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Prosecuting Attorney and His Office

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THE PROSECUTING ATTORNEY AND HIS OFFICE

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[The following concludes the authors' discussion of this subject that was begun in the last number—pp. 695 to 720.—Ed.]

VI. The Metropolitan Office: The Effect of Election

The metropolitan office, like its rural counterpart, has failed to give the quality of service which the welfare and safety of the community requires, but the primary reasons for this situation differ somewhat from those which affect the service of the small office. In the larger community the prosecutor himself and most of his assistants receive salaries sufficiently large to make private practice on the side unnecessary. The prosecutor is given adequate assistance, office space, and library facilities. The utter impossibility of maintaining a personal acquaintance with more than a very small portion of the community makes the performance of the function of prosecution a more impersonal affair. Also, the metropolitan prosecutor, although he does not often come from the best talent of the legal profession, is likely to be much better qualified in respect to age and experience than his rural colleague. The candidate for office in the rural county is already in the public eye because he has probably grown up in the community. In the city he must make himself known before he can hope to be elected to the office, and to persuade his party to support him in his desire he must have proved his loyalty by service in less important positions within its control. He is older, therefore, and likely to have greater experience in the practice of law and in public affairs generally than the rural incumbent. While election to the office in the metropolitan area probably does not mark the attainment of his highest political ambitions, there can be no doubt that it represents a much higher level of political achievement than in the rural jurisdiction. It is not the first hurdle for the budding politician.

If all of this is true, why are not the deficiencies of the office remedied when it is transferred from the small to the large community? The answer is found in the effect of politics and the fact that the office is filled by popular election. While this is an im-

portant element in the administration of the rural office, it becomes the controlling factor in the demoralization of the office in the larger jurisdiction.

Popular election seems to work reasonably well as a means of selecting public officials who are given general executive supervision over the administration of a number of governmental functions and who participate generally in the formulation and execution of public policy, but it seems almost always to demoralize the administration of any office which is given responsibility for some particular function of government and which calls for some special type of training and ability. Popular election of such officers with specialized duties not only results in the selection of men with no regard for qualifications required by the particular office but it also makes it necessary for the man elected to use all the resources at his disposal to build up political support for the future or to pay back the political debts incurred in the past. As a result political considerations are likely to become paramount in the administration of the office and the public welfare becomes a matter of secondary importance only.

This is what has happened in the office of prosecuting attorney in Cook County, Illinois, for example, and generally throughout the United States. It is charged with the administration of special duties and its functions do not successfully mix with politics. The power and discretion of the office makes its control an invaluable asset to any political organization and in metropolitan regions the size of its staff and number of responsible, comparatively high salaried positions makes it a valuable fountain of political patronage.

At the present time it is practically impossible for any man to be elected to the office of state's attorney in Cook County without the support of either the Democratic or the Republican organization. In 1912 William Cunnea ran on the Socialist ticket against Maclay Hoyne the Democratic, and Lewis Rinaker, the Republican, candidate. When most of the returns were in, it appeared that Cunnea had won by a small margin, but the last few precincts heard from turned in amazing majorities for Hoyne who was declared elected. While the situation looked most suspicious, it was never proved that fraud was involved. The final returns showed Hoyne, 122,000; Rinaker, 113,000; and Cunnea, 107,000. This election and that of 1916, when Cunnea ran again, are the only ones in recent years in which a third party candidate has received any substantial part of the vote for prosecutor in Cook County.

The election of a state's attorney in Cook County is a strenuous

and complicated process. It comes in November every four years and is the usual type of contest in which the voters choose between the two candidates who have been nominated in the Republican and Democratic primaries in the preceding April. While, in theory, the nominations have been made by the rank and file of the voters of these political parties, it usually happens that the nominee is the choice of the party leaders instead. The organization decides beforehand whom it will support in the primary, and its strength is usually sufficient to insure his nomination. Perhaps the candidate has been agreed upon as a compromise after extended negotiations between several factions of the same party. He may be the direct personal selection of the party boss, or if he is a powerful political figure himself, he may have dictated his own selection. In any event he is picked by politicians for reasons which usually do not include any special fitness for the office.

Sometimes there is an astonishing popular upheaval in which the candidate who is supported by the major part of the party organization is defeated and some other nominated. In 1928 State's Attorney Robert E. Crowe of Cook County sought renomination and reelection for a third term. Since he was one of the leaders of the dominant faction of the Republican party in Cook County, it was practically a foregone conclusion that he would be renominated in the party primary. The faction led by ex-Senator Charles S. Deneen decided to run one of its own members for the nomination merely to maintain its own identity as a political group, but it did not pick its strongest man since it realized that Crowe's nomination was practically inevitable. If it had hoped to win, it is probable that John E. Northrup would have been its candidate. As it was, it ran Judge John A. Swanson with no expectation whatever that he would defeat Crowe. Shortly before the primary, however, the homes of Swanson and Deneen were bombed. The campaign became a crusade against politics in the state's attorney's office and against organized crime in general. Swanson overwhelmingly defeated Crowe and later won the election quite easily.

Under other circumstances the party organization may anticipate a bipartisan deal to elect the candidate of the opposing party, and may permit some man whom it does not specially favor to be nominated in its own primary with the expectation that he will be defeated in the final election. In 1932 in Cook County, State Senator Thomas J. Courtney was the leading contender for the Democratic nomination while State's Attorney John A. Swanson was very certain of renomina-

tion by the Republican party. It has been rumored, apparently authentically, that Anton J. Cermak, the boss of the Democratic organization, intended to support Swanson in the final election and therefore permitted Courtney to be nominated in the Democratic primary although he did not favor him for the office. After the primary and before the election, however, it was rumored so widely that this was the situation that the Cermak organization was forced to support Courtney to save its own reputation. He was elected by an overwhelming majority, partly as a result of the general Democratic landslide which swept President Franklin D. Roosevelt into office and partly as an indication of popular repudiation of the Swanson administration.

It is quite apparent that when political strength is an absolute necessity for election to this powerful office the candidate who seeks it will become the target of every conceivable kind of pressure, much of which seeks favors quite inconsistent with his oath of office. From the time that he begins to seek the nomination and especially after he is nominated, he is beseiged by persons and organizations seeking to exact some promise or favor in return for their support. It might be said in passing that the demands upon the candidate for the office of state's attorney are greater than upon the man who seeks a place on the bench of one of the courts of Cook County. There are dozens of judgeships and only one state's attorney and the power of the prosecutor to grant favors is many times that of any individual judge.

Most of the state's attorneys of Cook County in the last thirty-five years have been able lawyers and executives. If they have failed to give adequate service it is because they have been the creatures of machine politics and not for the reasons which have demoralized the work of the rural office. Failure has come not so much from lack of ability, experience, and facilities as from the fact that considerations of political expediency have governed selection of the staff and administration of the office.

Notwithstanding the tremendous power which inheres in the office of state's attorney in Cook County and the wide opportunity which it offers for political favoritism, it is nevertheless the most thankless and difficult office within the gift of the people of the county. The work which is assigned to it requires the service of a man of enlightened social viewpoint and of exceptional executive ability. The activities of the office provide far more opportunities to make enemies than to make friends, and involve the administration of a function of gov-

ernment of which the public in general is extremely critical and ready to believe the worst.

In Cook County as well as in the rest of the United States the office of prosecuting attorney is gradually assuming a position of chief responsibility for the enforcement of the criminal law. The process of law enforcement consists of far more than convincing juries of the guilt of defendants "beyond a reasonable doubt." If the prosecuting attorney is to fulfill the potentialities of his office adequately, he must be a criminologist rather than merely a prosecutor. He must understand the purpose and method of crime prevention activity and the technique of criminal investigation. He and his staff must know when to be lenient as well as when to be severe in the disposition of the case and must be thoroughly conversant with the purposes and utility of the devices of probation and parole.

The duty of supervising the work of a prosecutor's office in a large city requires executive ability of the highest order. If the office is to function properly, this task of supervision requires the undivided attention of the man who is responsible for its performace. The process of prosecution is primarily an administrative process. At almost every step it calls for the exercise of the broadest discretion by the subordinate members of the prosecutor's staff, making adequate records and rigid administrative control imperative. Since the individual responsibilities of the staff members are wider than in most administrative positions, the prosecutor must be able to pick competent, dependable assistants. It is essential for him to be able to inspire the highest confidence and loyalty in his staff, for when the discretion of its members is necessarily broad no amount of administrative control and discipline can substitute for office morale as a means of enforcing the policies of the state's attorney. The prosecutor, perhaps more than any other public official is at the mercy of the acts of his subordinates, and a mistake by one of them can easily ruin his political career.

In 1926, during State's Attorney Crowe's administration in Cook County one of his assistants, William McSwiggin, was killed by machine gunners along with some gangster friends.[28] The assassination led to all kinds of rumors concerning the alleged alliance between the underworld and the state's attorney's office and was undoubtedly one of the most important causes of Crowe's defeat by Swanson two years later. In spite of the public interpretation of the situation,

[28]See "Illinois Crime Survey," Chapter XVII, p. 827. This chapter, entitled "The McSwiggin Assassination as a Typical Incident," was written by John Landesco as a part of his study of Organized Crime in Chicago.

there has been no indication that McSwiggin's presence in the company of the gangsters indicated any corruption in the state's attorney's office. The association appears to have been purely a social one and the gangsters were boyhood friends who had gone in one direction while he went in another. He continued the friendship because he did not want to be thought "high-hat," and only a short time before his death the first assistant state's attorney had learned of the character of his companions and had requested him to discontinue the association because of the danger to the reputation of the office. The result of his failure to do so was his own murder and the political defeat of his chief.

Although the proper administration of the office requires that the state's attorney himself give close attention to administrative detail, for the most part these demands go unrealized in Cook County where the size of the population and the fact of popular election combine to make the office of prosecuting attorney highly political. The time and attention of the state's attorney are almost entirely taken up with the political affairs of the office and he is utterly unable to give the necessary consideration to the close supervision and control of his staff. To keep his political fences in good order he must constantly attend luncheons and banquets and public gatherings of all kinds. He must listen to a constant stream of callers who come in the name of political friendship to seek some special favor within the power of the prosecuting attorney. His prominent office necessarily places him high in the ranks of his party organization and he must give much of his time to the matters of party politics which do not relate closely to the prosecution of criminals. He has little time left for administrative matters.

The cases to which the state's attorney gives personal attention are "publicity" cases which bring his name before the public and upon the basis of which the voters approve or disapprove at the end of his term. He issues the general orders to the office to embark upon a campaign against racketeering, automobile thefts, or some other crime problem of the moment. Occasionally he may actually participate in the questioning of witnesses in the preparation of the case but usually his participation consists merely of an appearance in court on the opening day of the trial to have his picture taken for the newspapers. Only in the very rarest instances has the state's attorney of Cook County actually conducted a prosecution in person. He has usually been content to make general statements to the press and to

exercise merely a general supervision over the assistants assigned to the cases in which he was especially interested.

The sensational or "publicity" cases in which the state's attorney takes a personal interest constitute only a very small part of the work of his office, and the great bulk of the cases which are handled by his staff receive no attention whatever from him. In fact the records of the Cook County office are not adequate to enable him to judge the effectiveness of the work of his staff. The state's attorney must depend almost entirely upon the personal knowledge of his first assistant to whom the task of supervising the staff is given.

If it were possible to effect a sharp division between the political and the administrative matters involved in the operation of the office, perhaps it might be entirely possible for the state's attorney himself to devote his time to the political affairs and leave the administrative side entirely to the first assistant and the staff. Unfortunately, however, the political basis upon which the staff is now selected in Cook County makes such a division impossible. The subordinates in the office as well as the chief are deeply involved in politics and are subject in smaller degree to the same demands and pressures as the state's attorney himself. To understand the difficulties involved in the operation of the office it is necessary to discuss the manner in which this staff is chosen.

VII. The Metropolitan Office: The Selection of the Staff

Under the laws of Illinois the state's attorney of Cook County is given an absolutely free hand to appoint his staff and there is no legal restriction upon his power to appoint or discharge his subordinates. Nevertheless, while this may be the law of the situation, the state's attorney is deeply involved in politics and closely associated with a political party organization, and to the political mind this unrestricted power of appointment means only one thing—patronage. The patronage involved in the appointment of the state's attorney's staff is far too important an item to the party organization for it to permit the state's attorney himself to have exclusive control over its distribution. As a result the actual responsibility of the state's attorney for the quality of his subordinates is far less than it appears to be from the statutes.

In view of the practices which prevail generally in both the Republican and Democratic party organizations in Cook County, the man who is elected to the office of state's attorney is extremely fortunate if he is permitted the unrestricted power to fill more than

ten of the eighty-five or more assistantships under his control. Ordinarily he is free to appoint his own first assistant and perhaps four or five other assistant state's attorneys. His power to control the appointment of the remainder of his staff depends entirely upon the extent of his personal influence in the councils of his party organization.

The position of assistant state's attorney in Cook County is sought for almost exactly the same reasons as the office of prosecuting attorney itself is sought in the smaller communities, and for the young man who aspires to an appointment the most essential prerequisite is the recommendation of his own ward committeeman. Unless he can obtain this sponsorship, it is practically hopeless for him to seek any such appointment, and he is most unlikely to obtain this recommendation unless he has worked actively for the party in that particular ward. Occasionally where a man has contributed to the interests of the party by organizing some particular racial group which is spread throughout the city he may be appointed if he can obtain the recommendation of some ward committeeman or some other man high in the party organization.

The final selection among those who apply and who can obtain the necessary recommendations from the local party leaders is usually made by a committee of about five members chosen by the party organization. The state's attorney, or his first assistant, usually sits as a member of this committee. The applicants are called in and interviewed and the appointments are made, nominally by the state's attorney himself, actually by this group of party leaders. This procedure, of course, does not necessarily need to result in a low quality staff and if all other things are equal the committee will probably select the best of the men who present themselves. Unfortunately, however, other things are not always equal, and the positions are quite likely to be awarded not upon the basis of the fitness of the men who apply but rather upon the relative strength of their political sponsors. The presence of the state's attorney upon this committee of selection gives him a theoretical veto over the appointments "suggested" by the committee after these interviews. In actual practice, however, he also must be governed by political considerations.

When State's Attorney Thomas J. Courtney took office in December, 1932, he promised that no men would be given appointments as assistant state's attorneys unless they were first approved by the Chicago Bar Association. This promise was honored in the selection of the staff and a committee of the bar association actually passed

upon all of his appointments. Yet, in spite of the fact that this extra-legal review by such a body was designed to insure the appointment of a high quality staff, it did not have much actual effect upon the caliber of the men appointed. Nevertheless, the experiment was interesting and requires further attention.

The men who appeared before the committee of the Chicago Bar Association were those who had been chosen for appointment by the state's attorney and the political party leaders from the recommendations of the ward committeemen. In general they probably were the best of the applicants, and only a few were turned down by the committee or the board of directors of the bar association. The committee reached its decisions upon the basis of extensive information taken from the bar association files and other sources, and from personal interviews with the candidates for appointment. Most of the members of the committee were plainly dissatisfied with the men who were presenting themselves and some of them have stated since that they would not be willing to take into their own law offices many of the men whom they permitted to be made assistant state's attorneys.

This question immediately arises: Why were these men permitted to pass? The fact that their appointment was permitted is not necessarily a criticism of the members of the committee or the officers of the bar association. There was practically nothing else to be done under the circumstances. Each man was considered *individually* and any decision had to be made in comparison with some abstract standard and not by comparison with other men who might have been available for the position. The members of the committee felt that many of these men were deficient in ability, training, experience, and personality, but they found it extremely difficult to formulate concrete objections to any particular man sufficient to justify a refusal to permit his appointment. Early in the hearings the committee decided that the form of its action would be merely "no objection" and not "approved." They followed this policy consistently throughout the hearings and as a result they found "no objection" to many prospective appointees whom they might not have been willing to "approve." Whenever there was any doubt the state's attorney was willing to appoint the man in question. The result of all this procedure has been that the quality of the staff is probably little higher than if the state's attorney and the party organization had made the appointments without any participation by the bar association.

The situation at the time that Mr. Courtney took office was not altogether a fair test of the utility of such participation by the bar

association. Cook County was seven months behind in the payment of the salaries of its employees and this element undoubtedly deterred many competent men who might otherwise have applied for positions on the state's attorney's staff. Nevertheless, if the Chicago Bar Association is to play any effective part in the selection of the prosecuting staff of the county, it is quite apparent that the method must be different than that which has been described. If its committee merely reviews individually the appointments proposed by the prosecutor, it is likely to become merely a cat's paw to pull the state's attorney's political chestnuts from the fire, for he may easily pass to it the task of turning down some incompetent who has strong political backing.

If the bar association is to continue to participate in this process of selection, it must require that it be permitted to make a competitive elimination to find the best of all of those who apply for positions in the office of the state's attorney. It might well compile a list somewhat larger than the number of places to be filled with the understanding that all appointments should be made from this eligible list. Any smaller degree of participation by the bar association is probably of little value and may result in positive injury to the association itself. It is extremely difficult to convince the public, the press, the state's attorney, the political leaders, and the candidate for assistant state's attorney of the justice of any abstract standard or of its application where each case is considered individually. Unless the justice of the decisions can be made very apparent, the bar association is likely to suffer greatly from allegations of deference to political considerations.

The effects of the political basis of appointment of the state's attorney's staff are so evident that they require little elaboration. Perhaps the most obvious difficulties arise when the control of the office passes from one political party to the other and a complete turnover of the personnel ensues. State's Attorney Courtney, a Democrat, was elected in November, 1932, to replace Swanson, a Republican. He took office early in December and by the first of May, 1933 all of the old staff except six clerical employees and fifteen assistant state's attorneys had been replaced by Democratic appointments. Since that time, even this small group of holdovers has been gradually decreasing. During this period, and especially for the first three months of the new administration, the performance of the office was woefully disorganized. The holdovers from the Swanson regime had no interest in their work since they were to be ousted soon anyhow, and the new appointees had not yet learned their jobs. The

result was a suspension of all but the most urgent work of criminal prosecution. In the complaint department, which is an extremely important unit of the office, no letters were answered for over three months, although scores of complaints were received by mail each week. Almost the same situation applies for an even longer period when the incumbent state's attorney has been defeated in the April primary and his successor does not take office until December. Yet, this period immediately following the inauguration of a newly elected prosecuting attorney is the time when public interest in the work of the office is the greatest and the time when the demands upon the office are the heaviest.

The political obligations of the members of the staff do not end with the appointment to this staff. They must necessarily continue to be actively interested in the affairs of the party organization and to work to carry their own wards and precincts for the candidates of their party. On election day the office of the state's attorney is practically closed and for many days before any election most of the staff members spend more time campaigning than upon the duties of criminal prosecution. Regardless of the fact that the subordinate has nominally been appointed by the state's attorney he quite naturally feels that the appointment was the result of the influence of the ward committeeman who sponsored him. His first loyalty is given to this political sponsor, and his allegiance to the state's attorney is necessarily secondary. While the prosecutor, under the law, is free to remove his subordinates, their political connections make it practically impossible to discharge any of them except for an offense so grave that there is a loud public demand for his removal. Under such conditions rigid discipline and administrative control is impossible. The individual members of the staff are quite likely to assume the power to grant political favors without the authority of their superiors, and the state's attorney is powerless to stop it.

These statements have referred primarily to the selection of the legal staff of the office. Undoubtedly, the effects of the various elements which have been mentioned are most obvious in the work of this part of the personnel of the office, since the assistant state's attorneys are the men who are given the responsibility. The clerical staff, however, is also selected on a political basis and is therefore subject to many of the same criticisms. The stenographers and the clerks, as well as the assistant state's attorneys, must obtain the recommendations of their respective ward or precinct committeemen and are likely to be chosen upon the basis of their sponsor's political

strength rather than upon their own qualifications. The chief clerk of the office makes the appointments with the approval of the state's attorney. In general, the clerical employees of the Cook County Office appear to be competent enough and the only difficulty which arises from their political appointment comes at the time of a change of administration.

There has been one variation from this political appointment of the non-legal staff of the office under Mr. Courtney's administration. The women who compose the staff of the social service department of the office, who have very responsible work although they are classed as clerks in the administration of the office, have been selected by examination given at Mr. Courtney's invitation by a group of civic leaders in the city.

The investigation staff of the state's attorney's office is made up primarily of police officers who are loaned by the City of Chicago. Political influence sometimes determines which officers will be assigned to this staff but it is almost always composed of the best men available in the city police department. Under some administrations the professional police staff has been augmented by a group of political appointees who are given commissions as deputy sheriffs but operate under the direction of the prosecutor. Sometimes the head of this investigation staff is an officer from the Chicago department and sometimes he has been brought in from outside by the state's attorney. In spite of the fact that the major part of the investigation department is composed of police officers from the Chicago department, the personnel usually changes when a new prosecutor comes into office.

The press and the public commonly criticize the state's attorney for failures and errors of his office which arise from the political complexion of his staff, and it is altogether necessary that he be held responsible for the performance of his office. Such criticism is essential to goad the prosecuting attorney to do as much as possible under the conditions with which he must work, but any realistic analysis must necessarily lead to the conclusion that the individual who holds the office of state's attorney cannot do much to improve the situation alone. It would be unreasonable to demand that the new prosecutor retain most of the staff of his predecessor. Its members were selected for political reasons by the organization of the opposing party and they owe their allegiance to his opponent. Certainly he cannot be expected to keep them in office when there is every reason to think that they may work for his defeat at the next election or seek to do political favors for his opponents. Similarly, in the appointment of

the new staff it would be futile to expect the newly elected prosecutor to ignore political considerations. Perhaps once in a lifetime some man who has no political ambitions and who does have extraordinary strength of character may be elected to the office by accident, and he may be able and willing to appoint on a basis of merit alone. Ordinarily, however, such a man is defeated and the one who is elected is a politician, a member of the party organization who has political ambitions reaching toward other elective offices. Certainly he cannot be expected to bite the political hand which gave him the office. The impetus to reform the manner in which the staff is selected must come from without rather than from within the office, and it is unlikely that any such change will be accomplished as long as the prosecuting attorney himself is elected and therefore deeply involved in politics.[29]

VIII. The Metropolitan Office: Non-Criminal Duties

The statutes of the state of Illinois impose upon the state's attorney of Cook County exactly the same duties in non-criminal matters as they impose on the state's attorneys of the many rural counties of the state. Nevertheless, the effect of such duties upon the enforcement of the criminal law is much less serious in the large than in the small office. The size of the staff permits a specialization and a division of labor which is altogether impossible in the rural community. All the non-criminal duties of the state's attorney of Cook County are assigned to the tax division of the office, which consists of about fifteen assistant state's attorneys and six clerks. This staff normally works under the supervision of an assistant state's attorney who is unofficially designated the county attorney and devotes its full time to the collection of taxes, rendering advice to county officials, or representing the county in the civil suits in which it may be involved. Because of the tax crisis in Cook County, this small staff now has pending before the courts of the county over 300,000 cases of one kind or another, most of which are tax cases, and to enable the unit to function it has been necessary to borrow a dozen or so clerical employees from other offices of the city and county.

The office of the tax division is located in the county building in the Chicago Loop while the main office of the state's attorney is several miles away, and the state's attorney himself pays very little attention to its work. It occasionally happens, nevertheless, that

[29]The detailed description of the administrative organization of the state's attorney's office is reserved for presentation in a later article on the process of prosecution.

political jealousy causes a violent dispute between the county board and its legal advisers in the tax division of the state's attorney's office, and on numerous occasions this jealousy has been reflected in a refusal of the county board to vote appropriations sought for the criminal law work of the prosecutor's office. An incident which happened some years ago illustrates quite clearly the fact that the criminal and the civil duties of the state's attorney's office are not conducted as independently of each other as casual observation might indicate. For many years the state's attorney of Cook County performed only those usual duties of the office which relate to the administration of criminal justice. The non-criminal activities were undertaken by a county attorney who was chosen by the county board of commissioners. About 1913, however, a bitter political feud developed between the state's attorney, Maclay Hoyne, and the Cook County board of commissioners. Hoyne set out intentionally to have the office of county attorney abolished and the duties transferred to his own office because of the fact that as legal adviser of the county board he would have a much greater influence and control over the affairs of that body. He succeeded in his attempt and the political origin of the present unification of these duties in the office of state's attorney has often been reflected in the period since that time.

The difficulties which arise from the imposition of civil duties on the state's attorney of Cook County arise not so much from the burden of the work involved, as in the rural county, but rather from the highly political nature of the prosecutor's office. The present arrangement merely serves to draw the prosecutor even deeper into politics and it often gives the county board a political and legal adviser who is of an opposite political complexion and out of sympathy with its programs and policies. This relationship seems to operate to the advantage of no one and quite definitely to the disadvantage of the prosecutor, the county board, and the public.

IX. Conclusion

Of course it is impossible to catalogue all counties definitely within one or the other of these classifications. Counties and districts can be found which present every degree of combination of all the various elements which make up the complexion of the prosecutor's office. It has been found that the combination of many factors brings to the rural office mainly youth without experience or older men without competence. It has been found that this defect does not seem to apply as generally to the metropolitan prosecutor himself but that

the intervention of politics in the selection of his staff may often load the office with inexperience and incompetence. In view of the fact that this condition is due at least in part to the low level of the salaries paid to our prosecuting officials and to the fact that many of them must engage in private practice on the side to support themselves, the obvious solution might seem to be the abolition of the right to maintain private practice and the provision for payment of higher salaries. It is important to recognize, however, that many of the counties in which these conditions appear cannot afford to pay higher salaries. The number of prosecutions arising in the course of a year is not large enough to justify paying an adequate salary to a full time prosecutor. Further, the number of lawyers in the county may be so small that an adequate choice is impossible.

In one small county in Missouri there were three lawyers, all residing at the county seat. One served as judge and the other two, uncle and nephew, as defense attorney and prosecutor, respectively. The prosecuting attorney was a young man recently graduated from the University of Missouri Law School. He was elected, of course, without opposition. He used his uncle's office and when a complaint was made to the prosecutor a screen was used to insure privacy. The defense lawyer, who inevitably would come into the case, could hear every word. The defense was prepared under the very nose of the prosecution. Of course, criminal cases were few but this situation presented unusual opportunities for "office compromise."

Where counties are small and poor it is probably desirable, as one Oklahoma prosecutor has suggested, to combine several counties into one district in the hope that the higher salary and the larger area would tend to raise the quality of the men who might seek the office. In many of the counties it might be necessary to have a deputy, but the employment of a part time deputy to handle the less important matters would be more satisfactory than having a part time officer to handle all the prosecutions for the county. A prosecutor chosen on this basis would be much more likely to have adequate office and library facilities and sufficient legal and clerical assistance.

It is not intended to imply that this change would remedy the defects of the prosecutor's office, but it might result in some improvement in those localities where the defects of the small office result most disastrously. If the office continued to be elective, without further change than that suggested, the prosecuting attorney would still be burdened with non-criminal duties and would continue to be influenced by political considerations.

Popular election seems to affect the administration of the prosecutor's office primarily in two ways, and the diagnosis seems to apply to both the small and the large office. The first is the element which has already been noted—the fact that political considerations both preclude impartial administration and take up much of the time which the prosecutor should devote to the actual performance of the duties of the office. While these political elements affect both the rural and the urban offices, there are, perhaps, some differences. The publicity value of a sensational murder trial is important to both but probably somewhat more so to the city prosecutor. His election depends upon the strength of his organization and his ability to keep in the public eye. His rural or semi-rural colleague finds his strength more largely in his circle of personal friends and acquaintances. It is the difference between personal politics and machine politics. The country prosecutor uses the prerequisites of his office to make and keep friends while the city prosecutor uses them to put influential political henchmen under obligation to him.

The second condition which arises from popular election of our prosecutors is the tendency on the part of those who hold the office to regard it as a temporary position. In some parts of the United States it has been possible to build up a tradition that those holding offices requiring special competence and training shall be reelected as long as they serve well. This has been especially true with respect to judgeships in some states. The office of prosecuting attorney, however, is almost always regarded as something to be passed around. Very few prosecutors expect to remain in office for any length of time. As a result they develop no real interest in the problems of criminal law administration. They are likely to be wholly uninterested in the subject of criminology. They have small understanding of the social problems concomitant with crime. Few prosecutors ever write about their office or its administration. Few subscribe to criminological journals or support Institutes devoted to the study of crime and punishment. During the twenty-five years of its publication, the editors of the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY have found that it is difficult to secure subscriptions and articles from prosecutors while judges, prison officials, and social service workers have given loyal support. The prosecutor seems usually to be an ambitious, poorly-paid, temporary official whose main purpose is to hold the office for personal advancement and he has no understanding of or interest in the causes of crime in his community, the use of probation or parole systems, or the subject of penology generally. The tremendous

social importance of his office has never occurred to him and the reason may be found largely in the fact that it is filled by election.

No device for election or appointment of the prosecutor will guarantee the automatic elimination of these difficulties and the answer to the problem of selection may not be the same for all communities. In order to indicate, however, that it may not be as hopeless as it seems to attempt to eliminate these difficulties, this discussion will conclude with an appraisal of the method of selecting prosecutors in Connecticut. We quote from our correspondence with the Honorable William M. Maltbie, Chief Justice of the Supreme Court of Errors of Connecticut:

"As you say,[80] the State's Attorneys in this State are appointed for terms of two years by the judges of the Superior Court and the prosecuting attorneys in the lower courts by the judges of the particular courts in which the officers serve, and, as you say, there are certain other prosecuting officers connected with the State departments, as the Board of Education, the Humane Society, etc.

"In the first place the Superior Court is our trial court of general jurisdiction, which disposes of all the more serious offenders, and in certain of our counties of appeals from minor courts. In certain of our counties the Courts of Common Pleas deal with such appeals. The minor courts are really but police courts, with a very limited jurisdiction. The result is that the disposition of the great bulk of criminal cases, save those of very minor consequence, takes place in the Superior Court and therefore comes directly under the State's Attorney, who has complete control of all cases in those courts. The administration of the criminal law is very largely determined by the type of men we have as State's Attorneys.

"Our judges of the Supreme Court are also judges of the Superior Court and the State's Attorneys, of whom there is at least one for each county, are appointed at a meeting of the Supreme Court and Superior Court judges. By the statute their term is for two years but reappointment is universal so long as they are willing to serve and are not incapacitated. I can illustrate that by the statement that in eighty years Hartford County has had only four State's Attorneys. The method of appointment of these officers, by the judges, brings into that office lawyers of the highest ability, character and standing in the community; in fact an offer of an appoint-

[80]Judge Maltbie here refers to one of our articles—"The Prosecuting Attorney—Provisions of Laws Organizing the Office," 23 Journal of Criminal Law and Criminology 926 (March-April. 1933).

ment as State's Attorney is looked upon as a call to public service and the lawyer who receives it counts it as perhaps the highest honor he can obtain in the profession.

"Indeed a few years ago one of our best Superior Court judges stated that he considered it a greater honor to be appointed State's Attorney than to be appointed to the bench of the court. Appointment of these officers by a bench of judges who are themselves serving for life removes all question of political influence either in appointment or in service. I can illustrate that by two incidents. Some years ago I was sitting in the office of the State's Attorney for this county when a powerful local politician came in and said to the State's Attorney, 'Mr. ————, there is something I wish you would do for me,' to receive the reply, in a most courteous and kindly fashion, 'John, there is nothing I'll do for you, but if you have anything to say I'll be glad to listen.' The other incident to which I refer is the fact that the last time we were called upon to make an original appointment to that office I did not know until after it was made, the political affiliation of the gentleman who was appointed, and then learned it only casually.

"We are very proud here of the method in which criminal justice is administered, and believe it to be largely due to the circumstances I have outlined."