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CONVICTING THE ARSONIST

Herman H. Cohn

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To analyse and discuss adequately the subject of convicting the arsonist is a difficult and complex task. Any conviction of an arsonist involves consideration of legal questions of the crime itself and the admissibility of evidence in the trial, of investigation techniques and aids, of the psychological background of the arsonist, and of many other factors. In dealing with this subject a detailed breakdown into sub-headings makes it more comprehensive, but in so doing it is only possible to discuss some of the most important phases of the crime.

First, we should know and understand the law we are discussing. Under the old common law—the crime of arson was well defined by “Blackstone” as “the malicious and wilful burning the house or outhouse of another man”. But since that time an avalanche of statutes has overwhelmed this definition so that its former scope is interesting only in a historical sense. Where it was originally confined to dwellings and nearby buildings, it is now extended to all manner of structures, including even bridges. Where it formerly protected only habitation of man, it now covers personal property and even crops. Once it was limited to burning the house of another and now one may be convicted if he burns his own property. Arson has always been regarded by the law as a heinous and most aggravated offense, for not only does it endanger human life and the security of habitations, but it evidences a moral recklessness and depravity in the perpetrator. It was a capital offense until more lenient statutes were enacted in the 19th Century.

ELEMENTS OF OFFENSE

(1) Property Burned. Under the common law, unless the dwelling was actually occupied, its malicious burning was not arson, but present day statutes have changed this theory. Under common law principles, all outbuildings which were parcel of the dwelling house, that is, which were within the curtilage, were subject to the crime of arson, and this is true today under
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present day statutes in various states. A statute using the expression adopts the common law meaning of the words.

In the division of statutory arson in several degrees a distinction may be drawn between the firing of a building which is parcel to the dwelling and a building which is not parcel. They may be classed as different degrees of the same offense or under some statutes may be considered distinct crimes.

The word curtilage as pertaining to being a part of a dwelling house, has been judicially defined as the yard or space of ground near to the dwelling house contained in the same enclosure and used in connection with it by the household and parcel of buildings or structures contained therein.

In order that the burning of an outbuilding shall fall under the principle under discussion, it must have the required nearby location, and the main building to which it is subservient must be a dwelling house, that is a dwelling house inhabited by human beings. If the outbuilding is so situated that its destruction by fire will endanger the house, then it belongs to the dwelling house as expressed in a statute relating to arson.

The burning of other property including buildings, and other outbuildings, not parcel to a dwelling, personal property, etc., have all been regulated by statutes with different degrees of punishment, some being felonies and other misdemeanors. A felony is a crime punishable by imprisonment in the penitentiary and a misdemeanor is a crime punishable by a fine or jail sentence.

Due to the fact that most states have what is known as the “Model Arson Law”, most arson investigators are familiar with that particular statute and can advance the same theories and practices to bring about convictions for violations of it. This new amended statute covers practically any manner in which a violation can occur. It includes the person himself or any one who aids, counsels, or procures the burning; your own property or property of another. This law certainly makes it easier than before to convict an arsonist.

(2) Elements of Offense—Malice—Intent. At common law the common law definition of arson—the wilful and malicious burning of the property of another—imports two mental elements: wilfulness and malice. The act is done wilfully; that is, intentionally as opposed to accidentally; and maliciously, which is inferred if the burning is intentional. Under the statute, wilfulness and malice are essential elements to the crime of arson.

The distinction between motive and intent is clearly marked in the law of arson. While intent is a material ingredient of
this crime, motive is not an element. Motive is the moving cause which induces action. Intent is the purpose or design with which an act is done. Some courts have held that "maliciously" denotes the "wilful doing of an illegal act". It need not be expressed but may be implied from the deliberation of the act.

The crime of arson is not consummated without a burning.

At this time it might be proper to suggest some of the defenses to the crime of arson, for instance:

(A) INSANITY. The administration of modern criminal law does not permit the conviction of the insane; that is, that the party accused was laboring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know what he was doing was wrong.

(B) INTOXICATION. As a general rule, voluntary intoxication is no excuse for commission of the crime of arson, but it devolves upon the defendant to show that he was so drunk he could not distinguish between right and wrong.

(C) PYROMANIA. This may be defined as an insane disposition to incendiarism. It is generally referred to as "pathological arson" and is defined as "Fire setting under an abnormally conditioned impulse by a person not determinably insane". He labors usually under a mental disability that he is unable to resist the impulse to set the fire. He is usually a psychopathic case. Where there is no motive, the subject requires study and perhaps treatment is necessary. He will probably remain at the fire or return after the fire is set.

(D) INFANCY AND JUVENILE FIRES. Another aspect of arson investigation which must be handled with kid gloves, but at the same time drastically and efficiently, is the setting of fire by juveniles. Of all the persons setting fires, this class is the most flagrant. Too numerous are the fires that are set by the real young ones who cannot be prosecuted on account of their youth, and it becomes necessary to strongly admonish parents where the responsibility really lies. As to the older ones, in many cases, admonition is not sufficient to stay the tide spreading throughout the country, but many of them require being placed in an institution for careful study so that proper corrective measures could be taken thereby assuring society and the public that their fire setting activities would be curbed or discontinued. Of course, it is not an easy task to determine who shall be placed on probation and who shall be sent to an institution, but more careful study and a little more
time and attention by all concerned will avoid great many seri-
ous cases such as the one of "William Heirens" when he was
arrested after setting fire in 1942. The investigator should
follow through in these cases and do his utmost to see that the
child's case receives the attention it rightfully deserves. This
writer has personally handled a great many juvenile fire cases
in the Juvenile Court, and has sat in with the Judge and made
personal recommendations, even though the court does not
always follow these suggestions.

These juveniles absolutely must be brought before someone
with authority who shall dispose of their cases in a proper
manner. Without giving any detailed account of cases started
within the last year by juveniles, we can all agree that the
numbers exceed greatly the amount heretofore experienced.
We should remember that no other form of juvenile delinquency
endangers loss of life as does fire setting. Property damage
also caused by these youngsters is enormous. These juvenile
offenders can cause as much damage, and may constitute as
definite and serious a problem, as the most carefully planned
plots of the paid or mentally afflicted arsonist.

Too often juveniles who are arsonists are never brought in
to even be admonished by a slight slap on the wrist. They should
be brought in before the Juvenile authorities and depending on
their ages and mentality dealt with according to the honest conv-
ictions of the Juvenile Court or other tribunal in authority.
They should have a hearing like an adult except under juvenile
case jurisdiction; witnesses heard, confessions, statements and
admissions heard, mental examination in each case; bring in
the parents also by all means to see if they have not been
derelict in their responsibilities to their children; listen to their
story; and then let the authority pass judgment. If a youth
deserves being sent to an institution to learn to become a good
citizen or to take him away from his environment, then that
action should result. Too many bad offenders are released with
only an admonition which is taken as a joke by the juvenile.
When he finds how easy and simple it is to foil the authorities,
he will continue to carry on his damaging work to the end that
finally great damage is done and possibly human beings lose
their lives. The investigator must stay on the job in these cases
to see that these things are done; otherwise the case lags and
finally disappears. He should let the authorities know he is
vigilant and on the job, and they soon will begin to recognize
that he means business.

Then again these cases should be publicized in the papers,
naming the individuals which, of course, the parents do not like. The parents should be required to pay all damages caused by their reckless children.

In administering the law with reference to juveniles, one must take into consideration the statutory requirements in his state as to the age when a prosecution can be commenced. In Illinois infants under the age of ten years cannot be found guilty of any crime or misdemeanor, and infants below the age of 14 are presumed to be incapable. But the presumption is rebuttable if it can be shown he understands the difference between right and wrong. 14 or over he is accountable to the law for his acts and doings if he is of sound mind.

(E) ENTRAPMENT. The defense of entrapment does not arise when public officials are informed that the crime is to be committed and they conceal themselves to permit the accused to start the blaze before they make the arrest, but it certainly is not ethical to maneuver one into committing a crime and doing so is a dangerous procedure.

(F) ALIBI. In some states, when the accused offers evidence of an alibi, it is held that he is bound to show in its support such facts and circumstances as are sufficient when considered in connection with all of the other evidence in the case, to create in the minds of the jury a reasonable doubt of the truth of the charge against him. In other states the burden still remains with the prosecution when an alibi is injected by the defendant. The defense of alibi is that the defendant claims he was not at the place when the crime was committed but was some other place.

Confessions

(A) The confession, when obtained, is one of the most important elements of evidence. This requires especial comment. Be sure it is obtained voluntarily and without promises. The subject must be cautioned that what he says will be used against him. The question of whether or not a confession is voluntary is presented to the court before it is submitted to the jury, and for that reason a great deal of care must be taken when a confession is taken. One must learn to preface a confession and also to conclude the same with proper phraseology. Its value depends upon its deliberative and voluntary nature, means by which it was obtained, mentality of the accused, credibility of witnesses reporting it. Confessions are important for when they are made the subject usually enters a plea. But a confession alone is insufficient to obtain a conviction as it is necessary to corroborate the same by other credible evidence showing the corpus delicti.
(B) Confessions in open court, that is by the defendant entering a plea of guilty, are always binding upon the defendant and under no consideration, so far as the legal effect of such plea or confession in open court is concerned, can the same afterwards be questioned. However, it is proper to remark that such a plea shall not be entered until the trial court shall fully explain to the accused the consequences of his entering such a plea. A failure of the record in the case to disclose that the court so explained the legal effect of the plea to the defendant is what is known in law as reversible error.

Confessions out of court are of two types: either verbal or in writing. If freely and voluntarily made, they are always admissible in evidence against the party making them and, together with proof that a crime has been committed, are sufficient to warrant a conviction of such crime, without other evidence to connect the defendant therewith. In the application of the rule of law as to what are voluntary confessions in applying them to concrete cases there is an apparent conflict of decisions by the courts, not as to the rule of law, but as to what are in a given case free and voluntary confessions. In the application to these concrete cases all the courts, however, agree that a confession not freely and voluntarily made, shall not be admitted as evidence against the accused.

A confession is most certainly free and voluntary, if it proceeds from the unsolicited and spontaneous act of a person confessing, but to be free and voluntary it is not essential that it be the spontaneous act of the person making it. It might be set in motion by external causes. The fact that a confession is elicited by questions put by police officers or others, even though the questions assume the guilt of the person interrogated and are roughly asked, will not make such confessions involuntary, nor will an exhortation or request to tell the truth warrant the rejection of a confession as evidence.

The fact that a defendant is held without process or denied communication with friends does not render a confession inadmissible which is otherwise valid, but unlawful restraint may be considered in determining whether a confession is voluntarily made.

Some states have held and will recognize the right of police and other peace officers to detain persons suspected of crime for a reasonable time and to rigidly and even roughly interrogate them with a view of ascertaining their connection with a commission of a crime or to elicit facts which may lead to the appre-
hension of others, without rendering a confession in such circum-
cumstances inadmissible as evidence.

The rule of law in Illinois, and possibly in other states, is, that a confession becomes incompetent whenever any degree of influence has been asserted by any person having authority over the charge against the person or over his person, tending to cause duress or hope of leniency for the law presumes that such confession was prompted by that influence. It has long been held in this country and in England that where the admonition to speak the truth has been coupled with an expression implying that it would be better for the prisoner that he do so, the confession made in such circumstances is not admissible in evidence, for the reasons that such statement carries the inference that it would better for the prisoner to say something than remain silent.

It is immaterial upon the question as to the admissibility of a confession in evidence that in a trial a defendant may deny making such confession. If any expression be made that will be construed into duress or a promise of leniency, the law presumes such confession involuntarily made, which renders it inadmissible as evidence. This is merely stated to illustrate how easy it might be for an officer, by an unguarded expression, which may in fact or by implication be construed into a threat or a promise, to destroy the fruits of his effort to discover the perpetrator of a crime and render a confession inadmissible as evidence.

An officer is justified in subjecting a prisoner to a lengthy and vigorous examination for the purpose of satisfying himself of the guilt of the accused or for the purpose of getting information which would lead to the discovery of crime. Whether information thus elicited is a voluntary confession must depend upon the facts of each case.

If in the course of an examination of a prisoner who makes a detailed and truthful confession of the crime at the termina-
tion of such examination, the officer, upon due reflection, can see that in the heat of the examination or as a result of any cause he has gone beyond what the law permits by word or act in his conduct toward the accused in his examination, so as to render such confession incompetent as evidence, such officer should thereupon give the accused, out of his presence and influence, an opportunity of making another statement. Thus, if such prisoner desires to retract what has been said he may do so, and if he desires to confess anew or confirm what he had before confessed to such officer, the state may have the benefit thereof as evidence in the trial of the case.
A confession, not infrequently involves others and the person making it in the commission of the crime in connection with such person. In such case the confession is only evidence against the person making it unless made in the presence and hearing of those incriminated thereby. When a confession is made and reduced to writing or made without being reduced to writing, implicating others in the crime, generally speaking, it might be a good practice to confront those implicated with the confession and the party making it and give the persons thus implicated an opportunity to make a statement in regard to the truthfulness of what is imputed against them in the confession, so as to thereby render the confession admissible against such persons so confronted and implicated by the confession. However, when the probabilities are that the persons implicated by confession will deny all connection with the crime, such a course would be useless as on the trial all that is said or done on such an occasion is evidence; or if there is reasonable grounds to believe that the party confessing will take the stand and testify to the facts contained in his confession, such a course would not only be useless, but might do possible harm. The officer making the investigation must in each case exercise his own discretion and judgment, as in these cases no rule could be laid down that would apply to each particular case.

Confessions which the law regard as involuntary because of the presumption that they were induced by a hope of leniency or immunity from punishment or from fear of such punishment as the result of promises, threats, or duress, are rejected as evidence for the reason that such confessions cannot be relied upon as being true. The law considers the weakness of human nature and the effect that the flattery of hope or the horror for punishment may produce upon the mind and rejects as entirely untrustworthy and unreliable confessions which are made under circumstances which are calculated to produce an untrue confession. Hence the distinction exists between confessions made to officers who have custody of the prisoners and those made to individuals who have no power over the person of a prisoner or authority over the prosecution. In the former case, if promises or threats are applied as means of obtaining a confession, such a confession is rejected as involuntary. In the latter instance a confession obtained under like circumstances is admissible because the person to whom it is made has neither the power nor the authority to fulfill his promises or carry his threats into execution and the accused know such facts and cannot be influenced by such promises or threats.
For the same reason, where a confession is obtained by the appliance of hope or fear and under the rule above announced, rendered incompetent as evidence, if at the time such a confession is made, the person making the same narrates facts which upon investigation are found to be true, the facts thus disclosed, together with the confession, are proper evidence, because the existence of the facts repels the presumption that a forced confession may have been made as the result of appliance of promises or threats by those in authority.

It may be further stated that confessions are admissible in evidence even though obtained by deception or when the person is intoxicated, unless it be shown that such person be unconscious at the time of making such confession.

Confessions may also be implied by the conduct of the accused. Silence gives assent. So, if a person is directly charged with the commission of a crime by an officer who has such person in custody or if such person is charged with the commission of the crime by others under circumstances that would call for a denial and such person remains silent, such silence may be regarded as a confession in the absence of a satisfactory explanation as to the cause for such silence.

**Admissions**

There is a distinction between confessions and admissions. If a man admits the crime, the statements he makes amount to a confession. If his statements do not of themselves show guilt, but requires the proof of other facts in order to show guilt, they do not constitute a confession, but are classed as admissions of facts. It may be stated as a broad general rule that statements of the accused, if relevant to the charge of arson, may be proved by the prosecution. Statements made before, at the time or after the fire are equally admissible as admissions of fact. The statements which have been made by the accused may be shown by the prosecution as evidence tending to prove any material point.

Admissions are to be distinguished from confessions in that they all purport to admit some incriminating fact or facts and not to confess the guilt of the person making such confession of the crime itself. Such admissions are competent evidence, regardless of whether or not they are made at the time promises or threats are applied as a means of obtaining the confessions, because of the fact that the person making such confession does not confess, negatives the presumption that such admissions were the result of hope or fear emanating from such tactics.
Circumstantial Evidence

A conviction may be sustained although there is no direct evidence of the guilt of the accused. As in other criminal cases, one may be convicted of arson on circumstantial evidence. Because arson is one of those crimes which are peculiarly of secret preparation and commission, and it is very seldom that one can furnish testimony of an eye witness who observed the setting of the fire. The very nature of the crime is such that it becomes necessary in many if not in most cases to rely on circumstantial evidence to establish guilt of the accused. It is recognized that a well connected train of circumstances may be as satisfactory as an array of direct evidence. Although many of the items of evidence standing alone are of little consequence, but when considered as a whole point strongly to the guilt of the accused.

The corpus delicti may be proved with other elements by circumstantial evidence.

Circumstantial evidence is more clearly defined from its results than by definition of the phrase itself.

Direct evidence is that which establishes directly the ultimate fact, that is, the fact in issue, by eye witnesses or other evidence that directly establishes the main fact. Circumstantial evidence is such whereby certain facts are proven by which it is sought to establish the main fact in issue. If these other facts be such that from them the logical and natural inference is that the main fact exists, then the main fact has been established. Accordingly, where a case depends upon circumstantial evidence and the circumstances or collateral facts are such as to drive to the mind the conviction of the existence of the main fact so that its non-existence cannot be explained except by doing violence to what has been proven, then, the main fact has been proven and established. Hence, if the circumstances be such in a criminal case that the defendant's innocence cannot be accounted for upon any reasonable hypothesis from the facts before the jury, then the guilt of the accused has been established beyond a reasonable doubt.

All the circumstances amounting to proof of the crime of arson, or other crime, can never be a matter of definition applied to each individual offense or particular case. The real test is the sufficiency of the evidence to satisfy the understanding and conscience of the jury beyond a reasonable doubt. To warrant a conviction upon circumstantial evidence alone it is not necessary that every circumstance be proven beyond a reasonable doubt, nor that every link in each chain of circumstances be
connected and established beyond a reasonable doubt, but it is sufficient if the circumstances in evidence, when taken together are of such a conclusive nature and tendency as to justify the conclusion of the guilt of the accused beyond a reasonable doubt.

Arson, burning to injure an insurer and other heinous and grave crimes, are most generally if not invariably committed under the cover of darkness, in obscure places, at times and in a manner calculated to divert suspicion, and where no living being other than the criminal himself or those who are acting in concert with him can be present as eye witnesses thereto. In such cases it is almost invariably true that the detection and conviction of the criminal must be based upon circumstantial evidence, at least in part.

A learned author once said, "Circumstances are invincible proofs. They will not bend to the inclination of parties. Witnesses may be mistaken, may be corrupted; things can do neither, and therefore, so far as they do, deserve unlimited, unreserved faith".

"Circumstances cannot lie".

"Where a presumption necessarily arises from circumstances, it is more convincing and satisfactory proof than any other kind of evidence, because facts cannot lie".

Circumstantial evidence alone is enough to support a verdict of the most heinous crime. No greater degree of certainty in proof is required where the evidence is all circumstantial than where it is direct, for in either case the jury must be convinced of the defendant’s guilt beyond a reasonable doubt. The law makes no distinction between direct evidence of the fact and evidence of the circumstances from which the existence of the fact may be inferred. Hence, prejudice against circumstantial evidence is sufficient to disqualify a person who entertains such prejudice from serving as a juror. And in cases of arson it is very important on the trial of such cause that jurors be questioned regarding their prejudices against circumstantial evidence, and if they have such a prejudice they must be removed for cause.

**The Lie Detector**

One of the current developments in arson control of considerable significance is the extent to which arson investigators have resorted to the use of the lie detector as an aid in the detection of deception during the course of the criminal investigation. Several of the states including Illinois now have lie detectors and competent operators in their state police crime detection laboratories where persons suspected of arson or a
kindred crime may be taken to submit to lie detection examinations. The machine has been very helpful in breaking down suspects whereupon many confessions have been obtained thereby followed by pleas of guilty and placing the arsonist behind prison bars. This machine has greatly lessened the burdens of the investigator.

**Fingerprint Evidence**

This is one of the modern ways of detecting criminals. Most investigators are not familiar and do not have knowledge of fingerprint evidence. Because in many instances the culprit leaves his fingerprints at the scene of the crime it becomes necessary that such prints be preserved for those who can read and understand the same. Most states have fingerprint experts, and it will be up to them to pass upon that evidence.

It is very important that articles that are to be transported bearing fingerprints should be handled very carefully in order that the prints do not become obliterated. However, when an object must be carried some distance for a fingerprint examination, it should be supported in such a manner that the surfaces to be examined for fingerprints will not be touched or rubbed. Some experts suggest enclosing the article in a wooden frame, or in the case of some objects, lashing them to a board with string to prevent movement and friction.

The value of fingerprints as a method for identifying and convicting criminals depends to a considerable extent to the consideration given this type of evidence by investigating officers. Uninformed, disinterested, or careless officers may in the course of their investigation ignore or destroy identifiable impressions on objects which may have been touched by the perpetrator of a crime, and once a fingerprint has been rubbed off or obliterated, there is nothing an expert can do to rectify the investigator’s mistake or restore the fingerprint.

In investigations, parole officers should be contacted to ascertain names of parolees in that vicinity whose previous records might connect them with the case in question. Ex-convicts are prone to try new fields that are more difficult to solve and prove such as the crime of arson, and one will find that a great many of his culprits are ex-convicts, the ratio being one out of five.

**Evidence — Motive**

It is elementary that one accused of crime is to be tried by competent evidence, and this duty rests upon the prosecutor to prove the charge by competent evidence beyond a reasonable doubt. In arson cases it becomes necessary to build up a case by bringing in all those people who know anything about the
case and can supply some evidence to support some fact. A
great many things can be used in evidence in arson cases such
as footprints, photographs, maps, fingerprints, or anything
found on the premises that may prove some fact or point in
the case.

The accused is presumed to be innocent of the crime with which
he is charged, and the prosecution has the burden of establishing
his guilt. The evidence must establish his guilt beyond a reason-
able doubt. As in case of a fire, the presumption is that the fire
was accidental or providential. There is also a presumption that
one intends the natural consequences of his acts, and when it is
shown that one deliberately sets fire to a building, the prosecu-
tion is not bound to produce further evidence of his wrongful
intent.

Again, it should be remembered that while motive is not an
element of the crime it may be proved for the reason that so
grievous a crime as arson is rarely committed without some
motive underlying the offender’s acts. A man will not commit
a crime without reason, inducement, or temptation. This is one
of the first things an investigator should locate.

As evidence in order to show a motive, testimony is admis-
sible to show some of the following:

1. Ill feeling by reason of previous controversies.
2. Ill feeling by reason of previous litigation.
3. Ill feeling towards occupant.
4. Threats.
5. Animosity toward burned property (Jail).
6. Excessive insurance.
7. Financial embarrassment.
8. Inventory which was not in the fire.
9. Recent removal of chattels before fire.

In many states the person who burns is not the only one pun-
ishable, but anyone who aids, counsels, or procures the burning
is likewise guilty. This change has come about by amendments
to the statute in recent years.

It is very essential that investigators give to the prosecuting
attorney correct names of defendants, correct descriptions of
property, in order that he may correctly file all information or
have an indictment returned which will stand up because mate-
rial matters contained therein must be proven as alleged and
failure to do so will result in a variance. If the defendant’s
case has been started and a jury sworn, he will be freed.
Whereas all investigations ultimately lead to the courts for
determination, it is very essential that the material and find-
ings help bring about the desired results. Proper evidence is necessary and indispensable.

Let us take up some of the things that an investigator will be required to show to prove his case:

1. The corpus delicti must first be shown which means that he must show:
   (a) The building in question burned.
   (b) It burned as the wilful and criminal act of some person.

   **Accomplice**

   An accomplice is a competent witness against those connected with him in the perpetration of a crime. He cannot be compelled to testify, but he may voluntarily do so. If he does, subject to the rule that the testimony of an accomplice should be received with caution and carefully scrutinized by the jury, his testimony is sufficient alone to warrant a conviction. If the jury believes what has been testified to by him to be true, it should not hesitate to convict upon uncorroborated evidence of an accomplice alone.

   From the foregoing it follows that if an accomplice be corroborated in his testimony in some of the material facts, the jury may believe him as to the others, even though in the absence of such corroboration his testimony had been weakened as evidence, by evidence on behalf of a co-defendant.

   **Burden of Proof and General Rules of Evidence**

   The burden of proof in the first instance in all criminal cases is upon the people to establish the guilt of the defendant beyond a reasonable doubt, the presumption of law being that the accused is innocent until he is proven guilty. This rule is subject to some exceptions, as where the defendant sets up an affirmative matter as a defense. Then the burden of proof shifts and is upon the defendant, as where the defense is insanity, alibi, drunkenness to the extent that the accused is incapable of forming a specific intent, in cases where a specific intent is required to be proven, and the like, but the burden shifts only to the extent of raising a reasonable doubt of the guilt of the accused.

   The rule of law requiring the prosecution to establish the guilt of the accused by the evidence, beyond a reasonable doubt, does not require the prosecution to establish its case beyond a possibility of a doubt, or to demonstrate the guilt of the defendant with mathematical precision, but only requires that the case be proven to a moral certainty, that is, that the case be proven to the satisfaction of the jury, so that the jury can say that it has an abiding conviction from the evidence of the guilt of the accused.
A doubt to be a reasonable doubt must be such that in the graver transactions of life an ordinarily prudent man would hesitate and pause before acting in the particular instance under consideration. Unless such a condition exists and the doubt is merely chimerical, the case has been proven beyond a reasonable doubt.

The rule that the burden of proof shifts when the defense is an affirmative one as above stated, and that it rests upon the defendant to prove his insanity, alibi, or other affirmative defense standing on like footing or reason, does not require of the defendant that he prove each defense beyond a reasonable doubt or by preponderance of evidence. But it does require of him that the proof of such defense, when considered in connection with all the evidence and circumstances in the case, be sufficient to produce in the minds of the jury a reasonable doubt of the guilt of the defendant.

The general rules of evidence are the same in all criminal prosecutions. The law requires that the best evidence of which the nature of the case will admit must be produced. Primary evidence must be resorted to. Hearsay evidence is never admissible, except to prove pedigree and to establish certain facts which fall within well known exceptions to the general rule. Any fact that fairly tends, however remotely, to establish or to disprove any or either of the material allegations is relevant as evidence.

Crimes may be proven by direct evidence, as by the testimony of eye witnesses who saw the main transaction, or who acquired knowledge thereof by one of the five senses, or may be proven by circumstantial evidence, or may be proven by both direct and circumstantial evidence, since it is only necessary to establish by competent and proper evidence the guilt of the accused beyond a reasonable doubt.

Cooperation with Authorities

There should exist the friendliest and heartiest cooperation between the investigator and all legal authorities with whom he is obliged to operate. The success in detecting and apprehending the arsonist is largely dependent upon the extent of cooperation which exists between the fire and police services of a community. There should be no dispute or misunderstanding concerning that point. Whenever one finds that support he can rest assured there is an honest effort to curb arson. If that situation is lacking, then there is much to be accomplished
before arson is under control, and this last situation is prevalent in many communities. It is imperative that the prosecuting attorney knows about the investigators and that the investigator keep him informed upon all the phases of the investigation and seek his advice. The investigator shall perform the ground work, secure the evidence, and turn it over to the prosecuting attorney.

**Trial**

A trial of an arsonist deals with criminal law. It is no different than the trial of any other criminal case. The laws of evidence are the same. To convict it is necessary that the defendant be found guilty beyond a reasonable doubt. The investigator will be called upon to testify for the state and his testimony will be weighed by the jury the same as other witnesses who testify. But as an official and testifying in such capacity, he will be subjected to a severe cross examination by defense counsel to try to break down his evidence and to try to make it appear trivial and unimportant. It becomes necessary that the investigator keeps his head, know his evidence, and refrain from attempting to stretch his evidence and getting himself out on a limb. If his evidence is broken, then counsel has found a way of turning a promising case into an acquittal. A good witness does not let opposing counsel get him irritated or excited as he will attempt to do in every case so that the jury will frown upon the testimony. Such a witness always is fair and reasonable and acts the part of a gentleman on the stand. It is far better to act humbly than arrogantly and to make the jury believe that the witness is trying to convey to them only just what he knows and nothing else. He does not become irritated by severe grilling but tries to remain calm and collective. Under those circumstances the investigator is himself and thus makes a good witness. A great deal of latitude is allowed the defense attorney for cross examination and in many instances leading questions are permitted to be asked. The witnesses's connection as an officer will be injected into the case to prejudice the testimony, as defense attorneys all feel that juries dislike testimony of officers because they are usually over-zealous in their efforts to convict and sometimes stretch their testimony as well as their imagination.

In the trial of criminal cases wherein defendants are charged with the crime of arson or kindred crimes, it is of vital importance to present the case to the court and jury properly. A case will be lost when the allegations of an indictment allege one thing and the proof evidences another. This is what is
known at law as a variance and results in an acquittal. For instance, if it is alleged that John Doe is the owner of the property burned and the proof shows that Mrs. John Doe is the owner, that is a fatal variance. This writer personally has had that incident take place more than once when representing the defense several years ago. The jury had been sworn, the proof was being taken, and when the variance was learned, the movement for a directed verdict for the defendant was allowed and the defendant having been in jeopardy, could not be tried again for the same offense. So it can be readily seen how easy a serious mistake can be made. One must be very careful to give to the prosecuting attorney correct facts, especially when they are available if records are involved. Now this does not pertain to just one allegation of an indictment, but to every material allegation alleged. One just cannot be too careful in preparing his case for the prosecuting attorney. He has confidence in the investigator and his work and accepts his facts at face value, knowing that he is specialized in his work as an investigator. Perhaps he takes too much for granted in so doing and should use more diligence himself, but nevertheless these things do happen and are injurious.

One must be certain that all witnesses have thoroughly digested the evidence they are to present, and the investigator should have a few conferences with the Prosecuting Attorney, together with the witnesses, so that they will understand court procedure. Witnesses should be admonished about the tricks of cross examination so that they can withstand any stern examination by defense counsel. If a witness is telling facts, he should not be disturbed about defense counsel if he constrains himself to the evidence that he knows about and not permit counsel to let him wander on a fishing expedition to confuse him and the issue. The witness should be familiar with his own testimony and never deviate from that course and thereby eliminate any chance of telling conflicting statements.

**FIRE MARSHAL ACT**

In Illinois and many other states, there is a State Fire Marshal Act, and it goes without saying that we must first get our authority to act before we can act with effect. The Fire Marshal has a dual purpose to perform: First, the prevention of fires and second, the investigation of the causes of fires; and in that connection, if they are incendiary in their origin, the causing to be instituted of prosecutions for arson, burning to injure the insurer, or other criminal burning. When he begins an investi-
gation, he has the authority to take the testimony on oath of all persons supposed to be cognizant of any facts or to have any means of knowledge in relation to the matter as to which an examination is being made, and cause the same to be reduced to writing. If he believes there is sufficient evidence to charge any person with the crime of arson, or with an attempt to commit arson, or of criminal conduct in connection with any such fire, he shall cause such person to be arrested and charged with the offense committed and shall furnish to the prosecuting attorney all such evidence collected together with all exhibits, names of witnesses, and all information obtained by him.

He, or any of his deputies, further has the power to summon and compel the attendance of witnesses before them or either of them to testify to any matter which is the subject of inquiry and investigation and compel such witness to produce books, papers and documents deemed pertinent thereto. Such officers are empowered to administer oaths and affirmations to any person appearing as such witness and false swearing in any matter or proceeding is declared to be perjury.

Any witness refusing to be sworn or refuses to testify or disobeys any lawful order of any such officer or who refuses to produce any book, paper or document, etc., touching any matter under examination, or who is guilty of contemptuous conduct after being summoned by them, is declared to be guilty of a misdemeanor, and it becomes the duty of the officer to make the complaint.

Pointers For Investigators

Every investigator should familiarize himself with the laws of his state relating to arson and kindred crimes. He should be able, when talking to other officials, to explain what crime has been violated and in what manner. He should know all penalties involved for the commission of each offense. He should be able to distinguish between the offenses and the ingredients of each. Also, the difference between a felony and a misdemeanor. In some states the crime of arson is one of the exceptions for granting probation, as in Illinois. If a person is convicted of arson, he is not eligible for probation.

The writer has tried in a brief manner to enlighten the reader on some of the legal aspects of the arson law and some of the details investigators are always confronted with, in order to bring to justice the fiend who is willing to destroy property and even human beings to carry out his dastardly deeds. It is a difficult road to travel, but with the help of competent arson investigators traveling will be easier.