Journal of Criminal Law and Criminology

Volume 25
Issue 3 *September-October*

Article 3

Fall 1934

Vignettes from the Criminal Court

Charles C. Arado

VIGNETTES FROM THE CRIMINAL COURT[1]

IV

CHARLES C. ARADO[2]

I. *Youth on Trial for Murder During Commission of Robbery.*

In a daring theatre holdup, a shot was fired at the girl in the cashier's office. Newspaper accounts were to the effect that she disobeyed a command of the bandits by crying for help. The defense theory, however, was to the effect that she became panic-stricken and her piercing yell so startled Deska that the trigger was pulled before he realized it. The four defendants were between the ages of seventeen and twenty. They were arrested shortly after the offense and confessed. The assistant state's attorney assigned to the prosecution of the case brought the boys out to the scene and arranged to have them re-enact the crime in order to seal the case hermetically. The community was naturally aroused to a high pitch of excitement.

From the manner in which the selection of the jury was conducted, one would presume that defense counsel had a perfectly adequate defense to submit to the court. Upon one occasion he said significantly, "Your mind should be a sieve. The evidence should be sifted through it."

The court addressed a juror as follows: "You might receive an impression from reading newspapers, but it wouldn't amount to a fixed opinion. It is difficult to keep from acquiring impressions when reading about a case; but it is another thing to adopt a fixed opinion that would require evidence to remove it. Would you want your personal fortune or reputation taken from you by reason of unsworn articles appearing in the public press?"

Late in the afternoon he made this dismal announcement to the jurors: "You may be the twelve men finally selected. For this reason I must keep you together over night."

There was column after column in the newspapers about this murder. The prosecutors had prepared an iron-clad case. Two weeks were spent in trying to select a jury. One morning, defense counsel startled those in attendance by announcing to the court in a

[1]Earlier contributions by this author, under the same general title, have appeared in this JOURNAL, Vol. XXIII, at pages, 77, 469, 473 and 1020.

[2]Member of the Chicago Bar.

whisper, "These boys have decided to plead guilty. We will submit evidence in mitigation and allow Your Honor to fix the penalty."

The first witness called was one of the patrons who had been held up in the front of the theatre during the course of the robbery. There was no cross-examination.

An employee of the theatre, another victim of the holdup, was then offered by the state. There was no cross-examination of him.

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The mother of the deceased then took the stand to establish the corpus delicti. The father of the girl might have testified as to these facts and spared his wife the ordeal. But the prosecutors wouldn't stand for that. Presenting a pitiful picture, she broke down completely when asked, "When did you next see her?" In his cross-examination, the defending attorney said, "You recall that I talked to you and told you that these boys would be punished, do you not?"

The head of the Detective Bureau Squad who made the arrest then took the stand and testified that the boys told him their stories immediately.

A captain of police testified as to the investigation which led to the arrest of the defendants. In cross-examination defense counsel asked, "The bullets which you described in your direct-examination were not found in the defendant, James', home?" Answer: "No."

The coroner's physician, who removed a bullet from the body of the deceased, was the next witness. There was no cross-examination.

A garage man then testified that the four defendants were at his place of business in their car shortly before the robbery. On cross-examination he was asked, "Was Deska under the influence of liquor at that time?" The witness answered in the negative. The theory of the defense, however, was made plain.

The four statements that had been made by the defendants were then offered in evidence. There was no objection. Defense counsel admitted that third-degree methods had not been used.

The newspapers had stated that the defendants seized the bag of currency after the victim had been shot down. Such accounts appeared to be unfounded. At least, the evidence did not support them. Had such evidence been introduced it would have gone far to indicate a most abandoned cruelty. Such moral turpitude would drive nearly any jury to a death penalty verdict. The evidence indicated pretty clearly, however, that the money was obtained before

any shooting. The defending attorney followed this theory in attempting to show that the gun was fired in a moment of frenzy, perhaps by accident.

The first witness for the defense was a brother of James. He was fifty-six years of age, a teacher of telephone engineering at the General Electric Plant. He was neatly dressed, wearing glasses. He resembled a thorough business man, honest and conscientious. Defense Counsel asked him a few questions about his brother's family and home conditions. There was no cross-examination.

The next witness was a sister of the defendant, Stuts, attractive, and neatly dressed. She was asked a series of questions by the judge in regard to her brother's schooling, his work record, and general disposition. Defense counsel adopted the policy of asking only a few questions. This would invite the judge to complete the examination. In this manner the court would become personally interested in the witness and consequently more impressed by his testimony. The lawyer realized that such an interest displayed by the court would go much farther in persuading him to see the human side of the picture than any answers that he (the attorney) might obtain by a long direct examination of the witness. He thereby gave the judge an opportunity to demonstrate his personal knowledge of the underlying causes of the crime.

Bulock had nobody to say anything for him. An immediate sympathy for him was aroused. Here was a boy facing the greatest crisis of his life, alone. Not a single friend among Three Million people to say a word in his behalf. The impression was created of a young boy running wild in a big city, with no anchor. Was it any wonder that he should drift into bad company and become involved in a crime?

A sister of Deska was then called. She was thin, emaciated in appearance, and poorly dressed. She had guided her brother until she married. Since that time, the defendant worked off and on. He was always good to her. He was wayward, perhaps, but not vicious. He had never been in any trouble of this kind before. The judge then asked, "How was he to you? Was he mean, spiteful, using curse words around the house, or was he kind and considerate with you?" She responded as a loyal sister.

The crowded courtroom was about to see the first defendant make a plea for his life. Defense counsel patted the young man on the back as he said encouragingly, "All right, Bulock, you take the stand." His face was pale and thin. Would he falter? Appear-

ing to be absolutely nerveless, he testified almost nonchalantly that he had carried a gun on the night of the robbery, but had done no shooting. It was he who was arrested some weeks after the other three defendants. He had not left Chicago. The judge then delved into his family conditions and school record. He also inquired as to his past criminal record. It appeared that there was no major offense in this background. The state's attorney handed a record sheet to the judge, probably indicating the commission of minor offenses. The boy then testified that the thought of a holdup occurred to him and his associates only three hours before it was put into execution. The driver of a taxi-cab, Kates, described as dark-complected, had told the boys that they could obtain Five Thousand Dollars from a holdup of the theatre in question. This man supplied a shotgun and two revolvers. Bulock and Kates procured them at a nearby poolroom. Kates was to share in the proceeds. The boys first met him at the Legion Restaurant. The judge ordered, "Bring in Kates. He is more guilty than these boys. Bring in the restaurant owner. If he doesn't tell me who this Kates is, I'll put *him* in jail." The judge then asked the boy for a full description of this man who had eased out of the picture. The interest shown by the court in a man other than the accused was significant.

Stutz had curly blonde hair. He looked Irish rather than Polish. He had been the driver of the car. As in the case of Bulock, there were no tears. He spoke louder and clearer, more assuredly than his predecessor upon the stand. His statement had been obtained only after the other boys had confessed. He wanted the public to be sure to understand that. Defense counsel developed the idea that the police gave this boy to understand that if he would come through with his story they would bargain with him. It was a dramatic moment when the attorney said, "I am going to do something that I seldom have done in these criminal courts. I hope the boy will forgive me. I know that his parents will not. Stutz, tell us which of the four boys is most responsible for this tragedy." The answer came quickly and clearly, "All of us the same." The attorney then addressed the court, "I thought that he would say that. It shows you that he is willing to come in and take his punishment with the rest." (The effect was electrical. The aim had been to induce the judge to save the life of the youth who had pulled the trigger. If there were no leader, no one to blame particularly for the slaying, the electric chair was farther removed from the scene. It was reasonably certain that the court would not hang the four boys. If the

chair could be eliminated as the penalty for Deska, the defense was assured of success.)

James, a tall, well-built, dark-complected boy, with shining black eyes, dressed in a neat, gray suit, was the next witness. He had fired two shots as they left the theatre in order to frighten pursuers. He corroborated the other two boys in regard to obtaining guns and the manner in which the hold-up took place. The attorney developed the point in his examination of all three boys that in a subsequent conversation with Deska the latter was asked, "Did you shoot anybody?" He had answered, "No. I shot to frighten them. I saw a girl faint, but I didn't shoot her."

James had not been on the stand long when he pulled out a handkerchief and cried. His voice broke. It was a picture of an overgrown boy of seventeen. The tallest, yet the youngest of the quartet, he appeared to be possessed of the most sensitive nature, with the possible exception of Deska. Although he had been placed upon probation a short time before the murder for the theft of an automobile, he had never been in a holdup before. In fact, the four boys stated that they had never engaged in a previous robbery. A dramatic incident took place when the attorney said to the court, "James wants to say something, if Your Honor will permit him." The judge replied, "Certainly." James then arose from his seat and, facing the court, with a voice choked with feeling, said, "Judge, I want to ask you to be merciful to Deska." The judge was visibly affected. He held a handkerchief to his face.

Deska was of slight build, a blonde, dressed in a neat brown suit. His complexion was colorless. He had been very fidgety before taking the stand. He hadn't been able to sit still a moment. His hands were constantly moving. Although the lad who fired the fatal shot, he was not a combative type. He gave the impression of a foolish boy who had made a terrible mistake. This story that he fired in the height of excitement was perfectly consistent with his nervous disposition. His voice was a whisper, hardly audible to the court sitting but a few feet away from him. Its softness may have been due to his shame in recounting how he had taken the life of a young girl because she screamed. If it had been a large, burly police officer who had confronted him, and it was a question of shooting it out to save his own life, there would have been at least a trace of manhood in his quicker draw. As it was, however, he had to assume the role of a coward, as well as a thief and murderer. He had not been on the stand long before he began to cry. His breakdown was

more complete than that of any of the other boys. To the spectator, it looked as though their comparative reaction was in direct proportion to their moral guilt. The lesson from the tragedy seemed to have been brought home more forcefully to the boy most guilty of murder. Were they all to start life anew, it looked as though Deska would be the better prospect for living an honest, upright life. Whether the breakdown was caused by remorse for having been the instrument of death, or because of ghastly fear of the electric chair, is of course, a debatable question.

On cross-examination, the prosecutor developed the fact that the youth had told him that he had planned the holdup a month before, while returning to the city on a truck from Moline, Illinois. This story was in direct contradiction to the defense contention that the robbery was conceived in their minds but a few hours before it occurred. Defense counsel interposed on redirect examination, "Let me see if I can straighten him out. Isn't it a fact that this truck did not pass the theatre, and wasn't your former story to the state's attorney false as to that point?" This development was the first crack in the defense. It would have been choice material for a bitter attack upon this defendant's credibility, before a jury. Even with the matter before the court, it hurt him. If he lied as to that point, his entire story might now be considered false. A prisoner in his predicament has to impress the judge that he has told the whole truth, before he is entitled to ask for mercy.

The high spot in his examination occurred when his attorney asked these questions: "Did you mean to shoot this girl? Did you intend to kill her? Did you know that you had shot her? When did you learn that you had killed her?"

During the breakdown of James, the attorney turned to the court and said, "I must say that these boys have been carrying on this way ever since I have been in the case."

It had been only a few days before this trial that the judge had sentenced a colored prisoner to fourteen years' imprisonment for the slaying of a white policeman. It had been well worthwhile for the same attorney to have handled that case out of charity. It placed him in an excellent position to press his points home in the present case. He had learned the temper of the judge. This previous experience could be used to advantage in saving the lives of these four boys. Death penalty verdicts turn on straws. No person accused of murder, however heinous, is certain to die for it. How he avoids the extreme penalty, often by fortuitous circumstances,

is invariably an interesting story. A survey of results of murder cases, supplemented by an analysis of the causes of the outcome, should make an instructive contribution to the subject of trial advocacy as well as criminology. The most compelling argument against the imposition of the death penalty is found in the inequality and indefiniteness of its execution.

As previously indicated, the defending attorney had reason to believe that he could entrust the lives of these boys with this judge. He might have analyzed the situation as follows: This judge isn't made of the material that sets the machinery of the law in motion to take the lives of boys who have not reached an age of discretion, Had a jury returned a death verdict, he would have undoubtedly pronounced sentence, upon the theory that he was commanded by his oath of office to do so. But, when the matter was placed squarely before him, and where the death penalty, if fixed, must be determined by his judgment, wasn't there too much of an absorption of humanity in his makeup to permit him to be the sole instrumentality of bringing about the execution of four boys in their teens?

With the conclusion of the evidence, defense counsel addressed the court as follows: "To argue this case would be a vain gesture. Your Honor is equipped, morally and legally, to return a just verdict. What good can words do in helping you arrive at a just verdict? If it were a jury, it would be different. They might require enlightenment in order to know what was the proper view to take of the evidence. But there is not this occasion for argument, with Your Honor determining the verdict. Your Honor saw juror after juror look at these four boys and then say he had conscientious scruples against the infliction of the death penalty." The fact is well known that the real reason why so many jurors invoke conscientious scruples in a murder case is to avoid the possibility of being the means of returning a death verdict. They reason, "the defendant is guilty of an atrocious crime. Death is too good for him. But I do not want to be the man to send him to his doom. I do not care to go home with the thought that I have played a part in causing death. I do not wish to live under such a cloud. Let somebody else kill him." Such reasoning may be condemned by strict adherents of law and law-enforcement. But the fact remains that the human element in a human being will not be downed. No law nor set of laws can take the humanity out of a man.

The prosecutor then arose and said that the state, too, was willing to leave its case with the judge, without argument. He did not

wish to request any verdict. He undoubtedly remembered the outcome of the recent case, heretofore referred to, in which his partner had asked for death. The court had entirely disregarded the latter's remarks in that case and immediately began explaining his reasons for arriving at an imprisonment sentence.

The judge spoke up, "I realize the immensity of the responsibility that is mine. I wish it had been placed upon the jury. I have ordered the four boys examined by state alienists to help me in rendering correct judgment. The report will be a disinterested statement. Today is Thursday. I will announce my judgment on Monday morning at ten o'clock. In the meantime, I will read the transcript of this evidence, the confession, and the report of the alienists."

"I want to say, in passing, that I am against these cab drivers carrying revolvers. They are just as bad, and many of them worse, than the inmates of Joliet."

It might appear that this case was figuratively thrown at the judge. The trial of this desperate case lasted less than two and a half hours. It might seem that defense counsel hurried the case to its finish. Only one witness was called for each boy. Only a few questions were asked each of them. No defense alienists had been called. There had been no detailed tracing of the lives of the accused. The defending attorney volunteered information of the police records of the boys. Was all this method or madness?

The courtroom was packed on the morning of the decision. Reporters from all the newspapers were on hand. The judge interviewed them in his chambers for a few minutes before he ascended the bench. He felt the importance of his task to such an extent that his decision was reduced to writing. He began to read it in his clear, emphatic, inimitable way. His voice was filled with feeling as he announced his reasons for arriving at his decision. The following are not his actual words, but the substance of what he read:

"One of the witnesses said that the bandit car was black. Another witness said it was green.

"Genevieve Dawn, an eye-witness, made a mistake in pointing out other suspects before the arrest of these boys.

"There was credible evidence to the effect that the bullet struck the cash register in accordance with the defense theory that the gun was not aimed at the girl.

"Dr. Gold, a coroner's physician, testified that the empty cartridge showed that there had been a deflection.

"There had been no resistance. There was no occasion to shoot.

Had the victim screamed before the defendant fired, it might have been contended that she was shot to silence her. The evidence indicates, however, that there is reason to doubt the state's theory in this regard. It may, in fact, have been a scream of one of the spectators which startled the boy.

"Deska's story is to the effect that he didn't mean to shoot her. He was alone, as far as friends were concerned, at the time that he explained how he had shot her. No one had instructed him as to the account that he should give of it. The evidence of his conduct at this period showed that his grief was sincere. Where there had been doubt of facts, he removed it. He fixed his own guilt. It is plain that he had no experience with revolvers. There is a police record, it is true, but no conviction of a serious offense. He was nineteen years of age when the crime was committed. The facts do not support the conclusion that there was a cold-blooded, malignant intent to kill. In fixing his penalty I must take into consideration the fact that his parents returned to the old country when he was at an age when he needed them mostly. His sister has testified impressively about his true character.

"Two alienists have said in their report that Stutz is a dementia praecox type. Bulock is clearly a psychopathic subject. The other two are mentally defective.

"Deska lacked bravado. I believe his grief was genuine. One factor on the defense side might not be sufficient to mitigate the death penalty. But when there are many circumstances of mitigation, I must weight them conscientiously. The legislature has given the courts wide latitude in this matter.

"In accordance with the observations herein made I reach the decision that the four boys are equally guilty of this crime. Under the law and the evidence I find James, Stutz, Bulock and Deska guilty of murder as charged in the indictment and fix their sentence at life imprisonment at Joliet.

"The refusal of scores of men in high standing in this community to serve in a case involving the death penalty is significant. Personally, I believe that capital punishment should be abolished or these jurors indicted for perjury. The present status breeds contempt for the sworn word in a court of law."

II. *Heat of Passion Murders.*

Meeting a juror who had served in one of my trials, he told me that he had also served in the case following it. The defense

attorney in that case had been in the courtroom throughout my trial for very good reasons. He not only wished to become acclimated to the general atmosphere of the courtroom but he desired to learn the nature of the case on trial, the type of jurors who were serving in this courtroom, and the final result of the case. With this information he would be in a better position to estimate the temper of those jurors. By looking them over closely he would be able to remember them on the following day. On account of the juror's interest in the case on trial he would not notice the attorney as a spectator. While the latter appeared a perfect stranger to the jurors, the following day, he in fact knew them and knew the verdict that they had rendered.

This attorney had used good judgment in accepting this juror in his trial. The jury was out less than two hours before they arrived at an acquittal verdict. Why!

It was a case arising out of a card game. A quarrel arose, followed by a shooting. After the smoke cleared, one of the men had been killed, one was to be charged with a homicide, and one or two were to become prosecuting witnesses.

The background of such a homicide was favorable to the interests of the defense. The prosecuting witnesses came from the same level as the defendant and it was only a streak of fortune which caused them to be alive, telling about it for the state rather than in the position of the defendant on trial. They were all in the fracas and all on an equal plane of moral responsibility for its consequences. These conditions enable a defending attorney to cross-examine very effectually. As a rule, such eye-witnesses attempt to inject certain elements which will help establish the theories of the state in consideration for immunity.

The defense is always in a position to argue that a case of this nature is manslaughter, if anything. The quarrel arose suddenly. There had been no premeditation. The shooting was done in a moment of passion. The state is bound to be placed in an embarrassing position when it demands the death penalty in such a case. It is more unjust and unfair for the state to take the life of a defendant under these circumstances than for the accused in perpetrating his crime. The latter acted in a rash moment when reason had momentarily left its seat. The state's attorney, however, makes his request for death long after the quarrel. He is looking at the facts cooly and dispassionately. Yet he makes the solemn request that a jury electrocute the accused. Such an argument contravenes common

sense and its appeal is to the brutality in man instead of his humanity.

It is largely on account of the effectiveness of this argument that defending attorneys are successful in these homicide cases. The average person contemplates any murder case as a terrible situation for the defense. Even in a perfect self-defense case where it might involve the shooting of a man who had wronged the defendant's sister, the layman would look upon it in the same light. The mere fact that it is a murder case and that the state qualifies the jury for the death penalty causes the casual observer to believe that the defense is under tremendous pressure. As a matter of fact, a person who has made a close study of reported murder cases knows that the elements of murder are not in these "brawl cases," especially where they combine elements of self-defense.

The law is well-settled that a shooting arising out of a quarrel, resulting in death, constitutes the very set of facts covered by our manslaughter statute. A verdict of guilty of murder in such a case, therefore, will not stand before the scrutiny of the Supreme Court. Our highest tribunal has reversed many cases of this nature and has indicated in clear and precise language that if the defendant were guilty of anything, he was guilty of manslaughter instead of murder.

The state always tries to introduce the element of premeditation in these cases. Sometimes they introduce evidence which indicates bad feeling and actual threats made by the defendant some time before the alleged commission of the offense. In other cases they are forced to rely upon the ingenuity of their argument to the effect that a period of time for reflection, brief as it may have been, allowed a return of reason, and made the defendant responsible for a premeditated killing. The average jury will not be convinced by such fine-spun arguments in a case where the defendant's life is at stake. They determine from a consideration of all the circumstances whether the defendant deliberately decided to take a human life.

Another theory which the state resorts to in cases of this type revolves about that principle of law which says that, "Expressed intent to kill need not be shown. It is sufficient, if, from a consideration of all the circumstances, the jury believe that the defendant's actions were prompted by a malignant heart, bent on mischief." The state relies upon this principle to make capital of the fact that the defendant was not entitled to use a gun; and that the use of such a dangerous weapon evinced the malignity of heart referred to in this rule of law. The defending attorney makes this reply, "The use of that weapon would evince a malignant heart if there were

not any other circumstances in this case. But you cannot pick out one feature of the case and decide the question of malignity upon it. It is necessary for you to consider all the circumstances of the case in order to acquire a complete picture of what transpired, if you ever hope to come to a logical conclusion as to the state of mind of the defendant at the time that the fatal shot was fired. It isn't the use of the gun, it isn't the fact that the shooting resulted in death, that will enable you to determine the question of intent. You must go beyond the gun, you must go beyond the shooting, you must consider all the relations that existed between these two men at the time of the transaction, you must consider the personal disposition of the deceased as well as that of the defendant. Then, from the complete picture of the background as well as the commission of the offense, and the leading characters in it, you may be in a position to determine the state of mind of the defendant at the moment that he did the shooting.

"If, from a full and complete consideration of all these factors which tend to show the true state of mind of the defendant, you can say that when he fired the shot alleged in this case, his reason had left him, and that he was in a state of temporary derangement, you cannot hold him accountable in manner and form as charged in a murder indictment. That charge involves the actions of a man who had reason and who deliberately intended to wreak havoc upon his victim. These are the acts of a wild man, a deranged mind."

Returning to this particular case, it should be stated that in the first trial the jury had voted eleven to one for acquittal. This one juror forestalled a "not guilty" verdict. The papers did not publish this account. Had the situation been reversed and the one juror held out for an acquittal, then the press would have covered the front page with a cry that, "This juror had a wrong slant on life. He wasn't a man who believed in law-enforcement. He was a dangerous man to the community. He didn't believe in our laws. He didn't answer the questions truthfully when he was being qualified for service. He should be held in contempt of court for obstructing justice." In this instance we find the one juror looking at the facts differently than his eleven associates who wanted to acquit the accused. Wasn't it likely that his view or slant of life was wrong? Wasn't it likely that his eleven associates were bent on fulfilling their oaths and following the law? Could even a rabid punishment-enthusiast maintain that these eleven jurors were law breakers and that the one dissenter was an enforcer of the laws? The press is

interested in maintaining law and order at all costs. It appeals to the majority of the people who are known to be in favor of strict law-enforcement and heavy penalties. It sometimes takes positions in criminal matters which not only violate common sense but the dictates of common decency.

That an accused receives a fair trial is due entirely to the fact that this is a country of laws, not of men. The very foundation of jury trials is based upon the principle that the dispute should not be settled by men, but by law. The site of the trial is to be determined by rules of law. The judge who sits as the presiding magistrate must fulfill certain requirements of the law in aspiring to that office. The jurors who pass judgment upon the defendant must qualify and serve according to law. The method of charging the accused with the offense must be in conformity with the law. The rules of evidence which are to guide the state in submitting its proof must be strictly adhered to by the prosecuting attorney. Rules and principles of criminal law and evidence will apply throughout the conduct of the trial. The prosecuting attorney and the defending advocate are privileged and it is their solemn duty to make a survey of all the rules of criminal law and evidence to see that those which apply in the instant case are in fact brought to the attention of the court. If they are not applied in this manner, the defendant is not receiving the kind of trial to which he is entitled. If there has been a mistake of judgment upon the part of the court in allowing evidence to be admitted for the state, or in refusing to permit evidence on the part of the defense, and such rulings appear to have prejudiced a defendant in receiving a fair and impartial trial, such a cause must be tried again. The verdict of conviction will never be allowed to stand under these circumstances. The Supreme Court of the state stands squarely behind the doctrine that each and every man brought to trial for a criminal offense is to be guaranteed a fair and impartial trial. That guarantee is firmly imbedded in our system of jurisprudence. When it shall not be full and complete, when the humblest individual does not receive that type of trial, then this country will not stand for the ideals which are so eloquently recounted in our constitution. The Supreme Court of our state is carrying on the humble citizen's fight when it upholds these principles. But a jury is just as much obligated to uphold them as these jurists. They should be just as jealous of the rights and guarantees of the accused as the judge. They should be as much concerned in

upholding the traditions and ideals of the country as the soldier, for instance, who fights on the battlefield in time of war.

Referring again to the case under discussion, I asked this juror if it wasn't a typical self-defense case. He answered substantially, "Well, I wouldn't say that the self-defense feature was the deciding element in it. It was simply a shooting affair arising out of a brawl. I do not understand why there was a prosecution at all. I suppose that the only reason for it was due to the fact that one or two of the eye-witnesses decided to go along with the police and the prosecuting authorities. It was plain to me that there was no premeditation involved. The state had no right to claim that it was a murder case. It was not shown that the defendant had ever intended to kill the deceased." What is learned from the above statement? It shows that regardless of the charge in the indictment, regardless of the contentions of the state, the average juror carries with him his own opinions of the rights and duties of men under fire. No fine-spun argument of the state will make a murderer out of a man, if the jury believes that the evidence shows that he never planned the killing. In order for the jury to be satisfied as to the charge of murder, under these circumstances, there must be shown a clear and undoubted intent upon the part of the defendant to take a life. If they do not believe that such a clear intention is evinced, they will not entertain seriously the demand for the defendant's life. They may even be moved to sympathize with the defendant in his predicament. The long-headed men of the panel will ask, "What would you have done if you had been in the defendant's place?" If the defense has not been able to completely justify the defendant's actions, or if it has been unsuccessful in showing that the facts present a case of manslaughter instead of murder, the jury will be likely to give the defendant a minimum term of imprisonment under the murder charge.

It can thus be seen that the accused makes three drives against the attack of the state in its demand for the extreme penalty. The records will show that in a large number of these cases he succeeds in obtaining an acquittal verdict. It may be that the jury will reach a compromised manslaughter verdict. In many others, the verdict calls for a limited term of imprisonment under the murder charge. In the event the jury fixes the penalty at death in cases of this description, relief must be sought from the Supreme Court.

III. *A Wife Chokes Her Mate to Death.*

The accused was about fifty-five years of age, rather short, weighing about 175 pounds. She wore a coat and hat during the trial, ready, every moment, to receive the news of her discharge. She had on a new pair of patent-leather shoes for the occasion. These shiny shoes did not seem quite in place, because her other clothes were well worn. The color on her face was ashen white. She presented a huddled-up bundle of humanity as she sat there charged with the murder of her husband to whom she had been married twenty-six years. She had blond hair and blue eyes. Her face was full. There was no expression in it. She was a typical Polish-immigrant type. Her manner of speaking was in accord with her appearance. Her repetition of the curse words alleged to have been used by her husband and herself was very repulsive. It was plainly to be seen that she was really herself on the stand. She had not been trained and coached by her attorneys to act differently. A tone of gentility and tenderness in her voice would have been of inestimable value in this crisis. Her gruff manner, pugnaciousness, and vivid description of family quarrels made it appear very clearly that she made these family battles a part of her life. Although she was the mother of five children who were in the courtroom at the very time that she was testifying, no message of motherhood with its consequent call upon the sympathies, was sent out from her presence. The jury would be apt to treat the case without sympathy or favor in spite of her sex or even her state of motherhood. Upon direct examination she answered the questions readily, but without creating a lasting impression in her favor. It was simply an examination as to her relations with her husband from the time of their marriage until the date of the homicide, and the immediate facts surrounding the slaying. The attorney questioning her was seated during his examination. Frequently his associate would suggest questions to ask her.

She lived in a part of the city where nearly all the people owned their homes, frame shacks though they might be. These people live humbly in order to pay the mortgage. Her five children ranged from a boy who was seven years old to a young man who was twenty-two years of age. The little fellow seemed to be very intelligent. It was apparent that all had been dressed in their very best attire for this occasion. A photographer attempted to take a picture of them as they sat next to each other on the benches. Most of them seemed

pleased to secure the attending publicity which was to be given without cost; but the little fellow placed his cap in front of his face to avoid being included in the picture. A son, about nineteen, was called to the stand to testify as to previous quarrels, and as to threats by the father.

In cross-examination, the state's attorney asked him to describe one of the quarrels. He proceeded to relate the manner of his mother cursing the father and also of the threat that she had made to kill him. Inasmuch as the state's evidence had failed to reveal a motive for the slaying, the judge called the defending attorneys to the bench and warned them that they were placing their client in a dangerous position, where the jury might say that in view of the bitter quarrels and the defendant's threat it was reasonable to conclude that on the fateful day she intended to slay him. The judge's counsel in this respect was very helpful to the cause of her defense.

In cross-examination the state's attorney drew from the defendant the story that she and her husband had sold their cottage for $1,000.00 a short time before the date of the homicide. Eight hundred Dollars was paid in cash. She admitted retaining custody of this amount. This afforded the state a vague theory that she killed her husband in order to secure undisputed possession of this money.

The story of the actual slaying was as follows: It was Sunday, in mid-summer. The defendant, her husband, and three or four neighbors had been sitting in the yard of the defendant's home, drinking and merry-making. The accused became involved in an altercation with her husband and tore his suspenders in two as she pulled them from his left shoulder. She began hitting him over the head with her fists. Finally she walked to the rear door of her home and commanded him to come in the house. She cursed him repeatedly while standing at the door. He finally entered the lair. The party broke up. Neighbors went to their respective homes. One of them came back in about ten minutes, however, to snoop around. The rear door was finally opened. The defendant calmly asserted, "I have killed the old man." Her interpretation of the tragedy was as follows: My husband had not worked for many years. I have been compelled to take in washing in order to support the family. John has been a heavy drinker during all this period, especially when he was not at work. Often in these drunken spells he attacked me. On this day he had bought three bottles of moonshine from a neighboring bootlegger. He had been drinking throughout the day. We had quarreled in the yard. When John came in the house he grabbed

a long butcher knife. Raising it in the air, he rushed at me. I struck his wrist and knocked it from his hand. He grappled with me and threw me to the floor. He was beating me when I placed my hand between his collar and neck and in some manner the collar twisted around his neck until suddenly he stopped breathing."

The coroner's physician testified that death was caused by choking. He further testified that he had examined the organs of the deceased and discovered an enlarged liver as well as other physical disorders. The defense maintained that the husband's physical condition had been very poor and that he died from the effects of various physical ailments, all contributing to weaken the heart.

The undeniable facts in connection with the case were, first, that the state's evidence was weak; second, the death resulted during a drunken brawl in which both the defendant and husband had been equally guilty. Yet the coroner's jury recommended prosecution. Passing strange was the production by the police of the butcher knife which the defendant stated had been used by her husband in the fatal quarrel. The knife had been picked up in the home, but the defendant's version of its use in the affray was a self-serving story. Had *she* produced the knife, the jury might have reasoned that it was relatively easy for her to claim that this weapon had been used by her husband in the quarrel. But when its introduction came during the state's presentation, it was an implied admission upon the part of the police that they had placed credence in her story. If she satisfied the police as to his use of the knife, the jury certainly would accept that story. At no time did the state venture to show that she had wielded the knife. There were no cuts or abrasions upon the victim's body.

Along with the introduction of the knife by the state's attorney was another feature of the case which materially helped the defense. That was the appearance of an elderly matron in the Cook County jail, making a very impressive appearance in her white robe. She testified that when the defendant was first placed in her custody she discovered that the latter carried numerous bruises about her body, that her eyes were blackened, and her nose broken. Of course such testimony coming from an official of the state was of a character which could not be denied by the prosecution. They had to admit, by reason of this evidence, that the husband of the defendant had attacked her. This testimony clinched the theory of self-defense. Whether or not the defense offered pictures of the defendant at the time she was arrested, was not learned.

The prosecutor making the first argument for the state appeared to sympathize with the defendant. He was moved to consider the poverty of her home, her trials as the mother of six children, living with a husband who had been out of work and continually drunk over a period of many years. Not once did he ask the jury to convict the defendant. He told them that he would place the evidence in their hands and they could use their own judgment in doing what they pleased with the accused. He made the startling statement, "We admit that this is a case where moonshine played a big part. Without moonshine in the picture this tragedy never would have happened. With the state's attorney not blaming the defendant's depravity as the cause of the homicide, but placing the responsibility upon alcohol, the prosecutor was making the very best argument that could be made in the defendant's behalf.

The first speaker for the defense said that he would argue the law applicable to the situation. He brought about eight law books to the jury rail and read quotations from them. After reading a United States Supreme Court citation upon the significance of the doctrine of the presumption of innocence, he maintained that this rule of law clearly entitled the defendant to an acquittal.

The next speaker for the defense, logical in his analysis of the facts must have impressed the jury with his complete sincerity. He told them that he had been appointed by the court to defend this unfortunate woman. He regretted that they didn't have the opportunity of listening to one of the brilliant members of the criminal bar picturing the scenes leading up to this tragedy, as well as the circumstances of the actual homicide. He referred to the marriage, twenty-six years ago, how they traveled down the pathway of life meeting their problems in the best way they could, the conditions in and about the home, how circumstances led the husband into a state of irresponsibility and drunkenness, how she had gone into the Valley of Death upon a number of occasions for the love of her husband, and how it had become absolutely necessary for her to defend herself from the brutal attack upon her on the fateful day. The speaker must have been running these arguments over in his mind for many days. They were strikingly opportune. He waxed emotional in his narration of the great love that had brought them to face life's bitter struggle for twenty-six years. His voice broke as he talked about these matters.

A neatly wrought defense argument was as follows: "We, as lawyers, and you as jurors, are treating this case. *There* is the

patient. The story has been told to you by the witnesses who have appeared on the stand. Considering all the evidence in the case, you should be able to determine the mainspring of this tragedy. From the complete picture, you will draw your conclusions."

Another effective argument was advanced in this wise: "The state talks about a plot to kill the deceased. The very fact that the prosecution is charging that the defendant chocked him to death reveals very plainly that there was no plot. No one would plan to kill a person by choking him. That is the last method that anyone would use deliberately to bring about a death. Whoever heard of anyone planning to choke another to death? If you ever heard of somebody choked to death you knew there was a struggle."

"It does not take much effort to bring about suffocation of a human being. When you gentlemen are in your jury box, make this little test. One of you place your hand or fist into the collar band around another's neck and see how much pressure your victim will stand before he complains that he is being choked. When it is realized that the husband here was in an advanced stage of acute alcoholism it is easily seen how he would be a ready victim under those circumstances. From the evidence in this case I do not believe that the accused ever intended to kill her husband. She may have been the physical cause of the death but it was purely an accident and not the result of an intention upon her part."

Another argument was presented in this vein: "If the defendant had wanted to kill her husband, why wouldn't she have killed him many years ago? Ignorant as she is, couldn't she have devised a better method of doing away with him than choking him to death? Didn't the opportunity ever arise to do away with him? Did she wait twenty-six years for this summer's day to choke him to death?

"The state's contention, that the fact that the furniture was not disturbed, indicated that there had not been a struggle, was far from a conclusive argument to that effect. It sometimes happens that a most violent struggle takes place and yet not a single piece of furniture is knocked over. Did the state expect to see the dresser drawers pulled out, the mattresses pulled from the bed, holes in the walls, plaster on the floor? We never contended that there was such a fight. It was a vicious struggle, but brief. If he had struck her with the knife he would be on trial today for her death. Providence so ordained that she should survive the attack and become the unfortunate instrumentality of his sudden death."

The state's strongest argument ran along this line: "The evidence reveals that she had been in many quarrels with her husband. The fact that she spoke so glibly about them, on the stand, and used curse words so freely in describing them, indicated plainly that she was a quarrelsome, vicious type. The husband was under her dominion. She was the one who received the money from the sale of their home. She was the forceful character, he the weakling. He was the happy-go-lucky type. She was aggressive as well as calculating. He was a poor boob, and in her heart, she hated him. She was the aggressor in this struggle. The evidence was undisputed that she tore his suspenders from his back, that she stood at the door and commanded him to come into the house. Her story of his use of the knife is self-serving, to be expected from a murderess who desires to save her own life. Imagine the heartlessness of a woman grappling with a man, too drunk to defend himself. Imagine her twisting his shirt collar about his neck until she hears a rattle. This is the same woman who admits that she washed the dead body so that it would be more presentable to the police. That fact, in itself, describes the heart of this woman. We need go no further in determining whether or not she possessed a malignant nature. That fact indicates beyond a peradventure of a doubt that she has a most depraved heart."

The police were so considerate of the defendant that they brought into court the bottles of moonshine which they found in the house when they arrived at the scene. They had no duty to present them in evidence; but coming from the prosecution, they amounted to an admission that the police believed that this moonshine was an important factor in the case.

I was representing the co-defendant whom the state claimed had sold the moonshine to the husband on the day of the murder. The state's theory was to the effect that this moonshine had produced such a state of mind in the defendant that she wanted to kill her husband, and that it was to be considered a contributing cause of the death. The court had granted the motion for a separate trial, before the above hearing. At the conclusion of her trial, I moved that the court direct the state's attorney to nolle pros the charge against the co-defendant in the indictment. At first, they opposed the motion. Later they took the position that while it was most unusual to nolle pros a murder case, they felt it was justifiable in this instance.

IV. *Sudden Quarrel Ends in Slaying.*

It is seldom that a defendant charged with murder is at liberty before trial. The attorney who surrendered the accused to the police in this case made arrangements that in consideration of this surrender the prosecutor was not to oppose a motion for bail. The defense attorney satisfied the authorities that it was a capital case where the proof was not evident nor the presumption great that the defendant was guilty.

Defense counsel used a novel method of selecting jurors. He assumed facts revolving about a man six feet tall, weighing 250 pounds, with a bar of iron about one foot long, and an inch in diameter. He continued, "Assuming that this big man struck the little man one blow and had raised the weapon to strike again, do you believe that the use of a gun should be permitted the little man to prevent further injury?" This was a clever statement because, when the juror answered in the affirmative, he practically assured the defense of a verdict of not guilty. The defense must have been reasonably certain of establishing the facts as assumed in this hypothetical question. The judge permitted this form of examination, but whether or not all would, is doubtful.

The state's star witness was sixteen years old at the time of the occurrence. He testified that he had been with his brother on the evening in question and after making a purchase in a haberdashery store he came out and heard the collision of two automobiles. This store was on the north side of Chicago Avenue, a few doors west of a large theatre. At the time that he first saw the cars they were being driven slowly in an eastward direction. The Studebaker car, driven by the deceased, followed, there being about ten feet between them when they finally stopped. The driver of the first machine stepped out of the left side of his car and walked to the rear of it to see what damage had been done. The defendant, in the meantime, emerged from his car. The two began an argument. The defendant cursed the deceased but the latter made no reply. The Studebaker driver went back to his car, threw off his overcoat and suit coat and approached the defendant with his arms swinging before him. The defendant stepped over to the right door of the car, pulled a gun from the pocket, and when he turned around, was face-to-face with the deceased. He made a pass at him with his left fist and then pulled the trigger of the gun held in his right hand.

Defense counsel, in his cross-examination, began by inquiring into the history of the youth. He developed a background revealing

that the boy had been living with his brother here in Chicago. All the other members of the family had been living in New York at the time of this homicide. It was developed that the boy and his brother had received $25.00 from the state in order to make the trip and that they had been in Chicago for nearly three weeks. They had been living at the Palmer House and had been dining at the cafe there. It was further revealed that a policeman in the district of the homicide was living and sleeping with them. Counsel then delved into the testimony and traced every movement of the youth from the time that he left his house on the evening of the homicide, the distance between all possible points was inquired into, and the time as to minutes and seconds was brought out to cover these various steps. In going over the details of the actual shooting, it appeared that the attorney was rivetting the harmful facts, brought out on direct examination, into the minds of the jury. The boy was clever and his story was not shaken an iota. On the contrary, the wanton character of the slaying was burned into the hearts of all hearers by the reiteration of the details of the homicide.

Toward the end of this long cross-examination, however, the attorney reviewed the whereabouts of the witness from the time that he had arrived in Chicago, and his relations with the police. When asked whether or not he had discussed his testimony with anyone he frankly stated that the Coroner's minutes had been brought to the hotel room on the day before he was to take the stand. He also stated that he had gone over this testimony again in the witness room on the very day of his testimony.

The attorney then asked him how he had spent his evenings since he arrived in Chicago. He had been taken to various shows. When asked if he had been at the Sunset Cabaret, Wednesday night, he replied, "No." Counsel repeated the question. The boy finally said that he had gone to some place with the police and that there had been colored waiters, but he could not tell whether there were both white and black people dancing on the floor. He was unable to answer, when the attorney asked him why he had at first stated that he had not been there. Of course, this testimony reflected upon the credibility of the witness. It tended to show that the boy was unreliable and unworthy of belief. In addition, the fact that he had been in the constant custody of the police and under their influence, and had gone over his testimony to learn it correctly, tended to show that his story was prepared to suit the occasion.

The next witness for the state was a housewife, about fifty, who

testified that while she had not seen the beginning of the fracas, she had seen the big fellow rush at the defendant and had seen him strike the little fellow. She then testified that the accused went to the pocket of the machine to secure the gun and cried, "Stay away from me or I will shoot." On cross-examination, defense counsel brought out these facts in cold relief, so that her testimony concluded with the picture of the deceased rushing at the defendant, cursing him, and acting as the aggressor. This testimony was strongly in favor of the theory of self-defense; especially so, coming from a state witness.

The prosecution then called the police officer who had received the star witness from Officer Gould immediately following the homicide. His testimony did not materially affect the issues in the case except that he had seen an abrasion on the cheek of the defendant. Captain Cougan testified that the defendant had stated that he was twenty-six years old at the time of his surrender by his attorney. The prosecutor closed his case with this witness. Defense counsel immediately asked, "Aren't you going to call Mr. ————, those other two boys, Officer Sills, and others whom you have subpoenaed, and who have given testimony before the Grand Jury?" It appeared a grave mistake for the prosecutor to have terminated his case in this abrupt manner. The impression was given that he was afraid to uncover all the facts attending the homicide. His other witnesses must have been as unreliable and untrustworthy as the youth who testified. It is always of immense aid to the defense when it is able to show the jury that the state has not called all the eye-witnesses to a crime. In case after case where victory has been won, it has appeared that this feature of the trial was the turning point, the decisive factor in the result.

The defending attorney concluded his brief remarks with this pointed question: "Is Your Honor going to compel us to proceed immediately with our defense?" When the judge answered in the affirmative, the defense called about six witnesses, including an Alderman, who testified that they had known the defendant for a number of years and that his reputation as a peaceable and law-abiding citizen before the date of the offense was very good. The arresting officer, Gould, was then called. He was asked if he had been subpoenaed as a state's witness, to which question he answered in the affirmative. He was then asked about his movements on the evening of the offense. When he arrived at the scene, he asked, "Has anybody here seen the shooting?" When the boy, who had testified, answered in the affirmative, the officer took him into cus-

tody and asked him what he saw of the tragedy. The boy replied that when he came out of the store the shooting had taken place, so that he could not tell what led to the quarrel or the nature and character of the fracas. Of course, this testimony coming from a police officer, was dynamic for the state, because it tended to destroy the foundation of its case. Another salient feature of his testimony, was found in the fact that the boy had stated that he had seen that the defendant was Jewish, he perceived that the arresting officer was likewise Jewish, and that the reason why he didn't talk to this policeman was because he felt that the latter might harm him. He further testified that the officer had failed to show him his star. This assertion was contradicted by the officer. But the feeling that permeated the atmosphere of the courtroom was the boy's antagonism toward the Jewish race. In a murder trial the jurors are apt to look at such antagonism as contemptible. It is repulsive to their sense of equal justice. The officer's testimony was given in an impressive, striking manner, and the jury was undoubtedly strongly influenced by this evidence.

The defense then placed a barber on the stand. He testified that the accused had been in his shop on the night in question, just before the homicide. He had observed no mark or abrasion upon the left cheek of the defendant at that time. The accused was then called to the stand and asked about his family history and education. His life was traced from the cradle to the day of the homicide. He had worked at various places during his life, including different cab companies. The impression was created that he was not only unsteady in his employment but had been long engaged in an occupation associated with the idea of gang warfare and violence.

The defendant finally reached the day of the homicide. First, he recited his movements up to the hour of the tragedy. He then told, in his own way, how there had been a collision, how he and the other fellow had stepped out of their cars, how the driver began to curse him, and how he had answered, "I didn't hit you, you hit me." He continued, "He ran back to his car and then rushed at me with a piece of iron about an inch thick and about a foot long. Being a cab driver, I knew what that weapon was and I ran back to secure the gun. He again lunged at me as I said, "Get away from me or I'll shoot. Get away or I'll shoot. Still, his right arm came down and struck me on the left cheek. This stunned me and I fell alongside of the car for a second. He raised the iron bar to bring it down on me again and I pulled the trigger. I was very excited. I ran down Chicago Avenue, then north, and then through an alley.

I decided to go to a friend's house on the north side. His name was Jordan. I stayed at his house till the next morning, when he got in touch with an attorney. We then made arrangements that I should surrender to the police."

The defendant explained that he had received the car from the estate of his deceased brother and that the gun was in the car at the time that he received it. He testified that he never carried the gun and had never used it before. When he had placed his handkerchief on his injured cheek it was filled with blood. The prosecuting attorney might have seized this point, inquiring, "Where is that handkerchief?" Another line of inquiry that would have made very effective material for cross-examination was: Where was Jordan or members of his family, to testify as to the injured cheek? The defendant was only five feet three in height and weighed but 128 pounds. He was very excitable and as he told his story his voice rose to a high pitch, until finally he was almost shouting, "Keep away from me or I'll shoot." He was living the scenes. As a consequence, his testimony sounded genuine, realistic, vivid.

A dry-goods merchant then testified for the defendant, that he had been at his dentist's and later appeared on the scene during the shooting. He heard the deceased curse the defendant, saw him reach in his machine for a piece of iron, saw him advance toward the defendant with this iron bar raised above his head, heard the defendant pleading, "Keep away or I'll shoot;" and finally saw the accused fire while in this precarious position. An elderly woman living in the neighborhood also testified as to the same facts. Here was a woman who stated that she had not known the accused before the trouble. Her testimony would doubtlessly be considered truthful by the jury. This in itself was capable of creating in the minds of the jury a reasonable doubt as to his guilt.

The prosecutor began his final argument by briefly reviewing the facts. He urged the jury that the defendant was either entitled to an acquittal on the theory that it was a lawful killing; or else he deserved the extreme penalty of death, because of the wanton and vicious nature of the slaying. He repeatedly implored them not to compromise their verdict. When a state's attorney takes this attitude he should be reasonably certain that he has submitted a case meriting the extreme penalty, because if the jury does not believe that he has made out such a case, they will not hesitate to swing completely around, accept him at his word, and render a verdict discharging the accused. A state's attorney sometimes proceeds upon the theory, however, that by asking the extreme penalty the jury

may feel that it is in fact a death penalty case, and will consider its action lenient when it decrees any sentence calling for imprisonment. It was a favorable factor for the defense that the prosecutor should make this demand. The fact that the defendant was out on bonds was observed by the jury; a policeman had testified for the defense; the state's star witness had been impeached; an eye-witness for the state had definitely established a case of self-defense; so that it was practically certain that the jury would not administer the extreme penalty. Therefore, the defense could willingly accept the challenge and demand of the jury a verdict of either death or acquittal.

The most difficult task presented to the defense was the explanation of the use of a gun. Of course, if the jury believed that the deceased was the assailant and that he had struck the defendant once with a bar of iron a foot long, and had raised his arm to strike again, the jury might truly say that it was a fortunate circumstance that the gun was available for use. Even in such a case, however, the jury might possibly reason that the defendant had no right to carry the gun and that he had no right to use it under the circumstances. While a provocation existed for its use, whether or not it was sufficient, was a question which would be decided differently by different juries. The prosecutor might have hammered the point home that the defendant had no right to carry a gun, that he had not been put in danger of serious bodily harm, and that the pulling of the trigger flowed from a malignant and abandoned heart. He might have tantalized the defendant when he was on the stand by dwelling upon the use of his gun, bringing out the fact that it was a cowardly, dastardly act to shoot a man to death during a sudden street fight.

Probably the widest opening for attack by the prosecution lay in an analysis of the defendant's own testimony. The defense was no stronger than the weakest link in its chain. Here was the defendant who knew more about the homicide than any other witness, the party most interested in the outcome of the trial. He tells a story that will not stand up, after carefully considering it. The defendant's contention that he had been struck was self-serving. If it had been a very serious cut he might have been photographed to emphasize it. Of course, it is also possible for such a wound to be self-inflicted. His other contention, that as he cried, "Stay away from me, or I'll shoot," and that the deceased kept coming on, in the face of such warning, sounded incredible. But unless the prosecutor made the most of these points and drove them home to the jury they would not weigh them. A destroyal of the defendant's story, on the other hand, would have insured victory for him.

Defense counsel began his address to the jury with a statement of the vast power which is reposed in a jury, even the right to take a human life. He adjured them to treat that responsibility with the care and consideration deserving of such a sacred trust. He then explained to them that the law of the State of Illinois was no longer that a defendant should retreat to the wall before he fire at his assailant. He submitted the Hammond Case, in the 199th Illinois, to show that the defendant has a right to repel force with force. He then read from the Stapleton Case, in the 300th Illinois, to show that if the facts and circumstances surrounding a homicide caused the defendant to believe that the danger was apparent, such facts would justify the exercise of an act of retaliation, even to the point of taking human life. He cited the Duncan Case, in the 314th Illinois, decided in 1924, to show that the jury should not decide from their own experiences whether or not they thought the defendant acted as a reasonable man to protect himself from serious bodily harm. Such a determination would compel the defendant to have acted as a courageous man. The law merely demands that the defendant's actions, at the time of the homicide, should be reasonable, considering the defendant's particular characteristics and disposition. Under such a consideration, "if the jury should decide that the defendant, acting under circumstances which appeared dangerous to him, struck at his assailant for the purpose of protecting his own life or preventing serious bodily harm, and not in a malignant, wanton manner, he should be exonerated, even if his act might be considered cowardly by the jury."

He then began an analysis of the evidence. He started with the boy witness and went over each and every detail of the examination. His voice was clear and strong. He was logical in all his reasoning. He had impressed the jury with his honesty and sincerity in his conduct of the trial, in an effort to bring out all the little details which might help them in determining a just verdict. The jury followed him intently, as he spoke very slowly and deliberately. His recapitulation of the testimony of the boy indicated that he would require about six hours to complete his presentation of the argument. The repetition in detail of every bit of the examination of the youth was wearisome, although it may have been necessary on account of this testimony being the foundation of the state's case. He presented sound, judicial arguments throughout his address.

As might be expected, the jury returned a verdict of not guilty.

(To be continued in next issue)