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A POSSIBLE SOURCE FOR SISTER CARRIE: HORATIO ALGER'S HELEN FORD

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Theodore Dreiser, who recalled in his autobiographical work *Dawn* that as a boy in Indiana he had read such vintage Horatio Alger juvenile novels as *Brave and Bold*, *Pluck and Luck*, and *Work and Win*,¹ obviously did not subscribe as an adult to the pulp-magazine portrayal of success. According to Kenneth S. Lynn, one of the few critics who pays more than passing heed to Dreiser's boyhood reading of Alger, as an adult "Dreiser categorically denounced 'the Pluck and Luck, Work and Win theory of achievement.' In place of Alger, he hastily substituted Marx."² Still, Dreiser the novelist apparently meant the middle name of his financier, Frank Algernon Cowperwood, to be read quite literally: not an Alger hero. Except for the fact that both earn money, Cowperwood and Alger's scrupulously moral hero have little in common.³ It seems on this basis that Dreiser, while satirizing Alger, at least read him aright, for the Alger juveniles always were less about the acquisition of money, as is commonly believed, than about the moral uses of money once acquired.⁴

Dreiser perhaps could trace his novelistic lineage to Alger even more directly, for it seems possible that one chapter in *Sister Carrie* was modeled upon a similar chapter in an Alger novel, entitled *Helen Ford*. Although Alger's work was first published in 1866, at least two editions of it could have been available to Dreiser in 1899 as he began to write his novel. An inexpensive reprint from the original plates of *Helen Ford*, written as a story for mature girls but indiscriminately sold among Alger juveniles, was published in the late-

19th century by the John C. Winston Company of Philadelphia. Moreover, soon after the Alger juvenile *Work and Win*, which Dreiser claimed to have read as a boy, was serialized in 1884 in the pulp magazine *Golden Argosy*, its only publication under that title before 1908, that magazine republished *Helen Ford* under the title "A Child of Fortune."⁵ Perhaps not coincidentally, Dreiser describes Carrie at the beginning of chapter IV as "a child of fortune." That Dreiser may have used Alger's story much as he used the experience of his sister Emma or George Ade's *Fables in Slang* in the composition of *Sister Carrie* is suggested by a comparison of the following excerpts from chapter XI of Alger's work and chapter XXXVIII of Dreiser's novel. Both chapters describe the young heroine's frantic search for a job in a New York theatre:

Helen Ford

"Who did you wish to see?" inquired the clerk, with some surprise visible in his manner.

The request was repeated.

"The manager? Can't say whether he's in or not. You must go to the back entrance and turn to the left. Then knock at the first door."

Helen looked bewildered.

"Have you been here before?"

"No, sir."

"Stop a minute, and I will show you, then. I shall close the office directly."

Helen was very glad of the delay, as it gave her time to assume an outward semblance of calmness.

* * * *

Mr. Bowers, the manager, was seated in a small room connected with the stage. He was a man of comfortable proportions, and bore the appearance of one whom the world had used not unkindly.

Sister Carrie

"Where shall I find Mr. Gray?" she asked of a sulky doorman at the stage entrance of the Casino.

"You can't see him now; he's busy."

"Do you know when I can see him?"

"Got an appointment with him?"

"No."

"Well, you'll have to call at his office."

"Oh, dear!" exclaimed Carrie. "Where is his office?"

He gave her the number.

She knew there was no need of calling there now. He would not be in. Nothing remained but to employ the intermediate hours in search.

Carrie saw the manager at the Casino once.

"Come around," he said, "the first of next week. I may make some changes then."

He was a large and corpulent individual, surfeited with good clothes and good eat-

. . . She looked earnestly in his face. Her bonnet had partly fallen back, revealing the rare loveliness of which she was unconscious.

* * *

Helen experienced another revulsion of feeling. The clouds seemed breaking. The recall was evidently favorable to her prospects of an engagement.

Five minutes found her once more in the manager's presence.

"What is your name? he asked, abruptly.

"Helen Ford."

"Humph! that will do."

* * *

Helen hurried home, not as before with a heavy heart, but with a feeling of deep and thankful joy. It seemed as if she could not get over the ground fast enough. She was anxious to report her success to good Martha Grey, who, she felt sure, would sympathize with her. She bounded along . . . until she entered, breathless with haste, the room of her friend. . . .

"I have succeeded, Martha. Only think of that. I am to sing to-night at the theatre. I am engaged for a week, and am to receive six dollars."⁶

ing, who judged women as another would horseflesh. Carrie was pretty and graceful. She might be put in even if she did not have any experience. One of the proprietors had suggested that the chorus was a little weak on looks.

* * *

On the morrow Carrie reported promptly and was given a place in the line. . . . Oh, if she could only remain, how happy would be her days!

"What is your name? said the manager, who was conducting the drill.

"Madenda," she replied, instantly mindful of the name Drouet had selected in Chicago. "Carrie Madenda."

"Well, now, Miss Madenda," he said, very affably, as Carrie thought, "you go over there."

* * *

Carrie came away worn enough in body, but too excited in mind to notice it. She meant to go home and practice her evolutions as prescribed. She would not err in any way, if she could help it.

When she reached the flat Hurstwood was not there. For a wonder he was out looking for work, as she supposed. She took only a mouthful to eat and then practiced on, sustained by visions of freedom from financial distress--"The sounds of glory ringing in her ears."⁷

The affinity of these passages suggests, in short, both that Dreiser may not have dismissed Alger as readily as has been supposed until now, reading him as the moralist he was rather than as a mercenary, and that Dreiser imaginatively could transform a subject that had "all the triteness of a Horatio Alger situation"⁸ into an episode with genuine merit.

¹Theodore Dreiser, *Dawn: A History of Myself* (New York: Liveright, 1931), pp. 122, 125. The correct title of the second novel Dreiser mentions is *Luck and Pluck*.

²Kenneth S. Lynn, *The Dream of Success* (Boston, MA: Little, Brown, 1955), p. 72.

³Robert Penn Warren ("Bearers of Bad Tidings: Writers and the American Dream," *New York Review of Books*, 20 March 1975, p. 16) seems to have been the first to interpret Cowperwood's middle name in this manner. Philip L. Gerber ("Frank Cowperwood: Boy Financier," *Studies in American Fiction*, 2 [Autumn 1974], 165-174) suggests that Cowperwood's middle name indicates a compatibility with the Alger hero.

⁴See, for example, Michael Zuckerman, "The Nursery Tales of Horatio Alger," *American Quarterly*, 24 (May 1972), 201.

⁵Ralph Gardner, *Horatio Alger, or The American Hero Era* (Mendota, IL: Wayside Press, 1964), pp. 426-427, 474-475.

⁶Horatio Alger, Jr., *Helen Ford* (Philadelphia, PA: John C. Winston Co., n.d.), pp. 69-76.

⁷Theodore Dreiser, *Sister Carrie*, ed. Donald Pizer (New York: Norton, 1970), pp. 277-282.

⁸William J. Handy, "A Re-examination of Dreiser's *Sister Carrie*," *Texas Studies in Literature and Language*, 1 (Autumn 1959), 389.

DREISER'S LATER SHORT STORIES

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When Doubleday published a selection of Dreiser's short stories in 1947 under the title *The Best Short Stories*, all the contents were from previous collections of Dreiser's short material: his two collections of short stories, *Free and Other Stories* (1918) and *Chains* (1927), and one of his collections of personal sketches, *Twelve Men* (1919). Yet, after the appearance of *Chains*, Dreiser placed six short stories with American periodicals. One of these, "Fine Furniture,"¹ after being serialized in *Household Magazine*, was published as a Random House Prose Quarto in 1930; the rest, "Townsend," "Solution," "Tabloid Tragedy," "A Start in Life" and "The Tithe of the Lord," remained uncollected.²

Although these later stories are of uneven merit, they provide the evidence that Dreiser's practice of the short story had gone through some evolution since the early days. Three of the stories, "Townsend," "A Start in Life" and "The Tithe of the Lord," suggest to a greater or lesser degree the later tendency in Dreiser to blur the distinction between the short story and the personal sketch, a tendency also evident in the inclusion of two personal sketches from *Twelve Men*, "My Brother Paul" and "A Doer of the Word," in *The Best Short Stories*. The three stories are told in the first person by narrators not involved in the action, who are intrigued by the nature of certain developments in their protagonist-subjects' lives. When the narrator of "The Tithe of the Lord" remarks of one of his subject's acquaintances that "he seemed to me to be talking [i.e., about the subject, Benziger] in order to solve something for himself,"³ one has the sense that this applies equally to the narrator himself. The three stories are less dramatic presentations than recapitulations of segments of their subjects' lives, given at such intervals as the paths of subjects and narrators cross. When dialogue occurs--usually conversation between the narrators and the subjects or acquaintances of the subjects--it has more of a tone of scientific interest than a feeling of personal involvement in the subjects' dilemmas, invariably in themselves painful ones.

"A Start in Life" is in sharp contrast to an early Dreiser story of similar theme, "Nigger Jeff"; both are concerned with the maturing of young writers. "A Start in Life" follows at some distance the evolution of a potentially good fiction writ-

er through a disillusioning marriage to a recognition that pain and loss are maturing agents for both man and artist. "Nigger Jeff" telescopes into a two-day period a similar development; here, a third-person omniscient narrator recounts in detail the experience of a young St. Louis reporter who witnesses the capture and lynching of a Negro in the Missouri backwoods. Although "Nigger Jeff" is surely the story of Dreiser's own transformation from reporter to artist, it is a successful fictional translation of that event. "A Start in Life" is the examination of a character who intrigues Dreiser, and what strongly suggests that it is more fact than fiction--despite the caption on the *Scribner's* cover--is the identification of the narrator, by one of the characters, as "Mr. Dreiser."⁴

Dreiser's subject in "A Start in Life" is Nelson Peterson, a Swedish American from "the Dakotas" who comes to New York to fulfill a "very considerable and arresting ambition" (p. 211) to write. The story is the history of how that ambition is brought to fruition; that history is related in the words of the narrator who, although not passionately taken up in the plight of his subject, is nevertheless fascinated by a life that provides insight into the nature of artistic development. The detached stance of the narrator is frequently reflected by a choice of word and phrase that is calculated to play down the potential involvement in his subject's dilemma and resolution of it. At one point he remarks of Peterson: "Curiously enough, as I noted, he was not so much pained and irritated at any time by the difficulties of life as he was by a gnawing doubt as to his own talent for creative writing." (p. 212). Later, commenting on Peterson's girl friend, he says: "What came to the surface, and soon, was the interesting psychological fact that Amalie was also a writer..." (p. 216). And, referring to the new Peterson, he says: "My conclusion was that I was facing a man who was facing a second choice and doing his best to make himself like it" (p. 216). Words and expressions such as "curiously enough," "noted," "the interesting psychological fact," "my conclusion," in the context, give the narrator's recapitulation the tone of an intriguing case history.

Beyond this, certain facets of descriptive detail seem calculated to impose more of an atmosphere of reality than would normally be found in a piece of fiction. The following description of the contents of a county school library is a case in point: "There were books there, also the village, as well as an occasional Minneapolis or St. Paul paper, and these, plus some magazines and weeklies--*Cosmopolitan*, *Saturday Evening Post*, *Collier's*--all had made him conscious of the great world without" (p. 212). Here, the mention of three magazines places a documentary note on the passage. A more striking ex-

ample of the same tendency is suggested in the description of Sutton Place as "the outmoded, if not exactly sordid residence block, facing the East River, between 57th and 58th Streets" (p. 213). Because of such documentary touches and because of the tone of scientific interest, the reader is not altogether surprised to find, in the third to the last paragraph of "A Start in Life," the hitherto unnamed narrator being referred to as "Mr. Dreiser."

"Townsend," with an unnamed narrator, and "The Tithe of the Lord," narrated by a Mr. Lamborn, are without such overt implications of their non-fictional bias, but their first-person detached narration and their almost exclusive focus on their central characters make them very similar to "A Start in Life." "Townsend," a brief story, focusses on a man whose aspirations for entrepreneurial success are left unfulfilled; its narrative techniques are virtually identical to those used in "A Start in Life." "The Tithe of the Lord" examines a considerably more complex case: that of Benziger, a business tycoon, who vacillates between marital fidelity and altruistic service on the one hand and sexual promiscuity and entrepreneurial neglect on the other. Here, the narrator is almost exclusively listener, "allowing" two acquaintances of Benziger, each in his turn, to inform him about the two significant periods of the subject's life and reproducing their narrative verbatim in the story. Although there is some attention given to the religious quandary Benziger represents for the three "narrators"--the story is reminiscent of an earlier, more successful religious story by Dreiser, "The Mercy of God"--Benziger unquestionably remains the primary focus of attention.

The rest of Dreiser's later stories, "Fine Furniture," "Solution" and "Tabloid Tragedy," are more unequivocally fictional. Of the three, only one, "Tabloid Tragedy," is vintage Dreiser; it articulates the tension within a man caught up between his duty to divulge the truth and the pressure on him to protect his reputation and that of his paramour. His attempt to resolve the dilemma assuages his conscience but in its wake all comfort is removed from his life. Dreiser is on the old familiar ground of such stories as "Free," "The Old Neighborhood" and "Chains," depicting man trapped in circumstances from which he is powerless to free himself, in a plight for which there is no satisfactory solution.⁵

"Fine Furniture" and "Solution," however, suggest a mellowing Dreiser; both stories appeared in slick women's magazines and both seem accommodations to popular magazine standards of the day. This was a striking break from Dreiser's earlier practice; Swanberg has recorded in detail the story of Dreiser's dogged refusal to fashion his stories to fit the

norms of current magazine fiction, and their rejection history.⁶ When he had examined magazine fiction in the 1890's with a view to trying his hand at it, Dreiser had been "confounded" by "the discrepancy existing between my own observations and those displayed here, the beauty, and peace, and charm to be found in everything, the almost complete absence of any reference to the coarse and the vulgar and the cruel and the terrible."⁷

"Solution" is reminiscent, both thematically and stylistically, of Dreiser's earlier story "Typhoon" and, generally speaking, continues his investigation into the varieties of heterosexual relationships, an investigation that had occupied much of his attention in the collections *Free and Other Stories* and *Chains*. Conventionally in Dreiser's short stories of young love, girls are losers: attracted by flashy males, they are used and then dropped and suffer severe disillusionment and anguish: Shirley, the protagonist of "The Second Choice," reverts to a dull middle-class existence with little hope of deliverance; Madeleine Kinsella of "Sanctuary" returns voluntarily to a house of refuge; Ida Zobel of "Typhoon" commits suicide. Although "Solution" depicts an attachment that differs, in its initial stages, from those in the other stories of young love--the young man here is honourable and hard-working and it is the girl who seduces him--for a good part of its length it promises to follow the conventional pattern: Marjorie, assured by Walter that there is no hope of his marrying her, seems doomed to a life of single motherhood in the seclusion of her father's house. However, the World War intervenes, Walter returns home an amputee and Marjorie prevails upon him to marry her.

It does not appear to be Dreiser's intention to look upon this turn of events with a cynical eye; rather, the emphasis is on the all-forgiving love that motivates Marjorie's attempt to revive the relationship. Walter's acceptance is based on the realization that "without love, and above all and more than all, without such love as this, its fullness, strength, self-renunciation,"⁸ his future is hopeless. One sees in "Solution" something of the religious affirmation of *The Bulwark*: the story ends with Marjorie's father reciting the blessing as the new family sits in his house for dinner.

"Fine Furniture" is unique in the Dreiser short story oeuvre; a story with a serious subject, it is told in an informal, at times even flippant, fashion, and is without the tragic implications of most of Dreiser's short fiction. The story dramatizes the attempt of Opal, the wife of the lumberjack, Clem Broderson, to transcend the drabness of the world she is used to by insulating herself with reminders of the enchanted

world of the Calico Cat Restaurant, the scene of her conquest of Broderson. But Opal's dream world collapses in the face of the exigencies of lumber camp existence, and she realizes finally that her demands for a better life must wait. Marital tension is resolved and social disaster is averted. Fine furniture, the immediate cause of the problem, is put aside until a more appropriate time.

If Opal initially shares with her frustrated sisters of other stories the desire for a more colorful and meaningful life, ultimately her problem is not debilitating but minor and solvable. "Fine Furniture" portrays a situation in which the dream is not lost, but merely deferred. If Dreiser ever wrote a "slick" story it was "Fine Furniture": with its happy ending, its tension fully resolved, its smooth dialogue (a rare quality in his stories), and its lightness of tone and mood, it is as close as Dreiser ever came in fiction to succumbing to popular demand.

That Dreiser was tending in "A Start in Life," "Townsend" and "The Tithe of the Lord" towards a more "documentary" kind of fiction is abundantly clear. It had previously been his practice to fictionalize even the most patently autobiographical stories; for example, in "A Story of Stories," a partly verbatim, partly revised version of Chapters XLIV, XLV and XLVI of *A Book about Myself*, Dreiser changed the names not only of the two reporters involved but of the newspapers as well. That "Solution," "Fine Furniture" and "A Start in Life" show a Dreiser less preoccupied with a view of life as essentially destructive is clear as well. Dreiser's earlier "happy ending" story "Old Rogaum and His Theresa" concludes less with a solution than with a grudging accommodation. Even his early historical romance, "When the Old Century Was New," leaves the narrator pondering about his blissfully happy protagonist: "The crush and stress and wretchedness fast treading upon this path of loveliness he could not see."⁹ Clearly, there are important shifts in the orientation of Dreiser's short stories after the mid-twenties. Whether they signal changes pervasive in Dreiser's thinking and reflected in his other works or whether they are phenomena restricted to the short fiction is a question deserving of attention.

¹Theodore Dreiser, "Fine Furniture," *Household Magazine*, 28 (November, 1929), 5-7; 29 (December, 1929), 29-32.

²Dreiser, "Townsend," *American Spectator*, I (June, 1933), 2; "Solution," *Woman's Home Companion*, 60 (November, 1933), 19-20, 132-135; "Tabloid Tragedy," *Hearst's International-Cosmo-*

politan, 95 (December, 1933), 22-25, 115-116, 119-121; "A Start in Life," *Scribner's*, 96 (October, 1934), 211-217; "The Tithe of the Lord," *Esquire*, 10 (July, 1938), 36-37, 150, 155-158.

³Dreiser, "The Tithe of the Lord," p. 156.

⁴Dreiser, "A Start in Life," p. 217. Subsequent references to this story are to the *Scribner's* text and will be included in the body of the essay.

⁵The caption to "Tabloid Tragedy" in *Hearst's International-Cosmopolitan* reads in part: "What he [i.e., Thompson, the protagonist] did and what happened to him truly make another 'American Tragedy'."

⁶W.A. Swanberg, *Dreiser* (New York: Scribner's, 1965).

⁷Dreiser, *A Book about Myself* (New York: Boni and Liveright, 1923), p. 490.

⁸Dreiser, "Solution," p. 135.

⁹Dreiser, "When the Old Century Was New," *Free and Other Stories* (New York: Boni and Liveright, 1918), p. 369.

AN AMERICAN TRAGEDY: CONSTITUTIONAL VIOLATIONS

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Theodore Dreiser's *An American Tragedy* was first published in 1925. Nineteen years earlier, on July 11, 1906, Chester E. Gillette, the prototype of Clyde Griffiths, the main character of the novel, allegedly drowned a young woman named Grace Brown in Herkimer County, New York. On March 20, 1908, Gillette was electrocuted for this crime. Clyde Griffiths, his fictional counterpart, accused of drowning his pregnant girlfriend, Roberta Alden, also received the death penalty, although there was no witness to the occurrence and the accused claimed the drowning was accidental. Thus, Clyde was convicted on what seems purely circumstantial evidence. But was the circumstantial evidence really "pure"? To Dreiser the answer to this question must have been an emphatic "No."

Since Dreiser based Clyde's trial on the Gillette records, to the extent even of using several parts of the Court's transcript practically verbatim, the American tragedy in his mind must have contained elements *dehors* the record; and these elements must have consisted of practices prohibited by the Fourteenth Amendment but resorted to repeatedly during the Gillette/Griffiths trial. Such practices, abhorrent, illegal, and unconstitutional--and not the fact of the murder of a real or fictional person--are what Dreiser thought constituted an American tragedy. By an ironical coincidence, the same year (1908) that Gillette was executed, the United States Supreme Court, ruling on its own power to determine the scope of the Fourteenth Amendment, held that such practices violated the fundamental principles of liberty and justice which are inherent in a free government and are the inalienable right of a citizen of such a government.¹ Later it further ruled that such practices offended the canons of decency and fairness which express the traditions of English-speaking peoples even toward those charged with the most heinous offenses.²

Such "practices" are governed by Section One of the Fourteenth Amendment, which provides that no State shall deprive any person of life, liberty, or property, without due process of law. As guardian of the State criminal justice systems, the Supreme Court of the United States has decided that the Due Process Clause cannot be limited to those specific guarantees

spelled out in the Bill of Rights, that it even contains protection against practices which may be unfair without the violation of any *specific* provision. (An example is Justice Harlan's holding that despite the absence of a specific Constitutional provision requiring proof beyond a reasonable doubt in criminal cases, such proof is nonetheless a Due Process requirement.³) Another clause of Section One provides that the State cannot deny to any person within its jurisdiction the equal protection of the laws, and the Supreme Court has interpreted this to mean that no agency of the State, or of the officers or agents by whom its powers are exerted, can deny equal protection of the law to anybody, the reason being that since such a person acts in the name of and for the State and is clothed with the State's power, that his act is that of the State.⁴ Yet both of these Constitutional prohibitions were violated in the Gillette/Griffiths trial. Had the defense attorneys been competent and experienced trial lawyers capable of comprehending fully the implications of the Fourteenth Amendment, the death penalty probably would not have been imposed; or had it been, another trial would have been won upon appeal. But, as Dreiser described so well in his fictionalized account, Clyde Griffiths had neither adequate counsel nor a fair trial.

What is meant by a "fair" trial? The provisions of the Bill of Rights applicable to State procedures contain certain basic guarantees: right to counsel, right to speedy and public trial, right to be free from use of unlawfully seized evidence and unlawfully obtained confessions, etc. But these are not the only requirements: "Due process of law requires that the *proceedings* shall be fair. . ."⁵ and "as applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it. . .[the Court] must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial."⁶ Thus, in *Lisenba v. California*, the Court ruled that there are some Constitutional rights so basic to a fair trial that their infraction can never be treated as harmless.⁷ One such infraction is bias or prejudice, either inherent in the structure of the trial system or imposed by external events.⁸ Obviously, then, bias and prejudice on the parts of the prosecuting attorney, the judge, and the jury would be violations of the Due Process provision and grounds for an appeal. Bearing this in mind, let us scrutinize the motivations and actions of Orville W. Mason, the district attorney who prosecuted Clyde Griffiths' case, of Frederick Oberwaltzer, the presiding judge, and of the jury which returned a verdict of guilty.

At the time of Clyde's arrest, Mason had been district attorney for two consecutive terms and knew that unless he were fortunate enough to be nominated and elected to a county judgeship which was vacant, "defeat and political doldrums loomed ahead." What he needed to insure achievement of that judgeship was a "really important case" in connection with which he would be "able to distinguish himself and so rightfully and hopefully demand further recognition from the people."⁹ Moreover, because Mason's boyhood "had been one of poverty and neglect," he had a tendency to "look on those with whom life had dealt more kindly as too favorably treated" (p. 546); therefore, when informed that Clyde was the nephew of the wealthy Samuel Griffiths, he automatically assumed that the boy was a member of "The wretched rich! The indifferent rich!" (p. 559). Bringing such a criminal to justice would not only reward Mason emotionally but also promised him much favorable publicity "in view of the state of public opinion, which was most bitterly and vigorously anti-Clyde" (p. 623). Consequently, because the election in which he hoped to be nominated for the judgeship was fast approaching, Mason "decided to communicate with the governor of the state for the purpose of obtaining a special term of the Supreme Court [in New York the "Supreme Court" is the court of first instance]. . .with its accompanying special session of the local grand jury, which would then be subject to his call at any time" (p. 622). Yet, according to the Supreme Court, whenever a grand jury is utilized, it must be fairly constituted and free from prejudicial influences.¹⁰ But because Mason's political ambitions demanded a speedy trial, he was willing to deny Clyde his right to Due Process and equal protection of the laws as guaranteed in the Fourteenth Amendment.

When Belknap and Jephson, attorneys for Clyde, learned of Mason's request to the governor, they immediately asserted that he was endeavoring to railroad Clyde to the electric chair "merely to achieve a victory for the Republican party in November." Mason's reply to this charge is very revealing, particularly inasmuch as "it was listened to with proper gravity by the representatives of the various newspapers":

What reason have I, a representative of all the people in this county, to railroad this man anywhere or make one single charge against him unless the charges make themselves? Doesn't the evidence itself show that he did kill this girl? (p. 663)

Such remarks not only prove Mason to have been dishonest about his own motivations, but also constitute a bias or pre-judgment on his part and show him to be absolutely partial. The rule of law operative in the United States and in New York has always

held that a person is presumed to be innocent until he is proved guilty and this means the finding or verdict of a jury after it has heard all the evidence.¹¹ Furthermore, because Mason went on to ask the question, "And has he ever said or done one thing to clear up any of the suspicious circumstances? No! Silence or lies" (p. 663), it is obvious that he was trying to influence the press; for, as an attorney admitted to practice in New York, he must have known that in accordance with the rules of law operative in that state, or in any state, it is not incumbent upon the accused to say *anything* prior to the actual trial. His innocence is presumed until the testimony at the trial disproves it.¹²

Mason then said, "and until these circumstances are disproved by these very able gentlemen [Belknap and Jephson] I am going right ahead" (p. 663). The rule of law is that the *state* must prove beyond a reasonable doubt that the accused is guilty before the jury can convict him; therefore, the burden of proof is on the state and *not* on the accused, who is never required to disprove his guilt although he may do so.¹³ What Mason's statement shows is that he did not consider the rules of law applicable to the Griffiths case because he had shifted the burden of proving or disproving guilt onto the defendant. And his next remark, "I have all the evidence necessary to convict this young criminal now" (p. 663), indicates that he had already arraigned, tried, and convicted Clyde without the latter's having had the benefit of a hearing before judge and jury. Of course, Dreiser deliberately introduced this material for the purpose of showing just how unfairly Clyde was treated. Any attorney could have told Dreiser then, as he would now, that Mason's remarks not only disqualified him as prosecuting attorney but also guaranteed--should he insist on prosecuting the case--that the next highest court would reverse any decision made by the trial court adverse to the accused.

Belknap's formal protest and personal argument to the governor against Mason's request for a special term of the Supreme Court were denied. Yet neither he nor Jephson then filed a motion to be heard by the presiding judge--and not by the governor--asking that because of Mason's obvious prejudice, he be removed from the case; and this is a typical example of their fumbling. They knew that statements of the kind Mason made to the press would tend to prejudice the people in the community and make impossible the selection of an "impartial" jury, particularly since a jury's verdict must be based on evidence received in open court and not from outside sources.¹⁴ Moreover, they should have known that collaboration between counsel and press as to information affecting the fairness of a criminal trial is not only subject to regulation but is also highly censurable and deserves disciplinary meas-

ures (Syllabus 14). The irony of the situation is twofold: not only did Mason broadcast his own bias and prejudice, but he also indicted the community where the trial was to be held for similar bias and prejudice when he stated that he was "a representative of all the people."

Now let us examine the conduct of Frederick Oberwaltzer, justice of the eleventh judicial district, who was designated to preside over Clyde's trial. Belknap and Jephson's first move was to approach Oberwaltzer for a change of venue, "on the ground that by no possible stretch of the imagination could any twelve men residing in Catawaqui County be found who, owing to the public and private statements of Mason," would not be "already vitally opposed to Clyde and so convinced of his guilt that before even such a jury could be addressed by a defense, he would be convicted" (p. 664). Unfortunately for Clyde, Oberwaltzer was "a slow and meticulous man inclined to favor conservative procedure in all things"; therefore, the legal precedent that should have determined his decision seemed less weighty to him than Mason's argument that a change of venue would saddle Catawaqui County with an enormous expense. (The Supreme Court might have considered this to be a bias imposed by an external event on Oberwaltzer that resulted in his denying Clyde the right to a fair trial. However, what constitutes influencing the impartiality of the presiding judge has often divided the court.¹⁵) At any rate, although Oberwaltzer knew that there was a reasonable likelihood that the prejudicial news prior to trial would prevent a fair trial, and that under the circumstances he should either have continued the case until the threat abated or transferred it to another county not so permeated with publicity (Syllabus 11), he decided, "after five days, in which he did not more than muse idly upon the matter" (p. 665), to deny the motion.

Moreover, had Oberwaltzer had doubts concerning the existence of prejudicial publicity--and there is no evidence in the book that he did--they should have been immediately dispelled by the conditions prevalent on the first day of Clyde's trial. By his careful depiction of the atmosphere that day, Dreiser shows us once again just how unfairly Clyde was handled by the court. Despite the presence of hundreds of people eagerly buying peanuts, popcorn, hotdogs, and the "story of Clyde Griffiths, with all the letters of Roberta Alden," which had been issued "in pamphlet form together with an outline of 'the great plot' and Roberta's and Clyde's pictures" (p. 679), Oberwaltzer failed to do his duty as a state trial judge in a murder prosecution. He made no efforts at all to protect the defendant from the inherently prejudicial publicity which saturated the community (Syllabus 15). Nor did he order a new trial when publicity during the proceedings threatened the

fairness of the first trial (Syllabus 12). Even when the "solemn, vengeful voice" of an irate woodsman resounded throughout the courtroom, "'Why don't they kill the God-damned bastard and be done with him?'" (p. 776), Oberwaltzer did not declare a mistrial. (Mob domination of a trial so as to rob the jury of its judgment on the evidence presented is a Due Process violation: "And if the State, supplying no corrective process, carries into execution a judgment of death or imprisonment based upon a verdict thus produced by mob domination, the State deprives the accused of his life or liberty without due process of law."¹⁶ But despite the fact that Oberwaltzer's failure to control such disruptive influences deprived the defendant of due process (Syllabus 15), Oberwaltzer was not particularly concerned: "If he were wrong, there was the Appellate Division to which the defense could resort" (P. 665).

However, just as finding the woodsman guilty of contempt was not enough on Justice Oberwaltzer's part, so was acceptance of this ruling not sufficient action on the parts of Belknap and Jephson. Again they proved themselves astonishingly inept by not orally moving for a mistrial and asking the court for an immediate recess during which their motion could be argued in the absence of the jury. Even had Oberwaltzer refused such a motion in any particular, except to declare a mistrial, Belknap and Jephson should have taken exception to such ruling and have had the record show what had transpired; they then should have filed a formal written motion for a reconsideration of Oberwaltzer's decision and again, in writing, renewed their request for a mistrial. And, if this motion and request were overruled by the judge in any particular, Belknap and Jephson should have insisted that such be noted in the record of the trial as an exception to the court's ruling; for any such ruling on the judge's part would instantly have beclouded the correctness of his trial procedure, and the record of Belknap and Jephson's exceptions to the ruling would have implied error on his part. Unfortunately, neither Jephson nor Belknap thought to move for a mistrial; consequently, when they did seek recourse to the Appellate Division, which ironically had been Oberwaltzer's rationale for his shabby performance, they had no record of one ground which probably would have won Clyde a new trial--an implication of error on Oberwaltzer's part. The reasons Jephson and Belknap did present were, to the Court of Appeals, of insufficient moment to justify the granting of a new trial; the decision of the lower court was therefore unanimously confirmed; and Clyde, the victim of a horrible miscarriage of justice, was sentenced to die.

There can be no doubt that Dreiser intended to portray Clyde as such a victim, for, besides making it plain that the boy was actually innocent of deliberate murder and showing the

parody of justice accorded him, he also included other factors in the combination which defeated Clyde. For instance, Burton Burleigh, Mason's assistant and therefore an officer of the court, deliberately and with forethought threaded "two of Roberta's hairs in between the door and the lens of the camera" (p. 622) because he knew that without such incriminating proof Clyde might very well go free. That such hair could reasonably have been expected to be there is of no significance: Burleigh could not possibly have known this prior to the trial; consequently, his action in falsifying evidence made him guilty of conspiring against the life of another. Indeed, he is symbolic of all of the State forces allied against Clyde because he misused power that he possessed by virtue of state law and that was available to him only because he was clothed with the authority of state law. Such action is construed by the Supreme Court to be action taken "under color of" state law.¹⁷ Then there was the mob who screamed for Clyde's life and thus displayed the kind of hatred and ruthlessness that he himself had been unable to generate at the fleeting moment when he had thought to kill Roberta. And last, there was Reverend McMillan, whose word the governor would have taken to spare Clyde's life. Because of his conviction that committing murder in the heart made one a murderer, McMillan found it impossible to give that word even to save a life. Like all the others, he, too, violated the very laws of justice, mercy, and compassion that he professed to uphold.

It was in 1868 that Congress ratified Constitutional Amendment Fourteen, Section One of which guaranteed Chester Gillette/Clyde Griffiths that which in 1906 Mason, Oberwaltzer, and the people of Catakaqui County so summarily refused to grant--due process and equal protection of the laws. These provisions were finally vindicated and sustained, although it took another and similar case, which received nationwide publicity and discussion, to bring this about. In a similar trial (1954), Samuel H. Sheppard, a young Ohio osteopath, was found guilty of bludgeoning his pregnant wife Marilyn to death and ultimately served a number of years in the Ohio Penitentiary. Sheppard tried several times in one way or another to obtain his freedom. He finally engaged the services of attorney F. Lee Bailey, who was more successful; the result was that the Supreme Court decided that the community where Sheppard had lived had been so inflamed by the newspapers, especially *The Cleveland Press*, that he could not have had a fair trial. The Court therefore reversed the decision of the jury and ordered a new trial, at which Sheppard was defended by the able and aggressive Bailey, who won an acquittal for him.

The Sheppard case was not decided until June of 1966; therefore, the Syllabi that have been cited herein would not

have been available at the time of the Gillette trial. However, the Sheppard case is based on the same Fourteenth Amendment; had Gillette's lawyers used it as did F. Lee Bailey, a court of last resort no doubt would have rendered the same decision that it rendered in the Sheppard case. In fact, the *Griffiths* case is even stronger for the defendant than the Sheppard case because Mason told the newspapers, reporters, and the public generally that the defendant was guilty long before the trial. In the Sheppard case this did not happen because the prosecuting attorney knew that this could not and should not be done. What actually happened was that the newspapers and other news media made such a sensation out of the murder that in the opinion of the United States Supreme Court, a fair trial could not be had. Justice Clark delivered the opinion of the Court: "We have concluded that Sheppard did not receive a fair trial consistent with the Due Process Clause of the fourteenth amendment and therefore reverse the judgment. . . ." Had the appeal in the Gillette/*Griffiths* case been handled properly, some other Supreme Court Justice would have had to say much the same thing.

¹*Twining v. New Jersey*, 211 U.S. 78, 106 (1908).

²*Rochin v. California*, 342 U.S. 165, 169 (1952).

³*In re Winship*, 397 U.S. 358 (1970).

⁴*Ex parte Virginia*, 100 U.S. 339, 346-347 (1880).

⁵*Snyder v. Massachusetts*, 291 U.S. 97, 116, 117 (1934).

⁶*Lisenba v. California*, 314 U.S. 219, 236 (1941).

⁷*Ibid.*

⁸*Tumey v. Ohio*, 273 U.S. 510 (1927).

⁹Theodore Dreiser, *An American Tragedy* (Cleveland: World Publishing, 1948), p. 543. All subsequent references to this edition will appear within the text.

¹⁰On prejudicial publicity, see *Beck v. Washington*, 369 U.S. 541 (1962).

¹¹See article in *American Jurisprudence*, Second Edition, Volume entitled "Evidence." (Rochester, N.Y.: The Lawyers Cooperative Publishing Co., 1967), paragraphs 225 et. seq.

¹²*Ibid.*, Volume XXX (Paragraphs 1170 et. seq.).

¹³*Ibid.*, Volume XXI. See article entitled "Criminal Law." (Paragraphs 409 et. seq.).

¹⁴*Sheppard v. Maxwell*, Warden of the Ohio Penitentiary, 384 U.S. 333 (1966). 86 *Supreme Court Reports*, 1508. Syllabus 3. The Syllabi of a case are like synopses and appear at the beginning of the report. All subsequent references to Syllabi in the Sheppard case will appear within the text.

¹⁵E.g., *Ungar v. Sarafite*, 376 U.S. 575 (1964); *Holt v. Virginia*, 381 U.S. 131 (1965); *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971).

¹⁶*Frank v. Mangum*, 237 U.S. 309 (1915).

¹⁷*United States v. Classic*, 313 U.S. 299, 326 (1941).

REVIEWS

Dreiser's Non-Fiction Prose

Theodore Dreiser: A Selection of Uncollected Prose, edited by Donald Pizer. Detroit: Wayne State University Press, 1977. 340 pp. \$15.95.

While reading through Donald Pizer's *Theodore Dreiser: A Selection of Uncollected Prose*, I was repeatedly reminded of my years as a graduate student, when I sought far and wide, often in vain, for the Dreiser materials published in such hard-to-locate journals as *Ev'ry Month*, *Ainslee's*, *Success*, and *Tom Watson's Magazine*. After a considerable amount of time, frustration, and expense, I managed to secure reproductions of several articles, but some I did without, to my regret. Pizer's volume also brought back memories of unpublished manuscripts that I knew were at the University of Pennsylvania but did not seem promising enough to warrant my making the trip. I have since discovered that in several instances my study would have been considerably strengthened by items I did not have or take the opportunity to include.

Pizer's *Theodore Dreiser: A Selection of Uncollected Prose* will do much to alleviate similar frustrations of future Dreiser scholars. Included in Part 1 (1892-1897) are almost a hundred pages of Dreiser's more significant contributions to *Ev'ry Month*. Part 2 (1898-1910) features Dreiser's work as a free-lance magazine writer, particularly his interviews with celebrities and the more sombre philosophical sketches that followed the failure of *Sister Carrie* and his extended struggle with neurasthenia. The previously published selections in Part 3 (1911-1925) are generally more accessible to the scholar in their original form, some having appeared in such publications as the *New Republic*, *Nation*, and *New York Times Review of Books*; however, Pizer has also included heretofore unpublished essays, such as "A Confession of Faith," "Suggesting the Possible Substructure of Ethics," "Some Additional Comments on the Life Force, or God," and "It." Much the same can be said for the selections in Part 4 (1926-1945).

As Pizer points out in his introduction, a complete collection of Dreiser's uncollected prose would fill some fifteen volumes; therefore, he has tried to restrict his selections to "the best and most significant of Dreiser's previously uncollected non-fiction prose." In addition, Pizer has employed three other criteria in his choice of material: "that which reveals major moments in the history of [Dreiser's] thought and which is not now available in convenient form . . . ; that which preserves significant commentary by him on the origin and nature of his novels; and that which displays the range of his ideas, from the beginning of his career to its conclusion, so as to provide the material necessary to confront the vexing problem of consistency and coherence in his beliefs."

Inevitably, most readers will think of individual selections that they wish had been included or excluded. Such is the price of selectivity. However, few will deny that *Theodore Dreiser: A Selection of Uncollected Prose* has given a greater sense of continuity to Dreiser's career as a writer of non-fiction prose and has made readily available for the first time several significant links in the chain of Dreiser's intellectual development.

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