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Walter H. Hitchler

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NOTES

UNCOMFORTABLE MURDERS

By

WALTER H. HITCHLER*

The phrase "malice aforethought" when first used to describe the distinguishing feature of murder probably was used in its literal sense, i.e., a culpable intent to kill formed prior to the death dealing blow.¹

The forensic experience of successive generations disclosed many cases of homicide which, though not resulting from a desire to kill, were considered heinous enough to deserve the full penalties of murder. These, accordingly, one after another were brought within the definition of murder by a wide judicial construction of the phrase malice aforethought.

The various classes of homicides which were held to be with "malice aforethought" and therefore murder were summarized and classified as follows:

"In reference to murder, 'malice' (the word 'aforethought' is practically unmeaning), means any one of the following states of mind, preceding or co-existing with the act or omission by which death is caused:

(a) An intention to cause the death of, or *grievous bodily harm to*, any person, whether such person is actually killed or not.

(b) Knowledge that the act which causes death will probably cause the death of, or *grievous bodily harm to*, some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or *grievous bodily harm* is caused or not, or by a wish that it may not be caused.

(c) An intent to commit any felony whatever.

(d) An intent to oppose by force any officer of justice on his way to, in, or returning from the execution of the duty of arresting, keeping in custody, or imprisoning any person whom he is lawfully entitled to arrest, keep in custody,

*B.L., University of Virginia Law School, 1905; D.C.L., Dickinson College, 1932; LL.D., Saint Francis College, 1932; LL.D., Muhlenberg College, 1939; LL.D., Albright College, 1943; Professor, Dickinson School of Law, 1906—; Dean, Dickinson School of Law, 1930—; Chairman, Pennsylvania Liquor Control Board, 1939-40; Editor, Statutory Law of Pennsylvania, 1919-22; Chairman, Alien Enemy Hearing Board, U. S. Department of Justice, 1941—; Member American and Pennsylvania Bar Associations; Author, HITCHLER ON CRIMES.

¹ New York Law Revision Commission Legislative Document (1937) No. 65 p. 536.

or imprison, or the duty of keeping the peace, or dispersing an unlawful assembly, provided that the offender has notice that the person killed is such an officer so employed.²

Concerning the first class of murder the Pennsylvania court has recently stated:³ "If the intent be directly to produce bodily injury, it must be such an injury as may be expected to involve serious consequences, either *periling life or leading to great bodily harm.*" The court refused to *detail* what constitutes great bodily harm saying: "We agree, however, that it is not necessary that the injury be intended to be permanent or dangerous to life; it is malicious to intend injury such as to seriously interfere with *health and comfort.*"

Does this mean that a killing which results from an unlawful act intended to make another seriously *uncomfortable* is murder? The word *comfort* is connected with *health* by the conjunction *and*, and it may, therefore, be argued that the act must be intended to interfere with *both health and comfort*. An act intended to interfere seriously with health would probably be an act imperiling life or leading to great bodily harm.

² See *Turner v. Com.*, 167 Ky. 305, 180 S.W. 768.

³ *Com. v. Dorazio*, 365 Pa. 291, 74 A.2d 125 (1950).