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Prosecutor--Initiation of Prosecution

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THE PROSECUTOR—INITIATION OF PROSECUTION

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I.

"Sec. 5. The duty of each state's attorney shall be—First—To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in any court of record in this county, in which the people of the state and county may be concerned." (Ill. Sts. S.—H. 1931, Ch. 14, sec. 5.)

The above section taken from the Illinois Statutes is but typical of the legislative directions for the conduct of the prosecutor's office. He is to *commence* all proceedings in which the people of his county, or the state generally, have an interest or *may be concerned.* Commonly, we look upon the prosecutor as the representative of the people whose primary duty it is to see that *all* violators of the law are brought to account. He is employed to set in motion the governmental machinery which is designed to punish *all* offenders. The duties of the prosecutor, as set forth in the statutes, say nothing about compromise or adjustment, bargaining with defendants, mediation in quarrels, or crime prevention. On paper, the rules for the administration of the criminal law provide that all offenders should be treated equally—no defendant should receive more or less punishment than another who committed a similar offense and the rich and powerful should be prosecuted as vigorously as the poor and weak. Actually, however, the prosecutor is the "father confessor" of the community, and whether or not a particular offender is prosecuted depends very largely upon the personal reactions (or judgment) of the prosecutor.

"To prosecute or not to prosecute?" is a question which comes to the mind of this official scores of times each day. A law has been contravened and the statute says he is bound to commence proceedings. His legal duty is clear. But, what will be the result? Will it be a waste of time? Will it be expensive to the state? Will it be unfair to the defendant (the prosecutor applying his own ideas of justice)? Will it serve any good purpose to society in general? Will it have good publicity value? Will it cause a political squabble? Will

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it prevent the prosecutor from carrying the offender's home precinct when he, the prosecutor, runs for Congress after his term as prosecutor? Was the law violated a foolish piece of legislation? If the offender is a friend, is it the square thing to do to reward friendship by initiating criminal proceedings? These and many similar considerations are bound to come to the mind of the man responsible for setting the wheels of criminal justice in motion. The prosecutor who holds an exaggerated notion of duty can easily arouse such a storm of protest as a result of strict attention to his responsibilities that he will gain the reputation of being a "persecutor" thus alienating the police, the sheriff's force and the judges, and creating, by the loss of their coöperation, an insurmountable obstacle to the successful conduct of really important cases. Moreover, his days as a state official are numbered for he cannot continue long without public support. On the other hand, a prosecutor who takes his duties lightly probably will last longer but, in failing to give a reasonable amount of protection to his community, inevitably he will create in the minds of the public the belief that he is easy or dishonest and should be replaced. The average prosecutor must steer a middle course, statutes or no statutes, trying to serve and protect his community as best he can, but aware of the ultimate futility of combatting public opinion.

The crime surveys have thrown light upon the vast importance of the prosecutor's office in the process of administering criminal justice. The acceptance of pleas of lesser offenses, the cases nolle prossed, stricken off with leave to reinstate, or discharged for want of prosecution, and the prosecutor's recommendations at sentence, have received considerable attention. But all these deal with cases already commenced and prepared for trial. Here the prosecutor acts openly and a record may be kept of his motions or recommendations. How much more significant would it be to have figures on the situations arising behind closed doors in the prosecutor's office! Court statistics are enlightening to such an extent that it is now almost commonplace to designate the prosecutor as the most powerful official in local government. If we had some means of checking the decisions of the prosecutor when the question "to prosecute or not to prosecute?" arises, such figures would go much farther to substantiate such a statement. Nowhere is it more apparent that our government is a government of men, not of laws. Nowhere do the very human elements of dishonesty, ambition, greed, lust for power, laziness, or bigotry have more room for development. Also, there is no office where an able and honest public servant can be more effective. The

office requires judgment. How that judgment may operate is discussed in the following pages which present certain situations which arise in the ordinary prosecutor's office where his decisions are reached. No scheme has yet been devised to secure "statistics" on the disposal of such situations because there comes to the prosecutor a cross-section of all humanity. If he has a thousand problems no two will be exactly alike. But, it is here that the able prosecutor best serves the state. Often we judge prosecutors by a few successful murder cases and pay little attention to routine effectiveness. The "office disposal" of cases is the point in all his work which has received the least but is worthy of the most attention.

II.

Recently two newspaper stories appeared in a southwestern city newspaper. Both concerned the able prosecutor of a county of some 300,000 people. In one story we find that a high school boy had "hijacked" a man of five dollars at the point of a gun, a very serious offense. The prosecutor checked the evidence, sent for the boy and had a "heart to heart" talk with him. As the outcome of the conference the prosecutor filed a charge of merely "pointing a gun," bond was made and the boy was told, "Go ahead and finish school. Return at vacation time and pay your fine or serve your thirty days." The story relates that in June thereafter the prosecutor received in the mail an elaborately engraved invitation to attend the high school graduation exercises. At first he did not remember the name on the enclosed card but when he recalled the situation he wrote, "I want you to know I wish you all the success in the world," and then tucked into the envelope a copy of a dismissal order. The enterprising reporter designated his story, "The Strangest Graduation Gift in History."

Most of us would say, "That's a fine thing to do. The young man who stays out of jail makes the honest citizen." But, notice the extraordinary power lodged in the prosecutor in selecting the charge to be filed. Had he *desired* he could have secured a prison term. He did not *desire* to be "harsh" and thereby hangs the tale. Even the judge himself could not so completely follow his desires in such matters. Where there is an indeterminate sentence provided by statute and the probation process is curtailed by limitations, the judge's power in determining punishment is negligible.

In the same paper was another story about the same prosecutor. It reads, in part, as follows:

"A December bouquet of roses for ....., county attorney.

"It would have been easy for ..... to abandon the prosecution of Smith, the barber, after his first trial, when the jury disagreed. It would have been the conventional thing to do after a second jury had been unable to agree that the man had killed his wife. But ..... elected to bring the man to trial a third time and quickly. He was rewarded with a conviction and Smith was sentenced to thirty years in the state prison.

"It is no pleasure to send a man to prison. But it is some satisfaction to see that the *law is observed.* Evidence in the case seemed to justify the prosecutor in his determination of Smith's guilt. He was only doing his duty, nothing more, in fighting this case through three times.

"..... has made a record in the prosecuting of criminals during his first year in office that his friends might well be proud of."

In this situation the prosecutor persisted in his efforts to convict after two juries of twenty-four men had failed to find guilt. But for his kind-heartedness the High School boy mentioned above would be in jail. Suppose the prosecutor had reversed his judgments. If he had figured "there are too many high school gang hold-ups. I must make an example of some of these young thugs. I'll prosecute this to the fullest extent of the law"—then, with a man of his ability a prison term would have been inevitable. But with Smith, the barber, if the prosecutor had been *conventional,* a third and successful trial would not have been secured. Herein lies an enormous power over human beings. An idea, an impulse, the striking of a chord of sympathy, or the creation of irritation may have immediate and direct bearing on the beginning of criminal prosecution.

In the field of prostitution, gambling and liquor, the personal convictions of the prosecutor have a direct bearing upon prosecution of such offenses. One prosecutor reports from a medium sized midwestern city:

"We make no effort to stifle vice. There are prostitutes in my city, of course, but that condition is inevitable. I merely prosecute the clear cases which come up and try to keep prostitutes on the jump. The same is true of the bootleggers. Whisky is available at all the hotels and beer is made in the cellars of many good taxpayers but I'm not going to make a fool of myself by starting a lot of prosecutions where it will do no good. And, about gambling. What harm is there in a Saturday night poker game? I act upon the theory that vice will die a natural death if we take the profit out of it. We come down hard on the big bootlegger and we break up all 'crooked' gambling joints or 'rings' before they get started.

The result is that we merely prevent organized crime from developing and place our attention upon other more significant crimes."

This prosecutor feels that bootleggers are like weeds. Cut one down and another grows up. He does not have the facilities to dig out all the roots and sow salt to prevent further growth. As a result, he vigorously prosecutes the "worst" of the cases as they are brought in, making in general no attempt to suppress but only to control. He says:

"Why, if I wanted to, in one week I could secure convictions and jail sentences of prostitutes, bootleggers and gamblers sufficient to fill our jail five times over. But what good would it do? They would all be released shortly to return to their occupations. We just try to keep things safe in the city and to prevent conditions from becoming worse."

This prosecutor coöperates with the police and Federal authorities and does secure a large number of vice and liquor convictions each year. Another well-known prosecutor in the same state, however, has an entirely different attitude toward such cases. Particularly does he abhor liquor cases. His is a farming community and he sees no harm in his country friends trying to make a few honest dollars raising "corn by the gallon." He will prosecute when the case requires it and it is unavoidable. But he has ordered his own staff of "evidence men" to let *local* liquor cases alone. However, in the case of foreign bootleggers or attempted peddling organizations, he protects the home industry with great zeal. How different the attitude of another prosecutor in the same state. One Saturday afternoon the prosecutor was in his office in the court house. A deputy told him that a well-known man, a wealthy and influential farmer in the county, had a pint of whisky in his car. The prosecutor called the sheriff and went immediately to the street and, over the protests of the citizen, captured the bottle and immediately preferred charges. The citizen, of course, was irate. His arrest was in view of scores of friends and neighbors and caused much local comment. He was not a drunkard and he felt humiliated. At the next election he was very active in the political campaigns and his interest centered in the candidates for prosecutor. That one arrest may have determined the extent of the prosecutor's political career. Here, again, the requirement for the successful prosecutor seems to be not "fearless devotion to duty," but the application of discretion and soundness of judgment. Nowhere are the authorities in more discord than in the field of enforcement of prohibition laws. The confusion in that

type of case but illustrates the effect of difference of opinion as to the desirability of enforcement. Good laws or carefully designed administrative machinery do not mean effective operation. It is a matter of personnel.

Although a prosecutor must create a "record" of convictions if he rates as a success and, unfortunately, this record often is developed by trials of minor offenses and pleas of guilty, the greatest service which an able prosecutor renders is in crime prevention. As mentioned above, some prosecutors pursue the "worst" offenders in vice with the result that control is established and organized vice is rendered unprofitable. Quite often communities are protected by threats of prosecution made directly and at the proper moment. And by judicious use of the inherent powers of the office new and dangerous developments may be completely avoided. This does not appear on the "record" but often the effect is of more value than a dozen convictions.

In a city of about 150,000 population the cleaners and dyers recently organized an association to perfect standards of service and to set "fair prices." Big city racketeering methods had made no inroads as yet and the prosecutor in a newspaper interview expressed himself as favoring the association. Shortly after the formation of the association several non-member establishments were bombed and then it was learned that the president of the association had been imported from a large city nearby. This put a different aspect upon the situation. The county "evidence" men soon uncovered a plot to place a quantity of red dye in the vat of a non-member cleaner. The license plate of the car which delivered the dye was taken. It corresponded to the number issued to the president of the association. The newspaper account states that the president declared "if his car was used it was by someone else" but that "failed to convince the prosecutor." Brought to the prosecutor's office the president of the association offered to resign and to leave the city. "It was altogether their proposition," said the prosecutor. "I told him if he wanted to do that and call it square, it would be all right with me." This case is but typical of an attempt to avoid trouble. The same prosecutor makes it a practice to coöperate with the City Trades and Labor Council and the leaders in organized labor to avoid the development of racketeering. He realizes that it is easier to prevent racketeering from getting started than to stamp it out after it has become established.

III.

The manner in which the prosecutor may serve his district by a careful analysis of the situation and the use of discretion and judgment, and with an eye to preventing useless expense to the government, may be obtained by a review of the "day's work" of a prosecutor in a county of some 100,000 people. After checking his records and after securing a number of interviews with him, the following is put down to represent a standard performance behind the closed doors of the prosecutor's office.

The prosecutor's office has about fifty callers a day and, in addition, many phone calls. If the county is distracted by a political campaign some of these callers merely desire to visit and talk politics. Moreover, many interviews are devoted to the civil business of the county, to be discussed in a subsequent article. Approximately one-fourth of the callers of the prosecutor have criminal complaints to make and of these only one case in five results in criminal prosecution.

After arriving at the office and spending some time with his mail and in discussion of cases with his assistants this prosecutor called his secretary and announced that he was ready for business. The first caller was an irate business man, the proprietor of an auto supply store. He declared that he had sold some auto accessories to a certain Mr. Brown and had received in payment a check for $17.50. This check proved to be a forgery and the business man wanted a criminal prosecution immediately. Brown had left the city but had been located in a neighboring state. After listening patiently, the prosecutor said that it would cost at least $100 to bring the accused back to try him. Moreover, the prosecutor knew from long experience that it might be expected that after Brown had been returned and charged the friends of Brown would pay the witness his $17.50 and then the latter would refuse to assist the state's case. Therefore, the prosecutor said, "Let's wait awhile. I'll write Brown a letter." He called his stenographer and dictated a statement to the effect that unless the money was received within five days criminal prosecution would follow, but in case the money was received promptly action would be deferred. This letter was inspected by the witness and mailed; the witness departed somewhat mollified. The writer remarked, "So you run a collection agency, do you?" The prosecutor replied, "Yes, we do, though I do not admit it openly. This man probably will get his money and I'll save the state the expense of returning Brown to our county and the expense of a trial." Four days later the business man phoned the prosecutor that he had re-

ceived his money. In handling this case the prosecutor technically violated his oath of office and his action in collecting the money was a matter entirely out of line with his sworn duties. But, it is submitted that the way the witness was handled was a real service to the state and perhaps to the parties concerned. Some prosecutors make it a rule never to prosecute when only one bad check has been passed.

A woman came in with a story that her husband threatened to kill her and a man in the neighborhood. She wanted her husband put in jail. The prosecutor took some notes on the case and then told her that he would consider the matter. As soon as she left he called a deputy and ordered him to bring in the husband. He came in during the afternoon and had a long conference with the prosecutor. He admitted his jealous rage and murderous intentions but cooled off visibly as the prosecutor sketched for him the probable result of his animosity. After threatening him with a peace bond the prosecutor dismissed him and then phoned the neighbor and counseled him to refrain from any action calculated to inflame the jealousy of the husband. This action saved the state at least fifty dollars, the cost of a peace bond and a few days in jail, or possibly some five hundred dollars which might have been the cost of a murder trial if the husband had killed one or both of the objects of his rage.

Later in the day, however, a negro was brought in, charged with chasing his wife around the block with an open razor in his hand, threatening her life. The prosecutor lodged him in jail giving him time to cool off and ordered him to be placed under a peace bond. He explained that he invariably followed this practice for experience showed him that negroes in his county "were not to be reasoned with" and that a colored man with murderous intentions must be removed from the object of his animosity and placed under a peace bond. For some reason peace bonds have proved more of a deterrent than all the penal statutes in the book. Each day brings forth a variety of these "two-timing squabbles" though they seldom result in prosecution.

A farmer was charged with blocking a country road. During the interview it appeared that high water had washed out a part of the side road and the county engineer had been filling it up by dumping old automobile bodies and trash into it. The farmer feared that such refuse would be spread over his land so he put up a board barrier across the road with a sign upon it "Road Closed." The prosecutor explained the law to him and the farmer went back, removed the barrier and the case was dropped. The prosecutor then called his

political chum, the engineer, and asked him to visit the spot and fix it up with the farmer so that "direct action" would be unnecessary.

A man then came in to see the prosecutor and he stated that he was charged with assault and battery in a justice court at X, a town near the county seat. A second charge had been filed before one of the justices of the county seat. Since the witness lived near X, and there the alleged assault and battery had taken place, the prosecutor secured the dismissal of the complaint lodged in the county seat.

A deputy game warden came in wanting to file against some employees of the Gas and Electric Company who were fishing on the Company lake without fishing licenses. The prosecutor found they had permits from the Company and informed the game warden that the statute did not cover such a situation. No prosecution.

One Bertha Malone came in to plead guilty to selling beer. Her brother, Ed Malone, had been charged with this offense and his trial was pending. Ed, in the mean time, had found a job. Bertha was taken over to the county judge and a plea of guilty was entered. Ed's case was dismissed and Bertha started to serve the sentence "for Ed." In view of Ed's job the arrangement seemed to satisfy all parties concerned, especially Ed.

A woman entered the office to seek advice in the matter of an insanity hearing for her husband. According to the wife's statement he was plainly "woman crazy." However, some rapid questioning disclosed the fact that he was able to make money in his business and in every other respect was normal. The prosecutor declined to go forward with the hearing or to commence criminal proceedings until he had more evidence of actual wrong-doing.

A deputy sheriff brought in a man accused of illegal possession of liquor. Investigation showed that the sheriff's officers had raided the apartment with a defective search warrant. After talking to the accused at length the prosecutor discharged him knowing from past experiences that with such a warrant the case could not stand up at trial. Four other liquor cases came up at the same time. Here the warrants were in order and the witnesses were interviewed carefully. The prosecutor ordered criminal charges to be prepared.

The assistant prosecutor next came in for advice concerning a notorious case pending, which involved a sixteen-year old girl and a middle-aged man, both drunk, a wild ride in an automobile in the early morning, a collision and the death of an old man. When the case first came to the office the prosecutor ordered a charge of murder

for the girl who was driving the car and the man was held as a material witness. Realizing the difficulty of securing a murder verdict for the girl alone, "more sinned against than sinning," the two prosecutors conferred as to their chances. The county evidence man was called in and quizzed and it was found out that the man had been giving the girl liquor and was responsible for her condition. Instantly, the prosecutor called for authorities and a hasty search was made through the digests and reports. Soon citations were discovered and then the prosecutor ordered murder charges for both. He said, "I could not expect to convict the girl alone. Now I have a good chance to catch them both because the jury will want to stick the man and they can hardly do that and let the girl go free."

An excited lady next appeared with a story of having a mortgage upon an automobile which automobile was sold by the party accused to another man outside the state without her knowledge and consent. The prosecutor told her he could not act as a collector and warned her that prosecution of the illegal vendor might spoil her chances for recovering her money or interest. He spent some time with her trying to get her to make up her mind what to do. Finally, he wrote her a letter regarding the law involved in the case. This he gave to her to show to the vendor. Later in the day the man called the prosecutor and informed him he would have the car back the next day. No charges filed.

A man and his wife came in with the complaint that a bootlegger lived in an apartment under the same roof with them. Somehow they had secured his enmity and he had threatened them and on one occasion had assaulted the woman. The prosecutor authorized a peace bond for the bootlegger.

A baker came to the prosecutor announcing the loss of his delivery truck. Against the owner's orders the driver had taken the truck out on his route that morning and had not returned with it (and by this time it was three o'clock in the afternoon). The owner wanted to file charges of automobile larceny. The prosecutor, while admitting that the case seemed to fit the statute defining such larceny, refused to file charges. He told the owner to return home and in case the truck did not show up within twenty-four hours to phone him and he would take steps in initiating prosecution. No such message was received and, of course, the matter was dropped.

The proprietor of a negro "rooming house" related a tale of jealous rage exhibited by another negro toward his girl friend who resided with the witness. The accused appeared at the door late at

night and demanded admittance. This was denied him; he entered uninvited and endeavored to use an ice pick on the girl. He was partially successful in the use of his weapon and in addition he used it to telling effect upon certain guests of the establishment. After listening a short time the prosecutor merely called his secretary and said, "Disorderly conduct for the other man and you'd better fix up a peace bond for this fellow, too."

A man and his wife reported that while they were absent on a fishing trip their neighbor stole an automobile trailer.

Q. "How do you know X stole it?" A. "We are sure he did. We have had lots of trouble with him." Q. "Was he on your place?" A. "Why, we were away. How do we know? We came up here just as soon as we got back and found it gone. But, we know he took it." Q. "Why are you so sure?" A. "Well, he is mean and hateful to us and we have thought he was stealing from us for a long time." Q. "What did he take of yours?" A. "Well, we are sure he has taken lots of things since the law suit." Q. "Ah! A law suit?" A. "Yes, sir." Q. "What kind of action?" A. "Slander." The prosecutor then said, " Well, we'll look into this. Now you run along and I'll make careful investigation and if we find the slightest evidence of wrong-doing you may depend upon this office to punish it severely."

After they left he called an evidence man and told him, "George, the next time you are out by 2441 East 56th Street, you might look around for an automobile trailer Mr. and Mrs. Y. say was stolen. Chances are, however, there's nothing in it." How often it is that the prosecutor is asked to put neighbors in jail. Hardly a day goes by but he is asked to use his authority in spite cases or backyard arguments. His practice is to defer charges until after a reasonable "cooling time" has elapsed. The irate complainants are told to "return later" and only one out of twenty returns to sign a complaint and to assist the state if the case comes to trial. Somehow, a statement that it is necessary for the witness to sign a paper has an immediate sedative effect. People who do not shrink from telling tales hate "to put it in writing."

The next visitor came in unannounced and in vitriolic terms denounced her sister's husband, charging wife and child abandonment. It was a plain case of a family quarrel with the couple separating and the man, being out of work, becoming a drifter. The prosecutor explained that putting the husband in jail would do no good. He reasoned with her stating that the husband would have no chance at all to contribute to their support if imprisoned and the jail record would hurt his chances of landing a job after his release. The visitor

was far from satisfied but departed relieved to some extent by the recital of her tale. It is most interesting how people will quiet down when their stories are told.

A slow thinking farmer recited an account of family trouble. He was living with his sister and her husband. Their mother lived with them and contributed to their support by dividing with them some farm rental money. The farmer claimed that his brother wanted the old lady to move to his home in order to get her money. He accused the brother of poisoning the mother's mind with untrue stories and making her discontented. A fight had resulted and after being worsted he asked the prosecutor to fix up a legal restraint for his brother forbidding him to talk to his mother. The prosecutor refused to take action.

A negro complained that his sweetheart was constantly drunk and was engaged in prostitution. She had been booked several times by the police and the negro had paid her fines on several occasions. The prosecutor sent for a negro policeman and ordered him to lock the girl up for ten days on a charge of drunkenness. Then he told the caller that he would turn her over to him after she sobered up if he would promise to take her back to the farm and keep her there. This was agreeable to the visitor and he departed satisfied.

A victim of a bad check artist came in with the check for $7.50. The prosecutor recognized the handiwork of the writer of the check and informed the visitor that the accused had been arrested and was in jail. He had passed dozens of bad checks within the past month. The prosecutor asked for possession of the check saying there was little chance to secure the money and that he could charge only misdemeanor on that check but he was trying to collect sufficient checks to make possible a felony charge.

A tire dealer reported the loss of several used tires from his rack. He suspected a certain party but his information was rather indefinite. The prosecutor authorized a search warrant with a deputy sheriff to do the searching and declared that he would file a larceny charge if the tires were found.

A divorced woman came in with a tale of physical combat with her ex-husband and another woman. The details of the fight were gruesome and the struggle reached epic proportions but the prosecutor graciously dismissed the lady without filing charges.

A lady told the prosecutor that she was having trouble with her tenants who were noisy and disorderly and would not pay their rent. She claimed that she had called the police but by the time they got

there they had always quieted down. What could she do to get her money and then get rid of her tenants? The prosecutor told her that she might get a restraining order from the district judge but the best thing to do was to get rid of her tenants by asking them to vacate. He explained the terms of the lady's leases. She said, "How will I get my money?" The prosecutor advised a civil suit and she departed in a rage and using words in a manner far from "civil." Irate landladies are pests according to the prosecutor.

And phone calls! A farmer phones in that someone is stealing his apples. A citizen reports that X has threatened to kill his father-in-law. Heart-broken wives report the derelictions of their husbands and sometimes a husband reports the wife. Boys trespass and pester people, committing petty thefts. Girls become wayward and bastardy proceedings result. People tell lies in spasms of anger. All must be settled by the prosecutor, the "father confessor" for the community. Enough has been given to illustrate the average day's work for the prosecuting attorney. Few charges were formally filed but by threats, advice, or sympathy a score of cases have been disposed of with no grand jury, trial, or judicial decree. How necessary it is to have a prosecutor who is honest, wise, and with the ability by friendly counsel to put the erring back on the straight track, to heal broken homes, and to calm disputes without the publicity attendant upon court proceedings.

IV.

The experienced prosecutor soon learns that it pays to be extremely cautious in certain types of cases before initiating criminal proceedings. The prosecutor must be sure that the complaining witnesses will assist the State when the case comes up for trial. In petty larceny cases, as pointed out above, the complainant usually rushes to the prosecutor as soon as the loss is discovered. If the articles stolen are returned or paid for by the accused the owner generally is willing or anxious to drop the matter and as a result the case may fail after the trial has begun. This is a useless expense to the state, and, moreover, it looks bad on the prosecutor's record. Also, the desertion cases are difficult to handle. A prosecutor writes as follows:

"Take the average desertion case. Some poor woman comes in crying and declares that her husband has deserted her and her children. She is heart-broken, despondent and angry. She signs the complaint and readily assents to becoming the chief state's witness in the criminal prose-

cution of the man. Then the state spends a lot of money in hunting the husband and in securing his return to the county for trial. Of course, as soon as he gets back, he talks to his wife or his relatives get to her. All is forgiven and she refuses to help the state in prosecution. Then we release the man and in nine cases out of ten he either beats his wife and lies around forcing her to support him or he leaves home again. We generally try to convince the wife that her loss really is a gain when she is deserted. Though our statute is specific we rarely obtain a conviction of a deserter and when we do it is of no profit to the woman or to the state and certainly it does not improve the character of the man. This statute and many others are rarely used in prosecution, and their only value lies in their use as threats."

The prosecutor must learn that prosecution for rape often proves fruitless for much the same reason. Some boy is accused, many times falsely and many times as a "shake-down." Suppose a warrant issues and an arrest is made. Then the friends of the accused's family pour into the prosecutor's office. If they fail to influence him they go to the girl's family. Often they make up some kind of a deal with them, marriage, cash settlement, or threats of violence and this breaks down the case of the prosecutor. One prosecutor states that he does not take one case in ten to court when there has been a complaint of rape. Quite often the defendant and the prosecutrix engaged in sexual intercourse freely and voluntarily. Finding herself pregnant the prosecutrix tries to force the defendant to marry her by making a complaint of rape. Or, in case marriage is not desired, the prosecuting witness may figure that her local reputation would profit if she can show that the intercourse was forced upon her. The prosecutor learns that the courts may apply Lord Hale's caution as to rape, "that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused though never so innocent." (1 Hale, 635.)

Take the case of a hired girl who is indiscriminate in passing around her favors. Finding herself "in trouble" she considers her situation. It could be of no profit to her to fasten guilt on any one of her male companions so she decides to place the blame upon her employer. He is a man of means and able to take care of her during her trials in the approaching maternity. The prosecutor must show great care and diligence in investigating such cases and his duty to prevent criminal prosecution here greatly outweighs his duty to initiate criminal prosecution. One prosecutor made the statement that he never filed criminal charges on rape complaints unless there was medical evidence of an "attack." If such evidence could be obtained to his satisfaction he pushed the case with all his energy. Note, that

in this situation the prosecutor constituted himself a "court" trying the case without a jury before taking the case to the legally constituted court to try such offenders.

The vigor displayed by the prosecutor may depend upon his local community situation. A prosecutor of a county district in a western state writes that he has completed a successful campaign against chicken thieves. He says:

"In my county practically all farms are mortgaged. The major crop profits nearly all go to paying the interest on the farm loan. The farmer's ready money comes almost entirely from his butter and eggs. In some instances the chickens form the sole means of livelihood. My mother lost her whole flock the year before I was elected prosecutor and suffered great inconvenience as a result. A chicken thief is in the same class as a horse thief in the old range days. Just before I was elected, our legislature made chicken stealing a felony and I think it is a very good law. When I took office I prosecuted such cases as best I could and I am proud to say that in the first six months I secured ten convictions. The people around here soon learned that it was a dangerous thing to steal chickens. I sent deputies around to teach the farmer how to mark their chickens and I warned the poultry dealers to be on their guard and report suspicious cases, and the result is that we have absolutely stopped that form of crime."

This same prosecutor, by the way, has no patience with the state prohibition law and fails to coöperate with the federal officers in initiating liquor cases.

In a county of about 75,000 people, largely rural in character, the prosecutor has learned that it pays to coöperate with the Santa Fe Railroad which has a terminal and shops in the county besides being the largest land owner. He says:

"I have only one assistant and all the deputies are paid on a fee basis and hence are only average in ability and their testimony often fails when prosecution is begun. We cannot control the railroad employees, especially the Mexican laborers, as well as we should like to do. We coöperate with the railroad not only because it pays more taxes to the county than any other taxpayer but because of their very efficient force of railway detectives who do much of the work we would like to do but are not equipped to do. Whenever we find out that an employee of the railroad has been violating the criminal law I talk it over with the railroad authorities and their attorneys and detectives give me every assistance."

While making no charges against this prosecutor the members of the local bar often comment upon this feeling of regard displayed by the prosecutor. In exchange for the services of the railroad in aiding the prosecutor in preparing his cases, compiling evidence and

in securing witnesses, the prosecutor has been of service in tax cases, crossing disputes, and other civil matters of interest to the railroad.

Another illustration of the "judgment" exercised in initiating prosecution comes from the prosecutor of a county in a Western state wherein is located the State University. This institution brings to the county annually about eight thousand people from about seventeen to twenty-five years of age. The university town is about the same in population as the enrollment of the university. Of course, within the student body are a number of young people who violate the laws of the state. The prosecutor plays the game of "hands off" knowing from the experience of his predecessors that it is better for the university to handle its own cases. In case the university authorities ask for an investigation or prosecution then the prosecutor acts but not until he knows he will receive coöperation from them. This prosecutor writes:

"I know that I could take a deputy or two and find liquor in a number of fraternity houses. But I do not want to create the unfavorable publicity which resulted from raids at the University of Michigan some time ago. We have reports of rooming house 'riots,' joy rides, drinking and gambling coming in all the time but we always refer the cases to the university discipline committee. Sometimes student larks result in serious injuries. About six years ago the lawyers and the engineers staged a free-for-all on the campus and a law student received a broken nose and lost two teeth. Possibly because he was a law student and a man who 'knew his rights' he demanded that I prepare an information against his assailant. At the preliminary hearing the accused had about ten witnesses including his dean and several professors who all testified that it was merely a 'boyish prank.' Of course the case was dismissed but the big city newspapers played it up in humorous articles much to the embarrassment of the university. For some time the university authorities acted sort of cool toward me, seeming to feel that it was my fault that I made out the information. I was merely doing what I was sworn to do. The engineer was twenty-one and he did commit an assault and battery, and possibly committed mayhem upon the complaining witness. I figured that if the university felt that way about it I would keep my hands off. Of course, we have speeding cases and the violation of the city ordinances every day, but there is practically no chance of winning a criminal trial where a student is involved."

These few illustrations show that experience plays a large part in the proper equipment of the really efficient prosecutor. If the prosecutor has enough insight to weigh his chances for conviction before trial is begun, the effect generally is to increase the respect which a community should have for such an officer. Not only is the State saved needless expense but the "threat of prosecution," so ef-

fective in adjusting the difficulties of people with one another, becomes much more useful. How necessary it is, then, to have as prosecutor, not the youth just out of law school, but a full-fledged lawyer who knows how to try cases and *when not to try them.*

V.

A high percentage of pleas of guilty is necessary if the prosecutor intends to make a good record. Moreover, it is physically impossible in most judicial districts to try all persons accused of crime. The prosecutor should be a good bargainer and if he is skillful at that he can render good service to the State in saving time and money by avoiding trial. While this topic does not come squarely within the subject "Initiation of Prosecution," logically it involves the same technique as the latter and invariably the prosecutor who shows judgment in selecting the cases which he intends to push to trial shows a similar ability in accepting pleas of guilty. During the day's work of the busy prosecutor usually appear several situations which require plain ordinary trading ability.

An attorney calls upon the prosecutor. He represents a burglar with two terms in the penitentiary who was arrested recently for the third time. The defendant's profession is well known and there is no doubt about his guilt in the eyes of the defense lawyer or the prosecutor. However, the vagaries of a jury and the uncertainty attendant upon any criminal trial, usually to the advantage of the defendant, give his counsel something to bargain with. He knows that the prosecutor prefers to avoid trial, all things being equal. On the other hand, his client is guilty and he respects the ability of the prosecutor to secure a conviction. So he enters the office and proposes a compromise. He first asks for the minimum term recommendation—for in pleas of guilty the judge usually follows the recommendation of the prosecutor. The prosecutor looks pained and proposes ten years, pretty close to the maximum. The defense counsel looks sadly at the prosecutor and declares that the only thing for him to do is to go to trial. The prosecutor says that suits him fine. Both are bluffing and both know it. They hedge back and forth, propose and reject and finally set a three or four year recommendation, the defendant later pleads guilty and the affair actually ends right there in the prosecutor's office.

The factors involved in such bargaining by the prosecutor are legion but the following questions generally appear. Will my witnesses stand up? Do I have a good chance for conviction? Is my

opposing counsel able and efficient in defense? Will he get continuances and drag the case out until my case is worn down? Will he try to influence my witnesses? Is he able to sway the jury? If I secured a conviction what will be the sentence? Will the trial of this case be so long and arduous that it will take my time to such an extent as to hamper my work in other cases? Would the judge and sheriff want the case ended without trial? How will the public feel about it? In this type of case we have horse trader's technique, pure and simple. What is the best thing to do?—take a plea of guilty and a lesser term than is deserved, the sure thing, or take a chance, gambling for a longer term with possibility of a "not guilty" verdict.

In view of the fact that a plea of guilty is certain in result, saves the state time and expense, and frees the energy of the prosecutor for the investigation of other crimes and the trial of highly important cases, the promise of lighter punishment in exchange is justified. Moreover, the defendant who gives up the chance for acquittal even though it is remote and not deserved is entitled to consideration in that his case, settled as it is, does not clog up the machinery of justice. A student of this question states:

"Bargain and compromise are the usual result of law violations. Justice usually is futile in trials. The smart defendants usually get the best possible deal with the prosecution and then pay off. Our procedure has its faults. Juries often err and the human element in verdicts make any jury case a matter of uncertainty. One of the twelve may hold out and defeat justice. Moreover, the prosecutor must face as well the possibility of uncertain sentences if he goes to trial. If he was offered the acceptance of a four-year term by the defense, goes to trial and only wins a three-year term, the State suffers a double loss. The farther a case goes, the more uncertain it becomes. Contrary to the usual view, the prosecutor who is a shrewd bargainer adds to the certainty of the law. The good prosecutor tries his strong cases but he always bargains with his weak ones."

Perhaps the prosecution would profit by following the practice of certain large railroads. Every damage suit against the railroad is investigated closely and counter evidence is built up in great detail when possible. Then counsel get together and through bargain, compromise, or threat the best possible deal is put through. The corporations which never appear in damage suits are the ones which bear the best reputation and in the long run much expense is saved to the corporation.

The acceptance of pleas of guilty to a lesser offense is more open to question. If the prosecutor merely bargains on the punishment

for the *actual offense* his work generally is to the advantage of the state. However, if he is so desirous of making a record of convictions that he prefers a conviction for a misdemeanor to the possibility of a felony conviction, he may fall into the practice of manipulating the offense itself greatly to the disadvantage of the state. The crime surveys have made reference to the "startlingly large percentage" of cases in which the plea of guilty is to an offense of lesser gravity than the original charge and how often we find that the reduction is from a grave felony to a minor misdemeanor. A citizen is held up at the point of a gun and robbery with a gun is to be punished severely in all jurisdictions. Imagine the surprise of the person robbed when he learns that his assailant serves a few months in jail or pays a fine for assault! A citizen has stolen from him an automobile or diamonds worth hundreds of dollars. Imagine his surprise when he discovers that the thief serves a few months or pays a fine for petit larceny! Of course, the courts have a theoretical power to refuse such pleas but so dependent are the courts upon the prosecutor that in case the plea is refused nothing is accomplished by such refusal. Unfortunately the judge cannot order prosecution on the higher offense. Moreover, bargaining for pleas in consideration for probation or parole is becoming a common practice.

The practice of receiving pleas to the lesser offense in the larger centers opens the doors to fixers who thrive in "under cover" adjustments. The California Crime Commission states in its Report for 1929 (p. 26):

> "Few people realize the extent to which criminal cases are adjusted or compromised without trial. Much attention has been given by those who are interested in reforming the administration of criminal justice to changing the trial process. We have heard much of the necessity of reforming our jury system. Volumes have been written upon the subject of the insanity defense. Much has been said about procedure upon appeal in criminal cases. As a matter of fact, a large percentage of criminal cases are disposed of before they ever reach the trial process and many of them are never presented to juries at all. Attention must be directed to that comparatively unsupervised field of procedure which precedes trial and during which the adjustment or the compromise of criminal cases is not only possible, but widely practiced."

In the subject of "immunity" we find another fertile field for bargaining with the prosecution. An illustration may be taken from a notorious Illinois case, *People* v. *Bogolowski* (317 Ill. 460, 326 Ill. 253), where the defendant was indicted with three others for murder. After entering a plea of not guilty, Bogolowski withdrew his

plea of not guilty, pleaded guilty and gave valuable testimony for the state at the trial of the others indicted. Then Bogolowski was sentenced to fourteen years after attempting to withdraw his plea of guilty. The Supreme Court of Illinois decided that he should have been given the right to withdraw his plea of guilty and remanded the case for trial. After he was convicted and had appealed, the Supreme Court then held his conviction erroneous and he was given his freedom on the theory that the prosecutor had the power to grant immunity and that he had been promised freedom in exchange for his testimony. The court stated: (326 Ill. at 262)

"The promise was not that the defendant should be given the lightest sentence provided by law for the crime, but that he would get out. It does not appear to us, in view of the promise of immunity and the action of the defendant in testifying and remaining in jail almost three years for that purpose, that the prosecution was serving the best interests of the State in causing the defendant to be sentenced to imprisonment in the penitentiary after the State had made use of him in securing the conviction and imprisonment of the men who were most responsible for the murder.

"In consideration of all the circumstances of the case we are of the opinion the judgment must be reversed and defendant released."

As a result of making the trade with the prosecutor, the defendant obtained an absolute right which was not within the discretion of the prosecutor or court later to disregard. Except in Texas the courts of other states do not agree that the prosecutor has the power to make a binding promise of immunity but hold that the bargain creates only an equitable right to clemency. Nevertheless they hold that since such a bargain often is desirable the prosecutor should enter a *nolle prosequi* and if he refuses to do so the court should delay the case until the defendant can make an application for pardon.

Whether the defendant by his bargain receives an equitable or absolute right to his freedom makes little practical difference. The courts uniformly hold the prosecutor to his promises and the practice seems to be favored because of judicial necessity. As Greenleaf says (Evidence, sec. 379): "The admission of accomplices as witnesses for the government is justified by the necessity of the case, it being quite often impossible to bring the principal offenders to justice without them." In other words, suppose a gang of four men rob a store and the proprietor is killed during the robbery. The man left on guard at the entrance, in the eyes of the law, is guilty of murder as well as the person who drives the car. However, in the eyes of the public, those who actually took part in the killing are the

chief offenders. All four have a constitutional right to remain silent and should all resolve to give no testimony the case might fail entirely. The prosecutor generally feels, and quite properly, that it is better to secure a conviction of some than to lose them all. As a result, immunity may be promised to the guard or chauffeur in order to secure sufficient testimony to convict the men responsible for the homicide. Hence it is that this "service to the state" entitles the accomplice to consideration. As stated by Judge McLean in *United State* v. *Lee* (4 McLean 103):

> "Being called as a witness there is an implied obligation by the government, if not expressed, that if the witness shall make a full and honest disclosure of the facts which have a direct bearing on his case he shall not be prosecuted." The witness implicates himself and "the government is bound in honor, under the circumstances, to carry out the understanding or arrangement by which the witness testified, and admitted, in so doing, his own turpitude."

As in most discretionary actions by public officials there are advantages as well as disadvantages. It certainly is of profit to the state that some of the guilty may be convicted with speed and certainty and even though the ones who technically are accomplices but are lesser offenders escape. And, if the practice of granting immunity is followed, criminals become suspicious of their kind and this hampers their coöperation among themselves. On the other hand, we pay a high premium for "squealing," we deal kindly with those who are doing no more than they should do, and we encourage false testimony which often results from the desire of an accomplice to save his own skin.

But the chief loss to orderly administration of the criminal law which comes from bargaining for pleas of guilty, pleas to lesser offenses and the "immunity bath" is that it is all extra-legal, secret and under-cover. Statutes are stretched or ignored. It is "law in action" entirely, with slight regard for law in books. A certain degree of elasticity is inevitable but this practice, developing to an unusual extent and influenced in this growth, no doubt, by the public attitude toward traffic violations and the violation of the liquor laws and now spreading over into crimes *mala in se,* has made it possible for the fixer, the shyster lawyer, and the court house habitué to thrive as never before. Good citizens, prominent club men, and even clergymen seem to think that it is an honor to be called upon to help out some poor fellow. How shall it be done? By bringing pressure to bear upon the judge or prosecutor, generally the prosecutor because the

judge's position is the more exposed. These people who appear in behalf of friends or mere acquaintances seldom know much about the facts of the case. They never stop to inquire into the evidence. They never stop to consider the protection of the public. Most of them stoop without thinking to the use of political connections, social relations, or fraternal membership to secure their ends, hoping to "save some one from imprisonment." A mason must "save" a fellow mason and a Sigma Nu must "save" a fellow Sigma Nu. Once the system of compromising cases has developed the prosecutor is bombarded with hundreds of requests and so accustomed has become the public to the system that a display of official rectitude in which a request is denied, often results in the arousing of anger in the petitioner and in the development of opposition fatal to the holder of a political office. Unfortunately, many prosecutors regard their office as a political stepping stone and where the compromise of criminal cases offers a ready medium of exchange they set about using it freely to build up political support.

What can be done about it? Practically nothing under our present set up with the prosecutor's office undermanned and the legislature increasing the staggering number of criminal offenses. If we allow compromise in some cases where its use is justified our machinery is so designed that its use in unjustifiable cases inevitably must follow. Possibly the whole system should be reconstructed, but until that is done, the only chance for improvement comes from publicity, the greatest fear of the "under-cover" worker. In this work the all too few existing crime commissions have been particularly effective. Moreover, we might avoid the necessity for immunity bargains by removal of the constitutional right, so unnecessary now, which the defendant has to refuse to become a witness. At least we could allow comment upon his silence. But in order to lessen in some degree the evils of universal bargaining we should make all such arrangements as open as possible. Before a *nolle prosequi* is entered or a case is stricken off with leave to reinstate the recommendation of the American Law Institute, Model Code, sec. 305, should be followed— The court's order should be granted only "for good cause" and should be entered in the minutes "with the reasons therefor." A complete hearing should be held on every request that a "plea to lesser offense" be entered. Some method must be devised to show to the court that a conviction *cannot* be expected on the greater charge before it is abandoned. Also, we might expect some improvement by extending the methods of collecting "criminal statistics" now being

advocated by the Institute of Law of The Johns Hopkins University. The whole question of the compromise of cases by the prosecutor requires careful study and some reform in the present practice is greatly needed. As pointed out above, here is an "unsupervised field" of the utmost importance and the lack of attention which has been devoted to this part of our administrative machinery is amazing when one considers the extraordinary powers involved and understands the alarming possibilities of their misuse.

VI.

How far should a prosecutor go in ferreting out crime? One of the country's most successful prosecutors, a man who came to the office with experience as defense counsel in more than a thousand criminal cases and who has displayed the same energy in public office which he displayed in private practice, declares that he feels that his office should not be engaged primarily in hunting for crime. He feels that the apprehension of criminals and their arrest should be left to the police and the sheriff's force. This does not mean that he is not zealous in securing evidence—far from it. His two evidence men work with the police and county officers on every homicide case and practically all other felony cases. He maintains the most friendly relations with the city and county officers and once made the statement that he depends upon them for ninety per cent of his convictions. But, every case brought to his attention is adequately investigated and this prosecutor believes that it is his business to sift through the cases very carefully before determining how they shall be disposed. It might be mentioned that the grand jury, as it operates in some states, is virtually unknown and it exists, not as an inquisitorial body, but merely as a popular check upon the county officials. In some of the counties in the West and Southwest a grand jury has not been called upon for an indictment for several years. Where required by law to meet twice a year it merely holds informal hearings concerning the conduct in office of the various county officials. In addition, it should be noted that it is quite common to find the Justices of the Peace wholly dominated by the prosecutor. Where they operate on the fee system, where the prosecutor can determine the number of cases going to each justice, and where the prosecutor can pick his Justice for each preliminary hearing the whole system is controlled by the prosecutor. Armed with an information made out by himself, assisted by coöperative deputy sheriffs, and appearing before complacent Justices the prosecutor can bring almost any per-

son to trial on almost any kind of a charge. The prosecutor in such a situation virtually constitutes himself the court of first instance. He first examines the evidence and weighs it, then he must be convinced of probable guilt of the party being considered, and finally the prosecutor must determine to his satisfaction the chances for success if he proceeds along the statutory channels for the administration of criminal justice.

One case which recently caused some comment illustrates the necessity for adequate preliminary investigation. A young man received a warning presumably from the prosecutor which indicated that unless he took care of a girl friend during her approaching childbirth he would be prosecuted for criminal assault. The letterhead was identical with the official letterhead of the prosecutor. The man knew the girl, but being innocent of any misconduct, he mailed the letter and his story to the prosecutor. Of course, the latter was indignant at this use of extra-legal threats *by outsiders* and began an investigation which lasted several days, and he finally discovered the sender of the letter. The sender, who worked in a printing plant where he prepared the letterhead, earnestly denied "any criminal intent in the matter" but declared that his only motive was "to help the girl out of trouble." The prosecutor at first declared that he was not inclined to prosecute. However, the use of his name and stationery so intrigued the prosecutor that he continued his study of the case. He soon found that the sender, himself, had been having intimate relations with the girl and that his purported chivalry was in fact an attempt to fasten his own trouble upon an innocent person's shoulders. As a result, three avenues opened to the prosecutor. He might drop the case, as he probably would have done had not his own name been used, he might charge impersonation of an officer with a light penalty, or attempted extortion, a felony, which exactly fit this situation. What the prosecutor did was the obvious thing to do. Suppressing his personal desire to punish the sender of the letter by a prison term, which "he amply deserved for such a lack of chivalry," the prosecutor called in the accused along with the girl, had a long conference with them and, after declaring that the man needed some punishment, prepared an information for impersonation.

This prosecutor, though he declares it no function of his office to run a detective agency, has been extremely effective in uncovering violations of the criminal laws. Within the past year he has gone far beyond the average prosecutor's investigations and is personally responsible for many criminal charges. He found out that a district

judge was receiving a double salary for four months from the state and he charged obtaining money by false pretenses. A growing racket among electricians was followed by charges of assault and battery, extortion and malicious mischief. He has improved the bail situation by vigorous action in bond forfeiture cases. His office has investigated and has completely broken up a huge stolen car "ring." He personally appeared in the trial of a man charged with tampering with a jury in a recent criminal case. He broke up a group attempting to dispose of $500,000 in stolen bonds and brought them to trial for receiving stolen property. He discovered that oil pipelines near the city were being tapped and the case resulted in a trial. He took active steps to prosecute a Justice of the Peace who was abusing his office by securing payment beyond the usual fees for services rendered. An abortion practice was discovered by the prosecutor and before he was through, the deaths of ten young women by abortion were known. Vigorous prosecution followed. A city constable was charged with extortion after it appeared that he had collected excessive costs from a defendant under threat of placing him in jail. He made war upon "travel bureaus" which were operating without paying a state license. Only a few cases in a long list are mentioned and in some cases convictions did not result. However, enough has been given to show that the prosecutor, as key man in the system for securing criminal justice, has in his office an unusual opportunity to be of service to his community. Nevertheless, the ordinary office is not equipped for regular crime detection and any special activity in this line of work usually is due to voluntary inclination by the prosecutor toward detective work.

The writer, having recently graduated from law school, spent some time as assistant to a prosecuting attorney who also was young and greatly impressed by the responsibilities of the office. Together we combed the county like bloodhounds. Never shall we forget the exhilaration of planning, and carrying out with the help of the sheriff, raids upon "dives and disorderly houses." But the county was sadly law abiding. Our efforts to discover crime were a constant source of embarrassment to the sheriff and to certain property owners who feared "padlocking." One great day there occurred a riot among strikers at the Burlington Railroad shops. The feeling of superiority which we had during our probe! Peremptorily calling witnesses, dismissing them, giving orders, investigating "in the name of the law," we leaped upon the trouble as a God-send during a slack season. But, we were young, ruthless and desirous of trying our eloquence on a jury.

We know now that the prosecutor should not be a mere detective and should not always be seeking the trial of petty offenses. Possibly at the very time when we were overjoyed at the prospect of a few broken heads there were blue sky laws to be applied, extortion cases to be found out, officers to be punished for graft, and, as is always the case, the whole system of administering justice to be improved by quiet but effective measures. Our trouble was that we had not yet tempered the energy of youth with experience.

But, all things being equal, energy is better than sloth in the prosecutor's office. The writer knows a prosecutor in a rural section of a Western State who is an able man but holds the office only for the steady income it offers him and has no interest in digging up criminal cases. He prepares informations on complaints just as routine office duty and passes them on to preliminary hearings or trials with little interest in the outcome of the cases. He feels that it is no concern of his to sift the cases before initiating prosecution. Another man who occupies the office in a neighboring county performs the statutory duties of his office when absolutely necessary but spends the larger part of each day with his thriving real estate business. Others waste their time with political talk or by useless visiting with any person who claims their time.

Of course, there are countless varieties of prosecutors, old and young, able and stupid, experienced and inexperienced, those with judgment and the erratic, the courageous and the cowardly, the energetic and the lazy. The question may have come to the reader's mind, "Why write all this about the prosecutor? Everything which has been said is known to all. Why make an article out of the *obvious* traits of prosecution and the *usual* situations he must face." One answer is that too little attention has been devoted to the key man of the whole system. We are too prone to seek betterment by law making. If part of our legislative energy were devoted to the study of personnel in the administration of the law, we could expect to find more room for improvement. Higher salaries should be paid to attract men with wide experience in criminal law and the county should be generous with the prosecutor's help both in stenographic and evidence work. Then the term of office should be lengthened and in larger cities a permanent staff of assistants selected by civil service examinations, or other tests, could do a great deal to encourage efficiency and avoid political influence. The office should be regarded, as in reality it is, as the most important local governmental position, and care must be employed in filling that office. Once

we come to the realization that the prosecutor may accomplish more in one term than a dozen periodic "reform movements," we see the place where a judicious effort to promote public good will be most effective.

Law to the layman rests in the person of the policeman or the prosecutor. He knows little of supreme court law and cares less except where it occasionally influences his personal situation. As pointed out above, the prosecutor may violate his oath in determining whether or not to prosecute, but nevertheless he applies the "law" as he sees it and his application is the "law" to the ordinary man. The law is written by legislators, interpreted occasionally by appellate courts, but applied by countless individuals, each acting largely for himself. How it is applied outweighs in importance its enactment or its interpretation.