

C 25 P 1 Sp "attention"

B P 9 See pencil changes

P 12 "In" to "to"

C 30 P. 2 Davidson to Levenson



And he <sup>buses fellow,</sup> would have <sup>already</sup> run the gamut of <sup>the different grades of</sup> criminal offenses.

For felonies and misdemeanors cover the entire range of <sup>possible</sup> criminal offenses. Crimes are <sup>usually</sup> either one or the other. Felonies embrace the graver offenses, and the punishment is <sup>usually</sup> correspondingly more severe, for it is <sup>A felony is</sup> any criminal offense for which the sentence of death or imprisonment in <sup>Better you look out.</sup> a penitentiary may be imposed. In those states which do not have capital punishment, the definition is simpler.

~~Misdemeanors~~ All other criminal offenses are misdemeanors, <sup>and are usually</sup> covering <sup>the offenses</sup> punishable by <sup>usually</sup> fine or a jail sentence <sup>usually</sup> not to exceed ~~more~~ or both, if the judge <sup>should happen to be</sup> is <sup>liverish</sup> that day. <sup>Misdemeanors</sup> They are by far the most popular, and are recommended if <sup>you must test my definitions.</sup> still <sup>are on</sup> But back to your neighbor before he gets across the state line. When you <sup>are</sup> <sup>knocked cold.</sup> <sup>you are</sup> <sup>lying out</sup> <sup>the lawn,</sup> <sup>knocked cold.</sup> you would <sup>probably</sup> stagger in to the 'phone, call the police, and they <sup>would</sup> <sup>come over</sup> <sup>after a</sup> <sup>while,</sup> and tramp around in the plover beds, look at you narrowly as they question <sup>you</sup> about the insurance, and at length <sup>they</sup> tell you to come down <sup>your</sup> <sup>fun-loving</sup> <sup>neighbor.</sup> <sup>Presently</sup> <sup>they</sup> <sup>go</sup> <sup>away,</sup> and sign a complaint, <sup>you</sup> <sup>would</sup> <sup>then,</sup> if you are smart, <sup>go</sup> <sup>to</sup> <sup>the</sup> <sup>hitcher</sup> <sup>and</sup> <sup>hoist</sup> <sup>a</sup> <sup>double</sup> <sup>scotch,</sup> and <sup>crawl</sup> <sup>into</sup> <sup>bed.</sup>

Whether you wish <sup>to</sup> <sup>prosecute</sup> <sup>your</sup> <sup>neighbor</sup> for the felony <sup>or</sup> the misdemeanor, or both, the next morning <sup>after</sup> <sup>reading</sup> <sup>about</sup> <sup>your</sup> <sup>gallant</sup> <sup>stand</sup> <sup>in</sup> <sup>the</sup> <sup>papers,</sup> you would go down town, and answer a lot <sup>more</sup> questions, and finally appear before <sup>a</sup> <sup>lower</sup> <sup>court</sup> <sup>judge</sup> <sup>-</sup> <sup>known</sup> <sup>variously</sup> <sup>as</sup> <sup>justice</sup> <sup>of</sup> <sup>peace</sup> <sup>or</sup> <sup>criminal</sup> <sup>magistrate,</sup> and sign a <sup>criminal</sup> complaint. Because, with <sup>a</sup> <sup>few</sup> <sup>exceptions,</sup> that is the way and the <sup>judicial</sup> <sup>officer</sup> <sup>person</sup> before whom all criminal prosecutions are commenced, whether felony or misdemeanor.

In actual practice you would not be permitted to press both the arson charge and

a penitentiary

Criminal

hit yourself to the hitcher <sup>then</sup> <sup>promptly</sup>

justice of peace or criminal magistrate

the assault and battery charge. You would be asked to sign the arson complaint. The reason for this is that ~~if~~ where there are two or more criminal charges ~~to~~ which may be brought against a person, and this is ~~quite~~ all too common ~~chosen,~~ usually the gravest charge is ~~chosen,~~ ~~and the others are withheld, being,~~ are called to the notice of the sentencing judge, ~~for attention,~~ in the event of a conviction, and <sup>duly</sup> considered by him in determining the nature and extent of the punishment <sup>he will mete out</sup> for the specific offense which has been prosecuted. If, <sup>however,</sup> there should be a slip-up in that prosecution, then it may be possible to press some of the other charges. For example, if the neighbor managed to slip a third cousin on his jury, and was acquitted on the arson charge, he ~~could~~ <sup>might still</sup> be prosecuted for breaking and entering <sup>the garage</sup> or assault and battery on your person.

However, if the <sup>various possible</sup> offenses are what we

lawyers call "included offenses," then upon acquittal <sup>set</sup> of Mr. Defendant would go ~~to~~ free. Thus every rape <sup>embraces,</sup> necessarily <sup>includes,</sup> from its <sup>very</sup> nature, an assault with intent to rape and common assault and battery, which ~~are~~ <sup>also happens to be</sup> separate distinct criminal offenses. But if a defendant were tried and <sup>acquitted</sup> convicted of rape, he <sup>could</sup> not <sup>then</sup> be prosecuted for the lesser offenses, <sup>the thing here is that</sup> because the rape case jury <sup>could</sup> have convicted him of any one of these <sup>included</sup> three verdicts in the rape trial. By finding him "NOT guilty" <sup>there</sup> if there are deemed to have acquitted him of every offense in <sup>the larger</sup> charge.

I recall a rape trial which nicely <sup>illustrated</sup> this. ~~It~~ <sup>was</sup> a young Finnish boy <sup>beautifully</sup> picked <sup>her</sup> ~~nineteen or twenty~~, got home one Saturday night and <sup>any more</sup> came home and ~~it's getting so~~ <sup>creeped</sup> crawled into the neighbors house <sup>then</sup> into a downstairs bedroom, <sup>into a strange bed,</sup> and then into the <sup>woman's</sup> daughter of the house. After an indecent

with our genius for simplicity)

its nature,

not mildly, but ~~it's~~ <sup>it's</sup> getting so

interval, he was <sup>recognized by a passerby going</sup> ~~seen~~ <sup>leaving</sup> out of the house by a ~~passerby~~ and into his <sup>own</sup> carrying, of all things, his trousers. I personally investigated this case, ~~without~~ <sup>if it could have been called that -</sup> going into detail and talked with the girl at her home. <sup>From the physical evidence -</sup> There was no question she had been assaulted, but since she was practically an imbecile, it was very difficult to get her to tell the story. <sup>But with the help of her family, I got her to tell,</sup> She knew the boy, and in her grunting, mumbling fashion, using signs and what-not, that Bicker had "done that" to her and then he had gone away. (For all felonies are tried in the circuit court, whereas <sup>most</sup> misdemeanors are tried before the lower court judges of peace who issue the warrant.)

Bicker was charged with rape, arrested, ~~arraigned~~, ~~placed~~ <sup>brought before the magistrate, where he</sup> warned a preliminary examination, <sup>and</sup> was bound over to circuit court to await trial. Arraigned in circuit court <sup>his</sup> Bicker's lawyer <sup>him</sup> pleaded not guilty, and we proceeded with the trial.

The poor girl had been diffident enough to talk to in her home, with her family there to help. But up there in court, ~~with~~ <sup>out</sup> of her own little world, and faced by that sea of ~~staring~~ <sup>and</sup> faces that seem to be <sup>drawn</sup> to such trials, she was <sup>one of</sup> the saddest witnesses I have ever seen. <sup>On her <sup>grotesque</sup> way,</sup>

~~She would have Bicker in bed all right, and getting right chummy, but she would either break down and giggle or sob or snarl bitterly.~~ When it came to telling of that <sup>final</sup> ceremony which is the essence of a rape charge, she would <sup>wince and sob and grin and grimace, all the time,</sup> utter ~~the most~~ <sup>uttering</sup> a series of animal sounds that haunted me for weeks.

Nothing Judge Belden and I asked her could get Bicker past the ~~forbidden~~ <sup>forbidden</sup> portals and into the courtroom. In despair I finally gave <sup>her</sup> up, called my other witnesses, including the <sup>family</sup>, and

rested my case. ~~I waited~~ Like a June bride, I sat there waiting for the other lawyer to move for a directed verdict. He didn't disappoint me.

"Your Honor please," he intoned, ~~in the quaint phraseology that lawyers use to confound and mystify the groundlings,~~ "I move for a directed verdict of not guilty on the grounds that no act of intercourse having been shown, the People have failed to prove their case."

I reached for my briefcase, ready to strike out of court.

"The motion is overruled," I heard Judge Belden saying. "The charge of rape <sup>while</sup> will be taken from the consideration of the jury, ~~but~~ the included offenses of assault with intent to rape and assault and battery will be ~~submitted~~ go to the jury. The defense will proceed."

It is amazing what a toxic effect this <sup>sensational</sup> ~~comprising~~ information <sup>laid</sup> upon the prosecutor.

I leered at my opponent and almost whinnied aloud. My whole demeanor shorted: "Imagine, dear brother, that you should not have known this ~~most~~ elementary rule of criminal law." Imagine, indeed.

Brother took the stand and said he was <sup>intoxicated</sup> ~~too~~ <sup>to</sup> ~~unable~~ to remember a thing; that <sup>all he knew was</sup> he woke up <sup>in</sup> bed <sup>and</sup> that he had never been able to ~~engage~~ <sup>engage</sup> a female in the past, while drunk, <sup>that</sup> therefore he <sup>couldn't</sup> ~~would~~ <sup>couldn't</sup> ~~guess~~ <sup>couldn't</sup> ~~be~~ <sup>couldn't</sup> ~~not~~ <sup>couldn't</sup> ~~down~~ so on the night in question. As I have said, <sup>there</sup> was certain evidence that indicated that Brother didn't know his own strength. In our arguments to the jury, I pointed this out. The jury, after hearing Judge Belden's

exchanged lodge grips,  
instructions, retired and had a smoke and  
whatever else it is they do out there,  
and <sup>finally</sup> came in and found Bicker guilty of  
assault with intent to rape.

In view of Bicker's youth and the  
obvious fact that the poor girl <sup>had</sup> resisted her  
assault - <sup>and</sup> despite the <sup>rule of</sup> fact the law is that  
a full minded person cannot consent to  
intercourse, so as to remove it from the rape class -  
Judge Belden gave him a break, giving him  
a short rest case in which to engage in  
meditation and prayer.

"But what about my neighbor," you <sup>men</sup> now ask.

In the meantime, <sup>also</sup> your neighbor has  
bonded a fruit freighter bound for down  
Mexico way. I for one say its good riddance to  
bad rubbish. The insurance company will  
build you a new garage and help you out  
on a new car, so ~~that~~ the way not let  
by you be bygones. <sup>Personally,</sup> I'm getting as sick of  
your neighbor as you well be.

You are now ready to take your  
bald exams.