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Vignettes of the Criminal Courts

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VIGNETTES OF THE CRIMINAL COURTS[1]

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A MUDDLED DEFENSE

A roadhouse keeper was slain during an attempted robbery. Four negroes had gone to the premises to commit the crime. Proust was apprehended as he was fleeing the scene. He was an illiterate Southern negro, about thirty-five years of age, who had never been in criminal trouble. On account of his ignorance and unfamiliarity with police officers, he became a ready prey, divulging all details of the holdup to them. He admitted that he knew the victim received large returns from his business on Sundays and holidays. He had actually worked for him, knowing exactly where the money was kept. He had talked about undertaking the holdup with three or four colored boys in a poolroom. Taylor, who was not present during the commission, supplied them with a thirty-eight-calibre revolver. They had spent considerable time in an effort to obtain an automobile. Finally they came across Baine who consented to act as their driver. El Ward and George West (the latter never apprehended) were assigned the task of seizing the loot. Following is Proust's story of the perpetration of the crime.

The four approach the roadhouse, arriving a little before closing time. They sit in the car, about a city block away, until most of the guests leave the grounds. Baine stays at the wheel of the car, Proust takes his place along the road to act as lookout, and Ward and West advance toward the building. They are met by an unexpected resistance. In the melee the roadhouse keeper is shot twice. Ward claims that he did not have a gun and that West did the shooting. Isaiah Proust claims that Ward also had a gun and fired it. All except Proust made their escape and but for his apprehension it is likely the crime would have remained another of Chicago's unsolved mysteries.

The men involved in the crime would have been murderers in the same degree that they are now, under a conviction of the

[1] The last contribution under this general title may be found in the preceding number, pp. 862 ff.

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Criminal Court of Cook County. But the difference would be that instead of suffering the physical and mental torture of life imprisonment they would have but their conscience to afflict them. How painful this latter affliction would have been, no one is able to say. On the one hand, it is declared that even though unapprehended the murderer suffers the agony attendant upon anyone who does irreparable wrong. It is claimed in addition, of course, that he is doomed to eternal damnation. On the other hand, we hear it said that a man who would participate in a holdup with a gun and shoot his victim on the slightest provocation, is so callous that he suffers no ill-effects from a stricken conscience; and that within a short time, he entirely forgets the havoc wrought, thinking solely of his success in avoiding detection and punishment. Which of these views is correct, depends entirely upon the temperament and outlook of the party drawing the conclusion. In some of these robberies resulting in a fatal shooting, the culprit undoubtedly suffers from the consciousness of being a murderer. Yet, in others, the ego in his make-up is so exaggerated that he thinks not at all of the victim but only of himself and ways and means of picking up more easy money. This is true only of the most hardened, repeated violator of the law. In the case of homicide, where the offender has no previous record, he must suffer intense remorse after the slaying. In many cases, the already abnormal mind deteriorates rapidly after the murder.

Taking up the story again, we find Proust before the coroner's inquest absolving Ward. A later hearing follows at which time he testifies that Ward fired the shots which killed the roadhouse keeper. He also informs the police of Ward's hiding place. They find him closeted in a room. He had not left it for ten days. Ward denies participation in the holdup and specifically contradicts the implications of Proust. He informs the police that he was far from the roadhouse at the time of the shooting. His sister comes from Birmingham, Alabama, to assist his defense. A negro criminal lawyer hears the facts as related by Ward and demands $2,000 for his services. Of course, Ward had no more chance of raising this money than the proverbial snowball in Hades. Time goes on and the court is compelled to appoint an attorney for the two men. The judge assigns Ward's defense to a former prosecuting attorney, ranking high in legal circles. He is in favor of having his client plead guilty and escape the "rope." On account of this dismal advice, Ward and his sister dispense with his services. The court

orders Proust to trial before a jury. He is represented by two appointed attorneys. The trial proceeds to the taking of testimony, when Proust decides he wishes to change his plea to guilty. He is permitted to do this upon the assurance that he will reveal the true story and implicate his co-conspirators.

The case of Ward is now called for trial. At the last minute he too decides to plead guilty and tell the whole truth. Proust repeats his charge against Ward as one of the two men actually holding up the victim. After the hearing, the judge reserves his finding until a week later, at which time he is to sentence all the prisoners. Ward is in ghastly fear of the "gallows" during the interim. He is unable to sleep. Just as he feels that he is about to slumber, he jerks himself away from a rope that is being slipped around his neck. On the day set for sentence the judge orders Ward imprisoned for life upon the theory that he fired some of the fatal shots. He sentences Proust to the penitentiary for twenty years, granting this mitigated sentence because the latter did not participate in the shooting, and because he uncovered the mystery by turning state's evidence.

About a week after the trial I was in the County Jail interviewing a client when Ward's attorney afforded me an opportunity to see the accused at close range. He was about twenty-six years of age, with a copper-colored skin. He wore heavy black rimmed glasses. His hair was neatly combed and he appeared sleek in his light-gray, plaid suit. He talked with an air of refinement. He felt that he had been foolish to have joined in the deed. He had no relatives or friends in Chicago. He was glad it was all over. He planned to be a model prisoner in order to be released from jail as soon as the law permitted him. He was a bright fellow, elastic and quick in movement. He carried a scar down his left cheek, the widest and longest blemish of this character I have ever seen.

Proust then came before us. He was a tall negro, almost white; but he had kinky hair, a slow gait, and typical negro features. The skin of his face puckered as he talked. It was difficult for him to express himself. He used his fingers and hands in a strenuous endeavor to impress his hearer with the truth and importance of the matter under discussion. He presented directly opposite characteristics to those of Ward. He was slow in physical movements as well as speech. His mind was dull. He was dressed in rags. He said that he had not realized what a smart, educated man Ward

was, until he observed the latter's conduct in court. It was plain that Ward was the leader and Proust the dupe.

Proust was now ready for religion, receiving daily visits from the chaplain of the jail. He was a thoroughly beaten man. Criminal trials were new to him and not until now did he ever reckon with the power of the law. He felt that the white people were the cause of his predicament. If the whites would have only educated him so that he might have known something about the law, he would not now find himself facing twenty years' imprisonment. He was made the dupe of clever associates. They had told him that in his mere capacity as a lookout he would involve himself in no unlawful act; that he was not thereby committing the robbery, nor was he in any wise responsible for it. He felt that confinement for twenty years was a long time to suffer for misguidance, and seemed completely broken in spirit. He might have been seeing an old mother. She had given him a biblical name in the hope that he would grow up to be a good man, a credit to the family and her race. His befuddled mind may have visualized the old lady wending her way to Chicago, where she knew her boy had gone, and making a search for him. Not finding him, a friend might suggest to her that he was incarcerated in a penal institution. She would make the trip to Joliet and examine the records. There among the "P's" would appear Isaiah Proust, her son, a murderer, sentenced to the penitentiary for twenty years.

Here is a typical case where an accused admits participation in an offense and names others who had been with him. Ward was confronted with the story of an accomplice, without which there was no case against him. Ward at first pleaded ignorance of any of the facts connected with the holdup. Proust having altered his original story, and being very ignorant, was unlikely to be an unimpressive witness against him. Yet, to remain mute, would constitute an implied admission of guilt. It was almost necessary for Ward to take the stand and explain where he had been that evening. It was almost essential, too, for him to be corroborated in his alibi.

Ward, like many others in his predicament, thought it an easy matter to obtain alibi witnesses. This defense is much more difficult to substantiate than the average prisoner supposes. Even if it is an honest defense, it is a difficult matter to obtain testimony. Where the corroborating defense witnesses are of questionable character, the jury is likely to refuse belief of their stories even

though they represent the truth. It is common knowledge that a professional bandit prepares his alibi in advance of a contemplated crime and is often able to present reliable, trustworthy witnesses whose stories, while true, do not make it impossible for him to have participated in the offense. An example of this possibility was seen in a recent trial involving the testimony of an auto salesman who testified that the accused was in his salesroom at the time of the holdup. The salesman may have been influenced to give this testimony by reason of a sale he had made, or the bright prospects of making one after the trial.

Returning to the case under discussion, Ward's sister felt certain that she could procure several witnesses to testify that he had been with them upon the evening of the murder. When the hour of trial arrived, however, she had failed to obtain a single alibi witness. This instance shows the unreliability of the promise of a defendant's family to substantiate this defense. It becomes necessary for a lawyer, before he undertakes to present an alibi, to demand interviews with all prospective witnesses who will support it. While a lawyer may not obtain perfect corroboration, it is for him to judge its strength and to inform the defendant of the likelihood of its being believed by the jury.

This case also shows the tendency of lowly negro defendants to lie concerning criminal charges. They imagine that they can cover their tracks, seldom realizing that they stultify the intelligence of the men who are passing judgment upon them. It is therefore of supreme importance that the negro defendant and his witnesses be thoroughly examined in preparation for trial in order to know what to expect at the hearing.

When the colored attorney interviewed Ward he perceived the weakness in the latter's story. When he spoke to the sister and experienced difficulty in communicating with her so-called alibi witnesses, he was satisfied that the defense was hopeless.

Summary

The crude plans adopted to commit this robbery are touched upon; also, the bewilderment that seizes lowly negro defendants when they are apprehended. The picture of a leader and dupe is not uncommon in the criminal court when there are several involved in a crime. Proust's explanation of his understanding that he could not be held for the robbery because he did not personally assault the victim was probably a true statement. The reliance

that defendants of this character place upon their ability to establish an alibi out of thin air was also considered worthy of comment. Had Proust been a professional bandit he would have accepted the full penalty of the law and refused to implicate his associates. The police are always successful in running down a case when they have a man of Proust's mentality with whom to deal.

Alibi as a Defense in Labor Shooting

Golden, a teaming contractor, had non-union men on his payroll. The defendant was the business agent of a union having jurisdiction over men employed in teaming and heavy hauling. Golden was on duty in the vicinity of the stockyards district June 5, 1921, when he was shot several times in the legs. Death was caused by the severing of vital arteries. The defendant voluntarily surrendered on July 9th, and applied for bail. He was refused it. The case required two weeks to select a jury. The evidence and final arguments, on the other hand, required but three days. The state had been careful to qualify the jury for the death penalty. Also, since there had been much written about the case in the daily papers, the defendant being a labor leader and the deceased a Landis Award follower, it was made very difficult to select a jury. From the publicity, prospective jurors must have believed that the state had a case meriting the extreme penalty.

The first witness was the Coroner's physician, who testified that he had examined the body of the deceased and that in his opinion the man had died from gun shot wounds; second, a son of the deceased, who testified as to the date when he last saw his father alive, before he saw his corpse at an undertaker's establishment. One of the laborers testified that he had seen a drunken man about the premises shortly before the shooting. Another laborer testified that he heard the shots and saw a man step into a car which sped away. The next witness was August Mrez, a laborer, evidently supplied with a high-priced suit for this occasion, and sartorially perfect in every detail. Unable to speak English sufficiently well to testify in that language, a Polish interpreter was called. The witness being practically illiterate, it was difficult for him to understand questions and to answer them. He testified that he had been on the job the day of the shooting, that he had seen the man who fired the shots with a revolver in his hand, and that this

man levelled the revolver at him. Knowing that the witness had pointed out the accused and would repeat the performance, defense counsel at this junctice instructed his client to arise in order to convey to the jury the impression that the identification was a pre-arranged performance; that the witness had been trained to do it and would undoubtedly repeat the act. This seems a minor incident of the trial but is quite significant. Here was a case where the state was relying upon the identification of this single witness for its argument that the jury should return a verdict of death. The more impressive and dramatic they would depict this identification, the more likely they would succeed with their contention.

The defending attorney realizing that this moment was the high spot in the presentation of the state's case, made it his business to steal their thunder, to take the wind from their sails by interfering with the smoothness of the examination. When the state proceeds without interruption, when the courtroom is "as silent as the grave" at the moment the star witness for the state points an accusing finger at the defendant, an impression of guilt is created which is difficult to remove by subsequent evidence or argument. This is the scene which the state relies upon to clinch its case, especially where the defense is an alibi. By "rocking the boat" at this period of the trial defense counsel lessens the effect of the identification and makes his task of refuting it less arduous.

His last question on cross-examination was novel: "How do you know the defendant's first name is Ted?" In his cross-examination, upon a number of occasions he had insisted that the witness answer his questions, yes or no. He developed the fact that this witness, from June 11, two days after the shooting, till July 22, was in the custody of detectives from the Landis Award Committee; that he was turned over by them to an assistant state's attorney, and that he had remained in police custody until the moment that he related his testimony. It was brought out that during this period he had been escorted to the country home of one of the Landis Award Detectives in a western suburb, and that he had been a guest at a leading downtown hotel in the company of officers Terry and Drew. They bought and paid for all his meals. The witness was taken to theaters, given taxi-cab rides, and furnished with cigarettes and cigars. In addition to these treats he had been paid his regular salary of $28.50 per week. Defense counsel was shouting as he repeated question after question relating to these matters. He was a dramatic figure as he waved his slender index

finger at the witness. Finally he cried, "Isn't it a fact that when you first pointed out Ted Russell, that the victim's son, Louis Golden, said," "Now August, do your stuff. You know that there is plenty of money behind us." To the surprise of all, the witness answered that such words were spoken to him. Counsel quickly exclaimed, "That's all."

The first defense witness testified that he was an assistant manager of the Market Theater and that he saw Ted Russell at 2:15 on June 5, 1921, in front of the theater. The prosecutor brought out on cross-examination that the witness had been a political office-holder prior to his work at the theater. When he asked the witness how he remembered June 5, he stated that he saw an account in an evening newspaper charging Russell with the murder. It was then brought out on re-direct examination that the witness read the bull-dog edition of the morning Examiner. In his final argument the defending attorney commented on this point, saying that if Russell's name had not been mentioned that evening, the state would have brought newspapers into court and would have placed publishers on the stand to establish that contention. The next witness was Mr. Steele, owner of the theater. He was well-dressed and talked as a successful business man. He saw Russell at the same time that his manager did. The next witness was Mr. Rhodes, an engineer of a prominent office building at Monroe and Clark Streets, who testified that he had an appointment with a Mr. Howe on or about June 5th, at 2:30. Howe didn't appear, but a man whom he now identifies at Ted Russell did. The next witness was a man by the name of William Burt, a business agent for the Painters' Union, who testified that he was driving along Madison Street on June 5, about 2:15 P. M. and that he picked up Russell and drove him to Madison and Clark Streets. To further strengthen this story he stated that he had an appointment at a real estate office to close a deal; and he offered a receipt in evidence, dated June 5, to substantiate his story. The next witness was Mr. Howe who testified that he had an appointment with Mr. Rhodes and Mr. Russell at 2:30 at the Moore Building. He testified that he was unable to be present at this hour and called Mr. Rhodes on the phone at 3:00 o'clock.

Defense counsel then called Mr. Strange, cashier and auditor of the Landis Award Committee, to the stand. He was asked if he had received a subpoena *duces tecum* which commanded him to bring into court all data, cancelled checks, books, ledgers, and

papers relative to any payments which were made to August Mrez. The witness stated that he did not have them, that these papers were the property of the Chicago Employers' Association. Satisfied that Strange was in possession of the papers on the date that the subpoena was served upon him the court ordered the witness to have them in court on the following morning. These papers included cancelled checks and sheets showing expenditures for hotel room, board, cigars, cigarettes, taxi cab rides, and what not. In his final argument, defense counsel commented on the evasiveness of this witness, stating that this conduct showed that he was conscious of having done wrong. He also referred sarcastically to the witness' attempted suppression of evidence.

The lock-up keeper of the Detective Bureau was then called and asked whether he had brought the records mentioned in his subpoena *duces tecum,* relative to an arrest of George Dean, alias Brownie McCaffery on or about June 6, 1921, wherein he was charged with being an accessory after the fact in a murder case. When the witness replied that he had not brought the papers, defense counsel asked, "Why?" He then inquired whether the witness had talked with Captain Sneed and the state's attorney handling this case about the matter. His next move was to call an attorney who testified that he had represented McCaffery in the Police Court on or about June 6th on this same charge.

The defendant was the next witness. Counsel must have pondered long over the question of calling him to the stand. The state had presented a weak case. But witnesses for the defense had established a weak alibi. If the accused made a serious break on the stand, his alibi would be shattered on cross-examination. He answered his attorney's questions in a manner which gave the impression of calmness and gentility. With a tone of assurance and composure he denied having shot and killed the contractor. He had known the decedent but never had any trouble with him. He had been at Madison and Halsted Streets at 2:15. He had taken a ride with Burt to Clark and Madison Streets. He proceeded to the Moore Building and saw Rhodes at 2:30. He then returned to the Union offices and later went to two different billiard halls during the afternoon. At five-thirty he received a telephone call from a "copper friend" of his to the effect that he had better leave town. He was to be the object of a slugging. He spent the early evening shooting pool and thereafter went to a friend's home for the night. The next day found him at Adams and Wabash at 12:00

o'clock where he boarded the Milwaukee Electric train. From Milwaukee he transferred on a bus to Lake Habano. He stayed there until the Fourth of July when he returned to Chicago. The prosecutor developed in cross-examination that the accused did not register at the Lake Resort Hotel and that he was known around there only as Ted. The prosecutor would become so excited whenever he made any headway in cross-examination that he put the witness on guard. In his final argument he pointed to the defendant's inconsistency in claiming fear of a slugging and yet spending the evening at various pool halls.

His young associate argued to the jury, "Men, are you going to let defense counsel get away with murder? His only purpose in presenting the documentary evidence was to throw a smoke screen before you so that you would forget the real issue in this case. Does he think you are fools to swallow such nonsense?" He reviewed the evidence of each witness and drew various inferences from it. He covered the evidence thoroughly, but not systematically. There was no arrangement of his speech, it being merely a series of inferences of guilt arising from the evidence in the case. He created the impression that he was fair and would not make an argument for conviction unless the evidence showed conclusively that the accused was really guilty.

The chief defending attorney's associate talked about three quarters of an hour. He began his address by citing the three fundamental principles underlying criminal law: the rule pertaining to the presumption of innocence, reasonable doubt, and that which states that the indictment is not to be considered as evidence. He referred to the Coffin case in the U. S. Supreme Court reports where it was stated that proof beyond a reasonable doubt means an assurance little short of certainty. He injected the most striking phrase uttered in the trial when he referred to the accusing finger of the state's star witness as "the finger that was covered with gold"; the finger that was directed by the pressure of the Landis Award Committee. He quoted an Illinois case in support of his argument as to the degree of proof required where the defense was an alibi. He referred to a case on the question of alibi to show that the defendant's testimony should be carefully considered by the jurors. At one period in his argument he used the word "seriatim." When his elder associate asked him what that word meant he turned around and explained, "serially, in a series." The elder practitioner thus emphasized the importance of using plain, simple words.

The first words in the final argument of the last speaker for the defense were that the contractor was shot in the legs, and not in the back. His purpose in making this statement at the start of his talk was to counteract the impression created by the deceased's son shouting in open court, "In the back," in answer to a rhetorical question propounded by the younger attorney in the course of his argument. This was an instance of his resourcefulness. By refuting this suggestion in unanswerable terms, he established, once and for all, his associate's point which was in fact reasonable and logical. Upon one occasion, he cried, "If you have not approved my tactics during this trial, if you dislike me as a man, don't take it out on my client. I have done my best for him. It was because of the great burden that rested on me that I was forced to act in the manner I did. I have prayed to God to be given the strength to go through with this trial and meet the responsibility in my hands. His eyes were filled with tears and his face reddened.

At one stage of his argument he said amusingly, "I like this young prosecutor personally. Outside of the courtroom, I would believe anything he told me."

The last speaker for the state shouted at the top of his voice from beginning to end. He ran up and down and in circles. He looked disdainfully at the accused and contemptuously at his counsel as he shouted personal epithets in their direction. He was in a contest and was willing to fight the defendant, his lawyers, and everybody connected with him.

The jury returned a quick verdict of acquittal. A verdict of guilty would not have been supported by the evidence. On the side of the state was one identifying witness, dined and wined by the state for months before the trial. Opposed to him were five or six uncontradicted alibi witnesses for the defense. Yet the newspapers wrote up the acquittal as a travesty of justice.

Additional sidelights on the trial follow:

On a number of occasions during the trial the defense attorney said, "I wish to save an exception to the conduct of counsel." In his final argument, he enforced the point by asserting that it had been necessary for him to make this objection forty-one times.

The introduction of the evidence as to McCaffrey being charged with the theft of an automobile, and with being an accessory after the fact of murder, was for the purpose of corroborating the defendant's story that his auto was stolen on the day of the alleged

homicide. In his final argument, the prosecutor replied to this contention by saying that the accused was not such a fool to "pull this job" in his own machine. He would naturally use another car, without license plates, such as was observed by the witnesses in this case. A secondary purpose of the evidence was to show that McCaffrey was believed by the police to have been involved in this murder. Counsel pursued this theory when he placed his young associate on the stand and asked him if he had tried to find McCaffrey. The witness testified that he had driven to his home on two different occasions, but he was not to be found. The impression was created that McCaffrey may have been away from home to avoid capture and prosecution for this offense.

Toward the close of his final argument defense counsel said, "We have not tried to create sympathy for the defendant. All we want is simple justice at the hands of twelve American citizens, enforcing American laws. The defendant's wife is in this courtroom, within hearing of my voice at this moment. But I have not introduced her to you to excite your sympathies." This was an effective argument to counteract the influence of seven children of the deceased, as well as the widow, in deep mourning, constantly before the court.

A novel feature of the law in homicide cases, with reference to the relations between the defendant and the deceased, was illustrated in the the following incident of the trial. Defense counsel asked his client on direct examination if he knew the deceased, and if he ever had any trouble with him. The accused replied that he had known him but had never experienced any trouble. On cross-examination the prosecutor asked when he had first met the deceased and the circumstances of their meeting. Then he inquired about subsequent meetings. He was asked, specifically, "When was the last time, before June Fifth, that you saw him?" "Did you see him on the Plaza Hotel job on or about April 26th at about three o'clock in afternoon?" When the witness answered in the affirmative, the prosecutor continued, "Isn't it a fact that these words were spoken by him and by you at that time? You asked him, "What are you doing around here"; and he replied, "None of your business. I work for my living, you don't!" The prosecutor then directed his attention to another date, at another job, and asked the defendant if he had not spoken those words to the deceased at that time, "Get off that truck or I'll knock your head off." He used the significant phrase, "Pulling men off jobs," in

order to convey to the jury the nature of the work of the business agent of this union. Defense counsel objected to these questions on the ground that the prosecutor was not reading the exact words but was framing the alleged conversations between the two men. The state's attorney retaliated by asserting that he was reading the exact words from his note book, and that he was willing to show the jury these written words.

Rebuttal testimony, providing someone had heard these conversations, might have proved very effective. If the rebuttal testimony were believed it would have showed that the defendant was lying when he denied that he had these conversations with the deceased. The jury might have concluded, if he lied as to this matter, he was lying about other points in his testimony. Also, if this testimony had been believed, it would have shown that enmity existed between the two men and that it was reasonable to suspect the defendant to be the slayer in view of the other facts and circumstances in evidence. There is some doubt, however, whether such testimony of the rebuttal witness would have been admissible by the state's attorney, even though it tended to show motive. The courts consider the evidence of such enmity, when the circumstances happened months before the homicide, to be too remote in point of time for the jury to draw a reasonable inference that on account of such a quarrel the defendant was the killer in the case at bar. Of course, if a threat had been made by the accused to kill the deceased, the remoteness of months would not create a bar to it. The state relied upon its legal right to prove contradictions as to the defendant's testimony, it being recalled that the accused had testified on cross-examination he had never experienced any trouble with the deceased. Fortunately for the defendant, the jury did not believe the testimony of the contractor's son as to these quarrels, probably because of his hatred for the man charged with the murder of his father; and partly because of the defending attorney's cross-examination which brought out the fact that the witness had not mentioned them during his testimony before the coroner, although at that time, he testified *that* was all that he knew about the case. Counsel asked him if his mind were not fresher at that time than now. Had a disinterested witness testified as to these quarrels the result might have been different. The acquittal verdict indicated that a jury will not believe a man who shows by his conduct that he would testify as to anything because of a deep, passionate interest in the outcome of the suit.

Counsel, on cross-examination, asked questions which were to be answered, "Yes" or "No." He insisted, too, that they should be so answered. By this means he confined the witness, so that he could not hurt the defendant by contributing uncalled-for-remarks. An attorney knows the lay of the land when he asks such a question. Also, it enables him to lead the witness in obtaining desired answers. The witness often rebels against making such an answer because he wants to add an explanation. It is that explanation which the attorney wishes to avoid. It requires considerable tact in order to direct questions in this form.

At one stage of his final argument defense counsel appealed to the jury with these words: "Decide whether you would make a decision in a matter affecting important interests in your life upon such evidence as is presented in this case to take away this man's liberty or his life. That is the test."

Whenever he placed a witness in an embarrassing position, and he knew him to be mistaken, he would ask, "Are you as sure of that as you are the rest of your testimony?" This question was objected to by the state's attorney, and the objection upheld by the court. This question is frequently asked by attorneys but invariably stricken by the court upon objection.

As an example of counsel's spontaneity, when one of the witnesses indicated he had not turned over all moneys given to him by the Employers Association for the star witness, defense counsel shot forth, "Oh, it is a case of cheating cheaters, is it?"

In his final argument, he wisely expressed his sincere sympathy for the family. More than once he concluded such an expression with, "But we did not kill him."

Summary

On the side of the prosecution was a key witness kept in custody for several months. The defense cleverly pointed out that with the treatment accorded him, he would cooperate with them in every way to help their cause. The movements of the accused on the day of the offense are covered carefully by the defense in support of an alibi. The son of the victim did not help the state because he openly displayed his bitter hatred for the accused. Under these circumstances, the jury discounted any testimony that he gave. The fact that the defendant surrendered helped his cause. The defense, given time to catch their breath, was enabled to present a complete picture of his whereabouts on the day of the alleged offense.