

## Duncan Cooper Trial

It was January 1909 when the trial began. Within minutes after the opening of the courtroom doors, the 500 seats were filled with spectators from the surrounding area. Reporters from all around the nation were in attendance. Judge William Hart looked out at the sea of spectators, jurors and attorneys and proceeded to select the jury.

The prosecution was headed up by Attorney General Jeff McCarn. McCarn was a faithful devotee of Senator Carmack. He had written him a strong letter of support nearly two weeks after he had been elected attorney general in May of 1908. McCarn's attitude as a prosecutor was defined by saying, "I could easily sum up McCarn's personality simply by saying that if he wanted to chop a peanut, he would insist on using a sledgehammer to do it."

During the trial's first days, jury selection was difficult. The state had 18 peremptory challenges and the three defendants had a total of 72, in addition to any challenge for cause.

Repeatedly, prospective jurors were called. They were asked if they owned property, if they had formed an opinion in the case, whether there was any reason for them not to be seated. Repeatedly,

juror after juror would indicate they had already formed an opinion. Hundreds of jurors were called, then disqualified or challenged and sent away. The jury pool consisted of 3,000 names and by the end of the second day, only five men filled the seats in the jury box. After being seated, two of the five prospective jurors indicated they had already formed an opinion and were dismissed.

The local press had tainted the jury. While the Nashville *Banner* gave the killing balanced coverage, the *Tennessean*, engaged in a circulation war with the afternoon paper, in story after story repeated the tragedy of the cold-blooded killing of Edward Carmack by the “assassins,” those evil Coopers.

Finally, on February 16, testimony began.

The first witness for the prosecution was the widow, Colby Carmack, supported on the arms of relatives and friends. She added nothing to the facts for the prosecution, but she did paint a glorious, sad figure, prostrate widow, wringing her hands, her small son on the right, struggling to retain composure.

The state’s chief witness was Mrs. Eastman. She was in Senator Carmack’s presence when he was shot. She testified that Carmack did

reach for his weapon, but it seemed to catch in his pocket, and she believes that it could not have loosened in time for him to shoot before he was himself shot. She testified that Robin Cooper had walked, not toward his father, but toward the other side of Seventh Avenue, down south and below where, in theory, he could walk up behind Carmack and shoot him in the back of the head.

One of the defense lawyers, William Washington, cross-examined Mrs. Eastman. She admitted that the Colonel's outstretched hand held nothing, that she saw no shots fired by anyone. And she admitted that she was very excited, filled with emotion, and accordingly, could not recall the exact words spoken. Washington asked, "Who did you expect to do the fighting?" Mrs. Eastman answered, "I expected the man who called him a coward in my rear and told him to get from behind a woman was going to do it on the one hand, and I presumed Mr. Carmack was going to defend himself...I thought Colonel Cooper did the shooting."

The state called John Tindell, a 12-year-old newsboy who claimed that he overheard Colonel Cooper say, "Well, get him," or "we'll catch him" as they walked toward the Arcade.

Mary Skeffington testified that she overheard John Sharp, one of the defendants, say, “It’s Dunc Cooper shooting Senator Carmack.” Repeated testimony reinforced the fact that Cooper cursed Carmack and “damned him to hell.”

The state called Finley Duress, the undertaker, who testified that he found a gun “scabbard” or holster in Carmack’s right hand pocket. This clearly left the impression that Carmack had been stripping the holster from his gun when he moved his left hand to his right side.

After four days of testimony, the prosecution rested.

The defense was headed by John Anderson, a noted attorney who had been judge of the criminal court until 1900. He left that position to become attorney for the city’s electric light and streetcar systems. In the future, Anderson would represent Vanderbilt University in its fight to obtain the independence from the Methodist Church.

The Nashville legal community was close knit and well known. It was a small world, the world of the bench and bar, at the beginning of the 20<sup>th</sup> century. In 1909, Nashville had 200 lawyers serving a population of 110,000, or one attorney for every 500 citizens. Now, we have one lawyer for every 250 citizens.

Everyone knew all the attorneys. In fact, newspapers need only mention the surname of the attorney, or his title, and everyone knew who he was.

Starting on Saturday, the defense began their case. They first called Robin Cooper, the most important witness for the defense. Robin Cooper explained how he had killed Edward Carmack.

After he had seen his father walk halfway across the street, Robin felt it was his obligation to protect his father and, if he should be attacked, go with him.

The sight of Carmack drawing his pistol paralyzed Robin. But as Carmack made for the utility posts, Robin jumped forward on the sidewalk to stand between the Colonel and Senator Carmack. “A shot exploded, it seems to me, almost in my face. I could see the pistol and Senator Carmack’s arm. He was standing right in the gutter at the lower, or south, post. . . .” The bullet hit Cooper’s tie, dislodging a jewel from his stickpin, and stuck in his shoulder. A second shot rang out and this bullet tore through the left sleeve of Robin’s coat.

“As I stepped to the south pole, I put my hand on it, and stepped around to the curbing; and instantly when I stepped around, Senator

Carmack had stepped back, it seemed to me, two or three steps, or four or five ... his pistol pointed at me, looking toward me, and his side slightly to me. I fired as quickly as I could.”

“Why is it that you shot Senator Carmack?”

“I believed he would kill me if I didn’t.”

“Did you believe it was necessary to kill him at that time, or to shoot him at that time?”

“I do. I think if I had waited an instant later, he would have shot again; I believed it then, I do now.”

The defense called John Sharp. He explained Carmack had drawn his pistol and had moved toward the poles. He explained how Robin Cooper had jumped on the sidewalk and got somewhere near the opposite of the poles. He explained that Carmack had fired twice and then Robin drew a pistol and opened fire on Senator Carmack.

On cross-examination, Sharp admitted that if the Coopers hadn’t proceeded south on Seventh Avenue, there would have been no killing at the telephone poles.

The mood in the courtroom seemed to indicate that the defense’s arguments were carrying the day. While the prosecution had

established that the bullets from Robin Cooper's gun had killed Edward Carmack, the air of "self-defense" was lingering in the air.

Then, the defense called Colonel Duncan Cooper. His attorney, Washington, led him through the history of the relations between himself and Carmack. The Colonel outlined what happened during the gubernatorial debates, where Carmack would daily raise Cooper's name with a spirit of ridicule and veiled insinuations of corruption.

Fitzhugh, one of the state prosecutors, had the opportunity to cross-examine Duncan Cooper. Let's see what happened...