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THE JURY PROBLEM

Julius H. Miner

The author of this article, who holds a Master of Laws degree from Northwestern University, is a Judge of the Circuit Court of Cook County (Chicago, Illinois), currently assigned to the Criminal Branch of that court. In addition to his interesting discussion of the jury problem generally, Judge Miner presents in his article a "primer" for prospective jurors in criminal cases. He proposes that such a "primer" be distributed to all prospective jurors in order to familiarize them with the elementary principles of a criminal trial and its procedures, and to explain to them their rights, duties and obligations as jurors.—EDITOR.

In recent years much public criticism of juries has attended the acquittal of notorious criminals where the proof clearly indicated their guilt. The trial lawyer and trial judge, whose long and intensive contact with juries in both civil and criminal trials has afforded them a fair opportunity for appraisement, have the conviction that there is frequently a miscarriage of justice because of the lack of ability on the part of the average juror adequately to discharge the duties that devolve upon him in the fact-finding process. The legal profession generally, in spite of its traditional conservatism, shares this conviction.

The right to trial by jury except in chancery cases is of ancient heritage. It has long been regarded as one of the strongest pillars of democratic government. Liberty has been so closely identified with the jury system in Anglo-American legal history that it forms a part of our constitutional guarantees. In a very real sense incongruity exists between the full acceptance of the institution of the jury as being vital to a free society and the lethargic tolerance with which its imperfections have been endured through the years. With all its imperfections it is to be preferred to its abolition, if that were the choice. Those who would improve the administration of justice in the courts have come to recognize the need for improvement in the jury system to be as vital as that which inspired the procedural changes embodied in the civil and criminal codes of recent years. In any program of procedural reform it must be conceded that a reasonable guarantee of a process for ascertaining the truth ought not be subordinated to any other. Indeed, one is amazed at the startling disproportion in the effort that has been devoted to inconsequential procedural tinkering as compared to that devoted to the improvement of the jury system.

Suggestions for the improvement of the jury system require an understanding of the underlying causes and reasons for its failure to function adequately. Some of the more important weaknesses and the causes thereof, together with remedial proposals, will be presented in the following pages.

I

The woeful lack of intellectual endowment on the part of a juror is no doubt a most serious difficulty of common occurrence. Such lack of endowment is, to the defense lawyer in a criminal case, the very highest qualification any juror can possess. If a prospective juror discloses intelligence and competency he is promptly excused by the defense. For days the trial judge is obliged to sit idly by while lawyers wrangle over the selection of jurors with a view toward obtaining those whose prejudices and sympathies will best serve their side. The lawyers' range of inquiry upon selecting a jury frequently covers the juror's personal history as well as his political, social, economic and religious background, the objective being to discover some weakness to be exploited. The highest achievement of the defense lawyer in a criminal case with a guilty client rests in his successful effort to confuse and befuddle twelve inexperienced and sentimental jurors with issues entirely foreign to the merits of the case. The cheapest chicanery is frequently indulged in by the defense from the examination of the jurors on the *voir dire* until the parting summation.

In qualifying jurors in any case the lawyers should not be given the almost endless range of inquiry they are now afforded. Such examination should be confined to reasonable and sensible limits by the court[1] and should never be allowed to embrace inquiries into the law.[2] Much can be said for allowing the court to interrogate jurors as to their qualifications provided it will also ask such fair questions as counsel may suggest.[3] It cannot seriously be urged that this practice would permit the court to exert too important a sphere of influence. If the judge is competent to mete out punishment for most criminal offenses — a power now rested in him — and in civil cases to set aside a verdict and grant a new trial, he certainly should be trusted with the less important task of impanelling an impartial jury.

The best remedy for all this lies in the improvement of the method of selecting persons for jury service. Intelligence tests, the establishment of educational standards, or some method of selecting jurors to insure reasonable capacity upon their part to discharge their duty ought to be adopted.[4] Certainly no con-

[1] *Aldrich v. U.S.*, 283 U.S. 308, 51 Sup. Ct. 470 (1931); *People v. Kroll*, 315 Ill. 115, 145 N.E. 814 (1924); *Williams v. State*, 124 Miss. 799, 87 So. 273 (1921); *People v. Bryan*, 91 Cal. App. 189, 266 Pac. 972 (1928).

[2] *People v. Bruner*, 343 Ill. 146, 175 N.E. 400 (1931); *People v. Bryan, supra* note 1.

[3] *Owens v. Burt Motor Car Co.*, 44 Cal. App. 645, 186 Pac. 821 (1919).

[4] For statutes permitting the selection of special juries see, *People v. Hall*, 169 N. Y. 124, 62 N.E. 170 (1901); *People v. Mangannaro*, 20 N.Y.S. (2d) 389 (1940); *State v. Ellenstein*, 4 Atl. (2d) 770 (N.J., 1937).

stitution can be thought to guarantee trial by a jury of incompetents even if they are ineligible for conservatorship or the like. That the statutory exemptions of persons from jury service are too sweeping can hardly be doubted.[5]

II

Assuming that the juror is qualified to serve he is frequently baffled by the legal techniques and procedures which in no small degree baffled the lawyer until he mastered them. In criminal trials especially, the contest frequently resolves itself into one designed to create confusion rather than understanding among jurors. In them the defense hammers away at "reasonable doubt" and the "presumption of innocence," the exact content of which can never be defined with mathematical accuracy. In almost every trial legal artistry produces a host of maneuvers and subtle stratagems involved in objections to the admission or exclusion of evidence and to the court's ruling thereon. All this is climaxed by the instructions of the court to the jury upon the law to guide it in the discharge of its fact-finding function. These charges to the jury are highly technical in character and when given in stereotyped written form, as they must now be given in both criminal and civil cases, without oral elaboration on the law and without any comment on the facts,[6] their effect, combined with that of other trial procedures, is not particularly helpful even to the intelligent layman. Bewilderment, however induced, is not conducive to the discharge by the jury of its function.

The remedies for the evils last considered would embrace, among others, the following:

(a) Oral charges upon the law should be given to the jury. These should be couched in simple and understandable language for the comprehension of the layman and should be accompanied by all the explanatory remarks that may be necessary or desirable to enlighten the jury.

(b) The right of trial judges to comment upon the evidence is frequently urged. This power is subject to grave abuse unless confined to proper limits and its legitimate exercise will always require measured restraint and the most scrupulous regard for the true province of the jury. While this power has been subject to abuse[7] its absence has been thought to afford a laxity which, especially in criminal trials, has not only invited a

[5] Ill. Rev. Stat. (1945) ch. 78, §4.

[6] Rule 27 of The Illinois Supreme Court provides that in criminal cases the court shall give instructions to the jury in accordance with §67 of the Civil Practice Act, which states that "The court shall give instructions to the jury only in writing and only as to the law in the case." See *People v. Callopy*, 358 Ill. 11, 192 N.E. 634 (1934).

[7] *Fritts v. United States*, 80 Fed. (2d) 644 (1935); *United States v. Murdock*, 290 U.S. 389, 54 Sup. Ct. 231 (1933); *People v. Lintz*, 244 Mich. 603, 222 N.W. 201 (1928).

disrespect of lawyers for the court, but which has generally allowed a criminal trial to degenerate into a maze of immaterial issues. Those who disapprove of a court's having this power point to the dangers to the jury system that lurk in its abuse. They also point to the sinister influences which the trial judge may exert through the modulations of his voice and through other means which the cold record will never reveal.[8] It should be observed that the exercise of this power by federal judges as they have been admonished to use it "cautiously and sparingly, if at all, and only in exceptional cases"[9] has been thought to be satisfactory.

(c) In the recognition of the propriety of fuller judicial control over trials there should not be overlooked that disciplinary power of the court over attorneys in their conduct during the trial. Much of the conduct of the defense lawyer in criminal trials which is deliberately calculated to confuse the jurors upon the issues of the case ought never to be tolerated. Neither should similar conduct on the part of the prosecutor be allowed to occur without reprimand. This disciplinary power of the court should be more freely exercised in both civil and criminal cases,[10] but obviously with more caution where the liberty of the defendant is involved.

(d) The abrogation of the unanimous verdict in both civil and criminal cases, except when the offense is punishable by death, has been put forward as a remedy for some of the inadequacies of the jury system. Such a change in the common law jury verdict, while in full harmony with the democratic principle of majority control, is not free from constitutional obstacles. The abandonment of unanimity, however, would materially lessen the opportunity for the defense successfully to inflict upon the community the wrongs as it is now able to do through its ability by devious methods to mislead or confuse a single juror. Jurors on a "hung" jury suffer through coercion from without by the court and from within by their fellow members. Coercion is not a symbol of justice.

(e) A brief course of instruction should be given to prospective jurors to acquaint them with the nature of a trial and its procedures so that they can more intelligently appraise their own part in it. More should be done in the public school system to enlighten youth upon this important public service.

Although all prospective jurors should be acquainted with

[8] *Commonwealth v. Trunk*, 311 Pa. 555, 167 Atl. 333 (1933).

[9] *Boatright v. U.S.*, 105 Fed. (2d) 737 (1939); *U.S. v. Murdock, supra* note 7; *Capital Traction Co. v. Hof*, 174 U.S. 1, 19 Sup. Ct. 580 (1899).

[10] *White v. White*, 108 Tex. 570, 196 S.W. 508 (1917); *People v. Kelly*, 347 Ill. 221, 179 N.E. 898 (1931); *Maxwell v. Dow*, 176 U.S. 581, 20 Sup. Ct. 448 (1900); *In re* Converse, 137 U.S. 624, 11 Sup. Ct. 191 (1891).

the general nature of a trial and its procedures and principles, the need for such instruction is particularly acute among jurors in criminal cases. With this consideration in mind the writer prepared the following material which he proposes for distribution in printed pamphlet form by proper legal authorities to all prospective jurors in criminal cases. For purposes of clarity the proposed instruction is directed specifically to Illinois criminal trials, but with slight modification the material may be adapted for any other jurisdiction.

Information for Prospective Jurors in Criminal Cases

Preface

The purpose of this pamphlet is to acquaint prospective jurors in criminal cases in Illinois courts with a few of the elementary principles of trial and procedure in which they are about to participate, and with the duties and responsibilities which they are about to assume.

None of these principles is to be regarded by prospective jurors as instructions of law to be applied by them in any case in which they may serve. Jurors must follow only the instructions of law given to them by the trial judge in each particular case.

Nothing herein contained is intended to influence their judgment in the slightest in favor of or against the State or the defendant. On the contrary, fairness and impartiality in the highest degree are demanded of every juror to insure both the prosecution and the defense a fair trial.

It is sincerely hoped that these suggestions will in some measure help prepare those called as jurors to render efficient, intelligent and useful service and make their work more pleasant and interesting.

Right to Trial by Jury

The right to a speedy and public trial by an impartial jury is guaranteed by our Federal and State Constitutions to every person accused of crime. It is a grave and solemn responsibility to pass upon the guilt or innocence of a fellow man. It requires the utmost honesty, fairness and devotion to our democratic system of justice.

Who Is the Defendant?

The person on trial is called the defendant. There may be more than one defendant in the same case, as where several are accused of taking part in the same robbery, or attacking the same woman. It does not necessarily mean that they all must be tried together, for one may be in hiding, or dead, or the judge may have permitted one or more of them to be tried separately, or to plead guilty without a trial. Sometimes one

of several defendants wants to be tried by the judge without a jury, and consequently he may be tried separately. The jurors, therefore, must concern themselves only with the defendant or defendants actually on trial before them.

Who Is the Complainant?

The People of the State of Illinois are the real complainants in all criminal cases, and not the individual who claims to have been robbed, attacked or otherwise injured. The victim who is called the complaining witness may be compelled to testify for the State even though he or she does not want to prosecute the defendant. There are times when a complaining witness would like to drop the charges either because the stolen property was recovered, or the defendant is related, or friendly, or because it is embarrassing to testify, as it frequently is in many sex cases. But crimes are committed against all the people of the State and all the people are vitally interested in the enforcement of law and order, and in the protection of life, liberty and property.

The Issue in the Case

The State contends that the defendant is guilty as charged in the indictment. The defendant claims he is innocent. That is the issue which the jury must decide. A trial is not a contest of wits or talents between the lawyers. It is not a matter of looks or appearance of any of the participants. A defendant may be hard looking and yet be innocent, or he may have an angelic face and yet be a criminal, even a murderer. The sole and only question for the jury to decide is whether the defendant on trial committed the crime charged. Jurors must not speculate as to what happened in other cases to other people, or what might or could have happened under different facts and circumstances. They must decide the case solely on the evidence received on the trial and according to the law as stated to them by the judge.

The State's Attorney

The State's Attorney and his assistants represent the People of the State of Illinois in the prosecution of all criminal cases. The police generally get the complaints and make the arrests. Police officials, crime detection laboratories and other agencies investigate and gather the evidence; the State's Attorney analyzes and presents the evidence at the trial. The jury passes upon the sufficiency of the evidence. The judge instructs the jury as to the law. To insure an orderly society for the safety, comfort, happiness and well being of all the people, it is essential to maintain these law enforcing agencies and to co-ordinate and harmonize their efforts for our common good.

What Is an Indictment?

The indictment is a document required by law which contains the formal charges against the defendant. It was voted by a Grand Jury of twenty-three citizens, without the defendant or his lawyer being present. It therefore cannot be considered as any evidence in the case, nor does it raise a presumption of guilt against the defendant.

Qualifying a Jury

The purpose of the questioning of prospective jurors by the prosecuting attorney and defense counsel is to ascertain their fairness and their competence to pass upon the guilt or innocence of the defendant. It is not to pry into their personal affairs, but merely to ascertain whether they are acquainted with the defendant, the attorneys, or the witnesses in the case; whether they have any interest in the outcome of the trial; whether they have any sympathies for or prejudices against the defendant or the State; whether they can give both the People of the State of Illinois and the defendant a fair and impartial trial. No juror need feel offended if he is excused from sitting as a juror in any particular case, because the law permits each side to excuse a certain number of jurors in certain cases without giving any reasons, and the judge may excuse any juror who is not legally qualified. It is every juror's duty to answer all questions truthfully and to disclose anything that might prevent him from rendering an impartial verdict. A fair juror is one who starts out with, and maintains throughout the trial, a free and open mind, and who is ready and willing to bring in a verdict based solely on the evidence received on the trial and the instructions of law as given by the judge.

Opening Statements

After the jury is selected, both the State's Attorney and the defense lawyer are entitled to make opening statements outlining briefly what they each intend to prove. The purpose is to acquaint the jury with each side of the case so that they may better follow the testimony as given by the witnesses. Either side may waive making an opening statement. Lawyers are not witnesses; they are not under oath, and therefore, what they say is not to be regarded by the jury as testimony. They merely express their own interpretations, and their viewpoints are naturally partial. Unless what the lawyers say is supported by competent testimony, the jury is to disregard it.

The State's Proof

The State's Attorney must present his evidence first, as the burden is on him to establish the guilt of every defendant beyond a reasonable doubt. Unless his guilt is first so estab-

lished by the State, the defendant is not required to deny the charge, nor even establish his innocence. In that event, he may refuse to submit any proof in his defense, and he may ask the judge to direct the jury to return a verdict of "not guilty."

The Defendant's Proof

After the State's Attorney has presented his evidence, the defendant may proceed with his side of the case, if he so desires, and he may call his witnesses. The defendant himself may or may not testify in his own behalf, as he pleases. If he does testify, the jury has no right to disregard his testimony merely because he is accused of crime. His credibility is to be judged by the same tests as the testimony of other witnesses, and the jury may take into consideration the fact that he is interested in the outcome of the trial. If he does not testify, that fact must not be held against him.

Objections

Each lawyer may object to certain questions, or to certain answers, or to certain procedure, if he believes them to be improper for any legal reason. When the judge sustains the objection it means that he agrees with the lawyer making that particular objection, and if he overrules the objection it means he disagrees.

Discussions are often held between the judge and the lawyers outside the presence of the jury, to prevent the jurors from hearing what might be improper testimony, or in order that the jury may not be unduly influenced by what might be said by either side.

Rebuttal Testimony

After the State and the defense have concluded presenting their direct testimony, the State may first call rebuttal witnesses to disprove anything brought out by the defense in the direct testimony, and the defense may likewise call rebuttal witnesses to disprove anything brought out by the State.

Final Arguments

Arguments by the lawyers follow the conclusion of testimony. The State's Attorney makes the opening argument, then the lawyer for the defendant argues his side of the case, and the State's Attorney closes with the final plea. Either lawyer may waive his argument. Here again, nothing that the lawyers say is to be considered by the jury as evidence. They merely review, sum up and give their respective interpretations of the testimony for the jury's consideration. Sometimes, in the heat of these arguments, one or both of the lawyers make unwarranted references, accusations or analyses, and it becomes the duty of the jury calmly to determine what part of such re-

marks, if any, are based upon the evidence, and to disregard the balance. Jurors must be extremely careful not to be swayed by such arguments of lawyers in their over-anxiety to win the case.

Instructions of Law

After the final arguments by the lawyers, the judge reads instructions as to the law applicable to the case. Jurors, under their oaths, must follow the law as the judge gives it to them and apply it to the facts they receive from the witness stand. They may refer to those instructions during their deliberations.

Jury's Verdict

After the judge's instructions as to the law, the jurors retire for their deliberation. They first elect a foreman who presides over their discussions, and when they have agreed on a verdict, the foreman signs his or her name first on that verdict, and all the other eleven jurors sign their names next following. All twelve jurors must agree on the same verdict, whether it is "guilty" or "not guilty"; otherwise the judge will declare a mistrial and the case will have to be retried.

No juror may be forced or threatened by anyone to sign a particular verdict. Every juror's decision must be free, voluntary and honest. Any misconduct or intimidation in the jury room should be reported promptly to the judge. No one except jurors is allowed in the jury room. No one may have any contact or communication with any of the jurors during their deliberations. When a verdict is reached and signed, the foreman will notify the bailiff who in turn will notify the judge. The bailiff should likewise be notified by the foreman if there is no chance to agree on a verdict after extended deliberation.

Outside Influence

No one has a right to influence the judgment or decision of a juror, except other jurors during their deliberations. No one should be permitted to talk to any juror about the case on trial, or to discuss it in his presence, whether it be in the court room, in the lobby, on the street, in a street car or in the juror's home. That means no one, including the bailiffs, the clerks and other court employees, friends, and strangers. Any one trying to influence a juror's decision by conversation, threat or bribe should be reported to the judge promptly. A juror's conduct should be above suspicion; he should avoid talking to lawyers, witnesses or other persons interested in the case on trial.

Functions of the Judge

The judge passes on what evidence should or should not be admitted. Any testimony ruled out or stricken from the rec-

ord by the judge must be disregarded entirely by the jurors as if they had never heard it uttered.

The judge sees that proper decorum is had during the trial, and he guards against every form of corruption and unfairness. He decides all legal questions in dispute and instructs the jury as to the law in the case. He fixes the punishment of those found guilty by the jury in all felony cases except murder, rape, kidnapping and treason, and grants probation to those he deems deserving and who are eligible under the law.

Duties of the Jury

The jurors are the sole judges of the credibility of the witnesses. That means that they alone may judge the extent to which any witness may be believed or disbelieved, and they alone may say by their verdict whether the evidence is sufficient beyond a reasonable doubt to convict the defendant, or to free him.

Every juror must be satisfied beyond a reasonable doubt, from all the evidence in the case, of the guilt of the defendant before he may sign a verdict of guilty. Under our laws, the defendant is presumed to be innocent of the charge in the indictment until he is proved guilty beyond a reasonable doubt.

In cases of murder, rape, kidnapping and treason, the jury fixes the penalty when it finds the defendant guilty. In all other felony cases it is for the judge to fix the punishment, and the jurors should not permit that to influence their judgment in the slightest degree. They merely determine the guilt or innocence of the defendant and, if the verdict is guilty, the judge decides the extent of the punishment, or whether the defendant should be given probation upon a consideration of his character and the circumstances of the case.

Jurors are not permitted to interrogate witnesses because their questions may be improper, illegal or antagonistic, but jurors may address any fair question to the judge to get a better understanding of the case. They may also make any reasonable request of the judge to aid them in their service or for the comfort and welfare of the jurors.

It is important that each juror be prompt in attendance. He should pay close attention to all the witnesses while testifying, to the attorneys during their arguments, and to the instructions given by the judge. He must not discuss the case with anyone, in the court room or elsewhere, not even with fellow jurors, until their final deliberations. Such discussions have a tendency to fix opinions prematurely and unfairly. He must not make up his mind until he has heard all of the evidence, all of the arguments and all of the instructions, and until he has talked it over with his fellow jurors during their final de-

liberations. He must set aside preconceived notions and be guided solely by the law and the evidence in the case. He must not, by his verdict, desire to please anyone or fear to displease anyone. He must consider the evidence without regard to race, class, creed or color, and render a true verdict according to the dictates of his conscience.

Deliberation By Jury

When jurors deliberate over the guilt or innocence of a defendant, they must consider only the evidence in the case, and they must follow implicitly the instructions on the law as given by the judge. Jurors should approach the matters submitted to them in a calm manner. They should avoid heated arguments. They should discuss the issues among themselves, as honest men, with a single purpose of determining the truth. They should try by every reasonable means to arrive at a just verdict, founded solely on the law and the evidence in the case. They have no right to indulge in suppositions or guess work or under any circumstances go outside of the evidence in their deliberations. They must not permit a juror to mislead them through persuasion based on his personal assurances, experiences or prejudices. They should enter upon their deliberations with open minds and try to harmonize their views with each other through a free exchange of opinion on the evidence. A juror should not be influenced by the mere fact that a majority is against him, or yield for the sole purpose of hurrying a verdict. He should not permit his vote to be decided by a flip of a coin or by any other element of chance. The law requires an honest decision of each and every juror consistent with his conscience.

Jurors must remember that there are rules of evidence to insure a fair trial for both sides, and that the lawyers, the witnesses, and the judge must abide by these rules. That is why certain conversations are excluded; why certain documents are withheld; why some testimony is ruled out as incompetent. Jurors have often asked why the State or the defendant failed to prove this or that. The reason probably was that such proof was not permitted under the law, or was not available. Either side may compel witnesses to come to court and testify to the truth, and if a witness is not called, it is reasonable to presume that he is not available or that his testimony would not be favorable.

Jurors must not embark on tangents unsupported by the law or the evidence. They must not consider incidents related to other and different facts and circumstances. For instance, one juror refused to believe any policeman merely because his brother was once picked up on suspicion by the police and was

subsequently released; yet many police officers are reputable and truthful men. Another juror would not believe the defendant simply because he was living separate and apart from his wife and child. Many miscarriages of justice result from tangents which are wholly immaterial and unrelated to the merits of a case.

All deliberations by jurors in the jury room are confidential and must not be divulged. No one has a right to inquire of jurors how they arrived at their verdict and the discharge of their duty in this respect may not be questioned.

Beyond a Reasonable Doubt

Much is said in the trial of criminal cases about finding the defendant guilty beyond a reasonable doubt. It is stressed heavily throughout the proceedings and so much so that it tends at times to confuse honest and fair minded jurors. In all criminal cases, the evidence in favor of the State and against the defendant must be so conclusive as to leave no reasonable doubt in the minds of the jurors as to the defendant's guilt. A doubt to justify an acquittal must be reasonable, and it must arise from a candid and impartial consideration of all the evidence in the case. It is not necessary that each particular fact sought to be established should be proved beyond a reasonable doubt; it is enough if the jury is satisfied beyond a reasonable doubt that all the facts necessary to constitute the crime charged have been established.[11] The jury is not to go beyond or outside the evidence to create doubts from the realm of the conjectural or permit them to arise from sympathy.[12] It must be an honest doubt such as strikes an honest mind.[13]

Sympathy or Prejudice

In the discharge of his important duties, an honest juror will not permit sympathy or prejudice to influence his or her judgment in the case. As an illustration, a juror may not like the defendant's lawyer, or he may not be impressed by the defendant's personal appearance, or he may not like the nature of the crime charged; yet he must not permit any of these to prejudice his judgment against the defendant. That would not be fair. On the other hand, the mere fact that the defendant happens to be youthful or attractive, or that he comes from a fine family, or he has an ailing parent or some physical impediment, etc., should not arouse a sympathy to influence the verdict in favor of the defendant. These elements do not prove or disprove the guilt or innocence of the defendant.

[11] *Spies v. People*, 122 Ill. 1, 12 N.E. 865 (1887); *People v. Judycki*, 302 Ill. 143, 134 N.E. 134 (1922); *People v. Franklin*, 341 Ill. 499, 173 N.E. 607 (1930).

[12] *Spies v. People, supra* note 11; *State v. Wagner*, 207 Ia. 224, 222 N.W. 407 (1928); *People v. Will*, 79 Cal. App. 101, 248 Pac. 1078 (1926).

[13] *Commonwealth v. Disalvo*, 275 Pa. 70, 118 Atl. 559 (1922).

In sentencing the defendant upon the jury's verdict of guilty in all felony cases except murder, rape, kidnapping and treason (in which the jury itself fixes the penalty), the judge generally takes into consideration the defendant's age, environment, past record, reputation, background, health, dependents, etc. The judge may sentence the defendant to the penitentiary for any number of years within the limitations provided by statute, or he may put the defendant on probation, if he is eligible and the circumstances so warrant. That is why it is the duty of the jury in such cases merely to pass upon the guilt or innocence of the defendant. It is then the duty of the judge to impose sentence after considering all the circumstances.

A juror is unworthy of his trust if he has prejudices against any race, class, creed or religion, or if he entertains a conviction at the start that the testimony of the defendant is not to be believed under any circumstances, or that police officers as a class would lie to induce a conviction.

Credibility of Witnesses

Credible evidence is such evidence as is worthy of belief and confidence. Jurors must determine the truthfulness or falsity of witnesses for both sides by considering their interest or lack of interest in the outcome of the case, their relation to the parties in the case, their demeanor while testifying, their age and experience, their memory or lack of memory, their personal knowledge and observation, their evasiveness or straightforwardness in testifying, and the extent to which they were contradicted or corroborated by other credible evidence.

The number of witnesses produced to establish one side or the other of an issue is never of itself determinative of the issue in any case. The weight of testimony, as distinguished from the number of witnesses, is controlling and this must be determined upon the basis of its quality — whether the testimony has such a persuasive effect upon the jurors that they are induced to believe it.

If jurors believe from the evidence that any witness has wilfully and corruptly testified falsely to any material fact in issue, then they have the right to disregard all of the testimony of such witness, except insofar as his testimony has been corroborated by other credible evidence.

A previous conviction of any defendant of the crime of robbery, burglary, murder, rape, arson, larceny, etc., is not admissible in evidence unless the defendant testifies in his own behalf, and then it is submitted solely for the purpose of determining the weight to be given the defendant's testimony.

An Accessory

An accessory is a person who stands by, or not being present,

assists or advises in the perpetration of a crime. He is considered as a principal and is punished accordingly.

An Accomplice

An accomplice is one who is involved with another person in the commission of a crime. The testimony of an accomplice as to the defendant's participation in a crime is competent evidence, but it is subject to careful scrutiny and should be acted upon with great caution.[14] If the jury is convinced beyond a reasonable doubt of the truth of the testimony of an accomplice, then they should give it the same weight as would be given to the testimony of a witness who is in no respect implicated in the offense.[15] If the testimony of an accomplice is corroborated by other credible witnesses who are not accomplices, then they should also give it due weight and consideration.

An Alibi

In some cases the defendant offers proof that he was not present at the time and place of the alleged crime, but was then at some other place. Such defense is known as an alibi, and is a good defense if proved sufficiently to raise a reasonable doubt in the minds of the jury as to the guilt of the defendant. The proof, of course, must cover all of the time when the crime is supposed to have been committed so as to render it impossible or highly improbable that the defendant could have committed the act.[16] Obviously, the interest or lack of interest of alibi witnesses in the outcome of the trial is a strong factor for the jury to consider in weighing their testimony.

A Confession

A confession is a voluntary acknowledgment by a person charged with the commission of a crime that he is guilty of the offense or that he participated in committing the crime. Whether the confession is true or false, or partly true or partly false, or was made voluntarily or under force, threats or promises, is a question for the jury to determine.[17]

Where other facts and circumstances in evidence fully corroborate the confession and prove the commission of the offense charged in the indictment beyond a reasonable doubt, the jury may return a guilty verdict even if the confession itself is insufficient.

Circumstantial Evidence

Circumstantial evidence is competent legal evidence, and if

[14] *Waters v. People*, 172 Ill. 367, 50 N.E. 148 (1898).

[15] *People v. Johnson*, 317 Ill. 430, 148 N.E. 255 (1925); *Kearns v. United States*, 27 Fed. (2d) 854 (1928).

[16] *People v. Oswald*, 340 Ill. 434, 172 N.E. 819 (1930); *State v. Wagner*, *supra* note 12.

[17] *People v. Fox*, 319 Ill. 606, 150 N.E. 347 (1925).

the facts and circumstances shown by the evidence in the case are sufficient to satisfy the jury of the guilt of the defendant beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in finding the defendant guilty.[18]

Circumstantial evidence can best be illustrated by proof of fresh paint on the garments of the defendant charged with burglarizing a house freshly painted with the identical paint; or finding part of the loot in the possession or under the control of the defendant.

The fact that the defendant fled after the commission of the crime charged and remained away until taken into custody, is a proper circumstance, raising a presumption of guilt, to be considered by the jury.[19]

Distinction Between Civil and Criminal Cases

Briefly, a civil lawsuit is a controversy between two or more individuals or corporations wherein only private rights may be affected. The lawsuit is instituted by the plaintiff, and he must sustain it against the defendant *by a preponderance or greater weight of the evidence.* In a criminal case the state must prove its case *beyond a reasonable doubt.*

A Faithful Juror

Each juror takes a solemn oath, by the ever-living God, that he will well and truly try the issues in the case and render a true verdict according to the law and the evidence. Anything short of an honest verdict based solely on the law as given by the trial judge and the evidence received on the trial, constitutes a violation of his oath. Faithful performance of the important and sacred duties by a juror is vital to the administration of justice and constitutes one of the loftiest achievements of our democratic form of government. Liberty can not long endure without it.

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[18] *People v. Doody,* 343 Ill. 194, 175 N.E. 436 (1931).
[19] *People v. Talbe,* 321 Ill. 80, 151 N.E. 529 (1926).