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Albert H. Scharrer: An Anecdotal Exploration of the Practice of Criminal Law in Dayton, Ohio, between 1910 and 1950

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ESSAY

ALBERT H. SCHARRER: AN ANECDOTAL EXPLORATION OF THE PRACTICE OF CRIMINAL LAW IN DAYTON, OHIO, BETWEEN 1910 AND 1950

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I. INTRODUCTION

"IT'S THE TRADE OF LAWYERS TO
QUESTION EVERYTHING, YIELD NOTHING,
AND TO TALK BY THE HOUR."[1]

This article is about Albert Henry Scharrer, who practiced law in Dayton, Ohio, for almost seventy years.[2] It does not pretend to be a comprehensive treatment of his activities during that period but, instead, offers an anecdotal account of what it was like to practice law in Dayton, Ohio, during the first half of this century. The purpose is to illustrate the extent to which "the law" of the late twentieth century differs from and/or resembles "the law" of the earlier part of this century. The intent is that this article will contribute to our understanding of the endeavor in which we are engaged as practicing lawyers, law teachers and aspirants for either or both positions.

The article concentrates exclusively upon Mr. Scharrer's work in the area of criminal law. It does so for several reasons, one of which is the finiteness of any law review article. Also, this limitation is faithful at least to the once-popular perception of the nature of Mr. Scharrer's practice—after spending several years as a prosecutor, he entered private practice to become known as the defender of preference for local miscreants.

II. THE EARLY YEARS (1886-1918)

Albert Henry Scharrer was born "on Garrett Street in Dayton on

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1. D. SHRAGER & E. FROST, THE QUOTABLE LAWYER 187 (1986).
2. *See infra* section I.

April 6, 1886,"[3] the son of Henry J. Scharrer and Emma Groff Scharrer.[4] His formal education began when he entered the Hickory Street School[5] and concluded when he graduated from Steele High School in 1904.[6] Because his was not a wealthy family,[7] Albert sold newspapers

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3. Dayton Bar Association Testimonial Dinner Program (Apr. 22, 1959) ("Honoring members of the Legal Profession who have practiced 50 years or more") (on file with the University of Dayton Law Review) [hereinafter Program]. This program and the newspaper sources cited below require a prefatory comment. The original sources cited were found in the scrapbook of Albert H. Scharrer. The scrapbook was donated by his daughter, Jane Scharrer, to the University of Dayton School of Law. To the extent possible, all sources cited conform to A UNIFORM SYSTEM OF CITATION (14th ed. 1986). Due to the method by which the scrapbook was compiled, some citations are not complete. A copy of all materials are on file in the archives of the University of Dayton Law Review. However, for the sake of clarity, it may be helpful to identify the papers that had the widest circulation at this time. "The Herald, a daily evening paper, now owned by the News Publishing company" was located "on the southwest corner of Second and Jefferson streets." 2 MEMOIRS OF THE MIAMI VALLEY 139 (1919). The Dayton Journal and the Dayton Daily News descended from two earlier, rival papers, i.e., the Miami Herald and the Dayton Republican Gazette. *Id.* at 139. "June 22, 1908, the Journal celebrated its one hundredth anniversary by publishing a mammoth centennial edition of 124 pages." A. DRURY, 1 HISTORY OF THE CITY OF DAYTON AND MONTGOMERY COUNTY OHIO 401 (1909). The Dayton Daily News began after the Dayton News company purchased two papers, the Morning Times and the Evening News in 1898. *Id.* at 140. "The Dayton Daily News is now housed in a beautiful up-to-date building on the northwest corner of Fourth and Ludlow streets." *Id.*

4. 3 HISTORY OF SOUTHWESTERN OHIO - THE MIAMI VALLEYS 317 (1964). Both were "natives of Dayton." *Id.* According to an "obituary" found among Scharrer's papers,

> Emma L. Scharrer was born August 30, 1855 in Dayton, Ohio. Her maiden name was Miss Emma Groff. Her father died when she was five years of age . . . . [She] was married to Henry J. Scharrer [on] September 25, 1878, from which union four children were born, one daughter, Mrs. Roger M. Fenwick, and three sons, William L., Albert H., and Oscar B. Scharrer. The family lived for over forty years at 14 Garret Street. At this home she devoted her life to the rearing and educating of her children. She sacrificed the many pleasures of life for their advancement.

Id. Emma Scharrer died in 1923. 3 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE 124 (1932).

5. Program, Sixty Years a Lawyer, Testimonial to Albert H. Scharrer (June 23, 1969) (on file with the University of Dayton Law Review) [hereinafter Sixty Years Testimonial]. It appears that this school was "built about 1864 on grounds lying between Burns avenue and Hickory street, east of Brown street." A. DRURY, 1 HISTORY OF THE CITY OF DAYTON AND MONTGOMERY COUNTY OHIO 448 (1909).

6. 3 HISTORY OF SOUTHWESTERN OHIO - THE MIAMI VALLEYS 317 (1964). "Scharrer's history . . . is rather at odds with the modern idea of plodding along the road to success, for he is not a college or university man." Dayton Daily News, Oct. 12, 1926. Steele High School was opened for use in 1894; by 1899, "it was full to overflowing" so that various modifications were necessary in order to accommodate its ever-increasing populace of students. *See,* A. DRURY, 1 HISTORY OF THE CITY OF DAYTON AND MONTGOMERY COUNTY OHIO 453 (1909).

7. Scharrer's father was "a woodworker." 3 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE 124 (1932). Scharrer's daughter remembers her father describing how he grew vegetables in one of the garden plots which the National Cash Register Company made available to boys from "poor families" in the Dayton area. Interview with Jane Scharrer (Dec. 15, 1988). The practice began in 1894, when the directors of the company were trying to decide "what to do with the mischievous neighborhood boys who, having time on their hands, used it to destroy fences, break windows and otherwise lower values in that part of town." 2 MEMOIRS OF THE MIAMI VALLEY 204 (1919).

to support himself through high school.[8] After graduating, he entered the H.D. Wilt Business College where, among other things, he learned shorthand.[9]

A. Becomes a Lawyer

In 1905, Albert left the business college to become a stenographer in the law offices of Charles H. Kumler, who was "one of Dayton's leading lawyers."[10] Aside from its intrinsic interest, Kumler's experi-

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> Mr. Patterson offered the free use of land near the factory and had it ploughed up. Seeds were distributed among the boys . . . and prizes offered for the best results . . . . This was in 1894. From year to year the gardens grew—more boys, more land, more vegetables and more prizes . . . . Any boy wishing a plot of ground to cultivate applies to the Welfare Department of the city; a piece is assigned to him, ploughed up and he goes to work. The boys are organized into an incorporated company for profit from the crops; there is a board of directors, dividends are declared and deposits made in the bank. Once a year the N.C.R. Company entertains at dinner all the boy and girl gardeners and their fathers and mothers.

Id.

8. Sixty Years Testimonial, *supra* note 5. "His parents were poor, so young Scharrer carried papers while he was attending school, to get the money with which to buy books and clothing." Dayton J., Oct. 30, 1922.

9. Sixty Years Testimonial, *supra* note 5. The business college was located "on Main Street, opposite the Reibold Building." *See* 3 History of Southwestern Ohio - The Miami Valleys 317 (1964). The school was properly known as the Miami Commercial College; it was founded in 1860 by E.D. Babbit, who "associated with him Mr. A.D. Wilt" in 1862. A. DRURY, 1 HISTORY OF THE CITY OF DAYTON AND MONTGOMERY COUNTY OHIO 468 (1909). "In 1865, in consequence of the popularity of the Babbittonian System of Penmanship, of which Mr. Babbitt was the author and, which required his constant attention in New York and in London, England, where it was published, Mr. Wilt assumed entire ownership and control of the college." *Id.* According to a description which appeared in 1909, "[i]ts graduates from the bookkeeping department and in later years from the shorthand department, have taken very prominent positions in the business world, as presidents and managers of some of the largest manufacturing corporations, not only in Dayton, but in New York, Chicago and many other cities." *Id.*

10. Sixty Years Testimonial, *supra* note 5; 3 HISTORY OF SOUTHWESTERN OHIO - THE MIAMI VALLEYS 317 (1964). In this regard, Scharrer's career parallels that of one of his contemporaries, John C. Shea, who would found the first law school located at the University of Dayton. A. DRURY, 1 HISTORY OF THE CITY OF DAYTON AND MONTGOMERY COUNTY OHIO 242–43 (1910). Shea, who was born in 1876, left school at the age of eleven "and went to work in order to help his family." Sharkey, John C. Shea, The Founder of the University Dayton Law School (Mar. 26, 1965) (unpublished manuscript on file with the University of Dayton Law Review) [hereinafter Sharkey].

> After an unsuccessful attempt to enter the University of Notre Dame when he was nineteen, Shea spent several years working at various jobs. Once he worked as a clerk at the postoffice [sic] while he acted as a janitor at the Miami Commercial College which he was attending in order to obtain a commercial education.
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> [B]y this time [he] was dreaming of a law career and in 1898 he took a job as a stenographer in the legal department of National Cash Register. From this came the opportunity in 1900 for his working as a stenographer in the office of John A. McMahon . . . Mr. McMahon encouraged John to pursue his dream and John did so. He was accepted by the college of law of Western Reserve University from which he graduated with honors. He was admitted to the Bar in 1902.

Id. at 3.

ence is important because it obviously provided the model for Scharrer's legal career.

Although he was born in 1855, Kumler's formal education did not commence until 1873, when he entered the Dayton public schools.[11] He finished grammar school and entered "high school, where in three years time he prepared to enter Michigan university. This he did in 1877, took a full classical course and graduated in 1881."[12] Kumler returned to Dayton to become "a law student in the office of Nevin and Kumler" and was admitted to the bar in 1883, thereby embarking upon a long and noteworthy legal career.[13]

In 1886, he became a founding partner in the firm of Van Skalk and Kumler and practiced with the firm until 1894, when he became prosecuting attorney of Montgomery County.[14] Kumler was re-elected in 1896, "serving with marked distinction for six years."[15] After leaving the prosecutor's office, he "resumed the practice of law by himself. He had developed an unusual ability in the examination of witnesses and the conduct of trials . . . during his incumbency of the office of prosecuting attorney [which] served him well in private practice."[16] Kumler often received "assignments for the defense in cases of special importance . . . and so able was he in his defense of those charged with first degree murder cases that never once was one of the accused sent to the death chair."[17]

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11. Dayton J., Jan. 25, 1931. Kumler was born on a farm "near Trenton, Butler county." *Id.* "Until he was 17 years of age, he lived . . . on the farm, working in the fields during the summer and getting such limited instruction as the country schools of those days afforded during the winter months." *Id.* In 1873, his family moved to Dayton and Kumler "began attendance in the public schools with great eagerness." *Id.*

12. *Id.*

13. The firm was created in 1876 when Alvin W. Kumler, Charles' older brother, entered into partnership with Robert M. Nevin, a former congressman. A. DRURY, 1 HISTORY OF THE CITY OF DAYTON AND MONTGOMERY COUNTY OHIO 778 (1909). The partnership survived until 1896, which is when Alvin Kumler was "elected common pleas judge," a position which he held until his death in 1905. *Id.*

14. *Id.* at 129–31.

15. *Id.*

16. *Id.*

17. *Id.* Scharrer's papers included a copy of the "Feature Section" of the Dayton Sunday News for April 25, 1915. *See Snapshots of Dayton Men: C.H. Kumler,* Dayton Sunday News, (Apr. 25, 1915). The story is interesting both for what it reveals about Charles Kumler and for what it reveals about the culture of the period:

> Want to know something about 'Bill' Shakespeare or want to refresh your memory on anything the famous poet wrote—Just call Charley Kumler and he can give you the straight dope right off the bat—. . . .
>
> . . . .
>
> Charley believes in using the language of the bard for he never misses a chance to apply a quotation on any occasion—be that occasion a law suit before the learned judge, a fight in the street or a fire—. . . .

Scharrer came to work for Kumler five years after the latter returned to private practice; Albert's intelligence and energy impressed Kumler, who suggested that the young man become a law student in his office, rather than spending his life as a stenographer.[18] Albert accepted and spent the next several years "reading law" under Charles Kumler.[19] Scharrer took the bar examination in 1909 and was admitted to the Ohio bar on June 23, 1909, "at the age of 23 years."[20]

B. Becoming a Lawyer - Circa 1909

"THE VAST MAJORITY OF THE LEGAL PROFESSION UNTIL THE TURN OF THE CENTURY STILL EXPERIENCED ONLY ON-THE-JOB LEGAL EDUCATION."[21]

Although the phrase "reading law" may have some meaningful connotations for modern lawyers and aspiring lawyers,[22] it is instructive to consider what was required to become a member of the Ohio bar in 1909. As Scharrer's experience illustrates, although a bar examination was required, neither a baccalaureate degree nor a law degree was a prerequisite for the examination.

Until the end of the nineteenth century, most Ohio lawyers received their legal training by reading law under the aegis of an established practitioner;[23] aspirants read law to prepare for the bar examination, which tended to be an informal, often cursory exercise.[24] There

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. . . .

As a story teller he is A-1 - and he can always be counted upon to deliver a witty, humorous thrust in an argument - one that penetrates his opponents armor . . . .

Id.

18. Interview with Jane Scharrer (Dec. 15, 1988).

19. *See* Sixty Year Testimonial, *supra* note 5; *see also* 3 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE (1932).

20. *Id.*

21. R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S 25 (1983); *see also* S. Samad, A History of Legal Education in Ohio 51 (unpublished manuscript based upon a doctoral dissertation, Akron, Ohio, Aug. 1, 1972) [hereinafter Samad].

22. "In the law office, law was studied by readings, more or less supervised, and by learning law as a craft by observation and imitation." Samad, *supra* note 21 at 30.

23. "Training of the indigenous [Ohio] lawyers of the early bar was largely by apprenticeship in the law offices." *Id.* at 52; *see also* R. STEVENS, *supra note 21, at* 33–34.

A lawyer was a man with legal training, or some legal training and some legal skill . . . . Most lawyers gained their pretensions by spending some time, in training, in the office of a member of the bar. For a fee, they read Blackstone and Coke, and copied legal documents. If they were lucky, they benefited from watching the lawyer do his work, and do it well.

L. FRIEDMAN, A HISTORY OF AMERICAN LAW 278 (1973).

24. *See, e.g.*, L. FRIEDMAN, *supra* note 23, at 564. "Before 1890, only four states had boards of bar examiners; only a few required a written examination." *Id.* The first Ohio enactment on admission to the bar appeared in 1792; it required that an applicant have "passed an examination on his professional abilities before one or more of the territorial judges, and obtained from him or them a certificate attesting to his professional abilities." Samad, *supra* note 21, at 55.

was no general education requirement for bar admission until 1879,[25] and it was 1900 before the Ohio Supreme Court made a high school diploma or its equivalent a condition for admission to the bar examination.[26] The adoption of the more rigorous requirement was prompted by

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Seven years later, a second enactment required "production of a certificate from a practicing attorney within the [Ohio] Territory that the applicant was of good moral character and 'that he had regularly and attentively studied law under his direction within the territory for the space of four years' and an examination by two or more judges of the general court." *Id.* at 58. In 1802, the general assembly repealed this measure and passed an act which prescribed no explicit period of study . . . . Admission was contingent upon the production of a certificate of an attorney . . . concerning the applicant's character, training and ability, and passing an examination before any two judges of the Supreme Court of Ohio concerning the applicant's qualifications and good moral character. *Id.* at 60. Seventeen years later, the legislature modified this enactment by requiring "that the applicant shall have studied law during a period of two years previous to his application for admission." *Id.* at 61–62.

> Nothing more was done until 1856, when the legislature established what was, in effect, a diploma privilege. The district court of any county in which there was located a law college . . . was required, on the application of a member of the faculty of such college, to appoint a bar examining committee. The committee was required to attend the commencement exercises of such college and to examine each student who presented himself for examination for the practice of law in the State. The certificate provided by the examiners was to be received by the Supreme Court of Ohio without further examination for admission to practice.

Id. at 62. At this time, the state had two law schools, "the Cincinnati Law School, and the Ohio State and Union Law School, first at Poland, and later at Cleveland, Ohio." *Id.* at 63. It appears that the "bar examination was probably the same examination upon which the school conferred the degree." *Id.* (citing A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 251 (1921)). It was not until 1898 that Ohio established a centralized bar examination administered by a board of bar examiners. Samad, *supra* note 21, at 66. "By 1917, centralized boards of bar examiners existed in thirty-seven jurisdictions." R. STEVENS, *supra* note 21, at 99. As an example of the practice in other states, James Mathers became a bar examiner in what would become Oklahoma around the turn of the last century:

> Mathers used no written examination or set questions. In his view, two or three hours at a dinner table or relaxing over coffee or a drink was enough; he gained all the information in this way that he needed to decide on admission to the bar. He did not expect the man to have 'a great knowledge of case law since none of us did; but . . . good, reasonable common sense.'

Id. at 566 (quoting M. HOUTS, FROM GUN TO GAVEL 28, 31 (1954)).

> 25. [T]he first reference to a general educational requirement appeared in the Revised Statutes of 1879, in the context of the examination by the Supreme Court of the applicant's 'good moral character', 'competent knowledge of the law', and 'sufficient general learning' to discharge the duties of attorney and counselor at law. The term of general education was not spelled out . . . . The vagueness of the requirement admitted the possibility that the Court, as the examining authority, spell out its meaning. In 1897, the court defined, as a condition for admission to examination, a diploma or certificate showing at least a common school education.

Samad, *supra* note 21, at 70–71 (citing Ohio Sup. Ct. R. 14, 56 Ohio St. 5 (1898)). The 1879 rule created a twelve-member "standing committee on examinations . . . and any three of the committee could conduct an examination . . . . The committees were appointed at each term of court and therefore lacked permanency." *Id.* at 66 n. 55.

> 26. The rule that was adopted in 1900 required "either a diploma or certificate of a public high school, or evidence of equivalent education, or the passage of an examination to determine whether the applicant's attainments demonstrated sufficient general learning." Samad, *supra* 21,

a desire to maintain the law as a learned profession[27] and reflected the increasing availability of high school education within the state.[28]

By the end of the nineteenth century, the American Bar Association was agitating for measures which would upgrade the general quality of legal practice, including increases in the requirements for being admitted to the practice of law.[29] At the time that Albert Scharrer was admitted to the Ohio bar, the state conditioned admission upon the satisfaction of four requirements, i.e., a high school education or its equivalent, proof that the applicant was at least twenty-one years of age, the completion of a three year period of legal study and a passing score on the bar examination.[30]

The three year period of legal study could be accomplished by attending law school, reading law or combining the two.[31] In 1920, the Committee on Legal Education of the Ohio State Bar Association examined the qualifications of those who had taken the Ohio bar examination between 1907 and 1916 and found that sixty-one percent were law school graduates, thirteen percent had "read law" for three years

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at 71–72 (citing Ohio Sup. Ct. R. 14, 65 Ohio St. 30 (1902)). In 1902, the legislature adopted an enactment that would have permitted admission to the bar "with as little as two years of high school education." *Id.* at 72.

> For some years, [t]he court and the legislature were in conflict on the meaning of the general education requirement. The legislature authorized the holder of a diploma of any grade of high school to be admitted to the bar, through apprenticeship training, without further examination of his general educational attainment. The court required a qualifying examination if the applicant had less than the diploma from a . . . four year high school, whether or not the training was by apprenticeship.

Id. at 73.

27. "Now, in 1900 when the Legislature and the Supreme Court established the present standard, they thought they were putting it beyond the requirements for many other activities. They thought they were establishing a standard which would mean that the profession of the law would be the leader." *Report of the Committee on Legal Education*, 43 OHIO ST. BAR ASSOC. PROC. 55–56 (1923). *See generally* Samad, *supra* note 21, at 67–73..

28. In 1922, the Ohio State Bar Association's Committee on Legal Education submitted a report which described the extent to which a high school education had increased in popularity in the last several decades:

> In 1890 the high school enrollment in this state was about 26,000; by 1900 it was 57,000; by 1910 it was 83,000; and today it is 150,000 . . . . In 1890 in the high schools of the State only 3.7 per cent of the whole school enrollment was found in such schools; in 1900 seven per cent plus; in 1910 almost ten per cent; while in 1920 fifteen per cent of the enrollment in the Public Schools of Ohio was found in the high schools.

Report of the Committee on Legal Education, 43 OHIO ST. BAR ASSOC. PROC. 55 (1923).

29. In 1879, the American Bar Association's Committee on Legal Education began lobbying for a system of legal education that would replace "reading law" with formal education in "law schools." R. STEVENS, *supra* note 21, at 93–95. By 1891, "[i]t was of considerable concern to the Committee on Legal Education that only one-fifth of the lawyers admitted each year had been to law school, that no state required attendance at law school, and that there was little chance of the latter being achieved 'within the present generation.' " *Id.* at 95.

30. Samad, *supra* note 21, at 77.

31. *See, e.g., id.*

and twenty-six percent had combined law school study with reading law.[32] "Thus, in the ten years ending in 1916, nearly 40% of all candidates relied in whole or in part on law office preparation, i.e., they 'read law' under a preceptor, for admission to the bar."[33]

The interchangeability of the two forms of legal study was the product of several factors, one of which was that law school admission did not depend upon a college education. It was not until 1921 that the American Bar Association recommended that law school admission should be conditioned upon the completion of two years of college education;[34] at that time, one could be admitted to a law school by displaying a high school diploma, although more prominent law schools were able to insist that applicants have completed the baccalaureate degree.[35] The recommendation followed years of heated debate between

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32. W. VAN AKEN, BUCKEYE BARRISTERS: A CENTENNIAL HISTORY OF THE OHIO STATE BAR ASSOCIATION 138 (1980). With regard to their pre-law education, sixty-four percent had high school diplomas only, while thirty-six percent "presented evidence that they had had one or more years of college training." *Id.*

33. *Id.*

> The popularity of reading law was not due to a lack of law schools, for there were then no less than thirteen law schools in Ohio whose certificates met the requirements of the Supreme Court. Of these schools, four were in Cleveland: John Marshall School of Law; Rufus P. Ranney Law School; Cleveland Law School; and Western Reserve University Law School. Three were in Cincinnati: University of Cincinnati College of Law; Judge F.R. Gusweiler's School; and a Y.M.C.A. School. Two, Toledo University Law School and St. John's College, were in Toledo. Two, Ohio State University and a Y.M.C.A. School, were in Columbus. The remaining two were Ohio Northern University at Ada, and a Y.M.C.A. School at Youngstown.

Id.

34. *See, e.g.*, R. STEVENS, *supra* note 21, at 90–93; The ABA recommendations were presented at a meeting which was held in Cincinnati in 1921. *Report of the Committee on Legal Education*, 46 OHIO ST. BAR ASSOC. PROC. 12 (1928).

> Following that Cincinnati meeting there was a meeting at Washington in 1922 . . . of delegates from various Bar Associations, scattered all over the country . . . . [They] approved the resolution of the American Bar Association . . . and sent it on for adoption by the States, which provided briefly, that . . . the effort should be made to raise the standards of admission to the bar in this way:—there should be two years of college education required, preliminary to the beginning of the study of law, and those two years would be styled the general education requirement; after the completion of those two years of general education . . . three years of study in a Law School would be required.

Id.

35. The elite lawyer in the 1890s headed for the newly emerging law firms in Wall Street might well graduate from Yale College and the Harvard Law School and then spend his first few years working for the firm learning practical skills. The typical lawyer, however, in almost any state, might begin practice on his own without any institutional training, perhaps without even a high school diploma, and often with no or only minimal office training.

R. STEVENS, *supra* note 21, at 96. As an example of the less rigorous requirements that were common during the latter part of the nineteenth century and the early decades of the twentieth century, the Franklin Thomas Backus School of Law was founded at the Western Reserve University in 1891. Samad, *supra*, at 123–24. Although its dean was a graduate of the Harvard Law

those who advocated "law reading" and those who advocated "law school" training.[36]

The tenor of the debate is illustrated by excerpts from a report which the Ohio State Bar Association's Committee on Legal Education submitted in 1922 recommending that Ohio adopt the ABA requirement, i.e., the completion of two years of college as a prerequisite for admission to law school.[37] George W. Rightmire, of Columbus, spoke on behalf of the requirement:

> [I]n these days, when some knowledge of economics is needed on the part of the practicing lawyer, . . . when something of sociology is a necessary tool . . . in order to understand the socialistic drift of the law, when some knowledge of psychology is necessary . . . and some knowledge of political science, . . . the high school is entirely inadequate to furnish education of that sort. What will the college do toward furnishing such training and such knowledge? In the first place, the college deals with people of maturer age and mind. . . . Its subjects are more adapted to adults than to boys and girls. . . . The student there is introduced . . . to the kinds of knowledge that he will need especially when he goes into the study and practice of the law.[38]

School and a former dean of the University of Iowa Law School, the Backus school's "standards for admission fell far short of the Harvard standards of a baccalaureate degree. The standards for admission were those of the collegiate departments, namely, a high school education." *Id.* at 125. In 1911, the law school did institute a requirement of "a three year period of pre-legal education" at the college level, making it "the first in Ohio with an admission standard at that high level." *Id.* at 126.

36. *See, e.g.*, R. STEVENS, *supra* note 21, at 90–123. According to Stevens, this recommendation resulted from lobbying efforts of the Association of American Law Schools, which was determined to raise the standards of legal education in general and to eliminate "all but the full-time university-affiliated law schools." *Id.* at 116–17. It also appears to have reflected the elitist, anti-immigrant bias of the AALS and of the ABA itself: "A New York delegate [to the ABA] defended the college requirement of prelaw training [by arguing that] it was 'absolutely necessary' to have lawyers 'able to read, write and talk the English language—not Bohemian, not Gaelic, not Yiddish, but English.'" *Id.* at 101 (quoting from Richards, *Progress in Legal Education*, 15 HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 15, 67 (1915)).

37. *Report of the Committee on Legal Education*, 43 OHIO ST. BAR ASSOC. PROC. 49 (1923). "Every candidate for admission to the bar shall give evidence of the satisfactory completion of two years of study in an approved college, or educational experience which shall be the equivalent of such college study, and such study shall have been completed before the study of law is undertaken." *Id.* at 42.

38. *Id.* at 53–54.

> Rightmire distinguished high school education as being intended for youths; no one under normal conditions is found in the high school after the age of 18 . . . . [T]hat is merely the period of adolescence . . . . What we use in the high schools . . . is very largely the acquisitive faculties of the mind; memory is called into play, and perception; very little appeal is made . . . to a reasoned judgment. In other words, the high school curriculum is intended for a stage of immaturity.

Id. at 53. He also argued that the high school requirement was antedated, the product of actions taken in 1900, when high school education was not as common as it had become. *Id.* at 52–56. "A high school education was as far as the great majority of the people ever expected to get back in

He also argued that the increase in the volume and complexity of Ohio law also militated for the adoption of a more demanding educational requirement.[39]

Judge Willis Vickery, of Cleveland, spoke against it, offering what was known as the "poor boy" argument:[40]

> I was one of those men who was not born with a golden spoon in his mouth. I had to strive for my own success, and was happily contented when I succeeded in getting a high school education by the sweat of my brow you might say, walking four miles a day to and from school and working for my board in getting this high school education. It was then impossible for me to have attended college. I studied law, graduated from one of the best law schools in the United States forty years ago, and have been engaged in the practice of law . . . and in the administration of the law as a Judge for all that time. . . . The purpose of both the American Bar Association and this Association, if they adopt this resolution, is to prevent ambitious young men, who have not been born with golden spoons in their mouths, from getting a legal education.[41]

1900, and further than many of them ever did get." *Id.* at 55.

39. I figured it up recently. The lawyer in Ohio today who wants to have on his shelves the case law of Ohio must have at least 207 volumes . . . . The number of reports of cases . . . is almost bewildering. The pile of law which must be faced by the oncoming Bar is a good deal like the tower of Babel and has a good many of its characteristics . . . .

. . . .

Now, what about the statutory law of Ohio? . . . . [T]he character of the law has been changing materially. Up to the last decade of the last century the law . . . generally . . . attempted to preserve the rights of the individual . . . .

. . . .

That has greatly changed . . . the character of the law we have today is not individualistic. To prove that . . . look at the volume . . . of statutory law in this state, in the last 20 years. In that time we have attempted by legislation to control practically everything; we have passed a multitude of codes . . . .

. . . .

That has developed not only a mass of law, but a great many new kinds of law, and as we today think of standards of education of men who are coming to the Bar tomorrow and next year, we must keep in mind the kind of law and the mass of law that these men must understand and with which they must deal.

Id. at 51–52.

40. This position, known variously as the poor boy or Abe Lincoln argument, generally favored minimal educational requirements and reading law, or law office apprenticeship as the device for law study. *See, e.g.*, Samad, *supra* note 21, at 40 n. 89.

41. *Id.* at 62–63. Judge Vickery was the "proprietor of the Cleveland Law School," which resulted from "a contractual arrangement between [Baldwin-Wallace] University and a group of lawyers and judges, headed by Judge Willis Vickery, who . . . conducted the law school under a separate charter." *Id.* at 182. According to Vickery, who was probably a biased observer, it was "the largest law school in the State of Ohio" and had "graduated more students than any other." *Id.* It was also a night school that apparently catered to students who would have been financially unable to satisfy the college education requirement. *Id.* at 182–84. In 1926, Vickery's school severed its relationship with the university and "continued its part-time program." *Id.* at 185. In 1963 it resumed the relationship but, in 1967, "the Cleveland-Marshall Law School renounced" that affiliation. *Id.* at 187.

Another member of the Committee, Allen Andrews, of Hamilton, made a "poor boy" argument in favor of the requirement:

> My aspiration all my life was to have a college education. I never had it because I never had a dollar until I first earned it, and it took a long while sometimes to earn it. I was rather late in coming to the Bar—twenty-four years of age. I have regretted all my life that I did not have a college education, and I think the time has come now . . . that we should insist upon a pre-training, consisting of a college course, for entrance to the practice of law.[42]

The most interesting reaction came from Mrs. Jessie Adler, of Cincinnati,[43] who thereby became the first woman to "take an active part in the floor deliberations" of the association.[44] She began by suggesting that a college education was perhaps not essential for a legal career and then offered what must strike any aspirant for the bar as a truly frightening proposal:[45]

> [I]nstead of having a two-day Bar examination let us have a whole week of examination, let us take a whole day for every subject, and let us know what the man who is applying for admission to the Bar really knows about that subject before we admit him, but let us not tell him where he has to go to learn it. Let him find that out for himself.[46]

The Ohio Supreme Court finally implemented the Committee's recommendation in 1925, so that two years of college education became a prerequisite for attending law school in Ohio.[47] The court did not, however, adopt another recommendation contained in the 1922 report, i.e., that reading law should be eliminated and "graduation from law school [made] a condition for admission to the bar."[48] This recom-

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42. *Report of the Committee on Legal Education*, 43 OHIO ST. BAR ASSOC. PROC. 70 (1923). Andrews also noted that "[m]y almost fifty years at the Bar have brought me in contact with the college and with the self-trained man, and I often find the latter quite as well equipped and quite as formidable an opponent as the former." *Id.*

43. *Id.*

44. W. VAN AKEN, *supra* note 32, at 147.

45. I spent a good deal of my life in colleges. I was older than most of the young people when they took their Bar examinations, and I had to spend over twelve years studying for my Bar examination. But I have humble feelings in the presence of some of the men whom I have met since I have been practicing law, who have learned from life their lessons in law, in psychology and in economics.

Id. at 68–69.

46. *Id.* The report indicates that her proposal was met with "applause." *Id.*

47. Samad, *supra* note 21, at 78. The Committee's report had included the proviso that the new requirement "shall not apply to any person who, prior to the date when such standards will become effective, shall have filed with the Supreme Court of Ohio the certificate of entrance upon the study of law required by the rules" then in effect. *Report of the Committee on Legal Education*,. 43 OHIO ST. BAR ASSOC. PROC. 43 (1923).

48. Samad, *supra* note 21, at 78.

mendation also came from the ABA; the ABA's recommendation was the product of continued lobbying by the Association of American Law Schools, which wanted to eliminate law reading and to replace it with full-time study at an accredited law school.[49]

The court refused to "require graduation from law school as a condition for admission to the bar;"[50] instead, it extended the minimum period for reading law in a law office from three to four years.[51] "Underlying the court's rejection of the proposition that the law school should be the exclusive route to the bar was the ancient system of law office training which it was unwilling to forego."[52] This rejection had

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> Every candidate for admission to the bar shall give evidence of the satisfactory completion of three years of study in an approved law school in which he had devoted practically all of his working time to the study of law, and of a longer course, equivalent in the number of working hours, if he has devoted only part of his working time to the study of law.

Report of the Committee on Legal Education, 43 OHIO ST. BAR ASSOC. PROC. 42–43 (1923).

49. *See, e.g.*, R. STEVENS, *supra* note 21, at 90–123. This recommendation was also presented at the meeting in Cincinnati. *See, e.g., Report of the Committee on Legal Education*, 46 OHIO ST. BAR ASSOC. PROC. 12 (1928).

> Following that Cincinnati meeting there was a meeting at Washington in 1922 [which] . . . approved the resolution of the American Bar Association . . . which provided . . . that . . . there should be two years of college education required, preliminary to the beginning of the study of law, and after the completion of those two years of general education . . . three years of study in a Law School would be required.

Id. One study suggests that the ABA recommendation was the result of economic considerations: "[T]he leading law schools hoped to eliminate profitable non-AALS schools with whom they were at a disadvantage economically by 'going outside the market,' suppressing competition, and enforcing higher standards that would allow the schools, rather than the student population, to control the legal education market." R. STEVENS *supra* note 21, at 99 (citing First, *Competition in the Legal Education Industry*, 53 N.Y.U. L. REV. 311 (1978)). The reforms also reflected the elitist bias of the AALS and the ABA: "As Franklin Danaher said to the ABA Section of Legal Education in 1915, 'You can produce a moral and intelligent bar, by raising the standard, not only of education, but along economic lines so that every Tom, Dick and Harry cannot come to the Bar.'" *Id.* at 100.

50. Samad, *supra* note 21, at 79. Both the above-noted report of the Ohio Bar Association's Committee on Legal Education and a bill introduced in 1923 attempted to achieve this result. *Id.* The bill, which was known as the Tallentire bill, "provided a minimum requirement . . . wherein the student must have completed at least three years of law study . . . consisting of at least 1200 hours of classroom work." *Id.* It was introduced in 1923 and "passed both houses of the General Assembly but was vetoed by the governor." *Id.* "After its failure, an effort was made to have the Supreme Court adopt it as a court rule, but this was said to have failed by a four to three vote." *Id.*

51. *Id.*

> In December, 1925, the Supreme Court amended its Rule 14, dealing with the requirements for admission to the Bar, to the following general effect, viz., after the 15th of October, 1926, all persons filing certificates with the Supreme Court announcing the beginning of the study of law must present evidence that they have completed one year of study in a College, otherwise the certificate will not be received, and on and after October 15th, 1927, the certificate must show that the applicant has completed two years of study in a college.

Report of the Committee on Legal Education, 46 OHIO ST. BAR ASSOC. PROC. 193–95 (1928).

52. *Id.* "Complicating the matter of augmenting standards was the fact that six of the seven members of the bench in 1923 were either products of the law office apprenticeship system, or a

two related effects: it allowed aspirants to continue preparing for the bar examination by "reading law" and it encouraged a proliferation of "law schools," some of which were little more than bar preparation, or "cramming" courses.[53]

The Ohio Supreme Court finally abolished law reading in 1935 and made graduation from "a recognized law school" a requirement for admission to the Ohio bar.[54] The demise of law reading resulted from a concern that it did not adequately prepare individuals for the practice of law; this concern derived from the perception that the increasing complexity of the law required more rigorous academic training[55] and from abuses which had appeared in the administration of the law reading option.[56] It was in no respect alleviated by the requirement of a bar

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plan of systematic education that accommodated law office apprenticeship." *Id.* at 79–80.

53. Perhaps the least desirable were the correspondence schools. "Correspondence law school training was . . . accepted as a crutch to the law office apprenticeship system." Samad, *supra* note 21, at 210–11. "[T]he correspondence law school movement began about 1890, and gained momentum in the early decades of the twentieth century." *Id.* at 35 (citing Pierce, *Correspondence Law Schools*, *4* J. LEGAL EDUC. 160 (1951)). Although the Ohio Supreme Court announced that correspondence study would not satisfy its requirements for legal training, it appears that at least some correspondence schools managed to evade this proviso by persuading less than scrupulous attorneys to certify that "students have (on the basis of the correspondence school course alone) satisfactorily completed a three year course of legal study." *Id.* at 212–13. "The existence of an apprenticeship system provided the potential for admission to the bar for work that was neither completed in a law office nor in a law school." *Id.* at 214. In addition to the correspondence schools, another peculiar law school was the "bar review school conducted by Judge Frank R. Gusweiler in Cincinnati, Ohio." *Id.* at 208. Certificates evidencing completion of the school's program were accepted by the Supreme Court as satisfying its educational requirements from the time the school was founded in 1901 until its founder's death "a half century later." *Id.*

54. *See, e.g.*, Samad, *supra* note 21, at 214.

55. "Law office apprenticeship was superannuated as a system of legal education, and it served only as a barrier to raising of standards for systematic legal education in the law schools." *Id.* at 85. "'[I]t is self-evident that the over-whelming advantage is in favor of a law school education.'" *Id.* (quoting *Legal Education*, 22 OHIO L. REP. 51, 62 (1924)). *Cf.* J. DOS PASSOS, THE AMERICAN LAWYER 55 (1907):

> Modern methods of legal education are akin to the age. Lawyers are machine made. By a patented process, one can put a log of wood in a machine, and it comes out a box of matches. The aim of law schools and colleges is to manufacture the lawyers quickly. Hardly any of the instructors or professors have any practical knowledge of the profession. They are theorists and students . . . . They know almost nothing of the real office, and mission of the lawyer.

Id.

56. A study undertaken in the early 1920's noted that [i]n the past four years 66 attorneys of Cleveland have certified that students under their direction have satisfactorily completed some period of legal studies as a basis for taking the (Ohio) bar examinations . . . .

. . . .

> [I]t seems to be the view of many that an attorney is justified in certifying if he had personal knowledge that the student has actually pursued legal studies, and if the attorney has quizzed him at least once in regard to the subjects stated. It is the exception that a definite course is laid out by an attorney and the student pursues it under his immediate personal direction and is quizzed week to week or even from month to month.

examination for, as one author noted, "[i]n Ohio, there was evidence that the bar examination tended to be a test of persistence, rather than a test of competence."[57] A study conducted in 1933 revealed that only about 2% of those who sat for the examination were finally eliminated.[58]

It is interesting to speculate as to whether or not Albert Scharrer would have become a lawyer if the option of reading law had not been available to him. He certainly qualified as one to whom the "poor boy" argument applied, as it seems highly unlikely that he would have been able to satisfy any requirement predicated upon the completion of some quantum of a college education. In this he may have been something of an anomaly even in his own time.

An unrepresentative, idiosyncratic review of the credentials of several of Albert's colleagues during this era suggests that it was common for members of the legal community to have a baccalaureate degree, a law degree, or both. For example, Scharrer would serve as an assistant prosecutor under Haveth E. Mau, who was elected as the Montgomery County prosecutor in 1918.[59] Like Scharrer, Mau was born in 1886; unlike Scharrer, Mau "matriculated at Wittenberg College, Springfield, Ohio, and attended Ohio Northern University where he studied law."[60] Another contemporary, John B. Harshman, was born "in 1882 on a farm near Alpha in Beavercreek Township, Greene County, Ohio."[61] Harshman "attended Beavercreek Township school and was graduated from Ohio State University in 1904."[62] He was "graduated from OSU Law School in 1907 and was admitted to the Bar the same year."[63] Sidney G. Kusworm was born in Dayton in 1885 and attended Steele High School, graduating in 1903; he then entered the University of Cincinnati's College of Law and received "his degree of Bachelor of Laws" in 1908.[64] As a fourth and final example, Ralph E. Hoskot, who

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Samad, *supra* note 21, at 213. An Ohio State Bar Association study in 1896 revealed that it was not uncommon for attorneys to submit fraudulent certificates, attesting that an applicant had studied law when the attorney actually had, at best, second-hand knowledge that this was the case. *Id.* at 213 n. 8 (quoting *Report of Committee on Legal Education*, 17 OHIO ST. BAR ASSN REP. 59, 61 (1896)).

57. Samad, *supra* note 21, at 84.

58. *Id.*

59. Program, *supra* note 3.

60. *Id.*

61. *Id.* "When five years old he came to know T.L. McGruder, one of Xenia's outstanding attorneys who visited the Harshman homestead on several occasions. His personality gave Mr. Harshman his ambition to become a lawyer." *Id.*

62. *Id.*

63. *Id.*

64. *Id.* The five-year duration of Kusworm's tenure at the Cincinnati law school is most probably attributable to the fact that the law school structured its course offerings so as to permit

would serve under Scharrer when he became Montgomery County prosecutor, "was born in Dayton in 1883, graduated from Steele High School and later from Cornell University with the degree of L.L.B."[65]

As this brief survey perhaps suggests, although Scharrer was hardly unique in having been admitted to the bar without attending either an undergraduate institution or a law school, it does seem that he was unusual in this regard. Indeed, one has only to consider the experience of his younger brother, Oscar, for confirmation of this proposition. Like Albert, Oscar was born in Dayton in 1888 and attended its public schools, including Steele High School; however, after graduating from Steele High School, Oscar entered Dartmouth College, from which he graduated in 1913.[66] "He read law in the offices of Albert H. Scharrer of Dayton, and was admitted to the bar in 1917."[67]

Given the bar requirements of the day, it was not absolutely essential that Oscar Scharrer have attended college, or that he had obtained a college degree. It seems reasonable to assume that Oscar was profiting from his older brother's experience, i.e., Albert's awareness of the value of a commodity to which he had not been given access. It may have been that Oscar's educational venture was underwritten, at least in part, by his brother's increasingly successful law practice.[68]

Although Albert may not have had the benefit of any formal education beyond that offered by Steele High School, it seems certain that the legal training which he received from Charles Kumler was more than adequate, at least according to the standards of the era. The paramount vice of the law reading system was its dependance upon the dedication, integrity and legal aptitudes of a particular preceptor; in this regard, Scharrer was particularly fortunate. Aside from Kumler's talents as an attorney, he undertook Scharrer's legal training not out of casual accommodation or self-interest but because he truly believed in Albert's abilities.[69]

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its students to clerk in local law offices. *See, e.g.*, Samad, *supra* note 21 at 133–34. " '[F]or fifty years lectures in the Cincinnati Law School were held principally in the evening', and . . . 'later . . . in the afternoon' . . . for the convenience of . . . the part-time faculty who were engaged in law practice, and the law clerks who worked in the law offices and who undertook their systematic study in the law school." *Id.*

65. MONTGOMERY COUNTY HISTORY AND ANNUAL 43 (1926).

66. 4 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE 240 (1932).

67. *Id.*

68. The success of Albert's law practice during this era is considered in another section of the article.

69. Kumler's obituary noted that Albert Scharrer was one of "[t]hree local attorneys now practicing here [who] were associated with Mr. Kumler in their younger years and owe much of their success to the training they received while working with him in the legal profession." Dayton J., Jan. 25, 1931. The other two were Charles J. Brennan and Gaylord T. Heinz; only Scharrer, however, is described as having been "admitted to the practice of law under the guidance of Mr.

It is, therefore, reasonable to assume that Scharrer received an education that was at least commensurate with what was then available from many of the law schools in the area.[70] As is explained below, within a few years he would acquire a law degree from the University of Dayton.

C. *Private Practice: 1909-1918*

Scharrer's first venture into private practice began when he was admitted to the bar in 1909 and lasted until 1919, when he became a prosecutor.[71] His practice during this period can be reconstructed from his office ledger, which has survived to the present day.

1. Finances

The very first entry in the ledger was made on June 26, 1909, three days after Scharrer was admitted to the Ohio bar, and is prefaced by the notation "work done beginning as a lawyer."[72] It records that he received eighty cents as remuneration for "notary work for

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Kumler." *Id.* The obituary concludes by noting that "Mr. Kumler was always very proud of these young men, and because he had no children of his own considered them in many respects as if they were his own sons." *Id.*

70. This is a particularly reasonable inference given that many law schools were but "a sublimated law office." Samad, *supra* note 21, at 134. Although this description was offered for the Litchfield Law School, it also applied to many other law schools during this era, including the Cincinnati Law School. *Id.* at 134. That school combined the scheme of education developed at Litchfield with something known as the Butler " 'half and half' system of instruction." *Id.* The Litchfield method "used techniques characteristic of a school: lectures, recitations, notetaking, examination, and a practicum. Yet the close association with the law office in which the school was founded and its lack of academic contact characterized it . . . as sublimated law office training." *Id.* at 26. Benjamin F. Butler's "half and half" method "called for the training of law students in cities by a concurrent system of law clerkship and systematic study, lecture and moot court." *Id.* at 32.

> To avoid any interference with the attendance and duties of law clerks in the offices of their principals, the exercised of the School may be had in the afternoon and evening . . . . The mornings of each day before office hours and the numerous intervals of leisure when in the offices will be abundantly sufficient for reading and study.

Id. at 32 n. 69 (quoting B. BUTLER, PLAN FOR THE ORGANIZATION OF A LAW FACULTY IN THE UNIVERSITY OF THE CITY OF NEW YORK 29 (1835)). Obviously, this system of legal instruction was not far removed from "reading law"; it was only after the ABA implemented a system of accreditation that legal education shifted to a more rigorously "academic" system of instruction. *See, e.g.*, R. STEVENS, *supra* note 21, at 172–204. "[T]he ABA established library standards for approved schools for the first time in 1942 and in 1944 moved to inspect all schools. The postwar path was clear. Law was supposed to be an 'intellectual' profession." *Id.* at 199.

71. "Admitted to the Ohio bar in 1909, he began the practice of his profession in the same year in Dayton." 3 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE 124 (1932). "Prosecutor Haveth E. Mau appointed Albert an Assistant in 1918." Sixty Years Testimonial, *supra* note 5.

72. Office Ledger of Albert H. Scharrer, 81 (on file with the University of Dayton Law Review) [hereinafter Office Ledger].

Teutonia Nat[ional] Bank."[73] This is the only entry for June, 1909.

On July 2, Scharrer earned forty cents for "notary work Dr. Miller;"[74] the third entry, dated July 3, records payment of sixty cents for "[p]rotesting note for Third National Bk."[75] Nine days later, he received the rather more magnificent sum of ten dollars for "[r]epresenting Staniland Brothers as an attorney at Law on three cognovit notes."[76] On July 15, Scharrer received one dollar and fifty cents as payment for "[h]elping John C. Shea in drawing up dissolution agreement of Cody & Korm."[77] Five days later, he notes that he was paid two dollars for "[h]elping Shea and Mr. Bade in Market Savings Bank and steno. work."[78] On July 27 he earned four dollars for "[d]rawing up [a] partnership agreement" and on July 28 he was paid sixty-five cents for "protesting check for Teutonia Nat. Bank."[79]

Scharrer earned $24.80 in his first five weeks of practice, between June 26 and July 31, 1909.[80] His earnings for the remaining months of 1909 were as follows:

August - $16.25
September - $42.70
October - $21.30
November - $78.90
December - $66.85

His total revenues for "work done . . . as a Lawyer" in 1909 were $330.00.[81] In the first ten months of 1910 he earned a total of $777.70, with the following monthly revenues:

January - $72.15
February - $41.10
March - $18.10
April - $107.40
May - $208.80
June - $87.80
July - $74.75
August - $54.55
September - $65.20

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73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.* This engagement may have been significant for Scharrer's subsequent involvement with the University of Dayton's School of Law, as John C. Shea was the founder and first dean of that school. *See infra* section 3.
78. Office Ledger, *supra* note 72, at 81.
79. *Id.*
80. This is the total of the entries noted above, which are all of the entries for this period.
81. *Id.* at 81–85. Again, this is the total of the entries in the ledger for this period.

October - $47.85[82]

The entries break off at the end of October, 1910, because, as the ledger notes, Scharrer "went with Murphy, Elliff and Emanuel,"[83] i.e, he "became associated in the office[s]" of that law firm.[84] Scharrer may have made this move in order to enjoy the amenities of an already-established firm, but it was almost certainly prompted by a need to increase his income. On June 23, 1910, exactly one year after he was admitted to the Ohio bar, Albert Scharrer married Helen N. VanAllen, "a native of Dayton."[85]

Scharrer remained with Murphy, Elliff and Emanuel until June of 1912, when he left to practice on his own.[86] The ledger shows that he earned a total of $903.11 for the remaining months of 1912.[87] The chart on page 583 lists his monthly revenues for the years between 1913 and 1918. The most striking aspect of these revenues is the extent to which they exceed those which Scharrer generated during his first year in practice, between June of 1909 and October of 1910. As an example, in the first ten months of 1910, Scharrer recorded revenues totalling $777.70, while in the first ten months of 1913, he showed an income of $1,933.38.[88] Presumably, much of this increase is attributable to his association with Murphy, Elliff and Emanuel, either directly, as the result of client contacts which he made in the course of that association, or indirectly, as the result of professional skills which he acquired and/or refined during that period of time.

The next section describes the nature of Scharrer's practice during the periods that are documented in the ledger, and it explains exactly what he was doing in order to generate these revenues.

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82. *Id.* at 85–92.

83. *Id.* at 92.

84. Sixty Years Testimonial, *supra* note 5. The "Emanuel" of Murphy, Eliff and Emanuel was Albert Emanuel, the namesake for Albert Emanuel Hall, the building which presently houses the University of Dayton's School of Law. *Id.*

85. 3 HISTORY OF SOUTHWESTERN OHIO - THE MIAMI VALLEYS 318 (1964). Scharrer "lived with his father and mother on Garrett Street in the south end of the city" for twenty five years. After he married Ms. VanAllen, they established a residence "at 1523 Grand avenue." Dayton Herald, May 6, 1923. Their daughter, Ms. Jane Scharrer, recalls that her parents met when they were both participating in a local musical society. Interview with Jane Scharrer (Dec. 15, 1988). This society was probably either the Mozart Club, which was formed in 1888 and continued its activities "[f]or nearly thirty years," or the Chaminade Club, which was formed in 1902 and disbanded in 1914. 2 MEMOIRS OF THE MIAMI VALLEY 108–09 (1919).

86. Office Ledger, *supra* note 72, at 92. Scharrer apparently shared an office "in the Schwind Building (now Moraine) with William Pohlman," an arrangement that continued until Scharrer became a prosecutor in 1918. Sixty Years Testimonial, *supra* note 5.

87. His earnings for those months were as follows: June - $16; July - $202.30; August - $138.75; September - $105.60; October - $49.16; November - $201.55; December - $179.75. Office Ledger, *supra* note 72, at 93–98.

88. $2317.09 less revenues for November and December of 1913, or $383.71.

2. Nature of Practice

Since Scharrer's early ventures in private practice are temporally divisible into two parts, this discussion follows that structure.

a. 1909-1910

The foregoing section described his professional activities during June and July of 1909. Although the entries for the remainder of 1909 and the first ten months of 1910 indicate that he was engaged to perform tasks such as drafting documents[89] and litigating minor disputes,[90] they also suggest that much of his time was spent on collections,[91] protests[92] and notary work.[93] Certain entries reveal that

89. The entry for September 3, 1909, for example, records the receipt of a two dollar and fifty cent fee for "[d]rawing will for Elizabeth Schack." *Id.* at 82. An entry for October 3, 1910 shows that Scharrer received a fee of two dollars and fifty cents for "[d]rawing partnership agreement in case of Grant W. Nicholas and Rollyn Parker." *Id.* at 91.

90. One of the earlier entries, dated October 27, 1909, records the receipt of a fee of five dollars for the following: "John Klienhoefer - 145 Miami Street - compel telephone company to remove pole without owner's consent." *Id.* at 83.

91. Entries concerning collection work during 1909 and 1910 appear at the following pages of the ledger, with the fees for each being noted in parenthesis after each page number:

81 -($1.35);
82 -($1.70 and $1.35);
83 -($1.50 and $26.75);
84 -($1.25, $1.25, $1.25 and $3.35);
85 -($12.00, $.50, $1.25, $.50, $1.25, $1.25, $1.00, $1.25, $.50 and $6.00);
86 -($.50, $1.25, $.75, $1.25, $1.25, $1.25, $2.50, $1.25, $.50, $.75, $1.25, $.25, $.25 and $.25);
87 -($.75, $5.00, $.50, $.50, $1.20, $.90, $1.25, $.25, $.25, $.50, $1.00, $1.25, $2.50 and $.75);
88 -($.50, $.25, $.50, $1.25 and $1.25);
89 -($.50, $1.25, $1.00, $2.15, $.50, $.50, $.40, $.25 and $.80);
90 -($3.20, $.50, $5.00, $.25, $.50, $.25, $.65, $.35, and $.50);
91 -($.25, $.50, $.25, $.50, $.85, $.80, $.50 and $.25);
92 -(none).

This illustrates what is one of the more incomprehensible aspects of the ledger for a modern lawyer, namely, the prospect of an attorney's collecting a fee of twenty-five cents for his efforts.

92. Entries concerning "protests" 1909 and 1910 appear at the following pages of the ledger, with the fees for each being noted in parenthesis after each page number:

81 -(none);
82 -($1.25, $1.25, and $1.25);
83 -($.65);
84 -(none);
85 -($1.25);
86 -($1.25, $1.25, $1.25, $.75);
87 -($1.50, $1.50, $.75, $1.50, and $.75);
88 -($1.50 and $1.25);
89 -($1.25, $2.50, $2.50, $.75 and $1.25);
90 -($1.25, $2.50, and $1.25);
91 -($1.25 and $1.25);
92 -($1.25, $1.25, $1.25 and $1.25).

Charles Kumler was referring business to him[94] and that he was picking up work from the law firm of Ferneding, McConnaughey & Shea.[95]

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93. Entries concerning notary work during 1909 and 1910 appear at the following pages of the ledger, with the fees for each being noted in parenthesis after each page number:

81 -($.80 and $.40);
82 -($1.00, $1.00, $1.00, $.40, $.80 and $1.25);
83 -($1.00);
84 -($1.50 and $2.00);
85 -($.25 and $1.25);
86 -($.40, $.15, $.40, $1.50, $2.65, $.15, $1.50 and $1.50);
87 -($.80, $1.00, $.40, $.40 and $1.50);
88 -($1.00);
89 -($2.00, $.25 and $3.00);
90 -($2.40, $1.50 and $.40);
91 -($2.80, $.25, $.25 and $.50);
92 -($.50, $1.50, $2.00 and $1.50).

In addition to entries for "notary work," there are also several entries such as the following: "Swearing for Jus. Co.", which generated a fee of forty cents; "Swearing directors in Dayton, Springfield & Xenia So. Ry. Co. also letters written for Fer., McC & Shea," which generated a fee of four dollars; "Swearing Kunlein" and "Swearing Mr. Ferneding," each of which generated a fee of forty cents. *Id.* at 81, 82, 89. The reference to "letters written for Fer., McC & Shea" is particularly interesting, as it indicates an ongoing relationship between Scharrer and the firm with which John C. Shea was affiliated, namely, Ferneding, McConnaughey & Shea. Sharkey, *supra* note 10. The two would later become colleagues at the University of Dayton's first adventure into hosting a law school.

Another of Scharrer's activities was perfecting service. An entry dated January 18, 1910, records the receipt of a fee of one dollar for "[s]ervice of citation from New York on Warren Miller at NCR." Office Ledger, *supra* note 72, at 85. An earlier entry records the receipt of a fee of four dollars "[f]or legal services rendered in the case of Eisenhard vs. Broenstanp before Squire Beck, Union Tp. Miami County, in upholding service of summons upon Broenstanp, who claimed he was not a resident there." *Id.* at 83.

94. Fee in the case of Wm. O. Woods vs. Flo. Kroenen in the Common Pleas Court - settled $200 - Atty fees - $120 - $60 to CH Kumler. Office Ledger, *supra* note 72, at 88 (entry dated May 12, 1910). This entry is followed by the intriguing notation "(Manhole)". *Id.* Another entry, dated December 2, 1909, records the receipt of a fee of five dollars "[f]rom Emer Winsching for helping Kumler in his suit for child before Judge Kyle." *Id.* at 84.

95. One entry, dated December 3, 1909, records the following activity: "Ferneding, McConnaughey & Shea, assisting Mr. Shea in divorce case before Judge Brown." *Id.* at 84. Scharrer was paid five dollars for his efforts. *Id.* An entry dated December 15, 1909, records the receipt of five dollars for the following: "Suit brought by me for Fer. Mc & Shea - Anchor Paint and Glass Co. vs. George A. Williams proceeding in aid . . . settled." *Id.* Shea became a partner in the firm in the early years of the twentieth century, and continued that affiliation "for the remaining active years of his life." Sharkey, *supra* note 10, at 4.

ALBERT H. SCHARRER'S LAW PRACTICE REVENUES
1913-1918[96]

	1913	*1914*	*1915*	*1916*	*1917*	*1918*
January	$134.95	$228.75	$297.10	$603.35	$326.55	$596.85
February	215.35	106.15	241.73	393.85	227.97	193.85
March	243.55	267.10	350.18	414.70	565.05	437.50
April	214.00	296.45	322.80	281.79	403.20	78.00
May	199.15	565.60	371.06	275.17	344.54	236.45
June	92.35	172.75	253.95	217.26	365.01	170.50
July	117.50	129.45	177.30	397.45	380.95	210.60
August	95.55	417.30	142.30	310.52	553.15	153.52
September	448.40	86.40	837.54	206.49	429.95	139.35
October	172.58	182.60	174.35	205.60	275.10	385.00
November	174.85	290.67	260.60	155.10	85.50	106.50
December	208.86	176.23	380.25	378.22	152.04	358.15
Total	$2317.09	$2919.45	$3809.16	$3839.50	$4109.01	$3066.27

Other entries establish his involvement in criminal matters[97] and divorce cases.[98] One of the more peculiar entries, dated September 1, 1910, records that Scharrer received four dollars from "[t]estimony for Mau in Police Court."[99] Since Haveth Mau would not become a prosecutor until 1918,[100] this entry can only reflect services which Scharrer provided in a case that Mau was defending; other entries suggest that this refers to an instance in which Scharrer worked as a stenographer on one of Mau's cases.[101] The ledger includes a number of entries indicating that Scharrer continued to provide stenographic services

96. These figures were compiled from Scharrer's Office Ledger.

97. The first of these is dated November 5, 1909, and records the receipt of a fee of thirty-five dollars for the following: "Defending Joe Jackson on arson charge indicted by Grand Jury under Carl Lenz, Prosecuting Attorney; advised to enter plea of guilty, same done, under 20 years of age, sentenced to Mansfield Ref. for indefinite term by Judge Martin." Office Ledger, *supra* note 72, at 88. A second entry, dated May 9, 1910, records the receipt of a fee of twenty-seven dollars for the following: "Fee in the matter of Harry Engle arrested before Squire Brinkle for stealing $250 from Dubonsky. Succeeded in having his released." *Id.* at 88. Another entry, dated August 25, 1910, records the receipt of a fee of twelve dollars and fifty cents for the following: "Fee in Fighting case of City of Dayton vs. Joe Iransis in Police Court - Dismissed." *Id.* at 90.

98. An entry dated August 6, 1910, records the receipt of five dollars as a "[r]etainer fee in divorce case of Johnson vs. Johnson," while an entry dated October 8, 1910, records the receipt of ten dollars as a "[r]etainer fee in the case of Nicholas vs. Nicholas." *Id.* at 90, 92.

99. *Id.* at 91.

100. Mau was admitted to the bar in 1907. He then opened his law office with Ralph E. Hosket, under the name of Hosket and Mau, in the Conover (now American) Building. This partnership continued until 1918 when he was elected Prosecuting Attorney for Montgomery County. Program, *supra* note 5.

101. An entry dated June 18, 1910, records a fee of three dollars for "[s]teno. work Police Court - Mau." Office Ledger, *supra* note 72, at 89. Another entry, dated October 5, 1910, records a fee of three dollars and fifty cents for "[s]teno. work in Police Court vs. Jennie White." *Id.* at 91.

throughout this period.[102]

Stenographic services were not the only means by which he supplemented the rather meager revenues of his law practice. In 1910, he earned $259.30 by working for the United States census.[103] Since his revenues for the first ten months of that year totalled only $777.70, the census salary was a significant part of his income for the period.[104]

This was not his only extra-professional activity. In September of 1909 he earned five dollars for "working at polls as Clerk - Primaries,"[105] an activity which he repeated in November of that year.[106] On December 22, 1909, he received a fee of five dollars for "[a]cting as Clerk for Referee McConnaughey in Rohrer Matter."[107]

The entries for the sixteen months that encompassed Scharrer's first venture into solo practice reveal that he was, to use the modern vernacular, scrambling to make a living. Although it is difficult for modern lawyers to have any meaningful appreciation of the extent to which a fee of twenty-five cents was a reasonable remuneration for a collection,[108] it is apparent that much of Scharrer's time during this period was devoted to undertakings which do not conform to the traditional conception of practicing law. It is also apparent that these non-traditional undertakings were the source of a major portion of his income for this period, which may account for the fact that he entered into an association with an established law firm several months after, in the vernacular of that time, taking a bride.

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102. Entries dated October 7 and 16, 1909, record that Scharrer undertook "[s]tenographic work" for the Shea law firm, as do entries dated November 22 and December 11 of that year. *Id.* at 82-84. Another entry, dated January 22, 1910, records the receipt of a fee of fifteen dollars for "[t]aking testimony in the case of the State of Ohio versus Abe Kohn before B.F. Converse, Justice of the Peace." *Id.* at 86.

103. He was paid in four installments: the first, consisting of $60.00, was paid on April 21; the second, consisting of $90.00, was paid on May 16; the third, which for some reason consisted of $66.30, was paid on June 22, while the fourth and final installment, of $43.00, was paid on July 11. *Id.* at 88-89.

104. *See supra* section II(C)(1).

105. Office Ledger, *supra* note 72, at 82 (entry dated September 10, 1909).

106. An entry dated November 11, 1909 records the receipt of five dollars for "work on Election Day Burkhardt defeated Kishno, and pulled Dems. through." *Id.* at 83.

107. *Id.* at 84.

108. Samuel S. Leibowitz, who was to become a famous criminal lawyer in New York graduated from Cornell University's College of Law in 1915, passed the bar examination, and took "a job as law clerk at the firm of James A. Farrell inn Manhattan's financial district . . . at a salary of five dollars a week." R. LEIBOWITZ, THE DEFENDER: THE LIFE AND CAREER OF SAMUEL S. LEIBOWITZ 1893-1933 10 (1981). Although "five dollars went a lot farther then than now," Leibowitz was able "to make ends meet" only because he lived at home with his parents. *Id.* By March of 1916, however, Leibowitz was able to land a position which paid him thirty-five dollars a week. *Id.* at 11.

b. 1912-1918

The entries in the ledger end with Scharrer's departure for Murphy, Elliff and Emanuel in October of 1910 and resume in June of 1912, which is when he left the firm to re-establish his own law office. The later entries are far more cursory than those made during 1909 and 1910; presumably, practicing law had ceased to be a novelty and had become a business.[109]

Because the entries are so cursory, it is far more difficult to ascertain the type of legal activity in which Scharrer was engaged. It is, however, possible to identify certain clients and certain undertakings during this period.

Although Scharrer still handled collections for fees that were commensurate with those recorded between 1909 and 1910,[110] he was also recording the receipt of far more significant sums of money for settling cases[111] and selling real estate.[112] These two endeavors account for sev-

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109. Many of the entries made during his first sixteen months in solo practice are summaries of a particular case or of what he was retained to accomplish. *See, e.g., supra* notes 90–97. After 1912, the majority of the entries are a cursory notation of the receipt of a fee and the source. For example, an entry dated August 30, 1912 records the receipt of twelve dollars "[t]o fee in divorce case." Office Ledger, *supra* note 72, at 94. An entry dated September 11 of that year records the receipt of fifty cents "[t]o fee Frank Flax." *Id.* at 95. Another entry, dated September 28, 1912, records the receipt of three dollars "[t]o fee H. C. Ernst." *Id.* By 1913, this type of entry is almost the norm. *Id.* at 98–114. By 1914, the entries are equally cursory but have taken a slightly different form. As an example, an entry dated May 12 of that year records the receipt of one dollar and fifty cents "[t]o cash - Wheaton v. Luttrell." *Id.* at 123. This type of entry is the norm throughout much of 1914, although by the end of that year it has become "[b]y cash - Politz Bros. in matter of E.M. Abbott." *Id.* at 115–37. The latter type of entry remains the norm through the remaining years of this venture into private practice, i.e., until the end of 1918. *See id.* at 137–204.

110. *See, e.g.,* Office Ledger, *supra* note 72, at 95 ("To collection fee Kissell", entry for September 23, 1912); *Id.* at 103 ("To fee - collection Dalle a/c", entry for June 2, 1913). The fee for the Kissell matter was forty cents, and for the Dalle matter it was seventy-five cents. *Id.* Scharrer almost certainly continued to handle collection matters until he became a prosecutor in 1918, but the nature of the later entries in the ledger make it almost impossible to determine what type of legal work was generating a particular fee. There is, however, an entry dated January 17, 1914 which shows that he received twenty-five dollars "[t]o cash - collection C.J. Eichelbarger vs. Frank Huffner $125.00." *Id.* at 116. Presumably, this fee was noted in significantly more detail because it was an unusually high fee for a collection matter.

111. For example, an entry for July 10, 1912 records that he received twenty-two dollars and fifty cents as a "[f]ee for settlement of case of Nicholas vs. Culbertson." *Id.* at 93. Another entry, dated March 7, 1913 records that he received one hundred and fifty dollars "[t]o fee - settlement of damage suit of Henry A. Geskey vs. The James Saunders Co. by the Travellers Ins. Co. for loss of left hand - $1750." *Id.* at 101. An entry dated May 4, 1914 records the receipt of one hundred and fifty dollars "[t]o cash - H. F. Nolte estate to settlement of claims for wrongful death against Dayton St. Ry. Co. for $600." *Id.* at 123.

112. An entry dated July 24, 1912 records that he received one hundred dollars as a "[f]ee from Albert C. Scharrer under trustee's sale real estate." *Id.* at 93. Another entry dated August 9 of that same year records that he received fifty dollars "[t]o sale real estate No. Marie St. Mrs. Ames." *Id.* at 94. An entry dated September 3, 1913 records the receipt of thirty-five dollars "[t]o

eral of his largest fees, but he was also receiving significant revenues from handling divorces[113] and estates,[114] as well as representing local businesses on a variety of matters.[115] There are only a few entries that

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cash fee - sale of lot Ritter plat - W. H. Matthews." *Id.* at 106. An entry dated October 3 of that same year records receipt of twenty-five dollars as a "[c]ash fee - sale of property Ida Wheaton." *Id.* at 108. Another entry, dated May 4, 1914, shows the receipt of two hundred and twenty five dollars "[t]o cash - H. F. Nolte estate - sales of two properties - Richard St. at $2800 and Nevin St. at 1500.00." *Id.* at 123. A later entry, dated March 2, 1916 records the receipt of one hundred and fifty dollars "[b]y case - S. R. Shaner - sale of property to Sophia Levine . . . sold for $4100." *Id.* at 165. An entry dated October 4, 1917 records the receipt of seventy-five dollars and forty cents "[b]y case - Hendry Moses estate sale of real estate." *Id.* at 196.

113. The earliest entry in this category is dated July 24, 1912 and records that Scharrer received a two dollars and fifty cent "[f]ee from Mr. Elliff acting as Referee in Divorce case." *Id.* at 93. The most cryptic entry in this category is dated August 30, 1912 and records the receipt of twelve dollars "[t]o fee divorce case." *Id.* at 94. On September 5 of the same year, Scharrer recorded receiving of nineteen dollars "[t]o fee Swallow vs. Swallow", and followed that with another entry, two days later, showing that he received four dollars "[t]o a/c divorce case Swallow vs. Swallow." *Id.* On September 19, he received another three dollars ""[t]o fee a/c" for this same matter. *Id.* at 95. On September 12, he recorded that he received five dollars "[t]o fee refereeing case of Johnson vs. Johnson for Jones." *Id.* The following entry is dated April 15, 1913 and records the receipt of one hundred and fifty dollars: To fee - David Linn, to retainer fee, securing settlement with wife for alimony & support of children, $250 for support of children & $175 - alimony for wife, temporary and permanent, securing his release from jail on charge of abandonment, to making two trips to Cin. *Id.* at 102. The next entry records receipt of a fee of twenty-five dollars "from Julius V. Jones, securing copy of divorce petition filed in Cin . . . . Court & filing entry dismissing that case." *Id.* Four days later, Scharrer recorded a fee of three dollars as "[n]otary - deposition of Julius V. Jones." *Id.* On September 17, 1913, he recorded a fee of twenty dollars in the "divorce case of Engelsmier vs. Engelsmier," and on the twenty-third of that same month he recorded that he received forty five dollars as a fee in the "divorce case of Lapedes vs. Lapedes." *Id.* On November 15, 1913, he recorded receiving five dollars as the "final fees - Englesmier vs. Engelsmier." *Id.* at 111. An entry dated March 11, 1914 records a fee of thirty-five dollars for the striking "divorce case of Linkhart vs. Linkhart." *Id.* at 119. Another entry, dated March 17 of the same year, records the receipt of ten dollars, apparently as a partial fee for the "divorce case of Hornbeck vs. Hornbeck." *Id.* at 120. One of the more detailed entries, dated April 25, 1914, records the receipt of one hundred and fifty dollars from Jennie Seabrook, being consultation and advice concerning period of about ten days previous to April 25, 1914; to three trips to Vandalia; to drawing written articles of separation between John M. Seabrook and Jennie Seabrook, Vandalia, Ohio. *Id.* at 122. On August 1 of the same year, Scharrer recorded payment of five dollars for "drawing answer Jennie Seabrook case of Seabrook vs. Seabrook." *Id.* at 128. One of the more amusing of these entries is dated June 4, 1914, and records that Scharrer received fifty dollars "in the matter of legal services rendered Mrs. E.L. Moore - having them go back & live with each other." *Id.* at 124. By January 28, 1918, he was able to record that he had been paid one hundred twelve dollars and fifty cents as a fee in the ""T.A. & F.F. Tranchant divorce case." *Id.* at 198.

114. *Id.*

115. An entry dated August 13, 1912 records the receipt of fifteen dollars "[t]o fee Fenton Cleaning Co." *Id.* at 94. He was apparently handling some matters for NCR, as an entry dated December 24, 1912 shows that he received twelve dollars "[t]o fee - N.C.R. Co." and another, dated January 14, 1913 records payment of thirty dollars "[t]o fee - N.C.R. Co. from Jan. 6 to Jan. 11th 1913 - Cin." *Id.* at 98. On July 2, 1913, he recorded a fee of seventeen dollars for "affidavits (2) for N.T. Lanse; & taking deposition in case of Foglesong Co. vs. The J.D. Randall Co. before Lamon A. Ferris." *Id.* at 104. On September 3 of that year, he recorded receiving a fee of fifteen dollars and fifty cents from the Fenton Cleaning Company, but did not indicate what it

are identifiable as fees paid for criminal defense work, although it is likely that many of the generic entries, i.e., the "By cash - John Smith" type of entry, record fees paid for this type of service.[116] One noteworthy entry, dated October 26, 1914, shows that Scharrer received a fee of thirty-five dollars in the case of "Caroline Leidig vs. Adam Schweiker - Bastardy before Judge Markey - settlement 150.00."[117]

He also recorded fees for "election work" in each of the years between 1912 and 1918; by this time, this activity may have been more attributable to an interest in politics than a need for additional income.[118] One of the more amusing entries is dated July 24, 1912, and

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was for. *Id.* at 106. For some reason, there are a number of entries recording fees paid by piano companies; the following, dated November 24, 1913, are two representative examples: To cash Steger & Sons Piano Mfg. Co. to legal services rendered in Lee & J.A. Johnston matter - piano at Houston, Ohio [fee of $15.00] *Id.* at 112. To cash - Steger & Sons Piano Mfg. Co. to legal services rendered in Mrs. Edward Shannets matter - piano at Miamisburg, O. [fee of $15.00] *Id.* An entry dated November 26 of the same year, shows that he received ten dollars from "Brockport Piano Mfg. Co. for legal services rendered in securing Schuler piano No. 78,889 from Lewis J. Gage, 45 Weller St." *Id.* Scharrer handled a number of replevin actions for Steger & Sons; a typical entry for this type of activity is dated April 16, 1914, and notes that he received twelve dollars and fifty cents as a fee in "Steger & Sons vs. John L. Lesher and Anna M. Lesher - replevin suit." *Id.* at 121. On September 1, 1914, he recorded that he had been paid fifteen dollars for serving as a "director for James Sanders Co. (six months)." *Id.* at 130. On February 12, 1915, he received twenty-two dollars and fifty cents from the same company as the balance of his "directors fees year of 1914 and advance of $10 as Secretary." *Id.* at 139. On July 21, 1916, he received thirty dollars from the company, again as "directors fees", and on December 20, 1916 he recorded receiving forty dollars as "director and secretary's fees." *Id.* at 174, 181. On December 18, 1918, Scharrer was able to record that the James Sanders Company had paid him one hundred dollars "as Secretary year 1918" and sixty dollars "directors fees year 1918." *Id.* at 203.

He also handled bankruptcies. *See, e.g., id.* at 135. By 1917, Scharrer was recording that he had received forty-five dollars from the Fenton Cleaning Company as a "salary [for the] months of July & August 1917." *Id.* at 195. Entries to this effect continue until he left his practice to become a prosecutor in 1919. *See id.* at 204 (entry dated December 20, 1918, showing payment of forty-five dollars as "salary mos. of Nov. & Dec." 1918).

116. The first entry that is identifiable as resulting from this type of endeavor is dated July 23, 1912, and records the receipt of a thirty-five dollar "[f]ee from County for defending Orville Casterline." *Id.* at 93. Another entry dated February 3, 1914 records the receipt of a fee of thirty-five dollars in "State of Ohio vs. Laurence Hicks - defending prisoner." *Id.* at 118. Another entry dated August 12, 1914 records payment of sixteen dollars for "securing release of Joe Roman from jail." *Id.* at 128. And a similar entry dated August 25, 1914 records payment of ten dollars by "R.B. Tawney on a/c securing release of Mary Anderson from Jail - bal. 10.00." *Id.* at 129. On February 17, 1915, Scharrer recorded that he had received thirty-five dollars from the "State" for "defending Frank Jallis - sodomy - suspended." *Id.* at 139. An entry dated April 18, 1917 shows that Scharrer received fifty dollars for "securing release William Marion Jones from workhouse." *Id.* at 188. And an entry dated January 25, 1918 shows that he was paid two hundred and fifty dollars for "[d]efending Nancy Henderson murder 1st degree", although it does not indicate what the outcome of that defense was. *Id.* at 198.

117. *Id.* at 132; *see also id.* at 178 (entry dated October 27, 1916 showing receipt of $25.00 from "Rickey Burrows on a/c legal services bastardy case Lillie M. Swisher - 351 Huffman Ave."). *Id.* at 181 (entry dated December 26, 1916 showing receipt of $150.00 from Helen Minass settlement of Bastardy case for $500 vs. Edland Emanuel").

118. The first such entry is dated November 9, 1912, and shows that Scharrer was paid

records that Scharrer received a two dollar "[f]ee [from] Judge Dwyer writing some law."[119] Scharrer made a similar entry for January 4, 1913, noting that he had received fourteen dollars "[t]o fee for work L.A. Pettit, Albert Emanuel, W.R. Sullivan and Judge Dwyer."[120] Another unusual entry, dated January 23, 1915, shows a fee of two hundred and fifty dollars from the Fetterly estate for "securing insurance money, running moving picture show, sale of show, etc."[121]

Although the entries do not specifically indicate that Scharrer was representing defendants charged with a new type of offense, motor vehicle offenses,[122] an item that survived among his papers suggests that this is the case. This item is a published account of the traffic rules and regulations that went into effect in Ohio on December 5, 1915.[123] Despite the fact that they are careful to define a motor vehicle as an entity distinct from a vehicle,[124] many of the regulations refer only to the conduct that is expected from the operator of a vehicle, suggesting that the phenomenon of motor vehicles had not yet been fully assimilated. As an example, one regulation provided that "[a] vehicle overtaking another shall pass to the left, the front vehicle giving half the road to the rear vehicle."[125] An even clearer indication of the novelty of motor vehicles is the provision directing that "[w]hen a vehicle is slowing up or stopping, the driver shall give a timely signal to those in the rear, by *raising the arm or whip* vertically (preferably) or horizontally or by some other unmistakable manner."[126]

The regulations also provided that motor vehicles were not to operate at speeds greater than "8 miles per hour in the business or closely

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eighteen dollars for "election work as registrar judge - McClung." *Id.* at 96. On May 23, 1913, Scharrer recorded that he had been paid twenty-one dollars for "election work." *Id.* at 103. On November 13 of that same year, he recorded that he had received twenty-four dollars for "election work." *Id.* at 111. Another entry that may belong in this category is dated December 10, 1915, and shows that Scharrer received one hundred dollars from the "Citizens Committee" for "securing $1000 for bond issue campaign." *Id.* at 115.

119. *Id.* at 93.

120. *Id.* at 98.

121. *Id.* at 137.

122. "The term 'motor vehicle' shall apply to all vehicles propelled by power other than muscular, except a street car, traction engine, road roller, and police, fire or ambulance vehicles." Traffic Rules and Regulations Governing Traffic on the Public Highways of Ohio, art. I § (effective on and after Dec. 5, 1915) *reprinted in* the Dayton Daily News, Nov. 1915. The term "vehicle" referred "to a horse being rode or led, and to any conveyance except a baby carriage or street car." *Id.* at art. I, § 1. "The term 'horse' shall apply to any draft animal or beast of burden." *Id.* § 7.

123. *Id.*

124. *See supra* note 121.

125. Traffic Rule and Regulations Governing Traffic on the Public Highways of Ohio, art. III § 2 (effective on and after Dec. 5, 1915).

126. *Id.* at art. VI, § 2.

built up portions of a municipality," "15 miles per hour in other portions of a municipality" and "20 miles per hour outside of municipalities."[127] Other vehicles were directed not to "operate on a road at a speed greater than is reasonable or proper or so as to endanger the property, life or limb of any person."[128] The regulations also required motor vehicles to display "two white lights in front of sufficient power to be visible 200 feet away in the direction the vehicle is moving, and one red light visible in the opposite direction; also one rear white light which shall illuminate . . .the license number tag."[129] These lights were to be displayed "between 20 minutes after sunset and 30 minutes before sunrise."[130]

Although the ledger does not indicate the extent to which Scharrer was concerned with these provisions in his private practice, they certainly became a significant feature of his professional life once he entered the prosecutor's office. The next section describes his tenure as an assistant to Prosecutor Haveth Mau and then as a prosecutor in his own right.

III. A PROSECUTOR AND A PROFESSOR (1918-1927)

"THERE SHALL BE ELECTED BIENNIALLY, IN EACH COUNTY, A PROSECUTING ATTORNEY, WHO SHALL HOLD HIS OFFICE FOR TWO YEARS, BEGINNING ON THE FIRST MONDAY OF JANUARY NEXT AFTER HIS ELECTION."[131]

Haveth Mau appointed Scharrer as an assistant prosecutor in 1918.[132] He closed his practice at the beginning of 1919, and assumed his new duties, continuing as Mau's assistant until 1922, when he became county prosecutor;[133] he served in that capacity until 1927 when he returned to private practice.[134]

Scharrer preserved almost nothing from the period between 1919

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127. *Id.* at art. V, § 1.

128. *Id.* at art. V, § 2.

129. *Id.* at art. VIII, § 1. In order to avoid accidents and for the purpose of securing the greatest possible safeguard to human life, all drivers of horse-drawn vehicles are urged and requested to display a light at night that can be seen both in front and in the rear. *Id.* § 4.

130. *Id.* at art. VIII, § 1.

131. OHIO REV. CODE § 2909 (1924).

132. Program, *supra* note 3.

133. *See, e.g.*, 3 HISTORY OF SOUTHWESTERN OHIO - THE MIAMI VALLEYS 318 (1964). *See also* Office Ledger, *supra* note 72, at 204. The last entry is for February 13, 1919. *Id.* In 1923, Mau "was appointed United States Attorney by President Harding and was subsequently appointed to two more terms by Presidents Coolidge and Hoover. He held this office for ten years and resigned in August, 1933." Program, *supra* note 3; *see also* 3 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE 124 (1932).

134. *See, e.g.*, 3 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE 124 (1932); Program, *supra* note 3.

and 1923; he kept no office ledger and made no effort to save published accounts of his exploits, save one which is noted below. He did preserve information about his activities as county prosecutor and as a defense attorney. This is reflected in the discussion below. The first section attempts to evoke the legal climate of the period between 1919 and 1923 by relying upon secondary sources, while the third section uses the information that Scharrer compiled to describe his activities as county prosecutor. The second section offers a brief digression detailing a relationship that developed between Scharrer and the law school that was established at the University of Dayton in 1922.

A. Assistant (1919-1923)

> The ordinary citizen . . . imagines that the daily life of the prosecutor consists in demanding the conviction of hardened felons with sordid, crime-tracked features, varied by occasional spectacular 'star cases' where counsel for the defendant and the prosecutor vie with one another in stupendous outbursts of oratory in which the bird of liberty screams unrestrained and Justice frantically waves her scales. He supposes . . . that criminals walk the streets while the indictments against them lie accumulating an overcoat of dust in some forgotten pigeon-hole. He frankly assumes that the jury system is pretty near a failure, and knows . . . that any one with enough money can either avoid being tried for crime . . . or, if by any mischance he be convicted, can easily escape punishment or at least delay it indefinitely by technicalities of procedure and appeals.[135]

This passage appeared in a book which was written in the first decade of the twentieth century, and which analyzed the virtues and defects of the criminal justice system in the State of New York at that time.[136] It is interesting to speculate about the extent to which this passage describes the attitudes which the citizens of Dayton held toward their criminal justice system during this period and, to that end, it is helpful to consider the constitution of that system.

In 1919, the "Police Organization" in Dayton included "one chief, three inspectors, one superintendent of the bureau of identification, twelve sergeants, fifteen detectives, three matrons, one stenographer, one clerk, one janitor and one hundred and thirty-five patrolmen."[137]

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135. A. TRAIN, THE PRISONER AT THE BAR: SIDELIGHTS ON THE ADMINISTRATION OF CRIMINAL JUSTICE 192–93 (1924). It appears that this volume was originally published in 1906, and reissued in 1908 and again in 1924. *Id.* The book relies upon statistical reports for a period of years ending in 1907, which suggests that the 1924 edition was simply the republication of a volume that had been revised prior to the appearance of the 1908 edition. *See, e.g., id.* at 226–27.

136. *Id.* at xi–xii.

137. 2 MEMOIRS OF THE MIAMI VALLEY 207 (1919).

The patrolmen and sergeants were "stationed throughout the city, some in plain clothes, some in uniform" and operated "night and day for patrol, . . . traffic, pawn shops, speed regulation, identification, auto complaints . . . and on duty at headquarters."[138] In 1918,

> four thousand four hundred and eighteen complaints were received and attended to . . . Property stolen . . . amounted to $246,936.28 and $230,491.72 of it was recovered. Three hundred and ninety-one persons were missing and one hundred and seventy-two located; 3,316 ambulance calls made; 3,314 patrol calls; 5,130 emergency calls; two hundred and seven autos stolen, most of which were recovered; three hundred and eighteen bicycles stolen, two hundred and sixteen recovered. The complaints . . . included . . . assault, robbery, burglary, cutting with intent to wound, forgery, false pretenses, gambling, grand larceny, horse stealing, house breaking, homicide, malicious destruction of property, petit larceny, pocket picking, rape, shooting to kill or wound, violation of city ordinances. There were two hundred and thirty-nine arrests.[139]

In 1917, the city created a "Bureau of Crime Prevention;"[140] this entity worked "with the Humane society, the Juvenile court, the Associated Charities and the police women" to reduce the number of incidents that resulted in formal arrest and trial.[141] In 1918, it received eight hundred and seventy-six complaints, and resolved them in the following manner: "advice given, 720; cases adjusted out of court, 126; pool rooms visited, 66; saloons visited, 30; arrests made, 22."[142] "Of the possible 876 cases that formerly would have been haled up for public trial only 22 were thus created; the others disposed of by referring them to various reformational agencies or dismissed with good advice."[143]

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138. *Id.*

> The department included its own "Bureau of Identification" which kept a gallery where the photographs of suspected persons [were] made and preserved, 2,703 being the record for the year. The registering of German alien enemies both male and female was done under the supervision of this bureau, also keeping record of all changes of addresses of the same, notifying Washington and the United States marshal at Cincinnati.

Id. at 209.

139. *Id.* at 208.

140. *Id.*

141. *Id.* "Attention is called to the fact that in this department credit belongs for what the police did not do, viz., arrest the offenders and take them into court, thereby blasting hope and reputation." *Id.*

142. *Id.* The 876 complaints were processed by the following agencies: "referred to Juvenile court, 50; referred to Associated Charities, 4; referred to Humane society, 18; referred to police women, 83." *Id.*

143. *Id.* Another innovation was the Bureau of Police Women:

> For years . . . the management, arrest and commitment of drunken women and wayward girls fell to the duty of the policemen. It took years for . . . public opinion to . . . call for a new standard of decency . . . . In 1915 Miss Annie McCully was chosen as police woman,

For those who successfully resisted the blandishments of the Bureau of Crime Prevention, there were the City Prison and the Correction Farm, along with several state institutions.[144] The prison was located at the corner of Sixth and Main, and the farm was "under construction out on the Germantown Pike near the Soldiers Home."[145] The Correction Farm was an adventure in modern penology, intended to "provide for the prisoners hitherto herded in the city jail a wholesome place to live with an opportunity to learn a trade, to live largely out of doors and to render some benefit to the society that they have wronged."[146] Some fortunate prisoners were allowed "to construct the group of buildings," "as well as making the roads."[147]

Both institutions implemented a system of parole according to which

> [t]he superintendent finds work for a prisoner outside. . . . He leaves the prison in the morning and returns in the evening and at the end of. . .

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afterward promoted to . . . supervisor. . . . There are two police women at the present time, under the supervisor, and they find their hands abundantly full.

Id. at 210.

The police women are described as do[ing] much good work in the visiting of dance halls where their mere presence is provocative of order and decency and where they are often able to advise and warn wayward girls before it is too late. In one year nearly a thousand girls, not counting women, were under the surveillance and care of the police women. . . .

Id. at 211. The goal was "prevention". "[I]t is . . . more humane and scientific to halt the girl before she gets to the place where she will be a public malefactor." *Id.* The war had produced special difficulties. "The year when so many soldier boys were in Dayton made problems for the women difficult to meet." *Id.*

144. *Id.* at 206. The state institutions included Lima State Hospital, which only accepted those who had been determined to be "insane," the Ohio State Reformatory, the Ohio State Reformatory for Women and the Ohio Penitentiary. *See, e.g.*, F. PATTERSON, PATTERSON'S COMPLETE OHIO CRIMINAL CODE 191, 217, 225, 231 (1924). The Ohio State Reformatory accepted "all male criminals between the ages of sixteen and thirty years . . . if they are not known to have been previously sentenced to a state prison." *Id.* at 217. The Ohio State Reformatory for Women accepted "all females over sixteen years of age, convicted of a felony, misdemeanor, or delinquency." *Id.* at 225. The Ohio Penitentiary accepted male convicts who were not eligible for the reformatory. *See id.* at 220.

Roy Garrison was committed to that institution after he confessed to murdering Charles McDonald with an axe. Dayton Herald, June 29, 1923. Garrison, "huge in stature and with an excellent record of service in many important battles during the world war," was examined by physicians who decided that he was "wholly irresponsible for the ghastly crime . . . because of his mental condition."

Id. The cause of that "condition" may have been syphilis, as the report refers to Garrison's "failing mind and . . . a malignant disease which was racking his body." *Id.* Emma Diehlman was committed to the hospital for "several years" and then given a life sentence for murder. Dayton Daily News, Sept. 1, 1923.

145. F. PATTERSON, *supra* note 144, at 206.

146. *Id.*

147. *Id.* For their construction activity, they were directed to use stone which lay "in abundance . . . directly under the surface of a part of the farm land." *Id.* The farm would also include "[a] welfare league, similar to that organized in Sing Sing." *Id.*

> his pay period brings his pay envelope to the Superintendent. The money is distributed between his family, his creditors or used for special purchases for himself. Any surplus is set aside as a fund to start him in a new life.[148]

It also appears that the money so earned was used to defray certain of the expenses which the prisoner incurred during his incarceration.[149]

The Ohio criminal justice system also included another feature which was typical of the age and which an overly sanguine observer described in the following terms:

> The indeterminate sentence is . . . in force, by which broken down members of society may remain in the care of the institution until they are . . . deserving of being restored to the responsibilities of normal living. Such a method arouses hope in the minds of the prisoners and a resolve to do their best.[150]

A more cynical observer suggested that indeterminate sentencing created a disincentive for plea bargaining, while citing statistics which suggested that it had not had this effect in the state in which it originated, New York.[151] According to this report, "[t]he great bulk of cases, that is to say, nearly seventy-five per cent, are disposed of by plea."[152] A similar state of affairs seems to have prevailed in Montgomery County, Ohio. According to a newspaper account, between September 1, 1922, and September 1, 1923, the grand jury returned one hundred and ninety indictments, of which one hundred and twenty were

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148. *Id.* at 207.

149. *Id.* Case 10429 earned $123.05. $2.00 of this went to creditors, $43.25 to the purchase of clothes for the prisoner and his meals, leaving a balance of $77.80. Case 1126 earned $210.00. $4.00 was paid to creditors, $49.00 to meals and clothing, leaving a balance of $157.00 upon return to private life. Case 111371 earned $120.40. $94.40 went to relief of family, and $26.00 for prisoners clothes and meals. *Id.*

150. *Id. Cf.* H. BURNS, CORRECTIONS: ORGANIZATION AND ADMINISTRATION 139 (1975) ("The indeterminate sentence in itself had no reformatory power"). *See id.* at 133–39 for a discussion of the evolution and rationale of this sentencing system. *See also* Warner, *Some Aspects of the Indeterminate Sentence*, 8 YALE L.J. 219 (1907). Indeterminate sentencing was introduced in 1869 to advance the "reformation of prisoners" by creating a system in which they would not be released until they demonstrated that they had "re-formed" themselves into law-abiding citizens. Burns, *supra* note 150, at 139. An offender was sentenced to a particular institution for "a period of indeterminate years," his release date thereby becoming a function of his own efforts toward "reformation." As an example, on Jan. 3, 1924, George E. Volk, "who pleaded guilty . . . to . . . robbing Thomas Boggess, aged inmate of the Soldiers' home, of $400 . . . was sentenced to serve an indeterminate term of from 10 to 25 years in the . . . reformatory." Dayton Daily News, Jan. 3, 1924.

151. A. TRAIN, *supra* note 135, at 213.

152. *Id.* at 219. "Court officers often win fame in accordance with their ability as 'plea getters.'" *Id.* at 223. In 1907, in New York County, New York, out of a total of 4,573 indictments, 2,266 were disposed of by pleas, 582 were tried to convictions and 656 were tried to acquittals. *Id.* at 226.

resolved by guilty pleas; only seven of the cases were actually tried during the year, yielding four convictions.[153]

It was a time when prisoners were sentenced to serve their time at hard labor,[154] and the criminal code included offenses such as dueling,[155] "giving wine to a female in a wine-room with intent thereby to have sexual intercourse,"[156] "profane swearing,"[157] and "criminal syndicalism."[158] The code also made it an offense for the "owner . . . or manager of a theater . . . where . . . performances are given" to permit "a person attending such performance to wear a hat, bonnet or other covering for the head, which may obstruct the view of another during such performance."[159]

On a more sinister note, it was a time when the criminal code prohibited lynching,[160] and provided that "[a] person . . . lynched by a mob may recover, from the county in which such assault is made, a sum not to exceed five hundred dollars."[161] Although the statute was enacted to address conduct which was more common in the nineteenth century, at least one "lynching" occurred in Ohio in the twentieth century.[162]

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153. Dayton Daily News, Sept. 1, 1923. Accord, Dayton Herald, Sept. 1, 1923. The cases not accounted for were still pending. *Id.* As another indicator of the general volume of cases arising during this time, in October of 1923, the grand jury returned the following indictments:

> Shooting with intent to kill, one; assault with intent to rob, one; embezzlement, one; grand larceny, four; liquor law violations, seven; carrying concealed weapons, five; selling mortgaged property, one; obtaining property under false pretenses, one; shooting with intent to wound, one; frogery [sic], four; robbery, one, and burglary and larceny, one.

Dayton Herald, Oct. 1, 1923.

154. *See, e.g.* F. PATTERSON, *supra* note 144, at 556, 558.

155. "Whoever fights a duel, is second to a person who fights a duel, challenges another to fight a duel, accepts a challenge to fight a duel or is knowingly the bearer of such challenge, shall be imprisoned in the penitentiary." *Id.*

156. *Id.* at 1055.

157. *Id.* at 1280.

158. "[C]riminal syndicalism is the doctrine which advocates crime, sabotage, . . . violence or unlawful methods of terrorism as a means of accomplishing industrial or political reform. The advocacy of such doctrine, whether by word of mouth or writing, is a felony." *Id.* at 1299.

159. *Id.* at 1289.

160. "An act of violence by a mob upon the body of any person shall constitute a 'lynching' within the meaning of this chapter." *Id.* at 467.

161. *Id.* at 468. If the "injury received therefrom" was serious, the victim could recover "a sum not exceeding one thousand dollars" or, if the injury produced a "permanent disability to earn a livelihood by manual labor, a sum not to exceed five thousand dollars." *Id.* If the victim did not survive the assault, his legal representative could recover damages up to five thousand dollars. *Id.* at 468.

162. On June 7, 1932, a mob took Luke Murray from the South Point jail, where he was being held for threatening two white men with a knife. On June 11, Murray's battered body was found in the Ohio River. Four white men were arrested but later exonerated by a jury. F. SHAY, JUDGE LYNCH: HIS FIRST HUNDRED YEARS 147 (1969). The practice received its name from Colonel Charles Lynch, who was a judge during the Revolutionary War. *See id.* at 15–26.

It was also a time when search and seizure proceeded unimpeded by the strictures of the exclusionary rule:

> Upon the trial of a criminal prosecution, a general objection to the introduction of evidence obtained by search and seizure raises no question other than that of the competency, relevancy and materiality of the evidence tendered, and the court is not required to . . . examine the collateral question of the regularity of the proceeding whereby such evidence came into the possession of the prosecution.[163]

The enforcement of prohibition at once encouraged practices that were antithetical to the letter and spirit of this subsequently-articulated rule[164] and the development of technical defenses based upon the plain language of the fourth amendment.[165] Although the issue was hotly debated, the courts of the time declined to implement an exclusionary rule, leaving that task for their successors.[166]

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163. F. PATTERSON, *supra* note 144, at 439 (annotation to OHIO REV. STAT. §§ 6212–16). This edition of the volume was prepared by Robert C. Patterson, who described himself as Judge of the Common Pleas Court, Dayton, Ohio; former Prosecuting Attorney; Dean Law College, University of Dayton. For more on Judge Patterson see *infra* §§ III (B), III (C).

164. *See, e.g.*, F. PATTERSON, *supra* note 144, at 439.

> A search of an automobile by an officer and a seizure by him of intoxicating liquors then being possessed and transported in violation of law, is authorized though the officer has no previous knowledge of such violation as induces the honest belief that the person in charge of the automobile is inn the act of violating the law. A search and seizure under such circumstances is not unreasonable and therefore does not transgress . . . the Constitution.

Id.; see also Rosebraugh, *A Case for the Exclusion of Evidence Obtained by Illegal Search*, 4 ORE. L. REV. 323, 332 (1924) ("a great mass of illegal searches today are resulting from attempts to enforce the prohibition act").

165. Roberts, *Does the Search and Seizure Clause Hinder the Proper Administration of the Criminal Justice?*, WIS. L. REV. 195, 202 (1929).

> Before national prohibition came, the 4th Amendment . . . had been before the courts for interpretation but a few times . . . . [T]he decisions passing squarely upon the search and seizure clause . . . prior to prohibition would not average one for each state . . . .
>
> For some time following the adoption of . . . prohibition laws, cases involving search and seizure seldom reached courts of last resort . . . . The lack of decisions . . . was due to the fact that those getting into the new business were generally poor, and when caught, entered a plea of guilty and accepted the punishment of the court. The lawyers were slow to appreciate the gold mine of technical defenses to be found in the Constitution in cases where there had been a search and seizure. The bootleg business, however, proved profitable even beyond the expectations of those who had gone into it . . . . When a violator stood before court faced with a sentence as a second offender, . . . he hired an attorney, and was willing to pay a good fee for his defense . . . .

Id. at 200, 202–203.

166. *See, e.g.*, Roberts, *supra* note 165, at 195; Rosebraugh, *supra* note 164, at 323; *see also* Patterson, *A Case for Admitting in Evidence Liquor Illegally Seized*, 3 OR. L. REV. 334 (1924); Comment, *Enforcing Prohibition under the Federal Rule on Unreasonable Searches*, 36 YALE L.J. 988 (1927); Comment, *Legal Search and Arrest under the Eighteenth Amendment*, 32 YALE L.J. 490 (1923). "[T]hough papers and other subjects of evidence may have been *illegally taken* from the possession of the party against whom they are offered, or otherwise unlawfully obtained, this is no valid objection to their admissibility if they are pertinent to the issue." S.

One case that Scharrer and Mau handled was later featured in *Daring Detective Magazine* as "The Case of the Crimson Hand."[167] Morris Herman, a Dayton pawnshop owner, was attacked in his shop on South Main Street; the crimson hand was a bloody handprint that the perpetrator left behind.[168] After they learned of the crime, Scharrer and Mau inspected the pawnshop and then went to the hospital, where Herman survived for a time despite his injuries.[169] The magazine reported that this exchange occurred at the hospital: "If he comes to we may be able to get a description of the thugs,' Mau told Scharrer. 'Right now police don't seem to have a thing to go on.' 'It looks like a tough one,' Scharrer agreed."[170] Herman never recovered consciousness, but the crime was solved by the "sleuthing" of several Dayton police detectives.[171]

Despite its literary frailties, "The Case of the Crimson Hand" is interesting in that it suggests that there was a close working relationship between Mau and Scharrer. The existence of such a relationship would account for the fact that it was Scharrer, rather than another assistant who was Mau's former law partner,[172] who ran for and was elected as Montgomery County prosecutor in 1923, when Mau was awaiting an appointment as the United States Attorney for the South-

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GREENLEAF, 1 A TREATISE ON THE LAW OF EVIDENCE § 254a (1876).

167. Williamson, The Case of the Crimson Hand, 84 (Feb., 1943) (unpublished manuscript) (on file with the University of Dayton Law Review). The account of this case is the only information for this period that appears in Scharrer's surviving papers.

168. *Id.*

> 'Look!' It was Finn. He pointed, 'Look at the door.' The crimson print of a hand stood out clearly. The palm with fingers extended was about shoulder high on the ivory-toned finish of the interior side of the front door. It was as though someone had braced himself with his hand as he peered out through the window.

Id.

169. "Reports of the crime had reached County Prosecutor H.E. Mau and he arrived [at the crime scene] with his assistant, Albert Scharrer. After getting an outline of the case as Yendes saw it . . . the prosecutor and his aide prepared to go to the hospital in the hope of getting a statement." *Id.* at 87. "At the hospital, Prosecutor Mau and his assistant conferred with Coroner White and learned that Herman's jaw had been fractured on the right side and his skull had been crushed. 'I'm surprised that he's lived as long as he has.' White . . . arranged for the men to visit Herman's bedside. There they pulled up chairs and prepared to wait for—death or consciousness." *Id.* at 86. Herman's injuries resulted from an attack with a "homemade blackjack", i.e., a "[t]aped gaspipe." *Id.*

170. *Id.* at 88.

171. The sleuths were Detective Inspector S.E. Yendes and Detectives J.C. Dunlevy and M.E. Kincaid. *Id.*

172. Mau's other assistant was Ralph E. Hoskot, who "ha[d] charge of the Civil Department of the Prosecutor's office." MONTGOMERY COUNTY HISTORY AND ANNUAL 43 (1926). Hoskot "served under Haveth E. Mau, taking office immediately after the death of Wm. Marshall, in 1919. He continued to serve during both terms of Mr. Scharrer." *Id.* Prior to becoming County Prosecutor, Mau had been in private practice; ten years of that practice was spent in partnership with Ralph Hoskot. 3 MEMOIRS OF THE MIAMI VALLEY 395 (1919).

ern District of Ohio. Scharrer's tenure as County Prosecutor is examined below, but before proceeding with that discussion, it is necessary to examine his abbreviated career as a law professor.

B. Professor (1922-1923)

In 1920, St. Mary College became the University of Dayton, and on October 1, 1922, the University of Dayton opened a College of Law.[173] The College of Law "was organized to enable students to follow the study of law who are compelled to work during most of the day, and also to provide the matriculated student the opportunity to pursue the study of law in connection with his college course."[174] At first, students were admitted if they had a high school diploma or its equivalent; later, the school would insist that its entrants have completed two years of college education.[175]

John C. Shea founded the College of Law and became its first dean.[176] Classes were held "from 5:20 in the afternoon to 7:30 in the evening" on "every alternate day of the week."[177] The program lasted for "four years, and when successfully finished the graduate will be

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173. Samad, *supra* note 21, at 175; *see also* Sharkey, *supra* note 10, at appendix II.

The Dayton YMCA had opened a law school in 1925. "[This] law program was ill-conceived . . . because a part-time program was extant at the University of Dayton, and [its] academic potential . . . was far superior to that of an unaccredited YMCA school of vocational orientation." Samad, *supra* note 21, at 161. It was also "ill-timed" because it began at the moment when the Ohio Supreme Court adopted a requirement of two years of college education for admission to the bar, which meant that the school could not rely upon high school graduates as its students. *Id.* at 161–62. Nor did the school have funding sufficient to permit it to meet the new accreditation requirements, i.e., of a law library and full-time faculty. *Id.* at 162. "Criticism of both schools by the Dayton Bar Association resulted in the Young Men's Christian Association school being discontinued and amalgamated with that of the University of Dayton." 2 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE 785 (1932). This occurred in 1929. Samad, *supra* note 21, at 176.

174. Sharkey, *supra* note 10, at appendix II (excerpt from University of Dayton Bulletin - College of Law 37 (Oct. 1923)).

175. Samad, *supra* note 21, at 175; *see also* Sharkey, *supra* note 10, at appendix II. The school also required that entrants "present satisfactory evidence of moral character, and . . . be at least seventeen years of age." University of Dayton Bulletin - College of Law 38 (Oct. 1923).

176. Sharkey, *supra* note 10, at 6–7. "In preparing for the school, John C. Shea gathered a history of the law schools in Ohio and the surrounding states in order to determine the courses to be taught at UD [sic]. He also went from school to school inspecting their systems." *Id.* at 7. For a description of Shea and his path to the law, see *supra* note 10.

177. Sharkey, *supra* note 10, at appendix II (excerpt from University of Dayton Bulletin - College of Law 38 (Oct. 1923)). "These hours are convenient both for the regular students in the University and the residents of Dayton desirous of preparing for the Law." University of Dayton Bulletin - College of Law 46 (Oct. 1923). In 1930, the school implemented "a full-time law course of three years in the day. The classes are offered in the morning so as to enable the students to procure employment in the afternoons." University of Dayton Bulletin - College of Law 3 (Jan. 1932).

given a degree of Bachelor of Laws."[178] Instruction was by a "combined Case Book and Text Book System, supplemented by lectures, quizzes and written examinations."[179] Tuition was forty dollars per semester, and could be paid "semi-annually or in monthly installments, but in each case strictly in advance."[180]

Students took five classes during the first year of their four year program—contracts, torts, domestic relations, criminal law and civil procedure.[181] The faculty consisted of Dean Shea, Guy H. Wells, Joseph B. Murphy, S.S. Markham and Albert H. Scharrer, each of whom taught law as an adjunct to the full-time practice of law.[182] Shea taught contracts, Markham taught torts and civil procedure, Murphy taught domestic relations and Scharrer taught criminal law; Wells' duties during this period are not specified in the school bulletins, but he later recalled that he taught "Common Law Procedure and Sales."[183]

Of the five instructors, Scharrer was the only one who did not have a law degree.[184] The College of Law eliminated this deficiency by awarding him an Honorary L.L.B; although it is not certain as to when this occurred, it seems reasonable to assume that the degree was awarded in the spring of 1924. It does not appear in the recitation of Scharrer's credentials that appeared in the fall, 1923 bulletin,[185] and

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178. University of Dayton - College of Law 3 (Jan. 1932) To graduate, a student had to satisfy the following requirements: "Be twenty-one years of age at the time of receiving the degree, fulfill the academic requirements, make the required attendance upon lectures, and obtain the required marks in all courses scheduled for the degree." *Id.*

179. *Id.* The "case book" method was introduced at the end of the nineteenth century as the "scientific" approach to teaching law, because it encouraged students to analyze discrete cases as the often problematic, empirical corpus of "the law." *See, e.g.,* R. STEVENS *supra* note 21, at 51–72. It replaced the "text book" method of instruction, which proceeded as follows: "The student is assigned daily a certain portion of an approved text-book for his reading prior to listening to expositions of the subject involved [i.e., lectures]. To make the assignment effective, he is asked questions upon the topic, mainly to make it certain that he has studied the subject . . . ." Samad, *supra* note 21, at 30. During the 1920's, it was common for law schools to combine the two methods of instruction. *See* R. STEVENS, *supra* note 21, at 157.

180. Sharkey, *supra* note 10, at appendix II (excerpt from University of Dayton Bulletin - College of Law 39 (1923)). There was also a five dollar "Matriculation fee" and a ten dollar "Athletic and Library fee." *Id.* The law library was "located at the University, in St. Mary Hall. In it will be found books on all the subjects taught in the course." *Id.* By 1932, tuition had increased to $570 for two semesters. University of Dayton Bulletin - College of Law 10 (1932).

181. University of Dayton Bulletin - College of Law 39 (Oct. 1923).

182. Sharkey, *supra* note 10, at 7–8.

183. Sharkey, *supra* note 10, at appendix II (excerpt from letter from Guy H. Wells to Gerald Shea Sharkey (Mar. 9, 1965)). Scharrer may have taught evidence, as well. *See* 3 HISTORY OF SOUTHWESTERN OHIO - THE MIAMI VALLEY 318 (1964).

184. Markham's degree was from Harvard, Murphy's was from the University of Notre Dame and Wells' was from Cornell University. In addition to an LL.B. from Western Reserve University, Shea had acquired an LL.M. from the University of Notre Dame. University of Dayton Bulletin - College of Law 46 (Oct. 1923).

185. Although it seems that such a degree was awarded, neither the degree nor the official

his daughter remembers that the degree was awarded "so that he could teach at the law school."[186] If that was the motive for the award, then it was an exercise in futility, as Scharrer left the law faculty, probably in 1924.[187]

It is interesting to speculate as to the reasons for his departure. One possibility is that he left because the demands placed upon his time by his position as prosecutor made it inconvenient for him to continue; the likelihood that time constraints were a factor is enhanced by an empirical circumstance, the birth of his daughter on January 21, 1923,[188] and supported by a newspaper report which appeared in January of 1925. According to this report, Scharrer was "[c]onfined to his home because of overwork strain" and had been ordered "to refrain even from looking over his business correspondence."[189]

Another possibility is that he left to accommodate the university, which was attempting to gain accreditation from the North Central Association of Colleges and Secondary Schools.[190] Some difficulties arose in this area, as the ABA/AALS insisted that the law school must "have at least three full time teachers" and "an adequate law library."[191] The first requirement was particularly difficult, as "a lawyer,

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records of the College of Law have survived. Several biographies state that Scharrer was awarded the degree, and one of them asserts that it was awarded in 1922. Program, *supra* note 2. "In 1922 Mr. Scharrer was granted an Honorary Degree from the University of Dayton where he taught criminal law for several years". *Id.* Others indicate that he received such a degree, but do not specify when it was awarded. *See, e.g.*, Sixty Years Testimonial, *supra* note 5; *see also* 3 HISTORY OF SOUTHWESTERN OHIO - THE MIAMI VALLEY, 318 (1964). Unfortunately, copies of the 1924 bulletins of the College of Law have not survived, so that one is reduced to informed speculation as to when the degree might have been awarded. Although it is conceivable that it was awarded some time after Scharrer severed his connection with the law school, there are two items which suggest that this is not the case: The above-quoted observation that the degree was awarded in 1922 and his daughter's recollection that the degree was awarded so that her father "could teach at the law school." *See infra* note 185 and accompanying text. On the other hand, since the university awarded an honorary doctorate to John Shea "[i]n 1926 upon the graduation of the first law class", it may well have been that Scharrer's degree was also awarded at some later date. Sharkey, *supra* note 10, at 9 n.33 (citing THE UNIVERSITY BUILDER (1926)).

186. Interview with Jane Scharrer (Dec. 15, 1988).

187. Again, no copies of the College of Law's bulletins for 1924 have survived, so it is not possible to determine whether or not Scharrer was on the faculty at this time. It is certain that he was not listed among the faculty in the bulletin that issued for October, 1925, or in any succeeding bulletins issued by the law school until it closed in 1936. Samad, *supra* note 21, at 176. He was replaced by Judge Robert Patterson, who became the criminal law professor. Sharkey, *supra* note 10, at appendix II.

188. *See e.g.*, Sixty Years Testimonial, *supra* note 5.

189. Dayton Daily News, Jan. 1925. The account reported that Scharrer was "not expected back in his office for several days and possibly all . . . week." *Id.*

190. Sharkey, *supra* note 10, at 9–12. It seems that the law school was also attempting to gain accreditation from the ABA/AALS. *See generally supra* note 10.

191. Sharkey, *supra* note 10 at 9–12. The University of Dayton applied for accreditation in 1925 and was given three years in which to satisfy accreditation requirements. *Id.* at 9. In 1928, it

in order to teach full time, would have to give up the much more lucrative practice of law."[192] The second meant that the school would have to plough scarce financial resources into a venture that was uncertain, at best.[193]

The university attempted to satisfy these requirements, and even considered evading them,[194] but to no avail. In 1933, the North Central Association ordered the university to accept no more students and to close the law school once the existing classes had graduated; the final class graduated in 1936, and the law school closed for almost forty years.[195]

C. *Prosecutor (1922-1927)*

> 'I AM INNOCENT!' CRIES A PURPLE DEFENDANT, IN GREEN LETTERS. 'MURDERER!' HISSES A MAGENTA PROSECUTOR, IN CHARACTERS OF VERMILION.[196]

Scharrer ran for prosecutor on the Republican ticket in 1922,[197] with the support of at least one local newspaper.[198] In his campaign, he announced that if he were elected, he would implement "innovations" which would "not only . . . improve the efficiency of the office but at

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received provisional accreditation for three years; the adequacy of the law school became a major issue in the decision as to whether or not the university should receive full accreditation. *See id.* The law school added its full-time, three year program in order to satisfy other ABA/AALS requirements. *See id.* at 12.

192. *Id.*

193. [T]he University's finances, in face of declining enrollment, did not permit the school to meet the standards pertaining to the faculty and law library. Further, 'the student body of the Law School were largely interested in passing the Bar, and not in the educational philosophy of the University,' and the University 'didn't think we should continue to operate the Law School at the expense of other departments.'

Samad, *supra*, note 21 at 176 (quoting Letter from Rev. George J. Renneker, S.M., retired Vice President, to Stanley A. Samad (July 22, 1957)).

194. Father Bernard P. O'Reilly was at this time president of the University and he conceived a rather ingenious plan. "He planned to close the law school just long enough for [the university] to receive full and unprovisional accreditation and then he believed that [the university] could reopen it." *Id.* at 13 (citing interview with Rev. George Renneker, S.M., former dean, vice-president and registrar of the University of Dayton (Feb. 22, 1965)).

195. *Id.; see also* University of Dayton School of Law Bulletin (1988–89) ("In 1974 . . . the University of Dayton School of Law reopened under the direction of Dean Richard L. Braun").

196. A. TRAIN, *supra* note 135, at xi.

197. Dayton Herald, May 6, 1922. "Albert H. Sharrer [sic] yesterday filed his declaration with the Montgomery county board of elections as a candidate for the Republican nomination for county prosecutor." *Id.*

198. "During the last four years he has served as first assistant county prosecutor. In the last eighteen months he had handled practically the entire criminal docket, trying before juries approximately fifty cases. Of these there were only four acquittals." Dayton J., Oct. 30, 1922, editorial.

the same time reduce expenses."[199] "One of the most important . . . is the speeding up of the trial of criminal cases."[200]

Whether it was due to this announcement, the support of the local papers or a combination of these and other factors, Scharrer was sworn in as Montgomery County prosecutor on December 30, and assumed his new duties on January 1, 1923.[201] Charles Brennan became his chief assistant. "Under him will be Paul Wortman, Ralph Hoskot, Rolla M. Galloway and Herbert D. Mills."[202] Mau was awaiting "his appointment . . . as district attorney for the southern Ohio District," which finally came in April.[203]

Since this is an anecdotal history, the sections below trace Scharrer's activities as prosecutor by examining some of his more significant cases; in this context, "significant" denotes either that a particular case involved novel or otherwise interesting legal issues or that the factual details of a controversy contribute to understanding the social milieu of the era. The discussion proceeds chronologically, beginning with 1923.

1. 1923

a. Ku Klux Klan

He began by walking into a hornet's nest. Four days after he took office, the *Dayton Daily News* reported that a county grand jury would investigate the Ku Klux Klan and its "circulation of literature prejudicial to certain creeds and races, on the night before the election of November 7, last."[204] According to this article, Scharrer and Common Pleas Judge Robert Patterson planned "to ask the grand jury to return indictments against 27 or 28 Dayton men said to be members of the Klan."[205]

The *Dayton Herald* quoted Scharrer as saying that the investigation was "strictly news" to him.[206] "Scharrer said Judge Patterson

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199. A. DRURY, 1 HISTORY OF THE CITY OF DAYTON AND MONTGOMERY COUNTY OHIO 401 (1909).

200. *Id.*

201. Dayton Daily News, Dec. 30, 1922. Howard H. Webster was sworn in as Sheriff of Montgomery County on the same day. *Id.*

202. *Id.* "Mills, Wortman and Brennan [were] the new appointees in the office." *Id.*

203. *Id.*; Program, *supra* note 3.

204. Dayton Daily News, Jan. 5, 1923. The "literature" consisted of "hand bills" attacking "a number of Democratic candidates, three of whom were on the judicial ticket." Dayton Daily News, Jan. 6, 1923.

205. Dayton Daily News, Jan. 5, 1923. "Reports . . . were that the list of names, which is said to be in the possession of Prosecutor Scharrer, contains the names of many prominent business men." Id.; *see also* Dayton Daily News, Jan. 6, 1923. On Aug. 27, 1923, the papers reported that the Klan had purchased the "So-Co Printery, Mead and Longworth streets;" the "printery" was to be used to publish "a national Ku Klux Klan organ." Dayton Herald, Aug. 27, 1923.

206. Dayton Herald, Jan. 5, 1923.

mentioned the matter to him some months ago, but he felt at the time the judge was joking."[207] " 'If the judge wants an investigation of the klan, there will be one, of course,' Scharrer said."[208]

It did not, however, come to pass. Although the grand jury was impaneled and charged with the investigation,[209] on January 23, 1923, Judge Patterson asked Scharrer to "dismiss the investigation for the present" because the county was in the midst of a financial crisis. "The grand jury cannot go ahead with this Ku Klux Klan investigation. How would it dare to summon witnesses or take any other action in an investigation of this nature when the county commissioners cannot find the money to pay for it."[210]

At a meeting which was held in an attempt to resolve the crisis, both Judge Patterson and Judge E.T. Snediker volunteered "to hear liquor cases" in the event that such cases were placed on the court docket "to increase the receipts into the county treasury from liquor fines."[211] Two other judges indicated that they, too, "would be very willing to hear liquor cases if they [were] not assigned dates to interfere with or take precedence over the regular court docket."[212] This sensible proposal was not met with unanimous approval, as "Assistant Prosecutor Wortman intimated" that he would oppose trying liquor cases before these judges "unless an arrangement [could] be made for

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207. *Id.*

208. *Id.*

209. Dayton Daily News, Jan. 9, 1923. The *News* ran a photograph of the members of the grand jury, over a caption which noted, in part, that they were "[t]he grand jurors who were charged Tuesday morning by Judge Robert C. Patterson to investigate the alleged activities of the Ku Klux Klan in Montgomery County." *Id.* Both Scharrer and his first assistant, Charles Brennan, appear in the photograph. *Id.*

210. Dayton Daily News, Jan. 23, 1923 (quoting Judge Patterson). The budgetary problems were reported in a story published the day before, but this story did not indicate that these problems would have an impact upon the investigation of the Klan. Dayton Daily News, Jan. 22, 1923. By October, 1922, the county had spent the monies that were allocated for the operation of the court system until March 1, 1923, along with another $42,000 which it had borrowed to keep the system operating between October, 1922 and January, 1923. *Id.* As of January, 1923, the county found itself $42,000 in debt with no funds available to operate its judicial system; although another $43,500 would become available on March 1, that money was pledged to liquidate the debt that had been incurred in the fall of 1922. *Id.* Consequently, "jurors, witnesses, judges and court attaches [were] carrying unpaid salary vouchers which Treasurer Charles A. Kline refuse[d] to cash. 'Insufficient funds,' he quote[d] as a reason." Dayton Daily News, Jan. 23, 1923.

211. Dayton Daily News, Jan. 22, 1923. A statute in force at the time provided that "[m]oney arising from fines and forfeited bonds" in prosecutions for violating the liquor prohibition laws "shall be paid one-half into the state treasury . . .[and] one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal, or county officer." OHIO REV. CODE § 6212-19 (1923).

212. Dayton Daily News, Jan. 22, 1923. The two were Judge U.S. Martin and Judge Alfred McCray. *Id.*

quick trial and speedy disposition of the cases."[213] To understand Wortman's objection, it is necessary to understand the state of the prohibition laws at this time.

b. Prohibition - Overview

> [T]he people of Ohio, by amendment to their Constitution adopted November 5, 1918, and effective after midnight May 26, 1919, prohibited the sale and manufacture . . . of intoxicating liquor . . . and gave the general assembly authority to enact laws to make the provision effective. In accordance with this authority the general assembly enacted . . . the Crabbe Act, which outlaw[ed] intoxicating liquor for beverage purposes.[214]

Ohio anticipated prohibition measures which were eventually implemented at the federal level. On January 16, 1919, the "Secretary of State announced that the [eighteenth] amendment had been ratified by the required number of states, and would go into effect everywhere in the United States one year from that date."[215] The federal enforcement provision, known as the Volstead Act, became law on October 28, 1919.[216]

Although the goal was to establish a system in which enforcement would proceed at both the state and federal level, "[t]he tendency throughout the country was to leave it to the federal government."[217]

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213. *Id.*

214. 23 O. JUR. *Intoxicating Liquors* § 28 (1932)[hereinafter Intoxicating Liquors]. The Crabbe Act outlawed "liquor" consisting of "alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any distilled, spiritous, malt, vinous, or fermented liquor, and also any liquid . . . containing one half of 1 percent or more of alcohol by volume, which is fit for use for beverage purposes." *Id.* § 2.

215. H. ASBURY, THE GREAT ILLUSION: AN INFORMAL HISTORY OF PROHIBITION 132 (1950); *see also* A. SINCLAIR, ERA OF EXCESS: SOCIAL HISTORY OF THE PROHIBITION MOVEMENT 152–72 (1962); J. KOBLER, ARDENT SPIRITS: THE RISE AND FALL OF PROHIBITION 198–220.

216. J. KOBLER, *supra* note 215, at 214.

> Responsibility for the enforcement of the Volstead Act was lodged by Congress in the Bureau of Internal Revenue, a subdivision of the Treasury Department. As the first Prohibition Commissioner, the Secretary of the Treasury appointed John F. Kramer of Mansfield, Ohio, an ardent prohibitionist, and a lawyer who had formerly been a member of the Ohio Legislature.

H. ASBURY, *supra* note 215, at 134. In 1921, Kramer was succeeded by Roy Asa Kaynes, "an Ohio Republican" and "former mayor of Hillsboro, Ohio." J. KOBLER, *supra* note 215, at 274. Kramer established the "Prohibition Unit, the name of which was changed in 1927 to Prohibition Bureau." H. ASBURY, *supra* note 215, at 135. Throughout its history, the federal prohibition enforcement agency was characterized by corruption, inefficiency, ineffectiveness and ever-increasing demands for budget appropriations. *See, e.g.*, H. ASBURY, *supra* note 215, at 168–89; J. KOBLER, *supra* note 215, at 271–300.

217. J. KOBLER, *supra* note 215, at 271. Like the other states, Ohio had its own prohibition enforcement bureau, consisting of "a commissioner of prohibition, a deputy commissioner, and regular and temporary inspectors."

"In 1923 the combined expenditures on prohibition enforcement of all forty-eight states did not reach half a million dollars."[218] Aside from limited funding, enforcement was impeded by corrupt personnel and an unmanageable proliferation of cases. Although it is not possible to consider these issues in detail, it is helpful to review them in order to have some appreciation for the climate in which Scharrer became a prosecutor.

Corruption soon reached incredible proportions. In 1920, Warren Gamaliel Harding, former editor of the Marion, Ohio *Star*, became President of the United States.[219] Harding, a likeable, weak man, took his Ohio "cronies" with him to Washington, where certain of them became notorious as the "Ohio gang." "With Harry Daugherty as Attorney General and the unscrupulous William J. Burns running the Department of Justice as a private police force for the gang's benefit," its members dealt in "protection for bootleggers, illegal withdrawals of bonded liquor, pardons and paroles for ready cash [and] prosecutions dropped for a price."[220]

Jess Smith, who was "Daugherty's man Friday" and "the Ohio Gang's chief fixer,"[221] helped a Chicago lawyer to become "king of the bootleggers."[222] George Remus established his operation in Cincinnati " 'because eighty per cent of the bonded whiskey in the country was within three hundred miles of that city.' "[223] He dealt exclusively in "medicinal whiskey." The prohibition laws permitted whiskey to be distilled and provided to pharmacies for dispensation according to a doctor's prescription.[224] Remus exploited this, buying distilleries and a

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218. Intoxicating Liquors, *supra* note 214 § 42. Prohibition laws "were eagerly enacted by the legislatures at the behest of the Anti-Saloon League and other dry organizations, but almost no attempts were made to enforce them, even in the states which were under prohibition when the Eighteenth Amendment went into effect." H. ASBURY, *supra* note 215, at 171. "The bootleggers had more than a hundred times the appropriation of the [Prohibition] Bureau at their disposal, and were far better organized." A. SINCLAIR, *supra* note 215, at 184. Ohio did tend to spend more expansively in this area than did its peers; in 1927 its "appropriation of $146,577 was the largest" of any of the states. H. ASBURY, *supra* note 215, at 171. Utah spent one hundred and sixty dollars on prohibition enforcement in that same years, while Missouri and Nevada each spent less than one thousand dollars on that same enterprise. *Id.*

219. A. SINCLAIR, *supra* note 215, at 252–56.

220. *Id.* at 258, 285. The Volstead Act was used by the Ohio Gang as a protection racket. A file from the Department of Justice listed convicted bootleggers, who could be sold pardons. Special agent Gaston B. Means testified that he collected some $7,000,000 from bootleggers in a goldfish bowl to square the Department of Justice. *Id.* at 185.

221. F. ALLEN, ONLY YESTERDAY: AN INFORMAL HISTORY OF THE 1920'S 125 (1931).

222. A. SINCLAIR, *supra* note 215, at 410.

223. J. KOBLER, *supra* note 215, at 317. Prior to moving to Cincinnati, Remus was practicing in Chicago, where his clientele began to include bootleggers: " 'I was impressed by the rapidity with which those men, without any brains, piled up fortunes in the liquor business,' he recalled later. 'I saw a chance to make a clean-up.' " *Id.* at 316–17.

224. H. ASBURY, *supra* note 215, at 218–19. There was no limit on the amount of liquor

drug company; the drug company could legally withdraw whiskey from Remus' distilleries so long as it had obtained a federal permit to do so.[225] For a fee, Jess Smith supplied Remus with those permits.[226]

Remus' scam was very simple. His drug company would order whiskey from one of his distilleries and, on the way, the whiskey would be diverted from its course, winding up at "a hideaway, part depot, part arsenal, known as Death Valley Farm."[227] The whiskey was stored at the farm until it was shipped out in response to "purchase orders from retail bootleggers scattered throughout" Ohio, Kentucky, Indiana, Illinois and Missouri; the shipments traveled by trucks which carried guards to prevent highjacking.[228]

Remus eventually "owned fourteen distilleries, employed 3,000 truckers, salesmen and guards and controlled approximately one-seventh of all the medicinal liquor distilled in the United States."[229] He earned $2,000,000 the first year, $25,000,000 the third and his net worth exceeded $40,000,000.[230] His activities ended in 1924, when he was convicted of conspiring to violate the prohibition laws.[231] But at least until that time, Remus' trucks were traveling through the Dayton area, and Remus' whiskey must have found its way into the city.

The sheer volume of cases also proved an impediment. In June, 1920, the United States Attorney in Chicago "reported that the courts

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that Remus' distilleries could produce. *See, e.g.*, J. KOBLER, *supra* note 215, at 315.

225. *See* J. KOBLER, *supra* note 215, at 315.

226. *Id.* at 317. Smith's fee was from $1.50 to $2.50 for each case of whiskey encompassed by a permit. *Id.* Eventually, Remus paid Smith a quarter of a million dollars for this service. *Id.* In 1920, an IRS agent taped Remus as he bribed forty-four persons, including federal prohibition agents, federal marshals and local politicians; although the agent reported the matter to his superiors in Washington, no action was taken. *Id.* at 318.

227. J. Kobler, *supra* note 215, at 315. From Cincinnati's Queen City Avenue, paralleling the Ohio River, an unmarked road shot off toward farm county. Drivers could easily miss it unless they knew to look for a tar line curving into the side road. It had been painted there for the guidance of whiskey truckers, leading them to . . . Death Valley Farm. *Id.*

228. *Id.* "Pitched battles on the highways left numerous fatalities. No guilt was ever assigned." *Id.* at 317.

229. *Id.* at 315–16.

230. *Id.* In 1922, Remus distributed, as gifts at a New Year's Eve party, "$25,000 worth of jewelry to the men and to each woman, an automobile." *Id.* at 318.

231. *Id.* at 319. According to a federal prosecutor, the government prosecuted Remus for conspiracy in order to enhance his sentence: "[H]ad we indicted him under the National Prohibition Act do you know what was the limit sentence the judge could have given him? Six months! Under [the conspiracy statute], the judge gave him the limit of the law, which was two years!" Willebrandt, *The Department of Justice and Some Problems of Enforcement*, LAW VS. LAWLESSNESS 78, 84 (1924). Paul Wortman presented Scharrer with a copy of this volume, which contains "addresses" delivered at a conference held in Washington in 1923; the subject of the conference was "the flagrant violations of law . . . taking place, with particular reference to the Eighteenth Amendment and the Enforcing Acts." *Id.* at 5. This certainly suggests a level of interest in the enforcement problem, presumably as it manifested itself in Dayton.

there were already congested, with between five hundred and six hundred cases awaiting trial and more coming in all the time" and "the Department of Justice . . . declared that 'the United States courts today are staggering under the load imposed on them by prohibition legislation.' "[232] State courts tended to be less congested, "partly because the biggest cases were usually transferred to the federal authorities for prosecution."[233] In 1923, Federal Prohibition Commissioner Roy Haynes reported that, in Ohio, his agency was "securing good co-operation from most of the county and municipal officials, as well as from the state force."[234]

As far as enforcement in Dayton is concerned, the Ku Klux Klan fiasco suggests that the criminal justice system did not enjoy an abundance of funding during this era and the comments from Judges Patterson, Snediker, Martin and McCray suggest that court congestion may have been a problem as well. The sections below attempt to reconstruct the parameters of prohibition enforcement in this community from prosecutions that were brought during Scharrer's tenure as prosecutor.

With regard to what was no doubt the greatest obstacle to effective enforcement of the prohibition statutes, it is certain that Albert Scharrer was not corrupt and would not have tolerated corruption in his own office.[235] The discussion below, however, reveals that he did

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232. H. ASBURY, *supra* note 215, at 170. In 1923, Federal Prohibition Commissioner Roy A. Haynes, who would be severely criticized for what could charitably be characterized as boundless optimism, announced that from "June 1921, through March 31, 1923, there were 65,760 criminal cases begun in United States courts" with "43,905 convictions secured." Haynes, *The Facts of Prohibition Enforcement*, LAW VS. LAWLESSNESS 21, 30 (1923); For criticisms of Haynes, see J. KOBLER, *supra* note 215, at 274. Haynes also reported that Ohio has one of the best state enforcement codes in America. The State Prohibition Commissioner, under the state code, recently reported that in the first eight months of 1923 his department had made 6,520 arrests, assessed $1,407,209.00 in fines, and collected $1,079,719.00, whereas the cost to the state of the entire force for a full year is only $108,000.00. Haynes, *supra* note 232, at 29. This characterization was offered for the state which was the scene of George Remus' operations by a Prohibition Commissioner who supplied the Ohio Gang with liquor for the notorious parties that it hosted at its K Street headquarters in Washington. *See* J. KOBLER, *supra* note 215, at 274 (liquor was "delivered to the front door in Wells, Fargo express wagons with armed dry agents on guard").

233. H. ASBURY, *supra* note 215, at 170. New York experienced such an accumulation of prohibition cases that, after 1923, its police "referred all complaints of violations . . . to the Prohibition Bureau and the United States Attorney." *Id.* at 172.

234. Haynes, *supra* note 232, at 29–30.

235. "Corruption," here, refers to overt acts designed to subvert the enforcement mechanism in this community, i.e., taking bribes and other, similar conduct. Interesting questions arise, however, as to whether Scharrer himself abstained from bibulousness during this period and, if he did not, whether this was an ethical transgression. After a Kansas attorney was disbarred for "hav[ing] on his back porch a jug containing a small quantity of intoxicants," a debate arose as to whether or not the simple possession and/or personal use of liquor was sufficient cause for disbar-

discover corruption in another county office and describes his efforts to eliminate it.

c. Prohibition Cases

On March 29, in a case that was "the first of its kind in the county," a jury failed to convict John Schmidt of violating the Crabbe Act.[236] Schmidt already had two convictions, for "manufacturing whiskey and . . . possessing intoxicants," and was tried under a new statute which made a third violation of the Act a felony "punishable by imprisonment from one to five years in the state penitentiary and a fine of $500 to $2000."[237] He was arrested by "Hayes Reed, notorious speed cop of Wayne township" after a raid on his home produced "a quart of liquor in Schmidt's yard and five gallons of rhubarb wine in the basement."[238] His home was raided "by Reed and his men at midnight September 29 while Schmidt's wife and her mother were alone in the house."[239] The jury was apparently influenced by the prosecution's inability to establish that Schmidt had sold any of the wine to which he apparently laid claim and by his assertion that the liquor did not belong to him.[240]

The difficulties of enforcing prohibition in Dayton are illustrated by two incidents which occurred in the fall of 1923. The first came when "Fred Wolf, acting chief deputy sheriff, after conferring with Prosecuting Attorney Albert H. Scharrer" ordered "Oscar 'Red' Gilmer . . . to close his camp on the Troy pike . . . on the grounds that it was a nuisance to the community."[241] Wolf's action was prompted by

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ment. *See, e.g.*, Note, *Moral Turpitude and the Eighteenth Amendment*, 17 IOWA L. REV. 76 (1931); Note, *Moral Turpitude and its Connection with the Infraction of Liquor Laws*, 75 U. PA. L. REV. 357 (1927); see generally Ruddy, *Lawyers and the Flowing Bowl*, 5 NOTRE DAME LAWYER 3 (1929) ("Attend any modern Bar Convention and . . . look for the flasks. The old habits . . . have not disappeared").

236. Dayton Daily News, Mar. 29, 1923.

237. *Id.* Under the statute, a first violation of the Act was punished with a fine of "not less than one hundred dollars nor more than one thousand dollars," while a second offense was punished with a fine of "not less than three hundred dollars nor more than two thousand dollars." OHIO REV. CODE § 6212-17 (1923).

238. Dayton Herald, Mar. 29, 1923.

239. *Id.*

240. *Id.* "The fact that most of the evidence seized was wine also weakened the state's case." *Id.* The liquor, which was whiskey, was found in a corner of Schmidt's yard, which allowed him to disclaim any knowledge of it. *Id.* The first proposition is reasonable in the light of the prevailing law: The federal courts had held that simple possession of liquor was not a violation of the Eighteenth Amendment or of the Volstead Act. *See, e.g.*, Intoxicating Liquors, *supra* note 214, § 59. Although the Crabbe Act explicitly prohibited the possession of "liquor," the jury appears to have relied upon the theory that Schmidt's wine was not "liquor" within the compass of the statute. *See* OHIO REV. CODE § 6212-16 (1923).

241. Dayton Herald, Aug. 27, 1923. The order came after "a shooting scrape . . . which resulted in the wounding of Kinnard Johns, known as 'Kid Chump.'" *Id.*

reports that "crap shooting and prohibition law violations" were occurring at the camp, which seems to have been a training camp for prize fighters.[242] What is most interesting is that Gilmer was a former Dayton police officer who was "discharged . . . when he was caught transporting liquor."[243]

The second incident occurred in October. In response to agitation by the Anti-Saloon League, Scharrer filed an action under the state's "padlock law," which required that a judge who entered a conviction for selling liquor must also enter an order either closing the establishment or requiring the proprietor to post a one thousand dollar bond as assurance that no further violations would occur.[244] Scharrer filed his action because Police Judge William G. Powell had been refusing to carry out this part of the statute. "Despite the arraignment of the same men in his court for frequent offenses against the Crabbe Act, he refused to invoke the padlock law."[245] After failing to convince Powell to carry out his obligations in this regard, the League contacted Scharrer; his action produced a settlement by which both the owner and proprietor of an establishment at Sixth and Ludlow Streets would post the bond.[246]

On November 2, Harry Roderick was convicted "under the new Bender law, passed by the las[t] legislature putting 'teeth' in the eighteenth amendment."[247] The law went into effect in May of 1923 and increased the penalties for manufacturing distilled liquor, so that a first violation was punishable by a fine of "not less than five hundred dollars nor more than three thousand dollars" and imprisonment "in the state penitentiary [for] not less than one year nor more than five years."[248] Roderick was arrested after "a raid on his home . . . found a complete still in operation upstairs in his house."[249] "His indictment . . . was obtained through the efforts of Prosecuting Attorney Albert H. Scharrer, who contended that severer penalties should be given these persistent law violators."[250] Roderick pled guilty and, notwithstanding this observation, was sentenced as a first offender, to "a fine of $500 and

242. *Id.*
243. *Id.*
244. Dayton Daily News, Oct. 25, 1923.
245. *Id.*
246. *Id.*
247. Dayton Herald, Nov. 2, 1923.
248. *Id.* Second and subsequent offenses were punishable with a fine of "not less than one thousand dollars nor more than five thousand dollars" and imprisonment for "not less than two years nor more than ten years." OHIO REV. CODE § 6212–17 (1924).
249. Dayton Herald, Nov. 2, 1923.
250. *Id.*

one year in the Ohio State penitentiary."[251]

Scharrer assumed a rather different posture with regard to another offender, Joseph Shrodi, whose trial was set to begin a month later. "The jury was in its place and the 50-gallon still which officers say belonged to Shrodi was brought into the ante room when Shrodi entered a plea of guilty."[252] Since Shrodi pled to the offense with which Roderick had been charged, one would assume that a similar sentence issued; this was not, however, the case. "In consideration of [his] four small children, . . . previously clean record and the fact that he was said to have operated the still only a week, Judge Patterson upon the recommendation of Prosecutor Albert Scharrer and Paul Wortman, assistant county prosecuting attorney, deferred sentence."[253] Judge Patterson was careful to note, however, that " '[t]he court's action in this case is not to be regarded as a precedent.' "[254]

In November, Scharrer announced that he was taking the position, in a brief to be filed with the court of appeals, that "the possession of fruit juice, unless intended for making vinegar, [was] unlawful."[255] The brief was filed in an appeal brought by Vito Rotuno, who was "the first person in this vicinity to be arrested for having wine in his possession;" Rotuno was convicted of violating the prohibition laws, and appealed.[256] Scharrer's argument was presumably predicated upon an Ohio statute which provided that the prohibition laws did not "apply to a person for manufacturing vinegar, or non-intoxicating cider and fruit juices exclusively for use in his home."[257]

d. Other Cases

Aside from prohibition cases, Scharrer's professional life centered around a potpourri of crime that is not dissimilar to that which manifests itself in present-day Dayton.

On March 6, "Montgomery County's youngest convicted murderer" was given life in prison for stabbing "Frank P. Weidner, Miamisburg patrolman, while celebrating Armistice day, 1922."[258] The

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251. *Id.*

252. Dayton Herald, Dec. 18, 1923. "The still and 550 gallons of mash was [sic] confiscated October 13 in a raid at 4005 Home avenue." *Id.*

253. *Id.* The four children, "ranging in age from 11 months to six years," had been in the courtroom awaiting the commencement of their father's trial. *Id.*

254. *Id.* "The circumstances peculiar to this case led to the deferment of the sentence,' Judge Patterson announced." *Id.*

255. Dayton Herald, Nov. 15, 1923.

256. *Id.*

257. OHIO REV. CODE § 6212-17 (1924).

258. Dayton Herald, Mar. 6, 1923. "Weidner died at the Miami Valley hospital five days after he was stabbed." *Id.*

defendant; seventeen-year-old Letcherd Johnson, was convicted, after a trial that lasted "but eight hours, of murder in the second degree."[259] The jury consisted of seven men and five women. "[T]he men voted to electrocute Johnson for eleven ballots. The women voted for second degree murder" and, after sixteen ballots, the women prevailed.[260] Apparently, no one was swayed by Johnson's defense, which was that "he was crazy with moonshine liquor at the time" and so "did not remember what occurred."[261]

On March 8, "Herman Matthews, colored," was sentenced "to serve from 1 to 20 years with a minimum time of two years in the Ohio penitentiary . . . for forging eight checks on Dayton merchants."[262] Matthews went to trial but, "[f]ollowing the presentation of the evidence by the prosecution, . . . changed [his] plea of not guilty to guilty."[263] On October 13, Leland Ferden was sentenced "to one to 20 years in [the] reformatory" for forging two checks, one of which, for $39, was tendered to purchase clothing at the Metropolitan Co. and the other of which, for $42.65, was used to make a purchase at the Wayne Furniture Company.[264]

On October 19, John J. Schwartz was sentenced to serve thirty years at hard labor after he pled guilty to embezzling $104,000 from the Miamisburg Banking Company; Schwartz had been president of that institution, and the local paper praised Scharrer for his "[v]igorous efforts" in prosecuting the case.[265]

On October 1, Scharrer obtained indictments against three alleged robbers less than twenty-four hours after they were apprehended; they were apprehended "one hour and a half after the robbery."[266] The three were charged with "robbing the paymaster of the Delco-Light Co. . . . of about $6000."[267] Scharrer and Charles Brennan returned from Columbus and "saw a crowd that had gathered in front of police headquarters to get a glimpse of the" men after their arrest.[268] Scharrer confronted them with a crucial piece of evidence, eliciting statements that led to the return of the indictments.[269] He promised that

259. *Id.*
260. *Id.*
261. *Id.*
262. Dayton Daily News, Mar. 8, 1923.
263. *Id.*
264. Dayton Daily News, Oct. 13, 1923.
265. Dayton Herald, Oct. 19, 1923.
266. Dayton Herald, Oct. 1, 1923; *see also* Dayton Daily News, Oct. 1, 1923; Dayton Herald, Oct. 15, 1923.
267. Dayton Daily News, Oct. 1, 1923.
268. *Id.*
269. Dayton Daily News, Oct. 1, 1923. Since the three had robbed a paymaster and his

there would be a speedy trial and, on October 11, after a one-day trial and jury deliberations which lasted for fifteen minutes, they were convicted and sentenced to "25 years in the Ohio penitentiary, the maximum sentence for robbery."[270] The local papers lauded Scharrer for the speedy justice that he had secured.[271]

On October 23, Judge Patterson announced that unless the local police took action in regard to "a large number of slot machines in Dayton," he would turn the matter over to the grand jury.[272] Judge Patterson directed Scharrer to "notify the chief of police to proceed against the operators of these illegal machines" and asserted that, if no action were taken by November 5, he would charge the grand jury with investigating the matter.[273] According to Patterson, the police were "attempting to hide behind a recent decision" which he had made and which they contended prevented them from confiscating such machines; he pointed out that the decision in question "only applied to . . . one machine" and in no way impeded their ability to take action with regard to others.[274]

On October 31, "Allie Eubanks, negro, . . . was sentenced to life imprisonment in Ohio state penitentiary for the murder of Sam Johnson, negro."[275] After Eubanks was convicted in a trial that lasted four days, Scharrer had asked the death penalty but Judge Patterson decided otherwise.[276] According to testimony at the trial, Eubanks shot Johnson in order to " 'get even with [him]' for a severe beating."[277] Eubanks also testified that he was "24 years old, was married at the age of 14 or 15, and had one child, 9 years old."[278]

On November 6, in an interesting turn of fate, "Raymond F. Sullivan, former Steele High school instructor . . . pleaded guilty . . . to a charge of grand larceny."[279] Sullivan spent his summers working as the "floor manager for the Rike-Kumler Co." and had apparently been

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assistant, a question arose whether one indictment should be returned charging the men with robbing both paymasters. It was decided to file an indictment against the three for robbing each paymaster separately and one charging the prisoners with robbing both. Dayton Herald, Oct. 1, 1923. According to Scharrer, this was done in order "to cover up loopholes that might have existed had only one indictment been returned." Dayton Daily News, Oct. 1, 1923.

270. Dayton Daily News, Oct. 11, 1923.
271. *See, e.g.*, Dayton Daily News, Oct. 14, 1923.
272. Dayton Herald, Oct. 22, 1923.
273. *Id.*
274. *Id.*
275. Dayton Herald, Oct. 31, 1923.
276. *Id.*
277. *Id.*
278. *Id.*
279. Dayton Daily News, Nov. 6, 1923.

taking merchandise from the store for some time.[280] He was sentenced to "one to seven years in the penitentiary, with a minimum of five years," a term which he believed reflected Judge Patterson's outrage at the prospect of a larcenous schoolteacher.[281]

On November 23, Judge Patterson dismissed an indictment against "Walter P. Baughman, secretary of the Dayton Buick Co."[282] Baughman had been indicted for manslaughter after his automobile collided with another vehicle and killed eighty-two year old Julia Bates, who was "returning from decorating her husband's grave at Lebanon."[283] "Liquor was found in Baughman's auto at the time, officers reported."[284] The indictment was dismissed "[a]t the personal request of Miss Mabel Bates," daughter of the dead woman; Miss Bates explained that she wished to have the prosecution withdrawn because "it 'would not bring her mother back' " and because "she received $5,500 from Baughman and the Dayton Buick company."[285]

In December, Scharrer surpassed his performance in the Delco-Light robbery. Two local men robbed "the Xenia av[enue] branch of the City Trust and Savings Bank . . . of $7562" and "[j]ust 75 and a half hours after the commission of the crime both were on their way to prisons."[286] They were captured "the same day the robbery was committed. A special session of the grand jury was called and they were indicted" two days later.[287] Judge Patterson sentenced one to serve twenty-five years in the Ohio state penitentiary, and the other to "an indeterminate term of from ten to twenty-five years in the . . . reformatory."[288] On December 8, Louis J. Wilhoit, of Covington, Kentucky, was sentence to serve "from one to five years" for entering "the home

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280. *Id.* "After his arrest police searched his residence and recovered merchandise valued at about $2000." *Id.*

281. *Id.* According to the paper, in passing sentence Judge Patterson commented that "this act of yours, after having taught children to do right, has done irreparable damage to their minds." *Id.* The paper also reported that, "[w]ith time off for good behavior," Sullivan might serve as little as "four years and two months." *Id.*

282. Dayton Herald, Nov. 23, 1923.

283. Dayton Herald, Nov. 23, 1923.

284. *Id.*

285. *Id.* Miss Bates also "expressed dissatisfaction at the settlement made by an insurance company with which her mother had a policy." *Id.*

286. Dayton Daily News, Dec. 8, 1923; *see also* Dayton Herald, Dec. 8, 1923; Dayton J., Dec. 9, 1923.

287. Dayton Daily News, Dec. 8, 1923. The robbery occurred on Wednesday, and the indictments were returned on Friday. *Id.*

288. Dayton Herald, Dec. 9, 1923. The penitentiary term went to George Neff, who was 23, while his nineteen-year-old partner, Lawrence Schlipf, received the reformatory sentence. *Id.* The local paper reported that before Schlipf was transferred to the reformatory, his mother and father arrived at the jail to serve him a "last meal" consisting of "a chicken dinner, a home-baked pies [sic] and two bottles of pop." Dayton Daily News, Dec. 9, 1923.

of Mrs. S.S. King, 1118 Oakwood Avenue, [on] October 11, 1923" and stealing "several thousand dollars worth of jewelry."[289] Wilhoit told the judge that he committed his crime in order to obtain money to support his wife, "who had been used to a better living than he could give her."[290] Scharrer informed the court that "[t]he girl is a member of a wealthy Covington . . . family."[291]

On December 18, Judge Patterson announced that, due to the "[w]idespread prevalence of automobile stealing," offenders would no longer be given a suspended sentence; he made his announcement in the course of sentencing Samuel Ivory to serve seven years for stealing an automobile from "F.S. Reynolds, 333 West First Street."[292] The theft was Ivory's first offense, and Scharrer was quoted as saying that it was the first time that such an offender had been given "other than a suspended sentence."[293]

2. 1924[294]

At the end of August, Scharrer filed an annual report for the fiscal year ending August 31, 1924, which revealed that "the grand juries which have met since the opening of the September term in 1923 have considered 349 cases, returned 201 indictments, and ignored 141 cases."[295] He was quoted as saying that "the number of criminal cases handled by himself and his assistants was about the average number for a year."[296] Of the 201 indictments, "125 persons pleaded guilty . . . [and] of 13 who pleaded not guilty, 13 were convicted, . . . one was acquitted and . . . in one case the jury disagreed."[297] With regard to sentencing,

> [o]ne prisoner was electrocuted . . . four life sentences imposed; three suspended sentences imposed; three suspended sentences to the peniten-

289. Dayton Herald, Dec. 8, 1923.

290. *Id.*

291. *Id.*

292. Dayton Herald, Dec. 18, 1923.

293. *Id.*

294. As an aside, Scharrer became the president of the Dayton Bar Association in 1924 and, in that capacity, appointed four delegates to attend the American Bar Association convention. Dayton Daily News, July 7, 1924. This convention met "in Philadelphia for three days . . . [and] then sail[ed] for England," spending one week in London and four days in Paris. *Id.*

295. Dayton Daily News, Aug. 26, 1924. In so doing, the grand juries "examined 2244 witnesses." *Id. Accord,* Dayton Herald, Aug. 26, 1924; Dayton J., Aug. 27, 1924. The report also noted 660 cases . . . taken to juvenile court; four civil cases and three criminal cases to the court of appeals; one civil case to supreme court; six civil cases pending in U.S. district court [and] three civil cases taken to probate court . . . . Dayton Herald, Aug. 26, 1924.

296. Dayton Daily News, Aug. 26, 1924.

297. *Id.* "Forty-seven indictments were nolled, in most cases because the prisoners involved had pleaded guilty to other counts." *Id.*

> tiary; 25 men were sentenced to the Ohio State Reformatory, one woman to the State Reformatory for women, and seven men given suspended reformatory sentences. Seventeen were sentenced to the workhouse and fined, six given suspended workhouse sentences, three sentenced to the county jail, fourteen fines imposed and four suspended sentences.[298]

After announcing that "[t]he brightest spot" in the report was the forty-one cases that had been placed on the "open docket," which meant that the offenders had "pleaded guilty but . . . had been given new opportunities to make good," Scharrer offered the following observation: "I am becoming more and more convinced . . . that the real function of the prosecutor's office is to aid men who have erred to make good again. Whenever he may do so without jeopardizing the public, the prosecutor should extend assistance to the unfortunate men who commit crimes."[299]

On June 3, 1924, Scharrer filed for re-election;[300] once again, he had the support of at least one local paper, which characterized him as a "square shooter."[301] In the election, he defeated Strother B. Jackson, the Democratic candidate, by 35,462 votes.[302] In a close race, Sheriff Howard E. Webster soundly defeated Carson Pratt, the Republican candidate; this was also the election in which Calvin Coolidge carried Ohio in the Presidential race.[303] Webster was one of only "two Democratic candidates . . . elected . . . in Montgomery County."[304]

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298. Dayton Herald, Aug. 26, 1924; *see also* Dayton J., Aug. 27, 1924. One of the life sentences was given to "James Dawson, for breaking into the house of Christine A. Schantz, 923 Grand avenue;" the other three were meted out for murder. *Id.* Aug. 26, 1924. "Four prisoners were given life sentences; 38 were sentenced to the state penitentiary; 25 to the reformatory; one to the reformatory for women; 17 to the workhouse and three to the county jail. Fourteen were fined. There were 29 suspended sentences." *Id.*

299. Dayton Daily News, Aug. 26, 1924. Scharrer reiterated these sentiments at the end of the year, when he summarized the accomplishments of his office during 1924. Dayton J., Dec. 28, 1924. According to that story, instead of measuring his success according to "the number of convictions obtained," Scharrer measured his "by the amount of good done." *Id.* "He says that his greatest work is giving fallen men and women opportunity to go forward and onward." *Id.*

300. Dayton J., June 4, 1924; Dayton Herald, June 4, 1924. Both stories reported that "[j]udges . . . have commended Mr. Scharrer's efforts in his preparation and presentation of his cases." Dayton J., June 4, 1924.

301. Dayton Herald, Oct. 8, 1924. "He is a prosecutor in the real sense of the word. He is not a persecutor." *Id.; see also* Dayton Herald, Oct. 27, 1924 (editorial favoring Scharrer's re-election).

302. Dayton Daily News, Nov. 11, 1924. The final vote was 54,372 for Scharrer, as opposed to 18,910 for Jackson. *Id.*

303. *Id.*; *see also* Dayton J., Nov. 11, 1924. Webster received 40,071 votes, while Pratt received 27,787 votes. *Id.* In the Presidential race, Coolidge, the Republican candidate, received 50,845 votes, Davis, the Democratic candidate, received 21,860 votes and LaFollette, an Independent candidate, received 8,312 votes. Dayton Daily News, Nov. 11, 1924.

304. Dayton J., Nov. 11, 1924.

a. Prohibition Cases

Two items from local newspapers suggest that liquor cases did constitute a significant proportion of prosecutions commenced during this year. On January 4, 1924, the *Dayton Journal* reported that fifty cases would be presented to the grand jury at its January term, ten of which "involve[d] the manufacture of liquor."[305] When Scharrer submitted his report for the fiscal year ending August 31, 1924, it indicated that "[i]n at least 100 cases the prosecutor's office was notified to be ready for trial in liquor cases before justices of the peace, which finally resulted in pleas of guilty."[306]

Perhaps the most significant development was Scharrer's use of the padlock law. Section 22 of the Volstead Act authorized both state and federal prosecutors to institute an action for an injunction prohibiting, for one year, the use or occupancy of premises upon which liquor had been "manufactured, sold, bartered, or stored."[307] The premise was that this would contribute to prohibition enforcement because "[l]andlords will be careful to turn out tenants with 'bootlegging' tendencies, and owners will think twice before subjecting themselves to a possible deprivation of their place of business for . . . a year."[308]

Although Scharrer had commenced an action under the padlock law in 1923 at the instigation of the Anti-Saloon League,[309] no establishment in Dayton was actually padlocked until 1924. On January 10, Scharrer and Paul Wortman filed padlock proceedings against Tom Sever and Mrs. Mary Sever, who operated a "soft drink dispensary and poolroom" at "First and Beckel streets."[310] Their business had a history of "liquor law violations, according to Wortman."[311] Scharrer prevailed, and on February 18 Sheriff Webster and his chief deputy, Wil-

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305. Dayton J., Jan. 4, 1924.

306. Dayton Herald, Aug. 26, 1924.

307. Act of Oct. 28, 1919, Ch. 85, 41 Stat. 305, 314; *see also* Note, *The "Padlock" Injunction*, 72 U. PA. L. REV. 283 (1924).

> The Volstead Act defines the maintenance of a place where the act is violated . . . as a common nuisance. [A] person who maintains such a nuisance commits a misdemeanor. . . . The [statute] empowers a court of equity to enjoin this person from further violation of the law and gives it authority to abate the nuisance by ordering the place closed for a year.

Id. at 284 (footnotes omitted).

308. Note, *supra* note 235, at 289; *see also* Cheney, *Use State Courts and Padlocks*, in LAW OBSERVANCE 125, 130 (1929) ("the bootlegger . . . fears padlock proceedings much more than he fears the usual raids and the subsequent indictment") (emphasis deleted).

309. *See supra* text accompanying notes 242–44.

310. Dayton Herald, Jan. 10, 1924; *see also* Dayton J., Jan. 11, 1924. At the same time, Scharrer and Wortman also filed proceedings against another shop, which belonged to "Andy Keydoszius and Mrs. Urszulia Keydoszius" and was located "at 204 Troy street." Dayton Herald, Jan. 10, 1924.

311. Dayton Herald, Jan. 10, 1924; *see also* Dayton J., Jan. 11, 1924.

liam B. Alexander, "placed a large padlock across the door" of the Sever establishment.[312]

This was the first of a number of padlock actions instituted by Scharrer.[313] He may have been influenced by events which were occurring at the federal level: federal authorities "began to use the padlock method in 1921, when the courts granted 446 such injunctions, most of them in Illinois. The number of such cases increased each year until 1925, when they reached a high of 4,471."[314] At the federal level, padlock proceedings went into a decline after it became apparent that "places closed by injunction usually reopened as soon as the excitement had subsided."[315] "Because of these and other difficulties, the padlock policy was gradually abandoned, and was used infrequently after 1926."[316]

Scharrer's use of the padlock law may have been but one aspect of a campaign to crack down on liquor violators.[317] On February 6, two defendants, George Brown and Avery King, were sentenced "under the comparatively new Bender law."[318] They were only "the second and third to be prosecuted in Montgomery county under that statute, which require[d] prison sentences."[319] King "admitted that he was guilty of having a still on his property" and was sentenced to serve one year in the state reformatory and to pay a fine of five hundred dollars.[320]

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312. Dayton Herald, Feb. 18, 1924; *see also* Dayton Herald, Feb. 19, 1924 (photograph of Webster and Alexander placing the padlock on the front door of the Sever shop). "It is the first place in the county to be actually padlocked for repeated liquor law violations on orders of a state court, according to Albert H. Scharrer, county prosecuting attorney." *Id.*

313. As of February 18, Scharrer had prevailed in actions against Nick Kznarich, 2143 East First Street and John Radvansky, 444 Keowee Street. Dayton Herald, Feb. 18, 1924. By March 11, he had prevailed against four more defendants, i.e., Martin F. Dugan and Martin C. Dugan, Jr., who operated a soft drink establishment at 21 Deeds Avenue, and John Obelinius and Mrs. Murell Obelinius, who operated a similar establishment at 778 Troy Street. Dayton Herald, Mar. 11, 1924; Dayton Daily News, Mar. 11, 1924; Dayton J., Mar. 11, 1924.

314. H. ASBURY, *supra* note 214, at 172–73.

315. *Id.* at 173.

> Moreover, it was difficult to locate the real owners of property against which proceedings had been begun, and upon whom court orders must be served. A report . . . said that this was found to be impossible in some 50 per cent of the cases, and that in the country as a whole not more than 35 per cent of the padlock proceedings were successful.

Id.

316. *Id.*

317. On February 5, "[t]hree men said to be members of a 'booze ring' which has been selling large quantities of liquor in Easton" were arrested by United States Marshalls and taken before "U.S. Commissioner Carl Lenz on charges of violating Federal liquor laws." Dayton Daily News, Feb. 5, 1924. Their arrest followed "seizure of a large still several days ago. The men are believed to have been selling the output of this still." *Id.*

318. Dayton Herald, Feb. 6, 1924; Dayton Daily News, Feb. 6, 1924. For a description of the Bender law, see *supra* text accompanying note 246.

319. Dayton Daily News, Feb. 6, 1924.

320. Dayton Herald, Feb. 6, 1924; Dayton Daily News, Feb. 6, 1924.

Brown pled guilty "to having a still in operation in a cave under his stable along the Miami river, east of the Stewart st. bridge," and was sentenced to serve one year in the Ohio penitentiary and to pay a fine of five hundred dollars.[321]

Also in February, Richard Johns became "the first man in Montgomery county to stand trial under the act, which allows no alternative to the court where the defendant is found guilty, of suspending sentence."[322] Johns was convicted and, like Brown, sentenced to serve one year in the Ohio penitentiary and to pay a fine of five hundred dollars.[323] "The fact that Johns is 57 years of age, that he has never been convicted of any other criminal law, that he is the father of eight children and that his wife is ill were taken into consideration by the court in passing on the case."[324]

On February 9, in sentencing Frank Williams for his part in the robbery of a "filling station on the Brandt pike," Judge Patterson criticized "prohibition agents that would employ as their assistant a man just out of the penitentiary."[325] Williams had apparently been recruited by prohibition agents to assist in "trapping [a] bootlegger in Dayton," but wound up committing robbery instead.[326] In sentencing him to serve twenty-five years in the Ohio penitentiary, Judge Patterson observed that "[t]his Court is wondering if the time will ever come when those who are fanatics in the dry cause will come to the conclusion that the dry cause should not be enforced by persons who are just coming from the penitentiary."[327]

In March, Scharrer and Judge Patterson found a way to avoid the Bender Act's proscription of suspending sentence. John Wohlsegil pled guilty to operating a still, but "[u]pon the recommendation of Prosecuting Attorney Albert H. Scharrer, prosecution of [the] charges . . . was suspended until September 1."[328] Despite Wohlsegil's plea, Scharrer was able to suspend consummation of the prosecution until Septem-

321. Dayton Daily News, Feb. 18, 1924. "A cow, kept in the stable, was so tortured by the heat that it was pacing restlessly about the confines of the barn when the place was raided by city police, Mr. Scharrer said." Dayton Herald, Feb. 6, 1924.

322. Dayton Daily News, Feb. 18, 1924. All three prior Bender Act defendants had pled guilty.

323. *Id.*

324. *Id.*

325. Dayton Daily News, Feb. 9, 1924.

326. *Id.*

327. *Id.* Judge Patterson also rejected the contention, offered by "[m]ere fanatics," that Williams' offense "of robbery, which is a first cousin to murder, was a less [sic] offense than what you were claiming you were trying to do in trapping some bootlegger in Dayton." *Id.*

328. Dayton Herald, Mar. 11, 1924. This appears to have been an example of the use of the "open docket," to which Scharrer referred in a passage quoted above. *See supra* text accompanying note 297.

ber 1, at which time the case would "be dropped, providing Wohlsegil goes to work and refrains from further violations."[329] His recommendation came after he "made a personal investigation of the case, visiting Wohlsegil's home."[330] At the home, Scharrer "found [that] . . . Wohlsegil's four children, from two to seven years old, and his wife were entirely dependent upon him and believed that i[t] would work a severe hardship upon the family to send him to the penitentiary."[331]

In May, Scharrer became embroiled in a controversy that arose from over-enthusiastic efforts at enforcing the prohibition laws. E.C. Wilcox was driving his automobile, containing "his wife, his son, 16, and another youth" as passengers, down Troy Pike "near Ebenezer" when he encountered "two men [who] blocked the road waving searchlights."[332] Wilcox "slowed up until he was about 150 feet from them, then seeing the road clear ahead, he speeded up and drove by."[333] At that point, five men "opened fire with revolvers."[334] "Because Mrs. Wilcox had been injured in a fall just before leaving the house . . . and because of her highly nervous condition, Wilcox decided to stop rather than run the risk of encountering further revolver fire."[335] After he did so, "[t]hree men came up to the car with revolvers in their hands and demanded to know why he had not stopped when ordered. Wilcox and the others were ordered to get out . . . [and a] bluff was made at searching the car by raising the flaps of the door pockets."[336]

A few minutes after Wilcox was finally allowed to proceed on his way, a Dayton dentist, Dr. R.M. Cope, was driving down the same road and also refused to stop when ordered to do so.[337] Cope also had his wife as a passenger in his vehicle.[338] After refusing to stop, he "speeded up and escaped in a shower of bullets from several guns. One front tire was punctured and he stopped some distance down the road to repair it."[339]

Both men complained to Scharrer, who investigated and found that the shootings were committed by "Squire Arthur L. Green and his

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329. Dayton Herald, Mar. 11, 1924; *accord,* Dayton J., Mar. 2, 1924; Dayton Daily News, Mar. 1, 1924.

330. Dayton J., Mar. 2, 1924.

331. Dayton Daily News, Mar. 1, 1924; *see also* Dayton Herald, Mar. 11, 1924 ("Scharrer made the recommendation following a visit to the prisoner's home where the wife and four children were found living in very destitute conditions").

332. Dayton Daily News, May 3, 1924.

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*; *see also* Dayton Daily News, May 4, 1924.

338. Dayton Daily News, May 3, 1924.

339. *Id.*

constables."[340] "Prohibition agents had instructed Squire Green to have his men watch for three automobiles expected to pass through from Detroit on their way to Dayton, filled with liquor;" Green and his men mistook the Wilcox and Cope vehicles for two of these vehicles.[341] "Squire Green [also] related that he had understood his instructions from the prohibition men to mean that he should stop every southbound automobile and that firing at them had seemed necessary . . . to cause them to halt."[342]

Scharrer informed Green that he and his men "must not fire again upon any motorist in their pursuit of whisky-runners."[343] " 'The law shall not supersede the rights of individual citizens,' Scharrer quoted. 'I have no right,' he said, by way of illustration, 'to stop every man I meet on the street and search him just because I know lots of firearms are being carried in violation of the law.' "[344]

A month later, another local squire ran afoul of the law. James L. Corbett, justice of the peace in Jefferson Township, resigned after being convicted of drunkenness.[345] The conviction came after deputies raided his office, which was "near the National Military Home," and "found the squire engaged in a 'canned heat' party with two inmates of the home."[346] He was fined one hundred dollars and costs and, in default of payment, served one hundred and seventy days in the county jail.[347]

In August, Scharrer demanded the resignation of Madison Township constable Charles Gardner, who was accused of "secret[ing] liquor which he had been ordered to destroy."[348] Gardner eventually admitted "drinking 16 or 18 half pints of liquor that were found by raiders on the Jalappa road" and that had been given to him to destroy.[349] After

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340. *Id.* "Paul Ackerman, secretary of the Dayton Automobile club, figured largely in bringing the situation to a head. . . . Prosecutor Scharrer, however, took the matter entirely out of Ackerman's hands and threatened to bring criminal prosecution if any similar encounters transpire between prohibition enforcement officers of [sic] constables and passing motorists." Dayton Daily News, May 4, 1924.

341. Dayton Daily News, May 4, 1924. "The squire said that . . . the autos of Wilcox and Dr. Cope answered descriptions that had been furnished of whisky runners' cars." Dayton Daily News, May 3, 1924.

342. Dayton Daily News, May 4, 1924. He also declared that "all of his men are expert shots, all indulging in daily target practice." *Id.* " 'If we had wanted to hit either of the machines fired upon, we would have hit them,' one of the constables said." *Id.*

343. *Id.*

344. *Id.* For more on Squire Green's career, see *infra* notes 411–14 and accompanying text.

345. Dayton Daily News, Jun. 13, 1924. His resignation came on Friday the 13th of June. *Id.*

346. *Id.*

347. *Id.*

348. Dayton Herald, Aug. 1, 1924.

349. Dayton Daily News, Aug. 1, 1924; *accord* Dayton Herald, Aug. 2, 1924; Dayton J.,

making that admission, he tendered his resignation "[a]t the request of Albert H. Scharrer, county prosecuting attorney."[350] There is no indication as to whether or not Gardner was ever criminally prosecuted for this act.

b. Other Cases

In January, Scharrer prosecuted "Mrs. Blanche L. Hunter . . . on charge of embezzling $2,241.70 from the estates of her seven nieces and nephews."[351] She was "made the guardian of the seven children of Clyde and Emma George . . . after the death of the parents."[352] Notwithstanding her defense, which was that the "money she misappropriated [was] in the hands of her attorneys" and available "to make up any discrepancies in her accounting," Scharrer secured a conviction and she was sentenced to serve "from one to 10 years in the women's reformatory."[353]

In January, Scharrer faced his mentor, Charles Kumler. The defendant was "Frank Longo, 72-year-old Italian shoemaker," who was charged with manslaughter for "shooting . . . Mrs. Elizabeth Donisi, 64;" his defense was that he had acted to protect his "small weak wife [who was] being dragged about by her hair and stoned by Mrs. Donisi."[354] According to Kumler, who represented Longo, " 'If he had not done what he did he would not be fit for dog meat; he wouldn't be fit to stay in this country. If he hadn't taken his wife's part, he ought to have shot himself.' "[355] Scharrer argued that Longo's age was irrelevant, and drew the jury's attention to Mrs. Donisi's right to life and the love of her children.[356] Scharrer prevailed, and the jury returned a ver-

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Aug. 2, 1924.

350. Dayton J., Aug. 2, 1924; *accord* Dayton Herald, Aug. 2, 1924; Dayton Daily News, Aug. 1, 1924.

351. Dayton Daily News, Jan. 4, 1924. "Mrs. Hunter received regular monthly payments from the industrial commission, which payments she was ordered by the probate court to deposit to the credit of the children as heirs . . . . She also received $1,429 as the children's interest in the sale price of a farm, Scharrer said." *Id.* In his opening statement at the trial, Scharrer announced that he would prove "that defalcations were made in the handling and collection of the money." *Id.*

352. Dayton Daily News, Jan. 3, 1924.

353. Dayton Daily News, Jan. 8, 1924. Although Scharrer "used only two witnesses in presenting his case," the jury deliberated "less than 25 minutes" before returning a verdict of guilty. Dayton Daily News, Jan. 6, 1924.

354. Dayton Herald, Feb. 1, 1924. Mrs. Donisi occupied "half of a double . . . with the Longos." *Id.*

355. *Id.* Another defense attorney argued that Longo's crime was a product of "environment." " 'These Italian people like to fight. And they did fight. You cannot judge them by the standards of others who do not believe in fighting.' " *Id.*

356. *Id.*

Age has nothing at all to do with the commission of this crime, A man of 72 is just as

dict of guilty.[357]

In January, a grand jury indicted Francis Glenn Swisher and Heenan Augustus Swisher "for embezzlement in connection with the operation of the Swisher Realty Company;" trial was originally set for February 25 and then postponed until March at the request of counsel.[358] In March, they moved to have Judge Patterson disqualified from presiding over that proceeding for bias "grow[ing] out of their affiliation with a 'certain secret organization,' against which Judge Patterson has expressed open hostility."[359] The "secret organization" was, of course, the Ku Klux Klan.[360]

Patterson was disqualified, and the case went to trial in May before Judge Byron F. Ritchie of Toledo.[361] After the voir dire exhausted the panel that had been summoned, Judge Ritchie "sent Bailiff George Grusenmeyer out on the street . . . to summon the first man he met for jury duty."[362] "Albert H. Scharrer . . . and Paul Wortman . . . presented the state's case, while Herbert E. Kreitzer and Frederick Howell" represented the defendants.[363] After a four day trial, the Swishers were convicted by a jury which returned its verdict after only twenty minutes of deliberations.[364] Each was sentenced to serve seven years in the Ohio state penitentiary, and to pay the costs of the prosecution.[365]

In March, Scharrer arranged to have prosecution of another offender suspended as the result of a letter from his English war bride.

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responsible as a youth of 21. Longo loved that revolver so much that when he left the stand he kissed it. Imagine a man leaving the stand and kissing the very weapon that had taken the life of a human being! How about Mrs. Donisi? Didn't she love her children and her grandchildren? Naturally she would like now to be alive to enjoy their happiness and would enjoy being with them. Why it is that we forget the one whose life has been taken?

Id.

357. *Id.*

358. Dayton Herald, Mar. 12, 1924; *see also* Dayton Daily News, Mar. 12, 1924. The Swishers were charged with embezzling $9541.50 from the Swisher Realty Company, "of which they were the principal officers, from March 5, 1923 to July 9, 1923." Dayton Daily News, May 19, 1923. "They are said to have taken the deposits paid them as commission for sale of the contracts for erection of . . . houses." *Id.* A second indictment was pending against them for obtaining money under false pretenses. *Id.*

359. Dayton Herald, Mar. 12, 1924.

360. Dayton Daily News, Mar. 12, 1924. "According to state's attorneys, the question of the [K]lan would not have entered into the testimony in any way, and they contend that the filing of the affidavit was uncalled for." *Id.*

361. Dayton Daily News, May 19, 1924.

362. *Id.* Notwithstanding the reference to "man," the jury included five women. *Id.* During the jury selection, "no mention was made of the Ku Klux Klan." Dayton Herald, May 19, 1924.

363. Dayton Herald, May 19, 1924.

364. Dayton Herald, May 23, 1924.

365. *Id.* They entered the penitentiary in February of 1925, after their appeal was rejected. *See, e.g.*, Dayton Herald, Feb. 10, 1925.

William Bragg met his wife in England during the first world war; "[r]eturning to this country after the armistice, he sent for her and they were married. Three children were born."[366] She then returned to England to live with her father.[367] However, after Bragg was arrested and charged with attempted burglary for throwing a brick through the window of a drug store, she wrote a letter to Scharrer telling "a pitiful tale of her condition and ask[ing] that something be done whereby her husband could support them since the death of her father, a sea captain."[368] After Bragg "promised to obtain a position at once and to support his family," his case was placed on the court's "open docket" and he was released.[369]

In April, Scharrer prosecuted a man whom he described as "the king of bank robbers," one "Red" McGahn.[370] After what a trial that excited a great deal of local interest, McGahn was convicted of robbing

366. Dayton Daily News, Mar. 13, 1924.

367. *Id.*

368. *Id.*

369. *Id.* At Scharrer's recommendation, charges against Robert Friend, who was accused of stealing an automobile, were also placed on the "open docket." Dayton J., Apr. 30, 1924. Friend had stolen the vehicle and used it on his honeymoon, after which he "removed the coupe body from the chassis of the auto." *Id.* Although he did have a prior conviction, Scharrer recommended that Judge Patterson place the action on the "open docket," after Friend entered a guilty plea to the charges against him. *Id.* In May, Scharrer recommended that a case against David E. Siler, "former insurance salesman for U.S. Couk," be placed on the "open docket" after Siler pleaded guilty to "an embezzlement charge" arising out of a "controversy over commissions due and premiums collected." Dayton Daily News, May 8, 1924. The case was placed on the open docket on the condition that Siler repay the sums that he had embezzled; however, after he did not "make good" on that obligation, Judge Patterson "ordered [him] incarcerated in the Ohio penitentiary for five years." Dayton Daily News, Mar. 20, 1925.

The cases against two other men, Chester Cagg and "J.C. Wilson, colored," were also placed on the "open docket." " 'Have a job by May 17 or you will have sentences to serve,' Judge Patterson admonished" them. *Id.* Cagg pled guilty to "trading an automobile on which there was a $40 mortgage," while Wilson admitted breaking "open a popcorn stand on Western avenue . . . and [stealing] a small quantity of candy." *Id.* "James Hall, colored" was not so lucky: He was serving "a term in the Dayton workhouse for practicing medicine without a license," and was then given an additional sentence of thirty days for pleading guilty to "a charge of carrying concealed weapons." *Id.* According to Scharrer, "Hall [was] a horse doctor but was brought into the municipal court on [a] charge of operating on human beings." *Id.*

Scharrer did not offer leniency to Albert Russell McKee, who pleaded guilty to "pickpocketing." Dayton Herald, July 17, 1924. McKee, along with an accomplice who had not been apprehended, entered a local soft drink store, where the accomplice took $252 from the cash register and McKee "removed a watch and $1" from the pocket of one of its owners. *Id.* McKee was sentenced to serve five years in the Ohio penitentiary, notwithstanding his assertion that "he was under the influence of drugs when he entered the soft drink cafe." Dayton Daily News, May 8, 1924. In November, however, Bill Peters pleaded guilty to grand larceny and was given a "three to seven-year penitentiary sentence" which was suspended "on condition that he obtain a job and support his aged mother." Dayton Herald, Nov. 13, 1924. Although he pled guilty, Peters maintained that the watch that he was charged with stealing had been given to him by a woman, whom he said had stolen it from its rightful owner. *Id.*

370. Dayton Daily News, Apr. 7, 1924.

a West Carrollton bank and sentenced to serve from one to fifteen years in the state penitentiary.[371] "An interesting scene took place . . . when the two automobiles left with McGahan [*sic*] for Columbus. As [he] was about to enter one of the machines, Prosecutor Scharrer said 'Goodbye, George.' McGahan, thrusting out his hand, said 'Goodbye, Albert,' and the farewell was completed."[372]

In June, Scharrer announced "[a] campaign to stop violations of the 'blue sky law' " and to "round up stock salesmen operating in Dayton without state licenses."[373] "Scharrer said he had received several complaints that salesmen were selling stocks which had not been properly certified."[374] " 'It is our intention to see that this practice is stopped,' Scharrer said. 'There will probably be several arrests aand [sic] prosecutions. Investors must be protected against unscrupulous salesmen.' "[375] At least one arrest was made, of Robert O'Hearn, "who formerly was a policeman."[376]

In July, Scharrer and Sheriff Webster ordered the Montgomery County Police Association to desist from "making speed law arrests and liquor raids in Germantown, Miamisburg, West Carrollton and

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371. Dayton J., Apr. 8, 1924. During the course of the trial, the *Dayton Daily News* ran sketches of Scharrer and the other participants, and published a lengthy, effusive story by "Penelope Perrill" who, among other things, gushed over McGahn's "very well-shaped head, with ears well placed." Dayton Daily News, Apr. 6, 1924. At one point, "[t]he prosecutor, Albert Scharrer, came over to me and asked me what I was doing there and I said 'Nothing,' which seemed to please him. His is very quick on the uptake and makes the wheels hum, but his assistant, Mr. Brennan, certainly did his piece well." *Id.*

372. Dayton J., Apr. 8, 1924. McGahan's conviction was later affirmed:

> In his appeal, McGahan contended that one of the petit jurors was also a member of the grand jury which indicted him but was overruled in this contention by the appellate judges who ruled that he had ample opportunity to challenge the juror before the trial. The court of appeals also rejected McGahan's contention that the state court had no jurisdiction because of the pendency of federal habeas corpus proceedings.

Dayton Herald, Apr. 9, 1925. McGahan had been indicted in 1920, but was not apprehended until December of 1923, "when a tray was dropped as handcuffs were slipped on his wrists in a Marietta, O., cafeteria." *Id.* He was then taken to Toledo, where he pled guilty to a federal charge of using the mails to defraud: "[H]e was sentenced to serve two years in the Atlanta, Ga., federal penitentiary and fined $8,000 and costs." *Id.* McGahan's attorneys "instituted habeas corpus proceedings in an effort to have him begin serving the federal sentence and thus evade trial in the state court", but Scharrer "won a fight for the custody of McGahan and the prisoner was brought to Dayton to answer the charge of being one of three men who stole approximately $24,000 from the West Carrollton bank." *Id.*

373. Dayton Daily News, June 2, 1924; Dayton Herald, June 2, 1924.

374. Dayton Daily News, June 2, 1924.

375. *Id.*

376. Dayton Daily News, June 2, 1924. O'Hearn was arrested for selling "700 shares of capital stock in the Hall Air Lock and Railway Supply company . . . despite the fact that [he] ha[d] never been authorized to sell stock by the commissioner of securities of the state." Dayton Herald, June 2, 1924.

surrounding territory."[377] "The association, which was revived last February, is an outgrowth of the old Law and Order league, which was organized for the protection of farmers against horses [sic] and chicken thieves."[378] It was composed of fifteen men who had been "making arrests without warrants and collecting fees for their law enforcement activities."[379] When Sheriff Webster summoned the leaders of the association to appear at his office, one arrived wearing "a large badge bearing the label 'chief;' " after Webster confiscated the badge, its owner promised "to 'get' the sheriff."[380]

On July 17, Scharrer spoke at the sentencing of "Harry Garwood, 50, . . . and Oral Amber Garwood, his son, 29."[381] They had been convicted of burglary and larceny for stealing chickens. " 'The seriousness of the offense is not the stealing of the Chickens, Albert H. Scharrer, prosecuting attorney told the court. 'It is the entering and burglarizing of the chicken coops of neighboring farmers who go to much trouble to raise the chickens. City folks do not realize the value of a

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377. Dayton Herald, July 2, 1924; *see also* Dayton Daily News, July 2, 1924.

378. Dayton Herald, July 2, 1924. "It is declared similar to the body which aroused the ire of Haveth E. Mau, when he was prosecutor and which was broken up by Mau." Dayton Daily News, July 2, 1924.

379. Dayton Daily News, July 2, 1924.

> The 15 . . . have conducted raids in Germantown, and made arrests for alleged violations of auto parking and speed laws. . . . One autoist . . . was beaten on the head with a blackjack while on the Middletown road about one mile south of Germantown. A woman, who was with him, fainted and now is in a Middletown hospital suffering from lapse of memory. . . .

Dayton Herald, July 3, 1924. "Residents of Germantown paraded the streets of the community Wednesday night burning red rights, blowing fifes, pounding drums and carrying banners on which were inscribed: 'Scharrer and Webster have freed Germantown of the night riders.' " *Id.*

380. Dayton Herald, July 3, 1924. In November, Scharrer announced that "[a] campaign will be waged in Montgomery Co. immediately to enforce Gov. Vic Donahey's proclamation against unlawful carrying of guns." Dayton Daily News, Nov. 25, 1924; *see also* Dayton Herald, Nov. 25, 1924. The governor had issued a proclamation in which he called "attention to the fact that many individuals and members of certain so-called police organizations and detective agencies are carrying arms in violation of the law." Dayton Daily News, Nov. 25, 1924. Scharrer indicated that, pursuant to this proclamation, the grand jury would undertake an investigation into the illegal possession and use of weapons in Montgomery County. *Id.*; *see also* Dayton Herald, Nov. 25, 1924. The investigation appears to have been targeted directly at the members of the Montgomery County Police Association, some of whom had filed a replevin action to secure the return of "badges" seized by Sheriff Webster. *Id.*

After his " 'chief' badge was confiscated by Sheriff Webster," Walter L. Beachler became a special constable in Harrison township "but Squire S.B. Weeks asked for his resignation after Scharrer investigated an alleged attempt to blackmail two men found on a secluded roadside with two women companions." Dayton Herald, Aug. 21, 1925. In 1925, Beachler's wife filed for an action for divorce and asked that Sheriff Webster "appoint someone to protect her in her home against her husband." *Id.* In support of her request, she asserted that Beachler "drove her out of their home at the point of a revolver, abused and maltreated her and threatened her life on many occasions, so that she is in constant fear." *Id.*

381. Dayton Herald, July 17, 1924; *see also* Dayton Daily News, July 15, 1924.

chicken in the eyes of the farmer.' "[382] The Garwoods had apparently been "committing depredations on hen houses for . . . six years, bringing the loot to the home of Amber Garwood and compelling Amber's wife to clean and dress them," after which they "sold the dressed chickens."[383]

They were apprehended after Harry Garwood's wife called the police and told them that her husband and son were raiding chicken coops.[384] "Deputies hid behind a church and waited until the Garwoods coasted up to the house in an automobile," after which they accosted them and discovered five sacks containing 30 chickens in the automobile.[385] The Garwoods spent their days selling salve in order to "obtain[] the 'lay of the land' " at chicken farms; "[t]hey then waited for a dark and stormy night to visit the hen-houses."[386]

After Scharrer spoke at sentencing, the Garwoods' attorney, A.C. McDonald, spoke on their behalf, which was "the signal for a general tear scene. The two Garwoods, Harry Garwood's wife, her mother and his daughter, the daughter's small son, and Harry Garwood's small son began to cry."[387] Notwithstanding this tear scene, the Garwoods were sentenced to serve "a term of from 1 to 15 years in the Ohio state penitentiary."[388]

In early September, "[s]ix men confessed . . . and more were being quizzed concerning their parts in a stupendous scheme by which the Maxwell Motor Corporation was systematically robbed of more than $10,000 since last April."[389] "The rounding up of 10 suspects . . . was the result of a signed confession made to Albert H. Scharrer, county prosecuting attorney, by Edward Pilliod . . . a timekeeper at the Maxwell plant."[390] The conspirators were timekeepers who bilked the com-

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382. Dayton Herald, July 17, 1924.

383. *Id.*

384. *Id.*

385. *Id.*

386. *Id.*

387. *Id.*

Amber Garwood's wife appears to have been absent, perhaps because it was she who had been "compelled" to clean and dress six years' worth of stolen chickens. Amber Garwood, in denying that his wife, who recently sued him for divorce, was compelled to dress the chickens, told the court that she urged him to bring the chickens to her, promising to dress them so that he could sell them and secure money to take her to Montana.

Id.

388. *Id.*

389. Dayton Herald, Sept. 3, 1924.

390. *Id.* The confession came about after Pilliod "became conscience-stricken after attending a church . . . [and] told his aunt in Greenville of the plot." Dayton J., Sept. 4, 1924. She sent him to a former judge, who advised him to confess to Scharrer. *Id.*

Charles J. Brennan and Ralph Hoskot, assistant prosecuting attorneys, went to Greenville and obtained the confession. Scharrer then called H.C. Bulkley and T.A. Morrison, Detroit

pany by two means. They "systematically padded the payrolls in Plant . . . and pocketed the proceeds," and they managed to "cash checks made out to men no longer actually in the company's employ."[391] In the first instance, the conspirators received a portion of the amount by which a particular check exceeded the pay that was due for the hours actually worked; in the latter instance, "the time-keepers got all the profits."[392] Eventually, eleven employees were indicted for embezzlement and forgery; "[a]ll 11 men pleaded guilty. Seven were given suspended sentences, three sent to the reformatory . . . and one to the Dayton workhouse."[393]

In an interesting sidelight to the Ku Klux Klan controversy described above, Scharrer prosecuted

> Peter Dearwester for manslaughter in connection with the killing of Martin Shock . . . by an automobile . . . . With only the motormeter cap of an automobile to link Dearwester . . . with [the crime], Scharrer . . . prosecuted the case to a conviction aend [*sic*] sentence of from one to 20 years . . . . Shock was killed while he and two other members of the Ku Klux Klan were directing traffic at a klan meeting nearby.[394]

Dearwester was the first Montgomery County defendant to be "sentenced . . . for manslaughter in connection with an auto fatality."[395]

In December, Scharrer prosecuted William C. Tanner, "charged

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attorneys of the Maxuell Company, and J.B. Coolidge, local company counsel. The accused also were brought to Scharrer's office, where all day yesterday they were questioned [sic] [by] the attorneys not even stopping for lunch.

Id.

391. Dayton Daily News, Sept. 3, 1924. One of the conspirators was "quoted as saying that the robbery committed through the punching of clock cards for men who were no longer employed at the plant, and the padding of time tickets giving men credit for more work than they actually performed, involve[d] nearly every employe [sic] in the plant." Dayton J., Sept. 4, 1924. According to one report, J.R. Mendenhall, "admitted 'brains' of the ring," apparently "got the idea from ['Jimmy'] Murphy, who saw the same conspiracy in operation in the Maxuell plant at Detroit." Dayton Daily News, Sept. 3, 1924.

392. *Id.*

393. Dayton J., Dec. 28, 1924.

394. Dayton Herald, Oct. 4, 1929. "Shock was struck while he was standing near the side of the road branching of [sic] the Yellow Springs road and Springfield pike, near Riverview." Dayton J., Dec. 28, 1924. Shock "was talking to a Ku Klux Klan sentinel who was in full regalia at the time he was struck. A klan meeting was in progress in a nearby field." Dayton Herald, July 26, 1924. At trial, Scharrer contended that "Dearwester was 'filled with strong drink when his auto struck Martin Shock and then continued on.' " Dayton Herald, Sept. 11, 1924.

395. Dayton J., Dec. 28, 1924. At trial, Scharrer was vigorous in seeking a conviction: 'Five dollars and costs is not the remedy—money in a civil damage suit is not the remedy,' Scharrer shouted. 'It is up to you to see that the law is enforced. It is up to you to tell the people of this community that the pedestrian has a right upon the public highways and streets.'

Dayton Herald, Sept. 11, 1924; *see also* Dayton Daily News, Oct. 8, 1924; Dayton Herald, Oct. 8, 1924; Dayton Daily News, Sept. 11, 1924.

with contributing to delinquency of three 15-year-old boys."[396] Tanner, "who claim[ed] to be an ex-priest, . . . [was] charged with having enticed boys to come to his room at the Howard hotel . . . where he mistreated them."[397] "Upon taking the stand . . . Tanner . . . admitted . . . that he had never been ordained a Roman Catholic priest."[398] This admission came two days after Tanner was held in contempt for refusing to answer Scharrer's questions.[399] According to Tanner, "[h]e met one of the boys at a Ku Klux Klan circus in Dayton."[400] In his final argument, Scharrer "delivered a scathing denunciation of Tanner . . . and called upon the jury to do its duty for the protection of society."[401] "There [were] no women on the jury," but "[a]ll seats in the courtroom were taken and many spectators were standing."[402] After half an hour of deliberations, the jury returned with a conviction; Tanner was sentenced to serve one year at the Dayton workfarm and to pay the costs of the prosecution.[403]

3. 1925

a. Overview

Scharrer began the next year "[c]onfined to his home because of overwork strain."[404] He overcame his indisposition, however, because his report for the year showed that "[t]he grim 'wheels of justice' . . . rotated with unusual speed" in Montgomery County during that time.[405] "Perfect cooperation between County Prosecuting Attorney Albert H. Scharrer and Common Pleas Judge Robert C. Patterson is responsible for the record, which is believed to be unequaled in any sec-

396. Dayton Herald, Dec. 8, 1924. "Three 15-year-old boys appeared against Tanner during the trial, accusing him of enticing them to his hotel room for immoral purposes." Dayton Daily News, Dec. 9, 1924.

397. Dayton Daily News, Dec. 8, 1924. Tanner was also described as having "delivered a number of anti-Catholic lectures." *Id.* "Upton T. Rainbow . . . was jailed Saturday on a delinquency charge in connection with the Tanner case. He is alleged to have caused one of the youths to go to Tanner's room." *Id.*

398. Dayton Herald, Dec. 8, 1924.

399. Dayton Daily News, Dec. 8, 1924.

400. Dayton Herald, Dec. 8, 1924.

401. Dayton Daily News, Dec. 8, 1924.

402. Dayton Herald, Dec. 8, 1924.

403. Dayton Daily News, Dec. 9, 1924.

404. Dayton Daily News, Jan. 1925. Scharrer was "not expected back in his office for several days and possibly all . . . week, it was said . . . . His physician has ordered that he refrain even from looking over his business correspondence." *Id.*

405. Dayton Daily News, Jan. 4, 1926. "A discontented populace that has in recent years continually harassed the courts and the bar for greater speed in meting out justice to criminals has but to scan the records of the criminal docket of the Montgomery co. common pleas court for realization of its dreams." *Id.*

tion of the state."[406]

During the year, grand juries returned 181 indictments, of which "only two cases actually came to trial. In the remaining cases the defendants pleaded guilty or disposition of their cases was made through placing the defendants on the open docket or on probation."[407] Of the two cases that went to trial, Scharrer won one and lost the other.[408]

With regard to prohibition, Judge Patterson was quoted as saying that

> [s]ince the prohibition law has been enacted, the petty crimes in the county have been reduced, but there is a great increase in the number of major crimes . . . . The major crimes during the past six months have rivaled the records of cities of the state with a much larger population.[409]

Prohibition may very well have exacerbated the major crime rate, but prohibition offenses, as such, were very much of a constant; that is, the characteristics of the offenses and of their commission varied little from year to year. Therefore, neither this section nor succeeding sections

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406. *Id.* "Assistant Prosecuting Attorney Charles J. Brennan has been working hand-in-hand with Prosecutor Scharrer in the prosecution of major criminals." *Id.*

407. *Id.* In the report which he issued for the fiscal year ending August 31, 1925, Scharrer announced that the "[n]umber of indictments in the common pleas court decreased from 201 in 1924 to 176 in 1925, while juvenile court cases increased from 660 in 1924 to 695 in 1925." Dayton Herald, Sept. 3, 1925. "Only 12 of 69 prisoners who were placed on probation and 'given another chance' failed to make good." *Id.* "Of five jury trials held in 1925 only one case . . . was lost by the state." *Id.* "The prosecuting attorney's office tried 28 liquor cases in squires' courts during the year." *Id.* "The report further show[ed] that 122 defendants pleaded guilty to charges." *Id.*

408. Because it came in an unusual case, Scharrer's loss is discussed below. *See infra* notes 417–26 and accompanying text. His victory came in the trial of "Walter Perkins, alias Walter McConald, negro," who was convicted and "sentenced to a term of from two to 20 years in the Ohio penitentiary on an auto theft charge." Dayton Daily News, Jan. 4, 1926.

409. *Id.* As an example of the incidents to which Judge Patterson was referring, in January John Tozzo confessed to Scharrer and to Sheriff Webster that he "fired the shots which resulted in the death of Dominick Cassano, 1210 East Second Street." Dayton Daily News, Jan., 1925. According to Tozzo's confession, he met Cassano in a pool room, where he loaned the latter one dollar at his request; after Tozzo gave the money to Cassano, Cassano "informed him that he had six gallons of liquor hidden near the railroad bridge north of Dayton and that he wanted Tozzo to help him bring the liquor to Dayton." *Id.* According to Tozzo, as they were walking toward the liquor cache, Cassano "produced two half pint bottles of liquor" and offered to sell one to Tozzo for one dollar. *Id.* Tozzo accepted, took one drink, and then offered the bottle to Cassano, "who gulped down the entire contents." *Id.* Tozzo complained about Cassano's consuming the whiskey that he had just purchased, but Cassano's only response was to offer to sell Tozzo the remaining bottle, an offer which Tozzo declined. *Id.* They began arguing and "engaged in fistic encounter and rolled over and over in the snow, shouting at each other in broken English and Italian." *Id.* Then, according to Tozzo, Cassano "drew a revolver from his hip pocket and yelled that Tozzo would never see his wife again." *Id.* Tozzo said that, during a struggle for the revolver, Cassano was shot once accidentally; after Cassano was wounded, he continued to attack Tozzo, who finally "fired two more shots into Cassano's back." *Id.* In a death bed confession, however, Cassano said that Tozzo had lured him to the deserted area, and that it was Tozzo who had the gun. *Id.*

dwell upon prohibition offenses *qua* prohibitions offenses but, instead, concentrate their attentions upon crimes which are of interest either for the details of their commission or for their anachronistic tendencies.

b. Offenses

At the very beginning of the year, Squire Arthur L. Green, whose over-enthusiastic efforts at prohibition enforcement had resulted in an earlier confrontation with Scharrer,[410] handed his resignation to the latter, after signing "a statement in which he admit[ted] turning to his own use money collected as fines and received as cash bail."[411] "Green stated that he [did] not know the exact amount of his embezzlements but [was] willing to pay back any finding which the state examiner may make against him. Scharrer estimated the present finding at $1500."[412] It was, however Sheriff Webster, rather than Scharrer, who received credit for bringing the errant Squire to justice.[413]

In March, a former Dayton police officer pleaded guilty to burglary and larceny and was sentenced to serve "an indeterminate term in the Ohio State reformatory."[414] "Judge McCray passed sentence despite the vehement portest [*sic*] of" the man's father, who exclaimed in a loud voice: " 'A poor man's son has no chance.' 'You shouldn't say that,' retorted Scharrer. 'No, you shouldn't,' joined in the judge. 'Many is the poor man's sons who has [*sic*] received clemency in this court.' "[415]

It was also in March that Scharrer lost the first of the two cases that he tried during the year. This was the prosecution of "Gin Hung

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410. *See supra* notes 338–42 and accompanying text.

411. Dayton Herald, Jan. 8, 1925.

412. *Id.*

413. "The resignation came as a climax to a determined fight started and continued by Sheriff Howard E. Webster." *Id.* " 'There are others in this county too' asserted Sheriff Webster, 'I will get them.' " *Id.* "The admissions which have come before Prosecutor Scharrer are the result of intensive activity by Sheriff Webster." Dayton Daily News, Jan. 9, 1925.

> In March, another local paper, the Labor Review, ran a piece pointing out that, although the offenses which Squire Green and Mrs. Blanche L. Hunter had committed were almost identical, Mrs. Hunter, who was only a quasi-public official, was sentenced to serve seven years. Green, a public official, had enough influence to have the indictment against him nolled. This was done by Judge McCray on recommendation of the county prosecutor in order that Green would not lose his fireman's pension. Moral: If you must steal, steal public funds. There's always a way out.

Lab. Rev., Mar. 24, 1925. Both Green and Hunter "paid back the money embezzled." *Id.* The Labor Review was described as being "a conservative weekly controlled by members of organized labor." 2 MEMOIRS OF THE MIAMI VALLEY 140 (1909).

414. Dayton Daily News, Mar. 16, 1925. The former officer, Sylvester Wehrkamp, "confessed to Albert Scharrer . . . that on the night of June 29, 1924, he entered the restaurant at 441 N. Main St., owned by Charles Jackson, and stole $67. He said he paid it back two days later." *Id.*

415. *Id.*

Lim [for] first degree murder in connection with the killing of Fong Yuen, laundry proprietor."[416] In his "vigorous, straight-from-the-shoulder" opening, Scharrer told the jury his evidence would show that "Fong Yuen was quietly and peacefully conducting his laundry business, when that man sitting there (pointing at Gin Hung) for some reason know to God alone, shot and killed him."[417] "As Scharrer accused the defendant his voice rose to a high pitch and the thundering tones of the accusation reverberated through the crowded courtroom."[418]

Lim was represented by former Judge U.S. Martin, who began by casting doubt upon the reliability of prosecution witnesses and who then provided an exposition as to the "peaceable, quiet and unoffending" character of the Chinese people.[419] Scharrer objected to the exposition and the court sustained his objection, commenting "[w]e are not trying the land, we are trying the man."[420] Martin concluded by explaining the defendant's name: " 'Gin' in English means 'unadulterated, pure, clear;' 'Hung' means 'lotus, a flower and a food,' and 'Lim' means 'extending, or expanding'. . . . Winding up his statement, Martin exclaimed: 'Gin Hung Lim corresponds in action to his name—he would not kill any person under any circumstances.' "[421]

Lim was acquitted "after a sensational trial lasting several days."[422] To celebrate, he held "a wild party . . . in a local Chinese restaurant" at which liquor was "said to have flowed freely."[423]

> The freed Chinaman issued a blanket invitation to all to attend the blowout. The majority of the jury which acquitted [him], a number of attorneys and many of those who had attended the hearings and cheered when the verdict was announced are reported to have taken part. Liquor,

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416. Dayton Daily News, Mar. 28, 1925. Lim was charged in November of 1924 and held without bond until the trial commenced. Dayton Herald, Nov. 19, 1924. At the hearing on his request for release, Lim's attorneys put on several witnesses who either testified that the crime had been committed by "a white man" or that they were unable to identify Lim as the perpetrator. *Id.* "The defense failed in an attempt to draw out the prosecution 'hand,' Albert H. Scharrer . . . taking great care to develop only enough testimony to carry his point." *Id.*

417. Dayton Daily News, Mar. 28, 1925.

418. *Id.*

419. *Id.* " 'Chinese history will show that although the Chinese may have many faults one especial characteristic of the race is that it is peaceable . . . . Although imposed upon by the great powers of the world, the Chinese have not struck back—they are not vicious or quarrelsome—theirs is the only great nation which has acted as a pacific one.' " *Id.*

420. *Id.*

421. *Id.* Scharrer objected to much of this on the grounds that it was immaterial, but his objection was overruled. *Id.* Martin also discussed the fact that Lim's "aged blind mother and a bride" were waiting for him "[f]ar away in China," and the local paper reported that if Lim were convicted, his mother "want[ed] the body brought to her" in "Canton province, China." *Id.*

422. Dayton Daily News, Jan. 4, 1926.

423. Lab. Rev., Apr. 17, 1925.

> dance and song are stated to have been furnished at the diversion. The affair continued until nearly 3 o'clock in the morning when, if reports are true, a large percentage of the revellers were too hilarious to continue.[424]

The police received reports about the party "and the liquor squad sallied fort[h] to investigate. The squad reached the bottom of the stairs leading to the restaurant. There it paused, tarried for a while and then departed."[425]

In April, "Raymond Harrison . . . reaffirmed his attitude . . . to serve a term in the reformatory rather than return to his wife and two children."[426] Harrison preferred the reformatory to returning home, because "[h]is wife 'nags,' he declared."[427] Judge McCray chose to

> give him a suspended sentence and force him at least to take care of the tots.One of the children, a girl of about 3 years, toddled to her father's side in the courtroom and turned up her face to be kissed. The father refused. Albert H. Scharrer, prosecuting attorney, grabbed Harrison by the shoulders and forced him to kiss the child. Then he obliged him to kiss the other also.[428]

In a curious turn of events, Scharrer released "Jack Brabant, golf instructor," who was jailed after "22-year-old Irene List, Circleville school teacher," received "a dose of bichloride of mercury."[429] "I talked it over with the sheriff and we agreed there was no criminal intent, said Albert Scharrer . . . . 'Brabant gave the girl the tablets for medicinal purposes and the label was plainly marked "poison." The girl was a school teacher and could certainly read the instructions.' "[430]

The most noteworthy event of the remainder of the year was that a grand jury "investigated three bank robbery cases against Fred C. Nickol, Elliott Gabler and Russell Swihart and returned indictments to which the defendants pleaded guilty."[431] Nickol, described as "a 'phantom bandit,' " robbed the "North Dayton Branch of the Dayton Savings & Trust Co. of $25,000."[432] Swihart confessed to robbing "the Trotwood bank," while Gabler "was arrested a few hours after he

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424. *Id.*

425. *Id.*

426. Dayton Daily News, Apr. 28, 1925. After pleading guilty "to robbing the Piggly-Wiggly grocery store," he was arraigned on "a liquor violation charge;" he was sentenced to a term in the workhouse on the latter charge, "upon expiration of which Judge McCray commanded that he again be brought into . . . court on the burglary charge." *Id.*

427. *Id.*

428. *Id.*

429. Dayton J., June 16, 1925.

430. *Id.*

431. Dayton Daily News, Jan. 4, 1926. "Gabler and Nickol were sentenced to 10 years each in Ohio penitentiary and Swihart was sentenced to 15 years." *Id.*

432. *Id.*

robbed Phillip Kloos, manager of the Xenia Av. branch of the city National bank of $10,000."[433] Scharrer would later intercede on behalf of Nickol, who was released after serving "21 months of a one to 20-year term."[434]

More than a decade later, Scharrer would defend Elliott Gabler, who was charged with committing a series of robberies in the Dayton area during 1937.[435] In another interesting turn of events, Gabler was apprehended at that time by Phillip Kloos, Montgomery County Sheriff, the same Phillip Kloos whom he had robbed so many years before.[436]

4. 1926

a. Overview

For the fiscal year ending August 31, 1926, Scharrer reported that "130 indictments were returned and 178 cases were ignored by the grand jury."[437] With regard to the disposition of these cases, there were "[p]leas of guilty, 96; not guilty, 5; jury trials, 5, of which 3 returned verdicts of guilty, 1 not guilty and 1 disagreement."[438] "A larger number of cases, 39 in all, than in any year previous were placed on the open docket;" "Scharrer state[d] that not one of the 39 ha[d] given cause for regret that such disposition" was made.[439]

In October, he announced that he would not seek another term as prosecutor but was, instead, returning to private practice in partnership with his younger brother, Oscar B. Scharrer.[440] The papers lauded him for his work as prosecutor noting, among other things, that "[h]e has followed the course of giving the youthful criminal a chance to make good and has been relentless in prosecuting the hardened violator."[441] He supported Ralph E. Hoskot as his successor.[442]

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433. *Id.*

434. Dayton Daily News, July 12, 1927. Nickol, "a former Dayton business man," promised that "[d]ollar for dollar of the money missing when he was arrested following his holdup" would be repaid. *Id.*

435. Dayton Herald, Apr. 1, 1937; *see also* Cincinnati Enquirer, Apr. 2, 1937; Cincinnati Enquirer, Mar. 31, 1937.

436. Cincinnati Enquirer, Apr. 2, 1937.

437. Dayton Daily News, Sept. 2, 1926; *accord* Dayton Herald, Sept. 2, 1926.

438. Dayton Herald, Sept. 2, 1926.

439. *Id.* The increase was attributed to a new statute which permitted suspending sentence "where it is considered certain in the mind of the prosecutor that the offender is not likely to engage in an offensive course or where his conduct and the public good do not demand that sentence be imposed." *Id.*

440. Dayton Herald, Oct. 12, 1926; *see accord* Lab. Rev., Oct. 22, 1926; *see also* Dayton Daily News, Oct. 12, 1926.

441. Dayton Herald, Oct. 12, 1926.

442. "Ralph . . . has been my assistant for the past four years and has been an assistant in

b. Offenses

Many of the cases which arose in 1926 were reiterations, with different players, of cases that had arisen in earlier years; therefore, to avoid redundancy, this section considers only some of Scharrer's more noteworthy cases during this, his final year as prosecutor.

In January, he ordered "a cleanup of liquor conditions in the vicinity of the National Military Home."[443] The order was prompted by reports of "[p]ersecution of residents at the . . . home by civilian bootleggers and operators of gambling houses and houses of ill-fame."[444]

> Pocket bootleggers are reported to be selling hair tonic, jamaca ginger and alcohol rub and what not to the soldiers of the home resulting in a general drunken wave and operators of gambling devices by civilians in that vicinity are said to be robbing the soldiers of the small pensions. It was also reported that a woman known as 'Madam J' is running a house of ill-fame and daily inticing [*sic*] the residents of the home to spend their small government income at her place.[445]

It seems that "15 to 20 . . . inmates of the home [were] arrested and committed to the county jail every week on drunk charges."[446] Sheriff Webster promised "[a] raid a day and even more until the slate ha[d] been cleaned."[447]

Later that month, Webster arrested "Harold Lewis, 28, clerk at the . . . home" for possession of liquor.[448] After he was taken to the county jail, Lewis admitted that "he was bootlegger at the home and had made as high as $200 a day on pension day from the old soldiers."[449]

Scharrer stirred up political controversy. In August, he announced that "D.C. Brower, the Republican boss," had attempted to influence the granting of a contract for the construction of a new children's home.[450] Scharrer "told him to keep his hands off, that the children's home was too sacred a trust to be interfered with politically."[451] Two

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the Prosecutor's Office for the past seven years . . . . I know Mr. Hoskot is well qualified for this important post." Form letter signed by Scharrer supporting Hoskot's candidacy (Oct. 25, 1926).

443. Dayton Daily News, Jan. 21, 1926.

444. Dayton Herald, Jan. 21, 1926.

445. *Id.*

446. *Id.*

447. *Id.*

448. Dayton Daily News, Jan. 25, 1926.

449. *Id.*

450. Dayton Herald, Aug. 6, 1926. "Mr. Brower approached me relative to the awarding of the . . . contract . . . to Walker & Norwich, saying: 'I want that firm employed so that I can write the premiums on the contractors' bonds, which will mean $1500 to me.' " *Id.* (quoting statement from Scharrer).

451. *Id.*

weeks later, he announced "[a] methodical search for the person or persons who made a change in the figures on the poll books of Tuesday's primary election, whereby Herman Nies, Brower candidate in the Third ward, was credited with 18 votes instead of 8."[452] Because of the investigation, E.E. Hummerich, an anti-Brower candidate, was elected "by a vote of 213 for him against 211 for Herman Nies."[453]

The most interesting occurrence is a letter which Scharrer signed but which went out in the names of four other men, Arnold Skinner, M.C. Davis, C.L. McElwee and Garfield Huden.[454] It charged Webster with a variety of misconduct and asked that he resign as Sheriff; some of the accusations are as follows:

> Again on Saturday evening gambling paraphernalia was seized and a game of chance broken up by law officers but only after deputies . . . witnessed those in charge . . . robbing all who played. . . . The wheel seized was removed to the jail and when an effort was made to obtain it on Monday it had disappeared. . . . Conditions in the county being so lamentable . . . scandal on every tongue . . . necessitat[ed] the presence of a state officer in the raid of last Sunday. . . . Determination to put an end to . . . trucks openly hauling whiskey and beer through the streets over fixed routes in making their deliveries, not molested, hundreds of dollars of whiskey sold almost every Saturday and Sunday within a stones' throw of police court, you pleading an agreement to refrain from making raids in the city . . . and . . . only recently asking lenience . . . in disposing of Johnny, the Greek, caught with lots of Canadian beer. . . . . . Drinks . . . so free and accessible, directly causing one of your deputies to lose his power of locomotion . . . . Then you say your deputy sheriff, John J. Null, reported absolutely nothing intoxicating at last Sunday's picnic. Could you expect anything different from a former saloonkeeper. If the latter had seen fit to report the truth his services would have been terminated.[455]

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452. Dayton Herald, Aug. 15, 1926. "Where the word 'eight' was originally written in by the judges and clerks in the booth, this was changed to 'eighteen.' " *Id.*

453. Dayton Herald, Aug. 17, 1926. In October, after Brower had been dispossessed as chairman of the Montgomery County Republican Association, Scharrer placed his name in consideration as a candidate for that position. Dayton Daily News, Oct. 24, 1926. In December, the grand jury investigating the matter announced that it was unable "to place responsibility for the alleged changing of [the] election books." Dayton Daily News, Dec. 11, 1926; Dayton Herald, Dec. 11, 1926. In 1931, D.C. Brower was reported as having "personally besought Al [Scharrer] to be a candidate" for the Republican nomination for Congress. Dayton Daily News, Dec. 27, 1931. Brower's pleas notwithstanding, Scharrer chose not to run. *Id.*

454. Letter from Skinner, Davis, McElwee and Huden to Sheriff Howard Webster (Sept. 2, 1926). The names of each of the four are typed at the end of the letter, after the closing "[r]espectfully yours." *Id.* At the bottom left-hand corner of that page of the letter, the initials "AHS/IM" appear, and Scharrer signed the letter along the bottom right-hand corner of that same page. *Id.*

455. *Id.* Apparently, a state police officer was involved in the raid that seized the gambling

The letter begins by asserting that the signatories will not attend a "hearing fixed for ten A.M. to-day in" Webster's office pursuant to advice of counsel because "there is no authority in law" for it.[456] It concludes by requesting that the Sheriff "[a]rrange a hearing before the Prosecutor whom we highly esteem or any of the Common Pleas Judges" to investigate "why these arrests and seizures were made by state and other officers without any assistance from" Webster's office.[457]

There is no indication as to what became of the requests contained in this letter, but a subsequent exchange between Scharrer and Webster does survive. On November 15, Scharrer wrote Webster informing him that he had received a complaint that slot machines were being operated at various locations and requesting that Webster "please seize these slot machines, if they are being operated illegally and contrary to law."[458] On November 19, Webster responded. In a letter saluting Scharrer as "[m]y dear prosecutor," he "advise[d] that deputies from this office visited all the places listed by you, and seven or eight more, and we have confiscated six machines from" the Villa Inn, "Billy Edwards' Barbacue [*sic*]," and "Kates [*sic*] Chili Parlor."[459]

In a letter dated November 19, Scharrer informed his complainant, Daniel Brownlee, Secretary of the Sunday School Council of Religious Education, that he had received a letter from Webster "with reference to the slot machines, in which he says as follow;" Scharrer then reproduced the substance of Webster's letter in its entirety.[460] Brownlee's complaint had been based upon a report submitted by a

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equipment; after it disappeared, "bystanders remark[ed] that some one must have received a pretty penny for the privelege [sic] of conducting such a sure thing." *Id.*

456. *Id.*

> Non-sympathy with law enforcement as it pertains to gambling and intoxicating liquors, on your part, together with our desire and determination not to be a party to anything which in any manner might impede or obstruct the administration of justice in the cases growing out of the raid made in Eagles' Park last Sunday and liquors seized, may be mentioned as the chief causes for our non-attendance.

Id.

457. *Id.* The reference is apparently to the raids that had occurred at Eagles' Park on Sunday, for liquor violations, and to the seizure of the gambling equipment described above.

458. Letter from Albert H. Scharrer to Sheriff Howard E. Webster (Nov. 15, 1926). Scharrer asked that Webster investigate machines in the following locations: "White Diamond Inn; Villa Inn; Barbecue on Brandt Pike and Community Drive; Big Turkey Raffle, 300 feet outside of city, on the Troy Pike; Dagmar Inn, at Stop 9, Cincinnati Pike; Shadyside Inn, Dixie Highway; Kate's Place, New Troy Pike." *Id.*

459. Letter from Sheriff Howard E. Webster to Albert Scharrer (Nov. 19, 1926). Webster also noted that "[r]egarding raffle on New Troy Pike, deputies find no evidence of any raffle in operation." *Id.*

460. Letter from Albert Scharrer to Daniel Brownless (Nov. 19, 1926).

special investigator to the "Secretary of [the] Council of Churches."[461] According to that report, slot machines were being operated in several places which were identified in his report and "in several other places in our county."[462]

At the end of November, Scharrer prosecuted Albert L. Hill, who was convicted "on the first degree slaying of his six-year-old son, Roy Denver Hill."[463] He "was charged with slashing the throat of his son in the attic of their home . . . while police were attempting to batter down a barricaded door. He attempted to end his own life with the same safety razor blade before the officers entered the room to find the lifeless body of the boy."[464] Scharrer's closing argument was vehement and impassioned:

> 'Let a woman do a thing and she is damned for life, but let a man take the life of his boy and we weep over him,' Scharrer stated in pointing to the evidence of the defense, relative to the desertion of Mrs. Hill of her husband and family . . .' I will never compromise the murder of an innocent child. Albert Hill, I would have thought more of you had you slain your wife instead of taking the life of this child.'[465]

After he was convicted, Hill announced that he was satisfied with the verdict and wanted "to thank members of the jury, Judge Alfred McCray, [his] attorneys and State Attorneys Albert H. Sharrer [*sic*] and Charles J. Brennan for the consideration they have shown me during this trying ordeal."[466]

In December, Scharrer prosecuted his last case, against "James Wilson . . . nationally known burglar," who was arrested "when he claimed a brief case hidden under steps at a vacant house . . . which contained a complete burglar's outfit."[467] The outfit included "nitroglycerin . . . 23 blasting caps and five electrically wired blasting caps."[468] Scharrer brought in an expert, "George F. Hutchinson, of Winona, N.J., head of the eastern laboratory department of the Dupont Powder mills" to explain the explosive capabilities of the materials in

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461. Report to Secretary of Council of Churches, typewritten and with a handwritten, undated, notation added by Daniel Brownlee (on file at the University of Dayton Law Review).

462. *Id.* "The slot machine looks just like the old slot machine which was ordered out some time ago, 5 ct. pieces must be put into play, . . . and a player has a chance of winning more each play or nothing each play." *Id.*

463. Dayton Daily News, Dec. 5, 1926.

464. *Id.*

465. Dayton Herald, Dec. 4, 1926.

466. Dayton Daily News, Dec. 5, 1926.

467. Dayton Daily News, Dec. 11, 1926.

468. *Id.* Prior to trial, "[t]he nitro-glycerin . . . was poured into the Miami river while the empty bottle and other material was introduced as evidence." *Id.*

the brief case.[469]

Because the trial continued past January 1, 1927, when Scharrer's term as prosecutor expired, he was appointed "as a special prosecutor to complete the case."[470] When he gave his closing arguments, the audience "said they had never heard him handle a case with such brilliance."[471] The jury convicted Wilson on one count of "possessing explosive material" and he was "given an indeterminate sentence of from one to twenty years, with a minimum of ten years, in the Ohio state penitentiary."[472] Interestingly enough, the trial was also a milestone for Wilson's attorney, John Egan, "who . . . stated in court . . . that he would likely not appear in a criminal case again. The case ended 30 years to a day the career of Mr. Egan as an attorney."[473]

IV. DEFENSE ATTORNEY (1927-1950)

Albert Scharrer was a defense attorney for more than fifty years, from the time that he left the prosecutor's office in 1927 until his death in 1979.[474] It is impossible, in an article such as this, even to summarize the cases that he handled during this period of time.

This does not, however, pretend to be a literal recreation of Scharrer's career. It is an anecdotal exploration of aspects of his career, the purpose of which is to illuminate the extent to which the practice of law in days gone by resembled, as well as differed from, practice in the present era. To that end, this article has explored the earlier years of Scharrer's career in some detail, on the assumption that modern lawyers are likely to be most ignorant of the social and legal milieu which prevailed during that portion of his life. It is that assumption which limits this portion of the discussion to cases which Scharrer handled prior to 1950; that year was selected as a convenient cut-off date both because it brings Scharrer's history into the more modern era and because it follows the conclusion of what may have been his most sensational trial.

The discussion below is divided according to decades, and explores some of the cases that Scharrer handled in the years between 1927 and

469. Dayton Herald, Dec. 31, 1926. "Hutchinson . . . testified that he and Assistant Prosecuting Attorney Charles J. Brennan, who went east to the company's factory, tested the . . . blasting caps found by officers and that the shells, which were of his company's make, were of a highly explosive character." *Id.*

470. Dayton Daily News, Dec. 31, 1926.

471. Dayton J., Jan. 9, 1927.

472. *Id.*

473. *Id.*

474. "The Dayton Bar Association lost one of its most distinguished members with the passing of Albert H. Scharrer on January 10, 1979." O'Hara, Jacobson, Jeffrey, Mumpower & Porter, *supra* note 10, at 26.

1950. The emphasis is upon describing particular cases, the circumstances that gave rise to them and the circumstances by which they were resolved.

A. The Remainder of the 1920's

Albert and Oscar Scharrer opened their law offices "on the ninth floor of the Dayton Savings and Trust building."[475] In a letter to Gilbert Bettman, Attorney General Elect, Albert explained his motivations for entering private practice: "I . . . feel that I have given eight years to the public service and am now entitled to a little vacation in the private practice of the law."[476]

1. Mudd

In July, 1927, Scharrer represented twenty-seven-year-old Joseph Mudd, who was accused of shooting "Asa Ferris, 45, a steam fitter from Toledo who made his home with the Mudds in Dayton."[477] Ferris was shot "at the A. & P. filling station, Main street and Rush avenue;" at the time, he was a passenger "riding from Dayton to Toledo with" Mudd and his wife.[478] Mudd admitted the shooting but maintained that it was an accident.[479] He was acquitted, apparently on the strength of testimony from his wife, who was the only eyewitness.[480] The verdict was greeted with "clamor . . . and Mr. and Mrs. Joe Mudd were surrounded by the scores who had been hearing the trial and were congratulated."[481]

Scharrer "directed the defense of the case and the cross-examination," as well as making part of the closing argument on Mudd's behalf.[482] He was assisted by "John C. Hover, former Judge of the Logan County Common Pleas court" and by "A.A. McCarthy, assistant to Attorney Albert H. Scharrer;" both Hover and McCarthy also argued

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475. Lab. Rev., Jan. 21, 1927. After reading law in his brother's office, Oscar Scharrer was admitted to the Ohio bar in 1917 and spent "five years as a teacher in Parker High School, Dayton, and one year as a lawyer in the employ of the United States Department of Justice, in Cleveland" before entering "the independent practice of law in Dayton." 4 DAYTON AND MONTGOMERY COUNTY RESOURCES AND PEOPLE 240 (1932).

476. Letter from Albert Scharrer to Gilbert Bettman (Dec. 21, 1928). In an earlier passage in the letter, Scharrer is obviously declining an offer that had been made to him, for the reasons given above and because "[m]y family had to be considered first and we want to stay in Dayton." *Id.*

477. Dayton Daily News, July 12, 1927.

478. *Id.*

479. *Id.*

480. Enid Mudd was a nineteen-year-old "former telephone operator" who was described as "a pretty girl" whose "[t]estimony . . . helped to influence the jury." *Id.*

481. *Id.* As the clerk read the verdict, "pandemonium broke loose. Shouts, whistles, screams, yells filled the court room. The crowd had heard the verdict they desired to hear." *Id.*

482. *Id.*

on Mudd's behalf.[483] After the trial, the presiding judge, Ernest Thompson, wrote Scharrer a letter in which, among other things, he responded to what were apparently some compliments on his handling of the trial: "I greatly appreciate your kind words and hope my rulings merit them. You never asked for anything but right & law, so that my part was thus made easy."[484]

2. Freeman

In March of 1929, Scharrer won a far more difficult case, defending a black man, Roy Freeman, who was charged with the "first degree murder of Roy C. Horn, motorcycle officer."[485] Freeman was

> arrested Sept. 18, 1927, on the Dayton State hospital grounds, a few hours after Motorcycle Officer Horn was found at Hollencamp and Warren sts., dying of a bullet wound. Within one month, Freeman was convicted by a jury and received the death penalty in the court of Judge Robert C. Patterson. Date of his electrocution was set for Feb. 3, 1928, but the case was carried to the [state] supreme court w[h]ere a reversal was obtained and the accused granted a new trial.[486]

The National Association for the Advancement of Colored People retained Scharrer to represent Freeman at his second trial.[487] He was prosecuted by Charles Brennan and Paul Wortman, which gave Scharrer the opportunity to battle his former assistants.[488]

Scharrer began by persuading Judge C.A. Bell, who replaced Judge Patterson, to exclude a confession which Freeman was alleged to have made.[489] In so doing,

> Judge Bell scored police officials for propounding questions to the ac-

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483. *Id.*

484. Letter from Ernest Thompson to Albert Scharrer (July 26, 1927).

485. Dayton Daily News, Mar. 25, 1929.

486. *Id.*

487. Letter from Jessie Hathcock, Corresponding Secretary, NAACP, Dayton Branch (Apr. 1, 1929); letter from William Pickens, Field Secretary, NAACP, to Albert Scharrer (Mar. 23, 1929). Both letters congratulate Scharrer for his work on behalf of Freeman, to which he replied, in part, as follows: "Your letter . . . commending me for the effort which I put forth in the defense of Roy Freeman, is very much appreciated . . . . My only answer to you is this, I have done my duty." Letter from Albert Scharrer to Jessie Hathcock, Corresponding Secretary, NAACP, Dayton Branch (Apr. 2, 1929). Scharrer was lead counsel and was assisted by "Anthony McCarthy, Gilbert Waiters and Thomas Norris, the latter two being of Freeman's own race." Dayton Daily News, Mar. 25, 1929.

488. Dayton Daily News, Mar. 25, 1929.

489. Patterson had presided at the original trial; after Freeman's counsel objected to his presiding over the re-trial, "Judge C.A. Bell of Cincinnati" was brought in to hear the case. *Id.* Judge Bell granted "the motion of the defense to exclude the 'confession' Freeman made" and, in so doing, denounced "police tactics as adduced from evidence offered by the state and defense." Dayton, Mar. 21, 1929.

> cused before providing medical treatment for the gun shot wound in his leg.He also criticized police because statements Freeman made while the confession was being taken had been omitted from the transcript. This prop was knocked from under the state principally because of the experience of Defense Counsel Scharrer as a shorthand writer. He stood at the elbow of the police stenographer as he read his notes, questioned him on the characters he had written and forced an admission that there was at least one statement he had not transcribed at the time the statement was taken and which the stenographer could not read to the court at the second trial.[490]

Freeman was acquitted, probably because Scharrer succeeded in suppressing the confession and demonstrated that Horn was killed by a bullet of a caliber different from Freeman's gun.[491] After the acquittal, Freeman was whisked out of Dayton, to return "to his home near Mercer, Tenn[essee]."[492]

His immediate departure was prompted by concerns for his safety. During the trial, Scharrer received "[n]umerous threats, by telephone and by letter, to blow up his house."[493] After the trial, he said that "the first . . . came by telephone and was directed against Mrs. Scharrer."[494] Others followed, at least one of which threatened "to blow up Mr. Scharrer's residence while all the members of his family were in it."[495] Scharrer "paid little attention to the messages" but, after the trial was over, local authorities made an unsuccessful attempt to locate their source.[496]

3. Lensch

In July of the same year, he defended "Rehmund Lensch, [an] 18-year-old Steele high school graduate" who was indicted "on a charge of manslaughter for the death of Wilbur Setzer, as the two were camping along Wolf Creek."[497] In his closing argument, Scharrer tore into the fact that Prosecuting Attorney Paul Wortman was not present at the

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490. Dayton Daily News, Mar. 25, 1929.

491. "Former Coroner John F. Torrence . . . testified it was a .38 caliber shell [which killed Horn] while the gun of Freeman was identified as being a .32–20 revolver of Spanish make." *Id.*

492. *Id.* "A car was waiting outside the jail to take him immediately to the home of friends on Home Ave., and he left Dayton within an hour or so . . . ." *Id.*

493. *Id.*

494. *Id.*

495. *Id.*

496. *Id.* After he excluded Freeman's confession, Judge Bell also received letters threatening his life. *Id.*

497. Dayton Daily News, July 23, 1929. According to Lensch, Setzer died as the result of an accidental shooting. He testified that "he fired to let Setzer and his companion, Charles Stauffer, know that they had shot in his direction." *Id.*

trial but, instead, was touring Europe.[498]

> 'If this case is so important . . . where is the prosecuting attorney that you and I helped to elect? If the case is as important . . . as the prosecution would have us believe, the people are entitled to some statement from his lips. The prosecution is asking you members of the jury to make an example of this boy—to place him behind prison walls. While his assistants do this job, he is in Europe, conducting a tour. He should be here asking justice at your hands. When his assistants seek to send such a boy as Lensch to prison, I shall attack the head of that office.[499]

It took the jury twenty-two minutes to acquit Lensch.[500]

4. Parks

In August of that year, Scharrer defended Mrs. Amanda Parks, who was charged with violating the liquor laws.[501] The trial had the aspects of a farce. First of all, it was delayed when no one could locate Sheriff Robert M. Blank, who kept "the key to the county room where confiscated liquor [was] stored;" when he could not be located, it seemed that "the evidence . . . could not be produced" and Scharrer threatened to move for dismissal.[502]

The evidence was a small teapot said to have been confiscated in a raid on her home and, to avoid a dismissal, "[d]eputy sheriffs left the court room hastily and returned some minutes later with the alleged evidence."[503] They had pried the door of the evidence room open in order to obtain; "[p]aper seals had been placed on both the top and spout of the minature [*sic*] vessel, which would hold about one cup of fluid."[504]

> Scharrer instructed [State Officer Mid. C.] Davis to open the state's exhibit and tell the court what was in it. Davis did so only to find the liquor had disappeared. Only a faint smell remained. Davis explained it probably evaporated. The home was raided July 27. However, the faint odor in the china teapot and the word of arresting officers that a 'very small amount' of liquor was found in it at the time of the raid, caused . . . Judge Cecil to declare Mrs. Parks guilty.[505]

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498. *Id.*
499. *Id.*
500. *Id.*
501. Dayton Daily News, Aug. 6, 1929.
502. *Id.* The case was originally called for Friday, and then continued to Monday when the Sheriff could not be located to open the evidence room. *Id.*
503. *Id.*
504. *Id.*
505. *Id.*

Despite the fact that the liquor had 'evaporated,' the presiding judge said there was a thread of circumstances which would tend to prove she possessed liquor. In connection with

B. The 1930's

On September 26, 1930, Albert and Oscar Scharrer announced "the formation of a partnership, Oct. 1, for the general practice of law, with Anthony A. McCarthy and Ralph J. Hanaghan, under the firm name of Scharrer, Scharrer, McCarthy & Hanaghan."[506] In 1931, Albert announced that he would not be a candidate for the Republican nomination for "congressman from the Third Ohio district" but would run for judge of the common pleas court in 1934.[507] He was not, however, destined to take the bench but spent the remainder of his life as a defense attorney; the sections below describe some of the more colorful cases in which he became involved during the 1930's.

1. Roberts

At the end of 1931, he defended E.J. Roberts, a former police officer charged with participating "in the holdup of the H.R. Biagg company payroll on August 9, 1930."[508] Charles Brennan acted as co-counsel for the defense, which relied upon an alibi.[509] "This was shattered almost completely . . . when the state called two rebuttal witnesses who produced records to show Roberts had rented cars from the Barnard Brothers Drive Yourself agency during the month of August, 1930, when his alibi witnesses testified he was in Greene county."[510]

After Roberts was convicted, Scharrer moved to withdraw from the representation of James Foote, a former Dayton policeman who was charged with "complicity in the H.R. Biagg Co., pay roll holdup" for which Roberts had already been convicted.[511] "In his application for the court to name another attorney for Foote, Scharrer told Judge Cecil . . . that he felt that since he served in the Roberts trial for nearly a month, and received no compensation, he had done his duty as an officer of the court."[512] Although his "withdrawal . . . came as a dis-

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that though, he recognized a small amount of burnt sugar found in the house at the time as evidence. Dry raiders were forced by Mr. Scharrer to admit, however, that such sugar is used commonly for cakes and gravies.

Id.

506. Dayton Daily News, Sept. 26, 1930. Hanaghan was "a graduate of Stivers high school . . . and of the law school of the University of Dayton" and had spent two years as an assistant prosecutor when Scharrer was County Prosecutor. *Id.* McCarthy was a graduate of the University of Dayton and "of the Harvard Law School" and had been Scharrer's associate for "four and one-half years." *Id.*

507. Dayton Daily News, Dec. 27, 1931; Dayton Daily News, Dec. 24, 1931.

508. Dayton Herald, Dec. 4, 1931.

509. *Id.*

510. *Id.*

511. Dayton Daily News, Dec. 8, 1931; Dayton Herald, Dec. 8, 1931.

512. Dayton Daily News, Dec. 8, 1931.

'I feel that having served in the Roberts case for one month without compensation and

tinct surprise in court circles," it was granted and "Harry Jeffrey and Anthony McCarthy were appointed to represent" Foote.[513] "Foote made a statement . . . thanking Scharrer for his services and said that every effort he had made to raise money to pay him had met with failure."[514]

2. Shuey

In 1932, Scharrer represented Ray S. Shuey, former vice president and general manager of the Duro Company, who was charged with embezzling $59,350 "from that company during the last three years."[515] "Shuey was charged with padding the pay roll," with drawing between $500 and $600 a week over and above the pay roll requirements and appropriating the money to himself. His defense was that he was authorized by D.E. Burnett, former president of the Duro, to take the money as a bonus for extra work performed and in consideration of the investment they had in the company.[516] His trial lasted for ten days and, "because of the prominence of the persons involved and the large number of stockholders, the courtroom was crowded daily to capacity."[517]

After deliberating for less than four hours, the jury returned a verdict of not guilty. "Prosecutor Calvin Crawford and his assistant, Francis Canny, seemed stunned for a moment but shook hands with the defense attorneys before leaving the courtroom."[518] Both sides later issued statements praising the performance of their respective opponents.[519]

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since Foote is unable to raise any money for his own defense, I cannot, in justice to myself, go into another two weeks trial . . . without some pay,' Scharrer said, 'inasmuch as I have other cases coming along regularly for trial. I ask the court to consider these facts and to determine whether or not I have done my duty as an officer of the court, and to name other counsel for Foote.'

Id.

513. *Id.*; Dayton Herald, Dec. 8, 1931. "When Foote was first asked by the court if he wanted an attorney appointed to defend him, the former police officer rejected the proposal and said that he would defend his own case to the best of his ability." *Id.* Because Judge Cecil "did not think it was fair to" Foote to allow him to go to trial without an attorney, he appointed Jeffrey and McCarthy. *Id.*

514. *Id.*

515. Dayton Daily News, Mar. 27, 1932. R.N. Brumbaugh was co-counsel for the defense. *Id.*

516. *Id.*

517. *Id.*

518. Dayton Herald, Mar. 27, 1932.

519. *Id.* The statement issued by Scharrer and Brumbaugh noted that their defense was predicated upon a story which Shuey told them on the night he was arrested at "a stockholders' meeting at the plant of the Duro company;" it also referred to a settlement effected in a civil suit which Duro had brought to recover the allegedly embezzled funds. *Id.* Under the settlement, Shuey had made full restitution of the funds that were at issue in the criminal proceeding. *Id.*

3. Ostrov

In 1933, Scharrer defended Meyer Ostrov, "head of the Western Malt company," who was charged with "second degree murder for the death, by shooting, of Glen 'Fat' McCrosson" and "Lonnie Carmer, Newport gangster."[520] According to the prosecution, McCrosson and Carmer were shot in a gang war over a still.[521]

The shooting occurred at a house located on Princeton drive "which, at the time . . . was occupied by Mrs. Lola Dorman."[522] Ostrov would later testify that, on the day in question, he asked Detective Sergeant Tom Wollenhaupt and Detective H.A. Reed to go to the house and investigate; he and several companions then departed for the same location.[523] The prosecution contended that Ostrov owned a huge still which was located at the house on Princeton drive, and that he "drove to the house on that day . . . to protect his property."[524] When Wollenhaupt took the stand, he testified that he and Detective Reed were delayed and arrived after the shooting had already occurred.[525]

> When they arrived at the house they saw two men . . . dragging the body of McCrosson across the front porch, Wollenhaupt testified. Ostrov was standing in the front yard with a German Leuger [*sic*] automatic in his hand. . . . Wollenhaupt said he found Carmer slumped in an automobile parked in the driveway and when he attempted to question him, Carmer said: 'I'm shot; get me to the hospital.'[526]

On cross-examination, Wollenhaupt described McCrosson as "a bootlegger and hi-jacker" and admitted that he and Reed could have arrived much sooner if they had taken a different route.[527]

Ostrov took the stand and did not deny that he had shot both men, but contended that, if he had done so, it was in self-defense. "Scharrer said that Ostrov shot in self-defense; that when Ostrov entered the home he was grabbed by McCrosson and in the ensuing scuffle McCrosson and Carmer were shot."[528]

After a trial that lasted almost two weeks, Ostrov was acquitted

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520. Dayton Daily News, June 20, 1933; Dayton J., Dec. 3, 1933.
521. Dayton Daily News, Dec. 3, 1933.
522. *Id.*
523. Dayton Herald, Nov. 24, 1933.
524. Dayton Daily News, Dec. 3, 1933.
525. Dayton Herald, Nov. 24, 1933.
526. *Id.* (Carmer later died of his wounds).
527. *Id.*
528. Dayton Daily News, Dec. 3, 1933. Ostrov testified that "McCrosson grabbed him; that Carmer fired at him and that when he attempted to fire his own gun, he and McCrosson struggled for possession of it." Dayton J., Dec. 3, 1933. He also testified that "he was not sure whether he killed both men or not." *Id.*

and, after the verdict was read, women spectators wept and the men "formed in a line to congratulate Ostrov and his attorneys, Albert Scharrer and Anthony McCarthy."[529] Prosecutor Calvin Crawford, whom Scharrer had bested in the Shuey case, "refused to discuss the verdict and Scharrer found it impossible, being smothered in a shower of congratulations."[530]

In the course of the trial, a newspaper photographer was called to identify five photographs which he had taken shortly after the killings; Scharrer objected to the use of the photographs as evidence because three of them showed the bodies of the decedents and, he said, were intended "to 'inflame the minds and passions of the jury.' "[531] He lost the objection but won the trial; that Christmas, Ostrov presented him with an album containing those and other photographs.[532]

4. Kolb

"At 11:28 P.M., April 18, 1939, Patrolmen L.L. Stockman and Charles Evans, veteran Dayton . . . police officers, picked up a call on their cruiser radio to proceed to 629 Dakota St., center of the city's large Hungarian district. The complaint was burglary."[533] They arrived "at the modest two-chair barber shop of Andy Kolb, Hungarian-born citizen who was widely known in that district."[534]

Kolb said that he had arrived home late, to discover that "the living quarters back of the shop" had been burglarized.[535] He told the officers that ten dollars was missing from the cash drawer in the shop but that he did not yet know whether anything was missing from the living quarters.[536] He also said that his wife, Meri, did not seem to be at home and that neighbors had persuaded him to report the incident to the police.[537] After making a few notes and looking the place over, Stockman and Evans "put in a routine call to the Bureau of Identification" and left, telling Kolb that an officer would arrive to check on fingerprints.[538]

When Detective Harry Davis arrived, Kolb ushered him into the

529. Dayton Daily News, Dec. 3, 1933.
530. *Id.*
531. Dayton Herald, Nov. 24, 1933.
532. The album is on file with the University of Dayton Law Review.
533. Levins, *Did Justice Triumph? How Burglary Tip Uncovered Murder of a Nagging Wife*, N.Y. Sun. News, Oct. 1, 1939, at 8, col. 1.
534. *Id.*
535. *Id.* "Here everything was in wild disorder—a chair was overturned, closet doors were open, bureau drawers hung out, with articles of clothing scattered here and there." *Id.*
536. *Id.*
537. *Id.*
538. *Id.*

living quarters, mentioning that he was concerned about his wife's continued absence.[539] Davis "noted the disorder with the practiced eye of an expert" and concluded that the "burglary was a phony."[540] As he searched for fingerprints, Kolb "poked about the house," suddenly crying "My God, there she is. My darling Meri!"[541] Meri Kolb was lying in a pool of blood at the foot of the cellar steps, beaten to death with the leg of a pin-ball machine.[542]

Kolb told the police that he and Meri had argued earlier in the day and he had concluded the argument by striking Meri in the face, causing her to fall down the steps.[543] He then left the house for the afternoon, visiting a bowling alley where "[h]e rolled exceptionally well."[544] Later, he said, he returned home and discovered the burglary.[545]

While Kolb was making this statement, detectives discovered "ten blood-drenched towels in the barber shop;" when confronted with them, Kolb admitted that he had returned to the house late in the afternoon and had tried to mop things up in the cellar, where Meri lay.[546] Eventually, Kolb "admitted striking his wife with the pin-ball machine leg, and he admitted that he faked the burglary," but he insisted that the killing was done in a sudden rage, and was in no way premeditated.[547]

He was charged with first degree murder and defended by Albert Scharrer, Anthony McCarthy and Julius Herschig.[548] On May 15, Kolb "waived a jury trial and asked to be tried by a three judge court."[549] "In commenting on the reason for the change, Scharrer said

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539. *Id.*

540. *Id.* (emphasis deleted). "He had seen a lot of burglaries, both real and phony, and he knew what they looked like. Moreover, he could find no fingerprints." *Id.* (emphasis deleted).

541. *Id.*

542. *Id.* (emphasis deleted).

543. " 'I went into the cellar and she followed me . . . . She kept screaming at me so that I saw red. She made me so mad that I punched her in the face. She fell down. I went back upstairs.' " *Id.* at 8, col. 2–3.

544. *Id.* at 8, col. 3.

545. *Id.*

546. *Id.*

547. *Id.* at 8, col. 4. The confession came after police made Kolb take off his shoes: "The shoes were spotless, as were his clothes. But the socks were soaked with dried blood!" *Id.* (emphasis deleted).

548. Actually, Kolb "had engaged Julius Herschig, widely known among his countrymen, to defend him; Herschig had called in Albert Scharrer and Anthony McCarthy, both eminent criminal lawyers." *Id.* at 9, col. 2. Kolb had been born in Hungary, *id.* at 8, col. 1, and emigrated to the United States when he was nineteen; he eventually wound up as a barber in Dayton, *id.* at 8, col. 5, where he met Meri Konari, a widow whose husband had left her with "some real estate worth about $5,000 and about $1,000 cash." *Id.* at 9, col. 1. After "going together" for six years, they were married in a civil ceremony in Richmond, Indiana on October 20, 1938, and "went through a religious marriage ceremony at their own" church in Dayton on January 4, 1939. *Id.*

549. Dayton Daily News, May 15, 1939. This came after the defense "offer[ed] a plea of

that counsel for Kolb feel there are many angles in the case which would be better understood by three judges than by a jury of persons with no experience or knowledge of trial cases."[550] "Chief Justice Carl V. Weygandt, in granting the plea, named Common Pleas Judges Robert U. Martin, Lester L. Cecil and Charles Lee Mills" to hear the case.[551]

At trial, the prosecution attributed the murder to the fact that Meri had "stopped giving [Kolb] money" to make payments "on a loan held by a local building and loan association."[552] In his opening, Scharrer said the evidence would show that Meri had become "a nagging woman . . . [who] frequently accused her husband of unfaithfulness."[553] He also explained that

> on the day of the fatal fight, . . . each time Kolb returned and looked down the basement stairs at his wife he wanted to call the police but did not. Finally, Scharrer said, he did call the police, using the only method he could think of at the moment—a fake burglary.[554]

His first move was an attempt to repeat a tactic which had proved successful in the Roy Freeman trial, demonstrating that the transcript of a confession was incomplete. After "Vera Carpenter, stenographer in the prosecutor's office" took the stand and read a transcript of Kolb's confession, Scharrer examined her and "brought out that a complete record of everything [*sic*] said during the . . . session . . . was not made."[555]

This was actually Kolb's second statement. "The first was taken in

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guilty to second degree murder;" County Prosecutor Nicholas Nolan rejected the plea and "demanded trial." Levins, *supra* note 533, at 9, col. 2.

550. Dayton Daily News, May 15, 1939. Scharrer also reported to the court that "Kolb understood the entire procedure; that it was explained to him in every detail, in . . . English . . . and then in Hungarian . . . and that it was his desire." *Id.* The paper noted that it was "the second trial in this county where a person charged with first degree murder" had come before a three-man court. *Id.*

551. Levins, *supra* note 533, at 9, col. 3.

552. Dayton Herald, May 18, 1939. According to the prosecution, after Kolb struck Meri and left her lying on the cellar floor, he spent the rest of the day "alternately going downtown to make his building and loan payment, returning home and looking again at his wife, finding her still alive, calling up his wife's dressmaker to inquire where Meri was, making a sandwich for himself in the kitchen, going out and returning, and finally rolling a better than 200 bowling score." *Id.* This account of Kolb's conduct came from the confession which he gave to the police. *Id.*

553. *Id.* Meri Kolb was twenty years older than her husband, which meant that she was fifty-six years old when she died. Levins, *supra* note 533, at 8, col. 2.

554. Dayton Herald, May 18, 1939. "She also, Scharrer said, had made excessive demands for affection on the part of her husband." *Id.*

555. *Id.* This seems to have gone no further, either because nothing of importance was omitted or because Scharrer believed that the first confession was of greater tactical significance, or both.

police headquarters at 4:35 a.m. on the morning of the 19th of April" and the second "was taken by Mr. Kelly . . . in the office of the prosecuting attorney at about 3 p.m. on the 19th of April."[556] After the prosecution introduced the second statement, Scharrer demanded to see a copy of the statement taken at police headquarters.[557] Prosecutor Kelly refused, on the grounds that "the state had no intention of using the first statement."[558]

Scharrer's battle for the first statement spanned several days. Albert Gray, the police stenographer who recorded the statement, was summoned to court, bringing "a transcription of his shorthand notes and" the notes themselves.[559] When he discovered that Kelly removed the transcript before Gary took the stand, Scharrer was outraged:

> 'What right has Kelly—is he a Hitler or a Mussolini—or anyone else to take what a witness has brought into this courtroom under a duces tecum subpoena before that witness has a chance to testify about the things he brought,' Scharrer asked the court, then inferred that Kelly was in contempt for his action.[560]

Kelly maintained that he was "within this legal rights in keeping the police department statement, to be used . . . in his cross-examination of Kolb" if Kolb took the stand, and the court "held with Kelly."[561]

After losing this battle, the defense did not call Kolb to the stand, contenting itself with "calling a string of character witnesses—more than two dozen. The State made no effort to confound or refute these witnesses."[562] The state did attempt to establish that Kolb "married for money and murdered for freedom."[563] Kelly and his co-counsel, C.W. Magsig, tried to show that Kolb applied for a $3,000 life insurance policy on Meri, with himself as beneficiary, but this failed when the insurance salesman whom they called as a witness "denied that Andy [Kolb] had visited him" for this reason.[564]

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556. Dayton Daily News, May 28, 1939.

557. Dayton Daily News, May 23, 1939.

558. *Id.*

559. Dayton Daily News, May 25, 1939. Gray brought his notes because of a "subpoena duces tecum, signed by Scharrer." *Id.*

560. *Id.* " 'The court ruled,' Kelly answered, 'and if you want to file contempt charges, go ahead, but let's try this case.' " *Id.*

561. *Id.* Kelly contended that "Scharrer wanted the statement to refresh Kolb's memory if and when confronted with it." *Id.* When asked if Kolb would take the stand, Scharrer said that he would "probably" do so. Dayton Herald, May 23, 1939. " 'To say definitely that Kolb will take the stand would be unfair to my client,' Scharrer said. 'All I can state is that he will probably be called.' " *Id.*

562. Levins, *supra* note 533, at 9, col. 4–5.

563. *Id.* at 9, col. 3.

564. *Id.* at 9, col. 4. Instead, he testified that "it was Meri who had applied, and that she had been rejected." *Id.*

In their closing arguments, Kolb's attorneys admitted the crime of manslaughter, arguing that he "had struck his wife while in a blind rage, and that his actions after the assault were those of a man numb with fear."[565] The three-judge panel deliberated at length and returned a verdict of "guilty of second degree murder."[566] After Kolb was sentenced "to spend the rest of his life in the penitentiary at Columbus," Scharrer announced "that he would not file a motion for a new trial. 'We feel that justice has been done,' Scharrer said."[567]

C. *The 1940's*

This section describes two of the more sensational cases that Scharrer handled during the fourth decade of his career as a lawyer. The two have been chosen because they are so very different. Erle Stanley Gardner might have dubbed the first "The Case of the Acquisitive Accountant" and the second "The Case of the Rambling Robbers."

1. Bishop

On Friday, March 15, 1940, fifty-year-old Margaret Poor Bishop was charged with "taking several thousands of dollars of money paid into the Community Chest on pledges, during the period from Oct. 2, 1934 to Feb. 17, 1940, a few days before her arrest."[568] She appeared before Judge R.U. Martin on Tuesday, March 19 and entered a plea of not guilty; he set trial "for next Monday morning."[569]

Bishop was a two-thousand dollar a year bookkeeper for the Community Chest, which was a charitable entity that conducted fund raising and then distributed funds among various agencies, thereby freeing them from having to conduct separate financial campaigns.[570] Despite her not guilty plea, the newspapers reported that she had confessed to embezzling "$27,930 of Community Chest funds."[571] One story quoted

565. *Id.* "They pointed out that constant nagging by a wife might well throw any man off balance." *Id.*

566. Dayton Herald, May 27, 1939.

567. Dayton Daily News, May 28, 1939.

568. Dayton Daily News, Mar. 19, 1940.

569. *Id.* Judge Martin also continued Mrs. Bishop's bond, which had been set at $35,000, despite Scharrer's attempts to obtain a reduction. *Id.*

570. Dayton Daily News, Feb. 23, 1940. County Prosecutor Nicholas Nolan was chairman of the Council of Social Agencies, which "include[d] representatives of some 78 Dayton welfare groups, many of which receive[d] funds from the Community Chest." *Id.* This may have contributed to the zeal with which Nolan prosecuted Mrs. Bishop.

571. *See, e.g.*, Dayton Daily News, Mar. 19, 1940. "Although the indictment set[] forth a much smaller amount, authorities contend[ed] that the defalcations [ran] as high as $30,000." *Id.* As an indicator of the fiscal magnitude of her crime, in 1940 Bishop was paid $2,000 a year, while her boss, the director of the Bureau of Community Services was paid $7,500 a year. Dayton

her as saying that "[a] lonely woman's desire for the 'nice things of life' " led her to commit the crime.[572] Interviewed in her cell, she referred to

> 'the many silly stories going around town,' [and insisted] that money she took has dwindled to nothingness through expenditures 'here and there.' 'I never was one to go around a lot,' she [said]. 'Some folks are saying I spent it on a man. That is the silliest things I ever heard uttered. I'm not interested in men.'[573]

Although she refused to explain exactly what had happened to the money, she did admit spending some of it on jewelry and some of it on "good clothes and 'all nice things a woman likes to wear.' "[574]

According to C.W. Magsig, who battled Scharrer in the Kolb case, Bishop

> would keep sums of money which came in to the Chest and when large checks came in, would credit from it [*sic*], the amounts she had stolen. When the Inland Manufacturing Co. was called and told that its quarterly payment of $7500, representing one-fourth of the General Motors contribution was past due, a check up was made immediately and officials of the Inland produced their cancelled check to show that it had been turned in six months before.[575]

This led to an investigation which, in turn, led to the discovery that Mrs. Bishop had been appropriating funds intended for the Community Chest.[576]

In a surprise move, she appeared before Judge Martin on Saturday, March 23, and changed her plea to guilty.[577] According to Scharrer, the change came about after he

> was advised by the jailer last evening that Mrs. Bishop wished to see me. I immediately went over and talked with her and she told me that she wanted to withdraw her former plea of not guilty and enter a plea of guilty. Your honor, that is her wish and as her attorney I am entering a plea at this time to the charge contained in the indictment. . . . I might say to you that a not guilty plea was entered at the time of her arraign-

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Herald, Mar. 22, 1940. Other yearly salaries in that office were: stenographer, $1,040; receptionist and telephone operator, $1.020; typist, $900. *Id.*

572. Dayton Herald, Mar. 22, 1940. "It was a story of wanting to 'buy nice things for others,' presents 'nicer than I ever received' for her friends, that she told." *Id.*

573. *Id.* Notwithstanding her disclaimer, several newspapers reported that on Thursday night a man named 'Jim' brought Mrs. Bishop a box of candy, and sent it by a matron to her. On it was a note, 'Keep a stiff upper lip. Is there anything I can do?' She kept the candy but returned the note without answer. Friday morning the candy had not been touched. *Id.*

574. *Id.*

575. Dayton Daily News, Mar. 23, 1940.

576. *Id.*

577. *Id.*; Dayton Herald, Mar. 23, 1949 (extra ed.).

> ment to give me an opportunity to further acquaint myself with the facts, and I thought at that time other facts would develop of which I then had no knowledge, and it was upon my advice that the defendant entered a plea of not guilty. The magnitude of this case and the public interest involved therein has lead [*sic*] me, after frequent consultations with Mrs. Bishop, to advise restitution in this case. . . . Mrs. Bishop, having admitted the wrong, it was her desire and wish from the very beginning that restitution be made as far as possible, and in accordance with her wishes this has been done.[578]

Scharrer announced that "no one in his firm had received 'one penny for representing Mrs. Bishop in this case. I have sufficient means so as not to be required to take money for services in a case of this character.' "[579]

Judge Martin sentenced Bishop to serve one to ten years in the Ohio Women's Reformatory.[580] When he asked her what had become of the embezzled funds, she

> reiterated her previous story that most of the money had gone to buy clothing, jewelry, household furnishings and similar articles. 'I have nothing left,' she said. 'It just went. I spent it foolishly and that's the end of it.' She said that she bought most of the articles at local department stores between 1939 and 1939, usually at sales, sometimes paying cash and sometimes using charge accounts. A sum of $500, she said, she distributed to needy charity cases.[581]

After Mrs. Bishop went away to serve her sentence, her "personal property . . . was sold under the hammer in an effort to partly restore the funds she had embezzled."[582] Her household goods and personal effects brought $2,624.10 at a public auction; "[t]he next morning a more exclusive auction of her jewelry, appraised at $2,176, added $830 to the total."[583] "These figures, subtracted from the $27,930.97 [she] admitted converting to her own use, left the chest out only $24,475.97, besides what the unfortunate affair may slash from future solicitations. Sale of the . . . prisoner's life insurance will complete her meager

578. Dayton Herald, Mar. 23, 1940 (extra ed.).

579. *Id.*

580. *Id.*

581. *Id.* At sentencing, prosecutor Magsig noted that Bishop " 'kept an accurate record of the embezzlements . . . and produced a record almost as soon as she was accused, showing the total to be $27,930.07. The auditor who made a check reached the identical total.' " Dayton Daily News, Mar. 23, 1940. "Scharrer pointed out that if the defalcations began eight years ago, and she stole about $3500 a year, it would have given her, with her $2000 a year salary, $5500 to spend." *Id.*

582. Dayton Herald, Apr. 7, 1940.

583. *Id.*

restitution."[584]

2. Moran

In 1946, when he was sixty years old, Scharrer defended George C. "Bugs" Moran who, along with Albert Fouts and Virgil Summers, was charged with stealing ten thousand dollars from "John Kurpe, Jr., being the personal property of Gabor Silas."[585] "Bugs Moran had committed twenty six robberies and served three prison sentences, totaling two years, before his twenty-first birthday."[586] Some time thereafter, he arrived in Chicago, where he became a bootlegger, a killer and an implacable enemy of Al Capone.[587]

Moran's career as a bootlegger ended with the demise of prohibition; by the 1940's he had returned to robbery as a means of making ends meet. According to the *Dayton Daily News*, he led one of three gangs which were "responsible for 22 bank burglaries, numerous tavern hold-ups and 'juke-box' robberies in Missouri and the southern parts of Illinois, Indiana and Ohio."[588] The FBI was aware of their activities and "set several 'traps' for [them] in Southern Illinois, Indiana and Ohio, but had not been able to catch them in a robbery before Summers, Moran and Fouts were apprehended for the Kurpe holdup in July," 1946.[589]

Gabor Silas, John Kurpe's father-in-law, operated a tavern "at Moraine City, which is located a few miles south of Dayton near Frigidaire Plant no. 2" and on Fridays, he cashed payroll checks for workers at the plant.[590] Kurpe worked at the tavern and, on Friday, June 28, 1946, he went to the Winters National Bank & Trust Company, located at the corner of Third Street and Broadway in Dayton, to withdraw ten thousand dollars to be used in cashing checks for workers

584. *Id.*

585. State v. Fouts, 79 Ohio App. 255, 257, 72 N.E.2d 286, 287 (1947).

586. J. KOBLER, CAPONE: THE LIFE AND WORLD OF AL CAPONE 85 (1971).

587. Moran started out working for Dion O'Banion and, after O'Banion was murdered, rose to prominence in the gang that competed with Capone for the city's lucrative bootlegging revenues. *See id.* at 85–86, 130–238. Capone set up the Saint Valentine's Day massacre in order to eliminate Moran, but because Moran was running late that evening, he was not in the warehouse when the massacre occurred. *Id.* at 241–48.

588. Dayton Daily News, Aug. 24, 1946, at 1, col. 6. The gangs were described as "prey[ing] on small town banks and taverns." *Id.* Moran's gang had a "master plan . . . [which] was to obtain a house in the vicinity of the bank they intended to burglarize. After the robbery they would immediately go to their nearby hideout and remain until things quieted down, thus escaping dragnets and roadblocks set up by state police." *Id.* Moran's gang specialized in looting safe-deposit boxes with acetylene torches. "During the war and immediate post-war period safety-deposit boxes in small banks were bulging with cash deposits of farmers." *Id.*

589. *Id.*

590. State v. Fouts, 79 Ohio App. 255, 257, 72 N.E.2d 286, 287 (1947).

who would appear at the tavern later that day.[591] As Kurpe was driving south toward the tavern, "a large Buick sedan overtook him and cut in ahead of him, causing him to turn to the curb and stop."[592] Three men emerged, took the ten thousand dollars and left Kurpe bound and gagged along the side of the road.[593]

Moran, Fouts and Summers were apprehended on July 6, 1946 "at their respective residences."[594] Scharrer was retained to represent Moran and found himself with an extraordinary difficulty. "[A]ll three defendants had been under surveillance by the F.B.I. for quite some time" prior to the commission of the crime, and "15 agents of the F.B.I. were called as witnesses by the state."[595] Agents were watching Moran and Fouts up until the morning of the robbery, but they lost them shortly before it was committed, which at least meant that they could not testify as to the details of the crime.[596]

They could and did, however, attack the alibi defense which was offered on behalf of Moran and Summers, who contended that, on June 28, "at the time of the robbery they had already left Dayton and were driving . . . on the highway between Aurora and Evansville, Indiana, a distance of approximately 75 miles from Dayton. Moran . . . testified that he and Summers . . . were in Aurora, Indiana at 10:30 o'clock that morning."[597] An FBI agent and a "county patrolman of Henderson, Kentucky" testified, however, that the two did not arrive in Henderson, Kentucky "until approximately 8 hours after the robbery had taken place."[598]

Aside from presenting Moran's rather dubious alibi, Scharrer defended by suggesting that Kurpe had lost the ten thousand dollars and then made up a story about a robbery to appease his father-in-law.[599] After Moran and the others were convicted, he and the other members

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591. *Id.*

592. *Id.* at 258, 72 N.E.2d at 287.

593. *Id.*

594. *Id.* at 259, 72 N.E.2d at 287–88. Fouts lived "at 502 West Fourth Street Dayton, Ohio;" Moran and Summers lived in Henderson, Kentucky, which was "approximately seven miles from Evansville," Indiana. *Id.*

595. *Id.* at 261, 72 N.E.2d at 288.

596. *Id.* at 264, 72 N.E.2d at 290.

597. *Id.* at 265, 72 N.E.2d at 290. Kurpe was robbed at approximately 10:30 a.m. on June 28, 1946. *Id.* at 264, 72 N.E.2d at 290.

598. *Id.* at 265, 72 N.E.2d at 290.

599. The Bill of Exceptions, which was sent to the Ohio Court of Appeals as part of the record in the proceeding, preserves Scharrer's cross-examination of John Kurpe. Bill of Exceptions for appellant, State v. Fouts, 79 Ohio App. 255, 72 N.E.2d 289 (1947). He pointed out that Kurpe had been unable to identify Moran on July 13 and again on July 16, when Moran, who had been apprehended, was " 'brought out' " for his inspection. *Id.* at 345–49. Scharrer also asked Kurpe if he had not "lost" five thousand dollars of Silas' money five years ago, after which he incorrectly told Silas that the money had been taken from him in a robbery. *Id.* at 349.

of the defense team moved for a new trial arguing, among other things, that the trial court erred when it denied their motions for mistrial; the motions, submitted on August 20 and on August 26, sought a mistrial due to unfavorable publicity. Although the *Dayton Daily News* had allegedly agreed not to print stories about the FBI's investigation of Moran and his cohorts until after the trial was over, stories to this effect appeared during the trial, on August 16, 17, 19, 23, 24 and 25.[600]

The court of appeals rejected the argument because "no effort was made to interrogate the jurors either by the court or counsel. No request was made by counsel that the court determine whether such articles were seen or read by the jurors. The record is silent on that matter."[601] Absent such a record, the appellate court refused to "presume that the jurors saw the newspaper articles, read them and were prejudiced by them."[602]

On August 27, Moran was sentenced to incarceration in the Ohio state penitentiary "for a period of not less than ten (10) years nor more than twenty-five (25) years."[603] This was the beginning of the end for Moran, who died, approximately a decade later, "serving a ten-year sentence in Leavenworth for bank robbery."[604]

V. CONCLUSION

Albert H. Scharrer entered the legal profession eighty years ago and practiced for seventy years, until his death on January 10, 1979. Although he handled civil cases in his private practice, he was best known for his work as a criminal lawyer. He was a product of an age when lawyers modeled themselves after men like Clarence Darrow and Earl Rogers, who were esteemed for their oratorical skills and their ability to move a jury to tears or laughter, depending upon the circumstances.

The practice of law has changed a great deal since the years when Scharrer was establishing himself in this community; it is important for those of us who are products of this more recent era to realize that those changes have occurred and that many aspects of the law which we take for granted, and assume to be timeless in their significance, are really rather recent developments which may or may not prove to be more enduring than, for example, the practice of preparing for the bar

600. State v. Fouts, 79 Ohio App. 255, 267–68, 72 N.E.2d 286, 291 (1947). The trial began on August 12 and ended on August 26. *Id.* at 267, 72 N.E.2d at 291.

601. *Id.* at 268, 72 N.E.2d at 291.

602. *Id.* at 268, 72 N.E.2d at 292.

603. Order signed by Judge Martin in Montgomery County Criminal Case No. 15797 (Aug. 27, 1946). Fouts and Summers received identical sentences. *Id.*

604. J. KOBLER, *supra* note 586, at 381.

examination by "reading law." This article has attempted, in a very modest fashion, to illustrate certain of those changes while celebrating a great lawyer on the eightieth anniversary of his admission to the bar.