Attorney for the Defense

The laughing man and the poor man are best in the jury, as they understand life's values

by CLARENCE DARROW

Article

Eutrou's Note: Clarence Darrow will have passed his seventy-ninth birthday by the time this article print. Active practice is definitely over for the lawyer who never, in more than sixty years at the bar, appeared on the side of the prosecution, who never, in scores of capital cases, had a client executed. We gave him a rather pedestrian assignment, asking him to write a piece giving a few pointers on jury-picking. It was greater luck than we merited to receive in return this spirited answer to professorial questions than we had the wit to ask. For here is no less a thing than a golden epistle of all the wisdom that has accrued to one with an ever-youthful spirit in the late evening of a well spent life. Far more than a mere footnote to the tricks of his trade, it is a philosophic summation of the practical answers to any present day Pilate who might sitting ask "What is Justice?" It is an answer wise though witty, compassionate though cynical, the an­swer of the man who said of the great Governor Altgeld's "You may say of myself: "Even admirers have seldom understood the real char­acter of this great human. It was not a callous heart that an often led him to brave the most violent and malicious hate: it was not a callous heart, it was a devoted one and . . . that spoke for the poor, the op­pressed, the buffetted and the weak."
and their lawyers are supposed to want justice, but, in reality, there is no such thing as justice, either in or out of court. In fact, the word cannot be defined. So, for lack of proof, let us assume that the word “justice” has a meaning, and that the common idea of the definition is correct, without even seeking to find out what is the common meaning. Then, how do we reach justice through the courts? The lawyer’s idea of justice is a verdict for his client, and really this is the sole end for which he aims.

In spite of the power that the courts exercise over the verdict of a jury, still the finding of the twelve men is very important, sometimes conclusive. It goes without saying that lawyers always do their utmost to get men on the jury who are apt to decide in favor of their clients. It is not the experience of jurors, neither is it their brain power, that is the potent influence in their decisions. A skillful lawyer does not tire himself hunting for learning or intelligence in the box; if he knows much about man and his making, he knows that all beings act from emotions and instincts, and that reason is not a motive factor. If deliberation counts for anything, it is to retard decision. The nature of the man himself is the element that determines the juror’s bias for or against his fellowman. Assuming that a juror is not a half-wit, his intellect can always furnish fairly good reasons for following his instincts and emotions. Many irrevocable issues in choosing jurors are not so silly as they seem. Matters that apparently have nothing to do with the discussion of a case often are of the greatest significance.

In the last analysis, most jury trials are contests between the rich and poor. If the case concerns money, it is apt to be a case of damages for injuries of some sort claimed to have been inflicted by some one. These cases are usually defended by insurance companies, railroads, or factories. If a criminal case, it is practically always the poor who are on trial.

The most important point to learn is whether the prospective juror is humane. This must be discovered in more or less devious ways. As soon as “the court” sees what you want, he almost always blocks the game. Next to this, in having more or less bearing on the question, is the nationality, politics, and religion, of the person examined for the jury. If you do not discover this, all your plans may go awry. Whether you are handling a damage suit, or your client is charged with the violation of law, his attorney will try to get the same sort of juror.

Let us assume that we represent one of “the underdogs” because of injuries received, or, because of an indictment brought by what the prosecutors name themselves, “the state.” Then what sort of men will we seek? An Irishman is called into the box for examination. There is no reason for asking about his religion; he is Irish; that is enough. We may not agree with his religion, but it matters not; his feelings go deeper than any religion. You should be aware that he is emotional, kindly and sympathetic. If he is chosen as a juror, his imagination will place him in the dock; really, he is trying himself. You would be guilty of malpractice if you got rid of him, except for the strongest reasons.

An Englishman is not so good as an Irishman, but still, he has come through a long tradition of individual rights, and is not afraid to stand alone; in fact, he is never sure that he is right unless the great majority is against him. The German is not so keen about individual rights except where they concern his own way of life; liberty is not a theory, it is a way of living. Still, he wants to do what is right, and he is not afraid. He has not been among us long, his ways are fixed by his race, his habits are still in the making. We need inquire no further. If he is a Catholic, then he loves music and art; he must be emotional, and will want to help you; give him a chance.

If a Presbyterian enters the jury box and carefully rolls up his umbrella, and calmly and critically sits down, let him go. He is cold as the grave; he knows right from wrong, although he seldom finds anything right. He believes in John Calvin and eternal punishment. Get rid of him with the fewest possible words before he contaminates the others; unless you and your clients are Presbyterians you probably are a bad lot, and even though you may be a Presbyterian, your client most likely is guilty.

If possible, the Baptists are more hopeless than the Presbyterians. They, too, are
apt to think that the real home of all outsiders is Sheol, and you do not want them on the jury, you will sooner they leave the better.

The Methodists are worth considering; they are nearer the soil. Their religious emotions can be translated into love and charity. They are not half bad, even though they will not take a drink, they really do not need it so much as some of their competitors for the seat next to the door. If chance sets you down between a Methodist and a Baptist, you will move toward the Methodist to keep warm.

Beware of the Lutharians, especially the Scandinavian; they are almost always sure to convict. Either a Lutheran or Scandinavian is unsafe, but if both-in-one, plead your client guilty and go. They are nearer the soil. One jurorsitting and pondering, sinning and punishing from the preacher, and dares not doubt. A person who disobeys must be sent to Hell; he has God's word for that.

As to Unitarians, Universalists, Congregationalists, Jews and other agnostics, don't ask them too many questions; keep them anyhow; especially Jews and agnostics. It is best to depend on a Unitarian, or a Universalist, or a Congregationalist, with some care, for they may be prohibitionists; but never the Jews and the agnostics. If you are ever asked to accept a prohibitionist: he is too sober and holy and dyspeptic. He knows your client would not have been indicted unless he were a drinking man, and any one who drinks is guilty of something, probably much worse than he is charged with, although it is not set out in the indictment. Neither would he have employed his lawyer had he not been guilty.

I have never experimented much with Christian Scientists; they are too serious for me. Somehow, solemn people seem to think that pleasure is wicked. Only the gloomy and dyspeptic can be trusted to convict. Shakespeare knew: "Yond' Cassius has a lean and hungry look; he thinks too much; such men are dangerous." He used them; he knew the rules if you can get a man who laughs. Few things in this world are of enough importance to warrant considering them seriously. Few things in this world are sure they represent a great end. Like the rest of us, they do not know which way is forward and which is backward, nor whether either one is any way to be trusted. It might, however, make a vast difference to the unfortunates facing cruel, narrow verdicts. It will be so for many years to come. The chances are that it would not have made the slightest difference to the state if all cases had been decided the other way. It might, however, make a vast difference to the unfortunates facing cruel, narrow verdicts.

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tory, wearing solemn faces and white ribbons. The jury disagreed. In the second trial there were four women who would not budge from their seats, or their verdict. Once more I went back to the jury box, slapping my knees and waiting an answer. The number of women in the jury box had grown to six. All of them were unprejudiced. They said so. But everyone connected with the case was growing weary. These were women who were apt to interpret the results of their deliberations, written on the beach, while the really worth while fishes were left in slower dragging a long net across the sand. When it was safely landed, a few small, flopping fish disclosed the results of their efforts of optimistic men, and other human activities is so futile! And all of it is so futile!

I once spent a winter on the shores of the Mediterranean Sea. In front of my windows, four fishermen were trudging back and forth, and slowly dragging a long net across the sand. When it was safely landed, a few small, flopping fish disclosed the results of their efforts of optimistic men, and their idle undertakings, and aimless set to work to reform the courts and other human activities is so futile! And all of it is so futile!

Judges and jurors are like the rest of humans. Now and then some outstanding figures will roll past, present and prospective, in literature, wearing solemn faces and white ribbons. The jury disagreed. In the second trial there were four women who would not budge from their seats, or their verdict. Once more I went back to the jury box, slapping my knees and waiting an answer. The number of women in the jury box had grown to six. All of them were unprejudiced. They said so. But everyone connected with the case was growing weary. These were women who were apt to interpret the results of their deliberations, written on the beach, while the really worth while fishes were left in slower dragging a long net across the sand. When it was safely landed, a few small, flopping fish disclosed the results of their efforts of optimistic men, and their idle undertakings, and aimless set to work to reform the courts and other human activities is so futile! And all of it is so futile!

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May, 1936

The judge is, of course, an important part of the machinery and administration of the court. Like carpenters, and lawyers, bricklayers, and saloon-keepers, they are not all alike. No two of them have the same fitness for their positions. No two have the same education; no two have the same natural understanding of themselves and their fellowman, or are gifted with the same discernment and balance. Not that judges are lacking in knowledge of law. The ordinary rules for the administration of law are rather simple and not difficult to follow. But judges should be students of life, even more than of law. Biology and psychology, which form the basis of understanding human conduct, should be taken into account. Without a fair knowledge of the mechanism of man, and the motives and urges that govern his life, it is idle to venture to fathom a situation; but, with some knowledge, officers and the public can be most useful in preserving and protecting those who most need such help. The life of almost any unfortunate, if rightly understood, can be readjusted to some plan of order and system, instead of left to drift on to ruin, the victim of ignorance, hatred and chance.

If the physician so completely ignored natural causes as the lawyers and judges, the treatment of disease would be relegated to witchcraft and magic, and the dungeon and rack would once more hold high carnival in driving devils out of the sick and afflicted. Many of the incurable victims of crime are like those who once were incurable victims of disease; they are the product of vicious and incompetent soothsayers who control their destinies. Every human being, whether parent, teacher, physician, or prosecutor, should make the comfort and happiness of their dependents their first concern. Now and then some learned courts take a big view of life, but scarcely do they make an impression until some public brainstorm drives them back in their treatment of crime to the methods of sorcery and conjury.

No scientific attitude toward crime can be adopted until lawyers, like physicians and scientists, recognize that cause and effect determine the conduct of men.

When lawyers and courts, and laymen, accept the scientific theory which the physicians forced upon the world long years ago, then men will examine each so-called delinquency until they discover its cause, and then learn how to remove the cause. This requires sympathy, humanity, love of one's fellowman, and a strong faith in the power of knowledge and experience to conquer the maladies of men. The Forum of the lawyers may then grow smaller, the court house may lose its spell, but the world will profit a thousandfold by a kindlier and more understanding relation toward all humankind. #