

CHAPTER XVII  
THE McSWIGGIN ASSASSINATION AS A TYPICAL  
INCIDENT

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## CHAPTER XVII

### THE McSWIGGIN ASSASSINATION AS A TYPICAL INCIDENT

- i. *Scope of the Inquiry.* In any approach to the study of organized crime in Chicago, certain topics soon emerge to view in the shape of queries, which require to be answered.

The ensuing chapters furnish the material for answering. The principal queries are as follows:

- (1) Why have grand jury investigations and police drives failed time after time to crush organized crime? What is the reason why gang rule has successfully defied every attempt to suppress it?
- (2) Why has gang warfare over the profits of beer running and whiskey distribution, with its startling toll of the lives of gunmen, not resulted in the extermination of gangsters?
- (3) What is the role of bombing as a method of intimidation and control in black hand, labor, racial, and political conflicts?
- (4) Just what is the basis of the relation, if any, between gangster and politician? Does the immunity of the gangster and the gunmen from punishment rest upon graft, corruption and intimidation, or upon neighborhood influence?
- (5) What are the different types of organized gangs in Chicago, and what place and power do they possess in their own neighborhoods?
- (6) What does a "Who's Who of the Gang in Chicago" disclose about the career of gangsters and the fortunes of criminal gangs?
- (7) How does the gangster look at his own life and what apology for it has he to make to society?
- (8) If previous methods of crushing organized crime have failed, are there any feasible methods of control?

But, before presenting the mass of facts that show the various aspects of organized crime and supply the answers to these questions, it is necessary to draw a picture of a typical incident in that part of the crime world. The reader can then see for himself how these questions necessarily arise and demand answers. For this purpose, the McSwiggin assassination, in 1926, serves admirably. Most of the aspects of organized crime are displayed in this typical incident.

The killing of McSwiggin dramatized to the public the relation between criminal gangs and political organization. The work of the coroner's jury and of the six grand juries, futile as they were in solving the murder of an assistant state's attorney and his two gangster companions, did throw a flood of light upon the world of organized crime and its sinister attempts at controlling elections, public officials, and even the courts.

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### 2. *Theories of Why McSwiggin was Killed.*

On April 27, 1926, at 8:40 p. m., William H. McSwiggin, an assistant state's attorney of Cook County, was one of three men killed by machine-gun bullets in front of the saloon at 5613 West Roosevelt Road, in the incorporated town of Cicero, lying just west of the Chicago city limits. Doherty and Duffy, his slain companions, were known gangsters.

In the four months from January to April, there had been twenty-nine killings ascribed by the police and newspapers to the booze war. In the preceding four years, over two hundred such murders had occurred—"Gangsters killing gangsters, a good way to get rid of them." But this was the assassination of an energetic young public official in the most important office for law enforcement—no longer gangsters killing gangsters, but an attack upon the state.

A climax in the murderous activities of gangland had been reached. Intense interest was focused upon the question, "Who killed McSwiggin?" Public excitement and indignation were intense; columns of newspaper space were devoted to the topic for weeks. Every edition carried clues, new angles, and developments. To concentrate public attention upon the material issues, the *Chicago Daily News*, on April 28, presented three questions: (1) What was McSwiggin, a prized deputy of the state's attorney's office, doing in the company of notorious gangsters? (2) Who were Duffy and Doherty, his murdered companions? (3) What were the motives and affiliations of the killers?

Everyone seemed to have a different theory of the triple murder. Set down one after another they present a curious picture of defense reactions of public officials and speculations upon whether any alliance existed between the leaders of the underworld of organized crime and the murdered official. These theories may be grouped under three general heads:

1. *Killed by accident or design in the performance of official duty.*—Robert E. Crowe, the state's attorney, Gorman, his first assistant, and Judge William V. Brothers, presiding judge of the Criminal Court, believed that McSwiggin was a martyr, killed in the performance of his duties in revenge for his fearless prosecutions; that he was with gangsters at war with gangsters at the moment, but his hobnobbing was for the purpose of gathering material information for cases he was engaged in prosecuting; that the killing of McSwiggin was accidental, the killers not identifying him; that he was either getting evidence in the Durkin case<sup>1</sup> or investigating for the chief of police. It was also suggested by these officials as an alternative, that McSwiggin was shot in revenge for his energetic prosecution of the Scalise-Anselmi case.<sup>2</sup> On the last named theory, of course, the gangsters who killed the official knew that he was in the car.

2. *Slain inadvertently or deliberately as an incident of the beer war.*—Joseph Z. Klenha, the mayor of Cicero, pronounced the killing an incident of the beer war then raging between rival gang factions. The slayers, he believed, were the same men who had recently used the machine-gun in

<sup>1</sup> A famous murder case then pending.

<sup>2</sup> Another famous gang murder case in which gangsters had killed policemen in a running gun battle.

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another gang attack, and that they did not identify McSwiggin; that the killers were after the O'Donnells.<sup>1</sup> "But," he asked, "why was Assistant State's Attorney McSwiggin in that crowd?" Captain John Stege, of the Detective Bureau, also favored the theory that the killing was an incident of the beer war and that the gangsters who killed McSwiggin did not identify him.

A certain section of the press ascribed the murder to revenge by a bootlegger of the north side, recalling a killing which occurred the night before the triple murder. The names of two prominent gang leaders were brought into the affair—"Scarface" Al Capone, a notorious gang leader who later became the acknowledged king of the underworld in Chicago, and Hymie Weiss, of the old Dion O'Banion liquor gang on the lower north side of Chicago. A local newspaper advanced the theory that Capone had killed McSwiggin mistaking him for Weiss. Capone was interviewed. He denied it in the following language:

"Of course, I didn't kill him. Why should I? I liked the kid. Only the day before he got killed he was up to my place and when he went home I gave him a bottle of 'scotch' for his old man. I paid McSwiggin and I paid him plenty, and I got what I was paying for."

A variation of the mistaken identity theory was that the three men were killed by their own comrades to divert suspicion from themselves, in reprisal for tipping off the police about the activities of the McErlane-Saltis south side gang.<sup>2</sup>

The beer war theory has persisted the longest and is apparently supported by the most authentic information. It was quite definitely established that the word had gone out several weeks previous to the murder of McSwiggin that the Capone gang was no longer the approved beer concessionaire of Cicero; that the power to protect had been shifted to the O'Donnell Brothers, who, to convince the saloon-keepers of the authenticity of official sanction for this change of policy, took McSwiggin with them on the fatal night as proof. McSwiggin was, however, believed to have been unaware of the plans of his beer gangster associates. The Capone gangsters heard of this invasion into their territory, according to this theory, and sent out their killers to murder the O'Donnells, not knowing that McSwiggin was with them.

3. *Murdered with underworld friends for their part in the then recent primary election.*—This theory ascribed the killing to the efforts of the various gangs to reach out for election spoils. Duffy was a Crowe precinct worker and Doherty was a member of a gang that was known to have worked for Crowe. The day before the murders, Duffy, Myles O'Donnell, Hirschie Miller, and Terry Druggan<sup>3</sup> were present at the Election Commissioners' canvass of the April primary vote, wearing the badges of authorized watchers of the Crowe-Barrett machine. Subsequent investigations into vote frauds at that election were conducted by four special grand juries.

The *Chicago Daily Tribune*, which was one of the most influential factors

<sup>1</sup> Leaders of a liquor gang, who will be frequently mentioned in the succeeding pages.

<sup>2</sup> A notorious gang of beer runners on the south side, which still flourishes.

<sup>3</sup> Also notorious gangsters and bootleggers.

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in the subsequent investigations in the effort to solve this mystery, favored this theory.<sup>1</sup>

The murder was characterized by the persistence of public demands for its solution. The different theories advanced excited and even fascinated the people of Chicago, for the settled belief took root that the solution of the killing of McSwiggin would answer all puzzling questions of gang warfare, beer running, the alliance between the underworld leaders and politicians, and the immunity of criminal gangsters from punishment. From first to last, seven juries (a coroner's jury, five special county grand juries, and a Federal grand jury) investigated the many different angles presented by these theories.

3. *The Inquiries of  
a Coroner's Jury  
and Six Grand Juries.*

While the public shock of the killing was still at its height, Coroner Oscar Wolff<sup>2</sup> impaneled a special coroner's jury of six prominent citizens to investigate the death of McSwiggin. Coroner Wolff announced that he chose these men to insure public confidence in the inquest: John R. Noel, president of the Noel State Bank and chairman of the Committee of Fifteen, a reform organization; Willoughby Walling, president of the Morris Plan Bank and widely known as a philanthropist; Willys W. Baird, real estate; William Marshall Ellis, real estate; O. O. Frisbie, a manufacturer; and Robert H. Hunter, insurance.

4. *The Coroner's Jury.*

Coroner Wolff was then hostile to State's Attorney Crowe, but a little later became one of his strongest adherents. The possibility of a clash in authority between the coroner and the state's attorney became imminent because State's Attorney Crowe had incurred the displeasure of the coroner by claiming that vital evidence which should have been kept secret had been disclosed at the coroner's inquest. The coroner appointed John J. Healy, a lawyer of standing and formerly state's attorney (1904-08) as counsel for the coroner's jury, but Mr. Healy refused to serve.

The first session of the jury was held in secret, with special care to exclude reporters, because the coroner said he wished to keep interested gangsters from obtaining any information which might aid them in defense. On May 1, twenty witnesses were subpoenaed to appear, the most prominent among them being Judge William V. Brothers, who had presided at the trial of the gangsters Anselmi and Scalice.

Prior to his appearance he had twice conferred with his political chief, Mr. Crowe. While the session was secret, Judge Brothers released his testimony to the newspapers:

<sup>1</sup> On August 6, 1926, the *Chicago Daily Tribune* published the following editorial: "Throughout the four months of grand jury investigation there has run the opinion that McSwiggin was killed because of what happened in Cicero on election day. On primary day election, April 13, two weeks before the killing of McSwiggin, Capone had dominated Cicero in the intimidation of voters and in the counting of votes."

<sup>2</sup> Coroner Wolff's inefficiency and alliance with the underworld elements in the political affairs of Cook County later became so well established that when he ran for re-election in November, 1928, he was overwhelmingly defeated, his opponent, Dr. Bundesen, receiving over one million votes, the largest ever recorded for a municipal or county officer.

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"The coroner's jury wanted to know why I would not let Attorney Patrick O'Donnell introduce at the Scalise-Anselmi trial the information which he now claims could have prevented the McSwiggin murder.

"I merely told them I knew at the first trial that O'Donnell wanted to introduce evidence showing that certain police officers at the Maxwell Street Station made regular collections at the office of the Genna Brothers.<sup>1</sup> As these officers were not concerned in the trial, I refused O'Donnell the privilege of bringing it before the jury.

"At the end of the trial I gave O'Donnell a chance to read his evidence before me with the jury out of the court. He refused, and the trial went on without its introduction into the record."

The coroner's jury then adjourned to May 4, when the inquest was resumed in secret, although the newspapers carried the story of the session. A list of names of saloon-keepers found in the effects of Duffy, who was killed with Doherty and McSwiggin, had disappeared. The Oak Park police had found it in Duffy's effects; the Cicero police said they had turned it over to Mr. Crowe, who denied knowing anything about the list, which was later discovered in the coroner's own files. It was said to have been placed there without the knowledge of anyone in authority.

Captain Stege of the Chicago detective force told the jury of the account of the murder by the only eye-witness, Mrs. Bach, who lived above the Madigan saloon; she had seen neither victims nor slayers, and he testified that she said:

"It was daylight still and I saw a closed car speeding away with what looked like a telephone receiver sticking out of the rear window and spitting fire."

The coroner's physician testified that the bullets indicated that the three men were not killed in the car but while they were walking west on Roosevelt Road.

On May 6, Coroner Wolff turned over to Attorney-General Carlstrom, special prosecutor of the first special grand jury, about thirty cases of gangsters whom he had accused of unsolved gang killings; but the state's attorney took no action according to Wolff. While the special grand jury voted some indictments in these cases, none of them were ever convicted and none of them had to do with the McSwiggin murder. On May 7, Coroner Wolff invited Joseph Roach of Terre Haute, Indiana, who had become famous by sending one hundred forty-seven public officials and gunmen of Terre Haute to prison, to come to Chicago as special state's attorney for the inquest. His arrival on May 27 was attended with much publicity, but the coroner's jury met and decided to adjourn indefinitely until evidence could be assembled for their consideration.

Apparently no evidence was ever assembled, for the coroner's jury disappeared from view until December 31, 1926, seven months later, when it reconvened upon the urgent request of the insurance companies, who could pay no claims on McSwiggin's death until the coroner's jury returned a verdict. It adjourned immediately for a further continuance, and the case progressed no farther.

On March 4, 1928, it was announced that the final session of the

<sup>1</sup> Leaders of a powerful band of liquor gangsters.

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coroner's jury, appointed two years before to hold an inquest into who killed McSwiggin, would be held on March 7. But, a very small item in the newspapers of March 7 announced the postponement of this final meeting until May 7, because of the absence of a member of the jury of six prominent business men. No verdict has ever been returned in the case.

### 5. *The First Special*

"It will be a war to the hilt against these gangsters."

### *Grand Jury.*

This was the proclamation of State's Attorney Crowe immediately upon the news of the murder of McSwiggin. Men who knew practical politics, however, were skeptical. Indignation was burning at white heat at "Chicago's Anarchy." Prominent club women led a movement of protest against the murder of McSwiggin as a product of the breakdown of public justice. Ministers' associations were proclaiming their failure to get the cooperation of public officials in the suppression of vice and crime. Civic leaders, the most prominent of them Harry Eugene Kelly, then president of the Union League Club, shared this distrust of the state's attorney's declaration. Immediately they made vociferous demands for a special grand jury to investigate the murder. Mr. Kelly suggested that an independent fund be raised, contending that if a grand jury had to depend upon Mr. Crowe or the County Board for funds, it would be hampered by politics and incapable of free and unbiased action.

"I have nothing against Mr. Crowe personally," Kelly said, "but obviously he is unfit to go into the 'beer racket' because it is mixed up all down the line with politics. He is not only a capable politician but is the head and front of a powerful faction known as the 'Crowe Wing.' He is the directing head of a faction organized for politics, and politics only. Therefore, the citizens cannot expect Mr. Crowe to prosecute the kind of an investigation this city requires."

Mr. Crowe answered this by a formal statement in which he claimed that the people of Cook County elect their state's attorney and do not intend him to delegate his powers to "self-appointed investigators." He called the civic leaders notoriety seekers and appealed to the people for moral support and sympathy. He said:

"Under the law the people of Cook County select their state's attorney. They do not delegate his powers to self-appointed investigators.

"I am engaged in the investigation of the most brazen and dastardly murder ever committed in Chicago. Selfish notoriety seekers, who are called by some newspapers 'civic leaders,' have started a backfire on the state's attorney of this county, while he is engaged in this arduous and not entirely safe duty. I appeal to the law-abiding men and women of this county for their moral support and sympathy in this crisis; and I appeal to these officious meddlers, that if they have any information to present it to me; if they can be of any assistance, to cooperate with me, and cease giving aid and comfort to gangsters by attempting to divert my attention from the task in hand."<sup>1</sup>

<sup>1</sup> Crowe pursued the same tactics when there was an insistent public demand for a special grand jury to investigate election day violence at the primary election of April, 1928. He sought to prevent such an investigation by having his adherents on the County Board refuse an appropriation for a special grand jury, but the citizens raised the funds by popular subscription.

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Mr. Kelly retaliated with a statement in which he reminded Mr. Crowe that the people of this state had also provided for the appointment of a special state's attorney when the incumbent and his office should be involved in a controversy of this kind. Mr. Crowe took action and petitioned Judge William V. Brothers, member of his own political faction, for a special grand jury. Crowe intended to take charge of the prosecution, however. The petition was granted on April 30, 1926. Again the critical Mr. Kelly and other civic leaders declared Crowe's action just a "political gesture." They pointed out that a special grand jury, presided over by Mr. Crowe, would be precluded from investigating Mr. Crowe or his office in determining the underlying causes of the threefold murder. Nor would Mr. Crowe, they believed, being a powerful political leader, allow a grand jury to determine the connection between politics and beer running gangs in Chicago and Cook County.

Mr. Crowe then called on Attorney-General Carlstrom, who consented to undertake the direction of the grand jury. Mr. Kelly predicted that Mr. Carlstrom would not have a free hand: "Mr. Crowe has not turned over the investigation to Carlstrom, nor does he appear to intend to do so. He has simply invited the attorney-general to assist him." Thus Mr. Crowe frustrated by the movement for a special investigation and a special investigator.<sup>1</sup>

Under the broad instructions of Judge Brothers to the special grand jury to scrutinize all causes of crime, Mr. Carlstrom had the opportunity to divert the investigation to the scandals uncovered by the killing of Deputy Warden Klein at Joliet and to the administration of the Governor's Pardon and Parole Board. Mr. Crowe and Mr. Carlstrom filled many news columns with their discoveries of a syndicate for the sale of pardons and paroles. They gave out the names of notorious criminals who had been paroled, and claimed that the crime conditions of Chicago were caused by paroled convicts. The parole scandal, which engaged the time and attention almost exclusively of the first special grand jury, was dropped without the voting of a single indictment.

Some time was devoted to voting indictments in cases of gangster killings presented by Coroner Wolff, but these indictments never came to trial.

The remainder of the time was spent in hearing of witnesses in the McSwiggin murder. More than two hundred saloon-keepers, most of them from Cicero, testified. They were forced, it was said, to tell from whom they bought their supplies and the names of those who afforded them protection. This information was not given out to the newspapers nor turned over to the Federal Grand Jury, then also in session on the Cicero beer trade.

By May 5, the newspapers learned that the police "had no more actual evidence as to the motives of the shooting and the identity of the killer than they did when it happened." Of the forty-five witnesses who had testified on the same day, no one could tell about the McSwiggin murder.

<sup>1</sup> Of this the *Tribune* of May 1 said:

"Thus, by his two moves, that of summoning a special grand jury and engaging the aid of Mr. Carlstrom, Mr. Crowe believed he had checkmated his critics. He appeared confident that with one grand jury digging into the gunmen, the chances for creation of another would be nil and that those who have been calling for a special state's attorney will not assail the ability or fairness of Attorney-General Carlstrom or charge that he is a member of the same political faction as a man who fought his nomination."



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On that day, therefore, the news was released to the *Tribune* that secret warrants had been issued for the arrest of Al Capone, openly suspected of complicity in the murder. According to the *Tribune*, it was the state's attorney's claim that he had established to his satisfaction that Capone had in person led the slayers of McSwiggin.

Capone, however, was very difficult to find. Raids were made on all his haunts. His brother John was arrested but denied knowing his whereabouts. It was reported that Capone had barely escaped the police in New York. It was later reported that Capone and a dozen henchmen were hiding in the woods of northern Michigan, and a squad was sent to follow up this tip, but found no Capone. In fact, the police were unable to find "Scar-face" Al until he thought it the proper time to be taken.

On May 27, a month after the murder, following some very incisive editorial attacks on Mr. Crowe and the first special grand jury, the O'Donnell brothers, who had been with McSwiggin in the car, were captured and taken to the state's attorney's office. Their attorneys went immediately into Judge David's court with a petition for a writ of habeas corpus. Judge David declared it was about time the state's attorney's office obeyed the law. He reprimanded Captain Shoemaker and asked by what right he took the men to the state's attorney's office after arresting them. Many persons "in the know" believed "Klondike" and Myles O'Donnell permitted themselves to be arrested May 27 according to a prearranged plan, after having had a month to concoct their stories.

Taken before the grand jury, the O'Donnells refused to testify. Mr. Crowe then haled them before the court and threatened them with contempt of court if they did not talk. Upon the advice of their counsel they told, on May 28, what was hailed as the real story of the killing of McSwiggin, James Doherty and Thomas Duffy. They said they were with McSwiggin before the murder; that he was brought to their house afterward, wounded or dead; but they were not with him at the moment of the killing. Although the O'Donnells were notorious bootleggers and Doherty was a saloon-keeper, McSwiggin, they said, was accompanying them into Cicero to recover a bullet-proof vest purchased for the use of labor leaders. After refusing to testify and being forced to testify under threat of contempt of court, their testimony was of no value, for they did not reveal the murderers of McSwiggin nor the details of their war with Capone.

There was another highly intriguing clue. The three men had been killed by machine-gun fire. Machine-guns had only been introduced into gang warfare in Chicago a few months before. If the source of these machine-guns could be discovered, possibly the murderers could be traced. Alex Korecek, a hardware dealer, had earlier appeared before the grand jury and after admitting that he had sold machine-guns to a "John" and a "Charlie," failed to identify John Capone and Charles Fischetti of the Capone gang and begged not to be forced to disclose his customers for fear of his life. On June 3, he was again brought before the grand jury and testified that he had sold Thompson machine-guns to Charlie Carr, manager of the "Four Deuces," a house of prostitution said to be owned by Capone. He had sold these under duress. He had obtained them through a Val-paraiso firm.

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While the first special grand jury did not discover the murderers of McSwiggin, Doherty and Duffy, it uncovered at every turn the conditions of organized crime in Cook County. Ending the labors of a month, the special grand jury, on June 4, presented a report which was drafted with the assistance of Attorney-General Carlstrom and his aid, Harry Ash. Highlights of this report are quoted as follows:

- (1) "A conspiracy of silence among gangsters and intimidation of other witnesses after a murder has been committed, immediately operates and there is an element of fear involved because anyone who does aid the public officials by giving facts is very likely to be 'taken for a ride.' It is clear to us from what we have heard during the past five weeks in the grand jury rooms, that the prosecutors and the police have a most difficult task.
- (2) "The McSwiggin Case. William H. McSwiggin, an assistant state's attorney, was shot April 27, 1926, in Cicero. It appears from the evidence that he went to the saloon of James Doherty with his friend Duffy for the purpose of locating the last of a number of bullet-proof vests which had been stolen, in which service he was endeavoring to assist a personal friend, namely, Mr. Albert Dunlap, a reputable citizen and authorized representative of the manufacturers of the article, to recover a valuable piece of property. We find no evidence whatsoever indicating capable conduct on the part of McSwiggin, either in being at the place where he was killed or in the company with which he was then found. He was twenty-six years of age, was very active and successful in the prosecution of gang murderers, knew the persons suspected of holding the stolen property and personally sought to recover it for its owner. We find no evidence for the whispered criticism leveled against him or the state's attorney's office.
- (3) "Notwithstanding every effort has been made to solve the murder of William H. McSwiggin, it has been impossible for the jury to determine guilt or to ascertain the guilty parties in that case. Silence and sealed lips of gangsters make the solution of that crime, like many others, thus far impossible. McSwiggin was upon a legitimate errand at a time when one gang fired upon another gang, and we think that the murderers had no knowledge of the identity or position of the young man who was in the automobile and who became their victim.
- (4) "Reform Organizations. Self-appointed, self-styled reformers, organized apparently for the purpose of securing satisfactory remuneration for individuals and often actuated by purely political motives are a detriment and not a help.
- (5) "The Chicago Crime Commission has shown itself to be a powerful aid in the handling of the crime situation and should be encouraged and liberally supported.
- (6) "Baseless and pernicious criticisms by groups of persons or by newspapers when actuated by malice or political motives only result in aiding and encouraging crime and criminals. And it is deplorable that prominent citizens in public life make criticisms which are published in the press, as in the cases of Mr. Harry Eugene Kelly and Coroner Oscar Wolff, which statements when

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called before the grand jury they failed in any manner to substantiate.

- (7) "Pardon and Paroles. We believe that vicious administration of the pardon and parole laws has been one of the great contributory elements in making the present existing condition.
- (8) "We recommend that the attorney-general, the state's attorney, and the police officials continue the investigation now in progress with the hope that evidence may eventually be discovered that may lead to the apprehension and punishment of the murderers of the late William H. McSwiggin."

The grand jury made no mention of any alliance between crime and politics, which made the existence and operation of gangs possible. Their findings as to the causes of crime follow:

"It appears to us that the causes for the gang may be summarized as follows:

1. Profits obtainable from illegal traffic in beer and alcohol;
2. The ease with which deadly weapons are obtainable at small cost, and the light penalties for their possession;
3. Wide-spread violation of the Volstead Act.

"On the whole, a review of the years past gives no special occasion for alarm at the present moment. Crime, in volume and type, wheels and rotates in cycles. In the last thirty or forty years there have been periodical outbursts of gang activities in the criminal groups. The one through which we are now passing has been peculiarly vicious and has produced many murders by gangsters because the stakes played for have been great. Gang after gang has been wiped out by internecine warfare. Remnants of gangs have fled the city and the situation is well enough in hand to encourage the hope that there will be no outbreak on any such scale as in the recent past."

### *6. The Federal Grand Jury Indicts Capone and the O'Donnells.*

While State's Attorney Crowe's grand jury was in session, primarily to consider the solution of the McSwiggin mystery, a Federal Grand Jury was busy investigating prohibition violations, with possible bearings on the murders of Duffy, Doherty and McSwiggin. United States District Attorney Edwin A. Olson, in charge of this Federal Grand Jury, was of the Deneen faction. Chief Svoboda, of the Cicero police, and Joseph Klenha, president of the village board, were summoned to appear.

Federal agents had seized a stock of beer samples stored in the basement of the Cicero City Hall. It had been reported that immediately after the triple slaying, Cicero policemen had visited every saloon in the village and collected beer samples. According to the information given the Government on May 22, the police had told the saloon owners:

"There is going to be a big investigation. Don't tell anybody anything. If you open your faces, these samples go to the prohibition office and your prosecution under federal statutes is certain."

The Federal Grand Jury, on May 27, returned two indictments, naming the leaders of the two rival beer gangs, the Capone gang and the O'Don-

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nells, charging conspiracy to violate the prohibition law. Those in the Capone gang who were indicted were: Al Capone, Ralph, his brother, Frank Smith, Charles Fischetti and Peter Payette. The O'Donnell gangsters named were: William (Klondike), Myles, and Barnard O'Donnell, and Harry Madigan, the owner of the saloon where McSwiggin and his companions were killed.

On July 28, Capone surrendered voluntarily to Federal agents. He was released on bonds and now, two and one-half years later, the Federal indictments against Capone and the O'Donnells are still pending.

7. *The Second, Third,  
and Fourth Special  
Grand Juries Investigate  
Vote Frauds.*

The public disgust with the work of the first special grand jury, the caustic editorial comment of newspapers, and the continued public fury about the murder served as a threat that civic leaders might

now grasp the opportunity for an inquiry independent of the state's attorney. Immediately, upon the expiration of the first grand jury on June 4, Mr. Crowe petitioned Chief Justice Lynch to impanel a second special grand jury to investigate vote frauds in the April primary. A petition had been filed by Municipal Judge Daniel B. Trude (a Deneen adherent and opponent of Joseph P. Savage of the Crowe-Barrett faction in the primaries of the previous April 13) with Judge McKinley of the Superior Court, asking for a recount of the primary election ballots. He charged that Savage, a special protege of Crowe and one of his assistants, had been nominated for County Judge by means of fraud and intimidation.

Mr. Crowe's move for a second special grand jury to take up vote frauds and further inquire into the McSwiggin case again forestalled the possibility of an independent investigation of the McSwiggin murder and of election frauds as well. Judge Lynch appointed former Judge Charles A. McDonald, vice-president of the Foreman Trust & Savings Bank, with full power of state's attorney and, it was said, without consultation with Mr. Crowe. The second special grand jury investigation rapidly came to an impasse under the leadership of McDonald. It went out of existence<sup>1</sup> July 4 and a new grand jury was impaneled at the request of special State's Attorney McDonald to investigate vote frauds.

The most sensational events in the life of the third grand jury were: (1) the report that Edward Moore, precinct committeeman of the thirteenth ward and purchasing agent of the Sanitary District, was present when the McSwiggin shooting occurred. He was brought before the grand jury and denied that he had been present. (2) The surrender of Capone to Federal officers at an appointed place on the Illinois-Indiana state line on July 29. His testimony follows:

"I'm no 'squawker' but I'll tell you what I know about this case. All I ask is a chance to prove that I had nothing to do with the killing of my friend McSwiggin.

"Just ten days before he was killed I talked with McSwiggin. There were friends of mine with me. If we had wanted to kill him,

<sup>1</sup> The life of a special grand jury is one month, after which another must be selected if the investigation under way is to be continued.

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we could have done it then and nobody would have known. But we didn't want to; we never wanted to.

"Doherty and Duffy were my friends too. I wasn't out to get them. Why, I used to lend Doherty money. I wasn't in the beer 'racket' and didn't care where they sold. Just a few days before that shooting, my brother Ralph and Doherty and the O'Donnells were at a party together."

Capone declared that he left Chicago after the murder because he feared the "cops" would shoot him on sight. He said he had been in Chicago until a month before he had surrendered; but he added that at all times he had been in touch with his friends, waiting for word for the proper time to come back. Like the O'Donnells, Capone was not captured but returned, as it appeared, at his own convenience.

He was officially exonerated of any complicity in the murders, on July 29, and dismissed by Chief Justice Lynch when Assistant State's Attorney Gorman withdrew the charge. Gorman declared that the warrant charging Capone with the murders was issued on hearsay evidence and that the police had no legal evidence for the charge. He was re-arrested on a charge of conspiracy in connection with election frauds, only to be discharged when all the indictments for election frauds voted by these special grand juries were cancelled because the primary law was declared unconstitutional by the Supreme Court.

A fourth grand jury was impaneled in August. Some new testimony was introduced on August 3 by two sixteen year old Cicero boys who were playing near the scene of the killing. They ran to the scene and saw two men come out of the saloon from which the two victims had just emerged. This was contradictory to previous testimony that there was no one in the saloon at the time of the shooting and that no one came out. Harry Madigan, the owner of the saloon, and Michael Wendle were recalled to the stand, but their testimony was not divulged.

The bartender of Madigan's saloon testified that McSwiggin and his two companions were in the saloon and that two strangers in overalls came in at the same time. They did not do the shooting but they picked up the bodies. A Capone gangster, Will Heeney, was picked up. He established an alibi and was released after a three-hour grilling. Edward Moore, Crowe-Barrett committeeman, already mentioned, was again called to the stand and again denied that he was present at the shooting. Others, like Joseph Klenze, were arrested merely because they were Capone gangsters, and were released on habeas corpus petitions presented by Capone's lawyers.

The interlocking interests of gambling, bootlegging, vice and politics were exposed to the grand jury when cancelled checks were discovered which had passed between "racketeers" and public officials in Cicero. These checks were discovered in raids on "The Ship," "The Stockade," and "The Hawthorne Smoke Shop," gambling and vice dens owned by Capone. Through these checks Mr. McDonald learned that several years before, Capone had entered into an alliance with public officials which allowed him to operate with immunity. Among these checks were some from Louis La-Cava and Mondì, of the Capone gambling syndicate. The president of the

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bank, Alfred Pinkert, testified that he knew neither the makers nor the receivers of the checks.

State's Attorney Crowe testified before the grand jury August 29, that he did not know who killed McSwiggin and substantiated his innocence of this knowledge by reminding the jury that he had offered a five thousand dollar reward for this information. He expressed the belief that the killings were committed by gunmen imported from either New York or Detroit, and that, in fact, most of the gang murders had been committed by imported gunmen.

On August 5, Judge McDonald ordered the opening of the Cicero ballot boxes in the hope that some clues would be found there. Mr. McDonald said:

"Judges and clerks may be compelled to testify against bosses to save themselves from jail. If we can get them to talking about election crookedness, we will get them talking about the spoils of election. If, as we believe, the stakes in that election were beer privileges, we may be able to prove it. If we can prove that, we can create a situation in which many will be willing to tell on each other to save themselves. And if the underlings ever start confessing we may get the murderers of McSwiggin."

On August 25, the fourth grand jury announced the voting of twenty indictments, involving forty election judges and clerks of the forty-second ward.

The fourth grand jury was side-tracked into the hearing of evidence on the murder of "Mitters" Foley by Joe Saltis and "Lefty" Koncil, as an incident of the beer war. This grand jury indicted them; they were tried in the criminal court; two eye-witnesses identified them; and the trial jury acquitted them. Intimidation of witnesses was assigned as the reason for the acquittal in the report of the special prosecutor.<sup>1</sup>

The fifth special grand jury was impaneled immediately after the fourth jury was automatically disbanded on September 2. In making his request for a new special grand jury, McDonald told the court that he was then

<sup>1</sup>Final report of Charles A. McDonald, special prosecutor:

"A number of unusual and significant circumstances arose both prior to and during the progress of the trial against the said Saltis and Koncil.

"Prior to the trial two of the state's important witnesses disappeared, the immediate members of their families either refusing or being unable to give any information or clue as to their whereabouts.

"After the selection of the jury and the introduction of some of the state's evidence, one of the jurors selected to try the case became violently insane, necessitating the discharge of the entire jury and the selection of another in its stead.

"During the progress of the trial and immediately after the selection of the first jury, one Hymie Weiss, a notorious character in this community, was murdered in North State Street, a short distance from the Criminal Court Building where this trial was in progress. One of the counsel for the defendants, who had just left the court room, was also shot and wounded at the same time and place. In the possession of the said Hymie Weiss was found a list of the jurors selected to try the case, as well as the identical copy of the list of the state's witnesses that had been furnished counsel for the defendants by order of court.

"In addition to these significant facts, certain of the state's witnesses testified to having been threatened with violence in the event they testified against the defendants, and of having been approached with offers of bribery for either withholding their testimony or testifying falsely."

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in a position to know who was responsible for the murder of McSwiggin. The evidence was not at hand, but obtainable. With reluctance Judge Lynch ordered the impaneling of a fifth special grand jury. Judge William J. Lindsay succeeded Thomas Lynch as Chief Justice who swore in the fifth jury, instructing it to give its entire attention to the unsolved murder. The jury adjourned immediately, subject to recall as soon as McDonald and his assistants should find any evidence. It was reported two new clues were discovered and two new witnesses, one a woman, whose identities were kept secret. Mr. McDonald said:

"It is necessary to keep the names of these witnesses secret. The moment any of the witnesses learn that they are wanted they disappear, or are even killed."

Sergeant Anthony McSwiggin, of the Police Department, father of the murdered William, named four notorious gunmen as the slayers of his son:

"Scarface" Al Capone, underworld boss of Cicero;  
Frank Rio, one of the bodyguard of Capone;  
Frank Diamond, Capone gunman;  
Bob McCullough, suburban beer runner.

He insisted that he had positive inside information, which he had given to the proper authorities. He named Edward Moore and Willie Heeney as material witnesses. He charged that these men had flashed the information to Capone that McSwiggin, Duffy and Doherty were in Cicero just prior to the killing. Prosecutor McDonald said:

"I know who killed McSwiggin, but I want to know it legally and be able to present it conclusively. Neither Sergeant McSwiggin nor anyone else has at any time given me or my assistants the name of any one witness who would appear before the grand jury and identify Al Capone or any other person as the murderer.

"When the suspect Heeney gave himself up recently, he was questioned in the presence of Matthew Zimmer, Deputy Superintendent of Police, Chief William Shoemaker, Sergeant McSwiggin, Mr. O'Brien, Attorney Lloyd Heth and myself. All present, including McSwiggin, agreed that no information sufficient to book Heeney on a criminal charge or to present to the grand jury was obtained from him.

"Moore was called before the grand jury, signed an immunity waiver, and testified fully as to his whereabouts the entire day and night of the murder, and gave the names of the people with whom he spent the evening. Moore's statement that he was in a public downtown restaurant at the time was verified by investigation."

The fifth grand jury has never met since that first day. All of the primary election fraud indictments voted by McDonald's grand juries were nullified by the decision of the Supreme Court holding the Primary Act unconstitutional.

8. *Organized Crime  
and the Paralysis  
of Justice.*

ized crime.

While the coroner's jury and six grand juries did not obtain the legal evidence to prove who killed McSwiggin, the McSwiggin case marks the beginning of intense public interest in organized crime.

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The theories of the killing of McSwiggin, presented by public officials to the newspapers, revealed conditions as they were in Chicago. All the theories in some way or other involved gang war over beer. The most persistent theory was that the O'Donnell-Capone beer war was the motive. The list of principal witnesses summoned by the special grand juries, the coroner's jury, and the Federal Grand Jury would suggest that was the underlying theory of all of the juries. The election fraud theories also involved gang war, with the gangs reaching out for beer privileges as the stakes of the election. To an interviewer Capone countered the accusation that he had killed McSwiggin with: "I paid McSwiggin and I paid him plenty. I got what I was paying for." He intended to disprove any motive in the killing, but he admitted the payment of graft.

The cardinal feature of the rule of organized crime, the paralysis of justice, was expressed in the report of the first grand jury:

"A conspiracy of silence among gangs and intimidation by threats to murder witnesses make it almost impossible to solve the killing of gangsters by their rivals and of innocent bystanders."

After conducting five grand juries, all struggling to clear the McSwiggin murder, McDonald said:

"It is necessary to keep the names of these witnesses secret. The moment any of the witnesses learn that they are wanted, they disappear, or are even killed."

The courts had to release the principal witnesses on habeas corpus because neither the police nor the prosecutors could make them talk. Prosecutor McDonald had to admit: "I know who killed McSwiggin, but I want to know it legally and be able to present it conclusively."

While the prosecution of Joe Saltis was denounced by the press as an evasion, it illustrated to Special Prosecutor McDonald, to the grand jury, and to the public, that even if the evidence is obtained, at whatever cost, against a gangster chief, even when there are witnesses brave enough to identify him as the murderer, in court, the prosecution fails because the trial jury in the criminal court is manipulated by the gang.

9. *Conclusion.* The killing of McSwiggin dramatized to the public the relation between criminal gangs and the political machine. It is true that the coroner's jury and six grand juries were of no avail in solving the murder of an assistant state's attorney and his two gangster companions, but their findings did convince the public of the existence and power of organized crime—a power due in large part to its unholy alliance with politics. The very failure of the grand juries in solving the mystery of McSwiggin's death raised many puzzling and disturbing questions in the minds of intelligent citizens about the reasons for the breakdown of constituted government in Chicago and Cook County and its seeming helplessness when pitted against the forces of organized crime.

It is with these underlying questions that the present report deals. Any adequate program for dealing with organized crime in Chicago must be based on a thorough understanding of the origins and development of criminal gangs and with their organization, activities and political alliances.