Ruminations . . .

Darrow in Vermont

Paul S. Gillies, Esquire

Clarence Darrow came to Vermont in 1928 to fulfill a family promise. His son Paul, while a student at Dartmouth in 1904, had a tragic accident that resulted in the death of a young boy. At the time, Paul gave the boy's mother a note, promising help from the Darrow family if she ever needed it. Twenty-three years later, she approached Clarence Darrow after he gave a lecture on capital punishment at the college and reminded him of the promise. Darrow quickly agreed to help however he could.[1]

She had a nephew who was in trouble. John Winters had been convicted of the murder of Cecelia Gullivan in Windsor. It was a particularly vicious crime, involving death from cuts and blows of a chisel, and the circumstantial evidence against Winters was strong. He had been sentenced to death and the case was before the Vermont Supreme Court on exceptions.

Clarence Darrow was 71 years of age in 1928, and he kept saying he was retiring. The Winters case, he promised, would be his last appearance in a courtroom. In his career he had represented John Scopes in Tennessee, accused of violating the state's antievolution law; Nathan Leopold and Richard Loeb, accused of murdering fourteen-year-old Robert Franks for the thrill of it; Emma Goldman, accused of giving a speech that inflamed Leon Czolgosz to murder President McKinley; and dozens of others in Illinois and throughout the country. His specialty was capital crimes and his sworn enemy was capital punishment. His life was a crusade against it, both in the courtroom and as a lecturer. He held that there was no such thing as crime, that those in prison were no worse than most businessmen, except they got caught, and that hanging or the electric chair was an abomination, not only because it was cruel but because it was unjust.

Clarence Darrow was a household name in 1928. He had received such attention from the press that he was a national celebrity, *the* American lawyer. He did not always win his cases, but he often succeeded in reducing the sentence to life imprisonment by introducing sufficient doubt into a case to affect the jury.

Darrow arrived in Montpelier with his wife the day before the scheduled hearing before the Vermont Supreme Court. They stayed at the Pavilion Hotel, and met with Winters' local attorneys, Herbert Tupper of Springfield and Fred Bicknell of Windsor. When the hearing began the next day, the Supreme Court chamber was filled to capacity with the largest number of spectators the Court had known, at least since it had moved to the new Supreme Court building. Lawyers, journalists and other citizens understood that this would be a rare opportunity to see one of the greatest advocates in America in action. The doors of the chamber were opened to permit those in the corridor to hear the arguments of counsel.

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Vermont Attorney General J. Ward Carver, Windsor State's Attorney Robert Twitchell and special prosecutor Raymond Trainor represented the State. Chief Justice John Watson presided. Mr. Bicknell asked the Court to waive the one hour rule for arguments, and the Court granted the request quickly, allowing two hours per side.[2] Bicknell opened, then Twitchell, then came closing arguments by Carver and finally Darrow himself.

The case turned on six exceptions. Two of them involved a challenge to evidence presented by the prosecution about how certain dirt marks were made at the crime scene, which was Ms. Gullivan's bedroom. Can a witness describe *appearances* when they are incapable of exact and minute description? The Court allowed the evidence to stand. A third exception involved evidence of sexual comments made by the defendant about the victim during times when she passed him at work. Both worked for the Cone Automatic Machine Company in Windsor; she was its treasurer; he worked in the tool department. Another was based on objections to demonstrative evidence, particularly the reconstruction of the bedroom as a set within the courtroom. Another questioned the admissibility of the details of a similar crime allegedly committed by the defendant an hour or two earlier on a Mrs. Pandjiris, although Winters had not been tried or convicted of that crime. Mrs. Pandjiris testified that she saw Winters' face clearly during the assault.

Finally, there was the bloody trousers. Winters said he had cut off one of his fingers a few weeks before Ms. Gullivan's death. The court asked defense counsel if it could show that the blood found on Winters' overcoat and pants the night of the murder was from the finger incident. The defense admitted it could not, but wanted to put on evidence about the cut finger to show the *possibility* of that as a source. The court had denied the request.

Darrow was particularly moved by this issue. "Law is not a system of tricks," he said, "it is a system of getting justice. Blood is an important factor in a murder case. Blood is one of the first inferences drawn. I don't know what the jury would have done with the evidence. But it had a right to it."

Denying the admissibility of the evidence of the other crime, Darrow argued that in the Pandjiris incident the motive had been robbery or sexual assault, while in the Gullivan case the motive was murder. "There can be no question what the effect of the evidence was if the jury was satisfied it was the same person in question. Its effect was to madden and craze the jury. It was dangerous evidence to start with, and if admissible should have been most carefully guarded. No one could fail

to be affected by it. Nothing could be more calculated to affect one.

"Under such frightful circumstances no defendant could have a fair trial. It is important to punish murder, but still more important that all the safeguards surrounding a trial should be given in each case. No court decides one case alone. It decides other cases coming in the future. I submit this case should be reversed."[3]

Chief Justice Watson wrote the decision for the majority. It is notable for the careful manner in which the issues in contention are reviewed, and it is a longer decision than most in Volume 102. Clearly the Court was conscious of the reputation of Darrow. Several times it referred to "learned counsel for the respondent." It was not going to be swayed by a celebrity lawyer, but it also knew that its own integrity was on the line, that its decision would be carefully read by more readers than was usual for the Court.

The lower court's rulings on each of the exceptions except that involving the bloody clothes were sustained. It was not moved by the argument relating to the earlier crime. The evidence suggested that rape was the original motive in both crimes, and that was enough for the Court.

By a vote of three to two, the Court defense on the issue of the bloody clothes. Justice Watson seemed to hold his nose in writing this part of the decision. He was not in the majority, even though he accepted the assignment of writing the opinion of the court. He explained that a majority of the Supreme Court believed there was sufficient grounds to conclude that evidence of blood from the cut finger should have been allowed. Watson went out of his way to avoid embarrassing the trial court, however, treating the ruling as a misunderstanding between the judge and defense counsel that was of sufficient weight to justify a new trial. He ended his decision with these words:

"The utmost frankness to the court is required from counsel practicing at the bar. Equal frankness is due from the court to counsel practicing at the bar. The majority holds that if the court below did not mean to be understood in the way above indicated, counsel should have been informed about it. The majority does not in any way recede from former holdings regarding the sufficiency of offers of evidence, but simply says that in the peculiar circumstances of this case, no further offer was required."[4]

Darrow had won another close victory. In the second trial, Winters was again convicted, but sentenced to life imprisonment instead of the chair. By that time, Clarence Darrow was on to another trial in another city, and did not participate further in the Winters case. News of his retirement was premature.

News of Darrow's appearance in Vermont made all the Vermont papers, and the front page of the New York Times as well. Vermont lawyers were impressed, according to these reports, with the great man's manner and intelligence. If the Court was impressed, it did its best to conceal that feeling, but the decision itself is more telling. Clearly this was not just another hearing, just another performance by defense counsel. It shows in the effort the Court made to treat it that way.

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[1]Arthur and Lila Weinberg, *Clarence Darrow: A Sentimental Rebel* (New York: G.P. Putnam's Sons, 1980), 356-57.

[2]*Montpelier Evening Argus*, January 12, 1928.

[3]*Montpelier Evening Argus*, January 13, 1928.

[4]*State v. Winters*, 102 Vt. 36, 65 (1929).

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