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Vignettes of the Criminal Courts

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VIGNETTES OF THE CRIMINAL COURTS[1]

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A GIRL CHARGED WITH BANDITRY

The defendant had an abundance of reddish-brown hair, so parted that it fell over much of her face. She was tall and slender. Although in the County Jail sixteen months awaiting trial, she had not lost her comeliness and vivacity. Her eyes sparkled. The voice was low pitched. She seemed overcome by the pending ordeal. Perhaps she was acting her part. However that might have been, she was being subjected to a relentless cross-examination.

The state's case rested upon the testimony of a taxi-cab driver who was directed by a young couple to an address in the vicinity of 41st and Kedzie. He drove to this spot, when the man in the rear seat suddenly thrust a gun into his body. The driver testified that the gun was waving, indicating that the bandit was nervous. The defense made much of this phase of his testimony, claiming that the bandit was covering both the girl and the driver in the commission of the robbery. The state called the driver in rebuttal to testify that the hand of the bandit moved up-and-down rather than side-to-side. The theory of the defense, as may be presumed, was that the girl had been coerced at the point of a gun to commit the hold-up.

The man in the case, fresh from Joliet, where he had started serving three-to-twenty years for his participation in this robbery, supported the girl's theory of coercion. The victim testified that the girl searched every pocket in his coat and trousers and when she concluded, her associate told him "to beat it or he would find a bullet flying in his direction." The driver complied. But he rushed to a telephone booth to report the hold-up to the police. The pair testified that they stepped into the cab. The bandit was able to drive only a few feet when engine trouble developed. He and the girl jumped from the car and hurried to a thoroughfare where they hailed a Premier Cab. They were driven to the nearest station of the Elevated Road, where they boarded a train. In the meantime, a message having been flashed from headquarters describing the

[1] The last contribution under this general title and by the same author may be found in this Journal, XXVII, 4.

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pair, the police traced their movements, and before they stepped from the train, officers walked into their coach and arrested them.

In his cross-examination of the girl the prosecutor brought out the fact that she had lived with her associate at a south side hotel for a week preceding the hold-up. She testified that she had not learned that her escort was a bandit. She had never seen him with a gun before the moment he showed it to her in the cab, just before the holdup. The prosecutor, at this point, reviewed her actions in the cab. In substance, the defendants' explanation was as follows. Her companion did not tell her a word about the hold-up until fifteen minutes before it occurred. He ordered her to search the driver while he held the gun. She remonstrated, urging him not to do it. When she declined to assist him, he threatened her life, stating, "If you don't go along with me in this job, you'll get the same as the driver." Her testimony was to the effect that she had not placed her hand in the driver's pocket, that the latter readily gave her all his money, and that she had done nothing in furtherance of the robbery.

When asked why she hadn't cried for help when her escort told about the contemplated hold-up, and why she hadn't shouted for assistance in the thickly-settled community where she and her companion emerged from the car, why she hadn't informed the ticket agent of the Elevated Railroad Station that she had just been coerced in perpetrating a hold-up, why she hadn't told fellow passengers on the train of her predicament, and why she hadn't told that story to the police when they first took her into custody, she explained that he had threatened her with death if she told anyone that he had compelled her to participate in an hold-up.

When the State's Attorney asked her if she had not first given a false name at the time of her arrest, had not stated that her age was twenty-four instead of eighteen, and that she had just come to Chicago from her home in North Carolina, she admitted that she had lied in regard to these matters; but she stated on re-direct examination her reason for making these statements was to hide her identity because, if her mother, down in Indiana, ever learned of the affair, it would break her heart. This question was then hurled at her by the prosecutor: "When you were living at the hotel for a week with your friend as man and wife, you didn't think the news of that affair would break your mother's heart, did you?"

The prosecutor started his final argument with a definite aim to overcome the sympathy prevailing in the courtroom. He admitted

that the criminal court was a house of tears. He continued, "We all are genuinely touched by the penalty that the accused must suffer for his transgressions. We are moved by the scenes of the near and dear ones separated from the accused for years, until he has paid his debt to society. We are deeply affected by an expression of sincere repentance of an offender who is really sorry for an act which was done in haste or in a moment of foolhardiness. But the tears which have been shed in this trial are not honest tears coming from a contrite heart. They are shed for but one purpose and that is to mislead you, for the purpose of causing you men to violate your oaths as jurors. The story given by her escort, too, came from a man who had nothing to lose. He was willing to perjure himself black in the face in order to help his sweetheart in her ordeal. This girl's story is not only preposterous and unbelievable but it comes from a witness who admits that on prior occasions she had lied about several matters in the investigation of her case." His argument lasted only ten minutes, but he picked the high spots and made every word count.

The style and approach of the defending attorney was that of the scholarly young divine. He impressed his hearers with his refinement, his gentility, and his seriousness. He read a section of the statute to the effect that one who coerces another into the commission of a crime is himself the principal and should be convicted the same as though he had committed the offense. He read from Watts Case, Twenty-, Illinois, in which the court states that an accomplice must encourage, aid or assist in the commission of the crime to be liable. In accordance with the same principle, he cited the famous White Case in which "mere presence" is held not sufficient to make a party guilty of a crime. He urged the jury that it was not necessary for the defense to prove that the girl was coerced into participation in the robbery. It was sufficient if they entertained a reasonable doubt of this coercion. He maintained, further, that the evidence failed to disclose that the defendant had any intention to hold-up the complaining witness. If the jury entertained a reasonable doubt about the defendant intending to do so, they should render a verdict of not guilty.

He might have argued, from the fact the admittedly hardened bandit was eight years older than the girl, that he had succeeded in dominating her mind and subjecting her will. Her consenting to live with him indicated that the girl was under his dominion, led into this crime, and that she was literally compelled to take part in it.

He did argue that the fact the two remained together instead of separating and traveling in different directions in flight showed that there were not two minds functioning independently of each other. It indicated that the man was still in command, compelling her to attend him. He argued with effcet that he was not asking for a verdict of not guilty because of sympathy or mercy. He maintained that the law demanded such a verdict of the jury. This was the wise course to pursue because it was unnecessary for him to expatiate upon the subject of mercy. Here was an attractive girl charged with accompanying a hardened hold-up man on a mission of banditry. She had cried continuously while testifying and had almost collapsed as she whispered in broken phrases, "The news of my participation in a hold-up would break my mother's heart."

An impressive remark by her counsel in final argument was, "I always told her, 'Tell the truth to the jury, Claire, and they will set you free."

It was in rebuttal that the taxi-driver testified that the man did not point the gun at the girl; that while his hand shook, the gun was always pointed directly at him. A police officer was also called on rebuttal who testified that the defendant had not said anything about being coerced at the time that he had arrested her, or at the preliminary hearing of the case. She had made no complaint, whatsoever, of this nature.

On cross-examination of the girl, the prosecutor cleverly asked if her escort had coerced her in living with him for the week before the alleged hold-up. Along this line, he also brought out the fact that on one occasion during this period, while they were out driving, he had left the girl to go into a house. From this testimony, the state's attorney could argue. "He showed no signs of coercing or compelling this girl to stay and live with him. She might have left his company with little difficulty. The fact that she did not choose to avoid him indicated that she willingly associated with him. She freely and voluntarily agreed to enter and continue illicit relations with him. It is natural, therefore, to conclude that she willingly consented to go along with him and participate in this hold-up. If he didn't coerce her during the week to commit open adultery with him it is passing strange that she should be suddenly coerced into holding up the cab driver."

Such arguments overcame the call of sympathy. The jury found her guilty of robbery in manner and form as charged in the indictment.

Conclusion

Coercion is difficult to establish as a defense, especially when prosecutors are competent to point out the striking weakness in such a claim. The element of sympathy is developed here to rescue the accused. The subtle manner in which one of the prosecutors met this issue is probably the outstanding feature of this trial.

COERCION AS A DEFENSE TO RAPE

One of the policemen in a case which I was defending was also interested in this trial. His interpretation of the facts was as follows: A married woman was coming out of a cafe with her sister and a male escort. Three men commanded her to step into their machine. One of the defendants under indictment was arrested soon after the commission of the offense. A police investigation brought about the subsequent arrest of the other two. The alleged attack took place in the store of one of the defendants. The prosecuting witness identified this store in the company of officers. The three defendants were charged with personally attacking the complainant during the night she was held in custody.

The officer continued, "The defense attorney came to the station to have a petition for a writ of Habeas Corpus signed by his client. We wouldn't let him see the prisoners. He stepped outside the station and started shouting at the top of his voice, "Don't make a statement. Don't tell them anything."

"To show you how diligently we worked on the defendant's statement to us, the officer in charge of the investigation went over the story as told by the complaining witness and purposely made mistakes in recounting it. The prisoner swallowed the bait—hook, line, and sinker. He corrected the mistakes to give a true version of the facts. Of course, all this conversation was taken down in typewriting. We have an air-tight case against him."

One of the defense lawyers made an opening statement to this effect: "Dodd, my client, drove the car that carried the complaining witness from the cafe to the store; but he was driving it under the coercion of French, who held a gun pointed at the woman before she stepped into the car. He held it, also, at Dodd's back while driving." (The defense of coercion is recognized by defending attorneys as the most difficult of all to establish. I had heard it used in desperate cases a number of times but the verdict was always guilty).

"French's story, as told to Dodd, was to the effect that he was kidnapping Jordan's woman because she had double-crossed him and held considerable money belonging to him. (Jordan was the owner of the cafe where the kidnapping took place.)

"At no time did Dodd have intercourse with her. At all times he attempted to aid her. She said to him during the ride and at the store, "Isn't this terrible?" She confided in him and he in her. They were both victims of a kidnapping. The evidence will show that he said to her, "How can we get out of here? If I could only get hold of the gun I would kill him."

She answered, "Don't shoot him if we can possibly get out some other way."

It appeared that the attorney's heart as well as mind was in this case to help a friend out of a serious difficulty. He certainly was going "all the way" for him. Between the lines of the address it appeared that Dodd was a racketeer; specifically, a dealer in bootleg liquor. (The offense was committed in the Prohibition era).

The first witness, president of a sizeable corporation, testified that he had known the husband of Mrs. Graham, the complaining witness, for six months; that he was escorting her sister upon the evening of the kidnapping; that the two women called at his office at 4:30, that the three of them left the office in his Cadillac at 5:30; that they attended Forti's restaurant on Superior Street, east of Lake Shore Drive; that they remained there until 10:30; that at this hour they proceeded to Jordan's cafe next door, where they remained till 2:30 in the morning; that a short time before they left the cafe a young man, Zusta, joined them. Upon deciding to leave the premises, Zusta agreed to escort the ladies to the front vestibule of the cafe while the witness was to drive his auto up to the entrance. He had driven the car to the place agreed upon when he was suddenly confronted by a man with a gun. He was struck over the head with a blackjack and told to drive away or be filled with bullets. He drove on.

The car was under a railroad viaduct when the engine stalled. He called the Chicago Motor Club which in due course sent a repair man to the scene. The witness arrived home in a dazed condition. (The fact that he did not report the matter to the police, that he did not go back to the scene and lend succor to the ladies, left the plain inference that he had been too intoxicated to know what had actually happened.

He was plump, well-dressed, looking the part of a capable busi-

ness executive. On cross-examination, defense counsel asked his questions in a manner which indicated that he sympathized with the witness on account of his unfortunate experience. He joshed with him in a good-natured manner when the witness walked from the stand. This incident is one of the little things that a judge cannot very well eliminate without cavilling and at the same time appearing irritable and finicky. Yet, trivialities in a trial are significant. It is in these little things that an attorney makes headway in winning jurors to his side. He realizes the importance of appeasing the minds of his jury. As a consequence of this side-remark, whispered to the witness as he left the stand, one could see the jury relax. They joined in the spirit of merriment when they saw the witness smile broadly at the attorney's sally.

Zusta was the next witness. He told practically the same story as his predecessor on the stand, supplementing it with the testimony that when he went outside with the girls, a man with a gun threatened him and told him to beat it. He found his way back into the cafe and was soon joined by Miss Corbin, the complaining witness' sister who appeared to him to come through the rear door. They called a cab which was directed to his office in a loop building. Miss Corbin made a call to her sister to find out whether she was safe. This last statement was evidently a police suggestion intended to eliminate the inference that the couple were under the influence of liquor. Defense counsel indicated by his questioning that he was satisfied she did not make any inquiry about her sister until she arrived at the complaining witness' home the following morning at six o'clock. He developed the fact that she made no effort to trace the movements of her sister during the night although she, herself, had met with gun play and might have reasonably expected that her sister met a similar fate.

The attorney was allowed to ask as many questions as he saw fit and to inquire as often as he desired into the various angles of Zusta's testimony. The state's attorney made no objection. The court acquiesced fully in this wide latitude on cross-examination. The jury naturally believed that an uninterrupted examination which apparently met with the approval of the prosecuting attorney and the judge must vitally affect the issues of the law suit.

When the attorney fully established the existence of a drunken party, he relieved the tension that always accompanies the trial of a rape charge. A different complexion was now placed upon the facts. From this point the jury would not bear down as hard upon

the defendants as they would were the complaining witness entirely free from delinquency. Here was a married woman out till 2:30 in the morning in a drinking orgy with a married man and a youth in his early twenties.

Miss Corbin insinuated during her testimony that she had known Zusta before this evening, so as to negative the idea that there was anything wrong in the fact that he should spend the evening with her sister and then fail to accompany her home. The police had evidently been careful to instruct their witnesses that they must not by any means permit the jury to believe that this was a pick-up affair, or that this married woman had started to leave the cafe in the early hours of the morning in the company of this young man. It was deftly brought out by defense counsel that Mrs. Graham's husband was a traveling salesman. This was the opening wedge for the argument that the complaining witness was not the first wife, under these circumstances, to become lonely and seek the company of other men, in her husband's absence. Here at least was an ideal setting for such a defense theory. In trying to straighten out these tangles and knots, the complaining witness, her sister, and the later witnesses who appeared for the prosecution, involved themselves in a mess of contradictions and lies. All were trying their utmost to present a perfect picture of respectability when the facts belied it. One thing is certain, the truth will out when it serves the purpose of such an astute trial advocate as the one engaged here.

Zusta was led into countless absurdities. The police officers in the case had felt that the matter of telephoning from Zusta's office, after the skirmish, was of little importance. They did not stop to figure how the defense attorney was to use this incident in an attack upon the credibility of the entire prosecution. He followed this line of inquiry toward the close of his cross-examination: "What did you do at the office?" "Which of you used the phone?" "Whom did she call?" "What was said in your presence?" "How long did you stay there?" "Isn't it a fact that you were there over half an hour?" This latter question was intended to reflect upon the proprieties of the occasion. It concerned the complaining witness' sister on the very night of the alleged affair. He asked Zusta about two hundred questions in connection with the alleged telephoning to Mrs. Graham. Counsel seemed certain that the alleged conversation never took place and that its invention was part of a subterfuge to cover up a wild party.

Miss Corbin was now called to the stand. She related substantially the same story told by Zusta. She was cross-examined closely as to the details of her actions from the time that she stepped out of the door of the cafe. She spoke of having been assaulted on the street and knocked down. She must have known that the attorney had learned that her dress had been dirtied. When she attempted to explain it in the aforesaid manner, the attorney weaved his questioning in a fashion which inferred that she had become so intoxicated that she lost her balance and fell. He then questioned her closely as to the route she pursued in regaining entrance to the cafe through the rear door. He indicated plainly that he had visited the premises. He was questioning her with a view of showing that her notion of distances was at variance with the truth and her explanation of the manner in which she came back to the cafe was a physical impossibility. He was confident he could contradict her on these points. He was undoubtedly prepared to introduce witnesses who would testify as to correct distances, and for example, that there was no space at all between the adjoining buildings, as she had related. These contradictions would not only affect her general credibility but would be consistent with the defense theory that her mind was influenced by the liquor that she had been consuming throughout the evening.

To emphasize his point and to make it affect her entire testimony, he asked, "Are you as sure of that fact as you are of the rest of your testimony?"

Miss Corbin demonstrated her personal abhorrence of Dodd on every possible occasion. She wanted to establish the fact that he was a notorious racketeer. She also developed the idea that he had once planned an attack upon another girl. She inferred this from his conversation shortly thereafter. This was a pitifully weak attempt to besmirch a man by the use of generalities. The jury inferred that this was an instance of woman-hatred invoked against a man when it suited her purpose. Already informed by the attorney in his opening statement that the grey-haired defendant before them did not carry a blemish upon his record, it was natural for them to resent such an unfair attack upon him.

Finally he came to the trip in the cab with Zusta from the cafe to his office in the loop building. When he asked, "What happened next?", she replied, "I stayed in the car." Zusta went upstairs to make a phone call." The effect upon the jury was electrical. Here was a counterpart of the parable in the Bible where Daniel

was enabled to detect a lie by having two witnesses testify separately, out of each other's presence. The jury looked on in bewilderment. The irresistible conclusion was drawn that somebody was lying. There was no other reasonable deduction to be made. It looked as though the sister was at fault. Being so closely related to the key witness for the state, she cast a shadow upon the whole prosecution. If the sister were lying, was it not reasonable to conclude that the complaining witness' entire account of the attack was founded on perjury? Perhaps both Zusta and Miss Corbin were lying in order to cover up the inference of misconduct. If the attorney's theory were correct, and they remained in Zusta's office half an hour, continuing to drink liquor, then their minds were naturally flustered. At all events, their attempt to bridge this gap—the visit to the office—was a complete failure. Whether from too much drinking or from the plan to cover up a guilty trail, the state's case was now definitely punctured.

Defense counsel had not been harsh in manner or tone of voice in his cross-examination. He had engaged in no quarrels with the witness. He did not pick faults with her testimony. Not once did he raise his voice to shout at her. He just led her to the slaughter, without her realizing it. Such is the effect of a superior mind in a mental contest.

From this point, he kept hammering away at the incident of the telephone call. He realized that he had driven a wedge which might reasonably lead to the complete destruction of the state's case. The prosecuting attorney was forever deprived of arguing in support of the credibility of two important corroborative witnesses, on account of their flagrant contradictions. It was likely that at the start of the trial this defending attorney never dreamed he would develop such a striking contradiction.

He questioned her at length as to the contents of the drinks that she had been imbibing from 10:30 to 2:30. The state objected in vain to the liquor she had been consuming at Forti's Cafe for five hours previous to the time she entered Jordan's establishment. Defense counsel asked if her escort had carried a hip bottle on his person. He also propounded the daring questions, "Isn't it a fact that you fell on the pavement because of your intoxicated condition?" "Isn't it a fact it was because of your intoxicated condition that you did not call up your sister till 6:30 the next morning?" Those questions were argumentative but the state's attorney did not object to them. In answer to the latter question she testified that

she didn't call up before 6:30 because she did not wish to frighten Mrs. Graham's children who were undoubtedly sleeping. The jury might have reasonably inferred that the real reason she didn't call was because she didn't wish the children to learn of the events that were taking place during the evening.

Miss Corbin stepped from the witness stand, a woman who had been on a wild party on this evening, who had been exposed in a compromising position with a chance acquaintance, and who had been revealed in a deliberate falsehood about the telephone call.

The next witness was the state's ace. The verdict would hang on the impression which she made as a witness. If she were to be believed by the jury the defendants faced a long term of imprisonment on account of the gang attack upon a wife and mother of three children. The sentiment which the police always rely upon to create a deep-rooted prejudice against a defendant on a charge of this character revolves about the following conjecture: "It might have been your sister, your sweetheart, your wife, or your mother." One of the officers had said in conversation, "If she had been my wife, the case would never be here. Those fellows wouldn't be sitting here with a chance for their liberty." Suppose, however, that Mrs. Graham's husband had in fact slain these two defendants and was now on trial for murder. If this same policeman were handling that investigation he would bear down upon the husband. He would use every means at his disposal for prejudicing the jury against the husband in order to win a conviction. Another flaw in this point of view lay in the fact that as a minister of law and order he should be the last man in the community to take the law in his own hands and commit outlawry even unto murder.

Mrs. Graham was neatly dressed, with a flowing scarf about her neck, such as important feminine witnesses invariably wear in attending criminal trials. A bright colored scarf is intended to and does make a striking impression upon the jury. Her overcoat had been removed before she stepped into the courtroom. A neat hat fitted snugly over her head. She said that she was only thirty-seven years of age, although she had a sixteen-year-old son. She was an attractive personality and the jury followed her steps to the stand with rapt attention to hear her story. Strange to say, she exhibited no emotional outbreak as she told the harrowing account of three different attacks by as many men while held kidnapped at the store. She related it in an even tone, shedding no tears and

displaying no spirit of revenge. It seemed to be too mechanical to impress, too matter-of-fact and ordinary to be true. It seemed that she had been forced to give her account and mention all the details, in accordance with suggestions made to her by policemen and other advisers. Here was no actress. A married woman who spoke of the details as though they were but ordinary events was not the type to capture the imagination of a jury. She told of being kidnapped by French as she stepped from the cafe. She did not know him by name at that time but learned it later at the police station. She spoke of Dodd driving the car but said that as soon as they arrived at the store, he began to say, "Isn't this terrible? I wonder how we can escape?" She also recounted the fact that Dodd wanted to kill French. She admitted saying, "See if you can bring about our escape without shooting him." This was very favorable testimony for Dodd even though she did add, "I did not know, at that time, that he was really against me."

Defense counsel brought out the fact that she was a married woman, had been imbibing mixed beer for five hours, had never been out with her escort before, and had not shouted for help when she left the grocery store, to go to an apartment with the three men. He meant to convey the impression that she was still too helplessly intoxicated to know what was taking place.

He cross-examined her at great length in bringing out details of her dress. He asked her to describe the step-in that she wore this evening, the elastic band around the top, and the manner in which it was slipped on and off. He revealed the fact that he knew considerable about women's apparel. The purpose of this testimony was forcefully brought home when he called one of the defendants before her and asked, "Is this the man who drew your step-in down over your shoes?" She answered, "Yes." He then had the defendant display a withered right hand. (The physical incapacities of accused men are used so often in breaking down theories of prosecution and explaining away guilt, that the importance of investigating them closely is well appreciated by all defense attorneys.)

When she concluded her testimony, Mrs. Graham's husband rushed to her side and helped her walk down the steps. He continued to walk with her until she reached a place where she could sit down. This scene made it appear as though she were in danger of collapse. It was in all likelihood pre-arranged, calculated to create increased sympathy for her, with a correspondingly accentuated prejudice against the defendants. It was not skilfully done, however, and re-acted against the prosecution.

Was the defense of Dodd to be that he had not committed the act, or that it was done under a compelling threat? What position would the storekeeper take in regard to these defenses? In the course of the defense testimony, the impression was definitly given that Dodd had been kidnapped, and that he believed his assistant was likewise kidnapping "Jordan's woman." He also introduced character witnesses to help his cause.

I have omitted to say that at the very beginning of Miss Corbin's testimony, the defense attorney called a young lady into the courtroom. He asked the witness, "Do you know this girl?" Miss Corbin answered in the affirmative. It proved to be a cloak girl in Jordan's night club. She was to be called to describe the premises in order to deny Miss Corbin's account of what she had said and done upon returning to the cafe.

Associate defense counsel had asked Miss Corbin only a few questions when he called a Mr. Butra from the ante-room adjoining the court. The latter was dressed shabbily. The attorney asked the witness, "Do you know this man? Where did you ever see him before? Is it a fact that you identified him at the Detective Bureau as one of the men who attacked you? And that he was arrested and held in custody for two days? And isn't it a fact that he was able to show where he had been every minute of that time? And you finally admitted that you had made a mistake?" The witness readily admitted the truth of these charges.

The trial lasted three days. The jury returned a quick verdict of not guilty. Why? For one thing, the state's case was upset by the cross-examination of Zusta and Miss Corbin. These developments just about destroyed any prospects for the account of the prosecuting witness being believed when she subsequently testified. The state would have fared better had they not been called, although the defense would then have argued that the prosecution feared to call important witnesses. The fact of the matter was, Mrs. Graham was worthy of belief and undoubtedly told a substantially true account of the offense. She helped Dodd tremendously, though, by quoting his very words offering help and assistance during her predicament. Her story of the attack had not been recounted graphically. It was merely a series of assertions that this and that happened. She should have injected some details which would impress the jury with the undoubted truthfulness of her story. From the manner in which she told it, any listener would have doubted that the acts in question actually occurred.

It appeared reasonably certain that French had kidnapped her, that he had been the leader of the crew, and had actually made an attack upon her. It was strange that the storekeeper would resume the attack, a married man and the father of a large family. There were at least grounds for contending that the likelihood of an attack was unreasonable, owing to the surrounding circumstances.

Guilty or innocent, it is interesting to speculate upon a verdict of acquittal in a case where the set-up for the state included a married woman and mother, attacked by a gang, and subjected to fiendish indecencies. Unless counsel had a jury that would keep their minds open, his case would have been destroyed before the defense had introduced a single witness, and no matter what evidence was presented by the defense, this prejudice would have overcome it. Only with a most liberal-minded jury would he succeed in having them accept the man's version in the face of the harrowing nature of the complainant's testimony. The acquittal was to be attributed to the type of jurors who happened to be selected to hear this case. Defense counsel saw to it that they remained relaxed and neutral in a case where the natural reaction to the disclosures would have driven a normal set of men to a desire to tear the defendants limb from limb.

Defense counsel used the transcript of the testimony presented at the preliminary hearing during his cross-examination. This incident showed that Dodd had engaged his services or those of other able counsel immediately following his arrest. A foundation for impeaching the testimony of state witnesses was thereby laid.

One of the courtroom bailiffs summed up his reactions to the result substantially as follows: "The jury was out four hours. The defense had submitted a number of character witnesses. Both defendants took the stand and claimed that French had threatened them from the beginning, holding a gun pointed at them as he commanded them to attack Mrs. Graham. They shoved all the blame upon the missing man. The older defendant's right arm was artificial, almost from the shoulder. This crippled physical condition was certainly inconsistent with an aggressive attack such as she claimed. An attack, if it did occur, was consistent with the defense theory that Dodd's acts were committed under the influence of coercion."

Since the complex of the jury appears to be the main source of explanation of the verdict, withal the artful cross-examination heretofore accounted, a resume of the manner in which the jury was

selected might not be amiss. Defense counsel was calm and collected at this stage of the trial. He told the men frankly that it would require an unusual effort upon their part to remain fair and impartial in a rape case of this kind. He pleaded with them to hold their judgment in abeyance until they had heard the testimony of the two defendants. He assured them that his client was married and had previously borne a good reputation. He told them that evidence would be produced to establish his good character and asked them if they would consider this along with the other competent evidence introduced in the trial. The judge permitted counsel substantial latitude in pursuing his examination, and was lenient in all his rulings. Defense counsel's manner of approach and his means of obtaining suitable jurors may possibly be gleaned from the following examination:

"Did you ever have occasion to make a criminal complaint against anyone?

"Where is Tinley Park?" (He was showing an interest in the village where the juror made his home. A man is always proud of his home town.)

"We are not excusing the crime of rape. We are representing a man of previous good reputation who claims that he is not guilty of the act mentioned in the indictment. You believe that such a man should have a fair and square hearing, don't you?"

The first juror that he excused peremptorilly was a farmer.

"I am representing a man who tells me and this court that he is not guilty. You feel that he is entitled to have me appear for him, do you not?

"The complaining witness is a woman with two or three children. She is entitled to a fair and patient consideration of her testimony. (This was very effective since it showed a desire of the attorney to be fair.)

"The mere fact, however, that she testifies won't prejudice you so that your mind will be closed to further evidence, will it?

"You won't do anything in regard to making up your mind about things until you have heard both sides. Isn't that right?

"I have been engaged to present that side of the case which has been presented to me by my client. You believe that it is right that he be defended, don't you?

"We claim that he is a victim of a most unfortunate set of circumstances.

"You will not decide the case until you have heard from all the witnesses, will you?

"Did you ever have occasion to complain to the authorities for some criminal act that was committed against you or your immediate family?

"Do you read articles about the suppression of crime, or about criminal prosecutions and procedure?

"Are you a contributor to any organization which checks up on these matters?

"Can you try a rape case as fairly as any other charge?

"How long have you lived in Desplaines?

"How long have you lived in Chicago?

"Do you think that anything that you have learned or heard in that case would prejudice you here?

"There are hardly two cases alike. Each of them has a different background. One man may be guilty and the next innocent. Each case stands or falls on its own merit.

"Do you have any leaning against the defendant at the beginning? Do you start out with such a leaning?

"The indictment is not any evidence against us. You know that. We don't need to lose any time with it. We realize that the charge of rape is very difficult to defend. Lord Hale, one of the most learned English judges who ever sat upon the bench, stated in a classical expression that it is the easiest charge to make the hardest to defend of any criminal case.

"The alleged act took place in the vicinity of ———? Are you acquainted with that district?

Dodd's associate was a squatty Italian, about fifty years of age. His hair was unruffled. He sat in his chair, half-buried in a large overcoat. He did not seem to know what it was all about. It was likely that this impression was created because he did not understand the English language.

Upon one occasion counsel's associate left the courtroom. The latter relied implicitly upon his older colleague to select a favorable jury.

"You don't know the neighborhood, do you?

"Did you ever hold an official position as a mayor, baliff, or policeman?" (This question appealed to the vanity of the juror.)

"Have any of your family held a position of that character?

"In determining the credibility of witnesses you have a right to consider the evidence, the personal appearance of a witness, the opportunity of observation, the interest that he might have in the outcome; also the venom that a witness expresses by his or her conduct.

"We don't have to prove anything. The law says that the burden is on the other side.

"I know that Dodd will take the witness stand. I don't know whether his co-defendant will take the stand but I will ask you whether you will be fair and considerate in listening to either of them, should they testify."

Dodd had iron grey hair. There was a grim look of determination in his eyes. A favorable factor lay in the fact that he had not been in jail awaiting trial. The jury always feels that a man out on bonds is more worthwhile than he who is without sufficient funds or connections to make bail.

"The evidence will show that Dodd was in a place where drinks were being served. The complaining witness was also there." (In this way he informed the jury of the background. A juror would immediately reason, "I wonder what this married woman was doing in this cafe.")

"Would the nature of this case cause you to be so prejudiced against him that we would be forced to begin with a handicap.

"Your views on the Volstead Act aren't so pronounced that you will be unable to give the defendant a fair trial because he was in a cafe where liquor was being served.

"No one has a right to criticize when you return a conscientious verdict. You have the exclusive and conclusive power to do just as you please as long as the verdict meets with the approval of your conscience.

"We do not want a juror whose mind has become definitely prejudiced against either the complaining witness or the defendant because they were spending their time in a cafe serving liquor.

"You have a right to consider all your own experiences in life, Mr. Lorry, in judging the weight of testimony as well as its credibility.

"You wouldn't hesitate to follow that rule, would you?"

Dodd's missing co-defendant had jumped his bonds. It was now 25M. Probably because he felt that this information would prejudice his own case, the attorney said, "I have nothing to do with this other defendant.

"We don't know what theories Mr. Dodd's co-defendant will advance in his defense if captured.

"I have been informed that the defendant, Santino, has never been arrested in any criminal case before. Mr. Dodd also has never been involved in a criminal case.

"The other defendant is an Italian. You wouldn't let his birthplace have anything to do with determining your verdict, would you?

"In our courts we are all equal under the law. White or black, native or alien, all are entitled to a fair and impartial trial in a criminal case.

To a juror who worked for the Standard Oil Co., of Indiana, defense counsel said amusingly, "This case won't take very long. You will be able to return and vote in the Rockefeller-Stuart controversy, even if you are selected here." (This remark was naturally of interest to this juror.)

"Rape is forceful, carnal intercourse, against the will of a female.

"Will you hold your judgment in abeyance until you have heard both sides, to see whether Dodd had anything at all to do with it?

"Dodd says he is not guilty. He wants a jury to hear the case. A judge could not hear it, even if he desired. The law provides that upon a plea of not guilty in a felony case it is necessary that the issues be passed upon by a jury. So, there is no other possible way by which the defendant could be either acquitted or convicted, than by a jury such as composed by you men." (A later decision in the Supreme Court corrected this anomaly and now judges hear felonies and misdemeanors upon pleas of not guilty as well as guilty.)

"Have any of your relatives or close friends been the victim of a crime?

"Would the fact that you are married and that the complaining witness is married and the mother of a family cause you to be prejudiced against us?

"Do you feel that your mind is in an open state? You are conscientiously to see if the evidence produced against him is sufficient to prove guilt beyond a reasonable doubt.

"If there is not sufficient, reliable evidence produced you will not hesitate to acquit him, will you?

"You are a Board of Inquiry, not a group of men called here to convict.

"There is always the danger in a case of this character that the jury will start out prejudiced.

"The seriousness of the penalty causes us to be very careful in our selection of jurors.

"The brother-in-law of the complaining witness is a policeman. That fact wouldn't interfere with your ability to be fair and important, would it?

"The defendant is entitled to be acquitted if the state's evidence is such that it leaves in your mind a reasonable doubt of the defendant's guilt.

"The defendant doesn't need to take the stand. This is due to the fact that he is not here to try to prove his innocence. He says in effect, 'You have to prove me guilty.'

"The evidence of the state may not be sufficient. In that event it would not be necessary to consider any defense evidence. If the defense offers evidence, it is to be considered with all the other evidence to determine whether there is a reasonable doubt of the defendant's guilt.

"We are not entitled to any advantage. Neither are we to suffer any disadvantage. We don't want any juror to be against us at the beginning."

(Four out-of-town jurors were questioned in a row. It is strange that some venires are composed mainly of men living beyond the limits of Chicago.)

One juror said that he worked at an oil station at the corner of ——. Defense counsel remarked, "That's a new station, isn't it." (He thereby showed an interest in the juror's business. Subtle flattery.)

"How old are your children, Mr. ———?

"You grew up with the butcher business, as I understand it."

After he would obtain the preliminary information as to age, marriage, address, and a few other such questions, he would put his pencil in his pocket and drift along as his mind led him.

"I suppose that you know the laws, as to reasonable doubt and presumption of innocence by heart. The danger is that you know them too well. You may consider them lightly, when they are so important to this defendant.

"You may think that these are just talking points for lawyers. I will say, on the contrary, they are held in sacred regard by all lawyers and should be so considered by all good citizens.

"You are to banish all notions or ideas from your mind, if not consistent with the law. You should consider only the evidence introduced here in determining whether the state makes out its case by the required degree of proof.

"We realize that naturally there is a strong underlying prejudice against every man charged with such a crime. There is no use trying to hide it by burying our heads in the sand. All we can do is our best to see that the jury will be as fair as possible in the case.

"Were you previously called into the jury box?" (He wished to find out whether this juror had been previously examined by any defense counsel in another case and excused.)

"Have you or your friends ever been the victims of any crime of violence?

"You are not called here to convict. As soon as a defendant pleads not guilty you become a Board of Inquiry to determine whether the state's evidence is sufficiently conclusive to prove the defendant guilty beyond a reasonable doubt.

"If the evidence is of such a character, you will convict him. If it isn't you shouldn't hesitate to return a verdict of acquittal."

(The state excused a young, unmarried juror, engaged in manual labor. They did not feel that he would be severe or harsh enough.)

"If guilty, a defendant should be convicted. But everybody tried is not guilty. Acquittal verdicts are returned every day in the year.

"We're not justifying crime of any kind. We are merely defending a client who says he is not guilty of a specific charge in an indictment.

"Don't make up your mind in advance.

"You wouldn't hold it against Dodd's co-defendant because he is a native of Italy. We have nothing to say about where we were born. That is entirely out of our control.

"The evidence will show that Dodd has been a citizen of Chicago for twenty-five years and has never been charged with a criminal offense. You will listen to such evidence and give it your due consideration, will you not?

"It will be your duty to see whether a witness is worthy of belief; whether the charge is a mistake; and whether there is a reasonable doubt arising from the evidence.

"You want to remember that we are not defending criminals. We are defending men who are accused of crime.

"You are judges of the law as well as the facts. I presume that the attorneys will read law to you in their arguments, with the approval of the court." (This law was modified by a later judicial decision that jurors are not judges of the law.) We are officers of the court and are duty-bound to represent the defendants to the best of our ability.

"We have taken the same oath as the state's attorney when we were admitted to the bar. We just happen to be on opposite sides of the table. They are working for the state. We are working for individuals, accused by the state.

"Trials are matters of common sense. You are to use the same common sense as you apply to facts in your business.

"The jury is to make up its mind from the testimony introduced before it. You will not permit anything outside of the evidence to influence you, will you?"

To a butcher he said, "I don't know a hind quarter from a fore-quarter except when I see it in my plate at the table and taste it."

"Did you ever have occasion to have anybody arrested?

"We'll do the best we can in analyzing the facts for you. If we deceive you our clients are certain to suffer. If we show that we are fair and reasonable, we will serve you in helping you arrive at a true and just verdict.

"The court will give you the law that applies in this case. You will follow his honor on questions of law, will you not?

"We will lay our cards on the table. We want to be fair with you. We expect that you will be fair to us.

"It is impossible to inquire into all possible conditions of your mind in this cursory examination. We do the best we can to learn your mental state. We realize that it is impossible to be certain of anything when it comes to matters pertaining to the human mind.

"We have nothing against policemen. There are so many holdups that we are glad to see them around. We do not believe, however, that it would be fair to our client that any of your relatives or close friends should be policemen. I have many friends on the police force. I sincerely admire the courage of many of these men.

"You may wonder why I am asking so many questions. I am nervous because of the seriousness of this charge and the penalty that it carries.

"Race or religion has nothing to do with an American trial. This is an American court and American laws apply.

"When it comes to the final analysis, you feel that you can give us this kind of a trial, don't you?"

He would usually conclude his examination with, "Well, is there anything back in your mind I have not covered that may lead you to favor one side or the other?"

He tendered back the last panel of four, having excused only one of the men who had been tendered to him.

A court reporter took down the entire examination. The state also had its reporter.

Conclusion

Here we have the heinous offense of rape committed upon a defenseless woman. Three men are named in the indictment. The two on trial heap the blame upon the missing defendant. The far-fetched theory of coercion is relied upon by the defense. The withered arm of one of the defendants is made use of to deny the testimony of the victim. By clever cross-examination the state witnesses are made to contradict themselves and relate inconsistent accounts. But unless the defense was dealing with an open-minded jury the prejudice against the defendants under the circumstances would have been certain to prevail against them. It was the complex of the jury that accounted for the verdict of acquittal. The technique adopted to obtain a jury of this character is considered the highlight of the trial.