

THE LOEB-LEOPOLD MURDER OF FRANKS IN CHICAGO, MAY 21, 1924

[The kidnapping and murder of Robert Franks by Richard Loeb and Nathan Leopold, Jr., in Chicago, Illinois, on May 21, 1924, aroused world-wide interest—at first because of the contrast between the social status of the murderers and the callous cruelty of the deed, but afterwards because of the psychiatric testimony offered by the defense at the hearing for a mitigated sentence.

The complete testimony taken fills a thousand or more typewritten pages (the confessions alone, in the stenographic transcript, amount to three hundred pages); and the JOURNAL is not the place for printing this record. But criminologists everywhere are interested in the psychiatrists' reports, for this is probably the first instance of the offer of elaborate psychiatric analyses as the basis for remitting the law's penalty for a calculated, cold-blooded murder, committed by persons not claimed to be insane or defective in any degree recognized by the law as making them not legally responsible.

The JOURNAL therefore has thought it a matter of editorial duty to print enough of the record to serve as a basis in the future for general study and discussion of the psychiatric aspects of the murder. These portions printed are incomplete, but they are, at any rate, more full and authentic than the ephemeral journalistic reports, and they may suffice for most students of Criminal Science. The JOURNAL is indebted for them to the courtesy of the counsel for the prosecution and the counsel for the defense.

Some experts consulted by the defense were not called at the hearing, and the opinions of those who testified are too long for printing. The joint opinion (C) of four experts for the defense, here printed, was prepared by themselves as a summary of voluminous separate ones. The opinions (D) of the experts called by the prosecution are excerpts from their answers in testifying. (It should be added that none of these summaries make any reference to certain data of the murderers' sexual history, read to the judge 'in camera' and not communicated to the daily journals.) The summary of Events of the Crime and Its Detection (B) is printed verbatim from a memorandum of the state's attorney, and will serve to furnish the background for the psychiatric opinions; most of the events noted were covered by the confessional narrative, as afterwards exhaustively

checked up and verified by witnesses. There were some seventy-five witnesses (for the prosecution) and some fifty exhibits.

The record here printed is divided into six parts: A. Brief Chronology of Events; B. The Crime and Its Detection: a Memorandum Summary; C. Joint Summary Report of Psychiatrists for Defense; D. Opinions of Psychiatrists Called for Prosecution; E. Judge's Sentence; F. Comments on the Sentence, from the Legal Profession.

THE EDITORS.]

A. BRIEF CHRONOLOGY OF EVENTS

WEDNESDAY, MAY 21, 5:15 P. M.—Robert Franks kidnapped as he leaves the Harvard school.

WEDNESDAY, MAY 21, 9:30 P. M.—“George Johnson” called Mrs. Franks on the phone while the boy's father was searching for him and told her Robert was safe, and a letter to follow would explain everything.

THURSDAY, MAY 22, 8 A. M.—Nude body of unidentified boy found in the culvert at 118th street and Pennsylvania tracks with a pair of spectacles beside him.

THURSDAY, MAY 22, 12 M.—Special delivery letter telling that Robert was being held by kidnapers' band for \$10,000 ransom, arrived at home and directed the father to meet kidnapers at a drug store with the money.

THURSDAY, MAY 22.—Uncle of the boy went to south side undertaking parlor to identify body, and called the father with the news as he was frantically trying to remember where a second phone call directed him to meet the kidnapers.

FRIDAY, MAY 23, 12:30 A. M.—Persons questioned concerning crime. Subsequent days spent in following every possible clue.

WEDNESDAY, MAY 28, 4 P. M.—Both instructors released by Judge De Young on writs of habeas corpus.

FRIDAY, MAY 30, 1 A. M.—Nathan F. Leopold, Jr., and his chum, Richard Loeb, were arrested, and Leopold admitted the ownership of the glasses.

SATURDAY, MAY 31, 6:55 A. M.—Leopold and Loeb made formal statements that they kidnapped and murdered the Franks boy.

MONDAY, JULY 21.—Case of *People v. Richard Loeb and Nathan F. Leopold, Jr.*, called in the Criminal Court of Cook County, at Chi-

icago, on Indictments General Nos. 33623-4, for murder and for kidnapping for ransom.

Judge: John R. Caverly, Chief Justice of the Criminal Court.

Counsel for the People: Robert E. Crowe, State's Attorney for Cook County; John Sbarbaro, Milton D. Smith, Joseph P. Savage, Assistant State's Attorneys.

Counsel for Defendants: Clarence R. Darrow, Walter Bachrach, Benjamin Bachrach.

The defendants withdrew their pleas of not guilty and entered pleas of guilty, and asked for a hearing by the judge on the question of mitigation of punishment.

WEDNESDAY, JULY 23.—Hearing began.

THURSDAY, AUGUST 28.—Hearing closed.

WEDNESDAY, SEPTEMBER 10.—Sentence passed. Life imprisonment for the murder, 99 years' imprisonment for the kidnapping; the same for both. [Maximum penalty for either crime is death.]

B. THE CRIME AND ITS DETECTION: A SUMMARY

During the Marine-Michigan game, November, 1923, Leopold and Loeb robbed fraternity house of which Loeb was a member at Ann Arbor, Michigan, taking typewriter belonging to Bitker, etc.

Fair inference job was planned prior to this time.

Then started to look around for likely prospects so that they could carry out their plan.

Names of Prospects: Billy Deutsch, Rosenwald's grandson, Johnny Levinson, Clarence Ward (?).

Opened account Hyde Park State Bank. Clara M. Vinnedge recognizes Richard Loeb as having an account at that bank.

Charles E. Ward recognizes Nathan Leopold as one who opened the account under the name of Morton D. Ballard.

Arthur J. Doherty, teller, recognizes Loeb as one who cashed check for \$100 signed by Morton D. Ballard.

Established residence Morrison Hotel, May 9th. Suitcase recognized by J. D. Cravens, hotel clerk. House detective, in moving suitcase from room rented by Loeb under name of Morton D. Ballard, found four books in case taken from University of Chicago library, one book containing a card with the signature on of Richard Loeb. Thomas McWilliams, manager Morrison Hotel, turned over yellow envelope to Chief Morgan Collins, sent to Morton D. Ballard from Yellow Drive-It-Yourself System.

Barish's delicatessen store, 1352 Wabash avenue, where Loeb awaited call from Rent-a-Car on May 9th, regarding reference, he claiming to be Louis Mason.

Recognized by David Barish, owner, and Max Tucherman, Barish's brother-in-law, as having been in store on May 9th and answering the phone when it rang.

William Herndon, Rent-a-Car Company, 1426 Michigan avenue, recognizes Leopold as one who rented car on May 9th and also on May 21st, under name of Morton D. Ballard.

Turned application over to Walter L. Jacobs, of same company, president, who approved same, and called "Mr. Mason" at Wabash avenue address.

Margaret Fitzpatrick, typist and telephone operator, recognizes Leopold as a man who rented car under name of Morton D. Ballard, and who requested her to send duplicate identification card to Trenier Hotel, same request being made over the phone, and remembers Leopold coming into the office to sign second identification card.

First time car was taken out for only two or three hours.

Loeb visited Morrison Hotel and found that suitcase had been removed from the room. They immediately changed address from Morrison to Trenier Hotel.

Trial package thrown from train five or six times in the vicinity of 74th and Illinois Central tracks, around Champion Screw Works plant.

Purchasing of stationery to write ransom letters from Hakan Strandberg, 1054 E. 47th street. Purchased four or five days prior to the kidnapping.

Writing of ransom letter prior to kidnapping, leaving same unaddressed.

The procuring of a can of ether some days prior to kidnapping. The procuring of the car on May 21st from the Rent-a-Car people. Stopping in the vicinity of 35th and Cottage Grove avenue for lunch.

Putting on the side curtains.

Proceeding to the vicinity of 45th and Cottage Grove.

Loeb driving Leopold's car and Leopold driving car secured from Rent-a-Car people.

At 43rd and Cottage Grove Richard Loeb left car and purchased chisel and rope from Albert Hubinger, clerk, in hardware store.

Leopold purchased bottle of hydrochloric acid from Aaron Adler, 4458 Cottage Grove avenue.

Next stop was at Leopold's home. At this time Leopold was driving his own car. Loeb followed him in the pathway with the car that had been rented.

Leopold instructed chauffeur to fix brakes on his car, stating that they squeaked.

At this time he went into the house and secured tape from the bathroom for the purpose of wrapping the chisel.

Fair inference that boots and robe and two automatic pistols were placed in car at this time.

Left Leopold's home in rented car and went to vicinity of Harvard school, 47th and Ellis avenue, to look over "prospects."

Loeb got out of car and went into Harvard school yard, where some boys were playing ball, and there talked to Johnny Levinson and James T. Seass, who was the Levinson boy's tutor. Loeb told Johnny Levinson to hit out the ball, shook hands with Seass, and then left.

Thought that their actions around the school might later excite suspicion; they decided to get a pair of field-glasses from Leopold's home, so that they could watch the children who were playing and at the same time not be observed themselves.

Secured field-glasses from Leopold's home and returned to vicinity of Harvard school, where they watched boys playing unnoticed. Game broke up and Johnny Levinson and the other boys ran down the alley.

They waited awhile for them to return, but on the failure of Levinson to return they started toward his home, thinking they could pick him up before he reached home.

Made several circles around the blocks in the vicinity of Levinson's home, but were unable to see him.

Carl Ulving, driver for Mrs. Spiegel, saw Loeb driving car at this time.

While driving west on 49th they saw Bobby Franks just cross 49th street, going south toward 50th. Slowed up car to give Franks chance to get to about the middle of the block between 49th and 50th, some people being on the street at that time.

Turned off of 49th south on Ellis, and pulled to the west side of street to where Franks boy was walking. Loeb hailed Franks boy; asked him if he wanted to ride home.

Bobby Franks thanked him; stated he preferred to walk. Loeb then beckoned to him to come over near the car, telling him he wanted him to meet Nathan Leopold, and started in conversation with him about tennis racket.

Franks boy sat in front seat.

Started car south on Ellis avenue. Turned east on 50th street, and as they turned onto 50th street the one who was in the rear of the car struck Bobby Franks over head four times with the chisel, and pulled him into the rear of the car.

Stuffed gag into his mouth and held hand over mouth and nose until boy had died.

Removed shoes, stockings and trousers.

This was about 5:45 p. m.

Covered body with robe.

Drove to vicinity of 118th and Panhandle tracks.

Purchased sandwich at lunch counter, and continued to drive around until it was dark.

Had two loaded automatic revolvers on person at this time for the purpose of killing anyone who might interfere or attempt to stop car.

Went to 118th and Panhandle tracks after dark.

Carried body in robe from car to culvert.

Removed remainder of clothes.

Loeb poured hydrochloric acid on boy's face and body.

Leopold removed his coat and shoes and put on his boots. Then placed body in large drain pipe under railroad tracks.

When Leopold's coat was being picked up after body was placed in culvert, the glasses fell out of pocket.

Picked up clothes and wrapped them in blanket, losing one of Bobby Franks' stockings out of same on way back to machine.

On way back from culvert passed Mrs. Lucille Smith and daughter, who were returning from picture show, flashing bright lights. Smiths recognized car similar to the one they used as having passed them May 21st in that vicinity, about 9:30 p. m.

Leopold stopped car at a drug store on the way in and called a girl friend. Also called his home to inform them that he would be a little late getting home, but to have his aunt, Mrs. Schwab, wait for him and he would drive her home.

Stopped at Loeb's home first, where clothing, etc., was removed from car. Some of the blood they attempted to wash from the car at this time.

Clothes of Bobby Franks were burned in furnace. All metals were removed from same, buckles, etc.

Were afraid to burn robe at this time for fear it would cause too much smoke and a stench through the house. Robe was hidden in yard in back of some bushes.

Drove to Leopold's home, where he left the rented car parked a few doors from his home, and went into the garage and got his own car out. He then drove his aunt, Mrs. Schwab, home, Loeb remaining in his home at that time. Mrs. Sven Englund heard someone come in and take car out.

The Franks home was called by Leopold about 10:30, Mrs. Franks answering the phone. He informed her that her son had been kidnaped, but he was all right; not to tell the police, etc. Instructions would follow later.

The name and address of Franks was printed on the envelope in the car, this letter having been prepared beforehand. The letter was sent to Franks special delivery, stating that instructions would be given over phone at 1 p. m., May 22nd, as to where to proceed with the money. Signed "George Johnson." Mailed around 1 a. m. Explain letter.

After taking the Schwabs home Leopold returned to his own home, where they played a couple of games of cards and further planned. Then Leopold drove Loeb home.

On the way home with Loeb, about 1:30 a. m., Loeb tossed from the automobile the chisel that had been used in murdering Bobby Franks.

This chisel was picked up by Bernard Hunt, 6233 South Aberdeen street, who saw same thrown from an automobile at 49th and Greenwood, and recognizes Leopold's car as a car similar to the one the chisel had been thrown from.

Bernard Hunt turned chisel over to Officers Enos and Milligan of the flivver squad, about 2:30 a. m. Blood was on the chisel at this time.

Body found by Tony Menke. Glasses found, Paul Korff.

Korff and crew help remove body from culvert.

Offs. Byrne and Anderson found stocking belonging to Bobby Franks on Thursday, May 22nd.

Goldstein and Milroy.

Leopold met Loeb at the University on May 22nd, about 11 o'clock.

They drove from the University to Leopold's home in Leopold's car.

The rented car was then parked about two or three houses from Leopold's home, where it had been all during the night.

The rented car was then taken from its parking place, brought into the Leopold driveway, where Loeb and Leopold proceeded to wash out the blood.

While scrubbing the carpet of the rear of the car, Sven Englund, chauffeur for Leopold, came out of the garage and offered to assist them in cleaning the car.

Leopold stated to Sven Englund they had spilled some red wine in the car and they wanted to wash it out so that Loeb's father would not see it, and told the chauffeur they didn't need any help.

Letter was placed in Keep City Clean Box on 63rd street, giving Jacob Franks instructions what to do at the moment. After thinking it over, they were afraid that the letter would not stick to the cover of the box, and abandoned that step in their plans.

They then drove to Illinois Central depot, where a ticket was purchased by Richard Loeb for Michigan City, and a seat in the Pullman car No. 507, car Quarren, for seat No. 4. This was the last car on the train.

Loeb then entered car No. 507 and placed another letter in the telegraph blank rack. This letter, having been prepared some days prior to that time, and addressed that day to Jacob Franks. This was about 2:10 p. m., R. R. time.

Loeb then left the train.

Ticket was purchased from George C. Fry. Duplicate ticket was turned over to state's attorney by John F. Ball.

While Loeb was placing letter in car, Leopold called the Franks home from the drug store around 12th street and Park Row, and gave Mr. Franks instructions to go to the drug store at 1465 East 63rd street and await there for a call. That a Yellow cab would call for him at his home, and for him to proceed to the drug store at once, repeating the address twice.

Mr. Franks asked for a little delay, stating something had come up which made it necessary for him to have a little more time; but he insisted that Mr. Franks go there at once, and hung up the receiver.

About five minutes prior to the call from Leopold, Mr. Franks had been informed that his boy had been murdered and the body had been positively identified by his brother-in-law, Mr. Gresham.

A Yellow cab, driven by Robinson, Yellow cab chauffeur, arrived at the Franks home about 2:35, standard time. Robinson stated

that a call came to the stand to proceed to the home of Jacob Franks, 5052 Ellis avenue, for a load.

Explain letter placed in car.

Percy van de Bogert, clerk in drug store at 1465 E. 63rd street, and James C. Kemp, porter, 1465 East 63rd street, stated that two calls came to their drug store, asking for Jacob Franks, one about ten minutes after the other.

Tell what their plans were regarding watching train, field glasses, etc.

After coming out of drug store from which they had telephoned last time to the drug store at 1465 East 63rd street, inquiring for Jacob Franks, they noticed headlines in the newspapers that a boy's body had been found in the vicinity of 118th street and Panhandle R. R. tracks.

Leopold wanted to continue on to get the money, but Loeb insisted on dropping the plan, for fear that they might be detected.

Leopold called up George Lewis and requested him to take his ornithology class.

They then returned to the Leopold home, where Leopold secured his own car, and they proceeded to the Rent-a-Car Company, where Leopold returned the car he had rented the day previous.

There was some conversation at this time about getting a refund for gasoline that he had purchased. On the company insisting upon having a receipt for same, the matter was dropped and the balance of his deposit was returned.

Ballard's check cashed by Richard Loeb at Hyde Park State Bank on Thursday, May 22nd.

Loeb with Goldstein, Milroy and Mayer, drug store.

Leopold talked with Prof. Puttkammer, criminal law teacher, regarding Franks case, as to what the punishment would be.

Examination for Harvard held on Friday, May 23rd.

Saturation of automobile robe with gasoline, taking to 73rd and lake and burning same.

Taking Franks boy's shoes, class pin, belt buckle, etc., into Indiana and hiding same.

Leopold called in by Capt. Wolfe, Saturday, May 24th. Gave statement. Told of those in his class who visited that neighborhood. Gave name of George Lewis.

After returning from talking with Capt. Wolfe, carried typewriter from home and placed it in the trunk in rear of car.

That night Leopold drove around through the park while Loeb twisted off the keys of the typewriter, throwing typewriter in one part

of the lagoon from the bridge, and keys in another part of the lagoon.

Alibi prepared in the event they were called in.

Goldstein, Milroy of Daily News, Howard Mayer, American, left fraternity house to look for drug store that the calls were made from. Loeb suggested this and located drug store where calls for Franks came in, 1465 East 63rd street.

Loeb was asked if he knew Bobby Franks. Said "Yes." Stated the kind of a boy he was.

Leopold talked to Prof. Puttkammer about case. Argued with him as to what the punishment might be, and if it was not manslaughter instead of murder. Tried to shift blame to ——— and ———, who were at that time in custody of police.

Max Wester, Leopold's tutor, discussed Franks case with him.

State's attorney entered case on Saturday, May 24th.

Instructed assistants to find out about glasses.

Boubrou people of New York gave three names of concerns that handled their frames.

Almer Coe & Co. recognized frame as their special frame, and lenses as their lenses.

Supplied three names of people who had had the same prescription filled in their stores, one of the three being Nathan Leopold.

Almer Coe searched about four days. Dr. Emil Deutch, Jacob Weinstein.

Crowe had room arranged in La Salle Hotel for questioning.

Leopold brought in to La Salle Hotel, May 29th, afternoon. Told his alibi and stated Richard Loeb was with him on the day in question.

Said he had glasses at home.

Leopold returned from home with his brother "Mike," with glass case, after visiting the Franks home and talking to Senator Ettelson.

Loeb brought in while Leopold was out at his home. Could not remember days in question.

Stated later that they were to forget the alibi after one week.

Leopold admitted owning the glasses.

Stated he could write a letter.

Printed name and address of "Jacob Franks" at hotel.

Taken to state's attorney about 1:30 a. m., May 30th.

Officers Crot and Johnson went to Leopold home, found Hammond typewriter, ether, arsenic, etc.

Both taken from state's attorney's office to stations.

Elizabeth Sattler, maid in Leopold's home, told Capt. Schoemacher, on Friday, May 30th, about noon, that she had seen an Under-

wood portable typewriter in the house for the past three or four months and that it had disappeared within the last two or three days.

Relatives came into state's attorney's office, Friday, May 30th, around 3 o'clock.

On questioning Leopold about this Underwood typewriter that Miss Sattler spoke about, he stated it must belong to one of the four men who had been doing "dope-sheeting" with him, naming Maremont, Oberndorf, Shamberg and Abelson.

Milroy and Goldstein of Daily News furnished samples of type-writing from an Underwood portable machine that Leopold had made.

Oberndorf, Maremont, Shamberg and Abelson brought into the office, and denied that they ever owned the machine, but stated they had worked on equity with Leopold and that he had used a portable machine about a month prior to this time.

Leopold then told the state's attorney that this portable might belong to Leon Mandel, who was in Europe.

Crowe convinced him it did not, and if it did it must still be at his house. He agreed to go out and see.

Leopold returned to office after going to his home and looking for typewriter.

Bernard Hunt, watchman, who picked up chisel, was in office and gave a description of a car similar to the one that Leopold owned as having been the car the chisel was thrown from.

Sven Englund, Leopold's chauffeur, was in the office and stated that the car belonging to Nathan Leopold was in the garage on May 21st up until 10:30 p. m. that night.

Also stated he saw the boys washing red wine from car on Thursday, May 22nd.

When Richard Loeb was told of these facts, gasped and asked for water, and stated he would tell the truth.

After Leopold found out that Loeb was talking, he stated he would tell the whole truth.

Started out Saturday, May 31st, to visit various places mentioned in the confession.

First stopped, Rent-a-Car.

Leopold talked with Mr. Jacobs, and told Miss Fitzpatrick that he called over the phone first about the change of address and did not come in until later. (Corrected Miss Fitzpatrick.)

Second stop, 1352 Wabash avenue.

Barish recognized Richard Loeb as man who was in his store on May 9th and answered telephone.

Loeb also told Barish and Mrs. Barish what conversation they had with a brother-in-law of theirs during the time he was in the store.

Loeb fainted and was taken to Windermere Hotel by Sergt. Tom O'Malley and squad.

Next went to Leopold's home. Got boots and cap.

Went to hardware store in vicinity of 43rd and Cottage Grove avenue, where Leopold indicated that Loeb purchased chisel and rope. Talked with Albert Hubinger, who remembered selling chisel and rope to one answering the description of Richard Loeb, on May 21st.

Went to drug store operated by Aaron Adler, 4450 Cottage Grove avenue. Leopold stated that hydrochloric acid was purchased there. Aaron Adler remembered selling pound bottle of hydrochloric acid on that date, and recognized Leopold as purchaser.

Went to Jackson Park, where Leopold showed state's attorney and police officers where typewriter had been thrown from bridge in the lagoon.

Then went to the other bridge in park where Leopold indicated where keys had been thrown.

Went to 73rd and lake, where Leopold pointed out the robe that had been partially destroyed.

Then went to Indiana, where Leopold assisted in searching along a road that was about two blocks from a cemetery for the shoes, belt buckle, belt, etc., of Bobby Franks.

Returned to Windermere Hotel. Leopold had bath and food. Loeb in bed at Windermere Hotel at time.

L. and L. removed to stations about 1 o'clock in morning.

Leopold and Loeb taken to place where shoes, belt, etc., were buried. Loeb found belt. Turned same over to Chief Hughes, Detective Bureau.

Messages sent out that afternoon to trace car Quarren, No. 507, and look in telegraph blank box for letter that had been deposited there by Richard Loeb on May 22nd.

Letter found by Andy Russo in car Quarren in N. Y. City, in the New Haven yards.

Drs. Church, Patrick, Krohn called in Sunday afternoon.

Drs. Wesenér, Webster and Hecktoen, chemists.

Loeb repeated confession in the presence of the doctors and others Sunday afternoon, June 1st. Corrections and arguments between Leopold and Loeb.

Went to jail yard, where rented car used in the murder of Robert Franks was parked.

Loeb was unable to recognize car. Leopold recognized car by scratches on right side of car, which were made in trying to wash off the blood.

Both wanted to sit in front seat for picture.

Returned to state's attorney's office from yard. Leopold and Loeb stripped and examined by Drs. Krohn and Patrick.

Tyrrell, from Milwaukee, handwriting expert, called in.

Leopold printed name of Jacob Franks on envelopes and paper and stated he would give a correct sample of his printing at this time. Told how he tried to destroy couple of copies that he had made previous to that at the La Salle Hotel, fearing they might detect the printing.

June 2. Dr. Singer's examination. Refused answer on advice of counsel. Typewriter found by Frank Blair, diver.

Traced by Schulke, system manager of Underwood Typewriter Company, and found to be a typewriter that was reported stolen from Ann Arbor, Michigan, and belonging to a man named Bitker.

St. Germain and Baronsky found shoes and class pin of Bobby Franks, which were identified by the Franks family.

Drs. Springer and Benson testified to cause of death.

Edw. Gresham, brother-in-law of Jacob Franks, identified Bobby Franks' body to coroner's physician.

THE LOEB-LEOPOLD CASE—(Continued)

C. PSYCHIATRISTS' REPORT FOR THE DEFENSE (JOINT SUMMARY)

The study and opinion recorded below represents an attempt to combine into a single report the findings and conclusions of the examination of the defendants by Doctors WILLIAM A. WHITE, Superintendent of St. Elizabeth's Hospital, Washington, D. C.; WILLIAM HEALY, Director of Judge Baker Foundation, Boston, formerly Director of the Juvenile Psychopathic Institute, Chicago; BERNARD GLUECK, formerly Director Psychiatric Clinic, Sing Sing Prison and Bureau of Children's Guidance, New York; and RALPH C. HAMILL, Neuropsychiatrist, of Chicago.

The examinations were carried out at intervals between July 1st and 27th, 1924, at the Cook County Jail, in Chicago, in the presence of Walter Bachrach, Esq., one of the attorneys for the defense. The facilities furnished by the jail authorities, the complete co-operation of the defendants, and the ample time allowed for the examination made it possible to approximate the conditions of the examination ordinarily obtaining in the consultation room of the physician, and our conclusions are believed to be as reliable as are those ordinarily reached by us after a thorough-going examination of a patient applying to us for treatment. The data obtained as a result of the direct examination of the defendants were supplemented by data taken from the reports of the original examination by Doctors Bowman and Hulbert, and by conversations with relatives and acquaintances of the defendants.

The two defendants, neither of whom has reached the age of twenty, have maintained a very intimate and peculiar relationship since 1921. The Franks crime, as is well known, was carried out by them together, and, it might be added, that in our opinion the mental condition and conduct of the two defendants, certainly in so far as this crime is concerned, can best be understood when adequate consideration is given to the nature of this relationship between them and to the factors which led to its establishment and maintenance.

An unbiased estimate of the facts pertaining to this association between the two defendants leads us to the conviction that their criminal activities were the outgrowth of an unique coming-together of two peculiarly maladjusted adolescents, each of whom brought into relationship a long-standing background of abnormal mental life. This

has made a situation so unique that it probably will never repeat itself. There is justification for stressing the uniqueness of this case if for no other reason than that it has created widespread panic among parents of young people.

How is one to account for this most peculiar relationship of the defendants and their criminal action? Our studies have revealed the following evolution of the situation:

Nathan F. Leopold, Junior

The characteristics that Leopold presents today and which make his criminal conduct comprehensible, have their roots in his mental life, his thinking and his feelings, during the years of early childhood.

EARLY PECULIAR TENDENCIES

We find that already from five to seven years of age peculiar tendencies were shown quite at variance with the trends of normal childhood. He was not only precocious in his mental interests, but these interests assumed a degree of intensity and showed themselves in special directions which were in themselves indications of abnormality. As examples we may cite that when about five he showed an intense pre-occupation with questions of religion, cataloguing churches, insisting upon visiting the different ones in his neighborhood, learning the names and something of the lives of the minor Saints of the Catholic Church, dwelling upon the idea of the crucifixion, which he now states had a very peculiar fascination for him, and wondering greatly why there should be so many different ideas about God. And at this time he exhibited other curious interests, such as in the specific meanings of words, especially the meaning of "Yes" in different languages. He wanted to complete a series of numbers, to be roused up at odd hours of the night, to visit a street that had a certain attraction because of its number, to visit the church where there was a Madonna picture.

HIS DELUSIONALLY DISORDERED PERSONALITY

There are many well substantiated facts concerning Leopold's gradual development of a pathological, disordered conception of himself. Beginning very early in life with conceptions of his own superiority, which in intellectual ways were founded on fact, there has been a steady growth of delusional tendencies concerning himself, and to the extent that he definitely conceives of himself as a superior being, quite set apart and not called on to be amenable to the social regulations or legal restrictions which govern the ordinary human

being. His ego is all-important, right or wrong, his desires and will being the only determinants of his conduct. There is conclusive evidence of this conception and attitude developing years ago and being steadily cumulative in his world of ideas as well as his world of behavior. He says without the slightest exhibition of doubt or uncertainty that anything which gives him satisfaction is justified by this fact itself. Even the commission of murder is perfectly tolerable to him on this basis of his conception of himself.

This abnormal tendency had its beginnings early. Early recognition of his superior attainments by his teacher and by his mother made him feel unlike and apart from others and superior to them.

As a young child he placed his mother and a favorite aunt on the same level with the Madonna, about whom he came to know through having a Catholic nurse at four years of age, as being the most wonderful persons of whom he had any conception. And later in life, as he looked down with contempt on women on account of their intellectual inferiority to him, he steadily maintained the above exceptions. He thus transferred his own abnormal egotistical standpoint to his own immediate family life and what is more significant psychologically, to his own origin.

He early showed a well-defined tendency to whip himself into superior accomplishment, and to do those things which would set him apart from others on the basis of his superiority. He believed, for example, that his mental ability was stepped-up about twenty per cent following a night without sleep, and that when he showed increased ability as a result of the lack of sleep it demonstrated to the world his uniqueness. He prides himself on the fact that he has done something important at every hour during the twenty-four hours of the day, something that others have not done. Many of his college studies, such as Sanskrit, Oscan and Umbrian dialects, Russian and modern Greek, were chosen to emphasize his being different. He says he strove for perfection, he trained himself to think in the fourth dimension, he hoped to find the universal language.

While yet a child he began to strive to be the cold-blooded egocentric intellectualist, turning gradually from the usual and intense early childhood interest in religion to a deliberate overthrowing and eliminating of God, conscience, sympathy, social responsibility and loyalty as being thoroughly unnecessary to him and unworthy of him as a completely intelligent individual

(And, as his career shows, he developed these ideas to the extent that they have led him into conduct which, if it had not been for his

delusions and his defective judgment, he might have seen would certainly cause his own destruction.)

As it stands now, he looks upon his present predicament for the most part as offering him occasion for the utmost satisfaction. He says that in the eyes of the world, although despised and hated, he is considered as a Napoleon on St. Helena.

Through the pathological development of his ego he has gradually come to develop a personal philosophy which admits of only one motive, his own advantage. He estimates murder as a very small thing to weigh in the balance as against his pleasure. In a class on torts this year he challenged the professor in open class with the argument that legal regulations should not apply to one who is a superman.

It is of interest to note that for years he has been excessively hypercritical of others and has studiously avoided the making of friendships which might even through ordinary demands interfere with his delusionally cherished ego.

As it is now he ridicules the idea that he may be considered as mentally diseased, unbalanced or insane; saying that while he knows he is different from others, the difference is one of superiority only.

If he is going to have to die at the hands of the law, he has two main plans: First, he will write down ten of the world's riddles as he conceives them, put them into a safety deposit vault, select a committee of scientists who will try to get into communication with him after his death and get his aid in solving these riddles. Then he wants to write a book or books, particularly his autobiography, because he thinks he is different from others and has led a most unusual and interesting life and one that is worth recording. He would include an apologia or interpretation which would, among other things, show that he played his part and went to his end consistently; that he did not change as many expect him to. (At another time, speaking of his childhood ideas of self-perfection, he stated that consistency has always been a sort of God to him.)

Furthermore he wishes to be allowed to go to his death in his own way, and to address the public freely. It is vastly more important for him to preserve his dignity than to have his life preserved.

Another feature of Leopold's personality characteristics, which students of abnormal psychology all recognize as belonging to the same picture, namely, that of the paranoid personality, is concerned with the abnormal and intense energy which he has for many years displayed. His relatives and friends speak of his restlessness and excessive mental energy, and we have various records of his great mental output. He

has not been subject to the normal limitations of ordinary fatigue. There is much that bears upon this point. When interested in the study of birds he would remain up all night in preparation for his early morning observations. He was continually reaching out for new subjects to study, and a list of what he has undertaken is really formidable. In the same way he continually sought new life experience, new ideas, new sensations. He is a tremendous talker and arguer. His tense physical and mental attitude has been continued over many years and was noted by us throughout our examinations. In all this he presents what is known as the manic drive of the paranoid personality.

EMOTIONAL LIFE

Another outstanding abnormality in Leopold's life is related to his emotions. From childhood on there has been a definite and often very conscious effort on his part to suppress sentiment and sympathy, as being entirely out of accord with his well defined idea of himself as a being primarily intellectual and superior, one who could and should rule his actions by coldly logical notions of what he was pleased to do.

His pursuance of this idea of inhibiting emotions stimulated and made further possible an intensely energetic activity. We note that he not only liked to make collections in a normal boyish way, but he pursued a search for information about his numerous collections and about groups of ideas in his mind, which were themselves of the nature of collections, with an avidity that was altogether far beyond what is normal in child life. He wasted but little energy even then in emotional ways, and as time went on his conscious repressions in this sphere, made possible excessive and feverish exhibitions of mental activities in many directions, some of which have been thoroughly unhealthy from a mental and moral standpoint.

These peculiarities pertaining to his emotional life started in a direction determined by his early feeling of inferiority. His repression of feelings and emotions began with conscious realization of his own sensitiveness to the opinions of others, by discovering that he readily suffered from what others said or thought of him, notably in his school life. His feelings he found interfered with his self-satisfaction and soon he consciously determined that he could get most out of life by destroying emotions in favor of intellect, or, putting it in another way, by freeing his thought life as much as possible from admixture with normal emotions. But his continuously planned antag-

onism to emotional expression has led to a most abnormal dependence upon his own phantasy life and its expressions for the satisfactions which make life tolerable

Comparing his emotional life with his intellectual precocity we can definitely say that his emotional nature in its development (and in this he, strangely enough, closely resembles his comrade) is on an immature childish level. He now demonstrates a well defined incapacity for appreciating through emotional life his place in the social order; there is abnormal lack of ordinary ethical motivations. The normal "sense of right and wrong," is no longer a part of his makeup, having been effectually forced into the background by the manifestations of his delusional ego.

All through the various examinations by each of us, Leopold spoke with the utmost indifference and lack of emotional display concerning the details of the Franks crime, freely acknowledging that he had not the slightest remorse or what might be considered anything like an appropriate emotional reaction. The same absence of feeling characterizes his adjustment to his confinement in jail, under conditions so utterly different to what he has been accustomed to, and particularly as a prisoner awaiting sentence.

He expatiates on his own coldness and speaks of it as a desirable phenomenon in that it makes it possible for him to enjoy the dramatics of the situation, stating that he looks forward to his trial as the moment of the keenest intellectual enjoyment of his life. In this his attitude resembles that which he evidently displayed before the murder itself—he had considerable interest in the thought of observing himself as a murderer. Indeed, he goes further and sets up the picture of the possible and probable enjoyment of his own execution, if that takes place; his nature showing such an abnormal hiatus between normally constituted and correlated emotion and intellect that he can look on such an ending of his life as a keen-minded observer of human behavior.

The essence of his abnormality in this clearly perceivable lack in his emotional life is found, then, in the fact of the constant subordination of normal feelings of loyalty and obligation and sympathy to his intellectual life, and to the demands of his diseased ego. Herein lies also the explanation of the absence of natural feeling on his part about the commission of criminal acts.

This separation of intellect and emotions with certainty indicates mental abnormality. It is a symptom belonging to the same group of mental abnormalities as the manifestations of the pathologically developed ego or self.

ABNORMAL PHANTASY LIFE

Related to many important phases of his subsequent career has been Leopold's early and intense turning of his interests to phantasy life (conscious dreaming), spending a considerable part of the time each day in the weaving of phantasies. These day-dreams which have persisted continuously and with great vividness up to the present, have been indulged in to a tremendous extent and variety, forming for years a sort of serial story with many variations. The psychological significance of the persistent intrusion of this kind of abnormal imaginative life into the daily existence of a child, and particularly into the life of an adolescent, is very great, since it has the power of eventually leading to the confusion of reality with unreality—as was the case here.

In contrast to the imaginative life of normal childhood which is always in touch more or less with the realities surrounding child life, Leopold's phantasies were from the beginning out of accord with the usual demands of social life, and never seem to have undergone the natural fate of phantasy life in being increasingly matched or assimilated into the facts of reality. Thus the normal child identifies himself with the persons in his immediate environment, he day-dreams of being a motorman, an engineer, a policeman, showing thereby in his desires a normal response to the influences which surround him. These responses lead to the evolution of ideals and interests of a social quality which accords with the social status of the individual. Of peculiar significance in this case is the extent to which the ideals of the boy Leopold deviated from what might have been expected of him in his social setting—his ideals and behavior have evolved in line with the thoroughly abnormal phantasy life which since childhood has dominated him.

One of the earliest of Leopold's waking dreams was related to his peculiar religious interests; he persistently visualized the crucifixion—the idea of somebody suffering, or, as he states it now, the idea of some one being nailed down to something, had an abnormal appeal for him. And it is most important to note that in his later phantasies he very frequently indeed played the role of the one who suffered.

Earliest and throughout his life the most predominating has been a series of what may be called his King-Slave phantasies. He began these, as he remembers, before he was ten years old, and even recently these imaginations have played an immense part in his thought and in the directing of his impulses. They began with imaginings about a slave who was intensely devoted to a king or master. This slave was

extremely good looking, the strongest man in the world, and in some way or another, the way varying greatly in different pictures, this slave saved the life of a king. The latter was very grateful and wanted to give the slave his liberty, but he refused. As a rule, the lot of the slave was good. He belonged to a class or caste of slaves, each of whom was bound to his special king by a chain—our day dreamer himself, who was in the vast majority of his phantasies the slave, was bound to his king in later phantasies by a golden chain which he easily could have broken. There would be combats and slaves chosen to represent a side; the dreamer would always be chosen and would always win.

Other variations of this theme were that the dreamer thought of himself as a boy captured and beaten and then the king would come along and save his life; or that he was stolen away by gypsies and brought up subject to much punishment, or that he was taken during war times and made to serve a nice young girl, being frequently beaten by others but always saved by her.

When his phantasies grew too impossible or illogical for him even in his dream life to entertain, as when he found himself combatting and overcoming a thousand men in trying to save his king, he would consciously dismiss the idea as too absurd and improbable, and readjust his phantasy to accord more with the possibilities of real life.

The above is but a slight sketch of this realm of Leopold's mental life where abnormal thoughts and phantasies held sway. Very many details and variations of the above topics have been given to us.

We are impressed with the validity of his recital of this phase of his mental life because it is so explicitly similar in type to the phantasy life of which we are accustomed to learn during our studies of patients who have various sorts of psychoses (mental disorders). All of it came to the surface spontaneously in the original examination and then has been told to the different physicians with a free elaboration which is so characteristic in some forms of abnormal mental life.

CARRYING HIS PHANTASIES OVER TO REALITY

Even as early as at twelve years there was outcropping of phantasy life in the world of reality—he began to identify actual persons with the characters in his imaginings. There began then a confusion of the real with the unreal which has come to play an increasing and most important part in his daily intercourse with others. A specially good looking counsellor at camp was nightly fitted into the role of

slave. Other boys gradually were identified with characters in his life of phantasy. Every boy who appealed to him became eligible for some part in his inner dramas; an elaborate system of capturing them and even of branding them, with a very specially designed brand, on the inner surface of the calf of the leg, was evolved.

But of most significance is the fact that for three or more years his companion, Loeb, has been very definitely woven into his phantasy life. For the most part it has been a King-Slave affair, with Loeb as king, but there have been many variations to it. Latterly Loeb has been transfigured into an individual who has played the part of an ideal man, wonderfully good looking, an athletic star, a brilliant scholar, who gets the highest marks in college. Although in life none of these things have been true, Leopold has forcibly transformed his companion and, even apart from his definite day-dreamings, tried to make himself believe that he was this perfect individual. Thus he actually made a chart of the "perfect man," in which Loeb received a score of 90, Leopold himself grading as only 62, and other acquaintances ranging from 30 to 40. But as he says when looking back on these phases of his inner mental life, "there was at this time an almost complete identification of myself with Dick. It was a blind hero worship."

The abnormal and puerile unreality of Leopold's mental life is exhibited in the fact that he frequently told others that his companion was the superman, and often tried to convince Loeb himself that his mental powers were far above his own—knowing all the time that Loeb was thoroughly untruthful in boasting of his good marks in college, and that he was much inferior intellectually to Leopold himself.

We can see how the ready acceptance of Loeb's suggestions with respect to their joint criminal activity fitted in perfectly with Leopold's phantasing for years himself in the role of a slave, first to a phantasy kind and then transferring his allegiance to his idealized king-like companion.

The pathological admixture of inferiority and superiority concepts and strivings not only in his abnormal imaginations, but also in his behavior reactions to real life is a matter of great practical as well as professional interest in this case. It reflects, on the one hand, the profound disorder of judgment which permits such contradictory ideas and impulses to live side by side, and it indicates, on the other hand, a tremendous and altogether abnormal rift between Leopold's intellectual precocity and the emotional immaturity which made possible the ready acceptance by him of either role. The strange admixture demonstrates that no normally integrated or consistent personality was ever evolved in Leopold's mental life

CONCERNING POSSIBLE CAUSES OF LEOPOLD'S MENTAL ABNORMALITY

If one attempt to discover underlying causes of Leopold's above described abnormal mental life, one comes upon possibly significant factors in the following background:

Leopold, who is not quite twenty years of age, a first-year law student in the University of Chicago, comes from a well-to-do and socially well placed German-Jewish household. His father is a successful business man, who impresses one distinctly with his earnestness and solidity of character. The mother, who died about three years ago, was a socially minded, gentle and highly esteemed member of her community. Nathan Junior is the youngest of three boys, and with the exception of the fact that his mother was considered dangerously ill with nephritis during the pregnancy with him, there is nothing of special interest in his early physical development. He was unusually precocious in talking; it is recorded in his baby book that he spoke his first words at four months. Up to the age of nine he was considered poorly developed. His inferior physical status, together with the fact that he attended for the first two years of his school life a girls' school, on account of which he was taunted by other boys, and also because he was regularly taken by a nurse to and from public schools until he was eleven years old, tended very clearly to give him the feeling, which he himself now remembers well, that he was a person apart from the ordinary and physically inferior. It was all through this early school period that he was particularly sensitive to the opinions and criticisms of others. Among the people with whom he came into contact at this time most influential, probably, was a nurse, a woman who was dishonest, suspicious, irritable, jealous, and who showed marked indiscretions in her physical contact with this boy. For a considerable time he was very fond of her. She succeeded in winning his affections to the extent of his being fonder of her than he was of his own mother.

At school where his intellectual precocity was at once recognized by his scholastic performance, he was pushed ahead one grade. Later, in preparatory school, we find that he was characterized in the school publication as "The Great Nathan," "The Crazy Bird," "Flea" (because the boy was smaller than average in stature), and "This Crazed Genius."

He progressed very rapidly, and at the age of fifteen years and ten months he entered the University of Chicago, from which he graduated, although his studies were interefered with by illness of himself and in the family, with Phi Beta Kappa honors at eighteen years and

four months. Throughout his academic career he has engaged in considerable extra-curricular studies, during the school term or in vacation time. His studies and field researches in ornithology represent decidedly good work and he has contributed articles of note in that field, and has also taught classes in this subject. This and his work in languages, including philology, represent his best efforts. In much of this there is evidence of expression of his own desire for superiority through being different from others—once he was the only student in a course of advanced Greek.

Of significance in the case of Leopold (although probably of not so much import as in the case of his comrade) is the fact that this boy who had, during his early years lived such a guarded life, in respect to his contacts with other boys, at the age of fifteen was thrown with college students much older than himself and exposed to the temptations and obvious desirability of living up to what, in his particular set, were considered standards of manly behavior. He began to drink at the age of fifteen, and has been a more or less frequent consumer of alcohol ever since. It was when he was fifteen that he became intimate with Loeb, who is a little younger, he having barely known this boy before then. It is significant that up to this time no tendencies were shown to criminal behavior.

FINDINGS AND DATA OBTAINED THROUGH DIRECT EXAMINATION

Physical Status

There are definite signs of instability of the nervous system: a neurotic makeup. Even in ordinary conversation is noted exaggerated use of facial muscles, nervous gestures, flushing and pallor of the face. The examination of Doctors Bowman and Hulbert brings out the point that beyond these neurotic conditions, there is some evidence of pathology of the endocrine system (the glands of internal secretion) and the sympathetic nervous system

Mental Status

Given a number of mental tests, Leopold is found to have very considerably super-normal general intelligence, as indicated by all tests where the use of language, the comprehension of language and vocabularily are mainly involved. Up to a certain point he is good in abstract reasoning. His mental activity is extraordinary, his mental reactions are tremendously quick, his associations are abnormally rich, so much so that they are rather difficult for him to control. He is voluble, self-assertive and indeed aggressive in the use of his mind,

thoroughly enjoying mental tasks and doing special memory stunts by the use of associational memory devices—and altogether being very much interested in his own mental processes. In his reasoning power and especially in his common sense judgments, as might indeed be known by his life career, he is extraordinarily lacking, in comparison. Shrewdness is shown in only a very limited field and rarely takes into account the validity of premises which he assumes.

Personality Traits

Leopold's personality traits have been mainly indicated above. In review we may restate that he is pathologically egocentric; extremely energetic, showing a great pressure toward mental activity; hypercritical of others but not at all of himself; very appreciative of the dramatic when he plays a main part; astonishingly and quite abnormally devoid of any show of feelings of sympathy or obligation or conceptions of gratitude; persistent and obstinate in mental attitudes and behavior trends; enthusiastic and forceful about anything that he himself undertakes. Beyond this we note that he is not changeable in mood or subject to depressions, even under most unfavorable conditions. Whatever his native endowment of normal emotions may have been, they have been schooled by his intellect to remain in the background. Only occasionally, as noted during some mental testing periods, he may momentarily show evidences, however, of feelings which ordinarily do not come at all to the surface. He is a play-actor in a play-world of his own constructing and proposes to play out his part.

There have been alterations in his personality that show the progressive deterioration that is going on in his mental life. But all the evidences are minor as compared to our knowledge of his having gone downhill steadily along the paths of defective judgment in relation to the part which he should and might play in the world and of his development of various pernicious interests—all in utter contradiction to his notions of himself as a superior being and to his self-formulated desires of wishing to play the part of a superman.

THE PROBLEM OF MENTAL DISORDER IN LEOPOLD'S CASE

We could draw no other conclusions from Leopold's abnormal phantasy life, his delusional development of notions about himself, his defective or deteriorated judgment which has not permitted him to see the pathological absurdity of mixing up phantasy and real life; his repression and misplacement of emotional life; his abnormal urge towards activity and search for the experience of new mental and

physical sensations; his disintegrated personality to the extent that he has shown an essential and abnormal lack of foresight and care even for his much beloved ego—we can draw no other conclusions from the above than that Leopold is and was on the twenty-first day of May, 1924, a thoroughly unbalanced individual in his mental life.

He represents a picture of a special abnormal type, the paranoid psychopathic personality. His ability as a conversationalist and as a student had led to his being unrecognized for what he really is, and his delusional conceptions about himself have therefore not been taken seriously. His very manic (over-excitable and over-energetic) tendencies have been misinterpreted as evidences of cleverness. The fact that he has been able to carry himself along in the world without being recognized as being abnormal is in itself typical of individuals who belong to this special group of mental disorders

Richard Loeb

The facts and circumstances which have, as leading forces, combined to make this adolescent what he is and which serve to explain his criminal conduct reach back, as in the case of Leopold, to his early boyhood days.

The challenging fact in the personality of this boy as we see him today, lies in his most remarkable unscrupulousness, untruthfulness, unfairness, ingratitude, disloyalty, and in his total lack of human feeling and sympathy with respect to the deed, to which he has, with his companion, pleaded guilty. His characteristics assume a particularly abnormal nature when one views them in the light of the kind of home and social setting that he came from. The Loeb home has been noted for its high standards of virtue and culture and a place where the task of bringing up children was viewed with unusual seriousness.

It is therefore clearly indicative of some abnormal tendencies in this boy himself that he should have developed the above characteristics and that he should have felt from early childhood estranged and not wanted in his home, so that at one time he told his mother that he was thinking of running away, and that he should have missed during his developmental period the feeling that he could find some one who could understand him and to whom he could reveal his inner mental life.

It is astounding to contemplate how this boy's mind from the time before he was nine years of age, was filled with a curiously abnormal and criminalistic set of ideas and visions. For example, at

this early age he very strangely pictured himself frequently as being a prisoner in a jail yard. He would imagine himself stripped of clothing, shoved around and being whipped. This "picturization," as he calls it, was worked out with great detail. There were other people in the yard, he was ashamed of seeing the others and particularly the women naked or partly clothed, he made a burrow in the earth where he felt warm and comfortable, people looked at him through a fence that separated the yard from the street; at first it was only people in general and then it was young girls who looked at him with wonder because he was a criminal and they sympathized with him. There was a great feeling of self-pity in this, but no feeling of fear. "I was abused but it was a very pleasant thought; the punishment inflicted on me in jail was pleasant; I enjoyed being looked at through the bars, because I was a famous criminal."

(As bearing upon the validity of Loeb's testimony concerning these phantasies, we may note that the detailed picture which he gave us of the jail yard and fence was suggestive to us of the fence around the Chicago House of Correction, as it was years ago. Although he does not remember it, the family state that the boy occasionally was driven with his father to the latter's place of business, going over the boulevard that passes the House of Correction.)

Linked up with this phantasy of being in jail and evidently directly evolved from it and coming sometime later was the notion of being some sort of a celebrated criminal. Still later grew up the phantasy of being a "master-mind" directing criminal activities.

There seems to have been an endless variety to his imaginings about his own sufferings as a prisoner and about his being a criminal, working up to his being "the master criminal mind of the century." In his phantasies about crime he gradually imagined himself committing all sorts of crimes. He derived intense pleasure, he says, from this, particularly in having a feeling of being superior to others, inasmuch as they would not know how the crime was committed and who was connected with it, whereas he did.

He as the "master mind" was so clever at planning that he could escape detection from the greatest detectives of the world. He phantasied working out a wonderful plan of a great crime which would stir all the country and which would never be solved. None of this was undertaken for financial profit, and if the question of money did appear in his imaginings, it was only to make the "picturization" consistent and logical. In all of his phantasies he had one or more

associates, but he was always the leader. One reason for this was that others might appreciate his skill.

He states that these imaginings have recurred with very great vividness, so that he remembers them now as well as he does the actual occurrences of his earlier every-day life.

Among other types of phantasies which occurred early, but which was stopped, was that of thinking of himself as a frontiersman shooting at others. In this he would get under the bedclothes, which in his imagination were impregnable to bullets. We speak of this particularly because we note a photograph of Loeb as a child in cowboy outfit holding a toy pistol, and in this photograph he exhibits an extraordinary set, intense, facial expression; he is doing a bit of acting out of his phantasy life with a zest that remarkably changes his ordinary appearance, and indicating a deep leaning toward adventure.

(Here it may be noted that throughout his life, Loeb has shown a very great and indeed abnormal love of excitement and adventure. Unfortunately the repressive and sheltered life in which he was brought up by his governess and family, afforded him no normal outlets in healthy natural ways for his adventuresome spirit. The main satisfactions which he derived in this connection were through his curious and abnormal phantasies which he indulged in with such regularity.)

How completely his phantasies have controlled him and have been a habit with him is illustrated by the fact that, as he tells us, at night in the jail he has caught himself saying, "As you know, Teddy," this being the formula with which he introduced for many years his phantasy life to himself in his evening reveries. He began with his talking to his teddy bear who would understand all things and so obviate the necessity for the narrator or day-dreamer squaring himself with the necessities and logic and consistencies of ordinary life. And, of course, this, too, illustrates Loeb's dual nature, his being even now essentially a child in some respects, while otherwise he is so strikingly capable of hardened and vicious behavior.

ABNORMAL MIXING OF PHANTASY WITH REAL LIFE

As early as at eleven years of age Loeb actually began to live out his phantasy in his daily behavior—he would walk down the street as if he were directing people under his command in the carrying out of burglaries; in fact, he has kept up this play acting until very recently. It was a trick that his comrade, Leopold, told us he himself thought extremely foolish and childish as he observed it.

Loeb invented various games in which he played the role of

detective, and at about ten years of age he actually shadowed people persistently for hours. Somewhat later he was caught at this game by members of his family, who, however, knew nothing of the real significance of his behavior.

And the pleasure which Loeb first experienced in his phantasies from doing something that others did not know about, thus feeling in a sense superior to them, was likewise gradually carried over into real life. In fact, it has come to be one of the chief elements in the so-called thrill that he has derived from the planning of crime and from the mystification of others who did not know the real facts or his part in it.

He appears to have actually stolen first at about the age of nine and his experiences in connection with that event are still so vivid to him that he relates them in great detail—he had a curious set of physical sensations of the nature of exhilaration and power. He remembers in many such affairs how he has enjoyed the rapid beating of the heart.

As time has gone on, Loeb has endeavored to bring in line more and more his actual behavior and experiences with his phantasy life, with even his earlier phantasies. This is not only shown in the development of his crime ideas as such, but also in the fact and method of the enjoyment of his experiences connected with the crime. Under his present predicament, for example, he is much pleased over the fact that he knows more about the details of the events connected with the Franks case than any one has been able to find out.

Very remarkable in the light of his early imaginings is the fact that in jail he is endeavoring to obtain sympathy for himself through inviting friends, especially girls, to come and gaze at him behind the bars, to look up at the jail windows where he is, being stationed at places which he designates on the street. Also his ready adaptation to jail conditions, for a boy of his social status, shows the continuous influence on his mind of these early phantasies. Spontaneously he says on July 27th, "It's sort of all right, it seems, to be in jail. It seems to be a sort of confirmation of my early picturization. I had a very pleasant sort of feeling in the jail outfit when I first came in; this self-pity entered into it, but I was a little glad of the jail clothes, of being in jail. I was glad to have a ragged coat. When they offered me a better one, I refused it. The one they gave me was torn up the sleeve. I was living out being subjected to worse conditions than the other prisoners. I feel comfortable here. I am living it out—what I used to picture as a child." In these ways the thoroughly abnormal

ideas of some of his first phantasies of criminality are shown even today.

(Of considerable interest to students of abnormal psychology and mental disease must be the unquestioned fact that this boy, selfishly seeking in an extraordinary fashion his own peculiar pleasure at anybody's expense, even to the point of entering into situations which were most dangerous to him, is quite in line with his abnormal early phantasy of self-suffering and almost leads to the conclusion that he has been unconsciously bent, as it were, on self-destruction.).

EMOTIONAL NATURE

Another outstanding fact in explanation of Loeb's abnormal career is the extraordinary moral callousness which has been growing upon him. He has become incapable of viewing his criminal acts with any natural feeling. Nothing, perhaps, emphasizes this point any more than the fact that it was possible for him to contemplate the kidnaping of members of his own family, particularly his younger brother, of whom he professes to have been fondest.

This pathological moral obtuseness which all recognize who have been in contact with Loeb, especially when placed side by side with his intelligence and school achievement, points to a disordered condition of his personality and mental life, a type of condition not uncommonly encountered among the obviously insane

A careful estimate of the way in which this boy has developed his tendencies shows that the divergence between his thinking and his feeling or emotional life had its origin even before he was ten years old. Already that early he hit upon persistent lying as a means of avoiding the difficulties of his environment.

And while he continued to develop intellectually and to be capable of entering college extremely early and to obtain passing marks all through his college life, he has remained pathologically backward in his emotional make-up, and perhaps also retrograded to the point of being now absolutely defective or abnormal in this phase of his personality.

His notoriously unfeeling behavior in connection with his immediate situation, as a person about to be tried for murder, is ample illustration of the depths of his emotional displacement or defect. The absence, all along, of normal remorse, revulsion, disgust, depression, fear, or even apprehension, in any way concerning the planning, discussing and carrying out of the gruesome details of the kidnaping and murder, or in considering the outcome, also sharply emphasizes the thoroughly disordered character of his mental life. His own aston-

ishment at his lack of feeling is worthy of much note. He has repeatedly stated that certainly for years he had hardly any of the slightest evidences of being moved by ordinary sympathy. He says, "I would have supposed I would have cried at the testimony of Mrs. Franks, but I did not feel anything much. I was not sorry about any of the things I did that were wrong. I did not have any feeling about it. I did not have much of any feeling from the first. That is why I could do those things. I think I am getting worse in my mind in the last few years. I used to be quicker in my mind." "There was nothing inside me to stop me." "Of course, I feel sorry about my folks, but not so much as I ought to feel."

And to the same point, we have the manifestation in him of the outward characteristics of affability, good manners, desire for friendship, pushed to the point of deliberate planning to achieve better social relationships, desire for sympathy, all in the strangest contrast to his satisfaction in conduct and in the thought of conduct that could easily be seen to include every chance of negating all these desires. This makes a contradictory picture, both in the realms of judgment and emotional life that is incomprehensible except as it is seen so surely to involve mental abnormality.

CONDITIONING FACTORS OF LOEB'S PATHOLOGICAL MENTAL DEVELOPMENT

The above mentioned pathological features of Loeb's inner mental and emotional life were somewhat conditioned and probably strengthened by the following most important facts:

(a) Between the ages of four and a half and fourteen he was very largely in the company and under the domination and guidance of a peculiarly repressive and jealous governess. Through this he was very considerably deprived of the self-development that comes from free and healthy contacts with other children.

(b) Through this woman's scholastic ambitions for the boy and through her tutoring he was most rapidly pushed through his school classes, the boy having, however, exhibited no special abilities and particularly having developed no normal ambitions and interests. It is all during the period when he was supposed to be doing so well in meeting the requirements of formal education that he was forced to fall back for his real satisfactions upon the abnormal features of his phantasy life.

(c) The culmination of these efforts to push this boy rapidly through school was in his entrance to the university at the age of fourteen years and three months. This proved to be an unfortunate

circumstance in relation to his development, one that Loeb himself emphasizes as having been pernicious. Soon after his matriculation he was thrown among young fellows four to six or seven years older than himself, and the ways of some of the wildest and most immoral of them he soon imitated. Like his comrade, Leopold, he began to drink at fifteen. His very release at this age from the restraining influence of his repressive governess he reacted to by going rapidly in other and immoral directions.

(d) Beginning at ten years of age the boy found opportunity to secretly feed his cravings by reading exciting detective stories which made a great impress upon him and which afforded material for his criminalistic phantasies. A number of books of this kind he read over and over and the characters entered into his imaginative life. This reading interest also signifies that extreme attention was paid to the formal education of this boy without developing normal and healthy interest in his inner mental life and this left him with no vestige of ambition or ideal to counteract his eccentric and pathological interests.

PRESENT FINDINGS THROUGH DIRECT EXAMINATION OF LOEB

Physical Status

Although this active and well-built young fellow usually preserves a calm and pleasant demeanor, he shows marked signs of some nervous instabilities in certain involuntary twitchings of the muscles of his face and in the asymmetrical use of the muscles controlling the lips.

Mental Status

Given a number of mental tests of different sorts we find him grading as having only average general ability for a person of his educational advantages; and we find him evidencing no particularly good abilities of any sort. This is interesting because it seems out of consonance with his precocious academic record.

Concerning his personality traits we note that he takes very little pleasure in ordinary mental activity and that he appears to be very limited in his interests, to the extent of being almost ambitionless along any ordinary lines. His energies appear to be directed almost exclusively into the channels of his abnormal tendencies. He can easily take command of a situation and is strong in emergency. He has a pathological love of excitement and adventure. There is a very striking pathological contradiction between his desires for sympathy and friendships and the fact that he is unscrupulous, unfair and ungrateful. His unfortunate qualities he freely confesses and claims to wonder at them in his own makeup. He is rather even tempered and

shows no superficial evidences of repressed emotions, no special irritabilities. He can be decidedly courageous on occasions. He does, however, have times of mild and probably pathologically significant depressions, which, however, are easily changed by making pleasant social contacts. During these depressions he tells us, he has repeatedly contemplated suicide.

Thus a central indication of his abnormality is to be found in the great emotional peculiarities which are indicated by the extreme lack of feeling and of sympathy in certain spheres of life, by a lack of appropriate emotional response in connection with many situations which normally call forth certain emotional reactions, and in certain curious twists or misplacements, so that the few loyalties that he does express are quite incongruous and relate to issues of relatively minor social consequence. Thus when compared with the normal person, his entire scale of emotional values is seen to be defective and in certain aspects decidedly abnormal.

THE PROBLEM OF MENTAL DISORDER IN LOEB'S CASE

It is evident from the foregoing that in this case we are dealing with an adolescent who in his development has manifested a markedly pathological divergence or split between his intellectual and emotional life, so that while he may be considered mature intellectually, he is decidedly infantile in his capacity for reacting to the ordinary situations of life with normal, appropriate emotions. His whole behavior in connection with the Franks case before and after its occurrence and up to the present moment, indicates a degree of callousness which is wholly incomprehensible except on the basis of a disordered mentality.

The opinion is inescapable that in Loeb we have an individual with a pathological mental life, who is driven in his actions by the compulsive force of his abnormally twisted life of phantasy or imagination, and at this time expresses himself in his thinking and feeling and acting as a split personality, a type of condition not uncommonly met with among the insane.

We therefore conclude that Richard Loeb is now mentally abnormal and was so abnormal on May 21st, 1924, and, in so far as anyone can predict at this time, will continue, perhaps with increasing gravity, as time goes on.

WILLIAM A. WHITE,
WILLIAM J. HEALY,
BERNARD GLUECK,
RALPH HAMILL.

THE LOEB-LEOPOLD CASE—(Continued)

D. PSYCHIATRISTS CALLED BY THE PROSECUTION

DR. HUGH T. PATRICK

Q. Have you an opinion from the observation and examination as detailed as to whether the defendant, Richard Loeb, was suffering from any mental disease at that time?

A. Yes.

Q. What is that opinion?

A. My opinion is that he showed no evidence of mental disease.

Q. Will you state your reasons for that opinion, Doctor?

A. The reasons for that opinion are these, that unless we assume that every man who commits a deliberate, cold-blooded, planned murder must by that fact be mentally diseased. There was no evidence of any mental disease in any of this communication or in any of the statements the boys made regarding it, or their earlier experiences, there was nothing in the examination, there were no mental obliquities or peculiarities shown, except their lack of appreciation of the enormity of the deed which they had committed.

Q. Now, Doctor, have you an opinion from the observation and examination as detailed, as to whether the defendant, Nathan Leopold, Jr., was suffering from any mental disease at that time?

A. Yes, I have an opinion.

Q. What is that opinion?

A. My opinion is that there was no evidence of mental disease.

Q. And your reasons for that opinion, Doctor?

A. Well, the reasons are just as I have stated. . . .

Q. Now, Doctor, assuming the hypothetical person who on examination disclosed the facts and circumstances that you have mentioned from your examination of Richard Loeb, and add thereto these other facts that have been testified about here—that he is immature in his sexual development, that he still has three baby teeth, and that the growth of hair on the body is scanty, that he only requires to shave twice or three times a week, and that he has had several fainting spells during his life, and that he has tremors of the hands and tongue, enlarged inguinal glands; that he also has dermatographia; that the basal metabolism in one examination on one day averaged minus seventeen

per cent: have you an opinion whether such individual was suffering from any mental disease on May 21, 1924?

A. Yes.

Q. What is that opinion, Doctor?

A. I would answer that the same as I did the other; that I see no evidence of any mental disease. . . .

Q. It has also been testified, Doctor, that this same hypothetical person has had fantasies and that these fantasies nearly always were indulged in after he went to bed and before he went to sleep—this being a period of about a half hour. What would you say as to the effect?

A. Why, I think that is a highly normal procedure. I know that is when I had my fantasies, generally, after going to bed and before I go to sleep. I apprehend there is not anybody with an active mind that does not have fantasies now and then with the things that he is interested in. I would expect any man who has planned to be a lawyer to have fantasies regarding the entering of law, regarding the practice of law. It is well known that golfers have fantasies after they go to bed, and play, of course, very much better than they, as a matter of fact, do. In other words, these fantasies that people have are day dreams, or air castles, or castles in Spain, the more ordinary terms, and that sort of thing is exactly what everybody else, everybody indulges in now and then, and these things naturally take the line of the mental attitude of the individual. If a man has an artistic temperament or ambition, his day dreams go along the line of artistic enjoyment or artistic attainment. If his trend is along architectural lines, then the stream of fantasies is to make architectural discoveries and make a name for himself as an architect. It is a highly normal procedure, some people, of course, indulge in more than others, and it is possible for them to reach an abnormal degree, like any other normal process. But it is natural to have fantasies for thirty minutes before going to sleep. . . .

Q. It is stated, Doctor, of this same hypothetical person that he had extreme interest in planning crime. Do you attach any significance or importance to that?

A. Oh, very great significance. It shows that he had criminal tendencies, that that is what he was interested in.

Q. What would you say, Doctor, as to the fantasies of one who has criminalistic tendencies? What would you expect them to be?

A. I said before that his fantasies would probably be along the line of the thing that his mind is occupied with and the thing that he is interested in. Night before last, before I went to sleep, I had fantasies

of being on the witness stand and some things that might be asked of me and my imaginary answers and so on. I don't think that that sort of thing is to be evaded. If anybody is interested in crime, thinking crime, planning crime, and reading about crime, he naturally has fantasies relating to criminal deeds.

DR. HAROLD DOUGLAS SINGER

Q. Now, Doctor, from your observation as detailed by you on Monday, June 2nd, and from your observations of the defendants in court, have you any opinion as to whether or not these defendants are suffering from any mental disease?

A. I cannot answer that question without qualifications, Mr. Smith.

Q. Well, will you qualify it?

A. The answer I would give is that there is nothing in those observations that would indicate mental disease.

Q. Now, Doctor, you have listened to the testimony of all the witnesses for the state and the defense. I will ask you to assume that all the testimony as to the facts, exclusive of all opinion evidence, which was detailed here from the witness stand as applied to Richard Loeb, and to assume that with reference to a hypothetical person, and assume also the observations that you have detailed here both on Monday, June 2, 1924, and in court here, assuming all these as applied to a hypothetical person, have you an opinion as to whether such person was suffering from a mental disease on May 21, 1924.

Q. Have you an opinion?

A. Yes, sir.

Q. What is that opinion, Doctor?

A. That he had no mental disease on that date.

Q. Now, will you state, please, to the Court, Doctor, your reasons for that opinion in that answer?

A. First, of course, the physical development and condition as described.

Then a description is given of a fantasy life. . . . A fantasy life is present to a greater or less extent in all people. . . . Then these fantasies, as described, include a fantasy of himself in the role of a detective, in the role of a great criminal, and in connection with the fantasy of a great criminal there is described the picture of himself in jail being tortured in various ways and exposed to the gaze of people through the bars; that this fantasy evoked a pleasurable feeling and not a feeling of suffering. He said that on some occasions he

acted out some of the features contained in the fantasy, the illustrations being the shadowing of people on the streets and the walking along the streets snapping his fingers as if signalling to members of a gang of which he was the head.

It is stated that from early life he had been in the habit surreptitiously of reading detective stories. It is stated that he had read with special interest of the disposition of Charlie Ross; that he had read the story of Trent, the master criminal, with a great deal of interest.

The history as outlined shows that until the age of fifteen he presented no peculiarities noticeable to the governess who had immediate charge of him. Following the release from the governess, from the control of the governess when he entered the university, he is said to have stated himself that he broke loose and began to drink to excess, that he began to enter on various criminalistic activities of varying degrees which began with lying, along with cheating at cards, and included the theft of automobiles, commission of arson, commission of larcenies and burglary.

It is stated that these were carried on with the idea of getting excitement—I think the word used was that he was getting “a kick” out of them. It is stated that he with his companion planned very many methods of the crime of murder and kidnapping, and worked out the details and carried out the crime.

Other statements with regard to this are to the effect that while on the whole he showed no appreciation, no emotional reaction to this situation, he has expressed at other times a feeling of pity or sorrow for his family and relatives, that he has expressed some feeling of remorse; that during the week preceding the carrying out of the crime he had a desire to withdraw from it, but did not do so because he did not want to appear a quitter to his companion.

I have taken all these facts as testified to into consideration, and in them I see no evidence of any mental disease.

Q. What do you see evidence of, Doctor?

A. I see evidence of clear thinking, planning, carried out over a number of months. I see evidence of definite emotional reactions which belong in the normal mental activity.

Q. Will you go ahead, Doctor, now, and explain that which you desired to, relative to fantasies before, when you were interrupted?

A. Fantasy life is a normal experience and it represents an expression of the instinctive and emotional life of the individual. In order to understand that situation, it is necessary to realize that the emotion or instinct—I am using these more or less as though they were synonymous—is much more primitive than intelligence.

While I do not as a rule like similes because they are liable to be misunderstood sometimes, I am going to use a simile here to indicate the relation between the emotional life and the intelligence. I would compare the emotion to the steam that works the steam engine; that is, the driving force or power. Whereas the body and the intelligence as a whole represent the machinery through which that steam operates and does its work. Every living thing has certain instinctive reactions, not necessarily conscious. The simplest forms of life that we know react to certain situations in a certain way, and that reaction is an effort on the part of living matter to maintain itself alive. Man, like other forms of living matter—and here it is necessary to consider that we are speaking of man as a whole, as a living thing, as a unit—is subject to instincts like all other forms of life. This instinctive or emotional drive is present in every person. Man lives, however, in a social way. . . . Because of that social method of living, it has become necessary for each individual to modify the primitive instinctive ways of behaving that he is endowed with. These instincts include such matters as appetites, longings and desires which are not something that a person thinks out in any sense at all, but are inherent in him because he is alive; and when the appetites and desires of an individual man interfere with his relations with other people, it is necessary that they be modified in their expression, and this is rendered possible through the development of what we speak of as the intelligence of the individual. It is a part of the machinery through which these others work.

The fantasy life of an individual represents the striving of certain longings or appetites for expression, being prohibited by the social conditions under which he lives, more or less. The fantasy life therefore represents the dreaming of his longings as being fulfilled. It is a way of meeting desires which is permissible in society because it will not lead to difficulties. Perhaps a simple way of expressing that same thought is that which is given in the cartoon that appears in one of the papers quite frequently, called "Our Secret Ambition."

These fantasies represent our longings which for some reason cannot be expressed without meeting with difficulties in life, so that the fantasy life is a perfectly normal and sometimes a very valuable and important matter of dealing with longings that cannot be expressed openly. They do not represent in any sense a disease which is introduced into the mind. The particular form which they take, the particular figures in the pictures that appear in the fantasy depend largely on the accidental experiences of the individual. They represent al-

ways an effort to satisfy that individual; I would say they put him in the forefront.

In these fantasies that are described by Richard Loeb, he is in every instance the central figure; he is accomplishing something which represents an instinctive longing for excitement, a longing which in the primitive state is expressed openly by hunting, by making forays and raids on other tribes, on other peoples; and the fantasy life is only an expression of just exactly that instinctive longing, and is in no sense a diseased condition which had entered in. The fantasy life becomes pathological or diseased only when the individual loses the appreciation of the difference between fantasy and reality.

Richard Loeb's fantasy life is described as occurring during the half hour before he went to sleep, after he went to bed. The statement is made in one place that he could snap out of it at any time. The games of shadowing that are described represent the same effort to express these longings for excitement which are contained in the fantasy.

I would like to emphasize in this connection the fact that during his earlier life, the earlier years of his life, Richard Loeb was apparently under a governess who regulated everything that he did, and more or less interfered with his associating with other boys, and developed a play-life, a game-life, which would of itself satisfy this search for excitement. One of the features in our life to which I think sufficient importance is not attached is that it is just as important to play as to work.

In the descriptions which are given of his life, Richard Loeb is pictured—at any rate, during some of the early years, for instance, in Charlevoix, as being left to play with his younger brother. Competitive excitement is not possible in the ordinary way of games under those circumstances. Instead, he attempts to reach the same result by developing these games which do give a possibility for excitement and competition.

I therefore look upon that development of the fantasy life as a perfectly natural outcome of the manner in which the earlier years had been spent, and not as an evidence in any way of any mental disease.

Q. Something has been said here about a paranoid personality. What is meant by a paranoid personality?

A. In the first place, a paranoid personality is not a disease.

Q. What is it, Doctor?

A. It describes a certain kind of individual who tends to react to the situations in life in a certain way. It describes a person who is

essentially egocentric. By egocentric I mean a person who tends to interpret all the things that happen in his surroundings as if they applied to himself. It is not the same thing as selfishness. Such a person—there are many such persons in every community, probably many in this court room— . . . is inclined to be suspicious of the motives and meanings of what others say and do around him.

He is the sort of person who goes around with a chip on his shoulder, expecting that someone is going to knock it off. He is more or less suspicious; tries to read a meaning into things, a meaning that would relate to himself. With this he is usually intensely, more or less intensely, selfish, arrogant, and desires to impose his own thoughts on other people.

Such a condition is entirely compatible with normal mental health.

Q. It is not in any way a mental disease, is it, Doctor?

A. No, sir.

Q. What is meant by split personality?

A. A split personality is the condition where certain experiences in the life of the individual are pushed out of consciousness, or what we might say forgotten, but which remain without becoming conscious and have an influence on the way in which the person behaves. I imagine that everybody has more or less splitting in personality; and a sort of illustration of what I mean by that is this: That most of us at various times find ourselves unable to recall or bring into consciousness something which we are thoroughly familiar with. For some reason, or by some means, that particular experience which we forget or cannot recall when we want it is split off, and stays outside of consciousness. It has an effect on our outward behavior, in that it would seem odd to the onlooker that you cannot remember that particular thing.

Those are generally small items, I mean in most people, not covering a very wide range of his experience, and therefore they do not interfere with his conduct to any very great extent. Sometimes, however, much larger regions of experience are incapable of being recalled, or are split off. Forgetting, as a matter of fact, is a very important part of our mental life. It is a natural physiological thing, to forget things which are unpleasant. That is one of the ways in which time heals various unfortunate experiences. Sometimes they are forgotten very quickly, because of the nature of their unpleasantness. I think that covers more or less the point.

Q. Doctor, is the calcification of the pineal gland significant of mental disease?

A. No, sir.

Q. Will you give your reason for why you answer that way?

A. I would say, first of all, the pineal gland is one of which we probably know less than of any other gland in the body. The pineal gland in the very large proportion of all brains that I have examined does contain sand. It is not a true calcification, as a rule. The pineal gland, when examined early in childhood, probably six or eight years of age, always shows signs of degeneration; and, in fact, examinations of the body, of this pineal body when made after childhood, fail to reveal any gland tissue at all. The occurrence of calcification is only a further stage of degeneration, which makes no difference; the gland had already degenerated long before—if there was a gland in the first place, and we are not sure about that. . . .

DR. ARCHIBALD CHURCH

Q. Have you an opinion, Doctor, from the observation and examination as to whether the defendant, Richard Loeb, was suffering from any mental disease on that day at that time? . . .

A. I have an opinion.

Q. What is that opinion, Doctor?

A. That there was no mental disease of any character.

Q. Will you state your reasons for that opinion?

A. The young men were entirely oriented. . . .

Q. Now, Doctor, assume a hypothetical person who upon examination disclosed the facts and circumstances that you gained from your examination of Richard Loeb and add thereto these other facts that have been testified to here, . . . have you an opinion whether such an individual, Doctor, was suffering from any mental disease on May 21st, 1924?

A. I have.

Q. What is that opinion?

A. The opinion is that there was no mental disease.

Q. And will you give your reasons, please? . . .

A. Those additional facts have very little significance except as relates to the fantasies. The fantasies are day dreams. Everybody has them; everybody knows they are dreams. They are interesting as to character and conduct, but they do not compel conduct nor do they exclude it. Those additional facts would imply a slowly growing criminal character, but would not furnish the basis for an opinion that there is any mental disease in that individual. . . .

DR. WILLIAM O. KROHN

Q. Doctor, in what light would you consider the opportunities for the examination and observation that you made in the state's attorney's office on June 1, 1924?

A. I consider them very excellent opportunities for an examination of the mental condition. In certain respects they were ideal, in other respects not so good. By being excellent I mean they were excellent because the state of mind of these two defendants at the time of the examination on Sunday afternoon—they were stripped bare of all pretense, there was no posing; whatever they said and did was done spontaneously and without any studied effort, without any defense reaction having as yet presented itself. It gave the opportunity that we seek in examining in all mental cases, the examining of a person in their most natural state of mind, just as when we are called to examine in business as to his mental condition we like to take him at the most natural period, instead of having him brought to an office just for an examination. In those respects the opportunities for learning the mental condition of these defendants was ideal.

Q. As a result of your examination, Doctor, have you an opinion as to whether the defendant, Richard Loeb, was suffering from any mental disease on May 21, 1924?

A. I have, yes, sir, an opinion.

Q. What is that opinion?

A. In my opinion as a result of that examination he was not suffering from any mental disease, either functional or structural, on May 21, 1924, or on the date I examined him.

Q. Will you give your reasons?

A. Yes, sir. In the first place, if we take each of the mental processes in groups, as we used to call them, faculties, sensations first, there was not any evidence or any indication of any defect of sense; eyes, ears, all of the senses were working normally.

With reference to memory, there was disclosed a remarkable health and integrity of memory. The fact that this person could recite his fake or alibi story of his movements on the 21st of May and recite it on June 1, could recall his state of mind when he was deciding to tell the true story, that he could recall in detail the planning that had ensued from November on until May 21—from the November prior; the fact that he could give, not only the details of the plan, but details of the purchase of the different articles used in the homicide, of the place where each had been secured, who had secured them; there was no question about memory being in any way defective or deficient.

With reference to judgment or comparison, comparative worth of conduct or judgment of values, judgment of situations, this man gave samples of having a power of judgment and comparison that in no wise was interfered with. In placing himself on the front seat of the car, in his argument that the natural thing would be for him to open the front door and for the boy to get in there, he showed that he was weighing different events and making judgments as to worth or value.

With these instances in mind of his judgment, as exercised in his recital, we know that the same judgment, the same faculty of mind makes judgment as to other things, as moral conditions, as to different operations, so that in these things, that he disclosed so many instances of relative judgment, shows that he has not the diseased mind that affects judgment.

The logical sequence of the entire story as it was related and the catching up of each thread when broken by discussion—the other party interrupting, the other party to the homicide interrupting—picking up the thread of argument, using illustrations for the purpose of enforcing the point concerning which he made appeal to the audience, the logical sequence that is rare to find in its excellence and continuity of relationship.

Furthermore, the stream of thought flowed without any interruption or any break from within. There was not a single remark made that was beside the point. The answer to every question was responsive, there was no irresponsive answer to any question.

There was obtained evidence that the man I have described, and I assume with reference to this answer to this question, was perfectly oriented as to time, as to place, and as to his social relations, his regardfulness for the way in which it would affect his family, showed that he considered those relations to his family.

The reasoning not only was evidenced by the logical processes in which he gathered inductively certain instances and grouped them so as to bring forth a conclusion by inductive processes, but he gave evidence that he could reason by deduction. Not only that, there was excellence of attention. There was no diverting of his attention from the subject in hand during any part of the discussion.

In fact, you take each and all of the mental faculties or groups of mental activities as we discuss them and with reference to no one was there any single evidence of any defect, any disorder, any lack of development or any disease, and by disease I mean functional as well as structural.

Q. As a result of your examination on that date have you an opinion as to whether Nathan Leopold, Jr., was suffering from any mental disease on May 21, 1924?

A. I have an opinion, yes, sir.

Q. Will you state that opinion, please.

A. In my opinion he was not suffering from any mental disease.

Q. Will you state your reasons for that, Doctor?

A. The reasons would be the same, with different instances.

Q. Now, Doctor, you have been present in court during the hearing of all the testimony offered by the state and the defense from the very beginning of this case at the request of the state's attorney, have you not?

A. I have, yes, sir.

Q. Have you observed the defendants, Richard Loeb and Nathan Leopold, Jr., while here in the court room?

A. I have, yes, sir.

Q. What have you observed?

A. I observed that there were none of the modifications of movement that come with certain mental disorders; none of the lead-pipe, slow, resisting movements that come with certain conditions that are known as mental disorders; that the gait and the station showed freedom and ease; that the attitude in sitting, there was no staring, no gazing fixedly, none of the positions that are characteristic of certain mental diseases.

I found in these conditions certain indicative evidence that would show that they did not have certain special mental disorders.

Q. From your observations, both on Monday, June 1, and from your observation of the defendants in court, have you an opinion as to whether they are suffering from any mental disease?

A. I have.

Q. What is that opinion?

A. That they are not suffering from any mental disease.

Q. Will you state your reasons for that opinion?

A. I have already stated them. I would simply say there was nothing in the observation in court but what tends to confirm the reasons I have already given with reference to the previous situation.

THE LOEB-LEOPOLD CASE—(Continued)

E. SENTENCE OF THE JUDGE

In view of the profound and unusual interest that this case has aroused, not only in this community but in the entire country and even beyond its boundaries, the Court feels it his duty to state the reasons which have led him to the determination he has reached.

It is not an uncommon thing that the plea of guilty is entered in criminal cases, but almost without exception in the past such pleas have been the result of a virtual agreement between the defendant and the state's attorney, whereby, in consideration of the plea, the state's attorney consents to recommend to the Court a sentence deemed appropriate by him and, in the absence of special reasons to the contrary, it is the practice of the Court to follow such recommendations.

In the present case the situation is a different one. A plea of guilty has been entered by the defense without a previous understanding with the prosecution and without any knowledge whatever on its part. Moreover, the plea of guilty did not in this particular case, as it usually does, render the task of the prosecution easier by substituting admission of guilt for a possibly difficult and uncertain chain of proof.

Here the state was in possession not only of the essentials, substantiating facts, but also of voluntary confessions on the part of the defendants. The plea of guilty, therefore, does not make a special case in favor of the defendants.

Since both of the cases, namely, that of murder and that of kidnapping for ransom, were of a character which invested the Court with discretion as to the extent of the punishment, it became his duty under the statute to examine witnesses as to the aggravation and mitigation of the offense.

This duty has been fully met. By consent of counsel for the state and for the defendants, the testimony in the murder case has been accepted as equally applicable to the case of kidnapping for ransom. In addition, a prima facie case was made out for the kidnapping case as well.

The testimony introduced, both by the prosecution and the defense, has been as detailed and elaborate as though the case had been tried before a jury. It has been given the widest publicity and the

public is so fully familiar with all its phases that it would serve no useful purpose to restate or analyze the evidence.

By pleading guilty the defendants have admitted legal responsibility for their acts, the testimony has satisfied the Court that the case is not one in which it would have been possible to set up successfully the defense of insanity as insanity is defined and understood by the established law of this state for the purpose of the administration of criminal justice.

The Court, however, feels impelled to dwell briefly on the mass of data produced as to the physical, mental and moral condition of the two defendants. They have been shown in essential respects to be abnormal; had they been normal they would not have committed the crime. It is beyond the province of this Court, as it is beyond the capacity of human science in its present state of development, to predicate ultimate responsibility for human acts.

At the same time, the Court is willing to recognize that the careful analysis made of the life history of the defendants and of their present mental, emotional and ethical condition has been of extreme interest and is a valuable contribution to criminology. And yet the Court feels strongly that similar analysis made of other persons accused of crime would probably reveal similar or different abnormalities.

The value of such tests seems to lie in their applicability to crime and criminals in general. Since they concern the broad questions of human responsibility and legal punishment, and are in nowise peculiar to these individual defendants, they may be deserving of legislative but not of judicial consideration. For this reason the Court is satisfied that his judgment in the present case cannot be affected thereby.

The testimony in this case reveals a crime of singular atrocity. It is, in a sense, inexplicable; but it is not thereby rendered less inhuman or repulsive. It was deliberately planned and prepared for during a considerable period of time. It was executed with every feature of callousness and cruelty.

And here the Court will say, not for the purpose of extenuating guilt, but merely with the object of dispelling a misapprehension that appears to have found lodgment in the public mind, that he is convinced by conclusive evidence that there was no abuse offered to the body of the victim.

But it did not need that element to make the crime abhorrent to every instinct of humanity, and the Court is satisfied that neither in the act itself, nor in its motive or lack of motive, nor in the antecedents of the offenders, can he find any mitigating circumstances.

For both the crime of murder and kidnapping for ransom the law prescribes different punishments in the alternative.

For the crime of murder, the statute declares:

"Whoever is guilty of murder shall suffer the punishment of death, or imprisonment in the penitentiary for his natural life, or for a term not less than fourteen years. If the accused is found guilty by a jury, they shall fix the punishment by their verdict. Upon a plea of guilty the punishment shall be fixed by the court."

For the crime of kidnapping for ransom, the statute reads:

"Whoever is guilty of kidnapping for ransom shall suffer death, or be punished by imprisonment in the penitentiary for life, or any term not less than five years."

Under the plea of guilty, the duty of determining the punishment devolves upon the Court, and the law indicates no rule or policy for the guidance of his discretion. In reaching his decision the Court would have welcomed the counsel and support of others. In some states the legislature, in its wisdom, has provided for a bench of three judges to determine the penalty in cases such as this. Nevertheless, the Court is willing to meet his responsibilities.

It would have been the path of least resistance to impose the extreme penalty of the law. In choosing imprisonment instead of death, the Court is moved chiefly by the consideration of the age of the defendants, boys of 18 and 19 years. It is not for the Court to say that he will not in any case enforce capital punishment as an alternative, but the Court believes that it is within his province to decline to impose the sentence of death on persons who are not of full age.

This determination appears to be in accordance with the progress of criminal law all over the world and with the dictates of enlightened humanity. More than that, it seems to be in accordance with the precedents hitherto observed in this state. The records of Illinois show only two cases of minors who were put to death by legal process—to which number the Court does not feel inclined to make an addition.

Life imprisonment may not at the moment strike the public imagination as forcibly as would death by hanging; but to the offenders, particularly of the type they are, the prolonged suffering of years of confinement may well be the severer form of retribution and expiation.

The Court feels it proper to add a final word concerning the effect of a parole law upon the punishment of these defendants.

In the case of such atrocious crimes it is entirely within the discretion of the Department of Public Welfare never to admit these defendants to parole. To such a policy the Court urges them strictly

to adhere. If this course is persevered in, the punishment of these defendants will both satisfy the ends of justice and safeguard the interests of society.

In No. 33623, indictment for murder, the sentence of the Court is that you, Nathan F. Leopold, Jr., be confined in the penitentiary at Joliet for the term of your natural life. The Court finds that your age is 19.

In 33623, indictment for murder, the sentence of the Court is that you, Richard Loeb, be confined in the penitentiary at Joliet for the term of your natural life. The Court finds your age is 18.

In 33624, kidnapping for ransom, it is the sentence of the Court that you, Nathan F. Leopold, Jr., be confined in the penitentiary at Joliet for the term of ninety-nine years. The Court finds your age at 19.

In 33624, kidnapping for ransom, the sentence of the Court is that you, Richard Loeb, be confined in the penitentiary at Joliet for the term of ninety-nine years.

The sheriff may retire with the prisoners.

THE LOEB-LEOPOLD CASE—(Concluded)

F. A SYMPOSIUM OF COMMENTS FROM THE LEGAL PROFESSION

HARRY OLSON

(Chief Justice of the Municipal Court of Chicago)

The joint report makes no allusion to the heredity of either of these individuals. Such information might throw considerable light on this case. Often as much can be determined by a study of the heredity of an individual as can be learned from a clinical examination. For a diagnosis or an understanding of this case one should have the background afforded by a study of the heredity. I believe, from this report that the Leopold-Loeb case is not an environmental calamity, but a hereditary catastrophe!

The report says: "There is justification in stressing the uniqueness of this case if for no other reason than that it has created widespread panic among parents of young people." This case is not so unique from a psychological standpoint that it will not frequently repeat itself. On the contrary, it is very common in criminology where one of the parties is homosexual.

The part of the report referring to their contempt for women is interesting because it suggests homosexuality, to which no direct allusion is made.

The reference in the report to the "Emotional Life" gives an accurate picture of dementia praecox in which the normal emotions were lacking. From the description of their emotional life I believe that Leopold was a dementia praecox with paranoid trends, and Loeb was a dementia praecox hebephrenia, and from the character of the assault upon the Frank's boy, I would assume was an epileptic as well, as the killing in this case has a typical epileptic component.

That part of the report referring to Leopold's waking dreams relating to his peculiar religious interests and visualization of the crucifixion, and the reference to the so-called "phantasy" relationship, suggests sex Sadism and Masochism.

The reference to Leopold's attendance at a girl's school would indicate that he was effeminate, hence was sent to such a school.

There is nothing in the environmental life of these boys, as shown by the report, that would account for their mental condition, nor for the crime. It is my belief that that condition has a hereditary background, even though remote, which was not shown at the trial, for which there were obvious reasons.

Robert E. Crowe, the State's Attorney, investigated this case with great ability. He developed the facts with the utmost care and thoroughness, and is entitled to high praise for the initial energy and effectiveness of his investigation and prosecution. However, he prosecuted the case on the theory that the defendants were normal, or at least not insane, and demanded the death penalty, thereby ignoring all mitigating facts. This is disappointing, as the prosecutor had been at the head of the Crowe Crime Commission, which presented to the Illinois Legislature a law for the segregation of mental defectives, in which the definition of a mental defective was as follows:

"A person who has:

- (a) a defect of intelligence; or
- (b) a defect of *affectivity* or *emotion*; or
- (c) a defect of will;

to such a degree that he has criminal propensities and while at large is a menace to the life and property of others."

This bill passed the Illinois Legislature, but was vetoed by the governor, principally on the ground that the bill providing an appropriation for a farm colony did not pass. Thus it will be seen that emotional defect was recognized (except in murder and rape) in the law of Illinois prior to the Leopold-Loeb case. By the passage of this law the people of Illinois through their legislature expressed the public policy of the state as being in favor of treating the emotionally insane differently from other criminals, and substituting segregation for life in a protective farm colony in place of the traditional penitentiary.

The weakness of the defense in this case lay, in my opinion, in a failure to present the heredity background of the case, if any, and in their failure to "call a spade a spade." They evidently did not want their clients sent to the insane asylum, but preferred to have them sent to the penitentiary. While they apparently sought to make their clients out mental defectives, they did not wish to go too far for fear they would get them in the insane asylum.

It is quite true these defendants knew the difference between right and wrong, but I doubt whether such knowledge was sentient, or that they had the power to choose, in view of their mental

condition, as disclosed at the trial, and thus might have been successfully defended as insane under the law of Illinois as it now stands. Counsel evidently did not dare to take the chance with a jury in this day of slight public knowledge of psychiatry.

It is unfortunate for the administration of justice and for modern psychiatry in this country that the court in his written opinion apparently ignored the testimony which showed them to be emotional defectives.

It is true the court in one part of the decision said that the defendants were abnormal, and if normal would not have committed the crime, but he did not base his leniency and failure to hang them upon their mental condition. The courts may accept a plea of guilty as a factor in mitigating punishment, and also youth, but this murder was so aggravated and clearly proved, the defendants were about eighteen years of age, and in addition were college graduates, so that there is little or nothing here upon which to base mitigation. Clearly the only sound ground for failing to hang them was their mental defectiveness out of which the crime itself sprung. This failure to give weight to their mental condition was, in my opinion, a serious mistake, and has led to public confusion as to the soundness of the court's judgment.

The decision of the court that they be imprisoned for life was the only one he could properly and honestly give under the plea and evidence in this case. Drunkenness is no excuse for crime committed under its influence, but a court would err that excluded drunkenness as a defense, because the court and the jury may take the fact of intoxication into consideration in fixing the punishment. So here an abnormal mental status, probably amounting to dementia praecox hebephrenia, plus epilepsy, and dementia praecox paranoides, certainly must be taken into consideration by the court in fixing the penalty, as it will be only a few years until such grave mental aberration will be adequate defense in the courts against the charge of the crime itself, if it is not so already.

I doubt very much whether this was a kidnaping case at all. It appears to me that the ransom letter and pretended kidnaping was planned as an alibi to throw suspicion away from the perpetrators. Kidnapers do not destroy their victim. They keep him alive so that they will have something to sell for the ransom. In this case the killing occurred first and the ransom letter was sent afterward. The killing may have been accidental as a result of possible abuse of the Frank's boy, or it may have been done to silence him so that he could not tell of such abuse.

To sum up, I do not agree with the attitude of the prosecutor in ignoring the obvious emotional defects of Leopold and Loeb; I do not approve of the policy of the defense counsel in arbitrarily limiting the defense by the plea of guilty, and again curtailing it by accepting the report of the alienists with an omission of so significant a factor as the heredity of the defendants, and in pursuing the obvious, through excessive testing of the intelligence to the exclusion of the essential issue—the *emotions*, and I am not entirely satisfied with the written opinion of the learned judge, wherein he limits the mitigating circumstances in this case to the plea of guilty and the youth of the defendants, and places in the record the fact that he ignored the testimony of the alienists. He may have justified this, however, just because of the omissions and apparent generous use of artifice in the reports and testimony of the defense alienists. The obvious omission of elemental facts, and the stressing of non-essentials and invention of the teddy bear and cow-boy-suit psychoses conduced only to confusion. It therefore was most unfortunate for the administration of justice and the progress of modern psychiatry, that such omissions, half-truths, ignored facts and artifices beclouded the real issues in this case. As the defendants are alive, I leave it to time to substantiate the above comments.

HOMER CUMMINGS

Stamford, Conn.

(State's Attorney for Fairfield County, Connecticut)

The opinions expressed by the alienists in the Loeb-Leopold case evidently had no influence upon the judgment of the trial court. The penalty quite properly was fixed without reference to the report of the psychiatrists. Although undoubtedly the defendants presented certain aspects of abnormality, a plea, based on insanity, would not have been justified and could not have prevailed.

The report indicates very clearly the full mental and legal responsibility of the defendants for their acts as measured by any standard known to present day jurisprudence.

Similar opinions could easily be secured with reference to any average inmate of our jails or prisons; or with reference to the

average person condemned to capital punishment. If this be true, it follows that the line of reasoning and investigation adopted by the experts, if approved by the courts, would overthrow our entire system of administering justice. It may be argued that this ought to be done; but it is not the function of either the judge or the state's attorney to do it. It may be that in some future stage of civilization, other standards will be set up. Whether crime is always an evidence of disease and should be treated instead of punished, is an interesting speculation; but it could have no proper place in the decision in this case.

In view of the foregoing, there remained for the trial court but one vital question, to-wit: Whether these boys should pay the death penalty, both being minors, after a voluntary plea of guilty. It is a grave responsibility to advise the interposition of a plea of guilty upon the part of anyone in a capital case. This responsibility is all the greater when such a plea is entered by or in behalf of a person so young that the law, in all other relationships of life, presumes him incapable of acting for himself in any crucial matter. In many jurisdictions, a plea of guilty to murder in the first degree, if it involved the possibility of the death penalty, would not be accepted from or in behalf of a minor.

It is my judgment that there is a growing opposition to the death penalty in any case. Personally, I do not believe in capital punishment, although, as a matter of duty, I have prosecuted murderers and have asked for first degree verdicts from juries. I notice, however, that juries are increasingly squeamish about such verdicts where death follows as a natural consequence; and many of our best jurors have conscientious scruples on the subject, thereby disqualifying them from jury service with a resultant loss to the state. It is fair to say that the tendency all along the line is to soften the ancient harshnesses of the criminal law; and the execution of two minors, after a plea of guilty and without a jury trial, would have been contrary to the modern view.

It is unfortunate that the wealth of the parents and the exploitation of the learning of psychiatrists should have delayed into weeks a hearing which should have been concluded in two or three days, thereby giving the appearance to the world that money and influence were tampering with justice. A swift sentence (like the one actually imposed), based entirely upon two factors—the legal infancy of the accused and the absence of a jury verdict—would have

met every requirement of justice and gone far to satisfy the public mind.

JOHN H. WIGMORE

(Former President of the American Institute of Criminal Law and Criminology)

A. The Judge's Sentence

1. In the judicial opinion giving reasons for imposing less than the extreme sentence for murder in the Loeb-Leopold case, the court was "moved chiefly by the consideration of the *age of the defendants*—boys of 18 and 19 years, . . . persons who are not of full age." Declaring that the court's judgment "is not affected" by the psychiatrists' analysis of the "physical, mental and moral condition of the two defendants," and dwelling exclusively on their age, the court points out that the mitigation of penalty based on that circumstance alone "appears to be in accordance with [1] the progress of criminal law all over the world and [2] the dictates of enlightened humanity." The opinion adds that the life-imprisonment penalty "may well be the severer form of retribution and expiation."

These astonishing pronouncements, with their incidental reference to "progress of criminal law," "humanity," "expiation," "retribution," evidently were logical consequences of some conceptions, in the judicial mind, of the purpose of the penal law. Let us therefore briefly glance at the well-known state of theory on that subject.

2. The theories of the basis of penal law are all reducible to four—Retribution, Reformation, Deterrence, Prevention. But the last of the four—the preventive basis—does not concern the law and the courts; it concerns the general social measures—such as education and eugenics—which will eliminate or diminish the tendencies to crime; hence it is here immaterial. There remain the theories of Retribution, Reformation and Deterrence.

The *retribution* theory was once dominant, centuries ago. It had a theological origin, but has long been discarded. Probably the last writer to advocate it frankly was Thomas Carlyle. In his *Latter Day Pamphlets*, he says, "There is one valid reason, and only one, for punishing" a murderer with death, and that is that nature "has planted natural wrath against him in every God-created human heart. Caitiff! we hate thee—not with a diabolic, but a divine hatred. In the name of God, not with joy and exultation, but with sorrow stern as

thy own, we will hang thee on Wednesday next!" But nobody defends this theory any longer.

Why, then, does the opinion in the Loeb-Leopold case refer to a life sentence as "the severer form of *retribution* and *expiation*?" Those terms are discarded—and discarded by the very "progress of the criminal law" elsewhere invoked in the same opinion.

There is indeed one aspect in which the retribution idea still legitimately has a bearing, viz., not in initially fixing the penalty, but in *rebutting a plea for mitigation*. "We do pray for mercy," says Portia, "and that same prayer doth teach us all to render the deeds of mercy." He who asks for mercy is met by the retributive answer, "You yourself showed no mercy." So in a homicide case: The atrocious killer, if he asks for mitigation, is answered: "Who are *you*, to ask for mercy, that showed no mercy to others?" From the killer's point of view the retribution idea is a sufficient answer. And so it should have been in the Loeb-Leopold case.

But *that* theory does not tell the law how to fix the penalty in the first instance. And so we come to the other two theories.

The *reformation* theory is the proper basis for shaping any and all penalties, so far as concerns the individual at bar. It may lead to permanent segregation from society, at one end, or to immediate discharge on probation, at the other end. All modern criminal law has been modified, in obedience to this theory. In the Loeb-Leopold case it would lead to no mitigation; for there was no evidence at all that these men would ever reform. The evidence was all to the contrary. Their philosophy of life was fixed; they had been developed by the highest education; their cynical, callous unscrupulousness revealed them as irreclaimable.

But this reformation theory affects solely the *individual at bar*. It takes no account of the mass of humans outside. The criminal law is quite as much concerned with social effects, i. e., effects on the community at large. And that is where the deterrence theory comes in. The opinion in the Loeb-Leopold case ignores entirely this basis of the criminal law. And that is its cardinal error.

The *deterrence* theory is the kingpin of the criminal law. The crimes contemplated but not committed bear the same ratio, or greater, to those actually committed that the submerged base of an iceberg bears to the portion visible above the surface; scientists say it is as 6 to 1. The fear of being overtaken by the law's penalties is, next to morality, what keeps most of us from being offenders, in one way or another. For the professional or habitual criminals, who have ceased to care for social opinion, it is the *only* thing. A lax criminal law

means greater yielding to the opportunities to crime. This is common knowledge.

So the main question here really was: Would the remission of the extreme penalty for murder in the Loeb-Leopold case lessen the restraints on *the outside class of potential homiciders?* The answer is *yes*, emphatically. And daily newspapers dispense us from laboring to offer any elaborate proof. On September 1, after the counsel's argument for the defense had been published, two 18-year-old girls were arrested in Chicago for assisting two youths of 16 and 19 (Bill and Tony) to kill cruelly an old woman whose money they coveted. And the girls on their arrest said: "A cop told me they would hang Tony. But they can't. *There's never been a minor hanged in Cook County.* [Note that the judge later cited this point in his opinion.] *Loeb and Leopold probably won't hang. They are our age. Why should we?*" These particular reckless dastards, it seems, "wanted money for our good times, excitement, clothes, and fun," and they don't mind killing because they won't hang. On September 2, a male and a female, 19 years old, were arrested for highway robbery in Alexandria, Va.; the robbery failed, by accident only, from being a murder; the female, when arrested, said, "I'm sorry I didn't get away with it; if *I had more experience, I would have.*" (*New York Times*, Sept. 3, 1924.)

As everyone knows, today is a period of reckless immorality and lawlessness on the part of younger people, at the ages of 18-25. It is more or less due to the vicious philosophy of life, spread in our schools for the last twenty-five years by John Dewey and others—the philosophy which worships self-expression, and emphasizes the uncontrolled search for complete experience. Whatever the temporary cause of this behavior may be, it is in special need of repression. The instances above quoted show that such persons *are* amenable to the threats of the criminal law. If that law has no threat for them, they will the less try to repress their nefarious antisocial actions. Life imprisonment has no terrors to their minds. It takes not only imagination, but an experience of it, to sense any of that terror. But hanging is a penalty that needs no imagination and no experience. Everybody has sufficient horror of that—everybody except the crazy and the mere child.

And that is where we see the special, dangerous error of the court's opinion in the Loeb-Leopold case, in basing the mitigation on the offenders being "under age"—that is, under twenty-one. What has the twenty-one-year line to do with the criminal law? Nothing at all, nor ever did have. The twenty-one years is merely an arbitrary date for purposes of property rights, family rights, and contract rights.

For purposes of criminal law the only question is: *Are persons in general of the age at bar susceptible to the threat of the law's extreme penalty? Would it help to deter them?*

It certainly would. Those two clever female miscreants of eighteen that helped choke the old woman to death were smart enough to perceive the difference between hanging and imprisonment. Loeb and Leopold were clever enough to understand it; else why did they take such ingenious pains to avoid detection and to leave the country? As a matter of fact, the *only* thing that they did fear was the criminal law. Neither personal morality nor social opinion imposed any limit on their plans. The only repressing influence on them was the criminal law. To mitigate its penalty for them was therefore to "take the lid off" for all unscrupulous persons of their type.

And that is what the sentence of the judge in this case has done for Cook County!

B. The Psychiatrists for the Defense

I maintain that the reports of the psychiatrists called for the defense, if given the influence which the defense asked, *would tend to undermine the whole penal law.*

1. To perceive this, first note the expressions which reveal their point of view. These defendants were "peculiarly maladjusted adolescents." They had a "background of abnormal mental life." The qualities that "make their criminal conduct comprehensible have their roots in mental life, etc., during the years of early childhood." His "ego is all-important, right or wrong, his desires and will being the only determinants of his conduct." There is "instability of the nervous system." There was an "extraordinary moral callousness growing upon him." They were "*driven* in their actions by the compulsive force of their abnormally twisted life of fantasy or imagination." And so on.

Now all this is not the language of modern penal law. It is the language of biology. It points out that these cruel, ruthless deeds were simply the result of the parties' innate characters, as they developed even amidst the most favorable surroundings. The psychiatrists' description is just such a description as a botanist might give of a certain weed, as distinguished from a certain useful plant. What is their obvious logical conclusion, implied throughout?

It is this: If a party's life-history shows that his development as a human fiend was perfectly natural and inevitable—that he was "driven" (as they put it) by his character—then he should not receive the ordinary penalty for his misdeeds.

This is sheer Determinism. The vast complex of events that has brought you or me to the point of this criminal act makes it inevitable. Our character predetermined it. There was no choice for us, because all human acts are predetermined, and could be predicted if there were an omniscient observer.

2. Now, does Determinism eliminate moral blame, and therefore eliminate penal consequences?

These new-school psychiatrists answer, Yes. They do not say it, but they imply it in every sentence. And their answer applies just as much to the cruel murderer as to the petty window-breaker. He couldn't help it; then why punish him? As one psychiatrist said, who is attached to a court, speaking of delinquents: "We try to help criminals to get through the situation!"

Are these psychiatrists right? Emphatically, No. But their implications are dangerous, because their logic seems to eliminate penalties, and would, if applied practically, undermine the entire penal system.

Now this question of Determinism is an old one. In the 1800s, when the new biology was spreading, it was resented by the orthodox penologists, because it seemed to threaten the whole penal system. The Determinist criminologists were denounced by the orthodox.

But the answer was given by the Determinists themselves: Determinism leaves the penal law untouched. The measures of the modern penal law are not based on moral blame, but on social self-defense. When there is a weed in your garden, and you cut it down, you do not do this on any theory of the moral blame of the weed, but simply on the theory that you are entitled to keep weeds out of your garden.

So here. Society is entitled to use appropriate measures to repress anti-social acts. Society's right of self-defense is equally valid even when the human weed was predetermined by nature and environment to do just what he did. "Punishment," says Ferri (*Criminal Sociology*, § 219) "will no longer be retribution for a moral fault by a proportionate chastisement (ethico-legal phase), but a sum of preventive and repressive social measures which will protect society from the assaults of crime. . . . But the present spirit of penal justice, suffering from a double error, . . . and a *misunderstood application of the new scientific data, offers the most improvident impunity or indulgence to the more dangerous criminals.*"

Mr. Ferri has here struck at precisely the ominous error of the psychiatrists in the present case. This is the first instance in which their theories have been publicly advanced in an actual trial outside

the juvenile courts. They are preaching that, because of Determinism, the most dangerous criminals should be given indulgence.

And yet—this is the ominous feature—their theory *applies equally well to every man who comes to stand in the dock for a deliberate crime*. Look at his life history as fully as these learned gentlemen did in this case, and you will find that it was more or less the natural and inevitable result of his character. And (according to these gentlemen) the more natural and inevitable it was, the more indulgent should the law be!

3. I propose that the scientists who are advancing this theory go back to books like Ferri's (before writing more books of their own) and study the theory of penal law. As doctors and friends, let them sympathetically "help the criminal to get through the situation," by all means. But as advisers of a criminal court, let them learn that their Determinism is out of place, and that Society's right to eliminate its human weeds is not affected by the predetermined character of the weeds.

It is an excellent thing that these scientists have had their day in court thus publicly, because their theories have been going about in books and articles and have begun to affect public opinion. It is time that the issue be squarely faced in the open, before the whole administration of the penal law is undermined. Let public opinion look into the literature on this subject, and learn to discard that false sympathy and dangerous weakening that is apt to arise on first acceptance of the biopsychologic doctrine of Determinism.