

HOW TO WATCH A COURT

PART II

ILLINOIS COURT
WATCHING PROJECT



LEAGUE OF WOMEN VOTERS OF ILLINOIS

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HOW TO WATCH A COURT – PART II

by

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PREFACE

This volume is meant as a guidebook for citizens to use in monitoring the prosecution of felonies in Illinois. As a supplement to How to Watch a Court (1974) which described misdemeanor proceedings, it does not repeat the information about the history, structure and personnel of the state's court system. Readers are referred to the first handbook for this data.

Many acknowledgments are due. We wish to thank the judges, state's attorneys and public defenders from around the state who patiently answered our questions as we put together the booklet. Special appreciation for checking various sections is given to the Honorable George W. Unverzagt of the 18th Judicial Circuit (DuPage County); to the Honorable Harold W. Sullivan, Irwin Cohen and Peter Bakakos, all of the Circuit Court of Cook County; Lawrence X. Pusateri, president of the Illinois State Bar Association; William M. Madden and Brent Carlson of the Administrative Office of the Illinois Courts, and Carl H. Rolewick, administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois.

We are also indebted to our project secretary Peggy L. Neuliep, who typed the handbook and compiled Chapter 6.

THE COVER: Built in 1893, the Warren County Courthouse in Monmouth is the prototype of many Illinois courthouses and other public buildings erected at the turn of the century. It is still in use. During recent remodeling, the deteriorating clock tower had to be removed, but not without some public clamor.

The photograph was supplied by the Illinois Bar Journal. The cover designer was Gloria Hibbert of Clarendon Hills, Ill., an art student at Northern Illinois University.

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THE STORY SO FAR....

THROUGH SLUSH AND HEAT AND DARK OF NIGHT

From February slush through June heat of 1975, some 250 Illinois citizens trooped religiously to 22 lower criminal courts in four counties as monitors for the Illinois Court Watching Project. Housewives, students, retirees, people with jobs, they spent long days observing proceedings and recording data on misdemeanor prosecutions. Their mission was to identify problems in the courts from the viewpoint of the citizen--the ultimate "consumer" of criminal justice.

They described how judges, bailiffs and clerks were treating people who appeared before the court; noted adequacy of procedures and facilities; catalogued reasons for delay and incidence of victimless crime. In just two and a half months (March through mid-May), they had recorded information on more than 31,000 proceedings. When they were finished, 85 others--lay persons, lawyers, judges, professors--assessed the data and recommended some specific measures to improve the quality of justice.*

Many of the courts watched in Cook, DuPage, Champaign and Warren Counties met daily, others less often. But whenever the order "All Rise" came, the monitors were there. The courts selected for observation were as varied as the monitors. For example, there was Chicago's Shoplifting Court (one of five monitored in the city) located in Central Police headquarters on South State Street. Outside busy, dingy Room 800, the El thundered past every few minutes, drowning out all other sounds. Yet a case was heard on the average of every one and a half minutes. Then there was the small, neat, carpeted third-floor room in the Warren County Courthouse. Set in the town square in rural Monmouth, the court provided an out-the-window look at grass, trees and a quiet street lined with small shops. Here the average case took 24 minutes.

COURT WATCHING FOR FUN AND PROFIT

At the time it seemed more like work than play for the monitors who were scheduled in court for a day every other week for five months. Their job required and elicited professional dedication. A number of DuPage watchers re-arranged family vacations to keep to their monitoring schedules. In Warren County, a farm wife arrived breathless but on time for an 8:30 a.m. trial; she'd served dinner after midnight because of the spring plowing. In Cook, a retired school teacher alarmed his wife and was nearly reported a missing person when he failed to return from Gun Court. This Chicago court had stayed in session until after 8 p.m. with the monitor still at his post!

Nonetheless, in retrospect few court watchers would argue that it was not fun. Most are eager to start off again in the 1975-76 project.

The profit did not accrue to the monitors, at least in a financial sense.

*Monitors' findings and committee recommendations are summarized in the State Project Report, Illinois Court Watching Project (September 1975) and in the reports issued by the four local project steering committees.

As volunteers, they not only donated their time but paid their own baby-sitting, transportation and meal expenses and, in Cook, absorbed the cost of mailing back their reports. The reward came when they saw their efforts were accomplishing something. Based on their data, the local committees were able to call attention to problems in the courts and recommend solutions to many of them.

The profit derived from seeing the court improvements that have already resulted from their efforts, particularly in the area of providing better information, instruction and treatment for citizens who are hailed before the bench.

In Chicago, the project's suggestion that information officers be stationed at desks outside high-volume courtrooms to answer the public's many questions about procedures has been accepted. Now under preparation are pamphlets outlining defendant's rights and responsibilities, both in English and Spanish. To help avoid confusion and noise in the courtroom, daily calendars will now be posted outside the door. The court also has promised to "tighten up" procedures for calling cases to insure that clerks do not obtain undue influence on the administration of justice.

Shortly after the announcement of the project in Warren County, the court altered its practice of granting continuances so that all attorneys now have to appear in court to make their motions. Previously, some had been allowed to do this by phone. At the request of the project, the chief judge of the circuit had notices of defendant's rights printed and posted not only in Warren but throughout the circuit.

In DuPage, the court accepted the local project committee's offer to help write (and translate) a pamphlet on defendant's rights and obligations and the steps in criminal procedure; it is to be printed by the county. The court is asking the county to install a manned information booth in the courthouse lobby in Wheaton at the committee's suggestion.

These accomplishments can be attributed in some part to the project's method which stressed cooperation rather than confrontation with the judiciary. Setting up a line of communication between citizens and the bench was one of the goals, and judges' help was sought at nearly every step along the way. They were apprised of the project in the beginning and assisted in training monitors, arranging special seating for them (so they could hear) and conferring with local committees about the problems they saw.

THE NEXT FEATURE ATTRACTION

The Illinois Law Enforcement Commission has awarded a continuation grant to the League of Women Voters of Illinois for 1975-76 to expand the project to additional courts and communities. Monitors in Cook, DuPage, Champaign and Warren this year will concentrate on felony preliminary hearings and on those aspects of misdemeanor proceedings deemed most urgent by their local committees. In St. Clair, Rock Island and Winnebago Counties, local Leagues have established citizen committees to oversee new projects in their misdemeanor courts.

In addition, the Illinois project--its monitors, its methods, its materials--is providing a model for citizen groups in many other places. Organizations

in the Illinois counties of Kane, Lake, Will and Coles are now benefiting from the project's experience and materials, as are others in North Carolina, Ohio, New York, New Mexico, Pennsylvania, Montana, Massachusetts and Canada.

Although their stated aims may be different, all would probably endorse the sentiments of Leonard Downie, Jr. in Justice Denied, The Case for Reform of the Courts:

It is not enough for worried Americans to lock their doors, buy guns, complain about Supreme Court decisions, or conversely, to criticize those who do. It is not enough to complain that the law is wrong, the courts are unresponsive, the judges lazy and the lawyers greedy.

It is time instead for citizens to go down to the local courthouse, look around, and learn to understand what happens there.....

CHAPTER 2

SYNOPSIS: FELONY OFFENSES

This chapter does not require intensive study. Monitors should be familiar with the general description of felonies, the different classes and their penalties on this page, but the listing of specific offenses that follows is intended as a reference. On some court calendars the charges are listed by statute number only and this list will help in decoding them. (For example, "38192" would refer to Chapter 38, Section 19, Paragraph 2 of the Illinois Revised Statutes, and the charge would be "Possession of Burglary Tools.")

Titles of offenses are quoted from the Illinois Revised Statutes. Explanations which follow are informal interpretations.

WHAT IS A FELONY?

GENERAL DESCRIPTION

Felonies and misdemeanors are both criminal violations of the law, a felony being the more serious. Illinois' Unified Code of Corrections defines the two as follows: "Felony" means an offense for which a sentence to death* or to a term of imprisonment in a penitentiary for one year or more is provided. "Misdemeanor" means any offense for which a term of imprisonment in other than a penitentiary for less than one year may be imposed.

Most Illinois laws which specify crimes and their penalties are codified in Chapter 38 "Criminal Law and Procedures" of the Illinois Revised Statutes. (This is sometimes referred to as the Criminal Code.) However, offenses relating to marijuana and more dangerous drugs are covered in Chapter 56½ "Food and Drugs," and special laws on auto theft are contained in Chapter 95½ "Motor Vehicles."

CLASSES OF FELONIES

The law divides felonies into five categories, and the length of sentence which may be imposed varies with the gravity of the crime:

- Murder - Punishable by any term of imprisonment over 14 years.
- Class 1 - Punishable by imprisonment for any term over four years.
- Class 2 - Punishable by imprisonment from one to 20 years.
- Class 3 - Punishable by imprisonment from one to 10 years.
- Class 4 - Punishable by imprisonment from one to three years.

In addition, a felon may be sentenced to pay a fine of \$ 10,000 or an amount specified for that offense, whichever is greater. Some misdemeanors become felonies on second or subsequent conviction. These were noted in the first handbook on How to Watch a Court.

*At this time Illinois does not have capital punishment. The state's Supreme Court has found unconstitutional a 1973 law which called for the death penalty in certain murder convictions.

FELONIES IN THE CRIMINAL CODE

OFFENSES AGAINST PERSONS

Homicide

Chap. 38: 9-1 Murder

A person who kills an individual without lawful justification commits murder if, in performing the acts which cause the death:

- he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause a death
- he knows that such acts create a strong probability of death or great bodily harm
- he is attempting or committing a *forcible felony* other than voluntary manslaughter

(Note: Killings with "lawful justification" include those in defense of self or another or of a dwelling or other property. A peace officer is justified in killing when the victim is resisting arrest and the killing is necessary to prevent great bodily harm to the officer or others; the victim is trying to escape after committing a forcible felony, or a prisoner is trying to escape.)

Chap. 38: 9-2 Class 2 Voluntary Manslaughter

This offense occurs when:

- a person kills while acting under "a sudden and intense passion" resulting from serious provocation by either the individual killed or by someone whom the offender intends to kill. ("Serious provocation" is conduct sufficient to excite an intense passion in a reasonable person.)
- a person intentionally or knowingly kills another if he believes at the time the circumstances are such that, had they really existed, would justify the killing, but his belief is unreasonable.

Chap. 38: 9-3 Class 3 Involuntary Manslaughter Class 4 Reckless Homicide

A person who unintentionally kills another as a result of his own reckless actions commits involuntary manslaughter. If the reckless actions consist of the driving of a motor vehicle, the offender may be convicted on the less serious charge of reckless homicide.

Chap. 38: 9-3.1 Class 3 Concealment of Homicidal Death

This means concealing a death one knows to have been homicidal.

*Italicized words and phrases are defined in Glossary.

Kidnaping and Related Offenses

Chap. 38: 10-1 Class 3 Kidnaping

A kidnaping occurs when a person secretly confines another person against his will or by force, threat, deceit or enticement takes the victim from one place to another secretly to do so. Confinement of a child under the age of 13 is always considered to be against his will unless a parent or legal guardian has consented.

Chap. 38: 10-2 Class 1 Aggravated Kidnaping

An abduction is considered "aggravated" when it is done for the purpose of ransom; the victim is younger than 13; great bodily harm or another felony is inflicted, or the kidnaper conceals his identity with a hood, robe or mask.

Sex Offenses

Chap. 38: 11-1 Class 1 Rape

A male 14 or over who has sexual intercourse with a female who is not his wife, by force and against her will, commits rape. Intercourse is presumed to be without consent when the victim is unconscious or mentally incapacitated.

Chap. 38: 11-3 Class 1 Deviate Sexual Assault

Any person 14 or over who, by force or threat, compels another to perform or submit to deviate sexual conduct commits this offense.

Chap. 38: 11-4 Class 1 Indecent Liberties with a Child

This offense is basically the same as "statutory rape" in other states. A person 17 or over who performs or submits to intercourse, deviate sexual conduct or lewd fondling or touching with a child under 16 commits this offense. (Absolute defenses are that the accused believed the child was 16 or over, was a prostitute or had been previously married.)

Chap. 38: 11-10 Class 2 Aggravated Incest

A father who has sexual intercourse or performs an act of deviate sexual conduct with his daughter commits this crime.

Chap. 38: 11-11 Class 3 Incest

This offense occurs when a mother and a son or a brother and sister engage in intercourse or deviate sexual conduct. Each party involved would be committing incest.

Chap. 38: 11-12 Class 4 Bigamy

A married person who subsequently marries another person or cohabits in this state after such a marriage commits bigamy.

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Chap. 38: 11-16 Class 4 Pandering

A person who, for money, compels a female to become a prostitute or offers or arranges such a situation is a panderer.

Bodily Harm

Chap. 38: 12-4 Class 3 Aggravated Battery

Simple "battery" (a misdemeanor) becomes aggravated battery (a felony) when (1) a person causes great bodily harm or permanent disability or disfigurement to another or (2) uses a deadly weapon or (3) is hooded, robed or masked or (4) knows that the victim is a school teacher, park employee, social worker, police officer, fireman or public transportation employee or (5) administers narcotics, intoxicants or poisons to another without his consent.

Chap. 38: 12-6 Class 3 Intimidation

An offender "intimidates" when he threatens, without lawful authority, a person with any of the following in order to make him do something or not do something: (1) to harm a person or property; (2) to physically restrain or confine a person; (3) to commit any criminal offense or accuse another person of an offense; (4) to expose any person to hatred, contempt or ridicule; (5) to take action as a public official against anyone or anything; (6) to start or continue a strike or boycott.

Chap. 38: 12-6.1 1 to 10 years Compelling Organization Membership of Persons under 17 Years

Using force, threat or other unlawful means to make someone under 17 join any organization (such as a street gang) is a felony.

Chap. 38: 12-7 Class 4 Compelling Confession or Information by Force or Threat

Trying to obtain a confession or statement by using or threatening harm constitutes a felony.

OFFENSES DIRECTED AGAINST PROPERTY

Theft and Related Offenses

Chap. 38: 16-1 Class 3 Theft

Theft becomes a felony when the property stolen is worth more than \$ 150 or is taken from the person.

Deception

Chap. 38: 17-3 Class 3 Forgery

If his intent is to defraud, a person who alters, issues or delivers a document capable of defrauding is a forger.

Robbery

Chap. 38: 18-1 Class 2 Robbery

This crime differs from theft in that the use or threat of force is involved. The value of the property involved is not a consideration.

Chap. 38: 18-2 Class 1 Armed Robbery

A person who commits a robbery while armed with a dangerous weapon is guilty of this charge.

Burglary

Chap. 38: 19-1 Class 2 Burglary

A person who enters or remains in a building, mobile home, boat, etc. with the intent of committing a felony or theft is a burglar. (Nothing actually needs to be taken.)

Chap. 38: 19-2 Class 4 Possession of Burglary Tools

A person who possesses burglary tools with intent to commit burglary is guilty of this felony.

Arson

Chap. 38: 20-1 Class 2 Arson

Arson is committed when a person uses fire or explosives to do more than \$ 150 damage to another's property, without consent, or with intent to defraud an insurer.

Chap. 38: 20-2 Class 2 Possession of Explosives or Explosive or Incendiary Devices

It is a crime to possess, make or transport such materials for commission of an offense.

Damage and Trespass to Property

Chap. 38: 21-1 Class 4 Criminal Damage to Property

When such damage exceeds \$ 150, the offense is a felony.

Chap. 38: 21-4 Class 4 Criminal Damage to State Supported Property

When property damaged is state supported and exceeds \$ 500, the offense is a felony.

OFFENSES AFFECTING PUBLIC HEALTH, SAFETY AND DECENCY

Deadly Weapons

Chap. 38: 24-1 Class 4 Unlawful Use of Weapons
Class 3

The title of this statute is somewhat misleading to the lay person because the crimes listed involve possession and/or manufacture and sale of weapons rather than their actual use. It is a lengthy law, listing a great many offenses and mentioning almost every conceivable kind of weapon from broken bottles and metal knuckles to machine guns and bombs. Some may not be made, sold or owned; others may be owned but not carried concealed on an individual or in a vehicle. A number of the violations which are Class A misdemeanors on first offense become felonies upon subsequent offense.

The following are Class 4 felonies on first offense:

- Selling, making, buying, owning or carrying a machine gun, sawed-off shotgun, bomb, grenade or Molotov cocktail.
- Carrying in a vehicle or on the person any revolver or firearm when an individual is hooded, robed or masked so that his identity is concealed.

When a person commits a **misdemeanor** or Class 4 felony within five years after conviction or imprisonment on a previous charge, the new charge becomes a Class 3 felony. Policemen, wardens, prison guards, members of the armed services and so forth are exempted from many of the sanctions.

Mob Action and Related Offenses

Chap. 38: 25-1 Class 4 Mob Action

This offense could be charged against a person involved in a mob action which by violence inflicts injury to an individual or property.

Disorderly Conduct

Chap. 38: 26-1 Class 4 Disorderly Conduct

A number of violations commonly charged under this law are misdemeanors, but one rather familiar charge is a felony: transmitting a false fire alarm, knowing at the time there is no fire.

Gambling and Related Offenses

Chap. 38: 28-1.1 Class 3 Syndicated Gambling

A person who operates a policy game or makes book commits this crime.

Chap. 38: 29-1 Class 4 Offering a Bribe
 Class 4 Accepting a Bribe

These laws make it criminal for anyone -- outsider, official or player -- to offer or accept anything of value to alter the outcome of an amateur or professional athletic contest.

OFFENSES AFFECTING GOVERNMENTAL FUNCTIONS

Treason and Related Offenses

Chap. 38: 30-1 Class 1 Treason

A person who owes allegiance to the State of Illinois and knowingly levies war against it or adheres to enemies of the state, giving them aid or comfort, commits treason.

Chap. 38: 30-2 Class 4 Misprision of Treason

(Note: The dictionary defines "misprision" as maladministration of public office or neglect in preventing or reporting a crime.)

A person owing allegiance to the State of Illinois who conceals or withholds knowledge that another has committed treason against the state violates this law.

Chap. 38: 30-2 Class 3 Advocating Overthrow of Government

This offense may be charged when a person advocates or knowingly publishes, sells or distributes a document that advocates overthrow of the existing government by violence or unlawful means. It may also be charged against a person who becomes a member of an organization advocating such things if the individual is aware of the group's purpose.

Interference with Public Officers

Chap. 38: 31-4 Class 4 Obstructing Justice

This refers to actions taken to prevent the arrest or obstruct the prosecution or defense of any person, such as: hiding, destroying or altering evidence; furnishing false information; inducing a witness to hide or leave the state.

Chap. 38: 31-5 Class 4 Concealing or Aiding a Fugitive

Chap. 38: 31-6 Class 2 Escape
Class 4

It is a felony for a person convicted of or charged with a felony to escape from a penal institution. It is a Class 4 felony for a misdemeanor to do so if armed with a dangerous weapon.

Chap. 38: 31-7 Class 2 Aiding Escape

A person who aids the escape of a prisoner from a penitentiary or, if armed with a dangerous weapon, aids someone charged or convicted of a misdemeanor to escape commits this crime.

Interference with Judicial Procedure

Chap. 38: 32-2 Class 3 Perjury

If an individual under oath makes a false statement material to an issue before a court, legislature or executive branch of government, that is perjury.

Chap. 38: 32-3 Class 4 Subornation of Perjury

This refers to inducing someone else to commit perjury.

Chap. 38: 32-4 Class 4 Communicating with Jurors and Witnesses

Forcibly detaining, threatening or communicating false information to a witness or trying to bribe him violates this law. (Trying to influence a juror in an unauthorized way is a misdemeanor.)

Chap. 38: 32-8 Class 4 Tampering with Public Records

Chap. 38: 32-10 Class 4 Violation of Bail Bond

This occurs when a defendant free on bail on a felony charge does not appear in court as directed and then fails to surrender within 30 days after bail-bond forfeiture is ordered.

Official Misconduct

Chap. 38: 33-1 Class 4 Bribery

Promising or giving anything to a public official, employee or juror in order to influence him is a felony. The law also applies to the person who solicits a bribe or serves as an intermediary.

Chap. 38: 33-3 Class 4 Official Misconduct

This crime is committed when a public official or employee in his official capacity "intentionally or recklessly":

- fails to perform any mandatory duty as required by law
- performs an act he knows is illegal
- performs an act outside his legal authority to gain personal advantage.
- solicits or knowingly accepts a fee or reward not authorized by law for performance of an act.

CERTAIN AGGRAVATED OFFENSES

Armed Violence

Chap. 38: 33A-2 Class 4 Armed Violence
Class 1

This law was added to the Criminal Code in 1967 and refers to crimes committed involving dangerous weapons -- guns, knives, explosives, and so forth. If numerous specified crimes involve a dangerous weapon, the offense is a Class 4 felony or the maximum sentence provided for the same offense while unarmed, whichever is greater. A subsequent offense is a Class 1 felony.

ADDED ARTICLES -- MISCELLANEOUS

Criminal Usury

Chap. 38: 39-1 Class 4 Criminal Usury

Charging an interest rate of more than 20 per cent a year for loan of money or other property violates this law. However, anyone licensed to loan money

under the Consumer Finance Act or Consumer Installment Loan Act is exempted from this criminal sanction.

Juice Racketeering

Chap. 38: 39A-1 Class 3 Juice Racketeering Transaction

This law refers in particular to crime syndicate operations and prohibits loaning money, intending to get a greater repayment than authorized by law, and then threatening or intimidating the borrower to make him pay.

Criminal Misrepresentation of Factoring

Chap. 38: 40-2 Class 3 Improper Use of Words "Factor" or "Factoring"

This law is intended to protect business (and the public) from persons who are not engaged in the buying, selling and borrowing on accounts receivable from the fraudulent use of the accepted terms "factor" and "factoring."

Looting

Chap. 38: 42-1 Class 4 Looting by Individual

When normal security of a home or business is not present because of hurricane, fire or riot, a person who enters without authority commits looting.

Solicitation, Conspiracy and Attempt (Antitrust Act)

Chap. 38: 60-3 Class 4 Violations - Enumeration

The Antitrust Act was designed to promote the unhampered growth of business and industry by banning restraint of trade through monopolistic practices. The practices prohibited by this act are pricefixing, agreements to limit production or supply of commodities in order to keep prices high, allocating or dividing customers into territories by competitors, and agreements by purchasers not to do business with competitors of the seller to lessen competition.

Abortion

Chap. 38: 81-17 (a) Class 2 Criminal Abortion

In Illinois, abortion is legal only when performed by a licensed physician, with the patient's consent, under circumstances prescribed by law. These vary according to the stage of pregnancy. (E.g., after the first trimester, the woman must be an in-patient in a hospital.) When an abortion is not in conformity with the law -- whether or not the woman is actually pregnant or the abortion is completed -- the abortionist commits a felony.

Legislative Misconduct

Chap. 38: 90-1 Class 3 Acceptance of Money, etc. - Prohibition

A member of the General Assembly who accepts anything of value for his vote or influence on any bill, resolution or appropriation violates this law.

Chap. 56½: 709 Class 3 Calculated Criminal Cannabis Conspiracy
 Class 1

This occurs when a person possesses more than 30 grams of cannabis as a part of a conspiracy undertaken or carried on with two or more other people and obtains anything worth more than \$ 500; or organizes, directs or finances such a conspiracy. It is a Class 3 felony. If the offender has prior conviction on a felony under this Act, the Illinois Controlled Substances Act or any state or federal law relating to cannabis, the offense is a Class 1 felony.

CONTROLLED SUBSTANCES ACT

This law establishes a uniform system for the control of the manufacture, distribution and possession of controlled dangerous substances. There are hundreds of controlled substances -- "drugs" to the lay person including heroin, LSD, cocaine and such tongue-twisters as methylenedioxymphetamine.

In the Act, the General Assembly notes that its intent is not to treat the user or occasional petty distributor with the same severity as the large-scale trafficker. Thus, the law gives the courts a wide latitude in sentencing discretion, although nearly all violations of the Act are felonies. As noted in the discussion of the Cannabis Control Act, deferred prosecution may be offered to certain first offenders.

A controlled drug is placed in one of five "schedules," according to the medical and social ramifications of its abuse. Severity of punishment is graduated accordingly.

Chap. 56½: 1401 Class 1 Manufacture or Delivery Unauthorized by Act
 Class 2
 Class 3
 Class 4

A person cannot knowingly manufacture or deliver or possess with intent to do so, a controlled substance except as authorized by this Act.*

Additional penalties are provided when heroin, cocaine, morphine, peyote, barbiturates, LSD or amphetamines are involved. Depending both on the substance and the amount, a violator is guilty of a Class 1, 2, 3 or 4 felony and is subject to a special fine. The amounts range from \$ 5,000 to \$ 200,000.

Chap. 56½: 1402 Class 1 Possession Unauthorized by this Act

Unauthorized persons may not possess a controlled substance. As above, the more dangerous the drug and the larger the amount, the more serious the penalty. Violations can be Class 1 felonies with fines up to \$ 100,000 or Class 3 felonies with \$ 15,000 fines.

*Those "authorized" include hospitals, doctors, nurses, patients with proper prescriptions and the like.

fact on any application for a certificate of title, vehicle registration, or license plate; commits a fraud in connection with any application under the Motor Vehicle Code; aids or abets any offender under these sections.

CHAPTER 3

ACTS I THROUGH VIII: STEPS IN A FELONY PROSECUTION

ARREST

Screaming sirens, police with guns drawn, the paddy wagon -- these signal the kind of arrest familiar to TV-viewers. But there are two other ways suspected felons may be apprehended for prosecution: warrants and summonses.

REASONABLE GROUNDS: THE "ON VIEW" ARREST

This is the classic arrest. When a policeman sees someone committing a crime or believes a person has just done so, he has reasonable grounds for taking him into custody. An ordinary citizen, by law, may in certain defined situations make such an arrest if he catches a criminal in the act and holds the suspect until police arrive.

WARRANTS

An arrest warrant is a written order issued by a court commanding *peace officers* to arrest a specific person and bring him before the court. Both the nature of the offense and amount of bail must be specified. The warrant is issued by a judge upon the sworn complaint testimony of a citizen or policeman, an *information* from the state's attorney or an *indictment* by a *grand jury*.

SUMMONSES

A summons is also an order issued by the court after complaint, information or indictment. It differs from a warrant in that it simply commands a person to appear before the court at a certain time and does not require arrest or bonding. Summonses are sometimes used to command witnesses to appear in court.

"BOOKING"

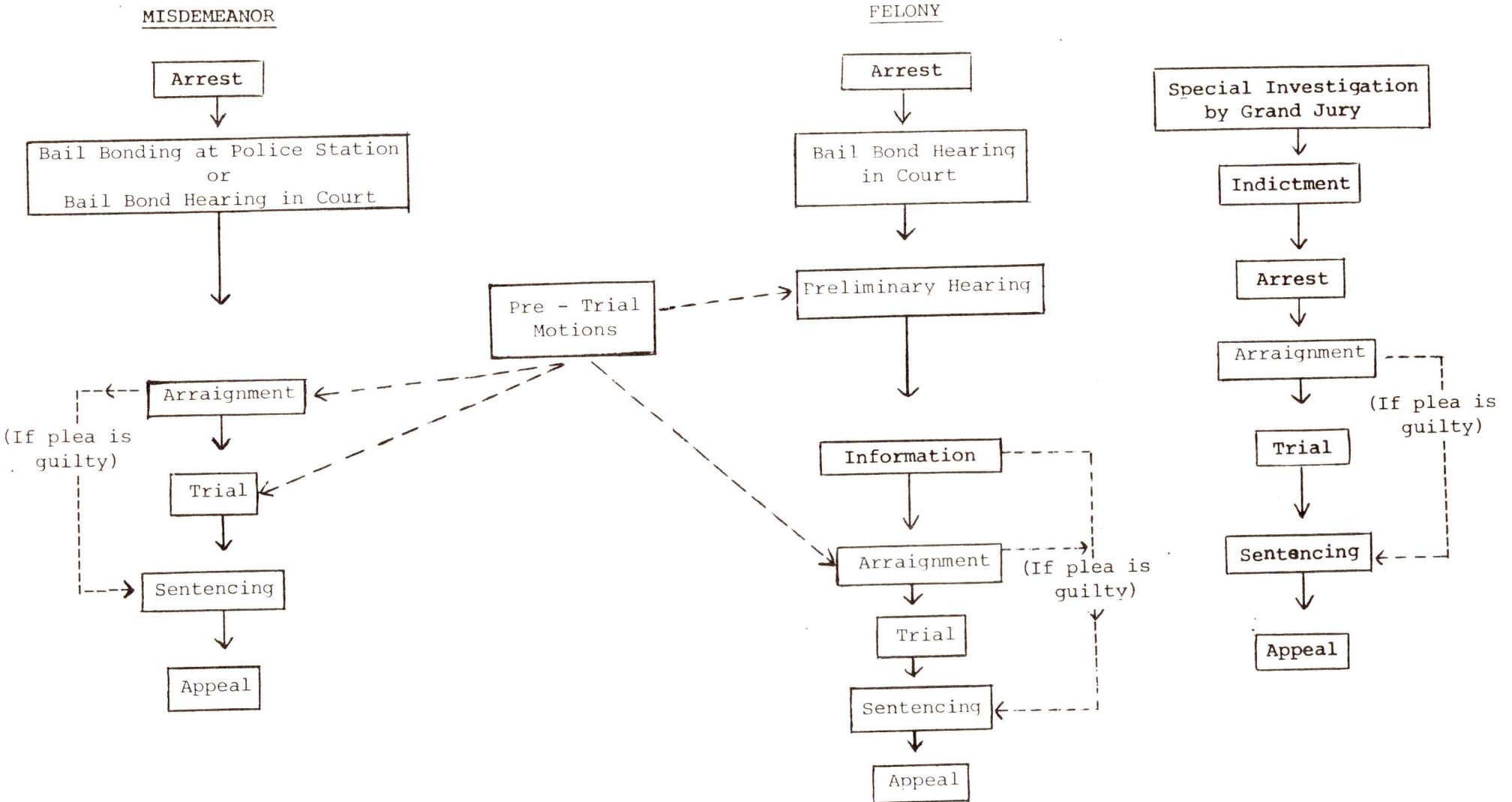
Once an arrest is made, the accused is taken to a police station and "booked." Essentially a clerical procedure, its purpose is to enter on the police record all available facts about the case; this material goes into a formal report to the state's attorney to enable him to decide whether to prepare a formal charge against the suspect and, if so, what the charge should be. The suspect may be fingerprinted, photographed and asked for a handwriting sample. The person arrested will be held in the lockup or transferred to the county jail to await a bond hearing in court, as police are not empowered to accept bail in felony cases unless the arrest is on a warrant in which bail must have been specified. (See above.)

(Note: Defendant's rights from arrest through sentencing are outlined in the next chapter.)

BOND HEARING

Monitors watching felony preliminary hearings will often see bond hearings, usually at the beginning of the court call. They

STEPS IN CRIMINAL PROSECUTION



should note whether the judge, before deciding on a recognizance bond or setting bail, makes an effort to question the defendant about his ties to the community (job, family, length of residence et cetera) which would make him a good risk and bring him back to court.

Monitors may also observe motions to raise or lower the amount of bail previously set; to change from a bail to a recognizance bond or vice versa; to revoke bond. All are explained below.

PURPOSE

As the heading implies, the bond hearing's purpose is to arrange terms for release of a defendant on bond pending trial. It is supposed to take place within a "reasonable" length of time after arrest.

WHAT TAKES PLACE

In setting bond, the judge has one or more decisions to make: (1) He must decide whether or not the defendant is eligible for release on bond. (Under Illinois law, most are. Criteria and exceptions are explained on page 20.) (2) If the accused qualifies, the judge must decide whether to release him on his signature only -- a *recognizance bond* -- or to set a bond demanding a cash deposit -- a *bail bond*.* (3) If the judge decides on a bail bond, he must determine the amount.

The recognizance bond -- This bond enables a person to be released on his own signature. It does not require payment of money but is a formal agreement to comply with the conditions of the bond: the defendant must agree not to leave the state without the court's permission and so forth, but of particular importance is his promise to return to court on the date specified. If he fails to do so, he is liable for a sum of money set in the bond.

Illinois law does not provide guidelines for judges to use in determining eligibility for recognizance bonds. Neither does it require an explanation for granting or not granting them. However, the statutes do state that they should be liberally construed "to effectuate the purpose of relying upon criminal sanction instead of financial loss to assure the appearance of the accused."

The bail bond -- This bond requires the accused to post money before release; the amount is determined by the judge. It has to be large enough to insure that the defendant complies with the conditions of the bond. But the law also requires that bail be in line with the offense charged, be non-oppressive and take into account the defendant's past actions, criminal record and finances. To ascertain ability to pay, the judge should question the defendant about his income, family obligations and so forth.

In Illinois a defendant has to post only 10 per cent of the full amount of bail. If he can pay the sum immediately, of course, he is released to await trial. Otherwise, the accused is held in jail for the trial or until he can raise the necessary funds. (Release on bail is possible any time before conviction.)

*In Cook County, the recognizance bond is called an "I-bond" and the bail bond a "D-bond."

In addition to deciding on the bond, the judge must inform the defendant of the charge against him; provide him with a copy of it, and advise him of his right to counsel and, if indigent, to a court-appointed lawyer.

CHANGING THE BOND

After it has been set, a bond can be raised or lowered or its conditions altered; it can also be revoked or forfeited. All such actions occur in open court. Raising and lowering are self-explanatory. Revocation and forfeiture are outlined below.

Revocation -- According to newly enacted legislation, bond can be revoked if a defendant bonded for a forcible felony is charged with committing another such crime. The court may hold this person without bail pending a hearing on the breach-of-bond charge.

Forfeiture of bond (bail jumping) -- If a person out on bond fails to appear in court on the day and hour designated, the judge may issue a bond forfeiture warrant (BFW) for his arrest. If the accused does not appear in court within 30 days, he forfeits bail money and bond. He will not be bondable following the BFW unless the court finds his absence was for reasons other than obstructing justice and avoiding prosecution. (An emergency appendectomy, for example.)

The maximum penalty for jumping bond on a felony is one to three years in prison and \$ 10,000. In practice, the charge is not often brought. The court usually has more than enough authority to punish the defendant by a supplementary sentence on the original charge or on a new charge arising out of his apprehension.

DENIAL OF BOND

Formerly in Illinois, all offenses wereailable except those which called for capital punishment, but recent Supreme Court decisions have left the question of bail in these cases in doubt.

FELONY PRELIMINARY HEARING

On October 1, 1975, the felony preliminary hearing took on new significance in Illinois. Before then, it was generally the first in a two-step procedure for bringing a person accused of a felony to arraignment and trial. If a judge found "probable cause" at the preliminary hearing, the defendant was bound over to await action by the grand jury--either indictment or release. In practice, grand juries returned indictments nearly all of the time, making this second step somewhat superfluous.*

Following the lead of several other states, the Illinois General Assembly changed the law to speed up the criminal justice process. Now felonies can be prosecuted either (1) on an information by the state's attorney requiring that probable cause be established at a preliminary hearing or (2) after indictment by a grand jury. In effect, this means that most felony cases will not go to the grand jury. (See chart on page 18.)

* A 1973 study of the Cook County grand jury by the Chicago Crime Commission showed that indictments were returned in 96 per cent of the cases.

PURPOSE

The felony preliminary hearing is held to determine whether prosecution against the defendant should be continued. A judge decides whether there is probable cause to believe that a crime has been committed and the defendant is the one who did it. It is an informal proceeding, not a trial to establish innocence or guilt.

This hearing is designed to protect a defendant against groundless or vindictive prosecutions. The burden is on the state -- specifically the state's attorney -- to prove there is probable cause to hold the accused to answer to a felony charge. The preliminary hearing must be held unless it is specifically waived by the defendant in open court. (This is a new law passed because indictment by grand jury is no longer necessary.)

The law says that the preliminary hearing should be held "without unnecessary delay;" the time for the procedure is set at the bond hearing. In Cook County, the hearing must be held within 30 days of arrest, except in exceptional circumstances. In other counties, it usually takes place within two or three weeks of arrest.

WHAT TAKES PLACE

First the judge must read the charge to the defendant and inform him of its nature. After that various things can happen -- a continuance, presentation of evidence, pre-trial motions, findings of probable cause or no probable cause, guilty pleas and, sometimes, even sentencing. Each is explained below.

Continuances -- There are no Illinois laws or Supreme Court rules that require specific grounds for continuances at the pre-arraignment stage. They may be requested and granted without any explanation. A continuance may be given if the defendant needs more time to hire an attorney or if the defense attorney needs additional time to consult with his client and prepare the case.* The state's attorney may ask for a delay because the complainant and/or prosecution witnesses have not appeared or laboratory test results are not ready.

Presentation of evidence -- The prosecution introduces evidence to prove that a crime has been committed and the defendant is responsible for it. The prosecutor can examine witnesses. The defense can cross-examine them, present evidence in its own behalf and call its own witnesses, who are then subject to cross-examination by the prosecution. (*Hearsay evidence* is admissible in the preliminary hearing although it cannot be used in a trial. Such evidence is best described as "secondhand." For example, a police officer may testify as to what a bystander, who is not present at the hearing, said to him regarding the incident.)

Finding of no probable cause -- If the judge finds no probable cause, the

*In Program for Action (1975), the Chicago Bar Association noted that a continuance for "professional reasons" (to give an attorney more time to collect his fee) was not legitimate and recommended that it be disallowed by judges. Also in regard to continuances, the CBA stated that attorneys who do not have time to handle cases within the court rules should not take so many cases.

defendant's attorney makes a motion to dismiss. If the charge is dismissed, the defendant goes free, bail is returned and the charge is stricken from the record. However, if the state's attorney uncovers additional evidence or a missing witness turns up, the defendant can be re-arrested. He is then entitled to another preliminary hearing. (This is not considered *double jeopardy*, as the hearing is not a trial.) Or the state's attorney can proceed to present evidence to the grand jury. If an indictment is returned a warrant can be issued for the defendant's arrest. This rarely occurs.

Pre-trial motions -- In addition to the motion to dismiss, there are a number of other motions the defense may make at the hearing, for example:

- Motion to suppress evidence illegally seized.
- Motion to quash a search or arrest warrant.
- Motion to reduce bond. (Prosecution can also move to increase.)
- Motion to vacate bond forfeiture warrant.

Finding of probable cause -- When the judge finds that there is probable cause to believe that the defendant committed the felony he is charged with, a court date is set for his arraignment. His status in regard to bond is not changed by this finding.

Guilty pleas and plea agreements -- Although the judge does not ask for a plea at a preliminary hearing, sometimes the defendant wishes to enter a guilty plea. This is usually the result of a *plea bargain* between the prosecution and defense for a reduced charge and/or recommended penalty in return for a guilty plea. (For example, the charge may be lessened from a Class 2 to a Class 3 felony or from a felony to a misdemeanor. Plea agreements are apt to occur when the prosecutor feels the police have overcharged or the evidence is too weak to gain a conviction on the original charge.)

The judge can accept a plea of guilty to a felony only if he is an elected circuit judge or one of the associate judges especially empowered by the Illinois Supreme Court to hear felonies. In Cook County, the judge at a preliminary hearing usually is a circuit judge, but downstate this is often an associate judge's duty. Because he cannot accept a felony plea, a defendant wishing to enter one may be asked to waive the preliminary hearing. Then the state's attorney will prepare an information, and the defendant will be taken before a circuit judge. But whoever the judge, the plea agreement must be stated in open court.

After a plea agreement has been stated, the judge is supposed to confirm the terms by personally questioning the defendant to determine that force, threats or promises outside the agreement were not used to obtain the plea. A judge may not initiate plea negotiations, but he is not explicitly prohibited from participating in them once under way. The parties involved can either request the judge's concurrence in court prior to entering the plea or his previous agreement can be stated when the plea is entered.

Before accepting a guilty plea, the court must inform the defendant and make sure he understands (1) the nature of the charge, (2) the maximum

and minimum penalties, (3) his right to plead guilty or not guilty, (4) the consequences of a guilty plea -- forfeiture of a trial of any kind and waiver of the right to be confronted by witnesses against him. The court must also determine whether there is a factual basis for the plea and whether the plea is voluntary. To accomplish this, the judge must directly question the defendant.

Sentencing -- Sometimes sentencing occurs at a preliminary hearing after a guilty plea has been accepted if the defendant waives a pre-sentence investigation. After pronouncing sentence on a felony charge, the judge must inform the defendant of his right to appeal and to have the clerk prepare an appeal application.

GRAND JURY

Court watchers cannot observe a grand jury, as all its sessions are secret. This section is included because the grand jury is still an important part of the criminal process despite recent streamlining legislation which reduced its duties. (See "Felony Preliminary Hearing" on page 20.)

PURPOSE

The role of the grand jury since October 1, 1975, is mainly an investigative one. No longer does it have to re-do what the felony preliminary hearing has done -- deciding whether or not there is probable cause to prosecute persons already arrested for felonies. Now the grand jury can concentrate on investigating situations in which there seems to be criminal activity; these investigations can come on its own initiative or on that of the state's attorney.

COMPOSITION AND TERM

The grand jury is a panel of 23 persons, with concurrence of 12 needed for indictment. Jurors are selected on a county-wide basis from voting lists in the same way as those for a *petit jury*. (The grand jury takes precedence over the other in that a person tapped for it cannot then be called for the *petit jury*.)

A grand jury usually serves for 30 days, but its term may be extended for additional 30-days periods up to 18 months. In Cook County, as many as six grand juries can sit simultaneously.

WHAT TAKES PLACE

Conducted in secrecy, grand jury sessions involve only the jurors, the prosecutor, court reporter, witnesses and others authorized by the court. (The judge does not "sit in" and preside over testimony as he does at a trial. He is available to resolve problems, but is not physically present in the grand jury room.) The state's attorney explains in detail the method of operation. In an attempt to ascertain probable cause, he or his assistant state's attorneys present evidence and produce witnesses to testify. The jury itself can also call witnesses, including probable defendants.

Defendants are not allowed to be accompanied by counsel; no cross-examination is permitted. When the grand jury finds there is probable cause for prosecution, it can vote a "true bill" (indictment), and arrest warrants go out for suspects. Search warrants also can be issued. Prosecution on such indictments will then follow the same steps as those stemming from an information prepared when probable cause is found at a felony preliminary hearing. (See chart on page 18.)

ARRAIGNMENT

Court watchers will not be observing felony prosecutions past the preliminary hearing stage for this project. This section on arraignment and the succeeding ones are included to help monitors become aware of the whole process and to provide future citizen-watchers some background for observing all their criminal courts.

PURPOSE

The arraignment is an open public hearing held in the Circuit Court to make a formal charge against a person accused of a crime and to register his plea of guilty or not guilty. If the offense is a felony, the charge will be presented either in an information filed by the state's attorney or by an indictment voted by the grand jury.

WHAT TAKES PLACE

Formal charging -- The court must furnish the accused with a written copy of the charge. If he requests it, the charge must be read before the plea is entered.

Making the plea -- The defendant is asked whether his plea is guilty or not guilty. (If he refuses to plead, it is presumed his plea is not guilty.) He is permitted to confer with an attorney before making this decision. Although the right to a lawyer may be waived and the accused allowed to defend himself, the proceedings are more expeditious when counsel is present. The judge may point out to the defendant that more is involved than just "telling your story," particularly in a jury trial, and that a lawyer would be aware of legal defenses, opportunities for cross-examination and so forth. But it remains the defendant's choice. Should he be adjudged indigent and want an attorney, the court must appoint a public defender or a private lawyer to represent him.

A guilty plea -- The court cannot accept a guilty plea until the judge is sure the defendant understands certain conditions. These are the same as outlined in regard to felony preliminary hearings, including the provisions on plea agreements on page 22. If the guilty plea is accepted, it means that a trial will not be held. (See chart on page 18.)

A not-guilty plea -- When the defendant enters this plea, it means that a trial will be held. It also means that a judge must ask whether the accused wants a trial by jury. If he does not, a jury waiver must be signed (see sample in Chapter 6) and a *bench trial* will be scheduled.

Pre-trial motions -- Pre-trial motions are requests by the defense or prosecution for rulings by the judge on particular legal issues. Some-

times hearing the arguments on these motions consumes a great deal of the court's time, but many important issues are resolved and cases lost and won on the outcome of a motion. Some examples of pre-trial motions are motions to suppress evidence or confessions or for substitution of the judge, change of venue or appointment of expert witnesses.

If the defendant has plead not guilty, the arraignment judge will set dates for discovery motions for exchange of information between defense and prosecution. He may possibly schedule the time for filing other pre-trial motions although the practice in different circuits varies. In some, they may be submitted any time before the trial gets underway, in others, only within a scheduled period.

Continuances -- Continuances are a widely publicized source of delay in the courts. A motion for continuing a case to another date may be made at the preliminary hearing, arraignment or trial stage by either the defense or prosecution. It may be granted or denied by the judge, who must use his discretion as to the validity of the request. When the motion is made 30 days after the arraignment, the court is supposed to demand an affidavit explaining the grounds for the continuance, but this is not often done.*

The right of a defendant to speedy trial is guaranteed by both the federal and state constitutions; the prosecution has no such assurances. Illinois statutes provide that a person in custody be brought to trial within 120 days after he has been arrested. If not in custody, the period is 160 days after he demands trial. If the defendant is not tried within the time limit, he must be released and the charges dropped. The judge is not required to inform a defendant of his rights under this law, however.

Specific delays which are excluded in computing the "speedy trial" provision are: (1) delay caused by the defendant or continuances that he agrees to, (2) delay caused by a defendant's competency examination or hearing, (3) adjudication of incompetency for trial, (4) continuance granted after a judge has determined that the defendant is not physically capable to stand trial, (5) an *interlocutory appeal* on the correctness of a ruling by the court.

Thus, if the defense moves for, or agrees to, a continuance, the timing "clock" starts all over again on the date to which the continuance has been granted. Delay caused by prosecution, however, does not stop the speedy-trial "clock."

After the 30-days period following arraignment, the defense can continue a case only on these grounds:

- Counsel is ill or at another trial.
- Counsel is unable to prepare for trial because of reasons above.
- Witnesses are unavailable and their absence would harm the defendant's case.
- The accused cannot stand trial because of physical or mental incompetence.

*Stephen A. Schiller, The American Bar Association Standards for the Administration of Criminal Justice: Illinois Compliance.

- Adverse pre-trial publicity.
- A change in the *bill of particulars* is a surprise to the defendant.

The state can ask for a continuance because of:

- The prosecutor's illness or presence at another trial.
- The witnesses are unavailable and their absence would harm the case.
- Adverse pre-trial publicity.

These are the only grounds allowable by law, but continuances have been granted for other reasons.

TRIAL

At long last.....the trial! Although most criminal cases are settled at earlier stages through negotiated pleas, the trial is the part of the whole process that most people are familiar with. Novelists and playwrights don't produce award-winning works about issuing bond forfeiture warrants, finding probable cause, pleading down from a Class 4 felony to a Class A misdemeanor, or filing discovery motions. The trial is *The Thing*. It is full of potential drama: the state's attorney builds his case, the defense tries to refute it, they argue, witnesses are called and, finally the fate of the accused is decided.

PURPOSE

The purpose of the trial, whether bench or jury, is to decide on the innocence or guilt of the defendant.

WHAT TAKES PLACE

If at arraignment the defendant has waived his right to trial by jury, a bench trial, in which the judge alone hands down the decision, will commence. But, if a jury has been demanded, the first step will be to select the jurors.

Choosing the jury -- When the panel of prospective jurors* is assembled, the judge should introduce the parties in the case and their counsel and outline the nature of the case. Then he will question the individual panel members to ascertain their qualifications and to make sure they will be free of bias or prejudice.

The opposing lawyers are also permitted to ask questions. Each side may make two kinds of challenges -- *challenges for cause* and *peremptory challenges*. There is no limit to the number of **challenges for cause** that can be made by the attorneys. Any number of potential jurors can be excused if shown to be prejudiced, related to the defendant or victim, sick, deaf or otherwise unacceptable. A peremptory challenge is the right of counsel to refuse a particular juror with no reason given,

*The panel is chosen from lists of registered voters.

and a limited number is permitted. Ten peremptories per side are allowed in a felony case when there is one defendant. When there is more than one, six are allowed for each defendant; the prosecution gets as many as the defense.*

The trial begins when 12 jurors are selected. The jury is charged "to inquire into the truth and questions of fact." It serves for a two-week period or until the trial is concluded and the verdict rendered.

Opening statements -- Both the defense attorney and the prosecutor present opening statements in which they outline what they intend to prove. This enables the jury or judge to follow more closely the evidence that is introduced later in the trial.

Conduct of a jury trial -- The jury is supposed to base its decision on proper evidence. Often there are disputes between the parties as to what is proper, or admissible, evidence. The judge has the responsibility to decide these points of law. Usually these decisions are made as the judge sustains or overrules objections made by one of the lawyers.

If a question cannot be asked without introducing a prejudicial subject, the lawyers may ask the judge to hear their arguments in the judge's chambers privately, so they can talk freely without prejudicing the jury. At other times, the jury may be escorted out of the courtroom while the defense and prosecution argue points of law before the judge. The judge may take time to instruct the jury about legal technicalities that arise.

Prosecutor's case -- The state, represented by the state's attorney, has the burden of proving the guilt of the defendant beyond a reasonable doubt. The prosecution, therefore, has the first turn. Witnesses are called to offer evidence. The defense is entitled to cross-examine the witnesses to test their credibility and the validity of their testimony.

Directed verdict -- When the prosecution has concluded the presentation of its case, the defense may move for a directed verdict of acquittal on the grounds that a reasonable juror, viewing the case in its most favorable light, could not conclude that the defendant was guilty beyond a reasonable doubt. If the judge directs such a verdict, the charges are dismissed and the defendant is immune from further prosecution on these charges.

Defendant's case -- If a directed verdict is not granted by the judge, the defense then presents its case. It calls witnesses and presents evidence to try to refute the prosecutor's case and/or to establish reasonable doubt of the defendant's guilt. The defense witnesses are subject to cross-examination by the prosecutor.

The defendant has a constitutional right in a criminal case not to be a witness against himself. He may choose to testify, but he cannot be compelled to do so. If he does not, the fact is not allowed to be presented to the jury.

*Until the recent Illinois Supreme Court decision declaring unconstitutional the law making certain offenses punishable by death, 20 peremptory challenges for each side were allowed in such cases. It is reasonable to assume that this rule will prevail should capital punishment be re-instituted.

Prosecution's rebuttal -- When the defense concludes its case, the prosecution is given the opportunity to rebut the defense evidence by offering additional evidence. The defense again has the right of cross examination.

Second request for directed verdict -- After the prosecution rebuttal, the defense can again move for a directed verdict. If the judge grants the motion, the defendant is freed, as above. If the motion is denied, in a jury case, the case must then be decided by the jury.

Closing arguments in a jury case -- First the prosecution, then the defense present closing statements to the jury. Each proposes theories and conclusions based on the evidence introduced in an attempt to persuade the jury.

Jury instructions -- When the arguments have been completed, the judge gives instructions to the jury. These pertain to how the law should be applied to the facts in evidence. The judge selects from a list of applicable instructions, Illinois Pattern Instructions in Criminal Cases. These must be used unless the judge determines that this book does not accurately state the law in this particular case. The judge may select an instruction from those submitted by the defense or prosecution. Written copies of the judge's instructions are given to the jury, and it then retires to the juryroom to deliberate.

Jury verdict -- To reach a verdict the 12 jurors must come to a unanimous decision. The foreman, elected by the jury to be leader and spokesman, announces the verdict in open court. If the verdict is not guilty, the defendant is discharged. He is immune from further prosecution on the charges for which he was tried and acquitted.

If the verdict is guilty, a date is set for the sentencing hearing. If the defendant has been out on bond, the judge may use his discretion in whether bond should be continued or the convicted person put in custody to await sentencing.

A jury unable to reach a verdict is called a "hung" jury and must be discharged by the judge, who then sets a date for re-trial before another jury.

SENTENCING HEARING

Pronouncement of sentence is often a dramatic moment in a criminal prosecution. It is the high psychological point for the defendant, and judges generally consider sentencing to be the most difficult of their duties.*

PURPOSE

The sentencing hearing is a proceeding held in open court to prescribe the penalty for a person convicted of a crime. The sentence must be imposed by the judge who accepted the guilty plea or presided over the trial, unless he no longer sits in that courtroom. He will have set

*Kris A. Korbakes, "Criminal Sentencing: Is the Judge's Sound Discretion Subject to Review?," Judicature, October, 1975.

the date for the hearing at a previous proceeding unless the defendant has waived his right to a pre-sentence investigation. (The waiver is most apt to occur when there has been a negotiated plea. In this event, the sentence usually has been part of the bargain and can be pronounced immediately when the guilty plea is accepted.)

WHAT TAKES PLACE

Before sentence is pronounced, the judge has the opportunity to review the pre-sentence investigation report and to hear *aggravation and mitigation*.

Pre-sentence reports -- The report is prepared by the probation department and is mandatory in all felony cases unless waived by the defendant. It includes information on the defendant's background, possible mitigating circumstances relating to the crime, estimated chances for successful rehabilitation and suggested means of treatment or education. The judge is not legally obligated to accept recommendations of the probation department, but usually recommendations will not be made unless the court has requested them.

Aggravation and mitigation -- This part of the hearing provides a chance for the state and the defense to present evidence -- witnesses or documents. Thereafter, the lawyers have the opportunity to present arguments in sentencing alternatives. After that the defendant has a right to make an "unsworn" statement in his own behalf.

Pronouncement of sentence -- The judge must announce the sentence to the defendant in open court. The law does not require that he also explain it, but some judges feel strongly that this should be done "in a spirit of understanding and justice without anger."

SENTENCING ALTERNATIVES

In sentencing a felon, the judge in Illinois has several alternatives: imprisonment, periodic imprisonment, probation or conditional discharge.* A fine may be imposed in addition to one of the other penalties.

The discretion in sentencing is meant to allow the judge to tailor the punishment to fit the crime and the criminal, but it also results in a disparity of sentences for the same crime being handed down by different judges and to different kinds of defendants. In its Program for Action (1975), the Chicago Bar Association noted that defendants out on bond usually receive lighter sentences than those in custody.

Several suggestions for alleviating the disparity are being advanced. A proposal for determinate, or "flat-time," sentencing is among those put forth in the "Justice Model" by Dr. David Fogel of the Illinois Law Enforcement

*There is also provision for *deferred prosecution* for first offenders being prosecuted for possession of small amounts of drugs. Before a conviction is entered, the court may place them on probation and defer further prosecution if they agree to certain treatment and rehabilitation procedures. (See "Synopsis: Felony Offenses" page 4.)

Commission; it will be included in draft legislation submitted to the legislature in 1976. The Chicago Bar has suggested that meetings of sentencing judges be held prior to the hearings to discuss imposition of sentences and that data on sentencing be disseminated monthly to the judges.

Imprisonment -- Illinois law states that the court shall impose a sentence of imprisonment if it believes that (1) it is necessary for the protection of the public or (2) the defendant needs correctional treatment that can be provided most effectively by incarceration or (3) a lesser sentence would deprecate the seriousness of the offender's conduct and be inconsistent with the ends of justice.

The statutes establish top and bottom limits for prison terms, varying with the seriousness of the crime. (See "Synopsis, Felony Offenses," page 4.) However, within these limits, the judge has considerable discretion. He must list both a minimum and a maximum time to be served when he pronounces the sentence. The first is important because a prisoner is not eligible for parole until the minimum term has been served. He must, of course, be released after serving the maximum.

All prison sentences in Illinois run concurrently unless the court has specified otherwise. The defendant is given credit for all time in custody for that crime before the sentence is pronounced, and the judge should explain to him how to obtain this credit.

Periodic imprisonment -- A sentence of periodic imprisonment is one in which the prisoner may be released during certain hours or days. This is done to enable him to work, take care of a family, go to school or receive medical or psychological treatment. The maximum term of periodic imprisonment is two years.

(In its criminal justice study, the Chicago Bar found that this sentence was used only by a few judges and, moreover, was advocated by few defense counsel.)

Probation and conditional discharge -- A defendant is not eligible for either of these sentences if he has been convicted of a crime such as rape, murder, armed violence, armed robbery, certain violations of the Illinois Controlled Substances Act or calculated criminal cannabis conspiracy. The maximum probationary term for a felony is five years.

A felon assigned probation or conditional discharge is released under certain conditions set by the judge; these are stated in a certificate handed to him. One condition that is always present is that the probationer may not violate any criminal law anywhere. Additional requirements may include working at a job, going to school or making restitution or reparation. Another condition may be incarceration for up to six months.

The main difference between these two sentences is that during probation the probationer is under the supervision of a probation officer and must report periodically. A conditional discharge does not require supervision by any person or agency although it could be included as one condition of the discharge.

The fine -- A defendant convicted of a felony may also be sentenced to pay a fine. (See "Synopsis: Felony Offenses," page 4.) According to law, in setting the fine the court must consider the financial resources of the offender and the effect of the fine on his ability to make reparations to the victim. There is no uniform policy for obtaining this information.

POST CONVICTION BAIL

If the case is to be appealed to a higher court, the convicted offender is still eligible for release on bail at the discretion of the judge. The law states that the bond must require the offender to duly prosecute his appeal; to appear in court at the designated time; not to leave the state without the court's permission, and to surrender "forthwith" if the appeal is lost or a new trial ordered.

APPEAL, POST CONVICTION PROCEEDINGS

APPEALS

Although the appeal is a proceeding Circuit Court watchers will not see, they should know something about the process for a well-rounded view of the criminal prosecution.

Appeals by defendants in felony cases represent a burgeoning workload for the Appellate Court, state's attorneys and public defenders alike.

All defendants have the right to appeal bail determination, conviction and sentence, but only certain cases must be notified of these rights by the court at the time of sentencing. (Notice must be given only to defendants who have pleaded not guilty and have subsequently been found guilty and sentenced to imprisonment, periodic imprisonment, probation or conditional discharge, or who have had the latter two lesser sentences revoked or modified to some form of imprisonment.)

Also according to the Supreme Court rule, those persons must be told of their right to be furnished if indigent with a free transcript of the proceedings and with counsel. The court determines the indigency of defendants before appointing a public defender. In Cook County, it is usually an attorney from the public defender's office. Downstate, it is usually one from the Office of the State Appellate Defender.

In practice, the Appellate Court rarely disturbs a sentence handed down by the Circuit Court; and if it does, it will request the court that originally imposed the sentence to reconsider. Sentences imposed as part of plea agreements can be appealed, but in all sentence appeals the burden is on the defendant to present reasons the sentence should be reduced.

POST CONVICTION HEARINGS

Post conviction hearings deal with prisoners who claim that there was substantial denial of their federal or state constitutional rights in the proceedings which resulted in their conviction. The hearing is held in the Circuit Court in which the petitioner was tried, and the presiding judge can free the prisoner, find against him or order re-arraignment, re-trial or re-sentencing. Under Illinois statutes, anyone who is a prisoner in a state penitentiary and who feels his rights at trial were abridged may petition.

An indigent prisoner is entitled to a free transcript of the hearing and to court-appointed counsel. The \$ 30 filing fee is also waived for indigents. Results of the post conviction hearing may be appealed.

PARDONS

A pardon from the governor is a "last chance" method open to the defendant when all else has failed. All convicted persons have the right to apply for a pardon which would restore their freedom.

THE CAST (NOT NECESSARILY IN ORDER OF APPEARANCE)

JUDGES

It....is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

-- Lord Hewart, 1921

The performance of the judge affects the quality of justice more than any other element. To defendant, victim and witness, the judge is the court. Not only must his rulings be technically fair; they must also appear to be duly considered, impartial and rendered in a spirit of justice. When they are not, citizens before the bench are "turned off" by the criminal justice system, the law, society itself.

This somewhat abstract picture of the importance of judicial behavior was brought into clear focus by monitors' reports during the 1974-75 Illinois Court Watching Project. Overall, the 22 Illinois courtrooms observed scored well in appearance of justice. But when they did not, the conduct of judges seemed to be the determining factor.

For example, ratings of judges' demeanor in the 16 Cook County courtrooms monitored showed a very high correlation with the court watchers' final impressions of whether or not justice was being fairly dealt. The courts suffered when a judge seemed inattentive or impatient with defendants; when he turned consistently to a prosecutor for advice; when he seemed oblivious to witnesses' presence in granting continuances; when he appeared racially prejudiced, flippant, irascible or indecisive.

MORE THAN A BOY-SCOUT-OATH

The main guidelines for conduct of judges in this state is Illinois Supreme Court Rule 61.* (See Chapter 6, "Program Notes.") At first glance, it may appear to be an updated version of the Boy Scout Oath: Its Preamble states: "In every particular his (a judge's) conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, and immune from private, political or partisan pressures. He should administer justice according to the law....." Then in 25 separate sections, it spells out requirements to be followed by judges on and off the bench.

However, Rule 61 is more than an abstract ideal. Any judge who consistently violates its standards is subject to discipline through a two-tiered system set up by the 1970 Illinois Constitution. It involves investigation and prosecution by the Judicial Inquiry Board and adjudication by the Courts Commission.** To date, 15 judges have been reprimanded, suspended or removed by this process.

*Although Supreme Court Rules are not law, they have the force of law. Adopted in 1970, Rule 61 is based on the American Bar Association's Canons of Judicial Ethics of 1924. The ABA revised its Canons in 1971, but the Illinois Supreme Court has not altered Rule 61.

**See Chapter 2 "Illinois Courts" in the first How to Watch a Court handbook.

DUTIES DURING A TRIAL

Aside from court rules and laws governing judicial ethics, a number of higher court decisions regulate a judge's conduct and demeanor while he is presiding over a trial. Some of those requirements follow:

Order in the courtroom -- A judge must be present at all **stages** of the trial. He has the power and duty to preserve order, enforce obedience to lawful orders and control witnesses and the conduct of attorneys. He should assure an orderly trial and keep it within bounds prescribed by decency and the ordinary rules of conduct.

Impartiality -- It is essential that the judge hearing a case be devoid of any personal interest in it, and he should disqualify himself if there is any direct or indirect interest. He should strive for impartiality, maintain poise and show due respect to a witness. He should not assume the role of prosecutor. (Strong remarks after a finding of guilty are not manifestations of prejudice where based on evidence.)

He should not indicate by his conduct or remarks either favor or disfavor toward witnesses. But he can admonish a witness to "speak up" so as to be heard or to answer a particular question.

Discipline of attorneys -- The trial judge may admonish and rebuke lawyers guilty of misconduct, as occasion may require, and use other preventive measures necessary to maintain the court's dignity.

Treatment of witnesses -- The judge has a right to control examination of witnesses. He may give the witness an opportunity to explain an answer or assist a confused witness or cure a misunderstanding over the meaning of words between witness and lawyers. He may compel an attorney to proceed with an examination with dispatch. The court has discretion in whether to permit a witness to be recalled for further examination.

Keeping the trial moving -- While a judge must be cautious to conceal his feelings, he must conduct the proceedings so that the trial moves at a reasonable pace. (An occasional impatient remark by the judge, while not entirely proper, does not in itself indicate prejudice toward a party and thereby deny him a fair trial.)

Regarding evidence -- The judge must refrain from making his own private investigation of the facts in a trial pending before him. However, he may take judicial notice of certain facts properly presented to him. On his own motion, he may exclude evidence that is not relevant, material or competent.

In short, the judge is supposed to do more than play the part of a wise old owl, merely gazing at the participants and looking distinguished. He must observe with care and seek to understand issues and testimony. He must rule quickly and correctly. However, in a bitterly fought trial, the judge is under great pressure, complex questions arising quickly and often. If there were time for reflection and research, he might rule differently. Accordingly, reviewing courts have given a trial judge considerable latitude in the conduct of a proceeding.

* See Chapter 2, "Illinois Courts" in the first How to Watch a Court handbook.

LAWYERS

Once admitted to the bar, attorneys are considered "officers of the court" and share responsibility with the judge to see that justice is done.

The Illinois Supreme Court gives judges the authority to criticize or discipline "with prudence" unprofessional conduct of attorneys appearing before them. (The judge's sole power in this respect is a contempt of court citation.) However, Supreme Court rule also directs him, if necessary, to refer the matter to "proper authorities." This authority is the Attorney Registration and Disciplinary Commission, established in 1973. It receives judges' complaints, as well as those from lay persons; investigates them and makes recommendations to the Supreme Court, which has the final word. The court's actions can result in reprimand, suspension, disbarment or dismissal of the charges.

Lawyers in the felony courts appear in the role of prosecutors (state's attorneys, assistant state's attorneys) or defense lawyers (private counsel, public defenders). The Illinois Code of Professional Responsibility is regarded as a standard for their conduct.*

The prosecuting attorney -- The chief function of the prosecutor, as defined in the Code, is to seek justice, not merely to convict. The Code is rather explicit in regulating the conduct of the prosecutor in plea bargaining: he must obtain the defense counsel's permission before negotiating directly with the defendant; he must not misrepresent his recommendations to the defendant, and he must determine that the plea is voluntary.

Prosecutors are given statutory authority to offer evidence and information at the sentencing hearing and to present arguments as to sentencing alternatives, but there is a disagreement among judges and prosecutors as to whether a prosecutor should actually recommend a sentence to the court.

The defense attorney -- The gist of the Code's rules governing defense attorneys is that a defender must represent his client zealously and within the bounds of the law -- he is forbidden to make a defense unwarranted by law, to advise his client to do something illegal or to employ coercion. A defender is supposed to tell his client about trial risks and range of sentences and relay to him any prosecution offers.

The Code further states that a lawyer should not involve himself in cases he is not competent to handle or for which he cannot prepare adequately. Neither defender nor prosecutor should engage in "undignified or discourteous conduct which is degrading to a tribunal."

DEFENDANTS

MIRANDA VS. ARIZONA...ESCOBEDO VS. ILLINOIS...GIDEON VS. WAINWRIGHT -- these are landmark decisions by the U.S. Supreme Court in the 1960's that broadened the scope of defendant's rights. Hailed gratefully by some, reluctantly by others, they have had a profound effect on today's criminal courts. Omission or mishandling of a suspect's rights during arrest or in court can result in dismissal of prosecution or successful appeal.

*An offshoot of the ABA's Code of Professional Responsibility of 1969, the Illinois code does not have the force of law, but it has been adopted by the two major bar groups in the state -- the Illinois State and Chicago Bar Associations -- and the Supreme Court has considered adopting it.

THE GROUND RULES, CIRCA 1791

The ground rules were laid down in the Bill of Rights of the federal Constitution. They say generally what may not be done to people; interpretation as to what specifically must be done is left to statute and court decision. Among the provisions are these guarantees to citizens:

-- To be secure in their persons, houses, papers and effects against unreasonable searches and seizures. Warrants are to be issued only upon probable cause and must describe the place to be searched and the persons or things to be seized. (4th Amendment)

-- To not be tried for the same offense twice; to not be compelled to be a witness against oneself; to not be deprived of life, liberty or property without due process of law. (5th Amendment)

-- To a speedy and public trial by an impartial jury in the state and district where the crime was committed; to be informed of the nature and cause of the accusation; to be confronted by adverse witnesses; to have compulsory process for obtaining witnesses in their favor; to have assistance of defense counsel. (6th Amendment)

-- To bail or fines which are not excessive and to punishment not cruel or unusual. (8th Amendment)

RIGHTS ON ARREST

What transpires on the street or in the police station might seem beyond the purview of court watchers, but it is relevant. In felony preliminary hearings, for example, monitors are apt to see defense motions alleging abridgement of one or another of the accused's rights during arrest. A monitor should be familiar with the rights to understand judges' rulings on motions such as those to suppress evidence or confessions.

Back to Miranda, Escobedo and Gideon. In its 1963 Gideon ruling, the Supreme court held that a person is entitled to a lawyer whether or not he can pay. The next year, the high court reversed a two-year sentence given to Escobedo, who had been convicted as a hired killer, because police had refused to let him consult a lawyer until they had finished questioning him. The 1966 decision handed down in the Miranda case voided a kidnaping and rape conviction because police had not advised the suspect of his constitutional right to remain silent.

Some of the major rights a defendant has during arrest and while awaiting prosecution are:

-- To be arrested without a warrant only if the policeman has reasonable grounds for believing he committed a crime; to be arrested on a warrant lawfully issued by a judge and lawfully executed by police. In either case, the nature of the offense must be stated.

-- To not have physical evidence or confessions that are illegally obtained used against him.

-- If held in custody, to be given the "Miranda Warning" that: (1) he may remain silent and does not have to answer questions (2) any answers may be used against him (3) he can consult with a lawyer before or during questioning (4) a lawyer will be provided free of charge if he cannot afford one.

IMPORTANT RIGHTS OF DEFENDANTS IN THE CRIMINAL COURTS

Rights	Bonding	Preliminary Hearing	Arraignment	Trial	Sentencing	Additional Information
*To counsel and, if indigent, to court-appointed attorney.	✓	✓	✓	✓	✓	Must be informed of this by judge. See sample affidavit for determining indigency on page 51.
To be informed of charge and presented with a copy of it.	✓	✓	✓			Defendant also has right to have the charge read in open court before pleading at the arraignment.
To have non-excessive bail set.	✓					Bail in certain cases is unsure. See "Denial of Bond" on page 20.
*To a prompt preliminary hearing if held on a felony charge.		✓				In Cook, it must be within 30 days. Downstate, 2-3 weeks. See sample waiver form on page 48.
To plead guilty or not guilty.		✓	✓	✓		
If guilty plea is a result of plea bargain:						Before accepting a guilty plea judge must personally question defendant to determine that he understands the consequence of the plea (no trial etc.) and that no force, threats or promises outside the agreement were used to obtain the plea.
To have agreement confirmed by court.		✓	✓	✓		
To withdraw plea if judge withdraws his previous concurrence.		✓	✓	✓		
To have proceedings surrounding the guilty plea transcribed.		✓	✓	✓		This provision is necessary in case of an appeal.
*To a speedy public trial (within 120 days after arrest if in custody; within 160 days after trial demanded if out on bond).				✓		Judge does not have to inform defendant of his rights under the speedy trial law.
*To trial by an impartial jury.				✓		See sample waiver form on page 46.
*To confront adverse witnesses; to call witnesses in own behalf.				✓		
*To be present at trial.				✓		
*To a pre-sentence investigation.		✓	✓	✓	✓	See sample waiver form on page 47.
To a sentence determined according to seriousness of offense and with the objective of restoring offender to useful citizenship.		✓	✓	✓	✓	
If sentenced to probation or conditional discharge, to be given certificate setting forth conditions.		✓	✓	✓	✓	
To appeal.	✓	✓	✓	✓	✓	All defendants have right to appeal, but only certain ones must be informed of it by the court at time of sentencing. See "Appeals" on page 31.

*May be waived.

-- If held in custody, to communicate with family and lawyer by making a reasonable number of phone calls.

-- To be told a line-up is planned and that there is no right to refuse to participate after arrest but that there is a right to have a lawyer present and to have one appointed if he cannot afford to hire one.

-- To be treated humanely and provided with proper food, shelter and medical treatment.

-- To be taken before a judge "without unnecessary delay" to receive a copy of the charge and have bail set.

VICTIMS AND WITNESSES

"THE PEOPLE OF THE STATE OF ILLINOIS VS. _____" has a dramatic yet familiar ring. It is with these words that the clerk calls a suspect before the court to answer to a criminal charge. Because they are accused of violating state law, alleged murderers, rapists, robbers -- even misdemeanants -- are prosecuted as offenders against all the people of Illinois. The actual victim of a crime "achieves" the status of a state's witness.

Until recently, cooperation of witnesses was taken for granted, and the concern over their rights and treatment is a relatively new phenomenon, which entered the scene with national alarm over climbing crime rates.

THE CASE OF THE RELUCTANT WITNESS

Hesitance of citizens to cooperate in criminal prosecutions is more than a Perry Mason puzzle. Surveys sponsored by the federal Law Enforcement Assistance Administration reveal that many victims refuse to report crimes, even serious ones, committed against them. In many other instances, prosecution of crimes that are reported is stymied because witnesses refuse to cooperate.

The state's attorney and the court have some remedies available to force material witnesses to appear and to testify. Subpoenas can be issued and the reluctant witness bonded or taken into "protective custody." If the witness refuses to testify under his Fifth Amendment privilege against self-incrimination, the court can grant him immunity from prosecution on a motion of the state's attorney. (Further refusal to testify then can result in a contempt of court citation and penalty.) If a witness fears reprisal, police protection can be provided; the prosecution has even paid for relocating a witness in another state.

Nevertheless, unwilling witnesses are often not very good ones. In its Report on Courts, the National Advisory Commission on Criminal Justice Standards and Goals urged a number of steps to ease the problems of witnesses and to encourage their cooperation -- reimbursement of expenses, compensation for time spent in court, better treatment in general. Assisting victims and other witnesses is drawing the interest of state's attorneys, neighborhood and community groups and the state legislature.

CRIME VICTIMS COMPENSATION ACT

In 1973 the Illinois General Assembly established a program to compensate victims of violent crimes* or their dependents. Its purpose is to reduce the financial burdens imposed by serious physical injury and to encourage cooperation with law enforcement agencies.

Compensation is limited to the victim's expenses above \$ 200 but not exceeding \$ 10,000. Cost of medical, hospital and nursing care; loss of earnings up to \$ 500 a month; funeral and burial expenses; loss of support -- all these may be compensated in certain circumstances. (See sample claim form in Chapter 6.) Two of the prerequisites are that the crime must have been promptly reported to proper authorities and the victim must have cooperated fully with law enforcement officials.

As of October 1975, nearly \$ 500,000 had been distributed under the program, which is financed by state funds and administered through the attorney general's office and the Court of Claims. Under this Act, the state is empowered to file suit against convicted defendants to recover funds advanced to their victims.

RESTITUTION AND REPARATIONS

Property loss or damage is not recoverable under the Crime Victims Compensation Act, but such costs may sometimes be paid by the defendant. The Illinois Criminal Code provides that payment of such damages, not exceeding the actual amount, may be a condition of probation or conditional discharge. (See Chapter 3 "Acts I through VIII," page 17.) An example would be repayment to the victim of a theft by the defendant or to the owner of damaged property for repairing the damage. Noting that such an arrangement is rarely ordered by Cook County courts, the Chicago Bar's Criminal Justice Commission recommended greater emphasis on restitution both to help the victim and to impose responsibility on the defendant.

Sometimes a victim will wish to halt prosecution once restitution has been made, but the decision is up to the state's attorney. It should be noted that it is illegal for a victim or witness to receive anything of value in return for a promise not to prosecute or to aid in the prosecution; it is also illegal to make such an offer. A person who does either is guilty of "compounding a crime," a *petty offense*.

REIMBURSEMENT FOR EXPENSES

Serving as a witness often costs a considerable sum of money in lost wages and travel expenses. To alleviate the financial burden of being a good citizen, the Report on Courts recommended that (1) witnesses in criminal proceedings receive compensation for court appearances at minimum rate of twice the prevailing federal minimum wage for each hour spent in court and (2) witnesses be paid for round trip travel between the court and their residence or place of business.

Illinois law provides for compensating witnesses in the amount of \$ 10 a day and eight cents per mile. This is the practice in civil matters, but there seems to be a question about whether the law applies in criminal cases.**

*Only the following crimes are covered: murder, voluntary manslaughter, kidnaping, aggravated kidnaping, rape, deviate sexual assault, arson, indecent liberties with a child, assault, aggravated assault, battery and reckless conduct.

**Schiller, op. cit.

An informal survey of several circuits shows that the practice is fairly consistent regarding reimbursement of in-state prosecution witnesses: only out-of-county witnesses are repaid the cost of their travel, and in some cases only if they request it.

(Out-of-state witnesses, by law, are to be paid 10 cents per mile and \$ 5 a day. Compensation is also given to expert witnesses.)

Other prosecution witnesses in criminal trials are not compensated for lost wages by the state or county. However, in Peoria County a private agency, Witness Information Service, has arranged with a number of employers to allow workers paid time-off to serve when they are required as witnesses.

"TENDER LOVING CARE?"

Noting that witnesses are often discouraged by lack of information, long waits in court and repeated continuances, the Report on Courts recommended more consideration for witnesses' time, better notification procedures and provision of adequate waiting-room facilities.

Victim/witness advocacy and support programs are currently operated by the Cook County state's attorney's office and several private groups, including the Chicago Crime Commission, Organization of the North East, The Woodlawn Organization and South East Chicago Commission. Downstate there are a victim assistance program in the Vermilion County state's attorney's office and the Peoria project mentioned previously; both are funded by the Illinois Law Enforcement Commission and more are planned.

CHAPTER 5

HOW TO WATCH A COURT

Specific instructions for filling out court watchers' report forms will be given by each local project's lawyer/advisor and local coordinator. The following advice of a more general nature is based mostly on the experience of the League of Women Voters of Illinois, which has been sending observers to meetings of governmental bodies for nearly a half century.

Do your homework! Read the handbook and attend the training sessions conducted by your lawyer/advisor. Ask questions about anything you do not understand. Go to court on your own at least twice during the training period.

Once the daily monitoring starts, make every effort to attend court on the day you are scheduled. If it is impossible for you to go that day, let your local coordinator know as far ahead of time as possible so that she can find an alternate.

Get to court early -- at least 15 minutes before it is scheduled to begin. Check to see whether the current day's call and the notice of defendant's rights are posted. Pick up a copy of the call if that has been previously arranged.

If any effort should be made to bar your attendance, do not argue; merely note the fact on your report form. (The same is true if you are denied any reasonable information or the opportunity to take notes.)

Introduce yourself to the judge, if possible, and to the clerk as an official observer from the Illinois Court Watching Project; show your Project ID card if appropriate.

Sit where your lawyer/advisor or local coordinator has suggested. If the judge asks you to sit somewhere else, don't argue.

Be as unobtrusive as possible in appearance and demeanor. NEVER INTERRUPT THE PROCEEDINGS. Always be courteous, no matter what the provocation.

REMAIN NEUTRAL. Do not betray your personal feelings by any facial expression or remark. If a judge or anyone else asks your opinion about anything that you have observed, politely refrain from commenting. Emphasize that you are merely collecting data and cannot speak for the Illinois Court Watching Project. Refer the person to the local coordinator or project chairman.

While you are observing, try to jot down all the data requested on the case observation form. If you miss some of it, ask the clerk for the additional information during a recess or after adjournment. Do not pressure anyone, though.

Make no movies, photographs or tape recordings in the courtroom.

Note any special problems you encounter and any suggestions you wish to make on the back of your report form or report them to your local coordinator.

CHAPTER
PROGRAM NOTES

RULE 61: STANDARDS OF JUDICIAL CONDUCT

A. Definitions

1. Wherever the word "judge" is used in the Standards and Rules it includes circuit and associate judge and judges of the Appellate and Supreme Court.
2. Wherever the pronoun "he" is used in the Standards and Rules it includes the feminine as well as the masculine form.

B. Preamble

The assumption of the office of judge imposes upon the incumbent duties in respect to his personal conduct which concern his relation to the State and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses, jurors and attendants who aid him in the administration of its functions. In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and immune from private, political or partisan pressures. He should administer justice according to law, and deal with his appointments as a public trust. He should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

C. Standards

1. *The integrity of our legal system.* A judge should bear in mind that ours is a government of law and not of men and that his duty is the application of general law to particular instances. He should administer the office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the law.
2. *The public interest.* Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the court.
3. *Constitutional obligations.* It is the duty of all judges to support the Federal and applicable State Constitutions; in doing so, they should fearlessly observe and apply fundamental limitations and guarantees.
4. *Avoidance of impropriety.* A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.
5. *Essential conduct.* A judge should be temperate, industrious, attentive, patient, impartial, studious of the principles of the law and diligent in endeavoring to ascertain the facts. He shall devote full time to his judicial duties and shall normally conduct morning and afternoon sessions of court for hearing and deciding matters regularly assigned to him.

6. *Promptness.* A judge should be prompt in the performance of his judicial duties. He should recognize that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality or diligence creates dissatisfaction with the administration of the court.
7. *Court organization.* A judge responsible for administration should organize the court with a view to the prompt and convenient dispatch of its business. No judge should tolerate abuses or neglect by clerks and other assistants.

All judges should cooperate to promote the satisfactory administration of justice.

It is the duty of a judge to hear and decide all matters regularly assigned to him except in those cases in which he has a conflict of interest.

8. *Consideration for counsel and others.* A judge should be considerate of, and courteous to, counsel, especially the young and inexperienced, jurors, witnesses, and others in attendance upon the court.

He should also require, and so far as his power extends, enforce on the part of the court personnel and counsel, civility and courtesy to the court, to other counsel, and to jurors, witnesses, litigants and others having business in the court.

9. *Special responsibility in crowded courtrooms.* In courts having a large volume of cases, tending to crowd the courtrooms, the judge should give serious and careful attention to all decisions, and should take special care to enforce reasonable order and decorum.
10. *Unprofessional conduct of attorneys.* A judge should criticize or discipline with prudence unprofessional conduct of attorneys in matters pending before him, and if such action is not a sufficient corrective, should refer the matter to the proper authorities.
11. *Appointees of the judiciary and their compensation.* All appointments in judicial proceedings should be made on an impartial basis, with a view of selecting competent persons of good moral character. A judge should avoid nepotism and action tending to create suspicion of impropriety. He should not offend against the spirit of this standard by interchanging appointments of trustees, receivers, guardians and other persons, but should not permit this choice to be improperly influenced, nor his free judgment to be impaired. He should not make unauthorized or unnecessary appointments. While not hesitating to set or approve just amounts, a judge should be most scrupulous in granting or approving compensation for services of appointees so as to avoid excessive allowances, whether or not the same be excepted to or complained of. He cannot rid himself of this responsibility by consent of counsel.
12. *Self-interest and freedom from influence.* A judge should neither perform nor take part in any judicial act in which his personal interests or those

of a relative are involved. He should not allow any person to influence him improperly or enjoy his favor; he should not be affected by the kinship, rank, position or influence of any litigant or other person and he should not convey the impression by his conduct that he can be so influenced or affected.

13. *Independence.* A judge should not be swayed by partisan demands, public clamor, considerations of personal popularity or notoriety, nor permit fear or unjust criticism to influence his judicial action.
14. *Interference in conduct of trial.* A judge should so direct the trial of a case as to prevent unnecessary waste of time but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

The judge should avoid controversies with counsel which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial manner or tone. He should give careful attention to the arguments of counsel and should avoid unnecessary interruptions.

15. *Ex parte hearings.* In proceedings where an ex parte hearing is proper, a judge should act only when he is convinced, after a careful examination of the facts and principles of law on which the application is based, that the facts and the law require such action.
16. *Ex parte communications.* Except as permitted by law, a judge should not permit private or ex parte interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal.

A judge should not accept in any case briefs, documents or written communications designed to influence his judicial action in any case, either civil or criminal.

17. *Continuances.* In considering applications for continuances, a judge, without forcing cases unreasonably or unjustly to trial, should insist upon a proper observance by counsel of their duties to their clients, and to adverse parties and their counsel, so as to expedite the disposition of matters before the court.
18. *Sentences and punishments.* In imposing sentence, a judge should follow the law and should not compel persons brought before him to submit to some act or discipline without authority of law, whether or not he may think it would have a beneficial corrective influence. He should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or by undue leniency.

19. *Review.* A trial judge should promptly certify the report of proceedings on timely application if it fully and fairly presents the questions as they arose at the trial.
20. *Legislation.* A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to expedite or impede the just disposition of controversies. Where it is clear that he might contribute to the public welfare, he should advise those in authority of his observation and experience in order that they may remedy defects of procedure.
21. *Inconsistent obligations.* A judge should not accept duties or obligations which will interfere, or reasonably appear to interfere, with the proper performance of his official duties.
22. *Gifts and favors.* A judge should not accept gifts or favors from litigants, lawyers practicing before him, or others whose causes are likely to be submitted to him for judgment.
23. *Social relations.* A judge should be particularly careful to avoid any action that tends reasonably to arouse the suspicion that his social or business relations or friendships influence his judicial conduct.
24. *Improper publicizing of court proceedings.* Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings detract from the essential dignity of the proceedings, distract participants and witnesses in giving testimony, and create misconceptions with respect thereto in the mind of the public and should not be permitted.
25. *Conduct of court proceedings.* Proceedings in court should be so conducted as to reflect their importance and seriousness. Judicial robes should be worn whenever practicable.

JURY WAIVER

Form 17

STATE OF ILLINOIS,)
County of Cook. } ss.

The Circuit Court of Cook County

....., 19.....

THE PEOPLE OF THE STATE OF ILLINOIS
va.

.....
.....
.....

Charge for

.....

No.....

I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing.

Signed.....

.....

WAIVER OF PRE-SENTENCE INVESTIGATION
(Alterations on form made by court .)

~~INDICTMENT~~ WAIVER of Pre-sentence Investigation

Form IND.

STATE OF ILLINOIS, }
County of Cook. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

.....Term, A. D. 19.....

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

Information for

.....
.....
.....

No.

Pre-sentence Investigation

I, the undersigned, do hereby waive ~~Indictment~~ and submit the above entitled cause to
the Court for hearing on an Information.

Signed.....

~~XXXXXXXXXXXX~~ Waiver of Preliminary Hearing

Form IND.

STATE OF ILLINOIS, }
County of Cook. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

.....Term, A. D. 19.....

THE PEOPLE OF THE STATE OF ILLINOIS
vs.

.....
.....
.....

Information for

.....

No.

Preliminary Hearing

I, the undersigned, do hereby waive ~~Indecent~~ and submit the above entitled cause to
the Court for hearing on an Information.

Signed.....

WAIVER OF PRELIMINARY HEARING
(Alterations on form made by court.)

**NOTICE OF INTENT TO FILE CLAIM
FOR CRIME VICTIM'S COMPENSATION**

APPLICANT'S NAME _____

NOTICE OF INTENT TO FILE CLAIM

Notice is hereby given to the Office of the Attorney General of the State of Illinois, Court of Claims Division, of my/our intent to file a claim for compensation pursuant to the provisions of the Crime Victims Compensation Act.

ATTORNEY (if any)

APPLICANT'S SIGNATURE

Address _____

Telephone _____

TO BE COMPLETED BY APPLICANT

Please print clearly or type:

1. Name of Victim _____

2. Victim's Address _____

3. Victim's Telephone No. _____ Business Telephone NO. _____

4. Victim's Social Security No. _____ Date of Birth _____

5. If Applicant is other than victim, then provide the following:

a. Applicant's Name _____

b. Applicant's Address _____

c. Telephone (Home) _____ (Business) _____

d. Social Security No. _____ Date of Birth _____

6. Date and time of incident _____

7. Place of incident _____

8. Police or Fire Department and District Number where report of incident was made _____ District # _____

9. Name and address of assailant, if known _____

Please give brief description of what happened.

RETURN THIS FORM TO:

For Northern Illinois and Chicago area OR For Southern Illinois

Office of the Attorney General
Court of Claims Division
Room 300, 188 West Randolph
Chicago, Illinois 60601
312/792-2587

Office of the Attorney
General
Court of Claims Division
500 South Second Street
Springfield, Illinois 62706
217/782-1090

APPLICATION FOR CRIME VICTIM'S COMPENSATION

STATE OF ILLINOIS
COURT OF CLAIMS
CRIME VICTIMS COMPENSATION ACT

Check One
 Application For Personal Injury Benefits
 Application For Death Benefits

VICTIM:

NAME _____
 STREET _____
 CITY _____ ZIP _____

CLAIMANT (if other than victim)

NAME _____
 STREET _____
 CITY _____ ZIP _____

VICTIMS:

SEX	MARITAL STATUS	DATE OF BIRTH
MALE _____ FEMALE _____	SINGLE _____ MARRIED _____ DIVORCED _____	MO. _____ DAY _____ YR. _____

STATE WHAT HAPPENED:

Date _____ Time _____ Location _____
 Description of Crime: _____

POLICE NOTIFIED:

Date Reported Mo. _____ Day _____ Year _____ Time _____
 To Which Police Agency: City _____ Dist. No. _____
 Names and Addresses of Witnesses to Incident _____

Names and Addresses of Suspected Offenders _____

Nature and Extent of Injuries: _____

MEDICAL EXPENSES

Doctor or Hospital	Address	Date	Amount \$
--------------------	---------	------	-----------

If This Is A Claim For Death Benefits:

Date of Death _____	Physician _____
Place of Death _____	Name _____
Attach Copy of Death Certificate _____	Address _____
Funeral Expenses _____	Funeral Home _____
Amount \$ _____	Address _____

CHILDREN OR DEPENDENTS OF DECEASED VICTIM

Name	Relationship	Date of Birth
------	--------------	---------------

EMPLOYMENT OF VICTIM:

Employer	Address	Tele. No.
----------	---------	-----------

Average Monthly Salary for Six Months Preceding Incident _____

If applicable indicate amount of time lost from work due to incident

From Mo. _____ Day _____ Yr. _____ To Mo. _____ Day _____ Yr. _____

Are Medical or Loss of Income Benefits Available From any Source

Indicate Sources and Amounts

\$ _____ Workmen's Compensation	\$ _____ Major Medical/Health Policy
\$ _____ County Medical Bureau	\$ _____ Veterans Administration
\$ _____ Medicare	\$ _____ Armed Services
\$ _____ Social Security	\$ _____ Health/Welfare Service
\$ _____ Other (Specify Source) _____	

Was Notice of Intention to File This Application Filed in the Office of the Attorney General

_____ If so, what date was it filed? Mo. _____ Day _____ Yr. _____

I AUTHORIZE THE RELEASE OF ALL REPORTS, DOCUMENTS, AND OTHER INFORMATION RELATING TO THESE MATTERS.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ ALL OF THE QUESTIONS IN THE APPLICATION AND DECLARE THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL OF MY ANSWERS ARE TRUE, CORRECT AND COMPLETE.

CLAIMANT'S ATTORNEY (If any):

 APPLICANTS SIGNATURE

 DATE

FINANCIAL AFFIDAVIT FOR APPOINTMENT OF PUBLIC DEFENDER

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
 Plaintiff)
)
 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 children _____
 (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 dwellings \$ _____
 - (b) Other real property \$ _____ Where situated _____
 - (c) Car \$ _____ Make _____ Year _____
 - (d) Other personal property (jewelry, household contents, furs, etc.) \$ _____
 - (e) Bank accounts \$ _____
 - (f) Cash on hand \$ _____
 - (g) Surrender value of life or annuity insurance policies \$ _____
 - (h) Securities, trusts, bond \$ _____
 - (i) Other assets \$ _____ Described herein _____
 - (j) Total value of assets \$ _____

(OVER)

7. Liabilities:

(a) Mortgage on home \$ _____ Monthly Payment \$ _____

(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

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

53

COOK COUNTY COURT CALENDAR
(Defendants' names deleted for use as sample.)

HEADING		ROOM	SHEET	DATE	CALL	JUDGE								
MUNICIPAL DEPARTMENT (3145)		800	401	04/21/75	0130pm	BRANCH 65								
LINE	CASE NUMBER	OFF CHARGES	NAME OF DEFENDANT		ARREST DATE-SEX-AGE-DEFTS	IDENT. NUMBER	NAME OF ATTORNEY	PREVIOUS LOC.-DATE	NEW COURT DATE	DISP. CODE	TRANSACTION NUMBERS	CASH	EX PARTE	BOND DEDUCT
			BOND NUMBER	AMOUNT										
1	B0925077				0			BRANCH 65 04/07/75						
2	B0925078				0			BRANCH 65 04/07/75						
3	B0925118				0			BRANCH 65 04/07/75						
4	B0938195				0			BRANCH 65 04/07/75						
5	B0959449							BRANCH 65 04/09/75						
6	COL		38	16-1		THEFT								
7	B0960632				0		164734	BRANCH 65 03/30/75						
8	COL		38	161A1		ATT THEFT								
9	BOL			10259486										
10	B0960461				0		433883	BRANCH 65 04/21/75						
11	COL		38	16-1		THEFT								
12	BOL			07616287		\$1,000								
13	B0960467				0		127393	BRANCH 65 04/07/75						
14	COL		38	16-1		THEFT								
15	B0960483				0		281823	BRANCH 65 04/07/75						
16	COL		38	16-1		THEFT								
17	BOL			07641496										
18	B0960494				0			BRANCH 65 04/08/75						
19	COL		38-	16-1		THEFT								
20	B0960499				0			BRANCH 65 04/07/75						
21	COL		38	16-1		THEFT								
22	B0960511				0			BRANCH 65 04/09/75						
23	COL		38	16-1		THEFT								
24	B0960514				0			BRANCH 65 04/09/75						
25	COL		38	16-1		THEFT								
26	B0960518				0		166934	BRANCH 65 04/09/75						
27	COL		38	16-1		THEFT								
28	BOL			D7642286										
29	B0960519				0		434326	BRANCH 65 04/09/75						
30	COL		38	16-1		THEFT								
31	BOL			D7644007		\$1,000								
32														
33														
34														
35														

TUESDAY NOVEMBER 4, 1975
COURTROOM 207 SECOND FLOOR

NAME	CASE #	TIME
[REDACTED]	CE A 4978	9:00 AM
[REDACTED]	KS A 6712	9:00 AM
[REDACTED]	RA A 6732	9:00 AM
[REDACTED]	RA A 6731	9:00 AM
[REDACTED]	TL L65149	9:00 AM
[REDACTED]	TL A 6704	9:00 AM
[REDACTED]	TL A 6703	9:00 AM
[REDACTED]	TL L65150	9:00 AM
[REDACTED]	DA A 6702	9:00 AM
[REDACTED]	MF A 6701	9:00 AM
[REDACTED]	JD A 6581	9:00 AM
[REDACTED]	JD A 6582	9:00 AM
[REDACTED]	PM L64876	9:00 AM
[REDACTED]	PM A 6713	9:00 AM
[REDACTED]	PM L64877	9:00 AM
[REDACTED]	PM L64875	9:00 AM
[REDACTED]	PM A 6714	9:00 AM
[REDACTED]	RM A 6706	9:00 AM
[REDACTED]	RM A 6705	9:00 AM
[REDACTED]	HV A 5748	9:00 AM
[REDACTED]	M A 6722	9:00 AM
[REDACTED]	GW A 6291	10:00 AM
[REDACTED]	SI A 6361	10:00 AM
[REDACTED]	SI A 6360	10:00 AM
[REDACTED]	JA A 6249	10:00 AM
[REDACTED]	JA A 6248	10:00 AM
[REDACTED]	JA A 6250	10:00 AM
[REDACTED]	KL L61875	10:00 AM
[REDACTED]	KL L61874	10:00 AM
[REDACTED]	KL A 6409	10:00 AM
[REDACTED]	KL L61876	10:00 AM
[REDACTED]	KL A 6408	10:00 AM
[REDACTED]	KL A 6407	10:00 AM
[REDACTED]	PJ A 6356	10:00 AM
[REDACTED]	AC A 5681	1:30 PM
[REDACTED]	AC A 5680	1:30 PM
[REDACTED]	AW A 6560	1:30 PM

ABBREVIATIONS

(FOR REFERENCE ONLY)

A -- Assault
 A&B -- Assault & Battery
 Acc -- Accused
 Acq -- Acquitted
 Adj -- Adjudication
 Afdvt -- Affidavit
 Agg Asslt -- Aggravated Assault
 AKA -- Also Known As
 AKU -- Also Known Under
 Arr -- Arraignment
 ASA -- Assistant State's Attorney
 Asslt DW -- Assault with a Deadly Weapon

BA -- By Agreement (both sides agree to continue a case)
 B&E -- Breaking & Entering
 BFC -- Bond Forfeiture Capius
 BFV -- Bond Forfeiture Vacated
 BFW -- Bond Forfeiture Warrant
 BO -- Bound Over
 Brby -- Bribery

CAP -- Alias Capius
 C of C -- Contempt of Court
 CCW -- Carrying a Concealed Weapon
 CR -- Capius Recalled
 CS -- Costs Suspended

D-Bond -- Bail Bond
 DWI -- Driving While Intoxicated
 DWLR -- Driving While License Revoked
 DWLS -- Driving While License Suspended
 DWP -- Dismiss for Want of Prosecution

Est B -- Estreat Bond

FG -- Found Guilty
 Frd -- Fraud
 Fug -- Fugitive

G -- Plead Guilty
 G JU -- Grand Jury
 Gtd -- Granted

HOC -- Hold On Call

I-Bond -- Recognizance Bond
 Indet Lib -- Indecent Liberties
 Intox -- Intoxication

JU -- Jury Demanded
 JDA -- Jury Demanded & Allowed
 Juv -- Juvenile

LFD -- Leave to File Denied

Marij -- Marijuana
 Marij, Sale of -- Sale of Marijuana
 MD -- Motion Defendant
 Misd -- Misdemeanor
 MS -- Motion State
 MV -- Motor Vehicle

NG -- Plead Not Guilty
 No Cont -- Plead No Contest
 NOLLE (NP) -- Nolle Prose (State decides not to prosecute)
 NP -- No Plea

OC -- Order of the Court
 ORP -- On Recommendation of Prosecutor

P (Prob) -- Probation
 PD -- Public Defender
 Poss -- Possession
 PP -- Parties Present
 Pros., Prost. -- Prostitute, Prostitution
 PSI -- Pre-sentence Investigation

Rest -- Restitution

ROR -- Release On Recognizance

So1 -- Soliciting

SOL -- Stricken Off the Call with
Leave to Reinstate

St Atty, SA -- State's Attorney

T -- Trial

TO -- Traffic Offense

W/ADJ -- Withhold Adjudication

W/C -- Worthless Check

W/J -- Waive Jury Trial

GLOSSARY

ACQUITTAL -- A verdict or finding of not guilty by a jury, or in cases in which a jury trial is not requested, by the court.

ADJUDICATION -- The giving or pronouncing of a judgment or decree in a cause; also the judgment given.

ADMISSIBLE EVIDENCE -- Evidence or testimony which is allowed by the judge to be introduced during the trial.

AGGRAVATION AND MITIGATION -- A hearing held after conviction in which both counsel offer evidence and information to the judge in order to aid him in deciding the sentence.

ALIAS CAPIUS -- A warrant issued by a judge for an individual's arrest.

APPEAL -- A proceeding for review by a higher court of bail, sentence or verdict handed down by a lower court.

ARRAIGNMENT -- The formal act of calling a defendant into open court, informing him of the offense charged, and asking for a plea of guilty or not guilty.

ARREST -- The taking of a person into custody for the purpose of holding or detaining him to answer a criminal charge. An arrest can be made when a warrant has been issued or a police officer has reason to believe that an individual has committed an offense.

B

BAIL -- An amount of money set by the court, the payment of which procures the release from custody of a person charged with a criminal offense. Bail is set in order to insure the appearance of the accused in court on the date his hearing is scheduled and compliance with the conditions of the bond.

BENCH TRIAL -- A trial heard by the judge without a jury. The judge delivers the verdict in a bench trial. If a defendant wants a bench trial, he waives a jury trial.

BILL OF PARTICULARS -- A more detailed statement of the offense charged than that in the indictment or information. Its precise nature enables the defendant more properly to prepare his defense.

BOND -- An undertaking (either secured by bail or the signature of the defendant) by which the defendant binds himself to comply with the conditions stated in the bond.

BOND FORFEITURE WARRANT -- A warrant directing forfeiture of bond and re-arrest of a defendant who has not appeared in court at the proper time.

C

CASE LAW -- Law of a particular subject as evidenced or formed by the adjudged cases.

CHALLENGE FOR CAUSE -- An objection to a juror, made in a voir dire examination, for a cause stated, which points out the grounds upon which the juror is disqualified.

CHALLENGE FOR FAVOR -- An objection lodged against an individual juror for bias, such to be determined by the trial court acting in the exercise of a sound discretion.

CHARGE -- A written statement, presented to the court, which accuses a person of committing an offense. A charge can be in the form of a complaint, or in the case of felonies, an information or indictment.

CIRCUIT COURT -- The trial court of first impression in Illinois. These courts hear all civil and criminal cases within their jurisdiction with a few exceptions. The state is divided into 21 judicial circuits, consisting of one or more counties.

CITATION -- A notice to appear issued by a police officer in a traffic case to an individual to appear in court on a certain date.

COMPLAINT -- A written statement presented to the court charging the commission of an offense other than an information or indictment. A complaint can be filed by a civilian or a police officer.

CONCURRENT AND CONSECUTIVE SENTENCES -- Concurrent sentence is one in which sentences for different offenses are served at the same time. Consecutive sentence is one which is served after another has been finished.

CONDITIONAL DISCHARGE -- A sentence of conditional or revocable release under conditions which may be imposed by the court. There is usually no probationary supervision of a defendant who is conditionally discharged.

CONSERVATION OFFENSE -- A violation of the Illinois laws relating to fishing, hunting, state parks, state forests, forest preserves, and so forth.

CONTEMPT OF COURT -- Conduct tending to bring the authority and administration of the law into disrespect or disregard, interfering with or prejudicing parties or their witnesses, during the litigation, or otherwise tending to impede, embarrass, or obstruct the court in the discharge of its duties.

CONTINUANCE -- The postponement or adjournment of legal proceedings.

CONVICTION -- An adjudication that a person is guilty of a crime based upon a verdict or by a plea of guilty.

COUNT -- A separate part of an indictment or information wherein a separate and distinct offense is stated.

COURT CALENDAR/COURT CALL -- (Terms are interchangeable) A list of cases set for trial on a particular day.

COURT REPORTER -- A stenographer who, during the proceedings in open court, records the testimony of witnesses and the colloquy between counsel and between counsel and the court, and later prepares transcripts from such record which may be needed and ordered for appeal or review of proceedings.

COURT SUPERVISION -- See SUPERVISION.

CRIME -- An act committed in violation of the criminal law.

D

DEFENDANT -- The person against whom the

complaint or charge is filed.

DEFERRED PROSECUTION -- An alternative method for dealing with non-violent misdemeanants, which the state's attorney's office withholds prosecution for a stated time while offender undergoes counseling or other treatment. If he fulfills conditions and stays trouble-free for a certain period, prosecution is declined.

DEPOSITION -- Testimony taken down in writing under oath. Although it is part of a judicial proceeding, the deposition is not taken in open court, but outside the courtroom.

DETENTION -- Incarceration in a lock-up or detention cell (usually in the police station) after arrest and booking.

DISCOVERY -- The process by which the prosecution and defense supply to each other information about the case. In Illinois, this information can only be obtained through motions made in the trial court.

DISMISS -- To send an action out of court without any further consideration or hearing.

DISPOSITION -- The outcome of the case.

DOCKET -- 1) A list of cases awaiting court action. Often used synonymously for court calendar, court call, case sheet. 2) The running record kept by the Circuit clerk's office for each individual case. It lists all the pertinent data for that case including orders by the judge, such as continuances, and final disposition. 3) The list of cases assigned to a particular judge; a judge's "personal docket."

DOUBLE JEOPARDY -- The constitutional right which bars a second prosecution for the same criminal act. It takes effect only "after jeopardy has attached," i.e. after the jury has been sworn in or after the judge in a bench trial has received the first piece of evidence.

DUE PROCESS -- The law in its regular course of administration through the courts of justice. The guarantee of due process requires that every man have the protection of a fair trial.

E

ESTREAT BOND -- Withdrawal of a bond by order of a court.

EVIDENCE -- The means by which any matter of fact, the truth of which is submitted to investigation, may be established or disproved.

EX PARTE -- From or on one side only. An ex parte proceeding is one brought for the benefit of one side only with no notice to the other side.

F

FELONY -- An offense for which a death sentence or imprisonment for a year or more in a penitentiary is provided. A felony is a more serious crime than a misdemeanor.

FORCIBLE FELONY -- Rape, treason, robbery, burglary, arson, kidnaping, aggravated battery or any other felony involving physical force.

"FOUR-TERM ACT" -- The act in the Illinois Revised Statutes (Chap. 38:103-5) which supports the right of the accused to a speedy trial. The "four-term" is the 120-day period after a defendant is taken into custody during which he must be brought to trial. For those free on bail, the term is a 160-day period beginning as soon as a trial is demanded.

G

GUILTY -- A plea or judgment which places the responsibility for the violation of the law on an individual.

H

HABEAS CORPUS -- "You have the body" -- a writ requiring a person be brought before a judge or court on the cause for which the individual is being held.

HEARSAY EVIDENCE -- Evidence based on reports of others rather than on a witness' own knowledge.

HUNG JURY -- A jury which does not unanimously agree on a verdict.

I

INCARCERATION -- An imprisonment.

INCOMPETENT -- A defendant is incompetent, or unfit, to stand trial or be sentenced

if he is unable to understand the nature and purpose of the proceedings against him or cannot assist in his defense because of a mental or physical condition.

INDICTMENT -- A written statement presented by the grand jury to a court which charges the commission of an offense. Indictments are delivered only in felony cases.

INFORMATION -- A written statement, signed by a state's attorney and sent to a court, which charges the commission of an offense. An information is presented only in felony cases.

INJUNCTION -- A court order requested by one party prohibiting another party from performing an act that infringes on the complainant's rights. Such an order may also be issued to compel the performance of an act.

INTERLOCUTORY APPEAL -- An appeal from an order of the court before final disposition of a case.

J

JOINDER -- An order by the court that two or more separate charges be combined into one, or that two or more defendants tried separately be made co-defendants in a single trial.

JURISDICTION -- The power of a court to inquire into the fact, to apply the law, and to declare the punishment, in a regular course of judicial proceeding; sometimes referring to the territorial area, national or state, by way of indicating the law applicable to a case or the place where a cause was tried.

JURY COMMISSION -- A body of three commissioners appointed by the Circuit Court to prepare a list of voters who qualify for jury duty.

JURY, GRAND -- A jury of 23 persons which hears evidence and testimony presented by the state's attorney and conducts special investigations. If at least 12 of the jurors decide that the case is strong enough to justify a trial, a "bill of indictment" is returned and an arrest warrant issued for the accused.

JURY, PETIT -- A body of laymen selected and impaneled according to law in order to ascertain, under the guidance of a judge, the truth in questions of fact arising in either a civil or criminal proceeding on the basis of testimony and evidence presented before them. A petit jury consists of 12 or fewer jurors, and a verdict of either "guilty" or "not guilty" is reached unanimously. It is sometimes called a trial jury.

K L

M

MANDAMUS -- "We command" -- a writ by the Illinois Supreme Court and directed to a private or municipal corporation, or any of its officers, or to an executive, administrative, or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified.

MANDATE -- A judicial order directing the proper authorities to enforce a judgment or sentence.

MISDEMEANOR -- An offense for which the imprisonment provided by statute is less than one year in a penal institution other than a penitentiary. A misdemeanor is a less serious crime than a felony.

MISTRIAL -- An invalid trial because of errors in procedure, law or fact. A new trial before a different jury or bench must be held if a mistrial has been ruled. Some examples of grounds for a mistrial are failure of a jury to reach a verdict, lack of jurisdiction, or errors in the selection of a jury.

MOTION FOR SETTING -- Court's motion to set a date for a jury trial. (Applicable in DuPage County only.)

MOTION TO SUPPRESS -- A request by defense to suppress evidence (such as drugs, guns, stolen property, confessions) on grounds it was obtained illegally. Evidence which is suppressed cannot be used in trial.

MUNICIPAL PROSECUTOR -- The attorney for municipality. He prosecutes violations of city or village ordinances

in court in contrast to the state's attorney who prosecutes Illinois statutory violations.

N

NOLLE PROSEQUI -- A motion by the state's attorney for a dismissal of a charge. In effect, it is a declaration of record that he will not further prosecute a particular charge.

NON-SUIT -- A dismissal of a suit by a municipality against an accused ordinance violator; in other words, dropping of charges. (It is analogous to an SOL on a statutory offense.)

NOTICE TO APPEAR -- A notice issued to a person arrested without a warrant by a peace officer which sets forth the nature of the offense and requests the accused to appear before a court at a certain time and place.

O

OBJECTION -- The ordinary method of raising in the trial court a question which would not otherwise appear upon the record, the matter being brought to the attention of the trial court for judge's ruling.

OFFENSE -- A violation of criminal law.

P

PAROLE -- The conditional and revocable release of a prisoner under supervision of a parole officer. It is determined by the Pardon and Parole Board, an agency of the Illinois Department of Corrections, not by the court.

PEACE OFFICER -- Any official or public employee who is vested by law with a duty to maintain public order or to make arrests, whether that duty extends to all offenses or is limited to specific ones.

PEREMPTORY CHALLENGE -- A challenge to a juror to be exercised by a party to a civil action or criminal prosecution without assignment of reason or cause.

PERIODIC IMPRISONMENT -- A prison term served on certain days or periods of days. This sentence allows a person to pursue activities outside of jail -- taking care of a family, going to school, working, etc.

PERJURY -- The legal offense of testifying falsely and deliberately under oath.

PETTY OFFENSE -- Any offense for which a sentence to a fine only is provided.

PLEA -- The reply of the defendant, either guilty or not guilty, to the charges filed against him at the arraignment.

PLEA BARGAINING -- Negotiations between the defense and prosecution in which concessions are made regarding the charging and/or sentencing of the defendant by the prosecutor in exchange for a guilty plea.

POLLING THE JURY -- The practice of asking each juror individually in open court whether he concurs in the verdict.

PRELIMINARY HEARING -- A hearing held after arrest for a felony in which the prosecution presents its evidence to the judge who determines whether there is "probable cause" to believe that a crime was committed and that the defendant may have committed it. If probable cause is found, an information is filed by the state's attorney and the defendant scheduled for arraignment.

PRE-SENTENCE INVESTIGATION -- A written report by the court's probation department about the defendant's social background. For misdemeanor offenses, the preparation of the pre-sentence report is at the discretion of the judge.

PROBABLE CAUSE (HEARING) -- Felony preliminary hearing.

PROBATION -- A sentence of conditional and revocable release under a probation officer's supervision.

PROHIBITION -- An order prohibiting an inferior court from proceeding in an action over which it has no jurisdiction.

R

REASONABLE DOUBT -- An actual and substantial doubt of the defendant's guilt arising from a fair comparison and consideration of all the evidence in the case, both for the state and for the defense. If a jury has a reasonable doubt about the truth of a charge, then it must render a verdict of not guilty.

RELEASE ON RECOGNIZANCE (R.O.R.) -- An undertaking in which no bail is set. A person binds himself to comply with the conditions set in the bond, and a sum of money may be forfeited if the defendant fails to comply with these conditions.

RECUSATION -- Challenging a judge for pre-

judice or bias; challenging a judge for disqualification, including a challenge on the judge's own motion.

REST -- An indication that a party has no more evidence to offer at the particular stage of the trial.

REVOCATION HEARING -- A hearing in which it is determined whether or not a probationer has violated the terms of his probation.

S

SEARCH WARRANT -- A written order issued by a judge directing a law enforcement officer to search a place or person for instruments, articles and things described in the order. A search warrant has to be issued in most instances for a search and seizure to be legal.

SELF-INCRIMINATION, GUARANTEE AGAINST -- Both United States and Illinois Constitutions guarantee that no person shall be compelled to give evidence against himself in a criminal case. A defendant or witness can refuse to answer a question posed by counsel on this ground.

SEVERANCE -- To command, authorize, urge, incite, request, or advise another to commit an offense.

SPEEDY TRIAL -- The right of a defendant to have a trial within a certain period of time as specified in the statutes.

STATUTE -- A section of the Illinois Constitution or an act of the Illinois General Assembly.

SUBPOENA -- A written order calling for an individual's presence in court in a situation involving someone else. A judge or state's attorney usually issues the subpoena.

SUPERVISION -- As opposed to incarceration or probation, it is a continuance of the matter for a period (usually no more than one year). At the end of a period, if the defendant has not been charged with a subsequent offense, the original offense is dismissed. Supervision is not a sentence.

SUMMONS -- A notice issued by the court commanding a person to appear in court at a given date and time. A summons can be sent to an individual charged in a complaint, to a witness or to a juror.

T

TECHNICAL PLEA OF NOT GUILTY -- A declaration by defendant that he will not contest allegations made by prosecution but does not admit guilt. (Such pleas are most often heard in certain traffic cases and in cases where an order of supervision is made by judge.)

TESTIMONY -- Words heard from the witnesses in court as distinguished from evidence derived from writings.

TRANSCRIPT -- An official record of proceedings in a trial or hearing.

U

V

VACATE -- To annul or set aside.

VENIREMAN -- A citizen who has been summoned for jury duty. The jury is selected from a group of veniremen.

"VICTIMLESS CRIME" -- Crimes in which there is no readily identifiable victim. (Examples often cited are some drug violations, prostitution, gambling, public drunkenness, homosexuality, fornication, adultery.)

VOIR DIRE -- "To speak the truth" -- An examination made by the court, through the judge or counsel, of a juror as to his qualifications. The examination is held in open court.

W

WAIVE -- To give up a right, such as the right to jury or right to counsel.

WARRANT -- A written document issued by a judge authorizing a law enforcement officer to make an arrest, conduct a search, or carry out a judgment.

WARRANT FOR VIOLATION OF PROBATION -- A warrant issued by the judge for a probationer who is suspected of violating the terms of his probation. A revocation hearing is held in which the State assumes the burden of proving the content of its petition for revocation.

WRIT -- An order issued from a court requiring the performance of an act

or giving authority to have it done.

X Y Z

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