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## Prosecuting Attorney: The Process of Prosecution

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# THE PROSECUTING ATTORNEY: THE PROCESS OF PROSECUTION

NEWMAN F. BAKER<sup>1</sup> AND EARL H. DE LONG

*[This concludes the authors' study of this topic, begun in the May issue, pp. 3-21]*

## VII. THE PRELIMINARY EXAMINATION

After the investigation of the alleged felony is completed, if it is decided that the suspect ought to be prosecuted, the matter will come before the felony court. This is a branch of the Municipal Court of Chicago and holds its sessions in a room in the Cook County Criminal Court House. It is presided over by one judge, who may be changed each month, and his duties are (1) to determine whether or not warrants shall be issued in cases in which a complaint of felony has been made, and (2) to conduct the preliminary examination of all persons arrested for a felony committed within the city of Chicago.

The only member of the state's attorney's office who has any part in the issuance of warrants for the arrest of persons accused of felony is the warrant clerk, who is a Chicago police officer detailed to the prosecutor's office. His office adjoins the room in which the felony court sits, and every application for a warrant involving a felony committed within the city of Chicago must be presented to him. If the complaint has been heard and approved by some other unit of the state's attorney's office—the investigation department, the complaint department, the social service department, or some assistant state's attorney who is specially assigned to the case—a recommendation to that effect will be sent to the warrant clerk, and almost as a matter of course he fills out the warrant form to be placed before the judge. He almost always refuses to fill out the form if some other unit of the prosecutor's office has refused to recommend a warrant.

Many of the requests, however, are presented directly to him without any hearing by the prosecutor's office by persons who may have been sent by the Chicago police department or who have come directly of their own accord. In these cases he proceeds or refuses to fill out the warrant form to be filed with the judge as his own inquiry into the facts of the case may lead him to decide. If there is

a doubt, the problem is passed on to the judge or referred back to one of the investigating units of the state's attorney's office.

All persons applying for warrants for the arrest of persons whom they accuse of committing a felony within the city of Chicago must appear before the judge of the felony court. He usually asks them a few questions and makes his own determination whether or not the warrant shall be issued, regardless of any previous recommendation by the prosecutor's office. If he approves, he signs the warrant and it is numbered and sent to the detective bureau to be served. If he refuses to sign, it is torn up and thrown away.

After the person accused of a felony has been arrested, with or without a warrant, as the case may be, he is brought before the judge of the felony court for a preliminary examination to determine whether or not he shall be bound over to the grand jury. As a general rule, two or three assistant state's attorneys are assigned to this court room to conduct the prosecutions in these preliminary hearings, which average about five hundred a week.

As in prosecutions for misdemeanor cases in other branches of the Chicago Municipal Court, the assistant state's attorneys know nothing whatever about the case when it comes up except the brief statement of facts which appears on the complaint sheet sent up from the clerk's office on the morning of the day the case is to be heard. If a police officer, either from the state's attorney's staff or from the city police department, has worked on the case, he is usually present to testify, but only in the rarest instances does the court receive the benefit of any study which may have been made by an assistant state's attorney.

The preliminary hearing itself is a rapid, jumbled proceeding. The defendant and his attorney, the witnesses, the police officers, and the assistant state's attorneys all stand in a huddle around the judge. The judge and the prosecutors all ask questions of witnesses and defendants with little regard for the rules of evidence, and from the resultant mass of leading questions, hearsay evidence, opinions, and competent testimony the judge learns what crime is charged and decides whether or not there is probable cause for holding the accused over to the grand jury. The prosecutors in this court can hardly be said to prosecute. Their lack of acquaintance with the cases and the witnesses prevents them from framing their questions to outline and present effectively the salient features of the case. The judge knows as much about the case as they do and consequently he usually makes his own inquiries.

The cases which come before this court involve, of course, the whole range of the criminal code provisions defining felonies. The dispositions made may be classified as follows: (1) discharged; (2) continued pending settlement between the defendant and the complaining witnesses, with agreement that case will be dismissed when this settlement is reached; (3) change of charge and sentence on misdemeanor charge immediately; (4) bound over to the grand jury.

The felony court is no more of a collection agency under the law than is the complaint department of the state's attorney's office, but nevertheless as in the latter agency, a surprising number of the cases involving offenses against property are compromised and discharged when the defendant makes restitution. Time and again, also, the judge of the felony court changes the charge to a misdemeanor and sentences the defendant immediately, or perhaps he continues the case with the promise that only a misdemeanor sentence will be imposed if the case is settled to the satisfaction of the complaining witness.

These are phases of the operation of this particular step in the process of prosecution which do not appear in the records, for only the briefest accounts of the disposition of the case are kept by the clerk of the court. The entire procedure depends solely upon the discretion of the judge and the prosecutor assigned to the court. In practically all of these cases which are settled or reduced, the assistant state's attorney approves the settlement. Few if any of the judges who sit in the felony court will make any such compromise over the vigorous protest of the prosecutor.

In practically all of the cases which are heard in this court the questioning by the judge and the prosecutors brings out the stories of both the complaining witness and of the defendant. Yet, while there is usually a court reporter in the court room, the writers have not seen any record made of any of the testimony given in any of these cases. In most of these hearings the defendant tells his story quite freely while under oath, but no record whatever is made to be passed on to those who prepare and present the state's case when the matter comes up for trial.

The preliminary hearing is not very different when it is held before a justice of the peace in the outlying districts of Cook County. Three assistant state's attorneys divide among themselves the part of the county which lies outside of Chicago. Each makes the rounds of the justice courts, and attends and prosecutes in preliminary hearings whenever the justices of the peace happen to remember to notify

the office of the state's attorney that the hearing is scheduled. Since the assistant state's attorney is a lawyer and the justice of the peace usually is not, the prosecutor may dominate these hearings somewhat more than in the felony court in Chicago. He determines, with practically unrestricted discretion, whether or not the case shall be compromised and settled, or perhaps reduced to a misdemeanor within the jurisdiction of the justice of the peace.<sup>8</sup>

#### VIII. RELEASE ON BOND

If it is decided at the preliminary hearing that the accused ought to be bound over to the grand jury, the presiding magistrate will fix the bond of the accused, unless the offense is one in which the laws of the state do not permit release on bond. Consequently, the next step to be taken by the accused after the preliminary hearing is that of finding someone to "go his bond." He may, of course, put up the amount of the bond in cash or negotiable securities borrowed from his friends, but in practically all the felony cases in Cook County the security offered is real estate. Before the accused will be released, that security must be investigated and approved by the bond department of the state's attorney's office, a unit consisting of two assistant state's attorneys, six clerks, and two police officers who act as investigators. It has the task of determining the value of any particular parcel of property which may be scheduled by a surety and of finding whether the incumbrances upon this property are such that it is not adequate security. If an indictment is returned, the grand jury usually fixes the amount of the bond at a figure somewhat higher than that established at the preliminary hearing, and the accused must get the approval for the additional property scheduled in exactly the same way before he will be released.

#### IX. INDICTMENT AND PREPARATION OF THE CASE

After the preliminary examination, while the accused is negotiating for his release on bond, the complaining witness and the other witnesses, usually including the police officer who has investigated the case, go from the felony court to the waiting room outside of the grand jury chamber. After spending some time here, perhaps several hours, another assistant state's attorney who has had

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<sup>8</sup>The City of Evanston has its own municipal court which holds the preliminary examination in all felony cases and which tries all misdemeanor cases arising within the city. The assistant state's attorney who is present at these cases seems to take a more active part than his colleagues in other parts of the county.

no previous contact whatever with the case will take them before the grand jury and question them concerning the alleged offense. If the prosecutor decides from his examination of the witnesses that an indictment ought to be returned, it is likely that the grand jury will follow his advice. Likewise, if he suggests a *no bill*, it is probable that the grand jury will not indict. The fact that the average amount of time per indictment is fifteen minutes indicates that the grand jury usually serves only as the prosecutor's rubber stamp. The exercise of discretion which is involved in this step of the process of prosecution, as in most of the other stages, operates with little restriction or control, except in those cases which are sensational enough to command public attention.

Generally, no record is taken of the testimony which is given before the grand jury, and since no written record of the case has been prepared at any of the preceding stages through which the case has passed, it is necessary that some account of the crime alleged be taken down for the use of the man who must prosecute the matter in court.

The witnesses are sent from the grand jury room to the preparation department, consisting of two assistant state's attorneys and four stenographers, where another man to whom the case is entirely new again questions the witnesses and dictates a statement of the story told by each. This is usually signed but not sworn to by the witness who is questioned. The stenographer's transcription, without any proof reading by the assistant state's attorney who dictates it or by the witness who tells the story, is then bound with a copy of the indictment and other documents relating to the case and placed in the file room of the state's attorney's office, under the charge of three clerks, where it remains until the case is called for trial.

The assistant state's attorney who prepares this statement of the case writes out, at the same time, a brief statement of the essentials of the offense involved and sends it to another assistant state's attorney and two stenographers who, together with the prosecutor assigned to the grand jury, constitute the grand jury and indictment department of the state's attorney's office. Here the indictment itself is prepared and sent back to the grand jury which returns it in person to the chief justice of the Criminal Court of Cook County after it is signed by the foreman of the grand jury and the assistant state's attorney who was present at the grand jury hearing.

## X. THE TRIAL OF THE CASE

All persons who are brought to trial for felony committed within Cook County are tried in the Criminal Court of Cook County, unless the matter happens to come within the jurisdiction of the Juvenile Court of Cook County. The Criminal Court meets in seven branches, all of which sit at the Cook County Criminal Court House in which the main office of the state's attorney is located. Two assistant state's attorneys are assigned to each of these branches of the criminal court except that of the chief justice to which three are usually assigned. It is the duty of these teams to take charge of the prosecution of all criminal cases coming up within their particular court room except those cases which have been made special assignments. If a case moves from one court room to another, it is handled by different assistants each time.

Along in the afternoon each day, the office of the clerk of the criminal court makes up the call sheet for the following court day and sends a copy of it to the file room of the state's attorney's office. Here the clerks find the case files which generally have not seen the light of day since the preparation department took the statements of the witnesses. They send them to the docket department of the state's attorney's office where they are placed in boxes for the respective assistant state's attorneys in whose court rooms they are scheduled to come up. Each assistant can get his assignment for the following day about four o'clock in the afternoon, and some of the men conscientiously attempt to learn something about these cases with which they have had no previous contact whatever. Most of them pay little attention to any case until it actually confronts them in court on the following morning.

If the case is called for the first time, it will come up in the court of the chief justice of the criminal court. He may hear it if it involves a plea of guilty or a bench trial, or he will assign it to some other judge. It may or may not be continued, although it is probable that there will be one or two continuances, and perhaps many more. In all of this routine relating to continuances, assignments, and similar matters, the state's attorneys play very little part, although they can but seldom do raise their voices in objection to some determination of the judge or request of the defense attorney.

The discretion of the prosecutor is no less at this stage of trial in the process of prosecution than it is in the previous stages. Here the tremendous power of the *nolle prosequi*, the motion to strike with leave to reinstate, the power to grant immunity to one man to

induce him to testify against his accomplices in a crime, or the intentional injection of error into the records of the case can be employed for or against the public interest, as the case may be. It is here that the prosecutor can agree to permit a defendant to plead guilty to a lesser offense than that charged in the indictment, or he may agree not to object to a motion for probation. All of these are matters over which the trial judge has full control, it is true, but as the criminal courts operate, the recommendation of the assistant state's attorney on these matters seems likely to be controlling. This is the stage at which the lack of preparation and the lack of adequate experience and ability on the part of the assistant state's attorneys are paraded most openly.

When these cases come to trial, the statements of the witnesses dictated and recorded by the preparation department are the basis for the direct examination by an assistant state's attorney who has hardly seen the case file before he picks it up to ask the first question. Almost the only exceptions to this statement among the non-publicity cases are those which have been investigated by members of the social service department, who insist on discussing its cases with the assistant state's attorneys who have the responsibility for presenting them in court.

These men who are assigned to the criminal court rooms are permitted to work with a high degree of freedom and independence. They are responsible only to the first assistant state's attorney, and his supervision consists largely of a glance at the brief daily reports which they turn in showing the disposition of the cases which were tried in their respective court rooms that day. There seems to be no effort whatever to maintain a continual, personal check on these men or to actually watch them at work in the trial of their cases. On certain vital matters, such as important compromises or the entry of a *nolle prosequi*, they are required to obtain the approval of the first assistant, but there is no concerted attempt to watch and correct the mistakes which they may make in the trial of cases.

#### XI. PREPARATION OF BRIEFS IN APPEALS

The brief department of the state's attorney's office is a unit which never receives public attention of any sort, and yet its work is obviously a matter of the greatest importance. The man in charge of the brief department is a colored man, Edward E. Wilson, who has been in the office of the state's attorney for over twenty years, serving in this capacity under five different generations of prosecutors.



He is the criminal law expert of the state's attorney's office and all the members of the staff come to him for assistance on any intricate questions of criminal law which may arise. It is his task, of course, to examine the record in all cases which are appealed and to write the briefs to be presented to the Appellate or the Supreme Courts of Illinois.

To assist him in the work of the brief department, he has one assistant state's attorney who aids in writing briefs and who is also called upon for assistance by the indictment department in the drafting of difficult indictments. In addition, there is one clerk and an assistant state's attorney who spends part of his time assisting in the preparation of briefs and part in appearing on motions before the first district Appellate Court of Illinois.

In view of the fact that the Illinois statutes require the attorney-general of the state to represent the state in criminal appeals, the briefs which are prepared in the office of the State's Attorney of Cook County are sent to the Attorney-General of Illinois, who prints his name on them without further revision, and submits them to the Supreme Court of Illinois. These cases are seldom argued orally by the Cook County prosecutor's office.

## XII. SUPERVISION AND RECORDS OF THE OFFICE

The personnel which has been enumerated in the foregoing sections does not exhaust the list of the members of the state's attorney's staff. Two assistant state's attorneys and a stenographer, who have not been mentioned above, are assigned to all matters which arise which involve extradition or *habeas corpus*. The docket department, which keeps the records of the office, consists of five clerks. There are also two clerical employees who serve in the capacities of librarian and photostat operator, respectively. The stenographic department consists of three stenographers who are available to aid the assistant state's attorneys for whom no other such aid is provided. One clerk is assigned to the office of the first assistant state's attorney to act as a general secretary, and the office of the state's attorney himself consists of his personal secretary, an assistant secretary, and one stenographer.

The task of supervising the clerical employees of the state's attorney's office is given to the assistant secretary to the state's attorney who also acts as chief clerk of the entire office. In this capacity he is primarily responsible for the appointment of the members of the clerical staff, although his selections are subject, of course, to the

approval of the state's attorney and any members of a party patronage committee which may be permitted to participate in the distribution of patronage. It is difficult to determine just what is the extent of the authority of the chief clerk, but he appears to have a considerable amount of supervisory power. It extends only to the clerical employees, however, and seems then to concern only matters of discipline. The supervision of the actual manner and quality of the work of both assistant state's attorneys and clerical employees seems to be left primarily with the first assistant and to those who are designated as the heads of the various units which have been mentioned.

The state's attorney himself takes little part in the active direction of the office and few of the assistants on the staff have any direct contact with him. His time is devoted to political matters, to listening to the requests of "friends," to important questions of policy involved in the administration of the office, and to the few important cases which are constantly in the headlines. The actual burden of running the office devolves almost entirely upon the first assistant. If he is aggressive and competent and makes it clear that he is the boss, he constitutes a definite, responsible check upon abuses of the enormous discretion which is given to the men who prosecute at each stage of the procedure which has been described. If it happens, as has sometimes been the case in this office, that four or five men are all attempting to act as first assistant and there are no well defined lines of responsibility among the staff, the subordinate members of the staff are entirely free to do as they please and there is no central supervision worthy of the name. Even if the first assistant state's attorney establishes his authority very clearly, the lack of adequate records and staff organization may make it quite impossible for him to exercise any close control.

Most of the men who compose the state's attorney's staff have come into that office from the practice of law with some private firm, and it seems to be the tendency to run this office in about the same manner as a private firm, that is, without any well defined administrative organization and with the understanding that each man will handle his own tasks without any close control and supervision by his superiors. Such supervision and control as may be given seems to be directed primarily at the work of the more able and experienced prosecutors who prosecute the specially assigned important cases. In other words, it is directed at the points where it is least needed, while the bulk of the work of prosecution is given to the less brilliant,

less able members of the staff and receives very scanty attention from any supervising officer.

It is true, of course, that the first assistant state's attorney is the man to whom all members of the staff come for assistance and advice on important matters. It is understood that the entry of a *nolle prosequi* must have the permission of the "front office" and that major compromises must be approved. It is true, also, that the first assistant looks over the criminal court call each morning when he enters his office and calls in the man assigned to any case upon which he wishes to make some comment. Obviously, however, the hour between nine and ten is hardly long enough to permit him to have conferences on very many of the cases coming up in seven branches of the criminal court on that morning. The records of the preceding day's prosecutions, which come to his desk each morning are merely the briefest tabulations of the charge and the disposition of all cases handled, both in the criminal court and in the municipal court. He cannot possibly do more than glance over these sheets. If some particular disposition, perhaps an acquittal in a jury trial, happens to strike his eye, he may call in the assistant involved and request an explanation. Neither he nor any other member of the office makes any systematic tabulation of the work of these prosecutors. Their record in the "front office" exists almost entirely in the memory of the first assistant.

On the specially assigned cases, the prosecutor assigned may keep some sort of complete file and record of the case. The only records which are kept in other cases are the case file which contains copies of the documents relating to the case and copies of the statements of the witnesses for the prosecution, and the records of the docket department which include only an index of the cases by the defendant's name and by indictment number and a very brief statement of the disposition of the case at each stage of the prosecution through which it has passed. This department also makes a monthly tabulation of the work of the office but as a statistical analysis of the work of the office, either in the aggregate or as individuals, this summary of types of offenses and dispositions is very rudimentary indeed.

Without more adequate information at his fingertips, properly summarized and organized for his quick appraisal and evaluation, it is too much to expect any first assistant state's attorney to maintain an adequate degree of control of the work of the staff. Without that control and in view of the fact that the staff is politically chosen and not particularly competent, it is almost inevitable that there should be many mistakes and abuses in the exercise of its tremendous power.

## XIII. THE COMPLAINING WITNESS

It has long been the theory and practice of English government to rest the primary responsibility for criminal prosecution with the person who has been injured by the alleged criminal act. The establishment in the United States of the institution of a public prosecutor who has the duty to prosecute all offenses which come to his attention and the corollary assumption that the complaining witness must testify are elements which imply an entirely different philosophy of prosecution. In every phase of the field of government, however, the investigator is likely to find a tremendous variance between the pictures outlined in the law books and those sketched from actual observation of the practice of government, and the subject of criminal procedure is no exception. The prosecuting officer may have the legal duty to prosecute and the complaining witness may be compelled to testify under the law of the American system but, nevertheless, there are many prosecutions in which the complaining witness is permitted to drop the proceedings as freely as he might under the English system.

Perhaps the most interesting practical modification of legal theory in this respect is found in that general class of prosecutions involving offenses against property. The dilemma which faces an assistant state's attorney in such cases presents one of the most difficult problems in the whole field of the criminal law. The political philosophy which calls for the maintenance of a public prosecuting establishment undoubtedly requires that offenders in such crimes be punished by the rules which society has decreed, but the fact remains that every prosecuting attorney in such a case is confronted with an intensely practical situation. There is a fundamental conflict between the interest of the state and that of the prosecuting witness, for in case after case it becomes painfully clear that no restitution can be forced or will be made if the prosecutor and the complaining witness push the case and obtain a conviction. As the description of the work of the complaint department of the Cook County office has already indicated, the result is that most such cases are dropped without punishment when restitution is made. Certainly the witness and the prosecutor can hardly be blamed in the great number of cases in which they make such a disposition for it is the only means by which a witness can recover his property.<sup>6a</sup> It is a most interesting vestige of the com-

<sup>6a</sup>The complainant in most cases where a warrant is issued is now required by the complaint department to subscribe to an affidavit that he will not drop the proceedings or refuse to testify in case of restitution. The effect of this affidavit is solely moral, however, and not legal. The process of compromise or dismissal on restitution goes on just the same in the prosecutor's office and in the courts.

mon law theory that criminal prosecution was a matter between the parties. Perhaps such exercises of discretion are violations of the prosecutor's oath of office but until this defect in our criminal law is remedied, too rigid enforcement of the prosecutor's obligation to prosecute all crimes may work real hardship. The absence of records makes it impossible to present any quantitative analysis of the significance of this element in the work of the office of the state's attorney of Cook County, but there is no doubt that it is a factor of importance at every stage of criminal prosecution. This consideration may result in the dismissal of the case by the prosecutor without any arrests or hearings in court. Scores of cases are dismissed at the preliminary by the magistrate when restitution is made, and in those which go to trial it is not uncommon for the witness and prosecutor to agree to a lesser punishment than the statute provides on condition that the property is returned.

It might be argued with equal validity that the same consideration for the prosecuting witness should operate to mitigate the punishment in crimes against persons. Obviously, most of these defendants in the criminal courts are judgment-proof as much against actions for damages for personal injuries inflicted as they are against actions to recover property which they have taken. Perhaps the prosecutor would be justified in dismissing the charges for offenses against persons on condition that damages be paid, but curiously enough this is not the common practice in the Cook County office.<sup>7</sup> In many of the

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<sup>7</sup>One of the exceptional cases in which dismissal of the criminal prosecution followed payment of damages in a personal injury case is described in the following story from the Chicago Tribune for July 8, 1933:

**"EX-POLICEMAN FREED ON PAYING BULLET VICTIM"**

"Roy Sullivan, who last week was dismissed from the police department after he had pleaded guilty before the trial board, was given his liberty on the same charge yesterday in Judge Harry A. Lewis' court. He was charged with having shot and severely wounded Andrew J. Gallagher, 40 years old, 2023 Lyndale avenue, a conductor for the surface lines.

"Sullivan, who, witnesses said, appeared to be intoxicated when he shot the conductor because of an argument over the 7 cents fare, settled what was called in court the 'civil liability' for \$2,500. Gallagher in return refused to prosecute the case and the charge was officially 'dismissed for want of prosecution.'

"First Assistant State's Attorney Grover C. Niemeyer said that he had sanctioned the action of his assistants, Richard Regan and Richard Devine, in allowing the dismissal order to be entered. The recommendation for the dismissal on the court records was signed by Gallagher and Attorney Thomas J. Symmes for the surface lines.

"Prosecutor Niemeyer was asked if Gallagher could not have been made to prosecute and he replied:

"I suppose we could have forced him to take the witness stand, but if he had told the jury he did not want to prosecute, it would have been a waste of time to try the case."

"Attorney Abe L. Marovitz, who represented Gallagher, said that the settlement was made because Gallagher had threatened to file a civil suit for recovery

cases involving sex crimes the complaining witnesses are children or young women whose parents are foreign-born. Such parents are usually quite eager to accept the defendant's offer to pay damages and to drop the prosecution. But such cases are almost always brought to trial if the offense is at all serious even when it takes much pressure to get the complainant to testify. It is of interest to note, however, that in all of these offenses, whether they involve property or persons, the state's attorney's willingness to respect the wishes of the complaining witness increases in direct proportion to his political, economic, or social position.

In spite of this concern for the interests of the victim in these property cases, it is nevertheless true that the complaining witness is the "forgotten man" in the enforcement of the criminal law. It is not that the members of the state's attorney's staff are discourteous. Extensive observation of the operation of the office indicated that in all of their personal contacts with the public the members of the office were most courteous and considerate. The difficulty lies in the procedure which has been described in foregoing paragraphs. The poor witness is juggled about the criminal court building from one office to another, telling the same story over and over to the assistant state's attorneys in the different departments which have been described, and even after the prosecution is actually started, the witness may drop his personal affairs time after time to journey to the Criminal Court Building only to find that the case is continued. The following story from the Chicago Daily News may not be typical but it is an excellent illustration of what can happen:

"SEES FIRST LADY, MISSES COURT, SO IT COSTS HER \$10"

"The experience of Mrs. Edward Alt, 1528 Farwell avenue, with the Criminal court, where she has sought to prosecute two men accused

of damages for his injuries. He said that Gallagher was paid from money which Sullivan obtained as a refund from the pension fund after he was dismissed on his plea of guilty last week.

"October 24, 1932, Sullivan, in plain clothes, boarded a north bound Halsted street car at Clybourn avenue. Gallagher, not knowing him to be a policeman, asked for his fare. Sullivan then announced his identity, but did not produce any credentials.

"The conductor made several requests for the fare and finally Sullivan paid the 7 cents. When the car reached the end of the line at Waveland avenue, the policeman whipped out his revolver and shot Gallagher twice.

"Gallagher and other witnesses, including Policeman Nicholas M. Geishecker, who made the arrest, said Sullivan appeared to be intoxicated.

"Gallagher is said to have recovered from his injuries.

"Prosecutors Regan and Devine said that the full facts were presented to Judge Lewis before he allowed the dismissal order to be entered."

of robbing her home five years ago, left her somewhat dazed today as Judge Harry Miller ordered her to pay the costs of an attachment issued against her yesterday when she failed to appear in court.

"Thirty times Mrs. Alt has journeyed to the Criminal Court to testify against the two men, Louis Arnold and Max Berman, only to find that the case was continued each time. Yesterday, believing another continuance would be given, Mrs. Alt went to A Century of Progress to see Mrs. Franklin D. Roosevelt.

"When the case was called and Mrs. Alt was found to be absent, Judge Miller issued an attachment, calling for her appearance to show cause why she should not be held in contempt of court.

"Today, appearing in answer to the attachment, Mrs. Alt was told by Judge Miller that she would have to pay the cost of its issuance, slightly more than \$10. Then he transferred the case back to Chief Justice Philip Sullivan, who reassigned it to Judge Joseph B. David. The next scheduled hearing is Tuesday."

"Mrs. Alt said she would pay the costs."

The effectiveness of the prosecutor's work depends upon the willingness of the public to aid him, and it is not at all unusual for prosecuting officers to complain of the lack of public cooperation. When these are the requirements of "cooperation," it is quite evident why it is not always willingly given. Undoubtedly this particular story is an exaggeration of the average demands upon the complaining witness in Cook County, but in any event those demands are unreasonable. He must appear at the police station, at the complaint or investigation department of the state's attorney's office, at the felony court, before the grand jury, before the preparation department of the state's attorney's office, and in court every time the case is called and continued. The result is that the busy responsible citizen often prefers to suffer real injury in silence rather than get "mixed-up" with a criminal prosecution and the very citizen who would make the best witness quite often will go to great lengths to avoid the discomforts attendant upon cooperation with public prosecutors.

#### XIV. CONCLUSION

It seems desirable as we end this description of the organization and routine of a metropolitan prosecutor's office, to reiterate some of the qualifications which were set forth at the outset of the discussion. There has been no attempt in these observations to find or investigate questionable cases nor to determine whether or not there have been corrupt commissions or omissions in the performance of

the duties of the office. Moreover, there has been no effort to assess the competence of the individual members of the staff, to learn whether a smaller staff might suffice, nor to make constructive suggestions for the reorganization of the office. These are matters which require an administrative survey of a more detailed character than the present investigation. It must be repeated, also, that the specific figures appearing throughout the discussion are indicative only, for assignments of work are necessarily subject to wide variation from day to day as the demands on the resources of the office may change.

It seems quite clear that the work of the Cook County office under the present incumbent, Mr. Courtney, has been far above the average, as measured by recent administrations. The fact that Chicago is now "wide-open" with respect to vice and gambling implies that the state's attorney at least tolerates—with or without profit to himself—violations of the law which his office has the power to reduce if not to end.<sup>8</sup> But in respect to major crimes, particularly automobile theft and racketeering, his record has been highly commendable. Nevertheless, the fact that the performance has been better than usual does not hide certain obvious weaknesses in the organization and administration of this governmental agency. Perhaps the present state's attorney has so inspired his staff with a sense of public responsibility that reorganization would not increase the effectiveness of the work. The present inquiry has no objective evidence to present to prove the contrary. Whatever may be the case at present, however, it is quite apparent that the opportunities for abuse and inefficiency are numerous.

The outstanding weaknesses which have been noted in the description may be summarized as follows:

(1) The records of the office are entirely inadequate in that they do not give sufficient history of the case nor make available to each man who handles the case the accumulated information gleaned by those who had some contact with it before him.

(2) In the great majority of cases the prosecutor who is assigned to take charge in court has made no preparation. He has never interviewed the witnesses and his first acquaintance with the facts comes when he glances over the case file in the court room just before the case is called.

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<sup>8</sup>At the moment this note is written, the Chicago police department is busily engaged in closing gambling establishments. The writers suspect that motives other than a desire to enforce the law have prompted this crusade, and they have grave doubts that the gambling joints will still be closed when this part of the article is published.



(3) There is a lack of supervision of the work of the members of the staff. The absence of adequate records makes supervision difficult, of course, but even aside from this the state's attorney himself and his first assistant tend to watch carefully the prominent cases which are given to the ablest assistants and to pay little attention to the great bulk of the cases which go to the less experienced prosecutors. Recognition of merit by the "front office" depends so completely upon the lucky opportunity to handle a "publicity" case that there is little incentive to do the routine work well.

A plausible explanation for the existence of these conditions has already been given—the tendency to carry over from private practice into the prosecutor's office the decentralization and individual responsibility which characterize the operation of the private law firm—and undoubtedly a strong argument can be made to the effect that the task of criminal prosecution is not a ministerial, clerical job which can be minutely supervised. Nevertheless, granting that large discretion and individual responsibility are inevitable, the political complexion of the average prosecutor's staff and the multitude of temptations arising from criminal practice make it advisable to reduce discretion and independence of action to a minimum.

Certain other tendencies in the operation of the Cook County office were noted in passing and are clearly of sufficient importance to deserve a brief restatement here:

(1) There is a very definite inclination, probably unintentional and unrealized, to permit the prosecutor's responsibilities in misdemeanor cases before the Chicago Municipal Court to atrophy. These cases move so rapidly and the assistant state's attorney is so completely unacquainted with most of them that his work is done by the police and the judge. It is not too much to expect that sometime in the future the responsibility for the prosecution of these misdemeanor cases will be taken away from the office of the state's attorney and given entirely to the police department.

(2) In respect to felonies the tendency is quite the other way. Here the state's attorney is gradually increasing his powers and responsibilities by holding vigorously to all of his power under the law to prosecute and, in addition, encroaching upon the functions of the police by assuming control of the criminal investigation itself in most important cases. Whatever may be his powers and duties under the law, the state's attorney of Cook County, from a practical standpoint, is undoubtedly the official whom the public now holds primarily responsible for criminal justice.

(3) Because the civil courts do not afford a remedy adequate to insure that the victim of a crime against property will recover his property, it is the practice of the state's attorney's office in a very large proportion of such cases—how many it is impossible to say—to drop the criminal proceedings upon restitution or, at least, to consent to a lighter sentence than the law provides. Thus in countless cases an uncontrolled assistant state's attorney takes upon himself judicial functions of great importance.

These are the elements which seem to stand out in the description of the process of prosecution as it is administered in Cook County. The preparation and presentation of the usual criminal case is treated much like the building of an automobile which moves along on an assembling belt. One man puts on a bolt; his neighbor tightens it; a third puts in tacks with his thumb while the next man pounds them in, and so on. The criminal case goes from one prosecutor in the complaint department to another in the felony court; a different man presents the case to the grand jury; another takes the statements of the witnesses; still another presents the case in court—perhaps four or five different prosecutors handle it in court before the string of continuances is ended and the case actually tried; and a different man prepares the briefs upon appeal. There the resemblance ends. The assembly of the automobile is a mechanical process. Each man who participates can see before him the sum total of the work of those who preceded him. The product is inspected and tested by some responsible person before it is called finished. The development of the criminal case, on the other hand, constantly involves a variable human factor and uniformity is completely lacking. Each man who participates adds his particular part without knowing much of anything about the contribution of his predecessors. No one inspects the product. If a conviction is obtained, it is deemed perfect. If something goes wrong, perhaps someone will inquire for causes—perhaps not. When one must add to this faulty administrative process those other factors which have previously been dwelt upon—political considerations, non-criminal activities, low quality personnel, and the wide discretion—which characterize every office, large or small, it becomes evident that even the present inadequate results of the machinery of criminal prosecution are much better than we have any right to expect.