

CHAPTER IV  
THE JURIES, IN FELONY CASES,  
IN COOK COUNTY

*By*

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## CHAPTER IV

# THE JURIES, IN FELONY CASES, IN COOK COUNTY

### I. *Foreword* [by the President of the Association].

Ever since its organization in 1905, the Industrial Club has maintained a committee on Jury Service, which has continuously studied the subject and made reports at regular intervals in an effort to stimulate interest in jury service and to impress upon the membership of the Club the importance of performing jury duty.

When the Chicago Crime Commission was organized in 1919, it placed observers in every branch of the criminal court, who were required to make daily reports of the proceedings therein. Arrangements were made by the Commission and the committee, whereby the observers procured data on the details of jury service and included the information so obtained in their daily reports. In this way, for more than eight years there has been accumulated a mass of information on this subject, which has been available for use by the committee. It was but natural, therefore, that the committee composed as follows: Gustave F. Fischer, chairman; George A. Paddock, secretary; W. Rufus Abbott, Henry Beneke, Rush C. Butler, William F. Juergens, Marvin B. Pool, William H. Rehm, Edw. M. Skinner, and Silas H. Strawn; should be requested to prepare this report. Moreover, the members of the Industrial Club, in a very practical and public spirited way, have demonstrated their interest in the subject of Criminal Justice generally by contributing the sum of one hundred thousand dollars to defray the expenses of the entire survey.

This committee, not satisfied with the accumulated data already on hand, employed special observers, who were placed in the criminal courts during October and November, 1927, and made an additional study of records in the courts and the office of the jury commissioners, prepared transcripts of every detail of all jury trials, conducted private interviews with numerous officials and others concerned with the administration of the jury system, and sent out over ten thousand questionnaires to persons who had lately served on juries, to judges and other public officials, to lawyers and witnesses in criminal cases, to employers of large numbers of persons constantly serving on juries, and to many others specifically referred to in the report.

The report, therefore, is based upon comprehensive research and observation over a long period of time and on the long experience and rather unusual knowledge of those directing and preparing it. The findings, conclusions, and recommendations are the result of careful study and mature deliberation.

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### 2. *Relative Importance of Jury Trials.*

In many of his recent addresses, the present State's Attorney (1928) of Cook County has said, "The main responsibility for any failures of justice which may have occurred in Cook County is upon the citizens themselves, because of their manifest unwillingness to accept jury service."

The records of criminal cases in Cook County hardly bear out this statement, however. Comparatively few of the thousands of cases which are commenced each year are ever prosecuted to a point where the jury is called upon to determine the guilt or innocence of the accused. This survey shows (Chapter I) that in the year 1926 there were 13,117 felony charges filed in Cook County.<sup>1</sup> Only 5,253 indictments were returned in those cases. Most of the others were disposed of through dismissal by, or at the instance of, the state's attorney.

Of the 5,253 cases in which indictments were filed, only 498 had been tried by juries at the time when the survey was completed in August, 1927. At that time there were still some cases pending, but, inasmuch as the longer felony cases are delayed the less likely they are to be tried, it is doubtful whether an inclusion of these cases would materially raise the percentage of cases tried. The survey, therefore, shows that only 3.8 per cent of all 1926 cases involving charges of felony ended in jury trials. Only 9.48 per cent of the indictments were tried by juries.

Although the jury, as judges of the law and facts, must in the last instance be held responsible for the adequate punishment of criminals, much depends upon the manner in which cases are presented to the jury. Efficient prosecution is absolutely essential to the punishment of crime. One important defect of the present administration is in the personnel of the state's attorney's office. Assistant state's attorneys are often young, inexperienced lawyers, who have received appointment for political favor rather than for their ability and integrity.

The system now employed in the preparation and trial of cases is also at fault. Assistant state's attorneys are commonly assigned to a single court room and take charge of all cases called in that room. Thus it frequently happens that cases are tried by attorneys who are utterly unacquainted with the evidence which they are to present and have had no opportunity to confer with witnesses until the day of the trial. The natural result of this practice is that prosecution is inefficient and unnecessary errors are committed. An assistant state's attorney should be assigned to each case upon its origin and should be held responsible for gathering the evidence, preparing the prosecution, and trying the case. Such a system would do much to eliminate the grounds upon which the state's attorney is frequently criticized; namely, that too many errors creep into the records, and that too many cases are compromised by permitting pleas of guilty of lesser crimes than those charged, followed by the assessment of wholly inadequate punishment and oftentimes by no punishment, as where the criminal is granted probation. It is wholly misleading to inveigh against "not guilty" verdicts by juries so long as the

<sup>1</sup> The figures quoted comprise felony charges filed in Cook County. Chapter VI, on Prosecutions, deals only with charges filed in the City of Chicago.

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release of criminals by other means than acquittals by juries are in the ratio of eighteen to one, which is the record in Cook County.

It appears that under the present administration the only cases that are presented to juries in Cook County are those in which the defendant and the state's attorney are unable to strike a bargain, or those in which the crime is so shocking that nothing short of a jury trial will satisfy the public.

Notwithstanding the fact that in the recent failure of criminal law in Cook County juries have played a relatively unimportant part, the jury system is an important part of our judicial machinery. Under the administration of a diligent prosecutor a larger number of cases will be tried before juries and an adequate jury system will become a practical necessity. There is also a psychological factor which renders the jury system important, even under such lax prosecution as that which we have just experienced. Most of the cases that are tried by juries after the various weeding-out processes have taken place are cases of sufficient interest to the public to receive considerable publicity from the press. The public opinion of the whole process of judicial administration is largely determined by the results of these exceptional cases which reach jury trial. The outcome of those trials is, therefore, of immense psychological importance.

For these reasons a review of the operation of the jury system has been made, and is submitted together with suggestions for changes in the present jury system to the end that better and more satisfactory enforcement of the criminal laws of the state may be realized.

3. *Constitutional and Statutory Provisions.* Under the Constitution of the State of Illinois, "The right of trial by jury as heretofore enjoyed shall remain inviolate."

The effect of this provision is that the right of trial by jury remains as it existed under the common law, which prescribed certain practices; the most important of which are:

- (a) Twelve men must be impaneled;
- (b) They must be impartial as between the accused and the public;
- (c) They must be summoned from the vicinage or body of the county in which the crime is alleged to have been committed;
- (d) They must concur unanimously in the verdict.

The State Constitution also provides that:

"In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

There is some sentiment among both lawyers and laymen that the constitutional requirement of a unanimous verdict should be dispensed with in all criminal cases not punishable by death. However, it is clear that such a change in jury verdicts in civil cases should be tested out before it is tried in criminal cases. In 1912, the State of Ohio amended its constitution so as to permit verdicts in similar cases by a vote of nine to three. The present sentiment there as to the working of this change is sharply divided.

Under the statutes of Illinois the juries are made judges of both the fact and the law in criminal cases. In its adherence to this rule the State

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of Illinois is almost alone. The rule is manifestly unsound: It imposes the duty of interpreting highly technical rules upon men of no technical training; it precludes all possibility of having the law applied consistently in every case and does much to prevent satisfactory review of cases on appeal; it subjects juries to undeserved criticism for blundering in a field which is strange to them; and it relieves the courts of responsibility for upholding the law.

By statute jurors in all counties of the state are required to be:

1. Inhabitants of the town or precinct, not exempt from serving on juries.
2. Of the age of 21 years and upwards and under 65 years of age.
3. In possession of the natural faculties and not infirm or decrepit.
4. Free from all legal exceptions, of fair character, of approved integrity, of sound judgment, well informed and able to understand the English language.

The statute exempts many classes from jury service. These exempt classes include many public officials, judges and clerks of courts, mail carriers, ministers of the Gospel, school teachers, physicians, pharmacists, policemen, firemen, embalmers, undertakers, and some others.

Under the present statutes only males are qualified to serve as jurymen, but the advent of women jurors seems to be inevitable although legislation to attain that end thus far has not been enacted. Suitable accommodations for female jurors in criminal cases have been provided for in a new Criminal Court Building.

The Jury Act of Illinois, of course, operates uniformly throughout the state, and the *modus operandi* which it provides for securing juries for the trial of persons charged with crime are ample. The method used in preparing the list from which juries are drawn differs in the County of Cook from the remainder of the state. The city of Chicago forms the largest part of Cook County. Because of its size, diversified industries and inhabitants, trial by jury in Cook County presents problems different from those existing in any other county of the state. The frequent complaints of miscarriage of justice in trials by jury, common in the County of Cook, do not prevail, to any serious degree at least, in other circuits of the state. Therefore, this survey of trial by jury has been confined largely to the County of Cook.

4. *Administration in Cook County.* The present system of obtaining jurors in Cook County is founded on an Act of the General Assembly approved June 15, 1887, and amended by subsequent enactments. This Act provides for the appointment of a board of three jury commissioners. It requires them to prepare the jury list and describes the manner in which jurors shall be selected for service in the various courts.

The commissioners are appointed by a majority of the judges of the superior, circuit, county, and probate courts of the county. One commissioner is appointed each year to hold office for a term of three years. The successful operation of the jury system requires, above all, that the jury list shall be compiled without partiality or favoritism. This can be accom-

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plished only by scrupulous discharge of the jury commissioners' duties. The Commission can easily abuse its powers; abuses are hard to detect and almost impossible to prove. Practically the only guarantee of complete jury lists is in the character of the persons serving on the Commission. The importance of carefully considered appointments should be kept constantly before the judges by whom selections are made.

The Act directs the jury commissioners to prepare a list every four years, containing the names of "all qualified electors" who are eligible for jury service, and to correct and supplement the list annually. This list is the jury list. The requirement that the jury list shall contain the names of all who are eligible for service is one that has embarrassed full administration of the Act. There is no one source from which either the names or the data necessary to compiling a complete list can be obtained. The Act should be amended to require a jury list composed of a specified minimum number of names, with suitable provisions for annual correction and alteration of the list.

Between the years 1897 and 1909 the jury commissioners used the poll lists in selecting names for the jury list. In 1909 the commissioners were judicially advised that they might use the Chicago City Directory instead of the registration lists. Since that time the jury commissioners have made up a list of "supposed electors" from the last available publications of the Chicago directory and from the poll lists of the parts of Cook County which lie outside of Chicago.

Neither the use of directories nor the use of poll lists is entirely satisfactory. Each source has advantages and disadvantages. The poll list is advantageous because all of the names which it contains are the names of electors; it is deficient in that it supplies only the names of registered electors and does not include names of qualified electors who have not registered. The principal advantages of using the city directory are that it supplies the names of many unregistered electors and that it enables the commissioners to avoid selecting the names of persons who are exempt by reason of their occupations. The disadvantages encountered in making up the jury list from the city directory are that the most recent (1923) edition is obsolete and that the directory does not indicate whether the names selected are the names of persons who are qualified to vote. In some respects both the directory and the poll lists are deficient. Neither shows whether the person whose name is selected is male or female, and it is impossible to determine from either source whether a prospective juror meets the statutory requirements as to literacy, age, or mental or physical condition.

The jury commissioners should be given greater latitude as to sources from which to choose electors for the jury list. The use of current membership lists of business, industrial, manufacturing, civic, charitable and social organizations would greatly facilitate the acquisition of a list of names and reliable addresses of electors qualified for jury service.

#### 5. *Method of Determining Qualifications of Electors.*

The qualifications of those whose names have been included in the jury list are ascertained from the answers given to a questionnaire sent out by the commissioners. The jury commissioners

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supervise the examination of answered questionnaires and upon information which has been given they pass upon the eligibility of the persons by whom the answers are made.

This method is not entirely satisfactory. There are many statutory grounds for exemption, and if a reply shows the existence of one of these grounds exemption is ordinarily allowed without further inquiry. Occasional investigations into the truth of the answers would probably accomplish some improvement, particularly if the investigations were accompanied by newspaper publicity. In the following passage the statute provides for investigations of this kind, but the authority which it confers has never been exercised:

"\* \* \* the said jury commissioners shall also have power to summon electors to appear before them and to examine them, touching their qualifications for jury service, and each of said commissioners and their clerk and assistants provided for in this Act are hereby empowered to administer all oaths or affirmations required in the discharge of their official duties."

If the commission would personally examine all veniremen before being turned over to the court it would substantially improve the quality of juries.

6. *The Jury Box.* The commissioners are directed to select from time to time not less than 15,000 names from the jury list and to place cards bearing the names, ages, places of residence and occupations of the persons so selected in the jury box. In so far as it is possible to do so the commissioners are to select the names of persons who reside in different parts of the county and who represent diversified occupations.

7. *Drawing Petit Jurors.* Under the law the judges certify to their clerks of court the number of jurors which will be required in their respective courts. These orders are transmitted to the jury commissioners. The law requires that in filling the orders, at least two of the three jury commissioners and the chief clerk, or one commissioner, the chief clerk, and a judge, shall be present when the jurors' names are drawn from the jury box. In the absence of the chief clerk one of the other clerks may be deputized to act in his stead. The deputy clerk of court by whom the certified order for jurors is presented draws out of the jury box and counts the number of cards selected. His count is verified by one of the commissioners. The work of preparing cards and depositing them in the jury box seems to be conscientiously done, as does the drawing of the jurors ordered for the courts.

At the end of each term of court the jury commissioners ascertain the names of all persons who have served as jurors during the term. These names are checked on the jury list and are not again placed in the jury box until after all others on the list have served or have been found to be disqualified or exempt. The names of those who are qualified to serve and are not exempt, but have been excused, are returned to the jury box. A juror may claim exemption if summoned within a year of his last service.



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8. *Selection of Grand Jurors.* From the inception of the jury commissioners' office in 1897 up to April, 1921, the jury commissioners all followed the same method of selecting jurors for grand jury service. From the replies received to their questionnaires the commissioners would select the names of persons who seemed to possess special qualifications for grand jury service. The names of the persons so selected would be deposited in the grand jury box.

In April, 1921, the state's attorney advised the jury commissioners that they were not selecting grand jurors in accordance with the statute, and instructed them to return all of the names in the grand jury box to the petit jury box and to refill the grand jury box by an indiscriminate selection from the petit jury box. The commissioners were also advised that after a panel of grand jurors had been drawn from the grand jury box a like number of names should be drawn from the petit jury box and deposited in the grand jury box. This method is now followed.

Since the adoption of the present method the grand juries frequently have been mediocre and have not had the mental capacity required for satisfactory service of this kind. Before 1921, the available grand jury was constituted of better and more intelligent citizens. The jury commissioners should again be vested with discretion in the selection of grand jurors.

9. *Personnel of Juries.* Some of the most important defects in the jury system manifest themselves after the jurors have been summoned for service. One of the principal reasons which has been advanced for the failure of proper and adequate punishment of criminals by juries is that juries are commonly constituted of citizens lacking in experience and intelligence, who are oftentimes corrupt and submissive to influence, sinister and otherwise. The circumstances to which this condition is attributed are:

1. The average, intelligent, eligible, citizen seeks to evade jury service.
2. Citizens best qualified by experience, training, and environment to bring in impartial verdicts are the type most often excused.

The main reasons for evasion of jury service are:

- (a) Insufficient time is allowed between date of service of summons and date required for appearing in court.
- (b) The idea that actual service is, in the eyes of fellow citizens, an exhibition of weakness in being unable to wield sufficient influence to be excused from service.
- (c) Objectionable treatment by court officials.
- (d) Loss and waste of time and pecuniary injury.
- (e) Fear of injury to self and family at the hands of organized criminals, enhanced by newspaper publicity of the names and addresses of jurors and their families.
- (f) Inadequate provisions for the comfort of jurors.
- (g) Inability of citizens to select time of service.

10. *Jury Service Statistics.* During the course of our survey an analysis was made of a list of 1,333 names of men who were called for jury service during two months of 1927. The following Table 1 shows the occupations in which these men were engaged

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and the number and percentage of those who served from each class:

TABLE 1. JURY SERVICE CLASSIFIED BY OCCUPATION

Occupation	Called		Served	
	Number	Per Cent	Number	Per Cent
Accountants .....	63	4.72	34	2.55
Appraisers .....	10	.75	3	.23
Brokers .....	18	1.35	6	.45
Buyers .....	24	1.80	8	.60
Chauffeurs .....	53	3.98	20	1.50
Clerks .....	134	10.05	73	5.48
Contractors .....	32	2.40	11	.83
Credit men .....	10	.75	4	.30
Executives .....	59	4.43	18	1.35
Farmers .....	14	1.05	8	.60
Foremen .....	51	3.83	21	1.58
Laborers .....	16	1.20	9	.67
Professions .....	64	4.80	29	2.17
Railroad men .....	24	1.80	9	.67
Realtors .....	30	2.25	13	.97
Retailers, etc. ....	97	7.28	30	2.25
Salesmen .....	263	19.73	85	6.38
Superintendents and managers.....	120	9.00	45	3.37
Tradesmen .....	242	18.15	99	7.43
Others .....	9	.68	2	.15
Total .....	1,333	100.00	527	39.53

The showing made by the above table that about 40 per cent of those summoned served, corresponds quite closely to the average figures taken from the jury commissioners' report for the last fifteen years. It is also representative of the experience of the entire year 1927.

During the year 1927, 14,300 men were drawn for jury service in the criminal court. One thousand nine hundred fourteen (over 13 per cent) of them were not found and could not be served with summons; 578 (about 4 per cent) were not summoned because not needed; and 61 were found to be exempt.

In 1927 the courts excused almost as many jurors as they retained for service. Out of the 14,300 who were drawn only 5,448 (38 per cent) served and 5,111 (35.74 per cent) were excused.

It is the practice of the jury commissioners to furnish the judges with reports showing the jury service records of the men on their venires. In October and November of 1927, 2,145 persons were drawn for service in the criminal court; 770 of them had been excused previously one or more times; 37 had obtained five or more excuses; and one of them had been excused ten times. The judges, persisting in their leniency, again excused 17 of the 37 who had been excused five times, and the man who had already avoided service ten times was again allowed to escape service. These conditions are generally known and justly create dissatisfaction on the part of those who are retained for service, as well as the general public.

One of the significant facts brought out by the survey was that 1,188 (over 8 per cent) of the 14,300 men drawn for jury service during 1927 did not appear in response to the summons with which they were served. Prob-

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ably some of these were not served in due time, but many wilfully disregarded the summons. The processes of the court afford an efficient remedy for this condition. Fines for contempt and writs of attachment, if given newspaper publicity, would do much toward creating greater respect for jury summons and more prompt obedience thereto.

A printed booklet should be given to each juror at the time he is examined or notified to report for jury service, which should contain a non-technical explanation of:

1. The obligation to respond to summons, and where and to whom he should report for service, and the penalty for not doing so.
2. The nature of the work expected of him.
3. The place it has in the process of justice.
4. What the juryman's duties are in the criminal and civil sides of the court.
5. The period during which he must serve.
6. The fee to which he is entitled.
7. The hours of service and housing accommodations.

### *II. Excessive Drafts and Excuses.*

Every year thousands of men are called to qualify for jury service. Of each thousand who respond and qualify, hundreds are compelled to report for jury service every day during a considerable period but never serve on a case. For this the community pays. Men on venires are paid for every day they are in attendance. The money paid is often not a complete recompense for the time they lose, and there is an absolute economic loss. Many a citizen becomes annoyed at the prospect of jury service, not because he is unwilling to serve, but because he fears that he will be haled into one court room after another from day to day at a financial sacrifice, without having an opportunity of serving in any case.

The waste of much time and expense to individual jurors and public officials can be avoided by reducing the number of jurors in each venire. At present sixty-five men are called for each judge for each two weeks' period of service. This number is excessive; it requires a needless number of jurors to respond because only about twenty-five of these men are retained. The system presents great opportunities for the exercise of political influence on the part of the sheriff or his deputy, the bailiff, and the judge, in excusing jurors from service. We recommend that the venire be reduced about  $33\frac{1}{3}$  per cent.

### *12. Length of Jury Service.*

Statistics prepared in 1922 under conditions similar to those of today show that very few jurymen serve the full time for which they are summoned. They show that of 6,166 who served in the criminal court, the average number of days served by each was seven. Forty-one per cent of the jurors served from 1 to 5 days; 46 per cent from 5 to 10 days; 11 per cent from 10 to 15 days; and only 2 per cent served for longer than 15 days. These figures plainly indicate that under present conditions the average man need not fear a term of service. They show that if jurors served for the full period contemplated by the statute, it would be possible to provide sufficient

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jurymen from much smaller venires than are summoned under the present wasteful method.

13. *Intimidation of Jurors.* The case of *People vs. Lewis*, wherein the defendant was charged with murder, tried in the Criminal Court of Cook County in November, 1927, served well to illustrate some of the weaknesses in our administration of the jury system. It was a sensational case, and wide publicity was given to newspaper articles tending to convince the public that the trial would be long and bitterly contested and that danger to jurymen and their families might result from serving on this case. A brief statement of the facts in that case will not be amiss.

The evidence showed that on August 26, 1927, a group of about sixty junk men were gathered in a yard at Roosevelt Road and Washtenaw Avenue when some fifteen men, said to be led by the defendant, Harry J. ("Lefty") Lewis, rushed in. These men proceeded to slug, choke, and beat the peddlers. Someone fired shots and the invaders fled. When the excitement subsided Max Braverman was found on the ground, fatally wounded. An investigation by the police developed that Lewis, said to be a business agent of the Truck Drivers' and Helpers' Union, for eleven months had been attempting to induce various junk men to join a new junk peddlers' union. Prior to the day of the murder he and a smaller group had invaded the junk yard but had been driven away by a hail of stones. On the day of the murder he had returned with reinforcements and when Braverman again refused to join the new organization, attacked the peddler, and Braverman was shot.

On September 9, 1927, Lewis and others were indicted by the Cook County Grand Jury on a charge of murder. Lewis was tried separately. Immediately after the indictments were filed, witnesses began to report to the state's attorney that threats against their lives were being made over the telephone. Later, the home of a state's witness was bombed while he and members of his family were asleep. Later still, a drug store said to be owned by a deputy coroner was burned as a result of an explosion, which was laid to the friends of the defendant as a reprisal for the part the deputy coroner took in the coroner's inquest. The threats, bombing and burning caused the state's attorney to request that the trial of the case be advanced. The request was granted over the objections of Lewis' attorney. Each of the state's witnesses was given a police guard. The trial started on October 7, 1927, and the selection of a jury was not completed until November 3.

A total of 1,350 jurymen was summoned for service in the case. Of that number, 178 were returned "not found"; 192 were served but did not answer the summons; 4 were reported dead; 236 excused; 40 were out of town; and 5 were sick. This made a total of 655 prospective jurors who did not appear in the box for questioning. Six hundred and ninety-five who were called appeared, of whom 646 passed through the jury box before the necessary 12 were selected to hear the evidence. The other 37 were waiting to be called when the jury was completed. Out of 646 who passed through the jury box, 163 were excused because they claimed conscientious scruples against the death penalty; 386 were excused because they had a fixed opinion as to the guilt or innocence of the accused; 65 were excused by agreement

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of counsel; and 32 were peremptorily challenged—16 by the State and 16 by the defense.

The trial continued until November 18, 1927, on which date, after a deliberation of about six hours, the jury acquitted the defendant. The defendant was acquitted in the face of the testimony of eight eye-witnesses that the defendant shot the deceased in the back while the deceased was running away. The view that the verdict would have been different if the jury had consisted of representative citizens is generally accepted. Only one out of every 112 men drawn by the jury commissioners was accepted for service, and it took nearly four weeks to select the jury. This caused not only enormous expense and loss of time, but the jury finally accepted consisted of "what was left." And there was general indignation at the verdict.

This case is cited as an illustration of: (1) the difficulties experienced in selecting a jury under the present practice; (2) the tendency of representative citizens to evade jury service by subterfuge; (3) the great advantage of the defendant which results from the elimination of representative citizens from the jury; and (4) the necessity for the law enforcing agencies in the City of Chicago to assure representative citizens of protection from personal injury or property damage in cases of this kind, if they will agree to serve as jurors.

Why would not representative citizens resort in many instances to little less than perjury to escape service? The bombing of the home of a state's witness, the explosion in the building of the deputy coroner, and the threats against other witnesses and their families were doubtless well known by every prospective juror. The daily press contained column after column of comments upon the coming trial, and freely predicted that the trial would probably last for weeks and that other bombings would take place. During the first days of the trial and before the selection of the jury had fairly started, complaints were made of threats against witnesses and their families in the corridors of the Criminal Court Building. Thus it was impressed upon every prospective juror that if he were accepted he probably would be locked up for weeks and perhaps months, deprived of contact with his family and business, and that he might suffer the fate of the witness who had a bomb laid at his door.

The juror would be fully justified in those fears. No one had been apprehended and punished for the previous acts of intimidation in the same case, and it is a fact well known to the average person that bombing in the City of Chicago is not only very popular, but also one of the safest forms of criminal violence. Seldom, indeed, is anyone convicted of the offense. Under these circumstances can one be blamed who, simply by claiming to be opposed to capital punishment, escapes all such inconvenience and danger? Except for those who may be friendly to the defendant and deliberately seek to serve, only persons of exceptional courage and patriotism, or unusual stupidity or ignorance, would be likely to voluntarily accept service as a juror.

The present situation is one that strikes at the foundation of our Government. The existence of any political body must depend upon its power to erect and maintain adequate machinery with which to put its laws into

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effect. The Braverman case demonstrates how far our administration has broken down. If the jury system is to be continued as a part of our law, the average citizen must be convinced of the ability and willingness of the state to protect those who engage in jury service.

In 1927 a questionnaire was sent out in an effort to take the sense of the community upon certain aspects of the problems presented by the jury system. These questionnaires were sent to the following groups and numbers of persons:

All judges and other county and city officials.....	2,300
Officers and directors of principal banks.....	913
All jurymen who served during September and October, 1927.....	1,500
Officers of various labor organizations.....	450
Complaining witnesses in criminal cases.....	500
Retired police officers.....	990
Leaders in political organizations.....	50
Chicago lawyers .....	3,300
Business men not otherwise classified.....	575

Among jurors who had served in criminal trials an inquiry was made concerning the effectiveness of the instructions which had been given them. Many expressed the opinion that instructions seemed to be prepared and given as a mere matter of form. They were generally not regarded as being either binding upon the jury or helpful to them. The artificial language in which instructions are now couched is the result of years of technical elaboration and refinement under decisions of the Supreme Court. It is far from clear, and can be held largely responsible for the bewilderment of juries. The flexibility of the jury system which has enabled juries to relieve the rigidity of the criminal law by bringing common sense to bear upon each individual case has been one of the most desirable qualities of the system. We do not propose to sacrifice this aspect of jury trials by binding the jury with explicit directions, but we submit that the scheme of instructing juries upon the law could be made to serve the valuable end for which it was intended if instructions were to be drawn for the purpose of actually assisting the jury as well as for the purpose of making a record.

In this connection it is pertinent to notice that the survey showed that both laymen and lawyers favored oral instructions rather than the written instructions, which are now in use.

The replies which were received to the questionnaire also favored changing the statute to permit prospective jurors to select the times of year in which they are best able to serve. At present there is no way in which one can be selected for service at a season of the year when he can give up two weeks or more of his time with the least pecuniary loss. At certain times of the year it might be ruinous for a businessman to absent himself from his business, and even the services of mechanics, laborers, and clerks are in greater demand in some seasons than at others. Under the present system many citizens engaged in seasonable occupations will make every effort to avoid jury service at one time, whereas during the time when their occupations are not pressing they would be glad to serve and would find jury duty interesting and enlightening. It is believed that if prospective jurors were permitted to designate periods in which they would prefer to serve,

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there might be economies and better types of juries would be obtainable.

The questionnaire sought opinions and criticisms concerning impressions which court officials made upon the minds of jurors. Inquiries were made respecting the manner of serving summons, the reception accorded to those summoned, and the treatment of jurors by court attendants and attorneys. In the following pages we have summarized the results of a study of the answers which were received.

Deputy sheriff's frequently serve jury summons by leaving them in a mail box or under the door of the juror's supposed residence. Probably many of the summons which are served in this way never reach the persons to whom they are directed. It is certain that the summons is often not received in time to enable the man to appear in court. This manner of service undoubtedly accounts for some of the comparatively large numbers who fail to respond to summons. We can see no advantage which the present system has that would not be preserved if summons were sent by registered mail, and recommend that such service be adopted.

The first impressions received by those responding to jury summons are not calculated to create a feeling of importance or dignity on the part of those summoned. Many wander about the court rooms for hours before finally locating the place where they are wanted. They are often herded together in unattractive surroundings. The attitude of those who take charge of them tends to make jurors feel that jury service is of no particular importance. We cannot expect men to approach their duty with seriousness and a sense of responsibility if the officials they meet do not themselves have such a feeling.

Those summoned should be directed to and received with ceremony in a separate room set apart for them. There should be impressed upon the jurymen the fact that they have come together for an important purpose, which is recognized by all of those with whom they come in contact.

The intelligent citizen called for jury service undergoes an experience which rarely gives him a favorable impression of our courts. He sees how easy it is for more than half of those summoned to escape serving. He sees bailiffs of courts assemble groups of jurors in an antechamber of the court room and excuse a considerable number. His impression is that these are men with "pull" or "influence," and his impression is correct. Investigation has shown that the system is loose, that it is possible for men to be excused by court attaches who have no authority so to act, and to return on the day on which the term of court closes to obtain their vouchers. There is a wide-spread traffic in jury excuses, many of which are made without personal knowledge on the part of the judge as to the nature of the excuse. The intelligent citizen notices, too, that the bailiff calls the names of many men who do not even answer. If he inquires, he finds that they did not appear in court at all and that they were excused at the request of an influential politician or the judge, or in some other manner equally irregular.

As long as judges permit the practice of excusing men who have not appeared in open court, the door is wide open for the preservation of the present practices.

Expressions of opinion as to the treatment of jurors by attorneys are to the effect that they are in varying degrees autocratic, arbitrary, and

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brusque; some of them are tricky, others insulting, discourteous, disrespectful, and sarcastic, and still others offend by being too familiar. Complaint is made that lawyers are too prone to use technical expressions and are wasteful of time. A good many of those answering the questionnaire say the lawyers sometimes make the juror feel as though he were the criminal on trial, with the result that his mind is prejudiced long before any evidence is introduced and this prejudice is carried out in the jury room and reflected in the verdict returned.

The right of counsel to examine each juror touching his qualifications and fitness is not questioned, but a change of practice which would permit the court to make the preliminary examination of the juror and then preside over and direct further examination by counsel would result in the conservation of much time, and in the formation of a better opinion on the part of the juror of the importance and efficacy of the law enforcing agencies. The judge can in this manner expedite the selection of a jury without committing error prejudicial to either the people or the defendant.

Of the many opinions solicited as to the attitude of judges during trial, only 40 per cent were favorable. The remaining 60 per cent were about equally divided between those who made unfavorable comment and those who expressed no opinion at all. Unfavorable answers to these questions carry an element of personal criticism in which many persons are reluctant to indulge. The result, therefore, is rather significant. The only remedy lies in the personal efforts of the judges. Judges should ever be mindful of the fact that jurors are there to form, and really do form, an important part of the court; that as such they are entitled to courteous treatment and respectful consideration not only by the judge but by everyone in his court. The judges must conduct the proceedings in the courts with dignity and dispatch and be as mindful of the use of the time of the jurors as of their own.

Many jurors who have recently served were questioned concerning their impressions of the general atmosphere in the court room. The replies were unfavorable. This is unfortunate, for juries form a direct contact between the average citizen and the courts. The public conception of the court is gained from jurors. It is to be deeply regretted that some of the courts in Cook County have created a condition which does not impress these men with the dignity of our courts, the majesty of the law, or the certainty of justice. The court, viewed through the eyes of the average juror in Cook County, is loosely organized, poorly administered, and ineffective in results. The remedy for this condition also lies largely within the powers of the judges.

The efficiency of the jury's work depends somewhat upon the physical conditions which surround it. There is no doubt that criminal juries are now subjected to unnecessary hardships in the present quarters of the criminal court, which are inadequate in many respects. A detailed discussion of these conditions is omitted, however, because they will soon be removed when the court is installed in the new Criminal Court-house, which is to be completed in 1929.

From many interviews and long observation the conclusion is inevitable that most juries do not debate the cases on which they are sitting and few



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jurors have opinions of their own. Undoubtedly, there are many compromise verdicts which are controlled by the wrong-minded jurors as often as by the intelligent and just. A partial corrective will be found in the measures recommended for raising the quality of juries. Further improvement could be accomplished if the jurors were given an understanding of their duties before hearing the evidence, and if greater pains were taken to put the case before them in an orderly and intelligible manner.

The answers to the questionnaires contain positive statements that there are dishonest bailiffs in the courts, who are under the influence of the lawyers representing criminals. In order to insure a good response to the questionnaire the identity of the citizen making the reply was not sought. It is therefore impossible to trace the statements to their source; nevertheless, the fact remains that under present conditions opportunities for reaching jurors are numerous. Many of the possibilities for tampering with juries will be eliminated by the appointments of the new Criminal Court Building. The exercise of care in the selection and control of court attaches who come in contact with jurors will remove other sources of difficulty.

The survey has demonstrated conclusively that there is a very decided tendency on the part of citizens who are most capable of making just and intelligent decisions as jurymen to evade this duty. Under the conditions already mentioned it is futile to lay at their doors all the blame for failures of justice and breakdown of law enforcement in Cook County. Rather, it is upon the officials themselves who are so unmindful of the sacrifices constantly being made by jurymen; who are so wasteful of the time of busy men; who compromise with criminals and breed in them a contempt for law; and who are so impotent in the face of threats and intimidation of jurymen that those called for service cannot depend upon the State to protect them from the threatened reprisals of criminals.

Recent developments point to an awakening of the people to these conditions and this should react favorably upon those in authority and lead to steps for the correction of many administrative evils. If this should fortunately become true, citizens may be inspired to more faithful performance of this important public service. To this end every organization of citizens should become interested in arousing the public conscience on the subject.

A juryman does his work without a uniform or military music, and in the quiet and monotony of routine peace time pursuits instead of in the excitement of war, but he is none the less a soldier. He renders a public service of paramount importance, usually at a sacrifice of time and money and occasionally at considerable risk of personal injury or property damage. He is entitled to protection while serving and his work should be regarded with the respect it deserves. Given such conditions, the average citizen will be found as willing to serve on a jury as he is to perform any other civic duty.

#### 15. *Summary of Findings.*

1. Only about five hundred out of a total of thirteen thousand felony charges filed in 1926 were tried by juries, and about fifty per cent resulted in acquittals. It is, therefore, plain that the results of jury trials, while of

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psychological importance in determining public opinion upon the whole process of judicial administration, is *relatively unimportant* so far as the number of cases disposed of is concerned. Assuming that each acquittal by jury is a failure of justice, which of course is not the fact, this would still account for only two per cent of all felony charges filed.

2. The administration of criminal justice will be better promoted by *increasing the minimum age limit* of jurors from twenty-one years to twenty-five years. It is probable also that women will be found as well qualified for jury service as men.

3. The successful operation of the jury system requires above all, that the *jury lists* shall be compiled *without partiality or favoritism*. Practically the only guaranty of such jury lists is in the character of the jury commissioners. The importance of proper selection of such commissioners by the judges is of the highest importance.

4. The present method of *selecting jury lists* in the City of Chicago from an obsolete city directory published in 1923 is unsatisfactory and wasteful of time and money. The use of current membership lists of business, industrial, manufacturing, civic, charitable and social organizations (of which there are over 1,000 in Chicago) and the list of registered voters in the County outside of Chicago, would be a great improvement in acquiring names and reliable addresses of electors qualified for jury service.

5. The jury commissioners should *personally examine* all electors as to their qualifications for jury service; thus saving much time of the courts and lawyers. The jury commissioners are hampered in the discharge of this duty by inadequate appropriations.

6. The *excusing from jury service* of those drawn for such service, purely as favors, and for political reasons, is a great abuse. It necessitates a drawing of an excessive number of prospective jurors, about fifty per cent more than are necessary, and thus wastes public money and the time of the courts and jurors. This results also in stripping the jury list of the more intelligent men; and in destroying the morale of those who are required to serve.

Some of the facts disclosed by the survey and forming the basis for these conclusions are:

During 1927, 14,300 men were drawn for jury service in Cook county; 38 per cent were accepted for service, 35.74 per cent were excused.

Of the 14,300 men drawn for jury service during 1927, 1,188, or over 8 per cent, ignored the summons. There is no record of any action taken by the court to enforce their attendance.

A sample count was taken of jurors drawn in October and November, 1927, in which period 2,145 persons were drawn for service in the criminal court; 770 of them had been previously excused one or more times; 37 had obtained five or more excuses; and 1 had been excused ten times. The judges, persisting in their leniency, excused 17 of the 37 who had been excused five times; and the man who had already avoided service ten times was again excused.

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The average number of days served by each juror accepted is 7; 41 per cent served from 1 to 5 days; 46 per cent from 5 to 10 days; 11 per cent from 10 to 15 days; and only 2 per cent served longer than 15 days.

In the Lewis Braverman case, 1,350 jurymen were summoned; 646 passed through the box before the 12 were selected; 163 were excused because they claimed conscientious scruples against the death penalty; 386 because of alleged fixed opinions as to guilt. Many of these disqualifying answers were obviously prompted through fear of serving and their belief that the law enforcing officials were unwilling or unable to protect them. The defendant was acquitted in the face of positive and convincing evidence of guilt.

7. A questionnaire was sent to ten thousand citizens of Cook County, consisting of public officials, bankers, officers of labor organizations, retired police officers, leaders in political organizations, lawyers, a diversified list of business men, complaining witnesses in criminal cases, and to fifteen hundred jurymen who actually served in the criminal courts during October and November, 1927, from which the following information and opinions were obtained, as to *objections to jury service*:

Written instructions given to jurymen by the court are not regarded as being either binding upon the jury or helpful to them, but tending rather to bewilder and confuse the jury. Both laymen and lawyers favored oral instructions over the present practice.

The statute requiring the jury to pass upon the law as well as the facts should be repealed because the jurymen are not qualified to pass upon questions of law.

Jurors should be permitted to select the times of year in which they are best able to serve, which would result in economies and obtaining better types of juries.

The practice of deputy sheriffs in serving jury summons by leaving them in a mail box or under the door of the juror's supposed residence would be improved upon if the summons were sent by registered mail.

Many jurors wander about the court rooms for hours before finally locating the place where they are wanted, and are often herded together in unattractive surroundings. The attitude of those who take charge of the jurors leads to a feeling that jury service is of no particular importance. The experience of the intelligent citizens called for jury service provokes a decidedly unfavorable impression of our courts. Bailiffs of courts assemble groups of jurors in an ante-chamber of the court room and themselves excuse a considerable number, leaving the impression with the others that those excused have a "pull" or influence, and this impression is usually correct. It is noted also that many of the jurors whose names are called do not even answer and one is forced to the conclusion either that the juror has ignored the summons or that he has been excused without appearing, in some irregular manner.

Expressions of opinion as to the treatment of jurors by attorneys are to the effect, that they are sometimes autocratic, arbitrary, brusque, tricky, insulting, discourteous, disrespectful, sarcastic, familiar, prone to use technical expressions, and are wasters of time; that many times the juror is made to feel as though he were the criminal on trial, prejudicing his mind and influencing his verdict.

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Of the many opinions solicited as to the attitude of judges during the trial, only 40 per cent were favorable; the remaining 60 per cent were about equally divided between those who made unfavorable comment and those who expressed no opinion at all. The result is rather significant when the fact is borne in mind that unfavorable answers to these questions carry an element of personal criticism in which many persons would be reluctant to indulge.

Jurors who have recently served were questioned concerning their impressions of the general atmosphere in the court room and their replies were unfavorable, indicating that in the opinion of the average juror in Cook county the courts are loosely organized, poorly administered, and ineffective in results.

The answers to the questionnaires contained positive statements that there are dishonest bailiffs in the courts, who are under the influence of the lawyers representing the criminals. In order to insure a good response to the questionnaire, the identity of the citizen making the reply was not sought. It is, therefore, impossible to trace the statements to their sources. The survey, however, shows conclusively that under present conditions opportunities for reaching jurors are numerous.

It is suggested by many of the jurors who have recently served, that each juror summoned for jury service be given a printed booklet containing a non-technical explanation of where and to whom he should report for service, the nature of the work expected of him, the dignity of the service he is rendering to the state, the period which he will probably be required to serve, the fee to which he will be entitled, and the hours of service and housing accommodations.

8. The survey finds that the *personnel of the state's attorney's office* is inadequate. Assistant state's attorneys are often young, inexperienced lawyers, appointed for political favor rather than for their ability and integrity. The system is also at fault. These men frequently are required to try cases with which they are utterly unacquainted, and have had no opportunity to confer with witnesses until the day of the trial. This naturally results in poor prosecution and many unnecessary errors are committed.

9. It is found that from the time the Jury Commission was created in 1897 until April, 1921, the jury commissioners selected persons for the *grand jury box* who were especially qualified for that important service. On the latter date the commissioners were instructed by the present state's attorney to discontinue this practice and in the future to draw grand jurors indiscriminately from the petit jury list. This has reduced the intelligence standard of grand juries. The survey finds that for this important service the members should be picked men, selected with discrimination for their intelligence, character, and permanency of residence.

16. *Recommendations.* 1. *Jury lists* should consist of a specified number of names, with suitable provisions for annual correction and revision. The jury commissioners should have greater latitude as to sources from which to choose electors for the list, such as current membership lists of business, industrial, manufacturing, civic, charitable, and social organizations.

2. *Jury commissioners* should personally examine electors as to their qualifications for jury service and the County Board should appropriate sufficient funds to enable this to be done.

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3. The jury commissioners should return to the former practice of selecting names of men for *grand jury* service of those whom they consider particularly well qualified by intelligence, character, ability, and permanency of residence.

4. Repeal that provision of the Jury Commissioners' Act empowering them, with the approval of the majority of the judges, to appoint *deputy jury commissioners* in each voting precinct.

5. Increase the *minimum age* limit of electors to qualify for jury service from twenty-one years to twenty-five years.

6. Electors should be permitted to *select two or more terms of court* when they can most conveniently serve.

7. Provisions should be made for *term boxes* in addition to the main and grand jury box.

8. Not less than *eight thousand names* should be maintained in the main box and in the current term box, and five hundred names in the grand jury box at all times. The names of jurors who have served should not again be drawn as long as it is practicable to select others who may be qualified for service.

9. Judges should *reduce the number of jurors drawn* by one-third and grant excuses only to those who in open court present just grounds for being excused.

10. The practice of some of the judges to *delegate* to bailiffs and other court attaches the power to *excuse jurors* without hearing should be discontinued.

11. Jurors who *ignore summons* should be cited.

12. Citizens drawn for jury service should be furnished, when summoned, a *printed list of instructions*, informing them where to go, the prospective length of service, amount of fees, nature of their duties, etc.

13. *Judges* should assume the *right to examine* jurors on *voir dire* and use the power vested in them to select a jury without unnecessary delay.

14. Citizens called for jury service should be made to feel that the whole power of the state will be utilized to *protect them from personal harm* while in the performance of their duties. In no other way can the sanctity and integrity of jury trials, and effectiveness-of criminal law administration be restored in this community.