

BENEFIT
OF
LAW

The Murder Case of Ernest Triplett

ROBERT BARTELS

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To Jeanann

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BENEFIT OF LAW

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PREFACE

WHAT follows is a true account of *The State of Iowa v. Ernest James Triplett, Jr.*, a case which began in August 1954 with the murder of a small child, and which did not end until some twenty years later. The story is reconstructed from newspaper accounts, official transcripts and other court documents, extensive notes and memoranda, personal interviews, and, in a few instances, my own recollections as a lawyer who became intimately involved with the case.

Ernest Triplett's encounter with the American criminal justice system was an unusual one. Nevertheless, it dramatically illuminates a number of important aspects of that system, including the central role of the police; the need for thorough investigation of the facts, even those that seem most obvious; the importance of conscientious legal representation for criminal defendants, particularly those accused of heinous and unpopular crimes; and the function of procedural rules in promoting fundamental fairness.

Several people contributed very significantly to this book. Professor John Kaplan of the Stanford Law School, Lauren Vree of Evanston, Illinois, and Professor David Kader of the Arizona State University College of Law all made many helpful comments on my various attempts at a manuscript. As an Iowa law student, George Thomas (now a professor of law at Rutgers University) produced an excellent initial version of Chapter 19. Bonnie Cotter and Myrna Pena typed and retyped several versions efficiently and with undue good cheer. Finally, my wife, Jeanann, has my gratitude for patiently tolerating the time I have devoted to tilting at this and other legal windmills.

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I



1954-1955

1

THE VICTIM

ON AUGUST 31, 1954, eight-year-old Jimmy Bremmer ate supper with his parents, Dorothy and Joseph, and his older sisters, Karen and Pat, at their home on Cottage Avenue in Sioux City, Iowa. After supper, Mr. and Mrs. Bremmer left to continue working on the basement of the new house they were building a short distance away. Jimmy went to the home of Mrs. Lucille Hammel, a half block from the Bremmers, to visit Mrs. Hammel's seven-year-old grandson, with whom Jimmy had been playing most of the day. That evening, six young boys (Jimmy, Mrs. Hammel's grandson, her two nephews, and two other neighborhood children) were in and out of the Hammel house playing and watching television.

Sometime between 7:00 and 7:30 P.M., Jimmy left Mrs. Hammel's to see if his parents were home. At around 7:45, Jimmy returned, knocked on the door, and asked Mrs. Hammel to see her younger nephew, Harold Counterman. Harold, who was watching television and did not want to go out, asked his aunt to tell Jimmy that he was not in. She did so, and Jimmy left. When Harold's brother Steven left Mrs. Hammel's shortly after "Life with Father" started at 8:00, he saw Jimmy standing by a fir tree in front of the house. Steven spoke briefly to Jimmy, then left.

When Dorothy and Joseph Bremmer returned home at 8:30, their daughters were there with two neighborhood children watching television. The Bremmers watched "Robert Montgomery Presents" for a few minutes before Mrs. Bremmer went into the yard and started calling Jimmy. When she received no reply, she returned to the house and telephoned several neighbors to ask if they knew where Jimmy was, but none of them had seen him since he left Mrs. Hammel's at 7:45. Concerned because he had not been seen for an hour and because it was almost dark, Mrs. Bremmer drove the family car around the block look-

ing for her son, but she did not find him. Before "Robert Montgomery Presents" was over, Joseph Bremmer joined his wife in looking for Jimmy. When a thorough search of the neighborhood proved unsuccessful, the Bremmers decided to call the police.

Captain Joseph Davidchik, who was in charge of the Sioux City Police Department's evening shift, received a report that Jimmy Bremmer was missing at 11:26 P.M. He dispatched a car to the Bremmers' address and subsequently assigned two other officers to make an initial investigation. Assisted by Mr. and Mrs. Bremmer, the Sioux City police continued the search for Jimmy. At dawn on September 1, they were still looking.

Over the next several days, the search for Jimmy Bremmer became the most intensive one in Iowa's history. Governor William S. Beardsley called out the National Guard to assist police, sheriff's officers, and volunteers in combing the rolling hills and ravines in the area surrounding the Bremmers' neighborhood. Helicopters, boats, horses, and various motor vehicles were brought in to aid in the search. Four weeks after Jimmy's disappearance, and while Mr. and Mrs. Bremmer made arrangements to appear on the national television program "Strike it Rich" to plead for information regarding the whereabouts of their son, a volunteer search of a five-county, three-state area was organized. On September 28, thousands of men and women, Boy Scouts, and soldiers joined in the massive effort, all to no avail.

The following day, September 29, John and Clarence Bock, two highway maintenance workers for Plymouth County, Iowa, were erecting a snow fence along a county road only four miles from the Bremmer home. As John Bock got out of the pickup truck he was driving to pace off the stretch they were fencing, something lying in the field that adjoined the road caught his eye. When he walked up the embankment to take a closer look, he discovered the mangled skeletal remains of what he later described as a "little man," with the torso protruding awkwardly from the pants and the skull lying several feet from the rest of the body. He had found Jimmy Bremmer.

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THE SUSPECT

WITH THE DISCOVERY of Jimmy Bremmer's body on September 29 came the disclosure by the Sioux City Police Department that they had arrested a suspect on September 2, only two days after the boy's disappearance. The police declined to name the suspect, but they revealed that he was a fifty-year-old itinerant music salesman. The man had undergone lie-detector tests and extended questioning by local officers, FBI agents, and others, and at the time of the discovery of Jimmy Bremmer's body he was receiving psychiatric treatment as a patient at the State Mental Health Institute at Cherokee, Iowa, fifty miles from Sioux City. The suspect reportedly admitted seeing Jimmy Bremmer shortly before the time of his disappearance, but steadfastly denied any knowledge of what had happened to him.

The following day, September 30, Dr. Anthony Sainz, the clinical director at the Mental Health Institute, told newspaper reporters that the suspect had entered the hospital voluntarily, and that doctors there had completed their psychiatric examinations before they had received word that Jimmy Bremmer's body had been found. Dr. Sainz had conferred with police until midnight on September 29 about the case, and he had accompanied Sioux City police officers and the suspect to the field where the body had been found to observe the suspect's reaction.

Acting on instructions by Woodbury County Attorney Wallace Huff, Dr. Sainz declined to make any comment about his opinions or findings. However, Sioux City police officers were somewhat less reticent. Police Chief James O'Keefe described the suspect as "psychotic as well as homosexual," and Detective Lieutenant Harry Gibbons stated, "I think he knows a lot more than he's telling," and "I think we have the right man."

Finally, on October 1, the police disclosed that the suspect was Ernest J. Triplett. Triplett was reported to be talking freely but without emotion, denying that he had any knowledge about the killing of Jimmy Bremmer.

Funeral services for Jimmy Bremmer were held that afternoon.

While the police continued to question Ernest Triplett, they were largely frustrated in their search for clues. No weapon was found at the

scene, and a search of the 1941 Plymouth that Triplett had been driving on August 31 produced no fingerprints or other evidence.

Meanwhile, three red herrings distracted the investigators. First, on September 30, after Triplett told them that he had been in Maine the previous summer, the Sioux City Police Department contacted officials in Auburn, Maine, where the slaying of a young boy remained unsolved. In a pattern similar to the Bremmer slaying, twelve-year-old Danny Wood had disappeared from his home on July 22, 1954, and his battered body had been found nine days later in the Little Androscoggin River. Auburn's Chief of Police, Alton Savage, traveled to Sioux City to question Triplett, but his investigation showed that Triplett had a good alibi for the dates in question.

Shortly thereafter, rumors that a man had molested a young boy from neighboring Sioux County raised speculation that Triplett might be the wrong man in the Bremmer case. However, police investigation disclosed that the alternative suspect was a respectable citizen who simply had asked the boy in question for directions, and that the boy, perhaps influenced by the Bremmer case, had made up the rest.

Finally, on November 8, 1954, Lyle Walter Palmer, a former resident of Sioux City and an escapee from the Mental Health Institute at Cherokee who had been picked up in Portland, Oregon on a Peeping Tom charge, told police that he had been in Sioux City on August 30 and that he had killed a woman and a boy there. Sioux City Police Chief James O'Keefe quickly traveled to Portland to question the new suspect. But Palmer's claim that he had killed the woman in an apartment turned out to be demonstrably untrue; and Palmer said that he had killed the boy in an old streetcar barn, which in fact had been torn down several years earlier and had been located miles from the pasture in which Jimmy Bremmer had been found. In the end, Palmer admitted that he had made up his story in an effort to get back to Cherokee, where he said he had some friends. Chief O'Keefe returned to Sioux City satisfied that Palmer had no connection with the Jimmy Bremmer murder.

Following his visit on September 29 to the field where Jimmy Bremmer's body had been found, Ernest Triplett was returned to the Sioux City Jail. However, on October 5, following a hearing requested by Triplett, the Woodbury County Insanity Commission ordered him returned to the Mental Health Institute at Cherokee, where Dr. Sainz indicated he would undergo further psychiatric treatment. Meanwhile, law enforcement officers speculated that a decision on charges against Triplett would be made shortly.

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A CHARGE OF MURDER

THE PUBLIC HEARD little of Ernest Triplett for several months after his return to the Mental Health Institute on October 5, 1954. However, on March 3, 1955, law enforcement officials filed a "preliminary information" in the Justice Court in Le Mars, Iowa, the county seat of Plymouth County, charging Triplett with the murder of Jimmy Bremmer. Within three hours, Triplett was arrested at the Mental Health Institute by Plymouth County Sheriff Frank Scholer and taken to Le Mars to appear before Justice of the Peace D. C. Lenihan. At the initial appearance, Justice Lenihan informed Triplett of the charge against him and of his right to employ a lawyer for his defense. Justice Lenihan then gave Triplett until 10:00 A.M. Monday, March 7, to obtain an attorney and enter a formal plea to the charge.

Plymouth County Attorney William Sturges declined to comment about the case to the press, except to state that he had not seen the results of an FBI laboratory analysis of the contents of Triplett's car. Sioux City police officers who were present at the arraignment did, however, disclose some new information about Triplett. First, they revealed that although Triplett had been able to account for his whereabouts and activities except for a ninety-minute period around the time of Jimmy Bremmer's disappearance, when he was asked whether the boy had been in his car, Triplett had responded by saying, "You know, it's funny, I can't account for that hour and a half." Second, they revealed that Triplett had a criminal record that extended back to 1931. He reportedly had served thirteen jail sentences between 1931 and 1942 for vagrancy; and in 1942 he had served thirty days for vagrancy and disorderly conduct after escaping a charge of selling narcotics because of a lack of evidence.

Triplett was fifty-one years old and of average height and weight, with close-cropped hair and a sallow complexion. He appeared calm during the courtroom proceedings and was cooperative in having his picture taken by reporters. His only comment was to ask sarcastically whether the reporters would like him to stand on his head.

The filing of criminal charges against Triplett on March 3 apparently was motivated in part by the stated intention of officials at the Mental Health Institute to release Triplett because he had been found not to be "psychotic." Consequently, Triplett was not returned to the Insti-

tute following his appearance in court, but instead was taken to the Plymouth County Jail. Because the crime with which he was charged carried the possibility of the death penalty, Triplett was not entitled to have bail set for his release.

The selection of Plymouth County as the location for the filing of charges was the prosecution's first important decision in the case. Iowa law, like the law of most states, required that a person accused of committing a crime be tried in the county, or "venue," in which the crime was committed. Since Jimmy Bremmer had disappeared from Woodbury County but had been found in Plymouth County, there was a question about which of the two counties was the proper venue. At the March 3 arraignment, prosecutors from Woodbury and Plymouth counties explained that Plymouth County had been selected, after a conference with the Iowa Attorney General, because the available evidence indicated that the murder itself had taken place there.

Although Triplett did not obtain an attorney by the March 6 deadline set by Justice Lenihan, he did so shortly thereafter. Thomas O. Tacy made his first formal appearance on Triplett's behalf in mid-March. Not much was known in Sioux City about the sixty-eight-year-old Tacy except that he was from Council Bluffs, Iowa; that he had not attended law school but had become a member of the bar by "reading" law; and that he had something of a reputation as a courtroom orator.

While the preliminary information filed on March 3 allowed the authorities to hold Triplett in custody, it was not legally sufficient to permit the State to bring Triplett to trial, since Iowa law provided that a person accused of a serious crime had a right to "presentment or indictment by a grand jury," or to a formal "county attorney's information." Despite the fact that he simply could have filed a county attorney's information, County Attorney Sturges decided to present the charges against Triplett to the Plymouth County grand jury. After hearing twenty-five witnesses, the grand jury returned the following indictment against Triplett on April 12, 1955:

The Grand Jury of the County of Plymouth in the name and by the authority of the State of Iowa, accuses Ernest Triplett of the crime of Murder committed as follows: The said Ernest Triplett on or about the 31st day of August in the year of our Lord One Thousand Nine Hundred and Fifty-four in the County aforesaid did murder Jimmie Bremmer.

This "open" charge of murder would permit the prosecution to prove Triplett guilty of any degree of murder, including first-degree murder, which in turn would expose him to the death penalty.

The day after Triplett was indicted, Sturges announced that he would be assisted in the prosecution by Robert Beebe, a private attorney from Sioux City whom the Iowa Attorney General had appointed as a special prosecutor at Sturges' request. The main reason for this appointment probably was Sturges' lack of experience. Sturges, who was still in his twenties, had just graduated from the University of Iowa College of Law in June 1954, and he had been the County Attorney for only a little over three months. As of April, 1955, he had never conducted a trial in a felony case. While Sturges might have allowed himself to cut his trial teeth on a lesser case, the Triplett prosecution was too important to the community and to his reputation to risk losing through beginner's mistakes. Beebe, a former FBI agent and an experienced and respected trial attorney, seemed a solid choice to be the special prosecutor.

Triplett's indictment by the Plymouth County grand jury required that he again be formally arraigned and that he enter a new plea to the indictment. The arraignment was held on April 18, 1955. Since Triplett was an indigent, Thomas O. Tacy was officially appointed to defend him at state expense. Tacy's first act was to enter a plea of not guilty for Triplett.

Following Triplett's formal plea, his trial was set to commence on Monday, June 6, 1955. It was to be the first major criminal case that had been tried in Plymouth County in sixteen years. At the time, no one could have guessed that it would be more than seventeen years before the case reached its final conclusion.

4

THE TRIAL BEGINS

THE TRIAL OF *The State of Iowa v. Ernest James Triplett, Jr.* commenced promptly at 9:00 A.M. on Monday, June 6, 1955, with Plymouth County District Judge R. G. Rodman presiding. Prosecutors William Sturges and Robert Beebe, both youthful looking and sporting crew cuts, occupied one side of a large oak counsel table in front of the judge's bench, while Thomas Tacy, a rather large man with a substantial shock of white hair who looked younger than his sixty-eight years, shared the other side of the table with his client. A deputy sheriff sat to

one side of the table to keep an eye on Triplett. The gallery behind the lawyers was filled to overflowing with curious spectators and representatives of the press.

Anticipating an especially lengthy jury selection process, Judge Rodman had directed that 150 prospective jurors be included in the initial panel. However, only three prospective jurors were challenged, and by late Tuesday morning, twelve jurors and two alternates (seven women and seven men) had been chosen. Observers noted only one characteristic of the jurors that seemed important in light of the nature of the crime—all but one were married and had children.

The prosecution began its case in a relatively unspectacular, businesslike fashion by calling a number of witnesses, including Jimmy Bremmer's mother, Dorothy, and his sisters, Karen and Pat, to establish that Jimmy was last seen alive around 8:00 P.M. on August 31, 1954. John and Clarence Bock then testified to their discovery of the skeletal remains of a small child in a field in Plymouth County on September 29, 1954, and the prosecution introduced into evidence a number of photographs of the body that the Sioux City police had taken at the scene. The prosecution established that the body was that of Jimmy Bremmer by recalling Mrs. Bremmer to identify the belt and shoes that were still on the skeleton when it was found, and by calling Dr. Frank Epstein, Jimmy's dentist, to compare the teeth in the skull with Jimmy's dental records.

Dr. Thomas Coriden, the Woodbury County Coroner, who had performed an autopsy of Jimmy Bremmer's body at the Manning Funeral Home in Sioux City, provided the first evidence that Jimmy Bremmer had been murdered. After describing the general methods used in the autopsy, Dr. Coriden testified that he had discovered two "defects," or holes, above and behind the left ear of the skull; four pieces of bone that precisely fit the holes were found in a clot of blood inside the skull. In response to questions by Beebe, Dr. Coriden gave his opinion as to the cause of death:

Beebe: From your knowledge of anatomy and knowledge of the skull, what type of a blow would it have taken to have made the type of fractures that were there?

Coriden: It would take a severe, direct blow—two, I would say.

Beebe: Was the nature of the skull such that such blows could be inflicted with a bare hand?

Coriden: No.

Beebe: Doctor, from your knowledge of anatomy and from your examination of the skull, could you say it would be possible for