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COVERING THE COURTS

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COVERING THE COURTS

BY

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PROFESSOR OF JOURNALISM
NORTHWESTERN UNIVERSITY

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PRINTED IN THE UNITED STATES OF AMERICA

THIS BOOK IS DEDICATED TO

ISAAC GERSHMAN

MANAGER, CHICAGO CITY NEWS BUREAU, WHO HAS GIVEN HUNDREDS OF OUTSTANDING NEWSPAPER MEN AND WOMEN THE INTENSIVE TRAINING ON WHICH THEY BUILT THEIR CAREERS.

Preface

NO MATTER what the critics of the newspaper may have to say, they will have to admit that, in the past few decades, in a number of different fields, the press has developed writers who rank as experts. Not mere specialists but top-flight authorities as good as any others to be found anywhere.

There is reason to believe that this trend will continue, and to predict that it will include fields heretofore neglected. What has happened to newspaper handling of science and international politics seems bound to happen to all other fields of social importance and reader interest.

With his *Newspaper Reporting of Public Affairs,* originally published in 1929, Chilton R. Bush, now director of the School of Journalism at Leland Stanford University, demonstrated both to the newspaper profession and to schools of journalism that to graduate from cubhood in newspaper editorial work a person needs more than the ability to remember to include all the 5 w's in a news story with facile and attractive variation.

Frankly, with this book I hope I am starting something. If we are to keep pace with the need for experts in all the fields that provide news—and that means almost everything—we must have specialized books of reference and instruction. Law and medicine have voluminous libraries of such specialized literature, and journalism must develop one. For the purposes of journalism students and newspapermen, the books put out by the political scientists, sociologists, economists and others are not enough. They are for practitioners in those fields or for general reading. We must be able to see the subject matter in relation to the everyday news events that we must cover. We need books on how to handle news from federal administrative agencies; city, county and state governments; from the fields of labor, business and finance, housing, race relations and education, to mention only a few of the subjects in which we have nothing, or almost nothing, now.

In writing about law and the courts I have tried to point out the major differences to be encountered between federal and state laws and between the practices of the states. It probably is true, however, that I have left many statements unqualified that should have been at least footnoted. As a matter of fact, the variations are so numer-

ous that there is hardly a statement that can be made to apply universally. Anyone reading this book must realize that even the terminology may be different in the jurisdiction where he works.

Teachers, I hope, will find many of the pleadings useful as class exercises. In some cases, for illustrative purposes, I have followed them by actual news stories that were written upon them. In others, however, I purposely have not done so.

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CURTIS D. MACDOUGALL

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NOTE

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PART I

ORIGINS AND SURVIVALS

CHAPTER 1

Origins and Survivals in the Law

UNFORTUNATELY, there were no reporters present when the first government was formed, the first law passed, and the first court created. In the absence of the contemporary records that such journalists might have left, historians, anthropologists, sociologists, political scientists, philosophers, and others have done the best they could, with the data available, to determine origins and subsequent developments.

This scholarly quest cannot be dismissed as academic or pedantic. It has a practical value, because virtually every modern governmental, legal, or judicial institution had an ancient origin—however difficult to determine—in the light of which its present utility may in part be judged. Law is a cumulative process, and it is a habitual contemporary legal practice to argue a case largely, and sometimes almost entirely, by reference to judicial precedents. The courts revere the principle of *stare decisis,* which means "to stand by decided cases, to uphold precedents, to maintain former adjudications."

Because this is so, the newspaper reporter who covers the courts must possess a knowledge of legal history and theory. Without it, he can have only a superficial knowledge of what the legal battles he encounters every day are all about. The rules of the "game," which he sees played between rival attorneys, with the judge as umpire, were not invented suddenly, as were those for gin rummy and many other games; they developed slowly over a long period. It is of tremendous value to be able to recognize to what school of thought a lawyer or a judge belongs, for almost every rule or principle that was widespread at some time in the past still has modern adherents—conscious or unconscious, in whole or in part.

The story of this research into origins, furthermore, is important in itself because the course of history has been seriously affected by the actions of men who have tried to solve contemporary problems in the light of theories as to the origins of society; they have usually done this by attempting to restore society to what they believed was an original and better state.

Theories and Their Effect

The law of nature. Our own United States of America, in fact, came into being in large part as a result of the activities of men who believed in one of those theories—the "social compact theory," expounded chiefly by John Locke, seventeenth-century English philosopher. The second paragraph of the American Declaration of Independence is a paraphrase of Locke:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable (sic) rights, that among these are life, liberty and the pursuit of happiness.—That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed,—

Not only the American Revolution, but also the so-called bloodless or "glorious" revolution of 1688 in England, which brought William and Mary of Orange to the throne, was activated by believers in this theory. Similarly, the French Revolution was influenced by philosophers, chiefly Jean Jacques Rousseau, who postulated a "social contract" explanation of governmental and legal origins. Rousseau taught the "natural rights" of man, saying that the only natural union is one in which a fundamental equality of brotherhood exists. Such a condition, he said, is found only in natural society. Hence, government must have originated when the people entered into a contract to have one. All these "natural rights" philosophers argued that man is essentially free and independent, and that government degrades him. Consequently, it follows that that government is best which governs least.

Both Locke and Rousseau were preceded, many centuries back, by the Greek philosophers and Roman legalists, who believed that there exists a law of nature antedating the existence of the state—a law that has to be discovered and applied. According to the Greek Sophists and Epicureans, law and justice are merely arbitrary conventions established by the weak for defense against the strong, who otherwise would insist upon and obtain their natural rights. The Stoics believed that there exist rules of natural justice based on reason and cognizable by the use of pure reason. To them all law was applied ethics, and what was not right was not law. Cicero and, centuries later, Thomas Aquinas held virtually the same view—that laws in conflict with nature are not true laws. As long as the church, through the Middle Ages, was accepted as the sole interpreter of natural or God's law (according to Aquinas that part of eternal law which the Almighty permits man to discern by reason), there was a brake on overt attempts to destroy the obstacles that government allegedly puts in the way of the complete

enjoyment of such law. After the Protestant Reformation had freed the conception of natural law from ecclesiastical associations, however, Locke, Rousseau, and others could find adherents for their ideas justifying the revolutionary overthrow of authority, with the object of restoring to all men their supposedly God-given birthrights.

In the Roman Empire there were two systems of law—*jus civile*, for Romans only; *jus gentium*, which included foreigners and which consisted in the points of law that were similar in the *jus civile* and the laws of the foreigners' own cities or states. It was in these discovered similarities that the Roman jurists saw evidence of a law of nature—an invisible fountain of right from which a body of rules proceeded. Its origin was accepted to be in divine power, rather than in enactments by any man or body of men. It could not be reflected and therefore was self-existent; its particular rules were reached by the processes of reason; it satisfied the universal sentiment of justice; it seemed inscrutable.

In the legal field, the importance of this ancient Greek and Roman philosophizing lies in the fact that two major branches of the law developed from it—the law of equity, about which we shall think presently, and international law. Although he was anticipated by numerous other writers, the seventeenth-century Dutchman, Hugo Grotius, because of the frequency, vigor, and clarity of his writings, is remembered as the father of international law. Impressed by the brutality of the Netherlands war of independence, he challenged the ancient rule that "might makes right" by declaring that nations have certain good neighborly obligations, or servitudes, to each other. To Grotius, the *jus gentium* and *jus naturae* (law of nature) were identical and were the original code of states or nations. Because of the sovereignty that nations up to this day have continued to exercise jealously, international law is not really law at all but a set of rules and customs deriving authority from abstract theories of justice. Nevertheless, Grotius' arguments for the voluntary acceptance of such restraints had a profound immediate effect upon military conduct in the Thirty Years War and upon both the wartime and peacetime relations among nations ever since.

It does not detract one iota from the soundness of the principles postulated by all these thinkers to suggest that they are probably better descriptions of how government and law *should have* originated than explanations of how they actually did. In the social sciences, as in the physical sciences, researchers and theorizers run the risk of wishful thinking when they interpret or rationalize their data. At any rate, it is hypothetical that law and government

actually began by deliberate compacts to perpetuate natural law.

The power of the state. The other major theory of the origin of law that has captivated many researchers and philosophers is that all law comes from the supreme power of the state. This theory was first given vigorous expression by Thomas Hobbes, seventeenth-century philosopher, in his *Leviathan,* and it was spread by his disciple, John Austin.

Before organized society developed, Hobbes claimed, man existed in a state of anarchy and war quite different from the blissful natural utopia that the "natural rights" school said governments destroyed. According to Hobbes, whose purpose was to justify the exercise of strong force in repressing civil revolution, unlimited and unquestioned public authority was essential to maintain order and to establish justice. His theory naturally appealed to feudal rulers, who were struggling to maintain their power, and it also gave impetus in England and on the continent to the establishment of administrative unity, centralized national governments, and the replacement of local customs and codes by legislative laws. Hobbes considered law by customs or judicial precedent to be anomalous, and he advocated its substitution by statutory enactment.

As is true of the "natural rights" theories, to argue that only legislatively enacted written law should be followed in the courts is one thing; to say that law originated in that way but that it has been corrupted judicially is another. Not only is it hypothetical so to contend, but strong evidence exists that there is much law that was never written.

The Role of Custom

A third school of thought regarding the origins of law and government—a theory first given expression in the eighteenth century by Montesquieu and Burke, who revolted against the then prevalent "natural law" ideas, and thereafter developed by innumerable nineteenth-century writers—is historical in its explanation. Law and government, its proponents contend, developed together, each affecting the other and both based upon custom and tradition as supported by public opinion.

Even today, it is pointed out, men do not engage in what is considered "right" conduct solely out of respect for or fear of the law. There are at least two other powerful means of social control, often difficult to distinguish from each other—religious sanctions, to be considered shortly; social or cultural pressure (custom). Social ostracism, loss of friends, and public opinion are and always have been feared more than formal laws. At any level of society

and at any time, it is possible to break certain laws without the loss of social prestige or status. Wrong conduct, as defined by one's fellows, is largely a departure from custom, but all such departures are not criminal. In other words, all crimes are violations of custom, but not all violations of customs are crimes.

Sir Henry Maine, one of the earliest to emphasize the role of custom in law, declared in his *Ancient Law* that in progressive societies social necessity and opinion are always ahead of the law; modern sociologists express much the same idea when they talk about "cultural lag." The law's own efficiency, it is held, is dependent upon its conformity to habit and custom; therefore, all law is custom, but not all custom is law. With memories of the fiasco of the Eighteenth Amendment still fresh, and with everyday examples of flippant violations of criminal laws regarding the operation of motor vehicles before us, it is difficult to refute the contention that the enforcement of laws that go counter to custom is difficult or impossible. The United States has often been criticized adversely by foreigners for its alleged predilection to avoid coming to grips with vital social problems by the practice of passing multitudinous laws—a policy which has the sole effect of creating a moralistic attitude. Custom continues to be the chief determinant of human conduct, and the principal crime becomes that of being caught violating a legislative edict when "everybody's doing it."

Acceptance of the hypothesis that law originated in custom has led a sizable number of lawyers, including most contemporaries, to believe that law, expressed either in statutes or judicial decisions, is scientific. "A judicial precedent," wrote James Coolidge Carter in *Law: Its Origin, Growth and Function* (G. P. Putnam's Sons), "is not law per se but evidence of it only. The real law is custom." When custom changes, according to Carter, the law not only should but *does* change. He expressed the extreme point of view that law is never made but is always found, just as is a new plant or animal, and that it is then classified by an expert judge. He explains discrepancies between judicial opinions as being similar to differences between botanists in classifying a new flower. Even today, according to Carter, written law is "a mere fringe on the body of law." From the theory that all law is custom comes the maxim that all of us are presumed to know what the law is—a maxim to which, happily, modern courts do not adhere. The maxim to which they do hold—that ignorance of the law is no excuse—seems to be predicated on almost the opposite principle.

Opposed to those who regard the law as the embodiment of culture, and therefore akin to an exact science functioning to apply absolute and universal principles to concrete situations,

have been several leading critics of the legal and judicial system as it has operated. To use contemporary slang, these critics consider law a "mess," if not a "racket."

Among the earliest and most distinguished to take this viewpoint was Jeremy Bentham, English philosopher and reformer of the late eighteenth and early nineteenth century. He considered unwritten law as a hateful usurpation and called legal fictions (see page 19) willful falsehoods. Bentham believed in "the greatest happiness of the greatest number" as the standard of social rightness and wrongness, and argued for a complete codification of the law to end judicial discretion and precedents, which, he thought, meant the strait jacketing of justice by allowing the "dead hand of the past" to rule the present. He would have been diabolically gleeful over the admissions by Federal Judge John Knox in *Order in the Court* that during his quarter century on the bench he often found himself unable to decide cases as he thought justice demanded, because he was bound by the principle of *stare decisis,* which was represented in some instances by judicial decisions several hundred years old.

Contemporary exponent of the Benthamian viewpoint is Fred Rodell, who in *Woe Unto You—Lawyers* calls it a legend that every dispute can and must be settled by hauling an abstract principle down to earth and pinning it to a dispute in question. Rodell says law is a business and government is run by lawyers. He feels that lawyers sell the law, talk a foreign language, and can find principles to lend the benediction of law to either side of any legal controversy. These legal principles are vague and abstract, but, Rodell believes, a majority of lawyers actually believe in their existence. Rodell insists that there are no more judge-made absolutes than there are absolutes created by a law of nature or by kings or legislative bodies. He would admit that custom should rule, and probably that many laws are based on custom, but in the frequency with which equally competent legal minds contradict each other and in the large number of reversals of lower-court decisions that are obtained in appellate courts, he sees evidence that law is not exact and impartial. Law is a fraud, he thinks—not because of its results, however, but because of the manner in which it purports to arrive at them.

Regardless of the extent to which custom is embodied in or corrupted by law, it seems indisputable that in primitive societies it preceded written law and that the first written codes were merely recordings of customs that had been given a sanction by public opinion. Writing existed in 1500 B.C.—centuries before any authenticated instance of its use in making laws. The first written laws of

which we have knowledge today were those of Solon, in 594 B.C., and they came into existence because growing international trade and commerce brought into focus conflicts between the customs of different nations. The earliest written laws of Rome, in 451 B.C., were the Twelve Tables, and they too resulted from the necessity of codifying existing customs because of increased commerce, division of labor, and the growth of distinct wealthy and debtor classes. A high degree of social advancement, large populations, large-scale industry and commerce, and highly organized government were reached without written laws.

In simple, primitive societies, with no real leaders, restraint on the individual's conduct was imposed by the mores. That the obligation to conform to custom did not come from any universal principles of right and wrong is demonstrated by the fact that, although tribes could plunder each other, they felt the necessity of internal order. Throughout history, military conquerors have learned the inadvisability of attempting to alter the private laws of the territories they have occupied; they tamper only with public laws. The "eternity" of justice is proved to be limited in space and, from the standpoint of Bentham and Rodell, in time as well. Regardless of the inspiration of judge-made law, however, the judicial reasoning that rationalizes it is of considerable public importance. Unfortunately, newspapers virtually ignore this reasoning, concentrating instead on the overt facts connected with specific cases. That is, newspapers are interested in how the rules are applied, and they do not fully realize that the umpires in this game not only apply the rules but also discover or manufacture them—depending on one's point of view.

Origin of the Law of Torts

Regardless of how it originated, among primitive peoples there was little or no civil law. Personal relations were regulated by status and custom; administration and inheritance of property were within the family or tribe. No contracts existed before business and industry developed to make them necessary. In all the earliest codes that have come down to us, criminal law received much more space than civil law. It really, however, was a law of wrongs, or a law of torts, rather than criminal law as we understand it today. The aggrieved party was not the state or community as a whole but the individual and, later, his kindred.

Primitive peoples reacted intuitively to wrongs and sought private retaliation. More often than not, the revenge far exceeded in severity the harm inflicted. Just as any modern person might

bloody another person's nose in anger over a mere pinch of the arm, primitive peoples slaughtered and maimed to more than "get even." Very early, also, appeared the idea that not only the individual but his whole family or clan was offended by any wrong inflicted by an outsider; thus, obtaining revenge became a group responsibility. To safeguard against self-extermination, blood revenge was not allowed within the kin group itself, but long-standing feuds, to which the present century is not a stranger, developed as the obligation to seek revenge shifted with each new victim. The individual was considered to owe allegiance to his kin, and the kin to owe protection to each of its members against all outsiders. Families punished the breaking of their own taboos—when a stranger attended a private ceremony or used improper language, for example —at first by death and later by fines. Among the Eskimos, until recently adjustment of grievances was mainly a matter for the individual or his kin rather than for the community at large. The nearest relative of a slain person, for instance, wreaked vengeance on the slayer or one of his kinsmen in accordance with the principle of collective responsibility.

The first interest of the community in administering justice was in regulating rather than in abolishing disputes between individuals and kin groups. The first effect historically was to soften the retaliation permitted. The Mosaic principle of "an eye for an eye." may seem atrocious today, but twenty-five centuries ago it was a tremendous advance. Then came "composition for crime," or the substitution of fines for physical punishment or death. These payments, commonly called "wergilds," were usually based upon class distinctions, being higher for injuries inflicted upon someone of title or wealth. Among the Shasta tribes, every person had a fixed value, which was determined by the bride price that had been paid for his mother in marriage. Among the early Anglo-Saxons, the Laws of Alfred stipulated a list of payments for different kinds of bodily injuries—payments based upon the severity of the injury and upon the rank of the victim. Part of the damages went to the king, part to the lord of the manor, and part to the claimant. "Group composition" meant that the family or tribe was responsible for the wergild. The Anglo-Saxon system of frithborh, later known as frankpledge, was also an early manifestation of the group responsibility idea. It consisted of a guarantee by each member of a tithing (small governmental unit, originally ten families) that all other members would maintain the public peace. If any member was accused of crime, the other members pledged themselves to arrest him and bring him to trial; if he was not cleared of the charge, they were responsible for his wergild.

Despite any eternal legal principles that may exist, ideas of what constitutes tortious action have changed. The Roman Twelve Tables treat many offenses, including theft, assault, violent robbery, trespass, libel, and slander—all of which we now consider public crimes—as purely private matters. Although these and many other offenses are now considered to be committed against society as a whole, and not merely against the individual victim, there is still recourse in the civil courts for redress and damages for loss suffered. That is, although the state will punish an embezzler as an enemy of society (as a criminal), the bank from which the embezzler took money can bring a private action in a civil court to obtain repayment of the amount lost (damages for commission of a tort).

The law of torts as well as the criminal law is constantly being increased by legislative enactment. At common law, a landlord had little or no obligation to repair premises that he rented to another. Today, however, statutes and ordinances generally impose duties upon landlords to do so, and tenants can go to court and insist upon their rights. If a landlord's negligence is responsible for injuries, he is held accountable under modern law. It may well be that before long the best interests of society will require considering such negligence a crime, and not merely a private wrong or tort.

The Ecclesiastical Influence

Religion also defines right and wrong conduct. Religious and/or moral law has always been much more extensive than man-made law, and it would be impossible to legislate against many sins, such as the Tenth Commandment, "Thou shalt not covet." Nevertheless, a large number of acts that later came to be regarded as torts or crimes were originally regarded as violations of religious law, and were punishable as such.

According to William A. Sumner in *Folkways,* the practice of blood revenge originated in goblinism, rather than in kin notions. There was a belief, this leading American sociologist wrote, that the ghost of a murdered man would seek revenge and that he was dangerous not only to the murderer but to everyone who came near the corpse. To escape the ghost's fury, it was necessary to avenge the homicide. Similarly, there arose the idea that the group suffered from the sins or crimes of any of its members, who therefore had to be punished or eliminated as a matter of self-protection. This—the expiation theory of punishment—was justified by Aristotle as essential to restore balance and order to society. It gave

impetus to the growth of the consciousness of criminal, as distinguished from purely civil, law.

Taboos, as defined by Hutton Webster in *Taboo* (Stanford University Press) are "prohibitions which, when violated, produce automatically in the offender a state of ritual disability—'taboo sickness'—only relieved, when relief is possible, by a ceremony of purification." In other words, the punishment was supposed to be imposed by the offended deity without the necessity of man's intervention. Unusual misfortunes were explained by primitive peoples as evidences of supernatural displeasure or punishment for behavior of which the victim's fellows might or might not have been aware. It was not until comparatively recently that the idea that God will intervene to help men determine and punish tortfeasors and criminals ceased to influence court procedure. (See "Trial by Ordeals," page 73.)

Throughout history, one of the principal purposes of the church has been the function of interpreting divine law and offering the means of salvation and escape from divine punishment to violators of this law. When all life had a religious or superstitious meaning, there naturally was no conflict between divine and human law. Spiritual and temporal authority were combined in one person—chief or priest. When, however, organized society developed and many acts formerly regarded as offenses against religious law were also considered violations of man-made law, it was inevitable that there should be conflict for jurisdiction over the wrongdoer.

For centuries the church shared that responsibility with the state. For a great deal of that time, in fact, the state acted largely as an agent of the church in enforcing religious law. Once the concept of crimes, as distinguished from personal torts, arose, among the first offenses punished by the community were sins against the gods. In both Athens and Rome such sins were punished as among the first class of ordinances. The Roman *jus civile* was largely religious in origin, and it was interpreted by patrician priests. Adultery, sacrilege, murder, and many other acts were punished as sins by the church, and not as crimes by the state.

As the Roman Empire grew, the influence of the Roman Catholic Church spread with it. After its recognition by Constantine up until the Protestant Reformation, the church became accepted as the only authorized spiritual power in all Europe. It was unlimited by national boundaries, and it had authority over the conduct of the clergy, punishment for heresy, administration of the personal property of decedents, marriage, and divorce. Its chief punishment was excommunication. As early as the second century, the church forbad communion to anyone who had failed to adjust

a difference with another Christian. By the fourth century the church had won the right to have the decisions of her canonical courts enforced by secular authorities. The canonical courts had exclusive jurisdiction over the conduct of the clergy, crusaders, students, widows, and orphans, and all men were responsible to those courts for behavior related to matters of faith, sacrament, and vows; for crimes against the church or crimes committed in sacred places.

As nationalism and the feudal system developed, it was inevitable that church and state should clash. The story of this centuries-old struggle is familiar. An almost immediate change in English law after the Norman Conquest was the separation of civil and ecclesiastical courts and the discontinuance of the practice of having churchmen sitting as judges in civil courts. Exactly a century later occurred the clash between Henry II and Thomas à Becket, Archbishop of Canterbury. In 1163, at the council of Westminster, the king demanded that church clerks who committed great crimes should be deprived of the guardianship of the church (*benefit of clergy*) and be handed over to his officers for corporal punishment after they had completed their religious penance. Three years later, Henry called together the entire body of bishops and barons to codify the civil law in sixteen Constitutions of Clarendon. Under them, members of the clergy convicted in ecclesiastical courts of crime were henceforth to be turned over to the civil courts for further punishment; there was to be no appeal to Rome without the king's consent; no clergyman was to leave the country without consent of the king; no villein could be ordained without the consent of his lord; no tenant-in-chief of the king's could be excommunicated without the king's knowledge. Becket declared that the constitutions were contrary to canon law, and he opposed the king's authority. When he appealed to Pope Alexander III, Henry declared him a traitor and Becket became an exile in France for six years. After his return, he continued in defiance and was murdered by a number of knights. Although the increased authority obtained for the civil courts by the Constitutions of Clarendon was not relinquished, that the power of the church was far from broken is evidenced by the public penance that Henry paid at the grave of the martyr to escape excommunication and by the Palestine pilgrimages that the penitent murderers made.

It was not until 1827 that the right of "benefit of clergy" was formally abolished by Parliament. Originally, this privilege of being tried in ecclesiastical courts was enjoyed by clergymen only, but in 1330 under Edward III it became extended to all clerks—which meant all persons who were able to read. As literacy spread, the

privilege obviously became anachronistic. It existed in only a few American colonies and in 1790 it was forbidden in capital offenses by act of Congress.

Although canon-law precedents have never been accepted in our courts, our jurisprudence, with its Roman and English heritage, has been influenced considerably by ecclesiastical concepts. A great deal of the absolutism in judicial thinking is probably traceable to the fundamental religious concepts of inflexible and immutable principles. On the other hand, the church has given impetus to the humanitarian movement in criminology and penology. Among the earliest religious ceremonies were those to absolve murderers from the fury of ghosts and gods. In the Old Testament there are accounts of sanctuaries and cities of refuge where accused persons could find protection from would-be lynchers. Churches and monasteries were sanctuaries as late as the seventeenth century. The canonical courts developed the system of composition for crimes to reduce the number and severity of capital punishments. During the Middle Ages, the church ordained truces of God—at first holy days upon which churchmen could not commit crimes without fear of excommunication. As long as comparatively mild religious penance was available as a substitute for legal punishment, however, the authority of the state was weakened.

In modern times, religious groups make their influence felt in the same way as other elements in a democratic society—by exerting pressure upon lawmakers and by instilling in legislators, judges, and jurors points of view that are reflected in their decisions.

Origin of Criminal Law

Religious sanctions, customs, and communal regulations of disputes between individuals (tortious behavior) were not enough to reduce violent actions. It very early became obvious, also, that such offenses were committed, not only against God and the victim or victims, but against society as a whole, because they disturbed peaceable relations, kept men in constant fear of danger, and deprived the community of valuable services and materials.

An early step in the direction of the concept of crime, as distinguished from sin or private tort, was taken by the Kafirs, whose laws and customs operated on the principle that all individuals are the property of the chief. The chief, therefore, naturally suffered a loss when one of his subjects was murdered, and he had to be compensated seven head of cattle for a male and ten for a female—the difference being due to the dowry that the woman brought.

Among the Eskimos, although kin vengeance prevailed, if a murderer or other capital offender became obnoxious to the entire community, any person could ask his fellows individually if they believed the offender should be killed. If the answers were unanimous in the affirmative, he was free to proceed with the execution. Witches, violators of taboos, and other "undesirables" were often put out of the way by similar process. In primitive or pioneer communities there always is considerable socially approved "lawlessness," which is allegedly justified by the necessity of preserving order and peace.

With the establishment and growing complexity of society, the necessity for peace and order increases. Step by step, primitive chiefs and priests modify or set aside in-kin laws and substitute authoritative control for private duels and feuds to settle grievances. Once the conception of crime as an offense against society as a whole catches on, those who seek to "take the law into their own hands" are held to be as offensive as those whose misbehavior they attempt to punish.

In taking over the responsibility for punishing wrongdoers, the state wisely merely substituted its authority and discretion for that of the smaller group, with little change in the basic concepts of what constituted right and wrong or in the forms of punishment to be inflicted. Early criminal law, therefore, continued to be violent and revengeful in purpose. The idea that the ruler was a fountainhead of justice developed later. It grew with the power of the state and the increasing complexity of everyday human relations. Its attainment awaited the decline of patriarchal law, which prevailed in primitive society. As long as the family continued as the principal unit of society, the parent's word remained supreme within the group. The idea that the individual, rather than the family, is the most important societal unit is a comparatively recent one. For centuries slaves, women, and children were considered property, and status counted for more than contract in determining the relations between men. Fathers were liable for the torts of their slaves, wives, and children during the days of the Roman republic, and could tender the delinquent's person in full satisfaction of damages. Feudal laws did not consider all men equal at the bar of justice; equality is a modern, democratic idea and one that even today it is easier to reverence in the abstract than to observe in the concrete.

True criminal law began in 149 B.C., when L. Calpurnius Piso, Roman tribune of the plebs, established the first *quaestio perpetua* (permanent commission). According to Sir Henry Maine, the steps in the primitive history of criminal law were:

1. When the idea of injury to the state is accepted, the lawmaking body, by means of a "Bill of Pains and Penalties," or indictment, seeks revenge separately for each offensive act.
2. The multiplicity of crimes makes it necessary for the legislature to delegate power to separate commissions, each to investigate a particular accusation and to punish it.
3. The lawmaking body, instead of waiting for the commission of a particular type of crime, periodically nominates commissions to watch for such crimes, in the painful knowledge that they will occur.
4. Permanent commissions or courts are created, with power to act when a particular kind of offense or group of offenses is committed.

Those were the steps that Sir Henry's studies revealed were taken in the development of Roman civil law. As will be pointed out in the next chapter, a similar development occurred in English law. In early days there were almost as many different kinds of courts as there were crimes to be tried and punished. Gradually the number of courts decreased, and criminal courts developed, with jurisdiction over all offenses that were considered crimes.

Origin of the Common Law

Go to a law library and ask to be shown the complete laws of a particular state. You will be handed a very bulky single-volume compilation or a series of volumes. As you are about to gasp at the extensiveness of the material, the librarian, in fiendish glee, will gesture in the direction of hundreds, or perhaps thousands, of other books lining the walls of the room and will explain that the "real" law is to be found in them. In those books are embodied, not the laws enacted by the state legislature, but the records of thousands and thousands of cases, including, most importantly, the decisions—together with the opinions explaining them—of judges concerning cases that have arisen in connection with all the laws passed by the lawmaking body, at the number of which you previously were prematurely inclined to be awestruck.

In other words, the law is really what the courts say it is, as Charles Evans Hughes once remarked concerning the Constitution itself. Visit a courtroom and it won't be long before you overhear some lawyer in a disputed case refer to a decision in an earlier case. He may have a copy of that decision to read in court or to allow the judge to read; he may bring with him a book or many books containing the embalmed judicial reasoning of the past. To each decision he will refer in a way such as this: State *vs.* Dean, 149

Minn. 410, which means volume 149, page 410, of the reports of the supreme court of Minnesota. These reports, which are issued annually by the highest courts of all the states, include brief statements of every case decided by the courts of last resort, the decision, and all opinions submitted by any justices of the court in all cases. In addition to the state reports, there are also regional reports in which the decisions of several states are included. N.E. in a notation would mean northeast; N.W. would mean northwest; and so forth.

The principal desire of the lawyer in preparing his case is to find a record of an earlier case involving an issue identical or similar to the one at hand—preferably one about which the highest appellate court of his own state has rendered a decision and opinion. He also seeks to show that the legal reasoning expressed in early cases has been followed in deciding more recent cases, so that he can contend that it should also be followed in the immediate instance. Not infrequently, however, he discovers that, although legal reasoning on a point of law has remained unchanged, he must prove that the issues involved in the case at hand are the same as those involved in the earlier cases. When a court case revolves around such a dispute, to the spectator it may resemble a retrial of the earlier case, in a manner not unlike that popularized by the radio series, "Famous Jury Trials."

Alas and alack for the hard-seeking attorney, despite *stare decisis,* it has happened that courts have changed their minds. More than that, different courts have decided identical or similar issues or points of law differently. This, in fact, almost invariably happens when Congress passes any important law before the United States Supreme Court has reviewed all phases of it. Furthermore, even after the appellate court, including the highest court of the land, has decided an issue, it is capable of reversing itself at a later date. In 1936, for instance, the United States Supreme Court declared unconstitutional the New York minimum wage for women law. The very next year, in 1937, it approved an almost identical law passed by the legislature of the state of Washington.

If the lawyer preparing his case can find no previous decision applicable to it in the courts of his own state, he will seek for similar cases tried in the courts of other states. If his quest is still futile, he will look into English law, and, in unusual cases, may go back hundreds of years to find a precedent upon which to base his plea. Roughly, citations to judicial decisions are important in the following descending order: United States Supreme Court; United States Circuit Court of Appeals; supreme court of the state; intermediate appellate court of the state; highest appellate court of

some other state; courts of original jurisdiction of the state; courts of original jurisdiction in other states; English courts. If there is more than one decision in any court, the most recent decision prevails. A decision of an American court of last resort is binding on all other courts in the system except itself.

Regardless of whether defenders, such as Carter (who said that judicial law is merely the discovery of custom), or the defamers, such as Bentham and Rodell (who deplored it as arbitrary), are right, the power of judicial precedent throughout history is indisputable. Judicial decisions comprise the main body of what is law; even statutory law can be and frequently is set aside by judicial fiat. A clue as to how it might have begun is found in the early practice of some primitive tribes of using go-betweens in their private relations. In Ifugao society this go-between was called a Monkalun. He acted as an agent for members of different families in buying, selling, deciding what damages should be paid for personal injuries, arranging marriages. He was supposed to be an impartial arbitrator, working for compromises. He had no real authority, but he might threaten either party, to make him "come around." He interviewed the principals separately, and there were no oaths or formalities, although at a later stage the go-between might be appointed to preside at trials by ordeal. (See page 73.) The go-between was paid by commissions or fees, so he was under a constant temptation to resort to "squeeze."

It is conceivable that certain go-betweens built up reputations and consequently received many appointments to handle certain types of situations at which they supposedly were adept. Others, in such cases, tended to imitate their successful competitors; the result was the establishment of precedent. This process occurred in Rome, where each year a *praetor peregrinus* was appointed to settle disputes between Roman citizens and foreigners. He was required to publish an edict to explain how he intended to administer his office. After a while each new praetor merely republished his predecessor's rules with an indication of whatever changes he expected to make in them, and there consequently arose a continuous edict. Finally, Salvius Julianus, the *praetor peregrinus* under Emperor Hadrian, put a stop to increasing the edict. The one that he published embraced the whole body of what really was equity jurisprudence developed up to his time.

Whenever a new judicial precedent is established, it probably, as Carter would insist, is influenced by custom and public opinion, although in these days of fast-changing headlines and short memories this may not be so true as in early times. After the original precedent is established, however, if the courts are to administer

anything akin to justice, they face the incessant necessity of reversing themselves or "getting out from under" in some other way. The traditional way is by means of what are called legal fictions. *Black's Law Dictionary* defines a legal fiction as follows: [1]

> An assumption or supposition of law that something which is or may be false is true, or that a state of things exists which has never really taken place. An assumption for purposes of justice of a fact that does or may not exist. A rule of law which assumes as true and will not allow to be disproved, something which is false, but not impossible.

One of the earliest fictions resorted to in the Roman civil-law courts was that foreigners actually were Roman citizens—a fiction necessary in order to exercise jurisdiction over them. Likewise, it was necessary to treat adopted members of a Roman family as full-fledged members, since the legal unit, for the purposes of fixing responsibility at law, was the family and descent was regulated by common lineage. In medieval England, the Courts of King's Bench obtained jurisdiction of civil cases by permitting the plaintiff to allege that the defendant was in custody of the king's marshal for a breach of the peace. The Court of the Exchequer similarly got jurisdiction by allowing the plaintiff to allege he was the king's debtor and prevented from paying his debt by the defendant's wrongful act against him.

In English common law, there was no way by which the owner of a piece of real property could obtain a court decision attesting to the correctness of his claim to ownership. There was, however, a mixed action (involving both a person and thing) of *ejectment*, whereby he could oust a squatter and recover damages for having been deprived of the lawful use of his own property. In order to bring the action, the property owner had to prove that he already possessed a good title. To make up for the deficiency in the law—that is, the absence of a distinct form of action to test a title—it became the practice to institute a fictitious ejectment action in the name of a nonexistent John Doe against oneself. Some authorities believe that there may have been an original John Doe in the flesh, possibly an obliging clerk or minor official of the Court of King's Bench, who would institute a suit for a consideration. Although the action of ejectment was abolished in England in 1852, the fictitious John Doe has continued to be a frequent litigant in both English and American courts. Sometimes he has as his legal adversary Richard Roe, often made the defendant in ejectment suits. In different American states other fictitious litigants have been used, such as Jackson in New York and Den in New

[1] *Black's Law Dictionary*, Third Edition. Saint Paul: West Publishing Company.

Jersey. The Romans had Titus and Esius when they needed them, and the English had Goodtitle.

To establish degrees of negligence in various tort actions, the courts have postulated the fictitious "reasonably prudent man." To extend their jurisdiction, they treat corporations as though they were individuals. Until workmen's compensation acts were passed, the courts accepted the fiction that every worker voluntarily assumes a risk when he accepts any employment. Another long-standing presumption virtually amounting to a fiction is that of *caveat emptor* (let the buyer beware). As far as the purchase of investment securities is concerned, it has been modified by statute; the federal Securities and Exchange Act is based on the contrary principle. The reporter who is aware of the existence and historical importance of fictions will be able to recognize them as he encounters them almost daily in the courts. His knowledge will make what goes on much more comprehensive—give it rhyme and reason, as it were. As a citizen, he may consider the particular fiction sound or silly. However, he is there to report and to interpret, not to reform, so he must first understand.

Origin of Equity Law

Despite the flexibility obtained through legal fictions, in medieval England there developed, mainly through judicial precedents, a common law that was extremely formal, rigid, and restricted in scope. It dealt almost entirely in retributive justice. That is, it allowed the recovery of damages for injuries sustained. Judgments were simply for the plaintiff or defendant without qualifications or modifications, and the common-law courts were powerless to prevent legal injuries or to abate nuisances. As a consequence, many who had grievances either had to find a way to settle them out of court, or, if they attempted to find a legal remedy, became convinced that their search for justice was futile. It was natural, as the monarchy developed, that such disappointed litigants should take their appeals to the king—the supposed "fountain of justice." Once the practice grew, it became impossible for the king personally to hear all complaints, so he delegated the responsibility to his secretary, the chancellor, who was known as "keeper of the king's conscience."

When lawyers in modern practice speak of equity, they mean the system of justice that developed in the courts which grew up to hear the pleas addressed to the king or his chancellor. At first the king's courts already in existence assumed jurisdiction of such cases by means of writs which the chancellor issued authorizing

them to be brought. In time, however, a parallel system of courts, known as the High Court of Chancery, developed, and it was not until 1873 that Parliament reorganized the English court system to abolish the distinctions between courts of equity (or chancery) and courts of law. Today in England, in the United States district courts, and in a majority of the states there is only one civil action. This means that in a single suit a plaintiff can ask for more than one type of relief, whereas formerly it was necessary to bring separate actions in different courts. For example, you can now in the same bill of complaint ask for damages already sustained because of a nuisance and also for an injunction to prevent the continuance of the nuisance.

Despite this simplified procedure, however, the fundamental difference between law and equity persists. Even in states which have technically abolished the distinction, there may be separate law and equity branches in which cases clearly classifiable as one or the other are tried, with border-line cases assigned arbitrarily. Every modern lawyer must know the distinction, and every newspaper reporter covering the courts should also. He cannot very well cover a court of equity daily without knowing what it is and how it got that way.

Although ultimately the principles and procedures in the equity courts became almost as fixed and rigid as those in the common-law courts, the original purpose of the chancery courts, as indicated, was to create or—as believers in law of nature theories felt—restore the ethical or equitable aspects of justice and to circumvent the inflexibility of the existent courts. The same thing had happened centuries earlier in Rome with the development of the *jus gentium,* which the praetors administered through arbitrating individual disputes in the belief that they gradually were restoring the type of law from which the formal law of their time had departed only to deteriorate.

Whereas the Roman counterpart had been based philosophically on a return to the law of nature, the English chancery courts developed as a means to permit a more direct appeal to the power of the state—that is, to the paternal authority of the king, from whose conscience justice was believed to flow. After the Norman Conquest, the English common-law courts became hard and rigid because of their devotion to precedents and their refusal to adopt the equitable part of the Roman law. The only reforms permitted were through the use of fictions. Since supreme judicial authority was vested in the king, who was assisted by his councils, it was natural that appeals should be made to the throne.

Origin of Statutory Law

Primitive codes, including that of Hammurabi and many others, cannot be considered properly as written laws; rather, they were enumerations of customs that were recognized as the equivalent of common-law decisions—those handed down by priest or chief, who dispensed justice. The Roman Twelve Tables were drawn up as a safeguard against the faultiness of the memory of the privileged oligarchy, who up to that time had been the repositories of knowledge concerning judicial precedents. The codes of the barbarians, who overran western Europe in the fifth and sixth centuries, were for the edification of the conquered peoples as to the rules in vogue. Neither the barbarians nor any other conquerors before or since could make material changes in the private laws, representing the customs of the native peoples.

In England, Saxon King Alfred compiled the existent rules and customs in the *Doom Book*. There is no evidence of enacted written laws from the time of the completion of the Saxon conquest, near the end of the sixth century, until the Great Charter (Magna Charta) of King John in 1215, which really was a treaty forced upon him by the lords. Actual lawmaking in England dates from the early judgments handed down in particular cases by the courts at Westminster Hall shortly afterward.

The earliest laws proper were probably *procedural* or *adjective*, as distinguished from *substantive* (laws which define the limits of man's lawful activities, telling him what he can and cannot do with impunity). The necessity for written law developed with the increasing complexity of society, trade, commerce, private property, large populations, and so forth. In republican Rome twenty or thirty different criminal laws existed together, with as many different *quaestiones* administering them. The inevitable resulting confusion can be easily imagined.

As distinguished from law by judicial precedent, statutory law is that passed by a lawmaking body—Congress, a state legislature, or a city council. In view of the hundreds of thousands of laws on the statute books of states and nation, one might conclude that the necessity for any other law would have ceased to exist. That such is not so has already been demonstrated. Although the terminology is not technically accurate, modern practice is to call written law *statutory* and unwritten law *common law*. The legal attitude is that if there is dissatisfaction with the common law, as developed through judicial precedent, the remedy is to be found by lawmakers in the passage of statutory law to compel judges to abandon

their ancient shibboleths. Statute makers, however, have as much difficulty keeping abreast of the times as do judges in their interpretations of both law and custom. Amusing lists have been compiled of obsolete laws that remain on the statute books, forgotten and unenforced for decades or centuries.

Perhaps the greatest early impetus given to the development of statutory law was the rise in Rome of the concept of individual private property, superseding the concept of familial and communal ownership and responsibility. With increased trade and commerce arose the necessity for formal contracts that were unknown to ancient civil law. According to Maine, the positive duty resulting from one man's reliance on the word of another was among the slowest conquests of an advancing civilization. No society is destitute of the idea of contract, but primitive peoples had no legal way of compelling performance.

Maritime law, as one would expect, developed early. Until feudal days, probate law was administered by the church. The industrial revolution and modern capitalism made necessary a multitude of laws to regulate newly created or intensified relations among men. Today volumes are needed for the compilations of laws related to many phases of business, commercial, and social life—insurance, taxation, railroads, corporations, education, health, relief and welfare, labor, public utilities, banks, automobiles, mines, foods, elections, cities and towns, to mention only some of the topics. Laws are needed to stipulate methods for registering births, deeds, and titles; to change one's name; to adopt children; to care for the insane and feeble-minded; to settle the estates of decedents; to register and incorporate businesses; and for innumerable other purposes. All these, however, still are subject to judicial interpretation, and so every new statute gives rise to a new library of judicial precedents. This procedure, furthermore, is likely to continue to be the case as long as courts are the principal medium by which the inevitable disputes between human beings are decided.

Survivals: Modern Law

For purposes of simplification and clarification, in almost every phase of human activity it is possible to draw a chart or graph or to make an outline into which subphases of the subject matter fall into place in a neat academic pattern. The relations to each other of the sundry parts that go to make up the entire field may thus be demonstrated. Although this categorizing of knowledge is man-made and possibly far from an approximation of any divine plan

for the universe, it is of great convenience to scholars and students of chemistry, physics, biology, economics, sociology, and many other subjects.

When it comes to graphing, charting, or outlining law, however, there are at least two insurmountable difficulties: law is all man-made, incorporeal, and the result of an irregular, haphazard development; there is no mutually exclusive set of categories into which to separate all its phases. For example, begin with a major division of all law into criminal and civil. Place those designations at the top of your chart or outline. Then try to fit in commercial law, insurance law, maritime law, and any of a number of other units under which the law is studied and practiced. You will find it impossible, because commercial, insurance, maritime, and other laws include both criminal and civil phases. The same difficulty is encountered if you begin with the major subdivisions of law and equity. To include under each heading only what belongs there means to forget phases of all other kinds of law, as law usually is considered, with the result that the finished chart or outline bears little or no resemblance to any system that a judge or lawyer would recognize.

In other words, the law can be outlined or charted in as many different ways as there are points of view toward it. It all depends on the approach. Commercial law, for instance, can be broken down into innumerable phases—common law, equity, statutory, criminal, et cetera—as can insurance law, banking law, and many other kinds of law. On the other hand, equity law can be subdivided to include phases of commercial law, insurance law, banking law, et cetera. There is nothing mathematical about it, and there is no way of pigeonholing the material into mutually exclusive departments.

What follows is a description of several of the major ways in which it is customary to attempt to classify law. Overlappings and contradictions are pointed out whenever possible. Every term in either bold face or italicized type is one that the newspaper reporter covering the courts cannot fail to encounter early in his career and with frequent regularity ever after. Some of the terms may never appear in a news story, but the news gatherer must understand them in order to know what is happening in his reportorial bailiwick.

I. Public and Private Law

Public

Relates to the operation of government and the relation between government and citizens.

A. *Constitutional:* deals with the organization and operation of government; the setup, distribution, and exercise of governmental authority; powers and scope of operation of government.

B. *Administrative:* deals with methods of operation of governmental units, such as tax collection, regulation of armed forces, citizenship and naturalization, sanitary and health measures, coinage of money, police, public safety and morals, poor laws, et cetera.

C. *Criminal:* deals with definitions of private acts that are considered crimes against society as a whole, their prevention, and punishment. Includes methods of criminal procedures for apprehension, trial or prosecution, and punishment of criminals. Sometimes distinction is made between criminal law proper and *criminal procedure.*

D. *Law of the state:* deals with the right of the state to act in a quasi-individual capacity; to bring civil suits against individuals (often called *quasi-criminal* actions); to enforce regulations, such as license laws; to collect debts, including taxes; to acquire, manage, and dispose of property as would any citizen.

E. *International:* deals with relations with foreign nations and nationals through treaties, international agreements, congressional resolutions, executive agreements; depends for obedience upon national honor and international public opinion, in the absence of any international organization with power to enforce its provisions.

Private

Relates to the relationships between individuals, their rights and privileges. Popularly called *civil* law, although technically that term applies to Roman private law. Our private law derives not only, or primarily, from Roman civil law, but also from English *common* law and *equity* law, supplemented by *statutory* law. A federal court rule reads: "There shall be one form of action to be known as 'civil action.'" Many states have adopted codes to the same effect. Nevertheless, in departmentalizing the work of courts there may be two main divisions:

A. *Equity (or chancery):* handles cases in which relief sought is not mere damages or return of property, but rather specific performance or anticipatory prevention of injury, typical actions being: divorce, injunction, foreclosure, receivership, accounting partition.

B. *Law:* handles cases both according to common-law principles and in accordance with statutory enactments to redress grievances. Under common-law actions are: (1) real, (2) personal, or (3) mixed.

1. *Real:* to recover lands, tenements, or hereditaments; either (a) *petitory* (droitural), in which title to property only is at issue, chief form being action of ejectment; or (b) *possessory*, in which actual possession is wanted, chief actions being forcible entry and detainer and condemnation, in which latter case the state is plaintiff.

2. *Personal:* to recover personal property on a debt, enforce a contract, obtain damages for breach or personal injury. Two major divisions are: (a) *contracts* (actions *ex contractu*) and (b) *torts* (actions *ex delicto*)—injuries sustained in any way unrelated to a contract.

3. *Mixed:* to recover both property and damages for injuries sustained.

II. Criminal and Civil Law

Criminal

As indicated under "I," criminal law is a branch of *public* law. As popularly used, the word is distinguishable from civil law. Criminal law sets forth what behavior is considered detrimental to the best interests of the community or society as a whole, not just the individual or individuals affected, who usually also can bring civil actions to recover damages for injuries. In a criminal case the state is the plaintiff, and the prosecuting attorney elected by the people handles the case.

Civil

Once civil law meant Roman law; today it means law governing the relations between individuals, being synonymous with *private* law. (See I.) The state may be party to a civil suit as plaintiff or defendant (in the latter case, it must give its consent to private citizen plaintiff), although cases involving enforcement of civil ordinances, such as those governing licenses, zoning ordinances, and the like, frequently are called *quasi-criminal.*

III. Substantive and Adjective Law

Substantive

Relates to that portion of the law which defines what man's behavior in relation to his fellows and the state should be—what is permitted, what forbidden. It is the law that courts administer and enforce.

Adjective

Relates to that portion of law which includes the rules of procedure by which the courts are to administer the substantive law; defines the technicalities of legal procedure and practice.

Some writers use these terms (substantive and adjective) in a different way, as the major divisions into which all law falls. They define substantive law as that which relates to the normal relations of social life, and adjective (or *remedial*) law as that which relates to abnormal conditions, with violations of the legal order.

According to this concept, the major divisions of substantive law are public and private. Public law, so restricted, includes constitutional, administrative, and international law; private law deals with things as objects of private rights, the major phases being laws regarding property, family, and succession (inheritance).

According to this concept, the major divisions of adjective law are criminal law and the law of torts, both dealing with abnormal situations.

IV. Common and Statutory Law

Common

Used in this sense, as distinguished from statutory law, common law means judicial precedents, that part of the law which comes directly from custom, as embodied in judgments and decrees recognizing and enforcing them. In a more limited sense, it is only that law which developed in the common-law courts of England. Is not synonymous with unwritten law, except as that term means law not written by some lawmaking body, such as Parliament, Congress, or a state legislature.

Statutory

That law which is enacted by a lawmaking body in the form of a statute; always is written law, cannot be anything else. Most states publish the complete statutes of the state, with revisions every two years after each session of the legislature.

V. Penal and Remedial Law

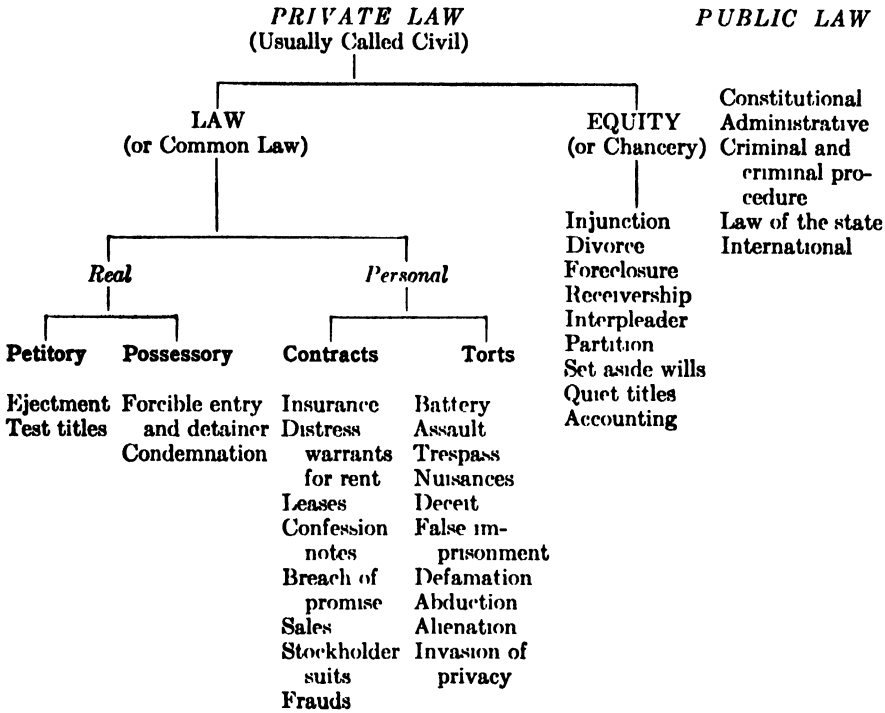
Penal Law

Means that law which stipulates that anyone convicted of its violation shall be punished, by fine or imprisonment, or both. *Criminal* law and much of what is called *quasi-criminal* law is penal wholly or in part. Penal actions are begun by the state or by citizens acting under statutory rights. *Popular* law is that which permits a person to sue on behalf of the king or state, as well as himself, in which case he recovers half the damages allowed; such suits are called *informer suits* or *qui tam* actions (*qui tam pro domino rege sequitor pro se ipse*). Private tort actions, seeking damages for private injuries, are not, strictly speaking, penal, even though some punitive damages may be allowed.

Remedial Law

Means that law which permits the private citizen to obtain damages or other relief for a private wrong. Remedial law stipulates the kind of damages which an individual or group of individuals can obtain as reasonable recompense for injury resulting from violation of a particular statute; this is in contrast with penal law, which imposes arbitrary, deterring punishments on violators of statutes.

The following outline is one—may it be repeated emphatically, *only one*—way of categorizing the major phases of the law. It is not all-inclusive, and the different categories are by no means mutually exclusive. Nevertheless, it comes close to being a chart of the everyday law with which the newspaper reporter who covers the courts comes into contact.



CHAPTER 2

Origins and Survivals in the Courts

REGARDLESS of his residence, the American citizen who wants to start a civil action has a choice of two or more—sometimes as many as ten—courts in which he can do so. If he is wanted in connection with a criminal case, he may be investigated by five or more separate law-enforcement agencies, such as the city police, county sheriff, prosecuting attorney, coroner, state police, and the Federal Bureau of Investigation. These agencies may act independently, or they may co-operate. When a suspect is apprehended, they may dispute his custody, and the prosecuting attorney may have a choice of courts in which arraignment shall take place.

In other words, the court system, like the law itself, developed haphazardly. Concurrent, overlapping jurisdiction is an unfortunate contemporary characteristic. In pioneer days, a multiplicity of courts developed because of inadequate transportation and because of the suspicion of "foreign" justice which isolation inevitably bred. These factors no longer exist, but tradition and the survival of the political patronage connected with them make for a continued complexity of judicial tribunals. Widespread reform, furthermore, is impeded by anachronistic state constitutions and laws, which set rigid limits on the number and kinds of courts, their jurisdiction, and the temporary transfer of judges to take care of crowded dockets.

The earliest courts, as was implied by the discussion of the development of the law in Chapter 1, were created pragmatically, to meet judicial needs as they arose. Instead of expanding the powers of existent courts, it has been the practice throughout history to multiply their number. In time this decentralization and specialization becomes complicated and expensive. There is a high duplication of officials and records; often parts of an action that common sense would dictate should be tried as a unit must be brought separately into different courts; double or triple appeals of the decisions in cases may be possible. Businesslike, speedy, and economical operation under a capable, unified administration is impossible. Rather, litigants can take advantage of the system's complexity to obtain

delays and confusion over technicalities of jurisdiction and procedure.

This chapter is intended to give the newspaperman a basis for understanding how the court system of his particular state developed as it did. It should be especially valuable to any journeyman journalist who, at different times throughout his career, works in more than one state, for it attempts to point out the historical origins of the wide differences that exist today between the judicial systems of the different states.

The American Court System

Imperfect as it still is, the American court system (the federal courts plus the systems of the forty-eight states) is a considerable improvement, in many important respects, over what it formerly was.

Limitation of functions. Foremost among the changes for the better is the gradual development of the courts as distinct judicial bodies, dealing only with administration of the law and freed from the necessity of performing legislative and other governmental functions as well. Colonial American courts followed English models, as did most other governmental agencies. During feudal times English justices of the peace supervised the whole administration of local government, as well as holding court for all crimes, with the exception of treason. Court-Leet and View of Frankpledge were franchise courts, with administrative as well as judicial functions; they could fine but not imprison. The Exchequer was originally a revenue department, with only incidental judicial powers. The Courts of King's Bench exercised general governmental as well as judicial superintending power through the issuance of prerogative writs; they held public officers to their duties through use of the writ of mandamus and controlled inferior administrative tribunals through writs of prohibition. (See Chapter 3.) Other English courts similarly had some extrajudicial functions.

At Plymouth in 1620 the entire company of Pilgrims at first acted as judges. In 1640 two persons were appointed to hear legal disputes involving sums not more than three pounds; the governor and his assistants acted as legislators, magistrates, and judges, and a court of assistants grew up. Following the English model, county courts were established, to be held by one or more of the assistants living in the respective counties; they had full civil power, except in divorce actions, and complete criminal jurisdiction. In Connecticut the county courts appointed the collectors of excise; in New York the justices of the peace had the duty of building and repair-

ing jails and courthouses and of raising money; the New Jersey Court of Quarter Sessions granted tavern licenses, recommended peddlers, and heard appeals from assessors and others well into the eighteenth century. The Plymouth Colony General Court became the legislature, court of appeals, and criminal court; it consisted of the governor, assistants, and freemen (church members), with powers derived from the charter.

Although most governors were given judicial as well as executive powers upon appointment, the growth of trade, commerce, and population created more everyday problems than they could possibly handle. They were compelled to delegate authority, and the least autocratic of them came to recognize the necessity for judges skilled in the law. One such person was John Printz, who in 1643 became governor of the short-lived Swedish colony in Delaware. Printz several times pleaded with the government at home to send him "a learned and able man to administer justice and to attend to the law business." Printz said he could not administer justice, as his authority stated, "in the regular manner only" and "according to the Swedish law and licit customs," because he lacked the time for careful hearing of all cases. Apparently a very liberal and democratic man, Printz also indicated the evil inherent in combining judicial with executive authority when he wrote that it was "difficult and never ought to be that one and the same person appear in court as plaintiff as well as judge."

After the creation of inferior courts, governors, legislatures, and councils continued for some time—in New York until 1846—to hear appeals, but the administrative functions of the inferior courts themselves were gradually shifted to county officers. The constitutions of the older Atlantic seaboard states provided for combinations of functions; those of the newer Western states called for strict separation.

The separation of the judicial function from others related to government has meant an elevation in the caliber of judges. Today, laymen without legal education or experience are rarely elected to the bench, although in 1942, according to *The Book of the States, 1943–1944*, put out by the Public Administration Clearing House, only twenty-six states required that a judge have actual legal experience or be admitted to the bar. All but eleven states, however, required that a judge be "learned in the law"; four specified that he must be "of good character"; and one state required that a judge "believe in God." Except for justices of the peace and some other inferior magistrates, judges now receive fixed salaries, established by statute, rather than fees deducted from fines paid by defeated litigants appearing before them.

Appellate functions differentiated. The resentment of the American colonists against remote governmental and judicial control is familiar to everyone with an elementary knowledge of the causes of the American Revolution. Provincial charters and the commissions to royal governors provided that the English king should be the ultimate court of review and that all colonial laws should be in accord with English laws. To take an appeal from a judicial decision in colonial times across the water to England naturally was difficult and expensive; as a result, there were few such appeals.

In the early days of the republic, because of the distrust of outside courts, frontier justice was administered locally and speedily, as expediency seemed to require. When the West was opened up, however, there developed a reluctance to trust local courts in controversies over land titles and boundaries; there was a strong fear that judges would be interested in or prejudiced regarding the subject matter. Hence, the first popular demand for appellate courts arose.

The development of distinct appellate courts had to wait upon the final separation of the judicial from other governmental functions. In colonial days, legislatures, governors, and governors' councils heard appeals. The first appellate courts proper were composed of judges who also served in trial courts, and they were mostly migratory. The trend, however, was toward complete differentiation between courts of jurisdiction in the first instance and appellate courts, and the constitutions of many of the most recently admitted states provide for such a differentiation. Appeals to nonjudicial officials and bodies today are virtually nonexistent—even the pardoning power of the governor being limited through authority vested in boards of pardon and parole.

Where they still exist, double and triple appeals are wasteful of both time and money, and are a doubtful aid to the cause of justice. Their elimination waits upon the reorganization of the court system of a state, with the establishment of a single court which will operate by branches or divisions.

Consolidations of jurisdiction. Some states still have separate equity or chancery courts; most states, by abolishing the difference between actions at law and suits in equity, have placed jurisdiction over all civil matters in a single court. The same courts, commonly called circuit or district, also, in most cases, have criminal jurisdiction, although it is common practice in large places to have separate criminal and civil branches. Most of the jurisdictional overlapping that exists today results from the survival of county courts, city courts, police magistrates, justices of the peace, and the development of municipal courts; in other words, the overlapping is

more for geographical reasons than because of statutory restrictions on subject matter. However, many ridiculous situations still exist. In Cook County, Illinois, for instance, all routine probate matters are handled by the Probate court. Inheritance taxes, however, go through the County court, and an action to break a will must begin in Circuit or Superior court. With the exception of Cook and a few other large counties, there are no separate probate courts in Illinois, probate jurisdiction being vested in the county courts. This practice follows the nationwide trend. Nevertheless, in this and other fields there undoubtedly are countless instances of divided jurisdiction.

To reach the present state of comparative simplicity—far as it still is from a single unified court system—centuries of experience were necessary. American colonial courts were modeled after English courts, which, in the seventeenth and eighteenth centuries, were mostly courts of special and limited jurisdiction, some dating from the days of the Roman occupation of Britain, others of Saxon or early Norman origin.

When the Romans conquered England in the first centuries B.C. and A.D., they brought with them a convenient and efficient system of governmental organization which they established in all their provinces. The country was divided into districts, each called a *comitatus* (ruled by a count), with subdivisions (centuries) consisting of one hundred freemen each, each subdivision in turn subdivided into decenaries of ten men each. After the Romans left early in the fifth century, this general framework was retained, although Saxon names were substituted for Roman to designate the political divisions. That is, the *comitatus* became known as a county; centuries became hundreds; decenaries became tithings. The numerical restrictions were outgrown, but the geographical boundaries originally established were retained, in most part, as the basic governmental and judicial units.

The decline of these local courts began with the establishment of manorial and baronical courts in feudal days. When the king granted lands, he also delegated responsibility to the chief vassals to maintain law and order. By the sixteenth century the county courts had declined to petty tribunals, although the hundred courts presided over by sheriff's deputies lasted until 1867, and borough (town) courts lasted until 1840.

A wise conqueror, the Norman invader William, who defeated Harold in 1066 at Hastings, did not interfere with this local court system. However, he imposed upon it his own authority, which in 1086 every freeman accepted by taking the Salisbury Oath. This checked the power of the nobles, as did the breaking up of the large

earldoms that had developed under Edward the Confessor. To assist him in his exercise of supreme judicial authority, William had two councils—the Great Council, consisting of bishops, earls, barons, and some knights, which developed into Parliament; and small or ordinary councils, which advised the king during intervals between sessions of the Great Council.

The Court of King's Bench developed out of the practice of appointing members of the king's household, or *curia regis,* to be sheriffs and to preside in the county courts. This meant that the quality of local judges was increased. Before they left the king's court to go to their assignments, these sheriffs conferred with each other as to the cases they were to decide. Thus, a separate tribunal, or King's Bench, developed and exercised general superintending power over the local courts through the use of prerogative writs of mandamus, prohibition, certiorari, error, and quo warranto. (See Chapter 3.) Under Henry I, the Court of King's Bench became a court of ultimate appeals from all courts of ordinary jurisdiction.

The role of legal fictions in expanding the jurisdiction of the Court of King's Bench, the Courts of the Exchequer, and other medieval English courts was mentioned in Chapter 1. It would be impossible as well as superfluous to attempt here any exhaustive history of the development of English courts. For more than five hundred years there was a three-way struggle for power among the monarchy, the privileged classes, and the common people. Alignments of allies in this struggle shifted often, and courts, as weapons, came into existence for a variety of reasons. In the case of the chancery or equity courts, the authority of the crown was strengthened to further the cause of justice among commoners; on the other hand, some royal courts were established or their powers extended to further the cause of tyranny. Most notorious example of the latter type probably was the Court of Star Chamber, whose origin is unknown but which gradually expanded its original jurisdiction over misdemeanors until, during the reign of Charles I, it had obtained autocratic control over almost all phases of the law. So odious did it become that Parliament, in revolt against a tyrannical sovereign, abolished it.

The Court of Common Pleas, one of three superior common-law courts at Westminster, was another which, by fictions, obtained general common-law jurisdiction, although it was originally intended to try only real-estate and debt cases. On the other hand, special courts with limited jurisdiction became so numerous that legal arguments over what court had authority over the particular subject matter were interminable. The following descriptions of

only a few of these courts will suggest what the situation must have been like:

Courts of Cinque Ports existed before the Courts of Admiralty developed. Each seaport town claimed jurisdiction of maritime cases, including equity and criminal jurisdiction in maritime matters.

Courts of the Forest had jurisdiction over improper and unlawful hunting in a forest. Some could inquire into offenses but could not convict, while others could convict but not give judgment.

Court-Leet and View of Frankpledge were originally franchise courts.

Courts of the Marshalsea had jurisdiction over trespass actions when one party to the action was a member of the king's household; the court had jurisdiction over debt actions when both were members of the household and over all trespasses committed within twelve miles of the royal court.

Courts of the Staple administered the law governing merchants—mostly contract actions.

Port Moots were local courts in haven towns or ports.

Courts of the Stannaries in Cornwall and Devon had jurisdiction over miners and tinners.

Courts of Wards and Lunatics had jurisdiction over all controversies connected with or growing out of wardships by the king incident to the settling of estates.

Courts of the Universities had jurisdiction over personal actions and criminal cases if one party was connected with a university.

Courts of Piepowder were established for every market, and had jurisdiction over all causes arising from the market.

Courts of the Lord Steward, Treasurer, and Controller of the King's Household tried anyone accused of attempting to kill the king or any member of his household.

Court of the Commission Under the Great Seal tried piracies, felonies, and conspiracies on the high seas.

Court of the Lord High Steward tried peers indicted for treason or a felony.

Courts of High Commission in Causes Ecclesiastical had general visitorial jurisdiction as to ecclesiastical persons and authority to correct heresies, schisms, and abuses in ecclesiastical affairs. They were common-law courts held in check by writs of prohibition.

Courts of Special Justice of Oyer and Terminer were partly criminal, partly visitorial courts.

Court of the Tower of London had jurisdiction over debts and trespass.

These and many other courts originated at different times and

had different spans of existence. In addition, there were provincial councils, county courts, and justices of the peace. Some of the names of these early courts have survived—common-pleas courts in some American states today are courts with general civil jurisdiction, and courts of oyer and terminer are criminal courts. Among the American colonies were established strangers courts, to try cases involving visitors; commissions of small causes; ship courts; courts of patroons; corporation and commercial courts; courts for petty causes; and many others. The Federal Judiciary Act of 1789 abolished separate admiralty courts, giving jurisdiction to the newly established United States district courts, and there never were any ecclesiastical courts in the New World. Overhauling of the English court system, including the abolition of the distinction between common law and equity, occurred in 1873, with the passage of the English Judicature Act. As previously pointed out, civil practices acts passed by numerous American states accomplished the same end in this country.

The modern pattern. As already stated, any newspaperman who has worked in more than one state, especially if the states are in widely separated parts of the country, knows that significant differences still exist in the court systems of the different states. These differences are important for the reporter to understand. Nevertheless, by comparison with the past, a fairly consistent pattern of state courts has developed.

Supreme Appellate Courts. At the top is a final court of appeals, with exclusive appellate jurisdiction and a fixed number of judges who sit only in it. In thirty-nine states it is called the Supreme court; in two states, the Supreme Court of Appeals; in three states, Court of Appeals; in three states, Supreme Judicial court; in one state, Supreme Court of Errors; and in one state, Court of Errors and Appeals. Its size, fixed by the state constitution, ranges from three members in two states to sixteen members in one state—New Jersey. In the vast majority of states, there are either five or seven members.

This court reviews the decisions of courts of jurisdiction in the first instance. In a majority of states, it represents the whole state, rather than a district or section, and judges are selected at large. In a few states, the chief justice is elected at large and other members by districts. Eight states provide that the court hold terms in more than three places. Five states allow the court to sit in two or more divisions. For a discussion of appellate court jurisdiction and procedure, see Chapter 19.

Intermediate Courts of Review. A century ago, to relieve overworked highest courts of appeals, a number of states experimented

with the plan of special commissions to act somewhat as do masters of chancery or United States commissioners. In 1943 only three states—Kentucky, Missouri, and South Dakota—continued to use this device. Likewise, the practice of permitting the highest court to sit in divisions—that is, with only one-third or one-half of the total membership reviewing a case—has fallen into disuse, largely because of the opposition of trial lawyers.

A third plan of relieving the congestion in the highest court of appeals is the intermediate court of review, frequently called a circuit court of appeals. Its jurisdiction is restricted by constitution or statute to exclude constitutional matters, and perhaps some other matters, but in a large number of cases it is the final court of appeals itself. In a third classification of cases, its decisions may be appealed again to the state's highest court.

Although intermediate courts of appeal meet the pragmatic need of lightening the burden of the highest courts of appeal, and thus speed up the appellate procedure, they do not greatly simplify the otherwise existent situation. Many advocates of judiciary reform favor appellate divisions of the courts of general jurisdiction in the first instance, which is the New York plan. A completely unified court system probably would be the only way to avoid all possibility of double appeals.

Courts of First Instance. The backbone of any state judicial system is its courts of original jurisdiction in civil and criminal matters. They are provided for in state constitutions and are established on a geographical basis according to population. Thus, in the thinly populated sections of a state, a circuit, district, or superior court (the names by which they usually are known) may include two, three, or many more counties; in more densely populated areas, a single county may constitute a circuit or district, and there may be numerous branches. Many constitutions are rigid regarding the limits to which such courts can expand, but legislatures usually are able to find loopholes by which to create separate courts with equal or nearly equal jurisdiction in the crowded areas needing them. The result, of course, is rival court systems with overlapping jurisdiction, but it may be the only way out.

The trend, as has been stated, is toward enlarging the jurisdiction of the circuit, district, or superior courts to include both law and equity—that is, all civil actions—and all criminal matters as well. In seven states, however, there are still separate courts of chancery, and an equal number of states have courts of common pleas. In New York City the Supreme court (the court of first instance, not an appellate court) handles all civil matters; the Court of General Sessions handles felonies; and the Court of Special Sessions handles

misdemeanors and preliminary hearings in felony cases. County, municipal, and city courts may have jurisdiction comparable to that given the courts included in the statewide system.

It is not infrequent for courts of general jurisdiction in the first instance to organize themselves into branches and for these branches to be given descriptive names by which they are mentioned in the newspapers and known to the public. This tendency rivals that of the constitutional or statutory creation of new specialized courts for specialized purposes. If the reporter wants to understand the operations of the court he is assigned to cover, he should inquire whether it is a separate court or a branch of another. Such courts include those known as Juvenile, Boys', Women's, Domestic Relations, Traffic, Small Causes, and Renters'.

Establishing such courts as branches of the courts with broader jurisdiction makes for greater efficiency and speedier handling of cases. Since each judge has authority beyond the mere limits indicated by the name given his branch, he can handle matters that otherwise might require bringing another new action in another court. In practical operation, there is an avoidable weakness which often characterizes these branch courts. That is the practice of shifting judges from one branch to another at brief intervals. Although this shifting may prevent some judges from becoming too narrow in their perspective, it may allow others too little time to acquire the experience required to do a competent job. An even greater evil is the opportunity this system provides lawyers to select the judges before whom their cases are to be heard. If a judge whom they consider little inclined to be sympathetic with the kind of evidence and argument they intend to present is sitting in a particular branch, they may employ dilatory tactics to delay the case's coming to trial until a reassignment of judges has occurred.

Probate and County Courts. Twenty-one states have separate probate courts, and twenty-six states have county courts. The former are restricted in subject matter to settling the estates of deceased persons; the latter are restricted geographically, as indicated by their name, and their jurisdiction in both civil and criminal matters varies greatly, depending on what other state courts exist.

Where separate probate courts do not exist, probate matters are handled by either county courts or by the circuit, district, or superior courts. In some places, including New York, the probate courts are called surrogate courts. In Michigan, county courts have been abolished, but each circuit court is only one county in size, making it, for all practical purposes, a county court with more jurisdiction than such courts usually have in states with circuit,

district, or superior courts. Where such courts do exist, county courts generally are restricted to jurisdiction over misdemeanors and small civil actions, enforcement of state license laws, tax matters, and supervision of the political machinery. The county courts also may handle a great deal of nonjudicial matters, such as registration of business titles, changes of names, adoptions, naturalization and citizenship, and registration of titles to property.

Inferior Courts. These are mostly relics of the decentralization characteristic of pioneer days. Except for some of the municipal courts to be found in seven states, inferior courts are mostly not courts of record and have very limited civil and criminal jurisdiction. Still the most prevalent of the inferior courts is the justice of the peace, who serves a township—in contrast to a police judge or magistrate, who serves a city. In civil matters these courts are restricted to actions involving only a few hundred dollars; in criminal matters they are merely examining courts, holding preliminary hearings and "binding over" accused persons to the grand jury of the court with jurisdiction. They may be able to assess small fines for a limited list of minor misdemeanors. They usually cannot impose jail sentences of more than six months or a year.

In recent years "j.p." (justice of the peace) has come to be known as "judgment for the plaintiff." This is because it is a fee office, which means that the justice receives no salary; instead, he collects a fee in the form of costs scaled in accordance with the amount of the judgment. Thus, the justice has a personal interest in returning a judgment for the plaintiff. Most motorists who have done any extensive traveling have at some time run into a "speed trap" operated by a constable and justice of the peace. Most of the fines in such cases probably go to the public fund, which is in need of replenishment so that some civic improvement can be carried out, but the j.p. is at least rewarded by the plaudits and votes of grateful constituents. Theoretically, the justice is supposed to be compensated by the township when any defendant fails to pay the costs assessed, but any j.p. who tried to collect probably would be left waiting at the polls on the next election day.

Justices, who in a large majority of cases are not lawyers, are notoriously careless about keeping records, so no reliable statistics regarding them are available. This office, which has degenerated to an almost disgraceful point, fortunately has been abolished by most cities of medium size and above, but it still flourishes in rural areas.

Police magistrates in many small places are no more necessary than justices, after city or municipal courts have been created. In other places, however, the magistrate may occupy a position of

importance comparable to a city or municipal judge. The clue to the probable nature of the office is to be found in the manner in which the magistrate is compensated. If the fee system prevails, the magistrate is likely to be no better than nor more necessary than the average justice.

In larger cities today, the municipal court may approximate the circuit (or district) court in importance because of almost identical jurisdictional power. In such cases, the chief difference between the municipal and circuit court is the geographical area over which they have authority. In smaller places the municipal court may in actual practice be the successor of the justice of the peace or the police magistrate, with jurisdiction somewhere between that allowed those inferior courts and that enjoyed by the circuit courts. Justices and magistrates persist, even in such places, however, often because of constitutional bars to their elimination.

A few examples. There is no such thing as a "typical" state, county, or city judicial system. There may not be two places in the United States with identical setups. A few examples will indicate how the diurnal tasks of reporters assigned to the courts in three different cities differ.

NEW YORK CITY. Civil courts are Supreme, City, Municipal, and Surrogate; criminal courts are General Sessions, Special Sessions, Magistrate, and Children.

Confusing to nonresidents, *Supreme court* is the name throughout New York State for civil courts of original jurisdiction in the first instance, corresponding to circuit, district, or superior courts in other states. The state is divided into nine judicial districts, Manhattan and the Bronx together comprising the first judicial district. The court's jurisdiction includes all forms of civil action in which the amount in dispute is at least $3,000. It also has exclusive jurisdiction over matrimonial difficulties, including divorce, annulments, and dissolutions. The Supreme court also has a special criminal branch, known as the "extraordinary term," which goes into session by special action of the governor, who appoints a justice to preside over a grand jury that hears evidence gathered by a special district attorney. Such action occurs very infrequently, not much oftener than once a decade—the last time being the racket-busting crusade of Thomas E. Dewey, which put "Lucky" Luciano, "Jimmy" Hines, and many others behind bars in the middle thirties after Dewey's appointment as special prosecutor by Governor Herbert Lehman.

The Supreme court of the First Judicial district of New York hears more than 20,000 motions and disposes of more than 5,000 cases annually. It is composed of thirty-seven justices, seven of whom are assigned to the appellate division. There are four appel-

late departments in the state, the first coinciding geographically with the First Judicial district—Manhattan and the Bronx. The appellate division hears appeals from the Supreme court. Above it is the Court of Appeals at Albany, which is the court of last resort in the state. It consists of a chief justice and six associate justices, and receives cases when there is a divided bench in the appellate division, by permission of the appellate division or upon direct appeal of litigants to it.

Jurisdiction in civil actions, wherein the amount of money at stake is between $1,000 and $3,000 and in some maritime matters up to $25,000, is vested in the *City Court of the City of New York.* It consists of nine justices, and it is rare that any case there is considered newsworthy by New York papers.

Civil actions up to $1,000 are brought in the *Municipal court,* which is a very busy court, employing thirty-five judges in districts in Manhattan alone but productive of very little deemed worthy of space in a newspaper. As one reporter puts it, "Once in a decade a judge will try his hand at literary composition and call his opinion to the attention of reporters." Each New York borough has its own municipal court, and these courts do more business than all the other courts in the city combined. One particularly active branch is the Small Claims court, which handles claims under $50. Only New York and Syracuse in New York state have city courts.

New York is the only county in New York state without a county court. Probate matters are handled by the *Surrogate court,* which has two judges. It has a division known as the adoption bureau.

The Court of General Sessions is the most fertile source of news of any court in New York. There are nine presiding judges, and all cases are felonies and are tried before juries. Felonies, for which jury trial is mandatory, include assault in the first and second degrees, murder, rape, arson, burglary, and grand larceny (over $100). The court also tries some misdemeanors when the defendant insists upon it; such cases must be referred to the grand jury and an indictment must be returned, because no cases can be tried in this court on informations only. Misdemeanor cases that get into the Court of General Sessions are typically those involving obscene public entertainments; "rackets," such as policy games and slot machines; and cases involving legal technicalities.

Appeals from General Sessions go to the *Appellate division of the Supreme court,* except when the defendant has been sentenced to death for first-degree murder. Those cases go directly to the *Court of Appeals* at Albany, and no sentence of death can be executed until that court has reviewed the record and rendered judgment. In any criminal case, unlike in civil actions, the defendant has the

right to one appeal only—except in rare cases, when there is a divided opinion in the appellate division and he is permitted to go higher.

Most charges of misdemeanor are tried in the *Court of Special Sessions.* Each borough has such a court—a bench consisting of three justices who can convict by a split vote of two to one. In Manhattan there are sixteen special sessions justices and one presiding justice. There are no jury trials, and the accused are arraigned on informations by the district attorney. Typical cases include assault in the third degree (simple assault), policy, lottery, slot-machine and bookmaking "rackets," petty larceny, and impairing the morals of a minor. There is a branch which hears "filiation proceedings," or bastardy cases, to determine the paternity of illegitimate children and to order the fathers to provide financial support.

Magistrates' courts are courts of inferior criminal jurisdiction which hear and dispose of most of their cases by summary trial; that is, the magistrate decides the cases himself without benefit of colleagues or jury. Traffic violations, disorderly conduct, prostitution, vagrancy, begging, minor nuisances, and violations of sundry municipal ordinances cases are heard in these courts. Another important function of the magistrates' courts is to conduct preliminary hearings for persons accused of felonies or misdemeanors over which the magistrates' courts have no jurisdiction. Such hearings are not trials; rather, they are examinations to determine whether there is sufficient likelihood of guilt to justify the public expense of trial in the proper court to which the magistrate "binds over" the accused. If a magistrate dismisses a charge, however, the district attorney still has the power to bring the defendant to trial in the Court of Special Sessions by information or in the Court of General Sessions, provided the grand jury indicts. Appeals from Magistrates' courts go to the Court of Special Sessions; from there, by permission, to the appellate division; from there, again by permission only, to the Court of Appeals at Albany.

CHICAGO: The courts are: Circuit, Superior, Criminal, Appellate, County, Probate, and Municipal.

Cook county, in which Chicago is situated, has the largest population of any county in the United States. It comprises in itself one of the eighteen judicial circuits into which Illinois is divided, and the court is known as the *Circuit Court of Cook county,* rather than the Circuit Court of Illinois. Because of constitutional restrictions on the number of judges that can be elected, there is also a *Superior court,* which exists in Cook county alone and has identical jurisdiction with the Circuit court. Both courts have complete

original jurisdiction in civil matters, and, although the Civil Practices act eliminated the distinction between law and equity, they operate by three divisions—law, equity, and divorce. There are twenty Circuit and twenty-nine Superior court judges.

The *Criminal Court of Cook county,* before the adoption of the 1870 constitution, was the Recorder's court of Chicago, and it has no civil jurisdiction. Its judges are regularly elected Superior and Circuit court judges who have been assigned to it by a joint executive committee of those two courts. The number varies from year to year; usually there are about five judges assigned to the Criminal court, but there have been as many as fourteen. The chief justice is a Superior court judge one year, a Circuit court judge the next. It tries all defendants indicted by its grand jury for a felony or misdemeanor punishable by a penitentiary sentence.

Cook county also comprises the first of four districts of the *Appellate Court of Illinois,* which is an intermediate court of review inferior only to the *Supreme court.* It can review all cases except those involving the following: felonies, a franchise or freehold, validity of the state constitution, a statute or municipal ordinance, revenue and cases in which the state is interested as a party. Appeals can be taken from the Appellate to the Supreme court if the amount involved exceeds $1,500, or upon permission by the former court. Appellate court judges are appointed for three-year terms by the Supreme court from among the Circuit and Superior court judges, who then serve in that court exclusively. There are three branches of the Appellate court, with three judges each, in Cook county; new terms begin the first Tuesday of each April, June, October, and December. A majority vote is sufficient to decide any case.

In downstate Illinois, the main business of the County courts is probate. In counties with more than 85,000 population, however, there are separate probate courts, leaving for the County court little more to do than, by actual or tacit agreement, the judges of the Circuit and Superior courts and the lawyers practicing therein delegate to it. The *Cook County court* handles the following types of cases: insanity, feeble-mindedness, elections, adoptions, delinquent taxes, support, birth certificates, inheritance taxes, receiverships for taxes, registrations of businesses operating under assumed names, and criminal actions brought by the state to enforce medical practice, blue sky and similar laws regulating business licenses and practices. The County court's jurisdiction is limited to $2,000 in civil actions, and its criminal jurisdiction is limited to misdemeanors and felonies for which the penalty is less severe than a penitentiary sentence—that is, cases which come to it on information rather than

by indictment. There is only one County judge, but there usually is enough business for two or three visiting judges from downstate. The single *Probate court* judge has four or five permanent assistants appointed by him.

The *Municipal court of Chicago* operates by highly specialized branches. Its thirty-seven judges are shifted frequently from one branch to another (the best being moved about the most often), but while sitting in the same branch each judge hears only cases of a particular kind. For example, on the civil side, one judge hears attachment, garnishment, and replevin proceedings; another, forcible detainer actions; a third, personal property tax cases. Actions on contracts, to recover property or for damages, are divided so that those involving more than $1,000 go to one branch and those for smaller amounts to another. Motions and body executions ancillary to any action are decided by a single judge; another holds pretrial conferences; a third hears motions for citations, rules, attachments, and supplemental proceedings. There is a branch for quasi-criminal and license cases, where violators of barber-shop, baker, building-code, fire, zoning, smoke, garbage-disposal, gasoline-pump, and similar ordinances are tried. From a news standpoint, these courts are not very productive, with the exception of the forcible-detainer branch, commonly called Renters' court. In that court, government regulations concerning rent control frequently are found to conflict with leases. Also, state laws and city ordinances regarding renting to families with children and forbidding discrimination for religious, racial, or other reasons are tested, focusing attention on important social and economic problems. The License court also is busy whenever the state's attorney conducts a drive to punish violators of a particular ordinance, a recent example being a series of cases involving convalescent homes after the death of a patient revealed substandard conditions in many of them.

Municipal court judges in the criminal branch hold what are called *Police courts* in "outlying" districts throughout the city. Each such judge usually holds court in three different places each day, and a reporter for the co-operative City News bureau travels with him from place to place. The cases are trivial—drunkenness, disorderly conduct, wife-beating, vagrancy, neighborhood quarrels, petty larceny, and the like, which are newsworthy only to the extent of their tear-jerking or laugh-producing human interest. Serious misdemeanor and felony cases are taken by police directly to branches either at police headquarters or in the Criminal court building. These branches also are specialized and are known by such names as Auto Theft, Auto Safety, Women's, Boys', Speeders', and Domestic Relations. The Municipal court has no jurisdiction

over indictable offenses, but it holds preliminary examinations of persons charged with such offenses, and either dismisses the charges or binds the accused over to the Criminal court grand jury. The court's criminal jurisdiction is limited to cases in which punishment is by fine or sentence in the county jail; it cannot commit to the state penitentiary.

The *Cook County Juvenile court* operates, for all practical purposes, as a separate court with its own building. However, it is a branch of the Circuit court, with jurisdiction over cases involving boys below the age of seventeen and girls below the age of eighteen. The court is not open to newspaper reporters—a fact which means that only an occasional feature article, initiated by a special writer, emanates from there. If a child is charged with a felony, the state's attorney has the discretionary power to remove the case from the jurisdiction of the Juvenile court to the Criminal court.

There are no *Justices of the Peace* or *Police Magistrate* courts within the city limits of Chicago, but they are to be found in suburbs and small towns in other parts of Cook county. In civil actions, they are limited to matters involving not more than $500, and in criminal cases to those in which the fine shall not exceed $200. Two of the twenty-eight *City courts* in Illinois also are in Cook county; their jurisdiction is the same as that of the Circuit courts within the geographical limits indicated by their name.

ST. LOUIS. This city has home rule, meaning that for governmental and judicial purposes it is separate from St. Louis county, where, however, many of those most active in its civic affairs reside and vote. The courts are: City, Justice of the Peace, Criminal Correction, Probate, Circuit, and Appeals.

City court, with jurisdiction restricted to the corporate limits, tries violations of city ordinances, such as building and sanitary codes, business licenses, and traffic cases. These are quasi-criminal proceedings from which either defendant or city (represented by the city counselor) can appeal to the *Court of Criminal Correction,* whose jurisdiction is similar to that of the Municipal court of Chicago in criminal matters. That is, it tries misdemeanors and preliminary hearings in felony cases. Prosecutor is the prosecuting attorney.

Justice of the Peace courts have jurisdiction in civil cases up to $750. In other parts of the state, they also have criminal jurisdiction comparable to that of the St. Louis Court of Criminal Correction.

The *Probate court* has jurisdiction over estates and guardianships. The *Circuit court,* with eighteen judges, has civil jurisdiction in actions involving more than $750 and over felonies in its criminal divisions. Its work is divided as follows: (1) Assignment division

(two judges), for preliminary motions and assignment of cases for trial to other divisions; it may grant certain simple petitions, such as a petition for change of name or for a pro-forma decree for an organization. (2) Equity division (two judges). (3) Criminal division (three judges). (4) Domestic relations division (two judges, one of whom also conducts the juvenile court). (5) Law division (ten judges).

The *St. Louis Court of Appeals* serves the eastern half of Missouri, the western half being served by the Kansas City Court of Appeals. It receives appeals in civil actions from circuit courts in cases involving not more than $2,500, and in criminal cases from justices of the peace and the St. Louis Court of Criminal Correction. The *Missouri Supreme court* at Jefferson City hears direct appeals from circuit courts in civil cases involving more than $2,500 and in all felony cases. In four regions of the state, not including St. Louis, there also are Courts of Common Pleas.

Comment and criticism. It may be contended that differences between the judicial systems of these three large cities and other places are more apparent than real, and any court system should always be flexible enough to take account of local conditions and needs. No one can disagree with that point of view, but judicial reformers contend that all purposes would be served and all weaknesses eliminated by consolidating all a state's courts into a single court to operate by divisions or branches, as numerous and as specialized as necessary. In that way, double appeals (such as from justices of peace to circuit to appellate courts) would be eliminated; judges could be shifted about as required; rigid stipulations fixing the times and places and duration of court terms would be ended; and specialist judges rather than specialized courts would be developed. There would be a single set of records in each case—not as many different records as the courts through which an action passes. The result probably would be fewer jobs for some politicians. Basic to any such wholesale reform is the statutory destruction of differences in the pleadings in branches of the law, such as common law and equity.

Peripatetic newspapermen, their employers, and readers would profit. Recently an editor of long experience in the East shifted to a Middlewestern newspaper and turned down a good story from a municipal court because, where he came from, courts by that name were not courts of record and accounts of their proceeding hence not privileged. He at least was fortunate in noting a similarity in names. How confusing the terminology and differences in jurisdiction may be can be seen by comparing the names of the courts of some other states with those of New York and Chicago. In Pennsylvania, for

instance, the Supreme court is that of final appeal, not a civil trial court, as in near-by New York. The Pennsylvania Superior court is an intermediate court of review, not a civil court of general jurisdiction, as in Chicago. Pennsylvania has no Circuit courts, but it does have Courts of Common Pleas (originally pleas by others than the Crown; hence civil), Courts of Oyer and Terminer (hear and determine), and Courts of Quarter Sessions. There also are Orphans', Juvenile, and County courts in different parts of the state. Philadelphia has a Municipal court and Philadelphia county has Magistrates' courts.

In Florida, on the other hand, the reporter will find justices of the peace; county courts; county judge's courts; civil courts of record; criminal courts of record; courts of crimes; circuit courts; probate, juvenile, and municipal courts; and a supreme court.

Federal courts. By comparison with that of any state, the federal court system is simple in organization and efficient in operation. It consists of a United States Supreme court of nine justices in Washington, the highest court in the nation; eleven Circuit Courts of Appeals; United States District courts; a Court of Claims; and a Customs court. All federal judges are nominated by the President and confirmed by the Senate; they hold office for life or until removed by impeachment proceedings. Federal judges are virtually scandal-proof, there being not more than a half dozen cases in the past half century of their impeachment, or resignation from office to avoid such proceedings.

The present simplicity of the federal court system dates from its reorganization in 1891 when, among other things, the Circuit Court of Appeals was established. Up to that time, according to Roscoe Pound in *Organization of Courts*, the persistence of archaic features was "a striking testimony to the tenacity of legal tradition." Furthermore, it was not until 1911 that a parallel system of Circuit courts was abolished; until then federal justice was complicated by the same judge's sitting concurrently in both Circuit and District courts and hearing appeals from one court to the other. The practice of shifting federal judges to accommodate needs really dates from the prohibition era, when certain courts became glutted with cases.

The first paragraph of Article III, Section 2, of the Constitution reads:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and a citizen of another state;

between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Establishment of the federal court system breathed vitality into the newly adopted Constitution and ended a nearly chaotic situation in the colonies. Despite the Declaration of Independence and the Revolution, local jealousies persisted, and the citizen of one state who brought action against someone in another state was at the mercy of chauvinistic jurors who consciously or unconsciously tended to favor their neighbor. The founders of the federal Constitution feared that national laws passed by the new government would not be enforced adequately by the courts of the individual states; Article III of the Constitution was the result. What shall be the exclusive jurisdiction of the federal courts and what concurrent jurisdiction in enforcing national laws the state courts shall share, is determined by Congress. In general, state courts have the authority and duty to enforce national laws.

Despite the temporary and incomplete setback as a result of the series of Supreme court decisions which declared unconstitutional several acts of Congress in early New Deal days, the everyday lives of American citizens are coming more and more to be regulated by federal rather than by state laws. With each growth in the power of the federal government, the scope of jurisdiction of the federal courts is also extended. Under Article I, Section 8, of the Constitution, Congress has power to regulate interstate commerce, and a great many controversies in recent years have arisen in both Congress and the courts as to what constitutes interstate commerce. It is nothing new, however, for the federal courts to interpret the clause broadly. Long ago, for instance, it was decided that a person making a trip from one state to another could bring action in federal court against any transportation company of whose facilities he availed himself during part of the journey, even though the company was incorporated and operated exclusively within a single state.

Today, majority opinion has almost but not quite reached the point of insisting that Congress has the right to legislate, and that federal agencies, including the courts, have the right to assume jurisdiction whenever a state line is crossed in any way. Strong opposition to the complete abandonment of "states' rights" still exists, but only the smallest businesses now operate on a strictly intrastate basis, and Americans continue to be as migratory as they have been throughout the nation's history. The saddle horse and the covered wagon carried them slowly westward, but by the time the frontier reached the coast the railroad, now supplemented by

the automobile and airplane, was available for the return trip and to take them constantly back and forth.

Under the interstate commerce and general welfare clauses of the Constitution, Congress has enabled the federal courts to take cognizance of many matters formerly considered strictly intrastate. A new weapon against automobile thieves, for example, was supplied by enactment of the National Motor Vehicle Theft (Dyer) act, which made the transportation of stolen cars across state lines a federal offense. Similarly, the Mann act gives federal courts jurisdiction over public morals in case illicit lovers cross state boundaries. Public dissatisfaction with the way police of several states handled the kidnaping of Charles A. Lindbergh, Jr., led to the passage of the federal anti-kidnaping law, which allows federal agents to enter any kidnaping case remaining unsolved after seven days, on the presumption that state lines will have been crossed by that time.

To the federal courts must be given credit for putting an end to the activities of many prohibition-era gangsters. After state law-enforcement agencies and courts had failed to convict on direct charges, federal indictments for violations of income-tax laws were obtained. Evidence produced during trials of such cases inevitably revealed the business transactions by means of which the alleged unreported fortunes were amassed—that is, there was *de facto* trial of the real crimes—but convictions and sentences technically were merely for income-tax discrepancies. No matter on what basis it enters a case, the highly successful Federal Bureau of Investigation (G-men) can operate with complete authority and full vigor. The whole business is no more fictitious than most of what passes for law and justice in the precedent-ridden state courts.

Among the most frequent kinds of cases that the reporter follows in a United States District court are the following:

Infractions of post-office regulations: wrongfully receiving mail (for instance, a former employee who continues to sign for registered mail sent to a company); stealing and forging the endorsement on a government check; theft and possession of stolen mail; rifling mailboxes; sending threatening letters through the mail.

Frauds against the federal government: embezzlements and swindles when federal funds or the funds of national banks are involved; impersonating a federal officer; theft of government property.

Infractions of the Interstate Commerce law: stealing from an interstate shipment of goods.

Citizenship and denaturalization cases; sedition cases.

Bankruptcy proceedings: appointments of trustees; reorganizations.

Infractions of the food and drug acts: misbranding food and drugs; false claims of cures.

Infractions of federal revenue laws: income-tax evasions; failure to pay federal "floor tax" on liquor; violations of alcohol tax laws.

Infractions of the Securities and Exchange act: revocation and suspension of registration as a securities dealer.

Infractions of the Trading with the Enemy act: conspiracies to acquire and export gold.

Infractions of the Narcotics act, anti-trust laws, Mann act, Dyer act, Lindbergh Anti-kidnaping act, Railway Labor act.

Classification of Courts

Prerequisite to a comprehension of any classification of courts is an understanding of the concept of judicial jurisdiction. According to *Black's Law Dictionary:* [1]

> Jurisdiction is the power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of the law, or to award the remedies provided by law, upon a state of facts, proved or admitted, referred to the tribunal for decision and authorized by law to be the subject of investigation or action by that tribunal, and in favor of or against persons (or a res) who present themselves, or who are brought before the court in some manner sanctioned by law as proper and sufficient.

Power to enforce its decisions is not essential to give a court jurisdiction. There are, however, three essentials:

1. The court must have power to decide the class of cases to which the one in question belongs; that is, it must have jurisdiction over the subject matter. This means that a personal-injury damage suit cannot be brought into a court with jurisdiction only over probate matters; nor can a person charged with murder be arraigned in a court of equity. What jurisdiction over subject matter a court has is determined by constitution or statute.

2. The proper parties must be present. This means that the person or persons bringing action must be qualified to do so, and that the defendant or defendants are ones over whose affairs, as relates to the subject matter, the court has the authority to render a decision. When the parties are citizens of different states, the jurisdiction of a United States District court is clear under the Constitution. A corporation can be sued in the state courts of any state in which it does business. When the litigants reside in different cities in the same county, in most matters they must use the county courts rather than the city or municipal court of either community.

3. The point to be decided must be, in substance and effect,

[1] *Black's Law Dictionary*, Third Edition. Saint Paul: West Publishing Company,

within the issue. A divorce-court judge, for example, cannot rule on a matter related to the probating of an estate in which either party is interested. Evidence concerning any dispute connected with the other issue may be admitted if it is relevant to establish some charge in the divorce action, but the parties must go into probate court for a decision regarding any rights to heirship.

Jurisdiction is not to be confused with *venue*, which is the particular place where a cause of action originates. It is important that the venue be established, for it may be outside the geographical area in which the court has jurisdiction. Jurisdiction—the inherent power of a court to decide a matter—as pointed out, however, involves more than venue.

What follows is a description of several of the ways in which it is customary to classify courts:

I. Courts of Record and Courts not of Record

Of Record	Not of Record
Those which keep a permanent or perpetual account of their proceedings; they generally have a seal, and power to fine or imprison for contempt of court.	Those whose proceedings are not enrolled or recorded; they usually are courts of inferior or limited jurisdiction, and do not have the power to punish for contempt of court.

II. Superior and Inferior Courts

Superior	Inferior
Those which have general original jurisdiction in the first instance—that is, those which can try cases. They control or supervise lower courts either by writ of error, appeal, or certiorari; the relationship between the ordinary circuit or district court and a municipal or city court usually is that of superior to inferior, the former receiving appeals from the latter.	Those with small or restricted jurisdiction, their decisions subject to review or correction by higher courts; they are limited to preliminary hearings or inquiries, except in minor criminal matters, and can handle only small civil actions; circuit or district courts are inferior to appellate or supreme courts, but the term is usually used for justices of the peace, city, municipal, and similar courts not of record.

III. Civil and Criminal Courts

Civil	Criminal
Those with jurisdiction over controversies between citizen and citizen; they enforce and redress private rights between private persons according to civil or private law.	Those which administer the criminal law and punish wrongs committed against the state or public as a whole, as defined by statute; they may be called oyer and terminer or be a branch of the circuit or district court.

IV. Equity and Law Courts

Equity	Law
Those whose jurisdiction is limited to handling equity or chancery matters, applying rules and principles of chancery law, following equity procedures; relief is remedial or preventative.	Those which administer justice in civil matters according to rules and practices of the English common law; they have no equitable power; relief is compensatory or punitive.

V. Courts of Competent Jurisdiction and Courts of Limited Jurisdiction

Competent	Limited
Those with power and authority of law at the time of acting to do a particular act; usually applied to circuit or district courts able to take cognizance of all phases of an action.	Those with power to act only as regards certain restricted matters, such as a municipal court able to handle civil actions only when the amount involved does not exceed a certain amount.

VI. Courts of General Jurisdiction and Courts of Special Jurisdiction

General	Special
Those competent to decide their own jurisdiction and to take cognizance of all causes, civil and criminal, of a particular nature; "general" often is used as synonymous with "competent."	Those incompetent to decide their own jurisdiction, so they can take cognizance only of a few specified matters, such as a probate court, orphans' court, or juvenile court.

VII. Courts of Original Jurisdiction and Courts of Appellate Jurisdiction

Original	Appellate
Those in which causes arise and where they are tried originally, a *nisi prius* court is a trial court of civil matters; criminal trial courts may be called *oyer & terminer* or *gaol delivery;* the term *assize* may be used for any trial court, but courts with this power today usually are called circuit, district, or superior; such special courts as probate, chancery, criminal, or common pleas are courts of original jurisdiction in their limited fields.	Those which do not try cases originally but merely review decisions in cases already tried in courts of last resort; superior courts of original jurisdiction usually have appellate jurisdiction over inferior courts, but courts of strictly appellate jurisdiction which are superior in turn to them are known variously as supreme court, court of error, or court of appeals.

Officers of a Court

Judges. The existence of judges antedates that of the law itself. In fact, as was pointed out in Chapter 1, judges have been responsible for creating a large body of law through the invention or sanctioning of fictions and by establishing and following precedents. The Code of Hammurabi indicates there were judges in Babylon as early as 2285 B.C.; the Old Testament reveals that the Israelites had judges before they had kings.

Among primitive peoples, the first judges probably were private arbitrators—patriarchs, go-betweens, chiefs, and priests. In feudal England they derived their power from the crown; many were appointed from the king's household to go out to the counties; barons were given judicial control over their manors; colonial governors got judicial power through royal charters. With the development of democratic government, however, came the popular elections of judges, as of other public officials. In 1943, the Council of State Governments reported that only six states provided for no election of judges; twenty-nine states provided for the elections of all judges; in only fourteen of those twenty-nine states was the election nonpartisan; sixteen states permitted nonpartisan election of some judges; and twenty-six states had some partisan elections.

In five states, all along the Atlantic seaboard, some judges were still selected by the legislature, but in no state did the legislature pick all judges; governors appointed some judges in fifteen states (mostly in the northeastern section), but in only three states did the chief executive appoint all of them. In some states, some judges of inferior courts were selected by judges of superior courts, as in New Jersey, where vice chancellors were selected by the chancellor, and in Indiana, where circuit court judges selected city magistrates. City councils, mayor, and selectmen also picked the judges of some inferior local courts in some places.

In twenty-six states, United States citizenship is a qualification for the position of judge; some states, however, require only citizenship in the state; and a few require only qualifications as a voter. A judge of the highest court of appeals must have been a resident for five years in twelve states; for three years in six states; for two years in nine states; for one year in four states. A minimum age limit, ranging from twenty-one to thirty-five years, is stipulated for judges of the highest court of appeals in thirty-four states.

Regardless of how he is selected and no matter what legal qualifications he possesses, once on the bench a judge *is* the court. He requires and can demand respect, and is responsible only to courts superior to that in which he presides and to the electorate which selected him or those who appointed him. Lawyers indicate their respect for his office, if not for his person, by addressing him as "Your Honor" and by beginning requests, "If the court please." In the inferior courts, the practice of wearing black robes is passing, and the justice of the peace, the city or municipal court judge who still does so often is a man who needs this external badge of authority to cover up his lack of self-confidence or ability. This generally is not true of judges in courts of higher dignity, however, where the judge who does not wear a robe may not have the proper respect for his office. No generalization on this matter is possible because local custom differs. However, any American jurist who emulated the British judge who wears a powdered wig would find it less rather than more difficult to command respect.

Better than robe or wig is the judge's power to cite any principal, attorney, witness, or spectator for contempt of court. It is in the American tradition that court proceedings be public, but a judge has the authority to clear his courtroom of persons who are not taking part in a case if the ends of justice seem to justify such action. A judge has the power to bar newspaper reporters from his courtroom, although the condemnation that the press would be likely to pour on him is a deterrent to his doing so very often.

Despite its one-time importance as a protection against tyranny,

trial by jury is steadily giving way to trial by judges. The Sixth Amendment to the Constitution provides that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury," and most state constitutions have similar provisions. Increasingly, however, defendants in criminal cases, especially in those of minor importance, are waiving their constitutional rights.

When a constitutional right is thus waived, the judge must inform the defendant of his own power to fine or imprison, definitely stipulating the maximum penalties that could be imposed. If the defendant still wishes to waive jury trial and signs the waiver, the hearing proceeds before the judge alone, who tries both the evidence and the law. Such trials are much more informal than jury trials, and the judge himself may take over a good share of the questioning of witnesses.

In civil actions, many states allow but do not require trial by jury. When the matters requiring a court's decision become more and more technical, attorneys increasingly prefer to have trained jurists rather than lay jurors pass on them. A typical waiver form is the following, used in the Common Pleas court of Montgomery county, Ohio:

I, ..., defendant in the above cause, hereby voluntarily waive and relinquish my right to a trial by jury, and elect to be tried by a Judge of the Court in which the same cause may be pending. I fully understand that under the laws of this state, I have a constitutional right to a trial by jury.

Defendant (must sign in person)

In any action the judge passes on motions, preliminary to and during a hearing or trial; rules on the admissibility of evidence; rules on objections to testimony by attorneys; signs orders prepared by a clerk or attorney. In civil matters he issues decrees or judgments; in criminal matters he passes sentences. The judge examines complaints or affidavits for warrants (informations) and signs them before warrants can be issued. He issues bench warrants to bring indicted and other persons into custody of the court; orders psychiatric examinations for defendants at the bar; receives grand-jury reports; grants injunctions, writs of habeas corpus, mandamus, and other extraordinary remedies.

The judge can make motions of his own, and does so when attorneys fail or refuse to do so; he can continue or dismiss cases, subpoena and examine witnesses, render judgments notwithstanding the verdict of a jury, declare mistrials, order juries to return a directed verdict, grant motions for new trials.

In jury trials, the judge presides and presumably passes on

matters of law but not of fact. He dismisses unqualified veniremen, rules on the admissibility of evidence, and charges the jury as to the law, sometimes in writing if so required by statute. As the law stipulates, he can suspend a sentence or place a convicted person on probation.

On or off the bench, judges are human and differ from each other as much as do newspapermen or members of any other occupational group. Because they must stand for re-election someday, judges are compelled to be politically conscious. It would be utopian to declare that the best way to impress the electorate and insure perpetuation in office is by conscientious service and utter disregard of all influences. Unfortunately, however, the body politic is not always so able to recognize or so willing to reward merit as ideally it should be. This does not mean that justice is bought and sold wholesale, because this is absolutely not the case. In a vast majority of cases, no political boss or pressure group has any interest, and judges are able to do their expert best. It does mean that the opposite may be true in the minority of cases in which some deserving party member or potential voter of the ticket sees a precinct or ward leader who sees a clerk who whispers in a judge's ear. Even without any such direct approach, it is difficult for candidates for re-election to forget their candidacies and to defy either particular persons or public opinion. Judges have their own prejudices and codes, which are an unconscious factor in determining their decisions, just as they are with everyone else. To the extent that a judge is a representative citizen, with the same attitudes as a majority of his fellows, the law that he administers coincides with custom, and criticism of it really is criticism of society as a whole. No community will continue in office a judge whose decisions constantly go counter to prevailing opinion, no matter what history may decide regarding his wisdom.

Young reporters should be aware that when lawyers speak of a "good" judge, they usually mean one learned in the law, who applies the law rigidly in strict adherence to precedent. They dislike jurists who are inclined toward skepticism regarding the concept that "justice" and "law" are synonymous terms and who are not adverse to disregarding precedents or to establishing new ones. It is not infrequent for those versed in legal lore to declare that juvenile and similar courts in which rules are waived and informality prevails are "not courts at all" but social agencies or medical clinics. Because the accumulation of legal decisions upon which it is possible to draw for precedents is so prodigious, it is not impossible in most cases to decide first what the common-sense disposition of a pending case should be and then go on a successful

hunt for a legal excuse for adopting it. Unfortunately for many judges who would like to adopt such a procedure, the initiative must be taken by attorneys in introducing sufficient evidence and/or argument to make it possible. Judges pride themselves on their "scores" before the appellate courts—that is, on the number of times their decisions have been upheld upon appeal. Consequently, they cannot take too many liberties with the adjective law, nor with judicial precedents either, unless the higher courts previously have shown a disposition to "follow the election returns," as Mr. Dooley said the Supreme Court of the United States does.

Clerks. The duties of a clerk of courts (called a prothonotary in Pennsylvania) are mostly secretarial, but he also has considerable discretionary power. It is he who receives all written documents in a case—complaints, answers, amendments, motions, appearances, and the like—and who prepares the calendar or "call" sheet of cases to be heard each day in court. As he disposes of cases, a judge either makes his own notes to indicate his decisions, or he dictates to the clerk, who makes the notations. In either case, the formal entries in permanent record books are made by the clerk, who uses his own or the judge's notes. Hence, the clerk is the source of most of the routine news originating in the court. He, his memory, and his written records are indispensable to judge, attorneys, and newspapermen.

It is important that a judge and his clerk work together harmoniously. If the office of clerk is elective, as it is in many cases, this may not be the situation. In large cities there will be only one clerk elected for each court; he in turn appoints assistant clerks to serve in the different branches so that each judge usually can obtain someone to his liking. It is rare when judge and clerk do not have the same political connections, with similar obligations and prerogatives. As a result, the judge usually permits his clerk to function without much scrutiny, which means that the clerk has it within his power to place cases higher or lower on the court's calendar than they ordinarily would come. Any tokens of gratitude that a clerk obtains in exchange for such favors are not likely to amount to much in the aggregate, although it has happened that clerks have demanded remuneration from unknowing people for services that they are obligated to perform as part of their regular duties.

A co-operative clerk may be a judge's memory and conscience. A sabotaging or inefficient clerk can get a judge into many embarrassing situations—through failure to prepare orders for him to sign on time, by not keeping the records in a pending case up to date, or by antagonizing people doing business in the court.

Statutory requirements as to exactly what books the clerk must keep differ, as do the abbreviations which judges and clerks use in making entries. In Cook County, Illinois, the most important records with which the newspaper reporters must be familiar are the following:

Indexes. At the time a suit is filed, it is given a letter to indicate the court (P for Probate, S for Superior, C for Circuit, et cetera), and a number which indicates the order in which it was filed since the beginning of the year. Case 46S–6793 would be the 6793rd case filed in Superior court in 1946. This number must be known to look up the file in any case. It can be obtained by referring to either the Plaintiff's Index to Court Records or the Defendant's Index to Court Records, in which the names of all plaintiffs and defendants are listed alphabetically. The vertical columns in which data are given follow: general number, surname of plaintiff, defendant, kind of action, date filed, fee book number and page, number of execution, disposed of (date).

Register. This is a permanent record book which includes entries of all legal papers filed in a suit. A typical record for a case, showing the printed column headings in the book, would read as follows:

General Number and Title of Case	Papers Filed	By Whom	When
45C 10956	Complaint	Rasco	3/6/45
Carl Blake	& Copy		
vs.	Appearance	Holmes	3/11/45
Maurice Rose	& Fee Paid		
	Answer &	Holmes	3/15/45
	Copy		
	Stipulation	Rasco	3/20/45

The names in the third column are those of the attorneys. Other entries that might be made in the second column include: jury trial demanded, affidavit to sue as poor person, summons, substitute attorney, notice and petition, trial notice. Obviously, this book is of more value to attorneys than to reporters. If a reporter, however, is eager to learn whether a particular paper has been filed, and the pending or active file is unavailable at the moment, he can obtain a quick "yes" or "no" answer by consulting the register. If he desires to ascertain what the paper in question contains, of course, he must go to the file itself.

Dockets. For a short summary of the development in a case, the reporter should consult one of the dockets (law, chancery, divorce, miscellaneous) in which all court orders are entered. To find any

such entry, he must know the case number, for entries are made numerically. Typical case histories follow:

Chancery Docket

Miller Insurance Co., plaintiff *vs.* Fred Vanzo and Esther Vanzo, his wife, defendants	Complaint to Foreclose 45S —3315	1895–18 –3/16/45–Wm. Bostrom appt. rec. (Fort) 1895–136–3/18/45–Revr bd approved (Fort) 1914–26 –4/30/45–Cs dms & rers F.A.R. appvd (Fort)

John L. Noyes, atty for plaint.
Victor E Quick, atty. for defend.

The numbers in the right-hand column before the dates refer to the file of photostatic copies of all court orders which are kept in a locked vault as duplicates of the records available for public inspection. The name in parentheses is that of the judge signing the order—Judge Fort in all three instances in this case. The abbreviations are not standard and differ according to the whims of the deputy clerks making the entries; it will be noted that strict consistency is not observed in the brief example given. Translated in this case, they mean: "appointed receiver," "receiver's bond approved," and "case dismissed and receiver's final account and report approved."

Common Law Docket

Edward Braden *vs.* Harold Oates Complaint for Damages Arising from Operation of a Motor Vehicle	45S –7709 Cal 2 Demand for Jury Call	5/17/45—jury to sep. R658 5/20/45—jury fdg dft not guilty 5/22/45—judg on verdict R658 mo. plff N.T. denied R658

Wilson K. Early, atty. for plaint.
Edward Noble, atty. for defend.

R658 is the judge's record book, in which entries are made each day by a clerk from the judge's own minute book. To keep the record books up to date, the clerk in each of the many branches of the Circuit and Superior courts keeps two minute books, odd and even, meaning that on odd dates (for example, May 1, 3, 5, et cetera) he uses one book in court and on even dates (May 2, 4, 6, et cetera) he uses the other book. The minute book not in use is in the main clerk's office for use in preparing the "R," or judge's record books. The name of the judge is listed in the record books.

The abbreviations mean: "jury to separate," indicating that the

case was not finished by the end of the day; "jury finding for defendant not guilty"; "judgment on the verdict"; and "motion by plaintiff for new trial denied."

Because of the large number of actions brought, stamps are used to indicate the nature of each case, in this instance, "complaint for damages arising from operation of a motor vehicle." Also "demand for jury trial" will be stamped on the docket entry. "P.P." stamped on the entry would mean the plaintiff had been granted permission to sue as a poor person. "D" written in ink in the right-hand column means "disposed," or that the case is concluded.

"Cal.2" is a clue as to the identity of the judge in the action. There may be as many as ten or fifteen judges hearing law cases. As they are filed, cases are assigned to them by lot and all those assigned to a particular judge go to make up his calendar of cases; Judge A will hear Calendar 1, Judge B will hear Calendar 2, and so forth. The lot drawing is by means of a device resembling a rotating squirrel cage in which there are as many discs as there are judges hearing cases. Each disc has a number representing a different judge. When the machine, known as a chuck-a-luck, is rotated and a slot opened, one disc falls out; the case for which the chuck-a-luck is rotated then is assigned to the judge represented by the number on the disc.

Daily Call. Before each day's court session the clerk prepares a list of the cases to be heard that day on a single printed sheet, filling in the case's number in one column, the plaintiff's name in a second column, and the defendant's name in a third column. In these courts, the clerk keeps this sheet in his possession as he calls the cases and makes check marks or abbreviations in two columns headed "pl'ff R" and "def't R" which mean "plaintiff ready" and "defendant ready." He also fills in the final column, "disposition of cause" and from this work sheet, after court has adjourned, makes entries in his minute book which, then, as already stated, goes to the chief clerk's office for recording in the judge's record books. The clerk also uses the daily call sheet notations to prepare future calendars of cases to be heard. In chancery cases he prepares the orders which, after the judge signs them, are sent to be photostated.

In other courts the daily call sheet may be kept by the judge. In either case, abbreviations are used and the newspaper reporter must become familiar with the "short longhand" that the particular clerk or judge uses. For instance, in the "disposition" column "D.W.P." may mean "dismissed for want of prosecution" and "Lv fl petn and set Jan. 31" would be "granted leave to file petition and hearing set for Jan. 31."

Minute Book. This book—rather, these books, as there are both odd and even day books—has been explained. It is written up by the clerk from the notations on the daily call and is sent to the chief clerk's office so that the judge's record books can be prepared. In other words, it is the direct or indirect source of the entries in all other books, indexes, and dockets.

Other Books. In the probate and chancery courts, there are motions books in which attorneys can write requests for hearings on motions in any case. The books are open on the clerks' desks, and are available to attorneys and reporters. The clerk consults the motions book before preparing the daily call. In the chief clerk's office also are fee books, itemizing all the costs in all cases. Some judges keep "set" books, in which they list important cases under the future dates set for their hearing. These are personal reference books and may not be available for reportorial scrutiny; a judge, however, usually knows when cases of particular interest will appear before him and he can save a reporter time otherwise spent in consulting official record books. Photostatic copies of all judgments and decrees are kept in vaults as a protection against theft of the originals. They can be consulted with the clerk's permission.

Naturally, the systems in other courts will differ because of statutory requirements and local custom. The similarities, however, between other systems and the one explained here will be greater than the differences. Everywhere there will be something corresponding to the daily call or calendar, the clerk's minute book, and the permanent record books. The reporter who does not know what and where these sourcebooks are is at a tremendous disadvantage.

Bailiffs, sheriff's deputies, constables, marshals. The *bailiff* is the court's sergeant-at-arms or, if necessary, its "bouncer." He opens the court. When the judge enters the courtroom, he bawls out something to this effect: "Everybody stand. Hear ye, hear ye, the Municipal Court of Centerville now is in session, Hon. John Smith presiding. Please be seated."

The bailiff is a messenger; he escorts jurors to and from the court room and waits outside the jury room when the peers are deliberating, ready to notify the judge of any requests or that a verdict has been reached. The bailiff summons veniremen, watches over witnesses, especially those in custody of the court. He serves subpoenas, delivers summonses and other processes.

The office may be elective or appointive. If the latter, the bailiff really is a *sheriff's deputy* or deputy sheriff. Chief bailiffs appointed by a sheriff usually cannot be removed by a judge, but deputy sheriffs usually are so removable. All bailiffs are ex officio police

officers, and regular members of the city's police force usually are ex officio deputy bailiffs.

The existence of the office of bailiff dates from feudal England, when the bailiffs of franchises were officers who performed the duties of sheriffs within limited or privileged jurisdictions in which formerly the king's writ could not be executed by a sheriff. Bailiffs of the hundreds were officers appointed by the sheriffs to collect fines in the hundreds, summon juries, attend the judges and justices of the peace at the assizes (town meetings) and quarter sessions, and execute writs and processes. Bailiffs of the manor were stewards or agents appointed by the lord, generally by an authority under seal, to superintend the manor; collect fines; inspect buildings; order repairs; cut down trees; impound cattle found trespassing; take an account of wastes, spoils, and misdemeanors in the woods; demesne lands; and do other acts for the lord's interest.

In modern justice of the peace courts, the officer corresponding to the bailiff is the *constable*—a township officer usually elected. His attendance in court is not so necessary as is that of the bailiff in courts of greater importance, but he executes the processes of the justices of peace or magistrate's courts, serves writs, and performs duties within the township similar to those which the sheriff performs in the county.

In medieval times, the constable was a high functionary under the French and English kings, with dignity and importance second only to that of the monarch himself. The constable was a leader of the royal armies, and he exercised both military and civil authority. It was his responsibility to conserve the peace of the nation.

Whenever a bailiff, sheriff's deputy, or constable has to do anything other than routine duties today, the occasion may be newsworthy. The fact that many bailiffs today are women indicates that preserving order in the modern court room does not require military or police experience or physical courage.

In the United States District courts the duties usually performed by bailiffs are assigned to *marshals,* who also function as law-enforcement officers (similar to sheriffs) within their districts.

Court reporters. These are stenographers who take verbatim accounts of everything that transpires during a court session. The statutes determine in just what instances such verbatim records must be taken. Usually everything that transpires in a nisi prius criminal court, regardless of the plea or whether there is a jury, must be reported. Except for default (uncontested) divorce and probate matters, cases heard in civil courts without a jury usually do not need to be reported verbatim.

Court reporters are appointed rather than elected, either for a

term of court or for a particular case. In criminal matters they are paid out of public funds; in civil actions they are paid by the principals, the responsibility for payment being agreed upon by the parties or, if in dispute, decided by the court. Often, in addition to the official court reporter, there will be other stenographers employed by the parties, making additional records. This happens when either side wants faster action in transposing the shorthand notes than the official reporter may be able to give.

Complete verbatim reports are important in cases of appeals, when copies, or transcripts, must be submitted to the reviewing courts. No report is official unless the reporter preparing it was appointed or approved by the judge in advance of the note-taking, and all copies must be certified as correct by the court in order to be legally valid.

Prosecuting attorneys. In every judicial district there is a public officer, almost always elected, to represent the state (people) in both civil and criminal matters. The trend is toward fixed salaries for such officers, although in some places they still are compensated by fees collected from defendants whom they have successfully prosecuted or from the public treasury according to a fixed scale for services rendered. The fee system in this, as in most other instances where it is tried in government, is bad, because it puts a premium upon obtaining convictions and in other obvious ways influences the actions of the potential recipient. It is disappearing because of the recognition of its obvious abuses and as the centuries-old idea that a court action is a contest between parties declines. Nevertheless, a public prosecutor is still judged by the electorate very largely by his record in obtaining convictions, and incumbents run for re-election on the basis of their success in sending accused persons to prison or the gallows or hot chair.

For the city, the public prosecutor usually is called city attorney or city counsel. In the municipal or city courts he stands before the judge's bench and represents the city in case after case. He will begin by informing the judge of the nature of the case and will examine witnesses for the state and cross-examine defense witnesses. Violations of municipal ordinances are civil actions, so, if he wishes to discontinue prosecution, he moves for a *nonsuit* rather than to *nolle prosequi (nol-pros)* the case, as in criminal actions. In small places the city attorney also may perform the functions of corporation counsel.

For the county, the public prosecutor is called the district attorney or state's attorney. The county is the agent of the state, and so this officer has the duty of commencing and prosecuting all actions, suits, indictments, and prosecutions, civil and criminal,

in the courts of record in the county or district that he represents. He must also defend all actions brought against any county or state officer in his official capacity within the county, and he must prosecute any actions brought by such officials. Because of the relationship between county and state, he also may be considered an assistant to the attorney general of the state, and that officer usually has the power to supersede any state's attorney in any case if he so desires. When actions originating in the county courts are appealed, the state's attorney provides the attorney general with all records and other information necessary to act in those matters.

The state's attorney or an assistant attends sessions of city, municipal, justice of the peace, and other inferior courts, when necessary, to handle preliminary hearings in state cases that must be bound over to the grand juries of higher courts, or to prosecute such actions over which the lower courts have jurisdiction. Not infrequently, it happens that an assistant state's attorney will nol-pros a case in some such court on the understanding that the city attorney will prosecute on a lesser charge. To facilitate such a procedure, and to allow judges and prosecutors leeway in settling cases without delays, police make a practice of booking many persons arrested on both state and city charges. An example might be the laws governing gambling devices. Whereas the state law might forbid their use for profit, the city ordinance might outlaw their existence. Thus, if there were not sufficient evidence that the devices seized by police in a raid actually had been used for profit, the state charges would have to be dropped. The defendant, however, could still be prosecuted on the city charge of possession. The state's attorney and the city attorney also may agree to reduce a charge from that of grand larceny to petty larceny on the understanding that the accused will plead guilty to the latter, whereas he would plead not guilty to the former. The difference between grand and petty larceny is that of the amount of money involved, and it differs greatly by states. Conviction for grand larceny usually brings a penitentiary sentence, whereas petty larceny usually is punishable by fine or a jail sentence. Inferior courts usually have jurisdiction over petty larceny, but they would have to bind over grand larceny cases.

The district attorney may be the most important public officer in a community. When public opinion is aroused by the commission of a crime, he may find it difficult to nol-pros a case or to be dilatory in its prosecution. In a large number of instances, however, he has great discretionary power. He can refrain from presenting certain matters to the grand jury, can make good or bad presentations,

can quash indictments, continue cases, or otherwise maneuver as he sees fit. If he has assistants, he has to be a tactful administrator to preserve harmony as they vie with each other to obtain the cases that will result in the best personal publicity; usually he reserves the very best of such cases for himself. He can make deals with accused persons, offering to reduce the charges in exchange for pleas of guilty and thus improve his own record for obtaining convictions. On the other hand, if he is conscientious and crusading, he can go after anybody almost everywhere. In other words, it is his prerogative to decide, virtually alone, what laws shall be enforced and what persons shall be brought into court.

An idea of how widespread the activities of a state's attorney's office may become may be derived from a listing of the titles of the departments in which one hundred fifty employees, seventy of them attorneys, in the office of the state's attorney of Cook county, Illinois, work: trial, investigation, grand-jury preparation, stolen automobiles, bond, docket, extradition, complaint, social service, appeals, tax, stenographic, library, bookkeeping, court reporting, and photostatic.

In the United States District courts the people are represented by the United States district attorney, who has the same relationship to the attorney general of the United States that the state's attorney has to the attorney general of the state.

Public defenders. The Sixth Amendment to the Constitution of the United States includes a phrase guaranteeing to everyone accused of a crime "the assistance of counsel for his defense," and most states have similar guarantees. No provision usually is made, however, for the financial wherewithal by which to obtain such legal assistance, and so the taxpayers have had to stand that expense. It is still orthodox practice today for the court to appoint counsel for prisoners at the bar unable to pay for them, from among the lawyers who happen to be in the courtroom on other business. Some courts maintain a panel of lawyers who have consented to take such cases. This practice may not be too bad in trivial cases in which there is obvious guilt or innocence. In other instances, however, it is inefficient and unjust. Appointing young, inexperienced lawyers fresh out of law schools is not much better, even though the accused is likely to get greater quantity if not quality of representation.

To approach the spirit of the constitutional provision more nearly, the practice of maintaining offices of public defender in criminal courts is growing. Paid a salary from public funds, the public defender has the same responsibility to impecunious citizens as the state's attorney does to the people at large—that is, it is his duty

to see that their legal rights are protected to the utmost. In places where the office has been established, it has reduced the number of small-time lawyers who haunt the courts for pick-up business and who also "milk" the relatives of persons accused of crimes, obtaining continuances as long as there is anything left in the family exchequer.

Masters. Many actions, particularly in equity or chancery, if heard entirely in open court, would consume so much of a judge's time that his calendar would be overcrowded and many other cases would be delayed unreasonably. To relieve such temporary situations, it long ago became the practice to permit judges to appoint assistants, generally called masters, to take testimony in protracted cases and report back to the court with recommendations.

In England, masters at common law are appointed to record proceedings of the court, to superintend the issuance of writs and other proceedings in an action, to receive and account for fees due the court, and to pay out moneys. In the United States, most such duties now are performed by clerks, auditors, referees, and commissioners. Masters act as surrogate judges, with authority to issue subpoenas; take testimony, depositions, accounts, acknowledgments of deeds and other instruments; issue injunctions and writs of certiorari to some inferior courts.

A master in chancery, regardless of whether he is a regular or special officer, inquires into such matters as are referred to him by the court appointing him. Stenographic reports are taken of all master's proceedings, and the record, together with the master's report and recommendations, go to the judge. Attorneys can object to any ruling by a master and can take exception to any part of his report. The judge hears arguments regarding the master's report and can accept or reject it wholly or in part. It is the judge's decree that is binding, not the master's report.

Each United States District court may have one or more standing masters and as many special masters as necessary. In the federal courts, the word also includes referee, auditor, and examiner, as well as the duties usually performed by such officers.

Although a master's hearing follows the general lines of a court trial, in actual practice it tends to be more informal. In his desire to obtain all information of any value for the judge, the master is inclined to admit a great deal of evidence that might be excluded if offered in court.

Referees. Civil practices acts are eliminating the differences between common law and equity and, as a byproduct, the distinction between masters and referees is disappearing. Formerly, a referee performed functions for a common-law court similar to those per-

formed by a master for an equity or chancery court. Because chancery matters are more likely to be complicated and protracted, masters in chancery always have been more frequent. In code states (those with civil practice acts) today the masters generally handle matters which formerly would have been referred to referees, although it is entirely possible that the term referee should be retained.

If the office of referee is abolished in the courts of general jurisdiction, it may continue to exist as a title in such special courts as county, probate, or municipal. In those courts the referee may be a special rather than a permanent officer, and may be appointed to decide only phases of a controversy rather than the entire issue. If the referee is a permanent officer, he probably has limited, particularized functions. For example, he may spend his entire time examining judgment debtors who have been brought into court by citation for the purpose of discovering assets subject to attachment.

Under the Federal Bankruptcy act, permanent referees in bankruptcy are created to perform administrative and quasi-judicial functions in relation to bankruptcy proceedings. They preside over long hearings and make reports and recommendations to the judge, as does a master in chancery.

Commissioners. In the state courts, special commissioners often are appointed to perform particular services in connection with some specific matter. They may inquire into the mental health of a person whose hospitalization a court is considering; take special depositions to establish old records that have been destroyed or lost; establish the value of some piece of property or perform some similar function requiring expert knowledge. Commissioners are selected for their special ability in the particular matters at issue, and they act as impartial fact finders for the court appointing them.

In the federal court system, the United States commissioner corresponds to the inferior state court judge who holds preliminary hearings in criminal cases over which he lacks original jurisdiction. He is principally an examining magistrate who binds over cases to the federal grand jury, and also presides at extradition and removal hearings and has some limited judicial authority.

Friends of the court. Theoretically, every attorney licensed to practice in a court is an officer of that court whose primary interest it is to uphold justice rather than the advantages of any client. It not infrequently happens that a lawyer not involved in a case being tried volunteers or is asked legal advice by a judge; in such cases he acts as a friend of the court (*amicus curiae*).

The term is also used to indicate any outsider who seeks to intervene, not as a participant but for the purpose of presenting evidence to protect some personal interest which, though not involved in the action at issue, will be affected by its outcome. For permission to file a brief as an *amicus curiae,* one must show that he has interests which would be so affected.

Broadly, a friend of the court is any outsider who is permitted to take a momentary part in a case. He may do so at the invitation of the judge, in which case he may share the bench with him, or he may be a bystander who steps forward to enlighten a judge who becomes "stuck" on some matter of law or fact of which he should take judicial notice (dates, names, places, et cetera). No friend of the court has any authority whatever, and a judge gives only such credence to his testimony as he desires.

The Courts as News

Newspapers cover the courts because of the cases being tried in them. Except for occasional feature articles, they print very little about the technical operations of the judiciary or the broader, abstract principles of justice involved. Routine news of courts occurs when terms begin or end, periodic reports are issued, judges are reassigned, rules are changed. What follows are a few examples of news stories related to the operation of the courts, as distinguished from news of cases before them:

Plans to end the abuses and scandals which have characterized the administration of the Municipal court in recent years were told yesterday by Chief Justice Edward S Scheffler. He was named to the post by his associates on the Municipal bench last April when Chief Justice John J. Sonsteby died, and was elected Nov. 4 to finish the one year remaining in Sonsteby's term.

Judge Scheffler is an alert, sandy haired man of 46, who is aware that the court, as he put it, has been a "legal cesspool" and he has determined to remedy those conditions.

"The court must be operated in a dignified, efficient manner," he said. "It is the poor man's legal resort and should be operated for his benefit."

Announces 5 Major Reforms

Among the administrative reforms which Judge Scheffler has instituted or has promised to put into practice are:

1. Stricter regulation of bondsmen.
2. Prohibiting of solicitation for sale of tickets or contributions to any funds in courtrooms.
3. Assignment of the 35 associate judges to the various branches for one year or six month terms instead of wholesale new assignments every month.
4. Cooperation with the police, and instruction of arresting officers in preparing foolproof cases against gamblers.
5. General economies in the operation of the court and improvement of employe morale.

The regulation of bondsmen is an outgrowth of the scandal of two years ago when Eugene L. McGarry, then a Municipal court judge, was accused of accepting false acknowledgments of bail bonds.

Ask Who Arranges Bonds

"We are going over the list of authorized bondsmen with a fine tooth comb and will cast out those whom we don't believe are acting properly," Judge Scheffler said. "Those who put up cash bonds will be required to state at whose request they are doing so. In this way we can learn who are the higher-ups behind criminal defendants. The state's attorney's office is cooperating with us on forfeiture of bonds, and such cases will not be allowed to lapse. We are demanding new sureties from all bondsmen who schedule real estate.

"Forbidding ticket sales and fund contributions in courtrooms will be good news to many lawyers, who have been coerced by bailiffs and clerks in the past to make such donations for politically sponsored affairs.

"By assigning the judges to branches for long periods, we will speed up the work of the court. In the past lawyers sometimes employed dilatory tactics, having their cases continued until a judge whom they regarded as more favorable was sitting in the particular branch. Judges, too, were occasionally eager to get rid of cases which were headaches to them and would postpone such cases until other judges were assigned to the branch.

Will Require Fewer Jurors

"By assigning a specific number of cases to the jury courts each day, we will need fewer jurors, won't have to keep prospective jurors waiting for long periods, and we will cut costs in this department. To improve morale, we are instructing court employes to be courteous and to speak distinctly in administering the oath to witnesses."

Judge Scheffler has cut the staff in the chief justice's office to three assistants, one of whom doubles as a secretary.

Judge Scheffler was in general law practice from 1916 to 1927. He was an assistant city prosecutor from 1923 to 1927 and an assistant to the probate judge until 1930. In that year he was elected to the Municipal court and was reelected in 1936.

—Chicago (Ill.) *Tribune.*

A total of 3,880 cases will be pending in the U.S. District court when it convenes Sept. 7 for the fall term and between 85 and 90 will be awaiting hearing before the U.S. Circuit Court of Appeals which reopens Sept. 28.

According to figures released by U.S. Dist. Judge John P. Barnes, senior jurist, the cases are 203 criminal, 1,491 bankruptcy and 1,186 civil. Among the important hearings scheduled is a conspiracy charge against 105 corporations and individuals accused of attempting to fix nation-wide prices on American and brick cheeses, and another against 16 flour milling firms accused of conspiring to fix prices on packaged flour for family use.

The so-called Haupt case also will be retried, after reversal of the guilty finding by the Court of Appeals. No date has been set as yet pending possible action of the U.S. Supreme court on the reversal of death sentences for three men and prison sentences for their wives.

Also scheduled for trial for conspiracy are a metallurgist, a coin collector and a salesman, indicted on a charge of accumulating gold for Germany. The mail fraud case of Arnold Joerns, president of the Resources Corp., involving about $7,350,000 worth of allegedly false securities, and five of his associates, will be

heard, as will that of Donald Vandercook, charged with originating an imaginary $109,000,000 federal building program to defraud building contractors throughout the country.

Hearings on that hardy perennial, traction unification, will be resumed before Judge Michael L. Igoe on Sept. 20. Igoe has called for proposals to speed unification to be presented on that date.

—Chicago (Ill.) *Daily Times.*

Despite substantial staff losses to the armed forces and the opening of new and novel fields of criminal and civil law because of war conditions, the highest percentage of federal convictions here in a decade was obtained during the year ended June 30, 1943, according to an annual report issued yesterday by U.S. Atty. J. Albert Woll.

The analysis of work by the department shows that in 976 cases prosecuted there were convictions while 25 were acquittals, a conviction percentage of 97.5.

Under the war-broadened duties work of the office ranged from prosecutions for treason to handling of thousands of petitions by aliens for travel permits. In the field of selective service violations alone, the report pointed out, 3,366 delinquencies were reported. Of these all but 161 were cleared up without court action. Of the 161 indicted, 118 convictions were obtained.

During the period three couples who aided the Nazi saboteur, Herbert Haupt, were tried and convicted of that rarest of crimes—treason. The case was later reversed on basis of a Supreme court decision made following the trial. The case will be retried. Four sedition cases resulted in conviction of all but two of the dozen defendants.

Convictions on draft evasion charges sent 63 men to jail and broke up their organization, the "Nation of Islam."

Saverio Ariana, former president of the First Italian State bank who embezzled about $150,000 from the institution and fled in 1931, also was apprehended and sentenced to a year in the penitentiary.

Of 714 indictments filed during the year, 708 were disposed of, the report shows. At present only 199 are pending. Average time between arrest and trial has been reduced to seven days.

In the civil division 500 cases were disposed of with 193 remaining.

—Chicago (Ill.) *Daily Times.*

Illinois judges like their work so well that a new pension system, which might have been a drain on the state treasury, actually is yielding a profit, according to figures revealed yesterday by Arthur S. Hansen, secretary and actuary of the judges' retirement system.

When the plan became effective Nov. 1, 51 of the 290 judges in the state were eligible for voluntary retirement at from one-fourth to one-half of their regular salaries, by virtue of being over 60 and having 12 years' service. So far, not one has taken advantage of his opportunity.

Since the five pensioners carried over from the old plan will be paid only $47,000 of the $80,000 that is being deducted from judges' salaries during the present biennium, the state need not touch its $76,000 appropriation. At present there is no provision in the law for refund if a judge dies before he has used up his contribution.

Average Service 10.7 Years

The figures show that the average length of service for the 290 judges is 10.7 years, compared to less than 10 years for all city employes and six years for

private employes of banks and industrial concerns. Forty-four have served more than the 18 years required for the maximum pension, and eight more than 30 years. Leading the veterans is Judge William H. McSurely of the Appellate court here, with 34 years.

The figures show that judges are unusually long-lived, also, with 87, or nearly one-third, over 60 years of age and eight, including five from Cook county, over 70.

Oldest in State Defeated

The oldest judge in the state, until his defeat last December, was Judge Charles Adams of the Canton City court, who is 84. Having 16 years of service, he probably will become the sixth pensioner.

The oldest now is Judge A. Breckenridge of the Fulton County court, who is 82.

The record by courts follows:

Court	No. of Judges	Ave. Age	Over 60	18 Yrs. Service	No Elig to Retire	Avg. Yrs. Service
Supreme	7	61 5	4	2	2	13 3
Superior	29	60 9	13	9	11	15 6
Circuit, Cook Co.	20	58 3	7	7	6	16 2
Downstate	51	56 0	18	7	7	10 7
Municipal	36	50 7	5	1	2	7 9
Evanston	2	10 5	0	0	0	8 7
County, Prob.	116	52 2	32	12	17	9 1
City Courts	29	54 3	8	6	6	10 7
Totals	290	54 3	87	44	51	10 7

The second oldest judge in the state is Judge E. L. Frankhauser of the Cook County Superior court.

—Chicago (Ill.) *Sun.*

Another relationship situation in the recent wave of $3,600 appointments by judges of personal shorthand court reporters was reported yesterday.

Judge Phillip J. Finnegan, in Circuit court, took advantage of an amended statute to name as his personal court reporter, at $3,600 a year, Robert L. Moran, 32, of 1219 Columbia ave.

A maid at the home of Judge Finnegan in the Edgewater Beach hotel identified Moran as a stepson of the judge. Moran, questioned in the Hotel Sherman, denied the relationship and Judge Finnegan had "no comment to make."

Law Permits Practice

The appointment of "personal reporters" by the judges is under an amended law, passed last summer, permitting every judge in the county to name his own shorthand expert, at a cost of $3,600 to the taxpayer, with the approval of only two members of the executive committee of his court.

Previously, in civil cases, shorthand transcripts were made by professional court reporters, hired by the litigants, and without cost to the taxpayer.

Judge Finnegan came into the picture again with the story of State Representative William G. Thon, of 23d senatorial district. He declared that he introduced the amended bill into the legislature at the request of Judge Finnegan.

Sought as Protection

"The judge sent me the bill, and told me the Circuit court judges wanted it," Thon said. "He said they wanted protection for themselves in tax and divorce cases particularly."

No Circuit court judge could be found who could remember that the matter had been brought either before a meeting of the judges as a whole, or the executive committee of the Circuit court.

It was learned Thursday that Judge Stanley H. Klarkowski of Circuit court had employed as his "personal reporter" his sister-in-law, Mrs. Loretta Korzen of 2711 W. Logan blvd.

—Chicago (Ill.) *Sun.*

CHAPTER 3

Origins and Survivals in Legal Rights

IN THE United States and other democratic countries a person accused of crime is presumed at law to be innocent until proved guilty "beyond a reasonable doubt." He cannot be arrested and incarcerated unless a formal charge is made against him; instead, he has the right to be brought into open court promptly to face his accusers and to be released under bond pending trial of his case—except when the public welfare might otherwise be affected adversely. His home is his castle, and it cannot be invaded except by public officers with search warrants properly issued by a court of competent jurisdiction; any evidence against him illegally obtained is inadmissible in any court proceeding. To determine the question of his guilt and to decide matters of controversy between himself and a fellow citizen, he is entitled to a jury of his peers (equals). If he stands mute at the bar of justice, his silence is not taken as prima-facie evidence of guilt; rather, it is interpreted to mean the opposite, and a public defender, whose compensation is provided by organized society, may be appointed to defend him.

These and numerous other legal rights, today generally taken for granted by inhabitants of democratic nations in which the individual is considered an end in himself, did not always exist. On the contrary, many of them were won only after long and bitter strife and, once obtained, they have had to be defended diligently. Even today they are no stronger than the public opinion supporting them. Mostly Anglo-Saxon in origin, they have, throughout the centuries, spread to other peoples, but their existence always has been tenuous among non-English-speaking groups, and even the Anglo-Saxons have been hesitant to extend them to others, especially those whose skin color is dark, whenever the groups have existed together in relationships of superior and inferior.

Trial by Jury

The written record is incomplete and inconclusive, so authorities disagree as to the steps by which the modern system of trial by jury

originated. There are important missing links in the chain of explanation of how ancient Anglo-Saxon and Norman institutions originated and developed. It is commonly believed that the present concept of a trial group, as distinguished from an accusing group or from witnesses either to the alleged crime or to the general character of the parties, dates from some time late in the twelfth century. Trial by jury, however, did not become a right rather than a privilege until more than a century later, and it was well into the fourteenth century before the openmindedness of all members of the trial jury was considered a necessity. Until then it was believed that unless there were a few on the trial jury with a fixed opinion as to the guilt of the accused, the prosecution had an unfair chance.

Trial by combat. An even greater anachronism was trial by combat as an alternative to which trial by jury arose. In criminal cases the principals themselves fought. In civil cases they hired professional fighters. Although in disuse for more than two centuries, trial by combat was not formally abolished in England until 1819, after an accused murderer insisted upon it and the courts decided it still existed as a right.

Trial by compurgators. Before the Conquest, the principle was established firmly that a person accused of crime was guilty unless he could prove himself innocent. The orthodox way of proving innocence was not by introduction of testimony by witnesses and other evidence, as it is today, but by bringing before the lord, and whatever knights or other followers assisted him in the administration of justice at the assizes, as many neighbors as the defendant could persuade to vouch for him. These witnesses, or compurgators, did not testify within their knowledge regarding the matter at issue; rather, they merely expressed their belief as to the trustworthiness of the accused. Thus, they were in the nature of character witnesses, and the decision of the court frequently went to the party able to present the larger number of compurgators. Trial by compurgators is also called *wager of law.*

The perjury committed in such proceedings can easily be imagined, for there is no evidence that man in the Middle Ages was any more truthful than his descendant is today. False swearing, in fact, was so bad that it became the practice to appoint sworn (official) witnesses in each district, whose duty it was to attest to all private bargains and transactions so that they would be qualified to give testimony in cases of dispute. This practice led to greater care being exercised in all business dealings; concealment or secrecy came to be regarded as prima-facie evidence of fraud, and was likely to be punished. Also, the practice developed of permitting the opposite party to select certain witnesses or compurgators from

among those whom the defendant or accused had chosen, to speak for him. If his reputation were bad, three times the usual number of witnesses was required.

Trial by ordeal. The alternative to trial by compurgators was trial by ordeal. If an accused person could not obtain the necessary number of compurgators (usually eleven or twelve), he had to submit to it. Trial by ordeal also was prevalent among many primitive tribes untouched by the Anglo-Saxon tradition—all forms of it being predicated on the assumption that the deity would suspend the ordinary laws of nature or otherwise intervene to indicate guilt or innocence.

Ordeal by fire was either by walking barefoot and blindfolded over red-hot ploughshares (usually nine in feudal England) placed at unequal intervals, or by carrying hot irons, one to three pounds heavy, in the hands for nine paces. Priests presided at the rituals and immediately sealed the hands or feet for a period of usually three days; at the end of that time the wounds were examined, and, if not too bad, the accused was declared not guilty.

On the theory that the "pure element" of water "would not receive into its bosom anyone stained with the crime of a false oath," for one form of ordeal by water the accused was bound hand and foot and thrown into a body of water. If he sank, he obviously was innocent and an attempt was made to rescue him before he drowned. Another form of ordeal by water was for the accused to thrust his arms or legs into boiling water; his guilt or innocence depended upon the condition of his scalds when unbound three days later, as in the case of ordeal by fire.

In the Ewe tribe of Africa, it was the practice to put boiling oil in a defendant's hand. If he held it without signs of distress, he was freed. Another Ewe ordeal was to throw grains of salt into a bowl of boiling palm oil; if they split it was a sign of guilt.

In 1215 Pope Innocent III forbad the clergy to participate in trials by ordeal.

Ordeal by oaths. Similarly, it seems to have been an almost universal practice to call upon the deity to indicate or punish a false swearer. The Plains Indians required oaths to establish disputed titles to war honors; if either claimant met with an accident shortly afterward he was considered a perjurer who had been punished by God. In feudal England, a corsned or consecrated morsel was used. The oath swearer swallowed it with a prayer that he might choke to death if guilty, and some (psychiatrists note!) actually did.

The modern oath which every witness in a court proceeding takes is a survival of these and many similar ceremonies. Today, however, it is regarded as hardly more than a solemn appeal to God to

attest to the truth of the testimony to be given—an outward pledge that the testimony is given under an immediate sense of responsibility to God and in fear of His everlasting wrath. Today the court oath indicates the taker's reverent state of mind and testifies to the fact he has a conscience. It consequently has subjective value in placing a witness in a mental state conducive to truthtelling. Nevertheless, a vast amount of perjury exists, as it probably always has, and there are few cases on record of false swearers being punished swiftly by other than mundane agencies.

Regardless of the potency of the oath, there are some modern states which make it impossible for an atheist to testify, although a majority of states permit a witness to "affirm" rather than to "swear." The duty of inquiring into the capacity of any witness to take an oath is on the one who objects. Most people, regardless of their religious beliefs, take the oath without much thought after it has been mumbled incoherently by a clerk or bailiff.

The grand jury. It was not until trial by ordeal disappeared late in the thirteenth or early in the fourteenth century that the separation of the trial (petit) jury from the accusing (grand) jury was complete. Formal origin of the modern grand jury idea is traced to the Assize of Clarendon, made by King Henry II with the assent of the archbishops, bishops, earls, and barons of all England in 1166. By it, the old form of trial by compurgators was abolished and the principle of collective responsibility to maintain law and order was reaffirmed. Thereafter, it provided, committees or juries of inquiry, consisting of twelve for each hundred and four for each manor, should be appointed annually by the sheriffs, and placed under oath, with the duty to determine "whether there is in their hundred or in their manor any man who has been accused or publicly suspected of himself being a robber, or murderer, or thief, or of being a receiver of robbers, or murderers, or thieves, since the lord king has been king." The next article provided that anyone so accused by an inquiring group should be forced to submit to the ordeal by water or be considered guilty as charged.

Obviously, in modern parlance, this was a jury of presentment, not of indictment. Modern grand juries still have this power to make inquiry on their own initiative into all matters affecting the general welfare of the public within the jurisdiction of the court appointing them. When a jury does so, its report to the court is called a *presentment*. Generally it has the same effect as an *indictment* in bringing to trial before a petit jury on the charges listed any persons named in it. It may, however, take the form merely of a recommendation or request to the prosecuting attorney to draw up a bill of indictment to be presented to the grand jury for its indorsement as a *true bill*.

Many presentments originate as by-products of an investigation of charges contained in a bill of indictment. It is rare (unfortunately so, many critics believe) for a grand jury to investigate a situation entirely unrelated to any brought to its attention by a prosecuting attorney. Newspapers frequently call the juries who do "runaway" juries, and they make good headlines.

As the independent investigative function of grand juries has declined, its main service has become the indorsement of bills of indictment prepared by the prosecuting attorney. This it does by marking such a document "a true bill" over the signature of the foreman of the grand jury only, by contrast with a presentment that must be signed by all members of the jury. If a grand jury believes that a bill of indictment does not contain sufficient evidence to warrant bringing the accused to trial, it writes "ignoramus" on the bill. The reporter in such a case writes that the grand jury "voted a no bill."

The grand jury has the power to subpoena and examine witnesses on its own initiative, and generally can indict on the oath of a single witness—except in certain cases, such as treason or perjury, in which two or more witnesses or written evidence in addition to oral testimony is required. Under the common law, the size of the grand jury varied from twelve to twenty-three; in American states today, that continues to be the usual range, although Utah and Oregon allow grand juries of seven, South Dakota from six to eight, and Michigan has a one-man grand-jury system. Unanimity generally is not required; indorsement of an indictment as a true bill may be by majority vote.

Throughout the many bitter fights against tyrannical monarchs that studded English history for many centuries, the grand jury was a safeguard of liberties, for it prevented legal prosecution upon the whim of a ruler or other public official. It provided an examining group of an accused's peers to determine whether there was sufficient cause (suspicion of guilt) to justify bringing him to trial. Today, in altogether too many instances, the grand jury is little more than a rubber stamp, indorsing the actions of the prosecuting attorney, who has it within his power to submit or not to submit particular cases to it and to present any case in such a manner that no true bill will result. In some states grand juries have the power to subpoena witnesses for the accused, even the accused himself, but this right is rarely exercised. Most evidence before a grand jury is ex parte—one-sided, that of the state only.

All deliberations of a grand jury are secret, and members are sworn not to reveal anything that transpires. Thus, it is difficult to check on activities of the prosecuting attorney and also for newspapers to report grand jury proceedings.

Even after an indictment has been indorsed as a true bill, a prosecuting attorney has discretion in bringing a case to trial and in prosecuting it vigorously. The grand jury may provide the way for a prosecuting attorney to "pass the buck" for dismissing obviously weak cases. No prosecuting attorney who inherits from a predecessor a list of indictments likes to dismiss them, even though they are weak. This reluctance results from the fact that the idea that all trial is combat has not disappeared, and a public prosecutor is judged by his record in obtaining convictions.

Usually, as presented to a grand jury, a bill of indictment names particular persons. Sometimes, however, the perpetrators of a crime are unknown. In such cases the prosecuting attorney brings the matter to the jury's attention in what is called a *John Doe hearing.* He calls witnesses, in the attempt to ascertain who should be indicted.

Informations. The Fifth Amendment to the United States Constitution provides that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger." Consequently, a Constitutional amendment would be necessary even to make any alternative optional to grand-jury action in capital or infamous cases in federal courts. Similar clauses are often included in the constitutions of the different states.

A *capital* crime is one punishable by death. An *infamous* crime is one punishable by imprisonment in a state prison or penitentiary, with or without hard labor. Thus, whether a particular offense is capital or infamous depends, not upon its intrinsic quality, but upon the statutory punishment to which the perpetrator may be subjected. Some states define an infamous crime as one upon conviction for which a person's civil or political rights are affected—that is, if, following conviction, a person would be deprived of the right to vote, hold office, serve on juries, or enjoy similar privileges, the offense is considered infamous.

In the case of offenses of less seriousness—mostly misdemeanors punishable by fine or imprisonment in a county jail—the grand jury indictment or presentment is unnecessary, and persons so accused may be brought to trial upon an information filed in court by a prosecuting attorney or a private citizen. In the latter case, the approval of a judge is required. The trend is toward reducing the number of indictable offenses to a minimum, substituting the practice of information.

The petit jury. The Sixth Amendment to the Constitution of the United States reads: "In all criminal prosecutions, the accused shall

enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed. . . ." The Seventh Amendment reads: "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ." Most state constitutions also provide for jury trials in certain categories of criminal cases and suits at law, but the Sixth Amendment, of course, applies only to federal court cases. The Fourteenth Amendment, however, extends the "due process" requirements to state courts, Section 1 of the amendment concluding as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The United States Supreme court has reversed convictions of Negroes in state courts in cases in which Negroes were excluded from jury panels.

The fact that those Jeffersonians who threatened not to ratify the Constitution until passage of the first ten amendments—the so-called Bill of Rights—was promised, included these two articles indicates that up to that time the danger that tyrannical government might cancel the rights was considered to be strong, even though trial by jury had existed since sometime in the twelfth or thirteenth century.

Just when the practice actually began, nobody knows. Trial by jury probably developed out of the same Norman institution of recognition that gave rise to the inquiring or grand jury, and it was accepted as a substitute for trial by battle. It is certain that in the twelfth century citizens applied to the King's Court for the appointment of recognitors to make special investigations of matters of personal concern to them, as was the Norman practice. The reports of these recognitors, similarly to those of the early grand juries, were tantamount to verdicts. Thus, the inquiring or accusing jury, by the very nature of its assignment, often was also a trial jury. The impartiality of the group was jeopardized by the practice of appointing to the regular or special grand juries persons with prior knowledge of the matter under investigation. It was believed that such acquaintance with the subject matter was an advantage, but it meant that there always was a certain proportion of the members who already were prejudiced against the defendant. These early juries have been described as having been, at various times, bodies of witnesses and representatives of the public opinion of the countryside, rather than as impartial judges of evidence as today.

All that stood between the grand jury's also being a trial jury

was the ordeal. When belief in the efficacy of that institution waned, the necessity for a separate trial jury arose. The gradual transformation of the recognitors into the common-law petit or trial jury followed naturally, and suitors and witnesses became ineligible to serve upon such juries. At first, however, defendants were reluctant to submit to trial by jury, and their consent always was asked. It was not until 1275 that trial by jury became obligatory.

Trial by jury, since it is a right, can be waived by anyone accused of a crime, who may instead elect to be tried by a judge, as was explained in Chapter 2.

In civil cases in code states (those with civil practice acts), either the plaintiff or defendant must formally request a jury trial to obtain it today. The trend is very definitely away from trial by jury, which is more time-consuming and hence more costly. The principal reason is that business relations in the modern world are so complicated that a judge with legal training and experience is considered better qualified than a layman or a jury to decide most matters. In *The Prisoner at the Bar,* Arthur Train wrote: [1]

> The fundamental reason for the arbitrary character of the verdicts of our juries lies not in our lack of human intelligence as a nation, but in our small regard for human life, our low standard of commercial honesty, our hypocrisy in legislation, our consequent lack of respect for law, and the general misapprehension that the function of the jury is to render "substantial justice"—a misapprehension fostered by public sentiment, the press, and even in some cases by the bench itself, to the complete abandonment of the literal interpretation of the juror's oath of office.

Train wrote that as long as we have hypocrisy in religion, business, and legislation we shall have it in courts of justice. It is difficult, he explained, to persuade a jury to convict for fraudulent bankruptcy or for false pretenses when it knows that such practices are common among thousands who are never prosecuted. Convictions for first-degree murder also are rare, probably, Train believes, because so many victims were men of violence themselves; also because of repulsion against capital punishment and the feeling of having blood on his hands that would haunt a juror. As a matter of fact, Train wrote, juries pass on few professional criminals. They have records and plead guilty, or, to save expense and trouble, the prosecuting attorney allows them to confess to a lesser degree of the same crime. In modern times the power of the prosecuting attorney is vastly more important than that of the jury or, in fact, of any other person or group; perhaps seventy-five per cent of all criminal cases are disposed of by plea, direction of court, or "recommendation" of the prosecuting attorney.

[1] Train, Arthur; *The Prisoner at the Bar.* New York: Charles Scribner's Sons.

Jurors, who are ordinary people, have unconscious prejudices—racial, religious, class, and others. A smart lawyer, knowing this, tries to get the jurors whose attitudes will be favorable to his client. Also, he tries to obtain a jury homogeneous as to age, occupation, and interests, so that the members will get along well with each other. In civil matters, it is generally believed a plaintiff prefers wealthy jurors, used to dealing in big money, so that a sizable judgment will not seem outlandish to them, whereas the defendant prefers poorer jurors.

On the subject of prejudice, the following clause from an Illinois law is of interest and significance to newspapermen: "It shall not be a cause of challenge that a juror has read in the newspapers an account of the commission of the crime with which the prisoner is charged, if such juror shall state on oath that he believes he can render an impartial verdict according to the law and the evidence."

The innumerable grounds on which a potential juror can be excused, however, unquestionably lower the educational and intellectual level of juries. Generally excluded are the following: elected public officials; all officers of the United States, including postmasters and mail carriers; judges, clerks, sheriffs, and coroners; mayors, policemen, and firemen; attorneys; ministers of the gospel; schoolteachers during the term of school; practicing physicians, dentists, veterinarians, and pharmacists; embalmers, undertakers, and funeral directors; newspaper employees, including editorial and mechanical; members of the national guard and naval militia. As of July 1, 1943, twenty states also still excluded women from jury service. The Public Administration Clearing House reports that opposition to legislation granting jury rights to women usually is based on the arguments that local governments cannot afford the expense of providing extra quarters for women jurors, and that women are emotional and lacking in judgment. In 1939 a "women on juries" bill was defeated in Vermont after several women legislators argued their sex "was not prepared" for jury duty.

Except for those who can claim exemption, jury service is a duty of citizenship. Jury panels presumably are selected by lot, either by a county board, sheriff's office, or, as the practice is growing in larger places, by jury commissioners, either elected or appointed by the judge. The law usually requires that a new jury list be prepared at certain intervals—such as every two years. The common practice is to go through the voting lists, which contain the names of persons with proper age, residential, and citizenship qualifications, and to take down all names separated by a certain interval—every twentieth name, for instance. These names then are given numbers, and the numbers are placed in some receptacle out of

which a sufficient number is drawn by chance whenever a new panel of jurors is required.

Anyone summoned to be a member of a jury panel is known as a *venireman*. The panel is selected for a court term or a portion thereof—ten days, two weeks, or a month, for example. For the average court a panel of thirty should be sufficient; from this panel, twelve are selected for each case on the jury trial calendar. If in any case it is impossible to obtain twelve qualified in that particular action, additional panels are prepared, its members being known as *talesmen*. In some inferior courts, such as justice of the peace courts, if the original panel runs out without a jury's being selected, talesmen may be selected from passers-by on the street.

If a judge feels that a competent jury cannot be obtained from the regular panel, he may order a special panel. A jury selected from it is known as a "blue ribbon" jury. In many states this practice is not permitted.

The writ issued to a sheriff to summon members of a jury panel is a *venire facies*. Upon receiving it, the sheriff issues summonses to all whose names appear on it. Not to respond is contempt of court. In fact, it is contempt of court not to answer any questionnaire or other communication received from the jury commissioners to assist them in making up the panel.

To *impanel a jury*, in American practice, means the entire process of determining who shall be on the jury through the summons to the clerk's making a list of those formally selected. Usually, it is against the law to seek to be on a jury. Nobody can legally serve a second time until after a certain lapse of time—such as two years. The recurrence of the same names on subsequent panels even at legal intervals may be grounds for suspicion.

Virtually every term italicized in the preceding discussion is one that a reporter may use in a news story, for they are in the lexicon of the ordinary reader as well as that of the lawyer or jurist. They should be used correctly. An indictment should not be called a presentment; nor should a talesman be called a venireman or juror. By strict accuracy the newspaper will contribute to educating the public in a vital field about which it knows too little, and, more important from its own standpoint, it will ingratiate itself with the legal profession and the judiciary whose members shudder at "abyssmal" journalistic ignorance.

The Rules of Evidence

The reporter should be able to step into any courtroom anywhere and, after listening for a few minutes, understand what is

going on. To do so, he must know the rules of the game he is seeing played. Most important, from the standpoint of his understanding, are the rules of evidence, which are in operation every minute that the trial of a case is proceeding. Without such knowledge, the reporter will be frustrated and will feel that legal procedure just doesn't "make sense."

If the scholars who count and analyze the word usages in a masterpiece of literature were to turn their attention to legal proceedings, their "frequency" list doubtless would be headed by "I object," and this in turn would be followed closely by "immaterial," "irrelevant," "incompetent," "not the best evidence," and similar expressions. These words and phrases are those used by lawyers in their incessant attempts to prevent witnesses for the opposite side to answer questions in violation of the rules of evidence.

As trial by jury grew in practice, some rules of evidence naturally became essential. As the law itself developed, the rules became voluminous and complicated, so that a complete treatise on contemporary rules of evidence runs into many volumes. This is particularly true of the United States. In England, as Arthur Train has Ephraim Tutt say in *Yankee Lawyer,* the alleged autobiography of the fictitious Tutt: [2]

> He [meaning the witness] rattles on, unhampered, telling his story as he is accustomed to recount the happenings of his daily life, and by the time he finishes the jury has a very fair idea of what sort of a fellow he is and how much he really knows.
>
> In this country he no sooner opens has mouth than he is choked off by a barrage of objections until, even if these be overruled, he does not know whether he is on his head or his heels. Indeed, a foreigner who stepped into an American courtroom might suppose that our theory of the best way to elicit information is to gag and blindfold the witness, punch him in the nose, whirl him around and upside down, and, after knocking all the breath out of his body, limit him to answering "yes" or "no" to a series of questions put by someone who does not know half as much about the case as he does.
>
> This is not so extravagant as it may sound. The Anglo Saxon law of evidence may be compared to a soundly rooted and once symmetrical tree which in the course of years has become lopsided, full of dry rot, and so entangled with vines and creepers that it not only obscures the light but it is impossible to tell which are branches and which are parasites.

The nature of evidence. Evidence is any proof presented to a jury in an attempt to influence its verdict. It, therefore, is distinguishable from the comment and argument presented by attorneys, usually in analysis of the evidence. It is not synonymous with proof, which is the result or effect of evidence; evidence proper

[2] Train, Arthur; *Yankee Lawyer.* New York: Charles Scribner's Sons.

is the medium or means by which a fact is proved or disproved. Advancing a presumption of law in support of one's case is adducing proof, but it is not giving evidence.

The most common form in which evidence is presented is by the testimony of witnesses. Usually it is delivered orally in open court, but it may be introduced by deposition. Other forms of evidence are: records, documents, and concrete objects which are submitted as exhibits, given numbers or letters, and protected during the trial by the clerk.

Material evidence is that which relates to the subject matter at issue or that has a direct bearing on the decision. It is evidence which serves to throw some light on the matter before the court. Lawyers invoke the rule to prevent witnesses from mentioning extraneous matters which would consume the court's time and possibly prejudice judge and jury. Matters related to race, religion, politics, marital status, business and personal habits, and experience not connected with the incidents about which the case revolves are immaterial.

Relevant evidence is that which touches on the question at issue; that which relates to or bears directly on the point or fact in dispute and proves or tends to prove or disprove a proposition or particular theory. It would be both material and relevant to introduce evidence to show that the accused possessed or had access to articles with which a crime was or might have been committed, for such evidence would tend to establish the time, place, and method of the crime. It is relevant to show that a person had a motive for committing a certain crime; had guilty knowledge of its commission; was traced by means of fingerprints, tracks, footprints, or other clues found at the scene of the crime.

It has been declared irrelevant to establish the fact of a person's insolvency as evidence that he borrowed money. Also, it has been declared irrelevant to show that an accused had been negligent in cases other than that being tried. It has been relevant, however, to prove the value of adjacent land to help establish the value of property under consideration.

Competent evidence is authoritative evidence from reliable sources—that which the very nature of the thing to be proved requires as appropriate. An eyewitness account of an incident is competent, for it is firsthand testimony. Original documents, expert testimony, properly identified photographs, et cetera, are competent. Direct testimony as to another's intent or motive, however, is incompetent, as is incriminating evidence obtained by compulsion and any evidence illegally obtained by wrongful search and seizure, wire-tapping, or interference with the mails.

During the discussion to follow, the differences between different kinds of evidence should become clearer. The rule at common law was that if there was any evidence at all in a case, the judge was required to permit it to go to the jury. This was the *scintilla of evidence* rule, "scintilla" meaning "a spark, glimmer, or faint show of evidence." It is difficult to decide when such exists and it is rare indeed today for the rule to be invoked.

Objections. The usual practice is to receive all evidence unless there is objection by the party against whom it is used. Objections must be made promptly unless grounds for objections do not become clear until later, in which case the proper procedure is to move to *strike* the evidence. Failure to object at the proper time is an implied waiver of objection which cannot be made later in the event of an appeal. Consequently, lawyers are quick on their toes to object to a question before the witness to whom it is directed has a chance to answer. Only such prompt action, of course, prevents the jury from hearing the answer, and it is doubtful whether it is humanly possible for a juror to blot from memory any testimony that a judge commands him to disregard.

Objections to the introduction of evidence which has been obtained wrongfully must be made before the trial begins by a *motion for the return* of the evidence or a *motion to suppress* the evidence. The Fourth Amendment to the Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The motion to suppress is frequent in cases of gambling and "bookie" raids. It gives the defense attorney the opportunity to examine the arresting officer. What constitutes illegal entry is not always easy to determine. It usually is held that if the door of a place is open, so that anyone can see into it and observe a crime being committed, a law-enforcement officer has a right to enter. His evidence also is admissible if he was invited into a place and, once inside, observed a violation of the law. There cannot, however, be any *entrapment,* which means the officer cannot induce or encourage anyone to violate a law. Many raids of gambling places, disorderly houses, and the like are made with full knowledge by police that they are illegal and that the cases will be thrown out of court. Such raids have nuisance value and serve notice on the principals that they are under surveillance. The practical effect may be the same as if there had been a court ruling. Often, also, once a place has been "spotted" by an illegal entry, a search warrant

can be obtained and legal entry and arrest can follow. Furthermore, any illegal gambling devices confiscated are seldom claimed by their owners and are destroyed.

If an attorney is dissatisfied with the court's ruling on an objection, he may take exception to it. He says, "Note the exception," and his words become a part of the record. In that way he protects himself in case he later wishes to appeal from the court's decision in the case, although in many states this precaution no longer is required. On appeal he can cite as in error only rulings to which he objected and took exception at the time. The newspaper reporter will encounter lawyers who object and take exception unnecessarily in the attempt to confuse witnesses, delay the progress of the trial, and, possibly, intimidate the judge. Masters and referees, especially inexperienced ones, are subjected frequently to such treatment unless their reactions to it are known.

The burden of proof. In criminal cases, involving either a felony or misdemeanor, the state must prove guilt beyond any reasonable doubt. In civil actions, a case must be sustained by a preponderance of evidence. It is a presumption of law that a person is innocent until proved guilty, and a defendant is supposed to obtain the benefit of doubt in all instances. Inasmuch as to define the word "reasonable" brings into play subjective factors that are not identical with any two persons, the ordinary juror finds it difficult to understand the responsibility placed upon him. Often criminal-defense attorneys with weak cases play upon the suggestibility of jurors by frequent repetition of the "reasonable doubt" rule, and there is no doubt that many guilty persons have been acquitted because jurors have exaggerated their responsibility under it.

The obligation of the prosecution in a criminal case is to prove that a crime was committed, to establish the *corpus delicti* as it is stated. It does so in an assault case by the testimony of the victim, physicians, hospital attendants, and policemen; in arson cases by testimony of the fire marshal; in murder cases by testimony of the coroner, policemen, and eyewitnesses. The weight and sufficiency of evidence, in both criminal and civil cases, do not depend upon the number of witnesses, but upon the preponderance of the evidence as considered by the jury. Preponderant evidence may be given by a single witness, and the jury is the judge of the credibility and importance of all evidence.

Throughout a trial the burden of proof shifts, always resting with the party that would lose if no evidence were introduced to counteract that of the other side. In civil cases the burden originates with the party who asserts the existence of a fact in a pleading. Negligence is never presumed. Anyone charging it has the burden

of proof; this includes counterchanges of contributory negligence. In defamation cases, the plaintiff must prove the falsity of the words, but the defendant has the burden to prove their truth. In malicious prosecution cases, the plaintiff has the burden of proving every essential element of the action, including his own innocence, want of probable cause, and the defendant's malice. Anyone charging fraud, undue influence, or duress has the burden of proof, except when the relationship involved is one of obvious superior and inferior, as an adult and child or sane and insane persons, in which instances fairness also must be proved.

Presumptions. A presumption at law is an inference as to the existence of one fact from the existence of another founded upon previous experience as to their connection. Presumptions usually favor the accused, just as does the familiar presumption already mentioned—that an accused person is presumed to be innocent until proved guilty. Similarly, the law presumes that: a person has a good character and ordinary mental faculties; a marriage is valid when there has been a ceremonial wedding; a child born in wedlock is legitimate; every woman is chaste and has a good moral character; public officers perform their duties and act in a regular and lawful manner; all acts of a court are within its jurisdiction; all court proceedings are right, including judgments, decrees, and orders; a person once proved to be insane continues in that state; possession over a considerable period of time of any property indicates ownership (familiarly stated, "possession is nine points of the law"); letters, notices, et cetera, properly addressed, stamped, and mailed reach their destination. In other words, the law presumes that where a person, object, relation, or state of things has been proved to exist at a particular time, such existence continues until the contrary is proved. Some presumptions are fictions, such as the presumption that no child under the age of seven is capable of committing a crime, but most are intended to protect legal rights.

Contrary to widespread opinion, it is not an accepted legal presumption that all people know the law—an obvious impossibility. There *is* a legal maxim that ignorance of the law excuses no one, which is somewhat different.

The guilt of an accused cannot be presumed by his failure to testify in his own behalf. A phrase in the Fifth Amendment to the Constitution reads, "nor shall he be compelled in any criminal case to be a witness against himself. . . ." Neither can a presumption be drawn from the failure of either side to call a material witness without explanation, unless that witness could be produced readily by one side although not equally available to the other.

In civil cases it is presumed that failure of a party to produce evidence that he has the power to produce is because it would be unfavorable to him should he do so. He has, however, the privilege of explaining his failure. Failure in a civil case of a defendant to testify in his own behalf or to call material witnesses leads to the presumption that such testimony would be unfavorable. Intentional destruction of written evidence leads to an unfavorable presumption, as does failure to produce a written instrument, or, in a personal injury suit, to submit to physical examination by a court-appointed physician.

Suppression, spoilation, or fabrication of evidence by either side in any kind of case raises an unfavorable presumption. Attempted bribery by the accused to escape imprisonment prior to trial, however, is not a presumption of guilt. Conduct of the accused shortly before or shortly after a crime inconsistent with his innocence is relevant and presumptive. Threats of an accused against a victim are relevant to prove intent, malice, and motive.

At law a person who has been absent and unheard from for seven years is presumed to be dead.

Presumptive evidence is usually defined as that which is received and treated as true until rebutted. A synonym for this type of evidence is *prima facie* evidence—that which is good and sufficient on its face. In another sense, presumptive evidence is synonymous with *probable* evidence—any evidence that is not direct and positive proof of minor or other facts incidental to or usually connected with the fact sought to be proved, which, taken together, inferentially establish or prove the fact in question with a reasonable degree of certainty. The existence of a fact not known or proved is presumed to exist as a logical consequence of other facts that are known or proved. For instance, the death of a particular passenger is presumed when a ship is known to be lost at sea with all hands drowned.

Judicial notice. The law "takes notice" of widely known everyday facts and relieves any party referring to them of the necessity of proving them. Personal knowledge on the part of the judge, jury, or any other principal is not required; the authority of ordinary books, documents, maps, calendars, and other similar sources is accepted.

Thus, geographical facts, such as the location of cities, states, and countries; mountains, lakes, and rivers; boundaries, et cetera, are noticed judicially. Likewise, the law accepts scientific and medical facts, such as the combustibility or inflammability of common objects like cotton and hay; the fact that gasoline is used in automobiles and airplanes; that alcoholic beverages are intoxicat-

ing; that a bullet through the brain is sufficient to cause death; that vaccination is believed to be a preventative of small pox; that in northern zones crops are planted in the spring and harvested in the fall.

Judicial notice is taken of public laws of the state and their purposes; the charters of cities; federal laws, including public acts and resolutions of Congress and Presidential proclamations and administrative rules. There is notice taken of political facts, such as the severance of diplomatic relations with a foreign government; the incumbents in important national, state, and local offices and their terms of office; the taxation system and rates, and the most important laws, statutes, and ordinances affecting local people. There also is notice of such business and industrial facts as that wholesalers generally sell to retailers and employ traveling salesmen; that passengers can check trunks while riding on railroads; that new automobiles of the same make are sold for a uniform price; that few banks could pay all depositors' checks in full simultaneously; and that modern business institutions provide toilets for both employees and customers. Times, days, and dates; standard weights and measures; the multiplication table; the value of money; local customs, such as payrolls being due on a particular day of the month or week; the ordinary meaning of words, including colloquialisms; weather reports; census figures; and innumerable other matters—all are noticed judicially.

It is news whenever a lawyer challenges a judge for taking judicial notice of any matter, thereby compelling the party seeking advantage of the notice to prove that the notice taken is correct or to submit to an adverse court ruling to which exception may be taken. It is bigger news when a judge refuses to take judicial notice of some supposedly common matter. If newspapers criticized the courts as they do books, musical performances, and sports contests, they would find some mighty good copy on occasion regarding what is and what is not worthy of judicial notice; it should interest crossword-puzzle addicts and followers of the radio quiz programs.

Qualifications of witnesses. The competency of any nonexpert witness is presumed and must be disproved by any party challenging it. The test is competency at the time the testimony is offered, not at any previous time. Any mental disability or other factor existent at the time of the event concerning which the testimony is given may be the basis for challenging credibility of the testimony, but not its competency.

As already mentioned, the modern oath is mostly perfunctory, but some states still forbid an atheist to testify. If any witness is willing to take an oath which any party believes would be mean-

ingless because of the witness' religious beliefs, he can object and assume the burden of proving the worthlessness of the oath. Judge John C. Knox in *Order in the Court* related the humorous anecdote of an elderly orthodox Jew who changed his testimony radically when required to put on his hat; he had not considered the oath taken when he was bareheaded as binding.

Infamy as the result of conviction for crime by the end of the seventeenth century had become established in the common law as a disqualifying factor. At first, depriving the traitor or felon of the right to testify in any court was considered part of his punishment, just as is depriving him of the right to vote. In addition, the fact of conviction was thought to be evidence of moral depravity that rendered any testimony untrustworthy. As a result, considerable hardship was often inflicted upon innocent parties who needed the testimony of a convict or ex-convict. The rule was criticized severely by Jeremy Bentham, English law reformer of the eighteenth century, and in 1843 it was abolished in England. In most American states today, infamy does not bar testimony; it is a matter of credibility, not competency, and the jury decides.

There is no age at which a child is held incompetent to testify, although he is supposed to be old enough to understand the meaning of the oath. The rule applied in accepting the testimony of minors is that of apparent capacity, and the same rule is applied to adults whose mental ability is questionable. Ability to recollect and narrate is the test that the court must apply. Even the insane can testify if their mental state has not affected their capacity to observe, recollect, and narrate. Intoxication in itself is not a bar to testimony.

At common law a man and his wife were incompetent to testify for or against each other because of their identity of interest, biased affection, and the danger that their doing so might create for their marital status. Today the bar generally has been lifted, completely in some states and in others, such as Texas, to permit testimony in favor of but not against a spouse in a criminal case. Confidential communications between spouses are generally considered incompetent evidence. Also eased is the prohibition against comment by the opposite party regarding the failure of a spouse to testify in a case in which his or her testimony would seem to be pertinent.

Attorneys are allowed to testify on behalf of their clients, but it is considered bad strategy to do so. Other parties officially connected with a trial are disqualified as witnesses, including the judge and jurors. A grand juror, however, can testify as to the nature of the testimony given by a witness before the grand jury

when it was contradictory to that given in the trial court. Any juror by affidavit can bring to the court's attention any misconduct or irregularity on the part of another juror, but such information is, of course, not testimony in the case being heard.

At common law, all parties to any suit and all persons interested in its outcome were disqualified as interested witnesses. This rule has been modified considerably, so that today it lingers in some states only as it relates to persons interested in the outcome of a legal dispute concerning the settling of a decedent's estate. Today defendants in criminal cases are generally permitted to testify in their own behalf, and practice differs as to whether the prosecution can make capital of any accused's failure to do so. No prosecuting attorney so restricted probably loses much, for juries find it difficult not to be prejudiced against anyone who does not avail himself of the opportunity to put up a personal defense. Lifting of the rule against testimony by defendants ended the opportunity of which defense lawyers took full advantage when they pleaded that their clients had "perfect defenses" but that the law had "sealed their lips."

Privilege. The protection offered by the phrase in the Fifth Amendment, "nor shall he be compelled in any criminal case to be a witness against himself," today is invoked more often to protect someone other than the defendant. The common law principle that no man can be compelled to incriminate himself dates from the political struggle in England, when physical torture and inquisitorial methods were used in the ecclesiastical courts to obtain confessions. It grew up as a general reaction against purely political prosecutions before biased judges and packed juries with the whole influence of government behind the prosecutors.

Today, persistence of the rule often is believed to encourage third-degree abuses by police to obtain out-of-court confessions, which, however, often are repudiated in court with the assertion that they were obtained by force or under duress. As the rule is applied today, any witness can refuse to answer any question that might tend to show him guilty of a crime, not necessarily or usually one with which the immediate case is concerned.

If a defendant in a criminal case chooses to take the witness stand, he must testify fully. No witness, furthermore, can refuse to answer a question on the ground that it might incriminate a third party, or on the ground that the answer might hold him up to infamy or disgrace. It is up to the judge to determine if the answer would tend to incriminate, and it is the duty of a conscientious judge to guard against use of the defense as a pretense to avoid giving pertinent testimony.

Since the testimony, to be incriminating, must tend to subject a witness to criminal liability, if such liability no longer exists the privilege lapses. This is true in cases of convicted criminals, accused persons who have been tried and acquitted of the charge involved, witnesses against whom criminal action would be barred by the statute of limitations, convicted persons who have received pardons, those who have been tendered immunity by the prosecuting attorney, and public officials who have legislative immunity.

The privilege does not protect one against being subjected to identification. A witness can be required to stand, sit, write, put on articles of clothing or wear them in a certain way, and to submit to medical examination. Furthermore, there is nothing to prevent the asking of incriminating questions; the rule applies only to answering them. A witness can refuse to answer an incriminating question, but if he does answer he thereby waives his immunity and what he says remains in the record.

Certain communications are privileged, and their introduction in court cannot be compelled. These include communications between attorney and client, exchanged in the course of their professional relationship, a privilege that can be waived only by the client. This privilege, however, does not protect against the introduction of documentary evidence by placing it in an attorney's hands, nor to any conspiracy to commit a criminal or fraudulent act. Communications between physician and patient usually are wholly privileged except in Workmen's Compensation act cases. Also privileged are communications between religious confessors and penitents in about one-third of the states. Under the common law, communications between husband and wife were privileged on the theory that they should be able to converse confidentially. Eight states have passed laws protecting a newspaper reporter from revealing the source of any information used in a newspaper article.

Examination of witnesses. One of the most frequent objections during direct examination of witnesses is to leading questions—questions that assume the truth of a fact in issue so that the answer merely admits the fact. For example, "Did you hear a noise?" is a leading question, whereas, "Did you hear any noise?" is permissible. When lawyers criticize any absurdities that get into newspapers, that is one to throw at them. Also, there is the insistence that questions be worded, "Did you or did you not—" on the legal theory that by presenting alternatives the witness, who probably has been coached for hours in his testimony, is not being "led."

Even lawyers have to consent to modification of the rule in the cases of unwilling, hostile, or biased witnesses or for ignorant or illiterate persons or children, and it takes quite a bit of intelligence

on the part of a witness to know when he is or is not being led and quite a bit of ingenuity sometimes to get to say what he considers it important for the court to know. The rule also is broken by tacit consent for such preliminary or introductory questions, as "Your name is John Smith, isn't it?" or "You live at 1313 Icicle Avenue, don't you?"

The most important exception to the rule against leading questions is one in aid of a witness' recollection. The law does not expect witnesses to have perfect memories. Nobody has, and juries become suspicious of witnesses who are able to recall minute details of any event too accurately. There is a difference, however, in using a memorandum of some kind to refresh the memory as evidence of a past recollection. There must, in other words, be a memory to refresh, and after introduction of the refresher the witness should then speak from memory. In some states, memoranda to refresh the memory are permissible only after it is ascertained that the witness has no present memory; then the memorandum must be shown to the adverse party for inspection and cross-examination and its accuracy must be proved. Such memoranda that can be used include stenographic or court reporter notes, business entries, notary's certificates, diaries, letters, and similar documents.

To *impeach a witness* is to discredit him and/or his testimony. The most important ways to do it are to prove that he has a bad moral character; that he is biased or has an interest in the outcome of the case; that he has made contradictory statements, either upon direct examination or on prior occasions; and that his testimony is incredible. The chief method used in the attempt to impeach a witness is cross-examination—one of the most important contributions to legal procedure of the Anglo-American law.

The old rule that "he who speaks falsely on one point will speak falsely on all" is probably unsound, but a jury cannot avoid being impressed by obvious discrepancies in a witness' testimony—especially if he is backed into a corner and compelled to admit that on a previous occasion or in answering an earlier question he either lied or was mistaken. A firm rule is that the state cannot attempt to prove bad character on the part of the accused unless he attempts to prove his own good character. A witness can be cross-examined about specific acts of misconduct as evidence of his character for veracity and truthtelling, but many places forbid such testimony being given by other witnesses.

Some states permit evidence of prior convictions for crime to be introduced in criminal cases but not in civil. The general rule is that there shall be no mention of any other unconnected crime unless it has some bearing on the immediate case or is for the pur-

pose of establishing identity. Such evidence is admissible if for the purpose of showing a common scheme, plan, or system, or if the issue in the case relates to a continuing offense. In sex cases, for instance, prior convictions usually can be referred to as showing a disposition to such conduct.

Character witnesses can testify to a person's general character only, not as to particular and specific incidents of conduct or their personal opinions regarding such incidents, or of rumors concerning them. Witnesses cannot express their private opinion or belief based on personal knowledge as to another witness' reputation for truth and veracity; they must purport to give the general opinion of the community regarding the party. The testimony of other witnesses is admissible to prove bias, interest, or inaccuracy. Accomplices, bondsmen, and policemen are biased witnesses; so are persons with any personal relationship—familial, business, or social. Any testimony regarding attempts to bribe or influence the testimony of other witnesses is admissible.

Although it is the credibility of testimony that is important, corroborated testimony is better than that which stands alone. Corroborative evidence is additional evidence of a different character, advanced in support of some fact or proposition already advanced. The testimony therefore becomes cumulative in quantity and effect. Counsel can comment upon the fact that any bit of testimony or other evidence is uncorroborated and may point to failure of the other side to produce certain witnesses or articles which might have been introduced if the uncorroborated evidence were capable of verification.

Hearsay evidence. The only testimony considered competent in any court is that which results from the personal observation or experience of the witness giving it. All other, including conjecture and opinion, is incompetent. The most usual objection to testimony that is based on other than a witness' firsthand knowledge is that it is hearsay, that is, secondhand evidence. Even a narration by a witness of statements previously made by himself, when such evidence is offered as proving the truth of the subject matter of such statements, is inadmissible as hearsay. The theory is that belief, even the witness' own, is not competent evidence. The twofold objection to such evidence is the absence of an oath when the reported statements were made and the lack of opportunity for cross-examination at the time.

Under the hearsay-evidence rule, a witness was permitted to answer a question, "Do you know what the warehouse rules were?" but after he had replied, "Yes," he was not permitted to reply to the question "What were they?" Similarly, objections were sustained

to the question, "Do you know what Miss Wilson planned to do with the statue?" because all the witness obviously could relate was what Miss Wilson had told him of her intentions. The witness was permitted to give a verbatim account of a conversation which he had with Miss Wilson, but was caught up short by the judge several times when he lapsed into a third-person account of the conversation such as, "She said she didn't want to go to Denver." The correct way to give such testimony is: "Miss Wilson said, 'I do not want to go to Denver,'" and heaven help the poor witness who cannot remember the conversation well enough to give it in dialogue form. Such exact recollection is contrary to all human experience, and insistence upon it is incitement to perjury.

Exceptions to the hearsay rule. Although plenty of absurdities are committed every day in almost every court in the land because of the hearsay rule, modifications of it have been accepted as precedents. All such exceptions are based upon some situations that give to such hearsay testimony an average reliability greater than that of hearsay evidence generally and the existence of some special need for such evidence. The exceptions include:

Declarations as to Bodily Condition. A witness can tell of screams, gestures, spontaneous exclamations, such as "My head aches," by another person when there was no conscious motive on his part to create favorable evidence for himself. Physicians, in addition to relating the results of medical examinations, can offer opinions as to how any condition found to exist originated.

Declarations as to State of Mind. A witness can tell of threats uttered by another person, and such testimony is circumstantial evidence of malice, motive, or intent to commit a crime. The declaration must have been made under circumstances under which they ordinarily and normally would have been made—not for the purpose of making self-serving evidence.

Declarations of Deceased Testators. What a person who drew a will really intended to do, and his state of mind at the time, are important factors in settling an estate—especially when a deceased is suspected of having been deprived of his normal faculties or of having been under improper influence. Any statements by the deceased indicating his true intentions, his attitude toward persons mentioned or disregarded in his will may throw light on the genuineness of the document, especially if there is a dispute over two or more wills. Some states have a general exception for all statements of a deceased who had competent knowledge and no apparent motive to deceive. Frequently it is necessary to invoke someone's recollection of a deceased person's statement regarding a title or boundaries.

Dying Declarations. Relevant dying statements, such as when a victim names his murderer, are admissible, provided the dying person was conscious of his approaching death and believed there was no hope of recovery, the statement was voluntary and without persuasion, the statement was not in answer to questions calculated to lead him to make the particular one that he did, and the deceased was sane at the time. Only that to which he would have been permitted to testify if he were still alive is admissible.

Spontaneous Declarations. The law presumes that anyone overwhelmed by a sudden or violent emotion loses his capacity for reflection, which would be necessary for him to fabricate, and thus speaks the truth regarding objective facts (*res gestae*). This is the familiar "truth will out" doctrine. This type of evidence is most frequent in accident cases, in crimes of violence when a victim cries out, when a parent reacts spontaneously to his child's picture or some other article associated with him, and in similar situations. On the stand, a witness usually is permitted to include otherwise extraneous matter in his testimony while relating the details of an event, on the theory that if he can recall and give expression to all details, even trivial, he will be better able to recall the major details as part of the mental picture that he has recreated for himself in whole. As previously stated, the English allow much more leeway for this type of circumlocutory testimony than do the Americans.

Previous Proceedings. If a former legal proceeding involved the same or substantially the same parties and issues, and the other party had an opportunity for cross-examination, a written record of the testimony or the oral testimony of someone who heard the original testimony can be introduced when the original witness has died or is otherwise unavailable. Ordinarily, testimony given at a coroner's inquest is not admissible because there was no opportunity for cross-examination.

Declarations Against Interest. Any statement of fact by a person deceased, which on its face was against his pecuniary or proprietary interest, is admissible, provided he was in a position to know of the matters stated and had no probable motive for misrepresenting them. Any evidence by someone living against interest, such as indorsement of a note or a book entry showing a debt to have been paid, also is admissible.

Admissions. An admission is any statement or action, not amounting to a confession, but prejudicial to one's interest, that can be used against but not for a person. Self-contradictory statements are used solely to impeach a witness, but admissions are affirmative evidence of the facts asserted. In criminal cases, admissions must

be made voluntarily; in conspiracy cases, however, each conspirator is responsible and liable for the acts of his co-conspirators, so an admission by one may be used against all. Likewise, in civil actions, the admissions of one joint obligor or partner can be used against others. The admissions of a deceased can be used against an executor; those of an agent, within the scope of his authority, can be used against the principal. The admissions of one spouse, however, do not bind the other. An offer to compromise or settle a claim is not an admission of liability, but merely evidence of a desire for peace. Evidence of repairs or improvements or additional precautions taken after an accident is not tantamount to an admission of prior negligence. Failure to answer a letter is not an admission of the truth of its contents. Inconsistent statements in an earlier proceeding, for instance, before a grand jury, in a former trial, in a deposition or stipulation in a former action, however, may be accepted in evidence as admissions. Also, acts from which inferences can be drawn that are inconsistent with present testimony, such as inducing a witness to leave the court's jurisdiction, refusal to answer a proper interrogatory, acts involving the recognition of the validity of a claim, as depositing in court money conceded to be due another, paying part of a claim, executing a note or part of it, offering to pay a claim, and so forth—are all admissions.

Confessions. A confession is a voluntary acknowledgment of guilt. While under arrest, a person must confess in writing unless he does so orally before an examining magistrate. Before someone's confession is taken, warning must be given that it may be used against the confessor; all confessions, to be binding, must be signed. It is proper for police to question a suspect and to ask him to confess, if no undue influence is used. The suspect can be exhorted to speak the truth, but there must be no force, threat, secrecy, or deception. If the confession is made upon a promise of benefit, it usually is considered involuntary; but mere hope of immunity, not encouraged by his questioners, is not enough to invalidate a confession. It is questionable whether an accused's actions after the alleged crime can be considered as evidence of confession, but testimony regarding such actions is admissible. Such testimony includes eyewitness accounts of the accused's reactions upon being accused of crime, refusal to give a name, attempts to bribe officers, attempts to conceal evidence of the crime, flight, assumption of an alias after the crime, attempts to destroy evidence, attempts to commit suicide, et cetera.

Book Entries. When the common law forbad witnesses to testify because of self-interest, the "shop book" rule arose to permit the introduction of written records even by witnesses present at the

time in court. Such records supposedly possess an element of unusual reliability and may be necessary when the entrant of the records in question is unavailable as a witness. The records must be originals; the entries must be "regular" ones, and they must have been made at the time of the transaction in issue. Today it often is impossible to ascertain the original entrant of a record in a large-scale business, so usually the testimony of anyone with knowledge and authority to vouch for such records is admissible.

Public Documents. Official written statements, such as judicial proceedings, sheriff's returns, surveyors' records, coroner's verdicts, tax records, lunacy commission reports, and similar public records, or certified copies thereof, possess an unusually large element of reliability and generally are admissible if made by public officials in line with their official duties.

Reputation. The nature of testimony regarding character already has been discussed. Private opinion is excluded, and particular acts are not admissible except as they are shown on cross-examination or by other evidence to relate specifically to the subject matter of the case. This exception to the hearsay rule is based on the theory that a person's general reputation in a community is usually deserved and a correct appraisal of him.

Family Pedigree and History. Members of a family, old servants, family physicians, and old friends are supposed, through constant discussion of a family's affairs, to be familiar with the family tradition. Their testimony, however, must be unbiased and unprejudiced. Such testimony is admissible when no other is available to establish such facts as those of birth, death, marriage, parentage, relationship, heirship, and kindred matters.

Ancient Documents. Any document over thirty years old is admissible without direct proof of its execution if it is in proper custody and free from outward appearance of suspicion. It is for the court to decide whether the contents of the document are competent evidence of the truth of the facts alleged.

Opinion evidence. On the theory that most opinions are based on guesswork or hearsay, or that they result from prejudice, the general rule is that a witness must restrict his testimony to what he observed or knows from his own firsthand knowledge. When a witness answered the question, "State what the conversation was?" with "She wanted me to extend the time for payment," he was admonished by the court to confine himself to a verbatim account of the conversation, leaving it to the jury to judge its meaning. In other words, although a person can testify as to his own motives or intentions, he cannot do so as regards those of another person.

Nor, of course, can a witness express an opinion as to what a

jury's verdict should be, what damages should be allowed, or, in fact, regarding any matter of law. Because, however, there are some facts about which it is impossible to testify without the use of descriptive words, a witness can describe the apparent emotional state of another—to say he was boisterous, quiet, grief-stricken, in pain, anxious, afraid, et cetera. The ordinary witness can testify as to the identity of another person known to him, and as to the apparent sex, age, and race of another person. He can estimate distances, size, quantity, and speed, and he can identify odors and tastes with which he has had previous experience. The nontechnical expert can testify regarding matters of common experience, such as that a certain day was hot, a knife was sharp, and so on. He can also speak of another's general appearance and behavior. He can say that another person fell to the ground purposely. He cannot, however, say that another person acted carelessly, with prejudice, in defiance of duty or propriety, in defiance of public safety, or in any other way evaluate another's actions when subjective factors are paramount in such evaluation. The ordinary witness cannot express an opinion as to another's moral traits, but he can say that another person is a careful or competent worker, if he has knowledge to that effect. In some states, in criminal cases, after a witness has testified to another's reputation, the question may legally be asked, "In view of that reputation, is he entitled to belief under oath?"

To testify on any matter as an expert, a witness must first be qualified as such, and the burden of proof is on the side introducing the testimony. In the case of fingerprint experts, doctors, handwriting, language, and other experts, this can be done by questions concerning education and professional experience. The witness is, of course, subject to cross-examination by the other party, who may attempt to show that the training and experience, regardless of how good, was insufficient to qualify the witness to testify regarding the particular point at issue—for example, when an ordinary physician is called to testify regarding the psychiatric condition of an accused.

Anyone familiar with the handwriting of another can identify it, but fingerprint identification is a matter for specialists alone. Common practice is to test the ability of a witness to estimate distances, weights, age, size, and similar matters. A familiar trick is to ask a witness who has testified that he saw some occurrence at a considerable distance to read a wall calendar or the courtroom clock. The ordinary nontechnical witness is considered an expert as regards the matter in dispute if he has general knowledge of the subject matter and of the particular thing under consideration. For

instance, an ordinary citizen may know what prices are charged in a particular community for a given article and may be able to identify a court exhibit of the same general type for which a given price ordinarily is asked. The ordinary citizen would not be expected to have a comparable knowledge regarding the medical causes of a bodily condition, nor to be skilled in ballistics, the identification of typewritten material by use of different makes of typewriters, and similar expert matters.

The *hypothetical question* is a device whereby the opinion of an expert can be introduced regarding a specific instance of which he does not have firsthand knowledge. Such questions frequently begin with an "if" and, in fact, contain a series of "ifs" in presenting various phases of a situation, or a chain of events about which the expert then is asked what in his opinion the logical outcome, behavior, or answer would be. (See page 572.)

Real evidence. Real or demonstrative evidence consists of articles brought into the courtroom and offered as exhibits. In criminal cases such articles may be those which, it is alleged, were stolen, or those used in the commission of a crime, such as weapons, articles found on the accused or in his home, clothing worn by the accused or the victim, equipment used in counterfeiting, incriminating letters or other documents, objects containing footprints or fingerprints. Sometimes casts or models of such articles are introduced rather than the originals. Motion-picture screens may be set up for the purpose of showing enlargements of fingerprints or of handwriting. There may be moulage casts of footprints; life and death masks; small models of rooms or buildings; and, of course, photographs of persons, places, and things.

In the Hauptmann case, the ladder by which the kidnaper entered the bedroom of the Lindbergh baby, the wood taken from the garage in back of his house, and the marked money paid out as ransom were introduced as real evidence. In the De Marigny case, the screen allegedly containing the accused's fingerprint was brought into court.

A *jury view* is taking a jury to the scene of a crime or to any place, in either a civil or criminal case, where it is desired that the jurors obtain a firsthand view. In some states, the consent of both sides is necessary for such a procedure.

Physical wounds, scars, and part of the body of a deceased may be introduced as real evidence. Facial resemblances between adult and child may be exhibited to indicate parentage, as was attempted in the Chaplin case. In the Rhinelander divorce case, the mulatto wife stripped to the waist to demonstrate that her husband should have been aware of her race.

Circumstantial evidence. Contrary to general belief, much, if not most evidence, in both civil and criminal cases, is circumstantial. That is, it is evidence from which inferences may be drawn, as contrasted with direct or eyewitness testimony. Its probative value and weight by comparison with direct and with real evidence depends entirely upon the individual case.

Circumstantial evidence may be introduced to prove the possibility of a certain person's having committed a certain act. For instance, if the act requires particular strength or skill or knowledge, evidence to show that the accused possessed such qualities is circumstantial with a high probative value. A person's possession of the instruments or the means by which an act was committed; his presence at the time and place; his fingerprints, footprints, and articles found at the scene of the crime and traced to him—all are circumstances with probative value. Detective stories are replete with anecdotes of clever tracings of clues, however minute, to certain suspects. Such clues may be as insignificant as a single thread from an article of clothing.

A person's customary habits may constitute important circumstantial evidence. It might be shown, for instance, that a person had the habit of being at a certain place at a certain time with regularity, that he often hummed a certain tune to himself, that he specialized in a certain type of gesture or mannerism known to have been possessed by the perpetrator of the crime in question. Professional burglars are said to have a "signature," or characteristic way of operating, by which police can often trace suspects. In rape and seduction cases, proof of promiscuity on the woman's part is prejudicial to her case. Evidence of good character is circumstantial evidence; thus the presumption is innocence when the charge is action that ordinarily would not be expected from one of such character or reputation. In a murder case, when the accused pleads self-defense, the habits of violence on the part of the deceased, threats received from him, his habit of carrying a weapon, and his actions just before being killed (such as reaching for a weapon)—all are circumstantial evidence leading to the conclusion that he intended to harm the accused. In negligence cases, if the accused can show that he acted in the same manner as anyone else would act in a similar situation, he may establish the likelihood that his conduct was not negligent.

Motives and intentions can often be established by circumstantial evidence, such as notations on calendars, memorandum pads, or diaries; purchase or possession of weapons or other articles; expressions or actions indicating desire or need, such as threats, known emotions or attitudes toward others, poverty or financial necessity,

sexual passion, mental capacity; conduct indicating consciousness of guilt, such as flight, destruction of evidence, attempted bribery, et cetera.

Best evidence. As the adjective implies, best evidence is that which supplies the greatest certainty of any evidence that might be introduced relative to a particular point at issue. Synonyms are *primary* or *original* evidence, and the rule is that such evidence must be produced and that secondary evidence is not admissible until it is proved that primary, original, or best evidence is unavailable.

The term is also virtually synonymous with *preferred* or *competent* evidence—that evidence which the very nature of the thing to be proved requires, such as producing the writing when its contents are the subject of inquiry. In practice, the rule is applied generally to written or other real evidence, although objection may be raised to testimony by a witness on the ground that the best evidence would be that which some other potential witness could supply.

Secondary evidence of a written nature—copies—may be admissible when primary evidence is unobtainable. Certified copies of public records are acceptable. Reliable secondary evidence is admissible when the primary evidence is lost or destroyed, or when its possessor deliberately fails to produce it. Anyone who destroys evidence is not allowed to testify as to its contents.

Parol evidence. This is oral or verbal evidence; synonyms are *aliunde* evidence, *extrinsic* evidence, and *extraneous* evidence. Ordinarily, parol evidence is much inferior to real or demonstrative evidence. In contract cases and other cases involving written instruments, however, it may be important to explain ambiguities or other inadequacies in the contract, deed, will, or other writing. It is the court's responsibility to ascertain the intention of parties to any written instrument in dispute. Ordinarily, only the final written form is accepted as binding, on the theory that in any business transaction many matters of preliminary discussion are discarded before final agreement is reached. Nothing that was promised or offered which was not made a part of the final record is binding. The judge and jury, however, often have to decide the extent to which a written instrument was intended by the parties to displace asserted oral agreements. The conduct of the parties in acting as though they were bound by such agreements, rather than, or in addition to, the written instrument, is important evidence. Maybe the parties did not intend to reduce all the terms to writing. Maybe the written instrument was modified by some subsequent oral agreement. Maybe the written agreement never took effect because of the nonoccurrence of some agreed conditions. Perhaps the

language used in the written instrument needs interpretation. These and other matters may require parol evidence for elucidation.

Naturally, a writing supersedes only those previous agreements and expressions which directly relate to the same subject matter, so an important test is the identity of the subject matter, and this test is a practical, not a legalistic one. The Statute of Frauds, as will be explained in a later chapter, requires that certain contracts be in writing to be effective legally, but a great deal of ordinary business is still transacted by unwritten agreements.

Extraordinary Remedies

As stated in Chapter 1, the entire system of law known as equity arose as part of the age-old struggle of man for justice. That battle was only one in the continuous war to obtain and retain civil liberties; not all of this war has been waged in the field of law, of course. Another phase of the conflict that has been fought with the courtroom as the battlefield has been by means of judicial writs, known as extraordinary remedies. These are legal procedures to which citizens resort when ordinary legal steps would cause prejudicial delay or inadequate relief. The various writs originated during the Tudor period as administrative orders from high officials to subordinates, commanding certain acts or information.

Habeas corpus. The oldest, most popular, and probably most important of these extraordinary remedies is that of habeas corpus (that you have the body)—the process whereby a person kept in confinement may compel his being produced in court by his jailers, to prove that his detention is lawful or for some other specified reason, such as to testify in some legal proceeding.

This protection against arbitrary arrest and imprisonment dates from 1215, when it was one of the most significant provisions of the Magna Charta, or Great Charter, signed by the English king John, at Runnymede. That charter was in reality a treaty forced upon the tyrannical monarch by a confederacy of barons, who sought to protect their rights and obligations as feudal tenants-in-chief. The significant sentence read: "No freeman shall be taken or imprisoned, or be disseized of his freehold, or liberties or free customs, or be otherwise damaged, nor will we pass upon him nor send upon him, but by lawful judgment of his peers or by the law of the land."

Magna Charta also ended the practice of selling justice; permanently established the Court of Common Pleas at Westminster, instead of compelling it to follow the person of the king; recognized popular tribunals as a check on official judges; provided that no

one should be indicted on rumor or suspicion, but only on the evidence of witnesses; established a system of fines in accordance with the magnitude of the offense; in general, established the supremacy of law over the will of the monarch; preserved the feudal idea of contract between lord and vassals, king and subject, thus leading the way to later parliamentary restrictions.

Even after Magna Charta, it was still possible to commit a person to jail by "mandate of the king" for "reasons of state," and he had no one to liberate him. The most important of several legislative attempts to strengthen the right was the Habeas Corpus act of 1679, whereby a sheriff or other official having custody was required to produce an accused person in court within three days unless the offense charged were treason or a felony plainly expressed in the warrant. In 1816 the privilege was extended to civil actions.

In the American colonies, the right of habeas corpus was taken for granted. There is only brief mention of it in the Constitution—Article I, Section 9—which reads: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." The wording of this section and its failure to define habeas corpus indicates that by that time it was a familiar proceeding.

The omission of any constitutional provision for the procedure whereby the right could be suspended, however, led to the Civil War dispute between Abraham Lincoln, as president, and Roger B. Taney, chief justice of the United States. Presuming that he had the power to do so, President Lincoln authorized the military to suspend the right of habeas corpus in the area between Washington and Philadelphia, where Confederate sentiment was strong. In one of several cases, John Merryman, a suspected secessionist, was jailed by the military without trial. Taney granted a petition for a writ of habeas corpus, but the military commander refused to obey it. In a lengthy opinion, the chief justice declared that only Congress had the right to suspend the right. Congress itself took the same point of view, but passed an act validating the president's action. When Clement L. Vallandigham, a Democratic congressman from Ohio, was arrested for urging disobedience to the draft, a federal circuit court denied his petition for a writ of habeas corpus.

Andrew Jackson had abolished the right in the New Orleans area during the War of 1812. The only state ever to do so was Massachusetts, from November, 1786, to July, 1787, during the Shays' rebellion. In the summer of 1943, during World War II, the military commander in Honolulu, acting upon orders from Army authorities in Washington, refused to honor a judicial writ for the

The State of Missouri, } SS.
CITY OF ST. LOUIS.

CIRCUIT COURT OF THE CITY OF ST. LOUIS,

Division No

..... Term, 19

. 19

To . . . . .

. Greeting:

We command you, *That you do, on*

without excuse or delay, bring, or cause to be brought, before the honorable CIRCUIT COURT OF THE CITY OF ST LOUIS, *Division No the body of*

by whatever name or addition he is known or called, who is unlawfully detained in your custody, as it is said, together with the day and cause of his capture and detention, then and there to perform and abide such order and direction of our said Court shall make in that behalf, and have with you this writ, with your return indorsed thereon; and herein fail not at your peril.

Witness, L. J. Kickham, Clerk of said Court, with the seal thereof hereto affixed, at the City of St Louis, this . day of A D nineteen hundred and

---- Clerk Circuit Court of the City of St Louis for Criminal Causes.

release of two Germans arrested shortly after the attack on Pearl Harbor. The issue was compromised by removal of the principals to the mainland and a reduction to $100 of the court's $5,000 contempt fine.

Two types of habeas corpus writs are in general use today. *Habeas corpus ad subjiciendum* (that he may be disposed of) is the common form to obtain arraignment of someone who is being held by police or other law-enforcement officers without being booked. It must be applied for by an attorney or by a next friend, for the imprisoned person himself may be unable to do so. *Habeas corpus ad testificandum* (that he may give evidence) is issued to bring someone already in custody, including imprisonment, into court to be a witness in some legal proceeding. He remains under guard during the time and is returned to prison at the end of his testimony.

There are also several other forms of the writ: to bring persons in the custody of one court into another; to transfer jurisdiction of an accused; in civil cases to remove a cause of action from one to another jurisdiction. All are peremptory writs, as indicated by the typical form on page 103.

A judge is required to grant all petitions which are returnable at a stated time when a hearing is held on the grievance and the petitioner wishes his day in court then. What follows are all the legal papers on file in one typical habeas corpus case:

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY

WENZLE AUSBERGER, by CARRIE HAWLEY, next friend, Petitioner *vs.* GEORGE W. MORROW, M.D. Acting Manager, Kankakee State Hospital, Kankakee, Illinois, Respondent	No. 42C 7100

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable JOHN PRYSTALSKI, one of the Judges of the Circuit Court of Cook County;

1. Your Petitioner, CARRIE HAWLEY, next friend of WENZLE AUSBERGER, of the City of Chicago, County of Cook, and State Illinois, respectfully shows unto your Honor that WENZLE AUSBERGER is retained and detained in the KANKAKEE STATE HOSPITAL by GEORGE W. MORROW, Acting Manager of the said institution.

2. Your Petitioner further shows that the cause or pretense of the said detention and restraint, according to her best knowledge and belief and a certified copy of the proceedings and order in the said proceedings, is that the said WENZLE AUSBERGER was suffering from a disease as stated in the said order as being in a paranoid state, and that the said disease is not with him hereditary; that he is not subject to epilepsy; that he does not manifest homicidal or suicidal tendencies.

3. Your Petitioner further shows that the said order was entered committing him to the Kankakee State Hospital for treatment of the said mental disease on, to-wit: the second day of September, A D. 1937, a certified copy of which is hereto attached and made a part of this petition, and a warrant of commitment was issued and served upon him, and he was confined to the said Institution and was, and has been, and is now confined and detained in the said Institution although fully recovered from the said mental disorder.

4. Your Petitioner further shows that although the said WENZLE AUSBERGER has recovered from his said ailment and mental disorder, the said GEORGE W. MORROW, Acting Manager of the said institution, refuses to release and discharge the said WENZLE AUSBERGER, from the said restraint and detention in accordance with the statute of the State of Illinois in such cases made and provided, and that the said detention is unjust and contrary to law.

5. Your Petitioner further shows that the said WENZLE AUSBERGER is not committed or detained by virtue of any process, judgment and decree, or execution issued by any Court or Judge of the United States in a cause where said court or judge has exclusive jurisdiction, nor by virtue of a final judgment or decree of any competent court of civil or criminal jurisdiction or any execution issued upon such judgment or decree, EXCEPT AS ABOVE STATED, nor for any treason, felony, or other crime committed in any of the states or territories of the United States for which he ought, by the Constitution and laws of the United States, be delivered up to the executive powers of said states and territories.

6. To relieve the said WENZLE AUSBERGER from said restraint and detention, your Petitioner now applies, praying that a Writ of Habeas Corpus, to be directed to the said GEORGE W. MORROW, M.D., Acting Manager of the said institution, may issue in this behalf, pursuant to the statute in such cases made and provided, so that WENZLE AUSBERGER may be forthwith brought before this Honorable Court to do, submit to, and receive what the law may require.

PETITIONER

Attorney for Petitioner

STATE OF ILLINOIS } SS
COUNTY OF COOK }

AFFIDAVIT

CARRIE HAWLEY, the Petitioner, above named, being first duly sworn on oath, says that she has read and heard read the foregoing petition, and has subscribed and knows the contents thereof, and that the same is true of her knowledge, except as to the matters and things therein stated, to be upon her information and belief and as to those matters she believes them to be true.

AFFIANT

Subscribed and sworn
to before me this ——
day of May, A D. 1942

NOTARY PUBLIC

ORDER

Let the Writ issued according to the prayer in the above petition be made returnable May 27, 1942, at 2 P.M.

ENTER: _____
JUDGE

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY

CARRIE HAWLEY, ex rel. WENZLE AUSBERGER,
Petitioner
vs.
GEORGE W. MORROW, M.D., Acting Manager, Kankakee State Hospital,
Respondent
} No. 42C 7100

PETITION

TO THE HONORABLE JOHN PRYSTALSKI, JUDGE OF SAID COURT:

Your Petitioner, ROBERT T. TERRY, respectfully represents unto Your Honor that he is the attorney of record for WENZLE AUSBERGER, in the above entitled cause.

That he filed a petition for Writ of Habeas Corpus in said cause, and that hearings have been had from time to time in the said proceedings, and the case has been, from time to time, continued and the patient remanded to the Kankakee State Hospital under the supervision of GEORGE W. MORROW.

That on the 15th day of October, 1942, a hearing was again had in the said cause and the case was continued and the patient remanded to the Kankakee State Hospital. That at the said hearing, on motion of the Attorney General, the court continued the case again to the 16th day of November, 1942, and granted the request of the Attorney General that the case be heard without the patient appearing in Court on that day.

Your Petitioner states that it would be unfair, inequitable, and in violation of WENZLE AUSBERGER's Constitutional rights to have a hearing to pass upon the sanity of the patient without having him present in Court.

Your Petitioner therefore prays that an order may be entered herein directing GEORGE W. MORROW, Acting Manager of the Kankakee State Hospital, Kankakee, Illinois, to produce the body of WENZLE AUSBERGER, to the court on the 16th day of November, 1942, at 2 00 P.M., that the court may observe him and his demeanor and that questions may be asked him if it becomes necessary.

PETITIONER

STATE OF ILLINOIS }
COUNTY OF COOK } SS

IN THE CIRCUIT COURT OF COOK COUNTY

WENZLE AUSBERGER, etc.
vs.
GEORGE W. MORROW, M.D. } 42C 7100

JUDGE PRYSTALSKI
DEC. 10, 1942
CIRCUIT COURT

This cause coming on to be heard upon the petition for a Writ of Habeas Corpus heretofore filed herein and the return of GEORGE W. MORROW, Managing Officer of Kankakee State Hospital, Respondent, and the said Respondent having produced in open court the body of the Relator, WENZLE AUSBERGER, and the court having heard all testimony offered on behalf of the Petitioner and of the Respondent and being fully advised in the premises:

Doth find, that the Relator, WENZLE AUSBERGER, has not recovered from his insanity (feeble-mindedness) and is now insane (feeble-minded).

IT IS THEREFORE ORDERED that the Relator, WENZLE AUSBERGER, be and he is hereby remanded to the custody of GEORGE W. MORROW, Managing Officer of the Kankakee State Hospital, and that the Writ of Habeas Corpus be quashed.

ENTER:

_____
JUDGE

Use of the right of habeas corpus is quite common to obtain release from state institutions. The following story tells of an interesting and typical case:

Arthur Haskell, Jr., now 36 years old, will be tried May 24 for a crime committed 20 years ago.

The prosecuting attorney who handled this case is dead.

The present prosecuting attorney was the defense counsel in 1923.

The prosecuting witness, a girl 6 years old when the complaint was filed, is now 26, married, and the mother of two children.

Haskell was indicted Aug. 24, 1923, on a charge of rape. He pleaded insanity and was committed to the Illinois Security hospital, Menard. The long years passed—boom years, depression years, war years—until Haskell was 36. Browsing in the hospital library recently, he found a law book and read about every man's right to ask the courts for freedom. He drew up a petition for a writ of habeas corpus and mailed it to Judge Charles A. O'Connor, of the Kendall county Circuit court.

Apparently Sane, 3 Doctors Say

Yesterday the court held a hearing on the petition. Three doctors testified that Haskell apparently is entirely sane. One of them was Dr. Maxwell Gage, a psychiatrist of the state department of welfare.

"What has been done at Menard to restore this man's sanity?" Judge O'Connor asked.

Dr. Gage replied that nothing had been done; that the law provides for no curative measures for the criminally insane, although such measures are provided for persons found insane in civil proceedings.

"This is an inexcusable gap between criminal and civil procedure," the judge

asserted. "Had this man pleaded guilty and been sentenced to prison, he would have been freed long before the passage of 20 years."

Free on Bond Until Trial

The court held that Haskell had recovered his reason, and ordered his release from the Security hospital. He was then remanded to the Kendall county sheriff on the old indictment. Until the trial, Haskell will be free on bond at his home in Yorkville.

Because David Newhirter, defense counsel for Haskell in 1923, now is prosecuting attorney, Judge O'Connor appointed a special prosecutor, Roger Clark of Yorkville, to handle the case.

Clark said he would confer with the complaining witness to determine whether she would be willing to testify again.

—Chicago (Ill.) *Tribune.*

Prohibition. "The writ of prohibition is a highly prerogative writ, to be issued only on rare occasions with caution and forbearance and in cases of great necessity, where no other adequate relief can be secured." (359 Ill. 102.)

Many lawyers and some judges have never heard of a writ of prohibition, yet the right to it is a safeguard against being subjected to any legal proceeding in a court which does not have statutory jurisdiction over the matter at issue. The writ is directed by a court of superior jurisdiction to one of inferior jurisdiction, commanding it to surrender jurisdiction to the higher court. The test of superior and inferior is not whether the former court can review the decisions of the latter, and the writ is in no sense a writ of review. It is issued only when a case is in its earliest stages.

Certiorari. Usually, it is difficult to accuse an inferior court or public officer or body of acting in excess of authority until after there has been some overt act, such as an order, decree, or judgment. Consequently, a more common method of asking a superior court to inquire into whether an inferior court has exceeded its jurisdiction is by petition for a writ of certiorari, as it is coming to be known in code states, a *writ of review.*

Certiorari means "to be informed of, to be made certain in regard to," and the writ originally issued out of an English court of chancery or King's Bench as a check upon county, hundred, and other local courts. In many states today, in addition to being directed to inferior courts, the writ is used to question the authority of such boards and commissions as possess what amounts to judicial authority in administering certain laws. Typical of such bodies are the state commerce commission; board of health; industrial commission, or whatever agency administers workmen's compensation laws; zoning commission; department of registration and education under the medical practices acts; and many others. A typical writ of certiorari follows:

STATE OF TENNESSEE

To----------

Court of General Sessions for the County of Davidson — GREETING:

Whereas, it has been represented to us on the part of----------

----------*that heretofore, to wit on the*----------*day of*

----------*19*----, ----------*recovered a judgment*

before you against the said----------

for the sum of---- ----------*Dollars,*

which judgment was erroneously and improperly given, as by the said---------- ----------

----------*we are informed, and we being willing*

that justice should be done in the premises, and the injury, if any has been done to the said

---------- ----------*speedily redressed, do command*

you that you certify, under your hand and seal, to our Circuit Court to be held for the County of Davidson,

at the Courthouse, in the City of Nashville, on the first Monday in----------*next,*

the original proceedings in said cause, as fully and entirely as they remain before you, so that such

proceedings may thereon be had, as to right and justice may appertain. Herein fail not.

WITNESS

HUGH FREEMAN, Clerk.

----------, *D. C.*

Theoretically, all that a superior court promises to do when it issues a writ of certiorari to a court or agency is to determine whether jurisdiction was exceeded or functions exercised erroneously. In other words, the inquiry supposedly is confined strictly to matters of legal procedure, without evaluation of the judgment exercised by the inferior body in evaluating the evidence in the particular case. Actually, although the predominant opinion of the legal profession is possibly to the contrary, it is virtually impossible to draw a sharp line of demarcation between what are matters of law and what are matters of fact, because the court or body has no opportunity to go beyond its legal authority until it reaches a decision regarding the facts. If it decides the facts one way, it may be within its jurisdictional discretion; if it decides them another way, it may exceed that jurisdiction. If the superior court decides that an action was removed from an inferior court for insufficient reason, it returns the action to the lower court by a *writ of procedendo.*

Formerly, it was usually mandatory upon the court or body to which a writ of certiorari was issued to send up to the superior court issuing it a certified copy of all proceedings in the case in question. Under civil practices acts, this expensive requirement is being lightened. Also, there is a decided trend toward consolidating the different methods by which activities of lower courts are reviewed by higher courts. This is accomplished through permitting simple appeal, regardless of whether objection to the lower court's action grows out of alleged errors in legal procedure, including the matter of jurisdiction or its interpretation of the facts. Further discussion of appellate procedure is found in Chapter 19.

Mandamus. Public officials are elected or appointed to perform certain functions as defined by the laws creating the offices. If for any reason they neglect or refuse to perform some act required of them, the legal remedy is for the person adversely affected by such neglect or refusal, or for anyone acting in the public interest, to petition a court of competent jurisdiction for a writ of mandamus, commanding the public official to fulfill the obligation of his office.

The writ does not issue automatically as one of right. The petitioner must show a "clear and undoubted right to relief," and also that it is the duty of the respondent to provide it. Usually the court issues a temporary or alternative writ, returnable in a certain number of days, at which time the respondent must appear in court to show cause why the writ should not be made permanent. The court, however, may issue a peremptory writ immediately, requiring absolute and prompt obedience. For a court to grant a peremptory writ, there must be overwhelming ex parte evidence

of dereliction of duty and a pressing need for immediate relief.

A writ of mandamus does not compel a specific action, the nature of which depends upon the discretion of a public official. For example, if a city council should instruct a mayor to appoint a certain commission and he should fail to do so, a writ of mandamus could force action, but it could not stipulate the membership of the commission to be named. If a board of review neglects or refuses to act on a complaint of an allegedly fraudulent assessment, the taxpayer, by mandamus action can force it to do so, but the court granting the writ cannot dictate what the board shall decide.

In other cases the issuance of a writ is tantamount to a judicial decision in favor of the petitioner, even though technically that is not so. Examples of this would be a writ to compel the expunging of void orders entered in habeas corpus proceedings when the court had no jurisdiction; to compel a town clerk to countersign a warrant for payment of an annual premium on the bond of the treasurer of the road-and-bridge fund of the town; to compel a civil-service commission to hold examinations required by law.

The most newsworthy mandamus actions are those in which interpretation of a law or political interests are involved. The widow of a man who for years had received a certain automobile license number sought a writ to compel the secretary of state to issue her the same license number. She proceeded under the state law which said anyone can get the same number if he applies not later than thirty days before the end of the year in which it was held. In this case, a certain politician wanted the low number, and claimed that the death of the car owner invalidated the right to it, even though the same automobile was involved. In another case, a schoolteacher who had been discharged for concealing her marriage for ten years began a mandamus action to test the validity of the state teacher tenure law, which provides that no teacher shall be discharged without trial after five years of service. The local school-board regulation was that there should be no married women teachers. To compel the state treasurer to return more than $100,000 that he had paid over a several years' period in sales taxes, a food retailer who sought a writ of mandamus contended that the tax had been paid for goods sold to hospitals, schools, and other public institutions which by law were required to pay the tax themselves. Mandamus action was begun to compel the chief justice to seat a judge appointed by the governor to fill a vacancy caused by death. The law empowered the governor to fill vacancies up to one year only; the former judge died more than a year before the expiration of his term, but the chief executive postponed filling the vacancy until less than a year remained. When a civil service commission

ordered the discharge of a city employee for illegal political activities in violation of the Hatch Act, but was reversed on appeal to a court, the employee, by mandamus action, sought to compel the city department where he was employed to pay him his year's lost salary.

What follows are the pleadings and court order in a comparatively minor mandamus action instituted as the technical means by which to circumvent an election law:

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY

JOHN TOUHY,
Plaintiff

vs.

HARRY ANDREWS, MABEL WRIGHT, and WILLIAM BAKER,
Defendants

At Law
No. 43C 778904

PETITION FOR WRIT OF MANDAMUS

Your petitioner, JOHN TOUHY, an actual resident of the County of Cook and State of Illinois, respectfully represents:

1. That he resides at 1600 West Elm Street, in the City of Chicago, County of Cook, and State of Illinois, which is in the 25th Ward of said City of Chicago;

2 That the defendants, HARRY ANDREWS, MABEL WRIGHT, and WILLIAM BAKER, constitute the members of the Board of Election Commissioners of the City of Chicago, having been duly appointed to said offices by the County Judge of Cook County, and they have been and are now acting as members of such Board of Election Commissioners and that pursuant to the provisions of the statute said Board of Election Commissioners has called an election to be held the 23rd day of February, A D. 1943, in the said 25th Ward of the City of Chicago, for the election of an alderman of said 25th Ward;

3 That a petition for nomination for the office of alderman of the 25th Ward of said City of Chicago was heretofore filed on behalf of your petitioner, JOHN TOUHY, nominating your petitioner as a candidate for said office of alderman of said 25th Ward of said City of Chicago, to be voted upon at said election on the 23rd day of February, A D 1943;

4. That after the filing of said petition on behalf of your petitioner for his nomination to such office of alderman, your petitioner presented to the said Board of Election Commissioners a request in writing, signed by your petitioner and duly acknowledged by him before an officer qualified to take acknowledgment of deeds, namely, a notary public in and for the County of Cook in the State of Illinois, as provided by statute, a copy of which request in writing is hereto attached, marked "Exhibit A" and hereby made a part hereof, requesting the withdrawal of his candidacy for said office of alderman of the 25th Ward of said City of Chicago, but that the said HARRY A. ANDREWS, MABEL WRIGHT, and WILLIAM BAKER, sitting as the Board of Election Commissioners of the City of Chicago, refused to accept the same and refused to act upon the said request and refused to permit the name of your petitioner as such candidate to be so withdrawn;

5. That the official ballots to be used for the voting upon said office of alderman of said 25th Ward on February 23rd have not yet been caused to be printed by the said Board of Election Commissioners of the City of Chicago, but that they are making preparations for so printing the same and that they will cause the name of your petitioner to appear upon said official ballots, together with the names of other candidates for said office of alderman of the said 25th Ward of said City of Chicago to be voted upon at said election on February 23, 1943, unless directed not to do so by the order of this Court;

6. That your petitioner does not desire to have his name submitted to the electors of the 25th Ward of the City of Chicago as a candidate for alderman of said 25th Ward at the election to be held for said office on the 23rd day of February, A.D. 1943, and accordingly requested that his name should be withheld from the official ballots to be submitted to said electors on said February 23, 1943, and that there is another candidate or candidates whose names will be presented on said official ballots to the electors of said 25th Ward of the City of Chicago to be voted upon for said office of alderman of said 25th Ward on said 23rd day of February, A.D. 1943.

WHEREFORE, your petitioner prays a writ of mandamus, directed to the said HARRY A. ANDREWS, MABEL WRIGHT, and WILLIAM BAKER, constituting the Board of Election Commissioners of the City of Chicago, commanding them and each of them to refrain and desist from placing or causing to be placed upon the official ballots to be presented to the electors of the 25th Ward of the City of Chicago on the 23rd day of February, A.D. 1943, for the office of alderman of the 25th Ward of the said City of Chicago, the name of your petitioner, JOHN TOUHY, that summons may be issued against said defendants as provided by law and for such further orders in the premises as justice may require.

PLAINTIFF

STATE OF ILLINOIS }
COUNTY OF COOK } SS

I, John Touhy, being first duly sworn upon oath, depose and say: that I reside at 1600 West Elm Street, in the City of Chicago, County of Cook and State of Illinois; that I am the same person whose name is subscribed hereto and in whose behalf a Petition for Nomination for the office of alderman of the 25th Ward of the City of Chicago, was heretofore filed in the office of the Board of Election Commissioners of the City of Chicago, Illinois, to be voted upon at the General Aldermanic Election to be held on the 23rd day of February, A.D. 1943; that I hereby withdraw as a candidate for election to said office pursuant to said petition and respectfully request that my name be not printed upon the aldermanic ballot as a candidate for election to said office.

NAME John Touhy
Address 1600 West Elm Street

STATE OF ILLINOIS }
COUNTY OF COOK } SS

I, George Thomas, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that John Touhy, residing at 1600 West Elm Street, Chicago, Illinois, personally known to me to be the same person whose name is subscribed to the foregoing withdrawal, appeared before me this day

in person and acknowledged that he signed the said instrument as his free and voluntary act of his own free will and accord.

GIVEN under my hand and seal this 16th day of January, A.D. 1943.

George Thomas
NOTARY PUBLIC

"Exhibit A"

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY

JOHN TOUHY,
Plaintiff
vs.
HARRY A. ANDREWS, MABEL WRIGHT, and WILLIAM BAKER,
Defendants

At Law
No. 43C 668900

ANSWER OF DEFENDANTS

Now come HARRY A. ANDREWS, MABEL WRIGHT, and WILLIAM BAKER, defendants, by Benjamin Rush, their attorney, and answering the Petition for Writ of Mandamus heretofore filed herein, say:

1. They admit the allegations contained in paragraphs 1, 2, 3, and 5.

2. They admit that after the filing of the Petition for Nomination for the office of alderman of the 25th Ward of the City of Chicago on behalf of the said petitioner, that there was presented to them a Withdrawal of Petition for Nomination; however, they allege that the said Withdrawal of Petition for Nomination, on behalf of said petitioner, was not presented to them until after February 2, 1943, which according to statute was the last day for the filing of Withdrawals of Petitions for Nominations for the office or offices of alderman in any ward of the City of Chicago. They state that they did refuse accordingly to accept the said withdrawal of Petition for Nomination.

3. They neither admit nor deny the allegations contained in paragraph 6 of the said Petition and state that they will abide by the Order of this Court regarding the matters set forth in the said paragraph 6 and prayed for in the said Petition for Writ of Mandamus.

HARRY A. ANDREWS
MABEL WRIGHT
WILLIAM BAKER
Defendants—Constituting the
BOARD OF ELECTION COMMISSIONERS
of the City of Chicago
By _____
THEIR ATTORNEY

SUMMONS IN MANDAMUS—Circuit Court of Cook County

In the Name of the People of the State of Illinois
In the Circuit Court of Cook County, Illinois

The People of the State of Illinois on the relation of

JOHN TOUHY

Plaintiff

vs.

HARRY A. ANDREWS, MABEL WRIGHT and WILLIAM BAKER

Defendant....

General No. 43 C 668900

To the above named defendant.....

You are hereby commanded to appear and answer the plaintiff.... in A **certain petition for mandamus in the above entitled cause.**

Take notice that you must file your answer or otherwise make your appearance in said court held in the Court House in the City of Chicago, Illinois, on the 8th day of February, 19 43 provided this writ shall be served upon you not less than five days prior to said date.

If this writ shall be served upon you less than five days before said date you will file your answer or otherwise make your appearance in said court by or before the fifth day after its return day.

If you do not appear according to the command of this writ, judgment may be entered against you by default and a peremptory writ of mandamus allowed.

This summons must be returned, in person or by mail, by the officer or other person to whom it was given for service, with indorsement of service and fees, not later than five days after the service thereof and in no event later than the first date above named.

Witness, JOHN E. CONROY, the clerk of said Court,

and the seal thereof, at Chicago, Illinois, this ....

day of ....., 19.. ..

Clerk.

Plaintiff's Attorney (or Plaintiff, if he be not represented by Attorney)

.....
Address

.....Phone.....

STATE OF ILLINOIS, }
COUNTY OF COOK } ss.

CIRCUIT COURT OF COOK COUNTY.

JOHN TOUHY

vs.

HARRY ANDREWS, MABEL WRIGHT and WILLIAM BAKER Defendants

General No. 43 C 668900

This matter coming to be heard on sworn petition of JOHN TOUHY for Writ of Mandamus directed to the Board of Election Commissioners of the City of Chicago and the Court having jurisdiction of the parties and subject matter and being advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clerk of this Court issue forthwith a Writ of Mandamus directed to HARRY A. ANDREWS, MABEL WRIGHT, and WILLIAM BAKER, constituting the Board of Election Commissioners of the City of Chicago, commanding them and each of them to refrain and desist from placing or causing to be placed upon the official ballots to be presented to the electors of the 25th Ward of the City of Chicago on the 23rd day of February, A. D. 1943, for office of Alderman of the 25th Ward of said City of Chicago, the name of JOHN TOUHY.

ENTERED: .....

Chicago, February, 1943

Some typical news stories of mandamus actions follow:

Peter Fitz, special agent for the state liquor control commission, filed a mandamus suit in Circuit court yesterday to compel payment of $1,150 in salary he lost during the period he was laid off on charges of political activity. The civil service commission removed Fitz, the bill recites, on Jan. 15, on the grounds that he had solicited votes for Republican candidates. Fitz took the case to court, and the action was nullified by Judge Thomas White. Fitz returned to work June 1, but wants to collect for the time lost.

Officials of Center County School board No. 16 will be called into court to explain why they have barred four pupils from school, it was disclosed yesterday.

The action will result from a mandamus suit filed by J. K. Torrence, general director of the state children's home, before Circuit Judge Raymond Sherwood.

The barred children, according to Torrence, are Patricia, Betty and Joseph Hunter, and Thomas Wilson, wards of the home who are boarded with foster parents in the school district.

Torrence pointed out that the foster parents are taxpayers and that the state supreme court and attorney general have made definite rulings that every child has a constitutional right to an education.

Seven police captains, suspended on charges of failure to suppress gambling in their districts, were ordered restored to their original jobs yesterday in writs of mandamus granted by Circuit Judge Raymond Sherwood.

The writs were served a few hours later on Commissioner Rankin at his office in the City hall, but Rankin declined to say when his order for reinstatement would be issued or whether the captains would go back to their old districts. He did say: "The order of the court will be obeyed."

Commissioner Rankin said the captains would go back on the payroll, as the order directs, with back pay retroactive to Oct. 18, at $350 a month. But as to actual assignment, Rankin said he had asked an opinion from the corporation counsel's office.

Indications were that the new assignments would be made over the week end.

Quo warranto. The citizen is protected against the illegal usurpation and exercise of public office by his right to petition for a writ of quo warranto or, as it is commonly called today, an "information in the nature of a quo warranto." In its broadest sense, a quo warranto proceeding is to determine the right to the use or exercise of a franchise or office, and to oust a holder from its enjoyment if his claim is not well founded or if he has forfeited his right to enjoy the privilege.

The writ originated in the early days of the English common law as a way by which the king removed usurpers from office before the authority of the crown was established firmly. Today, quo warranto is considered a civil rather than a criminal action, although many states require that the attorney general or county prosecuting attorney institute the action, either on his own initiative or on request of a citizen. Should the prosecuting officer neglect or refuse to do so, the usual statutory provision is that any citizen can do so himself as "relator," in the name of the state. In such a case, he must prove that he has an interest in the matter and he must obtain the court's permission to do so.

Illinois statutes provide that quo warranto proceedings can be brought in case: (1) any person shall usurp, intrude into, or unlawfully hold or execute any office, or franchise, or any office in any corporation created by authority of the state; (2) any person shall hold, or claim to hold, or exercise any privilege, exemption, or license which has been improperly or without warrant of law issued or granted by any officer, board, commissioner, court, or other person or persons authorized or empowered by law to grant or issue such privilege, exemption, or license; (3) any public officer shall have done, or suffered, any act which by the provisions of law works a forfeiture of his office; (4) any association or number of persons shall act within this state as a corporation without being legally incorporated; (5) any corporation does, or omits to do, any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises powers not conferred by law; (6) if any railroad company doing business in this state shall charge an exorbitant rate for the transportation of any freight or pas-

senger, or shall make any unjust discrimination in the rate of freight or passenger tariff over or upon its railroad.

Other remedies. Injunctions and receiverships are also included by some authorities in their lists of extraordinary remedies. They differ from the ones discussed here, however, in that they may be directed to individual citizens as well as to judicial and other governmental bodies and to officeholders. They also are so frequently used to obtain innumerable kinds of equitable relief that there is nothing extraordinary about them. Consequently, their discussion is postponed until later chapters.

CHAPTER 4

Origins and Survivals: Trends

WE ARE the medievals, ancients, or primitives of tomorrow. Unless a cataclysm eliminates the human species, that is how those of us alive today, and our institutions, will be studied by the historians of A.D. 3000, 4000, and 5000. What those scholars of the future will think of us may be imagined by recalling the shocks and chuckles engendered by the résumé in Chapters 1 to 3 of some of the ideas and methods of 4000, 3000, 2000, 1000, 500, and even 100 years ago.

In any generation there are farsighted critics who are aware of shortcomings in existent institutions, and there are constant changes to adjust the social machinery to cope with social problems. Nothing is ever static, and a new influence, which at first may seem important in only one limited sphere of human activity, may within a very few years have a radical effect upon social life as a whole. Witness, for example, the tremendous changes in the fields of business, commerce, government, and social relations that were brought about by the railroad, telephone, telegraph, automobile, radio, motion picture, and airplane. Even more important are the ramifications of revolutionary contributions to philosophical, religious, or scientific thought, such as those made by Jesus, Galileo, Newton, Darwin, Freud, and Einstein.

In view of the enormous acceleration of material and immaterial innovations in the past two centuries, it is breathtaking to conjecture what the world will be like in A.D. 3000, 4000, or 5000. It seems incredible, but the mechanical devices of those future years may make those which astound us today seem picayunish. We are dealing in this book, however, not with machines and gadgets, but with law and government—intangibles by means of which men regulate their relationships with each other, including those intangibles growing out of the use of tangible objects and ideas. Readers of this book are presumably practicing newspapermen or students getting ready to step into their shoes. Consequently, our concern is with things as they are or as they will be in the immediate future. An historical or anthropological perspective, however, is indispensable for a proper understanding of contemporary institu-

tions, and to obtain it requires both a study of the past and imagination regarding the future.

No matter how high-browed or short-legged posterity may be, men and women will still have to live and get along together. A law or government is good to the extent that it meets the needs of its times; it cannot be judged by the requirements of another period. The problem of "keeping up with the times" is one of maintaining a balance between the material and immaterial culture—of avoiding the "cultural lag" which the sociologists lament. Too often throughout history, violence has been necessary to sweep the board clean of outworn methods. Even more distressing is the fact that the means by which a reform movement achieves its ends often become obsolete, and in time even become impediments to the continued enjoyment of the benefits for which they originally were conceived.

An example taken from the discussion in the preceding chapters is trial by jury. For centuries trial by jury seemed the best, if not the only, way by which to prevent tyrannical control of the courts. Modifications were made so that the body of peers would be able to administer justice. For a long time the idea worked, but today there is an unmistakable trend toward the belief that there is a better chance of obtaining justice from a judge—not because of his legal experience, but because of his more intimate knowledge of the economic, social, and political affairs involved in the cases, which are matters of legal dispute. It probably would be suicidal, however, for any lawmaker today seriously to propose elimination of the right to trial by jury.

Even more catastrophic for anyone's political ambitions would be to suggest that judges and courts themselves be done away with. Judge John C. Knox probably expressed the attitude of a majority of his countrymen in *Order in the Court:*

> The very essence of the American system is liberty—liberty that is guarded by the law, which is the sovereign. It is in this that our system is unique. For the first time in history a people have vested their sovereignty in the law, with the idea of creating thereby a ruler that is above the human weaknesses of partiality or passion. In this way we have applied that principle which contends that all men are free and, so far as the law is concerned, equal.

Laws and government, however, developed as the means to orderly, peaceful human relations. There is little resemblance between the modern judge or lawyer and the chief, priest, or go-between of twenty, thirty, or forty centuries ago. Is it inconceivable that the time may come when men will decide that the monumental structure of law, which has been built up over such a long period, has outgrown its usefulness or that there are better ways of attain-

ing the ends that it was intended to achieve? Such a suggestion sounds ridiculous today, and the spots on the horizon may not seem big or significant. Nevertheless, there are trends which—unless they are just "flashes in the pan"—are going to make important differences in the roles played by the courts of the not-too-distant future.

The Drift from Courts

Reputable lawyers already advise their clients to avoid bringing court action except as a last resort to obtain their rights. Corporations employ large staffs of highly paid legal talent primarily for that purpose. The first effort of any defendant, if he is properly advised when action is brought against him, is to try to terminate the action by an out-of-court settlement. Only low-principled lawyers, retained on a contingent basis, whose fees or shares in any court awards are higher in the event a case comes to trial, encourage clients to use the courts indiscriminately.

In the light of the tribute to the American court system by Judge Knox, this avoidance of the courts may seem perplexing, and even possibly disturbing. Necessary as courts have been found to be for centuries, everyone wants to stay out of them if he possibly can. It is expensive, mentally disturbing, and poor publicity to enter court—not to mention the material changes that a legal proceeding may bring about in one's public and private life.

Pretrial conferences. The court's own recognition of the ordinary person's desire to avoid expensive and embarrassing litigation is the pretrial conference, which, however, is still in its experimental stage. That is, it is in its infancy as a device authorized or enjoined by statute or court rule, with the parties obliged or enjoined to attend or risk an adverse judgment by default. It is nothing new, of course, for a judge to talk informally in chambers—the polite name for a judge's office—to attorneys or principals either before or after an action has been reached on the court calendar.

With or without sanctions, the purpose of the pretrial conference is to get the adverse parties to agree on an equitable solution of their difficulties, or, at least, to narrow the issues so that the hearing in open court will be briefer and simpler, revolving around clearly understood matters of controversy. Such a procedure is a much more direct and quick way of settling a controversy than protracted written pleadings. When people sit down to talk something over, they usually get much further than if they have to correspond with each other in very formalized language, saying a lot of things they don't mean in order to protect their "legal rights."

The role of the judge in a pretrial conference is that of both a legal umpire and a conciliator. He can light a cigar, remove his coat, put his feet on the desk, and talk to the parties as a friend in ordinary English, not in the mumbo jumbo that courtroom etiquette requires. He works first for a reconciliation and then, if that is impossible, for agreement on what damages or financial settlements should be allowed. The experience of the Circuit court in Chicago, after only a few years, is that about eighty per cent of all cases can be settled in pretrial conferences. Once agreement is reached, the proper orders, judgments, or decrees are drawn up and the case is placed on the default calendar, which means that when it is called in court there will be no opposition. The formal court action, in other words, is merely to "rubber stamp" what has been decided upon at the pretrial conference.

The pretrial conference speeds up the administration of justice. In Washington, D.C., in the first year it was tried, 2,251 cases were disposed of; whereas, in the preceding year, only 1,074 had been decided. The law-trial calendar was accelerated from twenty-three to fifteen months, and the chancery calendar jumped ahead fourteen months. Removing the congestion in the courts saves time and money for both principals and the court; social and economic life is benefited in many ways by not becoming bogged down by long-winded court proceedings.

The following news story explains how one pretrial experiment fared after a short tryout:

By Max Sonderby

Use of the pretrial-conference method of settling contested divorce cases as a step toward clearing calendars for the expected postwar rush was begun last week by Judge Robert Jerome Dunne, of the Circuit court.

Not reconciliation, but a settlement of financial difficulties that will permit the case to be heard as a default (when one party withdraws to permit granting of an uncontested divorce) is the primary purpose of these conferences, Judge Dunne explained. Nearly all cases are past the reconciliation stage when they enter court, he said.

The procedure is for Judge Dunne to call both parties and their lawyers into his chambers for a discussion as soon as a case is put on the contested calendar.

After determining that reconciliation is impossible, Judge Dunne inquires into the financial situation of the couple, and generally suggests a lump-sum payment, in lieu of alimony for the wife—the amount depending on the circumstances.

"If you want the divorce to be the end of your troubles together, instead of the beginning, you had better settle on a certain sum, maybe payable in installments, instead of permanent payments," Judge Dunne tells the couple. "Let's have it over with, and let's avoid a disagreeable court fight, where no one will be satisfied."

Sometimes the couple, after discussing a figure, will want a few days to think it over, but in most cases the result is hearing of the case as a default. Of eight

pretrial conferences last week, only one remained a contest, five were heard as defaults, and two were continued for discussion.

Judge Dunne's hearing of the contested cases himself, instead of sending them to another chancellor, is already an innovation for a divorce judge. The practice has been to permit these cases to "fester," in the expectation that most would in time result in settlements or reconciliations. He has now 95 contested cases set through November, as well as 162 default cases.

—Chicago (Ill.) *Sun.*

Arbitration. In 1926 a group of New York business and professional men, including Charles Evans Hughes, later chief justice of the United States, organized the American Arbitration Association. In 1946 the association had a permanent panel of approximately 7,000 persons in 1,600 cities, available to contribute their services as members of tribunals whenever the parties to a dispute agree to submit the matter to arbitration and solicit the association's assistance.

In its early days the association functioned only in the field of business relations. So popular did its services become that an increasing number of contracts drawn in the United States contain clauses by which the parties agree, in case of dispute regarding the terms, to refer the differences of opinion to the association rather than resort to the courts. In addition to its continuing service in the field of business, the association now operates in three other fields—labor disputes, disputes between motion-picture producers and distributors, and accident cases involving claims for personal injuries or property damages.

From the panel of experts maintained by the association, the parties to a dispute themselves select those who will sit in judgment in their case. These experts are of a competence seldom found on court jury panels; they contribute their services for hearings that are held generally at their convenience; and they listen only to cases involving matters regarding which they are authorities. These specialists serve as both judges and juries, and a majority always rules. Long delays in legal preliminaries (waiting for formal answers to complaints, countercharges, cross suits, summonses, et cetera) are eliminated, and hearings resemble round-table discussions more than they do formal court proceedings. The financial saving to taxpayers is, of course, considerable.

A quotation from the pamphlet *Questions and Answers*, issued by the American Arbitration Association, explains the ideological motivation of this nonprofit organization:

The moving spirit in the association is a passion for justice. Every man who serves in its ranks, short as he may sometimes fall of achieving this ideal, is imbued with the spirit to do justice and see fair play. Every proceeding is set up to give equal opportunity to all disputes and a full hearing to their claims.

Every rule that is written breathes the spirit of justice and is designed to assure it. Every concept and plan and operation comes back to the core that justice shall at all times prevail. . . . The origin of the association lies deep in a fundamental belief in men's ultimate desire to settle their differences amicably and to work and live together equitably and co-operatively. . . . The fifth freedom, so to speak, is the right of men to settle voluntarily and amicably their differences under the protection of American law, but without its coercion. . . .

In its creation of a national panel of volunteers to serve without compensation or reward, the association embodies the belief that every American has the making of a judge. This judicial quality lies in his native common sense, his ability to distinguish right from wrong, a wide experience in turbulent economic affairs, and in his ability to weigh evidence and appraise facts.

In other words, the association's tribunals settle matters on their merits, using the best sense possible, just as a parent or teacher does, without being stultified by the necessity of adhering to a multitude of formal judicial rules. The plan resembles some of the proposals of nineteenth-century American anarchists, but, escaping the onus of an opprobrious label, it has worked to the increasing satisfaction of thousands, if not millions, of persons. Although the association has no legal authority, courts have upheld the validity of clauses in contracts stipulating that disputes shall be arbitrated.

Despite the proved success of voluntary private arbitration, considerable opposition exists to proposals for compulsory governmental arbitration in labor disputes. The United States Chamber of Commerce is on record against it; the National Association of Manufacturers calls it "contrary to American principles"; and labor is almost solidly opposed. The example of Australia, which has had compulsory arbitration since 1904, is often cited; statistics show that Australia has had more strikes per capita than either Great Britain or the United States.

As a result of this opposition, only one important attempt at arbitration—rather, in this case, adjudication—has so far been made in this country. That was the Kansas Court of Industrial Relations, which was made impotent by a United States Supreme Court decision, denying the right of the state to establish minimum wages to prevail during the time necessary for hearings. Basic to any compulsory plan under government supervision is acceptance by management of the principle of collective bargaining, which many industrialists still find it difficult to accept, despite the National Labor Relations Act.

Lacking the power to enforce arbitration, the United States Department of Labor nevertheless maintains a Conciliation Service, which, since 1913, has succeeded in adjusting approximately ninety per cent of the cases it has handled. A federal conciliator has only his power of persuasion upon which to rely. Experience shows that

the most successful conciliators are those who listen the most and say the least. Usually they interview the parties to the dispute separately and permit them to "let off steam" to a sympathetic listener. When the conciliator obtains a clear idea of the issues separating the disputants, he is able to "go to work" on the principals to persuade them toward reasonableness and compromise. State conciliators operate similarly.

What the combined experience of all arbitrators and conciliators indicates is that vexatious differences between citizens can be adjusted without resort to the courts. This fact must be kept uppermost in our minds when we attempt to predict what the future holds in store as human affairs become more and more complicated and ordinary judges and jurors less and less expert in matters calling for their decisions.

Administrative agencies. Inspired by the French political philosopher Montesquieu, whose ideas in turn were derived largely from Aristotle, the American founding fathers established a federal government of "checks and balances." That is, they distributed authority among three branches—legislative, executive, and judicial—in the belief that thereby any tendency toward tyrannical usurpation of power would be offset.

As any student of American political history well knows, basically this tripartite system has worked as intended; the three governmental branches have operated as brakes upon each other. In fact, they often have come close to hamstringing each other. The record is replete with conflicts between the chief executive and either the Supreme Court or Congress, or both, with the so-called "strongest" Presidents having had the most trouble. Likewise, the courts repeatedly have repudiated the will of Congress by declaring its acts unconstitutional.

The "way out" of what otherwise might be stalemate has been the development of a fourth branch of government—the administrative agency, endowed with legislative, executive, and judicial power in a limited field. All such an agency's authority is created by statute, and it can be modified or rescinded by act of Congress or a state legislature, depending upon whether it is national or statewide. Nevertheless, many Congressmen are among the leading alarmists who see in the considerable increase in the number of administrative agencies in the past two decades harbingers of danger for the American system of government.

Defenders of the trend toward administrative agencies argue their inevitability. They contend that the growth of large-scale enterprise creates problems that can be attacked only on a national scale. Agitation by every economic class in our society for inter-

vention in its behalf by the federal government began early in our history. Until the administrative agency concept was born, it is contended, "states' rights"—which also figure in the total "checks and balances" scheme—were an insurmountable obstacle in the way of the solution of an increasing number of an industrial society's problems.

The first federal law of broad economic significance was that creating the first important administrative agency—the Interstate Commerce Commission, in 1887. Congress passed it a year after the Supreme Court, in a case involving the Wabash Railroad, declared that no state has the right to regulate interstate commerce or to interfere with traffic moving across state borders. For fast action in solving the complexities of railroad rate-making, expert centralized authority was needed. Congress and state legislatures had no aptitude for such regulation, nor were the ordinary legislative procedures swift enough to meet the admitted need. Nor were the courts inclined to assume the responsibility. It is significant that the American Bar Association, chief worrier over the growth of administrative agencies, exempts the Interstate Commerce Commission, the Federal Trade Commission, and the Federal Reserve Board from its numerous proposals to curb their powers. Those three, of course, are the oldest and, in their early days, were condemned as vigorously as many of the newer ones are today.

The F.T.C. was established in 1914 chiefly as a reaction against the manner in which the courts had construed the Sherman Anti-Trust Act of 1890. That act was the first intended to curb the growth of undue concentration of economic power, and it retained the traditional method of enforcement by recourse to the courts. By adhering to the "rule of reason," the courts virtually nullified the act of Congress and were accused, as are some administrative agencies today, of usurping legislative powers.

It is natural that the legal profession should provide the spearhead of opposition to the trend toward administrative agencies. Their development in all fields in which the federal government becomes a regulator could mean an end to the practice of law as it has hitherto existed. Already parties ordered to appear before some agencies are not permitted to be represented by counsel. The principal objection of the bar is that the right of appeal to the courts from decisions of the agencies is limited or nonexistent. Under the sponsorship of the American Bar Association, Congress in 1940 passed the Logan-Walter Bill, which would have allowed virtually complete judicial review of all the activities of the 133 then existent agencies, except the I.C.C., F.T.C., and Federal Reserve Board. Before it passed the House of Representatives, a

facetious amendment was unsuccessfully offered to label it, "The lawyers' emergency relief bill to end unemployment in the legal profession and for no other purpose." President Roosevelt vetoed the bill. Since then there have been several supreme and appellate court decisions denying the right to judicial review of the findings and orders of administrative agencies, and Sewell Avery has been carried out of his Chicago Montgomery Ward & Co. office for refusing to admit that Congress has the right to delegate such authority to at least one wartime agency.

Fortune for May, 1943, contained an article, "Government by Commission," with the following summary of the situation:

> Judicial review applying to administrative decisions is in each individual case what the judges say it is. . . . Speaking broadly, review is generally limited to determine whether the agency acted rationally and within the scope of its statutory authority. The agency may be reversed if the court concludes that it has acted in an arbitrary or capricious manner, but in general the courts have held that the wisdom, reasonableness, or expediency of the action is a matter for administrative judgment. Otherwise, the court's judgment would simply be substituted for the agency's, almost every contested case would be appealed, and the agencies would become mere channels for transmission of evidence to the courts. . . .
>
> When an administrative decision is taken to court, the questions of law involved are subject to full review, but the agency's findings of fact may be reversed only if the court finds them unsupported by "substantial evidence." But to a lawyer a fact is something quite different from what it is to a layman. . . . It is usually opinion about a set of facts. Then, too, a judge may decide that a fact involved in the case is a "constitutional fact," whereupon it becomes subject to review.

In 1941 the Attorney General's Committee on Administrative Procedure, appointed by President Roosevelt, made a report. It pointed out innumerable weaknesses in the administrative agency system as it has haphazardly developed. The picture of interrelated and interlocking agencies duplicating and conflicting with each other's efforts was reminiscent of that which has been told of early English law courts, which mushroomed to meet new needs.

It is possible, of course, that the entire trend toward administrative agencies will be reversed, but that is unlikely. Even the American Bar Association does not advocate that, although, in August, 1943, its Special Committee on Administrative Law declared: "The federal administrative establishment has become so large that it overshadows in practice all other government and often prevents and precludes state legislation either directly or by example." The association's present efforts are toward clarification of procedures and for judicial review much less drastic than that proposed in the Walter-Logan Bill. A New York law provides for judicial review, after all administrative remedies have been ex-

hausted, of both the law and facts and also of the discretion and procedure of the agency, in the following types of cases: (1) where there was no substantial evidence to support a finding of facts; (2) where action of the agency was arbitrary and capricious; (3) where a question of determination of law by the agency arose; (4) where the agency allegedly exceeded its authority; (5) where the agency is charged with failing to follow the procedure prescribed by law or to conform to the principle of due process. The federal courts will review a ruling of the postmaster-general revoking or denying second-class mailing privilege, of the Board of Immigration Appeals in deportation or exclusion cases, and similar matters, only if they were arbitrary or capricious. What would happen to the courts should all decisions of administrative agencies be reviewable can be imagined when it is realized that the Board of Veterans' Appeals alone handles 42,000 cases annually.

To criticize the human operation of an administration or, more basically, the wisdom of the law in creating the particular agency is one thing; to attack the entire theory of governing human affairs in part by means of administrative agencies is another. As the problems of industrial society become more complex, there probably will be greater, not less, need for expertness on the part of those who represent the general public in settling disputes in a multitude of fields. That means more rather than fewer administrative agencies. Legislative bodies will probably limit themselves to laying down broad matters of policy and objectives, delegating the responsibility of deciding details to the efficiency experts charged with implementing their will. The lawmakers will exercise general supervisory and investigating authority, to see that their intentions are being carried out. In that task they will be assisted by the courts, which, however, will not decide matters of fact in particular cases.

Psychiatric service. More than a quarter century ago, Governor Alfred E. Smith proposed to the New York state legislature that the criminal code be modified drastically, to limit the power of judges and juries in criminal cases to fact-finding and to establish an impartial board of psychiatric experts to determine what should be done with anyone convicted of having broken a law.

Although social pathologists have been advocating such a step for even longer, Al Smith was way ahead of his time as far as lawmakers, lawyers, and the judiciary are concerned. Nevertheless, it slowly is being recognized that criminal court judges are as incapable of coping scientifically with the human wreckage that crowds their courtrooms as are civil court judges of deciding the multitude of problems that modern complex industrial society creates.

In the area of criminal justice, there is as yet no exact counterpart of the administrative agency. The slow but steady trend toward giving psychiatrists and social workers more and more to say continues in the face of the jealous opposition of judges and lawyers who are loath to surrender any of their traditional prerogatives. A typical bone of contention is the authority that probation and parole boards should have—the conservative legal viewpoint being that such bodies should have advisory powers only. The social scientists, on the other hand, contend that the problem is a medical rather than a legal one.

Polled a few years ago by the National Crime Commission, only 110, or 9.4 per cent, of 1168 criminal courts throughout the United States admitted taking advantage of any psychiatric assistance. Slow as the progress indicated by these figures may seem to be to those acquainted with the field, tremendous changes have taken place in recent years. After all, before the first American insane asylum was opened in 1850, the mentally ill were incarcerated in jails and prisons as criminals. Today more than fifty per cent of all hospital beds in the United States are occupied by mental patients, but the National Committee for Mental Hygiene has been in existence only since 1909, when it was established by Clifford Beers, a former inmate of several mental hospitals who the year before had shocked readers with his book, *The Mind That Found Itself.*

Development of systems of probation and parole, the indeterminate sentence, habitual criminal laws, and psychiatric institutes in connection with criminal courts are by-products of the widespread over-all movement to make practical application of contemporary psychological and sociological knowledge. During the present century, man's ideas about his own nature have been modified considerably by the popularization of the experiments of the Russian scientist, Pavlov, in the field of the conditioned reflex; the behaviorist theories of John B. Watson; the psychoanalytical teachings of Dr. Sigmund Freud; Alfred Adler's theory of the inferiority complex; Carl Jung's extrovert-introvert dichotomy; the development of intelligence tests and other theories, discoveries, and experiments in this new and fascinating field.

Granted that psychiatry is still a young branch of medicine, enough already is known to prove that human behavior is a complex of many factors. Diagnoses cannot be made so easily or so rapidly in psychiatry as in the fields of medicine and surgery, and the layman is less qualified to prescribe than he would be as judge or juror trying a person indicted for having tuberculosis or myocarditis. Most penologists now advocate a revamping of criminological theory so that the punishment will fit the criminal, and not the crime, contending that it is as unwise to have fixed punishments

for perpetrators of similar offenses as it would be to sentence every sufferer from pneumonia to the same number of days or weeks in bed. Before these advocates can have their way, however, a considerable change in public thinking regarding the nature of crime and the purpose of punishment will have to take place. If that change does occur, the role of the criminal courts will be considerably different from its traditional one.

Court Reforms

Important as are the nonjudicial methods of settling disputes, they have not put the courts out of business and they are not likely to do so for generations to come. Ordinary tort actions, divorce proceedings, probate matters, and tax foreclosures—to mention only a few of thousands of actions—will give judges and jurors plenty to do for as long as anyone can see into the future.

Reform in this field is as slow and tedious as in all others, but it is inevitable. Civil practices acts tend to simplify court procedure; statutory action is eliminating some of the most obsolete fictions; and appellate courts recently have taken a bolder attitude toward disregarding precedents in the interest of common-sense justice. Obsolete laws—mostly of the "blue" variety—periodically are wiped from the books, and the right to seek reversals of convictions because of technical, including stenographic, errors in records is being restricted.

Court organization. As Chapter 2 revealed, the present multiplicity of administrative agencies is nothing in comparison with the court system in medieval England. Today the trend is definitely toward establishment of new branches of established courts rather than the creation of new courts when an expansion of services becomes necessary. The goal of the advocates of simplicity and unification is a single state court system, to operate by means of branches or departments.

Such a consolidated system would eliminate duplication of clerical effort in the maintenance of records, with a resultant saving of public funds as well as of time and bother on the part of litigants. Reformers advocating such a change must surmount the hurdle of opposition by politicians, who know that their patronage would be reduced if superfluous jobs were eliminated. It is even advocated that court clerks generally be appointed rather than elected, and that the terms of judges be lengthened whenever the election of judges is retained at all.

Under a co-ordinated court plan, the multiplicity of courts would be eliminated, as would the confusion resulting from the concurrent

jurisdiction now possessed by numerous courts. There would be less piecemeal handling of single controversies, and double and triple appeals would cease. An appeal would merely take the form of a motion for a new trial in a different branch of the same court. If the chief justice were competent, waste of judicial power would be reduced to a minimum, for judges could be shifted among the branches to correspond with the pressure of work. To be effective, the plan would have to operate without rigid legislative restrictions as to time, place, and duration of sessions. Under such a plan the specialized court would be replaced by the specialist judge.

Technicalities and delays. After a number of critics in the late twenties and early thirties had directed attention to the extent to which justice was allowed to miscarry for merely technical reasons, there was a wave of reform. State legislatures forbad appeals and reversals merely because of stenographic and similar errors, which did not affect the gist of the matter in dispute. Previously there had been several notorious examples—such as the quashing of an indictment because a clerk had spelled a name "Holdberg" instead of "Goldberg," and an appellate court reversal of a verdict because it called a woman "Cleo" instead of "Clio." In the latter case, the learned jurists expounded on the derivation of the two names, pointing out that the former is a shortening of Cleopatra, while the latter originally was the appellation of a Grecian goddess.

More important technicalities, such as those which govern the laws of evidence, will persist in nisi prius (trial) courts until appellate court judges become more lenient. In fact, a goodly proportion of the reforms that anyone might wish to see in the administration of justice must start at the top, rather than at the bottom. Judges in courts of original jurisdiction have a perpetual dread of being reversed, and they are correct in holding that it would do no good for them to disregard a precedent or rule upon which a higher court still insists. For instance, statutory action undoubtedly would be necessary to destroy the fiction that legally a corporation is an individual, just as it was necessary, through workmen's compensation acts, to end the age-old "assumption of risk" fiction.

Limiting the number of pleadings in civil actions and allowing declaratory judgments has already speeded justice in civil courts, and there is a trend toward elimination of the grand jury in criminal law. Other suggestions to reduce delays include reducing the number of peremptory challenges in selecting jurors, shortening the time allowed for appeals, and restricting the number of continuances in any case. Speeding up the wheels of justice, however, is largely a matter of administrative efficiency on the part of the courts and their officers—chiefly the judge, clerk, and prosecuting attorney.

Poor man's justice. Much of the cynicism with which the average citizen regards the courts results from the widespread belief that justice for the rich man is different from justice for the poor man. This attitude, and the element of truth upon which it is based, is nothing new. When trials were by combat, the wealth of litigants was a factor because the rich could engage a more competent proxy to enter the lists for them. Today, the rich man can afford better counsel and can employ private detectives, handwriting experts, accountants, and other assistants in preparation of his case.

In the July 17, 1943, *Saturday Evening Post,* Jerome Frank, judge of the United States Circuit Court of Appeals for the Second Circuit argued that there should be impartial investigating staffs to gather evidence, rather than continuing the practice of leaving that task to the legal rivals. He cited innumerable cases of litigants who lost their cases because they had not been able to employ such investigators. Judge Frank pointed out that at present the Securities & Exchange Commission, without cost to the parties, provides engineering, accounting, and economic data in bankruptcy and reorganization cases, on the theory that the public interest is thereby promoted. He wants something similar in all civil matters. John C. Knox, senior United States district judge for the Southern district of New York, in the succeeding issue of the magazine, however, vigorously criticized Judge Frank's ideas, declaring that they would involve useless expense to taxpayers, inasmuch as the instances in which justice miscarries are negligible. He also pointed out that it is within the court's prerogative to subpoena and question witnesses without a petition from either side. He advocated more widespread exercise by judges of that right.

In most civil courts today, an indigent can sue as a poor person after taking an oath that he is a pauper. In criminal courts, counsel are provided for those unable to afford it, and the practice is growing of maintaining a public defender as a permanent officer of the prosecuting attorney's staff, with his salary paid by the state. The real problem, however, concerns the small claim that anyone, rich or poor, may want to take to court, but is prohibited from so doing because the costs would exceed any judgment he might win. In order to make it possible for such small causes to be heard without undue expense to the parties, most of the formalities now attendant on such actions would have to be eliminated. Instead of preparing a formal bill of complaint or declaration, the plaintiff probably would have to be permitted merely to sign a printed form. Then the court would summon the defendant, and, with or without the aid of counsel, the judge would listen informally to the respective arguments of the principals and then de-

cide the case. Justices of the peace and other inferior courts once operated almost in this way, but their present weakness lies in the fact that they are generally fee offices. In other words, the justice or magistrate is paid a proportion of the judgment collected from the defendant. Experience has shown that when city or municipal courts are established to put an end to such practices, they tend in time to become as formalized as the courts next on the scale of importance above them. There seems no way out except for the state to defray all the expenses of small-cause courts and to insist that they operate on a strictly informal basis—an idea that is scandalous to a large proportion of those who call themselves legal-minded.

Legal Theories

When, early in 1944, the United States Supreme Court, in an admiralty case, upset a precedent of long standing, Associate Justices Owen J. Roberts and Felix Frankfurter in a vigorous dissent wrote:

> The tendency to disregard precedents has become so strong in this court of late . . . as to shake confidence in the consistency of decisions and leaves the courts below on an unchartered sea of doubt and difficulty without any confidence that what was said yesterday will hold good tomorrow. . . . The law becomes, not a chart to govern conduct, but a game of chance; instead of settling rights and liabilities, it unsettles them.

So is it always when a judge refuses to follow the reasoning of his predecessors. No matter what the prevailing sentiment may be regarding a rule of law, for the court to disregard *stare decisis* is said to "shake confidence." The rebuttal of the majority in any such case is always, not that it believes the law should be capricious, but that the original court establishing the precedent erred. As Justice Hugo A. Black put it when the Supreme Court abandoned the "reproduction cost new" theory in public utility rate cases in favor of the "prudent investment" theory long advocated by the late Louis N. Brandeis, "The intent of Congress should prevail as the will of the people."

Both points of view could, of course, be right. In a democracy the will of the people *should* prevail. As will be related in Chapter 20, the appellate courts often have been accused of vitiating that will through misinterpretation of laws. One outstanding instance, already mentioned, was the "rule of reason," whereby most of the teeth were pulled from the Sherman Anti-Trust Act, which was intended to eliminate monopolies. Such misinterpretations are what is called "judge-made" law. When Justice Black contends

that courts should follow the intention of Congress, he probably expresses the opinion of a majority of his countrymen. Once a correct interpretation of a law has been made, however, Justice Frankfurter also is right in insisting that the courts adhere to it.

What the Blacks criticize most are precedents based upon fictions, or, as Thurman Arnold called them in *Symbols of Government,* "metaphysical concepts." These are not empirical social facts. They grow out of the mystical belief in abstract justice which permeates the thinking of altogether too many in the legal profession. Wrote Arnold, "Thus we see that 'Law' represents the belief that there must be something behind and above government without which it cannot have permanence or respect." Jurisprudence, he defined, as "the effort to construct a logical heaven behind the courts, wherein contradictory ideals are made to seem consistent."

What afflicts the law is the same absolutism to which man throughout the ages has been a victim in his understandable and laudable search for certainty. Absolutistic thinking has been the curse of leaders in every field—religion, philosophy, science, economics, and education. To contradict the eternity of an explanation that someone has found it comfortable to accept is to risk ostracism or martyrdom. Jesus, Socrates, Galileo, Newton, Darwin, Freud, and Einstein have been among the great iconoclasts of history. It is encouraging that the latter-day challengers of maxims have suffered less than their predecessors, in some cases even being applauded during their lifetime.

To deny the existence of *any* absolutes, however, is different from disputing the validity of a particular one, such as the hypothetical ether. That, however, is virtually what Einstein has done in the field of physics, and his relativistic way of thought is gradually affecting the way men think in all other fields. The dogmatism which dominates legal thinking is only the equivalent or counterpart of the dogmatism found in most other fields. It is perhaps more apparent in law and, of course, it affects more people—hence its importance. However, it is doubtful if absolutistic thinking will disappear from the law until relativistic thinking makes greater progress generally.

The utopian solution would be men of great wisdom—philosopher kings, according to Plato—sitting in judgment, as would a heavenly Father, deciding each case on its merits. Even in such a perfect society, however, there would exist basic premises as to what constitutes the public good and individual justice. In the United States these premises unquestionably should be those set forth in the Declaration of Independence—a man-made document—and the Con-

stitution—also man-made—which is the instrument by which the principles of the Declaration are to be put into practice. Both documents eloquently extol the importance, essential equality, and dignity of the individual, by contrast with the Fascist philosophy, which considers the individual merely the pawn of the state and denies the equality concept. Much of the wording in the Constitution, however, is theoretical. For example, consider the First Amendment, which insures freedom of speech, freedom of religion, and freedom of the press. These freedoms are not defined, and it has been up to the courts to determine in each specific instance whether a legislative act is in violation. What is eternal about the Bill of Rights is its spirit. There is nothing absolutistic about any measure taken to insure it, or any legal reasoning applicable in one generation to conditions existent at that time.

The trouble with altogether too many legal thinkers is not only that they refuse to admit that there is anything new, but also that they become so concerned with means that they forget the ends which the means were supposed to serve. Javert, in Victor Hugo's *Les Miserables,* relentlessly pursued Jean Valjean because "it is the law," although every reader of the book knew that everyone would have been better off had Javert met his end in an early chapter. His thinking was similar to that of the boy who stood on the burning deck until he met his death, rather than disobey his father, who had told him to remain there and who, preceding his son in death, was unable to countermand the instructions. Unfortunately, that youth—probably the most stupid in literature—has been held up to generations of school children as the ideal of heroism and devotion to duty. Actually, he lacked the flexible-mindedness necessary to adjust to changed circumstances.

In recent times there has been much talk about "red tape" and "bureaucracy" in government. It is all to the good to keep public officials on their toes and aware of the fact that procedure is not as important as accomplishment, but it must not be overlooked that the disease is not peculiar to government. Red tape is a curse of bigness, and many businesses are as much afflicted with it as any governmental agency. Bigness requires the formalizing of rules, and, once that happens, seeing that something is done properly becomes the prime object of a hierarchy of vice-presidents and other officers. Everyone with any acquaintance in the business world knows of bookkeeper-minded executives who consider the day a success if every report is properly filled out and filed, even though the company lost thousands of dollars in comparison with the preceding day or year.

The American philosophy of pragmatism, popularized by William

James, holds that the yardstick of success is results. If something works, it is good; if it fails to attain its objectives, it is bad. So long as the goal is achieved, it does not make any difference whether the methods are orthodox or consistent with those used in similar fields. This philosophy is very different from the absolutistic philosophies which prescribe what right conduct is and place adherence to it as uppermost. The danger in pragmatism is that it may be interpreted as meaning that an end always justifies any means, but such an interpretation is made by a shortsighted, limited view of the sphere in which the operations take place. All life is a compromise between immediate and ultimate benefits—a compromise which means the sacrifice of easy objectives in order to enjoy a higher good at some later time.

When we recall the democratic objectives that our courts should have, much of the mumbo jumbo heard in them is deplorable. "Punishment to fit the crime" means that the focus of interest is the deed, not the person. If the social scientists had their way, whenever a defendant appeared at the bar of a criminal court, the question to be decided would be, "What is best for society and this individual?" not "What rule is applicable here?" The high priesthood of the law, of course, believes that what is best is the existence of those rules, but it is easy to cite case after case in which a Victor Hugo could have convinced millions that such was not so.

In the long haul, what will count will be the human material that mans the judiciary, administrative agencies, psychiatric clinics, and all other institutions that deal with human problems. Too much discretionary power easily leads to its misuse, to tyranny. Too many rules to prevent that from happening end in bureaucratic red tape —thereby creating a vicious cycle. It has happened many times throughout legal history. Equity courts, for instance, came into existence to circumvent the dry rot that characterized the common-law courts. Today, equity courts are about as inflexible as any others ever were. Administrative agencies are coming into existence, partly to circumvent the red tape of contemporary courts, and yet they run the risk of becoming just as formalized in time. We cannot return to a state of anarchy, so we shall have to wait until the ethics and social consciences of men improve. New scientific discoveries will release men from the superstitions and unsound philosophies of the past, will slowly make them open-minded, less prejudiced, and more kindly toward experimentation. Until the economic house is in order, however, special interest groups and classes will struggle with each other for privileges and to obtain them will want to control government, including the courts. Thus, the question of

what shall and should happen to the law is not one that can be answered separately and apart from consideration of all the other problems of civilization. Call it progress or merely change; it is about the same in all phases of life, and it is unfair to make a scapegoat of any segment of life for seeming to be out of step.

PART II

CIVIL LAW

CHAPTER 5

Pretrial Procedure

THE manner in which one goes about obtaining his rights in a civil-court action is prescribed by statutes. With the passage by the states of civil practices acts (beginning with that of New York in 1848), or of statutes setting up uniform codes of procedure, the trend is definitely toward standardization and simplification. Nevertheless, considerable technical differences exist—between states, sometimes between different courts, or even between divisions of a court within the same state. The terminology used in legal proceedings also may differ, the same word having different meanings in different jurisdictions.

The young reporter assigned to cover a court should read the statutes and rules of that court, to familiarize himself with the system. Only thus will he understand the papers that a busy clerk shoves at him, and the connotations of the terms used by clerks, judges, and lawyers in telling him of a case. The standard reference is the *Martindale-Hubbell Law Directory,* published annually by Martindale-Hubbell Inc., Summit, N. J. The second of the two bulky volumes includes digests of the laws of all forty-eight states, territories, and possessions; digests of United States patent, tax, and trademark laws; digests of the laws of Canada, the Canadian provinces, and the colony of Newfoundland; digests of the laws of foreign countries; and the court calendars of all courts in the United States. From the digests, which follow the same alphabetical arrangement for each state (absentees; accord and satisfaction; acknowledgments, et cetera), a person learns the law; from the calendars he learns the jurisdiction of the courts administering the law. It is an indispensable sourcebook.

The directory does not, however, explain the procedures or "red tape" of the civil law. This explanation is to be found in the manuals or directories that the courts themselves publish and that should be available in newspaper libraries and courthouse pressrooms.

This chapter, and the succeeding seven, are devoted to the civil law. The first three of the eight chapters concern themselves with

civil procedure; the other five with some of the major types of civil actions—those most likely to merit the attention of reporters. Knowledge of both the procedures and the basic law, established either through precedent or statutory enactment, naturally is the mental raw material with which the reporter learns to understand any particular case to which he is assigned.

This section of the book is introduced with the warning that both procedures and the laws proper and the precedents differ so much between states that it is possible to present only a general outline. Wherever the newspaperman works, he will find variations. No two states are identical. If the reporter understands the broad fundamental principles, however, he will not be confused by these deviations from majority practice.

Starting an Action

Old common-law and equity procedures were similar, but they also had important differences and they were very cumbersome. The drift has been steadily away from them, but some states still follow the general principles, and some features persist even in states with civil practices acts or laws establishing codes of procedure.

A common-law action was called an *action at law;* one in equity was a *suit in equity.* In the United States courts, and in the courts of the states which have civil practices acts today, there is just one *civil action.* Says the New York civil practices act: "The term civil action means any action except an action prosecuted in the name of the people of the state as plaintiff against a party charged with crime."

A law action is begun with a *declaration;* an equity suit is begun by filing a *bill in equity.* The declaration is a methodical listing of the facts and circumstances constituting a cause of action by the person bringing the action (called the *plaintiff*) against the person from whom he wishes to recover (called the *defendant*). A declaration consists of several sections or *counts,* each of which constitutes a ground for action standing alone. It concludes with a statement of the relief desired, such as money damages or recovery of a certain piece of property. A bill in equity is a formal complaint, in the nature of a petition to the chancellor or to the court having equitable jurisdiction. It states the facts that comprise the case, alleges that those acts are contrary to equity, and prays for specific relief—for example that a person be compelled to live up to a contract, that a nuisance be removed, or that a marriage be dissolved.

In code states, a civil action begins with the filing of a *petition* or *complaint* or *statement of claim.* In North Carolina it must contain:

1. The title of the cause, specifying the name of the court in which the action is brought; the name of the county in which the trial is required to be held; names of the parties to the action, plaintiff, and defendant.

2. A plain and concise statement of the facts constituting a cause of action without unnecessary repetition; each material allegation must be distinctly numbered.

3. A demand for the relief to which the plaintiff supposes himself entitled; if in money, the amount must be stated.

This petition, complaint, statement of claim, or whatever it may be called, is the first of the *pleadings* in the case; all papers filed by both sides in argument of the issues at stake are called pleadings. In addition, it may be necessary to file some other papers to fulfill technical requirements, such as a *praecipe*—a request that a writ issue as a command by the court that the defendant do the thing required or show reason why he should not do so—or an *affidavit,* witnessed by a notary public—in which the plaintiff asserts that all the statements contained in his pleading are true.

What follows is a typical example of a complaint and of a news story written about it:

NON JURY

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE SUPERIOR COURT OF COOK COUNTY

WILLIAM H. SNYDER,
Plaintiff
vs.
ELIZABETH H. LEWIS,
Defendant
} No. 43S 7809

COMPLAINT

Now comes WILLIAM H. SNYDER, by JOHN H. LYLE and EDWARD T. HAVEY, his attorneys, and complains of ELIZABETH H. LEWIS, as follows:

1. That complainant is a resident of the City of Chicago, County of Cook, and the State of Illinois, and that his local residence is 6401 South Normal Boulevard in said city.

2. That on the 3rd day of November, A.D. 1942, he was married to BULIAH IRENE HERTTER of the town or city of Rosiclair, Hardin County, Illinois; that the said marriage ceremony took place at Poplar Bluff Township, Butler County, Missouri; and that he is still married to, and is now the lawful husband of, the said BULIAH IRENE HERTTER SNYDER.

3. That the said BULIAH IRENE HERTTER SNYDER, complainant's wife, is now and has been for more than six months last past, locked in, confined,

and forcibly and illegally held in the Illinois State Training School for Girls at Geneva, Illinois, by the defendant, ELIZABETH H. LEWIS, against the will and wish of the said BULIAH IRENE HERTTER SNYDER and in disregard of the protests of her husband and his often-repeated demands that she be liberated.

4. That at the age of 12 years, the said BULIAH IRENE HERTTER SNYDER, without ever having violated or without ever having committed any crime, was confined as a delinquent in the Illinois State Training School for Girls at Geneva, Illinois, where she has been imprisoned most of the time since said date; that at the time of her original imprisonment she was an inexperienced and harmless minor, the daughter of a widow who was the mother of four children struggling to live without funds; that she is now over age, is 19 years old, and the date of her birth was May 17, 1924; that she is married to the complainant herein, but is prevented by the defendant from living with her husband, the complainant, and she is otherwise deprived and prevented, by the acts and restraints of the defendant, from exercising her constitutional, civil rights and privileges as a married woman, as an adult, and an American citizen.

5. That the complainant herein, husband of the said BULIAH IRENE SNYDER, is a property owner and taxpayer, is employed at a gainful occupation as an expert electrician in a war-production plant, and has a salary in excess of One Hundred Twenty-Five Dollars ($125.00) per week and has sufficient property, income, and funds for the care, maintenance, support, and medical attention required to meet the needs of his said wife; and that he is and has always been ready, willing, and able, ever since the marriage to his said wife, to support, maintain, provide for, and give her any and all things needed, including any and all medical services, regardless of cost.

6. That on or about the 28th day of June, 1943, complainant filed a petition with the Honorable RODNEY H. BRANDON, Director of the Department of Public Welfare, Springfield, Illinois, who has charge, supervision, and control of the Illinois State Training School for Girls, copy of which Petition is hereto attached and marked Exhibit "A," and which said Petition, among other things, requested the release forthwith of the said BULIAH IRENE SNYDER.

7. That subsequent to the filing of the said Petition, the said RODNEY H. BRANDON, Director of the Department of Public Welfare, suggested to the complainant that upon investigation he had found that the said BULIAH IRENE SNYDER was being treated for a disease, which treatment was supposed to take eighteen months, but that the Army and Navy were using a ten-day cure with success and satisfaction, and he stated that he saw no reason why, if said treatment was good enough for the Army and the Navy, it would not be good enough for complainant's wife, and he stated that this complainant's wife should be released, provided a bond was executed assuring the department that the said BULIAH IRENE SNYDER would take the necessary ten-day treatments and provided this complainant would furnish the necessary expense for the same; and further provided that the complainant would secure the services of a medical expert to be designated or approved by the department, the said expert to report after an examination of the said BULIAH IRENE SNYDER that it would be safe and satisfactory for her to live at home with her husband and go regularly to receive the treatment as prescribed by the said designated medical expert.

8. Complainant further states that he has employed a medical expert who was designated by the department and paid Fifty Dollars ($50.00) for the services of said expert for going to Geneva and examining his wife, and complainant is informed that the said medical expert has recommended to the De-

partment of Public Welfare, in writing, that it is safe and proper and entirely expedient that the said BULIAH IRENE SNYDER be released to live at home with her husband and to continue medical treatments once a week, which will be sufficient.

9. Complainant further states that upon learning these facts, he thereupon arranged with this said medical expert approved by the Department of Public Welfare to treat his wife, BULIAH IRENE SNYDER, at the times and places designated, and complainant arranged to pay for said services in the amount requested; that he provided a bond of One Thousand Dollars ($1,000.00) as suggested by the Director of the Department of Public Welfare and forwarded the same to the Director of the Department of Public Welfare; that thereafter, through his attorney, he was informed by the Director of the Department of Public Welfare that the bond and the recommendation of the medical expert and the recommendation of the Director of the Department of Public Welfare that BULIAH IRENE SNYDER be liberated, had been forwarded to the defendant, ELIZABETH H. LEWIS; and this complainant further alleges that the said defendant, ELIZABETH H. LEWIS, notwithstanding the foregoing recommendations of the medical expert and of the Director of the Department of Public Welfare, and notwithstanding the repeated demands of this complainant, has ignored said recommendations and requests, bond, et cetera, and up to the time of the filing of this Complaint has neglected and refused to release the said BULIAH IRENE SNYDER.

10. That the said defendant, without cause or provocation, has unlawfully, willfully, and maliciously held the said BULIAH IRENE SNYDER in custody in the Illinois State Training School for Girls at Geneva, Illinois, and has not only refused to permit the said BULIAH IRENE SNYDER to leave the said premises, but has refused this complainant the opportunity to visit his wife, or to communicate with her; and on the 12th day of May, 1943, defendant addressed complainant a brief letter in which she stated as follows: "You may come to the school any day except Sunday before noon and hear from our physician, who is treating Irene, just what her condition is. Our doctor leaves at noon on Saturday, but is here on other week days."

11. This complainant further states that at divers times when he has tried to see his wife, he has conferred with the defendant concerning the release of his wife, and when seeking an opportunity to see her, the defendant has informed him that his wife was: "no good"; that "she is a prostitute"; that he "should get a divorce"; that "Why do you want to live with her anyway? She is no good"; "she is crazy"; et cetera; that this complainant has pleaded with the defendant that the girl had never had a chance, that her mother was a widow with two young sons and an invalid daughter, besides IRENE, whose foot had been injured when a child; that he had been helpful to the family; and that he had married IRENE and was willing to take care of her and to live with her and provide for her for better or worse; and that, if he chose to do so, there should be no complaint from the defendant; that, notwithstanding the many requests of the complainant, the defendant, ELIZABETH H. LEWIS, continued willfully, maliciously, and unlawfully to withhold the wife of this complainant from him; and complainant further states, in making this claim for damages, that malice is the gist of the action.

WHEREFORE, this complainant says that he has been deprived of his wife's aid, society, and love and affection, and has been damaged by the unlawful, malicious, and willful failure of the said defendant to allow him to see, to visit, to communicate with his wife, and to have her released into his care, custody, and keeping; and he is, therefore, and has been irreparably damaged

by reason of said conduct of the said defendant in that behalf, on to-wit: for the space of more than six months, and has been and is, thereby, put to great inconvenience and expense, and has been damaged in the sum of TEN THOUSAND DOLLARS ($10,000.00); and, in this behalf, complainant asks for a special finding of malice in a judgment in tort with malice as the gist of the action, against the said defendant, ELIZABETH H. LEWIS.

WILLIAM H. SNYDER

ATTORNEYS FOR COMPLAINANT

A news story on this case follows:

Asserting that his 19-year-old wife is being imprisoned illegally, William H. Snyder, 6401 S. Normal, an electrician, today brought suit for $10,000 against Elizabeth H. Lewis, superintendent of the Geneva training school for girls.

Mrs. Lewis, the Superior court complaint charged, told Snyder his wife was "no good," that she "is a prostitute," and he "should get a divorce."

The superintendent persists in refusing to release the wife, although Snyder agreed to post a $1,000 bond to insure that she will continue treatments for an unspecified disease, as suggested by Rodney H. Brandon, state welfare director, according to the bill.

Snyder said his wife, Buliah, has been in the institution as a delinquent intermittently since she was 12, when she was confined "without ever having violated or without ever having committed any crime."

They were married Nov. 3 last year at Poplar Bluff, Mo, according to the complaint. Snyder said he earns $125 a week, owns a 140-acre farm, and is frequently called to war plants to do special work because he is an expert.

—Chicago (Ill.) *Times*.

Note the extreme care used by the author of this story to accredit every allegation to the pleading. Every such story must include "the complaint charged," "according to the bill," "Snyder said," or similar phrases to protect against libel. Until a court has decided a case, no allegation—written or oral—can safely be made on the newspaper's own authority. As a matter of fact, the appellate courts of some states have ruled that no pleadings in any case are privileged (quotable with impunity), that a judicial proceeding does not begin until a judge has entered a case. Exactly the opposite, however, has been decided by the following courts—United States, New York, Pennsylvania, Nevada, Ohio, Georgia, and Texas. In no other states is there certain protection, even when the greatest care has been exercised to make the news story accurate and accredited to the authority of the legal paper involved.

The reporter must learn how to wade through oceans of legal verbiage to get the gist of what the case is about. He may reduce the charge contained in a single count, running several paragraphs, into a short phrase. Indispensable in any storytelling of the bringing of an action is a statement of the damages or relief asked for. In many if not most cases, the reporter will want to consult the

principals or their attorneys; often this is necessary if the legal persiflage is too confusing, even to experienced perusers of proceedings. Names and addresses may have to be verified, and the newspaper's morgue may be consulted for background on the incident out of which the legal action arose.

Note in the following example how a lengthy complaint has been "boiled down" to a brief but inclusive account that also includes some background obviously not included in the pleading itself:

Thomas Atwater, 40 years old, 6012 North Edgewater avenue, fire department captain of truck 15, filed suit in Superior court yesterday, asking $35,000 damages of the Acme Chemical Works, Inc., 2600 Wacker drive, and the company's officials.

Capt. Atwater was one of ten firemen injured July 16, 1945, in an explosion at the plant. Five other firemen died of burns.

The suit filed by Attorney Thomas Black charged that Capt. Atwater was "permanently hindered from working" by the loss of sight in one eye, and asserts that the company had no license to operate a chemical establishment in the city's limits, failed to undergo fire department safety inspection, and was guilty of numerous violations of the city fire prevention and building codes.

Sometimes an action has greater significance than a mere private action between two persons, or it may be advisable to indicate the law giving the plaintiff the right to bring the action. In many cases such factors may be more important than the names of the plaintiff and defendant, which usually go into the lead of the routine story. The following examples are leads to typical stories of this sort:

FIRST OF ITS KIND

The Office of Price Administration filed a suit in U. S. District court yesterday, seeking to restrain LeRoy G. and Mark Chester, trading as the Cheaper Poultry Markets, from violating OPA price ceilings on live poultry. It was the first such suit filed here against poultry dealers.

TO TEST CONSTITUTIONALITY

A pretty quarter-Cherokee Indian mother and her two attorneys yesterday filed a $50,000 suit in Superior court, to test the constitutionality of a state law banning breach of promise action in Illinois.

By their court test, the trio put themselves in the position of being sentenced to from one to five years in prison or $1,000 fine, or both, if the constitutionality of the existing statute is upheld.

The defendant in the test case, Harry Dorby, 42, 1332 Estes, an insurance broker, said through his attorney, Julius Kabaker, that he will petition the state's attorney to start indictment proceedings against them for violating the law by mere filing of the suit.

The mother charging breach of promise is Marguerite Teehee Cunningham, 25, 3325 N. Seeley. Through Attys. Sol R. Friedman and Thomas J. C. Cavanaugh,

she alleged Dorby is the father of her 4-year-old son, Thomas, born out of wedlock.

—Chicago (Ill.) *Times*

LAW INVOLVED

Charging that her husband lost his job as a milk-wagon driver and that she was forced to go to work to support their eight children, Mrs. Catherine Schmidt, of 6946 South Racine avenue, filed suit for $10,000 damages under the dram shop act in Superior court yesterday. The defendant is Isidore Liebman, proprietor of the Yankee Liquor store at 148 West 69th street.

Mrs. Schmidt charged Liebman kept her husband, Herbert, in a "constant state of intoxication" for two years, with the result that he lost his job.

—Chicago (Ill.) *Sun.*

The most newsworthy civil actions relate to startling incidents about which there previously has been no publicity, as in the following case:

The amazing story that a surgeon performed an abdominal operation on the wrong baby through a hospital mixup was revealed yesterday in a $10,000 damage suit filed in Circuit court.

The suit, in the name of the irate parents of the child who underwent the mistaken survey, names Dr. Spencer Blim, 51, of 1438 Park avenue, Chicago Heights, a doctor in Cook county for the past 22 years.

The parents are Mr. and Mrs. John Murphy, 1120 Emerald avenue, Chicago Heights. Their 13-month old son, a twin, is Timothy Michael Murphy.

Hospital Spared in Suit

The hospital, St. James in Chicago Heights, is not a defendant.

According to the story told in the bill filed by Ben Gleason, attorney, at 188 West Randolph street, Timothy was in the hospital in January, suffering from pneumonia.

Another tiny occupant of the same room is named in the bill only as "baby Sandra Jean, 6 months old." She was the victim of a stomach stricture, and surgery had been decided upon.

Apparently the wrong child was taken from the room to the operating table.

Dr. Blim said yesterday he had performed the surgery, and made the incision in the body of little Timothy Murphy. He declared, however, that he had ordered Sandra Jean brought in for surgery, and, when a child was brought, he naturally assumed it was the right patient.

The child was covered, he said, except for a small expanse of the abdomen, where the incision was made.

Mistake Amazes Mother

The mistake was discovered at once, according to Dr. Blim, and Timothy suffered no ill effects. Mrs. Murphy expressed high indignation when questioned yesterday, and declared that Dr Blim had not told her of the error for some hours. After that, she said, he consistently refused to see her.

"I cannot see," Mrs. Murphy said, "how a doctor could mistake a 1-year-old boy for a 6-month-old girl!"

The damage suit charges that Timothy, already ill from pneumonia, had been

endangered by the shock of the anesthetic, and that he has suffered permanent internal adhesions.

The hospital authorities declined to comment on the case, but it was learned that Sandra Jean eventually underwent the operation and recovered. The names of her parents were not revealed.

—Chicago (Ill.) *Sun.*

This story has human interest, and would have received a strong play long before the incident became a matter of court action, had the facts been known. The story is written virtually as an account of the incident itself, rather than of the filing of a complaint.

All the elements of news values (timeliness, proximity, prominence, consequence, and human interest) and of reader interest (personal appeal, sympathy, unusualness, progress, combat, suspense, sex, age, and animals) which enter into any kind of news story operate in determining the features to be played up in reporting court proceedings, as the few examples given in this section illustrate. Nothing orthodox is discarded, and, as the saying goes, nothing new added.

Notifying the Defendant

The old practice was not to consider an action legally begun until some notice—process, writ, or summons—had been served on the defendant. The modern tendency is to regard action as underway with the filing of a complaint with a bona fide intention that such notice follow. It is important to know the law of the state before calling the city desk with the story of an original pleading, for a good many legal actions are begun with no purpose beyond that of "getting a rise" out of the opposite party, and are withdrawn shortly or allowed to lapse. If notice is required, a newspaper that does not make certain it has taken place runs the risk of committing libel.

Process. Process is a court order compelling the defendant's attendance in court or his compliance with the demands of a writ. In a replevin action (see page 271), this means surrender of certain property to the plaintiff; in attachment proceedings, the sheriff becomes the custodian of articles with a value sufficient to cover whatever demands are being made. In chancery matters, process is by *subpoena,* ordering the defendant's appearance in court at a specified time.

Summons. In modern practice a summons is not a process demanding that a defendant immediately appear or surrender himself in court. Rather, it is a writ, directed either to the defendant,

ordering him to make answer to the charges within a certain period of time, or to the sheriff, directing him to serve such notice on the defendant. If any distinction between law and equity persists, in chancery matters the summons still may be called a subpoena, although that term is usually restricted to the court order to witnesses. The subpoena is addressed to the principal, whereas the summons in law actions is usually addressed to the sheriff.

The following is the blank form of the "summons in chancery" used by the Circuit court of Hillsborough county, Florida:

STATE OF FLORIDA

THE STATE OF FLORIDA TO . . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . *Greetings*

YOU ARE HEREBY NOTIFIED that a suit has been brought against you in the Circuit Court for Hillsborough County, Florida, in Chancery, by . . . . . .

. . . . . .

. . . . . .

. . . . . .

and you are hereby required to file with the Clerk of said Court your written appearance (personally or by attorney), in said suit on the first Monday in . . . . . , A. D. 194 , being the . . . . . day of said month, and thereafter to file with said Clerk your written defenses, if any, to the bill of complaint in said suit at the time prescribed by law.

Herein fail not or judgment will be entered against you by default

WITNESS my hand and the seal of said Court, at Tampa, Florida, this . . . . . day of . . . . . A. D. 194 . CHAS. H. PENT,

Clerk of said Circuit Court,

. . . . . By . . . . . .

Attorney for Plaintiff Deputy Clerk

The simple "summons" issued by the same court in law actions appears on the following page.

When a sheriff, bailiff, constable, or other court officer serves a summons, he must make a sworn return, usually by filling in blanks on a form printed on the back of the paper. He thereby certifies that a true copy of the summons or subpoena was delivered to the person named in it, or to someone qualified to receive it for him.

The *return day* is the day mentioned in the summons as the deadline for filing an appearance or answer. In some courts, particular days of the week or month (such as the first or third Monday)

THE STATE OF FLORIDA } ss.

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA—Greetings

You are commanded to summon .....

.....

.....

.....

if found within the State of Florida to file a written appearance with the Clerk of the Circuit Court for Hillsborough County, Florida, at the Court House in Tampa, on the first Monday in..... next, being the .....day of said month, to an action of..... brought against the above named party or parties by.....

.....

.....

.....

.....

and thereafter to file with said Clerk written defenses to the declaration on or before the time prescribed by law, and herein fail not or judgment will be entered against ..... by default

Witness my hand and the seal of said Court at Tampa, Florida, this..... day of..... A D 19 .

CHAS H. PENT.
Clerk of said Court

By.....
As Deputy Clerk

.....
Attorney for Plaintiff

are set aside for the filing of appearances or answers to summonses that have been served within a specified time preceding them. In other courts, only the number of days allowed for an appearance or answer is indicated in the summons, and the return may be any time before the expiration of the period set. In either case, failure to take cognizance of the summons before the deadline means that the defendant forfeits his right to make a defense, and a judgment by default, granting the plaintiff what he asks, will be entered against him.

Service. Proper service in any action is necessary. The statutes determine in what it consists. Usually the papers must be delivered personally to the individual mentioned in them, although it may be allowable to leave a copy at the person's usual place of abode, with some member of the household above the age of ten years, informing that person of the document's nature; in such cases a duplicate copy is sent to the principal by mail. When the process server delivers a legal paper to anyone other than the person for whom it is intended, he inquires that person's name. If the name is refused, he writes "John Doe" or "Jane Doe" on his return. Later in court it may be contended that there was improper

service, and it is difficult to determine who John or Jane really was. Many big-time defendants have delayed or evaded court actions by skillfully dodging process servers.

If, within the time allotted, the sheriff, bailiff, constable, or other person charged with service cannot find the person, the plaintiff can apply for issuance of a new summons or renewal of the old one. A second summons is called an *alias* summons; often the clerk merely rubberstamps "alias" on the original paper to authorize another attempt at service. Third or subsequent writs are called *pluries*.

Not infrequently, service by publication is allowed by the court. To obtain permission to do so, the plaintiff must file an affidavit stating that the intended defendant resides in or has gone out of the state or is in hiding, or, for any other reason, cannot be found. Statutes usually require that notice by publication appear at least three times in a newspaper of general circulation or in some paper that specializes in news of the courts. In almost every place of any size, there is a daily law bulletin or record which includes, in addition to legal notices, the day's calendars for all the courts and summaries of judgments, decrees, and other court actions of the preceding day. Attorneys read these papers daily for anything affecting or of interest to their clients. Newspaper reporters use them to learn what of importance is coming up each day.

Notices by publication include full information of the nature of the action, and the date on which a default judgment will be rendered in the event there is no answer or appearance by the defendant. It is usually required that a copy of the newspaper be mailed to the defendant's last known address. The clerk must file a certificate of regularity to indicate that the proper procedure was followed.

Failure of those charged with the responsibility of serving summonses may often be newsworthy, and a crusading newspaper should make checks of the number of suits filed that never have come to trial because of alleged inability of the proper public officials to serve them. Such laxity is most likely to occur in cases in which the state is plaintiff, such as in delinquent tax matters; private litigants are more successful in prodding process servers into performing their functions. When a judge with no strings attached to him—at least not in this matter—becomes interested in the accumulation of unserved papers, considerable good copy may result, as in the following two examples:

The county tax collector would like very much to see Joe Grein, the former city sealer, about a little matter of $1,161.25 in delinquent 1938 personal property taxes.

Judge John C. Lewe of Superior court said he was "surprised" yesterday when informed that the sheriff's office had failed in two attempts to serve summons on Grein.

"I've known Joe Grein for years, and I see him almost every day on Randolph street outside the City Hall," Judge Lewe said. Grein, who for many years lived in the Sherman hotel, across the street from the County building, in which the sheriff's office is located, was for a long time the traditional first voter in the 1st precinct of the 1st ward.

Judge Lewe issued a second alias summons and told Acting Sheriff Joseph Higgins to see that it was served immediately.

—Chicago (Ill.) *Sun.*

Chief Justice Michael L. McKinley of Superior court yesterday challenged the professed inability of the attorney general and Cook County sheriff to find certain sales tax delinquents who owe the state large sums.

He specifically referred to the J. K. Dering Coal Mining Corp., formerly of 332 South Michigan avenue. The corporation owes the state $26,100 in sales taxes dating back to 1933. Four summonses have been issued, but none has been served.

Judge Calls Officials

Judge McKinley told Archie Bernstein, assistant attorney general:

"This company is almost as well known as the Peoples Gas Light & Coke Co., or Commonwealth Edison. You might as well say you can't find the Chicago Rapid Transit Co."

The jurist sent to the sheriff's office for an explanation as to why the summonses were not served. Joseph F. Higgins, assistant sheriff, and Edwin Nelson, assistant chief deputy, came to the courtroom. Judge McKinley repeated to them what he had said to Bernstein:

"One of these summonses was marked for service on W. F. Duffy, secretary of the corporation," Judge McKinley observed. "And the first summonses bore four names." He turned inquiringly to the sheriff's representatives.

'Real Effort' Questioned

"Two of the persons were outside the county," said Nelson.

"We are making a real effort in this case," interposed Bernstein.

"Do you want to argue that point with me?" Judge McKinley demanded. "This suit was filed in June, 1941. Do you mean to tell me that in two years you couldn't get service?"

Without waiting for an answer, the judge said to Nelson: "I want you to check up on this case, and on 200 similar ones in which there has been no service. Speak to those deputies. Ask them if they like their jobs."

Judge McKinley reminded them that a summons could be served on any agent of the company.

(J. K. Dering, former director of the coal mining company and grandson of the founder, was found by a Chicago Sun reporter in an office across the street from the county building, at 111 West Washington street. He said he had been out of the corporation for several years. A concern called the Dering Coal company now operates at the Washington street address.)

It was recalled that while the attorney general was supposedly trying to collect the sales tax delinquency, the state department of conservation bought the J. K. Dering estate at Fox Lake for $50,000. It will be used as a training school for game wardens.

—Chicago (Ill.) *Sun.*

Attachments. In some states in certain kinds of cases, notice to a defendant that a civil action has been brought against him may be in the form of a *writ of attachment*, which is an order to the sheriff or constable to seize enough of the defendant's property to cover the amount of the plaintiff's claim, the property to be held by the law-enforcement officer pending the outcome of the court action. In other states, although not a substitute for a summons, a writ of attachment may be obtained as a means of compelling the defendant's attendance in court, to provide security for debts or costs, especially in tort actions (for damages). The plaintiff must always make affidavit and furnish bond sufficient to cover any loss the defendant might incur as a result of being deprived of his property, even though temporarily. The hearing on the application for the writ may be ex parte or with both sides represented. In some jurisdictions there may be a distinction between a *domestic writ* (issued against a resident who absconds, remains away, or conceals himself for the purpose of defrauding) and a *foreign writ* (issued against a non-resident of the state).

The Illinois statute, one of the most modern, reads as follows:

1. Causes. Art. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly. That in any court of record having competent jurisdiction, a creditor having a money claim, whether liquidated or unliquidated, and whether sounding in contract or tort, may have an attachment against the property of his debtor, or that of any one or more of several debtors, either at the time of instituting suit or thereafter, when the claim exceeds $20, in any one of the following cases:

First. Where the debtor is not a resident of this state.

Second. When the debtor conceals himself or stands in defiance of an officer, so that process cannot be served upon him.

Third. Where the debtor has departed from the state, with the intention of having his effects removed from this state.

Fourth. Where the debtor is about to depart from this state with the intention of having his effects removed from this state.

Fifth. Where the debtor is about to remove his property from this state, to the injury of such creditor.

Sixth. Where the debtor has within two years preceding the filing of the affidavit required, fraudulently conveyed, or assigned his effects, or a part thereof, so as to hinder or delay his creditors.

Seventh Where the debtor has, within two years prior to the filing of such affidavit, fraudulently concealed or disposed of his property so as to hinder or delay his creditors.

Eighth. Where the creditor is about fraudulently to conceal, assign, or otherwise dispose of his property or effects, so as to hinder or delay his creditors.

Ninth. Where the debt sued for was fraudulently contracted on the part of the debtor; provided, the statements of the debtor, his agent, or attorney, which constitute the fraud, shall have been reduced to writing, and his signature attached thereto, by himself, agent, or attorney.

There follows a typical blank which, when properly filled in, becomes a writ of attachment:

(ATTACHMENT.)

COMMONWEALTH OF VIRGINIA:

TO THE SERGEANT OF THE CITY OF DANVILLE,—GREETING:

having filed in the Clerk's Office of the Corporation Court of Danville, a Petition duly sworn to, praying for the issuance of an Attachment against

defendant , upon the ground set forth in said Petition, to recover of the said defendant , the sum of

with interest thereon from the day of , 19 , till paid, the said Petition alleging that the claim of the Petitioner is believed to be just, and that the Petitioner entitled to or ought to recover, at least, the sum of $ with interest thereon as aforesaid

THEREFORE, we command you to attach so much of the lands, tenements, goods, chattels, money and effects of the said defendant not exempt from execution as will be sufficient to satisfy the plaintiff demand.

And upon the plaintiff executing the bond required by law, that you take possession of the tangible personal property and safely keep the same in your possession to satisfy any judgment that may be recovered by the plaintiff in this Attachment, and SUMMON the said defendant

if they or any of them be found within your bailiwick or any County or City wherein you may have seized property under and by virtue of this writ to appear before our Corporation Court of Danville, at the Courthouse thereof, on the first day of Court, 19 , and answer said Petition or state the grounds of defense thereto.

And then and there make known how you have executed this writ

WITNESS, Clerk of our said Court, at the Courthouse thereof, this the day of , 19 , and in the year of the Commonwealth

, Clerk.

Ne exeat. Further protection is provided a plaintiff by this writ, the full title of which is *ne exeat republica*, forbidding the defendant to leave the jurisdiction of the court pending the outcome of the action. The writ originated in the courts of chancery, the English writ being *ne exeat regno*, forbidding the defendant to leave the kingdom. There follows the complete court file in a *ne exeat* action:

STATE OF ILLINOIS }
COUNTY OF COOK } SS.

IN THE SUPERIOR COURT OF COOK COUNTY
IN CHANCERY

SARAH WARNER,
Plaintiff
vs.
JOHN WARNER,
Defendant
} No. 43S 000004

PETITION OF PLAINTIFF
FOR WRIT OF NE EXEAT

TO THE HONORABLE JUDGES OF THE SUPERIOR COURT,
IN CHANCERY SITTING:

SARAH WARNER, plaintiff, respectfully represents unto this Honorable Court, as follows:

1. That she is the plaintiff in the above entitled cause: that on the 1st day of October, A.D. 1942, she filed suit for divorce against JOHN WARNER, the defendant herein, alleging, among other things, that the defendant had committed acts of cruelty, on to-wit: the 9th day of August, A.D. 1940, the 15th day of August, A.D. 1940, the 23rd day of September, A.D. 1942, and at various other times; that she prayed, among other things, that the said marriage between plaintiff and the said JOHN WARNER be dissolved and declared null and void, and that she be awarded the care and custody of her two minor children, JOHN WARNER, JR., 8 years of age, and SANDRA WARNER, 20 months old; that the defendant pay such sum or sums of money as to the Court may seem reasonable and just, as alimony and support for the said minor children; and further praying for the People's Writ of Injunction, to be directed to the said defendant, his attorneys, solicitors, agents, and servants, restraining and enjoining said defendant, his attorneys, solicitors, agents, and servants from interfering with, molesting, annoying, or otherwise injuring plaintiff at any time or any place; and from taking, encumbering, damaging, selling, or in any way disposing of the household furniture of the parties hereto.

2. That your petitioner is informed and believes, and so states the fact to be, that JOHN WARNER, who is now within the jurisdiction of this Court, expects to leave this State and go to California, and to take with him his property; that the said JOHN WARNER has told friends of your petitioner and also said petitioner that he would quit his job at the end of this week, take all his property with him, and leave the State and go to California; that he has often told your petitioner that if she would ever start a divorce action against him, he would leave the City and State and would never, at any time pay for the support of herself and the two minor children; that he is now saying the same thing to your petitioner's friends and to your petitioner.

WHEREFORE, petitioner prays judgment that JOHN WARNER may be stayed by the Writ of Ne Exeat Republica, from leaving the jurisdiction of this Court, and that petitioner may have such other and further relief as may be equitable in the premises.

_____
PETITIONER

SARAH WARNER vs. JOHN WARNER	CHANCERY ORDER **Superior Court** of Cook County No. 42 S 000004	STAMP HERE

On petition of SARAH WARNER, plaintiff, for an order for the People's Writ of Ne Exeat Republica, directed to the defendant, JOHN WARNER, the court being fully advised in the premises,

IT IS HEREBY ORDERED that a Writ of Ne Exeat Republica issue, as prayed for in the Petition, returnable on the 4th day of October, A. D. 1942, upon plaintiff filing a bond in the sum of $250, conditioned, according to law. The Clerk will endorse said Writ that the defendant be required to give bond, in the penal sum of $500.

ENTER: .....
JUDGE

Dated: Chicago, Illinois
October 1, 1942 A. D.

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE SUPERIOR COURT OF COOK COUNTY
IN CHANCERY

SARAH WARNER,
Plaintiff
vs.
JOHN WARNER,
Defendant
} No. 42S 000004

ORDER

On motion of attorney for plaintiff for an order for the People's Writ of Injunction, directed to the said defendant, JOHN WARNER, his attorneys, solicitors, agents, and servants, restraining and enjoining each and all of them from interfering with, molesting, annoying, or otherwise injuring the plaintiff at any time or any place; and from taking, encumbering, damaging, selling, or in any way disposing of the household furniture of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the PEOPLE'S WRIT OF INJUNCTION do issue, directed to the said defendant, JOHN WARNER, his attorneys, solicitors, agents, and servants, restraining and enjoining each and all of them from interfering with, molesting, annoying, or otherwise injuring the plaintiff at any time or any place; and from taking, encumbering, damaging, selling, or in any way disposing of the household furniture of the parties hereto.

IT IS FURTHER ORDERED, for good cause shown, that the said injunction issue without bond or notice.

ENTER: _____
JUDGE

Dated: Chicago, Illinois
October 1, 1942

WRIT NE EXEAT RE. Superior Court

STATE OF ILLINOIS, } ss.
County of Cook. }

The People of the State of Illinois,
To the Sheriff of Cook County, GREETING:

WHEREAS, it has been represented to the Honorable ERNEST ALDRICH ..... one of the Judges of the Superior Court of Cook County, in said State by SARAH WARNER in her Petition presented to said Judge and filed in said Court, that JOHN WARNER is about to remove without the jurisdictional limits of this State, to the injury of said Petitioner , and the said Judge having ordered under his hand, that a writ of Ne Exeat Republica issue according to the prayer of said petition

You are therefore Hereby Commanded to summon the said JOHN WARNER if he shall be found in your county, personally to be and appear before the said Superior Court of Cook County, at Chicago, in said County, on the forthwith 19...., to answer unto the petition of the said SARAH WARNER filed in said Court as aforesaid.

And You are Further Commanded, that if the said JOHN WARNER shall not give bail according to the provisions of the Revised Statutes of Illinois in such cases made and provided, in the sum of 500. Dollars, that you commit him to the common jail of Cook County, to abide the further orders of our said Court in the premises, or until he shall, of his own accord, give such bond and security.

Witness, FRANK V. ZINTAK, Clerk of said Court and the seal thereof at Chicago, this 1st day of October, 19 42

..... Clerk.

NE EXEAT RESPUBLICA BOND Form 74

Know All Men by These Presents,

THAT WE SARAH WARNER, as Principal, and MUNICIPAL BONDING COMPANY, as Surety, of the County of Cook and State of Illinois, are held and firmly bound unto JOHN WARNER of Cook County and State aforesaid, in the sum of $250.00 dollars to be paid to the said JOHN WARNER his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 1st day of October A.D. 1942

Whereas, the above bounden SARAH WARNER has filed in the Superior Court of Cook County, and State of Illinois, her certain petition for the arrest of the above named JOHN WARNER

And whereas, Hon. ERNEST ALDRICH one of the judges of said Court, has indorsed an order upon his hand on said petition, directing the Clerk of said Court to issue a **writ of Ne Exeat Respublica** for the arrest of the said JOHN WARNER upon the said JOHN WARNER giving bond and security as provided by law.

Now, therefore, the condition of the above obligation is such that if the above bounden SARAH WARNER has obtained an order from the judge of the Superior Court of said County for the issuing of the People's writ of ne exeat respublica; and, whereas the said writ is about to be issued from the Clerk's office of the said Superior Court, commanding the sheriff of the said county to summons him, the above named JOHN WARNER personally, to be and appear before the said Superior Court on the first day of the next term thereof, to be holden at the Court House in on the day in the month of next, to answer the petition exhibited against him by the said SARAH WARNER in that behalf; and also to oblige the said JOHN WARNER to give bond with good and sufficient security, payable to the said SARAH WARNER in the penal sum of $250.00 dollars, lawful money, of the United States, conditioned that he will not depart this State, without leave of the said Superior Court, and that he will render himself in execution to answer any judgment or decree which the said Court may render against him in the premises; and further requiring the said sheriff, in default of his giving such bond and security, to commit him to the common jail of said County until he shall do so of his own accord;

Now, if the said SARAH WARNER shall well and truly prosecute her said petition with effect and doth reimburse the said JOHN WARNER all such damages and costs as he, the said JOHN WARNER shall wrong-

fully sustain by occasion of the said writ, then this obligation to be void; otherwise to remain in full force and effect.

Approved this 1st day of October A. D. 1942

. . . . . Judge.

. . . . . (SEAL)

. . . . . (SEAL)

. . . . . (SEAL)

SARAH WARNER

vs.

JOHN WARNER

CHANCERY ORDER

Superior Court

of Cook County

No. 42 S 000004

STAMP HERE

On Motion of Attorney for John Warner and the defendant being before the court on a Writ Ne Exeat Republica and the plaintiff being represented in court and the court being fully advised in the premises,

It is hereby, ordered, adjudged, and decreed.

1. That the Writ Ne Exeat Republica be quashed.

2. That the Sheriff of Cook County be directed to release the said John Warner from his custody.

3. That the said John Warner file a personal Ne Exeat bond in the amount of $500.

ENTER: . . . . . Judge

October 2, 1942

NE EXEAT BOND.

Know all Men by these Presents, That We,

JOHN WARNER as Principal, and

MASSACHUSETTS BONDING COMPANY as Surety.

are held and firmly bound unto PETER B. CAREY, Sheriff of the County of Cook, in the State of Illinois, his executors, administrators and assigns, in the penal sum of $500 Dollars, lawful money of the United States, for the payment of which sum we hereby, jointly and severally, bind ourselves, our heirs, executors and administrators.

The Condition of this Obligation is such, That, whereas JOHN WARNER has been arrested under and by virtue of a Writ of NE EXEAT, dated the first day of October, 19 42, issued out of and under the Seal of the Superior Court of Cook County, State of Illinois, on complaint of SARAH WARNER by which the Sheriff of said County was required to hold the above named JOHN WARNER to bail in the sum of $500. Dollars,

Now, if the above bounden JOHN WARNER shall go or depart from, beyond, the border of the State of Illinois, without the leave of Court from which the said Writ of Ne Exeat was issued, and if the said JOHN WARNER shall not render himself in execution to answer any judgment or decree which the said Court may render against him, then the said JOHN WARNER as Principal and MASSACHUSETTS BONDING COMPANY as surety and each of them, will pay, or cause to be paid, unto the said PETER B. CAREY, Sheriff of Cook County, the sum of $500. Dollars.

But if the said JOHN WARNER shall not go or depart from, or beyond, the borders of the State of Illinois, without leave of the said Court, and if he will render himself in execution to answer any judgment or decree which the said Court may render against him, then and in that case this obligation shall be void and of no effect; otherwise to remain in full force and virtue.

Signed, sealed and delivered this 2nd day of October, 1942

[SEAL]

[SEAL]

[SEAL]

[SEAL]

The following example shows that a *ne exeat* action may become newsworthy:

Irving Dorenfield is perfectly willing to admit that he's just full of tricks—based on the old idea that the hand is quicker than the eye. In fact, that's his business, being a magician. But his performance before Circuit Judge Thomas J. Lynch, in which he sought to convince the judge that there was no up-the-sleeve deception involved in his desire to go to Detroit, turned out to be one of his biggest flops.

He wound up in the County Jail, because he couldn't furnish bond of $1,500. Despite his artistry in breaking shackles, escaping from sealed boxes and strait jackets, and his skill in legerdemain, he was unable to escape a cell or a writ of ne exeat, which brought him before Judge Lynch.

Attorney Maxwell Landis, representing the magician, pleaded that Dorenfield had an engagement to appear in Detroit, and was most anxious to fulfil it.

But Dorenfield's wife, Lillian, of 3301 Lexington avenue, says that's just another trick to get out of paying her $15 a week support money. She says he owes her $1,150 since a separate maintenance decree was granted March 15, 1940. She obtained a writ of ne exeat Tuesday to keep Dorenfield in Illinois.

"He's just full of tricks," Attorney Philip L. Howard, who represents Mrs. Dorenfield, said. "Last Christmas he wrote Mrs. Dorenfield a letter, in which he told a sad, sad tale. He said he lost his memory for a few days, during which his wallet was stolen. He said he regained his memory in a South Side hospital. But we found he had never been in the hospital."

So Judge Lynch denied the motion to quash the writ of ne exeat, and ordered Dorenfield returned to the County Jail, when he was unable to post the bond. The couple were married Oct. 17, 1926, and have a son, Ronald, 11

—Chicago (Ill.) *Daily News*.

Capias ad respondendum. Imprisonment for debt has generally been abolished in this country, but in most states a plaintiff can cause a defendant in a civil action to be arrested and brought into court to post bond to guarantee his appearance when the case is called. The plaintiff must satisfy the court that the defendant has defrauded him, or is about to defraud him, or to conceal or dispose of assets. If the defendant refuses or is unable to post such bond, upon the plaintiff's insistence, he may be jailed for a short period, usually not more than six months. During that time the plaintiff is required to pay the cost of keeping him imprisoned, usually from $1 to $2 a day.

Defaults

If the defendant has been served properly and makes no answer or puts in no appearance within the time specified, upon motion by the plaintiff the court (judge) decides the case in his favor by default, just as though the defendant had confessed. In law actions this is done by an *order of default, default judgment,* or *judgment by nil decit.* In equity suits it is by *decree pro confesso* or *default decree.* If the damages to be allowed the plaintiff are unknown, a

writ of inquiry is issued to the sheriff to instruct him to summon a jury to determine what they should be.

By act of Congress in 1940, members of the armed forces were protected for the duration of World War II against default judgments being obtained against them while they were absent on duty. As a result, thereafter, before any plaintiff could obtain such court order, he had to file an affidavit to the effect that the defendant was not in military service. A typical affidavit of this type appears on the following page.

Even in cases in which technically action could be prosecuted successfully, judges throughout the country adamantly refused to permit it. There follows a news story based on one such incident:

Federal Judge Michael L. Igoe today reaffirmed his decision that "there will be no cases prosecuted in my court against members of the armed forces," when he ordered the government's charge against a sailor serving in the Southwest Pacific withdrawn for the duration

The Federal Milk Marketing administration was suing Frank Rujecka, co-owner of the Seeley Dairy Co., of 4754 South Seeley avenue, for violation of the Milk Marketing administration act. Rujecka, now in the Navy, was charged with failing to pay between $10,000 and $20,000 to the government under its price stabilization program.

When Jesse L. Cook, attorney for the MMA, insisted that the government wanted to press the case against the seaman, Igoe flared up, saying: "I thought we were all agreed in prosecuting this war. There will be no cases prosecuted in my court against any members of the armed forces."

—Chicago (Ill.) *Daily News.*

The following feature article illustrates how the legislation affected the courts:

By Max Sonderby

More than 1,000 law cases in the Circuit and Superior courts are now on the "military calendar" where no trial is possible until six months after the war is ended, and cases are being added at a rate of more than 100 a month, a survey disclosed yesterday. These are cases where parties or important witnesses are in the armed forces.

In addition, hundreds of other cases are believed dormant for the duration, although no military affidavits have been filed entitling either party to a postponement under the Soldiers and Sailors Relief act. Judges have been liberal in granting such delays, which actually only protect a serviceman from having judgment entered against him.

In Circuit court, Judge Harry M. Fisher, central jury case assignment judge, has placed 180 cases on the military calendar since September, but no record exists on figures prior to then or in cases of judges handling divorce, chancery or other types of litigation.

In the Superior court, it was estimated that each of the 12 law jury calendars has at least 50 cases postponed for the duration. The figures will not be known until all cases are reclassified in making up the new calendars next summer.

Delay in the courts has recently been worse because of heavy filings of divorce suits stemming from war dislocation. A record 11,000 of the 45,000 cases pending in the two courts last December were divorces, constituting an entire usual year's

IN THE JUSTICE'S COURT OF BROOKLYN TOWNSHIP
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

Plaintiff

No.
Moratorium Affidavit

vs.

Defendant

STATE OF CALIFORNIA,
COUNTY OF ALAMEDA, } ss.

, being first duly sworn deposes and says:

That he is the in the above entitled action.

That at the date hereof defendant above named, is employed by the as

That he knows of his own knowledge that said defendant not engaged at the date hereof in the military service or naval service or a member of the armed forces of the United States of America, within the meaning of the Selective Service Act of 1940 and 'or the Joint Resolution of both Houses of Congress adopted at the 3rd Session, 76th Congress of the United States of America, Chapter 689.

Subscribed and sworn to before me

day of 19

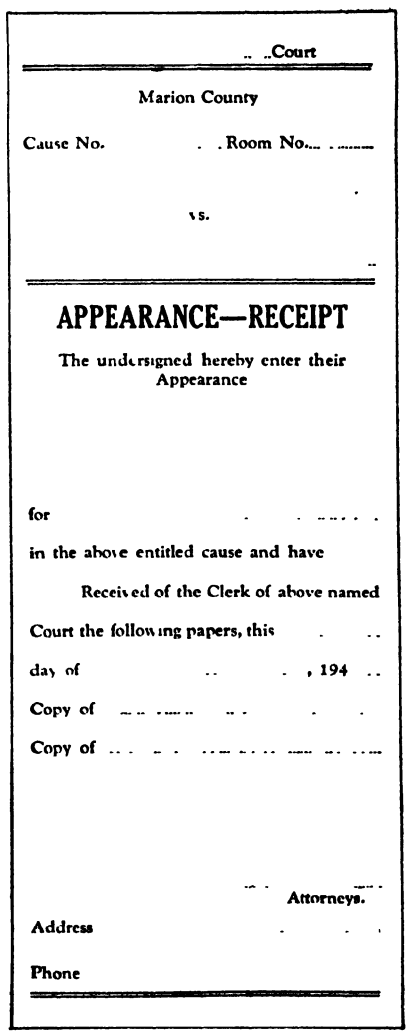
work for the divorce judges. A new record influx is expected when the war ends.

However, it is expected that lighter automobile traffic will cut down the jury cases, which numbered 15,500 of the total.

—Chicago (Ill.) *Sun.*

Appearances

In the old days, it was necessary for a defendant to appear personally in court to answer any complaint or bill. Today he gen-



.. ..Court

Marion County

Cause No. . .Room No.... .....

vs.

APPEARANCE—RECEIPT

The undersigned hereby enter their Appearance

for . . ..

in the above entitled cause and have

Received of the Clerk of above named

Court the following papers, this . ..

day of .. . , 194 ..

Copy of ....

Copy of ....

Attorneys.

Address . . .

Phone

erally can do so either personally or by attorney, and all attorneys who file appearances on behalf of clients are *attorneys of record* and thereafter must be notified of any motions by the adverse

party, court hearings, and other matters connected with a case. It is important for the newspaper reporter to know that the contents of a motion made in court are not privileged until copies have been served on the attorneys for the adverse party.

By filing an appearance, a defendant submits himself to the jurisdiction of the court. If he files an immediate answer to the charges in the case, he may dispense with the formality of an appearance. Usually, however, he requires more time in which to prepare a reply. If he has ten days or two weeks in which to file an appearance, and does so at the end of that time, he probably will get an additional fortnight or longer in which to make his first pleading. In some cases, such as evictions and small claims, formal answers are often not required; denial of the allegations is assumed, and the appearance is sufficient acknowledgment by the defendant.

The form of the appearance is extremely simple. That used by the Indianapolis municipal court is typical. It appears on page 165.

This is a *general* appearance, and it is tantamount to a waiving of any possible defects in service. A *special* appearance is for a specific purpose only—for example, to test the sufficiency of service or the jurisdiction of the court. An *optional* appearance is made by an intervener who wants to protect his own interests, though not joined as a party to the action. An appearance *de bene esse* is a provisional appearance, to remain good only upon a future contingency. A *gratis* appearance is by a party on his own volition, without waiting for any formal service or legal notice.

Defenses in Law

Instead of filing a *plea* or *answer* to the plaintiff's *declaration* or *complaint*, the defendant, after he has been notified that an action is being brought against him, may attempt to stop it by showing that the plaintiff has no legal right to go into court against him. Such pleas are usually called *pleas in bar, peremptory pleas,* or *pleas in abeyance*. All such pleas must be filed before any pleadings in reply to the plaintiff's charges. They are a waiver of any irregularities that otherwise might be pointed out in the technical manner in which the action was begun—that is, in the way any legal forms are written up or the manner in which the summons is served.

The modern trend is to substitute a *motion to dismiss* the action for any special plea by way of reply, or a *motion to strike* if the objection is to the form in which the complaint is drawn. A rule

of the United States District courts reads: "Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used."

Demurrers. According to the late Heywood Broun, widely known newspaper columnist, to demur is the legal way of saying, "What the hell?" In effect, a demurrer to an action declares that, even though true, the facts alleged by the plaintiff would not constitute a cause of action. A demurrer thus raises questions of law rather than of fact; it is not an answer either of confession or denial of the charges. Actually, a defendant who demurs is asking the judge to decide whether, under the circumstances, he is legally required to reply.

The reason for the elimination of the demurrer in the civil practices acts of many states is the opportunity it affords for protracted wrangling. Lawyers can come close to trying an entire case while they are merely arguing over the supposedly technical question of whether the plaintiff is legally qualified to bring suit or whether the offense charged violates any law. In modern practice, a motion to strike often takes the place of a demurrer.

Statutes of limitations. A frequent ground for demurrer is that the time allowed by statutes for the bringing of the action has expired. Such legislative acts are called statutes of limitations. Ordinarily, a person can seek to recover a debt that is not more than five or seven years old. In Illinois, the limitation on most civil actions is five years; for libel and slander, it is one year; for personal injuries, false imprisonment, or malicious prosecution, two years; to enforce a written contract, ten years; to recover lands, twenty years. In popular parlance, after the statutory limitation has expired, a bill or debt is said to be "outlawed." Newsworthy court situations may develop over determination of when the statute of limitations begins to run on a contract to make a purchase on the installment plan. Is it from the time a particular installment is due, or from the beginning or end of the contract? In embezzlement or forgery cases, is it from the time the act was committed or from when it was discovered? It frequently happens that a plaintiff can bring action to recover only part of a defalcation because of the operation of the statute of limitations.

Motions to dismiss. Although demurrers, pleas, and exceptions for insufficiency of a pleading are not allowed in United States district courts, the defendant can make a motion to dismiss the action on any one of the following grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim upon which relief can be granted.

Under the Illinois civil practices act, the motion to dismiss may be based on any of the following grounds:

1. That the court does not have jurisdiction of the person of the defendant.
2. That the court does not have jurisdiction of the subject matter of the action or suit, provided the defense cannot be removed by a transfer of the case to a court having jurisdiction.
3. That the plaintiff does not have legal capacity to sue.
4. That the cause of action is barred by a prior judgment.
5. That there is another action pending between the same parties for the same causes.
6. That the cause of action did not accrue within the time limited by law for the commencement of an action or suit thereon.
7. That the claim or demand set forth in the plaintiff's pleading has been released.
8. That the claim on which the action or suit is founded is unenforceable under the provisions of the statute of frauds.
9. That the cause of action did not accrue against the defendant because of his infancy or other disability.

Arguments on motions to dismiss may be newsworthy, as may be seen from the following examples:

Six earnest ladies, members of the Women's Christian Temperance union, listened anxiously yesterday in Evanston's Municipal court to an attack on the suburb's dry law which might alter Evanston's ancient aridity. The suburb is national headquarters for the WCTU and home of its founder, the late Frances E. Willard.

Defendants in the case were Mrs. Betty Brown, 1550 Greenleave avenue, and Mrs. Eloise Williams, 1110 Lake street, accused of selling and keeping for sale intoxicating liquor in violation of Evanston's dry ordinance. Their attorney, William James, argued in support of a motion to dismiss the complaint, that the ordinance is invalid, unconstitutional, and contrary to the Illinois liquor control law.

The gist of his argument, a technical one, was that the right of a municipality to vote itself dry, as inherent in the city and villages act, was revoked by implication with the passage of the control law. Chief Justice Donald Reese deferred his ruling until Nov. 21.

A reasonable doubt that a deputy sheriff could serve a summons personally on two defendants, dead seven and nine years, brought dismissal by Judge William Harding yesterday of a suit to recover $4,067 in sales taxes.

The suit, brought by the state against Lee Long and Lee Him, doing business as the Great China Cafe at 120 West 22nd street, covered 1933 and 1938 inclusive.

Sheriff's records showed that J. B. Bliss, a deputy, personally served the two last May 30. When the case was called, Lawrence Rice stepped forward with a motion to quash the service.

He presented an affidavit that he had attended the funeral of Lee Long in 1934

and that of Lee Him in 1936. Archie Wheaton, assistant attorney general, agreed to the dismissal.

Deputy Bliss said outside court that he had served papers on somebody.

Dismissal of a suit filed in Superior court by the Retail Clerks and International Protective association (A. F. of L.) against two former officers of Local 66660 in Chicago was recommended by Master-in-chancery Louis Worth yesterday on grounds that the court lacks jurisdiction in the case.

The two former officers, Louis Wells and Sam Brothers, left the clerks' union and affiliated with the Building Service Employes union, Local 160, taking membership cards with them, the suit declared.

Worth said the dispute could be adjusted under the laws of the American Federation of Labor, with which both unions are affiliated.

Voluntary dismissals. Under federal rules, a plaintiff can drop an action without a court order by filing a notice of dismissal before service of the answer, or by filing a stipulation of dismissal signed by all parties who have appeared generally in the action.

If the court itself dismisses an action, it is disposed of, decided in favor of the defendant. A *dismissal without prejudice,* however, means that the complainant can bring another action in the same cause, the immediate court order not being a bar to such a step. If a case goes to hearing or trial, and a judgment is rendered in favor of the defendant, it constitutes a dismissal with prejudice, thereby finally disposing of the matter and barring the plaintiff from bringing suit again on the same grounds.

In reporting the courts, it is necessary not only to have a thorough understanding of the law yourself but, every few days, to provide readers with a short course on some phase of it. It is difficult to imagine how the reporter of the following story could have avoided doing so, since the debate was on a technical motion:

Federal Judge William H. Holly today dismissed the government's petition for an injunction against Montgomery Ward & Co. "without prejudice"—and thereby gave the government the right to begin the suit all over again in the future should circumstances indicate the advisability of such a course.

The judge had declared earlier in the week that he would dismiss the case without ruling on its merits since the abandonment of the government's seizure of Ward's Chicago properties made the suit unnecessary.

But this action today, in ruling on the matter of "prejudices," meant that should the government seize Ward's again, it could return to the Federal court and request that company officials be restrained from interfering with government operation of the properties.

Asked 'Prejudice' Ruling

Attorney Harold A. Smith, counsel for Ward's, had argued that the dismissal of the government's suit should have been made with prejudice on the theory that the government did not have the right to request at any time in the future that company officials be restrained from operating the big mail order concern as they see fit.

Judge Holly had taken the "prejudice issue" under advisement. He cited legal precedents "which leave me no alternative" when he handed down the ruling today.

The filing of the government's suit followed Army seizure of Ward's when Sewell L. Avery, chairman, and other store officials refused to obey a presidential order to accept an NLRB ruling.

—Chicago (Ill.) *Daily News.*

The terms *agreement* and *stipulation* are often used interchangeably in ordinary legal parlance. Technically, a stipulation is part of an agreement, or, to put it another way, "an agreement stipulates so and so." Agreement may be used to refer to a meeting of minds by opposing counsel on some matter of procedure—such as, that a case shall be heard by a judge instead of being tried by a jury; that an action to which a defendant has filed an answer by way of denial nevertheless shall be placed on the default calendar of the court; that execution of judgment shall go into effect at the expiration of a certain period of time; and so forth.

If the term agreement is used in this sense, stipulation means an agreement regarding the complete disposition in the case. The difficulty of distinguishing between the terms is clear, because if lawyers agree that an action shall be placed on the default calendar they at the same time agree that the plaintiff should obtain judgment or decree as demanded, and only a judge can prevent such occurring. Even in default actions, however, some evidence is required in most cases before there can be a judgment or decree. This is an offset to collusion, especially in divorce actions.

An everyday occurrence is for a defendant's lawyer to get in touch with a plaintiff's lawyer as soon as possible after an action has begun, in the attempt to reach a compromise. Reporters should not take seriously the large sums that are demanded in damage suits, because it is seldom that a judge or jury will allow anywhere near what is asked. If he is not forewarned, a young reporter might be startled a few weeks after an action is begun for $10,000 to learn that by an out-of-court agreement the matter had been settled for something like $50. More important, he runs the risk of being scooped if the parties reach an out-of-court settlement that may not be reported in court for some time. It is impossible, of course, to follow up every pending case, but wise to do so whenever there is reason to suspect that the matter will never come to trial. Some attorneys will notify reporters when any out-of-court news becomes available; others will not. There is no rule; everything depends upon the contacts the reporter makes with court officials, attorneys, and principals. Good court reporting, however, consists in more than a routine stroll through the courtrooms every few hours. The following is a typical item concerning an out-of-court settlement:

A $10,000 damage suit against Judge Jacob M. Braude of Municipal court, in connection with the death of a woman in an automobile accident, was settled out of court yesterday for $2,500, according to V. Russell Donaghy, attorney for the estate of the woman.

This was learned when Judge John F. Bolton of Superior court dismissed the suit against Judge Braude. The suit was filed by the LaSalle National bank as administrator of the estate of Mrs. Lillian Holmes, 55, of 6230 Kenmore avenue, a widow, who was killed by Judge Braude's car on Jan. 27, 1942, at Sheridan road and Granville avenue.

The suit charged the judge with speeding, failing to sound his horn and disregarding a stop light, and sought a malice count under which the defendant would have been subject to imprisonment had he not paid whatever settlement was awarded.

The heirs of Mrs. Holmes' estate are Mrs. Helen Glawitsch of Roselle, N. J., a daughter, and Floyd Weeks, a soldier stationed in the East.

—Chicago (Ill.) *Sun.*

When lawyers get together before their case is called in court, they may draw up a *consent* judgment or decree to submit to the judge for his approval and signature. Such a document really amounts to a contract between the parties under the sanction of the court, and is an admission by the parties that it is a just determination of their rights on the real merits in the case.

The term agreement is used in its popular sense of a meeting of minds, which, at law, may be: to extend the time one side has to file a pleading, to take depositions, to waive objections, to admit certain facts, to continue a case. After lawyers agree, they write up the order covering the matter for the judge to sign, together with a motion that the court do so. Since the opposing side must be notified of all intentions of a litigant to make a motion, failure of either lawyer to appear in court when the motion is presented may be taken by the judge as evidence of consent. However, as a precaution, the judge may ask if the opposite side was notified and may suggest that another attempt, possibly by telephone, be made. Otherwise, if something went wrong with the notice, the other side could come into court and move that the order be *vacated.* Routine motions on which both sides are thought to agree, about which there will be no argument, may be called *motions of course,* and they may be disposed of very rapidly at the opening of court each day. By contrast, there are *contested motions,* to hear which a judge allows greater time. If there is argument on a motion, of course, it may be transferred to the contested motions call sheet. If the parties are agreed on the facts in a matter, but differ only on the law arising out of them, they may agree that the judgment shall be either for the plaintiff by confession or for the defendant by dismissal. In such instances they move for a *judgment on a case stated.*

The following are additional news items of cases in which the attorneys got together out of court:

U. S. District Judge John Kellog entered a consent decree today against the Acme Steel company, 160 West 22nd street, enjoining it from future violations of Office of Price Administration regulations.

An OPA suit, the first of its kind in this region against a steel warehouse, charged that the firm had violated price ceilings, failed to keep accurate records and had not made reports required by the OPA. Defense Attorneys Raymond Schultz and Benjamin Smith, in denying the allegations, contended that even if the charges were true, the volume of business affected would equal only one-half of 1 per cent.

Four company officials, David and Albert Holmes, Thomas White and Ernest Brown, and two customers, Coats and Company of South Chicago and the Acme Metal Products of Kansas City, Mo., were named in the injunction.

Attorneys Robert Johnson and Harold Whistler, representing the OPA, alleged the company had made overcharges of between $100,000 and $300,000 in sales of secondary steel products.

By a stipulation whereby the Prince Cheese company denied it had violated OPA price regulations as amended, triple damages were waived by the OPA before Federal Judge John Kellog today.

Triple damages of $112,120 had been sought on an asserted overcharge of $37,373 to its customers over a period of a year, on processed American cheese shipped from plants to buyers. The stipulation provided that the company pay the smaller amount and costs.

The cheese company defended its prices on the premise that charging wholesale prices on products shipped directly to buyers from factories and not through warehouses was an established trade practice and had been countenanced by an OPA amendment March 16.

Special pleas. Some special pleas, allowed in some states, which, if successful, bring about dismissal of an action, are:

A disclaimer in a pleading is an averment by a defendant that he has no interest or claim in the subject matter of the action. This may occur if the plaintiff has made a mistake in bringing suit against the wrong person.

A plea in discharge admits that the plaintiff once had a cause of action, but contends that it was discharged by some subsequent or collateral matters, such as a payment of a debt or performance of some act.

A plea of release admits that plaintiff had a cause of action, but avers that the plaintiff has released the defendant from fulfilling the obligation he now attempts to enforce.

Declaratory judgments. If you want to be certain before doing something that you are acting within your legal rights, you can go into a United States district court or into the courts of a growing number of states and obtain a declaratory judgment. In effect, what the court does when it renders such a judgment is to inform

the parties how any legal action growing out of the contemplated behavior would be decided. As a result, a person can avoid making a costly mistake. No executionary process follows a declaratory judgment, so anyone who doesn't like it can go ahead with any action contrary to it. Naturally, however, such action would be extremely foolhardy.

Declaratory judgments have been obtained to determine the legality of a proposed bond issue or tax levy; to determine the right of dental students to practice under an instructor's supervision and charge a fee; to determine whether a subscribed public fund can be used for a particular purpose; to determine rights under an insurance policy; to test the validity and construction of a will, and the rights of the parties thereunder.

Action to obtain a declaratory judgment begins with a complaint or petition alleging that a controversy exists, stating the plaintiff's interest in it, and praying for a declaration by the court as to his rights in the matter.

Extensive use of declaratory judgments would put an end to the uncertainty that often exists after the passage of some new act of Congress or state law. When the matter is one of widespread public interest and importance, it is not infrequent for lawyers in public statements to anticipate how the courts will interpret the matter and to advise those affected to act accordingly. That happened when a number of Liberty League bigwig lawyers announced that the National Labor Relations (Wagner) Act undoubtedly was unconstitutional and need not be obeyed. When, several months later, the United States Supreme Court decided exactly the opposite, the Liberty Leaguers appeared not only foolish but almost subversive as well.

The Federal Act on Declaratory Judgments was passed June 14, 1934, and during the first ten years of operation was upheld by the Supreme Court on at least twenty different occasions. The act substituted what its defenders consider a speedier, cheaper, and more civilized method of settling legal disputes. It is based on the assumption that most people will obey the law if they know what it is, and it attempts to provide an easy way by which such knowledge can be obtained.

Dilatory Tactics

By contrast with a plea in bar, which is intended to bring a halt to all proceedings, a *plea in abatement* merely seeks a delay or postponement. In some cases such a plea may seem to be justified to protect a defendant's interests. In others it is simply dilatory,

seeking to put the plaintiff to unnecessary inconvenience or expense so as to wear out his patience. Many such pleas take advantage of technicalities in the law regarding forms and procedures, although civil practices acts are rapidly putting an end to such tactics by stipulating that mere stenographic errors, which do not affect the substance of a legal document, will not invalidate it and can be corrected.

In its older meaning, an abatement of an action at law meant the overthrow of the action caused by the defendant's pleading some matter of fact tending to impeach the correctness of a writ or declaration, but not preventing the plaintiff from recommencing his action in a better, proper way. In equity or chancery practice, abatement meant the suspension of all proceedings for want of the proper parties capable of proceeding therein. In such cases the action could not be recommenced. Usually today, in matters to be decided according to equitable principles, a cause abates with the death of a party, as in the case of an actor under contract to take a part in a dramatic production. By contrast, the estate of a decedent can continue any action at law involving the recovery of damages which had been begun before death.

Challenge to the array. If it is suspected that there were irregularities in the procedure by which the entire panel of veniremen was prepared, either party, before a case comes to trial, can challenge the array or panel, but the plaintiff's right to bring further action later is in no way affected by the court's approval of the challenge. Such charges are made rarely, and when they are made they involve matters of important public interest. To support such a challenge involves producing evidence that there has been graft, bribery, or other "irregularities" involving public officials. The news value of any such challenge should be great.

Pleas to the jurisdiction. In modern practice, a motion to dismiss is the proper procedure when a defendant believes that the court does not have sufficient authority to handle the matter at hand. If the plea or motion is successful, the plaintiff is not prevented from beginning a new action in another court that does have jurisdiction.

On its own motion, a court may dismiss an action because of lack of jurisdiction. The following is an example:

Roger Touhy, convicted kidnapper now serving a 99-year term in Stateville prison, today lost in Federal court an attempt to prevent the showing in Cook county of the movie "Roger Touhy—Gangster." He had charged that the 20th Century Fox film would hold him up to public contempt and injure his character and reputation.

After listening for half a day to arguments by attorneys, Federal Judge

William H. Holly told Touhy's counsel, Irving S. Roth, that a damage suit was the proper remedy at law and that the Federal court lacks jurisdiction in the case.

Roth said he would appeal the denial of the injunction to the Circuit Court of Appeals. Attorneys for the producers of the film argued that the life of a criminal is public property.

—Chicago (Ill.) *Daily News.*

Change of venue. A plea or motion for a change in venue, more common in criminal than in civil actions, asks that the cause be transferred to another court or to another branch or division of a court. If a circuit or district court has sessions in more than one county, it may be requested that the case be tried in other than the defendant's home county, in the belief that jurors selected from that county will be less likely to be prejudiced.

The motion may be to transfer the case from one court to another with concurrent jurisdiction or to another branch or division of the same court in order to get a judge presumably less prejudiced. Sometimes it is mandatory upon a judge to grant such a plea or motion, but usually he has discretionary powers to grant or deny. It often is argued in support of a motion for a change of venue that newspaper stories of the case have made it difficult or impossible to obtain an unprejudiced jury, or that they have stirred up so much interest that there may be prejudicial conduct by spectators in the courtroom.

Judge Peter Williams of Renters' court was accused yesterday by Robert Johnston, an attorney, of prejudice and inability to give a fair trial to Jonathan Peterson of 23480 Devon avenue, a landlord charged with refusing to rent an apartment to a couple with children. Johnston asked and obtained a change of venue for Peterson.

Judge Williams ordered the case returned to Chief Justice Harold Dickinson of Municipal court for reassignment.

Peterson was arrested under an old ordinance on the complaint of James Cooper, 47000 Drexel boulevard, who said he paid a month's rent in advance for an apartment at 16000 Devon avenue, but later was advised he could not have the apartment because of his children. Cooper has a married daughter, two sons in the service and three younger children, 12, 8 and 5.

Motion to quash. Such a motion is based on the contention that the summons was defective or that the return of the sheriff or bailiff was defective. If it is granted, the plaintiff can start a new action in a better form.

Continuance. A motion for a continuance seeks a delay or continuance when the case is called for hearing or trial. Some judges are lenient in granting continuances; others are not. Repeated continuances obtained by the defendant tend to wear out the plaintiff. More than that, witnesses may become unavailable, real evidence may disappear, and a wrong that the action seeks to cor-

rect may continue to the plaintiff's disadvantage. It is not unusual for some actions to hang on in the courts for months or years, but they are mostly ones in which neither side is pressing for a showdown. Some courts have a rule requiring that dormant cases be called at least once a year and the parties be required to explain the delays. The court may dismiss the cases for want of prosecution (W. O. P. on the call sheet).

The newspaper reporter cannot assume that every request for a continuance results from a desire to delay action unfairly. Often there is a legitimate excuse—such as the illness of a witness or the necessity for an attorney to be present in another court. Nevertheless, lawyers who constantly seek continuances, regardless of the apparent validity of the reasons given, should be suspect, and usually are.

Respondeat ouster. Upon an issue in law arising from a dilatory plea, the form of the judgment for the plaintiff is that the defendant answer over (a second time)—a judgment of *respondeat ouster.* The pleading is resumed, and the action proceeds.

Pleas to the Merits

Old forms. At common law, the pleadings were as follows:

1. *Declaration,* in which the plaintiff enumerated his grounds for action and stated the relief that he wanted the court to grant.
2. *Plea,* the answer or defense of the defendant to the plaintiff's charges.
3. *Replication,* the plaintiff's reply to the defendant's plea.
4. *Rejoinder,* the defendant's answer to the plaintiff's replication.
5. *Surrejoinder,* the plaintiff's answer to the defendant's rejoinder.
6. *Rebutter,* the defendant's answer to the plaintiff's surrejoinder.
7. *Surrebutter,* the plaintiff's answer to the defendant's rebutter.

The idea was to simplify the controversy by reducing the issue to a few or a single point or points.

At equity the pleadings were:

1. *Declaration* by the plaintiff.
2. *Replication* by the defendant by way of answering.
3. *Replication* by the plaintiff in answer to the defendant.

In both law and equity these were the names of only the first pleadings. Others continued without special names. There was, in fact, no end to the pleadings, and lawyers could keep them up in-

definitely to wear out the opposition and/or keep the matter from being called in court. Equity, exactly the opposite of law, assumed that all allegations were denied unless admitted and compelled a defendant to answer or give discovery in advance of trial.

Code pleading. Under civil practices acts the number of pleadings is limited. Under federal rules the following are allowed:

1. *Complaint* by the plaintiff.
2. *Answer* by the defendant.
3. *Reply* by plaintiff, if the answer contains a counterclaim.
4. *Answer* to the cross or counterclaim.
5. *Third party* complaint or answer.

In Illinois there are the following:

1. *Statement of claim.*
2. *Answer* or *affidavit of merit.*
3. *Reply* by the plaintiff if the defendant makes counterclaims or introduces new matter, with a ten-day limit on filing.
4. Further pleadings only as allowed by court order.
5. If the statement of claim is *verified* by the oath of the plaintiff or any other person, all subsequent pleadings must be verified similarly.

Terminology. Whether the court operates according to old or new rules, traditional legal expressions are likely to be used, either formally in the pleadings themselves or informally in courtroom banter. Thus, some of the more important legal terms should be understood by the reporter. Among them are the following:

Traverse. To traverse means to deny. Thus, when a defendant answers any plaintiff's allegation, he is said to traverse it, and the plea itself may be called a traverse.

General Issue. A plea to the general issue traverses, not merely a part of the plaintiff's claim, but his entire declaration or complaint; it is, therefore, a complete denial.

Non Est Factum. This is a form of a plea of traverse in contract cases by which the defendant denies the validity of the instrument upon which the action is brought, and rests his entire case on that point of fact. A *special non est factum* plea may be made when the defendant admits execution of the instrument, but insists that it no longer is his obligation because of circumstances occurring subsequent to its execution and releasing him from the obligation. An example would be a deed in escrow, which might have been turned over prematurely to the plaintiff.

Non Infregit Conventionem. In Latin this means "he did not break the contract." As a plea it sometimes is used in an action of covenant.

Non Fecit. This means "he did not make it," and may be a plea on an action of assumpsit on a promissory note.

Non Assumpsit. This is the plea by which a defendant in assumpsit cases says that "he did not undertake" or promise what the plaintiff alleges.

Non Capit. It means "he did not take." It is a plea of general issue in replevin cases.

Nil Debet. It means "he owes nothing." It is a plea in debt actions on simple contracts.

Confession and Avoidance. This is a plea whereby the defendant admits the facts as set forth by the plaintiff, but declares that he had a right to do what is charged against him. For instance, the accused in a case of assault and battery might assert that he was protecting his home against unlawful invasion.

In his answer a defendant covers all the counts in the plaintiff's complaint, admitting some and denying others. The following example illustrates how this is done:

STATE OF ILLINOIS }
COUNTY OF COOK } SS

IN THE CIRCUIT COURT OF COOK COUNTY

CHARLES D. HYBL
vs.
ANTON HYBL, HELEN HYBL, GEORGE HYBL, and OLGA H. BAMBAS } No. 42C 5286

COMPLAINT IN CHANCERY FOR ACCOUNTING

Plaintiff alleges:

1. That during the year 1931 the plaintiff and the defendants Anton Hybl and Olga H. Bambas entered into an agreement to purchase a certain parcel of real estate described as

> Lots Eighteen (18) and Nineteen (19) on Lagoon Avenue in Block Eleven (11) in Patzel Lake View Subdivision of the North West Quarter (NW¼) South East Quarter (SE¼), Section Thirty-One (31), Township Thirty-Six (36), North Range Seven (7), West of the Second Principal Meridian, all in the City of Hobart, Lake County, Indiana.

2. That the plaintiff and the defendants, Anton Hybl and Olga H. Bambas, each contributed the sum of Six Hundred Dollars ($600.00) toward the purchase price of said property and thereafter said property was purchased for the sum of Eighteen Hundred Dollars ($1,800.00).

3. That it was agreed by and between said parties that title to said property should be taken and held in the name of Anton Hybl and Helen Hybl his wife; that thereafter title to said property was taken in the name of said defendants and they continued to hold said property for the benefit of the plaintiff and the defendant, Olga H. Bambas, until October 30, 1941.

4. That during said period the plaintiff contributed one-third (1/3) of the tax assessment each year and contributed various sums of money for the upkeep and maintenance of said property.

5. That during said period the property was rented at various times to dif-

ferent tenants, and the defendants, Anton Hybl and Helen Hybl, did collect rents therefrom, and have retained said money.

6. That on to-wit: October 30, 1941, the defendants, Anton Hybl and Helen Hybl, did convey said property to William and Rose Sontag and did receive for said conveyance the sum of Twenty-seven Hundred Dollars ($2,700.00).

7. That thereafter the said defendants, Anton Hybl and Helen Hybl, did purchase certain other parcels of real estate and did take title therefore in the name of the defendant, George Hybl, a son of the defendants, Anton Hybl and Helen Hybl; that the purchase of said real estate was made with the proceeds from the sale of the said property held by the defendants for the benefit of the plaintiff; that the defendant, George Hybl, did not contribute any money toward the purchase price of said property and that he holds title to said property as a dummy for the defendants, Anton Hybl and Helen Hybl.

8. That the defendants, Anton Hybl, Helen Hybl, and George Hybl, have made no settlement with the plaintiff, though requested to do so; that they have possession of all accounts and documents and refuse to permit the plaintiff to see same; that on a statement of the accounts it will appear that Anton Hybl and Helen Hybl are indebted to the plaintiff; that they are using and converting, to their own use, money and property belonging to the plaintiff.

WHEREFORE, plaintiff prays judgment:

(a) That an account be taken under the direction of the Court of all transactions in said real estate and that the same be fully adjusted and the respective rights of the parties ascertained.

(b) That the defendants, Anton Hybl and Helen Hybl, be decreed to pay the plaintiff whatever is due him.

(c) That the defendant, George Hybl, be enjoined from disposing or conveying the property now held by him.

(d) That the plaintiff may have such other or further relief as may be just and equitable.

_____
PLAINTIFF

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY

CHARLES D. HYBL
vs.
ANTON HYBL, HELEN HYBL, GEORGE HYBL, and OLGA H. BAMBAS } No. 42C 5286

ANSWER

ANTON HYBL, one of the Defendants in the above cause, for Answer to the Complaint filed in the above entitled cause, says:

1. This Defendant is not advised as to the nature of the agreement entered into between the Plaintiff and the Defendants, or whether the same was oral or in writing, and therefore asks strict proof thereof.

2. This Defendant admits that he, OLGA H. BAMBAS, and the Plaintiff each contributed Six Hundred Dollars ($600.00) toward the purchase of the property as described in Paragraph One (1) of Plaintiff's Complaint.

3. This Defendant admits that title of the aforesaid described real estate was taken in the name of the Defendant and HELEN HYBL, his wife.

4. This Defendant denies that the Plaintiff contributed one-third (1/3) of the

tax assessments each year, and further denies that the Plaintiff contributed any sum of money for the upkeep and maintenance of said property.

5. This Defendant further states that the said property was rented for only a short period of time and that the cost of putting the property in condition cost far more in excess than the amount received by the Defendant.

6. This Defendant admits that the said property was conveyed for a valuable consideration, but denies that he received Twenty-seven Hundred Dollars ($2,700.00) for same.

7. This Defendant denies that he purchased any other real estate or took title therefor in the name of his son, GEORGE HYBL, or in any other persons' name.

8. This Defendant denies that the Plaintiff is entitled to any settlement as a result of the sale of said property, that the cost of maintaining the said property, the taxes paid, and the time and material that the Defendant used in the maintenance of said property, and the benefits derived by the Plaintiff and his wife during the years in which Defendant had title to the above property, was far in excess of the money that the Plaintiff originally invested in same.

WHEREFORE, This Defendant states that there is nothing due to the Plaintiff and upon an accounting taken in this cause, it will show that the Plaintiff is indebted to the Defendant.

_____
DEFENDANT

In reporting an answer, the newsgatherer observes the fundamental principle of including sufficient tie-back to the original complaint, properly to identify the story. He also exercises the same care in accrediting allegations to the legal paper, as noted previously as regards the complaint. There follow two typical news items based on answers:

Attorneys for Walter Scott, advertising manager of Hines' Department store, yesterday filed an answer to a petition of his estranged wife, Loretta Scott, for $4,000 to finance her separate maintenance suit.

The answer filed before Circuit Judge John R. Williams asserted that Scott already had informed his wife of his exact income and holdings, so that there was no need for her to hire accountants to establish this fact, as her petition alleged. Furthermore, the answer said, even if accountants were necessary they could perform their task in half a day and it would not cost $4,000.

The answer added that Scott had paid his wife $500 monthly for support of her and their four children since their separation in 1940, and that she had no immediate need of funds for maintenance, attorneys' fees or expenses of the pending suit.

William Cooper, ex-member of the Chicago Civil Service commission, filed an answer yesterday to a suit in which he and Thomas Baker, former president of the Best Bakeries corporation, had been accused of splitting $800,000 in profits from Cooper's sale of flour to the bakery company. The suit, brought by stockholders in Cooper's firm, charged the flour had been bought by Baker for 30 cents a barrel above the market price and the two men had "played poker" to decide the accumulated differential.

In the answer Cooper denies he ever conspired with Baker or sold inferior flour or that there was any split in profits. He also denied ever illegally paying

Baker anything or making an illegal profit. In a supplemental answer he also denied playing poker with Baker for high stakes.

Counterclaims. Frequently, a defendant feels not only that he owes the plaintiff nothing but that he has something coming to him from that party. A typical situation of this sort is an action growing out of an automobile accident, in which each party insists the other was at fault and should pay.

Under the old rules of practice, to make a claim against a plaintiff usually required a new, separate action, obviously a cumbersome and expensive proceeding. Under the civil practices acts today, a defendant can include a counterclaim in his answer to the original complaint. In fact, he can make his claim against a co-defendant instead of or in addition to the plaintiff. The Illinois act reads as follows:

Subject to rules, any demand by one or more defendants against one or more plaintiffs, or against one or more co-defendants, whether in the nature of setoff, recoupment, cross-bill in equity or otherwise, and whether in tort or contract, for liquidated or unliquidated damages, or for any other relief, may be pleaded as a cross-demand in any action, and when so pleaded shall be called a counterclaim.

A *setoff* is a form of counterclaim in which the defendant avers that the plaintiff's claim against him is counterbalanced by another claim, arising out of a different transaction, which he has against the plaintiff. For instance, if *A* sues *B* to obtain $100 which he says is due him for a horse that he sold *B*, the latter may answer that *A* owes him $100 for carpentry work that he did around *A*'s place.

A *recoupment* is a form of counterclaim which pleads for a reduction in the amount of damages the plaintiff seeks, on the ground that it is excessive or because there is something due the defendant as a result of the plaintiff's failure to live up to some of his obligations. It corresponds to the *plea in reconvention* under the Roman civil law.

The following news story is of an unusual situation involving a countercharge in which exhibits are the center of interest:

Richard M. Genius, Jr., nephew of the late Charles H. Morse and heir to the bulk of a $3,000,000 fortune, found "all applicants for secretary unusually homely" in Boston, according to a letter written by him on file in Circuit court today.

The letter is one of nearly 200 epistles, checks and other documents filed by Robert N. Hoffman, head of the Bergonize company, 180 North Wacker drive, to support countercharges made in his answer to a $100,000 damage suit filed by Genius recently.

The exhibits, including photostats of checks drawn on Genius' personal account

which Hoffman is accused of altering and raising, are to be used April 20, when Judge Walter J. LaBuy will hear arguments on Genius' petition to strike most of the sensational allegations from Hoffman's answer.

Tells of Wife-Hunt

Hoffman, a long-time personal friend of Genius, asserts he approved a plan advanced by the 35-year-old heir to open branch offices for the company in various cities to further his search for a wife.

Genius, Hoffman's answer declares, footed the bill for these non-productive offices, hoping to meet a girl who "would love him for his business ability and not for his money."

During this period, Hoffman contends, he spent the $99,875 he is accused of misappropriating by sending checks, cables, telegrams and other things to Genius at the latter's request.

Tries Dancing Schools

In the letter from Boston, Genius added he was "thinking about enrolling in dancing school." The teachers, he said, "could be no worse than those in Philadelphia." With the letter was filed a check made payable to Richard M. Morse, indorsed by a dancing school in Boston.

Most of the other letters among the exhibits were said to have been written from different parts of the country and referred to different phases of "the gal situation."

—Chicago (Ill.) *Daily Times.*

Joining and Separating Actions

Joinder of parties. Ordinarily, under more liberal modern codes of practice, as many plaintiffs as are affected by the particular matter in interest can join together in an action, and they can name as many different defendants in the same complaint as are affected naturally by the subject matter. The test is whether each plaintiff could legally bring a separate action. If anyone necessary as a plaintiff refuses to join in an action, he can be named as a defendant, with an explanation of why such action is being taken. If convenience or justice seems better served by separating plaintiffs or defendants who have been joined, the judge has discretionary power to do this.

Joinder of causes. To avoid a multiplicity of actions, a plaintiff is permitted to join two or more demands or rights of action in the same complaint, although it is not mandatory that he do so. He can, for instance, seek damages and an injunction to prevent the continuance of the cause of the damages, such as a nuisance, in the same cause of action. He cannot join inconsistent causes of action which do not grow out of the same incident or conditions. He cannot join causes requiring different places of trial or distinctly different causes against different defendants.

The common law rule, still widely observed, is that it is impos-

sible to join an action on a contract with one in tort. Usually, however, one can join common law and statutory causes of action. Also, a plaintiff can join a demand for specific performance of a contract with a demand for damages for its prior breach. He can also join demands for both legal and equitable relief.

Consolidations. If, instead of joining together, a number of plaintiffs involved in the same action—such as an automobile accident—bring separate actions, in the interest of convenience and economy, they may be consolidated into a single action. If the original actions were begun in different courts, they cannot be consolidated, but one of the parties can make a motion that they be transferred to a single court and consolidated there. The proper procedure is for a court rule "to show cause" why the transfer should not be made; it is a matter of law, not of fact.

Consolidations are easier in code states, where actions at law and suits in equity can be combined, as an action to obtain the property of an estate together with probate proceedings. However, there can be no consolidation of proceedings involving different wills or estates. Different contract actions against the same person or against different parties on the same contract can be consolidated. So can tort actions against the same defendant resulting from the same tort, as in the typical automobile accident case. Separate suits to foreclose the same mortgage and several delinquent property tax suits against the same person or property can be consolidated.

The general rule is that consolidation is possible if all the causes of action originally could have been joined in one declaration or complaint. It is not possible, however, to consolidate to the extent that the total amount involved exceeds that permitted under the jurisdiction of the court.

In noncode states, the effect of consolidation is approached by trying one case as a test case and after the judgment or decree issuing an order *nunc pro tunc* as regards the rest. *Nunc pro tunc* means "now for then," or that the order becomes retroactive. Thus, it operates "as if" separate cases had been consolidated and the decision reached in the test case applies to all the others.

Federal Judge Edward J. Moinet Monday granted a motion by Louis M. Hopping, assistant district attorney, for the consolidation of cases involving seven reputed members of the German-American Bund. The government seeks cancellation of the American citizenship of the defendants.

The trial is expected to open in November and the principal witness to be called by the government will be Peter Gissibl, former fuehrer in the Bund at Chicago.

The defendants are John H. B. Schreiber, former Detroit Bund leader; Fritz Streuer, former Detroit Bund leader now serving a five-year sentence in the

Federal Correctional Institute at Sandstone, Minn.; August Baecker, Sr., Bund delegate now serving a six-month sentence for recruiting skilled workers here for jobs in Nazi Germany; Paul Gies, leader in 1933 when the organization Friends of New Germany was instituted; Fritz Bruno Ebert, Bund member in whose home FBI agents last February found several German medals, one from Adolph Hitler; Herman Guenther, former 'cellist in the Detroit Symphony orchestra; and Jacob Josef Karr, of Mt. Clemens, member of the Detroit Symphony orchestra for more than 18 years.

—Detroit (Mich.) *News.*

Interventions. Often a person not originally a plaintiff or defendant in an action recognizes that his interests will be affected by the outcome of the case. If he wishes, he can petition the court in which the action is begun, to be permitted to intervene as either a co-plaintiff or co-defendant. The test is whether he has a clear interest in the subject matter. If granted permission to intervene, he must take the action as he finds it; that is, he cannot change the cause of action or the demand for damages or other relief as originally made.

The OPA was allowed to intervene today in a Municipal court suit in which the constitutionality of the OPA laws had been challenged.

Myron Hoffman, attorney representing the OPA, filed a petition before Judge William Grady to intervene in a $150 suit against the Capitol Grocery company, which has contended, in answer to the suit, that the OPA laws are unconstitutional because they seek to regulate both intrastate and interstate traffic. Similar suits have been filed in Indiana and Massachusetts.

The suit here was filed by Thomas Bogan, 960 North avenue, who alleged he had been overcharged in purchases of asparagus soup. Under OPA rules, a purchaser who believes he has been overcharged may file suit for triple damages, or for $50, whichever is larger. Bogan seeks $50 and attorney's fees on each of three purchases.

Henry Adams, attorney representing the company, said in his answer to the suit that no overcharge had been made, that the ceiling prices were posted in the store, and that the law was unconstitutional. He also challenged the jurisdiction of the Municipal court.

A court test of the county's right to bid at its own tax-foreclosure sales was assured yesterday when Judge Oscar Williams permitted an intervening petition to be filed in Circuit court in a suit to foreclose the Newton building, 129 South Washington street.

Cork county bid the full amount of the delinquent taxes and penalties, $700,000, at the treasurer's sale on April 29, and would become the owner of the building when the two-year redemption period expires.

The transaction was challenged yesterday by Raymond Oleson, 6200 South Kenmore avenue, who claimed the county acted illegally. A previous intervening petition was filed by John Smith, representing the former owners of the building. Judge Williams set June 21 for hearing on both petitions.

Severances. If two or more co-defendants make separate answers, rather than joining in an answer, there is said to be a severance.

The term also means the division of one action into several distinct actions, and severance is permitted at the discretion of the court, which, in fact, may order it. In such case, there will be separate hearings or trials on each issue or for different defendants who wish to have their cases severed. Such permission is given when the judge feels that separate judgments on the claims made in the complaint would be justified, or when it would be improper or inexpedient to try together the claims set forth in different counts. A severance may be ordered if there has been an original misjoinder of parties, either as plaintiffs or defendants. If one fact has been admitted by all parties, a court judgment may be rendered concerning it, after which the case proceeds to settle the remaining matters still at issue.

Splitting. This is the dividing of a single cause, claim, or demand into two or more parts so as to bring action for only one part at a time. The defendant may move for a rule against such splitting so as to avoid expensive and vexatious litigation. Most courts are prompt in granting such protection to the defendant and, especially, will prevent splitting an action so as to get part of it into a court of limited jurisdiction, thereby allowing another portion to be available for action in a higher court.

Authorities differ, but it is generally held that all breaches of payment on an installment contract constitute one and not several causes of action; that a running account is one cause of action and cannot be split; that a single note gives rise to a single cause of action, but if there were several notes arising from the same transaction there can be separate actions, and that an entire contract of sale is the basis for a single cause of action.

Different persons injured in the same accident, however, can bring separate tort actions. Generally, this privilege extends to all tort actions.

Motions

Bill of particulars. If the defendant believes that the complaint or statement of claim is inadequate, vague, indefinite, incomplete, or so that he cannot answer it properly within the time allowed for an appearance or stipulated by statute, he can make a motion for a bill of particulars. If the bill is granted, the plaintiff is required to be more detailed in the respect asked. The motion is not a pleading; it is not for the purpose of discovering evidence. An example is a suit by a physician for collection of a bill on which he has listed all his charges, itemized by date and the nature of treatment, but on which he has lumped all the payments alleged and admittedly

made by the defendant. In such a case, the defendant can move successfully for a bill of particulars, to show his payments itemized as carefully as the charges, so that he can check the plaintiff's records with his own before making formal answer to the complaint.

Discovery. It may happen that the defendant, to answer properly, believes he must consult certain documents in the possession of the plaintiff or within the plaintiff's power to produce. Requests that he be given access to such material seemed so just that there developed within the chancery courts the right to petition for a bill of discovery, whereby the plaintiff might be ordered to supply a sworn list of documents, including photographs, books, letters, and so forth, material to the action. In modern practice, a plaintiff may be ordered to present two lists—one of the material that he is willing to produce for the perusal of the defendant, and information of where and when it will be available; the other a list of what he is not willing to produce and the reasons for his unwillingness. If the opposite party is dissatisfied with the second list, he can petition the court to compel production of items included in it.

In any case, either side has the right to present to the other any exhibit, with a request that its genuineness be admitted in writing in advance of trial. Such *admissions* eliminate the necessity of proof in open court and facilitate progress of the case. If, however, such an admission is refused and the genuineness of the exhibit is later proved in court, the party who refused admission may be assessed any costs to which the requesting party was put in order to establish the proof.

Interrogatories. If a pleading is insufficient, the other party may petition the court for the right to submit to the pleader a set of questions, called an interrogatory, the answers to which presumably would clarify the uncertainties. Interrogatories also are sets or series of questions to be submitted to a principal or a witness whose attendance in court will be impossible. In old practice, they were permitted in equity courts only. Today they are used frequently in probate matters to obtain proof of the signature to a will when the witnesses are outside the jurisdiction of the court. Most courts have a printed form containing routine questions. If such is not the case, the attorneys co-operate in preparing the lists of questions.

To preside at the answering of the interrogatories the court appoints someone, usually a notary public, in the place where the missing witness resides. The writ delegating the authority is called a *dedimus potestatem.* The commissioner, upon receipt of his authority, issues a summons to the person whose written answers are needed, administers an oath to him, and witnesses his answers and signature.

Interrogatories are commonly used in garnishment actions, a typical printed form being the following:

INTERROGATORIES TO GARNISHEE—Superior Court.

State of Illinois, } ss.
COUNTY

IN THE SUPERIOR COURT OF COOK COUNTY.

.... .Term, A. D. 19 .....

.. . .
. . . .
vs.
. ...
... .

INTERROGATORIES TO THE GARNISHEE SUMMONED IN THIS CASE·

1st Had you in your possession, charge or control, at the date of the service of the Writ in this case, any moneys, rights, credits or effects owned or due to .. ..
. . ..
. .. .

If so, state what rights, amount thereof, by whom due, and when payable.

2nd Were you indebted to the defendant at the date of the service of said Writ of Garnishment? If so, how much, for what due, and when payable?

3rd Please state what effects or debts of the defendant there were at the date of said Writ of Attachment in the hands of any other person or persons beside yourself, to the best of your knowledge and belief

4th Had you in your possession, charge or custody, at the date of the said Writ, any lands, tenements, goods or chattels of said ....
. . . .
If so, state the description of each and the value thereof.

5th. Had you, at the date of the service of said Writ, any rights, credits or effects of said defendant (not hereinbefore specified), in your possession, charge or custody, from you due and owing at the service of said Writ, or at any time since, or which may hereafter become due? If so, state the value, amount, when due, and how payable

6th Have you any property, goods, chattels, rights, credits or effects of any kind belonging to said defendant , or in which ... . interested? If so, describe the same fully, giving amount, items and describe the same fully and particularly

. . ..
.. ..
....

Depositions. These are oral interrogatories to obtain the testimony of witnesses outside the jurisdiction of the court or unable to appear in court. In some cases, they are matters of right—that is, the court is required to grant a petition that depositions be taken. In other cases, court permission must be obtained. In either case, as for written interrogatories, the court appoints someone to preside

at the hearing. There must be notice to the other side, which must have the right to attend and cross-examine the witness. All testimony is taken down verbatim by a stenographer, and a written transcript must be signed by the witness.

A deposition differs from an *affidavit* because of the notice to the other side. Also, persons whose depositions are ordered to be taken by a court can be subpoenaed. One who gives a deposition is called a deponent—a term that is also used in affidavits. A typical commission to take a deposition appears on the opposite page.

Testimony by means of depositions may be just as important in any legal action as that given orally during a hearing or trial. Likewise, the circumstances of obtaining a deposition often may be newsworthy, as in the following examples:

Mrs. Annabelle Adams Orton, 35 years old, was escorted yesterday from her Drake hotel suite to the 100 North La Salle street office of Attorney Robert J. Collins by two deputy sheriffs, sent to the hotel by Judge Thomas J. Lynch with orders to bring Mrs. Orton "on a stretcher if necessary."

Mrs. Orton who is being sued for divorce by Philo A Orton, 68, wealthy head of the Orton Crane and Shovel company, had been ordered by Judge Lynch to appear before Attorney Collins, a notary, to answer questions for depositions being taken by Daniel A. Covelli, Orton's lawyer, in connection with the case.

Fails to Appear

She did not appear. Attorney William S. Schwab, representing Albert Sabath, counsel for Mrs. Orton, appeared before Judge Lynch and presented a written statement from Dr. Ferdinand Seidler stating that Mrs. Orton was too ill to appear.

At Covelli's request, Dr. William Hanelin went to the Drake hotel, returned to court, and reported that Mrs. Orton apparently was well.

"She opened the door for me. She said she felt fine," Dr. Hanelin said.

Attorney Schwab offered to have Sabath bring Mrs. Orton before the notary next Wednesday.

"Oh, no!" said Judge Lynch. "The hearing was set for today." And he ordered the deputies to bring her in. He also ordered that Dr. Seidler appear before the court today.

No Questions Asked

As it developed, Mrs. Orton did not give a deposition. The attorneys wrangled over a financial settlement, came to no conclusion, and left Collins' office with the understanding that Mrs. Orton will appear before Collins to give a deposition at 2 p.m. today.

Orton in his divorce suit accuses Mrs. Orton, whom he married in 1938, of misconduct with a Mr. R., described as a millionaire New York manufacturer. The alleged misconduct, the suit states, took place during a romance which began in Florida and was resumed in Chicago, Detroit and New York.

A few months before he married the former Miss Adams, Orton was divorced by Mrs. Marie Orton in a case featured by a sensational exchange of accusations.

—Chicago (Ill.) *Daily Tribune.*

Peoria, Ill., April 6—(AP)—Depositions from two Navy lieutenants who were with Lieut. Richard Bull aboard a bombing plane which was shot down by the

COMMISSION TO TAKE DEPOSITION IN TEXAS.

THE STATE OF TEXAS

To any Clerk of the District Court, any Judge or Clerk of the County Court or any Notary Public in and for the County of , State of Texas—GREETING:

WE HEREBY AUTHORIZE AND REQUIRE YOU, or either of you, to summon

residing in your to come before you at a time and place to be fixed by you, and that you then and there take answers under oath to the attached copy of direct and cross interrogatories, and that when said answers are taken you return the same FORTHWITH to the Clerk of this Court, as herein provided:

1. That you reduce the answers so taken to writing in proper form, and cause the same to be signed and sworn to by said witness.

2 That you certify, under your hand and seal of office, that said answers were signed and sworn to before you

3 That you seal in an envelope the answers so taken, together with the annexed interrogatories and cross interrogatories, if any, and this commission, and write your name across the seal

4 That you endorse on the envelope the names of the parties to the suit, and of said witness .

5 That you direct the package to "The Clerk of the County Court of Dallas County, at Law No , Dallas, Texas

6 That if said package is sent by mail, you shall certify thereon that you, in person, deposit the same in the mail for transmission, stating the date when and the postoffice in which the same is deposited for transmission, or if same is sent otherwise than by mail, you will apprise the person receiving it that it must not be out of his possession, and that it must be delivered to the Clerk of this Court by himself in person, which evidence, so taken as above, is to be used on the trial of a suit now pending in the County Court of Dallas County, at Law No , in said State of Texas, wherein

Plaintiff , and

Defendant , and numbered on the docket of said Court

HEREIN FAIL NOT, but make due return of this writ as the law directs

Given under my hand and seal of said Court, at Dallas, Texas, this the day of A. D 19 .

Attest: J. E FISHER,
Clerk of the County Court of Dallas County,
at Law No. , Dallas County, Texas.

By Deputy

Japanese in the South Pacific last Feb. 5 were scheduled to be presented today in federal court at the hearing of a suit brought by Bull's widow against the Sun Life Assurance company of Montreal.

The widow, Mrs. Ruth P. Bull of Peoria, is suing to collect a $10,000 claim from the insurance company, which carried a policy on her husband's life. The company has refused to pay the claim, contending that Bull signed a waiver clause to be invoked in event of his death in an airplane.

Attorney Clarence W. Heyl in his opening statement before Judge J. LeRoy Adair yesterday said the depositions from the Navy lieutenants would set forth that Bull ordered the officers to take a wounded crew member ashore while he remained in the plane to destroy the bombsight and other equipment which might have proved useful to the enemy. While carrying out this task, Bull was shot fatally at close range by Jap fliers and the other officers escaped, Heyl related.

—Chicago (Ill.) *Daily Tribune.*

Strike. Either party in an action may make a motion to have any scandalous, immaterial, irrelevant, impertinent, redundant, or otherwise offensive material stricken from any pleading filed by the other party. He does so by a motion to strike. The motion also is used to compel a party whose pleading is inadequate at law to redraft his pleading in proper form. If the motion to strike is allowed, the action is not stopped, but merely delayed until the irregularities complained of are corrected.

Holding that it was filled with immaterial, impertinent and scandalous matter, Master in Chancery Joseph Williams today recommended striking of the complaint in a suit filed in Circuit court by 28 members of Local 69, Elevator Operators and Starters union, against Johnson Livingston, president, and other officials of the Building Service Employes' International union, the parent union.

In his report the master held the complaint failed to state sufficient facts.

The suit centered around a fight by members of the union to restore Robert Maroney to the office of president of the elevator operators' union. Maroney was suspended by Livingston, who charged he was not a citizen.

The master pointed out that the union members filing the suit had failed to exhaust sources within the union to settle their troubles and they should have done this before going into court.

Daniel D. Camron and A. C. Williams, attorneys for the international officials, said the decision of the master was a complete vindication of Livingston and his associates. Camron said that since Livingston had been president of the Building Service Employes' International union, he has waged a war against gangsters and hoodlums and that any charges made in the suit to the contrary were absolutely ridiculous.

The question whether a plaintiff's interest in romance would be pertinent in anything so drab as litigation over $99,875.50, or "just pure piffle," was taken under advisement yesterday by Judge Walter J. LaBuy in Circuit court.

The plaintiff was Richard M. Genius, Jr., 35, heir to a $3,000,000 estate and grandson of the late Charles Morse, founder of Fairbanks Morse & company. He is suing Robert M. Hoffman, Jr., 38, of Barrington, president of the Bergonize company, a wall processing firm. Genius charges he gave Hoffman checks which the latter raised by $99,875.50.

Yesterday, Genius asked that portion of Hoffman's answer be stricken from the records in which Hoffman asserted he had allowed Genius to establish branch offices of the company in various cities so he might hire pretty stenographers and find one who "through daily contact . . . would learn to respect his ability and love him for himself."

Attorney Fred C. De Young, representing Genius, told the court: "That portion of the answer is a side-track and a smoke screen. It is just pure piffle. It has no place in a lawsuit."

Judge LaBuy said he would think it over. The case is scheduled to be tried on May 10.

—Chicago (Ill.) *Sun.*

Routine motions. Almost daily in a court doing a great deal of business, a few minutes are set aside for routine motions or *motions of course* in actions pending therein. Such motions include those to change lawyers, amend some pleading, extend the time allowed for filing a certain pleading or complying with a court order. In fact, almost any motion already mentioned might be considered routine, provided it is unopposed. To repeat, no motion can be made unless previous notice has been served upon attorneys for the opposite party.

Judgments and Decrees on the Pleadings

Defaults. Judgments by default and decrees *pro confesso* have already been discussed. (See page 162.) They occur when a defendant fails to appear or answer.

Summary. If the plaintiff believes that the defendant's answer is grossly inadequate, to avoid delay and inconvenience by bringing the case to trial, he may make a motion for a summary judgment or decree. If the court decides that there is sufficient defense which should be heard in open court, he denies the motion.

One of the most important instances of use of the summary judgment in recent years was the antitrust suit against the Associated Press. There follow the leads of some news stories to show how the news was handled:

New York, May 25—(UP)—The Justice department filed in New York Federal court today a motion for a summary judgment, holding that the Associated Press is guilty of engaging in an illegal combination and conspiracy in restraint of interstate trade and commerce.

The motion was filed with a three-judge court which had been appointed to expedite proceedings in the government's anti-monopoly suit against the AP.

The government's motion contended that material submitted to the judges by the government and the Associated Press established the government's case and left "no genuine issue" of fact which needed to be tried. It said the government was entitled, without further proceedings, to the judgment requested.

In addition to asking the court to find that the defendants had violated the anti-trust laws, the summary judgment motion asked the court to decree: . .

New York, June 21—(AP)—The Associated Press filed in Federal court today more than half a hundred affidavits in opposition to a government motion for summary judgment in the anti-trust civil action against the non-profit cooperative newsgathering agency.

Arguments on the summary judgment motion, by which the government seeks a decision against the AP without the taking of testimony from witnesses in open court trial, are scheduled to be heard by a three-judge Federal court July 8.

Chief among the AP affidavits was one prepared by Frank B. Noyes, publisher of the Washington Star and president of the AP for 38 years until 1938, who declared that: . . .

—Chicago *Times*.

New York, Oct. 6—(UP)—A three-man Federal Court by a 2-1 decision, enjoined the Associated Press today from continuing to enforce in their present form its by-laws regulating the admission of members, but left the way open for the news organization to adopt substitutes which might bring the association into line with the law.

The decision meant that the court held that the organization's by-laws in respect to new members are in violation of the federal anti-trust laws.

The court, ruling on a complaint by the federal government that the Associated Press had conspired to restrain and monopolize interstate commerce in violation of the Sherman act and the Clayton act, held that: . . .

As can be inferred from these stories, the arguments on a motion for a summary judgment come close to constituting a trial in themselves. The evidence was before the court in the form of briefs, interrogatories, and affidavits, but no witnesses were called to give oral testimony. In view of the voluminousness of the material that was before the court, it is doubtful if there was much more that could have been told anyway.

Technically, what was decided first in the Associated Press case was that a summary judgment should be entered. The actual judgment followed.

Confession. Instead of contesting the action, a defendant may acknowledge the justice of the plaintiff's claim, in which case there will be a *judgment by confession,* or, as it may be called, a *cognovit actionem, cognovit,* or *confession judgment.*

Some states make it permissible to insert clauses in leases and other instruments whereby a party waives his right to legal process —which means that if he fails to live up to his part of the contract an action may be brought against him and a judgment be obtained without his having any knowledge of the matter. A typical clause of this sort is that included in the promissory note on page 193.

During the war there were some appellate court decisions that similar clauses in house leases were in violation of federal government rent-control regulations.

A judgment of *confession by warrant of attorney* is rendered when the written instrument in question authorized an attorney, to be



$\$$_____ _____ 19 __

_____ after date for value received _____ promise to

Pay to the order of _____

_____ Dollars

at _____ with interest

at ___ per cent per annum after _____ until paid

And to secure the payment of said amount ____ hereby authorize, irrevocably, any attorney of any Court of Record to appear for _____ in such Court, in term time or vacation, at any time after maturity, and confess a Judgment without process, in favor of the holder of this Note, for such amount as may appear to be unpaid thereon, together with costs and _____ dollars attorneys fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that _____ said attorney may do by virtue hereof

No. _____ Due _____

3320

named by the plaintiff, to confess judgment on behalf of the person signing the instrument. This kind of judgment differs from a *cognovit* because the necessity of formally bringing suit is eliminated. There usually is a printed form, variously called *petition and answer upon cognovit note* and *narr and cognovit on note,* which may be obtained from the clerk, filled in, and filed in lieu of any other pleadings. A sample is shown on the opposite page.

A *judgment by confession relicta verificatione* is rendered when, after pleadings have begun but before trial, the defendant both confesses the plaintiff's cause of action and withdraws or abandons his plea.

Discontinuance. A plaintiff may ask the court for permission to discontinue an action, in which case judgment is entered against him, and he usually pays the costs. He has the right, however, to bring another action in the same cause.

Stet processus. This is a judgment by agreement and leave of court to stay further proceedings. It really is for the plaintiff, and it occurs when the defendant becomes known as insolvent and the plaintiff decides to wait until later to press his claim. If that time arrives, he moves to have the judgment set aside, and the case is resumed from where it was at the time.

Nihil dicit. This is the judgment when a defendant withdraws his answer; it amounts to a confession. Therefore, it is stronger than a judgment by default, for it is a tacit admission of the justice of the plaintiff's claim.

Retraxit. This is a judgment for the defendant when the plaintiff voluntarily withdraws his suit. Civil practices acts usually provide simply for withdrawal, without the necessity of any judgment.

Non prosequitur. This is a judgment against the plaintiff for neglect to take the proper steps in forwarding his case. The Latin phrase means, "He does not follow up, or pursue." *Non prosequitur* is rendered when a plaintiff fails to plead as required.

Repleader. A judgment of repleader is rendered when an issue is joined on an immaterial point or on one on which the court cannot render judgment. It means that the parties must start their pleadings all over again, at the point where the immaterial issue originated. It is a judgment *inter quod partes replacitent.*

Because of the differences between the procedures in different states, no one reporter, no matter how long his career, will encounter all these special judgments in cases considered newsworthy. Somebody somewhere, however, is coming across one of them all the time. No news reporter can anticipate when it will be his turn to report and interpret some hitherto unknown aspect of the law. The index

It is Therefore Ordered and Adjudged by the Court, that said plaintiff.... have and recover of said defendant . ... judgment for said sum of .. . . Dollars, with interest thereon from this date at the rate of..... . . ..per cent per annum; and for the further sum of . . . . Dollars, taxed as the costs of this action, including a statutory attorney fee, which by the order of the Court is assessed by the Clerk, and found to be in the sum of ... ... Dollars.

And It is Further Ordered, Adjudged and Decreed by the Court, that plaintiff..... .. said mortgage recorded in volume . on page .. .. in the office of the County Recorder of said county, upon the following described real estate, situated in Linn County, Iowa, to-wit:

be and the same is hereby foreclosed as to each and all of said defendant....., and that said judgment be and the same is hereby declared to be a first lien on said mortgaged premises, and that the same is hereby decreed to be paramount and superior to any lien, claim or right of the said defendant.. .

And It is Further Ordered, Adjudged and Decreed by the Court, that a special execution be issued for the sale of the premises above described, or so much thereof as may be necessary to satisfy said judgment with costs, and that after the return of said special execution, should any of said judgment and costs remain unpaid, that a general execution shall issue to make any amount then remaining unpaid, and on and after the day of sale said defendant.... are forever barred and foreclosed of all interest, right and equity, in and to said mortgaged premises except such rights of redemption as are provided by law.

....Judge District Court.

of this book, it is hoped, will serve as a reference glossary. There are also available several pocket-sized legal dictionaries, in addition to the tomes to be found in law libraries. To disregard a story because it hinges around an unfamiliar Latin phrase may be to miss the feature of the year.

CHAPTER 6

Civil Trials

NEWSPAPERS do not devote anywhere near the attention to civil trials that they do to criminal. Ask any editor or reporter why this is so, and he will probably answer that criminal trials are much more dramatic, involving as they do murders and rapes and burglaries. Another contributing factor, however, is the comparative inability of the general run of court reporter to understand civil proceedings. Since perhaps ten times as much business is transacted in civil courts as in criminal, the importance of civil trials is undeniable. Every day in the civil courts questions of prodigious importance are decided, affecting business, commerce, trade, transportation, and all other phases of our economic life. It is the duty of the newspapers to report and interpret these proceedings. The reporter who becomes expert at civil law will be amazed to discover that the aura of dullness becomes dissipated. There is plenty of drama in the struggles of individuals and businesses to win or protect their legal rights. For every person who has had firsthand contact with a major crime, there are hundreds who have had experience with contracts, leases, insurance policies, stocks, and bonds. What a court decides in a case involving any of these aspects of everyday life may affect the average citizen much more profoundly than any punishment meted out to a hatchet man or kidnaper.

Notice for Trial

When a case is at issue—that is, when the pleadings have reached the stage where there is a distinct point or points of disagreement, of allegation and denial between the parties—either the plaintiff or defendant can petition the court to have the case come to trial. In some jurisdictions, such scheduling for trial may be on the court's own initiative—without petition. In either case, some form of notice must be served on the parties, and a petitioning litigant may have to file an affidavit attesting to the fact that he has served such notice.

A written request that a case be placed on the trial calendar is

often called a *praecipe*—a term also used for other kinds of requests for court writs or orders. Usually the trial calendars are prepared weeks or months in advance by the clerks, and often are printed and published before a new term of court begins. Theoretically, these "set matters," as they are designated, are "called" in the order in which the *praecipes* are received. A party, however, can petition the court to advance his case ahead of others so that he may have an earlier hearing. If a reporter notices that this happens too often, or that cases are not being called in their announced order, he should become suspicious that some "influence" is being exerted in the office of either the judge or the clerk—usually the latter.

It may take months or even years after a case is placed on the trial calendar before it is called in court. In some jurisdictions, especially in small places and in the inferior courts, the parties will be notified a few days in advance as to when their case is likely to reach the top of the list. In others, it is the responsibility of attorneys to watch the daily law bulletins, to receive such notice.

In most code states, unless a jury trial is requested by the plaintiff at the time of filing his complaint or of replying to a defendant's counterclaim, or by the defendant upon filing his answer, a civil case is heard by a single judge. Adherence to the twelve-man jury system is disappearing; some states now allow smaller juries, usually of six. In such cases, the party requesting a jury trial can stipulate the size requested within the law; the fee for a 12-man jury is naturally larger than for a six-man jury, but in either case it is not excessive. A fee of as many dollars as there are members of the jury is common.

Subpoenas

Either side has the right to compel witnesses to attend court and testify. A court order for this purpose is seldom necessary; the clerk has the power to provide blanks to be filled in by either side requesting that subpoenas demanding such appearances in court be served by bailiff, sheriff, or, in some cases, by the attorney himself. A typical subpoena blank form appears on the opposite page.

A *subpoena duces tecum* orders a witness not only to appear in person but to bring with him documents, books, records, and other articles to be submitted as real evidence. The opposite party can prevent issuance of a *subpoena duces tecum* by motion allowed by the court. Such motions, of course, are arguable. The form is substantially the same as that for the ordinary subpoena, with the addition of a list of the articles to be produced.

Failure to answer a subpoena, by appearing in court at the desig-

State of North Dakota } ss.
County of _____

In District Court.
_____ Judicial District

THE STATE OF NORTH DAKOTA TO . . . . . .

. . . . . .

GREETING:

You are hereby commanded to appear before the District Court of the County of . . . . . ,
in the Judicial District of the State of North Dakota, at the Court House, in the City of
. in said County and State, on the . . . . day of
19 . . , at the hour of o'clock. M , of said day, then and there to attend
and testify as a witness on behalf of the . . . in an action between
. . . . . .
. . . . . Plaintiff.
and . . . . . .
. . . . . Defendant.
And you are required also to bring with you the following: . . . . . .
. . . . . .
. . . . . .
Dated at . . . . . , N. D., this . . . day of . . . . . 19 . . .

. . . . . .
Clerk.

By. . . . . .
Deputy.

nated time, is contempt of court. The way to avoid the risk of that happening is to keep out of the way of the server of the subpoena. To prevent just that, the party requesting a subpoena may petition the court to suppress the names of the witnesses for whom he requests subpoenas. In such cases, the court expects the newspapers to co-operate by not attempting to obtain the names surreptitiously. If, however, the newspaper fails to do so—that is, when it obtains a fair and accurate account from sources other than the official records—it is unlikely that any citation for contempt could be sustained against it.

Federal Judge Joseph Nish today took under advisement a motion by Attorney Bradley Gordon, who represents five of six Madisonians indicted in Rochester in connection with the movie union extortion case to suppress the names of witnesses he intends to subpoena to the removal hearing against Robert Conroy, one of the defendants.

According to Gordon, who told U. S. Commissioner Joseph Brothers at a hearing last week that he intends to present 30 witnesses, many of the proposed witnesses will not want to appear and would attempt to avoid the subpoenas if their names are publicized.

The next hearing before Commissioner Brothers is scheduled for May 12, when Gordon said outside of court, five witnesses will appear in behalf of the defendants.

Judge Joseph Nish in Federal court yesterday issued subpoenas for ten leading movie executives in connection with proceedings seeking to remove six Madison hoodlums, indicted with the late Louis Prather by a Rochester grand jury.

Among the executives were Edwin Haensel, head of Acme Studios, and William Robertson, president of the Wurlitzer Pictures company.

The six hoodlums are Robert Conroy, Charles Chico, Ralph Pierson, Frank Marelli, Philip Diamond and Louis Revelson. All are accused of extortion and mail fraud in connection with the mulcting of more than $2,500,000 from the motion-picture industry.

The subpoenas were issued at the request of Bradley Gordon, attorney for the defendants, who assured Judge Nish that the testimony is important and relevant.

"I should dislike further to tax the transportation facilities of the nation unless this testimony is necessary," observed the judge.

Gordon said that because of the distances which the witnesses must travel, he will ask for a continuance when the removal proceedings are called at 2 P.M. tomorrow. Attorneys of several of the movie executives also were subpoenaed.

Calling the Calendar

Both sides are supposed to be ready and present in court when their case is called by the clerk. In some courts, it is the practice to run through the complete call of cases set for the day, to determine how many of those summoned are there to "go through with it." In large places, the reporter will be impressed by the large number of cases to which, when called, there is no response. They are ones that have been settled out of court, often at the last minute. If the plaintiff responds but the defendant does not appear, there will be a judgment or decree by default. If the defendant is ready but the plaintiff fails to appear, there will be a dismissal for want of prosecution (DWP on the call sheet).

Often an attorney will have an assistant, perhaps a clerk or a stenographer, wait in court and answer "here" for him when a case is called; this assistant will explain that his employer is busy in another court or delayed, but that he will be available at a later hour. A judge usually will order such a case put near the bottom of the day's list, and the assistant leaves to inform his employer at what hour his presence in court will be imperative.

A *nonsuit* is a judgment against the plaintiff, when at any time he refuses or neglects to proceed. It differs from an ordinary dismissal in that the plaintiff is permitted to bring another action in the same matter; on the other hand, unless a dismissal is by permission of court, "without prejudice," it is a final disposition of the case. Many nonsuits result from brief, informal hearings before a judge, especially in cases involving municipal ordinances which are civil cases, with the city attorney as prosecutor, although they frequently are referred to as *quasi-criminal* cases. A nonsuit may be voluntary if there is an intentional failure to continue; or it may be involun-

tary when ordered by the court because the plaintiff fails to present an adequate case. In such event, the nonsuit may be on motion of the defendant, and it operates as would a demurrer.

Whether a case should be dismissed or nonsuited may become a matter of legal argument and of news, as in the following example:

Judge Frank Neelders in Blue Yards court Monday nonsuited rather than dismissed a charge of disorderly conduct against Ralph Perkins, 50 years old, head of the National Automatic Juke Box company. Lawrence Miller, a former employe who recently started his own juke box business, accused Perkins of being connected with an assault upon him Sept. 15.

Perkins objected to the nonsuit procedure, ordered by the court to give police and Miller opportunity to revive the charge if they can find further evidence.

"It leaves me hanging in the middle," Perkins said. "Miller can't paint himself as the fair haired boy by painting me as a blackguard."

Miller has 20 stitches taken to close the wounds inflicted by two assailants with a jack handle and pipe. He admitted that he could not identify Perkins as one of the men.

"But I don't know of anyone else in the world who would do that to me," he said. "All indications pointed toward Perkins because I've taken business from him."

Motions for continuances are common when cases are reached on a court calendar. Some judges are lenient, others strict in granting them. If neither side is eager to come to trial, a continuance is usually granted as a matter of course. If, however, either party objects to frequent continuances, the motion must be argued.

When a case opens, the news story must contain the usual identifying tie-back to the previous legal history. The amount of money involved or the specific relief requested must be stated, as it was when the action was begun with the filing of a complaint or bill, and the principals must be identified. The reporter should refer to his original story of the action, written at the time of the first pleadings. The names of the court and the judge must be included, and usually the names of the attorneys.

By Sidney J. Harris

The welfare of 1,500 Chicago Negroes will be at stake tomorrow when Judge Samuel Heller in Renter's court must decide whether the Mecca Apartment Building, 34th and State streets, can be razed and its tenants evicted.

National interest has been focused on the case for the last two months, since the Illinois Institute of Technology, owner of the property, signified the intention of destroying the building for expansion of the campus.

Tenants of the building, and numerous Negro organizations, have protested that the evicted families would have no place to move within the city. The Negro housing situation—always a serious problem—has been aggravated by the influx of war workers. Because of restrictive covenants, Negro leaders say, they are confined to specific neighborhoods where adequate housing is not available.

Leading in the fight to prevent demolition of the building has been State

Senator Christopher C. Wimbish, Chicago Democrat, who introduced a bill last month prohibiting the razing of occupied buildings in defense areas where the tenants are unable to find other dwellings.

Although the bill passed the House by a vote of 114 to 2 and won in the Senate by a count of 46 to 1, it was vetoed by Gov. Green on the basis of an opinion by Attorney General George F. Barrett, which held it to be "illegal and unconstitutional."

Wimbish has held meetings with tenants of the building, who indicated last week that they would file injunction suits in the Circuit court to prevent the mass eviction if the landlord is granted permission to dispossess the tenants.

The significance of Judge Heller's decision tomorrow, according to legal and social welfare observers, will lie not merely in its effect upon the 1,500 Negroes in the building but may establish a precedent for wartime housing laws, especially those relating to Negro areas.

The Illinois Institute of Technology is basing its case upon two grounds: that it requires the land for extension of the school property, and that the building as it stands constitutes a fire and health hazard in violation of the statutes. The building is admittedly a substandard dwelling.

Built about 1890, the four-story structure occupies almost a half block on 34th street between State and Dearborn streets. Originally an ornate and hotel-like building with fountains, balconies and thick carpets, the Mecca is now shabby and outmoded. Tenants admit that it is not the most desirable dwelling, "but we just don't have any place to go."

Whatever Judge Heller decides to do in the matter, it is certain to go to the higher courts for a final ruling—perhaps to the United States Supreme court as a test case, some observers believe.

If the court rules against the landlord, Illinois Tech must appeal the decision to the Appellate court for an eviction order; if it is held that the building may be destroyed and the tenants dispossessed, Negro groups have promised to carry the fight to the highest tribunal. In either event, it should bring to a head the whole perplexing problem of wartime housing and tenants' rights.

—Chicago (Ill.) *Daily News.*

Nonjury Trials

If a case is to be tried before a judge alone, the procedure theoretically follows the same routine as a jury trial, to be described shortly, except for the selection or impaneling of a jury and the judge's final instructions to the jury. That procedure, briefly, is as follows:

1. Opening statement by plaintiff, through his attorney, of what he expects to prove.
2. Opening statement by defendant.
3. Direct examination of plaintiff's witnesses.
4. Cross-examination by defendant of plaintiff's witnesses.
5. Direct and cross-examination of defendant's witnesses.
6. Re-direct or rebuttal witnesses for plaintiff.
7. Closing statements by both sides, plaintiff speaking first, then the defendant, and, finally, rebuttal by plaintiff.

Actually, trial by judge is likely to be much more informal than a jury trial, with attorneys, principals, and witnesses clustered around the bench and the judge taking an important part in directing the questioning of all concerned. The first step is the swearing in of the witnesses by the clerk or judge, all together or singly as they are called to testify. Then the plaintiff begins to explain the nature of the case and his contentions. Unless the judge is a stickler for form, it is not unusual for the defendant's attorney or the judge himself to interrupt. The judge may break in to ask to have a witness mentioned by the attorney tell his story before the defense has made any statement, which the defense is permitted to withhold anyway until all the plaintiff's testimony is in. The judge may seem to take away the prerogative of the attorneys to put questions to witnesses. Attorneys differ in the extent to which they object to such direction of proceedings by a judge; they can, of course, insist that he observe the formalities. To do so strictly in most inferior courts, however, would delay matters considerably, and, unless such a suggestion is made tactfully, it would offend the judge.

Most cases are settled as soon as the hearing ends, the judge giving his judgment at once. If, however, the matter is in any way complicated, the judge may take it *under advisement,* which means that he will postpone his decision for a few days until he has time to think it over and examine any notes he has taken, and possibly read memoranda or *briefs* submitted by attorneys either on their own initiative or at his request. This usually happens in important cases that are long-drawn-out.

One of the longest trials in the history of Centerville's federal courts neared an end yesterday before Judge John H. Williams.

It involved a patent infringement suit by the Hooper company, manufacturers of tool machines, against the Harding Sales and Manufacturing company.

Testimony started on Sept. 28, 1945, and lawyers did not end their arguments until yesterday afternoon. They had spent three and a half weeks in final arguments. The court now has the case under advisement.

Judge Williams said the case was several months longer than any previous case in the local federal court. He pointed out that there were 3,000 exhibits entered and 16,000 pages of testimony were taken. Testimony by Stephen Warren, an official of the Hooper company, required six weeks. Walter Fishler of St. Louis, an expert witness for the defense, followed with a similar stretch.

Trial by Jury

Selecting the jurors. Methods differ, but the usual practice is to summon a *panel* of not more than twice as many veniremen as are needed to comprise the completed jury. In other words, if a jury of six is to be impaneled, the panel will consist of ten or twelve; if it is

to be a jury of twelve, there will be a panel of from eighteen to twenty-four.

In United States District courts, the parties can stipulate that a jury shall consist of any number less than twelve, or that a verdict or finding of a stated majority rather than a unanimous vote be accepted. The practice is also growing of having alternate jurors—one or two extra jurors, who listen to a case, but, unless some regular juror becomes disqualified through illness, misconduct, or other cause, do not retire to participate in deliberations at the end of a case. In the federal courts, the judge may direct that there be alternates.

If the original panel is exhausted without the required number of jurors being selected, additional veniremen are summoned. They are known as *talesmen,* and their names are selected in the same manner as those on the original panel. It is *not* a frequent practice to pick talesmen from the spectators in the courtroom or off the street, although such may occur in some of the most inferior courts. When it happens anywhere else, it certainly is news.

Attorneys and judges join in questioning veniremen as to their qualifications. The potential jurors may be examined singly or in groups of three or four—that is, the attorney for the plaintiff will continue questioning veniremen as they are called until there are the prescribed number (three or four) acceptable to him. Then the defense attorney will question them. If either side considers a venireman unfit to serve, it *challenges* him. Two kinds of challenges are allowed—challenges *for cause* and *peremptory* challenges.

A challenge for cause is based on some reason that the challenging attorney believes to have been revealed by the venireman's answers, and is stated by the attorney when he makes his challenge. In a majority of cases, the reasons are obvious. For instance, the venireman may be related to one of the principals, or he may be a close friend of one of the lawyers; he may have an interest in the subject matter, or be frankly prejudiced because of his knowledge of the case. He may admit that it would be impossible for him to be impartial for any of the reasons intimated or because of racial, religious, economic, political, or other bias.

There is no limit to the number of challenges for cause that either side may make. The opposite is true of peremptory challenges, for which no reason need be given. In civil cases in code states, each side is limited to a designated number of peremptory challenges—five, six, or seven. These challenges are used to excuse potential jurors against whom no challenge that a judge would accept can be made. Knowing the nature of the evidence that is to be introduced, the trial attorney tries to imagine the type of juror most likely to be

sympathetic. He may, for instance, want a jury of laboring men, of bankers, of young women, or of grandparents. Naturally, he cannot successfully challenge a venireman on any such grounds, and if he were not restrained by law or court rule he might cause the selection of a jury to drag on for days or weeks. To conserve his peremptory challenges, he tries to discover a basis for challenging every venireman whom he does not want, but the judge, who rules on all challenges, may not accept his challenges.

In some places, the first juror chosen becomes the foreman. In other jurisdictions, selection of the foreman is left to the jurors themselves when they retire to deliberate. The duties of the foreman are those of chairman, to preside over the discussion and the taking of ballots.

The time of completion of a jury may coincide with a newspaper's dead line and thereby provide the feature for the lead of the day's story, as in the following example:

A jury was selected before Judge Milton J. Green in District court this morning to hear an action in which Hilar Bruno is asking judgment of $350 against Charles E. and Mrs. Mary Ziller on a note and the defendants are asking judgment of $915 against the plaintiff on a counterclaim. The principals all reside in Centerville.

In the counterclaim, the defendants deny that there was any consideration for the note and claim the $917 due for grain raised on their farm.

Jurors hearing the action are: John P. Manders, Betty Luthers, Charles Garner, Mary Appleby, Katherine Cooper, Stell Hanson, Dorothy Jones, Mary Steiner, Henry Crawford and Isabelle Davison.

Taking of testimony will start tomorrow.

A vast majority of cases, however, are completed in less than a day, so that the outcome naturally makes the story. If a trial continues more than one day, furthermore, some development occurring after the completion of the jury almost always provides the feature. No reporter writes up a trial to read like a secretary's minutes, with the incidents set down in chronological order—unless he does so for the sake of featurizing, a rare occurrence.

Since trial by jury is much more common in criminal than in civil cases, the reader is referred to Chapter 17 for a more detailed treatment of the news possibilities of all stages of trial procedure, which is substantially the same in both branches of the law.

Opening statements. In their opening statements, the attorneys state what they expect to prove by means of the testimony of witnesses or by other evidence. Their statements themselves are not evidence, and they cannot contain argument. To avoid objections by the opposite party, the attorney punctuates his opening statement with such expressions as "We shall prove" or "We shall show that—" but it is not necessary to say which witness will testify to what al-

leged facts, or to detail how any material points are to be established.

The plaintiff goes first, and the defendant follows immediately, or waits until the conclusion of all the plaintiff's evidence.

Testimony. The rules of evidence described in Chapter 3 prevail. The judge presides and decides matter of law but not of fact—those being left to the jury. Witnesses for the plaintiff testify first and are cross-examined by the defense. All testimony is given in answer to questions put by attorneys. Questions asked on cross-examination must relate to matters touched upon during direct examination; if the defense wants to question a witness on other matters, when its turn comes to present its testimony, it may call the same witness to the stand again.

After the cross-examination of a witness, the plaintiff's attorney may resume his questioning; if he does so, it is called *redirect* examination and must relate to matters touched upon by the defense in its cross-examination. Actually, the examination of witnesses may be much more informal, with each side taking turns in asking questions until neither has any more. Such procedure, however, is unusual in cases of great interest or importance, and it may not be permitted by judges who are sticklers for form.

When all the plaintiff's witnesses have testified and have been cross-examined, the plaintiff *rests* his case. Then the attorney for the defense makes his opening statement, if he has not done so previously, and proceeds to call his witnesses to the stand. Instead of doing so immediately, however, he may make a motion for a *directed verdict,* contending that the plaintiff has failed to establish a case. It is seldom that the court allows such a motion in civil actions, but many lawyers have a policy of making the motion, on the long chance that it will be accepted. Occasionally it is. The judge has a right to reserve his ruling on a motion for a directed verdict until all the evidence is in—that is, until after the witnesses for the defendant have testified. He may, in fact, wait until after the final arguments have been given, or until after he has made his own charge to the jury and the jury has retired. In such unusual cases there may be a *judgment notwithstanding the verdict,* which means that the judge finds legal reasons for reversing the jury's finding in favor of the plaintiff. If the jury should find for the defendant anyway, the judge's ruling on the motion for a directed verdict is superfluous.

In a vast majority of cases, the motion for a directed verdict is overruled and the witnesses for the defense are examined and cross-examined in the same way those for the plaintiff were. There is no one way to report testimony. All the rules of reader interest, news

values, accuracy, and journalistic ethics apply. The reporter strives to make his account interesting, but he cannot emphasize some unusual but unimportant incident to such an extent that he distorts the impression his story gives of the day's proceedings. In the general run of cases, this is not a great problem, for they are disputes between private citizens and do not involve vital social, political, or social issues. As in the case of reporting a speech or a meeting, the reporter selects the points of greatest emphasis and weaves them into a story which, as a whole, should give an accurate picture of the day in court.

The usual way to handle testimony in a news story is by indirect summary and direct quotation. Usually such testimony provides the first adequate account the newspaper has had of the events giving rise to the action, as illustrated in the following example:

Testimony before Judge Robert Prendergast in Safety court yesterday outlined a picture of a woman curiously toeing the self-starter of a car to see what might happen.

The car started with a lurch, then backed through the parlor of a frame cottage at 1320 Devenon avenue, principals and witnesses testified. The picture will not be completed until April 15, however, for Judge Prendergast continued the hearing and ordered the principals to come to an agreement on a damage settlement.

Unexpected Visitor

Conrad Hannigan, owner of the cottage, testified: "We were sitting quietly when this woman and her car barged in. She threw a whisky bottle at my son when we asked her to leave. I want to keep her car in my wall until she pays for the damage."

Mrs. Julia Robertson, 33, of 3190 Ravenswood avenue, mother of three children and owner of the car, told the court: "My husband and I had gone bowling. He met a friend and went to his home for a bottle of beer, leaving me in the car. I must have stepped on something, maybe the starter."

In the next two examples, both related to the same case, the significant testimony is featured, but there also is mention of some of the legal jockeying that occurred:

His "beautiful friendship" with Robert T. Hoffman, Jr., began in the shallow water of the Union League club swimming pool, Richard M. Genius, Jr., testified yesterday at the opening of his suit to recover $99,875 which Hoffman allegedly obtained by altering checks Genius had issued.

Genius, grandson of Charles H. Morse, founder of Fairbanks Morse & company and heir to $3,000,000 left by his mother, told Judge Walter J. LaBuy in Circuit court that he issued many of the checks while he was classified 1-A in the draft. This, he said, was at the request of Hoffman, who told him:

"You never can tell where you'll be sent, so you'd better leave a couple of checks to pay your bills."

Lawyer's Query Barred

Judge LaBuy sustained an objection by Herbert C. De Young, attorney for Genius, when he was asked:

"Isn't it true that you hired three lawyers and a psychiatrist to keep you out of the Army?"

Later it was brought out that Genius was given a medical discharge after less than a day in the Army.

Genius told of opening a branch office for the Bergonize company, a firm dealing in wall processing products, in San Francisco. When it closed in less than a month, he returned to Chicago, he said, and later opened a branch office in New York but this, too, closed in a short time.

Love Bureau, Says Hoffman

Hoffman, president of the Bergonize company, asserted in an answer filed to Genius' suit that Genius opened the branches so he could conduct a personal matrimonial bureau while interviewing prospective secretaries.

The hearings will be resumed today.

—Chicago (Ill.) *Sun.*

Following the old theory about a bird in the hand, Robert M. Hoffman, youthful Barrington businessman, decided to put his friendship with Richard M. Genius, Jr., heir to a $3,000,000 Fairbanks-Morse fortune, on a cash basis, he testified before Judge Walter J. LeBuy in Circuit court last night.

Hoffman, erstwhile friend and business associate of Genius, took the stand at a special night session of court to testify in his own behalf in a suit for $99,875 filed against him by Genius, who charged that Hoffman obtained the money by raising his checks.

Under cross-examination by Genius' attorney, Herbert C. De Young, Hoffman testified that he wrote the checks himself and had Genius sign them as "partial payment" on a $150,000 bequest promised him by the millionaire. Such an arrangement was satisfactory to Genius, he said.

Part Payment a Good Idea

"If he did intend to leave me $150,000, I thought it was a good idea for him to give me partial payments," said Hoffman. "Otherwise, I might as well forget the whole thing."

Hoffman, who previously had declared that he was paid to help Genius find a likely wife while the two were associated in the Bergonize company here, denied that he had tampered with the checks or given Genius "the rush act."

"I'd been dubious about this inheritance, so I determined to put it on a business basis," he said. "I kept tab of the amounts in the checks on a little card so I could tell him exactly how we stood. Whenever I figured I had some money coming, I'd write a check and take it to Genius at the Lake Shore Athletic club and he'd sign it."

Heir Asked Secrecy

Genius insisted that the transactions be kept secret, Hoffman said, and requested him to make out the checks for odd amounts "to be more business-like." The checks ranged from $920 to $7,609, he said.

Genius, a grandson of Robert Morse, founder of the Fairbanks-Morse company, was an interested spectator in court. Several times he smiled wryly.

Earlier, Genius' former secretary, Mrs. Mabel Brogan of 211 Oak Park avenue,

Oak Park, had testified that Genius was careless with checks. The trial will be resumed today.

—Chicago (Ill.) *Sun.*

The courtroom scene, including the appearances of principals and witnesses, is more newsworthy in criminal than in civil trials. In the case reported in the following example, however, a witness in a civil action "stole the show" as far as reporters were concerned:

There was a mellow quality in the hearing today in the dark-paneled federal court room. Perhaps it was the warmth of the words of the expert witness—this white-haired man who had studied so well in the field in which he was an expert.

"I studied in Paris," he told Judge Philip L. Sullivan. "My father sent me there. I studied at the Cafe de Paris, and reviewed my experiences at the Cafe de la Paix. I studied at many other places in Paris—fine places. I became an expert, as my father wished—an expert on wines, liquors, liqueurs. I knew how to mix them, how to know them in the drinking, their fine variations."

The witness was George Rector, and from the opposing side in the case there was no challenge of the knowledge of this famous chef, son of a famous restaurateur of an earlier day.

George Rector came here from New York to testify that in a "Bacardi cocktail" there should be Bacardi rum, and his appearance followed charges that other rum was purveyed in so-called "Bacardi cocktails" at Isbell's restaurant and bar at 940 Rush street.

The impression conveyed to judge, lawyers, and spectators by the 65 year old witness' smiles and occasional nostalgic sighs—that his studies had induced a personal mellowness—was strengthened by the witness' appearance. He was pleasantly florid beneath a thatch of white hair. He wore a light tan suit, a blue checkered shirt, a red bow tie and red suspenders.

He summed up firmly: "Bacardi means the rum produced by the plaintiffs in this case, and no other rum. To sell any other rum in a 'Bacardi cocktail' would be deceiving the public."

Judge Sullivan was convinced. He issued a permanent injunction restraining the restaurant from filling Bacardi orders with other rum. Incidentally, the case settled an old argument. Pronouncing Bacardi either with an accent on the first syllable or on the second is equally incorrect. The Cuban family name is pronounced with almost equally stressed syllables, and simple accent on the last one.

—Chicago (Ill.) *Daily News.*

Closing arguments. When all the evidence is in, the attorney for the plaintiff makes his closing statement to the jury. He sums up the evidence, indicates the points that he wishes the jury to consider, argues, persuades, appeals to his listeners' emotions. He is followed by the attorney for the defendant, who does the same, and then is allowed a brief rebuttal statement. If he wishes, the plaintiff's lawyer can waive his right to go first, saying his whole say by way of answer to the defendant's closing argument. It is within the judge's power to limit the time allotted to the attorneys for their final speeches.

Robert M. Hoffman was just a $50-a-week paint salesman catering to the foibles of a rich young man, Edward K. Adams, attorney for Richard M. Genius, Jr., said last night in his final argument in Genius' suit against Hoffman before Judge Walter J. LaBuy in Circuit court.

Genius asks $99,875 from Hoffman as repayment for money he claims Hoffman obtained by altering Genius' personal checks. Hoffman contends the money was given him by Genius to finance the latter's quest for a wife.

Several Hundred Checks

Adams exhibited several hundreds of the checks written by Genius and cashed by Hoffman, whom he called "a man of weak moral character, while Genius was high-strung, nervous, lonely, wanting to be liked for himself alone, and utterly careless in his financial affairs."

He called attention to the rising scale of the checks during the two men's several years' association. These, he said, ranged from one for $31.16 for a hotel bill to one for $12,000.

"Hoffman would never have had the nerve to raise Genius' checks," Robert Golding, Hoffman's attorney, said in his closing argument, "but he may have chiseled a little on his expense accounts. That is legitimate. Most salesmen do."

Many Railroad Trips

Earlier, Hoffman had testified that the two took many railroad trips while wife-hunting for Genius.

"Many of the railroad trips we took were made to give him a chance to meet young ladies in the club cars," said Hoffman.

His wife, Mrs. Emily Pope Hoffman, 34, testified of cocktail parties she and her husband had in their Barrington home to give Genius a chance to meet girls.

—Chicago (Ill.) *Sun.*

Closing arguments were begun yesterday before Federal Judge John A. Williams and a jury in the government's condemnation suit against the Spalding airport in Lincolnsburgh. The case is expected to go to the jury today.

The airfield is now known as the Curtiss field and is being used as a training base for naval reserve flying officers. The government has offered the airport owners $600,000 for the property. Several real estate experts called by the government have testified this is a fair price.

Experts called by the airport owners gave a higher appraisal. The final expert, Bertram Simmons of New York, who testified yesterday, said he had supervised work on more than 1,000 airfields, including LaGuardia airport in New York, and that the Curtiss field with its improvements today is worth $900,000.

Charging the jury. When the attorneys are through, the judge charges the jury. It is his duty to inform the jury of the law in the case, and he should not comment on the facts themselves. He makes his charge either in writing or orally, or both. He may accept or request suggestions from the attorneys as to what he should say, but he is not bound to take any of the suggestions. Objections to any part of a judge's charge must be made before the jury has retired and out of its presence.

Special Interrogatories are questions that may be submitted to a jury for its answer. They are posed when there are several counts in

a complaint, or where there have been counterclaims. At the request of either party, the judge may direct the jury to return separate verdicts on different counts. If malice is charged, there will have to be a separate finding as to whether it shall be allowed. The jury may have the simple job of *finding* for either the plaintiff or defendant, or it may have to assess the actual damages. It is the judge's responsibility to make it clear to the jury just what it is supposed to decide in each case.

Verdicts. No matter what else it may do, in a civil action the jury always *finds* for either the plaintiff or defendant. The word "verdict" derives from the Latin *veredictum,* which means "a true declaration," and is "a declaration of truth as to matters of fact submitted to it," according to *Black's Law Dictionary.* Technically, no finding of a jury is a verdict until it has been announced in court and accepted by the court.

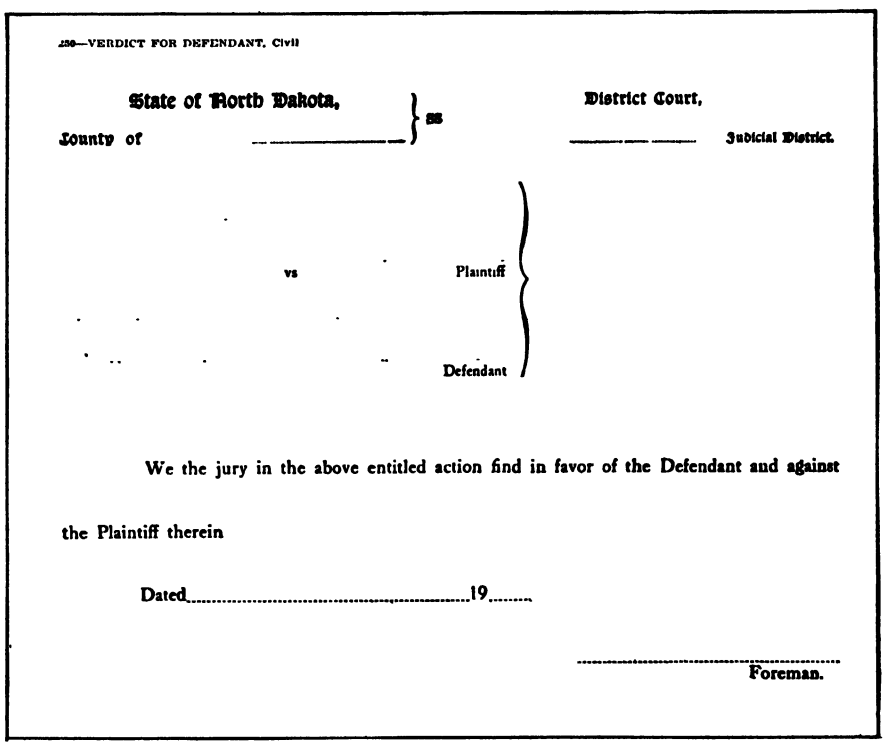
Only juries return verdicts. Judges make findings and reach decisions, and the term verdict is incorrect to describe them. Judgments and decrees are issued by judges on the basis of the verdicts of juries or on their own findings and decisions.

When a jury has reached a verdict, after deliberation, it summons the bailiff, and he notifies the court. Thereupon the judge reconvenes the court, if it is not in session, and asks the jury if it has reached a verdict. The foreman replies in the affirmative and either reads it himself or passes it to the clerk to read. Some states permit oral rather than written verdicts if it is a general verdict only (see below). Either side may demand a *poll* of the jury, which means that the judge must ask each juror to respond individually as to whether the verdict as announced was and is his. If a juror should change his mind when polled and answer in the negative, there would be a good newsstory, regardless of what the case happened to be, but this happens only a few times in a lifetime, and seldom in civil cases.

A *mistrial* results when, after what is considered a reasonable length of time, a jury cannot agree. The judge may summon a jury that has been out for some time to inquire into the chances of a speedy conclusion of its deliberations. Then he may send it back to its room or, if he is convinced that it is hopelessly deadlocked, he may dismiss it. On the other hand, the jury may ask to come into court and request dismissal—a request that the judge may accept or reject. The prospect of being locked up all night or of missing a meal often inspires jurors to quicken their deliberations. Former jurors tell fantastic stories of how eleven may shift to the point of view of one in order to be released, but such cases undoubtedly are rare.

The length of time a jury is out, how the vote stood at different times, and other details of how the verdict was reached are not so newsworthy in civil as in criminal cases. The legitimacy of interviewing jurors for these details, which are supposed to be secret, is questionable.

A *general* verdict is one in which the jury simply finds for either the plaintiff or defendant on all points. A sample form for the rendering of such a verdict is as follows:



250—VERDICT FOR DEFENDANT. Civil

State of North Dakota, } ss
County of _____ }

District Court,

_____ Judicial District.

vs

Plaintiff

Defendant

We the jury in the above entitled action find in favor of the Defendant and against the Plaintiff therein

Dated.....19.....

.....
Foreman.

A *special* verdict is a special finding of the facts in a case, leaving to the court the application of the law as to the facts thus determined. It differs from an answer to special interrogatories, which relate to specific matters, parts of issues involved, and not to the general conclusion.

A *sealed* verdict is delivered when agreement is reached after court has recessed and the jurors do not want to remain locked up all night. They write out and sign their verdict, and place it in a sealed envelope, which they leave with the bailiff. They must appear in court when the envelope is opened the next day, but they escape the discomfort of an all-night wait. In old times, there was such a thing as a *privy* verdict, whereby jurors could hunt for a

judge, possibly at his home, and submit a verdict to him, subject to later reaffirmation in court.

A *quotient* verdict occurs when a jury, which is to fix the amount of the money award, has agreed on its verdict for the plaintiff but not on the damages. Each juror writes down what he thinks the amount should be. These figures are added, and the sum divided by the number of jurors. Such a verdict is illegal if the jurors have bound themselves in advance to vote for the result (a *compromise verdict*); as otherwise, a scheming juror could skew the result by a ridiculously high or low figure. The quotient verdict is merely for the purpose of informing the jury where it stands; then it proceeds to a discussion of the results, and may or may not accept them. The quotient method to arrive at damages is a common device and may not vitiate a verdict if it is used merely as a basis for discussion. Verdicts reached by *chance* or *lot* are illegal.

Damages. The compensation that a loser in an action at law must pay to the winner is called damages. In jury cases, damages are established by the jury. Those that are requested in the *ad damnum* (that part of the declaration which states the total damages requested) are often outlandish. Juries frequently allow only a small proportion of what is asked. It is within the jury's power to increase the damages requested; when that happens—once in a blue moon—it is outstanding news.

The verdict and assessment of damages by a jury is merely a recommendation to the court. The judge accepts, rejects, or changes what the jury decides as he sees fit. In most cases, the judge accepts the jury's recommendation, and it is customary for the reporter to say that the jury awarded the damages. Usually this can be done safely because, if a judge intends to disregard the jury's verdict, he makes his intention known immediately, as in the case mentioned in the following story:

A sealed verdict returned by a jury today after two hours' deliberation found Mrs. Ruth Hopkins, 1629 South Water street, not guilty in a $10,000 personal-injury suit brought by a physician, and the verdict was immediately declared to be "against the weight of evidence," by Circuit Court Judge Robert Holmes.

He indicated he would permit J. F. Edwards, attorney for the injured doctor, Harvey Fisher, 1800 Greenleaf street, a new trial. Dr. Fisher's automobile had been hit by a car driven by Mrs. Hopkins at Greenleaf street and Oak avenue. Mrs. Hopkins, wife of "Terrible Tim" Hopkins, is the sister of the late Frank Sacro.

Said Judge Holmes: "I cannot let a verdict like that stand. Evidence shows Mrs. Hopkins was driving approximately 60 miles an hour when the accident occurred."

General damages are those presumed to have accrued from the wrong (tort), which would be the same in all similar cases. Under

Workmen's Compensation laws there are scales of amounts to be paid for particular losses—for instance, loss of an arm, leg, or eye. Juries do not have any such lists, and it is possible for one jury to value a hand at $1,000; whereas another jury might consider it worth $10,000. It is up to the judge to see that no such discrepancies occur. Tradition is strong in determining what general damages shall be.

News stories based on cases in which general damages only are assessed are easy to write. The following are typical examples:

Mrs. Edward Hutchison, 28, of 1750 Estis avenue, was awarded $12,000 damages yesterday against Charles Rogers, insurance broker, in a sealed verdict opened before Circuit Judge Daniel Linck.

Mrs. Hutchison suffered an ankle injury Nov. 29, 1940, when Rogers' car struck her after his car, another automobile, and a truck collided at Estis avenue and Sheridan road.

Damages of $40,000 were awarded today by a Circuit court jury to Frank Kowalski, 45, of 1848 North avenue, a switchman on the Northern and Southern railway, who, according to testimony, was thrown to the ground by the sudden stopping of a freight car and suffered foot fractures that hospitalized him for two years.

Special damages are those peculiar to the particular case, resulting from special circumstances. For instance, loss of a hand is more serious for a pianist than for a vocalist. Special damages are those which take into consideration the particular loss that the person has suffered over and above what anyone else would suffer in a similar situation.

Nominal damages consist in a trifling sum which suffices as a moral vindication for the plaintiff, in contrast with *substantial* damages, which are intended as real compensation for the injury sustained. Nominal damages are frequent in libel and slander suits, in which the plaintiff is more interested in being cleared of the accusations involved than in recovering for any pecuniary loss.

Compensatory damages are substantial damages to recompense the plaintiff for actual loss, in contrast with *exemplary* damages, which are assessed in addition and which may be punitive in purpose. They are defended as compensation for intangible mental injury and may occur when the act that is the gist of the issue was accompanied by violence, malice, fraud, or wanton and wicked conduct bound to cause mental anguish, hurt feelings, or emotional upset. When it assesses exemplary damages, the civil jury infringes upon the functions of the criminal courts, but the matter at issue may be one not involving a criminal charge. Consequently, the ends of abstract justice may often be better served by exemplary damages than by any other kind.

Statutes sometimes stipulate that ordinary damages may be *doubled* or *trebled* in cases of proof of injury through malice, negligence, or fraud. Such cases are unusual enough to be newsworthy, as in the following case:

In the first instance of its kind here, a $50 attorney fee, as well as treble damages, have been awarded in a ceiling price case in Hamtramck, the Office of Price Administration announced today.

Buyers who are overcharged on ceiling-priced items may recover thrice the excess paid, or $50, whichever is greater, but the Hamtramck case was the first in which a reasonable attorney fee, also provided for in the regulations, was awarded, the OPA said.

A. D. Ruegsegger, principal OPA attorney, said the ruling will enable others who have been overcharged to start court proceedings.

Under state law the attorney fee allowable in such actions is $50.

Nicholas S. Gronkowski, Hamtramck justice of the peace, awarded a judgment of $316.50, the $50 attorney fee, and $3.50 costs to Edward and Julia Radziszewski, 11413 Joseph Campau avenue, Hamtramck, in a suit against Duke and Mary Gordon, 18812 Moenart avenue.

The plaintiffs said they were charged $125 for an 11-year-old mechanical refrigerator, ceiling-priced by OPA at $19.50.

Ruegsegger also pointed out that Hamtramck has enacted an ordinance making violations of price ceilings a misdemeanor, punishable by 90 days in jail and a $100 fine, or both.

—Detroit (Mich.) *News*.

Motions after the Verdict

New trial. A motion for a new trial may be made immediately after a verdict has been returned, or, as the statutes stipulate, within a stated period—usually ten to thirty days—after the judge has rendered judgment. In federal courts, the motion must be filed within ten days, except when it is based upon newly discovered evidence, in which case the time limit is that allowed by law for the filing of an appeal. This time limit differs by states, and the United States District courts follow the procedural laws of the states in which they are located. In most state courts, execution of any judgment is withheld during the period allowed for the making of a motion for a new trial.

The motion constitutes a request by either party, almost always the loser, to set aside the verdict and try the case over because of gross error in the first trial that allegedly resulted in a miscarriage of justice. If granted, the request eliminates the necessity of an appeal to a higher court. Many lawyers make the motion for a new trial automatically, as some do the motion for a directed verdict, and the reporter should not take too seriously a great many such motions. It is usual for the attorney making the motion to ask that the hearing on it be continued for several days, which, in the case of the

automatic motion maker, may mean that he wants that much time to think up some reason on which to base the motion. A judge can refuse the motion without allowing a hearing on it, but appellate courts usually frown on such a procedure. Thus, the bluffing lawyer may have to go through with the new trial unless he withdraws his motion as automatically as he made it.

No longer is it possible to obtain a new trial merely because of clerical error in the record of the original trial. Civil practices acts generally provide for the correction of minor technical errors that do not affect the substantial rights of the parties, and in non-code states court rules provide the same. For a legitimate motion for a new trial there must have been prejudicial error.

The court may require a brief to accompany a motion or to be submitted following the hearing on the motion for a new trial. Some states also require that a bill of exceptions be filed, as it often is mandatory to do when taking an appeal.

Arrest of judgment. A motion for an arrest of judgment automatically precedes that for a new trial, and asks that a judge withhold judgment until he has heard the arguments on the motion for the new trial. It also is made if the defeated party intends to appeal to a higher court. If granted, it acts as a stay of judgment or of execution.

Judgment notwithstanding the verdict. A motion for a judgment notwithstanding the verdict (*non obstante veredicto*) is an appeal to the judge to override the jury by refusing to accept its verdict and to render judgment for the opposite party or for a different amount of damages than that assessed by the jury. A judge, dissatisfied with a verdict, may make the motion on his own initiative. He also can grant the motion if he believes an error was committed which would provide the basis for a successful motion for a new trial. In such case, granting the motion for a judgment notwithstanding the verdict obviates the necessity for a new trial, unless the originally successful party whose rights are now affected adversely moves for one or takes an appeal.

Judgments and Decrees

A *judgment* is the final determination of a court in an action at law. A *decree* is the corresponding court decision in a suit in equity.

A judgment is simply for the plaintiff or the defendant, for a certain amount of stipulated damages, based on the findings of a jury as expressed in its verdict or on the results of the court's own investigation. Decrees do not stipulate damages, but indicate how the prospective parties are to act, what disposition is to be made of

property, what legal rights are to be recognized. Decrees are usually much longer than judgments and touch on many more points.

For example, it requires only a few sentences for a judgment awarding $200 to *A* as compensation for damages to his automobile caused by *B*. It may take several pages for a divorce decree, which dissolves the bonds of matrimony, permits the wife to resume her maiden name, provides for the division of property, the custody and support of children, and the payment of alimony.

An *interlocutory* judgment or decree, touched upon in the preceding chapter, is rendered to determine some preliminary or subordinate point. A *respondeat ouster,* one form of interlocutory judgment, results when an issue of law arises on a dilatory plea and the defendant is ordered that he "do answer over." *Quod computet* is an interlocutory decree for the plaintiff in an action of account that the defendant "do account." A judgment of *repleader* follows when the issue becomes joined on an immaterial point on which the court cannot render a final judgment. A repleader means that both parties must recommence their pleadings at the point where the issues originated (*quod partes replacitent*). *Quod partito* is an interlocutory decree in partition suits requiring that a partition be made.

A *final* judgment or decree is based on the merits of the case and presumably settles the matter at issue. If for the plaintiff, it is called *quod recouperet,* meaning "he do recover." If for the defendant, it is called *nil capiat per breve* or *per billam,* meaning "that he take nothing by his writ" or "by his bill."

A *conditional* judgment or decree waits upon the performance of certain acts by one or both parties—such as a judgment in foreclosure that the property be sold unless the mortgagor pays by a certain time. This court order may be called "interlocutory," but it is not so in the strict sense. A conditional or interlocutory decree of divorce becomes final after a certain lapse of time or after certain things are done.

A judgment or decree *nisi* (unless) is one that becomes final unless some cause is shown within a certain length of time why it should not so become. English decrees of divorce are usually *nisi* for six months. At common law a judgment *nisi* was one entered on the return of the nisi prius (trial court) record, which was to become absolute unless the court ordered otherwise within the first four days of the next court term.

Court Costs

In order to bring a civil action, a person is required to pay certain fees that are established by statute or ordinance and differ by the

kind of case or the amount of money involved. There also are fees for filing an appearance, counterclaim, or intervening petition, and fees to the bailiff or sheriff for serving a summons, writ of attachment, subpoena, and other papers. In some states a fee must be paid if a jury trial is requested. These fees commonly are referred to as *costs,* which is what they are to the person who pays them. In addition to the fees for services that he presumably receives, a plaintiff may also have to put up a bond to guarantee payment of any costs to which a defendant may be put in defending a case in the event the plaintiff loses.

If a person is unable to pay any of the fees, he usually can petition the court to be permitted to bring action as a *poor person.* In such case, he must make an affidavit that he is insolvent, and he may possibly have to fill out a questionnaire regarding his financial status. The poor person's attorney may have to sign an affidavit that he will receive no fee, in the event his client wins his case, until the court fees are paid. The attorney may also stand surety for the costs in the event his client does lose the case. The court, of course, has a lien on any damages that a poor person recovers.

In any case, the judge determines whether *costs* shall be assessed against the losing party or be shared by the litigants. Usually the judge says, "Judgment for plaintiff for $500 plus costs," or, "Judgment for plaintiff, no costs." By "no costs" the judge means that the winner cannot recover the costs of the proceeding from the loser. In such case, each party pays his own attorney and court reporters and meets other expenses. A person may, of course, in a lease, promissory note, or other contract bind himself in case the other party brings suit, to pay attorneys' fees. It also happens, in certain types of cases, such as default divorce actions, that the parties agree in advance on who is to pay costs and attorney fees.

Whatever the procedure, the clerk makes out a bill of costs for either or both parties, as the case may be, and the sheriff is ordered to collect from whoever owes them.

CHAPTER 7

Enforcing the Civil Law

Executions

IT IS one thing to get a court judgment ordering another party to pay a sum of money. It is quite another thing to collect, and the reporter should be alert to stories which may arise out of legal steps taken to compel execution of judgment. Statutes provide that if the *judgment debtor* (the one against whom the judgment is rendered) does not pay, within a stipulated time, the *judgment creditor* (the one in whose favor the judgment is rendered) can apply to the court for a *writ of execution,* which engages the assistance of the court's officers in attempting to obtain collection.

The time limit on making application for such a writ differs by states and by kind of case, but the range is from five to twenty years. The writ is directed to the sheriff or some comparable officer, ordering him to demand payment from the judgment debtor, the amount collected to be turned over to the judgment creditor; or, if the judgment debtor is unable or unwilling to pay, to seize and sell at *public vendue* (auction) such of his property as may be necessary to raise the amount due.

Many judgments remain on the court records as mere liens on property for years, without any attempt being made by the judgment creditor to obtain execution, because he realizes that the value of the debtor's property is so meager that he would not be able to recover the full amount. Consequently, he gambles on an improvement in the debtor's financial status so that he will either satisfy the judgment voluntarily or a sheriff's sale will bring a higher amount. In the meantime, the judgment debtor is hamstrung as far as disposing of any of his assets; to dispose of them would be contempt of court.

The statutes regulate what property of a judgment debtor can be sold to satisfy a judgment. In Illinois, the creditor can elect on what property not exempt from execution he will have it levied, provided that personal property is taken last. California, New York, Oregon, and some other states, on the other hand, stipulate that personal property ordinarily should be sold first, unless the judgment specifi-

cally indicates that it is to be a lien on real property. Inferior courts are usually not permitted to execute a judgment against real estate. A typical execution against property appears on page 221.

Under the common law, a multitude of executionary writs existed, different ones for every kind of action—such as writs of covenant, debt, assumpsit, deceit, detinue, dower, elegit, ejectment, entry, delivery, inquiry, restitution, right, and so forth. New York today stipulates that a final judgment may be enforced by execution: (1) where it is for direct payments of a sum of money; (2) where it is in favor of the plaintiff in action of ejectment or for dower; (3) in an action to recover chattel wherein the chattel is awarded to either party. New York provides four kinds of execution: (1) against property; (2) against the person; (3) for delivery of possession of real property, with or without damages for withholding same; (4) for delivery or possession of chattel, with or without damages for taking or detention thereof.

Writs, even for different purposes, may all be known as *writs of execution*, or they may have different names. The most common writ is that of *fieri facias*, which Pennsylvania defines as a writ to collect the demand out of tangible property, as distinguished from *levari facias*, which is used to collect the charges upon land. The form is similar to the North Carolina example given and may read "execution" on the face and "*fieri facias*" on the reverse side. The similarities between the writs of execution used in the different states for different kinds of action are greater than the differences. One example of a slightly different writ is that of foreclosure, in which it will be stated that both a judgment and decree were issued, and the levy naturally will be on real estate only.

Among the distinctive writs that the reporter may encounter in some places are the following:

Writ of possession, which is used to enforce a judgment to recover possession of land. It commands the sheriff to enter the land and give possession to the judgment creditor.

Writ of habere facias possessionem (that you cause to have possession) is the process in a successful ejectment suit. The sheriff places the person in actual possession of the property.

Writ of habere seisinam (that you cause to have seisin) directs the sheriff to cause the demandant to have seisin of lands recovered. This, under the common law, was the proper process for giving seisin of a freehold, as distinguished from a chattel interest in lands.

Elegit is an old common law writ, still in use in some states. By it the defendant's goods and chattels are appraised and delivered to the plaintiff in part satisfaction of debt. If they are not sufficient, some of his freehold lands are also taken by the sheriff, and given to

NORTH CAROLINA
GUILFORD COUNTY } IN THE SUPERIOR COURT

TO THE SHERIFF OF GUILFORD COUNTY—GREETINGS

WHEREAS, Judgment was rendered on the day of .. 194. .., in the Court in an action between Plaintiff and defendant .., in favor of said against the said , for the sum of Dollars, as appears to us by the Judgment roll filed in the office of the Clerk of our said County And whereas, the said Judgment was docketed in the office of the Clerk of the Superior Court of Guilford County on the day of , 194 And the sum of Dollars is due thereon with interest on Dollars from

And the further sum of .. Dollars for cost and disbursements in said suit expended for which the said liable.

YOU ARE THEREFORE COMMANDED To satisfy said judgment out of the personal property of the said defendant within your County or if sufficient personal property cannot be found, then out of the real property in your County belonging to such defendant on the day when said Judgment was so docketed in your County or at any time thereafter in whosesoever hands the same may be, and have you this execution, together with the money before our said Court, at the Court House in Greensboro ninety days from date, then and there to render the same to the said plaintiff .

Issued in Guilford County, Greensboro, North Carolina, this the day of , 194

Clerk of the Superior Court of Guilford County

By
Deputy Clerk

the plaintiff to hold until rents and profits are sufficient to satisfy the judgment.

Writ of delivery is a form to enforce a judgment for the delivery of chattels, as in a replevin suit. The sheriff is commanded to cause the chattels to be returned to the judgment creditor. If the property cannot be found, the sheriff is ordered to distrain the judgment debtor until he returns them.

Writ of assistance is the process whereby a court of equity enforces its decrees respecting a title or right to possession of land. It is similar to a writ of possession at law.

A writ of assistance, signed by Federal Judge William H. Holly, was placed in the hands of federal deputy marshals yesterday empowering them to seize three buildings or portions of them occupied as warehouses of the Goldblatt Brothers department stores. The buildings are to be used by the army.

The order was signed Thursday after Special Assistant District Attorney Arthur A. Sullivan told the judge that 200,000 square feet of land and floor space had not been vacated as provided by a condemnation order issued last March 11.

Attorney Bernard Brown, appearing for Goldblatt Brothers, explained that originally four buildings had been named in the condemnation action, one of which had been surrendered, and that parts of the other three structures had been vacated. Although the firm had assigned 38 brokers to find available space for the warehoused merchandise, the lawyer said it had been impossible to vacate all the space. The buildings designated in the writ included Building E, 3923–55 South Winchester avenue; the west one-third of the Goodyear Building, 1927 Pershing place, and Building D, 3932–54 Winchester avenue.

—Chicago (Ill.) *Tribune.*

Testatum writs are issued when the sheriff reports that the debtor cannot be found in his bailiwick, and has no goods therein. *Testatum* writs are directed to sheriffs of other counties to execute.

A *writ of venditioni exponas* (you expose to sale) is issued after a sheriff returns the original *fieri facias* with a report that the property cannot be sold because there are no buyers. This writ orders that another attempt at a sale be made.

Citations

As defined by *Black's Law Dictionary,* a citation is: [1]

A writ issued out of a court of competent jurisdiction commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. It is usually an original process in any proceeding where used and in such respect is analogous to a writ of capias or summons at law and subpoena at chancery.

It also may be used in an entirely different sense, meaning a reference to other cases.

[1] *Black's Law Dictionary,* Third Edition. Saint Paul: West Publishing Company.

When a judgment creditor cannot discover any assets of a judgment debtor that could be attached or subjected to a sheriff's sale, he may apply to the court for a citation, to summon the debtor into court to be examined under oath regarding his assets. If the defendant appears, he is sworn and usually referred to a master in whose presence he is examined by the plaintiff's attorney regarding any assets that might be subject to execution to satisfy the judgment. Often the citation is the first notice that a judgment debtor in a confession judgment case has of the entry of the judgment against him. If he believes the judgment to be unfair, he is allowed to enter an appearance and later may move to have the judgment set aside. It may happen, of course, that a creditor is at fault, and the debtor may have a receipted bill or other evidence that he was not in default on the confession note.

A creditor may come into court with a motion to reinstate a citation that was allowed to drop. This happens when a plaintiff becomes convinced that a debtor previously lied to conceal assets; that he has returned to the jurisdiction of the court after an absence or for other reasons, including an improvement in his financial status.

The term *citation* is also used for other types of court summonses, usually in probate matters, when the court wishes to ascertain certain facts concerning an estate. The form does not differ much from that of an ordinary summons or subpoena, the different name being used to indicate the purpose for which it is used.

Contempt of Court

When a debtor fails to appear in court in response to a citation, the usual procedure is for the court to enter a *rule to show cause* why he should not be punished for contempt of court. If the debtor fails to come to court to satisfy the court that no contempt was intended, the court may issue an *attachment for contempt*. This writ is delivered to the bailiff or sheriff, with instructions to bring the debtor into court. A typical writ is that on page 224.

A *contempt mittimus* or *order for cimmitment* is an order to a sheriff to convey someone convicted of contempt of court to jail. Such commitments perhaps are most common today in cases of defaulters on alimony payments in divorce actions. The form on page 225 indicates the court's reasoning in such matters.

The following examples illustrate the news interest that may exist in contempt of court actions growing out of the failure of judgment defendants to comply with the terms of a judgment. When the plaintiff brings action to enforce a judgment, this is called an

COUNTY OF PHILADELPHIA, ss

Attachment for Contempt

The Commonwealth of Pennsylvania,

TO THE SHERIFF OF THE COUNTY OF PHILADELPHIA, GREETING

WHEREAS of your County, is in default in not complying with the Order of the Court of Common Pleas, No (Room) for the County of Philadelphia, made on the day of 19 , in certain proceedings pending between *Plaintiff* and *Defendant*, C P, No ( ) Term, No NOW WE COMMAND YOU to attach the said if he be found in your bailwick, and him safely keep, so that you have him before the Judges of our said Court, forthwith to answer for his contempt of our said Court in such default And have you then and there this writ, and your return thereto

WITNESS the Honorable President Judge of our said Court at Philadelphia, the day of in the year of our Lord one thousand nine hundred

Prothonotary

ancillary action—a term that includes all legal proceedings which grow out of previous proceedings.

Arthur Kamp, 30, can have the indisputed title of "meanest man" any time he wants it.

Kamp was sent to the county jail yesterday for six months by Judge William King of Superior court for being $90 in arrears on a $20-a-week order entered on May 15 for the support of his three sons: Arthur, Jr., 13; Raymond, 12; and Robert, 9.

Julius Brothers, attorney representing Kamp's wife, Marie, 28, of 4750 Kenmore avenue, told the judge that recently Kamp found his sons playing with a baseball they won as an athletic prize. Kamp took the ball and bat and sold them. With the money he bought a pint of whisky, which he drank in front of the boys.

The Office of Price Administration won a point yesterday in a battle against the black market in meat when Federal Judge John Williams ordered a South Westville, Ind., slaughterer to show cause why he shouldn't be punished for contempt of court.

The defendant was Lloyd Smothers, who was named on March 14 in a permanent injunction to restrain him from slaughtering in excess of his quota. OPA attorneys charged Smothers had ignored the injunction and had slaughtered 80,000 pounds over his quota. He was given until April 15 to answer.

When Mrs. Ruth O'Shea, 25, of 3676 South Michigan avenue, divorced her husband, Patrick, 32, of 4623 Oak Avenue, last Jan. 19, she waived alimony on condition that he give her back her $2,500 engagement ring.

And she wants all of the ring, if possible, her attorney, Ronald Davis, told Superior Judge William King yesterday. Three weeks ago, Davis said, she got the main stone—a 2½ carat diamond—by threatening a contest action, but she was still missing six little stones and the mounting, the latter valued at $300.

O'Shea, a printer, when asked about the missing parts, said he had sold the

STATE OF WISCONSIN

CIRCUIT COURT :· FOND DU LAC COUNTY

_____, Plaintiff,

vs.

_____, Defendant.

The order requiring the {plaintiff / defendant} _____ to Show Cause why he should not be punished for contempt for failure to comply with the judgment of divorce dated _____ requiring the {plaintiff / defendant} to pay the sum of _____ Dollars as and for alimony and the support of the minor child _____ of these parties coming on to be heard on the _____ day of _____ A. D. 19____, before the Hon. _____, presiding, the {plaintiff / defendant} appearing in person and the State of Wisconsin being represented by Divorce Counsel of Fond du Lac County and the {plaintiff / defendant} appearing in person and by _____ Esq, after hearing the parties upon all the papers, files and proceedings on file herein and the court being advised in the premises,—

IT IS ORDERED AND ADJUDGED That he, the said {plaintiff / defendant} _____ is guilty of contempt of court in having wilfully and contumaciously disobeyed the judgment heretofore referred to, that there is now due and owing {plaintiff / defendant} under said judgment the sum of _____ Dollars, and that said misconduct of the {plaintiff / defendant} _____ was calculated to and actually did defeat, impair and prejudice the rights and remedies of said {plaintiff / defendant}

IT IS FURTHER ORDERED AND ADJUDGED That as punishment for such misconduct said {plaintiff / defendant} _____ be and he hereby is committed to the County Jail in and for Fond du Lac County for a period of not exceeding _____ from the date hereof, unless sooner discharged by the Court.

IT IS FURTHER ORDERED AND ADJUDGED That the commitment of the {plaintiff / defendant} be and the same is hereby stayed until the _____ day of _____ 19____.

IT IS FURTHER ORDERED AND ADJUDGED That the {plaintiff / defendant} may purge himself of contempt by paying into the office of the Clerk of the Circuit Court the sum of _____ Dollars.

Dated, Fond du Lac, Wisconsin _____, 19____.

By the Court

_____

Circuit Judge

little stones for $50, but he still had the mounting. Judge King ordered him to turn over the $50 and the mounting.

Hollywood, June 7.—(UP)—Rita Hayworth, glamorous screen star, is $10,000 behind on the alimony she agreed to pay him, her playboy husband, Edward Charles Judson, charged today in a suit filed in Superior court.

Judson, described as an Oklahoma oilman, claimed Miss Hayworth failed to make any further payments after the fourth monthly installment of $500 in the financial settlement made when they were divorced.

The couple separated Feb. 21, 1942, and the final divorce decree was granted May 27, 1942.

Judson asked not only for the remaining $10,000 of the $12,000 Miss Hayworth agreed to pay, but requested 7 per cent interest, starting from Nov. 1, 1942, plus $2,000 to pay costs of the present action.

An attachment for contempt also can issue against a juror or witness who fails to obey a court summons or subpoena.

Attachments

Property attachment. When an attachment is obtained to enforce execution on a judgment, it operates in the same way as when it is obtained at the commencement of a suit. (See Chapter 5.) It ties up property that is sufficient if sold to cover the amount of the judgment. The property is held until the judgment is satisfied.

The counterpart to a writ of attachment, by means of which a court of equity enforces its decrees, is a *writ of sequestration.* It authorizes the taking into custody by the court of real and personal property or the collection of rents and profits from such property of a defaulting debtor or person held in contempt of court. He cannot obtain return of the property until he conforms to the terms of the decree. The writ may issue to a sheriff or to special commissioners. Texas permits sequestration at the beginning of equity suits of some kinds, such as foreclosures; divorce; to test titles; avoid waste, destruction, or removal. The writ is not so frequent at the beginning of suits, however, as are attachments in law actions. It is perhaps more common in alimony and support cases.

Body attachments. Imprisonment for debt has generally been abolished by statutes. Nevertheless, in cases in which it would have been possible for the plaintiff, upon beginning an action, to obtain an attachment (*capias ad respondendum*), he usually can cause the arrest of a defaulting defendant (judgment debtor) by means of a *capias ad satisfaciendum.*

An alternate name for a body attachment is a *body execution;* it may issue for the arrest of anyone guilty of any violation of a court order. Issuance of the writ may be limited in tort cases to those in which malice was the gist of the action, or to instances of deliberate

refusal to surrender property. If bringing a person into court on a writ of attachment results in a jail sentence, it usually devolves upon the plaintiff to pay the cost of his upkeep there at a rate of $1.50 a day or thereabouts. The maximum imprisonment also is limited; in New York it is six months if the judgment is over $500 and three months if below that amount.

Pennsylvania specifies that a *capias ad satisfaciendum* can be obtained if the plaintiff could have obtained a *capias ad respondendum* and that the debtor can obtain his release if he (1) pays the judgment and costs; (2) enters security for payment; (3) avails himself of the benefits of the insolvency law; (4) shows himself without property or means to pay, and has not secreted or assigned any property to avoid payment.

The following two news stories illustrate how writs of attachment may become newsworthy:

Alimony troubles caught up simultaneously yesterday with a father and son—the first a veteran of World War I, and the second a current inductee.

The son is Edwin Hanson, 21, whose wife, Rita, got a separate maintenance decree in 1941, and an order for $22 a week. Charging that Edwin is $1,500 in arrears, she obtained an attachment for his arrest.

Son Seized at Draft Board

Ignorant of this fact, Edwin went yesterday to his draft board at 1500 Devon avenue, to be inducted, and his father, William, 55, went along to keep him company. Edwin was arrested, and his father went with him to the sheriff's office.

There they met Rita, who saw William and cried: "That man owes money to his wife, too!"

A search of the files showed that William was liable to arrest for owing $300 to his second wife, Katherine. Father and son were incarcerated.

Circuit Judge Rudolph Grady was indignant about Edwin's arrest.

Draftee Released

"I want no writs served at or near a draft board," he said. "We must heed Uncle Sam's call first. Go to the Army, Mr. Hanson."

William appeared before Superior Judge John Necherman. The wife, Katherine, reached by telephone, said: "Oh, I'd forgotten all about that. I got that attachment a year ago. I don't want to prosecute."

So another Hanson went free. Edwin had lunch with Rita before going back to his draft board.

It's a 100-to-1 bet that Circuit Judge Rudolph Grady will meet Edwin Hanson with a steely gaze when the deputy sheriffs bring him in.

The last time was June 4, when deputies arrested Hanson, who is 21, as he stood in line at his draft board, awaiting induction. They had a writ of attachment obtained by his wife Rita, 20, of 1520 Hinman avenue.

Judge Rebukes Deputies

Judge Grady told the deputies that he thought it unseemly to arrest a man on an attachment writ while he was on the verge of becoming a soldier. He said he didn't want to hear of any more such arrests.

To Hanson he said: "Go back and report for induction—but if they don't take you, come back here."

Hanson went. He was rejected. But he did not report back to Circuit court.

Wife Gets New Writ

Yesterday the deputies resumed the hunt. They had another writ and Hanson's last known address, 1600 South LaSalle street. Mrs. Hanson asserts he owes her $1,500 in arrears on a separate maintenance order of long ago.

Courtroom attaches were wondering just how Hanson is going to finish the time-honored explanation that begins, "Your Honor, it was this way—"

Garnishment

If the judgment debtor has no property that can be sold to satisfy the judgment, it may be possible to obtain satisfaction by means of a court order to the judgment debtor's employer, to retain a certain proportion of his employee's wages each pay day, this amount to be turned over to the court for the judgment creditor's benefit. Such an order, called a *writ of garnishment*, also may be issued to some other debtor of the judgment debtor, other than his employer, similarly commanding him to make payments to the court rather than to the person to whom he is indebted.

In many states it is possible to *garnishee*, as it is called, at the outset of a law action, in addition to or instead of obtaining an attachment to tie up property. In other states, the right is limited to cases in which return of an execution reveals no property that can be converted. In any case, the procedure is for the judgment creditor to make an affidavit that a certain third party is the debtor of the judgment debtor. The plaintiff usually has to post a bond to protect the defendant (judgment debtor) in case the judgment creditor is acting wrongfully. The summons, or writ of garnishment, is served upon the third party, who must appear in court to reply to the claim that he has assets belonging to the judgment debtor that could be used to satisfy the judgment creditor. The summons served on the third party may be called a *scire facias*, or an *order in aid of execution*. After the appearance of the third party (known as the *garnishee*) and a hearing to ascertain what assets of the judgment debtor he controls, the court orders what property is to be turned over to the judgment creditor or what deductions are to be made from pay checks or other payments.

Revival of Judgment

If a judgment remains dormant beyond the time stipulated by statute for application for execution thereon, or if it is not fully satisfied after the time has elapsed, the judgment creditor may ap-

ply for a *scire facias to revive judgment* so that he can proceed to demand execution. In such case he files an affidavit to the effect that the judgment is not yet fully satisfied, and asks that the defendant be ordered to answer as to why it has not been satisfied.

The writ that issues is in the nature of an order to the defendant to show cause why the plaintiff should not still have the benefit of the original judgment. The filled-in affidavit and writ appearing on pages 230 and 231 are typical.

There are many other kinds of writs of *scire facias,* in addition to that to revive judgment. They are similar in that they are all founded on some court record of which the affiant wishes to take advantage. The Latin words mean "that you make known," and the order always is "to show cause," thus putting the burden upon the defendant. *Scire facias* may issue to repeal letters patent, to collect a bail bond from a surety when the principal has skipped, to enforce payments in bastardy and alimony cases, to compel stockholders to pay in accordance with their liability when a judgment is obtained against a corporation, and in similar cases. A *scire facias sur mortgage* issues to a mortgagor who defaults in showing cause why he should not be foreclosed. It is typical of the special forms of this writ.

Correcting Errors

In the United States a person has as many days in court as may be needed. The American system of justice has been criticized adversely for its slowness, but the fault exists because of the laudable attempt to allow a person accused of crime or made the defendant in a civil action every opportunity to prove his innocence. That the principle is overworked and misused, everyone acquainted with the courts realizes. In civil actions a plaintiff with an indisputably just claim may be utterly helpless before a powerful adversary able to employ high-powered legal talent to take advantage of every opportunity to postpone or evade the otherwise inevitable outcome.

Not always, however, does the slow machinery of American jurisprudence operate to the disadvantage of a litigant. Judge and juries are human, and they make honest errors for the correction of which there must be and are procedures. Among the orthodox methods are motions to *reinstate* a case which has been dismissed, to *set aside* a verdict, to *vacate* a judgment, or to *review* a decree. It is irritating to lawyers when newspapers use the italicized words interchangeably, or otherwise incorrectly. Laymen seldom know the difference, but in the interest of accuracy and prestige with the legal profes-

AFFIDAVIT FOR SCIRE FACIAS TO REVIVE JUDGMENT

STATE OF ILLINOIS, } ss. IN THE CIRCUIT COURT THEREOF.
COUNTY OF COOK }

COMMERCIAL NATIONAL BANK OF CHICAGO
First Plaintiff

VS

MARION KERRIGAN
First Defendant

AT LAW.

General No. 42 C 66667

AFFIDAVIT FOR SCIRE FACIAS

Dorothy Wakeman, being duly sworn, on oath states as follow, to wit: That s he is the duly authorized agent of plaintiff (agent of, — assignee of, — or — Plaintiff) in this action, and, that the following named persons are parties, thereto, to wit: The Commercial National Bank of Chicago, a national banking association, as Plaintiff and MARION KERRIGAN as Defendant.,

That a judgment was rendered in the Circuit Court of Cook County, Illinois, in case General Number B.26554 in favor of The Commercial National Bank of Chicago, a national banking association, and against Marion Kerrigan

on the 24th day of March A D 1934 for the sum of --$13,720. ---------- ---------- Dollars and ------- 90 ---------- Cents, together with costs of suit taxed at the sum of Dollars and Cents,

That there has been paid upon said judgment the sum of ---------- 220 ---------- Dollars and Cents, as appears from the records of the Court,

~~That there has been paid upon said judgment the sum of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Dollars and xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Cents, which does not appear of record, receipts of which last mentioned sum are herein acknowledged.~~

That after allowing all just credits and set-offs there remains due and unpaid on said judgment the principal sum of $13,000 Dollars and 90 Cents, together with interest accruing thereon at the rate of 5% per annum, from the day of 19

WHEREFORE, this affiant prays that said judgment be revived in the amount hereinabove stated to be due and unpaid thereon in favor of the Plaintiff and against the Defendant in this action

This affiant requests that the Clerk of said Court issue a writ of Scire Facias in this action directed to the defendant herein to file answer or otherwise make appearance in said Court on or before the 1st Monday in the month of July A D. 1942, and deliver said writ to the Sheriff of Courty for service and return thereon

Affiant.

Subscribed and sworn to before me this
day of 19

Official Title.

SCIRE FACIAS TO REVIVE JUDGMENT

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

General No. 42 C 66667

In the name of the People of the State of Illinois, in the Circuit Court of Cook County, Illinois.

WHEREAS, The Commercial National Bank of Chicago, a national banking association, heretofore, in our Circuit Court, on to-wit, the 24th day of March, A D. 19 34, being one of the days of the March Term, A D 19 34 of said Court, recovered a judgment against Marion Kerrigan in a certain cause, (General No B-26554), in the sum of $13,720 Dollars and 90 Cents, and also costs of suit taxed at the sum of Dollars and Cents, whereof the said Marion Kerrigan was, (were) convicted, as appears to us of record.

AND WHEREAS, it appears from an affidavit on file herein that there still remains due and unpaid upon said judgment the sum of $13,500 Dollars and 90 Cents, together with interest at the rate of five per cent per annum from the 15th day of March, A D 1934, together with costs taxed at Dollars and Cents.

AND WHEREAS,

And now on behalf of the said Commercial National Bank of Chicago, a nationa banking association, we have been informed, that although Judgment was given as aforesaid, yet execution of the damages and costs aforesaid still remains to be made to The Commercial National Bank of Chicago, a national banking association, wherefore the said Commercial National Bank of Chicago, a national banking association, has besought us to provide for it proper remedy in this behalf.

WE DO THEREFORE COMMAND YOU, That you make known to the said Marion Kerrigan that she be and appear before our said Circuit Court, at the Court House in the City of Chicago in said Cook County, on the 1st Monday of July A D 19 42, to show cause, if any she have, why the said Commercial National Bank of Chicago, a national banking association ought not to have judgment and execution against her the said Marion Kerrigan of the damages and costs aforesaid, according to the form and effect of the said recovery.

And have you then and there this Writ, with an indorsement hereon in what manner you shall have executed the same

Plaintiff's Attorney—and Address

WITNESS, JOHN E CONROY, Clerk of our said Court and the seal thereof, at his office in Chicago, Illinois this day of , A. D. 19 .

Clerk.

sion, reporters should strive for accuracy in their use of legal terminology.

Circuit Judge Robert Holmes indicated yesterday that he would set aside a verdict in favor of Mrs. Ruth Hopkins, 1629 South Water street. She was being sued for $10,000 by Dr. Harvey Fisher, a physician at 1800 Greenleaf street. A jury in Judge Holmes's court took less than an hour to decide against Dr. Fisher, who charged he had been injured in a crash with Mrs. Hopkins' car.

Judge Holmes expressed surprise and said: "This verdict is contrary to the manifest weight of the evidence." He then set April 16 for a formal motion for a new trial.

The crash occurred on Oct. 10, 1942, at Greenleaf street and Oak avenue

As can be inferred easily from their titles, all these motions are for the purpose of reopening a case. They are most frequent when the judgment or decree has been summary, by default or on a confession note. As previously stated, a defendant may not know that proceedings have been begun against him. When he is served with a citation to come to court to reveal his assets, he may wish instead to enter an appearance and state his case. A landlord or other creditor may frequently be in error in seeking a confession judgment, or the delinquent debtor may have "his side of the story" which he wishes to tell. Generalizations are always dangerous, but public opinion everywhere seems to support judges who are lenient and who do not allow judgments or decrees to stand against persons who have not had an opportunity to defend themselves, even though they may have slipped up on some legal points.

A *writ of audita querela* is one of ancient origin, by which a judgment debtor stops execution of a judgment because a new defense arises after the judgment has been rendered. This defense may consist of discovery of proof that the obligation which was the gist of the action had been discharged. It can occur if a judgment debtor finds a previously misplaced receipt or other bit of real evidence.

A *writ of supersedeas* is an order to a sheriff, constable, or other court officer to stop execution of a judgment found to be incorrect shortly after its rendition. If, however, the sheriff already has acted, the writ directs him to make restoration to the affected party. A typical form appears on page 233.

When a judgment has been reversed, a *writ of restitution* is issued as an order to the sheriff to restore to the defendant whatever had been taken from him to satisfy the judgment. Another kind of writ of restitution is issued when judgment is for the plaintiff in a forcible detainer action; it causes the defendant to be evicted, and restores the plaintiff to possession of the property.

STATE OF TENNESSEE, DAVIDSON COUNTY.

To _____ *Constable of said County,*

and _____ *GREETING:*

Whereas, it is represented to us on the part of _____ _____ _____

CHAPTER 8

Contracts

IT IS one thing to understand the procedures that the civil courts follow in all cases, regardless of nature. It is quite another to comprehend the basic law itself, the application of which is the purpose of the procedural law described in the preceding three chapters. To find his way around a courthouse and to know what is going on when he steps into a courtroom, the reporter has to know the procedure. Knowledge of procedure, however, is but a prologue to a real knowledge of the law, which consists in the precedents and statutes of many generations and centuries.

This chapter is the first of five devoted to discussions of the most important phases of the civil law proper. When a civil court operates by branches or divisions, the most common of such branches or divisions are those which handle contract cases, torts, and equity matters. There may also be special courts for divorce cases, which are otherwise handled in the equity branches. There are often special courts of probate, and bankruptcy and reorganization proceedings are handled largely by federal referees in bankruptcy. These are not all the major phases of the civil law given separate treatment in this and the four chapters to follow, but mention of them serves to prepare the reader as to what to expect—the law itself, not just the procedure by which it is adjudicated.

Nature of the Law of Contracts

Origins. Although today it is perhaps the largest and, in many respects, the most complicated branch of law, the law of contracts is of comparatively recent origin. Undoubtedly, primitive peoples made promises to each other and considered a failure to keep a promise to be a wrong (tort), punishable in whatever highhanded manner was sanctioned by custom. There was, however, almost no written contract law until trade and commerce developed and brought it into existence because of necessity. Its Roman origin was in agreement with a pledge and vow. The debtor gave the creditor a pledge which he held until it was fulfilled; if he possessed nothing of value, the debtor pledged his own person in the form of

a sale, the transaction being called *nexum,* similar to a judgment debt in modern times. Because of the vow to the gods, the priests were able to intervene and insist on specific performance of contracts.

Regardless of its origin, the object of the law of contracts, in the past and today, is to protect a person in the right to expect that promises made to him will be kept. Modern commercial relations are so extensive and complex, and so many different ways of doing business have developed, that a sizable library of law has become necessary to determine: (1) what constitutes a contract—that is, when does a binding promise enforceable at law exist; (2) what constitutes a breach of such a contract; (3) what remedy or recourse the victim of a breach of contract should have.

Legally defined, a contract is "an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others." A contract differs from other kinds of agreement in that: a promise is essential; the contract must originate in an offer; an accepted offer creates a promise; the law must attach an obligation to the promise. Virtually every bona fide business relationship involves a contract, formal or informal, actual or implied. Lawmakers do their best to anticipate every possible contingency that can arise in business: in the execution of simple sales contracts, deeds, leases, employment contracts, and insurance policies; in the issuance, sale, purchase, and transfer of negotiable instruments, such as stocks, bonds, bills of exchange, promissory notes, and mortgages; in the relationships between parties doing business with each other, such as landlords and tenants, masters and servants, physicians and patients, trustees and beneficiaries, common carriers and passengers, banks and customers, innkeepers and guests, sellers and buyers, stockholders and corporation officials. Nevertheless, a large proportion of contract cases must be settled by equitable rather than legal principles—a process that is simplified by civil practices acts, which eliminate the fine distinctions between law and equity. Such acts also permit a complaint for any tort committed in connection with a breach of contract to be combined with any other demands growing out of the transaction.

Remedies. The victim of a breach of a valid contract has his choice today of at least six possible remedies:

1. *Damages,* or compensation for the loss he has suffered, either as a result of past performance on his own part, measured by value received by the defendant, or as a result of failure of the other party to act, measured by the value of the promises that were made and any consequential injury resulting from their nonperformance.

2. *Restitution,* or the restoration of a specific thing or former position—for example, a sum of money paid by one party to a contract to another who failed to perform the services for which the payment was supposed to be remuneration.

3. *Specific performance,* or fulfillment of the terms of the contract.

4. *Injunction,* or the restraint of an actual or contemplated breach of contract.

5. *Cancellation,* or the setting aside of the contract.

6. *Rectification,* or the changing of the terms of the contract so as to correct any mistakes or impossible conditions therein contained.

The first of these remedies—damages—is obtainable in a court of common law. So, also, is the second—restitution—provided that only money restitution is requested. The other four forms of relief must all be sought in equity court.

Actions. At common law there are four forms of actions *ex contractu* (growing out of a contract), and they persist today in some noncode states, where reporters must understand them. To enumerate:

1. *Covenant.* This is the proper action for recovery of money damages for breach of contract of a binding obligation or contract made under seal. The validity of such a "specialty" contract does not depend upon any consideration but upon the formality of the execution. The distinguishing feature of this type of obligation is an express promise to pay a sum of money or perform a certain act.

2. *Debt.* This is the proper action to recover specific sums of money or a sum of money easily reduced to a certainty. It was restricted for a long time to unilateral contracts, but now may be used for liquidated or ascertained claims arising either from breach of covenant or nonpayment of a sum due for goods that have been supplied, services rendered, or money loaned.

3. *Assumpsit.* This is the proper action to recover damages for breach of contract not made under seal. General (*indebitatus*) assumpsit lies on an implied contract—that is, one which the law infers as constituting a promise from the conduct of the parties or the circumstances in the case. Special assumpsit lies when the promise was express—that is, one put in distinct and definite language. Technically, the claim is for the debt which grew out of the contract, not the agreement itself. Thus, an action for assumpsit is founded on a promise, whereas the actions of debt and covenant are founded on a contract.

4. *Detinue.* This is the proper action to recover specific chattels

withheld from the plaintiff by the defendant. In detinue cases it is charged that the defendant obtained the articles legally, but retains them illegally. The plaintiff can combine a demand for damages resulting from the detention with his demand that the articles be returned to him. Usually the defendant, if he lost, either returned the property or paid damages for its retention.

Qualities. To be valid, a contract must possess these qualities:

1. There must be a bona fide offer by one party and acceptance by another.
2. The form and/or consideration must be correct.
3. The parties must have the legal capacity to make the contract.
4. There must be no mistake, fraud, or duress.
5. The transaction must be legal.

These essentials will be considered separately in the sections that follow.

Offer and Acceptance

Essentials. According to Sir William R. Anson in *Principles of the Law of Contract,* the essentials of contract offer and acceptance are as follows:

1. Every contract springs from the acceptance of an offer.
2. An offer or its acceptance, or both, may be made either by words or by other conduct; it may be tacit.
3. An offer is made when, and not until, it is communicated to the offeree.
4. An acceptance must be indicated by words or other overt action.
5. An acceptance is effective when it is made in a manner prescribed or indicated by the offeror.
6. An offer creates no legal rights until acceptance, but it may lapse or be revoked.
7. An offer must be intended to create and be capable of creating legal relations.
8. An acceptance must be absolute and must correspond with the terms of the offer.
9. An offer need not be made to an ascertained person, but no contract can arise until it has been accepted by an ascertained person.

Assignments. Under certain circumstances, as in the case of a trust, rights and duties created by a contract may pass to some person not an original party to the contract. Ordinarily, however, there can be assignments of rights under a contract but not of duties.

For instance, a person can assign a lease to another unless it contains a distinct provision against such action. When an assignment is made, the new party is bound, as was the former, to the lease's terms. Restrictive covenants, such as those forbidding use or subleasing to persons of certain races, are binding upon subsequent holders of a lease.

When a party to a contract dies, his rights and duties pass to the executors of his estate. Contracts for personal service, of course, expire with death. Some such contracts are assignable during life, but all are not. For example, an artist who contracts to paint a picture cannot assign his obligation to another; nor can an actor who contracts to play a particular role. In such cases, what is contracted for is the personal skill of the original party.

Negotiable instruments can be passed without the knowledge of the original issuer, as in the case of a personal check after proper endorsement, a bill of exchange, bill of lading, trade acceptance, letter of credit. The characteristics of a negotiable instrument are these: (1) the title passes with delivery; (2) it is a written promise which gives a right of action to the holder of the document for the time being, although he and his holding may not be known to the original promisor; (3) the holder is not prejudiced by any defects in the title of his assignor. Defined, a negotiable instrument is a written promise or request for payment of a certain sum of money to order or to bearer. It is any instrument which may be transferred by endorsement and delivery, or by delivery only.

Form and Consideration

Formal contracts. Formal contracts are those which depend for their legal validity upon their form. They are either *contracts of record* or *contracts under seal.* Two varieties of the former, both really quasi-contracts since government is a party, are *recognizances* and *judgments.* A recognizance is a written acknowledgment or contract "made with the crown in its judicial capacity." It is a promise made before a judge or public officer with authority to keep the peace, be of good behavior, appear in court at a stipulated time, or act in some other way that the court requests. There are penalties for breach of contract so made, but when a newspaper reports that a person was released by a judge "on his own recognizance" it means that he has obtained his liberty without having had to supply bail bond.

A court judgment, as already indicated, places an obligation upon a person against whom it is rendered. It obtains its strength, not from the consent of the parties, but from the authority of the court of justice in which it was obtained.

At common law, contracts under seal were known as *specialty contracts.* They are contracts for which there is no consideration for either promise or acceptance—examples being deeds and bonds. A deed is often said to be operative when "signed, sealed, and delivered." Actually, it is the delivery that makes it operative. To place a deed or other instrument or money in the hands of a third party, to remain there until some condition is fulfilled, after which delivery is made to the proper party, is known as *escrow.* An instrument or article is said to be "placed in escrow" pending the outcome of the matter at issue. Equity courts will not specifically enforce any contract unless it is founded on a consideration; hence, actions growing out of breaches of contract under seal are actions at law.

Informal contracts. Informal contracts are those which do not depend upon any formality as to their execution to determine their validity; it is the consideration which validates them. For some types of informal contract, the law requires a form other than a seal. The following are examples:

1. *Bill of exchange,* which is an unconditional written order addressed by *A* to *B*, directing *B* to pay a sum of money to a specific person or to the bearer. The law requires that a bill of exchange be in writing and that the acceptance also be written.
2. *Promissory note.* This is a promise in writing by *A* to *B* that he will pay a certain sum at a specified time or upon demand. It is made to the order of *B* or to the bearer, and it must be in writing.
3. *Assignments of copyright* must be in writing.
4. Contracts of *marine insurance* must be in the form of a policy.
5. *Acceptance or transfer of shares* in a company must be in the form prescribed by law or charter.
6. *Acknowledgment of a debt* barred by the statute of limitations must be in writing and must be signed by the debtor or his agent.
7. *Bill of lading.* This is a receipt by a master of a ship or other common carrier, acknowledging that specified goods have been received on board. It contains the terms of the contract for carriage of the goods as agreed upon between the shipper and carrier, and it is an "account of title" to the goods. It must be in writing.

The fourth section of the English Statute of Frauds, after which American statutes are modeled, reads as follows:

> No action shall be brought (1) whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; (2) or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; (3) or to charge any person upon any agreement made in consideration of marriage; (4) or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; (5) or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in

writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.

With few exceptions, consideration is a universal requirement of contracts not under seal, even if there is a particular form prescribed by law for such contracts. "A valuable consideration in the sense of the law may consist either in some right, interest, profit, or benefit accruing to one party, or some forebearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." The American Law Institute says:

> Consideration for a promise is (a) an act other than a promise, or (b) a forebearance, or (c) the creation, modification or destruction of a legal relation, or (d) a return promise bargained for and given in exchange for the promise.

Exceptions to the necessity for consideration in a contract include promises of a gratuitous service which, though not enforceable, nevertheless involve the duty of using ordinary care and skill. Also, in dealings arising out of negotiable instruments, such as bills of exchange and promissory notes, a promise to pay money may be enforced although the promiser received nothing.

Legal Capacity of Parties

Political or professional status. Aliens in peacetime can make valid contracts. Felons undergoing sentence cannot do so. In England, barristers are forbidden to bring suit to collect their fees. Until recently in England, physicians could not sue on implied contracts.

Infants. Under the common law, two kinds of valid contracts could be made in the name of infants: (1) for necessities; (2) for the infant's benefit. No infant can appoint an agent, nor can he be sued for nonperformance of a contract. Other forms of contract may be valid and binding unless disaffirmed either during infancy or within a reasonable time after attaining maturity. Some are not binding until ratified within a reasonable time after majority. Just what kind of contracts come under each classification differs by states, and what is "reasonable" is for court interpretation.

Corporations. Corporations must contract by agents and always by means of a seal, so that there may be formal evidence of assent by members to any legal act. *Ultra vires* is a term used to express action of a corporation which is beyond the powers conferred by its charter or the statutes.

Lunatics and drunks. A lunatic can make a contract unless he was totally incapable of knowing what he was doing and the other party knew and took advantage of that fact. As a rule, a contract

by a mentally incompetent person is invalid if he did not understand the nature of the obligation. A person can avoid a contract made while he was intoxicated unless he later confirms it.

Married women. Formerly, married women could not make contracts, but there has been a steady modification of statutes in recent years to give them virtually equal status with men in this respect. The English Married Women's Property Acts of 1870 and 1874 specified various forms of property as the separate estates of married women, and enabled them to sue for such property. The same laws gave married women access to all the legal remedies, civil and criminal, of which an unmarried woman could avail herself.

Agents. According to *Black's Law Dictionary*, an agent is: [1]

> One who represents and acts for another, under the contract or relation of agency. One who undertakes to transact some business or to manage some affair for another by the authority and on account of the latter and to render an account of it.

An agent has power to bind another, even though he may not be able so to bind himself—as in the case of an infant, who can be an agent. An agent cannot delegate power. If he uses a subagent, there is no contract between that subagent and the principal. As soon as he completes details of the contract with a third party on behalf of his principal, the agent ceases to be a party to the contract.

An agent's *apparent authority* is that which the principal knowingly permits him to have or which he holds the agent out as possessing. The agent has such authority as he appears to have by reason of the actual authority he possesses. He has such authority as a reasonably prudent man, using diligence and discretion, in view of the principal's conduct, naturally would suppose his agent to have.

The principal and agent, by private communication, cannot limit the agent's power, which his own conduct has justified a third party to believe he possesses. If the agent acts as agents in his apparent situation customarily act, the principal is responsible for his actions.

An *agency of necessity* exists when the law confers power on a person to act as the agent for another without even the appearance of consent by the principal—for example, when a wife charges necessities to her husband, who is bound by law to maintain her. No husband can suddenly refuse to honor his wife's bills without serving due notice on those creditors whom his past actions have led to expect him to continue doing so. Marriage in itself does not create an agency, but both marriage and employment may create inferences of authority. A partnership does create an agency relationship.

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[1] *Black's Law Dictionary*. Saint Paul: West Publishing Company.

Only one form of agency requires a special form. That is *power of attorney,* which must be under seal to cause a contract under seal to be binding. There must be expression of mutual consent, consideration, or a seal and capacity to contract.

A *del credere agent* is one who guarantees the solvency of the purchaser whom he obtains for his principal. The agent, in other words, answers for the possible default of the purchaser. An *auctioneer* is an agent to sell goods, but when they are "knocked down" he becomes the agent of the buyer; he has the goods and liens on them for his charges. A *factor* is an agent to whom goods are consigned for the purpose of sale. He has possession, power to sell in his own name, and general discretion as to sale. He has a lien on the goods for the balance of the account, as between himself and the principal, and an insurable interest in them. A *broker* is an agent primarily to establish contractual relations between two parties; he has no possession of goods and no right of action in his own name on the contract made by him. A *commission agent* is employed, not to make a contract between an employer and others, but to buy and sell goods for him on the best possible terms, receiving a commission for doing so.

Mistakes

Contracting parties may misunderstand each other or may fail to express themselves clearly or adequately. In other words, there may be innocent mistake, and one or both parties may go to court in an effort to have it corrected or to void the contract because of it. The mistake may be: (1) as to the terms of the contract and the fact of agreement, possibly through the fraud of a third party or erroneous information; (2) as to the identity of the person with whom the contract is made; (3) as to the subject matter of the contract—the identity of the thing contracted for, the existence, the intention of other parties to the contract.

Equity decides when one party knows that the other understands his promises in a different sense than that in which he makes it, and in such instance the transaction is void. It is *void ab initio* (from the beginning) where the mistake affected the formation of the contract; in other words, no true contract ever existed legally. The victim of misunderstanding, upon proof, may ask that it be repudiated and may demand damages for any loss. He may resist specific performance of a contract so made.

Impossibility, or, as it may be called, *frustration,* exists when performance of the obligations of a contract is legally or physically impossible. Such condition may have existed at the time the prom-

ise was made—in which case no duty subsequently arises—or it may develop later. When a contract is entered into on the mutual assumption that a particular state of things exists or will occur, the nonexistence or nonoccurrence through no one's default terminates the obligation. Impossibility of performance may result from the nonexistence of the subject matter, from changes in statutory law, or from destruction of a specific thing essential to performance.

Innocent misrepresentation exists when one party is led to form untrue conclusions respecting the subject matter of the contract, by statements innocently made or from facts innocently withheld by the other party. Mere nondisclosure of some facts will affect some contracts, as in the case of marine life insurance. The phrase *uberrima fides,* applied in such contracts, means "the most abundant good faith" and forbids any concealment or deception, however slight.

Proof of innocent misrepresentation may vitiate a contract, but not give rise to an action of deceit. The general rule is that when the misrepresentation is innocent, there are no grounds for damages, although the contract is set aside. Exceptions to this rule include: (1) *warrant of authority*—where the agent in good faith assumes an authority he does not possess and induces another to deal with him in the belief that he has the authority; (2) *statutory* —the Companies Act of 1908 stipulated that the prospectus of a company must contain a number of particulars which must be assumed to be material to the formation of a judgment of an intended applicant for an allotment of shares. Any person who is induced to subscribe for shares in a company by untrue statements can obtain damages to recompense him for loss.

Fraud

Fraud is either deliberate misrepresentation, with the intention of deceiving, or reckless disregard for the truth, which results in wrongful belief by the other party. Most legal actions charging fraud are tort actions in which the gravamen or gist of the complaint is deceit. *Actual* fraud is that involving deceit, artifice, trickery, design, or cunning with the intent to cheat. *Constructive* fraud is any act, commission, or omission contrary to legal or equitable duty, trust or confidence, prejudicial to the public welfare, yet unconnected with evil or selfish design. If otherwise there would have to be several separate actions, equitable relief can be sought.

In contract law, fraud is the cause of error bearing on a material part of the contract created or continued by artifice with design to obtain some unjust advantage to one party or inconvenience and

loss to another. Simple nonperformance of contract is not fraud. The chief provision of the original English Statute of Frauds in 1677—still the model for similar statutes in most American states—was that certain types of contracts be in writing. (See page 239.) Its primary purpose was to prevent perjury, and it put an end to testimony based on mere recollections by witnesses.

The victim of fraud *ex contractu* may either: (1) affirm the contract and demand fulfillment of its terms; (2) demand damages for loss suffered because of nonfulfillment; (3) repudiate the contract and ask in equity court that it be cancelled; (4) resist a suit for specific performance. Power to affirm or avoid a contract may be lost if action is not begun promptly upon discovery of fraud; if it is lost, the only recourse is an action of deceit. Power also may be lost if the party takes any benefit that amounts to an affirmation of the contract, or if, before he exercises an option, circumstances change so that the parties cannot be placed in their original positions.

Laches is the legal term meaning the omission of asserting a right for an unreasonable and unexplained length of time under circumstances prejudicial to the adverse party. It is want of activity or diligence in making a claim or moving for the enforcement of a right.

Caveat emptor is the rule which still governs a major portion of business relations. It means "let the buyer beware," and implies that a purchaser of an article must examine, judge, and test the article himself, being bound to discover any obvious defects or imperfections. The seller has no obligation to point out any defects in the wares, but he cannot mislead the buyer into believing the defects do not exist.

Duress

If anyone's consent to a contract or, in fact, any matter related to law is obtained by violence or by threats of violence, it is known as *duress,* and nobody can be held accountable for any actions while under such compulsion.

Duress of imprisonment exists when a person is deprived of liberty, in order to be compelled to do something he otherwise would not do. There may be violence or actual injury to self, wife, child, or parents; or threats of imprisonment, physical harm, or death, which is known as *duress per minas.*

Circumstances may render one party morally incapable of resisting the will of another. Such a state is said to result from *undue influence,* and is a form of duress. Equity will not decree specific

performance if there is a gratuitous promise, even though under seal. The acceptance of a voluntary donation throws on the person accepting it the necessity of proving that the transaction was righteous. When the consideration in any deal is grossly inadequate, the presumption of undue influence or fraud is raised. A similar presumption arises when the parties are in a relationship of considerable inequality to each other by education, experience, or need. When the relationship is one of superior to inferior, such as that between adults and children, there is a presumption of undue influence that must be disproved. When no presumption at all exists, the burden of proof is upon the person charging undue influence or duress.

Legality of the Action

It is impossible to enforce a contract to commit an act which is forbidden by statute or considered contrary to public policy at common law. Such voidable contracts include:

Agreements to commit indictable offenses. Examples are assault or libel. A person cannot contract to indemnify a newspaper if it unsuccessfully runs the risk of committing libel.

Agreements which tend to abuse the legal process. Examples are *maintenance* and *champerty*. Maintenance is an unauthorized and officious interference in a suit in which the offender has no interest, to assist one of the parties to it, against the other, with money or advice to prosecute or defend the action. At common law it signifies an unlawful taking in hand or upholding of quarrels or sides, to the disturbance or hindrance of the common right. Champerty is a form of maintenance—the maintaining of one side, in consideration of some bargain to have part of the thing in dispute. It means to maintain another by agreement to share the land or debt involved in the suit; one maintains a quarrel in the hope and expectation of sharing in the proceeds.

Agreements contrary to good morals. Such agreements may be: in consideration of future illicit cohabitation; to introduce others with a view to their marriage; promises to marry another after the death of one's present spouse; a transfer by a mother of rights and duties in respect to an illegitimate child.

Agreements in restraint of trade. The rule, established by a long series of Supreme court decisions related to the federal antitrust laws, is "reasonable" restraint. An example of unreasonable restraint is a contract with a former employee not to enter into business competition with you, but you can prevent him from revealing your trade secrets or from improperly soliciting your clients or customers.

In insurance, the term "twisting" refers to improper salesmanship, to persuade a policy holder in one company to cancel that policy and take out a new policy in a second company.

Wagers. The essence of gaming and wagering is that one party will win and another lose on some future event that is uncertain when the contract is made. In many states, certain kinds of wagers —for example, on horse races—are legal, but carefully regulated. Under such systems, the bettor pays over a certain sum of money before the event occurs; this payment beforehand is generally untrue of much illegal gambling.

Actually, marine insurance is a wager in which a man bets against the safety of his own cargo, but it is not called a bet but a contract of insurance. It is forbidden unless the principal has an "insurable interest" in the cargo.

Life insurance is a promise to pay in the event of something which must happen, in contrast with fire and other forms of insurance, which depend for payment upon events that may not happen.

Stock-market trading is approved, but there can be no wagers on the prices of stocks or securities.

Reporting Contract Cases

If the courthouse reporter understands the "high lights" of contract law, which it has been the purpose of this chapter to present, he should not find it difficult to understand the pleadings in most actions charging breach of contract. A majority of them are routine matters, and the news interest is determined according to orthodox rules—prominence of principals, unusualness of circumstances, et cetera.

The following are typical stories involving contract actions:

Philip L. Andrews, one of the Chicago hoodlums under indictment for extortion from the motion picture industry, has filed a $21,000 Circuit court suit against two insurance companies, it was revealed today. He charged that the companies refused to pay a damage claim when his vacant stucco home at 500 East Oak avenue was damaged by fire Nov. 29, 1945.

The defendants are the Insurance Casualty company, which the suit alleges insured the home for $15,000, and the National Casualty company which was said to have insured it for $5,000.

Andrews' attorney, Richard Gleason, said they refused payment because the policies did not provide protection if the property was unoccupied. Andrews, who acquired the property after the death of an uncle, had occupied the house, the suit states.

Testimony that Hershel Williams, former assistant state's attorney, was insane when he entered into a real estate deal with Robert Johannsen, master in chancery, was given in Circuit court yesterday before Judge Rudolph Smothers.

Williams who sold the Dumont hotel, 2900 South State street, to Johannsen for $200,000 in 1940, is suing to have the sale set aside. He asserts he was mentally unbalanced at the time as the result of a blow on the head received in a quarrel with a court bailiff. His suit sets forth that the true value of the property was $250,000.

One type of contract case usually not overlooked by the press is that charging breach of promise to marry. In an attempt to protect against unscrupulous blackmail, some states have attempted to make such actions illegal. In any case, the remedy is a damage suit (tort action), rather than one for breach of contract, because the financial loss to the injured party is not a matter to be determined by reference to a contract.

CHAPTER 9

Torts

A tort is a legal wrong committed upon the person or property independent of contract. . . . A personal tort is one involving or consisting in an injury to the person or to the reputation or feelings, as distinguished from an injury or damage to real or personal property, called a "property tort." [1]

—*Black's Law Dictionary.*

While in general a tort is regarded as a private wrong and a crime a public wrong, the real distinction lies in the difference by which the remedy for the wrong is pursued. Thus a tort is a wrong for which the remedy is pursued by and at the discretion of the individual injured or his representative, while a crime is a wrong for which the wrongdoer is proceeded against by the sovereign or state for the purpose of punishment.[2]

—*Corpus Juris Secundum*, Vol. XXII, page 54.

One of the chief characteristics of the law of torts which differentiates it from criminal law: tort law affords protection to individual interests by adjusting conflicts between purely private clashes of interests in such a manner as to best promote the social interests affected; criminal law affords direct protection to the public as to certain matters of immediate social concern, irrespective of the individual interests involved. For example, in a mutual combat the consent of both parties thereto is an effective bar to recovery of damages by either against the other, but both are amenable to the criminal law and the consent of neither will exonerate the other from its penalty.[3]

—Abstracted from *A Treatise on the Law of Torts,*

Private Interests Protected

THE law recognizes that every person possesses certain rights and interests which, in the public interest, must be protected. In a long list of categories, violations of such rights and interests are considered to be offenses against society as a whole, not merely against the individuals directly affected. That is, such offenses are crimes, and they are prosecuted by the state. In virtually every such case, however, and in multitudinous others, in which the of-

[1] *Black's Law Dictionary,* Third edition. Saint Paul: West Publishing Company
[2] *Corpus Juris Secundum.* Brooklyn, New York: The American Law Book Company
[3] Harper, Fowler V., *A Treatise on the Law of Torts.* New York: the Bobbs Merrill Company.

fenses are not considered criminal the injured person can also bring civil action under the law of torts to recover damages for the harm inflicted upon him.

What follows is a discussion of the rights and interests protected by the law of torts and some of the types of offenses committed against those rights and interests. In a tort action, the plaintiff seeks to recover damages for an injury he has received. That means that such cases relate to past incidents of which the newspaper may have had accounts. Such is more likely to be the case in small than in large places. Often, however, the beginning of the action is the first intimation that the press has of the occurrence which gave rise to it.

Because so many tort actions grow out of incidents giving rise to criminal actions—fights, automobile accidents, fires, sex offenses, and so forth—they contain more possibilities for dramatic newspaper treatment than do many other types of civil action. A person brings a tort action when some right to which he is entitled as a member of organized society is violated. Hence, the situations that give rise to tort actions are such as any man or woman quite conceivably could experience.

Personality. The law assumes that a person has the right to freedom from bodily harm, fear of bodily harm, and undue restraint upon his liberty of action.

The offense of inflicting bodily harm or of touching another's body offensively, even though no harm results, is known as *battery,* which is also punishable as a crime. About the only sound defense against the charge is that of *inevitable accident,* such as when a driver becomes unconscious and out of control of his machine and injures someone. Kissing a woman without her consent is offensive bodily touching, though it is not malicious.

One of the few instances in which the law protects against a purely emotional disturbance is in the action known as *assault.* The offense consists in threatening another to the extent that he fears battery will occur—examples being fist-shaking and demanding money at the point of a gun.

False imprisonment can be charged against anyone—not just a police officer—when actual constraint of the person occurs. There must be intention, but malice is not necessary to substantiate the charge.

Capt. David Prendergast, a member of the police force for 25 years, was assessed $2,500 today in a damage suit brought by Edward Gleason, 39, 1387 Forest avenue, charging assault and battery, false arrest and malicious prosecution.

Prendergast was struck by Gleason during a gambling raid on May 15, 1940 in a tavern at 5690 South Main street, in which Gleason was a patron.

He testified that as a result of his injuries he has had recurrent epileptic fits which prevented him from working.

The police captain admitted during the trial that he had struck the defendant, but asserted "he was interfering with the duty of a police officer." He said that Gleason kicked him in the shins as he tried to arrest the proprietor of the place for gambling.

According to Gleason, the captain was dressed in plain clothes. "I thought it was a disturbance so I asked what was the matter. I didn't know who he was."

Arrested for assault and battery, resisting an officer and patronizing a gambling establishment, Gleason was taken to the Charity hospital and then brought before Judge Nathaniel Dolan in Municipal court who dismissed the charges.

Circuit Judge Peter A. Fiske who today opened the sealed verdict for damages returned by a jury, said he would rule Friday on a motion for a new trial for Prendergast.

Before the passage of state *workmen's compensation laws* early in the twentieth century, the legal presumption was that any worker voluntarily assumes reasonable risks of any employment he accepts. Under the laws as now enacted, the necessity of proving fault on the part of either party is eliminated. Today the burden is definitely shifted to the employer, on the theory that he is better able to pay and should have the responsibility for risks growing out of modern industrial methods. The first workmen's compensation laws were passed in 1884 in Switzerland and Germany. They have the social purpose of maintaining the standard of living of workers unemployed through accidents and of relieving such workers from the necessity of engaging in expensive litigation. Original claims under the state laws are made to a state commission, but are reviewable in the courts on writs of certiorari.

Young reporters may be mystified to learn that in many personal-injury suits in which the guilt of the defendant seems apparent, an insurance company for the plaintiff has already made a payment to him. What actually happens in such cases, therefore, is that when the court assesses damages the defendant pays over what he already has collected from the plaintiff's insurance company. This occurs when the defendant is not insured and the plaintiff is protected against any damages he may cause to another. It is obvious that often such a procedure is the only one by which the plaintiff can collect anything, for only a few states have compulsory automobile insurance laws, and many defendants are impecunious. In most cases, however, the insurance company has decided to settle out of fear of what an impressionable jury might decide. What is known as "ambulance chasing" is a ubiquitous menace. The ambulance chaser is a lawyer or his acquaintance who interviews an accident victim as soon as possible after the accident and persuades him to start an action for a large sum of money, with the lawyer to get a

certain proportion of what is obtained. Often the ambulance chaser and the insurance-company representative race to the victim's bedside. The insurance-company representative is intent upon obtaining the potential plaintiff's signature to an agreement either to accept a small sum as full compensation or to agree not to prosecute, or both. If a victim signs before the nature of his injuries is fully ascertained or before he knows what his hospital and medical expenses are to be, he may be victimized. Officially the courts take no cognizance of such goings-on, but everyone, including the newspaperman, has his eyes and ears open. In fact, reporters in police headquarters have been known to tip off ambulance chasers of accidents soon after their occurrence. Policemen, hospital attendants, doctors, and nurses are other pipe lines of such information.

In writing up a damage suit, the reporter should put the amount demanded in the lead. However, most demands are far in excess of what the court allows, and the parties frequently make an out-of-court settlement to avoid hearing or trial. There follow the complete papers in a typical damage suit arising from an automobile accident:

STATE OF ILLINOIS } SS
COUNTY OF COOK }

MILO CANTON
Plaintiff
vs.
JAMES MORGAN
Defendant

COMPLAINT AT LAW
No. 42S 599

IN THE SUPERIOR COURT OF COOK COUNTY

MILO CANTON, plaintiff, by JAMES CARTER, his attorney, complaining of JAMES MORGAN, defendant, alleges:

1. That on the 26th day of January, 1940, plaintiff was walking on and along Irving Park Road, in Cook County, Illinois, in a westerly direction in the village of Schiller Park, Illinois.

2. That the defendant, JAMES MORGAN, was then and there the owner of and operating and driving an automobile in a westerly direction on said highway known as Irving Park Road in Schiller Park in said county and state.

3. That while plaintiff was walking upon, along and over said public highway, he was in the exercise of due care and caution for his own safety.

4. That defendant then and there so carelessly, negligently and improperly, drove, managed and operated his automobile, that by and through the carelessness, negligence and mismanagement of the defendant in that behalf, his automobile struck the plaintiff with great force and violence.

5. That at the time and place aforesaid, defendant, contrary to the statute in such case made and provided, namely, Chapter 95½, Section 146 of the Illinois 1939 Revised Statutes, operated said motor vehicle at a rate of speed which was greater than was then and there reasonable and safe, having regard to the traffic and right-of-way.

6. The defendant, at the time and place aforesaid failed and neglected to

keep a proper lookout ahead for objects and persons on said highway, contrary to the statute in such case made and provided.

7. The defendant, at the time and place aforesaid failed and neglected to sound his horn or give any other signal or warning of his approach.

8. That by means and in consequence of the said negligence as aforesaid, and as a direct and proximate result of the said negligence and the collision and impact of the motor vehicle which the defendant was driving as aforesaid and the person of the plaintiff, the plaintiff was thereby greatly injured and the plaintiff's body was greatly crushed, bruised, lacerated and injured, and he became sick, sore, lame and disordered, and will remain sick, sore, lame and disordered the remainder of his life, during all of which time the plaintiff has suffered and will suffer great pain, and has been and will be prevented from attending to his usual and ordinary affairs and duties and has lost and will lose divers great gains and profits he otherwise would have made and acquired, and has paid, laid out and expended and will be compelled to lay out, pay and expend large sums of money, and incurred great indebtedness in and about the endeavoring to be healed and cured of his hurts, bruises, wounds, lacerations and injuries as aforesaid.

COUNT NO. 2

The plaintiff, MILO CANTON, here realleges as though fully set out, paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of Count No. 1 of this complaint, as paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 respectively of this count, and further says:

9. That at the time and place aforesaid, said defendant so willfully, wantonly and negligently propelled, operated and drove his said automobile at an illegal rate of speed, and without lights and without keeping a proper lookout for objects and persons upon the said highway, that his said automobile ran into and against the person of the plaintiff, MILO CANTON.

WHEREFORE, the plaintiff demands judgment against the defendant for the sum of FIFTY THOUSAND ($50,000) DOLLARS.

ATTORNEY FOR PLAINTIFF

STATE OF ILLINOIS } SS

IN THE SUPERIOR COURT OF COOK COUNTY

MILO CANTON
vs.
JAMES MORGAN } No. 42S 599

ANSWER

And now comes JAMES MORGAN, defendant, by Bliss and Bliss, his attorneys, in answer to plaintiff's complaint and state as follows:

1. He admits the allegations contained in paragraph 1 of plaintiff's Complaint.

2. He admits each and every allegation contained in paragraph 2 of plaintiff's Complaint.

3. He denies each and every allegation contained in paragraph 3 of plaintiff's Complaint.

4. He denies each and every allegation contained in paragraph 4 of plaintiff's Complaint.

5. He denies each and every allegation contained in paragraph 5 of plaintiff's Complaint.

6. He denies each and every allegation contained in paragraph 6 of plaintiff's Complaint.

7. He denies each and every allegation contained in paragraph 7 of plaintiff's Complaint.

8. He denies each and every allegation contained in paragraph 8 of plaintiff's Complaint.

9. He admits paragraphs 1 and 2 of Count 2, but denies each and every allegation of paragraphs 3, 4, 5, 6, 7 and 8 of Count 2.

10. He denies paragraph 9 of Count 2.

11. He denies that the plaintiff was injured in the sum of $50,000.00, or any other sum.

ATTORNEYS OF DEFENDANT
120 S. LaSalle Street
Central 1234

JURY DEMAND

STATE OF ILLINOIS, County of Cook } ss.

Superior Court thereof, to the ..... Term, A. D. 19....

MILO CANTON
vs.
JAMES MORGAN
GENERAL No. 42 S 599

MILO CANTON, THE PLAINTIFF HEREIN hereby demands a jury trial OF TWELVE MEN

Attorney for PLAINTIFF

Chicago, Ill. JANUARY 15, A. D. 1942

SUMMONS—Superior Court of Cook County

In the Name of the People of the State of Illinois in the Superior Court of Cook County, Illinois.

MILO CANTON

Plaintiff.

vs.

JAMES MORGAN

Defendant.

COPY

No. 42S 599

To the above named defendant:

You are hereby summoned to answer the complaint in the above entitled cause.

Take notice that you must file your answer or otherwise make your appearance in said court held in the courthouse in the City of Chicago, Illinois, on or before the third Monday in the month of February, 1942, provided this writ shall be served upon you not less than 20 days prior to said date.

If this writ shall be served upon you less than 20 days before said date, you will file your answer or otherwise make your appearance in said court on or before the first Monday in the month of March, 1942.

If you do not appear according to the command of this writ, plaintiff may take judgment against you by default.

This summons must be returned, in person or by mail, by the officer or other person to whom it was given for service, with indorsement thereon of service and fees, if any, not later than 5 days after service thereof and in no event later than the date first above named.

SEAL

Witness, HENRY SONNENSCHEIN, the Clerk of said court, and the seal thereof, at Chicago, Illinois, this 13th day of January, 1942.

HENRY SONNENSCHEIN

Clerk

Plaintiff's Attorney (or Plaintiff, if he be not represented by Attorney)

James Carter

Address

59 E. Randolph St. Phone Ran. 6421

Sheriff's No.....

Deputy .....

Superior Court for

Deputy .....

Process C.S..... Please serve

Name .....

Address .....

How served .....

Date served .....

Appearance

STATE OF ILLINOIS, } ss.
County of Cook }

Superior Court, thereof, to the February Term, A. D. 1942

Milo Canton

vs.

James Morgan

ACTION

42 S 599

We hereby enter our appearance for James Morgan

Defendant in the above entitled cause Bliss and Bliss

Attorney for Defendant

Chicago, Ill. ..... 19....

Superior Court of Cook County

Milo Canton ..... Gen. No. 42 S 599

vs.

James Morgan .....

To Bliss and Bliss .....

Attorney for (Defendant)

You are hereby notified that ..... desires the above entitled case to be placed upon Common Law Trial Calendar No. 2 ..... and shall file this notice for the purpose, pursuant to the Rules of Court.

..... Attorney for Plaintiff

Received a copy of the above foregoing notice this ..... day of .....

A. D. 194....

..... Attorney for Defendant (Plaintiff)

STATE OF ILLINOIS, } ss. In the Superior Court of Cook County
COUNTY OF COOK. }

..... being duly sworn, deposes and says that ..... is the attorney of record for the ..... in the above entitled cause; that ..... has caused the notice for trial to be served upon ..... attorney for ..... ; that ..... is ready for trial in this cause, and expects to be ready whenever this cause shall be reached for trial.

.....

Subscribed and sworn to before me this

..... day of ..... A. D. 194....

.....
Notary Public.

Milo Canton vs. James Morgan	LAW ORDER **Superior Court** of Cook County No. 42 S 599	STAMP HERE

On Motion of The Defendant, James Morgan, this cause coming to be heard upon the request of the defendant that Joseph Lee be permitted to file his appearance as associate council for him; and the defendant appearing personally in open court and his present attorneys Bliss and Bliss also being present in court together with Att. James Carter representing the plaintiff and it appearing to the court that the present attorneys representing the defendant wish to withdraw their appearance; It is ordered that Bliss and Bliss be and they are hereby authorized to withdraw their appearance for the defendant and that Joseph Lee be and is hereby authorized to file his substitution as attorney for James Morgan, defendant, herein with the consent of the defendant, who appeared personally in court.

..... Judge

O. K.
Defendant

Enter:

Superior Court of Cook County, Illinois

LAW RECORD

JUDGE TUTTLE — No. 563

FEBRUARY 18, 1943

42S 599
Milo Canton
vs.
James Morgan

By the agreement of the parties to this suit now here made in open court this cause is submitted to the court for trial without a jury. The court after hearing all of the evidence adduced and being fully advised in the premises, finds the defendant guilty and assesses the plaintiff's damages in the sum of $375 00. On motion of plaintiff's attorney judgment is now entered upon said finding.

Whereupon it is considered by the court that the plaintiff, MILO CANTON, do have and recover of and from the defendant, JAMES MORGAN, his said damages of $375.00 in form as aforesaid by the court assessed, together with his costs and charges in this behalf expended.

By the agreement of the parties hereto now here made in open court it is ordered that the issuance of an execution on said judgment is now stayed 90 days.

Property. Stealing, under a number of different legal names (larceny, burglary, robbery, et cetera), is criminal. Civil actions also can be brought to obtain redress for losses resulting from *trespasses to goods* or land; unlawful conversion of another's chattels for gain, nuisances, and harm from fire; blasting; and other violations of private rights.

At modern law, it makes no difference whether someone who unlawfully holds the property of another came into possession of such property legally or illegally. In either case, there has been *conversion,* and a refusal to return the article involved upon demand is evidence of conversion.

Anyone in legal possession of land, even though not the owner, can bring action charging *trespass to land.* It may be trespass to enter upon another's land without his consent or to refuse to leave, even though the entry was legal. In other instances what constitutes trespass may not be so clear-cut, and newsworthy situations may result in the attempt to define trespass. It has, for instance, been decided that such acts as constructing a building so that part of it extends over another's land, extending a hand over another's land, stretching wires over another's land, and leaning out of the window of a near-by building to look down on another's land constitute trespass.

Because of the obvious absurdities that otherwise would result, the rights of aviators in flying over private property are being defined by statute. Similarly defined is the liability of owners of trespassing cattle and other animals and poultry. The rule is that a person keeps dangerous animals at his own risk and peril and he is responsible for their trespasses. In fact, there is responsibility whenever a person brings anything dangerous onto his land. Damages have been allowed for losses caused by gas fumes, leaking water from artesian wells, dangerous combustibles, filth from cesspools, snow and rain sliding off a roof, and in similar cases. Similarly, anyone who is responsible for any tangible thing entering another's premises is liable for the consequences—examples being gun shots, debris, and water.

In the case of *harm caused by fire,* there is no liability unless there was negligence in starting a fire or in preventing its escape. Only gross contributory negligence is usually a defense when such circumstances are proved. By contrast, there is usually strict liability for *harm caused by blasting,* even though there was no negligence. If, however, the explosion was accidental, the laws of negligence apply.

Whereas a *trespass* is an actual physical invasion by a tangible

object, a *nuisance* is an invasion by noise, smoke, odor, or some other intangible substance. The recurrence or continuation of the invasion, which tends to interfere with the full use and enjoyment of property, is a characteristic of a nuisance. Reasonableness is a prime factor in determining whether a nuisance has been committed. An example is a factory or train whistle, considered disturbing by the plaintiff. Although nobody can conduct a business so as to interfere unreasonably with the ordinary comfort and convenience of near-by residents, some disturbances inevitably result if the business is to exist. Zoning ordinances are designed partly to protect residents from enduring more than a minimum of such disturbances. By consulting them, a person can obtain an idea of what reasonably to expect in a particular location. Legislatures and cities define nuisances and regulate pool halls, bowling alleys, cemeteries, garbage disposal, removal of dead animals, livestock, stables, sale of intoxicating liquors, and similar matters.

Pollution of drinking water by discharge of refuse, seepage, or percolating of filth or debris is a nuisance. So is unreasonable noise. However, conduct that merely offends taste or aesthetic sensitiveness is not a nuisance—meaning, among other things, that you cannot object to the color your neighbor paints his house. Creation of apprehension or fear of physical danger—keeping high explosives, for instance—may be considered a nuisance.

An *easement* is an acquired right to the use or enjoyment of the lands of another which goes with such ownership or possession. (See Chapter 11.) The law does not recognize an easement of light and air; this permits anyone to build up to the edge of his property unless there is a zoning ordinance to the contrary. Malicious interference is not permissible, of course, and pollution of the air with smoke, dust, odors, gases, and in other ways is forbidden.

Economic relations and transactions. The law protects the individual's interest in not being cheated. *Deceit* is the intentional invasion of that interest, and anyone affected adversely may bring action, even though the action was not directed specifically against him.

In general, the type of conduct that is considered tortious consists in: (1) false representations (2) fraudulently made (3) under circumstances which caused the plaintiff to depend upon them, provided (4) the plaintiff relies upon the false representations (5) to his disadvantage. The defendant, in such case, is liable for damages of the general class that made the conduct wrongful toward the plaintiff and that are the legal result of his deceit. Negligence by the plaintiff is not a defense, and the defendant is

liable, not only in cases in which he knew the representations were untrue, but also if he knew that he wasn't certain as to whether they were true or false and therefore made them recklessly. Ambiguous statements capable of two meanings, one true and the other false, are misrepresentations if so intended.

Deleterious interference with contractual relations is actionable. It is, for example, malicious to entice another person's servant from his employ, if the purpose is to injure the plaintiff and benefit the defendant. Conduct for the sole purpose of making the performance of a contract more onerous or to prevent a performance thereof is actionable and privileged only when some social good is held to be advanced—as in legalized labor strikes. Business competition is privileged if the purpose is justifiable and there is no fraud or deception. Examples of actionable interferences with contractual relations—that is "unfair business practices"—include: patent infringements; failure of the trustees of a corporation to file reports, as required by law; sale of stock without possession of license or registration required by law; and malicious inducement of another to break a contract.

Honor and reputation. The individual has a right to acquire, retain, and enjoy a reputation as good as his character warrants. Newspapermen and journalism students, for whom this book is primarily intended, have easy access to so many extended treatises on libel and slander that no attempt will be made to exhaust those subjects. *Slander* is oral and *libel* is written defamation. Communication (publication) is necessary for there to be defamation. If spoken, there must be others present. There is no publication if the written words are in a sealed envelope. Pantomime, however, is a form of communication, and successful libel suits have been brought because of effigies.

Anyone in any way responsible for the transmission of a defamation is liable. This means that pressmen, linotype operators, copy readers, and reporters can be sued, as well as editors and publishers. Likewise, telegraph company employees share responsibility with management. In actual practice, of course, hirelings are seldom named in such actions, if for no other reason than their financial incapacity to satisfy judgments.

The old distinction between libel *per se* (libelous without the necessity of special proof) and libel *per quod* (dependent upon the circumstances) is no longer believed to have much validity. There is no word or expression which, at all times, at all places, under any circumstances, is defamatory. Malicious intent is not necessary to make a statement slanderous or libelous, but proof of its absence tends to mitigate damages. It is up to the plaintiff to prove that he

was damaged, and up to the defendant to prove good motives and factuality.

Domestic relations. Wives, children, and servants are no longer regarded as mere chattel, to be treated and disposed of at the whim of a husband, father, or master. Nevertheless, a spouse has the right of protection against another person's depriving him of the affection and assistance of members of his household. The offense known as *abduction* originated in injury resulting from the seduction of a servant or wife, or from injury depriving the husband of the woman's services. See Chapter 5 (page 143) for an example of a complaint that illustrates one way in which a modern husband may consider himself wronged in this respect.

Some states have legislated against *breach of promise* suits in an attempt to protect males from blackmail and extortion. Similarly *alienation of affection* suits are slowly being outlawed. The argument against breach of promise to marry actions is that the right to change one's mind should be inviolate; also, what passes between lovers is so intimate and the feelings upon which they rely and form their judgments are so intangible that no judge or jury is competent to form conclusions regarding such relationships. The difficulty of framing legislation to protect a person against the misuse of the right is shown by the following news story:

Overruling a motion to dismiss a $50,000 breach of promise suit in which an illegitimate child is involved, Judge Frank M. Padden of Superior court yesterday branded unconstitutional the Illinois law of 1935 prohibiting breach of promise and alienation of affection suits.

The suit Judge Padden refused to dismiss is that brought by Miss Marguerite Techee Cunningham, 25, of 3834 Sheffield avenue, a one-quarter Cherokee Indian, who asks $50,000 from Harry Dobry, 42, of 1332 Estes avenue, married and an insurance broker.

Her suit charges that Dobry promised to marry her but later refused after a romance which began when he picked her up in his car on March 5, 1938, at Diversey parkway and Clark street. He is the father of her 4-year-old son, Thomas, her suit charges.

Attorney Fears Violence

"Laws like that passed in 1935 lead to acts of violence and murder such as have been committed in Chicago recently," said Sol R. Friedman, attorney for Miss Cunningham. "It denies a legal right for a wrong."

Judge Padden said: "The constitution of Illinois provides that every person ought to find a certain remedy in the laws for all injuries or wrongs which he may receive to his property or reputation.

"If the legislature can deprive a person of the right to sue for breach of contract to marry, it can abolish the right to sue for violation of any contract or for any wrong.

"The marriage contract has always been considered as one of the most important.

No Reason of Policy Alleged

"In order to sustain a legislative enactment, which in any way interferes with that right, would seem to require a very definite reason based upon sound public policy. Such reason does not appear.

"In the opinion of the court, the law violates the fundamental law of the land and, if it were upheld, would put a premium upon violation of the moral law."

A portion of the 1935 law was thrown out recently by another court which upheld the right of a litigant to name the co-respondent in a divorce suit.

—Chicago (Ill.) *Sun.*

Alienation of affections suits originated in the attempt to protect the individual from humiliation and shame, to insure his right to companionship and to the physical relations incident to marriage. When the last-named right is violated, the offense, of course, is *adultery*. The trend away from alienation of affections suits is also explainable by the extreme difficulty involved in proving that there was an affection to alienate and that the alienator acted deliberately to that end. A husband's consent to his wife's adultery always forfeits his right to action. A not infrequent type of case is that of a wife against a saloon keeper for selling intoxicating liquor to her husband and thus contributing to his loss of affection for her.

The action charging *alienation of child* originated through the fiction that the relationship between parent and offspring is that of master and servant. When this action lies, a parent can recover damages for the loss of services sustained through abduction or enticing away of a child, or for loss of services and other expenses incident to the seduction of a daughter. A parent can recover for an act that was wrongful against the child, to the extent of the parent's loss sustained thereby.

The following complaint indicates how a parent today may attempt to obtain such relief:

STATE OF ILLINOIS } SS
COUNTY OF COOK }

JURY DEMANDED
LIST 10

IN THE SUPERIOR COURT OF COOK COUNTY

WILLIAM J. STYNOSKI
Plaintiff
vs.
JOHN WOOD
Defendant

No. 43S 6790

COMPLAINT
At Law

Comes now WILLIAM J. STYNOSKI, of the City of Chicago, County of Cook, and State of Illinois and complains of JOHN WOOD, and as grounds for said complaint states the following:

1. That this plaintiff is an honest, law abiding, and reputable citizen of the City of Chicago, County of Cook, and State of Illinois.

2. That this plaintiff is the father of one JOHN ADOLPH STYNOSKI, who is now approximately 17 years of age.

3. That this plaintiff did at all times, since the birth of said JOHN ADOLPH STYNOSKI, his son, support, maintain, and gave his fatherly affection unto the said JOHN ADOLPH STYNOSKI, at all times endeavoring to make a home and did make such home, and to educate and support the said JOHN ADOLPH STYNOSKI, from his birth up to on or about June 1, 1943.

4. That up to said June 1, 1943, and from the date of the birth of said JOHN ADOLPH STYNOSKI this plaintiff had and did have the love and affection of his son, the said JOHN ADOLPH STYNOSKI.

5. That one JOHN WOOD, the defendant herein, without cause, rhyme, or reason, did maliciously, tortiously, and wantonly alienate the affection of the said JOHN ADOLPH STYNOSKI in that the said defendant did cause the said JOHN ADOLPH STYNOSKI, a minor, and the son of this plaintiff, to leave the home and habitation of the plaintiff without just cause whatsoever, and did maliciously, tortiously, and wantonly cause the said JOHN ADOLPH STYNOSKI to absent himself from the home and residence of this plaintiff and go and live with the said defendant herein, and that this defendant herein has taken advantage of the said JOHN ADOLPH STYNOSKI, the minor herein, and the son of this plaintiff, by causing him to work and labor for said defendant at an unreasonable wage so that the said defendant could reap and gain the profits from such labor produced by the said JOHN ADOLPH STYNOSKI, all of which is contrary to conscience and the law made and provided in such a case.

6. That due demand has been made upon the said defendant herein to desist from his efforts in endeavoring to alienate and wean away the said JOHN ADOLPH STYNOSKI from this plaintiff, all for the purpose of possible enrichment and gains and profits by the work and labor of the said JOHN ADOLPH STYNOSKI, to the benefit of the said defendant herein.

7. Plaintiff further alleges that he has been and is now aggrieved and has suffered both actual and mental damage in and by the malicious and tortious conduct on the part of the said defendant.

THEREFORE THIS PLAINTIFF CLAIMS that he has been damaged in the sum of Ten Thousand Dollars ($10,000.00) as and for his actual damage and punitive damages, which this plaintiff desires this Court to render, and therefore this suit is brought.

PLAINTIFF

WILLIAM FELDMAN
Attorney for Plaintiff
188 W. Randolph St.
CENtral 3936

A news story based on this pleading follows:

A father risked five years imprisonment and a $1,000 fine today when he instituted a $100,000 suit in Superior court charging his brother-in-law with alienating the affections of his oldest son. The penalty is provided for persons violating a 1935 statute which forbids the filing of such suits.

The father, William J. Stynoski, 1917 North Damen avenue, charged that his 17-year-old son, John, was lured away last July by the boy's uncle, John Wood, 3308 Armitage avenue. He said that Wood promised the youth a share in his pickle business but instead put him to work at low wages packing the product.

"The state law is unconstitutional and I dare the authorities to arrest me for filing it," Stynoski asserted. His wife died three years ago, he said, and since then his brother-in-law has systematically campaigned to make the boy leave home.

—Chicago (Ill.) *Times*.

Miscellaneous interests. In a democracy where "life, liberty and the pursuit of happiness" are supposed to prevail, the individual can seek damages to compensate him for violation of numerous other civil rights. One is the right to *freedom from annoying litigation* in the form of malicious prosecution, abuse of legal process, or unjustifiable enforcement of legal obligations. To establish the fact of *malicious prosecution,* it must be shown that the legal action was instituted without probable cause and with malicious motives. *Abuse of process* occurs when legal proceedings are used without justification, to accomplish a purpose not intended by law. For example, a subpoena is sued out against a debtor in an effort to coerce him into paying a debt rather than to suffer the inconvenience of appearing and testifying. *Unjustifiable enforcement* of legal obligations occurs when someone deliberately acquires a legal obligation for the sole purpose of enforcing it in a way not contemplated by the obligor—for example, when someone collects a large number of checks from a bank to force it to join the Federal Reserve System.

A *slander of title* action is brought against one who (1) communicates to a third party (2) statements disparaging the plaintiff's title to property (3) which are not true in fact and (4) which cause the plaintiff actual damage. Such suits protect the right to *vendibility of property.* It is legitimate to "puff" one's own goods and to say that they are better than another's, but to lie about another's goods is not legitimate.

The *right to privacy*—of peculiar interest to newspapermen—has not been clearly established in the courts. It is not permissible to use a person's photograph for commercial purposes without his consent or to manufacture a motion picture of his private life. Nor can one placard a debtor, disclose bank accounts, or reveal other information concerning a person's private financial status. The reasonable interest that the public has in the private lives of public figures, such as entertainers, officeholders, and authors, however, excuses almost any publication regarding them. For a discussion of the right to privacy as pertains to newspapers, the reader is referred to the author's *Newsroom Problems and Policies* (Macmillan, 1940), pages 323 to 342.

Another right that courts hold must be protected is that of voting without interference in accordance with the voting laws of the

state. Elected candidates, furthermore, are entitled to receive correct certificates of election. These and similar interferences with *political activities* are actionable.

It is an everyday occurrence for death to rob dependents of the deceased of their livelihood. *Death statutes* exist in some states, to permit those who have an interest in the *life of a third party* to obtain compensation when death results from another's fault. Statutes usually limit the damage that can be asked, the range being approximately $1,000 to $10,000. The actual amount may be a stipulated proportion of the deceased's earning capacity. Suit may be brought by an executor or administrator on behalf of a widow, widower, or next of kin. In many cases of violent death, criminal prosecution also results. Civil actions against murderers are not frequent, but common carriers may be sued for accidental deaths.

As a protection for a decedent's survivors, *survival statutes* permit a representative to continue to serve legally as the deceased would have had he lived. In other words, legal rights pass to the estate and may be enforced.

Principles of the Law of Torts

Foreseeability. Except when there is privilege (see below), any *intentional harm* inflicted on another is actionable. So is harm resulting from *negligence,* the results of which the actor should have been able to foresee, or from the *creation of extra-hazardous conditions.*

Negligence is conduct that falls below the standard established by law for the protection of others against unreasonable risk. It is a breach of the duty of using care, exposing others to unreasonable hazards. The Latin phrase *res ipsa loquitur* appears frequently in complaints charging negligence. It means "the thing speaks for itself" and refers to the fact that an accident such as that involved in the matter at hand does not occur in the absence of negligence. The Latin word *scienter* meaning "knowingly" is also used frequently in a pleading which contends that the defendant had previous knowledge of the cause leading to the injury, or at least had knowledge of a state against which it was his duty to afford adequate protection, which he was negligent in doing. When such an allegation is made, it is called "laying the action (or indictment) with a *scienter.*" In an indictment it means "guilty knowledge." These Latin terms are among the many a reporter must know to read legal papers with understanding.

The law presumes the existence of an "ordinary reasonably prudent man," but it does allow subjective leeway by modifying stand-

ards to consider the conduct in the light of "all the circumstances of the case." In other words, age, sex, experience, health, and other factors are taken into account when attempting to determine what reasonably should be expected of a person.

The law protects against unintentional but unreasonable harm. It imposes the duty of employing reasonable care in foreseeing harm to others. Although care and precaution are used, an action may still be negligent because of circumstances—for instance, when dangerous explosives are used. A person acting may indulge in acts that involve unreasonable risk of direct and immediate harm to others —for example, when he frightens an animal so that it becomes destructive. The actor may create a situation that is unreasonably dangerous to others because of the actions of third persons or of inanimate forces—when he leaves old iron on a truck in such a position that it is likely to fall, for instance.

It is negligent to entrust dangerous objects to persons incompetent to care for them properly, such as giving dangerous explosives to children. It is negligent for a person entrusted with the care of another to fail to exercise control over such a person who, by reason of some incapacity or abnormality, is known to be likely to inflict intended harm on others. An example is when an insane person is allowed to escape. It is negligent to fail to employ due care to give adequate warning—for instance, failure to signal a turn while driving or to sound a horn. It is negligent not to exercise proper care in looking out for persons whom it is reasonable to believe to be in the danger zone. It is negligent not to employ appropriate skill in performing acts undertaken.

To avoid being negligent, a person must make adequate preparation to avoid harm to others before engaging in certain conduct where such preparation is reasonably necessary. It is essential to inspect and repair instrumentalities or mechanical devices, if their defective condition is unreasonably dangerous to others. In general, courts are not concerned with humane principles, and there is no affirmative duty of protecting others. The trend away from this principle of law is largely the result of legislative action, such as that requiring drivers to give aid to automobile accident victims.

A landowner has a duty to persons on adjacent land and highways, to protect them against risks of his own creation, such as fences in disrepair, escape of steam from a mill over a road, decrepit walls and buildings, excavations, and so forth. A landowner has a duty to persons on his own property, especially to those who are there by invitation or on business, or otherwise legally. He has no right to place concealed perils, mechanical dangers, or automatic risks for trespassers, and if he has allowed trespassers in the

past he cannot create new risks without warning such habitual trespassers. To be specific, he cannot suddenly let loose a vicious animal in a yard across which he has allowed promiscuous trespassing. The owner of an animal known to be vicious always keeps such an animal at his own risk. The degree of negligence increases with the knowledge of the defendant that he is responsible for the existence of extra-hazardous conditions of any kind.

Voluntary risk. Otherwise tortious action is not actionable if the person threatened freely assents to the risk. When there is full knowledge and freedom of choice, one person is as competent as another to protect himself from danger. The voluntary assumption of risk presumes negligence on the part of both parties, and there is no basis for action. A familiar example is that of a spectator hit by a baseball at a baseball game. He cannot recover damages because he voluntarily assumed the risk. Likewise, a person driving at night with a driver of unknown skill cannot bring action. Nobody, including workers, however, assumes a risk of which he is ignorant. Workmen's Compensation acts generally define what the risk is.

Consent. If there is consent, there is no legal wrong when an interest is invaded. Consent is a complete defense in assault and battery, false imprisonment, trespass to land and goods, and similar cases. The consent, cannot, of course, have been obtained fraudulently, and it must be for a specified act. For example, a doctor cannot operate on one part of the body if the patient, before going under an anesthetic, consented to a different operation—unless, that is, the surgeon can justify his act according to necessity in the patient's interest.

Contributory negligence. The law will not adjust losses as between two wrongdoers, but the burden of proof of contributory negligence is on the defendant. The Federal Employees' Liability Act allows proof of contributory negligence only to mitigate damages, and it is not a complete defense. The doctrine of "last clear chance" or of "discovered peril" means that if the defendant discovers the plaintiff's peril he is bound to exercise reasonable care to avoid harm, even though the plaintiff is negligent.

Less diligence is expected of children, women, and incompetent people, but even they are responsible for the amount of discretion which it is reasonable for members of their class to exercise. For example, even a child of five might be supposed to know better than to run into the street in front of an automobile, and a driver has a right to expect such a child to avoid doing so.

Type of harm and class imperiled. To obtain the protection of a statute, the plaintiff must show:

1. That he is one of the general class of persons intended to be

protected by the prohibition of the unreasonable risk involved in the defendant's conduct.

2. That the harm sustained by him is of the general type of harms which make the defendant's conduct unreasonable—the type of risk which the legislature sought to avoid.

3. That the harm happened in such a way that it would not be unfair to hold the defendant liable therefor—that is, that the damage was the proximate or legal result of the defendant's breach of the statute.

There is no recovery, for example, if a fireman falls into a shaft supposed to be covered only for the protection of workers. A parking ordinance is no protection when the plaintiff was hurt when a fire truck ran into the defendant's car and pushed it on the sidewalk against the plaintiff, because the parking ordinance was not intended to offer such protection.

It is not negligence if injury results while some other law, such as on Sunday observance, is being disobeyed, because the law was not intended to protect against negligence, as are laws requiring that horses be tied, bottles containing poison be labeled, et cetera. A motorman, however, was liable for leaving his car unguarded on a grade so that a passenger could release the brake, because that was exactly the type of risk against which he should have been cautious. It is, similarly, negligent to leave a loaded gun so that a child can obtain it and injure someone, for such a result should reasonably have been expected. The same is true of driving too close behind a small boy who is hitching a ride. The rule under workmen's compensation laws is that injury must "arise out of" as well as "in the course of" employment. Contributory negligence is no defense in such cases.

Privilege. Conduct otherwise tortious is not so if it is socially desirable for the actor to engage in conduct that creates the threat to another's interest. If it was socially desirable that an invasion be made, or if it occurred in such a way that it would be unjust to hold the defendant responsible, it is not actionable.

In invasions of the interests of personality and property, *complete conditional privilege* may exist in the following cases: (1) reasonable self-defense, although such defense cannot be too severe, as, for example, homicide to prevent a trespass; (2) reasonable defense of members of a family or household; (3) reasonable defense of possession of real or personal property; (4) reasonable effort promptly to recover possession of personal property wrongfully taken away; (5) abatement of a nuisance with reasonable force, promptly and without breach of the peace in so doing; (6) reasonable discipline of children by parents; (7) lawful arrest without a

warrant—for example, by police when a felony has been committed and there is reasonable suspicion that the person arrested has guilty knowledge of it; also arrest for any misdemeanor or felony committed in the presence of the arresting person; (9) seizure of goods or taking possession of real property under lawful process; (10) destruction of property or trespass thereon under circumstances that create a public or private necessity, such as detouring onto private land to avoid injury by striking an obstruction in a highway, or by destroying property to prevent a spread of fire.

In invasions of interests of personality and property, *incomplete conditional privilege* may exist as follows: (1) If the invasion for necessity is harmless, merely violating the owner's dignity, there is no liability—an example being mooring a boat at another's dock during a storm to protect it. (2) If an invasion is made for the purpose of securing the actor's life or property from harm greatly disproportionate to that which will accrue to the other's property. In such case the actor is privileged to invade another's proprietary or dignitary interests in the property, but he must pay for the losses caused by actually harmful invasions. The owner whose interests are invaded is not privileged to resist the invasion and probably loses his actual privilege to defend himself against actually harmful invasions. An example would be bracing another person's building to prevent its falling on one's own premises. Another example would be to save goods in danger of fire or water, or to save a boat by driving it ashore on another's land.

In invasions of the interests of honor and reputation, there is privilege when the actor defames another in a bona fide effort to (1) protect certain legitimate and justifiable interests of his own, as business associates among themselves; (2) protect a similar interest of a third person; (3) protect some interest of the public which is recognized as paramount to the interest invaded by the person defamed. Thus a full and fair report of judicial or other public proceeding is privileged. So is "fair comment" concerning the literary and artistic works and achievements of persons in the public eye.

In invasions of interests in contractual relations, there is privilege: (1) when the actor is making a bona fide attempt to advance his own similar interests according to general notions of fair play in the economic struggle, such as through legitimate trade competition or legitimate collective bargaining; (2) when the actor is making a bona fide effort directly to protect some immediate public interest of great social or moral significance.

In invasions of interests in domestic relations, there is privilege when it is sought to protect some other domestic interests of the actor—for instance, when a parent alienates the affections of his

child from his spouse in an honest effort to protect the child's welfare.

Tort Actions

Trespass. Tort as a civil action for money damages originated in an action of trespass. By the thirteenth century the action included almost every wrongful act, but later it became restricted to cases involving acts of violence. The action of trespass came to be used to obtain redress for *intended* invasions, and the action of *trespass on the case* came to be proper for *unintentional* invasions. In an action for trespass, the taking of the property was unlawful. Only damages are sought in trespass actions, not the recovery of the property itself.

Malice count. In modern code practice, malice may be charged as a count in a complaint instituting a suit for damages—for example, in accident cases in which the plaintiff seeks to recover for the loss he has suffered. Malice is synonymous with criminal intention, but it really means doing a wrongful action intentionally without just cause or excuse—a conscious violation of the law. *Express malice* exists if there is ill will or wrongful motive, deliberate intention to commit injury, as evidenced by external circumstances. *Implied malice* is inferred from the facts in the case. Malice may be inferred from any deliberate cruel act committed by one person against another. It may be called *constructive malice* or *malice in law* instead of *implied malice*. If convicted on a malice count, a defendant thereafter may be jailed for nonpayment of any judgment against him. In such case, however, the plaintiff must pay his board while he is in jail.

Trespass on the case. This is an old common law action for damages for an injury not the direct result of the invasion charged but merely a consequential result thereof. The injury in such an action is intangible, without direct force, probably from nonfeasance —or negligence. The action is distinguished from that of trespass proper, which lay when the injury was the direct result of the invasion.

Detinue. Detinue is an old action to recover, in species, personal chattel from one who obtained them lawfully but retains them without right, together with damages for their detention. Its original use was when the party delivered goods to another to keep, and was refused their return. The gist of the action is the wrongful detention, not the original taking. In modern practice, the property remains in possession of the defendant pending the determination of the action, whereas in replevin suits the plaintiff obtains possession by filing

a bond. In detinue actions the plaintiff must prove property in himself and possession by the defendant. The judgment awards the property or, if it cannot be found, its value.

Replevin. The right to a writ of replevin was established by statute, by contrast with the actions of trespass, trespass on the case, and detinue which developed in the English common law courts. Replevin actions are still common and are instituted to obtain redress for both wrongful taking and wrongful holding. Usually, both return of the property and damages are asked. Upon filing his complaint, the plaintiff can, by posting bond with security double the amount involved, obtain possession of the property in dispute, but he is liable for its return in the same condition in the event he loses his case. In an affidavit the plaintiff must describe the property; offer claim and proof that he is the lawful owner; allege that the defendant wrongfully retains it and allege that the property was not taken to satisfy any tax, assessment, or fine.

A replevin writ is issued to a sheriff and is returnable as a summons. The sheriff seizes the property and turns it over to the plaintiff. In some jurisdictions the defendant can avoid this seizure, pending outcome of the case, by posting bond and security. If the decision is against the plaintiff a *writ of retorno habendo* is issued to order the return of the property to the defendant.

Some replevin suits provide good human-interest news material, as in the following case:

> Tampa, Fla., July 8.—(AP)—Hugo Zacchini wants his cannon back.
>
> One of the "human cannonball" Zacchinis, he filed suit Wednesday to recover his double repeating gun which he says earned him as much as $20,000 a year. It is impounded under a replevin action at Lancaster, Pa.
>
> Hugo said he lost his cannon when an acceptance corporation in Pennsylvania impounded it, claiming the brothers Zacchini had defaulted on a payment on a loan covering the equipment of the Zacchini Brothers circus.
>
> Hugo claimed the cannon was his personal property but that he and Brother Bruno own the rest of the show. The cannon, he went on, was put up as additional collateral for a loan on the other equipment.
>
> With the Tampa suit Hugo tendered a check for $2,150, claiming it covered the principal and interest due on his gun. He said the acceptance company had refused to accept the money in Pennsylvania. He asked further that the company be enjoined from proceeding with the Pennsylvania suit and be ordered to deliver his cannon to him.
>
> —Detroit *News*.

Trover. This is a common law action for damages for wrongful conversion. It originally lay for recovery of damages against a person who found another's goods and wrongfully converted them to his own use. Later the finding was only fictitious, and the action became a remedy for any wrongful interference with or detention

of the goods of another. In modern practice, when goods sought in a replevin action cannot be found, the plaintiff can recover their value and, in legal parlance, the action may be called one in a trover although no particular writ is issued. In Illinois there is a statutory provision that a person can sue for any gambling debt over $10. If the loser fails to recover within six months, any citizen can bring action and can keep half of whatever judgment results; the other half goes into the county treasury.

Distress. This is an old remedy whereby personal chattels were taken from a person accused of an offense, to be held until court action, the object being to insure his appearance in court and to have security to cover the alleged loss. A typical case was keeping cattle which had trespassed until the owner paid for damages committed by them. Today the action may be used to enforce payment of rents and taxes, and the property is held, not by the plaintiff, but by the sheriff. Most of the purposes for which this action lay are now covered by the statutory provisions defining replevin and attachment proceedings.

Attachment. The most common usages of a writ of attachment were discussed in Chapter 5. It is a writ ordering a sheriff to seize enough of a defendant's property to cover the plaintiff's claim, and to hold it pending a court judgment or other order. Its purpose is to compel an appearance and to furnish security for debts or costs. Generally it is used in an action on a judgment, but it also may be allowed by statute in tort actions to protect a plaintiff at the beginning of an action. To obtain it, the plaintiff must file an affidavit and give a bond and security.

Deceit. In old English law, deceit was an original writ and the action founded on it was to recover damages for any injury committed deceitfully. It is used when someone has brought legal action wrongfully in another's name, then suffered a nonsuit to occur so that the plaintiff became liable for costs. Also, it is used in cases of fraudulent warranties for goods and of any personal injury contrary to good faith and honesty. It also is a judicial writ formerly used to recover lands lost by default of the tenant in real actions, because he was not summoned by the sheriff or as a result of collusion by his attorney.

CHAPTER 10

Equity

THE trend in American states is definitely and decidedly in the direction of elimination of the centuries-old distinction between law and equity. (See Chapter 1.) Even if this elimination is not accomplished by civil practices acts, it may be provided that the same court can administer both forms of judicial relief. Or, it may be provided that actions at law or suits in equity can be amended at any time during a proceeding to change their nature and effect their transfer to another court (equity or law) or to another branch of the same court.

Complete elimination of the distinction—by substitution of a single civil action—such as has been accomplished in the federal and numerous state courts, however, does not do away with the fundamental differences between law and equity. After all, asking money damages for a personal injury or for a breach of contract is not the same as seeking to compel someone to live up to a contract or to refrain from operating a dangerous machine that might cause injury to others. In deciding an issue at law, reference must be made to statutory enactments and to judicial precedents. In determining what equitable relief should be granted, there must also be consideration of whatever concepts of abstract justice, fair play, and common sense prevail.

The first courts of equity arose in feudal England because the common law courts were restricted by precedent to application of formal, rigid rules of legislative and judicial precedent. The chancellor was secretary to the king and probably to the Great Council, which consisted of bishops, earls, barons, and knights and later developed into Parliament. A Statute of Westminster during the reign of Edward I provided that where there was a recognized wrong and no remedy under existing writs, the Court of Chancery should frame a writ to cover the new facts. The chancellor, as the king's agent, therefore issued writs authorizing the bringing of cases in the king's courts (Exchequer, Common Pleas, King's Bench), although purely private matters were still handled by the county, hundred, borough, manor, and baron courts. The crown presumably had an interest in

the cases heard in the king's courts, and in many cases fictions were resorted to in order to establish jurisdiction. For instance, to obtain a hearing in a criminal matter, it was held that, as a taxpayer, the principal was within the jurisdiction of the king's civil courts.

Among the titles that were first recognized in equity courts rather than in the common law courts were: trusts, mortgages, and assignments. In common law courts the relief granted customarily was remedial—generally damages to compensate for wrongs committed. In equity courts the relief was mostly preventive and compulsory.

Maxims in Equity

The nature of equity law may be comprehended from the following familiar maxims in equity—maxims that in equity courts have the same strength that precedents do in law courts.

1. *There is no wrong without a remedy.* This maxim is the foundation of equity. When damages or compensation alone are sought, the court of equity has no jurisdiction. When, however, some additional relief is asked, equitable principles operate.

2. *Equity follows the law.* Equity courts cannot go counter to legislative acts. They observe rules of law by which titles and interests are regulated if this can be done without injury to equitable titles and the interests themselves.

3. *The law aids the vigilant.* Diligence is rewarded and laches (unreasonable delay) are punished if harm results thereby.

4. *Between equal equities the law will prevail.* For example, the legal owner of a title gets preference.

5. *Equality is equity.* Property, for instance, will be divided between several beneficiaries.

6. *He who comes into equity must do so with clean hands.* One cannot upset a contract for fraud in which he participated. He cannot enforce a gambling debt, harsh legal rights, or insist on a share of any "spoils."

7. *He who seeks equity must do equity.* If a borrower of money on usurious interest wants it set aside, he must pay money with lawful interest. A property owner who seeks to enjoin collection of a tax because it is excessive must pay the proper amount.

8. *Equity looks upon that as done which ought to be done.* If a testator has imperatively directed land to be sold, equity will consider the conversion as having taken place from the instant of the testator's death. Any profit realized by a trustee is regarded as for the benefit of the trust estate.

9. *Between equal equities priority of time will prevail.* The first in time is right. One can transfer property only with consideration

of any existent mortgage or annuity. A new grantee takes only what is left in the grantor.

10. *Equity imputes an intention to fulfill an obligation.* When a person covenants to do an act and he does what may either fully or partially be converted to or toward the completion of the covenant, he shall be presumed to have done it with the intention of continuing to completion.

11. *Equity acts in personam.* An equity court's jurisdiction depends on the presence or residence of the principals, and not upon the location of the property in dispute. A decree in equity cannot of itself divest a title at law, but can only compel the holder to convey. The subject of jurisdiction is property, not persons, but there must be some right of property involved to give jurisdiction. There is no jurisdiction over damages for purely personal torts.

12. *Equity acts specifically.* Equity aims to put the parties exactly in the position they ought to occupy. Therefore, the essence is not to give compensation. Equity decrees performance of a contract, and does not give damages for its breach. Equity sometimes will restrain the commission of a trespass, whereas, at law, the aggrieved party can only obtain money compensation for injury after the trespass.

Equitable Concepts

Equity offers protection for a sizable list of rights. Among the most important wrongs which it may correct are those arising out of the following circumstances:

Accident. Legally defined, an accident is an unforseen and injurious event not resulting from any mistake, negligence, or misconduct. The loss of a deed or other valuable written instrument is considered an accident. Equity offers no release from doing something that one has covenanted to do, even though the burden becomes greater than originally thought. A frequent example is the obligation to continue paying rent for a rented house which has been destroyed by fire. When true accident occurs, equity will protect its victim from being deprived of legal rights as a result.

Mistake. Under the law, ignorance excuses no one and equity will not relieve for mere mistakes of law. If the mistake is mutual, material, and not the result of negligence, however, equity will give relief for any accidental circumstances. It may happen that a written document fails to express the real intentions of the principals; in such case, equity will provide relief.

Fraud. A law action charging fraud (deceit, action on the case, et cetera) is for the purpose of recovering a purchase price or to

effect a return of property. At equity the parties may be put back where they were before the transaction was undertaken. A party may be enjoined from enforcing a fraudulent agreement, and anything already done may be rescinded. There is no statute of limitations on undiscovered fraud.

Fraud may arise from facts and circumstances of imposition. One common form is puffing (fake bidding) at an auction sale. It is permissible for a salesman to praise his own goods, but he cannot tell falsehoods regarding them—for example, claiming that certain tests have been made when they have not. A salesman cannot remain silent when it is his duty to speak, especially in cases of insurance and suretyship. If a party asserts what he does not believe to be true, fraud is presumed, even though there was no wrongful intent. A fraudulent representation must be one that the other party reasonably would be expected to rely upon. It must be material and known to be false to the person making it.

Fraud may arise from the intrinsic nature of the transaction. It may be because of the terms of the contract (inadequacy of consideration, usury, gambling, et cetera), or because of the subject matter (contracts in restraint of marriage, in restraint of trade, for procurement of office, et cetera). The United States Supreme Court long ago invented the rule of "reasonableness" in interpreting the antitrust laws, and that principle has been applied generally in the courts.

Fraud may be presumed from the relations of the parties. One party may be mentally disabled, drunk, or under duress. He may have been under undue influence—if only being made the recipient of gifts. One party may use his position as guardian to impose upon a ward. Parents have a superior advantage over children, lawyers over clients, trustees over beneficiaries.

A third party may be victimized by a fraud involving others. For example, a debtor might dispose of property in order to defraud creditors. An expectant bride might dispose of property to prevent her husband-to-be from coming into possession of it. In all cases when there is suspicion, the burden of proof is upon the person in the superior position of advantage.

In all these and similar cases relief may be obtained in equity courts.

Notice. The principle of judicial notice was discussed in Chapter 3. It developed in the equity courts and may be stated in this way: knowledge of facts which would naturally lead an honest and prudent person to make inquiry constitutes notice of everything that such inquiry, pursued in good faith, would disclose. Constructive notice is where there exists actual notice of a matter, to which

equity has added constructive notice of facts that an inquiry after such matter would have elicited. Also, notice exists where there has been a designed abstinence from inquiry for the very purpose of escaping notice.

Lis Pendens. A person is protected against having his legal rights interfered with if another action is pending to determine what those rights are. A misuse of the rule occurs when a party may tie himself up in a harmless law suit as a protection against others that would be more vexatious.

Estoppel. An equitable estoppel (*estoppel in pais* or *by conduct*) is the bar equity puts on a person who has made a false representation or has concealed material facts, with the result that another person has acted in good faith in a way detrimental to his own interests. The estoppel makes it impossible for the guilty person to testify at all, either to confess or deny; thus, because of his past conduct, he is precluded from asserting rights he otherwise might have. An example would be withdrawing from a partnership without giving notice to others dealing with the partners, who would continue to act as though the partnership continued. Because he failed to give adequate notice and thus induced others to act differently than they otherwise would have acted, the former partner may become liable to the injured persons.

At law, estoppels may arise under a deed or any other matter of record. If, for instance, one party declares in a deed that he is owner of a certain piece of property, he cannot attempt to demonstrate that he is not. If there is a court record of matter which has been the subject of a legal proceeding, one cannot argue its validity. By contrast with such legal estoppels, equitable estoppels, as indicated, arise when a party represents by word, conduct, or silent acquiescence that a certain state of facts exists.

Election. Equity requires that a person choose between two alternative rights when it is obvious that it was not intended that he enjoy both. Choice may be indicated by an overt act from which election is deduced. Once made, the election cannot be changed. For example, a widow cannot accept a legacy and later demand dower rights (one-third of her husband's estate).

Conversion and reconversion. Conversion is the exchange of property from real to personal, or from personal to real, to conform with a will or contract or other legal instrument. At equity it is presumed that conversion already has taken place although the actual change has not occurred.

Adjustment. Several equities are intended to prevent circuity of action in placing burdens properly on those who should bear them. They relate mostly to the relations between creditors and debtors. A

setoff exists when a defendant has a claim against the plaintiff, even though it does not grow out of the same action. The rival claims are balanced together and an equitable remedy is found. If one or two or more parties who share a common debt or obligation pays the debt in full, he is entitled to *contribution* from his codebtor or debtors. At law the creditors of an insolvent debtor divide the property proportionately.

Exoneration is the right that exists as between those successively responsible for a common debt. That is, a subsequent surety who pays may collect from an earlier endorser, and he from the principal. *Subrogation* is the right which arises naturally out of contribution and exoneration by giving the surety or third party who has paid a debt all the rights previously possessed by the creditor against the debtor whose debt he has discharged.

If a debtor has two funds upon which to draw to meet his obligations, he cannot discriminate against some of his creditors by drawing on one fund upon which some of the creditors have a direct claim, to the injury of others whose direct claim is against the other fund. Equity in such cases insists that there be *marshaling*—a term meaning to make available all a debtor's assets for the relief of all creditors, so that some do not share better than others because of particular liens or other claims on particular assets. Generally, the order in which assets are liable for payment of debts is: (1) general personal estate, not expressly or by implication exempted; (2) any estate particularly devised simply for the payment of debts; (3) estates descended; (4) property devised and bequeathed to particular devises and legatees, but charged with the payment of debts; (5) general pecuniary legacies pro rata; (6) specific legacies and land devised; (7) personality and realty over which the person whose estate is to be administered has exercised a general power of appointment.

Liens. Certain rights known as liens can be acquired in property by persons other than owners. The word "lien" comes from the French and means a string or tie. A lien is legally a claim that one person has on the property of another as security for a debt. A shoe repairman, for instance, may have a lien on the shoes he has repaired for the amount of his bill until it is paid. This is a *common law lien.*

Liens may also be created by statute. In most states, persons who supply material or labor in connection with building construction are given *mechanic's liens* under statutory provisions, provided that they file notices of their claims against the real property within a certain period of time.

Another type of lien may arise as an incident to a contractual relationship. If the seller of property has not received the full pur-

chase price, he may have a lien for the unpaid balance, even though he already has delivered up possession of the property. So, too, the buyer who has paid part of the purchase price, but has not yet received possession of the property sold, may have a lien for the amount he has paid. Such liens are *equitable liens*. They differ from mortgages since they arise incidentally out of other transactions, while a *mortgage* is a direct transfer of property as security for a debt. So, too, a *pledge* of personal property is an express agreement by which the property is held by the pledgee, who has a power to sell it, if the debt is not paid.

There follow two typical news stories of liens:

Sally Rand's fans were tied up by the federal government yesterday.

A lien filed against her by Carter H. Harrison, collector of internal revenue, charges that she owes the government $1,336 in social security taxes, plus interest and penalties, bringing the total to $1,580. The lien prevents her from disposing of any of her assets.

Miss Rand, who is now dancing in Chicago, denies the charges, which stem out of a long engagement at a night club in California. The owner entered bankruptcy without paying his social security taxes, she said. Since she was in charge of the floor show at the time the government seeks to collect the taxes.

—Chicago (Ill.) *Sun.*

A lien demanding $15,345 additional income tax and interest for 1938 and 1940 was filed today in Federal court against Samuel Richardson, 48, 2830 South Michigan avenue, a member of the Centerville city council.

The lien, which ties up all Richardson's property for seizure unless the government's claim is satisfied, was filed in the United States District court by Thorne Wilkinson, collector of internal revenue. It demands $13,000 in taxes and $2,345 in interest, plus penalties.

The action is a civil one and the charge for the year 1938 is still within the six-year statute of limitations.

Equitable Remedies

Specific performance. If collection of damages would be inadequate relief and the offended party wants the other party to go through with a promise, equity will compel the performance. Equity will not enforce the terms of a promise to make a gift or any unilateral contract (there must be a consideration), and it usually will not enforce contracts related to personal property, in such cases because compensation in damages would be sufficient. Performances that the common law either would or could not enforce, however, and that the chancery courts can enforce include the following: duties under a trust; insurance contracts; surrender of certain particular goods on a debt; division of chattels which were assets of a firm among partners; sale of property which one contracted to sell; use of property in the way promised; payment in coin; issuance of a

new promissory note when the original was destroyed; assignment of a patent and supplying public utility services to a citizen entitled to them.

Injunctions. The relief sought under an injunction is exactly the opposite of that requested when specific performance is asked. An injunction orders someone to stop or to refrain from doing something. This is true of even a *mandatory injunction*, which technically orders compliance with a law, regulation, or court order. This point is illustrated by the case mentioned in the following news story. Although the injunction took the form of an order to comply with a public directive, it really was for the purpose of preventing a violation:

> Injunction suits to compel two Centerville dairies, the Quality Dairy company, 2540 Eastwood avenue, and the Pure Cream Dairy, Inc., 1600 Center street, to comply with terms of the Centerville federal milk marketing order were on file in the United States district court today.
>
> In the suits filed by U. S. District Attorney Anthony Bowman, the government seeks $12,000 from the Quality Dairy and $15,000 from the Pure Cream Dairy, for arrearages in payments into the producers-settlement and administrative funds of the market administrator's office. Mandatory injunctions ordering full compliance with the marketing orders also were sought.
>
> The Quality suit is the second such suit against the company. The first was dismissed a year ago when the company promised compliance.

A mandatory injunction may order the restoration of a previous situation or condition, such as restoring a river to its previous channel; removal of a nuisance; acceptance of freight by a common carrier or deliverance of the property to a party designated by the court.

Most injunctions prevent rather than compel action, and may be used both by and against government officials and agencies and in private litigation. They are called *prohibitory*, to distinguish them from mandatory injunctions, and either restrain the defendant from continuance of an injurious act or forbid an anticipated act.

Injunctions proper are either *temporary* or *permanent*. There is also the *preliminary restraining order* (or *stay*, as it may be called), which may be (but rarely is) issued without notice by a judge on ex parte evidence only. A temporary injunction (*injunction pendente lite*) is issued after a hearing and remains in force until it is vacated after a trial or appeal, or it is discontinued. Either the restraining order or temporary injunction may be called *interlocutory, preliminary,* or *provisional,* as they are issued for short periods only. The temporary injunction is an order to the defendant to cease or refrain from doing the act involved and to appear in court at a designated time "to show cause" why the order should not be made permanent. Usually the time limit is about ten days, so often

the plaintiff's purpose is served by a restraining order or a temporary injunction only. By the time the trial on the permanent injunction is held, the "crisis" may be past. For this reason much opposition has arisen in all fields of activity against use of orders and temporary injunctions, and wise judges are disinclined to issue them except in cases of apparent great emergency. When asking for a temporary injunction, the plaintiff must post bond and security to cover potential loss by the defendant.

Federal Judge John P. Wilkinson today issued a preliminary injunction restraining the John Garfield & Sons company, commission merchants at 33 South Main street, from violating OPA ceiling price regulations

William Dempsey, OPA attorney, charged the company sold 500 ten-pound sacks of grapefruit at prices 15 cents above the ceiling price for each sack. OPA also accused the company of making "tying agreements" which required customers to accept other merchandise in order to secure the grapefruit.

Counsel for the firm denied the charges and Judge Wilkinson allowed 10 days for both sides to file briefs on the ceiling price charges. He said he would hold a separate hearing on the charges involving the alleged "tying agreements."

A permanent or, as it may be called, *final* or *perpetual* injunction continues in effect until it is dissolved by the court. It is not issued until after a trial has been held on the merits of the case—at which both sides have an adequate opportunity to present evidence and arguments. It is always possible to go into court to move that a permanent injunction be dissolved.

There is almost no limit to the reasons for which injunctions may be sought and granted. Among the most frequent are the following eight reasons:

1. *To restrain proceedings at law.* The victim of any accident, mistake, or want of discovery may seek a stay of proceedings; the victim of judicial error may want a stay of judgment or execution or of delivery of possession of property. If granted in such and similar cases, the stay is not equivalent to a writ of prohibition because it is directed, not to a court officer but to the plaintiff, ordering him not to apply for a writ of execution.

The following news items indicate how injunctions may be used to restrain litigants from certain acts pending the outcome of other litigation:

With two women, both mothers, claiming to be the "legal widow" of Robert Snyder, a soldier killed in the Pacific sector, a Superior court injunction today restrained both of them from collecting his estate.

Mrs. Ruth Snyder, 30, of 239 South Water street, who was wife No. 1, asserts she didn't know her husband had divorced her until she read in the newspapers that he had been killed and saw the name of another woman mentioned as his widow. Notice of divorce proceedings was not served on her and, therefore, the divorce was illegal, she charges.

Mrs. Elizabeth Snyder, 29, of 1340 South Sheridan road, wife No. 2, who

claims to be widow No. 1 in the line of inheritance, has been drawing payments from the government. Snyder's estate consists of $10,000 war risk insurance, back pay and pensions.

Circuit Judge John Winthrose will hear arguments today on a petition of Henry Pearson for an injunction to prevent the Centerville Housing authority from paying taxes on property to be sold to the authority and deducting the amount from the purchase price. Pearson is asking for the writ pending further efforts to effect a compromise of the taxes and penalties due.

The property is located at Main street and Washington avenue, and along with two smaller tracts was sold to the housing authority for $25,000. The sellers were given until April, 1943 to effect a compromise of the unpaid taxes, totaling approximately $5,000, without penalties. Failing in that move, the authority had the right to pay taxes and penalties in full and to deduct the total from the purchase price.

The Pearson tract had unpaid taxes of $3,500, without penalties.

2. *Bills of peace.* These are issued to prevent unnecessary and vexatious litigation. Otherwise, a party might be compelled to defend himself simultaneously in numerous actions growing out of the same situation. Such an injunction may disallow numerous class suits testing the same right. For example, different riparian owners or taxpayers affected by the same ordinance may be required to join in one suit, instead of bringing separate actions. An injunction may also be sought to prevent a litigant from reiterating an unsuccessful claim.

3. *Bills of interpleader.* At common law, a bill of interpleader was issued to a depository or bailee of a deed being held in escrow, to enable him to know to whom to deliver the document. Later, chancery courts began providing similar relief in other cases in which a third party was at a loss as to which of two rival claimants he should recognize. In modern practice, bills of interpleader protect a person from being sued by two or more parties who claim title to some right or property that he has in his possession. A bill of interpleader compels the disputing parties to litigate the matter between themselves, rather than for each to involve the third party.

4. *To restrain government agencies and officials.* An injunction suit may be for the purpose of testing the constitutionality of a law, as illustrated by the following news story:

Springfield, Ill., Aug. 6.—(UP)—Constitutionality of a new state law requiring strip mine operators to level spoil piles was challenged in Federal District court here yesterday by 15 mine operators who obtained a temporary restraining order against enforcing the law, which was passed by the 63rd general assembly last June.

The restraining order, which will remain effective pending full hearing of the suit, is directed against Gov. Dwight H. Green, Attorney General George F. Barrett and State Mines and Minerals Director Robert M. Medill.

The strip mine bill, authored by Representatives Paul Powell (Dem. Vienna), and James E. Davis (Rep. Galesburg), was passed by the legislature after a measure requiring less rigid regulations was defeated. The original bill was offered by a special legislative commission to study strip mine operations and regulations provided for a reforestation program.

What Complaint Alleges

The complaint alleges that:

1. The cost of leveling spoil piles is out of proportion to the value of the land.
2. Leveling of the land does not adapt it to agricultural purposes.
3. It will be impractical and impossible to comply with the statute because haulage and drainage ways must be left open.
4. The mines do not have and will not be able to get bulldozers, tractors and trucks to carry out leveling.

The suit also alleges that the legislation is "arbitrary," and that leveling cannot be carried out in winter time when the ground is frozen.

Exorbitant Cost Cited

The "exorbitant" cost of leveling, according to the complaint, would range from $1,000 to $4,000 an acre, which "would be many times the value of the land either before or after leveling or restoration."

The suit said that strip mines produce one fourth—15,937,681 tons—of the total coal output of the state. It also alleges that enactment of the statute would hamper the war effort by handicapping and restricting strip mine production.

Any taxpayer can bring suit to prevent any public officer from exceeding his legal authority. Suits to restrain tax officials from levying or collecting a tax challenged as illegal are not infrequent, nor are suits challenging the disposition of municipal or county funds and the manner in which public officials perform their duties. The following articles illustrate typical actions in this category:

Charges that A. L. Brodie, coroner of Cook county, has received $13,219 in overpay in his three years in office were on file today in the Superior court. Frank Hanket, 4245 North Melvina avenue, who filed the charges in the form of a taxpayer's suit, asked an injunction requiring Brodie to account for the funds before receiving any more pay.

The suit quotes the Illinois constitution to the effect that the coroner shall be paid only out of fees he collects in fulfilling his official duties. It is alleged that Brodie has been derelict in collecting such fees.

The bill of complaint sets forth that Brodie collected approximately $16,000 in fees since he took office Dec. 2, 1940, and has drawn $28,125 in salary. Fees amounted to $5,510 in 1940, $5,033 in 1941, $4,012 last year and approximately $1,500 thus far in 1943, the complaint said.

—Chicago (Ill.) *Daily News.*

Superior Judge John Wilkinson yesterday denied a motion of the Indiana Commerce commission and the Office of Price administration to dissolve a temporary injunction which permits the Centerville railroad to collect a 10 per cent increase in suburban fares granted the company April 1, 1943.

Judge Wilkinson's ruling has the effect of extending the increase at least to Sept. 9 when he will hold another hearing to determine whether the temporary injunction shall be made permanent. Judge Wilkinson said he based his ruling

on "prima facie" evidence presented by the company to prove that the original suburban fares were confiscatory.

The commerce commission sought to bar the railroad from collecting a 10 per cent increase on 54 and 12 ride monthly suburban commuter tickets permitted on other suburban fares by the federal court in February, 1942. The railroad obtained the temporary injunction last Jan. 6.

Superior Judge John Wilkinson yesterday dismissed a suit brought by the Wrightwood school district trustees to restrain State's Attorney Theodore Hamilton from interfering with their prosecution of 13 cases against delinquent taxpayers.

The suit charged that Hamilton had stricken the appearances of private attorneys hired by the trustees to prosecute the cases and substituted his own. His office then failed to prosecute the cases and they were dismissed, the suit alleged. Judge Wilkinson said:

"I would consider a mandamus to compel the state's attorney to bring suit against the delinquents, but I can't tell him to refrain from doing his duty."

What follows are the papers in a typical tax injunction case:

STATE OF ILLINOIS } SS CHANCERY
COUNTY OF COOK } CAL. #4

IN THE SUPERIOR COURT OF COOK COUNTY

EVANGELICAL LUTHERAN BETHANY CHURCH OF SOUTH CHICAGO
Plaintiff

vs.

JOHN TOMAN, COUNTY TREASURER AND EX OFFICIO COLLECTOR OF COOK COUNTY, ILLINOIS, MICHAEL J. FLYNN, COUNTY CLERK OF COOK COUNTY, ILLINOIS, THOMAS J. COURTNEY, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, AND THE COUNTY OF COOK, a Municipal Corporation
Defendants

No. 42S 2006
IN CHANCERY

COMPLAINT IN CHANCERY FOR INJUNCTION

Now comes the EVANGELICAL LUTHERAN BETHANY CHURCH OF SOUTH CHICAGO, as owner, by its attorney, Ernest N. Warner, and brings this suit against the defendants above named and thereupon shows and charges the following:

1. Plaintiff is a Corporation and organized for the purpose of "The Propagation of the Gospel of Jesus Christ."

2. It is the record owner in possession of the following described real estate; commonly known as 9207 South Yates Avenue, Chicago, Cook County, Illinois:

Lots 43, 44, 45 and 46 in Block 5 in South Chicago Heights in Sec. 16, Town. 37 N., Range 15 in Cook County, Illinois

And that it uses said premises solely and exclusively for religious purpose and not for profit.

3. It acquired title to the abovedescribed real estate by deed dated May 12, 1925, and delivered on the 12th day of May, 1925, which deed was filed of record

in the office of the Recorder of Deeds of Cook County, Illinois, on the 25th day of May, 1925, and known as Document No. 8918536.

4. JOHN TOMAN, is the Treasurer and County Collector of Cook County, and as such, has the duty to collect the taxes extended in the various warrant books delivered into his custody.

5. MICHAEL J. FLYNN, is the County Clerk of Cook County and has the duty to extend the taxes based upon the various assessments made against plaintiff's property.

6. THOMAS J. COURTNEY, is the State's Attorney of Cook County and is in duty bound to appear for the County and its officials in all proceedings involving the collection of taxes and to take all necessary steps to enforce payment thereof.

7. All interest, penalties and costs collected by the County Collector on account of delinquent taxes are in accordance with law paid into the County Treasury and used for County purposes.

8. The general real estate Tax Warrant Books in the possession of JOHN TOMAN and MICHAEL J. FLYNN show the taxes as levied and the payments as made upon said real estate for the years 1926 to 1939 inclusive.

9. That for the years 1926 to 1939 inclusive the following taxes were illegally levied against the abovedescribed real estate and are null and void:

Year	*Vol. & Item*	*Principal Tax*
1926 to 1927		556 82
1928	326 1976 to 1979	213 58
1929	326 1939 to 1942	255 05
1930	326 1941 to 1944	279 53
1931	346 1943 to 1946	215 28
1932	346 1943 to 1946	193 60
1933	346 1943 to 1946	162 54
1934	346 1943 to 1946	178 32
1935	346 1943 to 1946	187 70
1936	346 1943 to 1946	213 48
1937	346 1943 to 1946	195 76
1938	346 1943 to 1946	204 52
1939	298 1943 to 1946	197 10

10. The defendants unjustly claim that there is due taxes, interest, penalties, cost for said years, or some of them, and threaten to take action to attempt to collect the same.

11. Unless defendants are restrained by this Court from making any attempt to collect such sums for taxes, interest, penalties or costs, plaintiffs will suffer irreparable injury. Plaintiffs have no adequate remedy except in a Court of equity.

WHEREFORE, PLAINTIFFS PRAY:

(a) That summons issue directed to the Sheriff of Cook County, Illinois, commanding him to summon JOHN TOMAN, County Treasurer and Ex Officio County Collector of Cook County, Illinois, MICHAEL J. FLYNN, County Clerk of Cook County, Illinois, THOMAS J. COURTNEY, State's Attorney of Cook County, Illinois, and COUNTY OF COOK, a Municipal Corporation who are made defendants herein, to appear before this Court to answer this Complaint.

(b) That the defendants and each of them be required to make full, true and complete answer to this Complaint within the time provided by law.

(c) That this Court decree that any amount of general real estate, taxes, interest, penalties, costs and forfeiture fees for the various years stated to be due in paragraph 9 of this Complaint, any liens therefore, are clouds upon the title of the property described herein and that the same, together with any forfeitures, be removed.

(d) That this Court decree that said defendants, and each of them, and their respective attorneys, agents and servants, be permanently enjoined and restrained from collecting or attempting to collect in any manner whatsoever, any amounts of general real estate taxes, interest, penalties and costs for said years on the property involved herein and that a writ of injunction issue out of this Court in conformity with such decree.

(e) That the Plaintiff have such other and further relief in the premises as equity may require and to this Court may seem just.

By _____
Their Attorney

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE SUPERIOR COURT OF COOK COUNTY

EVANGELICAL LUTHERAN BETHANY CHURCH OF SOUTH CHICAGO
Plaintiff

vs.

JOHN TOMAN, COUNTY TREASURER AND EX OFFICIO COLLECTOR OF COOK COUNTY, ILLINOIS, MICHAEL J. FLYNN, COUNTY CLERK OF COOK COUNTY, ILLINOIS, THOMAS J. COURTNEY, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, AND THE COUNTY OF COOK, a Municipal Corporation
Defendants

No. 42S 2006

ANSWER

Now comes JOHN TOMAN, County Treasurer and Ex Officio County Collector of Cook County, MICHAEL J. FLYNN, County Clerk of Cook County, THOMAS J. COURTNEY, State's Attorney of Cook County, and THE COUNTY OF COOK, a Municipal Corporation, defendants herein, by Thomas J. Courtney, State's Attorney, their attorney, and for answer to plaintiff's complaint heretofore filed in this cause, state as follows:

1. They deny that the plaintiff is the owner of the real estate described in said complaint nor has any interest therein whatsoever.

2. They deny that the plaintiff is a corporation organized not for profit and deny that as such its real estate involved herein is exempt from taxation under the laws of the State of Illinois, for the years 1926 to 1939 inclusive.

3. They deny that the plaintiff is entitled to the relief prayed in said complaint.

WHEREFORE, these defendants ask that the above entitled cause be dismissed.

THOMAS J. COURTNEY
State's Attorney
Attorney for Defendants

By _____
Assistant State's Attorney

STATE OF ILLINOIS } SS
COUNTY OF COOK }

ENTERED
March 18, 1942
P. H. SCHWABA

IN THE SUPERIOR COURT OF COOK COUNTY

EVANGELICAL LUTHERAN BETHANY CHURCH OF SOUTH CHICAGO

Plaintiff

vs.

JOHN TOMAN, COUNTY TREASURER AND EX OFFICIO COLLECTOR OF COOK COUNTY, ILLINOIS, MICHAEL J. FLYNN, COUNTY CLERK OF COOK COUNTY, ILLINOIS, THOMAS J. COURTNEY, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, AND THE COUNTY OF COOK, a Municipal Corporation

Defendants

No. 42S 2006

DECREE AND INJUNCTION ORDER

THIS CAUSE COMING ON TO BE HEARD in due course and the parties being present and duly represented in open Court, and the Court having heard the evidence submitted and the representations of counsel and being fully advised in the premises, finds:

1. That it has jurisdiction of the subject matter of this cause and of all parties hereto and that all the material allegations in the Complaint are true and proven.

2. That Plaintiff is the record owner in possession of the following described real estate, commonly known as 9207 South Yates Avenue, Chicago, Cook County, Illinois

Lots 43, 44, 45, and 46 in Block 5 in South Chicago Heights in Sec. 16, Town. 37 N., Range 15 in Cook County, Illinois

3. That Plaintiff is a Corporation organized for the purpose of the "Propagation of the Gospel of Jesus Christ," and that therefore said Corporation is exempt from general real estate taxation and that the taxes levied for the years 1926 to 1939 both inclusive on the property described herein, are null and void.

IT IS THEREFORE HEREBY DECREED that JOHN TOMAN, County Treasurer and Ex Officio Collector of Cook County, MICHAEL J. FLYNN, County Clerk of Cook County, THOMAS J. COURTNEY, State's Attorney of Cook County, THE COUNTY OF COOK, a Municipal Corporation, and all persons acting under them or in their behalf, are hereby perpetually enjoined and restrained from collecting or attempting to collect in any manner whatsoever, any taxes, interest, penalties, costs or forfeiture fees against the hereinabove described real estate for the years 1926 to 1939 both inclusive of any of said years, and that a writ of injunction issue out of this Court in conformity with this decree.

IT IS FURTHER DECREED that the costs herein are assessed against the plaintiff herein, and the same having been are hereby satisfied.

ENTER:

_____
JUDGE

Dated at Chicago, Illinois
this 18th day of March A.D. 1942

5. *To restrain corporations.* Stockholders and sometimes bondholders can go to court to restrain officials of corporations from certain acts. Regarding corporations, equity can intervene whenever the property of the corporation can be treated as a trust fund, to prevent a breach of trust. Thus, a railroad can be enjoined from exercising a right of entry under a concession that is violating a condition subject to which the right was granted. Also, equity can intervene when the acts in question injure the stockholder or public, even though there is no technical breach of trust. The following news story is of a typical case:

Philadelphia, July 10—(AP)—U. S. District Judge Guy K. Bard has refused to restrain stockholders of the Edward G. Budd Manufacturing company from voting next Tuesday on a proposed plan to award high Budd executives a bonus in the form of options to buy 300,000 shares of the company's common stock.

A petition for a restraining injunction had been filed by Henry F. Holthusen, New York lawyer, who says he owns 5,000 Budd common shares. Holthusen contended the plan was "illegal" because the other Budd stockholders would not have equal option privileges.

Although Judge Bard denied the petition yesterday he suggested that, before the proposed options are issued, Holthusen be given an opportunity to file another petition for an injunction to prevent the issuance.

The court held that stockholders' approval of the plan would not deprive Holthusen of any rights. It pointed out that if stockholders disapprove Holthusen would have no need for litigation.

Judge Bard retained jurisdiction in the case by overruling a Budd motion for dismissal of the suit.

—Chicago *Daily News.*

6. *To protect personal liberties.* What might be called personal liberties are jeopardized in many of the situations already cited. The following news story describes an unusual case:

A 19-year-old girl has a right to lead a normal life and go out without parental interference, Judge John Wilkson ruled in Superior court yesterday.

He issued an injunction against John and Mary Truman, 2534 Shakespeare avenue, parents of Christine Truman, 19, allowing the girl to leave the restraining influences of her home.

Permitted to Leave Home

The order restrains the parents from molesting Christine, from forcing her to live at home, and from interfering with her taking her belongings out of the house.

Christine left her home Monday night and all night long her father and mother sought for her in vain.

Yesterday she appeared before Judge Wilkson, accompanied by Arthur Golman, attorney, and a young man who did not give his name. He said, however, that he planned to marry Christine in three months when he would reach the age of 21.

Normal Life Denied Girl

Christine testified that for several years her parents have refused to allow her the life of a normal girl. She was not permitted to go out, she said, unless accompanied by her sister, and she was forbidden to see the young man.

After questioning the girl, Judge Wilkson satisfied himself that she had never caused her parents trouble, and that there seemed no reason for their ultra strict attitude.

"Where is she going to live?" Judge Wilkson asked.

"Her mother's sister in Detroit has invited her to live there until she is married," Attorney Golman explained.

Judge Wilkson then issued the injunction.

7. *To protect legal rights.* Legal rights are also protected in many of the situations already described. To list completely all the legal rights that equity will intervene to protect would require an encyclopedia on the law. Among the most common are the following: (a) *Waste.* Waste is the substantial injury of an inheritance by one having a limited estate, either a freehold or for years, during the continuance of the estate. The party committing waste must be in rightful possession, and there must be privity of title between the parties. Anything that changes the character of the property is waste, even though it increases its value. Examples of waste are the opening of a new mine on land, cultivating land so as to change its character, suffering a sea wall to decay, tearing down buildings, permitting buildings to become dilapidated, removing fixtures, or destroying trees planted or left for ornament. Malice is not necessary to obtain relief. (b) *Destructive trespass.* At common law, such trespasses can be punished, but the victim may want discontinuance. For example, he may want to stop the working of an oil well that causes injury to property. (c) *Nuisance.* If it is public, the attorney general acts—for example, to prevent interference with transportation of the mails or enjoyment of railroad facilities by persons and corporations in interstate commerce. It is necessary to show that the nuisance is habitual and that it is actual or imminent—not merely threatened. Suits charging a nuisance are brought to prevent obstruction of light and air to the owner of a building, pollution and corruption of air, excessive noise, interference with right of way in violation of building and other ordinances. (d) *Patents, copyrights, trademarks.* It is impossible to enforce a patent at law because of the difficulty of ascertaining the exact injury under each violation. At equity, one can obtain an inspection to determine if there has been a violation and an injunction and accounting of profits. (e) *Breach of negative covenants.* These are promises not to do something, such as ringing church bells or writing another book on the same subject after selling one manuscript to a publisher, or not to use building lots or rented premises for certain purposes.

An unusual situation is described in the following news story:

In an action believed without precedent throughout the country, Circuit Judge Benjamin P. Epstein today granted a temporary injunction restraining an alleged unfaithful wife of an army private from receiving $50 army pay allotments.

The injunction was issued on a petition filed by Pvt. Raymond T. White, 32, who is convalescing in an Air Forces hospital here.

Postponing a hearing on a permanent injunction, Judge Epstein expressed doubt that his temporary order would hold up if appealed since "I do not feel the court can go counter to an act of Congress."

Atty. Norman Becker, representing White, said he planned to send a copy of the court order to Washington, hoping it would stop payments to Mrs. White.

Judge Epstein, who has two sons in service, said he issued the unprecedented order "only as a service for a soldier with the hope that it might be honored by the army."

In his suit for an injunction, White alleges that his wife, Stella, 24, of 1435 North Dearborn street, had been unfaithful to him while he was overseas. She had been spending her $50 army allotment to entertain another man, the suit charged.

The suit also asks for a divorce on grounds of adultery. It sets forth that the couple married three days before Pearl Harbor and separated July 9, 1942, the date of the second alleged instance of adultery, cited by White. He also charged his wife committed adultery with a "John Doe" last December.

He took sick while in the South Pacific because his wife failed to answer his letters, White asserted in his suit. He alleged that while his wife had been receiving the $50 as well as an income from regular employment, he has been forced to live on about $22 a month.

Attorney Becker said White learned on his return to Chicago that his wife had gone to Norfolk, Va., reputedly with a sailor. He found 10 letters from the sailor in his home.

—Chicago (Ill.) *Daily Times.*

8. *Involving labor unions.* Until Congress passed the Norris-LaGuardia Anti-Injunction Act in 1932, one of the principal weapons of the union-busting employer was the judicial injunction. The courts for years interpreted the Sherman Anti-Trust Act of 1890 as applying to labor unions, and strike pickets were enjoined from restraining trade. The Clayton Act of 1914 was thought by labor leaders to exempt unions specifically from its provisions, but the courts decided otherwise, so the Norris-LaGuardia Act was necessary to end all doubt of the intention of Congress to put an end to use of the injunction to interfere with ordinary activities of union organizers and to permit peaceful picketing during strikes. The act also made unenforceable yellow-dog contracts by which employees promised, upon taking jobs, not to join unions, and eliminated any temporary injunction in labor disputes except after a hearing on the facts.

In the attempt to offset this labor victory, state legislatures began passing laws to define "labor dispute," "peaceful picketing," and similar phrases strictly so as to limit the Norris-LaGuardia Act's

applicability. The United States Supreme Court, however, has not dealt kindly with most of the antipicketing laws that it has been asked to review; in fact, it has usually found them in violation of the constitutional guarantees of free speech and a free press. The courts can still issue injunctions to prevent disorderly conduct and to protect life and property, but the promiscuous use of the injunction as a remedy to hamstring union activities was given a severe setback by the Norris-LaGuardia Act.

Victims and potential victims of racketeering unions and union officials, including union members, may seek the equitable relief provided by an injunction. The following are items based on typical instances of its modern use:

Charges of terrorism against Williamson Merryweather were contained yesterday in a suit for an injunction filed in Circuit court by Mrs. Elizabeth Mann, owner of a tavern at 6300 South Water street. Merryweather is head, in spite of much police effort, of the Negro Bartenders, Waiters, Waitresses and Cooks Union, local 280 (A. F. of L.).

Mrs. Mann's suit names the union, Merryweather; a vice president named Victim, Thereasa Adams, secretary-treasurer, and Thornton Case, business agent, individually and jointly. She charges conspiracy to destroy her business, to picket, do violence and make threats to prevent deliveries, to keep customers from entering and says that mobs led by Merryweather congregate around her place, block its doors, threaten her employees with violence and go to their homes for purposes of coercion.

Contends Employes Satisfied

Mrs. Mann says her eight employes are all members of the CIO Liquor and Food Service Employes union, that there are no disputes between them and her and that they are entirely satisfied with the union of their choice and do not want to join Merryweather's. She asks a blanket injunction to stop all the practices listed. Robert Morris filed the suit.

The tactics complained of by Mrs. Mann resemble closely Merryweather's methods as brought out in previous suits and complaints, attorneys and police of the labor detail said. He has 500 members in his union and there have been repeated pleas to A. F. of L. leaders to remove him from office.

A suit for injunction attacking the president of an independent union was filed yesterday in Circuit court on the eve of a national labor relations board election to determine the bargaining agent for five hundred employes of the Chicago Plastic Manufacturers company, 1500 North Division avenue, which is engaged in war production.

The suit, filed by John Kelly, Herbert Randall and Gordon White, employes of the company, charged that William Richardson, president of the Independent Plastic Workers confederation union, has increased membership dues from 75 cents to $1.25 a month without approval of union members, has set up a new constitution and by-laws in the same way and has held no meetings of the union for a year.

The suit asked the court to restrain the union and its president from enforcing the constitution and by-laws.

Richardson charged the suit was an effort to "smear" him before the election today, when workers in the plant will choose between the independent union and the A. F. of L. union.

Correcting contract errors. As stated in Chapter 9 and as implied earlier in this chapter, equity will require specific performance on a contract or, by injunction, restrain an actual or contemplated breach of contract. In addition, equity will order *cancellation,* or the setting aside of a contract when other forms of relief are inadequate, or *rectification* (or *reformation*), by changing the terms of the contract to correct mistakes or impossible conditions contained therein. Equity, in other words, compels contracts and deeds to conform to the intentions of the parties.

If deeds or other instruments are lost or destroyed, equity will order *re-execution.* If terms are omitted by mistake or the instrument is not expressive of the true intentions of the parties, equity will order reformation. If there has been fraud, equity will order *rescission,* which voids a contract or sets aside written evidence which is surrendered or destroyed.

Accounting. In any pending proceeding, either side may file a bill for an accounting in which it is demanded that the other side give an account of moneys involved in any phase of the matter in dispute. If the court orders a defendant to account, it issues a *judgment quod computet;* if, after an accounting, it orders payment of any unpaid balance due, it issues a *judgment quod recuperet.*

At common law, an action of assumpsit lay to collect the balance of any account due a plaintiff; an action of *account render* lay when the amount was unknown. In the latter case, the matter was referred to auditors, who went over item by item but had to refer their findings back to judge or jury. This was a cumbersome system, and it was never adopted extensively in the United States. In modern equity court after the defendant has answered a bill for an accounting, the matter is referred to a referee before whom the account is taken whenever there is need for a discovery, such as in a trust case when the trustee is suspected of making a private profit.

Equity will entertain an action for an accounting when a fiduciary relationship exists between the parties, as principal and agent, trustee and *cestui que* trust, guardian and ward, or when there is a mutual account between plaintiff and defendant, or when complications exist, as in a partnership. Any account stated can be opened on suspicion of fraud or error, and the side requesting that this procedure occur may *surcharge*—that is, show that a proper credit was omitted—or *falsify*—show that an improper charge was inserted.

Partition. When joint owners of any property (often co-heirs) want to have the property divided between them, one files a bill for partition—generally today as provided by statute, but formerly only in equity court because there was no common law remedy. In the bill the petitioner must prove the defendant's title as well as his own. The court can divide property if it is easily divisible (easiest when it is in cash) or it can order sales to make partition possible. *Owelty of partition* is a sum paid to one party when it is impossible, because of the nature of the property, to divide it exactly. The owelty is a money sum, or rent or its equivalent, to equalize the shares.

Dower. This is the right of a widow to a life estate in one-third of her husband's estate. It arose as an equitable right, but today is usually defined by statute. See Chapter 11 for a further discussion of dower rights.

Confusion of boundaries. Equity courts have jurisdiction over disputes over boundaries which arise on sales or inheritances. The court can order discovery and settlement. The plaintiff must show some portion of the land to be in possession of the defendant.

Partnership bills. Common law practices were inadequate to dissolve partnerships which involved taking an account. Equity courts can order dissolution, sequestration of assets, sale of property, and distribution of proceeds. Dissolution amounts to a rescission of the partnership contract. The equity court may name a receiver to settle the affairs of the partnership.

Creditors' bills. They are filed to collect debts out of the real and personal property of a debtor. The plaintiff must show that he has exhausted his remedies at law through judgment and fruitless attempts at execution. A creditor's bill may be sought to compel reconveyance of property conveyed by a judgment debtor in fraud of his creditors or to subject to the creditor other property to compensate him. Equity may make available a trust fund for the benefit of creditors. If the debtor is deceased, the creditor's bill may take the form of an administrator's bill. This, however, is rare in the United States, for probate rules are specific and generally adequate. (See Chapter 11.)

The *doctrine of equitable assets* has never been common in the United States. In feudal English equity courts, it meant that all the property of a decedent could be assigned to pay bills after the common law courts had ruled that lands in possession of an heir could not be bound unless they had been specifically pledged.

The *doctrine of performance* is that when one makes certain types of agreements and dies without performing them, equity compels

fulfillment by the heirs. An example would be a contract to make a will to leave another person some property, but failure to draft such a will. Under proper circumstances if the obligor dies intestate, the obligee can obtain equitable relief.

If a person is under legal obligation to another and by will leaves that person an amount sufficient to satisfy the obligation, the legacy may be considered to have satisfied the obligation. This is the *doctrine of satisfaction of debts by legacy.*

Bills of discovery. In many states today a *subpoena duces tecum* is sufficient to compel a defendant to produce in court records and other written material to which the plaintiff wishes to refer. The equitable relief provided by a bill of discovery originated when at common law only the testimony of third parties was permissible as regards such written instruments and a defendant could not be compelled to testify. At equity such defendants were required to answer under oath and to produce documents for inspection. No independent relief is sought, but the plaintiff is aided by having brought into court information necessary to support his claim. He can ask only for the disclosure of acts or the production of deeds, writings, et cetera, in which the opposite party has little or no interest, but which it is essential be established to show the merit of the claim. For example, one who inherits real property may ask for title deeds to trace his interest and establish his claim.

Examinations de bene esse. The Latin phrase *de bene esse* means "conditionally, provisionally; in anticipation of future need." The term is applied to bills in equity to take depositions of witnesses to guard against the possible inability of a witness to be present at the proper time in court. If the eventuality does not occur, the result of the examination will not be read into the record, and the firsthand evidence will be received. Examinations *de bene esse* are allowed when there is danger that the witness may die or be absent through no fault of his own. Unless his deposition is taken, the party needing his testimony would be at a disadvantage. Such bills are similar to bills to perpetuate testimony.

Bills quia timet. This phrase means "because he fears." Justice demands, and the law recognizes, that no person should exist in fear that at some indefinite future time action may be brought against him to upset a title, enforce a claim or liability, or in any other way deprive him of a legal right. To prevent this from occurring, a person can go into equity court and have his rights firmly established, free from contingent or future violations. In doing so, he is not seeking to guard himself against an imminent or even a certain invasion —in which case an injunction would be adequate relief—but against some future possibility.

For example, by a bill *quia timet* a person can *remove cloud from title,* compelling the cancellation of any invalid record or document that might tend to show an apparent defect in his title. An unscrupulous defendant, in fact, might retain such an instrument for a period of years, in the hope that the plaintiff would lose evidence of its invalidity. The action is often necessary to aid the plaintiff in securing the present marketable title to his property in anticipation of its sale.

Receiverships. Innumerable occasions arise when the rights of one or both parties to a civil action require that a property or business be operated by a disinterested court-appointed third party. The equitable remedy of receivership—one of the earliest developed in the chancery courts—is still among the most frequently sought types of relief. Among the many situations in which a receiver may be asked are the following: while a partnership is being dissolved, or to protect the interests of the widow of a deceased partner; while a lien or mortgage is being foreclosed; while a judgment is being put into effect, or during the pendency of an appeal from a judgment; during an action by a vendor to create a fraudulent purchase of property; during garnishment proceedings; when a creditor wishes to subject property or funds to his claims; when a company is being dissolved.

The most newsworthy type of receivership is that in which mismanagement and/or fraud is charged by stockholders, creditors, or a government official or agency. The difference between an ordinary chancery receivership and a bankruptcy receivership, however, must be kept clear. In the former case, the business is not necessarily dissolved. In fact, exactly the opposite usually is the case:

BY STOCKHOLDERS

Receivership for the Federal Power company is sought in a petition which was on file in Center county circuit court today. Filed Saturday by three stockholders, it asked for appointment of a receiver "to recover assets, operate the corporation and take the necessary acts to pay dividends on preferred stocks."

The three stockholders are John Ross, Richard Holland and A. J. Patrick, all living in or near Centerville. They named the utility's present officers and directors as defendants.

Three stockholders charge "many wrongful and fraudulent acts committed by the management of the corporation which resulted in large losses to stockholders on admissions and confessions contained in a statement of claims filed by present officers and directors of the company before the Securities and Exchange commission."

The Federal Power company is said to have 25,000 share-holders, mostly in Montana, and sells gas and electricity to 100 other communities. It was formed here in 1920.

The complaint alleges that the firm was "swindled and defrauded out of more than $40,000 between 1923 and 1930 by the Middle Western Light and Power

company through inside deals and manipulations accomplished by the same persons serving as directors and officers of the same three companies."

BY STATE OFFICIAL

Attorneys for Rosewood Cemetery today issued a categorical denial of charges made by Attorney General Thomas Adams last week when he filed suits charging Rosewood and three other local cemeteries with misapplication and fraudulent use of perpetual care funds.

In filing his suits to throw the cemeteries into receivership Adams issued a public statement declaring his move was only "to clean up an unhealthy condition." Adams said he intended to drive out of business "every dishonest operator and promoter of cemeteries" in this area.

Within ten minutes after release of Adams' statement, spokesmen for two of the four cemeteries—Oak Lawn and Beautiful Pines—had made flat denials of the charges. The new denial made this morning, came from Attorney Clyde Barrett, representing Rosewood Cemetery.

Although Adams said Rosewood had made "an incomplete report" of its financial operations in response to his request for particulars, Attorney Barrett declared the cemetery has at all times attempted to comply with "all reasonable requests" from Adams' office.

Pointing out that the Roseveill Corporation was organized in 1918 and has sold 9,000 lots, all with perpetual care agreements, Barrett said it was a physical impossibility to furnish Adams with a complete list of lot owners in the time Adams set.

BY GOVERNMENT AGENCY

Philadelphia, July 3.—(UP)—Charging "gross abuse of the trust" of its 400,000 investors, the Securities and Exchange commission today asked the United States District court in Minneapolis to appoint a receiver for Investors Syndicate, the nation's largest investment company.

The court set July 9 for a hearing on an SEC motion to halt payment of cash surrenders and loans to certificate holders pending determination of an SEC civil action filed against the company in Minneapolis yesterday.

Also named defendants in the suit were two subsidiaries, Investors Mutual, Inc., and Investors Syndicate of America, Inc. and 32 directors, officers and divisional sales managers of the three companies which together operate in 43 states and the District of Columbia.

New Loans Suspended

The continuance asked by the companies to permit study of the charges was granted on provision that new payments be impounded and no new loans made until further court action.

The commission said the company, using such slogans as "Help Set the Rising Sun," fraudulently represented that their shares were "safer than United States War Savings Bonds" and were "sponsored and guaranteed by the United States Government and the Securities and Exchange commission."

"Issues Never Registered"

Actually, the commission said, many of the companies' issues totalling more than $1,500,000,000 since 1925, were never filed with the commission. Total capitalization of the three companies is nearly $2,000,000.

Asking that Investors Syndicate be restrained from underwriting its subsidiaries, the SEC charged in its 16-count complaint that the companies' savings certificates are "contracts of penalty and forfeiture."

Calls Scheme Fraudulent

"Investors Syndicate devised a fraudulent scheme and course of business to sell certificates and accept payment from certificate holders," the SEC said. It added that as the maturity dates approached investors were urged to exchange their certificates for a new series maturing at a later date.

The complaint asked that the individual defendants be enjoined from acting as officers or directors of the three companies. Of the individuals, half are company officials with offices in Minneapolis and the remainder are divisional sales managers.

Officials of the companies include Earle E. Crab, president and board chairman of all three companies; Ernest M. Richardson, vice president and director of the three companies, and Investors Syndicate sales director; and Ralph E. Kennon, secretary of the three companies.

A receiver is a temporary court officer who holds property as a custodian for the benefit of the real owners, with whom title remains. He operates to prevent rather than to redress injuries. He is responsible to the court that appointed him and must receive court approval for all his actions.

Federal Judge William Carruthers today authorized receivers for the Castledom hotel to pay to County Treasurer Alfred Knudson $234,000 due on the balance of taxes for the years 1935, 1936 and 1938.

Payment of the 1937 balance was not authorized, according to Hamilton Fisher, attorney who represents the hotel's receivers, because of litigation now pending in the county court on a technical objection.

Fisher explained that objections to the taxes for 1935, 1936 and 1938 were settled with a reduction of 15 per cent. He said the taxes would be paid within 30 days.

Receivers for the hotel are Roger Matheny, president of the school board, and Winston Hall.

Some receiverships seem to be perpetual rather than temporary. When, after a long period of months or years, the financial status of a business does not improve sufficiently to warrant returning it to its owners, reorganization or bankruptcy proceedings may be instituted. (See Chapter 12.) If this does not happen or if, after a business has improved, the court persists in maintaining its control, there may be valid grounds for investigation. Newspapers have performed valuable services in exposing various irregularities in connection with receiverships—including negligence in dissolving them after the need for them has passed. In such cases, the recipients of court appointments generally do not wish to surrender their lucrative positions. Scandals may also arise out of the fees paid receivers, the prices paid by receivers for commodities necessary for the conduct of the business, the political connections of those from whom the purchases are made, the limited number of law firms or business concerns from whose members receivers are appointed, and from similar situations.

CHAPTER 11

Property and Inheritance

EVERYONE owns or rents property. Many buy or sell houses or buildings, obtain or invest in mortgages, get involved in foreclosure proceedings, or have their land taken over by the government in condemnation proceedings. Everyone also dies and leaves personal property, at least, to be disposed of.

In all these matters, which deeply affect the everyday lives of millions, the courts are umpires and arbiters. Every new "twist" that any judge gives a law in an individual case affects thousands of other persons. In its role of public informer, the newspaper makes it unnecessary for the ordinary reader to consult a lawyer regarding the basic legal principles governing property and its inheritance. The newspaper, by careful reporting of such news, also satisfies the urge for information concerning the activities of prominent persons and buildings and geographical areas. A change in the ownership or use of a piece of land, especially if there is a building upon it, can affect the welfare of an entire community. Likewise, the death of a leading citizen can have widespread ramifications as his holdings come into new possession and as the leadership he exercised in business and civic affairs passes to successors.

Property

The Romans believed that everything should have an owner. Consequently, their "principle of occupancy" was that any person could have what no one else claimed—an abandoned movable object, trees, game animals, and enemy plunder. This was the natural way to acquire things, and in early societies most ownership was probably joint or communal. The concept of private property probably awaited the weakening of communal or familial responsibility for the acts of individual members.

Although the Roman idea of private personal property seems to have been firmly established in medieval England and to have been unchanged by the Conquest, in feudal times all real property became the possession of the king. Both modern English and American law governing real property derive from the system of *tenure,* by

which the monarch made grants to the great lords or barons in exchange for promises of military and other service, and they in turn made similar grants to their tenants.

The system of tenure itself, however, never took hold in the New World. The Fifth Amendment to the Constitution provides that no citizen shall be "deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Thus, the right to private property is asserted, but under the sovereign right of *eminent domain*, either the federal or state government can acquire any property for public use, provided proper payment is made, as stipulated in the Fifth and Fourteenth Amendments.

Estates. In everyday conversation it is common to use the term *real estate* to mean land. Strictly speaking, a real estate is not the land itself, but property rights and interests in land. Under the feudal system, when all private owners were really merely tenants, the king was the actual owner, and the tenant's interest was called his *estate* in the land. It was either an estate of *freehold* or an estate *not of freehold.* The former was of uncertain duration, of which there were three principal types: in fee simple, in fee tail, life.

At modern law, an estate *in fee simple* is one that its possessor has unlimited right to possess or dispose of, by sale or will. At common law, under the tenure system, a fee simple could be created only by specifying in the deed that the owner possessed the right to *devise* (will) it without limitation. By contrast with an estate in fee simple, an estate *in fee tail* is one that cannot be deeded or willed to anyone who is not a lineal descendant. The object originally was to protect the great landed families, and the practice was legalized in 1285 by the Statute De Donis Conditionalibus. If the lineal heirs of the owner of an estate in fee tail ran out, the estate *escheated* (reverted) to the crown. It was not until 1833 that England abolished the system, which fortunately was never adopted to any great extent in the New World.

A *life estate* obviously is one that terminates upon the death of its owner. It is created either by will or by deed. A widow, for instance, may be left the use of a piece of property for as long as she lives, and after her death it passes to another who is known as the *remainderman.* Another common type is that created by a parent, who conveys property by deed to a child but reserves a life estate in it for himself. Today the end formerly accomplished by the life estate is achieved by the *trust*—a device whereby one person holds legal title for the benefit of another. A person in possession of a life estate is forbidden to commit any waste that would diminish its value to the remainderman.

Holders of estates in fee simple, or in fee tail, or in life estates were known as *freeholders* at common law. Other estates were those held for a definitely specified number of years (*leasehold*) *at will* of the owner or *at suffrance* of the owner. The lord of the manor containing freehold lands held in fee by his tenants was known as a *mesne lord.*

Modern deeds, wills, and other legal documents still contain the phrase, "lands, tenements, and hereditaments"—a phrase concocted by common law authorities to cover every species of real property. A *tenement,* in the strict legal sense, is anything of a permanent nature, corporeal or incorporeal, which may be held or be an object of tenure; in the broad sense, the term denotes any estate or interest in land, including rents and commons (profits that one person has in connection with another in the land of a third party), franchises, peerages, and so forth. Technically, a *hereditament* includes not only lands but incorporeal interests—including heirlooms, as well. The term includes everything that goes to an heir at law, and does not include such interests in land as a leasehold or life estate.

When two or more persons share ownership of property, the interest of each may be either one of *tenancy in common, joint tenancy,* or *tenancy by entirety.* If it is tenancy in common, each party has a separate and distinct title and, in the event of death, his heirs or devises get his interest. In joint tenancy, ownership is considered as a unit. If one joint tenant dies, the survivor comes into full ownership, and the heirs of the deceased joint tenant take nothing. Tenancy by entirety is similar to joint tenancy, but applies only for a title held by a husband and wife jointly. Each spouse is considered to own the whole or entirety of the property, and not merely a part. In the United States, unless a deed stipulates to the contrary, tenancy in common is assumed to exist. Hence we have the phrase "in joint tenancy and not tenancy in common," when husband and wife purchase property together and wish to avoid probate proceedings in the event of the death of either.

A *coparcenary* is a tenancy that results from the descent of inheritable property to several persons, each possessing equal title to it. Originally it was an English estate shared by two or more daughters of someone who died without male heirs, and there was no right to survivorship. In the United States it always has been possible for both daughters and sons to inherit in any way a parent wills, and coparcenaries can be destroyed by partition in equity courts.

To obtain title to real property by *adverse possession* is to prove that, after a stipulated time, no one has come forward to claim

legally what you have been occupying. The statutory period ranges from seven to twenty years, being less when the occupant begins his residence under grant of some public authority—such as through sale for nonpayment of taxes or on execution. Ordinary "squatters' rights" take the maximum of time to establish and in these post-frontier days are very rare.

Distinguished from real property are *chattels*—personal property that is capable of physical delivery and possession and is inheritable. Machinery and furniture are chattels, but houses and other buildings are generally held to be real property. Land upon which buildings have been erected is said to have been "improved." A *chose in action* is an intangible legal right to possession of property—such as to recover money due or to compensate for damages occasioned by tort or breach of contract.

Transfers of title. An important prerogative of the modern landowner is the right to dispose of his property, either by deed or by will. For his feudal ancestor, neither method of *alienation* (transfer of title to land or any interest therein) was easy. In fact, centuries of struggle were necessary before all the restrictions were removed.

Although a statute passed in 1290 during the reign of Edward I gave a freeman the right to sell property, a ceremonial mode of actual conveyance, known as *feoffment*, was required. In order for transfer of title to take place, an actual physical transfer of possession, or *livery of seisin*, as it was called, was necessary. The parties had to go onto the land, and the seller delivered a twig or clod of earth to the buyer as a token *livery in deed*. Later, a *livery in law* was permitted, which meant that the ceremony could take place anywhere in view of the premises; in time, the principals came to be represented by attorneys. The present-day delivery of a deed is the equivalent of the livery of seisin of feudal days. Under the Statutes of Frauds, such deeds must be in writing and must be "signed, sealed, and delivered."

Even after the right to alienate property was granted, a purchaser had to be beware lest the seller be without the legal right to transfer a clear, indefeasible title to him. That is, the estate might be in fee tail, rather than in fee simple. As related in Chapter 1, under the common law there was no action by which a title could be tested—with the result that fictitious suits of ejectment were instituted to circumvent the law. Originally, the *writ of ejectia firmae* issued, not to try title nor even to recover land, but to enable a tenant for years to recover damages for having been deprived of the use of the land. Ejectment suits, therefore, could be brought only by or in the name of the tenant for years and the plaintiff had to show, first of all, that the defendant from whom he rented pos-

sessed a good title. The origin of fictitious ejectment suits in the name of John Doe, plaintiff, is not known, but the purpose was to obtain a court judgment for the defendant establishing his title. Such suits were abolished in England in 1852, and since 1875 direct actions to recover land have been possible.

Similarly, a form of conveyance known as *fine* was resorted to at common law for centuries as a favorite way of "barring an entail" —which means to enable a tenant in fee tail to transform his limited fee into an absolute fee simple, and thus bar the heirs of the party alienating the property from claiming it upon the death of that party. Until the conveyance known as fine was designated as tortious in the Fines and Recoveries Act of William IV, it was accomplished by means of a fictitious suit, in which the party to whom the land was to be conveyed sued the vendor. The parties then asked court permission to reach an agreement in which the rights of the plaintiff were recognized. It is easily seen how two unscrupulous parties—neither of whom had real title—could deprive a real owner of his rights by this means. Although the practice spread to colonial America, it is now obsolete; New York did away with it in 1830.

A third type of fictitious or collusive suit was *common recovery*, which was resorted to in the attempt to circumvent the parliamentary Statutes of Mortmain, which forbad alienation of lands to religious corporations in perpetuity. The word "mortmain" means "dead hand" and is used figuratively. The statutes were enacted early in the long struggle for supremacy between church and state. In 1158 Emperor Frederick Barbarossa forbad conveyances to church corporations; in 1215 Magna Charta forbad transfers of land to them by tenants without consent of a lord; in 1279 all alienation to other than individuals was decreed to be unlawful. Until specifically forbidden in 1285, the statutes were evaded by means of default judgments in common recovery cases. For another century, until 1391, there was further evasion by means of a trust agreement, whereby title was invested in a layman who held the property for the benefit of the ecclesiastical corporation involved.

In 1736 Parliament recited the "public mischief" committed by large bequests to charity to the detriment of lawful heirs and forbad them unless made in the presence of two witnesses at least twelve months before death and enrolled in the Court of Chancery within six months thereafter. Under Victoria this restriction on deathbed bequests to charity was lightened to permit churches, public parks, museums, educational, literary, and scientific institutions to be beneficiaries; ordinary business corporations are still excluded.

Several American states at one time had mortmain laws. New York still forbids willing more than one-half of an estate to charity if there is a wife, child, or parent surviving; other states have similar laws. Virtually every state has adopted the *rule against perpetuities,* which forbids the disposing of property so that it never becomes at the absolute disposal of anyone. Usually it is possible to tie up property for only the lifetime of someone living, plus twenty-one years thereafter.

Ruling that a trust established in 1893 by the late Mrs. Harriet Singer of Baltimore, which owns the land on which the Pacific hotel stands, violates the statute against perpetuities, Judge William Thorpe in Superior court yesterday dissolved it and ordered the trust distributed among Mrs. Singer's legal heirs.

These are: Mrs. Mary Rheinhold of Washington, Me.; who receives one fourth; Gertrude Hawkins of New York, one-fourth; Mathilda Baldwin of New York, one-fourth; and Mildred Williams and Anna Thorenson, both of Philadelphia, one-eighth each.

Registering titles. Not only the interest of the principals involved, but the public interest as well, requires that there be an easy system whereby the purchaser of real estate can assure himself that the seller has a complete right to make a sale and that third parties, including government, do not have claims against the property which, as the new owner, he would have to satisfy. Consequently, every state requires some sort of registration of deeds and/or titles to real property.

Until the creation of modern recording statutes, a buyer of real estate had to have his lawyer examine the title deeds of the seller before he could be safe in accepting a deed. This method, however, was very unsatisfactory because of the danger that important title papers might be lost and that disputes might arise over the authenticity of old documents. Most of the risks were eliminated through the adoption of land registration and recording statutes in both England and the United States. Under these statutes, all conveyances of real estate must be recorded to be effective.

Even after the establishment of recording systems, it was still necessary for a buyer to have a lawyer examine the title—which he could do by looking at the original records in the office of the county recorder or register of deeds. However, this involved so much work that a device known as *abstract of title* was invented and came into general use in the United States. An abstract is simply a brief chronological digest giving the essential facts with reference to all documents, court proceedings, and other matters relating to the title to a particular piece of real estate. Abstracts are prepared by specialists, who sometimes monopolize the business in a particular county. Under the abstract system each successive

buyer of a particular piece of property, if he is cautious, will have the abstract examined by his lawyer and will not accept the title unless the lawyer's opinion shows that it is clear. A system that requires a new examination for each sale is obviously cumbersome and it results in an expensive duplication of legal work. In order to simplify the examination of titles, another device came into use —known as a *title guarantee policy*. In most large cities there are private companies, usually called *title and trust* companies or *title guarantee* companies, which make a business of investigating the legal histories of pieces of property and issuing certificates of guarantee which are similar to insurance policies protecting the property owner against attacks upon his title. In smaller places, where transfers of title are less frequent, the old abstract system is still relied upon.

In an attempt to simplify real-estate transactions further, to reduce the cost to the principals, and to place the weight of government behind the guarantee of title, about half the American states have adopted the Torrens system of title registration. It was invented by Sir Robert Torrens while he was a member of the British Admiralty office in Adelaide, South Australia, in the third quarter of the nineteenth century. The Torrens system, to repeat, provides for registration of titles, not merely registration of deeds, and no transfer of title occurs until entered on the register's books. Any loss incurred by a citizen relying upon a Torrens record is guaranteed by the taxable assets of the county through an indemnity fund. Illinois in 1895 was the first American state to adopt the Torrens system, but because the Chicago fire in 1871 destroyed most of the public records, the privately operated Chicago Title & Trust Company still does a lucrative business. Use of the Torrens system is permissive, but not mandatory.

The following news story indicates how important it may be to have clear and unincumbered title to property:

A city-wide real estate racket to force trustees of reorganized property valued at approximately $1,000,000 to "buy off" so-called nuisance suits in order that the property can be sold is being investigated by the Centerville Bar association, it was learned yesterday.

The association's inquiry committee is seeking to determine whether disbarment actions should be started against the attorneys alleged to be responsible for this practice.

Property Ready for Sale

Thousands of local apartment buildings, hotels and other property, which went into bankruptcy during the depression and were subsequently reorganized in federal court, are now coming up for final sale under the terms of the trust agreements.

Hundreds of complaints have reached the bar association that "sharpshooter"

attorneys, after purchasing a few shares of stock in the reorganized properties, are filing so-called "blackmail" suits to tie up the final sale of the real estate.

Forced to 'Buy Off' Suits

It is charged that these attorneys then force the trustees and sometimes the stockholders to "buy off" these suits so that sale of the property can be expedited.

It was learned that in many cases these "nuisance" suits have been settled immediately after they were filed and that the "sharpshooter" attorneys and their clients have profited as much as $2,000 a case.

Bar association spokesmen said it has been estimated that more than $100,000 already has been collected in this racket.

Suits Tie up Titles

These nuisance suits sometimes are filed the same day that the property is advertised for sale but in many cases the trustees do not learn of the suits until they try to get clear titles to the real estate.

Floyd E. Thorndyke, former chief justice of the Center Supreme court and president of the Centerville Bar association, refused to comment on the investigation but admitted that such an inquiry is underway.

Trusts. Most of the forerunners of the modern trust originated in attempts to evade the laws governing the transfer of property, especially by inheritance. The Roman practice of *fidei commissum*, for instance, in its essence was a simple conveyance of property to a friend who was charged with carrying out the will of the grantor. In that way the legal course of succession was broken and the natural heirs deprived of their rights either temporarily or permanently. The Romans also originated the idea of *usufructus*, or the right of temporary enjoyment of a thing, as distinct from its legal ownership.

In addition to the clergy who sought to evade the mortmain statutes, as already related, large debtors also emulated the Roman example in feudal England, to avoid satisfying the claims of rightful creditors and the execution of judgments by their creditors. The practice of conveying land to *uses* (to be held by one for the benefit of another) existed as early as the reign of Edward III. By the time of Henry VIII, the practice was so scandalously prevalent that the Statute of Uses was enacted to abolish the creation of such uses or trusts of land and to declare that legal title should be vested in the beneficiary (*cestui que trust*), rather than in the trustee. The new law also permitted the conveyance of legal interest in land by mere deed or bargain and sale without feoffment as at common law.

According to modern equitable practices, the interests of a beneficiary of a trust are regarded as analogous to a property interest at law. Equity imposes on a trustee an obligation to hold legal title only for the benefit of another, and it may compel the trustee to convey the property or to account for its proceeds. Under the

Statute of Frauds all trust arrangements pertaining to real property must be written, but other forms may be created without consideration or formality. Four types of trusts are recognized according to their means of creation: (1) *express*—by the intent of the person, either spoken or written, as in a formal declaration or will; (2) *implied*—from the intent of the person whose language or conduct is such that the court understands it as such; (3) *resulting*—although there may be no actual intention, a person's acts may cause a trust to be created, such as when he purchases real estate in the name of a third party; (4) *constructive*—if a person comes into possession of another's property, through fraud or otherwise, the courts will hold that he has a trustee's obligation toward the rightful owner.

Trusts today are created most frequently by will. Instead of leaving stocks, bonds, buildings, and other income-producing property outright to a wife or minor child, the testator appoints a trustee or trustees to whom he gives part or all of his estate for certain specified uses and purposes. The trustee takes physical charge of the property in question and sees to it that the income derived therefrom be made available for the benefit of the beneficiaries. State laws strictly regulate the activities of trustees, to prevent dissipation of assets through unwise reinvestment or waste. The historical type of use of trust to evade responsibility has been eliminated by statute. The trust also may be created by a person to take effect during his life time. A further use of the trust is in court proceedings for the purpose of protecting the interests of creditors. Statutes are written to prevent establishment of trusts for the purpose of evading legal responsibility.

Easements. The phrase "with the appurtenances" in a deed means that the purchaser of real property obtains, not merely title and the right to physical possession, but also certain rights to the use of the property of others. Such acquired rights are *easements,* and they belong to and go with the land itself rather than the owner thereof. That is, they are rights *in rem,* not *in personam.* The counterpart of an easement is a *servitude*—the obligation that other parties have not to interfere with the enjoyment of an easement.

Easements are not to be confused with:

1. *Natural rights,* which are not acquired but are inherent in the ownership of land. For example, if a person purchases land on a watercourse, he has a natural right to expect that the flow of water therein will not be interrupted. A purchaser of land has a right to use, and enjoy it, lease, mortgage, or sell it, subject only to restrictions which may have been created by purchase deed, statute, or ordinance.

2. *Licenses,* which are revocable privileges specifically granted to

a person, and are not appurtenant to the land itself. For example, by license one can obtain the right to fish, hunt on the property of another, or tie his boat to another's dock. Such rights are for limited periods of time and are not inheritable or transferable. They do not pass with sale of the property.

3. *Profits à prendre,* which is a right granted by one person to another to take something of value from his land—for example, by tapping a well, pasturing cattle, mining for coal or minerals, or chopping down trees for firewood or lumber.

4. *Public rights,* which are common to all citizens, not just the purchaser of a given piece of property. Such rights include the use of a public highway which crosses another's land or a navigable stream which flows through it.

By contrast, an easement proper is a right peculiar to the particular piece of property in question without which its possessor would be deprived of its full enjoyment. The law does not permit the creation of novel easements, so the most common types relate to rights of way, light and air, drainage, watercourses, and support for buildings. At common law, it formerly was attempted superficially to distinguish between positive and negative easements. A positive easement meant any that involved physical use of another's land—by going upon it, or for right of way, or drainage. A negative easement, on the other hand, called for no physical encroachment; typical examples were the right to light and air and to continued support of buildings.

Easements arise by grant or deed, prescription, or implication. Many of those which may be mentioned specifically in a written instrument were created by legal action. For instance, through condemnation proceedings, electric-power, gas, and telephone companies obtain the right to erect poles or to string or bury wires. Underground sewers and drain pipes underlie pieces of property owned by a number of different persons in order to accommodate a distant property owner.

Easements by prescription and implication derive from legal fictions. The former supposedly are created by long open and continuous existence, which gave rise to the fiction that at some remote time there must have been a specific grant of the right. Under the English doctrine of "ancient lights," it was decided that a man who for twenty years had received air and light through his windows from the adjoining property had a prescriptive right to continued freedom from obstruction of view. In the United States no such right is recognized by prescription, but only when created by contract—which means it is only a right *in personam.* If, however, the contract is so worded that the privilege passes on, it has the same

effect as an easement, becoming a *covenant running with the land.*

An easement by implication exists when the intention of the parties at the time the land was conveyed is easily presumed. An example would be purchase of a parcel of land shut off from direct access to a highway. In such case, it may be a presumption that the seller intended to give right of way to the buyer of the isolated property. Similarly, if there is a common driveway between two houses, a new owner of either building may presume that the right to use the driveway goes with his purchase. A further example is the right to use of a party wall—that is, a wall built under an agreement with the owner of the adjoining lot that neither may remove it without the consent of the other.

A much debatable form of negative easement is the *restrictive covenant* or private agreement to do by deed what otherwise would be accomplished by zoning and building laws. Such covenants restrict the property owner from using his land for certain purpose—such as commercial purposes—and may designate the type of building to be constructed, including stipulations as to building material, position on the lot, and cost. The most antisocial types of restrictive covenants are those which forbid rental or sale to persons of particular racial or nationality origins. (See page 312.) Since the law traditionally favors free alienation and the unrestricted development and use of property, many restrictive covenants are unenforceable because unreasonable. The covenants may also become a detriment because of changed conditions. Just as an obsolete zoning ordinance can handicap the industrial or commercial growth of a community, so can private restrictive covenants, with resultant financial loss to their supposed beneficiaries.

Foreclosures. Modern law governing foreclosure procedures is based upon principles developed in both the English common law and equity courts. At common law, if a mortgagor failed to pay a mortgage debt when it became due, he lost all claim to the property, which passed to the mortgagee. Obviously, this often worked hardship and injustice to a mortgagor who subsequently became able to meet his obligation. Consequently, most states have statutes providing for an *equity of redemption,* whereby the defaulting mortgagor has the right, within a specified period, to redeem the foreclosed property by the payment of interest as well as principal.

If not checkmated, this equity of redemption might work as much injustice to the mortgagee as its absence would to the mortgagor. Under modern practices a mortgage is really only a lien against property, with title remaining with the mortgagor. In some states unpaid mortgage debts may be satisfied by sheriff's sales of the premises to third parties. From the proceeds the mortgagee ob-

tains payment in full, if enough is realized to permit it. Any remainder goes to the mortgagor. But mortgages are now foreclosed generally by court proceedings which result in a decree under which the foreclosed property is sold subject to the right of the mortgagor and the holders of junior liens to redeem the property within time limits laid down by statutes.

The reporter who considers foreclosure law and procedure confusing can take comfort from the fact that often the courts do also, as may be seen from the situation described in the following news story:

> The foreclosure suit involving the sale of a $19,000 home to satisfy a $300 debt, which has been kicking around the courts for 15 years, had its latest appearance yesterday in the appellate court, with another reversal of judgment.
>
> The home at 49 West Sheridan road, was originally owned by Ralph and Mary Tobin. They had contracted to sell it to John Robertson, who installed a $500 furnace, paying for it on the installment plan.
>
> When the payments lapsed and $300 was owing, the Furnace corporation foreclosed on a mechanic's lien, and in 1935 sold the home at a master's sale to Peter Seward.
>
> Tobin then claimed he had never been served in the suit, and Circuit Judge Theodore Timkin set aside the foreclosure sale. Seward came right back to Judge John Wilkson, who reversed Judge Timkin, and reverted the title back to Seward.
>
> The Tobins took the matter to the appellate court, and that body reversed Judge Wilkson, making the Tobins the present owners. Nobody knows what will happen next.

A *mechanic's lien,* mentioned in the preceding story, is a claim against property that can be foreclosed in the same way as is a mortgage. Such protection to someone who provided labor or material for the improvement of property was not recognized in English common law courts. In fact, even today English law does not provide for mechanic's liens. All American states and Canada, however, have by statute allowed such liens, which apply only to the property affected and not to other assets for the defendant.

Landlords and tenants. During World War II, the dockets of courts with jurisdiction over rent eviction cases became overcrowded. Many cases involved vexatious conflicts between the provisions of leases drawn in conformity with state or local laws and O.P.A. regulations. Numerous ingenious schemes to evade rent ceilings came to light, and the controversies regarding the right of a landlord to choose his tenants on the basis of family composition or race provided plenty of copy for reporters, who formerly had ignored renters' court as being generally unproductive.

In comparatively normal peacetime, the case of the pathetic widow put out onto the street is always good for a tear-jerking feature, as is the underprivileged family seeking court action to

compel a hardhearted landlord to live up to the city's ordinances regarding provision of adequate heat and other facilities to tenants. For the protection of landlords against rent defaulters, some states permit *distress warrants,* which are writs ordering the sheriff to levy upon the chattels of the tenant in the interest of the landlord. Courts also order the *eviction* of persons in illegal possession of another's premises, and violation of a lease or refusal to move at its expiration naturally constitutes illegal possession.

In legal language, the offense of illegal possession of another's property is *forcible entry and detainer,* and renters' courts may formally be listed that way. The "forcible" part has long been a fiction—any entry without the consent of the rightful owner is considered contrary to the public peace. Likewise, mere refusal to surrender possession after a legal demand is called "forcible detainer." Newspapers use the popular term, "eviction."

Judges usually make a laudable attempt to apply rules of common sense and humanitarianism in eviction cases—if for no other reason than that it is good politics to be on the side of the underdog, especially when the incident obtains publicity. During the wartime housing shortage, the chief justice of the Chicago municipal court made himself popular by ordering the enforcement of a thirty-year-old statute forbidding landlords to refuse tenants because of small children in the family. The following is one of numerous stories which followed enforcement of this law:

In the first conviction under an old Illinois statute that makes it an offense for a landlord to refuse to rent to persons because they have children under 14, George J. Stungis, 47, of 6917 South Washtenaw avenue, was fined $100 and costs yesterday.

Judge Joseph B. Hermes, who heard the case without a jury, assessed the maximum fine under the law.

Stungis, a teller for the Drovers Trust & Savings bank, denied that he discriminated against children. He testified that he rented to several tenants with families. He, however, maintained his right to rent to a tenant acceptable to him.

Woman Has Four Children

The woman whose eviction from Stungis' apartment building at 8158 South Wood street, precipitated the case is Mrs. Margaret Considine, employe of the Cook County hospital. Her children are Donald, 18; Eileen, 14; Margaret, 11 and Richard, 8.

Dennis O'Hare, now of 8136 South Wolcott avenue, who formerly lived in Stungis' building, testified that last May he bought a home and notified Stungis that he wished to move and sublease the four months his lease had still to run.

O'Hare said Stungis first refused to allow him to sublease to the wife of an Army flier, now in overseas service, because she had three children. O'Hare said Mrs. Considine then answered an advertisement and again Stungis objected. But O'Hare rented to her, anyway, with the stipulation that she understood Stungis' attitude.

Court Orders Eviction

Later, she said, Stungis came to the apartment, declared she was a trespasser and demanded that she move. She refused and was taken to Renters' court. An eviction judgment was found against her, she said, and she had to move on Aug. 4.

Stungis denied telling O'Hare he would not rent to families with children, although he admitted he might have said he "preferred adults." He said that he did tell O'Hare that if he was going to move, he (Stungis) had the right to determine if the new tenants would be acceptable.

Stungis' attorney, H. V. Silvertrust, announced an appeal, and his client posted a $100 appeal bond.

—Chicago (Ill.) *Sun.*

More vexatious are the *restrictive covenant* cases involving members of minority groups, especially Negroes. Real-estate boards are adamant in defense of such covenants as parts of leases forbidding sale or rental to colored people and, not infrequently, to Jews and other racial or nationality groups. On the other hand, social agencies and organizations interested in the improvement of the standard of living of minority groups and in better racial relations bitterly oppose them. They contend that the covenants often create virtual ghettoes by forcing large populations to live in areas much too small to accommodate them, with resultant social evils. To date, appellate court decisions have mostly upheld the restrictive clauses in private contracts. A few bold judges, however, continue to defy these opinions, as is illustrated by the following news story:

There is no place in this country for the Nazi "herrenvolk psychosis" and its discrimination against minorities, Municipal Judge Samuel Heller ruled today. On that basis he rejected an attempt by a landlord to enforce a lease containing a clause barring Negroes.

The case was a suit in Renters' court brought by Alice M. Chew, owner of lodgings at 412 North Clark street, to oust Henry Reichard, lessee of the second and third floors. Reichard had rented rooms to Negroes, the bill charged, in violation of a clause in his lease specifically excluding them.

"The covenant contained in the lease," Judge Heller ruled, "is based on the theory of 'superior' and 'inferior' races and is an attempt to legalize the segregation of citizens lest the 'superior' one be contaminated by the 'inferior' one.

"This pseudo-philosophy is the basis of the minority problems confronting many nations, and no country has ever solved this problem through hate and discrimination. The Negro problem in the United States is no exception to this rule. Here, as elsewhere, racial prejudice is a double-edged sword. It violates the rights of helpless human beings and it degrades those who indulge in it.

"The 'herrenvolk psychosis' has no place in a country whose basic law is the United States Constitution with its immortal Bill of Rights. The Constitution is not just a grant of paper rights to be brandished as a cover-up for the development of Fascism in the name of democracy. Sophists and quibblers may bend it, twist it and emasculate it so that the Constitution is transformed from a barrier against oppression to a legal front for the oppressor.

"The Constitution of the United States is the basic law of a republic, which

recognizes only one class of citizens. All are subject to the same obligations. All are entitled to the same privileges.

"Any attempt on the part of any citizen to deprive any other citizen of the enjoyment of any privilege by means of Fascist solutions, such as 'Gentiles only' or 'whites only,' is repugnant to the spirit of the Constitution and, therefore, should not be enforced in any court in any state of the Union."

—Chicago (Ill.) *Daily News.*

The inquisitive reporter may find renters' court a fruitful source of tips for stories, columns, and editorials. An example is the following story by Herb Graffis in the Chicago *Times* under the title "Racket in Misery":

One of the lowest rackets conducted in this town has as its victims poor people who are evicted from their homes.

While the evidence is being gathered to burn out the unsavory chiselers, I'll tell you how the racket is worked.

A woman with five children and expecting another one, was tossed out of her $11-per-month home back of the yards. Her husband recently had got a job as a trucker and was out of town on a long trip.

So the bewildered woman and her youngsters, and furniture worth probably less than $70 were on the sidewalk by court order. A fellow who worked with the bailiff said to the frightened woman:

"Listen, there's no sense to leaving your furniture out on the sidewalk. Maybe it'll get rained on. I'll have it stored for you until you find a place to live, and storage won't cost you a cent."

Then the fellow hunts up a phone, and the woman, at a neighbor's advice, hunts up a man who sees to it that the kids get fed and get new clothes instead of the rags they were wearing.

Then the man heard the rest of the woman's story. When she came to the part about the stranger with the bailiff, the man who was giving first aid to the out-of-luck mother shook his head sadly and asked:

"Lady, who's got your furniture now?"

The woman produced a scrap of paper on which the fellow had written a telephone number. It was of a storage company on Wentworth avenue, and the first-aid man immediately knew the same old curve had been thrown into another family in distress.

Sure enough, the storage company wanted $50.80 from the woman's husband before the furniture could be reclaimed. The itemized bill was cute. There was no storage charge, but there was $30 for moving the pitiful furniture to the warehouse, $7.50 for labor, another item for wrapping, another for insurance and then there were incidentals.

Some very competent investigators now digging into this racket say that the incidentals include petty grafts to tipsters and accomplices who already are on the taxpayers' payroll.

This exploitation of people who are out of luck is done on an energetic and organized basis by the racketeers going to court records and learning who is going to be evicted.

The racket has been a soft one for specimens low enough to engage in it. And because it had preyed on people who are scared, broke and have "no connections" the racket has been conducted with impunity.

But it won't be that way long, so I am told by some strong and decent Americans.

Condemnation suits. Under the sovereign right of *eminent domain,* a governmental unit can force a private owner of property to sell his holding, provided that proper legal procedure is followed, the public use is for the public good, and just compensation is given. The proper legal procedure is a condemnation suit begun by petition. It is for the court to determine whether the contemplated use is in the public interest and to fix the price to be paid. What follows is a typical petition to condemn:

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY
CONDEMNATION

FOREST PRESERVE DISTRICT OF COOK COUNTY, ILLINOIS
vs.
JEANETTE HOLTON LAWLER formerly known as Jeanette L. Holton, individually and as Trustee under the Last Will and Testament of Ray C. Holton deceased.
No. 42C 8020

PETITION TO CONDEMN

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT
OF COOK COUNTY AND STATE OF ILLINOIS:

Your petitioner, the FOREST PRESERVE DISTRICT OF COOK COUNTY, ILLINOIS, respectfully represents:

1. That it is a municipal corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and particularly under and by virtue of an Act of the General Assembly of the State of Illinois, approved June 27, 1913, in force July 1, 1913, entitled "An Act to Provide for the Creation and Management of Forest Preserve Districts and Repealing Certain Acts therein named" and amendments thereto, and by virtue of a decree entered in the Circuit Court of Cook County, November 30, 1914, organizing the Forest Preserve District of Cook County, having boundaries coterminous with the boundaries of the territory embraced in said Cook County, to the record of which Act and decree reference is hereby prayed.

2. That by the said Act of the State of Illinois hereinabove referred to and acts amendatory thereof, duly enacted by the said State, the petitioner herein was duly authorized and empowered to create forest preserves and to acquire by gift, grant, devise, purchase or condemnation, land necessary and desirable for Forest Preserve purposes, and to acquire and hold lands containing one or more natural forests or parts thereof or lands connecting such forests or parts thereof, for the purpose of protecting and preserving the flora, fauna and scenic beauties within such district, and to restore, restock, protect and preserve the natural forests and said lands together with their flora and fauna as nearly as may be, in their natural state and condition, for the purpose of the education, pleasure and recreation of the public.

That by said Act and acts amendatory thereto, the petitioner herein is also authorized and empowered to acquire in like manner lands for the consolidation of such preserves into unit areas of size and form convenient and desirable for public use and economical maintenance and improvement, and when, in the judgment of the Board of Commissioners, the public access, use and enjoyment of such preserves and other purposes of said Act will be served by connecting any such preserves with forested ways or links, lands for connecting links of such width, length and location as the Board of Commissioners deem necessary or desirable may also be acquired and held for such purposes and improved by forestation, roads and pathways.

That by said Act and acts amendatory thereto, said Forest Preserve District is also empowered and authorized to acquire lands along water courses or elsewhere which, in the judgment of its Board of Commissioners, are required to control drainage and water conditions and necessary for the preservation of forested areas acquired or to be acquired as preserves; also to acquire unforested lands adjacent to forest preserves to provide for extension of roads and forested ways around and by such preserves and for parking space for automobiles and other facilities not requiring forested areas but incidental to the use and protection thereof.

3 That by the said act hereinabove referred to, and the amendments thereto, the petitioner was given and has the power and authority to exercise the right of eminent domain and to proceed under said power and authority in accordance with the statutes of the State of Illinois.

4. That after the organization of this petitioner, it proceeded to acquire by gift, grant, purchase or condemnation, title to many acres of land within said Forest Preserve District, for the uses and purposes authorized by law, and at the present time has acquired and is maintaining many acres of land for said uses and purposes of said Forest Preserve District.

5. Your petitioner further shows that the lands and premises hereinafter described, all of which are situated within the boundaries of said Forest Preserve District, are necessary and desirable for the lawful uses and purposes of said petitioner as hereinabove set forth, and also are of the character and nature of lands which the statute of the State of Illinois authorizes and empowers this petitioner to acquire as hereinabove set forth; that pursuant to the powers vested in the petitioner by the said act hereinabove referred to and the acts amendatory thereof, the petitioner herein has determined to acquire and by this proceeding seeks to acquire the property hereinafter described for the purpose of creating a Forest Preserve and for Forest Preserve uses; that said lands hereinafter described contain one or more natural forests or parts thereof; that said lands are necessary for the consolidation of forest preserves into unit areas of size and form convenient and desirable for public use and economical maintenance and improvement; that said lands are lands along water-courses necessary to control drainage and water conditions; that said lands are necessary for the preservation of forested areas acquired or to be acquired as preserves; that said lands are necessary for the extension of roads, forested ways around such preserves and for parking space for automobiles and other facilities not requiring forested areas but incidental to the use and protection thereof.

6. Your petitioner further shows that it has been unable to agree with the parties who are hereinafter named as to the compensation to be paid for or in respect of the lands and premises hereinafter described, and in which they are respectively interested, and the said Forest Preserve District of Cook County, Illinois, did thereafter duly resolve and order that said lands and premises be acquired as provided by the law of eminent domain.

7. And your petitioner now seeks to acquire, for the purposes aforesaid, and for the uses aforesaid, the lands and premises in the County of Cook and State of Illinois, described as follows:

> Lots Twenty-one (21), Twenty-two (22), and Twenty-three (23) and the South Three Hundred Feet (300') of Lots Eleven (11) and Twelve (12) in Assessor's Division of the Northwest Quarter (NW¼) of Section Twelve (12), Township Thirty-six (36) North, Range Twelve (12) East of the Third Principal Meridian, in Cook County Illinois.

together with the improvements thereon, and all private interest in so much of the public roads, streets and alleys as in anywise about the said lands and premises, and the names of the parties interested in said above described premises, as owners or otherwise, appearing of record, are as follows: JEANETTE HOLTON LAWLER, formerly known as Jeanette L. Holton, a widow, individually and as Trustee under the last Will and Testament of Ray C. Holton, deceased; MARY JONE BOHLING· NICKOLAS BOHLING, her husband; BARBARA ANN BOHLING, a minor; MARJORIE LOUISE HOLTON, a spinster; JOHN DAVID HOLTON, a minor; CHICAGO TITLE AND TRUST COMPANY, an Illinois Corporation; and MARSHALL FIELD AND COMPANY, a corporation.

8. Your petitioner further shows that it is informed and believes that there are other persons whose names are unknown to your petitioner, who have, or claim to have, some interest in said described premises, and your petitioner prays that said persons be made parties defendant hereto by the description of "UNKNOWN OWNERS."

9. Your petitioner, therefore, prays that process may issue to the parties above named, as defendants, and that due notice according to law may be given to the owners and parties interested and to the Unknown Owners of said lands and premises aforesaid, and that the just compensation to be made to the several owners or persons claiming interest in said premises, on account of the acquirement of title thereto and the use thereof by your petitioner, for the purposes aforesaid, may be ascertained and assessed, and that such further proceedings may be had in the premises as is by statute in such case made and provided.

FOREST PRESERVE DISTRICT
OF COOK COUNTY, ILLINOIS

BY: _____

_____

_____

Usually the court proceedings are routine in condemnation suits, out-of-court agreements already having been made. In such cases the news item is brief and factual:

An order condemning 2,500 acres of land bordering the lake between Centerville and Mainville for use by the Army as an aerial target and artillery training center was signed today by Federal District Judge Hawthorn Webster. The land will become part of Fort Center. The order was obtained for the government by Milton A. Gordon, an assistant U. S. attorney, and gives the Army the property to be used for military purposes until June 30, 1947, with the right of renewal.

Not always, however, is there smooth sailing, as witness the following:

The Centerville neighborhood redevelopment corporation law, which provides for slum clearance by community redevelopment corporations with the power of eminent domain (the power to seize private property for public use), was held unconstitutional yesterday by Judge John Wilkson of Circuit court.

Judge Wilkson issued his opinion from a sickbed. In holding the law to be unconstitutional, the court granted an injunction to John Duncan, 6750 North Winthrop avenue, who as a taxpayer, sued the city from enforcement of the act which was passed in 1941 by the state legislature.

Insufficient Control Seen

Pointing out that the statute does not make sufficient provision for public control and regulation of slum clearance property, Judge Wilkson stated:

"To justify the taking of private property from the owner without his consent, even for adequate consideration, the law must extend its control over the property after it has been condemned, to insure its devotion to the declared public purpose and uses.

"The present statute does not meet these requirements and is unconstitutional.

"Through this statute it is genuinely attempted to encourage private enterprise to promote and finance the sorely needed clearance and rehabilitation of slum and blighted areas in our cities. Beyond any doubt it is a laudable purpose of paramount importance. The combining and co-ordinating of private capital with purposes and public uses is an innovation worthy of every consideration and support.

Need for Housing Told

"But the problem is one that cannot be solved by slum clearance and public housing projects alone. Provisions must be made for some type of housing accommodations suitable and available for slum tenants, else conditions will be aggravated in remaining slum areas and the public purpose will be defeated."

The judge noted that after the slum clearance project is completed under this law all regulations by the city's redevelopment commission stops, and that in view of this "the purpose for which the property would be taken and used would be a private purpose for pecuniary profit and not a public purpose at all."

Private Use Assailed

"The law authorizing the taking of private property for public use on payment of just compensation does not permit the taking of private property for private use," the opinion stated.

The city, represented by a special attorney, Wilfred Thorndyke, indicated it would appeal the ruling to the state supreme court.

Inheritance

The ancient family resembled the modern corporation in that it was considered an entity. Death of its head merely meant that the chieftainship passed to another, and it is probable that the earliest forms of testaments were to name successors to such headship. Very early, however, there developed the system of *primogeniture,* familiar to students of either Hebrew or Hindu law. It consisted in the birthright of the eldest son to inherit all his father's real property to the exclusion of all others. If there were no lineal de-

scendants, the eldest male in next degree of consanguinity came into possession.

Both the ban on alienating lands by will and primogeniture persisted throughout the feudal period in England, but never spread to any great extent to the New World. In 1527, during the reign of Henry VIII, Parliament conceded the right to alienate lands by will, but *fee tails* were permitted in England and in the American colonies almost until the nineteenth century. Early traces of the right of *entail* (to break the normal course of succession) are found in both Greek and Roman law. The former permitted a person to name successors to his estate and to appoint substitutes for those first named. The latter developed a form of trust known as *fidei commisum,* whereby a series of successors to the enjoyment of property could be named, even though technically the descent was not broken. Eventually the courts sanctioned what originally was only a moral duty.

Descent and inheritance. Modern American laws of descent and inheritance strike a compromise between the unrestricted right of entail and protection of the rights of a surviving spouse. If a married person dies *intestate* (without leaving a will), the statutes stipulate as to how both his real and personal property shall be distributed among his relatives. Usually a surviving spouse receives most or all of the personal property and half of the real property, if there are no children, with the other half of the real property being distributed equally among other close relatives, such as parents, sisters, and brothers. If there are children, the surviving spouse usually receives only one-third of the real property and, perhaps, a smaller share of the personal property. When there are children, it is unlikely that other relatives—parents and sisters and brothers —will receive anything.

Under the common law, a widow had the right to a life estate in one-third of the real property owned by her husband—this right being known as that of *dower.* Some states enlarged upon this right to make it one in fee simple—that is, absolute ownership. Where the right to dower persists, it is necessary for a wife, during the lifetime of her husband, to waive her dower rights whenever he disposes of a piece of property. Otherwise, she might, after his death, assert her right to dower against the property which he sold without her joining in the conveyance.

Under the common law, also, a husband had a parallel right known as *curtesy* in the real property of his wife. In many states the term has been abolished by statutes and the husband is entitled to a similar right under the term "dower."

A popular means of preventing dower rights from attaching is

for a husband to have his title to property conveyed directly to a trust company under what is known as a *land trust agreement.* In such cases, the husband does not appear in the chain of title owners. He has only a beneficial interest in the real estate, and this interest is considered to be personal property so that dower does not attach.

After her husband's death, a widow can usually elect either to take her dower rights or to abide by the provisions of her husband's will in the event he died *testate* (having made a will). She is thus protected against being cut off entirely. In most states, however, children can be disinherited by a parent's will—the mere omission of mention of them being sufficient for that purpose. Some states, however, have statutes forbidding this to happen. The statute may provide that all children must be mentioned in a will; otherwise, it is presumed that they were inadvertently overlooked and they can take the share to which they would be entitled if there had been no will. Of course, if a son or daughter believes that a will is unfair, an attempt may be made to *break* the will by a law suit charging that the parental testator was of unsound mind at the time he perfected the instrument, that he was unduly influenced, or that the will is invalid for some other reason.

In the event there are no persons competent to inherit, the estate of a person dying intestate escheats—that is, it becomes the property of some unit of government as stipulated by statute. Usually that unit is the county, but, as in Maryland, it may be the county commissioners for public schools or some other governmental agency.

The tendency is toward state laws becoming more rigid and definite as to what constitutes a valid will. In many states it is no longer adequate merely to have witnesses to a testator's signature. Such witnesses must be able to testify that they actually saw the testator sign, that he appeared to be in sound mind, that they signed as witnesses in his presence and at his request and with full knowledge as to the nature of the document to which he had affixed his signature. An oral will is known as a *nuncupative* will and may be valid if made by a soldier or sailor in the presence of two witnesses. A *holographic* will is one written entirely in the handwriting of the testator, but unwitnessed. It may also be legal if made by someone in the armed forces. Some states permit noncupative and holographic wills by anyone, but may limit the amount of property affected by them. Many states do not recognize them at all.

Contemporary dictionary definitions of *will* and *testament* are virtually synonymous, which makes the phrase, "last will and testament" seem redundant. In their origin, however, the terms were dif-

ferent. Strictly speaking, a testament is any act by means of which a person directs what disposition shall be made of his property after death. The modern way of designating this is by will—a legal statement of such wishes. In ancient times, however, either the church or the king might be the custodian of a testament made in accordance with rules different from those governing the preparation of legal wills. In other words, the testament is the statement of intention and the will is the means by which it is made.

There are also legal differences between other words that laymen may use interchangeably. For instance, a *devise* is a gift of real property by will; a *bequest* is a gift of personal property to a nonrelative; a *legacy* is a gift of personal property to a relative. Anyone who receives anything under a will is a *beneficiary;* an *heir* is one of the relatives of a deceased person who is designated by statute as a beneficiary of his estate if there is no will. He is said to *inherit,* and what he gets is an *inheritance.* A *codicil* is an addition to a will already made; to be valid it must be prepared with the same legal formalities as the original.

Filing wills. The first step in settling the estate of a person who dies leaving a will is to file the will for probate in the court having jurisdiction. This is done usually by the attorney for the executor. The statutes require that anyone in possession of a will must file it in the proper court or be subject to severe penalties. The document is received by the clerk of the court, who usually keeps at least two sets of records—one listing the wills chronologically as they are received, the other listing them alphabetically. If the deceased left an estate requiring administration, a *petition* for probate of the will is filed, and issuance of *letters testamentary* to authorize the executor to act is requested.

The newsworthiness of a will filed for probate differs in accordance with numerous factors. Whenever anyone of prominence dies, there is public curiosity to know how much he left and to whom. The largeness or smallness of his estate, its nature, the beneficiaries, or some unusual provision of the will may be the feature. For the general run of wills in large cities, newspapers usually have an arbitrary rule based on the total estimated value of the estate to determine whether it is worth mentioning. In small places, most wills, regardless of the size of the estate, are deemed newsworthy.

Potential ingredients of stories regarding the filing of a will for which the reporter must be on the alert include the following:

1. *Tie-back to the obituary.* The deceased's name, occupation, residence, and age; date, place and cause of death.

2. *Size of the estate.* Does it correspond to what most people would expect, or is it unusually large or small? Bear in mind that

the value mentioned or inferred in a will may not correspond to actual value—especially if the will was drawn years before death. In fact, it is often impossible to get an accurate idea of the estate's value from the will itself. The attorney or relatives can be interviewed to obtain estimates of present value, or the reporter can consult stock market and other reports to estimate the current values of stocks and bonds and other property.

3. *Nature of the estate.* Is it in real or personal property? Does it represent a controlling or sizable interest in some business, so that the future of the business will be affected by the execution of the will's provisions? Does the estate include any rare objects of art or other items of unusual interest? Perhaps a business activity not hitherto known is revealed in the will.

4. *Nature of the beneficiaries.* Any deviation from what normally would be expected is newsworthy. Possibly an estranged relative is disinherited, or, on the other hand, and perhaps more unusual, remembered despite years of estrangement. Usually a wealthy person leaves a certain proportion to charity, perhaps establishes a memorial fund dedicated to his own memory; he may remember servants, friends, and relatives. There is human interest when someone of moderate means suddenly falls heir to a large sum—especially if it is in gratitude for some generous or upright behavior. When control of a prominent business enterprise or ownership of a widely known art treasure, race horse, or other distinctive piece of property changes hands, it is newsworthy.

5. *Date and place of making the will and the witnesses.* Did a recently made will contain provisions importantly different from those known to have existed in earlier wills? Did codicils to a will do the same? If such is the case, the reporter may have to seek an explanation through interviews with attorneys, witnesses, relatives, and others.

6. *Who is the executor?* Is it an unusual appointment from any standpoint?

7. *What is the inheritance tax likely to be?*

8. *Unusual features.* Did the will contain any statements related to matters other than disposition of property? Did the testator reveal anything hitherto unknown regarding his life or about others? Did he make any remarks—kind, caustic, or otherwise—about any of the beneficiaries, or in any way deviate from orthodoxy?

A different element of news interest is emphasized in each of the following typical articles:

SIZE OF ESTATE

The late Thomas Turner, founder and head of the Turner Warehouses, Incorporated, left an estate valued at approximately $1,000,000, the bulk of which

is to be shared equally by a son and four daughters. This was disclosed late yesterday when his will was filed with Probate Clerk Theodore Weisman. Mr. Turner died Saturday in the family home at 52 Main street.

Valuation of the estate was estimated by Attorney Robert Banks of the firm of Wilson, Banks and O'Brien, who filed the will. By far the largest portion of the fortune, Banks said, consists of shares of common stock of the Turner Warehouses business. There are some Centerville real estate holdings and a block of securities that includes bank stocks and other preferred paper among the assets.

Five Year Trust Created

Under the terms of the will which was drawn up by Mr. Turner on Nov. 5, 1938, and amended in a codicil dated April 3, 1944, almost the entire estate is placed in a five year trust, the income from which will be shared by the children. At the end of this period the principal will be divided equally among them or prorated in five equal shares to their descendants.

Thomas Turner, Jr., president of the warehouse company for many years before his father's death, was named executor of the will and trustee of the estate. His sisters are: Mrs. Wilma Duncan of Long Island; Mrs. Helen Price of San Francisco; Mrs. Maude Atkinson of Chicago; and Mrs. Alice Sterling of Center Heights.

Three Bequests Made

Three specific bequests were made by Mr. Turner, in addition to the creation of the trust. The largest of these was to Miss Henrietta Baker, a nurse who attended him for several years before his death. A specific block of securities, including 150 shares of Turner common stock, was given to her in the will. Attorney Banks said the value total of this bequest would amount to $40,000.

The two others were to Robert Turner, a nephew, and Sam Brown, for years the family chauffeur. Robert Turner was given 200 shares of Turner common stock and Brown was given 100 shares. The will also provided that all Mr. Turner's personal belongings, books, paintings, prints and objects of art be divided among his children.

NATURE OF BEQUEST

Gift of the late Dean John H. Wigmore's law library to Keio University in Tokyo and a bequest of $100 to his Japanese translator, Susumu Nomachi, as provided in his will, were set aside by his widow, Mrs. Emma H. V. Wigmore, her will filed for probate yesterday, revealed.

Mr. Wigmore, dean emeritus of the Northwestern University law school, died Aug. 22, 1942. His wife died April 20 of this year. They had identical wills, to guard against litigation in the event of their joint death in a disaster.

Dean Wigmore's will provided, however, that should his wife survive him by three months, she would receive the entire estate, valued at $35,000.

In Mrs. Wigmore's will filed yesterday, the Japanese bequests had been stricken out. It left $10,400 to 15 individuals and $11,500 to half a dozen charities, mostly in Evanston.

Royalties from Dean Wigmore's books are divided between his secretary, Miss Sarah B. Morgan, and a sister, Mrs. Violet W. Densham.

—Chicago (Ill.) *Sun.*

BENEFICIARY

A "friendly church" and two kind-hearted neighbors who cared for Mrs. Sarah Fiske, 78, before her death last April 1, were not forgotten when she made her will, it was disclosed yesterday in Probate court.

Mrs. Fiske, a widow with no surviving relatives, left her home and its furnishings to the neighbors, Lawrence and Fanny Torrence, who shoveled snow from her walks, mowed her lawn and often brought her soup.

The remainder of her $40,000 estate was left to the First Reformed Church of Roseland, 107th street and Michigan avenue, according to the will filed by James Laughton, attorney.

UNUSUAL INSTRUCTIONS

The strange will of D. B. Holland, 80, who died July 1 in his home at 1758 South Wilmette avenue, was filed in probate court yesterday.

In the will written by himself in long hand, Holland directed that after his death there be no services and that his body be placed in a plain rough box and sent to a crematory.

He also requested that there be no preacher or preachers, no prayer or prayers, no music, no flowers and no congregating of relatives or acquaintances. The will also directed that "positively my body shall not be viewed by relatives, acquaintances or anyone, except the undertaker and the necessary crematory attendants."

Holland, a retired salesman, left his estate valued at $3,000, to his daughter, Mrs. Romona Walker of New York. All terms of the will were carried out on July 2.

Admitting to probate. Either at the time a will is filed for probate or shortly thereafter a petition to *admit the will* to probate is also filed. Usually the court has a printed form to be filled in for this purpose, and the completed forms may not be available for examination by reporters. The petition ordinarily includes the name, address, and date of death of the decedent; name and address of the *executor* or *executors,* a person or persons named in the will to take charge of seeing that its provisions are put into effect; approximate value of real and personal property; and the names, relationship, and addresses of heirs, devisees, and legatees.

The petition also includes a request that *letters testamentary* issue to the executor or executors, and it may suggest the names of disinterested persons to be appointed to make an appraisal of the estate. When issued, the letters testamentary empower the executor to take whatever steps are necessary to put the estate in such shape that the provisions of the will can be carried out. The executor has the duty of finding the heirs, collecting any debts owed the estate, receiving claims against the estate, keeping any real estate in repair, and paying any bills allowed by the court.

Before a will can be admitted to probate, it must be *proved up,* which means that the court must have satisfactory evidence that it is genuine. Also, there must be *proof of heirship.* In either case testimony in open court or by deposition is received. The following are typical transcripts of testimony for these dual purposes:

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE PROBATE COURT OF COOK COUNTY

In the Matter of the Estate
of
IRA N. MORRIS, Deceased.

TESTIMONY TAKEN in the Probate Court of Cook County, Judge John F. O'Connell presiding on the 3rd day of March, A.D. 1942, in the matter of the PROOF OF LAST WILL AND TESTAMENT AND CODICIL in the above named estate.

APPEARANCES:

BLUFORD, KRINSLEY, SCHULTZ & VOORHEIS, by Mr. Lazarus Krinsley,
representing the executors;
Mr. Charles Leviton,
guardian ad litem for Ivan Morris, minor
Mr. Don M. Peebles,
representing Constance L. R. Morris, widow
Mr. Chester S. Bell,
representing Constance Irene Morris, daughter
Mr. David Bluford,
one of the executors
Mr. George W. Hoad,
one of the executors

THE COURT: I am ready to hear the Morris matter now.

MR. KRINSLEY: I would like to prove the will first and then the codicil. I would like to have the record show who were present this morning: Mr. Charles Leviton, guardian ad litem for the minor Ivan Morris is present; Mr. Peebles, representing Constance L. R. Morris, the widow; Mr. Chester Bell, representing the daughter, Constance Irene Morris. Mr. Bluford, one of the executors and Mr. Hoad, one of the executors.

Are there any other appearances here today? I represent the executors. Krinsley is my name.

Will your Honor ask the questions?

ANNA O'BRIEN

called as a witness herein, having been first duly sworn, was examined and testified in open court as follows:

THE COURT: *Q.* What is your name?

A. Anna O'Brien.

Q. Your address?

A. 145 North Mason.

Q. Were you acquainted with Ira N. Morris in his lifetime?

A. Yes, I was.

Q. How long had you known him prior to his death?

A. Well, at least ten years.

Q. How old was he or did he appear to be at the time of his death?

A. Well, between 60 and 65, I would think.

Q. I hand you a document purporting to be the last will and testament of Ira N. Morris, and ask if it bears your name and signature.

A. Yes, it does.
Q. For what purpose did you sign that document?
A. As a witness to the will.
Q. And at whose request did you sign it as a witness?
A. Mr. Morris' request.
Q. Did you see him sign the document?
A. Yes, I did.
Q. Did he see you sign the document?
A. Yes.
Q. Where was the document signed?
A. In Mr. Bluford's office, the firm of Foreman, Bluford, Krinsley & Schultz at that time.
Q. Who were present besides yourself and Mr. Morris at the time this document was signed by Mr. Morris and by you?
A. Mr. Bluford was present, Mr. Robert Moore and Mr. David Cullinan.
Q. Did you believe Mr. Morris to be of sound mind and disposing memory at the time he signed the document?
A. I did.
Q. Did he contract any marriage or adopt any child or children after this document was signed?
A. Not to my knowledge.
Q. I will ask you to examine the document and state if it appears to be in the same condition now as it was at the time you signed it?
A. I would say that it was, yes.
Q. It appears that each page of the document bears the signature of Ira N. Morris.
A. Yes, I saw him sign.
Q. Were those signatures appended to each of those pages in your presence?
A. Yes, they were. I saw him sign.
THE COURT: Are there any other questions?

CROSS EXAMINATION

By Mr. Peebles:
Q. By whom were you employed at the time of the execution of the will?
A. I was employed by the law firm of Foreman, Bluford, Krinsley & Schultz.
Q. In what capacity?
A. As secretary to Mr. Bluford.
MR. PEEBLES: That is all.

(Witness excused.)

ROBERT B. MOORE

called as a witness herein, having been first duly sworn, was examined and testified in open court as follows:
THE COURT: *Q.* Will you state your name?
A. Robert B. Moore.
Q. Your address?
A. 1700 Central Avenue, Wilmette, Illinois.
Q. I show you a document purporting to be the last will and testament of Ira N. Morris and ask if it bears your name and signature?
A. It does.
Q. At whose request did you sign that document?
A. Mr. Ira Morris'.
Q. The testator's?

A. Yes.

Q. And for what purpose did you sign it?

A. As a witness to his will.

Q. Did you see him sign the document?

A. I did.

Q. Did he see you sign it?

A. He did.

Q. Who were present besides yourself and Mr. Morris at the time the document was signed?

A. Miss O'Brien and Mr. David J. Cullinan and Mr. Bluford.

Q. Did you see Mr. Morris sign each of the pages of the will?

A. Yes, I did.

Q. Did you believe him at that time to be of sound mind and disposing memory?

A. I did.

Q. You affirm what Miss O'Brien has testified to with regard to his age and the fact that he contracted no marriage or adopted no children after this will was executed?

A. I do, your Honor.

THE COURT: Any further questions?

CROSS EXAMINATION

By Mr. Peebles:

Q. At the date of the execution of the will, by whom were you employed?

A. The law firm of Foreman, Bluford, Krinsley & Schultz.

Q. In what capacity?

A. As an attorney.

Q. Were you in any way entitled to receive any part or portion of the profits of the law firm?

A. No, sir, I am working on a salary.

Q. You were strictly on a salary basis?

A. Salary basis, yes.

MR. PEEBLES: That is all.

(Witness excused.)

THE COURT: Do you wish to produce Mr. Cullinan?

MR. KRINSLEY: Mr. Parker, a witness to the codicil.

J. FLOYD PARKER

called as a witness herein, having been first duly sworn, was examined and testified in open court as follows:

THE COURT: *Q.* State your name, please.

A. J. Floyd Parker.

Q. I show you a document which purports to be a codicil to the last will and testament of Ira Nelson Morris and ask if that bears your name and signature?

A. Yes, it does.

Q. For what purpose did you sign it?

A. As a witness.

Q. As a witness to what?

A. As a witness to this document, which I understand is a codicil to Mr. Morris' will, and as a witness to his signature.

Q. You saw him sign the signature?

A. Yes, sir, I did.

Q. Did he see you sign?

A. Yes, he did.

Q. Who were present at the time that both of you signed this document?

A. His wife, his daughter, Dr. Irons, Miss Luella Brown, the day nurse, and Mr. Albray.

Q. Did you believe him to be of sound mind and disposing memory at the time he signed this codicil and at the time you signed it?

A. Yes, your Honor, he appeared to be.

Q. And you believed him to be?

A. Yes, sir.

Q. Is this document in the same condition now as it was at the time you signed it?

A. Yes, it is.

THE COURT: Any further questions?

MR. KRINSLEY: No.

(Witness excused.)

THE COURT: Call your next witness.

PERCY ALBRAY

called as a witness herein, having been first duly sworn, was examined and testified in open court as follows:

THE COURT: *Q.* Will you state your name, please?

A. Percy Albray.

Q. Your address?

A. 219 Lake Shore Drive, Chicago.

Q. I show you a document that purports to be a codicil to the last will and testament of Ira N. Morris, and ask if it bears your name and signature?

A. Yes, sir.

Q. At whose request did you sign this document?

A. Mr. Morris'.

Q. And for what purpose?

A. To witness his signature on the codicil.

Q. Did you see him sign this document?

A. Yes, sir.

Q. And did he see you sign?

A. Yes, sir.

Q. Who were present besides yourself and Mr. Morris at the time this document was signed by him and by you?

A. Mr. Morris, Mr. Bluford, Mr. Parker, Dr. Irons, Miss Brown and Miss Morris.

Q. Did you believe him to be of sound mind and disposing memory at the time he signed this document and at the time you signed it?

A. Yes, sir.

Q. I will ask you to examine the document and state whether or not it appears to be in the same condition now as it was at the time Mr. Morris signed it and when you signed it?

A. Yes, sir.

THE COURT: Any further questions?

MR. PEEBLES: Your Honor, there are six executors named in this will. One of those executors is the surviving widow—

THE COURT: The will and codicil may be admitted to probate.

MR. KRINSLEY: I have a few appearances here, your Honor, that I would like to file, appearances of some of the heirs.

THE COURT: I assume that all the statutory requirements with regard to notice to those entitled to notice have been observed?

MR. KRINSLEY: Yes, sir. I would also like to file an affidavit as to military service.

THE COURT: See that the record shows all these documents being filed.

MR. KRINSLEY: Then I have here the individual bond of the executors, excepting—the individual executors, excepting Mrs. Morris, and I have the oath of the four individual executors except Mrs. Morris, and I have the written acceptance of the First National Bank of the office of executor. Mr. Peebles wants to speak for Mrs. Morris.

MR. PEEBLES: Mrs. Morris would like leave to have an additional ten days in which to determine whether to file an acceptance as executor and I would like a period of ten days in which to file the oath and bond.

THE COURT: We will let the record show first that letters testamentary will issue to the executors named in the will on filing of their statutory bond within a period of ten days.

MR. KRINSLEY: If the Court please, there is pending now—

THE COURT: That may be modified, upon the filing of the acceptance of the First National Bank of Chicago and the oath of the four individual executors.

MR. KRINSLEY: That means that their appointment, of the First National Bank and of the four individual executors.

THE COURT: Immediately.

MR. KRINSLEY: Immediately, and then later on if Mrs. Morris wishes to accept she may do so within ten days, is that right, and if she does not do so within ten days may we appear before your Honor and arrange to have some final order entered with respect to Mrs. Morris? I mean, we don't want to leave this thing open indefinitely. You see the statute provides, Section 62 of the statute provides that an executor must either accept or reject within thirty days after notice of the death.

THE COURT: Then why not set this for the end of the period of thirty days?

MR. KRINSLEY: Well, the thirty days have expired already.

THE COURT: Oh, is that so?

MR. KRINSLEY: You see, he died on January 5 and this is 45 days. We have no objection to Mrs. Morris having another ten days to file, provided that the others be permitted to act.

THE COURT: Yes, Letters will be issued to the bank immediately upon filing an acceptance and to the others upon filing of the acceptance and oath.

MR. KRINSLEY: Shall I take it up to the Clerk's office and file it there?

THE COURT: This is the clerk who will take that in.

MR. KRINSLEY: Here is the bond and order.

THE COURT: I suggest that you collaborate with the clerk, though, in the preparation of the minute that will cover this entire proceeding, so that the docket record may show that all the steps you have taken have been properly taken and appear of record.

MR. KRINSLEY: Thank you, your Honor.

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE PROBATE COURT OF COOK COUNTY

In the Matter of the Estate
of
GEORGE S. PAYSON, Deceased.

TESTIMONY TAKEN in the Probate Court of Cook County, Judge John F. O'Connell presiding on the 4th day of March, A.D. 1943, in the matter of the PROOF OF HEIRSHIP in the above named estate.

ELLEN WOODS

called as a witness herein, having been first duly sworn, was examined and testified in open court as follows:

THE COURT: *Q.* What is your name?
A. Ellen Woods.
Q. Where do you live?
A. 900 North Michigan Avenue, Chicago, Illinois.
Q. What relation were you to George S. Payson, deceased?
A. Daughter.
Q. When did he die?
A. February 27, 1943.
Q. How old was he when he died?
A. He was in his eightieth year; he was eighty last June.
Q. How many times was he married?
A. Once.
Q. And then to whom?
A. Josephine R.
Q. Is she living?
A. Yes.
Q. Did she live with him as his wife up until the time he died?
A. She did.
Q. How many children were born to them?
A. Two.
Q. Are they both living?
A. Yes.
Q. Name one.
A. Randolph Payson.
Q. Is he over twenty-one?
A. Yes.
Q. Name the next.
A. Myself.
Q. You are over eighteen and married to whom?
A. My husband is dead.
Q. What was his name?
A. Frederick Adams Woods.
Q. Two children are all that were born to your mother and father?
A. Yes.
Q. Did George S. Payson ever adopt any children?
A. No, he didn't.

THE COURT: So that at the time GEORGE S. PAYSON died he left him surviving:

Josephine R. Payson, his widow.
Randolph Payson, his son
Ellen Woods, widow of Frederick Adams Woods, his daughter;
as his only heirs at law and next of kin.

Most contests over wills originate after they have been admitted to probate, during the period—usually from six months to two years—designated by statute for the settling of an estate. Not always, however, is proof of a will or of heirship a routine matter, as the following news stories indicate:

Probate Judge Peter Linck yesterday denied admission to probate of a document written by Theodore Snyder, late department store owner, authorizing his secretary to "take charge" of all his personal belongings. Snyder left a $150,000 estate when he died last March.

Judge Linck held that the document was not a will and, as a power of attorney, was nullified by Snyder's death.

Snyder's secretary, Miss Ruth Nelson, of 543 South Sherman avenue, seeks to be appointed executrix of the estate on the basis of the document.

Miss Nelson offered to submit evidence that Snyder had directed the estate to go in equal shares to his employees, to her, and to his daughter, Mrs. Mabel Porter of the Greenglades hotel. Mrs. Porter is contesting Miss Nelson's action.

Probate Judge Peter Linck today puzzled over a will penciled on the paper wrapping of a liquor bottle. The will read:

"Present to David Horworth downstairs. If you don't grab first, you don't get anything. This bought Oct. 18, 1939—other liquor two years older. Bottle of Grand-dad to Dr. Porte. Grape brandy to Roberta Southern. Give my regards to Broadway—no regrets. I hereby leave my Oakwood property to Mary Ronald Rebbly. W. R. Preston."

The bottle wrapping was presented by Mrs. Rebbly, head of a nurse's registry at 4500 South Himmel avenue, as evidence in a claim against the estate of William R. Preston, a retired businessman, who died last April.

Mrs. Rebbly said that $5,000 was due her under an oral agreement with Preston for his board, room and nursing during his late years. The claim included a $300 loan made by Preston to the woman.

Robert Bonwith, her attorney, told the court that although Preston promised to leave her money in his will, there was no legal will and the holographic will—devoid of witnesses—was sufficient to show that Preston intended to leave his Oakwood home to Mrs. Rebbly.

Bonwith explained that the will and bottle were found in a trunk which Preston sent to his Oakwood home, with the provision that it be opened only after his death.

Judge Linck ruled out the will, holding that such wills were invalidated in 1911 and that two witnesses must attest such a document. Mrs. Rebbly got her $300, however.

Probate Judge Peter Linck at a hearing yesterday on the validity of the will of Lawrence Sander, a stamp and coin collector and dealer, appointed Attorney Wilson Fisher, a friend of the court, to protect the public from the sale of spurious stamps found in Sander's estate.

Sander died July 15, leaving an estate estimated at more than $150,000, including a collection which may contain one to 12 million stamps and nearly

300 woodcuts and perforating machines for forging cancellation marks. The fake cancellations in many cases would increase the value of a stamp 100 times.

In a will made three weeks before his death, Sander left his estate to Mrs. Patricia Kennedy, his former housekeeper. After hearing several witnesses Judge Linck indicated he will rule Sander was of sound mind when the will was drawn. He also indicated he will rule on the validity of the will Monday, when experts who are examining the stamp collection are to give a preliminary report.

Sheboygan, Wis.—County Judge F. H. Schlichting Tuesday admitted to probate the disputed will of Winfred C. Howe, former Milwaukee high school teacher and radical pamphleteer who committed suicide here Aug. 19, 1942.

Howe, who was a familiar figure for many years on Milwaukee street corners where he displayed signs setting forth his economic and political opinions, bequeathed an estate valued at $12,000 to a proposed organization which would propagate his philosophy. The will was contested by two distant relatives, Mrs. Alpha Swart, 96, formerly of Plymouth, and Mrs. Sophia Jones, 95, who contended that they were next of kin and charged that Howe was of unsound mind when the instrument was executed in 1942. Both women now live in California.

Will Held "Logical"

Judge Schlichting held that although Howe may have been suffering from "some mental disorder" in the last years of his life, "he held to his course during his lifetime and provided for its continuation by the will in question."

The court pointed out that "in his early days Howe espoused the cause of socialism and in later years advocated a 'worker's party' and 'workers' government' and expressed sympathy for the Soviet Union."

"The evidence, medical and nonmedical, and the exhibits point to the fact that it was a very logical thing for him to try to preserve his ideas and make some definite contribution to society along the lines of his philosophy," Judge Schlichting said.

Since the will was filed, two cousins, Oliver Ward Poole, Fredonia, N. Y., and John Ward Poole, Eldorado, Ark., claimed title to the estate. The court held that the Poole brothers, cousins to Howe, were more closely related to the testator than Mrs. Swart and Mrs. Jones and that the two women had no valid claim to the estate.

Named Communist Executor

Howe's will named as executor of his estate Fred Bassett Blair, Milwaukee Communist, and directed that a corporation be formed at Sheboygan under the name of the Progressive Center, "where you may see, read, hear, express, buy, rent, borrow and receive freely the truths which are suppressed almost everywhere else in Sheboygan."

Records were introduced at hearings to show that Howe had been arrested 23 times in connection with his pamphleteering.

He began teaching at Sheboygan in 1906 and later went to Milwaukee, where he was a history instructor at West Division high school for many years. He was dismissed from the West Division faculty in 1928. His wife, also a teacher, died earlier in 1942. Howe was 66 when he committed suicide by inhaling illuminating gas.

—Milwaukee (Wis.) *Journal.*

When a will is admitted to probate, the executor is issued *letters testamentary,* which empower him to proceed with performance of the duties already mentioned. Unless the will specifically provides

that the executor be allowed to serve without bond, the court requires posting of a bond equal at least to one and a half times the estimated total value of the estate. The size of this bond, therefore, may give the reporter a clue as to the estate's size.

The court having jurisdiction in probate matters usually has authority to appoint *conservators* to protect the interest of incompetent persons and *guardians* to protect the interests of minors. A *guardian at litem* has authority to represent his ward's interests only in the specific case for which he was appointed. In probate matters, his authority ends with conclusion of the probate proceedings. Juvenile, county, and other courts may have authority to appoint permanent guardians or conservators.

While an estate is in the process of probate to defray the living expenses of a widow, the court authorizes the executor to pay her a *widow's award,* the amount of which is determined by her needs and the probable size of the estate. To make it, the executor may be compelled to liquidate some of the estate's assets; he is permitted to do this only with specific court approval. The following news item tells of a peculiar dispute involving a widow's award:

> The question of whether Mrs. Constance L. R. Morris, 219 Lake Shore drive, is entitled to a substantial payment at this time from the $2,425,000 estate of her late husband, was presented to Probate Judge John F. O'Connell yesterday.
>
> The husband, Ira Nelson Morris, former ambassador to Sweden, left his estate in trust, the income to be divided among Mrs. Morris, a daughter, Constance Irene, and a son, Ira Victor.
>
> Before Judge O'Connell, a stipulation was filed that a controversy had arisen as to whether Mrs. Morris is entitled to a widow's award in addition to her share of the income. The "widow's award" would amount to a sum enabling Mrs. Morris to live for nine months on a scale commensurate with the size of the estate.
>
> It was disclosed, also, that Mr. Morris had created a trust for his wife of $1,200,000 in 1925.
>
> —Chicago (Ill.) *Sun.*

In the event that the decedent left no will—that is, died intestate—the procedure for settling the estate is virtually the same as when he died testate. Instead of the executor named in the will, the court appoints an *administrator,* who gets *letters of administration* to establish his authority. It does so on the petition of some relative potentially eligible for appointment or by the *public administrator,* one of whose primary duties is to see that all such petitions are filed so that no estate is allowed to go unsettled. As explained, the law also stipulates how the estate is to be divided, depending upon the familial situation.

Administering the estate. One of the first duties of an executor or administrator is to prepare and file a complete *inventory* of the

estate. Usually this must be done within sixty or ninety days. It may be necessary to authorize the employment of an appraiser or appraisers to assist in this work, and the value and nature of the estate when inventoried may be revealed to be somewhat different from that indicated by the provisions of the will itself. Some usual and unusual "angles" of news stories based on probate inventories are revealed in the following:

An inventory of the estate of Ira Nelson Morris, former minister to Sweden, was filed yesterday and approved by Probate Judge John F. O'Connell. The First National bank, administrator, is empowered to sell enough stocks to realize $500,000 for administrative and other expenses.

The estate, estimated by Attorney Lazarus Krinsley who filed the inventory, at "more than 2 million dollars," includes $393,000 in bonds, $113,237 in cash and nearly 30,000 shares of stocks.

Bank and Utility Shares

The Morris securities portfolio included the following:

2,488 First National bank.
2,489 Middle West corporation.
2,000 Niagara Hudson Power corporation.
2,405 Chicago corporation.
1,675 Continental Illinois National Bank and Trust company.
1,500 Continental Oil company.
1,700 Commonwealth Edison.
1,000 Chase National bank.
900 Borden company.
500 Bethlehem Steel.
1,400 North American company.
480 United States Steel.
500 United States Rubber.
700 Texas company.
800 Standard Oil of Indiana.
519 Standard Oil of New Jersey.
500 General Motors.
600 E. I. du Pont de Nemours.
400 American Telephone and Telegraph.
300 American Can preferred.
200 American Can common.
600 American Gas and Electric.
250 Chesapeake and Ohio railroad.
1,000 Chicago Daily News.
500 Chrysler corporation.
700 Consolidated Edison of New York.
231 Abbott Laboratories.
280 Caterpillar Tractor.
500 Commonwealth and Southern corp.
60 Cudahy Packing.
110 Hibbard, Spencer & Bartlett.
800 National Lead.
300 National Steel corporation.

Wealth Left in Trust

Mr. Morris died in Chicago Jan. 15 at the age of 66. His will left the bulk of the estate in trust to his widow, Constance Lily Rothschild Morris; a daughter, Constance Irene, and a son, Ira Victor Morris. On their deaths the estate passes to Ivan Morris, son of Ira Victor Morris, and to any grandchildren born subsequently.

If Ivan and other possible heirs, however, should die before coming into the estate it passes, on the deaths of the other legatees, to Michael Reese hospital to found an institute for treatment and investigation of nervous and mental disorders.

Mr. Morris was the son of Nelson Morris, founder of the Morris & Company, meat packing firm.

—Chicago (Ill.) *Tribune.*

Eight brown beer mugs valued at 80 cents, a mounted sailfish, said to be worth $1, five fishing rods, four guns, 17 bottles of liquor, and eight "Mae West" life preservers were among the worldly goods left by Joseph Grein, late mayor of Randolph street, it was revealed yesterday.

These items, reminiscent of the former city sealer's tastes and hobbies, were included in a $575,000 inventory filed yesterday in Probate court by the Continental Illinois Bank and Trust company, executors of the will. Grein shot and killed himself in his room at the Hotel Sherman Oct. 8.

The estate, in startling contrast to an original estimate of "in excess of $30,000," consists of $325,000 in bonds, including $135,000 in U. S. government bonds; $20,800 in cash in a safety deposit box: listed stocks valued at $158,000, with some unlisted stocks; mortgages worth $25,300; five South Side apartment buildings; a cottage at Fox Lake and chattels valued at $4,457.

Grein's will provides that $42,500 be divided among several charities. It leaves $57,000 to friends and $95,000 in trust for 10 relatives.

The residue, amounting to more than $300,000, will go in five years, to a sister, Mrs. Katherine Pahls, 1519 North Claremont avenue, and six nieces and nephews.

—Chicago (Ill.) *Sun.*

What did the "queen of the dice girls" wear? Here's the list:

Twenty-five dresses, nine jackets, three robes, five fur-trimmed cloth coats, four skirts, 17 blouses, 13 purses, nine pairs of shoes, two pairs of riding breeches, 28 hats (two of them fur-trimmed), one raincoat, one play suit, one riding jacket, two bedroom jackets, one pair of pajamas, one pair of slacks, one sable scarf, one fox muff and one mink muff.

These items were listed yesterday in an inventory of the estate left by Betty Lou Hines, sweetheart of Tony Costello, alias Rhoades, former Nickoli gangster. The inventory, valuing jewels, furs, savings and gowns at $3,531.09, was approved by Theodore Wolfe, assistant to the probate judge. Miss Hines was beaten, stabbed and burned in her apartment at 600 Monroe street, last March 2.

Mrs. William G. Reynolds, one of the founders of the Centerville Civic Opera company, left more than $500,000 to promote grand opera and to train youth in drama and music, a tax appraisal disclosed yesterday.

Mrs. Reynolds who died Aug. 1, 1944 in her home at 46 South Judson avenue, authorized trustees of her estate to award scholarships to young people who lack the money for dramatic and musical training.

She was the widow of William G. Reynolds, Centerville manufacturer.

Another executory or administrative duty is to advertise for claims against the estate. These claims must be approved before payment by the court, as must also any sales to liquidate items on the inventory. Claims are classified for the sake of establishing priority in the event that the total of the estate is inadequate to satisfy all of them in full—in which cases, beginning with the lowest

classifications, they are prorated as much as is necessary. No beneficiary receives anything until all valid claims against an estate are satisfied or until the court orders differently. In Illinois, claims are classified as follows: (1) funeral expenses and expenses of administration; (2) widow's or child's award; (3) debts due the United States government; (4) money due employees of decedent, of not more than $400 for each claimant for services rendered within four months prior to the decedent's death and expenses attending last illness; (5) money and property received or held in trust by decedent which cannot be identified or traced; (6) debts due the state, county, village, school district, town, or city; (7) all other debts.

If the executor or administrator discovers that the decedent's affairs were in such bad shape that he needs the assistance of a court of equity to untangle them, in some states he files a *bill of conformity* against the creditors, so that all claims can be adjusted and the order in which the assets of the estate are to be liquidated can be determined.

The following news items are based on court orders in connection with claims against estates:

Sale of personal property of the estate of Tony Nickoli, late Centerville union czar, for $35,000, was approved yesterday by Superior Judge John Wilkson.

Francis and Lawrence Yates of Chicago, who purchased the personal property, are expected to complete negotiations today for the purchase of $125,000 of the real estate on Quality Farms, on which Nickoli built a mile race track.

The estate of Michael Martin, former political leader and public administrator of Center county, was authorized by Probate Judge Thomas O'Brien yesterday to accept $45,000 from Peter Ross, who succeeded Martin as public administrator, in settlement of whatever fees are due from 500 estates taken over from Martin by Ross. The petition disclosed that the estate already owes Ross $30,000 for money advanced and has to pay from $12,000 to $25,000 in back income taxes.

Judge Philip J. Finnegan in Circuit court yesterday directed a jury to approve the $9,500 claim of Dr. Hilton J. McEwen of Phoenix, Ariz., against the estate of the late Ira Nelson Morris, former minister to Sweden, for professional services in Morris' last illness.

The widow, Mrs. Constance Lily Morris, 68, of 219 Lake Shore drive, had contested the award, made previously in Probate court.

The $9,500 represents a balance due on a $19,500 fee, computed at the rate of $300 a day for 65 days. Nelson died Jan. 15, 1942, at the age of 66, leaving a $2,500,000 estate.

The allowance by Probate Judge John F. O'Connell of a $150,000 claim by the Confederated Meat Cutters union against the estate of Harold Madison, late secretary of the union, who died last Aug. 10, today raised to over $1,000,000 the amount recovered by the union from the Madison estate.

In previous court orders the union got $150,000 in cash from Madison's safety deposit box; $150,000 in war bonds; $400,000 in securities from the Madison

Cattle company. Last year the union was allowed a claim of $150,000 against the secretary's estate.

The union, which has 200,000 members, had all its assets in Madison's name, Attorney Sol Bankhold, counsel for the union, said.

Newsworthy are the state *inheritance taxes* and *federal estates* taxes paid by the estate of a prominent person. News of state taxes can usually be obtained when the tax return is filed, but the United States Bureau of Internal Revenue is notorious for its refusal to divulge any information to anyone regarding federal tax returns.

Federal and state inheritance taxes in the $691,156 estate of Mrs. Ruth Barker who died Feb. 2 at her home at 16 South Lake Shore drive, was estimated at $182,000; according to tax returns filed today in the County court by the law firm of Clinton, Fairbanks and Grossman.

Mrs. Barker was the widow of James P. Barker, the grandson of William Barker, a pioneer in the development of Centerville's real estate.

The return disclosed that the estate left trust funds of about $95,455 to each of four sons and a daughter. The beneficiaries of the trust funds are: Mrs. Wilma Schwartz, of Philadelphia; James L. Barker of Glencoe; John R. Barker of New York and Theodore G. Barker of Chicago.

The estate of Arthur D. Porter, secretary-treasurer of the Cement Mixers council who was shot last August 1, was valued at $189,199 in the first official appraisal filed in the County court yesterday with the inheritance tax report. This is far above previous estimates.

The main assets are 15 parcels of real estate, mostly farms and subdivision land in Center county, valued at $151,800, and $18,754 in farm animals and equipment. The heirs are the widow, Mrs. Ruth Porter, 1601 Devon avenue; and a daughter, Mrs. Helen Robertson of New York.

Listed as a possible liability of the estate are suits totaling $30,000 brought on behalf of Thomas Rankin, business agent of the Cement Mixers union, Local 650, who was wounded and his wife, Dorothy, who was killed by Porter in the shooting affray in the Rankin home in which Porter was killed.

The $302,206.65 personal property estate the late William Cooper picked up during his rise from the shovel and broom of a street cleaner to boss of the street cleaners union, has dwindled to $33,041.78, his widow revealed yesterday in Superior court.

Judge A. R. Branston approved the report of Mrs. Rowena Cooper, as executrix, that showed U. S. inheritance taxes of $213,457; U. S. estate taxes of $42,740; a state inheritance tax of $3,549; $20,000 in fees to a Centerville law firm, and $3,000 to her present attorney, Monroe Atwood.

Judge Branston said the income tax paid by Mrs. Cooper as executrix was $205,811 and that this figure was included in the $213,457 inheritance tax payment.

Mrs. Cooper and her two children, George and Anna, still have real estate in Florida and payments coming to them from the sale of Cooper's dairies.

Statutes provide a time limit during which an estate shall be settled. However, special circumstances may exist under which an estate is kept open for years after a will has been admitted to pro-

bate. If the estate is kept open beyond the statutory limit, current *accounts* must be filed from time to time with the court. These accounts must include statements of all receipts and disbursements, and must show what disposal was made of all inventory items. The following is a copy of an executor's *final accounting:*

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE PROBATE COURT OF COOK COUNTY

IN THE ESTATE OF } Doc. No. 379
JOHN J. COUGHLIN, } Page No. 555
DECEASED } Case No. 38 P -8001

FINAL REPORT OF FLETCHER ROBERTSON, EXECUTOR OF THE LAST WILL AND TESTAMENT JOHN J. COUGHLIN, DECEASED.

The undersigned, FLETCHER ROBERTSON, respectfully represents unto this Court that on or about November 11th, 1938 one JOHN J. COUGHLIN, departed this life a resident of the County of Cook and State of Illinois, leaving a Last Will and Testament that was duly approved and admitted to Probate by the Probate Court of Cook County, Illinois on the 9th day of August, 1939.

The undersigned further represents that Letters Testamentary were duly issued herein by this Court to the undersigned on the 9th day of August, 1939; that the undersigned duly qualified and is now acting as such executor.

The undersigned further represents that on the 20th day of November, 1939, he filed in and had approved by this Court an Inventory of the assets of said Estate; that an appraisement was made of the goods and chattels belonging to said Estate by the appraisers appointed for such purpose and a Bill of Appraisement filed in and approved by this Court on the 15th day of April, 1939.

The undersigned further represents that notice was given and an adjudication of claims was duly had herein; that all claims have been filed against said Estate, have either been allowed, disallowed or dismissed for want of prosecution.

The undersigned further represents that proof of heirship was made and the same was duly entered herein from which it appears that the deceased left him surviving as his sole heirs at law and next of kin, KATHERINE COUGHLIN, a sister, and GEORGE COUGHLIN, a brother.

The undersigned further represents that pursuant to Orders of Court heretofore duly entered herein, he has sold certain personal property belonging to the Estate of the Deceased, all of which sales have been reported to and approved by this Court.

The undersigned further represents that he has paid to the County Treasurer of Cook County, Illinois, the sum of TWENTY SEVEN DOLLARS ($27.00) for personal property taxes assessed against said Estate for the calendar year 1940, and that he has paid to the County Treasurer of Cook County, Illinois, the sum of THIRTY ONE DOLLARS AND THIRTY TWO CENTS ($31.32), for personal property taxes assessed against said Estate for the calendar year 1939.

The undersigned further represents that he has collected together the sum of TWENTY FIVE THOUSAND SIX HUNDRED FIFTY FOUR DOLLARS and EIGHTY SIX CENTS ($25,654.86).

The undersigned further represents that there are claimants and devisees who

reside without the County of Cook and State of Illinois, and that on July 22, 1941, leave was given to the undersigned to serve all unpaid heirs, legatees and claimants by the service of a ten-day notice by United States Registered Mail, Return Receipt Requested, postage prepaid, at their last known addresses, of the filing of the Final Report and Account and the date upon which said Final Report and Account is to be heard.

The undersigned further represents that due and proper notice has been given to all persons entitled thereto of the time and place of the hearing of the Final Account of the undersigned accompanying this Report.

The undersigned further represents that more than one year has elapsed since the issuance of letters testamentary herein; that he has collected together the assets of said Estate out of which assets he has paid the costs and expenses of Administration herein; that he will, upon approval of this Report and Account pay all claims in full allowed in the Third, Fourth, Fifth and Sixth Classes; has paid such taxes as have been previously assessed against said Estate; that there will be a sum insufficient to pay claims allowed in the Seventh Class; that the Executor has on hand the sum of THREE THOUSAND NINE HUNDRED THIRTY EIGHT DOLLARS AND NINETY TWO CENTS ($3,938 92) and in addition thereto the sum of SEVEN THOUSAND NINE HUNDRED THIRTY TWO DOLLARS EIGHTY FOUR CENTS ($7,932.84) on deposit with the Chicago Title and Trust Company, which sum is held subject to the further Order of this Court, making a total of Eleven Thousand Eight Hundred Seventy One Dollars and Seventy Six Cents ($11,871.76) cash available immediately for distribution; and payment of cost of administration. That a supplemental inventory was filed and allowed by the Court on December 26, 1941.

That claims have been allowed in the Third Class in the sum of ONE THOUSAND FIVE HUNDRED AND FIFTY THREE DOLLARS AND TWELVE CENTS ($1,553 12), claims in the Fourth Class in the sum of TWENTY TWO DOLLARS AND FIFTY CENTS ($22 50), claims in the Fifth Class in the sum of FIFTEEN THOUSAND EIGHTEEN DOLLARS AND FIFTEEN CENTS ($15,018.15) of which the sum of NINE THOUSAND SEVEN HUNDRED FIFTY EIGHT DOLLARS AND SIXTY ONE CENTS ($9,758 61) is being waived by certain of said claimants in accordance with the agreement heretofore entered into in the purchase of said insurance agency by Fletcher Robertson, leaving a net amount of Fifth Class claims to be paid in the sum of FIVE THOUSAND TWO HUNDRED FIFTY NINE DOLLARS AND FIFTY FOUR CENTS ($5,259.54) and claims in the sum of EIGHT HUNDRED EIGHTY FOUR DOLLARS AND SIXTY FOUR CENTS ($884.64) have been allowed in the Sixth Class.

That the law firm of RUBENSTEIN, HAGGENJOS & MONARCH represented the Administratrix to Collect in this Estate and that they have received no fees for such representation and that at the time of the filing of said final account of said Administratrix to Collect, the fees to be allowed them were reserved by the court; that this Executor has likewise retained the firm of RUBENSTEIN, HAGGENJOS & MONARCH to represent him; that said firm has rendered valuable service to the Executor and the estate in the above matter.

WHEREFORE the undersigned prays that an Order may be entered by this Honorable Court approving his final account and accompanying Report and directing him to pay fees to the law firm of RUBENSTEIN, HAGGENJOS & MONARCH and to himself as Executor and that the costs of administration first be paid and that claims in the third, fourth, fifth and sixth classes be paid in full and that a report of distribution be made by the undersigned as to the pro rata share to be paid to creditors in the seventh class, and that an order be

entered discharging the undersigned as Executor herein, and that the Estate be declared fully settled upon his filing herein receipts or photostatics copies of vouchers and Report of Distribution to Creditors in the Seventh Class.

FLETCHER S. ROBERTSON

One news story based on this report follows:

The late Ald. ("Bathhouse") John Coughlin of the 1st ward, left assets of only $25,654, compared with claims against his estate of $42,195, the final accounting with Probate Judge John F. O'Connell shows. Alderman Coughlin's only heirs, a sister and a brother, will get nothing from the estate. He died Nov. 11, 1938.

Preferred claims are $17,477 of which $9,758 will be paid by Fletcher S. Robertson, Coughlin's former secretary and chauffeur, who took over the alderman's insurance business at 100 North LaSalle street. Robertson was given letters testamentary to administer the estate.

Assets included money from the sale of "The Bath's" stud farm in Kane county, some cash and $5,071 in past due salary.

Claims totaling $24,718, not listed as preferred, have not been paid, according to the accounting. These claims, it is estimated, will liquidate at about 15 cents on the dollar.

—Chicago (Ill.) *Daily News.*

Contesting wills. Most suits to set aside a will must be filed in courts of original civil jurisdiction rather than in probate court, the time limit being from six months to two years after the will is admitted to probate. Certain motions can be made in probate court, however, to test the technical validity of a will, as the third of the following examples illustrates:

Suit contesting the will of Mrs. Henrietta Peterson, which left the bulk of her $500,000 estate to the policeman on the beat near her home, was filed yesterday in Circuit court on behalf of Mrs. Norah Sanders of New York.

Mrs. Sanders had been identified in the will as an aunt, but after a hearing early this month, Ronald Miner, Probate court referee, held that Mrs. Sanders actually is Mrs. Peterson's mother and sole legal heir of the estate.

Had Asked Settlement

Mrs. Sanders' attorney, Frank Thorpe, announced at that time that he would file the suit contesting the will if the executors did not settle with his client.

The policeman who stood to inherit a fortune is Harrison Randolph, now in the army. Randolph is 45.

Flattery Charged

The present suit charges that Randolph and Attorneys Frank Oglethorpe and Henry Thomason conspired "by unnatural flattery and attention" to gain the confidence of Mrs. Peterson and make the will in Randolph's favor.

The bill also set forth that Mrs. Peterson, who died Sept. 1 at the age of 60, was "impaired in mind and body and was of weak and feeble will easily influenced by those in whom she had confidence."

A jury in the Circuit court of Judge Julius H. Miner today set aside the will of Leighton A. Turner, 82-year-old Niles farmer who, two months before his

death on Oct. 29, 1941, bequested all but $2,000 of a $75,000 estate to a Christian Science nurse, his lawyer, and the Chicago Home Missionary society of the Methodist church.

The nurse, Mitzie Garlock, admitted striking up an acquaintance with Turner while she used a portion of his land as a parking lot for the auto trailer in which she lived.

Under provisions of the will, admitted to probate in January, 1942, Turner left $1,000 each to the American Red Cross and the Salvation Army; the remainder went to Miss Garlock, Attorney Robert A. Scholz, who drew up the will, and to the Methodist society.

Suit to set aside the will was brought by the Continental Illinois National Bank and Trust company, on behalf of Turner's incompetent sister, Mary; a brother, Walter and five relatives. They charged Turner was subjected to "undue fraudulent influence to procure execution of the will." A defense motion for a new trial will be heard next Friday.

—Chicago (Ill.) *Daily Times.*

Kent Allan, assistant to the probate judge, ruled yesterday that two poodle dogs, Teddy and Joe, are not entitled to a $1,500 bequest under the will of Frank Levitin who died Aug. 1, 1939.

Levitin left one-eighth of his $12,000 estate for any dogs owned by him at the time of his death. The rest of his estate, with the exception of $5 bequests to each of seven aunts and uncles, went to a former friend of his, Mrs. Bessie Brown, of New York, Mrs. Brown had been married to Levitin but the marriage was annulled.

The Probate court previously had ruled that the bequests for dogs had been satisfied because at the time of his death, Levitin did not own any pets.

A petition to set aside that ruling was filed by Harry Quindry, of 2540 South Michigan avenue, an uncle of Levitin by marriage. Quindry testified yesterday that he had been caring for two poodles for Levitin and that the dogs were entitled to the $1,500.

Quindry, as conservator for his wife who is in a state institution, previously had sought to have the will set aside on the ground that Levitin was incompetent. The Supreme court denied his suit because it had not been filed within the nine months following Levitin's death, as required by law.

What follows is the original complaint and answers of two defendants in a typical suit to set aside a will charging incompetence on the part of the testator and undue influence on the part of beneficiaries:

STATE OF ILLINOIS } SS.
COUNTY OF COOK }

IN THE SUPERIOR COURT OF COOK COUNTY
IN CHANCERY
NO. 43S 6670

ANNA JORDON, MARY WILLIAMS and FRANCES PRICE
Plaintiffs
vs.
FRANCIS DOE, RALPH CASE, as the Executor of and co-Trustee named in the Last Will and Testament of MARTHA DOE, deceased, FRANK DOE, LAURA SCOTT, KATHERINE DEE, GRACE ROBINSON, MAE OTIS; and LILY SEEWARD and MARY BROWN as co-Trustees named in the last Will and Testament of MARTHA DOE, deceased.

COMPLAINT IN CHANCERY

Now comes ANNA JORDON, of Louisville, in the State of Kentucky, MARY WILLIAMS and FRANCES PRICE, both of the City of Los Angeles, in the State of California, and complain of FRANCIS DOE, of Chicago, Illinois, RALPH CASE, of Chicago, Illinois, as Executor and co-Trustee under the purported Last Will and Testament of MARTHA DOE, deceased, FRANK DOE, LAURA SCOTT, KATHERINE DEE, GRACE ROBINSON, MAE OTIS, LILY SEEWARD and MARY BROWN, named as co-Trustees with RALPH CASE in the purported Last Will and Testament of MARTHA DOE, deceased, and complaining alleges:

1. That MARTHA DOE, at the time of her death was a citizen and resident of Chicago, Cook County, Illinois; that she departed this life at Chicago, Illinois, on Nov. 30, 1941, leaving her surviving as her only heirs-at-law and next-of-kin the plaintiffs, ANNA JORDON, MARY WILLIAMS, FRANCES PRICE, and the defendant, FRANCIS DOE.

2. That said FRANK DOE, LAURA SCOTT, KATHERINE DEE, GRACE ROBINSON and MAE OTIS are named in the aforesaid instrument as legatees thereunder, and LILY SEEWARD, MARY BROWN, and RALPH CASE, are named as co-Trustees under said purported Last Will and Testament of said MARTHA DOE, and all of said persons are hereby made parties defendant hereto; that said persons named in this paragraph, together with the plaintiffs and said FRANCIS DOE, are all of the persons interested in the purported last will and testament of said MARTHA DOE, and are all of the proper and necessary parties to this suit.

3. That at the time of her death the said MARTHA DOE was the owner of real and personal property of the value of more than $500,000.

4. That said MARTHA DOE left an instrument in writing purporting to be her last Will and Testament, which is in the words and figures following, to-wit:

LAST WILL AND TESTAMENT OF MARTHA DOE

I, Martha Doe, of the City of Chicago, County of Cook and State of Illinois, being of sound and disposing mind and memory, hereby revoking and annuling any and all wills by me at any time heretofore made, do now make, publish and declare this as my last Will and Testament.

FIRST: I directed my Executor hereinafter named to pay all the expenses of my last illness, my funeral expenses and the expenses of the administration of my estate.

SECOND: I give and bequeath to my cousin, FRANK DOE, son of Norris S. Doe of New Haven, Connecticut, the sum of One Hundred Dollars ($100.00).

THIRD: I give and bequeath to LAURA SCOTT, wife of James Scott of St. Louis, Missouri, the sum of One Hundred Dollars ($100.00).

FOURTH: I give and bequeath to KATHERINE DEE, former housekeeper for my brother, Frederick Doe, the sum of One Hundred Dollars ($100.00).

FIFTH: I give and bequeath to GRACE ROBINSON, wife of Frank Robinson, who at present resides at 636 Grace street, Chicago, Illinois, the sum of Two Hundred Dollars ($200.00). I also give and bequeath to the said GRACE ROBINSON my two heavy winter coats and my small diamond bracelet.

SIXTH: I give, devise and bequeath to MRS. MAE OTIS, who at present resides at 43 Rochester Plaza, New York, New York, all of my jewelry except the small diamond bracelet hereinabove bequeathed to Grace Robinson. I also give, devise and bequeath to Mrs. Mae Otis all of my clothes other than the two heavy winter coats hereinabove devised to Grace Robinson.

SEVENTH: I give, devise and bequeath all the rest, residue, and remainder of my estate, real, personal and mixed, of whatever kind and nature and wheresoever situated, to LILY SEEWARD, of Rochester, New York, and RALPH CASE of Chicago, Illinois, as Trustees and to their successors in trust, for and upon the following trusts, purposes and conditions, to-wit:

(a) Immediately upon the completion of the probate of my estate and as soon as the property conveyed by the preceding section to the Trustees shall have come into their possession, they shall negotiate for and purchase out of the funds in their hands, the residence at Hartford, Connecticut, now occupied by Thomas Doe, formerly owned and occupied by members of the Doe family, together with the grounds around said residence not exceeding one acre. Said Trustees shall purchase said residence and grounds at the best terms obtainable but at a price not exceeding the sum of $8,000 00, and said property may be purchased with the understanding that if said Thomas Doe or his wife shall be still alive, they shall be permitted to reside in said house until their death, rent free. Upon securing title to said building and grounds the Trustee shall make such repairs, alterations and decorations as in their judgment shall seem necessary for the purposes hereinafter mentioned, but said repairs, alterations and decorations shall be made only after said Thomas Doe and his wife have ceased to occupy the property.

After said Trustees have taken title to said dwelling and land and after the same have been repaired, altered and decorated, they are directed to take all of the furniture, furnishings, rugs, pictures and other personal property which I may own at the time of my death and which has not been otherwise disposed of in this will and place the same in said building.

(b) Said Trustees shall hold, use and operate said property as a public museum to be known as the "Martha Doe Memorial" for the purpose of displaying and preserving the furniture, furnishings, pictures and other articles designated by me under this will and such additional similar articles as may be acquired by said Trustees and their successors in trust from time to time.

(c) Upon the completion of the purchase of said property and the repairs, alterations and decorations thereof, and upon payment therefor, the balance of said property shall be held by the Trustees as an endowment fund and the net income therefrom used for the maintenance, upkeep and care of said museum.

(d) The Trustees of the Martha Doe Memorial and their successors shall have full power and authority to hold, sell, exchange and convey any and all of the trust property received, held or acquired by them, for such prices and upon such terms as they shall see fit, and shall in general have every power and authority over the trust estate that they would have if they owned said property in their own right, except that said building and its contents shall always remain a museum, open to the public, and shall not be operated for profit. The said Trustees shall have power and authority to employ one or more caretakers for the said museum and are instructed that Katherine Dee, formerly housekeeper for my brother Frederick Doe, shall be given the position of caretaker provided she cares to accept at such salary as the Trustees shall deem proper.

(e) Any of the Trustees hereby appointed may by written notice to the other trustees resign, and the remaining trustee or trustees may appoint a new trustee to take the place of any trustee unable to serve by reason of death, resignation, inability or refusal to act, and such successor trustee or trustees shall be clothed with all the duties, rights, titles and powers, either discretionary or otherwise, of the original trustees.

(f) In the event that the Trustees appointed under this will are unable to purchase the residence and land in Hartford, Connecticut, for the sum of not more than $8.000.00 within two years after the probate of my estate is completed, or if for any reason the devise to the Trustees to establish the Martha Doe Memorial is declared invalid, then they shall give the balance of my property to my grand-niece, ANNA JORDON.

EIGHTH: I hereby appoint RALPH CASE of Chicago, Illinois, as Executor as well as Trustee under this my last Will and Testament, and direct him to pay out of the principal of my estate and treat as expenses of administration chargeable against my estate generally, all so-called inheritance taxes which may be assessed in any way by reason of my death.

IN WITNESS WHEREOF, I have set my hand and seal to this my Last Will and Testament, consisting of six typewritten pages, the certificate included, on the margin of each of which (except this page) I have attached my signature for greater security and further identification, this 4th day of April, 1938.

MARTHA DOE (SEAL)

We hereby certify that the foregoing instrument consisting of six typewritten pages, this certificate included, each of which bears the signature of Martha Doe, was on the day of the date thereof, signed, sealed, published and declared by said Martha Doe as and for her Last Will and Testament, in our presence and sight and that at her request, in her presence and in the presence of each other, believing her to be of sound mind and memory, and no fraud, compulsions or other improper conduct having been exhibited, we have subscribed our names hereto as witnesses.

Jessica Robins	Residing at 461 Oak Avenue, Oak Park, Ill.
David Mansions	Residing at 1611 Lawndale Avenue, Chicago, Ill.
Frank Lingle	Residing at 1412 Wiggins Avenue, Chicago, Ill.

5. That said instrument in writing was exhibited to and filed in the Probate Court of Cook County, Illinois, and on December 31, 1941, was approved, proved

and admitted to record and probate in and by said Probate Court; that in and by said instrument, the defendant RALPH CASE was named by said Martha Doe as the Executor thereof, and said defendant is now the duly qualified and acting Executor of the instrument purporting to be the Last Will and Testament of said Martha Doe, deceased.

6. That said instrument purporting to be the will of said Martha Doe is not her will; that at the time of the alleged or supposed making and execution of said instrument said Martha Doe was of unsound mind and memory and did not have the mental capacity or power to make a will; that she did not have the mental capacity, power or ability to know or understand what property she had to dispose of or who were the natural objects of her bounty or what her relations were to them or what disposition she wished to make of her property, nor did she then have the mental capacity, power or ability to make any rational plan for the disposition of her property or to understand the nature of her acts or the effects of her will; that she did not then know or understand the particular business in which she was then engaged; that she was not then capable of understanding the effect or consequence of her act; that she was not then competent to transact any business; that at the time of the alleged making and execution of said will said Martha Doe was approximately eighty-five (85) years of age and was in her dotage and was suffering physical weakness and disease and was wholly incompetent and unable to make said instrument or to understand its contents; that she was then obsessed by and under the influence and control of insane delusions which perverted and disordered her mind and memory and made her incapable of making her will; that said instrument is the product or result of an insane delusion; that at the time of making said instrument said Martha Doe was under the undue influence, domination and control of some other person or persons which deprived her of her free agency and destroyed the freedom of her will and that by the undue and wrongful influence and constraint of said person or persons, the will of said Martha Doe was overpowered and circumvented and she was induced to make said instrument contrary to her deliberate judgment and reason, and the will of some other person or persons was substituted for the will of said Martha Doe; that said instrument is not the product of the will of said Martha Doe but is the fabrication and product of the will of others; that said instrument is not the will of Martha Doe but is false, fraudulent, illegal and void.

WHEREFORE, the plaintiffs pray that said instrument purporting to be the will of said Martha Doe may be set aside and declared not to be the Last Will and Testament of said Martha Doe but to be null and void, and that the probate thereof may be set aside and vacated and that the plaintiffs may have such other, further or different relief in the premises as equity may require.

ANNA JORDON, MARY WILLIAMS and
FRANCES PRICE, Plaintiffs

By _____
Attorneys for Plaintiffs

STATE OF ILLINOIS } SS
COUNTY OF COOK }

ANNA JORDON, MARY WILLIAMS and FRANCES PRICE
Plaintiffs
vs.
FRANCIS DOE, RALPH CASE, as the executor of and co-trustee named in the Last Will and Testament of MARTHA DOE, deceased, FRANK DOE, LAURA SCOTT, KATHERINE DEE, GRACE ROBINSON, MAE OTIS; and LILY SEEWARD and MARY BROWN as co-Trustees named in the Last Will and Testament of MARTHA DOE, deceased
Defendants

IN CHANCERY
NO. 43S 6670

ANSWER OF RALPH CASE, AS THE EXECUTOR OF AND CO-TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF MARTHA DOE, DECEASED, TO COMPLAINT IN CHANCERY

Now comes RALPH CASE, as Executor and co-Trustee under the Last Will and Testament of MARTHA DOE, deceased, by his attorneys, Brown and Brown, and makes answer unto the complaint filed in the above entitled cause by Anna Jordan, Mary Williams and Frances Price, and alleges as follows:

1. This defendant admits that Martha Doe at the time of her death was a citizen and resident of Chicago, Cook County, Illinois; that she departed this life at Chicago, Illinois, on Nov. 30, 1941, leaving her surviving as her only heirs at law and next of kin the plaintiffs, Anna Jordon, Mary Williams, Frances Price and the defendant, Francis Doe.

2. This defendant admits that Frank Doe, Laura Scott, Katherine Dee, Grace Robinson and Mae Otis are named in said Will as the legatees thereunder, and Lily Seeward, Mary Brown and Ralph Case, are named as co-Trustees under the Trust created by said Last Will and Testament of Martha Doe, deceased, and admits that the persons named in paragraph 2 of said complaint, together with the plaintiffs and said Francis Doe are all of the persons interested in the Will of said Martha Doe.

3. This defendant admits that at the time of her death, the said Martha Doe was the owner of real and personal property of the value of more than $500,000.

4. This defendant admits that Martha Doe left a Last Will and Testament and that said Last Will and Testament of Martha Doe is set out in paragraph 4 of the complaint filed herein, together with attestation clause and the names of the witnesses attesting said Will.

5. This defendant admits that said Will of Martha Doe was exhibited to and filed in the Probate Court of Cook County, Illinois, and on December 31, 1941, was approved, proved and admitted to record and probate in and by said Probate Court; that in and by the Last Will and Testament of said Martha Doe this defendant, Ralph Smothers, was named as the Executor thereof and this defendant is now the duly qualified and acting Executor of the Last Will and Testament of Martha Doe, deceased.

6. This defendant denies the allegations set forth in paragraph 6 of said

complaint except as to the age of Martha Doe, concerning which this defendant has no knowledge and neither admits nor denies. This defendant further states that said Will is the Will of Martha Doe and denies that at the time of the making and execution of said Will, said Martha Doe was of unsound mind and memory and denies that she did not have the mental capacity or power to make a will and denies that she did not have the mental capacity, power, or ability to know or understand what property she had to dispose of or who were the natural objects of her bounty, or what her relations were to them or what disposition she wished to make of her property, and further denies that she did not then have the mental capacity, power or ability to make any rational plan for the disposition of her property or understand the nature of her acts or the effects of her Will. This defendant further denies that she did not then know and understand the particular business in which she was then engaged and denies that she was not then capable of understanding the effect or consequence of her act; denies that she was not then competent to transact any business; denies that at the time of making said Will said Martha Doe was in her dotage and was suffering from physical weakness and disease; denies that she was incompetent and unable to make said Will or to understand its contents; denies that she was then obsessed by and under the influence and control of insane delusions which perverted and disordered her mind and memory and made her incapable of making her will; denies that said Will is the product or result of an insane delusion; denies that at the time of making said Will said Martha Doe was under the undue influence, domination and control of any other person or persons which deprived her of her free agency and destroyed the freedom of her will; denies that by the undue and wrongful influence and constraint of any other person or persons the Will of Martha Doe was overpowered and circumvented and she was induced to make said Will contrary to her deliberate judgment and reason; denies that the will of some other person or persons was substituted for the will of said Martha Doe and denies that said Will is not the product of the Will of said Martha Doe and denies that said Will is the fabrication and product of others; denies that said Will is not the Will of Martha Doe and denies that said Will is false, fraudulent, illegal, and void.

NOW THEREFORE, this defendant having made answer to all of the allegations in said complaint, prays that an order be entered dismissing said complaint with defendant's proper costs.

RALPH CASE, Executor and co-Trustee of the Last Will and Testament of Martha Doe, deceased.

His Attorneys

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE SUPERIOR COURT OF COOK COUNTY
IN CHANCERY

ANNA JORDON, et al
vs.
FRANCIS DOE, et al } NO. 43S 6670

ANSWER OF FRANCIS DOE TO THE COMPLAINT OF ANNA JORDAN, ET AL.

Now comes FRANCIS DOE named as a defendant herein, by John A. Andrews, his attorney, and makes answer to the Complaint filed in the above entitled cause, and answering says:

1. That he admits the allegations set forth in Paragraph 1, 2, 3, 4, 5 and 6 of said Complaint.

Francis Doe

By _____
His Attorney.

A not uncommon probate matter is an alleged attempt to *conceal assets* which an executor or beneficiary brings to the court's attention by means of a petition for a citation to compel certain suspected parties to come into court for examination regarding said assets. The following is typical of such a petition:

STATE OF ILLINOIS }
COUNTY OF COOK } SS

IN THE PROBATE COURT OF COOK COUNTY

In the Matter of the Estate of ROBERT R. BROUK, Deceased } File 43P 1805 Docket 420 Page 59

PETITION

TO THE HONORABLE JOHN F. O'CONNELL,
JUDGE OF SAID COURT:

Your Petitioner, Frieda Scharer, respectfully states:

1. That she is the duly qualified and acting administrator of the estate of Robert R. Brouk, deceased, letters of administration having been duly issued to your petitioner by this court on the 12th day of March, 1943.

2. She believes that Peter F. Brouk and Emily N. Brouk, his wife, both of 2120 59th Court, in the City of Cicero in said county, had, and each of them has, in his possession or control, certain property belonging to said Robert R. Brouk, deceased, or to his estate, including among other things a certain 1937 Studebaker sedan automobile, certain moneys wrongfully withdrawn from the National Bank of Fort Sam Houston, at San Antonio, Texas, certain moneys wrongfully withdrawn from the First National Bank of Cicero, Cicero, Illinois, United States Government bonds of the maturity value of upwards of $3,400, a diary, and other papers and documents belonging to said decedent, including insurance policies and a certificate of title to the decedent's automobile, and other bonds, certificates of stock and choses in action wrongfully removed by said Peter F. Brouk or Emily Brouk, or both of them, from the decedent's safety deposit box at First National Bank of Cicero, Cicero, Illinois.

3. She believes that said Peter F. Brouk and Emily N. Brouk each have knowledge or information concerning property belonging to said estate which is needed to recover said property by suit or otherwise, which they and each of them withhold from said administrator.

4. Wherefore, the undersigned prays that the said Peter F. Brouk and Emily N. Brouk may each be cited to appear before this court on a day certain and be compelled to answer such interrogatories as may be propounded to each of them touching the aforesaid property in their, or either of their hands, and that the property order of this court be entered upon such examination if it be found that such property, or any thereof, is the property of said Robert R. Brouk or of the estate of said Robert R. Brouk, deceased, or of the administrator thereof, and to answer interrogatories put to them and each of them concerning knowl-

edge or information withheld by them, or either of them, and needed to recover property by suit or otherwise.

As administrator of the estate of Robert R. Brouk, deceased.

The following news story was based on the court hearing on the preceding petition:

The diary of Capt. Robert R. Brouk, 25, a late member of the Flying Tigers who earned $500 a month beside a $500 bonus for each Jap pilot he knocked out of China skies, figured yesterday in a Probate court controversy between the ace's bride and his parents.

Mrs. Virginia Brouk, 20, of 1643 North Melvina avenue, whom Captain Brouk married three weeks before he plunged to his death in an instructor plane near Orlando, Fla., on Dec. 19, wept as she testified before Judge John F. O'Connell at a hearing on her petition to discover further assets of her husband's estate.

Mrs. Emily Brouk, of 2120 South 59th street, Cicero, the hero's mother, also cried as she testified that Captain Brouk earned $11,000 by shooting down Jap Zeros.

In her petition the widow charged that Captain Brouk's parents had withheld from his estate an automobile, a $2,270 bank account, $3,400 in war bonds, and his diary.

Discussing the diary, his mother said: "He gave me his diary last July after he returned from China. At that time he said: 'Here, Ma, you keep my diary. Virginia's mother asked me for it because she wanted to publish a book on it, but I told her I wanted none of my diary in any book.'"

Peter F. Brouk, the flier's father, testified that he had given the widow a $600 car, and had supplied $350 for her engagement and wedding rings and her honeymoon trip to Florida. She also receives $38 a month pension from the government, he said.

Judge O'Connell ordered the parents to turn over to the estate the automobile mentioned in the widow's petition.

John W. Jedlan, attorney for the parents, agreed to let the widow examine the diary in his office. Mrs. Brouk said she would join the Waacs on Tuesday, the day after she is 21 years old.

—Chicago (Ill.) *Sun.*

Other news stories based on court proceedings when concealment of assets was charged follow:

A citation returnable Dec. 5 was issued by Probate Judge Peter Linck today to obtain information about certain properties and assets including valuable jewelry alleged to have belonged to the late William Pride, a prominent member of Centerville's board of trade who died last March 1.

The citation names Ronald Fisher, executor of the Pride estate; Mrs. Martha Black, maternal grandmother of Pride's two children, and Gordon Flambert, confidential secretary to Pride for a number of years.

Conservator Takes Action

This latest action in a case over which there has been a considerable mixup since Pride's death, was taken by Attorney Frank Robinson, conservator of the

estate appointed by the court. The estate includes an estimated $200,000 in personal property and large real estate holdings.

When Pride died he named as heirs his second wife, Helen, and the children, Francine, 16, and William Jr., 14. Before coming into possession of her share of the estate, Mrs. Helen Pride died on June 2.

Following the second Mrs. Pride's death, the existence of Mrs. Margaret Spring Pride, Pride's first wife, became known to the court. She is confined to the Centerville Hospital for the Insane.

Divorce Is Questioned

Robinson says there is a question whether she and Pride were ever divorced. Since this information has been uncovered, Judge Linck has continued indefinitely a hearing on proof of heirship of the two children. The first Mrs. Pride has had submitted for her a claim to her dower one-third of the estate.

Robinson said that the principal question to be settled is whether the first Mrs. Pride should get the claim or whether the children by Pride's second wife shall get the entire estate.

Twenty-five thousand dollars isn't hay, nor is it part of the George Carter estate, Judge Peter Linck ruled in Probate court yesterday.

The $25,000 was found under attic boards by a son, Robert, 35, after Carter, 75, of 6233 South Kenmore avenue, died last March 15. A sister, Mrs Theresa Black, 45, who was named executrix of the estate in a will, had Robert into court on a petition charging that he was concealing assets of the estate. Both lived with the father.

Judge Linck ruled that the evidence was too contradictory for him to decide ownership of the money. He recommended that Mrs. Black and two other brothers share it. The others are: George, 50, and Joseph, 60 of New York.

When their mother died three years ago, $20,000 in cash was found in drawers and closets as well as a cashier's check for $3,500 which was issued in 1927 by a bank which closed in 1933.

Post-probate litigation. In the understandable, sometimes wise but sometimes unwise, attempt to designate how the benefits of bequests and legacies shall be enjoyed for years if not generations, testators often keep the courts busy for decades settling disputes and answering vexatious questions which inevitably arise.

Changed conditions may make it impossible for certain provisions of a will to be carried out. Such was the case in the situation on which the following news story was based:

Circuit Judge Benjamin P. Epstein yesterday upheld the trustees of the Kate Sturges Buckingham memorial fund for the erection of a memorial to Alexander Hamilton, by dismissing a suit brought by State's Attorney Courtney for an interpretation of the provisions of Miss Buckingham's will.

Miss Buckingham, who died Dec. 14, 1937, left a will which set up a million dollar fund for a memorial to the first secretary of the treasury of the United States. The will gave wide discretionary powers to the trustees, and provided that if the memorial were not started within 10 years that the fund revert to the residuary legatee, the Art institute.

In his suit the state's attorney charges that there was a conspiracy between the trustees to allow the fund to revert to the Art institute, instead of erecting

the memorial. He also asked that two of the trustees be removed and asked for an accounting of the funds.

Architect Joins in Suit

Eliel Saarinen, an architect of Bloomfield Hills, Mich., who had been retained by Miss Buckingham to draw plans for the memorial, joined in the suit asking for $50,000 damages if the court should uphold the trustees.

The court in its decision held:

1. That the trustees have acted in good faith and within their unfettered discretion and that they have not breached their trust in not building the memorial to date. He pointed out that the will provided that the trustees have 10 years in which to start building the memorial, and held they were justified in holding plans in abeyance because of the war.

2. That the trustees have truly accounted for all monies that have come into their possession.

3. That Saarinen, who was paid $18,000 during the lifetime of Miss Buckingham, had no claim for compensation against the trustees for work done during the lifetime of the testatrix.

Approves Two Trustees

The court denied the request to dismiss Trustees Chauncey McCormick and Walter Smith, because they were officers of the Art institute. The court held that they were officers of the Art institute when Miss Buckingham named them trustees and that the testatrix had a high regard for their integrity and friendship.

—Chicago (Ill.) *Tribune.*

But the most careful testator cannot anticipate all contingencies that may arise, or his language may be capable of different interpretations. The court naturally is the moderator of resulting disputes, of which the two mentioned in the following news stories are typical:

Heirs of all three children of the late Mrs. Henrietta Sudyham Snell under her will are entitled to share in property valued at $600,000, according to a ruling made yesterday by Judge U. S. Schwartz in Superior court.

Mrs. Snell died in 1900. She was the widow of Amos Jerome Snell, a banker who was murdered in 1888. She willed that her property should not be distributed during the lives of her three children, whom she considered spendthrifts.

When the last survivor of the children, Mrs. Grace Henrietta Snell Coffin Walker Coffin Laymon Love, died Feb. 13, 1942, the question arose as to whether Mrs. Snell's property should be divided only among Mrs. Love's heirs or whether heirs of the other two children also should share. Judge Schwartz ruled in favor of the latter.

One of the heirs entitled to a share by the judge's decision is Edward J. Lehmann, Jr., 38, son of the founder of The Fair store. His mother was a daughter of Albert Jerome Snell, son of Henrietta.

—Chicago (Ill.) *Sun.*

A suit to construe the wills of the late Potter Palmer and his wife, Bertha Honore Palmer, was filed yesterday in Superior court by their sons, Honore and Potter Palmer, II, trustees of the Palmer estate.

The suit seeks determination of the portion of the $5,000,000 estate to be received by other heirs of Mrs. Palmer upon the death of Honore who is 68 and without descendants.

The trustees asked the court to refuse to recognize the claim for one twenty-fourth of the estate made by Frank Redd, an attorney of Sarasota, Fla. Redd entered his claim after he had been assigned by Louise Lowrey, fourth wife of the late Potter d'Orsay Palmer, Honore's son, one-third of whatever she received from the estate. On Jan. 24, 1942, the suit charged, she accepted $4,800 in settlement for any interests she might have.

—Chicago (Ill.) *Sun.*

Of nationwide interest is any attempt to break the terms of a long-existent endowment established by will, and hardly a year passes that some leading newspaper or magazine does not feature an article on how "the boney claws of the dead" hamstring the living. Some of the "lost" legacies usually mentioned in such roundups are: for superannuated wool carders in Massachusetts; for the ransom of American seamen held by Barbary pirates on the north African coast; the Bryan Mullanphy Fund, St. Louis, established in 1851 to aid "worthy and distressed travelers passing through St. Louis to take up new land in the West." In 1938 this one had more than $1,000,000 surplus.

In 1837 a board of inquiry of the English Parliament discovered about 30,000 such obsolete trust funds in Great Britain and Parliament promptly nationalized them. Pending such action by an American Congress or state legislature, thousands of such endowments and foundations for causes and persons long since extinct continue to be a source of journalistic amusement and of legal headaches.

CHAPTER 12

Other Civil Actions

Government as a Party

CIVIL courts exist primarily to settle disputes between private citizens. In addition to being the arbiter in such controversies and the prosecutor in all criminal matters, however, government may also be either the plaintiff or defendant in a civil action. It does so mostly through its multitudinous agencies, many of which are almost perpetually involved in civil litigation to enforce their regulations. Since there are so many different opinions as to how far government should go in regulating or interfering with business, labor, and other activities, many of the court battles between the individual citizen and some political unit have national importance. Millions of readers expect their newspapers to inform them promptly, completely, and accurately as to what the decisions are in such cases, so that they can guide their own conduct accordingly.

Government as plaintiff. Federal agencies—such as the Securities and Exchange Commission, for instance—bring actions in United States District courts for damages resulting from violations of their rules. In state courts, through the attorney general or the county prosecuting attorney (district attorney, state's attorney, or whatever called), who is a state agent, a state may sue to recover money due it, or to obtain equitable relief necessary to permit the proper operation of its numerous functions. In municipal courts, the city, through its city attorney or corporation counsel, enforces local ordinances, all violations of which are classifiable as civil offenses, though popularly called quasi-criminal in many instances.

As plaintiff or defendant, government has access to all the legal "tricks" available to private litigants, and the elements of news interest are about the same as in any other kind of case. In addition, however, an action involving government may have repercussions or ramifications that transcend the immediate controversy. It may, in fact, be a test case, with possibly the constitutionality of a statute or ordinance in question. Or, there may be a new application of an old law, or a new law enforced for the first time, or an innovation in judicial reasoning. All these elements, of course, may

be found in ordinary civil cases, but the reporter must be especially on the alert for them in governmental cases. Note some of these elements in the following news stories:

Attorney General Thomas Mason filed suit in Superior court today seeking to recover $1,710.65 from Mrs. Eva Anderson, of 530 Roosevelt road, charging she had received that amount in food and supplies from the Center Emergency Relief commission between Feb. 10, 1932, and Sept. 14, 1935, on her claim that she was poverty stricken, which he holds is untrue.

Gold notes amounting to $15,000 were found in Mrs. Anderson's clothing after she collapsed on the sidewalk at 1300 South Cermak road on May 20. The money was discovered by physicians at the county hospital where she was taken. Attorney General Mason also obtained a writ of attachment compelling the warden of the County hospital to hold the money until the suit is settled.

Judgment for $9,065 was entered against Martha L. Bauer, 1234 West North street, manufacturer of women's apparel, by Judge Frank Christianson in Federal District court yesterday, for violation of maximum price regulations set by the Office of Price Administration.

The judgment, first of its kind in this area, was entered by agreement, and represented a settlement at double damages.

The OPA originally sought triple damages in the suit, in which it was stipulated that the overcharges, made between April and May, 1943, were not willful.

Judge Peter Irwin indicated today he wasn't fooling when he ruled the city's zoning ordinances must be held in abeyance for the duration so that residences can be converted into living quarters for hard-pressed war workers.

Duplicating a case he heard yesterday in License court, Judge Irwin listened to a neighbor's complaint that Mrs. Henrietta Hanson violated an ordinance governing exclusively residential zones when she converted her bungalow at 2430 Northwood avenue into four flats now occupied by war workers.

"No ordinance should be invoked to make living conditions difficult," Judge Irwin ruled. The case was continued to April 15, to allow complaining witnesses to appear. "They've got to show me how Mrs. Hanson's action is destroying property values and creating a nuisance, as they charge," he declared.

Janesville, Wis.—(AP)—Holding that the Janesville parking meter ordinance was a revenue producing measure rather than one regulating traffic, Municipal Judge Ernest P. Agnew declared it unconstitutional Tuesday.

The court's judgment was pronounced in the case of Harold Scheele, of Janesville, accused of violating the ordinance. The city charged that his automobile was parked overtime in a metered parking zone. Judge Agnew dismissed the case.

Parking meters were installed here 17 months ago.

The city police were enforcing the ordinance as the court issued his opinion. Several cases were brought into court at once, but Judge Agnew dismissed them.

—Milwaukee *Journal.*

A suit seeking to declare unconstitutional the state sales tax act was filed in Circuit court yesterday on behalf of 60 commercial houses, most of them paint, pharmaceutical supply and building material firms.

The suit names William Ross, state finance director; Edward Barrett, state

treasurer, and Attorney General Thomas Mason, and asks that the court order segregation of taxes paid by the firms in a separate protest fund.

The action charges that the law is not a complete act in that it attempts to amend other statutes without printing the amended statutes in full, as required by the constitution.

Government as defendant. The last item concerns what is known as a *class suit,* one in which representatives of a class of citizens affected alike by a law bring a *test suit,* the outcome of which will affect all persons similarly situated. In this case, a large number of such members of a class acted together, but the relief sought was not just personal to them; thousands of others likewise would be affected by the court's action.

Similarly, a *taxpayer's suit* can be brought by a taxpayer for a wide variety of purposes, principally to check upon the expenditure of tax money by public officeholders. Frequently such suits are politically motivated, as was suspected in the case written up as follows:

The taxpayer's suit seeking an accounting of funds by Coroner A. L. Brodie dissolved yesterday into a good-will attempt to force future coroners to report to the County Board of Commissioners on efforts to collect delinquent taxes.

Harry S. Ditchburne, attorney for the taxpayer, Frank Hanket, 4245 North Melvina avenue, told Judge U. S. Schwartz in Superior court that if the reform could be effected, he would be willing to drop efforts to force Brodie to return $16,839, the difference between his salary of $34,875 since Feb. 14, 1940, and the fees collected in the four years, $18,036.

Ditchburne's move was made after Joseph P. Burke, assistant state's attorney, said he planned to have Anthony Prusinski, chief deputy coroner, and Clayton F. Smith, president of the County Board, testify that Brodie had attempted to collect the delinquent fees. The case was continued to March 8.

—Chicago (Ill.) *Sun.*

For claims against the state, most large states have a special *court of claims,* usually sitting in the state capital. In Michigan, for instance, the Court of Claims holds at least six sessions annually in Lansing and has exclusive jurisdiction over all claims against the state and any of its departments, commissions, boards, institutions, arms, or agencies except in matters over which the state legislature has given the circuit courts jurisdiction. In smaller states such damage suits are filed in the courts of original jurisdiction in civil matters. Suits against municipalities must generally be brought in state courts.

Quasi-criminal actions. "Quasi" means "as if" and quasi-criminal actions are those which are neither wholly civil nor criminal, but possess features of each. A quasi-criminal offense does not constitute a felony or misdemeanor, but it is one committed against the general welfare and is punishable by forfeitures and penalties.

Violation of a city ordinance, requiring the payment of a license or inspection fee, is a familiar quasi-criminal offense. Conviction results in a fine or penalty. Violation of the conditions under which a business should be operated may, in addition, result in revocation of a license. City ordinances govern the sale of cigarettes and liquor, building and zoning regulations, fire prevention, health and sanitation, weights and measures, and similar matters. Suit to recover the price paid for sales in violation of a law is a civil, not a quasi-criminal action, but all prosecutions by the city attorney to punish such violations are quasi-criminal.

Typical stories out of the quasi-criminal—or, as it may be called journalistically, if not on the court's own register—the license court, are the following:

Five more fines, each of $100, were piled up yesterday against Mrs. Virginia Newhouse, owner of the Plantations home, an institution for the aged and convalescents, 417 Lincoln avenue, at a brief hearing before Judge Theodore Pritkin in License court.

Three weeks ago, Judge Robert Aarson fined her $60 on a charge of operating a convalescent home without a license. Her appeal is pending.

Defendant Pleads Guilty

All five charges yesterday, to which she pleaded guilty, involved her refusal to allow city license and city health inspectors admittance to her home. Despite the pleas of guilty, Mrs. Newhouse's attorney, Donald Black, announced an appeal.

This is possible, it was explained, since Black says the appeal will be based on the charge that the city ordinance licensing convalescent homes is unconstitutional. Total appeal bond of $1,000 cash, or $4,000 real estate, was fixed.

Prosecutors Disappointed

Herbert Washburne and Elijah Kowalski, assistant corporation counsels, admitted they were disappointed at the abruptness of the hearing, since they had rounded up 23 witnesses to testify against Mrs. Newhouse and the operation of the home.

These, they said, included former patients, their relatives, neighbors who observed the conduct of the place, and a coroner's physician, who said he was prepared to testify that a former inmate died of a complication of aliments, including extreme malnutrition.

Municipal Judge Arthur Hastings in License court today joined with other city officials to end fire hazards in downtown saloons and night clubs with a warning that violators brought before him face closing or heavy fines.

Yesterday a seven-man committee of city officials, prompted by alarm over the Boston night club fire which claimed 491 lives last year, took action to protect servicemen and defense workers visiting these places.

The warning was issued after a hearing into the closing of the Golden Cage cocktail lounge, 116 North State street, by police and fire department heads for eight violations of the city safety code.

Judge Hastings continued the case for a week, ordering the place to stay closed, despite protests by Allan McNulty, manager, that the violations had been remedied.

A reporter visited the cocktail lounge after the court hearing and found the

upstairs lounge open, with no police guard in view. At the bar four trimly uniformed Wacs were sipping drinks and softly harmonizing on edited versions of ribald Army tunes. The unoccupied basement portion was being surveyed by a building inspector preparatory to reopening.

At the city hall it was learned that both police and fire department heads had O.K.'d the reopening of the lounge after the inspection, but ordered the basement closed until further work to clean up violations.

The court was notified of the reopening and then revised his order, stating that his only desire was to back up the authorities.

Informers' suits. In legal parlance these are known as *qui tam* cases, from the Latin phrase, *Qui tam pro domino rege et sequitor pro se ipse,* which, translated roughly, means, "Who sues in the name of the king sues also for himself." Such an action is one brought by an individual who contends that he is acting in the public interest to recover damages resulting from a criminal act. The federal law authorizing most of such suits was passed March 2, 1863, during the Civil War and permits the recovery of double damages against anyone found guilty of defrauding the government. The informer bringing the suit usually gets fifty per cent of whatever is recovered.

Originally intended to protect the government against wartime graft, the law was revived during World War II by some skillful persons who thereby profited considerably. In fact, so extensive did the practice become that it was branded a "racket" by many jurists and legislators. Rather than being informers who first directed government's attention to the fact that it had been cheated, these speculative informers frequently obtained their legal material from criminal indictments already obtained against their intended defendants. The informers merely succeeded in getting the jump on government in bringing civil actions using the true bill material as the basis. One news story based on the case which started the recent series of court actions was the following:

Pittsburgh, Aug. 12.—(UP)—Judge F. P. Schoonmaker of Federal court approved today an agreement awarding $260,000 to a Pittsburgh attorney and the government in the climax to an informer's suit brought by the attorney against electrical contractors accused of defrauding the government.

The award, $55,000 less than the amount set by a Federal court jury, will be divided equally between Morris L. Marcus, the attorney, and the government, with Marcus also receiving his costs in connection with the suit.

Judge Schoonmaker's action climaxed a three-year court fight which began after 57 electrical firms were accused of rigging bids on government contracts. The accused individuals and companies pleaded no defense to the charges and were fined a total of $43,900.

Another important case is mentioned in the following item:

A legal effort to obtain $35,000,000 for himself was made today by a "taxpayer" in a federal court indemnity suit for $70,000,000 involving the 1932 federal loan

to the old Central Republic Bank and Trust company, which was headed by Gen. Charles G. Dawes. The suit was filed under the "Informer act."

Raymond J. Nitkey, identified in the petition only as a "Chicagoan," instituted the suit. The petition says that the Reconstruction Finance corporation loaned $95,000,000 to the bank and that the application was arranged when General Dawes was also the head of the RFC.

The petition charges that, in violation of state laws, certain liabilities of the Central bank were transferred to a new state bank, the City National Bank and Trust company, and funds to cover these liabilities were taken from the RFC loan. The charge of fraud is based on the allegation that the defendants have "concealed the fact that the City National Bank and Trust company owes the government $35,000,000."

The defendants are: General Dawes; Oscar Nelson, former state auditor; Philip R. Clarke, William R. Dawes, George B. Dryden, James S. Kemper, Robert H. Morse, John W. O'Leary, and Raleigh Warner.

—Chicago (Ill.) *Daily News.*

Many states permit different kinds of *qui tam* actions, as when an informer brings action to punish violation of the game laws, laws against distribution of obscene literature, or liquor or gambling laws. In Illinois, for instance, if anyone who has lost at gambling or betting does not sue to recover within six months, anyone else can do so asking three times the value of the debt, plus costs. In all *qui tam* cases, half of whatever is recovered goes to the informer, half to government.

Similar to *qui tam* actions are the rewards paid by some federal agencies for valuable original information. For example, information provided a federal customs official which leads to seizure and forfeiture brings a reward of twenty-five per cent of the value of the goods involved to the informer. The commissioner of internal revenue also is empowered to give anyone who supplies original information leading to the recovery of taxes and penalties a reward up to half the amount of the penalties. When the informer believes he is not getting his just reward, he has to bring suit to recover his penalty.

The informer situation is good for a feature whenever a fresh news peg awaits itself. The following, from the Philadelphia *Record* of July 7, 1936, contains interesting historical as well as contemporary information:

There's a fortune in buried treasure hidden away in Pennsylvania and New Jersey—millions of dollars, waiting for someone to come and claim them.

Part of the vast treasure is hidden away in criminal statutes, many of them nearly two centuries old, which provide for the payment of fat fees to "common informers."

The rest is concealed behind the ancient escheat law, which holds that all unclaimed money in a state belongs to the state—with 25 per cent or more for the informer.

And although both sources already have been "tapped" many times by enterprising treasure hunters, there's still plenty left for other ambitious residents.

Informers Make Thousands

Charles D. Hyman, of Atlantic City, already has collected several thousand dollars—he won't say just how much—for tattletaling on the four New Jersey dog racing tracks, and he expects to get more.

William F. Swirner, of Merchantville, hopes to get something like $15,000,000 out of his prosecution of the Western Union for alleged violation of New Jersey gambling laws during the chain letter and telegram craze.

Michael Edelman and A. Jere Creskoff, Philadelphia lawyers, will get several thousand dollars from recent escheat proceedings in the Supreme court here—and hope to get many times more in other cases now pending.

A suit against Secretary of the Treasury Morgenthau was filed yesterday in U. S. District court by Henry Flournoy, not otherwise identified, for the collection of $600,000 fees, which he charged, is due him for information to the government in an alleged income tax evasion case. Flournoy charged that his information enabled the government to collect $6,000,000 in income taxes, interest, and penalties from Theodore Roseman, president of Quality Furs, 1300 Center street.

Roseman, when notified of the suit, denied that any deficiency income taxes had ever been assessed against him.

Garrett May Get Millions

And Charles H. Garrett, of Atlantic City, is to make about $4,000,000 as a "common informer" if the fabulous Garrett snuff fortune reverts to Pennsylvania.

The "novice" informer should begin on criminal statutes, leaving the escheat cases to older and wiser hands, for there's much less work involved in the former.

But let Milford J. Meyer, the attorney who handled the Hyman dog track cases, explain.

"The history of the common informer," said Meyer, who has offices in the North American building here," dates from early England, when law enforcement agencies were not so well organized as they are today and the Crown was willing to pay well for information as to law violations.

Adopted by Colonies

"The principle was adopted by many of the American colonies and later the states, and still is in effect in Pennsylvania and other nearby commonwealths."

In Pennsylvania, for instance, a citizen may claim half of the fine when he informs the authorities of the following (and many other) law violations:

1. Bribery of referees or arbitrators (fine: 10 times the amount af the bribe).
2. The holding of cock-fights (fine: $40, of which half goes to the informer, half to the poor district in which the offense occurred).
3. The serving of "strong liquors" at auction sales (fine: $20 for first offiense, $25 for all subsequent offenses).
4. Selling liquor on Sunday. Of the $50 fine, half goes to the informer, half to the "guardians of the poor," under the law of 1855, which still is in effect.
5. Failure of a sheriff to deliver to his successor all the deeds in his custody.
6. Failure to furnish a transcript of a record of marriage (fine: $50, half to informer, half to county).

All Gambling Included

All forms of gambling, underpayment of income taxes, and many other law violations, all easily found with a little research, also are included under the informer statute.

It was under the criminal statutes, such as those listed above, that Hyman collected from the Long Branch and Linden, N. J., dog tracks, and hopes to collect from the operators of the Pennsauken and Atlantic City courses.

It was the same type of case in which Swirner hopes to collect $15,000,000, half of the amount he alleges the Western Union transmitted in chain telegrams.

But the escheat cases require long hours of poring through musty law books and records, months and sometimes years of research, and the expenditure of considerable money.

Garrett Spends Thousands

Garrett has spent years and many thousands of dollars to refute the claims of 5,000 self-styled "heirs" of Mrs. Henrietta Garrett, the snuff king's widow, to her $14,000,000 estate. The estate, he claims, should revert to the state, and if it does, he will receive 25 per cent of it as the informer.

Edelman and Creskoff who have offices in the Girard Trust building, in South Penn square, also have spent much time and money in their search for unclaimed money which is escheatable to the state—but they'll probably be well repaid in the end.

Among escheatable money are uncollected pay checks held by big corporations. (The Navy yard here has thousands of dollars which workers during the wartime boom never bothered to collect.)

Other Escheatable Moneys

Others are unclaimed insurance benefits; unclaimed proceeds from the liquidation of bankrupt firms and estates; bribes paid to federal agents and turned over to the government; and many other kinds of ownerless money.

According to Edelman, there are thousands of millions of dollars of such unclaimed funds just waiting for escheat proceedings—but most of the 15 states which have escheat laws have not taken full advantage of them, he thinks. He's planning to do something about—in a big way.

It's easy—if you know how and have plenty of time and money for research and prosecution.

Tax delinquencies. The first step on the part of a governmental unit to collect delinquent taxes due it is to go to court and obtain a judgment against the delinquent. This judgment then constitutes a lien on the delinquent's property, which can be liquidated by a tax foreclosure sale to execute the judgment. An alternative is a tax receivership for income-producing property, whereby the county treasurer assumes control as receiver and collects rent until the tax judgment has been satisfied, after which the property is returned to its owner.

In actual practice, a large proportion of tax-delinquent cases are settled by compromises. Either the taxing body or the prosecuting attorney, which represents it in court, agrees to settle for a smaller amount than actually due, on the theory that half a loaf is better than none at all. It is not infrequent that judges clash with prosecutors because of such deals. Judges, however, are inclined to be lenient in personal property tax matters because of the lack of

any scientific method of properly assessing personal property.

The reporter must be aware of the fact that few readers find accounts of taxation matters easy reading. He should include an adequate amount of general explanatory matter in his stories, as did the authors of the following typical stories:

Action to speed further the collection of delinquent personal property taxes was taken yesterday by the County board when it authorized Theodore Longworth, state's attorney, to file suits immediately against taxpayers who are in arrears on their 1941 and 1942 payments.

The enabling resolution was introduced by Commissioner Donald Hellplewaite upon the suggestion of Vincent O'Brien, assistant state's attorney in charge of tax prosecutions.

New Powers Alter Tactics

O'Brien announced immediately thereafter that with this power the state's attorney will follow a new procedure by instituting within a few weeks a single suit against each delinquent taxpaper for the combined amount of personal property taxes owed for the two years.

Such action, he said, will cut almost in half the work involved in court proceedings, thereby stepping up the drive against delinquents by nearly a year.

First Suits for $100 or More

The new move followed the announcement by Longworth last week that he already is proceeding in Municipal court with tax suits against persons whose combined tax delinquencies for all past years total $100.

That collections, brought through legal action, have greatly increased is shown by figures. During the past month of June $400,939 was collected on judgments entered in Circuit, Superior, Municipal, Probate, Federal and justice of the peace courts, as against the 1942 June collection of only $62,447.

By Charles B. Johnson

The tax foreclosure committee of the County board yesterday turned down the offer of the Chicago Rapid Transit company, to settle for $2,583,471 its tax delinquency of $7,998,454.

"They're asking for a 12-cent fare and for a decrease in their delinquent taxes," said Harry E. Perry, committee member. "This doesn't seem very consistent. Let's defer action and let them make a better offer." The committee concurred.

This action had been recommended on Nov. 12 by Thomas J. Courtney, state's attorney, who stated in a letter to the committee that the offer was "grossly inadequate."

Delinquency Covers 7 Years

The delinquency is for the years from 1933 to 1939, inclusive, and is composed of $4,254,605 in principal and $3,743,849 in penalties. The offer had been made recently by A. A. Sprague and Bernard J. Fallon, bankruptcy trustees.

The committee, of which Daniel Ryan is chairman, also received a report from its secretary, William G. Donne, showing that $6,513,507 in taxes is in the process of collection because of the work of the committee during the last year.

Donne's report showed that the committee had ordered "voluntary" sales against 9,000 parcels of property upon which taxes are delinquent.

Settlements Agreed On

In this procedure, the board instructs the state's attorney to institute proceedings under which a judge orders a piece of property "sold for taxes," with the understanding that the original owner will bid at the sale an amount acceptable to the tax committee and County board.

The committee, Donne's report showed, had agreed to accept $1,052,322 on vacant property, or 46.6 per cent of the amount owed, while on improved property it had agreed to accept $5,461,125 on the principal of $8,350,603, or 65.3 per cent.

Operation of the department that prepares the cases for the tax committee costs the county $17,484 a year.

"It is clearly evident," Donne said, "that results are being produced at a small cost to the county."

—Chicago (Ill.) *Sun.*

Chief Justice Edward Simpson of the Superior court wound up his one-man campaign to force collection of delinquent sales taxes yesterday with the following actions:

1. He entered seven more judgments totaling $17,025 against delinquent taxpayers.
2. He ordered the attorney general's office to turn over to the sheriff's office for the service of summons the numbers and titles of 250 pending cases.
3. He instructed Donald Chidsey, assistant chief deputy sheriff, to call a special meeting of deputies working on sales tax cases to impress on them the importance of serving writs on delinquents.
4. He ordered the attorney general's office to issue by Aug. 1 executions on 161 judgments already entered.
5. He ordered the attorney general's office to explain why a taxpayer who owed $1,072.64 was allowed to settle for $200.76.

Judge Simpson started his campaign five weeks ago in an effort to clear up 420 suits by the state department of finance which had been pending for more than a year.

Of the 420 cases he has so far forced the department to take judgment in 161 cases totaling $341,497.

The remaining cases have been placed on a special calendar for call in September. Judge Simpson said he would dismiss the suits at that time unless summons had been served on the delinquents.

The 22-story Midland building, 172 West Adams street, once a $4,000,000 stock promotion, was ordered sold today for $150,000. The Circuit court also nullified the foreclosure sale of the building to Cook county by the county treasurer.

The ruling by Circuit Judge William V. Brothers will be appealed to the Illinois Supreme court, said John T. Fitzgerald, assistant state's attorney, who indicated that the county had the right to acquire the building by bidding the amount of taxes and penalties owed the county—$725,175.

The court ruled, however, that the original decree for sale specified that a cash bid must be accepted and ordered that the cash bid by Alexander Spare, an attorney of 10 South LaSalle street, be accepted. Spare's interest in the deal was not disclosed. He was represented today by Attorney Barre Blumenthal, who previously has appeared as counsel for the group owning the building.

The court's decision would eliminate the tax bill. County Treasurer Victor L. Schlaeger's office would receive only the $150,000. Judge Brothers said he ques-

tioned whether it is to the county's advantage to "go into the real estate business."

—Chicago (Ill.) *Daily News.*

Harvard, Neb., July 6.—(UP)—The town council admitted loss of the town jail today—at the price of $1.50 in a tax foreclosure sale.

The proud new owner is Robert Pinckney, 16, who discovered the jail was one of 10 tax delinquent lots he bought for $15 as sites for Victory gardens.

A letter from the council notifying Robert that the town was yielding to his ultimatum—quit using the jail or face an eviction suit. But the letter warned Robert pointedly that the city fathers will have their eyes on him.

Jail Owner on the Spot

First, the council ordered, Robert must raise the sidewalk near the jail to street level. Secondly, he must cut the grass and weeds on his property within a week. If he fails to comply, the council added, "the necessary action will be taken."

The controversy between Robert and the council started May 11, when the jail, by error, was included in a lot of property sold for failure to pay taxes. Soon after the boy announced that he owned the jail and would the town be kind enough to move a couple of drunks out of the building.

The council refused. Robert grew stern. He pointed out that the town had been leasing the jail and that his purchase had the full backing of law. The council members got sore too. They told Robert to keep away from the two-room jail and dismissed his father as the town physician.

Robert got a lawyer. Last week he laid down an ultimatum which brought the council into line.

Has Chance to Rent It

The responsibilities of owning a jail—even in a town of only 700 persons—weigh heavily upon him, Robert said, and he has not decided how to use it. He has had one offer to rent it. A pair of war plant workers want to live in it.

After inspecting his property again today Robert admitted the town might be holding a trump card in forcing him to raise the sidewalk in front of the jail.

"The cost would be prohibitive," he said.

"Perhaps I will tear down the jail and sell the materials to a construction company."

The County board at its meeting Monday will be asked to order Skardo receivership proceedings and tax foreclosure action against several pieces of property that have been backward in the payment of taxes at a time when their income is reported to be running at a high rate.

The board will be asked to approve a resolution adopted yesterday by its subcommittee on tax foreclosures. The resolution was presented to the committee by Commissioners George Nixon and Harry F. Perry, and followed an investigation of a number of tax delinquent properties.

Five Other Suits Asked

Simultaneous Skardo proceedings by the county treasurer and tax foreclosure suits by the state's attorney's office are requested for properties at 1111 Graham street, and 23 West Yonkers place.

In addition, the treasurer is also asked to start Skardo proceedings against the properties 200–4, 208, 212 and 226 West Ardmore street and 1300 North Adams avenue, with instructions that the net income be applied to the payment of delinquent taxes.

Nixon said the action against the Graham street and West Yonkers place properties is the beginning of a move to force the payment of taxes or a compromise of the indebtedness.

"Our investigation has found that owners, faced with the threat of a Skardo receivership, have escaped the appointment of a receiver by setting forth that plans were afoot to effect a compromise of the tax," he said.

Owners Dallying, He Says

"Instead of trying to reach an agreement, the owners have dallied for a year or more, in the meantime pocketing the receipts.

"We intend to see that income property makes some attempt to pay taxes. If not, we will start foreclosure suits, with instructions to the county comptroller to bid up to the full amount of taxes and penalties, under a law passed at the last session of the legislature."

—Chicago (Ill.) *Daily News.*

Bankruptcy; Reorganization

When an ancient Roman banker or merchant became insolvent, so that all might know what had happened to him, he symbolically broke the bench or counter which constituted his office. Then, if he was smart and able to do so, he made a hasty departure, to escape the wrath of his creditors when they discovered him no longer in business and able to pay his debts.

According to the Twelve Tables, dating from about 485 B.C., the "broken bench" or "bankrupt" was almost at the complete mercy of his creditors, provided they caught him. Imprisonment was the mildest form of punishment upon which they could insist. As a last resort, under the *lex sectu,* they might cut the insolvent's body into pieces and each receive title to a proportionate share.

The first known bankruptcy statute was enacted by Julius Caesar as part of the *lex julia.* Under the *cessio bonorum,* enacted about the time Justinian was codifying Roman law, the debtor for the first time became able to obtain exemption from imprisonment by making a voluntary surrender of his property to his creditors.

Since that time, the primary aim of bankruptcy legislation the world over progressively has been to foster commercial morality and to protect business from the wanton abuse of credit. The Constitution of the United States gave Congress the right to pass uniform bankruptcy laws for the entire country, obviously in the realization that chaos would exist under a system of conflicting and competing state laws. It was not until 1898, however, that Congress passed legislation sufficiently broad and comprehensive to render most state laws obsolete and to make it possible for United States district courts to exercise complete jurisdiction over all bankruptcy matters.

The 1929 stock-market crash and the many business failures of

the years immediately thereafter led to a considerable rewriting of the federal bankruptcy laws, culminating with the Chandler Act in 1938, intended to co-ordinate and unify the system as revised by innumerable piecemeal laws and amendments. One of the most important changes was the one making it possible for a certain proportion of debtors, unable to meet their obligations as they arise, to obtain relief without the disastrous experience of going "through the wringer" of complete bankruptcy proceedings. Among such debtors are those who by liquidation of all or part of their assets would be able to satisfy creditors in full. To do so, however, would be injurious to their business position. Obviously, it is in the public interest for them to continue normal activities, so they can apply for court approval for extensions or compromises.

Since June, 1934, furthermore, it has been possible for a debtor corporation to reorganize its financial structure, with the consent of a majority of its creditors, in accordance with a plan approved in court. Such reorganization is for the purpose of improving the concern's chances to avoid failure, with the resultant loss to both itself and its creditors. So interlocked is modern business that it is possible for one bankruptcy to cause several others, perhaps a series of them, each new one resulting from that which immediately preceded it. This is exactly what happened many times in the early months and years of the long depression. Many more of the depression-born changes in the bankruptcy law, in addition to the two cited, have been preventive rather than remedial in purpose.

Bankruptcy petitions. Either a person (consider a corporation as a person) comes to the conclusion by himself that he is at the end of his financial rope, or his creditors come to that conclusion for him. In the former case, the insolvent wants his books wiped clean so that he can start over again; in the latter, there is a vested interest in salvaging as much as possible of what is coming from the debtor.

Were it not for bankruptcy laws, a person failing badly in business would pass the rest of his life in debt. Everything he ever earned thereafter would have to go to pay off past obligations. There are, of course, heroic examples of former bankrupts who, without legal obligation, settle with their erstwhile creditors from responsibility to whom they have been discharged. Nevertheless, the large majority of those who go through bankruptcy proceedings never do so if only because they seldom are able to.

When a debtor wants the relief provided by the bankruptcy courts, he files a *voluntary* petition in bankruptcy. This is an admission of inability to meet his financial obligations, and a plea to the court to adjudge him a bankrupt, liquidate his assets, and distribute

the money among his creditors. The petition includes an itemized list of assets and liabilities, and to falsify this account is an offense subject to heavy penalty.

An *involuntary* petition is filed by the creditors, who, giving up hope of ever collecting in full what is owed to them and convinced that the debtor's financial condition will become worse instead of better, get together and ask the court to help them to salvage as much as they can from the wreckage. Not anyone, of course, can go into court at any time and ask that someone owing him a bill be declared a bankrupt. The indebtedness must be at least $500, provided the debtor does not have more than twelve creditors to whom he owes a total of at least $1,000. If there are more than twelve creditors, it is necessary for at least three creditors with claims aggregating $500 to join in the action.

An involuntary petition operates much the same as an original pleading in any civil action. The debtor is served promptly with a subpoena ordering him to court to answer the charge of insolvency. Up to this point, the elements of news interest are the same as in the case of a voluntary petition: (1) total assets and liabilities; (2) their nature; (3) unusual items, including those whose decline in value may have accounted for the insolvency; (4) analysis of the factors which caused a once-prosperous business to become defunct. Richer possibilities for news feature material exist in the attitude the debtor takes toward bankruptcy proceedings begun against him. In quoting the debtor the reporter must not overlook the libel laws.

Printed forms are available for use of the bankrupt. He must file: (1) a debtor's petition, wherein, under oath, he declares that he is insolvent and asks the court to adjudge him a bankrupt; (2) a statement of all debts of bankrupt, known as Schedule A; (3) a statement of all property of bankrupt, known as Schedule B; (4) a summary of debts and assets, which is a totaling of values of the details listed in the two schedules; (5) a statement of affairs, which gives information about occupation, bank accounts, property, income tax returns, suits, executions and judgments, loans repaid, losses, prior bankruptcies, et cetera.

The reporter looks first at the summary of debts and assets, and from it obtains the total assets and liabilities. Then he goes through the schedules in search of items of interest. He may find, for instance, that the only asset is a valuable stamp collection which may, as a result of the proceedings, ultimately be up for public sale. Or, a historic building may be involved, or an animal or heirloom. Recently a bankrupt's total assets were 30,000 pennies. When such feature angles exist, there is news interest, even though the name of the bankrupt is not important.

If the debtor does not contest the action, he thereby admits that he could and, probably in most cases, should have filed a voluntary petition. This is not always so, however, for there is many and many a business which survives rough financial weather during which it would have been extremely difficult to satisfy a bankruptcy court. An *accommodation* loan has saved many and many an operator in a variety of possible situations, often by making it appear that he is solvent when he really is not. An accommodation loan appears on a balance sheet as an asset, and presumably is a legitimate promise to pay a certain amount, which then becomes a bill collectible. Actually, in such cases no consideration was involved in the transaction; it was just a friendly service by someone who someday may need to have the favor returned. Should the person accommodated attempt to "double-cross" his obligor and sue on the paper, it is unlikely that he could collect. Should the paper come into the hands of a third party, however, the lack of consideration and nature of the original deal would hardly be a legal defense. To the layman, the accommodation loan may seem like a nice bit of skulduggery to defeat the purposes of many laws governing business; to the average businessman, however, it is no more a crime than stealing apples is to the small-town schoolboy. Anyway, the reporter must know the facts of life—they all do it.

If the debtor can convince the court that he actually is solvent, the involuntary petition is, of course, dismissed. In such case, however, he had better soon meet his outstanding obligations if he wishes to avoid a repetition of the experience, with the resultant bad effect that being dragged into court has on his business standing. If he can create the impression, in or out of court, that the whole thing is a frame-up by business enemies, he may not lose his credit, but that, however, is not so easy to do, and the newspapers are not able to give much assistance in such cases without running the terrific risk of committing libel. Reporters have seen thousands of small businessmen run out of business by larger competitors and financial institutions acting strictly within the law; in many cases a little patience would have been rewarded by the debtor's becoming able to survive unaided. It would be a masterpiece of understatement to declare that it sometimes seems that the larger outfit is not displeased to see the smaller one succumb; that, in fact, it would be rather displeased to see it survive.

At issue in a contested bankruptcy case is not only the solvency of the debtor, but also his conduct. There are six ways in which he can commit an act of bankruptcy, and if the creditors can prove any one of them, the court has no alternative but to adjudicate the debtor a bankrupt. The six acts are:

1. *Fraudulent conveyance.* This is any conveyance, transfer, concealment, or removal of property effectuated or permitted to be effectuated by the debtor with the intent to hinder, delay, or defraud creditors.

2. *Preferences.* These exist when a debtor transfers, while insolvent, any portion of his property to one or more of his creditors, intending to prefer them over the others.

3. *Preference through legal action.* A debtor who, while insolvent, permits any creditor to obtain a lien against his property through legal proceedings and who does not, at least five days before the property is sold or disposed of, have it vacated, is guilty of such an offense.

4. *Suffering judgments.* A debtor who suffers or permits, during insolvency, any judgment, attachment, or other lien against his property to attach without discharging it within thirty days commits this offense.

5. *Assignments for the benefits of creditors.* This is making a general assignment for the benefit of creditors, regardless of solvency, or the appointment of a receiver or trustee to be put in charge of the debtor's property during his insolvency.

6. *Admission of inability to pay.* If the debtor makes such an admission in writing and admits that he is willing to be adjudged a bankrupt because of his inability to pay his debts, he has no defense against an involuntary petition.

In all accounts of the filing of petitions and hearings, the reporter must be careful not to call the defendant a bankrupt until he has been adjudicated one by the court. Lack of malicious intent is no defense against an action for libel that may grow out of such carelessness.

If the petition is voluntary, it may contain most of the information necessary for a first news story, but the reporter may want to supplement its contents by explanatory background material, as in the following case:

Donald Greggs, once one of Centerville's leading real estate operators and builders, filed a petition of voluntary bankruptcy yesterday, listing liabilities of $229,991.38 and assets of $40 cash and a watch valued at $75.

Greggs, a pioneer in the cooperative apartment movement here, was president of the Centerville Real Estate Board in 1928 and 1929. He is a member of the Union League club and the Museum Institute.

Suits Blamed in Collapse

The petition was filed in the Federal Court by Thomas Chandler, attorney.

The lawyer explained that Greggs' financial collapse was brought about by a number of court judgments amassed during the depression which prevented him from earning a living.

He asserted that Greggs "hopes and intends, eventually, to pay off all his

debts." If he is declared a bankrupt, Greggs will have leeway to operate to earn money, the lawyer said.

Greggs started the apartment cooperative ownership movement here in 1919 by promoting several successful ventures, principally on the north side near the Centerville college.

Between 1931 and 1943, Attorney Chandler said, Greggs became heavily involved financially in cooperative buildings financed largely with his own funds. A flood of suits and judgments resulted, thus tying up his funds and preventing his making a comeback.

Greggs started in the real estate business in California in 1920. In 1905 he organized a bank in Lincolnville, N. Y., and was its cashier until 1915 when he came to Centerville.

By contrast there usually are "fireworks" when the petition is involuntary. The following item pertains to a case in which perhaps there were more than the usual amount:

Five depositors hurled charges of fraud in the weekend burglary of the Portage Park Safe Deposit Vault company, 4717 Irving Park boulevard, when they filed today in United States District court an involuntary petition in bankruptcy.

Filed by Attorneys Theodore D. Kahn and Milton Gerwin, the petition sought appointment of a receiver to protect the remaining property and a temporary restraining order to prevent the owners from disposing of any of the firm's books or remaining assets pending an examination.

The plaintiffs alleged that the company, while insolvent, "paid various sums to various creditors with intent to prefer one creditor over others with like claims." Declaring that affairs of the company were in a chaotic condition and that the creditors' property was so intermingled that they could not learn the extent of their losses, the five said the owners had refused them access to the company's books.

Seek Hearing Tomorrow

The suit was assigned to U. S. Judge William H. Holly, who is scheduled to preside from July 26 to Aug. 6, but the two attorneys said they would seek a hearing tomorrow before U. S. Judge William J. Campbell, who is presiding now.

Plaintiffs in the suit and the amounts of their claimed losses are: Earl Der, $1,500 in cash and $3,500 in jewelry and securities; Joseph M. Morman, $1,400 in cash and $2,500 in securities; Joseph Christ, $1,800 in cash and $1,500 in securities; Mrs. Marie Edling and Mrs. Waunita Pinkonsly, $1,000 in cash and an undetermined amount in securities in a combined claim. . . .

—Chicago (Ill.) *Times*.

Bankruptcy proceedings may be a legal device aimed at defeating some other activity on the part of the debtor corporation. Companies have been known to escape some of the effects of adverse judgments in common law state courts by filing voluntary petitions in bankruptcy in federal court.

The West Coast Shipbuilding and Drydock company Thursday was named defendant in a mortgage foreclosure action filed in Superior court, and later that day the firm filed a voluntary bankruptcy petition in the federal court, it was learned today.

The bankruptcy action listed liabilities at $294,538.81, including $69,625.08 to some 200 unsecured creditors, including many Centerville firms. An incomplete list showed $5,413.73 wages owing 35 employees. Assets total $404,400 were shown, consisting of $273,400 in equipment and $131,000 of debts due on open accounts.

Mark L. Carson and William Brody brought the Superior court to foreclose mortgages held and for an accounting of operations and finances. They were listed as the chief secured creditors in the bankruptcy petition, along with the Reconstruction Finance corporation with $38,000, representing assignment of certain accounts receivable.

Reading between the lines of the following item, the reporter finds it obvious that opinion differed as to the probable motives of the petitioners, inasmuch as a plan for municipal purchase of the transportation facilities was before the city council at the time:

A brief asserting it is mandatory on the United States District court to approve pending bankruptcy petitions against the Chicago Surface Lines was filed yesterday by the petitioning creditors in advance of a hearing tomorrow before Judge Igoe.

Attorney Joseph A. Struett, who represents these creditors with Attorney Charles B. Haffenberg, said he was not fighting municipal ownership with the bankruptcy action, but opposing further delay in settling the traction problem. The city plan announced last Monday proposed to buy the surface lines for 75 million dollars and the elevated roads for $9,650,000.

The brief argued that the interests of surface line creditors would be served better by bankruptcy proceedings than by the equity suits, which have dragged on for 17 years. It said many uncertainties existed as to the final ability of the city to effect a purchase, and that the bank offer on behalf of security holders was not a "firm" offer because it also was "conditioned on many factors."

—Chicago (Ill.) *Daily Tribune.*

Bankruptcy procedure. All bankruptcy petitions are referred at once to a referee in bankruptcy, a permanent court officer (see page 65), who must see that all parties concerned are notified promptly and an early hearing scheduled. He also appoints a *receiver*, who takes over the affairs of the business and operates them in the same manner as does any receiver appointed by an equity court. (See pages 295 to 297.)

It is the receiver's responsibility to prepare a careful inventory of the estate, to be presented at the first meeting of the creditors and later to the court itself. If the petition is voluntary, the task of the receiver may be largely one of negotiating an agreement, called a *composition*, between the bankrupt and his creditors whereby the latter agree to accept a settlement at so much to the dollar of their claims. If the bankrupt's assets are capable of easy and speedy liquidation, such agreement may not be difficult to reach, and thus the entire proceeding is speeded up considerably.

The law provides that the bankrupt shall not be rendered a pau-

per. State exemption laws determine how much he shall be left—the amount usually ranging from $100 to $500, being more for married people. A case grows in complexity with the number of preferred claims that are received. Establishing their priority may consume much if not most of the court's time as creditors vie with each other in presenting them.

The receiver in bankruptcy is a temporary officer. If an action is not settled at the first meeting of the creditors, he is discharged after having made a report of his examination of the debtor's assets. His successor is the *trustee,* whom the creditors elect, subject to the approval of the court. The creditors may invite the same person who has served as receiver to become the trustee. Political expediency often governs actions, for bankruptcy receiverships are lucrative patronage appointments, and creditors may not want to offend those who were responsible for the original appointments. In some places, it takes courage for creditors not to continue the court-appointed receiver automatically as trustee.

It is largely on the basis of the receiver's report that the court decides whether the debtor should be *adjudicated* a bankrupt, for his finding is more impartial than that of anyone else likely to appear at the open hearing on the petition. Once the court has decided to grant the petition, the way is clear for the creditors' meeting, election of the trustee, and discharge of the receiver. When the trustee is elected and approved by the court, he takes over complete control of the bankrupt's property, thereafter collecting any assets due it, completing any unfinished business, arbitrating and compromising any controversies, collecting and continuing leasehold interests in property, receiving and depositing moneys, and keeping regular accounts. Any property acquired by the debtor after he has been adjudicated a bankrupt is not liable for satisfaction of any debts payable in the bankruptcy proceedings. In brief, the trustee winds up the bankrupt's affairs up to the time of his bankruptcy, and sees that the creditors get their equitable shares of whatever there is to distribute among them.

Formal *discharge* of the bankrupt need not wait until the trustee has completed his work. The law provides that he can apply for it at any time between one and twelve months following adjudication. If the creditors are convinced that he has fully complied with the requirement that he turn over all his assets to the trustee, there is no opposition to the discharge's being ordered. Thereafter, the bankrupt is legally excused from doing anything further to assist in straightening out his old affairs, and he can start life anew. He still, however, is responsible for some financial obligations dating from before the time he was adjudicated a bankrupt. These include:

(1) taxes; (2) liabilities for obtaining property under false pretenses, willful injuries, alimony in support of wife or child; (3) debts not scheduled in time for proof and allowance; (4) debts created by fraud, embezzlement, or defalcation while acting in any fiduciary capacity; (5) moneys of an employee retained by his employer to secure faithful performance of the employee.

Among the reasons why a request for discharge may be refused are the following: (1) commission of a conveyance provided against in the bankruptcy laws as punishable by imprisonment; (2) intentional concealment of material facts; (3) refusal to obey any proper order of the bankruptcy court; (4) obtaining property under false pretenses and statements for the purpose of maintaining credit; (5) previous discharge in bankruptcy in voluntary proceedings within the past six years; (6) destroying, concealing, or otherwise obstructing the creditors within four months before the filing of the petition.

Reorganizations. The present bankruptcy act provides the opportunity of "another chance" for a concern whose financial structure is so weak that it cannot operate profitably without an overhauling. Perhaps the company is overcapitalized or has overexpanded or acquired bonded or other indebtedness beyond its capacity to carry. Unless something is done, bankruptcy is inevitable. The "something" which the law now provides is reorganization, and the sooner the necessity for it is recognized, the fewer the interests which "get hurt" in the process.

The Centerville Railroad company, which owns 160 miles of railroad between Centerville and Chicago, yesterday filed a petition in the United States District court for reorganization under Section 77 of the bankruptcy act.

The line has heretofore been operated under permanent lease by the Atlantic and Pacific railroad, which went into reorganization last December.

Such action by the Centerville line followed denial by Federal Judge William Hauer of a petition filed by a group of the road's stockholders to restrain officials of the Atlantic and Pacific from filing for reorganization of its leased line.

Federal Judge William Hauer yesterday approved a report of Andrew Sullivan, master in chancery, recommending that the O'Daniel Hotels, Inc., owners and operators of a series of hotels by that name, be reorganized under the bankruptcy law into one concern with the holders of first mortgage bonds of the corporation as the sole beneficiaries of the new company.

Judge Hauer ruled that the O'Daniel corporation is insolvent, and that junior security holders with aggregate securities of nearly $4,000,000 may not participate in the reorganization, inasmuch as the assets do not fully cover the amount of the first mortgage bonds and accrued interest.

As may be implied from the details of these items, reorganization can seldom be accomplished without sacrifice or loss by someone. Consequently, the court must be prepared to act as arbiter between

conflicting interests, all striving to improve their own chances when the final plan is evolved.

Among the most vexatious obstacles to equitable reorganization are creditors who insist they have preferred claims which must be met before the overall "shake down" takes place. Such claims are inevitable in any case involving a sizable corporation with different kinds of stockholders, bondholders, and mortgage holders whose "paper" is secured by different kinds of assets.

New York, Sept. 28—(UP)—A three-man committee, representing preferred stockholders of Childs company, today had on file with the restaurant chain's reorganization trustee a claim asserting the priority rights of preferred holders in the $2,734,590 fund held by the company.

Listing realty parcels in which the preferred stock fund, together with some assets of the company, had been invested, the committee told John F. X. Finn, the reorganization trustee, that the fund's interests in these properties were preferential "to any interests of the debtor" and therefore are the property of preferred stockholders "to the exclusion of any claims of the creditors of the debtor, including debenture holders."

The committee declared that investments and the proceeds in any sale of the properties should be distributed to preferred stockholders to apply against unpaid accumulated dividends.

"This interest of the preferred stockholders," the committee told Finn, who is trustee under appointment of Federal Judge Edward A. Conger, supervising the company's reorganization, "is in addition to their interest in the principal assets of the debtor which may be distributed.

"In any plan prepared by the trustee of organization of the debtor, if any, the vested interest of the preferred stockholders should be allocated to them in preference to all creditors or debenture holders."

Before any reorganization plan can be adopted finally and put into effect, these specific matters must be decided, even though the process seems interminable.

A federal court order today removed another obstacle to reorganization of the Centerville and Jakol Railroad.

The order, issued by Federal Judge William Rember, decided one of the issues left unsettled by the United States Supreme court in its general approval of the reorganization plan Jan. 15.

Under the order holders of the first and refunding mortgage bonds were granted first-lien rights to 16 pieces of line. General mortgage bondholders were granted similar rights to a piece of line running 3 miles from Nakomamat, Wis., to Wautung, Ill.

Judge Rember recommended that the Interstate commerce commission approve the plan with amendments necessitated by his order. He suggested that if a manager is named to administer the reorganization his appointment should be made subject to court ratification.

Once a plan finally is approved, it goes forward under constant supervision by the court.

The appointment of Wilbert Holmes as trustee of the Alton and Mississippi railway, became final today before Federal Judge Theodore Roscoe after approval of the appointment was granted by the Interstate Commerce commission.

Holmes was appointed last April 20 to replace the late Frank Seibert who was trustee for the lines until his death.

Judge Roscoe today approved Holmes' bond of $500,000 and set his annual salary at $15,000. Holmes is also head of the Wilbert Holmes & company, real estate dealers with offices at 20 West Monroe street.

Federal Judge Theodore Roscoe yesterday denied a petition by Franklin, Scott and Bliss, attorneys for the Junction Railroad company, debtor corporation, seeking to order the trustee to repay $48,322,687 of loans and interest to the Reconstruction Finance corporation.

"In view of the fact the (railroad reorganization) plan has been approved by the district court, the United States Circuit Court of Appeals and the United States Supreme court, it would be unseemly to disrupt the plan now or modify it," he said.

Judge Roscoe concurred with Douglas Aaronson, attorney for the Life Insurance Group committee, who argued that all energies should now be devoted to early consummation of the plan and reorganization.

Reorganization managers for the Chicago & North Western Railway company were granted authority by Federal Judge John P. Barnes yesterday to seek Interstate Commerce commission approval of the new securities to be issued and to assume obligations of the predecessor corporation.

Judge Barnes also approved a similar petition which would clear the way for filing of new securities with the Reconstruction Finance corporation, discharging present claims the RFC has against the railroad.

He approved transfer of properties to the new company in accordance with the reorganization plan.

Judge Barnes also authorized Claude A. Roth, trustee for the railroad, to spend $2,859,250 for the purchase of 39 Diesel-powered locomotives for switching purposes.

Judge Barnes said, however, that the actual number of engines to be delivered depends upon the War Production board.

He also authorized immediate payment for five engines of the original order already received by the railroad and gave the company until the end of the year to make the total payment.

—Chicago (Ill.) *Sun.*

Throughout reorganization proceedings, the interests of the general public are protected not only by the court itself but also by certain governmental agencies. In all matters related to railroads, the Interstate Commerce Commission is naturally concerned and, more than that, possessed of authority to upset any actions that go counter to its own rules and regulations. The Securities & Exchange Commission likewise is advised regarding any contemplated changes in the relation between the company and the investing public, but its authority is strictly advisory. When a reorganization plan is prepared, the court sends it to the shareholders affected. When approval is obtained from two-thirds, the court usually puts the plan into

effect. The reporter must be aware, however, of the court's absolute authority at all times.

By Edward Kandlik

Chicago, Milwaukee, St. Paul & Pacific Railroad company, debtor corporation, will shortly file a petition with Federal Judge Michael L. Igoe seeking modification of the road's five-year-old plan of reorganization because of "changed conditions."

Attorneys John L. Hall and James Garfield, acting for the debtor, notified principal parties that they will appear in court with their plea Dec. 8. The hearing, however, will probably be postponed to Dec. 17, it was said yesterday.

The debtor's plea for reconsideration of the plan is now being directed to the district court after having been rejected by the Interstate Commerce commission. That body dismissed the petition on the grounds it could only consider changes in the Milwaukee road's plan called for by the United States Supreme court decision.

Cash Improvement Cited

The high court directed the I.C.C. to consider supplementary compensation to the road's general mortgage bonds and its 5 per cent bonds of 1975 for surrender of their prior lien position.

Pointing out that the road will have $125,000,000 of cash and government securities on Dec. 31, the debtor claims that this coupled with a $45,000,000 increase in net worth since Dec. 31, 1938 arouses "grave doubt whether the plan affords due recognition to the rights of all classes of creditors and stockholders" and urges that the court "reconsider its former approval."

Between Dec. 31, 1938 and Dec. 31, 1943, the debtor's cash will have increased about $112,000,000 and the principal of its secured debt has been reduced about $17,242,670, making a total improvement of over $129,000,000 as against a gain of $83,423,448 in unpaid interest, an affidavit filed to support action declares.

Rapid Appreciation Claimed

The figures were supplied by R. J. Marony, vice president of the road. Currently the debtor's cash is piling up at a rate of $6,000,000 a month while bond interest accrues at $1,740,000 monthly, it further states, indicating net worth is appreciating at a rate of $50,000,000 a year.

Charging that the present plan was based on a record closed March 22, 1938, the debtor corporation said that:

"The conditions on which the commission and the courts acted have been altered to such an extent as to make out of date, inequitable, and contrary to the statute the decisions based on them.

Although the I.C.C. held hearings starting July 20 on modification of the road's reorganization plan, as ordered by the Supreme court, no decision has as yet been rendered.

—Chicago (Ill.) *Sun.*

By Clarence R. Dore

When a hearing on the allowance of fees in the reorganization of the 32 South State Building corporation was resumed before Federal Judge William H. Holly today only one of the 13 lawyers that have been in the case for the last four years offered objections to the $133,983 asked.

That was G. Gale Roberson, counsel for the Securities & Exchange commission, who orally examined each of the petitioning attorneys about the service

they had given to the estate. Soon it became apparent that one of the lawyers represented conflicting interests and might not be entitled to any of the $10,000 he requested; others may have put in the time represented but added little if anything to the final outcome, while a few seemed to have carried the heat and the burden of the labor represented in the reorganization plan.

In the present case there are more than 1,500 owners of the $853,000 in first mortgage bonds, many of whom have no one looking out for them but the SEC and the court. After taking the matter under advisement to determine who will get the $65,000 set aside for reorganization expenses, Judge Holly asked Attorney Roberson to file a memorandum of suggestions on the matter.

S.E.C. Protects the Public

Before the S.E.C. took a hand the judges often found that when it came to allowing fees they were at the mercy of attorneys, who were scratching each other's backs. While the commission generally finds that it is advisable to ask that fees be cut, it sometimes takes the opposite position. Recently Attorney Roberson asked Judge Philip L. Sullivan to raise the amount allowed one attorney by a master in chancery and the court agreed.

Nor is work on reorganization cases the only part of the service by the commission which has caused them to be known as a strong arm of the federal courts. A few months ago Thomas B. Hart, regional administrator here, asked Judge Michael L. Igoe to replace the trustee of the North Shore Electric Railway because he occupied a similar position with the Rapid Transit Lines, creditors of the North Shore. Judge Igoe promptly replaced the trustee when he was shown the conflicting interests.

Large Staff of Experts

A large staff of lawyers, accountants and business analysts operate through Illinois, Iowa, Wisconsin, Missouri and Minnesota, from the commission headquarters in the Bankers building, checking on the 650 licensed brokers dealing in securities. It is a safeguard for the investing public, for if evidence of sharp practice is found the culprits are hailed in to show cause why their licenses should not be revoked. Such a hearing has just been completed where a broker, with offices throughout the country, was reported to be overcharging customers to the tune of hundreds of thousands of dollars.

Bucket shops with their "boiler rooms" have practically disappeared since the advent of the S.E.C. and the S.E.C. is constantly preparing cases for criminal prosecution in federal courts when violations of the Securities act are uncovered. Commission agents are often drafted by U. S. attorneys to aid in the prosecution of a case that they have prepared.

S.E.C. Jailed 'Jake the Barber'

John "Jake the Barber" Factor escaped the long hand of the British authorities although the United States Supreme court ruled he should go back to be tried for a $7,000,000 fraud. He also avoided trial for swindles in this country until the S.E.C. traced a $1,000,000 whiskey warehouse receipt fraud to Factor and 11 accomplices. At Cedar Rapids, Iowa, with Alex J. Brown, Jr. of the commission office here acting as assistant prosecutor, they all pleaded guilty and drew sentences which added up to 50 years. Factor has served only a few months of his 10-year jolt.

Administrator Hart was a top-flight prosecutor on the staffs of Gov. Green and Judge Igoe when they were U. S. attorneys. Hart was drafted to aid in the prosecution of the alleged $7,000,000 fraud in Mexican timber lands by officials

of the Resources Corporation International uncovered by the commission here. The jury disagreed and the case is to be tried again this fall.

—Chicago (Ill.) *Daily News.*

Reporters, copyreaders, and editors must never forget that companies undergoing reorganization are *not* bankrupts. In fact, quite the opposite is the case. It is the newspaper itself which runs the risk of bankruptcy if it slips too often in this respect and invites libel suits as a consequence.

Divorce

Government (the state) licenses every marriage and is supposed to be a third party in every divorce action. Its interest is in preserving the American home. In recent years, neither it nor the church nor the many other institutions seeking that objective have been doing so well. Whereas a half century ago only about one out of every fifty marriages ended in divorce, today the national average is below one out of five.

This trend, as every reader of this book knows, is a matter of tremendous concern to students of social problems, and volumes have been written to explain it and to suggest remedies. Both the courts and the newspapers have come in for considerable discussion in the debate. There are some, in fact, who go to the extreme of accusing the judiciary and press as the main factors in the alleged "breakdown" of the institution of marriage.

Such a viewpoint, however, is seldom expressed by any reputable sociologist, who recognizes that the reasons for marital disharmony are to be found primarily in psychiatric and sociological factors. True, by an enlightened understanding of those factors, both judge and editor can contribute to public enlightenment. It is sadly true such understanding is often grossly lacking in both courtroom and newsroom. Nevertheless, it is naïve to declare that the space given divorce news in newspapers is disruptive of connubial bliss, or that tightening the restrictions against divorce would automatically make all married couples love each other more. It is irrational in this as in other social problems to pick a single factor and blame it alone for a multiple-sided situation. That is what is popularly known as scapegoating.

Marriage and divorce laws. Divorce news is not difficult to gather or write. Any reporter with a modicum of news sense can detect the feature possibilities in the average case. The written and spoken record is usually adequate as to information. If it is not, attorneys who specialize in divorce cases are notoriously co-operative with

news gatherers; in fact, they are almost the most publicity-seeking of their so-called profession.

The courthouse reporter probably can pick up his knowledge of the law in this field faster as he goes along than in most other branches of the law. He should, however, be able to do a better job with a preliminary understanding of the marriage and divorce laws of his state and of the philosophy underlying them. Hence this brief consideration of the subject.

As we have stated, organized society has an interest in the preservation of the family and the upbringing of children. For centuries monogamy has been the only approved form of marital relationship; polygamy and bigamy are criminal offenses in the United States. Basic to democratic thinking in this field is belief in the right of each person to select his own marriage partner, rather than having him or her selected by tribal chieftain, parent, or anyone else. American romantic literature is rich with stories of lovers who defied their families through elopement or other means. No longer does the would-be-groom consider it necessary to solicit the approval of his sweetheart's father before "popping the question" to the girl herself.

Despite this firm belief in freedom of marital choice, society has an interest in protecting itself against mistakes at the altar. Consequently, it generally frowns on child marriages and considers backward those states, mostly Southern, which permit them. Newspaper publicity for some notorious cases not many years ago was partly responsible for the raising of the age limits in several states, so that today most states require the bride to be at least sixteen and the bridegroom eighteen, and for both to have their parents' consent between those ages and eighteen and twenty-one respectively. The *waiting period* between the time when application for a marriage license is made and the license is issued, or between issuance of the license and the performance of the ceremony, is also intended to discourage hasty marriages that might end in failure. At different times all over the country, so-called "gretna greens" have existed in cities close to state boundaries. Couples residing in states with waiting period laws have eloped to them, as did runaway English couples to the village of Gretna Green in southern Scotland.

Eugenical marriage laws—that is, laws intended to safeguard the quality of children resulting from wedlock—are mainly for the purpose of forbidding marriages between close relatives: parents and children, brothers and sisters, uncles and nieces, aunts and nephews and, in most states, first cousins. Miscegenation, or marriage between Negroes and whites, is forbidden in many states; some states also forbid marriages between Caucasians and Indians, or Hindus and Orientals. The right to marry may also be forbidden to epilep-

tics, the insane, imbeciles and idiots, habitual drunkards, paupers, drug addicts, and victims of venereal disease. In some states, in fact, some such marriages are in violation of the criminal code.

In recent years there has been a strong trend toward compulsory physical examinations and blood tests to detect venereal disease. Some states require medical certificates proving that the male only is free from such diseases; others, in conformity with medical opinion, demand such certificates of both men and women. The tendency in states that have passed such laws also is to reduce the waiting period, in the belief that the bother connected with submitting to the examination is sufficient evidence of seriousness and that the time required for results of the tests to be known constitutes sufficient delay. At least the so-called "gin" marriage at the end of an all-night party is eliminated.

Marriages contracted in violation of some or all these statutes and for other reasons can be declared null and void in most states by *annulment proceedings* and in others by equity suits. Delaware, for instance, permits annulments for the following reasons: (1) incurable physical impotency; (2) consanguinity or affinity; (3) a husband or wife living at time of marriage; (4) fraud, force, or coercion at time of marriage; (5) insanity of either party at suit of other. Delaware considers children of void or voidable marriages as legitimate, but in several other states such children are illegitimate. About half the states recognize *common-law marriages*, which are marriages contracted without benefit of civil or religious ceremony, merely by the partners agreeing to live together and living together as man and wife. Progressive leaders in social welfare deplore what is still the prevailing attitude toward illegitimate children. They declare the undeniable truth that no illegitimate person is to blame for his illegitimacy. Consequently, they seek for him equal protection under the law, and would remove the social stigma attached to his situation. As yet, however, legal adoption is about the best that most such unfortunates can hope for. *Bastardy* usually is classifiable as a quasi-criminal offense, and the offending father is required to provide financial aid for the care of his offspring. This aid in most instances is pitifully meager. In 1936, New York passed the Holley Bill, which provides that "there shall be no specific statement on the birth certificate as to whether the child was born in wedlock or out of wedlock or as to the marital name or status of the mother." California, New Hampshire, and Massachusetts previously had similar laws, and several other states make a practice of keeping birth records confidential even without specific statute.

The English common law on which, unfortunately, most American state laws was modeled, was that the *filius nullius* (nobody's

child) had no legal rights, either of support or inheritance; could claim no legal relationship, even with his own mother; and did not become legitimate even by his parents' subsequent marriage. Today, however, all but three states recognize the legitimacy when the parents marry, and all but one state allow illegitimate children to inherit, at least from their mother. Attention to the problem is increasing as the number of illegitimate births in the United States grows rapidly. In the October, 1944, issue of *Hygeia,* Dr. Halbert L. Dunn, chief of the Vital Statistics Division of the U. S. Bureau of the Census, reveals that now one out of every twelve births in this country is illegitimate. This increase is correlated with a general decrease in the birth rate and in marriages. At the same time, however—fortunately for the children but of doubtful social value—is a mounting demand on the part of childless couples for babies to adopt. Only a court with proper jurisdiction can supervise adoption proceedings, but there have sprung up veritable baby factories in many parts of the country, where unmarried mothers are cared for on their agreement to turn over their babies to the cradling home. Hollywood stars and other parents too busy to be bothered with pregnancy come to these institutions to obtain their babies the easy way. There they find the infants on display, almost as in a store, to be picked up and taken to court with petitions to adopt, while social workers do their "lobbying best" to have state laws modified to outlaw the outrage. According to the best sociological thought on the subject, no infant should be taken from its mother for weeks, if not months, after birth, and the natural love of a mother can never be surpassed by that of a foster parent—no matter how ornate the physical surroundings. All laws governing illegitimacy and adoption, these "dreamers" declare, should be predicated upon what is best for the child and the real parents rather than the potential foster parents.

Only one state, South Carolina, does not permit divorce for any cause whatever. In others, any number of about twenty grounds for action are permitted. Among the most common are: cruelty (usually excessive and repeated), desertion (usually for at least one year), habitual drunkenness (usually for at least two years), adultery, bigamy, conviction of an infamous crime, assault with a deadly weapon or poisoning with intent to kill, impotence at the time of marriage, and venereal disease.

In states with strict divorce laws, perjury, framing, and collusion often are suspected. Adultery, for instance, is almost impossible to prove, as it seldom is witnessed. Courts have even been known to refuse to accept confessions to adultery as evidence of it. Consequently, it may happen that, with the knowledge and consent of

both parties, a fake bedroom scene is staged. In such cases a third person, the *co-respondent* when suit is begun, is engaged to play a part in which the offended spouse ostensibly interrupts an assignation, together with witnesses. Fraud, of course, is indictable, but it is not easy to prove in such cases, as no one wants to incriminate himself. Reputable lawyers generally have nothing to do with such matters, or at least so they say.

The easiest way to avoid such subterfuge is to change one's residence to a state where there exists a longer list of grounds on which divorce is granted. Nevada has won quite a reputation as a divorce center because of the short sojourn (six weeks) it requires to establish legal residence there, and because of the liberal interpretation of "extreme cruelty" as a cause of action. For bona fide residents of many other states, however, divorces are just as easy to obtain—more than ninety per cent of those granted being default cases. In the spring of 1945, furthermore, the United States Supreme Court caused thousands of Reno divorces to be subject to possible future attack when, in a North Carolina case, it upheld the conviction, in the courts of that state, of a couple for bigamous cohabitation. The case involved a man and woman, both of whom had obtained divorces from other spouses in Nevada before marrying each other in North Carolina. Two years earlier in the same case, the Supreme Court had decided that the Nevada divorce could not be upset because the service, in conformity with Nevada procedure, was at variance with that prescribed in North Carolina. The second time, however, the matter of bona fide residence was at issue, and the highest court in the land declared that going to Nevada for a short period merely for the purpose of obtaining a divorce did not constitute such bona fide residence. Consequently, the North Carolina courts were correct in considering the divorce invalid and in convicting the couple of bigamous cohabitation. Immediately, movement for a uniform federal divorce law was begun.

The following examples illustrate other ways in which jurisdiction in divorce matters may be vexatious and, consequently, newsworthy:

Superior Judge Joseph Benson set a precedent when he ruled yesterday that state courts have the power to inquire into out-of-state divorces involving state residents.

He denied motions of Earle Tilton to dismiss the divorce suit of Mrs. Etta Tilton, of 4350 Willo road, and her petition for temporary alimony. Tilton, treasurer of the Superior Products Sales company, obtained a divorce in Reno, Nev. in 1941 and has since remarried.

"If the Nevada decree here concerned was fraudulently obtained on a false claim of residence," Judge Benson said in a 12-page opinion, "this court would be stultifying itself to give force and recognition thereto."

He reassigned the case to the court calendar on Mrs. Tilton's request for a jury trial.

Judge Joseph Benson in Circuit court today granted an injunction to Mrs. Loretta Walker, 52 years old, of 5633 South Monroe street, from attempting to divorce her husband, Henry Walker, 49, in any state except Minnesota.

Charles Garry, attorney who represented Walker, told the court that Mrs. Walker had started two suits for divorce against Walker in Indiana, and that one suit had been dismissed because she could not prove her residence. The other is pending in Thorne county, Ind. Walker also asked that Mrs. Walker be restrained from molesting her husband or interfering with his work.

In his divorce suit, Walker charged that his wife, after he had paid for two college degrees for her, considered herself too good for him. He is an English teacher at Centerville high school.

Walker's attorney declared that Mrs. Walker thought her husband "clipped her wings by his monotonous way of life."

The validity of divorces granted under a 1939 amendment to Illinois statutes which permits city courts to confer decrees on any residents of their county was upheld yesterday by Judge Thomas J. Lynch in Circuit court.

The ruling was made in a test case in which John M. Cullen, Jr., 23, of 10635 Avenue G, a watchman, sought an annulment of his marriage to Harrete Stevens Cullen, 19, of 8818 Indiana avenue, on the ground that Mrs. Cullen had obtained an illegal divorce from her first husband, a soldier. Mrs. Stevens, a Chicago resident, obtained her decree in the City Court of Calumet City.

Attorney Sol R. Friedman, acting as a friend of the court, to protect the interests of thousands of persons whose divorces might be invalidated by an adverse ruling, moved to strike the bill as being legally insufficient.

Elmer J. Schnackenberg, speaker of the Illinois house, who was Cullen's attorney, argued that the 1939 amendment was unconstitutional, and said he would seek a direct appeal to the Illinois Supreme court.

Schnackenberg previously had contended that under the 1939 amendment "little Renos will spring up all over Illinois in which divorces could be obtained on flimsy grounds and without publicity."

—Chicago (Ill.) *Sun.*

Only New Mexico permits incompatibility as a ground for divorce, although Florida and Vermont allow "habitual bad temper." In other states, unless the meaning of "cruelty" is stretched, there is the temptation to perjury and the possibilities for a lucrative practice by shyster lawyers. In the average default case, the complainant (the wife in about eighty per cent of all cases) files suits, and the other party (the *respondent* as in all equity cases) answers with a general denial. Then, by stipulation, the case is put on the default calendar and the parties come to an agreement regarding any property settlement, dower rights, alimony, custody of children, and like matters. Either by statute or court rule the plaintiff in a default action usually has to appear in court, but the respondent need not do so. In Illinois, the statutes provide that there must be testimony of witnesses in open court. Usually this means the plaintiff and two

other witnesses, but if the calendar is crowded the judge may be satisfied with the testimony of the plaintiff and only one other witness. The whole proceeding may take only two or three minutes.

Contested suits, in which there is a cross suit, of course, are a different matter. They may drag on for weeks or months, with enough dirty domestic linen being dragged into court to satisfy even the most avid sensation-seeking newshound. Such cases may be tried with or without a jury, as the parties desire, but no decree is final until signed by the judge. In large cities it may be the custom for the judge to instruct the attorneys to prepare the written decrees. This makes it possible for a tightfisted lawyer to insist on payment of his fee within the time limit designated for the court's signature (probably ten days). It also occasionally results in the innocent commission of bigamy by a person who thoughtlessly considers the court hearing to be final and remarries before the decree is entered.

About half the states permit the innocent party in a divorce action to remarry immediately; the others stipulate periods from three months to three years—the period may differ depending on the grounds for action. In Georgia, the judge has the power in all cases to name the period. In the District of Columbia, the defendant is barred from ever remarrying, and in many other states he or she cannot remarry if the offense was adultery. State laws differ considerably, with court approval for remarriage necessary in many instances. When remarriage restrictions exist, divorce decrees are *interlocutory.*

In the attempt to discourage blackmail and defamation of character, there have been experiments with laws to forbid the naming of co-respondents in divorce and separate maintenance actions. When such laws exist, a complainant charging misconduct must limit himself to use of an initial or the fictitious John or Jane Doe. The following is the first third of a news story to illustrate a clever journalistic device to identify the fictitious third party without committing libel:

A pretty Chicago wife was accused in a divorce action yesterday of a six months' romance and misconduct that began amid the enchantment of the Florida keys, continued in tropical Havana, and was resumed in Chicago, Detroit and New York.

She is Mrs. Annabelle Adams Orton, 35 years old, whose husband, Philo A. Orton, wealthy head of the Orton Crane and Shovel company, is asking that he be granted a divorce and that she be ordered to vacate their home at 215 East Chestnut street. The bill, filed by Attorney Daniel A. Covelli, names a Mr. R., described as a millionaire manufacturer of New York City and Long Island.

Papers Served in Café

Adding filip to the case was a scene last night when sheriff's deputies served Mrs. Orton with a summons and subpoena as she dined in a restaurant at 222 North State street. They also handed a subpoena to her dinner companion, whom they addressed as Mr. Lou Root of New York. She took the papers smilingly. Her companion gasped: "What! Me too?"

—Chicago (Ill.) *Daily Tribune.*

A problem that became acute in wartime in many courts was the admissibility of depositions in divorce actions. A serviceman overseas, unable to appear in court to testify, was often deprived by statute or court rule of the right to bring suit. Unfaithful wives consequently were able to continue to collect soldiers' allotments and as potential beneficiaries of estates and insurance policies.

In a precedent-breaking decision, Judge Robert Dunne of Circuit court yesterday granted Cook County's first divorce to an absent serviceman. Judge Dunne held that a court rule of more than 25 years' standing, against decrees where there is no appearance by the plaintiff, is void and unfair in such cases.

The divorce was granted to Pvt. James Patejdl, 27, of 5246 South Troy street, now in England, from his wife, Ann, 26, whose last known address was Tampa, Fla. He charged desertion, and witnesses testified that his wife was associating with other men.

Judge Dunne ruled in a 13-page opinion that men in the armed services were entitled to divorces if their grounds were sufficient, even though they could not be in court.

The Illinois statute, he pointed out, provides only that testimony of witnesses shall be heard in open court and does not specifically state that the plaintiff shall be present.

The decision declared that there should be no discrimination against servicemen, but the judge added that he favored stricter proof in all divorce cases.

—Chicago (Ill.) *Sun.*

Most experienced divorce-court reporters would probably agree that there is little a judge can do to bring about reconciliations between couples wanting to dissolve their matrimonial bonds. With the increasing number of divorce cases, for the judge to hold even brief interviews with any appreciable number of principals would mean hopelessly to delay the docket. A judge is not expected to be an expert in psychiatry or social work, nor does he have the staff to conduct the investigations that would be necessary if he were to attempt to operate as a Mr. Fixit. The large proportion of default cases shows that a majority of persons seeking divorce desire a minimum of publicity and of airing of their private lives in court or on the record. Were a judge to open up from the bench with questions, he would in most cases deny the principals the privacy they desire. The problem of how to make marriages happier is one for the sociologists to grapple with and for enlightened legislators to

solve. Maybe something still can be done with a large proportion of couples even after they have reached the stage of wanting to call it quits. Maybe the whole matter should be removed from the jurisdiction of the courts of equity and placed in the hands of sociological experts. Until taxpayers are ready to pay the price of such expert handling, they should not expect judges on the bench to perform miracles of reconciliation. The recent increase in divorces may not by any means indicate an increase in marital unhappiness; rather, it may mean only a greater frankness in recognizing such unhappiness and a greater boldness in doing something about it. Whatever one feels—for religious or other reasons—about divorce, the basic problem remains: how to increase the number of married couples who want to remain that way.

Whereas a divorce decree dissolves the marriage ties, causing the parties to be single again, a decree of judicial separation (*a mensa et thoro*) does not leave them free to remarry. Instead, it is merely a court order that the two live apart. The *separate maintenance* for which a wife may sue is a support allowance from her husband while existing in such a state. This partial dissolution of marriage is often the alternative to a court action which neither party wants to begin for fear of the other's cross suit, or because of property rights, inheritance, or other reasons. Misused, it allows "gold digging" estranged wives to persecute their husbands, and it may be an inducement to immorality.

Properly speaking, separate maintenance is not *alimony.* The latter is the allowance that an ex-wife gets from her husband at stated intervals (weekly or monthly) for her support. During the pendency of a suit, a court may allow temporary alimony (*alimony pendente lite*), but the term generally applies to future payments as stipulated in a final decree. Support money for children whose custody is allotted to a wife is not alimony proper. A few states permit the awarding of alimony to a divorced husband. "Alimony row" in a local jail is for ex-husbands who have defaulted on their payments and who have, as a result, been found guilty of contempt of court.

Frank Naughton, 30, of 4590 South Winter avenue, was sentenced yesterday to six months in the County jail for being $2,680 in arrears in money owed to his former wife, Helen, 29, of 618 South Cedar avenue, for the support of their two children. The sentence was imposed by Superior Judge Foster Pendleton.

Mrs. Naughton said she hadn't heard from her former husband since 1937, when they were divorced and he was ordered to pay $8 a week, and last summer when she received one $42 Army allotment check from him. Since then he received an honorable discharge from the Army.

Naughton contended that he had paid his wife approximately $1,000 but he had no receipts for the money.

Handling divorce news. For his original story of the filing of a suit for divorce, a reporter should consider the following elements of potential news interest: (1) names and addresses of principals; (2) date and place of marriage, and any unusual aspects of the marriage or wedding ceremony; (3) date and place of separation; (4) grounds on which divorce is sought; (5) whether alimony is requested or waived; (6) other demands as to disposition of property; (7) whether there are children, and, if so, what demands are made as to their custody; (9) if wife is plaintiff, whether she asks court to restore her maiden name.

Privilege certainly extends to a statement of the general grounds on which an action is sought—desertion, cruelty, et cetera—but it is questionable whether a newspaper can, with impunity, before trial recite specific instances of alleged misconduct contained in a divorce complaint. What follows is a typical restrained press account of the beginning of such a suit:

A marriage that 11 years ago linked two of the most socially prominent families of Chicago and Boston was on the rocks today with a divorce suit filed in Circuit court by Mrs. Rose Movius Palmer against Potter Palmer III.

Mrs. Palmer, a relative of Governor Saltonstall of Massachusetts, asks custody of their two children, Rose, 10, and Potter IV, 8, and "other and further relief as the equity of the case requires."

According to the bill, filed by Attorney Clay Judson, of the law firm of Wilson and McIlvaine, Palmer deserted his wife a few days after Christmas, 1941. Their home is at 1260 Astor.

Palmer left Harvard university in his senior year to marry Miss Movius, sister of one of his classmates at St. Mark's school and a descendant of one of the founders of the Massachusetts Bay colony, on Feb. 7, 1932.

—Chicago (Ill.) *Times.*

When the case was disposed of on the default calendar, the writeup was similarly restrained, except for the "color" provided by the description of the plaintiff's attire:

Mrs. Rose Movius Palmer, member of a socially prominent Boston family, was granted a divorce today by Circuit Judge Thomas J. Lynch from Potter Palmer, III, a Navy lieutenant and a grandson of the early Chicago capitalist.

Attired in black, wearing a matching, flowered hat, Mrs. Palmer testified only briefly. Charging desertion, she said her husband in 1941 told her he was tired of married life and was leaving home. Her testimony was substantiated by Mrs. Barbara Stanley Coleman, 1530 North State street, and Barrett Wendell, 1260 Astor street, a college classmate of her father. Palmer did not appear in court.

Mrs. Palmer was awarded custody of their children, Rose, 10, and Potter IV, 8. She waived alimony and details of an out-of-court financial settlement were not revealed.

The couple was married in Boston, Feb. 6, 1932, in a wedding which was one of the social highlights of the Eastern city.

Palmer became president of the Mission Orange Bottling company in 1941.

Chicago (Ill.) *Daily News.*

Unusual charges can be played up in news stories without undue sensationalism, as may be seen from following routine accounts:

A new car every year for eight years was bad enough, but when her husband ran in four extra autos Elizabeth Weber, 30 years old, of 1890 South Holmes avenue, quarreled with him and they separated. She explained this yesterday to Judge Wendell Smithies in Superior court, who granted her a divorce from John R. Weber, 29, a blueprint worker, on charges of desertion. She waived alimony and the court ordered that he pay $8 a week for support of his sons, John, 9, and Harold, 6.

The last few years of her marriage to Albert Hess, 50, shoe salesman, were a series of practical jokes—none of them very funny, Mrs. Rose Hess, 48, of 159 Judson avenue, told Circuit Judge William Bronson today in obtaining a divorce.

With her attorneys, Ralph Dunne and Franklin Hayford, Mrs. Hess told the court her husband was the world's worst practical joker. Some of the things she told of his having done were: untying her apron strings; pinching her cheeks; unexpected pokes in the ribs; hiding things belonging to her about the house; offering to kiss her—and then backing away.

On one occasion, when he had returned from a road trip, he told her of the beautiful women he had met and later when she came back from a hospital after suffering a nervous breakdown because of his bad jokes, she found two women actually living in the house with Albert, Mrs. Hess said. She was refused admittance and left him Sept. 25, 1940, after nearly 20 years of marriage.

Judge Bronson awarded her a decree on grounds of desertion, and Mrs. Hess waived alimony. Her attorneys said there was an out-of-court settlement. There are no children.

The courtroom scene or an incident of the hearing may be the feature of the divorce story:

Frank Miller, 52, of 1670 Newcastle avenue, won a hock of ham as part of a divorce settlement approved yesterday by judge William Bronson in Superior court.

He was divorced by Mrs. Mary Miller, 48, who testified they bought a pig in the country, had it slaughtered and cut for home consumption. Her husband told the court:

"I work hard, and I need meat for lunch. She has agreed to divide the pig with me and give me all the bacon fat."

Mrs. Miller added: "I can eat no fat, so I am going to give him all but the lean."

After the divorce decree had been awarded on a charge of cruelty, the Millers drove home and divided the pig according to agreement. Mrs. Miller also gave him back his ration book and a wedding ring.

A clipping from an advice-to-the-lovelorn column found its way into Judge Julius H. Miner's division of Circuit court yesterday, as an explanation of the difficulties of Mr. and Mrs. Charles Johnson.

Johnson, an insurance clerk, said:

"I guess our love just cooled, judge. It says here (referring to the clipping which he gave to the judge to read) that when a man's love is dead because his wife nags him or goes to bed with cream on her face, they might as well get a divorce."

He did not allege that his wife, Virginia, 22, of 1257 Lunt avenue, ever went to bed with cream on her face. Mrs. Johnson is seeking separate maintenance, alleging that her husband deserted her Aug. 7, eight months after their marriage.

"Young man," said Judge Miner, "you do not regard the responsibilities of marriage seriously enough."

He told Johnson to pay his wife $15 monthly temporary alimony.

—Chicago (Ill.) *Sun.*

As in the former of the above two examples, the settlement or court order may be the feature. Other instances are the following:

One-fifth of her husband's $80,000 a year income, for life, was awarded Mrs. Rudolph Roland, 52, of 1900 Pratt boulevard, yesterday along with her divorce from Roland, president of the July Cement company.

The divorce was granted by Judge Henry Caldwell in Superior court on a desertion charge.

In addition, Roland has agreed to turn over a summer cottage at Center lake to his wife and house furnishings valued at $4,000.

And, as a precaution, Mrs. Roland was granted a right to examine his income tax returns, to be sure she is getting a full one-fifth of what he makes.

Judge Henry Caldwell of Superior court yesterday gave Harry Rollins, 50, an attorney, of 5432 South Indiana avenue, 30 days in which to pay an arrearage of $120 in alimony or face a jail sentence.

Rollins' former wife, Anna, had filed a petition to find him in contempt of court for arrearage. She said that on Jan. 27 he was $7,805 behind in payments ordered under a 1934 divorce decree. It was agreed, she added, that she would accept reduced alimony payments and he would pay $2.50 a week on the arrearage. He was remiss again, she told the court.

Judge Caldwell told Rollins: "If you don't pay the $120 in 30 days, I am afraid I will have to send you to jail."

What follows is the complete court record in a divorce action that was heard on the default calendar:

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE SUPERIOR COURT OF COOK COUNTY

SARAH ARNOLD
vs.
EDWARD ARNOLD

Gen. No. 53S 685

COMPLAINT FOR DIVORCE

TO THE HONORABLE JUDGES OF THE SUPERIOR COURT:

Now comes the plaintiff SARAH ARNOLD, and respectfully represents as follows:

1. That she is now and has been for more than one year last past, continuously and immediately preceding the filing of this complaint for divorce, a resident of the County of Cook and State of Illinois.

2. That this plaintiff was lawfully joined in marriage with EDWARD ARNOLD on the 1st day of April, A.D. 1940 in Sioux City, Iowa.

3. That there were no children born as a result of said marriage.

4. That the parties hereto lived and cohabited together as husband and wife until the 18th day of February, 1943.

5. That since the said marriage and during all the time this plaintiff and the defendant herein lived and cohabited together as husband and wife, this plaintiff treated the defendant kindly and affectionately, and in all things at all times, conducted herself as a good, true, and faithful wife.

6. That subsequent to their intermarriage the defendant has been guilty of extreme and repeated cruelty toward this plaintiff, in that on or about the 20th day of December, A.D. 1942, the defendant struck the plaintiff herein causing her severe injuries, and pain without any cause or provocation on her part; and that again on the 18th day of January, A.D. 1943, the defendant herein struck the plaintiff herein causing her severe injuries and pain without any cause or provocation on her part.

WHEREFORE, this plaintiff prays:

A. That EDWARD ARNOLD, who is hereby made a party defendant to this complaint for divorce, may be required to make full, true, direct, and perfect answer hereto.

B. That the bonds of matrimony existing between the plaintiff herein and the defendant herein may be thenceforth and forever dissolved and annulled and this plaintiff divorced from the defendant.

C. And that this plaintiff may have such other and further relief as may be equitable and just.

_____
PLAINTIFF

STATE OF ILLINOIS } SS
COUNTY OF COOK }

AFFIDAVIT

SARAH ARNOLD, being first duly sworn on oath, deposes and says that she has read the above and foregoing complaint for divorce by her subscribed; that she knows the contents thereof and that the same is true in substance and in fact.

_____

SUBSCRIBED and SWORN to before me
this _____ day of January, A.D. 1943

_____
Notary Public

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE SUPERIOR COURT OF COOK COUNTY

General No. 43S 685

SARAH ARNOLD
vs.
EDWARD ARNOLD

ANSWER

NOW COMES the defendant in person and for answer to the Bill of Complaint says:

1. Admits the allegations set forth in said Bill of Complaint in Paragraphs 1, 2, 3, and 4.

2. The defendant denies the allegations set forth in Paragraphs 5 and 6 of said Bill of Complaint.

STATE OF ILLINOIS }
COUNTY OF COOK } SS

AFFIDAVIT

Edward Arnold, being first duly sworn on oath, deposes and says that he is the defendant in the above entitled case, that he has read the above and foregoing and knows the contents thereof to be true.

Subscribed and sworn to
before me this _____ day
of _____, A.D. 1943

Notary Public

STATE OF ILLINOIS }
COUNTY OF COOK } SS

IN THE SUPERIOR COURT OF COOK COUNTY

SARAH ARNOLD
vs.
EDWARD ARNOLD — Gen. No. 43S 685

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the above parties that the above entitled cause be heard on bill of complaint and answer thereto as a default matter and the same be set for immediate hearing.

Attorney for plaintiff

Defendant

STATE OF ILLINOIS }
COUNTY OF COOK } SS

IN THE SUPERIOR COURT OF COOK COUNTY
IN CHANCERY

SARAH ARNOLD
vs.
EDWARD ARNOLD — No. 43S 685
COMPLAINT FOR DIVORCE

CHARGE: CRUELTY.

SERVICE: APPEARANCE, ANSWER AND STIPULATION PRO SE.

REPORT OF PROCEEDINGS at the hearing of the above entitled cause before the Honorable Frank M. Padden, one of the Judges of said Court, on the twenty-ninth day of January, A.D. 1943.

PRESENT:

MESSRS. RITTENHOUSE, MAROVITZ & WALLENSTEIN
By MR. HAROLD MAROVITZ
Attorneys for Plaintiff

THEREUPON the Plaintiff, to maintain the issues on her part, introduced the FOLLOWING EVIDENCE, to wit:

SARAH ARNOLD

the plaintiff herein, called as a witness in her own behalf, having been first duly sworn, was examined and testified as follows:

EXAMINATION

By Mr. Marovitz:

Q. Will you state your name and your address?
A. Sarah Arnold, 1601 Chicago avenue, Chicago, Illinois.
Q. You are the plaintiff in this matter?
A. I am.
Q. And how long have you lived in the City of Chicago, County of Cook and State of Illinois immediately prior to the filing of this complaint for divorce?
A. Twenty-two years.
Q. When and where were you married to Edward Arnold, the defendant in this case?
A. Sioux City, Iowa, on April 1, 1940.
Q. Are you living separate and apart from him now?
A. Yes, I am.
Q. Calling your attention to the twentieth day of December, 1942, did Mr. Arnold strike you?
A. Yes, he did.
Q. Did you give him any cause or provocation for striking you?
A. I did not.
Q. Was he angry when he struck you?
A. He was.
Q. And did he hurt you?
A. He did.
Q. Where did he strike you, on the face?
A. On the face.
Q. Directing your attention to the eighteenth day of January, 1943, did he strike you?
A. He did.
Q. Did you give him any cause or provocation for striking you?
A. I did not.
Q. Was he angry when he struck you?
A. Very angry.
Q. Did he hurt you?
A. Yes, he did.
Q. Where did he strike you at that time?
A. In the eye at that time.
Q. Were there any children born of this marriage?
A. No.
Q. During the time you lived with the defendant, how did you treat him?
A. As a wife should.
Q. How did he treat you?
A. Well, at times he was very nice, and at other times he was very disagreeable.
Q. Mrs. Arnold, in the event the Court sees fit to grant you a divorce, have you agreed to waive alimony and support?
A. Yes.
Q. And have you also agreed to waive any interest in and to any property Mr. Arnold has.
A. Yes.

Q. And he has agreed to waive any interest in and to any property you may now have or hereinafter acquire?

A. Yes.

Q. You understand by waiving alimony and property rights at this time you can never come in at any time and claim any alimony or property rights?

A. I do.

Q. And in the event the Court sees fit to grant you a divorce, do you want your maiden name back?

A. I do.

Q. And what is that, please?

A. Sarah Kincaid.

Q. Will you spell that, please?

A. K-i-n-c-a-i-d.

MR. MAROVITZ: That is all.

(Witness excused)

DOROTHY SULLIVAN

called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

By Mr. Marovitz:

Q. What is your name, please?

A. Dorothy Sullivan.

Q. You live at 16 East Madison street, Chicago, Illinois?

A. 16 East Madison street. Chicago, Illinois.

Q. Did you know Mr. and Mrs. Arnold while they were living together?

A. Yes, sir.

Q. Did you know how Mrs. Arnold treated her husband while they were living together?

A. Very nice.

Q. Did you have occasion to see Mrs. Arnold on or about the twentieth day of December, 1942?

A. Yes, I did.

Q. Did she have a bruise on her face or body?

A. She had a bruise on the side of her face.

Q. Did she tell you how she received that bruise?

A. She said her husband struck her.

MR. MAROVITZ: That is all.

(Witness excused)

RUTH ANDERSON

called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

By Mr. Marovitz:

Q. What is your name and address?

A. Ruth Anderson, 1512 South Shore drive, Chicago, Illinois.

Q. You are the sister of the plaintiff in this case?

A. I am.

Q. You had occasion to see and visit your sister and her husband while they were living together?

A. Yes, I did.

Q. Do you know how he treated her?

A. Sometimes he was congenial, and at other times he was quarrelsome.

Q. Do you know how she treated him?
A. She was very good to him.
Q. Did you have occasion to see Mrs. Arnold on or about the eighteenth day of January, 1943?
A. Yes, I did.
Q. Did she have a bruise on her eye or body?
A. She had a bruise on her eye and on her arm.
Q. Did she tell you how she received those bruises?
A. She said Mr. Arnold struck her.
MR. MAROVITZ: That is all.
THE COURT: Write it up.

(Witness excused)

WHICH WAS ALL THE EVIDENCE OR PROCEEDINGS HAD OR OFFERED IN THE HEARING OF THE ABOVE ENTITLED CAUSE.

STATE OF ILLINOIS } SS
COUNTY OF COOK }

AGNES G. BROWN, being first duly sworn, says that she is the court reporter who took down in shorthand the evidence given in the above entitled cause, and that the foregoing is a true and correct transcript of all the evidence heard.

SUBSCRIBED and sworn to before me this 29th day of January, A.D. 1943.

Notary Public

STATE OF ILLINOIS } SS
COUNTY OF COOK }

HAROLD MAROVITZ being first duly sworn, says that he appeared for the plaintiff in the above entitled cause; that he has read the foregoing Report of Proceedings, and that the same is, to the best of his recollection and belief, a true and correct transcript of all the evidence heard.

SUBSCRIBED and sworn to before me this 30th day of January, A.D. 1943.

Notary Public

FORASMUCH, THEREFORE, as the matters and things hereinabove set forth do not fully appear of record, this Plaintiff tenders this Report of Proceedings, which said Plaintiff prays may be signed and sealed by the Judge before whom said cause was heard.

WHICH IS ACCORDING DONE on the day and date of the entry of the decree herein.

ENTER:

JUDGE

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

STAMP HERE

DECREE FOR DIVORCE

SARAH ARNOLD

vs.

EDWARD ARNOLD

Superior Court
of Cook County

No. 43 S 685

January Term, A. D. 1943

This day came again the said Plaintiff by RITTENHOUSE, MAROVITZ & WALLENSTEIN Esq.; her Attorney, and it appearing to the Court that said Defendant has had due notice of the pendency of this suit by filing his appearance and answer pro se and the issues being joined and it being stipulated by and between the parties hereto that said cause might come on for an immediate hearing

according to the Statute in such case made and provided, that the default of said Defendant was taken and the Plaintiff's Complaint herein taken as confessed by said Defendant.

And the Court having heard the testimony of witnesses taken in open Court, in support of said Plaintiff's Complaint (a certificate of which evidence is filed herein), and now being fully advised in the premises, doth find that it has jurisdiction of the parties hereto and the subject matter hereof; that the Plaintiff is and since prior to the filing of said Complaint has been an actual resident of Cook County, and has been a resident of the State of Illinois for over one whole year next before the filing of the complaint herein, that the

parties hereto were lawfully joined in marriage at Sioux City, Iowa, on the 1st day of April, 1940,

that subsequently to their intermarriage the Defendant had committed adultery

been guilty of extreme and repeated cruelty toward the complainant to wit: on the 20th day of December, 1942, and on the 18th day of January, 1943.

as charged in the Plaintiff's Complaint.

On motion of said Attorney for the Plaintiff, it is therefore ordered, adjudged and decreed, and this Court by virtue of the power and authority therein vested, and the Statute in such case made and provided, doth order, adjudge and decree, that the bonds of matrimony heretofore existing between the Plaintiff Sarah Arnold and the Defendant Edward Arnold

be and the same is hereby dissolved, and the same are dissolved accordingly.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff be and she is hereby permitted to resume her maiden name of Sarah Kincaid.

The Plaintiff herein waives all her rights to alimony.

ENTER:

JUDGE

PART III

CRIMINAL LAW

CHAPTER 13

Crime and Criminals

ANY reader of this book who has not at some time broken a law belongs to a negligible minority of American citizens. And any person, including newspapermen, who has not attempted to philosophize regarding the cause of such lawlessness is just as much a rarity. Police and court reporters, because they see so much lawlessness, are perhaps more inclined than the average person to venture explanations. The first chapter of this part of the book is intended to help reporters in their thinking and in their understanding of the perpetual drama that unfolds before them daily. Succeeding chapters explain criminal law and procedure, in order to facilitate comprehensive reporting of crime news both before, during, and after it becomes a matter of court concern.

Much of our lawlessness is unintentional because the statute books are cluttered with obsolete "shalt nots" of which even law-enforcement agents are unaware. An Idaho sheriff, for instance, may not realize that any sale of a chicken at night in his bailiwick without a special permit from him is illegal; and few traffic policemen in New York, even knowing the law, would applaud a motorist who obeyed it by slowing down to four miles per hour while turning a corner. (For hundreds of similar "howlers," see *It's the Law*, by Dick Hyman, and *There Ought to be a Law*, by William Seagle.)

Most lawbreaking, however, is deliberate, and—what may seem to make a bad situation worse—is committed without any subsequent twinge of conscience or remorse. In fact, the stalwart "pillar of society" who knowingly exceeds the speed limit or violates a Sabbath blue law would take more than slight umbrage at the mere suggestion that he is inherently antisocial. While denying his own innate criminality, he nevertheless would be inclined to admit that there is such a thing as a criminal class, probably top-heavy with "born" criminals, to protect him against which the police and courts must be constantly on the alert.

Murderers, burglars, robbers, embezzlers, arsonists, kidnapers, sex perverts, and extortionists certainly would be included in a hypothetical Mr. Goodman's criminal class membership list. These and

others who commit similar offenses of which people in his economic and social class often are the victims, he would insist, are "just no good"—probably because of their racial, nationality, religious, or class origin. Most perplexing is the occasional member of his own stratum who goes wrong in some heinous way. Were Mr. Goodman to attempt to theorize, he probably would get all mixed up as he climbed family trees looking for bad hereditary branches from which the immediate bent twigs must have sprung. Possibly he might sincerely deny any inconsistency in the belief that, whereas all denizens of the slums who commit felonies are "born" criminals, the white-collared son or daughter who strays does so because of lax parental discipline or because of the temptations, examples, and incentives derivable from the motion picture, automobile, dance hall, and taverns.

When it comes to those lawbreakers to whose delinquency he himself occasionally contributes—bootleggers, black-market operators, panderers, prostitutes, bookies, gamblers, operators of lotteries and the like—Mr. Goodman finds it more difficult to apply any theory, either based on his knowledge of the comparative importance of heredity and environment or resulting from his prejudices. As for offenses peculiarly those of his own class—adulteration of foods, drugs, and other products; "chiseling" on contracts; violations of health and safety regulations by landlords; employment of labor spies and strikebreakers; political graft and bribery—Mr. Goodman would rather not comment. Cornered, he probably would admit the necessity of most, but not all, laws governing business operations of his class and of activity by law-enforcement agents and courts to enforce them. But he would at the same time deny that these violations constitute "true" criminal action, as, in fact, technically many of them as yet do not. For some defiant violators, he might even be so bold as to express admiration, holding them to be defenders of "true Americanism" against attempts by bureaucrats, communists, or worse to usurp constitutional authority and thwart the will of the founding fathers. Real respect, however, should be reserved for those capable of "getting around" a bad law without actually violating it—such as by inventing the device of the holding company to invalidate most antitrust legislation.

What is crime? Mr. Goodman's confused and inconsistent thinking is typical. Lawbreakers among those who are too poor to buy books like this one are just as faulty in their logic. To evade the statutes and ordinances governing jackrolling, shoplifting, and similar offenses is just as much a "game" with them as is Mr. Goodman's attempt to avoid prosecution for violation of the National Labor Relations Act or the Fair Labor Standards Act. Many a

racketeer regards himself as a contemporary Robin Hood, morally justified in his undertakings to bring about a more equitable distribution of the national wealth and income. He too admires the associate who can get away with the most with the least detection.

In attempting any definition of crime, we find one thing certain: crime and sin are not synonymous. "Crime," as John L. Gillin, University of Wisconsin social pathologist, wrote long ago, "is an act which is believed to be socially harmful by a group of people which has the power to enforce its beliefs." Absolute rightness and wrongness have nothing to do with it. Much of what by any set of criteria would be called progress has been accomplished by persons who believed that right conduct consisted in violation of some law or laws. In the realm of politics, for instance, every "father of his country" got his start by committing one of the most egregious of all offenses —treason. Throughout history the prisons have been filled with conscientious objectors, heretics, and rebels whose professed allegiances were to higher than man-made laws. Some of the greatest thinkers of history—including Socrates, Jesus, and Galileo—were willing to become criminals in the interest of eternal principles. The Christian martyrs were lawbreakers, and the United States Supreme Court has to be on the alert constantly to protect the Jehovah's Witnesses and similar cults from persecution in modern times.

Sin, by contrast with crime, is a private or personal matter—too vast for effective public control. In our everyday lives, often the wrong thing to do is not legally a crime. For example, we can watch a blind man walk over a cliff and make no attempt to prevent his destruction and be guilty of no breach of the law. Few religious adherents, of whatever faith, would deny that anyone who committed such an act of omission sinned. Someday, perhaps, the criminal code will contain more "shalls" as well as "shalt nots" to cover such situations. It does not yet, however, and it is doubtful if it ever could approach inclusion of a majority of acts that might be considered morally indefensible. Consequently, when Mr. Goodman persuades a widow to purchase a doubtful security instead of paying off her mortgage—the latter action being what he knows she should do—he will continue to fight the matter out with his conscience or with his spiritual advisor. A crime is a crime merely because society says it is such. True, much of what society calls criminal is also regarded as sinful, but the area *not* covered by such correspondence is greater than that which is.

That society, through its chosen governmental representatives, itself determines what constitutes criminal action is a great democratic advance. In primitive times, the offended party or a victim's kinfolks made the decisions. As related in Chapter 1, the criminal

law grew out of the law of wrongs (or torts), but the first interest that organized society had was merely regulation of private controversies, not their elimination. The concept of crime as an offense against the community as a whole rather than against a particular individual is a comparatively recent anthropological development. It came with the necessity of preserving order in a growing community, and at first only the worst forms of conduct were forbidden. Today lawmaking bodies declare, not only what constitutes crime, but also the degree of seriousness of the offense. Major crimes are called *felonies* and are punishable by the death penalty or by imprisonment in a state penitentiary. Comparatively minor crimes are *misdemeanors* and are punishable by fine or imprisonment in a county jail or both.

Conclusive evidence that there is no such thing as "absolute crime" is that provided by the criminal codes of different states and countries. The same act, in other words, may be a misdemeanor in one jurisdiction, a felony in another, and no crime at all in a third. Similarly, conduct that in our grandfathers' days was not criminal is now so regarded. The multitude of obsolete laws prove that much that in those days was thought to be antisocial is now condoned as proper or at least tolerable.

That comparatively few of the acts by members of Mr. Goodman's upper crust which others consider morally wrong are to be found high among the list of criminal offenses arises from the fact that it is Mr. Goodman and his better-heeled colleagues who do most of the lawmaking. If those in the lower income levels were to take over the legislative halls, the emphasis undoubtedly would be reversed radically. There is no question that the higher income brackets are disproportionately represented on all lawmaking and administrative bodies. Admitting the wisdom of this selectivity—since it means utilization of the talents of the better-educated and trained—we nevertheless see that it accounts for much of the lag that exists in the law when new needs for control of business and commercial relations come into existence. In a democratic society, the so-called masses do exercise control over their rulers through the voting privilege—a definite weapon which subjects of tyrannical monarchs or dictators do not have. Arousing the majority to agitate for their own best interests, or even to become aware of them, however, is not so easy. Consequently, as long as conditions do not get too bad, progress toward social control in the interest of the majority is slow.

Free will and the lawbreaker. No matter how large or small the criminal class proper may be, one scientific approach to finding an answer to the question, "What is crime?" would seem to be to

study, "What makes a criminal?" Even in the cases of the revolutionists and religious martyrs, who justify violation of man-made law because of devotion to higher principles, there remains the question of what caused them to feel that way in contradiction to majority opinion.

Scientific study of the criminal and of the roots of crime is of comparatively recent origin, and is still in its infancy. It receives its impetus from the world-shaking effects of the evolutionary theories of Charles Darwin and other biologists not much more than a half century ago. For at least five hundred years before that time, theoretical explanations originating in theological, metaphysical, and philosophic speculations regarding the nature of the human will dominated all thinking in this field. This is not tantamount to suggesting that thorough scientific investigation will entirely disprove the existence of anything resembling free will; possibly exactly the opposite will be the case. It does mean that because so many were so certain that the answer already was known, attempts to investigate were discouraged and any questioning was condemned violently as rank apostasy.

In *On the Trail of the Bad Men,* Arthur Train has an amusing chapter based partly on research into the extent to which this fanatical belief in absolute free will affected legal attitudes toward animals and even inanimate objects. Up to the time of Victoria, he pointed out, animals who killed human beings were killed or sold for the benefit of the poor. In the Middle Ages they were tried, convicted, sentenced, and publicly executed. In Falaise, in 1386, Train relates, a sow convicted of killing a child was dressed in man's clothing to demonstrate equality and executed in the public square by being maimed in the head and leg and then hanged. Because pigs ran wild, there were many similar cases.

Even earlier, Draconian law required that weapons and objects by which life had been taken be condemned publicly and "thrown beyond the boundaries." A hangover today is the avidity with which we destroy dangerous weapons, gambling devices, and other possessions of the guilty in our courts, much to the benefit of the manufacturers of such material. Ecclesiastical courts in the Middle Ages considered even insects as equal to men before the law. If the bugs became too annoying, they first were warned. That failing, the bishop delivered an anathema at them. Then they were tried and, if found guilty, it became open season for their extermination.

In view of such attitudes toward nonhuman forms, it can easily be imagined what interpretation was put upon misbehavior by homo sapiens. Until comparatively recently, there was no questioning of the hypothesis that all crime is traceable to the perversity of in-

dividuals. Criminals are criminals, the theory holds, as a result of free choice. If they wanted to, they could be nice people like the rest of us, but, faced with the choice between evil and good, they deliberately choose the former. As will be related in Chapter 18, when such a basic belief prevails, it is not difficult to understand the reliance that has been placed upon punishment as a criminal corrective.

The harshness that otherwise follows naturally in the correction of criminality when there is belief in free will is alleviated only when doubt exists as to whether the victim of the discipline was in actual possession of his complete faculties at the time the act in question was committed. Once any *extenuating circumstances* are admitted, however, the door is open for those with theories which go way beyond those that would excuse just the idiotic, imbecilic, and insane. Nevertheless, for centuries the courts have been lenient toward children. Seven usually is thought to be the *age of discretion*—before which no boy or girl should be treated as though in full possession of the faculty of free will. Certainly nobody would convict an infant of six months for intentional wrongdoing. "When," ask present-day experimenters, "does this free will begin? Why seven years in all cases—rather than five in some and eight in others? If it is an inherent quality or instinct, in fact, why isn't it present at birth?"

Another mitigating circumstance increasingly recognized by scholars at least is that of the effect of ignorance upon the exerciser of free will. The tourist, without maps or guideposts, may decide wrongly as to which crossroad to take. Similarly, anyone exercising free will in any other field of behavior may err because of similar absence of knowledge. Still to gain much headway is the contention of mental experts that personality defects may have a similar effect on free choice of alternatives. There are the alcoholics, hysterical, hypochondriacal, and neurotic individuals who often hardly know what they are doing. The law, of course, does not recognize such defects as excuses; the legal definition of insanity is based on the famous McNaghten's Rule that an insane person is one who "(1) is incapable of understanding the proceedings of his trial or of making a defense; (2) is proven to have had, at the time of committing the crime, such a defect of reason as (a) not to know the nature or quality of the act he was doing, or (b) not to know that the act was wrong."

Are criminals born? Before 1876 there was no science of criminology. The doctrine of free will up to that time had never been seriously questioned; at least, no satisfactory alternative theory as to why men act antisocially had been advanced. Then Dr. Cesare

Lombroso of the University of Turin published *The Criminal Man* and started a controversy that is still going on.

As a result of years of performing autopsies upon dead Italian prisoners, Lombroso concluded that the lawbreaker is a type different from so-called normal individuals. In other words, because of atavistic anatomical characteristics, crime is for him normal rather than abnormal behavior. The chief physical peculiarity pointed out by Lombroso as a result of his post-mortem work was a depression where the spine protrudes upward to the normal skull. This he called the "median occipital fossa," and he said it indicates that those possessing it are throwbacks to earlier evolutionary forms. Lombroso also said the prisoners he dissected had excessive asymmetry of the skull, smaller than average cranial capacity, abnormal features, and slight growth of beard relative to the amount of hair on the head.

Not all criminals, Lombroso declared, are to be accounted for by these physical abnormalities. In addition to born criminals, there are also criminaloids, or occasional criminals who do not possess the physical traits he enumerated, and insane criminals who may be normal anatomically.

Today there are few if any believers in Lombroso's theories. The importance of his theories consequently derives from the storm of controversy that they evoked and the experimental work that they inspired, if only in the effort to disprove them. Lombroso and others of what was called the Italian "school" of criminology—notably Enrico Ferri and Raffaele Garofolo—turned the emphasis from penology to criminology. That is, they performed a great service in directing attention away from the attempt to find the proper kind of punishment to persuade wrongdoers to use their free will to decide to be law-abiding, to a study of the lawbreakers as individuals. The Italians were the first to declare boldly that such study is essential if the causes of crime ever are to be understood. They attacked the smugness of their centuries of predecessors and, although they all still professed belief in free will, nevertheless insisted it is not the complete explanation.

Lombroso has been called a criminal anthropologist, and his specific conclusions stood only until adequate checking of them by others had occurred. Most devastating were tests conducted on the cadavers of supposedly law-abiding persons who had never been convicted of crime. Lo and behold, they were discovered to possess the allegedly anachronistic symptoms in the same proportion as those who had been incarcerated during life behind prison walls. In passing, it might be stated that subsequently many another test made on prisoners has been discredited through similar tests on out-

siders. If the supposed criminal characteristics actually exist, judges and juries err considerably in finding guilty a large number of innocent persons and—perhaps more important—police fail to round up a goodly number of antisocial individuals who continue to roam at large.

In addition to the scientific data accumulated to disprove Lombroso, analysts of his theories pointed out that the prison population may not be an accurate cross-section of criminally minded persons or even of lawbreakers. The smarter offenders, it was argued, evade arrest or conviction; law enforcement may be lax, especially when statutes are unpopular. As it has already been pointed out in this chapter, ideas of what constitutes crime change, so the definition of who is a criminal is not static. Throughout history people have been thrown into prison because of political or religious heresy —even for having unpopular economic or social ideas. Furthermore, even prison inmates differ so much from each other, and have life histories and psychological complexes that are so various that lumping them together as a born criminal class is obviously absurd.

Are criminals feeble-minded? Absurd or not, the quest for a criminal class went merrily on in the wake of what Lombroso started. One of the first and most widespread alternatives to the theory of physical abnormality to be advanced was mental inferiority or feeble-mindedness. In 1914, H. H. Goddard published *Feeble-mindedness: Its Causes and Consequences,* in which he revealed that his studies showed that from twenty-five to fifty per cent of all prisoners were mentally defective. Therefore, he concluded, it is obvious that the criminal type is merely a type of feeble-mindedness, which is hereditary—thus proving the existence of born criminals.

Goddard wrote in the period when social scientists were going wild in their attempt to explain all human phenomena in terms of Mendel's laws of inheritance. It never occurred to anyone to question the basic assumption that intelligence is a unit characteristic as inheritable as eye color or any other physical trait. So the criminal anthropologists studied family trees and came up with horrendous tales of the Jukes and the Kallikaks and other families who for generations had produced nothing but very sour human fruit. To the unlearned, it was very impressive to read that the American revolutionary hero Kallikak had produced two strains—one illegitimately by consorting with a feeble-minded girl, the other with his thoroughly respectable and intelligent wife. The progeny of the unmarried wench turned out bad. Generation after generation, the descendants of the original bastard preferred to live in the slums, associate with pimps and pickpockets, and commit all sorts of offenses, many of which landed their perpetrators in jail. On the other

hand, the legitimate offspring turned out well. The case histories of the Jukes and others were similar.

The embarrassing question that starts an entirely new train of thought in explanation of the eugenic data compiled by the hereditists is, "What would have happened if Kallikak had married the moronic prostitute and raped the intelligent girl?" In other words, to what extent was the predilection toward crime that was discernible in the illegitimately begotten posterity traceable to genes and chromosomes, and to what extent to the home and community life that the succeeding generations of children had? What would have been the fate of the first feeble-minded child if it been born into an average middle-class home, such as Kallikak is said to have maintained? Would he have been so likely to run wild—smart or stupid—to commit deprivations, and to fall into the clutches of the law? The controversy cannot honestly be said to be finished even today, with Albert Edward Wiggam keeping the case for heredity before the newspaper-reading public in a rather widely syndicated feature column. The best evidence available, however, to be found in the textbooks on heredity used in medical schools, is that not more than one-sixteenth of feeble-mindedness is hereditary.

Even, however, if all feeble-mindedness did result from transmission of Mendelian characteristics, it still would not be established that mental deficiency is the chief or even an important cause of crime. Again, as in the case of the experiments to check Lombroso's theories, examinations of nonprisoners revealed that Goddard erred in thinking his discoveries applicable only to convicted felons. In 1926, Carl Murchison published *Criminal Intelligence,* which contained the results of studies during which the Army Alpha Intelligence Tests were given to prisoners. The inmates of penal institutions in four out of five states were found to rank higher than the men who had been accepted for service in the United States Army during World War I. Since no tests were made in federal penitentiaries, Murchison suggested that the criminal may, in fact, be a superior rather than inferior mental type, for federal prisoners, serving time for offenses that take more skill and cleverness than other kinds, certainly would bring up the average. Once again, it was also pointed out that the smartest criminals are never caught or, if caught, are seldom convicted. Few wealthy men, for instance, ever serve long prison stretches, and most wealthy men have had unusual educational advantages.

Further studies have substantiated Murchison. Easy as the explanation would be, it just is not true that criminals on the whole are inferior intellectually to other persons. Nor is it true that the mentally retarded commit more serious offenses than the brighter

lawbreakers; if anything, the opposite is the case. It is not even true that morons are guilty of a disproportionate number of sex offenses. The American newspaper, it must soberly be admitted, has been more responsible than any other factor in giving wide currency to this unscientific belief. In the headlines, "moron" has become a synonym for "sex offender," so the American Psychiatric Association, in despair, has changed the scientific terminology in its literature, to substitute "high-grade defective" for "moron." For the information of the journalist perusers of this volume, a moron (high-grade mental defective) is a person with an I.Q. (Intelligence quotient by the Stanford-Binet tests) of from 50 to 69, which means a mental age of from 8 to 12 years. A moron is capable of menial labor, is slow to learn, but is capable of self-support. Fortunately, 80 per cent of all the feeble-minded are no worse than morons. About 15 per cent, however, are imbeciles, and 5 per cent are idiots. An imbecile's I.Q. is from 25 to 49, meaning a mental age of from 4 to 8 years. The imbecile needs constant supervision, but can take care of himself. He can protect himself against physical danger, but he cannot support himself. The idiot has an I.Q. of from 0 to 24, or a mental age of from 1 to 4 years. He is incapable of any self-help.

Most feeble-mindedness results from prenatal or birth injuries, and is not hereditary. Hence, the agitation for sterilization of the feeble-minded, if successful, would eliminate only a small proportion (about 6 per cent) of all mental defectives. Feeble-mindedness is something that can and does occur in the best regulated families.

Other explanations. The gropings of the criminal anthropologists have been all to the good, even though the specific conclusions to which they came have been discredited. They "sold" the scientific world on the necessity of studying the criminal if the causes of crime are to be understood. They were also responsible for inspiring studies outside the lawbreaker as an individual personality, to discover social, economic, and other factors seemingly important. Many of the resultant theories were funnier than anything the Lombrosians ever thought up, and the incidence of crime has been correlated by somebody with almost everything else within human experience.

For a while the ecologists had a brief inning. They pointed out that there are more crimes against the person (assault, homicide, et cetera) in warm climates or during the summer months in the temperate zones, and more crimes against property in colder regions or during winter. Experienced newspapermen know enough about statistical fallacies to examine all such correlations critically. Quite obviously, when more people are outdoors, as they are in warm weather, there will be more stick-ups and automobile thefts; just as naturally, burglaries will increase in wintertime.

The effect of climate upon the metabolism of the offender may have nothing whatever to do with the phenomenon.

Improbable as many of the explanations may seem, their promulgators are usually able to obtain a satisfactory press. Newspaper treatment of most news in the various social scientific fields is about the same today as was its handling of the physical sciences a generation ago, when experiments to take the smell out of the onion, the search for the missing link, and progress on the rocket cars to the moon were surefire copy. Often, however, it is difficult to ignore even what seems to be the worst crackpot suggestion, for its progenitor may be an otherwise reputable thinker. Not long ago, for instance, a leading member of a large university faculty advanced the notion that light has a leading effect upon potential criminals. In the tropics, the savant postulated, people are more cheerful and happy-go-lucky, not addicted to lawbreaking. On the other hand, in the temperate and Arctic zones, where the sun shines fewer hours each day, there is more melancholia and hence more lawlessness. What is the reporter to do when he is told something of that sort by a supposed scholar? Shall he argue? Not unless he holds the news source in such low esteem that he is indifferent to the possibility of being refused return favors. Tactfully, if he has the sociological and anthropological background, he may discuss the possibility that other factors associated with cultural conditions in the tropics may be important. Usually, however, he knows that, coming from the source that it does, such a statement will make the paper. He may argue with himself that many of the greatest scientific discoveries of the past, when first postulated, perhaps seemed as ridiculous. Anyway, in an age of science, to be skeptical of any claim that may lead to research and discovery is unorthodox, if not sinful.

It is not so much the transparent silliness of any idea that is a signal for caution, as it is the single-mindedness of most of those who advance them. If open-mindedness is a virtue, it should be extended to include the possibility of multiple rather than single causation—especially in the social sciences. "Authorities" who attribute crime—or any other social phenomenon, for that matter—to a single cause should be suspect. As will be discussed shortly, cultural changes brought about by the motion pictures, telephone, radio, automobile, and other inventions have had their effect on potential criminals, as they have had on all other persons and social institutions. It is nonsense, however, to make a scapegoat of any single factor to the exclusion of others, and whoever attempts to do so should be asked for proof to substantiate his allegations. This can be done in an interview legitimately and without imperti-

nence in the attempt to improve the quality of the forthcoming article; it is not so easy to soften the remarks of a fanatic who presents them from a public platform or in print. As regards these, editors and columnists, however, can help restore balance.

Are criminals crazy? Some of them undoubtedly are, just as some are feeble-minded, and their state of mental unbalance may be the direct cause of their antisociability. What, however, is craziness, and how extensive among lawbreakers is it? On page 400 was given the customary legal definition of insanity—in brief, the inability to distinguish between right and wrong. Contrary to the wild claims of some who do not like "nut" doctors, no psychiatrist would contend that any appreciable proportion of those convicted of crime come within the definition. As will be explained shortly, their criticism of the rule is that the ability to distinguish right from wrong behavior is no criterion by which to determine criminal responsibility, and it is certainly no clue to causation.

The word "insanity" is not included in the psychiatrist's lexicon. It is strictly a legal term. To the psychiatrist, a major mental disorder is a psychosis, victims of which are diagnosed through their complete loss of touch with reality. About seventy-five per cent of all psychoses are functional (mental), rather than organic in origin, resulting from internal conflict and the victim's inability to adjust to a normal environment. As the alternative to accepting mentally a real situation that is painful, the psychotic person creates his own private mental world in which he finds peace and happiness.

The two major forms of psychosis are *schizophrenia* and *manic depression.* The former, formerly called *dementia praecox,* is noticeable at times of great stress—at puberty; about thirty, when financial adjustments become important; about forty, when mental and physical decline begins. It is characterized by lack of insight, general indifference, and poor social energy. In the *simplex* form, the patient flees from reality into daydreams; his mental horizon contracts; he neglects his friends; he has few interests except eating and sleeping. This form begins early and is followed by a long and slow deterioration. The *hebephrenic* form of schizophrenia, on the other hand, begins more suddenly, and there is a rapid deterioration. The hebephrenic is inclined toward auditory hallucinations. The *paranoid* who deteriorates slowly is distinctive because of the delusions of either persecution or grandeur that he develops; the disease terminates in a vegetative or dream-world existence. The most hopeful, in the light of present knowledge, is the *catatonic,* whose chief characteristic is negativism. He may become stuporous, refusing to eat, move, or care for himself. He may

maintain a waxlike flexibility. When excited, on the other hand, he may scream, repeat words or phrases, have auditory hallucinations.

By contrast with schizophrenia, which is a flight *from* reality, manic depression is marked by a flight *into* reality. The patient is alternately extremely elated (manic stage) and extremely depressed (depressive stage). There may be an interval of normality as he passes from one stage to another. When manic, he is talkative, lacks judgment, is restless; when depressed, he cries, remains quiet, possibly immobile, is mean and surly, blames himself for all sorts of things—real and imaginary, may attempt to commit suicide.

It can readily be seen that psychotic individuals are potentially dangerous. Likewise, it is evident that it is absurd to declare, "All criminals are crazy."

Are criminals queer? The other major class of mental disorders, in addition to the psychoses, is the *neuroses*. By contrast with the psychotic patient, the neurotic does not lose touch with reality; he is, in fact, well aware of his environment. Generally he is of average or superior intellect, and his condition, after all possible organic causes have been excluded through physical examination, is diagnosed as functional in origin.

A common form of neurosis is *hysteria,* originally thought to be a female disease of the womb. Temper, fits, vomiting, aches and pains, and regions of anesthesia are characteristics. Hysterical people usually get their way with others, who are frightened into yielding to them. Hysterical symptoms in children can often be corrected by allowing them to lie on their backs and kick their heels without giving them the attention they are seeking to get in a naughty way. The swooning mother or frantic grandmother who has "sick spells" when crossed, however, is incurable by anything short of psychiatric treatment. Other members of the family have to "watch their step" to avoid the disagreeable scenes that otherwise result if their behavior meets with disapproval of the hysterical member of the household.

Neurasthenic patients complain of their health, are always exhausted, unable to sleep, have unlocalized pains of which they are fond of telling others. Unless their *hypochondria* is recognized for what it is, they receive the attention and sympathy to obtain which is the unconscious motivation of their behavior.

The *psychaesthenic* person is the victim of obsessions or compulsions that he rationally knows are wrong, but that he is unable to overcome. He may find it impossible to stop humming a certain tune or to stop touching every fence post he passes, as was the case of Dr. Samuel Johnson, the great lexicographer.

The victim of an *anxiety* neurosis is under continuous nervous tension which wears him down because he has a feeling of impending disaster and wishes the worst would happen so that it would be over with quickly.

The difficulty of answering easily the query, "Are criminals queer?" can be inferred from the foregoing brief description. There is not a symptom by which neurotic behavior is detected that is not also discernible in supposedly normal persons. As the psychologists are fond of remarking, "The abnormal are just like the rest of us—only more so," which means that the line of demarcation between mentally well and mentally ill people is extremely difficult to draw. Certainly, criminals are queer, and so are most of the rest of us. Some of us who consider ourselves sane and average have *phobias,* which are specific fears, as distinguished from anxieties, which are vague and general. The psychiatrists tell us that these "anxiety hysterical phenomena" are disguised unconscious wishes as a result of unpleasant experiences in early life. Anyway, we may be afraid of high places (acrophobia), or of closed places (claustrophobia), or of darkness (nyctophobia), or of any of scores or hundreds of other things that have been given Greek-derived scientific names. Furthermore, we probably are not a bit ashamed of our phobias; rather, we may be proud of them—especially after reading a Sunday feature article that some motion-picture star or general has a phobia just like ours.

Criminals have no monopoly on any of the defense mechanisms enumerated by the great Viennese, Dr. Sigmund Freud, father of psychoanalysis. We all *rationalize* (give good reasons for the real ones); *compensate* (take the "sour grapes" attitude that the goal which we have been unsuccessful in attaining wasn't worth attaining anyway, and then shift to some other line of activity to overcome the inferiority complex we otherwise might develop); *regress* (become more childish in our behavior—an unconscious device whereby a person who is unable to make a proper adjustment at a higher age level returns to the behavior of a younger period of his life, at which time he was successful, examples being the weepy, babyish woman or the thumb-sucking adolescent); *substitute* (give up one kind of activity for another more socially approved); *project* (act as if others have our own ideas, virtues, and shortcomings for which we praise or blame them); *sublimate* (divert our energies into more uplifting channels than temptation would cause us to do).

Everyone has his peculiarities; even our closest friends and relatives have traits that we do not like. Some are overbearing, pushy, egotistical, the probable psychiatric explanation being that they are overcompensating for feelings of inferiority and insecurity acquired

in early life. Some have tics or they shake their heads, nod, scowl, have the hiccoughs, twist their mouths, scratch themselves, bite their fingernails. These are ways of "letting loose" surplus energy that otherwise would be pent up; the cure consists in making it possible for the person with the disagreeable habit to find satisfaction in some socially approved way. Perhaps the reader can recall someone whose annoying personality traits disappeared after he met with success in business or love or in some other way.

Since H. I. Thomas postulated them, social psychologists almost unanimously have accepted the four "wishes" or "desires" which everybody acquires in his attempt to become a socially accepted person: (1) a sense of security; (2) recognition by others; (3) affectional response; (4) new experiences. These are not instincts, belief in which the scholars lost some time ago; they are socially determined, and the person who is frustrated in their attainment is in danger of adopting socially disapproved ways of satisfaction, which, as far as he is concerned, are normal, but which may be branded abnormal by the group into which he is attempting to fit himself.

Plenty of behavior problems—perhaps a good majority—do not turn to lawbreaking as a means of obtaining emotional satisfaction when otherwise frustrated, but some do. Juvenile vandalism, for instance, may be the child's psychological way of showing resentment and hatred against parents who have neglected him or whose discipline was too strict. It may just happen that he takes to truancy or petty larceny if such is the case; he might just as well fail in his schoolwork or merely be naughty to force attention otherwise denied him. The so-called "criminal personality" is nothing strange, mysterious, and different. The well-adjusted person who has been reared in a happy home in which the parents love each other and are skilled at avoiding sibling rivalries, overindulgence, and excessive discipline seldom becomes a lawbreaker, or "queer" in any other way. Such persons attain their emotional satisfaction in socially approved lines and do not need "abnormal" outlets for their pent-up energy.

But why crime? Society as a whole—and not just parents, teachers, friends, and others close to the behavior problem—becomes concerned when the form that the misbehavior takes violates the written or unwritten codes and annoys or harms others. Why cannot the "bad" child—or adult too, for that matter—confine himself to disagreeable personality traits or to behavior that doesn't inconvenience others, instead of breaking the law? Well, most of them, perhaps a majority, do, but the opportunities offered by so-called abnormal behavior that is not criminal are limited. The

gravity of the offense depends somewhat on the greatness of the need to sow wild oats or break the shackles of restraint.

Recognizable among the behavior problems who run afoul the law are the neurotically inhibited and the unsocialized aggressive individuals. The former are those who have had to live within too rigid a disciplinary "shell," and just break forth. The kleptomaniac from a well-to-do home is an example. He doesn't have to steal, but he does so to satisfy some deep emotional need—often as a substitute for repressed sexual desires. Likewise, the boy who throws a brick at a policeman may have overbearing parents intent upon regulating his entire life. He doesn't dare throw bricks at them, so he selects the established symbol of authority in the community on whom vicariously to take out his spleen. The unsocialized delinquent, on the other hand, is usually the product of a home in which standards of right and wrong have not been clearly defined. It may be a broken home in which the conflict between parents makes a sense of security in the child impossible. He does not receive the affection or attention or discipline he deserves. Instead of being too tight, his "shell"—or "conscience," as it may be called—is too loose.

Researchers into the causes of juvenile delinquency have had a lot to say about errant parents, broken homes, stupid schoolteachers, friends, and relatives for their failures in child rearing. The lack of adequate religious education and character training has been stressed. To provide other outlets for the underprivileged boy or girl, thousands of experiments in recreational projects have been attempted. Boy Scouts, Girl Scouts, Y.M.C.A.'s, Y.W.C.A.'s, boys and girls clubs, settlements, playgrounds, summer camps, and many other opportunities are intended to make available for the emotionally immature substitute forms of behavior. Psychiatric behavior clinics deal with parents as well as children in their attempt to discover the causes of personality conflicts that lead to antisociability, and social workers for both public and private agencies have multiplied many hundreds of times in the past few decades to try to relieve environmental tensions breeding misconduct.

The entire field of study must still be considered in its infancy. Freud, who started the quest for clues to adult behavior in the unconscious motivations based on suppressed childhood memories, has been dead only a few years. There are only a few thousand psychiatrists in the nation, and they are mostly self-trained, for medical schools have as yet to provide adequate courses in the field. The National Committee for Mental Hygiene was founded in 1909 by Clifford Beers a year after he published *The Mind That Found Itself*—an account of his experiences as a patient in several in-

sane asylums. Schools, parent-teacher associations, social agencies, churches, and other social institutions are just beginning to feel the real impact of the movement; to date the newspapers have demonstrated not more than a flicker of intelligent interest. After another generation of debates on whether or when to spank, what to do about bed-wetting and thumb-sucking and hundreds of other similar problems, the outlook should be different. To date, it must be admitted, not much progress has been made either in prevention or in cure. Studies of both juvenile and adult lawbreakers reveal that they have had the advantage of Sunday School and other character-building training to about the same extent as those who escape the clutches of the law; and that, conversely, former Boy Scouts and Y.M.C.A. members are no more likely to "go straight" than others denied those privileges. When the statistics are gathered, the correlations just are not there.

The state of psychiatric research is not the only confusing one. Even more so is the research into the effect of social and economic conditions upon potentially criminal personalities. There is no disputing the evidence that bad housing, poverty and unemployment, urban living, alcoholism, and other factors make the attainment of well-adjusted personalities difficult, but one big difficulty is the fanaticism of many supposed authorities who "pop off" without adequate evidence or who overemphasize one or a few factors to the exclusion of others. Too many well-meaning reformers seek panaceas through enforced changes in our economic, social, or political life. Some, for instance, put their entire faith in prohibition of the manufacture and sale of intoxicating beverages, giving "drink" as the pat answer to queries as to why a great deal of misbehavior exists. To the mental hygienist, such an answer is only a partial one; to him, "What drove him to drink?" is the important question. Anyway, the noble experiment of attempting to eliminate the evils that come from the Demon Rum resulted in an increase rather than a decrease in lawlessness. Removal of temptation is important, but it leaves the tempted person still in need of some channel for emotional expression. To summarize: a person becomes a delinquent or a criminal in the same way that he becomes anything else psychologically. To prevent his being an antisocial person, he must be able to have experiences to make such possible.

Is crime normal? There isn't a newspaperman, no matter how hard-boiled, who, after any period of covering the criminal courts, has not remarked or believed, "He never had a chance," regarding some unfortunate who was dragged off to the penitentiary or gallows. What he means is that the miscreant with whom the law finally caught up lived a life in which all the chances were against

his ever getting along by being obedient to everything the statute books prescribe.

In 1943, distressed over the city's bad criminal record, Mayor Gordon B. Ambler, of Richmond, Va., appointed a citizens' committee to make a study in an effort to determine the causes of this record. Part of the committee's report related to the homicide rate read as follows:

> From the standpoint of environment, ten cases originated in the slum areas, 25 in very poor, unsanitary, dilapidated houses, two in homes above the average, and only two in homes owned by participants. Members of the committee were shocked and appalled at the overcrowded, unsanitary, and unsafe conditions under which most of these people live. Old houses and outbuildings bring high rents without regard to sanitation or safety. Duly constituted city authorities, so far as we could ascertain, make no effort to compel owners of these properties to comply with various city ordinances protecting the public against tenements without proper ventilation or safe exits.

Similar investigations, many of them conducted by newspapers, have led to similar conclusions in other places. Obviously, the youngster born and reared in such surroundings is going to be frustrated and more inclined to seek antisocial outlets for his behavior. Sociological thinking, however, is today progressing beyond a study of the effect upon the individual of such living conditions to a consideration of the cultural standards that such communities develop for copying not only by the person of warped personality but by the normal resident as well.

Most of the early research of this kind was conducted in Chicago under the leadership of Dr. Clifford Shaw of the Institute for Juvenile Research. Mapping of the homes of more than 100,000 children getting into the Chicago Juvenile court, established in 1899 as the first of its kind in the United States, revealed *delinquency areas* in which the rates of delinquency remained substantially the same throughout the decades, despite the fact that the population had turned over several times and the nationality and racial complexion also differed widely at different times.

How the delinquent tradition originated in these areas, all inhabited by very low income families, can be imagined in view of what is known of how delinquency easily may become a normal, if not psychologically necessary, form of behavior for frustrated children. Once established, its effect on all subsequent generations is more easily seen. In a series of books, notably *The Jackroller*, *The Natural History of a Delinquent Career*, and *Brothers in Crime*, Shaw has shown that delinquent behavior is normal in such environments. The child who does not conform to what the gang does is the queer one, not the opposite. It is only by the standards of

other elements in the larger community that the behavior in these areas is delinquent.

When this point becomes clear, the difficulty that settlement-house and social workers have in guiding individual problem children into paths of righteousness is seen. Those agents usually come into a community during the daytime working hours from other parts of the larger community. Try as hard as they may, they run the risk of being considered supercilious, condescending, and lacking in understanding, attempting to reform by imposing the standards of one social group onto another. To offset this difficulty, the Chicago Area Project was created under the auspices of the Institute for Juvenile Research to see what could be done to arouse the leadership within the areas themselves to work for a change in the cultural norms making for delinquency and crime. The project has consorted with and even employed ex-convicts; it has provided inspiration rather than direction. After ten years, the results have been phenomenally good. The delinquency and crime rates have gone down, and community pride has been stimulated to work for improvements in the recreational, educational, and other facilities available.

The Chicago Area Project works with neighborhood and community groups—that is, with cultures within a larger culture. It can go only so far to stimulate a new attitude toward behavior peculiar to the areas in which it operates. It cannot have much effect as regards the lawlessness that is characteristic of the larger social group of city, state, or nation. That would be too big a job to tackle. Nevertheless, the limited-scale findings of the project have provided factual argument for those who theorize that crime as a whole is a *cultural product*. Most of the more recent treatises on the subject by sociologists take that point of view. It incorporates what those who trace the origin of law to custom have implied for centuries, what the prohibition era demonstrated, what every lawbreaker himself asserts in rationalizing his behavior.

The United States, the world's youngest great nation, has what many of its most friendly critics, foreign and native, have described as a lawless heritage. It dates from frontier days, when pioneers had to take the law into their own hands, and is rooted in the rugged individualism which characterized the entire colonization period and westward expansion movement. As long as there was a west, nobody had to be disciplined; as long as there were wide open opportunities, there was little resentment against the other fellow's getting "his." Business was "rough and ready" and resentful of any controls; heretics in all fields successfully argued their constitutional civil liberties. Nobody gave much of a hang for anyone

else—including foreign countries and their political troubles—because nobody had to. A sense of responsibility developed slowly, and harnessing the centuries-old tradition of unrestrained behavior has been a prodigious task for government. A substitute for a high degree of ethical behavior has been the practice of legislating against undesirable behavior followed by as much disregard for the statutes as possible. Before the population had a chance to settle down, take root, and develop traditions of loyalty and co-operation, furthermore, the march of science gave us the railroads, automobile, airplane, telegraph, telephone, motion picture, radio, and other divertissements to complicate the problem. The mobility and increased tensions provided by urban living has increased the incidence of neurotic behavior as the relentless competitiveness inherent in the so-called American way of life increased the strains and stresses on the individual. Frustrations incident to the inability to realize all the grand things that an industrial society makes possible to the fortunate naturally have led to the search for surcease in the traditional lawless way. Darwin, Freud, Einstein, and others have had a devastating effect upon long-established moral and religious as well as scientific concepts. Whole libraries have been written upon these alleged evil effects of the machine age.

In his chapter on "Our Lawless Heritage" in *Our Business Civilization,* James Truslow Adams brilliantly traced the American disregard for law from pioneer days. When "everybody's doing it," as everybody almost always has, the potential lawbreaker has great temptations and considerable opportunity for self-exculpation when he transgresses. He doesn't have to be a born criminal, feebleminded, crazy, queer, or even much of a behavior problem to do so.

Who are the criminals? Research into the causes of crime and preventive work has been handicapped because of the lack of adequate statistics. It is only since 1932 that the Federal Bureau of Investigation has been gathering data on a nationwide basis, and it is entirely voluntary with police departments the country over whether they submit their reports on "offenses known to police." During 1945 such reports were received from 2,267 cities, with a total population of 67,608,610, or about 90 per cent of the urban population of the nation.

For whatever they are worth—and they probably are indicative, since virtually every urban center over 25,000 is represented—the figures included in the FBI's *Uniform Crime Reports* (since the war issued semi-annually instead of quarterly, as formerly) show that the average American lawbreaker is getting younger year by year. Since 1943 the most frequent age group has been 17 years; in 1942 it was 18; in 1939, 1940, and 1941 it was 19, as it was also from 1932

to 1935 inclusive; in 1936 and 1937 it was 22, and in 1938 it was 22. In 1945, 21 per cent of all offenses were committed by youths below 21. It was 22 per cent in 1944; 22.9 per cent in 1943; 19.2 per cent in 1942, and 17.6 per cent in 1941.

The proportion of women offenders, as determined by examination of fingerprint records sent to the FBI in Washington, has steadily increased, comparative percentages by years being as follows: 1939—7.6; 1940—8.5; 1941—9.2; 1942—12; 1943—16.1; 1944 (first half)—17.1.

The same data revealed that 51.9 per cent in 1945 were recidivists. Unfortunately, since 1941 the FBI has not figured out the crime rates for white native-born, foreign-born, and Negroes in proportion to their representation in the population as a whole. In that year the rates per 100,000 were—native whites, 317; foreign-born, 104; and Negroes, 906. This is significant, however, in view of the periodic attempts by uninformed Congressmen to solve the nation's crime problem by deporting aliens. As innumerable studies by sociologists have revealed, first-generation Americans are and always have been more law-abiding than the average. The problem of the second-generation American, however, is something different. When children of immigrants go to school and church, they come into contact with new cultural patterns in conflict with those of their homes. There are often disputes between parents about use of the native language and adherence to Old World customs. The kids want to talk and act like their schoolmates and resent parental attempts to discipline them more severely than they know to be the American pattern. The personality conflicts that result show their effect in crime statistics, but more fact-gathering is necessary for an accurate picture.

As for the Negro, the statistics reflect the poor living conditions into which he is forced, but there are further factors to consider in evaluating the statistics regarding him. There is no doubt that there is a greater avidity among police, in the North as well as the South, to arrest Negroes for offenses for which a white person would be let off with only a reprimand. White citizens are also more prone to report minor offenses by colored persons.

No matter how good they may be, to be meaningful, any criminal statistics must be interpreted. In the first place, the FBI receives only reports of "offenses known to police," with no indication naturally of how much lawbreaking never comes to the attention of law-enforcement officers. A great proportion of white-collared crime would be in that category. Furthermore, police in different places have different methods of charging offenses. For instance, in one place it may be the practice to place a technical

charge of manslaughter against all drivers of cars taking part in fatal accidents pending investigation. In other places, this is not done. In some cities the police merely issue warning tickets to certain traffic violators; in others, arrest is immediate. Police every day exercise a wide range of choice as to the charges under which someone is to be booked. "Disorderly conduct" covers a multitude of offenses; it may even include prostitution, keeping a brothel, adultery, fornication, and vagrancy. Labor pickets have been arrested on the same charge as have rioters, exhibitionists, and just plain drunks.

In reading crime statistics, it is also necessary to be aware that the correspondence between number of offenses committed and total arrests may mean little or nothing. One arrest, for instance, may clear up a large number of crimes, whereas in another case a number of separate arrests may be necessary to solve a single crime.

One thing that the statistics of both the FBI and private researchers tend to establish year after year is that there seldom is any such thing as a "crime wave." They are synthetically, mostly journalistically, created. Either a dramatic offense of a particular kind creates interest in similar offenses—even though they may be occurring no more frequently than ever—or police become more active in enforcing a particular statute or ordinance after an especially flagrant violation. This is not to deny that some potential murderer or other criminal might be "set off" by newspaper publicity given a dramatic case. From it he might reach a decision as to the method to be used, or the final inspiration to do it at all. In the absence of the publicity at the particular time, however, he probably would receive his impetus from something else then or later. There is no evidence that any appreciable amount of lawbreaking has been directly caused by graphic accounts of crime in newspapers. The effect on the law-abiding public of such journalism is another matter, which the author went into at considerable length in his *News room Problems and Policies* (Macmillan, 1941).

The situation is bad enough without any journalistic exaggeration. In its report covering 1944, the FBI revealed: "Each day on the average brought 28 felonious killings, 30 rapes, 150 aggravated assaults, and left 120 robbed, 555 with their automobiles stolen, and the homes or business places of 749 others burglarized. In addition, 2,176 larcenies occurred during the average day, until by the end of the year an estimated 1,393,655 major crimes were registered." The 1945 estimate was 1,565,541 offenses, an increase of 12.3 per cent. During the average day covered by the 1943 report, 3,785 crimes of the types reported occurred, meaning 158 per hour. The value of property reported stolen to police in 254 cities with a total popula-

tion of 30,827,991 rose from $55,056,176.74 in 1943 to $66,856,733.64 in 1944. The following tabulation shows the percentage distributions of the crimes reported for 1945:

Offense	*Rate Per 100,000*	*Per Cent*
Larceny	889 9	54.7
Burglary	359 3	22.1
Auto Theft	241.5	14 9
Assault	59.8	3.7
Robbery	54 3	3.3
Rape	11 5	.7
Murder	5.5	.3
Manslaughter	4.4	3
Total	1,626.2	100.0

What, then, is a criminal? Maybe there are reporters who have spent years observing thousands of them who can do better, but this writer can think of no better definition than the following: a criminal is a person who has broken a law and has been convicted in a court of law for so doing.

CHAPTER 14

Classification of Crimes

SOMEDAY, as was implied in the preceding chapter, criminal law may be rewritten on the basic assumption that the lawbreaker is a behavior problem. Then the classification of crimes and criminals will resemble the table of contents of a textbook on psychiatry, and the disposition of cases will be predicated on the belief that it is the criminal himself—not his crime—that should be the object of concern and attention.

Realization of this goal of a majority of contemporary social pathologists, however, is still far off. For decades, if not generations to come, criminal courts may be expected to operate as in the past, meting out justice in accordance with, or in spite of, a scale of offenses and penalties established by lawmaking bodies.

There is today no universally applicable outline of criminal law. Most states have codified the results of generations of legislation, so as to get laws related to the same or similar situations under the covers on adjacent pages. The groupings and terminologies, however, differ, and only slow progress has been made toward persuading state legislatures to pass uniform laws covering even such interstate problems as extradition and arrest. In recent years the federal criminal code has been expanded considerably, to give the Federal Bureau of Investigation and other federal law-enforcement agencies and the United States District courts jurisdiction over automobile thefts, kidnaping, fugitive felons, national bank robberies, white slavery, and numerous other crimes. Nevertheless, the vast majority of police work and subsequent court procedure remains the prerogative of the states.

With the warning that it probably does not apply exactly to the criminal code of any state, the classification of crimes, according to the public interests which the criminal law purports to protect, in this chapter is an approximation of the average practice in the United States today. These are the crimes as the court reporter knows and must report them. This chapter is intended to help him in understanding the meaning of the names which have been applied to the major acts considered antisocial.

Crimes Against the Person

The person who suffers an injury by another has resort to the civil action of tort in the civil courts. In a number of situations, however, the state believes that the public interest is affected when violence is committed or even threatened against an individual, even though nobody else may be affected directly. Criminal action to punish such offenses does not prevent the injured party from bringing a tort action in a civil court.

Assault. This is an unlawful attempt to injure another physically. The statutes may differentiate between *simple* assault, which is a mere threat to injure, and *aggravated* assault, which is a threat sufficient to cause the intended victim to flee. Statutes also may include a scale of gravity of the circumstances under which the offense can be committed. If the offender, for instance, is masked or hooded, the penalty may be greater. Likewise, the seriousness of the offense threatened may increase the criminal liability. For example, it may be considered worse to threaten to murder or rape someone than to threaten to rob him or burglarize his house. If the assault is committed with a deadly weapon, furthermore, the penalty may be greater; if the assaulter is both armed and masked, it may be still greater. The formal charges may be worded to designate the degree of the offense.

No newfangled gadget like that devil's instrument, the automobile, is going to halt the progress of 75-year-old Thomas Lambert when he wants to cross a street.

He was crossing an intersection Tuesday night when Virgil Holmes, 34, approached in his automobile. Lambert held up his 50-year-old black-thorn walking stick, indicating Holmes to stop.

Holmes didn't.

Lambert swung his black-thorn. The glass from one of the car's windows tinkled in the street. Lambert swung again. Another window was smashed.

"I didn't intend to hit the window with the first swing," Lambert told police. "I was aiming at the driver. But on the second swat my Irish was up and I aimed at the window."

Lambert was booked for assault; Holmes for failing to yield the right of way to a pedestrian.

"I had to smack another car a while back," Lambert grimly reported.

A terrifying ride in an automobile with a man who threatened to shoôt her with a sawed-off shotgun was described to police yesterday by Miss Dolores Montgomery, of 1339 South Monroe street. She escaped from the man, who was later arrested and charged with assault.

Miss Montgomery said that Allan Fisher, 40 years old, of 190 Montrose avenue, was given an examination by her in June at the city tuberculosis sanitarium, where Miss Montgomery is a supervisor. He was sent to the sanitarium, but left six weeks later of his own volition.

He asked her for a ride in front of her home. yesterday morning. After she had driven a short time, he unwrapped the gun, she said, and said he was going

to shoot her and himself, blaming her for sending him to the institution. Miss Montgomery drove into a filling station at Addison and North avenues, where an attendant helped her wrest the gun from Fisher.

Battery. This is the actual carrying out of the threat or assault—the unlawful application of force to the physical injury of another. It does not necessarily mean striking another with either the fist or some object. To poison another person is to commit a battery. Also, it is a battery to spit on another or to take indecent liberties with him. The courts also have decided that if a threat (assault) is so severe as to result in a person's injuring himself in the attempt to escape, the assaulter is guilty of battery, even though he may not have touched his victim. Striking a rider's horse may be battery, as may be placing him in a position so that injury results, either from inclement weather or any other cause. On the other hand, it is battery even though the physical force does not result in actual injury; its attempt constitutes an offense.

In booking those charged with battery, it is common practice also to include a charge of assault, for a threat is implied to have preceded the attack. Some states, such as New York, now include battery in their laws against assault, dropping the term from their code.

Michael Radek, ousted secretary of local 653 of the Journeymen's Plumbing union, was fined $50 yesterday for his courtroom slugging of Thomas Day, a Daily Journal photographer.

Day told Judge Charles S. Thackery in the Municipal jury court that Radek committed assault and battery upon him Aug. 1, when Day was trying to take Radek's picture in the courtroom of the chief justice of the Criminal court, before court opened.

Radek had gone to court the day of the slugging in connection with an investigation of racketeering charges against his brother, Burton. Burton is the ousted czar of the union.

False imprisonment. It is not necessary that a person be arrested illegally and locked up to be a victim of false imprisonment. Any unlawful restraint of his freedom of action is sufficient to substantiate the charge. As will be explained in the next chapter, the power to arrest under many circumstances is possessed by private citizens as well as by policemen; because the right or duty seldom is performed by other than regular law-enforcement officers, however, most of those charged with the offense are policemen. Some states, however, do not specify false imprisonment as a separate offense, but cover the act under the statutes against abduction and kidnaping. Technically, the offense can be committed without touching the victim—if he is persuaded or frightened into remaining mobile or restricted in his actions by threats. Anyone in custody of a law-enforcement officer or of a citizen exercising his power to arrest is a prisoner; incarceration is not necessary to imprison.

Although the victim of false imprisonment may prefer criminal charges against the offender, he is more likely to seek damages in civil court because a successful tort action will result in monetary advantage to him, whereas a successful criminal prosecution gives him only the satisfaction of obtaining revenge. It is not necessary, of course, that the victim himself prefer the criminal charge. In fact, it is the duty of law-enforcement agents to apprehend perpetrators of this as well as of all other crimes.

Morgan L. Fitch, Republican candidate for city treasurer in the last election, who was kidnapped April 4 and taken to the Wabash Avenue station, today obtained a warrant for the arrest of Maxwell Barbour, Negro politician in the 3rd ward, charging false imprisonment.

Fitch, who appeared before Judge Victor Kula in Jury court, charged that Barbour was one of the Negroes who forced him and two other Republican workers into an automobile. He also accused Barbour of pointing a gun at him.

Although the warrant had not been served, Assistant State's Attorney Alex Napoli said he had questioned Barbour and that he denied pointing a gun at Fitch. Barbour insisted, Napoli said, that Fitch and his companions voluntarily entered the car and accompanied the Negroes to the police station.

—Chicago (Ill.) *Daily News.*

Police Commissioner James P. Allman announced yesterday that he will make his own investigation into the illegal seizure of Morgan L. Fitch, defeated candidate for city treasurer, on the south side last Sunday. The promise came after the commissioner had read a scathing letter from State's Attorney Thomas J. Courtney, pointing out that six days had passed without the apprehension of Fitch's abductors, and demanding immediate action by Allman.

A similar letter was sent to the city civil service commission. Walter L. Gregory, a member of the commission, said he will give "careful consideration" to Courtney's demand that "the intolerable action of the police department in connection with this matter is most certainly worthy of your immediate attention."

—Chicago (Ill.) *Tribune.*

Kidnaping; abduction. When the victim is a woman or child, these terms are often used synonymously by news writers, but the statutes still usually list them as separate offenses. Some states even make a separate crime of *child stealing,* and the laws against seduction often overlap all the others.

To distinguish as much as is possible, abduction is the taking or stealing away of a woman, child, or ward for unlawful purposes; kidnaping is the unlawful detention of another against his will. Not all kidnapings, obviously, involve a stealing away or even an enticement, and presumably there may be no unlawful detention after an abduction has occurred.

As it originated at common law, kidnaping was the forcible stealing away of a person from his own country to send him to another. There was no common law crime known as abduction, but late in the fifteenth century a statute was enacted, presumably to

defend young heiresses from fortune hunters, making it unlawful to take away any female who possessed or was heir to a substantial amount of property. Modern statutes on abduction usually include children as well as women, but there may be separate laws to cover the different purposes for which the abduction takes place—for instance, for purposes of prostitution or concubinage, or to compel to marry. If the girl is under eighteen years of age, the offense may be included under the laws against seduction, although a seducer presumably can be only a man, whereas an abductor can be of either sex.

The most severe offense in this category is kidnaping for ransom —usually a capital offense. The Federal Anti-Kidnaping law was passed by Congress June 22, 1932, as a result of the public clamor which followed the kidnaping of Charles A. Lindbergh, Jr. It is frequently called the Lindbergh law, and it gives the Federal Bureau of Investigation the power to enter any kidnaping case after seven days on the assumption that by then state lines have been crossed, thus making it an interstate matter. It would be much simpler if state laws against kidnaping and abduction, and probably also against seduction, were to be combined. But the statutes, no matter what a hodgepodge they may be, generally cover every objectionable act, so legislators don't bother to rewrite them for the convenience of the reporter or author overly conscious of the necessity to be accurate in his nomenclature. Note in the following item how the legal niceties are disregarded, anyway:

Mrs. Anna Semple, 49, the untidily dressed woman who has been identified as the abductor of 4-month-old Rosejean Booth, was formally charged with kidnapping today.

After her arraignment tomorrow before Judge Frank Lohr in Felony court, the grand jury will be asked to vote a kidnapping indictment, Assistant State's Attorney Mathew Jenson said. Later, when the case comes before Judge John Chidsey in Superior court, a mental test of the defendant will be sought.

The baby, who was stolen from a buggy at Madison and South Grand avenues Saturday afternoon where her mother, Mrs. Louise Booth, 3256 West Madison avenue, had left her for five minutes, was back with her parents today, apparently unharmed. She was found in an alley behind 1350 West Madison avenue, late Saturday night, suffering only because she had missed a couple of meals.

Mrs. Semple was arrested while she wandered early in the downtown shopping section yesterday. Policemen recognized her from witnesses' descriptions of "a woman with wild hair."

"There is no doubt in my mind that Mrs. Semple is a psychopathic case," Assistant State's Attorney Thomas Welch declared. "She has a brother who is in a mental asylum now."

Mayhem (or Maim). Maliciously to disable or dismember another is mayhem (or maim). In feudal days, only those injuries which impaired a person's ability as a warrior were actionable, but

today all bodily injuries or disfigurements generally are included under the title. Maim really is battery which results in serious injury—such as loss of an arm, leg, ear, or nose. A person who maims himself to create sympathy, such as a beggar, is guilty of the crime.

Henry Perkins, 43, of 1280 East Kimball avenue, was arrested today on a charge of mayhem after he put out the eye and hacked off the right ear of his partner, Eli Coles, 40, of 573 Ellis street, during a dispute over conduct of their business, the Perkins & Coles Hardware company, 414 South Ellis street.

Rape. Unlawful carnal knowledge of a woman other than one's wife without her consent is rape, which is considered a capital offense in most states. The perpetrator obviously is always a male and, in some states, if the female is below a certain age "of consent"—such as sixteen or eighteen years—it is *statutory rape,* or rape in the second degree, even though she submits willingly to the act of sexual intercourse.

Newspapers generally protect the innocent victims of rape by not including their names in stories, although they may mention the place of the offense as a warning to other women in the neighborhood in the event that the rapist still is unapprehended. As stated in Chapter 13, "moron" is not a synonym for rapist, despite the tendency to conclude that any violent sex offender necessarily is feeble-minded. A description of the suspect in rape cases is given to aid in his arrest.

A well-dressed man with a "Jerry Colonna mustache" was sought today in a south-side rape case. Two women victims are certain that they can identify him because of his striking appearance.

Both women, living in the Sherman Park area, were forced into alleys at the point of a gun, compelled to disrobe, and submit to the rapist's desires. The crimes occurred within a half hour of each other, at 9 and 9:30 P.M. yesterday.

The rapist is described as about 35 years old, nearly six feet tall and weighing about 175 pounds. He wore a blue serge suit and a black derby. His appearance was described by both women as "flashy," as it included a bright-red necktie and handkerchief. Neither victim could recall any identifying scars or physical characteristics other than the large-sized mustache similar to that popularized by the famous comedian.

Criminal homicide. With the possible exception of the infrequent crime of treason, for which the penalty is as severe or worse, there is no human act considered more despicable than that of taking another's life without just cause. In ordinary conversation, all such killings are likely to be called murders. Actually, however, *murder* is just as much a legal term as any other mentioned in this book, and journalistic accuracy as well as caution forbids its indiscriminate use until a judge or jury has spoken.

Frequently throughout the discussion to follow in this chapter, it will be pointed out that the historical counterpart of the use of

legal fictions in civil law has been the reduction of charge in criminal law. This practice continues today long after the severe penalties that inspired it have been eliminated for all but a few offenses —mostly treason, murder, and rape—and is particularly prevalent in those capital offense cases for which the death penalty still is prescribed. So, the homicide may not be murder at all, or at least not first-degree murder. It may instead be second-degree murder, voluntary manslaughter, involuntary manslaughter, or justifiable homicide. In addition, there exists the possibility that the court will acquit the person charged with the offense, whatever called, providing further reason for not going "out on the limb" to headline the word "murder."

Statutes differ in recognizing two, three, or four degrees of criminal homicide and in use of the term *manslaughter* to describe them beginning with the second, third, or fourth degree. In any event, it is necessary for the victim to die within one year and one day after the alleged act and for there to be an unbroken line of causation between the act and the death. Thus, if *A* strikes *B* causing him to fall and fatally fracture his skull on a rock, there is an unbroken line of causation. If, however, *B* is merely injured and is taken to a hospital, where he loses his life in a fire, *A*'s act is not held to have been the cause of *B*'s death, even though *B* would not have been in the hospital had *A* not hit him.

If four degrees of homicide are recognized, they may briefly be described as follows:

First-degree murder: with expressed malice and premeditation, often expressed "with malice aforethought."

Second-degree murder: without premeditation (aforethought), but with intention at the time to kill or injure without concern for the consequences (malice).

Voluntary manslaughter (usually called first-degree manslaughter, but sometimes third-degree manslaughter, if there are both first- and second-degree murder): intentionally in a sudden rage of passion or as the result of extreme provocation but without prior malice or premeditation.

Involuntary manslaughter (second- or fourth-degree manslaughter): unintentional but resulting from criminal negligence; without justification or excuse, but with no malice aforethought.

At law, *malice* means something different from what it does when used in everyday speech. It means "conscious violation of the law" or "criminal intention," and not anger or spite. "Malice aforethought" is an "unjustifiable, unexcusable, and unmitigated man-endangering" state of mind, and it is not difficult to imagine why even the most potentially bloodthirsty jury often finds it diffi-

cult to fit the facts to the theory and overcome any reasonable doubt that the condition existed.

It is no excuse that the homicide was committed accidentally or otherwise unintentionally during the commission of another felony. The fact that a felon was armed is taken as prima-facie evidence that he was prepared to use the weapon if necessary, even though he declares he merely meant to brandish it as a bluff. No matter how unexpected loss of life may be during the commission of a robbery or burglary or any other felony, it is criminal homicide under the law.

To determine whether a charge of murder should be reduced to one of manslaughter, historically the *rule of provocation* supposedly is invoked. Requirements are: (1) there must have been adequate provocation; (2) the killing must have been committed in a heat of passion; (3) such heat of passion must have been sudden; (4) there must have been a causal connection between the provocation, the passion, and the killing. Many judges and jurors would be happy to turn the whole matter over to a board of psychiatrists.

Homicide is *justifiable* when committed by a law-enforcement official in line of duty, in self-defense, to prevent the escape of a felon when deadly force alone will suffice, in wartime under orders as a member of the nation's armed forces; and when acting as an official executioner. The most common defense in the courts is self-defense—the existence of which, when there are no witnesses, must be established by circumstantial evidence.

Certain kinds of killings have particular names that the police or court reporter may wish to use on occasion. Some of them and their meanings follow: regicide—killing a king; parricide—killing a parent; fratricide—killing a brother or sister; infanticide—killing a baby; feticide—killing a fetus; uxoricide—killing of a wife by a husband; matricide—killing a mother; patricide—killing a father; vaticide—killing a prophet.

Note, in the following examples, the careful use of the term "murder" and the implied suggestions of news sources and of police and legal procedures:

A cafe party ended in tragedy yesterday when Mrs. Florence Grace Butler, 25, shot and killed her husband, Frank William Butler, 28, in their apartment in the Palace Theater Building, 765 Broadway, Gary.

Butler was a construction foreman for the government's new tank armor-plate mill in Gary.

According to the hysterical story told Police Captain Billick by the red-haired widow, Butler had suggested that the two hold a little celebration in the cafe of the Lake Hotel in Gary.

Quarrel After Party

They had drinks there, she said, returning to their home about midnight. Then, she said, they quarreled.

"I don't even remember what it was about," she sobbed. "It was something that didn't amount to much—but he hit me and knocked me down!"

Mrs. Butler said she seized a pistol from a desk drawer, and her husband grappled with her.

"The gun went off accidentally and he fell," she said.

Still holding the gun, Mrs. Butler ran screaming into the hallway and to the apartment of V. U. Young, owner of a string of theaters in Indiana.

Hugs Husband's Body

"I've just shot my husband!" she cried.

Mrs. Young took the gun and telephoned police. When they arrived, Mrs. Butler had run back into her apartment, where she was found hugging the body of her husband and sobbing: "I didn't mean to do it—I didn't mean to do it!"

—Chicago (Ill.) *Sun.*

A young stepfather was held by Hudson avenue police last night on his admission that he had fatally beaten his 2½ year old stepson. He said he struck and kicked the child "because he cried and interfered with my dinner."

The prisoner is George H. Hall, Jr., 23 years old, 2151 Cleveland avenue, a warehouse employe, formerly of Oakland, Calif. His victim was James Junes, a son of Hall's wife, Eleanor, by a former marriage. She was at work at the time of the fatal beating.

Assistant State's Attorney Julius Sherwin announced that he would seek Hall's indictment on a charge of murder.

Girl, 4, Also Beaten

The beating was administered Saturday night, and was shared by Nancy, 4, Mrs. Hall's daughter. Her face and body were still black and blue yesterday. The case came to police attention Sunday when the Halls took Jimmie to the Children's Memorial hospital. Hall said the boy had been hurt in a fall, but when physicians examined him they found he was dead.

Hall was taken into custody yesterday at an inquest presided over by Deputy Coroner Pasquale Venetucci. The inquest will be resumed tomorrow at 1 p.m. at the police station.

His Way of Training

Questioned by Acting Capt. Daniel Healy and Sergt. Frank Perkins, Hall admitted striking the children.

"I was eating and they were playing in the living room," he related. "They were crying and making lots of noise, and messing up the room, so I hit them. I don't know how many times, seven or eight or more maybe."

In his complete statement to Sherwin, Hall said that beating was his way of training his stepchildren and that he "had been beating them a month." Asked how he felt now, he replied he felt "ashamed."

—Chicago (Ill.) *Tribune.*

Abortion. At common law, feticide was not murder because no human life was considered to have come into existence until actual birth. Under modern statutes, to interfere with the normal course of pregnancy is usually considered an offense on about the same plane

as manslaughter. Abortionists are usually physicians, and it is seldom that a patient on whom he has operated prefers charges against him for the obvious reason that the idea originally was hers and she submitted to the abortion willingly. Parents or other relatives, however, may bring criminal charges against a violator. If the patient dies, the charge, of course, is murder.

In medical circles the term abortion may be used only after the embryo has become a fetus (after three or four months of pregnancy, at the end of which time the unborn child is said to "quicken"), a similar occurrence before that time being known as a *miscarriage*. At law, however, the terms are synonymous, or abortion may be defined as anything which causes a pregnant woman to miscarry. If drugs or other means are used to bring about miscarriage, it is just as much abortion as though instruments were employed.

Newspapers often protect the woman in an abortion case, provided she is still alive, by omitting mention of her name, but seldom do the same for the alleged abortionist.

The parents of a 15-year-old Fenmore high school girl today filed charges of abortion against Dr. I. L. Secor, 1514 East Jackson street. They told police their daughter had confessed her condition after they questioned her at length when she became ill and fainted. Another physician has examined the girl and has declared her out of danger.

Dueling. This virtually obsolete crime is defined as fighting by previous agreement with a deadly weapon. If death results, the charge naturally is murder and the seconds of both parties and all others who had anything to do with arranging the duel are equally guilty. A challenger to a duel is guilty of a misdemeanor, even though his challenge is not accepted, and the same is true of any others who in any way helped with preparation or delivery of the challenge. About the only American newspapermen with occasion to write or edit news of duels are foreign correspondents and cable editors, and foreign laws on the subject may differ from those of the American states.

Crimes Against Habitations

Man's home is supposed to be his castle, and it is deemed to be in the public interest that he be protected in his enjoyment of it. Illegal entry, destruction, or injury are felonies under modern statutes. The laws, however, are behind the times in their description of what constitutes a dwelling and cumbersome in considering such buildings separately from stores, factories, office buildings,

other places of work, and structures for human occupancy of any kind.

Burglary. The laws against burglary, for instance, would be simplified by combination with most of those covering robbery and other forms of larceny, as will be explained under the next section, "Crimes Against Property." Traditionally, burglary is "breaking and entering the building of another with intent to commit a crime therein." At common law, burglary was restricted to such offenses committed at nighttime for the purpose of committing a felony, but many modern statutes have been liberalized to include daytime and misdemeanors as well. Also, business places are generally included with dwellings under modern laws on burglary.

The legal requirements of "breaking" and "entering," however, are still adhered to. To break means to make an opening; hence, you cannot burglarize a place by walking through an open door. If you push open a screen, however, it is burglary—provided you enter as well as open. Should your hand, or even the tip of one of your fingers, protrude, that is sufficient to establish the fact of an entry, but if you reach in with a stick you may or may not be said to have entered, depending upon the law school that the judge attended.

If nobody has lived in the place into which you break and enter, you are safe as far as a burglary charge is concerned, because no building becomes a dwelling until it has been inhabited. An exception is other structures—such as barns and woodsheds on the premises, which, centuries ago, were declared to be part of the "parcel thereof," a habitation although used for purposes other than sleeping. This "curtilage" rule originated as a fiction to enlarge the scope of the law against burglary, but it seldom is invoked today as other statutes already cover such situations.

A person cannot burglarize his own home, but a landlord can burglarize a house rented to and occupied by a tenant. Completion of the criminal intention for which the burglary was committed is not necessary, and often the crime inside the place is more heinous than the burglary itself and is the one on which the burglar is tried first. Larceny is the usual intention of the burglary, but it may be any other crime—including murder or rape. Modern statutes generally recognize degrees of burglary, such as when the burglar is armed or masked or commits an assault.

Tracking down burglaries would be such a lark if all of them would cooperate as nicely as a pair did yesterday, by walking through a pool of grease. Investigating the burglary of a hardware store at 14 West Washington street, Lieut. William Adams and Detectives Peter Healy and Thorne Dunbar merely followed two sets of greasy footprints to the rear of a garage at 3900 Booster avenue. Adjoin-

ing the garage was a suspicious shack, which the policemen entered to find the culprits flat on their backs and snoring gently. Awakened, both men admitted the burglary when confronted with their greasy shoes. They are William Bolke, 21, an ex-convict, and Robert Plain, 20.

The burglar who accosted Frank Simpson, 66, night watchman in the Ace Department store, as he made his rounds early yesterday made one mistake. He said, "Dad, I ought to kill you."

Simpson knew that only one man ever called him "Dad." It was John Sherwin, 24, who worked as a porter in the store five years ago, and who was sent to prison for robbery in 1937.

The burglar and a companion escaped from the store in spite of a police guard of 60 men thrown around the building. But Simpson told the police about Sherwin. Officers seized Sherwin last night at his home at 1209 South Halsted street, and Simpson identified him as the burglar. Sherwin denied the charge.

Burglars smashed open the front door at the Wolfe Credit Jewelry store, 1550 West Chicago avenue, early today and obtained $800 cash, 60 dozen women's and men's diamond rings, and 300 gold watches valued at several thousand dollars. Four $100 and four $50 defense bonds also were taken.

A woman clerk discovered the burglary when she opened the store at 6 A.M. and notified Louis Wolfe of the Clark hotel, 234 East Pearson street, the owner, who summoned police. He was unable early to give the actual value of the merchandise taken, but said it was all insured.

The burglars apparently used a sledge hammer to smash the wooden door around a heavy lock, then lifted the lock from its place, and entered. A burglar alarm attached to the lock either was defective or was detached somehow by the burglars before they forced entry.

Arson. This is the willful and malicious burning of another's real estate. In some instances, burning one's own property is arson if the intention is to defraud another—such as an insurance company. In most states, however, such offenses are covered by separate statutes rather than included under those against arson. In journalistic parlance, a person who makes a practice of setting fires is a "firebug." Such persons are generally thought to have "something wrong" with them more than is true of the mine run of lawbreakers, as financial gain obviously is not their motive. Degrees of arson may take into account whether the building was occupied at the time, whether the act occurred in the nighttime or daytime, and the kind of building.

A 19-year-old youth "with a silly grin on his face," confessed to setting "35 or 40" fires on the South Side since last May, Capt. Thomas Clark of the city police announced yesterday.

The youth, Donald Boyd, 19, of 4321 South Greenwood avenue, unemployed, was picked up Friday night after a fire at 43 South Ellis street, which drove 50 people to the street, eight of them being assisted down fire ladders.

Detective Lou Anderson, who has been investigating the series of fires in the neighborhood, arrested Boyd after Mrs. Eleanor Wood, operator of the boarding-house at that address, told him she suspected the youth as the arsonist.

Captain Clark said that after several hours of questioning Boyd admitted starting the fire "for revenge." Boyd, he said, told him he had a "grudge" against the landlady.

The "grudge" grew out of arguments with the landlady, Boyd is reported to have told police, while he and his father lived there.

Recently Boyd's father moved to Montgomery, Ala., and Capt. Clark said the youth had purchased a train ticket to join him there.

Boyd told him that Friday night he piled papers and rubbish under a rear porch of the building and started the blaze, Captain Clark said, as a contemptuous "farewell gesture."

When asked why he fired other buildings in the district, police said Boyd assumed "a silly grin on his face" and simply shrugged his shoulders.

Crimes Against Property

There should be one crime known as "theft" to include virtually every other offense to be discussed in this section. If there were, it would save everyone who has anything to do with the courts—including newspapermen—a lot of headaches. Many indictments could be written in simpler language, and hairsplitting judges and lawyers would be at a tremendous disadvantage. For example, it would be impossible to "beat a rap" for larceny by proving that the offense charged, even if committed, would not be larceny at all but embezzlement, or obtaining money under false pretenses, or something else.

The present gallimaufry of laws calling similar offenses different names and forcing the courts into technicalities is understandable only in the light of the long development of common law practices. In early days, larceny covered only the taking away of another's property by force or stealth—a definition which obviously excluded buildings. In the early days of business relations, the rule of *caveat emptor* (let the buyer beware) excluded virtually everything now called embezzlement from prosecution as larceny. In fact, it was considered clever, not corrupt, to get the better of another in a bargain. Because until not much more than a century ago in England capital punishment was prescribed for the conviction of stealing almost everything, the courts, in their laudable disinclination to impose the death penalty so extensively, resorted to fictions whereby infractions of the law were adjudged to be less serious than they really were. Consequently, a lot of new offenses under different names were created legislatively to facilitate the drift from use of the gallows.

Larceny. This is the taking away of the property of another with the purpose of stealing it. Real property is obviously excluded because of the impossibility of carrying it away, but everything else of value comes under the definition. An early fiction to avoid con-

victing someone for larceny was that the object in question was valueless or "base," as it was stated. Base animals were exempt, and so dogs and other animals for the taking of which the death penalty seemed too severe were called base.

Most of the legal difficulty over what constitutes larceny arose over the stipulation that it is an offense against possession, as it still is. Since *possession* differs from *ownership* or *custody*, one can imagine the lucrative polemics in which lawyers have been able to engage. For the charge to be larceny, someone else must have legal possession; misappropriation of something of which you have possession is embezzlement. We repeat—it ought all to be simply called theft. Because it isn't, during the centuries all sorts of fine distinctions have had to be drawn and agreed upon—such as that a person who loses an article still continues in possession of it until someone else finds it and takes it away with him. You have custody only of store goods that you pick up to inspect, or of the silverware with which you eat in a restaurant or a friend's home; a gardener who cuts your lawn has custody only of your lawn mower, but a cashier in a store has possession of the money he handles; if you receive money in an envelope because the sender accidentally put it there, it is not larceny to keep it because the envelope is meant to be a container; on the other hand, if you find money in a suit of clothes that someone gives you, possession of the money does not change and it would be larceny for you not to return it. And so on!

One troublesome legal rule was that of *breaking bulk* by a *bailee*. Modern laws have taken care of the difficulty by stipulating what are the responsibilities of common carriers, messengers, agents, and others. In the early days, however, the problem arose as to what crime it was when someone charged with delivery of a package opened it and removed part of its contents. Also, what was the legal term when someone gave a servant something to take home to his master. Did the servant have custody even though his master never saw, or perhaps never even heard of, the object? Or, did the servant have possession until he delivered it? Custody was finally accepted as the answer.

A few of the problems decided at common law persist today, and there is considerable ignorance about many of them. For instance, when can you keep something you find without making an effort to ascertain the owner who lost it? The test is whether there is *clue to ownership*. Common sense is applied in the answer in each situation. If you find a dime, there is no clue, for many dimes are lost daily, and seldom can anyone prove that a particular coin is the one he lost. On the other hand, $500 bills are seldom lost, so there would be clue to possession upon finding one. If you inadver-

tently leave a parcel any place, there is clue to possession. If something is delivered to you by mistake, there is a clue, just as there is when you are given too much change in a store. Special statutes which may or may not relate to larceny describe what people should do in these and similar circumstances. Generally, one test of larceny is whether the taker intends to keep what he has taken or to return it after temporary use; to be called larceny, there must be "continuous trespass."

For there to be *asportation* (taking away), essential to prove larceny, only a slight movement is necessary after the article in question has come into the thief's possession. If you tug at something and do not succeed in loosening it from its fastenings, there is no larceny—only an attempt to commit. *Lucri causa* means "for the sake of gain" and, as applied here, means that simple mistakes are not actionable, such as when you walk off with someone else's hat in the belief it is your own.

All the preceding may seem academic, but the distinction between *grand* and *petit* (petty) larceny is still vitally important. The former is a felony, and the latter a misdemeanor, but there is not much conformity between the states as to just where the dividing line is to be drawn. The familiar means of distinguishing is by the value of the article allegedly stolen, but states differ widely in the amount —the range being generally from $10 to $100. Fictions are resorted to almost daily in every criminal court in the land when charges are reduced from grand to petty larceny and rewritten to lower the value of the articles in question, even though everybody knows the original value approximated what they probably would bring in a sale. Another way of distinguishing is by designating objects by name so that the theft of them is either a felony or misdemeanor.

Compound larceny is that committed under aggravated circumstances—for instance, when there is also a burglary or robbery to obtain possession. A squabble may arise as to whether something taken inside a building was in the possession of the building or the person relieved of it; the decision is needed in order to establish whether it was burglary or robbery. The modern tendency is toward special statutes creating the offenses of larceny from a building, larceny from an automobile, larceny from a person, and so forth. It still should all be called theft. As things now stand, if the reporter wants to use the correct legal phraseology, he must avoid the word.

John S. Gavin, 22, will be returned to San Francisco from Tulsa to stand trial on a grand larceny charge, according to Police Detective Riley Johnson. The officer said Gavin is accused of purchasing merchandise from various stores on the installment plan and then taking the goods without finishing payments. It is estimated these losses to stores may exceed $1,000.

Capt. John R. Algren, chief of the uniformed police force, and his aid Sergt. Thomas Stuart, took time out from their supervisory duties yesterday to capture two motorcycle thieves.

The captain and his assistant were driving toward their office in the detective bureau when a motorist, Edward Ray Carlson, 24, of 631 Devonclare place, hailed them at 45th and Throop streets.

"Those men stole my motorcycle," Carlson shouted, pointing to a machine a block away. "I was chasing them in my car." Algren and Stuart turned around and curbed the motorcycle.

At the police station the prisoners, Patrick Donough, 18, of 12 South Main street, and Robert Voorhess, 18, of 190 Sheridan road, admitted the theft and were charged with grand larceny. They will appear in Automobile court tomorrow.

The extra pair of trousers in the suit Robert Sullivan was alleged to have stolen at Illiopolis was just enough to make the charge against him grand larceny, a felony. If the suit had had only one pair of pants, its value would have put the theft in the classification of petty larceny, a misdemeanor.

Sullivan's attorneys, Charles Ogden and James Robertson, listed this complaint against two pants suits yesterday in asking the Circuit court to quash the true bill voted by the grand jury against Sullivan. They also contended that the grand jury was improperly paneled because the county board of supervisors did not include women on the jury list.

Sullivan is 38 years old and lives at 2860 North Lake street.

Robbery. This is larceny from a person by means of intimidation or violence. The ordinary *holdup* or *stick-up* is robbery, but *pick-pocketing* may not be, because it is done by stealth without violence or threats. In his quest for synonyms, the reporter must be careful that his use of them is correct. A *bandit*, for instance, is strictly speaking a *highwayman*, meaning that he plies his trade on the streets or roads. An *outlaw* is an exile, or outcast, with the secondary meaning of lawless person or criminal. To *hijack* is to rob by force—the term being restricted in prohibition days to robbery from a bootlegger of liquor in transit. A *hoodlum* is a rowdy or street ruffian; a *rowdy* is a rough, quarrelsome person; and a *ruffian* is a rough, brutal, or cruel person. A *gunman* is someone who carries a gun, and a *gangster* is a member of a gang. A *racketeer* is one who makes a business of extorting money from others by intimidation, threats, or terrorism.

A robber who adds a personal touch to his criminal artistry today forced Johnathan Stone, a druggist at 1368 North Clark street, to take off his trousers in the rear room of his store, returned to the front, hung the trousers on the prescription counter, and fled with $10 taken from two cash registers, Stone reported to police. Earlier this week, a robber hung up his grocer victim's trousers in full view of two women customers.

Five minutes after $5,000 was deposited today in the Quick Currency exchange at 1780 Van Buren street, two men armed with pistol and shotgun invaded the exchange, lined up three men customers, kicked in the door of the cashier's cage, when the cashier refused to open it, and removed the cash from

the safe. The dark-visaged gunmen then fled south on Van Buren street in a sedan driven by a third man.

Two robbers, one armed and both wearing caps, took $395 from Edward Jenkins, manager of the Thompson Currency exchange, 190 Lincoln avenue, at opening time this morning. Jenkins said the two compelled him to open one section of a safe. A second section contained $2,500 but was secured by a time lock.

Terrified by a holdup man armed with a knife, Miss Noreen Lumley, 23, of 150 Marshfield avenue, was compelled to strip off her clothing early yesterday while in an automobile driven by Lawrence Carson, 30, of 120 Milwaukee avenue.

The bandit then demanded $50 to "ransom" Miss Lumley. Carson told him that he had only $6, but could get $44 at home. He was ordered to drive there. Miss Lumley, meanwhile, resumed her clothing.

At the home the robber was promptly routed by Mrs. Carson, 29. She had been sleeping with her children, Harry, 9, and Joyce, 5. He took a wrist watch from her, and Mrs. Carson slapped his face. The bandit fled after cutting Carson across the face when Carson sprang to his wife's aid.

Embezzlement. As already indicated in the discussion of what constitutes larceny the embezzler has custody but not possession of what he appropriates for his own use. The crime is that of breach of confidence by the fraudulent appropriation of personal property entrusted to one's care by its rightful owner. It is a statutory, not a common law, offense, created to close one of the serious loopholes in the law of larceny (New York now calls it larceny by embezzlement). Most embezzlements naturally are committed by servants or other employees, such as bank tellers or bookkeepers. If recovered before trial and conviction, embezzled property is held in escrow by the court until the outcome of the case.

Miss Hattie Trowbridge, for 18 years a trusted employee of the Verlog & Mitchell Real Estate company, is in custody of police today, charged with the embezzlement over a period of five years of $56,371.56 from her company.

False pretenses. Laws forbidding the obtaining of the property of another by false pretenses—the first of which was passed in 1757—originated as an attempt to fill another gap in the statutes defining larceny. Confidence games, impostures, and all other kinds of swindles are included under the heading of false pretenses, which is obtaining the property of another by means of untrue statements of fact, with the intention of deceiving and defrauding. For the statutes to be effective, there must be an exchange of title as well as of possession, and the books bulge with specific laws outlawing particular kinds of false representations, frauds, and cheats.

Ordinary "puffing" of his goods by a salesman is permissible, as are opinions and predictions. Promises are not actionable if there is intention to keep them. The swindler, however, makes his prom-

ises while knowing that he will violate them. Criminal negligence is not false pretenses; there must be an intention to deceive, and the victim actually must be deceived, although it is not necessary to prove loss.

It is a crime in most states to impersonate a member of the armed forces through wearing a uniform, insignia, or in any other way. Special statutes also exist to prevent impersonation of lodge officers, the unauthorized solicitation of funds, and numerous other kinds of impostures. Falsely assuming an office; swindles by means of cards, sleight of hand, and fortunetelling; making checks to defraud ("rubber checks"); obtaining signatures on goods; using false weights and measures and other traps for the gullible are banned as means of obtaining property through false pretenses.

A woman's intuition warned Miss Alice Crawford, 30, owner of a tavern at 18 Milwaukee avenue, that she had made a mistake when she gave Edward Nelson, 48, of 190 South avenue, $500 to invest for her.

She asked police today to get it back. They arrested Nelson on charges of operating a con game but he only had $200 left.

He said he had lost $300 in an "investment" office at 130 Main street. He took police there and they found Frank Gepford, 48, whose investments, police said, consisted of accepting bets on the speed of horses. He was charged with operating a gambling house.

Two claim clerks for the unemployment compensation division of the state department of labor, accused of stealing $3000 by means of false claims, and three others accused of sharing the money will be arraigned in Felony court tomorrow on charges of obtaining money under false pretenses.

The two clerks are James R. White, 33, and Anthony Bell, 31, both of 154 Park avenue. The other defendants are: Charles Rhodes, 35, of 176 Main street; Albert Catlow, 33, of 1890 Milwaukee avenue; and James Kraut, 35, of 1905 LaFayette avenue.

According to Assistant State's Attorney Thomas Pinkney, both clerks admitted making out claim checks to people who were entitled to the compensation, but failed to claim it. Bell cashed the checks himself, and White sent the checks to the addresses of the three other defendants, splitting the proceeds with them.

Mrs. Rose Ashford, 30, of 1456 Deacon street, was arrested by police yesterday and turned over to agents of the Federal Bureau of Investigation, who said she would be charged with impersonating an Army officer. Mrs. Ashford is alleged to have posed as an Army nurse with a lieutenant's commission. She was arrested on information furnished by Mrs. Clarice Jarvis, 304 Horton street, who reported that Mrs. Ashford said she recently had seen Mrs. Jarvis' son, Jerome, in France. Mrs. Jarvis' son was killed in action in October.

Receiving stolen property. Crime as a big business could not operate without "fences"—the popular appellation for those who purchase stolen goods from robbers and burglars, usually at low prices for the purpose of resale. To be guilty of the offense of receiving stolen property, however, it is not necessary to resell. If

the recipient knows or, in some jurisdictions, even believes or suspects that the goods were stolen but "shuts his eyes," he is equally guilty.

At common law, *misprision of felony* was a misdemeanor and covered all cases of failure to report a felony. Another early prosecution was for *compounding a felony*—that is, agreeing not to prosecute a felony, usually one of which the compounder was the victim. These still are crimes, usually now statutory, but, when industry developed, were not enough to cover all cases of receiving stolen property. Nor was it adequate to try all such cases on charges of being an *accessory after the fact,* although that too still is possible. It is the modern fence who often is the "man behind the scenes," the Fagin who teaches juveniles the "tricks of the trade." Some states have special laws covering embezzled property; others include embezzled and stolen goods in the same statutes.

Mrs. Frances Gregg, 23 years old, owner of a grocery at 139 Lincoln street, was placed on probation for a year yesterday by Judge Raymond Grimm in the court of domestic relations, on charges of receiving stolen property.

Police charged that she bought candy, cigarettes, and other loot from a gang of 13 boy burglars, most of them in their early teens. She denied knowing the goods were stolen.

According to detectives, 101 burglaries have been solved as a result of the roundup of the gang. All were on the north and northwest sides. The boys are to appear in Juvenile court next month.

Meyer Sampson, 48, of 1908 North Hoyne avenue, described by J. Edgar Hoover, chief of the Federal Bureau of Investigation, as a notorious fence, was released on $5,000 bond yesterday after his arrest on a charge of receiving stolen property in violation of the national stolen property act.

A native of New York, Sampson has operated jewelry stores and pawn shops for many years. Hoover said his arrest solved a $9,000 jewel robbery near Chicago, three years ago. He said FBI investigation showed that Sampson paid $900 for the loot of the robbery.

Sampson pleaded not guilty before U. S. Commissioner Nathan Hewitt, and his bond was set at $5,000 pending a hearing Sept. 9 on his removal to Denver.

Malicious mischief. The malicious destruction of or injury to property, sometimes even your own, is malicious mischief. Malice is said to exist when the circumstances fail to justify, excuse, or mitigate the act. Even though actual harm does not result, the act is malicious if performed wantonly and willfully when the perpetrator knows that harm might result.

Some acts of malicious mischief are felonies, others misdemeanors, and there is a multitude of statutes on the subject. Among the acts of vandalism classifiable as malicious mischief are: turning in false fire alarms; injuring monuments, shrubs, trees, ice, levees and embankments, rafts and vessels, lamp posts, domestic

animals, water, railroads, advertisements, public buildings, newspapers; interfering with water or electric supply; tampering with motor vehicles; interfering with coin-box telephones; depositing stink bombs; obstructing streams or watercourses. This compilation is illustrative, not exhaustive.

County highway police announced yesterday that Dr. George Otter, 40 years old, of 1089 Center street, had been arrested and charged with malicious mischief, larceny, and disorderly conduct. Police said he was seized as he stood over the fragments of a "No Trespassing" sign in a side road near Route 59.

A hatchet lay near by, police said, and the sign, torn from the supporting timbers, had several gashes on its surface. Dr. Otter denied that he had removed or smashed the sign. He was released on bond and ordered to appear Thursday before Justice of the Peace Thomas Elkins in Willow Springs court.

Police were instructed yesterday to give special attention to Lincoln school during the evening hours after it was reported that three windows in the school building had been wrecked by vandals Wednesday night.

Another report of vandalism came from Glen Oak street and Loras boulevard Tuesday night. Here automobile owners complained that boys were letting the air out of tires. Police went there, but the boys were gone.

Stopping trains is no trouble at all for Frank French, a brakeman for the Centerville railway. But stopping streetcars, he learned last night, is something else again.

Standing on a safety island at Kirkpatrick and Madison streets on his way to work, the 52-year-old French was dismayed by two streetcars which passed him up.

So he lit his brakeman's lantern and attempted to flag down the third. It didn't stop, either, so French heaved the lantern through the front window.

That did it.

In fact, the car stopped and unloaded all the passengers. Then it proceeded empty to the barn for repairs while Edward Coleman, conductor, proceeded to the police station with French.

Coleman obtained malicious mischief and disorderly conduct warrants which French must answer tomorrow in court.

Forgery. This is creating, altering, or marking any piece of writing for private profit or the deception of another. A forgery may be created by use of a fictitious name for the purpose of misrepresentation, by false dating, or by using one's own name with the intention of passing the writing as signed by another person of the same name. Usually the writing involved in a forgery is a negotiable instrument, such as a bank check or a letter of credit, but it may be a diploma, will, letter of recommendation, or any other document with value to the forger.

"Raising" a check is forgery, as may also be filling in blanks left vacant on a paper by the original executor. Persuading someone to sign something under false pretenses is not forgery but fraud.

Uttering a forgery is offering the forged instrument as genuine,

when it is known by the utterer to be fraudulent with the intent of defrauding another. The intended victim may not accept the offer; its being made is enough for prosecution.

Clyde Fishman, 28-year-old plumber, was an inmate of the Centerville reformatory Monday following his appearance before Judge H. E. Taylor in Allamakee County District court on a forgery charge.

Fishman was sentenced to an indeterminate sentence not to exceed ten years when he pleaded guilty to the charge. He was arrested Sept. 27 after he forged a check for $6.75 and cashed it at a local shoe store.

Fishman, married and the father of three small children, had been arrested on a similar charge three years ago, but was paroled.

District Judge Thomas Myers sentenced Joseph Umber, 29, of San Francisco, Tuesday to a year in the county jail after Umber, referred to by police as a "hitchhiking, good-time Charlie," pleaded guilty to forgery.

Police said a local hotel assistant manager led to Umber's arrest after reading a newspaper account of how Albert Netherson of Oakland, Calif., was robbed of $700 worth of travelers' checks by a hitchhiker to whom he had given a ride. The hotel man said Umber cashed a $100 travelers' check when he registered at the hotel.

Extortion; blackmail. As will be explained later under the section "Crimes Against Justice and Authority," extortion in its original sense is an offense committed by a public official who charges for services for which he is entitled to no compensation except that provided by his salary. Statutes today, however, also label as extortion any similar attempt committed with force or fear of threat by someone other than a public official.

A common form of extortion is *blackmail*—obtaining compensation from another upon a promise not to reveal something that the victim wishes not to be known. The demand must be made in writing. The blackmailer receives "hush money," and if he sends his threatening or soliciting letters through the mails, or in interstate commerce in any other way, is guilty of a federal felony. Another federal law covers an informer who threatens another with a revelation that he has broken a federal law.

Henry Blackwell, prominent real-estate man, today filed countercharges of attempted extortion against Miss Vera Grunwick, waitress, who yesterday sought Blackwell's arrest on a charge of bastardy.

Crimes Against Morality and Decency

Throughout the long period when the English common law was developing, supervision over people's morals was held to be the concern of the church rather than the state. Hence, most law in this category is statutory, dating from comparatively recent times,

after the state won out in its long struggle for supremacy with the ecclesiastical courts.

Adultery; fornication. In some states today both parties to an illicit sexual relationship are guilty of adultery, if one is married to a third party. In others, only the married person commits adultery, whereas the unmarried person commits fornication. In all states if both are married to other persons, both commit adultery and if both are unmarried both are guilty of fornication. In the absence of a crime known as fornication, the unmarried copulators can be booked for disorderly conduct.

In the ecclesiastical courts, where adultery and fornication were punished, it was adultery if childbirth resulting from the act would tend to adulterate the blood—that is, if the woman was married. Otherwise, the charge was fornication. As explained, this distinction no longer holds. As a matter of fact, criminal prosecution for either adultery or fornication is rare. Adultery may be cited as grounds for divorce if other reasons cannot be found or are not permitted, and fornication may be charged in bastardy cases. If the girl is a minor, the male may be charged with *contributing to the delinquency of a minor.* It is difficult to prove either adultery or fornication, for there seldom are witnesses, and judges and juries are reluctant to rely on circumstantial evidence.

Illicit cohabitation is the crime of living together in either adultery or fornication. Even if proved, none of these offenses receives newspaper attention except under extremely unusual circumstances.

Bigamy. Nobody can have two legal spouses simultaneously, and it is a crime to contract a second marriage without dissolving the first. In some jurisdictions, the previously unmarried partner to a bigamous marriage is also indictable.

Wife No. 1 smiled pleasantly, but Wife No. 2 wept in Domestic Relations court today as the romances of the man both claimed as husband were told—a husband who knew his amenities and had a nice church wedding each time.

According to the testimony before Judge John R. McSweeney, Wife No. 1, Mrs. Virginia Schultz, 31, of 1806 North Honore street, filed nonsupport charges for herself and two children against Frank J. Schultz, 33, of 533 Delaware place. He had left her in 1936, she said, but she had been able to trace him only recently.

Officers who called at Schultz' home were confronted by Mrs. Margaret Beatrice O'Malley Schultz and two children. "Why, he couldn't be married to anyone else!" she protested. "We've been married for eight years."

Schultz was arrested, finally, and Wife No. 2, angered, filed a bigamy charge.

In court today, Schultz, thin and baldish, looked on nervously as Wife No. 1, a brunette, displayed her marriage certificate and Wife No. 2, a blonde, produced her certificate. The two children of Wife No. 1—Frank, 7, and Lillian, 6—were at their mother's side. Schultz' other children—Anne, 5, and Thomas, 2—remained at home.

In the midst of the proceedings Wife No. 2 began to cry and refused to press the bigamy charge.

"I wouldn't waste any tears on that kind of a man," Judge McSweeney said, but, unable to control herself, she left the court.

Looking at the defendant, Judge McSweeney asserted: "I would suggest that you go into the Army, but that would not solve the problem of two wives and four children. And probably the Army wouldn't want you."

Schultz was ordered to pay Wife No. 1 $20 a week for support, and the case was continued until Sept. 30 for further study.

Wife No. 2, returning to the court, said shyly to a bailiff, "I wonder if I could talk with her—with Mrs. Schultz."

Wife No. 1 nodded and said, "Of course, I'll talk to Mrs. Schultz."

Thereupon the two wives retired together into the judge's chambers to decide which, if any, wants Schultz.

—Chicago (Ill.) *Daily News.*

Incest. This is sexual intercourse or marriage between persons so closely related that they are forbidden to marry. Once an ecclesiastical offense, like bigamy it is now statutory. Some jurisdictions include affinity as well as consanguinity as being within the definition of incest. *Affinity* is relationship by marriage, meaning that one cannot marry or cohabit with his in-laws. Most states ban marriages between first cousins and all others more closely related, but there are differences.

Miscegenation. Some Southern states, in addition to declaring marriages between whites and Negroes to be void *ab initio* and, sometimes, any children resulting from the marriage to be illegitimate, make such marriages crimes. A Negro or mulatto is defined as anyone with one-eighth or more Negro blood. Alabama defines Negro more strictly, as anyone with any Negro ancestor—no matter how remote. Marriages between whites and Mongolians and Indians are also banned in some states which, however, may not make such marriages crimes.

Seduction. The perpetrator must be a male and the victim an unmarried female of previously chaste character, possibly below a certain age stipulated by statute. The act of seduction consists in having illicit sexual intercourse after inducing the girl to submit by promise of marriage or by some other act of artifice, flattery, or deception. Some states do not require promise of marriage to be proved, and some apply the law only to unmarried men. In no case is it seduction when the girl merely gives in to a feeling of passion or lust without persuasion. Seduction differs from adultery or fornication, which require no promise of marriage or seductive act, and from rape, which is committed as an act of violence rather than by artifice.

This crime, generally untouched by newspapers, is rarely imputed today, largely because of the difficulty of proof.

Prostitution. This is the promiscuous indulgence by women in sexual intercourse for profit. Many states have special statutes forbidding the keeping of a house of prostitution or in any way being responsible for its existence—such as by knowingly renting property for that purpose. Other states punish prostitution as a nuisance, as disorderly conduct, or indecency.

In large cities there is a steady parade through the courts of prostitutes, keepers of houses (madames), and panderers (pimps), who procure female inmates of such houses and customers. Newspapers may run brief items about convictions for keeping or inhabiting such a house, but generally such cases go unmentioned unless there happens to be a drive on them by police at the time. When such news does appear, the house of prostitution is likely to be called a *disorderly house* or a *house of ill fame* rather than a *bawdy house* or a *whore house*, which are other synonyms. Although a sizable portion of the public insists that prostitution be kept under control, it is still squeamish about reading too much about the so-called oldest profession. Good taste or public pressure keeps the newspapers in line. In addition, a large number of cases brought into court are dismissed because the arrests were illegal.

Sodomy. If "squeamish" is the correct word to describe the public's attitude toward prostitution, "prudish" is probably the right word to explain how most people feel about homosexuality. Medical authorities may insist that homosexuality is a disease or an abnormality and that punishment effects no cure, but the United States probably is a long way from emulating some European nations, which merely register and watch homosexuals and issue certificates to "masqueraders" who insist on wearing clothing customarily worn only by the opposite sex.

The danger from the homosexual is that he may corrupt a child. If the condition is in any appreciable part functional rather than organic, protection against innocent victims is essential. Newspapers will usually print brief items of arrests or convictions on charges of sodomy, but never go into detail regarding commission of the crime. The offense is frequently euphemistically referred to as a "crime against nature"—a term which, however, might also mean unnatural sexual acts performed by two persons of opposite sexes.

Sodomy as a legal term generally includes both *buggery* (which, in turn includes both *pederasty* and *fellation*) and *bestiality*, although there are court decisions that exclude some or all these acts from the definition. It also includes sexual intercourse with a corpse.

Obscenity; Indecency. Use of obscene or profane language, indecent exposure, blasphemy, lewdness, putting on an obscene or indecent entertainment, mistreatment of dead bodies, conducting

nudist colonies, and other acts coming under this heading may be prosecuted as nuisances or as disorderly conduct, or there may be statutes governing them by name.

Obscenity is anything offensive to one's sense of chastity. *Indecency* is anything outrageously disgusting. It is up to the courts to determine whether a particular act is either, and judges and juries change their scales of judgment as public taste changes. Prosecutions for publishing obscene and indecent literature, for instance, virtually never succeed any more and have been abandoned by so-called antivice organizations. The entertainment field, however, is still carefully disciplined. There is virtually never an arrest on a charge of *blasphemy* (malicious reviling of God or religion), but pickups for *indecent exposure* or use of *obscene or profane language* in public occur occasionally. Sending obscene or indecent material through the mails is a federal offense, and the most controversial part of the law covering such use of the mails has been that forbidding the dissemination of birth-control information and material. Most of the obscenity laws were passed during the so-called Comstock period around the turn of the century, when Anthony Comstock, famous vice crusader, successfully lobbied for them in Washington and the state capitals.

The Fiji islanders helped to save Elizabeth Ellis, 24, a dancer, when she appeared before Municipal Judge William Thornton today on a charge of giving an indecent exhibition.

Elizabeth and her husband, Paul, 37, a dance team, were arrested by Sergt. Thomas Allison, at the Club Golden, 438 South Grove street. Sergt. Allison said Ellis ripped a brassiere from Elizabeth during their act. Elizabeth said she had another one underneath. In freeing them, Judge Thornton said: "I saw a movie last night in which natives of the Fiji islands were shown dancing exposed to the waist. I don't see any difference between that and this case."

Contributing to delinquency of a minor. Many states have separate statutes to prevent anyone—including and, in some cases, especially parents—from contributing to the delinquency of minors. Such delinquency need not be improper sexual behavior. The New York statute includes permitting a child "to associate with vicious, immoral, or criminal persons, or to grow up in idleness, or to beg or solicit alms, or to wander about the streets of any city, town, or village late at night," and to do numerous other wayward acts as actionable against parents, guardians, or any other having custody. Juvenile courts often have jurisdiction over delinquent parents as well as children.

With tiny arms, George Stewart, Jr., 3½, clung to the neck of Patrolman Martin Barrett in Domestic Relations court yesterday and smiled shyly at his mother, Mrs. Cecilia Stewart, 19, of 2222 Orchard street.

But although he smiled, he made no move to go to his mother.

Under his faded rompers were ugly looking bruises, covering his back and his left leg. One of his fingers was in a splint.

His father, a steeplejack, and his mother were in court because police said they inflicted the bruises. They said his father beat the child Saturday because he wanted to go out the back door instead of the front and that his mother spanked him with a pancake turner because he littered the floor.

Mother Denies Beating Boy

In court Mrs. Stewart admitted spanking the child with the pancake turner but denied that this caused the bruises. Then she wept.

The father admitted whipping the child, but said the bruises and the broken finger resulted from a fall off a scooter.

While all this was going on, young George clung tightly to Patrolman Barrett.

The story begins Saturday night when neighbors in the apartment house on Orchard street found young George wandering in the street, without any clothes on and crying. They called police. Acting Capt. John O'Malley of the Hudson avenue station, after looking at the child's bruises, sent him to the Bureau of Identification to be photographed and then to St. Vincent's Orphanage.

Police Posted at Home

Then he posted policemen at the Stewart home. They arrested George's parents when they returned. The parents said they had left George alone at home to do some shopping.

Two other residents of the building, Edward Wilson, 13, and Mrs. Kate Witt, were called as witnesses yesterday. They wanted to testify that they heard the child screaming last Wednesday, but Judge Justin McCarthy ruled out their testimony because the charges against the Stewarts, contributing to the delinquency of a minor and cruelty to a child, involved the acts of Saturday.

Probation Hearing Granted

After listening to the story police told, however, he fined Mr. and Mrs. Stewart $200 each—$100 on each charge—and set July 30 as the date for hearing a motion for probation, offered by William Goldstein, an attorney appointed to defend the Stewarts.

Until then, young George was taken back to St. Vincent's to insure that he will receive proper care, pending a study of the case by social workers.

—Chicago (Ill.) *Sun.*

Sabbath laws. There are very few places that do not have some statutes or ordinances regulating observance of the first day of the week which are not enforced and which, if enforced, would bring down condemnation on the heads of the enforcers. Most of these restrictions are in the form of municipal ordinances, and violations do not constitute crimes. Many, however, are included in the penal codes of the states. One section of the New York code, for instance, reads: "All shooting, hunting, playing, horse racing, gaming, or other public sports, exercises, or shows, upon the first day of the week and all noise unreasonably disturbing the peace of the day are prohibited." Any violation is a misdemeanor.

It is customary to exempt food stores, restaurants, drugstores,

and transportation lines from the Sunday laws, and other labor is permitted by interpreting the clauses allowing "works of necessity and charity" to include them. Laws closing liquor establishments, motion-picture theaters, and other places of amusement are most commonly enforced. Until comparatively recently, no professional baseball was allowed in Boston or Philadelphia on Sunday, and today playing must stop at 6 P.M. Contracts signed on Sunday are generally not binding anywhere, and legal processes cannot be served on that day except in cases of breach of the peace.

Sabbatarianism is of comparatively recent origin, dating from 1595, when the Rev. Nicholas Bound of Norton, Suffolk, England, published *The True Doctrine of the Sabbath.* Prior to that time, Parliament is known to have met on Sundays. The 1448 act forbidding large fairs and markets on Sunday was passed, not because it was thought that they were wrong but because they interfered with church attendance. In 1618 James I tried to put a stop to the growing agitation to make Sunday a "day of rest and religious uses," by publishing his *Book of Sports* in which he said dancing, archery, May games, morris dances, leaping, vaulting, and some other sports were all right. In 1633 Charles I renewed James's edict, but in vain. Under Charles II in 1676 the Lord's Day Acts were passed to forbid all work or business except "works of necessity and charity." They were the first blue laws, and were copied extensively in the American colonies.

In modern times the best way to bring about the repeal of some of the Sunday laws, forbidding such activities as grass-cutting, is to conspire with police to enforce them.

Special to the New York Times

Orange, N. J.—Oct. 5—The shadow of a 1750 blue law kept 900 seats in the Palace motion picture theater vacant here today while the remaining 1,200 seats were filled. The reason was that Orange, for the first time in its history, has permitted Sunday motion picture shows, while East Orange, true to the mores of the past, will not allow them. The vacant seats were on the East Orange side of the town line.

Those who patronized the theater accepted the new freedom quietly, never verging toward license. They bought their tickets from the Orange window of the box office, entered the theater through the Orange doors and kept clear of the marked-off seats on the East Orange side.

Two hours before the doors were opened a fair-sized crowd of residents of both communities had gathered outside. By the time the doors opened there were almost enough persons in line to fill the Orange side of the theater. Throughout the afternoon scores turned back from the long line waiting outside for vacant seats.

But, although a special guard of ushers and the sensibilities of the theater patrons kept the shadowed 900 seats empty, the question of the theater screen, which is two-thirds in Orange and one-third in East Orange, was not settled today. City Counsel Walter Ellis of East Orange, who was asked for a ruling, has not yet given an opinion.

The theater owner, D. J. Shepherd, is paying a $100 license fee for each week, part of it for the privilege of opening on Sunday.

Bellows Falls, Vt., Dec. 5.—(AP)—Churchgoers carried rusty muskets and police listed names of Sunday yard rakers for possible "arrest" today as Windham county residents staged a comic opera protest against "blue laws," some dating as far back as 1770.

"A little unusual," the parading musketeers agreed, "but entirely in compliance with our interpretation of a law requiring men folk to carry guns to protect women from prowling redskins."

It all started when a theater manager was arrested for running movies on Sunday.

Prosecutor Orders Roundup

Irate citizens mockingly demanded enforcement of all the blue laws to hasten their repeal, and State's Attorney Ernest Berry laughingly entered into the game. The prosecutor sent police and sheriffs throughout the county to record such "lawbreakers" as buyers of gasoline, cigarettes, and newspapers—one of the ancient statutes forbade any "secular business or employment except works of necessity and charity."

Berry even said he would seek warrants for 100 golfers who deliberately defied a hoary ordinance against Sunday participation in "games in which an admission or fee is paid."

"I know it's all ridiculous," the state's attorney acknowledged, "but it's the best way I know to remove those antiquated laws from the books."

Can't Kiss Wife in Public

"Although officials are on the watch," he announced with mock solemnity, "we have not as yet detected a man kissing his wife in public—that's a breach of the peace, you know."

Other flagrant violations of the 1770 code noted were wood-chopping, auto-washing and truck-driving.

In near-by Brattleboro food stores usually open on Sunday stayed closed. Some restaurants declined to sell tobacco and candy.

The theater manager who started the whole thing will be arraigned on Thursday.

—New York *Times*.

Crimes Against the Public Peace

The necessity for order arises early in any social group, and a sense of community responsibility to maintain it is a natural concomitant. A parallel development to the growth of government as the agency to enforce the will of the majority has been the growing recognition in democratic times of the importance of the individual and of the necessity to protect his civil liberties from any encroachment, including governmental.

Breach of the peace. Once indictments included the phrase "against the peace of the king." Now they read "against the peace of the state." In the broader sense, all crimes are breaches of the peace, but there is a difference between an offense committed fur-

tively against one or a few special victims, and a public exhibition or conduct which affects a large number of citizens.

In highly developed code states, the catchall title, "breach of the peace," may not be included in the statutes. Instead, each offense may receive separate treatment. Unless otherwise provided for, disorderly conduct, drunkenness, prostitution, some minor nuisances and mischiefs, carrying concealed weapons, and disturbances annoying to others are breaches of the peace.

He said a naughty word, so Jerome Blackword, 45, alleged pal of the recently slain Capretti, faced disorderly conduct charges in Municipal court today. Lt. George Winslow, head of the police labor detail, said Blackword used bad words when women were present at a union election of the Cooks and Pastry Cooks, Local 90, and then turned on him when the policeman remonstrated. Blackword is secretary-treasurer of the Hotel and Restaurant Employees International alliance.

Martha Caldwell, renowned opera soprano, was booked for disorderly conduct at police headquarters yesterday and released on $50 bond.

The police found her, incoherent, in a gas station at 1800 South Water street. On Dec. 1 she was arrested in front of the Cliff hotel when a doorman objected to her singing on the sidewalk.

She gave her age as 40 and her address as the Elmgate hotel.

Fighting. It is virtually impossible to fight in a public place without violating some other law—such as assault, battery, or breach of the peace. However, the crime of *affray* is defined as such fighting to the alarm or terror of others. For it to be committed, the fight must be genuine, and it must be mutual; it must be open to public view, even though actually taking place on private property.

Another form of fighting which may be banned or regulated is *prize fighting*, which is fighting for a prize or reward. States which permit it regulate it by licenses and rules and have boxing commissions to enforce the regulations. Transportation of prize fight pictures through the mails is a federal offense; many states and municipalities ban the public showing of such pictures. Exhibitors, however, often find it profitable to do so even upon payment of the fine.

To protect oneself against threatened or anticipated attack by another, it is possible to petition a court to place the feared person under *peace bond*. That means that he must deposit a certain sum with the court to be forfeited in case he violates the court's order to keep the peace, making it a form of injunction.

An affray which drew a crowd of 300 persons and stopped traffic at James and Eighth streets for a half hour late yesterday ended in the arrest of two teen-aged boys by a police riot squad. It all started when one boy called the other a dirty name and ended when a traffic policeman two blocks away heard the shouts of spectators and called for help.

Unlawful assembly; rout; riot. The Bill of Rights guarantees the right to assemble lawfully, and, unless a public place is to be used as the rendezvous, it is not necessary to obtain a permit to hold a meeting in the United States today. Even ordinances requiring permits for assemblies in public buildings and parks have been attacked as unconstitutional, although few if any such cases ever reach an appellate court for an opinion to be rendered.

An assembly is unlawful when it is for the purpose of planning or committing a crime by force, or to parade, demonstrate, or behave in any other way to the disturbance of others. It is quite obvious that the Constitutional protection does not extend to making traffic tie-ups nonactionable, or to permit meetings that might endanger the safety or health of others.

A *rout* occurs when an unlawful assembly of three or more persons begins to move. From the same origin as "route," the word means "on their way." If the disturbance of the peace, either at the assembly or on the route, becomes tumultuous or violent, it is a *riot.* Many statutes include rout under the sections proscribing riots. The test of whether an assembly or rout becomes a riot is whether it is conducted in such a "violent or tumultuous manner" as to create the likelihood of public alarm and terror.

Springfield, Ill., April 1—(AP)—H. B. McGregor, Lincoln policeman, and Edgar N. Britton, custodian of the city crematory, pleaded not guilty today to rout and riot charges filed by Larry B. Shroyer, city editor of the Lincoln Evening Courier. Judge William S. Ellis set May 3 as the trial date.

McGregor and Britton previously had pleaded guilty and paid fines of $3 each on charges of assault and battery, disturbing the peace and disorderly conduct. They admitted they attacked and beat Shroyer March 18.

—Chicago *Herald-American.*

A riotous meeting between mobs of youthful toughs was narrowly averted on the West Side last night by the quick intervention of the Adams street police as a reign of juvenile hoodlumism spread to include a gang from the Northwest Side.

The 30 Northwest Side youths, armed with billies, sash weights, and leaded hose, drove to the vicinity of Karlov avenue and Madison street intent on avenging yesterday's early morning attack by one of the West Side gangs on two of their gang.

Mistaken Identity

As the Northwest Side youths jumped from their automobiles, another gang, believed to have come from the neighborhood of Ellis avenue, approached from across the street.

It was a case of mistaken identity, because the Ellis avenue gang was also looking for another gang. But neither the Northwest Side gang nor the Ellis gang knew this.

The gang hunted by both the other mobs includes young hoodlums from the vicinity of Fillmore avenue and Flournoy street. It was this gang that beat up the two youths from the Northwest Side. This mob was not on the scene, however.

Detectives Rout Mobs

Because of a series of beatings and hoodlumism by the two Centerville gangs, uniformed police and detectives were stationed along Karlov Avenue near Madison Street, who took some of the boys into custody when the trouble started.

Disturbance of public assembly. To implement the Constitutional guarantee of peaceful assembly, states and cities stipulate penalties for its violation. There may be as many statutes or ordinances as there are possible situations. That is, there may be one law to forbid interference with a religious gathering, another to protect political meetings, and so on. Any unauthorized disturbance of a lawful public assembly is proscribed.

Screaming "Communist" and "Red Russians," Leo Vatkinov, 41, a sign painter of 1415 West Gorham street, was carried out of a meeting of the Civic association last night at the Masonic Temple, Fifth avenue and Green street.

Vatkinov, who said he belongs to the Christian Front, heckled speakers so incessantly that Virgil G. Frontescue, chairman, after warning him, summoned Summerside police. Vatkinov refused to be quieted or to leave the hall peacefully.

Disorderly conduct. As already stated several times, offenses that may be included under this heading may be mentioned by name in separate statutes. The principal mentioned in the following news item, for instance, in other jurisdictions might have been booked for false pretenses, impersonation, extortion, or breach of the peace.

A self-styled charitable organization, whose seven members included six collectors, was dissolved yesterday by Judge Frank Morrison in Center street court.

Wearing bright blue uniforms decorated with gold braid and stars denoting their rank, "Adjutant General" Henry Conover, 40, of 139 Washington street; and "Major General" Edward Merryweather, 45, of 2034 Damen avenue, stood before Judge Morrison charged with disorderly conduct.

Detectives John Hanson and Edward Hall testified that they had arrested the men when they found them going from house to house on the South Side taking up collections in a small metal barrel.

The "generals" said they were members of American Tried and True Workers, with offices at 159 Lincoln avenue. They produced as their witness "General" Benjamin Lucas, who said he was head of the organization. At the "general's" side was Mrs. Lucas, who told the judge she was a "vice-general."

"What does a vice-general do?" the judge asked. "I don't know," replied the vice-general.

Questioning brought out that the collections after one third was deducted for the collector's commission were distributed to "the needy." But "General" Lucas was unable to name any "needy" who had been aided.

Judge Morrison stripped all the "generals" of their gold braid, ordered their collections turned over to the United Service Organizations, put the three men on probation for six months, and levied suspended fines of $100 against each of them.

Forcible entry and detainer. This is another heading that may be omitted from the statute books—the act covered by it being pun-

ishable as assault or trespass. If in the criminal code, it probably is included in the section on real property. In civil courts (see page 310) this is the technical charge in eviction actions.

Because he refused to interrupt a picnic supper, Harold L. Weeks, 26, of 998 Watkins street, was arraigned before Police Magistrate L. K. Kremer today, charged with forcible entry and detainer.

Weeks was arrested last night by Patrolman W. A. Wolfsohn in the orchard of V. C. Vollmer, 1212 Wilson avenue. Vollmer says that Weeks has made a habit recently of picnicking on his property and that last week he warned him not to do it again. He described Weeks's attitude as "surly."

Defamation. As any experienced newspaperman knows, criminal charges of libel or slander are rare, but any defamation that tends to cause the person slandered or libeled to commit a breach of the peace may be prosecuted by the state. Such criminal libel cases as have occurred have generally been brought by public officials on complaint of members of a family, religious, or other group. Some attempts have been made to punish libel of the dead on the theory that survivors are injured in their reputation by the disgrace brought upon family or group. Few such prosecutions have been successful, and it is not possible to collect civil damages for libel of a dead person. (For civil defamation, see pages 260 to 261.)

Criminal libel is charged against H. L. Bogart, publisher of the Centerville News Gazette, by Police Judge Harold Green in a warrant issued today.

Grounds for the action is an article in "The Man About Town" column of the paper last Tuesday referring to Judge Green's handling of the Roberta Grant case before him July 20.

Judge Green's ire was stirred by the alleged insinuation in Bogart's article that the wealth of Miss Grant, 26-year-old New York society woman, caused the court to deal with her more lenently than would have been the case if she had not been influential.

Bogart's "The Man About Town" article and a reputed letter from a "New York subscriber" prominently displayed as well as the 8-column headlines on the matter are attached to the complaint as grounds for the action.

Criminal libel is a high misdemeanor which can be punished with maximum penalties of $5,000 or one year in jail, or both.

New York, Nov. 21—(Special)—Test of the legality of the indictment charging libel of a religion and, inferentially, all its members, will be a major issue in the trial of Robert Edward Edmondson, publisher of anti-Jewish literature. There has been no similar indictment in this state in recent years.

Edmondson, 65 years old, who calls himself "an unsubsidized investment-economic-publicist," was indicted in New York county on June 11, 1936, on two counts of malicious criminal libel against Frances Perkins, secretary of labor; Dean Virginia Crocheron Gildersleeve of Barnard college; and on a third sweeping charge of criminally and maliciously libeling the Jewish religion.

Postponements have shifted the prosecution of the case to Thomas E. Dewey, district attorney-elect, who was swept into office with Mayor LaGuardia, who inspired the original action leading to the indictment of Edmondson. . . .

—Chicago (Ill.) *Tribune.*

Concealed weapons. A permit is generally required to carry a concealed weapon. A violation may be called disorderly conduct, but some statutes list it as a separate offense.

A frisk of two reckless drivers early today led to additional charges of carrying concealed weapons being placed against them. The men are Harry and Henry Vinson, twin brothers of 132 Monroe street. Policeman Walter Pullet, who made the arrest at Jones and Smith streets, says the men, 20 years old, were so defiant when he ordered them to follow him to police headquarters that he searched them "on a hunch."

Gaming; gambling. Gaming, simply explained, is playing games for money, or playing games of chance—such as roulette, dice, blackjack, and chuck-a-luck. Gambling is betting on the outcome of horse races, baseball games, other athletic contests, elections, or any other future events over which the bettor has no personal control.

Keeping gaming equipment, including slot machines, is either a state or municipal offense in most places, as may also be manufacture and sales. Some states permit pari-mutuel betting at race tracks, but forbid bookmaking or maintenance of "bookie" or "policy game" joints. Only slowly is licensed gambling being permitted.

It is a federal offense to import in the United States any *lottery* ticket or advertisement for the purpose of distribution in interstate commerce, and the post office department has the power to ban from the mail newspapers containing advertisements of lotteries. To date, however, the department has been lenient regarding its additional power to forbid the mails to publications containing news of the outcome of lotteries, such as the Irish sweepstakes. At intervals newspapers and press associations decide to eliminate such stories on their own volition, but invariably to date they have slipped back into the old practice after short intervals.

In addition to the federal laws, states and/or municipalities may legislate against lotteries. Defined, a lottery is the distribution of property by chance to someone who has paid for the chance. Three elements are necessary to create a lottery—consideration, chance, and a prize. Raffles, gift enterprises, "numbers" games, and policy rackets are covered, but guessing contests are problematical. The common defense against a charge of conducting a lottery is that it really is a game of skill—a defense which then must be proved. Newspapers found this so arduous that they have pretty generally abandoned promotion stunts in the form of "best name," slogan, and similar contests.

Prohibited under gaming laws are *bucket shops*—places that pose as brokerages, but actually do little more than "play" stock- or bond-market speculation. The "customer" actually bets on what will happen during a stipulated period in the financial world, as any

contract or deal is made contingent upon what happens there.

Even the most conscientious and honest police find it extremely difficult, if not impossible, to enforce gaming and gambling laws. Arrests must be made in accordance with the Constitutional prohibitions of searches and seizures without search warrants. In large cities a large proportion of such cases are dismissed because of illegal entry.

Assistant State's Attorney Sam Thornwald said today that 13 persons arrested in a gambling raid on the Dunes, 1378 Sheridan road, last night would be arraigned next Tuesday before Justice Henry Byrnes of Cicero on charges of keeping a gaming house.

The raid led by policemen of the state's attorney's office, resulted in the arrest of more than 200 patrons and the seizure of seven roulette wheels, six dice tables, chuck-a-luck games, and several horse-racing sheets. All but the 13 to be arraigned were released after being questioned.

For one minute yesterday afternoon, Capt. Thomas Wheatly of the central police station looked through the door of a handbook on the second floor at 1833 Irving Park Boulevard, at some 50 persons gathered around a loud-speaker.

Then the door was slammed.

The next minute, after police broke the door down, the place was deserted.

Investigation revealed that the keeper and patrons had escaped by going up two floors, walking across a roof, and emerging through another building. They left behind one overcoat and $42 in the cash drawer.

Back on the street, Capt. Wheatly recognized Daniel Grady, 49, of 150 Harrison street, as the doorman who had slammed the door in his face. He arrested Grady on a charge of keeping a gambling house.

Crimes Against Justice and Authority

Democratic government is effective to the extent that it has the support and co-operation of the citizenry that comprises it. Attempts to interfere with or corrupt public officials in the proper conduct of their duties or to disobey their commands vitiates the effect of honest administration.

Treason. Still first on anyone's list of crimes is treason, which is breach of allegiance to one's country and giving active aid to its enemies. Throughout the centuries, the traitor has been the most despised and rejected of men, and today treason is the one offense which is capital (punishable by the death penalty) throughout the United States, since it is a federal felony and punishable by the death penalty even in states that have abolished capital punishment for state felonies.

High treason has no particular meaning today; it once distinguished treason against the king from *petit* treason committed against an authority of less importance than a monarch—including murder of a master by his servant or a husband by a wife. *Misprision*

of treason is persuading another to be a traitor; it is included in the federal laws and no longer is a separate offense.

Other related federal felonies include inciting to insurrection or rebellion, trading with the enemy, advocating anarchy, seditious conspiracy, recruiting service against the United States, and enlisting to serve against the United States. *Sedition* is the creation of commotions or disturbances to the embarrassment of legitimate authority, but it does not involve open violence, as does treason. *Insurrection* goes beyond sedition in that it is open and active, but is not so serious as a rebellion in that what is sought is not the complete overthrow of the government but only changes in particular laws or administrative methods. A *rebellion* is the taking up of arms traitorously with the aim of overthrowing the government; a *revolution* is a successful rebellion or revolt, the term applied to a small-scale rebellion. *Mutiny* is organized opposition to authority in the armed forces.

After World War I, several states passed laws against *criminal syndicalism,* which is suggesting or advocating violence to bring about changes in the existing political, social, and economic system. Such laws may be called red-flag or insurrection laws. State laws and municipal ordinances requiring school children to salute or pledge allegiance to the flag and to require teachers to take loyalty oaths are similar in purpose.

Washington, July 26.—(AP)—Eight Americans, including two women, who have broadcast regularly from Germany and Italy in behalf of the Axis war effort, were indicted today for treason, and Atty. Gen. Biddle said they would be brought to trial when caught.

The indictments, involving a charge which carries the death penalty, were returned before U. S. Dist. Judge James W. Morris in the District of Columbia as the culmination of many months of preparation by the Justice department.

The indictments are similar, each alleging that the defendant named aided this country's enemies by repeated broadcasts designed "to persuade citizens of the United States to decline to support the United States in the conduct of the war."

Six Are U.S. Natives

Seven of those charged have been broadcasting from Germany, one from Italy. Six are native Americans, the other two are naturalized Americans of German birth.

The defendants, with a summary of their backgrounds as outlined by the justice department are: . . . —Chicago *Times.*

The American citizenship of German-born Theodore Donay, now serving a six-year sentence in the Federal Correctional institution in Milan, Mich., for misprision of treason, was cancelled today by Judge Arthur F. Lederle on petition of Louis M. Hopping, assistant district attorney.

To show that Donay took his oath of citizenship with mental reservation on Oct. 28, 1935, Hopping placed an agent of the Federal Bureau of Investigation on

the stand. Nicholas Salowich, attorney for Donay, did not oppose the government action.

Named Co-Conspirator

Donay was convicted for aiding Max Stephan, traitor, in the escape of Lieut. Hanes Peter Krug, Nazi flier, who came to Detroit after breaking from a Canadian prison camp.

Donay, who operated an import shop here, also was named co-conspirator but not a co-defendant in the Detroit spy ring indictment. He was accused of providing ingredients for secret ink used by the spies to transmit defense information to the German government. . . .

—Detroit (Mich.) *News*.

Perjury. Perjury is giving false testimony under oath or affirmation in a judicial proceedings. *Criminal false swearing* is committing the same offense in any other kind of proceeding. *Subornation of perjury* is attempting to get another to commit perjury. Anyone who has been around the criminal courts for any length of time will agree that altogether too much perjured testimony goes unprosecuted.

Alleged perjury in the income-tax evasion trial of Sam F. Anderson, reputed former gambling head, will be investigated by the government, U. S. Attorney Alfred Jett said yesterday.

He made the statement in a request to the U. S. Circuit Court of Appeals for additional time until Aug. 21 in filing the government's answer to an appeal for a new trial.

Anderson was convicted of income-tax evasion and sentenced to serve for five years. The conviction was upset by the U. S. Circuit court but upheld by the U. S. Supreme court.

Attorneys for Anderson then filed affidavits charging that William Thornberg, an attorney, had perjured himself as a government witness at the Anderson trial.

William Goldstein, 35 years old, of 1190 Sheridan square, a lawyer's investigator, was reported named in a true bill charging subornation of perjury by the grand jury yesterday in connection with an abortion case pending in the Criminal court. Goldstein disappeared several days ago.

Assistant State's Attorney John Duke said Goldstein offered "between $400 and $500" to a mother of seven children to withdraw a charge of abortion against Mrs. Rose Kravock, 53 years old, a midwife who lives at 1390 Ogden avenue.

The case, scheduled to be heard Sept. 15 before Judge Frank Byron, was continued to Oct. 15 when the woman retracted her original story.

Bribery; embracery. Any attempt to influence a public official in the performance of his duties by offers of financial remuneration or other reward is bribery. A similar attempt to influence a juror is embracery. Originally, bribery referred only to attempts to influence judges, but today it is pretty generally extended to include all public officials. The recipient of any such offer is equally as guilty as he who makes the offer. It is not necessary that actual benefit result; the mere offer and/or acceptance with a willfully corrupt intention is sufficient to make the charge stick.

Special to the Chicago Sun

Detroit, Mich., Dec. 29—County Auditor Ray D. Schneider was accused today in a grand-jury petition for his removal of accepting $16,022 in bribes since he took office in 1933.

The charge was made in a second grand jury petition to Gov. Murray D. Van Wagoner, asking for the removal of the auditor.

Earlier, Auditor Edward H. Williams, head of the county's chief governing body, was accused of accepting bribes totalling $59,525 and his removal was asked by Judge Homer Ferguson, acting as the one-man grand jury authorized by the county board of supervisors to investigate all parts of the county government.

The possibility that the current investigation may extend to other divisions of government was seen in a statement issued by Gov. Van Wagoner after receiving the petition for Schneider's ouster. It read:

"It is unfortunate that men in public office will abuse the public's confidence and trust. If these men are shown to have committed the acts charged, they will be removed at once.

"This should be a warning to every public official of what he may expect if he fails to conduct his public office honestly."

Williams' ouster hearing is to be held here Wednesday before Probate Judge Maurice E. Tripp, of Adrian, as ordered by the governor.

Counterfeiting. Before World War II, the United States Secret Service, a branch of the Treasury Department, had reduced counterfeiting by ninety-three per cent within a decade. With our entrance into the war our enemies began the widespread manufacture of spurious money, as have many warring nations since the time of the Roman Emperor Nero. Napoleon, the French revolutionists, the American Tories during our War of Independence, and the Japanese in the Russo-Japanese war of 1904 made widespread use of counterfeit money, mostly paper money.

Under the Constitution, Congress is empowered to "provide for the punishment of counterfeiting the securities and current coin of the United States," which makes counterfeiting a federal offense. Defined, counterfeiting is making false money which is to be passed as genuine. After American Marines captured some counterfeit Australian money on a Solomon island in 1943, the Secret Service began a nationwide "Know Your Money" campaign, to educate people in how to detect spurious bills and coins.

Misconduct in office. During political campaigns voters acclaim their favored candidates as noble, unselfish saviors of mankind. Afterwards, they devote an overabundance of their time berating the same erstwhile heroes as grafters and crooks. Neither extreme adulation nor extreme contempt, of course, approximates what the proper attitude toward public officeholders should be. Engaging in favoritism through patronage or favors does not constitute misconduct in office unless there has been bribery on the one hand or extortion on the other.

Extortion, which is illegally demanding reward or remuneration for the performance of some duty that the officeholder by law is required to perform, leads the list of offenses under this heading. If the misconduct toward a citizen takes some form other than extortion—such as refusal to issue him documents to which he is entitled—it is *oppression.* Public officials also can commit *fraud* or *breach of trust* in their handling of public funds and records. *Neglect of official duty* is failure to perform the functions of one's office as required by law. A civil action of mandamus can be brought to compel specific performance, but criminal charges can be brought also.

Two former employes in the state unemployment compensation bureau were each sentenced yesterday by Municipal Judge Jacob Corcoran to a year in the county jail for defrauding the state of $1,500. The men are Arthur Keller, 45, of 1783 Michigan avenue, and Robert Thackery, 40, of 1908 East Chandler avenue. Both pleaded guilty to making out checks in the names of persons whose right to receive aid had expired, but whose names were kept on the roll.

Obstructing justice. Even though he suspects that the arrest is illegal, a person cannot *resist arrest* by a law-enforcement officer. Neither can he *refuse to give aid* to such an officer who requests it in the performance of his duties. Obstructing an officer in the performance of his duty in any way is criminal.

Nathan Leventhal, 36, 3217 Belle Plaine, a Checker cab driver, was under arrest today on three charges because he illegally refused northbound passengers.

The driver had his taxi parked facing west on Randolph near State. Shortly after midnight Policeman James Bittner, 543½ Belmont, a traffic officer off duty, and his wife came out of the Chicago theater and asked the driver to take them north.

Leventhal reputedly declined, stating he was waiting for a possible westbound haul. Bittner said he protested that a cab driver cannot refuse a legitimate customer, but that Leventhal replied: "You think I can't? Well I'll show you. You can't ride."

Bittner said he displayed his police star, and the driver told him that "a star doesn't mean anything to me."

Both men got out of the cab and, according to Bittner, the driver jostled him. The policeman drew his gun.

The traffic policeman at the corner intervened and called for a patrol wagon.

At the Central police station Leventhal was booked on charges of refusing a fare, resisting an officer and disorderly conduct. He was released on $60 bond pending a hearing in police court at 11th and State tomorrow.

—Chicago (Ill.) *Daily Times.*

Obstructing punishment. A person under arrest is a prisoner, and if he runs away while being taken some place by whoever has him in custody he commits the crime of *escape.* It is the same offense to go over the wall of a prison or to depart from any place of incarceration without official permission. If force is used in the escape, it is *prison breach,* which can be committed against an arresting

officer on the streets as well as from within a jail or prison. In olden times, anyone convicted of *permitting escape* was considered guilty of the same offense as the prisoner whom he allowed to leave his custody either willfully or through gross negligence. The theory was applied to those convicted of rescue—which means assisting someone who is a prisoner to escape. In most jurisdictions today if force is used in the rescue it is a felony. Jumping bail and *violation of parole* are separate offenses since there obviously is no escape by someone who is at liberty.

Judge John R. Senn, sitting in Criminal court, yesterday invoked a new state law by calling up the department of welfare to bring before him—perhaps for recommitment to another institution—two youths whom he sentenced to the Illinois State Training School for Boys near St. Charles, on Aug. 1, and who escaped Saturday night only to be recaptured.

The boys, Edwin Liggett and Frederick Smith, both 18, of 1760 South Allport avenue, had been sentenced to the Sheridan branch of the school, the judges being under the impression that it had been opened. Sheridan was built to house the incorrigibles from St. Charles, but disputes over responsibility for completing it have delayed its opening.

Compounding a felony. Agreeing not to prosecute someone who commits a felony or entering into any agreement with a felon to assist him in evading apprehension is a crime. Every citizen is legally obligated to report any evidence of a felony's having been committed which comes to his knowledge. (See discussion of "Receiving Stolen Property.")

Exciting litigation. Willfully to excite or stir up lawsuits or quarrels between other persons, either with a view to promote strife and contention or to profit thereby, is *barratry*. Strictly, under the common law, that offense could be committed only by repeaters or habitual offenders. A single offense was *maintenance*, if the perpetrator was merely a trouble maker, and *champerty*, if he expected to receive a share of whatever profits might result from the controversy. This was one of the earliest forms of racket. (See page 245.)

Elections. Both voters and public officials in charge of elections can be guilty are—false registration, by means of an incorrect name, voting. Among the crimes, generally misdemeanors, of which a voter can be guilty are—false registration, by means of an incorrect name, residence, age, or other incorrect information; filing false affidavits; fraudulent voting; soliciting a reward from a candidate for public office in exchange for a promise to vote for him; mutilation or destruction of polling lists or ballots; circulating fictitious nominating petitions and attempting to bribe or illegally influence another voter.

Election officials can be guilty of attempting to influence voters; revealing how someone voted; allowing fraudulent voting; destroying polling lists or ballots; entering a booth with a voter; showing a ballot to another before casting it; marking a ballot so as to be able to identify it later; and failing to make a correct count or report of the votes cast.

Local ordinances usually regulate the sale of liquor and conduct of other businesses on election days. Statutes or ordinances may require political workers to remain a certain distance from polling places. Betting on election results is proscribed.

Arthur French, 35, of 1890 Center street, was sentenced to 90 days in the county jail yesterday after pleading guilty to a charge of fraudulent voting in the primary election of Feb. 15.

French admitted to Judge Thomas Elinson in County court that he had voted as "Arnold Rollins" in the 15th precinct of the 3rd ward. He had done it at the request of a stranger who gave him a drink, the defendant said. French was arrested a week ago as the result of an investigation that began after the real Rollins appeared at the voting place and found his name checked.

Fifteen fourth-ward Democrats—all but one of them political job holders in the city or county government—today were found guilty by Judge Harold Cole, of Centerville, on charges of participating in an election fraud during the 1946 primaries. One was given a six months' jail sentence; the others drew the maximum fine under the charge, $100.

In addition to their being largely on the political pay rolls, all but two of the defendants were precinct captains. They were accused of having conspired to file a fictitious nominating petition for John P. Blair, an unsuccessful candidate for the Republican nomination for judge of the probate court.

Defense Attorney John Wilkinson said all the convictions would be appealed, and the score of defendants were permitted to continue at liberty on their original bonds of $1,000 each.

Assistant State's Attorney Ralph Becker, who prosecuted the case as a violation of the state primary law, contended the defendants had placed 4,000 false signatures on nominating petitions which they, as Democrats, were circulating for Blair, a Republican. The defense had relied on technicalities to win its case.

Conspiracy. If two or more persons discuss and make plans for the commission of a crime or how to get someone else to commit one, they are guilty of conspiracy, even though their plans never come to fruition.

Dick Tosci, accused of being one of three men who conspired to murder Tony Barelli, laundry truck driver, was released today by the state's attorney's office after Prosecutor Raymond Stanford told Chief Justice Frank Mayer in Criminal court that "the state is not ready to prefer any charges."

Tosci's dismissal only a day after his surrender to the police was a blow to the state's attorney's investigation of the Barelli murder, which a week ago looked as if it would become the first solved labor murder in a decade.

Peter Mariority, a West Side hoodlum, said three weeks ago that he, Tosci, and a third man whose name only Tosci knows were paid $100 each "to take care of Barelli." He said that Thomas Gruber, a partner of the Wet Wash Laundry

company, hired them because Barelli was taking business from the Wet Wash Laundry.

Subsequently, Mariority repudiated the confession, claiming he had been beaten into making it, but was indicted on a murder charge, and is being held in the county jail. Gruber was arrested and released on $10,000 bond.

Tosci was the object of an intense police search until he walked into the state's attorney's office yesterday. Witnesses of the murder said they were unable to identify him, and Mariority only said, "Take me away," when he faced Tosci.

Mrs. Martha Chatfield, accused of being the head of an abortion ring, and two other women are scheduled to go on trial tomorrow in the Criminal court of Judge John Fuller on a charge of conspiracy. Co-defendants with Mrs. Chatfield are Mrs. Matilda Burns and Mrs. Margaret Mercer.

Last April 20 Policeman Louis Harpers of the state's attorney's staff, visited the Chatfield home at 1791 Foster street and shot and killed Mrs. Chatfield's daughter, Mary. Harpers said he killed the young woman in the mistaken belief she was Mrs. Chatfield.

Harpers confessed he feared Mrs. Chatfield was going to expose him as a paid employee of the abortion ring. Harpers was convicted of the murder and sentenced to life imprisonment. His confession resulted in the dismissal of two assistant prosecutors in the state's attorney's office.

Contempt. A United States Supreme Court decision in 1944 upholding the right of the Los Angeles *Times* to comment on court proceedings while they are still in progress probably will act as a future brake to citations of contempt of court for newspapers that publish unflattering comments about judges. Reporters and photographers, however, still have to watch their conduct in courtrooms, where they are present at the sufferance of the court, not from right.

To maintain their dignity and authority, courts have the right to punish by fine and imprisonment disorderly, contemptuous, insolent, or otherwise disrespectful conduct tending to interrupt proceedings or impair respect for the judiciary. Judges can cite witnesses, attorneys, and spectators for refusals to obey court orders or for creating disturbances.

Books on newspaper law contain full discussions of contempt of court as it affects newspapers. Eight states have laws protecting newspapermen in refusals to reveal the sources of information; other states do not have such laws, and there have been several notable cases of newspapermen going to jail for refusal to tell. Newspapers have also been cited for contempt for revealing "off the record" information regarding grand juries and court proceedings.

Akron, O., April 24.—(AP)—Judge Walter B. Wanamaker of the court of common pleas today found Walter Morrow, editor of the Akron Times-Press, guilty of contempt of court on three counts and fined him $50.

The case arose after Morrow ordered printed the names of grand jurors, names of witnesses and cases they were considering after Judge Wanamaker ordered strict secrecy on those matters.

Three Separate Fines

The court assessed Morrow $10 for publishing the names of the county grand jurors, $15 for revealing the names of witnesses and $25 for making known the titles of grand jury cases.

Judge Wanamaker contended there had been too much trying of lawsuits in newspapers instead of in courts, particularly in criminal cases, where he said the rights of society and the individual should be established by the orderly procedure of justice.

Case to Be Appealed

Attorney Robert Guinther, Morrow's counsel, announced the case would be appealed. The editor furnished bond of $100, pending appeal.

In his opinion, the court read one biblical quotation, on the letter and spirit of the law, and one citation in law by Former Chief Justice Carrington T. Marshall of Ohio.

Morrow, at a hearing yesterday, insisted that it was his function, as editor, to determine what news should be published.

—Chicago (Ill.) *Tribune.*

Harrison Parker, 66, one-time business manager of the Chicago Tribune, yesterday drew his second sentence of 90 days for contempt of Circuit court. Judge Daniel P. Trude, who had imposed the first one on Jan. 15 for scurrilous attacks on several judges and other persons, added the second for filing an answer in similar vein.

"You don't do what the court tells you to do," Judge Trude said. "I'll give you another 90 days. You can appeal from the County Jail if you want to."

The terms are to be consecutive. Judge Trude indicated he would free Parker if the man could put $1,000 appeal bond in each case.

—Chicago (Ill.) *Sun.*

Crimes Against Public Safety, Health, and Comfort

City ordinances generally regulate traffic, zoning, building, garbage disposal, and similar matters affecting the public safety, health, and comfort. Violations of these ordinances are civil offenses, commonly called *quasi-criminal*, since punishment is by fine or revocation of license only. There are, however, some state and federal laws in each of the categories listed under this heading.

Nuisances. At law, nuisance means about the same as it does in everyday speech—an annoyance. A public as distinguished from a private nuisance is a crime against the order and economy of the state which annoys, injures, or endangers a considerable number of persons. As already pointed out, anything that offends public decency may be called a nuisance—such as prostitution—but the most common offenses so called include the following: improper disposal of dead animals; pollution or obstruction of waterways; obstruction of highways, streets, alleys, or ways to cemeteries; careless manufacture or keeping of combustibles and explosives; polluting the air with poison or obnoxious odors; improper disposal of garbage; lit-

tering public places with rubbish; keeping places where narcotics are sold or used; engaging in speculation for tickets to entertainments (scalping).

Dropping rubbish in city parks will cost picnickers $1 this summer, Ralph Perkins, superintendent of parks, said last night.

The system will work like this:

If park police or foremen see picnickers or visitors littering parks with papers, banana peels, cans, bottles or other refuse, they will be given a ticket to appear in Cafeteria court and must pay a $1 fine. Perkins said laws permit assessment of the penalty.

Lack of laborers to clean up the litter is responsible for the move.

The labor shortage also is responsible for the numerous women lifeguards who will appear on the beaches, the women lawnmower operators and the women starters and golf ball retrievers on golf courses.

With gasoline rationed and the prospect of a ban on pleasure driving, park patronage is expected to be several hundred thousand greater each week end than in prewar years, said Perkins.

Traffic regulations. There are so many laws affecting motor vehicles that usually they are found in a separate chapter of a state's statutes, rather than as a part of the criminal code. If such is the case, it may be stipulated that violation of any part of the chapter shall be a misdemeanor unless declared a felony by special act of the state legislature.

Reckless driving, leaving the scene of an accident (hit-run driving), and violation of safety requirements are among the most serious offenses. Most states now require tests for the obtaining of drivers' licenses, and there is a growing movement for driver responsibility laws, making it compulsory for drivers to take out insurance to protect anyone who may suffer loss through the improper driving of another. The National Motor Vehicle Theft Act makes it a federal offense to transport a stolen car across state lines.

Parking regulations are established by city ordinances, but the state may set standards for traffic signals, rights-of-way, and speed. The state regulates the conduct of trucks on the highways. The state legislature often passes enabling acts, to allow cities to require that automobiles submit to periodic inspection, install parking meters, and establish other regulations.

The driver of a hit-run jalopy without a safety sticker surrendered to police yesterday after being sought since Oct. 15, the date of the accident.

The police also arrested the driver of another stickerless automobile yesterday for leaving the scene of an accident and reckless driving. The driver of this car was John Tuggart, 48, of 1890 North Troy street. When he was found by police, he argued that he could not be arrested because "I'm away from the scene of that accident."

"That's one of the things I'm charging you with," Patrolman Robert Dunham said as he took Tuggart into custody.

The other case was that of Martin Lamberton, 18, of 1390 Hoyne street. His jalopy struck and demolished a car in which Mrs. Jane Bessford, 13890 Kimball avenue, was riding. She suffered a cut on the arm and bruises. Lamberton, who had neither city nor state licenses, had abandoned his car shortly after the accident. The driver was traced by means of the motor license on the car.

Angered by the tactics of hangers-on in the corridors of the Criminal Courts building outside the automobile court, who waylay defendants and promise to get them an attorney "who knows the judge," Judge William V. Daly did something about it yesterday.

He got Capt. Michael Naughton of the commissioner's office to send Patrolman Edward Hogan over.

Morton Genson approached Hogan in the corridor, and, learning that Hogan was accused of reckless driving, he told him: "That's a tough judge in that court. You could get a year for that. But I know a lawyer who knows the judge who could do you some good."

Hogan thereupon seized Genson and took him before Judge Daly in his chambers. Genson told Judge Daly he was a city employe who worked at a North Side safety lane. He was released on his promise never again to enter the Criminal Courts building.

Judge Daly then summoned his bailiffs and told them that anyone found guilty of collusion with corridor hangers-on would go to jail for 30 days for contempt.

—Chicago (Ill.) *Sun.*

Foods and drugs. When in 1937 a liquid form of the newly discovered drug, sulfanilamide, resulted in 107 deaths throughout the nation, Congress finally ignored the powerful adverse pressure that advertising agencies had been applying and passed the Copeland Act, amending and supplementing the original Food & Drug Act, which had been passed in 1906 after Dr. Harvey W. Wiley had worked for it for years. The new bill did not go so far as its predecessor—the much-disputed Tugwell Bill, which would have required that complete information regarding drugs be given in advertisements, as well as on labels, and that no misleading statements be permitted. Nevertheless, it gave inspectors of the food and drug administration power to seize foods and drugs considered dangerous, whereas formerly they could confiscate only what was adulterated, fraudulently labeled, or filthy.

The provisions of the federal law are too numerous to list. The administration usually works quietly without a great deal of publicity, but newspapers have been criticized for not publishing its cases which often involve prominent advertisers. Consumers' groups exert constant pressure to make public all the findings of the administration and of the Bureau of Standards. Without fanfare, the administration in 1943 brought 560 court actions; analyzed new drugs on the market at the rate of 125 per month; and inspected over 56,000 samples of foods, drugs, and cosmetics collected at random.

The Federal Trade Commission issues *cease and desist* orders to prevent improper advertising.

State laws supplement the federal. Together they forbid false labeling or branding, adulteration and impurities. State laws prescribe what medicine can be sold only upon the prescriptions from licensed physicians; regulate the use of poisons in embalming fluids, the pasteurization of milk, the cold-storage processes for food; and stipulate what records doctors and druggists shall keep of their prescriptions or sales of poisons and narcotics. The states also license medical practitioners and pharmacists.

Attorney General Thomas Hall filed complaints in Municipal court yesterday charging a Centerville retailer and two local manufacturers with violation of the state pure food laws. John Todd, proprietor of a meat market at 1760 Lincoln avenue, was charged with using sulphite to color hamburger.

The manufacturers are the High Top Beverage company, 109 East 15th street, charged with substituting saccharine for sugar in root beer and not properly labeling their product, and the Quality Food company, 76 East 80th street, charged with improperly labeling, using decomposed eggs and not maintaining state standards on the egg mix they manufacture.

"All violators of the pure food laws of the state will be vigorously prosecuted," Hall said. "During this war emergency we must keep close watch on all foodstuffs manufactured or sold. Unfortunately, there are those among us who need to be watched to be made to comply."

Mrs. Margaret Bates, 47, of 1904 Milwaukee avenue, was fined $200 yesterday by Judge Rudolph Overaker in County court, on a charge of violating the state medical practice act by representing herself as a chiropractor when she had no license.

With her husband, Fred Bates, she maintains a suite of offices at 169 Canal street. Assistant State's Attorney Ray Schmidt told the court that Mrs. Bates was fined $300 on a similar charge in 1934. He added that Mrs. Bates' husband was fined $600 last November for practicing medicine without a license and $500 in March for the same offense. He has just finished serving a 90 days' sentence in the County jail.

Health. In addition to the food and drug acts, public health is protected by state laws compelling obedience to lawful orders and regulations of local boards of health and health officers. Such authorities have the power, among others, to quarantine, to seize and dispose of tainted foods, and to enforce sanitary laws. Dissection of dead bodies is regulated by the state. Laws may forbid obstructing an ambulance, spraying fruit trees with poison; contaminating salt wells; throwing gas, tar, or refuse into public water; selling tubercular cattle; selling instruments used for abortion or birth-control purposes; and other acts.

The proprietor and chef of the Grand hotel were under subpoena today to appear before the grand jury, investigating the illness of 53 patrons of the

hotel's dining room Sunday evening. Chemical analysis in the Board of Health laboratories revealed that salmon served on the menu was tainted.

Safety. The Interstate Commerce Commission regulates public safety in railroad travel. There is agitation to expand its jurisdiction to include all means of transportation, instead of having each under the control of a separate national body—the present system. Rate making is generally considered the most important function of these administrative agencies, but public safety is an equally important responsibility.

State laws in this category may include the following: forbidding overloading of a passenger vessel; forbidding unauthorized pressure of steam, or generation of an unsafe amount of steam; regulation or management of steam boilers; safety rules for the storage or use of explosives and combustibles; regulating or prohibiting the sale, possession, and use of fireworks; regulating or prohibiting the manufacture, sale, and ownership of dangerous weapons; forbidding negligence in the putting out of a fire and obstruction of any fire-fighting work; regulating ice cutting; regulating the manufacture and sale of illuminating oil; regulating fire escapes on schools and other buildings; forbidding the use of vehicles, perhaps bicycles, on sidewalks; penalizing injury to life-saving equipment; requiring the reporting of accidents. Motor vehicle laws may include provisions regarding horns and radios so as not to interfere with a driver's hearing of safety signals.

Judge Nicholas Berkhardt of License court yesterday cracked down on violators of city fire ordinances, assessing fines ranging from $50 to $200 against 16 persons and issuing warrants for the arrest of nine defendants who failed to appear in court.

Charges against 20 others were continued or dismissed. All the cases were based on investigations made by the City Fire Prevention bureau, under the direction of Chief John L. Hasten.

Dates for hearings on motions to vacate the fines were set in 15 of the cases, to give the defendants an opportunity to correct the violations discovered by Hasten's department.

The exception was the case of Jack Goldman, owner of the Monte Carlo hotel, 150 North Michigan avenue, who was accused of failing to provide proper exits despite repeated warnings. Judge Berkhardt fined Goldman $100 and costs, and ordered him to pay the fine by tomorrow.

Some Criminal Law Principles

Throughout the preceding discussion, some attempt has been made to distinguish between *felonies* (crimes punishable by death or imprisonment in a penitentiary) and *misdemeanors* (crimes punishable by jail sentences or fines), but it must be repeated that the

statutes of the states differ considerably. They differ also as to the headings under which felonies, misdemeanors, and *high crimes and misdemeanors* (immoral and unlawful acts not technically felonies, but nearly so; aggravated misdemeanors) are classified. Some of the headings frequently used are: animals, attorneys, banking, child labor, civil liberties, corporations, discrimination, evidence, exhibitions, husband and wife, incompetent persons, insurance, intoxication, judges and juries, lynching, marriage and divorce, military, navigation, negotiable instruments, pawnbrokers, peddlers, railroads, real property, records and documents, religion, society and order, suicide, taxes, trademarks, usury, weights and measures, and wrecks. Continuation of the tendency to classify crimes under such headings may in time render obsolete the classifications according to the public interests protected, such as used in this chapter.

Parties to crime. When all felonies were punishable only by the death penalty, one of the fictional devices originating in the English common law courts to avoid inflicting it in many cases was to distinguish between different degrees of participation in the commission of a crime, the chief distinction being between a principal and an accessory.

As generally defined today, a *principal* is the actual perpetrator of a crime, whereas an *accessory* aids in its commission either before, during, or after the crime has been completed. To draw the line between what constitutes being a principal or accessory, however, is not so easy as it might seem at first glance. Plainly, anyone who strikes a blow, sets a fire, or writes a forgery is a principal, but what of a person who holds a victim or acts as a lookout? Some statutes call such a person an *accomplice;* others distinguish between first- and second-degree principals. Then there is the matter of what constitutes *presence* when a crime is committed. A lookout close enough to witness the crime may be considered to be present, whereas the lookout who stands outside a building or a block or more away is not. The doctrine of *constructive presence* includes anyone close enough to be able to aid in the crime proper if summoned to do so. They are second-degree principals or accomplices or, in some places, *accessories at the fact.*

An *accessory before the fact* is one who helps plan the crime, gives advice, encouragement, or aid in obtaining material necessary for its commission, or in any other way assists, but who physically is absent at the time the crime is committed. An *accessory after the fact* is one who assists the principal to escape or otherwise to evade justice, to dispose of stolen goods, or in any other way aids him.

Because the degree of guilt has nothing to do with whether a person is a principal or accessory, the distinctions are obsolete and

harmful in that they allow lawyers to quibble over technicalities and divert attention from the real issue.

Guilty mind. What is essential to establish culpability is a guilty mind (*mens rea*) or knowledge of the crime and intention to participate in it as principal, accomplice, or accessory. Actual physical presence is in no way necessary for a person to be just as guilty as the one who actually fires the shot or breaks open the door. If, for instance, *A* and *B* conspire to murder *C*, both are equally guilty of first-degree murder even though *A* is miles away when *B* kills *C*. Likewise, if *A* and *B* are burglarizing a store and *A* kills *C*, the proprietor, *B*, is equally guilty, even though he didn't know *A* had a gun in his possession at the time.

A guilty mind without a harmful deed does not constitute commission of a crime. This rule does not excuse conspiracy, which in itself is a harmful act, even though the crime plotted never materializes. In some cases, however, the law imposes penalties when no guilty mind exists—as in the case of overtime parking. Such offenses, however, are technically civil, not criminal, and they involve no suggestion of moral turpitude.

Because he has guilty knowledge, the landlord who rents his property to someone who conducts a disorderly house on it is a principal rather than an accessory, according to many modern statutes. Article I, Section 9, of the United States Constitution forbids Congress to pass any *ex post facto* law, which means that nobody can be held liable for an offense that at the time of its commission was not prohibited by law. State constitutions have similar provisions, so state laws are not retroactive either. This limits the time during which a guilty mind can be proved to have existed, but is important only as regards recently passed legislation.

Attempt. Some states have special statutes covering unsuccessful attempts to commit a crime, usually stipulating that such abortive act constitutes a misdemeanor. Others follow the common law principle that there is equal culpability, whether the act succeeds or fails. Consequently, if the intended crime is a felony, the attempt also is felonious. A few states have a scale of penalties based on the seriousness of the attempted crime—such as twenty-five years' imprisonment for attempted murder; fifteen years for attempted burglary; and so on.

Immunity. In the absence of statutes to the contrary, there is no statute of limitations on criminal prosecution. That is, an indictment continues indefinitely and a person can be brought to trial at any time under it. Acquittal following trial for a felony does not bar an indictment for a misdemeanor growing out of the same act, nor does acquittal for a misdemeanor bar indictment for a felony. Ac-

quittal on a charge of a lower degree of a crime, however, does bar prosecution for a more serious degree of the same crime. Furthermore, if a person has been acquitted of an offense in one state, he cannot be tried again in another for the same offense. In such case, protection provided by Amendment V of the United States Constitution, which reads "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb," comes into operation as it would were both cases brought in the same state.

It generally is provided that a person can be convicted of a lesser degree of the same crime than charged in the indictment. An accomplice who turns state's evidence in exchange for a promise of immunity or pardon does not possess such immunity as a matter of law. No judge is bound by any promise made by a prosecuting attorney, unless the statutes so stipulate. In actual practice, judges do "go along" in such matters as they do when a prisoner at the bar changes his plea. This happens most frequently in inferior courts when, to give the court jurisdiction, the accused pleads guilty to a lesser offense after having pleaded not guilty to a more serious one. The practice of prosecuting attorneys in permitting such "bargaining with justice" or "cop pleas" is often criticized, but the prosecutors and law-enforcement officers defend it as necessary in order to obtain convictions and valuable information that may lead to the apprehension of others. The practice may lead to a closer approximation of justice in a particular case, since probation may not be allowed for persons convicted of certain felonies, or the circumstances of the case may make mercy advisable. For centuries, as explained in an earlier chapter, the right to benefit of clergy prevented the execution of many before the statutes were revised to provide light penalties for many crimes. The use of fictions in criminal courts has been mostly for the laudable purpose of making the punishment more nearly fit the criminal rather than the crime.

CHAPTER 15

Law Enforcement

BECAUSE of the wartime manpower shortage, Al Capley of the Memphis *Press-Scimitar,* a deskman, for a day took over coverage of the police beat that had been his twenty years earlier. In an article in the April 17, 1943, *Editor and Publisher,* he revealed that only the starting time—6:30 A.M.—was the same as he remembered it. In the "good old days," complaints came in by telephone and were reported to the station captain, who then bawled out the news in a loud voice. Policemen assigned to the case hurriedly departed in a squad car and the reporters went with them.

Today newspapermen, in Memphis or elsewhere, rarely if ever accompany police. Instead, in the large cities, newspapermen spend most of their time in the press room, listening to radio calls and the fire-alarm box. Someone also keeps a vigilant eye on the teletype, which carries messages from headquarters to district stations. When a "tip" on something worth covering is received from any of these three sources, the perpetual card game is interrupted and the newsgatherers go into action over the telephone. After checking as best they can with desk sergeants in the outlying districts or with principals, they "flash" their offices by telephone with the first details.

The second act of covering such a story is a continuous one of seeking amplification of the skeleton details already received. Patrolmen and detectives involved, principals and witnesses are the best sources of information about the actual incident, whatever it may be, and if any of them return to headquarters they are interviewed. Granting reporters the privilege of talking to a prisoner is, of course, discretionary with the police.

In small places, where newspapers do not station reporters at headquarters full time, methods of coverage are not so different. The leg man who visits the station or stations at intervals does not learn of what has happened as promptly as the beat man who remains there all the time, but he gathers his facts from talking to those who know them rather than by dashing about as in the motion pictures, sleuthing either on his own or in co-operation with law-enforcement agencies.

Modern Police Work

Newspaper reporting of police news has been routinized, largely because the same thing has happened to modern police work. The contemporary department, even in the smallest places, no longer consists of an untrained, illiterate chief and a staff of unspecialized "coppers." Police work in this country is rapidly becoming a science, and the organizational chart of any department provides the clue as to how far progress has gone. In smaller places, several functions may be combined in one or a few members, but failure to take cognizance of many of the phases of modern police activity is an indication of stagnation or decadence.

Police books. An idea of the manysided nature of modern police work can be gleaned from a scrutiny of the everyday record books that are kept at headquarters and that are mostly available for examination by newspaper reporters covering the beat. Those in use in each of the forty Chicago district stations are more numerous than those found in most smaller places, but the categories which they cover are the same as those into which official police reporting anywhere falls. A brief description of them follows:

1. *Captain's Orders.* These may be written in by the captain himself, but usually are typewritten by a secretary and pasted into the larger ledger by the desk sergeant. This is the only one of the ten books that newspaper reporters cannot consult. It contains confidential information related to cases and policies that the reporter may get "off the record" from someone "in the know" but which he is not privileged to use.

2. *Complaint Book.* This is the big-city counterpart of the ordinary police *docket,* in which is listed every telephone call, letter, or personal complaint of a citizen, patrolman, plain-clothesman, squad-car-man, or anyone else. The form, a carbon copy of which is pasted into the book, is shown on page 469.

The "C.C." means "Central Complaint," or one that was received at central headquarters rather than at an outlying district station; "R.A." means "Record of Arrest" and is checked when there is such a record in the Arrest Book; "A.R." means "Accident Report." This book is the reporter's main source of information.

"A man accosted by three colored men," or "Took two suits of clothes from closet between 8:30 and 5 P.M.," or "Doesn't keep dog on leash" are examples of complaints entered in this book. If someone reports a lost article or an injury, this is also listed here, although the word "complaint" may not seem to apply exactly. Police, as every experienced newspaperman knows, are the most fertile source of information regarding all unusual incidents in any city.

No. _____

Dept. of Police—Chicago—
STATION COMPLAINT

In person
By phone
By letter _____, 194_____ ___ District

Nature of Complaint _____

Location _____

_____

Complainant _____ Address _____

Officer Assigned _____ Time _____. M By _____

_____ Time _____. M By _____

_____ Time _____. M By _____

Report made by _____ Date _____, 194_____

To _____ Desk sergeant

_____

_____

_____

C.C. R.A. A.R. *Complaint received by*

No. _____ Page No. _____ No. _____ _____
Rank

On the side also are the three additional lines:

Transferred to district _____

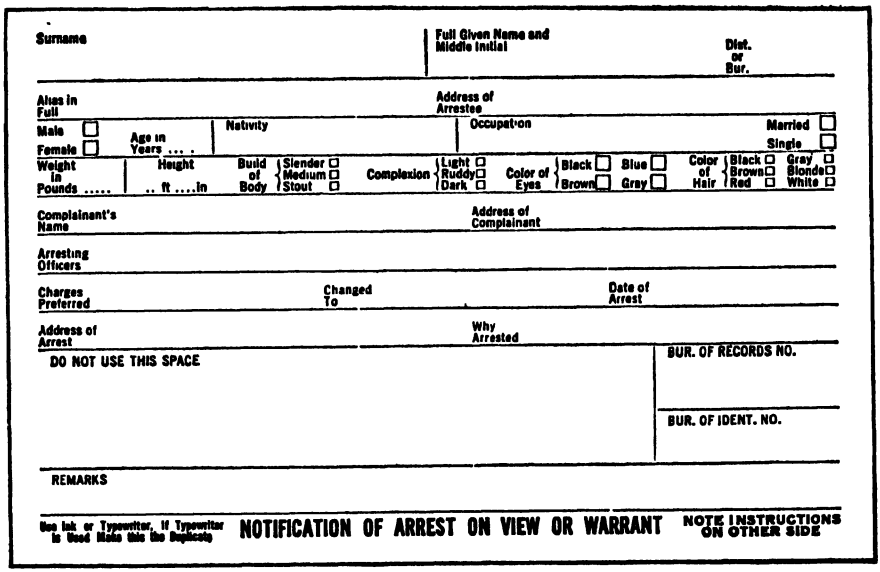
Telephone to _____ Rank _____

Station Camp No. _____

As will be explained later, news originating at police headquarters is by no means all related to lawbreaking.

3. *Local Book.* In addition to the complaints filed in the Complaint Book, this book also contains teletyped reports that are received from central headquarters pertaining to the particular district. There is a Local Book in each district station.

4. *Arrest Book.* As the name indicates, this book contains a record of all arrests made in the district. In addition to writing out reports in the book, the desk sergeant fills in a white card, which goes to the Bureau of Criminal Information and Statistics, and a salmon card, which is kept in the station until the case is disposed of. The front of the former card is as follows:


Surname | Full Given Name and Middle Initial | Dist. or Bur.

Alias in Full | Address of Arrestee

Male ☐ Female ☐ | Age in Years ... . | Nativity | Occupation | Married ☐ Single ☐

Weight in Pounds ..... | Height .. ft ....in | Build of Body { Slender ☐ Medium ☐ Stout ☐ } | Complexion { Light ☐ Ruddy ☐ Dark ☐ } | Color of Eyes { Black ☐ Blue ☐ Brown ☐ Gray ☐ } | Color of Hair { Black ☐ Gray ☐ Brown ☐ Blonde ☐ Red ☐ White ☐ }

Complainant's Name | Address of Complainant

Arresting Officers

Charges Preferred | Changed To | Date of Arrest

Address of Arrest | Why Arrested

DO NOT USE THIS SPACE | BUR. OF RECORDS NO. | BUR. OF IDENT. NO.

REMARKS

Use Ink or Typewriter. If Typewriter is Used Make this the Duplicate **NOTIFICATION OF ARREST ON VIEW OR WARRANT** NOTE INSTRUCTIONS ON OTHER SIDE

The reverse side allows space for "Additional Complainants—Names and Addresses" and gives instructions about spelling names correctly, printing all names at top of card, as well as some additional rules for reporting particular offenses, an example being: "On all arrests for Larceny of Auto, show the charge in full, as 'Larceny of Auto.'"

The salmon card is labeled, "Final Record of Arrest on View or Warrant" and is similar to the former down to and including the line beginning "Address of Arrest." Below that, there are spaces to indicate what happened in court when the case was called—typical items being, "held to grand jury," "continuances," "fined $——.00." This card eventually also goes to the records bureau.

5. *Accident Book.* No matter how slight the injury, if police learn of it, an entry is made in this book and a copy of the Accident Report sheet on which the entry is based goes to the Bureau of Records and Documents. Dog bites, suicides, deaths, and murders all are recorded on these forms. There are special blanks for automobile accidents, on which detailed information is contained. One small part of one page of the three-page report form has parallel columns to be checked for each of two vehicles in the same accident under the heading, "Type of Vehicles Involved," with the following choices: private passenger car; truck or commercial; taxicab; motorbus; motorcycle; bicycle; street car or elevated; horse-drawn vehicle; railroad; other vehicle. Other main headings include: movement of vehicles preceding accident; what was driver doing; con-

dition of vehicle; condition of motorist; condition of pedestrian; road conditions; road surface; weather conditions; light conditions; railroad crossing; direction of travel; position—pedestrian; driving experience—pedestrian; action of pedestrian.

Some places have even more elaborate accident report forms, including maps to show where and how the incident occurred. There is nothing tinhorn about modern automobile accident prevention, investigation, and reporting work. Since motor vehicle accidents are so common, many readers of this book undoubtedly have wondered at the efficiency with which the police handle them. While some members of the detail administer any first aid that is necessary, others go to work measuring skid marks, taking photographs of the scene from a number of skilled angles, and interviewing principals and witnesses. Society is indebted to a number of individuals and organizations for making the three E's of accident-prevention work (engineering, education, and enforcement) into scientific procedures. The Northwestern University traffic institute trains hundreds of traffic policemen annually with the co-operation of the International Association of Chiefs of Police. It is financed by the Automotive Safety Foundation and special fellowship grants from the Kemper Foundation for Traffic Police Training and the Alfred P. Sloan, Jr., Safety Award. Its director, until he entered the armed services, was Lieutenant Franklin M. Kreml of the Evanston, Ill., police department. The National Safety Council and several large insurance companies have also been leaders in the field. The Institute's *Accident Investigation Manual* is a valuable addition to any newspaper police reporter's library.

The great progress that has been made in this field is reflected in the elaborate but easily understood Accident Report blanks in vogue. The practice is also spreading of requiring policemen assigned to accident cases to make formal complaints against offenders, in the knowledge that a large number of parties engaged in such accidents would fail to do so on their own volition. Getting all accident cases reported and into court and ending "fixing" of such cases with clerks and judges are prime objectives of all crusaders in this field. Copies of coroners' reports when deaths occur are added to the record bureaus' files of accident cases.

6. *Wanted Book.* This book includes teletyped wire strips with entries similar to the following:

BE ON LOOKOUT FOR A CHECKER EXPRESS TRACTOR AND TRAILOR GREEN COLOR NO. TRACTOR 174, TRAILOR 221, LOADED WITH LIQUOR HIJACKED AT 1:15 P.M. APRIL 24–43RD LINCOLN AND FOSTER. DRIVER RELEASED IN NILES, ILL.

O'CONNOLLY 40 3:50 A.M. EMP. APRIL 25–46

MAKE USUAL INQUIRIES IN ALL HOSPITALS DR. OFFS, DRUG STORES, ETC. ASCERTAIN IF THEY DRESSED A GUN SHOT WOUND FOR 2 MEN RIDING IN A CREAM COL. CONV.

LAST SEEN ON GRAND AVE. FROM WESTERN & WERE FIRED ON BY OFFICERS OF THIS DISTRICT.

HOMER 28 1:22 A.M. EMP. APR. 25–46

PURSE SNATCHING, I MAN. 1845 WASHINGTON, 25–5–7–130 DK. SWEATER DRK. CAP NO FURTHER DESC. AT 11:25 P.M. 4–24–46 AT SEELEY & MADISON GOT COUPLES PURSE CONTS. $10.

CY

The abbreviations used are understandable. The number after each reporting officer's name is that of his district. When arrests are made or cases are otherwise disposed of, cancellations are entered in this book.

7. *Missing Book.* This contains not only teletype slips but reports of missing persons of which the district has been notified by telephone, letter, or personally. No entry is made, however, until a person has been missing twelve hours. The desk sergeant writes as well as pastes in this book. More than ninety-five per cent of all persons reported missing either come home or wind up in the morgue, according to police. Thus, about that many items in this book are ultimately cancelled. Typical entries are the following:

CANCEL MISSING MESSAGE NO. 9403—RETURN HOME—KLATZCO 25–9:30 A.M.—H.C. APR. 9–1946

NO. 9609 MISSING SINCE APRIL 9–43 9:00 A.M. ROCKUS FAUTSCH 2039 ARMITAGE 79–5–10–200 BLUE EYES GREY HAIR LIGHT COMPLEX HEAVY BUILD FALSE TEETH SUFFERS FROM LOSS OF MEMORY BLUE SUIT BROWN SWEATER WHITE SHIRT BLUE PANTS BROWN SHOES DR. GREENHAT NOTIFY WIFE AT ABOVE.

BARRY 32 AP
IL. 10–46 1:39 AMN
H.M.

NO. 9614 WHAT STATION HAS IN CUSTODY OR HANDLED IN AN ACCIDE JAMES COX 33 YEARS OLD COLORED LET THIS DISTRICT KNOW YES ONLY.

SCOTT 4—APR. 10–46
2:10 A.M.
H.M.

Other reports begin: "Ran away from home," "At County Morgue unidentified," "At St. Elizabeth's Hospital," "There is at Black's Undertaking Parlor," and so forth. Reports made personally to the district are listed in the Local as well as Missing Book. The most newsworthy of "missing" cases involve children, mothers who desert their children, and youths seeking adventure. The reporter must be careful not to report as missing someone who already has returned home.

8. *Stolen Auto Book.* Entries in this book from the teletype or written locally are similar to those in the Wanted and Missing Books, except that the subject matter is stolen automobiles.

9. *Miscellaneous Book.* Everything that does not fall easily into any of the other categories goes into this book. Sample entries are the following:

TAKEN IN LARCENY FROM 239 SO. WOLCOTT AVE. L GLADSTONE BAG CONTAINS MEN'S WEARING APPAREL VALUE $85.

HARRISON 27 APRIL 12–46
9:39 P.M.

1 SIOX GRINDING MACHINE, 1 LARGE BLK SUIT CASE CONTAINING WOMEN'S WEAR, APPROXIMATE VALUE $125 TAKEN IN LARCENY FROM NE CORNER OF ROOMET AND PEORIA FROM AN AUTOMOBILE

Serial numbers of bicycles, typewriters, and other articles, labels, values, trademarks, and general descriptions are included in lists of stolen items. The complainant's name, address, and phone number are also given.

10. *Commanding Officer's Book.* Sample entries in this follow:

REPORT TO CHICAGO STADIUM 1800 W. MADISON SAT. 6:30 FOR DUTY IN CONNECTION WITH BENEFIT BALL AS FOLLOWS—

REPORT TO CAPT. HARRISON AT 27TH DISTRICT FOR DUTY IN CONNECTION WITH REGULATING TRAFFIC AND PREVENTING SOLICITING PARKING OF AUTOS ABOUT CHICAGO STADIUM DURING BENEFIT BALL AS FOLLOWS

STOP AND KEEP STOPPED ALL WORK AT 3648 W. 38TH STREET. HAVE POLICE OFFICER ON BEAT AND SQUADS MAKE FREQUENT VISITS TO DANGEROUS BUILDING LOCATED AT 1437 N. CLARK AVE. IT IS DANGEROUS FOR UNAUTHORIZED PERSONS TO ENTER THIS BLDG.

The names of the patrolmen and others affected by these orders are attached to them. As can be deduced from the preceding examples, some orders are rewritten following general instructions from central headquarters, whereas others are not.

Police departments. Many of the divisions or bureaus of the modern police department are suggested by the preceding description of the types of books kept by the desk sergeant, who is hardly more than a clerk or telephone operator. The major divisions of the Chicago department follow:

Records (accidents, arrests, crimes, guns, homicide, firearms, permits, pawnshops, vagrants, etc.); identification (fingerprints, ballistics, moulage, etc.); confidence detail; uniformed force; crime prevention; detectives; social service; pickpockets, shoplifters, ho-

tels, department stores, and banks; narcotics; stolen automobiles; traffic; vehicle licenses; motion-picture censorship; homicide and sex offenses; missing persons.

In smaller places, patrolmen, traffic, and records are the basic departments. All the titles are self-explanatory, and the reporter can tell by the nature of any case what bureau or bureaus most likely will be involved in it. To make certain that he misses nothing, and to maintain friendly contacts, he "makes rounds" of most or all the departments once or twice daily.

At the head of any police department is a *chief of police* or *commissioner of police.* He is a political appointee, either nominated by the mayor with or without the approval of the city council, or selected by a police board or commission which owes its appointment to the mayor and/or the councilmen or aldermen. The movement to place police heads under civil service has not progressed very far; consequently, those officials have only as much policy-making authority as is delegated to them. It is extremely unusual for a mayor to adopt a completely "hands-off" policy as to police. He usually makes some campaign promises regarding the community situation as to lawbreaking and law enforcement which he must carry out. The police chief may "take the rap" whenever "the heat is on," but in most cases he is just a flunkie carrying out orders that originate higher up. In the carrying out of a general policy, of course, he has considerable authority, which maintains for him the respect and/or fear of his underlings. It is always possible, however, to appeal over his head, if only through political organizational channels. It is impossible to generalize on the extent to which political or other influence corrupts police departments, but in 1931 the Wickersham commission on law enforcement, appointed by President Hoover, found plenty wrong. Five major charges were brought against police, as follows:

1. The chief evil lies in the insecure, short term of service of the chief or executive head of the police force and in his being subject while in office to the control of politicians in the discharge of his duties.
2. The second outstanding evil of such poor police administration is the lack of competent, efficient, and honest patrolmen and subordinate officers.
3. The third great defect is the lack of efficient communication systems whereby intelligence of the commission of crime and descriptions of the criminals may be quickly spread over a wide territory, and, as part of that, the necessary equipment in motors to pursue traces of the criminals making their escape.
4. The well-known and oft-repeated alliance between criminals and corrupt politicians, which controls in part at least, where it does not wholly do so, the police force of our large cities, might well be taken as a primary cause of inefficiency, since it rules the head and every subordinate and lays a paralyzing hand upon determined action against such major criminals.
5. There are too many duties cast upon each officer and patrolman.

A sixth charge was one of failure to make proper provision for the policing of millions of immigrants and of the influx of large numbers of Negroes to the northern cities.

A study by a group of university professors appended to the report, however, included the following paragraph:

> According to the theorists, if the police wished, they could easily stop bootlegging, gambling, and prostitution. But is this true? How does it happen that repressive moral legislation is unenforceable where education has not preceded the legal enactment, regardless of the country in which this repressive legislation has been initiated? Severe penalties may be imposed for peddling opium in China, but opium continues to be peddled. Do the famous English bobbies cope with minor gambling regulations in London? Has the repression of prostitution succeeded in those communities where the police are not supported by a strong public sentiment?

Under the police chief or commissioner are captains, lieutenants, sergeants, and patrolmen. Captains are in charge of stations; lieutenants usually head divisions or bureaus. Sergeants command details or do clerical work. The desk sergeant is a "straw boss" who supervises the switchboard and directs the work of patrolmen. Most police systems are under civil service except for their executive heads, and appointments and promotions are made by those heads from civil service lists made up following examinations. To discharge a member of the department, charges must be presented to the civil service commission. Anyone suspended, otherwise disciplined, or nursing any grievance can make a complaint to the commission.

The ideal is supposed to be one policeman for every two hundred in population, but few departments come anywhere near that ratio. One to 700 or 1,000 is considered good, but if only those on duty at any one time are counted the proportion is much less.

The modern policeman. No matter how he may get his job or his assignment or promotion, the modern patrolman is less of a flatfoot than formerly. It takes five pages the approximate size of this book to list, in double row, the "instructional units" that are taught in the training program operated by the Federal Bureau of Investigation, which, since 1935, has been conducting the National Police Academy for state and local police. The headings of a suggested minimum basic course for police officers, to be found in *Training for the Police Service*, an Office of Education pamphlet, show how extensive and intricate the knowledge required of modern law-enforcement officers is: operation of police department; departmental rules and regulations; local ordinances; local geography; care of equipment; records and reports; self-protection; first aid; public relations; patroling a beat; duties of a patrolman; transportation of

prisoners; property protection; miscellaneous duties; investigation; identification; misdemeanors; arrest, search, seizure, and prosecution; collection and preservation of evidence; communications facilities; police strategy and tactics; catastrophes; missing persons; personal property; crime prevention; court procedure; presentation of evidence; accidents; fires and co-operative relationships with other law-enforcement agencies.

It is not to be supposed that all, or even an appreciable proportion of the approximately 250,000 persons engaged in normal peace times in law-enforcement work, have taken classroom or any kind of training other than that which practical experience provides in all these phases of police work. Nor have we reached the day when a majority of newspapermen have attended a school of journalism. There is no doubt, however, that in this, as in scores of other fields in which unskilled labor formerly was thought enough, the necessity for education and specialization is rapidly being recognized. The modern policeman's job is so important that a lowbrow, cursing, discourteous, if not sadistic, bruiser is no longer qualified.

The G-Men. Already in the United States we have one group of law-enforcement agents for which the qualifications are extremely high. They are the members of the Federal Bureau of Investigation —the famous G-men who are mostly if not all college graduates, who have passed the most rigid tests of their intelligence, knowledge, character, and physical condition. This federal police branch, like the federal courts, has yet to feel the slightest breath of scandal. Its head for more than twenty years has been J. Edgar Hoover, who expresses eighteenth century ideas of criminology and penology in his popular lectures before ladies' groups, but who knows how to catch crooks, more and more before they have had a chance to enact their conspiracies. During the kidnaping era, the G-men were often criticized because of their "shoot to kill" rule, which endangered the lives of bystanders and took the lives of fugitives from justice who might have been taken alive and compelled to "sing." Peacetime sins were forgotten, however, when after Pearl Harbor it became increasingly evident that the FBI had done an almost 100-per-cent job of spotting potential saboteurs and spies before they went into operation.

It was the FBI also which instituted the first nationwide system of crime reporting, to make possible some crime statistics on which reliance can be placed and which showed the way to what scientific crime detection can do. Champions of civil liberties, who for years were uneasy lest the FBI become an American Ogpu, now voluntarily contribute their fingerprints to the civilian files of the FBI in Washington and wish that strike-breaking and third-degree

specializing local police were capable of a modicum of the high calibered performance for which the federal men are famous. Local police authorities also are not so antagonistic as they were formerly to J. Edgar Hoover and his men, who handled many early cases in a high-minded manner, generally ignoring city and state enforcement agents, sometimes to their regret, for lack of knowledge of local conditions proved a disadvantage to them.

The publicity-seeking period of the G-men seems over. Hoover no longer pops off publicly against newspapermen for tipping his hand on important cases, and he is more co-operative with the press. Indication of how ironclad is the evidence presented by FBI men is the 96-per-cent convictions obtained in the courts during 1941 in cases investigated by G-men. The opposition of "states-rights" to federal "usurpation" of police work crumbles before such figures, as has Congress before public opinion in extending the range of activities of the FBI by new laws making federal offenses out of crimes over which the states formerly had jurisdiction. New Deal measures passed in the one year, 1934, extended the powers of the Department of Justice to include the following:

Make it a federal crime punishable by up to $5,000 fine and five years imprisonment to flee across state lines to escape prosecution or avoid giving testimony in criminal cases.

Permit two or more states to enter into compacts for close co-operation of their enforcement agencies in pursuing criminals.

Make it a federal crime subject to punishment of up to $5,000 fine and three years' imprisonment to assault or resist federal officers while they are on duty, and providing $10,000 and ten years for assault with a dangerous weapon.

Permit juries to bring in the death penalty in kidnaping cases unless the victim has been returned unharmed, and further strengthen the so-called Lindbergh Anti-Kidnaping Act by making seven days' absence of the victim presumption, but not conclusive evidence, of his transportation in interstate commerce, and providing equal punishment of two or more conspirators.

Make it a federal crime to send ransom notes or other threats or demands in any manner across state lines.

Make it a crime subject to a maximum penalty of $5,000 fine and twenty years' imprisonment to rob a bank in any way nationally affiliated, with punishment boosted to $10,000 and twenty-five years if a dangerous weapon is used in the attempt, and the death penalty if anyone is killed.

Punish as a federal crime with ten years' maximum imprisonment anyone who helps in a federal prison escape, inciting a riot, or smuggling contraband into such institutions.

Broaden the law punishing interstate transportation of stolen automobiles to include money, securities, and merchandise of $5,000 or more value, with a $10,000 fine or ten-year jail term penalty, applying also to "fences" for such property.

Permit the bringing in of a new indictment in the next term of court while the grand jury is sitting when the previous indictment is found defective, regardless of expiration of the statute of limitations.

Authorize the attorney general to spend up to $25,000 for one or more rewards

for the capture of criminals wanted by the federal department, and an equal sum for rewards for information leading to conviction of criminals.

Some of the acts of that and other recent years are the following: Federal Extortion Act; Federal Bank Robbery Act; National Stolen Property Act; Federal Fugitive Felon Act; National Bankruptcy Act; Federal Anti-Kidnaping Act. Other congressional acts giving the FBI authority over white slavery (Mann Act), stolen automobiles (Dyer Act), thefts from interstate commerce, and national federal reserve member banks were passed during the present century, indicating the trend in this, as in most other fields, toward greater responsibility and authority for the federal government.

Police history. Long as the way ahead still seems as regards local police, phenomenal progress has been made. After all, it was not until 1844 that the first "day and night police" were organized by New York law. The watch (nighttime) and ward (daytime) societies, which date from 1699 in Massachusetts, were peopled by unpaid volunteers and they engaged in strictly protective rather than preventive activities. Even the highly respected London "bobbies" date only from 1829, when Sir Robert Peel pushed through Parliament the first law establishing a real police department. Today, the bobbies, who get their nickname from their legislative sponsor, can go unarmed and efficiently perform their duties by use of courage, tact, patience, modesty, and other manly virtues.

In the United States we still scare children into good behavior by threatening to call the policeman, whom altogether too many people regard as a public enemy, not a friend. In Chicago the criminal delinquency area studies revealed that a large proportion of the city's police come from the same neighborhoods, if not the same homes, as its leading lawbreakers. The scientifically selected and trained policeman will receive greater respect and confidence as he deserves it. But he will not function with real efficiency until there is widespread popular desire and expectation that he will refuse the five spot that the wealthy speeder hands him to overlook his offense. In other words, the most highly ethical police department can never be expected to subdue a lawless-minded populace. As explained in Chapter 13, crime is more and more coming to be considered a cultural phenomenon, and at any time the people will get the kind of law enforcement that they want and deserve.

Sheriffs and others. In addition to city police and FBI agents, we have sheriffs, constables, United States marshals, secret service men, post-office inspectors, state police, and other operatives with law-enforcement powers. Sometimes, unfortunately, they get in each other's way.

The office of *sheriff*—most familiar of those mentioned to the

newspaper reporter—is of ancient origin, dating from about the time of the Norman Conquest. The word derives from "shire," meaning "county," and "reve," meaning "keeper." That is what the sheriff traditionally is—keeper of the county—and in American pioneer days he was the strong man who fought rustlers and bank robbers, to establish law and order in rough communities. In those days he possessed almost as much authority and commanded about as much respect as the feudal English sheriffs, who were sent down by the king to preserve order in the hinterland.

Ownership of land is no longer a requirement for a person to occupy the position of sheriff, but the practice of not permitting a sheriff to succeed himself in office is a heritage of the distant past. Because of the enormous power the sheriff possessed, it was thought best, when the office became elective in the fifteenth or sixteenth century, to rotate it. The practice was perpetuated by the American colonists, and it prevails in many states today. What sometimes happens is that two men form a political team. One runs for sheriff and, when elected, appoints the other his deputy. At the end of the term —two or four years usually—the deputy is a candidate to succeed his boss and, if elected, appoints the retiring sheriff to be deputy. The arrangement can continue as long as the voters are willing.

Since county government is a branch of state government, the sheriff's duties are to enforce state laws. Most modern sheriffs, however, have little to do as police officers any more, especially in populated urban areas. In many places, the office could easily be abolished or at least stripped of its police functions, which are handled by city policemen within the corporate limits and by state police in the rural areas. Sheriffs today spend most of their time keeping jails and other county institutions, supervising janitorial and repair work in public buildings, and serving and executing court processes. If the office of sheriff were abolished, those activities could be taken over without much inconvenience by other departments of county government.

Some of the newsworthy activities of the sheriff's office are reported in the following news items:

The sheriff's office is starting a drive to reduce the speed of large busses and trucks throughout the county, it was revealed Monday night at a meeting of the county safety council in the courthouse.

Sheriff Peter Young explained to the group the high speed of the busses on county highways, and suggested that the safety council contact the state highway division to request larger stop signs to be placed at various intersections throughout the county.

Judge Andrew Hoskins, principal speaker of the evening, pointed out that greater care must be taken by drivers to comply with the state law respecting the traversing of intersections. The law requires that the speed of a vehicle shall

not be greater than that which will permit the operator to stop within half the distance within which he is able to see approaching traffic, the judge said. The law applies to both city and country driving.

Steadfastly denying that he had violated the law in any way, Dr. Theodore Gavin, freed from prison a year ago after he had served eight years for manslaughter by abortion, today surrendered at the sheriff's office to answer a charge of practicing medicine without a license.

Dr. Gavin was accompanied by his attorney, Martin Levin, who is also representing him in his attempt before the Board of Registration and Education to obtain a renewal of his license to practice. Gavin was released in $500 cash bail by County Judge Edward Jett and the hearing set for June 1.

Dr. Gavin was arrested on a capias issued by the County court on Saturday on an information filed by a state inspector, who based his request on allegations made by two reporters for a morning newspaper that Gavin was practicing medicine without a license.

Lieut. Thomas "Red" Booth, the former major league umpire who is now a one-man morals squad on the County Highway police force, recognized a familiar torso as he entered the Gilded Cage Tavern in Calumet City over the week end.

The recognition turned out to be mutual, and the owner of the torso, Jean Fitzgerald, 21, of 1896 Winchester street, fled for her dressing room, clad in her evening slippers and very little else.

Booth followed and, sure enough, it was the same girl he had arrested in Centerville a few weeks before on a charge of giving an indecent performance. He took her into custody again, and for good measure arrested Harrison White, 30, producer of the show, and Harvey Jeser, 50, a bartender. Jeser was charged with selling drinks to minors.

Booth then went to the Club Willow, 189 Northfield avenue, where he arrested Ronald Algren, 54, owner of the place, on a charge of selling drinks to minors.

A squad of sheriff's deputies armed with judgments issued by Circuit and Superior court judges yesterday visited four firms and collected $1,500 in delinquent personal-property taxes.

A second squad visited 11 firms, found that seven had gone out of business, and received promises of payment from the other four.

Constables are township law-enforcement officers and operate out of the offices of justices of the peace. Unless the township conducts a speed trap for tourists, the constable has little arresting to do. He spends most of his time running errands for the j.p. and delivering legal papers. He may also act as game warden.

U. S. marshals operate in connection with U. S. district attorneys and make arrests for violations of federal law. Most such arrests, however, are made by FBI agents, post-office inspectors, secret service men, and local police, leaving the marshal as a custodian of prisoners of the federal court awaiting trial and as a process server.

Not all states have recognized the need of *state police,* and there has been considerable opposition in the past, mostly from labor and liberal groups, against their establishment for fear they would be

used as strike-breakers and to break up unpopular gatherings. There is no doubt that federal and state law-enforcement offices are steadily increasing in size, authority, and prestige at the expense of county, township, and city offices.

Reporting Crime News

The scope of the news that the police reporter handles was suggested by the discussion of police books and departmental organization. Unless the newsgatherer considers himself a sleuth, there is nothing recondite about his job. It is mostly straight reporting and writing, with a liberal amount of human interest raw material available constantly. It is mostly routine rather than exciting romantic adventure. The ethics of crime news handling has been discussed by innumerable critics—friendly and otherwise—of the press. This writer had his say in *Newsroom Problems and Policies.*

First stories. The police are the first to learn about almost anything unusual—not only lawbreaking. For some time, the Chicago *Daily News* ran a daily column of short items under the heading, "What the Desk Sergeant Hears." The following is only part of one day's column—enough to indicate the variety of copy from this source:

Englewood—"Hey, bud, you goin' to the stag?" muttered the stranger in the saloon. Aha! exclaimed Detective Edward Crowley to himself. "What stag?" he asked slyly. And that, he explains, is how he happened to attend the annual meeting of the "Western Football association" in a hall at 812 West 59th street last evening. The flimsily-clad dancing girls could by no stretch of the imagination be construed as football players, so the 135 patrons, the performers, and management were chauffeured to the station in eight patrol wagons. All except a woman and three men were later released.

Chicago Lawn—Charles Jensen is dead today because of a faulty knot. He was painting yesterday at the American Can company building, 6017 South Western avenue, when a knot in the rope supporting the scaffold on which he was standing slipped, plummeting him four stories to his death, according to Desk Sergeant Mike Nevell. Jensen was 45 years old and lived at 6148 Greenwood avenue.

Kensington—Rifling the automatic coin devices on washing machines was a pushover for Joseph Brennan, 27, of 907 East 71st street, because he used to work for a firm that makes them. But he and two companions, who confessed last night to robbing three of the machines in South Side basements, are occupying a cell today. This time it's no pushover, says Desk Sergeant Frank Prekwas.

Shakespeare—Search for a woman and a 5-year-old child was being pressed today by the police under the direction of Lt. James O'Brien, it was learned from Desk Sergeant John Fallon. The woman, Mrs. Agnes Jakubczky, 50, of 2524 Cortland street, disappeared Monday afternoon with Janet Kolbin of 1217 North Claremont avenue, whom she had been tending during the daytime for the child's mother, Mrs. Anna Kolbin, 37, a widow and the mother of three other children.

Central—Like the cornered rat, a bandit last night scurried, despite a wooden leg, to find a hole in which to dive in the second basement of the Palmer House, but there was none. And a bullet from the gun of Serg. Edward O'Malley that grazed his head persuaded him to cool down quickly. The bandit, Jerry Malek, 20, of 2827 South Harding avenue, had fled to the basement after losing his nerve in an attempted holdup of two women employees in the hotel lobby. He was hunted by more than a score of policemen dispatched by Desk Sergeant Stephen Naughton.

Jefferson Park—Burglars even took the rugs off the floor when they ransacked the home of Mrs. Blanche Engel, at 3621 North Lamon avenue last night. The rugs and other furnishings taken were worth $165, she told Desk Sergeant Matt Hayes.

All Stations—Double trouble was the reason for the glum expressions today of the Negroes who operate "jitney" taxi service on South Side boulevards. Till now, when they made numerous stops to pick up extra passengers, they violated but one city ordinance. From here on it'll be two. City officials have decided to charge them with reckless driving.

—Chicago (Ill.) *Daily News.*

These items were based mostly on complaints, routine entries in police books, and reports to policemen. None of the cases could be considered closed or even far advanced. The following is a typical restrained story of sufficient importance to merit separate rather than column treatment:

Seven-year-old Janette Knight awakened to an unusual quiet in her home at 891 South Linden avenue this morning. Her calls to her mother and father went unanswered. Getting out of bed she went to look through the other rooms until she got to the kitchen door. On it was pinned a note in her father's handwriting. It read: "Children: Don't open the door. Call the police."

Paying no heed to the note, Janette pushed open the door and found her father, William Knight, 45, lying on the floor beside the gas range. Gas was escaping from two open burners.

After opening the kitchen window, Janette telephoned the fire department; then, sobbing, returned to the bedroom, where her sister, Margaret, 4, still slept, to await the firemen.

Firemen were unable to revive Knight. They noted the precautions he had taken against the deadly fumes seeping into the other rooms and endangering the children. He had stuffed the door cracks with newspapers and placed a rug at the bottom.

In the meantime police who had been notified by the firemen made a search of the neighborhood and found Mrs. Ruth Knight, 35, at the home of a neighbor, where she had spent the night. She said she had quarreled with her husband because he had been drinking, and, after the children had gone to bed, left the house, intending to return this morning. She said her husband had threatened suicide before when drinking.

Knight was employed as a railroad ticket agent.

Usually the reporter must have his information faster than he would receive it if he were to wait for it to appear in any of the record books previously described. His best sources are the *Investi-*

INVESTIGATING OFFICER'S OFFENSE REPORT

Date of This Report: 3/18/45
Cent. Compl. Room Number: 2412
Offense: Burglary
Station Compl. Number: 7189
Originally Reported as: Burglary
Message No.: 61234
Complainant: John Doe
Dist. Reporting: 35th
Address: Oak & Polk Streets
Phone No.: Del. 5050
Name of Firm or Business: Kirkwood Smelting Company
Address: 554 Hazel Street
Phone No.:
Date and Time of Occurrence: 3/6 4:15 p. m.
Was Warrant Issued: Yes / No
Place of Occurrence: Apartment
Between What Streets:
Reported by: John Doe
Date: 3/18/45
Address: Oak & Polk Streets
Time: 2:00 p. m.
Reported to: Det's John O'Mara & Hugh Glutz
Color and Number of Offenders
No. Male | No. Female | Nationality | Vehicle Used
Witnesses
Nature of Location Where Occurred
Residence? Yes. | Flat? Yes. | What Floor? 3rd. | If Store, Kind?
Tools or Weapon Used: Pass key.
How Victimized or Injured:
Object of Offender: Burglary.

HOW REPORTED	
In Person	
By Telephone	X
By Police Officer	
Arrest on View or Warrant	

Trademark
Property Insured? Yes. By Whom? Plymouth Insurance Co.
Description of Property Lost and Value
Details of Offense Committed
If Not Bona-Fide Give Reasons Why
If warrant case give name of defendant and address
For This Information Use the Other Side
Reporting Officer | Star No. | Dist.

THIS REPORT MUST BE GIVEN TO THE CAPTAIN'S SECRETARY

Form U F 53 50M 53

gating Officer's Offense Report and the *Arrest Slip.* Whenever a complaint is received at central headquarters or a branch station, an investigation is made. Central headquarters keeps in touch with touring squad cars by two-way radio, so it may be only a matter of seconds before the police are on their way to the scene of a complaint. The investigation completed, the police are required to make a written report on a printed form. The form on page 483 is a typical sample.

On the blank reverse side will be given a brief statement, such as "Complainant states that on Mar. 1, between the hours of 10 A.M. and 4:15 P.M., some unknown person or persons used a pass key and gained entrance to apartment on third floor, taking the following articles: 1 mink coat—$2,000; 1 silver fox chubby—$500; 1 silver service set—$300; 1 radio—$250; total value—$3,050." These are the essentials needed for a routine brief item: time, place, means of entry, nature and value of whatever is taken. If more information is wanted, the reporter may obtain it by interviewing the policemen, principals, and witnesses if he can find them.

The Arrest Slip is shown on page 485 and its reverse is shown on page 486.

Arrests. To understand a great deal of police activity, the reporter must know something about the law of arrests. A basic principle is that under certain circumstances any citizen—not merely a police officer—can make an arrest. In some states, this privilege extends only to felonies committed in the citizens' presence. In others it is extended to include petty larceny, breaches of the peace, and similar offenses, still in his presence. In nearly half the states, a private citizen can make an arrest for any offense that is committed in his presence.

Such arrests, whether by private citizens or police, are arrests *on view,* by contrast with arrests on *warrants.* The term presence requires explanation. As developed at law, the rule is: when made known to the arrester at the time by any of his senses, which means that it is not necessary to see the crime or even to hear it. There must, however, be reasonable ground for suspicion, and it is held that the statement of a third party is usually sufficient for that purpose. Thus, if someone runs out of a house yelling "murder," any person can arrest someone else who appears with a smoking gun in his hands.

The right to arrest for an offense committed outside the presence usually is limited to felonies. To arrest a person, it is not necessary to touch him, but the person must know that he is being arrested—which means made a prisoner for the purpose of being taken to a lockup or court. Merely asking a witness not to leave for a short

Form UF 47 300M
PD x 26

Dist. or
Bur. _____

ARREST SLIP

Full Name and
Middle Initial

Alias in Full

Address of Arrestee

Male ☐ Age in Nativity Occupation Married ☐
Female ☐ Years ..... Single ☐

Weight in Pounds ..... | Height ft. ____ in. ____ | Build of Body: Slender ☐ Medium ☐ Stout ☐ | Complexion: Light ☐ Ruddy ☐ Dark ☐

Color of Eyes: Black ☐ Blue ☐ Brown ☐ Gray ☐ | Color of Hair: Black ☐ Red ☐ Blonde ☐ Brown ☐ Gray ☐ White ☐

Marks
Deformities
Amputations, Etc.

Complainant's
Name

Address of
Complainant

Arresting
Officers

Charges
Preferred

Date of
Arrest

Time of
Arrest ..... A. M.
..... P. M.

Address of
Arrest

Why
Arrested

Court
Branch

Immediate Booking: Yes ☐ No ☐

Send to B. of I.: Yes ☐ No ☐

Book Prisoner When
Returned from B. of I.

Record at B. of I.: Yes ☐ No ☐

Wanted: Yes ☐ No ☐

Bur. of I.
Number

Held or Booked
at Other District

Crime Cleaned up: Yes ☐ No ☐

Dist. or
Bur.

Crime or Sta.
Comp. No.

SEE REVERSE SIDE FOR PRISONERS HELD OPEN

Place of Arrest _____

If Speeding _____ **Miles per hour** _____

Pickup Ordinary _____ **Pickup Felony or Misdemeanor** _____

If not booked at once or when returned from B. of I., state offense held for

_____

Complainant's name _____

Address _____

Date of Commission _____

Court Branch when booked _____ **Date** _____

If to be held after return from B. of I., state reason _____

_____

Brief facts concerning arrest _____

_____

period does not constitute arrest, nor does brief questioning or stopping someone to demand an identification, such as an automobile or drivers' licence card.

Raymond S. McKeough, regional OPA administrator, said today that week-end holiday motorists confronted by OPA investigators can stand on their "constitutional rights and refuse to answer questions which might incriminate them."

Despite the avowed intention of his office to proceed with the week-end gas ration enforcement drive, McKeough explained that motorists cannot be compelled to produce their ration books for examination without a proper warrant.

However, McKeough warned, investigators might find sufficient evidence of violation even if a motorist fails to supply the information requested. In such cases, he added, the motorist will be cited to his home board or in the district or area where the violation occurred.

—Chicago (Ill.) *Times.*

For an arrest to be legal, it usually is necessary to inform the person being arrested of what is happening to him, but in an emergency even that formality can be waived, especially if to do so would be dangerous to the arrester. The words "Come with me" may be sufficient. The formal procedure is to declare: "In the name of the state of Maine, I arrest you on a charge of robbery."

A *warrant of arrest* is a written order issued by a judge or some other official with authority, ordering the police officer or other person to whom it is directed to arrest the person named in it. The

Fourth Amendment to the Constitution includes the statement: "no warrants shall issue but upon probable cause, supported by oath or affirmation," meaning that anyone who wants another arrested must "swear out" a complaint and the judge must be satisfied that the "information," as it frequently is called, is requested upon reasonable grounds. A typical complaint appears on page 488.

Warrants are *executed* by police officers, not *served,* as are subpoenas. They differ also from *summonses,* which many places substitute for warrants in traffic violation cases. When such a system prevails, the summons probably will contain the warning that failure to answer it will lead to a warrant of arrest.

Declaring that it was his belief that his 17-year-old daughter was "dead or kidnaped," a father appeared in South State Street court today and obtained a warrant for the arrest of a 45-year-old man, a friend of the family, whom he blamed for the girl's disappearance.

The father, Arthur Hanson of 180 North Troop avenue, told Judge Oscar Weiboldt that his daughter, Ruth, disappeared last Tuesday night.

An arresting officer must have the warrant in his possession unless there is a statute making that unnecessary. Because so many complications arise in interpreting what constitutes possession when two or more policemen are working on the same case, and because the requirement might make it impossible for an officer to make a legal arrest when off duty or temporarily out of possession of the warrant, the Interstate Commission on Crime has eliminated the requirement from its model arrest law. The public good is served by making it possible for any law-enforcement officer asked to be on the lookout for a fugitive to arrest him without the danger of the arrest's being illegal because he didn't have a piece of paper in his pocket. Courts have been liberal in interpreting the rule, holding that someone actually hunting for the person named must be in possession of the warrant. Even this view, however, makes illegal any arrest made when the warrant happens to be reposing in police headquarters.

The arresting officer does not have to show the warrant to the person being arrested, but he must produce it if the accused person requests that he do so. General warrants which do not name specific persons and blank warrants, presumably to be filled in later, are illegal. John Doe warrants are void unless they cover cases in which the person wanted is known by sight but not by name. The warrant must read: "John Doe, whose other or true name is unknown."

Two warrants charging John R. Smith, an attorney, with embezzlement, were issued by Judge Charles Nelson in Felony court at the request of Dr. William Cohen, 102 East 41st street. Dr. Cohen told assistant state's attorneys that last

CRIMINAL COMPLAINT.

STATE OF WISCONSIN, MILWAUKEE COUNTY } ss. In the District Court of the County of Milwaukee.

THE STATE OF WISCONSIN,
Plaintiff,

AGAINST

Defendant

being first duly sworn, on oath, complains to the District Court of the County of Milwaukee, that on the day of A. D 19 , in the County of Milwaukee, Wisconsin, was then and there the clerk, servant, agent and employee of and he, the said not being then and there an apprentice nor a person under the age of sixteen years, did then and there, by virtue of his said employment and whilst he was so employed have the care, custody and possession of a certain sum of money, to-wit the sum of Dollars, of the value of Dollars, of the moneys of said and the said moneys did then and there and whilst he was so employed as aforesaid, unlawfully and feloniously embezzle and fraudulently convert to his own use, without the consent of his said employer, contrary to the statute in such case made and provided, and against the peace and dignity of the State of Wisconsin, and prays that the said may be arrested and dealt with according to law.

Subscribed and sworn to before me this day of A. D. 19 }

Clerk of the District Court.

August he gave Smith $25,000 to buy stock in a building corporation; that Smith bought the stock, and then pledged it at a bank for security for a loan. Smith said he and Cohen were partners, which Cohen denied. He will be arraigned today. Involuntary bankruptcy proceedings were filed against Smith ten days ago in federal district court after he had been reported missing.

A *search warrant* is good for only one search of the premises mentioned, and is issued only upon oath or affirmation and "particularly describing the place to be searched and the persons or things to be seized," to quote the Fourth Amendment again. Search warrants expire at the end of a specific time—usually not more than five days. Police are authorized to break into a building in order to execute a search warrant, but some states limit their use in daytime and forbid their execution on Sundays, except, perhaps, in cases of felonies. The same time restrictions may also apply to warrants of arrest.

Taking cognizance of the ease with which modern criminals can cross county and state lines, fugitive arrest laws are being amended to permit *fresh pursuit* beyond the *bailiwick* (geographical area of jurisdiction) of the pursuing law-enforcement officer. Fresh pursuit means pursuit that is a continuation of that begun within the pursuing officer's bailiwick. It is not legal for a policeman to go outside his limits to begin a search that may lead to a pursuit. If a fugitive leaves a jurisdiction but is still within the same state, a *fugitive warrant* may be issued by a court directed to sheriffs or police anywhere in the state. If the fugitive crosses state lines, extradition proceedings, to be described in Chapter 16, are necessary unless there has been fresh pursuit.

An arresting officer can search his prisoner and can take away any weapons, incriminating evidence, or other articles that he considers it dangerous to leave in the prisoner's possession. He can *frisk* a prisoner, which means that he can run his hands over his prisoner's clothing to determine whether he has any such articles concealed on his person. This right to search or frisk extends to articles "about" the prisoner—such as his overcoat, luggage, or automobile. The arresting officer can also handcuff his prisoner to protect himself and to prevent escape. In no case, however, can he use unreasonable force or violence. If the person whom he is attempting to arrest is suspected of having committed a felony, the policeman can injure or even kill him to prevent his escape. If the crime involved is a misdemeanor, he cannot do so except in self-defense.

Few arrests are made for crimes committed in the presence of the arresting officers. Many, however, are made without warrants when a policeman has reasonable grounds to believe that an offense has been committed and that the person arrested was implicated.

The president and ex-convict business agent of the painters' union, local 12, were arrested yesterday afternoon by Serg. George Ramsey of the police labor detail for questioning about the slugging Friday night of Edward Bowles, 40 years old, leader in a reform movement of the union.

Bowles, who last week carried his fight to the floor of the union's international convention in New York, was called to the door of his apartment at 13 Lawndale, by two men in overalls. One of them asked: "Edward, is there anything we can do for you?"

The other man then clubbed Bowles and he was still in the County hospital yesterday.

Those arrested are Raymond Watrous, 39, of 13 Madison street, president, and Lawrence Crawford, 57, of 139 Lawrence avenue, business agent of the union. Crawford, according to police records, has served five penitentiary terms for robbery and assault.

The circumstances leading up to the calling of the police often make interesting news items, as in the following cases:

Frank Powell, 20 years old, of 2400 South Wilmette avenue, is 5 feet 7 inches tall, weighs 150 pounds, and wears glasses.

At Wood and Forest avenues he saw two men attempting to drag a girl into an alley. He ran over, slugged it out with the men, enabling the girl to get away. Then a third man stepped up and poked a gun against Powell's ribs. Powell knocked him down, and took the gun away. The three hoodlums fled.

Powell told his story to Lieut. Wayne Anderson of the Michigan avenue station and the lieutenant sent Policemen William Lurie and Robert Albig out with him to find the trio. Back in the same neighborhood, Powell pointed out two of the suspects, John Anorelli, 18, of 1600 West Oak avenue, and Henry Rhoades, 19, of 150 California avenue.

As Policeman Lurie stepped out of the squad car, Rhoades drew a gun, but Lurie knocked him down and disarmed him. Anorelli also was carrying a gun. Both men were arrested and a search was started for the third man.

Kingfish Levinsky, Chicago's fabled pug who legend says once fought half a prize fight with the left shoe on the right foot and vice versa, hasn't improved his footwork since he retired from the ring, police testified today.

Called to break up a noisy crap game in front of a saloon at 1390 West Edwards street, early yesterday, Detectives John Stuart and Theodore Fisher saw seven men scatter in all directions. But one man remained—the Kingfish.

"I was just a spectator," Levinsky explained today to Judge Gibson E. Gorman in Racket court, where he was charged with disorderly conduct. Judge Gorman commented that Levinsky looked a bit punchy and told him to go home.

The circumstances occasioning the issuance of a warrant also may be the feature. The extent to which newspapermen supplement the work of detectives is often exaggerated, but the following example illustrates a fairly common way in which they do co-operate, sometimes forcing the hands of law-enforcement agents:

Dr. Amante Rongetti, abortionist and ex-convict, was ordered arrested yesterday afternoon on charges of practicing medicine without a license.

A writ to take the 61-year-old physician into custody was issued by Judge Don Scott, sitting in County court. In an information filed by the state's attor-

ney's office in behalf of the state department of registration and education, it was revealed that Rongetti is in business at 2900 West Van Buren street in a completely equipped medical office above his brother's drug store.

A sheriff's deputy sent to serve the writ on Dr. Rongetti failed last night to find the physician either at his office or his home.

It was partly through evidence collected by two reporters of the Chicago Sun that action against Rongetti was taken. Only a year ago the doctor was released from Stateville penitentiary after serving more than eight years of a one-to-14-year sentence for manslaughter. He was convicted on charges growing out of the death by abortion of a 19-year-old girl.

The Sun reporters, representing themselves as husband and wife, visited Rongetti's Van Buren street office twice in the last week. They learned, among other things, that the doctor has regular office hours during which he sees patients, that his office is equipped for the practice of medicine, and that he advertises himself in the classified telephone directory under physicians and surgeons.

—Chicago (Ill.) *Sun.*

When the grand jury returns an indictment, the judge in whose court it is received issues a *bench warrant* (*capias*) for the arrest of the person or persons named in it.

Donald Gibson, 34, who did a land-office crime business in East Chicago, Ind., in 1939 and 1940, has been arrested in Detroit on a federal auto-theft indictment returned at Fort Wayne, Ind., Feb. 15, 1940, the Federal Bureau of Investigation announced today.

Wanted by the East Chicago police on charges of kidnaping and robbing three persons Aug. 20, 1938, Gibson was implicated by a companion, who was captured and confessed. But this crime, in which the pair took $30 from Mr. and Mrs. William Perry of Gary before releasing them in Calumet City, did not end his trail of stick-ups in the Indiana town. He is wanted there for ten subsequent jobs, most of them filling station holdups.

Raids. For the arrests to be legal, police making raids must have search warrants. Often they don't, and when they reach court the cases are dismissed upon a *motion to suppress* the evidence. Such raids have nuisance value, however, and cause prostitutes, bookies, and others to "move on" for fear the police will return with the proper papers. "Good" people often are satisfied if they know raids are taking place—unless or until they happen to look up the court records to learn what a small proportion of them result in convictions.

The door breaking, window smashing tactics of Centerville police squads assigned to raid bookies and other types of gambling houses were criticized yesterday by Judge Franklin Percy of the Rackets court. In a lengthy written statement issued from the bench, he demanded a more restrained campaign against gamblers, which he said would result in an immediate increase in convictions.

Charging that the police are fully aware that evidence obtained by breaking into an establishment illegally without a search warrant is worthless in court,

Judge Percy said that he was amazed by the attitude taken by many policemen regarding gambling.

"It seems that many officers believe or were led to believe that their responsibility and duty were completed upon the making of an arrest," Judge Percy said. "There is an astounding lack of interest on the part of police officers as to whether a conviction is obtained in their cases."

To impress law officers with the necessity of obtaining evidence and making arrests in a proper manner, Judge Percy, upon taking over the Rackets court, issued an order denying the police leave to file cases for trial in which there had been a forcible entry without a warrant. Leave to file was denied in 270 instances during the 20 court days of November, the judge declared.

"Despite this, there were more gambling convictions during the month in my court than in any other month in the history of the court," he said. "I had 122 convictions, with fines totalling $2,155 and costs amounting to $1,035. There were only 54 dismissals.

Raids are most frequent when city and county officials are of different political parties or where there is friction between the prosecuting attorney and police. In such cases, it is common to have charges and countercharges regarding laxity in enforcing the law. County officials will assert that city authorities are negligent, and city officials will counter with lists of places that county authorities allegedly disregard.

Raids on three city handbooks quickly followed a meeting of police captains yesterday in which Commissioner Oscar Drake warned that the district commanders would have to stamp out gambling or face the consequences.

Two men were arrested and 165 patrons were dispersed in the raids which were led by Capt. Gordon Schwartz of the central station.

Drake told the captains that the city administration is opposed to gambling and wants it stopped.

End to Gaming Ordered

"It's up to you to see that there is no gambling in your districts," Drake said. "If there is any, stamp it out. If you fail to do so, you'll have to answer to me."

The state's attorney's office charged last week that several handbooks were running without molestation by police. At the time, Drake issued a denial that handbooks were operating anywhere locally.

Following a conference with Drake, Capt. Schwartz led a squad of police to the third floor at 5300 Michigan avenue, where he arrested three men who had been seized earlier in the week on the second floor at the same address.

Sometimes newspaper reporters go along on raids, mostly for the lark or to pick up feature angles.

Striking a paralyzing blow at horse-race betting, police late yesterday raided and dismantled one of the principal "nerve centers" of Centerville's bookies.

While the raiders were smashing down the door of a suite at 163 Linden street, the operators fled without even time to turn off the loud-speakers blaring out the race results, or to disconnect their elaborate hookup of telephones.

A list of 1,500 names and addresses in Centerville's suburban area, believed to be those of handbook clients of the "nerve center," was found in the place, and Capt. Gordon Schwartz, who led the raiders, said that 1,000 handbooks in

New York, Cleveland, Detroit, Chicago and Boston were served by the establishment.

Capt. Schwartz discovered 15 phones connected by homemade wiring from Room 280 in the building to Rooms 350, 540, 530, and 310.

The place did not take bets directly, but apparently took layoff bets, Capt. Schwartz said—that is, bets taken by small bookmakers, who, fearing their own ability to pay, passed them on to the larger outfits.

While the police were in the place, one of the phones rang, and Detective William Hanson answered it: "This is 61," said a voice. "Can you take $600 on Prince Wahoo in the second at Boston?"

"Sure," replied Hanson.

Capt. Schwartz checked later and discovered that the horse had won and paid $12.60 on a $2 bet. He is still chuckling, wondering who had to pay and who got mad.

Check Files

The file containing the 1,500 names and addresses was found beneath a counter. It was taken to the police station, where Capt. Schwartz said all the addresses would be investigated to ascertain whether they were those of handbooks.

Such articles as the following help educate the public as to how organized crookedness operates:

Ever wonder how Chicago bookies manage to establish elaborate telephone "nerve" centers while legitimate enterprises have difficulty getting regular telephone service? The Illinois Bell Telephone company knows the answer.

Inside working of horse parlor operators were exposed today by the telephone company in its Information Bulletin to company supervisors.

"On July 1, certain Chicago newspapers carried stories of a raid on a gambling center as an alleged 'nerve center' of a booking syndicate," the bulletin said. "Photographs accompanying these articles showed about a dozen telephones installed on various desks of the suite of rooms at 416 S. Dearborn.

Use Different Names

All these phones, the company said, had been installed "over a period of two months with several different installers doing the work." Installations had been ordered for different dates and under different names, it was explained.

"It was found upon investigation that all these telephones had been moved by some unauthorized person to the same room, 280," the bulletin added. "These moves have been accomplished by extending, rerouting, and adding more wire. In a few instances the move had been made by using some of our inside cable."

To show how all this had been accomplished, the bulletin then printed the following list of lines involved, subscribers and date of installations: . . .

"We do not want to provide telephone service to any individual or business where it will be used for illegal purposes, such as bookmaking or gambling," the company concluded. "If we have complete evidence that it is to be used in such a manner, the service will not be installed.

"Under state and federal law, however, we must accept all applications for service and, unless we are sure that it is to be used illegally, we must install it."

—Chicago (Ill.) *Times*.

A slot machine which was seized in a raid last Friday and which was found to have been altered with solder so that the jackpot never would disgorge was tested over the week end by Bailiff Oscar Winthrow and some helpers. Winthrow

said yesterday they played the machine 12,000 times, which would have cost $600 if they had been playing with coins. Their tests showed that of that sum the players would have received $100 and the owners of the machine $500.

The machine was seized by police in a tire shop at 1239 North Wilson avenue. The owner of the shop said the machine was put there by representatives of the Standard Gimrick company, 130 Milwaukee avenue. The owners of the company, Wilson Anderson, 45, 190 South 15th street, and Michael Roderer, 40, 109 South 14th street, were charged with possessing gambling apparatus. Judge Arthur Atwill in Racket court yesterday granted their attorney, Oscar Clinton, a continuance until Nov. 1.

Judge Atwill issued a search warrant for the Milwaukee avenue address, and police said twenty other slot machines were found there, with 150 pinball games and hundreds of slot punchboards of the type banned by the police department.

The following items point up some of the difficulties police encounter:

Police Commissioner Oscar Drake says he always investigates a place where the state's attorney says a gambling establishment is being operated.

For example, he said, he sent two men to 1908 Milwaukee avenue on April 20 after the state's attorney's office said a handbook was in operation.

Yesterday, the commissioner said, the state's attorney's office called back with a demand to know what had been done. Drake replied: "Yes, we looked into it. It's a book joint, all right—and a big one—the Centerville Public Library."

A city prosecutor ran afoul of a second mate today in the celebrated "gambling on the high seas" case involving the steamer City of Benton, a moonless moonlight cruise on the lake, 24 slot machines, a "Races-Paces" game, and a "Dominoes" machine. And so the case was wrecked.

Wilfred O'Daniels, second mate, testified before Judge Arthur Atwill in Racket court that the ship was exactly 3.78 miles off Centerville when a police squad aboard made a raid on the machines, and thus was beyond the three-mile limit in which the state and city claimed jurisdiction in law enforcement.

Said Prosecutor A. J. Willis: "How do you know that?"

"By the bearing indicator," replied O'Daniels with a seaman's contempt of a landlubber.

"Nautical terms befuddle me," confessed Willis. "Will the able fisherman enlighten me?"

"Fisherman?" echoed O'Daniels. "I'm an able seaman."

After much more nautical lore about the opening and closing of the river locks, Judge Atwill accepted the second mate's nautical terms and discharged Herbert Fredericks, Charles Schneider, and Kenneth Miller. Willis, using landlubber legal terms, filed notice of appeal.

Charged with having sold at least 5,000 morphine tablets to Negroes, Dr. Alexander White, 54, Negro, of 149 South 19th street, pleaded yesterday for his case to be dismissed on the grounds that he had been entrapped.

His attorney, Anton Abloret, told Federal Judge James Garfield that the government had unfairly hired Negro addicts to make the purchases on which the arrest and indictment were based.

Judge Garfield replied: "A man who preys on his own people in one of the most nefarious and shocking types of traffic, to ruin human lives, is deserving of no consideration by this court!"

The sentence was two years in a federal penitentiary on a charge of violating the Harrison anti-narcotics law.

Efforts by an estranged husband to make a city high school dean of women look like a scarlet woman came to nothing today when Municipal Judge Jacob M. Braude, in effect, threw the case against Janet Freckleton, 36, Lindblom faculty member, out of court.

The judge said he wouldn't say there weren't phases of Mrs. Freckleton's conduct the law would not condone. But the court granted the petition of Attorney Emmett F. Bryne that evidence of a pre-dawn police raid led by William Freckleton, Chicago Vocational school teacher, on his wife's apartment at 11253 Hermosa last Nov. 27 be suppressed. Mrs. Freckleton's resultant arrest was illegal, the judge agreed.

—Chicago (Ill.) *Daily Times.*

When the "heat is on" for police action in relation to a particular crime or situation, there may be a "roundup" of suspects, usually including parolees and others who have been suspected of or charged with that type of offense in the past. It is legal to arrest a number of people if there is reasonable grounds for believing one or more of them to be guilty. Seldom, however, are the "big shots" of organized crime and vice brought in—often because the police don't know who they are any more than does anyone else. *Stool pigeons* (underworld characters who tip off the police as to violations of the law or the whereabouts of suspects) can spot underlings, but rarely get close to the higher-ups. If the practice of coralling ex-convicts and parolees and probationers is extensive, it becomes difficult for the best intentioned former lawbreaker to "go straight."

Searches. There is little resemblance between the way ordinary policemen and detective story heroes operate. Police like to solve cases as efficiently as possible, but they can be as baffled as anyone. Nevertheless, they are inclined to be optimistic in their public statements, if only to curtail public criticism of their apparent shortcomings. If there is a way to "report progress," they will find it.

Police pressed a search yesterday for Dr. Amante Rongetti, abortionist and ex-convict, charged with practicing medicine without a license.

He was not in his office at 2900 West Van Buren street, and members of his family at his home at 4838 Washington boulevard said they did not know his whereabouts.

The doctor apparently fled shortly after a warrant for his arrest was issued by Judge Don Scott sitting in County court. Evidence on which the warrant was issued was obtained partly through the activities of two reporters of the Chicago Sun who learned Rongetti was practicing medicine, although his application for a license had been denied several months ago. A second application is now pending.

—Chicago (Ill.) *Sun.*

Police had a first-class mystery on their hands last night following the discovery of Anton Duffy's bullet-riddled body in the front seat of his car at Wabash and 1st streets early yesterday.

Duffy had been murdered, shot four times. What puzzled police was why.

He had no known gang connections. He had no police record, except that he had been picked up for questioning occasionally since 1932, but he was never charged with anything.

He worked every day or nearly every day at the Quality Piano company, where his wife, Anne, 20, also is employed, and they were pinching to pay for the funeral of a 5-month-old daughter who died five months ago.

Duffy never appeared to have large sums of money.

An insane killer whom she may have recognized was hunted yesterday for the murder of Ruth Swanson, 14-year-old schoolgirl who fell under twenty knife thrusts Saturday in her home at 1667 South 19th street.

Police Chief Thomas Barnes said he has "four or five good leads" to track down the killer.

The girl's body was found at 5 P.M. Saturday on the kitchen floor of her home. It was discovered by her foster father, Patrick O'Brien, 40, a steel worker, for whom she kept house. On the floor beside her were two knives from their pantry—a bread knife and a paring knife with the blade broken.

It was believed by investigators that the intruder had tried to force his attentions on the girl and had become enraged when she resisted him. She apparently had been stabbed six times while trying to protect herself, and then stabbed in the back, while face down on the floor.

Police "dragnets" and traps are reserved for desperadoes, and the everyday newspaper reporter will not be overburdened with that kind of news. Occasionally a novel method of "making a pinch" provides material for a feature, as in the following:

Adopting the classic formula for finding a handbook—watch for a racing publication under the arm and the seat out of his pants and follow him—Acting Capt. William Davidson of the Aurora police raided two bookies yesterday.

At 924 Racine avenue he chased out fifteen persons and arrested Henry Canwild, 44, of 157 North 18th street, and Sidney Thorndyke, 38, of 907 Elm street. At another place, 389 Oak street, he shooed away 20 persons.

"Bookies were hiding their places so well we had to try some new way to find them," Captain Davidson explained. "We tried this. It worked."

Content most of the time to let the police do their work while he does his, the police reporter nevertheless may have an occasional opportunity to do a little sleuthing on his own for good old circulation's sake.

A letter signed "Business men and neighbors" came to the Tribune the other day.

"For three months a gambling house has been operating at 3939 Sheridan road," it read. "It nets thousands of dollars monthly—wheels, dice, and cards. We have written to authorities, but to no avail."

A Tribune reporter was assigned to investigate.

The show windows at 3939 Sheridan held dusty cigarette displays—traditional equipment of gambling houses and bookie joints—but the doors were locked. Apparently those letters to the "authorities" had closed the place.

What a Bartender Knows

The reporter wandered into a near-by bar. The bartender was affable. Sure, he said, there's a gambling spot at 3939. Closed? "It was running wide open two nights ago," he said.

The reporter hurried back to the deserted spot. Still closed. Over a cup of coffee in a lunch counter next door, he asked the waiter a question or two.

"Here's the man you want to see—right here," the waiter said. "Sitting right next to you."

The man was a pale character in a cream colored gabardine jacket, who didn't look natural without a cigarette hanging from his mouth. He lit a cigarette and stepped back into character. While his sharp eyes cataloged the reporter, he asked a series of questions. Then—

Reporter Is a Bit Early

"Guess yer O.K., pal," he said. "We gotta be careful. Since certain people have got morals we can't run wide open. Wait around. I'll show you the new joint. You're a bit early."

During the wait the reporter learned that the man's name was "Doc," that after three months of running full blast at 3939 some "crank" had written to authorities. "Two nights ago the dicks come around and tell us we better move for a while," Doc said.

Doc finally conferred with a group of men who walked south on Sheridan road and then turned the reporter over to a red-headed man with an earphone who took him to the door at 932 West Sheridan, a rug and carpet shop.

Three slender men with hats pulled low stood inside the door. They thoroughly frisked the reporter—an unproductive search—and then directed him upstairs.

Use Only Dice Table

The second floor was a littered, barnlike room, remarkable only for the long dice table standing along the east wall—a far cry from the luxurious dens of not so long ago.

No poker or roulette?

"Naw," replies a guard, "just craps. One buck minimum. Buy yer chips at the table." It was explained that a dice table is easily moved and has a fast enough play to be profitable, even in a hideaway joint. The roulette wheels had been left behind.

About 15 men and two women with from $50 to $300 each stacked in front of them were standing around the table. In front of the cashier was the bank —an 18 inch sheaf of $5, $10, and $20 bills.

More Customers Arrive

The reporter bet modestly—all bets are made with the house, either for or against the player or a special roll—but he lost $23 in about 20 minutes. During that time another 15 or 20 customers came in.

A heavy-set woman with a lot of rings and a lot of chips bet $50, lost, and didn't change her expression of boredom. A man with glasses, who looked like a small businessman, made six straight passes and raked in $320 on his original bet of $5.

Each player took his turn at throwing the cubes. One employe with a hooked stick would retrieve the dice and two others collected or paid off on bets.

The reporter started to leave as the gamblers stripped another table and got it ready for the gathering crowd. As he went down the stairs, he could hear the steady chant of the croupier:

"Six is his point. Getcher bets down! Here he goes. Does he make it? It's an eight—an eight the hard way, four and four. Six'll win. There it comes. It is a six! He wins. Does he seven? There it is . . ."

Outside, the reporter met Doc, still steering the cash customers to the door.

"Lost, eh?" he asked. "Yeah, but you coulda won, bo. A guy took us for six grand last week at the other spot. But we got it back. We always take ya, sucker. See ya next pay day."

—Chicago (Ill.) *Tribune.*

Police reporting offers incessant opportunities for feature treatment of otherwise routine cases. The writer of the following story demonstrated how it can be done to the possible assistance of the cause of law and order:

(This is an open letter to Mrs. Anna Ruth, the fur store operator who pawned about $25,000 worth of fur coats for $1,800 and then disappeared.)

Dear Mrs. Ruth: Will you please come home? There are 60 women claiming 54 fur coats, and the police and the state's attorney's office are in a dither.

Ever since you didn't come back to your shop at 4711 Irving Park road last Saturday, indignant fur-coat owners have been storming the Albany Park police station demanding their coats.

And the weatherman can't promise this nice mild temperature much longer.

Assistant State's Attorney Julius Sherwin, Acting Chief of Detectives Walter Storms, Sgt. George Tucker of the pawn shop detail and even First Assistant State's Attorney Wilbert F. Crowley, are stumped.

You Didn't Leave Record

For one thing, you didn't leave any records to show which coat belonged to whom. If the police give a coat to a woman and then find out that it isn't her coat but that it belongs to someone else, that will be a fine mess.

If the police don't give the coats back to their owners, the storming of the Bastille will be mild compared to what may happen to the Albany Park station.

The police are taking an inventory of all the coats they have located in the three pawn shops where you took them. If a claimant can prove positively and absolutely that a certain coat belongs to her without first seeing the coat, the police figure they may be able to return the garment to her.

Your disappearance has begun to cause legislative repercussions. Prosecutor Sherwin says he thinks it might not be a bad idea to have a law requiring the licensing and bonding of fur store operators.

Sergeant Keeps Busy

Out at the Albany Park station, Lt. John H. Scherping and Desk Sergeant Frank M. Bauler are all balled up. Sgt. Bauler says he has received 20 calls since he came to work today from women demanding their coats. He hasn't got them, of course.

Sherwin says he realizes that it is not an unusual practice for small fur coat-store operators to pawn coats temporarily in order to raise ready cash for the lean summer months, but he's quite sure you should have got the coats back in time.

So Sherwin says: "Perhaps we could help you, Mrs. Ruth, to salvage the situation. I'm not promising immunity, but for goodness' and warmth's sake will you please come in and talk it over?"

—Chicago (Ill.) *Daily News.*

Prisoners' stories. After arrest, according to the Chicago Civil Liberties Committee, "a policeman has no legal right: (1) to 'make you talk,' or (2) to force you to answer questions you do not choose to answer, or (3) to prevent your lawyer from talking to you, or (4) to keep you in jail 'on suspicion' only, or (5) to detain you merely to allow himself time to make an investigation, or (6) to imprison you for a longer time than is necessary to write out a complaint against you or to take you before a judge."

Nevertheless, as the Wickersham commission and many other investigators have discovered, police often do go to extremes to exact confessions from prisoners. The term *third degree* is used to describe such methods, particularly when physical violence is used. Telephone books, rubber hoses, and some other weapons do not leave telltale marks, but so prevalent is the belief that police beat up prisoners that judges and juries are disinclined to give much weight to confessions that are repudiated in court with claims that they were obtained under duress. Several years ago a retired police chief in a western state told how he used a wired carpet on the cell floor. "Sparks fly and the prisoner leaps, screaming in agony, into the air," he reminisced. "It is not fatal, its effects are not lasting, and it leaves no marks."

Incessant questioning, bright lights, and threats often have the effect of opening mouths without resort to physical torture. A *show up* is more of a public than a private affair, although only police and other public officials, persons summoned to help identify prisoners and reporters, generally are admitted. The bright lights shining into the faces of the suspects at show ups are for the purpose of protecting those behind them, especially plainclothes detectives, whose efficiency depends largely on their remaining unknown. At the show ups, suspects stand in front of walls on which there are height indicators, and they usually are asked to walk, stand, and assume other positions and to appear with and without hats and other articles of clothing as the situation may warrant. They are questioned by a police official who may be hidden from view.

Police had requests today from seven additional women who wanted to view Donald R. Hewitt in efforts to identify him as their attacker.

Already the 18-year-old Centerville college student has been viewed by more than 70 women, three accusing him of rape and 20 charging he attempted to assault them.

Since his arrest Saturday night on a tip from one of his reputed victims, the youth readily admitted accusations made against him by the women who identified him, police said, and today Assistant State's Attorney Julius Wright planned to go before the grand jury to seek indictments in three rape cases.

Tonight the other women who asked to view him will be given that chance at the detective bureau show up.

Police usually can find some justification for holding a prisoner for forty-eight hours without formally booking him on charges. It also is legal to hold a prisoner *incommunicado* (without permitting him to communicate with anyone or to see visitors) if there is reasonable grounds for believing this to be necessary to prevent the disappearance of other suspects, the disappearance or destruction of evidence, or to protect the lives or safety of other persons.

Monterey, Mexico, Nov. 14 (Special)—Dr. Arthur Frederick Torrance, noted explorer and scientist, was held incommunicado by police tonight following his reconstruction of the circumstances which he contends were attendant in the death of his bride, the former Mrs. Ada Loveland, wealthy widow of Kalamazoo, Mich.

Torrance asserted that the 70-year-old woman, whom he married only a month ago, was fatally injured Saturday night on their honeymoon tour when she swerved their limousine into a ditch to avoid a cow on the road.

However, the dead woman's son, Richard Loveland of Los Angeles, an American government attorney, has made a written complaint expressing his suspicion that she was slain rather than accidentally injured. The body of his mother has been ordered exhumed for an autopsy.

—Chicago (Ill.) *Tribune.*

Habeas corpus proceedings may be resorted to in order to release a prisoner illegally held. (See pages 101 to 108.) Usually, when threatened with them, police either release the person or file charges.

Reporters generally learn secondhand what prisoners tell police. It is not a common practice to permit them to be present at questionings or to interview the prisoners themselves.

Lawrence Talbot, Jr., 20 years old, son of a wealthy manufacturer, sat dishevelled and shaking with fright last night at police headquarters as he told police why he ran away from the scene of an accident in which his car killed two pedestrians.

It had been a gay night, Talbot, a third-year student at Centerville college, told police. He and two of his classmates visited four taverns, had six or seven beers, and met two young women in the last pub they visited.

At a high rate of speed the party headed south on Ashland Avenue with Talbot at the wheel. Other members of the party said they cautioned him to drive more slowly.

Tells of His Fright

"At Drake two men stepped off the safety island," Talbot said last night. "I felt the car bump, then I was scared to death. I wanted to tell dad."

The victims were John Bowles, 59, of 2395 North 29th street, a janitor, and an unidentified man about 55 years old, who was wearing a steel brace on his left leg.

Talbot let the passengers out of his car, then drove to his home at 1938 Artesian avenue, where police later found him sitting on his bed, partially undressed.

"I just didn't know what to do," the youth said. "I was afraid to tell dad and was afraid to call the police."

Sometimes it's difficult to believe that the facts of a prisoner's story were obtained without a personal interview, especially when the news story contains description and verbatim quotations.

A fugitive from a Florida chain gang sat in a cell yesterday and told Racine avenue police: "I'll kill myself before I go back to the chain gang! There's nothing like it in the world—except maybe a Hitler concentration camp."

It was the story of 16-hours-a-day slavery; of beatings; of imprisonment, from time to time, in a 3x3x5 foot "sweatbox," with the added punishment of being forced to drink one pint of castor oil a day (a treatment invented by Mussolini).

Police at the Racine station, who hear all kinds of wild tales from prisoners in the course of a day, listened to this one. When the prisoner had finished, Capt. Patrick O'Connell and Sergt. William Doheny declared that they were positive he was telling the truth and they went further. "We'd like to help him keep from being sent back, even though he shot at a brother officer."

The prisoner was Archer Poor, 33, who, on Monday night in a holdup of a tavern at 1143 Chicago avenue, had shot at Policeman Patrick Doheny. The bullet glanced off a bar stool and Doheny felled him with the stool.

Poor, tall, wavy-haired, and well-built, showed police two red welts on his ankles where the chains had been riveted. "These sores haven't healed yet, although it's been almost two years since I escaped," he said.

His life, as he told it, was mainly a life in prisons. "I'm a three-time loser, and that means I couldn't get a job, no matter how hard I tried."

He was one of a family of eight children in Spokane, Wash., and when he was 15, he was arrested for burglary. "It was a small job, and my first," he said. "I got 18 months to 10 years in the reformatory. I did 18 months and got a job driving a truck. Everything was swell until my boss found out my record and then he fired me.

"I tried to get other jobs, but that record kept popping up. I went to Los Angeles, did a burglary, got caught and did three years in San Quentin.

"That's when I quit looking for jobs. I went to Florida, and I was caught burglarizing a wealthy man's home near Miami. That was March, 1939. They gave me 10 years in Raiford penitentiary.

"They put me through a hardening-up process at Raiford for the first three months—they always do that before sending you to the chain gang. The gang I was with cleared swamps.

"We worked 16 hours a day, and if we didn't go fast enough the cane boss slugged us. Once I was put into the sweatbox for a stretch of nine days. This is a box they shove you in where you have to crouch. You can't stand, you can't sit, so you crouch. They give you water all right, but part of the punishment is the castor oil treatment. They make you drink a pint of it every day. If that doesn't kill you, the mosquitoes probably will.

"For breakfast you get hominy grits; lunch, beans; supper, more grits. The only decent meals we had were when the federal prison inspectors came around—but they only came around once a year.

"Somehow I got to be a trusty. That means you don't have to be rivet-chained to the next prisoner. I escaped May 7, 1942. I hid in a swamp for two days and three nights, didn't budge. That's the only way you can escape—lay low until they've quit looking for you."

After he escaped, he hitchhiked north, Poor said. Then he added: "I tried to get again jobs, but it was no go. I stole a draft card and shipped to sea on a fruit

boat. I went to the British West Indies and came back. I was going to try to ship again, but I was scared the immigration officials would find out I was a lamster and send me back to the chain gang."

Police said Poor had admitted seven burglaries and holdups and in each case had identified the victims, even telling police to the penny how much he had taken.

—Chicago (Ill.) *Sun.*

Police reporters obtain favors at headquarters to the extent that they make friends with the authorities. One good way for a reporter to ingratiate himself with a policeman is to mention his name in a "good pinch" story. Another is to play fair and to give credit when it is due. Lavish police claims of having broken crime rings or of being on the way to successful solutions of criminal mysteries cannot be overplayed without endangering the newspaper's reputation for accuracy, but giving a "copper" the benefit of a doubt once in a while doesn't hurt any.

Springfield, Ill., July 29—(AP)—Federal authorities said today they had broken up a "black market in war bonds" that had netted a profit of $2,750 in Edwardsville between November, 1942, and April, 1943.

Assistant U. S. District Attorney George Kennedy and U. S. Secret Service agents announced the arrest of Donnell Hoffmeier, justice of the peace, and Kenneth Shaw, cashier, and Christ L. Jahns, assistant cashier of the Bank of Edwardsville, and said they had obtained signed confessions from the three men that they were guilty of illegal redemption of about 1,000 war bonds of $25 denomination.

Each Under $1,000 Bond

The three men waived preliminary hearing last night before U. S. Commissioner William B. Chittenden, who issued warrants against them and the bank. They were released on $1,000 bond each, pending action by a federal grand jury.

Kennedy said Hoffmeier advanced $10 each on $25 war bonds on which the 60-day minimum redemption period had not elapsed, and that Shaw and Jahns certified that the payee personally appeared before them and signed a request for payment.

Hoffmeier Got $2.25

After the 60-day period expired, Kennedy said, Hoffmeier would obtain an $18.75 redemption check, payable to the bondholder, from the St. Louis Federal Reserve bank. After the bondholder endorsed the check, he was given an additional $6, leaving Hoffmeier $2.25 profit after he paid the two bank officials 25 cents each for each bond certified, the federal attorney said.

Hoffmeier said he was unaware he had violated any laws during the transaction.

—Chicago (Ill.) *Daily News.*

Scientific Crime Detection

A vast majority of the clues by which lawbreakers are apprehended still come from stool pigeons and underworld characters known to police. Witnesses supply other clues, and police rely considerably on their intuition. Nevertheless, a valuable asset of

comparatively recent development is the scientific laboratory, in which clues may not be discovered, but where they may be interpreted and proved for the enlightenment of both law-enforcement officers and the courts.

For an excellent clear-cut discussion of the subject, the reader is referred to *Elements of Police Science,* by Rollin M. Perkins. The following summary "hits the high spots" for the benefit of the newspaperman who is bound to have to deal with, or at least understand, some of the methods either at police headquarters or in court.

Fingerprinting. The science of identification by means of fingerprints, known as *dactyloscopy,* often is associated with the name of Alphonse Bertillon, of the Paris police department. This association is inaccurate. Bertillon pursued the theory of identification of individuals by means of *anthropometry,* or individual measurements. Anthropometry is based, as are fingerprinting and moulage, on the established fact that no two persons and no two things ever can be exactly identical. In all nature, no two blades of grass, no two leaves, no two bodies or parts of bodies can be found that have exactly the same characteristics. Microscopic analysis may be necessary to determine the differences, but they are there. Bertillon's theory was based upon the knowledge that the human skeleton is unchangeable after the twentieth year, that no two human beings have bones alike, and that all necessary measurements can be taken with simple instruments. By its application, criminals using false names can be detected. Its major drawbacks are that it is limited to use on adults, that differences in measurement may be made in different police departments, or in the same one on a second try. And, although a table of measurement allowances was set up, serious mistakes still occurred. Such errors are not possible in finger, palm, or sole printing.

Because the fingertips, the palms of the hands, and the soles of the feet are devoid of hairs, friction ridges that form different patterns develop there. Each ridge, examined microscopically, reveals rows of equidistant pores, outlets for sweat glands. Of the three areas mentioned, the fingerprints are most important, for there the patterns formed by the ridges are most intricate and complicated. They differ completely in each individual, and they were used as seals for personal identification by Romans, Babylonians, and Chinese before the time of Christ.

There have been attempts to prove that fingerprints may be inherited in all details and that they may be used to determine paternity. Anthropologists are now convinced, however, that absolute identity never has been found, and never can be found, between

parents and offspring or between brothers and sisters, even between identical twins. Fingerprints are formed in the fourth month of pregnancy, the ridges beginning to grow after the foetus is three months old. Patterns may enlarge just before as well as after birth, but no changes take place in either the pattern or the arrangement of the friction ridges. The only illness that can affect fingerprints is leprosy, and even if the skin of the fingertips is wounded or burned, the whole pattern, in complete detail, will reappear when the wound heals. If the wound is very deep, the resulting scar is only a further means of identification. For such reasons, attempts by criminals to alter or destroy fingertip skin by means of plastic surgery have been notably unsuccessful.

The taking of fingerprints is extremely simple. Materials needed include any smooth white paper except blotting paper, printer's ink, a rubber roller, and a smooth glass or metal plate, about 6 x 10 inches. The ink is spread in a thin layer on the plate, and the person to be fingerprinted, after having had his hands cleaned with ether, benzol, or soap and water, has each finger placed in turn on the ink and then on the paper, in a rolling motion from right to left. The finger must never be rolled back again. The prints then can be read by anyone trained in the detection of arches, whorls, and ridges. It is possible to fingerprint dead people, even people who have been in the water long enough to have acquired "washerwoman's skin," although this latter process sometimes must include clipping the skin and placing it in a special solution to restore the ridges.

Latent fingerprints, left unwittingly by the criminal on some object with which he has come in contact, are often invisible, although they sometimes may be seen on smooth surfaces with the aid of indirect light. Such prints can now be revealed and developed by the use of fine-grained powders or by use of a ten-per-cent solution of silver nitrate. After an application of the nitrate solution and an interval to permit drying, exposure to strong sunlight or, better, to the ultra-violet ray, light will reveal clearly the print. Such prints are, of course, immediately photographed for permanent records.

If fingerprints appear hazily on a white object, the use of a fine-grained black powder, such as lampblack, powdered graphite, or any special black powder is advisable to bring them out clearly. Conversely, if the prints are on a dark object, or on glass, white lead, chalk, chalk and mercury, plaster of paris, kaolin, aluminum powder, or any specially prepared white powder will give best results. Another good preparation for such purposes is called "dragon's blood," made from a resin obtained from the rattan palm tree. Ap-

plication of hot iodine fumes are found effective in developing fingerprints left upon a paper surface. When these fumes come in contact with the cold paper, a thin coating of iodine adheres to the entire surface, and the organic content of the paper is attacked. As this occurs, all stains on the paper, in particular those of greasy origin, show up brown against the paper. The secret here is in knowing how long to apply the fumes, for, if they are left too long, the entire paper will become dark brown in color and the stains will be obliterated. Good results depend upon training and experience. Cold iodine fumes can be used with equal success if the paper is placed first in a glass container into which the fumes are introduced. Prints developed in this manner must be photographed immediately, since they will not remain permanently upon the paper.

By use of oblique light and special filters, fingerprints left upon bottles, glasses, windowpanes, sticky substances, and in dust may be photographed successfully, as can bloody prints on a colored background. Fingerprints discovered on multicolored objects can be photographed in filtered ultra-violet light.

When the latent fingerprint is compared with that of the suspect, the presence of twelve characteristic identical features is held to be absolute proof of identity. Even by using gloves, a clever criminal can no longer avoid detection, since it is now possible to identify from glove impressions. If a glove becomes greasy or dusty, it leaves an impression on any smooth surface. These glove prints can be developed by use of white powder or lead, photographed, and compared with glove fabric.

While prints of the entire palm or of the sole of the foot are less ordinarily found, detection can be made through them exactly as by means of fingerprints, and by the same methods.

Moulage. The term "moulage" comes from the French verb "mouler," meaning "to mould" or "to cast." It is a method that has been developed for making plaster casts of evidence, such as footprints, tire tracks, impressions of tools used in crimes, tooth marks. It can also be used in making death masks of corpses, which is especially helpful when identity is unknown.

Since foot and tire prints and other such evidence are extremely perishable, it is often of great importance in the solution of a crime that means be found to create a permanent and perfect record of them. In the moulage process a quantity of moulage "negative" material, which has an agar base, is placed in a double boiler and cooked until it has the consistency of pancake batter and is free of lumps. This is then poured into the object under consideration and carefully spread with a brush so that all the finer details of the object are carefully covered. Layers of moulage are added, each

before the previous one has cooled and hardened, until the cast is about one and a half inches thick. Strips of gauze bandage are frequently worked into the various layers to serve as reinforcement. After being permitted to congeal and cool for about thirty minutes, the negative mold is removed carefully. A "positive" moulage mixture, which has been melted, is then poured rapidly into the negative mold, over a spatula, to prevent the formation of bubbles. The entire mass must be permitted to cool before the positive mold is freed from the negative. The negative may be broken away from the cast, if only one cast is wanted; otherwise, the negative must be carefully removed to prevent injury.

Lie detectors. There are about a half dozen so-called lie detectors in use, but as yet results of tests using them are not admissible as evidence in court. Even the strongest advocates of their use claim only from seventy-five to eighty-five per cent accuracy, and all admit that their value is largely the psychological effect upon subjects.

What the lie detectors do is record what are considered symptoms of emotional disturbances. They take measurements of blood pressure, breathing, heartbeats, and other physical phenomena, and advocates of them insist that a specialist can tell when the subject lies because of the changes that occur in his respiration or blood supply. One of the most widely used lie detectors is the *polygraph,* invented by a Dr. Larson, of Berkeley, California, and perfected by Leonarde O. Keeler, of Chicago. The following is a news feature article on how the polygraph works:

A difficult, nerve-straining ordeal is the lie detector test, to which Mrs. Patricia Goodbody and Elizabeth Born, daughters of the slain Mrs. Frank Starr Williams, were called today in the crime detection laboratory on the 12th floor of the police building at 1121 South State street.

The witness is led into a small, brilliantly lighted room and is seated in a chair that has a wide flat arm. A band to record the changes in breathing is strapped about the witness' chest. Another to record blood pressure is placed upon the upper left arm. Another device attached to the palm of the left hand records perspiration. The left hand must be kept flat upon the chair arm.

There are two other chairs in the little room, one for the questioner—in this case, Charles M. Wilson, head of the laboratory. Another chair is for an assistant operator.

Can't See Observers

The witness cannot see questioner or assistant and cannot see the recordings of the test, which are made by needles that trace lines upon a rotating graph.

In a little darkened booth separated from the witness room by a soundproof wall sit the observers of the test—police officials, a prosecutor, usually, and a shorthand reporter. The observers can see the witness and see the graph by means of an opaque mirror, which obscures the observers from the witness. The reporter records the questions and answers, which are heard in the soundproof booth by means of a loud speaker.

The questioner begins slowly, in even voice: "What is your name? Your address?" Then he cautions the witness: "This is a normal test. Relax, be calm, answer carefully." Then he will say: "What do you know about this case?"

Records Sharp Changes

In nearly every case, there is a sharp change in breathing, blood pressure, and perspiration when an important question relative to the case under inquiry is asked. The needles jump. There are sharp peaks on the graph. Such a question sometimes follows a calm query about the weather. The jump of the needles does not necessarily indicate a false answer. The laboratory experts have their own ways of judging whether changes on the graph indicate concealment of truth or utterance of lies.

In many Chicago crime cases the solutions have stemmed from lie detector tests. Discrepancies in stories of crimes have been cleared up. Guilty persons have confessed when told that the weird machinery has proved that they answered falsely to certain questions.

In many cases, the questioning has provided important records for prosecutors and police. Today, the police wanted such a record as a foundation for their further inquiry into the Drake hotel slaying of Mrs. Williams.

—Chicago (Ill.) *Daily News.*

Obviously the operator is as important if not more so than the machine. A great many subjects, told that the lie detector has trapped them, will confess.

Subjected to a lie detector test, Howard Jacquith, 39, father of an 18-year-old daughter, confessed yesterday afternoon that he had lured 4-year-old Nancy Lee Parker to his room at 1377 East 57th street, where she was found early yesterday by police after a citywide search.

Earlier he had declared that Nancy had approached him on the beach at the foot of Oak street and asked him to buy her some food. He said he had taken her to his home because he could not learn where she lived.

Samuel Papanek, assistant state's attorney in charge of sex investigations, said the lie detector prompted Jacquith to confess that he had harmed the child.

—Chicago (Ill.) *Sun.*

On the other hand, police are often convinced that successful passage of lie-detector tests is an indication of innocence.

Henry Swanson, 32, an ex-convict who once used a bicycle for getaways after robbing suburban homes, was questioned at length today in connection with the murders last August of Mrs. Rosetta Holmes and her maid, Ruth Orwasky. After a second lie detector test, police said they were convinced he had no connection with the case.

Swanson, who was arrested last Friday for burglary, was given the lie detector tests by Sgt. Frank Otter, the police department's polygraph expert, and Sgt. Arthur Henderson, who is assigned to the Holmes case.

Chemistry. In cases where money is being extorted, the use of a powder known as fluorescent atroscene has brought many culprits to justice. It is a coal-tar product—a powder that can be spread on the money or object in question without being noticeable. When the criminal touches it, however, it adheres to his hands and to

his clothing. When ultra-violet light is used, the chemical shows up clearly. Aniline dyes work in much the same fashion and are also used in the detection of forged documents.

The ultra-violet light has a variety of uses in the modern crime laboratory. It is of value in rape cases because it will show up invisible, dried stains left by seminal fluid, which then may be submitted to the Florence test for semen. Blood and other stains show up equally well under this powerful light, as do dyes, forgeries, and other things invisible to the naked eye.

Volumes could be written about the chemical analysis of physical evidence to establish identity of the substance in question. Broadly, such material undergoes three main analyses. There is, first of all, microscopic inspection. Second, the material may be submitted to spectograph inspection. This is used for analysis of minute particles too small to be analyzed in other ways. It is known that certain drugs and metals will form spectrums of certain definite colors. By use of the spectrograph, therefore, it can be determined what specific drug or metal a microscopic particle is. And, third, there is chemical analysis, which includes, of course, analysis of the inner contents of the victim in a case of murder or suicide.

Chemical analysis is a huge field. There is today no substance that can keep its secrets from the chemist. In the case of bloodstains alone, it is now possible, with the merest fragment of dried blood to work with, to determine that it *is* blood, to determine whether it is human blood or animal blood, and then to establish beyond doubt from what part of the body it came. By use of blood-grouping tests, it may be discovered, in a negative way, whether that blood came from a particular individual. That is, it can be determined that the blood did *not* come from the individual in question, but not that it did definitely originate with him. However, from the viewpoint of an investigation, negative proofs are just as valuable as positive.

In addition to blood, semen, and excrement stains, other stains of interest to criminal investigators, and for which positive proof can be established, are meat, vegetables, fats and sugar, oils, candles, rust, and mud.

Handwriting; typewriting. In criminal investigations, analysis of handwriting has nothing to do with determining the character of suspects. The writing must be classified, identified, and analyzed by an expert. In cases where an attempt is being made to determine whether the suspect has written a particular letter or document, a letter containing many of the words used in the original is drawn up and is dictated to him. The dictation is, of course, completely rephrased, and speed is increased during the dictation, making it diffi-

cult for the person under examination to maintain unnatural writing habits. Experience has shown that words misspelled in the original document will be misspelled in the same way in the dictated material. This, plus analysis of letter formation, can definitely establish the identity of the writer. The same holds true as well for hand printing. By chemical means, the age of ink, presence of erasures, type of ink used, and tracings may be determined.

Torn and chewed papers may be restored by means of the Friedendorff method of reconstruction. The number of fragments and the succession of smooth and torn edges give the clue to the system of tearing. The pieces of paper are soaked in sapon lacquer, which makes them elastic and resistant, so that they can be handled with microscopic preparation needles, put on glass slides, and covered with glass, like a mounted lantern slide.

In analyzing typewritten documents, the investigator must determine whether the whole document was written on the same machine in the same continuous writing and whether the make of typewriter corresponds with the date of writing. No two typewriters are exactly identical, and each gives an individual writing, which, when enlarged and accurately measured, can be identified with the machine in question.

If a part of the document has been added later to the original writing, it is easily shown. It is, for instance, almost impossible to insert paper in a typewriter exactly as it was done the first time. And, of course, the identification of typewriting done with a particular machine is always possible if the writing on the questioned document is sufficient to show up the peculiarities of that particular machine.

Photography. In the field of criminal investigation, it is surely true that "one good picture is worth more than a thousand words." Good photographs presented in court are of more value than any amount of words from the witness stand, for testimony may vary and man is fallible, but pictures do not lie. The chief value of pictures is their accuracy and speed of recording. To be of real value in criminal work, pictures must have correct values of light and shade, correct values of color as transposed to black and white, correct perspective, and they must be printed in the correct size to give the right impression.

Attention must be paid to the type of camera used for police work, as well as to the lens, shutters, and film. Great attention must be paid too, to viewpoint, angle of view, direction and strength of light, appraisal of subject matter values, and determination of exposure. Photography represents one of the most important modern aids to criminal investigation—serving, as it does, as a sort of artifi-

cial memory. It can retain for us the scene of the crime long after the scene has been destroyed.

Forensic ballistics. Forensic ballistics—the science of identification of bullets and firearms—is of comparative recent origin. It is based, as are so many of the sciences of criminal identification, on the fact that there are no two identical items in the world. Although guns are products of machine industry, no two revolver barrels or barrels of any weapon make the same scratches on a bullet. Therefore, the microscopic examination of bullets will reveal minute but distinct scratches that can subsequently be linked with the barrel of a particular weapon. Fired bullets are, in this respect, like fingerprints.

Forensic ballistics is so exact a science that it does away with opinions expressed by so-called firearms "experts" in the courtroom. The court can see the indisputable scientific facts. An enlarged microphotograph, or comparison photograph of the test bullet and the fatal bullet under the microscope, is placed before the court, and the truth is obvious.

The scratches that appear on the surface of the bullet from the barrel of the revolver appear because in the machining operations and tooling used in the rifling of a pistol barrel, minute scratches or imperfections appear on the interior of the barrel. The barrel is rifled in the first instance, of course, to give the bullet a spinning motion as it emerges from the weapon; this thereby improves the accuracy of its flight. Since the bullet is made of softer metal than the barrel, it receives the impressions of these imperfections as it passes through. It is mathematically impossible for the machining operation in the barrel to produce the same arrangement of scratches or imperfections in one barrel that it has in another—even when the barrels have been bored by the same machine.

The same sort of identification can be made for fired shells as for bullets, since breech faces, firing pins, extractors, and ejectors possess distinctive features similar to those in the chamber of a revolver. If this were not so, a shotgun, which has no rifling in its barrel and which shoots pellets rather than bullets, would be the ideal weapon for a criminal.

A trick often resorted to by illicit gun wielders is the filing away of the weapon's number, placed on it in the factory. However, even this number can be reconstructed, since it will reappear after application of a certain etching fluid. This is due to the fact that when a number is stamped upon steel, it makes changes in the structure of the metal which go deeper than the visible numbers.

It is also possible, by chemical analysis of powder residue in the barrel of a weapon, to determine how much time has elapsed since

a shooting. Examination of a bullet wound and powder marks on a victim enable the investigator to discover the distance from which the shot has been fired. Spectrographical analysis of powder residue will determine exactly what powder was used in the fatal shot.

Through these scientific discoveries, forensic ballistics can present an array of imposing "silent witnesses" to a crime—witnesses which prove effective in solving thousands of otherwise baffling cases.

Police Departmental Activities

The police beat is good for a lot more than running stories of crime. The first paragraph of *Training for the Police Service* reads as follows:

> The police service is that important division of the government whose function is to assist in preserving the peace, enforcing the laws, protecting life and property, preventing and detecting crime, apprehending criminals, promoting safety, controlling traffic, and to make it possible for the public to go about its daily tasks with the maximum of protection and the minimum of interruption. Employes of the police service aid parents in locating lost children, assist aged and infirm persons in crossing the streets, train school children in individual traffic adjustment, and organize boys' clubs as a crime prevention measure. Policemen give directions to strangers, inform people where a doctor can be found when one is needed in an emergency, educate the public in matters of public safety, and, in innumerable ways, contribute to the comfort and security of citizens and the conservation of life and property. Policemen also deal with nonconformists, such as those individuals or groups who make their living through the exercise of questionable or unlawful practices, and those who try to circumvent the laws or to disorganize community activities either by trickery or by force. In the performance of their duties, especially in law-enforcement activities having to do with crime, they often risk their lives.

Noncriminal activities. Some news items based on police activities not related to crime detection follow:

> Police today sought to determine what caused the acute illness of six persons who ate a turkey dinner in a local hotel.
>
> The first cases reported were those of three members of the Moosehart Ladies aid, which held its annual dinner at the Centerville hotel last night.
>
> They became ill shortly after they left the hotel. Mrs. Ruth Baker, 27, of 137 North Park avenue, and Mrs. Martha Ryde, 26, were taken to the County hospital. Mrs. Bertha Shackman, 30, also ill, went home.
>
> Mrs. Baker was able to leave the hospital after treatment, while Mrs. Ryde remained.
>
> Other members of the organization did not eat turkey and suffered no illness.
>
> Police were told by Dr. Robert Ritter, house physician, that two others who ate turkey last night also were sick. They were Mrs. J. S. Cavell and her son, Robert, 18, of New York. They recovered after treatment, he said.
>
> Tests of the turkey and side dishes served with it are to be made by the board of health laboratory today.

James Rbaum, 13 years old, and Betty Wagner, 15, eighth-grade pupils, were going south for the winter on a $3 bicycle when they ran out of cash in St. Louis. Today they are under police chaperonage, waiting for their parents to rescue them.

James had pedaled most of the way from Centerville with Betty on his handlebars. They ran out of money and tried to sell the bicycle for $12, police said today.

Young Rbaum lives at 1149 North Sopero avenue, Betty at 918 Schiller parkway. They attend the Wright grade school and have been "going steady" about a year, James said.

"Betty didn't like the teacher," James explained, "and she's a swell girl and I thought I'd help her get away from school. So last Tuesday we skipped school, went home and got our clothes, and started out. I bought the bicycle for $3 I earned selling papers."

The trip wasn't as easy as they expected, he admitted. One night they had to sleep in a doorway. Yesterday James tried to sell the bicycle and police picked him up.

The elderly woman who has been in the County hospital since Aug. 1, when she was injured by an automobile accident at Division and Strand streets, has been identified as Mrs. Henrietta Pinkerton. The identification was made by Mrs. Ethel Cassidy, 1907 Walton street.

Mrs. Cassidy said the woman threw her arms around her and broke into sobs when she visited the hospital last Sunday. She was unable to answer questions, Mrs. Cassidy said.

Mrs. Cassidy told police that the woman came to visit her once a week to help with house cleaning. Mrs. Cassidy said she did not know where she lived and said she knew of no relatives.

Fast action by Policeman Timothy Ritter restrained Harvey Stone, 29, of 90 South Wabanasia avenue, from plunging off the Monroe street bridge early today.

Taken to police headquarters, Stone said his rejection by the Army yesterday, coming on top of domestic troubles, made his life seem futile. The Army refused him because his left arm was badly injured in an automobile accident, he said.

On the bridge, police found a farewell note he had written to his estranged wife, Esther, and his small son, Harvey, Jr. He said he was a truck driver.

Mrs. Sarah Prestegard, 37, of New York, and her brother Ralph Morgan, 55, of 971 South 21st street, met at the Missing Persons Bureau yesterday for the first time since Ralph left the family home in Rumania when the sister was three months old.

Ralph came directly to Centerville where he obtained a job on the Centerville railroad. The sister left Rumania 16 years ago and settled in New York.

Yesterday, while on her way to California for her health, she learned of Ralph's presence here and, with the co-operation of Sgt. John Matthews, they were united for a few hours before she continued on her journey.

Policemen delegated to guard polling places in Tuesday's mayoral election will be assigned to precincts remote from districts where they reside or pursue their regular police duties, Police Commissioner J. K. Hagg announced today. The plan was evolved by Hagg; Guy Park, chairman of the Joint Civic committee; and County Judge Edward J. Kysor. Similarly, many of the committee's 2,500 volunteer non-partisan watchers, who will receive their official credentials to-

night from Judge Kysor, will be assigned to districts where they are unknown to "floaters" and others who try irregularities.

Nine abandoned kids aroused the sympathy of Cragin police today as they pressed a search for their mother, whose name police listed as Nanny Goat. She left the kids shortly after they were born last night, her owner, Joseph Sytornello, of 2225 North Harlem avenue, told Sergt. Mark Dean.

—Chicago (Ill.) *Herald-American.*

Departmental news. Promotions, demotions, transfers, changes in rules, recognition of heroism, inspections, and other strictly departmental news is reported.

Contending that municipal police assigned to the coroner's office merely duplicate the work of other policemen, Police Commissioner James P. Allman today ordered five "coroner's police" to return to their Chicago posts.

"They will be doing more good in the police stations," he said.

It was only a week ago that the five, former members of the coroner's staff, were returned to the coroner's office at the request of Coroner A. L. Brodie.

The five and the police stations to which they were assigned are: Sgt. Frank J. (Jiggs) Donohue, West North Avenue; Sgt. John W. Mullhern, Chicago Lawn; Patrolman Oliver Karowski, Shakespeare; Walter J. McDermott, Engelwood; and Patrolman David Lichtenstein, Fillmore.

The county board has refused Brodie's request for funds to hire investigators.

—Chicago (Ill.) *Daily Times.*

Police Commissioner James P. Allman announced yesterday that he would instruct Capt. James Kerr of the Morgan Park police station to file charges immediately against two policemen in connection with the slaying on May 13 of a 16-year-old Negro schoolboy, Elmo Vasser, Jr.

The policemen, Patrick Rynne and Charles Schwartfeger, have been under suspension since May 15.

Kerr to Specify Charges

Allman said it would be up to Capt Kerr to decide the nature of the charges against the two men He added that the charges would be placed before the Civil Service commission as soon as he receives them.

Vasser was shot to death by Rynne when he and his companion officer went to 113th place and the Pennsylvania railroad tracks to investigate a complaint that boys were throwing rocks at passing trains.

Both Rynne and Schwartfeger have contended that Rynne did not fire at the youth until Vasser hurled 10 or 15 rocks at them, one of which struck Rynne in the head.

Exhumation Ordered

An order for the exhumation of the boy's body was issued yesterday by Chief Justice John A. Sbarbaro of Criminal court, according to William H. Temple, one of the attorneys for Elmo's family.

Temple said the body would be examined either tomorrow or Friday to determine whether the youth was shot more than once.

—Chicago (Ill.) *Sun.*

Eight promotions and the transfer of two captains, three lieutenants, and 18 other policemen were announced yesterday in two orders signed by Police Commissioner James P. Allman.

The men promoted included six patrolmen who were named sergeants and two

sergeants, including one now serving in the navy, who were named lieutenants.

The promotion in absentia was awarded to Thomas J. McLaughlin, a sergeant at the Racine avenue station, who also was transferred to the Marquette station.

—Chicago (Ill.) *Sun.*

Anthony T. Comiskey, motorcycle patrolman, will be awarded the Carter H. Harrison medal for the bravest act by a police officer during 1942, the city civil service commission voted today after hearing Comiskey and nine other patrolmen recite their deeds of courage. The ten were sent by their commanding officers to appear before the board and tell their stories. Nine will receive certificates of creditable mention. The medal and certificates will be presented by Mayor Kelly.

Comiskey, on the night of April 27, 1942, noticed a speeding car containing four men going west on Harrison street at LaVergne avenue. He followed on his motorcycle and turned on his red flasher to signal the car to stop. But the car went faster. At Laramie avenue, it turned north through a stoplight.

Comiskey fired and was answered by a shower of bullets. One hit the mudguard of his cycle. Another pierced his leg. At Van Buren street, the speeding car crashed into a post and three men leaped out, still shooting. Comiskey, despite his wound, entered the car and forced the fourth man, who also was wounded, to surrender.

After having his wound dressed at the station, Comiskey joined in pursuit of the other three men. Eventually six members of a robber band were rounded up and all were sent to the penitentiary.

—Chicago (Ill.) *Daily News.*

Policemen as news. Sometimes policemen themselves are news.

Police squad car No. 20 was back at the Fullerton Park police station today and the city-wide search for it called off, but for Policemen Robert Haynes and Patrick McGiggner, from under whose noses it had been stolen in the sub-zero cold early this morning, the memory lingers on in cold-nipped ears, fingers, and toes.

The policemen had halted the car at 52nd street and Morgan avenue about 3 A.M., observing that a trolley wire was sagging and in danger of falling.

Policeman Haynes got out to telephone the station. Just then a middle-aged woman walked up to McGiggner, still sitting in the warmth of the car, to report a man had attempted to snatch her purse and pointed to a disappearing figure down the street. Leaving the motor running, McGiggner got out and gave chase. When he returned, sans prisoner, he found Partner Haynes standing where the car had been, shivering violently.

McGiggner was panting and still warm from the chase, so he asked, "Where's the car?" Half-frozen Haynes was able only to throw up his hands disgustedly and indicate that someone else must have it. Not counting the time spent out in the cold already, it was a four-block walk to the station.

At 9 o'clock this morning, after Policemen Haynes and McGiggner had gone to their homes to thaw out, fellow policemen found the squad car standing at 1900 Dorchester avenue.

Spring arrived yesterday for the overheated men of District 3 of the state highway police in the form of a full dress inspection at the Northwest Armory, Kedzie and North avenues.

Conducting the inspection in the amphitheater of the armory were Highway Chief Harry Yde; Capt. Wayne Alkie, department inspector; and Col. Thomas R. Gowenlock, state co-ordinator of police.

The show was stolen by the 33,000-pound armored crime laboratory truck which patrols Illinois highways prepared for any emergency. The vehicle was six inches too high for the 11-foot ceiling of the armory's basement, and its eight-foot girth would not permit turning in the ramp entrance.

The exhibition of the truck was held on a side drive for the attending police chiefs from north suburban communities and delegates from the city police department. The removable contents of the truck were spread on 30 feet of tables in an adjoining hallway.

Gas masks, surgical instruments, grappling hooks, a diver's suit, photographic equipment, a portable X-ray and fluoroscope and a couple of hundred more important items are contained in the truck. Two 3,000-watt generators supply enough current to light the average house. These supply searchlights to ferret out a concealed bandit or light up a bad wreck. Lt. John Stuper, head of the unit, and Lt. Edward Kenney, commander of District 3, said the truck was regarded as the finest of its kind in the country.

Back in the amphitheater a huge service flag with the number 571 is the only reminder of the hundreds of young National Guardsmen to whom the spacious armory was dedicated in 1940, a year before Pearl Harbor.

—Chicago (Ill.) *Daily News.*

In a cell at the police station yesterday was one of the most vicious inmates ever held there.

When Sergt. Edward Mullen and other policemen approached, the inmate flew into such a rage that the minions of the law withdrew.

The inmate was a bird.

But what Srgt. Mullen and the other policemen wanted to know was: What kind of bird?

Anton Perkins, a plumber, who found it in the rear of his yard at 390 South Troop avenue, described it as having a long bill, a short tail, and a broken left wing.

In their record book, police wrote: "Make of bird, unknown."

The bird will be turned over to the Anti-Cruelty society.

Reports and surveys. The statistics contained in annual reports are always good for news stories and longer features, especially when they are accompanied by attempts at explanation or interpretation.

The annual report of Capt. Timothy Rolland, in command of the police gambling detail, yesterday showed 3,483 raids and 6,825 arrests made during the past year. Seven defendants were convicted, for a batting average of .00102.

In 1943 there were 4,778 gambling raids, 9,613 persons were seized and none was convicted—an average of .000.

Captain Rolland, when he assumed charge of the detail in November, abandoned raids without search warrants on gambling establishments. He obtained warrants, with the result that dismissals of defendants in racket court came to a halt. Bookies were forced to move for jury trials rather than for suppression of the evidence.

Only five bombings occurred in Centerville during 1945, according to an annual report compiled by Lieut. John Regan, head of the police department bomb squad. The bombings were not solved, but police suspect labor trouble was the motive for each.

According to Lieut. Regan, the damage caused by the bombs was estimated at

$1,215. In 1945 there were 15 bombings, causing an estimated damage of $2,042. During the year, 56 stench bombs were thrown in stores and factories as compared to 82 a year ago.

The police questioned more than 200 persons, but none was charged with crimes. The detail also seized and destroyed 66 sticks of dynamite, 39 percussion caps, two ounces of nitroglycerin, and one unexploded artillery shell.

Professional automobile thieves have virtually been driven out of business, State's Attorney Anthony Storm reported yesterday. In the last eight years, he said, automobile thefts have declined from 35,233 annually to 2,863 for 1945, despite a tremendous increase in the number of passenger automobiles.

Storm gave full credit to Lieut. John Bolter. Bolter was placed in charge of a new stolen automobile section soon after the prosecutor took office. Since then a force of 12 men has worked continuously on the problem.

Almost All Cars Recovered

Almost every stolen car is recovered, the prosecutor reported. Many cars stolen out of the state are recovered in Centerville, he explained, so that recoveries here usually exceed the number of cars stolen locally.

"The result," Storm said, "has been a decline of 64 per cent in automobile theft insurance rates. Reductions have been greater on some of the smaller and more popular cars, while the reduction was less on other types."

In 1932 the state registration for passenger cars was 1,197,327; last year the registration exceeded 1,600,000.

Professional Thievery Gone

"The racket has been taken out of automobile thievery," Storm continued. "Professional stealing is practically nil. At least 70 per cent of the thefts are committed by kids who want to go for a joy ride or who are stealing parts from old cars for their own jalopies.

"Records for the last four years show that the professional theft of automobile accessories has been eliminated. We are pleased at our record in reducing automobile thefts, because such thievery is the first step toward more serious crimes of robbery and burglary."

Lieut. Bolter said that only three professional thieves are now operating and that his men expect to have them in jail soon.

When newspapers themselves survey or investigate a situation, the assignment usually goes to someone other than the person who covers the police beat regularly—if for no other reason than to avoid making him the object of vituperation in case the results are not pleasing to the police.

By Louis J. Schaefle

A Chicago Sun survey last night disclosed that almost half of the 97 murders "solved" by police last year were the result of the criminals being thoroughly intoxicated, voluntary surrender, information furnished by citizens, or suicides.

The Sun's survey demonstrated that many of the murders were "solved" by the simple expedient of picking up drunks who were incapable of locomotion in many instances or who had slain in tavern brawls, making concealment of their identity impossible.

The analysis of homicide records finally was permitted by Commissioner Allman after his chief clerk, Hans Olson, declined to allow their inspection on

the grounds that James Conlisk, the commissioner's secretary, had restricted information to the number of murders committed and solved.

Suicides Solve Five Cases

In 29 cases, the Sun found, men or women charged with homicides were listed as having been drinking heavily, a figure most criminologists would term conservative. Five more were "solved" by the criminals committing suicide and, in another five, relatives or friends of girls who died after illegal operations furnished the required information. In four more, the murderers surrendered voluntarily, one telephoning an FBI man to come and get him. In another, a courageous bystander pursued a killer, finally enlisting police aid to apprehend the culprit. Total: 44.

Meanwhile, evidence accumulated at the Chicago Crime commission and in the county coroner's office that many crimes classified as "solved" have not resulted in a single conviction.

One Arrest Is "Solution"

The Sun's survey also showed that in several instances a crime is listed as "solved" when it has been committed by several persons and only a single arrest made.

The Sun's analysis of the homicides revealed that the murders, which occurred at the rate of one every three days, were instigated in virtually all cases by love, money, or liquor. All but three of the 131 were open and shut, with no "mystery" about motivating factors. One of the three was the bizarre murder of Mrs. Frank Starr Williams in the Drake hotel on Jan. 19.

Since gang warfare became epidemic in Chicago again last May 5, beginning with the murder of Danny Stanton and Louis Dorman in a tavern, the following victims came in order: Walter Smith, Aldo Razzins, Martin Quirk, John Pisano, Thomas Negla, William Wytrykus, Sidney Rossman, Ben Zuckerman, Sam Gervase and James V. D'Angelo.

"Sonny Boy" Quirk

The murder of "Sonny Boy" Quirk was classified as solved, although three of those indicted were found not guilty, the case against a fourth was nolle prossed and two suspects are sought. (To nolle prosse a case means that no further action will be taken.)

Although the police list only 34 of the 131 murders in the city last year as unsolved, the Crime commission's figures demonstrate that only 51 of the murderers were convicted. One was sentenced to death, 41 to penal institutions and nine are on probation.

Much the same story is related by the figures in the office of State's Attorney Courtney. Of 70 cases disposed of in the county, 11 were nolle prossed, and six stricken, with permission to reinstate.

Allman granted permission for the survey after Virgil Peterson, operating director of the Crime commission and Ald. Roy E. Olin (8th) insisted that files on homicides should be accessible to the public at all times. Olin said that if the police had solved 97 cases they should be proud to let the public know all about it.

—Chicago (Ill.) *Sun.*

Situation stories. Police generally will co-operate in roundup stories such as the following, especially when they are to be quoted in them:

By Jimmy Murphy

Chicago's Grant Park is a "port of missing girls." So is Chicago's Loop. So is the district adjacent to Navy pier.

Authority for these revelations is John Prendergast, chief of the uniformed police, who disclosed today that it has been necessary to send scores of policewomen into the district to clean up what has become a pernicious and dangerous problem.

The girls, most of them of high school age, are "dazzled by a uniform," he said. They come to these districts because there they hope to find a boy they knew near home. Failing to find him, they find other men in uniform.

All Picked up Under 21

Last month, Prendergast reported, 32 girls were picked up in the district. All had run away from home. Fifteen were 15 years old. Four were younger. All were under 21.

The girls came from many towns in Illinois, Michigan and Indiana, as well as from Chicago.

Nor are all the Chicago girls who are picked up by the policewomen runaways. Many were absent from school. Now that vacation time is near, their number is increased. More enter the districts at night.

Prendergast said that the situation is "alarming," and after a conference with Police Commissioner James P. Allman, decision has been made to combat the problem on an "all out" basis. Policewomen will be taken from their regular duties in courts and other places and assigned to patrol the "danger zone," as the chief called the area.

The situation has also aroused the attention of Roger Shanahan, chief of the Park District police, who has ordered all patrolmen and patrol car squads to concentrate in the Grant park area from Randolph to Roosevelt.

Runaways Seized by Squads

In two weeks his men have picked up 10 girls—runaways.

The plight of some of the girls is deplorable, officials said. Many of them are penniless and a long way from home.

They came, a large number of them, hoping they would find the boy friend who wrote saying he was stationed near Chicago. But the Army and Navy establishments here are large, and it's hard to locate a particular soldier. Other soldiers have been transferred out.

So the girls wander around, always attracted by a uniform, trying to find a friend. These chance acquaintances help them eke out some kind of an existence, Prendergast said.

For some reason, he added, many of the girls head west after they lose interest in Chicago and its attractions. They make their way by hitch-hiking or on buses, working en route as waitresses and in other chance jobs.

Police Watch Bus Stations

The runaways travel by bus, even in coming to Chicago originally. That's why some of the policewomen have been assigned to the bus stations on Roosevelt, on State and on Randolph, to try to intercept them on their arrival and arrange for their return home.

Girls who run away from their homes in Chicago to wander around the city or go elsewhere chasing their boy friends also are very numerous. In the past three months, Prendergast said, 118 have been reported missing.

Some of them seem to disappear. Only 80 of the 113 have been accounted for. The other 36 are just "gone."

Juvenile authorities have asserted that this is the way many girls start "on the road to ruin—professional prostitution." First it's a boy friend, then a job as a waitress in a restaurant, or tavern, then—

To avoid as much of this as possible, police have developed a technique for handling the girls, Prendergast said.

First Offenders Warned

First offenders are warned. Their names are taken and they are admonished to return to their parents and behave. If caught again, they are brought in with their parents, and subsequent misbehavior leads to action by juvenile authorities.

"Some have suggested that we lock these girls up right away," Prendergast said. "But that wouldn't be right. They're young. They should be given every chance."

Nor, it was revealed by Capt. Thomas Duffy of the Central district, are the areas where there are sailors and soldiers the only "danger zones."

Theaters, night clubs and taverns have been placed under strict supervision because more young girls have been congregating there lately.

"It's another thing that we want cleaned up," Duffy said. "And we mean to do it."

—Chicago (Ill.) *Daily Times.*

The jingle of coins in the war worker's jeans is music to the ears of the pickpocket. Jamming of wage earners into packed public conveyances is a joyful sight. In Chicago and other centers of the armament industry, bulges have appeared in hundreds of thousands of pockets that never bulged before. A paradise has been created for the slick fingered gentry.

Paradise or not, Chicago comes close to being pickpocketless, according to Lt. John Griffith, head of the confidence detail of the police department. For 20 of his 28 years on the force, Lt. Griffith has specialized at keeping Chicagoans' wallets intact. When he was young in the department, the recording of 50 complaints in one day was not unusual. However, only 13 victims have reported losses since Jan. 1 of this year. Five complaints were received in January, three in February, three in March and two since April 1.

While there is no need for uneasiness about a situation that hasn't developed, the lieutenant admitted that the pickpocket isn't "dead as the Dodo," and warned against carelessness that might make the dip's work easy.

Just Be Cautious

"Play safe. Put your billfold in the inside breast pocket of your coat," he advised. "To get at it without arousing suspicion, the 'tool' will have to be a Houdini. Hiding your poke in your shoe or pinning it to your underwear is unnecessary, as well as unhandy. Just be reasonably cautious."

Pocket-picking as an art is on its last legs, according to Griffith.

"Most of the good workers are dead. No new guys are breaking. Old men who have been in the racket all their lives are all we find nowadays," he said.

The Burnside police last week caught three aging cannons with their hands where their hands ought not to be. Rheumatic fingers betrayed John Lally, 76; Joe Buckley, 57; and Ed Purcell, 54. The grand jury will consider their shortcomings.

Pays for Chumminess

More dextrous were the two affable strangers who met Robert O. Robbins of Anderson, Ind., in the North Western station Sunday night. They jostled

Robbins loose from $27 in cash and $50 in travelers' checks. If being chummy pays, the money sometimes goes in the wrong direction, the man from Indiana found.

Pickpockets delight in crowds. They bemoan the calling off of the national corn husking tournament. They play the race tracks and visit the opera. As many as seven work in a unit. Usually they operate in two's, three's or four's. Success depends on teamwork, with psychology and dexterity equal in importance.

The "tool" does the actual stealing. His accomplices, or "stalls," may do the sounding (locating the right pocket) and set up the touch. One of the "stalls" will lurch into the prospective victim, or step on his toes. If reaction is normal, the pocket-miners have added another sucker to their list.

"Tool" Talks Way Out

Once the wallet is lifted, it is passed to an accomplice. The "tool," if detected, acts indignant and frequently succeeds in brazening his way out of trouble. Should the victim grab and hang on until the police arrive, the thief, whether in possession of the stolen wallet or not, is due to be recognized Lt. Griffith and the two dozen men of his outfit carry mental pictures of every dip who has an arrest record.

Pickpockets made a general exodus from Chicago ten years ago. The confidence detail, acting on vagrancy warrants and backed by the courts, cleaned house for the Century of Progress exposition. Constant vigilance since then has kept the city fairly free of the pests, according to Lt. Griffith.

—Chicago (Ill.) *Daily News.*

Tens of thousands of dollars are paid out annually by policy players on Chicago's South Side for "dream books," charms, candles, seals, and incense which are purported to bring luck to the purchaser, the Chicago Sun's investigation into the policy racket has disclosed.

The sale of the books and luck charms constitute an "associate industry" with the policy racket and brings a lucrative return to peddlers and stores.

Numbers Thrown In

Pamphlets issued by the companies extol the products as sure harbingers of good fortune, and with most of the items the purchaser is given three "lucky" numbers to try in the policy games.

"If you don't win with these numbers," a clerk in one store told an investigator for the Sun, "it's because you don't live right."

The most popular items are the "dream books," in which nearly every conceivable dream is listed, together with its meaning and three lucky numbers. The books have such titles as "Prince Ali," "Napoleon's Oraculum," "Solid Gold," "Madam Fufutam," "Genuine Afro," "Rajah Rabo," and "Policy Pete."

Here Are Samples

Here are samples of the dream interpretations and lucky numbers, picked at random:

"Policeman: Such a dream should teach you to beware of false friends. 1, 2, 5, 31.

"Watchman: To dream of calling one gives confidence; to see a person taken to prison by a watchman shows that you must be careful of your business. To see many watchmen together signifies the loss of money. 1, 9, 23.

"Rain: If it rains lightly and unaccompanied by wind, it is a good dream for workingmen. 43, 45.

"Wine: To dream of drinking wine shows power and fortune; to see it flow, the spill of blood. To get drunk from good wine indicates fortune. 10, 29, 48.

"Wig: Beware of neglected cold or cough. 11, 31, 57, 63.

"Suspenders: To wear them, precaution. 11, 31, 63."

To Lose Is to Gain

"Money: To find money, mourning and loss; to lose money, good business; to count it, gain. 45.

"Climbing: If you climb a tree, you will rise to honor. 16."

Among the incense offered is a popular item called "Big Jumbo Jinx Sticks." Burning of the incense in a room is supposed to bring good luck and dispel voodoos.

Among the charms offered are stones, coins, seals, rings and pocket pieces. Seals apparently are a popular item in this category, for one catalogue lists several dozen varieties. The seals, it says in the catalogue, bring their bearer luck in games, love, health, finding buried treasure and "in general."

The catalogues offered white, black, green, red, yellow and blue candles, each with some special lucky significance. Green candles are for policy players, it appears, for the books declare:

"Green candles are burned for money, and signify worldly and commercial gain. Take a piece of money, place it on the table in front of two burning green candles and then count up the money you desire. If the sum be $5, for example, count "one dollar, two dollars, three dollars, etc." This must be repeated for ten successive days. Then watch for results.

—Chicago (Ill.) *Sun.*

Seeking causes. Albert Deutsch, who writes a daily column or feature article for *PM,* is almost in a class by himself in his diurnal attempt to enlighten New Yorkers as to the basic underlying causes of antisocial behavior. Deutsch's long career as an authority in social problems enables him to write with conviction. A typical column follows:

To the average citizen who has followed the Lonergan case up to the climactic confession, the whole business must boil down to a sordid story of a perverted heel and a flighty heiress. There are, however, some significant psychological aspects of this case that cry for broader understanding. It is easy to be chilled and repelled by a horrible crime of violence; it is far better, though more difficult, to try to grasp the tragic implications of twisted emotions that underly such crimes.

Lonergan says that he killed his wife because she wouldn't let him see their baby. That motive doesn't make sense. No rational person bashes in his wife's head for such a cause. The sources of the murderous act must be sought in deeper emotional mainsprings. Exactly what these sources are I don't pretend to know. But one element in the murder background seems to me important: the element of insecurity. Insecurity in the emotional, social, and economic life of the confessed murderer; insecurity in the life of his victim.

Lonergan, by his own admission and the evidence of his draft record, is a bisexual—that hapless type of individual with biologic urges toward both sexes. Oscar Wilde was such a person; the excruciating prison experience and the tragic end of that extraordinary figure are familiar to all.

The Lonergan type never finds a stable place in society. He is ever enmeshed in an inner conflict that corrodes his personality. He is the hunted "pervert," the

"moral leper," the secret lawbreaker, the social outcast. It is easy to condemn the type on amoral basis, but who can say Lonergan is responsible for his twisted personality makeup?

When such men marry, the inner conflict usually deepens. The feeling of insecurity and instability is intensified.

Added to emotional instability, in Lonergan's case, was the social and economic insecurity which arises when a poor and obscure youngster, on the basis of only his looks and perhaps even his "perversion," is catapulted into a fast-moving, high-living set where he lacks anchorage. Lonergan apparently remained as poor as a churchmouse, personally, in spite of his marriage to a rich heiress, living in luxurious trappings. Here was another source of insecurity.

As for the victim, she must have learned of her husband's biological peculiarity, and it couldn't have given her the feeling of a secure family relationship. The many neighbors' tales of violent quarrels between the Lonergans attest to the insecure basis of their unhappy marriage.

Nobody can discern, at this time, all the factors that combined to impel Lonergan to beat his wife to death last Sunday morning. But, surely, the twisted and frustrated and insecure personality of the murderer must have been a significant factor.

There's a moral in the biological aspect of the Lonergan case. The sooner our society learns to face frankly and squarely certain biological facts of life, the sooner it may learn to prevent such horrible crimes. We do virtually nothing to encourage twisted personalities like Lonergan to seek treatment, and perhaps cure, while there still is time.

Such conditions can be, and have been, corrected by proper medical and psychiatric techniques. We would be spared many crimes of horror if we could only learn more about the people who commit them and act wisely upon our knowledge.

—New York (*PM*).

A reporter without Deutsch's background is able to approach this type of reporting by making use of the scientific talent of his community. The following is an outstanding example of subsurface reporting in the field of crime news which, in another generation or so, may become the rule rather than the exception, with newspapers staffed with persons able to do it under the direction of editors who see its value and necessity:

(What unnatural instincts promoted one man to torture his 4-year-old stepdaughter to death and another to beat his 5-year-old son unconscious? The case histories of the two are here presented as they were to eminent sociologists without, of course, any idea of creating any maudlin sympathy for the two individuals.)

By Jerry Thorp

John William Shaffer is an inoffensive-looking little man, not the type who would argue with someone whose coat is cramped for muscle room. He stands 5 feet 10 inches, with extra lift heels, weighs 145 pounds, and is 28 years old. His unflinching eyes are pale blue. In appearance, he is neither meticulous nor unkempt. John William Shaffer, to look at him, is quite an average man.

But a few days ago he gained notoriety of a type not envied by anyone. Shaffer, in 24 hours, became the most despised, most-talked-of man in

all Chicago. It was he who literally punished to death his 4-year-old stepdaughter, Lettie Joyce Weir. He bound her hands and legs, gagged her, dipped her in a tub of water, and then stuffed her in a closet, just because "she annoyed me." Lettie died in the closet.

Another Father Kicks Son

Only a day before Lettie's death, the newspapers had chronicled a somewhat similar incident, less violent, but almost as abhorrent to parents, the case of Arthur Haselton, the 31-year-old truck driver, whose brutal beatings of his son, Arthur, Jr., prompted neighbors to call the police. As a result Haselton is serving a one-year sentence in the Bridewell.

Why did one torture his 4-year-old stepdaughter to death and the other beat and kick his 5-year-old son unconscious?

A reporter for the Daily News has attempted to find the answers to those questions. He presented the cases to eminent sociologists. They agreed that both men were the product as well as producers of a type of parental inadequacy that cannot be destroyed by legislation or social movements Shaffer and Haselton are men who never have known affection, the sociologists said, and consequently they are not equipped to pass such an attribute along to those close to them.

Shaffer, a native Chicagoan, recited his life history to the reporter a few minutes after the inquest over the body of his stepdaughter. Haselton was interviewed after he had begun serving his sentence in the Bridewell.

Both talked earnestly and fluently. Neither made many errors in grammar. Their words flowed easily and sometimes dramatically. Haselton was the more emotional of the two, and on occasions permitted his eyes to become tear-filled simply because "I've had a tough time of it."

Shaffer spoke matter-of-factly in telling of Lettie's death and his own life. Never did he permit himself the luxury of a conscience-inspired sigh. Both told of boyhoods in which there was little or no parental supervision. They were much more concerned about their own fate than that of the children they had offended. Both were convinced that fate wasn't on their side. It developed that neither was poverty-stricken nor a drunkard, and neither showed serious mental deficiencies.

Loses Mother at 3

"To begin with," said Shaffer, peering self-consciously through the bars of his cell at the Austin police station, "my mother was sent to the State Hospital at Elgin when I was three. After that I spent most of my school years in private boarding schools while my father kept on with his business as a trucker."

He implied that the "boarding schools" weren't the type where one was taught "to dress" and respect one's elders. There were more practical things to be learned. Eventually he began attending a public high school in Chicago but after his third year there he went to work in a print shop.

Later he clerked in a grocery store and then began making a more substantial wage as a machinist. Only recently he became a brakeman for a railroad company.

"I always managed to make a living," he said, "and never had to go on relief, even though in the depression it was pretty tough."

About three years ago he became enamored of a woman, his present wife, who now is 23 years old. At that time she was married, already the mother of three children, the oldest of whom now is 7.

Shaffer, who lived at 400 North Cicero avenue, admitted that he lived with the woman a year before they were married. "And I had to pay for the divorce," he added a trifle bitterly. After that a child was born, Ida, now 21 months old.

"My wife and I got along pretty good," he continued, "until four months ago when her children came to live with us. Before that they had been in a state school in Wisconsin. She would nag me about how they acted and I got fed up with it. Every day I would get more nervous, what with her yelling about the kids and the way they acted. Besides, my stomach's been bothering me lately. Then a couple of days ago I lost control of myself. Of course I didn't mean to hurt the girl—"

Shaffer halted his recital to ponder his own troubles.

Haselton Locked Up

Haselton, who lived at 865 Oakwood boulevard, also is a normal appearing man. He is 6 feet tall, weighs 170 pounds and has a habit of staring disarmingly at his questioner. His black hair at times hangs untidily from the sides of his head. He unfolded a tale of trouble that dates back 24 years, when he was 7 years old and living in a small Michigan city.

"My father died when I was 7," he confided, "and I was the oldest of five children. When I was 11 they sent me to reform school—I really hadn't done anything—only tried to cover up for another fellow. After nearly a year there, I came home. My mother remarried. I hated my stepfather and he hated me, so when I was 16 I left school and home.

"I knocked around the country but after five years or so I came home and got married. Later I found out my wife was only 16, but no one told me that when we were married. Two months after the wedding, while I was working down in Florida, she was shot to death by a man she had accused of stealing her pocketbook. I was driving up to the funeral and had a wreck. I left the hospital when they told me I couldn't, but by the time I got home she had been buried an hour."

Six months later he was married to his present wife—that union was nine years ago. In addition to Arthur, Jr., they have a daughter, Joyce. A third child is expected soon.

About two years ago, Haselton said, he received a blow on the head during a fight. Ever since then he has had frequent, severe headaches.

"And my teeth are all infected too—I couldn't afford to have them pulled out," he added, intently eying the interviewer for signs of sympathy. "Then my sister and her two children came to live with us after her husband left her. They just left a month or so ago.

"But that wasn't all. My wife, Virginia, wasn't in good health either and I wasn't making much money in the truck business. Lately all those things made me worry a lot. The last few months I've been real jittery, and I guess that's why that happened the other day. But, understand, I didn't kick the boy's teeth out, like they said in court. I only swatted him and he fell on his face."

Experts Analyze Cases

The stories of these two men, told to Dr. Sophie Schroeder, Mrs. Frances Perce and Claudia Wannamaker, staff members at the Institute for Juvenile Research, and Dr. E. W. Burgess, professor of sociology at the University of Chicago, brought varying responses. All four emphasized that because they sought to explain the conduct of the two, they were not attempting to condone the actions of delinquent parents.

Dr. Schroeder, Mrs. Perce and Miss Wannamaker described both Haselton and Shaffer as "emotionally inadequate—starved for affection."

As they explained it:

"The stories indicate that because of the men's lack of family life in childhood

neither is familiar with a family and its purposes. Having never had affection to any degree, neither is entirely capable of bestowing it upon others."

They qualified that observation in commenting on the apparent love of his own child, displayed by Shaffer, although he has shown only indifference and dislike toward his stepchildren.

"His own child satisfies the man's basic craving for something all his own," they said. "He had little he could call his own during his own childhood and in marriage he became the husband of a woman who had been the wife of another man.

"Unable to adjust himself to that situation, he undoubtedly resented supporting someone else's children. But he apparently experienced an entirely different feeling with the birth of his own child."

Dr. Burgess substantiated the theory advanced by the other sociologists.

"A person who never has received a deep and strong affection seldom develops strong emotions toward those nearest him," he said.

He explained that the "giving of affection" is one of the most important of family functions because "the child learns in turn to express its feelings toward those about it."

Are there cure alls for the type of parental abuses perpetrated by Shaffer and Haselton? Those who specialize in that field think no, at least not in this generation.

They are hopeful that in the future, through the expanding acceptance of child guidance clinics and similar groups, such outrages can be reduced. Elimination of the problem is another matter, they said, because peculiar, unexpected quirks always are popping out in the human race.

"If we have more child guidance now," staff members at the institute said, "we won't have as many parents like Shaffer and Haselton. The object is to get hold of neglected children before the pattern is set."

Dr. Burgess contended that relief from such practices could be obtained by more widespread training of adults in the art of being parents. He especially commended the Association for Family Living and similar organizations which are endeavoring to accomplish that task.

School Aid Urged

"But," he added ruefully, "parents who become associated with such groups generally aren't those that are in urgent need of training."

He maintained that education for family living should be introduced into public schools, "if we ever are to get this type of instruction to the masses."

Dr. Burgess emphasized still another point. A family never should become so completely isolated that none of its members has outside contacts. Participating in outside activities relieves the tension at home, he said.

"From what I've heard," he concluded, "neither Shaffer nor Haselton was integrated into any type of community life. And that certainly isn't conducive to good family relationships."

CHAPTER 16

Criminal Procedure

Pretrial Procedure

WHEN a person is arrested—regardless of how or by whom—he is entitled to be taken without unnecessary delay to the nearest magistrate or judge, to be formally charged with whatever offense he is supposed to have committed and to be examined, especially if he pleads not guilty, to determine how his case should be handled judicially.

If, instead of being brought into court, the prisoner is held by his arresters for an unreasonable length of time, the proper procedure is application for a writ of *habeas corpus*, usually by someone acting in his behalf, since he undoubtedly would be unable to do so himself. Habeas corpus was discussed on pages 101 to 108.

A writ of habeas corpus for the release of Raymond Peterson, 17, of 1449 West 51st street, one of three youths held in connection with the kidnaping of Miss Ruth Holmes, 18, Centerville heiress, and two male companions early Wednesday, was sought yesterday by his attorney, Thaddeus Clinton.

Clinton told Judge Anthony Webster in Criminal court that police had refused to let him see his client. The state's attorney's office obtained a continuance, indicating that police had agreed to book Peterson by 6 P.M. Friday.

Arraignment. To bring a prisoner before the bar to answer an accusation is to arraign him. By that means, he is identified and acquainted with the charge against him. What happens next depends upon his answer. If the plea is guilty and the charge is a minor one over which the court has jurisdiction, the judge may pronounce sentence immediately. If the plea is guilty and the court does not have jurisdiction, the case is referred to the grand jury of the proper court (if it is a capital or other offense for which an indictment is necessary to bring a person to trial), or directly to the proper court (if no indictment is necessary). If the plea is not guilty, the case may proceed immediately to trial, if the court has jurisdiction, or a date for trial will be set. If the court lacks jurisdiction, it either conducts a preliminary hearing at once or sets a date for it. If the prisoner stands mute, a plea of not guilty is entered for him. Anyone accused of a crime requiring grand jury investigation may waive preliminary hearing (examination) and have his case re-

ferred immediately to that body. He must be informed that he has the right to counsel.

WILL BE ARRAIGNED

Mrs. Frances Fitzgerald, 23 years old, who operates a grocery store at 19 Fisher's lane, will be arraigned in Domestic Relations court tomorrow on a charge of contributing to the delinquency of minors by purchasing goods stolen by a gang of boy burglars. Mrs. Fitzgerald admitted buying two radios, linen, candy and cigarettes from the gang.

Police are holding the following boys on robbery charges: John Martin, 13 years old, 1314 Wellington avenue; Robert Baker, 14, of 1509 Wellington avenue; Ernest and James Hawthorne, twins, 15 years old, of 2805 Clybourne avenue, and Richard O'Grady, 15 years old, of 176 Sherman avenue. Most of the goods was taken from stores, police said.

ARRAIGNMENT (CASE) CONTINUED

Named by a 20-year-old unmarried girl in her dying declaration, Mrs. Elizabeth Tomlinson, 60, of 2981 Seminary avenue, a midwife, was arraigned in Felony court yesterday on a charge of murder by abortion.

The girl, who died late Wednesday night, was Miss Alice Bogle, of 3891 Clybourne avenue.

The midwife was to have been arraigned yesterday on a charge of performing an illegal operation. On the death of Miss Bogle, the charge was changed to murder by abortion. The case was continued until June 15 and Mrs. Tomlinson released on bonds of $10,000.

HEARING CONTINUED

Anthony Tomaska, 35, Centerville high school teacher who was arrested on a charge of violating the Selective Service act, pleaded not guilty today on his arraignment before U. S. Commissioner Frank Desort, who continued the hearing until Oct. 15.

Tomaska was charged specifically with falsifying his draft questionnaire Jan. 15, 1941, by claiming dependency of his wife, Ruth, and a daughter, Mary, now 8 years old. Government attorneys contended that he had separated from his wife in December, 1939, and had not contributed to the support of her or the child since then. They also said that after his divorce he married Mrs. Wilma Fuller on Oct. 15, 1941.

Bond for Tomaska, who was held over the week end in the U. S. marshal's lockup, was set at $1,000.

PRELIMINARY HEARING WAIVED

Louis Prescott, 30 years old, of 2970 Washington avenue, was arraigned on two liquor violation counts Wednesday before Judge John Albright. He waived examination and was held for trial in bonds of $500.

Prescott is said by Assistant State's Attorney William Mueller to have admitted being the owner and operator of a tavern at 3890 Monroe street, at which he and four other men were arrested Tuesday.

Prescott is charged with importing and transporting illegal liquor and also with the sale and possession of the liquor.

Bail. The purpose of bail is to prevent an innocent person's being punished by being compelled to remain in jail while awaiting trial,

but at the same time to insure his appearance in court when wanted. To "bail a person out" means to deposit cash or securities with the court having jurisdiction, to be forfeited if the prisoner does not appear when wanted. The person who thus makes himself responsible for the keeping of the other's obligation is known as a *surety*, and technically the released party becomes his prisoner. The bailee has the legal right to lock up or in any other way restrain the person in his custody, to protect himself against the released prisoner's leaving the jurisdiction, which is called *jumping bail*, thus causing the surety to lose his money or security.

The *bond* which the surety provides is a written contract to forfeit whatever he has pledged in the event the prisoner skips out. Under certain circumstances, as provided by statute—usually for minor offenses—a prisoner can supply his own bond. Or, he may be released from custody on his own *recognizance*, which means on a mere promise to appear when wanted, without the posting of a bond. A recognizance is defined as any acknowledgment of an obligation of record entered into before a court, but in some places it is used as synonymous with bail bond.

Because many people are unable to raise bond, or to find friends or relatives to do so for them, a lucrative profession has grown up of going bail for strangers. Today these professional bondsmen generally operate under authority and direction of the court, thus ending many of the scandals that formerly surrounded their activities. Chief offense was pledging the same piece of real property or security several times for different persons for whom they provided jail bond. If a sufficient number of prisoners jumped bail, the court found it impossible to collect the total amount legally due it. Under the best conditions, collecting on forfeited bonds is difficult, for bondsmen have a habit of disappearing too. The proper procedure is by a writ of *scire facias*, but it cannot, of course, be executed if the parties named in it cannot be found.

Even when bondsmen are regulated by law or court rule, it is possible for persons anticipating the danger of arrest to give securities to potential bondsmen to use "just in case." In other words, such prisoners actually provide their own bonds, and the device may be valuable to "cover up" wealth or sources of income for taxation purposes.

The right to bail following arrest is absolute in all cases except capital offenses, in which the proof of guilt is evident or the presumption great. After an indictment, conviction, or mistrial, or while a motion for a new trial is pending, bail bond is discretionary with the court. It is customary for the prosecuting attorney to suggest or request bail bond of a particular amount or to recommend the denial of bail.

BOND ASKED

An unprecedented $100,000 bond for Edward Allen, 40-year-old father of three girls, who confessed that he lured 6-year-old Virginia Loveless to his room at 6980 Mark avenue, will be asked, Assistant State's Attorney Robert Hughes said today.

Hughes said that Allen will be charged with kidnaping and a statutory crime. He explained the $100,000 bond will be the highest ever asked in such cases. Ordinarily the bond requested is between $5,000 and $10,000.

"The man deserves it," Hughes said.

Allen will be arraigned before Judge Martin Donoghue in Felony court on Monday, Hughes said, and grand jury action will be sought later that day.

According to Hughes, Allen admitted after a lie detector test yesterday that he had molested the girl. He confessed that he had kidnaped the girl from in front of her home at 1786 Plainview boulevard Wednesday night.

BOND SET

Bonds aggregating $150,000 were set today for four young hoodlums, three of them kidnapers, on a total of 30 charges when they were arraigned and pleaded not guilty before Judge Edwin McKillip in Municipal court.

The hearing was set for April 21, but William Lochner, assistant state's attorney, indicated he would seek an indictment next week.

The kidnaping was mentioned only once in court today, when Judge McKillip asked, "Why did you do it?"

The youths hung their heads and then answered almost in a chorus, "We ran out of gasoline."

RELEASED PENDING HEARING

Accused of forcing a comely student nurse into their auto and of raping her despite her screams and entreaties, three 17-year-old "kids on the loose" today were under arrest at Skokie Town.

Police Magistrate Thomas McKelly released them on bonds of $1,000 apiece, pending hearings on June 1. All three, police said, had signed statements.

Bonds were furnished by Andrew Schenold, golf course operator, whose son and namesake is one of the defendants. In addition, those under arrest are: Donald Kravish, 190 York avenue; Robert Lake, 169 York avenue, both nephews of Schenold; and Andrew Schenold, Jr.

POSTS OWN BOND

Ralph Nixon, residing east of Oklahoma City, posted $1,000 bond today for appearance in Tulsa on charges of violating mail laws. He waived preliminary hearing before U. S. Commissioner H. M. Frye. Details of the charge were not revealed.

SURETY BOND

Henry Bennett, alias Henry Diamond, who was indicted by a New York grand jury in connection with the movie extortion plot of Willie Bioff, was released yesterday on $100,000 surety bond, pending a removal hearing before U. S. Commissioner John McIntosh.

Bennett has been in the Centerville jail since he surrendered two weeks ago. Hearing on the removal petition has been set for Aug. 19.

HELD IN BOND

Following hearing on a charge of failing to report to Selective Service board 10 for a physical examination March 1, George Porter, 36 years old, of 1986 Blue

Island avenue, was held in $1,000 bond for grand jury action by U. S. Commissioner John McIntosh.

Witnesses told the commissioner that Porter had ignored several communications from the board. Porter said he had been ill. McIntosh declared it looked like a willful violation of the selective service law.

It was stated that Porter was rejected at the induction center Monday.

UNABLE TO RAISE

Unable to post $60,000 bond, Edgar Stevens, alias Edgar Fuller, today is still in the county jail, wondering where his friends have gone.

Stevens was named with other local underworld characters in a New York indictment charging them with extorting millions of dollars from moving-picture magnates and theatrical unions.

Apparently he had made arrangements for bond, as he spent most of the night asking county jail guards if there had been any telephone calls for him and decrying the loyalty of friends who were supposed to come up with $50,000 in cash or $60,000 liquid assets.

Federal Judge Robert Geoghegan dismissed a habeas corpus petition shortly after Stevens was arrested and he entered a plea of not guilty. The case was continued to April 27.

HELD WITHOUT BOND

Patrick Lunde, 52, of 6980 South 15th street, a freight handler, was held without bail today by Judge Frank Otter in Felony court, charged with beating his wife, Wilma. Lunde said he became annoyed when his wife snapped his suspenders and declared she talked too much He was ordered examined at the county behavior clinic.

BONDSMAN TURNS JAILER

New York, July 3.—Henry Unger, a bondsman who earns his livelihood by getting prisoners out of jail, reversed the procedure today by tackling a prisoner who was attempting to escape after he had been arraigned on a robbery charge. Ulysses Hayes, 23, was in the detention room. He ran through the door and down the center aisle. Magistrate Harry G. Andrews shouted, "Get him!" Unger threw his 268 pounds at him. Down went Hayes, a prisoner again.

—Chicago (Ill.) *Sun.*

BONDSMEN BANISHED

Irate at what he termed unreasonably high fees for providing bail money for two girls charged with shoplifting, Municipal Judge William Liggett today banned the bondsman, Henry Atkinson, from his courtroom.

The judge, hearing the case of Betty Watkins, 21, and Evelyn Leathers, 33, both of 189 Monroe street, arrested on Main street on charges of having stolen $15 worth of Christmas trinkets from department stores, learned they had paid Atkinson $15 each for providing $100 bail and in addition had given him $25 "security money."

"I have nothing against legitimate bondsmen, but you're not legitimate," the judge told Atkinson, who identified himself as a representative of the Quality Bail and Bond company, 189 North 18th street. "You give these girls $30, get out of this courtroom, and don't ever even enter this building again."

To the girls, who admitted stealing a small quantity of Christmas cards, silk handkerchiefs, and lingerie, the judge said: "You look like nice decent girls. Whatever possessed you to do such a thing?" He placed both under supervision of the court, dismissing the charges on condition of good behavior.

Preliminary hearing. The purpose of a preliminary hearing in an inferior court that does not have jurisdiction over the offense charged is to determine whether a crime actually has been committed and, if so, whether there is probable cause to believe that the accused committed it. If the answer to either question is in the negative, the state is spared the expense of a trial and an innocent person is spared the ordeal.

A preliminary hearing, or *examination* as it also is called, is not a trial. Consequently, it may not be necessary that the state's witnesses be present to face the accused, although it often would be difficult to persuade a judge, justice of the peace, or police magistrate that there is sufficient justification to refer the case to the grand jury unless they were.

One important function of the preliminary hearing is to inquire into whether the evidence was obtained legally and to dismiss the charges if there has been illegal entry or entrapment.

The police had five handbook cases scheduled for the Racket court today, but Judge Matthew Arnold, after a conference with Assistant State's Attorney Ralph Clement, ordered all the complaints marked "leave to file denied" and would not accept them for the call sheet.

"I'd go further if I were to be here longer," he said afterward.

He has been substituting the last two days for Judge William Flannigan, who started the practice of refusing to hear gambling cases in which the police had faulty evidence.

The five raids made by the police were at 1890 North Main street; 17 South Market street; 198 Canal avenue; 908 Washington street and 609 North Clark street.

Judge William Haymarket in the Criminal court will rule today on whether the state's attorney's office will be required to submit proof of the legality of police raids made last fall on the offices of Mrs. Ruth Wilaman at 860 Ashland avenue and 190 Canal street.

Mrs. Wilaman, reputed head of an abortion ring, and Mrs. Doris Gaynes, her office receptionist, are charged with conspiracy to commit abortions. In the hearing before Judge Haymarket, they are trying to suppress the evidence seized in the raids, on the ground the raids were made without search warrants.

Mrs. Wilaman, the only witness yesterday, testified that Capt. Thomas O'Brien and 18 policemen raided her Ashland avenue office, took away carloads of records and material, and that the captain said, when she asked for a search warrant, that he "didn't need one." Defense Attorneys W. L. Smith and H. L. Bowen revealed that Judge A. K. Hill of the police court subsequently held the raid illegal, and that police returned the records after making photostatic copies.

Judge Oscar Winthrop, in discharging three cases against defendants charged with selling liquor to sailors who are minors, said yesterday in South State street court that the Army and Navy should shoulder responsibility for their men's behavior.

The men charged with serving the sailors are: James Montgomery, of the

Golden Cage, 32 Michigan avenue; Sam Carraway, of Cocktails for Two, 190 East 18th street; and Daniel Gibson, of the Club D'Amour, 65 South State street. The clubs were raided on May 1 and were among 16 taverns whose licenses were revoked as a result of the raids. Tavern owners charged entrapment by the Navy and city police.

Sailors Told of "Mission"

Testimony by the sailors last week showed that the boys were sent on a "mission," on May 1, when they met at the "lakefront home" of a mysterious Mrs. Arnold. The sailors testified that they were given money, provided with girl escorts, and were accompanied by police, who told them to visit various taverns and order drinks. Each time police raided the tavern after the sailors had been served.

Fourth Defendant Fined

Judge Winthrop indicated that he did not believe that the blame fell on either tavern keepers or bartenders.

A fourth defendant, Miss Eloise Wilson, waitress at Cocktails for Two, was fined $75 on a charge of selling liquor to minors other than the servicemen on the "mission."

The taverns will appeal the loss of licenses.

The accused can waive preliminary hearing, allowing the case to go directly to the grand jury. This is the equivalent of a finding of probable cause, but it cannot be used as presumptive evidence against the defendant.

It is immaterial whether the prisoner pleads guilty or not guilty as far as the responsibility of the inferior court to refer his case to the grand jury is concerned. If the court lacks jurisdiction over the offense charged, it cannot impose sentence, nor can it order anyone who pleads guilty to stand trial in a higher court; only the grand jury can do that.

Twelve employes of the Hawthorne plant of the Western Electric company pleaded guilty today to charges that they had stolen important communications equipment being manufactured for the government. Among the goods taken was a secret military device—a headphone used in high-altitude flying.

The defendants, all of draft age, some of whom have deferment because of their employment in a war industry, were seized at the plant last night by FBI agents under the direction of Spencer J. Drayton.

Arraigned before U. S. Commissioner Edwin K. Walker, the workers were held to the grand jury in bonds of $50. Commenting on the bond—the lowest possible, but called acceptable by Assistant Attorney U. S. John Owen—Commissioner Walker said: "The government is extremely lenient in favoring such a low bond."

To one of the defendants he added: "This is pretty near sabotage. People have been hanged for such an offense."

More than 1,800 pieces of stolen electrical goods were recovered, Drayton said. Most of it is almost priceless in wartime, he explained, because it is made of scarce materials.

—Chicago (Ill.) *Daily News.*

For the reporter seeking so-called human interest material, there is no better place to go than the ordinary police, justice of the peace, or municipal court, which gets "first crack" at the cases.

"Please let me alone. She is the only thing I got left in the world." So spoke mild little Eugene Cornwall, 24, suspected hammer terrorist, as bailiffs tried to separate him from his wife, Etta, in the Felony court of Judge Robert Hawkins.

Crying and sobbing, Cornwall, positively identified by a host of complaining witnesses, all women and girls, as their assailant Monday during an interlude of terror on the northwest side, embraced his wife as the judge announced his decision.

"I order the defendant held to the grand jury," intoned the court, "on three charges of assault with intent to kill and two of attempted rape. Bond is fixed at $10,000 on each of the five charges."

A short time later it was reported that the grand jury had voted true bills on all five charges.

Mrs. Cornwall had come from the rear of the courtroom during the arraignment, to stand by her husband's side. Her face tear-stained and pale, she threw her arms about him and glanced angrily at those who would have the court believe he was a terrorist.

Judge Hawkins waved a hand toward the witnesses. "Do you know these girls?"

"I never saw them before." Cornwall spoke so quietly that his attorney, Philip X. Cox, urged him to talk louder.

Flash bulbs exploded, and the frightened defendant threw his hands to his face.

"Please don't take so many pictures," he pleaded. "I'm getting a headache."

The judge looked curiously at the shy, weeping defendant, and once again asked the witnesses if they were positive that he was the terrorist.

"He is the man," they chorused.

Bolstering his courage, Cornwall spoke up: "You better take a good look at me to be sure."

Most of the witnesses were taken directly from court to appear before the grand jury, in line with a promise of the state's attorney's office that the defendant would receive speedy justice.

When Cornwall left the courtroom, his ordeal was still not finished. He was being questioned about 14 unsolved sex crimes of the past year. One 16-year-old girl already had identified him as the man who attacked her July 15, 1944.

Cornwall was seized Tuesday night in his room at 319 North Kenmore avenue. The three assault charges were based on complaints of Roberta Fredericks, 16, of 910 Wilmette avenue, who said he threatened her with a knife; Francine and Dolores Wainwright, 17-year-old twins, who charged he struck them with a hammer.

What begins as a preliminary hearing may turn into an actual trial if the prosecuting attorney during the examination decides to change the charge from a more severe one, over which the court lacks jurisdiction, to one which it can try. In such a case, the prosecutor makes a motion of nolle prosequi, commonly shortened to *nol-pros*, which means "do not wish to prosecute" as regards the more severe offense. Usually in larger places the city attorney then takes over to prosecute the lesser offense. Actual procedure in inferior

courts is so informal that the suggestion may come from the judge, accused, or a witness instead of from an attorney. Often the action is taken when the accused indicates he will plead guilty to the lesser offense. In other cases, two charges originally are brought for fear that the court may fail to find the prisoner guilty on the greater one; the second is listed to "fall back on" in such event.

Harvey S. Park, 47 years old, of Blue Island, a milk wagon driver from 3 P.M. to 3 A.M. and at other times a constable in Blue Island township, was fined $100 and costs for disorderly conduct last night in Williams Park. The testimony was heard by Justice of the Peace Robert Overton and a large striped cat which dozed on the floor of the Overton living room.

After hearing testimony that Park was drunk and that he fired a pistol to halt a party returning from a Sunday school picnic, Justice Overton decided that the fine should be suspended and the defendant be assessed $3 costs. Charges of assault with a deadly weapon and reckless driving were changed to disorderly conduct by Assistant State's Attorney Thomas Moran, who, although he appeared as prosecutor, spoke for the defense.

Coroners' inquests. If the case involves violent death, no preliminary hearing will be held until after there has been a coroner's inquest, even though police already have made charges of murder or manslaughter. If the coroner's jury recommends that someone be held to the grand jury on such a charge, no preliminary hearing is necessary. The jury issues its own mittimus, referring the case to the grand jury. If the jury returns a verdict of accidental death, disagrees, or for any other reason fails to recommend grand jury action, it still is possible, however, for the prosecuting attorney or police to cause a suspect to be arraigned.

Note that in the preceding paragraph it was said that the coroner's jury "recommends." That is all it can do—suggest what police, prosecuting attorney, grand jury, or someone else should do. Its verdicts are binding upon no one and testimony given at an inquest is admissible in trial court only to impeach a witness, although the grand jury may examine it. About the most valuable function of the modern coroner's jury is to provide jobs for needy jurors, who get paid by the case. In large places the same jury, usually of six, travels about with an assistant coroner and assistant prosecuting attorney, viewing bodies and holding inquests and making a fairly decent living out of it. When there is a case requiring expert knowledge of any kind, a special jury—usually called a "blue ribbon" jury—may be summoned. All that is really needed today is a medical examiner attached to the prosecuting attorney's office or police department to determine the cause of death in suspicious cases. It is rare that a coroner's jury ever learns anything which police investigation does not reveal. In fact, the principal testimony usually is given by coroners' physicians and policemen.

In feudal England, the king's "crowner" had functions—in addition to keeping a record of inquests—which made his an important office. A county officer, then as now, he kept all records of the county related to criminal justice, collected all goods and chattels of criminals, confiscated treasure trove, salvaged shipwrecks, and collected the royal share of fishermen's catches. He also heard appeals in felony cases, confessions, and adjudications of those condemned to flee the realm. He did not crown the king, but he took care of all legal matters in which the king had a direct personal interest.

Today the coroner has been stripped of all his historical functions except that of investigating cases of unusual death—including those of persons who died without recent medical attention. Whenever there are grounds of suspicion of violence or foul play, the coroner must summon a jury and conduct an inquest. The first step at such inquests is to identify the body, which the jurors view. Then testimony is received in an attempt to determine the cause of death, including the name of anyone suspected of having contributed to it. Occasionally a jury visits the scene of death; ordinarily, however, most inquests are held in undertaking parlors or police stations.

Because he has so little authority, the coroner may be extremely jealous of that which he does possess. Quarrels with the police regarding removal of dead bodies are not infrequent. Also, the coroner is supposed to be custodian of all personal property or other effects found on dead bodies, and police are supposed to obtain his permission before assuming custody of such objects. Hospitals are not permitted to perform autopsies on bodies that are coroner's cases and are required to provide medical histories. No undertaker can embalm a body under investigation, and the coroner must issue all certificates of death required for burial permits in such cases. The coroner also acts as a substitute sheriff if that office becomes temporarily vacant.

In small places the coroner may be an undertaker whose main ambition is to improve his own business by the advertising and contacts the office provides. Politically the issue is raised as to whether it is more suitable to have an undertaker or a physician as coroner. A few states require that he be the latter.

Reporters attend inquests into important police cases largely to obtain data from witnesses whom they previously had been unable to interview. The testimony, though legally superfluous, may be a preview of what to expect later at hearing or trial.

INVESTIGATION

Coroner Charles Herlin opened an investigation last night into the death of Eleanor Fowler, 34, actress and entertainer, whose body was recovered yesterday from the Pleasant river.

Mr. and Mrs. Ralph Fowler, parents of Miss Fowler, made the identification

of the body through a wristwatch and clothing. The Fowlers, who live at 4439 Winchester avenue, said their daughter was a USO entertainer and a former member of the cast of "Music and Melodies."

Missing Since Valentine's Day

A widow with a 13-year-old son, the victim had been missing since St. Valentine's Day. On Feb. 13 she had attended a party in Marywood. The next day the daughter of the host called the Fowler home and said Miss Fowler had left the party, hatless and coatless, following a quarrel.

Herlin pointed out that it was five below zero on Feb. 14, that the river was frozen, and that it is a mile from the Marywood home to the river. It is unlikely, he said, that Miss Fowler would have braved the cold to walk to the river, then chop a hole in the ice.

Throat Slashed, Face Bruised

Nor was the coroner satisfied that a slash in the victim's throat and injuries to her face were caused by ice or other objects in the river.

INQUESTS CALLED

Two inquests were planned into a two-car collision near Centerville which last night killed nine persons. Two others were injured critically.

Because two of the nine victims died in St Benedict hospital, Deputy Coroner Thomas Brown will hold an inquest into their deaths Deputy Coroner Hugo Fox of New Plains plans to investigate the deaths of the other seven.

Both inquests were delayed pending improvement in the condition of Adam Gray, 21, St Louis, driver of one car. He is in the St Benedict hospital. Coroner W. W. Wrightwood said Gray apparently was the only witness who would survive.

The other survivor, Mrs. Antionette Allen, 29, has been unconscious since the accident and is not expected to live.

Deputy Coroner Brown said he plans to question Gray either tomorrow or Monday. Deputy Coroner Fox indicated that whatever statement was obtained probably would be used in both inquests.

SUICIDE VERDICT

Alfred Porter, wealthy 89-year-old retired paint dealer who shot himself to death yesterday, frequently spoke of his fear that he might become a burden to others because of his age, a nephew, Ronald Porter, told a coroner's jury today. Porter's body was found in his suite at the Park Plaza hotel, 1900 West Morgan street, where he had lived for ten years. The jury's verdict said he ended his life "while in a despondent frame of mind due to old age."

ACCIDENTAL DEATH

Robert Roloson, millionaire Winnetkan, and his wife, son and daughter died accidentally in a fire of "undetermined origin" which swept their $250,000 home early yesterday morning, a coroner's jury decided today.

Only one member of the family, Robert III, 9, survived the tragedy. He was carried out by firemen. The father and mother, overcome by smoke while trying to save the children, died of burns, the medical testimony showed, while Carry Belle, 12, and Edward, 5, were suffocated in their rooms.

The cause of the fire remained a mystery today. Fire Chief George M. Houren of Winnetka said that the whole center of the palatial residence in the Woodly area of Winnetka was burning furiously when the firemen arrived shortly before

2 A.M. Sunday. He thought it started in the library on the first floor, where there was a wood-burning fireplace with a gas pilot light.

The testimony at the inquest was given mostly by four servants who escaped uninjured from their quarters. Tearfully, they told of the $65 worth of flowers which arrived at the home yesterday as part of the family's plan for celebrating Easter, and spoke of what "wonderful people" the Rolosons were as employers.

—Chicago (Ill.) *Daily News.*

JURY VIEW

A coroner's jury of six men, four of whom have a knowledge of aviation, today visited the scene of the crash in which 12 Army fliers lost their lives yesterday and saw the bits of still burning wreckage.

Poking their way through the debris of the big Army bomber and the 500-foot gas tank, both destroyed by the collision and the resultant explosion and fire, the members of the jury themselves gathered portions of the plane. Most of the bodies were believed to be in the bottom of the tank, perhaps consumed by the flames.

Members of Jury

The members of the jury are: Bernard E. Keegan, foreman, 927 Jackson avenue, River Forest; Martin C. McMahon, 7234 Eberhart avenue, an attorney; Thomas P. Fleming, 1215 North Hayes avenue, Oak Park; Edward F. O'Maley, of 9614 West Shore drive, Oak Lawn, deputy Cook County assessor; Raymond Bocian, 8158 South Lake Shore drive, a clerk, and Jacob Lubawy, 8233 Coles avenue, a retired businessman.

The four jurors first named are members of the aviation department of the American Legion, and McMahon, one of them, was formerly a Navy flier.

The jury went to the crash scene—at Central Park avenue and 73rd street, near the Municipal Airport—after a brief opening in the funeral chapel at 7838 Cottage Grove avenue. The proceedings were continued to June 11, at the request of the Army, according to Deputy Coroners Jack Prybylinski and James J. Whalen, because none of the bodies has been properly identified.

Police Captain Testifies

One of the few witnesses heard by the jury was Supervising Captain Andrew Barry of the police, who said rain and fog caused poor visibility at the time of the tragedy. He also testified that the gas tank was equipped with warning lights, turned on automatically by an "electric eye" when daylight fades, but that he did not know whether the dim daylight yesterday had caused the switch to turn on.

—Chicago (Ill.) *Daily News.*

MURDER; SUICIDE

A verdict of suicide and murder was returned yesterday by a coroner's jury investigating the deaths of Dr. Otto Schneider and his wife, Beatrice, whose bodies were found yesterday in their apartment at 2891 Rockwell street.

The jury decided that Mrs. Schneider died from a bullet through her heart, fired from a gun in her husband's hand, and that he ended his life by hanging. Earlier, police had investigated the possibility of a double suicide.

Will Read at Inquest

An unwitnessed will, written Saturday and found in a desk drawer, was read at the inquest. In it Schneider said that his wife had died Friday night. He re-

quested that no autopsies be performed and that the funeral be held the fourth day after their deaths were discovered.

Schneider directed that his insurance, the amount of which had not been determined, be divided equally between Mr. and Mrs. Oscar Bowler of New York and Mr. and Mrs. Raymond Peterson of Philadelphia.

The will also specified that a pair of agate cuff links be given to Dr. Schneider's attorney, Ralph Bowles, and that a gold cigarette case be sent to his brother, Dr. Jacob Schneider of Portuguese East Africa.

Seen Saturday Morning

Mrs. Rosetta Dofferkam, resident housekeeper of the building in which the Schneiders resided, testified that she last saw the physician at 5:30 A.M., when he put the cat and dog outdoors. She said she had not seen Mrs. Schneider since Thursday night and that the doctor had told her his wife had gone to New York.

The bodies were found by police after Bowles received a letter from Schneider which said that his wife had died the previous night and that he was planning suicide.

Bowles said he first became acquainted with Dr. Schneider three months ago. At that time Schneider retained the attorney to defend him against a federal narcotics charge. Schneider was at liberty on bond, but was to have appeared for a preliminary hearing yesterday.

Seek Drug Cache

Police were continuing to investigate the possibility of a drug cache in the apartment, although they had not found any trace of such a store. They also were making an inventory of Schneider's personal possessions, including newspaper clippings and pictures of Japanese Army activities.

Dr. Schneider was a citizen of Austria, according to court records, and came to the United States in 1936. Naturalization papers found at the residence indicated that Mrs. Schneider was born in Vienna.

EXONERATION

Mrs. Virginia Sabins, 25 years old, who reputedly confessed placing her newborn son in the incinerator of her home at 1890 Milwaukee avenue, was exonerated by a coroner's jury yesterday.

The jury's verdict stated that Mrs. Sabins "while temporarily insane, because of labor pains, and believing the child dead, threw it in the incinerator," and recommended that she be released "since we cannot tell how the baby died." Deputy Coroner Anthony Stock conducted the inquest.

Mrs. Sabins in her testimony said she could not recall making admissions to police or to the state's attorney's office representatives. The incident took place October 13. The baby was rescued alive, but died soon afterward. At the same time Mrs. Sabins was quoted as saying, "Another child was just too much." She has two other small children. Despite the coroner's jury action, Assistant State's Attorney Robert Bennett said he will present the case to the grand jury.

OPEN VERDICT

The coroner's office today closed its investigation into the death of Thomas Crawford, 49, of 190 Magnolia avenue, slain Oct. 1 as he sat in a barber chair at 190 North avenue, after a jury returned a verdict of "murder by person or persons unknown." Any further investigation will be conducted by the police. Only one witness testified at the inquest—Detective Frank Hudson, who said no new evidence had been discovered. Crawford, a wealthy lumber dealer, was killed by ten bullets fired from the guns of two assassins.

DISAGREEMENT

The question of whether Elmo Vassar, 16-year-old Negro schoolboy, was accidentally shot and killed by a Morgan Park policeman on June 1 was passed on to the state's attorney's office for further action late yesterday by a six-man coroner's jury holding an inquest into the death. Three of the jury members were Negroes.

Immediately following the four-hour long session, Assistant State's Attorney Gordon Nash said the case would be presented to the grand jury, in his opinion, at the earliest possible date.

Unable to Agree

The verdict of the jury read: "From the testimony presented, we, the jury, are unable to agree as to whether this occurrence was accidental or otherwise and recommend that the transcript of this inquest be presented to the state's attorney's office for review of the testimony presented at this hearing."

Yesterday's session—the third of the inquest since the boy was fatally wounded by Policeman Patrick Joseph Rynne, since suspended from the force—was held in a courtroom in the Criminal Courts Building, 26th st. and California ave.

Officials Attend Inquest

S. F. Vyzral, deputy coroner, presided at the inquest and was assisted by Robert Martin, deputy coroner, a Negro. Official interest in the case was evidenced by the presence of Capt. James Kerr, of the Morgan Park police, Wilbert F. Crowley, first assistant state's attorney, James Whalen, a deputy coroner and chief investigator for the coroner's office, and Anthony Prusinski, chief deputy coroner.

Both Rynne and Charles Schwartferger, a policeman, who is also under suspension and who was with Rynne at the time of the killing testified that Vassar had thrown between 10 and 15 rocks at them and cursed them.

Rocks Offered in Evidence

Twenty-six rocks, weighing, in the opinion of Schwartferger, "about 15 pounds," were introduced as evidence. State Senator Milton D. Smith, representing the policemen, said the rocks had been taken from Vassar's pockets after the shooting.

The hearing was constantly interrupted by the running verbal battle between attorneys of the patrolmen and attorneys representing the interests of Vassar.

Toward the end of the hearing the exchange of words flared up violently when Rynne testified that one of the rocks had struck the visor of his police hat with such force that "everything went black."

Bruises on Policeman Described

An intern from the Little Company of Mary hospital told the coroner's jury that he had examined Rynne "sometime around the 13th of May" and found that his forehead was bruised and his fingers swollen.

Both policemen were questioned at length about whether Vassar was shot in the back as he fled from them.

—Chicago (Ill.) *Sun.*

GRAND JURY CASE

After hearing how George Anthony, 29, of 2391 Oak street, beat and kicked his stepson so viciously that the child died, a coroner's jury today directed that Anthony be held to the grand jury on a charge of murder. The child, James Johnathan, 3, was dead when taken to St. Mary's hospital Sunday.

The boy's father, Robert Johnathan, 27, of 1908 South State street, who pre-

viously had threatened harm to Anthony, had been allowed to attend the inquest only on his promise to Coroner Peter Simmons that he would create no disturbance. But twice during the hearing, held at the police station, he made outbursts and finally was ejected permanently from the hearing.

Once during Anthony's testimony Johnathan lunged at him and was ordered to leave. He was allowed to return when he calmed down, but a few minutes later he broke out again, cursing Anthony, and was removed for the rest of the hearing.

After identifying a statement in which he had confessed to police the beating he gave the boy, Anthony was questioned by Coroner Simmons. He said that he beat both James and his sister, Betty, after they had wet their clothes, and that later, when the boy became ill, he took him to the sink, where the boy slipped and cut his lip. The boy fainted, Anthony said, so he put him to bed. When he arose at noon, the boy looked pale and sick, so he took the child to the hospital. There he was told the boy was dead.

Coroner Simmons then showed him a pair of shoes, and after Anthony had admitted he was wearing the shoes at the time he struck the children, Simmons directed him, "Now tell the truth, what really happened?"

Anthony then admitted he kicked the children "several times."

"How many times is that?" Simmons asked.

"Six or seven," Anthony replied.

Q. Did you kick them with one or both feet? *A.* Both.

Q. What was he doing when you kicked him? *A.* Sitting on the floor.

Q. What happened then? *A.* He fell to the floor.

Anthony also admitted he struck the boy with his hand, hitting him "all over."

"Why did you do it?" Simmons asked.

"I lost control of myself," Anthony said. "Everything went black. I was never that way before. I just couldn't control myself."

Assistant State's Attorney John Whiteworth then took up the questioning.

Q. How long have you beaten those kids? *A.* Three months.

Q. How did you beat them? *A.* With my open hand most of the time.

Q. Why did you beat them? *A.* To learn them a lesson.

Q. What kind of lesson? *A.* To go to the toilet.

Q. Did you think you could train them with physical force? *A.* Yes.

Q. After three months did you still think you could teach them that way? *A.* Yes.

Anthony said that after he put the children to bed, he covered them with nightgowns, so that their mother, Mrs. Eleanor Anthony, waitress, would not see the bruises on their bodies when she returned from work.

Betty testified that her daddy spanked her and her brother, and pointed to Anthony as daddy. During most of the hearing she played with two dolls, apparently not aware of the serious proceeding in which she was taking part. She refused at first to take the stand, but overcame her shyness when her mother went with her.

Coroner Simmons displayed photographs taken of her at the hospital, showing severe bruises, but they were not introduced into evidence.

Asked why he did not tell his wife about the children's injuries, Anthony said he "just didn't think" he ought to tell her, because he was afraid she would worry.

While the jury was deliberating, Simmons said: "This is the most dastardly crime I have ever run into in my duties as coroner. You are worse than the worst hit-and-run driver. You probably could have saved the little boy's life if

INFORMATION

State of North Dakota, } ss.
County of Grand Forks. }

IN DISTRICT COURT,
FIRST JUDICIAL DISTRICT.

THE STATE OF NORTH DAKOTA
VERSUS
_____ / INFORMATION
_____

Milton Moskave, a States Attorney in and for the County of Grand Forks, in the State of North Dakota, informant, here in open court, in the name and by the authority of the State of North Dakota, give this Court to understand and be informed

That heretofore to wit On or about the _____ day of _____ in the year of our Lord one thousand nine hundred and _____ within the County of Grand Forks in said State of North Dakota one _____ late of said County of Grand Forks and State aforesaid did commit the crime of _____ committed as follows, to wit:

That at the said time and place the said _____

This contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of North Dakota

Dated at Grand Forks, N D, this _____ day of _____ 19____.

Names of all witnesses for the prosecution known to State's Attorney at this date

_____
State's Attorney, Grand Forks County, N Dak.

you had taken him to a hospital immediately, instead of covering him up and hoping that by some miracle he would get well."

For the first time during her testimony, Mrs. Anthony admitted that she and Johnathan never were married. Previously she had told the police she had divorced him before she was married to Anthony. Whiteworth then asked that this statement be stricken from the record, and Simmons ordered it stricken.

Anthony's police record showed that he had served time for shoplifting, twice for petty larceny, for taking indecent liberties, and for sex perversion; and that he is a fugitive from the Kansas State hospital.

Informations. The office of prosecuting attorney (also called district attorney or state's attorney), as powerful as that of the coroner is weak, steadily is becoming more influential. This is occurring chiefly because the states, by Constitutional or statutory provisions, are allowing the substitution of informations for grand-jury indictments or presentments to cause persons charged with crime to be brought to trial. (See page 76.) Typical information blanks whereby a prosecuting attorney can do so appear on pages 541, 542 and 543.

State of North Dakota, } ss.
County of Grand Forks }

MILTON MOSKAU, being first duly sworn, on his oath says that he has heard read the foregoing and within information, that he knows the contents himself, and that he is informed and verily believes that the facts set forth therein are true and from said knowledge, information and belief he states the same to be true.

_____

Subscribed and sworn to before me this _____ day of _____ A. D. 19____

_____
Clerk of District Court.

Defendant arraigned this _____ day of _____, 19____, and _____ assigned as Counsel. Given until _____ of _____, 19____, in which to plead

On the _____ day of _____, 19 __, defendant enters plea of _____

Tried _____

Verdict _____

Sentence _____

In states retaining the grand-jury system, an information by an individual, approved by a judge, may be used to cause the arrest of a person. If the inferior court hearing reveals that the offense is one requiring grand-jury action, however, there is no way to circumvent it.

The prosecuting attorney's power exists in the fact that it is he who prepares cases for presentation to the grand jury. He does not

THE MUNICIPAL COURT — MCC410 — Assault and Battery Information by Individual

STATE OF ILLINOIS, COUNTY OF COOK, CITY OF CHICAGO } SS

In The Municipal Court of Chicago

a resident of the City of Chicago, in the County and State aforesaid, in h . own proper person comes now here into Court and in the name and by the authority of the People of the State of Illinois, gives the Court to be informed and understand, and states the facts to be, that late of the said City of Chicago, heretofore, to-wit, on the day of , A D. 19 at the City of Chicago, in said County of Cook, in the State of Illinois aforesaid, having then and there the ability to commit a violent injury upon the person of one did then and there attempt to assault, beat and strike said and did then and there assault, strike, beat, wound and bruise the said , and did then and there beat the said and commit a violent injury upon the person of the said contrary to the Statute in such case made and provided, and against the peace and Dignity of the People of the State of Illinois

STATE OF ILLINOIS, COUNTY OF COOK, CITY OF CHICAGO } SS

being duly sworn, on oath, deposes and says that he has read the foregoing information by h subscribed and knows the contents thereof and that said information and the matters and things herein stated are true

Subscribed and sworn to before me this day of , A D 19

Judge of The Municipal Court of Chicago

I have examined the above information and the person presenting the same and have heard evidence thereon, and am satisfied that there is probable cause for filing same Leave is given to file said information and IT IS ORDERED that a capias issue against the accused

Bail fixed at $ or cash deposit of $

Judge of The Municipal Court of Chicago

have to accept the recommendation of a coroner's jury, and he can move to *nol-pros* (drop) a case at any stage. If he wants to "pass the buck," he can present a weak case to the grand jury. After indictment, he can adopt dilatory tactics in court to prevent a case from being brought to trial.

A criminal information filed before U. S. District Judge Philip L. Sullivan today charged Dr. Jean Paul Fernel, eccentric patent medicine maker and former plastic surgeon, with misbranding food and drugs.

One of the seven counts in the document charged that a Stultz' capsule, "Breasts of Youth—For Developing and Nourishing the Bust," was misbranded because it was "not effective for the purposes claimed."

The former plastic surgeon, who has been in court numerous times, faces a year's imprisonment and a $1,000 fine on each count if found guilty. The criminal information was one of the few ever filed in a local federal court.

Called Valueless

"Fernel Nerve and Brain Food" was cited in another count as having no particular value for either nerves or the brain. Two counts were directed against "Liniodol" for improperly being labeled and misbranding. The counts said that the product was entirely linseed oil and valueless for curing colds or catarrh.

Another product, "Food Essence No. 7," contained nothing but magnesium chloride and cornstarch, the document charged. It was labeled "Essential Min-

erals." "Thymus Arthritis Treatment" tablets were misbranded, it was charged, because they could not alleviate the disease.

Bench Warrant Issued

Following the filing of the criminal information by U. S. Attorney Albert J. Woll, Judge Sullivan issued a bench warrant for Fernel's arrest and set his bond at $3,000.

—Chicago (Ill.) *Times.*

Accepting the verdict of a coroner's jury that Mrs. Virginia Sabins, 25 years old, of 1890 Milwaukee avenue, was temporarily insane as a result of postnatal shock Oct. 13 when she placed her newborn son in an incinerator, the state's attorney's office announced today that no charge would be placed against her.

Mrs. Sabins, mother of two, cried out during questioning that she wanted the baby dead because "another is too much." The baby was retrieved from the incinerator by a family physician, but died the following day.

Grand jury proceedings. In large places there is a grand jury in almost continuous session—a new one taking over as soon as its predecessor ceases to exist. This makes it possible to present cases to the grand jury on the same day that they are bound over by inferior courts. Witnesses at preliminary examinations are detained for possible appearance before the grand jury, and newspaper accounts of such hearings may include mention of anticipated or actual grand-jury actions.

Since the length of service of a grand jury is established by statute, a recurrent problem presents itself when a jury goes out of existence while engaged in an investigation, and it is not so easy for its successor to take up where it left off.

The December grand jury went into office today in complete official ignorance of the furor stirred up by the gambling investigations efforts of its November predecessor.

The new jury was sworn in in the customary fashion by Chief Justice Robert Jerome Dunne of the Criminal court. In so doing, Judge Dunne ignored a recommendation left by the November jury that the new investigative body be charged to continue the gambling inquiry.

Asked why he had not followed the jury's recommendation, Judge Dunne said, "The state's attorney's office will call the gambling situation to the attention of the grand jury, I believe."

The November jury had asked that "the December grand jury and as many good juries as necessary be charged to co-operate with the state's attorney's office in continued investigation of protected and syndicated gambling. . . ."

Judge Dunne appointed Clement T. Conway, 1318 Catalpha, director of sales for the U. S. Standard Products Co, 222 W. North Bank, as foreman of the December body. Ten of its 23 members are women.

First Asst. State's Atty. Wilbert F. Crowley announced later he would "outline" the November jury's action to the incoming jury today. He said questioning of witnesses would not start until tomorrow.

Crowley had no comment to make on Judge Dunne's action in not charging the December grand jury.

—Chicago (Ill.) *Times.*

Denouncing laxity on the part of the city administration and police, a special three-man committee from the October grand jury advised the November jury yesterday to make sure that Police Commissioner T. J. Wilson takes action against policemen suspended as a result of the gambling investigation.

In a novel memorandum presented to the new jury, the former jurors laid the blame for open gambling in Centerville on the lack of action by city officials. The memorandum, serving as a report, made these points:

1. The presence of open gambling in Centerville is a result of laxity on the part of police.

2. The October grand jury believes that a well-organized syndicate is the central organization behind protected gambling in the city and county.

3. Progress made by the October grand jury will have been to no avail unless the November jury takes up the investigation and pursues it vigorously.

4. Commissioner Wilson was left on virtual probation by last month's jury, and the new jury was asked to see that he takes action against nine captains and five policemen suspended during the inquiry.

In this latter respect, the former jurors pointed out that in the past no charges have been filed against suspended policemen and they have been reinstated at the end of twenty-nine days.

The jury memorandum was handed to the jury by William Hall, 1890 Greenleaf avenue, a member of the October jury. Appearing with him were Thomas Bernard, 7590 Whittier avenue, sergeant-at-arms for the October jury, and Robert Quirk, 1905 South Grand avenue, secretary of the previous jury.

The October grand jury decided on presenting the memorandum to the new jury after it was found that a jury may not make recommendations to its successor. Advised of the availability of the memorandum, the November jury summoned the three men.

Since 1928 Pennsylvania has gotten around the one-month term restriction by continuing a former grand jury as a special investigating body. Its recommendations are presented to the sitting jury for action by the prosecuting attorney. In 1938 the special grand-jury system was upheld by the state's supreme court. Michigan, however, took no chance of an adverse appellate court decision and, in 1917, legalized the appointment of a one-man grand jury upon the petition of any county prosecutor or citizen. The system became famous in 1939 when the Wayne County circuit court judges appointed one of their members, Judge (now Senator) Homer S. Ferguson to investigate police and city government graft in Detroit. Within the next three years 43 indictments mentioning more than 500 persons resulted from the jury investigation. The advantage of having a judge as a one-man jury is that he can suspend his activities as a jury and hold court at any time. The one-man grand jury also can hold hearings anywhere, except in a saloon, and at any time except Sunday. He can operate in absolute secrecy, not being required to make a financial report until after he has completed his work. This means any investigators he employs remain unknown.

It is news whenever a new grand jury takes office or begins investigation of an important case or situation. The reporter is at the

mercy of the prosecuting attorney for information concerning what is on a jury's agenda, and he may have difficulty obtaining it when secrecy is desired. The press naturally tries to co-operate with the prosecutor, so as not to "tip his hand" and allow persons whom he expects to subpoena as witnesses to evade service or to warn anyone about to be investigated so that he can "cover up."

Inquiry into charges that the Franklin Steel company furnished faulty steel in its war contracts is believed by observers here and in Washington to be the purpose for which a federal grand jury has been summoned into special session.

The grand jury today was ordered into session next Monday on request of Charles Overaker, U. S. attorney, who said in his petition that "matters of great importance to the United States have come to the attention of this office which require the reconvening of the grand jury for the purpose of an investigation and finding of indictments."

Bloomington, Ill., May 10—(UP)—A second investigation of the alleged sale of jobs at Illinois war plants by George W. Ziller, Springfield and Weston (Ill.) politician, was begun today by the McLean County grand jury.

The five former indictments had been dismissed by Judge W. S. Bodman, Decatur, on the ground that Ziller was the victim of prejudice before the first grand jury.

Ziller was indicted last July on charges of operating a confidence game and conspiring to defraud laborers and truckers through sale of jobs while ordnance plants were being built at Kankakee, Wilmington, Illiopolis, Elwood and Crab Orchard. He was alleged to have charged truckers as high as $300.

Testimony before the grand jury is supposed to be secret, but there are "leaks" from which the reporter profits. Since only prosecutors and witnesses are allowed in the jury room, they are the logical suspects in addition to the jurors themselves. Unless the abuse of taking newspapermen into their confidence becomes too flagrant and detrimental to the cause of justice, nobody complains.

Sheriff's deputies, armed with a writ of attachment, were searching last night for Charles Rosenberg, wealthy sportsman and printing company president, after he failed to keep a promised appointment with the November grand jury investigating gambling.

The writ, under which Rosenberg would be brought before the jury, was issued by Chief Justice Richard Bennington of the Criminal court at noon. Rosenberg had been scheduled to appear at 11 A.M. with the books of his printing company, Rosenberg Printers, 419 Wellington avenue.

Reported in St. Louis

The jurors wanted to question Rosenberg about the company's alleged printing of handbook tickets and wall sheets for the gambling syndicate. He appeared before the jury on Wednesday and after hesitation promised to appear yesterday with the company's records.

At Rosenberg's office, it was reported last night that he had gone to St. Louis.

Meanwhile, Francis X. Smith, assistant state's attorney, prepared a subpoena for the company's records, hoping to serve it on another member of the company.

Rosenberg, owner of the Centerville Bluebirds, baseball team, is president of the printing company.

Attorney Comments

His attorney, Charles Wheeler, said he did not know where Rosenberg had gone, but would advise him to surrender voluntarily for further questioning when he was found.

In obtaining the writ of attachment, Frank Scott, first assistant state's attorney, disclosed Rosenberg's testimony before the jury on Wednesday. In the testimony Rosenberg refused to answer all questions about his firm's contracts with handbooks, on the ground that the answers might incriminate him.

He testified that he had been the sole owner of the printing company since a corporate ownership had been dissolved about a year ago. Records of the company, he said, were in the hands of its auditor, Harvey Livingston.

A true bill charging murder was reported voted today by the grand jury against Richard Bellamy in the death of his 20-month-old daughter. The jury's action, it was reported, was the immediate result of testimony by the child's mother that Bellamy had struck his daughter many times—"ever since she could walk."

The mother, Mrs. Marie Bellamy, 24, a tall brunette, was sobbing as she entered the jury room. She still loves her husband, she said today, and she is now living at the home of his relatives.

Mrs. Bellamy went to the Criminal courts building with her mother, Mrs. Ruth Rosecranz, of 239 Harrison street. When Mrs. Bellamy insisted that she loved Richard, her mother said: "I don't see how you can—after what he did to your child."

Mrs. Rosecranz asked Marie to come to her home to live, but Marie said she had not yet decided where she will live.

The child, Rosette, died of a skull fracture and brain concussion after a breakfast time squabble in the apartment at 1780 Elm street, when her mother returned home from work in a war plant. At the coroner's inquest the mother testified that the baby fell when Bellamy slapped her. He testified that the child "slipped and fell." Today, it was reported, she testified that she did not know exactly how the baby fell.

Mrs. Bellamy, sobbing, told the jury of 12 occasions on which the father had struck Rosette, saying he probably had struck her "harder than he realized," since he was a truck driver, according to reports of the jury session. The reports included statements that once when Rosette pulled a scarf off a table, Bellamy "got mad and threw her into a closet and locked the door"; that the child's face was red and discolored several times when Mrs. Bellamy brought her to the Rosecranz home.

The grand jury took a more serious view of the case than did the coroner's jury, which had recommended that he be held on manslaughter charges.

"Butch" O'Neil, long-legged gangster, was reported to have admitted to the grand jury today that he had slugged a city official and a contractor who had been mentioned in connection with a million-dollar paving deal. His brief statement caused the jury to issue subpoenas for the two men, Andrew Costello, city superintendent of streets, and Robert F. Stewart, of 907 West Oak street, the contractor.

The subpoenas called for the appearance of the pair before the jury by Thursday. Both had kept silent on the reports, current for months that O'Neil had

attacked them in connection with the deal. According to State's Attorney Theodore Clement, Costello was slugged in his office in the city hall last June 1.

Asked by reporters today about the story that he had failed to get $50,000 promised for his aid in arranging paving contracts let by the WPA to a combine of contractors, "Butch" merely said: "I'm interested in getting back some that is owed to me."

Most testimony before the grand jury is ex parte, but in some states it is now possible for an accused person to be subpoenaed or to request to be permitted to testify. Anything he says, however, may be used against him at his trial. A witness can refuse to answer questions put to him by the jury if to do so would tend to incriminate him. For any other reason, refusal to testify is contempt of court.

The grand jury interrupted its work yesterday while a slightly confused witness tried to remember a word.

He was Robert O'Hara, 50, of 1908 Main street, who didn't want to testify because he might—uh—

"I can't remember the word," O'Hara was said to have told the jury.

So the 23 jurymen trooped before Chief Judge William Waskowitz of the Criminal court, to have O'Hara cited for contempt. The judge explained that if an "answer to any question would tend to incriminate—"

"That's it. That's the word," O'Hara said gleefully.

So back O'Hara went and was reported to have told the jury he wouldn't talk because he might "incrimerate" himself.

The jury released him, but the state's attorney promptly grabbed him for questioning in connection with a burglary.

There also occur leaks as to what action the grand jury takes in advance of its making formal reports to the court. In such cases, the clerk usually is the pipeline. An attempt at secrecy may be maintained, however, even after the report has been made, so as to permit execution of bench warrants before persons named in indictments or presentments have a chance to depart the jurisdiction.

Some points that the reporter of grand-jury proceedings must bear in mind include the following:

1. *Number of indictments.* There may be several citing the same person or persons for different offenses.

Eugene Cromwell, 24, identified as the diminutive hammer maniac who spread a reign of terror among girls and women of the northwest side, was reported named in five true bills, voted by the grand jury yesterday.

Three charged assault with intent to kill, and two assault to commit rape, it was reported. Bonds were fixed at $10,000 in each case, and Cromwell was lodged in the county jail.

Justice moved rapidly for the accused sex fiend, as he faced three separate legal actions within two hours.

The first was before Judge William O'Rourke, where his lawyer, Thomas Cooper, had sought a writ of habeas corpus. Since it was apparent, however, that

the grand jury was to take immediate action, Cooper consented to withdraw his plea.

Between two baliffs, Cromwell was led before Judge Robert Hawkins in Felony court, where he was identified by ten girls and women who accused him of attacking them.

Later Cromwell and the girls and women were taken to the grand-jury room where Arnold Robinson, assistant state's attorney, questioned them for about an hour.

2. *Number of counts and different acts.* In reporting the contents of an indictment, the reporter must be careful to accredit everything to the true bill, either by direct quotation or by careful reference: "according to," "the indictment read," et cetera. Not a single sentence should be permitted that could be interpreted as being the newspaper's own statement:

Three persons, including an enemy alien, were indicted by a federal grand jury here today in a plot to counterfeit United States gold coins and ship them to Germany by submarines.

Those named are Kurt Erich Schimkus, 36, of Blue Island; German alien and scientist; Elbridge Gerry Bates, 43, of Glen Ellyn; and Frank Smith, 54, furniture manufacturer of 2267 Clybourn av.

Five Counts Listed

The indictment, comprising five counts and charging 12 overt acts, accuses the trio of:

1. Entering into a conspiracy to acquire gold bullion in quantities exceeding 1,000 ounces, in violation of the trading with the enemy act.
2. Entering into a conspiracy to earmark the gold for export in quantities exceeding 1,000 ounces.
3. Conspiracy to export gold bullion and manufactured gold in the form of gold coins.
4. Conspiracy to manufacture and counterfeit facsimiles of American $20 gold pieces.
5. Conspiracy to have in their possession, without lawful authority, certain dies and parts for the counterfeiting of American $20 gold pieces.

Secret Meetings Charged

Among the overt acts are charges that the trio held numerous secret meetings in hotels and banks to further the conspiracy, and that Schimkus represented himself as an agent of a foreign government.

After $100,000 Gold

While the indictment fails to disclose the whole story of the conspiracy, it was learned that the defendants sought to acquire $100,000 in gold bullion in the first stage of the plot.

Behind the grand jury's action are seven months of undercover work by the United States secret service agents and the FBI, it was revealed. Evidence was presented to the jurors by Assistant United States District Attorney Maurice Walsh.

Schimkus, Bates and Smith were seized by federal agents March 16. Authorities

said large quantities of contraband were found in their possession, as well as documents bearing on the conspiracy.

Directed from Berlin

It was learned the plot was directed from Berlin as part of a world scheme to bolster Hitler's tottering credits in Sweden, Switzerland and other countries still trading with the Nazis.

Schimkus first came to the attention of government authorities when in 1931 he claimed to have perfected a "mystery ray" which would render all modern explosives harmless.

He was invited at that time to the Great Lakes Naval Station to demonstrate his contraption after explaining that tests in Germany proved that enemy ammunition stores, floating mines, and other explosives could be made impotent by the secret ray.

Bare Secret Experiments

Naval authorities were not impressed by his demonstration, and nothing came of his "mystery ray." Since that time, it was learned, Schimkus has been conducting a small chemical laboratory and making numerous secret experiments.

—Chicago (Ill.) *Herald-American*.

3. *Unusualness.* This element may be found in the number of persons indicted, the law under which the indictments were obtained, persons named either as accused or their victims, testimony upon which the true bills were returned, the probable effect of the grand jury's action on others, or in any of a number of other factors. If the true bill does not contain sufficient information regarding the offenses charged, it may be supplemented through interviews with the prosecuting attorneys, witnesses, law-enforcement officers, or investigators working on the case or from the newspaper's own clipping file.

Usually the reporter will want to mention the alternative punishments which the indicted persons face in the event of conviction following trial. The headings over the following examples direct attention to handling of the particular elements.

NUMBER; EFFECT

A total of 220 individuals were indicted by a federal grand jury today—the largest number in any single prosecution—on charges of operating four nationwide lottery rings. According to U. S. Attorney Thomas Wolfe, the operators had an annual business of $1,000,000.

Four Centerville residents were among those named as operators in the indictments, which were returned before Federal Judge Peter Bates. The other defendants, in various states, include owners of pool halls, cigar stores, and handbooks, who were accused of selling lottery tickets.

Local Nerve Center

Centerville was the nerve center for all four of the alleged rings, Wolfe said. All the tickets were printed here at one shop, then distributed throughout the country to the agents.

The lotteries, according to the indictment, were conducted on the hazards of

almost any event about which the public was willing to wager—baseball games, football games, treasury figures, horse-racing, and even the weather.

To escape detection, said Wolfe, deceptive names were given companies, then changed from time to time; bank accounts were placed in many places, sometimes under assumed names; and offices moved often.

Nearly 300 persons were arrested by FBI agents in the investigation.

LAW; PENALTY

A federal grand jury today returned the first indictments under the new Smith-Connally Anti-Strike law, naming 30 United Coal Miners and Operators Union officials and members on charges of obstructing "the successful prosecution of the present war" during recent outlaw coal strikes.

If convicted, those under indictment face maximum penalties of a year in jail, fines of $5,000, or both. The new law forbids work stoppages in government-operated industries, and the mines are under federal supervision.

The indictment climaxed an investigation which began July 1 following a series of wildcat strikes in Virginia, one embracing a total of 20,000 men, after the men were ordered back to the pits under a truce.

Bench warrants for the arrest of the 30 defendants will be issued and bonds of $1,000 will be asked.

The defendants were accused of endorsing "work stoppages and picketing" by arranging to place pickets and picket lines for the purpose of dissuading miners from entering the pits, or "urging and counseling" miners and local union officials to remain away from work.

PRINCIPALS: ACCUSED AND VICTIMS

New York, May 19—Joseph S. Fay, international vice-president of the Union of Operating Engineers (A. F of L.) and close friend of William Green, president of the American Federation of Labor, was accused in an indictment today of extorting $420,000 and of conspiracy to extort $703,000 from numerous contractors.

Among his victims, according to the indictment, was the Henry J. Kaiser company of Oakland, Calif., which was to have paid $109,000 to prevent labor troubles and sabotage.

Contractors Called Victims

Indicted with Fay was James Bove, international vice-president of the Hod Carriers union (A. F. of L.).

The two worked their shakedown racket principally upon contractors building New York's new $300,000,000 water system in upstate counties, Frank H. Hogan, district attorney said.

Hogan said the amount extorted by the two men may exceed $1,000,000.

"See us," the two labor leaders would tell the contractors over the telephone, Hogan said, and the conferences resulted in payments to prevent threats of labor troubles.

Both Plead Innocent

Both men pleaded not guilty and were held in $35,000 bail each.

Fay, at the A. F. of L. convention, New Orleans, in 1940 slugged David Dubinsky, president of the International Ladies Garment Workers union, when the latter proposed a resolution to bar racketeers and gangsters from the federation.

—Chicago (Ill.) *Sun.*

The printed form used by grand juries of the St. Louis circuit court indicting for murder in the second degree appears on page 553.

The reporter must be careful to distinguish between an indictment and a presentment. The latter is more unusual and hence generally more newsworthy:

Pittsburgh, May 27—(UP)—A federal grand jury, after almost six weeks of investigating practices of the Carnegie-Illinois Steel corporation, returned today a bill of presentment, requesting that the steel firm and four of its employes be indicted.

The company, world's largest producer of steel, was accused of concealing and destroying vital evidence sought by the government in connection with the alleged production at the company's Irvin works, near Pittsburgh, of sub-specification steel plates for war use.

Inspectors Named in Bill

Others named in the bill of presentment were:

J. H. McConnell, sheet metallurgical inspector, Irvin works; David B. Ireland, sheet mill metallurgical inspector; and Murray E. Stewart and Walter J. Humerich, specifications supervisors.

The presentment, received by Federal Judge Nelson McVicar, asked that Charles F. Uhl, U. S. attorney, prepare an indictment or indictments formally charging the company and the four men with the federal offense.

Uhl, who has been aided by three representatives of the attorney general's office, told Judge McVicar that the investigation was not concluded.

Further Inquiry Planned

"The jury is going on with a further investigation, and it has not been discharged," he said.

From that, it is presumed the jury will undertake to determine whether the corporation and any of its employes will be accused of manufacturing substandard steel plates. Today's presentment covered only the alleged destruction and concealment of plant records.

The presentment charged that on or about March 17 the corporation and the individuals "did knowingly and willfully conceal and cover up material facts within the jurisdiction of certain departments and agencies of the United States by the trick, scheme, and device of removing from the files of Carnegie-Illinois Steel corporation, and concealing and destroying several hundred of the original records of Carnegie-Illinois Steel corporation in violation of Section 80, Title 18, United States code."

Faking of Tests Disclosed

The grand jury investigation grew out of disclosures before the Senate (Truman) committee investigating the war program that tests on steel plates for governmental agencies had been faked to meet the specifications for the material.

When a grand jury refuses to indict, this may mean that the evidence presented to it was not so strong as would have been possible, indicating derilection or negligence on the part of the prosecutor or police, or it may mean that the prosecutor was overzealous. There is no way to train a reporter to be smart enough to "see through" such situations. His ability to do so is based upon his general intelligence and mental alertness and his success in getting to know the

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS

Circuit Court, City of St. Louis, ... Term, 19 . .

THE GRAND JURORS OF THE STATE OF MISSOURI, within and for the body of the City of St Louis, now here in Court, duly impaneled, sworn and charged, upon their oath present,

That..... .

on the . day of , in the year of our Lord one thousand nine hundred and . , at the City of St Louis aforesaid, with force and arms, in and upon one

in the peace of the State then and there being, feloniously, willfully, premeditatedly, and of malice aforethought, did make an assault, and that the said

a certain pistol then and there charged with gunpowder and one metal bullet, then and there feloniously, willfully, premeditatedly, and of malice aforethought, did discharge and shoot off, to, at, against and upon the said. ,

and that the said

with the metal bullet aforesaid, out of the pistol aforesaid, then and there by the force of the gunpowder aforesaid, by the said discharged and shot off, as aforesaid, then and there feloniously, willfully, premeditatedly, and of malice aforethought, did strike, penetrate and wound the said in and upon the head and body of the said giving to the said .

then and there, with the metal bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid by the said in and upon the head and body of the said one mortal wound of the depth of six inches, and of the breadth of half an inch, of which said mortal wound the said then and there did languish and languishing did live from the said day of , A. D. 19 . . . , till the day of , A D 19 , on which said day of , A D 19 , the said of the said mortal wound, at the said City of St Louis, did die

And so the GRAND JURORS aforesaid, upon their oath aforesaid, do say that the said . the said in the manner and form, and by the means aforesaid, feloniously, willfully, premeditatedly, and of malice aforethought, did kill and murder;

Against the peace and dignity of the State.

Assistant Circuit Attorney

right people and knowing how to make them talk. A handicap is the fact that the reporter who covers grand-jury proceedings may not be the same one who handles police news and therefore is in a better position to learn the background of specific cases.

The two Morgan Park policemen involved in the fatal shooting of Elmo Vassar, 16-year-old Negro youth who was killed May 13 after he allegedly threw stones at the officers, were absolved of blame yesterday by the Cook County grand jury.

The jurors refused to take action on both murder and manslaughter indictments against the two officers, Patrick Rynne and Charles Schwartferger. Rynne fired the shot which entered Vassar's back and caused his death.

Nine persons, four of them witnesses to the shooting, appeared before the jury in a three and a half hour session.

Gordon Nash, assistant state's attorney, who with another assistant, Edwin Spiro, presented evidence in the case, could give no reason for the decision.

"I wasn't there during the jury's deliberations," he said. "The other prosecutor and I purposely stepped out to let them decide the case alone. I didn't ask them their reasons, but apparently they thought there wasn't sufficient evidence to justify the indictments."

Policeman Hit by Rock

Vassar, who lived at 11347 S. Carpenter st., was killed along the Pennsylvania Railroad tracks at 113th st. At the inquest June 5, Rynne testified a rock thrown by the youth struck him on the head and "everything went black."

Rynne and Schwartferger, through their attorney, Milton D. Smith, offered to give their version to the jury yesterday, but the request was declined. Chief Justice John Sbarbaro told Smith that it would be "unusual" for a grand jury to hear "a prospective defendant."

Four Tell of Shooting

Four Negroes who witnessed the shooting told their stories to the jury yesterday. They are Thomas Phillips, 6543 S. State st.; Lewis McCamey, 11348 Morgan st., a sailor at Great Lakes Naval Training Station; Robert Murchison, 11360 Morgan st., and James Streeter, 11362 Morgan st.

Other witnesses included the youth's father, Elmo Vassar Sr.; Miss Anna Johnson, Negro, of 1221 W. 111th st., attendant at the undertaking parlor where the youth's body was taken; Capt. James Kerr of the Morgan Park station; and two coroner's physicians, Drs. Julian Dawson, Negro, and S. S. Snider.

According to Nash, Miss Johnson told of taking 21 rocks from Vassar's pockets. She told the jury however, that 21 rocks brought before them by police looked bigger than the ones she saw, Nash said. The rocks exhibited to the jury ranged from egg-size to the size of an inkwell.

Men Still Suspended

The regular June grand jury, composed of 23 men and women, heard evidence in the case. When their verdict was announced to the youth's father, Nash said, he "appeared disappointed."

The two policemen have been under suspension since May 16. Police Commissioner Allman said yesterday he would take no action on the suspension until he had an official report of the jury's action and until his own special investigation is completed.

—Chicago (Ill.) *Sun.*

Presentments and special grand-jury reports must be followed up to determine what prosecutors and other public officials intend to do about them. Customarily, everyone promises to carry out the jury's recommendations with loud protestations of intentions to uphold law and order and good public morals. The "real" follow-ups should be made months or years later.

An investigation of the office and conduct of Dr. Edward O'Toole, Centerville county physician, who was inferentially "rapped" in a county grand jury report Saturday, was begun today by County Attorney Robert Krause.

Krause took over the probe after the board of county commissioners had studied the report and decided that any action would be up to him. In its report, the grand jury found:

"We are not satisfied with the administration of this particular office. . . . We strongly urge that the proper authorities make a full, complete, and careful investigation of this matter and apply whatever corrective measures may be necessary to insure the people of Centerville county the proper administration of this particular office."

Krause said he would call for questioning Dr. O'Toole and George Garry, county hospital investigator, who appeared before the grand jury against him. Relations between O'Toole and Garry have been strained for more than a year. Reappointment of O'Toole was opposed by Commissioner Edwin Williams, sponsor of Garry.

Williams said he was "anxious to carry out the grand jury's recommendation," but felt it had instructed Krause to make the investigation. Chairman Frank Kennedy, who once voted with Williams not to reappoint O'Toole but reversed himself when the Centerville County Medical society closed the county clinic, concurred.

Kennedy defended O'Toole, declaring that charges made before the grand jury were different from those already aired before the commission and he did not consider them sufficient.

Pleas and Motions Following Indictments

After indictment, the accused must be arraigned in the court in which the indictment is returned, to be made acquainted with the charges against him and to make his answer or plea. If the offense is a felony, it may be required by statute that he receive a copy of the indictment in advance of arraignment; in all cases, he can have one for the asking.

If not yet in custody of the court or if at liberty on bail, an indicted person is arrested on a *bench warrant* (capias) issued promptly following the reporting of the true bill. Upon arraignment, the accused must be informed that he has the right to counsel and, if he is unable to afford such legal aid and requests it, the court must assign a member of the bar to defend him. The practice of a state-maintained public defender is growing—especially since the right to waive jury trial has been upheld—if county budgets can afford it.

Pleas in abatement. As in civil cases, such pleas are dilatory to obtain delays and do not go to the merits of the action. Many penal codes forbid a formal plea in abatement, but the equivalent may be permissible by a motion to *set aside* or to *dismiss* or to *quash* the indictment, depending upon the grounds. If granting the plea or motion would not be a bar to further prosecution, through amendment of the indictment or a new indictment, it is in abatement.

One such plea or motion is a *challenge to the array,* or a *challenge of the panel,* by which it is contended that the grand jury was selected illegally—because the jury commissioner handpicked it or in some other way deviated from the prescribed system of selecting it by chance; because members of a particular race or class, as Negroes, were not included in the panel or because of some other similar reason suggesting graft, bribery, or other malfeasance in office. The indictment may also be attacked because of its form or the manner in which it was voted by the grand jury. For example, there might not have been a quorum of the jury present; the foreman might not have endorsed it properly; the accused might have been indicted by the wrong name; or there might be other technical, including stenographic, errors. Perhaps persons not entitled to be there were in the jury room at the time.

Another set of reasons—sounder than those mentioned but not a bar to further grand-jury action—are: insufficient evidence, admission of illegal evidence, no facts sufficient at law were presented.

A motion to quash an indictment against Frank Chrison, 50 years old, president of the Securities Corporation International, was overruled today by Federal Judge Arnold Pierson. Chrison was one of ten men named in indictments charging a $500,000 fraud in violation of the Securities and Exchange act. Chrison's motion was based on the allegation that a government agent was in the grand-jury room when he testified. This was denied by the government. Judge Pierson set the trial for Sept. 20.

Six indictments against Robert H. Smithies, Centerville Morning Star reporter, returned in connection with investigation of the police cell death of a robbery suspect, were dismissed today for lack of evidence to support them.

Request for dismissal before Circuit Judge Clarence Pollrow was made by Hartford Benson, circuit attorney.

Smithies had charged that his indictment was the result of efforts by Wayne Pope, first assistant circuit attorney, to muzzle the Star in its investigation and to cover his bungling of the case.

By Frederick C. Othman

Hollywood, March 9—(UP)—Federal Judge J. F. T. O'Connor today rejected seven motions in a row to quash charges against Charlie Chaplin and six alleged co-conspirators to give Joan Barry what she called the bum's rush out of Beverly Hills.

While Chaplin, two of his cronies, and four officials of Beverly Hills sat glumly

in the modernistic courtroom, their lawyers lined up before the bench and one after another demanded that the indictments be thrown out of court because there were no women on the federal grand jury that returned them.

Seven times Judge O'Connor snapped: "denied."

Prepare to File Demurrers

Jerry Giesler and his fellow lawyers immediately prepared to file demurrers in the case, in which the multi-millionaire British comedian and the others are charged with conspiring to take from Miss Barry her civil rights.

The lawyers contend that the sending of Miss Barry out of California instead of keeping her in Beverly Hills' model jail as a vagrant was purely a matter of local law enforcement.

The government contends that when Police Capt. W. W. White put her on a train with a ticket bought by Chaplin her "rights, immunities and privileges" were violated.

Police Judge Absent

All the defendants were in court except Police Judge Charles J. Griffin, who sentenced the red-haired Miss Barry to jail and later changed his mind. His lawyer filed a plea nonetheless. The other alleged conspirators, aside from Chaplin, included:

Tim Durant, the movie producer who never produced a picture but who did introduce Miss Barry to Chaplin; Robert Arden, the refugee radio commentator from Austria, who allegedly delivered the railroad ticket; Capt. White, who put Miss Barry on the train; Police Lt. Claude Marples, who booked her as a vagrant; and Police Matron Jessie Billie Reno, who guarded her briefly in jail.

Plea to the jurisdiction. The title of the plea is self-explanatory. By it the accused contends that the indicting body acted without legal authority over his case. A motion for a *change of venue* is a different kind of plea from the plea to the jurisdiction. (See page 175.)

William J. Golde, counsel for Judge David Bliss of the county Probate court, whose impeachment trial before the state senate is to start Monday, filed formal notification today that motion to dismiss the charges against his client will be filed.

Golde revealed that he will advance contention that the senate lacks jurisdiction because the legislature did not conduct the original grand jury investigation upon which charges of malfeasance and malfeasance in office are based. The bill of impeachment was voted by the house on the basis of a petition filed by Judge Herman Dranke of Huntersville, who had functioned as a one-man grand jury investigator of county affairs. Bliss was accused of violating the state's marriage laws by conducting a wholesale business in secret marriages and of padding expense accounts.

If the traditional defense is disallowed, Golde indicated, he will move that an acquittal verdict be directed and that charges relating to Bliss' earlier terms, as far back as 1933, be stricken from the complaint. Golde further informed the prosecuting officials, three lawyer members of the house, who by constitutional provision serve as a "board of managers" in impeachment proceedings, that he would call among defense witnesses, Gov. Ronald Whitelock; Thomas Savage, Whitelock's legal adviser; another assistant attorney general; and several newspapermen.

Pleas in bar. If granted, a plea in bar or an equivalent motion has the same effect as a verdict of acquittal. The charges against the accused are dismissed and cannot be brought again in another form.

One familiar plea of this kind is a *demurrer,* which is a contention that the acts charged in the indictment, even if true, do not constitute a crime.

Members of a District court jury panel who may be called Wednesday to try Ralph Fowler, former Centerville high school principal charged with embezzlement from the student activities funds, were kept out of the courtroom this afternoon while Fowler sought dismissal of two grand jury indictments on a demurrer.

John Galsworthy, former United States district attorney, representing Fowler, asked Judge William S. Maltz to dismiss the charges because he said they "do not show what the high school activities fund is and do not constitute a criminal offense."

"We don't know yet what it is," Galsworthy said. "We have been trying to find out and we can't."

He said that under the law, a defendant is presumed not to know anything about the charges against him because he is presumed innocent until proved guilty.

Arnold Friedman, assistant county attorney, defended the indictments, asserting Fowler's argument meant he was "playing hide and seek with the law, juggling justice and attempting to take advantage of his wrong."

"If he was trustee enough to collect this money and have it under his control, he was trustee enough to be prosecuted for its embezzlement," Friedman argued.

Friedman read several cases in which it was held that it was not important whether the money involved "had a right to exist," but it was only important that the person accused was in charge of it and used it for his own purposes.

A plea of *former jeopardy* is based on the phrase in the Fifth Amendment to the United States Constitution, which reads: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Proof that a person has been tried previously for the same offense is an iron-clad defense, and arguments when a plea of former jeopardy is made are based on the technicalities of what constitutes a trial. The plea applies if there has been a jury verdict, even though judgment or sentence did not follow. Generally, prosecution for a lesser charge will bar subsequent prosecution for a more severe charge growing out of the same offense. However, acquittal of felony will not bar indictment for a misdemeanor.

Some special pleas of former jeopardy still encountered in some jurisdictions are: *autrefois acquit,* that the defendant has been indicted, tried, and acquitted for the same offense; *autrefois attaint,* that the defendant already has been attainted (deprived of civil rights) for one felony and so cannot be criminally prosecuted for another; and *autrefois convict,* that the defendant already has been indicted, tried, and convicted for the same offense.

There is no time limit as to when prosecution can begin when the charge is murder or treason and, in many states, kidnaping and some other major crimes. For most other offenses, felonies, and misdemeanors alike, however, there is a *statute of limitations*, varying from two to ten years, depending upon the gravity of the charge. In figuring when the statute becomes operative, time spent outside the state or under a false name inside the state is not counted. A defendant can, of course, waive the statute of limitations, but every few months press associations pick up stories of escaped convicts or other criminals who either are apprehended or give themselves up after the passage of many years.

Demurrers by counsel for six St. Louis gangsters, seeking to quash movie extortion indictments, contending the charges had been outlawed by the statute of limitations and asking for a bill of particulars, were taken under advisement today by U. S. District Judge Franklin Theirman.

Arnold Stevens, special assistant U. S. attorney general, told the court similar motions had been made to no avail for Anthony Grace, east coast labor leader, and Charles Bolter, former motion picture employes' union official, who were convicted and jailed in a like indictment.

Routine motions. These motions are called routine only because they do not attack the indictment or in any other way attempt to stop the proceedings. A motion for a *bill of particulars* may, in some cases, be a first step toward such an objective. Usually, however, it is a request that the charges be made more specific. When this motion is made, there is often ground for suspicion that the defendant committed other acts similar to those cited in the indictment which have not yet been "pinned on" him, and he wants to be certain which ones he is defending.

When two or more defendants are named in the same indictment, one of them may move for a *severance*, meaning a separate trial. To plead successfully for a severance, the defendant must establish that a joint trial would be prejudicial to his interests. He may, for instance, point to the bad reputation or record of his fellow defendant, to confessions or admissions made by his co-defendant, to the antagonistic defenses they are presenting, or to the inability of their counsel to get along or to similar circumstances.

A separate trial was granted yesterday to Mrs. Nancy Gaultman, a nurse, who is charged with conspiracy in connection with an alleged abortion ring. She was indicted with Mrs. Ruth Wilaman, alleged head of the ring, and Mrs. Doris Gaynes, a receptionist.

Judge William Haymarket granted the severance on a showing that Mrs. Gaultman is in a hospital suffering from injuries incurred in an automobile accident and cannot be ready for trial before some weeks.

The hearing before Judge Haymarket was enlivened when the $2,000 bonds for Mrs. Wilaman and Mrs. Gaynes were withdrawn and the two women were taken

into temporary custody. They were freed on other bonds afterward. The original bonds were surrendered because the property on which they were issued is up for sale.

Judge Haymarket continued the case until next Tuesday, when he will hear a motion by Defense Attorneys W. L. Smith and H. L. Bowen to suppress the evidence. If the motion is denied, the trial will be started immediately afterward.

Judge Peter Carlson in Circuit court yesterday denied the motions of Robert Hainey and two other Stateville convicts for separate trials on an indictment charging them with aiding Clarence Dofferkamp in the mass break of eight prisoners June 15.

After the decision Attorney Robert Nelson was granted leave to withdraw as counsel for Hainey because he would be unable to appear at the trial set for Oct. 1. The court told Hainey that if unable to get an attorney one would be appointed to represent him.

If convicted, Hainey and his two companions, Billy Bellington and Harvey Withers, would become subject to a sentence equal to the term Dofferkamp is serving—199 years.

A *continuance* may be requested in a criminal as in a civil case for adequate reasons why immediate trial would be to the disadvantage of the side making the motion. Either the state or the defendant can ask for a delay. If too many weeks or months pass without trial, the alert reporter should make inquiries.

Ralph Fowler, former Centerville high school principal indicted last week for embezzlement, Monday will file a formal motion for a continuance in his trial set for Dec. 1, John Galsworthy, counsel for his defense, said today.

Galsworthy objected to trial on the current District court docket, insisting it did not give Fowler sufficient time in which to prepare a defense. The case was set over his objection by District Judge William S. Maltz.

Fowler is free under bonds totaling $5,000.

Federal Judge J. T. Magiera yesterday continued until April 20 draft evasion charges against Donald Price, Negro minister of the Temple of Faith, a South Side religious cult. The continuance was granted to allow the government time to correct a technically faulty indictment.

Before he granted the continuance, Judge Magiera upheld a defense contention that the indictment failed to state the age and sex of a cult member whom Price is accused of having influenced to evade the draft. He ruled that the person named could have been a female and over the draft age.

Price and five other leaders of the group are scheduled to go on trial May 10 on charges of sedition in federal court. Seventy-five members of the cult have been sentenced to federal prisons on charges that they failed to register for the draft.

Pleas to the merits. The two standard pleas to the merits obviously are *guilty* and *not guilty*. Rewrite men please note: there is no such plea as "innocent," and little slips of that sort disgust judges and lawyers perhaps more than major ones.

If the plea is guilty, the court (judge) must inform the defendant of its power to sentence, citing the possible punishments, and allow

him the opportunity to change his plea. If he does not do so, he is at the mercy of the court. He may, however, make a *plea for mitigation*. Perhaps the most famous of such pleas was that which Clarence Darrow made in behalf of Richard Loeb and Nathan Leopold in 1924. It took days and was supplemented by the testimony of many mental and other experts. The purpose was to persuade Judge Caverly to sentence the killers to life imprisonment instead of to death, and it was successful. The hearing on the plea virtually amounted in that case to a complete trial. Such "news breaks" occur only a few times in a generation.

Seventy-four minor defendants in the so-called Happy Chance lottery pleaded guilty yesterday before Judge John Wenderoth in Federal court to charges of violating the lottery laws. Fines of $25 were assessed against 68 defendants. Six others, who pleaded inability to pay the fine, were placed in the custody of the U. S. marshal for one hour.

Twelve other defendants who have pleaded not guilty are scheduled to go on trial later in the month.

David Abbott, U. S. district attorney, said operators of the ring took in several million dollars annually through the sale of baseball pool tickets and lotteries based on treasury balances.

Daniel Green, 17, of 190 Eastwood avenue, and Horace Werner, 17, of 970 Forest avenue, escaped inmates of the Illinois Training School for Boys near St. Charles, pleaded guilty to auto theft in the Kane County Circuit court at Geneva yesterday. They were sentenced by Judge Victor Hopkins to serve from one to ten years in the penitentiary at Joliet.

The boys escaped three weeks ago and were captured after they had stolen the automobile of an Elgin grocer.

When the accused pleads not guilty, he is entitled to a speedy trial by jury—unless he waives jury trial, in which case the judge alone hears the evidence. At any time during the proceedings, up to and including trial, it is possible to change the plea to one of guilty. Upon the original plea the judge sets a date for trial at which time both sides are supposed to be ready.

Federal Judge William Katz yesterday set June 2 as the trial date for Herman and Richard Noonan, 29 and 35 respectively, on charges of attempted bribery and conspiracy.

The two brothers, who own a sausage factory at 19078 Ridge road, pleaded not guilty. They are accused of attempting to bribe a war production board agent to conceal illegal construction.

The government charged that an attempt was made to bribe WPB inspectors, who found that $25,000 had been spent in plant alterations at the Quality Sausage company, 910 Elgin road, instead of the $5,000 authorized by the WPB.

Pleas of not guilty were entered in U. S. District court today by Attorney Leo F. Tierney for 16 flour-milling corporations, 11 of their executives, and the Millers' National federation, 309 West Jackson boulevard, accused of conspiring to fix prices on packaged flour.

A defense request that the trial be delayed until after the first of the year was objected to by Daniel B. Britt, special assistant to the attorney general in charge of anti-trust cases. Judge Philip L. Sullivan then set the date for Nov. 15.

Indicted for violating the anti-trust laws, the firms include some of the largest in the country. Defendants include the Standard Milling company, with offices at 309 West Jackson boulevard, and the Trenton Milling company, of Trenton, Ill. Others range from South Carolina to the state of Washington.

The indictment charges that members of the Millers' federation met in the Edgewater Beach hotel each May and fixed the prices on flour ultimately to be sold to housewives. As a result, 1½ pound packages cost the consumer 100 per cent more than an equal amount of barreled flour, the government contends.

Maximum penalty for the individuals upon conviction would be a year's imprisonment and a fine of $1,000. Maximum penalty for the corporations would be a fine of $5,000 each.

—Chicago (Ill.) *Times.*

A special plea of *not guilty because of insanity* may be permitted, or, as more frequently is the case, insanity is pleaded as justification for the not guilty plea.

Nolo contendere. By this special plea, the defendant says, "I will not contest it." Thus, as far as his chances of escaping punishment are concerned, it is tantamount to a plea of guilty. The plea is most frequent in federal courts, especially when other trials for similar offenses have been held and have resulted in guilty verdicts. For instance, if a number of companies are indicted for violation of the anti-trust laws and one is tried and convicted, the others may plead *nolo contendere* even though they consider themselves morally if not legally innocent. By doing so, they spare themselves the ignominy of a guilty plea or of a guilty verdict as well as the expense of defense. Likewise, the plea cannot be used against them in any subsequent civil action. The plea is allowable at the court's discretion only.

Fort Wayne, Ind., June 10—(UP)—Defendants in the government's war fraud case against the Marion (Ind.) plant of the Anaconda Wire and Cable company, pleaded nolo contendere today before Federal Judge Thomas W. Slick.

The plea signifies that the defendants place themselves at the mercy of the court, without pleading either guilty or not guilty. The government presented evidence to show the defendants were guilty of a conspiracy to sell defective communications wire to the armed forces and the Lend-Lease agencies.

Pat Coon, special assistant to the attorney general, said the government was prepared to try the case, but because of the defense plea "the only question before the court is the punishment to be meted out."

Coon submitted examples of what he described as defective communications wire, which he charged was packed preparatory for shipment to the armed forces.

Coon contended that the Marion plant stored an equal amount of wire to correspond with that which had been inspected. Then it substituted tags during the night when government inspectors were not present, he said.

Besides the company, the defendants are: Thor S. Johnson, Hastings-on-Hudson, N. Y., general manager of all Anaconda mills; Frank E. Hart, manager

of the Marion plant; Don R. Carpenter, former superintendent of the plant; Chalmer C. Bishop, chief inspector; and Frank Kunkle, former chief inspector.

After attorneys for the company have been heard, probably tomorrow, the court will dispose of the $5,000,000 fraud case, the first of its kind of the war.

Nolle prosequi (nol-pros). This plea is made by the prosecuting attorney when he does not wish to continue against the defendant. If accepted by the court, it means an end to that proceeding and the granting of liberty to the accused. It is possible, however, for the state to proceed against him under another indictment at a later time, without a plea of former jeopardy being available to him. The plea is made most frequently when new evidence reaches the prosecutor and convinces him of the defendant's innocence, or when the state's case is too weak to proceed. No prosecuting attorney wants to go into court certain that he will lose.

Federal Judge Franklin Holmes yesterday nol-prossed indictments charging Howard McCarthy, 54 years old, of 190 Darrow place, an attorney, with sedition and conspiracy. The court order was made on a government motion.

Arthur Burbank, 41 years old, a statistician, was found guilty in January of writing seditious pamphlets, and was sentenced to five years imprisonment, and Percy Methudy, 35, was sentenced to a year and a day for mimeographing them. Methudy had rented space in McCarthy's offices at 190 West Randolph street. Burbank and Methudy have carried appeals to the United States Circuit Court of Appeals and arguments will be heard April 29.

Insufficient evidence had been produced to connect McCarthy with the pamphlets, the court held yesterday. McCarthy said he will ask the court to order Federal Bureau of Investigation and county jail records and pictures of him destroyed.

Motion to suppress. A motion to suppress the evidence is proper when the evidence was obtained illegally—by search of a premises without proper search warrant, wire tapping, or in some other way, all of which violate constitutional protections.

A severe blow was dealt government efforts to convict Hans Max Haupt of treason when U. S. District Judge John P. Barnes upheld a defense motion to suppress evidence obtained by FBI agents in a search of the Haupt home at 2234 Fremont.

Immediately after the court's decision, selection of a jury began for the defendant's second trial on the accusation of aiding his son, Herbert, executed Nazi saboteur. Commenting on Defense Attorney Paul A. F. Warnholtz' motion, Judge Barnes said this case in general paralleled the McNabb case, in which means used by federal agents to obtain evidence was censured.

High Standards Set

He said the McNabb precedent set a high standard of conduct for law enforcement officers. "If it is not adhered to, the evidence procured shall not be permitted to be used in the courts of the United States," Judge Barnes said. "and if it were permitted to be used and convictions occurred, they would be reversed."

The defense contends three FBI agents searched the Haupt home after having

the defendant and his wife, Erna, sign a waiver to objection, whereas an incontestible search warrant could have been obtained. Too, Warnholtz argued that the Haupts did not know what they were signing.

Judge Barnes sided with the defense on these points, saying he was taking into consideration evidence brought forth in the defendant's sanity trial held before him. "I do not believe Haupt competently waived his rights," the court commented. "It seemed a power he could not oppose at the moment."

—Chicago (Ill.) *Daily Times.*

Some Other Preliminaries

Extradition. When a fugitive from justice crosses state lines, the proper procedure in order to bring about his return to the jurisdiction where he is wanted, to stand trial, to complete a prison sentence, or for any other legally valid reason, is for the governor of the state from which he has fled to request the governor of the state to which he has gone to have him returned.

Extradition—the return of the fugitive—is called "a political duty of imperfect obligation," depending upon the treaty obligations between countries or the pacts between states. There is a Uniform Criminal Extradition Act which many states have adopted, whereby their chief executives are bound under virtually all circumstances to honor a request for extradition from another state. Such requests must be in writing, and the governor of the state receiving one must issue a warrant for the arrest of the fugitive if he is not already in custody for another reason. Then there must be an extradition hearing before the governor, after which he determines whether to honor the request.

Many fugitives are discovered by means of their fingerprints, which were taken when they get into trouble in the state to which they fled. An increasingly large number of local police departments routinely forward all fingerprints to the Federal Bureau of Investigation in Washington for possible identification. Many businesses today require employees to be fingerprinted and the prints are sent to the FBI, where they are checked before being added to the civilian file.

The best extradition stories occur when a governor refuses a request. Most such cases are those of fugitives from southern states who have gone north. Arrested, they often seek their release through writs of habeas corpus, and contend that if they are sent back south they will be lynched or subjected to cruel and inhuman punishment. The chain gangs still permitted by some southern states have received a great deal of notoriety, and a northern governor is usually on safe political ground when he declines to send even a hardened criminal back to such servitude.

Extradition proceedings were begun today to bring Dwight Caldwell, former CIO union organizer from New York, to stand trial for the fatal shooting of Wilbert Barnes, another union organizer, in October, 1936, in a union hall at 190 Milwaukee avenue.

An indictment charging Caldwell with murder was returned yesterday by the grand jury, after information that a five-year search had ended with his arrest in St. Louis.

Asserting that, if he returned to Atlanta to face a charge of robbery, he would fall into the hands of the Ku Klux Klan and be subjected to bodily harm, Edgar Price, Negro fugitive from Georgia, filed a petition for habeas corpus yesterday in the U. S. District court.

Price, a prisoner in county jail, is awaiting extradition on a governor's warrant in connection with a robbery in Atlanta on June 5. After the indictment was returned, Price fled here where he was arrested.

He charges in his petition that the complainant, J. R. Goldberg, is a racketeer and operator of a numbers game that ran in opposition to his own. He claims that the charge of robbery was fraudulent, and maintains his innocence.

The petition was referred to Judge William Albach.

Acting Gov. Homer R. Thornton today denied Ohio's application for the extradition of Robert Higgins, who escaped from the Ohio state prison in 1919 after serving only five years of a life sentence for the killing of his 13-year-old stepbrother.

Higgins, who was caught when his fingerprints were taken after he had driven past a stop sign, had lived here for 24 years as Arnold Peterson.

He conceded through his lawyer that he had no legal grounds on which he could resist extradition, but contended he had lived an exemplary life and had achieved self-rehabilitation.

His wife, who said she knew nothing of his past until his arrest, declared he had been a model husband; had cared for her and her two children by a former marriage as though he had been their own father, and now, after they were grown, he was supporting two step-grandchildren while their father was in the Army.

The acting governor said he disliked denying another state's requisition application, but he believed Higgins' return to prison would serve no worthy purpose.

Mrs. Nancy Hitch, 30 years old, charged with abandoning her two children in New York, and Harold E. Snyder, 31, charged with kidnaping Mrs. Hitch, waived extradition yesterday when they were arraigned before Judge William Harrison in Felony court. They were turned over to New York authorities. They were arrested June 1 in a Dorchester avenue flat. Mrs. Hitch at the time denied she had been kidnaped or that she had deserted her children. She said she had come here to seek work to support the two children, James, 2, and Richard, 4.

In the federal court system, the equivalent of extradition is *removal* from one district to another. Hearings are held by commissioners and, as in the case of extradition hearings, they may be virtually trials of the evidence.

A removal hearing for six racketeer gangsters wanted in New York to face trial on charges of extortion and mail fraud will be held this afternoon before United States Commissioner Edwin K. Walker. All the defendants have pleaded

not guilty and today's action is expected to be brief, with the government proceeding cautiously to avoid disclosing evidence to be used at the trial in New York.

The six, Paul Ricca, Louis (Little New York) Campagna, Ralph Pierce, Philip D'Andrea, Charles Gioe, and Francis Mariotte, alias Frank Diamond, all were associates of the late Frank Nitti, who shot and killed himself a few hours after the indictment was returned in New York.

Subpoenas have been issued for Ralph Capone, brother of Al, and Alex Louis Greenberg, reputed financial adviser for the gang, to appear at today's hearing as identifying witnesses. The two men were witnesses before the grand jury which returned the indictment, it was disclosed yesterday in New York.

—Chicago (Ill.) *Tribune.*

Featuring "personal appearances" of a half-dozen movie magnates more important than those of their best cinema stars, Chapter 2 of the removal proceedings against six Capone gang racketeers will unfold today before U. S. Commissioner Edwin K. Walker in the U. S. courthouse.

Best legal opinion admits that the racketeers, fighting removal to New York to stand trial for mail fraud and extortion of motion picture firms, are being afforded a golden opportunity by the court's permitting testimony to be taken at the hearing from defense witnesses.

Walker, who presided at the last similar session when he ordered the extradition of John "Jake the Barber" Factor to England, admitted out of court that calling of witnesses is a rare procedure. High courts, however, have held defendants must not be denied an opportunity to present witnesses at such hearings, he said. At the same time, no testimony properly reserved for the trial courts can be accepted, Walker added.

Walker, it is understood, will permit Defense Attorney A. Bradley Eben to continue questioning the movie magnates about their dealings with unions as long as Eben confines himself to queries attacking the probable cause of conspiracy in which the six defendants allegedly took part. Although Eben said at the "premiere" yesterday that he intends to call 14 witnesses, it is held probable that the proceedings may be terminated without hearing from them all.

Nicholas Schenck, president of Loew's Incorporated, first defense witness, will be recalled to the stand today to continue his narrative of the movie firms' dealings with unions, principally the International association of Theatrical Stage employes, headed by Willie Bioff and George Browne, whose prosecutions were believed to have led to the present proceedings.

—Chicago (Ill.) *Times.*

Six former Capone mobsters, in an unexpected move before U. S. Commissioner Edwin K. Walker, suddenly dropped their fight yesterday against removal to New York to stand trial on federal charges of extorting more than $1,000,000 from the motion picture industry.

The sudden termination of the hearing came while five top executives of Hollywood film companies, summoned by the defense from both coasts, awaited a call to the witness stand. Only two witnesses had thus far been heard.

A. Bradley Eben, defense attorney, made the surprise announcement that the proceedings would be dropped, after exacting from the prosecution a promise not to bring the defendants to trial before September.

The six defendants must appear in New York on June 9, however, to enter pleas at a preliminary arraignment. Bonds of $100,000 for each defendant, set at $50,000 on each of two indictments, remain the same.

The accused men are Paul Ricca, Louis "Little New York" Campagna, Ralph

Pierce, Charles Gioe, Philip D'Andrea and Frank Mariotte, also known as Frank Diamond.

—Chicago (Ill.) *Sun.*

Depositions. If a person wanted as a witness at a trial is ill, infirm, or about to leave the court's jurisdiction, or if there is reason to fear he will be unable to attend when the case is called, either side can petition the court for the right to obtain his testimony by deposition. (See pages 187 to 190.)

The appearance of five men in uniforms of U. S. Army officers at a German-American Bund camp near Philadelphia, where they conferred with Fritz Kuhn, former head of the Bund in America, was described by a federal court deposition today, taken from John C. Metcalfe, former Chicago newspaperman.

Metcalfe, questioned by government attorneys as a preliminary action in the denaturalization trial of Dr. Otto Willumeit, Bund leader, and eight other Bund members, testified that he joined the Bund at Astoria, L. I. in 1937 as part of a newspaper assignment. He said that after joining the Bund, he was "persuaded" by Willie Seckell, treasurer of the Astoria chapter, to make a coast-to-coast tour to speak at various Bund camps.

The first stop, Metcalfe said, was at the Philadelphia camp, where he saw an Army car drive up and let the five men in uniform get out. Later, he said, an airplane flew overhead and dropped swastikas. The Army car bore the legend "28th Aviation Unit," he added.

—Chicago (Ill.) *Daily News.*

Howard Martin, a cellmate, said in a deposition today that Edward Barnes, Mexican citizen beaten to death in a St. Louis jail, asked repeatedly to be taken to a hospital, but was only given two red pills before he died.

Martin, who said he had not been called before the March term of the grand jury which indicted another cellmate, Wilfred White, for the slaying, testified that he, Martin, had been given two aspirin tablets after he complained that Barnes' suffering kept him awake all night.

If a witness is in a foreign country, the judge may write a *rogatory letter* to a judge in that country, requesting that the testimony of the witness be obtained by him and forwarded to the court where it is needed. This system was once used between American states. Today, however, commissions appointed by the original court is the usual practice.

Subpoenas. Both sides are entitled as a matter of right to obtain subpoenas for witnesses. A typical blank form of a criminal subpoena appears on page 568.

Counsel are the sources of news as to what witnesses are being subpoenaed as court clerks provide signed blanks often without filling them in. Because he does not want the other side to know who is to testify, a prosecutor or attorney for the defense may be reluctant to supply the information. If a prospective witness avoids service of a subpoena by leaving the court's jurisdiction, it is especially newsworthy.

In the Circuit of the State of Oregon

To.....

For the County of . . . .

.....

In the Name of the State of Oregon:

You are hereby commanded to appear before the said Court for the County of ... *State of Oregon, at the Court House in*..... *in said County, on the* .....*day of*. ..... 19 . , at.....*o'clock*. ... . *M. of said day as a witness in a criminal action, prosecuted by the State of Oregon against* ... .

on behalf of.....

WITNESS my hand and the seal of said Court affixed at ... . *the* ... *day of* ..... 19 .....

By..... .....*Deputy*. *Clerk*.

I HEREBY CERTIFY, that the within is a true copy of the original Subpoena in the within entitled action, as the same appears in my hands for service.

.....*County, Oregon*. *Sheriff of*.....*County, Oregon*.

.....19 .... *By*.....*Deputy*.

A defendant can refuse to honor a *subpoena duces tecum* demanding that he bring into court documents, records, and other articles which, as evidence, would tend to incriminate him. Such objects obtained from other sources, however, are admissible in evidence.

Sanity hearings. In New York if at any time it seems that "the defendant is in such a state of idiocy, imbecility, or insanity that he is incapable of understanding the charge or proceedings or of making his defense or if the defendant makes a plea of insanity," the court is empowered to order his examination by at least two psychiatrists. If he is found to be insane, the prisoner is committed to an institution, where he remains until declared sane and able to stand trial. Other states have similar provisions, although the advisory opinions may be given by ordinary physicians, instead of by specialists in mental disorders, or by ordinary lay juries.

To the expert in this field even the best laws are still primitive. To an expert, for a person to be tried in a court of law to determine his sanity is as ridiculous as it would be to refer cases of suspected scarlet fever or small pox to the grand jury.

Mrs. Agnes Whipple, 40, of 979 Oak Ridge avenue, charged with kidnaping 4-month-old Nancy Unger from her buggy in front of a South Side department

store on May 25, today was adjudged insane by a jury in the Criminal court of Judge William Hainey, and will be committed to a state mental hospital.

The jury of seven women and five men returned the insanity verdict after only a few minutes' deliberation. They had heard the only witness called in the case, Dr. Robert Whitney of the Centerville County behavior clinic, describe Mrs. Whipple's abnormal mental condition and term it incurable dementia praecox.

A successful private secretary 20 years ago, Mrs. Whipple was haggard and unkempt when she appeared in court today. Hearing the alienist state that she was insane, she burst out: "What about a change of venue? What about a change of venue?" The child she kidnaped, the daughter of Mr. and Mrs. Robert Unger, 3907 51st place, was found unharmed eight hours later abandoned by Mrs. Whipple in an alley at 109 East 20th street.

John Shaffer, railroad brakeman charged with murder for the fatal beating of his 5-year-old stepdaughter, was adjudged sane this afternoon by a criminal court jury. But the defense asked a new insanity trial and was given ten days in which to prepare argument for another hearing.

Chief Justice Benjamin P. Epstein, who conducted the hearing today, said after the jury returned its verdict: "In this case there is uncontradicted testimony that the defendant is not competent, not capable even of cooperating with his counsel."

Surprised at Verdict

The jury of seven women and five men deliberated an hour and ten minutes. The verdict seemed to surprise all attorneys in the case and the spectators. The judge had told the jurors they should find Shaffer insane if they believed he could not cooperate with counsel.

Shaffer, 28, had been placed on trial for murder for the death of the child, Letty Joyce Weir, but an insanity trial was granted him.

The final witness was Dr. William H. Haines, head of the Cook County Behavior clinic, who reported that he was unable to form an opinion on the defendant's mental condition, following an hour's examination of Shaffer during a court recess. Dr. Haines had found Shaffer legally sane Dec. 9, but conducted today's examination when Dr. Harold S. Hulbert described the defendant as a manic-depressive.

Insanity in Family

Shaffer's father, Homer R. Shaffer, 29 North Mayfield avenue, testified that there were several instances of insanity in the family.

In Judge Francis Allegretti's court, Mrs. Mildred Merkel, 22, was put on trial on a manslaughter charge for the death of her 2-year-old daughter, Claire, ascribed to a beating administered with a stove poker by the mother. Charles A. Bellows, defense counsel, said he hopes to prove that Mrs. Merkel was temporarily insane when her blows killed the child last Jan. 3. Dr. Haines has found her "legally sane" in two examinations. Bellows and Prosecutor James A. Brown selected a jury of ten women and two men.

—Chicago (Ill.) *Daily News.*

Psychiatric clinics connected with criminal courts are increasing in number, but their authority is limited or nonexistent. Judges can order psychiatric examinations, but prisoners can refuse to submit to them on the Constitutional ground that to do so might incrimi-

nate them. If the defense in a criminal case is to be insanity, the court psychiatrist is almost always refused the opportunity to conduct an examination. If, however, he comes close enough to hear the defendant refuse his request, he may be able to testify in court that the prisoner appeared rational and that his refusal to be examined indicated that he was sane enough to co-operate with his counsel, which is one legal test of sanity.

Since 1921, as the result of a statute enacted by the legislature that year, everyone accused of a capital crime in Massachusetts and indicted for a felony has been examined by a state-maintained alienist. A considerable amount of skepticism persists in most places, due largely to the fact that a generation ago it was not difficult to find mental experts of supposedly equal skill to contradict each other flatly on the witness stand. That period of the "battle of alienists" left many people thinking the psychiatrists were as mentally unbalanced as their patients, or at least too venal to be trusted. In addition, there lurks the fear that it is possible to "put it over" on a "nut" doctor during the single examination, which is about all that is permitted him.

A convict from Joliet Prison today took the stand in the Federal court of Judge John P. Barnes to describe in detail the manner in which he coached Hans Max Haupt in the art of feigning insanity so that Haupt might escape retrial on charges of sheltering his son, Herbert, the executed Nazi saboteur.

"I told him," the convict said, "that he must say foolish things to his lawyer, go without shaving, not keep himself too clean. He asked me what kind of tests the doctors would give him, and I said they'd give him problems to do with blocks and ask him a lot of funny questions."

Now Doing Life

The witness was Carl Hamby, recently sentenced to state's prison for life under the Habitual Criminal act. A robber, Hamby's criminal record dates back to 1926.

Hamby was followed to the stand by another state convict, John Majerczak, who substantiated his testimony of having coached the sad-faced and aged Haupt while all three of them were held at the County jail.

Both Hamby and Majerczak told Defense Counsel Paul A. F. Warnholtz that they had volunteered to testify as government witnesses at Haupt's insanity trial because, as Hamby said: "I have a brother in the Army and another about to go in. I think all of us ought to support the war effort."

Together In Jail

Hamby's personal support of the war effort lay in the detailed story he gave the jury about how he, Majerczak, and Haupt found themselves together in the bull pen of the County jail after Haupt's original conviction for aiding his son had been set aside by the U. S. Court of Appeals.

"We were discussing," Hamby said, "the luck of a guy who pretended he was nuts and got sent to a hospital instead of jail. After a few years he got out and there was no one around to prosecute him. Haupt said he'd try that as a last resort."

Haupt tried a few minor acts of irrationality, Hamby went on, but his coaches told him he wasn't very convincing and that he'd have to "put it on stronger."

Haupt asked what would happen to him if he were adjudged insane, the witness said, and both Hamby and Majerczak explained that he'd be kept in a hospital, probably until after the war, and that then no one would be interested in prosecuting him.

Earlier in the day, Dr. Harold S. Hulbert and Dr. Francis J. Gerty, alienists, had agreed that Haupt does not have the usual symptoms of insanity, but both had added they couldn't be sure.

Haupt, his wife, and four others are awaiting retrial—provided Haupt is adjudged insane.

—Chicago (Ill.) *Daily News.*

Nevertheless, the use of psychiatric advice is growing, not only to determine whether an accused is legally sane (see page 400) but also as an aid to the courts in determining what disposition to make of cases.

Recorder's Judge Arthur E. Gordon turned over to psychiatrists Wednesday the task of solving the mental processes which have led Frank Mikol, 44 years old, and his wife, Kazmira, 40, to conduct a two-week reign of terror against the tenants in their four-family apartment building at 1645 Elmhurst.

The psychiatrists took over after Judge Gordon had found the couple guilty of disturbing the peace. The court will sentence them next Wednesday, after studying the doctors' finding.

Petoskey Station police arrested the two Tuesday night after they had climaxed the two-week fight by dousing two male tenants with a dirty fluid ("definitely not water," the victims said) when the tenants tried to force their way through a basement door the Mikols had padlocked.

Wife Scratches Self

Mikol spent the night in jail and his wife was taken to the psychopathic ward of Receiving hospital after she had scratched her hands and arms severely while being placed under arrest, police said.

The tenants testified in court Wednesday that Mikol's previous moves in the running battle had consisted of nailing shut apartment doors, throwing garbage into the halls, disconnecting refrigerators, shutting off the gas to the hot water heater, and throwing the master switch to cut off all electric lights and power.

O. P. A. Forbad Remodeling

All this was done, they alleged, to get them to move out, so Mikol could convert the four-family dwelling into a 12-apartment building. The OPA already has banned such a move and has referred Mikol's case to the United States district attorney for action.

Mikol appeared in Recorder's court last June 18 and was placed on six months' probation after conviction of assault and battery on one of the tenants.

Still hanging over the couple's heads are a violation ticket from the fire marshal, against Mrs. Mikol, and tickets from the board of health and building inspector against Mikol, all based on the shenanigans at 1645 Elmhurst.

Judge Gordon ordered Mrs. Mikol held in jail until she could be taken into ordinance court on the fire marshal's ticket. Mikol was permitted his freedom under personal bond pending sentence.

Door Held Shut

Tenants involved in Tuesday's affray were Rudolph Wittla and Thompson Bonzo, who testified that they found the door padlocked when they tried to go to the basement, where they have storage and laundry facilities.

They started to force the door open, they testified, and found Mikol and his wife pushing against the other side. When they had the door open about four inches, Mrs. Mikol threw the pail of fluid on them, they said.

Other tenants in the building are Mr. and Mrs. Milo Root and Mr. and Mrs. Julius Tervo.

—Detroit (Mich.) *Free Press.*

A mental examination was ordered yesterday by Chief Justice Julius Goldberg of Criminal court, for David Livingston, 18 years old, confessed rapist. He is under indictment on three charges of rape and one of assault to rape.

The test was ordered at the request of Livingston's lawyer, Richard Havinghurst, when Livingston was brought into court for arraignment. Livingston pleaded guilty, but Havinghurst promptly halted the plea, and entered a technical one not guilty for him.

Arraignment then was deferred to Sept. 15, at which time the result of the mental test will be known. Livingston is to be examined by Dr. Arthur Millard, clinic behavior court, and Dr. Henry Anderson, state alienist.

In court, unable often to comment directly on the mental condition of an accused as it affected his alleged antisocial behavior, the psychiatrist may respond to a hypothetical question which, in effect, is about the same thing—about the same but not quite the same, according to the late Dr. William Alanson White, one of the greatest if not the greatest mental expert the United States as yet has produced. In a Salmon memorial lecture before the New York Academy of Medicine in 1935, Dr. White declared:

> The hypothetical question asks something about an individual which does not exist, never has existed, and from the constitution of most questions never could exist. It is in harmony with the entire criminal procedure, which does not try the defendant but tries a hypothetical individual accused of something, the existence of which often is questionable except by definition. The trial that takes place in our criminal courts is not the trial of a man, but the trial of a ghost that stalks across the stage in this dramatic procedure, and that probably would be least recognized by the so-called criminal himself, while behind such indefinable terms as "responsibility" there hides the same old motive of vengeance.

In Texas, juries in county courts must answer seven questions after a lunacy trial, either of a person charged with crime or one merely up for possible commitment to an asylum. They are: (1) Is the defendant of unsound mind? (2) If the defendant is of unsound mind, is it necessary that he be placed under restraint? (3) If you answer both the foregoing questions in the affirmative, then what is the age and nativity of the defendant? (4) How many attacks of insanity has he had, and how long has the present attack existed? (5) Is insanity hereditary in the family of defendant, or not?

(6) Is the defendant possessed of any estate, and if so, of what does it consist and its estimated value? (7) If the defendant is possessed of no estate, are there any persons legally liable for his support; if yes, name them?

The following *writ for confinement of lunacy* in Mississippi is typical:

8748 Writ for Confinement of Lunacy.—Chancery Clerk.

THE STATE OF MISSISSIPPI
COUNTY OF LOWNDES

TO THE SHERIFF OF LOWNDES COUNTY:

Whereas, ... was, on the .. .. day of. .... .A. D. 194... , duly adjudged a lunatic or insane by a jury of .....freeholders, competent jurors of the body of said County:

You are therefore hereby commanded to arrest the said . ... forthwith, and place h. ... .. in one of the asylums of the State of Mississippi for the care and treatment of lunatics and insane persons, if there be a vacancy; and if not, to confine h ... in the jail of said County until there be room in one of said asylums

Given under my hand and official seal, and issued, this the..... .day of . ... A. D. 194..

....
Chancery Clerk of Lowndes County, Miss.

By..... .. . . .. Deputy Clerk.

In Illinois, a judge must instruct a jury on a sanity issue as follows:

On this hearing, the jury is instructed not to consider the question as to whether the defendant in this case is guilty or not of the crime charged. The only question to be determined by you is whether or not this defendant has sufficient mentality to be tried.

After considering all the evidence in this case, if you are convinced by a preponderance of the evidence that this defendant is insane to such an extent that he does not understand the nature of the charge against him and, further, that he is unable fully to co-operate with his lawyer in a proper defense of the case, you will find by your verdict that the defendant was at the time of the impaneling of this jury, and now is, insane.

On the other hand, if you find from a preponderance of the evidence that the defendant in this case fully understands the nature of the charge and is fully able to co-operate with his counsel in a proper defense of his case, you will, by your verdict, find that the defendant at the time of the impaneling of this jury was, and now is, sane.

In feeble-minded cases the word "insane" is replaced by "feeble-minded."

The McNaghten rule referred to on page 400 was that contained in the answers given by Lord Chief Justice Tindal on behalf of Her Majesty's justices to four questions put to them by the House of Lords following the acquittal in 1843 of Daniel McNaghten for the murder of Edward Drummond, private secretary to Sir Robert Peel, because of insanity. The evidence convinced the jury that McNaghten was suffering from delusions of persecution, but the verdict was unpopular, and Tindal's answers reaffirmed the "right-and-wrong" test and the "knowledge-of-the-act" tests which had been asserted in earlier cases.

The earliest record of an attempt to define the legal concept of insanity was the statement in 1265 of Bracton, chief judiciary of England, who said: "An insane person is one who does not know what he is doing and is lacking in mind and reason and is not far removed from brutes." As early as 1342 an idiot or an individual of unsound mind was made a ward of the king. He was deprived of property and hence was immune from punishment for crime.

The "brute" or "wild beast" test for insanity prevailed until the seventeenth century. In 1625 Coke wrote: "In criminal causes, as felony, the act and wrong of a madman shall not be imputed to him, as he is without mind or discretion." In 1671, however, Sir Matthew Hale applied the so-called "14-year-old-child" test: "Such a person as, laboring under melancholy distempers hath yet ordinarily as great understanding as ordinarily a child of 14 years hath, is such a person as may be guilty of treason or felony." In 1675 Hale also wrote: "If a lunatic during his lunacy a man distrait by force of disease, kills himself, no felony. A man that is *non compos mentis* kills another this is no felony, to the same for a lunatic during his lunacy." A lunatic was supposed to be *compos mentis* during temporary lucid periods.

By the eighteenth century the "knowledge-of-right-and-wrong" test had become established. In 1800 Lord Erskins attempted to overthrow it when defending James Hadfield, a discharged soldier who had shot at George III. He argued that delusion "is a true character of insanity" to which the rule was not broad enough to apply. Similar attempts were made in 1812 in the John Bellingham and Bowler trials, and so when a jury finally went beyond the old rules, as it did in the McNaghten case, something had to be done. It still is being done—by the accused's peers rather than by experts.

CHAPTER 17

Criminal Trials

FROM a technical legal viewpoint, everything that precedes the opening statement of the prosecuting attorney in a criminal case is preliminary. Journalistically speaking, however, a criminal trial begins when the case is called on the court calendar. How many stories appear during the trial of a case depends on its length and on the number of editions that the newspaper publishes daily. If the whole affair lasts only a few hours, there may be only one newspaper story, featuring the outcome and summarizing the proceedings. If the trial drags on for days or weeks, each day's story will play up the latest developments and the high lights of the preceding day's activities. The examples throughout this chapter are of stories written at different stages of comparatively lengthy cases.

Goes to trial. If the case is important, there will be a story the day before or the morning of the trial. In gathering material for his first-day story, the reporter should bear in mind the following elements of news interest:

1. *Charge.* There may be more than one; consult the indictment, possibly quote from it. Give a tie-back to the occurrence on which the charges are based—that is, review the high lights of the alleged crime. Usually the newspaper's morgue is an adequate source. If not, there are the police, the witnesses, and the prosecuting attorney.

2. *Defense.* Obviously, the plea is not guilty. This does not mean necessarily, however, that the defendant denies all knowledge of the incident giving rise to his indictment. He may argue that homicide was in self-defense, or that he was insane, intoxicated, or for some other reason justified in doing what he did.

3. *Evidence.* Who will be the principal witnesses for both sides? What, in general, will be the nature of the evidence they will present? Will the defendant testify in his own behalf? Will a wife or husband testify for or against a spouse? Will there be any real evidence—that is, exhibits? Will there be any expert testimony—by fingerprint experts, psychiatrists, or others? Is there any question about the admissibility of some of the evidence—such as a confession or admission?

4. *Penalty.* If convicted, what penalty does the defendant face? If the state permits indeterminate sentences, tell what the minimum and maximum would be. Does the jury or court have any alternatives regarding the degree of the crime of which the defendant can be found guilty? If so, what are the possible punishments for each?

5. *Unusual Elements.* The list of possibilities is interminable. Maybe this is a test case—the first of a series in a campaign by police or prosecutor to enforce a new or forgotten law, or a second trial after either a mistrial or appellate court reversal. Is it the first time a defendant of this particular age, sex, race, or occupation has been tried on such a charge? Are there any new legal principles—as a result of legislative action or judicial decision—that will apply? And so on.

TIE-BACK

Trial of John W. Bigelow, Arnold R. Johnson and Theodore DeSwarte opened before Federal Judge Joseph Irvin and a jury here today on charges of mail fraud, violation of the Securities Exchange act, and conspiracy in transactions last year in bonds of the Central Railway.

Bigelow, a financial analyst then employed by the firm of Johnson and Johnson, according to Assistant State's Attorney J. B. Harder, was instrumental in circulating reports that resulted in a rise in the price of the railway bonds from 13 in January to 40 in July, 1945. Subsequently the bonds dropped to 12.

The reports, the indictment charges, were to the effect that a Cleveland and Cincinnati railroad would offer 50 or more for the bonds in the near future. The price collapsed when the railroad issued a denial of the reports.

ANTICIPATED TESTIMONY

Selection of a jury began today in Judge Thomas Echols' Criminal court to try two suspended county highway policemen, Lt. Edward White and Deputy Sheriff Philip Aleshire, on charges of conspiracy to aid and abet gambling.

Chief prosecution witness, the state's attorney's office disclosed, will be Capt. Frank Talbot, suspended county highway police chief, for whom a subpoena has been issued. He will be questioned on gambling and on White's duties and responsibilities.

In addition, he will be asked what he knows of the disappearance from the Skokie police station of seven roulette wheels seized in a raid on The Dome, 19709 Vernon avenue, last November. The prosecution will seek to prove that two old wheels found in their place never had been used in the night spot.

In this, the first big court fight growing out of the grand jury investigation of gambling, the state will call between 25 and 30 witnesses, including Harold Schwartz, assistant to the operating director of the Centerville Crime commission, who accompanied the raiders to The Dome.

UNUSUALNESS; LAW

For the first time in the history of the County court, a mother and her son will go on trial together for murder tomorrow.

They are Mrs. Virginia Schulz, 51, of 1890 Noyes street, and Walter Schulz, 19, student singer.

Early on the morning of Sept. 16, according to evidence in the hands of

Assistant State's Attorney Thomas Wilson, Percy Werner, 50, a roomer in the Schulz home, quarreled with Mrs. Schulz and was beating her.

Walter ran from the kitchen with a cup of coffee in one hand and a butcher knife in the other, and fatally stabbed Werner.

James Monroe and E. S. Kuhn, defense attorneys, will base their case on a plea of self defense. A state ruling holds that a son has the same right to defend his mother as himself. The defense will claim that Werner was stabbed while he was choking Mrs. Schulz.

Jury selection. If the defendant does not waive jury trial and if no important motions are allowed, the first order of business after a case is called is the selection of a jury to hear the evidence. Since a lawyer's idea of justice is a verdict for his side, questioning of veniremen may be a protracted battle of wits to obtain jurors of the type most likely to be sympathetic with the kind of case to be presented. Because of the advance publicity that any important case is bound to get, it may take days to fill the jury box with jurors "just like this sheet of paper—absolutely blank," as Federal Judge J. F. T. O'Connor stipulated in the Hollywood trial of Charlie Chaplin on a Mann Act violation charge.

In the United States district courts the *voir dire* (examination of prospective jurors) is usually conducted by the judge—much to the discomfort of the lawyers. In a lecture printed in the Appendix of the *Congressional Record* for Nov. 14, 1944, Grover M. Moscowitz, United States district judge for the eastern district of New York, said:

> It cannot be successfully urged that juries selected by lawyers are fairer or more impartial than those selected by the judge. Many times the attorneys excuse those who are more intelligent and who probably would be most impartial. I have had the experience on numerous occasions of having the attorneys excuse all jurors who were college graduates. The only standard in the federal courts is that jurors shall have the qualifications required by state law. Jurors should be selected who are truly representative of the community and who have sufficient intelligence, knowledge, and capacity to understand the case to enable them to render a fair and impartial verdict.

With most professional persons excused from jury service by statute, the task of obtaining such a jury is difficult. When the number of peremptory challenges is limited, lawyers work hard to discover grounds for challenging a venireman for cause.

Washington, Jan. 7.—(UP)—A jury of 12 men was selected in the United States District court today to try George Hill, 45-year-old secretary of Representative Hamilton Fish (Rep., N. Y.) on charges of perjury in connection with his testimony before a federal grand jury investigating Axis propagandists.

William Power Mahoney, special prosecutor for the justice department, asked prospective jurors if they or any members of their families had ever belonged to the following organizations:

The American First committee; the Make Europe Pay War Debts com-

mittee; the Islands for War Debts committee; the War Debts Defense committee; the American Fellowship Forum; the Keep America Out of Foreign Wars; the German-American Bund; the Steuben society; the Friends of Germany or the Friends of New Germany; the National Association for Social Justice; the National Committee of 1,000,000; the Ku Klux Klan; the Silver Shirts, "or any other color shirts."

Questioned by Defense

Defense Counsel John O'Connor, former Democratic representative from New York, asked each prospective juror whether he had been associated with the Committee to Defend America by Aiding the Allies; Fight for Freedom, Inc.; or Union Now.

He also asked panel members if they had any relatives in government service. If the answer was yes, he asked whether they feared their relatives would be discharged if they acquitted the defendant.

America, Not Germany

Maloney jumped to his feet and exclaimed: "This is America, your Honor, not Germany."

O'Connor retorted that Maloney's questions had "made me think it was Germany."

O'Connor asked if mention in the course of the trial of names of formerly isolationist senators, such as Burton K. Wheeler (Dem., Mont.), Gerald P. Nye (Rep., N. D.), Bennett Clark (Dem., Mo.), and D. Worth Clark (Dem., Idaho) would influence the juror's decision.

Roughly, challenges for cause are of two kinds: general—disqualifying a juror from serving in *any* case; particular—disqualifying him from serving in *this* case. Challenges also may be made to the entire panel rather than to an individual venireman.

The issue of freedom of the press, "terrorized" jurors, and the case of the two policemen who shot a sailor were used yesterday in a courtroom filibuster staged by defense counsel for three men indicted for the murder of Martin "Sonny Boy" Quirk, South Side gambling overlord.

The men on trial are John Joseph Williams, Anthony de Lordo and John Enright. So far three days have been consumed without the selection of a single juror.

"Bars" All Veniremen

James M. Burke, one of the defense attorneys, frankly told Judge Harold G. Ward of Criminal court that he had "no intention of accepting any juror on the panel now serving" in the criminal courts building.

Burke charged that editorials appearing in the Chicago Sun, the Chicago Tribune and the Chicago Daily News criticizing the verdict of the jury in the case of the two policemen who shot Howard Darnell, 22-year-old sailor, in a tavern brawl, had intimidated all prospective jurors now on call in the Criminal court. The jury fined the policemen $800 each.

Editorials Put in Record

Burke said because of these editorials, which he read into the record of the trial, the defendants would not be able to receive fair treatment.

"I am the last one to argue against freedom of the press," Burke said, "but I

don't think that means that these defendants should be denied a fair and impartial trial."

He pointed out that the jurors in the Darnell case are still working and have mingled with the other jurors on the 200-man panel awaiting call.

Postcard Charges Told

"We don't want a jury that will function in terror," Burke said.

He read into the record two postcards received by members of the Darnell jury which stated that the members of that jury should be "ashamed of themselves" and asking, "Who bribed you and how much?"

Because the defense legally has the right to 60 peremptory challenges of jurors and because a new panel must be sworn in Monday, the case was continued until then.

—Chicago (Ill.) *Sun.*

In the knowledge that a jury must and will be selected ultimately, the judge patiently orders additional panels (talesmen) to be summoned.

New York, Feb. 20.—(AP)—In swift compliance with court orders, 100 additional persons were added today to the special jury panel for the first degree murder trial of Wayne Lonergan.

Drawing of the extra talesmen was asked by both prosecution and defense after 73 of the original 200 were excused for personal reasons. Five others were rejected yesterday by both sides.

The additions bring to 222 the number scheduled to report when trial is resumed tomorrow morning.

Painstaking examination of the first talesman interrogated forecast that the job of selecting a jury acceptable to both sides would be long and slow.

Assistant District Attorney Jacob Grumet, who indicated at yesterday's opening session that the state would accept only persons willing to decree the death penalty, predicted the jury would not be completed before the end of the week.

—Chicago (Ill.) *Times.*

The situation described in the following news item is so unusual as always to be newsworthy when it occurs:

Jurors shuttled in and out of the Federal court of Judge John P. Barnes so rapidly yesterday in six trials of accused draft dodgers that marshal's deputies had to get fresh veniremen off the street.

The defendants were the last of some 60 indicted last summer for failure to register for selective service.

Most of the group pleaded guilty and were sentenced, but the last six demanded separate jury trials. All had the same plea. They stated they were members of the Temple of Allah and, as such, were registered in Heaven, thus making registration here unnecessary.

Evidence Presented in Hour

One Sam Davis came before the bar first, and a jury was sworn in. Taking of evidence by John Owens, assistant U. S. district attorney, and C. Bentley Pike, defense attorney, appointed by the court, took little more than an hour.

While Davis' jury retired to deliberate, a new jury was sworn in to try Lemon Thorton.

That jury was hearing evidence when Davis' jury came in with a verdict of guilty. By the time Lemon's jury retired, another jury was being sworn in for Raymond Sharrief.

Court Order Issued

It soon became evident that the jury situation was imperiled by the lack of veniremen. A court order was issued, and men under Joseph E. Tobin, chief deputy U. S. marshal, went to Adams street and Clark street and Jackson boulevard.

Persons who had come to the Loop with no other thought than buying a new bracelet, or a pair of shoes, found themselves sitting as jurors before Judge Barnes. Forty were brought in, after the original venire of 36 had been exhausted.

After Sharrief came Farroz Jordan, Frank Estridge and George Hawkins, each with his own jury. The juries returned guilty verdicts for all.

Judge Barnes passed sentence of three years each for the six.

—Chicago (Ill.) *Sun.*

The efforts to which prospective jurors sometimes go to avoid serving may provide material for news features:

Take off your hats to Peter Neffer, 33, a bookmaker of considerable astuteness, who beat the odds against escaping federal jury duty yesterday by indulging an inclination toward honesty.

Neffer was summoned before Federal Judge John T. Ball, as a prospective member of the September grand jury. Neffer asked to be excused.

"Why?" asked Judge Ball.

"Because I'm working in a handbook," answered honest Peter Neffer.

That's Right, a Handbook

"A handbook, you say?" asked Judge Ball.

"Yes," said Neffer. "That's right. You know—a handbook."

He went on to identify the handbook. It is located, he said, at 1908 Spring avenue. It is operated by one Raymond Peterson. Neffer has been working in handbooks, he said, for seven years, which, by coincidence, is the length of time he has been married.

Judge Ball interrupted the proceedings long enough to put a call through to the office of Police Commissioner S. W. Smith.

Raided Once a Month

Sure enough. There is a handbook there. It had been raided four times in four months ended Aug. 15, but apparently not since the current racing season began.

Neffer was relieved of jury duty.

The poison-gas murder trial of two holdup men was nearly disrupted yesterday before Criminal Judge John T. Youngblood because of a 5-months-old baby belonging to one of the woman jurors.

After she had been sworn in and discovered the jury was to be locked up, the juror, Mrs. Rachel Holsted, 25, of 919 North avenue, burst into tears. She pleaded the baby needed her care.

There was a long legal colloquy about the baby, its formulae, and its diaper changing, until a compromise was reached. Mrs. Holsted's sister would care for the baby, and lawyers for both sides agreed it was all right for Mrs. Holsted to go home from time to time and see that the infant was in good health.

Then the trial of Edward Kankin, 30, and Ronald Gibson, 29, for the slaying

of Miss Ruth Matthews, 49, cashier in a currency exchange at 1908 Hawthorne avenue, got under way.

When the jury is finally selected and sworn in, its nature should be reported. In important cases it is customary to give the names, addresses, ages, and occupations of jurors and to comment on how closely they approximate what rival counsel had been battling to obtain.

Ten married women, six of them mothers, and two ex-service men will comprise the jury to hear evidence against Angus MacArthur, 24, charged with the brutal rape and murder of Helen Vickers, 22, last Memorial day.

Two of the mothers have daughters about Helen's age, as has one of the men. All convinced counsel for MacArthur, however, that they would not be swayed emotionally by that fact. Both former soldiers also convinced counsel they would not be influenced unfairly by the fact that the defendant was a draft dodger.

Opening statements. The prosecutor goes first and is supposed to outline his case fully, so as to give the accused a fair chance to answer. He cannot argue, but must confine himself to a statement of what, in general, he expects to prove by the testimony of witnesses and other evidence. He cannot mention testimony before the grand jury or the fact that the defendant asked for or obtained a change of venue or a continuance. He cannot refer to previous trials or the accused's criminal record. He cannot argue issues outside the case at hand.

Counsel for the defendant can choose between making his opening statement immediately after the prosecuting attorney has finished or waiting until after all the evidence for the prosecution has been completed. It is a matter of strategy, to be determined in each case. If he believes that by making his statement first he can prejudice the jury against witnesses for the state, he will do so; if he wishes to avoid "tipping his hand" as to what the defense is to be, he waits.

When the defendant denies all connection with the offense charged, his strongest defense is an *alibi* to prove that he could not possibly have been at the place at the time the crime was committed. Lacking that, he may content himself with breaking down the credibility of the state's evidence. If he admits commission of the act charged, he nevertheless may plead not guilty for any of a number of reasons, including the following: self-defense; defense of others; defense of property; to prevent a crime; justifiable because acting within the privilege of a public official; compulsion or duress from fear of death or injury; necessity, such as when property is destroyed, to avoid danger; committed without criminal negligence; ignorance or mistake, as when a prowler is killed in the belief that he is a burglar; infancy as defined by the law defining criminal

capacity; insanity, or inability to distinguish right from wrong; entrapment, which is being lured or induced by a law-enforcement officer into breaking a law. Other defenses, such as former jeopardy and the statute of limitations, were mentioned in the preceding chapter.

From the opening statements reporters get a preview of what to expect from the evidence to follow.

By Robert Yoder

The government charged today that William H. Malone collected $330,000 as chairman of the Illinois tax commission during 1929 and 1930 "to influence him" in making out the tax bills of big corporations.

The accusation was made in Federal Judge William H. Holly's court as Austin Hall, assistant district attorney, outlined the government's income tax case against Malone. The former tax commission chairman, who held a membership on that body for ten years and was its chief for five, is charged with evading $59,000 in income tax during 1929 and 1930.

Hall promised proof that Malone received the money in cash, in the form of big bills. "And when I speak of large bills," the prosecutor told the jury, "I mean $500 and $1,000 bills."

It was Hall's assertion that Malone concealed the income by mixing it with the receipts of his large real estate operations in Park Ridge and other suburbs to the northwest.

When the government's opening statement was finished Defense Attorney Charles F. Rathbun arose to outline how his client will meet the charges. It was a flat denial. Malone will take the stand, Rathbun said, and will prove he never had any of the ominous "other income" for which the prosecutors wish to send him to jail. The former state official, the lawyer promised, will show that all of his money came from reputable sources. . . .

Charges $265,000 Extra

"Now, gentlemen," the prosecutor told the 12 jurors, "the evidence will show that throughout the year 1929 the defendant received a great deal of income that he did not report. The evidence will show that he received about $265,000 in addition, and should have paid the government $58,000.

"This income of $265,000 was received in the form of currency in large bills. It was received at different times, and taken to different banks, and there Malone deposited it with his two hands, to be credited to his various accounts."

Hall then trailed the money to the banks—part to Malone's own bank in Park Ridge, part to the Jefferson Park National bank, part to the Norwood Park Trust and Savings bank and part to the National Bank of the Republic in Chicago.

1930 Finances Are Traced

Coming to 1930, Hall told the jurors that Malone filed a return which alleged he had no net income but went in the red for the year—sustaining a loss, in Malone's figures, of $60,910. If that was right Malone owed the government nothing and was entitled to the collector's sympathy. But Hall found fault with the arithmetic.

"The evidence will show that he received additional income of approximately $65,000," said the prosecutor, "and should have paid an income tax of $1,100.

The evidence will show that this income was of the same kind as received in 1929, namely, currency in large bills.

So Hall again set out to trace these pennies from heaven, and told the jury that in 1930 it was Malone's procedure to pay notes with part of it, and use another part to buy bank stock in the Jefferson Park National bank. . . .

Hall's opener today was a dispassionate story, full of figures and delivered with no more heat than if the prosecutor had been reading a bill of sale. While he set the amount of the alleged payoff at $330,000—$265,000 in 1929, a boom year; and $65,000 in 1930, after the depression set in—Hall made no attempt to break this down, and did not furnish any names of the attorneys and corporations which the government says did the paying.

Malone sat back and listened, occasionally whispering to chief of defense, Attorney Rathbun. When Hall came to the part mentioning William F. McCaughey, Malone fished a pencil from his pocket and began taking notes.

Calls Him a Samaritan

Rathbun insisted in his opening statement that the defense will picture Malone as an enemy of big corporations, not their pal. To make a start on this Rathbun referred to the fact that former Gov. Frank O. Lowden abolished the state board of equalization several years ago when Malone was a member. Rathbun did not go into detail, except to say that Malone was "a little too strenuous" and "made many enemies," with the inference that he did it by boosting corporation assessments. The defense has indicated it hopes to call former Governor Lowden as a witness.

All Rathbun said was that Malone's record, as a tax official, "made it highly improbable that he would receive any money from the corporations."

As for the $50,000 transaction on Dec. 31, 1929, Rathbun declared the money was part of an "accumulation of years" from his client's "large enterprises," and said, furthermore, that when Malone put it in the bank he was acting as a Good Samaritan. "It was deposited because the institution needed cash," the lawyer declared. "Secrecy was essential, for otherwise it would have hurt the bank's reputation."

The noon recess came with Rathbun half way through his statement. The government meanwhile prepared to call its customary first witness in income tax cases—Charles W. Arndt. Head of the income tax division of the internal revenue bureau, Arndt usually tells what the income tax returns show and identifies them as exhibits.

—Chicago (Ill.) *Daily News.*

If some of that evidence has already been received before they write their stories, reporters may contrast it with the opening statements, as in the following example:

The amazing story of how a poor and unschooled young man, without friends or influence, can win a fortune in democratic society—and then lose it again—was told at some length today before a jury of 11 women and a man in the Criminal court of Chief Justice John A. Sbarbaro.

The occasion was the trial of Joe Saltis, immigrant boy who rose to knight commander of the Order of Prohibition Beer Barons. Joe is accused of assault with intent to kill.

It was a pathetic tale which James M. Burke, defense counsel, unreeled as he asserted in his opening statement that poor Joe did not take a couple of shots at

four war plant workers in a saloon at 7089 South Chicago avenue in the early morning of June 5.

Wantonly Set Upon

Far from going out to look for trouble, according to the defense view of the matter, Joe was wantonly set upon by a committee of the common people.

A different version of the fracas was given when Joseph Gerretano, a crane operator for the Carnegie-Illinois Steel company, took the stand as the state's first witness. Gerretano and three of his pals said Joe started a fight and topped the fracas off with a couple of revolver shots. This, Gerretano insisted, was what prompted him to let Joe have it with a guitar. The guitar was an exhibit in court, sadly splintered and with its dulcet voice gone forever.

But what happened June 5 was a mere detail of Attorney Burke's opening statement. He described how Joe came to the United States and began his career as a railroad section hand—only to find spread before him the glittering opportunities of prohibition.

"Like thousands of others," Burke said, Joe began to make beer—delicious, though slightly illegal.

Tidy Sum of 3 Million

So good was this beer that in a little while Joe had gathered together the sum of $3,000,000 while easing the pangs of the "noble experiment" for many thousands of citizens on the South Side.

But, like so many of the aristocracy of the era, Joe was profligate in the administration of his estates. His fox farm near Hayward, Wis., was a no sale proposition, as were agrarian interests. In addition, Joe indulged in numerous forms of ducal munificence, all of which were expensive.

Possibly the most colorful of these was his habit of maintaining standing charge accounts with undertakers in the stock yards district.

Through these accounts Joe was wont to finance the final rites for the common folk who lacked money to bury themselves. A summer lodge, a private 18-hole golf course, an airplane and a continuous round of entertainment for other peers of the beer finally caused Joe's financial feathers to drag somewhat in the dust.

Palace to Flop House

According to Burke, the man who once lodged in a palatial Beverly Hills residence is now reduced to sleeping here and there for prices as low as 50 cents a night. Supporting Burke's contention about Joe's current finances is the fact that Joe has been in a cell for want of bail since June 5.

Burke asserted that on that fateful morning the 58-year-old former beer baron had gone to the South Chicago avenue saloon for a peaceful nightcap while he ruminated about the days of might and glory. How a fight started under such meek and mild conditions is a matter about which Saltis and his faithful solicitor have no idea.

—Chicago (Ill.) *Daily News.*

State's evidence. Because it relates mostly to facts familiar to anyone in everyday life, testimony in criminal cases is much easier to follow than that given in civil trials. The laws of evidence, described in Chapter 3, prevail. Establishment of the *corpus delicti* —proof that a crime was committed—usually comes first; anyway, it must be established before the state *rests its case* (finishes), or a

defense motion for a directed verdict of acquittal will be in order.

In addition to the testimony itself, the reporter may want to include a description of the courtroom scene—size of audience and its demeanor; appearance and behavior of the defendant and other principals; attitude of jurors, especially when important evidence is being introduced. Objections by attorneys, arguments over points of law, and rulings by the judge may be mentioned to give "the complete picture." What and how much to use is subject matter for a book on journalistic ethics, not on reporting and writing.

The usual way to report a day's proceedings is to summarize the cumulative effect of testimony by several witnesses. Some direct questions should be used, but most of the testimony will have to be reviewed by indirect quotation.

Walter Schulz didn't stab the roomer in an impassioned frenzy to ward off an attack on his mother. The roomer was murdered in cold blood—an hour or more before police were called.

That's the version of the slaying which Assistant State's Attorney Thomas Wilson tried to bring from witnesses today before Chief Justice Andrew Norton in Criminal court in the trial of Mrs. Virginia Schulz, 51, and her 19-year-old son. They are accused of the murder of Percy Werner, 50, a roomer at their home at 1890 Noves street on Sept. 16.

Patrolman John Babcock related that blood surrounding the victim's head was "congealed" when he reached the scene. Dr. Emil Nixon, in a stipulated statement, said in his opinion Werner was dead an hour or an hour and a half before he was called.

Statements of the defendants, given police shortly after their arrest on the morning of the slaying, were introduced in evidence but not read to the court, which is hearing the case without a jury.

The trial was adjourned to tomorrow after Prosecutor Wilson said his next witness, Mrs. Bertha Payne, who has the apartment underneath that of the Schulz', was unable to appear because of an illness in her family.

"The state will show young Schulz stood by Sept. 16 while Werner struck his mother and did not lunge at Werner until after Werner had packed to leave and was taunted by Mrs. Schulz into turning on her again," said Wilson in opening the case yesterday.

Victim Stabbed 27 Times

Wilson said the man had been stabbed 27 times, 17 in the back, and that Schulz bragged he knew how to kill a man "by first blinding him with a cup of coffee."

Wilson said he would show the boy held a cup of hot coffee in his left hand while he held the butcher knife, snatched up in the kitchen, concealed under his right arm. Werner, he pointed out, had been living with Mrs. Schulz, divorced from her husband about two years ago.

Defense Attorney James Monroe, painting the boy as ill, said his clients would admit the boy had stabbed and killed Werner, but as a "justifiable homicide" in defense of his mother.

Walter had to leave school after the second year in high school to support his mother and younger sister, Rose, 16.

"It was the money earned by this boy which took care of Werner many a time,

once for six weeks while Werner was laid up in the Schulz home with a broken ankle," Monroe said.

Rose Schulz was forced to leave her own home to avoid the advances of this "drunken monster whom Walter eventually had to kill," Monroe said.

Son Awakened by Quarrel

Walter had gone to bed Sept. 15, but was awakened about 2 A.M. by the quarreling of his mother and Werner. He went to the kitchen, heated up some of the coffee left over from the night before, and was drinking it, says the state, while the two argued.

Testimony of a single witness may overshadow everything else. Dialogue, especially if there is repartee between lawyer and witness, may be used effectively. If there is plenty of space available, the *Q* and *A* (question and answer) form may be used.

By Lottie Stovall

Stunned by the predicament of testifying against her husband, on trial in Criminal court for the murder of their 22-months-old baby, Linda, Mrs. Thelma Bartell, 24, collapsed on the witness stand today.

She slumped over as prosecutors asked whether the husband, Thomas, 25, had struck Linda in a rage because she had wet her pants.

Hesitant, obviously testifying with great reluctance, the mother was torn between love for the husband she said she would stick to and the duty she owed the state in telling "the facts."

Earlier she murmured that the husband had doubted the baby's paternity almost from the time she told him she was pregnant.

Called to Stand

She took the stand at the state's insistence and over the protest of Defense Attorney Charles Bellows. But in an unusual ruling yesterday Chief Justice John Sbarbaro had ruled she could be summoned.

Under questioning by Assistant State's Attorney Francis McCurrie, the frail, work-worn mother quoted her husband in the presence of an all-woman jury as having said: "It's not possible that I'm the father." She said she assured him that he was.

"Did your husband ever put Linda in a closet?" asked McCurrie.

"Yes," replied Mrs. Bartell reluctantly, in a voice scarcely audible.

"Did he close and lock the door?"

"No. He always left the door open."

"Did you ever see Linda's face black and blue?"

"Yes," the witness whispered.

"When?"

"Two months before the death."

"Who did it?"

"Thomas did it. He slapped her while she was asleep because earlier she had turned on the gas."

Questioned About Blows

Then questioning turned to events on the day of the baby's death, which the state charges was due to heavy blows inflicted by Bartell during a fit of rage.

Mrs. Bartell testified that her husband slapped the baby to the floor when she tossed him his last clean pair of socks and they fell where little Linda had wet the floor.

"Did he slap her again after she had fallen in the corner?" demanded McCurrie.

The young mother broke into violent sobs. A matron revived her momentarily with a drink of water. The prosecutor read a statement made to authorities after the death, in which the mother had said Bartell struck the child numerous times.

"You can't make me answer that," screamed the witness. "You have tortured me enough."

On her refusal to answer, court adjourned until afternoon.

—Chicago (Ill.) *Daily Times.*

An unusual incident may turn an otherwise routine or unimportant case into a feature:

Arthur Douglas lived long enough to take the witness stand and accuse his assailant.

It was on Nov. 27 that Douglas, 40, of 4652 Magnolia avenue, was slugged with a gun butt by a burglar at 45th street and Michigan avenue.

There were 16 stitches taken in Douglas' head. Theodore Miller, 30, of 4970 Wentworth avenue, was arrested and indicted for the crime. Yesterday he appeared before Judge Frank Rordan in Criminal court.

Questioned by Andrew Kelly, assistant state's attorney, Douglas pointed out Miller as his attacker. Then he gasped and collapsed. Dr. Edward Hicox of the behavior clinic, who pronounced him dead, said: "It was either a heart attack, or complications brought on by the wounds he received in the slugging."

But Douglas' testimony is in the record, and must be considered, even after his death, when the case is resumed March 18.

Rulings by the judge often have an important effect on the outcome of a case:

Judge Frank Rordan in Criminal court refused yesterday to admit in evidence confessions of Abraham Jones, 18, and his brother, Richard, 16, involving a kidnaping and currency exchange holdup, on the ground that the confessions had been obtained by force while the youths were in police custody.

The two boys were accused of kidnaping Chester Brown, 40, manager of the Gruenerwald Currency Exchange, 1908 Spalding avenue, in connection with robbery of the exchange last April. Both were tried previously on the kidnaping charge and acquitted.

They are now on trial on the robbery charge.

Judge Rordan held the evidence of duress was sufficient to bar the evidence.

Every variety of feature treatment has been used at some time by reporters in an attempt at originality and interest. Here is one example of how to dress up a running story of a trial that took several days:

Who: Bernard (Knifey) Sawicki, 19, a foundling and parolee from the Illinois State Training School for Boys at St. Charles.

What: His trial for the slaying June 30 of Park Policeman Charles Speaker in Jackson Park.

Where: In the Criminal court of Judge John Sbarbaro—Assistant State's Attorney Richard Devine, the prosecutor, and Public Defender Morton Anderson, defense counsel.

Why: Speaker's murder was one of four committed within a week end and

confessed by Sawicki. The others: Henry Allain, 72, a Momence farmer; John J. Miller, 19, 5542 West 63rd street; Charles Kwasinski, 17, another St. Charles parolee. . . .

Witnesses for the state continued to occupy the attention of the jury of seven women and five men today as Sawicki continued to smirk, flatter his lawyer and offer odds on a bet that "they get me."

Dr. Harry R. Hoffman, state alienist, captured the spotlight yesterday with his expert testimony that the defendant is "certainly not classifiable as insane" and that he "is a psychopathic person with marked criminal tendencies."

Boasts of 2 More Killings

The alienist's interview with Sawicki during an adjournment of the court session was also featured by the youth's boast he killed a Negro man and woman "in the park" the same night he shot Kwasinski.

"And if you tell anybody about that, I'll slit you," Hoffman said Sawicki told him.

One occupant of the witness stand yesterday was Clarence Schwark, 16, 1736 West Monroe street, an eye-witness to the shooting of Kwasinski at 16th and State streets. Schwark said Sawicki asked Kwasinski to join him in a robbery.

"And when he refused, Sawicki whipped out a gun and let him have it," Schwark testified.

Another state witness, Lester E. Owens, Clinton, a railroad laborer, testified he met Sawicki last May when the latter was walking along the railroad tracks.

Befriended, Stole Gun

Sawicki was hungry and penniless and Owens took the boy into his home, fed him and let him stay overnight. The next day, Owens said, Sawicki disappeared, stealing a revolver belonging to Owens.

Still a mystery today was the identity of two men whom Sawicki said he would "get" if he were out of jail because he "especially hated" them.

—Chicago (Ill.) *Daily Times.*

The real "fireworks" of many if not most criminal trials comes upon *cross-examination* of the witnesses for either state or defense. Reporters as well as lawyers must watch for inconsistencies or contradictions, but must be careful to avoid possible libel by not attempting to interpret them. In the following story from the Chicago *Evening American,* there are several statements regarding the appearance and conduct of the defendant which would seem to be prejudicial but which might be defensible on the grounds they were accurate interpretations. There is no doubt that the story gives *a* vivid picture of what happened. Whether it was *the* picture which should have been given, another witness would have to declare:

In one breath Dr. Harry R. Hoffman, alienist, today testified that 19-year-old Bernard "Knifey" Sawicki, slayer of four men, was legally sane—and in the next, under cross-examination, he testified Sawicki was a psychopathic personality, or "moral imbecile."

Dr. Hoffman's appearance as a state witness in closing phases of the trial before a jury of seven women and five men in Judge John A. Sbarbaro's court was considered more vital than anything before it.

The fate of the sneering "Knifey" who not only confesses but brags of his

crimes, rests on his mental status. The statement drawn from Dr. Hoffman by Public Defender Morton Anderson could well save the enigmatic young defendant from the electric chair, said observers.

Interview Described

There was nothing contradictory in the terms "legally sane" and "morally imbecile," as used by the alienist. Questioned by Prosecutor Richard Devine, he had told of interviewing the lad in the county jail April 24. Dr. Hoffman said, Bernie snapped: "You're one of those nut doctors. You've come to find whether I'm insane. Well, I'm not insane."

"Knifey" told the doctor he was born presumably April 21, 1924, left on a doorstep, sent through the sixth grade in school, beaten and mistreated by an alcoholic father. He said he once wanted to be an aviator, but had no religion, no belief in an after-life. He went on blandly, according to the alienist:

Hates Foster Father

"I never cried. I never felt sorry for anybody. Don't you feel sorry for me, doc, because if you were in my place I wouldn't feel sorry for you. I hate two people: my foster-father and one young kid I'd like to kill."

He didn't name the boy he hated, Dr. Hoffman stated. Asked about the plight he was in, "Knifey" observed: "The three penalties for murder are death, life in prison, or any number of years in prison."

Dr. Hoffman gave his opinion on young Sawicki as follows:

"When examined, he was legally sane. He knew right from wrong. He had the power to choose between right and wrong."

Held 'Moral Imbecile'

Anderson's first question was: "After the examination did you place Sawicki in any psychopathic category, and if so what was it?"

Dr. Hoffman said readily: "I did. He is a psychopathic personality, otherwise a moral imbecile. Sanity, of course, is purely a legal term. One might be of superior intelligence and still be a moral imbecile—one unable to make adjustment to his environment, one upon whom punishment has no effect."

Dr. William H. Haines, director of the Behavior clinic, offered virtually identical testimony. Dr. Harold Hulbert was to be summoned by the defense just before the case went to the jury, probably late today.

Through it all, "Knifey" slouched deep in his chair, watching with beady eyes. What he considers a sophisticated, sneering smile remained on his lips. Sometimes he smoothed his Hitler-cut hair with a nervous hand.

'Insane,' Mother Cries

The cry of insane was first raised as the sessions came to an end late yesterday. The slayer's foster-mother, Mrs. Anna Sawicki, who rose from a sickbed to testify, dramatically ended her story by lapsing into her native tongue, Polish, and crying: "Insane, insane, insane. He's insane."

Waving her arms, she shouted: "He talked to himself. He threw things around. He was always getting worse. When police arrested him so much, I told them:

" 'You should have his head examined.'

"But they told me: 'Oh, no. He has more brains than we have.' "

"If he was not crazy, would he do these things?"

In Trouble Before

(Sawicki had been in frequent trouble with authorities, who caused him to be sent to the Illinois Training School near St. Charles, from which he was paroled.)

Mrs. Sawicki earlier described how the boy who grew up to be a killer came into her home. She said: "He was left on my doorstep, all wrapped in a blanket, when he was three days, maybe four days old. We looked all over for his father, his mother. Couldn't find them."

Killed Policeman

Her testimony that Sawicki is insane was similar to that given by Henry Sawicki, 23, a foster brother, who said the defendant always acted "peculiarly." He continued: "He was always starting fights with his playmates. My father used to hit him a lot. Once Bernie chased my sister out of the house. He was always running away from home."

Sawicki is on trial for the murder of Park Policeman Charles Speaker last July 29 in Jackson Park. He committed three other murders over that week end.

When all the evidence has been introduced, the state *rests* its case:

The government rested its case late yesterday before Federal Judge Frank Roland in the denaturalization proceedings against eight men and one woman, former members of the German-American Bund.

The prosecution seeks to show that the Bund is subversive and membership in it is automatic reason for cancellation of citizenship.

Final testimony, presented by William Hershey, assistant U. S. attorney, revealed how the Bund, in past years, sent large groups of American boys and girls to Germany, to absorb Nazi ideology and then return and teach it to their fellows here.

Witnesses were Herman Hendricks, 21, once a member of the Bund youth movement, but now an apprentice seaman stationed at Great Lakes; and Ralph Schwartz, 23, youth movement leader in both Germany and America.

Both were born in Germany. Hendricks was brought to America at the age of 5 years, but Schwartz did not leave Germany until he was 12 years old, he testified. He told the court he was a leader in the Hitler jugend in Germany.

The state's case against 15 Democratic workers from the fourth ward, charged with conspiracy to file a false nominating petition in the 1940 primary, was closed today in the County court of Judge Harold Cole, and the trial was adjourned until May 16, when the defense will present its evidence.

The ward workers are alleged to have conspired to forge and file a petition for the Republican nomination for probate judge on the behalf of John P. Blair, who is not a defendant.

Most of the defendants have admitted their part in the plot to Assistant State's Attorney Ralph Becker, and today four of their statements were admitted into evidence. Matt Coughlin, 910 Wentworth avenue, a notary public, admitted taking the acknowledgments of the circulators of 125 petitions sheets. Harold Bone, 1907 South Clark street, and Martin Fisher, 1089 Sedgwick street, admitted writing purported petitioners' names on the sheets, while Harvey Danielson, 1090 Michigan avenue, admitted writing his name on a petition form ten times.

If convicted, the 15 face maximum penalties of $100 fine and a year in jail.

Defense motions. After all the witnesses for the state have testified, the defense may demur to the evidence and make a motion for a *directed verdict of acquittal,* if there is a jury, or for *dismissal,* if the case is being heard before a judge alone. To demur to the evi-

dence is to waive objections to its admissibility and virtually to admit the facts themselves, but at the same time to contend that there is not sufficient evidence of guilt to make presentation of the defense's case necessary.

The grounds on which a judge may grant such a motion include—the evidence is insufficient; evidence was illegally obtained; prosecution is outlawed by the statute of limitations; the court obviously does not have jurisdiction over the case. If any of these reasons except the first becomes apparent, the court may not wait until all the state's evidence is in, but may dismiss the case on its own motion.

Los Angeles—(AP)—Judge Arthur Crum today dismissed the assault charges against Tommy Dorsey; his wife, Pat Dane; and their neighbor, Allen Smiley, which grew out of an attack on Jon Hall.

The court said it had been reluctant to take the case from the consideration of the jury, but felt that under the state of the record it would be an abuse of its judicial discretion not to do so.

Says Testimony Impeached

Judge Crum referred to one of the state's principal witnesses, Antonio Icaza, Panamanian actor, as a "fabulous, masterful fabricator of falsehoods, a perjurer pure and simple, demonstrated innumerable times out of his own mouth."

Icaza escaped last night from protective custody, the sheriff's office said, but was rearrested early today and committed to the county jail. He had been kept in custody in a hotel since his return from Panama.

"No court with any sense of justice," continued Judge Crum, "could permit such testimony as he gave, so thoroughly impeached as a matter of law as it is, to go to the jury."

Protects Taxpayer

"To further protract this trial with its tremendously heavy expense to the taxpayers would serve no useful purpose whatsoever."

The court pointed out that should the jury convict the defendants, he would be compelled under a long line of decisions, under California law, to grant them a new trial.

Ruling that federal restrictions against so-called "war brokers" are not clear, Judge Theodore Cole directed a verdict of acquittal today in the government's case against two New Yorkers accused of conspiring to defraud the United States of $100,000.

Freed were William Payne, president of the Payne Schools, Inc., of New York, and Thomas Stryker, sales agent.

The government charged that the sum in question was paid to Stryker on a fifteen-per-cent fee basis for war contracts he obtained for the firm—an engineering school which trains technicians for the armed services. The defense said Stryker was scheduled to receive only $25,000.

—Chicago (Ill.) *Daily News.*

A serious irregularity may cause a case to end in a *mistrial*. In such case the defendant can be tried again, whereas a directed verdict or dismissal allows him to go free.

Judge Francis Lenz of Criminal court yesterday declared a mistrial in the murder trial of Thomas Gault because his sister, Mrs. Edith Hadden, 40, of 4390 Greenwood avenue, spoke to two women jurors who had been called as prospective jurors.

The incident occurred on a streetcar near the Criminal court Tuesday when Gault went on trial. Mrs. Hadden supposedly remarked: "Trouble, trouble, trouble. He's a nice man with children, and he probably will hang."

Assistant State's Attorney Franklin Barnum informed Judge Lenz of the incident and the mistrial was ordered. Mrs. Hadden pleaded she didn't know the women she spoke to were prospective jurors. Mrs. Gault will face Judge Lenz today for possible contempt action. Her brother is accused of shooting Peter Krueger, 30, because of suspicion that Krueger was attractive to his, Gault's, wife. The shooting allegedly occurred July 1.

Defense evidence. If he did not do so earlier, after the state's case is completed the attorney for the defense makes his opening statement. Then he proceeds with the direct examination of his own witnesses. The big moment of any criminal case is when the defendant himself takes the stand. This does not always happen, of course, as the Fifth Amendment of the United States Constitution provides: "Nor shall he be compelled in any criminal case to be a witness against himself." Consequently, no comment by the prosecutor on the failure of a defendant to testify is proper; violation of this rule may cause a mistrial.

American juries are prone to give the defendant in a criminal case the benefit of every doubt. They do not like to convict unless the evidence is overwhelming. Nevertheless, they undoubtedly are adversely affected by a defendant's failure to take the stand, Constitution or no Constitution.

It is proper for the reporter to point out wherein defense testimony contradicts or answers that submitted by the state. In fact, to give an adequate report of such testimony, it is essential to do just that.

The silent, mousy-appearing man who has been identified as the hammer terrorist of the Northwest Side took the stand today in Criminal court and offered an alibi defense against the charge of assaulting a 14-year-old girl.

The defendant, Eugene Cromwell, 24, was summoned as the first witness in his behalf before the jury of ten men and two women who are trying him in the court of Justice Frank Pierce.

Played Records, He Says

He testified that he had spent the entire afternoon of July 15, the day on which the assault occurred, in the company of his wife in their room at 319 North Kenmore avenue, and that they had played phonograph records during the time.

His alibi was supported by his wife, Etta, and their landlady, Mrs. Rachel Bone, 30. Mrs. Cromwell testified that he had not been out of her sight all afternoon. Mrs. Bone asserted that she had heard him and his wife talking, at intervals that afternoon, from 12:30 to 6 P.M.

Girl Tells of Assault

The testimony was sharply at variance with that of 14-year-old Ethel Speaker, high school student, the assault victim, who took the stand shortly after the trial opened this morning. Looking directly at the defendant, she said: "This man came out of the kitchen with a butcher knife, and held it pointed at me. He told me not to scream or he would kill me. But I took a chance, and screamed."

Ethel, who was wearing a print dress, a little white hat and a fur jacket, told her story calmly and firmly under questioning by Thomas Kelly, assistant state's attorney.

Character witnesses often play an important part in a defense:

Lawrence J. O'Connell, former securities examiner of the Illinois industrial commission, took the stand today before a jury in Judge Stanley Klarkowski's court in his trial on embezzlement charges.

The defendant had been preceded by two character witnesses, Fred Lindstrom, former Cub third baseman and now Evanston postmaster, and Judge Philip Finnegan.

Explaining he had been named to the commission post by Gov. Henry Horner in 1933, O'Connell strove to justify his diversion to personal use of $6,000 posted with him as indemnity bond by Julian Goldberg, assistant manager of the Chicago Sanitary company, after a conference in February, 1940. At that time, he testified, Goldberg told him:

"You want me to post $25,000 in bonds with the commission. But I'd like to post $6,000 now and add the rest later. I know you need money, with your wife in the hospital. I'll give you a $6,000 bond and you do with it as you like."

Since this was a "personal matter," O'Connell told the jury, he used the bonds to get loans and used the money to pay doctor and hospital bills.

In an earlier trial on an almost identical charge, O'Connell won acquittal.

—Chicago (Ill.) *Herald-American.*

A kind of testimony that often makes excellent newspaper copy is that during which a prominent defendant virtually relates his entire life story. So good is it thought to be that reporters are not adverse to suggesting to defense counsel that they put it on.

With a maximum stress on his life's history, and minimum remarks about the assault to kill charge for which he is standing trial, Joe Saltis, Buddha-like beer baron of prohibition days, held the witness stand for two hours yesterday.

A jury of 11 women and one man is hearing the case before Judge John A. Sbarbaro in Criminal court.

Joe is charged with having engaged in a tavern fracas with four steel workers, firing two shots at them, then being bopped over the head with a guitar.

Poor Boy to Millionaire

But, questioned by his attorney, James M. Burke, Joe didn't talk about the incident until he had made a lengthy recital of his career since he was born in Austria-Hungary 58 years ago.

It was sort of a Horatio Alger tale of the poor immigrant boy who, by hard work and prudent use of bodyguards, rose to be a multimillionaire purveyor of some of the most desirable illegal beer Chicago ever saw during the rampant twenties.

The story told of a huge farm near Hayward, Wis., where Joe had an eight-

room house, a 36 room clubhouse, and a nine-hole golf course. With a sympathetic voice, Attorney Burke said: "About the surplus farm products, Joe. Did you consult the parish priests about disposing of it?"

Reluctant to Give Details

Joe hung his head with becoming modesty.

"Aw, Jimmy, I don't want to talk about that," he said.

"Joe, you must tell us," persisted Burke, with a quaver in his voice. "Didn't you distribute it to destitute people?"

"I guess I did, Jimmy," Saltis finally admitted.

If anybody wondered what this had to do with a tavern brawl in Chicago 15 years later, he didn't speak up.

Joe was excused, and the trial is expected to end today after the state puts on rebuttal witnesses.

—Chicago (Ill.) *Sun.*

The "Sidney Carton" defense occurs rarely, but when it does it is sure-fire feature material.

Peter Raft, 28, who could "double" for Eugene Cromwell convicted hammer bandit, if Cromwell were in the movies, was free today of an assault charge after his likeness to Cromwell astounded a jury of 11 women and a man in criminal court.

Raft was charged with robbing Mrs. Patricia Eberhardt, 24, of 810 Foster street, gagging her, and ordering her to disrobe on the night of March 5. The attack occurred, Mrs. Eberhardt testified, near Harlem and California avenues. She identified Raft by his stature and voice, since she was not able to see him in the dark.

Cromwell was brought into court as a surprise witness, and the jurors gasped as they saw his resemblance to Raft. He denied he had been in the vicinity at the time of the attack, however.

In rebuttal testimony Mrs. Eberhardt said Cromwell's voice did not resemble that of her assailant.

Raft faces trial May 15 on a charge of attempting to kill Mrs. Bertha Palmer, 35, of 1908 Robinson avenue, by stabbing her in the back at Wellington and Arndt avenues the night of March 5.

Closing arguments. After all rebuttal testimony is in and both sides have rested, the closing arguments are presented by rival attorneys. They supposedly must refrain from personal abuse and vilification and must restrict their comments to the evidence as presented. They should not comment on the law, but can state it correctly if they so desire. There are innumerable restrictions on what is privileged, and, in a "hot" case, there may be frequent objections to what is said. Sometimes neutral observers, including the press, may suspect that the interruptions are for the purpose of spoiling the effect of a bit of crescendo oratory.

Los Angeles, April 3—(AP)—A verdict in accordance with "law and justice," unswayed by bias or prejudice, was asked of the jury in Charlie Chaplin's Mann act trial today by U. S. Attorney Charles H. Carr in his closing argument.

"It is not my function to convince you that a defendant is guilty of a crime,"

he declared. "It is my duty merely to marshal the facts and present them to you, that you may arrive at a decision in accordance with the law."

The actor is charged with having transported Joan Barry to New York and back to Beverly Hills in 1942 for immoral purposes. From the witness stand, he denied the government's charges categorically and in detail.

"If I go beyond the bounds of logic in my argument, don't let that swerve you from your duty of arriving at a verdict based on justice," Carr told the jury of seven women and five men.

He reminded them that each had sworn that he entered the case with an open mind, asserting that both prosecution and defense are entitled to that consideration.

"We must keep the jury function pure," he declared. "That is one of the foundations of our democracy."

The U. S. attorney then launched into a discussion of the prosecution evidence. He and Jerry Giesler, Chaplin's lawyer, have two and one-half hours' argument each. After Carr's opening summation, Giesler will address the jury for his entire period; then Carr will use whatever time remains to him for rebuttal.

—Chicago (Ill.) *Times.*

A jury of 11 women and one man sat dry-eyed in Chief Justice John A. Sbarbaro's Criminal court yesterday while James M. Burke, attorney, delivered a heart-rendering plea on behalf of Joe Saltis, beer baron of the prohibition era.

Saltis is on trial on a charge of assault with intent to kill. Complaining witnesses are four South Chicago steel workers. The alleged assault was the outgrowth of a tavern brawl during which Saltis was struck on the head by a guitar wielded, according to the evidence, by Michael Santora.

Burke, who announced that he was accepting no fee, but had entered the case "for old times' sake," pictured Saltis as a philanthropist, a prince at heart, but a hard luck guy if there ever was one.

—Chicago (Ill.) *Sun.*

Judges' instructions. Judges are human, and they cannot sit through trials without forming personal opinions regarding the guilt or innocence of defendants. Slowly but steadily, judges are being allowed greater leeway in commenting on the credibility of evidence, but they are still restricted pretty much to acting as presiding officers to pass on motions and maintain order.

Before a jury retires to deliberate on a verdict, it is the duty of the judge to make clear its responsibilities. He must explain all the alternatives open to a jury and the meaning of every possible verdict. He can review the high points of the testimony of both sides and point out its implications, depending on the importance attached to each bit of significant evidence. He can explain the law and precedents regarding corroborative testimony, confessions, the testimony of accomplices, attempts by the accused to flee the jurisdiction of the court, and similar matters. Because judges fear reversals by higher courts, they are careful to be as fair as possible, but shakes of the head and suggestive tones of voice do not show up in written transcripts.

Los Angeles, April 4—(AP)—An anxious Charlie Chaplin paced a federal building corridor today as a jury sought to agree on whether he is guilty of violating the Mann act.

The jury went to lunch at a hotel shortly before noon after about 50 minutes discussion with no indication that agreement was near.

The seven women and five men retired from U. S. District Judge J. F. T. O'Connor's courtroom at 11:03 A.M. and walked up one flight of stairs to the jury room. Before them was the task of deciding whether the 54-year-old comedian transported Joan Barry to New York city and back in 1942 with immoral intent.

Judge Admonishes Jurors

The jurist solemnly admonished the jurors in a 50-minute reading of instructions:

"You are expected to use your good sense . . . and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment.

"While remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the government is entitled to a verdict."

Throughout the judge's instructions the gray-haired film veteran, in a double-breasted gray suit, sat relaxed and immobile, legs crossed, right hand raised to chin, eyes fixed on the judge.

Beside him sat his attorney, Jerry Giesler, likewise following every word and sometimes nervously dangling his spectacles in one hand. At an adjoining table sat the prosecutor, U. S. Attorney Charles H. Carr.

Four Verdicts Possible

Under the judge's instructions any one of four verdicts was possible: Guilty on both of two counts; guilty on the first and innocent on the second; innocent on the first and guilty on the second; and innocent on both.

The first count involves the transportation of Joan Barry to New York city in 1942 for allegedly immoral purposes, and the second is based on her return journey to Los Angeles.

Conviction on both counts would involve a maximum penalty of $10,000 fine and 10 years imprisonment.

Judge O'Connor instructed the jury that it should find Chaplin guilty if it decides he caused Miss Barry's interstate transportation for immoral purposes or aided in such transportation with that intent.

Conversely, the judge declared, if the jurors determine that the journey to or from New York, as charged in the indictment, was not for immoral purposes, then there was no violation of the Mann act, even if an act of sexual intercourse took place between Chaplin and Miss Barry as an incident thereto.

"If the intention referred to did not exist before the woman commenced her journey, but was formed after reaching said state, and thereafter an illicit relationship was had, a conviction under the act could not be had," the judge stated in his 5,500-word message to the jury.

Defining the provisions of the Mann act, Judge O'Connor said that the transportation of a woman in interstate commerce for immoral purposes is forbidden, even if commercial or profit motive does not exist.

Joan's Character Not Issue

"The immorality denounced is not limited to commercialized vice, but includes the transportation for the purpose of engaging in any illicit sexual relations with the persons transported," he said.

"The defendant is equally culpable, whether the woman made the trips willingly, or even suggested or solicited such transportation," he added.

". . . It is not the issue in this case whether the woman . . . was or was not of chaste character . . . whether she was previously moral or immoral is outside the issues of this case."

The judge emphasized also that it is not relevant whether or not the woman is accompanied by the defendant.

Judge O'Connor cautioned the jury against considering the question of his citizenship (Chaplin is a British subject) or considering the paternity suit Joan has pending against him in the civil courts.

Jury Given Wide Scope

"It will be your duty to put aside . . . any such matters . . . and decide the issues involved here solely from the evidence as relates to the charges contained in the indictment," he said.

The judge said that if a witness is shown to be false in one part of his testimony he is to be distrusted in others; "that is to say, you may reject the whole testimony of a witness who wilfully has testified falsely as to a material point, unless . . . you believe that the preponderance of truth favors his testimony in other particulars."

—Chicago (Ill.) *Times*.

Verdicts. If judges are susceptible to emotional appeals, jurors are more so. In most jurisdictions they are not allowed to take notes during a case, so general impressions may count more than memories of details.

The story of a verdict in an important criminal case usually includes a resume of the trial, with quick summaries of the evidence presented by both sides and any high points of interest. As for the jury itself, the following are among the elements of interest to be ascertained: length of deliberations, number of ballots, vote on each ballot, attitude of jurors toward important pieces of evidence. These facts can be ascertained only by interviewing jurors after they have rendered their verdict and have been discharged.

The courtroom scene when the verdict was returned generally should be described, with emphasis upon the attitude of the defendant. The possible sentence that a defendant found guilty faces should be explained and the date set for passing sentence should be stated.

GUILTY

By Wayne Adams

New York, March 31—Wayne Thomas Lonergan was found guilty tonight of murder in the second degree in the slaying of his heiress wife, Patricia, last Oct. 24 The verdict carries a penalty of 20 years to life imprisonment.

A jury of 12 business and professional men brought in a verdict at 10:25 P.M. (9:25 P.M. Chicago time), nine hours and 35 minutes after receiving the case.

The Royal Canadian Air Force student flier stood ashen-faced and trembling. Three guards stood near as he heard the pronouncement of guilt.

Lonergan Sniffles

As the jury foreman, William J. Byrne, a bald, middle-aged man, announced the verdict, Lonergan sniffled as if he would cry, but no tears came. The jurors were excused and for the first time in the 10-day trial the defendant spoke.

The court clerk, Arnold Sayer, asked him his pedigree. In almost a whisper, Lonergan gave his age as 26, said he was educated at the University of Toronto and that his mother was dead.

Judge James G. Wallace announced that he would sentence Lonergan on April 17, and the defendant walked from the court back to his cell in the Criminal courts building.

Jurors Get Instructions

Twice before during the deliberations Lonergan had entered the courtroom expecting a verdict. For the first time during the trial, he showed signs of nervousness. Both times the jurors merely asked for instructions.

The first time, in mid-afternoon, they sought further aid in determining whether Lonergan had been given the third degree when he confessed that he beat his wife with two candle holders, then choked her to death and left her nude body lying on her bed in her Beekman Hill triplex apartment. Testimony at the trial showed he had a drink of his own brandy on a train to New York, but witnesses denied he was plied with liquor during the all-night questioning.

Defense Attorney Silent

The second time the jury asked about the four possible verdicts.

Edward V. Broderick, defense attorney, would make no statement after the verdict.

"In my opinion, it was fair and intelligent," Frank Hogan, district attorney, said of the verdict.

The jury, in returning a second-degree verdict, rejected the contention of the prosecution that Lonergan went to the apartment of his wife with the intention of killing her. Jacob Grumet, assistant district attorney, had asked for the death penalty.

—Chicago (Ill.) *Sun.*

NOT GUILTY

Beaming and smiling, Joe Saltis, portly beer baron of prohibition days, was found not guilty yesterday of a charge of assault to commit murder growing out of a tavern brawl.

The jury of 11 women and one man reached their verdict at 4:45 P.M. after deliberating four hours and 20 minutes.

Judge John A. Sbarbaro of the Criminal court, before whom the case was heard, had left the building, however, and it was 5:33 P.M. before he was found and returned to receive the verdict.

Lone Man Jury Foreman

The verdict was handed to the clerk by Henry F. Breidinger, the foreman and only man on the jury.

On the first ballot, it was learned, the jury was split 6 to 6. Arguments followed, and the vote became 8 to 4 for acquittal. More arguments, and it went to 11 to 1.

It took an hour more to convince the holdout, a woman, that she should join the majority. The verdict, it was also learned, was based on the belief of the jurors that the state had failed to produce sufficient evidence of guilt.

Result of Tavern Brawl

The case against Saltis grew out of a fracas in a south side tavern between Joe and four steel workers. Joe was charged with having fired two shots at one of the quartet, after which he was smashed on the head by a guitar.

During the trial, Saltis' lawyer, James M. Burke, bitterly contended that Joe ought to be the complainant, not the defendant, in the case.

Saltis Denies Having Gun

From the witness stand, Saltis denied firing the shots, or even possessing a gun. In fact, Assistant State's Attorney Francis McCurrie, prosecuting the case, did not produce the weapon alleged to have been used, although Saltis was taken into custody on the scene of the fight.

In closing arguments, Attorney Burke denounced the four plaintiffs as "drunken bums," and accused the police witness, including Chief of Detectives John L. Sullivan, of a conspiracy to "hie poor Joe into jail."

McCurrie advanced the theory that Saltis had started shooting because he saw the guitar case and mistook it for a violin case such as the gangsters of beer-running days used to conceal machine guns.

A Power in Prohibition Days

Joe Saltis, who went from nothing to $1,000,000 and all the way back down again in his beer-running career, was about the only Chicago gangster of prohibition times who couldn't be "pushed around" by the mighty Al Capone.

Teamed from time to time with John "Dingbat" Oberta, Frank "Lefty" Koncil and the brothers McErlane—Frank and Vincent—Big Joe regarded the areas around 51st Street and Ashland avenue as his exclusively.

But with the repeal of prohibition, Joe fell upon evil days. His wife divorced him, and his $5,000 a week income shrank to the point where he was forced to sleep in 50-cent flophouses.

—Chicago (Ill.) *Sun*.

A *general* verdict is simply either *guilty* or *not guilty*. A *special* verdict relates to a specific phase of the case, usually in answer to interrogatories.

Motions after verdict. Unless a motion for a new trial is made within a statutory limit, the judge, acting upon the recommendation contained in the judy's verdict, sentences the guilty person or sets a date for doing so. A motion to *set aside the verdict* and grant a *new trial* is accompanied by one for an *arrest of judgment* until the judge has ruled on it. In some jurisdictions, the motion for a new trial may be made even after the convicted person has begun to serve his prison term.

The purpose of granting the privilege of moving for a new trial is to correct any error or to set forth any new evidence so that the necessity for an appeal to a higher court is obviated. The motion cannot be made by the state when there is an acquittal. Common grounds for a motion by the defense for a new criminal trial include the following:

1. Absence of the judge from the courtroom at any time.

2. Denial to the accused of the right to be present at any time.

3. Irregularity in selection of the jury, as in the drawing of the panel or summoning of veniremen. For this to be a ground, prior objection must have been made.

4. Irregularity in the subpoenaing or examining of witnesses, provided prior objection was made.

5. Absence of material witnesses, provided an attempt was made to obtain their presence and a continuance to allow more time was denied.

6. Improper instructions by judge to jury.

7. Introduction of improper evidence over objections; improper exclusion of evidence, or withdrawal of evidence by the opposite party over objections.

8. Pre-existent prejudice or disqualification of a juror not known at the time of his selection.

9. Improper conduct of a juror, such as talking to an outsider, or admitting outsiders to the jury room.

10. Newly discovered evidence, the existence of which must be attested to by sworn affidavits.

Circuit Judge Cassius M. Gentry denied today the plea of D. C. Stephenson, former grand dragon of the Ku Klux Klan of Indiana, for a new trial.

Stephenson is serving a life sentence for second-degree murder in the death of Miss Madge Oberholzer of Indianapolis. He was convicted in 1925 in Noblesville.

Judge Gentry ruled that the petition for a new trial did not allege sufficient facts under the law to justify granting it.

Stephenson based his plea on the grounds that the evidence against him was not true and that he did not testify in his own behalf for fear of bodily harm. This was his 15th attempt to gain his freedom.

—Chicago (Ill.) *Sun.*

Criminal court features. Like the reporter at police headquarters, the newsgatherer who spends his time in criminal court has incessant opportunities for feature and other stories in addition to those of actual trials. The following are typical examples of such stories based on observation, reports, and interviews with judges and other court officials:

By Wayne Humphrey

Thirty-six of the 96 persons who were brought to trial under murder indictments in Cook county in the court year just ended were convicted on that charge, the state's attorney's annual report discloses.

In trials before judges, 16 defendants were found guilty, 19 convicted of lesser offenses, 17 were acquitted, 12 cases were disposed of by a state nolle prosequi, and seven were stricken from the docket with leave to reinstate.

The proportion of acquittals in jury trials was even greater. Fifteen were found guilty, while 22 were exonerated. Five persons pleaded guilty to murder indictments, while 12 took pleas to lesser offenses, chiefly manslaughter.

1,704 Indictments Disposed Of

During the year from Dec. 6, 1943, to Dec. 2, 1944, a total of 1,704 indictments were disposed of, representing 1,534 defendants. Charges, with percentage of convictions, follow:

Assault	110	74 per cent
Attempt	2	50 per cent
Burglary	301	92 per cent
Confidence Game	91	92 per cent
Embezzlement	37	86 per cent
Larceny	104	91 per cent
Auto Larceny	144	90 per cent
Murder	96	63 per cent
Manslaughter	17	78 per cent
Rec. Stolen Property	7	71 per cent
Robbery	94	69 per cent
Robbery with Gun	319	90 per cent
Sex Offenses	273	73 per cent
Miscellaneous	106	57 per cent

Of the total number of persons found guilty, 809, or 51 per cent, were sentenced to the penitentiary; 243 were given probation with jail terms; and 356, or 22 per cent, were given probation outright.

One Death Penalty Imposed

In 161 cases, prisoners were sentenced to either the county jail or the House of Correction. The death sentence was imposed in one murder conviction. Eleven were committed to state hospitals for mental treatment.

In court trials, 726 persons were convicted, 203 found guilty of a lesser charge and 261 were found not guilty. In jury trials, 53 were found guilty, while 71 were acquitted. In 263 cases the state entered a nolle prosequi before going to trial, and in 194 others the charge was stricken with leave to reinstate at some future time.

—Chicago (Ill.) *Sun.*

By Wayne Humphrey

The procession is unending.

Day after day, stretching into weeks, months and years, the depressing scene is re-enacted at the Criminal courts building.

Young men, 16 to 21 years old, are led before the judge. Their crime: robbery with a gun.

They are brought into court, singly and in pairs, sometimes in groups. Some come from homes of luxury; some have known only poverty. Some by reason of family disaster have been thrust into the world when young to shift for themselves.

Now and then Chief Justice Robert Jerome Dunne wearily removes his glasses and wonders what the world is coming to.

What Is It?

"What is it that gets into you young fellows," he asks, "that you go out into the night with a loaded pistol and take money at the point of a gun?"

The answer is seldom honest, never adequate.

Dr. William Haines, director of the Criminal courts behavior clinic, has studied hundreds of cases and worked out some pertinent conclusions.

"Young men who commit robbery with a gun usually can be divided into two classes," he says. "They come either from broken homes or they are children of the foreign-born."

Many persons of foreign birth, Dr. Haines will tell you, cling to their old world customs and thus lose contact and control over their children. Death of a parent, often resulting in remarriage of the father or mother of a boy, too frequently creates friction at home and drives a youth into bad companionships, he explained.

They're Strangers, Says Judge

Says Judge Dunne: "Too many parents do not really take the time to know their children and their children never get to know them."

Judge Julius H. Miner adds: "All our educational and religious and social agencies are fine, but they will never have the power over a young man that has a loving and understanding mother."

There is a gleam of hope in the greater number of mothers who are serving on juries, Judge Miner believes. Court rooms give to mothers a picture of the reality of life and the evil influences that eternally beckon to the young.

432 Convicted in Year

In the calendar year just closed 432 men, predominantly between the ages of 16 and 23, have been convicted of robbery with a gun. Many have been sent to the penitentiary. More have been granted probation.

"It is invariably a condition of probation," said Judge Dunne, "that the boy or young man reports to me personally once a month. I am proud that so many who have been given another chance have made good and have before them a life of happiness and usefulness."

—Chicago (Ill.) *Sun.*

Chicago, despite the best record of any large city in venereal disease control, may be facing an increase in syphilis and gonorrhea as a result of greater moral laxity among women who are independent because of war jobs, Chief Justice Edward Scheffler of Municipal court warned yesterday.

Judge Scheffler told of new problems in venereal disease control as he analyzed figures from Judge Jacob M. Braude of Women's court showing that the number of persons ordered hospitalized by that court for venereal disease during the first six months of 1943 increased 500 per cent over the number for the first six months of 1941.

His warning was given further emphasis by city health department records of venereal disease cases. While the total cases reported decreased from 15,371 for the six first months of 1942 to 13,863 for the same period this year, reported cases of gonorrhea among women increased from 1,448 to 1,697.

Chicago Rate Lowest

Chicago's venereal disease infection rate of 17.5 per 100,000 population recently was termed the lowest in any large city by federal officials. Peak infection rate was 158.3 in Washington, D. C.

More infection is now being encountered here among persons other than professional prostitutes, Judge Scheffler warned. "There is more drunkenness among women," he said. "Women used to complain about their husbands' drunkenness. Now husbands complain about their wives. Many women now working in war plants have become more independent. They come in contact with other men, and they drink with them.

"While many prostitutes have abandoned solicitation in favor of war work, thereby easing that phase of the venereal disease problem, we are finding more and more young girls who must be hospitalized."

Clinic Gets All Suspects

Part of the increase in venereal disease hospitalization from Women's court, Judge Braude said, probably results from his practice of sending not only prostitutes but all defendants in cases where there is any evidence of promiscuity to the Municipal Social Hygiene clinic for examination.

In the first six months of 1941, he said, 35 Women's court defendants were hospitalized for gonorrhea or syphilis. In the first six months this year, 159 were hospitalized for gonorrhea and 412 were discovered to be infected with syphilis.

—Chicago (Ill.) *Tribune.*

In the docket kept by the criminal court clerk is to be found the complete, chronological story of any case. Typical docket entries on a nonjury case would be:

Arraignment
Indictment number—from grand jury
May 25, 1945
Indictment for incest, etc.
People of State of Illinois *vs.*
Leon Gregory
Bail fixed at $5,000
3–24–45 Plea of not guilty entered
Public defender appointed
Case assigned Judge Lewe
3–24–45—3–30–45 Date set by judge
3–30–45 Plea of not guilty (heretofore entered)
Jury waived
Testimony heard
Found guilty of incest
Found guilty on second count of indictment
Motion for new trial entered, denied, and exceptions taken
Motion in arrest of judgment denied and exceptions taken
Sentenced on finding and judgment
Penitentiary—one to 10 years
Bill of exceptions to follow 30-day stay

Typical entries for a case tried by a jury would be:

Indictment No. 38–561
Clarence Knott—rape
Bail fixed at $7,500
5–24–45 Plea of not guilty entered
Public defender appointed
Case assigned Judge Lewe
5–24–45—5–30–45 Date set
5–25–45 Motion of defendant to be examined by clinic before or on 6–7–45
6–7–45 Plea of not guilty
State proceeds on fourth count of indictment
Jury trial—examination of jurors
Accepted and sworn
Testimony heard
At close of state's evidence, motion for directed verdict of not guilty—denied and exceptions taken

6–8–45 At close of all evidence motion for directed verdict of not guilty—denied and exceptions taken
Jury verdict finds guilty of indecent liberty with child
Motion for new trial entered, denied, exceptions taken
Motion in arrest of judgment entered, denied, exceptions taken
Sentenced on verdict and judgment
Penitentiary—one to 20 years
Ten days given to file motion in writing
7–17–45 Bill of exceptions

On small and large papers alike, these records which are kept by the clerk are the principal source of information for the reporter. This is true because the big city reporter must divide his time between many branches of a court, whereas in small places the courts may be only one stop on a busy beat that takes the newsgatherer all over the city. Consequently, as was explained in Chapter 2, friendship with the court clerk is indispensable. Also, judges are not so austere to newspapermen as the general public might imagine them to be, and lawyers and their clients usually are not reluctant to "talk," if only to make certain that their side of the case is understood by the press. Most news of court proceedings is gathered secondhand from such sources. It is impossible for a reporter to sit through the trial of many cases.

CHAPTER 18

Punishment

WHEN a person stands convicted of having committed a crime —by plea of guilt, court finding, or jury verdict—after all motions for a new trial, to set aside a verdict or in any other way to upset the conviction, have failed, the question to which the criminal court reporter awaits an answer is: "What will he get?"

Sentence

It is the judge who provides the answer. He acts within the statutory limitations, which sometimes allow little or no leeway. That is, the punishment provided by law may be absolute, without alternatives, or it may be the prerogative of the jury to say what it shall be. In such cases, the judge pronounces sentence (or judgment) as a mere formality, although his remarks in doing so may be newsworthy. The tendency, however, is to permit discretionary latitude.

Suspended. One way in which a judge can "temper justice with mercy," as it is tritely put, is by a suspended sentence. Thereby, execution of the sentence is postponed and if the behavior of the guilty person is exemplary it never takes place. The prisoner is allowed his liberty, but if at any time he violates the conditions under which it is granted, he is taken into custody and subjected to whatever penalty the law provides.

Technically, the term "suspended sentence" may be a misnomer in states with well-developed systems of probation. Even where it can be used correctly, the prisoner may be released under supervision of probation officers.

By James T. Howard

At Fairmount, W. Va., Benjamin F. Male, 74, who voluntarily returned from Oregon to stand trial on a 40-year-old murder charge, was called into court and told that he was free to go home. Taken by surprise, the gray haired man burst into tears, sobbing his thanks to Judge Charles E. Miller.

In the brief session, Judge Miller pointed out that the jury of Marion county citizens, finding Male guilty of voluntary manslaughter last week, had accepted

Male's testimony that he did not intend to kill Walter Smith, a schoolmaster, when they fought back in 1905.

"The law does not exact its pound of flesh for acts committed in the heat of anger," said the judge, adding that he also was influenced by the fact that more than 100 citizens of St. Helens, Ore., had written in, testifying to Male's good character during the 38 years he had lived there.

Male was sentenced to serve from one to five years in prison, a mandatory penalty, after which Judge Miller suspended the sentence, directing Male to report every six months, by letter or in person, to the Marion county probation officer.

—New York *P.M.*

Two Market Street poultry dealers received suspended one-year prison sentences and were fined $1,000 each today for exacting "side payments" above the OPA ceiling prices in deals with retailers. Both had pleaded guilty to charges contained in criminal information filed against them through the OPA.

Federal Judge Michael Knight pronounced the sentences against the dealers, Mark Fleming, 1908 Wentworth avenue, who operates the wholesale house of Fleming and Company, 1910 Market street; and Arthur Olson, 190 North State street, owner of the A. Olson and Company, wholesale house at 1920 Market street.

The specific charge against both was violation of OPA ceiling prices. There were eight counts in the charges against Fleming, alleging excess prices ranging from 3 cents to 10 cents a pound. There were nine counts against Olson.

Thomas Wright, assistant U. S. attorney, said the excess prices did not appear on the invoices issued by the dealers, but were "side payments" from the retailers.

Judge Knight's sentence places both men on probation for a year, with the possibility of serving time in prison hanging over them if further violations are proved.

Probation. The advantage of probation over a simple suspended sentence is that the probationer, although at liberty, is under constant supervision of probation officers. Probation is most common for juvenile and first offenders. It can be terminated for a violation and the violator sent to prison for the unexpired part of sentence plus additional time for the violation. It also can be extended in some cases.

Some probation departments conduct pre-sentence investigations and make recommendations to judges as to what sentences should be imposed. These recommendations are not always that the convicted persons be placed on probation.

A convicted murderer was placed on three years' probation by Judge Frank Kappelman in Criminal court yesterday on condition that he immediately reenter the Merchant Marine, in which he formerly served.

The man is Charles Hardy, 40, a former organizer here for the Aircraft Workers. On Sept. 15, 1936, he shot and killed Anthony Dirksen, also a union organizer, during a tavern dispute.

Hardy fled, and was not heard of again until his arrest several months ago in New York. He waived extradition and returned here to face the murder charge.

Hardy's attorney brought out at the trial that he had been a member of the

Merchant Marine, and had received a government medal for heroism during the torpedoing of a ship on which he served.

Hardy said he would reenter the service immediately.

Investigation showed their children were well-fed and well-behaved, so Judge Kent Barber in Domestic Relations court yesterday continued the year's probation he had decreed earlier in the week for Mr. and Mrs. Douglas Pendelton, of 910 Hinman avenue. The Pendeltons were brought into court after police broke into their apartment and found the children, who, they said, had been neglected.

"The probation will stand," Judge Barber told Mrs. Bertha Pendelton, "on condition that you be a good mother, take care of your children, and stay out of taverns."

Mrs. Pendelton and her husband were drinking in a tavern at the time police broke into their home.

The children, Betty, 2, and Dwight, 3, who had been cared for in St. Matthew's orphanage, have been returned to their parents.

Judge John Shumway yesterday revoked an order under which Miss Dorothy Peterson, 57 years old, was placed on probation last September, after she had been convicted of assisting in an abortion and sentenced to one to ten years in prison.

The court had been informed that Miss Peterson had violated the probation by continuing to permit abortions to be performed in her home at 948 Wiggins avenue. Witnesses who made the charge in November later changed their stories before the grand jury, and Judge Shumway referred to them as sacrificing themselves for Miss Peterson.

The judge granted a stay of 30 days on his order that the defendant go to prison. This was done so she might carry on an appeal.

Probation of James M. Regan, Sr., an associate of the late Moses L. Annenberg and convicted with him of income tax violations, was terminated yesterday by Judge William C. Lindley.

Regan paid a fine of $10,000 and was put on probation for three years at the time of his conviction. He still had almost two years' probation to serve when he was discharged.

The court's action was over the objection of U. S. Attorney Albert Woll and his assistant, Austin Hall.

—Chicago (Ill.) *Sun.*

Consecutive; concurrent. If the defendant is found guilty on two or more charges and it is possible for the judge to sentence him to a prison term for each offense, the terms may be served consecutively or concurrently, as the judge decides. If the former, the prisoner serves the total amount of time; that is, if he gets two years on one count, three years on a second, and five years on a third, he serves ten years. If the sentence runs concurrently, however, he serves only the longest, or five years.

Eugene A. Cromwell, sentenced to two consecutive terms of one to 14 years late yesterday after his conviction in a knife attack on a Northwest Side girl, remained in the County jail today awaiting disposition of three more indictments arising from a one-day reign of terror in which ten girls and women were accosted.

The hearing on the other charges is set for Tuesday before Judge Frank Pierce, who sentenced Cromwell yesterday.

Judge Pierce's courtroom was thrown into an uproar when he imposed the sentences on the 24-year-old factory worker. A jury of ten women and two men found Cromwell guilty of assault with intent to rob after deliberating 50 minutes.

Motion for a new trial and for arrest of judgment made by Thomas Good, defense attorney, were overruled.

Boston, April 15—(AP)—Barnett Welansky, owner of the Cocoanut Grove night club where 490 persons met death in a fire Nov. 28, was sentenced in superior court today to serve 12 to 15 years in state prison for manslaughter.

Convicted on 19 counts of manslaughter, Welansky was sentenced to concurrent 12- to 15-year sentences at "hard labor" on each count.

Judge Joseph L. Hurley a short time earlier had denied three defense motions —for a new trial, for a continuance and for arrest of judgment.

Massachusetts Attorney General Robert T. Bushnell, personally urging the court "to impose long sentences on this defendant," excoriated the night club as "a flower of the underworld" and, referring to Welansky, declared: "He is a criminal, of course; he is a felon, of course, because he took these lives in the course of making money."

The attorney general declared that he would like to bring all persons responsible for conditions at the club, "high or low, low or high, before the bar," and—turning to Welansky—he said: "Let him tell the rest of the story."

Bushnell pointed out that 55 Army and Navy men met death by fire "in this trap." He declared that the sentence ought to be a punishment "for an attempt to get rich during the war and for taking chances with the lives of men in the Army and Navy and others."

—Chicago (Ill.) *Times*.

Indeterminate. An indeterminate sentence is one that sets a minimum and a maximum prison term, the actual amount of time to be served being up to parole authorities. Laws lightening the arbitrariness of sentences and increasing the authority of penological experts are consistent with the thinking of an overwhelming majority of social pathologists, but they may not be so popular with judges and old-fashioned prison officials. A compromise form of indeterminate sentence law is one which permits the judge to set minimum and maximum sentences within the broader limits set by statute.

Judge Harold G. Ward had the distinction today of imposing the first sentence in Criminal court under the new minimum-maximum penalty law for which he fought for years while a member of the state legislature.

The case was that of James Munford, 48, convicted of stealing $36 from the pocket of Sam Rabinovitz, 3552 Grenshaw street. The penalty for the crime is one to ten years, but under the new law, which became effective today, Judge Ward was able to fix the imprisonment at the more definite period of three to five years.

Ward and Representative Elmer J. Schnackenburg were the original sponsors of such legislation, giving judges the right to fix maximum and minimum terms without subsequent revisions by parole boards, but their bill was vetoed by Gov. Henry Horner.

Ward continued his fight for the law, and when Gov. Dwight Green took office, another bill was passed and signed. The Supreme court, however, declared it unconstitutional. Then a third bill was drawn and enacted into law.

—Chicago (Ill.) *Daily News.*

State parole laws usually provide that at least one-third of a term must be served before a prisoner shall be eligible for parole. The requirements, however, may differ by offenses, so the reporter must inquire into or look up the statute to determine the absolute minimum that any prisoner will have to serve. The information is essential to any news story of a sentence. The alternatives that the judge rejected also should be mentioned.

Athon Papas gained 92 years of freedom—theoretically—when he was sentenced today in his second trial for the fatal shooting of a girl during a quarrel with a group of young people over a watermelon at his fruit stand in 1939.

He was sentenced to from one to three years in prison by Chief Justice John A. Sbarbaro in Criminal court on a manslaughter verdict by a jury. He had served part of a 99-year sentence on a murder conviction which had been nullified because the first jury had not been instructed as to a manslaughter verdict. He will be eligible to ask parole after 11 months.

Health Gravely Impaired

His attorney, Samuel Golan, told the court that Papas, now 59, probably will have few more years of life, because his health has been gravely impaired by confinement.

Papas chose to be sentenced under a new law by which the judge fixes the sentence rather than to accept the one-to-14 year statutory term and leave the time of his release in the hands of the parole board.

Golan told the court that Papas has eight children, three of them in the Army. He asked probation, but the plea was denied.

State Witnesses Missing

There was no contention by the defense that Papas, who had been locked up since May 29, 1939, has already served sufficient time to satisfy the new sentence. Preparations to return him to prison were made by the sheriff's office. Attorney Golan did not file notice of intention to appeal.

When pronouncing sentence, Judge Sbarbaro told the defense counsel: "Your client is very fortunate, because the state's witnesses are missing, three of them in the Army, at least one overseas."

Papas, short and stocky and gray-haired, still appeared bewildered after the sentence, as he had when he testified yesterday and said he was beaten by some boys and fired into the air and didn't know how it happened that the girl, Muriel Campbell, 18, of Berwyn, was killed. The missing witnesses were youths involved in the fight over the watermelon which some of them broke while foraging at the fruit stand.

—Chicago (Ill.) *Daily News.*

Dixon, Ill., Feb. 15—(UP)—A sentence of 207 years in prison—which will keep Norman Burton, 15, behind bars until he is 85 years old—was imposed today as the penalty for the boy slaying of his niece, Sara Jayne Tyne, 5, last December.

Judge George C. Dixon, in imposing sentence, said he was disregarding the

pleas of both defense and prosecution because he didn't think the Princeton (Ill.) boy should be out of prison "until he's at least 85 years."

Norman stood handcuffed before the bench and stared sullenly at the judge, who also ordered that Norman must spend Dec. 20 of each year—the anniversary of the crime—in solitary imprisonment.

Morey Pires, state's attorney, had asked the court to fix a 199-year sentence, which would have barred parole for the youth until he was 67. The defense had requested a life sentence under which Norman would have been eligible for parole after 20 years.

Unusual punishments. The solitary confinement each year on the anniversary of his crime imposed upon the youth mentioned in the preceding example is typical of the unusual stipulations that judges may be allowed to include in sentences. Sometimes the statutes provide that there shall be a certain amount of solitary confinement, usually at the beginning of a term, and the phrase "at hard labor," meaning what it says, may be mandatory or permissible in a sentence. The Eighth Amendment to the Constitution forbids "cruel and unusual punishments," as do most state constitutions. Consequently, stocks, racks, and prison ships are relics of the past, and public opinion reacts violently against the occasional use of the whipping post in the few states still permitting it. When cruelty to prisoners is exposed, blame attaches to prison officials rather than to sentencing judges.

Especially in the juvenile and inferior courts do judges impose unusual sentences. Those guilty of reckless driving, for instance, may be taken on a tour of the morgue, to view the corpses of automobile accident victims. Children and youths may be ordered to attend Sunday school regularly, or to memorize passages of the Bible or poetry. Judges have been known to send principals in their courtrooms to attend motion pictures or dramatic or musical performances or lectures. There hasn't been much testing in the higher courts of the rights of judges to impose such sentences —undoubtedly because the defendants who get them generally are grateful not to receive anything worse. If the judge is an expert psychologist, he may protect the public welfare much more by such unusual punishments than by adhering strictly to the letter of the law. The common criticism of such sentences, however, is that they frequently are imposed by judges who are not psychiatrists and without psychiatric advice.

Statutes permitting the payments of fines to certain public or private agencies other than to the court are not infrequent. School and park boards, humane societies, and charitable institutions are among the most common beneficiaries under such laws.

Two Greenville high school students who "borrowed" the automobile of Dr. Prentice Hill, 1614 Scott avenue, Monday night must pay for their "joy ride"

by keeping the doctor's car washed and in repair for the next three months, Judge Harrison Smythe ruled today in Boy's court.

The youths were given six months' suspended sentences after they pleaded guilty to charges of larceny. They told the court that they intended to return the physician's machine within an hour but abandoned it when it ran out of gasoline.

Courtroom scene. What the judge says in pronouncing sentence and how the defendants take it may contain news interest, as may also any unusual incident in the courtroom when sentence is pronounced. Attorneys may make recommendations for leniency or severity, and relatives and friends may attempt to intervene. The reporter should be an eyewitness to the sentencing in any important case.

Five youths who held up a priest, stole his car, and used it to kidnap three Lake Forest young persons on April 1 were sentenced and pungently criticized yesterday by Judge Donald S. McKinlay in Criminal court. He called them "malignant hearted."

They were sentenced not for the kidnaping, which was perpetrated in Lake county, but for robbing the Rev. Matthew McGovern of Hinsdale of his automobile and $23 in Cook county.

Good Samaritan Victimized

Father McGovern was victimized while playing Good Samaritan to the five. Judge McKinlay, pronouncing sentence, said:

"It seemed to make no difference to them that their victim was a clergyman, or that he had stopped to help them when they ran out of gas. This shows a malignant heart. It indicates they have no spark of conscience left."

Noting that three of the youths had Juvenile court records, Judge McKinlay assailed what he described as that court's leniency.

Twenty-Year Term for Leader

First to be sentenced was the gang's leader, John Bodenchak, 23, a parolee from Joliet. As an habitual criminal, he was given two 20-year terms, to run concurrently.

Bodenchak had swaggered to the bench. He walked back to his friends with a comparable show of bravado, smirking and joking as he sat down.

Joseph Jakubec, 18, who had been in Juvenile court four times, was sentenced to one to eight years. Robert Kravish, 16, also a repeater in Juvenile court, drew one to three years. Kravish was 11 when he was first arrested. Richard Schenold, 19, three times in Juvenile court, was given two sentences of one to three years, to run concurrently.

Probation to First Offender

Richard Weglowski, 17, had no previous record. He was given probation for two years, but with the stipulation that the first six months should be spent in jail.

A sixth member of the gang, John Hanuska, 19, who did not participate in the kidnaping, was given one to three years for complicity in a previous robbery of two taxicab drivers.

Their kidnap victims, all of whom were released unharmed, were Helen Priebe, 17, Lake Forest heiress, and her two escorts, Thomas Stanton Armour, 18, and

Kent Clow, Jr., 18. Armour and Clow were robbed of small amounts, and a car, owned by Clow's father, was stolen.

In a last ditch effort on behalf of the young gangsters, Attorney George M. Crane suggested that they be given maximum sentences of one year, so they might enlist in the Army when freed.

The suggestion did not sit well with Alexander Napoli, assistant state's attorney. He retorted: "God forbid that boys serving in the U. S. Army ever have to rub shoulders with the likes of these fellows."

All the youths who took part in the kidnaping are under indictment for robbery in Lake county.

—Chicago (Ill.) *Sun.*

Bernard "Knifey" Sawicki, 19, was sentenced today to die in the electric chair on Jan. 17, but pronouncement of his doom merely deepened the mocking sneer on his juvenile face.

He cursed the judge, lit a cigarette and calmly blew smoke rings.

The boy killer was convicted by a jury last week of slaying Policeman Charles J. Speaker, one of four victims of his "tough guy" mania. The verdict made the extreme penalty mandatory.

Ask New Trial

But when Sawicki slouched into Judge John A. Sbarbaro's court today, his counsel, Public Defender Morton Anderson, argued for a new trial on the ground the first was unfair.

Swiftly rejecting this plea, Judge Sbarbaro passed sentence, fixing the time of execution and concluding with the formula: ". . . and may God have mercy on your soul."

Curses Judge

Then he asked the grinning "Knifey" if he had anything to say. With perfect poise the boy drew a pack of cigarettes from his pocket, selected one, lit it, dragged deeply, and snarled: "To hell with you, judge. I can take it."

He was taken back to his cell, where he had regaled neighbors earlier by declaring his sole wish was to live until after the holidays—so he could "eat turkey on the state."

—Chicago (Ill.) *Herald-American.*

Executions

In the lexicon of the hypothetical "man on the street," the term *execution* has become synonymous with "imposing the death penalty." Actually, however, every court sentence or judgment is executed when its terms are carried out.

Mittimus. After he imposes a sentence calling for a prison term, a judge issues a mittimus, or *warrant of committment.* It is directed to the sheriff and to the warden of the prison, ordering the former to convey and the latter to receive and keep the prisoner until the sentence has been completed or he is released "by due course of law." A typical mittimus appears on the opposite page.

Reprieves. A reprieve, or *stay of execution,* is a postponement of the execution of a sentence of death. It may be granted by a court

139—COMMITMENT TO STATE PENITENTIARY Sec 10965 C L. 19 Ch 173 Laws '17

State of North Dakota, } ss. District Court.
County of _____ } _____ Judicial District

STATE OF NORTH DAKOTA
vs.

The State of North Dakota to the Sheriff of the County of _____

and to the Warden or other officer in charge of the State Penitentiary in said State, Greeting.

WHEREAS, The above named defendant was on the _____ day of _____ 19 _____ sentenced by the above court to be imprisoned in the State Penitentiary at Bismarck, N D, a certified copy of which said judgment is hereto attached

NOW THEREFORE, You the said Sheriff are hereby commanded to forthwith notify the Board of Control of State Institutions of said State of such sentence, and to deliver to the State Transportation Officer or such other person authorized thereto, this commitment and the body of him the said _____ for transportation to the said State Penitentiary, taking from such officer a receipt for the delivery of this commitment and said defendant.

And, You, the said Warden, or other officer in charge of said State Penitentiary, are hereby commanded to receive and safely keep the said _____ until the expiration of said sentence, or until he shall be discharged therefrom by due course of law

WITNESS, The Hon _____ Judge of the above entitled court, and my hand and the seal of said court this _____ day of _____ 19 _____

_____ Clerk.

By _____ Deputy.

(NOTE —Attach hereto a certified copy of the judgment of the Court)

or governor for any of a number of reasons all related to legal proceedings that might result in the condemned person's life being spared.

Minor technicalities no longer suffice to bring about a reversal of sentence, but even the most carefully worded penal code cannot provide for every contingency.

Ernest Wishon, 35, sentenced to die in the electric chair at 12:01 A.M. Friday for the murder of Joseph Schulte, jeweler, in a holdup on June 28, won a stay of execution yesterday on a strange technicality.

The technicality is based on a provision in the state law that condemned felons must be executed not less than 50 nor more than 60 days from the date of sentence. Wishon was sentenced to death by Judge John A. Sbarbaro, then chief justice of the Criminal court, on July 22. The 60-day maximum period expired at midnight last night.

Wishon's attorney, Joseph Powers, acting in the illness of the original defense attorney, James M. Burke, said he would go to the state Supreme court with an original writ of habeas corpus seeking Wishon's dismissal on the ground that he cannot now be legally executed.

Chief Justice Benjamin P. Epstein of the Criminal court, before whom Wishon appeared yesterday on a writ of habeas corpus, granted the stay, but said he was loath to believe that an error in fixing the date for execution would result in Wishon's dismissal.

Richard Austin, assistant state's attorney, admitting that through error the

execution date had been set beyond the 60-day limit provided by law, dug up a Supreme court decision in a similar case from Tazewell county, in which the defendant was remanded for resentencing.

—Chicago (Ill.) *Sun.*

Kansas City, Oct. 8—(INS)—Legal red tape may prove a nuisance to some people, but it is as likely to be a lifesaver for Ferdinand Brockington, a Negro.

Brockington, sentenced in 1929 to hang for the murder of Patrolman Ralph Hinds, was declared insane and sent to the Missouri state hospital until cured, at which time sentence was to be fulfilled. After a year's treatment, he escaped.

Police today were returning the condemned man to Kansas City to face punishment, following his capture in Michigan. Shortly after his escape, the hospital declared him officially discharged.

Since Brockington's escape, Missouri forsook hanging as a means of capital punishment and adopted the lethal gas chamber.

Now Gov. Forrest C. Donnell has the problem on his hands. He must decide what is to be done with the condemned man, for the judge who sentenced him to death by hanging is dead and the Negro cannot be resentenced by that court, Prosecutor Michael W. O'Hern pointed out.

While the problem is being figured out, Brockington will be held on a charge of assault with intent to kill Delbert Hanes, another policeman who was wounded in the fatal melee.

Commutations. To commute a sentence is to substitute a lesser punishment for that contained in it. Power to do so is possessed by the President of the United States, as regards federal offenses, and by the governors of the states through constitutional provision or statutory enactment. In actual practice the power of a governor to reprieve, commute, or pardon is not so absolute as formerly. Petitions are still addressed to him, but most states have boards of pardons and paroles that review them and make recommendations. The governor usually acts upon the recommendations of such boards, although he may not be bound to do so.

Washington, July 1—(AP)—President Roosevelt today commuted the death sentence of Max Stephan of Detroit, who was convicted of treason for aiding a German prisoner who escaped from Canada.

His punishment was set by the President as life imprisonment.

The chief executive took this step, a White House announcement said, because he believed "that the sentence imposed by the court was too severe in that it did not sufficiently take into account the statute which provides for the consideration of different qualities of treason."

Stephan would have died by hanging before dawn tomorrow if the chief executive had not commuted the death sentence.

Arrangements for his execution, which would have marked the first time the federal government had exacted a life as the penalty for treason, were completed; the canvas-surrounded gallows were set up on the grounds of the Federal Correctional institution at Milan, Mich.

Strong pleas for a commutation of sentence were presented to the President. Largely they were based on a contention that capital punishment was too severe a penalty for the crime—harboring and assisting a German prisoner of war who

escaped from a Canadian detention camp and who turned to espionage as he subsequently made his way from Stephan's home to San Antonio, Tex.

The White House statement asserted the chief executive hoped none of his successors would commute the life prison term, since he said Stephan was "properly convicted of treason" and that "he was guilty."

But the President decided that the law under which Stephan was convicted contemplates "treason of different qualities" in fixing a sentence.

He pointed out that when six Nazis were executed last year and two others given long sentences after landing from submarines in this country, they were members of the German armed forces wearing civilian clothes and acting in accordance with "a mature plan" concocted in Germany. He compared their offenses with a "carefully planned murder in the first degree."

—Chicago (Ill.) *Tribune.*

Springfield, Ill., July 22—(AP)—Gov. Dwight Green commuted today, effective immediately, the life sentence of Ormond Westgate, 50, who escaped from Joliet Prison in 1924 and "went straight" for 18 years in New York City.

Westgate escaped while serving a life term for a second robbery conviction. He was apprehended Sept. 10, 1942. Later he was paroled to his parish priest, who said Westgate and his wife were devout churchgoers and respected parents of a 10-year-old son.

The governor said he acted on the finding of the State Pardon board that Westgate, under the name of Patrick J. O'Brien, had been a good citizen.

Westgate's identity came to light through fingerprints taken before he took a job in a war production plant, in which he still is employed.

—Chicago (Ill.) *Daily News.*

Pardons. A pardon frees a prisoner from any further punishment as a result of his sentence. If pardon is absolute, he obtains his liberty and restoration of full citizenship rights—just as though he never had been tried and convicted. If conditional, he may have to live up to certain provisions—such as refraining from the use of intoxicating beverages or from the operation of a motor vehicle. A pardon is an act of grace or executive clemency, and the main factors that a governor considers in action on a petition may be political.

A term hardly ever—if ever—to be found in the penal codes of American states is *amnesty*, which means the pardoning of political offenses against the government—including cases in which there have been no trials and convictions as well as those in which there have been sentences. A sovereign grants amnesty to those who have talked or attempted rebellion, and the act often applies to classes of offenses or groups of individuals rather than to particular persons. If a governor were to grant a large number of pardons to persons convicted for similar offenses, the term amnesty might be apropos.

Richmond, Va., Dec. 20—(UP)—Edith Maxwell, attractive school teacher of the Virginia mountain country who was convicted of killing her father with the

heel of a slipper because he objected to her staying out late, has been pardoned by Gov. James H. Price of Virginia.

The governor's office announced today a conditional pardon had been granted and that Miss Maxwell was released yesterday from the State Industrial Farm for Women near here.

Miss Maxwell, now 27, has served almost five years of a 20-year sentence, imposed for killing Trigg Maxwell, her 52-year-old blacksmith father.

She first was convicted in 1936 and sentenced to 25 years in prison. The Virginia Supreme court set aside the first degree murder verdict on grounds it was not warranted by the evidence, and sent the case back for retrial.

The body of Maxwell was found in his mountain home near Pound, Va., July 21, 1935. He had received severe wounds about the head and had died of brain injuries.

Two days later, Miss Maxwell admitted she had killed her father. She said he was drunk and had scolded her and threatened to whip her because she stayed out until midnight.

Penological Theories

Primitive and frontier people did not philosophize before taking the law into their own hands to punish or get rid of lawbreakers. It is not a mere rationalization, however, to declare that their motives were tantamount to theories of penology. Historically, these motives have changed, but every one that has been important at any time persists to some extent today and is encountered whenever argument ensues as to what the theoretical bases of contemporary methods of dealing with convicted criminals should be.

Retaliation. The convict still "pays his debt to society." Nobody today would advocate revenge as the motivation for lawmakers in formulating the penal code, or of judges and juries in enforcing it. Whenever a heinous offense is committed, however, there is an unthinking clamor for vengeance. Feuding and dueling have died out in the United States, but we still have a half dozen or more lynchings each year. Many editors scream "hang him" and call "maudlin sentimentalist" anyone who dares suggest that it is wrong to demand an "eye for an eye."

Unscientific as that Mosaic law (*lex talionis*) now seems, when it was postulated centuries ago—perhaps for the first time in the Code of Hammurabi—it was a considerable advance over the unrestrained vengeance that characterized primitive society. Before the concept of crime as an offense against the community as a whole originated, first the private vegeance, and later the family, tribe, or group vengeance, obtained was way out of proportion to the offense occasioning it.

Enlightened as we are supposed to be in the twentieth century, it is difficult on occasion to refrain from declaring, "He got what he deserved." To contend that the penal code should be predicated

on the assumption that the guilty should get their deserts is something else, but it is impossible to deny that a certain amount of vengefulness unconsciously at least goes into the making of certain laws.

Expiation. It wasn't just a matter of "good riddance" with some of the ancient peoples when they exiled or killed their lawbreakers. There was also an element of fear that the wrath of the Almighty would descend upon any group which failed to purge itself of a taboo breaker or sinner. There was little distinction between the concepts of crime and sin, and human sacrifices of the innocent as well as of the guilty were for the purpose of pacifying an angry deity.

It was Aristotle who provided the philosophical justification for expiation, as necessary to maintain balance in the social and moral universe. The great Greek had no theory of a penal system, nor even of criminology. He held that crime—whatever it might be decided to be—obviously upsets the social balance, and, to restore order, the offending element has to be eliminated.

The Judeo-Christian philosophy, with its emphasis upon free will and individual responsibility, also provided a theoretical justification for punishment. Amos' God was one of social righteousness, who punished those guilty of social injustice. Hosea, however, preached the redemptive purpose of punishment—not to destroy the evildoer, but to provide for him a penance by means of which he could purge himself of sin. The confession, excommunication, and inquisitions all grew out of the purging idea. Curses, incantations, and magic formulae utilized by holy men were means by which the assistance of the unseen powers was solicited in the endeavor to punish the wicked. Effigies of enemies were tortured in the belief the persons whom they represented would suffer simultaneously—even though fugitive and miles away. Spells were cast on the effigies and upon any nail pairings, hair, excreta, or other tokens of the missing culprits. Until comparatively recent times, the deity was called upon, by elaborate religious ceremonies, to suspend the ordinary forces of nature to reveal guilt or innocence through ordeals and oaths. (See pages 73 to 74.)

The Middle Ages *hue and cry* differed from the modern lynching mob in that it was a lawful means whereby a posse formed to track down and destroy a lawbreaker. An *outlaw* was a felon who became a fugitive from justice and whose lands and goods were seized. He was considered a communal enemy and could be killed by anyone.

Deterrence. In the attempt to scare people into being good, throughout history every form of torture that ingenious man could devise has been tried. Capital punishment has been inflicted by

stoning, crucifying, beheading, burning at the stake, impaling, spearing, throwing from high places, poison, boiling in oil, throwing to wild beasts, dragging at horses' hoofs, hanging, drowning, shooting, electrocuting, gassing, and other ways. Prisoners have been flogged, stretched, branded, mutilated, and subjected to innumerable other forms of corporal punishment. Banishment was popular in early Biblical days. Poetic punishments have been tried—such as cutting off the hands of thieves, or the tongues of liars, emasculating rapists, gagging scolds, drowning Baptists and branding or placarding with scarlet letters. The Eskimos ridiculed offenders with raucous recitations of poems or stories telling of their misdeeds, and the stocks and pillories, tar and feathers have been used for the same purpose.

Severity of punishment as a deterrence is rooted in the belief that fear is the strongest psychological force. Long before psychologists began to question that assumption, the statistics revealed that the theory didn't work in practice. Almost until the nineteenth century approximately two hundred and forty crimes were punishable in England by the death penalty; yet the net effect was only an increase in the resort to legal fictions to avoid convicting offenders. The excellent reputation of the English as law-abiding by contrast with Americans dates from the time the criminal code was reorganized to reduce the number of capital offenses to two and the substitution of *certainty* for severity as the cornerstone of the criminal law. American states which have abolished capital punishment have had the same experience. Public executions of the death penalty in England were discontinued because pickpockets were too active in the crowds that gathered to witness them—even when the condemned persons were themselves pickpockets.

Criminal court statistics also overwhelmingly prove that modern judges and juries will not inflict the death penalty, except in rare cases. Even in large cities where two hundred or three hundred homicides are committed annually, there may be only two or three hangings or electrocutions, or maybe none at all. Prosecuting attorneys are prone to accept guilty pleas to manslaughter charges rather than prosecute for murder, and judges allow the lesser pleas. They don't want "blood on their hands."

Opponents of capital punishment contend that its existence on the statute books is an obstacle rather than an aid to swift detection and conviction. They call it "neurasthenic, emotional, erotic, and sadistic," coloring the attitude of those who prosecute heinous criminals and often permitting prisoners to go free or to prison on light sentences to the danger of society. They contend that the deterrent effect which any punishment may have is just as strong

when life imprisonment is the most severe penalty; that, in fact, being "taken in hand" by the state and deprived of liberty for any length of time is sufficient. More importantly, they often question the entire philosophy of punishment as the chief preventive of antisocial behavior.

To believers in the efficacy of punishment, most of the contentions of the death penalty abolitionists are maudlin sentimentalism. While not denying the importance of certainty, they also believe in severity. Their argument is that the *certainty of severity* is what is needed, and they deplore light sentences and prison reform innovations. They point to the quick end to which the kidnaping era came in the thirties after the FBI moved in under authority of the Lindbergh law and the federal courts gave maximum sentences to the snatchers whom the G-men caught.

Reformation. The "softness" in penalties and prison methods, which some applaud and others deplore, originated, not in attempts to be more scientific, but in humanitarianism. The Old Testament tells of cities of refuge and sanctuaries to which accused persons could flee for temporary safety from their would-be avengers. In the Middle Ages the church prescribed truces of God—holy days on which it was a sin, punishable by excommunication, to break a law. As the state took over from the church in the trial and punishment of many crimes, the king's peace replaced the truce of God.

Hosea, as already mentioned, preached the possibility of redemption through punishment; he is called "the father of the reformation idea" by some modern criminologists. It was the church, more than any other force, which was responsible for the gradual substitution of fines for capital or corporal punishment and for a great deal of the sentiment that developed against arbitrary and cruel punishments.

Famous exponent of the theory that *the punishment should fit the crime*—to whom the theory is generally traced—was Cesare Bonesano Beccaria (1735–1793), founder of the so-called "classical school" of criminology. Enraged by the abuses of the discriminatory power possessed by judges and inspired by the democratic theories of Rousseau and other believers in the natural rights of man, Beccaria insisted that the law, not the judge, should determine what the penalty of a certain offense should be. He advocated a statutory scale of punishments to fit all possible crimes, and a limitation of the power of courts to the determination of whether the offense had been committed.

Beccaria's ideas—which were embodied in the French code of 1791—were easily enforced, and they led to an elimination of the gross abuses of his day. However, they were unscientific in that they

took no account of extenuating circumstances in particular cases. Beccaria's scale of crimes provided a Magna Carta for the criminal, who thus was able to determine in advance of his crime exactly the risk that he undertook.

The first serious jolt to those who adhered to the "punishment to fit the crime" philosophy, which means almost everyone, was provided by the Italian criminologists, chiefly Lombroso (see pages 401 to 402), Ferri, and Garofalo. They introduced the idea that it is the criminal rather than his crime that should be the object of study, both in understanding the causes of crime and in determining its proper treatment.

More important than the religionists and the criminal anthropologists, however, in paving the way for a penology based on the reformation idea were the humanitarians of the eighteenth and nineteenth centuries. Notable among them were Jeremy Bentham, Sir Samuel Romilly, John Howard, and Elizabeth Fry in England; and Dorothea Dix, Z. R. Brockway, Moses and Amos Pillsbury in the United States. They exposed the prisons of their times as breeding places of crime, where the horrible treatment accorded inmates degraded them and turned them into hateful beings intent on obtaining revenge after their release.

Until the number of capital offenses punishable by death was reduced and the exile of criminals to America, Australia, and other places was stopped, England had need of few prisons except as places to incarcerate persons temporarily waiting trial or deportation. Her early efforts and those in the New World were frightful experiments. The prisons were crowded and unhealthful. There was no classification of criminals; the hardened, diseased, and degraded mingled with the young and incorrigible. No worthwhile labor was provided, and there was emphasis upon corporal punishment. There was the shaved head; striped uniforms; balls and chains; solitary confinements in dungeons, with only bread and water or less; the lock step; the silence system; and little or no recreation.

Georgia, today ranked among the most backward of the states in its penological methods, was among the first to experiment with rewards as well as punishments in 1832, when Sunday yard privileges were allowed for good behavior. About the same time, Kentucky introduced a marking system; Tennessee began to commute sentences for good behavior; and Vermont provided tobacco for the well-behaved, permitted letter writing and visitors. Elam Lynds, warden, abolished the lock step at Auburn in 1821, and Amos Pillsbury experimented with an honor system in New Hampshire.

By gradual steps the modern penitentiary has become almost an

entirely different place from that of its predecessor of a century, or of even a half century ago. Inmates are now classified and segregated in accordance with their capacity for rehabilitation, either within or between prisons. Cell blocks are sanitary, heated, and ventilated. Stripes, shaved heads, the lock step and irons have virtually disappeared, and the silence system is not so absolute. There are chapels, recreation halls, libraries, classes, and worthwhile labor for most prisoners. Labor unions have opposed prison labor on contract from private industry, so that it is forbidden in many state penitentiaries, but articles are manufactured for state use—such as automobile license plates—and for use within the prisons themselves.

Proponents of probation, parole, and the indeterminate sentence point to the fact that ninety-eight per cent of all federal prisoners and ninety per cent of all prisoners in state penitentiaries outlive their sentences and are released to return to societal life. They contend, therefore, that the fundamental purpose of prison life should be reformation, so that ex-convicts will not continue to be public enemies. They argue that there must be hope as well as fear as an incentive, and point to the success of federal parole and probation as proof of what can be accomplished when there is no political pressure. The annual records show only about two per cent violation of federal probation and only about five per cent violation of federal parole.

John Augustus, a Boston cobbler, is recalled as the first *probation* officer. In 1841 he appealed to the court to suspend the sentence of a young man, and undertook to act as his guardian. The result was so good that for seven years he continued to supervise a total of four hundred and two persons without a single revocation of probation. In 1878, Massachusetts became the first state to establish probation by law. Until 1891 the law applied to Boston only; thereafter it became statewide. Congress voted federal probation in 1925. Newspapermen should be familiar with the magazine, *Federal Probation*.

Parole is of earlier origin. It was suggested in 1791 by the French statesman, Mirabeau, and tried out in England about fifty years later. The first English parole law followed a report to Parliament in 1838 by Sir William Molesworth, who was horrified by the convict transport system to Australia that he had investigated. In this country there has been federal parole since 1910, since 1913 for all prisoners, including those serving life terms. In addition to parole proper, there is the *conditional release* for prisoners ineligible for parole but entitled to reduction of their sentences for good behavior —"good time," as it is called. Federal probation officers also have jurisdiction over federal parolees and over those released condi-

tionally, and the trend in the states is toward a combination of probation and parole work.

Parole experts insist that there is no correlation between the kind of crime that the prisoner committed and his chances of success on parole. Considerable research is being conducted at present in the attempt to arrive at criteria by which to predict the probability of success in the readjustment to society after release from prison. An important factor, it is held, is the time the release occurs. Jesse Stustman, Detroit prison warden, in *Curing the Criminal,* years ago insisted that there is a psychological moment in every inmate's career when, if ever, he should be released. Rigid sentence laws remain an obstacle to attainment of that end. So does restricting the authority of the psychiatric and sociological experts, who attempt to prepare the prisoner for release. The indeterminate sentence is a step in the direction of *making the punishment fit the criminal* rather than his crime, but social pathologists will not be content until they have reached the goal that Alfred E. Smith envisioned—limitation of the power of judges and juries to the determination of fact, the disposition of cases to be in the hands of penological experts appointed for life and immune to political or other influence.

Prevention. Unless justice has miscarried, the person who has been convicted and sentenced to a prison term has already committed a crime. Consequently, the preventive value of punishment has been thought of as consisting in the deterrent effect of his example on others and/or the reformative value of his prison experience on him after he has regained his freedom. Real preventive work, it has been held, must be done outside the courts and penitentiaries—in the home, school, church, and community.

In the penologist's utopia, however, the criminal court will resemble a behavior clinic more than an inquisitorial and punitive tribunal. The desideratum will be *punishment to fit the criminal,* but "punishment" will be a misnomer in many, perhaps a majority of cases. The parade of petty offenders—drunks, dope fiends, vagrants, homosexuals, prostitutes, panhandlers, and the like—so familiar to every police court reporter, will end as revamped laws make it possible to handle them as medical or social rather than as legal problems. Evidence is abundant that sentencing these human derelicts repeatedly to short jail terms does no good. To test the statistics that Sheldon and Eleanor Glueck and many other criminologists have presented for years, the Chicago *Times* in 1937 picked six male derelicts for an experiment. All were given new clothes and placed in good jobs. In eight months five were back on West Madison Street where they had come from.

Rather than being weaker, the discipline advocated by the "reformers" would be considerably stricter, for potentially dangerous criminals would be kept under lock and key or at least careful supervision. Under present conditions, it does little good for a psychiatric clinic to diagnose a petty offender as a potential rapist or murderer. As long as the punishment must fit the crime rather than the criminal, judges and juries have no power to protect society against incipient danger. Before the serious penalty can be imposed, it is necessary to wait until the serious offense has been committed.

A number of states today have what are called *habitual criminal laws*—the best known being the Baumes Laws of New York, which derive their name from Sen. Caleb H. Baumes, chairman of a state commission which promulgated them. The most important Baumes law is that which makes life imprisonment arbitrary for a fourth-time felon. After seven years the New York *Times* investigated operation of the law and discovered that of the 111 persons convicted under it, all but one were "small fry." There were a number of pitiful cases, including a lifer whose fatal offense had been a twenty-cent burglary, a second who took a tool box, and a third who got away with only four dollars.

If punishment were the one and only way to prevent lawbreaking, Baumes laws would make sense. One of the many studies made by the Gluecks, however, revealed that 76 per cent of the inmates of a reformatory for girls became repeaters; 78.9 per cent of the graduates of a boys' reformatory did the same, as did 88.2 per cent of the youngsters going through a particular juvenile court. Such statistics can be supplemented by many and many more—all demonstrating the same thing. There is a healthy realization of this fact among many juvenile court judges, but the social and psychiatric work that such courts can undertake is limited by the funds available and the restrictions imposed by obsolete laws. Ignorant judges, prosecutors and lawmakers prevent improvement.

To do really preventive work, the courts will have to be empowered to insist on psychiatric and social investigation of all cases and to prescribe whatever treatment is best for the protection of society. Under such a system, some killers might be set free and some who commit malicious mischief might go to prison for life. Short jail sentences might still be imposed as object lessons in certain disciplinary cases, but they would not constitute the major work of many inferior courts, as at present. Instead, the riffraff who at present receive the sentences would receive treatment or, if incorrigible, would be segregated and institutionalized.

The following article by Albert Deutsch in the Nov. 24, 1943, issue of *PM* is reproduced both for its contents and because it is an

example of what a newspaperman with adequate background can do on the job:

With the dramatic close of the Codarre trial, the State of New York is spared the shame of relentlessly pursuing its 13-year-old quarry to the precincts of the electric chair. Thus the first-degree murder trial of a child is cut short before the question of his criminal responsibility could be determined in open court. It remains to be seen whether the penal institution to which he is committed has the facilities for giving him the psychiatric treatment he obviously needs.

Remember that Eddie will be in the full bloom of manhood when he emerges from prison walls. Will he be salvaged for a future of useful citizenship by proper treatment or turned loose with a twisted psyche, an unredeemed menace, capable of repeating his repulsive act of last August?

I want to stress a vital aspect of the case of Edwin Codarre. I refer to the miserable failure of existing social agencies through whose hands he passed before he killed little Elizabeth Voigt.

Since he was ten years old, Edwin Codarre was hailed three times before the Children's court of New York City. He was a chronic truant, a petty thief, a runaway, and a generally ungovernable child, socially and emotionally unadjusted. His psychiatric disturbance was mirrored in a series of irrational acts. On one occasion he burned off the whiskers of his dog. He once tried to asphyxiate the same dog by putting it in the kitchen, turning on all the gas jets and shutting the windows and doors. Another time, he seized a razor and slashed all the furniture at home, with no apparent provocation.

The Codarre boy was under the attention of the Children's court psychiatric clinic from July, 1941, to May, 1942. Little or nothing was done for him by the understaffed, overworked clinic. It is farcical to dignify this agency as a "psychiatric clinic" in its present state of inadequacy.

In October, 1941, the boy's mother, Mrs. Irene Codarre Bishop, proposed that Eddie be sent to a psychiatric institution for treatment.

"I am always afraid of what he will do next," she said at the time.

Dr. Helen Montague of the clinic advised sending the boy to the Rockland State hospital for mental patients. An application for admission was filed, but the children's pavilion at Rockland was then crowded. By the time a vacancy occurred, Mrs. Bishop had changed her mind about placing her son there. Nothing further was done by the clinic to rehabilitate Eddie.

In April, 1943, after another appearance in Children's court as a delinquent, Eddie was referred to the Bellevue Psychiatric hospital for observation. He stayed there about two weeks. The psychiatrist who examined him recommended that he be placed in an institution. Again, nothing was done.

Four months later, the lifeless, raped body of 10-year-old Elizabeth Voigt was found in a field at Fishkill, New York

That tragedy might have been prevented, if Eddie Codarre had received the prompt and efficient care he needed. Two children might be looking forward to a cheerful future. Instead, one lies in her grave; the other, in a few days, will be engulfed by grim prison walls.

PART IV

APPELLATE LAW

CHAPTER 19

Appeals

THE right to appeal to a superior court in order to correct any errors or injustices resulting from a final order, judgment, or decree in an inferior court—civil or criminal—is consistent with the democratic ideal that government should protect the individual from the arbitrary and tyrannical deprivation of his rights and liberties.

In republican Rome, the appeal could be taken directly from the magistrate to the people, who were assembled as the *comitia centuriata;* the practice was called *provocatio.* In modern complex society, of course, no such system is possible, and appellate court judges are human beings, either elected or politically appointed. They are, however, traditionally men of superior attainment and integrity, by comparison with lower court judges. At any rate, they have a fresh and more objective perspective toward a case than a trial judge, no matter how conscientious, can possibly have.

Rights and Grounds

When and how appeals can be taken today is regulated by statutes.

Jurisdiction. As related in Chapter 2, great progress has been made in eliminating double and triple appeals. In New York, for example, there can be only one appeal in criminal cases. If the penalty is death, the appeal is direct to the highest tribunal—the Court of Appeals. Otherwise, in New York City, the appeal is to the appellate division of the Supreme court, except for city magistrate cases, which go to the appellate division of the Court of Special Sessions. In the rest of the state, appeals from County and Supreme courts go to the appellate division of the particular area's Supreme court; and those from justices of the peace, police magistrates, and Special Sessions court go to the County court. Further appeals are allowed only if a judge of the Court of Appeals or of a Supreme court appellate division certifies that there are questions of law that ought to be reviewed by the Court of Appeals.

Probably without exception, matters involving the construction of a state's constitution go directly to the highest court of any state. Other cases over which intermediate courts of appeal seldom have jurisdiction include those involving revenue, those in which the state is interested as a party or otherwise, those involving the validity of a statute and, possibly, a municipal ordinance, and those involving a franchise or a freehold. If the state has no intermediate court of appeals, all cases arising in the courts of original civil or criminal jurisdiction go directly to the highest court. The courts of original jurisdiction, on the other hand, may hear appeals from justices of the peace, police magistrates and county and municipal courts, and also from the rulings of some state agencies and commissions, such as the commerce commission, license appeal commission, and whatever agency administers the workmen's compensation acts. Not all actions are appealable; the statutes determine which ones are.

Kinds. Some states still retain the distinction between an *appeal* proper and a petition for a *writ of error*. The former, of civil law origin, if granted, removes a case entirely (*de novo*) from the jurisdiction of the lower to that of the higher court, which can review both the law and the facts. The proceedings in the appellate court are a continuation of those begun in the lower. On the other hand, a writ of error, of common law origin, originally was a writ of right, and resulted, not in a continuation, but in an original proceeding in the higher court. The distinction today is to such a great extent fictitious that for all practical purposes it is ignored, even where technically retained. The terminology may be retained to distinguish between civil and criminal matters—an appeal in a criminal case being by writ of error. Granted, a writ of error is an order from the higher to the lower court to send up its record for review.

The Illinois Civil Practice Act (Article VIII, paragraph 74 (2)) reads:

> All distinctions between the common law record, the bill of exceptions, and the certificate of evidence, for the purpose of determining what is properly before the reviewing court, are hereby abolished. The trial court record shall include every writ, pleading, motion, order, affidavit, and other document filed or entered in the cause, and all matters before the trial court shall be certified as a part of such record by the judge thereof. All matters in the trial court record actually before the court on appeal may be considered by the court for all purposes, but if not properly authenticated the court may order such further authentication as it may deem advisable.

A typical writ of error still in use appears on the opposite page.

Distinction also may be made between appeals *as of right* and appeals *by permission*. Which it is is entirely a matter of statutory

WRIT OF ERROR

State of Florida,—ss.

The State of Florida, to the Judge of the Circuit Court of the Thirteenth Judicial Circuit of the State of Florida, Greeting:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said Circuit Court before you, between _____

_____

_____

as Plaintiff___ and _____

_____

as Defendant___, manifest error hath happened, as it is said, to the great damage of the said

_____

_____ as by_____ complaint appears,

We, willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid with all things touching them, under your seal, together with this writ, to our Supreme Court of the State of Florida, so that you have the same at Tallahassee on the_____day of _____, A D. 19 __, in our said Supreme Court to be then and there held, that inspecting the record and proceedings aforesaid, our said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law should be done.

Witness the Honorable_____,

Chief Justice of the said Supreme Court, and the seal of the said Circuit Court, this_____day of_____ in the year of our Lord one thousand nine hundred and_____

_____

Clerk of the Circuit Court of_____ County.

By_____, D. C.

determination of the jurisdiction of courts. If the statutes permit direct appeal, it is appeal as of right; if the permission of an intermediate appellate court or of the highest court must be obtained, it is appeal by permission.

Questions of law. If the appeal is by means of a petition for writ of error, only errors of law apparent on the record of the inferior court are proper grounds. No matters antedating an indictment can properly be referred to in the *bill of exceptions,* which must accompany the petition to set forth the reasons why review is requested, except as codes have changed the procedure. Neither can proceedings arising out of a judgment and not part of the record be referred to.

In criminal proceedings, usually it is not possible to list as errors rulings of the court to which objections were not raised during trial. It may not be necessary, however, to have taken exception to an adverse ruling on an objection. It may not be possible to raise objections to formal defects in an indictment, information, or complaint for the first time on appeal.

Proper grounds in civil and criminal cases alike include any ruling or order improperly prejudicial; improper conduct on the part of attorneys for the other side; improper exclusion of evidence; improper instructions to the jury by the judge; improper conduct on the part of a juror or of others toward a juror; a verdict contrary to the weight of the evidence; an excessive or otherwise unjust sentence or judgment; denial of a motion for a new trial; denial of a motion for an arrest of judgment. Not all trial errors are reversible errors. The burden is on the appellant to show that the errors were prejudicial.

In criminal cases, the state cannot appeal from a verdict of not guilty. In fact, the state has no right to appeal at all except as allowed by statute. Among the grounds that the law may allow are: a court order sustaining a defense plea in abatement or in bar; an order for a new trial; discharge of the accused or dismissal of the prosecution; quashing of an indictment; sustaining a demurrer to an indictment; granting a motion in arrest of judgment.

Questions of fact. To determine whether an inferior court ruled correctly on a motion or plea, it is virtually impossible not to consider the facts as well as the law—no matter what distinctions the statutes may pretend to make. Although reviewing the facts, the appellate court, however, cannot set aside a lower court verdict unless it is contrary to the manifest weight of evidence.

The appellate court, furthermore, is not supposed to interfere when the evidence is conflicting if it is material. It should not upset circumstantial evidence that tends reasonably to prove guilt. It

does not concern itself with the credibility of witnesses nor with the weight of evidence as to a particular fact. It ordinarily does not review any findings of fact of a jury nor any facts preliminary to the admission of evidence. It is not possible to raise questions regarding the weight and sufficiency of evidence for the first time on appeal, and gone is the day when reversals can be obtained by pointing out minor or technical errors in some court record. Today the statutes pretty generally provide that any stenographic or other mistakes that do not materially change the record shall be corrected or overlooked. Where there are no specific statutes to that effect, precedent prevails to the same effect.

Statutes often make a distinction between cases in which death is the penalty and other cases. If the former, the appellate court may be empowered to consider the facts fully and to reverse a lower court's judgment—even though no exceptions were taken during the trial—if it is considered against the weight of the evidence, or against law, or if justice requires a new trial.

Appellate Procedure

Notice of appeal. The party who takes an appeal or files a petition for a writ of error is known as an *appellant* (or *plaintiff in error* if on a writ of error). Except in rare cases, the appellant was the loser in the lower court action. The other party, when there is an appeal, is known as the *appellee* or *respondent* (or *defendant in error*). There are statutory time limits—usually running from thirty days to one year—during which an appeal can be taken. After filing notice with the clerk of the lower court, and possibly with the attorney for the other side, that it is the intention to appeal, however, there may be further time in which to do so—to *perfect* the appeal, as it is called. Whether the appellant must post bond and its amount are determined by statute. The notice of appeal may be by means of a single form, such as that on page 632.

Bills of exceptions. When the appeal proper is made to the higher court, there must be a clear and complete statement of the grounds on which it is being asked. The old practice was for this statement to be in the form of a bill of exceptions, to contain a full listing of all errors not apparent on the record which constitute the basis for complaint. The bill consists of a formal written statement of all objections taken during a trial to decisions, rulings, or instructions of a judge, stating the objections and the facts and circumstances on which founded.

In some jurisdictions a synonym for bill of exceptions is a *statement of the case.* In New York, its equivalent is a *certificate of rea-*

THE STATE OF OHIO, CUYAHOGA COUNTY. } ss. IN THE MUNICIPAL COURT OF CLEVELAND.

..... Plaintiff

vs.

..... Defendant

Case No. ...

NOTICE OF APPEAL.

The hereby gives Notice of Appeal to the Court of ..... of Cuyahoga County, Ohio, from a judgment (final order) rendered—made—by The Municipal Court of Cleveland in the above entitled cause, on the day of , 19 .

Said Appeal is on QUESTIONS OF LAW (QUESTIONS OF LAW AND FACTS).

Attorney for Appellant.

sonable doubt. The statutes also may prescribe that an *affidavit for appeal* accompany the notice, such as that on page 633.

Whatever it is called, it must contain as much of the evidence and other proceedings as is material to the questions raised regarding them. An *assignment of errors* technically is different, in that it includes a statement of all errors relied upon—whether or not based on exceptions to court rulings.

The listing of grievances by the appellant must be signed by the judge and perhaps the counsel for both sides. Since the bill does not contain argument other than that already presented or implied when objection was taken, the judge's certification is only equivalent to an affidavit that the appellant really feels that way about things. It is not an endorsement by the judge of the stand taken. The form used in Georgia for certification to the state's Supreme court appears on page 634.

Should a judge refuse to sign, the remedy is by mandamus proceedings in most jurisdictions, by petition to the appellate court in others. For example, in typical cases in inferior courts there may

In the Circuit Court, City of St. Louis

DIVISION No. ... ...

.... *Term, 19* . .. ..

STATE OF MISSOURI
vs.
....

On..... .... *for*
....

No..... .... *Term, A. D. 19*. . ....

AFFIDAVIT FOR APPEAL

....., *the defendant in the above entitled cause, being duly sworn according to law, upon his oath states that the appeal in said cause is not made for vexation or delay, but because he, said defendant, believes himself to be aggrieved by the judgment and decision of the court.*

....
Defendant.

Sworn to and subscribed before me this..... .. ..

day of....., *A. D. 19*.....

.....
Circuit Clerk of the City of St. Louis, for Criminal Causes.

CERTIFICATE OF THE JUDGE.

I do certify that the foregoing bill of exceptions is true and . . . . . all of the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the . . . . . court of . . . . . is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the . . . . . term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This 19

. . . . . .

be a form which, filled in, is sufficient to take an appeal. An example of such a blank appears on page 635 and its reverse on page 636.

Briefs. In some jurisdictions, the bill of exceptions or assignment of errors has been rendered obsolete by extending the scope of the brief, which the appellant must file to include everything a bill ordinarily would contain. In other places, the brief, limited to argument, merely supplements the bill of exceptions.

Where the brief has been made the most important document in an appeal, it must contain a statement of the facts of the case, including only that which is a part of the record, complete enough to obviate the necessity of the appellate court judges' reading the complete record. A brief is a summary or epitome of the case at issue. In civil cases, it must state the nature of the action; the nature of the pleadings sufficiently to show what the issues were and to present any question subject to review arising out of the pleadings. In cases depending on evidence, it must state the leading facts that the evidence proved or tended to prove—without quotation, discussion, argument, or details; how the issues were decided upon trial or hearing; what judgment or decree resulted.

The most important part of the brief is that which states or restates the alleged errors and the argument thereon. The argumentative part of the brief cites authorities and precedents in support of whatever contention is made. Many jurisdictions require that it be printed and that a number of copies, perhaps as many as twenty,

(CITY COURT TRANSCRIPT)

THE CITY OF ST. LOUIS, Plaintiff, VS. _____ Defendant, _____	In City Court _____ of the City of St. Louis CHARGE: VIOLATING CITY ORDINANCE Number 41386, Section___Clause___and Section___ Approved July 26, 1938

Debt _____ Dollars, for the violation of an Ordinance of said City, being Ordinance Number 41386, Section____Clause_____and Section _____

On the _____ day of _____ 194___ the Chief of Police of the City of St. Louis reports the arrest of the above named defendant, charging the said defendant with violating the above entitled Ordinance.

On the_____day of_____194___, the case was called and continued to the_____day of_____ 194___, _____

On the_____day of_____194___, the case was called and continued to the_____day of_____ 194___, _____

On the_____day of_____194___, the case was called and continued to the_____day of_____ 194___, _____

On the_____day of_____194___, the case was called and_____

_____

_____

_____

_____

_____

On the_____day of_____194___, comes the Assistant City Counselor, for the City of St. Louis, and the defendant in his-her own proper person also comes, and having seen and heard read the information herein, says he-she is not guilty in manner and form as therein charged. And the Court having heard the evidence, fully advised of and concerning the premises, doth find the defendant guilty as charged and assesses his-her punishment at a fine of _____ Dollars. It is, therefore, considered and adjudged by the Court that the said defendant for his-her offense pay the City of St. Louis a fine of_____Dollars, together with the costs herein accrued. Thereupon comes defendant and files his-her affidavit and bond, with

_____

as security, for appeal, whereupon an appeal is taken to the ST. LOUIS COURT OF CRIMINAL CORRECTION.

STATE OF MISSOURI, }
City of St. Louis, } ss.

I, FRANK L. KLEIN, Clerk of the City Courts of the City of St. Louis, do hereby certify the foregoing to be a full, true and correct transcript of all the entries on the Docket of this Court, in the case of the City of St. Louis versus _____ _____and all the papers before me relating to the same are attached hereto and are herewith returned.

Given under my hand, this_____day of_____ 194____

_____
Clerk of the City Court of the City of St. Louis

By_____
Deputy Clerk.

be filed with the appellate court. The appellee's brief is filed in reply to that of the appellant, answering it point by point and also citing law and authorities.

Transcripts; abstracts. By praecipe the appellant requests the clerk of the lower court to transmit to the appellate court as many printed copies of the official record of the proceedings as are required. Also, there must be sent a certified copy of the notice of appeal and of the judgment or decree. In addition, there may be required an abstract of the complete transcript containing everything necessary to determine the questions presented for review. This abstract usually must be indexed for the convenience of the appellate court judges. In inferior courts the transcript is a simple thing, that on page 637 being typical.

Supersedeas. Formerly it was necessary to make separate application for a writ of *supersedeas,* whereby the appellate court assuming jurisdiction of a case ordered the lower court to postpone execution of a judgment, decree, or sentence pending its decision. Today in most jurisdictions a notice of appeal or obtaining of the judge's signature to a certificate of reasonable doubt or bill of exceptions is an automatic *supersedeas* or *stay of proceedings.* Posting of an appeal bond may be necessary to bring about the stay.

A *supersedeas* or stay does not vacate a decree, judgment, or sentence; it merely delays execution until the appellate court has reviewed the case. The writ is served by the sheriff upon the lower court or upon any public official who otherwise might proceed to carry out execution. A *caveat* (let him beware), permissible in some cases, is a notice of warning to a court, judge, or officer that an appeal is pending. Where allowed, it is most common in will and patent cases. A typical *supersedeas* is shown on page 638.

What follows are the complete papers in a simple case of appeal from the ruling of a state agency ending in a notice of appeal to

TRANSCRIPT ON APPEAL FROM JUSTICE No 237 Rev Perfection Legal Blank Co., Chicago

State of Illinois, } ss.
County of Cook

IN Justice COURT.

Before Roy F. Nix
Justice of the Peace

Henry Koelling, Martha Schultz, Emily M. Poecher, George Winkleman, Alvina Schmeltekop

vs

Nick Dentzer & Louis Dentzer

Action F. E. & D. suit

Demand $ Possession of property.

FEES	
Alcoare Costs	$2 00 $
Approv Bond	$1 00 $
Subpoena @ 25 ¢	
Trans Chg of Ven	1 00 $
Trial Fee	3 00 $
CONSTABLE	
Serv Summons	$
Serv Venire	$
Serv Subpoena	$
Serv Execution	$
Returning Writ	$
Mileage	$
	$
RECAPITULATION	
Total Court Costs	$
Total Const Fees	$
Witness Fees	$
Jurors Fees @ 50	$
Atty of Judgment	$
Transc Lien on R E 1 50	$
Atty Fees	$
Appr Appeal Bond 1 00	$
Trans Chg of Ven 1 00	$
Transcript Appeal 1 00	$
Transc Lien on R E 1 50	$
Total	$

12/3/42 complaint of plaintiffs, Henry Koelling, Martha Schultz, Alvina Schmeltekop, Emily M. Poecher, and George Winkleman filed that plaintiffs are entitled to possession of the following described premises:

E½ of the E½ of the SE¼ of Section 30, Township 41 North, Range 12, East of the third P. M. (except county) containing forty acres more or less.
Located in the County of Cook, State of Illinois, wherein this Court has jurisdiction.

12/3/42-Summons issued by this Court and service made by Constable F. H. Brasie. Trial set for 12/10/42 at 2 p. m.

12/10/42-Case called at time and place set in summons.
Plaintiff represented by Atty. Paul Passell
Defendants represented by Atty. Edwin Walsh.
All witnesses sworn and testimony heard.
On motion of the plaintiffs, George Winkleman was withdrawn as one of the plaintiffs. Motion granted.
After considering all the evidence adduced and the arguments thereon the Court finds the defendants guilty of a forcible detainer of said premises and that the plaintiffs are entitled to the possession thereof. Whereupon it is considered, ordered and adjudged by the Court that the plaintiffs, Henry Koelling, Martha Schultz, Alvina Schmeltekop, and Emily M. Poecher have and recover of the defendants Nick Dentzer and Louis Dentzer the possession of the premises described in complaint.

12/29/42 Case appealed to Circuit Court of Cook County case # 42 C 15286/

State of Illinois, } SS
Cook County

I Roy F. Nix
Justice of the Peace—Police Magistrate in and for said County, DO HEREBY CERTIFY, that the foregoing is a true and correct Transcript of the Judgment given by me in the above entitled suit, and that said Transcript, and the papers herewith accompanying, being 2 in number and numbered from one to 2 inclusive, contain a full and perfect statement of all the proceedings before me in the above entitled cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of January A D 1943.

Justice of the Peace [SEAL]

SUPERSEDEAS—Circuit Court of Cook County.

STATE OF ILLINOIS, County of Cook. } ss. **The People of the State of Illinois.**

To .....Esquire, Justice of the Peace, and.....

a Constable in and for said County, GREETING:

Whereas, You, the said..... a Justice of the Peace, as aforesaid, did on the.....day of..... A. D. 19 ....., render a judgment in a certain suit lately instituted and then pending before you, wherein..... Plaintiff and .....Defendant in favor of the said ..... and against the said..... for the sum of..... Dollars and .....Cents, besides the costs of suit, as it is said:

And whereas the said .....ha taken an appeal from the said judgment to our Circuit Court of Cook County, and thereupon executed an Appeal Bond with security according to law, now on file in the office of the Clerk of the said Circuit Court.

Therefore We Command and Enjoin you, the said.....

Justice of the Peace, and you the said..... Constable as aforesaid, that you do absolutely and entirely supersede and desist from proceeding any further in said suit, and all proceedings in relation thereto you do solemnly suspend, until the further order of our said Circuit Court.

Witness, JOHN E. CONROY, Clerk of our said Court, and the Seal thereof, at Chicago, in said County, this..... day of..... A. D. 19 .....

.....Clerk.

the supreme court of the decision of the court of original jurisdiction:

STATE OF ILLINOIS } SS
COUNTY OF COOK }

APPEAL TO THE CIRCUIT COURT OF COOK COUNTY
FROM
THE UNEMPLOYMENT COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR OF THE STATE OF ILLINOIS

WALGREEN CO., a corporation,
Plaintiff-Appellant
vs.
FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the State of Illinois; DR. ELMO P. HOHMAN, as Representative of Francis B. Murphy, as Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; and C. B. DALZELL, et al.,
Defendants-Appellees
} No. 42C 6796

PRAECIPE

TO THE CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS:

Pursuant to the provisions of the Unemployment Compensation Act of the State of Illinois, you are directed to issue:

1. A Writ of Certiorari directed to Francis B. Murphy, as Director of the Department of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, and to Dr. Elmo P. Hohman, as Representative of Francis B. Murphy, as Director of the Department of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, requiring them to certify to this court the record of the proceedings in the matter lately pending before them entitled "In the Matter of the Claim for Benefits of C. B. Dalzell, et al.," commonly referred to as "In the Matter of the Appeal of Walgreen Company, Chicago, Illinois," being No. 41-DL-107, and to prepare and to have certified a true and correct typewritten copy of such testimony and a true and correct copy of all other matters contained in such record of said proceedings on or before Friday, the FIFTH day of June, A.D. 1942.

2. A Writ of Scire Facias directed to:

(list)

requiring their appearance in this cause on or before FRIDAY, the FIFTH day of June, A.D. 1942.

_____

Attorneys for Plaintiff-Appellant

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS

WALGREEN CO., a corporation,
Plaintiff-Appellant
vs.
FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; Dr. Elmo P. Hohman, as Representative of Francis B. Murphy as Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; and C. B. Dalzell, et al.,
Defendants-Appellees

No. 42C 6796

WRIT OF CERTIORARI

BY VIRTUE OF THE PROVISIONS OF THE UNEMPLOYMENT COMPENSATION ACT OF THE STATE OF ILLINOIS.

TO: FRANCIS B. MURPHY, as Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois.

DR. ELMO P. HOHMAN, as Representative of Francis B. Murphy, as Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois.

GREETINGS:

WHEREAS, a decision has lately been rendered in the cause entitled "In the Matter of the Claim for Benefits of C. B. Dalzell, et al.," commonly referred to as "In the Matter of the Appeal of Walgreen Company, Chicago, Illinois," being No. 41–DL–107; and

WHEREAS, Walgreen Company, a corporation, pursuant to the provisions of the Unemployment Compensation Act of the State of Illinois has filed in this court a praecipe for a Writ of Certiorari to be issued to you commanding that you certify and return to this court a record of the proceedings had before you in the cause entitled "In the Matter of the Claim for Benefits of C. B. Dalzell, et al.," commonly referred to as "In the Matter of the Appeal of Walgreen Company, Chicago, Illinois," No. 41–DL–107;

YOU ARE THEREFORE COMMANDED without delay to certify and return to the Circuit Court of Cook County the record of all proceedings had before you in the matter lately pending before you, entitled, "In the Matter of the Claim for Benefits of C. B. Dalzell, et al," commonly referred to as "In the Matter of the Appeal of Walgreen Company, Chicago, Illinois," No. 41–DL–107, including therein a true and correct typewritten copy of the testimony taken and a true and correct copy of all other matters contained in such record, on or before the FIFTH day of JUNE, A D. 1942.

WITNESS, John E. Conroy, Clerk of the Circuit Court of Cook County and Seal of the said Court at Chicago this 20th day of May, 1942.

_____

Clerk

STATE OF ILLINOIS }
COUNTY OF COOK } SS

IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS

WALGREEN CO., a corporation,
Plaintiff-Appellant
vs.
FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; DR. ELMO P. HOHMAN, as Representative of Francis B. Murphy, as Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; and C. B. DALZELL, et al.,
Defendants-Appellees

NO. 42C 6796

WRIT OF SCIRE FACIAS

BY VIRTUE OF THE PROVISIONS OF THE UNEMPLOYMENT COMPENSATION ACT OF THE STATE OF ILLINOIS.

TO:

(names)

GREETINGS:

WHEREAS, under the provisions of the Unemployment Compensation Act of the State of Illinois, Dr. Elmo P. Hohman, Representative of Francis B. Murphy, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, rendered his Report to Francis B. Murphy, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, in the cause entitled "In the Matter of the Claim for Benefits of C. B. Dalzell, et al.," commonly referred to as "In the Matter of the Appeal of Walgreen Company, Chicago, Illinois," No. 41–DL–107; and

WHEREAS, Francis B. Murphy, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, has lately rendered his Decision in the cause entitled "In the Matter of the Claim for Benefits of C. B. Dalzell, et al.," commonly known as "In the Matter of the Appeal of Walgreen Company, Chicago, Illinois," No. 41–DL–107; and

WHEREAS, Walgreen Co., a corporation, pursuant to the provisions of the Unemployment Compensation Act of the State of Illinois has filed a Praecipe for a Writ of Certiorari and a Writ of Scire Facias to obtain a review of said decision by this court:

YOU ARE THEREFORE SUMMONED personally to be and appear before the said Circuit Court of Cook County, Illinois, in the Courthouse in the City of Chicago in the said Cook County, State of Illinois, on FRIDAY, the FIFTH day of JUNE, A.D. 1942, then and there to show cause, if any you can, why the Report of Dr. Elmo P. Hohman, Representative of Francis B. Murphy, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement

and Unemployment Compensation of the Department of Labor of the State of Illinois, and the Decision of Francis B. Murphy, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, should not be reversed and set aside and further and do and receive what shall then and there be adjudged by our said court in the premises.

WITNESS, John E. Conroy, Clerk of the Circuit Court of Cook County, and the Seal thereof at Chicago, in the said Cook County, this 20th day of May, A.D. 1942.

Clerk

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY

WALGREEN CO., a corporation,
Plaintiff-
Appellant
vs.
FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; DR. ELMO P. HOHMAN, as Representative of Francis B. Murphy, as Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; and C. B. DALZELL, et al.,
Defendants-
Appellees

NO. 42C 6796

PETITION AND APPLICATION FOR SUPERSEDEAS

NOW COMES WALGREEN CO., a corporation, plaintiff-appellant, by George E. Arthur and Wolff, Keane & Gonberg, its attorneys, and shows unto this Honorable Court:

That plaintiff-appellant has filed an appeal in this court from a decision of Francis B. Murphy, Director of Labor of the State of Illinois, and Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, which said decision was rendered in favor of defendant-appellees and against the plaintiff-appellant on the first day of May, 1942;

That the plaintiff-appellant has filed with the Clerk of the Circuit Court of Cook County a praecipe demanding that the said clerk issue of writ of certiorari against the defendant-appellees, Francis B. Murphy, as Director of the Department of Labor of the State of Illinois, and Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the

State of Illinois, and Dr. Elmo P. Hohman, as Representative of Francis B. Murphy, Director of Labor of the State of Illinois, and Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, and that in accordance with said praecipe the clerk of the Circuit Court, as by statute provided, has issued the said writ of certiorari directed against the aforesaid parties:

That the said writ of certiorari has been duly served upon the said parties in accordance with the statute in such case made and provided:

That the praecipe filed with the Clerk of the Circuit Court of Cook County demanded that the said clerk issue a writ of scire facias directed against all of the defendants other than the Director of Labor and his representative, and that in accordance with said demand the Clerk of the Circuit Court issued the said writs of scire facias and the said writs have been duly served upon the defendants as by statute in such case made and provided.

The plaintiff-appellant further represents unto the court that it has paid to Warren Wright, State Treasurer of the State of Illinois, the sum of Fifty-Six Dollars and Twenty-five Cents ($56.25), receipt of which sum was duly acknowledged by Francis B. Murphy, as Director of Labor of the State of Illinois and Ex Officio Director of the Division of Placement and Unemployment Compensation of the State of Illinois, said sum being the cost of the certification of the record in the above-entitled cause.

WHEREFORE, plaintiff-appellant now moves this Honorable Court to make this appeal and writ of certiorari a supersedeas, to the end that execution of said decision of Francis B. Murphy, as Director of Labor of the State of Illinois, and Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, may be suspended pending final order of this Court, and plaintiff-appellant prays that it be excused from filing any supersedeas bond herein.

WALGREEN CO.

By: _____

Attorneys for Plaintiff-Appellant

On the reverse side of the original petition it was written: "June 24, 1942, this writ of certiorari be and the same is hereby made a supersedeas and as such is to be obeyed by all concerned," signed by the judge.

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY

WALGREEN CO., a corporation,
Plaintiff-Appellant
vs.
FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; Dr. Elmo P. Hohman, as Representative of Francis B. Murphy, Director of Labor of the State of Illinois, Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois; and C. B. Dalzell, et al.,
Defendants-Appellees

No. 42C 6796

JUDGE PRYSTALSKI
June 24, 1942
CIRCUIT COURT

ORDER

This cause coming to be heard on motion of Walgreen Co., a corporation, plaintiff-appellant, for an order to vacate the order heretofore entered herein on June 11, 1942, denying the application of the plaintiff for a writ of supersedeas and for an order to make the appeal heretofore filed herein by Walgreen Co., and the writ of certiorari heretofore issued herein a supersedeas, due notice of said motion having been served upon all parties in interest, or their attorneys, and the Court, having heard the argument of counsel and being fully advised in the premises, and having jurisdiction of the subject matter hereof and of the parties hereto;

NOW THEREFORE, it is hereby ordered and adjudged:

1. That the order heretofore entered herein on June 11, 1942, denying the application of plaintiff-appellant for a writ of supersedeas be and the same is hereby vacated, set aside, and held for nought;

2. That the appeal of Walgreen Co., and the writ of certiorari heretofore issued in this Court by the Clerk thereof, be and the same are hereby made a supersedeas and as such are to be obeyed by all concerned;

3. That the execution of the decision rendered on the first day of May, 1942, by Francis B. Murphy, as Director of Labor of the State of Illinois and Ex Officio Director of the Division of Placement and Unemployment Compensation of the Department of Labor of the State of Illinois, be and the same is hereby suspended pending final order of this Court; and

4. That the plaintiff-appellant be excused from the filing of any bond herein.

ENTER: _____
Judge of the Circuit Court
of Cook County

STATE OF ILLINOIS } SS
COUNTY OF COOK }

IN THE CIRCUIT COURT OF COOK COUNTY

WALGREEN COMPANY,
Plaintiff,
vs.
FRANCIS P. MURPHY,
Successor, DIRECTOR OF
LABOR
No. 42C 6796

Judge Prystalski
Feb. 19, 1943
CIRCUIT COURT

ORDER AFFIRMING DECISION
OF THE DIRECTOR OF LABOR

The above cause coming on to be heard on Writ of Certiorari to the Director of Labor and the Court having considered the record heretofore certified herein by the said Director of Labor, and the Court having heard the arguments of counsel, is of the opinion and finds that the decision of the Director of Labor should be confirmed and that the Writ of Certiorari heretofore issued should be quashed.

IT IS THEREFORE ORDERED that the decision of the Director of Labor be and the same is hereby confirmed, to which the plaintiff objects and excepts.

IT IS FURTHER ORDERED that the Writ of Certiorari heretofore issued be and the same is hereby quashed, to which the plaintiff objects and excepts.

ENTER: _____
Judge

APPEAL TO THE SUPREME COURT OF THE STATE OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,
THE HONORABLE JOHN PRYSTALSKI, JUDGE

WALGREEN COMPANY,
Plaintiff-Appellant
vs.
FRANCIS B. MURPHY, Director of
Labor of the State of Illinois,
Defendant-Appellee
No. 42C 6796

NOTICE OF APPEAL

On the 19th day of February, A.D. 1943, the Circuit Court of Cook County entered an order in this cause affirming a decision of the Director of Labor dated May 1, 1942.

WALGREEN COMPANY appeals from said order of the Circuit Court of Cook County, Illinois, entered in this cause on February 19, 1943, so far as said order confirms paragraph 1 of the said decision of the Director of Labor of the State of Illinois entered in this cause on May 1, 1942, which said paragraph 1 of said decision of the Director of Labor read as follows:

> 1. The determination of the Deputy in the above matter with reference to all claimants, appellants, herein, who were employed at the warehouse of the Walgreen Company in Chicago, Illinois, during the period involved herein, be and the same is hereby affirmed, and that the said claimants be and the same are held to be eligible for benefits

under the terms of Section 7 (d) of the Illinois Unemployment Compensation Act during the period from July 31, 1941, to August 18, 1941, both dates inclusive, if they are otherwise eligible under the terms of the Act;

WALGREEN COMPANY asks:

(1) That the said order and judgment of the Circuit Court of Cook County entered on February 19, 1943, be reversed so far as it confirms paragraph 1 of the division of the Director of Labor as above set forth;

(2) That it be held and determined by the Supreme Court of the State of Illinois that all employees of the Walgreen Company who were employed at the warehouse of Walgreen Company in Chicago, Illinois, prior to July 31, 1941, and who filed claim for compensation with the Director of Labor for the period July 31, 1941, to August 18, 1941, inclusive, be held to be ineligible for benefits under the terms of Section 7 (d) of the Illinois Unemployment Compensation Act for the period from July 31, 1941, to August 18, 1941, both dates inclusive.

WALGREEN COMPANY

By: _____

_____
Its Attorneys

Dated: March 11, 1943

Reporting appeals. Reporters learn of appeals when notices of appeal are filed. In important cases, they naturally follow up a judgment or sentence by inquiring of defendants and/or attorneys for the losing parties whether appeals are to be taken. A reporter must be careful not to be premature in declaring that an appeal has been taken, even though he may be in possession, through some lawyer's courtesy, of copies of the papers to be filed. The reporter assigned to the appellate court is responsible for watching for the filing of appeals, but the reporter who handles a case in the lower court usually has the first tip on an appeal.

First stories of appeals should include adequate resumes of previous proceedings. Since there is little or nothing new in a case appealed until the higher court has acted, all news stories until that stage has been reached are to a large extent "rehashes."

NOTICE OF APPEAL

Attorneys for the Centerville Transit company, which would take over the elevated and surface lines under the city unification plan, today prepared to fight the Center Commerce commission's recent order rejecting the merger.

Notice of the appeal was filed yesterday in the court and in the commission's office, where the commissioners are in session this week. David Aronson, special traction counsel, filed a similar notice and in addition asked Superior court for a reversal of the commission's order of June 29 granting the local surface lines a permanent ten-cent fare.

Attorneys for the proposed unified traction system said they would argue that the commission refused a rehearing of the petition for the merger even when they showed they had new facts and exhibits in support of the plan. The court has the right to order the commission to grant a rehearing.

APPEAL FROM J. P.

William H. MacDowell, 35, of 917 Evergreen Avenue, appealed in Circuit court yesterday from a judgment of $60 and costs entered against him for violation of the anti-discrimination statutes.

MacDowell owns bowling alleys and billiard rooms at 891 Wentworth avenue. He had been sued in a civil action before Justice Edward David by Clyde Murphy, Negro, of 490 East 42nd street. Murphy, who is now in the Army, testified that MacDowell refused to let him play billiards on June 6, 1945.

APPEALS AS OF RIGHT

Louis Harpers, suspended policeman on the state's attorney's staff, appealed yesterday to the state supreme court to review his conviction and sentence to life imprisonment for murder.

Harpers is in the state penitentiary. He was sent there by a jury which found him guilty of the murder of Miss Mary Chatfield, 26, daughter of Mrs. Martha Chatfield, accused by the state as the head of an abortion ring.

Harpers confessed that he planned to kill Mrs. Chatfield, fearing she would expose him as a paid employee of the ring. He went to her home at 1791 Foster street on April 20 and shot the young woman, believing she was Mrs. Chatfield. The defense contended he was insane at the time.

Springfield, Ill., April 16—(AP)—An appeal was filed in the State Supreme court today from the dismissal by the Cook County Circuit court of an election contest in which Robert E. Crowe, Democrat, was declared winner over John F. Tyrrell, Republican, as judge of the Superior court of Cook county. Helmer C. Patterson, 220 South Maple avenue, Oak Park, who described himself as a "qualified voter and elector," filed a petition charging inaccuracies and irregularities in vote counts in the special election held Nov. 3, 1942, to fill a vacancy caused by the death of Judge Robert C. O'Connell.

—Chicago (Ill.) *Daily News.*

APPEAL BY PERMISSION

The Rev. Thomas Clark, former pastor of the Centerville Presbyterian church, petitioned the state Supreme court yesterday for permission to appeal from an Appellate court decision, holding the church did not owe him $20,000 in back salary.

The Appellate court had affirmed the decision of a Circuit court jury which handed down a decision March 13.

The disputed pay is for the period from April 1, 1933, to Oct. 31, 1940, during which Clark's annual salary of $5,000 was reduced because of the depression to $2,400 and later raised to $2,500. In its opinion, the court said evidence showed Clark agreed to the salary reduction.

BRIEF

Three men and three women convicted of treason for aiding Herbert Haupt, executed German spy, on his mission of sabotage to this country, instilled in Haupt the Nazi philosophies that guided him, a government brief charged yesterday.

The charge was made by U. S. Attorney J. Albert Woll. The brief was filed in the U. S. Circuit Court of Appeals in answer to one filed by the defense, which is seeking a new trial.

Those convicted were Mr. and Mrs. Hans Max Haupt, young Haupt's parents; Mr. and Mrs. Walter Otto Froehling, his uncle and aunt; and Mr. and Mrs. Otto

Richard Wergin, parents of Wolfgang Wergin, who fled from this country to Mexico with young Haupt. The men have been sentenced to death, the women to 25 years imprisonment each.

The court set oral arguments for June 8.

—Chicago (Ill.) *Sun.*

SUPERSEDEAS

After being in jail for nearly five weeks, Wilfred Schwartz, former German-American Bund leader, obtained his freedom yesterday when his attorneys produced $15,000 in cash as an appeal bond before the U. S. Circuit Court of Appeals.

Schwartz is seeking a reversal of his sentence to ten years and a $15,000 fine, imposed by Federal Judge Theodore Dreyfus on a charge of violating the Selective Service act.

The government accused Schwartz of representing himself as a minister of the gospel to evade the draft.

An order staying the execution of Harold Johnston, convicted of murder in connection with the prison break at Stateville penitentiary last summer, in which Warden John Wesley lost his life, was issued by the Criminal Court of Appeals today as an appeal from the conviction was filed with the court. Johnston was sentenced to die June 1.

Appellate Hearings

Every act of an appellate court, no matter what, must be interpreted, its meaning made clear. It is not enough just to state what the order, decision, or opinion is. In addition, the reporter must explain how the status of the case is affected. Often the case is to test or interpret a law, so, when the appellate court speaks, thousands or millions of persons other than the particular litigants in the immediate incident may be interested.

Appeals by permission. If the court consents to review a case that cannot be appealed to it as of right, the news story of its decision may be hardly more than a statement to that effect, plus an adequate review of past history.

Washington, Nov. 8—(UP)—The Supreme court agreed today to review the conviction of a Massachusetts butcher on charges of violating Office of Price administration regulations. The court also agreed to review the conviction in New York of German-born Anthony Cramer, on charges of aiding two Nazi saboteurs.

The court also agreed to review a case involving the government's anti-inflation program, in which Fred M. Vinson, economic stabilization director, and the OPA seek to overrule a decision by the District of Columbia Public Utilities commission, which authorized the Washington Gas Light company to increase its rates $200,000 a year.

A. & P. Suit Review Refused

The high court refused to review the government's anti-trust suit in Northern Texas federal district court against the New York Great Atlantic & Pacific Tea

company, inc., charging that A. & P. with destroying competition of small food stores through price wars and unfair buying practices. . . .

In the OPA butcher case, the high court granted the petitions of Benjamin Rottenberg and Albert Yakus for a review of their convictions in Massachusetts federal district court on charges of violating price regulations in the sale and delivery of wholesale beef cuts. Their appeals challenged constitutionality of the Emergency Price Control act under which the OPA was set up.

In the saboteur case, Cramer appealed to the Supreme court from a Sept. 7 decision of the 2nd Circuit Court of Appeals, which upheld his conviction.

Aided German Saboteurs

He was found guilty, in the Southern New York federal district court, of giving "aid and comfort" to Werner Thiel and Edward John Kerling, two of eight Nazi saboteurs who landed in the United States from German submarines in June, 1942.

The eight men were tried before a military court martial. Six of them, including Thiel and Kerling, were executed and the other two given long prison terms.

Cramer contended that evidence introduced during his trial was "prejudicial" and was insufficient to sustain his conviction.

In some jurisdictions, when the court consents to review a case, it issues a *writ of review* and may give its reasons for doing so.

Supreme court Justice Morter today granted a writ to review the appointments of Fire Captains Walter H. Parker and Theodore Anderson as deputy fire chiefs. Application was by Capt. Harry O'Keefe, a World War I veteran, who finished second among the four who took the Civil Service examination. Parker was first and Anderson fourth. Captain Thomas Morgan was third.

Justice Morter pointed out O'Keefe is a veteran. His opinion declared the court ought to determine whether the Civil Service commission in such a case should not have certified a list of eligibles for each of the two appointments, instead of one for both.

If the court after review should find in the affirmative, O'Keefe would stand first on one of the lists and his appointment as a veteran would be mandatory.

Parker is a former Republican town chairman. His promotion has been described in some quarters as favoritism. Some firemen have declared the appointment is a deviation from Public Safety Director John Key's long-standing policy of filling vacancies in the order in which candidates finish in Civil Service tests. Keys said he departed from his usual custom because he thought Parker and Anderson the two best men from an executive standpoint.

It is when a court refuses to review a case that the interpretative function is needed. In all such cases, the effect on the appellant's legal status and any other avenues of escape from the lower court's judgment or sentence remaining to him must be explained.

Washington, April 5.—(UP)—The Supreme court ruled, in effect today, that Max Stephan, Detroit restaurateur, must die for treason unless he obtains presidential clemency.

It refused to review lower court proceedings which resulted in a treason conviction against Stephan for harboring a Nazi flier who escaped from a Canadian prison camp. Stephan was to have been hanged Nov. 13. Execution was stayed pending appeal.

Stephan's last recourse in court is an appeal to the high tribunal to reconsider its refusal to review the case. It is unusual for the court to grant such a petition.

Reconsideration Sought

(In Detroit, Nicholas Salowich, Stephan's attorney, said he would ask reconsideration by the court of its refusal to grant a review.)

In other important rulings, the court agreed to hear oral argument on a case arising in South Bend, Ind., in which a lower court held unconstitutional rent controls established by the Office of Price Administration. The tribunal accepted the case with certain restrictions, however, so that a clear ruling on validity of the regulations was by no means assured.

Sometimes the refusal has general public effect, as in both cases mentioned in the following example. Mr. McKibbin—to explain the veiled reference in the lead—was a mayoralty candidate at the time.

Washington, D. C., April 5.—George B. McKibbin won today, but his victory was in the U. S. Supreme court, where he was the nominal defendant in the suit brought by the City of Highland Park to recover $4,796 paid the state of Illinois, under the defunct State Public Utility Tax act.

The Supreme court upheld the lower federal courts by declining to hear the case argued. McKibbin, as state director of finance, was named as respondent.

The refund sought by the suburb represented the 3-per-cent tax collected on gross receipts of the city's municipal water plant. When the state supreme court held the utility tax unconstitutional, it ruled that the section authorizing refunds also became inoperative.

George F. Barrett, attorney general of Illinois, contended that Highland Park had never sought a refund, but had endeavored to have the tax payment applied as a credit against taxes to become due under a subsequent act.

In another Chicago suburban case, the Supreme court made final the decision of the Illinois Supreme court that the Village of Maywood was without a police magistrate after the incumbent, Edward D. Markham, accepted a captaincy in the Army. In a taxpayer's suit brought by Earle G. Cromer, the state court held that acceptance of the commission "automatically vacates the office to which the person was previously elected."

Markham contended that he should be permitted to hold his magistracy, since his commission was not in the regular Army, but the court declined to hear arguments.

—Chicago (Ill.) *Sun.*

Other appellate court rulings before a case is heard may be newsworthy. The situation explained in the following example is one typical instance:

New York, Nov. 14—(AP)—The United States Circuit Court of Appeals today denied a defense motion to admit William Bioff and George E. Browne to bail pending the outcome of their appeal from conviction under the federal anti-racketeering act.

Browne, until recently head of the International Alliance of Theatrical Stage Employes (AFL), and Bioff, his Hollywood representative, were sentenced on Wednesday to eight and ten years, respectively, and fined $20,000 each after being convicted of extorting $550,000 from movie producers as the price of peace in the movie industry.

The government opposed their release on bail. United States Attorney Mathias F. Correa told the Appeals court that it was brought out at the trial that Bioff was a fugitive for many years after his conviction on a pandering charge, and suggested there was good reason to believe both defendants might become fugitives if bail were set.

—Chicago (Ill.) *Tribune.*

Oral arguments. By complying with statutory time limits for giving notice, either party to an appeal can request that the appellate court listen to oral arguments in the case. Usually cases involving a death penalty go to the top of a court's docket, with all other cases being listed for call in the order in which petitions are received.

The court has the power to limit the number of counsel to appear for both sides and the length of time they are to speak—unless there are statutory provisions covering those matters. It is unlikely that more than two counsel for either side will be heard, and there may be only one. Thirty minutes is probably the average time allowed for each side's argument, although the appellant's lawyer may have five or ten minutes in addition for reply. If the court is not already in possession of all papers required, the appellant must provide them at the time of the oral arguments, except when it is the distinct statutory obligation of the clerk of the court of original jurisdiction to do so.

There is a trend toward broadening the prerogatives of appellate courts, to permit the introduction of new testimony at hearings. Ordinarily, however, only argument based on the bill of exceptions or its equivalent is permissible. The judges may question the attorneys freely regarding any phase of the case, whether referred to by them in their arguments or contained in the transcript or judgment roll. The defendant in the original action need not be present at the oral arguments.

TRANSCRIPT

The testimony of Raymond Wright, accountant for the bureau of internal revenue, in the Frank Bliss income tax trial, was certified to the United States Circuit Court of Appeals yesterday by Federal Judge Theodore Younger.

Erle Carr, assistant United States attorney, requested that a complete record be sent to the higher court to bolster a petition for a rehearing on the decision of the court recently reversing the conviction of Bliss and four other defendants. The Appellate court ruled that Wright, who testified as an expert, had invaded the province of the jury.

Although the record has been certified by Judge Younger, the higher court will decide whether it may be admitted for consideration.

HEARING SET

The United States Circuit Court of Appeals on Tuesday will hear oral arguments in the case of six relatives and friends of Herbert Hans Haupt, executed

Nazi saboteur. The six are appealing their convictions last fall in the first treason trial in Illinois history.

Three of the defendants, Hans Max Haupt, father of the spy, Walter Froehling and Otto R. Wergin, were sentenced to death by execution. Their wives, Erna Emma Haupt, Lucille Froehling and Kate Matha Wergin, received 25-year prison terms and fines of $10,000 each.

In an appeal brief filed in the appeals court, the defendants' attorney, A. F. Warnholz, contended that error was committed by the trial judge in allowing prejudicial testimony to be introduced; that the closing arguments of government prosecutors was inflammatory; and the instructions given the jury were improper. This the government denied in an answer brief filed by District Attorney J. Albert Woll.

—Chicago (Ill.) *Tribune.*

HEARING

Arguments to decide the fate of the parents of Herbert Haupt, executed Nazi saboteur, and four associates were heard today in the United States Circuit Court of Appeals here in the fight of the defendants against their conviction for treason.

At stake are the lives of Hans Haupt, Walter Froehling and Otto Wergin, sentenced to death, and the liberty of Erna Haupt, Lucille Froehling and Kate Wergin, the wives of the three men, given 25-year prison terms and fined $10,000 each.

Opposing attorneys in the proceedings were Paul F. Warnholtz, for the defense, and J. Albert Woll, U. S. attorney. Justices J. Earl Major, Sherman Minton, and Otto Kerner heard the arguments in the highest tribunal in this district.

Barrage of Questions

Both attorneys ran into a barrage of questions from the judges themselves, who usually listen quietly to the opposing statements. At one point, the queries from the bench were so pointed that Warnholtz put his hand to his head and asked the indulgence of the court, saying that he has not been feeling well.

In his plea Warnholtz attacked the indictment as faulty. The government, he charged, included 41 separate acts and alleged that all the overt acts were incidents in one treasonable conspiracy.

"That was incorrect," he argued. "If five persons murder five different persons, we do not try them together on a general charge of murder."

"But we would if 41 persons committed one murder," Justice Minton interposed.

Herbert Haupt Mentioned

Warnholtz also objected to testimony at the trial as to Herbert Haupt's activities in Germany, contending it inflamed the jury.

"The court will take judicial notice that Hitler is running the show over there, and it can be assumed that Haupt came to this country to be an enemy agent," Justice Minton asserted.

In presenting his arguments, Woll was asked whether he thought the conviction would stand if the confessions of the defendants were excluded.

"Yes," he answered. "In my personal opinion, yes."

Judge Major then raised the point as to the conspiracy angle in the government's charges.

Woll Explains It

Taking exception to the remark, Woll replied, "While the case was not tried as a conspiracy, the act of each defendant shows a concrete step toward culmination of a common object. If we look at each act as a part of treason, a conspiracy definitely exists."

"But there is nothing in the indictment which shows that the people acted in concert," Judge Major persisted.

"Haupt came to this country under certain instructions," Woll answered. "That is alleged in the indictment. He was bent on destruction. Each of the six defendants acted to give aid and comfort to the enemy agent, and that shows that they were acting in concert."

—Chicago (Ill.) *Daily News.*

The court does not render its decision immediately after a hearing. That is done following consultation of the three or more justices involved. During the interval between the conclusion of the arguments and the announcement of the decision, the court is said to have the case *under advisement.*

The United States Circuit Court of Appeals here today took under advisement an appeal by Albert W. Krause, 46, German-born engineer and precision instrument technician, who is fighting the cancellation of his citizenship last Sept. 17.

Krause, formerly a laboratory technician at Northwestern university, was charged with retaining his faith and sympathy in the German Reich after he swore allegiance to the United States. Former associates from Northwestern university appeared before Federal Judge Philip L. Sullivan to testify that Krause had praised the German government and had criticized this country.

Attorney Joseph T. Harrington, representing Krause, contended at the three-judge hearing this morning that the preponderance of evidence at the trial favored Krause.

The court also took under advisement Krause's appeal on a habeas corpus petition contesting the right of the government to intern him for the duration of the war. He was seized by the FBI as an enemy alien a month after his citizenship was revoked. Krause is now at liberty on an appeal bond of $500.

—Chicago (Ill.) *Daily News.*

St. Paul, May 8.—(UP)—A federal court of appeals today took under advisement the appeal of the Union Electric company of Missouri and its former president, Louis H. Egan, from convictions on charges of conspiracy to violate the corrupt practices section of the federal holding company act.

Egan was sentenced to two years' imprisonment and fined $10,000 in the lower court at St. Louis. He was accused specifically of using a $591,000 slush fund to buy political favor.

Attorneys admitted Egan contributed $1,250 to the Republican national committee, but insisted it came from his personal funds.

The company was fined $10,000 on each of three counts in the St. Louis decision.

Decisions; Mandates

Before an appellate court meets to consider a case, each member is supposed to have made a complete study of it and to have reached

his own conclusion as to what the court's *decision* regarding it should be. The chief justice or presiding judge is chairman, and each jurist is called upon to state his opinion. Usual practice—that followed by the United States Supreme Court—is to take turns, in the order of length of service on the court, the oldest members going first.

After discussion, a vote is taken and the chief justice appoints one judge who sided with the majority to prepare the *majority opinion.* Other judges who join in signing the opinion are said to concur in it, and any member of the court can prepare a *concurring opinion,* in which he may present different reasons for upholding the decision. Those who vote with the minority are said to *dissent,* and any one can prepare a *dissenting opinion.*

That part of an opinion which deals directly with the case at hand, to support or dissent from the court's decision, is to be distinguished from other parts which contain collateral, explanatory, or background material, which are called *obiter dictum* (said in passing). The obiter dictum is not part of the opinion proper, and therefore is not legally binding; it merely sets forth the basic reasoning, to explain how the judge arrived at his immediate opinion. It may, however, be more newsworthy than the opinion proper.

The Constitutional prerogatives of appellate courts differ, but the basic alternative, to *uphold* (affirm) or *reverse* the action of the lower court is universal. The differences relate to the extent to which partial affirmations or reversals are possible. If the court holds a trial *de novo*—that is, considers a case in its entirety, not merely the alleged errors of the lower court—it renders an independent judgment. This is generally what happens when appeals are taken to courts of original jurisdiction (circuit, district) from inferior courts (county, police magistrate, justice of the peace). Even the appellate courts proper, however, may have the power to render any judgment, decree, or other order that the lower court should have given, or to make any further order, or to grant any further relief deemed necessary. Authority to *modify* a lower court judgment is defined by constitution or statutes.

When an appellate court issues an order to a lower court or public officer, the order is called a *mandate.* If any further action by the lower court is ordered, the appellate court *remands* the case to that court, and there is a *remittitur* of the record so that there may be a *new trial,* or so that proper judgment may be entered in keeping with the appellate court's decision, so that execution can be issued, or so that any other action ordered can be taken by the lower court. When a new trial in the lower court is ordered, there is a mandate reversing and remanding the case. A case is dismissed and the defendant, if a criminal action, is discharged if there is a complete

reversal, without a new trial's being ordered. Most mandates are original documents, but there may be a blank suitable for use in cases of simple affirmation or reversal like that on page 656.

Affirmations. If the evidence is sufficient to convict and no reversible or prejudicial error is shown, a criminal conviction must be upheld. A majority vote of the court is necessary, but if one or more judges for any reason do not take part in the vote—so that an even number of judges participate and there is an equally divided vote—there is affirmation. It is not necessary that reasons be given when a lower court is upheld, but in important cases there almost always is a majority opinion. Sometimes, when the vote is unanimous, it is dispensed with. When the United States Supreme Court decides an important case without an opinion, it is news.

The reporter should obtain, not only the decision, but also: (1) the vote by which it was reached; (2) the names of the judges voting both with the majority and minority; (3) the opinions—majority, concurring, and dissenting. The case must be properly identified as to: (1) the issues involved; (2) the court from which the appeal was taken; (3) the judgment, decree, or other order objected to; (4) the grounds on which objection was made; (5) the chief arguments of both appellant and appellee; (6) what affect the appellate court's action will have on the case—does the supposedly aggrieved party have any further recourse? In particular, the reporter must analyze the general public effect of the decision.

UPHOLD CONVICTION

David ("Bud") Hummer, tax-dodging racketeer and leading beer runner of prohibition days, gave "potent evidence of his guilt" by high living and by running away when his tax was questioned, the United States Circuit Court of Appeals ruled yesterday.

The court affirmed unanimously the conviction of Hummer under a four-count indictment for conspiracy and attempting to defraud the government out of income taxes for 1939 and 1940 and his sentence to ten years' imprisonment plus a fine and costs which, as revised, amount to $11,000.

The court's opinion was written by Judge Franklin T. Dawson and concurred in by Judges William Pierce, presiding, and Arthur Braum. Discussing the claim that insufficient evidence had been offered concerning Hummer's actual income and his failure to declare it, Judge Dawson wrote:

"He lived on a scale beyond his declared income and he gave potent evidence of his guilt by running away when his tax was questioned. His explanation was at best unlikely, and no jury ought to have accepted his word, for his untrustworthiness was demonstrated.

"He had been convicted a number of times for thieving of one sort or another, and his parole had been revoked. He was engaged in running a hotel of at least equivocal character and he could show no honest means of earning a livelihood.

"On what theory we are to say there was no evidence to convict him, we find it hard to learn. Not only was there enough, but it would be difficult to see how an honest jury could have taken any other view."

Mandate from the Circuit Court of the Thirteenth Judicial Circuit of Florida

To the Honorable, the Judge of the Criminal Court of Record, in and for Hillsborough County, State of Florida, Greetings:

WHEREAS, Lately in the Criminal Court of Record, in and for Hillsborough County, Florida, in a cause wherein the State of Florida was plaintiff, and ..... defendant, the judgment of the said Criminal Court of Record was rendered ..... as by the inspection of the transcript of record of the said Criminal Court of Record, which was brought into the Circuit Court of the Thirteenth Judicial Circuit of Florida, by virtue of a writ of error, agreeably to the laws of the State of Florida in such case made and provided, fully and at large appears:

AND WHEREAS, at the Term of said Circuit Court holden at Tampa, Florida, A D. 19 , the said cause came on to be heard before the said Circuit Court on the said transcript of record, and was argued by counsel, in consideration thereof, on the ... day of ....., A. D. 19... , it was considered by said Circuit Court that the said judgment of the Criminal Court of Record, be, and the same is hereby.....; it is further ordered by the Court that the costs in this behalf expended, be, and the same are hereby taxed against the ..... in error, which costs are taxed at the sum of $ ... ; therefore,

YOU ARE HEREBY COMMANDED, that such further proceedings be had in said cause as according to right, justice, the judgment of the said Circuit Court, and the laws of the State of Florida, ought to be had.

WITNESS, The Honorable....., Judge of the Circuit Court of the 13th Judicial Circuit, and the seal of said Court at Tampa, Florida, this the ..... day of ..... A. D 19 .....

.....

Clerk Circuit Court Thirteenth Judicial Circuit of Florida.

By ..... D. C.

EFFECT OF AFFIRMATION

Only action by Gov. William Graves can save Robert Nelson from death in the electric chair Nov. 1, indications were today.

Yesterday the state Supreme court affirmed his conviction for the slaying of Jerome Downey, merchant at 190 Wentworth avenue, in a holdup last summer. Notified of the decision by Warden J. S. Burns, Nelson expressed hope that an appeal might be carried to the United States Supreme court. However, jail officials pointed out that the verdict cannot be appealed to the federal court.

LOWER COURT UPHELD

The United States Circuit Court of Appeals today unanimously affirmed a decision of the United States District court of Maine, refusing to grant an injunction to the Franklin Bicks company against the Fashion Originators Guild of America, Inc., of New York.

Bicks charged that the guild had conspired to carry on a monopoly in interstate trade in violation of the Sherman Anti-trust act.

Judge Harvey Diener wrote the opinion, in which he reviewed the purposes of the guild, which the master had found to be a legal organization designed to prevent copying and style piracy in the dress manufacturing business.

After pointing out that there are five seasons a year in the dress industry—namely, spring, summer, fall, winter, and winter resort seasons—he continued: "A manufacturer makes up a line of samples each season. The cost to produce a single line is between $30,000 and $50,000. When a line has been prepared, it is put on display in the manufacturer's showroom and is there shown to prospective buyers."

The court said that in 1943 Bicks entered into an agreement to co-operate with the guild in eliminating piracy, but in 1945 repudiated that agreement. The court ruled:

"The Sherman Act does not preclude the members of an industry in which evils exist disorganizing trade in such industry, acting collectively in the elimination of such evils, and establishing fair competitive practices.

"That the plaintiff (Bicks) now seeks to be permitted to return to practices which it once characterized as 'evil' (style and design piracy) does not commend it to a court of equity as entitling it to relief."

Bicks contended that the "red carding" of its store by the guild in effect was a monopoly cutting it off from the dress market.

AGENCY UPHELD; COURT REVERSED

Washington, June 14—(AP)—The Supreme Court upheld today an Interstate Commerce commission order permitting railroads to charge local rates for grain reshipped from Chicago to eastern destinations after arriving by water over the Illinois waterways.

Validity of the order was challenged by the Inland Waterways corporation and by a group of elevator companies, on the ground that it permitted the continuance of lower reshipping, or proportional, rates on grain arriving in Chicago by rail or by lake.

The order also was assailed by the Agriculture department on the ground that it was "in contravention of the declared policy of Congress, as expressed in the Transportation Act of 1940, to preserve the inherent advantage of water transportation."

Counsel for railroads serving the East from Chicago asserted that shippers of grain by barge over the Illinois waterways had been receiving, under the pro-

portional rates previously in effect, "an undue advantage" and that this had "seriously disturbed the sensitive grain rate structure."

A three-judge federal court in Chicago set aside the commission's order, holding that it discriminated "against water competition by use of barges."

Justice Jackson delivered today's 5-to-3 decision. Justices Black, Douglas, and Murphy dissented and Justice Rutledge did not participate.

"Our function," Jackson said, "does not permit us either to prescribe or approve rates, and our decision carries no implication of approval of any rates here involved. Nor are we at liberty to prescribe general attitudes the commission must adopt toward the exercise of discretion left to it rather than to courts. We decide only whether the commission has acted within the power delegated to it by law. We are of opinion that it has."

—Chicago (Ill.) *Daily News.*

DECISION'S EFFECT EXPLAINED

The United States Circuit Court of Appeals yesterday held in effect that an insurance company is subject to the jurisdiction of Congress, under its interstate commerce powers, and to the provisions of the National Labor Relations act, and rejected a petition of the Polish National Alliance of America, challenging a ruling of the National Labor board. The finding, which is believed to be the first of its kind by any court, is certain to be appealed to the Supreme court, attorneys said.

Specifically, the court held that the Polish organization, which has headquarters in Chicago, and 1817 lodges in 26 states, the District of Columbia and the province of Manitoba, Canada, owning assets of $30,090,835 on Dec. 31, 1941, is subject to the act of Congress and to the labor board. It denied the contention of the alliance that as a fraternal organization, formed not for profit under Illinois law, it is, therefore, not engaged in commerce, and also, that if it be held to be an insurance company, it also would be exempt from federal regulation on the ground that insurance is not commerce. . . .

The court, in taking up first the question of whether the alliance was subject to the jurisdiction of the Labor Relations act, quoted from Section 10 (a) of the act which provides:

"The board is empowered as hereinafter provided, to prevent any person from engaging in any unfair labor practice affecting commerce."

Before reaching the "inescapable conclusion" that the alliance is engaged in the insurance business, the court pointed out that the Polish organization holds direct control of Alliance Printers and Publishers, Inc., located in Chicago, which publishes the Zgoda, which is mailed to members outside the state.

In respect to the contention of the alliance that insurance is not commerce, the court referred, among other cases, to that of the Associated Press against the NLRB, stating that a comparison of the alliance's activities with those of the AP "makes that decision of persuasive and perhaps controlling importance.

"There the court considered the activities of a cooperative organization of 1,350 members, which did not operate for profit, although its members were representatives of newspapers which did operate for profit. Its means of communication in receiving and transmitting news consisted of telegraph and telephone wires, messenger service, the wireless and mail."

—Chicago (Ill.) *Tribune.*

Washington, May 10—Exclusive contracts between radio stations and broadcasting systems were outlawed today by a decision of the United States Supreme court.

The court upheld the authority of the Federal Communications commission to enforce regulations for the correction of network "abuses."

In a 5 to 2 decision written by Justice Frankfurter, from which Justices Murphy and Roberts dissented, the court decided that the Communications commission had followed the intent of Congress in ruling that no licenses should be granted to radio stations which did not comply with the commission's regulations.

Two Big Networks Hit

The court's conclusions affect principally the National Broadcasting company and the Columbia Broadcasting system, which have a number of station contracts of the type ruled out by the commission. Mutual Broadcasting system, the third major chain, sided with the FCC.

As a result of the decision, the National and Columbia networks must cancel contracts which prevent stations from broadcasting programs of any other network, and must abandon "territorial exclusivity," which was designed to protect affiliated stations from the competition of other stations serving the same territory.

The effect of "territorial exclusivity," the court said, "was to deprive the listening public of many programs that might otherwise be available."

Cites FCC Conclusion

The communications commission, the court said, had concluded that "it is not in the public interest for the listening audience to be deprived of network programs not carried by one station where other stations in that area are ready and willing to broadcast the programs." . . .

Affects 3 Chicago Stations

The NBC operates two Chicago stations by license and CBS has one there. At the commission's direction, the Red and Blue networks of NBC are in the process of separation.

—Chicago (Ill.) *Sun.*

Constitutional questions. Contrary to the viewpoint of many, only a proportionately small number of cases decided by an appellate court, including the United States Supreme Court, are to test the constitutionality of a law or action. The publicity that such decisions get is justified by their importance. The outcome of the particular case brought to test the law is secondary in importance to the broader effects of the decision. Note in the following two stories about the same decision that the first is objective and factual only, whereas the writer of the second, under his by-line, went beyond the decision itself to an interpretation of it:

Springfield, Ill.—(UP)—The 1941 state neighborhood redevelopment corporation law, which provides for slum clearance and rehabilitation of slum and blight areas, was held constitutional by the Illinois Supreme court today.

The court reversed Judge Julius H. Miner of Cook County Circuit court, who had held the act invalid on the ground that it would take property for private purposes, does not afford due process, and because it delegates legislative power.

In upholding the act, the Supreme court ruled that the legislature properly delegated to community development corporations the power to take private

property by eminent domain for public purposes. The decision is expected to increase the slum clearance activity throughout the state.

The high court said the principal question involved was whether the property acquired by such corporations would be used for a public purpose. The decision was written by Justice June C. Smith, Centralia. A dissenting opinion was by Justice Loren E. Murphy, Monmouth.

"The legislature has definitely determined that the prevalence of the conditions enumerated in (the act) are conducive to ill health, the transmission of disease, infant mortality, juvenile delinquency, crime and poverty," the opinion said.

"It has further declared that the elimination of the conditions . . . is in the best interest of the health, morals, safety, and general welfare of the citizens of the state.

"The taking of property for the purpose of the elimination, redevelopment, and rebuilding of slum and blight areas meets all the requirements of a public use and public purposes within the principles of the law of eminent domain."

The opinion said the act contains no provisions for regulation or control of rents, but is "solely for the purpose of slum clearance."

"Subsidized tenancies, based upon below-rental values, are not within the power of the act," it said. The high court directed the lower court to dismiss the complaint of John F. Zurn, a taxpayer, who had obtained an injunction restraining the City of Chicago from enforcing the act.

By John Pickering

Springfield, Jan 17—The Illinois Supreme court in a sweeping and far-reaching decision here today paved the way for private enterprise to finance a vast post-war slum clearance and housing program.

It upheld the constitutionality of the Neighborhood Redevelopment corporation law, which permits private corporations to acquire blighted areas through condemnation proceedings.

Under the act, corporations may be formed under supervision of the Chicago Redevelopment commission to acquire not less than 80 acres of slum areas through the right of eminent domain after the corporation has obtained 60 per cent of the land through purchase from owners.

Language of Ruling Extensive

The language of the decision, which upholds the right of the legislature to delegate such power, would indicate that the right to acquire slum or blighted areas through condemnation proceedings could even be extended beyond the provisions of the present act.

The court, with Justice Lauren E. Murphy of Monmouth dissenting, upheld the validity of the entire act, which is expected to induce private capital to invest in slum clearance projects. Justice June C. Smith of Centralia, who wrote the majority opinion, set forth in a digest the following:

1. "The opinion holds that the redevelopment and rehabilitation of slum and blight areas is a public purpose.

2. "That the legislature could properly delegate to Neighborhood Redevelopment corporations the power to take property by eminent domain for such purposes.

3. "That the fact that practically all supervision over the use of the property ceases when redevelopment has been achieved does not prevent the use for which the property is taken from public purpose.

4. "The opinion further holds that when redevelopment of slum and blight

areas has been achieved, the public purpose has been accomplished and that the use of property thereafter as private property does not change the rule."

Further Legislation Needed

As a result of the far-reaching decision, it is expected that Gov. Green probably will confer with Mayor Kelly and city officials and recommend further legislation which, as he declared in his inaugural message, "will clear the way for investment of private and corporate funds in slum-clearance projects."

In this connection the government's housing board has already announced it was preparing clarifying amendments which would give life insurance companies assurance of their right under Illinois law to invest in housing projects. Insurance companies already have invested some $200,000,000 in such projects in New York but investment in Illinois under a vague statute has been limited to $7,000,000.

The court in its decision today gave a new interpretation to the public welfare clause of the state's constitution. Heretofore, in general, it has been held that the right of eminent domain could only be exercised to acquire land for such public purposes as parks, highways, public buildings, or institutions.

The court's decision points out the legislature in the enactment of the law determined that slum conditions "are conductive to ill health, the transmission of disease, infant mortality, juvenile delinquency, crime and poverty." It notes further that the legislature declared that the elimination of slum conditions is in "the best interest of the health, morals, safety, and general welfare of the citizens of this state."

—Chicago (Ill.) *Sun.*

In the preceding case, a law's constitutionality was upheld through reversal by a higher of a lower court's finding. In the following examples, reversals had the effect of declaring laws unconstitutional:

Washington, D. C., Nov. 24—(AP)—The Supreme court today held unconstitutional California legislation which prohibited anyone from assisting nonresident indigent persons to come into the state, popularly known as the "anti-Okie" law. The measure was intended to bar from the state persons likely to become public charges.

Twenty-seven other states were said to have similar statutes.

Justice James Byrnes said in the decision—his first since taking his seat last October—that the legislation "imposes an unconstitutional burden upon interstate commerce."

The litigation specifically involved the conviction of Fred F. Edwards of Marysville, Calif., on a charge of violating the statute by driving his jobless brother-in-law, Frank Duncan, from Spur, Tex., to Marysville, Calif., in 1939. Duncan later received help from the Farm Security administration after his arrival.

Sentenced to Six Months

Edwards was given a six months' suspended sentence in a justice's court, a verdict upheld by the Yuba county Superior court.

Justices William O. Douglas and Robert Jackson wrote separate concurring opinions with Justices Hugo L. Black and Frank Murphy subscribing to the opinion Douglas wrote.

Byrnes stated objections to the theory that "relief is a local matter." He said "relief of the needy has become the common responsibility and concern of the whole nation. . . .

"We do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a 'moral pestilence.' Poverty and immorality are not synonymous."

Implies Right to Move

Jackson asserted Duncan was a citizen of the United States and the Constitution "forbids any state to abridge his privileges or immunities as such." His opinion held that the Constitution implied that citizens had a right to move freely from state to state.

"I am of the opinion," Douglas said, "that the right of persons to move freely from state to state occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines."

—Chicago (Ill.) *Tribune*.

Washington, D. C., May 3—The right of itinerant evangelists to disseminate their religious beliefs from door to door in any city, without paying a license tax, was upheld today by the United States Supreme court in three decisions.

The court held, twice by 5–4 and once by 6–3, that members of Jehovah's Witnesses, a religious sect, were protected by the constitutional guarantees of freedom of speech, press, and religious worship in distributing books and pamphlets.

Judgments of state courts that the evangelists had violated city ordinances were reversed, and the Supreme court, with four members dissenting, overturned its own decision in three cases decided in 1942, in which it had ruled that Jehovah's Witnesses must obey certain municipal regulations in regard to licenses in their house-to-house canvassing.

Justices Robert L. Jackson, Stanley Reed, and Owen J. Roberts dissented in all three cases, and were joined by Justice Felix Frankfurter in two of them. The appeals to the Supreme court were taken from state courts of Alabama, Arizona, Kansas, Pennsylvania, and Ohio.

The American Newspaper Publishers association and the American Civil Liberties union joined with the religious cult in its appeal.

—Chicago (Ill.) *Sun*.

Reversals. An appellate court will not reverse a lower court today for minor, formal, or technical errors that do not affect the substantial rights of the parties or result in a miscarriage of justice. If a new law is passed while the appeal is pending, the rights of the parties are not affected, although it may be necessary to remand a case to the lower court for modification of a judgment or sentence—for example, when the legal form of capital punishment is changed in the meantime.

If the error that the appellate court finds was only in the judgment, sentence, or order of the lower court, the case usually is remanded with a mandate that the proper action be taken there. In some jurisdictions, the higher court itself can correct an error simply by making the proper judgment, sentence, or order itself.

In some cases an appellate court reversal of a lower court means dismissal of the proceedings, as in the following instance:

Washington, May 24—(AP)—The Supreme court ordered the dismissal today of litigation challenging the constitutionality of the delegation of rent control powers by Congress to the Office of Price Administration.

In an unanimous opinion read by Chief Justice Stone, the tribunal held that a suit filed in the federal district court at South Bend, Ind., was "collusive" because it had been filed by agreement between the interested parties.

At the same time, the tribunal vacated the judgment by the federal district court which had declared unconstitutional the delegation of rent control power in the emergency price act.

"Here an important public interest is at stake—the validity of an act of Congress having far-reaching effects on the public welfare in one of the most critical periods in the history of the country," the chief justice said.

"That interest has been adjudicated in a proceeding in which the plaintiff has had no active participation, over which he has exercised no control, and the expense of which he has not borne.

"He has been only nominally represented by counsel who were selected by (his adversary's) counsel and whom he has never seen. Such a suit is collusive because it is not in any real sense adversary."

—Chicago (Ill.) *Daily News.*

The Appellate division in Brooklyn by a unanimous decision set aside yesterday the convictions and dismissed the indictments against Angelo Paino, Frank H. Berg, Jr. and Albert Levin, who had been found guilty by a Queens jury of offering a $10,000 bribe to George U. Harvey on Nov. 11, 1928, after his election as borough president of Queens.

The court ruled the defendants' contention that Mr. Harvey was not "exercising the functions" of a public officer at the time the alleged bribe was offered. It pointed out, in a lengthy opinion written by Justice Young in the Berg case, that Section 378 which was invoked against the defendants, made no reference to the bribery of persons elected to public office but not functioning in such office. Other sections of the penal law dealing with bribery, it found, made specific reference to persons elected to office as well as persons actually functioning in office. The absence of such reference in Section 378 "is not explained," the court said, "but it would seem that it could not have been the result of carelessness." Justices Rich, Kapper, Lazansky and Hagarty concurred in the opinion.

Convicted Last March

Levin and Berg were convicted by a jury before County Judge Adel in Queens on March 15, 1929, and Paino on April 17, 1929. Each was sentenced to four to eight years in Sing Sing and all were released in $10,000 bail each pending the determination of the appeals.

Berg and Levin were alleged to have offered the $10,000 note to Mr. Harvey at his summer home in New Milford, Conn. The state charged that they acted in behalf of Paino, a Queens sewer contractor, who admitted ownership of the note, and attempted to show that the bribe was proffered for the purpose of obtaining favors in the letter of Queens sewer contracts. Paino contended that it was simply a "campaign contribution."

Two main contentions were advanced by counsel for the defendants in the arguments before the appellate division last fall. The first was that the state had failed to show that Mr. Harvey was functioning as a public officer when the alleged bribe was offered and that its failure to show that made Section 378

inoperative. The other contention was that if a crime had been committed it was committed in Connecticut and not in New York.

—New York *Times.*

The court may, however, point out other means of legal recourse available to the party whose interests are upset by its mandate of reversal:

The state pay rolls, long held up by a legal battle between Circuit Judge Thomas Ray and Attorney General Richard Long, were completely released today by the State Supreme court, which threw out Ray's injunction on the grounds the Circuit court had neither power nor jurisdiction in the matter.

The opinion, rendered in a special vacation session of the tribunal, means that 5,000 state employes whose checks were held up during the fight, will have a merry Christmas. The other 25,000 employes, whose pay was released recently, were not affected by the injunction, although their wages had also been held up for many weeks because of it.

Five Justices Sign Opinion

Five justices of the court signed the opinion. Judge F. S. Summer and Judge William Bartell did not approve the verdict, although they did not write a dissenting opinion.

Attorney General Long said he was "very pleased" by the opinion and said that state officials would begin to pay the hitherto payless employees immediately. He said that it would take only 24 hours to issue all checks, but other officials indicated it might be Monday before all pay rolls are paid.

Objects to Method

In its decision the court ruled that other means, such as quo warranto or mandamus, should be sought to stop irregular payrolls. Even if irregularities have been made in appointments, the opinion said, they do not establish rights for the appointee which cannot be liquidated by a court of equity.

When there has been a double appeal, reversal by the highest court may restore a judgment of the court of original jurisdiction.

Washington, D. C., June 7—Using forceful language, the Supreme court today reversed the 7th Circuit Court of Appeals and upheld the conviction of William R. (Bill) Johnson, Chicago gambling czar, and four of his associates for attempts and conspiracy to defraud the government of income taxes.

Johnson was sentenced to five years imprisonment and a fine of $10,000. The other defendants, who acted as fronts for Johnson's de luxe chain of gambling houses in Chicago, were sentenced to lesser terms and fines. They include Jack Sommers, James A. Hartigan, the late John M. Flangan, William P. Kelly and Stuart Solomon Brown.

The court's opinion was delivered by Justice Felix Frankfurter in behalf of himself and four other justices. Justice Owen J. Roberts concurred as to the validity of the indictment, but dissented on reversal of the Circuit court decision, holding that the lower court properly ruled that there were trial errors in the case of Johnson and failure to prove that the other defendants aided or abetted Johnson in committing fraud. Justices Frank Murphy, Robert H. Jackson and Wiley Rutledge did not participate in the case.

—Chicago (Ill.) *Tribune.*

Washington, April 8—The Supreme Court of the United States today decided in favor of New York city and the New York Transit commission in the 5-cent fare case.

Associate Justice McReynolds handed down the opinion. It reversed a decree of a three-judge federal statutory court, which justified the proposed 7-cent fare on the subway lines of the Interborough Rapid Transit company.

Justice McReynolds declared the court did not consider the 5-cent fare had been proved confiscatory. This is taken to mean the Interborough will have to produce more evidence on this point before the Supreme court could entertain such argument, if the question involved comes back here for decision.

Comes Back to State Courts

The effect of the Supreme court action here today will be to take the controversy over the rate of fare to the New York state courts for an opinion. It was explained by interested lawyers that if the state courts hold a 5-cent fare is not confiscatory, then the Interborough can appeal to the Supreme court here on that issue.

"This direct appeal is from an order of May 10, 1928, by the District court, Southern district of New York, three judges sitting, which authorized an interlocutory injunction to restrain appellants—the Transit commission and New York city," said Justice McReynolds, launching the decision, "from requiring or attempting to enforce further acceptance by the Interborough Transit company of a 5-cent passenger fare over the lines operated by it and from seeking to prevent a charge of 7 cents.

"This court stayed the order pending further hearing. The cause has been twice orally argued before us and helpful briefs are on file. . . ."

—New York *World.*

A reversal may mean a modification of the lower court's judgment:

Reversing Judge Robert Jerome Dunne of Circuit court, the Appellate court yesterday ruled that $241,533 remaining in the estate of Henry A. Mix, real estate dealer, should go to a sister, Mrs. May Jackman of Oregon, Ill., and her two children. They are Mrs. Margaret Borland of 726 Monroe street, Evanston, and C. Houghton Jackman who is in the Army.

Judge Dunne had construed the will of Mix who died in 1935, as leaving half of the sum to five children of the late Mrs. Sarah Ives, another sister, of Franklin Grove, Ill.

Mix was the husband of Florine C. Mix, 1112 East 48th street, who left the bulk of a $450,000 fortune to a policeman when she died last October. He was Henry O. Larson, who walked a beat in front of the Mix home and became a friend of the couple through a mutual interest in horses and dogs.

—Chicago (Ill.) *Sun.*

The appellate division handed down a decision yesterday involving the legal principles affecting payment for elevated railroad structures condemned by the city. The court refused to uphold a decree of the Supreme court awarding $975,438, with interest since 1923, to the Manhattan Railway company, for the removal of the 42nd street elevated spur from 3rd avenue to a point near the Grand Central terminal. The court cut off $25,000, ordered a reappraisal as to $870,438, and upheld only $80,000.

Describing the case as one presenting "a novel and interesting question in the law of condemnation," Justice Finch, who wrote the unanimous opinion of the court, ruled that an award of $750,000 as the value of the "so-called right to

impair light, air, and access appurtenant, to the property abutting on east 42nd street," was not based on the proper principle of valuation, and that if the parties were unable to agree upon the amount to be allowed the court would appoint a referee.

The appellate division struck out an award of $25,000 given the Manhattan Railway company as the value of the franchise obtained from the city to build, maintain and operate the spur. The court declined to uphold $120,438 as the value of the condensed area, including stations, platforms and staircases, but approved necessary reconstruction and alteration of 42nd street station of the 3rd avenue elevated, made necessary by the removal of the spur.

—New York *Times*.

In reversing a case, the appellate court may remand it to the lower court from which it came for further action, possibly for entirely new trial. If the state has no better evidence or tactics than it had before, it may move to dismiss the case rather than to attempt further, apparently futile, prosecution.

TO HEAR MOTIONS

The U. S. Circuit Court of Appeals, in session here, today remanded the case of William "Big Bill" Johnson, former gambling czar convicted of income tax evasion, to the federal district court for hearing of defense motions.

Under the procedure the case now goes back to Judge John P. Barnes, who sentenced the gambler to five years in prison and a fine of $10,000. After study of defense affidavits and motions, Judge Barnes can grant a new trial or refer the case back to the Circuit court.

Despite two adverse rulings by the United States Supreme court, Johnson has continued his fight before the Circuit Court of Appeals for a new trial. His counsel has argued that the grand jury that indicted him acted illegally, because it was held over for too long a time, and in addition has charged that Attorney William Goldstein perjured himself in testifying that he was Johnson's agent in the purchase of gambling properties.

Johnson's conviction was reversed by the Circuit Court of Appeals, but on appeal to the Supreme court the conviction was affirmed. Last Monday the Supreme court refused Johnson's appeal for a rehearing.

—Chicago (Ill.) *Daily News*.

FOR NEW TRIAL

Mrs. Ruth Wilaman, convicted as the leader of a city-wide abortion ring, and her office receptionist, Mrs. Doris Gaynes, won appeals for new trials today when the state Supreme court reversed the decision of the Criminal court here and remanded the case.

The Supreme court upheld the two women in their contention that the Criminal court convictions were faulty because the state's attorney's police had entered their office without a warrant. The Supreme court held that the evidence in the case had been illegally seized.

May Ask Rehearing

Assistant State's Attorney Richard Patrick, who conducted the state's case, could not be reached for comment, but a spokesman for the state's attorney's office indicated that the state would ask for a rehearing before the Supreme court, after the court's decision had been received.

Defense Attorney W. L. Smith said: "It's what I expected."

Asked when a new trial might begin, Smith said: "I don't know until I've read the opinion, but there may not be anything on which to base a new trial. In that case, the case would have to be dismissed."

Sentenced to Five Years

Judge William Haymarket found the women guilty and sentenced them to five years in prison. Mrs. Wilaman's attorneys moved that the sentence be vacated and when this was refused announced they would appeal. Both women remained free on bonds.

The case began two years ago with an investigation of an office alleged to be a center of the illegal operations racket.

FOR FURTHER PROCEEDINGS

The United States Supreme court in a decision handed down at Washington today ruled that lower courts in examining reorganization plans under the municipal bankruptcy law must determine "in such detail and exactness as the nature of the case permits" the relative rights of creditors to a municipality's revenue.

The court, with only Justice Black dissenting, remanded to a lower court the reorganization of Everglades Drainage district of Florida on the grounds that the original findings were inadequate.

After referring to the decisions in the St. Paul and Western Pacific railroad reorganization proceedings, the ruling continued:

"Elusive exactness of findings is likewise not demanded in cases of municipal bankruptcy, but where future tax revenues are the only source to which creditors can look for payment of their claims, considered estimates of those revenues constitute the only basis available for appraising the respective interests of different classes of creditors.

"In order that a court may determine the fairness of the total amount of cash or securities offered to creditors by the plan, the court must have before it data which will permit a reasonable and hence an informed estimate of probable future revenues available for the satisfaction of creditors."

—Chicago (Ill.) *Daily News.*

Rehearings. Just as the defeated party can move for a new trial in a court of original jurisdiction, so can one adversely affected by an appellate court decision petition for a rehearing:

U. S. Attorney J. Albert Woll petitioned the Circuit Court of Appeals to grant a rehearing in the case of the six Haupt aids, whose conviction for treason recently was upset by that court when it reversed the case and remanded it for a new trial.

Woll and three assistant U. S. attorneys, Earl C. Hurley, Richard G. Finn and William J. Connor, listed five points on which they contended the Circuit court erred in reversing the decision.

One of the government's principal contentions was that the Circuit court overlooked evidence showing that waivers of custody had been signed voluntarily by the defendants.

The government's petition also declared that the McNabb and Anderson treason cases, cited by the Circuit court to substantiate its stand, did not parallel the Haupt treason trial.

The petition further stated that the court had overlooked the point that by

agreeing to remain in the FBI lockup, the defendants also had waived the right to object to statements taken before their arraignment.

Woll and his assistants took issue with another point upon which the court based its reversal and insisted that some of the defendants should not have been granted separate trials.

—Chicago (Ill.) *Daily News.*

The state Supreme court yesterday denied a petition for a rehearing of an appeal filed on behalf of Ernest Watson, 30, who was fined $2,000 and sentenced to two years in the county jail after his conviction in two assault cases.

Lawrence Frey, attorney for Watson, appealed to the Supreme court before he asked the appellate court to review the case, on the ground Watson's conviction involved a constitutional question. The court, in denying the appeal earlier, ruled no constitutional issue was involved.

Watson, at liberty on $4,000 bond pending a review in the appellate court, was convicted of assaulting fellow employees in a strike while he was employed by the Trans-State Motor company, and of assaulting a competitor of the Trans-State Motor company.

New trials. Essential in a story of a retrial ordered by an appellate court is sufficient background to explain the new developments.

SUIT RETRIED

A suit to collect $14,000,000,000 from twelve directors of two bankrupt holding companies of the collapsed Insull utilities empire was opened in Federal court before Judge Charles G. Briggle yesterday, on the basis of a mandate from the United States Circuit Court of Appeals.

The directors named, who may be assessed for dividends owing, are: Samuel Insull, Jr.; Philip J. McEnroe; John F. Gilchrist; Edward J. Doyle; the late John G. Gulick; George F. Mitchell; the late Marshall E. Sampsell; Stuyvesant Peabody; H. L. Stuart; Stanley Field; C. W. Sills; and F. K. Shrader.

All were directors of Insull Utility Investments, Inc., and Corporation Securities company of Chicago.

Judge Briggle yesterday entered an order reinstating a suit by a group of creditors and calling on the defendants to file an answer by Sept. 15.

Some time ago Judge Briggle dismissed the original suit holding that a payment of $5,000,000 by a number of New York and Chicago banks settled the case and that there was no further cause for action.

The Circuit Court of Appeals subsequently ruled that the $5,000,000 settlement eliminated any cause of action against the banks and also against the directors for an alleged illegal pledging of securities to the banks, but did not eliminate action against the directors in the matter of dividend payments.

—Chicago (Ill.) *Sun.*

After a year and a half in jail as the accused baseball bat murderer of Anton Gorczak during the bloody cleaning and dyeing strife of 1941, David Goldblatt, 42, walked out of the criminal courts building yesterday a free man.

Charges that he was brutally beaten and mistreated by police in the extortion of a confession from him were the foundation of the action that led to Goldblatt's freedom.

Three Men Beat Victim

Gorczak was beaten to death on April 23, 1941, by one of three men who followed him into the Englewood Cleaners, 1745 West 63rd street, where he was

employed as a driver. Subsequently Goldblatt was arrested, made his confession, and was indicted.

The confession was admitted in evidence when he was tried before Judge Ulysses S. Schwartz of the Criminal court, and a jury returned a verdict of guilty. The case was appealed.

Verdict Reversed

On last May 24, the Illinois Supreme court reversed the verdict and remanded the case for a new trial, holding that the confession should have been excluded.

When the case was called yesterday Richard Devine, assistant state's attorney, told Chief Justice John A. Sbarbaro that the state's attorney's office "reluctantly" asked that it be nolle prossed.

—Chicago (Ill.) *Sun.*

CHAPTER 20

The Supreme Court

BY THE time the reporter is good enough to be assigned to cover the highest appellate court of his state or nation, he will not need this or any other book to tell him how to do it. Throughout his entire journalistic career, however, he will be in contact with courts and other agencies of government whose power and activities are affected profoundly by what a majority of nine men have thought a year, a decade, or perhaps a century earlier. In fact, without a knowledge of the traditional role of the United States Supreme Court, no citizen understands much, if anything, about the history of his country. Hence, this final chapter of brief resume.

Origin and Powers

The Supreme Court of the United States, according to Woodrow Wilson, is "a sort of constitutional convention in continuous session," which means about the same thing as Charles Evans Hughes' famous aphorism, "We are under a constitution, but the Constitution is what the judges say it is."

Implied powers. The tremendous power that the Supreme Court exercises—virtually to veto any act of the legislative or executive branch of the federal government or any state—is inferred or implied rather than specifically set forth in the Constitution. That noble document sets forth innumerable principles, but its authors were wise enough not to attempt the impossible task of defining those principles irrevocably for posterity. To have specified, for instance, what are "excessive fines," "cruel and unusual punishment," and "unreasonable searches and seizures"—all forbidden by the Constitution—would have been to compose a complete set of statutes. "Just compensation," "due process," and "equal protection" are among the scores of other phrases which, of necessity, had to be left for subsequent definition and application to particular instances.

Not only did the Founding Fathers leave these universally undefinable terms undefined, but, more important, they did not make

clear with what branches of government lay the authority and responsibility to define them. According to the notes that James Madison made of the proceedings of the Constitutional Convention in 1787, there was a specific proposal by Edmund Randolph of Virginia to establish a Council of Revision, to include the President and the membership of the Supreme Court, with veto power over all legislation passed by Congress. The proposal was turned down, and the veto power was limited to the President only.

In 1795, John Jay, the first chief justice, resigned to become governor of New York because he believed that the Supreme Court never would amount to much. Up to that time, it certainly had not. Established by the Judiciary Act of 1789, it convened for the first time February 1, 1790, and during its first two years decided only one case. Its original membership consisted of a chief justice and five associate justices, one for each of five federal judicial circuits. Because the five associate members "rode circuit" until as recently as 1891, in the early days many men refused presidential nominations to the Supreme Court, despite the life tenure, preferring to serve in the state courts or in other positions.

John Marshall's influence. Then came John Marshall, appointed in 1801 by John Adams as the fourth chief justice after Oliver Ellsworth resigned. By the time death ended his career in 1835—after he had served longer than any other chief justice before or since—he had effected a complete change in the court's authority and reputation, and had had an influence on the entire development of the nation that many historians say never has been surpassed by any other man.

Although during Marshall's incumbency the Supreme Court declared only one act of Congress unconstitutional, it was Marshall who established the power of the court to do so—the power known as that of *judicial review*. He did this early in his career, in the celebrated *Marbury v. Madison* case, decided in 1803. This involved a mandamus action brought by William Marbury to compel James Madison, secretary of state, to deliver to him a commission to be justice of the peace in Washington, D.C., which had been signed by John Adams just before he went out of office. A Federalist, Adams attempted frantically to fill a large number of judicial and other positions created by Congress with members of his party before his Democratic-Republican successor, Thomas Jefferson, took office.

Jefferson and Madison, who cancelled the appointments of Marbury and others who had not been notified of them, contended that the Judiciary Act of 1800, which created the positions, was illegal because it increased the original jurisdiction of the Supreme Court as set forth in the Constitution. Hence, they denied that the court

had the right to interfere with the executive department by ordering it to deliver the commissions. Jefferson feared, of course, that Marshall, a Federalist, would uphold the Adams appointments. Instead, with shrewd political as well as judicial sense, Marshall upheld Jefferson and went beyond him in his decision. He declared, not only that his court did not have the power to interfere with the executive department in this instance, but that the Judiciary Act was unconstitutional. Not only did Marshall uphold Jefferson's contention that recognition of the act would give Congress supremacy over the Constitution, but, in addition, in his decision, he declared:

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. . . . If both the law and the Constitution apply to a particular case . . . the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

John Marshall's main effort was to strengthen the recently formed national government, to establish its supremacy firmly and irrevocably over the states, which he regarded as only component parts of it. Properly to evaluate Marshall's service, we must recall that long after the Constitution was adopted there was a sizable body of opinion to the effect that the new union was little or no more binding than the confederacy that it succeeded. The *strict constructionists,* as they were called, contended that the federal government possessed only those powers specifically granted to it by the Constitution; that the states still were dominant. The opposite viewpoint, held by Marshall, was that a new nation had been created, with the federal government dominant and the states inferior to it.

Marshall, of course, did not settle the *federalism vs. states' rights* issue; it is not settled yet. Marshall did, however, breathe life into the new national government and established many, if not most, of the principles that have guided the courts ever since. Prior to his taking office in 1793, in *Chisholm v. Georgia* the court had declared that a citizen of one state could bring suit against another state in a federal court. This had been quite a bombshell bursting in the middle of the controversy over how far the authority of the national government went, and it led shortly to the passage of the Eleventh Amendment to the Constitution which reads:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

Not only does this reaction indicate the opposition that Marshall set out to overcome, but it also was the first incident of important

legislation or constitutional amendment directly caused by a Supreme Court decision.

Next in importance to *Marbury v. Madison* perhaps during Marshall's regime was *McCulloch v. Maryland* by which the power of Congress to charter a national bank was upheld. This decision established the doctrine that the Constitution includes *implied powers* to be exercised by Congress under the constitutional phrase empowering it to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Marshall declared that the word "necessary" should not be construed in a narrow sense. The important sentence from his decision reads:

> Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

It was of this decision that President Andrew Jackson remarked: "John Marshall has made his decision; now let him enforce it."

The doctrine of the inviolability of the obligation of a contract was established in the *Dartmouth College v. Woodward* case, which grew out of the attempt in 1816 of the legislature of New Hampshire to amend the charter granted Dartmouth College by George III in 1769 to convert the private school into a state institution. Marshall held that a charter granted by a legislature is not the product of an act of sovereignty, but a contract between the legislature and corporation it created. Under the Constitution, no contract could be impaired by state law, and the only recourse left to the states—and which a large number adopted—was to write their corporate grants so as to reserve the power to repeal, alter, or amend them at any later date.

The Dartmouth decision, which, like all other important decisions, has been debated ever since, has been attacked as exalting the rights of a few above those of a majority. As things stand, a corporation incorporated in one state may do business in any other state by obtaining a license there. It must meet whatever tests the states require and must pay taxes in each state where it operates. First New Jersey, and, more recently, Delaware, have been the home states of a large number of corporations doing business on a national scale because of the comparative leniency of their incorporation laws. Delaware plays somewhat the same role in this field as Nevada does for would-be divorcees.

Regardless of its other implications, the Dartmouth case was another step in the direction of establishing the authority of the national over state governments and of the Supreme Court to decide such controversies. In *Martin v. Hunter* and *Cohens v. Virginia*

(1821) the court asserted its right to set aside the proceedings in a state court whenever the defeated party asserts a federal right. In *Gibbons v. Ogden* (1824) was established the right of Congress to regulate commerce on waterways even within the boundaries of a state. This case involved a suit questioning the exclusive rights granted by the state of New York to Robert Fulton, inventor of the steamboat, and his associate, Robert Livingston, to operate such boats. In *Osborn v. U. S. Bank,* it was held that no state has the right to tax one of the branches of the United States bank. Arguing that "the power to tax is the power to destroy," Marshall, by this decision, removed all federal agencies from the sphere of state taxation, and it is only since 1942 that the incomes of federal employees have been subject to state income tax laws and, conversely, the incomes of state employees subject to federal income taxation.

Taney's constructionism. Andrew Jackson thought he was appointing a strict constructionist when he named Roger B. Taney to succeed Marshall in 1836. He was, but Taney construed the Constitution to mean that the federal government has virtually as much power as Marshall asserted it has. In *Genesee Chief v. Fitzhugh* (1851) the court went beyond the *Gibbons v. Ogden* decision and junked the old English rule that the jurisdiction of the admiralty ends with waters affected by the ebb and flow of ocean tides. The commerce clause, the court decided, gives the national government control over all inland waterways as well. In *Ableman v. Booth* (1858), Taney's court decided that a prisoner in custody of federal authorities cannot obtain his freedom through recourse to state courts. In Chapter 3 (pages 102 to 103) we considered Taney's unsuccessful effort to deny Abraham Lincoln the authority to suspend habeas corpus during the Civil War.

It was Taney's most famous application of his constructionist point of view that is generally considered to have made that war inevitable. The case was the celebrated one involving *Dred Scott,* a freed slave. Taney's decision destroyed as unconstitutional the Missouri Compromise, which presumably had determined the status of slavery in the territories and any states to be added to the union from them.

Dred Scott was born in Missouri, but was taken to Illinois and later to Fort Snelling, near the present site of St. Paul, in free territory. He married, had two children, and then returned to Missouri and appealed for his freedom. To bring his action, he had to establish that he was a citizen of the state in order for the federal court to have jurisdiction under the "diversity of citizenship" clause. All that the Supreme Court actually was asked to decide was whether the federal court in Missouri was in error in sending Scott back to

slavery. In addition to deciding that such was the case, however, Taney, in an obiter dictum, traced the history of slavery in the United States from colonial days. Unfortunately, but correctly, he referred to the prevailing attitude at the time the Constitution was adopted as being that "the Negro has no rights which the white man was bound to respect." This quotation, lifted from its context, was widely advertised as part of the decision proper. Lincoln attacked it severely in his senatorial campaign against Stephen A. Douglas in 1858, and two years later when he ran against Douglas for the presidency. He savagely challenged Taney's decision that Congress has no constitutional right to legislate slavery in or out of a territory acquired since the adoption of the Constitution, so that a slave could not acquire freedom by residence in a free state. In his first inaugural, Lincoln said:

> The candid citizen must confess that if the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court the instant they are made, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal.

The effect of power. To evaluate the effect of John Marshall and Roger B. Taney upon our history, try to imagine what that history would have been had they had a different point of view. Suppose it had been decided that the federal government has no control over inland waterways, that state laws take precedent over acts of Congress, that states can tax a federal agency out of existence. Together these two men presided over the Supreme Court for sixty-three years—the formative years of the new and struggling republic.

To contend that the result would have been the same if it had been Smith and Jones, or any two other men instead of Marshall and Taney, is to imply, either that the law is absolute and eternal and all Marshall and Taney did was render the only possible decisions in every case; or that the economic and social factors making for federalism were so strong that not even a consistently antagonistic Supreme Court could stop the trend.

That the former concept is invalid is seen by the fact that in more than two-thirds of the cases involving constitutionality the court has not been unanimous. The record from the first Washington administration through that of Calvin Coolidge follows: 21 unanimous decisions; ten 7 to 2; one 8 to 2; eight 5 to 4; three 5 to 3; six 8 to 1; one 7 to 1; six 6 to 2; and five 6 to 3 decisions. The differences in the votes result primarily from the changing size of the court. In 1807 Congress increased the court from the original six to seven; in 1837 to nine; and in 1863 to ten. In 1866 Congress

voted to reduce the size to seven, by refusing to approve any new appointments until it had reached that size through death or resignation. In 1869, however, the size was increased to nine again, and it has remained nine since that time.

The "one and only" theorists must also find a satisfactory answer to the dilemma created by the numerous instances in which the court has reversed itself. According to Henry A. Wallace in *Whose Constitution,* published in 1936, there had been at least sixty such cases up to that time. In four additional cases, he said, the minority accused the majority of reversing previous decisions, and in fourteen more cases the court, "while not definitely overruling a previous decision, so qualified the principle of the prior case that it in fact was overruled."

Let us consider a few typical examples. In 1896 the court said an indicted person must be arraigned and have the chance to plead to an indictment and the plea must be part of the record; in 1914 the court said no arraignment or plea is necessary. In 1886 the court said that to seize the private papers of a person for use as evidence against him compels a man to be a witness against himself, in contradiction of the Fourth and Fifth Amendments; in 1904 the court said it depends on how competent the evidence is; in 1914 it said the illegally seized papers cannot be used if their owner has made a reasonable request for their return; in 1928 it ruled that evidence illegally obtained by wiretapping is permissible. In 1928 the court said Massachusetts could not tax royalties from patents; in 1932 it said Georgia could do so.

As for the second point of view—the superiority of social and economic forces—the famous remark of Mr. Dooley seems apropos: "The court follows the election returns." As will be pointed out in the next section, whenever the court has been an obstacle in the way of satisfying the public will, there has been trouble. Wrote Irving Brant in *Storm Over the Constitution:* [1] "Centralization is the natural, inevitable consequence of an industrial revolution whose depth and duration, even in the middle of the twentieth century, we are unable to estimate." And again: "Secession is the logical goal of states rights, but federal supremacy is the answer of a people growing in consciousness of national unity."

The Court as Lawmaker

After the Civil War, the court continued to assert the authority of the federal government as superior to that of the states, until Congress slowly but steadily entered a new phase of lawmaking—

[1] Brant, Irving, *Storm Over the Constitution.* New York: Bobbs-Merrill Co., 1936.

social legislation intended to curb the power of the railroads and other large corporations and to improve the living and working conditions of the masses. Since the authority of the court by now was firmly established, it naturally became the final battleground of rival economic interests. Defeated in the legislative halls, these interests refused to admit that their causes were lost; instead, they carried on the fights in the courts.

The Supreme Court does not give advisory opinions or render declaratory judgments. A constitutional question reaches it only when a litigant in a lower court action appeals to it on the basis that his constitutional rights have been infringed upon. When the court declares a law unconstitutional, that law is void; legally, it never existed and consequently everything done as a result of it is retroactively invalid. Some states provide that there shall be no retroactive effects of such a decision, but Congress has not acted on the suggestion that it follow suit. Naturally, when there is a long interval between the passing and testing of a law, considerable confusion results if it is upset. There have been proposals to limit the time after passage of a law during which its constitutionality can be tested and to permit advisory opinions, but they have not been adopted.

In *The Struggle for Judicial Supremacy,* published in 1941, Robert H. Jackson, since then elevated to the court as an associate justice, wrote: [2]

> These constitutional lawsuits are the stuff of power politics in America. Such proceedings may for a generation or more deprive an elected Congress of power, or may restore a lost power, or confirm a questioned one. Such proceedings may enlarge or restrict the authority of an elected president. They settle what power belongs to the court itself and what it concedes to its "coordinate" departments. Decrees in litigation write the final word as to distribution of powers as between the federal government and the state governments and mark out and apply the limitations and denials of power constitutionally applicable to each. To recognize or to deny the power of governmental agencies in a changing world is to sit as a continuous allocator of power in our governmental system. The court may be, and usually is, above party politics and personal politics, but the politics of power is a most important and delicate function and adjudication of litigation is its technique.

Whereas during the early period when the national government was struggling to assert itself the court supported it by invoking the *implied powers* of the Constitution, from the Civil War to the present it has invoked the *implied limitations* of that document upon the authority of Congress with considerable potency. Compilations

[2] Jackson, R. H., *The Struggle for Judicial Supremacy.* New York: Alfred A. Knopf, Inc., 1941.

of congressional acts declared unconstitutional by the Supreme Court differ, but it is certain that during the first seventy-five years (1789–1864) of its existence it nullified only two or three; during the second seventy-five years (1864–1939) it threw out at least 75 more. From 1835 to 1936, according to one authority, the court declared 74 acts unconstitutional; from 1906 to 1936, says another, the score was 43. A third gives the count from 1789 to 1935 as 67, and makes the interesting observation that twenty per cent of the laws overthrown were passed by predominately Democratic Congresses, whereas sixty-three per cent were passed by predominately Republican Congresses. The count ended before the series of decisions outlawing a quantity of Roosevelt New Deal legislation. Laws have been declared unconstitutional during the administration of every president since James Buchanan, Lincoln's predecessor—with the exception of those of Hayes, Garfield, Arthur, and Hoover.

Since the age of members of the court was an important issue in 1937 when President Roosevelt proposed to increase the size of the court, statistics compiled by Dean Justin Miller of the Board of Tax Appeals are interesting. Dean Miller found that the average age of justices has advanced rapidly since the court's beginning and that as the ages advanced there also was an increase in the number of laws declared unconstitutional. When the average age was below sixty-two, the largest number of laws declared unconstitutional in any age group was one and that was only in the age group fifty-three to sixty-one. Miller's charts showed:

Year	*Average Age*
1790	51
1810	49
1840	59
1900	65
1930	68
1937	72

The number of laws nullified as ages increased was as follows:

Average Age	*Laws Nullified*
63	8
64	10
65	7
66	9
67	7
68	8
69	6
70	7

By the time he had appointed seven new members in 1941, President Roosevelt had reduced the average age from 72 of the "Nine Old Men" to 56. By 1945 the average had risen to 58, being kept from going higher by the naming of 48-year-old Wiley Rutledge to succeed 63-year-old James Byrnes in 1942.

Acts of Congress have been declared unconstitutional by the Supreme Court for a variety of reasons. What follows is a brief discussion of some of the clauses of the Constitution most frequently involved.

Due process. The Fifth Amendment to the Constitution includes the phrase: "No person shall . . . be deprived of life, liberty, or property without due process of law. . . ." Section 1 of the Fourteenth Amendment includes the following: "Nor shall any state deprive any person of life, liberty, or property without due process of law. . . ."

Until well after the Civil War, it was taken for granted that the Fifth Amendment meant that proper legal procedure—such as indictment and trial, condemnation proceedings, et cetera—must be followed. As regards Congress, it meant not *what* Congress did but *how* it did it. In *Munn v. Illinois,* one of the so-called *Granger* cases, decided in 1876 furthermore, it seemed as though the court were intent upon strengthening the power of both federal and state governments to regulate railroads and public utilities. Although the Patrons of Husbandry (commonly called the Grange) was not a party to any of the actions, it had supported most of the state laws that were reviewed. *Munn v. Illinois* tested the rate-fixing powers of the states through commissions. The court's attitude was expressed as follows:

> Whenever any person pursues a public calling, and sustains such relations to the public that the people must, of necessity, deal with him, and are under a moral duress to submit to his terms, if he is unrestrained by law, then, in order to prevent extortion and abuse of his position, the price he may charge for his services, or use of his property, may be regulated by law.

This, of course, paved the way for state regulatory commissions in many public utility fields, but the result was almost disastrous to the railroads because of the differences in the decisions of the different state boards. Furthermore, rebates and other discriminatory practices were not eliminated. The need for federal rather than divergent state regulation was obvious, and in 1887 Congress passed the Interstate Commerce Act and established the first important federal administrative agency—the Interstate Commerce Commission.

Although "due process" had not saved the railroads from regulation, beginning shortly after the Granger cases a distinct change in reasoning by the Supreme Court entered into the making of many other decisions affecting utilities and corporations. In a case involving the St. Paul railway, it was decided that rates set by a state commission are subject to judicial review. The Fourteenth Amendment had been written expressly to protect the rights of the former Negro

slaves, but it was interpreted as applicable generally and was used to kill a long list of state laws regulating business activities and protecting the rights of labor; the Fifth Amendment was applied for the same purposes to federal laws.

Under the Fourteenth Amendment a corporation was defined as a person. In different decisions the due process clauses were invoked to prevent New York from prohibiting bakeries from employing men for more than ten hours a day and to declare that rate-fixing commissions must allow utilities a "fair return" on their investments; specifically, a limitation of 6½ per cent on invested capital was called confiscatory.

An outstanding example of the fallibility of the court is provided by its history in relation to laws fixing minimum wages for women. In 1923 the court upset a congressional act applicable only to the District of Columbia, implying that the federal government had no power to legislate in this field. Then, in 1936, by a five to three vote, it declared a New York state minimum wage for women law unconstitutional because it violated the due process clause of the Fourteenth Amendment. This created what critics called a "no-man's land," in which neither federal nor state governments could legislate. Then Justice Owen J. Roberts made his historic shift from the conservative to the liberal faction, and the period of nullification of New Deal laws ended. In 1937, just a year after the New York decision, by a five to four vote, the court upheld a virtually identical minimum wage for women law for the state of Washington.

The *New International Encyclopedia* explains "due process of law" as follows:

> By this phrase is meant the regular and orderly determination of the rights of the citizen, whether by the ordinary courts of the land, the legislature, or by the people in enacting constitutional provisions. As applied to the courts, it means law administered according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights; law which hears before it condemns, which proceeds upon due and orderly inquiry, and renders judgment only after trial.

Obviously, due process had come to mean something very different to the Supreme Court long before New Deal days. It was the effect that laws would have that was the yardstick by which they were judged—not the manner in which they were passed or administered. Defenders of this assumption of power by the court declare it is necessary to preserve the American system of free enterprise; adverse critics of it say that it is artificial and illegal respiration for an obsolete laissez-faire economics.

Commerce clause. Article I, Section 8, of the Constitution includes among a long list of powers of Congress: "to regulate com-

merce with foreign nations, and among the several states, and with the Indian tribes." The final sentence of the section is as follows: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The former is the commerce clause, but it was not until almost a century after it was written into the Constitution that Congress did much about it. In the meantime, of course, the transportation system of the nation had changed tremendously, particularly because of the railroad. In 1866 Massachusetts established the first state commission to supervise rate making and, as related, in the Granger cases, the Supreme Court upheld such legislation. In 1886, in a case involving the Wabash railroad, however, the court virtually nullified its own action by declaring unconstitutional an Illinois statute to prevent rate discrimination on shipments to various points within that state. The court ruled that such shipments were interstate commerce, and that Congress alone had power to regulate them.

Congress already had started to do something. The year before, 1885, the Senate appointed a special committee, of which Senator Shelby M. Cullom of Illinois was chairman, to hold extensive hearings throughout the country. The voluminous report concluded that, "Upon no public question is public opinion so nearly unanimous as upon the proposition that Congress should undertake in some way the regulation of interstate commerce." The Interstate Commerce Act of 1887 was the result. Entirely as a result of several Supreme Court decisions defining its power in strict and limited fashion, however, it was not until after the passage of the Elkins Act (1903), Hepburn Act (1906), and Mann-Elkins Act (1910) that the Interstate Commerce Commission obtained adequate authority. The answer to the charge that such strict constructionism really is obstructionism always has been: "If you don't like it, your proper recourse is in Congress." The Elkins Act made both parties to a rebate liable. The Hepburn Act increased the commission's size from five to seven; increased its scope to include terminals, ferries, pipelines and express companies; and gave it power to reduce discriminatory and unreasonable rates, subject to judicial review. The Mann-Elkins Act increased the commission's authority to include telegraph, telephone, cable, and wireless; enabled it to initiate proceedings on its own responsibility and to suspend new rates until satisfied of their reasonableness. A commerce court was restored by the act.

The Supreme Court, as a result of the Hepburn Act, changed from

a policy of always allowing the benefit of the doubt to the railroad to the opposite viewpoint. It laid down the principle that a common carrier could expect protection only if it could prove "beyond a reasonable doubt" that its property was being confiscated by commission regulations.

As the frontier and free lands disappeared, an obstacle to the continuation of the free competitive system that had characterized the tremendous expansion during the first three-quarters of the nineteenth century was the growth of monopolies through pools, trusts, and holding companies. It resulted in a widespread demand for their elimination or control by the federal government. A *pool*—the first of which were mostly in the railroad industry—was a simple agreement between supposed competitors to fix prices, regulate production, and divide markets. A *trust,* the original being Standard Oil in 1879, consisted of a group of corporations in the same field, which entrusted their stock to a small board of trustees with authority to vote it and control the combination. In 1882 John D. Rockefeller's trust consisted of forty companies, representing ninety per cent of the refineries and pipe lines in the country, all controlled by nine trustees. There were similar whisky, sugar, beef, and other trusts. A *holding company* is a distinct entity which purchases the majority of the stock of a number of otherwise competing companies, and possibly also their physical property. In 1889 New Jersey, West Virginia, and Delaware liberalized their incorporation laws to permit them.

Congress in 1890 responded to popular demand that something be done by passage of the Sherman Anti-trust Act, which declared illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign countries." The first case under the act to reach the Supreme Court was *United States v. E. C. Knight Co.,* a combination that controlled ninety-eight per cent of the sugar refining business. Instead of voting its dissolution, however, the court in 1895 held that its activities were manufacturing only and "bore no direct relation to commerce between the states or with foreign nations."

Further tests of the act did not occur during the next two decades, largely because the government did not bring them. Then came the celebrated trust-busting crusade of Theodore Roosevelt, during whose administration there were twenty-five indictments and eighteen bills in equity. Attorney General Philander C. Knox filed suit against the Northern Securities Company, a holding company for several railroads, and won it. The Supreme Court in 1905 upheld the conviction, refusing the defendant's plea that "reasonableness"

should be the determinant of whether a combination was in restraint of trade. Two years later, however, in both the Standard Oil of New Jersey and American Tobacco Company cases, the plea was permitted as it has been ever since.

T. R., as everyone knows, did not succeed in "busting" the trusts or even in reducing their number appreciably. According to Ferdinand Lundberg in *America's Sixty Families,* in 1900 there were 149 trusts, with a total capitalization of $4 million; in 1908, when Roosevelt went out of office, there were 10,200 trusts, with a total capitalization of $31 billion. Taft continued the gesture, however, forty-five suits being brought during his four years, mostly against the Morgan interests, by contrast with those under Roosevelt, which had been mostly against Rockefeller interests. According to Thurman W. Arnold in *The Folklore of Capitalism,* instead of destroying monopolies, the antitrust laws actually encouraged them by deflecting the attack into purely moral and ceremonial channels. It certainly is true that during fifty years of alleged enforcement no businessman of any importance went to prison for violating any anti-trust law and only $3,461,000 in fines were collected. In 1907 United States District Judge K. M. Landis, later high commissioner of baseball, fined Standard Oil of Indiana $29,210,000, but the Supreme Court disallowed it as excessive. In 1938 Williard Thorp, of Dun & Bradstreet, told the Temporary National Economic Committee, chairmanned by Sen. Joseph C. O'Mahoney of Wyoming, that three automobile corporations controlled eighty-six per cent of the product in that field. Similar situations included: three can companies, 90 per cent; three cigarette companies, 80 per cent; four corn-binder manufacturers, 100 per cent; three steel companies, 60 per cent; and four whisky manufacturers, 58 per cent. Corporations whose total assets were below $50,000 comprised over 50 per cent of all American corporations, yet they totalled only 1.4 per cent of all corporate assets. Only 0.2 per cent of all corporations had assets of $50 million; yet they controlled 50 per cent of all corporate assets.

Against labor unions, enforcement of the anti-trust laws was as vigorous as it was weak against monopolies. In 1908 the court decided that unions are illegal combinations in restraint of trade if they boycott goods of any firm in interstate commerce; also, that no common carrier subject to regulation by the I.C.C. can be restrained from discharging an employee because of membership in a labor union. Injunctions to restrain labor union activities—particularly during strikes—had become common before the Sherman Act was passed, the first notable one being granted in 1800 in New York City. By the turn of the century, they were being issued to

restrain labor under the anti-trust act. The most famous case was that of Eugene V. Debs, prominent Socialist, who went to jail for six months for contempt of court after he disregarded a federal injunction during the 1894 Pullman strike.

In 1914 the Clayton Act was passed, not merely to provide for the punishment of monopolies, as did the Sherman Act, but to prevent their being formed. It enumerated unlawful means of business competition; forbad interlocking directorates in certain banking institutions and in concerns in interstate commerce; and listed various means for securing relief from illegal trade practices. It specifically exempted labor unions and agricultural associations from its provisions and forbad federal injunctions to interfere with union activities such as strikes, boycotts, and peaceful picketing. Labor hailed it as its magna charta, but its celebration was short-lived as the Supreme Court decided that the Clayton Act applied only to those types of union activity which were lawful before the act was passed and that the anti-injunction provision applied only to disputes between employers and their immediate employees. This outlawed sympathetic strikes and pickets who were not employees of the plant on strike. In several cases, the court upheld "yellow dog" contracts, which were employment agreements whereby the worker took his job upon a promise not to join a union. It became illegal to urge anyone working under such a contract to join a union.

Most injunctions were peremptory, issued without hearings until the passage, on March 23, 1932, of the Norris-LaGuardia Anti-Injunction Act, which forbad temporary injunctions unless there had been a hearing on the facts and unless the court, on the basis of evidence, found that irreparable damage had been done and violence committed. Injunctions were forbidden to stop peaceful persuasion, assemblage, advertising strikes by various means, and peaceful picketing. No injunction is possible under the act if an employer has failed to make a reasonable effort to settle the dispute.

The effect of the Norris-LaGuardia Act has been to cause numerous states to pass laws rigidly defining peaceful picketing and requiring advance notice of intention to strike—the same principle embodied in the federal Smith-Connally Act. In a dispute between the Amalgamated Meat Cutter and Butcher Workers of North America and the Shinner Company of Milwaukee, the circuit court of appeals affirmed the district court's decision that no dispute between the union and the company under the jurisdiction of the act existed because the company already had a contract with a company union, making the striking union an interloper and its picketing for an illegal purpose. As in the minimum wage cases decided under the due process clause, the anti-trust laws were enforced upon labor

whenever any deprivation of "liberty of contract" was found.

It was not until May 27, 1940, in the Apex Hosiery Company case, that the Supreme Court gave a clear-cut statement as to what it considers the applicability of the Sherman Anti-Trust Act to be as regards organized labor. In that case, growing out of a sit-down strike in a Philadelphia plant, the court said that the type of interference with interstate commerce supposedly outlawed by the Sherman Act is suppression of competition by monopolizing a supply of goods, controlling its price, or discriminating between its would-be purchasers. Although it was decided that the Sherman Act did not apply in the Apex case, it was clearly stated that labor unions are not immune to prosecution under that act.

In 1916, Congress made its first attempt to regulate child labor through an act which went into effect Sept. 1, 1917, banning from interstate commerce goods produced by child labor below the standards set forth. On June 3, 1918 the Supreme Court handed down its decision by a five to four vote, to the effect that the law was unconstitutional because child labor in mines and factories is a "matter purely local in its character." Consequently, the act was in violation of the Tenth Amendment, which reserves to the states all power not delegated to the federal government. The court held that the act also was in excess of the power granted Congress under the commerce clause.

In a second attempt, early in 1919, Congress imposed a ten-percent tax on the net profits of an industry in which child labor was employed illegally. On May 15, 1922, by an eight to one vote, the court declared this law also unconstitutional, as a violation of both the Tenth and Fourteenth Amendments. The court said that Congress exceeded its power to regulate by taxation, inasmuch as the tax was a penalty, not a revenue-producing measure. This obviously left a constitutional amendment as the only recourse. By joint resolution, June 2, 1924 Congress passed an amendment, but a sufficient number of states (36) has not ratified it.

The Federal Trade Commission—established in 1913 to investigate unfair methods of competition, issue orders to cease and desist from such practices, and apply for judicial injunctions to enforce its orders—has had varying success in the courts, but on the whole fair treatment. One early case involving Swift & Co., meat packers, caused fear that this was not going to be the case. In that instance, the Supreme Court ruled that the FTC could order a suit to sell illegally acquired stock, but could not dislodge Swift's from control of assets so secured from erstwhile competitors.

The New Deal and the court. Although Franklin D. Roosevelt's fight with the Supreme Court was not the first and may not be the

last between a chief executive and that body, it was the most important because of the large number of adverse decisions handed down invalidating extremely important legislation. The court annihilated not merely the particular acts being tested, but the philosophy of the first New Deal as well.

The first two decisions during the "testing period" of 1934 to 1937 were favorable. Both laws, however, were state laws, although New Dealish in spirit. On January 3, 1934, in *Home Building & Loan Association v. Blaisdell,* the court upheld the Minnesota mortgage moratorium act. It has been attacked as in violation of the first paragraph of the Fourteenth Amendment—the "due process" clause. The court, however, said the act was suited to cope with an existing emergency. On March 5, 1934, in *Nebbia v. New York,* the court also upheld the New York milk control board to fix prices. This act was attacked as violating the police powers of the states, but the court held that since the milk business is "affected with a public interest" the act was constitutional. Each decision was by a five to four vote—the intransigents being Justices McReynolds, Van Devanter, Butler, and Sutherland.

Then, when the federal New Deal acts came up for review, Justice Owen J. Roberts joined this quartet, leaving Chief Justice Hughes and Justices Stone, Brandeis, and Cardozo in the minority. Roberts was the only one of the "nine old men" always to vote with the majority on every New Deal case; he held the balance of power. Contrary to general memory, however, only four of the eleven important decisions adverse to the New Deal were by five to four votes. The chronology was as follows:

Hot Oil. Section 9 of the National Industrial Recovery Act, delegating to the President authority to prohibit the transportation in interstate commerce of oil produced in violation of state laws fixing code quotas, was declared unconstitutional on Jan. 7, 1935, by an eight to one vote (Cardozo dissenting) as exceeding the scope of delegation of legislative power to the chief executive. The case was known as *Panama Refining Co. v. Ryan.*

Gold Clause. The act of May 12, 1933, authorized the devaluation of the dollar up to 50 per cent of its value; the actual devaluation was 40.94 per cent. On June 5, 1933, Congress in a joint resolution declared void contracts stipulating that payment must be made in gold as against public policy, and ordered that debts be redeemed in any legal tender currency. The resolution was tested in *Norman v. Baltimore Railroad; Perry v. United States* and two other suits in which it was charged that Section 4 of the Fourteenth Amendment, prohibiting anyone "to question the validity of the public debt," had been violated. By a five to four vote, on February 18,

1935, the court declared the joint resolution unconstitutional "in so far as it attempted to override the obligation created by the bond in suit," but the case was dismissed, as the claimant could not prove damage. There really were two decisions—the majority of four (Stone not voting) holding only that abrogation of the gold clause was illegal; by five votes the court held that the plaintiff could not succeed. So it really was an eight to zero vote against the gold clause.

Railroad Pensions. The Railroad Retirement Act of June 27, 1934, was declared unconstitutional by a five to four vote on May 6, 1935, as a violation of the commerce and due process clauses. The court denied to Congress the power to pass any compulsory act for railroad employees.

N.R.A. This was the decision that really "upset the applecart," as, by a nine to zero vote, the court declared the National Industrial Recovery Act unconstitutional in the famous *Schechter Poultry Corporation v. United States,* or "sick chicken" case decided May 27, 1935. The background of the case was this: the NIRA set up the National Recovery Administration (NRA) to approve "codes of fair competition" for each industry prepared by a code authority of the industry itself. Once approved, the codes were mandatory upon all members of the industry and could be enforced by criminal prosecution and civil process. A wholesale poultry firm in Brooklyn, the Schechter Brothers, had violated the "live poultry code" and was prosecuted for so doing. The brothers did not sell their poultry in interstate commerce. Rather, they bought it from commission men in New York and Philadelphia for slaughter and resale. One of the eighteen points in the indictment on which the company was convicted charged that an "unfit chicken" had been sold.

The government contended that poultry markets in large cities are bottlenecks of interstate commerce, even if the particular company's trade is entirely intrastate. The defendants charged violation of the commerce clause and excessive delegation by Congress of power to the President. The court agreed.

Mortgage Moratoriums. The first Frazier-Lemke Act, which amended paragraph 75 of the Bankruptcy Act, June 28, 1934, was declared unconstitutional May 27, 1935, by a nine to zero vote. The court held that it deprived creditors of property without due process of law in violation of the Fifth Amendment.

H.O.L.C. That section of the Home Owners Loan Corporation Act, which permitted state building and loan companies to transfer to federal jurisdiction, was declared unconstitutional by a nine to zero vote.

A.A.A. Next to that of the NRA, this case provided the New Deal

with its biggest jolt on Jan. 1, 1936, when in the Hoosac Mills case the court, six to three, nullified the Agricultural Adjustment Administration Act. In that and another nine to zero decision invalidating processing taxes under the act, the court held that the power to appropriate money for the general welfare does not include the right to require or even to persuade the recipients of the money to perform acts that could control agricultural production. The processing tax had been charged against processors to raise funds to pay benefits to farmers under the *general welfare* clause, which is found in the preamble to the Constitution, which lists as one of the purposes of that document the desire of the people to "promote the general welfare."

Guffey Coal Act. The Bituminous Coal Conservation (Guffey) Act provided for regulation of wages and hours in the coal industry. It was invalidated by two votes, five to four and six to three, on the same reasoning applied earlier in the gold clause cases.

Municipal Bankruptcy Act. This was held wholly unconstitutional May 25, 1936, by a five to four vote as in violation of the Fourteenth Amendment.

S.E.C. By a six to three vote, the Securities and Exchange Commission lost an attempt to compel a New York stock dealer to testify about a proposed issue of securities withdrawn before their registration became effective.

Humphrey Case. By a nine to zero vote the court ruled that President Roosevelt did not have the power to remove William E. Humphrey as a member of the Federal Trade Commission. This was despite the fact that in 1887 Congress repealed the Tenure of Office Act and in 1926 the court had approved the presidential removal of a postmaster.

The original Tenure in Office Act was passed by Congress on March 2, 1867, in the hope that President Andrew Johnson would disobey it. By it he was forbidden to remove officeholders, including cabinet members, without the consent of the Senate. In 1868 Johnson obliged by removing Edwin M. Stanton, secretary of war, and the House judiciary committee successfully recommended that the House impeach the President for "high crimes and misdemeanor." The dramatic trial, March 4, 1868, in the Senate ended in a vote that came within one of the necessary two-thirds required to remove Johnson from the White House. Years later, Grover Cleveland removed a federal district attorney in Alabama and the Senate demanded that he "submit papers relative to the removal." Cleveland refused. The Senate censured him, but then repealed the 1867 act.

His first New Deal junked by these and other adverse decisions, in

his message to Congress on February 5, 1937, President Roosevelt submitted a plan to increase the size of the Supreme Court by giving the chief executive the power to appoint an additional member for any judge not retiring within six months after becoming seventy years of age, until the size of the court was fifteen. The congressional storm that this "court packing" plan raised will linger long in memory. The President, apparently relying upon his great popularity with Congress, refused to compromise until it was too late. After Senator James A. Robinson of Arkansas, majority leader who had been leading the fight for the plan, died suddenly, the original bill's support collapsed. A bill modernizing the rules of the court, however, was passed, together with a provision for retirement at seventy of justices with full pay for life.

By the time any of the "nine old men" decided to avail themselves of this opportunity, however, Justice Roberts had made his famous switch to the New Deal point of view. It is believed that he did so upon the persuasion of Chief Justice Hughes, in order to help defeat the Roosevelt plan. In the heat of the debate Hughes addressed a strong letter to the Senate judiciary committee, answering virtually every argument the President had advanced in favor of the bill, especially stating that increasing the size of the court would not improve its efficiency.

The "break" came March 29, 1937, when, as already related, the court dramatically reversed itself and upheld the 1913 Washington state minimum wage for women law. The same day it unanimously approved the second Frazier-Lemke Farm Mortgage Moratorium Act of 1935 and the Railway Labor Act of 1934. This "big" day had been presaged when, a few weeks earlier, Roberts had switched to permit a five to four decision upholding abrogation of gold payments in contracts based on gold bullion. When that decision was being read, Justice McReynolds histrionically cried out, "The Constitution is gone," and stalked out of the court chamber. On March 29 he refused to remain in the room to hear the majority opinion in the Washington wage case.

Everything thereafter was anti-climactic—both as regards the court's upholding of New Deal legislation, including the National Labor Relations (Wagner) Act, April 12, 1937, and the dwindling fight for the "court packing" bill. The Social Security Act, Philippine coconut oil processing tax, new AAA, the Tennessee Valley Authority, and numerous other second New Deal measures were approved in rapid succession. As the war clouds began to gather, no new important legislation for economic and social reform was even introduced in Congress, and the general public paid little attention to the fact that the new court, containing seven Roosevelt appoint-

ees, disagreed more frequently and handed down more closely split decisions than perhaps any of its predecessors.

Civil liberties. The sharpest adverse critics of the Supreme Court for its record in matters related to labor and business usually agree that in defense of civil liberties the court's record is excellent. The National Opinion Research Center at the University of Denver in 1944 revealed that only twenty-three per cent of those polled by it know what the American Bill of Rights is, but the first ten amendments to the Constitution, which collectively are known as the Bill of Rights, are called the "charter of American democracy" or the "cornerstone of our liberties."

None of the liberties—freedom of speech, press, religion, et cetera—is absolute, but the Supreme Court almost always has given the benefit of the doubt to the individual. In this field, the cases have been almost all tests of state laws or municipal ordinances, although some acts of Congress also have been invalidated. Among the decisions in that category were the following reversals: 1870—an act to permit federal courts to retry civil actions already decided in a state; 1886—an act to permit searches and seizures; 1890—an act to dispense with grand-jury indictments for infamous crimes; 1899—an act to make it unnecessary for a man accused of crime to be confronted with the witnesses against him; 1909—an act to permit appeals by the government from acquittals in criminal cases.

After the Civil War the court upset numerous state laws and court decisions depriving former Confederate soldiers and sympathizers of equal privileges. In 1919, the court upheld the Seditious Libel Amendment to the Espionage Act of 1917 in *Schenck v. United States,* but Oliver Wendell Holmes in that case delivered his famous definition of what constitutes sedition—a definition that has guided the courts ever since and has helped rather than hurt most defendants so charged. Holmes said in part:

> The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

In 1937 the court upset the Oregon Criminal Syndicalism Law, tested in the case of Dirk DeJonge, who had attended a meeting sponsored by the Communist party. Said Chief Justice Hughes in part:

> Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment . . . Peaceable assembly for lawful discussion cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved,

is not as to the auspices under which the meeting is held, but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects.

The reasoning in numerous other cases has been similar. Likewise, the court has protected the rights of Communists, Jehovah's Witnesses, and other unpopular minorities in other cases. In 1943 in the case of William Schneiderman, who was defended by Wendell L. Willkie, the court decided that membership in the Communist party does not disqualify an alien for American citizenship. In 1937 it reversed the twenty-year prison sentence of Angelo Herndon, a Negro Communist organizer. The same year it reversed itself by a seven to two vote that evidence obtained by wire tapping is not admissible, and it voided by habeas corpus proceedings the convictions of two counterfeiters who had been tried without benefit of counsel. In 1939 it forbad the deportation of Joseph Strecker, an Arkansas Communist, and reversed the supreme court of Missouri, to insist that a higher state institution must admit Negro students unless equivalent educational opportunities are otherwise offered.

In 1943 the court reversed a 1940 decision that the Gobitis children of Minersville, Pennsylvania, could be expelled from school for refusal to salute the flag contrary to their religious convictions. In 1940 the court had said:

> The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities. . . . National unity is the basis of national security.

In 1943 it said:

> We think the action of the local authorities in compelling the flag salute transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the first amendment to our Constitution to reserve from all official control.

In 1938 the court reversed the conviction of Mrs. Alma Lovell, member of the Jehovah's Witnesses, by a Griffin, Georgia, court for distributing handbills on private property without a permit in violation of a city ordinance. The court declared the ordinance unconstitutional. In November, 1939, in four other cases the Supreme Court upheld the right to distribute such literature on public ways, and in public places as well, without interference.

Although the court has held that the National Labor Relations Act, and other laws affecting business practices and labor relations apply to newspapers, it has consistently protected the press against censorship and discriminatory taxation. The two most famous cases in recent decades were the Minnesota "gag" law upset in 1931 and the Louisiana advertising tax upset in 1936. In the former case, involving *The Saturday Press*, a Minneapolis scandal sheet run by

J. M. Near, the court ruled that "malicious, scandalous, and defamatory newspapers, magazines, or other periodicals" cannot be put out of business because of bad past performance, but must be prosecuted under the libel laws. The purpose of the Minnesota law was held to be suppression, not punishment. The four stalwarts who declared so much New Deal legislation unconstitutional were in the minority on this one.

The Louisiana tax law was an attempt by Huey Long to destroy large city dailies which opposed him politically. It imposed a two-per-cent tax on the gross receipts from advertising in newspapers of more than 20,000 circulation. Because only thirteen of the state's 163 newspapers were affected, the court found it discriminatory and, in its opinion, stated that it took into consideration the purpose as well as the method of the law.

On April 4, 1944, the court upheld the right of Negroes to vote in the Democratic primaries in Texas, but in other earlier decisions it upheld a state's right to insist on payment of a poll tax to qualify for a ballot. Some liberals have contended that the court could and should stretch the meaning of "due process," in this and other cases, to judge the effect as well as the methods of the law. This argument, however, is inconsistent with the stand that the same people take regarding the labor and business cases in which the court *does* assume the virtual role of vetoer of the acts of Congress and the state legislatures—all of which proves that the attitudes of laymen are as likely to be colored by their beliefs and opinions as are those of judges.

Criticisms and Suggestions

In the majority opinion declaring the original Agricultural Adjustment Act unconstitutional, Justice Roberts wrote:

> When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty—to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former.

Nearly a decade later, when the Roosevelt appointee-dominated court seemed to have in common only a willingness to disregard precedent, though not at all in agreement as to when or how, Roberts lamented publicly that the tendency led the lower courts on an uncharted sea of "doubt and difficulty."

By contrast, there is this dissenting opinion from Harlan Fiske Stone, later chief justice, in the AAA case:

While unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our sense of self restraint.

Similarly Oliver Wendell Holmes, in his book *Common Law,* took a crack at *stare decisis* as follows: [3]

The official theory is that each new decision follows syllogistically from existing precedents. But, just as the clavicle in the cat only tells of the existence of some earlier creature to which a collar bone was useful, precedents survive in the law long after the use they once served is at an end and the reason for them has been forgotten. The result of following them must often be failure and confusion from the merely logical point of view.

In no other nation in the world is there to be found a court with the power that the United States Supreme Court has been granted or has assumed. No English court for two centuries has declared any act of Parliament to be unconstitutional. Our court fills the role of superlegislature and guardian of the Constitution. There are no appeals from its decisions; its decrees are law, and neither the executive nor legislative branch of government can upset them. All anyone can do is circumvent them. As a result, it is not surprising that every "strong" President in the nation's history has come into conflict with the court.

Jackson's defiance of Marshall on the national bank and Lincoln's defiance of Taney on the Dred Scott and habeas corpus matters have been mentioned. In the former case, Congress just declined to establish a national bank, even though empowered to do so. Lincoln "got away" with his defiance largely because of the uncertainty as to where the power to suspend habeas corpus lay. Congress, however, promptly passed legislation to assert that it had the power in the future to do so.

Ulysses S. Grant—whether by intention or not historians do not agree—brought about a court reversal in the *legal tender* cases by "packing" the court with two new members. The case was that of *Hepburn v. Griswold* to test whether Civil War greenbacks were legal tender under the act of 1862. On February 7, 1870, the Supreme Court, by a four to three vote, said no. The same day, Grant nominated two new members, to bring the total to nine as authorized by Congress the year before. A year later the new members joined with the majority to reverse the legal tender decision, five to four.

Theodore Roosevelt, who turned to federal power as the most effective weapon in his fight against plutocracy, favored the recall of Supreme Court decisions, meaning their overriding by a two-thirds or three-fourths vote of Congress. Neither he nor Robert M. LaFollette, Sr., who felt likewise, ever got anywhere with the pro-

[3] Holmes, O. W., *Common Law.* Boston: Little, Brown & Co., 1938.

posal. Nor did a bill introduced by the late Senator George W. Norris of Nebraska, to require a seven to two vote to declare an act of Congress unconstitutional. Nor, of course, did Franklin D. Roosevelt's "court packing" plan.

Striking deeper, Dean Lloyd Garrison, of the University of Wisconsin law school, has proposed a constitutional amendment to give Congress "power to promote the economic welfare of the United States by such laws as in its judgment are appropriate and to delegate such power, in whole or in part, to the states." Such an amendment would mean a fundamental change in our concept of our union. Although some critics argue that states' rights have been a fiction ever since the Louisiana Purchase by Thomas Jefferson, which was in admitted violation of the Constitution, they have been safeguarded jealously and defended ever since. Originally, the large states wanted to hold down the power of the federal government; whereas the small states wanted to use it to hold the large states in restraint. This situation no longer prevails, and states' rights are argued today, not by the states themselves, but by private interests, as it serves their purposes. There is no consistency about who supports states' rights today and federalism tomorrow.

Despite the debate and the use of states' rights as a political weapon, the trend toward federalism has been steady. In 1841 the National Bankruptcy Act marked the first time the power of the federal government was used against entrenched financial interests, to relieve the victims of wildcat banking and land speculation and those ruined by the depression of 1837. Other national problems have been solved with national solutions, as has been pointed out numerous times throughout this book. When the Supreme Court has been an obstacle, any of a number of alternatives have been tried to circumvent it—alter the membership or size; rewrite a forbidden law, so that it will "slip" through; constitutional amendment. The most notable example of the last method was the Sixteenth Amendment passed in 1913 to permit a federal income tax after a Supreme Court five to four decision in 1895, reversing one of 1868, forbad Congress to levy such a tax. The decision pointed out that the Constitution provides that direct taxes be apportioned among the states according to population, and that a tax not so apportioned on income from real estate and the direct product of personal property was invalid.

In the long run, public opinion rules. Judges who are behind the time die and are replaced by those with more up-to-date ideas, or they "see the light" for political reasons. Nevertheless, it is charged, the power of the court at its best is entirely a negative power and a check on democratic action, making inevitable a lag of a decade or

generation behind the will of Congress as representative of that of the people. It is quite possible, it is asserted, for the court again to create a "no man's land," in which neither federal nor state governments can legislate, and nothing can change the fact that as long as the power of judicial review remains, there will be reluctance to obey or enforce a controversial act of Congress until the Supreme Court has spoken. Placing a time limit on challenges to such acts would help, as would advisory opinions, but, whether they sit on the Supreme Court or in a dictator's chair, men still will be human —lawmakers, rulers of nations, and judges alike. No law will ever be made or enforced by a perfect man, and no system of law or government will ever make all other men perfect.

It is one of the press's great—if not its greatest—responsibility to provide the essential information regarding the administration of justice, without which no progress whatever is possible in a democratic society. It is for the right to do so that the press fought for centuries, and it is under the obligation placed upon it by the first amendment to the Constitution of the United States. Not merely routine reporting of everyday occurrences is meant; not merely exposure of corruption, wherever it occurs; but intelligent interpretation, so that a democratic people can form judgments, not only regarding particular newsworthy cases, but, more important, about the system as a whole. This book has been an attempt to help prepare newspapermen for that prodigious task.

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