

Then, as now, the practice of law was a gateway to politics, being involved in high profile cases and participating in debates on political issues was how lawyers became known and built their professional and political careers. Then, as now, political careers, especially for minorities, involved apprenticeship and sponsorship by those few others who were in power.⁸³

The system for electing judges was enshrined in the Illinois Constitution of 1848 and retained in the Illinois Constitution of 1870, which governed Illinois for the next ninety-four years.⁸⁴ Elected judges were very much a part of ward politics. The State's Attorney, the Chief Prosecutor, and the Clerk of the County were all elected.⁸⁵ African American attorneys were eventually elected to be State's Attorneys, or prosecutors.⁸⁶ The status of African American lawyers as prosecutors improved as the number of professionals increased but

from row to row of the parked trains. . . . On July 6 alone, the Managers estimated, railroad property valued at \$340,000 had been lost.

DAVID RAY PAPKE, *THE PULLMAN CASE: THE CLASH OF LABOR AND CAPITAL IN INDUSTRIAL AMERICA* 33 (1999).

⁸³One author notes,

The younger lawyers who have won elective office have invariably held appointive legal positions before they became candidates. Their initial training in political office came as assistant county attorneys, assistant corporation counsels, assistant state's attorneys, or as employees as the Secretary of State. The typical course of advancement of an able young colored lawyer is shown in the case of William E. King, who was successively assistant corporation counsel, assistant state's attorney, state representative, ward committeeman and state senator.

GOSNELL, *supra* note 46, at 109.

⁸⁴ HON. GEORGE FIEDLER, *THE ILLINOIS LAW COURTS IN THREE CENTURIES, 1673–1973, A DOCUMENTARY HISTORY* 210, 227 (1973).

⁸⁵Ravoke writes,

The predominant role of the members of the Roman Catholic church in the life of the city is closely related to and buttressed by another cultural fact in Chicago—the control of the city's political life by the Irish. . . . The first two major ethnic groups who came into the city from Europe were the Irish and the Germans. . . . They [the Irish] were neutral outsiders in the traditional ethnic antipathies and hostilities which Central and East European ethnic groups brought to America from their homelands. . . . And, finally, the Irish became the saloon keepers in cities like Chicago, and the Irish-owned and-run saloons became the centers of social and political activity not only for the Irish but also for the Polish, Lithuanian, Bohemian, and Italian immigrants who poured into the city after the Irish and Germans.

RAKOVE, *supra* note 16, at 32–33.

⁸⁶Gosnell recalls,

The first colored man to be appointed as an assistant state's attorney was Ferdinand L. Barnett . . . After editing a weekly newspaper for a few years he entered the practice of law [at age thirty-three] in 1892. He took an active part in the Republican presidential campaign of 1896 and immediately following the election was appointed assistant state's attorney by Charles S. Deneed.

GOSNELL, *supra* note 46, at 206.



was subject to the fluctuations of politics.⁸⁷

The State's Attorney was, and is today, a key political actor in the Chicago system of ward politics.⁸⁸ Elected judges referred cases to lawyers, who then became judges, or aldermen, or state legislators or officials. Only a few ran for national office. The money from organized criminal activities, or simply from payoffs, bankrolled the political machine.⁸⁹ And judges who wished to be reelected,⁹⁰ or receive favorable assignments, needed to maintain good relations with ward bosses.⁹¹

Yet then, as now, a large part of the criminal docket was made

⁸⁷Gosnell continues,

It was under State's Attorney Crowe that the Negro lawyers in Chicago received their greatest recognition in the prosecuting office. At one time during Crowe's administration [during the mid-1920's] there were at least ten colored assistant state's attorneys. It was not until 1922 that a deputy coroner [who was a Negro] was finally appointed . . .

Id. at 209.

⁸⁸Judge McKinley writes,

The grim, gray walls of the Criminal court building have been honey-combed by the busy builders of a patronage system in the center of which the state's attorney sits, surrounded by the satellites of the particular political machine that "put him over." His assistants are not—save for a few—his own selections, but represent the ramifications of "the organization," chosen chiefly for their outstanding ability "to deliver" politically in their wards and precincts.

McKinley, *supra* note 72, at 6.

⁸⁹Haller explains,

In many ways organized crime resembled a business. These often included substantial capital investment, a regular payroll, and problems of manufacture, distribution, and retailing. . . . In the early years of the twentieth century, Chicago's red light district achieved well-deserved fame, based on the high quality of its better houses and the wide variety of services available. Those classic aldermen from the First Ward, Michael "Hinky Dink" Kenna and "Bathhouse John" Coughlin, presided over political protection of vice in the ward. Saloons, gambling houses, and bordellos provided the funds that nurtured the aldermen's political organization and paid enthusiastic workers who supported the party's efforts on election day. In addition to arrangements with Hinky Dink and Bathhouse John, operators also made business arrangements with the local police . . .

Haller, *supra* note 75, at 623.

⁹⁰ Richard Brooks' and Steven Raphael's essay in this volume explores the relationship between sentencing and elections. See Richard R. W. Brooks & Steven Raphael, *Life Terms or Death Sentences: The Uneasy Relationship Between Judicial Elections and Capital Punishment*, 92 J. CRIM. L. & CRIMINOLOGY 609 (2002).

⁹¹McKinley writes,

The subtle influences exerted, the surreptitious fashion which certain extraneous elements of criminal cases—such as the personality of the defendant, his "connections" and the pointed "interest" this or that political "friend of the court" has in the case—are presented to prosecutors and judges by attorneys retained for their "pull" and "in."

McKinley, *supra* note 72, at 7.

up of substance abuse cases.⁹² Drug use and alcoholism were associated with prostitution and “houses of assignation” as they were called.⁹³ Nor did the criminal justice system or social service providers then have an effective way of dealing with these addictions.⁹⁴ Then, as now, the overcrowding of the criminal docket and inefficiencies in court scheduling and procedures ensured delays and permitted manipulation of dockets, sometimes with a corrupt purpose.⁹⁵

⁹²A judge of the Municipal Court in Chicago wrote,

A large percent of the 75,000 persons brought into the criminal courts of this city each year are arrested for drunkenness. There is seldom any dispute about the fact of the drunkenness An average of one hundred men and women are picked up by the police in the streets and alleys of the city every day and night of the year. Substantially all of them are in an unconscious or semi-conscious position when found. Most of them are found at night time, and I am sure were it not for the most efficient work of our Police Department at least 50% of these would perish from cold and exposure during the long winter nights.

William N. Gemmel, *Crime and Punishment in Chicago*, 1 J. AM. INST. OF CRIM. L. & CRIMINOLOGY 29, 37 (1910).

⁹³The Vice Commission of Chicago notes,

It is generally recognized that immoral women and their “cadets” are addicted to the use of cocaine and morphine, as well as other drugs and liquor. Most of the cocaine purchased by habitues is secured through physicians. Most of the morphine is nearly always obtained from druggists by merely asking for it and paying the price asked. . . . It is practically impossible to ascertain exactly how much cocaine or morphine any particular drug store buys in spite of the fact that wholesale houses keep a record. The druggist who sells cocaine illegally, orders some through his friends or orders direct from the manufacturer

THE VICE COMM’N OF CHI., *supra* note 6, at 84–85.

⁹⁴ William Gemmel wrote,

[We] have several thousand cocaine and opium fiends in this city who have the forms and figures of men and women, but here the likeness stops.

The habitual taking of strong drink into a man’s system is certain to result in his becoming a drunkard, a vagabond and an outcast. The time when this result will follow is uncertain, depending upon the extent of the indulgence. Consequently we have sixty thousand vagabonds, vagrants, beggars and outcasts, living in or passing through Chicago every year, many of them stopping only long enough to beg a few cents to enable them to hold soul and body together until they reach the next stopping place; many others, shivering, starving, friendless, hopeless, some with maggots already eating into their putrid flesh, are awaiting for their last ride in the police patrol to the county morgue.

Gemmel, *supra* note 92, at 33. This quotation also gives some of the flavor of the temperance movement in 1910.

⁹⁵ Judge M. L. McKinley describes the process:

“Justice delayed is justice defeated.”—the platitudinous proverb is as true as it is trite. Although it is admittedly no part of the duty of a judge to invade the province of the prosecutor by forcing cases to trial, it has been proved in the Criminal court in the last year that 50% of the delays in disposing of pending indictments are unnecessary

McKinley, *supra* note 72, at 7. If a case does get to the grand jury, and is assigned for trial, there are still many ways for the political machine to make known what it would like done

And the small number of convictions for felonies suggests a whole scale breakdown of the criminal justice system.⁹⁶ The politics of Chicago was its own world, and elected judges were very much part of the spoils and the game. Police were also a part of the corruption.⁹⁷ Organized violence and the protection of criminal activity was part of the operation.⁹⁸ And the large amounts of money at stake was always a relevant factor.

Judge McKinley describes a court packing scheme in 1921 whose purpose was to increase the number of judges to ensure that all judges would be sympathetic to the political regime, allowing the political machine to get control through the courts of 50 million dollars worth of government bonds for the south park district.⁹⁹ The corrup-

with this case.

⁹⁶ John Healy explained,

One day during the summer of 1927, a prisoner who possessed a long police record as a bomber, auto thief, and hold-up man, escaped through a skylight from the prisoners' room in one of the branches of the municipal court. Subsequent search for him was in vain. This escape attracted widespread attention; it was commented upon editorially, and presumably stirred to some degree the City of Chicago. In the year 1926, however, out of 10,829 cases in which individuals were arraigned in the municipal court on felony charges, over six thousand were released by municipal judges. More thousands were released along the line from the municipal court to final conclusion of the resources of criminal procedure. . . .

This is the story of the enforcement of law in the City of Chicago. It means in solid numbers that out of 12,543 prosecutions for serious crimes, 10,658 result in no punishment. . . .

John J. Healy, Ill. Ass'n for Criminal Justice, *The Prosecutor (in Chicago) in Felony Cases*, in *THE ILLINOIS CRIME SURVEY* 281, 294-95 (John H. Wigmore ed., 1929) (citation omitted). This chapter breaks down the felonies and their legal dispositions by type and discusses how cases drop out of the prosecutorial system through the application of routine procedures.

⁹⁷ Police raids against gambling places which did not pay protection were a successful means of crushing challenging illegal competitors by the controlling syndicates.

In February, 1923, it was learned and made public by vice investigators that profits of vice in Chicago amounted to \$13,500,000 per year, part of which went to the police. The system by which "fixed" police "tipped off" resort keepers, and the police discriminations against unprotected resorts, which were very frequently raided, was exposed.

LANDESCO, *supra* note 9, at 39, 47.

⁹⁸ Ravoce writes,

During the reign (1915-23, 1927-31) of Mayor William Hale ("Big Bill the Builder") Thompson, according to a contemporary observer, "In four years 215 gangsters were killed and no one punished. The police, however, took a toll of 160 gangsters during the same period. In one instance police cruising about the streets in ostensible pursuit of evil doers, but in reality with an eye on incoming trucks laden with liquor, fell afoul of each other and opening fire as if upon the high seas in time of war. . . ."

RAKOVE, *supra* note 16, at 25.

⁹⁹ Judge McKinley describes the period after 1914 as,

eight years of municipal misgovernment, malfeasance in office, misuse of public funds, criminal

tion of the legal system was inextricable from the politicized system for nominating and electing judges, including the control of elections by ward politicians, vote fraud¹⁰⁰ and ballot stuffing by paid ward operatives,¹⁰¹ and the assignment of judges to the criminal court at a time near to when they will be up for reelection, making the dependency of the judges upon ward politicians all too clear.¹⁰²

Influence could be brought to bear on criminal cases and hidden because the criminal court docket and the assignment of cases was not routinized, or the procedures transparent. The slack in the system allowed for manipulation of the calendar, the assignment of cases to particular, safe judges, and other “procedural” manipulations with a

assaults upon civil service, demoralization of the police and fire departments, destruction of the moral fiber of the city council, prostitution of the public schools, terrorization of legitimate businesses and tolerating illegitimate industries, incubation of crime in brothels that paid millions for protection; complete control of the Criminal court by the malodorous machine in selecting the head of the prosecuting agencies of Cook County.

McKinley, *supra* note 72, at 9.

¹⁰⁰ As one observer noted:

Here in Chicago, for instance, the looseness of the registration laws, the reckless facility with which anybody and everybody is registered as a citizen, is a direct encouragement to those vulgar Catilines to aspire to pack not a primary or a ballot box, but the register of the electorate. To put matters simply, registration in Chicago is a farce. Any naturalized citizen can vote, and anybody and everybody can be naturalized as a citizen if they are males over twenty-one years of age

STEAD, *supra* note 32, at 321–22.

¹⁰¹ The contemporaneous commentator continues:

Tramps and nondescripts of every description, raked together from anywhere and everywhere, can be registered under any name and with any address, so as to swamp the resident electorate. In Chicago in one ward on one occasion, the registration agents falling short of names and lacking the imagination of a novelist, registered as citizens of that ward every man whose name was printed on the familiar print representing the prize fight between Sayers and Heenan. None of these worthies had even been in the ward, few of them had ever been in the country, many of them were dead; that was immaterial. The politician registered them all as citizens, and when polling day came he had his obedient drove ready, who voted punctually as Tom Sayers and J.C. Heenan or any other of the ornaments of the British prize ring of thirty years ago.

Id. at 322.

¹⁰² Judge McKinley continues:

The psychology of a situation that perennially places in the Criminal court men who must in the immediate future look to “the organization” for renomination in a convention of party managers is all in favor of the delays that defeat justice. A judge, particularly a chief justice, has a continuous queue of callers whose mission is to cajole him into a compromise with conscience when, indeed, it is not a downright demand that he ignore his oath in order to please this or that poobah of the party who “is interested in this boy.” To a boss his heelers and precinct captains never grow up, but remain “the boys.”

McKinley, *supra* note 72, at 7.



direct impact upon outcome.¹⁰³ The dismissals of cases, the postponements, and the decision not to prosecute at various stages were accomplished through the application of appropriate criminal procedures. The structure for a legal system existed, but the application of the law was such that the legitimate ends of prosecution, the conviction and punishment of the guilty, was perverted. And crowds and incensed citizens took the law into their own hands.¹⁰⁴

The judges assigned the criminal cases where influence was sought to the judges who would soon be up for reelection.¹⁰⁵ These judges knew that their reelection, indeed their renomination and future legal careers, were entirely controlled by the political operatives “interested” in the outcome of a particular case.¹⁰⁶ Controlling the assignment of cases to judges soon up for reelection assured that these judges would be responsive to ‘influence’ in these cases.

The amounts of money from the sale of alcohol and other illegal enterprises skimmed by politicians and criminals, who were sometimes indistinguishable,¹⁰⁷ were contributing factors to long standing

¹⁰³ Judge McKinley goes on to explain:

The loose organization of the Criminal court lends itself to a laxity of procedure and an off-hand contact between court and counsel which is the reason why “influence” is an overpowering consideration among clients of criminal court lawyers. That such a condition is possible readily arises from the fact that forty-two members of the Circuit and Superior Courts are ex-officio judges of the Criminal court, and that assignment to service “on the north side” as a rule comes to us in the last year or two of our elected term.

Id.

¹⁰⁴ Lynchings and other summary executions occurred. Elizabeth Dale argues persuasively that traditions of popular justice aggravated by sensational reporting were important reasons why an ineffective judicial system was tolerated. See ELIZABETH DALE, *THE ROLE OF JUSTICE, THE PEOPLE OF CHICAGO VERSUS ZEPHYR DAVIS* (2001). This detailed monograph describes the circumstances and treatment of a sensational interracial murder in 1888. The case appears in this data set as: Case No. 806, Feb. 27, 1888, “Gaughan, Maggie killed by Zeph Davis, a colored boy, who was arrested, tried and executed.” Leigh Bienen, Chicago Homicide Project, Homicide Cases 1870–1930, Book One (2000) (unpublished manuscript) [hereinafter Chicago Homicide Dataset].

¹⁰⁵ Scott Turow’s novel, *Personal Injuries*, brilliantly captures a contemporary system of corrupt judges and lawyers in his world of Kindle County which bears a strong resemblance to Chicago. See SCOTT TUROW, *PERSONAL INJURIES* (1999).

¹⁰⁶ Judge McKinley describes his experience:

In increasing instances during my terms as presiding head of the court, I was made fully aware of the fixed idea that my service in the state legislature for several sessions, my appointment to the city civil service commission as a minority member under Mayor Busse, and my selection as Chief justice made me a “political judge.”

McKinley, *supra* note 72, at 7.

¹⁰⁷ “After the election of [Mayor] Harrison in 1911, there was a general understanding

divisions in the body politic.¹⁰⁸ Bombings, in addition to outright murder, were used frequently by the syndicates to intimidate competitors or law enforcement. Police and other agencies of the law seemed to be ineffective against these organizations.¹⁰⁹ Many politicians, ward leaders, aldermen and elected officials had ties to saloons, the sale of liquor, prostitution, gambling, and other illegal enterprises, long before Prohibition. Yet at the same time Chicago had a business and social elite which pushed for political stability and strong governmental institutions, and spearheaded reform efforts.¹¹⁰

The indisputable presence of colorful organized crime figures, and the ebbing and waning of corruption in political and judicial institutions, should not overshadow the influence of discontinuous, transformative external events.¹¹¹ This period included the First World War, an international health crisis with devastating effects (the Spanish Flu in 1918), a national strike against Pullman railroad cars

among the sporting element [*i.e.* professional gamblers] that the police were not going to interfere with handbooks or poker games. Gamblers from other parts of the country came to Chicago for easy money.” LANDESCO, *supra* note 9, at 58. Apparently appointing the Chief of Police was one of the spoils of the mayoral election.

¹⁰⁸ Organized crime in Chicago did not start with Al Capone. Connections between organized crime and political leaders in the city had a long history.

Jim Colosimo had been a bootblack, a pickpocket, a pimp, and a bagman for the aldermen who controlled the vices and votes in their Chicago districts. He married a brothelkeeper and was soon managing scores of bordellos and saloons. By the end of the first decade of the twentieth century, Colosimo was the biggest vice operator in the city of Chicago and possessed great political influence.

GRANT & KATZ, *supra* note 18, at 104.

¹⁰⁹ “Many [police] raids followed, seemingly aimed at the smash-up of the city-wide syndicate; raids even on central stations where the race returns were distributed by telephone. Tennes merely put in new telephones and restored the service the next day.” LANDESCO, *supra* note 9, at 54.

¹¹⁰ The business leaders and elites pushed for reform and were an important influence behind the establishment of the City Council Committee on Crime in 1914 and the Illinois Crime Commission in 1925.

The Dever’s administration came, with a genuine attack upon bootlegging as well as upon gambling and vice. . . . During the four years prior to October, 1926, the year of the greatest activity for the control of the booze and beer business in Cook County, two hundred fifteen gangsters murdered each other. The police during these same four years, in literally running battle, killed one hundred sixty beer feudists and gangsters. Within the city limits of Chicago forty-two men were slain in the booze war during the ten months subsequent to January 1, 1926. Within Cook County, for the same period, the total reached fifty-four. Neither of the latter figures includes sixty other deaths which were the result of frays with policemen.

LANDESCO, *supra* note 9, at 97–98. *See also* JOHN R. SCHMIDT, *THE MAYOR WHO CLEANED UP CHICAGO* (1989).

¹¹¹ *See* Chicago Timeline (on file with author).

which resulted in thousands of federal troops occupying Chicago for months in 1894,¹¹² and other major labor actions and race riots. These unsettling events created a ground-bass of civil unrest and uncertainty throughout the period, as did the continuous jockeying for political power between organized crime elements, the temperance movement and those arguing against the imposition of Prohibition. A series of financial panics and currency crises, sharp economic downturns accompanied by widespread unemployment and hunger, a lack of control over their physical or economic environment, and many, many other stark realities were the ordinary fare for most people. Yet this period also saw economic recovery, the grant of voting rights to women, and increased political participation by African Americans.

Technological Change, Industrial Development

America was not the same after World War I, and the decade of the 1920's profoundly changed all of American society, not just Chicago.¹¹³ In the 1920's Prohibition, but not just Prohibition, changed the face of Chicago and America forever. The cause and impact of Prohibition are still subject to debate.¹¹⁴

¹¹² Lukas writes,

The severe recession of 1893–94 so eroded the company's profits that Pullman felt compelled to reduce wages 25%. When a delegation complained that he had made no corresponding cut in the model village rents—already higher than for comparable houses in Chicago—Pullman loftily declined to talk with them. In May, the Pullman workers went on strike. . . . The [national] boycott began on June 26, 1894. Within four days, 125,000 men on twenty-nine railroads had quit work rather than handle Pullman cars

LUKAS, *supra* note 14, at 310.

¹¹³ Jensen explains,

The transportation revolution took a different form in Chicago. In 1890 the city's million inhabitants travelled chiefly on foot—not difficult, since the majority lived within three miles of State and Madison. Only the homeowners, outlying middle classes spent their money on the horse drawn street cars. Few but the very rich owned a horse and carriage. By 1920, the city had tripled in size. The inner ring, already overcrowded in 1890, grew not at all. The new dwellings were four, five and even ten miles from the Loop. Although factory workers and unskilled laborers still walked to work, the rapidly growing middle classes depended on public transportation, especially the rapid transit (“el”) system that made it feasible to buy or rent in a pleasant neighborhood while working downtown.

JENSEN, *supra* note 53.

¹¹⁴ Grant and Katz argue,

Enforcement of the Volstead Act [Prohibition] was weak and ineffective. At the same time, prohibition was responsible for bringing about a sharp decline in per capita consumption of alcohol and in diseases and deaths related to alcohol. Consumption fell to one-half the rate prior to World War I. A sharp rise in the price of liquor caused by prohibition had the effect of limiting the number of purchasers. . . . The number of arrests for drunkenness fell off remarkably during

