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BRIEFER CONTRIBUTIONS

VIGNETTES OF THE CRIMINAL COURT, I
ABANDONED COLORED DEFENDANTS CHARGED WITH MURDER

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Two colored boys were being tried for a murder which took place during the hold-up of a grocery store in a negro district on the west side. The grocer was shot and fatally wounded in the presence of his wife. A witness testified that one of the defendants and another negro whom he was unable to identify were sitting in an adjoining doorway during the evening, a little before the hold-up. Because of the coldness of this December night this circumstance aroused this witness' suspicion. He saw the two boys arise upon his approach and walk in different directions. The prosecutor would interpret this as a customary act of robbers desiring to forestall later identification. It was a few weeks after the holdup when the police arrested the two defendants. One of them was hiding under his bed at the approach of the police. The defendant, Hood, made a statement in which he implicated Cressy. Although this statement was not legally admissible against the latter because made out of his presence, its introduction at the trial had surely its desired effect in influencing the jury against him. The grocer's wife positively identified the two boys. Hood claimed that he was beaten at the time that he made his confession, and that a state's attorney gave him Fifty Dollars to answer the questions in the manner indicated. He claimed further that as soon as this prosecutor had secured the desired statement he demanded back the money. Also, that this lawyer personally beat him in order to secure the statement. A prior conviction of Hood was read into the record upon the theory that it affected his credibility as a witness. Every seat along the inner circular rail of the courtroom was occupied by women relatives of the deceased. They ranged in age from three years to seventy-five.

The defendants were typically abandoned negro boys. They were probably forsaken in their early youth and made to shift for themselves, whither they might travel. Finding it difficult to secure work, or unwilling to do manual labor—all that they were capable of doing—their weak minds conceive the idea of obtaining easy money by means of robbery. With a dollar in sight they take desperate chances to obtain it. They carry guns as necessary means to accomplish their object. Young and impulsive, the situation arises during the commission of a hold-up when they discharge a fatal bullet. The sudden, unexpected approach of a stranger, unforeseen resistance, consciousness of impending capture, causes them to commit a killing they would never do if everything ran smoothly. They do not tackle big jobs. They

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do not feel competent to undertake, for instance, large payroll robberies. As a rule they hold up taxi-cab drivers, store-keepers, and pedestrians. They know only a few of the rudiments of their profession. They have learned them from their contact with others more thoroughly schooled in these affairs. Their weak judgment concludes that they, too, will be able to commit their crime without detection or capture. They are aware of the difficulty of the white race picking them out from a crowd of negro boys. They make it a practice to commit the act in a dark spot where it is increasingly difficult for the victim to secure a clear view of their personal features. They also wear caps which partly conceal their faces. This is about the limit of their knowledge upon the subject of evading detection and capture. In most cases they do not even have an automobile with which to make their getaway. In a district where there are normally few colored residents they fail to consider that their arrest in the general vicinity of the hold-up is itself a suspicious circumstance which they will have to explain at the trial. They neglect to take into consideration the fact that they are without means to defend themselves properly, and that they are as a rule without friends who will give them any assistance. In the majority of cases they do not have a single acquaintance of good repute who will testify as to their character. The trial usually finds their only hope of an acquittal resting upon the inconclusive nature of the state's proof. Their only defense is a denial of the commission of the crime. They are confident, however, that they will be able to convince the jury of their innocence by their own testimony. So we find them confronted by a jury of twelve white men instructed to consider the interest that the defendant always has in the outcome of his trial. They are to consider also his appearance while upon the stand. The odds that are against them must be plainly apparent to any reasonable man. Where the victim is a white man it will be difficult for them to establish their innocence even if they have a legitimate defense, substantiated by adequate evidence. Where it is a murder case the jury naturally put themselves in the position of the victim. They feel that the prisoners are such desperate, depraved types that the jury will invite their own calamity if they return any verdict but that of extermination. The nature of the case is such that the benign principle of imprisonment instead of death does not have a fair chance to operate upon the mind of the jury. It is comparatively easy for the state's attorney to arouse this jury to take a life for a life. The jury feels that the life so ruthlessly taken was a worthy one, while that of the prisoner is not only dangerous to the community but utterly worthless to the defendant, himself.

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

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

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

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

The last prosecutor made no at-

tempt to prejudice the minds of the jury by picturing the death scene. Also, the surviving wife and children were kept out of the picture. The facts actually justified such an appeal. He must have felt that the circumstances were of such a character that they did not require this sentimental approach. He relied mainly upon the subtle argument heretofore mentioned to secure his desired result.

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

"From the confession, and the testimony that the grocer's wife gave, it appeared that the deceased had looked up from his counter and seen a gun pointed at him. When he resisted, the shot was fired. He fell. The defendants stepped over his fallen body to reach the cash register. They took the $3.00 which was in it and ran out of the store. This was one of the little things in the case which convinced us of the depravity of the act and led us to inflict the death penalty.