

WOULD YOU CONVICT— ON CIRCUMSTANTIAL EVIDENCE? GUILTY?—THE TRAGEDY OF THE HOUSE IN GREEN STREET A TRUE STORY

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DELANCEY NICOLL, formerly District Attorney of New York county, says—
"I see no danger in circumstantial evidence that is not fully provided for in law. There have been very few cases in which innocent persons have been convicted on circumstantial evidence, and very few in which innocent persons have been convicted on direct evidence."

"Circumstantial evidence is good evidence. Direct evidence, of course, admits of perjury. Circumstances very seldom lie. There is no rule to be laid down as to whether circumstantial evidence or direct evidence is better. It depends entirely upon the case. Whichever may be chiefly relied upon, the fact stands that the accused has every chance. No jury will convict unless guilt is proved beyond a reasonable doubt."

THE grimy house in Green street, Chicago, slouching to premature decay, bowed by faulty construction and ill usage, held the trace of many a sordid secret behind its three storied, weather beaten facade. Along its sagging stairs and muddy hallways passed strange faces of the world that wakes to life with the travesty of a smile in the glitter of the streets at night. Side by side, in its narrow rooms, huddled simple poverty and the lying semblance of wealth; yet it was not crowded, in the sense of a tenement. The sun seldom filtered through its windows, save where a shutter hung awry. Hopeless, cheerless, it knew its unrewarded virtues and its unrebuked vices, its rare moments of laughter and its frequent flashes of violence.

Sharp words, blows, oaths, echoes of quarrels, floated through its passages at intervals. There was none to remark or to inquire. Its tenants were not too curious concerning either its periods of turmoil or of silence.

A woman awoke from sleep at some time approaching midnight in the middle of May, 1891, on the third floor of the Green street house, filled with a terror that caught her at her throat like poisonous fumes and left her trembling and choking where she lay. From below, on the second floor, came a subdued, sinister sound. She had slept through many an uproar, or waking, had given it never a thought. But there was something in the hammering and scuffling beneath that struck primitive, unreasoning fear into her.

How long she lay there listening she could not have known exactly, although she afterward was ready enough to cling to an estimate. But some time later the noise ceased, and when she had summoned the courage she tiptoed to her door and opened it.

The hall was lighted from a glaring gas jet. Her door commanded a view of the stairs to the floor below and part of the hall of that floor. She saw no one, heard nothing further for some time. In the dead and middle of the night, while her frightened breathing alone broke the quiet and the gas flame flickered, the minutes passed again unnoted.

Suddenly a door in the lower hall within her field of vision was flung wide and a man stepped out. She recognized him instantly. It was George Painter, a shiftless worker at odd jobs, who lived with a woman known as his wife in three rooms to which this door gave access. His face showed drawn and yellow in the gas light as he glanced along the hall and up the stairs. She could see his shoulders rise and fall like one who strives for breath. He was without hat or coat. She drew back into her room as he came to the foot of the stairs and called—
"Is any one up?"

She made no answer. After a short pause the man strode quickly back into his home, closing the door after him. The woman returned to her post of observation. Once more the door below was flung open and the figure of the man appeared. She did not retreat this time and he caught sight of her.

"Has any one been to my rooms to-night?" he asked, with a break in his voice and an agitated manner. She replied that she thought not.

"Somebody Has Killed Alice."
"God!" he shrieked, throwing his arms above his head, "somebody has killed my Alice!" He turned and ran down the stairs to the street, while the woman, her fear once more strong upon her, locked her door and crept to her bed.

Half an hour later Painter returned with Policemen Donovan and O'Day. He led them to his flat, where a hasty preliminary examination showed that foul murder had been done within two hours. The door on the hall opened into the kitchen. To the front of this was the bedroom of Alice Martin, the common law wife of Painter. To the rear of it was Painter's bedroom, which gave in turn upon a rear entrance. The kitchen and the rear bedroom were in usual condition. In the front room was evidence of a fearful struggle.

The body of Alice Martin, partly clothed, lay upon the floor. The bed coverings and the wall were spotted and stained. Chairs had been broken and a table overturned. No weapon, so far as could be discovered, had been used; only the bare, muscular hands of the assailant. The victim had been choked and beaten to death, beaten against the floor, the furniture, the wall. There were no finger prints, no tracks leading from the room, none of the more common clues in such cases. Such was the essential outline of the murder.

These were the happenings of Sunday night, May 25. On Monday morning the Coroner held his inquest. Mrs. Laura Overlander and others testified that Alice

Martin had lived as Painter's wife. Mrs. L. Norse the woman who had been awakened and had seen Painter come from his kitchen, told her story in full, indicating immediately that she would be the most important witness for the prosecution. She described the series of events in detail. The significance of her statements lay in the fact that she placed only a few minutes between her awakening, her going to the door, Painter's appearance and his reappearance. The man was charged with the murder and committed to stand trial.

The investigator who was assigned to the collection of the case against Painter was Lieutenant Larson, an efficient, ambitious member of the police force. It was his first big case, his opportunity to make a record where all might take note of him, for the public was interested and columns were devoted to the matter. He applied to his work all his power of observation and his faculty of finding and developing valuable points through the aid of obscure persons. He spent weeks about the Green street house, making friends, gaining the confidence of this man and that



the house. It was stated that he had been in Schiller's saloon, in West Madison street, playing cards and drinking. The prisoner's explanation was as follows—

He had come home and had entered the Green street house by the rear stairway, in accordance with his habit. He had stayed in his own room, which opened on this stairway, had taken off his hat and coat and had thrown himself upon the bed to read. Hearing no sounds from the woman's room, he had grown uneasy, had passed through the kitchen and had found Alice Martin dead. Yielding to sudden panic he had rushed into the hall and had asked if any one was up. The thought occurring to him that the woman might still retain some life, he had returned to find her almost cold and had again rushed into the hall, this time seeing and speaking to Mrs. Norse on the upper landing.

The case for Painter, apart from the attempt to establish an alibi, hung chiefly upon the fact that when he came up to the two policemen in the street and hurried with them to the house they did not notice stains upon his clothing or hands. When he was arrested the following day no stains were discovered on his person. The only directly incriminating piece of evidence in this connection was the overcoat, which had not been produced by Larson until some months after the murder. Professor Ewell testified that it was impossible to determine whether the spots on the overcoat were six weeks or two years old.

The significance of this part of the defensive story was well brought out and strongly emphasized. It was shown by expert testimony that it would have been impossible for the murderer to leave the murder scene without bearing marks of his commission unless he had carefully removed them immediately. There were no indications that cleansing had been resorted to. Indeed the very strength of the prosecution rested upon the point that Painter had been seen to come from his flat just after the sounds of violence had ceased, a position which did not admit any delay on his part.

Painter took the stand in his own defence. He told his version of the affair in a straightforward manner, explaining all his actions on the night of the murder, and proving a strong witness for himself. But the preponderance of the testimony, if not of evidence, was against him in the minds of the jury. After retreating they took a number of ballots, finally bringing in a verdict of guilty and fixing the penalty as death, in the solemn moment when Judge Clifford, about to pass sentence upon the prisoner, asked him the prescribed question, Painter, pale but firm, arose and said in a calm voice—
"Judge, I did not kill that woman."

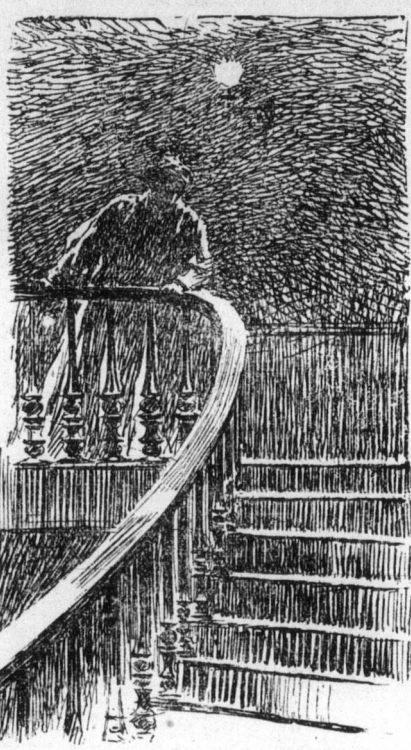
At this point there began one of the most remarkable fights for the life of a convicted man in the history of criminal jurisprudence. Thrice Painter was snatched from the gallows, twice by a scant few hours, and in the last few moments of his life came a final agonizing respite, the result of a palatial accident.

Motion for a new trial was denied and Judge Clifford set the hanging for June 24, 1892. The attorneys for the defence appealed to Governor Pifer for pardon or clemency, but he refused to interfere. They then applied to the State Supreme Court for a writ of supersedeas. The matter went over until the last day, and on the night of June 23 Judge Bailey granted the writ. The case was not argued before the Supreme Court, but the attorneys filed a brief, which was considered in due course. In the decision the sentence was affirmed and Judge Clifford named the date of the hanging, for the second time, as December 15, 1893.

Friends to the Rescue.

Painter had been active in local politics and had some friends who came to his aid in his dire need. Other lawyers were retained, among them Major Blackburn. Luther Lavin Mills became independently interested in the case and lent his services. Governor Altgeld granted a hearing, and a respite was asked that another application for a new trial might be made. The Governor refused at first, but later, when it was insistently represented that important new evidence had been discovered, he consented.

His decision was made on December 14, the day before that set for the hanging. A heavy snow had swept the Springfield and Chicago. It seemed for a time that the man must perish with hope at hand, but late at night a message to the Sheriff was forced through by a roundabout route and again Painter was saved. The third date for the execution was set at January 12, 1894. Desperate efforts were made to obtain a new trial, but before the pleas were



passed upon it again was necessary to obtain a respite from Governor Altgeld. He granted it, and a fourth date, January 26, was named.

One of the last attempts of Painter to clear himself of the crime in the eyes of men was made while he was confronted with inevitable death. It was a statement of his view of the case, written in his cell and given to Clerk Rice for publication after his execution. In this he called "Almighty God to witness that he spoke the truth," and began with the words, "I am innocent." This declaration, composed in admirable style and alive with poignant feeling, contained his story of his life. Summarized, it ran after this fashion—

George H. Painter was born in Brooklyn in 1855, his father being a Methodist minister. He learned the trade of machinist in South Norwalk, Conn., and later he conducted a drug store in Brooklyn, which he sold. He moved to Chicago and for a time owned a laundry in Halsted street. His wife came with him, and "after eleven years of happy married life," contracted consumption and died.

He met Alice Martin, who came to Chicago from Minneapolis, and she became his common law wife. They had lived together for a year and a half up to the time of the murder. He loved Alice Martin and their relation was of the pleasantest nature. He discovered that she was not faithful to him. Then he became despondent and took to drink. At times they patched their difficulties and then a breach would come again. He never threatened her with death, although he struck her once following the discovery of her infidelity. She continued to betray his trust and he continued to drink.

On the night of the murder he was in the West Madison street saloon. He came home and discovered the body of the woman, as related by the defence at the trial. The case against him was partly unfortunate circumstance and partly the product of clever manufacture. He accused the witnesses who had testified to having heard him threaten the woman with death and to having seen him throw her down stairs, of perjury.

He pointed to the fact that Lieutenant Larson had collected most of the evidence, and declared that the policeman's ambition had spurred him to a point where he was willing to help railroad an innocent man to the glory of a conviction. He was emphatic once again that his clothing had been free from blood, and cast suspicion upon the manner in which the stains had come to be on the overcoat. In conclusion he declared that a combination of perjured testimony and faulty circumstantial evidence had brought about his end.

To one who visited him in prison while he was awaiting the outcome of the hopeless struggle made on his behalf he elaborated his defence.

Painter's Defence.

"I have not been a good man, but I am not a murderer," he said. "They say I lived on Alice Martin, that I drove her to her shame and took the money away from her. It is a lie. It was the great sorrow of my life that she would not be true to me. When she was herself she was a good woman. When she drank she became a fiend, and then she betrayed me. And when she was unfaithful it bit into my heart and I tried to forget her in liquor. That was the root of my trouble. It was horrible, but remember that I still loved her, as I do this minute, I take God to be my judge."
"I accepted money from her on just one occasion. I needed it and she willingly lent it to me. Need I admit this if it were otherwise? The sum amounted to several dollars and I took it."
"They say I used to beat her. It is a lie, and those who swear to it are perjured in the sight of heaven. Again, there is this much truth in it. I struck her once. She had been false again; she was hatin' me, but I was in drink, and when she sneered at me, I struck her. I have never ceased to repent of it. This is the sum of my transgression. For this they will hang me."

Painter was a large man, of great strength and good appearance, and he put all the force of his mental and bodily vigor into his words. He was remarkably intelligent. He felt his position keenly, fought against it desperately. Life was sweet to him, the more in that he had a mind sensitive enough to suffer intensely. He knew people and things. He had culture. He rebelled in every fibre against the threat of death.

While loopholes after loopholes were being closed against him he made an extraordinary proposal to the Court. About this time a famous paralytic "fakir" was exposed by a physician. He was a criminal who simulated a helpless condition to escape punishment for his acts, and was so expert that for months it was impossible to prove that he was feigning. Finally he was carried to an operating table and placed under an anæsthetic. As he was returning to consciousness, while his brain was still dimmed by the drug but was struggling toward its awakening, the table was tipped. In falling the man, not yet able to discipline his faculties to the part he had imposed upon himself, instinctively spread out his contracted and supposed paralyzed limbs.

Painter seized upon this incident. He begged that physicians be allowed to experiment upon him; that he be placed in some degree of stupor and questioned as to the murder at a time when his inmost thoughts might be revealed. He also asked that hypnotists use him as a subject in the same way.

"May it not be that a mesmerist can induce a mental condition in me that will cause me to tell whatever secrets I possess?" was his query. "Let the State take note of this for the chance of saving an innocent life. I am ready and eager to submit to all tests."

But the Court would not take cognizance. Hypnotism and the psychological effects of drugs held no part in legal matters. His petition was refused.

After Governor Altgeld granted the respite in December that gave the defence its second opportunity to put in a plea of fresh evidence Painter's attorneys advanced a set of affidavits that gave a new turn to the case. It was suggested that "Dick" Edwards, at that time serving a life sentence in Texas for the murder of a woman, knew something of the matter. Edwards was credited with the killing of three other women, and was believed to have been in Chicago at the time Alice Martin was strangled. A remarkable fact was that Edwards murdered Mrs. Hattie Hynes, in Jenison, Texas, on May 17, 1892, exactly a year after the killing of Alice Martin.

The description of Edwards fitted that given by Mrs. Augustus Roth and May Slatery of a man they had seen about the Green street house. It was fairly well established that the Martin woman had entertained other men in the flat during Painter's absences. The two women went further. They swore that the man they had seen with Alice Martin was called "Dick" and that they had seen him in the house just prior to the time the murder must have been committed.

Goes to the Governor.

Mrs. Roth, the housekeeper, stated that Painter and the woman were her tenants for two months and that "Dick" was a frequent visitor, always when Painter was away. She said that she saw "Dick" and Alice Martin in Green street on the evening in question and that she heard "Dick" say, "Get me that money, or I'll fix you so that you'll never be able

to give Painter any more money." Another witness Buckley, swore that "Dick" entered the Green street house that night.

With a mass of affidavits of this tenor Painter's attorneys carried the fight before the Governor. After a long conference the Executive announced that he believed no wrong had been done in the conviction. He pointed out that Edwards, so far as was known, had shot his victims and had never strangled them. But he granted the final reprieve to January 26 for the presentation of further evidence.

The defence fired its last shot. Richard Koch, still well known throughout the country in sporting circles, was brought forward. He swore to an affidavit stating that on the night of the murder he was in a certain notorious resort in Chicago when Edwards, whom he knew, came in with his hands and clothing covered with blood. He asked the man where he had been and Edwards replied, the statement read, that he "had given a woman a trimming in Green street."

Governor Altgeld brushed this affidavit aside as unworthy of consideration. He declared that it was worthless on its face, since no guilty man would come fresh from a murder to a public place and exhibit the stains he bore. He said the evidence showed that Painter had beaten the woman often as five times a week. It was usually so, he remarked, with a man who lived on money he compelled a woman to earn. From that moment it was apparent that Painter must hang, but the prisoner did not cease to protest his innocence to any one who would listen, finally drawing up his posthumous statement.

The execution of George Painter was attended by one of the most terrible incidents that ever took place in that grim home of horrors, the Cook County Jail. Many there were who throughout had believed the man wronged, but the hardest of those most firmly convinced of his guilt were not proof against the shock of superstitious doubt that swept upon the community when the facts of the case were fully made known. The weaker saw a judgment therein.

It was in the north corridor of the jail, from which the prisoners had been removed, following custom, and placed three and four in a cell through the other parts of the building. About a hundred persons filled the seats facing the gallows. An hour before the time set for his hanging Painter was led upon the scaffold, his arms manacled behind his back.

He began to talk, and as he talked he wrought himself into a whirlwind of prayer, appeal, passion, regret and impotent revolt against his fate. With nods of his head he indicated individuals in the crowd. He addressed men by name—politicians, persons he had known intimately, to whom he had loaned money and who had loaned money to him, with whom he had walked arm in arm. He demanded to know why they had come to look upon his degradation, his death. At times his voice, the voice of a powerful man, rose to a wailing scream.

"I don't want to die. I won't die! I am innocent!" Again he spoke calmly, recalling some personal incident to the mind of an acquaintance who was seated beside him. He was one of the few men who had suffered capital punishment in the jail who stood in no need of stimulants to support them at the end. He was in possession of all his faculties. He argued, discussed, feverishly but bravely, he was talking for life, talking against death, his mind still alert for one more chance of escape, sharply bent upon sensing its consciousness, its vitality, to the last second.

Then the Rope Broke.

"Gentlemen," he began, "I see some friends here to-day—some good friends. O God, forgive them! A friend of mine who would come here to see me die—it hurts me. The brotherhood of humanity has taught better things. Men have sought death because they thought there was an advancement in the future life. To-day I hate death. I don't want to die. If I killed Alice Martin, the woman I do love, if I committed a crime for her, I pray this minute—my last on earth—that the eternal God will put me in eternal hell."

"If there is one man among you who is an American I say to him on his soul and his honor, I say—see that the murderer of Alice Martin is found."

Toward the last of that hour the little group of men who, brought to the place by duty or by curiosity, had listened to the torrent of words that quivered at every one of them, were suddenly, as if a jagged blade had hacked upon his nerves. Each was keyed to the snapping pitch by one of the most trying experiences of his life. No one moved a muscle there was scarce a breath in the corridor.

The hour struck. The execution officials came forward. Painter declared his innocence for the last time and was silent. The attendants quickly adjusted the white shroud that covered him from neck to heels, the rope under his left ear and the long, white cap that draped upon his shoulders. The pause of a second and the trap was sprung.

At the instant that the slamming report of the swinging door against the under side of the scaffold rang out the white figure bounded into the air, there was the twanging crack of yielding hemp and Painter fell to the concrete floor of the corridor, almost on the knees of the newspaper men in the front row. The rope had snapped.

A gasp came from the hundred watchers. If one of them had started from his seat or had voiced the cry that rose to his throat there must have been a disastrous panic at the cost of lives in the narrow winding, iron lined corridors of the jail. In the condition bordering on frenzy to which every one of them had been worked the matter stands for wonder but all sat fast.

The sheeted figure on the floor partly raised, once twice. A red stain showed and slowly grew about the edges of the draped cap. Deputy sheriffs, running from behind, threw themselves upon the condemned man, forced him to a prostrate position and half dragged, half carried him back of the scaffold up the stairs to the trap again.

This time the emergency rope was used, almost as thick as a hawser. The officials adjusted it while Painter, once more and most terribly resplend, knelt limply, his head on one side, the stain on his shroud widening, while the tortured group, with pinched faces and shattered nerves, still watched. It took sixteen minutes for Painter to strangle to death where the trap was sprung again. On the first occasion every prisoner in the jail had rattled his cell bars and cried out in the awe inspiring protest and demonstration that no number of guards can ever prevent. Instinctively they knew that something had gone wrong.

When the report of the swinging door rang out again there was complete silence.

Luther Lavin Mills, who successfully prosecuted the Cronin case and was one of the best lawyers in the country, had been intensely interested in the trial and conviction of George Painter. To his trained legal mind here was an instance in which the machinery erected for the protection of society had operated to bring about the execution of an innocent man. He believed much of the evidence was false, either willfully perjured or the outcome of misapprehension.

He repeatedly pointed out the fact that the circumstances were capable of the defence's construction, consistent either with guilt or with innocence, and that the rule of law declares in such instances for acquittal. After the hanging he announced that he would devote a year in an attempt to establish Painter's innocence.

During that period he made an exhaustive study of the case and the matter was never far from his mind. He conducted an investigation of his own, quietly examining the men and women who had appeared as witnesses and going over the ground carefully. At the expiration of the year he stated that the question loomed as large as it did the day of Painter's sentence and that he had been able to make no progress. Shortly before the death of Mr. Mills in January, he told an intimate friend that he was still convinced that Painter had no share in the murder of Alice Martin, and that he had fallen as one more victim to the misuse of circumstantial evidence. Officially and so far as ascertainable that George Painter stands among the guilty. Yet many who knew the man, and notably the able, level minded lawyer who undertook the post mortem defence, have clung to the belief that he was innocent.

