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Newman F. Baker

Earl H. De Long

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THE PROSECUTING ATTORNEY: THE PROCESS OF PROSECUTION*

NEWMAN F. BAKER¹ AND EARL H. DE LONG²

I. THE STEPS IN THE PROCESS

All criminal cases from their inception to their disposition follow practically the same procedure. It matters not if the prosecuting office consists of two persons or two hundred and it makes little difference what type of offense may be involved. The governmental agencies engaged may vary from one jurisdiction and from one type of case to another, and the duties of the office of prosecuting attorney may differ from one situation to another, but the stages through which each prosecution must pass are nearly the same for all.

The initial step in any criminal prosecution is the complaint that a crime has been committed, unless the arrest is made without a warrant. The complaint may be made by a private citizen who is injured by the offense, by some private citizen who happens to see it committed, by a police officer, or by some member of the staff of the prosecuting office. It may be made to the sheriff or his deputies, to the coroner, to the constable, to the municipal police authorities, or to the prosecuting attorney. It may be presented directly to a magistrate or a justice of the peace by a person seeking the issuance of a warrant for the arrest of the offender.

After the complaint has been received by some law enforcement authority, it becomes necessary to determine whether or not a crime has actually been committed and, if so, what is the nature of the offense

*This article is a continuation of the series on the general subject of "The Prosecuting Attorney" which the writers have presented in the Journal of Criminal Law and Criminology over the last three years. This present discussion of "The Process of Prosecution" should be read especially in conjunction with "The Administration of the Office," which appears in 25 *ibid* 695,884. The writers wish to express their appreciation of the courtesy of Mr. Courtney and his staff of the Cook County office, and of Col. Henry Barrett Chamberlain and his staff of the Chicago Crime Commission, who have made possible the personal observations upon which the conclusions presented are based. They wish also to acknowledge that in the preparation of the description of the office of the State's Attorney of Cook County they have had the benefit of a manuscript prepared by Mr. Charles C. Arado of the Chicago Bar. These men, however, must not be assessed with any responsibility for the statements which are published above. For these the writers alone are responsible.

¹Professor of Law, Northwestern University School of Law.

²Instructor in the Department of Political Science, Northwestern University.

and who may be the offender. This stage of the process may be an inquest by the coroner and his jury, it may be an extensive criminal investigation by the police department, the sheriff, or the prosecutor, or it may be merely a brief questioning of the complainant by the police or prosecutor. If it is found that a crime has actually been committed and the offender is suspected or known, then comes the next stage of the process which is the arrest of the suspect.

These preliminary stages may have been eliminated, of course, if the arrest has been made at the time of the offense by a private person or by a police officer who was present, if it was made by a police officer who arrived immediately after the offense and to whom the suspect was pointed out by those who did see the crime committed, or if the arrest was made later by a police officer "on suspicion." If the complaint and investigation have preceded the arrest, then it is made by a sheriff or other peace officer armed with a warrant which has been sworn out by someone who has been injured by or who witnessed the crime or by the police.

It is usual in the United States for the prosecutor or the police to conduct an unofficial examination of the suspect immediately after the arrest. In minor offenses the police usually decide whether or not he shall be prosecuted for the offense and set the amount of the bond necessary to effect his release from jail. In felony cases, if the police or prosecutor decide after questioning the suspect that he may be guilty, he is brought before a magistrate for the preliminary examination. If the magistrate believes that there is sufficient evidence, the suspect is bound over by the magistrate to await the filing of an information by the prosecutor or an indictment by the grand jury. He may or may not be released on bond at this stage of the process, depending upon the gravity of the offense and the evidence of guilt. The next step is the filing of the formal accusation by information or indictment, as the case may be in the particular offense or jurisdiction, and following that the accused is brought to trial. Thereafter the prosecutor must represent the state if the defendant appeals from a conviction.

The duties of the office of prosecuting attorney in relation to this process are very much the same whether it is a small or large office. It is quite evident, however, that the problems involved in the administration of those duties are hardly the same in Sonoma County, California, where an office, consisting of one district attorney, one deputy, one stenographer, and one detective, cost the county \$15,168 in 1931, and in Cook County, Illinois, where the office of the state's attorney

consists of the state's attorney himself, eighty-five or ninety assistant state's attorneys, about fifty clerical employees, and about fifty police officers and investigators. For the operation of this office the Cook County board appropriated \$654,148.43 in 1933.³

The division of work among the members of a small prosecuting office is a simple process. Each task can be considered individually as it arises, every case comes under the immediate supervision of the prosecutor, and he is able to exercise a close control over every action of every member of his office. He directs all of the proceedings and actually participates in most of them. In view of the fact that he is becoming more and more of a police officer, especially in the rural areas, the prosecutor is gradually assuming control of the process of law enforcement from the very beginning and a word from him will end the proceedings at any stage. His power is practically as broad in every other step of the process as in the actual initiation of prosecution which was discussed in a preceding article.⁴

As the office becomes larger, it is no longer possible for him to supervise and assign each case. An office routine and a systematic division of work must be provided for the performance of the ordinary duties. In the metropolitan office the process of prosecution is the same and the discretion is as wide at each stage of any criminal case as in the smaller agency, but the prosecutor at the head of such an office cannot possibly know anything about most of the cases for which he is responsible. Much of the work of his office is necessarily left to subordinates who proceed in most instances without consultation with him. Each stage of the case may be handled by a different unit of the office. Such a division of labor in the large prosecuting establishment makes its work a complex administrative procedure which must be studied if the problems of prosecution in the urban center are to be understood. The following sections are devoted to a discussion of the administrative organization and the process of prosecution in the office of the state's attorney of Cook County.

This description of the Cook County office is presented as an illustration of the system and not as an administrative survey embodying definite recommendations for reorganization. Perhaps, because of its size, the Cook County office is not a typical example of the metropolitan prosecuting agency, but this does not make it so much the exception that it is profitless to study it. The large size of

³"Report of the Crime Problem Advisory Committee of California" (December, 1932), Table 8, pp. 38-39. Cook County 1933 Budget.

⁴Baker, "The Initiation of Prosecution," 23 *Journal of Criminal Law and Criminology* 770.

the office, the type of community which it serves, and the special complexity of criminal law enforcement problems in Chicago all combine to make this office an appropriate subject for investigation. Its administration appears to involve all the problems of metropolitan prosecution as well as any other office which might be selected, and an analysis of its operation seems more likely to indicate the reasons for the shortcomings of the office of prosecuting attorney than a study of the few agencies which might be found in the United States which have given a high degree of satisfaction over a long period of years.

The writers have been "outsiders" who were observing the work of the office through the courtesy of State's Attorney Thomas J. Courtney and his staff. The inquiry has been restricted very definitely to administrative routine, and no attempt whatever has been made to evaluate the honesty or the effectiveness with which the powers of the office are exercised. No part of this analysis is intended to be an attack upon the men who happened to hold office at the time this study was made. The office and its routine have been inherited from preceding prosecutors and have been left largely unchanged. With this machinery, which he may or may not think capable of improvement, the present state's attorney is doing the most effective work which has been done in the office in Cook County for many years. After the description of the office and its organization has been given, it will be pertinent to inquire whether the machinery can be made more effective. One word of caution is necessary with respect to the following description. The work of prosecution requires a highly flexible organization and staff assignments are constantly changing. Numbers stated and assignments described throughout the study must be taken as approximate only. They merely represent the situation as we happened to see it. The general steps which are followed, however, do not change materially, even from one administration to another.

Most of the criminal law activities of the office of the state's attorney of Cook County fall within the following classification:

- (1) The prosecution of misdemeanor cases in the criminal branches of the Municipal Court of Chicago.
- (2) The investigation of complaints of crime.
- (3) Prosecution at the preliminary examination in felony cases.
- (4) Investigation of the security scheduled to make the defendant's bond.
- (5) Presentation of felony cases to the grand jury for its consideration and action.

- (6) The preparation of the state's case.
- (7) The presentation of the state's case at the trial.
- (8) Presentation of the state's case on appeal.

In addition to these steps, there are a number of miscellaneous matters involved in the administration of the office which must also be mentioned. These include the question of supervision of the staff, the maintenance of the records of the office, and the prosecution of matters involving writs of *habeas corpus*, *coram nobis*, paupers' writs, or matters of extradition.

These various steps are not always clearly separable. The order may be transposed from that given here, or the various stages may overlap or be combined. In some prosecutions the office of the state's attorney may perform all of these activities. In others it may perform only a few or even none of them. This outline, however, sets forth the usual duties of the prosecutor in the enforcement of the criminal law in Cook County and it will serve as a basis for the more detailed discussion of the organization and the work of the various units of the state's attorney's office.

II. THE PROSECUTION OF MISDEMEANORS

Of all of the 350,000 criminal cases which constitute the annual grist of the criminal courts of Cook County, less than 15,000 involve crimes which are punishable by a sentence of one year or more in the state penitentiary.⁵ The remaining 335,000 involve the speeding motorist, the drunken driver, the shoplifter, the prostitute, the vagrant, the gambler, those engaging in disorderly conduct and the like. These particular transgressions of the law are punished by a small fine, by a larger fine, or by a sentence of ten, thirty, sixty, ninety days, or perhaps a year in the county jail. Since most of them are committed within the city of Chicago, they are disposed of in the criminal branches of the Municipal Court of Chicago—the woman's court, the vagrancy court, the criminal jury court, the domestic relations court, the boys' court, the quasi-criminal and license court, or the various general police courts which are scattered throughout the city—to which are assigned thirteen of the seventy or more assistant state's attorneys who are engaged in some way in the work of criminal law enforcement. To this small group of men and to the judges of the

⁵These figures are approximations only, based upon annual reports and upon information furnished by the clerks of the Criminal Court of Cook County and the Municipal Court of Chicago. In 1934 only 3,159 indictments were returned by the grand jury.

courts to which they are assigned is given perhaps the most important phase of the work of criminal prosecution—important because these are the courts in which a large portion of the community forms its impressions of the administration of criminal justice and is made respectful or derisive, as the case may be. To these tribunals come the great mass of persons who are experiencing their first contact with the agencies of criminal justice, and to them is given the greatest opportunity to check and recast incipient criminal careers. It is of vital importance, therefore, that those who are given the task of directing the prosecution of these cases be competent, conscientious, experienced, and intelligently sympathetic.

These cases involving the reckless motorist, the streetwalker, the pickpocket, or the quarrelsome neighbors have reached these various branches of the municipal court through the police department of the city. Perhaps the accused was arrested by a police officer while he was actually violating the law, perhaps later by an officer who suspected him of having violated the law, or perhaps he was arrested on a warrant which was sworn out by the person injured by the alleged criminal act. In any event, in such cases, any criminal investigation which may have been required has been made by the police department. It is the members of the police department who decide whether or not such a case shall actually be permitted to come to trial. The few seconds or minutes during which the matter is actually on trial before the court is the only time at which the office of the state's attorney has any contact with these thousands of minor prosecutions.

When a very small number of judges is given the task of disposing of the tremendous criminal docket of the Municipal Court of Chicago, it seems inevitable that the trial of these matters should become a very rapid, confused procedure in which everyone, including all of those involved in the case just disposed of, those interested in the case being tried, and those who are waiting for the next case on the call, are gathered in a huddle immediately in front of the judge. Under such circumstances, it would be too much, perhaps, to expect the prosecuting attorney to be very effective and conscientious, particularly when he may know nothing whatever about the case until the witnesses are actually on the stand.

Although there are occasional exceptions in the individuals assigned to this task, the service of these municipal court prosecutors is such that it would make little difference if they were removed altogether. Other factors, as well as those mentioned, have contributed to make this true. These men are the lowest paid members of the

state's attorney's staff. They are, accordingly, the youngest, usually with little or no experience in the practice of law and with none whatever in the field of the criminal law. They are chosen upon the political basis which has been described in the preceding article. They regard their period of service in the state's attorney's office as a brief interlude in their private practice or as a first step in a political career. There is little incentive for an ambitious, intelligent young lawyer to seek this job in the first place, and if he gets it, there is little inducement for him to give adequate, conscientious attention to the great mass of routine cases which have no "publicity" value. These men work with practically no supervision. Occasionally they are called to the office of the state's attorney for a general meeting of the staff, but the only personal attention which their work receives is that which the first assistant may have time to give. Since he is kept busy supervising the prosecutions of felony cases in the Criminal Court of Cook County, he cannot possibly do more than glance through the daily report sheets sent in by the municipal court prosecutors, and these reports do not give him sufficient information to judge or supervise their work. Only occasionally when some misdemeanor case is sensational or unusual enough to attract the attention of the newspapers does this phase of the work of the state's attorney's office receive any special attention.

All matters involved in the preparation and initiation of the case—determining what charge to bring, finding the witnesses, and questioning the accused—have been undertaken by the police, and when these cases come to trial the interrogation of the witnesses is more often conducted by the judge than by the assistant state's attorney. In most of these cases the prosecutor seems to act as little more than a glorified assistant clerk, with the primary duty of filling out a report sheet giving briefly the name of the case, the charge, and the disposition, all of which might be sent to the office of the state's attorney by the clerk of the court who must record this information anyway. Occasionally, some young prosecutor assigned to one of these courts, by reason of his force of personality, actually assumes his proper role, but these instances are the rare exception.

Only a few cases, perhaps one or two a week on the average, rise out of the obscurity of the mass of misdemeanor prosecutions which are disposed of in this court, and every one of the prosecutors assigned to the branches of the municipal court lives in the hope that he may happen to have one of these cases and may accredit himself sufficiently well to be transferred to one of the branches of the Cook

County Criminal Court. It sometimes happens that some "publicity" case arising within the jurisdiction of the municipal court requires some special attention, and to these a more competent, experienced member of the prosecuting staff may be assigned. In such a prosecution the state's attorney's office may participate in the investigation and preparation of the case, but it is quite unusual to find this type of case in the municipal court.

III. THE INVESTIGATION OF CRIME BY THE STATE'S ATTORNEY'S OFFICE

Although it appears that in the prosecution of most misdemeanor cases arising within Cook County the office of the state's attorney plays a very small part, the situation is quite different in the more important offenses which require the attention of the law enforcement authorities. Instead of permitting its powers and duties under the law to atrophy, as it has done in the minor criminal matters, the state's attorney's office has aggressively expanded its powers and activities in the more important criminal cases beyond the minimum set forth in the statutes. In these criminal matters a very large number of complaints are made directly to this office and the staff members actively participate in the criminal investigation. Most units of the office are involved in some way in the procedure of prosecution of felony cases which are tried in the Cook County Criminal Court.

The citizen of Cook County who wishes to make a complaint of a crime against a neighbor who has shot at him with intent to commit murder, against a business associate who has defrauded him, against some unknown person who has held him up at the point of a gun, or for any other reason, has an extraordinarily wide choice of agencies to which he may present it. In the suburban municipalities surrounding the city of Chicago, he is most likely to take it to the local police department, but he is equally free to take it to the sheriff, or the state's attorney. If it involves a homicide he may also take it to the coroner. If the crime has been committed outside of any incorporated municipality, it may be brought to the attention of the state highway police, the county highway police—the peace arm of the sheriff's office—to the coroner, or to the prosecuting attorney. Within the city of Chicago the complaint may be phoned to the central complaint room of the Chicago Police Department, presented in person to the district stations of the department, or brought to the attention of the police department of the Chicago Park System. In Chicago, as well as out-

side, the complainant may choose to ignore the police and present his grievance to the coroner or to the prosecutor. Furthermore, as indicated at the beginning of this article, the injured citizen may go directly to a magistrate and request the issuance of a warrant. In the part of the county outside of Chicago, this request will be directed to a justice of the peace, a police magistrate, or to the judge of a city or municipal court. Within Chicago the request will be presented to a judge of the Municipal Court of Chicago.

Any criminal investigation or questioning which may be necessary, either before or after the arrest, may be undertaken by the police agency to which the complaint is made. When this happens, the office of the state's attorney has no contact with the case until it comes up for preliminary hearing if it is a felony, or for actual trial if it is a misdemeanor within the jurisdiction of a municipal court.

If the case involves a homicide, the county coroner must conduct an investigation and, with his coroner's jury, hold an inquest. When this happens, however, the office of the state's attorney has some contact with the case throughout this investigation since an assistant state's attorney is assigned to be present at all coroner's inquests. He cannot expect to obtain much information there because the witnesses, though under oath, are immune to perjury charges, but the prosecutor's office is at least in touch with the case.

The work of the state's attorney's office, however, is by no means restricted to the presentation in court of evidence gathered by the coroner or the police. There are many circumstances in which the prosecutor's office is drawn into the actual investigation of complaints to determine whether or not a crime has been committed and, if so, who is the offender. Whenever any crime receives any substantial amount of publicity in the newspapers, the office of the state's attorney usually intervenes in the case immediately. The members of the investigation department of the office, which will be described presently, often conduct an investigation which supersedes or parallels that of the coroner or the police, and an assistant state's attorney may be specially assigned to work on the case from the very beginning.

Approximately twenty of the lawyers on the staff of this office are given no specific permanent assignment to a particular court room or to some one step in the process of prosecution, but are reserved for important cases which require special attention or for special classes of investigations and prosecutions. This group of men includes the oldest, most experienced, and ablest prosecutors in the office and its members are constantly called upon to take charge of some particular prosecution. It may be a sensational rape case, a prosecution

for murder, or perhaps an investigation of graft and corruption in some governmental agency. In some of these prosecutions, the state's attorney's office may not intervene at all until the coroner or the police have failed to produce any results. In others an assistant state's attorney may take charge of the case within an hour after the crime is committed and follow it through all of the steps in the process. When this occurs, he will participate actively in the whole criminal investigation leading to the identification and apprehension of the offender. He will take charge of questioning the suspect after his arrest. He will appear at the preliminary hearing to have the accused bound over and he will be responsible for presenting the evidence to the grand jury. It will be his task to interview the witnesses and prepare the state's case, and he will conduct the prosecution when the case comes to trial.

At the time that this study was made, one assistant state's attorney was made responsible for the investigation and prosecution of all racketeering cases which came to the attention of the office. Another was similarly assigned to all homicide cases which were not considered important enough to deserve special assignment. Three assistant state's attorneys, who were given the aid of three accountants, were engaged in a series of banking prosecutions and investigations. Two assistant state's attorneys, together with a stenographer and an investigator, constituted the "blue sky" department of the office which was made responsible for all investigations and prosecutions involving the statutes regulating the sale of securities. Various others were working on specially assigned arson, murder, rape, graft, or other cases.

In these special cases, because responsibility for the whole process of prosecution is placed on one man, there is little or none of the division of labor which characterizes the ordinary, routine cases which constitute the bulk of the work of the office. In these the process of prosecution is practically the same as in the small office. It is not the complex administrative procedure which this inquiry set out to study and, consequently, will not be given much more attention. Such cases in number are only a very small part of the work of the office, probably not more than one-half of one per cent. The more important work of the large prosecutor's office is that involving the thousands of cases which do not get into the newspapers and which do not seem important enough to need the individual attention of some one "ace" prosecutor. These are the ones which follow the routine of the office.

The work of criminal investigation by the prosecutor's office is

not limited, however, to these special sensational cases. In hundreds of the more routine matters, which never reach the newspapers, it takes active charge of the investigation. Many of these are cases in which the prosecutor's office does not intervene until investigations by other law enforcement units have failed to yield results. Many more, however, involve cases in which the complaints have been brought directly to the office of the state's attorney (1) because of distrust of the complaining witness toward other agencies, (2) because the police or coroner have failed or refused to act, (3) because of a belief on the part of the complainant that this office is the chief law enforcement agency in the county and will give more direct action, or (4) because the particular crime alleged requires a type of investigation which only the prosecutor's office is equipped to undertake.

The subordinate units of the office of the state's attorney which participate in such investigations of crimes are the investigation department, the complaint department, and the social service department. A short description of each follows.

IV. THE INVESTIGATION DEPARTMENT

If the state's attorney of Cook County limited the activities of his office strictly to the prosecution of criminal cases and depended for his evidence upon the work of other law enforcement agencies, there would be little need for an investigation department as one of the units of the office. As conditions are, however, the state's attorney enters actively into the field of police work, and the investigation department of his office is one of the most active and important of its subdivisions.

Its staff usually consists of about the following personnel: one captain of police, three lieutenants, five sergeants, and from thirty-five to fifty patrolmen. All of these men are detailed from the Chicago police department and usually they are among the best qualified officers in that department. They are paid by the city and continue to be city officers, but they are given commissions as deputy sheriffs to enable them to exercise peace powers anywhere in the county. Occasionally the group is augmented by the employment of special investigators who are paid from the appropriations for the state's attorney's office, and under some administrations, the chief of the investigation staff is brought from outside of the Chicago police department. In spite of the fact that most of the members of this staff are city police officers, these officers and investigators work wholly under the supervision of the state's attorney. It even happens

sometimes that they engage, at his order, in activities which may be directly contrary to the wishes of the police commissioner.

The work of the investigation department is very definitely and exclusively police work. It operates in substantially the same way and performs the same type of duties as the detective bureau of a police department. It is, in fact, a county detective bureau attached to the prosecutor's office. Except as the coroner may investigate homicide cases, it is practically the only agency available for the investigation of crimes committed outside the cities of the county. Quite often, when the state's attorney decides to participate in the investigation of a crime committed within the jurisdiction of a city police department, his investigation department is assigned to conduct an independent inquiry duplicating the work of the city agency. It may make raids on gambling houses, vice establishments, slot machines, bucket shops, speakeasies, or racketeering labor unions, as the prosecutor or his subordinates may decide. It may enter upon a criminal case at the order of the state's attorney after other police agencies of the county have failed to produce results. On the other hand, its inquiry may concern a complaint which was never presented to the police at all but brought directly to the state's attorney's office. In any event, its task is to perform all general police work which may be ordered by the state's attorney or his authorized subordinates, and in the performance of these duties it may participate in raids and investigations relating to any case within the jurisdiction of the office.

In addition to performing these activities as a detective bureau under the orders of its superiors in the state's attorney's office, the investigation department must also act as a complaint bureau to hear and sift complaints of crime to determine which cases require further action and which should be dropped. The complaints which are brought to its attention usually involve matters which might equally well have been directed to the Chicago police department, but most of them involve felonies. Few misdemeanor complaints come directly to the state's attorney's office. Matters involving sex crimes are referred to the social service department of the state's attorney's office, and complaints involving complicated business and financial offenses go to the complaint department, but the other crimes of violence and the simpler embezzlements and larcenies are matters for the investigation department to hear. Sometimes the sergeant or lieutenant who hears the complaint refers the complaint back to the police department. Perhaps he will make a memorandum of the case and turn it over to the police himself, calling for a report on the matter

at some later date. He may, on the other hand, decide that the complaint is a matter for investigation by the investigation department itself without regard for the existence of the police department. If he believes that further action ought to be taken, and does not refer the matter back to the police department, he recommends the issuance of a warrant and the men of his unit make the necessary arrests and investigations. If it is impossible to persuade the investigation department to push the case or to recommend the issuance of the warrant for the suspect, the ordinary complaining witness has no further remedy to force prosecution unless the Chicago Crime Commission and the newspapers will take up the matter when it is brought to their attention. On most of the cases which go through its hands, the decision of the investigation department is practically final. In the ordinary run of cases which involve no publicity, no records are kept of complaints dismissed and no check maintained by the first assistant state's attorney.

V. THE COMPLAINT DEPARTMENT

Cohen and Rosenberg sat for three quarters of an hour glaring at each other across the waiting room of the complaint department of the state's attorney's office. Rosenberg was there because he had received a letter: "A serious complaint has been made against you at this office. In order to adjust this matter as conveniently as possible for all concerned, we suggest that you come to the office for a conference at ten-thirty A. M., April 22, 1933." It did not state what the trouble was nor did it tell who had made the complaint.^{5a} He had his suspicions, of course. The summons from the state's attorney's office could not have been enforced by any legal compulsion but, as in almost every other case in which it is sent, Rosenberg dropped his private affairs to hurry out to the criminal court building to give his side of the story. When he arrived, his suspicions that he was "in trouble" were confirmed. Cohen had made his complaint exactly a week before and had been directed to return at this time when both sides of the story would be heard.

Presently the assistant state's attorney in charge of the complaint department stepped out and motioned the two men into his office.

^{5a}Since this incident occurred the form of the letter has been modified. The letter now used by the complaint department reads as follows: "A complaint has been made at this office upon which we have been asked to recommend the issuance of a warrant for your arrest. The complainant is Said complaint has been set for hearing in Room 262 of the Criminal Courts Building on at o'clock, to give you an opportunity to appear and show cause why a warrant should not issue."

Cohen told his story although the state's attorney had trouble keeping the other man from interrupting with denials. About two weeks previously he had answered a "want ad" in a local newspaper seeking a "man with an automobile to purchase a share in an established business." The business, a share of which Rosenberg offered for sale, had been represented as a "concession" for the sale of dresses to a number of girls' schools in the Chicago area. After much bargaining, Cohen had agreed to pay one hundred fifty dollars down and two hundred more within one month. After the first payment had been made, Cohen discovered that there was no business—the reason, undoubtedly, why Rosenberg decided to sell a share—and he had come to the state's attorney to get back his one hundred fifty dollars.

The prosecutor listened while Rosenberg related his side of the situation, but since the facts could hardly be disputed, there was obviously only one conclusion:

"Well, Rosenberg, you'll have to pay back this money or I shall be forced to prosecute you for taking money under false pretenses."

"Yes, but—vell, vot can I do? I ain't got the money."

Cohen chimed into the colloquy. "Vot you do vid the money I give you two veeks ago?"

"Ach! I give that back to shut up the guy who answered my ad first but," but turning to the state's attorney, "don't you worry, Judge, I hev the money for you tomorrow. I got another ad in the paper today."

We do not know whether Rosenberg plucked the money from another advertisement which did not result in a complaint, but regardless of its source. It must have been repaid, for the case was continued at this hearing and neither party appeared again. *That was the disposition of the case.* There was no further action, although there clearly had been a violation of the statute.

While this incident obviously is more ridiculous than the general run of cases which pass through the complaint department of the state's attorney's office, it illustrates (1) the type of case with which this agency deals, and (2) the fact that large numbers of cases which clearly involve criminal offenses are disposed of finally in this office.

Nearly twenty-five hundred complaints of larceny by bailee, embezzlement, confidence game, false pretenses, or similar offenses are presented each month in person, by telephone, or by mail to the complaint department, which consists of four assistant state's attorneys and two women. Many of them come because they are referred to the state's attorney's office by the police themselves on the

theory that *financial* and *legal* investigations are not *criminal* investigations within the proper scope of police activity. Others are brought because the complainants themselves recognize that the case requires a different kind of inquiry than the police are qualified to give. It is the task of this department to sift these complaints and decide what action, if any, ought to be taken.

While no accurate record of the work of this department is kept, it appears that about eighty per cent of the persons who bring complaints to the office must be told that no criminal action can be taken. Either the complainant's case is barred by the statute of limitations or he has been the victim merely of his own bad judgment or the other man's better judgment in a business deal.

In offenses of the type usually brought to this office, it often happens that the crime is not discovered until some time after it has been committed. Under the Illinois law, prosecution is barred in most felonies after three years from the time the crime is committed and not three years from the time the offense is discovered. This limitation is eighteen months in misdemeanor cases. As a result of this unfortunate interpretation of the statute, many of these complaining witnesses must be told that it is too late for the prosecutor to do anything. When this situation is explained, the prosecuting witness is always disappointed, of course, but almost invariably he appears to understand the situation and does not cherish a grudge against the assistant state's attorney who makes the explanation.

Under other circumstances, however, the attitude of the complainant is often quite different. Most of the matters which come before this complaint department are purely civil disputes involving no violation of the criminal law. These are not so easily dismissed. Those who take the time and trouble to lay their grievances before the state's attorney's office do not take kindly to the suggestion that nothing can be done. It is the task of the assistant state's attorney to make this clear without offending. A lack of tact and patience in dealing with this problem can make more enemies for the state's attorney than any other activity of his office, for no other unit comes in contact with so many people. Some very difficult situations arise from the attempts of the assistants to point out that no criminal offense is involved. The complainant who is told that he has no case quite often becomes angry and declares that the state's attorney's office is "fixed" when the assistant refuses to proceed with the case. The writers have seen such accusations made time after time in cases which clearly involved no criminal offense whatever, and the as-

sistant state's attorneys in these cases have patiently borne unfriendly accusations.

Perhaps two of every ten complaints which reach the complaint department seem to the men there to have some merit. The procedure is approximately that which was followed in the incident related above. If they are first presented by mail or telephone, the complaining witness is requested to come in for questioning before any further action is taken. When the personal interview indicates that some criminal offense has been committed, the assistant who hears the story makes a brief record of the case giving the names of the complainant and accused and a brief statement of the facts as told. The witness is then requested to return at some specified time, usually a week later, at which time the accused is also called in, and the two parties appear and argue the matter before one of the assistant state's attorneys in the complaint department.

This department is not officially a collection agency to recover money unlawfully taken, nor is it a court having the official duty to sit in judgment and render decisions on cases which come before it. Nevertheless, in most of its work it acts in these two capacities, and a very large part of its cases are finally disposed of when the assistant state's attorney orders the accused to restore the money or the property which he has taken. These orders may be issued before and perhaps after the accused has been interviewed. In any event, the only instrument of enforcement is the threat that prosecution will be instituted if the order is not complied with.

A man and woman came into the office. They were man and wife although she was living apart from him under an order for separate maintenance. He had been giving ten dollars a week to her attorney, who in turn had kept most of the money instead of giving it to her. The assistant state's attorney in charge of the complaint department sent the lawyer a letter ordering him to pay over the money immediately. Nothing further was heard of the case.

Another case illustrates well the variety of activities in which this department engages and the extent to which it brings about a final settlement. The complainant was a laundry truck driver who worked on a commission basis. He collected the laundry from customers and turned it over to a man who operated a laundry establishment. At the time in question the driver owed the owner of the plant thirty-six dollars. The driver appeared at the state's attorney's office on Wednesday afternoon and stated that on Monday morning he had collected sixteen bundles of laundry to be delivered on Wednesday morning, but that the owner had refused to return the laundry

until the thirty-six dollars was paid. The assistant state's attorney immediately called the owner, telling him that this constituted larceny by bailee and ordered him to release the bundles. The owner called his lawyer who in turn called the complaint department to hear the story told again. The assistant told the attorney to have the laundry released and offered to send the driver to negotiate with him concerning the settlement of the debt. Almost as soon as the driver had left the state's attorney's office, the lawyer called back and agreed to release the bundles immediately.

It is easy to see how much time and effort was saved by this direct, although extra-legal, approach to the situation. If the assistant had waited, the police would have been required to listen to the complaints of the sixteen laundry customers. Warrants probably would have been issued for the driver and the laundry owner, and these as well as the sixteen witnesses would have found it necessary to appear in the municipal court on the following morning. It is altogether probable that the eventual settlement would have been exactly the same.

Case after case might be related in which the complaint department concludes that one person has taken money or property which belongs to another. These are cases in which a criminal statute clearly has been violated and for which the law provides definite punishment by fine or imprisonment. Nevertheless, the order for return of the property taken seems to be a much more common disposition in cases of this type which come to the complaint department than is the penalty prescribed by statute.

Of course there are many cases coming to the complaint department which call for more drastic action than a mere order for restitution. Perhaps the accused refuses to heed the order of the complaint department; perhaps it is thought that he will leave the state if he learns that the state's attorney's office has heard of his misdeeds; perhaps it is necessary to investigate the case more thoroughly or to wait for further complaints against the same offender before any action can be taken. Under such circumstances the complaint department may give the complaining witness a recommendation that a warrant be issued for the arrest of the offender. If so, it sends him to the warrant clerk and the judge of the felony court who issues such warrants. It may call in the investigation department and conduct a raid to seize the offending parties and their records. In the case of fly-by-night bucket shops the complaint department usually accumulates a few complaints and then raids the office and takes the records. The business disappears and no further action is taken.

Small loan companies, fake collection agencies, second hand furniture dealers, and many other types of business concerns are often the subjects of these raids. If the evidence justifies, a prosecution is instituted; if not the matter is dropped.

Whatever may be the type of case which is involved, the function of the complaint department is that of determining whether or not a crime has been committed, and, if so, whether or not a criminal prosecution ought to be initiated. The records which it makes are for its own use only and when the case is passed on to some other cog in the machinery of justice, the complaint department gives it no more attention. It almost never learns whether the accused is arrested or what happens if the case gets to trial. The statements which may be made by both the complaining witness and the defendant to the men in the complaint department are not taken down nor used in any way in the later stages of the proceeding. The record of the case made in the complaint department is filed away and used only by it to determine whether or not the person complained against has been accused before. It is of no assistance whatever in most cases to the other departments of the state's attorney's office.^{5b}

Furthermore, the decision of the complaint department not to prosecute is practically final. It is very seldom that an appeal is taken to the first assistant state's attorney, and even then the decision of the complaint department is almost never over-ruled. If the complaint department refuses to push a case which is brought before it, there is little if anything for the complainant to do except to drop the matter. The discretion of the complaint department is almost unlimited and uncontrolled.

VI. THE SOCIAL SERVICE DEPARTMENT

The name social service department is a euphemism for the division of the state's attorney's office which makes all investigations and prepares the cases involving sex crimes. The department consists of three women who are members of the state's attorney's office and one policewoman who is detailed from the Chicago police department. It participates actively in approximately five hundred investigations a year, about half of which result in indictments which are tried in the Criminal Court of Cook County. Bastardy cases or misdemeanor cases involving sex matters which arise within the

^{5b}Since this paragraph was written some changes have been made, and at the present time the complaint department does send a memorandum to the felony court in cases which it sends up. One interesting suggestion has been made concerning the reason why no defense statements are taken here. If some statement were recorded, the accused would have to be warned that his statements might be used against him. Consequently, he would not talk freely.

city of Chicago are sent to the domestic relations branch of the Municipal Court of Chicago and this department does not participate.

These cases reach the social service department from a number of different sources. Many of them have been taken to the police department first and referred by the police to the state's attorney's office. Many of the complaints are brought directly to the state's attorney's office and there are referred to the social service department. In some of the cases the complaining witness applies at the felony court for a warrant without taking the matter to the police or the social service department at all, but these are referred back to the social service department for investigation and report, and usually the warrant is refused unless this department recommends that it be issued.

In view of the fact that the complaining witnesses in these cases are almost invariably women and children, they are interviewed alone by the women of the social service department who question them and record their statements. These statements are usually taken before the case gets as far as the preliminary examination stage. The defendant, also, is questioned, and a field investigator makes an investigation of the social background and history of both the complaining witness and the defendant.

The members of the social service department are not attorneys and do not appear in court proceedings which involve cases which they investigate. They confer with the judges and with the members of the state's attorney's staff who take charge at the various stages of the process of prosecution and the written statements of the witnesses form the basis of the direct examination when the case comes to trial. The records of these cases are well kept and, unlike the complaint department which pays no further attention to cases which go from it to some other part of the state's attorney's office, the social service department keeps a very close check on every step in every case which has passed through its hands. If the grand jury fails to indict, if the case is *nolle prossed*, or if the defendant is acquitted when the case comes to trial, this department makes a thorough inquiry to determine why the prosecution failed and the reasons are noted in the case file.

These cases in which the women of this department participate are practically the only cases in the criminal courts, except, of course, the sensational ones which are specially assigned, in which each prosecution is followed through by some one agency which definitely assumes responsibility for seeing that the matter is properly handled at all stages.

(To be continued in the next issue)