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Vignettes of the Criminal Court

Charles C. Arado

VIGNETTES OF THE CRIMINAL COURT[1]

ALIBI OR SELF-DEFENSE

Charles C. Arado[2]

Here was a defendant with the natty appearance of a matinee idol. He was the son of a police officer who had been on the force twenty-two years. The accused and a young companion, Gene Stratton, accompanied two girls to the Quadrangle Cafe. The defendant drank to excess. The two men quarrelled. At about one-thirty Stratton and the two girls left in the defendant's car. After Miss Henry was driven to her residence, the young man and Mrs. Creel proceeded to her home. They had not been there over twenty minutes when the accused appeared at the door, saying, "Why did you leave without me? Don't you think I'm able to drive my own car?" He also charged his erstwhile friend with forcing him to pay the bill at the cafe. At this juncture, Stratton took the accused by the arm and walked downstairs. Mrs. Creel followed. By looking out the front door she observed the accused continuing his argument. She heard him say, "Come out in the car and have a drink." His companion remonstrated that he did not care for any more liquor. The defendant said, "Well, I'll show you." Mrs. Creel then saw the defendant step into his car and place his hand into one of its pockets. She ran down the stairs. She heard four or five shots fired by the time she reached the auto. The defendant had left Stratton dying in the street.

The police were notified. When Mrs. Creel told them about the accused, the son of Mike, their comrade, they rushed to his home, finding him in bed. A brother was backing the car into the garage in the rear of their home.

The fact that the defendant had been drinking during the evening, that he had said during the quarrel, "Let's have a drink," the fact that he had shot his friend after a minor quarrel, all tended to prove that the shooting resulted as a consequence of drunkenness. Because the young man had led the defendant downstairs, and there were no eyewitnesses to the tragedy, it would be expected that the defending attorney would build his case upon the theory of a shooting in self-defense during a drunken brawl. Of course, drunkenness is no excuse for crime. The use of the gun, too, is always a difficult factor to explain in a homicide. It must have been because of these factors that defense counsel selected a different tack, an alibi. Perhaps he understood that the friendly police would not strenuously resist the effort to establish such a defense.

In addition to this reasonably ex-

[1] This is the final installment under the above title.

[2] Member of the Chicago Bar, 110 S. Dearborn Street, Chicago.

pected non-resistance was the fact that Mrs. Creel bore an unsavory reputation. Living apart from her husband, she was charged with using various assumed names. Two years ago it was claimed she had been taken from a disorderly house in a raid. Her husband was pictured as an ex-convict. It was brought out in cross-examination that he had been to see her only a week before the homicide and had pleaded with her to come back. The defending attorney weaved into his argument the theory that the husband, suspicious of his wife, had retraced her steps this evening. Finding an intruder in a comprising situation with his wife, he wreaked vengeance. While the defending attorney maintained that the wife was shielding her husband, it was apparent that she bore him no love.

The defense was in a position to offer many witnesses in behalf of the alibi; also, many who would attest the defendant's good character. Whether an alibi was the proper defense under the circumstances is debatable. It was certainly a dangerous undertaking. It became incumbent upon the defense to paint the character of Mrs. Creel so black that the jury would not believe a word she uttered. She could not be mistaken in her statement that the accused came to her house on the fatal night. She had been with him all evening. She certainly knew him when he knocked at her door. It was therefore necessary for the defense to make of her a consummate liar. Even though it is natural that a witness of questionable character will not be received with open arms by a jury, still, he is under oath and unless his testimony is shattered by cross-examination, there is good reason to believe it.

In concluding his final address the defending attorney cried, "I have lived with this defendant and slept with him in preparing this case. He has been serving as my clerk and investigator. I want no other honor when I pass away than that one word should appear on my tombstone, and that is the word, 'Faithful.'

"If I did not do all in my power to have you see the light, to see the innocence of this boy, it were better that I would be struck down by the Almighty this very moment."

Other striking arguments he advanced were as follows: The police have told you that they reached the death car within ten minutes after the homicide. It is natural to suppose that the car was driven at a furious rate of speed from the cafe to the girl's house, a distance of six miles. Yet the police tell you that the radiator was cool and the tires cold.

"The police found the defendant sleeping. Here was a boy who appears never to have been in trouble before. Do you think that he could commit a cold-blooded murder and then go fast asleep a few minutes later?

"There is no identification as to the homicide. Not even Mrs. Creel says that she saw the accused shoot the deceased.

"Why have a good reputation if you cannot use it when charged with a serious offense? Here is a boy who was building a reputation for twenty-one years. It was firmly established before your eyes by such witnesses as a former Assistant State's Attorney and

a well-known judge. In a case where the state's witnesses are of the character shown by the evidence in this case, a good reputation is of supreme importance in assisting you to determine who is telling the truth. Who would you prefer to employ or take into your home, Mrs. Creel's husband, Mrs. Creel. or this defendant? Would you want your daughter to associate with Mrs. Creel? Would you want your son to associate with her husband?

"I did not make the bed from which Mrs. Creel was taken by the police. I have no desire to publish her infamy. Whatever I say about her I feel duty-bound to say in defending my client against her outrageous charge.

"Mrs. Creel is contradicted by Mrs. Hood, who was in the house just before the shooting, on two or three important details. Whom would you believe between these two witnesses? Now, the law is that if you believe that Mrs. Creel has wilfully and corruptly testified falsely in regard to any material matter in this case you have a right to disregard her entire testimony unless it is corroborated by other competent testimony in evidence.

"In regard to circumstantial evidence, and it is upon this type of evidence that the state is relying for a conviction in this case, the law is that circumstantial evidence is not sufficient unless each and every circumstance necessary to satisfy your minds of the guilt of the defendant has been proven beyond a reasonable doubt. Circumstantial evidence is not stronger than its weakest link. If one of these links is lacking there is no chain upon which you can base a verdict of guilty."

The prosecutor began his argument by saying that defense counsel was a very forceful speaker. During the latter's argument the prosecutor had appeared dazed. While he spoke with diffidence at the start, before finishing he thoroughly reviewed the evidence from the state's viewpoint.

But the jury returned a verdict of not guilty. They were influenced by the police testimony in the defendant's favor, the argument that the radiator and the tires of the supposed "death car" were cool, and by the prominence of the character witnesses for the defendant. The jury must have considered Mrs. Creel an arch perjurer. Finally, they felt that the homicide was the outcome of a hilarious evening and that if the defendant did shoot Stratton, it was done at a time when he did not know what he was doing, since there was no adequate motive for the slaying.

Summary

Here we have the novel situation of a policeman's son charged with homicide. We see brother police officers rallying to the side of the accused. While the evidence indicated rather clearly that the accused was the only man who had a motive to slay the deceased, the defense of alibi is interposed successfully for him. Of course, the state was handicapped by the fact that the star witness against the defendant was a shady character. Her reputation became an issue in the trial. The jury decided it was bad and proceeded to acquit the prisoner of the homicide. It was unquestionably a verdict based upon sympathy rather than reason.

UNION LABOR OFFICIAL KILLS A NEGRO ORGANIZER

While the state's attorney qualified most of the jurors for the death penalty he seemingly forgot to ask this inquiry as to some of them. He asked only the most essential questions in every instance. It appeared that his main object was to curtail the examination as much as possible. With a number of the jurors he spent not more than two minutes. Three or four questions were asked and the men were accepted. The lack of enthusiasm upon the part of the prosecutor may have been due to the scarcity of evidence on his side of the issue. At any rate, the trial seemed a frolic for the defending attorney. He would laugh and josh with the judge, state's attorney, and the jurors. When it was disclosed that two or three of the jurors were bankers, he asked the next prospect, "Do you own a bank, Mr. Smith?" The judge responded most congenially to these antics.

The accused was tall and heavy set, blond and blue-eyed. He was neatly attired and sat directly facing the jury. He seemed to be supremely confident of the ultimate result. There were two co-indictees who were to be tried separately, if at all. They were constantly at his elbow, affording him consolation and hope. One of the tacks taken by the defending attorney in his examination of prospective jurors was: "Do you believe it is legal and proper for a group of men to organize? The right to organize is not the issue in this case. But we want men on the jury who will not be prejudiced against the defendant because he happens to be an official who makes it his business to help organized labor."

The facts were substantially as follows: The defendant was an official in the Flat Janitors Union. An energetic colored man, instrumental in organizing negro janitors on the south side, intended to make this group independent of the main Flat Janitor's Union. The defendant drove to the scene with his two friends, also interested in the same union. They sighted their victim riding a bicycle. Policemen were occupying a squad car about a block away. They heard the shots and overcame the union men before they had proceeded more than two blocks from the scene. The union men claimed that the defendant was threatened, that the colored man reached for a gun, and that the accused had to shoot to protect his life. The body of the victim was searched for weapons. None was found. At the hospital one of the policemen observed that there were a half dozen cartridges in the coat pockets. None of the policemen saw any movements of the combatants during the affray. Neither did they succeed in obtaining statements from the doughty union men. It was not long after their arrest before the defending attorney made a motion to have the men released on bail. In the case of two of the men the bonds were placed at a sum of $10,000; and as to the man who actually did the shooting, his bond was fixed at $20,000. The court, in admitting the defendants in this capital case to bail, acknowledged that the presumption of guilt was not evident.

Of course, the race issue was presented inasmuch as a white man was being charged with the murder of a negro. His fate was to be decided by men of his own color. The state's attorneys asked the jurors if they would be influenced either one way or the other by reason of this feature of the case, to which question the jurors naturally answered that such a situation would not influence them in the least. From the lack of concern by all taking part in the trial, an observer was led to infer that it was not a serious matter, after all, for a white man to slay a negro. It was startling to hear defense counsel using the term, "Nigger" in referring to the deceased while examining jurors.

One of his questions was, "Were you ever in a position where you were deprived of work because of the interference of labor unions?"

Upon learning of any experience which might make the juror prejudicial in his determination of the guilt or innocence of the defendant, counsel would ask, "Do you think that fact might influence you for or against the defendant?" He would continue, "You would rather try a case where a union official was not on trial, isn't that right?"

"On the other hand, if you would be anxious to sit upon a jury which was deciding the fate of a union official you would not be the type of juror best-fitted for this case. The ideal juror is one who is not influenced one way or the other by reason of the defendant's affiliation with union labor.

"The fundamental rules of law, in their application to jury trials, are rules of common sense best fitted to determine the truth of the issues and to do justice to both the state and to the defendant."

One juror stated that he had been a member of a union during the period when it launched a strike. Yet he was accepted for service.

Defense counsel repeatedly inquired, "Were you ever in a position where you had to decide whether or not you would join a union?"

"Would the result mean anything to you in your line of business?"

"Would your participation in the trial as a juror, or any verdict that you might render, tend to put you in the middle, as it were? Do you feel that you might have to answer to somebody for your verdict? Would you feel a slight embarrassment in deciding a case where a union official was on trial?"

He asked prospective jurors whether they owned apartment buildings and whether they employed janitors, with a view of finding out whether they had ever experienced difficulty with union labor.

"The law says that an organizer of union labor is in a lawful business. You believe that a business agent of a union is following a lawful occupation, do you not?"

There was no tenseness in the atmosphere of the courtroom throughout the selection of the jury, always a favorable defense factor. All participants were gay and so expressed themselves. The prosecutor at times remarked to a prospective juror, "I do not want to burden you with a number of questions. All I want to know is that you

will give this defendant a fair and impartial trial."

The defense made it plain that it did not have any burden of proof in the trial.

One of his lines of inquiry was as follows: "If the defendant is advised by me not to take the stand, you will not hold that against him, will you? If he does take the stand, you will not discard his testimony simply for that reason, will you??

"There may not be enough evidence offered by the state to make out a case and in that instance we will not offer any evidence in defense. You wouldn't be prejudiced against us because we didn't offer any evidence in this case, would you?"

"If the Court instructs you that a reasonable doubt may arise from the state's evidence, or from a lack of state's evidence, you will follow that instruction, will you not?"

As a rule, the last question was, "Would you be willing to have tweleve men of your frame of mind sit as a jury in a case where one who was near and dear to you was on trial for his liberty?"

The defending attorney was able to discern whether a certain occupation indicated that the individual was a Union man or employed in an occupation where the "open shop" prevailed. In learning that one juror was a cigar maker he concluded that "open shop" prevailed in that line of work, and accordingly excused him.

"Briefly the facts in the case are as follows: A man who was breaking the rules of the Flat Janitors' Union was shot and killed. The defense is self-defense. Of course, self-defense is one of the first laws of human nature and is recognized everywhere as a defense in a trial for murder. We do not have to prove that this killing was in self-defense. If, from all the evidence, you entertain a reasonable doubt whether it was in self-defense you are to give the defendant the benefit of that doubt and acquit him.

"We want you to know the law and follow it when it is given to you in the instructions of His Honor."

By reason of the fact that the police did not see anything, and that the union men did not say anything, the state was hard-pressed for evidence. In answer to the charge, the defendant introduced an old negro janitor who testified that decedent, Jones, had been active in forming an independent union, that he, the witness, had talked to Jones on the morning of the shooting, and that the latter had told him that if any of the Union men came down to his place of business he would shoot the first one that crossed his path.

The accused was not placed upon the stand. This was a wise policy because his two associates could tell the jury a story which would exonerate the defendant, and at the same time render it unnecessary for the defendant to be subjected to cross-examination. In the excitement of cross-examination the accused might say something which would shoot a hole through the defense.

In his final argument the defending attorney followed the same hurry up fashion that had marked his entire conduct of the trial. All the evidence was

made to fit defense theories and there was no objection forthcoming from the state's attorneys. They gave him free reign to tell the jury anything that pleased his fancy. One of his arguments was based on the theory of the law that declares that where there are two constructions which might be placed upon any circumstance in evidence, one consistent with guilt, and another consistent with innocence, the jury is compelled to place an innocent construction upon such circumstance. He was referring particularly to the attempted flight of the defendant.

A novel point made was to the effect that the map prepared by the state's attorney's office was based on police investigation. The draftsmen went out to the scene to measure distances, and then proceeded to draw the map in accordance with the facts developed by the police and consistent with the theories to be advanced by the prosecution.

He cited the Davis Case in the 270th Illinois to support his contention that where there was positive testimony of an unimpeached witness in the record, such testimony must not be disregarded. Unless there is other evidence inconsistent with such testimony, it must control.

He wove into his argument the picture of Jones as a "bad man," on whose person had been found a knife and bullets. He also told the jury about Jones' police record. The basis for its introduction lay in the theory that the details of such record had come to the attention of the defendant prior to the shooting and they affected the defendant's conduct at the time of the slaying.

The state might have argued strenuously that the version of the defense, that Jones had reached for a gun, was not probable when the jury considered that the man did not have a gun in his possession. This obstacle is always in the path of the accused in a self-defense case where the deceased had not in fact carried a gun.

One of the instructions supported the defense argument that in a case of self-defense there is no malice prompting the defendant's action even if he shoots to kill his assailant.

Another instruction stated that if there was a reasonable doubt in the minds of the jury as to any material allegation in the indictment embracing the elements of murder, there could be no conviction.

Another stated that the defendant was not required to prove his innocence.

One of the instructions stated that the mere fact that a life had been taken should not cause the jury to believe that the slaying was unlawful. Another explained that the accused should not be convicted simply because he was the means of causing the death. A man may deliberately intend to kill, and not be held accountable for murder, if he acts in self-defense.

The Filipi Case in the 224th Illinois was cited in argument to show that a man has the right to arm in order to protect himself from a contemplated attack. Under these circumstances, the law holds that a man has the right to carry a gun, even though there is a statute which prohibits carrying concealed weapons. While on this phase of the case, counsel pointed out

that the Supreme Court of the State has held that a man might carry a gun in his automobile without violating the statute, if the gun was not readily accessible to him.

A forceful argument of the defense was as follows: "If you had been acquainted with Jones' reputation, and had known of the threats Jones made against this defendant, and then you met him on the street, you would not let him reach very near his pocket if you became involved in an altercation with him. In connection with this principle, the law states that if a man makes a gesture under circumstances which reasonably cause the defendant to believe that he is in danger of losing his life, the defendant has the right to shoot and kill his adversary, even though the latter reaches for a handkerchief in jest."

The jury did as might be expected by returning an acquittal verdict in record time.

Summary

In a large city where union labor is well-organized, resort to violence is not an infrequent occurrence among its leaders. They are powerful politically. At times they appear to be a law unto themselves. We observe a lax prosecution at the very start of this trial. It seemed only necessary for the defense to present its witnesses to be assured of success. The deceased was a humble negro. A white jury was considering a white man's case. The defense pulled its trump card by calling a negro to carry out its theory of a justifiable homicide in self-defense. It serves as an example of a trial wherein the defense has a walkaway.

ON TRIAL FOR MURDERING HER HUSBAND

The defendant was a woman about fifty-five years of age. She was charged with the murder of her husband, a policeman. She had told such an effective story of inhuman treatment borne at the hands of the deceased that a coroner's jury had discharged her from custody. The powers that be, however, arranged to have her indicted for murder. She did not present the appearance of the average murderess. There was no powder or rouge on her face. It had been a long time since she had been to a hairdresser. It had been a longer time since she had purchased the garments that clothed her. The trial held no allurements of the drama for her. Although the central figure in a murder case, she would have given anything to avoid the spotlight. It was a terrific ordeal for her to ascend the witness stand and look into the faces of the morbidly curious who had come to listen to her account of the treatment to which she had been subjected by her husband.

An alienist, one who is ever-ready to appear upon the side of a defendant without resources, testified that in his opinion the accused was insane at the time that he examined her. He spoke of the meno-pause, saying that there was less resistance at that period.

A boy took the stand to testify that

only a week before, he had observed the husband drunk. The latter had struck him for little or no reason.

The judge instructed the jury as to the precise purpose of the following inquiry upon cross-examination: "Was this question asked of you and did you make that answer?" He advised the witness that the latter was not to answer whether or not the matter referred to in the question had actually occurred. She was merely to answer whether she remembered that such a question had been asked her and whether she had answered it in that manner.

The prosecutor had been directing his questions to the accused along this line: "Isn't it a fact that ———?" He was attempting to show that the witness had contradicted her present testimony. The court warned him that he must frame his questions as heretofore indicated. He continued, "These questions are allowed only for the purpose of laying a basis for calling witnesses in rebuttal who will support the state in the contention that she is telling a different story than she told immediately after the shooting; to inform the jury that she was now testifying inconsistently with her previous statements. Unless the state is prepared to call witnesses who heard her previous statements, so that they will be able to show their inconsistency with her present testimony, such questions should not be asked at all."

As to the actual occurrences surrounding the commission of a crime, they may be inquired into as res gestae; also, the conduct of a defendant immediately after it, indicating guilt. But they should not be brought out by particular questions and answers made in an interview of the accused by the police. Unless his complete statement is produced and offered into evidence, it should not be used indirectly in cross-examination.

If the jury believed that the deceased had compelled her to resort to the perversion charged, they would undoubtedly acquit.

During the state's attorney's bitter arraignment of her in final argument, she sat in a daze, apparently oblivious to the surroundings.

He made a close analysis of the defense. He divided it in three parts: insanity, the perversion features, and accidental shooting.

Defense counsel maintained, "She may have been sane at the time that she told one of the state's witnesses her telephone number, after the homicide. The sight of blood may have brought her to her senses."

The defense had prepared a long hypothetical question. It contained the following elements:

Assume a woman 55 years of age.

Meno-pause.

She was married eighteen years. There were no children.

Her husband was given to drinking sprees. He frequently came home drunk.

He used vile epithets at that time.

He deserted the defendant on numerous occasions.

Several times she had been forced to leave.

Last January 1 she had left him for self-protection.

Her husband was very jealous and accused her of infidelity.

Upon several occasions he forced her (perversion).

On the ..... day of ....., she grabbed a bottle of poison and tried to drink it.

On another occasion she picked up a revolver with intent to kill herself.

Her husband came home drunk two hours later. He broke down the garage door with his car.

He threatened to kill her. She called the police.

Her paternal grandfather acted queerly. Her maternal grandmother was affected by senile dementia.

Her father was senile at 78.

Her uncle was a religious fanatic.

Her grandmother died giving birth to twins.

Her mother faints easily. Defendant did not graduate from grammar school until she was seventeen.

She was morose and brooded a great deal.

She threatened suicide on a number of occasions.

She applied Lysol to her food in order to poison herself.

Have you an opinion whether the assumed person was on October 4, 1939 sane or insane? Objection sustained.

He arranged his hypothetical question so as to include additional facts brought out in the state's cross-examination of her.

Additional factors enumerated were:

"Immediately thereafter this supposed person went into the bathroom and ———."

Her liver and kidneys were found to be exceptionally large.

Suppose that this woman, about ten days thereafter, was examined by psychiatrists and that in their examination they ascertained that her grandfather ———

Her father failed in the grocery business.

Of the defense doctor, counsel suggested: "Describe to the jury what you found on your last examination." Answer: "Her lower jaw was cut and bruised. She said that her husband had hit her there."

Cross-examination of the defense alienist by the state:

Was she sane or insane during your examination? I have no opinion.

Your opinion was based on your examination that morning? The court objected.

What is dementia praecox? Answer: Disturbance of the emotions. There are two types. One is lacking in emotions. The other is the melancholy type, the shut-in. He feels that he is being abused, insulted. He weeps easily. His mind is cloudy. He is forgetful.

Are these two types accepted by experts on mental disease? (An eminent alienist was assisting the cross-examination.)

How many other forms of insanity are there? There is the Katatonic type that believes he is pursued. The paranoiac believes that the world is against him.

In obtaining her personal history, how did you go about it?

You assumed that her answers were true, did you not?

What happened on the second visit?

Is senile dementia hereditary? Yes.

Is that answer based upon medical authorities? Yes.

Are the other forms of mental trouble that you speak of inherited?

Suppose that you leave out the history pertaining to the grandmother, the grandfather, her father and her mother, would your answer be the same? (The process of elimination is always a means of effective cross-examination in these cases.)

What effect did the father being married three times have upon her sanity or insanity? Objection sustained.

Leaving out the life history of the defendant, what do you base your opinion upon? Answer: Because she had been subjected to great mental torture and stress. (Unwritten law invoked by a clever witness.)

Supposing you added the fact that on July 1, 1925, she was laughing and talking to neighbors. Objection sustained. There was a dispute as to this evidence.

Assuming that the acts of perversion were not true, would that change your opinion?

You knew that she had shot and killed her husband a month before your examination.

Would you expect her to be joyful and playful instead of melancholy?

Have you ever seen a sane person joyous after a killing?

Did you make any notes on the act of perversion? Privately, yes.

Will you refer to those notes?

Additional parts of hypothetical questions:

Her brother was a Salvation Army exhorter on street corners.

She threw herself on the lounge several times.

Her husband was a chronic alcoholic.

She was ten years old according to intelligence tests.

A physical, nervous, and mental examination had been made.

With all these elements and facts suggested in the previous question, and in addition, the fact that after the slaying she was capable of making some statements to the effect that ———, do you have an opinion as to whether the subject was sane or insane?

When did you last examine the defendant? Saturday.

From your examination on that day, have you an opinion as to her sanity or insanity last Saturday? Her mind has cleared up. She is much improved, almost normal. (The theory of the defense was that she had been insane at the time of the murder and sane now.)

The defendant presented a pitiful spectacle on the stand. She was constantly crying. To the prosecutor's inquiry: Was this question asked and did you make this answer?, she always replied, "I don't remember."

"When did you decide to kill him?" This was a trick question, double-barreled.

More cross-examination of the defense alienist:

What did she tell you about the shooting? Answer: "I don't know much about handling a gun. The first thing that I knew, it exploded!"

Re-direct examination. Have you an opinion as to what intention she had

when she picked up the gun? An objection was sustained, but the inference was "suicide."

Upon rebuttal, a life insurance man testified that he had seen the deceased nearly every day. He had not seen him drunk in the fourteen years that he knew him. He saw him at eleven o'clock on the day of the murder and he was sober.

A filling station attendant was then called.

Did you know the deceased officer? Yes.

Did you know the defendant? Yes.

Did you ever have occasion to visit their home? Yes.

Did you observe the conduct of the defendant? Yes.

Fix the time of your visits.

Do you have an opinion whether the defendant was sane or insane at that time? An objection was sustained, on the ground that the visits predated the time when the defense claimed that she was insane.

What did the defendant do, if anything, while you were there?

Based on what you saw and heard, have you an opinion? The court held that the witness had not qualified to give an opinion.

Upon cross-examination, defense counsel brought into the record the reputation of the accused as a peaceful and law-abiding citizen.

An old woman who had visited the defendant was then asked her opinion. An objection was sustained.

Was she melancholy? Objection sustained. (Leading question.)

Another woman was called by the state to tell of her observations of the defendant immediately after the shooting. The court exclaimed, "How is this rebuttal? You should have offered this evidence in your examination-in-chief."

Upon cross-examination, defense counsel asked, "Did you hear the defendant say, "I can't stand this any longer."

The prosecutor next called an officer in charge of the deceased's personal police record, kept in the ordinary course of business.

"Please refer to the records."

"Have you refreshed your mind?"

"Can you say whether, when he reported at 3:30, he was sober? Yes.

Where did he call from at 5 o'clock? Answer: At his regular post.

When did you receive the next call?

Officers sometime call up for each other. The box number of the post registers on a tape.

A police captain then testified that he had never seen the deceased drunk. He also testified that he had interviewed the defendant after the shooting and that in his opinion she was sane.

Cross examination: Isn't it a fact that you told the Coroner that she should not be held for murder?

Didn't you say that you had seen the garage door broken?

The prosecutor made a powerful argument for conviction. With the unwritten law on the other side, he fought valiantly to overcome it.

The defense attorney predicted: "You will be treated to such eloquence as you have never heard from the lips of mortal man. The prosecutor is at home in these cases. My practice is largely civil. I seldom come into the criminal courts. I may not be ac-

quainted with the tricks that are at the disposal of my opponent and which can be called forth with the ease of a magician. I happen to be in this case simply because I am a neighbor of this poor woman and somebody had to defend her."

"What a nagging, worrying, miserable life she had. A life of hell.

"We want either the electric chair or an acquittal. No compromise.

"If there had been 'another woman' in the case there would have been a motive for her act. As it is, where is the motive? There is none. Her act was but the release of stemmed-up emotion.

"What a cold-blooded murder was revealed in the prosecutor's opening statement. That was the way he would like to have it. But the evidence proved otherwise.

"The state's alienist prepared the hypothetical question that the prosecutor asked. Naturally the doctor was prepared to analyze and give his reasons for arriving at his opinion. When I asked him my hypothetical question he didn't have an opinion. He is a $100-a-day man. Who wouldn't have a favorable opinion for that?"

The defense had made an opening statement in this case.

"Suicide is not a crime. A man is invariably insane at the time. At common law, if a man in the act of committing suicide, killed another, and he was found sane, he was declared guilty of manslaughter. If insane, there was no crime." (The defending attorney was attempting to weave the theory that the deceased was possibly shot while the accused was attempting to commit suicide.)

In the course of the prosecutor's closing argument, he said:

"The father of the officer had testified that his boy had waved good-bye to his wife the day before the homicide. (Directly after the alleged act of perversion.)

"Another witness testified that the husband had been seen to throw out garbage at that very hour.

The jury apparently satisfied with proof of the husband's bestiality returned a verdict of not guilty.

Summary

A woman is on trial for the murder of her husband. We hear her recount the wrongs committed against her by the deceased over a span of many years. The impression is generated that she had a right to end that life of hell by removing the cause There were no eye-witnesses, as is frequently the case under these circumstances. The facts of the tragedy are developed to show that the deceased was the assailant and that the shooting by the accused was in necessary self-defense. This account is given to the jury so that they will have something to hang their hat on in returning an acquittal verdict. These facts enable the jury to reconcile the acquittal with the dictates of the law. But as a matter of fact it is the unwritten law which leads them to acquit.