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Vignettes of the Criminal Law

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VIGNETTES OF THE CRIMINAL LAW[1]

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I. Drunkenness as an Excuse for Murder

It required about ten days to secure a jury, largely because the defense inquired whether or not each prospective juror would be prejudiced against the defense of "moonshine madness." If a juror would entertain any prejudice against a defense of "the insanity of drunkenness from low-grade alcohol," he was not acceptable. The defense inquired as follows, along this line: "If the defendant is able to show by competent evidence that at the time of the commission of the alleged homicide the condition of his mind were such that he did not know right from wrong and did not have the power to choose the right and refrain from the wrong, he should not be held accountable for his act. If that condition of the mind were brought about by imbibing a low-grade alcohol, you will not refuse to consider that insanity, simply because he voluntarily drank the liquor. The law is to the effect that even if the defendant were at fault in bringing about this condition, if the state of his mind were such that you have a reasonable doubt as to whether he was sane or insane, then, you should act upon that doubt and return a verdict of not guilty, regardless of the cause." The question of law in reference to drunkenness and insanity was explained to the jury in the above manner in order to find out whether they were agreeable to those laws. Questions were also asked for the purpose of finding out the juror's attitude on the prohibition question. It was desirable from the state's standpoint to secure reformers, ardent church-adherents, model-men, strict law-enforcers, prohibitionists. On the other hand the defense wanted liberal-minded men, good fellows, at least moderate drinkers, those who had been around saloons, and if possible, those who had actually experienced drunkenness. The attorney in this type of case must be able to understand the state of mind of the defendant to do the defense justice. He should be prepared to live the scenes of the tragedy. He should seek to understand why the defendant did the different acts attributed to him, to explain his

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conduct before, during, and after the homicide. Deeds are committed when one is in this state that would never be committed in normal periods. Some will fight upon the slightest provocation. Offenses by those with whom they are in contact at the time are greatly magnified and taken to heart. Reason is not in the saddle. The nervous system is affected and the emotions run riot. The heart beat is twenty to thirty pulsations per minute faster than normal. The eyes are ablaze. The blood rushes through the veins. This internal excitation will naturally bring about external manifestations of a similar character. The victim loses his sense of proportion. He gives vent to his feelings. He loses control of his reflexes and equilibrium. He sways. His sense of egotism becomes unduly enlarged. Anything may happen. The spirit of "I don't care," predominates. He looks only to the act, and disregards consequences. He says foolish things and does foolish things. If one of his acts results in a tragedy, when he learns of it, he may be a most sorrowful person on account of it. Men have been known to slay their own blood while in this state.

The facts in the case appeared to be as follows: The defendant was a city policeman at the time of the commission of the homicide. On this day he used his city star in securing liquor at different drinking establishments. He ordered a taxi-cab to take him to several road-houses after visiting various places within the city limits. Walking into the bar room in question he asked the proprietor to serve him some liquor. The owner refused. The defendant went into a rage and swore profusely at him. The accused finally obtained his drink from the bartender. The proprietor was approaching the bar from the rear of his store. He held a glass of beer toward the defendant and said, "Regards." The defendant drew his gun and said, "I'll kill you, you Polack." Two shots were fired, one of them striking the wall, and the other penetrating the cheek of the victim. He fell mortally wounded. The defendant was heard to say, "Is he dead? If he isn't I'll shoot him again." Policemen were called to the scene and the defendant was placed under arrest. Numerous continuances had been granted in the case. The defendant was even permitted bail, and he was out on bonds until one day during the selection of the jury, his bondsmen surrendered him into custody. It was undoubtedly because of the defendant's drunkenness at the time of his deed that the judge had agreed to permit the defendant bail. From the extreme state of drunkenness the court must have concluded that it was not an ordinary murder case. The

evidence was not strong or the presumption of guilt great against the accused. Otherwise, defendants charged with murder are not permitted bail.

The taxi-cab driver who drove the accused to the scene of the homicide, the bartender, and one or two others testified for the state in reference to the conduct of the defendant and what he said and did just before, during, and after the shooting. The defense relied upon a doctor in a southern suburb of the city, a graduate of a Swedish Medical School, for its proof of drunkenness, amounting to insanity. He was a man about forty-five years of age, clean-shaven, and spoke with a slightly Swedish accent. He testified that he examined the defendant twenty minutes after the shooting. He spoke of the latter's condition. From this physical examination he reached the conclusion that the accused was insane. In cross-examination, the prosecutor would mention one of the symptoms which had influenced the doctor in reaching the conclusion of insanity. He would then ask these questions: "Isn't that symptom found in a person suffering from pyorrhoea, or some other physical ailment? Isn't that symptom frequently found in persons who are perfectly sane? Isn't that symptom often found in a person suffering from intoxication, resulting from drinking high-grade alcohol? What is the distinction between ordinary drunkenness and drunkenness from low-grade alcohol? How can you tell whether a man has become drunk from ordinary alcohol or low-grade alcohol? Is there any difference in the insanity resulting from drinking ordinary alcohol and the insanity arising from drinking low-grade alcohol?" Next were called two witnesses who testified as to the good reputation of the defendant for peaceableness and quietude. One of these witnesses was not neatly dressed and made a poor appearance. The defense then rested its case. One of the state alienists was asked on rebuttal whether or not the symptoms mentioned by the defense doctor were not the possible symptoms of a man suffering from various physical diseases; also, whether they were not the symptoms of those suffering from ordinary drunkenness caused by ordinary alcohol. In cross-examination the defense brought out the fact that the witness was receiving $100 per day for his participation in this lawsuit as an assistant to the state's attorney. He had been present for three days and expected to receive $300.00. He stated that he was not receiving this money for testifying, but for his services as a professional man. Aside from this point, the cross-examination of the doctor was futile. The defendant was not called to the stand.

The first part of the defense final argument dealt with the sanctity of the courtroom, the glory of the jury system, the attorney's proud privilege to appear for a man whose liberty and life were in the balance, his high regard for his profession, and other matters of an introductory character. At this period he spoke at a distance of about six feet from the jury rail. His left hand was at his side as he gestured with the other. He spoke very rapidly, but clearly and distinctly. In the course of these preliminary remarks, he stated, "I will review this evidence in the best way that I can. I will make no reference to any notes. I will give you the benefit of my analysis of this evidence, to enable you to reach a just verdict in this case." He referred to the defendant "as more than a client, my friend." Toward the close of his address he turned to the defendant and said, "Whatever the verdict in this case, George, I hope you feel that I have done all in my power to make this jury see the light, and to do justice toward you as I know it should be done."

The prosecutor replied, "I am a young man. I have not had the experience of my worthy opponent. I am not an emotional speaker. I cannot cope with the defending attorney either in speaking or dramatics. I am not an actor. Tears do not as readily come into my eyes as they do to his. All I will do is try to answer his argument in the best way that my humble ability permits. I will try to talk logically to you, appealing neither to your sympathy nor to your prejudice. Personally, I have nothing against the defendant. I am here trying to do my duty as a public officer. I first want to explain the law of this state in regard to drunkenness. I will submit the same case that the defending attorney used, to show you that drunkenness is no excuse for crime. It is permitted to be shown in any case, not because the state must show a specific intent to kill, but because murder involves malice, a condition of the mind. It is therefore allowed the defense to introduce evidence as to drunkenness, not as an excuse for the crime, but to throw some light on the condition of his mind at the time of the alleged homicide. If you found, therefore, that the drunkenness of the defendant so affected his mind that you have a reasonable doubt as to whether or not he entertained malice aforethought, then you would not call his act murder. But if you found that his act was the cause of an unlawful killing, then, regardless of his drunkenness, he would be guilty of manslaughter.

"Now, in regard to drunkenness in connection with insanity. If you believe that the defendant was suffering from chronic alcohol-

ism so that at the time of the commission of the homicide, the drinking of alcohol had produced an insane mind, then, that insanity, like any other insanity, is a complete excuse for crime. In that instance the insanity is just as much an excuse as insanity from any other cause. In connection with this matter, you are to take into consideration the conduct of the defendant just before the commission of the crime, in deciding whether or not at the time of the alleged shooting the defendant knew right from wrong and had the power of choosing between them. Unless you have a reasonable doubt as to whether or not he had the ability to know right from wrong and to choose between them you are to find that he had sufficient sanity to make him accountable for his actions. From the fact that he told the taxi-cab driver his objective, from the fact that he knew where he was going, where he was at, that he acted as any normal individual who wanted something, I contend that you are to conclude that he was sane at the time that he was in that saloon. The Supreme Court has stated in regard to this particular matter, that before drunkenness can amount to an excuse for crime, it must have caused a complete suspension of reason. The reason must have been completely overcome. Unless you believe that the drunkenness of this defendant had completely suspended his judgment at the time of the shooting, you are not to consider that drunkenness as an excuse for the crime."

"You would think, from the argument of the defense in this case, that our doctor was on trial, and not this defendant. When I learned from the questions of the defending attorney in his examination of the jury that he was going to introduce the defense of insanity I knew that I needed assistance and asked for this doctor to help me in understanding the issues which were to be raised in this lawsuit. It is true that the taxpayers of this county are going to pay the doctor $300.00. Out of that same fund I am paid my meagre salary. This doctor is not the ordinary witness. He is taken from his chair at the University. He is taken from his practice. He is entitled to be paid a reasonable fee for his services. You can judge from the character and learning of the man whether or not he was worth that money to the state. I will take the responsibility of approving his bill. If you do not believe that he is worthy of that payment, charge it personally to me. Any grievance that you may have on that score you should direct toward me."

"Now as to the facts in this case, you have a policeman who is supposed to honor and respect the law. In this case you have him

violating the law at every turn. You see him so bold and defiant that he even commits murder and thinks he can get away with it. We find him starting on a spree in Chicago, going from place to place to secure liquor. You find him aggrieved because the proprietor of this inn refused his request for liquor, and when that proprietor raises his glass of beer in token of good fellowship you see the defendant make the declaration, 'I will kill you, you Polack —!' The aim is sure. The gun is steady. The result is Death. His victim didn't even have a chance to say a prayer. That is the kind of a case that you are considering."

"The doctor for the defense makes an examination of the defendant a half hour after the alleged murder. He testified that at that time the defendant was insane. But there is no testimony in this case that the defendant was insane at the time of the shooting. For that reason I did not ask our doctor whether or not, from all the assumed facts and circumstances in this case the defendant was insane at the time of the shooting. That issue is not in this case."

"I am not going to suggest to you what your finding should be. You will be given several verdicts. If you find that the defendant was insane at the time of the shooting, then sign that verdict. If you believe that he was not insane but that his drunkenness eliminated the element of malice from the mind of the defendant, then return a verdict of guilty of manslaughter. If you do not believe that his drunkenness so interferred with his reasoning processes so as to take away the element of malice, then return a verdict of guilty of murder and fix the penalty for any number of years not less than fourteen. Do not send out the message that a man can become drunk, go out and commit a heinous offense, and then be acquitted on account of his drunkenness. Do not return a verdict which will say that ordinary drunkenness is a form of insanity which excuses a man for the commission of his crime."

The jury, from the account in the newspaper, returned a verdict of guilty on the first ballot. Seven of the jurors voted for the death penalty, four of them for life, and one for fourteen years. After about four hours of deliberation they agreed to fix the penalty at thirty-five years.