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BRIEF CONTRIBUTIONS

ALBERT LANE, MURDER

Charles C. Arado[1]

The following account offers an insight into the character of a man for whom I bore a profound respect because of his keen intellect, his sense of the grave responsibility befalling a jurist who passes judgment upon fellowmen, and because of his broad sympathy for the under-dog.

I have hesitated to use the real names of any of the participants in the trial, wishing to exploit no one. The deceased jurist, Judge Comerford, did not need a herald. The result of this trial could have occurred, however, only because the presiding judge was "that kind of a man."

The defendant was charged with the murder of a policeman on the morning of October 4, 1926. The facts appeared to be substantially as follows: The defendant, a colored youth, thirty years of age, visited an apartment where a party was in progress on the evening of the alleged offense. It appeared that there were numerous women in attendance. Various card games were being played. Liquor prepared by the host was being distributed to the guests. The setting of the scene was in a colored community along Roosevelt Road, Chicago. The doorman of this gambling rendezvous took the precaution to collect weapons from each of the guests entering the apartment. The defendant handed over his gun, which was fully loaded, to this guard. Lane immediately joined the crowd and was soon playing cards and "shooting craps" with his companions. He lost continually, and, perhaps to soothe his sorrows, the more money he lost, the more liquor he felt it necessary to imbibe. It now was well after midnight. Within a few minutes after leaving this establishment we find the state's theory of the homicide placing him at a nearby corner.

Two pistol shots are heard. A policeman approaches the scene. He commands Lane and another negro to halt. The officer searches the defendant's companion. The accused draws his gun and levels it at the policeman's back. Two shots are fired by the defendant. The officer turns and empties his gun at the fleeing figures.

Police are rushed to the scene and within a few minutes are on the trail of the defendant. One of these officers locates a barn in the vicinity. There appears to be an opening along the side under which the officer peers and observes a skulking form in the darkness. He commands him to come out. Refusing to obey this order, the policeman crawls under the shed. He observes his prey holding a gun in his right hand placed over his chest.

[1]Member of the Chicago Bar.

His back is turned to the officer, who commands him to throw down the gun. The prisoner obeys and is placed under arrest.

In the above account of the facts I have adhered closely to the skeleton of the state's case. The high spots about it were as follows. A policeman had been shot in the performance of his duty. A negro had been arrested within four and one-half hours of the killing. He was arrested holding a gun fully loaded. The police will naturally press the prosecution of such a homicide with more energy and vengeance than they will any other type of criminal case. It involves one of their own. A similar fate might be in store for them. They want, by all means, to make the handling of such a prosecution a fearful example to hoodlums. Here is a case in which they feel that they are eminently justified in seeking a life for a life. It will be described by the ambitious state's attorney, seeking assignment, "A pretty case for the electric chair." No steps will be left undone to shut off every avenue of escape from the death penalty. No other verdict will satisfy the prosecuting authorities.

The case passes through its preliminary stages and we eventually find it on the call of the Criminal Court. As can be expected, the judge finds the defendant penniless, homeless, and friendless. The case is ultimately assigned to Judge Comerford who had some very definite convictions as to the methods of handling such criminal trials. He was a judge who appreciated the inequality in strength between the prosecution and defense. He saw the state with its unlimited resources, enabled to secure witnesses and present its evidence in a manner likely to bring about its desired end. He saw trained police officers testifying for the state, medical experts paid $100.00 a day for their testimony as to the sanity of the accused and skillful prosecuting attorneys making the most of their opportunity to lead unwary, inexperienced witnesses into traps from which there would be no escape. In his brief but noted career on the bench he saw the defendants who were able to engage the best legal talent acquitted purely by reason of this exceptional ability. The striking unfairness of it all had made a deep impression upon the plastic mind of this jurist, known widely for his remarkable grasp of the elements of human nature. With these thoughts revolving in his mind, he appoints two leaders of the criminal bar to defend this prisoner. Here was a step which, if followed to its logical conclusion, should revolutionize criminal court practice in this community. In desperate cases of this type, the very best talent at the criminal bar should be engaged to defend the prisoner. The handling of criminal cases is a public responsibility and society owes it to the prisoner to give him a fair and impartial trial, with an observance of all his Constitutional rights and guarantees, whether he be the country's most distinguished office-holder or one of its most humble citizens.

When Lane's case was called for trial there were at least ten policemen sitting back of the assistant state's attorneys ready to do their bit to send their victim to the "chair." One of the defending attorneys stepped before the judge and in a calm voice and everyday, conversational manner, said, "The defendant will plead guilty to the indictment, which, of course, includes a manslaughter count. We

desire to have the evidence submitted to Your Honor. We will present mitigating circumstances and allow Your Honor to fix the penalty which you believe fits the offense." A thunderbolt could have caused the two ambitious state's attorneys no more consternation and surprise than this unexpected move of the defense. The sensational aspect of the trial had thus been removed. The picturesque side of the case had been destroyed. There would now be no photographs of fearless state's attorneys prosecuting a police slayer. No picture of the gallant, arresting officer would grace the front page of the evening newspaper. The suspense of a jury trial, with its increasing heat and passion, as the trial proceeded, were forever lost, as far as this case was concerned. Regrettable, but there would have to be another police slaying to bring about all these favorable aspects for the newspapers, police, and state's attorneys. A judge's sentence of a prisoner, pleading guilty, never carries the heroic features of a jury's pronouncement. His finding of guilt can never compare with a jury's verdict in producing thrills for either the spectators in attendance or the readers of daily newspapers. Neither can it ever have the same crushing effect upon a prisoner. There is something about the condemnation of a group of twelve men which satisfies the passions of those seeking vengeance upon a prisoner. Bench trials have too much of the technical aspect about them to excite the curiosity of the Criminal Court fan. This side of the law does not interest these people. It is only with a "jury-trial setting" that the sensation seekers can gratify their emotions.

In opening his remarks to the court at the conclusion of the testimony in this case, one of the defense counsel voiced the opinion that it would probably be better for the administration of criminal justice if defendants could waive jury trials and in all felonies submit their cases to the court for its findings as to guilt. (This very law was passed by the Legislature and was to go into effect July 1, 1929, but due to some technicality it was declared inoperative. It was later upheld in a Supreme Court decision and is now being observed by the courts.) He continued to speak of the learning of the average judge, his training in the handling of facts, and his less susceptibility to be carried away by the emotional stress attending a jury trial. Personally, I think that this suggestion is sound, although it would place jurists in a position where the responsibility of the verdict would be upon one man instead of twelve. It is also true that one of the twelve might appreciate a point which had completely escaped a judge, wise and learned though he may be. Another objection to this change would be found in the fact that some jurists would be overburdened with work, while others would only hear cases with juries. There are not many judges with the understanding of the frailities of mankind, together with the learning and breadth of experience of Judge Comerford. With his qualifications, justice would be administered, both to the state, to whom a judge recognizes a duty by reason of his oath of office, and to the prisoner at bar, to whom he owes consideration as an individual with constitutional rights. Here was a conscientious judge bent on fulfilling the arduous duties of his office. He was exceptionally well-fitted to handle a case in this

manner because there was present not only the splendid mind which saw, but a tender heart which felt. To illustrate the excellency of the plan when it has a judge of this character at the helm, we may refer to this case which was disposed of in an hour and a half, whereas a jury trial would have required at least two entire days for merely taking the testimony that Judge Comerford heard. Again, had the case gone to the jury, the state would in all probability have called at least fifteen witnesses instead of merely the three eye-witnesses, who were sufficient to prove the substance of its case. Had the defending attorneys been reasonably careful in the selection of the jury, in a case of this character, this task, alone, would have required a week. In the hour and a half above referred to, substantial justice was done both sides. A verdict was arrived at, which, in my opinion, a jury should have reached at the conclusion of a long, drawn-out trial. At the same time, a jury would never have been fair with the defendant. It could not have been. There were features in the case which lent themselves all too well to the development of arguments which would undoubtedly succeed in inflaming the minds of the jurors. Justice was meted out in an hour and a half whereas in all probability injustice would have resulted, had the jury been engaged in the trial for a period of two weeks.

To proceed with the trial. The defendant was duly warned of the nature and consequences of his plea. Defense counsel then suggested that the witnesses take the stand when giving their testimony, that the hearing might present a more orderly appearance than if the witnesses merely stood before the bench. To expedite matters the state then suggested a stipulation agreeing upon the facts that the deceased officer had been a living human being and that an acquaintance who knew him in life had recognized his remains as that of the deceased in this case. The defense attorneys readily consented to this stipulation. The first witness called to the stand was Shelby Green, in custody of a sheriff. Shelby was a negro, about thirty years of age, dressed in a cheap blue suit, holding a brown hat in his hand. He was on his way home when his attention was attracted by two shots nearby. He turned around and saw an officer in uniform. He heard the officer shout, "Halt." The policeman began to search one of two men. The witness described that man as being short, of jet black complexion. Shelby continued to say that he then saw the other man, Alfred Lane, draw a gun and aim it at the back of the officer. He saw two flashes from the pistol and heard the reports from its firing. He concluded his testimony with the perfunctory identification of the defendant as "the man who fired those shots."

Defense counsel was very gentle in his cross-examination of the witness. He sat upon the table in a leisurely manner as he asked the witness to locate the scene of the shooting on a diagram which was hanging on the wall behind the witness chair. He then asked him if he knew who had fired the two shots preceding the officer's approach. Shelby answered that he did not know anything about the matter. He was then asked whether he saw the defendant playing cards and drinking at the party. He answered in the affirmative.

The defendant's common law wife then took the stand and testified that he had come rushing into her home about midnight of the day of the shooting and appeared very excited. He was swinging a revolver in his right hand, saying, "I just shot the law. You come with me or I'll shoot you." He forced her to walk down the rear stairway, when she succeeded in running away from him. She was evidently a woman scorned because she frequently looked at the defendant with a most bitter expression as she related her testimony. Up to this point we have an eye-witness of the affair, supported by another who saw the defendant almost immediately after the said shooting, setting forth an extremely damaging admission against his interest.

The next link in the chain of guilt appeared in the person of the arresting officer who related his finding the defendant in a barn with a loaded revolver in his hand. It appeared from this officer's testimony that the prisoner's sweetheart, above mentioned, told him of his hiding place.

The state rested its case at this point. The defense immediately suggested that the prosecution call the other witness in custody to reveal the condition of the defendant preceding the alleged shooting. Defense counsel said, "I think the court would be interested in viewing this phase of the case in its endeavor to fix the appropriate penalty." The judge answered, "Yes, I would like very much to learn more about this angle." The defending attorney examined this witness in a very kindly manner. He first suggested that the court inform him that he need not answer any questions which he thought might involve or incriminate him in any charge. He then developed a picture of the defendant playing cards and drinking throughout the evening. The witness testified that the defendant had been drinking from a pint bottle which he carried upon his hip. Aside from this bottle, he saw the defendant take three glasses of similar liquor which was served to him at one of the tables. He also related the fact that the guard at the door of the apartment took guns and other weapons from the guests as they entered. He pointed out this guard who was now sitting in the courtroom as a spectator. This witness, like Shelby, was in rags.

An interesting feature of this case lay in the fact that the three main witnesses for the state had been indicted for the murder in question. This was apparently done for one of two reasons; either for the purpose of instilling fear of the death penalty unless they told all they knew about the case; or else, to insure their appearance at Lane's trial. It forms a striking illustration of the high-handed methods used by prosecuting authorities in the supposed performance of their duties. It is true that Shelby Green appeared to be directly at the scene of the shooting, but it was the state's theory that he had nothing at all to do with it. Why, then, should he be charged with the murder of the policeman? The defendant's common law wife was admittedly far from the scene of the shooting. The third witness, also, had no possible connection with the crime. Why were these three human beings charged with the sin of Cain?

Lane was now called to the stand. He was neatly dressed in a reddish-brown, Scotch-tweed suit. It was probably the costliest garment that the defendant had ever worn in all his thirty years. It must have

been loaned to him for the occasion. It was naturally to his advantage to look his very best for the trial. After that, he could go back to rags. He was not a vicious-looking negro. His complexion was yellow rather than black. While his forehead was not high it was very wide and receded a considerable distance back. His face was full. I would judge that he was five feet, seven inches in height and that he weighed about one hundred seventy-five pounds. He was neither alert nor personable. While ordinarily dull, his fate now in the hands of the judge before him, his doom about to be sealed, he was probably wider awake than he had ever been in his life. He lifted his large feet and ponderous body with an apparent effort, as he stepped to the stand. There was nothing haughty or proud in his demeanor. Neither was there a cringing fear of consequences. There was no indication of a state of collapse such as exhibited by a murderess on trial for her life. There were no tears or expressions of sorrow for what had been done. An extremely favorable feature of his personality was found in his expression of a clear conscience. He testified as one who did not know where his connection with the offense started. He was now unworried as to how it was going to end. This freedom from concern and anxiety must have been the result of an undeveloped condition of mind and sensibilities. He was worrying less, on trial for his life, than a school-boy, preparing for the recital of a few verses of poetry. The philosopher and the intellectual might indeed envy such equanimity. The defendant spoke in a slow and easy, unruffled manner. He made no glaring grammatical mistakes. He had evidently been in the employ of people of culture and his manner was that of a courteous, deferential negro. Had one met him on the street he would have been inclined to like him for his seeming modesty and unassuming manner.

The defendant first told about his early life on a farm in Arkansas. Up to the age of twenty-seven he had always worked hard for a living. He came to Chicago in 1925. The judge asked him when he began toting a gun. He said that the only time he carried it was to protect money which he expected to win in gambling. He said that upon the evening in question his right arm was carried in a sling. He had suffered a gunshot wound in June. One of the guests at the apartment told him that the "moonshine" which was being dispensed could be poured upon his wounded arm and it would do no injury. The defendant concluded that if it would not infect the wound it couldn't be poison. He said that he had not drunk any liquor since January. As soon as he drank it on the evening in question, he felt heat rushing to his head. It was not long before his mind became a blank. He had a hazy recollection of losing continually at the games. He seemed to remember that he had said, "Why are you robbing me? Why don't you give a fellow a chance?" He recalled his falling over one of the tables and that he was unable to rise. From that point he remembered nothing. The shooting was an entire blank in his mind. He testified, "If Shelby Green says I shot the officer and if I told "Mamma" that I shot him, I must have done it. But I remember nothing at all about it. I remember, slightly, that the police were questioning me about the shooting the next day but they beat me so badly

that I lost my senses." With this testimony, the defense rested its case.

The state called as a rebuttal witness a police Captain who testified that he spoke to the accused soon after his apprehension and that the defendant admitted firing two shots during the night. The captain further testified that the defendant was not in a highly drunken condition at that time. On cross-examination he was asked if he smelled the breath of the defendant. He replied in the negative. He was then excused.

At this point Judge Comerford addressed the state's attorneys, "Well, what do you have to say?" One of them arose and stated, "An officer has been killed in the performance of his duty. The evidence indicates clearly that the defendant was the guilty party. The only fitting punishment under these circumstances is death."

The defense counsel were very gentlemanly and made no objection to these remarks. One of them proceeded in the same conversational tone of voice which characterized his entire conduct of the trial, saying, "This is a case where two shots had been fired preceding the policeman's entrance into the affair. At most, a misdemeanor had been committed. While I do not wish to be disrespectful to the memory of this policeman, I do say that he had no right to arrest either of these men without a warrant. When he said, 'Halt,' he had placed these men under a technical arrest. The law states that a party resisting an illegal arrest, who shoots and kills the man attempting it, is not guilty of murder. The law is well settled that such a shooting does not include malice aforethought, which is an essential ingredient of the crime of murder. I realize, however, that such indignation as attends resistance to an unlawful arrest was probably not present in this case. I realize also the inconsistency of our defenses. If the defendant did not have sufficient consciousness to recall anything that he did from the time that he swooned over one of the tables at the party, he naturally was not in a condition where it could be said that he realized the illegality of his arrest and attempted to avoid it.

"We have shown both by the testimony of a state witness, himself charged with this murder, and the defendant, that Lane was in a very drunken condition. This testimony has not been impeached by any evidence with the possible exception of that of the police Captain. The state had any number of witnesses present who participated in the party and yet they did not call a single one to impeach our testimony. The Cochrane case is to the effect that drunkenness affects the state of mind and that it is competent to show that a mind in that condition is devoid of the power of malice aforethought. We contend that this is a case in which the befuddled mind of the defendant caused him to do the act in question and that it was done during an attempt to make an illegal arrest of his person. We therefore respectfully submit to your honor that it is a case of manslaughter and that you should so find."

The other attorney then addressed the court calmly and dispassionately. Not once did he raise his voice or make a violent gesture. He outlined an explanation of the defendant's act with a view of showing that it was in fact a crime of manslaughter which had been committed, not murder. Among other

things he said, "Here is a boy who it can be seen is not possessed of a vicious temperament. He has been brought up without any schooling. He has never been in any trouble before. He had no reason to take the life of this officer. The explanation of the act lays in the *moonshine* which was served him. The real cause of his act can be traced to the type of social entertainment in which he was indulging on the evening preceding this shooting. Such terrible consequences will follow as long as such places are allowed to run in this city. There were some ingredients of nature in the liquor that used to be sold before prohibition. The present beverage which is served at such a place as the apartment in this case is a rank poison which paralyzes the system. It deadens the nerves. It causes men to become blind and not infrequently leads them into the dreadful mess that this defendant now finds himself. We realized that this case was fraught with many difficulties. We had read the coroner's minutes. We had interviewed some of the state's witnesses and we had a conscientious conviction that this defendant had committed some offense and should be punished for it."

"There may be more in this case than appears on its surface. Shelby Green was at the scene of the shooting. He has been indicted for murder. He testified for the state and expected his discharge for doing it. It may be that he can tell the real reason why this shooting took place. I sometimes feel that justice can be done in an informal hearing such as this, as well as in a trial before a jury. I feel that Your Honor is an ideal judge for us to submit a case of this type because you have been a student of human nature ever since you became a lawyer."

He spoke eloquently about the task of the judge to look into the heart of the defendant in order to fix the proper punishment. He continued, "There are no inventions by which we can read the mind or the heart of an individual; and yet this court is called upon to do that very thing at this moment. May your conscience deliver a fitting judgment."

The court proceeded instantly to make its findings, saying, "I have read the Cochrane decision. I cannot see how this case before me is one of manslaughter. I would stultify my intelligence and violate my oath of office were I to call this a manslaughter case. At the same time I realize the mitigating circumstances in it. I appreciate the effect that the liquor must have had upon this boy. I can well imagine that he did not know what happened after he filled himself with it. The most striking feature of the entire case, however, is not this point of his being drunk. As I see it, it lays in the fact that he has no criminal record whatsoever. A person who lives a decent life, considering his particular station, whether it be high or low, deserves dividends for it. The man who has led a criminal life pays the penalty for it when he is accused of crime. So, in this case, the lack of a criminal record should enure to the defendant's benefit. With the exception of a tendency to 'shoot craps,' which appears to be an essential ingredient in the makeup of most of his race, he has apparently done nothing wrong in his life. Under the handicap of his color, in addition to his poverty, and lack of favorable environment, he has led a good life. Of course, we feel genuinely sorry for the gallant officer whose life was snuffed out