

THE CROSS-EXAMINATION OF DR. ---- IN THE CARLYLE W. HARRIS CASE – Extract from Frances Wellman's "The Art of Cross Examination"

The records of the criminal courts in this country contain few cases that have excited so much human interest among all classes of the community as the prosecution and conviction of Carlyle W. Harris.

Even to this day--ten years after the trial--there is a widespread belief among men, perhaps more especially among women, who did not attend the trial, but simply listened to the current gossip of the day and followed the newspaper accounts of the court proceedings, that Harris was innocent of the crime for the commission of which his life was forfeited to the state.

It is proposed in this chapter to discuss some of the facts that led up to the testimony of one of the most distinguished toxicologists in the country, who was called for the defence on the crucial point in the case; and to give extracts from his cross-examination, his failure to withstand which was the turning-point in the entire trial. He returned to his home in Philadelphia after he left the witness-stand, and openly declared in public, when asked to describe his experiences in New York, that he had "gone to New York only to make a fool of himself and return home again."

It is also proposed to give some of the inside history of the case--facts that never came out at the trial, not because they were unknown at the time to the district attorney, nor unsusceptible of proof, but because the strict rules of evidence in such cases often, as it seems to the writer, withhold from the ears of the jury certain facts, the mere recital of which seems to conclude the question of guilt. For example, the rule forbidding the presentation to the jury of anything that was said by the victim of a homicide, even to witnesses surrounding the death-bed, unless the victim in express terms makes known his own belief that he cannot live, and that he has abandoned all hope or expectation of recovery before he tells the tale of the manner in which he was slain, or the causes that led up to it, has allowed many a guilty prisoner, if not to escape entirely, at least to avoid the full penalty for the crime he had undoubtedly committed.

Carlyle Harris was a gentleman's son, with all the advantages of education and breeding. In his twenty-second year, and just after graduating with honours from the College of Physicians and Surgeons in New York City, he was indicted and tried for the murder of Miss Helen Potts, a young, pretty, intelligent, and talented school girl in attendance at Miss Day's Ladies' Boarding School, on 40th Street, New York City.

Harris had made the acquaintance of Miss Potts in the summer of 1889, and all during the winter paid marked attention to her. The following spring, while visiting her uncle, who was a doctor, she was delivered of a four months' child, and was obliged to confess to her mother that she was secretly married to Harris under assumed names, and that her student husband had himself performed an abortion upon her.

Harris was sent for. He acknowledged the truth of his wife's statements, but refused to make the marriage public. From this time on, till the day of her daughter's death, the wretched mother made every effort to induce Harris to acknowledge his wife publicly. She finally wrote

him on the 20th of January, 1891, "You must go on the 8th of February, the anniversary of your secret marriage, before a minister of the gospel, and there have a Christian marriage performed--no other course than this will any longer be satisfactory to me or keep me quiet."

That very day Harris ordered at an apothecary store six capsules, each containing 4-1/2 grains of quinine and 1/6 of a grain of morphine, and had the box marked: "C. W. H. Student. One before retiring." Miss Potts had been complaining of sick headaches, and Harris gave her four of these capsules as an ostensible remedy. He then wrote to Mrs. Potts that he would agree to her terms "unless some other way could be found of satisfying her scruples," and went hurriedly to Old Point Comfort. Upon hearing from his wife that the capsules made her worse instead of better, he still persuaded her to continue taking them. On the day of her death she complained to her mother about the medicine Carlyle had given her, and threatened to throw the box with the remaining capsule out of the window. Her mother persuaded her to try this last one, which she promised to do. Miss Potts slept in a room with three classmates who, on this particular night, had gone to a symphony concert. Upon their return they found Helen asleep, but woke her up and learned from her that she had been having "such beautiful dreams," she "had been dreaming of Carl." Then she complained of feeling numb, and becoming frightened, begged the girls not to let her go to sleep. She repeated that she had taken the medicine Harris had given her, and asked them if they thought it possible that he would give her anything to harm her. She soon fell into a profound coma, breathing only twice to the minute. The doctors worked over her for eleven hours without restoring her to consciousness, when she stopped breathing entirely.

The autopsy, fifty-six days afterward, disclosed an apparently healthy body, and the chemical analysis of the contents of the stomach disclosed the presence of morphine but not of quinine, though the capsules as originally compounded by the druggist contained twenty-seven times as much quinine as morphine.

This astounding discovery led to the theory of the prosecution: that Harris had emptied the contents of one of the capsules, had substituted morphine in sufficient quantities to kill, in place of the 4-1/2 grains of quinine (to the eye, powdered quinine and morphine are identical), and had placed this fatal capsule in the box with the other three harmless ones, one to be taken each night. He had then fled from the city, not knowing which day would brand him a murderer.

Immediately after his wife's death Harris went to one of his medical friends and said: "I only gave her four capsules of the six I had made up; the two I kept out will show that they are perfectly harmless. No jury can convict me with those in my possession; they can be analyzed and proved to be harmless."

They were analyzed and it was proved that the prescription had been correctly compounded. But often times the means a criminal uses in order to conceal his deed are the very means that Providence employs to reveal the sin that lies hidden in his soul. Harris failed to foresee that it was the preservation of these capsules that would really convict him. Miss Potts had taken all that he had given her, and no one could ever have been certain that it was not the druggist's awful mistake, had not these retained capsules been analyzed. When Harris emptied one capsule and reloaded it with morphine, he had himself become the druggist.

It was contended that Harris never intended to recognize Helen Potts as his wife. He married her in secret, it appeared at the trial,--as it were from his own lips through the medium of conversation with a friend,--"because he could not accomplish her ruin in any other way." He brought her to New York, was married to her before an alderman under assumed names, and then having accomplished his purpose, burned the evidence of their marriage, the false certificate. Finally, when the day was set upon which he must acknowledge her as his wife, he planned her death.

The late recorder, Frederick Smyth, presided at the trial with great dignity and fairness. The prisoner was ably represented by John A. Taylor, Esq., and William Travers Jerome, Esq., the present district attorney of New York.

Mr. Jerome's cross-examination of Professor Witthaus, the leading chemist for the prosecution, was an extremely able piece of work, and during its eight hours disclosed an amount of technical information and research such as is seldom seen in our courts. Had it not been for the witness's impregnable position, he certainly would have succumbed before the attack. The length and technicality of the examination render its use impracticable in this connection; but it is recommended to all students of cross-examination who find themselves confronted with the task of examination in so remote a branch of the advocate's equipment as a knowledge of chemistry.

The defence consisted entirely of medical testimony, directed toward creating a doubt as to our theory that morphine was the cause of death.

Their cross-examination of our witnesses was suggestive of death from natural causes: from heart disease, a brain tumor, apoplexy, epilepsy, uremia. In fact, the multiplicity of their defences was a great weakness. Gradually they were forced to abandon all but two possible causes of death,--that by morphine poisoning and that by uremic poisoning. This narrowed the issue down to the question, Was it a large dose of morphine that caused death, or was it a latent kidney disease that was superinduced and brought to light in the form of uremic coma by small doses of morphine, such as the one-sixth of a grain admittedly contained in the capsules Harris administered? In one case Harris was guilty; in the other he was innocent.

Helen Potts died in a profound coma. Was it the coma of morphine, or that of kidney disease? Many of the leading authorities in this city had given their convictions in favour of the morphine theory. In reply to those, the defence was able to call a number of young doctors, who have since made famous names for themselves, but who at the time were almost useless as witnesses with the jury because of their comparative inexperience. Mr. Jerome had, however, secured the services of one physician who, of all the others in the country, had perhaps apparently best qualified himself by his writings and thirty years of hospital experience to speak authoritatively upon the subject.

His direct testimony was to the effect that--basing his opinion partly upon wide reading of the literature of the subject, and what seemed to him to be the general consensus of professional opinion about it, and "very largely on his own experience"--no living doctor can distinguish the coma of morphine from that of kidney disease; and as the theory of the criminal law is that, if the death can be equally as well attributed to natural causes as to the use of poison, the jury would be bound to give the prisoner the benefit of the doubt and acquit him.

It was the turning-point in the trial. If any of the jurors credited this testimony,--the witness gave the reasons for his opinion in a very quiet, conscientious, and impressive manner,--there certainly could be no conviction in the case, nothing better than a disagreement of the jury. It was certain Harris had given the capsules, but unless his wife had died of morphine poisoning, he was innocent of her death.

The cross-examination that follows is much abbreviated and given partly from memory. It was apparent that the witness would withstand any amount of technical examination and easily get the better of the cross-examiner if such matters were gone into. He had made a profound impression. The court had listened to him with breathless interest. He must be dealt with gently and, if possible, led into self-contradictions where he was least prepared for them.

The cross-examiner sparred for an opening with the determination to strike quickly and to sit down if he got in one telling blow. The first one missed aim a little, but the second brought a peal of laughter from the jury and the audience, and the witness retired in great confusion. Even the lawyers for the defence seemed to lose heart, and although two hours before time of adjournment, begged the court for a recess till the following day.

Counsel (quietly). "Do you wish the jury to understand, doctor, that Miss Helen Potts did not die of morphine poisoning?"

Witness. "I do not swear to that."

Counsel. "What did she die of?"

Witness. "I don't swear what she died of."

Counsel. "I understood you to say that in your opinion the symptoms of morphine could not be sworn to with positiveness. Is that correct?"

Witness. "I don't think they can, with positiveness."

Counsel. "Do you wish to go out to the world as saying that you have never diagnosed a case of morphine poisoning excepting when you had an autopsy to exclude kidney disease?"

Witness. "I do not. I have not said so."

Counsel. "Then you have diagnosed a case on the symptoms alone, yes? or no? I want a categorical answer."

Witness (sparring). "I would refuse to answer that question categorically; the word 'diagnosed' is used with two different meanings. One has to make what is known as a 'working diagnosis' when he is called to a case, not a positive diagnosis."

Counsel. "When was your last case of opium or morphine poisoning?"

Witness. "I can't remember which was the last."

Counsel (seeing an opening). "I don't want the name of the patient. Give me the date approximately, that is, the year-but under oath."

Witness. "I think the last was some years ago."

Counsel. "How many years ago?"

Witness (hesitating). "It may be eight or ten years ago."

Counsel. "Was it a case of death from morphine poisoning?"

Witness. "Yes, sir."

Counsel. "Was there an autopsy?"

Witness. "No, sir."

Counsel. "How did you know it was a death from morphine, if, as you said before, such symptoms cannot be distinguished?"

Witness. "I found out from a druggist that the woman had taken seven grains of morphine."

Counsel. "You made no diagnosis at all until you heard from the druggist?"

Witness. "I began to give artificial respiration."

Counsel. "But that is just what you would do in a case of morphine poisoning?"

Witness (hesitating). "Yes, sir. I made, of course, a working diagnosis."

Counsel. "Do you remember the case you had before that?"

Witness. "I remember another case."

Counsel. "When was that?"

Witness. "It was a still longer time ago. I don't know the date."

Counsel. "How many years ago, on your oath?"

Witness. "Fifteen, probably."

Counsel. "Any others?"

Witness. "Yes, one other."

Counsel. "When?"

Witness. "Twenty years ago."

Counsel. "Are these three cases all you can remember in your experience?"

Witness. "Yes, sir."

Counsel (chancing it). "Were more than one of them deaths from morphine?"

Witness. "No, sir, only one."

Counsel (looking at the jury somewhat triumphantly). "Then it all comes down to this: you have had the experience of one case of morphine poisoning in the last twenty years?"

Witness (in a low voice). "Yes, sir, one that I can remember."

Counsel (excitedly). "And are you willing to come here from Philadelphia, and state that the New York doctors who have already testified against you, and who swore they had had seventy-five similar cases in their own practice, are mistaken in their diagnoses and conclusions?"

Witness (embarrassed and in a low tone). "Yes, sir, I am."

Counsel. "You never heard of Helen Potts until a year after her death, did you?"

Witness. "No, sir."

Counsel. "You heard these New York physicians say that they attended her and observed her symptoms for eleven hours before death?"

Witness. "Yes, sir."

Counsel. "Are you willing to go on record, with your one experience in twenty years, as coming here and saying that you do not believe our doctors can tell morphine poisoning when they see it?"

Witness (sheepishly). "Yes, sir."

Counsel. "You have stated, have you not, that the symptoms of morphine poisoning cannot be told with positiveness?"

Witness. "Yes, sir."

Counsel. "You said you based that opinion upon your own experience, and it now turns out you have seen but one case in twenty years."

Witness. "I also base it upon my reading."

Counsel (becoming almost contemptuous in manner). "Is your reading confined to your own book?"

Witness (excitedly). "No, sir; I say no."

Counsel (calmly). "But I presume you embodied in your own book the results of your reading, did you not?"

Witness (a little apprehensively). "I tried to, sir."

It must be explained here that the attending physicians had said that the pupils of the eyes of Helen Potts were contracted to a pin-point, so much so as to be practically unrecognizable, and symmetrically contracted--that this symptom was the one invariably present in coma from morphine poisoning, and distinguished it from all other forms of death, whereas in the coma of kidney disease one pupil would be dilated and the other contracted; they would be unsymmetrical.

Counsel (continuing). "Allow me to read to you from your own book on page 166, where you say (reading), 'I have thought that inequality of the pupils--that is, where they are not symmetrically contracted--is proof that a case is not one of narcotism--or morphine poisoning--'but Professor Taylor has recorded a case of morphine poisoning in which it [the unsymmetrical contraction of the pupils] occurred.' Do I read it as you intended it?"

Witness. "Yes, sir."

Counsel. "So until you heard of the case that Professor Taylor reported, you had always supposed symmetrical contraction of the pupils of the eyes to be the distinguishing symptom of morphine poisoning, and it is on this that you base your statement that the New York doctors could not tell morphine poisoning positively when they see it?"

Witness (little realizing the point). "Yes, sir."

Counsel (very loudly). "Well, sir, did you investigate that case far enough to discover that Professor Taylor's patient had one glass eye?"[25]

Witness (in confusion). "I have no memory of it."

Counsel. "That has been proved to be the case here. You would better go back to Philadelphia, sir."

There were roars of laughter throughout the audience as Counsel resumed his seat and the witness walked out of the court room. It is difficult to reproduce in print the effect made by this occurrence, but with the retirement of this witness the defendant's case suffered a collapse from which it never recovered.

[25] The reports of six thousand cases of morphine poisoning had been examined by the prosecution in this case before trial, and among them the case reported by Professor Taylor.

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It is interesting to note that within a year of Harris's conviction, Dr. Buchanan was indicted and tried for a similar offence--wife poisoning by the use of morphine.

It appeared in evidence at Dr. Buchanan's trial that, during the Harris trial and the examination of the medical witnesses, presumably the witness whose examination has been given above, Buchanan had said to his messmates that "Harris was a ---- fool, he didn't know how to mix his drugs. If he had put a little atropine with his morphine, it would have dilated the pupil of at least one of his victim's eyes, and no doctor could have deposed to death by morphine."

When Buchanan's case came up for trial it was discovered that, although morphine had been found in the stomach, blood, and intestines of his wife's body, the pupils of the eyes were not symmetrically contracted. No positive diagnosis of her case could be made by the attending physicians until the continued chemical examination of the contents of the body disclosed indisputable evidence of atropine (belladonna). Buchanan had profited by the disclosures in the Harris trial, but had made the fatal mistake of telling his friends how it could have been done in order to cheat science. It was this statement of his that put the chemists on their guard, and resulted in Buchanan's conviction and subsequent execution.

Carlyle Harris maintained his innocence even after the Court of Appeals had unanimously sustained his conviction, and even as he calmly took his seat in the electric chair.

The most famous English poison case comparable to the Harris and Buchanan cases was that of the celebrated William Palmer, also a physician by profession, who poisoned his companion by the use of strychnine in order to obtain his money and collect his racing bets. The trial is referred to in detail in another chapter.

Palmer, like Harris and Buchanan, maintained a stoical demeanour throughout his trial and confinement in jail, awaiting execution. The morning of his execution he ate his eggs at breakfast as if he were going on a journey.

When he was led to the gallows, it was demanded of him in the name of God, as was the custom in England in those days, if he was innocent or guilty. He made no reply. Again the question was put,

"William Palmer, in the name of Almighty God, are you innocent or guilty?" Just as the white cap came over his face he murmured in a low breath, "Guilty," and the bolts were drawn with a crash.