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VIGNETTES OF THE CRIMINAL COURT

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Ice-Pick Attack. Self Defense

On trial for murder was a clean-shaven, bright-eyed man, forty years of age, whose general appearance was that of a pugilist. His gestures while speaking indicated he was aggressive and demonstrative.

The defendant was walking through a gangway when he chanced to meet Clancy, an iceman. The latter grabbed the accused with his left hand and whirled him around. The defendant reeled backwards, lost his footing and fell against the side of a garage. He was rising from this position when his assailant said, "You ——, I've got you now." Seeing an ice-pick raised in the right hand, ready to come down upon him, the defendant reached in his right, rear trouser pocket and grabbed the handle of a butcher knife, wrapped in a newspaper. He stabbed the deceased in order to save his own life.

While the defendant had made a complete statement to the police, it was agreeable with his present story and the prosecutor used it sparingly in cross-examination. On one occasion the State's attorney asked, "Was this question asked of you by Officer McCarthy and did you make this answer?" Inasmuch as the facts to be elicited by the question represented cumulative evidence, the judge remarked, "How does that inquiry tend to contradict the witness? Unless you are prepared to contradict him, such inquiries should not be made."

The defendant's sincerity while testifying made a marked impression upon the jury. His aim was to demonstrate to them that he did only what any other red-blooded person would have done, with an ice-pick about to be plunged through his body.

The fact that there was but one wound inflicted tended to show it was an act of self-defense and not the deed of an aggressor, bent on destruction.

The case was submitted to the jury on a Friday afternoon. On

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the following Saturday, at twelve o'clock noon, the jurors were still deliberating over their verdict. Shortly thereafter they disagreed. This was a defense victory because the accused was never again tried for the offense.

Killed in Brawl at Defendant's Home

Here was an indigent colored prisoner, weighing two hundred pounds, charged with killing another negro. The witness on the stand was at the defendant's home on the evening of the shooting. He testified there were four women present. All were shooting dice and drinking. He observed the defendant in a quarrel. The latter ordered his antagonist, Whitewall, out of his house. Several times the defendant told him to go. Finally the accused shot Whitewall, backing out the front entrance of the house. The witness appeared to be a loose character and coupled with his low grade of intelligence, became an easy victim for the defending attorney on cross-examination. The latter endeavored to show that the witness was not in a position to see the shooting. After the affair, the witness said that the defendant asked whether Whitewall was dead. He used a curse word in referring to his victim and expressed himself as hoping he would die, if he had not already passed away.

On the following day the defendant was on the stand. His shabby clothes were much too small, probably borrowed for the occasion. He talked freely. Instead of answering a simple question with a few words he would discuss it from several angles. His voice indicated no apprehension over the result of the trial. He spoke as a man with a perfectly clear conscience. He impressed the jury with the idea that he had nothing to conceal, speaking to them exactly as he would if he met them on the street. He mentioned the quarrelsome disposition of Whitewall and his known reputation for violence. He denied the profanity attributed to him by the eye-witness for the State while the victim lay mortally wounded but expressed no compunction over his act. It was done in dire emergency and there was no significance to the fact that Whitewall died.

Although the gun had been in evidence the defense was in a position to explain its possession because the shooting took place in the defendant's home where he had a right to have it.

In final argument, defense counsel pointed out many inconsistencies in the testimony of the State witnesses. They had testified that Whitewall was shot in as many rooms as were in the house.

As a result, the jury did not believe any of them were telling the truth. Counsel argued that a man's home is his castle, that in view of Whitewall's bad reputation and quarrelsome conduct, the defendant was eminently justified in shooting in order to protect himself from great bodily harm.

The first vote of the jury was ten to two for conviction but after six hours of wrangling they returned a verdict of not guilty.

For the Honor of His Sister

Here was a boy charged with the slaying of Jack Crane, twenty years of age. The shooting took place in a poolroom in the vicinity of their homes. It occurred between the hours of midnight and one o'clock during the month of December. It was agreed that the victim had been acting in the capacity of scorekeeper for other boys who were playing pool. The state's theory was to the effect that the defendant came into the poolroom, saw his target, and immediately fired upon him.

The prosecution was forced to rely upon the testimony of the proprietor of the poolroom and two or three of the boys present at the time of the homicide. The substance of their testimony was, that things happened so quickly they were bewildered. Unable to describe details, their testimony was of such a negative character that had the defendant denied the shooting it is doubtful whether the state could have established criminal agency against the defendant. The proprietor admitted that the gun which discharged the fatal shots was his and that it was laying in the drawer behind the counter, in accordance with the subsequent testimony of the defendant. All the state witnesses were friends of the accused and testified only because they were compelled to answer the subpoenaes issued by the court. In cross-examination they all admitted that the deceased bore a bad reputation for peacefulness and quietude, while the defendant had a good reputation in this respect. Such testimony, coming from the state witnesses, naturally struck at the vitals of its case. It appeared that the defendant's friends had been active in preparing his case. They knew the state witnesses and arranged their testimony to help the accused. The gun was not in evidence. The defendant said that he had thrown it away, about four doors from the poolroom. He was arrested a week after the occurrence, telling the police that he shot in self-defense.

The accused was twenty-eight years old, short in stature, and of rather slight build. Freckles covered his face. He was curly-

haired and blue-eyed. In brief, he was a typical Irish lad from "back of the yards." He sat upright in his chair, and looked at the jury while on the witness stand, and told his story effectively. He lived the scenes over again. When he came to the actual shooting he said in a broken voice, "When I got my package of Durham behind the counter, I turned around and saw Crane. That was the first time I had seen him. Immediately he lunged forward. His left hand went into his right vest pocket. I knew that he was going to kill me. I knew he was reaching for his gun. I was frightened. I saw a drawer partly opened. I saw a gun. I reached for it. I shot him because I knew he was going to shoot me. After the shooting, I lost my head. I didn't know what to do. I ran out of the store and strolled around for some time. Finally I thought of a friend. I went to his home and told him my trouble. I spent the night there." The defendant was crying as he uttered these words. They seemed to be genuine tears. If he were acting, he was indeed a proficient actor. He showed compunction, penitence, sorrow in every act and word, while on the stand.

The defense proffered several boys of the community who testified that the reputation of the deceased as a peaceful and law-abiding citizen was bad, and on the contrary, the accused bore a very good reputation along these lines. These witnesses were boys who lived in the neighborhood and knew both the defendant and the deceased intimately. While they were not outstanding citizens, yet their close acquaintance with the defendant and deceased made their testimony very important. A jury might well say they were competent to judge the reputation of the two leading figures. A character witness who impressed his hearers with his sterling reputation was a conductor who had been with the Surface Lines for seventeen years. He did not know the deceased but his testimony in behalf of the defendant was strikingly impressive.

The defense then put on a witness who testified in regard to a conversation he had with the deceased a short time before the homicide. He said that he quarrelled with him. The latter asked him why he had told the accused about his relations with the defendant's sister. The witness, replying, said, "I have no use for you since you committed that lousy trick of burglarizing the place where I was working." The state moved to exclude this remark and the court granted the motion. Nevertheless, the jury had an insight into the bad reputation of the deceased.

A key witness, one whose testimony meant more to the accused

than that of any other, with the possible exception of the defendant's sister, told of the following occurrence on the evening before the homicide: "I was standing on the corner at about 11:30 in the evening. I overheard a conversation between the defendant and Crane, who were about five feet from me. The defendant said, 'What I have heard about your relations with my sister I find are true. What are you going to do about it?' Crane replied, 'To——with your sister and your whole family. I'll kill you, you——.' With these words he placed his left hand in his right vest pocket and drew a gun. The defendant ran down an alley, with his pursuer close behind him until they were out of my sight." Unless the state was able to shatter this story, their case looked hopeless. The state's attorney did not cross-examine this witness at length. It was thought that he would inquire of his condition in life. The witness had said on direct examination that he was out of work at the time of this trial. It was surprising when the state did not inquire when and where he last worked. He stepped from the stand with his story unshaken in any particular.

After the accused had testified, the defense wisely called the defendant's sister as their concluding witness. The verdict would certainly turn on her testimony. She was twenty years of age, speaking in a soft voice. She revealed her relations with the deceased from the time that she first met him. She had often spoken to him about marriage but he always avoided the subject. She concluded her sorrowful account with the information that in the following month she was to become a mother. The state's attorney was very gentle in his handling of the witness. When she cried, he avoided pressing his question. He wanted her to say that she loved the deceased and that she had talked about marriage with him at his home. She admitted that she had loved him.

The state called as a rebuttal witness an officer who testified that he had a conversation with the defendant soon after his arrest and that the latter had told him that he had been in two fights with the deceased and had licked him on both occasions. The state next called the mother of the deceased, who testified that her boy and the defendant's sister always acted very affectionately toward each other; that they frequently talked about marriage at her home, and that the deceased had been saving his money for the occasion when he would marry her. Next came the brother of the deceased who testified that the latter did not own a brown

overcoat. This was to contradict the defendant who stated that the deceased had a brown overcoat on the night of the homicide.

To diminish the effect of the testimony of the witness who spoke of the attack upon the defendant the prosecutor stated in final argument that personally he did not believe this witness had ever seen the incident related by him. Such a categorical denial of a fact, entirely a matter of opinion upon the part of the state's attorney, would not have its desired effect. The jury is not inclined to rely on this method of approach to obviate the effect of sworn testimony. They want to be shown why such testimony is not to be believed. Merely because the state's attorney does not believe it is not a sound reason why the jury should agree with him.

A young attorney, making his first argument for the defense, confined it to reading a number of Illinois decisions upon the law of self-defense. He read quotations from the Hammond, the Campbell, and other leading Illinois cases on this subject.

The second defense attorney, resting his arguments firmly on logic, addressed himself to the minds of the jury rather than their hearts. He reviewed the testimony of each witness, using his notes for reference, although he did not seem bound by them in the least.

With the evidence decidedly in favor of the defense, it would be thought a physical impossibility for an attorney to make a strong argument for conviction. Yet the prosecutor delivered a vigorous response to the defense contentions. He took the position that the defendant and his family had been in constant opposition to the marriage. The accused himself was the cause of his sister facing the world as an unwed mother. It was he who was responsible for the child being born without a father's name. From the girl's testimony, however, it was clearly shown that the deceased did not intend to wed her. The prosecutor continued, "This defendant ought to receive some punishment, whether you find him guilty of murder or manslaughter." His intimation of the applicability of manslaughter indicated desperate straits. It showed that he would have been willing to have the jury return any verdict except an acquittal. Yet it was apparent that the case was either murder, or a justifiable homicide on the grounds of self-defense. It was highly improper and unfair to attempt to secure a compromise verdict of manslaughter, under these circumstances. Probably the strongest argument advanced by the state was to the effect that the defendant had not exhibited the conduct of an innocent man immediately after the shooting. The prosecutor argued, "Why didn't the accused

say, 'Oh I'm sorry, but I had to shoot him in self-defense.' Instead of that he ran away and remained hidden for a week. It was during this week that he built up his story of self-defense."

The jury deliberated five hours over their verdict. This was a long time, in view of the evidence before them. They finally returned. The clerk read, "We, the jury, find the defendant not guilty."

Following are additional sidelights upon the trial:

When the officer testified that he would not believe the defense witness who spoke of the attack upon the accused, under oath, the attorney for the defendant asked him why he would not so believe him. The officer was delighted to see the trap into which he had led the attorney. He was eager to blurt out that he had made arrests of this witness and that the latter was a notoriously bad actor in the neighborhood. The judge very kindly saved counsel from embarrassment by saying, "Wait a minute, officer, before you answer." He called the defending attorney to the bench, warned him of the danger, and instructed him to withdraw the question. Specific instances of wrongdoing are not permitted to be brought out either in cross-examination or by calling impeaching witnesses, without laying a proper foundation, namely giving the attacked witness an opportunity to deny the implication. The state on redirect attempted to put into evidence the matter which they had no right to submit in their examination-in-chief by asking the officer, "The defending attorney has asked you why you would not believe Cole on oath. He withdrew his question. Now I want to ask you this same question." The court intervened and forbade an answer.

When the police arrived at the death scene they found the right hand of the victim holding a pencil. This little incident shows the importance of securing witnesses to view the scene of the homicide before it has been disturbed in any manner. By reason of the pencil being found in the hand of the deceased, the state was enabled to prove conclusively that he had been acting as a scorekeeper for the boys at the time of the shooting. From this fact it would reasonably be inferred that he had been sitting at the table, interested in the matter before him; that the defendant's entrance into the poolroom was probably unnoticed; and that the deceased could not have been the aggressor in the affray.

The state introduced the element of a hold-up on the part of the defendant, after he had shot his victim. The proprietor had said that the defendant took money from the cash register, held

the gun levelled at the occupants of the store, and backed his way out of it. The defendant maintained that he did not remember doing this. This feature of the case was not brought out strongly in the argument of the state's attorney. The affair between the two men was a distinct matter and no element of robbery was involved in it. The state's attorney, might, however, have laid great stress upon this conduct of the defendant, as indicating his loose character. The defending attorney attacked the theory of a hold-up by asserting that it was an improbability inasmuch as the defendant testified that he did not have a dollar at the time he reached his friend's house after the homicide.

One line of inquiry which was important in establishing the theory of self-defense was found in the question asked each of the friends of the defendant who had been with him on the fatal night from seven till midnight. Each witness answered that the accused had not mentioned Crane during the entire evening. This fact indicated the former did not have the deceased on his mind. It was strong evidence to show that the shooting was the outcome of a sudden impulse, that it was the result of a surprise encounter rather than a contemplated slaying with malice. When a defendant in a murder case is able to eliminate the element of malice from his actions he has gone a long way in destroying the state's case. His action in shooting may then be explained in a manner consistent with his theory of self-defense during a sudden affray.

There could be no case where the facts more clearly justified a fervently pathetic appeal to the jury in behalf of an accused. If ever there was tragedy before a Criminal Court, here it was. The despoiler of the defendant's younger sister had been approached by the youth who stood at the head of the girl's family. The brother assumed the task of inquiring what the decedent intended to do to rectify his grave wrong. He appealed to him in a lawful, orderly manner. How was he met? Did he who had ruined the defendant's sister show a trace of penitence or sorrow? With the arrogance of a fiend, he cursed not only the defendant, who had made the inquiry, but even this girl who had so loved him that she gave him her all. This argument might have been continued along this line: "Suppose that the defendant had found this young man in the midst of his lecherous act? Or, suppose that you had confronted the same situation and the offender of the sanctity of your sister had answered you in the manner that the deceased answered this defendant. If you had killed him on sight, is there any law anywhere

that would punish you for it? You wouldn't merit punishment. You would deserve commendation. If you did not strike back, under these circumstances, you would be a cowardly cur, unworthy of the love of a confiding sister or mother. How much must a man bear? Is there no end to the anguish that he must suffer under such circumstances? The deceased's conduct in this case was so despicable that it passeth human understanding. More depraved conduct could not be imagined. After besmirching forever, the fair name of this little girl, he utters an oath against the defendant for merely questioning him about the transaction. He draws a gun in order to commit a second atrocious crime against her family. If anyone were entitled to carry a gun at the time of discussing this loathesome affair, it was the defendant. In summing up, if you would not condemn this defendant's act had he witnessed the deed which forever branded shame upon the brow of his sister, how can you contemplate punishing him for his act at a later date? Even with no element of self-defense in this case, is there a jury in Christendom that would punish a brother for avenging the despoiler of his sister?"

One of the few possible arguments for the state, under the circumstances in this case, was couched in the following words: "If this girl is to become the mother of an illegitimate child, if the defendant is in the shadows of the penitentiary or the gallows, if his mother and family have spent sleepless nights since the date of this affair, the defendant can look into the mirror and find the man who has caused all this tribulation. I was of the belief that we were living in a civilized community where private, personal vengeance is looked upon with horror. There is a written law that is intended to cover the wrongs which are inflicted against each of us. If you are suffering from one of these wrongs and you step from the pale of the law to avenge it personally, then the consequences of that act are yours. I do not believe that Crane would have refused to marry the defendant's sister. But for the sake of argument, let us assume that he would. The defendant was not the first member of a family where a young girl had loved not wisely, but too well. The law does what it can for such a girl. If its remedies are not satisfactory or conclusive, who is this defendant that he may become the judge of the alleged offender of the virtue of his sister? Who is he that he can determine the question, whether or not Crane was to marry his sister? Who is he that can fix the penalty for such transgression? We are giving him a trial by jury, a trial

presided over by an impartial judge, a trial according to the rules and principles of law. What kind of a trial did Crane have? The defendant assumed the role of grand jury, prosecuting attorney, judge and jury. He fixed the penalty at death and became the executioner."

SUMMARY

Here is the picture of a boy avenging his sister for a moral wrong committed against her by the deceased. We see a case where the neighborhood opinion was in entire sympathy with the defendant. His witnesses outnumbered those of the state ten to one. Previous threats by the deceased against the accused were testified to. Finally, there is the unfortunate girl taking the stand for her brother. The natural sympathy that was aroused in her behalf clinched the verdict. We see the desperate though futile effort made by the prosecutor to meet the mountainous opposition against him. The unwritten law was not to be denied.

Murder Follows Whiskey Demand

The prosecutor was making his final argument to the jury in a case where two policemen were on trial for murder committed when one of them shot a barkeeper for not serving drinks fast enough. The two sleek defendants, out on bail, expected an easy victory. The spirit of brotherhood among fellow officers would assert itself. Again, it was a case of extreme drunkenness where the defendants could not have entertained a deliberate intent to murder.

It was midnight when the two officers finished their shift and started on a spree. In the fourth tavern they visited, the demand for whiskey was met by two glasses of near-beer. They became enraged and were finally given whiskey. One of the eye-witnesses of the tragedy testified that Officer Toohy demanded drink after drink and was heard to say to the bartender, "I wouldn't hesitate a minute to kill you." The defending attorney contended that the shot was fired from the gun while in the holster as the result of an accident. The prosecutor challenged counsel to explain how one of the bullets hit the side wall of the bar room near the ceiling, and another struck the deceased in the head.

Quoting from a number of Illinois reports, the prosecutor made the following argument the basis for his theory of the defendants' guilt: Specific intent must be proved as to certain crimes, but not

in a murder case. The jury is to view the surrounding circumstances, particularly the conduct of the defendant and deceased, and the nature of the instrument of death. If they can say that the acts of the defendant were dictated by malice, express or implied, the defendant will be held accountable for murder.

In further support of this contention, he argued from the decision in the famous Mays case where a drunken man, quarreling with his wife, hurled a beer stein in her direction. It knocked over a lamp; the curtains of the house caught fire, and a third party in the room was burned to death. The court sustained the judgment of the trial court which found the defendant guilty of murder.

He recalled every-day experiences to drive his points home, for example, "After all, law is but common sense, an effort to apply a reasonable solution to a dispute. And so it is not at all surprising for us to find that the law says that drunkenness is no excuse for crime. You could walk down Dearborn Street for six miles and wouldn't find a man who didn't approve of that doctrine, even if he had never looked at a law book. The moment that it is not the law in this community you may as well lock the doors of this building and throw the keys into Lake Michigan."

His tenacity was rewarded with a verdict of guilty of murder, with a penalty of fourteen years imprisonment for the slayer. The State had *nolle prossed* the case against the other officer at the conclusion of its evidence.