BENCH BOOK FOR ILLINOIS TRIAL JUDGES

(CRIMINAL CASES)

2nd Edition

Prepared By

ILLINOIS JUDICIAL CONFERENCE COMMITTEE
ON CRIMINAL LAW FOR ILLINOIS JUDGES

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This Bench Book contains suggested forms and procedures to which an individual trial judge may wish to refer when conducting criminal proceedings. The material in this Book has not been approved or endorsed by the Supreme Court and is not to be considered an authoritative statement of Illinois law.

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United States and Illinois Constitutions; United States Supreme Court Reports; United States Court of Appeal Reports; Illinois Supreme and Appellat Court Reports; North East Reporter, 2d;

Ill. Rev. Stat., Ch. 38; Illinois Supreme Court Rules; Federal Rules of Criminal Procedure; Federal Rules of Evidence;

Am. Law Repts., Annot.; Am. Jur., Proof of Facts;

Excerpts, Adaptations and Forms from the Benchbooks of Illinois Trial and Appellate Judges; California Benchbook for United States District Judges (Campbell Edition);

Excerpts from reading material prepared for the Annual Illinois Judicial Conference (1965-74); American Bar Association Standards for the Administration of Criminal Justice, elating to Pre-Trial, Trial, Post-Trial and Functions of Judge, prosecutor and Defense; Illinois Criminal practice Manual, published by the Illinois Institute for Continuing Legal Education; Task Force on Criminal Sentencing Report of Twentieth Century Fund;

Hunter's Trial Handbook (4th Edition); Callaghan's Illinois Evidence Law (1964), and Procedure (1971); Manuals of

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Excerpts from handbooks of the Federal Defender Project and National District Attorney's Association;

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CHAPTER I

WARRANTS

I

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SCOPE NOTE

Chapter One deals with constitutional and statutory material governing the issuance of arrest and search warrants, including occasional citations to United States and Illinois Supreme Court Decisions.

Cross Reference: Chapter III - Motions

0.1 In General: The Concept of Probable Cause

An arrest may be effected with a judge-issued warrant or without a warrant by a police officer in certain instances. "Searches" may be pursuant to search warrant or, in exceptional circumstances; without a warrant procedure (where the judge issues process) or without warrant by an officer. The test is the same. Was there probable cause, as required by the Fourth Amendment which provides as follows:

> 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. (underscoring added)

Probable cause for an arrest or search warrant is a variable concept related to appearances at the time of decision based on data, place, offense and offender. In Brinegar v. United States, 338 U.S. 160 (1948), the Supreme Court wrote:

> Probable cause exists where the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. 338 U.S. at 175-176

Probable cause is also used in connection with preliminaries, search warrant procedure and indictments. The phrase describes a quantity of information, less than a preponderance, but more than a scintilla. The standard is objective, based on information which would lead an ordinary, prudent, reasonable person to believe the crime occurred, the existence of fruits or instrumentalities thereof or the identity of the offender. See Annotations at 39 ALR 790, 69 L.Ed. 543.

0.2 In General: The Relevance of the Arrest

Most suspects are searched, and/or taken into custody pursuant to an arrest by a peace officer, Ill. Rev. Stat. Ch 38 §107-2 (1965), who, whenever practical, should obtain advance judicial approval by warrant procedure. (§107-9)

Where, however, there is probable cause to believe that an offense is being committed, or has been committed, and the officer has reasonable grounds to believe that the person to be arrested has committed the offense, he may effect a legal arrest and search for objects, weapons, fruits, instruments or evidence if "incident" to a legal arrest. (See I-3.2). Several principles emerge:

-- An officer may not arrest on suspicion, but reasonable suspicion may become or harden into probable cause.

-- An arrest looks at both the officer and the individual. Stopping a person is not, in itself, an arrest.

-- A prior illegal "search" cannot provide a pretext for a valid arrest. On the technical meaning of search, see §I-3.1. The "search" must follow, not precede, the arrest.

-- A non-search look-and talk- situation, especially in public places where the officer has a right to be, may lead to grounds for the legal arrest.

See Annot. What Constitutes Probable Cause for Arrest? Supreme Court Cases, U.S. v. Martinez - Fuerte et al, 28 L.Ed. 2d 978. Sifuentes v. US. 96 S.Ct. 3074 (1976)

WARRANTS UPON COMPLAINT ON AFFIDAVIT

1.0 Arrest Warrants in General

If it appears to the court from the contents of a duly verified complaint and from examination of the complainant or other witnesses, if any, that an offense is being, or has been committed by the accused, the court must issue a warrant for his arrest. The warrant may not lawfully issue upon the complaint without an examination by the court of the complainant, and the right that there be such examination is a substantial right of the accused.

Summons may be used instead of arrest, see Ill. Rev. Stat., Ch 38 §107-11.

1.1 Conclusionary Recitals

> The decisions of this Court concerning Fourth Amendment probable cause requirements before a warrant for either arrest or search can issue require that the judicial officer issuing such a warrant be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant. Whiteley v. Warden, 401 U.S. 560, at 564 (1971).

1.2 Statutory Material Ch. 38, § 107-9

Arrest Warrant Upon Complaint

§ 107-9. Issuance of Arrest Warrant Upon Complaint

(a) When a complaint is presented to a court charging that an offense has been committed it shall examine upon oath or affirmation the complainant or any witnesses.

(b) The complaint shall be in writing and shall:

(1) State the name of the accused if known, and if not known the accused may be designated by any name or description by which be can be identified with reasonable certainty;

(2) State the offense with which the accused is charged;

(3) State the time and place of the offense as definitely as can be done by the complainant; and

(4) Be subscribed and sworn to by the complainant.

(c) A warrant shall be issued by the court for the arrest of the person complained against if it appears from the contents of the complaint and the examination of the complainant or other witnesses, if any, that the person against whom the complaint was made has committed an offense.

(d) The warrant of arrest shall:

(1) Be in writing;

(2) Specify the name of the person to be arrested or if his name is unknown, shall designate such person by any name or description by which he can be identified with reasonable certainty;

(3) Set forth the nature of the offense;

(4) State the date when issued and the municipality or county where issued;

(5) Be signed by the judge of the court with the title of his office;

(6) Command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or if he is absent or unable to act before the nearest or most accessible court in the same county; and

(7) Specify the amount of bail.

(e) The warrant shall be directed to all peace officers in the State. It shall be executed by the peace officer, or by a private person specially named therein, and may be executed in any county in the State.

See also arrest procedure under Article 111 (Charging an Offense), Sec. 110-3 (bail default) and Unif. Code of Corr. Sec. 1005-6-4 (Violation of Probation, Supervision or Conditional Discharge Conditions).

1.3 Irregular Warrants; Technical v. Substantial Defects

A warrant of arrest shall not be quashed or abated nor shall any person in custody for an offense be discharged from such custody because of technical irregularities not affecting the substantial rights of the accused (Ch. 38, §107-10).

Examples of such non-fatal irregularities are;

(1) The failure of the clerk to sign or affix his seal.

(2) Absence of judge's signature from copies so long as the original is signed.

A Warrant is substantially defective if the accused is deprived thereby of constitutional rights.

Some examples of substantial defects are:

(1) There was no probable cause for the issuance of the complaint.

(2) The complaint is not verified.

(3) The court has failed to examine the complainant or other witnesses.

(4) The warrant was issued in blank to be completed by the police.

(5) Non-specificity in description of the items to be seized. Illinois applies a rule of reason in this respect. People v. Reid, 315 Ill. 597 (1925); People v. Sawyer, 42 Ill. 2d 294 (1968).

(6) Name misdescription; but fictitious warrant, upheld in People v. Stansberry, 47 Ill. 2d 541 (1971).

1.4 Execution of Warrant

Generally Ill. Rev. Stat., Ch. 38 §108-6.

Peace Officers Use of Force, Ch. 38, §107-5 (Arrest) § 108-8 (Search).

ALI Model Code of Pre-arraignment Procedures §3.06 (Tentative draft 2969).

WARRANT PROCEDURE: FUNCTION OF THE TRIAL JUDGE

2.0 Function of the Trial Judge in General To Determine Probable Cause

Mr. Justice Jackson, writing for the Court in Johnson v. United States, 333 U.S. 10 (1948), explained that:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protections consist in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. . . When the right of privacy must reasonably yield to the right of search is a rule to be decided by a judicial officer, not by a policeman or government enforcement agent. 333 U.S. at 13, 14.

See also Coolidge v. New Hampshire, 403 U.S. 443 (1971). The Constitution requires "that the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police. . . . ." See La Fave and Remington, "The Judge's Role in Making and Reviewing Law Enforcement Decisions," 63 Mich. L. Rev. 927 (1965).

2.1 Evaluating Affidavits

Probable cause to justify the issuance of either a search and seizure warrant or an arrest warrant may be predicated upon:

1. Direct observation of affiant.

2. Hearsay Furnished to affiant.

3. Combination of both of the above.

In applying tools of analysis to an application based upon mixed predicates of direct observation and hearsay information, the issuing judge may, after evaluating both the trustworthiness of the source of information and the weight and worth of the information itself, reach one of four conclusions:

(1) That the direct observation is adequate itself to establish probable cause;

(2) That the hearsay information is adequate itself to establish probable cause;

(3) That neither the direct observation nor the hearsay information, standing alone, is adequate to establish probable cause, but that the two combined add up to the establishment of probable cause.

(4) That the total of the direct observation plus the hearsay information does not establish probable cause.

2.2 The Spinelli-Aguilar Test Prongs

Where an arrest or search warrant is based on hearsay or information from informers, the United States Supreme Court in the Case of Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U. S. 410 (1969), requires a two-pronged inquiry or test:

(1) Is the informant credible? The application must set out a basis to enable the judge to conclude that the informant is credible (the Credibility Prong). Discussion in United States v. Harris, 403 U.S. 573 (1971).

(2) Are the informer's conclusions reliable, based on facts, specificity and detail contained in the warrant application? (the Conclusion Prong).

On the order of analysis and procedure where a warrant is sought partly on a hearsay affidavit and partly on direct observation, consider the following:

> The most logical procedure to follow in evaluating a warrant application is to look first at the hearsay information. If the affiant has furnished the issuing magistrate enough of the underlying circumstances to persuade the magistrate (1) That the informant is credible or his information otherwise reliable and (2) that the informant's conclusions were validly arrived at, probable cause is established. What Spinelli refers to as "Aguilar's two-pronged test" has been met. If, on the other hand, the information furnished about the informant and the information furnished from the informant fail to pass muster by either or both of Aguilar's prongs, the informant's information is still not rendered valueless. "Rather, it need(s) some further support."
>
> In search of that "further support," the magistrate may then look to the direct observation recounted by the affiant. That direct observation may serve a dual function. As substance in its own right, it bears directly on the question of probable cause. It may also serve the ancillary and concomitant function of corroborating or verifying the hearsay information. Initially, the trustworthiness of an informant's information may not have been adequately established intrinsically because either (1) the magistrate was not persuaded by proven past performance or testimonials as to character, or otherwise, that the informant was inherently credible, or (2) the magistrate was not persuaded that the information was otherwise reliable by virtue of having been furnished under circumstances reasonably insuring trustworthiness.
>
> The necessary trustworthiness may then be established extrinsically by the independent verification of the affiant's direct observation. If some of the significant details of the informant's story are shown to be, in fact, true, that encourages the magistrate to believe that all of the story is probably true. Taken from Dawson v. State, 11 Md. App. 694, 276 A.2d 680 at 682 (1971)

2.3 Warrant Application Perspectives

The trend of the decisions is to avoid encouraging officers to resort to form-type applications while at the same time avoiding over-particularity requirements likely to encourage a by-pass of judicial application and process. Increasingly, the good faith of the applicant is becoming the main factor in a common-sense approach to warrants.

Variables: Informant - Participant - citizen - victim -named or if unnamed facts recited.

Conclusions - Type of crime - likelihood of recitals - patterns of history - likelihood of the facts.

Reliable facts tend to show credibility of a source and vice versa; for the Spinelli-Aguilar test is but an attempt to establish both the reliability of the source and the facts presented, independent of each other.

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WARRANTLESS SEARCHES

3.0 The Fourth Amendment in General

The Law:

4th Amendment - 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 person or things to be seized.

Application:

The Fourth Amendment applies a variable concept of reasonable rights to privacy of the person, and of things, objects, effects and possessions of the individual. It does not cover seizures of items abandoned or where suspect has no right to privacy. The test is two-fold; first, that a person have exhibited an actual subjective expectation of privacy, and second, that the expectation be one that society is prepared to recognize as "reasonable." The leading Supreme Court case defining the contemporary nature of privacy is Katz v. United States, 389 U.S. 347 (1967). Whether the actor expected privacy is fact. Whether the expectation is reasonable is law. People v.Stacey, 58 Ill. 2d 83 (1974)

The Fourth Amendment is addressed to persons and things, unlike the Fifth Amendment which is addressed only to persons. For Discussion of Differences. See Andersen v. Maryland, 96 S.CT. 27, 37 (1976)

Approach

The general rule is that officers, whenever practical, should obtain a warrant prior to a "search." There are exceptions; they are well defined but tend to over-lap. Very often counsel will suggest more than one possible box category or label exception to uphold proffered evidence questioned on motion because seized without warrant.

3.1 What is a "Search"?

The term implies some exploratory investigation; a prying out, a trespass, a quest, a looking for, a seeking out. A search implies peering into hidden places for that which is concealed, and implies that the object searched for has been hidden or intentionally put out of the way.

Merely stopping an individual is not a search; a plain view look is not a search.

For temporary questioning without an arrest, see Ch. 38, §107-14.

3.2 Stop and Frisk

A frisk or limited pat-down for weapons is considered an intrusion requiring reasonable suspicion as a standard and is thus protected under the Fourth Amendment. It falls short, however, of a full custody search. Sometimes the fruit of a stop and frisk vis-a-vis discovery of weapons may at once become probable cause for an arrest and more complete search incident thereto.

Illinois Stop and Frisk, Ch. 38 §108-1, 1.01.

Supreme Court Frisk Cases, see Adams v. Williams, 407 U.S. 143 (1972); 67 Mich. L. Rev. 40 (1968).

Cf. Model Rules for Law Enforcement: Warrantless Searches of Persons and Places Commentary at 9 Crim. Law Bul. 64-683 (1973).

3.3 Plain View - Open View

If the officers are in a place where they have a lawful right to be, they may seize contraband or evidence in

"plain view." There is, in fact, no search.

Whatever is in plain view or discernible to the senses may be relied upon by a peace officer as evidence of facts or circumstances constituting or tending to constitute probable cause, provided that the officer is in a place he is lawfully entitled to be and thus acquires his veiw lawfully.

Mere civil trespass upon lands of another would not, in all cases, preclude peace officer from acting upon that which he sees, i.e., officer looking into open window, or open door of a house, office or room.

One rationale of plain view is that there is simply no search where a person knowingly exposes himself or his property to public view, i.e.,he cannot be deemed to have had a reasonable expectation of privacy. Even if the place looked into is one wherein defendant had an actual expectation of privacy, the "looking" does not necessarily constitute a "search." That expectation must be reasonable. If a governmental intrusion is not made by warrant or exception, an illegal search may have occured. See People v. Wright, 41 Ill. 2d 170 (1968). Plain view cases are summarized at 29 L.Ed. 2d 1067. See also 44 LW 4970 (1976)

Courts distinguish between plain view where an officer, acting with prior justification, i.e. warrant or emergency, inadvertently comes across an item of incriminatory significance and open view where the item was located in open view and no rights of privacy attached. The theory of open view implies no prior technical Fourth Amendment search. See discussion in Coolidge v. New Hampshire, 403 U.S. 443 (1971).

Plain view requires that the officers were not, in the first instance, expecting to find what they came across.

Plain view discovery must then be inadvertent. The category overlaps to some extent with a search incident to arrest and the exigent circumstance category. See People v. Wiseman, 59 Ill. 2d. 45 (1974); 12 Crim.Law Bull. 5 (1976); U.S. v. Santana 96 S.CT. 2406 (1976)

3.4 Warrantless Searches "Incident" to an Arrest

A peace officer may search for dangerous weapons on any person whom he has legal cause to arrest, whenever he

has reasonable cause to believe that the person possesses a dangerous weapon. In addition, he may search for fruits, instrumentalities, or evidence relating to the crime for which the defendant has been arrested.

When a lawful arrest is made, it is reasonable for the arresting officers to search the person arrested and the area into which an arrestee might reach in order to grab a weapon or evidentiary items.

Normal extensions of the person of the arrestee may be searched, including purse, jacket, etc.

The leading case: Chimel v. California, 395 U.S. 752 (1969). Note: Scope Limitations for Searches Incident to Arrest, 78 Yale L.J. 433 (1969).

A search is incidental to a lawful arrest if:

(a) It is limited to the person of the arrestee or vehicle in which he is arrested or area under arrestee's immediate control from which he might gain possession of a weapon or destructible evidence;

(b) It is substantially contemporaneous with the arrest;

(c) It has a definite object and purpose, is related to the offense for which the person is arrested (not general or exploratory) and is reasonable in scope.

The variable factors on application of the "incident" category are time, locale of the search and a danger expectation of the officers based on grounds for the arrest. See U.S. v. Edwards, 415 U.S. 800 (1974).

On Site - Custody Arrest for Search - Scope, see United States v. Robinson, 414 U.S. 218 (1973).

Station Houses Searches, Cupp v. Murphy, 412 U.S. 291 (1973).

Grand Jury Exemplar (handwriting-voice) directives held not a "seizure," United States v. Dionisio, 410 U.S. 1 (1973); United States v. Mara, 410 U.S. 19 (1973).

3.5 Consent Searches

A person who freely and voluntarily consents to a search and seizure by a peace officer thereby waives his constitutional rights to be free from unreasonable searches and seizures. Mere submission to authority is not consent.

For a detailed outline of the manifold problem in consent searches, see the LaFave-Bowman materials, 1972, Illinois Judicial Conference Readings.

From Schenckloth v. Bustamonte, 412 U.S. 218 (1973):

> When the subject of a search is not in custody and the State would justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntary. Voluntariness is to be determined from the totality of the surrounding circumstances, but while knowledge of a right to refuse consent is a factor to be taken into account, the State need not prove that the one giving permission to search knew that he had a right to withhold his consent. 412., at 248

Consent variables, including careful sifting of unique facts and circumstances, the length and nature of detention, the truth of police representations, if any, the subjective state of the person who may have consented and the often present credibility factor with respect to testimony relating to consent:

The consenting party usually has a joint right of control over the property seized:

The items seized are found in a common area or portion of the premises unrestricted to the consenting party, and under the totality of the circumstances reflected, the warrantless search is "reasonable."

See, Validity Under Federal Constitution of Consent to Search - Supreme Court Cases, 38 L.Ed. 2d 1143.

On the Admissibility of Evidence at the Contested Consent Suppression Hearing, see U.S. v. Matlock, 415 U.S. 164 (1974).

3.6 Exigent Circumstances

The existence of "urgent need," "necessitous haste," frustration of governmental purpose or exceptional circumstances, may justify a warrantless search. The Rules are capsulized under the rubric "Exigencies." The category includes an:

- Emergency, 44 Ill. 2d 80 (1969) (death - bodily harm or property destruction), i.e.

> As a general rule, we think an emergency may be said to exist, within the meaning of the "exigency" rule, whenever the police have credible information that an unnatural death has, or may have, occurred. And the criterion is the reasonableness of the belief of the police as to the existence of an emergency, not the existence of an emergency in fact. 227 A.2d 486 at 489 (1967 - Sup. Ct. Del.)

Also, Destruction of Evidence, 461 F.2d 1026 (3rd Cir. - 1972), eg, narcotics; no time for warrant and Hot Pursuit, 387 U.S. 294 (1967).

Exigent Circumstances implies an adequate and sufficient reason why no warrant was obtained. Good faith of the officers has become relevant. See discussion in Cupp v. Murphy, 412 U.S. 291 (1973). 57 Ill. 2d 64 (74). For a combination factor analysis of plain view, no "search" and hot pursuit See U.S. v. Sanata 96 S.CT. 2406 (1976).

3.7 Auto Searches

The mobility of an automobile, and to some extent the lack of a reasonable expectation of privacy while on public streets, has resulted in more liberality in upholding an immediate warrantless search where there was probable cause to search an automobile stopped on a highway. See Note, Warrantless Searches and Seizures of Automobiles, 87 Harv. L. Rev. 835 (1947); Cardwell v. Lewis, 417 U.S. 583, (1974); Carroll v.U.S., 267 U.S. 132, (1925); Chambers v. Maroney, 399 U.S. 42, (1970); Coolidge v. New Hampshire, 403 U.S. 443, (1971); U.S. v. Robinson, 414 U.S. 218 (1973); See also, in connection with automobile searches:

Plain View -- People v. Scherer, 318 N.E.2d 760 (4th

Dist.1974); Probable Cause -- People v. Wiseman, 319 N.E. 2d 225 (1974); Exigent Circumstances -- Dodd v. Beto, 435 F.2d 868, (5th Cir. 1970); Consent -- Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Incident to Arrest -- U.S. v. Edwards, 415 U.S. 800 (1974); For Supreme Court Cases: 26 L ed. 2d 893; South Dakota v. Opperman 96 S.CT. 3092 (1976)

3.8 Electronic Eavesdropping

Ill. Rev. Stat., Ch. 38, §14-1 et seq., §108A-1 et seq.

United States v. White, 401 U.S. 745 (1971) Assumption of Risk. Discussion of State and Federal Areas Together in Conn. v. Vitello, 327 N.E. 2d 819 (Mass. Sup. Jud. Ct. 1975) Annot. 57 ALR 3d 172.

3.9 Obscenity Seizures

Heller v. New York, 413 U.S. 483 (1973)

A preseizure adversary hearing is not required where a film is seized for bona fide purpose of preserving it as evidence pursuant to a search warrant, and following the seizure a prompt judicial determination of the obscenity issue in an adversary setting is available, but upon a showing that other copies of the film are not available for exhibition, the court should permit the seized film to be copied so that exhibition can be continued. For procedures See McKinney v. Alabama 96 S.CT. 1189 (1976).

3.10 Administrative Searches

Camera v. Municipal Court of San Francisco, 387 U.S. 523 (1967)

Collonnade Catering Corp. v. U.S., 397 U.S. 72

(1970) Liquor Authority Search

Wyman v. James, 400 U.S. 309 (1971) Welfare Search

U.S. v. Biswell, 406 U.S. 311 (1972) Gun Control Inspection

U.S. v. Watson 423 US 411 (1976)

3.11 Airport Searches

Reconciling Airline Security with the Fourth Amendment, 6 Crim. Law Bul. 498 (1973); 464 F. 2d 1180 (1972)

3.12 Private Person Searches

Annot: Admissibility in Criminal Case of Evidence Obtained by Search by Private Individual, 36 ALR 3d 553.

THE EXCLUSIONARY RULE

4.0 Standing

In order to sustain a motion to suppress an item, object or place illegally searched, complainant must show some proprietary or substantial possessory interest in the premises searched. Automatic standing is conferred to contest a search where the same possession needed to establish standing is "an essential element of the offense charge," i.e. Possession. Brown v. U.S., 411 U.S. 223 (1973)

Where, however, mover was not on the premises at the time of the contested search and seizure, and had no proprietary or possessory interest in the premises, and is not charged with an offense that includes possession as an element, standing to contest is absent, for one must allege a violation of one's own rights. See Shultz v. Assoc. of Bankers, 416 U.S. 21 (1974); People v. McNeil, 53 Ill. 2d 187 (1972). Cross Reference: Abandonment; Fruit of The Poison Tree Doctrine. Stone v. Powell 96 S.CT. 3037 (1976)

4.1 Fruit of the Poison Tree Doctrine

Where an item of real evidence or a statement is the product of, tainted by, derived from, the fruit of or proximately related to illegality, the thing, item or statement must be suppressed as unpurged from primary taint. Wong Sun v. U.S., 371 U.S. 471 (1963); Cases Collected 388 F.Supp. 294, Footnote 1.

Deterrence and judicial integrity form the bedrock of the exclusionary rule.

Today, whether or not the relationship of an item to the tree is substantial or attenuated requires the trial

judge to measure (1) temporal proximity of illegality to the discovered item; (2) the presence of intervening circumstances and (3) the purpose, good faith or its absence, and the flagrancy of the official misconduct or illegality. Substantiality of a claimed violation of the Fourth Amendment has become an integral test in application of the poisonous tree doctrine. Brown v. Illinois, 422 U.S. 590 (1975); U.S. v. Janis, 96 S.Ct. 3021 (1976).

4.2 Quashing Search Warrants in General

At a hearing on a pre-trial motion to suppress evidence, Ch. 38 §114-12, a defendant in Illinois is limited to an examination of the complaint and warrant and may not dispute the underlying matters declared under oath which led to the finding of probable cause. People v. Bak, 45 Ill 2d. 140 (1971). To avoid collateral and successive re-assessments, a trial court should not rehear a motion to suppress where one was already made at, for instance, a preliminary unless there exists a plain new offer of evidence in addition to that submitted upon the first hearing or special or exceptional circumstances warranting a second determination. People v. Holland, 56 Ill. 2d 318 (1974).

4.3 Common Grounds to Quash Warrants

(a) - Warrant based on data which infer mere suspicion.

(b) - Neither the complaint nor the search warrant upon which it issued particularly described the place to be searched, i.e., it did not state whether the residence referred to is a house, apartment, or other type of dwelling, or it did not state the location of the residence by street and number, apartment number and street address, or by other mode distinguishing it from other residences.

(c) - Neither the search warrant nor the complaint upon which it issued particularly described the person to be searched.

(d) - The instruments, articles and things seized

under the search warrant were not particularly described in the search warrant or the complaint upon which it issued. See Anderson v. Maryland 96 Sup Ct 2737 (1976).

(e) - The complaint upon which the search warrant issued was based solely on uncorroborated hearsay information.

4.4 Common Grounds to Suppress Warrantless Searches by Exception

- "Incident" Category - Search went beyond person or weapons within his reach. Variable Factors: time, place, extent of exploration, and especially the expected problems due to the nature of the crime for which the arrest is made.

- "Plain View" - Prior knowledge and expectation; a result of general exploration forbidden by Fourth Amendment policy; view the result of trespass on execution of illegal warrant. Variable Factors: Rightful presence at view, nature of intrusion and no prior expectation related to what was found.

- "Exigent Circumstances" - Ample time and opportunity to obtain a warrant; no genuine need; Variable Factors: Probable cause and common sense need for action now.

- "Consent Searches" - Fraud in obtaining consent. Variable Factors: Both officer's and person's mental state, plus locale, i.e. custody vs. street, and reasonableness of search.

- "Auto Searches" - A stop and a "search" without adequate reason or probable cause. Variable Factors: Probable Cause, locale of vehicle and condition thereof. Time and exigent circumstances.

CHAPTER II

PRELIMINARY HEARINGS, BAIL AND ARRAIGNMENT

Chapter II

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SCOPE NOTE

This chapter covers preliminary hearings, bail, appointment of counsel, admonishments, and arraignment. See also Motions, Ch. III and Formal Pleas, Ch. V.

0.1 Functions

A preliminary hearing is a judicial proceeding in which defendant has an opportunity for a prompt determination of the issue of probable cause.

The function of an indictment is that it serves as a determination that there is probable cause to charge a defendant. In cases where the prosecutor obtains a grand jury indictment prior to the defendant being taken into custody, there is no constitutional requirement for a preliminary hearing because the issue of probable cause will have been determined by the grand jury in deciding to indict. Usually, an initial arrest charge is made by an arresting officer rather than a grand jury. In such cases the person would be entitled to a "prompt preliminary hearing" unless understandingly waived.

The function of an arraignment is to formally charge and/or obtain a plea.

0.2 Illinois Constitutional and Statutory References

- Right to a Preliminary, Ill. Const., Art. I, Sec. 7 and 8; Ch. 38, Sec. 111-2 (Rev. 1975)
- Definition of Terms - Ch. 38, Sec. 102-1 et. seq.
- Charging an offense - Ch. 38, Sec. 111-1 et. seq.

- Preliminaries - Ch. 38, Sec.109-1, 2 and 3
- Statutory Rights of Accused - Ch. 38 Sec. 103-1 et. seq.
- Arraignment Procedure - Ch. 38, Sec. 113-1 et. seq.
- Guilty Pleas - Supreme Court Rule 402, 605

0.3 Readings

The Constitutional Due Process Requirements:

Gerstein v. Pugh, 420 U.S. 103 (1975); 26 U. of Fla. LR 825 - 843 (1976).

II - 1

PRELIMINARIES

1.0 In General

A person arrested before indictment on a felony charge is entitled to a preliminary hearing to determine if "there is probable cause to believe an offense has been committed by the defendant." (Ch. 38, Sec. 109-3) At the preliminary hearing the prosecution may call those witnesses necessary to establish "probable cause." The defendant is entitled to cross-examine these witnesses. While the scope of the hearing is somewhat limited -- the prosecution usually puts on a truncated version of its prima facie case -- the value of the hearing for discovery purposes is obvious.

An adequate means of recording the testimony given at the preliminary hearing should be provided. An indigent defendant is entitled to a transcript of the preliminary hearing at the expense of the state.

At the preliminary hearing, the trial judge shall:

A. Inform the defendant of the charge against him and provide him with a copy of the charge.

B. Advise the defendant of his right to counsel and if indigent, appoint a public defender or licensed attorney at law of this State to represent him in accordance with the provisions of Section 113-3.

C. Admit the defendant to bail in accordance with the provisions of Article 110. (Ch. 38, Sec. 109-1, (b))

Background Readings: The Function of the Preliminary Hearing, 83 Yale L.J. 771 (1974).

1.1 Checklist of Procedures at Defendant's First Appearance

DEFENDANT'S FIRST APPEARANCE

A. Ascertain defendant's age

B. Advise:

1. Manner defendant is held
2. Nature of charge or possible charge, include all penalties
3. Right to counsel
4. Ascertain if defendant desires counsel
5. Right to preliminary hearing, unless charged by indictment

C. Ascertain if defendant desires preliminary hearing or desires to waive

1. Sign waiver in open court
2. Fix bond & issue capias

3. Furnish defendant with copy of information or indictment

4. Ascertain if defendant ready for arraignment

1.2 Awareness Inquiry

Identity. What is your name: What is your address? Are you the person accused in this case?

Pedigree. When were you born? Where? Where did you spend your childhood? Where else have you lived? How long have you lived where you now live?

Family. Do you have parents living? Do you have brothers or sisters? Do you have a wife (or Husband)/ Do you have children? Which of them are living with you?

Friends. Do you have close friends? About how many?

Religion. Do you have a religious faith? Are you a member of a church or religious group?

Occupation. Are you working? At what? Where? For whom? What do you earn? How long have you had this job? Do you enjoy this work? What other kind of work have you done?

Education. How long did you go to school? Where? When?

Health - Physical, Mental, Emotional. How is your physical health? How is your sight? How is your hearing? Do you have any sickness? Do you have any special or difficult mental condition? Do you have any special or difficult nervous condition? Do you have any special or difficult social condition? Do you get along with those around you?

Orientation. Can you tell me what day this is? What time is it? What do you call this room? Why are you here?

Confinement. Were you arrested? When? Where? By whom? Were you told the charge against you? Were you in jail? Where? How Long? Were you in any other jail? Where? How long? Are you now in jail? How long have you been there? How has the food been? How have the bed and cell facilities been? How are the heat, light, and air? Have you been comfortable? Have you been adequately clothed? How were you treated by the jailers? Were you allowed to call your family, your friends, a lawyer, or a clergyman? Have any of

them visited you? Who? Have you received any medical care you needed? Have you been able to talk alone with your lawyer? Have you made any statements? Do you want to say anything about that?

Voluntary Standing. Has anybody hurt you physically? Has anybody bothered you? Has anybody kept you from sleeping or eating? Has anybody questioned you when you objected? Has anybody threatened to do any of these things? Has anybody made you afraid in any way? Has anybody given you any hope of special treatment? Has anybody told you what sentence you might get? Has anybody asked you to agree to anything? Has anybody made any promises to you? Do you understand what I have told You? Have you understood my questions?

1.3 Fitness Note:

The court, defense or prosecution may raise the question of fitness to stand trial. Unified Code of Corrections, Ch. 38, Sec. 1005-2-1 sets out standards, procedures, burden of proof and contains a useful list of admissible matters addressed to the standards of fitness to stand trial. See Chapter X - 4 entitled Fitness for Trial or Sentencing.

1.4 Questions for Minor Defendants

A. Ask minor:

1. His name
2. His age
3. The extent of his education and schooling
4. If he is or has recently been under the care of a physician or a psychiatrist, or if he has been hospitalized or treated for narcotic addiction
5. If his parents are present; does he live with them
6. If he is represented by counsel

7. If he has a job

B. Inform Minor:

1. Of charge against him

2. Of his right to counsel

3. Of his right to remain silent

1.5 Statement of Rights

"Mr. (Defendant), it is my duty to advise you as to certain of your constitutional rights.

"You are entitled to represent yourself or be represented by an attorney at all stages of the proceedings against you. If you cannot afford an attorney, an attorney will be appointed to represent you.

"You will receive a jury trial in this case unless you, personally, tell the court you wish to voluntarily give up this right in which case you will receive a trial by a judge sitting without a jury.

"You are entitled to a public trial.

"You are entitled to a speedy trial.

"You are entitled to confront, that is, to face and to hear, all the witnesses who may testify against you, and you have the right, through your attorney, to cross-examine each witness.

"You have the right to present evidence on your behalf.

"You are entitled to have the processes of this court to compel the attendance of witnesses and/or records on your behalf. That means that if there are witnesses whom you wish to have testify, you may have the clerk of the court issue subpoenas for those witnesses. And this is at no cost to you.

"You may be a witness at your trial, but only if you choose to take the stand. You have the right to remain silent. No one can make you testify against yourself at any time.

"You may be entitled to be released on reasonable bail.

"Do you understand your rights as I have outlined them for you?"

Caveat: If guilty plea is to occur follow procedure outlined in Chapter V.

II - 2

APPOINTMENT OF COUNSEL

2.0 Appointment in General

In Argersinger v. Hamlin, 407 U.S. 25 (1972):

> "We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial . . . 407 U.S. at 37.

> "Under the rule we announce today, every judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel. He will have a measure of the seriousness and gravity of the offense and therefore know when to name a lawyer to represent the accused before the trial strarts." 407 U.S. at 40.

Ill. Rev. Stat., Ch. 38, Sec. 113-3.

Assistance: Geders v. U.S., _____ U.S. _____, 96 S.Ct. 1331 (1976).

2.1 Appointment of Counsel Checklist

If Defendant has no attorney

A. Inform Defendant:

1. Of his constitutional right to be represented by an attorney at every stage of the proceedings

2. That if he is unable to afford an attorney, the court will appoint an attorney for him without cost to him

3. That he is not required to have an attorney if he does not so desire (Caveat: no minor's pleas without attorney), but that it would be unwise for him to proceed without an attorney and why

B. Ask defendant:

1. If he understands his right to an attorney

2. If he wishes and is able to obtain counsel for himself and

3. If he wants the court to appoint counsel for him

C. If defendant does not wish counsel, ask defendant:

1. Why he does not want an attorney

2. If any threats or promises have been made to him to induce him to waive his right to an attorney

(Tell defendant that the court cannot urge him too strongly to obtain an attorney)

Annot: Accused's right to assistance of counsel at/or prior to arraignment, 5 ALR 3d 1269

2.2 Waiver of Counsel

Waiver requires a knowing relinquishment of a right. A person who voluntarily waives a right must first have been informed of it.

(Supreme Court Rule 401) Waiver of Counsel

(a) Waiver of Counsel. Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understsands the following:

(1) The nature of the charge;

(2) The minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) That he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

Amended effective September 1, 1974.

Waiver and Pro Se

In Faretta v. California, 422 U.S. 806 (1975), the United States Supreme court held that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so and that the state may not force a lawyer upon him when he insists that he wants to conduct his own defense.

2.3 Pro Se Waiver of Counsel Scenario (Spoken Form)

JUDGE: "You have now indicated to the court that you want to act as your own attorney and you do not want to be represented by counsel in this case - is that correct?"

DEFENDANT: (Responds)

JUDGE "Do you understand that you have a constitutional right to a lawyer and that the court will appoint one for you if you do not have the money to employ an attorney?"

DEFENDANT: (Responds)

JUDGE "Do you understand that in the court's opinion you are making a very serious mistake by asking this court to permit you to act as your own lawyer?"

DEFENDANT: (Responds)

JUDGE: "Why do you wish to act as your own lawyer?"

DEFENDANT: (Responds)

JUDGE: "Can you read and write the English language?"

DEFENDANT: (Responds)

JUDGE: "I will have the bailiff hand you, at this time, a form entitled 'Pro Se Acknowledgement Form.' The bailiff will also hand you a pen. I want you to sit down in a place that the bailiff will provide for you and fill this form out in its entirety. When you have completed the form notify the bailiff and I will take up your request to act as your own attorney.

"Let the record reflect that the defendant has now handed me a Pro Se Acknowledgment Form which he has filled out, and signed."

2.4 Self Representation: Pro Se Acknowledgment Form (Optional)

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT

The People of the State of Illinois, Plaintiff,	
vs.	Defendant's Self-Representation ACKNOWLEDGMENT
_____	
_____ Defendant.	

1. I am the defendant in the above-entitled case, and I certify to the Court that I can read and write, I understand that my constitutional rights include the following:

   a. I understand that I have the right to a speedy and public trial, and a right to a trial by jury.

   b. I understand that I have the right to utilize the process of this court to subpoena any witness or any records that I may need in my own behalf or in my defense.

c. I understand that I have the right to be confronted in open court by all witneses who will be called to testify against me, and that I have a right to cross-examine those witnesses at the time of trial.

d. I understand that I have the right to testify at the time of trial, but that I cannot be compelled to testify at the time of the trial unless I so desire

e. I understand that I have the right to be admitted to liberty on reasonable bail pending the trial.

f. I UNDERSTAND THAT I HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER AT ALL STAGES OF THE PROCEEDINGS AND, IF I DO NOT HAVE FUNDS TO EMPLOY COUNSEL, ONE WILL BE APPOINTED FOR ME BY THIS COURT.

2. I am charged in the above-entitled case with the crime(s) of

_____

_____

_____

_____

The crime(s) with which I am charged is (are) as follows:

_____

_____

_____

_____

3. I am aware that there are certain legal defenses to the crime(s) with which I am charged, and they are as follow:

_____

_____

_____

_____

4. I am aware that in the event I plead guilty, or if after trial I am found guilty, I have a right to make an application for probation, but that I am not entitled to probation as a matter of right. I am further aware that the punishment specified by the Code of Corrections for the crime with which I am charged is as follows:

MINIMUM SENTENCE: _____ MAXIMUM SENTENCE: _____

5. I understand that if I am permitted to represent myself it will be necessary for me, WITHOUT THE ASSISTANCE OF COUNSEL, to conduct my own trial consisting of (but not limited to):

a. Making preliminary motions.

b. Impanelment of jury.

c. Making an opening statement.

d. Cross-examining witnesses for the prosecution.

e. Subpoenaing and presenting my own witnesses.

f. Making appropriate objections and motions during the course of the trial.

g. Preparing and presenting to the Court proposed jury instructions.

h. Making the final argument.

6. I further understand that after trial if I continue to represent myself, it will be necessary for me, WITHOUT THE ASSISTANCE OF COUNSEL, to conduct all matters after trial consisting of (but not limited to):

a. Conducting the insanity or penalty phases of the trial, if applicable.

b. Making appropriate motions after trial.

c. Representing myself at the time of probation and sentence hearing in the event of a conviction.

7. Biographical

a. Age: _____ Year of Birth: _____

b. Education:

(1) High School Attended_____

(2) High School Graduate: [ ] Yes [ ] No

(3) Additional Formal Education

_____

_____

_____

_____

(4) Legal Education:

_____

_____

_____

_____

c. Employment Experience:

_____

_____

_____

_____

d. I have previously acted as my own attorney in the following criminal matters:

Case	Court	Year	Results

I FURTHER UNDERSTAND THAT IT IS THE ADVICE AND RECOMMENDATION OF THIS COURT THAT I DO NOT REPRESENT MYSELF, AND ACCEPT COUNSEL APPOINTED BY THE COURT: AND FURTHER THAT IF I DO PERSIST IN MY MOTION TO ACT PRO SE THAT IT IS THE ADVICE AND RECOMMENDATION OF THIS COURT THAT I AT LEAST WAIT UNTIL I MEET A PUBLIC DEFENDER WHO IS ASSIGNED TO TRY MY CASE BEFORE I GIVE UP MY VALUABLE RIGHT TO LEGAL REPRESENTATION.

Understanding all of the constitutional rights set forth above, it is my personal desire that I am to be my own counsel and represent myself, and that by making this request I am giving up the right to be represented by a lawyer appointed by the court.

I hereby certify that I have read, understood and considered all of the printed matter on this acknowledgment, and that the writing hereon in response to the questions asked is in my own handwriting.

DATED: _____

_____

DEFENDANT

2.5 Ruling Allowing Pro Se Representation

JUDGE: "The court is going to make a preliminary ruling in this case to the following effect:

"The court finds that the defendant has demonstrated in the courtroom, both orally and in writing, a capacity to make an intelligent waiver of counsel.

"The court further finds that defendant understands that he is entitled to have a lawyer appointed to represent him; that he has made an intelligent waiver of that right. I, therefore, accept the defendant's waiver of his right to counsel and grant him the right to proceed Pro Se.

"The court, however, specifically reserves the right, as this matter proceeds to trial, to continually evaluate the capacity and ability of this defendant to act as his own attorney, with the clear understanding that if at any time it becomes apparent to the court that the defendant cannot act as his own attorney, his Pro Se status will be revoked and an attorney will be appointed to represent him."

BAIL

3.0 Bail Factors in General

Those matters which may be taken into consideration in determining bail can include the following:

A. Prior record of the defendant - the fact that the defendant has a prior record does not necessarily make him a poor risk for being released on his own recognizance. It may be that he has a history of petty offenses, but is known to appear promptly in court when required to do so.

B. Family ties - is he married, does he have children, does he live with his wife and children or, if single, with his parents?

C. Employment - is he employed, for how long has he been employed, does he support anyone other than himself?

D. Residence - is he a local resident, how long has he resided locally?

E. Discretionary matters such as the defendant's pregnancy, old age, poor health, or attending school.

The court in determining bail should go so far as to presume that a defendant should be released on his own recognizance unless some good reason is known to the court why this should not be done. Such a presumption would be overcome by a finding of substantial risk of non-appearance, or the likelihood that the defendant would commit a crime upon his release.

Ill. Rev. Stat., Ch. 38, Sec. 110-5, determining the amount of bail, provides:

"Sec. 110-5. Determining the amount of bail

(a) The amount of bail shall be:

(1) Sufficient to assure compliance with the conditions set forth in the bail bond;

(2) Not oppressive;

(3) Commensurate with the nature of the offense charged;

(4) Considerate of the past criminal acts and conduct of the defendant;

(5) Considerate of the financial ability of the accused.

(b) When a person is charged with an offense punishable by fine only the amount of the bail shall not exceed double the amount of the maximum penalty.

(c) When a person has been convicted of an offense and only a fine has been imposed the amount of the bail shall not exceed double the amount of the fine."

Bail security might be required or release on recognizance denied when the defendant might not otherwise appear when notified.

Negative Factors

- is a drifter
- has previous convictions
- is on probation or parole from another conviction
- is sought for other offenses
- has no property
- has no family
- has no job
- is emotionally disturbed and/or
- is a stranger in the area

Positive Factors

- owns real estate in the country
- is married, especially if he has small children
- has other dependents
- has a good job
- has no previous police record
- holds some public, business or social position of respect
- is active in church, civic or social affairs
- has other strong ties to the area and/or
- has financial and emotional stability

Bail once denied may thereafter be allowed. Bail once allowed may for good cause be revoked.

Bail set too high may be reduced. Bail set too low may be increased, and the conditions of bail may be altered.

3.1 Bail Procedure; Judge's Checklist and Chart

A. Ask state's attorney whether the defendant has failed in the past to appear for a scheduled court hearing.

B. Ask state's attorney whether he has any evidence that there is a likelihood that the defendant will attempt flight to avoid further prosecution.

C. Set bail.

D. State explicitly whether:

1. Defendant may sign own bond without sureties

2. Sureties will be required

3. A cash deposit will be required

4. The defendant is being placed in the custody of a designated person or organization which has agreed to supervise him

5. Any restrictions are imposed on the travel, associations, or place of abode of the defendant

6. The defendant is required to return to custody after specified hours and

7. Whether any other conditions are imposed (deemed reasonably necessary to assure the appearance of the defendant).

E. Explain to defendant:

1. When he is to appear in court again or how he will be advised when next to appear in court

2. The consequences and possible penalties if he fails to appear or if he violates conditions of a bail

3. If defendant is ordered held without bail in a capital case of after conviction.

Reading: Schilb v. Kuebel, 404 U.S. 357 (1971).

3.2 Bail Inquiry; Questions of Defendant

A. Are you married?

B. Do you have any children and, if you do, are they presently attending school?

C. Are you living with your wife (husband) and/or children?

D. Are you employed?

E. How long have you been employed with your present employer?

F. What is your average weekly or monthly take home pay?

G. Do you own an automobile?

H. Do you have a savings account, bonds, stocks, or similar liquid assets?

I. Do you own or rent your home?

J. How long have you lived at your present address?

K. How long have you lived in this city (state) or the surrounding area?

L. Where did you live before that?

M. Do you own any other real property?

N. Do you have a telephone?

O. Do you possess a passport? (NOTE: The defendant might be asked to deposit his passport as a condition of bail.)

P. Do you owe anyone any money, have to make any mortgage payments, time payments, or other periodic payments?

Q. Are you regularly receiving medical treatments?

R. Have you ever been treated or hospitalized for mental illness?

3.3 Affidavit of Assets - Form

IN THE CIRCUIT COURT OF THE ___ JUDICIAL CIRCUIT

_____ COUNTY, ILLINOIS

The People of the State of)
Illinois,)
)
vs.) No. _____
)
)
_____,)
Defendant)
)

AFFIDAVIT OF ASSETS AND LIABILITIES

I, _____,
DEFENDANT IN THIS CASE, ON OATH STATE THAT I am without adequate assets to retain counsel, and that I make the following statement in support of my request to be represented by court-appointed counsel.

1. Name _____ Date of birth _____

2. Address _____ Phone _____

3. Family: (a) Marital status _____ (b) Number of childern _____ (c) Number of other dependents ___

   and relationship _____

4. Name and address of employer _____

Length of employment _____

Occupation _____

5. Earnings and sources of income:

(a) $_____ per month from employment

(b) $_____ per month from pension, trusts, annuity, welfare, Workman's Compensation, retirement or disability plan, or any similar State, Federal, Local, or private benefit plan.

(c) $_____, per month from rents, royalties, bonds securities, or interest

(d) $_____, per month from other sources enumerated herein_____

(e) $_____, per month from all sources

6. Value of assets:

(a) Home or other dwelling $ _____

(b) Other real property $ _____ Where situated? _____

(c) Car $_____ Make _____ Year _____

(d) Other personal property (jewelry, household contents, furs, etc.) $_____

(e) Bank account $_____

(f) Cash on hand $ _____

(g) Surrender value of life or annuity insurance policies $_____

(h) Securities, trusts, bonds $_____

(i) Other assets $_____ Described herein

_____ _____

(j) Total value of assets $_____

7. Liabilities:

(a) Mortgage on home $_____ Monthly payments $_____

(b) Amount owed on car $ _____

(c) Personal debts $ _____ To whom owed _____

(d) Other debts $_____ To whom owed _____

(e) Total liabilities and debts $ _____

8. If released on bail, specify amount of security $_____

_____

and source of payment of security (defendant's funds, borrowed cash, etc.) _____

_____

I certify the foregoing is true to the best of my knowledge and belief.

_____

Defendant

Subscribed and sworn to before me

_____19 _____

_____

(deputy) Clerk

3.4 Bail Application - Personal Information and Model Forms

IN THE CIRCUIT COURT OF THE ____

_____ JUDICIAL CIRCUIT

_____ COUNTY

The People of the State)
of Illinois)
) No. _____
vs.)
)
_____)
Defendant)

1. Home address (street, city, state, Zip Code):
_____ Length of residence
_____
Phone & Area Code _____ _____
2. Age_____ Date of birth _____
3. Driver's license (state & No.) _____
4. Social Security No. _____-_____-_____
5. Employer (name, street, city, state, Zip Code):
_____
Length of Employment _____
Phone & Area Code _____

Immediate Supervisor's name _____

6. Two people who will always know how to contact me (name, street, etc.):

(a)_____

_____

Phone & Area Code_____

(b)_____

_____

Phone & Area Code_____

3.4 Specimen Model Forms

A. Personal Recognizance

B. Ten Per Cent Cash Bond

C. Real Estate and Schedule

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT

_____ COUNTY, ILLINOIS

The People of the State of Illinois	)	
	)	
vs.	)	
	)	
	)	
Defendant	)	
	)	
	)	No. _____
_____	)	
Defendant	)	
	)	
_____	)	
Address	)	

PERSONAL RECOGNIZANCE BOND

The undersigned defendant, being charged with the offense of_____

and now being admitted to bail in the sum of $_____, acknowledges himself to be indebted to THE PEOPLE OF THE STATE OF ILLINOIS in the penal sum of $_____, to be levied upon his property, of whatever kind and wherever situated, and he does undertake the following as conditions of said bail:

(1) That said defendant shall appear in the Circuit Court of _____ Judicial Circuit, _____ County, Illinois at Courtroon No._____/Branch No. _____ on the _____ day of _____, 19_____ and any of the divisions thereof as required to answer said charge, and appear therafter as ordered by said court until discharged or until final order of the court;

(2) that said defendant shall submit himself to the orders and process of said court;

(3) that said defendant shall not depart this state without leave of Court;

(4) that said defendant shall report any change of address to the Court;

(5) that said defendant shall not violate any federal, state or local law;

(6) that said defendant shall not contact the complainant or any of the state witnesses by telephone or otherwise nor shall the defendant direct any other person to make said contact for him;

(7)

(8)

Defendant is released on his own recognizance and if said defendant shall comply with the conditions of this bail bond, it shall upon order of this Court be discharged. If the defendant shall fail to comply with the conditions of this bond, it shall remain in full force and effect and the obligated sum fixed herein shall be forfeited and collected in accordance with subsection (g) of Section 110-7, Chapter 38, Ill. Rev. Stat.

EXECUTED this _____day of _____19_____

_____(seal)

TAKEN before this _____ day of _____A.D. 19____

Peace Officer or Clerk of Court

By_____

Deputy Clerk

APPROVED by me this _____day of _____A.D. 19____.

_____

Judge

STATE OF ILLINOIS)
)
COUNTY OF _____)

IN THE CIRCUIT COURT OF THE _____
JUDICIAL CIRCUIT, _____ COUNTY, ILLINOIS

The People of the)
State of Illinois)
)
vs.) No. _____
)
_____)
Defendant)
_____)
Address)

TEN PER CENT CASH DEPOSIT BAIL BOND

The undersigned defendant, being charged with the offense of _____ and now being admitted to bail in the sum of $_____, acknowledges himself to be indebted to THE PEOPLE OF THE STATE OF ILLINOIS in the penal sum of $_____, to be levied upon his property, of whatever kind and wherever situated, and undertakes the following as conditions of his bail.

(1) that said defendant shall appear in the Circuit Court of _____ Judicial Circuit, _____ County, Illinois

at Courtroom No._____/Branch No. _____ on the _____ day of _____, 19_____ and any of the divisions thereof as required to answer said charge, and appear thereafter as ordered by said court until discharged or until final order of the court;

(2) that said defendant shall submit himself to the orders and process of said court.

(3) that said defendant shall not depart this state without leave of Court.

(4) that said defendant shall report any change of address to the Court.

(5) that said defendant shall not violate any federal, state or local law.

(6) that said defendant shall not contact the complainant or any of the state witnesses by telephone or otherwise nor shall the defendant direct any other person to make said contact for him.

(7)

(8)

As security for the compliance with conditions of bail above set forth, said defendant deposits the sum of $____ in cash with the Clerk of this Court, which sum is equal to 10% of the amount of bail set in this cause for the appearance of said defendant, in accordance with the provisions of Paragraph 110-7, Chapter 38, Illinois Revised Statutes.

If said defendant shall comply with the conditions of this bail bond above set forth, it shall upon order of Court be discharged and said defendant shall be entitled to the return of 90% of said deposit, the remaining 10% of said deposit to be retained by the Clerk of this Court as bail bond cost;

Provided, however, that in the event a judgment is entered against said defendant for a fine and/or court

costs, the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of said fine _____ and/or court costs.

At the request of the defendant the court may order such 90% of defendant's bail deposit, or whatever amount is repayable to defendant from such deposit, to be paid to defendant's attorney of record.

Whenever a defendant who has been admitted to bail utilizes the services of a public defender or other appointed counsel, the amount deposited may be used to reimburse the county funding the legal services.

If said defendant shall fail to comply with said conditions of his bail, his bail bond shall remain in full force and effect and said defendant shall be liable for forfeiture theron.

EXECUTED this_____day of_____19_____.

_____

(Seal)

TAKEN before me this_____day of_____19_____.

_____

Peace Officer or Clerk of Court

By_____

Deputy

APPROVED by me this_____day of_____19_____.

_____

Judge

(Bail Bond - Real Estate - Sworn Schedule)

STATE OF ILLINOIS)

)

COUNTY OF_____)

IN THE CIRCUIT COURT OF THE ____

JUDICIAL CIRCUIT, ____ COUNTY

The People of the)

State of Illinois)

) Gen. No. _____

vs.)

)

_____)

Defendant)

Bail Bond

The undersigned defendant, being charged with the offense of_____and now being admitted to bail in the sum of $_____undertakes the following as conditions of his bail:

(1) that said defendant shall appear in the Circuit Court of the _____ Judicial Circuit, _____ Street, Illinois in Courtroom _____ on the _____ day of _____, 19___ and any of the divisions thereof as required to answer said charge, and appear thereafter as ordered by said court until discharged or until final order of the court;

(2) that said defendant shall submit himself to the orders and process of said court;

(3) that said defendant shall not depart this State without leave of court;

(4) that said defendant shall not violate penal statutes of any jurisdiction;

(5) that said defendant shall not possess any hand guns or dangerous weapons;

(6) that said defendant shall be within his residence between the hours of 11:00 p.m. and 6:00 a.m. each day of the week;

As security for compliance with the conditions of bail set forth above, the undersigned as principal and sureties respectively and jointly and severally acknowledge themselves to owe and be indebted unto THE PEOPLE OF THE STATE OF ILLINOIS in the penal sum of $_____ to be levied upon their property, of whatever kind and wherever situated.

If said defendant shall comply with the conditions of this bail bond, it shall upon order of this court, be discharged and the undersigned released from the obligations thereof and the lien on the real estate discharged. If said defendant shall fail to comply with the conditions of said bond, it shall remain in full force and effect and the obligated sum fixed herein shall be forfeited and collected in accordance with subsections (g) and (h) of Section 110-8, Chapter 38 of the Illinois Revised Statutes.

The sworn schedule on the reverse side hereof constitutes a material part of this bond.

EXECUTED THIS _____ day of _____ 19_____.

_____
Defendant and Principal

_____
Surety (SEAL)

_____
Surety (SEAL)

TAKEN before me this _____ day of _____ A.D. 19___.

_____
Clerk of the Court

By _____
Deputy Clerk

APPROVED by me this _____ day of _____ A.D. 19___.

_____
Judge

SWORN SCHEDULE

The undersigned, being first duly sworn, depose and say that _____ ___ he (they)_____ reside(s) at _____ _____, Illinois, and that the following is a true Schedule and Statement of real estate situated in Illinois:

1. Legal Description of the real estate:

2. A description of any and all encumbrances on the real estate, including the amount of each and the holder thereof:

3. The market value of unencumbered equity in the above described property owned by your Affiant(s) is:_____ _____.

4. That your Affiant(s) (is) (are) the sole owner(s) of the said unencumbered equity in the above described real estate and that it is not exempt from execution.

5. That the said described real estate has not been previously used or accepted as bail in this State during the twelve months preceding the date of the bail bond.

6. That the aforesaid described real estate shall be and is security for the compliance by the defendant with the conditions of the bail bond on the face side hereof and this sworn schedule constitutes a material part of said bail bond.

Your Affiant(s) being duly sworn on oath state that the Affiant(s) have read the foregoing schedule and that each has personal knowledge of the statements contained therein and said statements are true and correct.

WITNESS, our (my) hand(s) and seal(s) this _____ day of _____, A.D. 19____.

_____ Signature (SEAL)	_____ Signature (SEAL)
_____ Name - Printed	_____ Name - Printed
_____ Address	_____ Address

SUBSCRIBED to and sworn before me this _____ day of _____, A.D. 19_____.

_____
Judge - Clerk of Court - Notary Public

3.5 Conditions of Bail Bond

See Chapter 38, Section 110-10 for mandatory conditions, see also sub-section (a) (5) providing authority for other reasonable conditions as the court may impose: e.g., refrain from possession or use of firearms, alcoholic liquor, controlled substances; reporting requirements; no contact with complaining witness; continue education or training; be gainfully employed; support dependants; permit authorities to inspect home; etc.

3.6 Bail Forfeiture Forms

CASH DEPOSIT

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ____JUDICIAL CIRCUIT
_____ COUNTY

The People of the State of Illinois)
)
vs.)
_____)
)
_____)
Defendant)

NO._____

DATE:_____

ORDER OF FORFEITURE
(Cash Deposit)

This cause coming on for hearing on the Complaint filed by _____, arresting officer, charging _____ with violation of Paragraph _____ Chapter _____, Illinois Revised Statutes, in the County of _____ on _____ day of _____, 19____.

And it appearing that said Defendant was ordered to appear in Circuit Court in the Court House in _____, Illinois on _____, 19____ at _____ and that bond in the amount of $_____ was set and that said Defendant deposited $_____ as bail, conditioned for appearance at the time and place specified in the Complaint. And it further appearing that said Defendant failed to appear as directed in said Complaint.

It is hereby ordered that the bail deposited by the Said Defendant is forfeited.

DATED: _____

ENTER: _____
Judge

PERSONAL RECOGNIZANCE

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY

The People of the State of Illinois)
)
vs.)
_____)
_____)

NO. _____

DATE: _____

ORDER OF FORFEITURE
(Personal Recognizance)

This cause coming on for hearing on the Complaint filed by _____, arresting officer, charging _____ with violation of Section _____, Chapter _____, Illinois _____, in the County of _____ on _____, 19 ____.

And it appearing that said Defendant was ordered to appear in Circuit Court in the Courthouse in _____ Illinois on _____, 19 ____ at _____ and that said Defendant deposited as bail, his own recognizance signed by himself for the amount of $_____, conditioned for appearance at the time and place specified in the Complaint. And it further appearing that said Defendant failed to appear as directed in said Complaint.

It is hereby ordered that the bail deposited by the said Defendant is forfeited. It is further ordered that the Clerk of this Court shall forthwith mail a copy of this Order to the said Defendant at his last known address. It is further ordered that if the Defendant does not appear and surrender himself to this Court within _____ ( ) days from this date, the said Defendant will be found to be in contempt of this Court. The said Defendant will also be subject to further proceedings in accordance with the Statutes of the State of Illinois

_____
Judge

_____
Date

SURETIES

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY

The People of the)
State of Illinois)
)
vs.)
_____)
_____)
Defendant

NO. _____

DATE: _____

ORDER OF FORFEITURE
(Sureties)

CHARGE: _____

It appearing that said Defendant was ordered to appear in Circuit Court in the Courthouse in _____, Illinois on _____, 19 ____ at _____ and that said Defendant deposited a bond in the mount of $_____ with _____ and _____ as Sureties, conditioned for appearance at the time and place specified in the Complaint. And it further appearing that said Defendant failed to appear as directed in said Complaint.

It is hereby ordered that the bail deposited by the said Defendant and his Sureties is forfeited. It is further ordered that the Clerk of this Court shall forthwith mail a copy of this order to the said Defendant and his sureties at their last known address. It is further ordered that if said Defendant does not appear and surrender himself to this Court within _____ ( ) days from this date, the said Defendant will be found to be in contempt of this Court, and Judgment will be entered for the State and against said Defendant and his sureties for the amount of said bail and the costs of this proceeding. The said Defendant will also be subject to further proceedings in accordance with the Statutes of the State of Illinois.

JUDGE: _____

DATE: _____

3.7 First Appearance: Continuance to Preliminary and/or Arraignment

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS
_____ DIVISION

The People of the)
State of Illinois)
Plaintiff)
vs.)
_____)
_____)
Defendant

NO. _____

On this date, the sheriff brings the defendant into Court.

The Defendant is informed by the judge of the charge against him.

The defendant acknowledges that he has received is served with a copy of the charge.

The defendant is advised by the judge of his right to counsel.

The defendant states that he cannot afford an attorney and requests the appointment of an attorney for him; defendant is furnished a form of affidavit of assets and liabilities.

The defendant states that he will be represented by his own counsel.

Bail is determined and fixed in the amount of $_____

The defendant is advised of his right to be released on bail, and the manner in which he can satisfy bail.

On motion of the State's Attorney, it is ORDERED that the cause be continued to _____ at _____ o'clock A.M. for Arraignment Preliminary Hearing.

DATED: _____

ENTER: _____
Judge

ARRAIGNMENT

4.0 Arraignment Procedure Checklist

A. Preliminary:

1. Identification of defendant and attorney, if attorney retained

2. Data on defendant (age, schooling, occupation, etc.), fitness questions

3. If no attorney
   a. Consideration of appointment
   b. Waiver (finds that understandingly waives)

B. Admonishment:

1. Charge

2. Copy of charge

3. Penalty

   a. Minimum and maximum
   b. Consecutive or concurrent
   c. Enhancement

4. Constitutional and procedural rights (See Chapter V)

   a. Assistance of lawyer
   b. Trial (jury or bench)
   c. Presumption of innocense
   d. Confrontation of witnesses
   e. Testify or not - self-incrimination
   f. Subpoena - Right to process
   g. Appeal (Rule 605)
   h. Grand Jury
   i. Preliminary hearing (if no indictment)

C. Pleas

1. Not guilty
   Set for preliminary hearing

2. Guilty

Caveat: Before taking a Plea of Guilty follow Chapter V
- Arraignment Procedure - Ch. 38, Sec. 113-1 et seq.
- Guilty Pleas, Supreme Court Rule 402

4.1 Indictments in General

The Indictment -

You are hereby handed a copy of an indictment returned against you by the Grand Jury of _____ County, Illinois, on _____ , 19 ____ .

This indictment reads as follows.

(Indictment read)

In simple language, here is what this means:

On (date) at (place) you (along with others named) did . . .

Sufficiency of Indictment - People v. Blanchett, 33 Ill. 2d 527 (1965)

People v. Jones, 53 Ill. 2d 460 (1973)

Note Indictment Sufficiency, 70 Col. L. Rev. 876 (1970) Tracing language of Chapter 38 is not enough where crime contains specific intent. See Joinder and Severence, Chapter III.

4.2 Common Indictment Defects

A. Failure to charge a crime: In Illinois this is jurisdictional and may be reached after trial by a motion in arrest of judgment (116-2).

B. Duplicity: Charging two or more offenses in the same count.

C. Multiplicity: Many counts but only one offense.

D. Non-Joinder: Of offense or defendants, see Chapter III.

E. Misjoinder: Improper joinder of unrelated offenses or defendants.

F. Composition of Grand Jury see Frances v. Henderson 96 S. Ct. 1708 (1974).

4.3 Indictments: ALR 3d Cites

Power of court to make or permit amendment of indictment with respect to allegations as to: nature of activity, happening, or circumstances; 17 ALR 3d 1285.

- Prior convictions, 17 ALR 3d 1265
- Non-substantial defects, 17 ALR 3d 1181
- Criminal intent or scienter, 16 ALR 3d 1093
- Money, 16 ALR 3d 1076
- Property, objects, or instruments, other than money, 15 ALR 3d 1357
- Place, 14 ALR 3d 1335
- Time, 14 ALR 3d 1297

4.4 Not Guilty - Jury Waiver Order

ORDER

_____, defendant, having been arraigned before this court, and appearing with _____ (his) (her) attorney (pro se), having been advised of right of counsel and having understandably waived such, and having heretofore been furnished with copy of the charge against (him) (her), and having been apprised of the possible penalties in the event of a plea of guilty or finding of guilty, and having been apprised of the nature of an arraignment and having been advised of constitutional and procedural rights, the defendant entered a plea of not guilty as charged in the (information) (indictment), which plea is accepted by the court.

Jury waiver accepted.

Order

The defendant stated to the court that (he)(she) desires a trial before the court and thereupon waived right of trial by jury, which waiver the court finds was understandingly and voluntarily made.

This cause is set for trial on the _____ day of _____ 19 ____, at the hour of _____ o'clock __ M.

EXTRADITION

5.0 Extradition Arraignment Checklist

Extradition Proceedings - Arraignment

Ill. Rev. Stat., Ch. 60, Sec. 18 et. seq., Uniform Criminal Extradition Act.

A. Preliminary

1. Identification of alleged fugitive

2. Attorney

a. Identification of attorney, if attorney retained
b. No attorney - advise as to right consideration of appointment
c. Data on alleged fugitive (age, schooling, occupation, etc.)

B. Admonishment - No Extradition Warrant

1. Complaint

2. Copy of complaint

3. Alternatives

a. Waive extradition and consent to return to the demanding state
b. Require formal extradition

C. State nature of extradition

D. If no waiver of extradition

1. Immediate hearing to determine that:

a. Alleged fugitive is person charged
b. Has fled jurisdiction
c. Not a determination of merits of charge

2. Remanded to Sheriff to await extradition requisition by Governor of demanding state

   a. Not over _____ days
   b. May be released on bail unless penalty for offense is life imprisonment or death.

E. Conduct hearing on extradition

1. Right of counsel

2. Right to file writ of habeas corpus for determination of:

   a. Person named in requisition
   b. Whether substantially charged
   c. Fugitive from demanding state
   d. Papers in regular form
   e. Not a determination of merits of charge.

F. Make finding that alleged fugitive understands

1. Execution of waiver

2. Finding that voluntary

G. If no waiver of extradition - no extradition warrant

1. Fix Bail

2. Execute warrant remanding to Sheriff, not _____ days, to await extradition warrant.

H. Conduct Admonishments

1. In form of demand

2. Copy of demand

3. Crime with which charged

4. Right of counsel (has not less than 24 hours to procure)

5. Right ot file writ of habeas corpus to determine

   a. He is a person charged

b. Whether substantially charged
c. Fugitive from demanding state
d. Papers in regular form
e. Not a determination of merits of charge.

I. State alternatives

1. May file writ of habeas corpus

2. May waive further proceedings and consent to return to demanding state

3. If no consent, court will set time and date to file writ of habeas corpus

J. Make finding that alleged fugitive understands

1. Consent - Extradition Warrant

a. Execution of consent
b. Finding that voluntary

2. No consent

a. Fix bail
b. Set date for filing of petition for writ of habeas corpus.

5.1 Extradition Waiver Form

Waiver of Extradition

DATE: _____

I, _____ , now in the custody of the Sheriff of _____ County, Illinois, and having been produced by the said Sheriff before a judge of the Circuit Court, do hereby certify that I freely and voluntarily agree to accompany Messenger to _____ County in the State of _____ for the purposes of answering to the charge of _____ there pending against me.

Furthermore, I hereby waive my right: To the issuance and service of a warrant of Extradition; to obtain a writ of Habeas Corpus, and; To all other procedures incidental to Extradition proceedings and consent to return to the above named stated.

I exonerate (excuse) _____, Sheriff of _____ County and all other officers of said department, from any blame, compulsion, or interference in this connection.

_____
Person Charged (Signature)(Seal)

_____, Illinois _____, 19 ____

SUBSCRIBED TO BEFORE ME _____
JUDGE

_____ _____
Arresting Officer Agent of Demanding State

_____
Arresting Officer

CHAPTER III

MOTIONS

CHAPTER III

MOTIONS

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III - O

SCOPE NOTE

This chapter relates primarily to pre-trial and trial motion practice. See also: Objections (Ch. VII - Trial), Post Verdict Motions (Ch. VIII - Verdicts), and Motions in Aid of Discovery (Ch. IV - Discovery).

0.1 Applicable Rules

Present trial motion practice is governed by the following:

A. Supreme Court Rules

Article I entitled General Rules is applicable to both civil and criminal cases. Rule 11 provides (a) that service shall be made on the attorney and (b and c) the methods of service, either personally on the attorney at his office or by mail. Rule 12 provides (a) that proof of service shall be filed with the clerk and (b) the manner of service either personal or by mail.

Article IV entitled Rules on Criminal Proceedings in the Trial Court has no rule pertaining to motion practice.

B. Code of Criminal Procedure

Ill. Rev. Stat., Ch. 38, Art. 114, entitled Pre-Trial Motions, lists thirteen pre-trial motions:

114-1 Motion to Dismiss Charge

114-2 Motion for a Bill of Particulars

114-3 Motion to Discharge Jury Panel

114-4 Motion for Continuance

114-5 Substitution of Judge

114-6 Change of Place of Trial

114-7 Joinder of Related Prosecutions

114-8 Motion for Severance

114-9 Motion for a List of Witnesses

114-10 Motion to Produce Confession

114-11 Motion to Suppress Confession

114-12 Motion to Suppress Evidence Illegally Seized

114-14 Alibi Defense

Section 115-6 provides for the appointment of a psychiatrist.

Caveat:

Check local rules to determine if any local motion rules have been promulgated for your circuit.

C. Motions may be based upon new constitutional decisions of the United States Supreme Court or the Illinois Supreme Court or from change in the common law.

The number of motions used in American courts are limited only by imaginative maneuvers of counsel. New motions are improvised each year while others become outmoded or are discarded. Motions perform a multiformity of functions such as challenging jurisdiction, questioning rights, before the trial, at the trial itself or post trial.

0.2 List of Miscellaneous Motions

Motion for Additional Discovery Ill. S.Ct. Rule 415 (b)

Motion for appointment of Separate Counsel for Different Defendants 509 F.2d 334 (D.C. Cir. 1974)

Motion for Bill of Particulars 342 Ill. 421 (1931)

Motion for Continuance Ch. 38, §114;19 Ill. App.3d 840 (1st Dist. 1974)

Motion for Discharge Ch. 38, §103-5; 407 U.S. 514 (1972) 39 Ill.2d 436 (1968)

Motion for Discovery U. of Ill. Law Forum 1971

Motion for Evidence Favorable to Defendant 7 ALR 3d 8

Motion for Examination of Defendant 402 U.S. 424 (1971)

Motion for Issuance of Subpoena Duces Tecum Ill. S.Ct. Rule 412 (a) (v)

Motion for Joinder of Prosecutions 354 Ill. 573 (1933)

Motion for List of Witnessess 90 Ill. App.2d 310 (1st Dist. 1967)

Motion for Pre-trial Conference ABA Standards, Discovery (5-3) 1969 Draft

Motion for Production Concerning Eavesdropping Ch. 38, §14-5

Motion for Production of Electronic Surveillance 394 U.S. 165 (1969)

Motion for Production of Grand Jury Testimony Ill. S.Ct. Rule 412 (a) (iii)

Motion for Production of Scientific Reports Ill. S.Ct. Rule 412 (a) (iv)

Motion for Production Relative to Identification of Defendant Ill. S.Ct. R. 413

Motion for Reduction of Bail Ill. S. Ct. Rule 604(c); Ch. 38 §110-5

Motion for Ruling on Impeachment of Defendant 67 ALR 3d 824

Motion for Severance Ch. 38 §114-8 404 F.2d 300 (7th Cir. 1971)

Motion for Substitution of Judges Ch. 38 §114-5 454 F.2d 1337 (5th Cir. 1972)

Motion to Change Place of Trial 421 U.S. 794 (1975)

Motion to Discharge Jury Panel Ch. 38, §114-3

Motion to Dismiss Ch. 38 §114-1

Motion to Inspect Physical Evidence

Motion to Preserve Grand Jury Testimony

Motion to Produce Confession

Motion to Quash Search Warrant

Motion to Suppress Confession

Motion to Suppress Evidence Illegally Seized

Motion to Suppress Identification

III - 1

GENERAL MOTIONS

1.0 Motion to Dismiss The Charge

This motion must be in writing, and it must be made prior to trial. The motion to dismiss meets those problems formerly dealt with by the motion to quash, plea in abatement, and plea in bar. The motion properly addresses itself to those matters which would have precluded charging the defendant in the first instance, such as the running of the fourth term or a plea of former jeopardy. See Ill. Rev. Stat., Ch. 38, § 114-1 (Motion to Dismiss).

Whether a charge is sufficient to state an offense is governed by the general rule that it is sufficient if it is in the language of the statute and contains all the necessary elements listed in the statute. However, where the statute does not define or describe the act or acts constituting the offense created, such acts must be sufficiently alleged or the charge is deficient, People v. Aud, 52 Ill.2d 368 (1972). If the motion is sustained, the State may file a new charge. However, where the indictment, information or complaint totally fails to charge an offense due to a substantial defect, this can be raised in a motion in arrest of judgment or even attacked collaterally. People v. Brantley, 46 Ill.2d 413 (1970). Re variance, see People v.

CONTINUED

1 OF 6

Jones, 53 Ill.2d 460 (1973). Re amendment of indictment, see Ch. 38, § 11-5.

1.1 Duplicity and Multiplicity

Duplicity is the practice of charging more than one offense in one count of a complaint or indictment. Multiplicity is the practice of improperly charging more than one offense in separate counts of the same indictment. People ex rel Ledford v. Brantley, 46 Ill.2d 419 (1970). Duplicity and multiplicity defects are nor-jurisdictional and are thus waived by failing to raise them in a motion to dismiss. However, if there is a failure to state an offense, the defect is jurisdictional and may be raised by a post-trial motion in arrest of judgment. Reindictment may follow from dismissal based on defective pleadings.

1.2 Double Jeopardy

In General	Supreme Court Cases 25 L.Ed. 2d 968
History of Double Jeopardy	490 F.2d 868 (1973)
Effect of Acquittal and Meaning of Phrase "Offense"	18 ALR Fed. 393
What is Jeopardy and When Is It "Double"	398 U.S. 323 (1970)
Retrial after a Mistrial in General	410 U.S. 453 (1973)
Guide to "Manifest Necessity"	U.S. vs. Dintiz 96 Sup. Ct. 1075 (1976)
Abuse of Discretion	478 F.2d 88 (1973)

Double jeopardy does not prevent retrial where mistrial resulted from defense motion or clearly with his consent.

Where defendant accedes to early termination without verdict the record should be so noted.

Where Prior Trial Jury Was Deadlocked	
Yes	460 F.2d 164 (1972)
No	479 F.2d 1061 (1973)
Prosecution Over-reaching or Abuse of Nolle as Double Jeopardy in Subsequent Proceeding	481 F.2d 1145 (1973)
In General - Retrial After Adjudication	Ashe v. Swenson, 397 U.S. 436 (1973)

1.3 Checklist of Grounds for Motion to Dismiss Criminal Charge

1. The defendant has not been placed on trial in compliance with speedy trial requirements (38 Ill. Rev. Stat. Ch. 38, §103-5).

2. The prosecution of the offense is barred by multiple prosecution and former prosecution provisions (Ill. Rev. Stat. Ch. 38, §§3-3 through 3-8), and see §§15:11 and 15:10.

3. The defendant has received immunity from prosecution for the offense charged. See §38:10.

4. The indictment was returned by a grand jury which was improperly selected and which results in substantial injustice to the defendant.

5. The indictment was returned by a grand jury which acted contrary to Article 112 of the Criminal Code and which results in substantial injustice to the defendant.

6. The court in which the charge has been filed does not have jurisdiction.

7. The county is an improper place of trial.

8. The charge does not state an offense.

9. The indictment is based solely upon the testimony of an imcompetent witness.

10. The defendant is misnamed in the charge and the misnamer results in substantial injustice to the defendant. (Ill. Rev. Stat. Ch.38, §114-1). Hunter, §8.6.

1.4 Constitutional Right to Speedy Trial

The Sixth Amendment right to a speedy trial has been applied to the states through the Fourteenth Amendment, Klopfer v. North Carolina, 386 U.S. (1967). In Barker v. Wingo, 407 S. 514 (1972), the Court mandated a balancing test to determine if the right to a speedy trial had been violated. Four factors are to be considered in each case: "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." 407 U.S. at 530.

A defendant is deemed to have been "brought to trial" at the time that jeopardy attaches, as when the jury is impaneled in a jury trial. In computing constitutional or statutory times for trial, the days of postponement requested by the defendant, or delays caused by proceedings instituted by him, will be deducted and defendant is not entitled to a dismissal when the delay has been caused by proceedings, motions or continuances instituted by him.

What is a constitutionally secured speedy trial may depend on the circumstances of each case. Good cause or the ends of justice for those postponements that did take place are principal determinants of whether defendant received a speedy trial. Regarding speedy trial in setting of habeas corpus after Illinois Supreme Court appeal see: 477 F.2d 767 (1973); 507 F.2d 693 (1975).

1.5 Statutory Right to a Speedy Trial

Section 103-5 of the Code of Criminal Procedure, Ill. Rev. Stat. Ch. 38, §103-5:

(a) Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he was taken into custody unless delay is occasioned by the defendant, by an examination for competency ordered pursuant to Section 104-2 of this Act, by a competency hearing, by an adjudication of incompetency for trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal.

(b) Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial unless delay is occasioned by the defendant, by an examination for competency ordered pursuant to Section 104-2 of this Act, by a competency hearing, by an adjudication of incompetency for trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal.

(c) If the court determines that the State has exercised without success due dilligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the State for not more than an additional 60 days.

(d) Every person not tried in accordance with subsections (a), (b) and (c) of this Section shall be discharged from custody or released from the obligations of his bail or recognizance.

(e) If a person is simultaneously in custody upon more than one charge pending against him in the same county, or simultaneously demands trial upon more than one charge pending against him in the same

county, he shall be tried, or adjudged guilty after waiver of trial, upon at least one such charge before expiration relative to any of such pending charges of the period prescribed by sub-paragraphs (a) and (b) of this Section. Such person shall be tried upon all of the remaining charges thus pending within 160 days from the date on which judgment relative to the first charge thus prosecuted is rendered pursuant to Section 118-1 of this Act or, if such trial upon such first charge is terminated without judgment and there is no subsequent trial of, adjudication of guilt after waiver of trial of, such first charge within a reasonable time, the person shall be tried upon all of the remaining charges thus pending within 160 days from the date on which such trial is terminated; if either such period of 160 days expires without the commencement of trial of or adjudication of guilt after waiver of trial of, any of such remaining charges thus pending, such charge or charges shall be dismissed and barred for want of prosecution unless delay is occasioned by the defendant, by an examination for competency ordered pursuant to Section 104-2 of this Act, by a competency hearing, by an adjudication of incompetency for trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal; provided, however, that if the court determines that the State has exercised without seccess due dillegence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the State for not more than an additional 60 days.

(f) Delay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as by subparagraphs (a), (b), or (e) of this Section and on the day of expiration of the delay the said period shall continue at the point at which it was suspended. Where such delay occurs within 21 days of the end of the period within which a person shall be tried as prescribed by subparagraphs (a), (b), or (e) of this Section, the court may continue the cause on application of the State for not more than an additional 21 days beyond the

period prescribed by subparagraphs (a), (b), or (e).

This subparagraph shall become effective on, and apply to persons charged with alleged offenses committed on or after July 1, 1976.

See Speedy Trial in Illinois, The Statutory Right, 25 De Paul Law Rev. 317 (1976), re Delay Attributable to Defendant see, People v. Young, 46 Ill.2d 82, (1975).

1.6 List of Witnesses

The purpose of the state furnishing the list of witnesses is to prevent surprise at the time of trial and also to assist the defendant in combatting false testimony at the time of trial. The trial court has the discretion to allow non-listed witnesses to testify on behalf of the state at the time of trial, and this discretion will not cause an unfavorable verdict to the defendant to be overturned in the appellate court unless the defendant shows that he was prejudiced by the testimony of the nonlisted witnesses or was surprised by the testimony of the nonlisted witnesses.

1.7 Motion for a Bill of Particulars

In a proper case, the prosecution may be required to show, in a bill of particulars, the time of an event, the address, or place, the act or transactions constituting the offense, instruments used, the value of the property involved or a description of a co-conspirator. The purpose, however, of a bill of particulars is not to substitute for evidentiary discovery, but instead to provide more specific detail as to an offense than is provided in a charge. A bill of particulars is proper where the charge sufficiently identifies the offense for purposes of jurisdiction, but is still too general to enable the defendant adequately to prepare his defense and to be protected against surprise. A bill of particulars cannot cure or aid a substantially

deficient indictment, information or complaint which fails to state an offense. The prosecutor is not required, in answer to a bill, to supply particulars which are not available. At trial, the state is limited to presenting evidence of those transactions which are specified in the bill of particulars. (See People v. Blanchett, 33 Ill.2d 527 (1965) and Gallagher, Criminal Procedure, 18.13 - 18.15).

1.8 Motion for Severance

The most common use of this motion will relate to instances where there are multiple defendants charged with the same offense. The trial judge has no obligation to order separate trials for co-defendants on his own motion, and it is necessary for the defense attorney to address the court with the motion if he wishes a severance. Ill. Rev. Stat., Ch. 38, § 114-8.

On motion for severance the judge should analyze whether evidentiary antagonism among defendants will result if no severance is ordered.

The decision as to whether a joint trial will deprive a defendant of the right to a fair trial is resolved by determining whether it is within the jury's capacity to follow the trial judge's instructions to limit and separate the evidence against each defendant. The ultimate test whether the jury can follow admonitory instructions of the court and appraise independent evidence against each defendant solely upon the defendant's own acts, statements and conduct.

The determination of severance motions rests "within the sound discretion of the trial judge..."Opper v. United States, 348 U.S. 84 at 95 (1954). Ill Rev. Stat. Ch. 38, 3-3 (c) and 114-8, People v. Bernette 45 Ill.2d 227 (1970).

The mere fact that several defendants and offenses are combined in one indictment does not constitute a basis for severance. Where the defendants are all charged with having participated in the same series of transactions, the proof of separate charges may be largely dependent upon evidence applicable to all defendants. If it is, potential jury confusion regarding evidence applicable to only one defendant can be obviated by appropriate instructions from the bench. As the court said in Hanger v. United States,

398 F.2d 91 at 100 (8th Cir.-1968), Cert. den. 393 U.S. 1119:

> "The feature of certain evidence being evidence against one defendant but not against another defendant is usually present in every joint trial. It is well settled that the fact that in a joint trial there will be evidence against one defendant which is not evidence against another defendant does not require separate trials."

Severances have been sought on a wide variety of imaginative grounds. See, e.g. United States v. Cohen, 145 F.2d 83 (2d Cir. 1944), (defendant sought severance alleging that he was only a minor participant in a conspiray); United States v. Myers, 406 F.2d 746 (4th Cir. 1969), (unsavory character of co-defendant); United States v. Hoffa, 367 F.2d 698, at 709 (7th Cir. 1966), rev'd. on other grounds, 387 U.S. 231 (1967), (antagonistic personality of co-defendant); United States v. Turner, 274 F. Supp. 412, at 419 (E.D. Tenn. 1967), (fact that one defendant is a police officer and his co-defendants have prior criminal records). See generally Note: 74 Yale L.J. 553 (1965). The fact that a co-defendant gave a confession inculpating the moving party may warrant a severance prior to trial.

If the prosecution proposes to introduce into evidence an extrajudicial statement of one defendant which implicates in a harmful manner a co-defendant, the trial court must consider one of the following procedures: (1) permit a joint trial if all parts of the extrajudicial statement implicating any co-defendants can be and are effectively deleted without prejudice to the declarant. To be effective, deletions should include direct and indirect identifications of co-defendants and any statements that could be employed against nondeclarant co-defendants once their identity is otherwise established; (2) grant a severance of trials if the prosecution insists that it must use the extrajudicial statements and it appears that effective deletions cannot be made. If the prosecution has successfully resisted a motion for severance and thereafter offers an extrajudicial statement implicating a co-defendant, the trial court shall exclude it if effective deletions are not possible.

See Brutton v. United States 391 U.S. 123 (1968). For a discussion of confrontation and the Brutton rule in conspiracy cases see U.S. v. Truslow 530 F.2d 257 (4th Cir. 1975).

1.9 Motion for Joinder

Test is whether the offenses and the defendants could have been joined in a single charge. Ill. Rev. Stat., Ch. 38, § 111-4.

A complaint may charge two or more offenses made under separate counts.

If the offenses charged were connected together in their commission or if there is a common element of substantial importance in their commission, they may be joined or consolidated even though they do not relate to the same transaction.

Where the same conduct may constitute a violation of a number of different sections of the Code, the prosecution is not required to elect between the different offenses or counts, but may join different statements of the same offense.

Where the offenses charged are of the same class or have common characteristics or attributes, they may properly be joined.

For guideline sees Federal Rules (Fed. R. Crim. P. 8); I.L. Orfield, Criminal Procedure Under Federal Rules § 38:47; Discussion of joinder at 445 F.2d 1076 (1971). The concept of "offense" is best understood by an analysis of whether any new or different items of evidence are needed. The concept of related offenses contains either a same time or same character likeness.

III - 2

CHANGE OF JUDGE

2.0 In General

Change of judge where a prosecution is brought in the proper court should be distinguished from the situation where the charge is brought in an improper county. See the

Code of Criminal Procedure Ill. Rev. Stat., Ch. 38, § 114-5, Substitution of Judge.

The right to a substitution of judge may be a constitutional right where essential to a fair trial, under procedural due process. Tumey v. Ohio, 273 U.S. 510 (1927).

(See Substitution of Judge in a Criminal Case: 83 ALR 2d 1032; 114 ALR 135; Staste's Right to Change of Venue in Criminal Cases, 80 ALR 355 Re Misdemeanor Fair Trial Venue Change 34 ALR 3d 804.)

For a discussion on the subject of judicial disqualification see memorandum of Mr. Justice Rehnquist in 409 U.S. 824 (1972). Disqualification of Judges 56 Yale L. J. 605 (1947).

2.1 Substitution Without a Hearing

A defendant is entitled to a substitution of a judge as of right and without hearing where the ground is that the judge is prejudiced against him or his counsel. The mandatory substitution must be filed within ten days after the matter is placed on the judge's trial call and defendant receives notice of such assignment and prior to the judge ruling on any motions going to the merits of the cause. A fitness ruling is not a hearing on the merits, while a motion to suppress a confession, or a ruling on the constitutionality of a statute would be. It is not for the judge to determine whether he entertains prejudice against the defendant, where the motion is made within the statutory 10 days. The court or judge to which a transfer is to be made should not be named, and counter-affidavits should not be received. Upon timely filing, the court must grant the motion and the trial judge loses all power over the case except to make necessary orders to effect the substitution of judge or judges.

2.2 Substitution for Cause

A substitution of judge at any time is authorized "for cause" whereas an automatic substitution without hearing is

authorized upon allegation of "prejudice."

The word "cause" includes bias, but the fact that the trial judge presided at a previous trial of the defendant for another offense, does not necessarily entitle the defendant to a change of judges for cause. An allegation of the defendant that he could not receive a fair and impartial trial because the judge was prejudiced is, however, an allegation of cause. The substitution on hearing for cause motion, may be made even though defendant may have waived automatic substitution.

Where substitution of judges is based on cause, there should be a notice of motion.

The motion must be supported by affidavit or verified and thereupon the court should grant a hearing and exercise its discretion to grant or deny the motion. The trial judge's duty under the statute providng for non-mandatory substitution of judge on motion, affidavit and hearing is "to afford an opportunity to present evidence, not to assure that it is presented." People v. Wolfe, 124 Ill. App.2d 349 (1970).

A motion or petition for substitution of a judge on cause as distinguished from automatic substitution for alleged prejudice may be denied when brought in bad faith.

Generally defendant cannot, after the judge has denied other motions or ruled unfavorably, expect to get an automatic change for cause. Where the trial has begun, or the jury selection complete, it is very late for defendant to find sufficient cause for change. The same can be said where the court has denied motions to suppress a confession or pre-trial identitication. (See People v. Wilson, 29 Ill.2d 82 (1963)). References: Substitution - Callaghan Proc. 3.20, 21.01-27. U.S. v. Garrison 340 F. Supp. 952 (E.D. La. 1972).

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PRE - TRIAL PUBLICITY VENUE CHANGE

3.0 In General

The lead cases in this area are Estes v. Texas, 381 U.S. 532 (1965); Sheppard v. Maxwell, 384 U.S. (1966); Main v. Superior Court, 68 Cal. 2d 375, 66 Cal Rptr. 724, 438 P. 2d 372 (1968). Nebraska Press Assoc. v. Stuart 96 Sup. Ct. 2791 (1976).

The prevailing view is that the decision on such motion is usually made upon the selection of the jury, so it can be determined if a fair jury can in fact be obtained. People v. Speck, 41 Ill.2d 177 (1968). Ill. Rev. Stat., Ch. 38 § 114-6, provides:

> "(a) A defendant may move the court for a change of place of trial on the ground that their exists in the county in which the charge is pending such prejudice against him on the part of the inhabitants that he cannot receive a fair trial in such county.
>
> (b) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of the prejudice alleged. The State may file counter-affidavits. The Court shall conduct a hearing and determine the merits of the motion.
>
> (c) If the court determines that there exists in the county where the prosecution is pending such prejudice against the defendsnt that he cannot receive a fair trial it shall transfer the cause to any other court of competent jurisdiction in any county where a fair trial may be had."

Each case must be judged on its own facts in determining whether community prejudice warrants a change of venue. See: Re Pre-Trial Publicity as Grounds, 33 ALR 3rd 17; Good case collection in Callaghan's Crim. Proc. § 21.28. See also A.B.A. Standards relating to Fair Trial - Free Press 3.4 (B) Re Pre-Indictment Publicity 397 F.2d 741-discussing effect on Grand Jury. RE: Pre-Trial Orders Precluding Publicity See 33 ALR 3d 1041.

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CONTINUANCE

4.0 In General

A Motion for Continuance is addressed to the sound judicial discretion of the Court, and the Court's ruling will not be disturbed on revue, unless it is shown that the discretion has been abused -- and must show the failure to grant a continuance has embarrassed the accused in his defense, and thereby prejudiced his rights.

Chapter 38, 114-4 lists the grounds for continuances. The Court may require an Affidavit to support a Motion if it is made more than 30 days after arraignment.

Where there have been a number of continuances, it is not error for the court to appoint a public defender on the day of the trial and deny further continuances. People v. Bimbo, 369 Ill., 618 (1938) - Certiorari denied in 305 U.S. 661 (1939).

Since the granting of a Motion for a Change of Venue for Leave of Counsel to Withdraw, a Jury Waiver will necessarily cause a continuance, if made on the day the case is set for trial, and it is not error to deny such a motion. People v. Catalano, 29 Ill.2d 197 (1963). Certiorari denied in 377 U.S. 904 (1964).

Even if the State has been granted several continuances, the granting of an additional continuance is not, as a matter of law, an abuse of the Court's discretion. People v. Taylor, 82 Ill. App.2d 5 (1st 1967).

If the trial has begun, a reasonable brief continuance may be granted to either side in the interest of justice. 38 Ill. Rev. Statute 114-4 (f).

A rule that a Judge should not make a private investigation in any case applies to the grounds for a motion for continuance. Wowaczyk v. Welch, 106 Ill. App.2d, 453 (1969). Also: People v. Thunberg, 412 Ill. 565 (1952) and People v. Wallenberg, 24 Ill.2d 350 (1962).

Same principles regarding continuances are applicable in any evidentiary hearing, such as post trial motions and hearings in aggravation and mitigation.

4.1 Unpreparedness

1. Where the defendant escapes and does not confer with his attorney, and the attorney cannot prepare, the defendant is not entitled to a continuance. People v. Dery, 74 Ill. App.2d 112 (1966).

Corollary: Where defendant himself causes, or contributes to the cause of delay, no continuance need be granted.

2. On appeal, where no motion for a continuance was made, the defendant cannot contend he was not given a fair trial because his counsel did not have sufficient time to prepare. People v. Laffton, 62 Ill. Appl 2d 440 (1965).

Continuance must be granted where, through no fault of the party or his attorney, there has not been sufficient time to prepare for trial. People v. Dunham, 334 Ill. 516 (1929).

It has been held to be reversible error to deny a Motion for Continuance where the States Attorney indicated earlier that he would proceed on one indictment, and then two days before trial, he indicated he would proceed on an entirely different indictment.

Corollary: Complaint instead of indictment. People v. McNeil, 102 Ill. App.2d 257 (1968).

3. If a new witness' name is furnished to defendant's counsel on the day of trial the defendant is not automatically entitled to a continuance if the States Attorney offers to have the new witness available to defendant's attorney for questioning whenever he wishes. People v. Bond, 99 Ill. App.2d 45 (1968).

4.2 Absence, Illness or Death of Party or Counsel

1. In General

Physical incapacity--if the appearance of a defendant woud endanger his health, a continuance must be granted. If such a continuance precedes the appearance of counsel, the court shall simultaneously appoint counsel in a manner prescribed in Ill. Rev. Stat. Ch. 38, §113-3, and shall suspend the provisions of Section 103-5 of the Act, which periods of

time limitations (speedy trial term) shall commence anew, and the court, after presentation of Affidavit or evidence, has determined that such physical incapacity has been substantially improved.

4.3 Absence of Witnesses or Evidence

1. If the defendant applies for a continuance because of absence of witness or evidence, he must give an Affidavit showing due diligence has been used to obtain the evidence, or that there was not enough time to obtain it, and what the actual evidence consists of. If it is testimony of a witness the Affidavit must show the address of the witness, or, if not known, that due diligence was usd to attempt to obtain it and that if further time is given, it can be obtained. Ill. Sup. Ct. Rule 231(a)

If the court is satisfied the evidence is not material, or if the States Attorney stipulates that as to what the absent witness would testify to, then the continuance can be denied. Ill. Sup. Ct. Rule 231(b).

Where address of a witness is known and a party fails to subpoena the witness, it is in the court's discretion to deny the continuance for failure to exercise due diligence in compelling his presence at trial. Keel v. Ill. Ter. R.R., 346 Ill. App. 169 (1957)

2. The determination of whether the granting of a continuance is reasonable must be made from facts and circumstances existing when the motion is considered, and not in light of subsequent events: i.e., not reversible error in allowing the States Attorney a continuance due to the absence of a witness even though the witness did not ultimately testify. People v. Moore, 95 Ill. App. 2nd 89 (1968).

4.4 Prejudice or Surprise

In the case of People v. White, 123 Ill. App. 2nd 102 (1970) held: At trial, after one panel of jurors were selected 24 additional witness' names were given to defendant and all witnesses were made available for interview, the defendant must be granted a continuance; common sense

indicates that counsel could not adequately interview 24 witnesses during trial.

A continuance may properly be granted pending the availability of co-defendants where it appears that it is desirable and in the interest of justice for all of the defendants to be jointly tried.

Where the prosecutor for good cause is unavailable to try the case, a continuance may properly be granted pending his availability or the appointment of a special attorney to act as prosecutor.

The excusable absence of a material witness, following due diligence to secure his attendance, is good cause for granting a continuance. However, the proof should show (1) a particular obtainable witness, (2) materiality of the evidence, (3) the necessity of his testimony, (4) diligence to obtain his attendance and (5) a likelihood that his attendance can be secured within a reasonable time.

Re problem of unprepared counsel, Avery v. Alabama, 308 U.S. 444 (1940).

Re abuse of discretion in not giving new counsel another continuance, (No) 386 F.2d 611, (2d Cir. 1967) (Yes) 314 F.2d 868 (10th Cir. 1963). No constitutional right to new choice, 354 F.2d 637, (7th Cir.-1965).

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CONTESTED MOTIONS

5.0 Common Pre-Trial Contested Motions

A. To suppress physical evidence on the grounds of:

1. Illegal search and seizure

2. Illegal arrest

B. To suppress admissions or confessions made by

defendant on the grounds of:

1. Delay in arraignment amounting to coercion

2. Coercion (totality of circumstance)

3. Violation of the Miranda Rule

4. Unlawful arrest

C. Improper Lineup

D. Evidence based on suggestive identifications violative of due process

E. Motion for a ruling concerning impeachment of defendant by prior infamous convictions.

5.1 Motion to Suppress Evidence Illegally Seized in General - Ill. Rev. Stat., Ch. 38, § 114-12

Caveat: The areas of search warrants and searches without warrant are unstable. Trial judges should consult materials in annual reports of the Judicial Conference. The court should also keep in bench book new relevant advance sheets from the United States or Illinois Supreme Court.

5.2 Motion to Quash Search Warrant

The object of this motion is to attack any defects on the face of the search warrant itself or the complaint for the search warrant, and to also attack the execution of the warrant, as well as the creation of the warrant in the first instance. This motion should be made in writing and filed and argued prior to trial.

Some search warrants will fail because of an improper statement of probable cause in the complaint for the search warrant. At the hearing to quash the search warrant, the court is bound by the four corners of the complaint, and cannot consider facts beyond those alleged in the complaint. People v. Bak, 45 Ill.2d 140 (1970).

The important thing to remember in ruling is that pro-

bable cause and reasonableness are variable concepts that depend upon unique time, place, object and circumstances. The judge should not allow counsel to argue authority unresponsive to the particular facts.

5.3 Motion to Suppress Fruit of Illegal Seizure

The purpose of this motion is to suppress real or demonstrative evidence in the hands of the state that was acquired by an unreasonable search and seizure in violation of the defendant's Fourth Amendment rights, or in some instances in violation of the defendant's Fifth Amendment rights where the demonstrative evidnece was derivative from an unlawful statement or confession.

The trial judge should be prepared for alternative theories seeking to uhold seizure and admission, by the state's attorney. The main areas where the search and seizure law is likely to be in flux are (1) person-place searches incidental to an arrest, (2) what is plain view, (3) automobile searches, (4) consent, (5) Harmless error and (6) the generic doctrine of probable cause.

The key question is whether the evidence was the product of, derived from or tainted by illegality, or was it derived from an independent source or independent orgin, as to this question the collector's good faith is relevant. Brown v. Illinois, 422 U.S. 590 (1975). Re Entrapment Hampton v. U.S., 96 Sup. Ct. 1646 (1976)

5.4 Motion to Suppress Confession - Ill. Rev. Stat., Ch. 38, § 114-11

Miranda matters:

Meaning of "interrogation:	423 US 96 (1976)
Meaning of "Custody"	96 Sup. Ct. 1612 (1976)
The Warnings	417 U.S. 433 (1974)
The Waiver	420 U.S. 714 (1975)

Derivative evidence Rule 422 U.S. 590 (1975)

Impeachment use of Miranda Silence

96 Sup. Ct. 2240 (1976)

Admissibility of pretrial confession in criminal case, see: 1 L.ed. 2d 1735, 4 L Ed. 2d 1833, 12 L.Ed. 2d 1340, 16 L.Ed. 2d 1294, 22 L.ED. 2d 872

Use in evidence of co-defendants in joint trial as denial of other defendants' right of cross-examination secured by confrontation clause of Sixth Amendment (application of Bruton rule) 29 L.Ed. 931.

In Lego v. Twomey, 404 U.S. 477 (1973) the United States Supreme Court reaffirmed a preponderance of the evidence burden of proof as to voluntariness:

> "...exclusionary rules are very much aimed at deterring lawless conduct by police and prosecution and it is very doubtful that escalating the prosecution's burden of proof in Fourth and Fifth Amendment suppression hearings would be sufficiently productive in this respect to outweigh the public interest in placing probative evidence before juries for the purpose of arriving at truthful decisions about guilt or innocence."

5.5 Identification Based on Pre-Trial Confrontation

United States v. Wade, 388 U.S. 218 (1967), Gilbert v. California, 388 U.S. 263 (1967); and Stovall v. Denno, 388 U.S. 293 (1967) provide the basis for a motion to suppress both the line-up and the in-court identification. The distinction between the line-up and the in-court identification should be noted. If the line-up is suppressed it means the state may make no mention of what transpired at the line-up. The suppression of an in-court identification, of course, means the witness may not identify the defendant at the trial. Leading case is Neil v. Biggers, 409 U.S. 189 (1973).

A. Due Process

Any line-up procedure which is so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable mistaken identification amounts to a denial of due process and the results should be excluded from evidence. In each case the

possibility of unfairness must be examined in the context of the totality of the circumstances, Coleman v. Alabama, 399 u.s. 1 (1970).

B. Independent Origin

In-court identifications of an accused subseguent to a constitutionally defective line-up are not per se inadmissible, but once a constitutionally defective line-up is established (defendant's burden), the burden is on State to show by clear and convincing evidence that in-court identifications were based on observations of the suspect other than line-up identifications.

c. Hearing to Determine Independent Origin

Prior to admitting in-court identifications of a suspect when there has been an illegal pretrial line-up, court should take evidence out of presence of jury in order to determine whether there is sufficiently distinguishable basis or independent origin for in-court identification.

D. Show Ups

Validity of show up, or one man confrontations see: 34 L.Ed. 2d 839.

E. Photographs

There is no constitutional right to counsel at a photographic identification, United States v. Ash, 413 U.S. 300 (1973)

In determining whether the picture spread in a particular case is impermissibly suggestive, the trial court should follow a two step procedure: (1) the court should determine if the photographic identification was impermissibly suggestive, either in the photographs used or the manner or number of times they are displayed; (2) if so, then the trial court should determine if the impermissibly suggestive picture spread gives rise to a likelihood of irreparable misidentification. See: United States v. Sutherland, 428 F.2d 1152 at 1155 (5th Cir. 1970).

The questions whether or not line-up evidence or an in-court witness identification or both should be suppressed are both primarily questions of due process. A per se rule of line-up suppression results only when based on a post-indictment line-up conducted without notice to counsel. Kirby v. Illinois 406 U.S. 632 (1972).

Pre-indictment confrontations and in-court identifications are determined by broad principles of fundamental fairness. In making this determination the court could consider:

1. Was the defendant the only individual that could possibly be identified as the guilty party by the complaining witness, or were there others near him at the time of the confrontation so as to negate the assertion that he was shown alone to the witness?

2. Where did the confrontation take place?

3. Were there any compelling reasons for a prompt confrontation so as to deprive the police of the opportunity of securing other similar individuals for the purpose of holding a line-up? Exigent circumstances?

4. Was the witness aware of any observation by another or other evidence indicating the guilt of the suspect at the time of the confrontation?

5. Were any tangible objects related to the offense placed before the witness that would encourage identification?

6. Was the witness' identification a product of mutual reinforcement of opinion among witnesses simultaneously viewing defendant?

7. Was the emotional state of the witness such as to preclude objective identification?

8. Were any statements made to the witness prior to the confrontation indicating to him that the police were sure of the suspect's guilt?

9. Was the witness' observation of the offender so limited as to render him particularly amenable to suggestion, or was his observation and recollection of the offender so clear as to insulate him from a tendency to identify on a less than positive basis?

Important factors:

1. The witness' prior opportunity to observe the alleged criminal act.

2. The existence of any discrepancies between the defendant's actual description and any description given by the witness before a photographic identification.

3. Any previous identification by the witness of some other person.

4. Any previous identification of the defendant himself.

5. Failure to identify the defendant on a prior occasion.

6. The lapse of time between the alleged act and the out-of-court identification.

See: Admissibility of evidence of show up identification as affected by allegedly suggestive show up procedures, 39 ALR 3rd 791; and admissibility of evidence of line-up identification as affected by allegedly suggestive line-up procedures, 39 ALR 3rd 487.

A confrontation between a crime victim and suspect is not necessarily invalid, especially if "inadvertant". Moreover, there is no prohibition against a viewing of a suspect alone in what is called a "One-man show up," when this occurs near the time of the alleged criminal act. Such a course does not tend to bring about misidentification but rather tends under some circumstances to insure accuracy. People v. Young, 46 Ill.2d 82 (1970).

5.6 Motion to Suppress Identification

This motion should be made in writing and made prior to trial. The motion in its broadest terms has two functions: (1) to suppress any testinomy at the time of trial relating to an unlawful line-up or suggestive out-of-court identification of the defendant by the state's witness and (2) to suppress identification at trial if it is tainted, derived from or the product of illegal suggestiveness.

5.7 Burdens of Proof

In order to suppress an in-court identification on the ground of improper pre-trial identification procedures, a defendant bears the burden of proving two facts: (1) he must establish that the pre-trial identification procedures were so suggestive as to give rise to a very substantial likelihood of irreparable misidentification, People v. Holiday, 47 Ill.2d 300 at 307-308 (1970) and (2) to the extent that suggestive procedures are established, they must be shown to have been "unnecessary" under the totality of the circumstances, People v. Lee, 44 Ill.2d 161, 169 (1970).

However, even if a defendant successfully establishes the above two elements, an in-court identification may nonetheless be admissible if the State shows by clear and convincing evidence that such in-court identification has an independent origin, arising from other uninfluenced observations of the defendant.

5.8 Motion for Ruling Concerning Impeachment

The Illinois Supreme Court held, in People v. Montgomery, 47 Ill.2d 510 (1970), that a trial court has the disccretion to refuse to admit evidence of a defendant's prior conviction of an infamous crime. Where defendant has such a record, counsel may obtain a ruling on such admission prior to trial so that he may plan whether or not to have his client testify.

The factors to be considered are: nature of past crime, length of record, age, circumstances and especially the trial judge's estimate of whether obtaining defendant's testimony is worth the cost. The Supreme Court approved the spirit of Rule 609 of the Federal District Court Rules of Evidence:

> "Evidence of a conviction is not admissible if a period of more than 10 years has elapsed since the date of the release of the witness from confinement imposed for his most recent conviction, or the expiration of the period of his parole, probation, or sentence granted or imposed with respect to his most recent conviction, whichever is the later date.
>
> Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon, anulment, certificate of rehabilitation, or other equivalent procedure based on a substantial showing of rehabilitation and the witness has not been convicted of a subsequent crime, or (2) the conviction has been the subject of a pardon, annulment or other equivalent procedure based on innocence.
>
> The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible."

5.9 Motion in Limine

The use of a pre-trial motion to exlude prejudicial evidence or exclude from trial other matters is recognized in Illinois. See Authorities in Hunter, §8:4; Annot. pre-trial or Preliminary motion to secure exclusion of prejudicial evidence which it is anticipated may be offered, 94 ALR 2d 1087.

SAMPLE MOTION

Now come the PEOPLE OF THE STATE OF ILLINOIS, by the State's Attorney of _____ County, Illinois, and respectfully move the Court, in limine, for an order prohibiting the appearance before any petit jury impaneled in the above captioned case of the alleged defense witnesses _____, or in the alternative that after a voir dire hearing outside the presence of the jury, protective orders entered prohibiting certain lines of questioning from being propounded to either of the aforesaid alleged witnesses or any prosection witness. The PEOPLE also seek a protective order as to potential representations by the defense to the jury in any opening statement relative to the aforesaid alleged defense witnesses; all such relief, if deemed appropriate, being sought for reasons as follows:

(Reasons stated in numbered paragraphs)

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS respectfully move that the defense be prohibited from summoning before the jury Mr. _____ or Mr. _____, absent an indication that they or either of them will freely and voluntarily testify as to some or all of their supposedly relevant knowledge. The PEOPLE also seek such additional relief as the Court may deem advisable under the circumstances.

_____

State's Attorney

Where severance relief is sought the court may suggest to counsel as an alternative a motion in limine to prevent the other side from gaining an untoward advantage.

POST-TRIAL MOTIONS

6.0 Note

A motion in arrest of judgment is a jurisdictional motion based on the record and confined to claims that the indictment information or complaint does not charge an offense or that there is no jurisdiction. Questions addressed to trial errors are raised in the motion for a new trial.

6.1 In Arrest - New Trial

A. Motion in Arrest of Judgment

Ill. Rev. Stat., Ch. 38, § 116-2 provides:

"(a) A written motion in arrest of judgment shall be filed by the defendant within 30 days following the entry of a verdict or finding of guilty. Reasonable notice of the motion shall be served upon the State.

(b) The court shall grant the motion when:

(1) The indictment, information or complaint does not charge an offense, or

(2) The court is without jurisdiction of the Cause."

B. Motion for a New Trial

Ill. Rev. Stat., Ch. 38, § 116-1 Provides:

"(a) Following a verdict or finding of guilty the court may grant the defendant a new trial.

(b) A written motion for a new trial shall be filed by the defendant within 30 days following the entry of a finding or the return of a verdict. Reasonable notice of the motion shall be served upon the State.

(c) The motion for a new trial shall specify the grounds therefor."

6.2 Grounds in Writing

The statutory requirements that a new trial motion shall be in writing and state grounds are waivable if prosecutor fails to object. The judge, nonetheless, is entitled to know with specificity all grounds for a new trial in order to give him an opportunity to correct or review his trial and also to give to the reviewing court the benefits of the trial judge's judgment and observations.

Requiring defendant to write or specify may save delay and expense on appeal about matters which could have been corrected by trial judge.

6.3 Motion to Vacate

The post trial motions in a criminal case also include motions to vacate the judgment of conviction and sentence and motion under Section 72 of the Civil Practice Act. After the trial is completed and sentence is imposed, the

motion to vacate has the utility of extending the time to perfect an appeal. Such time runs from the date of the denial of this motion rather than from the date of the judgment. It must be filed within 30 days of the rendition of judgment and, in such motion, any errors committed at the trial may be directed to the court's attention.

Pleas of Guilty (See Chapter V).

CHAPTER IV

DISCOVERY

CHAPTER IV

DISCOVERY

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IV - 0

SCOPE NOTE

This chapter deals with pre-trial disclosure by prosecution and defense under Supreme Court Rules 412 to 415 together with omnibus hearing matters.

IV - 1

RESPONSIBILITIES OF THE TRIAL COURT

1.0 In General

ABA Standards relating to discovery and procedure before trial, Sec. 1.4 (a):

"(a) Trial court. The trial court should, on its own initiative, provide for the exercise of discovery automatically, without the filing of formal requests or supporting documents. The court should supervise the exercise of discovery to the extent necessary to ensure that it proceeds properly, expeditiously and with a minimum of imposition on the time and energies of the court, counsel, and prospective witnesses. In any event, the court should encourage effective and timely discovery conducted voluntarily and informally between counsel. The court should take the initiative at appropriate times in ensuring that any latent procedural or constitutional issues are exposed and determined prior to trial. To these ends, the court should provide appropriate checklist forms, time schedules, and hearings; and hearings should be consolidated, if possible, with any other hearings to be held in the case prior to the trial."

1.1 Evidence Favorable to the Accused

It is a denial of due process to suppress evidence favorable to the defendant, People v. Murdock, 39 Ill. 2d 553 (1968). The question to be resolved by the court in ordering the State to answer a motion relating to criminal discovery is whether the disclosure will avoid an unjust advantage or remove an unjust disadvantage. Generally, state's attorneys will become accustomed to disclosing all material which is even possibly exculpatory as a prophylactic against reversible error and in order to save court time arguing about it. In cases of doubt, the state should at least disclose the material to the trial judge.

The court may sua sponte, notwithstanding statue, initiate discovery by order.

> "As we see it, the prosecution should disclose to the defense such information as it has that may reasonably be considered admissible and useful to and exculpatory and where there is doubt as to what is admissible and useful for that purpose, the trial court should decide whether or not a duty to disclose exists." 386 U.S. 66 at 80.

U.S. Supreme Court Guidelines: Moore v. Illinois, 408 U.S. 786 (1972); Wardius v. Oregon, 412 U.S. 470 (1973).

See: Zagel and Carr, "State Criminal Discovery and the New Illinois Rules," 1971 Ill. L.F. 557 (1972); and Right of Accused to Inspection of Evidence in Possession of Prosecution, 7 ALR 3d 8.

Re: Attorney-Client Privilege in respect to disclosure or testimony, see People v. Speck, 41 Ill. 2d 177.

See: Discussion of Privilege, Generally, U.S. v. Nixon, 418 U.S. 713 (1975).

1.2 Disclosure to the Defense

Defendant should be granted a pre-trial request for a list of witnesses to the extent allowed by statute (Ill. Rev. Stat., Ch. 38, Sec. 114-9), and he should be allowed to examine the physical evidence, e.g., clothing or hair samples which the prosecution intends to introduce in evidence at the trial.

Likewise, where no privilege exists and where the relevancy and competency of pre-trial statements or reports shall have been established, the trial judge should order that the reports or pre-trial statements of the prosecution witnesses in the possession or control of the State be made available to the defendant for his inspection and use for impeachment purposes upon a proper showing of their existence. The State has no interest in interposing an obstacle to the disclosure of facts unless it is interested in convicting accused parties on testimony of untrustworthy persons. The rule relative to the production of pre-trial statements of prosecution witnesses also applies to police reports. Brady v. Maryland, 373 U.S. 83 (1963); 9 Crim. L. Bul. 327 (1975); Moore v. Illinois, 408 U.S. 786 (1972); Napu v. Illinois, 360 U.S. 364 (1959); Calley v. Callaway, 519 F. 2d 184 (5th Cir. 1975).

The constitution protects an accused only from providing evidence of a testimonial or communicative nature. Distinquish providing tests, reports and statements which defendant intends to introduce at trial from the state fishing for information about whether defendant has knowledge of any tests, etc. See Jones v. Superior Court, 58 Cal. 2d 56 (1962).

For compulsory tests or examination, see: 16 L.Ed. ed 1332,

Voice Identification 24 ALR 3d 1261;

Psychiatric Examinations 18 ALR 3rd 1433;

Accused's right to interview witness held in public custody 14 ALR 3rd 652.

When an accused for impeachment purposes demands production of a witness' statement in the possesion of the People and when the prosecution claims the statement is privileged, irrelevant or incompetent, the trial court should examine the statement to determine if such claims are justified.

What is "a statement;" see federal practice discussed in Goldberg v. U.S., 96 S.Ct. 1338 (1976).

Defense is entitled to constitutional disclosure of material necessary to effect (a) fair trial (5th), (b) proper confrontation (6th) or the right to effective assistance of counsel, (6th). See People v. Nichols, 349 N.E. 2d 41 (1976); 519 F.2d 184 (5th Cir. 1975); U.S. v. Agurs 96 Sup. Ct.2392 (1976).

1.3 Disclosure to the Prosecution

Illinois Supreme Court Rule 413 provides a list of physical characteristics that are subject to discovery. The accused may be required, for example, to appear in a line-up, try on clothing, permit the taking of blood samples, and submit to a physical examination. See Gilbert v. California, 388 U.S. 263 (1967).

The accused may be required to present himself for any of these purposes and an order admitting him to bail may so specify.

Rule 413(d) requires the defense, upon written notice, to inform the State of:

a. All defenses it intends to raise;

b. Names and addresses of all witnesses it intends to call;

c. Written or recorded statements of such witnesses, including memoranda reporting or summarizing their oral statements;

d. Any prior criminal conviction of the witnesses, and

e. Any documents or other tangible evidence he intends to use for evidence or impeachment.

The rule makes all "subject to constitutional limitations," see discussion in U.S. v. Nobles,422 U.S. 225 (1976); People v. Woodward, 349 N.E. 2d 57 (1976). State Ex. Rel. Keller v. Criminal Court of Marian City, 317 N.E. 2d 433 (S.W.P. Ct. Ind. 1976).

1.4 List of Witnesses

The defendant must demand a list of witnesses in order to assign the omission to furnish it as error. It is within the discretion of the trial court to allow unlisted witnesses to testify, and the court's ruling will not be disturbed unless it appears that the defendant has been taken by surprise. The burden of showing such surprise is on the defendant. In order to make such a showing, a surprised defendant, upon learning of the unlisted witness, should move for a continuance and fully explain to the court why the continuance is necessary.

Although the practice is for the State to furnish a written list, oral notice has been held sufficient. The State is not obliged to call every witness on the list, and the defendant should subpoena the listed witnesses himself if he desires to insure their presence at the trial.

1.5 Police Reports

It is better practice to allow defendant discovery of all memoranda and summary police sheets though the rule speaks to summaries " Substantially verbatim." The purpose of discovery is to lead to derivative data which could become evidence; composite police memoranda should qualify.

1.6 Informers

Participant informers should be made available for at least in-camera conference though it is established that the state may, under appropriate circumstances, withhold from disclosure the identity of persons who furnish information of law violations to officers charged with the enforcement of that law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officers and, by preserving their anonymity, encourages them to perform that obligation (353 U.S. at 59), 8 Wigmore Evidence § 2374 (McNaughton Rev. 1961). The privilege is not absolute and must give way where required by fundamental fairness, e.g., where disclosure of the identity is essential to the defense of the accused and a fair determination of a cause. Whether disclosure is required in any given case depends on the particular circumstances of the case taking into consideration the crime charged, the possible defenses and the possible significance of the informer's testimony.

McCray v. Illinois, 386 U.S. 300 (1967); see discussion at 201 A.2d 39. Cases cited at 406 F.2d 400 (7th Cir. 1972).

1.7 Limitations

The rules provide for broad discovery but do set some limits. Rule 412 contemplates that attorney work product, identity of informants not to be produced at trial and matters involving "substantial risk of grave prejudice to national security" are usually not subject to disclosure.

Rule 412(i) establishes a balancing test applicable to all discovery -- whether by defense or prosecution. Disclosure may be denied if there is "a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel."

1.8 Discovery in Non-Felony Cases

The State is required to furnish defendants in misdemeanor cases with a list of witnesses (Ill. Rev. Stat. 1971, Ch. 38, para. 114-9), any confession of the defendant (Ill. Rev. Stat. 1971, Ch. 38, para. 114-10), evidence negating the defendant's guilt [Brady v. Maryland, 373 U.S. 83, S.Ct. 1194, 10 L.Ed. 2d 215 (1963)], and, in this particular case, the results of the breathalyzer test (Ill. Rev. Stat. 1971, Ch. 95 1/2, para. 11-501 (g)). Additionally, the report which the defendant seeks will be available at trial for use in impeachment of the prosecution witness who prepared it. See People v. Schmidt, 56 Ill. 2d 572, (1974).

With respect to breath tests under Ill. Rev. Stat. 1973 Ch. 95 1/2, Sect. 11 [P]retrial civil discovery should be available without making application to the court to the extent that such matters involve (1) a list of witnesses, (2) any confessions by defendant, and (3) evidence negating defendant's guilt." Discretionary discovery in suits for violation of municipal ordinances where the penalty is a fine only is governed by Sup. Ct. Rule 201, City of Danville v. Clark, 348 N.E. 2d 844 (1976). Juvenile Proceedings: Discovery discretionary, People ex.rel. Hanrahan v. Felt, 48 Ill. 2d 171; (1971).

1.9 Evidence Depositions

> If it appears to the court in which a criminal charge is pending that the deposition of any person other than the defendant is necessary for the preservation of relevant testimony because of the substantial possibility it would be unavailable at the time of hearing or trial the court may, upon motion and notice to both parties and their counsel, order the taking of such person's deposition under oral examination or written questions for use as evidence at a hearing or trial. (Rule 414).

This provision allows the taking of depositions by either the prosecution or defense for the purpose of preserving relevant testimony for trial. Implementation of

this provision is subject to court approval and is not a matter of right. Depositions taken pursuant to this provision may be used as evidence at trial if the person deposed is unavailable for any reason.

A deposition taken under Rule 414(a) may be by written questions or oral examination. The taking of the depositions is governed by the same rules applicable to the taking of depositions in civil cases. Rule 414(b). An order authorizing a deposition may require "designated books, papers, documents, or tangible objects not privileged" to be produced at the time and place of the deposition. Rule 414(b).

When a witness has been jailed for failure to execute a recognizance to appear to testify at a hearing or trial, the court may order his deposition taken in order to prevent unnecessary incarceration. Rule 414(c). This procedure requires a written motion by the witness and notice to both the state and the defense. Following the taking and subscribing of the deposition, the witness by order of court may be discharged from custody.

CHECK LIST OF ITEMS UNDER RULES 412 AND 413

2.0 For the Defense

A. Names, addresses and statements of persons whom the state intends to call as witnesses Rule 412(a)(i)

. . . the names and last known addresses of persons whom the state intends to call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports of their oral statements, upon written motion of defense counsel; memoranda reporting or summarizing oral statements shall be examined by the court in camera and if found to be substantially verbatim reports of oral statements shall be disclosed to defense counsel.

B. Statements made by the accused or by a co-defendant

Rules 412(a)(i)

. . . any written or recorded statements and the substance of any oral statements made by the accused or by co-defendant, and a list of witnesses in the making and acknowledgment of such statements.

C. Statements or reports of expert witnesses and results of medical or scientific tests

Rule 412(a)(iv)

. . . any reports or statements of experts, made in connection with the particlar case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.

D. Documentary and physical evidence

Rule 412(a)(v)

. . . any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused.

E. Prior criminal records of state's witnesses

Rule 412(a)(vi)

. . . any record or prior criminal convictions which may be used for impeachment, of persons whom the State intends to call as witnesses at the hearing or trial.

F. Electronic surveillance

Rule 412(b)

The State shall inform defense counsel if there has been any electronic surveillance (including wiretapping) of conversations to which the accused was a party, or of his premises.

G. Material or information favorable to the defense

Rule 412(c)

Except as is otherwise provided in these rules as to the protective orders, the State shall disclose to defense counsel all material or information within its possession or control which tends to negate the guilt of the accused as to the offense charge or would tend to reduce his punishment therefor.

H. Discretionary disclosures

Rule 412(h)

Upon a showing of materiality to the preparation of the defense and if the request is reasonable, the court, in its discretion, may require disclosure to defense counsel of relevant material and information not covered by this rule.

2.1 For the Prosecution

A. The person of the accused

Rule 412(h)

Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, a judicial officer may require the accused, among other things to:

(i) Appear in a line-up;

(ii) Speak for identification by witnesses to an offense;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of a scene;

(v) Try on articles of clothing;

(vi) Permit the taking of specimens under his fingernails;

(vii) Permit the taking of samples of his blood, hair and other materials of his body which involve no unreasonable intrusion thereof;

(viii) Provide a sample of his handwriting; and

(ix) Submit to a reasonable physical or medical inspection of his body.

B. Medical and scientific reports

Rule 413(c)

Subject to constitutional limitations, the trial court shall, on written motion, require that the State be informed of and permitted to inspect and copy or photograph any reports or results or testimony relative thereto, of physical or mental examination or of scientific tests, experiments or comparisons, or any other reports or statements of experts, which defense counsel has in his possession or control except that those portions of reports containing statements made by the defendant may be withheld if defense counsel does not intend to use any of the material contained in the report at a hearing or trial.

C. Defenses

Rule 413(d)

Subject to constitutional limitations and within a

reasonable time after the filing of a written motion by the State, defense counsel shall inform the State of any defenses which he intends to make at a hearing or trial and shall furnish the State with the following material and information within his possession or control:

(1) The names and last known addresses of persons he intends to call as witnesses together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements, any record of prior criminal convictions known to him; and

(2) Any books, papers, documents, photographs or tangible objects he intends to use as evidence or for impeachment at a hearing or trial.

See generally, U.S. v. Dioniso, 410 U.S. 1 (1973) re: Alibi Discovery, 45 ALR 3d 958.

2.2 Informal Discovery

A. Discussion with the prosecutor and the police

B. Proceedings following arrest, challenging the legality of the arrest

C. Application for bail, or for reduction of bail

D. Preliminary hearing, contests

E. Arrangement of transcription of grand jury proceedings; motion to quash indictment on grounds of procedural or evidentiary defects before the grand jury.

F. Plea of double jeopardy, where defendant has been previously tried for related matters

G. Motion to suppress illegally obtained evidence

H. Motion for joinder, severance or for consolidation

I. Depositions to preserve the testimony of witnesses who may become unavailable (supra, this chapter)

J. Bill of Particulars (Ch. III)

K. Pre-Plea Negotiation Conference, see Chapter V

2.3 Protective Orders (Rule 415(d)

Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate provided that all material and information to which a party is entitled must be disclosed in time to permit counsel to make beneficial use thereof. See Discussion of Judge's Role in Kerr v. U.S. District Court 96 Sup. Ct. 2111 (1976)

COMMENT: Paragraph 415(d) establishes the availability of protective orders to delay the time or use of disclosure in a particular case. Since it is not intended to bar discovery completely, materials should be made available to counsel in time to allow their beneficial use. The provision is intended to apply to the mandatory disclosure requirements of the rule since discovery under the discretionary disclosure can be disallowed.

The main difference between a protective order under Rule 415 and the denial under Rule 412 would consist of the burden of proof which, under Rule 415, would lie with party seeking order. . . .

Rule 415(e) permits excision of nondiscoverable matter. Material so excised is then to be sealed, impounded and provided to the reviewing court on appeal.

2.4 Sanctions (Rule 415(c) and (g))

> If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as it deems just under the circumstances.

Wilful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

> The rules give wide discretion to the court in dealing with the failure of either party to comply with a discovery order. Such discretion will permit the court to consider the reasons why disclosure was not made, the extent of the prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances.

The court may, under Rule 415, exclude evidence but this should not be applied to the merits of the accused's case. See also Contempt Materials (Ch. VII) and Rule 219 on Consequences of Refusal to Comply with Orders Relating to Pre-Trial.

2.5 Pre-Trial Discovery - Short Form Order

IN THE CIRCUIT COURT OF THE_____JUDICIAL CIRCUIT,

_____ COUNTY, ILLINOIS

The People of the)
State of Illinois)
)
vs.) No. _____
)
_____)
Defendant)

PRE-TRIAL DISCOVERY ORDER

The State's Attorney is hereby ordered to deliver to defendant's attorney within _____ days hereafter the following:

1. A list of prosecution witnesses or other witnesses having knowledge of the offense;

2. A list of witnesses to any oral or written statement made by the defendant, or to any oral statement which has since been reduced to writng;

3. A list of all physical evidence seized from the defendant;

4. The transcripts of any statements made by witnesses before the Grand Jury;

5. A copy of any law enforcement or investigative

report relevant to the case;

6. A detailed statement of any exculpatory evidence that is within the possession or knowledge of the People;

7. All scientific reports of tests conducted on items of evidence;

8. A list of any prior convictions of the defendant;

9. The time, place and composition of any line-up where the defendant was identified;

10. Photographs, sketches, movies or any similar items relevant to the prosecution of the case.

Delivery by the State's Attorney of a list and copies of reports, will be considered substantial compliance with this order.

Defendant shall comply with Supreme Court Rule 413(d) regarding disclosure of intended Defenses.

DATED: _____ _____

Circuit Judge

2.6 Pre-Trial Discovery Long Order Form

CIRCUIT COURT OF ILLINOIS

The People of the)
State of Illinois)
)
vs.) No. _____-_____-_____
)
)
_____,) _____-Division
Accused.)

DISCLOSURE ORDER

All disclosure required of "Illinois" includes all material and information within the control or knowledge of the State's Attorney, all law enforcement officers, and all government bodies and officers, involved in investigating the offense charged or the arrest of Accused and each co-defendant and it is the primary duty of the State's Attorney to know of and obtain all such material and information. This order is continuing in effect and all new matter discovered after this order shall be disclosed within _____ days after discovery or within _____ days before trial, whichever is earlier.

Illinois shall disclose (and file written proof thereof) within _____days hereafter and Accused shall disclose (and File written proof thereof) within _____ days hereafter:

1. name and address of each person each intends to call at trial or any hearing;

2. each written or recorded statement of each person so named;

3. each memo reporting or summarizing each oral statement of each person so named, or the substance of each oral interview of each for which there is no memo;

4. name and address of each person who saw or claims to have seen the offense, or who was present or claims to have been present at Accused's arrest;

5. regarding each physical or mental exam, scientific test, experiment, or comparison about the offense: (a) each report or statement of an expert; (b) each report, result, or any testimony; and (c) every other report or statement of an expert about the offense; and

6. unless provided in 5, full information about each test of Accused's blood or breath, including date, time, results, and name and address of each person present and each who conducted each test. Illinois shall also disclose (and file written proof thereof) within _____days hereafter;

7. each written or recorded statement of Accused and each co-defendant and name and address of each person present at the making of each;

8. regarding Accused (and each person so named by Accused in writing) and each person Illinois intends to call at trial or any hearing: (a) a complete transcript of Grand Jury testimony; and (b) each record of prior criminal conviction which might be used to impeach credibility;

9. each book, paper, document, photo, or other tangible object obtained from or owned by Accused which might be used at trial or any hearing;

10. whether there was any electronic surveillance (including wiretapping) of Accused's premises or of any conversation to which Accused was a party;

11. all material information and evidence which might tend to negate guilt of Accused or reduce punishment;

12. each police (and every other governmental unit) report about the investigation or arrest of suspects of the offense;

13. a copy of each warrant or affidavit used in this case;

14. whether Accused or any other suspect or any photo of any such person was viewed by any person (including those named in 1 and 4), including about each view: (a) date, time and place; (b) name and address of each person present; (c) whether Accused or any other person was identified; and (d) name and address of each person making each identification; and

15. a Bill of Particulars, including date, time and place of the offense.

16. a list of all rebuttal witnesses; Accused shall also disclose (and file written proof thereof) within _____ days hereafter:

17. each defense (including, but not limited to, alibi); and

18. regarding Accused and each person Accused intends to call at trial or any hearing, each record of prior criminal conviction which might be used to impeach credibility.

Illinois and Accused shall file each motion and initiate any other pre-trial matter by _____, 19_____.

Preliminary hearing is set for _____, 19_____, at_____: _____ _____.

_____

Judge of Circuit Court

PROOF OF SERVICE: On _____, 197___, I- delivered -mailed- a copy of the above Order to each attorney of record - proper postage prepaid - from _____, Illinois.

_____

PRE-TRIAL ACTION AGENDA

3.0 Omnibus Pre-Trial Order Form

State of Illinois,)
County of)
_____,) In the Circuit Court Thereof
Judicial Circuit

The People of the State of)
Illinois,)
)
vs.) No. ----------
_____)
_____)
Defendant (s))

OMNIBUS ORDER

It is the policy of this Court that persons charged with crime shall be brought to trial within _____ days of arraignment. Pre-trial proceedings and matters relating to production, inspection and discovery of evidence should not be causes of delay and, therefore, in order to expedite the trial of the cause, the Court, on its own motion, orders as follows:

(1) Within ____ days hereof the People shall furnish the Defendant with:

(a) All of the information and material provided for by Paragraphs (a), (b) and (c) of Supreme Court Rule 412, subject, however to Paragraphs (i) and (j) thereof.

(b) If Defendant believes he is entitled to discovery, inspection or production in addition to that theretofore ordered, motion for same shall be filed within _____ days hereof.

(2) Within ____ days hereof Defendant shall file any motion relative to formal defects in the charge, as provided in Section 111-5 of the Code.

(3) Within ____ days hereof Defendant shall file:

(a) Motion to Dismiss Charge under Sec. 114-1 of the Code:

(b) Motion for Bill of Particulars;

(c) Motion for Severance under Sec. 114-8 of the Code;

(d) Motion for Joinder under Sec.114-7 of the Code;

(e) Notice of Defense of Insanity; or unfitness under 1005-2-1.

(4) Within ____ days hereof, Defendant shall file:

(a) Motion to Suppress Confession, Statement or Admission;

(b) Motion to Suppress Evidence Illegally Seized:

(c) Motion to Suppress Identification, whether In or Out-of-Court.

(5) Within ____ days hereof People shall advise the Defendant whether or not the People intend to put into evidence a record of conviction for the impeachment of the Defendant. If the People propose to do so, Defendant's Motion to Suppress Evidence of Record of Conviction shall be filed within ____

days therefater.

(6) Not less than ____ days before trial, defendant shall file and serve on the People a Notice in writing of intention to assert Alibi Defense, which Notice shall include specific information as to the place Defendant maintains he was at the time of the alleged offense and the names and addresses of the witnesses he intends to call to establish the alibi.

(7) The Defendant shall within ____ days hereof furnish to the People all of the information and matters contained in Paragraphs (c) and (d) of Supreme Court Rule 413.

(8) If the People desire additional information or performance by the Defendant under Paragraphs (a), (b) and (e) of Supreme Court Rule 413, they shall file written motion therefore within ____ days.

(9) If the People believe that discovery should be denied under Supreme Court Rule 412(i), or excised, or In-Camera proceedings had under Supreme Court Rule 415(e) and (f), they shall so move in writing within ____ days hereof.

(10) Rule is entered on the People and the Defendant to notify the Court within ____ days of any default of the discovery ordered herein.

(11) Hearing on the following Motions is hereby set for_____, 19____ at 9:30 A.M.: (Not less than nor more than _____days)

(a) Additional Discovery, Production or Inspection;

(b) Formal Defects as Provided in Sec. 111-5;

(c) Dismiss Charge under Sec. 114-1;

(d) For Bill of Particulars;

(e) For Joinder under Sec. 114-7;

(f) For Severance under Sec. 114-8;

(g) Excision or In-Camera Proceedings.

(12) Hearing on the Following Motions is hereby set for _____, 19____ at 9:30 A.M.: (Not less than _____ nor more than _____ days)

(a) Suppress Confession, Statement or Admision;

(b) Suppress Evidence Illegally Seized;

(c) Suppress In-Court Identification;

(d) Suppress Record of Conviction of Defendant;

(e) Relative to Defense of Insanity, pursuant to Sec. 115-6.

DATE OF ORDER _____

ENTER _____

JUDGE

3.2 Stipulation Samples

It is stipulated between parties:

(a) That if _____ was called as a witness and sworn he would testify he was the owner of the motor vehicle on the date referred to in the indictment (or information) and that on or about that date the motor vehicle disappeared or was stolen and that he never gave the defendant or any other person permission to take the motor vehicle.

_____ _____

Attorney for Defendant Defendant

(b) That the official report of the chemist may be received on evidence as proof of the weight and nature of the substance referred to in the indictment (or information).

_____ _____

Attorney for Defendant Defendant

(c) That if _____ the official Government chemist were called, qualified as an expert and sworn as a witness he would testify that the substance referred to in the indictment (or information) has been chemically tested and is _____ and the weight is _____.

Attorney for Defendant | Defendant

(d) That there has been a continuous chain of custody in Government agents from the time of the seizure of the contraband to the time of trial.

Attorney for Defendant | Defendant

3.2 Pre-Trial Listings

(Useful matters likely to promote an expeditious trial)

- Make stipulations as to facts about which there can be no dispute.
- stipulate with the consent of defendant an alternative to less than a 12 member jury should the need arise.
- obtain stipulations and or waivers as to foundations of authenticity of documents, qualifications of experts and non-disputable foundation matters.
- have marked for identification various documents and exhibts
- discuss procedures on objections particularly where there are multiple counsel.
- agree on order of proof and presentation of evidence.
- obtain from counsel estimates of trial time, continuances, etc.

- arrange for jury amenities before voir dire.

- discuss, if helpful, severence of defendants or offenses

- obtain proposed motions in limine as to evidentiary or other expected procedural problems to presentation or objection.

- use a jury questionnaire.

- determine whether the judge will allow attorneys to supplement his voir dire examination of prospective jurors with direct inquiry.

- admonish counsel before voir dire about repetitious questions.

CHAPTER V

PLEAS OF GUILTY

This revised Chapter V, PLEAS OF GUILTY, has been prepared for the committee by Lawrence J. Bolon, Esq., formerly Chief of the Criminal Appeals Division, Office of the State's Attorney of Cook County.

CHAPTER V

PLEAS OF GUILTY

INTRODUCTION TO PLEAS OF GUILTY

The procedure and perspective regarding pleas of guilty changed with the United States Supreme Court decision in Boykin vs. Alabama, 395 U.S. 238, 89 S. Ct. 1709,23 Law Ed. 2d 274 (1969). In general, the court held that it is a violation of due process to accept a guilty plea in state criminal proceedings without the record affirmatively showing that the defendant voluntarily and knowingly entered his plea of guilty. Subsequent to the Boykin decision, the Illinois Supreme Court adopted Rule 402 to insure compliance with the mandate of the United States Supreme Court. Although Rule 402 goes further than that which was required to be of record as pronounced by the court in Boykin, the case law that has developed since Boykin has proven the wisdom of the additional requirements of Rule 402.

The perspective on pleas of guilty now focuses on the quality of the record of the proceedings where the plea of guilty was entered. It is necessary that the record reflect the entry of a plea of guilty that is not only voluntary but made by the defendant with an understanding of his fundamental rights and the consequences of the waiver of those rights.

In light of the significance of the plea of guilty to the individual defendant as well as to the court system, this chapter is designed to be a guide to the trial judge to insure that the record reflects that each defendant was admonished fully and in accordance with the requirements of Supreme Court Rule 402. Since the plea of guilty is a dynamic area of the law, judges are advised to keep current by reviewing decisions of the Illinois Reviewing Courts as well as decisions of the United States Supreme Court.

This chapter sets forth relevant constitutional and statutory standards. It includes pointers, forms, options, and scenarios for trial judges in the taking of pleas of guilty before or after arraignment and before or during trial. It is intended to be a working tool for trial judges hearing criminal cases.

The plea of guilty format sections are divided into short formats and scenario formats for taking pleas of guilty. The longer scenario formats are suggested for taking pleas of guilty but the short format sections are

given since it is recognized that high volume courtrooms may require a shorter version of the plea of guilty format.

PLEA PRACTICE

1.0 Generally

Unquestionably the greater majority of criminal cases are disposed of by pleas of guilty. Although the plea negotiation system draws frequent criticism, the fact remains that there are sound reasons in support of the process of "plea negotiation", "plea bargaining", "trading out", or "the compromise of criminal cases." The process of plea negotiation is desirable for the following reasons:

1) Prompt and final dispositions avoid the corrosive impact of necessary delay prior to trial;

2) Prompt dispositions protect the public from those prone to criminal conduct while free on bail awaiting trial;

3) By shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately convicted;

4) The system protects victims of crime from the trauma of examination at trial;

5) The process acts to filter the questionable cases, which require a full trial, from the non-substantial cases which are not disputed;

6) It conserves scarce resources to insure that the innocent can get the maximum of trial benefits which could not occur if all those accused of crimes were afforded like procedures at trial.

The authors of Justice By Consent, a study of plea bargains, write:

> "A major asset of the guilty plea process is its promise of speed and economy in sorting the unimportant cases from the important ones. It avoids the belaboring of the obvious that mark so many trials. In most trials, the only genuine dispute between the prosecution and the defense is not guilt or innocense; it is what the punishment shall be, and this can be settled outside the courtroom. Trying cases in which there is no real

> dispute is a waste of vast resources and tedious for everyone involved except the accused. Moreover, for the innocent as for the guilty, justice delayed is catastrophic. Speed in the resolution of a criminal matter is necessary for fairness. . .Aside from the claims of economy, discretion in criminal justice is needed to balance the system's commitment to the individuality of the guilty with its commitment to a general set of rules for everyone. There are inherent limits on the capacity of human beings to state in advance general rules which will be appropriate in a variety of cases. No legislature that is far removed from the conduct it defines as criminal is able to incorporate enough justice-producing nuances and behavioral clues in its statutory statements. No two robberies are the same. No two defendants charged with robbery are identical either. . .A system of criminal justice that did not take into account people's uniqueness and personality would be so unmerciful and wasteful of human lives that few thinking citizens would support it."

Despite the value of plea bargaining and its necessity, criticism will come from the community because of the quid pro quo nature of the process.

> "A wide range of promises are made by prosecutors in exchange for pleas of guilty; included are promises to reduce charges, to dismiss charges, not to charge other offenses or to seek or obtain a certain sentence..." ABA, Pleas of Guilty, p. 60.

However, if material aspects of the plea process and agreement are spread of record, criticism can be substantially reduced. Advising the public of what occurred at the plea negotiation conference increases the integrity of the system and respect for the judicial process.

Although the United States Supreme Court has dealt with issues arising from pleas of guilty on a number of occasions, the following cases are suggested reading for added perspective on the views of the United States Supreme Court:

1) McCarthy vs. United States, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969) sets forth the procedure for accepting a plea of guilty under Federal Rule 11;

2) Boykin vs. Alabama, 395 U.S. 238, S. Ct. 1709, 23 L. Ed. 2d 274 (1969) held that the validity of a state guilty plea will hinge on whether or not the record affirmatively shows a voluntary and knowing relinquishment of several federal rights;

3) McMann vs. Richardson, 397 U.S. 759, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970) held that a guilty plea is not subject to collateral attack if the plea was motivated by the existence of a voluntary confession unless counsel was incompetent;

4) Parker vs. North Carolina, 397 U.S. 790, 90 S. Ct. 1458, 25 L. Ed. 2d 785 (1970) held that a guilty plea was not involuntary although it may have been induced by confession, assuming that counsel erroneously felt the confession was admissible;

5) Brady vs. United States, 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970) held that a guilty plea made with competent counsel was not invalid because it may have been motivated by the defendant's desire to avoid the death penalty or to obtain a lesser sentence;

6) North Carolina vs. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) held that a defendant's protestations of innocence will not undermine a guilty plea where the record reflects the defendant was willing to waive his rights after concluding his interests mandated his plea and where the record reflected a strong case against the defendant; also it was stated that the defendant has no right to have his guilty plea accepted.

7) Santobello vs. New York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) held that the failure of the prosecution to keep its promise as part of a plea bargain requires either that the plea be vacated or the prosecution be compelled to fulfill its obligation;

8) Lefkowitz vs. Newsome, 420 U.S. 283, 95 S. Ct. 886, 43 L. Ed. 2d 196 (1975) held that federal habaes corpus relief is available once state-appealed rights are exhausted, if the state law allows a defendant to appeal claimed constitutional violation as asserted at a motion to suppress, where the defendant pleads guilty subsequent to the motion to suppress;

9) Henderson vs. Morgan, 426 U.S. 637, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976) held that a plea will be considered involuntary if the defendant was not advised of a necessary element (intent to kill) or of a lesser included offense for which the defendant was not originally charged.

References: Validity of Guilty Pleas, U.S. Supreme Court Cases, 25 L. Ed. 2d 1025; Enforceability of Plea Agreement of Plea Entered Pursuant Thereto with Prosecuting Attorney Involving Immunity from Prosecution for Other Crimes, 43 ALR 3rd 284; Withdrawal, Federal Cases at 6 ALR Fed. 665, U.S. v. Barker, 514 F.2d 208 (1975).

1.1 Factors Influencing Choice of Plea

There are many considerations involved in any individual's decision regarding the entry of a plea. Some considerations are socially and economically oriented. For instance, the defendant charged with rape may desire to plead guilty but will not do so because of fear of rejection by his family. Other individuals fear the break-up of their family because of a possible prison sentence after a trial and therefore opt to plead guilty to stay out of prison to maintain their family unity. There are those that cannot plead guilty because of the economic collapse that will follow a conviction. Whatever the reason, every defendant has his own considerations for the plea that is ultimately entered.

Although the reasons vary from case to case, an individual's particular reasoning for his plea usually will be most dramatically influenced by the predicted likelihood of success at trial. This, of course, involves analysis of the facts and the law which will be related to the degree of skill and experience of the defense attorney. However, notwithstanding the skill of the attorney and therefore the correctness of his reasoning, the factors which are most influencial in determining the defense likelihood of success are as follows:

1. The legal merit of the prosecutor's theory, and the convincing power of legally admissible evidence to prove the facts on which that theory rests.

2. The likely availability of prosecutor's evidence at trial.

3. Factors which may tend to impeach or discredit his witness or evidence (e.g. a witness's criminal record or prior inconsistent statements).

4. The likely availability of the defense evidence at trial.

5. Factors which may tend to impeach or discredit defense witnesses or evidence.

6. Circumstances that will tend to give the defendant an advantage in sentencing if he pleads guilty, including local judicial practices or "giving consideration" in sentencing for a

guilty plea or similar demonstrated attitude of a particular sentencing judge (judges generally tend to give lighter sentences to defendants who plead guilty because they regard the plea as a sign of contrition and a first step toward reform or because the pre-sentence report or other sentencing record makes the defendant's crime less vivid than a trial).

7. Circumstances suggesting that the offense charged is not the most serious charge that could be made against the defendant on the facts of the case, with the result that a plea of guilty may bar the likely subsequent filing of aggravated charges.

8. The absence of debatable or dubious legal points relating to substantive or evidentiary matters on which the trial judge might commit reversible error.

FROM: Trial manual for the Defense of Criminal Cases, ALI-ABA (1967).

1.2 Function Of The Trial Judge In Pleas of Guilty

The basic function of the trial judge in hearings on pleas of guilty is to insure substantial compliance with the requirements of Illinois Supreme Court Rule 402, Ill. Rev. Stat. 1975, Ch. 110A, Sec. 402. Further discussion of the function of the trial judge in plea proceedings focuses on two areas:

(1) Plea discussions and

(2) A formal acceptance of the plea of guilty.

Compliance with Supreme Court Rule 402 will insure the integrity of the judge's role in both the discussion phase and the acceptance phase. Moreover, the failure to comply with Supreme Court Rule 402 may ultimately result in the plea of guilty being vacated.

(1) Plea Discussions and Negotiations

The role of the trial judge in plea discussions and negotiations has certain limits which are set forth in Supreme Court Rule 402(d). Supreme Court Rule 402(d) permits judges to participate in plea discussions where the defendant consents but also requires that the judge not initiate plea discussions or negotiations. However, it is required that there only be substantial compliance with this rule. Consequently, there is no unanimity in procedure in the application of this requirement.

Many judges, as a rule, do not allow any discussion with the parties of a proposed plea and probable sentence until formal tender with the court, for the first time, and the judge either agrees to concur or not to concur.

In other areas, trial judges agree to participate in a conference after obtaining the defendant's consent in open court to confer with the prosecution and with the defense, provided that the defense counsel has initiated the proposal to confer with the court.

Other judges, ".....while not directly initiating plea discussions, make known to prosecutors and defense lawyers regularly practicing in their courts, the preference for, whenever possible, case disposition on the basis of a plea." The American Bar Association Standards For The Administration Of Criminal Justice: Illinois Compliance, Steven A. Schiller (1973) Standard: 4.1 Role of the Judge in Plea Discussions and Plea Agreements, commentary, p. 331.

Where there is a conference with the parties and the judge, which was not initiated by the judge, the precise function and degree of participation by the judge is not readily ascertainable by a reading of Supreme Court Rule 402. However, it seems that the rule contemplates limited participation by the trial judge in plea negotiations. Care should be taken by the trial judge to avoid any coercive influence on the defendant. In addition, the judge must maintain his perspective of impartiality so that both parties believe that they can receive a fair and impartial trial in the event that the case must proceed to trial. See People vs. Nikols, (1976) 41 Ill. App. 3d 1974, 354 NE 2d 474; People vs. Fox (1975), 38 Ill. App. 3d 257, 345 NE 2d 139.

(2) Accepting the Plea of Guilty

Illinois Law places a duty on the trial judge to address the defendant personally and in open court in plea of guilty proceedings. The primary function of the judge is to conduct a meaningful dialog with the defendant to ascertain on the record that the defendant understandingly knows his rights, that the defendant wishes to waive those rights, and that the defendant is voluntarily pleading guilty. Of course, the judge must more fully comply with the other requirements of Supreme Court Rules 402 and 605, but essentially the judge acts as an independent protection for the defendant and as an independent guardian for the criminal justice system. Because the accused gives up so much, with the consequences of the plea potentially lasting a lifetime, it is essential that the judge be convinced that the defendant is acting with full knowledge and understanding of the consequences of his plea of guilty.

SUPREME COURT RULES 402 AND 605(b)

2.0 Introductory Note

A guilty plea is a serious and sobering occasion, inasmuch as it constitutes a waiver of the fundamental right to a jury trial, Duncan vs. Louisiana, 301 U.S. 145 (1937); to confront one's accusers, Pointer vs. Texas, 380 U.S. 400 (1965); to present witnesses in one's defense, Washington vs. Texas, 388 U.S. 14 (1957); to remain silent, Malloy vs. Hogan, 378 U.S. 1 (1964); and to be convicted by proof beyond all reasonable doubt, Santobello vs. New York, 404 U.S. 257 (1971).

Procedure at plea dispositions in Illinois is covered by Supreme Court Rules 402 and 605(b). Substantial compliance with Rule 402 obliges the trial judge to inform the defendant of the crime and penalty possibilities, and advise the defendant of his constitutional rights (admonishments), to ascertain the voluntary nature of the defendant's waiver of these rights (voluntariness), to make sure the defendant knows the consequences of his plea, and finally, to monitor the making of a factual basis for the plea of guilty.

Effective July 1, 1975, the Illinois Supreme Court adopted Illinois Supreme Court Rule 605(b) which essentially provides that the trial court shall advise the defendant of his right to appeal from a plea of guilty and the procedure that the defendant must follow in order to secure his right to appeal. Most significantly, the new rule provides for the defendant to file a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty within 30 days of the date on which sentence was imposed, as a prerequisite to any appeal following a plea of guilty. In the event the trial judge complies with the requirements of Supreme Court Rule 605(b) and the defendant fails to follow such procedure the defendant will be precluded from appealing the sentence and judgment that was entered on the plea of guilty. See People vs. Frey, (1977, 67 Ill. 2d 77, 364 NE 2d 46). Consequently, in addition to the requirements of Supreme Court Rule 402, the trial judge must advise the defendant of his rights and the procedures to be followed pursuant to the provisions of Supreme Court Rule 605(b) in the plea of guilty proceedings.

Illinois Supreme Court Rules 402 and 605(b) are set forth below verbatim.

2.1 RULE 402 PLEAS OF GUILTY

(Adopted June, 1970, effective September 1, 1970; amended effective September 17, 1970.

In hearings on pleas of guilty, there must be substantial compliance with the following:

(a) Admonitions to Defendant. The court shall not accept a plea of guilty without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;

(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and

(4) that if he pleads guilty there will not be a trial of any kind, so that by pleading guilty he waives the right to a trial by jury and the right to be confronted with the witnesses against him.

(b) Determining Whether the Plea is Voluntary. The court shall not accept a plea of guilty without first determining that the plea is voluntary. If the tendered plea is the result of a plea agreement, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the plea agreement, or that there is no agreement, and shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea.

(c) Determining Factual Basis for Plea. The court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea.

(d) Plea Discussions and Agreements. When there is a plea discussion or plea agreement, the following provisions, in addition to the preceeding paragraphs of this rule, shall

apply:

(1) The trial judge shall not initiate plea discussions.

(2) If a tentative plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specified sentence will be imposed or that other charges before the court will be dismissed, the trial judge may permit, upon request of the parties, the disclosure to him of the tentative agreement and the reasons therefor in advance of the tender of the plea. At the same time he may also receive, with the consent of the defendant, evidence in aggravation or mitigation. The judge may then indicate to the parties whether he will concur in the proposed disposition; and if he has not yet received evidence in aggravation or mitigation, he may indicate his concurrence or conditional concurrence, he shall so state in open court at the time the agreement is stated as required by paragraph (b) of this rule. If the defendant thereupon pleads guilty, but the trial judge later withdraws his concurrence or conditional concurrence, he shall so advise the parties and then call upon the defendant either to affirm or to withdraw his plea of guilty. If the defendant thereupon with draws his plea, the trial judge shall recuse himself.

(3) If the parties have not sought or the trial judge has declined to give his concurrence or conditional concurrence to a plea agreement, he shall inform the defendant in open court at the time the agreement is stated as required by paragraph (b) of this rule that the court is not bound by the plea agreement, and that if the defendant persists in his plea the disposition may be different from that contemplated by the plea agreement.

(e) Transcript Required. In cases in which the defendant is charged with a crime punishable by imprisonment in the penitentiary, the proceedings required by this rule to be in open court shall be taken verbatim, transcribed, filed, and made a part of the common-law record.

(f) Plea Discussions, Plea Agreements, Pleas of Guilty Inadmissible Under Certain Circumstances. If a plea discussion does not result in a plea of guilty, or if a plea

of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in any criminal proceeding.

2.2 RULE 605. ADVICE TO DEFENDANT

(Amended July 1, 1975)

* * *

(b) On Judgment and Sentence Entered on a Plea of Guilty. In all cases in which a judgment is entered upon a plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) That he has a right to appeal:

(2) That prior to taking an appeal he must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw his plea of guilty, setting forth his grounds for the motion;

(3) That if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) That upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) That if he is indigent, a copy of the transcript of the proceedings at the time of his plea of guilty and sentence will be provided without cost to him and counsel will be appointed to assist him with the preparation of the motions; and

(6) That in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw his plea of guilty shall be deemed waived.

MECHANICS OF THE GUILTY PLEA

3.0 Admonishments

The plea of guilty is organized under Supreme Court Rule 402 into three basic phases. The first phase considers the admonishments that are to be given to the defendant. The second phase is the dialog between the judge and the defendant where the judge determines that the plea is voluntarily given. The third phase is where the judge determines that there are facts that legally support the plea of guilty to the offenses charged.

Supreme Court Rule 402 envisions that the defendant, in the admonishment phase, should again be informed of the charges against him and the possible sentence to which the defendant may be subjected; in taking a plea of guilty to a lesser included offense it is imperative that the defendant be advised of the elements of the lesser offense. See Henderson vs. Morgan, 426 U.S. 283 (1976). The judge must further determine that the defendant understands the nature of the charges since an individual that does not understand the charges cannot plead guilty and a fitness hearing may be warranted.

Supreme Court Rule 402, as well as significant case law, requires that a defendant be advised of his fundamental rights at the admonishments phase of the plea of guilty proceeding. Equally important as the defendant having knowledge of his rights, is a requirement that the defendant understandingly waive those rights. It is, therefore, insufficient to simply advise the defendant of his rights without making an appropriate inquiry to determine whether or not the defendant understands and wishes to waive those rights.

The last consideration regarding the admonishments phase of the plea of guilty proceeding is that the defendant understand that which he is giving up by pleading guilty. The defendant must know the consequences of his plea of guilty. In the dialog between the judge and the defendant, the judge must make known to the defendant that by pleading guilty the defendant gives up all of the fundamental rights to which he is entitled under our constitutions and other laws.

3.1 Ascertaining That The Plea Is Voluntary

A plea of guilty that is not voluntary is not a valid plea of guilty. Constitutionally, it is required that the plea be voluntary. In order to determine and make sure that the plea is voluntary, the trial court must, ascertain that (1) the defendant knows what the plea agreement consists of (if there is an agreement), (2) that the defendant confirm (for the record) its terms, and (3) that no threats or promises apart from the plea agreement were used to obtain the plea. The trial judge must be satisfied that the plea is voluntarily given and should state so in the record.

3.2 The Factual Basis

Supreme Court Rule 402 requires that the court not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea of guilty. This simply means that the court must determine that there are facts which support the charges. There is no special manner of establishing the factual basis. The factual basis may consist of a stipulation, an admission, an offer of proof that a factual basis for the plea exists or questions of record from the court, directed to the merits or facts of the case.

The court may question the defendant. The judge may, instead, require a prima facie prove-up by the State's Attorney. Other means, such as stipulations of fact indicative of guilt may also be used. The trial judge, however, must monitor this phase. Usually, the trial judge asks the State's Attorney what the proof of the State case would tend to show; the State's Attorney then proceeds to enter into a stipulation of facts with the defense. After hearing the stipulation the court usually makes a statement of record that the court finds that there is a factual basis for the defendant's plea of guilty.

3.3 Simple Explanation Of Terms

The experienced trial judge knows that the exact course of the plea of guilty proceeding is somewhat unpredictable. In many instances the defendant will seemingly, offer a mechanical response to virtually all of the judges interrogatories. Yet, in other instances, defendants may ask many questions of the trial judge. Whatever the occasion, the trial judge must be satisfied that the defendant understands the proceedings and the consequences of his plea of guilty. Many times a simple explanation of terminology by the trial judge to the defendant will clear up any possible confusion

or question that the defendant might have. The following list of words with simplified definitions may assist the trial judge in problems that may develop.

Knowledge - to know the allegations of the charge filed in the case; to obtain a copy of the petition when it is put in writing; and to be informed of your rights.

Counsel - to call and talk privately with a lawyer and to have him represent you; to pick your own lawyer, or if you have no money of your own and no one will let you have money to hire a lawyer, I will appoint one; you will not have to pay.

Communication - to call or contact a member of your family.

Hearing - to be taken before a judge without unnecessary delay, and, in any event, within a time (36 hours, excluding Sundays and holidays) to be released if there is no probable cause to believe you are a person as described in the petition.

Proof - in any hearing, to hear what is said against you; to give you aid if you wish; and to call in those who could say things on your side.

Records - to examine court files and records pertaining to your case.

Detention - if you are detained in a facility other than your home, to be treated humanely and to be given adequate food, shelter and medical care if you need it.

Due Process - to have a fair, speedy and public trial, with a fair judge in a courtroom.

Confrontation - to hear, in open court, those talking about the case against you, face-to-face.

Cross-Examination - to ask pointed questions of witnesses.

Testimony - to talk in open court about the case for your side; to say nothing, and have no one talk about that.

Witnesses - to have others talk in open court about the case for your side.

Subpeona - to have the sheriff bring in those people

for you.

Jury Trial - to have this case decided by a jury of 12 fair, honest, understanding people from this county.

Voir Dire - to help pick the jury.

Statement - to make an opening statement to the jury, and, at the close of evidence, to argue your side of the case to the jury.

Instructions - to have the jury deliberate in private; to decide the case only on what it has heard in court; and to return a unanimous verdict of guilty.

Presumption of Innocence - from the moment you are accused and detained, to the end of your trial or adjudication, you are presumed or considered innocent; to be released from court authority, you do not have to prove yourself not guilty; instead, for the court to exercise control and restraint over you, the state must prove you guilty; if the state fails to prove you guilty, or if there is any reasonable doubt about it, you will be released.

3.4 Suggested Admonitions For The Acceptance Of Pleas Of Guilty

Mr. (Ms.) _____, before accepting your plea of guilty I must be certain that you understand your rights:

I.

You are charged with the offense of _____ (crime to which plea is being taken) in that you on _____ (date of offense), did _____ (elements of crime from pleading), in violation of the laws of the State of Illinois. Do you understand what you are charged with?

II.

You have the right to plead not guilty or to persist in your previously entered plea of not guilty, or you may plead guilty. Do you understand this?

III.

If you plead not guilty or persist in your previously

entered plea of not guilty you have the right to be tried by a jury or by this Court.

A) If you were tried by a jury, your lawyer and the State's Attorney would select twelve (12) citizens from this county who would listen to the evidence and who would decide your guilt or innocence.

B) If you decide to be tried by this Court, then you would be tried by me. I would hear the evidence and I would decide your guilt or innocence.

But, if you plead guilty you will not be tried by a jury and you will not be tried by me. You will not have a trial of any kind. Do you understand this?

IV

You have the right to subpoena and present witnesses in your own behalf. You have the right to testify in your own behalf or to remain silent. You have the right to confront the State's witnesses and to have your lawyer cross-examine them. By pleading guilty you give up these rights. Do you understand this?

V.

What is the factual basis?

VI.

If you plead guilty and I accept your plea, I will then sentence you. The offense with which you are charged is: (select appropriate classification).

A. MURDER. Murder is punishable by imprisonment for a fixed, or exact term, in the Department of Corrections, for not less than 20 years nor more than 40 years. If I find that you have been convicted in Illinois within the last 10 years of the same offense, excluding any time you have spent in jail for that offense, then I could sentence you to an exact term of up to 80 years. If I find from the fact of this case that your conduct was exceptionally brutal and heinous I could also sentence you to an exact term of up to 80 years. If I find from the facts of this case that any of the aggravating

factors listed in Section 9-1(b) of the Murder statute are present, or if I find that your conduct was exceptionally brutal and heinous, I could also sentence you to imprisonment for the rest of your life. In addition, I could require you to pay a fine of up to $10,000.00. There is no parole for Murder, however, you will be required to serve a period of 3 years mandatory supervised release following your discharge from the Department of Corrections.

B. CLASS X FELONY: A Class X Felony is punishable by imprisonment for a fixed, or exact term, in the Department of Corrections of not less than 6 years nor more than 30 years. If I find that you have been convicted in Illinois, of the same or greter class offense, within the last 10 years, excluding any time you have spent in jail for that offense, or, if I find from the facts of this case that your conduct, was exceptionally brutal and heinous, then I could sentence you to an exact term of up to 60 years. In addition, I could fine you up to $10,000.00. There is no parole for a Class X Felony, however, you will be required to serve a period of 3 years mandatory supervised release following your discharge from the Department of Corrections.

C. CLASS 1 FELONY: A Class 1 Felony is punishable by imprisonment for a fixed or exact term, in the Department of Corrections of not less than 4 years nor more than 15 years. If I find that you have been convicted in Illinois of the same or a greater class offense, within the last 10 years, excluding any time you have spent in jail for that offense, or, if I find from the facts of this case that your conduct was exceptionally brutal and heinous, then I could sentence you to an exact term of up to 60 years. In addition, I could fine you up to $10,000.00. There is no parole for a Class 1 Felony, however, you will be required to serve a period of 2 years mandatory supervised release following

your discharge from the Department of Corrections.

D. CLASS 2 FELONY: A Class 2 Felony is punishable by imprisonment for a fixed, or exact term, in the Department of Corrections of not less than 3 years nor more than 7 years. If I find that you have been convicted in Illinois, of the same or a greater class offense, within the last 10 years, excluding any time you have spent in jail for the offense, or, if I find from the facts of this case that your conduct was exceptionally brutal and heinous, then I could sentence you to an exact term of up to 14 years. In addition, I could fine you up to $10,000.00. There is no parole for a Class 2 Felony, however, you will be required to serve a period of 2 years mandatory supervised release following your discharge from the Department of Corrections.

E. CLASS 3 FELONY: A Class 3 Felony is punishable by imprisonment for a fixed, or exact term, in the Department of Corrections of not less than 2 years nor more than 5 years. If I find that you have been convicted in Illinois, of the same or a greater class offense, within the last 10 years, excluding any time you have spent in jail for that offense, or, if I find from the fact of this case that your conduct was exceptionally brutal and heinous, then I could sentence you to an exact term of up to 10 years. In addition, I could fine you up to $10,000.00. There is no parole for a Class 3 Felony, however, you will be required to serve a period of 1 year mandatory supervised release following your discharge from the Department of Corrections.

F. CLASS 4 FELONY: A Class 4 Felony is punishable by imprisonment for a fixed, or exact term, in the Department of Corrections of not less than 1 year, nor more than 3 years. If I find that you have been convicted in Illinois, of the same or a greater class offense, within the last 10 years,

excluding any time you have spent in jail for that offense, or, if I find from the facts of this case that your conduct was exceptionally brutal and heinous then I could sentence you to an exact term of up to 6 years. In addition, I could fine you up to $10,000.00. There is no parole for a Class 4 Felony, however, you will be required to serve a period of 1 year mandatory supervised release following your discharge from the Department of Corrections.

Do you understand what sentence(s) could be imposed?

(If the offense with which the defendant is charged occurred prior to February 1, 1978, the following admonition should be added):

Mr. (Ms.) _____, the offense with which you are charged occurred before February 1, 1978. There was a different sentencing law in effect before February 1, 1978, and because the offense with which you are charged happened before that date, you can choose to be sentenced either under the new law, which I have just explained to you, or under the old law, which I will now explain to you. Under the old law, the offense with which you are charged is: (Select appropriate classification).

AA. MURDER: Murder is punishable by imprisonment for an indeterminate, or "spread sentence", in the Department of Corrections of not less than 14 years to any number of years. Upon your release from the Department of Corrections you would be required to serve a period of 3 years mandatory parole. In addition, I could fine you up to $10,000.00.

BB. CLASS 1 FELONY: A Class 1 Felony is punishable by imprisonment for an indeterminate, or "spread sentence", in the Department of Corrections of not less than 4 years to any number of years. Upon your release from the Department of Corrections, you would be required to serve a period of 2 years mandatory parole. In addition, I could fine you up to $10,000.00.

CC. CLASS 2 FELONY: A Class 2 Felony is punishable by imprisonment for an indeterminate, or "spread sentence", in the Department of Corrections of not less than 1 year, nor more than 20 years. Upon your release from the Department of Corrections you would be required to serve a period of 2 years mandatory parole. In addition, I could fine you up to $10,000.00.

DD. CLASS 3 FELONY: A Class 3 Felony is punishable by imprisonment for an indeterminate, or "spread sentence", in the Department of Corrections of not less than 1 year nor more than 10 years. Upon your release from the Department of Corrections you would be rquired to serve a period of 1 year mandatory parole. In addition, I could fine you up to $10,000.00.

EE. CLASS 4 FELONY: A Class 4 Felony is punishable by imprisonment for an indeterminate, or "spread sentence", in the Department of Corrections of not less than 1 year, nor more than 3 years. Upon your release from the Department of Corrections you would be required to serve a period of 1 year mandatory parole. In addition, I could fine you up to $10,000.00.

Do you understand the sentence that could be imposed under the old law?

As I advised you earlier, you have the right to choose between being sentenced under the new law or under the old law. Which do you choose?

TAKING THE PLEA OF GUILTY NEGOTIATED
AT A CONFERENCE WITH THE COURT

4.0 Short Form For Negotiated Plea of Guilty Pursuant To A Plea Conference With The Court.

1. Attorney request for conference with the court.

2. Court asks defendant if he wants his attorney to meet with State's Attorney and court.

3. Court advises defendant that during conference the defendant and the case will be discussed and that defendant will not then be entitled to a substitution of judges.

4. Conference.

5. Court reconvenes and states for the record the results of the conference.

6. Court asks defendant if his attorney has advised him of the results of the conference and ascertains if the defendant is satisfied with the agreement.

7. Court asks defendant how he wishes to plead, guilty or not guilty.

8. Ask defense counsel if he has advised the defendant of his rights and consequences of his plea.

9. Advise defendant of his right to remain silent and ask if he will give up this right and answer further questions.

10. Establish defendant's age and awareness (see Chap. II).

11. Read and explain charge and nature of charge. Determine if defendant understands charge.

12. Inform defendant of Penalty Range. (See §3.4 supra, and Chap. IX)

A. If offense is not probationable, defendant should be advised. (murder, armed robbery, rape, etc.)

B. Advise defendant if he is subject to a greater penalty by reason of a prior conviction, or if consecutive sentences are possible.

13. Inform defendant of Mandatory Period of Supervised Release upon release from the penitentiary.

14. Advise defendant of his right to persist in his plea of not guilty and have a trial by jury. Explain.

15. Advise defendant of his right to bench trial and that he will have no trial by pleading guilty. Explain. Determine if defendant understands and waives such rights. Execute jury waiver form if utilized.

16. Advise defendant of right to confront and cross-examine witnesses or to have his attorney do so.

17. Advise defendant of right to insist that state prove the charge beyond a reasonable doubt.

18. Advise defendant of right to present evidence in any defense and to compel the attendance of witnesses by the subpeona process. Ask if he is willing to give up these rights.

19. Advise defendant and inquire if he understands that by pleading guilty he is admitting to the commission of the crimes charged.

20. Inquire if anyone has threatened or otherwise forced defendant to plead guilty.

21. Inquire if any promises have been made by anyone to induce defendant to plead guilty other than the plea agreement.

22. Ask defendant if he is pleading guilty voluntarily.

23. Advise defendant that it is judge's responsibility alone to sentence defendant and inquire if defendant understands.

24. State's Attorney recitation of facts and stipulation to facts by parties.

25. Ask defendant if he still desires to plead guilty in accordance with the plea agreement.

26. Court recites for the record that

A. The defendant has been advised of his rights and the consequences of his plea of guilty.
B. The defendant understands his rights and wishes

to waive them and plead guilty.
C. The defendant voluntarily wishes to plead guilty.
D. There is a factual basis for the plea of guilty.
E. Leave to withdraw not guilty plea is given and guilty plea is accepted and entered.
F. It enters a finding of guilty and judgment on the finding of guilty.

27. Aggravation and mitigation hearing before imposition of sentence.

A. Presentence report waiver if appropriate.
B. Consider presentence investigation report if not waived.
C. Consider testimonial and other evidence of state in aggravation, if any.
D. Consider testimonial and other evidence of defense in mitigation, if any.

28. Arguments of prosecution and defense before imposition of sentence.

29. Inquire of defendant if he wishes to make a statement.

30. Impose sentence and mandatory period of supervised release.

31. Advise defendant of right to appeal (Rule 605(b).

32. Advise defendant of requirements to appeal.

A. Motion to vacate and leave to withdraw plea within 30 days stating grounds for relief.
B. Advise of right to free transcript and attorney if indigent to assist him.
C. Advise that if motion is allowed a trial date will be set on the charges.

33. Direct Court Reporter to type notes if defendant sentenced to penitentiary and that they should be filed with clerk as part of the record.

4.1 Scenario For A Negotiated Plea of Guilty Pursuant To A Plea Conference With The Court

ADMONISHMENTS FOR CONSENT TO A PRE-TRIAL PLEA CONFERENCE

THE COURT: Does the Defendant or Defense Counsel have any matters to bring to the Court's attention at this point?

DEFENSE ATTORNEY: Yes, your honor, (advises the Court that his client wants him to enter into a plea discussion with the Court and the State's Attorney regarding this charge).

THE COURT: Mr. (Defendant), you have heard the statement of your attorney. Is it your wish that the Court and the State's Attorney enter into a conference with your attorney for the purpose of discussing a possible plea of guilty by you to the charge in this case?

THE DEFENDANT: Yes.

THE COURT: Mr. (Defendant), I want you to realize that during this conference certain personal information concerning you may be discussed, such as facts surrounding or relating to the charges in this case, evidence in aggravation and mitigation, your past criminal record, if any, and data of your personal history such as family background, employment, education, military service, et cetera.

Furthermore, I want you to realize that if during this conference, the State's Attorney and your counsel reach an agreement, the Court is not bound by such agreement. But if I should concur in a proposed agreement for sentence in this matter, I will advise you at the conclusion of the conference. You should also realize that if at the conclusion of this conference, I do not concur in a proposed agreement or there is no agreement reached, you would not then be entitled to a substitution of judges. Now, with that explanation by the Court and with that understanding, do you wish the Court to confer with the State's Attorney and your attorney regarding this case?

THE DEFENDANT: Yes.

THE COURT: Very well, the Court will stand in recess

and the Court, State's Attorney and Defense Counsel will proceed to confer in this regard.

POST PLEA CONFERENCE PROCEDURE

THE COURT: Let the record show that the Court has now reconvened after a recess. During the recess a conference was held in this matter between the Court, the State's Attorney and the Defendant's attorney in the Court's chambers. Mr. (Defendant) at this conference the State's Attorney and the defense attorney advised the Court of the facts relating to the charges in this case. Also discussed at the conference were matters in aggravation and mitigation, your past criminal record, and your personal history. During the conference the State's Attorney recommended to the Court a sentence of _____ in exchange for a plea of guilty to the charge(s) of _____. After being advised of all of this information the Court advised your attorney and the State's Attorney that in exchange for a plea of guilty to the charge(s) of _____, the Court would sentence you to _____. [Mr. (Defendant) you should further be advised that at the conference the State's Attorney agreed to reduce the charge (dismiss or other) under indictment number from _____ to the offense of _____.]

THE COURT: Mr. (State's Attorney) is that a correct recitation of the results of the conference?

THE STATE'S ATTORNEY: Yes, your honor.

THE COURT: Mr. (Defense Attorney) is that a correct recitation of the results of the conference?

DEFENSE ATTORNEY: Yes, your honor.

THE COURT: Mr. (Defense Attorney) have you had opportunity to confer with the Defendant and have you advised the Defendant of the results of our conference?

DEFENSE ATTORNEY: Yes, your honor.

THE COURT: Mr. (Defendant), you have heard your attorney's statement. Is it correct that he advised you of the results of the conference?

THE DEFENDANT: Yes, your honor.

THE COURT: Are you satisfied with the plea agreement that your attorney has entered into on your behalf?

THE DEFENDANT: Yes.

THE COURT: And do you understand that in accordance with that agreement in exchange for your plea of guilty to the charge(s) of _____ the Court will sentence you to _____.

THE DEFENDANT: Yes, I do.

THE COURT: Let the record show that the Court finds that the Defendant understands the negotiated plea agreement and is satisfied with the plea agreement entered into at the plea negotiation conference. We will now proceed to admonish the Defendant of his rights before the Court can formally accept the Defendant's plea of guilty.

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ADMONITIONS FOR ACCEPTING A NEGOTIATED PLEA OF GUILTY

THE COURT: Mr. (Defense Attorney) the record now reflects that there has been a plea conference and that you have conferred with your client and advised him of the results of the con- ference. The record also shows that I have advised the Defendant of the results of that conference and that the Defendant is satisfied with the agreement entered into at that conference. Mr. (Defense Attorney), does your client wish to persist in his plea of not guilty or does he desire to change his plea?

DEFENSE ATTORNEY: My client now wishes to withdraw his previously entered plea of not guilty and enter a plea of guilty to the charge(s) of _____ in accordance with the agreement at the plea conference.

THE COURT: Mr. (Defense Attorney), have you advised your client of his rights under the law and of the consequences of his entering a plea of guilty?

DEFENSE ATTORNEY: Yes, I have your honor.

THE COURT: Mr. (Defendant), your attorney advises me that you now wish to plead guilty to the charge(s) of _____ _____ in accordance with the agreement entered into at the plea conference. Mr. (Defendant), has your attorney advised you of your rights under the law and the consequences of entering a plea of guilty?

THE DEFENDANT: Yes he has, your honor.

THE COURT: What is your plea? Guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Mr. (Defendant) although your attorney has advised you of your rights, before the Court can accept your plea of guilty, the law requires that I further and fully advise you of your rights under the law and of the effect and consequences of your pleading guilty. Let me first advise you that you have a right to remain silent and not say anything. Are you willing to waive and give up tht right and answer the questions that I will be asking of you?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), indictment number _____ charges you with the crime(s) of _____; in [count

one of] the indictment [repeat the following in this section as to each count of the indictment] you are charged with _____ [set out elements of offense or nature of the offense, i.e. you are charged with Murder in that you intentionally shot and killed John Doe on January 1, 1969 without lawful authority]. Under the law, the crime of _____ is a class _____ felony and I can sentence you to a term of no less than _____ and up to _____ years in prison; that within those limits the Court may fix a specific term of years as your sentence. Further, that upon your release from prison, you would have to serve a mandatory period of supervised release of _____ years during which time you would be under the supervision of the authorities. The Court may also impose a fine of up to _____ dollars. [Where more than one charge add the following: The law further provides that I can impose the sentences to run consecutively. That means that you would have to serve one sentence before you could begin to serve the second sentence].

Do you know and understand the nature of the charge(s) against you and the sentence(s) that could be imposed?

THE DEFENDANT: Yes.

THE COURT: Mr. (Defendant), although you have said you wish to plead guilty, and you have a right to plead guilty, I must tell you that you have a right to plead not guilty and persist in that plea of not guilty. Do you understand that, sir?

THE DEFENDANT: Yes, your honor.

THE COURT: By pleading guilty you waive and give up your right to a trial. Under the law you have a right to have a jury trial, that means you would have a jury of 12 fair people of this county decide your guilt or innocence. On the other hand, you could choose to have your guilt or innocence decided by the Court; that means that I would hear the evidence and decide whether you were guilty or not guilty. Do you understand your rights to a trial by a jury or trial by the Court and that by pleading guilty you will not have a trial of any kind?

THE DEFENDANT: Yes, your honor.

THE COURT: Then I will ask you to execute a waiver of your right to a jury trial in writing. The record should reflect that the Defendant is now being given a jury waiver form.

Mr. (Defendant) would you please read and sign the jury waiver form. You should understand that by signing the form you acknowledge that you knowingly, understandingly, and voluntarily are giving up your right to a jury trial.

Let the record reflect that the Defendant has signed the jury waiver form.

THE COURT: The Court further advises you that by pleading guilty you give up your right of confrontation that is, to say, hear and have your attorney question all witnesses called to testify against you. You should know that by pleading guilty you give up your right to present evidence in any defense of the charge(s) that you may have. You should realize that by pleading guilty you give up this right and admit to the commission of the crime(s) charged. You also give up your right to have the Court compel the attendance of witnesses on your behalf by the subpeona process. Do you understand these rights and are you willing to waive and give them up?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), you have a right to remain silent, and to require the prosecution to prove their case against you beyond a reasonable doubt. Do you understand these rights and are you willing to waive and give them up?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), have any promises of any kind, other than the plea agreement, or threats been made to you by the State's Attorney, your attorney, or by any other person or persons to induce you to plead guilty?

THE DEFENDANT: No, your honor.

THE COURT: Mr. (Defendant), has anyone forced you to plead guilty?

THE DEFENDANT: No, your honor.

THE COURT: Mr. (Defendant), are you pleading guilty voluntarily?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), under the law the sentence to be imposed upon you is completely within the

province of the court and is my responsibility and mine alone. If anyone has forced you or threatened you to plead guilty or if any promises, other than the plea agreement, have been made to you by anyone, they would not, in any way, be binding upon the Court, and they are unenforceable. Do you understand that?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. State's Attorney, before accepting the Defendant's plea of guilty, will you please advise the Court as to the facts in this case and what your proof would show?

STATE'S ATTORNEY: It is hereby stipulated, etc. (a narrative of the facts).

THE COURT: Mr. (Defendant), is the statement of facts related by the State's Attorney substantially correct?

THE DEFENDANT: Yes, your honor.

THE COURT: Now, Mr. (Defendant), knowing the nature of the charge(s) against you, the consequences thereof and the penalty that may be imposed upon you, knowing of your rights, do you still desire to enter a plea of guilty to the charge(s) of _____.

THE DEFENDANT: Yes, your honor.

THE COURT: Let the record show that the Defendant, upon being duly advised of his rights under the law and of the effect and consequences of entering a plea of guilty, persists in his desire and intention to enter a plea of guilty to [the charge(s) of _____ in indictment number _____] or [the included offense(s) of _____ under indictment number _____].

The Court finds, and let the record show, that the Defendant knowingly understands and comprehends the nature of the charge(s) against him, the consequences thereof and the possible penalties provided, including the minimum and maximum sentences prescribed by law. The Court also finds that the Defendant knowingly understands and comprehends his rights under the law and wishes to waive them and plead guilty. The Court further finds that the Defendant voluntarily wishes to plead guilty.

The Court further finds that there is a factual basis for the plea of guilty herein. The Court grants the

Defendant leave to withdraw his previously entered plea of not guilty to indictment number _____ and hereby accepts the Defendant's plea of guilty and enters a finding of guilty.

Judgment is hereby entered on the finding of guilty to the charge(s) of _____ in indictment number _____ or [the included offense(s) of _____ under indictment number _____].

THE COURT: We will now proceed to a pre-sentencing hearing.

4.2 Advising Defendant of Rights to be Sentenced Under Old or New Law

[If the crime occurred prior to January 1, 1973, add the following:]

THE COURT: Mr. (Defense Attorney), does your client wish to be sentenced under the Code of Corrections which became effective January 1, 1973, the criminal code as it existed at the time of the commission of the crime?

DEFENSE ATTORNEY: My client elects to be sentenced under the [old criminal code] or [the code of corrections.]

[If the crime occurred between January 1, 1973 and February 1, 1978, add the following:]

The Court: You have the right to be sentenced under the law as it (was--existed) at the time this offense was committed, or you may be sentenced under the law that now is in effect. . .Have you discussed that right with your lawyer?

Counsel, have you explained to your client his right to elect under which law he will be sentenced? Have you explained to your client the consequences of being sentenced under the old and the new law? Are you satisfied that he understands his right to elect and the consequences of whatever decision he makes?

Mr. - Ms. _____, you have (asked to plead guilty to ____ been convicted of) the offense of _____ _____.

The possible penalties after conviction of that offense differ under the old and new law.

First, I will tell you the possible penalties under the old law, that is, the law in effect at the time this offense was committed. At that time, the offense of _____ carried a minimum of _____ years, and a maximum of _____ years in the Illinois State penitentiary. The sentence would be for an indeterminate period; that is, there would be a minimum and maximum sentence of years.

In addition, there would be a mandatory parole term of _____ years (Sec. 1005-8-1 applies) that would follow any penitentiary term that might be imposed on you.

In addition, I can fine you in an amount up to $_____.
(If applicable) I can place you on probation or conditional discharge, or sentence you to periodic imprisonment.

If you should be sentenced to a term of imprisonment under the law in effect at the time this offense was committed, you would be eligible for release on parole within the time provided by law.

(Note. If applicable, and if being considered, judge should advise defendant of possibility of extended term and/or consecutive term under the law as it existed before February 1, 1978. Sections 1005-8-2 and 1005-8-4).

Mr. - Ms. _____ , do you understand the sentences that are possible under the law as it was at the time this offense was committed?

As I have said, you have the choice of being sentenced under the old law, as I have just explained it to you, or you may be sentenced under the new law that now is in effect. Please listen carefully while I tell you about the possible sentences under the new law.

You now may be sentenced for a certain and specific number of years that is no less than _____ and no more than _____.

In addition, I can fine you in an amount up to $_____ (and I can order you to pay restitution to the person harmed by your offense).

(If applicable) I also can place you on probation or conditional discharge. I also can sentence you to periodic imprisonment for a period of _____ . (Section 1005-6-1,

1005-6-2(b), & 1005-7-1).

If you are sentenced to prison under the law that now is in effect, that is, the new law, you will not be eligible for parole. You will receive one day good conduct credit for each day you serve, unless you lose good conduct credit because of a violation of prison rules and regulations.

Note: After a finding or after a plea, where appropriate, judge must warn defendant of possibility of an extended term sentence, under the new law, if such a sentence is going to be imposed. Section 1005-8-2. The same is true for cases where consecutive sentences may be appropriate. Sec. 1005-8-4.

[Q: must these admonishments go into the treatment of parole violations under the old and new law?]

Mr. - Ms. _____, do you understand the sentences that are possible under the law that is now in effect? Do you wish to be sentenced under the law as it was at the time this offense was committed? Or do you wish to be sentenced under the law as it now exists, that is, the new law?

Counsel, do you believe your client understands his rights and the sentence consequences under the old and the new law?

I find the defendant understands his rights and the consequences of being sentenced under the law in effect at the time this offense was commmitted; and that he understands his rights and the consequences of being sentenced under the law now in effect. I further find the defendant's decision to be sentenced under the (law in effect at the time the offense was committed ---- under the present law) is a voluntary and intelligent election.

Therefore, we will proceed under the sentencing law (in effect at the time this offense was committed -- now in effect).

[For procedure to be followed in hearing in aggravation and mitigation and sentencing, see Chap. IX, Sentencing and Appeal.]

TAKING THE PLEA OF GUILTY WHERE THE PARTIES HAVE REACHED AGREEMENT BUT THE COURT WAS NOT A PARTY TO THE CONFERENCE

5.0 Short Form For Plea Of Guilty Where Parties Have Reached Agreement But The Court Was Not Party To The Conference

1. Defense attorney or State's Attorney advises court of conference and agreement that was reached and that defendant wants to plead guilty.

2. Ask defense counsel if he has advised the defendant of the agreement, his rights and the consequences of his plea.

3. Ask defendant if his attorney has advised him of his rights and the consequences of his plea.

4. Ask defendant if he knows that the court was not party to the agreement and advise the defendant that the court is not bound by any agreement.

5. Advise defendant that a sentence will be imposed that the court thinks is appropriate which may not be in accordance with the agreement.

6. Ask defendant how he wishes to plead, guilty or not guilty.

7. Advise defendant of his right to remain silent and ask if he will give up this right and answer further questions.

8. Establish defendant's age and awareness (see Chap. II) if deemed appropriate.

9. Read and explain charge and nature of charge. Determine if defendant understands charge.

10. Inform defendant of Penalty Range

   A. If offense is not probationable, defendant should so be advised (murder, armed robbery, rape, etc.)
   B. Advise defendant if he is subject to a greater penalty by reason of a prior conviction, or if consecutive sentences are possible.

11. Inform defendant of Mandatory Period of Supervised

Release upon release from the penitentiary.

12. Advise defendant of his right to persist in his plea of not guilty and have a trial by Jury. Explain.

13. Advise defendant of his right to bench trial and that he will have no trial by pleading guilty. Explain. Determine if defendant understands and waives such rights. Execute jury waiver form if utilized.

14. Advise defendant of right to confront and cross-examine witnesses or to have his attorney do so.

15. Advise defendant of right to insist that state prove the charge beyond a reasonable doubt.

16. Advise defendant of right to present evidence in any defense and to compel the attendance of witnesses by the subpoena process. Ask if he is willing to give up these rights.

17. Advise defendant and inquire if he understands that by pleading guilty he is admitting to the commission of the crimes charged.

18. Inquire if anyone has threatened or otherwise forced defendant to plead guilty.

19. Inquire if any promises have been made by anyone to induce defendant to plead guilty.

20. Ask defendant if he is pleading guilty voluntarily.

21. Advise defendant that it is judge's responsibility alone to sentence defendant and inquire if defendant understands.

22. State's Attorney recitation of facts and stipulation to facts by parties.

23. Ask defendant if he still desires to plead guilty.

24. Court recites for the record that:

A. The defendant has been advised of his rights and the consequences of his plea of guilty.
B. The defendant understands his rights and wishes to waive them and plead guilty.
C. The defendant voluntarily wishes to plead guilty.
D. There is a factual basis for the plea of guilty.

E. Leave to withdraw not guilty plea is given and guilty plea is accepted and entered.
F. Court enters a finding of guilty and judgment on the finding of guilty.

25. Aggravation and mitigation hearing before imposition of sentence.

A. Presentence report waiver if appropriate.
B. Consider presentence investigation report if not waived.
C. Consider testimonial and other evidence of state in aggravation, if any.
D. Consider testimonial and other evidence of defense in mitigation, if any.

26. Arguments of prosecution and defense before imposition of sentence.

27. Inquire of defendant if he wishes to make a statement.

28. Impose sentence, give reasons for particular sentence and indicate Mandatory Period of Supervised Release.

29. Advise defendant of right to appeal (Rule 605(b)).

30. Advise defendant of requirements to appeal

A. Motion to vacate and leave to withdraw plea within 30 days stating grounds for relief.
B. Advise of right to free transcript and attorney if indigent to assist him.
C. Advise that if motion is allowed a trial date will be set on the charges.

31. If a felony case, direct Court Reporter to type notes. The verbatim report of proceedings should be filed with clerk as part of the record.

5.1 Scenario For Plea of Guilty Where Parties Have Reached Agreement But The Court Was Not Party To Conference

THE COURT: Does the Defendant or defense counsel have any matters to bring to the Court's attention?

DEFENSE ATTORNEY: Yes, your honor. At this time my client wishes to withdraw his previously entered plea of not guilty and enter a plea of guilty to the charge(s). I wish to further advise the Court that I have had a conference with the State's Attorney and as a result of that conference the State's Attorney and the defense have agreed that... [i.e., the agreed upon disposition is set forth].

THE COURT: Mr. (Defense Attorney), have you advised your client of his rights under the law and the consequences of his plea of guilty?

DEFENSE ATTORNEY: Yes, your honor.

THE COURT: Mr. (Defense Attorney), have you advised your client that I was not party to that agreement and that I am not bound by any agreement that you have reached with the State's Attorney?

DEFENSE ATTORNEY: Yes, your honor.

THE COURT: Mr. (Defendant), has your attorney advised you of your rights under the law and the consequences of entering a plea of guilty?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), has your attorney advised you that I was not a party to the agreement reached by you and the State's Attorney, and, more important, I am not bound by any agreement reached by you with the State's Attorney?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr (Defendant), if you persist in a plea of guilty to the charge(s) and if I accept your plea of guilty, I will impose a sentence that I think is appropriate under the circumstances of this case, which may not be in accordance with your agreement with the State's Attorney. Do you understand that?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), knowing and understanding that I am under no obligation to impose the sentence that you agreed upon with the State's Attorney, what is your plea? Guilty or not Guilty?

THE DEFENDANT: Guilty.

THE COURT: Very well. Mr. (Defendant), although your attorney has advised you of your rights, before the Court can accept your plea of guilty, the law requires that I further and fully advise you of your rights under the law and of the effect and consequences of your pleading guilty. Let me first advise you that you have a right to remain silent and not say anything. Are your willing to waive and give up that right and answer the questions that I will be asking of you?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), indictment number _____ charges you with the crime(s) of _____; in [count one of] the indictment [repeat the following in this section as to each count of the indictment] you are charged with _____ [set out elements of offense or nature of the offense, i.e., you are charged with Murder in that you intentionally shot and killed John Doe on January 1, 1969 without lawful authority]. Under the law, the crime of _____ is a class _____ felony and I can sentence you to a term of no less than _____ and up to _____ years in prison; that within those limits the Court may fix a sentence. Further, that upon your release from prison, you would have to serve a term of _____ years on Mandatory Term on Supervised Release during which time you would be under the supervision of the parole authorities. The Court may also impose a fine of up to _____ dollars. [Where more than one charge, add the following: The law further provides that I can impose the sentences to run consecutively, that means that you would have to serve one sentence before you could begin to serve the second sentence].

Do you know and understand the nature of the charge(s) against you and the sentence(s) that could be imposed?

THE DEFENDANT: Yes.

THE COURT: Mr. (Defendant), although you have said you wish to plead guilty and you have a right to plead guilty I must tell you that you have a right to plead not guilty and persist in that plea of not guilty. Do you

understand that, sir?

THE DEFENDANT: Yes, your honor.

THE COURT: By pleading guilty you waive and give up your right to a trial. Under the law you have a right to have a jury trial, that means you would have a jury of 12 fair people of this county decide your guilt or innocence. On the other hand, you could choose to have your guilt or innocence decided by the Court; that means that I would hear the evidence and decide whether you were guilty or not guilty. Do you understand your rights to a trial by a jury or trial by the Court and that by pleading guilty you will not have a trial of any kind?

THE DEFENDANT: Yes, your honor.

THE COURT: Then I will ask you to execute a waiver of your right to a jury trial in writing. The record should reflect that the Defendant is now being given a jury waiver form.

Mr. (Defendant), would you please read and sign the jury waiver form. You should understand that by signing the form you acknowledge that you knowingly, understandingly, and voluntarily are giving up your right to a jury trial.

Let the record reflect that the Defendant has signed the jury waiver form.

THE COURT: The Court further advises you that by pleading guilty you give up your right of confrontation that is, to see, hear and have your attorney question all witnesses called to testify against you. You should know that by pleading guilty you give up your right to present evidence in any defense of the charge(s) that you may have. You should realize that by pleading guilty you give up this right and admit to the commission of the crime(s) charged. You also give up your right to have the Court compel the attendance of witnesses on your behalf by the subpoena process. Do you understand these rights and are you willing to waive and give them up?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), you have a right to remain silent, and to require the prosecution to prove their case against you beyond a reasonable doubt. Do you understand these rights and are you willing to waive and give them up?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), have any promises of any kind, or threats been made to you or your family by the State's Attorney, your attorney, or by any other person or persons to induce you to plead guilty?

THE DEFENDANT: No, your honor.

THE COURT: Mr. (Defendant), has anyone forced you to plead guilty?

THE DEFENDANT: No, your honor.

THE COURT: Mr. (Defendant), are you pleading guilty voluntarily?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), under the law the sentence to be imposed upon you is completely within the province of the Court and is my responsibility and mine alone. If anyone has forced you or threatened you to plead guilty or if any promises have been made to you by anyone they would not in any way be binding upon the Court and they are unenforceable. Do you understand that?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (State's Attorney), before accepting the Defendant's plea of guilty, will you please advise the Court as to the facts in this case and what your proof would show?

STATE'S ATTORNEY: It is hereby stipulated, etc. (a narrative of the facts).

THE COURT: Mr. (Defendant), is the statement of facts related by the State's Attorney substantially correct?

THE DEFENDANT: Yes, your honor.

THE COURT: Now. Mr. (Defendant), knowing the nature of the charge against you, the consequences thereof and the penalty that may be imposed upon you, knowing of your rights, do you still desire to enter a plea of guilty to the charge(s) of _____.

THE COURT: Let the record show that the Defendant, upon being duly advised of his rights under the law and of

the effect and consequences of entering a plea of guilty, persists in his desire and intention to enter a plea of guilty to [the charge(s) of _____ in indictment number _____] or [the included offense(s) of _____ _____ under indictment number _____].

The Court finds, and let the record show, that the Defendant knowingly understands and comprehends the nature of the charge(s) against him, the consequences thereof and the possible penalties provided, including the minimum and maximum sentences prescribed by law. The Court also finds that the Defendant knowingly understands and comprehends his rights under the law and wishes to waive them and plead guilty. The Court further finds that the Defendant voluntarily wishes to plead guilty. The Court further finds that there is a factual basis for the plea of guilty herein. The Court grants the Defendant leave to withdraw his previously entered plea of not guilty to indictment number ___ and hereby accepts the Defendant's plea of guilty and enters a finding of guilty.

Judgment is hereby entered on the finding of guilty to the charge(s) of _____ in indictment number ____ or [the included offense(s) of _____ under indictment number _____].

THE COURT: We will now proceed to a pre-sentence hearing.

5.2 Advising Defendant of Right to Elect Sentencing Under Old or New Law

[If the crime occurred prior to January 1, 1973, add the following:]

THE COURT: Mr. (Defense Attorney), does your client wish to be sentenced under the new code of corrections which became effective January 1, 1973 or does your client wish to be sentenced under the criminal code as it existed at the time of the commission of the crime?

DEFENSE ATTORNEY: My client elects to be sentenced under [the old criminal code] or [the new code of corrections].

[If the crime occurred between January 1, 1973 and February 1, 1978, see §4.2 of this Chapter.

TAKING THE "BLIND" PLEA OF GUILTY

6.0 Short Form For A "Blind" Plea of Guilty

1. Ask defense counsel if he has advised the defendant of his rights and consequences of his plea.

2. Advise defendant of his right to remain silent and ask if he will give up this right to answer further questions.

3. Establish defendant's age and awareness (See Chap. II) if deemed appropriate.

4. Read and explain charge and nature of charge. Determine if defendant understands charge.

5. Inform defendant of Penalty Range .
   A. If offense is not probationable, defendant should so be advised. (murder, armed robbery, rape, etc.)

   B. Advise defendant of right to be sentenced under old or new law if crime occurred before February 1, 1978.

   C. Advise defendant if he is subject to a greater penalty by reason of a prior conviction, or if consecutive sentences are possible.

6. Inform defendant of Mandatory Period of Supervised Release upon release from the penitentiary.

7. Advise defendant of his right to persist in his plea of not guilty and have a trial by jury. Explain.

8. Advise defendant of his right to Bench trial and that he will have no trial by pleading guilty. Explain. Determine if defendant understands and waives such rights. Execute jury waiver form if utilized.

9. Advise defendant of right to Confront and Cross-Examine witnesses or to have his attorney do so.

10. Advise defendant of right to insist that State prove the charge beyond a reasonable doubt.

11. Advise defendant of right to present evidence in any defense and to compel the attendance of witnesses by the

subpeona process. Ask if he is willing to give up these rights.

12. Advise defendant and inquire if he understands that by pleading guilty he is admitting to the commission of the crimes charged.

13. Inquire if anyone has threatened or otherwise forced defendant to plead guilty.

14. Inquire if any promises have been made by anyone to induce defendant to plead guilty.

15. Ask defendant if he is pleading guilty voluntarily.

16. Advise defendant that it is judge's responsibility alone to sentence defendant and inquire if defendant understands.

17. State's Attorney's recitation of facts and stipulation to facts by parties.

18. Ask defendant if he still desires to plead guilty.

19. Court recites for the record that

A. The defendant has been advised of his rights and the consequences of his plea of guilty.
B. The defendant understands his rights and wishes to waive them and plead guilty.
C. The defendant voluntarily wishes to plead guilty.
D. There is a factual basis for the plea of guilty.
E. Leave to withdraw not guilty plea is given and guilty plea is accepted and entered.
F. Court enters a finding of guilty and judgment on the finding of guilty.

20. Aggravation and mitigation hearing before imposition of sentence.

A. Presentence report waiver if appropriate.
B. Consider presentence investigation report if not waived.
C. Consider testimonial and other evidence of state in aggravation, if any.
D. Consider testimonial and other evidence of defense in mitigation; if any.

21. Arguments of prosecution and defense before imposition of sentence.

22. Inquire of defendant if he wishes to make a statement.

23. Impose sentence, give reasons for particular sentence, and indicate Mandatory Supervised Release term.

24. Advise defendant of right to appeal (Rule 605(b)).

25. Advise defendant of requirements to appeal

A. Motion to vacate and leave to withdraw plea within 30 days stating grounds for relief.
B. Advise of right to free transript and attorney if indigent, to assist him.
C. Advise that if motion is allowed a trial date will be set on the charges.

26. Direct court reporter to type notes if defendant sentenced to penitentiary and that they should be filed with clerk as part of the record.

6.1 Scenario For A "Blind" Plea of Guilty

THE COURT: Does the Defendant or defense counsel have any matters to bring to the Court's attention at this point?

DEFENSE ATTORNEY: Yes, your honor. At this time, my client wishes to withdraw his previously entered plea of not guilty and enter a plea of guilty to the charge(s).

THE COURT: Mr. (Defense Attorney), have you advised your client of his rights under the law and the consequences of his entering a plea of guilty?

DEFENSE ATTORNEY: Yes, I have, your honor.

THE COURT: Mr. (Defendant), your attorney advises me that you now wish to plead guilty to the charge(s) of _____ _____, is that correct?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), has your attorney advised you of your rights under the law and the consequences of entering a plea of guilty?

THE DEFENDANT: Yes, he has, your honor.

THE COURT: What is your plea? Guilty or not Guilty?

THE DEFENDANT: Guilty.

THE COURT: Mr. (Defendant), although your attorney has advised you of your rights, before the Court can accept your plea of guilty, the law requires that I further and fully advise you of your rights under the law and of the effect and consequences of your pleading guilty. Let me first advise you that you have a right to remain silent and not say anything. Are you willing to waive and give up that right and answer the questions that I will be asking of you?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), indictment number _____ charges you with the crime(s) of _____; in [count one of] the indictment [repeat the following in this section as to each count of the indictment] you are charged with _____ [set out elements of offense or nature of the offense, i.e. you are charged with Murder in that you intentionally shot and killed John Doe on January 1, 1969

without lawful authority]. Under the law, the crime of _____ _____ is a class _____ felony and I can sentence you to a term of no less than _____ and up to _____ years in prison; that within those limits the Court may fix a sentence. Further, that upon your release from prison you would have to serve a term of _____ years on Supervised Release during which time you would be under the supervision of the parole authorities. The Court may also impose a fine of up to _____ dollars. [Where more than one charge add the following: The law further provides that I can impose the sentences to run consecutively, that means that you would have to serve one sentence before you could begin to serve the second sentence].

Do you know and understand the nature of the charge(s) against you and the sentence(s) that could be imposed?

THE DEFENDANT: Yes.

THE COURT: Mr. (Defendant), although you have said you wish to plead guilty and you have a right to plead guilty, I must tell you that you have a right to plead not guilty and persist in that plea of not guilty? Do you understand that, sir?

THE DEFENDANT: Yes, your honor.

THE COURT: By pleading guilty you waive and give up your rights to a trial. Under the law you have a right to have a jury trial, that means you would have a jury of 12 fair people of this county decide your guilt or innocence. On the other hand, you could choose to have your guilt or innocence decided by the Court; that means that I would hear the evidence and decide whether you were guilty or not guilty. Do you understand your rights to a trial by a jury or trial by the Court and that by pleading guilty you will not have a trial of any kind?

THE DEFENDANT: Yes, your honor.

THE COURT: Then I will ask you to execute a waiver of your right to a jury trial in writing. The record should reflect that the Defendant is now being given a jury waiver form.

Mr. (Defendant), would you please read and sign the jury waiver form. You should understand that by signing the form you acknowledge that you knowingly, understandingly, and voluntarily are giving up your right to a jury trial.

Let the record reflect that the Defendant has signed the jury waiver form.

THE COURT: The Court further advises you that by pleading guilty you give up your right of confrontation, that is to say, hear and have your attorney question all witnesses called to testify against you. You should know that by pleading guilty, you give up your right to present evidence in any defense of the charge(s) that you may have. You should realize that by pleading guilty, you give up this right and admit to the commission of the crime(s) charged. You also give up your right to have the Court compel the attendance of witnesses on your behalf by the subpeona process. Do you understand these rights and are you willing to waive and give them up?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), you have a right to remain silent, and to require the prosecution to prove their case against you beyond a reasonable doubt. Do you understand these rights and are you willing to waive and give them up?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), have any promises of any kind, or threats been made to you or your family by the State's Attorney, your attorney, or by any other person or persons to induce you to plead guilty?

THE DEFENDANT: No, your honor.

THE COURT: Mr. (Defendant), has anyone forced you to plead guilty?

THE DEFENDANT: No, your honor.

THE COURT: Mr. (Defendant), are you pleading guilty voluntarily?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (Defendant), under the law the sentence to be imposed upon you is completely within the province of the Court and is my responsibility and mine alone. If anyone has forced you or threatened you to plead guilty or if any promises have been made to you by anyone, they would not in any way be binding upon the Court and they are unenforceable. Do you understand that?

THE DEFENDANT: Yes, your honor.

THE COURT: Mr. (State's Attorney), before accepting the Defendant's plea of guilty, will you please advise the Court as to the facts in this case and what your proof would show?

STATE'S ATTORNEY: It is hereby stipulated, etc. (a narrative of the facts).

THE COURT: Mr. (Defendant), is the statement of facts related by the State's Attorney substantially correct?

THE DEFENDANT: Yes, your honor.

THE COURT: Now, Mr. (Defendant), knowing the nature of the charge against you, the consequences thereof and the penalty that may be imposed upon you, knowing of your rights, do you still desire to enter a plea of guilty to the charge(s) of _____.

THE DEFENDANT: Yes, I do.

THE COURT: Let the record show that the Defendant, upon being duly advised of his rights under the law and of the effect and consequences of entering a plea of guilty, persists in his desire and intention to enter a plea of guilty to [the charge(s) of _____ in indictment number _____] or [the included offense(s) of _____ _____ under indictment number _____].

The Court finds, and let the record show, that the Defendant knowingly understands and comprehends the nature of the charge(s) against him, the consequences thereof and the possible penalties provided, including the minimum and maximum sentences prescribed by law. The Court also finds, that the Defendant knowingly understands and comprehends his rights under the law and wishes to waive them and plead guilty. The Court further finds that the Defendant voluntarily wishes to plead guilty.

The Court further finds that there is a factual basis for the plea of guilty herein. The Court grants the Defendant leave to withdraw his previously entered plea of not guilty to indictment number _____ and hereby accepts the Defendant's plea of guilty and enters a finding of guilty.

Judgment is hereby entered on the finding of guilty to the charge(s) of _____ in indictment number _____

or [the included offense(s) of _____ under indictment number _____].

THE COURT: We will now proceed to a presentence hearing.

6.2 Advising Defendant of Right to Elect Sentencing Under Old Law or New Law

[If the crime occurred prior to January 1, 1973, see §4.2 of this Chapter.]

[If the crime occurred between January 1, 1973 and February 1, 1978, see §4.2 of this Chapter.]

PROBLEM AREAS

7.0 When The Judge Withdraws His Agreement

Where a judge concurs or conditionally concurs in a sentence or plea agreement after a conference where the judge fully involved himself with the facts, the evidence, and the sentencing data but the judge subsequently withdraws his concurrence or conditional concurrence the judge must so advise the defendant. The judge must then give the defendant an opportunity to withdraw his plea of guilty since the judge is no longer in accord with the plea agreement. If the defendant chooses to withdraw his plea of guilty, then the judge must recuse himself. This is required by Illinois Supreme Court Rule 402(d)(2).

However, the mere fact that a judge is party to a plea conference and rejects a plea agreement, does not entitle the defense to an automatic re-transfer or recuse since this would foster wasteful forum shopping.

7.1 When The Defendant Is Under 18

Illinois Supreme Court Rule 403 covers the situation where the defendant is under the age of 18 years. The Rule prohibits a person under the age of 18 years to plead guilty, waive indictment, or waive trial by jury (except in cases in which the penalty is by fine only) unless he is represented by counsel in open court. Additionally, pleas of guilty of people under the age of 18 years should not be taken where the parents or guardian are not present in court.

Where the parents or guardian of the individual under 18 years of age are in open court, it is the preferred practice to obtain an acknowledgement from the parents or guardian that they understand all of the defendant's rights and the consequences of the defendant's plea of guilty and that they are in agreement with the plea of guilty.

7.2 When The Defendant Is Without A Lawyer

Where a defendant appears in court and is desirous of pleading guilty to an offense that is punishable by imprisonment it is required that the court obtain a waiver of counsel from the defendant in accordance with Supreme Court

Rule 401. Under these circumstances compliance with Supreme Court Rule 401 is mandatory before the trial judge enters into the plea of guilty phase of the proceeding.

7.3 When The Defendant Appears Unfit or Incompetent

The defendant who pleads guilty is presumed to be fit to stand trial. However, if a defendant appears unable to understand the nature and the purpose of the proceedings against him or appears unable to assist in his own defense the defendant may be unfit for purposes of trial or for the proceedings in the case.

Where bona fide doubt of the defendant's fitness exists the court should proceed in accordance with Chapter 38, Sec. 1005-2-1. A defendant who enters a plea of guilty while unfit for trial may collaterally attack a plea of guilty pursuant to the provisions of Section 72 of the Civil Practice Act. Ill. Rev. Stat. 1975, Ch. 110, Sec. 72.

7.4 When The Defendant Appears Under The Influence Of Drugs or Alcohol

A defendant who enters a plea of guilty under the influence of drugs or alcohol gives rise to questions of voluntariness of the plea and possibly fitness under Chapter 38, Sec. 1005-2-1. Consequently, where the trial judge has facts before him which give rise to the belief that the defendant is either intoxicated or otherwise under the influence of drugs the court should not proceed any further with the plea of guilty proceedings. Under certain circumstances, the court may appoint qualified experts to examine the defendant to determine his fitness prior to further plea of guilty proceedings. See Ch. 38, Sec. 1005-2-1(g). Only when the court is satisfied that the defendant is sober or not otherwise under the influence of drugs should further plea proceedings be held.

7.5 When The Defendant Has A Language Problem

A defendant who does not speak English or has other language problems poses further difficulties in the plea of guilty proceeding. The use of an interpreter in most instances will be required. Using an independent bi-lingual individual is preferred but a bi-lingual friend or relative will probably accomplish the same result. However, when an interpreter is used it is essential that the record reflect the qualifications and other foundational requirements for the use of the interpreter.

When using an interpreter greater care ought to be taken in establishing the Rule 402 requirements before acceptance of the plea of guilty because of obvious problems in determining the understanding and voluntary aspects of the plea of guilty.

7.6 When The Defendant Changes His Mind

Occasionally the plea of guilty will "blow up". The defendant decides that he does not want to plead guilty or otherwise could not understand all of the consequences and ramifications of the plea proceedings. In such circumstances, the plea of guilty must cease. If the questions that have arisen cannot be resolved, the matter must be set for trial. If the problems can be resolved, it is suggested that the plea proceedings commence from the beginning with greater care taken by the trial judge to make certain that the plea is entered understandingly and voluntarily.

WITHDRAWAL OF GUILTY PLEA

8.0 Note

On timely application of the defendant the court may, for good cause, permit a plea of guilty to be withdrawn and a plea of not guilty substituted. The motion to withdraw a guilty plea should be heard before the court in which the plea was sentenced. Compliance with Supreme Court Rule 604(d) is required if the defendant subsequently wishes to appeal (see People v. Frey, 67 Ill. 2d 77 (1977).

8.1 Good Cause for Plea Withdrawal

Circumstances constituting good cause include cases where the defendant pleaded guilty in reliance upon representations or unkept promises of public officials; or upon representations of such by private counsel, which were substantially corroborated by acts of public officials; or where there has been any duress, fraud, or other force overreaching defendant's free will; where defendant was ignorant of his rights or improperly influenced by hope or fear; where defendant was influenced to plead to a charge more serious than he understood to be involved; or where defendant, by his own mistake, misunderstood the crime charged or the consequences of his plea or possible punishment, withdrawal should be permitted.

A plea may be withdrawn in the discretion of the judge, based on new evidence, inadequate admonishments by the court, or where the record discloses that defendant doubts his commission of the charged offense or a count thereof. Where a defendant moves for leave to withdraw his plea, the court should allow full consideration by way of hearing, affidavits or witnesses.

WAIVER FORMS

It is not necessary in Illinois to have the defendant acknowledge his rights in writing in any fashion. Further, there is similarly no requirement that the defendant waive any of his rights in writing. However, many courts require that the defendant waive some right or rights in writing during some part of the proceeding. Sample waiver forms are included herein from which the trial judge might choose any appropriate forms desired for inclusion in the plea of guilty proceeding.

A. Written Waiver - Form

IN THE CIRCUIT COURT OF THE _____ JUDICIAL

CIRCUIT, _____ COUNTY, ILLINOIS

The People of the State)
of Illinois)
)
vs.) No. _____
)
_____)
Defendant)

WAIVER OF RIGHTS

The above named Defendant, being advised of the nature of the charge in the above numbered criminal case(s), and being fully advised by the Court as to his constitutional rights, does hereby WAIVE in open Court:

His right to a trial by jury in said criminal case(s)

His right to remain silent

His right to the presumption of innocence

His right to cross-examine the witnesses for the State

His right to offer evidence in defense

His right to be proved guilty beyond a reasonable doubt

His right to plead not guilty

His right to pre-sentence report.

I know that the Court will not permit anyone to plead GUILTY who claims to be innocent and, with that in mind, and because I am GUILTY and make no claim of innocence, I wish to plead GUILTY and respectfully request the Court to accept my plea of GUILTY.

I hereby declare that this GUILTY plea is made without any threats of reprisal or harm to myself or any member of my family.

I hereby declare that I offer my plea of GUILTY freely, voluntarily and of my own accord, and with full understanding of all the matters set forth in the charges, in this petition and in the certificate of my counsel which is attached to this petition.

Signed by me in open Court in the Presence of my Attorney on _____, 19___
(date)

_____
Defendant

B. Defendant's Written Plea - Form

CAVEAT: A WRITTEN PLEA OF GUILTY IS NOT A SUBSTITUTE FOR COMPLIANCE WITH THE REQUIREMENTS OF RULE 402 TO BE CONDUCTED IN OPEN COURT BY THE JUDGE WITH THE DEFENDANT PRESENT.

_____CIRCUIT COURT OF ILLINOIS

_____ COUNTY

_____)
_____,)
)
V.) No. ___-___-___
)
_____)
_____)
)

PLEA OF GUILTY

The above named Defendant on oath states:

1. My full true name is _____.

2. My Age is _____: I was born on _____, 19___.

3. I have completed _____ years of school

4. I have received a copy of each charge herein (Indictment or Information) and before being asked to plead, have read each charge and discussed them with my lawyer - and fully understand every charge made against me in this case.

5. I understand the maximum punishment which the law provides for the offense of _____, is:

   (a) A maximum of _____ years in prison; plus

_____ years on parole;

(b) and a fine of $_____, or both;

(c) or imprisonment in jail for a maximum of _____ days;

(d) and a fine of $_____, or both, for the offense of _____, and that the court may order each sentence to run either concurrently or consecutively.

6. I may, if I choose, plead NOT GUILTY to any offense charged, and if I should choose to plead NOT GUILTY, the Constitution guarantees me:

(a) the right to have the assistance of a lawyer for my defense at each stage of my case;

(b) the right to be presumed innocent;

(c) the right to remain silent;

(d) the right to be proved guilty beyond a reasonable doubt;

(e) the right to a speedy and public jury trial, or, if I choose, a bench trial before a judge without a jury;

(f) confrontation, or the right to see, hear and cross-examine each witness called to testify against me;

(g) the right to offer evidence in my own defense and to use the power of the Court to compel the production of any evidence, including the attendance of each witness in my favor, and

(h) the right to a presentence report.

7. I understand the nature of each offense with which I am charged and the consequences of entering a plea of guilty.

8. I am represented by Counsel whose name is

_____

9. I have told my lawyer everything I know about all the

facts and surrounding circumstances concerning the matters mentioned in each charge and believe that my lawyer is fully informed as to all such matters.

10. My lawyer has explained to me the nature and substance of the charges including the elements of the offense and the requisite intent. I have been advised of my possible defenses to the charges in my case.

11. I believe that my lawyer has done all that anybody could do to counsel and assist me, and that there is nothing about the proceedings in this case which I do not fully understand.

12. I understand that within 30 days after each sentence is imposed:

    (a) I have the right to appeal each sentence and to have the Circuit Clerk prepare and file a Notice of Appeal for me;

    (b) HOWEVER, before any such appeal, within 30 days after each sentence is imposed, I must file in the Circuit Court a written motion to vacate every judgment and withdraw every guilty plea, stating every reason for each motion;

    (c) I have a right to request a free lawyer and a free written transcript of each charge, both for the motion and for appeal; and

    (d) if such motion were granted by the Circuit Court, a new plea of NOT GUILTY would be entered for me and each charge would be set for jury trial (including reinstatement of every charge dismissed as part of this plea agreement).

13. I am not a drug addict who habitally uses any controlled substance.

14. I understand that the Court will not permit anyone to plead GUILTY who claims to be innocent, and with that in mind, I wish to plead GUILTY and ask the Court to accept by plea of GUILTY.

15. I declare that I offer my plea of GUILTY freely, voluntarily and of my own accord, and with full understanding of all the matters set forth in each charge, and in this written PLEA OF GUILTY.

Signed by me in open Court -- in the presence of my lawyer -- subject to the penalties of perjury, on _____, 19____.

_____
Defendant

CERTIFICATE OF COUNSEL

The undersigned, attorney for the above-named defendant, certifies as follows:

1. I have fully explained to the Defendant, the nature, substance and elements contained in each charge in this case.

2. To the best of my knowledge and belief, the statements and representations and declarations made by the Defendant in the foregoing written plea of GUILTY are in all respects accurate and true.

3. The plea of GUILTY, as offered by the Defendant in the foregoing plea, is in accord with my understanding of the facts as related to me by the Defendant and is consistent with my advice to the Defendant.

4. In my opinion, the plea of GUILTY made by the Defendant is voluntarily and understandingly made, and I recommend to the Court that the plea of GUILTY be now accepted and entered on behalf of the Defendant as therein requested.

Signed by me in open Court, in the presence of the Defendant above named and after full discussion of the contents of this certificate with the Defendant, on _____, 19____.

_____
Attorney for Defendant

C. Waiver of Presentence Report

A presentence report is mandatory for sentences in all felony cases unless knowingly waived by the defendant. The court may order a presentence report in any case irrespective of whether the defendant is willing to waive the report. Waiver of presentence report does not affect the duty of the trial judge to justify the sentence. (Unif. Code of Corr., Ill. Rev. Stat., Ch. 38, §1005-4-1).

D. Presentence Report Waiver - Scenario

The Court: Do you understand that unless you waive it prior to formal sentence, you are entitled, under Illinois Law, to a presentence investigation and report of your history for criminality, your personal background and rehabilitation prospects, if any?

The Defendant: _____

The Court: Do you, at this time, prior to sentencing, formally waive and relinquish your statutory rights to presentence investigation and report?

The Defendant: _____

The Court: Let the record so note.

[NOTE: §1005-3-1 of the Unified Code of Corrections provides: "Presentence Investigation. A defendant shall not be sentenced for a felony before a written presentence report of investigation is presented to and considered by the court.

"However, the court need not order a presentence report of investigation where both parties agree to the imposition of a specific sentence, provided there is a finding made for the record as to the defendant's history of delinquency or ciriminality, including any previous sentence to a term of probation, periodic imprisonment, conditional discharge, or imprisonment.

"The court may order a presentence investigation of any defendant."

E. Admonishment of Appeal Rights After Plea

ADMONISHMENT

RULE 605(b)

Motion for New Trial on Plea

A. Right to appeal

B. File motion within 30 days

1. Leave to withdraw plea and have judgment vacate

2. Must be in writing
3. State grounds

C. If motion allowed

1. Plea sentence and judgment vacated
2. Charges dismissed as part of plea agreement, motion of State, will be reinstated
3. Case set for trial

D. Indigent

1. Free transcript
2. Appointment of attorney

E. Points waived in motion, forever waived.

F. Admonishment of Appeal Rights After Plea - Form

IN THE CIRCUIT COURT

FOR THE _____ JUDICIAL CIRCUIT OF ILLINOIS

_____ COUNTY

The People of the State of Illinois,	)	
	)	No. _____
Plaintiff,	)	Charge: _____
	)	_____
v.	)	
	)	
_____	)	
	)	
_____	)	
Defendant (s)	)	

ADMONISHMENT OF APPEAL RIGHTS

AFTER GUILTY PLEA

I understand that I have a right to appeal from this plea of guilty and that:

(a) prior to taking such an appeal, I must file in this court, within 30 days, a written motion setting forth grounds why this guilty plea and sentence should be withdrawn, and to vacate the judgment

(b) if my motion is allowed, the guilty plea and sentence will be withdrawn and a trial date will be set on the charges against me, including any charges dismissed by the State as part of my plea agreement, and

(c) if I am indigent, a free transcript of the plea

proceedings and an attorney to assist me will be provided, and

(d) any issue not raised in such motion to withdraw the guilty plea and sentence cannot be raised on any later appeal from the guilty plea and sentence.

_____
Defendant

I certify that the Defendant read the foregoing in my presence.

_____
Defendant's Attorney

CHAPTER VI

JUDGE AND JURY

CHAPTER VI

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VI - 0

SCOPE NOTE

This chapter covers relations with the petit jury and grand jury, including voir dire forms.

VI - 1

VOIR DIRE

1.0 Selection of the Jury in General

In criminal cases, the judge conducts the voir dire examination. The judge puts to the jurors any questions which he thinks appropriate, touching their qualifications to serve as jurors in the case on trial. (Supreme Court Rules 431).

The parties or their respective counsel may be allowed a reasonable opportunity to supplement such examination by submitting additional questions for inquiry by the court or by direct inquiry as the court deems proper. See People v. Jackson, 69 Ill.2d 252, 371 N.E.2d 602.

It is a violation of the spirit of voir dire for counsel to conduct an exercise in indoctrination of individual jurors.

The Constitution does not always entitle a defendant to have questions posed during voir dire specifically directed to matters that conceivably might prejudice veniremen against him.

Voir dire "is conducted under the supervision of the court, and a great deal must, of necessity, be left to its sound discretion." Connors V. United States, 158 U.S. 408 (1895); See, Ham v. South Carolina, 409 U.S. 524 at 527-528, Aldridge v. United States, 283 U.S. 308, 310, 51 S.Ct. 470, 471, 75 L.Ed. 1054 (1931). This is so because the "determination of impartiality, in which demeanor plays such an important part, is particularly within the province of the trial judge." Rideau v. Louisiana, 373 U.S. 723,733, (1963) (Clark, J., dissenting).

The Due Process Clause may, however, require somebody to question prospective jurors about race prejudice where there exists a significant likelihood that, absent questioning about race prejudice, the jurors would not be indifferent as (they stand) unsworn, Ham v. South Carolina, 409 U.S. 524 (1973); questions about general bias or prejudice without specific questions will, in ordinary encounters, absent special circumstances, be enough, Ristaino v. Ross, _____ U.S._____, 96 S.Ct., 1017 (1976). See: Re: Race Type Questions, 305 N.E. 2d 858 (1976).

1.1 Challenges and Exemptions

A. Number of Peremptory Challenges; Ch.38 §115-4(e)

> (e) A defendant tried alone shall be allowed 20 peremptory challenges in a capital case, 10 in a case in which the punishment may be imprisonmsent in the penitentiary, and 5 in all other cases; except that, in a single trial of more than one defendant, each defendant shall be allowed 12 peremptory challenges in a capital case, 6 in a case in which the punishment may be imprisonment in the penitentiary, and 3 in all other cases. If several charges against a defendant or defendants are consolidated for trial, each defendant shall be allowed peremptory challenges upon one charge only, which single charge shall be the charge against that defendant authorizing the greatest maximum penalty, The State shall be allowed the same number of peremptory challenges as all of the defendants.

B. Grounds for Challenge for Cause

The Statutory qualifications: (1) Being of the age of 18 years or upwards, (2) being in possession of natural faculties and not infirm or decrepit, and (3) being free from all legal exceptions, of fair character, of approved integrity, of sound judgment, well informed, and able to understand the English language. Ill. Rev. Stat., Ch. 78, §2.

It is cause that the juror is a party to a suit pending for trial in that court, Ill. Rev. Stat., Ch.78, §14, or has served as a juror on the trial of any cause in any court of record within the past year, Ill. Rev. Stat. ch. 78, §14, or has sought the position of the juror, Ill Rev. Stat., Ch. 78, §13.

Conviction of an infamous crime is cause, and includes conviction for arson, bigamy, bribery, burglary, deviate sexual assault, forgery, incest or aggravated incest, indecent liberties with a child, kidnapping or aggravated kidnapping, murder, perjury, rape, robbery, sale of narcotic drugs, subornation of perjury, theft if the punishment imposed is imprisonment in the penitentiary, or conspiracy to commit any of such offenses. Ill. Rev. Stat., Ch. 38, §124-1.

C. Exemptions

By statute, the persons exempt from jury service are the Governor, Lieutenant Governor, Secretary of State, Comptroller, Treasurer, Superintendent of Public Instruction, Attorney General, Members of the General Assembly, judges and clerks of courts, sheriffs, coroners, postmasters, practicing attorneys, national guardsmen, naval militia, all officers of the United States, mayors of cities, policemen and firemen. Ill. Rev. Stat., Ch. 78 §4.

In addition, a juror who has been in attendance for two full weeks of jury service is thereafter exempt for that term of service, whether or not he has served for all or part of that period. Ill. Rev. Stat., Ch. 78, §8.

CHALLENGE TO THE ARRAY

Method of Challenging the Array

(1) Motion to Quash the Array.

(2) In Criminal Cases - Motion to discharge jury panel before voir dire. Ill. Rev. Stat., 1973, Ch. 38, §114-3.

a. Upon good cause shown, motion may be allowed after voir dire has begun, but not after the jury has been sworn.

b. Written motion supported by affidavit.

c. If affidavit shows sufficient facts, court must conduct a hearing.

d. Burden is on the movant.

(Hunter, §19:7)

Grounds for challenge to the Array

(1) Mere irregularities are not grounds for challenge if there has been substantial compliance with statutes.

Examples:

a. A jury list does not contain the names of 10% of the legal voters of the county.

b. Absence of designated officer at drawing.

c. Jurors have served more than two weeks

(2) Where there has been no substantial attempt to follow the statute, the challenge will lie.

Examples:

a. Failure to present jury list to Board of Supervisors.

b. Deliberate exclusion of qualified persons from the jury list.

c. Deliberate exclusion of persons from the jury list because of race, color, sex, etc., violates Federal and Illinois Constitutions.

There is no constitutional requirement of proportional representation. The fact that the State's peremptory challenges result in the exclusion of a certain group is not unconstitutional. (Hunter, §19:7).

PEREMPTORY CHALLENGES Ill. Rev. Stat. 1973. Ch. 38, §115-4; (See Hunter, §19:20,19:22).

A. Capital Offenses: People v. Watkins, 17 Ill. App.3d 574, N.E. 2d 180 (1974).

B. Conditional bases for challenge. (Hunter, §28:3).

C. Some factors not normally grounds for challenge: (Hunter, §28:4, 28:5).

(1) Juror is related to one of the attorneys.

(2) He is a former employee or employer.

(3) He is a former landlord or tenant of one of the parties.

(4) The existence of publicity. (Hunter, §28:1, 28:4); People v. Torres, 54 Ill.2d 384, 297 N.E.2d 142 (1973); Ill. Rev. Stat. 1973, Ch. 78, §14.

D. The challenge must specify the cause. (Hunter, §28:5).

E. Judge may exclude juror on his own motion. (Hunter, §19:23).

F. The right to challenge may be waived:

(1) By failure to make a timely challenge. (Hunter, §28:6).

(2) By exercising a peremptory challenge after a challenge for cause has failed. (Hunter, §28:5).

1.2 Possible Written Juror Questionnaire Forms

(General -- Civil and Criminal)

A. _____JUDICIAL CIRCUIT OF ILLINOIS

_____ COUNTY

JUROR NUMBER _____

JUROR QUESTIONNAIRE

Name: _____

(Last) (First) (Initial)

1. Are you married? _____
2. What was your maiden name? _____
3. What is your age? _____
4. How many times have you been married? _____
5. How did previous marriages terminate? _____

_____

6. List names, ages, and occupations of your spouse and all children. If any child is married, list the name of the spouse and his or her occupation.

NAME	Relationship	Age	Occupation	Employer

7. What is your present occupation and employer?

8. What other occupations have you held? _____

9. What do you consider to be your family national origin (such as Greek, Scotch, Irish, etc.)?

10. Have you ever been a juror before? _____ (Yes or No)
or called and not selected? _____

11. Have you ever been involved in a lawsuit as either a Plaintiff or Defendant?

12. Has your husband (wife) ever been involved in a lawsuit as either a Plaintiff or Defendant? _____

13. Has any other member of your family ever been involved in a lawsuit as either a Plaintiff or Defendant? (Family is defined as father, mother, brother, sister or children). _____

14. Have you ever been called as a witness in a lawsuit? _____.

15. Has your wife (husband) ever been called as a witness in a lawsuit? _____

Yes or No

16. Have you ever witnessed a severe personal injury to another person? _____

17. Do you drive an automobile? _____

18. How long have you been driving? _____

19. Have you ever been involved in an automobile collision either as a driver or passenger?

_____

20. Have you ever suffered a personal injury? (Briefly state the circumstances and the extent of the injury).

21. What is your religious preference? _____

22. What education have you received? _____

_____

_____

23. Have you ever been convicted of an offense in ANY Court? _____

24. If so, give details briefly. (Such as Disorderly Conduct, Speeding Ticket, etc.) _____

_____

_____

25. Are you related to, neighbor to, or close friends with any law enforcement officer? _____

26. Is there any reason why you should not serve as a juror? _____. If so, state the reason _____

_____

_____

_____

Signature

_____

Address

_____

Telephone No.

B. Juror Questionnaire

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT

_____ COUNTY, ILLINOIS

JUROR QUESTIONNAIRE

I CERTIFY THE FOLLOWING INFORMATION TO BE TRUE

NAME_____
(please print) (Last) (First) (Middle Initial)

RESIDENT OF_____
(Town, Village, City, or Township)

POST OFFICE ADDRESS_____
(R.R. & Box No. or Street Address) (Post Office)

TELEPHONE NO.: (Home)_____ OR (Business)_____
(If no phone, please see Clerk before leaving Courthouse)

_____

_____

MARITAL STATUS:_____ YOUR CHILDREN'S AGES_____

YOUR AGE_____IS YOUR HEARING IMPAIRED?_____

YEARS OF RESIDENCE: In Illinois_____ In this County_____

DISTANCE FROM YOUR HOME TO COURTHOUSE_____ROUND TRIP_____

HAVE YOU EVER SERVED AS A JUROR BEFORE?_____

(If yes, when and where was the last time?_____

(Were they civil or criminal cases?) _____

(Did you actually go all the way to verdict?)_____

HAVE YOU EVER BEEN IN COURT AS A PARTY TO AN ACTION?_____

AS A WITNESS?_____

HAVE YOU EVER BEEN CONVICTED OF A CRIME, OTHER THAN A TRAFFIC OFFENSE?_____IF SO, DESCRIBE_____

DO YOU KNOW ANY REASON WHY YOU SHOULD NOT SERVE AS A JUROR?

_____

_____

_____

(FOR MEN) OCCUPATION:_____

(if retired, state "Retired", when, and give former occupation).

EMPLOYER:_____ HOW LONG_____

(FOR WOMEN) MAIDEN NAME:_____

OCCUPATION_____

(If housewife, state Housewife, and give former occaption and when).

EMPLOYER:_____HOW LONG_____

HUSBAND'S OCCUPATION:_____

_____

_____

MISCELLANEOUS QUESTIONS:		Yes	No
1.	Do you own an automobile?	___	___
2.	Do you drive an automobile?	___	___
3.	Have you ever been in an auto accident?	___	___
4.	Did you receive bodily injuries?	___	___
5.	Has any member of your family received bodily injuries in an automobile accident?	___	___
6.	Was the case settled out of Court?	___	___
7.	Was the case tried in Court?	___	___
8.	Has a claim for bodily injury ever been made against you?	___	___

_____

_____

SUBSCRIBED AND SWORN TO BEFORE ME

ON _____, 197____.

_____

(Juror's Signature)

_____

Deputy - Clerk of Court

Juror No. _____

1.3 Standard Questions

1. Have you heard or read anything about this case?

2. Do you know the defendant in this case?

3. Do you know any of the attorneys in this case?

4. Do you have any friends or relatives in the State's Attorney's office or on a police force?

5. Do you know any reason why you cannot be a fair and impartial juror in this case?

6. Have you ever been a party to or interested in the outcome of a civil or criminal case?

7. Have you ever testified in court?

8. Have you ever served as a grand juror or trial juror before today?

If the previous service was in a civil case, ask this question: The rules of evidence relating to burden of proof are different in criminal cases than they are in civil cases. Will you listen to the instructions carefully and apply the law as I state it to be, rather than as you were instructed in the civil case that you served on as a juror?

9. Have you or anyone in your family ever been a victim of a crime?

10. Do you have any bias or prejudice against a person simply because he may be charged with a crime?

11. Is there anything about the nature of the charge in this case that would prevent you from rendering a fair and imparital decision?

12. Will you apply the law as the court states it to be, without regard to your own personal feelings about it?

13. If accepted to serve in this case, will you

be a fair and impartial juror?

When the attorneys have agreed upon a panel, the court may say to the jurors:

> The purpose of questioning the jurors has been to select a jury which is free from prejudice. It may be that for some reason known only to you and perhaps not covered by any question, you would be unable to listen with an unbiased mind to the evidence in this case and reach a fair and impartial decision. If so, I expect you to volunteer such information to the court at this time.

See: Propriety, on voir dire in criminal case, of inquiries as to juror's possible prejudice if informed of defendant's prior convictions, 43 ALR 3d 1081; beliefs regarding capital punishment as disqualifying juror in capital case, post Witherspoon cases, 39 ALR 3d 550.

1.4 Panel Questions

Questions for the entire prospective jury panel, anticipating negative answers: (These may be supplemented by questions submitted in advance by counsel.)

(Each member of the panel in the jury box is requested to raise his hand if his answer to any question is YES. He is then questioned individually, and excused or not, as appears proper.)

a. (Request defendants to rise and identify them.) Are you personally acquainted with any of the defendants, related to them by blood or marriage, or do you or any member of your immediate family have any connection of any kind with any of the defendants?

b. (If the defendant is a corporation) Are you an officer, director, stockholder or employee of

_____

c. (Request counsel to rise and introduce them.) Do you know, or are you related by blood or marriage to counsel for the state or any of the defendants?

d. Has any lawyer in this case acted as your attorney or the attorney for any of your immediate family or close friends to your knowledge?

e. Have you ever served as a juror in a criminal or a civil case, or as a member of a grand jury, either in the federal or state courts?

f. Have you or your family ever been the victim of a crime or participated in a criminal case as a complainant, witness for the state or in some other capacity?

g. Have you or your family ever participated in a criminal case as a defendant, witness for the defense, or in some other capacity?

h. Do you of your own knowledge know anything at all about the facts of this case?

i. Do you remember having read or heard anything about this case?

j. Have you an opinion as to the guilt or innocence of any of the defendants of any of the charges contained in the indictment at this time or have you ever expressed an opinion as to the guilt or innocence of any of the defendants?

k. Has anyone talked to you about this case?

l. Have you or any of your immediate family or any of your close personal friends ever served as law enforcement officers?

m. Do you know of any reason why you may be prejudiced for, or against the state or any of the defendants because of the nature of the charges or otherwise?

n. Do you have any belief or opinion that any of the offenses with which any of the defendants are charged are unique in any respect, in the sense that they

should be pursued with extraordinary vigor, or that they should not constitute an offense, or that they carry penalties which you may consider improper?

o. (Highly publicized cases only) Do you think your verdict would be affected by the unusual amount of publicity given this case by the news media?

p. (Capital cases only) Do you have conscientious scruples against capital punishment?

q. If you were the State's Attorney charged with the responsibility for prosecuting this case, or if you were any of the defendants on trial here today charged with the same offense, or their counsel, do you know of any reason why you would not be content to have your case tried by someone in your frame of mind?

1.5 Impanelling Jury - Voir Dire Scenario - Spoken Form

JUDGE: "Ladies and Gentlemen of the jury, this is the case of the People of the State of Illinois v. _____. The defendant is (The defendants are) seated _____. The defendant, _____, is represented by his attorney, _____. The People are represented by _____ Assistant State's Attorney, who is seated _____. It is charged that [Here read the substance of the information or indict ment]. To these charges the defendant has (the defendants have) pleaded not guilty, and it will be the question of his (their) guilt or innocence of these charges that you will be asked to decide if you are selected as trial jurors in this case. It has been indicated that the following persons may be called as witnesses in the case [names of witnesses].

"Do any of you know any of the parties, witnesses or attorneys in this case?

"Have any of you, or has anyone close to any of you, ever suffered a similar charge to that (those) in this case?

"Have any of you, or has anyone close to you, ever been

a complaining witness or a victim in a case of this kind?

"May I see the hands of those jurors who have never served on any case as a trial juror?

"Recite the names of those jurors.

"To those of you who have not previously served let me state, in case you do not know, what we are doing at this time. We are examining the jurors on voir dire examination for the purpose of determining your qualifications to serve as trial jurors. In this connection, it is my responsibility and the responsibility of the attorneys in the case, to question you concerning your qualifications and to this end it is our duty to ask you many questions which, if we were not engaged in the serious business of selecting a trial jury, you would quite properly think were none of our business.

"If in the course of this examination any attorney should ask a question which any of you should consider to be an impertinence or otherwise improper question, would you permit your irritation or other reaction to such a question to bias you against his client and to affect your determination of this case?

JUDGE: "Can I assume that every juror would answer that question in the same fashion?

"In addition to excusing jurors for cause, the attorneys have the right and the duty, if they believe it is in the interest of their client, to excuse jurors as we say, peremptorily, that is, without giving any reason.

"If you should be seated in the jury box and a fellow juror should be excused and you should believe that you knew the reason why he was excused and should feel that it was in some way an unfair or improper reason, would you permit that fact to bias you against the side which had excused your fellow juror, or otherwise affect your determination of the case?

"Can I assume that all the other jurors would answer that question similarly?

"May I see the hands of those jurors who have served on civil cases, but who have never served on a criminal case?

"Recite the names of the jurors whose hands are up.

"I am sure that you are aware that there are substantial differences in the rules applicable to the trial of criminal cases from those applicable to the trial of civil cases. This is particularly true respecting the burden of proof which is placed upon the plaintiff. I will not, at this time, purport to instruct you as to the rules of law applicable to the burden of proof and other matters in criminal cases, but I will call your attention to the fact that whereas in a civil case we say that the plaintiff must prove his case by a preponderance of the evidence, the People in a criminal case must prove their case beyond a reasonable doubt.

"Will each of you be able to set aside the instructions which you received in your previous cases and try this case on the instructions given by me in this case?

"Do any of you have any quarrel with the rule of law which requires the People to prove their case beyond a reasonable doubt?

"Is there any juror who has any quarrel with that doctrine?

"Have any of the jurors who have tried criminal cases, tried a case involving a charge (charges) similar to that (those) in this case?

JUDGE: Recite the name of any juror holding up his hand.

"The evidence in this case will undoubtedly be different than the evidence in those cases and the instruc-

tions are very likely to be different. Can we be assured that you will try this case on the evidence in this case only and on the instructions given in this case only?

"I will ask you each in turn to tell me your occupation, your spouse's occupation, if you have one, and where generally in the community you live [if children or young people appear to be relevant to the charges, ask them about children in their family], [elicit this information from each juror in turn].

"Has any juror had any law enforcement training or experience? Has any juror anyone close to him involved in law enforcement in any way? By this I include not only police officers, but F.B.I. agents, sheriffs, prosecuting attorneys, District attorneys, states attorneys, etc.

"[If any juror indicates such experience or connection elicit the details of the experience or connection].

"Do you feel that this connection (experience) would in any way affect your deliberations in this case?

"Would you be able to listen to the testimony of a peace officer and measure it by the same standards that you would use to test the credibility of any other witness?

"Would you have any difficulty or embarrassment in returning a verdict in this case against the side which had called a police officer as a witness?

"Has any juror had any legal training or experience?"

1.6 Panel Procedure, Ch. 38, §115-4

(a) After examination the jurors shall be passed upon, accepted and tendered as a panel of 4 commencing with the State.

(b) After the jury is impanelled and sworn, the court may direct the selection of 2 alternate jurors who shall take the same oath as the regular jurors. Each party shall have one additional peremptory challenge for each alternate juror. If before the

final submission of a case a member of the jury dies or is discharged, he shall be replaced by an alternate juror in the order of selection.

Procedure

1. Ascertain that defendant is present.

2. Have clerk call roll of veniremen.

3. Have clerk administer voir dire oath to the entire panel.

4. Fill the jury box.

5. Instruct all jurors whether in the jury box or not to listen to the questions and statements of the court.

See: Propriety and prejudicial effect, in criminal case, of placing jury in charge of officer who is a witness in the case, 38 ALR 3d 1012.

Panel of Four - Scenario

(Where Court Permits Counsel to Orally Pose Questions)

You will be sworn by the clerk to answer the questions truly and properly. Your names will be selected at random by the clerk, and you will take your seats in the jury box on the other side of the room. Thereafter, the court will submit to you certain questions, touching upon your qualifications as jurors. After the examination of the first four jurors by the court, they will be tendered to the state for examination. If those jurors are acceptable to the court and the state, then the defendant will examine those four jurors, and if they are acceptable to the defendant, then those four jurors are accepted as the first panel of four.

If, during this examination, either the court, the state, or the defendant excuses any juror for cause or peremptorily, then that juror will be excused for the day. His place will be filled from the original group in the same manner as the original four were chosen. This replacement juror will be examined by the court, the state, and the defendant, until he is acceptable by all.

Upon the completion of the examination of the first four jurors selected, the examination of the second four will begin; first, with the court examining them again, and then, commencing with the state who will tender them to the defendant.

This process will continue until the jury box is filled with twelve jurors acceptable to the court, the state and the defendant.

1.7 Supreme Court Rule 234 - Possible Outline

A. The court shall conduct the voir dire

1. Identify the defendant, the complaining witness, any other person or witness deemed necessary, and counsel.

2. Outline briefly the nature of the case. (This does not contemplate a detailed discussion of the indictment or facts. Its purpose is to give the jurors sufficient information to answer intelligently questions concerning bias or prejudice.)

3. Outline the duties of jurors,

   a) Answer truthfully questions touching on qualifications-- and state any matter tending to disqualify,

   b) Sole judges of fact,

   c) Absolute duty to accept law as court states it to be

   d) Not to discuss case with anyone and keep

an open mind until case submitted to jury.

B. The court will then conduct a general examination of the prospective jurors. This may include questions on the following general subjects, omitting those subjects which, under the indictment and nature of the case, appear unnecessary.

Note: When a question is addressed to more than one juror, it is important to have the answers recorded by the reporter, if present. See, American Bridge Works v. Pereira, 79 Ill. App. 90 (1st Dist., 1898).

The following questions are furnished merely as suggestions to aid the trial judge. He may omit any or all of them:

1. Name, address, occupation, marital status, occupation of spouse, number and ages of children, their occupations and the occupations of their spouses?

2. Do you know any of the attorneys or the defendant?

3. Have you heard or read anything about this case?

4. Do you have any friends or relatives in the State's Attorney's office or on a police force?

5. Have you ever been a party to or interested in the outcome of a civil or criminal case?

6. Have you ever testified in court?

7. Have you ever served as a grand juror or trial juror before today?

8. If the answer to No. 7 is yes, ascertain when, before what court and the nature of the case in which the prospective juror served, and ask the following questions:

   a) Did anything happen in that case that would prejudice you or in any way affect your judgment in this case?

b) If the previous service was in a civil case, ask this question:

The rules of evidence relating to burden of proof are different in criminal cases than they are in civil cases. Will you listen to the instructions carefully and apply the law as I state it to be, rather than as you were instructed in the civil case that you served as a juror?

9. Have you or anyone in your family ever been the victim of a crime?

10. Do you have any bias or prejudice against a person simply because he may be charged with a crime?

11. Is there anything about the nature of the charge in this case that would prevent you from rendering a fair and impartial decision?

12. Will you apply the law as the court states it to be, without regard to your own personal feelings about it?

13. If accepted to serve in this case, will you be a fair and impartial juror?

14. Any further question or questions that the judge may deem pertinent.

15. Do you know any reason why you cannot be a fair and impartial juror in this case?

C. When the above items have been disposed of, counsel may then furnish supplemental questions to be asked by the court, or if permitted by the presiding judge, personally examine the jurors. In doing so, counsel

1. Shall not repeat the questions asked by the court unless:

a) A juror's answer was uncertain or suggested the desirability for follow-up, or

b) Counsel has cause for believing the juror has not answered truthfully or

fully.

2. Will refrain from any attempt to "educate," "instruct", "or "question" jurors as to matters of law. That is the function and duty of the court exclusively.

D. As other jurors are substituted in the places of jurors excused for challenge, the court will question them to the extent deemed necessary, after which counsel may, if the court permits, examine such jurors within reasonable limits, keeping in mind the foregoing restrictions.

When the attorneys have agreed upon a panel of four jurors, the court may say to the jurors:

> The purpose of questioning the jurors has been to select a jury which is free from prejudice. It may be that for some reason known only to you and perhaps not covered by any question, you would be unable to listen with an unbiased mind to the evidence in this case and reach a fair and impartial decision. If so, I expect you to volunteer such information to the court at this time.

E. While Rule 234 prohibits an attorney, when permitted by the court to directly inquire, from examining jurors concerning matters of law, a proper interpretation of the Rule would not prohibit any question reasonably calculated to ascertain the existence of a prejudice in the mind of a juror against any principle of law applicable to the case, so long as the attorney, himself, does not attempt to restate the law, but merely refers to the principle of law by the court, e.g., presumption of innocence, burden of proof, self-defense, etc. If, under such circumstances, a juror indicates that he did not understand the statement of the law as made by the court, the attorney could then ask the court to restate it. For example, an attorney might be permitted to ask:

> You have heard the court's statement of the rule of law concerning the burden of proof. Would you have any hesitancy in applying that principle of law in this case?

F. It is not the purpose of voir dire to place restrictions on the right of litigants to obtain a fair and impartial jury. Counsel has the right to make reasonable and pertinent inquiries to ascertain whether or not the minds of prospective jurors are free from bias or prejudice. Such

inquiries may be in the form of supplemental questions submitted to the court for inquiry, or posed orally by counsel if permitted in the court's discretion. A properly conducted voir dire examination, however, will minimize attempts by the State's Attorney or counsel for defendant to predispose the jury in their favor in the pre-trial stage, and it will tend to produce fair and impartial jurors.

Taken from 1959 Ill. Judicial Conference Annual Report, pp. 57-60.

JURY COMMUNICATIONS

2.0 Address to the Array - Scenario

Sample

I shall at this time touch upon certain broad fundamental principles of law applicable to all criminal cases in order to assist you further in understanding and following the evidence and law in this case. My remarks at this time are not to be considered by you as instructions by the court, for after you have heard all of the evidence in the case and the arguments of counsel based thereon, the court will at that time instruct you, in writing, as to the law applicable to this case.

The indictment in this case is not to be considered as any evidence or presumption of guilt against the defendant. It is a mere formal charge necessary to place the defendant upon trial. The defendant, under the law, is presumed to be innocent of the charge in the indictment, and this presumption remains throughout the trial with the defendant until you have been satisfied by the evidence in the case, beyond all reasonable doubt as to the guilt of the defendant, and the burden of proving the guilt of the defendant beyond all reasonable doubt is on the State. The law does not require the defendant to prove his innocence.

The judge is the judge of the law, and at the conclusion of the case, after you have heard all the evidence and the arguments of counsel based thereon, the court will instruct you in full as to the law applicable to the case and will then submit verdicts to you for your consideration. These instructions will be in writing and, after being read to you by the court, will be given to you to be taken to the jury room with the verdicts for your consideration while you deliberate. It is your absolute duty to accept the law as defined in these instructions and to follow it.

You are to be the judges of the facts in this case, and in that connection you are the judges of the credibility of the witnesses - that is to say, the question of whether or not the witnesses are telling the truth - and the weight to be given to their testimony. It is my duty to tell you what the law is that is applicable. It is also my duty to tell you what evidence you may hear. After the jury has heard all of the evidence in this case, and the arguments of counsel based thereon, and received the written instructions of the court as to the law applicable to this case, it will be the duty of the jury to determine whether the defendant is guilty or not guilty.

If you become convinced, from all the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment, it will be your duty to find him guilty.

On the other hand, if you do not become convinced beyond a reasonable doubt that the defendant is guilty as charged in the indictment, it will be your duty to find him not guilty.

During the course of the trial you may hear objections made on the part of the lawyers. It is their duty to do so when they think it should be done. It is a help to the court and its purpose as part of our system is to get the case heard concerning the issues and to keep out all irrelevant and immaterial matters. You should not hold it against either the State (Plaintiff) or the defendant or feel that either side is trying to keep something from you.

At times the jury will be excused from the courtroom, or the judge and the attorneys will go into the judge's chambers while objections are being discussed, or for other reasons. Under the law, various matters must be heard out of the presence of the jury. Also, when a case on trial is recessed or adjourned for further hearing, and the trial does not commence promptly at the designated time, the delay may be caused by the court's administrative duties or its transaction of emergency or other matters. When a trial is necessarily interrupted or delayed for any of these reasons, you should not feel that your time is being wasted.

Now, in order to determine your qualifications to sit as jurors in this particular case, the court (and counsel) will question you concerning your names, addresses, occupations, experience, and other related matters. You should not consider this an attempt to pry into your personal life.

To those who will be accepted as the twelve jurors in this case, the court wishes to caution you during the course of this trial not to discuss the case with anyone - not even your own families or friends, and also not even among yourselves, until at the end of the trial when you have retired to the jury room to deliberate your verdict. If anyone has spoken to you, or should speak to you, about this case, or tries to influence you in any manner before its final disposition, directly or indirectly it is your legal duty to report this to the judge immediately.

You should not allow sympathy or prejudice to influence your verdict, but should decide the case on the law and the evidence.

2.1 Instructions Upon Completion of Selection

Sample

You have now been sworn as the jury to try this case. By your verdict(s), you will decide the disputed issues of fact. The court will decide the questions of law that arise during the trial and, before you retire to deliberate at the close of the trial, the court will instruct you on the law that you are to follow and apply in reaching your verdict(s).

You should give careful attention to the testimony and evidence as it is received and presented for your consideration, but you should not form or express any opinion until you consider your verdict(s) after having heard all of the evidence, the closing arguments of the attorneys and the charge of the court.

During the trial you must not discuss the case among yourselves or with anyone else, or permit anyone to discuss it in your presence. You must avoid reading newspaper headlines and articles relating to the trial. You must also avoid seeing or hearing television and radio comments or accounts of the trial while it is in progress. You must not visit the scene of the occurrence that is the subject of the trial unless the court directs the jury to view the scene.

From time to time during the trial I may be called on to make rulings of law on objections or motions made by the attorneys. You should not infer from any such ruling that I have any opinions on the merits of the case favoring one side or the other. And if I sustain an objection to a question asked of a witness and not permit it to be answered, you should not speculate on what answer might have been given, nor draw any inference from the question itself.

2.2 Admonition to Jury Before Recess

Sample

Until this case is submitted to you for your deliberation, you must not discuss this case with anyone or remain within hearing of anyone discussing it; nor read any newspaper article, listen to any radio broadcast, nor view any television program which discusses the case. After this case has been submitted to you, you must discuss this case only in the jury room when all members of the jury are present. You are to keep an open mind and you must not decide any issue in this case until the case is submitted to you for your deliberation under the instructions of the court.

2.3 Jury Instruction Checklist

- Discuss functions as jurors.
- State functions of courtroom attendants.
- Distinguish between criminal and civil cases.
- Advise against staying in halls, over-hearing discussions between attorneys, litigants and witnesses
- Caution against viewing premises and locale involved unless ordered by court.
- Note taking by members of the jury. (Most judges caution jurors not to keep notes as they are not evidence,

might distract, or might have prejudicial weight when used in deliberations.)

See: Use of intoxicating liquor by jurors: Criminal cases 7 ALR 3d 1040. The Trial Judge's demeanor; Its Impact on the jury, the Judges' Journal, Vol. 13, No. 1, Jan. 1974

2.4 Instruction on Order of Proof

Sample

This case will proceed in the following order:

The State's Attorney may make an opening statement outlining his case.

Then the defendant(s) may also make an opening statement outlining his case.

Neither party is required to make an opening statement.

The opening statements are not evidence but are merely to aid you in understanding the significance of evidence when it is introduced.

After the opening statements, if any are made, the State will introduce evidence.

At the conclusion of the State's evidence, the defendant(s) may introduce evidence.

Rebuttal evidence may be introduced.

At the conclusion of all the evidence, the attorneys may make their closing arguments to you.

After the closing arguments, you will be given further instructions, and you will deliberate and arrive at your verdict.

The law applicable to this case will be contained in the instructions I give you during the course of the trial,

and it is your duty to follow all such instructions.

2.5 Note Taking

Unless you are a highly skilled stenographic reporter, you will find yourself incapable of writing down all the testimony. Your notes may, therefore, be inaccurate or incomplete. I would urge that you listen and observe carefully and that you do not let note-taking interfere with your duties as jurors. 7 Tulsa L.J. 56 (1971)

2.6 Checklist Regarding Personals

- Hours of court, duration of term, recesses and refreshments.

- Reporting in.

- Dress requirements.

- Parking.

- Payment.

- Personal emergencies.

- If jurors have any problems, they should not hesitate to bring them to the attention of the bailiff.

2.7 Seclusion of the Jury on Submission and Retirement

Except as authorized by law, the jury must be kept together and segregated from outside influences from the time of the submission of the case to the jury until it reaches its verdict in final form. The key concept is privacy and the test of whether any invasion or departure is enough to set aside a verdict depends on the influence the invasion is calculated to have. See: Ill. Rev. Stat., Ch.

38, §115-4 (l),(m).

It is the responsibility of the jury custodian to prevent contact or communication. There should be no conversations or communications between the jurors and witnesses or other persons, including spouses of jurors. It is improper for jurors to be in the company of outsiders, or for their custodian to permit it. The jurors should not, during the period of their deliberations, be allowed to lodge or eat with other persons.

2.8 Giving Case to Jury - Checklist

After instructions and final arguments:

- Explain Bailiff's duties to jury.
- First, elect foreman or forelady to preside.
- Take necessary time for careful study of the case and for a fair decision.
- When verdict reached, notify Bailiff who will then inform court.
- Have clerk swear Bailiff.
- Give Bailiff instructions, verdict forms and exhibits.
- Direct Bailiff to conduct jury to jury room.
- Note time jury retires.
- When jury is retired, thank and discharge alternate jurors.

2.9 Publicity and the Jury

In respect to the propriety and content of a pretrial order precluding publicity or comment, see 96 Sup. Ct. 2791 (1976); annotation on this and related matters in 33 ALR 3rd 1041, Sheppard v. Maxwell, 384 U.S. 333 (1965)

> "It is not for the trial judge to decide at the threshold whether news accounts are actually prejudicial; whether the jurors were probably exposed to the publicity; and whether jurors would be sufficiently influenced by bench instructions alone to disregard the publicity. In making his determination the trial judge must consider such things as (1) the character or nature of the information published, some being more sensational or penetrating than others; (2) the time of the publication in relation to the trial; (3) the credibility of the source to which the information is attributable and (4) the pervasiveness of the publicity, that is, the extent of the audience reached by the media employed and the interest evoked. With so many variables involved, every claim of jury prejudice because of newspaper articles appearing during a trial must turn on its own facts from examination of the total circumstances surrounding a given case.
>
> "Whether publicity is so prejudicial as to require a mistrial is ordinarily committed to the trial court's discretion." (Taken from Gordon v. U.S., 438 F.2d 858 (1971)).

See: The Trial Judge's Guide to News Reporting and Fair Trial, 60 J. Crim. L.C. and P.S. 287 (1969). 15 ALR 2d 1152.

When it is brought to the attention of the court that any juror or jurors have been exposed or may have been exposed to a newspaper article or radio or television report or comment on the trial, the court may and under some circumstances should, in its sound discretion, make inquiry of the jury as a group as to whether any of them has read or listened to the report or comment, or make such inquiry of

individual jurors, apart from other jurors, so as not to create any prejudice by the inquiry itself or the answers that a juror might give.

Having ascertained the facts, the court may give appropriate warning to jurors who have read or listened or been exposed to the reports or comment to disregard what they read or heard and not to discuss it with other jurors or persons and to reach their verdict solely on the evidence. The court may also admonish the jury as a whole, or repeat its prior admonishment to them, to avoid discussing the case with anyone, reading any articles or headlines or listening to any radio or television reports or comments on the case.

2.10 Jury Communications with the Judge

"After the jury has retired to deliberate, its only source of contact with anyone outside the jury room is with or through the bailiffs, who are charged with receiving and referring communications to the trial judge. The jury may indicate, through the bailiffs, its desire to have consultation with the trial judge. When such a request is made, the judge should notify counsel so as to give them an opportunity to be present; in a criminal case it may be reversible error for the judge to communicate with the jury unless the defendant is present in open court. The reporter should make a complete record of the proceedings. The judge should then address himself to the foreman and ask him to state the request unless it has been reduced to writing in accordance with practice followed by many judges. The nature, relevancy or materiality of the request is wholly unpredictable. The judge may expect almost any inquisitorial situation to develop. Whatever it is, it must be dealt with, generally without much chance for the judge to deliberate. The judge should decide whether he is prepared to make an immediate answer. An on the record consultation with counsel is usually desirable. Quite frequently the answer has already been given to the jury in the court's instructions, and the court may so inform the jury. The court should guard against undue emphasis on any given proposition. Agreement of counsel as to the course to be followed by the judge should be reached if possible."

Source: The State Trial Judge's Book, Second Ed. (1969) p. 169.

See also: Prejudicial effect in criminal case of communication between court officials and jurors, 41 ALR 2d 237; Prejudicial effect in criminal case, of communications between witnesses and jurors, 9 ALR 3d 1275.

2.11 Foreman's Written Request to The Judge - Optional Form

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT

_____, COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
)
) No. _____
vs.)
)
)
)
_____)
Defendant)

We, the jury in the above entitled action request the following:

This____day of _____ 19__

_____Foreman

VERDICT PROCEDURE

3.0 Delivery of the Verdict - Scenario

JUDGE: In the matter of the People v._____, the record will show that the defendant and both counsel are present. All 12 jurors are present in the jury box. Mr. (Foreman), has the jury arrived at a verdict?

FOREMAN: (Responds)

JUDGE: Please hand all the verdict forms to the bailiff. (The bailiff hands the verdict forms to the judge who reviews them to see if they are complete, and in turn hands them to the clerk).

JUDGE: (To the clerk): Please read the verdict. (The clerk complies).

JUDGE: Counsel, do you wish to have the jury polled? (Some judges prefer to automatically poll the jury in each and every case without request of counsel).

STATE'S ATTORNEY or DEFENSE COUNSEL: (Responds)

(The clerk polls the jury).

JUDGE: (To the clerk): Please record the verdict. Counsel, do you waive reading of the verdict as recorded?

STATE'S ATTORNEY or DEFENSE COUNSEL: (Responds) If no waiver, the clerk must read the verdict as recorded and inquire of the jurors if it is their verdict as recorded.

The defendant is entitled to poll each juror to determine whether he joined in the verdict.

JUDGE: Ladies and Gentlemen of the jury, this completes your duties on this case. Thank you for your attention and the sacrifice of your time for this important public service.

The jury is now discharged.

For additional judge-jury material see Chapters VII and VIII.

3.1 Expression of Thanks to the Jury at the Close of Trial - Sample

The court desires to express appreciation for your services as jurors in this case. There is no higher duty of American citizenship than that of jury service.

When independence was won for this country, trial by jury became one of the institutions which Americans would preserve at all costs. And today it stands at the keystone of our system of justice; the connecting link between the courts and the people. It is one of the blessings of a free society.

There is no more sacred public trust than to be chosen as a juror to try a cause - to sit in judgment on the acts and motive of one's fellow man.

The law, which it is the court's duty to declare, is found with comparative ease. But the facts of the case, of which you as jurors are the exclusive judges, are nowhere written, are usually in dispute, and are found only after the jurors have determined the truth from evidence before them. We appreciate your service here.

I make these remarks upon discharging you from further service in this case, not only in appreciation of your services here, but also to give due recognition to the exalted character of jury service in every case.

See also: Verdict, Ch. VIII

GRAND JURY MATERIAL

4.0 Statutory Index

References are to Ill. Rev. Stat., 1977:

Selection and Qualifications of Grand Jurors	- Ch. 38, §112-1; Ch. 78, §8
Drawing a Grand Jury	- Ch. 78, §9
Petit jurors - Selections And Qualifications	- Ch. 78, §2
Impanelling the Grand Jury	- Ch. 78, §16; Ch. 38, §112-2
Oath	- Ch. 38, §112-2(c)
Foreman - Selection and Duties	- Ch. 78, §17
Charging Grand Jury	- Ch. 78, §19
Duties of Grand Jury and State's Attorney	- Ch.78, §19; Ch. 38, §112-4;
Secrecy	- Ch. 38, §112-6
Meetings	- Ch. 38, §112-3(b)
Offenses Relating to Grand Jury Proceedings	- Ch. 38, §112-6(a)
Communication with Jurors or Witnesses	- Ch. 38, §32-4

Harassment	- Ch. 38, §32-4(a)
Immunity	- Ch. 38, §106-1 & 2
Refusal to Testify	- Ch. 38, §106-3
Inspection and Reports	- Ch. 78, §§26, 27
Preservation of Testimony Before the Grand Jury	- Ch. 38, §112-6(a)
Relationship to Preliminary	- People v. Kent, 34 Ill.2d 161, 295 N.E. 2d 140 (1972)
The Nature and Function of the Grand Jury	- Columbia Journal of Law and Social Prob. 681 (1972)
Constitutional Challenge to the Array	- 378 F.Supp 605 (1974)
Dash, The Indicting Grand Jury; A Critical Stage	- 10 Am. Crim. L. Rev. 806 (1972)
People v. Sears	- 49 Ill. 2d 14, 273 N.E. 2d 380 (1971)

4.1 Grand Jury Checklist

IMPANELLING THE GRAND JURY

- Roll Call of Grand Jury and Supplemental Panel
- Excuses
- Select Foreman
- Swear Foreman
- Swear Grand Jury
- Dismiss and not used
- Instruct Grand Jury
- Swear Sheriff to attend

4.2 Charge to Grand Jury - Scenario

(Before the grand jury is called confer with the State's Attorney as to who is to be appointed as foreman. Usually, the State's Attorney has a preference. The clerk then calls the roll of the twenty-three (23) grand jurors on the regular panel. If any are absent, the places are filled from the supplemental panel. If all twenty-three (23) are present, then the number called on the supplemental panel are excused).

Under the law of the State of Illinois, a grand jury is an investigating body. They investigate the alleged violation of laws by individuals that have occurred within the county. The grand jury does not convict or acquit any person charged with a crime. They only determine from testimony that they hear whether there is reasonable ground to require a person who is charged with the viclation of the criminal laws of this State to appear in open court and answer the charge that has been made. That determination is made by the return of an indictment or true bill.

Then call the name of the foreman and say, "The court is appointing you as foreman of the grand jury. You will raise your right hand and take the oath as such foreman."

> You, as foreman of this inquest, do solemnly swear that you will diligently inquire into and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge, touching the present service. You shall present no person through malice, hatred or ill-will; nor shall you leave any unpresented through fear, favor or affection, or for any fee or reward, or for any hope or promise thereof; but in all of your presentments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding; so help you God.

After he has taken the oath, the other members of the grand jury are requested to stand and take the oath which is administered by the clerk.

> The same oath that _____,your foreman, has just taken before you, on his part you and each of you shall well and truly keep and observe on your

respective parts: so help you God.

(Be sure the bailiffs have been sworn by the clerk). The charge then proceeds as follows:

As now organized, you constitute a grand jury for the Circuit Court, _____County,_____ Judicial Circuit. Mr. _____ has been appointed as foreman of this grand jury, and, as such, he is the presiding officer over this body. It is his duty to preside at all of your sessions. It is his further duty to administer an oath to all persons who appear before you to testify concerning matters within their personal knowledge. The oath that is administered is the simple oath that the person will tell the truth, the whole truth, and nothing but the truth, so help him (her) God. In addition to being the presiding officer, the foreman has the right to excuse members of the grand jury from attendance upon any of the sessions therof. If any member of the body desires to be excused from all, or a part of the sessions, the request should be made to the foreman; and he, using his good judgment, shall determine whether the request should be granted. In that regard, it is important to remember that before a grand jury can transact business, at least sixteen (16) of the number must be present or that the entire body should stand adjourned until the required number are in attendance.

When you go into the grand jury room, it is necessary for you to select someone from among your number to act as your clerk. This selection can be made in any manner you see fit to make it, either by acclamation, by ballot, or otherwise. The duty of the clerk is to keep a record of the proceedings that transpire before the grand jury and a record of any vote that is taken upon matters which require a vote.

Under the law of the State of Illinois, twenty-three (23) persons constitute a lawful grand jury, and that number are now present and have been sworn to act as grand jurors. At this point, I wish to call attention to the oath that each of you has taken. It is a simple oath that you will not present or indict any person out of malice or ill-will for that person; nor will you fail to indict any person out of favor or fear of that person. This oath is binding upon all members of the grand jury during the time you are considering the matters that you have to consider, and should be your guide in determining the ultimate action which you take.

Mr. _____, the State's Attorney for this county, is your legal advisor and he will be in attendance from time to time during your sessions. You should feel free to call upon him for any information that you desire or for any advice on any matters that come before you.

You will be furnished with a copy of the statutes of this State, and you will find therein the provisions of the criminal code. You are free to examine those provisions if you see fit to do so. The State's Attorney is familiar with the provisions of the criminal code and he is in a position to advise you as to what does or does not constitute a violation of any provision thereof.

In all probability, there will be persons who appear before you to testify concerning facts within their personal knowledge about alleged violations of the criminal code by certain individuals. Those persons should be first sworn by your foreman. They are then examined in your presence as to the facts within their knowledge. I would suggest that you permit the State's Attorney to conduct the examination of all witnesses, in the first instance, because he is familiar with the procedure that is usually followed and can greatly facilitate the consideration of the matters that are presented to you.

However, after he has completed his examination, any member of this grand jury is at liberty to ask any additional questions of a witness upon which that individual desires further information; and you should feel free to exercise this privilege if you see fit to do so.

After you have heard the testimony of the witnesses, it will be necessary for you to take a vote on the question of whether or not an indictment should be returned against the party charged. Before an indictment can be returned, it is necessary that at least twelve (12) of your number vote in favor of so doing. If less than that number vote in favor of the return of the indictment, you must indicate that fact by the return of what we call "not a true bill". It is the duty of the foreman to sign all indictments that are returned and all charges that are returned as "not a true bill".

It is likewise the duty of the foreman and the State's Attorney to see that all names of all witnesses who appear before you are endorsed upon the back of the indictment.

It is of particular importance that at the time a vote is taken that all persons other than members of the grand

jury be outside of the grand jury room. This includes the State's Attorney, any witnesses, the secretary of the State's Attorney, and any other persons who may be in attendance. When you are ready to take a vote upon a particular charge, it is perfectly proper for you to request the State's Attorney, his secretary, and any witnesses, or other persons who may be present, to leave the grand jury room so that a vote can be taken.

I call your particular attention to the fact that proceedings of the grand jury are secret proceedings. That means you are not permitted to discuss or divulge anything that transpires in the grand jury room. This prohibition includes the members of your immediate families, your friends and persons generally on the outside. The stated rule has a two-fold purpose: First, it is for your personal protection, for no one can compel you to disclose the part that you may have taken in the deliberations of the grand jury nor the manner in which you may have voted or any discussions which you may have entered into. Secondly, it very often happens that there are persons who have been charged with crime by a grand jury who are still at large and not within the custody of the proper officers. The prompt apprehension of these individuals requires that the proceedings of the grand jury be kept secret until such time as this court releases this information for general knowledge.

After you have disposed of the matters which the State's Attorney has to present to you at this time, you will be excused and permitted to return to your homes. However, should an occasion arise in the near future which requires the services of the grand jury, you are subject to be recalled. If such occasion arises, the sheriff will notify you in ample time to permit you to arrange your affairs and return to the court house. If you receive such notice, it will be your duty to come back and reconvene as a grand jury. I do not anticipate that it will be necessary to recall the grand jury, but we cannot forsee at this time what might develop in the future.

(Next, ask the State's Attorney whether there is anything that should be called to the attention of the grand jury. Then say to the grand jury:)

You may now retire to the grand jury room.

CHAPTER VII

TRIALS

CHAPTER VII

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VII - 0

SCOPE NOTE

This chapter covers conduct of judge, prosecution and defense, from jury selection through jury deliberation, and includes procedures, evidence and contempt.

Cross Reference: Chapter VI, Judge-Jury Relations.

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ABA STANDARDS

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ABA Standards and Commentary Relating to the Function of the Trial Judge - Approved Draft 1972:

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WITNESSES

2.0 In General

In a criminal case the Clerk of the Court must issue a Subpoena for the attendance of a witness at the request of the prosecution or the accused. Ill. Rev. Stat. 1977, Ch. 38, Par. 155-2. The Subpoena is served by the Sheriff, or Coroner.

Any person served with a Subpoena must attend and testify as to such material facts as may be within his knowledge. Walker vs. Cook, 35 Ill. App. 561 (1889). Of course, for good cause shown, the Court, on motion, must quash, or modify any subpoena. Ill. Rev. Stat. 1977, Ch.110, Par. 62.

A witness is not the property of either party, and even though one party may have conferred with a witness and even pay him for his expert advice, that does not render the witness incompetent to testify for the other side. People vs. Speck, 41 Ill. 2nd 173 (1968).

2.1 Failure to Appear

Failure to appear, pursuant to a duly served subpoena, is contempt. Ill. Rev. Stat. 1977, Ch. 38, Par. 155-2. If a witness fails to appear as commanded by a subpoena, the procedure is to move for a Writ of Attachment against him supported by Affidavit that the witness was duly served.

2.2 Out-of-State Witnesses

In criminal cases, but not in civil cases, a witness may be summoned from out of state if he resides in a state which has adopted the Uniform Act to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings. Ill. Rev. Stat. 1977, Ch. 38, Par. 156-3. The judge issues a Certificate under the Court Seal, stating the facts and specifying the number of days the witnesses are required. The certificate is presented to any Judge of a Court of Record in the County in which the witness resides. The witness is paid 10 cents a mile, each way, and $5.00 per day.

2.3 The Right to Interview Witnesses

A lawyer is entitled to interview any witness, or prospective witness, in a civil or criminal action without consent of opposing counsel, or party, and a party is entitled to an instruction regarding his right to interview witnesses. ISBA Canons of Ethics, and People vs. Smith, 90 Ill. App. 2d 310 (1967) -- certiorari denied 402 U.S. 945 (1971).

Where a prosecutor advises any eye-witness not to speak to anyone unless he is present, it is held that this constitutes reversible error. Gregory vs. U.S., 369 F.2d 185 (1966).

It is proper for an attorney to interview his witness just before trial and review testimony of other witnesses, and refresh his memory before taking the stand. People vs. McQuirk, 106 Ill. App. 2d 266 (1969).

2.4 Material Witnesses

In criminal cases, a Court may order that material witnesses, either for the State or the Defendant, be required to give recognizance, and upon failure to do so, to be committed to jail. Ill Rev. Stat. 1977, Ch. 38, Par.

109-3(d).

Any witness who executes a recognizance and fails to comply with its terms shall, in addition to any forfeiture, be subject to prosecution for violation of bail bond. Ill. Rev. Stat. 1977, Ch. 38, Par. 32-10.

If the evidence of a witness before a coroner's inquest implicates a person as the "unlawful slayer," the Coroner shall recognize such witness to appear before the Circuit Court on a designated day within 30 days of the recognizance there to give evidence and not to depart without leave of Court. Ill. Rev. Stat. 1977, Ch. 38, Par. 17.

2.5 Right to Confer with Witness

It is not error to permit the State a recess during direct examination if the Defendant is given an opportunity to be present with the State's Attorney and witness during the cross-examination, and if he is permitted to conduct a very extensive and searching cross-examination. People vs. Struck, 29 Ill. 2d 310 (1963).

The United States Supreme Court has held that a criminal defendant where trial testimony was interrupted by regular overnight recess, was denied 6th Amendment right to assistance of counsel by trial judge's order, forbidding his consultation with attorney during recess. Geders vs. U.S., 96 S.Ct. 1331 (1976).

2.6 Exclusion of Witnesses

Upon Motion of either party, or on the Court's own Motion, the Court may order all witnesses, except the parties, excluded, during the taking of testimony. Noone vs. Oleahy, 297 Ill. 160 (1921) - but such exclusion is not a matter of right, but rests within the sound discretion of the Court. People vs. Mack, 25 Ill. 2d 416 (1962) - but to refuse a Motion to exclude without a sound basis for refusal in a criminal case is reversible error. People vs. Dixon, 23 Ill. 2d 136 (1961).

Exclusion Orders are not applicable to expert witnesses unless it expressly so states. West Chicago St. R.R. Co. vs. Kean, 104 Ill. App. 147 (1902).

The exclusion request is usually to exclude all witnesses, and if the request is granted, the Court usually says in its Order "All Witnesses" -- the better procedure would be to make the Order clear that it applies to all witnesses except technical experts (unless the Court wishes to actually exclude experts also).

The Order does not apply to rebuttal witnesses. Huff vs. Fannie May Shops, 321 Ill. App.640 (1944).

If a witness violates the exclusion order, it is in the sound discretion of the Court whether the testimony of such witnesses is to be received. People vs. Crump, 5 Ill. 2d 251 (1955). A witness who is disobedient to the exclusion order may be punished for contempt and the court may permit the disobedient witness to testify, but must give an instruction as to the effect of the disobedience regarding the witness's credibility. Bulliner vs. People, 95 Ill. 394 (1880).

2.7 Confrontation

The defendant's right to confront a witness does not include any right to cross-examine a witness prior to the time of the trial. People vs. Robinson, 42 Ill. 2d 371 (1969).

The use of testimony given at a previous trial does not violate the right of confrontation where the witness is now dead, or otherwise not available, Mattox vs. U.S., 156 U.S. 237 (1895). BUT, the reasonableness of the efforts to obtain the witness must be examined in light of present day available transportation, including jet airplanes, and an effort to obtain the witness's voluntary appearance must be made if witness is not subject to compulsory process. Gout of the Virgin Islands vs. Aquino, 378 F.2d 540 (1967).

Regarding defendant's waivable right to be present at his own trial, Supreme Court Cases are annotated at 25 L.Ed. 2d 931.

2.8 Uniform Act Attendance Forms

IN THE CIRCUIT COURT OF THE ___ JUDICIAL CIRCUIT OF ILLINOIS

_____ COUNTY

IN THE MATTER)
)
OF)
)
)
)
)

Certificate under Uniform Act to secure the attendance of Witnesses from without a State in Criminal Proceedings.

TO: _____

_____

_____

I, _____, presiding in the Circuit Court of the _____ Judicial Circuit of Illinois, do hereby certify that such is a Court of record and that grand jury proceedings will commence on the _____ day of _____, 19___ at _____ M. in the Circuit Courtroom located on the second floor of the County Courthouse in Illinois and that _____

_____

is a material witness in that _____

_____

the said material witness resides at _____

_____

and the witness's presence is required for a period of

_____ days.

The State of Illinois by its laws has made provisions for commanding persons within this state to attend and testify in other states such being via the "Uniform Act to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings," enacted 25, July, 1959 and is in full force and effect, Chapter 38, Sec. 156-1, et. seq., Illinois Revised Statutes, and Smith Hurd Annotated Statutes, a true copy being attached hereto.

ENTER: _____

JUDGE

I, _____ Clerk of Court, do hereby certify that

_____

who has signed the foregoing certification is a Judge of the _____ Judicial Circuit of Illinois and is presiding in the Court.

_____

Clerk

IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT

OF ILLINOIS IN ____ COUNTY

IN THE MATTER OF THE PROCEEDING)
TO COMPEL THE ATTENDANCE OF A)
WITNESS IN A CRIMINAL PROCEEDING) CASE NO._____
IN THE STATE OF _____) MR. _____
)

ORDER SETTING HEARING ON CERTIFICATE

There having been tendered to this Court a certificate concerning out-of-state witness by a Judge of a Court of record of a foreign state, i.e., _____, Judge of the _____ and it appearing that the State of _____ by its laws has made provision for commanding persons within that State to attend and testify in this State, and the said certificate relates, under the seal of the Court, that there is a criminal proceeding pending in said Court, i.e., _____, and that _____ is within this State and that said person is a material witness and that attendance will be required in such proceeding for a period of _____ days, beginning the _____ of _____, 19____.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Hearing on said certificate be and the same is hereby set for the ____day of _____, 19____, at ....., _____.M. to determine whether or not summons should issue directing said person to attend and testify in the case above referred to.

2. The said witness be and is hereby ordered and directed to attend the hearing aforesaid.

3. Summons to issue accordingly.

ENTER: _____

JUDGE

DATED: _____

Summons issued on the _____ day of _____, 19____

_____

Circuit Clerk

IN THE CIRCUIT COURT OF THE _____ JUDICIAL

CIRCUIT OF ILLINOIS IN _____ COUNTY

IN THE MATTER OF THE PROCEEDING)

TO COMPEL THE ATTENDANCE OF A)

WITNESS IN A CRIMINAL PROCEEDING) CASE NO._____MR___

IN THE STATE OF_____)

ORDER

This cause coming on to be heard on the certificate of _____, Judge of _____, for the issuance of a summons directing _____ to appear and testify in said Court on the _____ of _____, 19_____, in the case of _____

_____, and it appearing to this Court that due and proper notice by summons has been had upon the said witness, and the said witness appearing in open court, and the Court having examined the said certificate, heard evidence adduced and being advised, finds that:

1. _____ is a material and necessary witness in the case of _____ now pending in the _____.

2. It will not cause undue hardship to the said witness if compelled to attend and testify in said action.

3. The State of _____, and other states which the witness would be required to pass by the ordinary course of travel, will give the witness protection from arrest and service of civil or criminal process, i.e., _____

_____.

4. There has been tendered to the said witness funds equal to ten cents (10¢) a mile for each mile by ordinary travel route to the Courthouse of _____County _____ and return, plus $5.00 per day for each day of travel and attendance as a witness, i.e., the sum of _____, a total of $_____.

Now therefore,

1. Summons shall issue commanding the said _____ _____ to attend and testify in the case of the _____ on the _____ day of _____, 19 ____, in the _____.

ENTER: _____

JUDGE

DATED: _____.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL

CIRCUIT OF ILLINOIS IN _____ COUNTY

IN THE MATTER OF THE PROCEEDINGS)

TO COMPEL THE ATTENDANCE OF A)

WITNESS IN A CRIMINAL PROCEEDING)

IN THE STATE OF _____) CASE NO. ____MR___

SUMMONS

TO: _____

_____

_____

You are hereby commanded to appear before the Circuit Court of the _____ Circuit of Illinois in _____ County, in the _____ County Courthouse at _____, Illinois, in the Circuit Courtroom located _____, on the ____ day of _____, 19____, at _____ ____M. on hearing to determine whether or not summons should issue directing you to testify in the case of _____

now pending in the _____

In the event you fail to appear, a Warrant may be issued for your arrest. This summons must be returned by the officer or other person to whom it was given for service, with endorsement thereon of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than _____ days after its date.

Issued at _____ County, Illinois this _____ day of _____, 19 ____.

_____
Circuit Clerk

2.9 Witnesses Called by the Court

The practice of the court's calling a witness at the request of the prosecution in a criminal case was first enunciated in Carle v. People, 200 Ill. 494, 66 N.E. 32 (1903), where the court approved the calling of an eyewitness to a crime for whose veracity the State's Attorney could not vouch. It was later stated in People v. Cardinelli, 297 Ill. 116, 130 N.E. 355 (1921), that the purpose of the practice was to prevent a miscarriage of justice by having an eyewitness to a crime, for whose veracity neither party will vouch, fail to testify. And while subsequent decisions have held that the practice is not limited to the calling of eyewitnesses. (People v. Touhy, 361 Ill. 332, 350, 197 N.E. 849 (1935); People v. Siciliano, 4 Ill. 2d 581, 590, 123 N.E. 2d 725) (1955)), every decision which has touched upon the subject has counseled that the practice should be sparingly used and restricted to cases where it is shown there might otherwise be a miscarriage of justice. People v. Johnson, 333 Ill. 469, 165 N.E. 235 (1929); People v. Laster, 413 Ill. 224, 108 N.E. 2d 421 (1952); People v. Bennett, 413 Ill. 601, 110 N.E. 2d 175 (1953); People v. Robinson, 14 ill. 2d 325, 153 N.E. 2d 65 (1958)]. Further, as indicated in People v. Siciliano, 4 Ill., 2d 581,590, 123 N.E. 2d 725 (1955), a proper foundation must be laid for the calling of a court's witness, which would necessarily consist of the reasons why the party desiring the witness cannot vouch for his veracity, and showing that the testimony of the witness will relate to direct issues and is necessary to prevent a miscarriage of justice. See also, People v. Touhy, 361 Ill. 332, 349, 197 N.E. 849 (1935); People v. Johnson, 333 Ill. 469, 473, 165 N.E. 235 (1929). The effect of declaring a witness a court's witness is to open the witness to cross-examination and impeachment by either side. People v. Moriarity, 33 Ill. 2d 606, 213 N.E. 2d 516 (1966).

PROFESSIONAL RESPONSIBILITY

3.0 Illinois Code of Professional Responsibility - Excerpts

EC7-26 The law and Disciplinary Rules prohibit the use of fraudulent, false, or perjured testimony or evidence. A lawyer who knowingly participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.

EC7-27 Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailabe as a witness therein.

DR7-106 Trial Conduct

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no

reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

(D) A lawyer shall use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards tribunals, judicial officers, jurors, witnesses and litigants.

DR7-107 Trial Publicity.

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a prudent lawyer would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a prudent lawyer would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or result of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR7-107 (B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a prudent lawyer would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer associated

with the prosecution or defense shall not make or participate in making an extrajudicial statement that a prudent lawyer would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a prudent lawyer would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance of results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer associated therwith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a prudent lawyer would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees and associated from making an extrajudicial statement that he would be prohibited from making under DR 7-107.

(K) A partner or associate of a lawyer is bound by the provisions of DR 7-107 to the same extent as the lawyer.

DR7-108 Communication with or Investigation of Jurors.

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.

(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7-108 (A) and (B) do not prohibit a lawyer from

communicating with veniremen or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury until the venire of which he is a member has been discharged, nor shall the lawyer thereafter ask questions of or make comments to a member of the venire that are calculated merely to harass or embarass the juror or to influence his actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR7-109 Evidence - Witnesses.

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. But a lawyer may advance guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his

loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

DR7-110 Relationship with Officials.

(A) A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(4) As otherwise authorized by law.

Illinois Code of Professional Responsibility, Adopted by Board of Governors of the Illinois State Bar Association and Board of Managers of the Chicago Bar Association (May, 1970).

3.1 Note: Lawyer's Conduct in Relation to Court

In the exercise of his sworn duty to safeguard the interests of his client, a lawyer's forceful, vigorous advocacy must be tempered with his basic duty of respect for the authority and dignity of the court, and the court's inherent right to control its own proceedings must be exercised in the light of the fundamental interest of the public in maintaining an independent bar.

Mere mistaken act of counsel is not contempt, even if

his interpretation of the law is in error or untenable, counsel may urge it respectfully and in good faith even though he may not expect to be successful, and has a right to present legitimate argument, protest erroneous rulings, express an opinion in argument, pointing out asserted inadequacies or error in court's action, provided he does not resort to deceit or willful obstruction of the orderly processes and his language and behavior are not offensive or in contravention of the common rules of decorum and propriety.

Misconduct of attorney which reflects improperly on dignity or authority of court, or which obstructs or tends to obstruct or embarrass due administration of justice, constitutes contempt.

ACTS CONSTITUTING CONTEMPT

1. Disorderly, Contemptuous or Insolent Behavior Toward the Judge While Holding Court, or Breach of Peace, Boisterous Conduct or Violent Disturbance Tending to Interrupt Due Course of Trial, as For Example:

Contemptuous Conduct and Language

If the occasion is proper, lawyer's manner, attitude, or tone of voice in making proper statements to the court cannot alone support conclusion; such behavior is not disorderly, contemptuous or insolsent, unless judge first warns him that his facial expression, manner or tone of voice is offensive and tends to interrupt the due course of the proceedings and he persists in repeating his conduct, tone of voice or facial expression.

2. Deliberate and Repeated Disobedience of and Flaunting Authority of the Court.

3. Disobedience of Rules and Lawful Court Orders.

4. Willful Neglect.

It is lawyer's duty to punctually present himself in court and continue with the trial he has undertaken and not continually to delay it for any personal matter, reasonably within his control.

Lawyer's failure without valid excuse to be present in court at announced time for resumption of criminal trial in which he is engaged, for pronouncement of judgment and sentence of a client whom he represents, or to prepare, appear at and participate in pre-trial conference, or to appear in court each morning and remain until excused, may constitute contempt.

5. Acts Impugning Integrity of Court.

The judge of a court is well within his rights in protecting his own reputation from groundless attacks upon his judicial integrity and it is his duty to protect the integrity of his court. For example:

Attacks on the court's integrity made orally in open court.

Impertinent, scandalous, insulting or contemptuous language reflecting on the integrity of the court or individual judge -- in briefs, correspondence between two attorneys, letters to the court or false affidavits accusing a judge of misconduct.

That counsel may have proceeded out of an excess of zeal ... does not justify making scandalous charges against the judge.

Affidavit of disqualification of judge for bias filed pursuant to statutory authority does not justify contempt proceedings where manner of presentation is unobjectionable and no bad faith is shown unless statements made therein are wholly irrelevant, immaterial or in bad faith, or falsely stated with improper intent.

Regarding the contempt power in respect to attorney-client advice, see Maness v. Myers, 419 U.S. 449 (1975). Where trial judge becomes embroiled in running controversy with attorney, contempt proceedings should be conducted before another judge.

3.2 Draft Order Concerning Conduct of Attorneys During Trial - Form

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,

_____ COUNTY, ILLINOIS

People of the State)
of Illinois)
)
vs.)
) No. _____
_____)
Defendant.)

ORDER CONCERNING

CONDUCT OF ATTORNEYS DURING TRIAL

In order to expedite the jury trial of this particular case and to avoid the possibility of prejudice or possible mistrials, the court requires that all counsel follow the following instructions in the trial of the case:

1. Counsel will not be permitted to address each other during the trial of the case in the presence of the jury.

2. Counsel will state all objections to the court and not to opposing counsel.

3. There will be no arguments on objections in the presence of the jury. If counsel desires to argue his point after making his objections or being overruled on a point he will ask the court to exclude the jury before he proceeds with such

argument. However, argument will be permitted on objections at the discretion of the court.

4. Neither counsel will interrupt the other, except to state a valid objection, while counsel is addressing the court or the jury. If objection is made by way of interruption it shall be short and concise and not stated by way of argument.

5. If either counsel desires to offer stipulations, they shall be made to the Court in the absence of the jury. After the offer is made, opposing counsel may either accept or reject them, or ask for a conference to state some conditions or additions.

6. There will be no wisecracking, and attorneys will conduct their examinations of witnesses at a reasonable distance away from the witness chair so that all jurors and other counsel may hear the questions and answers.

7. Counsel will submit their questions to be asked of prospective jurors only on matters which would be the basis for challenge for cause and will not examine as to matters of law.

8. In making an opening statement, counsel will refrain from argument of any kind and will confine themselves to the outline of facts that they intend to prove and will stay within the issues framed.

9. Counsel will refrain from making derogatory remarks, inferences or insinuations about each other or their handling of the case. This is a trial between parties and not counsel.

10. When two or more attorneys are on the same side trying a case, the attorney conducting the examination of the witness shall continue until the witness is excused from the stand; and all objections made or exceptions taken during the examination of such witness shall be made be made or announced by the attorney who is conducting the examination or cross-examination.

11. When counsel desires to approach the bench for any

reason, counsel will ask leave of court to do so, and if leave is granted, one counsel for each party shall approach the Bench.

_____

CIRCUIT JUDGE

DATED: _____

CONTEMPT

4.0 In General

If the judge determines to impose sanctions for misconduct affecting the trial, he should ordinarily impose the least severe sanction appropriate to correct the abuse and to deter repetition. In weighing the severity of a possible sanction for disruptive courtroom conduct to be applied during the trial, the judge should weigh the risk of further disruption, delay or prejudice that might result from the character of the sanction or the time of its imposition.

For general discussion of attorney contempt see: In Re Dellinger, 461 F.2d 389 (7th Cir. 1972); 505 F.2d 813 (1st Cir. 1974); Due Process Cases collected at 39 L.Ed. 2d 1031.

4.1 Disruption by Defendant

Alternate procedures for coping with a disruptive defendant were described by the United States Supreme Court in Illinois v. Allen, 397 U.S. 337 (1970). The court suggested four approaches to the problem:

(a) Citing the defendant for contempt, which may not be effective where the defendant is already charged with a serious crime carrying a severe penalty. It should be noted that overreaction to courtroom disruption or failure to first warn the defendant, unless his conduct is blatantly disruptive or otherwise, may lead to reversals of convictions or contempt citations. E.g., People v. Jashunsky, 51 Ill, 2d. 220 (1972).

(b) The trial may be discontinued and the defendant removed from the courtroom until he promises to cooperate. This alternative, however, although it preserves the

defendant's right to be present at trial, allows him to elect to continue the trial as a matter of strategy.

(c) The defendant may be manacled, shackled and/or gagged when circumstances warrant it. Yet this should only be used as a "last resort" as it would prejudice the jury, offend the dignity of the court, and inhibit communications between counsel and defendant. The defendant must first be warned against another outburst before he may be gagged. Furthermore, it is error to gag a defendant for his initial attempt to object to counsel's competency. That defendant's claim is without merit is irrelevant until he has been given an opportunity to present argument or evidence in support of his contention.

(d) The defendant may be removed from the courtroom, and the trial may continue in his absence; the defendant should first be warned.

> "A defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom. Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings." Illinois v. Allen, (Supra).

The court may also choose to increase the courtroom security by adding armed guards either as an alternative or as an adjunct to those measures listed above. Regarding fairness to a defendant re: clothing and shackles See: Estelle v. Williams 96 Sup. Ct. 1691 (1976).

4.2 Misconduct by Counsel

An attorney exhibiting disorderly or insolent behavior toward the judge may be summarily punished for contempt. This is the judge's ultimate weapon, as he has no authority to discharge an attorney from a case over objection of his client, as it would infringe on the defendant's right to

counsel of his choosing. The judge should also avoid provocation of counsel which would constitute mitigating circumstances. In Re Dellinger (supra), and he should accept a satisfactory reasonable apology. The correct judicial response will depend primarily upon the type of conduct shown by counsel.

A mistaken act by counsel cannot render him in contempt of court. Counsel is entitled to obtain the court's considered ruling even if his claim appears farfetched. Sacher v. United States, 343 U.S. 1 (1951). As long as counsel acts in good faith and does not resort to deceit or wilful obstruction of the proceedings, he may press a legal proposition. When it appears that defense counsel is making serious mistakes to his client's prejudice, the judge may intervene, within reasonable limits, by disallowing pleas or motions to withdraw pleas, controlling the scope of examination, questioning witnesses himself, making appropriate suggestions as to the items or order of proof, commenting on the evidence, admonishing or instructing the jury on his own motion, or exercising any of his other inherent powers, even the conduct of the proceedings to insure that the accused receives a fair trial.

For Contempt Outline, Case Citation and Forms, see Monograph in 1972 Illinois Judicial Conference Report.

TRIAL

5.0 Trial Outline

Cross Reference Ch. VI

1. Determine if counsel are ready to proceed with the trial
2. Jury selection (Chapter VI)
3. Give preliminary instruction to the jury (Chapter VI)
4. Ascertain whether any party wishes to invoke the rule to exclude witnesses scheduled to testify in the case from the courtroom
5. Hear motions made or deferred until this time
6. State's Attorney makes opening statement
7. Defense counsel makes opening statement
8. State's Attorney calls witnesses
9. People rest
10. Motion for judgment of acquittal or directed verdict (See Ch. III)
11. Defense counsel calls witnesses for the defense
12. Defense rests
13. People call reply and rebuttal witnesses
14. People rest on entire case

15. Defense rests on its entire case

16. Motion for judgment of acquittal or directed verdict

17. Consider requests for instructions from counsel

18. Rule on requests for instructions and inform counsel as to the substance of the court's charge to the jury

19. Closing arguments by counsel

20. Charge the jury (See I.P.I. Instructions in Criminal Cases)

21. Pass on objections to the charge and make any appropriate additional charge

22. Request counsel to decide which exhibits they desire to be sent to the jury room

23. Have the clerk give the jury the exhibits and the verdict forms (if used)

24. Instruct the jury to go to the jury room and commence its deliberations

25. Excuse and thank alternate jurors

26. Recess court during the jury deliberations; if the jury cannot agree on a verdict, declare a mistrial

27. When the jury has agreed upon a verdict, reconvene court and take the verdict (See Ch. VIII)

28. Poll the jury upon demand of either party (See Ch. VIII)

29. Thank and discharge the jury

EVIDENCE AND TRIAL PROCEDURE

6.0 In General

See generally: Hunter's Trial Handbook for Illinois Lawyers, 4th Edition.

Trial evidence rules, in Illinois, are mostly a matter of practice and court decision. The Rules of Evidence for Federal District Courts might be used as a guideline.

6.1 Objections

The court should encourage counsel to state, except where objecting to a line of questioning, the specific tenor to all objections. Specific objections are those which state in detail the grounds or reasons why the offered evidence is legally insufficient to be admitted. Specific objections should be made in all instances where the objection, if specifically pointed out, might be obviated or remedied; that is, in all cases where the error complained of can be obviated by further evidence so as to lay a proper foundation for its reception, or where an objectionable question might be reframed to correct the error.

The form in which a specific objection should be stated varies with the individual case, depending largely on the nature of the evidence offered. The words used should clearly and completely inform the court of the specific ground of the objection.

Specific objections should be made where:

1. Leading questions are asked on direct examination
2. The answer of a witness is not responsive to the

questions asked.

3. The evidence offered is not the best evidence

4. Documentary evidence offered is incompetent for any reason

5. A proper foundation has not been laid for the admission of documents, photographs, X-rays and all exhibits

6. Wrong instructions are given or where there is a refusal to give proper instructions

7. Expert testimony is improperly excluded

8. A question asked on cross-examination improperly goes beyond the scope of the testimony brought out on the direct examination

9. A question is asked which has been previously asked and answered

10. There is propounded an improper question or re-cross examination

11. Hypothetical questions are defective

12. The question calls for a privileged communication

13. The form of the question is objectionable

14. The evidence is admissible in part

15. The evidence is admissible for any particular purpose

16. The method of proving a fact is objectionable

17. The question calls for a conclusion of the witness

18. The evidence is hearsay

19. The question impeaches own witness

20. The document offered is self-serving

21. The evidence violates the parole evidence rule

22. The witness is incompetent

The following is from Handbook in Criminal Procedure for the San Diego U.S. District Court:

A. Movement of evidence in the courtroom

Where it is necessary to transport evidence in the courtroom during the course of the trial, permission should be sought from the judge to leave the podium, and as appropriate approach the clerk, approach the jury, or approach the witness. Where documents are being shown to opposing counsel and/or the jury, care should be taken that they are also shown to the court prior to commencement of examination thereon.

B. Marking documents for identification

Where a document is to be used in any manner:

(1) It should be handed to the clerk with a request that it be marked for identification as the party Ex. ____ or next in order.

(2) It should be then shown to opposing counsel or a statement made that it has been previously shown to counsel or he has been supplied with a copy

(3) In questioning about the document always refer to it by Ex. number and not as "this document" or "this contract."

C. Establishing foundations - conversations

The essential foundational facts for proof of a conversation are the time of the conversation, the place of the conversation and the identity of the persons present.

Typical questions are as follows:

(1) Q: Did you have a conversation with Mr. Smith?

(2) Q: When did the conversation occur?

(3) Q: Where did the conversation occur?

(4) Q: Who was present at the time of the conversation?

(5) Q: What did Mr. Smith say to you and what did you say to him?

D. Establishing foundation - laying a foundation for a document or exhibit

The following procedure should be utilized in offering exhibits in evidence

First: The instrument should be marked for identification

Second: It should be shown to opposing counsel for examination.

Third: The document should be identified and a foundation must be legally laid for its admission.

The document is shown to the witness. He testifies what the document is and identifies signatures if any. He relates the time, place and circumstances of its execution; what he knows of the possession of the document; whether it is the original, a duplicate original or a copy of an original he saw.

Fourth: It must be offered in evidence.

Fifth: A ruling must be obtained from the court as to its admissibility.

Sixth: The record should show that it is received in evidence.

Seventh: Upon the admission of an exhibit in evidence it may be read to the jury.

E. Business records

Business records, like all evidence, must be material, relevant and competent. Evidence is material if it tends to prove a fact put in issue by the pleadings of the case.

Evidence is relevant if it tends to prove the fact for which it is offered. Evidence is competent if it is not excluded by one of the exclusionary rules of evidence, such as the Hearsay, Best Evidence, or Authenticity Rules.

In broad terms, the hearsay rule prohibits the introduction of evidence in court of an assertion made out of court offered to prove the truth of the facts contained

therein. Business records are one exception to the hearsay rule.

The best-evidence rule requires that in order to prove the contents of a document, the original of the document is the best evidence and must be introduced into evidence unless the offering party can show what became of the original, and that it is not available.

The rule of authenticity requires that no writing can be offered into evidence until it is first shown by some proof that the document is in fact what it purports to be, i.e., that it is authentic.

This can be done by proving the handwriting, the signature, or the identity of something appearing in a document.

6.3 Scientific Evidence in Criminal Cases

Photographs:

53 ALR 2d. 1102

Video tapes

Confessions

DWI cases. People v. Ardella, 49 Ill. 2d 517 (1971); Lanford v. People, 159 Colo. 36 (1966)

Slides

Mug shots may not be allowed if they indicate to jury that defendant has criminal background. People v. Murdock, 39 Ill. 2d. 553 (1968)

How photographs are admitted

1. A showing that they are relevant

2. Proper showing of authentication, i.e., that they

correctly depict the scene

(a) by photographer, or

(b) by person present when photo taken, or

(c) by person who can testify that scene is the same.

Color slide showing blood still coming from bullet wounds admissible. State v. Jackson, 1969, 22 Utah 2d. 408 (1969).

Photos of murder victim taken at morgue. Admissible on ground they showed "the amount of force that has been used." People v. Colep, 29 Ill. 2d. 116 (1963); Photo of 10 Year old girl shot in head. Admissible. People v. Meyers, 35 Ill. 2d 311 (1966), cert. den. 385 U.S. 1019.

Remoteness in time of taking a photograph. . . or changeable conditions at time of taking, do not necessarily make it inadmissible.

Drawings, maps, models and casts:

Models and Casts

. . . are a form of diagram that can be used to further aid a jury's understanding. They should be used in cases where a 3-dimensional object will make the crime scene more understandable to the jury.

Example

In the case of People v. Richard Speck, 41 Ill. 2d 173 (1968), a model of the townhouse where 8 student nurses were murdered was constructed and used during the trial.

Types of Models and Casts

Houses or Apartments

Hospital "Dummy"

Tire Impressions

Shoe Impressions

How casts and models are admitted

1. Showing of relevancy

2. Showing of accuracy (constructed to exact scale)

as pictorial reproductions of objects, locations, scenes or places relevant to the issues. Illinois Evidence Manual, Rule 247.

Rough sketch of premises admissible though not mathematically accurate. Brown v. Galesburg Pressed Buick, Co., 132 Ill. 648 (1890).

How Firearms Comparisons are Admitted

1. Expert testimony

2. Chain of custody of the bullets, shells, or weapons must be unbroken, as is true with the clothing containing the powder burns.

Law

Breechfall markings may sustain a conviction. Edwards v. State, 81 A.2d. 631 (Md. App. 1951)

Firing pin impressions, Sebastian v. Commonwealth, 436 S.W. 2d 66 (1969).

Powder Burns

McPhearson v. State, 125 So. 2d. 709 (Ala. 1961).

Ballistics Tests - Illinois

People v. Fisher, 340 Ill. 216 (1930)

Woodrich v. Smith Gas Service, 87 Ill. App.2d. 88 (2d Dist. 1967)

Collins v. People, 194 Ill. 506 (1902)

How are toolmarks admitted

1. Chain of evidence

2. Tests on similar materials

3. Comparative findings by expert

Law

Crowbars

State v. Brown, 291 S.W. 2d. 615 (Mr. 1956)

State v. Eichneier, 1971, 191 N.W.2d. 815 (Neb. 1971)

Tireirons

Adeock v. State 44 p.2d. 242 (1968)

Bolt cutters

Souza v. U.S., 304 F.2d. 274 (1962)

Hammer marks

State v. Olsen, 317 p.2d. 938 (1957)

How finger prints are admitted

1. Officer testifies to recovering object
2. Technician "lifted" print
3. Comparison of ridge characteristics made by expert against set of defendant's prints taken by officer
4. Expert finds 10 to 12 concordances

Law

Experts in field may give opinions as to whether fingerprints recovered from crime scene belong to defendant. People v. Jennings, 252 Ill. 534 (1911).

Fingerprints are the most scientifically accurate method of identifying an individual.

Anderson v. State, 1969, 169 S.E.2d. 629 (Ga. App. 1969).

People v. Adamson, 165 P.2d. 3 (Cal 1946); aff'd. 332 U.S. 46, (1947), rehearing denied 332 U.S. 784 (1947)

U.S. v. Magee, 261 F.2d. 609 (7th Cir 1958).

A. Past recollection refreshed

A witness's memory on a certain point may fail him while he is being examined at trial by the counsel who has called him as a witness. The witness's memory may be refreshed on the point by allowing him to examine any object which will help him to recall facts about which his memory is unclear. Often the object used to refresh his memory is a written statement the witness has made, concerning his knowledge of the case, prior to trial. The document is not actually introduced into evidence; it is being used only to refresh the witness's memory and not to prove a point in itself; and therefore it need not be shown to be relevant, competent, or authentic.

Requirements to be met before refreshing recollection:

1. That the witness's memory on the point has failed; and

2. That there exists an object which, if shown to the witness, would refresh his memory on the point.

B. Past recollection recorded

If a witness' memory on a point is completely exhausted, a document may be introduced into evidence as a substitute for the witness's memory on the point subject to the requirements set out below. To make use of the document, the counsel must show:

1. That the witness's memory is exhausted (that it cannot be refreshed by allowing him to read the document);

2. That a document exists which contains the witness's knowledge on the point; and

3. That the witness either made the document personally, or it was made by someone else and the witness verified it, and

4. That such document was made or verified at a time when the events it records were fresh in the

witness's mind.

The rationale of the Business Records hearsay exception is routine or custom. The rationale of Past Recollection Recorded is compliance with the rituals, including presence of the declarant-author.

6.5 Offers of Proof

Offer of proof procedure:

1. Tangible offer - Hand exhibit to clerk.

2. Witness offer - When an objection has been made to a question put to a witness on the stand an exclusionary ruling is made by the trial judge, examining counsel can make his offer of proof through the witness. He proceeds with his examination of the witness, employing the usual question-and-answer method, and the witness' recorded responses ususally taken outside the jurors' hearing constitute the offer of proof.

3. Lawyer offer - Where it appears that a question in proper form was posed during the direct examination of a witness on the stand and that upon objection by opposing counsel the trial court ruled out the answer, examining counsel's offer of proof may consist of a statement to the court at the time of its ruling and on the record showing what the witness's answer would have been. Counsel's statement will include any additional matters essential to demonstrate that the described response would be material and otherwise admissible in evidence. Counsel's statement will also show that the response would benefit his client; that is, that it would be of such a character as could reasonably be expected to affect the finding of the jury in his client's favor.

6.6 The Child Witness

A child witness less than twelve years old may testify if the court is satisfied that he possesses the ingredients of competency, perception, memory, power of expression and an appreciation of the oath.

The court must hold, particularly in rape cases, a competency hearing first to determine that the child possesses sufficient competency.

6.7 Privileges

Husband-wife	- Ill. Rev. Stat., Ch. 51, Par. 5 Ill. Rev. Stat., Ch. 38, Par. 155-1 People v. Palumbo, 5 Ill. 2d. 409 (1955)
Attorney-Client	- 8 Wigmore § 2284, 22 ALR 2d. 659, 64 ALR 184
Doctor-Patient	- Ill. Rev. Stat., Ch. 51, Par. 5-1
Psychologist-Patient	- Ill. Rev. Stat., Ch. 91, Par. 406 44 Alr 3rd. 24
Psychiartist-Patient	- Ill. Rev. Stat., Ch. 51, Par. 5.2
Priest-Penitent	- Ill. Rev. Stat., Ch. 51 Par. 48-1
Accountant-Client	- Ill. Rev. Stat., Ch. 110, Par. 51
Reporter's Privilege	- Ill. Rev. Stat., Ch. 51, Par. 111-9
Informer's Privilege	- McCray v. Illinois, 386 U.S. 300 (1967) People v. Finch, 47 Ill. 2d 425 (1970) People v. Lewis, 12 Ill. App.2d. 762 (1973) People v. Strother, 53 Ill.2d. 95 (1972)

6.8 Defendant's Failure to Testify

It is an impairment of the defendant's privilege against self-incrimination for the prosecutor to comment on the defendant's failure to take the stand, Griffin v. California, 380 U.S. 609 (1965), unless the court is able to say beyond a reasonable doubt that the error is harmless under the circumstances, Chapman v. California, 368 U.S. (1967). The court has not been willing to consider anything more than trifling comments harmless, Fontain v. California, 390 U.S. 593 (1968); Anderson v. Nelson, 390 U.S. 523 (1968); 24 ALR 3d. 1093.

The Illinois Supreme Court takes the position that the test is whether the reference was intended or calculated to direct the jury's attention to the defendant's failure to testify, People v.Mills, 40 Ill.2d. 4 (1968). Comment on accused's failure to testify by counsel for co-defendant, 1 ALR 3rd 989.

It is also unconstitutional to allude on cross-examination or closing argument to an arrested person's station silence for the purpose of impeaching a defendant, Doyle v. Ohio, 96 Sup.Ct. 2240 (1976).

CLOSING STATEMENTS - CONDUCT OF ATTORNEYS

7.0 Excerpts

Raggio, Opening and Closing Argument in Trial Practice reprinted by permission of the National District Attorneys Association.

Instructions

This is the time to emphasize those instructions which you feel have particular application to your case, and which, if followed will support your theory of the case. When numbered, emphasize these by marking the numbers on the blackboard. Apply the evidence to these instructions, leaving with the jury the realization that there can be no other valid explanation.

Witnesses

This is a fine opportunity, before the real thrust of your argument, to pinpoint the reliability of witnesses, to compare the caliber of witnesses offered by each side, to point up any bias motive or feelings that witnesses may have, and to remind them of the points on which witnesses have been effectively impeached. In this regard, it is important that sufficient background information has been brought out during the examination of the witnesses.

Improper Argument: In General

Although most courts are liberal in the latitude permitted counsel in summing up the evidence, his argument must, by law, be confined to the evidence and reasonable inferences to be drawn therefrom. It is improper, of course, to argue matters not in evidence or to misstate the evidence; to refer to evidence which has been excluded, to criticize the court's rulings or misstate the law; or to comment upon the failure of the defendant to take the stand in his own defense.[1] The United States Supreme Court has now clearly established that it is reversible error to comment upon the failure of the defendant to take the stand.[2]

Improper Argument: Defendant's Bad Reputation

It has also been held error to comment on the defendant's bad reputation where it has not been put in issue.[3]

A reversal will often result when there has been abusive characterization of the defendant. This is especially true when such characterization is not warranted by the evidence.

Failure of Defense to Produce Evidence

It is legitimate argument to comment upon the failure of your adversary to produce relevant evidence which is within his power to obtain or which is clearly subject to his control.[4] The prosecutor must clearly avoid any inference, however, that he is referring to the failure of the defendant to testify.

It has been held error for a prosecutor to make remarks during argument indicating that opposing counsel was attempting to suppress evidence by his failure to produce a particular witness, or was attempting to suppress physical evidence. Generally, however, where an explanation could be offered by such evidence, and it would clearly be within the province of the defendant to produce same, such reference is not objectionable.[5]

Such comment can be held improper if the witnesses are more readily accessible to the state.[6]

Likewise, the prosecutor may not make adverse comment upon the failure of defendant's spouse to testify for or against the other spouse where, for example, the wife of defendant is made incompetent to testify by statute, or pursuant to a privilege granted, the witness-spouse or both spouses must consent.[7]

Improper Argument: Prosecutor's Opinion as to Guilt

The prosecuting attorney must be careful not to express his personal belief or opinion in the guilt of the defendant, when the opinion is not based on the evidence adduced upon the trial.[8] It has been stated:

> The role of the prosecuting attorney is a difficult one in many respects, and his argument to the jury is a particularly difficult problem in discrimination. He must pursue his duty as a diligent prosecutor without transgressing his

> responsibility as an officer of the state, and, above all, he must refrain from unduly oppressing or burdening the accused with the vast resources or dominating position of the state government. In particular, he must at all times bear in mind that defendant is innocent until proved guilty, and while it is his duty to forcefully present all material facts from which the judge or jury may conclude that defendant is guilty, he must, nevertheless, refrain from precondemning the accused on the authority of the government he represents.[9]

A great deal of latitude is, of course, allowed in argument to the jury.[10] A prosecutor may lead the jurors to his own judgment by pointing out to them, independently, and impartially, the evidence which cannot fairly justify any other conclusion. Although some cases have held that such assertion or belief merely puts into words what the very act of prosecution implies, it is wise to avoid such a direct statement. The test generally seems to be whether or not the conclusion reached by the prosecution is based on the evidence. In the absence of any indication to the contrary, the prosecutor's expressed opinion or belief will ordinarily be construed as his conclusion from the evidence introduced upon the trial.[11] Error has been assigned to a statement in argument that the prosecutor would not have prosecuted the case unless he believed the defendant to be guilty. A great deal depends on whether the statement may be justified in final argument as being incited or provoked by statements of the defense counsel.

Clearly the prosecuting attorney may not express his personal opinion or belief as to the guilt of the accused in such a way as to permit the jury to think that his opinion is based on information not placed in evidence or of which the prosecutor has some independent knowledge.[12]

Reading Law or Arguing Law

Although some jurisdictions hold otherwise, it is generally considered proper for the prosecutor to read and argue the law as given by the court. It is improper to read or argue law which has not been given by the court unless the law quoted has clear application and is correct in its statement.[13]

Improper Argument: Attacks Upon Counsel

While each case will have to determine its own by-play

between adversary counsel, and will depend upon their particular traits or personalities, it is wise for the prosecutor to avoid, at all costs, attacks on opposing counsel. Whether or not such remarks will constitute prejudicial error depends on the facts of the particular case. Such remarks can run the gamut from charges of dishonesty to lesser acts of impropriety, and the like. The test is whether they brought to the jury's attention matters which it should not have considered.

It is certainly the duty of the prosecutor to conform to the high ethical standards expected of him as a representative of the people. Even though it is common practice for the defense counsel to "try" the prosecutor, as well as all the other persons involved except the defendant, such tactics usually defeat themselves and should not be dignified by counter-tactics of this nature.[14]

Reference to Release Upon Acquittal for Insanity

Where a prosecutor has commented during an argument that the defendant would be released from an institution if he were acquitted for insanity, the cases have produced opposite results.[15] Although such reference is generally considered harmless if the trial court takes some prompt curative action, it would seem best to avoid such direct reference to release. In most states where this issue arises, the defendant is entitled to an instruction that, upon acquittal by reason of insanity, he is to be committed to a mental hospital or similar institution. Without benefit of comment, this places the state in a difficult position. Since the only issue properly before the jury is that of insanity, references to the nature of treatment and/or release are usually improper. This argument should be sufficient to instill in the minds of the jury the necessity for determining guilt and not taking the easy way out, or compromising merely for the purpose of placing the defendant in a mental institution. A strong argument on the issue of insanity is the most effective approach. Testimony of an expert as to unlikelihood of defendant's response to treatment is helpful at this point.

Improper Argument: Appeals to Prejudice

The prosecutor should avoid appeals to racial, national or religious bias. Statements which are reasonably calculated to appeal to, or evoke, racial, national or religious prejudice are universally condemned.[16]

Although such comments have been characterized by

courts as hitting below the belt,[17] there are occasions when such statements are made inadvertently or may be provoked by argument of defense counsel. Such action can be rendered "harmless" by careful action on the part of the prosecutor or the court, by apology, deletion, or proper instruction. The test generally is whether such remark was calculated to engender such prejudice, whether the remark was unjustified, and whether the defendant has been deprived of his right to a fair and impartial trial.

Improper Argument: Reference to Public Opinion

It is generally held that prejudicial error would be assigned upon a prosecuting attorney's argument to the effect that the people of the state, county or community "want" or "expect" a conviction in the case, on the basis that the remark is a fact not in evidence and therefore a departure from the record.[18] Some courts have overlooked this where guilt was clearly shown by the entire record, or where the remark falls short of indicating a public demand for conviction. A remark that the people of the state would expect the jury to perform its duty has been held as not objectionable, and a general reference to the fact that jury verdicts as a whole establish a standard of conduct for others in the community has been held proper. Again, a great deal may depend upon what has been said by the defense attorney regarding the jurors' obligations in the case and as to any reference made to community feeling. Recognizing that some latitude is allowed in summation, some courts have viewed such statements as being the usual rhetoric appeal to the jury and have considered the same harmless.

Punishment

In most states the jury has no duty to fix punishment, and in most jurisdictions where this is the exclusive function of the court, it is improper to make reference to the punishment prescribed by law.

Where it is within the province of the jury to fix the punishment for the particular offense, it is wise to first discuss these alternatives during voir dire examination of the jurors. This is particularly true where one of the alternatives is the assessment of the death penalty.

The jury should be reminded that upon voir dire examination each indicated that he would return a true verdict based upon the evidence and the applicable law, without regard to pity or sympathy or extraneous feelings or matters.

I deem it inadvisable for the prosecutor, representing the state, to appear before the jury and "demand" any particular type of punishment. This can serve to detract from your position, and can often cause the jury to stiffen against your appeal. A better approach is to stress all the alternatives and to indicate that, although it is exclusively their choice, a capital verdict or other punishment would clearly be proper under the circumstances. This can be done in such a way that there can be no doubt about your suggestion, and without causing the jurors to take issue with your premise.

Argument Invited by Opposing Counsel

This does not mean that you have no recourse to defendant's argument where the door has been opened for comments by you. There is authority that where remarks have been provoked and invited by opposing counsel, an otherwise improper reply may be proper.[19] It is thus important to have the defense argument reported.

The line that the prosecutor must draw between "hard blows" and "foul ones" is often fine, and it is easy for an earnest prosecutor to unintentionally make remarks of an improper nature. The "harmless error" rule has application in these cases, and if the court feels that the prosecutor's statements were error, but not so prejudicial that they adversely affected the verdict, the appellate court will grant no reversal.

It is interesting to observe that most articles on this subject are geared to the defense lawyer in criminal cases, brimful of artful ways in which to delude the prosecution and with suggestions as to how to detract from the issues. Yet any treatise suggesting similar tactics for the prosecutor would be undoubtedly condemned as lamentable and shocking.

In view of the unilateral right of appeal, most decisions ignore the histrionics of the defense lawyer while concentrating on the comportment of the prosecutor. Although it remains an adversary proceeding, demeanor, in practice, becomes pretty much of a one-way street. The prosecutor is at all times expected to proceed with dignity and ward off the snipes and jabs of the defense with restraint.

1. Am. Jur., Pros. Attys. §21, p. 256.

2. Griffin v. California, 380 U.S. 609, (1965).

3. Fletcher v. State, 49 Ind. 124, 19 Am. Rep. 673 (1874); State v. Upham, 38 Me. 261 (1854).

4. See Busch, Law & Tactics in Jury Trials, s. 518.

5. 29 ALR 2d. 996.

6. People v. Rubin, 366 Ill. 195, 7 N.E. 2d. 890 (1937); People v. DePaulo, 235 N.Y. 39, 138 N.E. 498 (1923); Cole v. State, 92 Tex. Crim. 368, 243 S.W. 1100 (1922).

7. Graves v. United States, 150 U.S. 118, (1893); Zumwalt v. State, 16 Ariz. 82, 141 P. 710 (1914); Johnson v. State, 63 Miss. 313 (1885).

8. 50 ALR 2d. 766.

9. State v. Gulbrandsen, 238 Minn. 508, 57 N.W. 2d. 419 (1953).

10. State v. Buttry, 199 Wash. 228, 90 P. 2d. 1026 (1939).

11. People v. Ross, 120 Cal. App. 2d. 882, 262 P. 2d. 343 (1953); State v. Pisano, 33 N.J. Super. 559, 111. A.2d. 279 (1955).

12. 42 J. Cr. L., C. & P. S., 73 (1951).

13. 67 ALR 2d. 245.

14. 99 ALR 2d. 508.

15. 44 ALR 2d. 979.

16. People v. Simon, 80 Cal. App 675; 252 P. 758 (1927); 45 ALR 2d. 303.

17. Ross v. United States, 180 F. 2d. 160 (6th Cir. 1950).

18. 85 ALR 2d. 1137.

19. State v. Lindsay, 192 Wash. 356, 73 P. 2d. 391 (1937); see 42 J. Crim. L., C. & P. S. 73.

INSTRUCTIONS

8.0 In General

Cross Reference: Ch. VI

See:

Snyder, Illinois Pattern Jury Instructions, 40 Ill. B. J. 230; Hannah, Jury Instructions; An Appraisal by a Trial Judge, 1963, Univ. of Ill. L. F. 627; Hunter's, Chapter LXXXIII, especially section 83:21, entitled "Other Rules Relating to Instructions in Criminal Cases."

8.1 Supreme Court Rule 451 - Instructions in Criminal Cases

RULE 451. Instructions:

"(a) Use of IPI-Criminal Instructions; Requirements of Other Instructions. Whenever Illinois Pattern Instructions in Criminal Cases (IPI-Criminal) contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury should be instructed on the subject, the IPI-Criminal instruction shall be used, unless the court determines that it does not accurately state the law. Whenever IPI-Criminal does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given on that subject should be simple, brief, impartial, and free from argument.

(b) Court's Instructions. At any time before or during the trial, the court may direct counsel to prepare designated instructions. Counsel shall comply with the direction and copies of instructions so prepared shall be marked "Court's Instructions." Counsel may object at the conference on instructions to any instruction prepared at the court's direction, regardless of who prepared it, and the court shall rule on these objections as well as objections to other instructions. The grounds of the objections shall be particularly specified.

(c) Section 67 of the Civil Practice Act to Govern. Instructions in criminal cases shall be tendered, settled, and given in accordance with section 67 of the Civil Practice Act, but substantial defects are not waived by failure to make timely objections thereto if the interests of justice require.

(d) Procedure. Each instruction shall be accompanied by a copy and a copy shall be delivered to opposing counsel. In addition to numbering the copies and indicating who tendered them, as required by section 67 of the Civil Practice Act, the copy shall contain a notation substantially as follows:

> "IPI-Criminal No. _____" or "IPI-Criminal No. _____ Modified" or "Not in IPI-Criminal" as the case may be. All objections made at the conference and the rulings thereon shall be shown in the report of proceedings.

8.2 Suggestions - Excerpts

Pre-trial suggestions about instructions by Judge Edward Devit, former Chief Judge of the U.S. District Court, District of Minnesota:

> "1. Proposed Instructions Should be in Writing
> Both the Civil and Criminal Rules require that submitted instructions be in writing. This makes for a good record and safeguards an objection on appeal. It is recommended that proposed instructions be submitted well in advance of their intended use so that the court will have time to study them and check the supporting citations. Some judges will receive well-prepared and documented instructions as a substitute for a trial brief.
>
> 2. Instructions Should be Limited
> Only a limited number of instructions should be requested and given. A large number tends to confuse rather than enlighten the jury. Very few lawsuits call for more than 4 or 5 instructions on points of law unique to the issues involved. Many lawyers submit, and some judges may give, repetitive instructions on the same point of law, although phrased in slightly different language. The lawyer reasons that a repetition of his favorite points of law will impress the jury. When counsel on the other side reasons the same way, the judge who subscribes to such suggestions is no more than a talking machine repeating the same

points ad nauseam. "Instructions by the acre", serve only to plant confusion in the minds of the jurors.

3. Instructions Should be Objective

It is not uncommon for counsel to submit, and for courts to give, instructions which are phrased in an argumentative vein favorable to the side submitting them. Instructions should be objective, not subjective. It is the court, not counsel, who annonces them. The judge is the only non-partisan lawyer in the courtroom, and the jury may properly expect a dispassionate and unslantd statement of the pertinent law from him.

4. Instructions Should be Phrased in Understandable Language

Instructions should be phrased in clear, concise language applicable to the case. Sometimes counsel will quote verbatim from an appellate court decision dwelling on a point involved in the trial and urge it as a proposed instruction. Appellate court opinions are written for a purpose different from that for which jury instructions are designed. The point of law may be controlling, but not the language. It is the legal principle, not the words expressing it, which is pertinent and which will be helpful to the jury. Legal points from decided cases should be couched in language appropriate to the facts and to the parties in the lawsuit.

The use of legal terminology instructions should be avoided as much as possible. In preparing instructions we should remember that the task is to shed light and not to add to the darkness. The use of some legal terms such as "proximate cause" and "reasonable doubt" cannot be avoided. But to the extent possible, we should use that which Chief Judge Alfred Murrah calls "the common speech of man."

5. Accurate Citations should Support Suggested Instructions

Since a suggested instruction is a representation to the court as to the pertinent law, it should be supported with appropriate citations in order to receive the consideration it deserves. It is helpful to many judges who employ a looseleaf system of organizing their instructions to submit numbered requests on separate sheets of paper with their citations.

6. All Pertinent Instructions must be Given
It is the court's obligation to instruct on all pertinent points of law even though not specifically requested. But, of course, it is counsel's duty to make such requests.

Only instructions pertinent to the issues being litigated should be proposed by counsel or be given by the court. No matter how correct the statement of law in a proposed instruction may be, it will serve no purpose for the court to give it if it is immaterial. And here, the court must be careful, for to give an abstract instruction, albeit embodying a correct statement of law, may well be prejudicial and grounds for reversal.

7. Instructions should be Given in Logical Sequence
Sometimes a judge's instructions sound like a talking crazy quilt as he jumps from one subject to another and back again with utter abandon. This is most confusing to jurors. The instructions should be arranged in a logical sequence so that the whole will be intelligible to the jury. Symmetry is as necessary to the legal exposition for easy understanding as it is to any other form of literary exposition.

8. Pattern Instructions Must be Tailored to the Case
It is urged that you exercise caution when using pattern jury instructions. Very few pattern instructions are intended to be copied verbatim in every case. They are intended principally as an aid to the preparation of an appropriate instruction in the particular case. What is sauce for the goose is not always sauce for the gander. Each case has its own peculiar facts and formalized instructions must be tailored to the facts and issues." 38 Fed. Rules Decisions, 75-78.

MISTRIAL

9.0 In General

"At any time during the trial, the court must declare a mistrial and order a new trial of the indictment under the following circumstances:

1. Upon motion of the defendant, when there occurs during the trial an error or legal defect in proceedings, or conduct inside or outside the courtroom, which is prejudicial to the defendant and deprives him of a fair trial. When such an error, defect or conduct occurs during a joint trial of two or more defendants and a mistrial motion is made by one or more but not by all, the court must declare a mistrial only as to the defendant or defendants making or joining in the motion, and the trial of the other defendant or defendants must proceed;

2. Upon motion of the people, when there occurs during the trial, either inside or outside the courtroom, gross misconduct by the defendant or some person acting on his behalf, or by a juror, resulting in substantial and irreparable prejudice to the people's case. When such misconduct occurs during a joint trial of two or more defendants, and when the court is satisfied that it did not result in substantial prejudice to the people's case as against a particular defendant and that such defendant was in no way responsible for the misconduct, it may not declare a mistrial with respect to such defendant but must proceed with the trial as to him;

3. Upon motion of either party or upon the court's own motion, when it is physically impossible to proceed with the trial in conformity with law." Model Penal Code, Sec. 1.08 where there occurs 'manifest necessity or the ends of justice require it.'

9.1 Exclusion Versus Mistrial

As a general rule, evidence which is withdrawn from the consideration of the jury by the direction of the trial judge may not serve as a basis for reversible error, and the instruction of exclusion by the court cures any error which

may have been committed in its introduction.

But where the improper evidence was calculated to make such an impression on the jury that no direction from the court, however strong, can eliminate the prejudice thereby created, the trial court should declare a mistrial.

In Kotteakos v. United States, 328 U.S. 750 (1945), the court reaffirmed the following proposition:

> "If, when all is said and done, the [Court] is sure that the error did not influence the jury, or had but very slight effect, the verdict and the judgment should stand, except perhaps where the departure is from a constitutional norm or a specific command of Congress."

In one case the Supreme Court of Indiana wrote,

> "Turning to other jurisdictions wherein the courts have considered the adequacy of striking improper testimony and admonishing the jury, as opposed to declaring a mistrial, we find that the following matters have been considered:
>
> 1. The effect of constitutional provisions, statutes or rules relating to harmless error.
>
> 2. The degree of materiality of the testimony.
>
> 3. Other evidence of guilt.
>
> 4. Other evidence tending to prove the same fact.
>
> 5. Other evidence that may cure the improper testimony.
>
> 6. Possible waiver by the injured party.
>
> 7. Whether the statement was volunteered by the witness and whether there had been deliberate action on the part of the prosecution to present the matter to the jury.
>
> 8. The penalty assessed.
>
> 9. Whether or not the testimony, although volunteered by the witness, was in part brought

out by action of the defendant, or his counsel.

10. The existence of other errors.

11. Whether the question of guilt is close or clear and compelling.

12. The standing and experience of the person giving the objectionable testimony.

13. Whether or not the objectionable testimony or misconduct was repeated." White v. State, 272 NE 2d. 312, 314 (1972).

9.2 Double Jeopardy

A defendant has a "valued right to have his trial completed by a particular tribunal." Wade v. Hunter, 336 U.S. 684 (1949). Because of this right, a court may not, without effecting a double jeopardy situation, declare a mistrial without the consent of the defendant unless there is a "manifest necessity for the act, or the ends of public justice would otherwise be defeated." United States v. Perez, 22 U.S. (9 Wheat) 579 (1824).

In Perez the Supreme Court wrote:

> "We think, that in all cases of this nature, the law has invested Courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances which would render it proper to interfere. To be sure, the power ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes; and, in capital cases especially, Courts should be extremely careful how they interfere with any of the chances of life, in favor of the prisoner. But after all, they have the right to order the discharge; and the security which the public have for the faithful, sound, and conscientious exercise of this discretion, rests, in this, as in other cases, upon the responsibility of the Judges, under their oaths of office." 22 U.S. at 580.

See: Illinois v. Somerville, 410 U.S. 458 (1973); see Ch. III - Double Jeopardy, Double Jeopardy Mistrial, Annotation at 6 L. Ed. 2d. 1510, where jury unable to agree. U.S. v. Dinitz, 965 S. Ct. 1075 (1976).

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Compelling expert to testify, 77 ALR 2d. 1182.

Admissibility of experimental evidence to determine chemical or physical qualities or character of material or substance, 76 ALR 2d. 354.

Use of medical or other scientific treatise in cross-examination of expert witnesses. 60 ALR 2d. 77; 50 ALR 3d. 117.

Annot., Admissibility, as against hearsay objection, of report of tests and experiments carried out by independent third party, 19 ALR 3d. 1008 (1968).

Annot., Expert testimony as to modus operandi of criminal with respect to particular types of crimes, 100 ALR 2d. 1433 (1965).

Annot., Testing qualifications of expert witnesses, other than handwriting expert, by objective tests or experiments, 78 ALR 2d. 1281 (1961).

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Annot., Prejudicial effect of prosecuting attorney's argument to jury that people of city, county, or community want or expect a conviction, 85 ALR 2d. 1132 (1962).

Annot., Prejudicial effect of prosecutor's comment on character or reputation of accused, where accused has presented character witnesses, 70 ALR 2d. 559 (1960).

Annot., Propriety and effect of prosecuting attorney's argument to jury indicating his belief or knowledge as to guilt of accused, 50 ALR 2d. 766 (1956).

Annot., Prejudicial effect of prosecuting attorney's argument or disclosure during trial that another defendant has been convicted or has pleaded guilty 48 ALR 2d. 1016 (1956).

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CHAPTER VIII

VERDICTS

CHAPTER VIII

VERDICTS

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VIII - 0

SCOPE NOTE

This chapter covers directed verdicts, the requirement of verdict returns and more on new trial. See: Ch. III, Motions, also.

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DIRECTED VERDICTS

1.0 Directed Verdict of Acquittal

Ill. Rev. Stat., Ch. 38, Sec. 115-4(k) Provides:

> "(k) When, at the close of the State's evidence or at the close of all of the evidence, th evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant."

It is proper to direct a verdict as to one or more separate charges.

JURY VERDICTS GENERALLY

2.0 Form of Verdict

Verdicts should have a reasonable intendment and receive a reasonable construction, and should not be set aside unless from necessity originating in doubt as to their meaning.

The form of the verdict must be in accordance with the court's instructions.

If the jury renders a verdict which in form is not in accordance with the court's instructions or which is otherwise legally defective, the court must explain the defect or error and must direct the jury to reconsider such verdict, to resume the deliberation for such purposes, and to render a proper verdict. If the jury persists in rendering a defective or improper verdict, the court may, in its discretion, either order that the verdict in its entirety as to any defendant be recorded as an acquittal or discharge the jury and authorize the people to retry the indictment or a specified count or counts thereof as to such defendant; provided that if it is clear that the jury intended to find in favor of a defendant upon any particular count, the court must order that the verdict be recorded as an acquittal of such defendant upon such count.

If the court accepts a verdict which is defective or incomplete solely by reason of the jury's failure to render a verdict upon every count upon which it was instructed to do so, such verdict is deemed to constitute an acquittal upon every such count improperly ignored in the verdict.

2.1 Partial Verdicts

If a deliberating jury declares that it has reached a verdict with respect to one or more but not all of the charges submitted to it, or with respect to one or more but not all of the defendants, the court may proceed as follows:

A. If the possibility of ultimate agreement as to the other charges or defendants is so small and the circumstances are such that if they were the only matters under consideration the court would be authorized to discharge the jury, the court must terminate the deliberation and order the jury to render a partial verdict with respect to those counts and defendants upon which or with respect to whom it has reached a verdict, and judgment must eventually be imposed accordingly;

B. If the court is satisfied that there is a reasonable possibility of ultimate agreement upon any of the unresolved charges with respect to any defendant it may either:

1. Order the jury to render the verdict with respect to those charges and defendants upon which or with respect to whom it has reached agreement and resume its deliberation upon the remainder, or

2. Refuse to accept a partial verdict at the time and order the jury to resume its deliberation upon the entire case.

2.2 Discharge of Jury Before Rendition of Verdict

A deliberating jury may be discharged by the court without having rendered a verdict if:

A. The jury has deliberated for an extensive period of time without agreeing upon a verdict with

respect to any of the charges submitted and the court is satisfied that any such agreement is unlikely within a reasonable time; or if

B. The court, the defendant and the people all consent to such discharge; or

C. A mistrial is declared.

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DEADLOCKS

3.0 Deadlocked Jury Unable to Reach a Verdict

If the jurors become deadlocked, call them in and ask them the following question:

> "If the court were to ask you to continue your deliberations, do you feel that there is a reasonable probability that you might yet be able to arrive at a verdict?"

If the foreman's answer is "yes" send the jury back to the jury room for further deliberation. If the answer is "no", ask the foreman if there is anything further that the court can do in assisting the jury in arriving at its verdict, such as further jury instructions or reading of testimony by the court reporter. If the answer is still "no" ask the foreman how many ballots have been taken and have him respond only with a number. Ask the foreman what the numerical breakdown was at the last ballot (BEING CAREFUL NOT TO PERMIT THE FOREMAN TO TELL YOU IN WHICH DIRECTION WAS THE LAST VOTE). If you are satisfied with the foreman's answer that the jury is hopelessly deadlocked, ask each juror if in his considered opinion further deliberations could possibly result in a verdict. If all jurors answer "no", declare a mistrial and discharge the jury from any further service in the case. If any juror says "maybe" or "yes', send the jury back to the jury room

for further deliberation after giving the following instruction:

> "The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.
>
> It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if conviced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.
>
> You are not partisans. You are judges - judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case."

See: Allen v. United States, 164 U.S. 492 (1896); see discussion in State v. Marsh, 490 P. 491, cert. den. 406 U.S. 974 (1971); Comment on Instructing Juries, 78 Yale L.J. 100 (1968).

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VERDICT PROCEDURES

4.0 Delivery of the Verdict

The verdict must be rendered and announced by the foreman of the jury in the courtroom in the presence of both the court and the defendant. The prosecutor may as a

matter of right be present but may waive such right.

Before rendering and announcing the verdict, the foreman of the jury must be asked whether the jury has agreed upon a verdict and must answer in the affirmative.

For Verdict Scenario, See Ch. VI.

If verdict is guilty;

1. Proceed to sentence, if pre-sentence report waived by defendant
2. Order preparation of pre-sentence report
3. Set date for sentencing (See Ch. IX)
4. Continue or reset bail
5. Inform defendant how he will be advised when to next appear in court
6. Order judgment entered by clerk and sign same
7. Adjourn or recess court.

4.1 Sample Verdict Forms

A. Guilty Form

We, the jury, find the defendant, _____, guilty of _____, in the manner and form as charged in the indictment (information) (complaint).

We, the jury, find the defendant, _____, guilty of _____, in the manner and form as charged in Count _____ of the indictment (information) (complaint).

B. Another Guilty Form

We, the jury, find the defendant, _____,

guilty in the manner and form as charged in Counts _____ of the indictment (information) (complaint).

C. Acquitted

We, the jury, find the defendant, _____, not guilty.

D. Another Not-Guilty Form

We, the jury, find the defendant, _____, not guilty of _____ under Counts _____ of the indictment, (information) (complaint).

E. Another Not-Guilty Form

We, the jury, find the defendant, _____, not guilty under Counts _____ of the indictment (information) (complaint).

F. Finding As to Being Armed

And we further find from the evidence that at the time of the commission of said robbery, the defendant was armed with a dangerous weapon, to-wit: _____ (e.g., a pistol).

G. Finding As to Age

And we further find from the evidence that the said defendant, _____, is now about the age of _____ years.

Annotations: Juror's reluctant, equivocal, or conditional assent to verdict on polling, as ground for mistrial or new trial in criminal case, 25 ALR 3d 1149; Inconsistency of criminal verdicts as between two or more defendants tried together, 22 ALR 3d 717; Inconsistency of criminal verdict as between different counts of indictment or information, 18 ALR 3d 259; Inconsistency of criminal verdict with verdict on another indictment or information tried at same time, 16 ALR 3d 866.

POST VERDICT

5.0 Common Grounds for New Trial Motions

Grounds Relating to Evidence

Insufficient evidence

Erroneous rulings on the evidence

Improper admission of confessions, admissions, statements

Reference in confession to prior crime

Variance

Failure to furnish statement for impeachment purposes

Newly discovered evidence (People v. Holtzman, 1 Ill. 2d 562 (1954))

New impeaching or contradictory evidence

Evidence contradicting dying declaration

Existence or materiality known, unknown or forgotten

Evidence under new theory of defense

New eyewitnesses

Recantation of testimony

Knowing use of perjured testimony

Nondisclosure by state of witnesses

Comment on failure of defendant to testify

Grounds Relating to Jurors

Disqualification of jurors

Improprieties of or relating to jurors communications

Publicity affecting jury

Grounds Relating to Counsel

Deprivation of right to counsel

Incompetence of counsel*

Improper conduct or argument of counsel

For content of motion for new trial, in general see: People v. Hairston, 46 Ill. 2d. 348 (1970); also see Ch. III, Motions.

* 507 F.2d. 413 (6th Cir. 1974); 509 F.2d. 334 (Dic. Cir. 1974) (Conflict of Interest).

CHAPTER IX

SENTENCING AND APPEALS

CHAPTER IX

SENTENCING AND APPEAL

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CHAPTER IX

SENTENCING AND APPEAL

IX - 0

SCOPE NOTE

This chapter covers sentencing law and procedure, under the Unified Code of Corrections, and appeals after sentencing. Cross Reference: Ch. VIII, Verdicts, and Ch. X-4, Fitness.

IX - 1

UNIFIED CODE OF CORRECTIONS

1.0 Sentencing Under the Unified Code of Corrections, As Amended, Effective February 1, 1978, Ill. Rev. Stat., 1977, Ch. 38, Par. 1005-3-1 et seq.

1.1 Generally

Effective February 1, 1978, the sentencing provisions of the Unified Code of Corrections, Ill. Rev. Stat. 1977, Ch. 38, §1005-5-1 through 1005-5-4.3, were amended to provide for a system of flat sentencing.

1.2 Presentence Procedure

A defendant shall not be sentenced for a felony before a written presentence report of investigation is presented to and considered by the court. §1005-3-1.

A. Exception - The court need not order a pre-sentence report where both parties agree to a specific sentence. §1005-3-1.

B. Findings - In all felony cases where a pre-sentence report is waived, the court must make a finding for the record as to the defendant's history of delinquency or criminality, including any previous sentence to a term of probation, periodic imprisonment, conditional discharge or imprisonment. §1005-3-1.

1.3 Contents of Presentence Report

A. About Defendant:

1. Defendant's history of delinquency or criminality;
2. Physical and mental history and condition;
3. Family situation and background;
4. Economic status;
5. Education;
6. Occupation; and
7. Personal habits.

B. Information about special resources within the community.

C. The effect the offense has had upon the victim, and any compensatory benefit that various sentencing alternatives would confer on such victim;

D. Information concerning defendant's status since arrest.

E. When appropriate, a plan as an alternative to institutional sentencing.

F. Any other matters the investigating officer deems relevant or the court directs to be included; and

G. A physical and mental examination of the defendant, when ordered by the court. §1005-3-2.

1.4 Sentencing Hearing

A. Hearing Required - Except when the death penalty is sought under procedures otherwise specified, after a determination of guilt, a hearing shall be held to impose the sentence, §1005-4-1(a).

B. The Hearing - The court shall:

1. Consider the evidence, if any, received upon the trial;
2. consider evidence offered in aggravation and mitigation;
3. hear arguments as to sentencing al-

ternatives; and
4. afford defendant the opportunity to make a statement in his own behalf. §1005-4-1(a)(1)(2)(3)(4)(5).

C. Findings for the Record - In imposing a sentence for a felony, the trial judge shall specify on the record the particular evidence, information, factors or other reasons that led to his sentencing determination. §1005-4-1(c).

D. Transcript - The full verbatim record of the sentencing hearing and all information presented to the court in connection therewith shall be filed with the clerk and shall be a public record. §1005-4-1(c).

E. Clerk's Duties - The clerk shall transmit to the department, agency or institution to which the defendant is committed:

1. the sentence imposed,
2. the statement of the court of the basis for imposing the sentence;
3. the number of days the defendant has been in custody and for which he is entitled to credit;
4. all statements filed with the clerk by the state's attorney or defense counsel about the offense and defendant for the purpose of transmitting such statements to the department, agency or institution; and
5. all additional mattes which the court directs the clerk to transmit. §1005-4-1(e).

1.5 Classification of Offenses

A. Felonies are classified for purposes of sentencing as follows (§1005-5-1(b)):

1. Murder
2. Class X
3. Class 1 Felonies
4. Class 2 Felonies
5. Class 3 Felonies
6. Class 4 Felonies

B. Misdemeanors are classified, for purposes of sentncing, as follows (§1005-5-1(c)):

1. Class A Misdemeanors
2. Class B Misdemeanors
3. Class C Misdemeanors

C. Petty offenses and business offenses are not classified (§1005-5-1(d)). Any unclassified felony shall be a Class 4 Felony. Any unclassified misdemeanor punishable by less than 1 year but in excess of 6 months shall be a Class A misdemeanor (§1005-5-2(b)(1)). Any unclassified misdemeanor punishable by 6 months or less but in excess of 30 days shall be a Class B misdemeanor (§1005-5-2(b)(2)). Any unclassified misdemeanor punishable by 30 days or less shall be a Class C misdemeanor (§1005-5-2(b)(3)). Any unclassified offense which does not provide for a sentence of imprisonment shall be a petty offense or a business offense (§1005-5-2(c)).

1.6 Authorized Penalties Generally

A. Generally - The following options, alone or in combination, are appropriate dispositions for all felonies (§1005-5-3(b)):

1. Probation
2. Periodic Imprisonment
3. Conditional Discharge
4. Imprisonment
5. Fine
6. Restitution Under §1005-5-6

B. Exceptions - Probation, periodic imprisonment or conditional discharge shall not be imposed for (§1005-5-3(c)(2)):

1. Murder, where the death penalty is not imposed
2. Attempted murder
3. Class X Felony
4. Violation of §402(a) or §407 of the Controlled Substance Act
5. Violation of §9 of the Cannabis Control Act
6. Violation of Ch. 38, §24-1(a)(4),(5),(6),

(8) or (10) Unlawful Use of Weapons
7. Second conviction of a Class 2 or greater felony within 10 years
8. Any Class 1 felony committed while serving a term of probation or conditional discharge for a felony.

C. Limitation on Fine or Restitution - A fine or restitution may only be imposed in conjunction with another disposition §1005-5-3(b).

D. Supervision - The court may order supervision if the defendant is not charged with a felony and the court is of the opinion that:

1. the offender is not likely to commit further crimes;
2. the defendant and the public would best be served if the defendant did not receive a criminal record; and
3. a sentence of supervision is more appropriate than a sentence otherwise permitted. §1005-6-1(c).

1.7 Authorized Penalties By Class

A sentence of imprisonment shall be a determinate sentence, according to the following limitations §1005-8-1:

A. Murder - not less than 20 years nor more than 40 years §1005-8-1(1), or where accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty or any of the aggravating factors listed in §9-1(b) are present, to natural life imprisonment §1005-8-1(a)(1), or death under §9-1(b).

B. Habitual Criminal Under §33B-1 - natural life imprisonment.

C. Class X - not less than 6 and not more than 30 years.

D. Class 1 Felony - not less than 4 and not more than 15 years.

E. Class 2 Felony - not less than 3 and not more than 7 years.

F. Class 3 Felony - not less than 2 and not

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more than 5 years.

G. Class 4 Felony - not less than 1 and not more than 3 years.

F. Extended Term - where the factors in aggravation set forth in §1005-5-3.2(b) are present, the court may sentence the defendant to (§1005-8-2):

1. Murder - not less than 40 and not more than 80 years.
2. Class X - not less than 30 and not more than 60 years.
3. Class 1 - not less than 15 and not more than 30 years.
4. Class 2 - not less than 7 and not more than 14 years.
5. Class 3 - not less than 5 and not more than 10 years.
6. Class 4 - not less than 3 and not more than 6 years.

1.8 Concurrent and Consecutive Terms

A. Sentences shall run concurrently or consecutively as determined by the court §1005-8-4(a).

B. Exception - the court shall not impose consecutive sentences for offenses which were part of a single course of conduct §1005-8-4(a). However, if one of the offenses was a Class X or Class 1 Felony and the defendant inflicted severe bodily injury, the court may enter sentences to run consecutively §1005-8-4(a).

C. Length of Consecutive Sentences

A. For sentences imposed for offenses committed prior to February 1, 1978 see §1005-8-4(c)(1). The aggregate maximum of consecutive sentences shall not exceed the maximum term authorized under §1005-8-1 for the 2 most serious felonies involved. The aggregate minimum period of consecutive sentences shall not exceed the highest minimum term authorized under §1005-8-1 for the 2 most serious felonies involved.

B. For sentences imposed for offenses committed after February 1, 1978, see §1005-8-4(c)(2). The aggregate of consecutive sentences shall not exceed the sum of the maximum term authorized under §1005-8-2 for the 2 most serious felonies involved.

1.9 Classification Of Felonies For Sentencing Purposes

OFFENSE	HB 1500 OF CORRECTIONS	1973 CODE
Aggravated Arson	X	DNA
Aggravated Battery	3	3
Aggravated Incest	2	2
Aggravated Kidnapping	1	1
Aggravated Kidnapping for Ransom	X	1
Aiding Escape (from felony custody or while armed)	2	2
Armed Robbery	X	1
Armed Violence (with category I weapon)	X	-
Armed Violence (with category II weapon)	2	-
Armed Violence (with sawed-off shotgun or machinegun or while committing forcible felony)	-	1
Arson	2	2
Attempt Aggravated Arson	1	DNA
Attempt Aggravated Kidnapping	2	2
Attempt Aggravated Kidnapping for Ransom	1	2
Attempt Armed Robbery	1	2
Attempt Arson	3	3
Attempt Bribery	3	4
Attempt Burglary	3	3
Attempt Deviate Sexual Assault	1	2
Attempt Escape (from felony custody)	3	3
Attempt Escape (from felony custody while armed)	3	3
Attempt Escape (from non-felony custody while armed)	3	4
Attempt Forcible Detention	3	3
Attempt Heinous Battery	1	DNA
Attempt Kidnapping	3	3
Attempt Murder	X	1
Attempt Rape	1	2
Attempt Retail Theft (over $150.00)	4	4
Attempt Robbery	3	3

Attempt Theft (over $150.00)	3	3
Attempt Theft from Person	3	3
Bribery	2	4
Burglary	2	2
Concealment of Homicidal Death	3	3
Criminal Damage to Property (over $150.00)	4	4
Deviate Sexual Assault	X	1
Escape (from felony custody)	2	2
Escape (from felony custody while armed)	2	2
Escape (from non-felony custody while armed)	2	4
Forcible Detention	2	2
Forgery	3	3
Heinous Battery	X	DNA
Incest	3	3
Indecent Liberties With a Child	1	1
Intimidation	3	3
Involuntary Manslaughter	3	3
Kidnapping	2	2
Murder	sep. class	sep. class
Obstructing Justice	4	4
Pandering	4	4
Perjury	3	3
Possession of Explosives	2	2
Possession of a Stolen Vehicle	4	4
Rape	X	1
Retail Theft (over $150.00)	3	3
Robbery	2	2
Syndicated Gambling	3	3
Theft (over $150.00)	3	3
Theft from Person	3	3
UUW (conviction or release within 5 yrs. or sawed-off shotgun or machine gun)	3	3
UUW (second conviction for same)	4	4
Unlawful Restraint	4	4
Voluntary Manslaughter	2	2

1.10 Death Penalty

Ill. Rev. Stat., 1978, Ch. 38 Sec. 9-1(b)

(b) Aggravating Factors. A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of murder may be sentenced to death if:

1. the murdered individual was a peace officer or fireman killed in the course of performing his official duties and the defendant knew or should have known that the murdered individual was a peace officer or fireman; or

2. the murdered individual was an employee of an institution or facility of the Department of Corrections, or any similar local correctional agency, killed in the course of performing his official duties, or the murdered individual was an inmate at such institution or facility and was killed on the grounds thereof, or the murdered individual was otherwise present in such institution or facility with the knowledge and approval of the chief administrative officer thereof; or

3. the defendant has been convicted of murdering two or more individuals under Subsection (a) of this Section or under any law of the United States or of any state which is substantially similar to Subsection (a) of this Section regardless of whether the deaths occurred as the result of the same act or of several related acts so long as the deaths were the result of either an intent to kill more than one person or of separate premeditated acts; or

4. the murdered individual was killed as a result of the hijacking of an airplane, train, ship, bus or other public conveyance; or

5. the defendant committed the murder pursuant to a contract, agreement or understanding by which he was to receive money or anything of value in return for committing the murder or procured another to commit the murder for money or anything of value; or

6. the murdered individual was killed in the course of another felony if:

   (a) the murdered individual was actually killed by the defendant and not by another party to the crime or simply as a consequence of

the crime; and

(b) the defendant killed the murdered individual intentionally or with the knowledge that the acts which caused the death created a strong probability of death or great bodily harm to the murdered individual or another; and

(c) the other felony was one of the following: armed robbery, robbery, rape, deviate sexual assault, aggravated kidnapping, forcible detention, arson, burglary, or the taking of indecent liberties with a child; or

7. the murdered individual was a witness in a prosecution against the defendant, gave material assistance to the State in an investigation or prosecution of the defendant, or was an eye witness or possessed other material evidence against the defendant.

1.11 Prison Review Board

H.B. 1500 abolishes the "Parole and Pardon Board" and replaces it with a "Prison Review Board". It will be this new body that will determine parole eligibility under the old act, as well as the conditions of mandatory supervised release under the new.

The basic difference between parole under the old system and mandatory supervisory release under the new, seems to be in the penalties for violation. Generally, a violation of parole under the old law subjects the violators to not only imprisonment for the balance of the parole term, but potentially to incarceration for the unexpired portion of the sentence as well. In the case of mandatory supervised release, however, the maximum possible period of incarceration appears to be the balance of the unexpired release term plus one year.

Parole and Mandatory Release are similar in some other respects, however, such as in concept and in the power of the Prison Review Board to establish the conditions of the parole or release.

IMPOSING SENTENCE

2.0 Sentencing Policy

Probation or Conditional Discharge Favored - Except where specifically prohibited, the court shall impose a sentence of probation or conditional discharge unless the court is of the opinion that:

A. imprisonment or periodic imprisonment is necessary for the public protection;

B. probation or conditional discharge would depreciate the seriousness of the offender's conduct (§1005-6-1(a)(1)(2)).

2.1 Conditions of Probation - See §1005-6-3.

2.2 Violation, Modification, or Revocation of Probation, Conditional Discharge or Supervision

Hearing - see §1005-6-4. Time served on probation, conditional discharge or supervision shall be credited by the court against a sentence of imprisonment unless the court orders otherwise §1005-6-4(i).

2.3 Sentence of Periodic Imprisonment - see §1005-7-1(a).

A. The court shall not impose a sentence of periodic imprisonment if it imposes a sentence of imprisonment in excess of 30 days §1005-7-1(c).

B. A sentence of periodic imprisonment shall be for a definite term of from:

1. 3 to 4 years for a Class 1 Felony,
2. 18 to 30 months for a Class 2 Felony, and
3. up to 18 months or the longest sentence of imprisonment that could be imposed, whichever is less, for all other offenses §1005-7-1(d).

C. When the court imposes a sentence of periodic imprisonment it shall state:

1. the term
2. the days or parts of days the defendant is to be confined.
3. the conditions (for conditions, see §1005-7-1(b)).

D. Modification and Revocation of Periodic Imprisonment - Hearing - see §1005-7-2.

IX-3

AGGRAVATION AND MITIGATION

3.0 Factors In Mitigation §1005-5-3.1

The following grounds shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment:

1. the defendant's criminal conduct neither caused or threatened serious physical harm to another;

2. the defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another;

3. the defendant acted under a strong provocation;

4. there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

5. the defendant's criminal conduct was induced or facilitated by someone other than the defendant;

6. the defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained;

7. the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

8. the defendant's criminal conduct was the result of circumstances unlikely to recur;

9. the character and attitudes of the defendant indicate that he is unlikely to commit another crime;

10. the defendant is particularly likely to comply with the terms of a period of probation;

11. the imprisonment of the defendant would entail excessive hardship to his dependents;

12. the imprisonment of the defendant would endanger his or her medical condition.

3.1 Factors in Aggravation §1005-5-3.2

A. The following factors shall be accorded weight in favor of imposing a term of imprisonment or may be considered by the court as reasons to impose a more severe sentence under §1005-8-1:

1. the defendant's conduct caused or threatened serious harm;
2. the defendant received compensation for committing the offense;
3. the defendant has a history of prior delinquency or criminal activity;
4. the defendant, by virtue of the duties of his office or by his position, was obliged to prevent the particular offense committed or to bring the offender committing it to justice;
5. the defendant held public office at the time of the offense, and the offense related to the conduct of that office;
6. the defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it;
7. the sentence is necessary to deter others from committing the same crime.

B. Extended Term §1005-8-2

A judge may sentence a defendant to a term in exess of

the maximum term provided in §1005-8-1 when:

1. the offender was at least 17 years old on the date of the offense;
2. when offender is convicted of any felony, after having been previously convicted in Illinois of the same or greater class felony within 10 years, excluding time spent in custody; and
3. such charges are separately brought and tried and arise out of different series of acts §1005-5-3.2(b)(1); or
4. when a defendant is convicted of any felony and the court finds that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty §1005-5-3.2(b)(2).

3.2 Sentencing Hearing

THE COURT: We will now proceed to a hearing in aggravation and mitigation and formal sentencing.

[Where a presentence report has been made and submitted to the Court, add the following:]

THE COURT: A presentence report has been made in this case and filed with the Court in a sealed envelope. The record should reflect that the Court is opening the envelope in open court and now has given a copy of the presentence report to the Defendant's attorney and to the State's Attorney. Mr. (Defense Attorney) and Mr. (State's Attorney), under Chapter 38 Section 1005-3-4(2) each of you has a right to view the presentence report at least three days prior to imposition of sentence unless waived.

THE COURT: Mr. (Defense Attorney), do you wish to waive that right and proceed at this time to imposition of sentence?

DEFENSE ATTORNEY: Yes, your honor.

THE COURT: Mr. (State's Attorney), do you wish to waive that right and proceed at this time to imposition of sentence?

STATE'S ATTORNEY: Yes, your honor.

THE COURT: Very well, the record should reflect that the Court has read the presentence investigation report and will consider the information therein as evidence in this aggravation and mitigation hearing and the report will be made part of this record unless there is objection by the defense or by the prosecution.

THE COURT: Does either the defense or the prosecution have any objection to this procedure?

DEFENSE ATTORNEY: No, your honor.

STATE'S ATTORNEY: No. your honor.

THE COURT: Mr. (State's Attorney), do you have any testimonial or other evidence to present at this hearing?

STATE'S ATTORNEY: No, your honor. [If yes, the State should be directed to proceed with hearing the presentence of the evidence].

THE COURT: Mr. (Defense Attorney), do you have any testimonial or other evidence to present at this hearing?

DEFENSE ATTORNEY: No, your honor. [If yes, the defense should be directed to proceed with the presentment of the evidence].

THE COURT: Mr. (State's Attorney), do you have any statement or argument to present? If so, please proceed!

STATE'S ATTORNEY: [makes his argument in aggravation].

THE COURT: Mr. (Defense Attorney), do you have any statement or argument to present? If so, please proceed!

DEFENSE ATTORNEY: [makes his argument in mitigation].

THE COURT: Mr. (Defendant), before this Court imposes its sentence, do you have anything you wish to say?

THE DEFENDANT: [makes his statement, if any].

THE COURT: This Court having entered judgment on a finding of guilty and having considered the facts of the case and those matters in aggravation and mitigation and arguments and statements made by the parties does hereby sentence you Mr. (Defendant), to _____ [If the sentence is to the penitentiary, add the following:] Further, Mr. (Defendant), you should be aware that by Illinois law, upon your release from the penitentiary you will be required to serve a period of _____ years on parole (or supervised release under new Act) under the supervision of the parole authorities.

THE COURT: Mr. (Defendant), under Illinois law you have a right to appeal from judgment and sentence entered on your plea of guilty. However, prior to taking such an appeal you must file in this Court within 30 days, a written motion asking to vacate the judgment and for leave to withdraw your plea of guilty, setting forth the grounds for the motion; any grounds, claim or issue not set forth in your motion will be considered waived by you if you ultimately do choose to appeal. If you are indigent and thereby unable to afford it, a free transcript of these

plea proceedings will be provided to you without cost and an attorney will be appointed to assist you with the preparation of the motion. Do you understand these rights and what is required of you if you wish to appeal?

THE DEFENDANT: Yes.

THE COURT: Furthermore, do you understand that if your motions are allowed, the plea of guilty, judgment and sentence will be vacated and a trial date will be set on the charges to which the plea of guilty was made?

THE DEFENDANT: Yes.

THE COURT: [If a felony case, add the following:] The Court Reporter is hereby directed to transcribe the proceedings herein and file the transcription with the Clerk of the Circuit Court and that the transcription be made a part of the record.

[If the offense occurred between January 1, 1973 and February 1, 1978, add the following]:

THE COURT: You have the right to be sentenced under the law as it (was--existed) at the time this offense was committed, or you may be sentenced under the law that now is in effect. . .Have you discussed that right with your lawyer?

Counsel, have you explained to your client his right to elect under which law he will be sentenced? Have you explained to your client the consequences of being sentenced under the old and the new law? Are you satisfied that he understands his right to elect and the consequences of whatever decision he makes?

Mr. - Ms. _____, you have (asked to plead guilty to -- been convicted of) the offense of _____.

The possible penalties after conviction of that offense differ under the old and new law.

First, I will tell you the possible penalties under the old law, that is, the law in effect at the time this offense was committed. At that time, the offense of _____ carried a minimum of _____ years, and a maximum of _____ years in the Illinois State penitentiary. The sentence would be for an indeterminate period; that is,

there would be a minimum and maximum sentence of years.

In addition, there would be a mandatory parole term of _____ years (Sec. 1005-8-1 applies) that would follow any penitentiary term that might be imposed on you.

In addition, I can fine you in an amount up to $_____.

(If applicable) I can place you on probation or conditional discharge, or sentence you to periodic imprisonment.

If you should be sentenced to a term of imprisonment under the law in effect at the time this offense was committed, you would be eligible for release on parole within the time provided by law.

(Note. If applicable, and if being considered, judge should advise defendant of possibility of extended term and/or consecutive term under the law as it existed before February 1, 1978. Sections 1005-8-2 and 1005-8-4).

Mr. - Ms. _____, do you understand the sentences that are possible under the law as it was at the time this offense was committed?

As I have said, you have the choice of being sentenced under the old law, as I have just explained it to you, or you may be sentenced under the new law that now is in effect. Please listen carefully while I tell you about the possible sentences under the new law.

You now may be sentenced for a certain and specific number of years that is no less than _____ and no more than _____ .

In addition, I can fine you in an amount up to $_____ (and I can order you to pay restitution to the person harmed by your offense).

(If applicable) I also can place you on probation or conditional discharge. I also can sentence you to periodic imprisonment for a period of _____ . (Section 1005---1, 1005-6-2(b)).

If you are sentenced to prison under the law that now is in effect, that is, the new law, you will not be eligible for parole. You will receive one day good conduct credit for each day you serve, unless you lose good conduct credit because of a violation of prison rules and regula-

tions.

Note: After a finding or after a plea, where appropriate, judge must warn defendant of possibility of an extended term sentence, under the new law, if such a sentence is going to be imposed. Section 1005-8-2. The same is true for cases where consecutive sentences may be appropriate. Sec. 1005-8-4.

[Q: must these admonishments go into the treatment of parole violations under the old and new law?]

Mr. - Ms. _____ , do you understand the sentences that are possible under the law that is now in effect? Do you wish to be sentenced under the law as it was at the time this offense was committed? Or do you wish to be sentenced under the law as it now exists, that is, the new law?

Counsel, do you believe your client understands his rights and the sentence consequences under the old and the new law?

I find the defendant understands his rights and the consequences of being sentenced under the law in effect at the time this offense was commmitted; and that he understands his rights and the consequences of being sentenced under the law now in effect. I further find the defendant's decision to be sentenced under the (law in effect at the time the offense was committed ---- under the present law) is a voluntary and intelligent election.

Therefore, we will proceed under the sentencing law (in effect at the time this offense was committed -- now in effect).

IX-4

SENTENCING PROCEDURES

4.0 Checklist

See: Ill. Rev. Stat., Ch. 38, Sec. 1005-4-1

1. Record those present
2. Make a record of the evidence considered;
   a) Pre-sentence report
   b) Prior criminal record
   c) Other communications received
3. Insure that participants have had an opportunity to read and consider items in No. 2
4. Inquire if there are any matters of fact to be contested (See 2)
5. Conduct a hearing on contested matters of fact (See 2)
6. Announce findings of fact
7. Ask for further summation and recommendations from participants.
8. Allow defendant to make a statement in his own behalf.
9. Make decision
10. Announce decision
    a) Explain it to defendant
    b) Make formal announcement

11. Inform defendant of his right to appeal

12. Inform defendant of right to record

13. Conduct hearing with respect to bond on appeal, if requested

14. Conclude hearing

    a) Remand to Probation Department

    b) Remand to Department of Corrections

4.1 Sentencing Procedure

A. Prior to Imposing Sentence

Call the case and note presence of defendant and counsel.

Ask defendant if his name is _____.

Advise defendant that he was heretofore arraigned under Indictment (Information) and alleging the prior conviction was denied, so state.

It there was a change of plea, so state.

If trial by jury was waived, so state and state the decision of the court as to each count and the determination as to each prior indictment.

If defendant was tried by a jury, so state and state the verdict as to each count and the determination as to the prior convictions.

If there are remaining counts, determination of degree, allegations of priors or allegations as to being armed to be disposed of, so state and make determination at this point.

Inquire if there is any legal cause why sentence and judgment should not now be imposed. (This is to invite any motion for new trial, motion in arrest of judgment, or assertion of present

insanity. If any of these are raised, they must now be ruled upon).

Ask defense counsel if he has anything to say in his client's behalf, or whether he wishes to present any information in mitigation of punishment.

4.2 Outline of Dangerous Drug Abuse Act

Chapter 91 1/2, Sec 120.1, et. seq.

Dangerous Drug Abuse Act

A. Addict: Charged or convicted of crime may elect treatment under supervision of the Department of Mental Health in lieu of prosecution or sentence, with exceptions.

B. Exceptions:

1. The crime is a crime of violence

(a) Treason

(b) Murder

(c) Voluntary Manslaughter

(d) Rape

(e) Armed robbery

(f) Arson

(g) Kidnapping

(h) Aggravated Battery

(i) Felony which involves the use or threat of force of violence against an individual.

2. Violation of Sections 401, 402b, 405 or 407 of Controlled Substances Act,

-or-

3. Record of two or more convictions of a crime of violence.

4. Other criminal proceedings alleging the commission of a felony are pending against the addict.

5. Addict on probation or parole and the appropriate authority doesn't consent.

6. Addict was admitted to a treatment program on two prior occasions within any consecutive two year period.

C. Before Trial

1. If addict elects treatment, certified by the court, and accepted by the Department of Mental Health:

(a) May be placed under supervision of Department of Mental Health for a period of up to two years.

(b) May be confined in an institution or may be released from confinement for supervised care.

(c) 1 - Treatment completed - charge dismissed

2 - Not completed - Prosecution will be resumed.

(d) Waives constitutional right to a speedy trial.

(e) Waives constitutional right to a trial by jury, consent to trial by court with finding to be deferred until prosecution is authorized to be resumed.

2. On Election of Treatment

(a) Department of Mental Health conducts an examination to see if:

1. Person is an addict

2. Likely to be rehabilitated

(b) Department submits report of exam and recommendations.

1. court decides if:

Addict and likely to be rehabilitated

(c) Not addict or not likely to be rehabilitated

1. Proceedings resume.

(d) Addict and likely to be rehabilitated

1. Conduct trial before court

2. With consent of the State's Attorney, defer trial until such time as prosecution is authorized to resume, if ever.

3. Placed under supervision of Department of Mental Health for two years.

(e) End of treatment period

1. Certification that person has successfully completed treatment program - charges dismissed.

2. No certification at end of period.

1. Prosecution resumed

2. Credit on any sentence of imprisonment for time spent in institution.

D. After Conviction

1. If <u>elects</u> treatment <u>certified</u> by the court

and is accepted by Department of Mental Health:

(a) Sentenced to probation and placed under supervision of Department of Mental Health for period of:

1. Five years or maximum sentence, whichever is less.

(b) May be confined in institution or released under supervision.

(c) Adheres to treatment and fulfills other conditions of probation - discharged from probation.

(d) Violates probation or doesn's adhere to treatment - probation may be revoked.

2. Election of Treatment

(a) Department of Mental Health conducts an examination to see if:

1. Person is an addict

2. Likely to be rehabilitated

(b) Department submits report of exam and recommendations

1. Court decides if:

Addict and likely to be rehabilitated

(c) Not addict or not likely to be rehabilitated

1. Proceed to pronounce sentence

(d) Addict and likely to be rehabilitated

1. Place on probation under supervision of Department of Mental Health for treatment.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL

CIRCUIT COURT OF ILLINOIS

IN _____ COUNTY

The People of the State	)	
of Illinois,	)	
Plaintiff,	)	
	)	Number _____-_____-_____
vs.	)	
	)	
	)	
_____	)	
_____	)	
Defendant.	)	

ELECTION FOR TREATMENT

PURSUANT TO DANGEROUS DRUG ABUSE ACT

I, _____, defendant herein, being of the age of _____ years, having heretofore been furnished with a copy of the charge against me, and having been informed of the possible penalties in the event of a plea of guilty or a finding of guilty after a trial, and having had explained to me the nature of an arraignment and the constitutional

guarantees of right to have a lawyer represent me, speedy public trial before the court or by an impartial jury, the presumption of innocence, right to remain silent or to testify, right of confrontation and power of subpoena, and further, in the event that I am addicted to dangerous drugs, the right to elect treatment under the supervision of the Department of Mental Health, do hereby elect to receive such treatment. I hereby consent to an examination by the Department of Mental Health and understand that by this election I am waiving right to a speedy trial, and if the court finds that I am an addict and likely to be rehabilitated and the Department of Mental Health accepts me for treatment, that by this election for treatment I am waiving my constitutional rights of trial by jury and consent to an immediate trial before the court. The Court, in addition to informing me of the foregoing, has stated to me that the period of treatment may extend for a period of two years and that I may be confined in an institution.

Futher, in the event I do not successfully complete the treatment program that prosecution shall resume, and if I do successfully complete the treatment that this charge will be dismissed.

_____

Defendant

ATTEST:_____

Clerk

DATED:_____

ORDER FOR EXAMINATION OF DEFENDANT BY DEPARTMENT OF MENTAL HEALTH PURSUANT TO DANGEROUS DRUG ABUSE ACT

The defendant, _____, having elected to submit to treatment by the Department of Mental Health pursuant to the Dangerous Drug Abuse Act, and the court having heard evidence adduced and being fully advised in the premises finds that:

(1) There is reason to believe that the defendant is an addict

(2) The defendant states that he is an addict

(3) The defendant is eligible to make the election

1. The Department of Mental Health of the State of Illinois is hereby authorized and directed to conduct an examination of the defendant to determine whether he is an addict and is likely to be rehabilitated through treatment and make a report thereof to this court of the results of the examination and recommend whether the defendant shall be placed under supervision for treatment.

2. The defendant is directed to submit to such examination.

3. (The Sheriff is hereby authorized and directed to transport the defendant to the appropriate facility of the Department of Mental Health for such examination.)

ENTER: _____

DATED: _____

IN THE CIRCUIT COURT OF THE _____ JUDICIAL

CIRCUIT OF ILLINOIS IN _____ COUNTY

The People of the State	)	
of Illinois	)	
Plaintiff,	)	
	)	
vs.	)	NUMBER _____-_____-_____
	)	
_____	)	
_____	)	
Defendant.	)	

ORDER FOR TREATMENT UNDER

DANGEROUS DRUG ABUSE ACT

The defendant, _____, having made election for treatment under Dangerous Drug Abuse Act, and the Court having found that the defendant was eligible for such and an examination of the defendant having been conducted by the Department of Mental Health to determine whether the defendant is an addict and likely to be rehabilitated through treatment, and hearing having been held on said election and the court having considered other evidence adduced and being fully advised in the premises, finds that:

1. The defendant is an addict and is likely to be rehabilitated through treatment.

2. The Department of Mental Health has consented to accept the defendant for treatment.

3. The State's Attorney (has)(has not) consented to

defer the trial of the defendant until such time as prosecution is authorized to resume.

It is, therefore ordered that:

1. Supervison of the defendant, _____ be and it is hereby vested in the Department of Mental Health of the State of Illinois for treatment pursuant to the provisions of the Dangerous Drug Abuse.

2. The defendant be and he is hereby directed to submit to the supervision of the Department of Mental Health

   (a) at once.

   (b) immediately upon the conclusion of the trial in this case.

   (c) and the Sheriff is hereby authorized and directed to transport the defendant to the appropriate facility of the Department of Mental Health.

3. This cause stands continued until further order of this court

ENTER: _____

Judge

DATED: _____

IN THE CIRCUIT COURT OF THE _____ JUDICIAL

CIRCUIT OF ILLINOIS _____ COUNTY

The People of the State	)	
of Illinois	)	
Plaintiff,	)	
	)	
vs.	)	No._____-_____-_____
	)	
_____	)	
_____	)	
Defendant.	)	

ORDER DENYING TREATMENT

UNDER DANGEROUS DRUG ABUSE ACT

The defendant, _____, having made election for treatment under the Dangerous Drug Abuse Act, and the Court having found that the defendant was eligible for such and an examination of the defendant having been conducted by the Department of Mental Health to determine whether the defendant is an addict and likely to be rehabilitated through treatment, and hearing having been held on said election and the Court having considered the report of the Department of Mental Health and its recommendations, and having considered other evidence adduced and being fully advised in the premises, finds that:

(1) The defendant is not an addict.

(2) The defendant is not likely to be rehabilitated through treatment.

(3) (and) the Department of Mental Health does not

consent to accept the defendant for treatment.

IT IS, THEREFORE, ORDERED THAT:

1. Treatment under the supervision of the Department of Mental Health pursuant to the Dangerous Drug Abuse Act be and it is hereby denied.

2. Prosecution be and it is hereby authorized to resume.

ENTER: _____

Judge

DATED: _____

IX - 5

SENTENCING FORMS

5.0 Presentence Bench Checklist

NAME:

ADDRESS:

AGE:

D. O. B.:

RACE:

MARITAL STATUS:

OFFENSE:

JUDGE:

A. Offense

1. Legal Data:

2. Defendant's Statement and Attitude:

B. Prior Record

1. Juvenile Delinquencies:

2. Adult Arrest Record:

3. Detainers:

C. PERSONAL AND FAMILY BACKGROUND

1. Parents:

2. Siblings:

3. Defendant:

D. MARITAL STATUS

E. HOMES AND NEIGHBORHOD

F. EDUCATION

G. RELIGION

H. INTERESTS AND ACTIVITIES

I. MILITARY HISTORY

J. HEALTH

K. EMPLOYMENT

L. ECONOMIC RESOURCES

M. SUMMARY

5.1 Defendant's Pre-sentence Questionnaire

(Particularly useful where probation office resources are limited).

NOTE: This information is to be completed in its entirety, do not omit any section unlsess it does not apply to you.

NAME:_____

(Last) (First) (Middle)

(aliases)_____

PRESENT ADDRESS_____CITY & STATE_____

_____How long have you resided at this address?

FORMER ADDRESSES_____

_____PRESENT PHONE NO_____

SOCIAL SECURITY NO._____DATE OF BIRTH_____

PRESENT AGE____CITY AND STATE WHERE BORN_____

RACE_____HEIGHT_____WEIGHT____HAIR____EYES____

MARITAL STATUS: SINGLE____MARRIED____, DATE____PLACE___

DIVORCED DATE_____PLACE_____

SEPARATED_____HOW LONG_____,If Married, are you living together?_____

Spouse's Name_____, If separated, where does your spouse live?_____How many dependants do you have?_____

Name and Ages of Children: 1._____2._____3.__

_____4._____5._____

Others_____

Father's Name and address and place of employment_____

_____

Mother's name and address and if she is employed_____

_____

If either are deceased, list date of death_____

_____

Are parents living together_____date separated_____

date divorced_____

If you have a stepfather or stepmother give name and address

_____

Name and addresses, and ages of living brothers and sisters

_____

_____

Education: List grade school, high school, college, night school, or any other institution attended. Name the schools, and the cities and states where located.

Grade Schools_____

_____

High Schools_____

_____

Highest grade completed_____Date dropped out and reason

_____

List Names of Principals or Teachers for references or Date

Graduated:_____

_____

Religion: Name and location of church_____

(city & state)

Name of Pastor and Address_____

Phone Number_____Do you attend regularly? Yes__No__

Employment: I am presently working____I am not employed___

List your present employer first--or your latest place of employment:

Name of Company_____Date Hired_____Date Left_____

Address (City and State)_____

Type of position and salary_____

Reason for leaving_____

Former places of employment:

Name of Company_____

Address_____

Type of position and salary_____

Reason for leaving_____

Name of Company_____

Address_____

Type of position and salary_____

Reason for leaving_____

5.2 Judgment Order

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT, _____ COUNTY, ILLINOIS

The People of the State of Illinois)
)
vs.)
)
_____)
Defendant

No. _____

ORDER AND JUDGMENT ON SENTENCE

Now, come THE PEOPLE OF THE STATE OF ILLINOIS, by the State's Attorney of said County, and the defendant, in his own proper person and represented by his counsel of record;

And the court finds the age of said defendant to be _____ years;

And the court having heard evidence in mitigation and aggravation of the offense, and now the defendant saying nothing further why the sentence of the court should not be pronounced against him;

And after due consideration and deliberation, it is therefore ordered and adjudged by the court that said defendant is hereby sentenced as follows:

Judgment is entered on the sentence.

_____
CIRCUIT JUDGE

DATE: _____

5.3 Negotiated Plea Judgment and Sentence Scenario

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT _____ COUNTY, ILLINOIS

The People of the State of Illinois)
)
vs.) No. _____
)
_____)
Defendant

JUDGMENT AND SENTENCE ON NEGOTIATED PLEA

On this day this cause comes on for hearing on the request of the parties that the Court permit the parties to disclose to the Court a tentative plea agreement.

The people appear by the State's Attorney. The defendant appears in person and by his attorney.

Leave is granted to the parties to disclose the agreement, and the Court listens to the agreement as outlined by the State's Attorney and the attorney for the defendant.

After questioning the defendant personally in open Court, the Court finds:

A. That the defendant fully understands the nature of the crime with which he is charged, the intent involved therein and the penalties that could be imposed on the defendant for such crime.

B. That the defendant is making this plea voluntarily, without any threats, force, coercion or intimidation having been employed, and without any promise having been made to him, apart from the plea agreement, to obtain the plea or to induce defendant to enter a plea of guilty.

C. That the Court determines that there is a factual basis for a plea of guilty by the defendant.

With the consent of the defendant, the parties waive evidence in aggravation and in mitigation.

The Court thereupon does advise the State's Attorney, and the defendant and his attorney, in open Court, that he does concur in the agreement reached by the parties, and that upon a plea of guilty by the defendant, the Court will impose sentence as outlined in the tentative plea agreement.

The defendant enters a plea of guilty to the crime of _____ as charged in the _____.

That the defendant is guilty of the crime of _____ in the manner and form as charged _____.

It is Ordered that judgment is entered against the defendant on the finding.

It is the further Order and Judgment of this Court:

That the defendant be committed to the Department of Corrections of the State of Illinois, and sentenced to imprisonment and confinement in a penitentiary under the jurisdiction of said Department, in accordance with the negotiations and recommendations herein.

The Court fixes the duration of imprisonment at _____ years, (set a minimum and maximum if the offense occurred prior to February 1, 1978 and defendant elects to be sentenced under the old law).

It is further Ordered that this sentence shall run concurrent with the sentence in Cause Number _____.

It is further Ordered that the defendant is given full credit for all time spent in confinement in the County Jail of _____ County awaiting disposition of this case.

The defendant is committed to the custody of the Sheriff of _____ County, for delivery to the Department of Corrections.

A mittimus shall issue by the Clerk of this Court according to the statutes of the State of Illinois.

DATED: _____

ENTER: _____
Judge

(COUNTY JAIL VARIATION)

It is Ordered that judgment is entered against the defendant on the finding.

It is the further Order and Judgment of this Court:

That the defendant is sentenced to imprisonment in the County Jail of _____ County for a period of _____ .

It is further Ordered that the defendant is given full credit for all time spent in confinement in the County Jail of _____ County awaiting disposition of this case.

The defendant is committed to the custody of the Sheriff of _____ County.

A mittimus shall issue by the Clerk of this Court according to the statutes of the State of Illinois.

DATED: _____

ENTER: _____
Judge

5.4 Probation Admonition

THE COURT: Mr. _____, your counsel has advised the court that you have voluntarily entered a plea of guilty to the charges contained in indictment number because in fact you are guilty of the said charges and furthermore you are asking this court to consider placing you on probation, is that correct?

DEFENDANT: Yes, your honor.

THE COURT: Before placing you on probation, do you realize that if you violate any of the terms and conditions of the probation I can sentence you to the state penitentiary for a period of not less than _____ nor more than ____ years?

DEFENDANT: Yes, your honor.

THE COURT: Mr. _____, I will place you on probation for a period of ____ years and I am herewith advising you that in the event that you violate any of the terms and conditions of the probation I will sentence you to the state penitentiary for a period of not less than ____ nor more than ____ years. Kindly report to the probation officer.

5.5 Probation Order

State of Illinois)
)
County of _____)

IN THE _____ COURT OF COOK COUNTY, ILLINOIS

_____ DEPARTMENT _____
(County) (Municipal) (Division) District)

People of the State of Illinois Plaintiff)
vs.)
_____ Defendant)
I.R. No. _____)

CASE NO. _____

SPECIFICATIONS AND CERTIFICATE OF CONDITIONS OF PROBATION SENTENCE

IT IS THE SENTENCE AND ORDER OF THE COURT that the above named Defendant, having been adjudged guilty of the crime of _____ in the above captioned case, and further, having regard to the nature and circumstances of the offense, and to the history, character and condition of the above named Defendant, and being of the opinion that a sentence of probation would not

depreciate the seriousness of the Defendant's conduct, the above named Defendant is sentenced to a period of probation of _____, unless terminated sooner if warranted by the conduct of the offender and the ends of justice.

The Defendant acknowledges receipt of the above document setting forth the specifications and conditions of the sentence of probation and understands that a failure to follow these conditions could result in a revocation of the probation and resentencing up to the maximum penalty for the crime for which he is on probation.

SIGN: _____
(Defendant - Probationer)

_____
(Your Address)

The conditions of the Probation Sentence shall be as follows:

(1) The Defendant shall not violate any criminal statute of any jurisdiction;

and

(2) The Defendant shall make a report to and appear in person before _____

_____

Phone number _____, within _____ days of this order and at any other time and place designated by the Probation Department;

and

(strike any of the following which are not conditions of probation)

(3) The Defendant shall serve a term of imprisonment _____, a term less than six months, at the _____.

(4) The Defendant shall serve a term of periodic imprisonment of _____, a term less than two years and less than the maximum term of imprisonment for the offense, with the following conditions:

_____

_____

_____

_____

(above enter the days or parts of days which the defendant is to be confined and conditions imposed, e.g., work, school, treatment, etc.)

and

(5) The Defendant pay a fine of $ _____;

and

(6) The Defendant shall obtain employment or pursue a course of study or vocational training;

and

(7) The Defendant shall undergo medical and/or psychiatric treatment or treatment for drug addiction or alcoholism;

and

(8) The Defendant shall attend and reside in a facility established for the instruction or residence of defendants on probation;

and

(9) The Defendant shall support his dependents;

and

(10) The Defendant shall refrain from possessing any firearm or any other dangerous weapon;

and

(11) The Defendant shall permit his Probation Officer to visit him at his home and elsewhere;

and

(12) The Defendant shall make restitution through

the Adult Probation Department to the victim in the amount of $ _____ an amount not exceeding the actual loss to the victim of the instant crime, said payments to be made in the following manner: (enter conditions of payment)

_____

_____

_____

and

(13) (enter any further conditions set by the court)

_____

_____

_____

_____

and

(14) The Defendant shall comply with the rules and regulations of the Adult Probation Department. Pursuant to the provisions of Ill. Rev. Stat. 1977, Ch. 38, Par. 1005-6-1.

It is the further order of this Court that records of this Probationer be maintained by the Adult Probation Department, and that if a petition for revoction of this probation is filed, that the Adult Probation Department shall file such records of this Probationer, kept in accordance with statute and this order, bearing upon the conduct of the Probationer during his probation period in compliance with Ill. Rev. Stat., 1977, Ch. 38, Par. 204-4(4).

It Is So Ordered

ENTER: _____
(Judge)

DATE: _____

5.6 Federal-State Concurrent Sentence Form

It is further ordered that his sentence of imprisonment is to run concurrently with a certain sentence of imprisonment heretofore imposed on the said defendant in the United States District Court for _____ Division of the _____ District of _____, by the Honorable _____ on the _____ day of _____, 19__, in case number _____, which sentence was for _____ years, imposed for the crime of _____ _____.

It is further ordered and adjudged by the court that the said defendant _____ be and is hereby committed to the custody of the Attorney General of the United States under the provisions of Title 18 U. S. Code to serve the aforementioned sentence, and it is further ordered and adjudged that the said defendant _____ be taken from the bar of the court to be turned over to the United States Marshal or his authorized representative for delivery to a place designated by the said Attorney General of the United States, for incarceration until discharged according to law, provided such term of imprisonment in this cause shall not be less than _____ year(s), nor more than _____ years.

It is further ordered that if the incarceration under the aforesaid Federal sentence terminate, by parole or otherwise, before the sentence imposed by this court in this case be terminated, that the defendant be remanded from the custody of the Attorney General of the United States to the custody of the Sheriff of _____ County and by him taken to the Illinois State Penitentiary, and delivered to the Department of Corrections and, the said Department is hereby required and commanded to take the body of the said defendant, _____, and confine _____ to said penitentiary, according to law, from and after the delivery thereof until discharged according to law.

5.7 Insanity Commitment Order

This cause coming on to be heard upon the trial call, and the parties hereto being present in person as well as by counsel, and it appears to the court that by the Indictment returned herein, it is charged that on _____, at and within the County of _____ and State of Illinois, the

defendant, _____, did commit the offense of murder, as more fully appears from the recitations contained in said Indictment in Counts I and II thereof, and defendant, _____, having entered his plea of not guilty to the charge contained in said Indictment, and having waived trial by jury and signified said waiver in writing (the same being filed herein) and defendant being advised by the court of his right to trial by jury and did persist in his demand that the trial be by court without jury;

The court having considered all of the evidence offered by the People of the State of Illinois in support of the charge contained in the Indictment and all of the evidence offered by the defendant in defense thereto, finds:

(1) That upon the trial, the sole and only defense offered by defendant, _____, to the charge, was that he was not mentally responsible for his conduct because at the time, and as a result of mental disease or defect, he lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law and was, in law, insane and not guilty of said charge;

(2) That, _____ continues to be afflicted with said insanity up to and including the date hereof;

IT IS THEREFORE, the finding and judgment of the Court after hearing all the evidence, that the defendant, _____, is not guilty of the charge of murder contained in said indictment by reason of insanity, and that said insanity continues up to and including the date hereof;

THE COURT FURTHER FINDS and, IT IS HEREBY ORDERED, that the defendant, _____, is in need of mental hospitalization and said defendant, _____ shall be taken by the Sheriff of _____ County from the bar of this court, to _____ and thence forthwith to the Department of Mental Health of the State of Illinois in whose custody he shall remain, be treated and cared for, all in accordance with law.

_____
CIRCUIT JUDGE

DATED: _____

PROBATION REVOCATION

6.0 Probation Revocation - Revocation of Conditional Discharge

A. Procedure

§ 1005-6-4

1. Petition - People v. Nelson, 19 Ill. App. 3d 438, 311 N.E. 2d 763 (5th, 1974): Petition to revoke probation need not meet specificity requirements of an indictment or information. It must, however, acquaint defendant sufficiently of the nature of the conduct alleged to constitute grounds for revocation. Example of insufficient petition in case, which was sufficient on facts due to defendant's obvious awareness of factual basis.

2. Summons or Warrant - issuance shall toll the sentence of probation or conditional discharge.

3. Hearing - Mandatory to impose or alter the conditions previously set.

   People v. Manns, 18 Ill. App. 3d 611, 310 N.E. 2d. 411 (5th 1974): A hearing must be held prior to change or alteration of probation, conditions previously set. Here, court simply amended order to comply with prohibition against split sentence then in effect

4. Burden of proof - preponderance of the evidence

   People v. Crowell, 53 Ill. 2d 447, 292 N.E. 2d 721 (1973): The standard of proof in a probation revocation hearing is preponderance of the evidence.

5. Rules of evidence

People v. Malone, 18 Ill. App. 3d 69, 309 N.E. 2d 325 (2d, 1974): Hearsay may not be the sole basis for the revocation of probation.

6. Admission of guilt

People v. Godsey, 22 Ill. App. 3d 382, 317 N.E. 2d 157 (2d, 1974): Where revocation of probation is based solely on defendant's admission of guilt relative to charges set forth in the petition, the trial court must ascertain that such admission was voluntary.

People v. Dowery, 20 Ill. App. 3d 738, 312 N.E.2d 682 (1st, 1974): Previously suppressed evidence may be utililzed as evidence in a subsequent probation revocation hearing. This does not violate the purpose of the exclusionary rule or the principle of res judicata due to the different nature of a criminal proceeding and the probation recovation hearing.

B. Failure to make Restitution - Violation of this condition must be willful.

§ 1005-6-4 (d)

People v. Mahle, 57 Ill. 2d 279, 312 N.E. 2d 267 (1974): The Court has no authority to order restitution of sums not set out in specific charges against the defendant (indictment or information). Open question whether total sums charged can be subject of condition of restitution if the defendant pleads guilty to less than all "charges" originally brought.

C. Credit - Sentence credit for time served on probation unless - court orders otherwise

§ 1005-6-4 (i), as amended.

People v. Taylor, 21 Ill. App. 3d 702, 315 N.E. 2d 914 (1st 1974): Upon revocation of probation, the probationer is entitled to credit for time served or probation from the date of placement on probation to date summons or bench warrant issued.

People v. Henderson, 20 Ill. App. 3d 788, 314 N.E. 2d 504 (1st 1974) - the mechanics of crediting.

People V. Kelly, 16 Ill. App. 3d 559, 306 N.E. 2d 638 (1st 1974) - the mittimus.

People v. Decker, 15 Ill. App. 3d 230, 304 N.E. 2d 99 (2nd, 1973) - the realities of crediting.

People ex, rel. Morrison v. Sielaff, 58 Ill. 2d 91, 316 N.E. 2d 769 (1974) - no credit for time spent on bail.

APPEALS

7.0 Index to Supreme Court Rules

The following was taken from Chapter 14 of the Illinois Criminal Practice Handbook, published by the Illinois Institute for Continuing Legal Education (1972).

1. Reaching the Reviewing Court.

   a. Advice to the defendant concerning his right to appeal: S. Ct. R. 605

   b. Form of the notice of appeal: S. Ct. R. 606

      (c)

   c. Time for filing notice of appeal: S. Ct. R. 606 (b), (c)

2. Jurisdiction of Reviewing Courts.

   a. Method of review in criminal cases in general: S. Ct. R. 602

   b. Direct appeals to the Supreme Court: S. Ct. R. 603

   c. Appeals to the Appellate Court in general: S. Ct. R. 603

   d. Appeal to the wrong court: S. Ct. R. 365, 612 (p)

   e. Appeals from certain judgments and orders:

      (1) State appeals: S. Ct. R. 604 (a)

      (2) Appeals where probation is granted: S. Ct. R. 604 (b)

      (3) Appeals from bail orders before conviction: S. Ct. R. 604 (c)

      (4) Appeals in post-conviction cases: S. Ct. R. 651

(5) Appeals by minors found delinquent: S. Ct. R. 661

3. Record on Appeal

a. Designation and contents: S. Ct. R. 608 (a)

b. Time for preparing report of proceedings: S. Ct. R. 608 (b)

c. Time for filing record on appeal: S. Ct. R. 608 (c)

d. Extensions of time for filing record: S. Ct. R. 608 (d)

e. Preparation and certification of record: S. Ct. R. 324, 612 (d)

f. Transmission of record or certificate in lieu of record: S. Ct. R. 325, 612 (e)

g. Docketing of appeal: S. Ct. R. 327, 612 (f)

h. Return of record: S. Ct. R. 331, 612 (i)

i. Amending record: S. Ct. R. 329, 612 (h)

j. Substitutes for report of proceedings: S Ct. R. 323 (c), (d), 612 (c).

4. Motions in the Reviewing Court.

a. Motions in general: S. Ct. R. 361, 610

b. Motions for extension of time: S. Ct. R. 610, 361

c. Motions for bail pending appeal: S. Ct. R. 609

d. Short record: S. Ct. R. 328, 612 (g)

e. Process: S. Ct. R. 370, 612 (s)

f. Constructive date of filing: S. Ct. R. 373, 612 (u)

5. Briefs and Abstract or Excerpts from the Record.

a. Contents and form of briefs: S. Ct. R. 341 612 (j), 344, 612 (m)

b. Contents and form of abstract or excerpts from the record: S. Ct. R. 342, 612 (b), 344, 612 (m)

c. Times for filing briefs and abstracts or excerpts: S. Ct. R. 343, 612 (l)

d. Motions for extension of time: S. Ct. R. 610, 361

e. Number of copies to be filed and served: S. Ct. R. 344, 612 (m)

f. Number of copies in appeals by indigent: S. Ct. R. 607 (d)

g. Process in reviewing court: S. Ct. R. 370, 612 (s)

h. Constructive date of filing: S. Ct. R. 373, 612 (u)

i. Amicus Curiae briefs: S. Ct. R. 363, 612 (n)

6. Oral Argument

a. Request: S. Ct. R. 353, 611 (b)

b. Sequence and manner of calling cases: S. Ct. R. 611 (a), 351

c. Conduct of oral argument: S. Ct. R. 352, 611 (b)

7. Mandate of the Reviewing Court

a. Issuance, stay, and recall of mandates: S. Ct. R. 368, 612 (r)

b. Other matters: S. Ct. R. 613, 614

8. Petitions for Rehearing

a. Petitions for rehearing in general: S. Ct. R. 367, 612 (q)

b. Time for filing: S. Ct. R. 367 (a)

c. Contents: S. Ct. R. 367 (b)

d. Form, copies, service: S. Ct. R. 367 (c), 341, 344, 607 (d)

e. Procedure following filing of petition: S. Ct. R. 367 (d)

f. Limitation on petitions in Appellate Court: S. Ct. R. 367 (e)

9. Petitions for Leave to Appeal to the Supreme Court

a. Petitions for leave to appeal in general: S. Ct. R. 315, 612 (b)

b. Grounds for petition: S. Ct. R. 315 (a)

c. Time for filing: S. Ct. R. 315 (b)

d. Contents of petition: S. Ct. R. 315 (b)

e. Format, service filing: S. Ct. R. 315 (c), 314, 344, 607 (d)

10. Appeals by Indigents

a. Indigent appeals in general: S. Ct. R. 607

b. Appointment of counsel: S. Ct. R. 607 (a)

c. Providing report of proceedings free of cost to defendant: S. Ct. R. 607 (b) [see Mayer v. Chicago, 404 U.S. 189 (1967)].

d. Excusal of filing fees: S. Ct. R. 607 (c)

e. Copies of briefs, abstracts or excerpts: S. Ct. R. 607 (d) Sherman Magidson, Appeal Index Compilator.

7.1 Rule Changes

(Note: Stay Current: Read Advance Sheets and Material from the Administraive Office)

7.2 ARTICLE VI. APPEALS IN CRIMINAL CASES, POST-CONVICTION CASES, AND JUVENILE COURT PROCEEDINGS

RULE 604. Appeals from Certain Judgments and Orders

(a) Appeal by the State.

(1) When State May Appeal. In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence.

(2) Leave to Appeal by State. The State may petition for leave to appeal under Rule 315 (a).

(3) Release of Defendant Pending Appeal. A defendant shall not be held in jail or to bail during the pendency of an appeal by the State, or of a petition or appeal by the State, or of petition or appeal by the State under Rule 315 (a), unless there are compelling reasons for his continued detention or being held to bail.

(4) Time Appeal Pending Not Counted. The time during which an appeal by the State is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103-5 of the Code of Criminal procedure of 1963.

(b) Appeals when Defendant Sentenced to Probation, Conditional Discharge, or Periodic Imprisonment. A defendant who has been found guilty and sentenced to probation or conditional discharge (see Ill. Rev. Stat. 1973, ch. 38, par. 1005-6-1 through 1005-6-4), or to periodic imprisonment (see Ill. Rev. Stat. 1973, ch. 38, par. 1005-7-1 through 1005-7-8), may appeal from the judgment and may seek review of the finding of guilty or the conditions of the sentence, or both. He may

also appeal from an order modifying the conditions of or revoking such a sentence.

(c) Appeals from Bail Orders by Defendant before Conviction.

(1) Appealability of order with Respect to Bail. Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a wirtten motion for the relief to be sought on appeal. The motion shall be verified by the defendant and shall state the following:

(i) the defendant's financial condition;

(ii) his residence addresses and employment history for the past 10 years;

(iii) his occupation and the name and address of his employer, if he is employed, or his school, if he is in school;

(iv) his family situation; and

(v) any prior criminal record and any other relevant facts.

If the order is entered upon motion of the prosecution, the defendant's verified answer to the motion shall contain the foregoing information.

(2) Procedure. The appeal may be taken at any time before conviction by filing a verified motion for review in the Appeallate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

(i) the court that entered the order;
(ii) the date of the order;
(iii) the crime or crimes charged;
(iv) the amount and condition of bail;
(v) the arguments supporting the motion; and

(vi) the relief sought.

No brief shall be filed. A copy of the motion shall be served upon the opposing party. The State may promptly file an answer.

Rule 605. Advice to Defendant

In all cases in which the defendant is found guilty and sentenced to imprisonment, probation or conditional discharge, periodic imprisonment, or to pay a fine, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified, except in cases in which the judgment and sentence are entered on a plea of guilty, the trial court shall, at the time of imposing sentence or modifying the conditions of the sentence, advise the defendant of his right to appeal, of his right to request the clerk to prepare and file a notice of appeal, and of his right, if indigent, to be furnished without cost to him, with a transcript of the proceedings at this trial or hearing, and, in cases in which the defendant has been convicted of a felony or a Clas A misdemeanor or convicted of a lesser offense and sentenced to imprisonment, periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified and a sentence or condition of imprisonment or periodic imprisonment imposed, of his right to have counsel appointed on appeal. The trial court shall also advise him that his right to appeal will be preserved only if a notice of appeal is filed in the trial court within 30 days from the date of the sentence.

Rule 607. Appeals for Poor Persons

(a) Appointment of Counsel. Upon the imposition of a death sentence, or upon the filing of a notice of appeal in any case in which the defendant has been found guilty of a felony or a Class A misdemeanor, or in which he has been found guilty of a lesser offense and sentenced to imprisonment or periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence modified and a sentence of imprisonment or periodic im-

prisonment imposed, and in cases in which the State appeals, the trial court shall determine whether the defendant is represented by counsel on appeal. If not so represented, and the court determines that the defendant is indigent and desires counsel on appeal, the court shall appoint counsel on appeal. When a death sentence has been imposed, the court may appoint two attorneys, one of whom it shall designate as the responsible attorney and the other as assistant attorney for the appeal. Compensation and reimbursement for expenses of appointed attorneys shall be as provided by statute.

(b) Report of Proceedings. In any case in which the defendant has been found guilty and sentenced to imprisonment, probation or conditional discharge, or periodic imprisonment, or to pay a fine, or in which a hearing has been held resulting in the revocation of, or modification of the conditions of, probation or conditional discharge, the defendant may petition the court in which he was convicted for a report of the proceedings at his trial or hearing. If the conduct on which the case was based was also the basis for a juvenile proceeding which was dismissed so that the case could proceed, the defendant may include in his petition a request for a report of proceedings in the juvenile proceeding. The petition shall be verified by the petitioner and shall state facts showing that he was at the time of his conviction, or at the time probation or conditional discharge was revoked or its conditions modified, and is at the time of filing the petition, without financial means with which to obtain the report of proceedings. If the judge who imposed sentence or entered the order invoking probation or conditional discharge or modifying the conditions, or in his absence any other judge of the court, finds that the defendant is without financial means with which to obtain the report of proceedings at his trial or hearing, he shall order the court reporter to transcribe an original and copy of his notes. The original of the report shall be certified by the reporter and delivered to the defendant without charge. The reporter who prepares a report of proceedings pursuant to an order under this rule shall be paid the same fee for preparing the transcript as is provided by law

for the compensation of reporters for preparing transcripts in other cases.

Rule 609. Stays

(a) Death Sentences. A death sentence shall not be carried out until final order by the Supreme Court.

(b) Imprisonment or Confinement. If an appeal is taken from a judgment following which the defendant is sentenced to imprisonment or periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or from an order revoking or modifying the conditions attached to a sentence of probation or conditional discharge and imposing a sentence of imprisonment or periodic imprisonment, the defendant may be admitted to bail and the sentence or condition of imprisonment or periodic imprisonment stayed, with or without bond, by a judge of the trial or reviewing court. Upon motion showing good cause the reviewing court or a judge thereof may revoke the order of the trial court or order that the amount of bail be increased or decreased.

(c) Other Cases. On appeals in other cases the judgment or order may be stayed by a judge of the trial or reviewing court, with or without bond. Upon motion showing good cause the reviewing court or a judge thereof may revoke the order of the trial court or order that the amount of bail be increased or decreased.

7.3 Appointment of Counsel - Draft Order

IN THE CIRCUIT COURT OF _____ JUDICIAL CIRCUIT, _____ COUNTY, ILLINOIS

The People of the State of Illinois)
)
v.) NO. _____
_____)
_____)
Defendant

APPOINTMENT OF COUNSEL ON APPEAL

It appearing to the court that the above named defendant desires to appeal from the order entered by the court on _____ and that the defendant is indigent and requests the appointment of counsel,

IT IS THEREFORE, ORDERED that the OFFICIAL SHORTHAND REPORTER of this court shall:

1. Forthwith transcribe an original and a copy of all the notes taken of the proceedings in the above-entitled cause;

2. Without charge to the defendant and within 49 days from the date the Notice of Appeal is filed file the original of the Report of Proceedings with the clerk of this court and on the same day mail or deliver the copy of the Report of Proceedings to the defendant or his attorney.

3. Within 10 days thereafter, file in writing a Report of Compliance with this Order.

IT IS FURTHER ORDERED that the clerk of this court shall:

1. Prepare and file a Notice of Appeal on behalf of the above named defendant, and shall send a copy of the Notice of Appeal to the defendant's counsel;

2. Send a copy of this Order to the defendant and

to defendant's counsel;

3. Prepare and certify the Record on Appeal pursuant to Supreme Court Rules 324 and 608;

4. File the Record on Appeal in the reviewing court within 63 days from the date the Notice of Appeal is filed, or file a Certificate in Lieu of Record pursuant to Supreme Court Rule 325, and send a copy of the Record on Appeal to the defendant's counsel;

5. Furnish the defendant with a copy of the common law record;

6. Within 10 days thereafter, file in writing a Report of Compliance with this Order.

It is further ordered that Attorney _____, a member of this Bar, is hereby appointed counsel on appeal for the Defendant herein.

_____
Circuit Judge

DATE: _____

7.4 Notice of Appeal - Form

Illinois Supreme Court Rule 606 (d) provides that the notice of appeal shall be substantially in the following form:

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT, _____ COUNTY, ILLINOIS

(Or in the Circuit Court of _____ County)

People of the State of Illinois)
)
vs.) NO._____
_____)
_____)
Defendant

NOTICE OF APPEAL

An appeal is taken from the order or judgment described below:

(1) Court to which appeal is taken:_____
_____

(2) Name of appellant and address to which notices shall be sent.
Name:_____

Address: _____

(3) Name and address of appellant's attorney on appeal.

Name: _____

Address: _____

If appellant is indigent and has no attorney, does he want one apponted? _____

(4) Date of judgment or order:_____

(5) Offense for which convicted:_____

(6) Sentence: _____

(7) If appeal is not from a conviction, nature of order appealed from: _____

(Signed)_____

(May be signed by appellant, attorney for appellant, or Clerk of the Circuit Court)

CHAPTER X

MISCELLANEOUS PROCEEDINGS

CHAPTER X

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X - 0.

SCOPE NOTE

This chapter concerns collateral relief, including the Post-Conviction Act, Section 72, Habeas Corpus, Fitness for Trial, the Sexually Dangerous Persons Act and other materials.

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POST-CONVICTION ACT

1.0 In General

Ill. Rev. Stat., Ch. 38 § 122-1 et seq.

The Post-Conviction Hearing Act is a complete non-technical remedy by which penitentiary prisoners may obtain a hearing and relief where their imprisonment was a substantial violation of their rights under either the federal or state constitution and where their constitutional claims have not been adjudicated or waived.

The Post-Conviction Hearing remedy is not intended as a way to reconsider claims previously considered and determined on appeal from a judgment, It is intended to afford a penitentiary prisoner a mode of general review of constitutional error in the criminal proceedings in which he was convicted. It exists to provide review for substantial denials of constitutional rights. A trial court may, however, treat a prisoner's Petition for Habeas Corpus or

other mislabeled pro se petition alleging constitutional defects as a petition under the Post-Conviction Hearing Act, insofar as it relates to constitutional issues not previously adjudicated. People ex. rel. Palmer V. Twomey, 53 Ill. 2d. 479, 292 N.E. 2d. 379 (1973).

1.1 Misdeameanors

Until otherwise provided by rule of the Supreme Court or by statute, a defendant convicted of a misdemeanor who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his constitutional rights, may institute a proceeding in the nature of a proceeding under the Post-Conviction Hearing Act. The remedy provided in the misdemeanor cases is governed by the Act in all regards, with the following modifications:

A. The defendant need not be imprisoned;

B. The proceeding shall be commenced within four months after rendition of final judgment if judgment was entered upon a plea of guilty and within six months after the rendition of final judgment following a trial upon a plea of not guilty.

C. Counsel need not be appointed to represent an indigent defendant if the trial judge, after examination of the petition, enters an order finding that the record in the case, read in conjunction with the defendant's petition and the responsive pleading of the prosecution, if any, conclusively shows that the defendant is entitled to no relief. People v. Davis, 54 Ill.2d 494, 298 N.E. 161 (1973). People v. Warr, 54 122.2d, 494, 298 N.E. 2d 164 (1973).

POST-CONVICTION ACT GROUNDS

2.0 Constitutional Claims

Specific constitutional rights or due process rights which have been considered under the Post-Conviction Act include: a "fair" jury guarantee; In re Gault rights of juveniles; unlawful arrest and detention; violation of rights after arrest and in preliminary proceedings; failure to advise the defendant of his right to remain silent; disqualification for cause of jurors having scruples against capital punishment; prejudicial publicity concerning the case; deprivation of the right to consel; inadequate representation by appointed counsel; deprivation of rights on a plea of guilty; double jeopardy; denial of speedy trial; knowing use by the prosecution of perjured testimony; suppression of evidence; coerced confessions; denial of change of judge or place of trial; and mental incompetence at the time of the offense or to stand trial.

2.1 Common Grounds

Coerced Guilty Plea: 40 Ill.2d 105 (1968); 404 U.S. 257 (1971)

Failure of Defense Counsel to Disclose Prosecutor's Offer to client: 40 Ill.2d 308 (1968)

Suppression of Evidence: 39 Ill.2d 296 (1968); 408 U.S. 786 (1972); 34 A.L.R. 3d 16

Fitness: 48 Ill.2d 254 (1971); Ill. Rev. Stat., Ch. 38, § 1005-2-1 (e)

Denial or Right to Counsel: 49 Ill. 2d 298 (1971); 406 U.S. 682 (1972)

Incompetence of Counsel: 39 Ill. 2d 96 (1968); 49 Ill. 2d 321 (1971)

Knowing Use of Perjury: 360 U.S. 264 (1959)

Entrapment (Constitutional Variety): 21 Ill. 2d 320 (1961); 411 U.S. 423 (1973)

Right to Speedy Trial: 39 Ill. 2d 73 (1968); 407 U.S. 514 (1972)

Double Jeopardy: 37 Ill. 2d 96 (1967); 398 U.S. 323 (1970); 421 U.S. 519 (1975)

2.2 Res Judicata

The post-Conviction Act is not intended to review constitutional issues which were raised at the trial proceedings or on appeal. A petition which contains only matters which were considered on the original appeal should be dismissed without an evidence hearing. On the other hand, res judicata has no application in the assertion in a post-conviction petition (supported by affidavits) from making a constitutional complaint which, although raised on a formal appeal, requires for its resolution an inquiry into facts not presented in the common-law record of the criminal case, e.g., a coerced guilty plea through intimidation and misrepresentation by court-appointed counsel.

Res Judicata bars subsequent litigation between the parties of matters which could have been (though they were not) actually litigated or decided at a prior proceeding. In this respect, the doctrine differs from collateral estoppel where at a second proceeding a party is estopped from relitigating only facts actually decided. A principal difficlty in using res judicata to bar a post-conviction petition is the problem that arises from the failure of defendant's incompetent counsel to have actually raised the petition grounds when there was opportunity. However, where the failure to contest the constitutional ground, at trial or on appeal, was under defendant's control, res judicata would apply. It is most advisable for trial judges to record all statements, understandings, admonitions, waivers and findings in order to later demonstrate that a particular matter was considered at trial, or that the opportunity to present such matter was provided.

2.3 Waiver

Issues that could have been, but were not, presented on a previous appeal from the petitioner's judgment of conviction are waived if they were known at the time of the appeal and may not be raised by a post-conviction proceeding.

The Illinois Supreme Court has consistently held that the Post-Conviction Hearing Act was not intended to be used as a means of obtaining further consideration of claims of denial of constitutional rights, where a review of the issues raised has been had on appeal. Where review has once been had by a writ of error, including presentation of a bill of exception, any claim which might have been raised but was not, is considered waived. It is only where application of this principle would be manifestly inconsistent with concepts of fundamental fairness that the Illinois Supreme Court has relaxed the general rule. People v. Brown, 52 Ill.2d 227, 287 N.E.2d 663 (1973).

Where there is no indication in the record of the former appeal that the defendant disagreed with the presentation made by his appellate counsel (whether retained or appointed) or that he attempted in any way to raise the points which he raises for the first time in a subsequent post-conviction proceeding, application of the waiver principle to preclude him from raising those points in the post-conviction proceeding is not inconsistent with fundamental concepts of fairness and justice. However, waiver of constitutional issues at trial or by failure to raise them on appeal has no application in a post-conviction petition where the issues could not have been adjudicated at trial or on appeal from a judgment of conviction.

Waiver requires knowledge, therefore, waiver will not apply to a post-conviction petitioner who alleges improper admonishment by the trial court before accepting his guilty plea, (since he could not then have "knowingly" and "intelligently" waived his constitutional rights). See Chapter V.

POST-CONVICTION ACT PROCEDURE

3.0 In General

A proceeding for a post-conviction hearing is commenced by filing a petition with the clerk of the court in which the conviction occurred, together with a copy of the petition, verified by affidavit. The clerk, upon receiving the petition, must docket it and bring it promptly to the attention of the court.

The petitioner must serve a copy of a post-conviction petition upon the State's Attorney, in accordance with any of the methods provided by the governing Supreme Court Rule.

Where a post-conviction petition is sufficient and the state duly makes answer, an evidentiary hearing is required on the constitutional issues framed by the petition and the answer.

3.1 Contents of Petition

The statute, Ill. Rev. Stat., Ch. 38, § 122-2, specifies the contents of a sufficient post-conviction petition as follows: (1) the court and date of the original proceeding which led to defendant's conviction; (2) the constitutional right (s) which defendant claims to have been denied him; (3) a brief statement of the facts which suggest this constitutional deprivation (for example: "The state had in its possession a signed statement of X which stated that he was a participant in the crime and that the defendant was not present; but the state failed to make that evidence available to the defendant, in violation of his constitutional rights"); (4) identify any previous proceedings in which defendant sought relief from his conviction.

The petition should include the case caption and number, and the allegations to support the request for relief, set out in numbered paragraphs. Factual allegations are to be supported by affidavit.

Affidavits or records supporting the claim of denial of constitutional rights should be attached to the petition. This should include the affidavit of counsel where counsel has personal knowledge of the denial. The post-conviction petition should be signed by the defendant. Arguments or citations of points and authorities are properly put before the court at the hearing or in legal memorandum, not in the petition.

Three copies of the petition should be filed with the clerk of the trial court where the defendant was convicted. The State's Attorney should be served with a copy of the petition and should be notified of the proceedings. The defendant may file as a pauper if a statement of financial incapacity is contained in the petition; this permits the preparation of the transcript without charge to the defendant where that is appropriate.

3.2 Presence of Petitioner

There are no confrontation rights requiring the petitioner's presence at the post-conviction hearing, but where factual issues are to be determined, the presence of the defendant may be necessary. The judge may order the defendant brought to the hearing.

3.3 Appointment of Counsel

When post-conviction petitons are brought pro se by prisoners, it is the better practice to appoint counsel even though the petitioner has not made a formal request under Ill. Stat., Ch. 38, § 122-4.

It is sufficient to require the court to appoint counsel for an indigent petitioner that he expresses his wish that counsel be appointed for him. Supreme Court Rule 651 (c) provides:

"(c) Record for Indigents; Appointment of Counsel. Upon the timely filing of a notice of appeal in a post-conviction proceeding, if the trial court determines that the petitioner is indigent, it shall order that a transcript of the record of the post-conviction proceedings, including a transcript of the evidence, if any, be prepared and filed with the Clerk of the Appellate Court and shall appoint counsel on appeal, both without cost to the petitioner. The record filed in that court shall contain a showing, which may be made by the certificate of petitioner's attorney, that the attorney has consulted with petitioner either by mail or in person to ascertain his contentions of deprivation of constitutional right, has examined the record of the proceedings at the trial, and has made any amendments to the petition filed pro se that are necessary for an adequate presentation of petitioner's contentions."

With regard to the required contacts with the petitioner, the submission of a questionnaire or a series of letters, even when the defendant fails to respond, personal contacts by the law partner of the attorney actually appointed, and a personal visit required by a court order, have been upheld as complying with Rule 651 (c).

Complaince with Rule 651 (c), may require access to the transcript of the several proceedings, if such can be prepared.

Where no certificate has been filed by counsel and the record itself does not make a clear showing of compliance, the reviewing court may reverse the dismissal of a post-conviction petition, even though the issues ruled therein would have been res judicata or waived due to a prior direct appeal. People v. Brittain, 52 Ill. 2d. 91, 284 N.E.2d. 632 (1972).

Illinois Supreme Court Rule 651:

Rule 651. Appeals in Post-Conviction Proceedings
(As amended effective July 1, 1971)

"(a) Right of Appeal. An appeal from a final judgment of the circuit court in any post-conviction proceeding lies to the Appellate Court in the district in which the circuit court is located.

"(b) Notice to Petitioner of Adverse Judgment. Upon the entry of a judgment adverse to a petitioner in a post-conviction proceeding, the clerk of the trial court shall at once mail or deliver to the petitioner a notice in substantially the following form:

> 'You are hereby notified that on _____ the court entered an order, a copy of which is enclosed herewith. You have a right to appeal to the Illinois Appellate Court for the _____ _____ District from that order and, if you are indigent, you have a right to a transcript of the record of the post-conviction proceedings and to the appointment of counsel on appeal, both without cost to you. To preserve your right to appeal you must file a notice of appeal in the trial court within 30 days from the date the order was entered.'

"(c) Record for Indigents; Appointment of Counsel. Upon the timely filing of a notice of appeal in a post-conviction proceeding, if the trial court determines that the petitioner is indigent, it shall order that a transcript of the record of the post-conviction proceedings, including a transcript of the evidence, if any, be prepared and filed with the Clerk of the Appellate Court and shall appoint counsel on appeal, both without cost to the petitioner. The record filed in that court shall contain a showing, which may be made by the certificate of petitioner's attorney, that the attorney has consulted with petitioner either by mail or in person to ascertain his contentions of deprivation of constitutional right, has examined the record of the proceedings at

the trial, and has made any amendments to the petition filed pro se that are necessary for an adequate presentation of petitioner's contentions.

"(d) Procedure. The procedure for an appeal in a post-conviction proceeding shall be in accordance with the rules governing criminal appeals, as near as may be."

As to frivolous appeals, see: Anders v. California, 386 U.S. 738 (1967).

3.5 Section 72 (Criminal)

Under Section 72 of the Civil Practice Act, a criminal defendant may petition the trial court to set aside his conviction if the trial judge was not aware of an important fact that would have affected the disposition of the case, assuming that the defendant was not at fault for failing to apprise the judge of the fact. No longer called a writ of error coram nobis, the Section 72 petition is used to set aside a conviction obtained by duress or fraud, or where the conviction results from the excusable mistake or ignorance of the accused.

Section 72 should be used where a non-constitutional issue which might have affected the disposition of the case was not brought to the attention of the original trial court. Thus, if newly discovered evidence does not come to the attention of the defendant within thirty days of the judgment (within which time a motion for a new trial could be made), a petition for a new trial under Section 72 should be filed in the trial court where conviction was had. Proper notice should be served on the State's Attorney. The action must be brought within two years of the conviciton unless the facts were fraudulently concealed or unless the defendant was under a legal disability. See Haddad, Collateral Attack on Convictions, Ill. Crim. Prac., Ch. 15 (1972).

An adverse ruling on the Section 72 petition may be appealed to the Appellate Court.

3.6 State Habeas Corpus

The state writ of habeas corpus is limited in scope by virtue of the coverage of the Post-Conviction Hearing Act. Under the Habeas Corpus provision, Ill. Rev. Stat., Ch. 65, § 22 et seq., the writ may be used to test the jurisdiction of the court, as where it is alleged that the defendant is being tried in Illinois for a crime committed wholly outside the state. Habeas Corpus is commonly used to test the validity of an extradition proceeding. The remedy is not available for a denial of non-jurisdictional constitutional claims.

A petition for habeas corpus is filed in the Supreme Court, but an evidentiary hearing is held in the circuit court where the conviction was had.

A Post-Conviction Act claim mislabeled Habeas Corpus should be treated as petition under the Post Conviction Act. People Ex Rel Palmer v. Twomey, 53 Ill.2d 479 (1973).

FITNESS FOR TRIAL OR SENTENCING

4.0 Fitness in General

In Withers v. People, 23 Ill.2d 131, 177 N.E. 2d 203 (1961), the Illinois Supreme Court observed:

> "The test to be applied in determining whether a defendant has the mental capacity to stand trial is whether he understands the nature and object of the charges against him and can, in cooperation with his counsel, conduct his defenses in a rational and reasonable manner. If the defendant does understand the nature and object of the charges against him and can, in cooperation with his counsel, conduct his defense in a rational and reasonable manner, then he is menally competent to stand trial although upon other subjects his mind may be unsound."

Matters made admissible on the question of the defendant's fitness to stand trial or be sentenced are set out in Ill. Rev. Stat., Ch. 38, § 1005-2-1 (e) (1) (2) and (3).

4.1 Ingredients of Fitness

(1) That he has mental capacity to appreciate his presence in relation to time, place and things; (2) that his elementary mental processes are such that he apprehends (i.e. seizes and grasps with what mind he has) that he is in a court of justice, charged with a criminal offense; (3) that there is a judge on the bench; (4) a prosecutor present who will try to convict him of a criminal charge; (5) that he has a lawyer (self-employed or court-appointed) who will undertake to defend him against that charge; (6) that he will be expected to tell his lawyer the facts and

circumstances, to the best of his mental ability, surrounding him at the time and place of the offense alleged to have been committed; (7) that there is, or will be, a jury present to pass upon evidence adduced as to his guilt or innocence of such charge; and (8) he has memory sufficient to relate the relevant facts and circumstances in his own personal manner. A person possessing these should be considered mentally fit to stand trial.

4.2 Fitness Procedure

FITNESS FOR TRIAL OR SENTENCING

A. The Statutory Standard (Ill.Rev.Stat. 1973, Ch. 38 Par. 1005-2-1 (a)).

1. Ability to understand the nature and purpose of the proceedings.

2. Ability to assist the defense.

B. Procedure for Determining Fitness

1. Raising the issue and burden of proof (Par. 1005-2-1 (b)(i) and (j).

2. Judge's initial determination (Par. 1005-2-1 (c)).

3. Right to jury (Par. 1005-2-1 (d)).

4. Evidence and expert witnesses (Par. 1005-2-1 (e), (f), (g) and (h)).

C. Procedure After a Finding of Unfitness

1. Remand to a hospital (Par. 1005-2-2 (a)).

2. A hearing must be held under the Mental Health Code to determine if the defendant is a person in need of mental treatment, as defined by Chapter 91 1/2, Par. 1-11.

3. If the defendant is committed under the Mental Health Code, both the question of fitness and the question of hospitalization must be reviewed within the first 90 days and each year thereafter (Par. 1005-2-2 (b)).

4. Time in a hospital must be credited against any sentence, and any charges against one found unfit to stand trial must be dismissed once he has been confined for a period equal to the maximum sentence. (Par. 1005-2-2 (a)).

5. If the defendant continues to be unfit, but is not a person in need of mental treatment as defined in the Mental Health Code, he is entitled to bail or recognizance. (Par. 1005-2-2 (a)).

D. The Problem of the Permanently Unfit."

1. The incompetent's rights at a trial. Jackson v. Indiana, 406 U.S. 715 (1972); People ex. rel Meyers v. Briggs, 46 Ill.2d 291, 263 N.E.2d 109 (1970).

2. The inability to convict the incompetent, or to waive incompetency. People v. Lang, 26 Ill. App.3d 648, 325 N.E. 2d 305 (1975).

PROCEEDINGS AFTER ACQUITTAL BY REASON OF INSANITY

A. Where the judge or jury finds that the defendant has recovered, he shall be discharged (1005-2-4 (a)).

B. Where the judge or jury finds that the defendant has not recovered, the court "shall enter an order finding the defendant to be in need of mental treatment" and place him in the custody of the Department of Mental Health (Par. 1005-2-4 (a)).

1. The effect is the same as an order for commitment under Ch. 9 1/2, Par. 9-1 et. seq.

2. To include a specific finding on competence.

4.3 Order for Fitness Examination - Form

ORDER

Upon motion [petition] by the defendant by his attorney,_____, (or state) the court being fully advised in the matter, it is hereby ordered:

1. That criminal proceedings are herein suspended to permit inquiry into present fitness of defendant under Ill. Rev. Stat., Ch. 38, Par. 1005-2-1 (t);

2. That Doctors_____and_____are appointed to examine defendant for ascertainment of his mental condition and capacity to understand the nature and purpose of the proceedings against him, to cooperate with counsel and to assist in his defense; that said doctors file with this court on or before_____ 19____, reports of their examinations of defendant and furnish _____, State's Attorney, and_____defendant's attorney, with copies of said reports; and that they testify at a competency hearing at a time and place hereinafter stated (to be set by subsequent order of this court);

3. That _____, warden of _____ jail, (superintendent of _____ hospital), make defendant available on _____, 19____, at the hour of _____, a.m., and for _____ hour(s) thereafter, for examination by Dr. _____, and provide a room in said jail (hospital) for the examination to be in private;

4. That this court shall impanel a jury on _____ 19____, at the hour of _____ a.m., in _____ department of this court in the Courthouse at _____, or at such other time and place as this court shall hereafter set, for the purpose of determining the fitness of the defendant.

5. That a copy of this order be served upon _____, warden of _____ jail, (superintendent of _____ hospital).

Date:_____ _____

CIRCUIT JUDGE

4.4 Fitness Hearing - Voir Dire Jury Address

Good morning, ladies and gentlemen of the jury. My name is _____, Judge of the Circuit Court of _____ County.

1. I want you prospective jurors to listen carefully to what I have to say. Your duty requires communication and serious attention. The issue to be decided here is the legal fitness of the defendant to stand trial before this Court.

2. You are called here as prospective jurors in the case of People v._____. The defendant, as (Petitioner) is represented by Attorney _____. The State, as (Respondent) is represented by Assistant State's Attorney _____.

3. The defendant has been formally accused by the People of the State of Illinois of a criminal offense and the State wants him to stand trial. The (defendant) (State) has filed a petition alleging that defendant is unfit to stand trial at this time.

4. Unfitness for trial means a person charged with an offense who is unable because of a physical or mental condition:

a) to understand the nature and purpose of the proceedings against him; or

b) to assist in his defense; or

c) after a death sentence has been inposed, to understand the nature and purpose of such sentence.

5. The burden of going forward with evidence of the defendant's fitness shall be on the (defendant) (State).

6. This trial is in the nature of a civil proceeding as distinguished from a criminal trial.

Your decision must be arrived at upon the preponderance of the evidence. In other words, you will decide the question of the defendant's fitness or unfitness by the greater weight of the evidence. In a criminal trial the State must prove its case beyond a reasonable doubt, but

the present case will be decided by a mere tipping of the scales.

7. Your decision will relate only to the defendant's ability to understand the nature and purpose of the proceedings against him or to his ability to assist in his defense. These are the legal requirements.

8. The court is the sole judge of the law in the case. It is your duty to accept the rulings of the court on questions of law as just and proper regardless of your own feelings about it.

9. The jury is the sole judge of the facts in the case. Your decision as jurors must be based solely on the evidence the court allows to be heard or produced during this trial.

You are not to speculate as to what might have happened outside the facts presented in the trial but to make a decision only after all the evidence has been heard, and upon the law as the court gives it to you, with no feeling for or against either side and without bias or prejudice of any sort.

Regardless of what the court says or does, you are not to feel that the court has any opinion as to the facts in the case.

10. Keep an open mind and hear all the evidence before you deliberate to determine your verdict in this case.

Your verdict must be unanimous and you are cautioned to make a sincere attempt to reach a just decision.

11. If it should appear that any expert witness who testifies herein has been appointed by the court, you must understand that the court appoints such experts impartially without regard to the contentions of the parties of the trial and he is to be treated the same as any other witness.

12. Under the law the defendant is presumed to be fit mentally (or physically) (or both).

The Petitioner has the burden of proving the competency of the defendant.

The Petitioner is the (State)

(Defendant)

The Respondent is the (State)

(Defendant)

13. Lawyers from both sides may properly make objections to matters before the court, and if the court strikes out, or warns the jury to disregard any matter, the jury will disregard it in arriving at its decision.

14. I will ask a few questions. If your answer is "yes" to a question, indicate by rising and giving your name and star number only.

QUESTIONS BY COURT: (1) Have you or anyone in your family ever been involved in any way in a fitness or competency hearing or proceeding? (2) Is there anything about the nature of the proceedings or do you know of any reason that would prevent you from rendering a fair decision?

15. In the jury box you will be asked questions to determine your fitness and impartiality as jurors. These questions will not be put to embarrass you or pry into your private affairs, and you are sworn to give true answers.

Mr. Clark, please swear the prospective jurors and call 12 to the jury box.

4.5 Defendant Found Unfit

If found unfit, commit defendant to a Department of Mental Health or hospital, and follow the procedure set out in Ill. Rev. Stat., Ch. 38, Par. 1005-2-2.

If found fit, order the suspended proceedings to be resumed and set date for trial.

Re-arraign the defendant and take his plea before reinstating proceedings.

SEXUALLY DANGEROUS PERSONS ACT

5.0 In General

The Sexually Dangerous Persons Act was originally enacted in 1938 and is now set out in the Code of Criminal Procedure, Ill. Rev. Stat., Ch. 38, Pars. 105-1 to 105-12. It provides that when a person is charged with an offense, the Attorney General or the State's Attorney may file a petition in the original criminal proceeding setting forth facts tending to show that the person charged is a sexually dangerous person. If, upon a hearing, and after examination by two qualified psychiatrists, the accused is found to be a sexually dangerous person, he must be committed to the custody of the Director of Corrections until recovered.

The Act further provides that proceedings thereunder shall be civil in nature, and that the respondent shall have a right to demand a jury trial and to be represented by counsel.

Sec. 105-1.01 defines a sexually dangerous person as follows:

> "All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensitites to the commission of sex offenses, and who have demonstrated propensities towards acts of sexual assault or acts of sexual molestation of children are hereby declared sexually dangerous persons."

5.1 Elements

(1) A mental Disorder, (2) coupled with criminal

propensities, (3) to commit sex offenses, (4) and who has demonstrated (5) propensities towards acts of sexual assault or acts of sexual molestation of children.

5.2 Court's Duties

Under Sec. 105-4, two qualified psychiatrists must be appointed after the proper filing of a petition.

A sexually dangerous personality is not in itself a condition that renders a defendant incompetent to stand trial or waive jury.

5.3 Order for Examination - Form

ORDER

Upon motion of _____, defendant, by his attorney, _____ (State's Attorney) (the court's own motion), it appearing to the court, and the court finding, that defendant is 17 years or older and is charged with the offense of _____;

It is ordered that Doctors _____ and _____, duly licensed physicians and qualified psychiatrists, who have agreed to examine defendant at the time and place hereinafter stated (if a time and place can be arranged) are appointed to examine him personally and report in writing to this court the result of the examination, a copy of which shall be delivered to defendant; that _____, warden of _____ jail, make defendant available and provide a room at said jail for private examination of defendant by said doctors, (defendant submit himself to such examination) at _____, on _____, 19____, at the hour of _____ a.m., and for _____ hour(s) thereafter, and that by subsequent order of the court the cost of such examination shall be made a charge against, and payable from, the general fund of _____ county.

It is further ordered that a copy of this order shall be delivered to _____, warden of _____ jail.

Date:_____ _____

CIRCUIT JUDGE

See: Callaghan, Vol 6

ORDER

This cause coming on to be heard for a determination by the court (a jury) as to whether defendant, _____, is a sexually dangerous person within the meaning of Ill. Rev. Stat., Ch. 38, Par. 105-1.01 and, the court having heard and considered the evidence, finds that defendant, _____, is, and for one year immediately preceding the filing of the petition in this proceeding has been, a sexually dangerous person (or a jury having been impanelled to determine that issue and having heard the evidence adduced in court, and having been duly instructed by the court as to the law, returned a verdict in words as follows:

> "We, the jury, find that the defendant, _____, is and for a period of not less than one year immediately preceding the filing of the petition in this proceeding has been, a sexually dangerous person."

It is therefore ordered and adjudged that the Director of the Department of Corrections is appointed guardian of the person of defendant, _____, and that defendant shall stand committed to the custody of such guardian who shall safely keep and provide care and treatment for defendant as required by law until the defendant is recovered and released in accordance with law.

It is further ordered that a certified copy of this order be delivered to the Director of the Department of Corrections.

Date: _____ _____

CIRCUIT JUDGE

See: Ill. Rev. Stat., Ch. 38, Par. 105-8

APPENDIX I

A HANDBOOK OF

CRIMINAL LAW CITATIONS

BY

MATTHEW J. MORAN

ASSOCIATE JUDGE

CIRCUIT COURT OF COOK COUNTY

ACKNOWLEDGEMENTS

This handbook was published and distributed through the joint cooperation of the Cook County State's Attorney's Office and the Association of Defense Lawyers. Acknowledgement and thanks are hereby made to Cook County State's Attorney, Bernard Carey and Thomas Durkin, President of the Association of Defense Lawyers, Gino L. DiVito and James R. Kavanaugh of the Cook County State's Attorney's Office for their cooperation and assistance in making available Judge Moran's fine work.

THE HANDBOOK

The Handbook of Criminal Law Citations is comprised of over one thousand noteworthy decisions by Illinois Courts of review and the United States Supreme Court. The citations are listed under seventy-five topics and primarily cover the period from 1961 to March, 1977. It is designed for use by defense counsel and prosecuting attorneys and should also be of assistance to judges, assigned to the trial of criminal cases.

THE AUTHOR

Judge Moran is a 1956 graduate of the University of Notre Dame and Notre Dame Law School. Prior to his appointment as Associate Judge in April, 1974, he served as Chief of the Criminal Division in the office of the State's Attorney of Cook County and as Deputy Director of the Illinois Defender Project, now known as the State Appellate Defender.

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Proof of age is unnecessary unless evidence shows defendant a minor. People v Cavaness, 21 Ill.2d 47

A minor may testify as to his age. People v Harvey, 9 Ill. App.3d 944

Lack of required age, an affirmative defense. People v DeBartolo, 24 Ill. App.3d 1000

Defendant misrepresented his age as 17. After trial his age was shown to be 16. The age issue was waived. People v Walker, 19 Ill. App.3d 798

AGGRAVATION AND MITIGATION HEARING

Consideration of arrests improper. People v Drewniak, 105 Ill. App.2d 37

Strict rules of evidence do not apply. People v Hurst, 42 Ill.2d 217

Pending cases may be considered if presented in detail and protection from future prosecution on these cases. People v Hampton, 5 Ill. App.3d 220

School record properly considered. People v Fowler, 8 Ill. App.3d 927

Hearing not necessary after negotiated plea. People v Haynes, 10 Ill. App.3d 923

Court can consider conduct on dropped charge. People v Farley, 27 Ill. App.3d 568

Pending charges may be considered. People v Jones, 36 Ill. App.3d 491

Improper to consider that trial required disclosure of informer's identity. People v Gilmore, 101 Ill. App.2d 447

No error in informal presentation of prior record. People v Savage, 102 Ill. App.2d 88

Hearsay inadmissable. People v Crews, 38 Ill.2d 331

Prior conviction and fine may be considered although no counsel. People v Heal, 20 Ill. App.3d 965

Use of Bureau of Identification record authorized. People v Evans, 19 Ill. App.3d 780

ARGUMENT TO JURY

On inferences from evidence, reply provoked - no error. People v Hayes, 23 Ill.2d 527

Beyond evidence - error. People v Lewerenz, 24 Ill.2d 295

On evil results of crime - proper. People v Hampton, 24 Ill.2d 558

Improper reference to failure to testify. People v Morgan, 20 Ill.2d 437

Reply that offense probationable not error. People v Galloway, 28 Ill.2d 355

Victim the mother of four - error. People v Hicks, 28 Ill.2d 457

Defense attorney trying to confuse jury - proper. People v Miller, 26 Ill.2d 305

Error cured by prompt action of court. People v Wright, 30 Ill.2d 519

States's evidence uncontradicted - defendant did not testify - no error. People v Norman, 28 Ill.2d 77

Defendant a dope peddler, possession of narcotics case - error. People v Trotter, 84 Ill. App.2d 388

Reading from transcript, discretionary matter for court. People v DeStafano, 85 Ill. App.2d 274

A finding of not guilty would be a crime - error. People v Payton, 72 Ill. App.2d 240

State's evidence unexplained - defendant did not testify - error. People v Burton, 44 Ill.2d 53

Defendant may argue, although represented by counsel. People v Johnson, 45 Ill.2d 38

Calling jurors by name, harmless error. People v Davis, 46 Ill.2d 554

Personal opinion, defense trickery - error. People v Pearson, 2 Ill. App.3d 861

On equally accessible but absent defense witness - error. People v Moore, 9 Ill. App.3d 231

Reading of indictment authorized. People v Robinson, 14 Ill. App.3d 135

Defense created a smoke screen - no error. People v. Merritt, 16 Ill. App.3d 72

On missing alibi witness - authorized. People v Ashton, 25 Ill. App.3d 172

State's evidence uncontradicted and undenied - no error. People v Edmonds, 25 Ill. App.3d 523

Error to comment on missing alibi witness mentioned on cross-examination by State. People v Blakes, 27 Ill. App.3d 439

Error to comment on silence after arrest as distinguished from defendant story. People v Monaghan, 40 Ill. App.3d 322

A defendant has a right to final argument in a bench as well as jury trial. Herring v New York, 422U.S.853

Prejudicial error for prosecutor to argue that defense witnesses lied to protect a member of their own race. People v Richardson, 49 Ill. App.3d 170

It was error for the State to call attention to defense possession of potentially impeaching statements and to comment upon the lack of impeachment. People v Suggs, 50 Ill. App.3d 778.

VALIDITY OF ARREST

Where probable cause is present,a warrant is not necessary, even if time to obtain. U.S. v Watson, 423 U.S. 411

Probable cause to arrest may exist although the wrong man is stopped. Hill v California, 401 U.S. 797

An automobile may be stopped to investigate a crime without probable cause to arrest. Adams v Williams, 407 U.S. 143

Arrest valid although delay of several months. People v Parson, 27 Ill.2d 263

Arrest warrant invalid if based on conclusions in complaint. People v Waitts, 36 Ill.2d 467

Certainty that crime committed not necessary. People v Fleming, 33 Ill.2d 431

Deception in entering premises to arrest authorized after photo identification of offender. People v Macias, 39 Ill.2d 208

Reliability of informant not necessary where ordinary citizen the informer. People v Hester, 39 Ill.2d 489; In re Williams, 30 Ill. App.3d 1025

Vehicle stop on suspicious circumstances, arrest invalid. People v Harr, 93 Ill. App.2d 146

Accusation of accomplice sufficient for probable cause. People v Denham, 41 Ill.2d 1

Probable cause not necessary to arrest parole violator. People v Brantley, 44 Ill.2d 31

Stop not an arrest where no intent to arrest or restraint. People v Bridges, 123 Ill. App.2d 58

Illegal entry into premises tainted probable cause. People v Abrams, 48 Ill.2d 446

Warrant need not be in possession of arresting officer. People v Dopak, 11 Ill. App.3d 555

Drinking from wine bottle in car, arrest valid. People v Floyd, 18 Ill.App.3d 1007

Traffic arrest of attorney on way to court invalid, but charge can be refiled. People v Clancy, 22 Ill. App.3d 14

No right to resist unlawful arrest. People v Locken, 59 Ill.2d 459

Detention authorized after suspicious conduct and for search for object thrown away. People v Tilden, 26 Ill. App.3d 447

Security guard has no right to arrest for ordinance violation. People v Perry, 27 Ill. App.3d 230

An officer may execute a search warrant anywhere in the State. People v Carnivale, 61 Ill.2d 57

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No right to preliminary hearing on validity of misdemeanor arrest. People v Toler, 32 Ill. App.3d 793

Knowledge of one officer imputed to another to justify arrest. People v Beard, 35 Ill. App.3d 725

Issuance of traffic ticket immaterial to validity of arrest. People v Cruz, 38 Ill. App.3d 21

Arrest by Chicago Police officer in suburb, valid. People v Lawson, 36 Ill. App.3d 767

Trial judge must question the complaining witness to validate an arrest warrant. People v Krumery, 74 Ill. App.2d 298

No duty to halt investigation and make arrest where probable cause. Hoffa v U.S., 38 U.S. 293

Investigatory stop justified when prompt action required. People v Gatheright, 43 Ill. App.3d 922

Reasonable grounds necessary to detain and place in a showup. People v Garza, 44 Ill. App. 30

No right to stop motorist to check on drivers license. People v James, 44 Ill. App.3d 300

University security officers are peace officers and have authority to arrest for battery and disorderly conduct. People v Picha, 44 Ill. App.3d 759

Where an anonymous tip is corroborated in part by police observations, an immediate public danger authorizes a search for a weapon. People v McElroy, 44 Ill. App.3d 1040

Police may have the right to stop and question a defendant but not the right to search his person. People v Thomas, 47 Ill. App.3d 402

A stop and frisk is authorized where a defendant and his companion were found at a location where a shot was heard. People v Basiak, 50 Ill. App.3d 155

A curfew violation arrest may be made although on private property. People v Coleman, 50 Ill. App.3d 1053.

Pat down search of passenger in car justified after lawful arrest of driver. People v Thompson, 51 Ill. App.3d 447

Dogs trained to detect narcotics may provide sufficient corroboration for a tip to provide probable cause. People v Campbell, 67 Ill.2d 308

Stop and frisk permitted in high crime area in view of time and dress of defendants. People v McGowan, 67 Ill.2d 73

An otherwise lawful arrest is not invalidated due to failure of police officers to announce their authority and purpose after prolonged knocking on a door. People v Wolgemuth, 69 Ill.2d 154

ARMED VIOLENCE

Statute constitutional and evidence sufficient. People v Hardaway, 108 Ill. App.2d 325

Conviction upheld although gun unloaded. People v Graham, 25 Ill. App.3d 853

Prosecution for armed violence rather than aggravated battery proper. People v Muskgrove, 44 Ill. App.3d 381

Unlawful use of a walking cane justified its classification as a dangerous weapon. People v Lee, 46 Ill. App.3d 343

ARSON

Lien interest in property sufficient for indictment. People v Ross, 41 Ill.2d 445

Knowingly not necessary in indictment. People v Shelton, 42 Ill.2d 490

Without consent not necessary in charge. People v Lundblade, 26 Ill. App.3d 1026

Evidence of willfullness insufficient. People v Hougas, 91 Ill. App.2d 246

Insufficient evidence of substantial step to prove attempt. In re Anderson, 25 Ill. App.3d 134

BAIL

Bail jumping conviction reversed, defendant's presence at post-trial motion not necessary. People v Cox, 74 Ill. App.2d 348

Must be set even for forcible felony after conviction. People, ex rel Stamos v Jones, 40 Ill.2d 62

Bail jumping statute constitutional. People v Arron, 15 Ill. App.3d 645

Refusal to grant I bond to obtain counsel - no error. People v Hayes, 37 Ill. App.3d 772

Defendant indigent although on bond. People v Valdery, 41 Ill. App.3d 201

Parole hold bond must be set. People, ex rel Tucker v Kostos, 42 Ill. App.3d 812

Bond properly withdrawn after finding of guilty. People v Sneed, 24 Ill. App.3d 36

Under specified conditions, bail may be denied. People ex rel Hemingway v Elrod, 60 Ill.2d 74

Denial of bail did not deprive defendant of right to fair trial. People v Kelly, 24 Ill. App.3d 1018

Defendant not fit to stand trial, but not in need of mental treatment. Bail must be set. People ex rel Martin v Strayhorn, 62 Ill.2d 296

10% statute valid. Schilb v Kuebel, 404 U.S. 357

Proof of mailing of notice of bail bond forfeiture not required for bail jumping prosecution. People v Ratliff, 65 Ill.2d 314

Bail not required for parole violator before hearing. People ex rel Tucker v Kotsos, 68 Ill.2d 88

In absence of 72 petition, trial court cannot vacate judgment on bond forfeiture after 30 days. People v Canaccini, 52 Ill. App.3d 811

Deposit on second bond properly applied to existing judgment after forfeiture of first bond. People v Cox, 48 Ill. App.3d 499

BATTERY, AGGRAVATED BATTERY, AGGRAVATED ASSAULT

Teacher may strike student if exercising same reasonable authority that exists for a parent. People v Ball, 58 Ill.2d 36

Aggravated battery as a result of excessive force in self-defense. People v Atkins, 2 Ill. App.3d 372

Aggravated battery conviction reversed - no showing defendant knew victim a police officer. People v Infelise, 32 Ill. App.3d 224

Gun threat to trespasser - conviction reversed. People v Raber, 264 N.E.2d 274

Great bodily harm shown by 28 stitches. People v Alleiv, 117 Ill. App.2d 20

Aggravated battery, police officer victim, statute valid. People v Meints, 41 Ill. App.3d 215

Conviction affirmed, self-defense not available to aggressor. People v Oliver, 11 Ill. App.3d 1152

Battery conviction upheld, although rape claim presented. People v Clark, 13 Ill. App.3d 491

Intercourse alleged, reversed, no harm shown. People v Griffin, 29 Ill. App.3d 581

Aggravated battery, throwing brick at teacher. People v Johnson, 1 Ill. App.3d 616

Aggravated battery not shown by reckless act. People v Barrington, 15 Ill. App.3d 445

Offense shown although victim deceased. People v Mitchell, 22 Ill. App.3d 817

Visible injury not necessary. People v McEvoy, 33 Ill. App.3d 409

Reversed, self-defense right not removed by time interval. People v Bailey, 27 Ill. App.3d 128

Aggravated battery, a Class 3 offense. People v Bratcher, 63 Ill. 2d 534

Conviction reversed, incidental touching by security guard. People v Craig, 46 Ill. App.3d 1058.

Battery properly classified as aggravated because committed on public property. People v Cole, 47 Ill. App.3d 775

Officer engaged in official duties although off duty and working as a security guard. People v Barrett, 54 Ill. App.3d 994

BILL OF PARTICULARS

Denial upheld, information not necessary for defense. People v Davis, 73 Ill. App.2d 386

Limits State evidence but not required to answer legal conclusions. People v Williams, 79 Ill. App.2d 56

Denial upheld, where exact time unknown. People v Stadtman, 15 Ill. App.3d 259

No right to general disclosure of evidence. People v Decker, 19 Ill. App.3d 68

BRIBERY

Attempt, substantial step taken. People v Wallace, 10 Ill. App.3d 580

Conviction reversed, official capacity not shown. People v Jordan, 15 Ill. App.3d 672

Criminal intent not shown, reversed. People v Gokey, 57 Ill.2d 433

Statute valid, not vague. People v Mostert, 34 Ill. App.3d 767

Conviction for bribery of officer reversed where officer had no authority to influence criminal prosecution as alleged. People v Powell, 48 Ill. App.3d 723

BURGLARY

Proof of specific items taken unnecessary. People v Dennis, 28 Ill. 2d 525

Intent to steal may be inferred. People v Johnson, 28 Ill.2d 441

Statute constitutional. People v Reed, 33 Ill.2d 535

Intent not shown - reversed. People v McCombs, 94 Ill. App.2d 308

Possession of stolen property within ten days of offense, sufficient to support conviction. People v Hanson, 97 Ill. App.2d 338

Intoxication defense rejected. People v Bell, 114 Ill. App.2d 194

Pry marks sufficient to show attempt. People v Szymezak, 116 Ill. App.2d 384

Circumstantial evidence sufficient. People v Batie, 113 Ill. App.2d 139

May be committed by one with an interest in the property. People v Williams, 118 Ill. App.2d 341

Conviction reversed, defendant in apartment but knew victim. People v Perry, 272 N.E.2d 766

Forceable entry necessary where public place involved. People v Blair, 1 Ill. App.3d 6

Car wash a building for purpose of statute. People v Blair, 52 Ill. 2d 371

Garage considered part of house, no trespass signs unnecessary. People v Gargano, 10 Ill. App.3d 957

Metal telephone booth considered a building. People v Embry, 12 Ill. App.3d 332

To commit theft shown, although sex act probable. People v McMorris, 17 Ill. App.3d 364

Attempt burglary a Class 3 offense. People v Weeks, 23 Ill. App.3d 989

Entry shown to be without authority, although defendant had a key. People v Woolsey,24 Ill. App.3d 1079

Presence at scene and flight are insufficient for a conviction. In re Whittenburg, 37 Ill. App.3d 793

Offense committed by breaking into an automobile. People v Jennings, 42 Ill. App.3d 168

Proof of ownership not necessary in an attempt burglary case. People v Flowers, 52 Ill. App.3d 301

CHAIN OF EVIDENCE

Stipulation to the testimony of a chemist waives the issue. People v Davis, 33 Ill.2d 135

Positive identification by everyone in the chain is not necessary. People v Cain, 35 Ill.2d 184

Weapon admitted although unmarked, since no evidence of tampering. People v Hines, 267 N.E.2d 696

Proof of chain beyond a reasonable doubt not necessary. People v Marquis, 24 Ill. App.3d 653

Identification of an item removes the necessity to show a chain of possession. People v Watkins, 46 Ill.2d 273

CHANGE OF VENUE - SUBSTITUTION OF JUDGES

Denial proper, where motion to suppress heard. People v McDonald, 26 Ill.2d 325

Motion properly denied where conference held. People v Catalano, 29 Ill.2d 197

Properly denied when too many judges named. People v Cesarz, 44 Ill.2d 180

Motion within ten days of date on judge's call, error to deny. People v Evans, 1 Ill. App.3d 158

Motion filed too late when trial had commenced. People v Savaiano, 10 Ill. App.3d 666

Where the judge had heard the case against the co-defendant, the motion must be granted. People v Robinson, 18 Ill. App.3d 804

The motion is too late where a ruling was made on a substantive issue. People v Johnson, 24 Ill. App.3d 152

Defendant entitled to only one motion unless cause. People ex rel Walker v Pate, 53 Ill.2d 485

Change of place of trial properly denied, publicity issue. People v Speck, 41 Ill.2d 177

Motion still timely although after ten days on call of substitute judge. People v Flowers, 47 Ill. App.3d 809

Motion may be denied although the trial judge previously accepted the defendant's guilty plea on another charge. People v Ward, 49 Ill. App.3d 780

Second motion properly denied although first motion which was granted named only one judge. People v Davis, 54 Ill. App.3d 517

CONDUCT OF COURT

A judge may not ask the witness during his testimony if he knows the penalty for lying. People v Moriarity, 33 Ill.2d 606

Comments provoked by defense counsel. People v Taylor, 32 Ill.2d 165

Judicial examination to clarify testimony permitted. People v Gaston, 85 Ill. App.2d 403

No error committed when judge commended jury on verdict. People v Winstead, 90 Ill. App.2d 167

Conviction reversed due to private investigation by judge. People v Burks, 105 Ill. App.2d 111

Examination of witness by judge not improper. People v Wright, 42 Ill.2d 457

Comment showing opinion of reliability of witness error. People v Schmidt, 118 Ill. App.2d 476

No error where judge in bench trial was aware of three other pending cases. People v Rucker, 9 Ill. App.3d 297

No error where defense counsel advised to ask question at his own risk. People v Hodges, 20 Ill. App.3d 1016

A judge does not have authority to dismiss a charge on his own motion. People v Thomas, 24 Ill. App.3d 907

Error occurred where trial judge examined weapon in evidence outside the presence of the parties. People v Gilbert, 38 Ill. App.3d 816

Excessive questions by judge to expert witness, error. People v Godbout, 42 Ill. App.3d 1001

It is improper for court to inquire as to the reason for a timely motion for substitution of judge. People v Miller, 64 Ill. App.2d 135

The court may allow re-opening of a case to establish facts necessary for a conviction. People v Price, 9 Ill. App.3d 158

Premature findings of guilty before final arguments not fatal where defense subsequently argued and court re-affirmed its finding. People v. Daniels, 51 Ill. App.3d 545

No error when judge examined mechanical operation of weapon outside presence of parties. People v Gilbert, 68 Ill.2d 252

CONFESSIONS - ADMISSIONS

Admissibility for court not jury, preponderance of evidence the standard. Lego v Twomey, 404 U.S. 477

Voluntary although false representation that co-defendant confessed. Frazier v Cupp, 394 U.S. 731

Totality of circumstances the test to be applied on the voluntary issue. Morales v New York, 396 U.S. 102

Attorney request in another state before return to Illinois, statement in Illinois inadmissible. People v Blanehard, 37 Ill.2d 69

Objection during trial to the admissibility of a statement requires a hearing on voluntariness. People v Thigpen, 33 Ill.2d 595

Where an involuntary claim is made, a hearing is necessary whether the statement is an admission or a confession. People v Lefler, 38 Ill.2d 216

A weapon recovered as a result of a coerced confession is inadmissible. People v Alexander, 96 Ill. App.2d 113

All material witnesses must be called by the State when a coercion claim is made. People v Bullocks, 23 Ill.2d 515

Miranda warnings are not necessary when booking questions are asked. People v Fognini, 47 Ill.2d 150

A statement may be admissible even though a defendant is under drug medication. People v Long, 119 Ill. App.2d 75

A statement is not inadmissible because misrepresentations were made as to the amount of evidence against the defendant. People v Pritchett, 23 Ill. App.3d 368

A right to counsel waiver cannot be by silence after the right has been exercised. People v Darnell, 31 Ill. App.3d 627

A youth must be made aware of potential criminal responsibility before a statement is admissible. People v Prude, 32 Ill. App.3d 410

Where an arrest is unlawful, but a statement is given after Miranda warnings, the statement is admissible if voluntary. Brown v Illinois, 422 U.S. 590

A statement given after a request for an attorney may be used for impeachment only. Oregon v Hass, 420 U.S. 714

All witnesses need not be called where fraud is alleged on a motion to suppress. People v Williams, 26 Ill.2d 190

A statement is admissible although the defendant was in custody 44 hours before taken to court. People v Reader, 26 Ill.2d 210

A statement is admissible although a material witness was not called, where he was out of the jurisdiction. People v King, 29 Ill.2d 150

Illegal detention alone does not make a statement inadmissible. People v Melquist, 26 Ill.2d 22

A hearing is necessary although the defendant denied making a confession. People v Norfleet, 29 Ill.2d 287

Where an involuntary claim is not rebutted, the statement is admissible. People v Cunningham, 30 Ill.2d 433

Confession of 14 year old, voluntary. People v Connolly, 33 Ill.2d 128

Judicial confession inadmissible, no warnings. People v Rue, 35 Ill.2d 234

Voluntary, although defendant told it would be better to confess. People v McGuire, 39 Ill.2d 244

Post indictment statement to informer, not an agent of government admissible. People v Milani, 39 Ill.2d 22

Statement to citizen admissible, no warnings necessary. People v Bielecki, 89 Ill. App.2d 41

Statement while indictment pending, no attorney, inadmissible. People v Halstrom, 34 Ill.2d 20

Second statement inadmissible because first obtained without warnings. People v Raddatz, 91 Ill. App.2d 425

Miranda warnings not necessary where statement made to a high school principal. People v Shipp, 96 Ill. App.2d 364

A request for a priest is not equal to one for an attorney. People v Rosochaeki, 41 Ill.2d 483

No warnings necessary where statement made to an insurance agent. People v Vlcek, 114 Ill. App.2d 74

Miranda warnings sufficient although defendant not told he had a right to terminate statement at any time. People v Washington, 115 Ill. App.2d 318

Warnings need not be renewed at each interview. People v McCottrell, 117 Ill. App.2d 1

Statement to fellow inmate, no warnings necessary. People v Smith, 5 Ill. App.3d 642

Statement admissible, although an attorney told the defendant not to speak. People v Taylor, 8 Ill. App.3d 727

Confession to lie test man, admissible. People v Redden, 10 Ill. App.3d 889

A statement may be used in rebuttal, although no Miranda warnings. People v Hooks, 14 Ill. App.3d 89

To inform State's Attorney of cooperation, not an improper inducement to confess. People v Hubbard, 55 Ill.2d 142

Injured defendant and long detention period, statement involuntary. People v Wilson, 16 Ill. App.3d 473

Statement by subnormal 13 year old, inadmissible. People v Devine, 17 Ill. App.3d 1053

Victim's attorney acted as agent for State, warnings necessary. People v Baugh, 19 Ill. App.3d 448

Statement to lie test man after defendant told he failed test, admissible. People v Taylor, 58 Ill.2d 69

Subsequent statement valid although defendant initially refused to give a statement. People v White, 61 Ill.2d 288

Statement admissible if intoxication not extreme. People v Pickerel, 32 Ill. App.3d 822

Warnings not necessary when incriminating statement made by one officer to another. People v Wenstrom, 43 Ill. App.3d 250

Statement after new warnings and separate investigation valid. Michigan v Mosley, 423 U.S. 96

Defendant in pain may give voluntary statement. People v Walden, 43 Ill. App.3d 744

Admission by silence properly admitted where no restraint and circumstances required a response. People v Morgan, 44 Ill.App.3d 459

Where misrepresentation made to minor and his father excluded, his statement is involuntary. People v Groleau, 44 Ill. App.3d 807

Voluntary written statement admissible although prior statement excluded due to inadequate warnings. People v Robertson, 46 Ill. App.3d 750

By juvenile not inadmissible although not told of adult prosecution. People v Prude, 66 Ill.2d 470

Miranda warnings not required during inspection authorized by search warrant. People v Sleezer, 47 Ill. App.3d 969

A volunteered statement is admissible although the defendant initially requested counsel. People v Morgan, 67 Ill.2d 1

Request of juvenile to speak to his father not a demand for an attorney. People v Riley, 49 Ill. App.3d 304

Statement admissible despite illegal arrest due to intervening event. People v Faulisi, 51 Ill. App.3d 529

A defendant may be questioned after a request to remain silent but not after a request for an attorney. A desire to speak to a priest or a psychiatrist is not a waiver of an attorney demand. People v Washington, 68 Ill.2d 186

Where a minor is illegally arrested, his statement is inadmissible despite Miranda warnings. People v Williams, 53 Ill. App.3d 266

After a traffic arrest, a motorist may be asked if he had a gun, Miranda warnings are not necessary. People v McIntosh, 53 Ill. App.3d 958

A statement that Miranda warnings were given does not satisfy the State's burden of showing proper admonitions. People v Morgan, 69 Ill.2d 200

A defendant cannot be questioned in the absence of an attorney after judicial proceedings have commenced. Brewer v Williams, 51 LE2d 424

CONSPIRACY

Withdrawal not shown, not communicated to others. People v Brown, 26 Ill.2d 308

Physical evidence admissible against all. People v Babitseh, 82 Ill. App.2d 299

Immaterial that acts completed. People v Destefano, 85 Ill.App.2d 274

Statute of limitations runs from last overt act. People v Isaacs, 37 Ill.2d 205

Separate conspiracies not shown. People v Brinn, 32 Ill.2d 232

Not guilty on substantive offense not inconsistent with guilty on conspiracy. People v Kroll, 4 Ill. App.3d 203

Not shown, unexpected shooting. People v Bailey,60 Ill.2d 37

Statements during commission but not after arrests are admissible. People v Hoover, 35 Ill. App.3d 799

No proof outside confession, reversed. People v Holmes, 38 Ill. App.3d 122

CONTEMPT OF COURT

When based upon outbursts at trial, party has a right to a public trial before another judge. Mayberry v Pennsylvania, 400 U.S. 455

Where a dispute between attorney and judge, error to deny a substitution of judge and to impose punishment at the end of the trial. Taylor v Hayes, 418 U.S. 488

Jury necessary where sentence over six months. Codispoti v Pennsylvania, 418 U.S. 506

Where contempt for refusal to testify before grand jury, cannot confine beyond discharge of grand jury. Shillitani v U.S., 384 U.S. 364

Not by letters criticising the court. People v Hathaway, 27 Ill.2d 615

Properly based upon attorneys failure to appear. People v Buster, 77 Ill. App.2d 224

Indirect reversed where no notice and rule to show cause. People v Vitucci, 49 Ill. App.2d 171

By witness affirmed where immunity given and "I don't remember" response. People v Gilliam, 83 Ill. App.2d 251

Not for failure to appear in court where pre-indictment representation only. People v Rice, 96 Ill. App.2d 253

Order necessary for direct contempt. People v Tomasheusky, 48 Ill.2d 559

Where indirect, a party has a right to substitution of judge. People v Wright, 20 Ill. App.3d 96

Finding upheld where failure to testify after immunity given. People v Denson, 59 Ill.2d 546

No contempt where party makes a good faith assertion of a legal defense. People v Brown, 27 Ill. App.3d 891

A false petition filed with the Court is direct contempt. People v Brown, 30 Ill. App.3d 828

Properly based upon an attorneys refusal to participate in a trial. People v Wilson, 31 Ill. App.3d 1067

An attorney's failure to appear in court is indirect contempt. People v Pincham, 38 Ill. App.3d 1043

A comment during a heated exchange that the court was biased was not contempt. People v Aimen, 98 Ill. App.2d 203

No contempt where defendant acted on good faith advice from his attorney. Maness v Meyers, 419 U.S. 449

Failure to appear after stay of mittimus is indirect contempt. People v Winchell, 45 Ill. App.3d 752

A prosecutor cannot be held in contempt for failure to take part in a preliminary hearing when a direct indictment was returned. People v Kuelper, 46 Ill. App.3d 420

Properly based on the filing of a civil suit against a judge by an attorney during a criminal case. People ex rel Kunce v Hogan, 67 Ill.2d 55

May be based on willful violation of a periodic imprisonment order. People v Colclasure, 48 Ill. App.3d 988

Negligent failure to respond to a subpoence not contempt. People v Witherspoon, 52 Ill. App.3d 151

CONTINUANCES

Error to deny where rebuttal witness is necessary. People v Kuczynski, 23 Ill.2d 320

Request for a delay to check on the law and prospective jurors properly denied. People v Turner, 60 Ill. App.2d 388

Where only one day to prepare, it is error to deny a continuance. People v McNeil, 102 Ill. App.2d 257

Error to deny when motion made two weeks after arraignment. People v Parker, 120 Ill. App.2d 203

Defendant entitled to continuance to prepare for mitigation and aggravation hearing. People v LaRocco, 123 Ill. App.2d 123

Where discovery was furnished late, it is error to deny a continuance for expert witnesses. People v Simpson, 24 Ill. App.3d 835

When additional witnesses are furnished shortly before trial, it is error to deny a continuance. People v Mourning, 27 Ill. App.3d 414

When new defense counsel appears, it is error to deny a continuance. People v Jefferson, 35 Ill. App.3d 424

Error to deny the defense a continuance upon discovery of a false name used by a State witness. People v Grigsby, 47 Ill. App.3d 812

COUNSEL - ATTORNEY

No right to choose appointed attorney. People v Woods, 26 Ill.2d 557

Error to fail to appoint because defendant on bond. People ex rel Baker v Power, 60 Ill.2d 151

Actual incompetence and substantial prejudice must be shown before there is a lack of effective assistance. People v Ward, 32 Ill.2d 253

No right to a new attorney on trial date. People v West, 80 Ill. App.2d 59

Not necessary at hearing to determine if defendant indigent. People v Rebenstorf, 37 Ill.2d 572

Absence of attorney at sentencing is reversible error. People v Hinkle, 1 Ill. App.3d 202

One day for associate counsel to prepare is sufficient. People v Harvey, 5 Ill. App.3d 499

No right to pro-se representation where mental capacity is in issue. People v Rose, 7 Ill. App.3d 374

An attorney's acts are binding on his client. People v Sivels, 14 Ill. App.3d 453

Counsel is necessary where a jail sentence is imposed for a misdemeanor. People v Brooks, 17 Ill. App.3d 974

Leave to withdraw properly denied. People v Johnson, 24 Ill. App.3d152

The right to pro-se representation may be forfeited by conduct. People v Smith, 33 Ill. App.3d 725

A minor is bound by his attorney's jury waiver. People v Hammond, 35 Ill. App.3d 370

A waiver of counsel at sentence as well as trial is necessary. People v Trump, 38 Ill. App.3d 44

A defendant has a constitutional right to pro-se representation. Faretta v California, 422 U.S. 806

A defendant has the right to counsel at a preliminary hearing. Coleman v Alabama, 399 U.S. 1

A defendant has the right to an attorney in any case where a jail sentence may be imposed, felony or misdemeanor. Argersinger v Hamlin, 407 U.S. 25

Effective assistance of counsel not rendered when in a challenge to the courts jurisdiction, no questions were asked on cross. People v Coss, 45 Ill. App.3d 539.

A conflict of interest is present when counsel represents a wife in a criminal case and is the attorney for her husband's estate. People v Cosley, 67 Ill.2d 127

Waiver of counsel prior to trial does not cover sentencing, a new waiver is necessary. People v Glass, 49 Ill. App.3d 617

No right to appointed counsel in a habeas corpus case, People v Goulet, 52 Ill. App.3d 609

An undercover agent cannot use information obtained from a conference between the defendant and his attorney. Weatherford v Bursey, 51 L.E.2d 30

CRIMINAL TRESPASS

No prior notice, conviction reversed. People v Mims, 8 Ill. App.3d 32

To vehicle, conviction upheld although claim that car obtained from another. People v Jackson, 19 Ill. App.3d 765

To vehicle, reversed, no showing passenger knew car stolen. People v Bunch 36 Ill. App.3d 235

Conviction upheld, teacher refused to leave building. People v Spencer, 268 N.E.2d 192

Instruction as to lack of knowledge due to drugged condition warranted. People v Graves, 54 Ill. App.3d 893

CROSS-EXAMINATION

An informant testifying at a trial may be questioned as to his real name and correct address. Smith v Illinois, 390 U.S. 129

A narcotics informer may be questioned as to criminal charges pending against him. People v Soto, 64 Ill. App.2d 94

A witness may be questioned on drinking habits to determine credibility. People v Zaeske, 67 Ill. App.2d 115

Arm inspection of addict informer, proper. People v Washington, 81 Ill. App.2d 162

Cannot question defendant on prior conviction. People v Headrick, 65 Ill. App.2d 169

Cross not limited to direct, a matter of discretion for the trial judge. People v Clark, 96 Ill. App.2d 247

A court witness may be cross-examined by either side. People v Marino, 44 Ill.2d 562

Restriction of cross proper in view of the absence of an offer of proof. People v Curtis, 123 Ill. App.2d 384

Error to cross on drinking habits and prior arrests. People v Gibson, 272 N.E.2d 274

Error to restrict cross on an arrest in the same case. People v Barr, 51 Ill.2d 50

No cross permitted by a conviction over ten years old. People v Cox, 293 N.E.2d 727

Cross on police policy properly restricted. People v Noblin, 15 Ill. App.3d 1060

An arrest record of addict may be used on cross. People v Galloway, 59 Ill.2d 158

An alibi witness cannot be questioned on contrary testimony of other witnesses. People v Hawkins, 61 Ill.2d 23

State witness may be questioned on a pending charge. People v Baptiste, 37 Ill. App.3d 808

Error to cross by use of a manual not known as a learned treatise. People v Behnke, 41 Ill. App.3d 276

An inquiry must be allowed on charges dismissed against a witness when motive in issue. People v Garrett, 44 Ill. App.3d 429

Error to allow foundation questions when subsequent expert testimony barred. People v Lofton, 45 Ill. App.3d 157

A defendant cannot be questioned as to the veracity of the state's witnesses. People v Hampton, 46 Ill. App.3d 455

A police officer may be questioned on a relevant omission from a police report. People v Brown, 47 Ill. App.3d 920

DEVIATE SEXUAL ASSAULT

On prior inmate, conviction affirmed. People v Shields, 9 Ill. App.3d 682

By doctor, consent not shown. People v Borak, 13 Ill. App.3d 815

Conviction reversed, force or threat of force not shown. People v Darcy, 18 Ill. App.3d 1068

Statute and sentence provided valid. People v Boyer, 63 Ill.2d 433

Evidence insufficient but attempt conviction upheld. People v Oliver, 38 Ill. App.3d 166

Resistance not necessary if life endangered or overcome by superior strength. People v Poe, 109 Ill. App.2d 295

Homosexual defense rejected. People v Jones, 43 Ill.2d 113

Penetration not essential for offense. People v Beerli, 44 Ill. App.3d 164

DISCOVERY

Conviction reversed for failure of state to disclose favorable police report. People v Murdock, 39 Ill.2d 553

Defense investigators report discoverable when relevant to testimony of witness. U.S. v Nobles, 422 U.S. 225

Not for lie test results. People v Nelson, 33 Ill.2d 48

No right to notes of lab technicians when reports received. People v Hester, 39 Ill.2d 489

Not for grand jury worksheets. People v Torello, 109 Ill. App.2d 433

It is error to refuse to disclose at trial the identity of a participating informer. People v Lewis, 12 Ill. App.3d 762

Interview notes are discoverable. People v Bassett, 56 Ill.2d 285

Misdemeanor discovery order invalid, no court discretion. People v Narducy, 23 Ill. App.3d 806

Known rebuttal witness must be listed. Good cause necessary before inspection of state file. People v Manley, 19 Ill. App.3d 365

Error exists where to avoid discovery, notes were not taken after an interview. People v Destefano, 30 Ill. App.3d 935

The court in its discretion may require a written summary of an oral statement. People v Wilson, 32 Ill. App.3d 842

Defense investigators statement is discoverable. Expert witness statements of defense are discoverable only if the expert is to be called. People ex rel Bowman v Woodward, 63 Ill.2d 382

Notice to defense counsel of photographing of a defendant is necessary. People v Nichols, 63 Ill.2d 443

The court in its discretion may allow the use of exhibits not listed in a discovery response, if no surprise. People v Acevedo, 40 Ill. App.3d 105

Notice of alibi witnesses through use of discovery rules authorized. People ex rel Carey v Strayhorn, 61 Ill.2d 85

Where probable cause to arrest, fingernail scrapings may be taken over objection. Cupp v Murphy, 412 U.S. 291

Error for state not to disclose accomplice witness until time of trial. People v Millan, 47 Ill. App.3d 296

Exclusion of witnesses too severe a sanction for violation of discovery rules. People v Jackson, 48 Ill. App.3d 769

State must disclose known alias of witnesses. People v Berland, 52 Ill. App.3d 96

Lost notes on statement not fatal to admissibility in absence of intentional misconduct. People v Stmps, 52 Ill. App.3d 320

Rule to show cause proper rather than sanctions for misdemeanor discovery violation. People v Petru, 52 Ill. App.3d 676

Defendant properly barred from interposing a defense different from pre-trial answer. People v Jayne, 52 Ill. App.3d 990

DISORDERLY CONDUCT

Conviction arising from sitting in street upheld. People v Raby, 40 Ill.2d 392

Obstructing police officer offense shown. People v Jackson, 266 N.E.2d 475

Shouting testimony insufficient to show disorderly conduct. People v Suriwka, 2 Ill. App.3d 384

Drinking in house, offense not proven. People v Johnson, 15 Ill. App.3d 471

Arguing with officer not sufficient for disorderly conduct. People v Douglas, 29 Ill. App.3d 738

Not shown by emotional outburst on telephone, no knowing intent to annoy. People v Cooper, 32 Ill. App.3d 516

Ordinance not limited to fighting words, invalid. Sewes v New Orleans, 415 U.S. 130

Obscene language alone not sufficient for offense. Cohen v California, 403 U.S. 15

Properly based on refusal to obey officer. People v Gonzalez, 43 Ill. App.3d 838

DOUBLE JEOPARDY

Preliminary hearing not jeopardy. People v Webb, 39 Ill.2d 146

Not after mistrial unless on abuse of discretion. People v Nilsson, 44 Ill.2d 244

Ordinance prosecution barred subsequent criminal charge. People v Gilmore, 20 Ill. App.3d 1090

Not applicable to ordinance violations. City of Chicago v LaSalle National Bank, 20 Ill. App.3d 462

No double jeopardy where dismissal of charge before jury panel selected and sworn. People v Grevan, 23 Ill. App.3d 997

Order vacating directed verdict created a double jeopardy defense. People v Hutchinson, 26 Ill. App.3d 368

No new trial because of insufficient evidence unless proper evidence excluded. People v Woodall, 61 Ill.2d 60

Double jeopardy rights apply where mistrial declared due to difficulty with complaining witness. People v Phillips, 29 Ill. App.3d 529

No trial bar by former trial under void charge. People v Bailey, 31 Ill. App.3d 1045

If party punished for criminal contempt, he cannot be prosecuted for battery. People v Gray, 36 Ill. App.3d 720

Defense exists where dismissal after jury sworn and no state witness presented. People v Hurlbert, 41 Ill. App.3d 300

Trial on city charge barred state prosecution. Waller v Florida, 397 U.S. 387

Where prior conviction revealed, mistrial proper as to both defendants over objection of one. People v Grignon, 37 Ill. App.3d 418

No double jeopardy where mistrial caused by conduct of defense attorney. U.S. v Dinitz, 424 U.S. 600

Not caused by mistrial due to improper question by prosecutor, no attempt to gain an unfair trial advantage. People v Wilson, 48 Ill. App.3d 885

Not by prosecution for theft in another county based on item taken in a subsequent burglary prosecution. People v Simpson, 54 Ill. App.3d 504

Dismissal of defective charge at close of evidence, no bar to second trial. Lee v United States, 53 L.E.2d 80

DRIVING WHILE UNDER THE INFLUENCE

No Miranda warnings are necessary before a breathalizer test. People v Mulack, 40 Ill.2d 429

Conviction reversed where it was not shown that defendant was driving. People v Ammons, 103 Ill. App.2d 441

Complaint alleging influence from liquor or drugs is void. People v Johnson, 16 Ill. App.3d 819

Implied consent order not appealable by the state, final action by the Secretary of State is necessary. People v Quinn, 17 Ill. App.3d 1058

No showing ampules contaminated. People v Crawford, 23 Ill. App.3d 398

Conviction reversed, asleep in car. People v Hess, 24 Ill. App.3d 299

Evidence sufficient, asleep behind the wheel. People v Johnson, 40 Ill. App.3d 982

Consent necessary for blood test. People v Todd, 59 Ill.2d 534

No right to take test, but right to choose test person. Error to admit refusal to take test. People v Mankowski, 28 Ill. App.3d 641

Breathalizer test statute valid. People v Bullard, 61 Ill.2d 277

Error to deny twelve man jury in ordinance case. Village of Park Forest v Walker, 32 Ill. App.3d 210

Joint trial with implied consent permissible. Conviction reversed where drinking after accident. People v Flores, 41 Ill. App.3d 96

No warnings necessary for physical tests. People v Killian, 42 Ill. App.3d 596

Conviction upheld although tests given before attorney arrived. People v Block, 48 Ill. App.3d 241

No obligation to give other tests after refusal of breathalizer. People v Walker, 52 Ill. App.3d 510

EAVESDROPPING

Narcotics conviction reversed where device unlawfully used to obtain evidence. People v Perez, 92 Ill. App.2d 366

Where electronic eavesdropping used, state surveillance reports must be furnished to defense counsel. Alderman v U.S., 394 U.S. 165

Illinois statute valid. People v Richardson, 60 Ill.2d 189

Recording proper after approval of First Assistant to State's Attorney. People v Marlow, 39 Ill. App.3d 177

Eavesdropping not shown by telephone company records of long distance calls or by device used to detect offenders. People v Smith, 31 Ill. App.3d 423

ENTRAPMENT

Not available if pre-disposition to commit crime. People v Wells, 25 Ill.2d 146

Conviction reversed where State failed to rebut entrapment testimony. People v Jones, 73 Ill. App.2d 55.

Not shown to have been committed by undercover agent. People v Phifer, 30 N.E.2d 644

Where offense denied, the defense is unavailable. People v Gonzales, 24 Ill. App.3d 259

ESCAPE

Errors in prior proceedings immaterial. People v Hale, 55 Ill. App.2d 260

Conviction on original charge unnecessary. People v Winchester, 5 Ill. App.3d 548

Statute constitutional. People v Carlisle, 16 Ill. App.3d 379

Mandatory consecutive sentence when escape from penitentiary. People v Nelson, 26 Ill. App.3d 227

Compulsion as a result of threat of violence not shown. People v Terry, 30 Ill. App.3d 713

Necessity is a proper defense to a charge of escape and must be considered. People v Unger, 66 Ill.2d 333

EVIDENTIARY RULINGS

Another offense may be shown to prove motive, intent, identity, accident, absence of mistake or a common scheme. People v Dewey, 42 Ill.2d 148

Prior indebtedness proper to show robbery motive. People v Fleming, 54 Ill. App.2d 457

Other offenses may be shown when they arise from the circumstances of the arrest. People v Brown, 64 Ill. App.2d 233

A statement may be admitted although hearsay when received to show made, and not the truth of the matter. People v Hannah, 54 Ill. App.2d 218

A prompt complaint of a victim in an indecent liberties case is inadmissible. People v Smith, 55 Ill. App.2d 480

An officer may not testify as to an identification by a witness. People v Solomon, 24 Ill.2d 586

Testimony of intimidation of a witness after the witness testified is inadmissible. People v Veidt, 28 Ill.2d 547

It is error to fail to admit evidence of the violent disposition of the deceased in a self-defense case. People v Adams, 25 Ill.2d 568

Statements and conduct of conspirators is admissible when during the cause of the conspiracy, although not so charged. People v Parson, 27 Ill.2d 263

An expert cannot give an opinion based in part on matters not in evidence. People v Davis, 73 Ill. App.2d 386

A statement of a victim one hour after an event is not admissible as res gestae. People v House, 69 Ill. App.2d 324

Lie detector results are inadmissible. People v Triplett, 37 Ill.2d 234

Gang membership evidence is proper to show motive. People v Turner, 82 Ill. App.2d 10

Positive identification is not necessary for non-susceptible items such as Kennedy half-dollars. People v Johnson, 88 Ill. App.2d 265

Reputation testimony is admissible but not particular acts. People v Myers, 94 Ill. App.2d 340

A sheriff's radio log is admissible as a public record. People v Lacey, 93 Ill. App.2d 430

A jail card is admissible when made during the regular course of business. People v Jackson, 41 Ill.2d 103

An identification made under truth serum is inadmissible. People v Harper, 111 Ill. App.2d 204

A third party's admission of guilt is inadmissible unless justice demands a departure from the rule. People v Moscatello, 114 Ill. App.2d 16

A personal opinion on good character is inadmissible. People v DeMario, 112 Ill. App.2d 175

A court reporter's notes is the best evidence of an in court inconsistent statement. People v Olbrot, 117 Ill. App.2d 366

A sketch is inadmissible. People v Turner, 91 Ill. App.2d 436

Impeaching statements are not available as substantive evidence. People v Bailey, 60 Ill.2d 37

A complaint of a rape victim in response to interrogation is not admissible as a prompt complaint. People v Taylor, 48 Ill.2d 91

The statutory intoxication standards do not apply in a murder case. People v Cunningham, 270 N.E.2d 147

Where other offense evidence is admissible, details are not relevant. People v Butler, 273 N.E.2d 37

A building's reputation is not admissible. People v Boatman, 3 Ill. App.3d 652

A statement within seven minutes of starting incident qualifies as a spontaneous declaration. People v Dearmond, 5 Ill. App.3d 831

A diagram is admissible although not to scale. People v Howze, 7 Ill. App.3d 60

When a defendant enters a denial, a certified copy of a conviction under the same name is inadmissible. People v Connell,6 Ill. App.3d 791

A declaration to a treating physician is admissible. People v Camel, 59 Ill.2d 422

Where no consent was obtained, blood test results are inadmissible. People v Self, 8 Ill. App.3d 1003

A jail letter is hearsay but may be admitted as evidence of intent to act. People v Reddock, 13 Ill. App.3d 296

A gruesome photo of a deceased is admissible when relevant to the time and cause of death. People v Henenberg, 55 Ill.2d 5

Expert testimony on matching fibers is admissible. People v Mackins, 17 Ill. App.3d 24

A fingerprint card is not admissible as a business record. People v Lewis, 18 Ill. App.3d 131

A security guard's testimony is sufficient to prove corporate existence. People v Lewis, 18 Ill. App.3d 131

A traffic expert may not testify as to speed from photograph. People v Dietschweiler, 21 Ill. App.3d 707

A theft bureau agent's testimony as to a false identification number is admissible although he did not see the number put on. People v Snow, 21 Ill. App.3d 873

Collateral estoppel barred evidence on a second indictment. People v Williams, 59 Ill.2d 557

A four year old's statement two hours after an occurrence is not admissible. People v Jackson, 26 Ill. App.3d 618

Evidence of physical impossibility to perform an act is admissible. People v Carbona, 27 Ill. App.3d 988

Restitution by a defendant is admissible to show no criminal intent. People v Campbell, 28 Ill. App.3d 480

It is error to bar proof of an inoperable gun in an armed robbery case. People v Richards, 28 Ill. App.3d 505

There is no declaration of mental state or statement of intent exception to the hearsay rule. People v Cole, 29 Ill. App.3d 369

Secondary evidence as to a court ordered destroyed weapon is admissible. People v McShan, 32 Ill. App.3d 1068

Public survey excluded. People v Thomas, 37 Ill. App.3d 320

Scientific evidence excluding other suspects is admissible. People v Johnson, 37 Ill. App.3d 328

Tape recordings not scientifically tested are not admissible. People v Middleton, 38 Ill. App.3d 984

An expert may testify as to the effect of alcohol. People v Rice, 40 Ill. App.3d 667

A lay person may give an opinion on a footprint. People v Holmes, 41 Ill. App.3d 956

Judicial notice may be taken of a prior conviction in the same court. People v Davis, 65 Ill.2d 157

A medical report is admissible to show the identity of a victim. People v McMahon, 30 Ill. App.3d 16

An entry must be contemporaneous or based on first hand knowledge to be past recollection recorded. People v Munoz, 31 Ill. App.3d 689

Name tag testimony is admissible to identify a body delivered to a funeral home. People v Ransom, 65 Ill.2d 339

An officer may testify as to investigatory procedures which led to the arrest of a defendant. People v Byrd, 43 Ill. App.3d 735

Inference proper on unexplained recent possession of stolen property. Barnes v U.S., 412 U.S. 837

Attorney-client privilege extends only to communications not retention. People v Adam, 51 Ill.2d 46

An officer may state who was identified at a line-up where there was no identification at trial. People v Miller, 27 Ill. App.3d 667

Judicial notice of corporate status as shown in public records proper. People v Middleton, 43 Ill. App.3d 1030

Expert medical testimony necessary to show cause of death when beyond layman's understanding. People v Love, 45 Ill. App.3d 259

Excited utterance admissible although thirty to sixty minutes after injury. People v Robinson, 47 Ill. App.3d 48

Experiment inadmissible since original conditions not duplicated, People v Lonzo, 47 Ill. App.3d 939

Acquittal in trial involving testimony of witness, no bar to rebuttal evidence as to whereabouts of defendant at time in question. People v Bricker, 48 Ill. App.3d 452

Although escape and flight are admissible to show consciousness of guilt, an unrelated offense after an escape is not. People v Pelate, 49 Ill. App.3d 11

Prior threat message given to third party for victim admissible to show made not for truth of matter. People v Howell, 53 Ill. App.3d 465.

Testimony of compensated detective admissible at motion to suppress but not at trial. People v Meacham, 53 Ill. App.3d 762

Error to admit prior unrelated rape where facts were dissimilar and did not fit into modus operandi. People v Cook, 53 Ill. App.3d 997

Hair and blood samples properly taken before indictment although no notice to defense counsel. People v Pugh, 49 Ill. App.3d 174

Evidence of bankruptcy one month after bad check issued immaterial. People v Mitchell, 50 Ill. App.3d 120

Testimony concerning assumed name use immaterial and prejudicial. People v Pumphrey, 51 Ill. App.3d 94

A verdict on the same issue in a federal trial bars state prosecution. People v Borchers, 67 Ill.2d 578

Expert testimony admissible as to rate of growth of corn in a field. People v Jayne, 52 Ill. App.3d 990

EXTRADITION

A defendant has a right to counsel at an extradition hearing. People ex rel Harris v Ogilvie, 77 Ill. App.2d 1

Habeas Corpus writ allowed where no proper demand. People ex rel Ritholz v Sain, 24 Ill.2d 168

Prima facia case must be shown by Governor's warrant. People v Williams, 31 Ill.2d 160

Extradition errors immaterial at trial. People v Halstrom, 34 Ill.2d 20

Defendant must be in demanding state when offense committed. People ex rel O'Mara v Ogilvie, 35 Ill.2d 287

No double jeopardy issue where defective warrant corrected. May v Sexton, 35 Ill.2d 585

Rearrest allowed where released after thirty days due to absence of Governor's warrant. People exrel Vasquez v Pratt, 24 Ill. App.3d 927

Arrest defects harmless if valid Governor's warrant. People ex rel Goodman v Elrod, 32 Ill. App.3d 362

Discharge proper where thirteen year delay in extradition. People ex rel Bowman v Woods, 46 Ill.2d 572

Habeas Corpus properly denied although party held over thirty days. People ex rel Emerson v Pratt, 23 Ill. App.3d 340

A defendant may be released to an out of state federal prison pending an Illinois trial. People v Dye, 45 Ill. App.3d 465

Discharge of relator cannot be based on conflict of evidence. People ex rel Molock v Elrod, 53 Ill. App.3d 14

A defendant who has refused to waive extradition cannot claim a speedy trial violation. People v Uplinger, 69 Ill.2d 181

FORGERY

Document must be set forth within charge. People v Addison, 75 Ill. App.2d 358

Conviction reversed, document incomplete and not capable of defrauding. People v Moats, 8 Ill. App.3d 944

"Another" can be fictitious person. People v Bell, 23 Ill. App.3d 227

Offense may be based upon credit card sales slip. People v Roberts, 27 Ill. App.3d 489

Offense committed although forged document given as security. People v Hackbert, 13 Ill. App.3d 427

Conviction upheld although check indicated void after thirty days. People v Marks, 63 Ill. App.2d 384

FOURTH TERM - SPEEDY TRIAL

Where a trial demand is made to a state court, an attempt must be made to obtain the release of a defendant from federal custody. Smith v Hooey, 393 U.S. 374

Defendant not bound by continuance when neither he nor his attorney was present. People v Williams, 27 Ill.2d 327

Delay caused by motion to quash. People v Hamby, 27 Ill.2d 493

Period tolled by escape. People v Arbuckle, 31 Ill.2d 163

Defendant bound by motion defendant when no objection to a co-defendant's continuance and each represented by the same attorney. People v Jackson, 35 Ill.2d 162

Defendant properly discharged when known to be in custody on another charge. People v Gray, 83 Ill. App.2d 262

Term extension properly granted although witness not used. People v Canada, 81 Ill. App.2d 220

Term runs from confinement in Illinois, rather than notice of custody in another state. People v Hayes, 23 Ill.2d 527

Properly discharged when in another state penitentiary for five years and no attempt to return. People v Bryarly, 23 Ill.2d 313

Substitution of judge within ten days, a delay by the defendant. People v Walker, 100 Ill. App.2d 282

Order of court construed as a motion defendant. People v Jenkins, 101 Ill. App.2d 414

Delay caused by motion for severance. People v Jones, 101 Ill. App.2d 423

Does not apply to probation violation hearing. People v Sims, 108 Ill. App.2d 281

Not extended by expiration of term on weekend. People v Rice, 109 Ill. App.2d 212

Eighteen month delay did not create a right to a speedy trial discharge. People v Tetter, 42 Ill.2d 569

Period runs from restoration of committed defendant. People v Little, 44 Ill.2d 267

Filing of detainer with other county tolls the term. The period runs when the prisoner is turned over. People v Mikrut, 117 Ill.App.2d 444

Term runs from filing of appellate mandate not opinion date. People v Worley, 45 Ill.2d 96

Term does not run anew after mistrial, but fifty-five days not too long. People v Hudson, 46 Ill.2d 177

When three year delay, prejudice need not be shown. Moore v Arizona, 414 U.S. 25

State motion for competency examination of defendant not in good faith and not a delay by the defendant. People v Hugley, 1 Ill. App.3d 828

Eight month delay in filing charges not fatal. People v Carpenter, 2 Ill. App.3d 372

Term expired after warrants lodged at penitentiary. People v Vaughn, 4 Ill. App.3d 51

Renewal of trial demand not necessary. People v Cornwell, 9 Ill. App.3d 799

Discovery motion not defense delay where information available. People v Nunnery, 54 Ill.2d 372

Delay charged to defendant when no hearing sought on pending motion. People v Partee, 17 Ill. App.3d 166

If on bond term does not run although in custody on another charge. People v Daily, 30 Ill. App.3d 413

Attempt escape, term runs from date of charge. People v Dery, 31 Ill. App.3d 70

Defendant must be in jail on charge in issue for term to run. People v Jones, 33 Ill.2d 357

Attorney late, motion defendant proper. People v Howard, 34 Ill. App.3d 145

No speedy trial violation by eleven month mandate delay. People v Farnsworth, 31 Ill. App.3d 771

Preliminary hearing delay properly charged to defendant. People v Gooding, 61 Ill.2d 298

Term runs where trial demand after motion filed. People v Terry, 61 Ill.2d 593

Sexual psychiatric tests not defense delay. People v Leonard, 34 Ill. App.3d 911

Defendant ready, attorney not ready, motion defendant proper. People v Williams, 37 Ill. App.3d 151

Term extension permitted after unsworn testimony. People v Green, 42 Ill. App.3d 978

Delay motion to suppress. People v Donalson, 64 Ill.2d 536

Error to extend term if stipulation offered to testimony of missing witness. People v Grant, 42 Ill. App.3d 790

Defense attorney on trial before same judge, motion defendant. People v Beyah, 42 Ill. App.3d 962

State should have known defendant in custody, discharge. People v Powell, 43 Ill. App.3d 934

No defense delay by motion to quash on novel issue. People v Ferguson, 46 Ill. App.3d 815

Objection to continuance not a trial demand. People v Wyatt, 47 Ill. App.3d 686

Plea negotiations did not toll fourth term. People v McRoberts, 48 Ill. App.3d 292

When a defendant has several cases pending, he cannot delay trial on one and run the term on another. People v Toolate, 48 Ill. App.3d 1038

Order of fourth term discharge cannot be vacated within thirty days. People v Heil, 49 Ill. App.3d 55

Motion state for a continuance properly construed as motion defendant, due to late appearance of defendant. People v Boyce, 51 Ill. App.3d 549

Where the court and attorneys for both sides are engaged in other cases, a continuance is not a delay by the defense. People v Beyah, 67 Ill.2d 423

A motion to sever and a motion for substitution of judge per se break the fourth term. Circumstances determine whether a motion for discovery causes delay. People v Grant, 68 Ill.2d 1

GAMBLING

Arrest in phone booth insufficient to show possession of betting slips behind the telephone. People v Lucas, 109 Ill. App.2d 303

Landlord not presumed to have knowledge of gambling in his building, although he lived nearby. People v Perry, 34 Ill.2d 229

Policy tickets are gambling devices. People v Chatman, 38 Ill.2d 265

Evidence that defendant a keeper insufficient where paper was burned. People v Russo, 266 N.E.2d 395

Felony gambling statute valid. People v Greenman, 38 Ill. App.3d 734

Where a bad search, money must be returned. People v Mota, 27 Ill. App.3d 982

GRAND JURY

Defendant need not be called before Grand Jury. People v Vlcek, 68 Ill. App.2d 178

No probable cause to subpoena witness necessary. People v Adam, 51 Ill.2d 46

Special grand juries are not limited in number or authority. People ex rel Carey v Power, 59 Ill.2d 569

An extended grand jury can consider new matters. People v Miller, 31 Ill. App.3d 436

Record of grand jury minutes not required unless requested by grand jury. People ex rel Bowman v Woodward, 61 Ill.2d 231

A witness cannot refuse to testify because of illegally seized evidence. U.S. v Calandra, 414 U.S. 338

A grand jury witness need not be given Miranda warnings. A statement may be used in a subsequent perjury prosecution. U.S. v Mandujano, 425 U.S. 564

No silent warning before grand jury necessary when perjury shown. U.S. v Rose Wong, 52 L.E.2d 231

Grand jury witness does not have to be told a suspect, and where warned of right to remain silent, a statement is admissible. U.S. v Washington, 52 L.E.2d 238

GUILTY PLEA

The validity of a guilty plea cannot be presumed from a silent record. Boykin v Alabama, 395 U.S. 238

Withdrawal of plea one week later properly denied. People v Worley, 35 Ill.2d 574

Conviction set aside where defendant not advised of consecutive sentence possibility. People v Rue, 35 Ill.2d 234

Defendant need not be present at plea conference. People v Carter, 92 Ill. App.2d 120

No need to advise of loss of license on DWI plea. People v Jenkins, 128 Ill. App. 351

Plea valid although fear of greater punishment after a trial. People v Sutton, 4 Ill. App.3d 97

Speedy trial and extradition issues waived by plea. People v Scott, 3 Ill. App.3d 1063

Plea invalid where charge void. People v Moats, 8 Ill. App.3d 944

Court not bound to accept plea to a lesser offense. People v Williams, 10 Ill. App.3d 456

Transfer to penitentiary warning necessary when sixteen year old enters plea. People v Richmond, 13 Ill. App.3d 187

Valid, although made after improper denial of motion to substitute judges. People v Robinson, 18 Ill. App.3d 804

No improper participation by judge where State was asked if they desired to make an offer. People v Steele, 20 Ill. App.3d 879, 314 N.E.2d 531

When a negotiated plea is set aside on appeal, dropped charges can be reinstated. People v Horne, 21 Ill. App.3d 10

A defendant cannot reserve his right to appeal a ruling on a motion when a guilty plea is entered. People v Green, 21 Ill. App.3d 1072

No probation revocation warning is necessary on a plea. People v Warship, 59 Ill.2d 125

Admonishment as to the mandatory parole period is necessary. People v Wills, 61 Ill.2d 105

Warnings are necessary on a stipulated bench trial unless the defense is included in the stipulation. People v Russ, 31 Ill. App.3d 385

No pre-sentence report is necessary on a negotiated felony plea. People v Barto, 63 Ill.2d 17

Where felony sentence above minimum, the Court must note it is aware of the nature and circumstances of the case and the history and character of the defendant. People v Matychowiak, 18 Ill. App.3d 739

Error not to allow withdrawal where lesser sentence expected. People v Riebe, 40 Ill.2d 565

No appeal from guilty plea where no motion to vacate plea within thirty days. People v Frey, 67 Ill.2d 77

Defendant's presence not necessary on motion to withdraw plea. People v Hummel, 48 Ill. App.3d 1002

New counsel necessary on motion to vacate guilty plea where adequate representation by prior attorney in issue. People v Ball, 50 Ill. App.3d 36

A stipulation that facts are sufficient to support the charge is a sufficient factual basis for a plea. People v Willis, 50 Ill. App.3d 498

When plea vacated, dismissed charges may be reinstated. People v McCutcheon, 68 Ill.2d 101

Where a plea is entered along with a claim of innocence, a hearing is necessary on why the plea was entered. People v Lucas, 53 Ill. App.3d 714

IDENTIFICATION

A lineup is not always necessary. An in-court identification may be sufficient for a conviction if independent from a faulty lineup. People v Blumenshine, 42 Ill.2d 508

A post indictment photo may not be used where no notice to defense counsel. People v Nichols, 27 Ill. App.3d 372

Counsel necessary at post indictment lineups only. People v Palmer, 41 Ill.2d 571

Identification improper due to unlawful arrest. People v Bean, 122 Ill. App.2d 332

A silhouette identification is admissible. People v Garcia, 7 Ill. App.3d 742

It is error to deny a motion to suppress identification hearing. People v Bentley, 11 Ill. App.3d 686

A voice identification is admissible. People v McMorris, 17 Ill. App.3d 364

A one on one showup in a hospital is permitted where the victim is seriously injured. People v Huff, 20 Ill. App.3d 924

A defendant's misconduct at a lineup does not prevent testimony thereon. People v Broadnay, 23 Ill. App.3d 68

Preliminary hearing identification admissible. No counsel right at photo identification. People v Camel, 59 Ill.2d 422

Total facial description not necessary. People v Ellis, 24 Ill. App.3d 870

Photo identification not fatally defective because two photos of defendant in group. People v Owens, 36 Ill. App.3d 1049

No counsel right when photos viewed. U.S. v Ash, 413 U.S. 300

A suggestive identification must be suppressed. Foster v California, 394 U.S. 440

A right to counsel exists where there is a formal adversary proceeding. Kirby v Illinois, 406 U.S. 682

A suspect may be required to wear certain clothes in a lineup. People v Shaw, 6 Ill. App.3d 366

Counsel is necessary at a lineup after an arrest on a warrant. People v Hinton, 23 Ill. App.3d 369

No right to refuse to be in a lineup. People v Nelson, 40 Ill.2d 147

State must give notice to defense of alibi rebuttal witness. People v Manley, 19 Ill. App.3d 365

An identification of a defendant at a preliminary hearing, when the defendant did not have counsel, is not admissible at trial. Moore v Illinois, 54 L.E.2d 424

Identification of a suspect in a police car fifteen minutes after an offense is admissible. People v Manion, 67 Ill.2d 564

Group photo identification not necessary where a police officer is the witness. People v Allender, 69 Ill.2d 38

Composite picture properly excluded at a hearing on a motion to suppress photo identification. People v Wolf, 48 Ill. App.3d 736

One on one identification of suspect shortly after arrest suggestive but not inadmissible. People v McKinley, 69 Ill.2d 145

IMPEACHMENT

Prior inconsistent statements admissible although admitted by witness. People v Stacey, 25 Ill.2d 258

Not necessary for foundation to repeat exact former question and answer. People v Dixon, 28 Ill.2d 122

"Don't remember" testimony subject to impeachment. People v Bush, 29 Ill.2d 367

Court martial conviction for robbery may be used to attack credibility. People v Helm, 40 Ill.2d 39

Impeachment proper although prior conviction on appeal. People v Bey, 42 Ill.2d 139

Foundation cannot be laid outside the presence of the jury. People v Isom, 4 Ill. App.3d 407

Written motion may be used to impeach. People v Sturgis, 14 Ill. App.3d 181

Inconsistent statements must be substantial. People v Boyd, 22 Ill. App.3d 1010

Defendant's statement may be used to impeach defense witnesses. People v Green, 26 Ill. App.3d 662

Collateral impeachment properly excluded. People v Bruce, 32 Ill. App.3d 404

May be through unlawfully seized evidence. People v Brown, 40 Ill. App.3d 1003

By statement contrary to trial defense, no violation of right to remain silent. People v Johnson, 42 Ill. App.3d 194

Impeachment by omission proper where a duty to state. People v Owens, 65 Ill.2d 83

Voluntary statement barred by Miranda may be used for impeachment. Harris v U.S., 401 U.S. 222

An involuntary statement may not be used for impeachment. People v Doss, 26 Ill. App.3d 1

Affidavit of judge sufficient for out of state prior conviction. People v Rowland, 36 Ill.2d 311

Post-arrest silence after Miranda warnings cannot be used to impeach a defendant's testimony at trial. Doyle v Ohio, 426 U.S. 10

Misdemeanor theft convictions proper for impeachment. People v Rudolph, 50 Ill. App.3d 559

Error to impeach defendant's credibility with felony aggravated battery conviction. People v Wright, 51 Ill. App.3d 461

Rape conviction may be used to impeach a defendant. People v Chatman, 52 Ill. App.3d 631

Aggravated battery convictions may be used to affect credibility to show a disposition to place individual self-interest over that of society. People v Kitchen, 53 Ill. App.3d 521

INDECENT LIBERTIES

No force necessary. People v Watts, 19 Ill. App.3d 733

Age must be proved. People v D'Angelo, 30 Ill. App.3d 86

Reasonable belief that party sixteen rejected but offense reduced to contributing to the delinquency of a minor. People v Plewka, 27 Ill. App.3d 553

INCEST

Penalty section unequal but invalid but conviction upheld. People v Boyer, 24 Ill. App.3d 671

Evidence of a prior attempt with the same victim is admissible. People v Sanders, 2 Ill. App.3d 82

Statute invalid on mother-father distinction. People v Yocum, 31 Ill. App.3d 586

Statute valid. People v Malone, 38 Ill. App.3d 157

Statute valid although greater sentences for male offenders. People v Yocum, 66 Ill.2d 211

INDICTMENT - INFORMATION - COMPLAINT

Hearsay permitted before a grand jury. An indictment may be quashed only if all witnesses are incompetent. People v Bissonnette, 20 Ill. App.3d 970

Where a prompt indictment, no preliminary hearing is necessary. People v Aldridge, 20 Ill. App.3d 1045

No ownership allegation is necessary in an attempt theft charge. People v Lonzo, 59 Ill.2d 115

Burglary charge upheld although no street address therein. People v Druden, 25 Ill. App.3d 47

A charge cannot be dismissed because an officer was ordered by a superior not to talk to defense counsel. People v Silverstein, 60 Ill.2d 464

A complaint may be based in part on verified hearsay. People v Mourning, 37 Ill. App.3d 945

Narcotics charge upheld although an element of the offense was missing. People v Rege, 64 Ill.2d 473

"Without legal justification" is not necessary in a murder or manslaughter charge. People v Carlton, 26 Ill. App.3d 995

Ownership allegation not essential to a specific burglary charge. People v Mills, 29 Ill. App.3d 582

"Unauthorized taking," not essential to a theft charge. People v Suarez, 33 Ill. App.3d 689

Court could not dismiss charge on own because the defendant was not fit for trial. People v Byrnes, 34 Ill. App.3d 983

Charge properly dismissed for failure to give home address of witness, when no danger shown. People v Gonzales, 120 Ill. App.2d 406

Knowing allegation not necessary in possession of narcotics charge. People v Smith, 40 Ill.2d 501

Proof of precise date on charge not necessary if within statute of limitations. People v Evans, 24 Ill.2d 215

Charge valid although section number of statute not stated. People v Shannon, 94 Ill. App.2d 110

Without legal justification allegation unnecessary in aggravated battery charge. People v DeArmond, 5 Ill. App.3d 831

Knowledge or intent allegation not essential to robbery charge. People v Hayes, 52 Ill.2d 170

Theft charge fatally defective when mental state not alleged. People v Smith, 7 Ill. App.3d 350

"In performance of his duty" is an essential allegation in an aggravated battery upon a police officer charge. In interest of Bryant, 18 Ill. App.3d 887

Charge sufficient although county not stated. People v Williams, 37 Ill.2d 521

An ordinance violation which alleges the offense was against the People of the State of Illinois is fatally defective. People v Stout, 108 Ill. App.2d 103

Election required only if distinct offenses and not the same transaction. People v Millet, 60 Ill. App.2d 22

No right to challenge although testimony on essential element not presented to grand jury. People v Melson, 49 Ill. App.3d 50

Cannot be dismissed because defendant unfit to stand trial but not in need of mental treatment. People v Ealy, 49 Ill. App.3d 922

Additional counts based on same transaction may be added by information after a preliminary hearing on one count. People v Redmond, 67 Ill.2d 242

May be dismissed due to pre-trial delay only where actual and substantial prejudice is shown. People v Lawson, 67 Ill.2d 449

Hearing on leave to file misdemeanor complaint not required. People v Billings, 52 Ill. App.3d 414

Attempt murder charge void where intent not alleged but rather knowledge that death would probably result from conduct. People v Trinkle, 68 Ill.2d 198

Attorney General has no authority to replace State's Attorney before Grand Jury in absence of request from Court or State's Attorney. People v Massarella, 53 Ill. App.3d 774

INSTRUCTIONS

Modified Allen instruction to deadlocked juries permitted. People v v Prim, 53 Ill.2d 62

Grounds for an objection to an instruction must be stated. People v Abrams, 48 Ill.2d 446

Objection to an instruction held insufficient where a new instruction was not tendered. People v Holt, 7 Ill. App.3d 646

Where only abnormal conduct is present, no need to instruct on insanity. People v Smothers, 55 Ill.2d 172

Where the defendant is mentally retarded, an insanity instruction is necessary. People v Turner, 56 Ill.2d 201

A felony murder instruction is proper although the indictment did not so charge. People v Wright, 56 Ill.2d 523

Where motive evidence was presented, it is error to give an instruction that the State was not required to prove motive. People v Jackson, 22 Ill. App.3d 873

The court has not duty on its own to instruct on the lesser included offense of manslaughter. People v Hall, 25 Ill. App.3d 992

The court need not on its own instruct on the limited purpose of evidence. People v Doss, 26 Ill. App.3d 1

The court need not give an accomplice instruction on its own. People v Parks, 65 Ill.2d 132

It is error to give an Allen type instruction when the jury is not deadlocked. People v Jackson, 26 Ill. App.3d 618

A limiting instruction must be given where a statement is used to impeach a witness. People v Chitwood, 36 Ill. App.3d 1017

Error to give instruction on defendant not testifying, where defense objects. People v Lee, 44 Ill. App.3d 43

Error to give an accomplice instruction where a companion testified for the defense and exonerated the defendant. People v O'Neal, 44 Ill. App.3d 139

An attempt not necessary in felony murder case. People v Miner, 46 Ill. App.3d 273

Error to fail to define "reasonably believes" in self-defense case. People v Underwood, 50 Ill. App.3d 908

Where evidence warrants, a manslaughter instruction may be given in a murder case over defense counsel's objection. People v Lewis, 51 Ill. App.3d 109

JURISDICTION

An order dismissing a charge without prosecution may be vacated within thirty days. People v Lance, 25 Ill.2d 455

Except for appellate matters, the trial court loses jurisdiction when a notice of appeal is filed. People v Brigham, 47 Ill. App.2d 444

Any issue thereon is waived where the defendant misrepresents his age. People v Smith, 59 Ill.2d 236

When a removal petition is pending in a federal court, the state court cannot proceed. People v Martin-Trigona, 36 Ill. App.3d 482

The Juvenile Division of the Circuit Court has no jurisdiction to establish procedures and guidelines that would intrude upon the authority of the Department of Corrections. In re Washington, 65 Ill. 2d 391

An Associate Judge may hear a motion to suppress at a preliminary hearing. People v James, 44 Ill. App.3d 300

Not lost by felony complaint rather than information. People v Garrett, 46 Ill. App.3d 592

A trial court has no jurisdiction to dismiss a charge and hold a defendant on call pending an appeal. People v Heddins, 66 Ill.2d 404

JURY

Cannot impeach own verdict. People v Weger, 25 Ill.2d 370

Withdrawal of jury waiver properly denied. People v Catalano, 39 Ill.2d 197

Improper to select from same venire as co-defendant. People v Faulisi, 34 Ill.2d 187

Tendered but broken panel may be challenged. People v Murray, 73 Ill. App.2d 376

Jury deadlocked after six hours may be returned for further deliberation. People v Daily, 41 Ill.2d 116

Additional challenge request properly denied. People v Rohwedder, 106 Ill. App.2d 1

Jury waiver proper although promise of lighter recommendation if a finding of guilty. People v White, 116 Ill. App.2d 180

Waiver need not be written. People v Basile, 112 Ill. App.2d 108

Claim of prejudiced jury waived when all challenges not used. People v Cunningham, 123 Ill. App.2d 190

Mistrial not necessary when voir dire excused. People v Oliver, 129 Ill. App.2d 83

Signed waiver alone insufficient. People v Losacano, 29 Ill. App.3d 103

No right to challenge sworn juror. People v Manns, 1 Ill. App.3d 871

Error to send provables to jury. People v Manley, 272 N.E.2d 411

No defense right to arrest records of jurors. People v Moore, 51 Ill. 2d 79

Jurors may examine handwriting during trial only in presence of defendant. People v Harter, 4 Ill. App.3d 772

Twenty-nine hour deliberation not too long. People v Gargano, 10 Ill. App.3d 957

Need not be of like income, race or ancestry of defendant. People v Connolly, 55 Ill.2d 421

Ten challenges on murder case. People v Green, 30 Ill. App.3d 1000

Error not to consider read back to jury. People v Autman, 58 Ill.2d 171

Cannot be waived by 17 year old without counsel. People v Davis, 23 Ill. App.3d 775

Jury waiver valid after five minute conference with the defendant. People v Wright, 25 Ill. App.3d 234

Counsel waiver in defendant's presence valid. People v Murrell, 60 Ill.2d 287

Cannot bar all attorney questions on voir dire. People v Willis, 26 Ill. App.3d 513

Waiver shown after record corrected by judge's notes. People v Feather, 42 Ill. App.3d 974

Properly sequestered where danger of influence. People v Bolton, 35 Ill. App.3d 965

In camera examination of each juror not required on publicity. People v Marino, 44 Ill.2d 562

An attorney cannot waive a jury over the demand of his client. People v Smith, 10 Ill. App.3d 61

A defendant may waive 12 for 6 jurors in a misdemeanor case. People v Quinn, 46 Ill. App.3d 579

No error in selection of jury from same venire as defendant's competency jury. People v Flemming, 47 Ill. App.3d 755

Error to permit juror to participate in trial under the belief that a victim would never forget the face of the offender. People v Oliver, 50 Ill. App.3d 665

Refusal of judge to allow jury to examine transcript not error where discretion exercised. People v Madden, 52 Ill. App.3d 951

New trial required where juror visited the scene and discussed the viewing with other jurors. People v Spice, 54 Ill. App.3d 540

JUVENILE MATTERS

No appeal from a transfer to the criminal division. People v Jiles, 43 Ill.2d 145

Jury trial not necessary. In re Fucini, 44 Ill.2d 305

Lie tests results are not admissible in a delinquency hearing. People v Perry, 270 N.E.2d 272

It is not unconstitutional to confine a juvenile for non-criminal acts. In re Sekeres, 48 Ill.2d 431

A curfew violation is sufficient for a delinquency finding. People v Casper, 22 Ill. App.3d 188

The thirty day adjudicatory hearing period is directory not mandatory. In re Armour, 59 Ill.2d 102

It is for the court not the prosecution to determine whether there should be a transfer to the criminal division. People v Rahn, 59 Ill.2d 302

A petition must be filed in juvenile court before an adult prosecution. People v Caudell, 28 Ill. App.3d 916

Arrests may be considered at a dispositional hearing. In re Seibert, 29 Ill. App.3d 129

No state appeal from a denial of a transfer to the criminal division. People v Boclaire, 33 Ill. App.3d 534

Where a minor demands a trial as an adult, no hearing is necessary. People v Thomas, 34 Ill. App.3d 1002

A finding that the minor is a ward of the court is necessary before a dispositional hearing. In re Ross, 37 Ill. App.3d 827

Station adjustments can be considered at a dispositional hearing. In re Wilson, 40 Ill. App.3d 619

No jury advisory trial right in juvenile court. People ex rel Carey v White, 65 Ill.2d 193

Supreme Court Rule 402 warnings not necessary in juvenile court. In re Beasley,66 Ill.2d 385

A juvenile cannot be handcuffed solely because the judge is of the opinion that courtroom security is insufficient. In re Staley, 67 Ill.2d 33

Juvenile detention records may be expunged. In re St. Louis, 67 Ill.2d 43

A court's refusal to transfer a felony charge for adult prosecution is a final order appealable by the State. People v Martin, 67 Ill. 2d 462

Adjudication of wordship is a procedural matter which is waived when not raised in the trial court. In re Tingle, 52 Ill. App.3d 251

Violation of time limitation for hearing requires release from custody but not loss of jurisdiction. People v Dean, 52 Ill. App.3d 383

State court cannot bar disclosure of a juvenile's name in a juvenile court murder case. Oklahoma Publishing Co. v District Court, 51 L.E.2d 355

LESSER INCLUDED OFFENSES

Possession of narcotics is a lesser included offense under a sale of narcotics charge. People v King, 34 Ill.2d 199

Aggravated battery is not a lesser included offense of involuntary manslaughter. People v Higgins, 86 Ill. App.2d 202

Theft is a lesser included offense of robbery. People v Ramey, 22 Ill. App.3d 916

Aggravated battery is a lesser included offense of murder. People v Griffith, 26 Ill. App.3d 193

Reckless conduct is a lesser included offense of aggravated battery. People v Perry, 19 Ill. App.3d 254

Theft is not a lesser offense of burglary. People v Shoemaker, 31 Ill. App.3d 724

Selling of non-narcotic under a false representation is not a lesser included offense of a sale or possession charge. People v Ortega, 83 Ill. App.2d 49

Deceptive practice is not a lesser included offense of forgery. People v Baylor, 25 Ill. App.3d 1070

Intimidation is a lesser included offense of rape. People v Smalley, 43 Ill. App.3d 600

Criminal trespass to vehicle not a lesser included offense of theft. People v Rainbolt, 52 Ill. App.3d 374

Intimidation is not a lesser included offense of armed robbery. People v Stewart, 54 Ill. App.3d 76

MANSLAUGHTER

May be based upon an unreasonable belief in the right of self defense. People v Schwartz, 58 Ill.2d 274

Conviction for killing a prowler reversed. People v Post, 39 Ill.2d 101

Involuntary conviction upheld as a result of a reckless use of a weapon. People v Gordon, 116 Ill. App.2d 260

No manslaughter finding proper where a felony murder charge. People v Weathers, 18 Ill. App.3d 338

Conviction reversed, weapon used against larger man. People v Shields, 18 Ill. App.3d 1080

Victim hit head on fall after blow with fist, manslaughter finding upheld. People v Parr, 35 Ill. App.3d 539

Conviction reversed after accident. Evidence of speeding and following too closely insufficient for manslaughter. People v Frary, 36 Ill. App.3d 111

Conviction of officer after interstate collision in response to emergency call, reversed. People v Chiappa, 53 Ill. App.3d 639

Voluntary intoxication does not reduce voluntary manslaughter to involuntary. People v Zynda, 53 Ill. App.3d 794

MISCELLANEOUS OFFENSES

Medical Practice Act conviction reversed where no showing defendant held himself out to the public as a doctor. People v Shokunbi, 89 Ill. App.2d 53

Complaints fatally defective in charge of violation of Assumed Name Act. People v Arnold, 3 Ill. App.3d 678

Conviction for unlawful possession of a shotgun shell reversed where several in the car where shell found. People v Cogwell, 8 Ill. App.3d 15

Flag desecration conviction reversed where evidence showed defendant layed on the flag. People v Meyers, 23 Ill. App.3d 1044

Conviction for resisting on unlawful arrest upheld. People v Douglas, 29 Ill. App.3d 738

Curfew law for those under 18 is upheld. People v Chambers, 32 Ill. App.3d 44[illegible]

Prostitution conviction reversed where evidence showed an agreement to perform not an offer to perform. People v Johnson, 34 Ill. App.3d 38

Conviction for concealing a homicidal death reversed, where no overt act only knowledge shown. People v Vath, 38 Ill. App.3d 389

Possession of car with identification number removed, statute valid. People v Neville, 42 Ill. App.3d 9

Conviction affirmed for a false report of a crime. People v Stevens, 40 Ill. App.3d 303

No contempt in non-support case where a failure to comply with original sentence was shown. People v Doss, 35 Ill. App.3d 365

Conviction for obstructing justice set aside where intent not shown. People v Eveland, 43 Ill.2d 90

Law clerk not guilty of unauthorized practice of law by appearance and motion in court. People v Alexander, 53 Ill. App.2d 299

Public indecency may be committed in a jail cell. People v Giacinti, 44 Ill. App.3d 699

Knowledge and association insufficient to support a conviction for concealing a fugitive. People v Donelson, 45 Ill. App.3d 609

Statute prohibiting phone call with intent to annoy invalid. People v Klick, 66 Ill.2d 269

Official misconduct shown where officer released defendant against whom there were grounds for a criminal charge. People v Thomas, 50 Ill. App.3d 398

A false denial of involvement cannot be the basis for an obstruction of justice prosecution. People v Brooks, 51 Ill. App.3d 800

Misrepresentation as to relation to defendant not obstruction of justice. People v Dewlow, 54 Ill. App.3d 5

MOTION TO SUPPRESS

Defendant has standing to file a motion to suppress in a possessory charge even where he denies possession of the contraband. People v DeFilipis, 34 Ill.2d 129

No hearing is necessary when the same point was previously ruled upon in a motion to quash. People v Brokowski, 25 Ill.2d 497

The court in its discretion may hear an oral motion during a trial. People v Thomas, 88 Ill. App.2d 71

It is error to reserve a ruling on a motion until the trial of the case. People v Guthrie, 7 Ill. App.3d 243

The motion may be reheard after a denial on a showing of new facts or special circumstances. People v Holland, 56 Ill.2d 318

A defendant has no right to challenge a co-defendant's arrest. People v Basile, 21 Ill. App.3d 273

A second trial judge cannot vacate the suppression of line-up testimony. People v McDonald, 23 Ill. App.3d 86

Hearsay evidence is admissible on a motion to suppress. People v Fultz, 32 Ill. App.3d 317

The court must hear a motion although it was denied as to a co-defendant. People v Starr, 37 Ill. App.3d 495

Where a showing of illegality by the defendant, the burden shifts to the State. People v Moncrief, 131 Ill. App.2d 770

It is not necessary to produce an informer on a motion to suppress evidence seized through a search warrant. People v Smith, 40 Ill.2d 501

Trial testimony properly considered with reference to motion to suppress. People v Berry, 54 Ill. App.3d 647

MULTIPLE PROSECUTION

Statute not applicable where previous order a dismissal without prosecution. People v Rinks, 80 Ill. App.2d 152

Second trial for greater penalty barred. People v Golson, 32 Ill.2d 398

Trial on traffic violation no bar to subsequent manslaughter trial. People v Limauge, 89 Ill. App.2d 307

Statute does not apply to traffic offenses. People v Kenney, 39 Ill. App.3d 941

Manslaughter case barred by traffic trial. In re Vitale, 44 Ill. App.3d 1030

MURDER

Jury not bound by defendant's testimony although he is the only eyewitness. People v Melquist, 26 Ill.2d 22

Conviction reversed where cause of death not established. People v Martin, 26 Ill.2d 547

Specific intent must be shown in attempt murder case. People v Ross, 103 Ill. App.2d 441

Evidence of rape admissible in murder case. People v Nemke, 46 Ill.2d 49

Felony murder conviction set aside, when co-defendant killed. People v Hudson, 6 Ill. App.3d 1062

Felony murder conviction upheld where officer killed another officer in pursuit of felon. People v Hickman, 59 Ill.2d 89

Contributing cause of death sufficiently shown. People v Humble, 18 Ill. App.3d 446

Compulsion defense rejected, fear of third party. People v Smith, 19 Ill. App.3d 36

Conviction reversed, accomplice witness testimony insufficient when promise of reward and inconsistent statements. People v Price, 21 Ill. App.3d 665

Accountability not shown, cab driver killed. People v Robinson, 69 Ill.2d 184

Accountability shown, life and death witness not necessary. People v Tate, 25 Ill. App.3d 411

Absence of suicide not evident, conviction reversed. People v Garrett, 62 Ill.2d 151

Intoxication defense rejected, intent proved. People v Smith, 26 Ill. App.3d 1062

Cause of death established, injury and illness. People v Baer, 35 Ill. App.3d 391

A defendant cannot be charged with felony attempt murder. People v Viser, 62 Ill.2d 568

Previous violent acts of the deceased are relevant in a self-defense murder case. People v Singleton, 41 Ill. App.3d 665

Body identified by dental chart. People v Mattox, 96 Ill. App.2d 148

Suicidal tendencies did not remove intent to kill officer. People v Muir, 67 Ill. 2d 86

NARCOTICS OFFENSES

No specific quantity is necessary for lab tests. People v Norman, 24 Ill.2d 403

A showing of danger is necessary before an inquiry will be barred on the residence and employment of an informant witness. People v Hall, 117 Ill. App.2d 116

Conviction reversed where drug not shown to be a habit forming depressant. People v Fischer, 15 Ill. App.3d 557

No constructive possession is shown where the narcotics were recovered from an apartment occupied by four persons. People v Washington, 17 Ill. App.3d 383

Proof of a particular type of heroin is unnecessary. People v Binkley, 25 Ill. App.3d 27

Barbituates are a controlled substance under the Narcotics Act. People v Elsner, 27 Ill. App.3d 957

Court must consider the Dangerous Drug Abuse Act where the defendant is an addict. People v Stickler, 31 Ill. App.3d 726

The court need not ask if defendant is an addict. People v Newlin, 31 Ill. App.3d 735

Statute valid although it requires proof of a substance containing narcotics rather than a pure substance. People v Mayberry, 63 Ill.2d 1

Robbery is not a crime of violence for the purpose of the Dangerous Drug Abuse Act. People v McCoy, 63 Ill.2d 40

Narcotic provision based on total weight of substance is valid. People v Behnke, 41 Ill. App.3d 276

Possession of a large amount is evidence of intent to deliver. People v Kline, 41 Ill. App.3d 261

An amphetamene charge not alleging weight is a misdemeanor. People v Clutts, 43 Ill. App.3d 366

Constructive possession not shown by mere knowledge. People v Jackson, 23 Ill.2d 360

Conviction reversed where knowledge not shown and narcotics in the sweater of another. People v Reeves, 270 N.E.2d 592

Evidence of a prior narcotics sale is admissible in the trial of a sale of purported narcotics. People v Trigg, 97 Ill. App.2d 261

Sale conviction reversed where no corroboration of addict informer. People v Jackson, 103 Ill. App.2d 123

Judge must exercise discretion on addicts drug abuse election. People v Ruffin, 46 Ill. App.3d 448

An addict must be referred to the Department of Mental Health before a decision on drug election is made. People v Killion, 50 Ill. App.3d 433

Money found in home properly seized as part of narcotics business. People v Snyder, 52 Ill. App.3d 612

OBSCENITY

A person has a right to have stag films or obscene books in his home. Stanley v Georgia, 394 U.S. 557

A film can be seized without a prior hearing if probable cause. Heller v New York, 413 U.S. 483

Conviction reversed where book shown to have literary and historic value. People v Romaine, 38 Ill.2d 325

Conviction set aside where no showing that defendant knew book sold was obscene. People v Kimmel, 34 Ill.2d 578

Proof of sale to minors or unwilling adults not necessary. People v Ward, 25 Ill. App.3d 1045

Statewide standard must be applied. People v Watson, 26 Ill.App.3d 1081

In absence of an emergency, a search warrant or prior adversary hearing is necessary before a seizure. People v Brown, 27 Ill. App.3d 891

Nude and non-expressive dancing not prohibited by constitution. People v Better, 33 Ill. App.3d 58

Obscenity statue valid. People v Ward, 63 Ill.2d 437

Statute valid. Other films on bill of fare need not be considered on obscenity issue. People v Mazzone, 52 Ill. App.3d 859

OWNERSHIP

Conviction reversed where not proven in a criminal damage to property case. People v Smith, 18 Ill. App.3d 851

Security officer's testimony sufficient to show ownership in a corporation. People v Gerhci, 25 Ill. App.3d 191

Sufficiently shown where property owned by a subsidiary corporation of that alleged. People v Figgers, 23 Ill.2d 516

Conviction reversed where no link of defendant with stolen car nor proof that owner's car the one recovered. People v Williams, 24 Ill. 2d 214

Proof of a possessory interest or legal occupancy is required. People v Apple, 91 Ill. App.2d 269

Ownership proof unnecessary in robbery. People v Steenbergen, 31 Ill.2d 615

Testimony of a partner or partnership sufficient. People v Harden, 42 Ill. 2d 301

PERJURY

Conviction reversed where false statement not shown to be material. People v Harris, 102 Ill. App.2d 335

Not shown in application for title certificate. People v Pearson, 98 Ill. App.2d 203

Based upon grand jury testimony, immunity waiver effective. People v Ricker, 45 Ill.2d 562

No conviction unless a fact question, not a vague statement or conclusion. People v White, 59 Ill.2d 416

Charge properly based on contradictory statements while under oath. People v Mitchell, 44 Ill. App.3d 399

No prosecution for unresponsive answer. Bronston v U.S., 409 U.S. 352

Prosecution not warranted when based on response to confusing or ambiguous question. People v Wills, 44 Ill. App.3d 585

False testimony of officer before Grand Jury not coerced by department rule requiring him to testify. People v Beacham, 50 Ill. App.3d 695

State could show false trial statements in subsequent perjury case although defendant acquitted. People v Ward, 50 Ill. App.3d 885

POST - TRIAL MOTIONS

Due diligence necessary when based on newly discovered evidence. People v Harris, 268 N.E.2d 724

New trial granted when location of defense witness concealed. People v Hughes, 11 Ill. App.3d 224

A hearing under Section 72 is required where fraud and duress by a sheriff is alleged. People v Ethridge, 8 Ill. App.3d 235

Juror's affidavits rejected, previously uncooperative witness does not present newly discovered evidence. People v Jones, 26 Ill. App.3d 78

A written post-trial motion limits the grounds for appellate review. People v Irwin, 32 Ill.2d 441

It is error to delay a ruling and deprive the defendant of an appeal. People v Carnes, 30 Ill. App.3d 1030

Cumulative newly discovered evidence is insufficient. People v Williams, 27 Ill. App.3d 858

A hearing must be held on a motion to withdraw a guilty plea. People v Chestnut, 15 Ill. App.3d 188

Arrest of judgment motion not for evidentiary matters. People v Irwin, 32 Ill.2d 441

New trial denied although witness recanted testimony. People v Nash, 36 Ill.2d 275

Substantial constitutional question necessary for post conviction petition. People v Wallace, 35 Ill.2d 620

The Post Conviction Hearing Act applies to misdemeanors as well as felonies. People v Cross, 30 Ill. App.3d 199

Defendant need not be present at a motion for a new trial. People v Berry, 37 Ill.2d 329

In absence of fraud or duress, a motion based on newly discovered evidence must be filed within thirty days. People v Hammers, 48 Ill. App.3d 1023

PRELIMINARY HEARING

A defendant has a right to counsel at a preliminary hearing. Coleman v Alabama, 399 U.S. 1

A court reporter is not necessary at a preliminary hearing. People v Camel, 59 Ill.2d 422

An indictment sixty-five days after an arrest is not prompt, but no dismissal of the charge although no preliminary hearing held. People v. Howell, 60 Ill.2d 117

Where private counsel does not appear, a public defender may be appointed for a preliminary hearing. People v Edmondson, 30 Ill. App.3d 763

A transcript of a preliminary hearing is not a prerequisite before trial. People v Ritchie, 36 Ill.2d 392

No counsel necessary at determination of defendant's custody. Gerstein v Pugh, 420 U.S. 103

Cross examination at a preliminary hearing is limited to direct and inquiries into the witness' credibility. People v Horton, 65 Ill.2d 413

PRIVILEGE

Properly invoked by an attorney for his client. People v Myers, 35 Ill.2d 311

The doctor patient privilege does not apply when information relates to the facts or immediate circumstances of a homicide. People v Hester, 39 Ill.2d 489

Attorney client privilege waived by defendant's testimony. People v Peaslee, 7 Ill. App.3d 312

Husband wife privilege applies only to statements made during the marriage relationship. People v Tinsley, 128 Ill. App.2d 440

Clergyman privilege applied. People v Pecora, 107 Ill. App.2d 283

Self-incrimination right applies to only testimonial compulsion not placing glasses on person. People v Tomaszek, 54 Ill. App.2d 254

The attorney client privilege extends to communications not whether or not retained. People v Adam, 51 Ill.2d 46

Self-incrimination rights apply to a paternity case. People v Brown, 44 Ill. App.3d 783

A defendant's statements to a defense investigator are protected. People v Knippenberg, 66 Ill.2d 276

Legislator returning home from a legislative session has no privilege from a traffic arrest. People v Flinn, 47 Ill. App.3d 357

PROBATION

A preponderance of the evidence rather than reasonable doubt, is the standard at a violation hearing. People v Bauer, 29 Ill. App.3d 396

Consideration must be given to a request for treatment under the Drug Abuse Act at a violation hearing. People v McCoy, 29 Ill. App.3d 601

A pre-sentence investigation is not necessary prior to revocation of probation. People v Handlon, 40 Ill. App.3d 959

A haircut may not be ordered as a condition of probation. People v Dunn, 43 Ill. App.3d 94

Cannot be revoked after a finding of not guilty on a new charge. People v Smith, 31 Ill. App.3d 244

Void indictment on probation case may be questioned at revocation hearing. People v Gregory, 59 Ill.2d 111

Supreme Court Rule 402 warnings do not apply to a revocation hearing. People v Beard, 59 Ill.2d 220

At a revocation hearing, subsequent acts may be considered only on a rehabilitation issue. People v Stillwell, 23 Ill. App.3d 797

Violation proper only after a willful failure to make restitution. People v Harder, 59 Ill.2d 563

A violation may not be based upon hearsay. People v White, 33 Ill. App.3d 523

A finding of no probable cause does not bar a violation. People v Harkness, 34 Ill. App.3d 1

May be revoked on illegally seized evidence. People v Powery, 62 Ill.2d 200

Probation cannot be revoked on a conviction under appeal. People v Lampkins, 28 Ill. App.3d 254

Restitution cannot be ordered on charges not before the court. People v Mahle, 57 Ill.2d 279

A showing of actual prejudice is necessary before a motion for substitution of judge can be granted. People v Haynes, 21 Ill.App.3d 1

A revocation after the expiration of probation is proper where a warrent was issued during the period. People v Cirullo, 40 Ill. App.2d 181

Revocation is authorized although the Fourth Term Act barred prosecution of the new offense. People v White, 98 Ill. App.2d 1

The court may proceed with a revocation hearing before a trial on the new offense. People v Smith, 105 Ill. App.2d 14

An aggravation and mitigation hearing is necessary after revocation. People v Poston, 111 Ill. App.2d 306

There is no right to a jury trial at a probation revocation hearing. People v Gabriel, 270 N.E.2d 869

The court cannot impose a condition that the defendant not work in a tavern. People v Brown, 272 N.E.2d 252

A new hearing on the validity of a conviction need not be held before revocation. People v Brooks, 14 Ill. App.3d 93

Probation cannot be conditioned on cooperation with the police. People v Bellson, 14 Ill. App.3d 1089

Preliminary hearing on new offense not necessary before issuance of revocation warrant. People v Knowles, 48 Ill. App.3d 296

A finding of no violation in a probation violation hearing bars a trial on the same facts in the new case. People v Kondo, 51 Ill. App.3d 874

An admission in violation of Miranda is not admissible in a probation violation hearing. In re McMillan, 51 Ill. App.3d 940

Equal protection laws are not violated although the State proceeds on some violation hearings and not on others. People v Golz, 53 Ill. App.3d 654

RAPE

General reputation of victim in consent case is relevant but not specific acts. People v Collins, 25 Ill.2d 605

Conviction of husband of rape of wife affirmed where third party involved. People v Damen, 28 Ill.2d 464

Defense character witness properly questioned as to the defendant's reputation with woman. People v Lewis, 25 Ill.2d 442

Medical testimony not necessary. People v Gersbacher, 44 Ill.2d 321

Circumstantial evidence sufficient to show defendant not the husband of victim. People v Alexander, 13 Ill. App.3d 635

Previous sexual experience immaterial where identification the issue. People v Stephens, 18 Ill. App.3d 971

Statute valid although reference to male only. People v Medrano, 24 Ill. App.3d 429

Conviction reversed where no prompt complaint and insufficient evidence of force. People v Johnson, 270 N.E.2d 130

Statement at time of offense that one offender had been in prison admissible in consent case. People v Trejo, 40 Ill. App.3d 503

Retarded victim held not able to consent. People v O'Neal, 50 Ill. App.3d 900

RECKLESS CONDUCT AND RECKLESS HOMICIDE

Proof of intentional conduct not necessary. People v Norris, 118 Ill. App.2d 406

Victim not necessary for reckless conduct charge. People v DeKosta, 270 N.E.2d 475

Reckless conduct conviction reversed where no showing defendant knew fired gun was loaded. In re Landorf, 7 Ill. App.3d 89

Brakes failed, conviction for reckless homicide reversed. People v Richardson, 21 Ill. App.3d 859

Vehicle malfunction claim rejected. People v Salazar, 37 Ill. App.3d 800

Reckless homicide statute valid, finding not inconsistent with not guilty on involuntary manslaughter. People v McCollough, 57 Ill.2d 440

ROBBERY AND ARMED ROBBERY

Evidence sufficient although two others claimed guilt. People v Tribbett, 41 Ill.2d 267

Proof of ownership of property not necessary. People v Skinner, 103 Ill. App.2d 201

Use of starter pistol sufficient for armed robbery. People v Trice, 127 Ill. App.2d 310

Conviction upheld although force used after money taken. People v Kennedy, 10 Ill. App.3d 519

Intent not shown, labor dispute. People v Latham, 17 Ill. App.3d 839

Blank target pistol sufficient for armed robbery. People v Ratliff, 22 Ill. App.3d 106

Evidence sufficient for attempt, although victim dead. People v Was, 22 Ill. App.3d 859

Not armed robbery if weapon used only on attempt to recover property. People v Simmons, 34 Ill. App.3d 970

Attempt not shown, no threat of force. People v Williams, 42 Ill. App.3d 134

Voluntary intoxication not a defense. People v White, 40 Ill. App.3d 455

A presumption exists that a gun is loaded and dangerous. People v Greer, 53 Ill. App.3d 675

A shotgun although unloaded is a dangerous weapon in an armed robbery case. People v Webber, 47 Ill. App.3d 543

Extreme voluntary intoxication or drugged condition is necessary to remove intent in an armed robbery case. People v White, 67 Ill.2d 107

SANITY - COMPETENCY

A defendant not competent for trial cannot be indefinitely committed. Jackson v Indiana, 406 U.S. 715

Directed verdict of incompetency required although the defendant testified he was competent. People v McKinstray, 30 Ill.2d 611

A lay witness cannot be cross-examined on technical terms. A psychiatrist may visit a defendant in the absence of an attorney. People v Williams, 38 Ill.2d 115

A competency hearing is necessary where the defendant exhibits amnesia during the trial. People v Stanhope, 44 Ill.2d 173

Sanity shown despite homosexual panic. People v Parisie, 7 Ill. App.3d 1009

Opinion of lay witness and facts properly rebutted expert testimony. People v Jackson, 42 Ill. App.3d 919

A restoration jury cannot be waived. People v Polito, 21 Ill. App.3d 182

Opinion admissible although examination four months after conduct in question. People v Graham, 25 Ill. App.3d 853

Clear and convincing evidence necessary for commitment. In re Wisniewski, 27 Ill. App.3d 104

Mental illness and future dangerous conduct necessary before commitment. In re Welch, 28 Ill. App.3d 716

A psychiatrist may testify in part on customary records of others. People v Ward, 61 Ill.2d 559

A failure to civilly commit does not mean a defendant is capable of standing trial. People v Chambers, 36 Ill. App.3d 838

No criminal court jurisdiction after a finding of still insane. People v Javerek, 40 Ill. App.3d 218

Proof by clear and convincing evidence is necessary for commitment of a defendant with a pending criminal charge. In re Stephenson, 67 Ill.2d 544

The burden of proof of fitness cannot be placed on a defendant. People v McCullum, 66 Ill.2d 306

A defendant has no right to counsel at a sanity examination or a right to refuse to answer questions. People v Larsen, 47 Ill. App.3d 9

A finding of unfitness in a felony trial is not admissible in a civil commitment proceeding. In re Love, 48 Ill. App.3d 517

A defendant cannot waive a finding of unfitness and stand trial. People v Williams, 48 Ill. App.3d 842

A court has no authority to prevent an acquitted defendant's release from a mental health facility. In re Langdon, 53 Ill. App.3d 768

The Department of Mental Health may be required to notify a court and prosecutor before release of a defendant. People v Coughlin, 53 Ill. App.3d 23

SEARCH AND SEIZURE

Where a traffic stop and shifting of feet, no probable cause to search. People v Dotson, 37 Ill. App.3d 176

Where an unlawful stop, the evidence seized must be suppressed although in open view. People v Lilly, 38 Ill. App.3d 379

Traffic stop and nervous driver, insufficient for trunk search. People v Blitz, 38 Ill. App.3d 419

Search unlawful, due to unannounced entry. People v Polito, 42 Ill. App.3d 372

An inventory search of a car to be towed is authorized. People v Clark, 65 Ill.2d 169

When unlawfully on premises, items seized must be suppressed although in plain view. In re Brewer, 24 Ill. App.3d 330

Where an arrest for no drivers license, but no fear or danger to the officer, the automobile cannot be searched. People v Hendrix, 25 Ill. App.3d 339

When a traffic stop and wired plates observed the vehicle identification number may be checked. People v Wolff, 60 Ill. 2d 230

A passenger may be frisked for the protection of the officers, when a driver is lawfully arrested. People v Williams, 28 Ill. App.3d 189

An officer may gain admission to premises by using the name of an invited party. People v Favela, 31 Ill. App.3d 453

A home may be broken into in an emergency search for a victim. People v Clayton, 34 Ill. App.3d 376

The knowledge of one officer is imparted to another, but the information possessed by all must add up to probably cause. Whitely v Warden, 401 U.S. 560

An authorized search incidental to a lawful arrest is limited to a place where the arrestee could reach to destroy evidence or to obtain a weapon. Chimel v California, 395 U.S. 752

For an authorized stop and frisk, reasonable belief that criminal activity exists and that the suspect is dangerous must be shown. Terry v Ohio, 392 U.S. 1

An uncorroborated tip from an unknown informer is insufficient for probable cause. People v Pitts, 26 Ill.2d 395

Probable cause to search may exist although search warrants are invalid. People v Brinn, 32 Ill.2d 232

An informant is not reliable although his prior information led to three arrests. People v McClellan, 34 Ill.2d 572

Where the right to search originally existed, an auto trunk may be searched after the vehicle was brought to a police station. People v Nugara, 39 Ill.2d 482

A landlord's consent is insufficient to search a car in a garage. People v Miller, 40 Ill.2d 154

A search may precede an arrest if reasonable and suspicious circumstances. People v Tassone, 41 Ill.2d 7

An apartment may not be searched in the defendant's absence. People v Bussie, 41 Ill.2d 323

Constitutional warnings are not necessary for valid consent. People v Rhodes, 41 Ill.2d 494

When a judge has reasonable doubt of the existence of an informer and the State fails to produce the informer, seized evidence may be suppressed. People v Clifton, 42 Ill.2d 526

A search of a basement with the owner's consent is authorized. People v Garrett, 115 Ill. App.2d 336

When property is abandoned and thrown away, the right to arrest is immaterial. People v Sylvester, 43 Ill.2d 325

Where binoculars are used, a reasonable expectation of privacy is the test. People v Ciochon, 23 Ill. App.3d 363

A statement that an informant is reliable is insufficient unless there is a showing of how the informant knew the information to be true. Spinelli v U.S., 393 U.S. 410

A full search is authorized after an in custody traffic arrest. U.S. v Robinson, 414 U.S. 218

Consent to search may be validly obtained although there is no showing of knowledge of a right to refuse. Schneckloth v Bustamonte, 412 U.S. 218

Where no showing of reasonable grounds to believe a search is necessary to protect an officer, there is no right to search the vehicle of an ordinary traffic violator. People v Lichtenheld, 44 Ill. App.3d 647

Where a defendant has been arrested and transported to a police station, his vehicle located on private property cannot be searched. People v Jones, 45 Ill. App.3d 307

Flashlight search valid after arrest in motel room but not subsequent evidence technician search. People v Von Hatten, 52 Ill. App.3d 338

Bending movement after traffic violation insufficient to justify a search of the automobile. People v Collins, 53 Ill. App.3d 253

A warrantless search of a footlocker over one hour after a lawful arrest is invalid. U.S. v Chadwick, 53 L.E.2d 538

After a lawful traffic stop, a defendant may be ordered from his vehicle. Where a bulge is observed, a pat down search is authorized. Pennsylvania v Mims, 54 L.E.2d 331

SEARCH WARRANT

A belief that a person arrested for possession of narcotics has additional narcotics in his car is insufficient to justify a search of the car. People v Harshbarger, 24 Ill. App.3d 335

Contraband items not listed in a search warrant may be seized. People v Williams, 36 Ill.2d 505

The return of a warrant to court is immaterial to the validity of the warrant. People v York, 29 Ill.2d 68

Information obtained by an officer holding himself out as a member of the public may be a basis for a search warrant. People v Walker, 30 Ill.2d 213

A statement that prior information was true is insufficient where the basis for the informant's knowledge is not set forth. People v Parker, 42 Ill.2d 42

A party cannot go behind the face of a search warrant and attack the truth of the allegations. People v Bak, 45 Ill.2d 140

A clerical error may be shown by an officer's testimony. People v Smyles, 27 Ill. App.3d 166

A judge who issued a warrant cannot quash it. People v Davis, 28 Ill. App.3d 30

A civil court cannot return property seized under a search warrant in a criminal case. People ex rel Carey v Covelli, 61 Ill.2d 394

Where no emergency a seizure is invalid when there is a failure to announce "police officers" before a forced entry. People v Richard, 34 Ill. App.3d 621

A fictitious name may be used on a search warrant complaint. People v O'Neal, 40 Ill. App.3d 448

A court cannot quash a search warrant for failure of the State to produce an informant. People v Lakuboski, 42 Ill. App.3d 1067

A search warrant is valid although information sworn to before the judge was not on the face of the warrant. City of Chicago v Adams, 67 Ill. 2d 429

Seven day old information not too remote for probably cause. People v Hall, 45 Ill. App.3d 469

Looking through binoculars into apartment in morning hours held not an unreasonable intrusion. People v Ferguson, 47 Ill. App.3d 654

Valid despite conversation between affiant and judge outside the warrant. People v McCullum, 66 Ill.2d 306

SENTENCE

A court has no power to suspend a sentence. People v Rush, 72 Ill. App.2d 316

A defendant cannot be sentenced on conspiracy and the substantive offense. People v Edwards, 74 Ill. App.2d 225

Sentence set aside where a disparity for a co-defendant who had a jury trial. People v Jones, 118 Ill. App.2d 189

A sentence cannot be consecutive to one to be imposed on a future date. People v Walton, 118 Ill. App.2d 324

Concurrent sentences for crimes arising from the same conduct are improper. People v Duszkewycz, 27 Ill.2d 257

In the absence of additional evidence, a court cannot impose a heavier sentence after a retrial. North Carolina v Pearce, 395 U.S. 711

A greater sentence may be imposed after trial than offered for a plea. People v Morgan, 59 Ill.2d 276

A sentence may be greater than recommended by the state. People v Coley, 15 Ill. App.3d 963

A misdemeanor sentence must be at least one day less than one year. People v Collazo, 20 Ill. App.3d 752

The court must consider the Dangerous Drug Abuse Act when raised by an addict. People v Dill, 23 Ill. App.3d 503

Misconduct in jail may be considered. People v Whitley, 26 Ill. App.3d 212

Delinquency findings may be considered. People v Simpson, 26 Ill. App.3d 205

If no statement to the contrary, a sentence is consecutive to that imposed in another State. People ex rel Fuller v Twomey, 29 Ill. App.3d 523

Separate sentences may be given for a felony and murder in a felony murder case. People v Green, 62 Ill.2d 146

An attorney cannot waive the presence of his client at sentencing. People v Etheridge, 35 Ill. App.3d 981

A waiver of counsel at trial is insufficient to justify an absence of counsel at sentencing. People v Campbell, 37 Ill. App.3d 511

A probation officer cannot compel answers to questions by a defendant. People v Hogan, 37 Ill. App.3d 673

Not for aggravated battery and intimidation where one conduct involved. People v Brown, 44 Ill. App.3d 104

A parole violator has a right to a reasonably prompt revocation hearing. People ex rel Tucker v Kotsos, 68 Ill.2d 88

Cannot be greater because defendant refuses to admit guilt. People v Sherman, 52 Ill. App.3d 857

Although two victims, only one conviction is proper for attempt robbery based on the same conduct. People v Johnson, 46 Ill. App.3d 365

Consecutive sentence only if a determination that necessary for protection of the public. People v Henry, 47 Ill. App.3d 545

SEVERANCE

A severance is required in a joint trial where a co-defendant's statement implicates the defendant. Bruton v U.S., 391 U.S. 123

Motion filed too late after a jury is sworn. People v Woods, 114 Ill. App.2d 348

Not required where no showing of antagonistic defense. People v Brinn, 32 Ill.2d 232

Not necessary where both defendants confessed. People v Strayhorn, 35 Ill.2d 41

Error to deny, deletion from confession insufficient. People v Harper, 91 Ill. App.2d 179

Severance of charges necessary where a felony weapon possession within five years of a conviction and a robbery charge. People v Edwards, 63 Ill.2d 134

Deletion from co-defendants statement and instruction sufficient to uphold denial of motion. People v Davis, 43 Ill. App.3d 603

Where no sufficient showing prior to trial, an antagonistic defense cannot be established during the trial. People v Miner, 46 Ill. App.3d 273

SEXUALLY DANGEROUS PERSONS ACT

Validity of Act upheld, reasonable doubt standard applies. People v Pembrock, 62 Ill.2d 317

Self-incrimination rights apply. People v English,31 Ill.2d 301

A defendant cannot be convicted of a charge and then committed as a sexually dangerous person. People v Patch, 9 Ill. App.3d 134

A defendant has a right to counsel prior to examination. People v Potts, 17 Ill. App.3d 867

A hearing must be held on a defendant's application for recovery. People v Capoldi, 37 Ill.2d 11

THEFT

Possession of stolen property three months after offense not sufficiently recent to support charge. People v Henkel, 60 Ill. App.2d 331

Conviction reversed, not shown to be automobile of alleged victim. People v Horton, 78 Ill. App.2d 428

Exclusive recent possession of stolen property may be joint. People v Hyde, 97 Ill. App.2d 43

Repairman conviction for theft of auto reversed, intent not shown. People v Baddeley, 106 Ill. App.2d 16

Offense not committed by landlord retaining a security deposit. People v Mattingly, 106 Ill. App.2d 74

Possession of stolen property within twenty-five days of the theft is recent possession. People v Smith, 107 Ill. App.2d 267

Conviction reversed, recent possession did not show defendant obtained control of the property knowing it to have been stolen. People v Malone, 1 Ill. App.3d 860

Permanent deprivation shown when the defendant smashed the eyeglasses of the victim. People v Bell, 9 Ill. App.3d 465

Charge proven although victim did not testify. People v Stallcup, 10 Ill. App.3d 153

Property shown to be stolen need not be introduced into evidence. People v Baer, 19 Ill. App.3d 346

Receiving stolen property conviction reversed, no evidence stolen by another. People v Rosochacki, 21 Ill. App.3d 477

Replacement value insufficient to show property value over $150. People v Cobetto, 32 Ill. App.3d 696

Bad checks, intent to defraud not shown. People v Dennis, 43 Ill. App.3d 518

Retail Theft Statute unheld. People v Fix, 44 Ill. App.3d 607

Presence at scene with knowledge of offense insufficient to show accountability. People v Thruman, 52 Ill. App.3d 13

Prior theft conviction without counsel wherein a fine was imposed, may be considered for the enhanced penalty provisions. People v Baldasar, 52 Ill. App.3d 305

TRAFFIC

Actual notice of revocation of license not necessary. People v Twitty, 25 Ill. App.3d 1065

Error to deny severance of DWI from breathalizer suspension hearing. People v Perry, 27 Ill. App.3d 565

Reckless driving not shown by a violation of a traffic signal and speeding. People v Johnson, 30 Ill. App.3d 974

A highway includes a publicly maintained lot conviction reversed, entrapment defense. People v Jensen, 37 Ill. App.3d 1010

The City has no authority to prosecute a State offense. People v Koetzle, 40 Ill. App.3d 577

Driving on a revoked license conviction affirmed, new license obtained by fraud. People v Turner, 64 Ill.2d 183

A defendant on a minor State traffic violation has a right to counsel. People v Dunn, 43 Ill. App.3d 94

Judicial notice may be taken that radar is accurate. People v Barbie, 105 Ill. App.2d 360

Head gear requirement for motorcycle riders is unconstitutional. People v Fries, 42 Ill.2d 446

No intent necessary for offense of driving while license suspended. People v Espenscheid, 109 Ill. App.2d 107

A Secretary of State certificate is prima facie evidence of a revoked license. People v Wallace, 9 Ill. App.3d 129

No jury right on an implied consent hearing. Misdemeanor type discovery allowed. People v Finley, 21 Ill. App.3d 335

A reckless driving complaint must describe the offense. People v Walker, 20 Ill. App.3d 1029

Where the State objects, the Court cannot dismiss a speeding charge because of successful completion of a driver improvement school. People v Ledwa, 44 Ill. App.3d 499

Supreme Court Rule 504 on return date of traffic ticket is directory only. People v Hutson, 45 Ill. App.3 977

Intent is not a necessary element of offense of unlawful use of license. People v VanCura, 49 Ill. App.3d 157

Probation without jail time may be given for driving under a revoked license although a mandatory minimum. People v Dodd, 51 Ill. App.3d 805

Depressed tires and listing sufficient to justify stop of overweight truck. People v Lumpp, 54 Ill. App.3d 235

Expert testimony on radar not necessary where proper calibration shown. People v Donohoo, 54 Ill. App.3d 375

TRIAL

Where a hiding inference is left, it is error to offer a stipulation in the presence of a jury. People v Hovanec, 40 Ill. App.3d 15

It is error to bring out a prior conviction of a witness associated with the defendant. People v Dehoyos, 64 Ill.2d 128

A jury may be told of the defendant's flight during the trial. People v Gary, 42 Ill. App.3d 357

The court must consider a read back request to the jury. People v Jackson, 26 Ill. App.3d 618

Where defense counsel testifies as a witness, he is properly required to withdraw in favor of co-counsel. People v Clark, 32 Ill. App.3d 926

It is error to shackle a defendant during a trial or a competency hearing unless a showing for extreme security is made. People v Boose, 33 Ill. App.3d 250

Pro-se defendant may be ejected from the courtroom for misconduct. People v Heidelberg, 33 Ill. App.3d 574

Public access to a trial may be limited where an assault on a child is involved. People v Latimore, 33 Ill. App.3d 812

Mistrial properly denied despite a co-defendants misconduct. People v Ridley, 25 Ill. App.3d 596

Error exists where a defendant was forced to testify by illegally admitted evidence. People v Wilson, 60 Ill.2d 235

The Court in its discretion may refuse to allow a reopening of a case while a jury is deliberating. People v Housby, 26 Ill. App.3d 92

A witness may be allowed to testify although he talked with other witnesses during a recess. People v VanBussum, 72 Ill. App.2d 428

It is improper to turn over a defendant's statement and grand jury minutes in the presence of a jury. People v Lowe, 84 Ill. App.2d 435

Children of a defendant may be excluded from the courtroom. People v Dronso, 83 Ill. App.2d 59

A written confession may be taken to the jury room. People v Caldwell, 39 Ill.2d 346

A list of witnesses may be amended even after a selection of a jury. People v Raby, 40 Ill.2d 392

No right to separate trials on sanity and guilt or innocence. People v Speck, 41 Ill.2d 177

No error in refusal to allow the prosecutor to be called as a witness. People v Gendron, 41 Ill.2d 351

A jury is not to be informed of a dismissal of counts in a charge. People v McFadden, 107 Ill. App.2d 132

A defendant cannot be told not to talk to his attorney during a recess in his testimony. People v Noble, 42 Ill.2d 425

A plea conference may be properly denied after a trial started. People v Marshall, 112 Ill. App.2d 426

A defendant who elected not to testify cannot show his teeth to the jury. People v Harris, 46 Ill.2d 395

The Court cannot force the State to proceed on a reduced charge. People v Baron, 264 N.E.2d 423

The Court cannot bar an offer of proof. People ex rel Paul v Harvey, 9 Ill. App.3d 209

The Court may allow reopening after final argument. People v Padfield, 16 Ill. App.3d 1011

Error to deny transcript of co-defendants trial and of mistrial. People v Russell, 7 Ill. App.3d 850

No right to motion to suppress transcript. People v Williams, 268 N.E.2d 730

A former trial transcript must be made available to an indigent defendant. People v Miller, 35 Ill.2d 615

A defendant guilty of misconduct during a trial may be ejected from the courtroom. Illinois v Allen, 397 U.S. 337

Where an objection is made, a defendant cannot be compelled to go to trial in jail clothes. Estelle v Williams, 425 U.S. 501

The right to a directed verdict is waived when the defendant testified. People v Slaughter, 29 Ill.2d 384

A mistrial as to both defendants is proper although over the objection of one. People v Grignon, 37 Ill. App.3d 418

Jurors read articles about trial, but mistrial not necessary. People v Speck, 41 Ill.2d 177

A pro-se defendant may be barred from questioning jurors. People v Barksdale, 44 Ill. App.3d 770

It is error to fail to disclose favorable evidence until the time of trial. People v Elston, 46 Ill. App.3d 103

A record must show a hearing and reasons for shackling a defendant. People v Boose, 66 Ill.2d 261

Costs may be assessed although not equally applied to all. People v Estate of Scott, 66 Ill.2d 522

A trial court may reserve a ruling on a motion to bar use of a prior conviction until the issue is raised at trial. People v Murdock, 50 Ill. App.3d 198

A reference to a conversation with a suspect and the subsequent arrest of the defendant is a proper showing of investigative procedures. People v Williams, 52 Ill. App.3d 81

A defendant may be allowed to confer with counsel during cross-examination. People v Lewis, 53 Ill. App.3d 89

UNLAWFUL POSSESSION OF WEAPON

A defendant has the burden to show a weapon non-operable. People v Halley, 268 N.E.2d 449

Conviction reversed, possession of weapon near auto not shown. People v Higgens, 1 Ill. App.3d 879

Not unlawful possession if self-defense from gang shown. People v Williams, 57 Ill.2d 239

Weapon fell when emerging from car, concealed. People v Gokey, 57 Ill.2d 433

A weapon may be destroyed although the defendant was acquitted. People v Stankovich, 20 Ill. App.3d 162

Partly concealed is sufficient, butt seen. People v Graham, 23 Ill. App.3d 685

The necessity defense applies only if imminent injury is to be avoided. People v Ballard, 59 Ill.2d 580

Possession in a car may be joint. People v Bell, 7 Ill. App.3d 625

No constructive possession where no control over the area. People v Zentz, 26 Ill. App.3d 265

Conviction reversed where security exemption not rebutted. People v Randle, 26 Ill. App.3d 713

The abode exemption includes overnight quarters. People v Taylor, 28 Ill. App.3d 186

A non-custodial jail employee cannot carry a weapon. People v Lampkins, 28 Ill. App.3d 246

A weapon on a rear seat passenger side is not inaccessible. People v Pugh, 29 Ill. App.3d 42

A complaint charging possession of a firearm or ammunition is fatally defective. People v Ellis, 31 Ill. App.3d 303

Possession of a firearms identification card at trial is no defense. People v Cahill, 37 Ill. App.3d 361

A weapon on the floor of the back seat area of a car is concealed. People v Williams, 39 Ill. App.3d 129

A complaint must allege possession in a city, town, etc. People v Stanley, 42 Ill. App.3d 99

Taxi not a fixed place of business for purpose of exemption. People v Cosby, 118 Ill. App.2d 169

Weapon accessible although in locked glove compartment. People v Smith, 45 Ill. App.3d 66

Gun under car hood not accessible. People v Cook, 46 Ill. App.3d 511

Front seat passenger not in possession of gun under the driver's seat. People v Davis, 50 Ill. App.3d 163

Defendant not in possession of State firearm identification card shown to be in possession of gun found in engine of car. People v Billings, 52 Ill. App.3d 414

A security guard can only carry a weapon when he has on his person a firearms training card. People v Lofton, 69 Ill.2d 67

After a jury verdict of not guilty on unlawful possession of a weapon, a properly registered weapon cannot be ordered destroyed. People v Mudd, 54 Ill. App.3d 603

VERDICT

Not coerced by returning jury for further deliberations. People v Puszkewycz, 27 Ill.2d 259

Cannot be impeached by jurors' affidavits. People v Krueger, 99 Ill. App.2d 431

Valid although leniency note attached. People v Worsham, 26 Ill. App.3d 767

When unsigned, not a not guilty. People v Chisum, 30 Ill. App.3d 546

Where signed but not returned, mistrial proper. People v Bean, 64 Ill. 2d 123

Valid when only eleven signed where all polled. People v Jones, 5 Ill. App.3d 926

Error when sealed verdict without the consent of the defendant and jury not polled. People v Townsend, 5 Ill. App.3d 924

Not error to give seven forms of guilty verdicts and one not guilty. People v Cole, 50 Ill. App.3d 133

Where an insanity issue is present, separate verdicts are necessary for each charge. People v Lipscomb, 46 Ill. App.3d 303

WITNESSES

Informer's identity properly protected on search warrant. People v Rinaldo, 34 Ill. App.3d 999

Psychiatric examination of complainant not necessary. People v Middleton, 38 Ill. App.3d 984

Competent although incompetent to stand trial. People v Brooks, 39 Ill. App.3d 983

Evidence deposition proper where witness unavailable. People v Smith, 26 Ill. App.3d 1062

Psychiatric examination of alleged rape victim allowed. People v Wilcox, 33 Ill. App.3d 432

Error to admit prior trial testimony when no showing of due diligence to locate witness. People v Payne, 30 Ill. App.3d 624

Supervisor may refresh his memory from the report of his trainee. People v Armstead, 30 Ill. App.3d 756

Opinion of psychiatrist on sanity properly considered but not psychologist. People v Gilliam, 16 Ill. App.3d 659

Unless physical danger shown, a defendant at trial is entitled to the name and address of a participating informer. People v Lewis, 57 Ill.2d 23?

Where identity and last address of participating informer is disclosed, he need not be produced. People v Coles, 20 Ill. App.3d 851

Immunity statute gives transactional not use immunity. People v Dinora, 13 Ill. App.3d 99

Where a fabrication motive is revealed, a prior consistent statement may be shown. People v Clark, 52 Ill.2d 374

A cause must be pending before a subpoena can issue. People v Craft, 8 Ill. App.3d 131

One officer may advise another not to talk to defense counsel. People v Nunn, 264 N.E.2d 786

The Uniform Material Witness Act is also available for use by a defendant. People v Moscatello, 114 Ill. App.2d 16

When under fourteen, the Court must determine if the witness is competent. People v Sims, 113 Ill. App.2d 58

An informer's identity need not be disclosed at a hearing. People v Robinson, 105 Ill. App.2d 57

It is error to exclude the testimony of a psychologist as to tests and procedures. People v Noble, 42 Ill.2d 425

A witness may decide for himself whether or not to talk to opposing counsel. People v Jackson, 116 Ill. App.2d 304

No inference exists when a party fails to call a witness. People v Green, 118 Ill. App.2d 36

There is no right to rehabilitate an impeached witness by a consistent statement. People v Depoy, 40 Ill.2d 433

A contingent fee payment to an informer is permissible. People v Mills, 40 Ill.2d 4

Prior trial testimony of a deceased witness is admissible. People v Jackson, 41 Ill.2d 103

A psycopath is a competent witness. People v Nash, 36 Ill.2d 275

Co-defendants who intend to plead the Fifth Amendment cannot be called. People v Haran, 27 Ill.2d 229

It is not for the Court to decide if testimony would aid a defendant. People v Dixon, 28 Ill.2d 122

The State has no right to advance notice on whether or not a defendant will testify. People v Morton, 21 Ill.2d 140

A seven year old may be a competent witness. People v Tappin, 28 Ill. 2d 95

An expert witness cannot be questioned by a hypothetical question based on matters not in evidence. People v Freeman, 78 Ill. App.2d 242

An informer may invoke the attorney-client privilege to prevent his former attorney from testifying. People v Werholliek, 101 Ill. App.2d 353

A defendant has a right to examine the arms of a witness for needle marks. People v Strother, 53 Ill.2d 95

No subpoena for a witness who may know the whereabouts of a witness. People v Savaiano, 10 Ill. App.3d 666

The preliminary hearing testimony of a deceased witness is admissible at trial where an adequate opportunity for cross-examination was provided. People v Tennant, 65 Ill.2d 401

It is error to bar a crucial defense witness for a violation of an order excluding witnesses. People v Johnson, 47 Ill. App.3d 362

Reputation testimony based upon the observations of the witness properly stricken. People v Flemming, 47 Ill. App.3d 755

Consistent statements are admissible to rebut charge that testimony is a recent fabrication. People v Gray, 47 Ill. App.3d 1026

Transactional immunity given at a grand jury bars prosecution in other counties. People ex rel Cruz v Fitzgerald, 66 Ill. 2d 546

Failure to discuss victim's reputation with other people, no bar to opinion of witness. People v Chaney, 48 Ill. App.3d 775

The refusal of a witness to be interviewed may be shown. People v Vanzile, 48 Ill. App.3d 972

A witness cannot be questioned about an alleged illegal obtaining of police reports. People v Sepka, 51 Ill. App.3d 244

A third party witness may testify as to eavesdropping on a public conversation between a defendant and his wife. People v Simpson, 68 Ill.2d 276

A paid informant may testify but not a paid investigator hired by a public officer on other than a time basis. People v Rabe, 53 Ill. App.3d 838

A witness who admits an offense at trial may be questioned on a long period of silence in reliance upon Miranda warnings. People v Moss, 54 Ill. App.3d 769

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