Disunion follows the Civil War as it unfolded.

Tags:

Civil War (US) (1861-65), Indianapolis (Ind), Murders and Attempted Murders

The shooting occurred about 7:30 p.m. on Tuesday, Aug. 4, 1863, "halfway between sundown and dark," as one witness described it. The day had been a typically hot one in Indianapolis, but a rain shower in the early evening cooled the air and knocked down the dust. Residents came out of their houses and shops onto the streets. Others ate their suppers or relaxed on their porches after a long day of work.

Amid the traffic, residents noticed two men standing close by each other on a street corner exchanging heated words. Then one of the men pulled a revolver from his pants pocket and fired it. The other man cried out, "Don't shoot!" and started to run away. The man with the gun stepped forward, steadied his aim, and fired again. The running man fell, got up, and tried to run again, limping. He groaned loudly and fell for the last time. Within about 15 minutes he was dead, having been shot and bled to death.

A small crowd converged on the corner; some went to the aid of the dying man, others stood and gossiped. Meanwhile the shooter started walking toward the city's center, gun in hand, asking people if they had seen the shot man verbally abusing him. Don't worry, he told onlookers, he was turning himself in. Soon a
deputy sheriff arrested him without a struggle and took his gun. The gunman was later indicted on a charge of premeditated murder.

The dead man was named Roddy A. Small, the foreman of the blacksmith’s shop of the Indianapolis and Cincinnati Railroad. He was a middle-aged Irish Catholic with a wife and children, and a Democrat. The man who shot him dead was James Sutherland, a hand in Small’s shop, a young Protestant man with a wife and three young children, and a Republican. The men had quarreled in the past, most likely over a workplace rivalry. But as the trial showed, wartime politics stoked the heat of their animosity to the point of murderous hatred.

The shooting became the latest political cause célèbre to hit Indianapolis, a city brimming with partisan tensions. Bad blood still boiled from the standoff between Gov. Oliver P. Morton, Republican, and the Democratically controlled Legislature. Draft-related violence had recently occurred all over the state. And John Hunt Morgan’s rebel cavalry invasion was fresh in residents’ memories.

The city’s three daily newspapers — two Republican, one Democratic — produced partisan accounts of the shooting. The Sentinel, the organ of the state Democratic Party, noted that the unarmed Small had been “an uncompromising Democrat” and “persecuted for his political opinions,” for which he “fell a martyr.” The paper asked, “Is life so cheap in this free country that men may be shot down in our streets like dogs?” But The Gazette, a Republican paper, claimed that Sutherland was justified in killing Small because he thought Small was armed and was going to draw a pistol to shoot him.

The partisan character of the case was revealed in the lawyers secured to argue it. The county prosecutor, William W. Leathers, a Democrat who turned Republican at the beginning of the war, secured bipartisan legal help, most importantly from former Congressman Joseph E. McDonald, whose was often mentioned as the likely Democratic candidate for governor in 1864. A coterie of Republican barristers participated in the defense, led by the silver-tongued Sims A. Colley and William P. Fishback, experienced criminal defense lawyers. Interest in the case was high, and attorneys traveled as far away as Iowa to take depositions.
The trial commenced in the Marion County circuit court on Nov. 9, 1863 and lasted four days. The prosecution, led by McDonald, presented its case based on the testimony of numerous witnesses to the encounter, employing a diagram of the scene. The first witness noted that after the first shot appeared to miss at close range, Sutherland took deliberate aim at the fleeing Small and fired again. Other witnesses confirmed hearing two bangs and that the gunman calmly delivered himself to authorities. The Marion County sheriff produced the five-shot revolver handed over by Sutherland and showed that two caps had gone off but only one bullet fired, meaning that the first cap had failed to launch the bullet in its chamber.

The prosecution also highlighted the bad blood between the two men, calling a fellow blacksmith shop hand who recounted hearing the defendant say only days before the incident that Small’s lies had “injured” him and that Sutherland would get his “satisfaction.” Another said that Sutherland had asserted that Small had been jealous of him and was a “scoundrel,” and that the younger man would “shoot him the first chance he got.”

When the prosecution rested its case on the second day, defense lawyers turned attention to the character of the dead man. Witnesses testified that Small was a quarrelsome, bullying, vengeful and dangerous man who typically went armed. The first defense witness, a woman, testified that when Sutherland shot Small on the street that she saw a “protuberance” in the dead man’s pocket, suggesting a gun. But prosecution lawyers produced an inventory of Small’s pockets that showed he had carried no firearm when he was killed.

Witnesses recounted that Small turned his spite on Sutherland when the younger man successfully fixed an ax that he, as shop foreman, had declared was beyond repair. Co-workers testified that Small frequently carried a pistol into the shop. The elder man threatened Sutherland several times, sometimes with his hand on a weapon, other times shaking a fist in his face. Witnesses said Sutherland tried to avoid Small.

Testimony showed that wartime politics entered into their dispute. Sometime before the shooting military authorities in the city had arrested and tried Small,
the Democrat, for “traitorous sympathies.” Records (not introduced in the murder
trial) show that in the summer of 1863 military authorities in Indiana circulated a
list of people to be arrested by the Army for disloyalty.

Was Roddy Small on that arrest list? We don’t know. But testimony in the
murder trial showed that Sutherland had informed on Small to Brig. Gen. Orlando
B. Willcox, commander of the district of Indiana and Michigan, who released
Small on $1,000 bond. Afterward, an angry Small loudly accused Sutherland of
joining the Republican political secret society, the Union League, to spy and
inform on him. No military officers appeared in the murder trial, probably because
Willcox and his staff were then serving at the front near Knoxville, Tenn.

Testimony closed on the third day of the trial. William Fishback made the
third and final defense speech. Eschewing calls for mercy from the jury, he said he
appealed to each juror’s “manhood.” Sometimes the individual had to “depend
upon the natural right of self-preservation” that derived from God and not from
law. Small had a grudge against Sutherland because of the younger man’s superior
skill and for “honestly” being an informant for General Willcox. “A loyal citizen
had a right to defend himself against the violence of turbulent men,” said
Fishback. Sometimes the individual could not wait for the law, but had to “assert
his own rights.” Small often carried arms and might have been armed when he
badgered Sutherland on the street. “Sutherland was bound to act upon
appearances.” He knew, “therefore, whom he had to confront.” Besides, Fishback
concluded, “One was a loyal citizen — the other a hissing traitor. No man could say
that Sutherland’s life was safe until Small was out of the way.”

The jury took less than half an hour to reach a not guilty verdict. Sutherland
knelt and prayed aloud in thanks, hugged and kissed his wife and children and
shook the hands of all the jury members. “The prayer was irresistibly eloquent,”
reported the official Republican organ, The Journal. “Tears fell and sobs burst
from men unused to weeping.”

The Small murder trial was just one of many hundreds during the Civil War,
but it perfectly encapsulates an emerging theme in American jurisprudence, one
that remains powerfully resonant today. Sutherland had ventured out carrying a
concealed revolver prepared to “confront” his antagonist. Once met, he drew his weapon to kill Small and did so, shooting down a fleeing man. But Fishback skillfully appealed to American masculinity couched in partisan language to trump centuries of legal precedent. His invocation of the “natural right” to seek out and destroy a threat joined a chorus of case law that later transformed American jurisprudence to form what the historian Richard Maxwell Brown has called the “no duty to retreat” doctrine. After the verdict, the Democratic Sentinel observed that “in civilized States, every safeguard is provided for the protection of human life, but if murder is justified upon the grounds assumed in this trial, all the restraints of law will be loosened, and the passions of men, not justice or Christian principles, will judge their fellows.”

The case also offers a lens into wartime partisan animosities on the Midwestern home front. In Indiana and neighboring states beset by political strife, it became commonplace during the war for men to carry concealed weapons illegally. Women and men frequently resorted to fists, knives, and guns to settle war-related quarrels. Roddy Small’s arrest by military authorities exacerbated tensions and heightened Democrats’ fears that President Abraham Lincoln was a despot who sought to undermine republican government. How could a Democrat obtain justice under Lincoln’s tyranny, they lamented, if a man could be both illegally arrested by the Army and later gunned down while in the act of fleeing, and his murderer acquitted?

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