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BRIEFER CONTRIBUTIONS

VIGNETTES FROM THE CRIMINAL COURT—II

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MURDER BY ABANDONED COLORED YOUTHS

Two colored boys were tried for a murder which took place during the hold-up of a grocery store in a negro district on the west side. The grocer was shot and fatally wounded in the presence of his wife. A witness testified that one of the defendants and another negro whom he was unable to identify were sitting in an adjoining doorway during the evening, a little before the hold-up. Because of the coldness of this December night this circumstance aroused this witness' suspicion. He saw the two boys arise upon his approach and walk in different directions. The prosecutor would interpret this as a customary act of robbers desiring to forestall later identification.

It was a few weeks after the hold-up before the police arrested the two defendants. One of them was hiding under his bed at the approach of the police. The defendant, Hood, made a statement in which he implicated Cressey. Although this statement was not legally admissible against the latter because made out of his presence, its introduction at the trial would have its desired effect in influencing the jury against him. The grocer's wife positively identified the two boys. Hood claimed that he was beaten at the time that he made his confession, and that a state's attorney gave him Fifty Dollars to answer the questions in the manner indicated. He claimed further that as soon as this prosecutor had secured the desired statement he demanded back the money; also, that this lawyer personally beat him in order to secure the statement. A prior conviction of Hood was read into the record upon the theory that it affected his credibility as a witness. Every seat along the inner circular rail of the courtroom was occupied by women relatives of the deceased; they ranged in age from three years to seventy-five.

The defendants were typically abandoned negro boys. They were probably forsaken in their early youth and made to shift for themselves, whither they might travel. Finding it difficult to secure work, or unwilling to do manual labor—all that they were capable of doing—their weak minds conceived the idea of obtaining easy money by means of robbery. With a dollar in sight they take desperate chances to obtain it. They carry guns as necessary means to accomplish their object. Young and impulsive, the situation arises during the commission of a hold-up when they discharge a fatal bullet. The sudden, unexpected approach of a stranger, unforeseen resistance, consciousness of impending capture, causes them to commit a killing they would never do if everything ran smoothly.

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They do not tackle big jobs. They do not feel competent to undertake, for instance, large payroll robberies. As a rule they hold up taxi-cab drivers, store-keepers, and pedestrians. They know only a few of the rudiments of their profession. They have learned them from their contact with others more thoroughly schooled in these affairs. Their weak judgment concludes that they, too, will be able to commit their crime without detection or capture. They are aware of the difficulty of the white race picking them out from a crowd of negro boys. They make it a practice to commit the act in a dark spot where it is increasingly difficult for the victim to secure a clear view of their personal features. They also wear caps which partly conceal their faces. This is about the limit of their knowledge upon the subject of evading detection and capture. In most cases they do not even have an automobile with which to make their get-away. In a district where there are normally few colored residents they fail to consider that their arrest in the general vicinity of the hold-up is itself a suspicious circumstance which they will have to explain at the trial.

They neglect to take into consideration the fact that they are without means to defend themselves properly, and that they are as a rule without friends who will give them any assistance. In the majority of cases they do not have a single acquaintance of good repute who will testify as to their character. The trial usually finds their only hope of an acquittal resting upon the inconclusive nature of the state's proof. Their only defense is a denial of the commission of the crime. They are confident, however, that they will be able to convince the jury of their innocence by their own testimony. So we find them confronted by a jury of twelve white men instructed to consider the interest that the defendant always has in the outcome of his trial. They are to consider also his appearance while upon the stand.

The odds that are against them must be plainly apparent to any reasonable man. Where the victim is a white man it will be difficult for them to establish their innocence even if they have a legitimate defense, substantiated by adequate evidence. Where it is a murder case the jury naturally put themselves in the position of the victim. They feel that the prisoners are such desperate, depraved types that the jury will invite their own calamity if they return any verdict but that of extermination. The nature of the case is such that the benign principle of imprisonment instead of death does not have a fair chance to operate upon the mind of the jury. It is comparatively easy for the state's attorney to arouse this jury to take a life for a life. The jury feels that the life so ruthlessly taken was a worthy one, while that of the prisoner is not only dangerous to the community but utterly worthless to the defendant, himself.

The prosecutors in this case used their customary clever argument in order to bring about a verdict imposing death. They maintained, "When these defendants conspired to hold up this store-keeper, they made themselves accountable for each others' acts. It makes no difference which one fired the fatal shots. One of them was the agent for the other. Each was responsible for any of the consequences which followed their joint resolve to commit this hold-up. The robbery resulted in the death of an innocent

victim. They are both chargeable with murder. We believe that the proof clearly establishes a hold-up. I don't believe that there is a man on this jury who would return a verdict of not guilty if the charge in this case were robbery instead of murder. Now the penalty for robbery is ten years to life. The law says that a defendant convicted of robbery is to be committed to the penitentiary for a period of not less than ten years and it may be life. In this case you have robbery, plus a slaying. It is for this slaying that we are asking you to fix a penalty greater than life imprisonment. This is the one case of murder where the death penalty is the only punishment commensur ate with the offense.

"Men who are robbers know that the penalty for robbery is ten years to life. They know that when they are in the store in the commission of a robbery. During that hold-up they know that if they are detected and captured they will be sent to the penitentiary for life. If the victim makes a false move, if they are surprised, or if they deem it necessary, from any consideration, they will shoot and shoot to kill in order to avoid capture and punishment. If juries in this type of a murder case return verdicts fixing the penalty at life imprisonment, or imprisonment for any term of years, the message is sent to these hold-up men that they will receive no greater punishment for killing during the commission of a hold-up than they will if they do not kill their victims. Your plain duty, then, is to return a verdict which will deter them from killing during a hold-up. The only verdict that will do this is a verdict inflicting a greater punishment than that applying in the case of an ordinary hold-up."

There were two defending attorneys, but only one of them made a final argument. His first words were, "It must be plain to you gentlemen that we are not versed in criminal practice." The prosecutor promptly objected to this line of argument. The judge, very cruelly, sustained the objection, dismissed the jury for a moment, reprimanded the attorney for attempting to appeal to the sympathy of the jury, and ordered him to refrain from further comment upon his lack of experience. The defending attorney was really not making any attempt to be offensive or to make any appeal for sympathy. He had in all likelihood been appointed to represent these defendants. He made no harsh remarks against the police or the state's attorney, although he did say that the police were interested in promoting themselves for good detective work in solving murder cases. Also, that there was no evidence againnst Cressy aside from the confession of his co-defendant, which was really inadmissible against him. It was unfortunate that this attorney should be called into the criminal court to defend a case where the death penalty was the probable verdict, if they jury found the defendants guilty. A case of this kind required the ablest counsel at the bar, those especially trained in criminal cases in order for the defendants to have any chance whatsoever. It is an anomaly in the administration of criminal justice that the experienced, able counsel practicing before the criminal bar are seldom engaged in cases where it is extremely likely that the death penalty will be inflicted. An ideal administration of criminal justice would require the

appointment of at least two recognized leaders of the criminal bar in such a case.

The last prosecutor made no attempt to prejudice the minds of the jury by picturing the death scene. Also, the surviving wife and children were kept out of the picture. The facts actually justified such an appeal. He must have felt that the circumstances were of such a character that they did not require this sentimental approach. He relied mainly upon the subtle argument heretofore mentioned to secure his desired result.

One of the jurors, who happened to be a friend, made the following comments after the trial: "We would see from the beginning of the case that the defendants were up against it. The odds were heavily in favor of the state. The prosecutors were energetic and enthusiastic in their conduct of the trial, while the defending attorneys seemed cowed and beaten at the start. It was apparent to us that the state had an abundance of evidence and was confident of securing a conviction. The defendants, on the other hand, were fighting with their backs to the wall. We could tell that the defending attorneys were not criminal lawyers. They did not bring out their points in a striking manner. We decided the case on the evidence, however, in arriving at our verdict. Inasmuch as the evidence showed that one of the defendants bought the gun and the other fired the fatal shots, we held them equally guilty of the murder. We placed much credence upon the testimony of the old German watchman who identified one of the defendants as the suspicious character hanging around the building containing the grocery store, a few minutes before the robbery took place. We felt that the grocer's wife not only had a marked interest in the result of the trial, but that she was naturally very much excited at the moment of the robbery; when her testimony was corroborated by that of the watchman, however, we felt satisfied that the state had the right men. The fact that both defendants had criminal records indicated to us that they were desperate characters. We were much influenced by the argument of the prosecutors to the effect that the penalty for robbery was life, and that the penalty should be more severe where a homicide followed in the wake of a hold-up. The judge seemed to be on the side of the prosecution from the start. The defense offered a few pool room habitues to testify that the defendants were at another place at the time of the hold-up; this other place was a pool room. The prosecutor asked his questions on cross-examination with much rapidity and satisfied the jury that the witnesses were unworthy of belief. He forced them to admit that one of the defendants was known by another name. These witnesses were of the same intellectual caliber as the defendants and testified as to their movements throughout the day of the hold-up. But when they were asked what they had done or where they had been on the day before the hold-up, or the day after it, their minds were complete blanks."

"From the confession, and the testimony that the grocer's wife gave, it appeared that the deceased had looked up from his counter and seen a gun pointed at him. When he resisted, the shot was fired. He fell. The defendants stepped over his fallen body to reach the cash register. They took the $3.00 which

was in it and ran out of the store. This was one of the little things in the case which convinced us of the depravity of the act and led us to inflict the death penalty. This 'little thing' characterized the homicide and gave the prosecutors ground for arguing that the death penalty was the only proper punishment. They argued that this act showed that the defendants had neither feeling nor respect for human life."

(As a matter of fact, it showed that the defendants wanted money at all costs, and nothing was to stop them in securing it. They secured the munificent sum of Three Dollars for their trouble. In the confession the defendant who did the shooting stated that he had no intention of firing the gun at the time that he went into the store; also, that he did not fire it with the intention of hitting the deceased; that his only purpose was to frighten him. This is a customary explanation for a defendant of this type to make to the prosecutors. In his own feeble mind he believes that such an explanation wins sympathy and somewhat excuses him for his part in the homicide. He does not realize that the law does not recognize his inward intention in the matter but makes him legally responsible for any of the consequences of his misdeed.)

Two of the jurors stated that the reason that they did not vote the extreme penalty on the first ballot was due to the fact that they were unable to spell "d-e-a-t-h." Ten of them had been sufficiently informed. The other two learned quickly.

Homicides Committed in Drunken Brawls

Charles C. Arado

The accused was charged with stabbing his nephew to death. There were no eye-witnesses. He was sixty years of age, dressed in a neat blue-serge suit. He had a thick, black mustache, and wore the old style gold-rimmed glasses. He presented the appearance of the average substantial American citizen. One would have judged his occupation to be that of a comfortably-fixed store-keeper, or perhaps a school teacher. Were you to have passed him on the street you would never have suspected him of being the central figure in a murder case. He was married and the owner of his home. This was the first time that he had ever been involved in a criminal matter.

A lieutenant in command of his station on the evening of the homicide testified that he investigated the case. When he arrived at the defendant's home the deceased was lying in bed. He found the accused highly intoxicated. There was one empty whiskey bottle and another, nearly full, on the dresser. There was blood on the defendant's shirt. He said that he had been killing chickens that afternoon. After talking to the accused for about two hours the latter finally told him that he was willing to tell just how it happened. His statement appeared to be substantially to the effect that the two men became involved in an altercation. He had used a knife with a narrow blade, about ten inches in length, in the assault. It did not reveal the details of the actual slaying because the accused was too intoxicated to remember them. The statement merely had the effect of establishing the fact that the accused had committed the slaying.

The defendant had appeared a pitiful object upon the witness stand. He was horror-stricken with the

thought that in a drunken debauch he had destroyed his own blood. When asked to describe the actual slaying he burst into tears. When directed to take the knife and illustrate how he held it at the time of the homicide he stated that he did not want to touch it. That knife will haunt him the rest of his natural life. His was a tender nature. It is very likely that in the middle of the night he will awaken with a vision of his nephew's death-stare before him, with his own hand clutching the weapon that killed him. During the final argument of his attorney the accused frequently had to remove his glasses to wipe away tears. He was crest-fallen, a broken man.

Two or three witnesses testified that the reputation of the defendant as a peaceable and law-abiding citizen was good. These witnesses testified further that they had had an opportunity to observe the defendant's conduct when intoxicated, that on those occasions he was mild and docile, and frequently played with small children in the neighborhood. The deceased's brother was the star witness for the defense. He not only testified that the defendant's reputation for peaceableness and quietude was good and that on occasions when he was drunk the defendant was mild and docile in temperament, but he testified that his brother's reputation was that of a fighting, quarrelsome boy, especially so when under the influence of liquor. This witness testified further, "My Uncle Joe was the best friend Jack had. Jack would stay at his house more often than at home, when he was in Chicago. Every time that I would see Jack he was drunk, having a split-lip or a black eye which he had received in a fight." The prosecutor attempted to shake his story, but without avail. This was the most effective testimony possible for the defendant, not only because of its support of self-defense, but because it came from the lips of a brother of the deceased. The jury naturally expects that a homicide comes closer to the deceased's immediate family than anyone else, with the possible exception of the family of the defendant. Here was a representative of the deceased's family testifying, without any contradiction from any other member, that his brother's nature was such that in all likelihood he was the contributing cause of his own death. If the family of the deceased, who knew the respective dispositions of both victim and slayer, who also knew as much about the facts in this case as the jury could ever learn, felt that it was a case where the defendant should be exonerated and excused from responsibility, how could the jury take it upon themselves to find him guilty? Elements seem to appear in every criminal case which point to the path of duty. In this case the spectacle of the deceased's brother testifying in the manner that he did, served as a beacon light to guide the jury to a correct decision. It was a message from the same blood as the deceased to acquit the defendant of the charge. How could the state's attorney maintain that the People of Illinois wanted a conviction in this case, when the deceased's own relatives implored the jury to acquit the accused?

The first speaker for the prosecution spoke about the defendant being the judge, jury, and executioner. An attempt was made to use this argument with telling effect.

Defense counsel opened his argument, standing about eight feet from the jury box rail. He spoke in a

low pitch, slowly and deliberately. He gripped the attention of all within the hearing of his voice, although he made no emotional appeal. He asked for a verdict based strictly upon the weakness of the state's case, without an eye-witness to it. True, he referred to the broken old man who was "on the other side of the hill," who had only a few years to live. But he spoke solely as a lawyer bent on doing his duty. He analyzed the evidence. He spoke of the damnable effect of poison moonshine and attributed this tragedy to it. He illustrated his argument in regard to the defendant's refusing to touch the deadly weapon by a personal experience. He and his cousin were driving down the streets of Chicago. A drunken pedestrian tottered in front of the car. His cousin, at the wheel, attempted to avoid him but the unfortunate man fell directly in the path of the machine. He was killed. A coroner's inquest was held. The cousin was discharged. Nevertheless, the picture of that swaying, drunken man, as he fell before the wheels of the car, will be a picture before this young man the balance of his life. Although not blamable for the tragedy, yet, because he was the active agency of the death, the tragedy will mark him indelibly. Today he is unable to take the wheel of a car. The attorney wisely selected the testimony of the deeased's brother as the subject for his closing appeal. This was by far the strongest point in behalf of the defense. It could be seen that the jury was deeply impressed by it.

The last speaker for the state arose and paid a compliment to the eloquence of the speaker who preceded him; but said that it had been his experience that even after eloquent defending attorneys had pictured the lily-white innocence of their clients, juries had remained steadfast in their honest beliefs and had rendered verdicts based upon the law and the evidence, rather than upon sympathy and mercy. He spoke distinctly and with considerable feeling in his voice.

He pictured the defendant clutching the handle of the knife with both hands, swinging it above his head and coming down upon his victim eleven times. He made it a practice to speak directly to the defendant. An objection might have been made, requesting him to address his remarks to the jury, because a direct personal attack always tends to inflame the jurors against the accused. In the course of his argument he stated, "Do not put your stamp of approval upon this dastardly deed. If the defendant is not guilty of the crime of murder he certainly violated the law of God and man, "Thou shalt not kill," and should be found guilty of manslaughter."

The jury consisted of a few *very* intelligent men. As a whole, it was a high class group. They appeared to be men who normally loathed drunken debauchery. They would hold an accused fully responsible for the acts committed while in that state. Probably not ever having been intoxicated themselves, they did not view the circumstances of the case as the defendant had, in his particular mental condition. Strong enough to withstand the temptations of drink, they were of a type who felt no sympathy for one who allowed himself to become intoxicated. They were ready to follow the law which does not recognize drunkenness as an excuse for crime. They appeared ready to

hold the defendant strictly accountable.

To restate the elements of this case. There had been no eye-witnesses to the tragedy, as heretofore intimated. The defendant and the deceased had been the best of friends. There was no motive for the defendant to slay his nephew. It was virtually impossible for the jury to conclude that the killing was premeditated, with malice aforethought. The defendant had no more idea of killing his nephew before they started drinking than any member of the jury. There was no doubt that without the drinking debauch there would have been no slaying. Now the jury had the evidence of reliable witnesses who testified that the defendant bore a good reputation in the community as a peaceable and law-abiding citizen. What was also very important was the evidence tending to show that when intoxicated he became mild and docile. On the other hand, there was the testimony of the deceased's brother that the slain boy was a vicious, quarrelsome type, especially when intoxicated. The jury did not have to be shown by a preponderance of the evidence that the slaying was in self-defense in order to warrant an acquittal. Yet, a case was submitted to the jury with uncontradicted testimony in support of this theory. If that evidence created a reasonable doubt as to whether or not the slaying was in self-defense the defendant was to be exonerated. The jury could not disregard the aforesaid testimony in behalf of the defense unless they believed that the witnesses lied. In spite of this condition of the evidence, the jury returned a verdict of manslaughter, that is, a killing in the heat of passion. No mention of this crime had been made until the moment that the prosecutor referred to it in his final argument. He succeeded in convincing the jury that the defendant should be convicted simply because he admitted that he had killed the deceased. The verdict, in law, meant that the defendant made an unlawful assault which resulted in his victim's death:. It was undoubtedly a compromised verdict. There could not have been an unlawful attack if the slaying had been in self-defense.

Defense counsel might have argued that this was not a manslaughter case and maintained that it was either murder or nothing. If the theory of the state were correct the defendant was guilty of murder. If the theory of the defense were correct the defendant never made an unlawful attack upon the deceased. Self-defense was just as effective in clearing him of the responsibility of manslaughter as of murder. Defense counsel had taken the position that the jury would not send an old man to the penitentiary for a period of years not less than fourteen, the penalty for murder. He probably figured that they would select the alternative and acquit him of this charge. This they did, but they did not discharge him. Under the verdict he was deemed guilty of an unlawful slaying, but without malice aforethought.

It was a most unusual sight to see a woman called from the audience to testify in rebuttal for the state. She was fairly well dressed, mild mannered, and soft spoken. Her answers could hardly be heard by the jurors. She testified that she lived in the flat above the defendant on the date of the tragedy, that she heard him that night, cursing at his nephew, and at one period heard him say, "Get out of here or I'll

kill you." She said that she heard him rise from a chair in the rear part of the house and walk to the front. When asked how she could tell that the footsteps were those of the defendant she replied that she knew they were his because she heard his voice accompany them. She stated that she followed the steps and walked into the front of her house at the same time he did. This was certainly an amusing picture to depict to a jury. This self-constituted detective presented such a ludicrous picture to the jury that it reflected damagingly upon the entire case of the state. Her testimony that she knew the reputation of the defendant, and that for peaceableness and quietude it was bad, was uttered in such a low tone that it could hardly be heard. She did not look at the jury once while on the stand. If ever testimony was ineffective it was hers. She could not have been a poorer witness. Defense counsel might have driven home a powerful argument to the effect that never in his long career had he seen such a spectacle, of a witness coming from nowhere and repeating words for the sole purpose of sending an old man to the penitentiary. There was malice in the heart of that woman. She must have hated the defendant in order to have testified as she did. He did say that she was full of poison, as green as the color of her hat. He said, further, that he would not claim her as a witness. If he were the prosecutor, he would disown her.

The state's attorney commented upon this witness in his closing argument to this effect, "I'll tell the defense where I found her. I found her in a divorce case in which the defendant was a party and I could tell you more about the accused from what I learned in connection with that divorce case." This was entirely improper. It caused the jury to believe that he defendant had committed some dire wrong.

The testimony of the rebuttal witness as to what she heard on the night of the tragedy was in fact inadmissible, because it did not tend to rebut any of the testimony in evidence. The defense had a right to find out what the substance of her testimony was going to be before she took the stand, and upon learning that she was going to testify upon the above matters, the court could have been thus informed, and a motion made to keep her from so testifying.

Referring to another subordinate issue in the trial, the prosecutor maintained that the defendant did not claim that the homicide was done in self-defense when first arrested. Just when he first claimed self-defense was not learned. This was a very important point in this case. It is important in every case of self-defense to learn whether the conduct of the defendant, when first apprehended, was consistent with his present theory. His attorney contended that the story that the accused related to the police when first arrested was substantially that told at the trial.

This was an excellent case to typify a class of homicides. There are a considerable number of cases of this character presented to juries throughout the year. In such a killing, where both the defendant and the deceased are drunk at the time, there is not present that usual bitter feeling on the part of the family of the deceased. Very often there are no witnesses to the tragedy. Where the defendant is an elderly man, the father of a family, or a man who has something in his

background peculiarly in his favor, he is bound to attract the sympthy of the jury. The dead man will not be brought back by a verdict of guilty. The defendant very often does not know that he has killed the deceased until some hours later. In some instances he would be the last man to perpetrate such a deed, in his right mind. Sympathy is not so readily extended to the deceased because he, himself, was at fault and contributed to his own death. On the slightest showing of self-defense the accused has an excellent chance to be acquitted of the charge of murder. Where he can produce witnesses to describe the tragedy so that it appears clearly that the homicide was the outcome of a drunken brawl there are few juries which will take the case so seriously that they will condemn a man to the penitentiary for at least fourteen years. Evidence of good reputation as a peaceable and law-abiding citizen will be of material assistance to the defense. The accused may be able to secure witnesses to testify that the deceased bore a reputation for quarrelsomeness and viciousness. If this latter evidence comes from those who are apparently disinterested and who have no motive to prevaricate, such a defense is likely to withstand any attack of the prosecution. The atmosphere in the trial of such a case is not as tense as in the ordinary murder case. The sympathy of the onlooker is frequently extended to the man who survives such a brawl. This feeling was very prevalent in this case. If a vote had been taken in the courtroom the result would have probably shown the spectators five to one in favor of an acquittal.