



# One Night in Detroit

The famous American lawyer, Clarence Darrow, once wrote that 'True patriotism hates injustice in its own land more than anywhere else'. One of his most famous cases was the successful defence of a black man, Ossian Sweet, and his brother Henry. Ossian was a rising doctor in Detroit who moved his family to a middle-class (white) suburb in the 1920s. He anticipated trouble, and the first night was accompanied by his brothers and a few friends, all armed with rifles. That evening, the house was surrounded by a mob of angry white men. Shots rang out from the house, killing a neighbour who was standing on his porch, and injuring another person.

Clarence Darrow was instructed to defend Dr Sweet by the National Association for the Advancement of Coloured People. What the objective reality of that night was, remains unclear – how big or threatening was the mob? Moreover, the house was under police protection. The prosecution proceeded on the basis that the crowd was small, and there was no real and imminent threat of violence. But Darrow's focus was on the state of mind of those inside the house – did they believe that they and their house were under immediate threat of attack? He brought into play – before an entirely white jury – the whole history of black-white relations: the slave ships, plantation servitude and lynch-mobs in the South.

In his summing up, Darrow thrust upon the jury a role that went beyond finding guilt or innocence, to the making of history:

The Sweets spent their first night in their new home afraid to go to bed. The next night they spent in jail. Now the state wants them to spend the rest of their lives in the penitentiary ... There are persons in the North and South who say a black man is inferior to the white and should be controlled by whites. There are also those who recognize his rights and say he should enjoy them. To me this case is a cross-section of human history. It involves the future and the hope of some of us that the future will be better than the past.

The jury could not reach a verdict. Darrow's words had worked their magic on enough members of the jury, and Ossian Sweet went free.

I must mention one other feature of the trial – it was a model of civility; in spite of the high drama involved, all counsel involved

conducted themselves with grace and due courtesy. The hearing was presided over by a future Supreme Court Justice, Frank Murphy, who controlled proceedings – quietly, patiently and firmly. His rulings were sound and clearly explained, eliciting nods of acceptance even from the counsel ruled against. Darrow himself – though strong and tenacious – was known for his good humour and even temper. He was described by a commentator present during the trial as 'a born protector of the misunderstood, the persecuted, and the oppressed'. The prosecutor, Robert Toms, while said to share many of the racial prejudices common to the general citizenry at that time, was nonetheless an honourable, honest fellow who did not seek a conviction at all costs.

Let me return to the quote I started with. It states an essential truth. The person who dissents, who points out shortcomings of his own group, whether profession, nation or society, may in fact be the true patriot. His criticism marks him as a person who cares about what goes on. It is not disloyalty. Simply joining in a flag-waving chorus may be nothing more than a sign of indifference and apathy.

So this brings me to my final point. Lawyers should not be afraid to speak up – about the state of the profession, the legal system or the nation. This starts with each individual lawyer. If you have something to say, just say it. But there is also a potential collective voice. If the profession has a distinctive and united view on an issue for which the profession has special competence and can make a legitimate contribution on, then the Society will readily speak on behalf of the profession on that issue. Moreover, discussion of legal issues – including constitutional issues – is something which the Society encourages. Nonetheless, on many issues there is no clear profession-wide consensus, and so the Society's role for such issues is limited to facilitating discussion among its members rather than seeking reform. If and when a clear consensus develops, the Society will take the further step of representing that view and seeking change.

And every lawyer, in the cases they undertake, can look to Darrow as a model – to understand the broader implications of a case and not shrink from them.

And before I end, Seasons Greetings and Merry Court Vacation!

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