

Oscar Krueger

NEW YORK FEDERAL

IN December, 1910, a very respectable young woman, who was then boarding at 51 Third Avenue, New York City, advertised for a position in the *New York Journal*. Her name was Miss Waschack. In reply, she received an obscene letter couched in such language that it cannot be reproduced. Miss Waschack, naturally, was disturbed over it, and showed it to the people with whom she was boarding. She was advised by them to take it to Anthony Comstock, the founder of the Society for the Prevention of Vice in New York City. The letter, dated December 10, 1910, and signed by "Ed," had been posted at Branch Post Office, Station Y, at Twenty-third Street and Fourth Avenue. It contained an improper proposal, with the suggestion that, if Miss Waschack desired to accept it, she should insert a notice in the personal column of the *New York Journal*, stating where they should meet.

Mr. Comstock determined that this was a matter which should not be permitted to rest. He inserted a notice in the *Journal*, as directed, stating that the place of the meeting should be at Fourth Avenue and Twenty-third Street at one o'clock on December 19. Under the directions of Mr. Comstock, who was standing close by and watching the entire proceeding, Miss Waschack went there and waited on the corner—waited until fifteen minutes past one, but no one approached. She noticed a man on the opposite side of the street who seemed to be watching her, so she began looking at him. He didn't approach. Thereupon she crossed the street and strolled slowly by him and on up the sidewalk. The man followed her for a couple of blocks, and finally accosted her, without using any name. She asked him if he was "Ed," and he replied, "Yes." She then asked him if he was the man who sent her a letter, and he said, "No," whereupon she told him that he was not the man she was looking for. He, however, was not in a mood to be dropped so abruptly. He decided to speak up, and said, "Well, I sent you the letter." Miss Waschack mentioned circumspectly the proposition

made; and his replies were as vague as her references to it. He made a "date" with her, however, to meet later that afternoon, and they parted.

Miss Waschack went to the appointed place, but the man never appeared.

Some days later, this man was arrested upon the complaint of Mr. Comstock. His name was Oscar Krueger, and it was learned that he lived near Fourth Avenue and Twenty-third Street with his wife and two children. He was a well-built man of Teutonic type, about five feet ten inches tall, and rather good-looking. He was employed usually as a painter or plasterer, or at some kindred occupation, on various construction jobs, and before his arrest in December, 1910, had never been arrested. He was induced to write "Waschack" on an envelope. This was compared with the handwriting in the obscene letter, and it looked like the same. Handwriting experts were called in by Mr. Comstock for consultation. They proclaimed this writing, and other letters written by Krueger, similar to that in the objectionable letter. The matter was laid before a Federal Grand Jury, which indicted Krueger on December 27, 1910, on the charge of depositing in the mails a lewd, lascivious, obscene, and unmailable letter, in violation of Section 211 of the Federal Criminal Code.

Krueger was arraigned in the District Court for the Southern District of New York on January 25, 1911, and entered a plea of not guilty. He was tried before Judge James L. Martin on February 2, 1911. The testimony against the defendant was entirely circumstantial. Mr. Comstock and Miss Waschack both related the circumstances of Krueger's accosting her on the street. The various samples of handwriting looked similar; and an alleged handwriting expert, who shall be nameless, testified that the two writings were the same. Krueger seems to have offered but little evidence. He flatly denied having written the incriminating letter or knowing anything about it. He produced no handwriting expert. He explained that he followed the prosecuting witness on December 19 because she was evidently trying to "pick him up," to see what would happen. He did not ful-

fil the "date" made at that time because he did not desire to do so.

The jurymen evidently placed little credence in his story, in view of the expert testimony on the handwriting and the other circumstantial evidence. They found him guilty of the charge, and Judge Martin sentenced him to serve eighteen months in the Federal Penitentiary at Atlanta.

PROTESTING his innocence, as he had from the very day of his arrest, Krueger was sent to Atlanta. He wrote letters continually to the President and the Attorney-General maintaining that it was an outrage to keep him in prison for an offense he knew nothing about. The letters made some impression. He was advised to apply for a pardon, and he did make three applications. The first two were refused. The third application was presented about one year after he arrived at Atlanta; and on being referred to the United States Attorney in New York for investigation and report, it happened to come to the attention of Hon. Daniel D. Walton, then an Assistant United States Attorney. He became interested in the case and made a thorough investigation. He obtained the samples of Krueger's handwriting, and the letter which Miss Waschack had received. He had them re-examined by other handwriting experts, particularly by the late William J. Kinsley, who pronounced the two handwritings different, though to the lay observer they might have indicated some similarity.

On the basis of this second examination of the writings and a thorough reinvestigation of all the testimony in the case, the District Attorney's office strongly recommended that Krueger be pardoned on the ground that he was not the person who had written the obscene letter and sent it through the mails. The pardon was vigorously opposed by Anthony Comstock, who attacked the United States Attorney and Mr. Walton for their conclusions and recommendation. It is understood that Mr. Walton's recommendation to the Attorney-General included a suggestion that, in view of the undoubted injustice suffered by Krueger, compensation ought to be awarded to him.

On January 18, 1912, Oscar Krueger was released from the Atlanta Penitentiary on a full and unconditional pardon granted by President Taft, after an imprisonment of nearly a year for a crime committed by another.

KRUEGER'S predicament arose out of circumstantial evidence, backed by the corroborative testimony of a person who professed to be a handwriting expert. Anthony Comstock, that zealous "Roundsmen of the Lord," evidently considered Krueger's continued incarceration part of his divine mission, for in spite of Mr. Kinsley's positive declaration that the two writings could not have been the work of the same man, Comstock vehemently opposed Krueger's pardon and denounced those who favored it. Comstock's sincere, though often misguided, fanaticism induced in him gullibility and carelessness in fastening so serious an offense on an innocent man, and these characteristics were combined with exceptional stubbornness and unwillingness to admit error. He and the lady were eager to believe that the handwritings were those of the same person, and Comstock seems to have found an obliging "expert" who agreed with them. Krueger could not afford to engage a handwriting expert, and apparently the government prosecutor did not feel disposed to do so. Had he, however, retained Mr. Kinsley at the trial, instead of on the application for a pardon, much suffering and injustice would have been averted. Krueger owed his ultimate pardon and release to the conscientious investigation of Mr. Walton, who took the trouble to retain an impartial and noted expert. Inasmuch as the whole case turned essentially upon the identity of the handwritings of the letter writer and of Krueger, it seems unfortunate that the government prosecutor and the jury relied solely on the "expert" furnished by Mr. Comstock. There is much to be said for publicly employed experts who shall not be considered witnesses for either side.¹ What happened to Krue-

¹ See the Wisconsin statute for impartial experts appointed by the court, upheld in *Jessner v. State*, 202 Wis. 184, 231 N.W. 634 (1930), and case note in 26 *Illinois Law Rev.* 82 (May, 1931). See also Wigmore, *Evidence*, sec. 563.

ger's family during his imprisonment or to Krueger after his release is not known.

BIBLIOGRAPHY

1. The indictment, pleas, and record of conviction on file in the office of the Federal District Court in New York City. *United States v. Ed Kern, true name Oscar Krueger*, C 3-229.
2. *United States Attorney General's Report, 1912*, p. 348.
3. "Pardon for an Innocent Man," *Washington Evening Star*, January 21, 1912, p. 8.
4. Acknowledgment: Hon. Daniel D. Walton, New York City.