

PROCEDURAL LAW

105. So far, all along, we have been considering what made a man guilty of a crime—maybe a big crime, like murder, or a little one, like selling toy pistols—but all the way through we were always counting up and learning the facts necessary to make up each crime. Now we are going to shift over entirely. We are going to see what the law does—how the law proceeds—when a crime has been committed. (That is why it is called “procedural law.”) We are going to take for granted that a crime has apparently been committed, and we are going to watch the machinery of the law to see how it will work to bring the proper person to punishment. For example, what can and should be done in the way of arresting him, getting him to trial, managing and conducting the trial, and so on. We shall take the various events one after the other in more or less the same order in which they would actually happen.

PROCEEDINGS PRELIMINARY TO TRIAL

106. When a crime has been committed the first thing (or nearly the first thing) of a legal nature that will happen will be the arrest of the criminal. This arrest may be either with or without an official order (commanding the officer to make the arrest) called a “warrant.” In some cases an officer must have such an order, and in other cases he need not. We shall first consider arrest with warrant and describe how warrants are issued, and then we shall go on and describe those cases where the police officer does not need a warrant in order to make an arrest.

First, then, as to arrests with warrants. How are these official orders issued? How does a person get one? A person who knows that a crime has been committed, whether he be a police officer or a private person, goes to a place where court is being held. In Chicago he will go to one of the branches of the Municipal Court (the city court). These branches are

scattered through the city, at different police stations. He goes to a person called the "warrant clerk" (a member of the Police Department) and tells him his story. The warrant clerk has a large number of blank forms, and picks out the one that fits the crime which has just been described to him (that is, there is a form for felonies, one for misdemeanors, another for violations of city ordinances). In this form he writes down what has been told him, that is, a statement of the offense charged to have been committed, the name of the person accused, and that the "complainant" (the person asking for the warrant) has just and reasonable grounds to believe that such person committed the offense. This paper, which is called a "complaint," is then taken before the judge and signed and sworn to by the complainant. The judge will read it, and if from the facts stated he considers that an offense has been committed, he will then issue the warrant. The warrant, as was said above, is a written order from the judge to the police to arrest the person accused (it also contains the name of the complainant and the offense charged) and bring him (or, as the warrant expresses it, "bring his body") into court for further proceedings (which will be described later on). The person who is to be arrested should be described by name if possible; if his name is not known, then he ought to be described so that he can be identified with reasonable certainty. This warrant is then turned over to the police, to be "served" by them as soon as possible. When a warrant is handed you to be served, make sure that it is properly filled out with the accused person's name, the offense charged, and so on. If the warrant appears to be proper and all right, it is a complete protection to the police officer who serves it, and he need not be afraid of getting into any trouble, such as false imprisonment, an account of making the arrest.

107. The officer should have the warrant with him when making the arrest. If he is in plain clothes he ought, if he is asked, to show the warrant when making the arrest, but if, by his uniform or otherwise, it is plain that he is a police officer, it will be enough if he describes what is in the warrant. Under

111. In the case of an arrest without warrant for a *misdemeanor* an officer has not quite so wide an authority. If the misdemeanor is committed or attempted in his presence he may *probably* make the arrest, no matter what kind of a misdemeanor it is. Certainly he may (1) if the misdemeanor is a breach of the peace, or (2) if it would be continued if he did not make the arrest, or (3) if the offender was unknown and would get away if he did not arrest him at once. But if none of these is true—that is, it was not a breach of peace, there was no danger of its continuing, and the offender was known to the officer—the Illinois Supreme Court has not yet exactly said he could arrest without a warrant. And we cannot be sure until they have decided it.

In the case of a misdemeanor committed in an officer's presence, in what cases can we be sure that he may arrest without a warrant? When, on the other hand, is it doubtful? Explain to the class that the statute (c. 38, sec. 657) says that an officer has the right to arrest without warrant for *every* misdemeanor, but that this may be against the Illinois constitution which says, "No person shall be deprived of liberty without due process of law."

Statutes, c. 37, sec. 405; c. 38, sec. 657

North v. People, 139 Ill. 81

Conkling v. Whitmore, 132 Ill. App. 574

Hermanson v. Shaffer, 184 Ill. App. 273

People v. Gullman, 211 Ill. App. 373

People v. Scalisi, 324 Ill. 131

112. But remember, what was said just now applied only to misdemeanors committed or attempted in the officer's presence. If the misdemeanor was not committed in his presence, he may arrest without a warrant only if he can show two things: In the first place, a misdemeanor must *really* have been committed—it will not be enough that he reasonably believes one has been committed. In the second place, he must have had reasonable grounds to believe that the person arrested had committed it. Reasonable ground would be, for example, where a reputable citizen told him that such-and-such a man was the one who had just committed the misdemeanor, asked the officer to arrest him, and agreed to come along to the station to sign the complaint.

Where the misdemeanor is not committed in his presence what must the officer be able to show? How does the first requirement compare with the situation in a felony arrest? Must the person arrested actually have committed the misdemeanor, or is reasonable belief enough?

Statutes, c. 38, sec. 657

Lynn v. People, 170 Ill. 527

Cahill v. People, 106 Ill. 621

Shanley v. Wells, 71 Ill. 78

Wood v. Olson, 117 Ill. App. 128

Levin v. Costello, 214 Ill. App. 505

113. If an arrest was originally properly made (whether with a warrant or properly without one) and the prisoner breaks away, he may, of course, be pursued and rearrested without a warrant.

Statutes, c. 38, sec. 661

114. But all of what was said about arresting without warrant for a misdemeanor takes for granted that the arrest was made at the time the misdemeanor was being committed or very soon after. There is probably no right to arrest without a warrant for a misdemeanor committed some time ago.

115. Now let us suppose that the officer is rightly making an arrest (either because he has a warrant or because it is a situation where he does not need one). How much force may he use in making the arrest? (Of course, if the arrest was not rightful he cannot excuse any force; the arrest to begin with would be wrong and so would any force used in making such a wrong arrest.) He can in no case excuse using more force than would reasonably seem to be *necessary* to make the arrest.

Are we talking now of proper or improper arrests? What is one limit that we can right away put on the force that he may use?

But is necessity the only limit? May he always go ahead and do what is necessary to carry out the arrest, even if that means doing very serious injury to the prisoner? In the first place, as to arrest for a *felony*. In such a case an officer may use all the force necessary to make the arrest, or to prevent the escape of the felon, even to killing him, if nothing less could be done. This is so because the safety of all the public

is in danger while the felon is at liberty. The same thing, of course, is true if the felon has already been arrested and is trying to get away. It makes no difference whether the arrest is being made with or without a warrant.

Point out that this authority to use force even to killing is like the wide authority to arrest a felon without a warrant.

Statutes, c. 38, sec. 368

116. If the arrest is for a misdemeanor, it is not quite so simple. If the officer has a *warrant* and yet the offender resists and *assaults* the officer, despite the warrant, he is behaving in such a wrongful way that the officer may, if necessary, kill him, just as was said about killing a felon. But if the officer does *not* have a warrant, he may not kill him so as to arrest him. He may, of course, do everything necessary in his own self-defense. Or if the officer does have a warrant but the offender, instead of assaulting him, runs away, he may not kill him so as to arrest him. In other words, he may kill (if necessary) only either in self-defense or when he has a warrant and is assaulted. In all other cases the force used must stop short of killing, and rather than kill he must let the offender get away.

First be sure class sees difference between self-defense and the force permitted to make an arrest. Officer like any other person may do what is needed to defend self. Our main question now is, How much may he do aside from self-defense, and just to make an arrest? May he ever kill? When? When not? When he may not kill, does that mean he may not use any force *at all*? May an officer ever use more force than necessary?

Statutes, c. 38, sec. 368

People v. Klein, 305 Ill. 141

People v. Scalisi, 324 Ill. 131

117. An officer when making an arrest may call on any man over eighteen years old to help him. If a man so called on fails to help, he is committing a minor misdemeanor by this failure.

Statutes, c. 38, secs. 500, 656

118. Now let us suppose that the person whom the officer wants to arrest is in a house, or room, whose doors he has

locked. What may the officer do to get at him and make the arrest? If he has a *warrant* he should first state who he is and what he wants and demand to be let in. If he is not let in he may then break in; whether the room or house belongs to the man he wants to arrest or to somebody else makes no difference. Where he has *no warrant* he may still break in (after making the same demand to be let in) where his object is either to arrest a felon or to stop a breach of the peace which is being committed in the house. But if he is not trying to arrest a felon or to stop a breach of the peace, he may not break in without a warrant. And getting somebody to open the door by false pretenses and then rushing in is the same as breaking in. Two more things should be mentioned. If a person has been lawfully arrested (even if for a small offense) and breaks away and runs into a house or room and locks the doors, the house may be broken into, no matter what he was first arrested for; the breaking-away has made it bad enough so as to allow the officer to break in. And if an officer is properly in a house or room and is kept from leaving it by the doors being locked on him, he may break out or other officers may break in to rescue him.

When may an officer break in if he has a warrant? When if he has no warrant? Be sure the class remembers that in *all* cases of breaking in he must first state who he is and demand admittance.

Cahill v. People, 106 Ill. 621

119. After a proper arrest has been made what may a police officer do and what must he do? He may handcuff the prisoner if such force is necessary so as to keep him quiet, but not otherwise. He should promptly take him to the police station, not to some other place (as, for example, a newspaper office). What may he do in the way of searching his prisoner and taking property from him? An officer, when he has made a proper arrest, has a right to search his prisoner and to take away from him any property which he used in committing the crime or which he got as a result of committing the crime (that is, things which could be used against him as evidence), or property which he might use in trying to escape or in commit-

ting violence. Other property may not be taken from him. Thus, for example, his money may not be taken away unless it is in some way or other connected with the crime he is charged with. What is to be done with the property, what kind of receipt is to be given, and so on, are questions that you will be told about in your course in "Rules and Regulations."

May a man be arrested simply to search him for a concealed weapon? May he be searched if for some proper reason he has been arrested? May all property be taken from him? What may be taken from him? Where should a prisoner be taken after arrest?

People v. Chrfrikas, 295 Ill. 222

People v. Reid, 336 Ill. 421

People v. Hord, 329 Ill. 117

People v. Swift, 319 Ill. 359

North v. People, 139 Ill. 81

Stuart v. Harris, 69 Ill. App. 668

120. When the arrest has been made and the prisoner brought in, what must the officer do with him? If the arrest was made with a warrant he should, as soon as reasonably possible, bring the prisoner into court, before the judge who issued the warrant. He should then also return the warrant (signed in the proper place) to the court. If the arrest was made without a warrant the prisoner should, as soon as reasonably possible, be taken before the nearest judge, and a written complaint be made against him just like the complaint described a little while ago, on which a warrant was issued. This does not mean that the prisoner must *at once* be taken to court; reasonable delay is all right, and he may even be kept over night without being "booked," if it is necessary, but as soon as possible the complaint should be placed against him. (One of the main reasons why he has a right to be booked promptly is because he cannot get out on bail until after he has been booked.) But what the law certainly does forbid is locking a man up for some time (say several days), or moving him from station to station, without giving him a chance to get legal advice or get out on bail, for the purpose of trying to get a confession out of him, by any method or means at all.

What does "returning a warrant" mean? Before what judge is the warrant to be returned? What does "booking a prisoner"

mean? How soon should this be done? Do you remember anything we had before that had to do with police officers' getting confessions?

Statutes, c. 38, secs. 660, 673

People v. Guthman, 211 Ill. App. 373

Levin v. Costello, 214 Ill. App. 505

People v. Frugoli, 334 Ill. 324

People v. Berardi, 321 Ill. 47

121. Before going on with our account of what happens to the prisoner it should be mentioned briefly that there is another way of getting persons into court besides by the way of arresting them. This other way is by what is called "summons." A summons is a paper notifying the person to whom it is addressed that he must appear in a certain court on a certain day to answer to a charge (described by the summons) against him. If he does not obey this order a warrant will be issued for his arrest. A summons is plainly much less severe than an arrest, because the person summoned does not have to come along to the station to be locked up (if he cannot give bail). A summons is often called a "ticket." When is a summons used instead of an arrest? It is used for violations of city ordinances, for example, motor-vehicle violations. But not in all cases of violations of ordinances. If the violation was a breach of the peace, an arrest is proper. Or if the violator was a known criminal. Or an intoxicated person. Or if the violator could not show clearly and positively who he was. But where a citizen of good reputation, positively identified, violates a city ordinance, a summons should be used, not an arrest. And in the same way a court will issue a summons instead of a warrant for him. It will only issue a warrant if he fails to obey the summons. But a warrant may be used right away, and not first a summons, if the judge believes the violator is guilty and will try to escape if he is merely summoned.

What is a summons? Why is it different from an arrest? When is it used? What does a police officer mean by a "ticket"? Show blanks and explain fully.

Statutes, Cahill, c. 24, sec. 506; c. 37, sec. 438

122. There is still another matter that needs to be cleared up before we can go ahead and describe what happens to the

prisoner when he has been brought before the court, after his arrest. This other matter has to do with what are called "search warrants." In enforcing the criminal law it may, and often does, happen that it is very important to get hold of certain property (or to see if someone has that property or not). It might be needed as evidence, or it might be stolen property, or intoxicating liquor, just to use three common examples. How should an officer go about the job of getting hold of this property? The law does not permit him simply to break into a house and get the property. How then should he go at it? The person who knows about the matter (whether a private person or an officer) should make a sworn complaint in just the same way in which a complaint for an arrest would be made, which was described a little way back. In this complaint he must describe the property that was stolen (or embezzled or got by false pretenses, as the case may be), then he must state that he believes that this property is hidden in such-and-such a place, describing exactly where he thinks it is and why he thinks so, and he must wind up by asking for a search warrant. A complaint for search warrant can also be made to search for counterfeit money, obscene books or papers (which are going to be sold or distributed near a school), lottery tickets, gambling apparatus and supplies, and intoxicating liquor. If the judge is satisfied that there is reasonable cause for the complainant's belief that the things named are to be found there, he will issue a search warrant, that is, a written order directing a police officer to make a search for the property and bring it (and the persons who may be found in possession of it) into court before the judge who issued the warrant. The warrant must say who made the complaint, what the complaint was for (stolen property, etc.), exactly what property is to be looked for, and exactly where search is to be made. The officer to whom a warrant is given to serve should serve it as soon as he can. The warrant says he must make the search "forthwith," which means right away. Perhaps a few hours' delay may be all right, but not one of several days. If he delays too long, the warrant loses all its force, and

a search then would be just as improper as if he had no search warrant at all. He should at once go to the place named in the warrant and state who he is and what he wants (just as where he is serving an arrest warrant), and if he is not let in he may break in. Search must be made in the daytime, unless the warrant is signed by two judges (instead of one only); then it may be made at night. The property seized must be brought into the court, and the judge will declare how it is to be kept. When it is brought in the officer must return the search warrant to the judge who issued it, and must state exactly what property he seized and sign his name.

The law is very strict about search warrants. If they are not all right in all respects, they are no good at all. Remember, the warrant must say exactly what place is to be searched, and exactly what property is to be looked for. If it does not say these things exactly it is no good at all. And when the warrant does describe the place and property exactly, the officer is allowed to search only in that place and to take *only* that property. If he wants to search in any other place or to take along any other property, he must get a new warrant for that place or property. It is very important for your own sake to remember this, because if the warrant was not good or if you went farther than you had a right to go (by searching in another place or by taking other property), you will be harming yourself and spoiling your case. The court will not allow the jury to see or hear of any evidence that was got hold of by an improper search; no matter how clearly it may show that the prisoner was guilty, if it was got by an improper search it cannot be used at all. So for your own sake get a search warrant if you need to make a search, and then stick to what it tells you to do.

Show class blank forms of the complaint and the warrant. Drill them in what each must contain. (*Complaint*: Sworn to; exact description of property [stolen, intoxicating, obscene, etc.]; exact description of place where; reason for thinking it there; ask for warrant.) (*Warrant*: Name of complainant; statement of what the complaint was about; exact description of property; exact description of place where; order to bring before the court the property and

anybody in possession of it.) When may force be used to get into a house? How soon should warrant be served? Must arrest warrants be served as quickly as search warrants? Should search be made in daytime or nighttime? What should be done with property found? What property may be taken? What places may be searched? What is going to be the result if an officer goes beyond what the warrant directs?

Statutes, c. 37, sec. 410; c. 38, secs. 691-97; c. 43, secs. 30-31, 66-69
People v. Wiodeman, 324 Ill. 66
People v. Fetsko, 332 Ill. 110
People v. Holton, 326 Ill. 481
People v. Foster, 250 Ill. App. 520
People v. Pederson, 248 Ill. App. 462
People v. Jackson, 246 Ill. App. 248

123. We have now seen how a person suspected of having committed a crime, big or little, is got before a judge (and with him, perhaps, evidence got hold of on a search warrant). What happens next? Will the trial start right away? If the prisoner is charged with a felony the answer is "No," several more steps have to be taken before he can be tried, and these steps will be described very soon. If it is a misdemeanor or a violation of a city ordinance, the trial may or may not happen right away. This depends on whether the prisoner wants a jury to decide his case or is willing to leave it to the judge to decide. If he is willing to leave it to the judge, the trial will begin at once (giving up his right to have a jury decide on his case is called "waiving a jury"). What happens at the trial will be told to you later on (sec. 135 and following); the only difference between this trial and the one that will be described to you later on is that here the judge does both his own work and that of the jury besides.

124. If the prisoner says he wants a jury trial (instead of leaving it to the judge to decide), the judge will have to turn the case over to some other judge (also of the Municipal Court) who has a jury with him, and the case will be taken care of by them. Of course, sometimes several days will probably pass by before they will get around to it. A police officer has several duties in regard to taking care of the prisoner until then and getting him, the evidence, and the files (that is,

papers having to do with the case) over to the jury court and having them all on hand on the day which has been set for the trial. Just what these duties are you will learn in the course on "Rules and Regulations." Finally, on the day set, the prisoner will have his trial. But what happens then is just like a trial in a felony case, so instead of describing it here we shall wait and describe a trial later on (sec. 135 and following).

125. So a misdemeanor case is handled without any more formalities after the prisoner is brought into court, either by the judge alone, at once, or by a jury trial some days later. There is no reason for any more formality. Everybody concerned, the prisoner and the state's attorney—they all—have information enough so they can go ahead at once. But in a felony case it is different. It is likely to be more complicated, and in any case the punishment is so much more severe (penitentiary or death instead of fine or jail) that it is necessary to be specially careful that no mistakes are being made, and so several more steps have to be taken before we get around to the trial. The trial cannot be started right away simply on information got hold of from the evidence collected by the officer. What these extra steps are will now be described. But we can say right now that they are difficult enough and hard enough so that often a state's attorney, when he is not entirely sure that he has evidence enough, is glad to give up the chance to get a prisoner convicted of a felony, and instead make sure of getting a conviction of a misdemeanor, where these added steps do not have to be taken. For example, the prisoner is charged with larceny of more than fifteen dollars' worth of goods, a felony. The prisoner agrees to plead guilty of stealing the goods if the value will be said to be only ten dollars, a misdemeanor. This is called "waiving a felony."

When an officer brings his prisoner into court can the trial start without more steps being taken? If it is a misdemeanor charge will the trial be by judge or jury? Who decides? What is "waiving a jury"? In what court will the trial in either case be? Can a trial for a felony be begun at once? What do you understand by "waiving a felony"?

Statutes, c. 37, sec. 382

126. When a prisoner charged with a *felony* is before the judge who issued the warrant (or if the arrest was without a warrant, then when he is before whatever judge he may be brought before), the judge will examine the state's witnesses and, if the prisoner has any witnesses in court, his witnesses too. This is called the "examination." If, after listening to the witnesses, the judge thinks that no offense was really committed, or that there is no probable cause to think the prisoner did it, he will order the prisoner "discharged," and that ends the matter right there. But if, on the whole, he thinks that the offense probably was committed by the prisoner, he will prepare a written order, called a "mittimus," describing the offense with which the prisoner is charged and commanding the police officer to "commit" him (that is, to take him) to jail and deliver him to the jailer and command the jailer to take him in and keep him until further orders. The officer leaves the mittimus too with the jailer.

What is an "examination"? What happens there? Must the judge be convinced that the prisoner is guilty? Has an examination anything to do with misdemeanors? What does "discharging" a prisoner mean? What is a "mittimus"? What does "committing" somebody mean? What does the officer finally do with the mittimus?

Statutes, c. 38, secs. 779, 781, 786, 789

127. After the prisoner has been examined and committed to jail his case will be sent up to the grand jury. But before we can describe what happens there we must describe one situation in which a case may get straight to the grand jury without any of the steps we have described just now (the examination, commitment to jail, etc.). This is where the grand jury gets the case from an official called the "coroner." Whenever any person is found dead and there is any reason to think that the person came to a violent death (accidentally or intentionally), the coroner must be called and he will take charge of the body. He then organizes a jury of six persons, and this jury then investigates how the person came to be killed and who did it and in general all the facts. This investigation is called an "inquest." If they finally decide that there

was nothing wrong they say so, but if they have found anything wrong they describe just what it is in the report, called a "verdict," which they make to the coroner. If they name anybody as the killer, or as mixed up in the killing as an accessory, and that person is not already under arrest, the coroner can issue a warrant for his arrest, just as if he were a judge. When that person is arrested he will, on the coroner's orders, be at once committed to jail and his case sent to the grand jury. There is no need to protect the prisoner by giving him an examination, since the coroner's inquest has already shown that there is enough ground for suspicion to take it on to the grand jury.

Can a case get to the grand jury only by way of examination and commitment by a judge? In what kind of cases alone does a coroner act? What does he do? How large is a coroner's jury? What does the jury do? What is their investigation called? What is a "coroner's verdict"? What does the coroner do after the verdict? Why doesn't the prisoner get an examination?

Statutes, c. 31, secs. 10, 15, 24

128. We have now described everything up to the time when the case got to the grand jury (either directly from the coroner or by the way of examination and commitment). Now what happens before the grand jury, and what is a "grand jury"? A grand jury is a group of citizens, not less than sixteen and not more than twenty-three, whose work will now be described. In every one of the felony cases which they are to consider the state's attorney writes out a very careful, exact, and detailed description of the offense which the prisoner is charged with having committed. This paper is called a "bill." The bill is carefully read by the grand jury, and they then examine the state's witnesses to see if there is reason to believe that the bill tells the truth. They do not examine any defense witnesses—just witnesses against the prisoner. Their meetings are secret and no outsiders are allowed to be present. If, when they have examined the state's witnesses, they do not think that the bill is true, that ends the matter, the prisoner goes free. But if they (or not less than twelve of them) think that the bill probably tells the truth, they write

on the bottom of it the words "true bill" and sign their names. From then on this paper is not called a bill any more; it is now called a "true bill" or an "indictment." "True bill" and "indictment" are the same thing.

As was said above (when the bill was described), an indictment is a very exact description of the facts of the offense. If it is not complete in every way the case will break down. The reason for insisting on this exactness is because of the purpose for which we have to have indictments. There are three purposes: To let the trial court know what kind of case is coming up for its consideration. To let the accused know what charge he is going to be called on to answer, so he can get his case ready. To have on record just what he was tried for, so that if ever there should later be any question as to whether he had already been tried for exactly that offense or not there would be a way to find out. Plainly, for all of these purposes we have to have a detailed and exact indictment.

How large is a grand jury? What is a "bill"? What is the difference between a bill, a true bill, and an indictment? How many grand jurors must vote for a true bill? Are all witnesses heard by the grand jury? Are meetings public? What happens if they vote it not a true bill? Why does an indictment have to be so detailed?

Statutes, c. 38, secs. 702, 711, 714, 720

When the grand jury has voted the indictment, the felony case is at last ready for trial. But before we can describe the trial a number of other things have to be explained.

129. Sometimes a grand jury may happen to learn of a crime's having been committed even though nobody has been arrested so far. Or perhaps some person was arrested and examined and his case put up to the grand jury, and when they considered it they decided that there was a second person who should also be indicted. In both of these situations the grand jury can vote an indictment and so itself begin the case against him. So it is not always true that the grand jury only acts after many other steps—complaint, issue of arrest warrant, arrest, examination, commitment to jail—have all been taken. Sometimes the grand jury may (because of facts it

learns in its inquiries) be the first to act. In such a case as soon as the grand jury has voted the indictment the person indicted must be arrested. For this purpose a written order to make the arrest is sent out to the police by the court. For your purposes this order is about the same as the arrest warrant which was described a while ago. But this time the order is not called a warrant; it is called a "capias" or a "bench warrant" (depending on some differences not important enough for us to notice). When he has been arrested under the capias or bench warrant the prisoner is sent to jail to wait for trial. From then on, of course, he is no different from someone who was first arrested and then indicted, instead of the other way around.

This paragraph is not very important. Do not spend much time on it, unless you have plenty of time. Tell class they do not need to know exactly what "capias" and "bench warrant" mean.

Statutes, c. 38, secs. 724-25

130. From what has been said so far a person might get the idea that a man could be arrested for a crime and be tried for it, no matter how long ago he did it. This is not so. There are time limits. The time limit for felonies (except murder, manslaughter, arson, and forgery) is three years. That is, the indictment must be voted inside of three years after the felony was committed. But for murder, manslaughter, arson, and forgery there is no time limit; no matter how long ago they were committed there can still be an indictment. For misdemeanors the time limit is shorter; the prosecution must begin within one year and six months after the offense was committed. For a few very small crimes, such as drunkenness, the time limit is even shorter. Prosecution must be begun inside of thirty days after the time of being drunk, or it will be too late. But in counting up the three years or the eighteen months we do not count any time during which the offender was in hiding or was out of the state.

What is the time limit for criminal proceedings? Why is time in hiding or out of the state not counted?

Statutes, c. 38, secs. 628-32

131. So far we have talked as if a person who was arrested for a crime had to stay locked up until his trial came round. This might mean a long wait, especially if it was a felony charge, and as he may turn out to be entirely innocent such a time in lockup would be very unfair. On the other hand, simply letting him go, telling him to be on hand for the trial, would plainly be much too easy on him and very unwise, as he may be guilty. So the law has worked out a system half-way between the two. It says he can go free until the trial, if (but only if) he can give some sort of security that he will come back again when he ought to. This security is called "bail," and we are now going to study some of the questions that come up about giving bail.

What do you understand by "bail"? Why do we have such a thing as the giving of bail?

The prisoner and a number of other persons who are willing to do this for him make a written agreement with the state of Illinois that the prisoner will be in court when he is supposed to, and if he is not that they will pay a sum of money fixed by the judge (called the "amount" of the bail) over to the state. To make sure that they will really be able to make this payment the persons signing the agreement (called the "bond") must hand in an exact list of real estate that they own and that the state could take over if the prisoner did not appear and they did not pay the amount of the bail. Or they may hand over cash at once, as a security, to be handed back if the prisoner appears as he should. The bail bond (that is, the agreement) must say who the prisoner is, what offense he is charged with, and when he is to appear and exactly where. If the persons who have signed the bond become afraid that the offender may run away and leave them to pay the bill, they may at any time have him arrested and locked up again. That ends their bond, and he will stay locked up unless he can find others who will sign a new bond for him. If the offender is not on hand at the time named for him to appear, the amount of the bail has to be paid to the state. Almost no excuse will do for his not being there. There are, though, a very

few excuses that will be good enough. Serious illness of the offender, or an unavoidable accident, will excuse if the offense was merely a violation of a city ordinance. But if it was a state misdemeanor or a felony there are only two excuses that will explain his not being there and save his "bondsmen" from having to pay. One excuse is that he is already locked up in some jail or penitentiary in Illinois (and so cannot come); the other is that he was kept from being there by "act of God." Just what "act of God" means is not settled, but certainly it includes where the offender is dead. It is not a good excuse that he is locked up in another state.

What is the name of the agreement to produce the prisoner? What do we call the people who sign it? Do they have to show that they own any property? What happens if the offender does not appear? Are there any good excuses for his not appearing? If the bondsmen become scared is there anything they can do to be on the safe side? If he does not appear and they do not have a good excuse how can we tell how much they will have to pay? What is this figure called?

Statutes, c. 38, secs. 612, 615-16, 619-23, 627, 722, 724-25, 728

132. From what has been said it is plain that making this sort of an agreement with a prisoner and his bondsmen is a matter of a great deal of importance and responsibility. For example, how high should the amount be set? If the bondsmen do not offer a cash deposit is the real estate which they own valuable enough to come up to the amount and cover it with any to spare? These are questions of some difficulty, and so the law gives to only a few persons the authority to make such an agreement. Who, then, may make such an agreement? Any judge may, of course, whether the offense with which the prisoner is charged is a violation of a city ordinance, a misdemeanor, or a felony. Besides that, a police officer of the rank of sergeant or higher may make such an agreement (or "admit to bail," as the law calls it) if the offense was a violation of a city ordinance or a misdemeanor (but not if it was a felony). But if the police sergeant does so he must follow certain rules of the Municipal Court. These rules tell him exactly what the amount of the bail must be in each offense, and what kind of property to take.

What is "admitting to bail"? Who may admit to bail in a felony charge? Who in lesser charges? When a desk sergeant admits to bail how does he know what amount of bail to ask?

Statutes, c. 27, sec. 406

Municipal Court Rules, secs. 23-28

133. As was said when we first began with bail, it is an arrangement by which a person who, for all we know, may turn out to be innocent, has a chance to be free until his trial begins. Since he is supposed to be innocent, or at any rate may be, he has a right to be set free on bail, if he can get satisfactory bondsmen. If he has these the judge *must* admit him to bail; he has no choice. In fact, a refusal by the judge would probably be a criminal offense. And the judge cannot get around this by setting the amount so high that the prisoner cannot possibly raise it. He can only set it at the figure needed to make sure that the prisoner will appear all right. There is one exception though. If the prisoner is charged with an offense punished by death, where there is a strong case against him, he may be refused bail, because the chances are too great that he would run away no matter what the amount of bail was.

May a judge refuse to take bail? When? How high should the amount be?

Illinois Constitution, art. ii, sec. 7

Statutes, c. 38, secs. 609, 682

134. Sometimes there is reason to be afraid that a witness who is going to be needed at a trial will run away. If so he may be arrested and either kept locked up or set free on bail, just like the offender himself.

TRIAL

135. Now at last we are ready to see what happens at the trial, after the grand jury has voted the indictment. The first thing that happens is what is called the "arraignment." The prisoner is called before the Criminal Court (the trial of a felony is in the Criminal Court, as the Municipal Court can only try for misdemeanors) and the whole indictment is read to him. Then when that is finished he is asked, "Are you guil-

ty or not guilty?" Then he may do any one of several things. He may say that he is guilty ("plead guilty," as it is called). If he does that the judge must carefully explain to him just what pleading guilty means and what the result to him may be if he sticks to it. Then he is asked again. If he still pleads guilty it is then just as if he had been tried and the jury had found him guilty. Later on we shall see what happens then.

136. Or instead of pleading guilty, he may plead that although he committed the crime he has already been convicted of it and served his time, or was convicted and got a pardon. Or he might say that he was already tried for this same offense and was found not guilty. To back up this kind of a defense he would have to show the indictment in the old trial and make clear from it that that was the same offense for which he is now being tried. If that is true it is a good defense as the government can only put a person in danger of a conviction once for each offense; if he is found not guilty the first time the state's attorney cannot try all over again some later date.

137. Or, finally (and most important), he can plead not guilty; that is, he can say he never did commit a crime the way the indictment says he did. Maybe he will try later on at the trial to back this up by showing that he did not do the act, and that somebody else did it. Maybe he will admit that he did the act but claim that it was in self-defense, or defense of somebody else (and so he did not have the wrongful kind of intent). Maybe that he was insane. Maybe that the victim was willing and gave his consent. All of these and many more will back up a plea of "not guilty" because they all, in one way or another, back up his claim that he is not really guilty of committing a crime of that sort, the way the indictment says he is.

138. If he refuses to say anything at all, that is, refuses to make any sort of plea, the law says that that is to be taken as if he pled not guilty.

What different pleas can the defendant make? What is their difference? What does "pleading not guilty" mean? In what court is a felony tried? A misdemeanor?

Statutes, c. 38, secs. 731-33

139. Let us suppose that the "defendant" (that is, the prisoner) pleads not guilty. The trial may now begin at once or may be delayed a while, to give both sides a chance to get ready. But anyway, whether it begins at once or not, we are now up to the trial itself. There is only one thing that can still stop it. If the defendant should go insane while waiting for the trial (or during the trial) everything has to stop still right there. This is because, being insane, he could not tell his lawyer how to defend him and bring out his side of the story, so it is necessary to wait until he can recover his understanding.

140. When the trial begins, and all the way through it, the defendant must be in the courtroom. Nothing can go on while he is away, because he has a right to know exactly what is going on so as to object to it if he is entitled to object. For more or less the same reasons he has a right to insist that every witness against him must say what he has to say while the defendant can hear him and, if the witness is not telling the truth, the defendant can show him up. All these advantages to the defendant are only fair, because according to our system of law a man is taken to be innocent until he is proved to be guilty. Bear this in mind and it will help you to understand many things in the law. Until we know he is guilty we assume that he is innocent.

What does "defendant" mean?

141. When the trial begins the first thing that is done is to pick the jury (unless the defendant is willing to waive a jury and let the court decide on the facts—waiver has already been explained in sec. 123 where we were talking about misdemeanors; the same things are true now when we are talking about felonies). Sometimes picking the jury takes a long time as each side is entitled to a jury that will give it a fair deal, and it may be a hard thing to find such a jury. When the jury has been picked, the state's attorney explains to them the facts as he expects to prove them. Then he brings in his "witnesses" who tell their stories. Each witness, when he finishes, can be asked questions by the defendant's lawyer who will try, of course, to show that the witness did not know what he was

talking about or just imagined a part of it, or was not telling the truth, and so on. This is called a "cross-examination." When all the witnesses for the state have spoken (or, as the law calls it, have "testified"), the defendant's lawyer gets up and tells his side of the story, what he expects to prove by witnesses, how he expects to clear up and explain what the witnesses against the defendant said, and so on. Then, one after the other, the defendant's witnesses testify. Each one when he finishes can be cross-examined by the state's attorney. When all the witnesses for the defendant have finished, the state's attorney can call some more on his side, if he wants to get some more explanations in. If not, the lawyers on both sides will make their final speeches to the jury, to explain to them what they have just heard and to try to make them see it against the defendant (so far as the state's attorney is concerned) or for the defendant (so far as the defendant's lawyer is concerned). But before we can get to these final speeches we shall have to spend a great deal of time learning things about the witnesses, how they testify, and what kind of evidence they bring.

142. In the first place, about witnesses, it is not up to a witness to decide whether he wants to bother about testifying or not, or whether he knows enough to make it worth while. If either side (the state or the defendant) wants him to testify he must come; the court will issue an order commanding him to come. This order is called a "subpoena," and if he disobeys he can be locked up as a punishment. The order may also tell him to bring along his account-books, papers, and so on.

But there is one witness who may know a lot about the matter but who cannot be made to testify unless he chooses to, and that is the defendant himself. If he wants to, he may. If he does not want to, he does not have to, and nobody is allowed to draw any conclusions from it. The reason for this rule is that it seems unfair to make a man be a witness against himself in any way. But if of his own free will he decides to testify, he is then treated like any other witness, and of course can be cross-examined by the other side.

Why would the trial have to be put off if the defendant went insane? Can the trial go on while he is away? Why must witnesses testify in court? What is a "jury"? Can a jury be "waived"? What does that mean? What does "testify" mean? "Cross-examination"? Which side starts the case? If a witness will not come to court to testify what can be done about it?

Statutes, c. 38, sec. 735

143. Now as to the witnesses and what they testify to (their "testimony," as it is called). Remember, when the case starts the jury does not know a thing about it; in fact, a man cannot be on a jury if he knows anything about the case to begin with. They must get all their information while they are in the courtroom. And at the end of the case they must know all that there can be known about the case. All this information that must be handed out to them is what is called the "evidence" in the case. Anything that helps the jury get hold of the information that they need is good evidence.

Certain rules must be followed regarding the way of bringing evidence before the jury and what may be told before the jury. These rules sound very hard to understand, but they turn out not to be so hard if it is remembered all along that we are simply trying to be sure that the jury will get a true, reliable idea of what has happened, and that the rules are planned all along to help bring this result about. So that you may understand this, the reason for each rule will be explained to you as we go along.

144. Perhaps the plainest and easiest rule is that the evidence must be limited to things that help the jury decide whether the defendant is guilty or innocent. Things that have nothing at all to do with that question will only waste their time and maybe mix them up. For example, the defendant is charged with robbery (which is taking something from the person or another by putting him in force or in fear). Evidence that the defendant had a gun in his hand, that he had the victim's watch in his pocket, that the victim was scared, and so on are all good. But evidence that the victim wore a brown suit and was just coming from the movies is bad, because it does not show anything worth knowing. So evidence

that does not help matters in any way is not allowed by the judge. Lawyers call such bad evidence "irrelevant."

Ask for and give other examples of irrelevant evidence; of good evidence. Why is irrelevant evidence shut out from the jury?

145. But that is not all. It is not enough that the evidence must have something to do with the question. There are some more requirements. Suppose, for example, in a robbery case that the officer wants to testify that John Brown, a citizen, told him that he saw the defendant make the stick-up. This evidence is bad; the officer will not be allowed to testify that Brown said that. If the state wants Brown's testimony it ought to bring Brown into court to do his own talking, not have somebody else say what Brown said. There are many good reasons for that. The officer may have misunderstood him—he may have only said, "I saw *somebody* making a stick-up." Or Brown may have said it just to be important, and if he had to repeat it after having sworn to tell the truth he might not be so sure. And anyway a defendant has a right to have all the witnesses against him tell their story to his face, so he can cross-examine them and maybe show that they were lying. Perhaps he could show that of Brown. For all these reasons and others besides the law will not as a general rule (there are exceptions which we shall get to later) let a witness tell what others have told him or what he heard others say. He must stick to what he personally knows, and let the others tell their own story. This kind of bad evidence is called "hearsay," because the witness does not know it himself but only heard somebody else say it.

What do you understand by "hearsay evidence"? Give examples. Why is it bad?

For more or less the same reasons, if it is important to know what some letter or other writing said, the thing to do is to bring that letter or other written thing into court and read it there, not to have somebody tell what, so far as he remembers, was in the letter. Let it speak for itself. Only if it is lost or destroyed can somebody say what he remembers was in it. Then there is no other better way possible.

A witness (including, of course, a police officer) who has forgotten some of the matters about which he must testify is allowed to freshen up his memory by looking at memoranda or notes if he made them himself at the time the things in them were happening. But it is not a good thing to do—he should avoid it. The other side naturally will say that his testimony cannot be relied on if he doesn't remember things clearly enough to describe them. He should read his notes and remember before he is called as a witness, not after. But if he cannot help it, it is better to use his memoranda than to get mixed up. When a memorandum has been used the lawyer for the other side has a right to see it and the witness should promptly hand it to him. If he hesitates it looks as if he had something to hide.

Why is it bad evidence to say what a letter said if the letter itself can be got hold of? Can a police officer use a memorandum to freshen his memory?

146. When the reasons were given why hearsay evidence is bad, it was said that there are a few exceptions in which it is all right to report in court what somebody else said. One case that may look to some people like an exception but that really is no exception at all is where a person is being tried for false pretenses. Of course, anybody can testify as to what he (the defendant) said to the victim. That is because we are not simply interested in whether the things he said were true or not (perhaps we already know that they were not), but we are interested in knowing whether in fact he said those very words and so got the property. That is, the things he said are not merely evidence of some wrong thing—they are *themselves* the wrong thing that we are after. But it would be bad if a police officer tried to testify that John Brown, a citizen, had told him that he had heard the defendant say "so and so." Let John Brown come in and himself tell us what he heard the defendant say.

Why isn't this a real exception to the rule against hearsay?

147. There are some real exceptions, though, to the rule against hearsay, that is, some cases where for one reason or

another the law allows evidence that really is just plain hearsay. For example, the defendant is being tried for manslaughter by the careless driving of his auto. The state has a witness who testifies that just the moment after the accident happened he heard a citizen, John Brown, say in great excitement, "My God! He didn't even have one hand on the steering wheel!" Plainly this is only hearsay, yet it is good. What is the difference, and why is this good? It is good because the statement was made so soon after the accident that Brown had not yet had time to figure out a lie, and anyway he was so excited that he probably spoke the truth without thinking it over. That cuts out two of the big objections to hearsay. But it also means that this exception cannot be carried very far—we can only let in things that others said right at the time of the exciting event. If it had been an hour after the accident when Brown told an officer, "I saw him—he had both hands off the wheel," it would be bad hearsay if the officer tried to tell of it in his testimony. It was not said on the excited impulse. Brown would have to come into court himself and tell his story.

Make sure the class understands this exception, and that it only applies to things happening at the moment of the crime or so soon after as to give no one time to figure out a lie.

148. Then there is another case where it is even plainer that the evidence is hearsay, and yet it will be good. This is what is called the "dying declaration." This exception is limited to homicide cases (murder and manslaughter). If in such a case the person who was killed shortly before he died made a statement about what happened (who did it, the circumstances, etc.), that statement can be shown in court, if, but only if, it can be shown that the victim knew he was certainly going to die very soon and had no hope at all of recovery. In such a situation it is thought very unlikely that a man will tell a lie, and that is why we will listen to his declaration even though there is no chance for the other side to cross-examine him. But the declaration can only be used in a homicide trial of the man named in the declaration—nowhere else.

And it can only speak about the things that the dead man knew of himself, as happening at the time of the accident. It must not, for example, give mere opinion of his, or hearsay from him, such as "Just before the bullet hit me I heard John Brown say, 'Look out, Pete is going to shoot!'"; it must be just what he himself knew. The declaration may be merely spoken, but to avoid any confusion it is better to get it in writing and read over to the dying man. If he has strength enough to sign it that is best of all.

Get a form of dying declaration and read it to the class. In what cases only may a dying declaration be used? Who is the only person who can make the declaration? What must the person making it know for sure? To what should its contents be limited? Must it be written and signed? Why does the law allow dying declarations to be used, even though they are hearsay?

North v. People, 139 Ill. 83

149. After thinking over the things just spoken of, it will probably be quite clear why witnesses are not allowed to give their opinion as to matters. A witness may and should tell what he saw; it is the *jury's* job to form an opinion on these facts. For example, in a trial for assault and battery, a witness who got there after the fight should not say that in his opinion there had certainly been a fight. He should describe what he saw—chairs kicked over, rug pushed against the wall, a broken picture, and so on. He should let the jury do its own deciding as to what all that means. This rule about opinions is only one more example of the big rule running all through the matter of evidence; that is, that a witness has just one job; to tell what he himself knows and no more. He must leave all other jobs to other people—to other witnesses the job of telling what *they* know; to the jury the job of forming an opinion on the evidence and deciding what it really means.

Why is a witness' opinion not relevant?

150. The rules so far explained are plainly common sense. There is nothing mysterious or hard about them. If a person will just bear them in mind he will find that a great deal of

what goes on in court is perfectly clear to him. They cover most of what goes on. But a few things that are likely to turn up must still be described. One of the most important of these matters that must still be explained comes up whenever the state tries to show that the defendant on some other occasion committed a crime, or that he had a bad reputation. May the state show such a thing? No, generally it may not. It is of course true that such evidence of the defendant's being a trouble-maker and a bad actor may fairly enough help decide whether he is the man who committed this particular offense for which he is being tried. But the danger is that the jury will be prejudiced against him; they will forget that their only job is to decide whether *he* committed *this crime*; and may decide that he is guilty mainly because somebody told them (perhaps not truthfully) that some other time he did something else that was wrong. That is why as a general proposition the state is not allowed to mention other crimes of the defendant, or his bad reputation. But there are some exceptions. They will now be explained.

Why can't we have testimony as to the defendant's bad reputation—it helps us decide whether he is the sort of person likely to commit a crime, doesn't it? Or as to other crimes that he committed at other times?

In the first place suppose the defendant himself brings the matter up by having witnesses tell what a well-behaved man he was and how unlikely it would be for a fellow like him to do such a thing. Then, since he himself started it, he cannot complain if the state goes ahead and shows what a general rascal he really was.

Or suppose he is being tried for one of those crimes that get more severe punishment on second conviction than on the first. Of course it will be all right then to show the earlier conviction, as that is the only way to show that this is a second offense. A certified copy of the first indictment and conviction can be shown to the jury to prove to them that this is the second offense.

Or, as another example, suppose that the defendant in a

murder case puts up the argument that somebody else did the killing. The state will be allowed to show that he had had many fights with the dead man and had several times tried to kill him. Such evidence would not just prejudice the jury against him because he was a bad man. It would really help them decide whether he, and not somebody else, did this killing.

Or again, the charge is receiving stolen property, knowing it to have been stolen, or passing counterfeit money, knowing it to be counterfeit. How are we going to prove that he knew that the goods were stolen or the money counterfeit? Plainly one of the best ways of showing it would be to show other times when he had done the same thing. As said before, it simply comes to this: We cannot show that the defendant was a bad man merely to get the jury down on him. But we can show anything which clears up this particular case, and if what we show happens to be itself a crime, he is simply out of luck; it is good evidence just the same because it helps clear up this case.

Why may evidence sometimes be good, although it will show that the defendant was a rascal? When? Can anybody think of other examples? (Defendant claims killing was accidental—or in self-defense; proof of previous attempts to kill. Defendant claims his house was accidentally burned; proof that this was the third house in which he lived that had burned and that he collected insurance each time. More can easily be thought up.)

Painter v. People, 147 Ill. 444

151. Now as to what the law calls "confessions" and "admissions," and first as to confessions. For one reason or another a person who has been arrested may come clean with it. He may tell all the facts and so show completely that he is guilty. Such a statement that he is guilty and telling all the facts about the crime is called a "confession." It is plain that there could hardly be any better evidence for a jury to consider than a confession. Nobody knows the facts better than the defendant. Nobody would be less likely to lie so as to make him seem guilty when he was not than he himself. So a confession is fine evidence for the state to have. But now we

come to one big and very important limit on confessions: A confession must be absolutely free and voluntary. That means that the prisoner must have made it of his own accord without any pressure on him at all. The courts are *very* strict in this. If the state cannot show that it was made by him of his own free will, the jury will not be allowed to hear a word of it. It is not free and voluntary if he made it because of violence done to him or threatened to be done, or because he was afraid of something or other. The courts go even farther. They say it is not free and voluntary if he made it as a result of some promise or hint that he would get off easier by making it—he may have lied so as to get the promised thing. It comes to this—the confession must have been wholly and simply of his own accord, with absolutely no outside inducement, either of force or of fear or of hope of some advantage. When a confession is made, several persons should be present. They should try to remember as exactly as they can just what the prisoner says. But it is much safer and better to have it taken down in writing and when he is all done have it read over to him and then get him to sign it.

What do you understand by a “confession”? Must it be in writing? Is it better to have it in writing? Why? What about the confession if the prisoner was shown the goldfish? If he was promised a light sentence? Why do these things make the confession bad? If your prisoner wanted to make a confession would you send everybody else out of the room? Why not?

People v. Frugoli, 334 Ill. 324

People v. Berardi, 321 Ill. 47

People v. Swift, 319 Ill. 359

152. Next as to an admission. What is an “admission”? An admission might very well be called a confession’s little brother. A confession covers the whole thing, everything the indictment says, and so shows, of course, that the prisoner is guilty. An admission only admits the truth of one or two (or more) particular facts. For example, in a murder case the prisoner’s statement, “Yes, I killed him when his back was turned; I wanted to rob him,” would be a confession. But if he only said, “Yes, that gun you found lying near him is

mine," or, "Yes, that handkerchief with blood on it belongs to me," that is only an admission. He has not said anything that shows he is guilty. In fact, he may try the next minute to show that he lent his gun to the dead man and that he cut himself while shaving. But by his admission he certainly has helped the state's case against him somewhat. Or instead of his *saying* something as an admission, somebody else may have said something in his hearing under circumstances where it would seem only natural for him to speak up and deny it; then, if he keeps *silent*, that is an admission. For example, somebody says in his hearing, "That is his gun and his handkerchief," and he says nothing. But if his silence can be explained (for instance, if he was afraid to speak up), the silence loses its meaning.

What do you understand by an "admission"? Can silence be an admission? When and why?

153. Besides the fact that a confession covers everything and an admission only a single fact (or maybe a few facts) there is one more practical difference between them that is worth knowing. As was said before, a confession is absolute poison to the defendant's case; if the jury hears it, it will probably settle his case right there. But suppose that the confession turns out to be not free and voluntary, or even to have been forged by interested persons. The judge might tell the jury not to pay any more attention to it. But we know that they can't and won't forget it, just the same. Yet that is unfair to the defendant because it means that the confession is really working against him even though it was bad. To guard against this result, when a confession is brought into court, the defendant can, if he wants, first have the judge, out of the jury's hearing, listen to the arguments for and against its being good. Then, if the judge decides that it is bad, the jury will never hear a word of it at all. But an admission is not so dangerous to the defendant's case, and letting a false or doubtful one in is not so serious. Therefore in the matter of admissions the state can bring them in before the jury, and if the defendant wants to get away from them (by explaining,

for example, that he never said those words, or that he meant something else when he said them, and so on) he must wait and make his explanation when his turn comes. He cannot (as in confessions) ask the judge to hear him first and then maybe keep the jury from ever hearing the admission at all.

Does the class understand the difference? Why is it important?

154. You have now been told the things that you need to know about in court. They are not very hard to learn once you remember that all these rules are to help in getting safe, reliable information to the jury. The jury must learn about the whole case, therefore the evidence must cover everything. There must be evidence as to *every fact* which forms part of the offense. That is why you need to understand clearly the things we had in the first part of our course, where we saw what facts combine to make up the different offenses. When your case comes up in court you are going to need evidence on every one of the facts that make up the crime that the prisoner is charged with. For example, if your prisoner was charged with receiving stolen property you would need (1) evidence that he received the property, (2) evidence that it had been stolen, (3) evidence that he knew it had been stolen, and (4) evidence that he did it for his own gain or to keep the owner from getting it back. That covers everything, but every one of these points has to be shown by good evidence. If you know what the things are that make up the crime charged, and if you have good evidence as to every one of these things, you need not worry any more about the rules of evidence; you are safe. There is one more point on evidence, though, which is going to be explained to you now, not so much because you need to know it as police officers, but because people may mention it and you ought to know what they are talking about. Evidence is sometimes divided into two classes, direct evidence and circumstantial (also called indirect) evidence. Direct evidence is evidence which the witness knows directly from one of his own senses, what he saw with his own eyes, what he heard with his own ears, what he learned by his own

sense of taste or touch or smell. On the other hand, circumstantial evidence only indirectly gives us any information. For example, the dead man held in his hand a piece torn out of somebody's shirt and it can be proved that a piece exactly like that was missing from the defendant's shirt. Or footprints show that the burglar had a queer-shaped patch in his left shoe. The defendant's left shoe has just such a patch. Such evidence as this connects the defendant very clearly with the crime—in fact, it may be clear enough to make the jury find him guilty. Yet it plainly is very different from direct evidence. But both circumstantial evidence and direct evidence are good. All you need to do is to bring in *good* evidence. Then if the lawyers want to divide it up and give it fancy names ("direct," "circumstantial," "tangible," "intangible," and so on), let them.

Here impress once more on the class the simple problem we are after here: How the jury can best get the information they need, and that all our rules are merely to bring that result about.

155. When the evidence has all been heard, the state's attorney makes a speech to the jury in which he talks about what the testimony of the witnesses has shown and tries to convince the jury that that shows that the defendant is guilty. The defendant's lawyer then answers and tries to make them see that he is innocent. Then the state's attorney has a second chance to speak to the jury. When he has finished the judge will explain to the jury what the law is in a case like this. He will not say what his opinion about the facts is, or which witness, in his opinion, told the truth and which one lied. But he will tell them just what the law is in that kind of a case. The jury will then be taken away to talk it all over and come to a decision. This decision is called a "verdict." The verdict, of course, will be either "guilty" or "not guilty." If it is "not guilty," that result is called an "acquittal"—the jury is said to have "acquitted" the defendant. That ends the case for good. He goes free. If they bring in a verdict of "guilty," that result is called a "conviction"—the jury is said to have "convicted" the defendant. If he has been convicted, the defend-

ant can do one or the other of two things. Either he can give up the fight and take his medicine, or he can try to show that some mistake (called an "error") was made and that he ought to have a new, correct trial (or maybe ought to go entirely free). This is called "appealing a case," and you will remember that it was mentioned in the very beginning of our course. If he wins on his appeal, he will get his new trial or go free, as the Supreme Court decides. But if it decides against him, then he cannot do anything any more—he must take his punishment. This, as we have seen, may be a fine or jail, depending on what kind of a misdemeanor it was; or it may be the penitentiary or death, if a felony. A judge has a limited authority, though, to let a prisoner go free on probation, that is, on his promise that he will report in person or by writing from time to time and will behave himself in a law-abiding way. So far as we are concerned the case is now over, though.

What happens after all the testimony is finished? What does the judge do? What should he not do? What does a verdict of "acquittal" mean? What can the defendant do after a verdict of conviction?

MISCELLANEOUS

156. There are some matters left to be explained that have so far been left out because they did not fit in anywhere. One of these concerns this sort of a question: Suppose a man commits a crime in Indiana and then runs away into Illinois. How can the Indiana authorities get hold of him? They have no power to cross over and arrest him in Illinois, as they stop being police officers the minute they cross the state line, and anyway, even if they had a warrant, that warrant would not be good across the state line. This is the way it is done: When an indictment has been voted in Indiana the governor of Illinois will be told of it and will be asked himself to issue a warrant for that man's arrest. If the governor of Illinois agrees that the man looks like a runaway law-breaker, he will do so, and thereby have him brought under arrest in Illinois so that he can be turned over to the Indiana officers. This proc-

ess is called "extradition." This process of extradition, it is easy to see, is bound to take a great deal of time, and it cannot, plainly, be done secretly, so it has this big disadvantage, that the man wanted may be gone before it is finished. To keep this from happening any Illinois court can, if it is asked to by the Indiana authorities, at once issue what is called a "fugitive warrant" directing the police to arrest the man and to hold him until the extradition papers are finished.

See that class understands meaning of "extradition" and how it works. Why can't the Indiana officers do their own arresting without help? What is the good of a fugitive warrant?

Statutes, c. 60

157. Our last matter concerns what is called "habeas corpus." Suppose somebody is (or thinks he is) wrongfully and illegally kept locked up, either because (just as examples) he was arrested when the officer had no right to arrest him, or because he was kept locked up although on his examination the judge ordered his discharge, or because he was not allowed to give bail, or the bail was set impossibly high. All these and more that might easily be named are examples of cases in which a man is illegally locked up. What may he do to help himself? He or, if he cannot do it himself, a friend for him may make a petition, in writing, to any judge, stating the name of the person locked up, where he is locked up, and why the person making the petition thinks it is illegal. Then the judge will issue a written court order, called a "writ of habeas corpus," directed to the person who has (or is believed to have) the prisoner in his custody, commanding him immediately to bring the prisoner into court, and at the same time to make a written report, called a "return," giving his side of the story. (For example, the return might say that the officer making the return could not bring the prisoner in because he did not have him and never had had him under his custody. Or that he had had him but had turned him over to such-and-such another officer. Or that he was holding him in custody for such-and-such reasons.) Then when the prisoner and the return are both before the court, the judge will proceed to

hear both sides. If there turns out to be nothing illegal in keeping the prisoner locked up, he will be sent back to the place where he was locked up. But if he was wrongfully locked up, the court will order him set free (or if it was a question of refusing to let him give bond, will set his bail at a proper amount so that he can try to give bail). The writ of habeas corpus, as you can see, is the way by which private citizens are given a chance to protect themselves in case government officers of any sort try to go beyond their lawful authority.

What is a writ of habeas corpus used for? How does a prisoner get such a writ? What should the petition show? What do you understand by the "return" of the officer to whom the writ is directed? What does the return contain? How soon must the return be made and the prisoner be brought into court? Then what does the judge do? Why do we have such things as writs of habeas corpus in our system of law? If a prisoner is legally arrested but is refused a chance to make bail will habeas corpus help him? How?

Illinois Constitution, art. ii, sec. 7
Statutes, c. 65