The most notorious murder trial of the 19th century, Part 2

This is the second of a two-part column in an occasional series on law and history. Last week's installment discussed the gruesome murder of Dr. George Parkman at the hands of Harvard Medical School Professor Dr. John Webster. This week focuses on the trial that followed.

By R. Marc Kantrowitz

There are few, if any, cases that have produced or furthered the number of fundamental legal principles used throughout our nation today than the trial of Dr. John Webster and subsequent appeal.

A murder without a body, forensic dental testimony, handwriting experts, proof of character and reputation, malice, murder and manslaughter, consciousness of guilt, alibi, taking a view, juror bias and circumstantial evidence were all highlighted in one manner or another.

Perhaps the greatest contribution to the law was the formulation of a reasonable doubt jury instruction that is still given, often verbatim, in every criminal trial in Massachusetts.

Lost however, like parts of Dr. George Parkman's body, are the factual details of a trial many at the time considered to be a mockery.

When approached, Daniel Webster, Rufus Choate and Charles Sumner, three of the criminal legal giants at the time, all declined the invitation to participate in the most famous murder case in America at the time. While putting forth plausible excuses, the bottom line is that everyone thought Webster guilty and no attorney wished to soil his reputation by representing one who had committed so heinous a crime.

With the assistance of the Supreme Judicial Court, before which the actual trial would be tried, two attorneys were named: Edward Sohier and Pliny Merrick, both highly respected civil lawyers. However, as a hand specialist would not perform heart surgery, a civil attorney should not try a murder case. They did, with disastrous results.

It is clear, in 1849 as today, as to what the defense should have been: Ephraim Littlefield, the janitor who made the grisly discovery of Parkman's body, did it. He had no great love for Webster, had easy access to Webster's laboratory, and was skilled not only at hacking up bodies, but purchasing them from grave robbers ($25 for a whole body; $5 for the head only) and selling them to Harvard Medical School. He also would benefit greatly by collecting a reward many times his annual salary.

Counsel ignored nearly 200 pages of notes Webster had prepared, many countering Littlefield's anticipated testimony. When Littlefield testified about Webster's movements in the week following Parkman's disappearance, Webster gave his attorneys the names of those who would contradict the janitor's testimony. When Littlefield told the jury he was not interested in the reward, Webster identified a professor to whom Littlefield told an opposite story.

JUSTICE LEMUEL SHAW

LAW 'n HISTORY

Counsel used none of Webster's notes. Most egregious, the day after a handwriting expert testified, tying Webster to an anonymously penned bogus letter telling of Parkman's whereabouts, a second letter, obviously written by the same person, arrived. Webster, who was in jail at the time, clearly could not have written it. His attorneys did nothing.

In his closing, as in his opening, defense counsel argued at length that if Webster were to be found guilty, it should be of manslaughter, not murder.

In contrast, the prosecution's summation, which started at 9 and ended at 5, was, like the presentation of its case, effective.

What truly sealed Webster's fate, however, were the jury instructions of Judge Lemuel Shaw, who, inexplicably given the late hour, charged the jury for a little under three additional hours, ending at 8.

In part, Shaw suggested that perhaps Parkman had been drugged, notwithstanding there was no evidence of such an occurrence. Shaw further instructed the jurors to basically disregard the testimony of seven defense witnesses who stated that they had seen Parkman later that Friday afternoon, long after he would have left Webster.

We know what the jury thought given a letter one juror later wrote to a local newspaper. "Was there nothing more that could be said in Dr. Webster's defense?"

Though more than 120 witnesses testified over 11 days, the jury took but a few hours to render the inevitable verdict of "guilty."

After Webster was sentenced to death, an earthquake of criticism rocked the judiciary with its chief justice receiving the brunt. From one Philadelphia newspaper: "Judicial Murder in Boston."

Perhaps in response to the outcry, the two prosecutors, two defense counsel and Shaw sat down and rewrote the charge (as well as other segments of the trial) from how the jury was actually instructed to what it should have been told. Then-prosecutor George Bemis published the altered account as the official one, and from that version Chief Justice Shaw wrote *Commonwealth v. Webster*, one of the most noteworthy opinions in our legal history.

As one legal scholar opined, "The charge of Shaw as it appears in the Massachusetts Reports ... is not at all the charge delivered to the jury in March 1850."

Epilogue

On Aug. 30, 1850, Webster was hanged. Prior to his hanging, he confessed to the murder. He requested that he be buried in Mt. Auburn Cemetery in Cambridge, but his lawyer, Ned Sohier, and others feared grave robbers and buried him in an unmarked grave in Copp's Hill Burying Ground in Boston's North End instead.

In 1853, Gov. John Clifford, who prior to being elected was one of the two prosecutors on the case, appointed Pliny Merrick, one of the two defense attorneys, to the SJC.

Judge R. Marc Kantrowitz sits on the Appeals Court. The above column, based primarily on books written by Robert Sullivan and Helen Thomson, is discussed in much greater detail in a book the judge is writing about the history of the Supreme Judicial Court.