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INSTRUCTING POLICE OFFICERS IN THE CRIMINAL LAW

Daniel P. A. Sweeney and Louis L. Roos

(The authors of the following article, "Instructing Police Officers in the Criminal Law," are members of the City of New York's police department. Acting Captain Sweeney is commanding officer of the department's Legal Bureau and Acting Lieutenant Roos his second in command. Their work brings them into continued contact with problems of the criminal law facing the department and its members. Organized as an informative and advisory unit of the department, the bureau acts as liaison agency between the departmental personnel and members of the judiciary in argumentative cases and others in which legislative intent is not manifest. The bureau has the further duty of keeping the department informed of current law decisions and recent legislative enactments. This is the first of two articles written by the authors for this Journal and are designed to describe some of the salient facts about the criminal law with which the police officer could, with profit, be familiar. The second article will appear in a later issue.—Editor.)

Police Administration, like the changing times, is in a perpetual process of growth. Old methods are continually being discarded or drastically revised. New standards and methods of procedure are constantly forcing their way to recognition. The pace is swift and the changes many. Both the legislatures and the courts are continually bowing to the will of the people and enacting or interpreting statutes in accordance with public sentiment. Law enforcement agencies must keep abreast of these changing tides and adjust themselves to altering circumstances or else suffer in efficiency. Modern conditions render it increasingly imperative that police officers should be well-informed.

The high efficiency ratings enjoyed by the modern police department can be predicated, to a large extent, on the *training* programs adopted in instructing its personnel. The more effort, time and care given to this course of instruction, the better the results obtained and the higher the efficiency rating. No training

program can be too complete or thorough. Periodic refresher courses must be given in the basic fundamentals of law enforcement and to keep members advised of new laws, amendments and court decisions. Only in this way can police officers retain the knowledge and instruction necessary to perform efficient police work.

In preparing a syllabus to be followed in giving lectures to a group of policemen every effort should be made to stress the fact that it is equally important for a police officer to know *how* the perpetrated offense was committed as it is for him to know that a crime has been committed. The importance of familiarizing peace officers with court procedure and the rules of evidence cannot be over-emphasized. The records of criminal courts are replete with cases where guilty parties escaped just retribution, because the officer through ignorance, blundered in not properly securing the evidence which was necessary to convict, although it was readily accessible to him at the time of arrest. The curriculum, therefore, should place as much emphasis on *adjective* law as it does on *substantive*.

The question of standardization of laws throughout the country has long been the subject of discussion but as yet little legislative progress has been made. The diversity of statutes of different jurisdictions having to do with the powers of arrest, the definition of various crimes and offenses, the status of peace officers, and the like, make difficult if not impossible any specific plan of instruction which could be broadly applied. The only practical plan that could be employed in common by all police departments, is a syllabus embodying the basic principles of law enforcement coupled with a general discussion of criminal statutes and the rules of evidence adopted throughout the country.

As a means of orienting recruits in court procedure and for better explanation of the rules of evidence and their application, it is suggested that study and evaluation of the criminal trial be broken down into its component parts. In this simple way, the police officer will understand the fundamentals of criminal jurisprudence more clearly, and more readily comprehend the purpose and intent of the rules relating to problems of proof. Conscientious attention to this phase of the subject matter will obviate many difficulties which are frequently confronting police officers in presenting their evidence in court.

The Stages in Criminal Prosecution.

In any criminal prosecution, the proceedings to be followed fall into five successive stages. The first is the procurement of the defendant's appearance before the tribunal. This may be accomplished either by a summary arrest or the execution of court process, viz., the execution of a warrant or the service of

a summons. A criminal court is powerless to act in deciding the merits of the case unless it has jurisdiction of both the subject matter of the proceeding and the person of the defendant. If both these prerequisites are present, the court has authority to exercise its judicial powers in adjudicating the case before it. Unlike a civil court, if there is no jurisdiction *in personam*, a criminal court cannot act.

The power of arrest is probably the most potent weapon possessed by a police officer. Fear that this power can be invoked at any proper time, is the compelling force which leads to law and order and acts as a crime deterrent. An arrest is generally defined as the taking of a person into custody that he may be held to answer for a crime. An arrest may be effected summarily by a police officer without court process, usually in cases where a crime has been committed or attempted in his presence, or in instances where the crime was not committed or attempted in his presence, but such arrest is authorized by statute, such as in felony cases where there are reasonable grounds to believe that the person arrested committed the crime. In some jurisdictions there is express statutory authorization for arrest in certain misdemeanor cases although the crime was not perpetrated in the presence of the officer.

An arrest may also be effected by executing a warrant issued by a court of competent jurisdiction. A warrant is an order in writing signed by a magistrate, directed to a peace officer commanding him to take the person named therein into custody and bring him before the court. In lieu of an arrest, and as a courtesy, a summons may be served in cases authorized by the laws of the state or the municipality under the conditions specified. In order to give the court jurisdiction in such cases, it is mandatory that personal service of the summons be made on the defendant. As a necessary corollary to the law of arrest, the lawful use of force and the rights of the defendant, should be discussed.

The second stage in the prosecution of a criminal case is the ascertainment of the subject matter or charge to be preferred against the defendant. This contemplates the preparation and docketing of the court complaint, information or indictment. In the case of minor offenses and the more common misdemeanors, little difficulty is encountered by arresting officers in preparing complaints or informations, for in the usual case the wording of the statute is simply followed and pertinent facts inserted. However, in other cases, arresting officers should be advised to request the assistance of the district attorney or other prosecuting official. Many sound cases have been dismissed by the court due to some technical error or omission in the pleadings. Some police departments maintain legal bureaus, staffed with police

officers who are attorneys at law, for the purpose of obviating any such difficulty and rendering whatever legal assistance may be required in preparing the cases for trial. Since an indictment usually follows the action of a grand jury or other similar body, it is prepared by the prosecuting official and, therefore, police officers are not concerned with the preparation of this pleading.

The third phase of a criminal proceeding is the trial of the case; the fourth, the verdict or judgment of the court; and the last or fifth stage, the sentence or execution of judgment. The last two steps, being solely the function of the court are not important, insofar as the police officers are concerned.

The trial of the case is the most important stage of the proceeding. It is during this phase of the case that the knowledge acquired by police officers in attending courses of instruction, is put to the test. The rules of evidence relating to admissibility, materiality, competency and relevancy are constantly being raised. The introduction of real, secondary, demonstrative, hearsay, documentary, best, circumstantial, opinion, etc., evidence is continually being challenged by the adverse party. Unfair and prejudicial testimony and statements find their way into the proceedings unless carefully guarded against. Laying the proper foundation for the introduction of confessions, admissions, *res gestae* statements, dying declarations, fingerprints, specimens of handwriting, photographs, etc., are matters meriting daily attention. There can be no question that the successful prosecution of the case depends to a large extent on the type of evidence acquired and the circumstances under which such acquisition was made. Familiarity with the rules of evidence is, therefore, a "must" in any course of instruction given.

Evidence: Direct and Circumstantial

Evidence is defined as including all the means by which any fact or set of facts which are the subject of or pertinent to the issues, are established or disproved. The means used to prove the facts in issue are controlled by certain rules commonly referred to as the rules of evidence. Evidence is divided into various kinds. Evidence is direct when the witness can testify to facts of which he has actual personal knowledge. Circumstantial evidence is evidence that relates to facts, other than those in issue, from which the existence or non-existence of the facts in issue may be reasonably inferred. Circumstantial evidence, therefore, does not directly tend to prove the facts in issue. It is founded on experience and observed facts, and establishes a connection between the known and proved facts and the facts sought to be proved.

Direct and circumstantial evidence may be of the following kinds: Relevant evidence is evidence which tends to establish or

create a belief as to the existence or non-existence of material facts which are in issue. Evidence is material when it has an effective influence or bearing on the question in issue. By competent evidence is meant that which the very nature of the thing to be proved requires, as the fit and appropriate proof in the particular case. Satisfactory evidence is that amount of evidence which is necessary to lead the court or jury to a conclusion.

Presumptions

The subject of presumptions is an important topic in its relation to law enforcement. Legislatures have at divers times enacted penal statutes to remedy certain conditions affecting the public interest. Law enforcement officers, however, in many of these cases, could take no effective action because of the difficulty involved in proving violations. A typical example of such a statute would be a case where a police officer stopped a car in which there were four occupants and, upon searching it, found a loaded firearm underneath the front seat. Each occupant would deny either knowledge or ownership of the dangerous weapon. If the weapon in question bore no identification marks, the prosecution, invariably, would fail since proof connecting any one of the defendants with the crime of unlawfully possessing a dangerous weapon would be lacking. The New York Legislature, to remedy this weakness, created a statutory presumption that in such a case it would be presumed that all the occupants in the automobile were in possession of the weapon in question. This, in effect, places a burden upon each defendant to prove he had no knowledge or connection with the presence of the firearm. These types of presumptions, therefore, materially aid in making out a *prima facie* case, where without them, the case would be dismissed for want of evidence. The effect of these inferences is to put "teeth" in an otherwise unenforceable statute.

A presumption is an inference as to the existence of one fact from the existence of some other fact founded upon a previous experience of their connection. A legal presumption is a rule of law which requires that a certain fact be inferred by the court from the existence of certain other facts. Legal presumptions are either rebuttable or conclusive. Conclusive presumptions are usually creatures of statutes and once the set of facts is established which is sufficient to create the presumption, no proof in rebuttal is permitted. Rebuttable presumptions, on the other hand, continue only so long as they are not overcome by other evidence.

The statutes of various states provide for numerous specific presumptions dealing with the possession of unlawful articles. In the main, these laws provide that the possession of these forbidden articles is presumptive evidence of intent to use un-

lawfully. Recourse to the laws of the jurisdiction will disclose many other specific inferences with which police officers should be familiar.

The more common presumptions encountered in various phases of police work are: Presumption of innocence; of legitimacy; of knowledge of the law; of ownership from possession; of guilt from recent possession of fruits of a crime; of continuance; of sanity; that one intends the natural consequences of his acts; that evidence has been fabricated, withheld or destroyed.

Presentation of Evidence

In any criminal prosecution there are two modes or ways of introducing evidence for the purpose of establishing the points in issue. The first is the presentation of the thing itself (real evidence) for the personal observation of the court and jury. The second mode of presentation is the introduction of some independent fact such as would be the case where testimonial or circumstantial evidence is resorted to. In an endeavor to explain the difference between these types of evidence, it may be well to refer to that excellent illustration given in Wigmore on Evidence wherein he states, "If, for example, it is desired to ascertain whether the accused has lost his right hand and wears an iron hook in place of it, one source of belief on the subject would be the testimony of a witness who had seen the arm; in believing this testimonial evidence, there is an inference from the human assertion to the fact asserted. A second source of belief would be the mark left on some substance grasped or carried by the accused; in believing this circumstantial evidence, there is an inference from the circumstance to the thing producing it. A third source of belief remains, namely the inspection by the tribunal of the accused's arm. This source differs from the other two in omitting any step of conscious inference or reasoning, and in proceeding by direct self-perception or autopsy."

It follows that the introduction of real evidence, whenever possible, will materially strengthen the People's case, as the court and jury need not draw any inference from the proof given. The question of credibility and veracity is usually not brought into play, as the evidence produced speaks for itself. Police officers should be advised to bring into court when this is practical, all tangible evidence associated with the prosecution of the crime in question.

The manner in which the evidence is presented in court is immaterial. An object may be merely set forth for inspection, or some experimental process may be conducted. The court may merely employ its senses or make use of some mechanical aid, such as a microscope. It may merely observe or take an active part in the demonstration; or it may direct an inspection and

report by experts skilled in the matter under consideration. The science of ballistics affords a striking example of the use of this type of evidence. A comparison microscope has been frequently brought into court and the judge and jury have made comparisons with the bullet taken from the scene of the crime and the bullet fired from the gun in question. In enforcing the gambling laws, the complex mechanism of the present day slot machines make it necessary to bring the contrivances into court for demonstration. Hand writing specimens, fingerprints, stains, etc., are constantly introduced for the personal inspection of tribunals.

Circumstantial evidence, as distinguished from real, is evidence of some collateral fact from which the existence or non-existence of the fact in question may be inferred as a probable consequence. To prove a fact by circumstantial evidence there must be positive proof of the fact from which the inference is to be drawn. An inference may not be based on an inference.

Character as evidence is often resorted to by both sides to prove or disprove that the accused did or did not commit the offense in question. The defendant's character in a criminal prosecution is of probative value as bearing on his innocence or guilt. The inference is that a person did or did not do a certain act because his character would predispose him to do or not to do it. The accused is permitted to call witnesses to testify to his good reputation for the purpose of raising an inference that he would not commit the crime with which he is charged. This is true irrespective of the gravity of the offense charged. There is no presumption one way or the other that the accused's character is good or bad. The defendant is the only party who can raise the issue as to his character. The people are not permitted to prove the bad character of the defendant until the defendant has introduced evidence of good character. Police officers in preparing their cases should make every effort to learn what the reputation of the defendant is in order to be able at the proper time to rebut evidence of good character.

The defendant may be at the same time both a party and a witness. If the defendant testifies, his general reputation for veracity may be attacked as that of any other witness or, upon cross-examination, he may be interrogated as to any specific act or thing which may affect his character and tend to show that he is not worthy of belief.

Proof of other Crimes as Evidence

The general rule of law is that a person cannot be found guilty of the crime charged by proof of other crimes. However, there are exceptions to this rule. In New York, proof of any crime not alleged in the indictment is inadmissible for any purpose except when it tends to establish (1) motive, (2) intent, (3) the

absence of mistake or accident, (4) the identity of the accused, or (5) a common plan or scheme embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other. It is not necessary to show that these other crimes resulted in convictions. If the case falls within any of the five exceptions listed above, then the prosecution can introduce these crimes in evidence as part of their prima facie case.

Evidence of the commission of other crimes is admissible when its object is to prove motive or the inducement for the doing of the act. Motive, although relevant, is never essential to establish the commission of a crime. Intent on the other hand is usually required, especially in felony cases. The criminal intent can be inferred from the commission of other crimes. Motive and intent are not synonymous. Motive is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such result.

Whenever it becomes important to prove guilty knowledge in connection with the doing of a certain act in order to negative the defense of good faith in the transaction in question, it is proper to show that the accused has been guilty of similar offenses on prior occasions. This would be applicable to cases where the state of mind of the defendant is an important issue, such as cases of forgery, passing counterfeit money, possessing slugs with intent to use unlawfully, obtaining money by false pretenses, receiving stolen goods, disorderly persons, etc. For similar reasons, proof of other crimes are admissible only in cases where a defense of mistake or accident can be anticipated from the facts.

This rule has been generally limited to the introduction of prior crimes. However, the Court of Appeals of the State of New York has extended this doctrine by permitting evidence of eight offenses, six of which were prior to the crime charged and two of which were subsequent.¹ The Appellate Division, Second Department, New York State, extensively broadened this rule in the case of *People v. Rutman*² when, in addition to proof of the instant crime, they upheld a forgery conviction where only subsequent forgeries were introduced at the trial. The court here held that proof of such crimes was competent to show defendant's criminal intent and also the common scheme or general design. The court said that the other transactions were so connected and related to each other and to the crime charged as to show a common intent running through all of them.

Evidence of other crimes is admissible to show a common plan or scheme. This is admissible as proof of a plan or scheme to commit a series of crimes including the one on trial. In order

¹*People v. Marrin*, 205 N. Y. 275.

²260 App. Div. 784.

to render such evidence admissible, a very close relation of time, place or circumstance must be shown between the other crimes sought to be embraced in a single criminal plan.

The remaining exception to the rule excluding proof of other crimes is that where the proof of another crime will tend to identify the person who committed it as the same person who committed the crime in question, it is admissible. To illustrate: in one case the defendant was being tried on a charge of murder. The prosecution, over objection, was permitted to introduce evidence that the defendant, a short time previously, burglarized a certain home and stole the weapon with which the deceased had been killed. It was held to be admissible because it identified the person who committed the burglary as the one who committed the murder.

In addition to the admissibility of criminal acts to prove the point in issue, whether prior or subsequent, conduct after the commission of a crime, may also be shown to indicate guilty knowledge on the part of the accused. This may be shown by words or acts. Anything that would tend to show that the defendant had knowledge of the circumstances surrounding the commission of the crime is admissible.

Burden of Proof

As a general rule the burden of proof rests upon the prosecution throughout the case. This requires that the People prove the defendant guilty beyond a reasonable doubt. This is true irrespective of the nature of the defense. It is incumbent upon the prosecution to make out a *prima facie* case in the first instance. Once the *prima facie* case is made out, the burden of going forward with the proof is placed upon the defendant. At the end of the whole case the burden of proving the defendant guilty beyond a reasonable doubt remains with the people.

Where a statute prohibits the doing of an act but provides certain exceptions, the burden of proving he comes under the exception rests with the defendant. Similarly where the defense rests its case on license, this being a fact which is peculiarly within the knowledge of the defendant, the burden is on the defense to prove license. Driving a car without the required license, possession of dangerous weapons without a permit, selling tickets or other articles where a license is necessary, etc., are instances where the prosecution need prove only the doing of the act.

The Hearsay Rule

Probably one of the most troublesome and confusing subjects to be encountered in the instruction of police officers is the subject of hearsay evidence. There is no real reason for this confusion, and it may be ascribed to a lack of understanding between

this and other types of evidence. A situation most frequently misunderstood arises where a third party in the presence of the defendant makes an accusatory statement which the latter fails to deny. The officer is permitted to testify to the statement of the third party and describe the reaction of the defendant. Although this would be hearsay evidence in so far as he is concerned, the statement and the reaction of the accused is allowed under a different rule; that of an admission by silence. This will be covered later.

Witness testimony not predicated on his own personal observation or knowledge but on the statement of some other person is hearsay evidence. It is inadmissible unless it falls within one of a number of well-defined exceptions. Reason for the exclusion of hearsay evidence lies in the fact that the opposing side has no opportunity for cross-examination as the witness, having no personal knowledge of the occurrence, cannot be subjected to the usual tests relating to credibility and the strength of his observations and recollection.

The courts have permitted exceptions to the hearsay rule on grounds of necessity and on the guarantee of trustworthiness created by the surrounding circumstances. Before any such hearsay evidence will be admitted, a certain foundation must be laid. If these conditions are not proven, the court will not permit the introduction of the evidence.

Dying Declarations

Dying declarations constitute one of the exceptions to the hearsay rule. These consist of statements made by the deceased of the facts concerning the circumstances of the fatal assault made under a sincere conviction that death is imminent. Such statements will not be admitted, as a rule, unless it can be shown that the victim was at or near the point of death, that he knew this fact, had no hope of recovery, and that he would be a competent witness, if living. If the victim by any act or word indicates that he has the slightest hope of recovery, even though he died a short time thereafter, the statement is inadmissible. If the statement made by the deceased is based on hearsay or is not limited to the facts of the homicide, it must be excluded. Clearly, if the victim could not be a competent witness if living, his statements may not be received. By virtue of statutory law in New York dying declarations are admissible in homicide and abortion cases.

Res Gestae Declarations

Declarations concerning the *res gestae* (transaction or thing done) is another exception to the rule prohibiting hearsay statements. These consist of statements which are uttered at the time of the occurrence in question and as part of the event or

act which they relate to, or so close to it in sequence of time as to eliminate the possibility of fabrication. These declarations must be spontaneous and not the result or answer to a question. The underlying principle enunciated by this doctrine is that the declaration must be the result of some spontaneous reaction caused by the surrounding circumstances and so rapid in point of time as not to give the declarant an opportunity to reflect on the statement before it is made.

Confessions and Admissions

The subject of confessions and admissions present a field of evidence with which police officers are continually coming in contact. An expressed confession is defined as an acknowledgment by the accused in a criminal case, by express words, of the truth of the essential fact charged or of some essential part of it. An admission is a statement made or an act done which amounts to a prior acknowledgment by one of the parties to an action that one of the facts relevant to the issues is not as he now claims it to be. A confession is, therefore, the express admission of guilt, whereas an admission is only a partial acknowledgment of the truth of the charge made from which guilt may be inferred. Confessions are applicable only to criminal or quasi-criminal proceedings. Admissions are used in both civil and criminal cases. An expressed confession must be verbal or in writing, whereas admissions arise also by the conduct of the accused.

There is no specific way in which a confession should be made. It may be made to anyone. It may be in the form of a letter, or of several letters to different individuals, or may consist of detached conversations with many people, or it may be a formal confession made in court, or it may be a combination of all these circumstances. No matter what way it is made, a confession is admissible for the prosecution on the theory that no one would make a damaging statement against himself unless it were true.

The one essential requirement of a confession is that it be made voluntarily. In New York, the Code of Criminal Procedure, Section 395, provides that a confession of a defendant, whether in the course of a judicial proceeding or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of the district attorney, that the confessor will not be prosecuted therefor; but it is not sufficient to warrant his conviction, without additional proof that the crime charged had been committed.

A confession induced by threats, which are sufficient to put the accused in fear, is not voluntary and must be excluded. Such threats need not come from a peace officer or other legal custodian of the prisoner. Threats of personal injury by a private

person or fear of mob violence, as well as fear produced by threats of law enforcement officers, will void a confession. It must be shown in this regard, that the makers of the threat had the physical power to carry them through.

Whether the confession was or was not voluntarily made is a question which the court, after the submission of proof, must determine before the confession can be admitted. Unreasonable delay in taking a prisoner before a magistrate is admissible on the question of whether or not the confession made was a voluntary one, but standing by itself, is not sufficient to void the confession. Failure to warn the prisoner that he is under no obligation to speak, likewise, has no effect on admissibility, unless the prisoner is before the court.

The additional proof required by statute means that there must be some other evidence of the *corpus delicti* besides the confession. It is only necessary to show, by some other evidence, that the crime charged has been committed by someone. The courts have held that when in addition to the confession there is proof of circumstances which, although they may have an innocent construction, are nevertheless calculated to suggest the commission of crime, and for the explanation of which the confession furnishes the key, the case must be submitted to the jury. It is not necessary that the corroborative evidence of itself should be sufficient to show the commission of the crime, or to connect the defendant with it. It is sufficient if it tends to connect the defendant with the perpetration of the criminal act.

There are very few criminal cases tried where an admission by the defendant of some essential element of the crime charged is not introduced in evidence. An admission, like a confession, may arise by word, or writing, and in addition by conduct of the party sought to be charged. Express admissions are easily discernible and readily understood. Likewise the conduct of the accused after the commission of the crime, such as fleeing the scene, bribing witnesses, etc., can be used as an admission against him.

There are admissions arising by silence the value of which police officers do not seem to appreciate. This is probably due to the fact that they are not familiar with the fundamentals underlying the admission of such evidence. It may be stated as a general rule that, where a statement is made in the presence and hearing of an accused, incriminating in character, and such statement is not denied, contradicted, or objected to by him, both the statement and the fact of his failure to answer or deny are admissible on a criminal trial as evidence of his acquiescence in its truth. Although such out-of-court statements made by a person not in court, are really hearsay, they are nevertheless

admissible, not because of the statement made, but primarily to show the reaction of the defendant to the accusation. If the statement made is one which would naturally call for a denial on the part of the person against whom it is directed, and that person does not deny or make answer thereto, his silence amounts to an admission of the truth contained in the statement.

In New York the courts have placed limitations on the admission of such statements, depending on the circumstances of the case. If the accused is under arrest at the time the statement is made, there is no duty placed on him to answer. Nor can such an admission arise where the defendant was accused in a language he did not understand; or when the statements were made in the course of a judicial proceeding; or when the accused was shamming consciousness; or refused to answer on advice of counsel; or when he was not permitted to answer. The rule has been further limited in its application by cases which hold that the failure to answer statements made by third parties, strangers to the transaction, cannot serve to make such conduct an admission, the court stating that there is no obligation upon a party to answer every idle or impertinent inquiry.

Other than in the above cases, where some peculiar circumstance renders statements and silence inadmissible, admissions by silence, having due regard for competency, relevancy and materiality, are always admissible even if made in the presence of a police officer who is conducting an investigation preliminary to making an arrest. It must be remembered, however, if the accused makes reply to the statement, the admission by silence does not arise.

Opinion Testimony

Police officers are often called upon to give their opinion as to the existence or non-existence of some fact in issue. No specific rule can be laid down as to where such opinion will be permitted. Generally it may be stated that a police witness will be permitted to give his opinion in cases where, because of the peculiar nature of the facts and circumstances involved, he will be unable to describe the occurrence with sufficient particularity as to enable the court or jury to draw a reasonable inference from his testimony. Trials dealing with intoxication, speed of vehicles, handwriting specimens, etc., are typical of such cases.

In the usual case the prosecution must lay a foundation qualifying the witness before such opinion evidence can be given. This is accomplished by showing that the officer acquired his knowledge of the subject matter through personal experience and observation. To illustrate: the officer will not be permitted to testify to the speed of a moving vehicle unless he can show he has had some experience in driving or observing rates of speed. Likewise in liquor violations, the witness can testify that

the beverage which he drank was whiskey, wine or beer, only after he demonstrates to the satisfaction of the court that he has had prior knowledge of these beverages and is qualified to give his opinion. The color of an object is something not capable of adequate description, and on a showing that the witness is not color blind, he will be allowed to state his conclusion as to the color of the object in issue.

Ordinary witnesses as distinguished from expert witnesses may give opinions as to all matters which are of common knowledge but cannot be adequately described. These include such subjects as matters affecting taste, sight, smell, sound, touch, color, weight, atmospheric conditions, state of intoxication, speed, age, etc. In the average case, such witness need not state the facts leading to his opinion. The opposition is always permitted to break down such opinion evidence by any means recognized by law, such as proof on cross-examination that the witness had defective eyesight, hearing, taste, etc., or was not in a position to observe the occurrence.

In enforcing anti-gambling statutes, police officers, on raiding wire rooms maintained for the purpose of receiving and recording bets on horse races, have been frequently called upon to answer telephone calls coming into the premises from another bookmaking room, transmitting a number of bets. On ascertaining the location of the other premises and apprehending the sender of the telephone message, the officer will be permitted to give his opinion that the voice he heard on the telephone is the same voice as that of the defendant. Although this type of evidence may be weak, such weakness does not affect its admissibility. In any case, the admission of the telephone conversations, if repeated to the defendant, has been upheld by the New York Appellate Courts as against the proprietor of the wire room where the calls were received, if it can be shown by some evidence that the defendant was the person for whom the calls were intended.

In order for a police officer to qualify as an expert witness, specialized courses of training are necessary. The Police Academy of the City of New York's Police Department, in addition to giving the regular courses of instruction in law enforcement and criminal law, also undertakes to instruct its own experts in those fields where the need for such training manifests itself. The subjects covered include matters dealing with ballistics, drugs, fingerprinting, dangerous weapons, forgeries, chemistry, engineering, photography, skid marks from motor vehicles, etc. The police officers receiving these courses are assigned to specialized squads where they receive further practical instruction. After a short period of time, these men can qualify as expert witnesses when the need for their services arise.
