



# WOULD YOU CONVICT ON CIRCUMSTANTIAL EVIDENCE?

THE SILENT SACRIFICE  
A TRUE STORY

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M. R. W. J. O'SULLIVAN, an eminent medico-legal expert, says:—"The distinction between direct and circumstantial (or indirect) evidence is more apparent than real. Direct evidence is defined as the testimony of a person relative to matters of his personal knowledge gleaned from sensory impressions, chiefly through the eye and ear. Circumstantial evidence is in general defined as the testimony of persons to facts other than the fact in issue and from which the main fact or the fact in issue is inferred."

"The conclusion reached by this 'inference' is in general not as convincing as the direct evidence of facts by one whose sanity and honesty are not open to reasonable doubt. A disadvantage to this 'inference' is that the logical process of the reasoner who draws the 'inference' is in itself an issue. From this it will be seen that both direct and circumstantial (or indirect) evidence necessitate 'inference' and that both are equally open to the same errors. The testimony that sets forth direct facts from which an 'inferred' fact in issue is deduced is open to all the errors and falsehoods of direct testimony, with the added errors of faulty or biased logic."

"It was Paley who laid down as a cardinal proposition or the rule of evidence that 'circumstances cannot lie.' The whole series of stories by Gaboriau, Du Boisgobey and others gathered from cases before French tribunals of criminal jurisprudence proves how fallacious this dogmatic utterance of Paley's is."

It was a courageous man that passed the abandoned coal mine twelve miles east of Rock Island, Ill., when the sun had thrown the last orange rays athwart the broken ground and the shadows stole up out of the purple mouths of the pits to spread upon the land. The place was shunned by the country folk, as is likely to be the case with the spots where man has striven and departed and the sounds of pulsing activity have hushed to the deadening advance of vegetation and decay.

The mouldering huts of the vanished workmen stood with gaping doorways, adding the vivid touch of desolation to the sweep of rolling prairie. The wind played creak and clatter there and there with a rusted shutter or a loosened shingle. A file of wrecked, upended hand cars stood along the streak of sunken track. The highway that wound past the deserted settlement showed clear between the tangled stretches of hedging green, with no diverging bypath or trampled margin to show where part of the passing traffic was wont to leave the common road.

To any who came that way after twilight on clear evenings two points of light sparkling from a distant section of the group of huts stood sharply out against the darkness. For in one corner the hand of man still clung—let him who rode past take comfort in the fact if he might. Those who knew the region found small relief in the proof of habitation and hurried onward. It was an ill place and bore an ill name.

On the night of September 2, 1881, an itinerant tinsmith, whose home and conveyance were the little one horse cart he owned, jogged through the deserted village of the coal mine on his travels down the eastern side of the Mississippi. It was overcast, threatening rain, and he hurried forward, intending to camp when the storm should break. As he swept down a slight decline into the hollow where the huts stood and started up the next gradual rise there came a strange, muffled cry along the wind. The tinsmith glanced fearfully to right and left from under the cart's hood, leaning from his seat. The black curtain was unbroken. Struck with fear he lashed his horse and drove on forward. At the top of the ascent he drew in a moment and listened. At that moment the first patter of drops tapped upon the roof of his vehicle and in a breath the storm burst upon him. But as he gathered up his reins he seemed to hear behind him, lessening into the distance, the hammering hoofs of a galloping horse.

The two families that lived by the abandoned coal mine were market gardeners who cultivated some portion of the rich land earlier overlooked in the search for deeper and less certain treasure. They were German immigrants who had come to Rock Island and drifted beyond the outskirts some years before. William Hellwag, a man beyond middle age, dwelt with his wife and two grown daughters in one of the yet habitable huts. Some two hundred yards away was the home of J. Otto Hellwag, a son, who had married a young woman of the local German farming colony.

They were silent, secretive people, congenial by nature to the wild, untended refuge they had sought. They courted few visits, and received fewer. Their nearest neighbors, a mile away, regarded them with dislike and suspicion that was not wholly born of the place in which they lived. For the rest, they visited the town with produce each week or so, and the appearance of each was familiar.

## Their Quarrels Their Own.

They indulged in frequent and violent quarrels among themselves, though seldom with others. Their strife, it was rumored, not only proceeded between the separate households but rent each internally. Some months before J. Otto Hellwag had had a particularly bitter disagreement with his wife, it was understood, that had ended in his abrupt departure. Since then he had not been seen in the vicinity of the coal mine. It was well known that he had gone across the river to Davenport, where he had obtained quarters in a poor lodging house and was reported to be working steadily as a section hand.



STRATTEN SET HIS MEN AT WORK REMOVING THE LUMBER.

On the morning of September 5, 1881, William Freis, a farmer, while driving a team along the road through the abandoned settlement, was minded to stop and ask the wife of the younger Hellwag, who now lived alone, a question concerning the disposition of her potato crop. He disliked to wait at such a place, but there was a matter of business involved that might accrue to his advantage, and it was then broad daylight.

He made his way among the scattered, crumbling dwellings toward the house which the woman occupied. She was not in sight. On drawing near he found that the door stood open. He called but there was no answer. He entered the front room of the hut to find it empty. Thinking that she might be upon the nearby rise, he climbed the gentle ascent in the direction of the home of the elder Hellwag.

A field of corn, ripe for the scythe, spread between this rise and the next. He started through it and came to a small clearing, where three or four shocks had been cut and bound. He was passing one of these when he noticed the trailing rag of a garment from under the end of the stalks. He stooped and pulled at it. It resisted, and he pushed the gathered corn aside.

On the ground lay the body of the younger Mrs. Hellwag. Her head had been beaten with some heavy instrument and her clothing was torn and stained. Apparently she had been dead for several days.

It was a frightened and breathless man that, standing upon his dashboard and driving his tired team with falling whip, came pounding into Rock Island two hours later. He tumbled from his wagon and hurried to the Sheriff's office, where he told of his terrible discovery. The Sheriff and various deputies returned with him to the coal mine and the first bare outlines of the matter were made ready for the further development of the case.

The victim had been murdered in the bedroom of her home, which took up the rear half of the hut. Traces of a terrific struggle were clear about the place. Mrs. Hellwag had been a vigorous, powerful woman, with heavy frame and limbs hardened by the active life she had ever led on farm and garden. The flimsy table and two chairs had been smashed to bits. The bedstead, home made, of stout timbers, had crashed to the floor, the two or more persons who had fought the death fight here apparently having fallen across the sideboard in their desperate encounter.

Marks showed plainly where the body had finally lain upon the floor. It was significant that when the murderer or murderers had removed the body it had been dragged, evidently with some difficulty and at the expense of considerable labor. To those who had the immediate investigation in charge, as well as to the man who later constructed the State's hypothesis, this seemed to argue that but one person had been concerned in the killing. The track made by the passage of the burden over the truck garden and prairie led straight to the corn shock under which it had been found by Freis. The attempt to cover the crime appeared unusually clumsy and bungling.

## Weapon Not Hidden.

The murderer had not taken away or tried to hide the weapon used when the woman had been overcome or exhausted in her struggle. It lay across the threshold of the back door—an ordinary household hammer, a cheap implement, but sufficiently deadly in a strong hand such as had wielded it. Six heavy

blows had been struck upon the victim's head.

There was nothing to indicate that robbery had been the motive of the assailant. Mrs. Hellwag's little savings, tied up in the corner of a woollen petticoat, were found in a drawer of the kitchen table. It seemed likely that the murderer had come upon her by surprise as she sat in the rear room and had departed without even entering the kitchen. It had not been disturbed and the floor bore no tracks.

The body was removed to Rock Island for an inquest and the prosecuting authorities placed the investigation in the hands of Stratten, a young detective, who had established an enviable reputation through several smaller cases in which he had displayed remarkable enthusiasm and the ability to track a way through a maze of blind clues. He was given full charge of the collection of evidence and began by assembling the few known facts concerning the Hellwag family, stock and branch.

He had taken but few steps into the matter when he found himself in a complication of petty feuds, jealousies and cross purposes among the dwellers by the abandoned coal mine. The tangle involved each member of both families, and the facts or statements to be elicited from one against the other and from neighbors against them all would have supplied motives for a list of crimes. If ill feeling toward the victim lent a support to suspicion of guilt, then all were equally involved. Few of the domestic virtues had found a welcome at the hearths of the Hellwags. Dark, heavily framed, shifty eyed men and women they were, physically magnificent, but sullen, quick tempered and vindictive.

Stratten considered first, as the most obvious suspect, the husband of the murdered woman. He instituted strict inquiry into the increasing domestic difficulties that finally had driven him from home. He could not learn that the man ever had indulged in threats or that any one had seen him strike his wife. Hellwag's removal to Davenport he found to be a fact. The young fellow was still working regularly and was satisfactory in his behavior. So far as Stratten could discover Hellwag had never returned to the coal mine since his departure. Several persons had seen him in and about Davenport late in the evening of September 2, the day on which the killing was supposed to have occurred. Tenants in the lodging house in which he lived had not missed him from the place, and the detective finally was forced to admit a complete alibi for him.

Having eliminated the most promising figure from his inquiry Stratten set himself to thresh down the mass of hints and suggestions concerning the other members of the family. The mother, he felt, could be removed from consideration. The two grown daughters, heavy handed, black browed girls, were well within the range of possibility. Even after her death they were outspoken in their hatred of their sister-in-law. The detective had worked for several days on the theory of their connection with the crime when his attention was sharply drawn upon William Hellwag, the father.

The significant discovery involving the head of the family was that he had most bitterly and insistently opposed the marriage of his son two years before. His antagonism after the ceremony had been performed in spite of him had settled into a smouldering resentment against the young woman, and she had been scarcely a week in the refitted coal miner's cabin across the rise when he had struck into a violent quarrel with her near the road over some trifle. Two men who had driven by at that moment described the scene they had witnessed, and, indeed, it had become a matter for common comment throughout the region. His daughter-in-law, for her part, was not inclined to the passive acceptance of abuse. The witnesses could declare that she gave as sharp a word as she got, and frequently on her trips to the town, when she saw an occasional former acquaintance, she had denounced the elder man savagely.

## The Hammer Clew.

This was all in the way of preliminary inquiry. Stratten's real chain of evidence began with the hammer used by the murderer. Promise of a clew through this implement was the better by reason of the fact that it was almost new and still bore the paper label of the maker upon the handle. The detective visited the stores in Rock Island at which the farmers of the section were used to purchase their

supplies. They could all identify the hammer as of familiar make, and each carried in stock dozens of the same pattern and shape. But none could recall that he had sold one to any of the Hellwags. A farmer who drove to town a little later, hearing of the quest along this line, cleared the matter. He said that in a small trade of live stock with William Hellwag he had thrown in such a hammer and various other articles.

Stratten made a careful examination of the scene of the crime, hopeful of finding some additional tangible glew of value in the case. The house of the younger Hellwag, the garden and the cornfield revealed nothing beyond that discovered on the first day of the investigation.

It now became necessary to search the house of the elder Hellwag, and Stratten obtained the services of several deputies to assist him. The place and the character of the family under inspection made him unwilling to undertake such a task alone. The party descended suddenly upon the coal mine hut and ordered the four persons of the household out into the garden, where one of the deputies remained to watch them while the others conducted a thorough ransacking within.

They had returned empty handed to the doorway when the deputy who had been left outside informed Stratten in a whisper that he had seen Hellwag walk to a pile of lumber and old planks saved from the decay of the shanties that had been tossed in one corner of the enclosure and idly kick a strip of board from its place to another side of the pile. Acting on the hint supplied by this alert watcher Stratten set his men at work removing the lumber. They had been engaged in this for several minutes, while the Hellwags looked stolidly on, when one of the deputies lifted something that had been stuffed between and under the planks. It was a man's shirt, the front and arms of which were stained with blood. Hellwag was unmoved by this discovery.

While the case was being presented before the Grand Jury the elder Hellwag was under constant surveillance, but was permitted to remain at large. At this stage, according to his later sworn statements, Stratten made an approach from a new angle after careful consideration, as he said, of the character of the suspect and the manner by which he could be reached.

His achievement was not made known until the trial, when he took the stand and testified to the circumstances. It stood upon his unsupported word, since no witnesses from whom corroboration could be obtained had been present when it occurred.

It appeared that he arranged to encounter the elder Hellwag at the ferry house of the Rock Island-Davenport ferry. He engaged the man in conversation, informed him that he was a detective and said that he was willing to work for any side of a case that would furnish him the best pay. He allowed the other to see that he was dissatisfied with his present employment, and by skillful flattery and denunciation of the officials brought the talk to a confidential key. After some talk, he swore, Hellwag disclosed that he had a matter in mind in which an expert detective would be of assistance, and finally proposed that Stratten should begin to shadow his son and to collect evidence against him for the murder of his wife. Terms were agreed to.

From this point, the detective afterward testified, he led the discussion around to the details of the murder, fomented Hellwag's resentment against the members of his family and finally intimated that the victim of the murder had received no more than her due. And then, Stratten swore, Hellwag came out suddenly with the admission that he had killed his daughter-in-law and was glad of it.

## Story Is Unshaken.

It should be stated that this important allegation of a confession fell within the scepticism of the rule of law which tempers the value of each separate bit of testimony to the number and character of the witnesses who affirm it. While it weighed heavily in the case, it was bitterly attacked by the defence and operated, in fact, for a revulsion in Hellwag's favor among some who previously had regarded his guilt as certain. Its effect on the jury, however, made for conviction. No amount of cross-examination could shake Stratten's story, and his evidence was able to pass practically intact.

The trial of William Hellwag for the murder of his daughter-in-law, Dorothea Hellwag, took place during the January term of the Circuit Court in 1882. The testimony of the wife was excluded on account of the marital relation. The daughters, and more particularly the son, were important witnesses for the State. They related a series of incidents tending to show that the accused had threatened the victim with death, had frequently expressed his hatred of her and on several occasions had attempted to strike her. Their testimony tended to show that the elder man had finally nursed his ill feeling to a degree where he was willing to rid his son and himself of one whom he regarded as an intruder and a trouble maker.

The prisoner remained unmoved throughout. His attorneys received little if any assistance from him in preparing their defence against the formidable attack. He was induced to volunteer the statement that he had worn the stained shirt while butchering a pig and had hidden it after the murder through some vague fear of possible suspicion. But beyond this he made absolutely no effort to escape from the net of circumstance that was woven about him.

The indifference of the man was most marked, because most extraordinary, when his daughters took the stand and swore, one after the other, that their father had been away from home on the night of the murder, that the hammer was his property and that he had threatened the victim. He sat with expressionless, sombre gaze fixed upon the face of his son while the young man outlined the motive of ill will and almost maniacal aversion that upheld the prose-

cution's view. At such times it was noticed that the witness did not look at his father, though there was no hint either of anger or of appeal upon that hard, lined, ill favored countenance.

The convicting elements in the mass of testimony offered were supplied almost entirely by the members of the prisoner's family and by Stratten. The case was ably presented and its strong points were properly emphasized. The defence, handicapped by the inexplicable silence of their client, fought hard. They attempted to break down the testimony of the prosecution's witnesses by showing the unfriendly relations between the father and his children and the alleged confession came in for a heavy fire at their hands. They brought forward the tinsmith who had heard the cry and the galloping of a retreating horse on the night of the murder. They contested every inch of ground, resisting the picture drawn by the prosecution of William Hellwag's character as untrue and without just bearing upon the question of guilt.

The accused heard the eloquent pleadings of his attorneys as calmly as he had listened to the denunciations of the prosecutor. Observers could make nothing of him. His was not the silence of despair, they agreed, nor of insanity. He saw and noted everything that passed with his furtive, restless eyes. But he made no sign. He was, and he remained, a complete enigma.

The trial lasted about three weeks. The jury was out only a short time and returned with a verdict of guilty. Judge Arthur A. Smith was presiding. Judge Smith was known throughout the State as one of the kindest and most tender hearted of men, one whose nature shrank from the infliction of severe penalties. Many stories were told of him bearing upon his remarkably sympathetic personality and the painful emotions he sometimes experienced in passing the judgments which fell within his duty. When arguments for a new trial were concluded he spoke calmly, in an even, quiet voice.

"I overrule the motion for a new trial. I am not inclined to interfere with the verdict of the jury in this case. Mr. Sheriff, you will remove the prisoner from this court room to the county jail and there hold him in custody until Friday, March 24, when, between the hours of one and five o'clock in the afternoon, you will remove him to the enclosure known as the jail yard and there hang him by the neck until he is dead. May God have mercy on his soul. Mr. Clerk, call the next case."

## Sent to His Death.

Throughout his confinement in the death cell the convicted man was under constant pressure to confess. In spite of his violent nature he had been faithful to his religious observances throughout his life and as the last days drew near he was ever in close converse with his spiritual adviser, a Lutheran clergyman. The divine, the man's attorneys and such few friends as he possessed pleaded continually with him to make some definite statement, either to deny positively that he was guilty, with some explanation of the fatal evidence, or to admit once for all that the law had made no mistake in its working. He remained deaf to all such pleas. He was silent, save when religious topics proper to one in his position were under discussion with the clergyman. He was not visited by any member of his family, nor did he express a wish that any of them should see him.

He made no outcry against death. Nor was it merely the case of a strong man in control of his emotions. The indifference of his trial days became accentuated. He did not weep, or smile, or blaspheme, or protest. He simply waited.

The community was fully convinced of Hellwag's guilt, with the exception of a very few individuals. Among these there was none to assert his innocence. Their belief was that he had not been proved guilty, though in all likelihood he was. Such persons held knowingly or instinctively to the legal rules which govern, or should govern, all cases of circumstantial evidence. In their view there was an innocent interpretation to be placed upon each separate circumstance adduced, with the exception of the confession. The confession they refused to accept. The hardest matter in connection with the affair for them to explain to their own satisfaction was the lethargy of the accused.

William Hellwag walked unsupported into the jail yard when the time came for his execution. Beside him was the Lutheran clergyman, who read from a book of prayers. The convicted man gave ear as the little procession moved on up the stairs to the scaffold. He had needed no stimulants for the ordeal. Even at the supreme moment he exhibited not a trace of agitation or excitement. He stood solidly on his feet.

Just before the officials stepped forward with the black shroud and cap Hellwag looked down at the group of newspaper men and others who had obtained entrance to the jail. In a voice so quiet and forceful that the judge at the trial might himself have been speaking he uttered one phrase:—

"Gentlemen, I am innocent of this crime."

Those who know declare that ninety-nine out of every hundred persons who suffer execution for crimes and are able to talk at the last moment assert their innocence. The group about the scaffold accepted the declaration as the usual thing, the right of the man who is about to step into eternity. It meant no more than that to any then present. It changed no opinion, left no impression, served only as subject for an additional paragraph in contemporaneous stories of the hanging. Five minutes after the words were uttered Hellwag was dead.

Eight years later J. Otto Hellwag, the son, committed suicide by jumping from the bridge at Quincy, Ill., into the Mississippi. Before going to his death he called several acquaintances around him and confessed that, on the night of September 2, 1881, he left his lodging house in Davenport, that he crossed the river, that he took a horse secretly from a stable in Rock Island and that he rode to the abandoned coal mine. There, he said, he stole into his wife's house, surprised her, overpowered her and killed her with a hammer. Returning, he left the horse where he had found it and reached his lodging house in Davenport before daybreak. The hammer had been his father's property, but had been borrowed by the young woman a few days before. The aged man's explanation of the stained shirt was correct. He could not explain the alleged confession.

But he could explain his father's silence. It was the memory of that sacrifice that finally drove him to take his own life. He was sure his father had known of his guilt.