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Prosecuting Attorney and Reform in Criminal Justice

Newman F. Baker

Earl H. DeLong

THE PROSECUTING ATTORNEY AND REFORM IN CRIMINAL JUSTICE

NEWMAN F. BAKER* and EARL H. DELONG†

From time to time during the past three years this Journal has published the comments of the writers on various aspects of the office of prosecuting attorney in the United States and the relation of that office to the process of criminal prosecution.[1] This chapter is intended to be the conclusion of this series. As such, perhaps it should be simply a summary of what has been found or suggested in previous articles, but it seems more appropriate to discuss the office of prosecuting attorney in its relation to the broad general problem of the improvement of the whole process of criminal law administration.

We retract no part of the estimate, suggested frequently throughout this series, that the office of prosecutor is the central force which gives tone and momentum to the creaking movement of our criminal justice machinery. There can be no doubt that where the prosecutor is strong offenders are caught and convicted, but where he is weak the best of machinery fails completely. Perhaps this reflection should lead to the conclusion that our whole problem can be solved by concentrating exclusively upon the prosecutor's office—by rehabilitating it to make high quality the rule instead of the exception. Nevertheless, our study of the prosecutor's office indicates that the problems

*Professor of Law, Northwestern University.

†Instructor in Political Science, Northwestern University.

[1]The following is a complete list of preceding articles by the authors on the general subject of the prosecutng attorney. "The Prosecutor—Initiation of Prosecution, 23 J. Crim. L. 770-796 (Jan.-Feb., 1933); "The Prosecuting Attorney: Provisions of Law Organizing the Office," 23 J. Crim. L. 926-963 (Mar.-Apr., 1933); "The Prosecuting Attorney: Powers and Duties in Criminal Prosecution," 24 J. Crim. L. 1025-1065 (Mar.-Apr., 1934); "Powers and Duties of the Prosecuting Attorney: Quasi-Criminal and Civil," 25 J. Crim. L. 21-52 (May-June, 1934); "Powers and Duties of the State Attorney General in Criminal Prosecution," 25 J. Crim. L. 358-400 (Nov.-Dec., 1934); "The Prosecuting Attorney and His Office," I, 25 J. Crim. L. 695-720 (Jan.-Feb., 1935); "The Prosecuting Attorney and His Office," II, 25 J. Crim. L. 884-901 (Mar.-Apr., 1935); "The Prosecuting Attorney: The Process of Prosecution," I, 26 J. Crim. L. 3-21 (May-June, 1935); "The Prosecuting Attorney: The Process of Prosecution," II, 26 J. Crim. L. 185-201 (July-Aug., 1935); "The Prosecuting Attorney: Legal Aspects of the Office," 26 J. Crim. L. 647-678 (Jan.-Feb., 1936). In addition two articles, published in other journals, should be listed: Baker "Some Problems of Criminal Prosecution," 14 Ore. L. Rev. 153-164 (December, 1934) and DeLong "Which Man for the Job?," State Government, March, 1935, pp. 64-8.

of criminal justice require a major operation which must include not only the prosecuting office but also the whole machinery of which it is only one part. It is not intended that this discussion shall analyze in detail all the phases or implications of any such drastic change. Our purpose is to survey briefly some of the alterations, both major and minor, which are attempted or proposed from time to time, and especially to consider the relation of the office of prosecuting attorney to these possibilities.

The Failure of Procedural Reform

For the last twenty-five or thirty years it seems that those who would improve the administration of criminal justice have singled out as the particular object of attack the so-called "technicalities" of criminal procedure. To this great sector of public hopes and civic efforts this series of articles has given almost no attention, not because it was overlooked, but rather because it has become clear that most of the effort devoted to legislative reform of criminal procedure has proved futile. We think this to be true, first, because it has accomplished relatively few important legislative changes and, second, because the Crime Surveys have demonstrated that our difficulties lie primarily with police and prosecuting agencies and not in the legal intricacies just preceding or during the trial itself. This conclusion of futility is by no means original with this study and to emphasize this point may seem out of place in this closing article. But an examination of the office of the prosecuting attorney necessarily has carried us deeply into the broader field of general law enforcement and more and more we were led to disapprove the general direction of reform energy, constantly being stirred up by recurring waves of crime publicity, but largely wasted in rather barren ground. Since the loss of this power affects the general possibilities of more fundamental improvement, we feel that a comment upon the failure of procedural reform is appropriate.

At the first general session of Governor Lehman's Conference on Crime, The Criminal and Society, held at Albany, New York, September 30, 1935, former Police Commissioner Edward P. Mulrooney said:[2]

"State Enforcement of the Criminal Law suffers seriously from the activities of certain types of unscrupulous politicians and the activities of unethical lawyers. It has been advocated that our Penal Law and our Code of Criminal Procedure be revamped. Such action

[2]"Proceedings of the Governor's Conference," p. 40 (1935).

has been approved by the American Bar Association and the bar associations of the several States. Committees have been appointed by the various legislatures. Little or nothing has been done except the filing of voluminous reports.

"Such procedure avails little, if it is not followed by action, and action can be taken only in the legislatures. But when such legislation as is necessary is proposed, lobbies and other obstacles are encountered, inspired from sources which are not difficult to locate."

Many will take issue with the statement that little or nothing has been done "except the filing of voluminous reports." Mr. Will Shafroth of the American Bar Association from time to time reports progress in the National Bar Program[3] and Dean Herbert F. Goodrich, adviser on professional relations of the American Law Institute, reports to that body the use of its model Code of Criminal Procedure as a guide for legislative committees seeking to modernize state law enforcement machinery.[4] While both naturally take the most favorable view of bar and legislative activities, the sum total of actual changes in the law is very small indeed.

Nor can we say that much has been accomplished to date by the crime surveys. Mr. Alfred Bettman reported to the Wickersham Committee[5] that "the surveys have sown many seeds which have already taken root" but the major contribution of the surveys—the importance of the administrative side of criminal justice—has largely been overlooked both by legislatures and bar associations and practically all recommendations for new laws have been completely ignored. One trouble with the surveys was the simple fact that they attempted to deflate the value of changes in criminal procedure, but could make few recommendations for reform in administration except to advocate generally removal of public officers from "politics," to urge the election of administrators who are "able and honest," or to point out "the importance of selecting for these positions lawyers of standing, integrity, industry, ability, and experience."[6] Little came from these elaborate surveys except to show in an academic way the relative over-emphasis of "procedural" reforms, but unfortunately that happened to be the lawyers' stock-in-trade. For many years bar associations have been led by their more progressive members to

[3] 21 A. B. A. J. 86 (Feb., 1935).

[4] 11 American Law Institute Proceedings, 62 (1933). See also the Report of the Special Committee on Model Code of Criminal Procedure of the American Bar Association, 60 Reports of A. B. A. 552 (1935).

[5] "Criminal Justice Surveys Analysis for National Commission on Law Observance and Enforcement—Report on Prosecution," p. 185 (1931).

[6] *Ibid.* p. 177.

believe that anything which made it easier to convict was a "reform." So, in spite of the surveys which show the ultimate futility of such reforms, the bar associatons have continued to ignore the administrative side of criminal law and have confined their efforts to such things as alibi and insanity notices, comment on defendant's failure to testify, alternate jurors, less than unanimous verdicts, and the like. In so doing the bar committees in effect have been butting against a stone wall for few of these recommendations ever pass through "non-lawyer" legislatures. But, since the initiative in reforming the administration of criminal justice seems to rest with the bar groups, real improvement in the field has been negligible.

A recent report[7] from the Missouri Bar Association's Committee, bearing the rather inaccurate label of *Committee on Legal Aspects of Criminology,* proves to be an excellent illustration. The report itself is well written and so thoughtfully worked out that it should be printed here in its entirety. This we cannot do but we shall try to catch the undercurrent of genuine distress contained in the report.

After several earlier attempts to correct the existing antiquated Criminal Code had failed at the hands of the Legislature, the Missouri Association for Criminal Justice was formed by high-minded citizens and under its auspices the Missouri Crime Survey (one of the best) was published in 1926. The next year there were introduced in the Missouri Legislature fifty-five bills "covering a wide range of criminal reform. All went down to complete defeat." Since then the Bar Committee has recommended and sponsored only such legislation as might be termed a "minimum of advancement for our State" and at the last session confined itself to eight changes of a petty procedural nature. All were advisable and desirable and were fully approved by the Bar's executive committee. After these eight bills were introduced, officers of the Association lobbied for them but only one was reported out of the House Judiciary Committee. Nevertheless, the Bar succeeded in getting all brought to the floor of the House for consideration. One bill was passed, though not the one favored by the Judiciary Committee, but the Senate refused to act upon it. "Pressure of other legislation, coupled with active opposition by a minority of the House prevented any further consideration of the bills."

Now the Bar Committee feels rather badly about it and can they be blamed? The bills were favored by the leaders of the State Bar Association. All had been recommended by the American Bar Asso-

[7] 6 Mo. Bar Jour. 250 (Nov., 1935).

ciation and the Missouri Crime Survey, and some of them by the Attorney General's Conference on Crime held at Washington, December, 1934. The Committee points out that the Missouri Criminal Code is "literally a product of the frontier" being one hundred years old.[8] Yet, "for the past twenty years, efforts of laymen and lawyers alike to secure improvements in the Code by legislative action have been almost complete failure."

The Committee feels all washed up. It has tried hard and wasted much valuable time "barking up the wrong tree." It has unwillingly come to this conclusion:

"We have passed the time when there is a question of what to do; the question today is, how to get it done. The published results of the Missouri Crime Survey; the work of the American Law Institute in the preparation of a model code of criminal procedure; the Attorney General's Conference on Crime instituted in 1934, the studies of the American Bar Association—all of these agencies have made available an adequate program which needs only to be fitted to Missouri conditions.

"With the record before us of almost complete and continuous defeat by the Legislature, we are forced to the conclusion that there is no immediate hope of accomplishment through that avenue. Measures recommended by the Governor to the last session of the Legislature relating to changes of venue and to the number of challenges of jurors in criminal causes met the same fate as those proposals sponsored by our Association. The Governor's recommendation that the time for appeal in criminal cases be reduced was adopted, in part, by the Legislature. To continue to push a program of comprehensive revision before the Legislature appears futile. If the voice of the Bar and the press is any criterion as to whether the action of the Legislature voices the will of the people, there can be no doubt that this attitude of the legislature runs directly counter to that of the enlightened public. It is our belief that to expect sympathetic treatment of any adequate program on this subject we might present to the next Legislature is, from past experiences, but a fatuous hope."

The Report of the Committee on Criminal Law and Procedure of the Texas Bar Association voiced the same general conclusion at the 1935 meeting at Houston.[9] It was suggested that bar recom-

[8]See Hyde "A Missouri Centennial Which Has Been Overlooked—Some Comments on Criminal Procedure and Law Enforcement," 6 Mo. Bar Jour. 101 (July, 1935).

[9]Texas Law Review—Bar Association Number—Proceedings, vol. LIV, p. 126.

mendations often were passed by the Association by the unanimous vote *of those present at the meetings* but without open opposition of those who really had negative opinions. And as to the results of the bar lobbies, Mr. Sam R. Sayers of Fort Worth graphically described the situation by saying.[10]

"I shall not discuss why they [certain bar measures] were not passed because if any of you were down there on any business, you found that your Legislature individually, and your Legislature collectively, were too busy trying to consolidate Hog Creek School with Jones Independent School District over here, or to stop the running of hot oil, or to prohibit the raising of dogs, horses and other four-footed animals, and things of that kind, to become interested in our proposition."

A Special Committee on Criminal Law and Procedure later reported back to the Texas Bar Association that,[11]

"..... as a rule, when such measures reach the floors of the two branches, they become lost in the rush and confusion incident to personal interests in hundreds of measures that universally find their way to the calendars. Furthermore, a large number of the members of the Legislature are not lawyers and know very little of what is needed in the way of reform in court procedure and law-administration. . . . For these reasons, measures pertaining to such matters fail of passage and, in fact, are rarely able to find a favorable place upon the calendars of the two branches of the Legislature."

In effect, then, we have this general situation. The chambers of commerce, civic clubs, crime commissions and voters' leagues all favor sweeping *administrative* reforms but they are largely inarticulate groups of chronic protesters. Legal changes in the field are dependent upon bar groups for concrete recommendations and bill drafting, but the bar groups content themselves with "procedural" matters which have been demonstrated by the surveys to be of much less public importance. The bar groups, however, are the ones which succeed in getting their measures before the legislatures where they are actively opposed by rural lawmakers and professional criminal lawyers[12] who are not in sympathy with the bar movements. Civic

[10]*Ibid.* p. 127.

[11]*Ibid.* p. 220.

[12]For example, when the new draft Code of Criminal Law and Procedure, prepared by a Committee of well-known and well-qualified judges, prosecutors and university scholars for the Illinois State Bar Association, was before the Illinois Legislature, it was actively opposed by Mr. William Scott Stewart who has defended scores of notorious criminals. Mr. Stewart prepared at his own expense a 23-page booklet criticizing the New Criminal Code. He claims that

groups naturally are apathetic toward the technical bar measures and lend small support and, of course, the measures usually are defeated. This cycle of frustration bids fair to continue until the bar groups are awakened to the necessity of broadening their activities beyond the present narrow confines of statute tinkering over into the more general field of governmental administration wherein a general program, attractive to the thoughtful citizen and the civic organizations, will secure widespread support. In effect the lawyer must become a political scientist.

The Use of Court Rules

While we think that a drastic reorganization of law enforcement machinery ultimately will prove necessary, we do not intend to convey the idea that we are opposed to the usual, current bar recommendations concerning criminal procedure. However, we are very much concerned with the wasteful expenditure of precious energy in channels which seem to present the minimum in concrete results. The suggestion that reform of criminal procedure will not solve our crime problem is not by any means a denial that such reform is desirable. As parts of a more comprehensive picture, many of the procedural changes which have been sought by legislative action are necessary if we are to achieve a maximum of improvement. If they are to be attained, however, it becomes more and more apparent that the method must be some alternative to legislative action. At present, the most hopeful substitute seems to be the possibility that these reforms can be accomplished by exercise of the judicial rule-making power.

It is strange that so little attention has been given to the judicial power to make rules of procedure as an easy but sure method of reform in that field. Citing the example of the Wisconsin Supreme Court rule which requires the pleading of the alibi defense in all courts of record on the day of arraignment the Journal of the American Judicature Society asks:[18]

"And why should not the host of eager criminal procedure reformers take part actively in the campaign for rule-making authorty? They have bumped their heads often enough, one would think, in their efforts to get past judiciary committees. It might be no harder to

"a trial under the [new] Code will be an idle ceremony, and the accused, guilty or innocent, will be the hopeless victim of arbitrary power."

The New Code was withdrawn by its managers in time to forestall an unfavorable vote and the Bar Association now plans a campaign of "education" before it is presented again.

[18]18:187 (Apr., 1935). See Harley "The Argument for Judicial Rule-Making," 167 Annals of the American Academy of Political and Social Science 90 (1933).

change the entire system of formulating rules of procedure than to get a single petty concession."

In a powerful editorial[14] Dean Wigmore once asserted that the legislature exceeds its constitutional power when it attempts to impose upon the judiciary any rules for the dispatch of the judiciary's duties; and that therefore all legislatively declared rules for procedure, civil or criminal, in the courts, are void, except such as are expressly stated in the Constitution. He concludes that *"the legislature has no more constitutional business to dictate the procedure of the judiciary than the judiciary has to dictate the procedure of the legislature."*

While we do not intend to go deeply into this matter it should be stated that many supreme courts by statute are empowered to make rules governing the procedure in inferior courts, though instances of the use of the power are comparatively rare.[15] And the conservative Supreme Court of Illinois recently held that in the absence of legislative enactments upon the subject the Supreme Court has inherent power to formulate rules of procedure governing such practice.[16]

Take the matter of alibi notice. It was discussed in the section on Criminal Justice of the Illinois State Bar Association and though finally approved was heartily condemned by many present. It was included in the Bar Association's Draft Code as it went to the Illinois Legislature and again was attacked. It might safely be stated that an alibi notice law, presented as an ordinary bill, would have no chance of passing, but as a *rule of court* it could easily and quietly be adopted and become as useful and effective as though formally passed by the lawmakers. Again, if the court rule outlives its usefulness it may simply be dropped in the same way that it was promulgated.

The Texas Bar Committee report, referred to above, quite frankly declared that the responsibility for making procedural rules ought to be "restored" to the courts and, if the courts can be trusted with the grave responsibility of interpreting the law, even to the extent of nullifying acts of the Legislature by declaring them unconstitutional, *a fortiori,* they could be trusted with the regulation of a mere matter of procedure. "Certainly the power to declare what the law is and what the interpretation of it shall be is greater than the power to

[14]23 Ill. L. Rev. 276 (Nov., 1928).

[15]See 13 A. B. A. J. Supplement to the March issue (1927).

[16]*People* v. *Callopy,* 358 Ill. 11, 192 N. E. 634, 25 J. Crim. L. 946 (1934). Unfortunately, while claiming the power the Court showed no disposition to use it. But court membership changes and judges often become more liberal. At least the power is there and the Court presents a good target for reform energy.

enact the mere details of procedure by which the decisions are made."[17]

Likewise, the Missouri Committee, completely disillusioned as to the possibilities of procedural reform by legislation, eagerly seized upon court rules as the only possible means of improving criminal procedure in that state. We agree with their conclusion that "it is the opinion of this Committee that the exercise of the rule-making power by the Supreme Court of Missouri would furnish the most direct and expeditious means of improving our Code of criminal practice and procedure." It is simple and direct and, as pointed out by Mr. Wigmore, it is *logical.* It is believed that one-tenth of the reform energy now being wasted in speeches, committee reports, and legislative skullduggery, if directed into this channel, would produce more lasting improvement in the field of criminal prosecution.

One other point may be discussed while we are considering an alternative method of reforming procedure. Even where the rule-making power is not used it is thought that if properly approached, supreme courts may be induced to assist in efficient criminal prosecution through liberal decisions which might supply wants unobtainable through legislation. Many members of supreme courts belong to bar associations, crime institutes, and various organizations such as the American Law Institute. Though hampered by ancient precedents and often by the political taint of election, supreme courts furnish a fertile field for reformers to attack. In the State of Illinois, for example, the Legislature for many years has steadily refused to approve changes designed to facilitate criminal prosecution. The two most important changes in the field came not from laws but from decisions which resulted from powerful arguments submitted by scholarly members of the Judicial Advisory Council. *People* v. *Fisher*[18] provided for waiver of jury trial in a felony case, upon a plea of not guilty, and for trial by the court. It has resulted in a tremendous speeding up of criminal trials with the result that in Cook County the Criminal Court with a reduced bench is now keeping up with the docket with ease instead of being months behind.[19] Even more interesting was *People* v. *Bruner*[20] which held unconstitutional a statute passed in *1827* which provided that "juries in all criminal cases shall be judges of the law and the fact." This relic of Jacksonian democracy had been interpreted and rendered immune from

[17]"Proceedings," p. 221, *supra* note 9.

[18]340 Ill. 250, 172 N. E. 723, 22 J. Crim. L. 113, 26 Ill. L. Rev. 56 (1930).

[19]Jury trials in Cook County numbered 438 in 1935 as against 1,160 in 1929. There were 191 indictments pending at the close of 1935 as against a high 1,965 in 1928. (From records of the Chicago Crime Commission.)

[20]343 Ill. 146, 175 N. E. 400, 22 J. Crim. L. 430 (1931).

constitutional attack for more than one hundred years. But, though this law doubtless would have been fought for and defended to the bitter end by elected legislators, it was effectively removed from the books by this decision. No longer can juries disregard instructions from the Court; no longer can counsel read "the law" to the juries in long-winded and confusing lectures. Now the Court may direct a verdict for the defendant. The result has been good. Where a frontal attack would have been useless the end was obtained through sheer weight of legal argument. A third case designed to secure oral instructions and comment on the evidence was presented but the Supreme Court, perhaps frightened by its over-liberality, would go no farther at the time,[21] but the success in the two favorable decisions obtained more than repaid the effort. If this means could be used to secure such needed law reforms, it naturally would release for bigger and better things a great deal of energy now largely wasted.

Reforming the Office of Prosecuting Attorney

There can be no doubt that the burden of the prosecutor would be easier if the procedure of criminal trials could be simplified and expedited, and the experience of the Missouri Bar Association is most disheartening to all who are attempting to improve this procedure. Another Missouri experience, however, contrasts sharply with this failure of procedural reform and provides an astonishing indication that courageous, competent prosecution can get results with unreformed procedure even in the face of terrific political opposition and sabotage.

At the age of thirty-one, a comparatively unknown man, Joseph W. Folk was asked by a Committee of Democrats to accept the nomination for circuit attorney, the chief law-enforcement officer for St. Louis. He reluctantly agreed and became "the accidental beneficiary of a unique combination, in that his candidacy was supported by the Democratic boss and machine, who believed him to be 'safe,' and by the reform element" as well. He barely was elected.[22] One morning he read in the papers that members of the unbelievably corrupt Municipal Assembly were selling railway franchises for money and that the money was being kept in a safe-deposit box of one of the city's trust companies. At once he began a grand jury investigation. Assemblymen, street railway officers, bankers and bookkeepers were summoned before the grand jury. They appeared with

[21]See *People* v. *Kelly*, 347 Ill. 221, 179 N. E. 898, 23 J. Crim. L. 1034 (1932).
[22]"Dictionary of American Biography" VI, 490.

good natured confidence and so many declared that "they didn't know nawthin'," that the phrase became a slogan. Everyone expected the usual grand jury flash-in-the-pan. But Folk ran a bluff against the president of the traction company and the legislative agent who negotiated the deal with the assembly. Calling them in, he intimated that he knew the whole story and gave them their choice of being witnesses or defendants at the coming trial.[23] Thinking that someone had "squealed" they decided to be witnesses for the state and so went before the grand jury and told a story of a most thorough going alliance between corrupt business and corrupt politics. Securing the indictments of seven "boodlers," Folk pressed forward despite bitter opposition and investigated three other franchise deals. In all thirty-nine indictments, twenty-four of them for bribery and thirteen for perjury, were secured, and among those indicted were twenty-one members of the Assembly and the city boss himself, Edward Butler. Forcing these men to trial, though faced with the knowledge that the Missouri Supreme Court probably would require new trials for most of those convicted,[24] Folk sent nine corrupt politicians to the penitentiary; others turned State's evidence; still others fled from justice; and all were definitely discredited. Folk's "persistence and rigid honesty" brought to his aid the better element of St. Louis and other parts of the State. Politico-moral conditions definitely improved. Folk's reward was the governorship. He served a scant four years as prosecutor and never returned to that work in his subsequent career.

If a man like Folk can accomplish so much in a State with a backward criminal code and an over-technical judiciary and in the face of terrific political opposition, it is clear that it is worthwhile to take any steps which may make courage, competence, and initiative permanent rather than spasmodic characteristics of the office of prosecuting attorney. Such efforts would not solve some of the more basic difficulties in our machinery of criminal law enforcement, but anything which improves the administration of this office will be reflected by increased efficiency in the general machinery of law enforcement.

Frankly recognizing that administration should be emphasized, even at the expense of reform of legal codes, our general recommendation in the manner of the crime surveys would be, "elect more

[23]Lawson, 9 Am. St. Trials XI.

[24]For example, see *State* v. *Butler*, 178 Mo. 272, 77 S. W. 560 (1903). The same Court later was responsible for the famous "the" reversal, *State* v. *Campbell*, 210 Mo. 202, 109 S. W. 706 (1908).

Folks and keep them in office." But, how can we keep them in office? Folk left upon his own free will to run for Governor, and had his pugnacious qualities ever been suspected *he never would have been elected prosecutor* in the first instance. So a generality such as "elect to the office of state's attorney an efficient, incorruptible, and industrious lawyer who will devote his entire time to the performance of his duties and whose conduct of the office will be as free from partisan politics as any other judicial officer"[25] is as fine a statement of our ideal as we have seen anywhere but we fear that practically it will remain only an unattainable ideal.

When we finished our studies of the provisions of law organizing the office[26] and defining the prosecutors' powers and duties[27] we thought that we might make the following concrete and practical recommendations for legislative guidance, which recommendations were deliberately limited to the very minimum for efficient prosecution:

(a) Increase salaries and terms to the point where able men would be attracted to the office and induced to remain therein for a "career."

(b) Provide sufficient funds for adequate clerical, detective and professional assistance, and for the larger offices extend the civil service laws to cover all subordinates.

(c) Relieve the prosecutor from the burdens and the distractions of the civil duties of the office.

(d) Where counties are too poor to do this, provide for the consolidation of counties into districts for criminal prosecution.

(e) Wherever possible provide for appointed prosecutors under the Connecticut system.[28]

It will be noted that we do not consider any limitations upon the quasi-judicial powers of the prosecutor in bargaining and initiating or dropping criminal prosecutions. We feel that he should retain his full discretion in criminal matters unfettered by legislation and we think that definite improvement will be apparent in criminal prosecution if the measures listed above are carried out—more "Folks" will become prosecutors and, more important, will be content to remain in office. But, a hasty examination of the session laws from 1933 to 1935 convinces us that our minimum proposals are far from becoming realities.

[25]Illinois Crime Survey, p. 331 (1929).
[26]23 J. Crim. L. 926 (Mar.-Apr., 1933).
[27]24 J. Crim. L. 1025 (Mar.-Apr., 1934) and 25 J. Crim. L. 21 (May-June, 1934).
[28]See Maltbie quotation, 25 J. Crim. L. 900 (Mar.-Apr., 1935).

The laws of the past two years definitely indicate that

(a) Salaries are being reduced rather than increased.
(b) Contingent funds and clerical assistants are being abandoned or drastically reduced; nor is extension of civil service even hinted.
(c) Most states seem to be adding additional civil duties at each session of the legislature.
(d) There is no tendency at present to consolidate counties into prosecuting districts.
(e) Nor to provide for appointment rather than political election.

As in the case of procedural reforms, we find ourselves up against the stone wall of legislative inertia. Those of us, who might humbly beseech legislators to come to our assistance, are under the handicap of having nothing to trade—logrolling still seems to be the usual method of securing the passage of laws, and we have no logs to roll. The logic of a further drain upon the treasury, in order to gain indirectly through greater efficiency in the office plus savings in the "cost of crime," never penetrates deeply if presented by a citizens' group which may not be able to carry even a single precinct if later called upon to show its gratitude. As a result we do not retract from our recommendations but, again, we desire to go beyond the depressing atmosphere of the legislature to draw attention to an alternative which may offer a legitimate return for energy invested.

Unofficial Supervision and Co-ordination

The Journal of the American Judicature Society made this further comment in the article which was quoted above:[29]

"It has occasionally been observed with reference to the propaganda for reform of criminal procedure that the leaders are law school professors who, with rare exception, have had few contacts with criminal justice as it exists in the lower courts. They learn from the reports. But the appellate courts never even hear of the cases in which juries disagree or acquit."

While we present no claim to be "leaders," we have taken this statement to heart, and throughout this study of the prosecutor's office we have sought to emerge from the "quiet cloisters of academic life" to a direct examination of the administration of criminal justice *as it is*. The recommendations set out in the preceding section represent an honest attempt to be restrained and thoroughly practical. But immediate practicality has been difficult for each further inquiry

[29] *Supra* note 13.

brings more forcibly to mind the fact that the problem of criminal law enforcement is inextricably bound up within the complexity and political disorganization of *local government.*

The prosecutor alone is not responsible for the administration of criminal justice. Innumerable other agencies may have a hand in this responsibility—the various police units of our state and local governments, the coroner, the sheriff, the clerks and court attachés, the grand jury, the relatively independent assistant prosecutors, the magistrates or justices of the peace, the trial judges, the trial juries, and the judges of the appellate courts. The weakest point in criminal prosecution comes not at the trial but in the proceedings which are preliminary to trial. The most deficient place in the whole process of criminal law administration is that shadowy area where policing merges off into prosecution. Here is the vortex of confusion where the fixer, the politician, the "criminal" lawyer, and the police court reporters have full sway. With countless city, county, state, or even federal officials, elected or appointed, independent or subservient to some political tie or obligation, all getting their thumbs into the law enforcement pie, there is no administrative unity and no personal responsibility.

Strange as it may seem, this disjointed, archaic law enforcement machinery occasionally operates quite smoothly. If this occurs, it is usually because the officers involved are united by common membership in a dominant political party or because they are whipped into a unity of action by the public press. Either of these factors can promote friction and inefficiency with equal ease and neither can be depended upon for permanent, continuous results in the co-ordination of the work of the various agencies. If the enforcement of the criminal law, from the first report of the crime to the ultimate parole of the convicted offender, is to be permanently cemented into a single process efficiently administered, that result can be accomplished only by the pressure of some really effective unofficial agency, or by extensive reorganization of the official law enforcement machinery.

The larger the community the more complex is the administration of local government and the more necessary the concentration of interest and responsibility in the enforcement of the criminal law. Given the typical diffusion of responsibility among the prosecutor, the sheriff, the police, and the coroner, the need for a well organized civic body to coordinate and investigate their work seems to increase with the size of the community. That is, it increases in the absence of willingness or ability on the part of the community to take the more drastic step of thorough reorganization. In view of the com-

plexity of the Chicago situation the work of the Chicago Crime Commission deserves comment here since it has been particularly effective and successful in the performance of this function,[30] and its work may easily be duplicated in other communities where official reorganization seems hopeless.

A sharp line of contrast divides the Chicago "Commission" from most other agencies of the same name. It consists of a body of representative civic leaders who give general direction to a full time staff which gathers data, keeps *complete* records of all criminals of the community, and watches the work of state's attorneys and judges. During the period when the crime surveys were being made, so-called crime commissions sprang up like mushrooms in nearly all the large centers of population—in fact in 1930 there were about seventy-five in existence. But most of them were merely "citizens' committees," created during the excitement of the discovery of "crime waves," and few have survived the depression. To be of real service to a community, a crime commission must be a permanent body, with supervision lodged in experienced, salaried officers, and non-political. It must have sufficient support by civic organizations to create in it the prestige necessary to obtain admission to officials and records, and, on the other hand, to give it the influence and publicity value necessary if its exposés or recommendations are to be effective.

It may be of interest to pause for a few illustrations, taken from the daily work sheets of the Chicago Crime Commission, which is the parent agency of this type. It is important to keep in mind that the following summary does not touch the routine staff activities such as recording complaints and criminal records and observing and reporting the work of public agencies. In one week the Commission may be credited with the following accomplishments:

1. It dug up some old charges, which had been "stricken off with leave to reinstate" and then lost completely by the county officers, whereby a notorious gangster, released by *habeas corpus,* was rearrested and jailed.
2. A parole violator was sent back to the penitentiary because of a report by the Crime Commission.
3. Though not a matter within the Commission's routine activities a growing neighborhood feud was brought to the attention of the police and police protection arranged for worthy citizens.

[30]See Simpson "The Chicago Crime Commission," 26 J. Crim. L. 401 (Sept.-Oct., 1935); Chamberlin "The Chicago Crime Commission: How the Business Men of Chicago are Fighting Crime," 11 J. Crim. L. 386 (Nov., 1920).

4. It prevented the illegal discharge, by use of an improper medical report, of a person charged with indecent liberties. This was done by obtaining information from the prosecutor's social service department.
5. It made a report to an insurance company of the crime record of a person applying for life insurance.
6. For a young woman who complained of abandonment by her husband it got in touch with the domestic relations division of the Municipal Court where the husband was apprehended and agreed to support her.
7. It took sides with a complaining witness in a robbery case and succeeded in having the case, previously stricken off, reinstated.
8. It listened to a prosecuting witness who now "complained" to the crime commission that the assistant prosecutor seemed inclined to whitewash the defendant, and brought the matter to the state's attorney's attention.
9. It heard a story of repeated continuances which greatly inconvenienced another witness and contacted the state's attorney concerning the matter.
10. It found out that a man who had been previously indicted for felony was at large, bothering complaining witnesses, and called upon the sheriff and prosecutor to investigate.
11. Another witness related a tale about a probationer who had failed to make restitution as agreed. Here it was necessary to talk with the trial judge and the probation officer, and it was found that the probation office had no knowledge of the terms of the sentence.
12. The attention of the Commissioner of Police was directed to a recent bombing case, "stricken off with leave to reinstate" because of the non-appearance of complaining witnesses.
13. It received a message from a neighborhood civic club concerning prostitution and passed it on to the "Committee of Fifteen," an organization dealing with such matters.
14. An anonymous complaint was received concerning a certain hotel said to be a disreputable resort and "thieves hang-out." A message was sent to the Commissioner of Police.
15. It strenuously opposed a bond forfeiture "settlement" since the records of the Commission indicated that the bondsman was a professional.
16. A business man reported activities by a labor union in behalf

of certain persons charged with murder. The Commission succeeded in having the case assigned for immediate trial.

17. It furnished a coroner's jury of six men, chosen from members of the Commission's directorate, for a notorious murder investigation. This jury made a report which drew public attention to several evils in the administration of the jail and conduct of trial court rooms.
18. It devoted much time listening to the grievances of the victim of a recent robbery—continuances, waste of time, lack of contact with the assistant prosecutors, etc. The state's attorney was notified.
19. It investigated a lengthy report that the county building's corridors were infested with "chiselers." A list of 170 names was studied with the aid of the Commission's records.
20. A complainant in a rape case reported that offers had been made to "buy her off." The information was submitted directly to the state's attorney.[31]
21. Another complainant declared that an eye-witness was about to leave town. Trial was set before this was accomplished.
22. An embarrassing mistake in the criminal court clerk's records, due to identity of names, was discovered and corrected.[32]

This record might be spun out indefinitely.[33] These are a few of the cases in which the commission acted. Many "complainers" come to the Commission with unfounded accusations and no action follows, but in every case an *investigation* is made under experienced and unbiased direction. Note that when the Commission acts it does so directly with the judge, the chief prosecutor, the sheriff, coroner or commissioner of police. An ordinary citizen, bewildered by administrative complexity, usually would not know where to go, and if he should arrive at the proper office with his troubles, he would have to

[31]It will be noted from the above instances that complainants often turn to the Chicago Crime Commission with grievances and as a result the Commission is in a position to keep the authorities advised. This is made possible because the Commssion sends a postal card to all complainants and their employers, when an indictment is returned, advising them of such a return and suggesting that if any attempt to intimidate or to bribe is made an immediate report of such fact should be made to the Chicago Crime Commission. A further suggestion is made that if a complainant moves he should so advise the Commission. This information secured by the Commission has saved many a case from being *nolle prossed.*

[32]In almost every respect the Crime Commission's records are more accurate and complete than the public records.

[33]*E. g.,* in 1935 the Commission sent 1,672 reports to the Illinois Parole Board, giving complete data as to the record, both in court and otherwise, of prisoners who were given hearings on application for parole or pardon.

run the gamut of uninterested clerks. But the chief service of the Commission is its constant threat to throw a bright search light of publicity upon behind-the-scenes-corruption and slovenliness. The Crime Commission stories are *news* which the newspapers are glad to have and this is the real secret of its power. The Commission may talk directly to a public officer, otherwise arrogantly independent, and ask for action "or else," and the "or else" is unwanted newspaper publicity.

Thus, a crime commission's work is that of a co-ordinator and a watchdog. When a large business establishment feels that its administrative machinery is becoming inefficient it may easily meet its problems by a vigorous reorganization from top to bottom, but since the process of criminal prosecution cuts through three governmental layers—city, county, and state—and since charters, statutes and constitutions are not readily changed, a legal unification of law enforcement agencies is a vastly more difficult matter. It is not practicable nor legally possible to provide a governmental status for such an organization as the crime commission, and, indeed, such a status probably would destroy its immediate usefulness. Recognizing conditions as they are, we heartily recommend to communities with cumbersome and inefficient governmental machinery the use of a crime commission, permanent, non-political, and with a full time staff.

It is a matter for regret that it seems necessary to advocate the establishment and support of such stop-gap agencies. The work which they do is necessary primarily because of the obvious weaknesses in our system of administering criminal justice. Why should a chamber of commerce support a commission to observe the courts, keep records, and prevent cases from being lost from sight in the preliminary stages? Our hired or elected officials should do that. A sound governmental structure would make the work of the crime commission useless. But where that structure approaches chaos, as it does in Cook County where much of our observation has been concentrated, it has been the only body, official or quasi-official, whose main duty it is to see that the machinery runs smoothly from the time of apprehension on through to the application for parole. Further, it has served as the only direct, though extra-legal, channel of communication between the citizen and the innumerable governmental authorities among which he would be hopelessly lost without this assistance.

The Reorganization of Official Agencies

Quite clearly the more fundamental need is a drastic reorganization of our official law enforcement machinery—a reorganization so drastic that it insures some possibility of efficiency and responsibility and removes the need for surveillance of the type given by the Chicago Crime Commission. This comment is not meant to imply that we have ignored the need for improvement in the prevention, the investigation, or the prosecution of crime. The last fifteen years have witnessed tremendous strides in these fields. Efforts at such improvements, however, have been limited usually to single sectors of the process of law enforcement and practically no consideration has been given to the need for amalgamation of these jealous segments into one integrated administrative procedure.

Since the primary responsibility for law enforcement has traditionally rested with the local community, efforts to attain administrative improvement of existing agencies have involved only local government establishments. Even then the major attention has been to the municipal police department where more adequate methods of recruitment and training, new developments in scientific and mechanical equipment, and improved practices of patrol and investigation have restored hope that American police work can become really effective. The problems of internal administration in the agencies which complement the police have received scant study, and the vital problem of the relation between the police department and the prosecutor's office has been overlooked.

In view of the momentum which now characterizes the movement for better internal administration of police departments, it is possible that reform emphasis should be shifted to this field of inter-agency relationships. But study of the office of prosecuting attorney, which this discussion concludes, has led us to the decision that the local machinery of law enforcement must be rebuilt in order to place in some one official the responsibility and the power now shared by the police, the sheriff, the coroner, and the prosecutor. It is hardly the province of this paper to treat of the implications of this suggestion but brief recognition of alternative methods of accomplishment is not out of order. One suggestion, which has been proposed by Dr. Willoughby,[34] is to concentrate responsibility by simply giving the prosecuting attorney the control over the work now handled by the other three agencies—an arrangement which is not especially appealing

[34]W. F. Willoughby, "Principles of Judicial Administration," p. 138 (1929).

unless the prosecutor's office can be made decidedly less political than is usually the case at present.

Another proposal involves the elimination of the offices of sheriff, coroner, and prosecuting attorney with provision for the transfer of their functions directly into the police department itself. The fact that police work is becoming definitely professionalized in our moderate and larger sized cities makes this approach rather attractive. Bruce Smith has shown special interest in this possibility.[35] Further, the English experience with police supervision of prosecution is evidence that this arrangement works. Observation of prosecution in Chicago indicates that in misdemeanor cases, which constitute approximately nine-tenths of the work of the criminal courts in Cook County, the responsibility for prosecution now devolves primarily upon the judge or the police. One of the features of the present situation which is most destructive to the morale of police officers is the fact that time after time, in cases which they have investigated and prepared, they go to court only to see the defendant discharged because the prosecutor is incompetent, unprepared, or uninterested.

Another plan is that of the Ohio County Government Commission which suggests that the municipal police department, the coroner, the sheriff, and the prosecuting attorney all be abolished and their functions assigned to a county department of law enforcement consisting of a police division, an investigation division, and a division of prosecution.[36] The commissioner of this department would be appointed by the chief executive of the county—a county manager or the president of the board of commissioners, as the case may be.

The question of the extent and the method of integration of the local machinery is by no means the only controversial issue involved in the matter of law enforcement organization. This brief summary of possibilities for the reorganization of local law enforcement machinery has assumed that it is both desirable and politically necessary to continue to give the major responsibility for this function of government to the local community. Perhaps this assumption is unjustified. It is possible, of course, that the whole responsibility should be turned over directly to the administrative authorities of state government. If that seems too drastic, a compromise might be effected by giving the state full control and responsibility in the rural areas of the state while local responsibility continues to be the rule in the

[35]Bruce Smith, "Municipal Police Administration," 146 Annals of the American Academy of Political and Social Science 18 (November, 1929).

[36]"Report of the Governor's Commission on County Government—Reorganization of County Government in Ohio," submitted to the Governor, December, 1934.

urban sections. If the urban community is to continue to carry some responsibility, it is necessary to decide how large a geographical area each local unit should cover. Is a regional establishment necessary for our metropolitan regions? Should the same regional unit be used in the rural area also? The Ohio Commission's proposal that the county be made the unit is a very definite attempt to deal with this issue as well as with the problem of integration to which reference has already been made. Whatever this local unit should be, it seems very clear that the ordinary city, town, or village is too restricted an area for most effective administration.

To consider these points would require a discussion too extended for presentation here, but they are matters of fundamental importance which must be met and decided before any extensive program of law enforcement reorganization is determined upon. However, one conclusion seems justified. If there is any situation in which it seems desirble to continue a local law enforcement agency, it must embody the concentration of responsibility which has been suggested if it is to reach a maximum degree of effectiveness.

Although little has been done toward this thorough reconstruction of local machinery, there has been some vague recognition that a co-ordinating hand is needed—recognition which has been expressed primarily in the demand for some sort of state action through a state police force, a state bureau of criminal identification and investigation, or a state department of justice. Analysis of the state police movement indicates that the creation of such an agency usually is not an attempt at co-ordination so much as it is the provision of a substitute for the degenerate office of sheriff in the rural areas of the state. As these state police forces have matured, however, they have gradually assumed the role of supervisors of the police agencies within the state. The state bureaus are definite attempts to provide co-ordination, limited as in the case of the state police almost entirely to inter-community aspects of police activity. They have accomplished this by filing and exchanging identification information and by maintaining teletype and radio communication systems. Occasionally both the state police and the bureaus provide assistance to local agencies in criminal investigations, but this type of agency has neither been adequately staffed nor given sufficient grants of power to enable it to weld police, coroner, sheriff, and prosecutor into a single administrative organization.

Over a somewhat longer period of time, and almost independently of these developments in the police field, many states have attempted

to provide for some state supervision of criminal prosecution. The attorney general is almost invariably the official chosen for this task. His powers range all the way from the mere offer of advice to prosecutors to the power to supersede local officers when such drastic action seems necessary. The extent and effectiveness of these powers has been reviewed at length in this series and need not be repeated here.[37] Let it suffice to say that only within the last two years have the attempts to expand the power of the attorney general contemplated any co-ordination of prosecution and police work. If any particular lesson is to be drawn from American experience with the power of attorney generals to supervise criminal prosecution, it is that this officer should not be given any of the criminal law functions which the state government decides to assume.

The present state department of justice movement, of which the California constitutional amendment is the most vigorous offspring, does involve a real recognition that the whole process of law enforcement must be supervised by one responsible head.[38] To the extent that this movement involves the recognition of this necessity, it may be expected to contribute heavily to the future efficiency of this phase of government. Our local experience indicates that state efforts in this field must be integrated just as fully as local administration. If however, the department of justice enthusiasts insist that the attorney general be the one to have this duty of supervision, this previous experience with attorney generals in the field of criminal law administration indicates that this will be only another disappointment along a pathway of reform which is strewn with disappointments. The American Bar Association's recommendation for the establishment of state departments of justice included the possibility that some officer other than the attorney general ought to be made the head of such a department,[39] and the most should be made of this phase of the recommendation. It is most important to decide what should be the proper extent of direct state activity in the administration of criminal justice, but whatever the degree of state participation which is determined upon, the best results will come if all aspects of the process are united in one agency and if the enforcement of the

[37]"Powers and Duties of the State Attorney-General in Criminal Prosecution," 25 J. Crim. L. 358 (Sept.-Oct., 1934).

[38]See "Current Notes—California Constitutional Changes," 25 J. Crim. L. 797 (Jan.-Feb., 1935).

[39]"Current Notes—American Bar Association's Recommendations," 25 J. Crim. L. 465 (Sept.-Oct., 1934); *cf.* "Uniform Department of Justice Act," 26 J. Crim. L. 475 (Sept.-Oct., 1935). See Earl Warren "A State Department of Justice," 60 Reports of the Am. Bar Ass'n. 311 (1935).

criminal law is the exclusive, or at least the major, function of this unit.

More closely related to this matter of state law enforcement organization than a first glance might indicate, is the widespread interest in the extension of federal power in this field and in the development of substantial interstate co-operation. In fact, so widespread is the conclusion that crime is a national problem which transcends state power and state boundaries that it is clearly a part of the credo of criminal law reform—an item which seems to have been accepted without full analysis of its implications or of its significance.

There can be nc doubt that it is highly desirable for the states to make the fullest possible use of the interstate compact and other devices of co-operation in meeting their mutual problems in law enforcement. The conclusion of compacts and agreements to relax the formalities of interstate rendition and to provide for effective supervision of convicts released on probation and parole is a decidedly hopeful step, and the compact plan should be extended into other aspects of the crime problem. There is one danger, however. The compact device is new, at least in this field, and it is comparatively easy of installation. The result is that it is being taken up with a fervor somewhat similar to that which initiated the movement for the reform of criminal procedure a quarter of a century ago.[40] Desirable as the development may be, it most certainly is not a panacea. Assuming that the percentage of achievement is higher than in the procedural reform movement, the use of these agreements can affect only a negligible part of the work of criminal courts and law enforcement agencies. For example, it will not substantially shrink the wide area between the seventy-five thousand felonies "known to the police" and the 2,011 indictments returned in Cook County in 1935. If the interstate compact becomes the exclusive enthusiasm of any substantial part of our reform energy, more fundamental needs may suffer. It should be developed, of course, but it should be relegated to its proper relation in the treatment of the general issue.

A somewhat similar problem arises in connection with recent extensions of federal activity in the field of crime.[41] This is true

[40]See "Proceedings of the Interstate Conference on Crime," Trenton (October, 1935); "Report of the New Jersey Commission on Interstate Cooperation" (January, 1936); "Current Notes—New Jersey Conference," 26 J. Crim. L. 634 (Nov.-Dec., 1935); Hartshorne "Inter-Governmental Cooperation—The Way Out," 2 N. J. L. Rev. 5 (Jan., 1936).

[41]Much material is found in the number "Extending Federal Powers Over Crime" of Law and Contemporary Problems published by Duke University School of Law, vol. I, No. 4, (Oct., 1934).

not so much in the legislative enactments of the last three years as of the purely administrative expansions of the work of the federal Bureau of Investigation in the Department of Justice. There can be little doubt that "Babyface" Nelson, John Dillinger, and others needed to be caught or killed, and it seems to be quite clear that the federal Bureau of Investigation had to step in if this was to be accomplished. The problem is not the fact of specific or even hasty action in these particular cases. It is rather the complete equanimity and enthusiasm with which the public has accepted the fact that the federal government was the one to do the job. The success and the spectacularity of the work of the federal agents seems likely to lead the general public to assume that the matter has been solved by this intervention and that tedious, perseverant concentration on problems of state organization and state procedure is no longer necessary. The disorganization and inefficiency of state agencies lead to federal intervention which in turn further demoralizes the organs of state and local government, and the cycle continues! It will be a long time before the few hundred agents of the Department of Justice can expand enough to do the work now given to 130,000 peace officers in the United States, but this consideration does not stop the growth of the assumption that the national government has taken over the job nor does it stop the effects of that assumption.

As a matter of constitutional assignment, the responsibility for the maintenance of public peace and order still belongs quite definitely to the state. Despite the considerations which have been mentioned in the preceding few paragraphs, it is still one of the functions of government which, quite conceivably, the states can handle effectively in a federal system. To the suggestion that our past and present experience proves the contrary, it is perhaps sufficient to point out that we have had no experience with the possibilities of a symmetrical, state-wide program. The best which has been provided has been a congeries of local prosecutors, coroners, police, and sheriffs on which we have pasted a state police force, a state bureau of criminal identification, and perhaps a state department of justice—a patchwork structure with no unity of action or responsibility. It is by no means necessary that all administration be performed directly by the administrative officers in the departments of state government; local agencies may continue to carry a large part of the burden. But until sufficient unity of program and action is provided to see the problem as a state-wide problem, there is no reason to think that interstate co-operation can be effective or federal encroachment delayed.

If a federal structure is worth preserving—a controversial issue which this discussion seeks to avoid—this matter of criminal law enforcement is an issue of supreme importance. There is still opportunity for the states to prove themselves capable of handling this aspect of government, but the opportunity is waning very rapidly. The present trends cannot be reversed or stopped simply by adding "notice of alibi" at this point and providing for an "interstate compact" at that. These are the little holes through which a few members of our criminal population trickle back to unsupervised, unreconstructed, and resentful freedom. The great flood has passed unseen behind us through the wide gaps which occur in the pre-trial administrative processes which are under the control of our police and prosecuting officers.

Of course, these comments have barely touched the problems which have been indicated. It has been thought to be much beyond the scope of the discussion to give any extensive analysis of implications or criticism of details. The only justification for even mentioning these matters is the extreme significance of the disorganization of the law enforcement structure and the fact that its relation to the general problem has not been sufficiently emphasized. There is need for analysis not merely of the actual processes of administration and the conflicts of policy which have been noticed but also of the proposals for change on which reform energy is now being spent. There is every reason to think that more substantial results may be obtained by utilizing these reform efforts to attack the heart of the problem rather than expending them on minor improvements which are desirable but not controlling. It will be necessary for the interested elements in each state to plan a comprehensive program of action for that state and to work for the entire program.

The determination of such a program is alone a difficult problem which involves decision on all the issues which have been hinted throughout the preceding discussion, and others in addition.

How far can we go in uniting police and prosecution work under one responsible head?

Is it worth while to attempt to keep a strong local administrative unit, or should the whole responsibility be turned over directly to state officers?

If the local unit is kept, what geographical area should it cover? What should be the relation of state agencies to such a local unit?

How much emphasis shall be given to the reform of criminal procedure? Shall the mode of attack be shifted to reform through the judicial rule-making power?

If extensive reorganization is not practicable at once, can anything be done in the meantime to make the prosecutor's office less political and more competent? What can be done to co-ordinate the work of police and prosecuting agencies in the meantime before the two functions are united in the same office?

What is the relation of the interstate compact and the federal extension movement to such a general program?

All these and innumerable other questions must be answered before any such comprehensive program is attained, and then, of course, the task of accomplishing it is even more difficult. It takes the allied efforts of bar groups, civic associations, chambers of commerce, labor unions, churches, and the press to create enough pressure upon the electorate to achieve the ends sought. Frankly, it is a matter of sweat and blood. And rarely do we find, at least in bar groups, lawyers with sufficient dominance of character who are willing to sacrifice the necessary time which such leadership demands.

While little or nothing may be expected in most states under present conditions, it is refreshing to see what might be accomplished if unified effort is made. In January, 1934, the California Chamber of Commerce initiated a history-making legislative campaign and in one year's time four sweeping constitutional amendments were obtained. They provided for a better method of choosing judges, a state department of justice, and certain procedural changes. This occurred only after an intensive campaign. 122,000 digests and 100,000 cards were mailed, chairmen served in each county of the state, and 1,000 copies of a speakers' manual were used by volunteer speakers. During the campaign newspaper releases went daily to three hundred newspapers, 5,000 meetings were held, and extensive use was made of the billboard and radio. All efforts emphasized the simple slogan, "Curb Crime."[42] Back of the campaign were the Women's Clubs, the League of Women Voters, the American Legion, the Commonwealth Club, the state and local bar association, the prosecutors and chiefs of police throughout the state, and the universities. This California experience is a graphic illustration of what can be done but it also teaches that it is imperative that a comprehensive program be planned before such energy may be attracted and directed.

[42]"Crime Can Be Curbed"—a booklet published by the California Chamber of Commerce. See McCormick, "Judicial Selection—Current Plans and Trends," 30 Ill. L. Rev. 446 (Dec., 1935).