25		22				6
Burglary	1433	510	416				10	9				73		9	292	7						2	2		12
Forgery	171	36	16												1		1	3							11
Embezzlement and Frauds	2854	216	140									2			105			32							1
Larceny	2968	525	394	1											380	8						5			
Carrying concealed weapons	15	1	1																					1	
Sex offenses	114	23	11								10										1				
Liquor																									
Miscellaneous	724	15	10												4			2					4		
Total	12543	2449	1855	5	27	263	10	9	1	1	68	319	9	9	973	15	1	37	32	1	31	7	6	1	30

selves outraged, with the exception perhaps of the innocent victims, if petty larceny is substituted for robbery.

Among the crimes to which the original charges are reduced, it is significant to note that petty larceny is the most frequent representative of such favor. Of the 1,855 felony charges which are reduced to a lesser offense, 973 are finally punished as petty larceny. It should be noted further, that of the total of 2,449 convictions in Chicago, 973, or about two-fifths are found guilty of petty larceny, a crime which, according to the statutes of Illinois, involves the theft of property of the value of "fifteen dollars or less" and prescribes punishment "in the county jail or sentenced to labor in the workhouse of the county, city or town where the conviction is had, or on the streets or alleys of the city," for a term "not exceeding one year and a fine not exceeding one hundred dollars."

Thus the full force of the punishment for law breaking in Cook County appears to best advantage. If law enforcement is to be reduced to such a petty gesture as this table indicates, there should be slight wonder that criminals choose to ply their dangerous trade under such conditions. When robberies, which are charged according to the police, in 871 cases come down finally to punishment for petty larceny, grand larceny, or even plain robbery, it is absurd to talk about punishing for robberies or driving robbers from the city. Law enforcement under such conditions becomes a farce and travesty upon justice. One final set of facts should be stated in order to show how, in cases where convictions are had to the original offense, mitigation of the force of legal punishment is still enjoyed by offenders.

24. Pleas and Probations. Almost conclusive evidence of the tendency which we have already described as "bargaining" for pleas of guilty is contained in a simple correlation of the various kinds of pleas and the proportion of cases which are placed on probation after pleading guilty. The purpose is to indicate whether there is greater tendency to grant probation in cases where persons plead guilty than where persons do not plead guilty and force the state to the trouble and expense of a trial. Therefore, the following series of statements indicate the facts in this connection:

1. Of the 468 who are found guilty after a plea of not guilty, 78, or 16.7 per cent, receive probation.
2. Of the 419 who are convicted after a plea of guilty as charged, 166, or 39.6 per cent, receive probation.
3. Of the 1,559 who are found guilty on a plea of guilty of a lesser offense, 266, or 17 per cent, receive probation.

These figures indicate conclusively that a defendant's chances of probation are enormously increased if he pleads guilty to the offense charged. Presumably, probation will not be granted when the state has already permitted a reduction of the charge which is, of course, in line with the logic of events; but if he is willing to plead guilty to the offense charged he is granted probation in nearly forty per cent of the cases. This is, therefore, another way of lessening the effectiveness of law enforcement and is almost definitely indicative of a process of bargaining between defendants and prosecution, to the great advantage of the defense.

25. The Plea, the Prosecutor, and the Jury, Compared as to Responsibility.

At a public meeting held in the City of Chicago recently (1928), the state's attorney stated that in his opinion the failure of the administration of justice was due largely to the refusal of good citizens to serve on juries. He is quoted as saying, "Police, prosecutor, and judge can do their utmost; but if the jury lets a criminal go unwhipped, the blame cannot be placed on the officials who tried to convict him . . . . The great responsibility rests upon the citizenry, the men who serve as jurors and the men who believe in the enforcement of the law but are willing to let somebody else assume that duty." From this statement we are to assume that trials by jury are a significant, perhaps a predominant, feature in the administration of the criminal law. The refusal of the good citizen to meet the obligation of jury service is one of the reasons most generally assigned for failure in the administration of criminal justice. This charge has been given such frequent public repetition as to be now generally accepted as the principal cause for the escape of criminals from punishment.

Before passing to a discussion of this generally accepted, but erroneous, conception of the part played by juries in the trial of criminal cases, we desire to point out what we conceive to be a most unfair burden placed upon jurors under our present system.

Every citizen called for jury service in our criminal courts is confronted with the appalling possibility of being locked up for an indefinite time, dependent upon the length of the trial in which he is called to serve. It is, of course, true that jurors are locked up only in the more important cases, and then only when one side or the other makes the request; but the prospective juror can never know but that the case in which he is then called may be the one which calls for a "locked up" jury. Such "imprisonment" may be for days or weeks, or even months. During that time the juror is continuously kept away from his family and business, except that during court intermissions he may see and talk with his family and business associates, but then only in the presence and hearing of the bailiff of the court. Even such visitations are limited and may not be indulged except at infrequent intervals and upon necessary and important occasions.

Accepted by both sides and necessarily considered to be a good and worthy citizen as a result of such selection, he at once becomes an object of suspicion, to be constantly guarded and watched so as to prevent the exercise of improper influence upon him by evilly disposed persons.

Contrast the position of the imprisoned juror with that of the average defendant who stands before the bar of justice solemnly charged with crime. Being out on bail, as he frequently is, he comes to court at ten o'clock in the morning from his home or his office; during the noon adjournment he lunches leisurely at a place of his own selection; and reappears in court at the afternoon session unattended and unwatched. Not so with the members of the jury, who are called to pass upon the question of his guilt or innocence; they go where they are taken, carefully guarded and watched by two court bailiffs, and they receive whatever the particular hotel in which they are housed may have to offer. At the close of the afternoon session, the

defendant is again at full liberty until the next morning. On Saturday and Sunday and during any intervening holiday he is also excused from attendance because the court is not usually then in session.

Selected because of his integrity and honesty, the juror is, nevertheless, under our present system, constantly guarded and watched and denied the same measure of liberty which even the probably guilty defendant enjoys. And the pity of it all, from the viewpoint of the public interest, is the fact, that the more intelligent the prospective juror may be, the more quickly does he recognize the danger of being locked up and it then becomes comparatively easy for him to avoid service by pleading a prejudice that will result in his being excused. The less intelligent and therefore the less desirable juror from the standpoint of the prosecution fails to realize his predicament until he is fairly caught, when it is too late to escape the legal fate to which he has unwittingly committed himself. Is it any great wonder that good citizens, facing such a contingency, resort to conscientious scruples or other legal excuses in order to escape jury service?

It is probably true that until the common public standard of honesty has been raised, it will still be necessary in the more important criminal trials to resort to the method now in vogue. We may hope, however, that the day is not far distant when we may safely rely upon the integrity of the juror without treating him differently from the judge or other public official who is called upon to decide important public questions.

But, trials by jury are not significant or predominant features in the administration of criminal law. They have long ceased to be important factors in the administration of criminal justice in Chicago and other largely peopled centers. The final determination of cases exercised through the discretionary powers of the prosecutor greatly overshadows and greatly outnumbers the results obtained through trial by jury.

A recent study of the crime situation in St. Louis, Missouri, shows that of the total charges which were made in felony cases, 49.64 per cent were finally terminated by the prosecutor without the intervention of a jury, while only 7.84 per cent were submitted to the consideration of a jury for disposition. Of the cases so submitted, jury convictions were obtained in 111 cases and acquittals resulted in 83.

In the City of Chicago, for charges filed in the year 1926, the following Table 14 shows the proportion of cases terminated by the prosecutor and the jury, respectively:

TABLE 14. PROSECUTOR AND JURY, COMPARED

	Number	Percentage
Total felony charges	12,543	100.00
Eliminated by prosecutor by way of dismissal	4,827	38.49
Eliminated by juries	276	2.19
Convicted by juries	200	1.59
Other dispositions	7,240	57.73

Even if it should be conceded that there was a failure of justice in every case in which the jury found the defendant not guilty, which is, of course, most highly improbable, it would still result in a negligible number of failures to be charged against the jury. Their percentage of failure would

be at most 2.19 per cent of the whole number of felonies charged and more likely less than one per cent.

It is doubtless true that the verdict of acquittal sometimes results from prejudice or sympathy, or even corruption, but such instances are rare compared with the large number of cases which annually pass through our criminal courts. During a four years' experience in the state's attorney's office, the writer knows of but one attempt to corrupt a jury—and even that effort failed due to the honesty of the approached juror, who promptly informed the court of the attempted bribery, and in that case the defendant was found guilty and served a term in the penitentiary. In this same connection, and based upon the same experience, while the writer has known of numerous instances in which the jury acquitted when in the opinion of the prosecutor a different result should have been reached, yet in every such instance it was not difficult to vindicate the verdict of the jury, either because of a reasonable doubt of guilt or the natural prejudices which sway and influence the judgment of the average man under certain conditions, or because of some other fact or circumstance in the particular case. It should also be borne in mind that the prosecutor is many times possessed of information which under the rules of law may not be submitted to the jury. This, together with his more intimate association with the witnesses and parties to the prosecution, tends to make him more or less a partisan and leads to a conclusion which may not always be as sound as that reached by an impartial jury.

Of the 12,543 felonies last referred to, 2,449, or 19.53 per cent, resulted in convictions; in 80.75 per cent, or 1,978 of the latter number, convictions were obtained on pleas of guilty; and the remaining 471, or 19.25 per cent, were found guilty as a result of trial by court or jury. In the 476 cases submitted to trial by jury, a verdict of guilty was found by the jury in two hundred cases.

To put the situation somewhat differently, the statistics show that of the 12,543 felonies charged and brought into court, 4,982 resulted in indictments by the grand jury, and of this number the petit jury was called upon to consider and pass upon 476 cases, in which they acquitted 270, convicted 200, and in six instances mistrials resulted.

To say, therefore, that the processes of criminal justice, with their attendant results, are based upon jury trial, is to speak of *what happens in less than one case out of ten.* From this brief summary of the statistical facts, it is clearly evident that *trial by jury in Chicago is relatively unimportant.* While justice may be hampered, it does not break down because of the failure of good citizens to serve as jurors.

26. Specific Examples of Unsatisfactory Prosecutions in 1926.

The foregoing sections of this report are very largely based on mass statistics of prosecutions in Chicago. They are impressive only in so far as they indicate general tendencies. We have refrained throughout the discussion from mentioning specific examples because, after all, the quality and character of the work done by a public official should be determined not by the individual, perhaps isolated examples, but by what he does in the mass. However, in any statistical

study a great deal is lost by the fact that large numbers of cases, considered in quantity lots, do not convey to the average citizen the real significance of the cases involved. For example, it is much more forceful to discuss what happens in a given homicide case than to say merely that there were four hundred homicides in Chicago in a given year. In order to illustrate definitely what the various items which we have discussed in the preceding sections of this report actually mean, we have carefully selected from the masses of cases which were abstracted in our study, a number which illustrate certain methods of work in the courts and in the state's attorney's office in the City of Chicago. These we shall classify under a number of significant headings.

The fact is that not only great numbers of cases in Chicago are being dismissed for reasons that seem to be insufficient, but in many of these instances dangerous enemies of society are being released to continue their evil practices. Not only these, but men with established criminal records, who are obviously dangerous to the peace and security of the community, receive such slight punishment as to be wholly out of keeping with the importance of the crimes which they committed. It is this that seems to go to the heart of the problem of criminal law enforcement in the City of Chicago. We are not making the criminal law actually reach those who are violating it with any degree of certainty or severity. Of course, one can conceive of a plausible excuse in the case of crimes which are not solved and in which no arrests are made—perhaps the police are unable to make these arrests—but when individuals are actually caught by the police and when their guilt is in a fair way to being established, it is a very serious difficulty in law administration if they are permitted to plead guilty to some minor offense, and in consequence receive only a trivial, unimportant, punishment. This, it seems, gives notice to the criminal population of Chicago that the criminal law and the instrumentalities for its enforcement do not really mean business. This, it would seem, is a pretty direct encouragement to crime.

27. Same: Pleas to a Lesser Offense.

The statistical evidence presented in this report indicates quite clearly that the most serious loss of force and energy in the prosecution of felonies in Chicago comes from the practice of accepting pleas to a lesser offense. The extent to which this practice has grown is perhaps the most serious indictment which can be leveled against the state's attorney's office. We have already indicated the seriousness of this practice in quantitative terms. It remains, however, to indicate by a number of selected examples the significance of the practice.

The fact is that through this convenient way of getting rid of prosecutions many serious crimes committed in Chicago, in which the guilty person is obviously caught, are permitted to pass with only a slight punishment. In many cases this slight punishment is administered to professional criminals, whose records indicate that they are a menace whenever they are at large; but in spite of this fact they are permitted to return to their own ways after a short term in a house of correction. The practice of accepting pleas to a lesser offense so commonly is not only unwise on the face of it, because of the light way in which serious crimes are punished, but in many instances

the process is illogical on its very face. For example: A dangerous criminal, with a previous record, holds up a citizen at the point of a gun and robs him of all he has on his person, but by agreement with the state's attorney and the court he pleads guilty to petit larceny and is punished for this crime. The illogical manner of this method of disposition is obvious. The serious offense of robbery with a gun is the real crime that has been committed. If the defendant is to be prosecuted at all it should be for the crime of which he is guilty. By reducing the charge to the unimportant one of petit larceny, the state's attorney is in effect saying to the defendant: "You are charged with highway robbery, a felony carrying a severe penalty of imprisonment in the penitentiary for a long term of years, but if you will agree that you have stolen property worth $15 or less, we will punish you for petit larceny and forget that you robbed a man by threatening him with a gun."

It might seem to the uninitiated that this is a process of refusing to punish a person for a crime which has been committed by creating a new crime of smaller degree. It is, however, a practice which is commonly followed in the City of Chicago. The lack of logic of the process would be excusable, because, after all, nice distinctions in law and logic are not in themselves things of value. It is, however, serious that through this process of legerdemain dangerous criminals are permitted to develop an attitude toward the public which holds in utter contempt all attempts to restrain their pernicious activity. Lack of space forbids a detailed statement of the facts of hundreds of cases in the records of the Chicago Crime Commission, but the following examples will quite clearly indicate the nature of this practice.

Case X.

In this survey our attention was called to this case by the fact that a defendant was arrested in 1926, and four separate charges of conducting a confidence game were made. All four of these charges were nolle prossed. It is not our intention to criticize this act because we have not the necessary facts, but an investigation of the record of the man concerned in this case indicates that in 1924 he was indicted with four others for stealing an automobile, the value of which was seven hundred dollars; three of the other defendants were permitted to plead guilty to petit larceny and were sentenced to six months in the house of correction; thus, the legal fiction was set forth that a car which was considered by at least three persons of sufficient value to be worth stealing was, in the eyes of the law, worth only fifteen dollars and these defendants were permitted to escape the consequences of their act with a slight sentence of six months in the house of correction. As to the defendant concerned in this case, the court waived the felony charge and tried him for the offense of petit larceny and found him not guilty.

Case XI.

In this case we have in our records for the year 1926 six charges; four of robbery and one larceny of an automobile. In the larceny of an automobile the case was transferred to the Boys' Court where it was dismissed for want of prosecution. Three of the robbery charges are pending, while in the fourth the defendant was permitted to plead guilty to a lesser offense

and was sentenced to the house of correction for one year. The facts in the case indicate that the defendant was one of a gang of criminals who had been robbing Standard Oil filling stations. There was a positive identification, but the defendant escaped with this slight sentence of a year in the house of correction.

28. Same: Intimidation of Witnesses.

It is a fact which is common property in Chicago, that important witnesses in criminal prosecutions, which involve professional criminals, are constantly being subjected to intimidation by the underworld, of which the defendant in the given case is a member. Threats to life and property are made, oftentimes property is actually destroyed, bombs are thrown, physical violence is practiced, and other methods well known to the underworld are used to keep witnesses from performing their public duty in criminal prosecutions. The point in question here is not to point to the fact of intimidation, which, of course, everyone will join in condemning, but to the casual manner in which the state's attorney permits cases in which he ought to know that there is a taint of intimidation to be terminated without heroic and complete efforts to bring such witnesses to the bar of justice. Ample evidence could be adduced as to the nature and quality of such intimidation, but the following cases, taken from the records of the Chicago Crime Commission, indicate this quite early:

Case I.

This man is on the list of dangerous criminals prepared by the police department for the Chicago Crime Commission. His criminal record extends back to 1921. In most of the cases where he is involved witnesses fail to appear against him. In 1926 nine robbery charges were filed against him and in 1927 two charges of assault to rob, and in none of these cases was any conviction obtained. One was nolle prossed, five were stricken off with leave to reinstate, two were no billed by the grand jury, two discharged in the court of preliminary hearing, and one resulted in acquittal after jury trial.

In one of the robbery cases listed above, the defendant was identified by four victims of a hold-up in which he participated. The hold-up occurred at 9:25 a. m. in a well lighted room; the defendant was wearing no mask; the witnesses had him under observation for eight minutes; but later they failed to appear against him.

Case II.

This defendant had three indictments voted against him in September, 1919; two being for robbery and one for assault to murder. He was acquitted after a jury trial on one robbery charge on April 19, 1920; the other robbery charge was nolled; the charge with assault to murder was stricken off with leave to reinstate. He again appears in the court records on May 18, 1926, when a charge of larceny was nolle prossed in the preliminary hearing. In the robbery charges noted above, a bank messenger was held up and about thirty-seven thousand dollars taken by two robbers. When the case went to trial the witnesses, who had positively identified the defendants in the preliminary hearing, testified they were mistaken in their

identifications. It is reported that the brothers of the defendant had deposited eighty thousand dollars in the bank which was robbed, to influence the attitude of the bank officials in the prosecution of the case.

Case III.

The record of this person extends back to 1916, he being paroled from the Pontiac Reformatory on July 24 of that year. In September, 1926, he was indicted for murder, and in April, 1927, this case was stricken off with leave to reinstate. The defendant with two others was charged with having entered a cigar store at 3:15 a. m. and attempting a hold-up, during the course of which the proprietor of the store was shot three times, from the effects of which he died three days later. One of the chief witnesses for the prosecution, a cab driver, was murdered before the case came up for trial; other witnesses for the state seem to have disappeared. On November 1, 1927, this person was indicted for rape, which case is now pending.

Case IV.

On November 2, 1921, an indictment was voted for burglary. When the case came to trial, the felony charge was waived and the defendant found guilty of petty larceny and put on probation April 4, 1922. On June 18, 1926, he was indicted for manslaughter and the indictment was nolled June 25, 1927. The facts in the manslaughter case noted above appear to have been as follows: The defendant's brother was beaten up by someone and the defendant set out to get even. It would appear he struck the first one he saw, with his fist, the blow resulting in the death of the one attacked. He was found guilty by a jury, of manslaughter, but a motion for a new trial was granted by the judge, who said he did not want it on his mind that he had sentenced the defendant to the penitentiary on the evidence submitted, and three months later the case was nolled. The brother of the deceased recommended this action be taken. It has been intimated that a civil settlement entered into the dismissal of this case.

Case V.

On July 13, 1921, this defendant was indicted for attempted larceny and was acquitted in October, 1921. The facts in the case are as follows:

The defendant and another person unlocked and entered a lumber yard at 1:30 a. m. and were caught in the act by the night watchman, who testified at the trial. The defendant set up the defense that permission had been obtained from the owner to use his truck for a moonlight picnic. Two police officers, who went to the owner's home, were told that the accused had been given no such permission. The owner of the lumber yard although subpoenaed failed to appear at the trial. No attempt was made to require his presence in response to process. On the facts as presented, the court found the defendants not guilty, saying, "Defendants say they had permission. The owner is not here to say they did not." A charge of burglary was filed against this defendant in December, 1926. The case went to trial in the criminal court March 4, 1927, at which time the felony charge was waived and the defendant pleaded guilty to petty larceny and was put on probation.

29. Same: Restitution to Prosecuting Witness.

It is perfectly obvious that restitution is being substituted for the punishment fixed by law in the case of serious crimes, and that courts and prosecuting attorneys, and perhaps the police, are permitting cases to be thrown out of court, in which the prosecuting witness has been satisfied by some act of restitution.

Wholly aside from the legal aspects of restitution, it is very evident that in cases where a dangerous criminal is involved, the public interest should be sufficiently protected too. After all, the public is party to a crime and the future safety of the public is not assured simply because a professional and unreformed criminal is permitted literally to "buy off" the victim. In the cases which follow, taken from the records of the Chicago Crime Commission, evidence of such restitution is quite apparent, and the state's attorney, and in some degree the court, is deeply at fault in permitting cases in which such a taint is present to escape prosecution.

Case I.

On April 17, 1926, he was arrested and twenty charges of confidence game were filed against him. Of the twenty charges nine were dismissed for want of prosecution in the court of preliminary hearing; on five charges he was discharged by the court of preliminary hearing; and in two cases the records were incomplete; four cases resulted in indictments and the cases were dismissed for want of prosecution in the criminal court. Three additional charges of confidence game were lodged against this defendant on May 5, 1926, two of which were dismissed for want of prosecution in the court of preliminary hearing; in the other he was held to the grand jury, which returned a no bill. In the cases noted, the charges were instigated by one of the larger banks of this city. The bank's representative stated to the prosecuting officials that the defendant had made restitution and whatever action the state took was satisfactory to the bank. On this statement, all the above cases were dismissed for want of prosecution. The defendant pending the outcome of the criminal cases was released on a bond signed by a surety, who upon investigation stated that he knew nothing whatever about the bond. Further investigation disclosed that a well-known professional bondsman, who has been in trouble several times, apparently had conducted all negotiations for the defendant.

Case II.

Three indictments were filed against this defendant in 1922; one on January 16, charging larceny, which was stricken off with leave to reinstate in July of that year. An indictment charging burglary was voted April 6, 1922, and an indictment charging forgery was voted September 7, 1922. On the burglary charge, the defendant pleaded guilty to petty larceny and received a sentence of three months in the house of correction and the forgery charge was stricken off with leave to reinstate when this conviction was obtained. In the burglary charge noted above, the defendant burglarized a sister's home and took property amounting to about two hundred dollars. In the forgery case the defendant forged the name of a clothing company's cashier to two checks for $165 each. The sister promised to make these

checks good. The defendant again appears in the records of the courts in 1926, when he was indicted for robbery. This case was stricken off with leave to reinstate in February, 1927, with the notation that there was no prosecuting witness.

Case III.

This man has a long criminal record. In February, 1920, he received sentence to one year in the house of correction for carrying concealed weapons. On May 17, 1920, he was indicted for robbery, which case was dismissed for want of prosecution. On May 24, 1920, he was indicted for robbery, which case was dismissed for want of prosecution. In February, 1922, he was indicted for robbery, convicted, and sentenced to the penitentiary on March 6, 1923. After this conviction a new trial was granted and the defendant pleaded guilty to grand larceny, receiving a sentence of one to ten years in the penitentiary. On May 18, 1925, he was indicted for confidence game. The felony was waived and the defendant pleaded guilty to petty larceny, receiving a sentence of one year in the house of correction. In this case the prosecuting witness testified that he had paid the defendant $207 for which the defendant was to get him, the complaining witness, a job, which the defendant never did. The court informed the defendant that he would recommend a pardon at the end of four months if the defendant made restitution. In January, 1926, two charges of robbery were filed against the defendant, both of which resulted in indictments. On one of the indictments the felony was waived, the defendant pleaded guilty to petty larceny and received a sentence in the house of correction and was fined one dollar, whereupon the second indictment was stricken from the docket with leave to reinstate.

Case IV.

In June, 1919, this person was indicted for embezzlement but the charge was nolled in February, 1921. In September, 1926, the defendant was arrested and confidence game charges were filed against him. Three indictments for forgery were returned against him, which were later stricken off with leave to reinstate on the grounds of insufficient evidence. The secretary of the corporation filing these complaints signed a statement saying that full restitution had been made and the organization had no desire to prosecute.

30. *Same: Dismissed for Want of Prosecution.*

As we have noted in the preceding discussion of statistics for the year 1926, this notation appears at the conclusion of a very large number of felony prosecutions in the City of Chicago. As we also indicated, cases seem to be disposed of under this head with a great deal of reckless abandon. When these cases pass through the mill of justice no one seems to be strictly responsible for producing the necessary witnesses, and such cases are, for the most part, disposed of without definitely fixing responsibility on either the state's attorney or the police. The fact is that the state's attorney is responsible for the prosecution of his cases not only in law, but in accordance with the dictates of any sound public policy. It is true that the police are often at fault in producing witnesses, but there is no excuse for the casual, careless attitude on the part of the state's attorney

which is shown in the records of the Chicago Crime Commission gathered in the course of observation in the courts. Over and over again dangerous criminals, presumably professional criminals, appear with some serious charge against them and if witnesses are not present, the assistant state's attorney weakly, and apparently without any deep sense of responsibility, permits these cases to die. The seriousness of this is indicated, of course, in the records of the men concerned, and a few of these records are shown below as gathered at random from the Crime Commission records above referred to.

Case I.

Six larceny complaints were filed against this woman in March, 1926. Three were nolled in the preliminary hearing and three indictments charging grand larceny were returned in April, 1926, on which the defendant was dismissed for want of prosecution in June, 1927. There were three other defendants involved in these cases, two women and one man. It was a case of shoplifting. The three women defendants took several coats and dresses, which action was noticed by the storekeeper, who followed them and had them arrested. The man in the case drove their automobile and waited outside the stores while the women worked inside. When the case came up at the preliminary hearing, the prosecuting witnesses failed to appear and the judge sent a patrol wagon to round them up; two of the witnesses could not be found. On the testimony, reluctantly given, of the witnesses brought in by the police, the defendants were held to the grand jury. The judge conducting the preliminary hearing said, "These girls have been in the penitentiary and the house of correction on several occasions and none of them should be on the streets to-day." He also said that he had been approached in an effort to have the case fixed.

Case II.

In August, 1926, nine charges of confidence game were filed against this defendant; two of the cases were dismissed for want of prosecution in the preliminary hearing, and he was held to the grand jury on the remaining seven. The grand jury no billed four of these cases and returned indictments in three. On one of the indictments a plea of guilty to petit larceny was entered and the defendant was sentenced to serve one year in the house of correction; the other two were stricken off with leave to reinstate. In the case for which sentence was imposed, the defendant passed a worthless check of fifty-five dollars. When arrested he offered two hundred dollars to the officer for his release.

Case III.

In June, 1924, an indictment for assault to murder and an indictment for robbery were returned against this case. The first was stricken off with leave to reinstate and the second was nolle prossed on account of insufficient evidence. In November, 1924, he was indicted for arson, which case was stricken off with leave to reinstate, on the grounds that insufficient evidence was returned. In 1926 three charges of larceny were filed against him; two of which were dismissed for want of prosecution in the preliminary hearing,

and in the third he was discharged by the court after the presentation of the state's evidence.

Case IV.

In 1926 seven charges of confidence game were filed against this man. Four of them were dismissed for want of prosecution in preliminary hearing. In the other three he was held to the grand jury, which returned three indictments, and when the defendant went to trial he pleaded guilty of the offense charged and was placed on probation by the court.

Case V.

In July, 1926, four charges of robbery were filed against this defendant and three indictments were voted charging robbery, the other case being dismissed for want of prosecution in the preliminary hearing. When these cases came to trial, the gun and robbery counts were waived by the state and the defendant entered a plea of guilty to grand larceny. The defendant, on three separate occasions, had held up three men. The judge suggested to the complainants that as the defendant was the father of two children and as it appeared that it was his first offense, probation should be granted, which action the court took.

31. Same: Probation Improperly Granted.

Probation has, of course, become a regularly recognized and proved method of dealing with certain types of offenders. When it is used with care and discrimination it unquestionably can produce very marked results. It lends itself, however, in many instances, to very undesirable practices. For example, the expressed or implied promise of probation to a defendant merely because he pleads guilty to the offense charged is a most improper practice. The willingness of the defendant to plead guilty should have nothing to do with the determination as to whether he should be put on probation. The determination whether he should be put on probation or not should be made only after a careful examination of his record, of the environment to which he wishes to return, and his general mental attitude toward his conduct. These are things which a well-equipped probation department should provide for the court before a decision as to probation is made. It is not the purpose of this report to go into the details of how probation is managed in the City of Chicago, but in the study of unsuccessful prosecutions which we have made, it has become increasingly evident that probation is granted in instances which are very doubtful and that probation is being misused as merely another means of reducing the force of the penalties prescribed by law. In many instances persons with long and formidable criminal records are placed on probation, apparently for no reason except their willingness to plead guilty to the offense charged. This simply means that such persons are returning to their former habits and from the standpoint of their effectiveness as criminals the state is no better off than it would have been had the culprit never been caught. In fact, the state, after going to the trouble and expense of preparing a case against the individual, tosses away its advantage and the fruits of all its labor by ill-advised probation. As we have indicated in a preceding section of this report, about twenty per cent of those who are found guilty in Chicago are placed on

probation. There is no marked tendency in this direction. The criticism which can be made is in individual cases.

A few cases by way of illustration of the unsatisfactory uses to which probation is put in Chicago follow:

Case XXXI.

This defendant was charged in 1924 and also in 1925 with larceny. In both cases he escaped with a "stricken with leave to reinstate" disposition. He was then sent to Pontiac from Du Page County for another offense. Our investigation finds him charged in 1926 with grand larceny. He pleaded guilty to this and was placed on probation. It is not very reasonable to expect a person with a record such as this to yield even to the most effective probation system.

Case XXXII.

This person apparently was before the courts of Chicago in 1925 on a charge of grand larceny. He pleaded guilty to petit larceny and was placed on probation. Four months later he was dismissed from probation. In 1926 our investigation finds him charged three separate times with burglary. In the first case he was dismissed in preliminary hearing. In the second case he was permitted to plead guilty to a lesser offense and was sent to the house of correction for one year. The third charge was then stricken off with leave to reinstate. If a case in which probation is granted turns back to evil ways so quickly, it would seem that a plea to a lesser offense should not be accepted but that the full force of the law should be administered.

These cases are typical and might easily be multiplied in numbers. They are sufficient, however, to illustrate the thought behind the criticism made.

32. *Summary of Findings.*

1. The state's attorney, the mayor, and the police in Chicago, the sheriff of Cook County, the coroner, and a majority of the judges of the courts belong to or affiliate with the same *political faction* in Chicago and Cook County. This permits of perfect harmony and cooperation between the state's attorney and all other agencies for the administration of justice. In the face of this fact, prosecution in Chicago and Cook County is found by the survey to be ineffective and barren of reasonably substantial results.

2. The state's attorney of Cook County has repeatedly stated in answer to critics of his administration that failures of justice in Chicago are due to *evasions of jury service* by representative citizens. Complete refutation of that statement is found in the foregoing report. Only 3.79 per cent of all felony charges brought into court are tried by juries, and the record shows that eighteen persons are released by the action or through the influence of the state's attorney to one person released by the jury.

3. The practice of the state's attorney in *compromising with criminals* and agreeing to a reduction of the character of charges from a grave offense to a petty offense has become so prevalent in Cook County that the criminal population has become contemptuous of the law and fear of punishment is

no longer a deterrent of crime. Some of the facts upon which this conclusion is reached are:

Three hundred thirty-eight charges of murder were filed in Chicago in 1926 and *55* convictions obtained for that offense. The original charge of murder was reduced and convictions obtained of lesser offenses in 28 cases as follows: to manslaughter in 27 cases; and to assault with deadly weapon, a misdemeanor, in 1 case. Two defendants were found insane. Eleven cases were pending. The defendants in the remaining *242* cases were discharged without any punishment.

Two hundred twenty-nine charges of manslaughter were filed, each representing a killing. Only *4* were convicted of that offense. The original charge of manslaughter was reduced to assault with a deadly weapon, a misdemeanor, and the defendant convicted of that offense in 1 case. Eleven cases were pending. The defendants in the remaining *213* cases were discharged without any punishment.

There were *2,696* robbery charges filed in the City of Chicago in 1926. The offense of robbery is "the felonious and violent taking of money, goods, or other valuable things from a person by force or intimidation." Convictions of the offense charged were obtained in but *151* cases. The charge of robbery was reduced to misdemeanor and convictions obtained for the misdemeanors in the following instances: to petty larceny in 191 cases; to assault with a deadly weapon in 5 cases; to plain assault in 7 cases. The original charge of robbery was reduced and convictions obtained of a less serious felony offense in the following instances: to plain robbery in 263 cases; to grand larceny in 244 cases; to larceny from person in 9 cases. All of these felonies, however, carried much lighter sentences than that imposed for robbery while armed. One was found insane. Thirty-seven cases were pending. The defendants in the remaining *1,788* cases were discharged without any punishment.

One thousand four hundred thirty-three charges of burglary during the same period resulted in convictions on the original charges in but *94* cases. The charge was reduced from burglary to misdemeanors in the following cases: to petty larceny in 292 cases; to attempt at larceny in 7 cases; to driving auto without owner's consent in 2 cases; to malicious mischief in 2 cases; to attempt to commit a crime in 12 cases. The original felony charge of burglary was reduced and convictions obtained of a less serious felony offense in the following instances: to burglary in the daytime, 10 cases; to attempt at burglary in 9 cases; to grand larceny in 73 cases; to receiving stolen property in 9 cases; all carrying a much lighter sentence than the offense originally charged. Eleven cases were pending. The defendants in the remaining *912* cases were discharged without any punishment.

Of *2,854* felony prosecutions for embezzlements and frauds, only *76* resulted in convictions on the original felony charge. The charge was reduced from embezzlement and fraud to misdemeanors in the following cases: to petty larceny in 105 cases; to obtaining money under false pretenses in 32 cases; to attempt to commit a crime in 1 case. The original felony charge of embezzlement and fraud was reduced and convictions obtained of a less serious felony offense in the following instances: to grand larceny in 2 cases. Forty-eight cases were pending. The defendants in the remaining *2,590* cases were discharged without any punishment.

There were *2,968* prosecutions for grand larceny, which brought convictions for the offense charged in but *131* cases. The charge of grand larceny was reduced to misdemeanor and convictions obtained for the misdemeanors in the following cases: to petty larceny in 380 cases; to attempt at larceny in 8 cases; to driving auto without owner's consent in 5 cases. One was found insane. Forty-five cases were pending. And the defendants in the remaining *2,398* cases were discharged without any punishment.

One hundred fourteen prosecutions for various felony sex offenses resulted in a total of *12* convictions for felonies and a reduction of the original felony charge to misdemeanors in 11 cases, 10 of which were for contributing to delinquency and 1 for plain assault. One case was pending. The defendants in the remaining *90* cases were discharged without punishment.

In *540* charges of rape, there were but *27* convictions for that offense. The charge of rape was reduced to misdemeanor and convictions obtained for the misdemeanors in the following instances: to contributing to delinquency in 58 cases; to indecent liberties in 1 case; to assault to do bodily harm in 1 case; and to plain assault in 1 case. The original felony charge of rape was reduced and conviction obtained for the less serious felony offense of assault with intent to commit rape in 1 case. Eight cases were pending. The defendants in the remaining *443* cases were discharged without punishment.

Out of *724* prosecutions on miscellaneous felony charges, convictions for felonies resulted in only 5 cases, and a reduction of the original felony charge to misdemeanors in 10 cases. Thirty-three cases were pending. The defendants in the remaining *676* cases were discharged without punishment.

Of *12,543* felony charges filed in the City of Chicago in 1926, *2,449* were found guilty of some offense; 1,978, or 80.75 per cent of those convicted were found guilty on pleas of guilty; and 1,559 or 78.81 per cent of all pleas of guilty were pleas to lesser offenses than the original charge, many of them to misdemeanors. Those pleading guilty to lesser offenses or found guilty of lesser offenses after a trial were 1,855 or 75.74 per cent of all convictions. Only *594* were convicted of the offenses charged, but of these 200 escaped punishment as felons through probation, other modifications of sentence, new trials and appeals, so that *394* or only *3.13* per cent of the total felony charges filed were finally punished for the offense originally charged in the indictment. Of these, *249* were punished on pleas of guilty, and *145* as the result of jury trials. It is found that even after the reduction of charge preceding the plea of guilty, in cases noted above, the defendant received probation in *266* or *17* per cent of the cases. Probation, however, was more readily granted where the defendant was willing to plead guilty to the offense charged. In *419* cases where convictions resulted after a plea of guilty as charged, *166* or *39.6* per cent received probation. In 78 cases probation was granted after convictions resulting from trials by the judge or by the jury.

These facts warrant the conclusion that bargaining for pleas of guilty by reduction of charge and promise of probation is so extensively practiced in Chicago that the significance of law enforcement is reduced to the min-

imum, and that, compared to the number of charges for serious major crimes, the number actually receiving adequate punishment is negligible.

4. The prosecution of felony cases in preliminary hearing in the municipal court of Chicago is mainly in the hands of *incompetent and indifferent assistant state's attorneys,* who know nothing about the facts in the cases and are not prepared to and do not render efficient service. To this fact may largely be ascribed the failure of 56.55 per cent of all cases to survive the preliminary hearing.

5. The practice of assistant state's attorneys, in the municipal court, of not following up cases in which *bond forfeitures* occur and failing to have state's witnesses present where such forfeitures are set aside and the felony case is reset for a preliminary hearing, in many cases results in needless failures of prosecutions.

6. One of the most serious of all reasons for the escape of dangerous criminals from prosecution and punishment is the *dismissal of felony charges for want of prosecution.* Twenty-two per cent of all persons charged with felonies are released on this account. "Want of prosecution" usually means that the witnesses are not present. Intimidation of witnesses is a growing evil in Chicago. In the usual run of cases no real effort is made by the state's attorney or the court to procure attendance of such witnesses and punish those guilty of intimidation. A refreshing example of what might be, but is not, done in every such case was given in the recent case of State vs. Rongetti, a prosecution for murder by abortion. The two assistant state's attorneys in charge of the prosecution and the judge of the court in which this case was tried are to be commended for the stern and effective measures taken to bring before the court and obtain the testimony of witnesses who were absent on account of intimidation, and the subsequent action taken to punish those responsible for the obstruction of justice. If the state's attorney's office and the other judges of the criminal courts would follow the precedent set in this case, the intimidation of witnesses would cease.

7. There is found to be a wide-spread practice on the part of *victims* of crime to *compromise with the criminal* by accepting *restitution,* and of the state's attorney to thereupon dismiss the criminal charge. This results in convincing the criminal that the only offense of which he can be guilty is that of "getting caught," and if "caught," the only punishment he need fear is giving up some or all of the fruits of his crime.

8. It is found to be a common practice of the state's attorney in Cook County, in felony cases, to *waive the felony;* that is to agree not to prosecute on the felony charge if the defendant will plead guilty to a misdemeanor and take a short term in jail or a fine as punishment. Over 800 cases were handled in that manner in 1926 and some criminals with long records of major crimes escaped with practically no punishment at all, yet in each of these cases the state's attorney takes credit on his record for a conviction.

9. The state's attorney of Cook County is one of the most influential leaders of the dominant political party; his assistants are mainly *political appointees.* On account of the amount of patronage at his command, the large sums of money appropriated to his use—exceeding one-half million

dollars per year—and the important personal and property rights involved in the administration of the duties of his office, he has many opportunities to build up a political following. The present incumbent (1920-1928) has neglected none of these opportunities, but devotes a large amount of his time and energies to political activities. This has a tendency to diminish the judicial character of his official acts. It is inevitable in such circumstances that his duties as public prosecutor will often conflict with his interests as an active political leader; moreover, when political considerations outweigh efficiency and ability in the selection of assistants, efficient, capable service can hardly be expected of such appointees.

10. It is found that the action of the state's attorney in Cook County in entering nolles, strikeoffs, and other *forms of release* results in the discharge of such large numbers of persons charged with felony crimes, without any punishment, as to be out of all proportion to an effective administration of justice. The courts are inclined to permit the state's attorney an unlimited discretion in dismissing charges, without considering or questioning the propriety of such action, and no complete record is made of the reasons for such action.

11. The record of the escape of criminals by the simple expedient of *forfeiting bonds* is deplorable. The record of forfeited bail bonds which have not been collected, is even worse. In so far as it is the duty of the state's attorney to guard against such escapes and to take all necessary steps to collect forfeited bail bonds, his administration has been an almost complete failure.

12. While it is doubtful if any considerable number of miscarriages of justice can be traced solely to the statute giving the *jury power to judge the law* as well as the facts, it seems certain that in actual practice it strongly tends to confusion and delay. Lawyers for the defendant frequently consume hours and even days reading to the jury from the reported decisions in Illinois and other states, which is permitted under this statute. It seems obvious that the judge and not the jury should be required to differentiate and apply these decisions to the facts of each case.

13. It is found that the outstanding defects and weaknesses in prosecution in Cook County are *administrative;* the more important of which have been pointed out in the preceding findings. While changes in the criminal code, if properly administered, would tend to speed up trials, yet there would be no improvement unless the prosecuting officials were faithful and efficient in the performance of their duties, and additional laws or amendments to existing laws would of themselves give no relief. If the present laws were so administered, there would be little necessity for any changes, so far as prosecution is concerned. In any event most of such changes can not be considered from the standpoint of prosecution alone, but should relate to all phases of procedural law. The subject of amendments to the code should be taken up by a separate body of lawyers, laymen, and legislators, appointed by the governor, to co-operate with the Association in the preparation of amendments for which there may appear to be an urgent demand.

The Prosecutor (in Chicago) in Felony Cases

33. Recommendations.

1. *Elect to the office of state's attorney* an efficient, incorruptible, and industrious lawyer, who will devote his entire time to the performance of his duties and whose conduct of the office will be as free from partisan politics as any other judicial officer.

2. Provide a *sufficient number of assistant prosecuting officers* in the criminal branches of the municipal court to insure a careful and comprehensive investigation of every felony charge before trial.

3. Appoint as such assistants, *lawyers of ability and standing.*

4. The state's attorneys and the courts should use the power they have to stamp out the practice of the *intimidation of witnesses.*

5. The state's attorney and the courts could reduce the number of *bond forfeitures* to a minimum if proper care is exercised to get solvent responsible sureties on bail bonds and take the required steps to enforce collection of judgments in forfeited bail cases.

6. The state's attorney should put the public interest above the private interests of victims of crime in *restitution cases.*

7. Courts should require state's attorneys to file a written motion setting out in full the *reasons for dismissing* or striking off criminal cases.

8. *Reorganize the police force* of Chicago by providing a comprehensive and efficient system for the detection and prevention of crime.

9. Establish *court rooms* for the criminal branches of the municipal court to conduct the business of the court with the same dignity and decorum as that which prevails in the criminal courts, and impress upon the courts and assistant state's attorneys the necessity of treating preliminary hearings with the same careful consideration and attention as in the final trial courts.

10. Organize in the state's attorney's office a *record system* which will reflect a brief history of each case handled by that office, which will show final disposition and the reasons therefor, where the nature of the order would seem to require the giving of reasons.