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Friday, August 15th, 1924.

1:50 o'clock P.M.

Court convened at 1:50 o'clock P.M. Friday,
August 15th, 1924, pursuant to adjourn-
ment heretofore taken.

Present, same as before.

D R . R O L L I N T U R N E R W O O D Y A T T

a witness called in rebuttal on behalf of the prose-
cution, having been previously duly sworn, testified
further as follows:

CROSS EXAMINATION

(Continued)

BY MR. WALTER BACHRACH.

THE COURT: You may proceed, gentlemen.

MR. WALTER BACHRACH: Q You are being paid a
reasonable compensation for your services here by
the State, are you not?

A Well, I presume so, but nothing was stipulated.

Q You expect to receive a reasonable compensation,

do you not?

A I made no stipulation, but I rather expect it.

Q Who arranged with you to come here and testify?

A I was first called up, as I recall it, by Dr.
Singer.

Q When were you first called up?

A I don't remember the exact date. It was about
five days ago.

MR. WALTER BACHRACH: That is all.

MR. SMITH: That is all, doctor.

THE COURT: That is all.

(Witness excused)

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D R. H A R O L D D O U G L A S S I N G E R,
a witness called in rebuttal on behalf of the Prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MILTON SMITH.

MR. SMITH: Q Will you state your name, please?

A Harold Douglas Singer.

Q Where do you live?

A In Chicago.

Q Where is your office?

A 25 East

Washington Street.

Q What is your business or profession?

A I am a physician.

Q Do you confine yourself, doctor, to a specialty in the practice of your profession?

A I do.

Q What is that specialty?

A Mental and nervous diseases.

Q Will you kindly state your preparation and experience in practicing that specialty?

A I graduated in medicine at the University of

London, England, in 1898, and after graduating I did about six years of post-graduate work, first as an interne at St. Thomas Hospital in London, and then I was working in the laboratory in that same hospital as assistant superintendent for about eighteen months.

I then went to the National Hospital for the Paralyzed and Epileptic at Queens Square in London. I was there first as junior physician for one year, and for one year as senior physician.

I then went back to St. Thomas Hospital as their resident assistant physician.

I had charge of all the medical wards of the hospital/ I was there for two years. During that time I was doing some special work at the Bethlehem Hospital in London, a hospital for mental cases. I examined all the patients that came in there, signing certificates for commitment.

I then came to this country -- that was in 1904 -- having been appointed as associate professor of neurology in the John Creighton University of Omaha, Nebraska.

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I practised in neurology in Omaha for about three years, or a little less than that, and then I went as assistant superintendent to the Norfolk State Hospital of Nebraska. I was there a little over a year.

Q Was that a hospital for the insane?

A I beg your pardon?

Q A hospital for the insane?

A That was a hospital for the insane, yes. I was there for a little over a year. Then I came to Illinois as director of the State Psychopathic Institute, which was then just opened.

Q Describe that to us.

A That was in the fall of 1907. That institute was founded for the purpose of teaching the physicians in the Illinois State Hospitals for mental cases, on the subject of psychiatry and methods of examination, supervising in a general way the medical work of the State Hospitals, conducting investigations into the nature and causes of mental disease.

That institute was located at that time on the grounds of the Kankakee State Hospital at

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Kankakee. I was there during the time from 1907 to 1919 when we moved the institute from Kankakee to Chicago, at the Chicago State Hospital at Dunning. In 1917 --

MR. DARROW: Excuse me, Doctor. You say you were at Kankakee from 1903 to 1917?

THE WITNESS: No sir, from 1907; from the fall of 1907 --

MR. DARROW: Oh yes, thank you.

THE WITNESS: Until the fall of 1919.

In 1917 when the civil administrative code was put into effect in this State I was appointed also as State alienist.

MR. SMITH: Q Will you describe the duties of the State alienist?

A The duties were largely advisory to the Department of Public Welfare in regard to matters concerning the care and treatment of mental diseases; the medical supervision of the work in the State Hospitals for the insane.

Q Did that include all the state hospitals, doctor?

A All the state hospitals in Illinois, yes sir.

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MR. DARROW: When was that?

MR. SMITH: 1917.

MR. DARROW: 1917?

MR. SMITH: Q That is correct, doctor?

A That is correct, yes. And I held that position, as well as acting as director of the State Psychopathic Institute, until 1921.

During the latter part of that time I was also appointed as an advisory consultant to the Surgeon General of the United States Public Health Service in their mental work; and later when the work with the ex-service men was taken over by the Veterans Bureau I was adviser in neuro-psychiatry to the director of that bureau.

Since 1921 I have been in practice in nervous and mental diseases in this city.

I have had several different teaching positions. In 1904 I was appointed as associate professor in nervous diseases at the Creighton University --

MR. DARROW: What university?

THE WITNESS: The Creighton University, the John A. Creighton University in Omaha. That was in 1904.

In 1904 was that appointment.

MR. DARROW: You mentioned that, I believe.

THE WITNESS: Yes.

In 1906 I resigned from there and was appointed as associate professor of mental diseases in the Nebraska State University, and I resigned from there when I came to Illinois. In about 1914, I think, somewhere about that date, I was appointed as associate professor of mental diseases in the University of Illinois.

MR. DARROW: 1913?

MR. B. C. BACHRACH: 1914.

THE WITNESS: And I was made full professor with charge of the department I think in 1919 or 1920, I am not quite sure which date it was, and I still hold that position.

MR. SMITH: Q Doctor, will you state the names of what medical societies or associations you are affiliated with?

A There are rather a lot of them. I am a member of the Chicago Medical Society, the Illinois State

Medical Society, the American Medical Society.

I am also a member and at the present time Vice President of the American Neurological Association.

I am a member of the American Psychiatric Association.

I am a member of the Chicago Neurological Society and have been President of that body.

I am also a Fellow of the Royal Society of Medicine in England and also of some minor societies.

Q Are you associated now, Doctor, with any body or organization which has for its purpose the study of mental diseases, mental conditions, etc.?

A I am acting as medical director of the Medical Hygiene Society of Illinois, and am also a member of the National Committee for Mental Hygiene.

Q Doctor, were you in the State's Attorney's office on Monday, June 2nd, at the request of the State's Attorney?

A I was.

Q Will you please describe who was present and what occurred?

A I went there about three-thirty in the afternoon and at that time there were present in Mr. Crowe's office, yourself and Mr. Sbarbaro and Mr. Savage and one or two other people who came in and out.

Shortly afterwards the two defendants in this case were brought in by several deputy sheriffs, three of them, I think.

I believe there was also a stenographer present, and later Mr. Crowe, the State's Attorney, came in.

Later still Mr. Darrow and another gentleman whom I did not know came into the room for a short time, and then left.

When the defendants were brought into the room various questions were asked of them, chiefly by the Assistant State's Attorneys, one after the other, to each one of which, regardless of its nature, they made exactly the same reply.

The one who did the most answering was Leopold, and that reply was to the effect:

"I respectfully decline to answer on the advice of counsel".

Loeb also made the same answer to the questions put to him. There were a number of such questions asked, many of them very trivial, joking remarks.

Q Do you recall any of the questions?

A I recall some of them. The majority of them, I do not.

One of the earliest questions that was put, I think by Mr. Savage, was he asked Leopold whether he understood how it was that a certain person whose name I did not know and do not now recall had been interviewed in that morning's newspaper.

Q Do you remember if that was with reference to a young lady or not?

A It was a young lady, yes, -- to which he replied with the same answer that I have already given.

Q That is, he answered with:

"I respectfully decline to answer on the advice of counsel".

A "I respectfully decline to answer on the advice of counsel".

Mr. Savage then gave an explanation that the State's Attorney's office was not responsible for

this lady's name appearing in the paper, that she had given it, as he understood it, voluntarily to the ~~XXXX~~ newspaper. Mr. Savage made several remarks, to the effect that he wanted him to understand that he had not violated his confidence, and such remarks as that.

The only answers received were still in exactly the same terms, that he respectfully declined to answer on the advice of counsel. They were asked questions about some of the various trips that had been made about the city in the last day or two, and asked about places where they had lunch.

I remember some comments were made about some sandwiches, as I recall.

The answers were always in exactly the same form or substantially the same form.

After Mr. Crowe came in he asked them some questions, and got the same answer, and I remember that he then asked Leopold whether he thought there was anything that he could tell, that he had not already told.

Leopold laughed, and said he respectfully

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declined to answer.

MR. DARROW: Upon the advice of counsel?

THE WITNESS: On the advice of counsel every time, Mr. Darrow, I remember just one spontaneous remark

on the part of Leopold that I heard at that time, and that was to one of the deputy sheriffs, when he said,

"Say, Mr. Sheriff, I am in your control,

and I protest against this proceeding",

or words to that effect. When Mr. Darrow came

into the room, he and Loeb both talked to him. I didn't

hear what was said at all. They appeared to be con-

versing with him in a natural manner.

Mr. Darrow made some remark to the State's Attorney to the effect:

"I thought I had taken these boys out

of your charge".

Mr. Darrow was only in the room a very short time and then left.

I recall another series of questions that were asked in connection with the disposition of the suit cases belonging to the defendants. They were asked whether they wished to take those to jail

with them, and they replied that they respectfully declined to answer on the advice of counsel. They showed, however, that they understood perfectly --

MR. DARROW: Wait a minute. I object.

THE WITNESS: pardon me.

MR. DARROW: They understood that you were violating their rights, too.

MR. SMITH: I think Dr. Singer ought to be allowed to tell.

MR. CROWE: They also understood they did not get that advice soon enough.

MR. DARROW: You let him in after, in direct violation of law, and the witness knew it, and everybody knew it.

MR. CROWE: It was really too bad, for the cause of justice, that they were so loquacious.

THE COURT Put another question.

THE WITNESS: May I continue?

MR. SMITH: Go ahead.

MR. DARROW: No. I understood the court said to put another question.

THE COURT: Yes, put another question.

A I have not completed describing what happened, if the Court will allow me.

MR. SMITH: Q Go right ahead with those particular phases of it, your observation.

THE COURT: The doctor may tell anything he observed there.

MR. SMITH: That is the question your Honor.

THE COURT: He was about to say something to which Mr. Darrow objected. Go ahead, doctor. You may proceed.

A One of the assistant State's Attorneys told the defendants to take the suitcases. They went over and took them and carried them to the door. They were then told to put the suitcases down and they complied with that.

During the interview the defendant Leopold was self possessed.

MR. DARROW: Was what?

A Self possessed, laughed, and on one occasion he mimicked the laughter of someone who had been speaking to him, and laughed at the time.

Loeb on the other hand was quiet, and but restless, and his face had the appearance of being

Worried.

MR. DARROW: I object to that and ask to strike it out, the appearance of being worried. I do not know how you are going to define that.

THE COURT: He may tell how he appeared to him, and you may cross examine him on that.

MR. DARROW: All right.

A He was smoking cigarettes for a short time, and throwing them away. He repeatedly got up and went to the water cooler, and took some water.

I think in substance that about covers the nature of and the things that happened at the interview.

MR. SMITH: 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.

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

A I have.

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Q Will you tell his Honor, Judge Caverly, what you observed?

A I have observed that the defendants have been free and easy in their movements, which were natural, easy and smooth; I have observed them especially during the early part of the trial laughing and conversing with one another; I have observed them both consulting on frequent occasions with their attorneys, they taking the initiative in those conversations by calling the attorneys back to speak to them.

I have noticed that during the last two weeks since the alienists for the State started to testify, their demeanor has been distinctly different. There has been much less laughing, although occasionally they do laugh now, particularly Leopold.

I have noticed that they smile and nod to persons in the courtroom, and to witnesses on the witness stand. That they have occasionally, particularly Leopold, shaken their heads as if in dissent from various things that have been ~~said~~ said. The laughing on the part of Loeb has changed frequently and quite abruptly to a very serious expression.

MR. DARROW: Just a minute, if you will pardon me. Will you read that last answer, the latter part of it, please.

(Whereupon the last answer, latter portion thereof, was read by the Reporter).

MR. DARROW: All right.

THE WITNESS: I have observed him on several occasions throw his arms around his brother; I have observed him show signs of feeling --

MR. DARROW: I ask --

THE WITNESS: Perhaps that is not fair.

MR. DARROW: All right. That, your Honor, I judge may go out.

THE COURT: All right, it is out by agreement.

THE WITNESS: I think, Mr. Smith, that covers about the situation.

MR. SMITH: 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 qualifica-

tion, Mr. Smith.

Q Well, ~~will~~ ^{will} you qualify it please?

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

Q Have you read the Hulbert-Bowman report which was presented in evidence on behalf of the defendants, Richard Loeb and Nathan Leopold, Jr.?

A I have.

Q Now, doctor, you have listened to the testimony of all the witnesses, both for the State and the Defense; is that correct?

A Yes sir.

Q Now, I will ask you to assume all the testimony as to the facts, exclusive now of all opinion evidence, that was detailed here from the witness stand as applied to Richard Loeb and assume that with reference to a hypothetical person and assume also the observations that you have detailed both on Monday, June 3, 1924, and in court here; assume all these as applied to a hypothetical question -- person, rather, and assume also in this hypothetical question the

reading of the Hulbert-Bowman report, have you an opinion as to whether such hypothetical person was suffering from a mental disease on May 21, 1924?

MR. DARROW: To that we object. You cannot ask a witness a question to assume when all the testimony in a case is through, if on that testimony he thinks he is sane or insane or diseased or otherwise.

THE COURT: Not assuming everything that has been testified to here. You can take parts of it --

MR. SMITH: We are assuming it all.

THE COURT: Objection sustained. You may ask him about the Hulbert report or about various parts of it.

MR. SMITH: This of course is on the Loeb case.

THE COURT: You may assume --

MR. SMITH: In the Lowhorne case, 236 Illinois --

MR. CROWE: The identical question was asked.

THE COURT: Let me see your question.

MR. CROWE: It states -- assuming all the facts, have you an opinion as to the mental and physical condition.

THE COURT: He may testify to everything except --

MR. DARROW: That would not meet the case.

Whereupon Mr. Crowe here read from the
Lowhone case, 296 Illinois, in words
and figures as follows, to-wit:

MR. CROWE: They would not want us to repeat everything that every witness testified to. He has heard it all. You can cross examine as to what he took into consideration. The same question arose in the Church case before your Honor.

THE COURT: He cannot take into consideration anything that the alienists have said anywhere along the line.

MR. CROWE: Well --

THE COURT: You may answer this question, doctor --

MR. CROWE: Let me put it, and see if I have it right.

THE COURT: You may frame it.

MR. CROWE: Q Taking into consideration, doctor, your observation of Richard Loeb as testified to by you, the Hulbert report as applying to Richard Loeb and all the testimony offered in this trial in reference to Richard Loeb, have you an opinion based upon that, as to whether or not this hypothetical person was suffering from mental disease or not on May 21st, 1924?

MR. DARROW: To that I object.

MR. CROWE: Add "all opinion evidence".

THE COURT: You cannot take into consideration the opinions of Dr. Hulbert or Dr. White or Dr. Woodyatt or Dr. Patrick or Dr. Church.

All opinion must be set aside.

From your own observation of this man and the evidence that you heard here from the witness stand outside of opinions, can you form an opinion as to whether or not Richard Loeb, the defendant, was mentally diseased on May 21st, 1924?

THE WITNESS: I can.

MR. DARROW: Wait, wait.

THE COURT: We will stop at that, he says he can.

MR. DARROW: I have not had time to read this Lowhone case.

THE COURT: I think the question, Mr. Darrow, as modified by me was given in the Harvey Church. I permitted it to go in, and the defendant was found guilty and he was sentenced to death, and his case went to the Supreme Court, and I was sustained in letting that question in.

MR. CROWE: This is the identical question.

MR. DARROW: Well, I may be wrong, but it is new

practice to me.

THE COURT: I will let it in subject to this, that if later on you find an authority sustaining your position I will strike that portion of Dr. Singer's testimony.

MR. DARROW: The question is absolutely vague and indefinite. No one can tell. He may have heard it all and remembered none of it, or he may have heard it all and remembered half of it wrong. I guarantee that your Honor cannot remember ~~all~~ the evidence here, nobody can.

THE COURT: I will let him answer subject to that, that if you find some authority later I will strike that part of the testimony. Of course if there were a jury here I would give you more time to look it up, but there is not, and I can exclude it without any prejudice at all.

MR. DARROW: I have no doubt of that, your Honor.

MR. SMITH: Q You say you have an opinion, doctor?

A Yes.

Q What is that opinion?

A That he has no mental disease.

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MR. DARROW: Now, let me have that question read.
I want to be sure just what it is.

Read the question please.

(Whereupon the question was here read
by the Court Reporter).

MR. CROWE: Q That is, exclusive of opinion
evidence.

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1m MR. DARROW: Now, what do you want to do, change it?
This is not a ~~q~~ hypothetical person, it is Richard Loeb.

MR. CROWE: Strike that question out.

MR. DARROW: You have two hypothetical people.

MR. CROWE: Well, we got into an argument there, I
will ask the question this way:

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

MR. DARROW: I want to make the objection, to save
the question.

MR. CROWE: Q Have you an opinion?

A I have.

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MR. SMITH: Q What is that opinion?

A That he had no mental disease on that date.

Q Will you please state to the court, doctor, your reasons for that opinion and that answer.*

A As regards the physical development and conditions described--

MR. SMITH: Q Speak up louder, doctor.

THE WITNESS: He is described as having been a healthy baby; as having grown steadily and regularly; as having been not very strong or robust in his earlier years, but that later after an operation for removal of the tonsils he became stronger; that he had had several childhood infections; that his sexual maturity as shown by the development of hair on the body began at about the age of twelve. That sexual maturity was completed by the age of fifteen. That he had scanty hair on the body; that at the time of the examination in the county ~~jan~~ jail his basal metabolism rate was estimated at minus seventeen per cent; that he had a slight anemia--

MR. DARROW: Are you sure you are talking about Loeb now?

THE WITNESS: Yes, sir.

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MR. DARROW: All right.

THE WITNESS: I think I can give you almost the figures, Mr. Darrow.

MR. DARROW: All right.

THE WITNESS: His color index was, I think, said to be .87, which means to say that he had eighty-seven one-hundredths of the normal amount of coloring matter in his blood; the number of red cells was five and a half millions--

MR. DARROW: Go on. I didn't mean to interrupt you.

THE WITNESS: The number of white cells was six thousand and some odd. That he showed a dermatographia.

Those are the principal facts reported with regard to his physical development, and I conclude from those that his development was within normal limits of physiology.

With regard to his mental development he was described as a bright, affectionate, quiet child, who was subordinate; who showed a high degree of intelligence. One examiner stated that it was average for a college graduate at the time when examined in jail.

Others stated that it was very high and superior. That

he learned under the tuition of a governess very rapidly; and it was stated that he completed his high school work when he was only fourteen and a little over; that he then entered the university, and that he graduated from the university when he was eighteen years of age. He was the youngest graduate of that university.

The evidence showed that he was liked, popular with his fellows; that he was taken into a fraternity in that university after a period of study and observation of him covering about three months; that he was one of the youngest members of that fraternity, although a senior; that he was censured by the members of the fraternity for drinking too much. He was described as having been intoxicated on several occasions.

It was stated that he was not given certain privileges by his fraternity which were usually given to seniors in that fraternity.

It was stated that he was fond of athletics, of an outdoor life. I think no facts are given as to the extent and frequency with which he did

partake of such activities.

With regard to his training, it is stated that he was under the care of a governess up until the time he was fifteen years of age, and it is stated that she took very close care of him, that she helped him in his work, that she stimulated him to acquire knowledge rapidly, and to pay close attention to his studies. It is stated that he was somewhat lazy, but that realizing if he worked hard he would be able to complete his school work, he worked hard for the period of one year, and finished his high school work, allowing him to enter college.

There were descriptions of what was spoken of as his inner mental life, and the statements that were made in regard to that included an assertion I think said to have been made by the hypothetical person himself to the effect that he had a feeling of inferiority.

It was not specified what that covered.

Then a description is given of a phantasy life. Before describing and discussing that, I would like to state the meaning of phantasy life,

if I may be permitted.

MR. DARROW: Well, I think he ought to complete his answer.

MR. SMITH: Go right ahead, doctor.

A Phantasy life is present to a greater or less extent in all people.

MR. DARROW: Just a moment.

THE WITNESS: Just a minute. I am going to try to explain what I mean by that.

MR. DARROW: Objection.

THE COURT: Yes. Mr. Darrow wants you to finish your answer, and then come to that afterwards.

A All right, sir. These phantasies, as described, included a phantasy of himself in the role of a detective, in the role of a great criminal, as a cowboy, frontiersman, and in connection with the phantasy of a great criminal there is described the picture of himself in jail, being tortured in various ways, exposed to the gaze of people through the bars; that this phantasy evoked a pleasurable feeling and not a feeling of suffering.

He said that on some occasions he acted

out some of the things contained in the phantasy; the illustrations being, the shadowing of people on the street, and walking along the street snapping his fingers as if signaling to members of a gang of which he was the head. It is stated that from early life he had been in the habit of surreptitiously reading detective stories.

It is stated that he had read with especial interest of the disappearance 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 control of his 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,

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the commission of arson, the commission of larcenies and burglaries.

It is stated that these were carried out with the idea of getting excitement. I think the word he used was that he was getting a "kick" out of it.

It is stated that he with his companion planned over many months the crime of murder and kidnaping, 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 through this situation, he has expressed at other times a feeling of pity or sorrow for ~~xx~~ 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.

THE COURT: We will take a recess now for ten minutes.

The session will go on until four thirty this afternoon,

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gentlemen.

Whereupon a short recess was here
taken by Court and Counsel.

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Court reconvened pursuant to short
recess heretofore taken.

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D R. H A R O L D D O U G L A S S I N G E R,

a witness called in rebuttal on behalf of the prosecution, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION
(continued)

BY MR. SMITH.

MR. SMITH: Q Will you resume doctor.

THE WITNESS: Since the commission of the crime he has first of all told an alibi story showing what he said he had been doing on the day of the crime itself; that when confronted with the fact that the glasses that were found belonged to his associate, he became very pale and asked for water and said,

"Oh, my God, is that true",

or words to that effect; that later on he, when confronted with the statement that his alibi was not correct, again became very pale and asked for water;

that later ~~xx~~ when being taken around to some of the scenes in connection with the crime and after having been identified, he fainted; and that when examined at the time of the examination on the Sunday afternoon he collapsed, after a flashlight picture was taken, against the wall of the jail. These incidents I took as evidence of intense emotional strain.

The fact that after the confessions had been made he blamed his associate for the actual commitment of the crime -- I say the striking of the blows, and that he supported this statement by logical reasoning to show why it could not have been he; that he was driving the car, and that he would naturally have had the boy that was kidnaped enter the car and sit beside him, and as the boy was in the front seat, he must have been driving.

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

MR. DARROW: Well, now, the question has been answered, hasn't it?

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MR. SMITH: 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 phantasies before, when you were interrupted?

A Phantasy 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 of 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 intelli-

gence 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. That is to say, his reactions affect not only himself but other persons in the society around him. It is therefore necessary that the primitive ways of reacting, the primitive instincts --

MR. DARROW: Objection. He is giving a lecture on sociology here.

MR. CROWE: We listened to four of them when you had

your experts on.

MR. DARROW: Oh no.

MR. CROWE: Absolutely.

MR. SMITH: The court ought to be enlightened.

MR. DARROW: As to whether it is necessary to adjust themselves to each other in society?

MR. CROWE: That is a part of the explanation.

MR. DARROW: I object.

MR. CROWE: We listened to the dissertation of Dr. White about Babes, Teddy Bears, and phantasies, and a lot of other foolish things, and I insist that we have the same opportunity to state our reasons for our views here.

MR. DARROW: If the fact that the social animal has to adjust himself in society is a part of it, if you think so, go to it. But it hasn't any bearing.

THE COURT: Go ahead, doctor.

A (Continuing) 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 interferes 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 phantasy 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 phantasy 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 phantasies represent our longings which for some reason cannot be expressed without meeting with difficulties in life, so that the phantasy 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 in which they take, the particular figures in the pictures that appear in the phantasy depend largely on the accidental experiences of the individual. They represent always an effort to satisfy that individual, I say they put him in the forefront.

In these phantasies 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 his phantasy life is only an expression of just exactly that instinctive longing, and is in no

sense a diseased condition which had entered in.

The phantasy life becomes pathological or diseased only when the individual loses the appreciation of the difference between phantasy and reality.

Richard Loeb's phantasy 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 phantasy.

I would like to emphasize in this connection the fact that during ~~the~~ 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 phantasy life as a perfectly natural outcome of the manner in which his earlier years had been spent, and not as an evidence in any way of any mental disease.

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MR. SMITH: Q Now, doctor, I will ask you to assume all the testimony as to the facts exclusive, however, of all opinion evidence, that was detailed here from the witness stand as applied to Nathan Leopold, Jr., and assume that with respect to a hypothetical person; and assume also the observations that you have detailed both on Monday, June 2, 1924, and in court here; also assume the detailed Hulbert report which you have read; assume 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 21st, 1924?

MR. DARROW: The same objection, your Honor.

THE COURT: Same ruling.

THE WITNESS: I have.

MR. SMITH: Q What is that opinion?

A That he was not suffering from a mental disease.

Q Will you please state to the court your reasons for your opinion. *

A With regard again to the physical development, Nathan Leopold is described as a healthy baby, small in size, who develops regularly, the weights are given month by month or for certain periods at any rate

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during his earlier years; who grew rather rapidly up to the age of about twelve or fourteen when he was rather larger for his age, and then apparently stopped growing. He was said to have been a weakly child also in the earliest years, and again after the removal of the tonsils here he changed and became more robust and more active.

During those earliest years he took very little active interest in games outside, games with boys and so on. He went, it is said, to a girls' school, but after this nine years of age when the operation was performed he became stronger, and took a more active part in the athletics but that he never cared for them.

He is described as having begun to show signs of intellectual development somewhat early. It is said that he talked at the age of four months, and that he did not walk until he was about fourteen months ~~at~~ old, if I remember rightly.

With regard to his sexual maturity the date is not fixed by any very definite facts. It is said that he knew nothing of sex matters until he was about

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eleven years old, and that certain sex matters were learned at the age of thirteen, which was the earliest age at which any very definite knowledge was acquired by him on the subject.

He is described as having always had a lot of hair, even as a baby.

During the period of about puberty, around the age of fourteen or around there, he had severe illnesses in which it is said that his reactions to the infections were unusually severe, from which he made recoveries without leaving any evidence of disease behind.

When he came to be examined in the county jail he presented certain physical symptoms which are described in detail. Among them it was stated that the pineal gland was calcified, that he had what is called vagatonia. That is really a statement of fact, vagatonia is really a description of a certain kind of constitution. It corresponds more or less perhaps in a more scientific way which used to be described under the temperament of phlegmatic. It is also frequently true that such persons perhaps

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suffer more severely from infections or are likely to be affected by poisons than others, some particular poison, especially food poisons, and I think the statement is made that he was susceptible to the effects of eating bananas; that he frequently had skin eruptions, although the cause is not stated. As to the description of a certain kind of bodily circumstance; he is described as having a rather low blood pressure which varied, however, on the different occasions when it was taken, sometimes as low as 100, and sometimes as high as 115. He is stated to have shown certain variations in his body chemistry. None of these things is incompatible with physiological health and they do not indicate any evidence of any mental disease.

With regard to his mental activities he is described as an individual of unusual intelligence developing very rapidly with a consequence that he was promoted rapidly through school; that he had little opportunity for developing close friendships with school companions, in that connection too must be considered the fact that he went first of all to a girls' school.

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He is described even during his early years as being very selfish; as feeling himself both superior as regards intelligence and inferior as regards physical activities. Both these statements conforming with the history of his mode of living. He is described as developing a very rapid understanding and intelligence in connection with philosophic and scientific subjects. He is described as a person who had a great liking for classification. He is described as having a very great interest in languages, in religions, and especially in connection with certain nature studies in regard to birds. These interests led to very definite accomplishments, and were worked out and planned with a very definite purpose and the purpose was carried out. Some of the work is described as being definitely constructive and research in character. It was also carried into the field of teaching. His academic career shows also graduation from the university at a very early age, and then the following up of a definite plan, that of studying law, at which he was also a successful and good student, and quite a leader in the discussions in the class. In regard to his emotional life he is described

as being very devoted to his mother and to an aunt.

It is described that he put himself to special efforts in regard to securing a Phi Beta Kappa key in order to please his mother.

He is described as having many acquaintances; some of his fellow students visited him at his home and worked with him.

It is said that he had few friends. There are no facts to indicate that he quarrelled.

It is stated that he was fairly well liked, that he made sometimes sarcastic remarks which offended people. He himself said that he purposely avoided making friends because friends could hurt him.

He stated that throughout his life he has endeavored to control and suppress his feelings.

With regard to his inner mental life, again we have facts with regard to the occurrence of phantasies, -- these phantasies of various shapes and kinds, the earliest one said to have been connected with the thought of himself in command of soldiers, after seeing his brother in uniform.

Then -- when this started is not given in

the facts -- there appears a phantasy which has been described as the king-slave phantasy.

In this he pictures himself rather particularly as having considerable physical prowess; he is defending the life of the king, he is fighting for the king.

It is striking in this connection that he stated that when his phantasies reached a point where they were really illogical, he discarded them.

He stated that he would purposely place himself in a position in which to indulge in these phantasies. It was also emphasized that during his class work in school he made a number of illustrations, some of them connected with his phantasies, some of them connected with his interest in birds and other subjects.

He got his work very easily. He did not have to strive for it very hard.

There are certain features, Judge, in connection with these phantasies, that I would like to mention to you if I may.

MR. B. C. BACHRACH: Is that a part of the matter referred to?

MR. SMITH: I submit the doctor should be allowed now to go ahead with his testimony.

(Whereupon the witness then testified out of the hearing of the audience, to the Court, Counsel and Court Reporters as follows):

THE WITNESS: There are important facts in connection with his phantasy life which concern his sex life.

The facts are described with regard to his relations to a particular nurse or governess that he had, the meaning of which it is said he did not himself know, -- wrestling with this governess, and going through various other performances, -- which are evidently now, in his description of them, considered definitely as sexual.

In that king-slave phantasy, my experience with such phantasies would indicate that it has a homo-sexual significance.

That is borne out by certain facts that were testified to, particularly in the contract that is

described as having been entered into between these two defendants, which I did not hear the details of at all, but which I understand represented --

MR. DARROW: Where did you get your understanding, doctor?

THE WITNESS: From Mr. Crowe; I asked him about it.

MR. DARROW: All right.

THE WITNESS: And this is the information that I received, -- that in exchange for doing what Loeb wanted done, Loeb would submit to certain homo-sexual practices.

That is a further indication of fact which would tend to support my general understanding of what such a phantasy would represent, -- that it is a homo-sexual longing.

MR. B. C. BACHRACH: Is that all there is on this subject?

THE WITNESS: That is all I have on that to record.

(Whereupon the witness then proceeded

with his testimony in the usual manner):

Q. Go ahead, doctor.

A In regard to the crime itself, he described the planning and the carrying out of the crime in detail.

It is said he perhaps has not shown any emotion in speaking about the crime or in his behavior since. There is one statement which he is said to have made while in the jail to the effect that his appearance of composure was a pose, that he has been while in the jail under an extremely emotional strain, nervous tension and irritability.

MR. DARROW: Q Where did you get this that you are talking about now?

A From the Bowman-Hulbert report. All these facts that I have considered here are compatible with a healthy mind or I would say a mind that is not diseased.

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.

MR. DARROW: Just a moment. Did you say what is meant by it?

MR. SMITH: Q What is meant by a paranoid personality?

MR. DARROW: If you have not finished, doctor, I did not mean to interrupt you.

MR. SMITH: 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, and there are many such persons in every community, probably many in this court room --

MR. DARROW: Probably.

THE WITNESS: -- such a person 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 somebody 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.

MR. SMITH: Q It is not in any way a mental disease, is it, doctor?

A No sir.

Q What is meant by split personality?

A That is a little bit difficult to explain in non-technical language.

MR. DARROW: Q Well, we understand the technical now.

THE WITNESS: 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 with which we are thoroughly familiar.

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 behaviour in that it would seem odd to the onlooker that you cannot remember that particular thing.

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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.

MR. SMITH: 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

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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, 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.

Q Is a small sella turcica, doctor, significant of mental disease?

A No, sir.

Q Why?

A The sella turcica itself is very much larger than the gland which it holds, and it is quite possible for the sella turcica to be small, without having any effect on the pituitary gland. The relation of the pituitary gland to mental conditions

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is extremely little known. I think those are sufficient reasons.

Q In other words, the sella turcica itself could be somewhat small and the gland itself be normal?

A Yes, sir, and if you are referring to these x-rays that were shown here--

Q Refer to them, yes.

A Those pictures show the head in only one direction, ~~is~~ from side to side. You may well have a small sella turcica in that direction, when it is larger in the other, and it fully compensates. As a matter of fact, in that particular picture, the sella turcica is not unusually small; it is rather a small size.

Q Don't you take into consideration the size of the head also?

A Yes, more or less.

Q It was a small head, wasn't it, doctor?

A The picture does not give the size of the head, the size of the picture does not correspond with the size of the head exactly. I mean that

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MR. SMITH: You may cross examine.

MR. DARROW: Is your honor going any further tonight? It is pretty hot down here and I really would prefer to adjourn at this time.

THE COURT: All right. We will suspend until tomorrow at 10 o'clock, not 10:30, 10 o'clock Saturday morning.

Whereupon an adjournment was
here taken until 10 o'clock A.M.
Saturday August 15th, 1924.

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Friday, August 23, 1924.

10:30 o'clock A.M.

Court reconvened pursuant to adjournment heretofore taken, at the hour of 10:30 o'clock A.M.

Friday, August 23rd, 1924.

Present, same as before.

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(Whereupon Mr. Walter Bachrach resumed his argument on behalf of the defendants as follows):

MR. BACHRACH: If your Honor please: At adjournment time yesterday, I was discussing the examination of the defendants made by the alienists of the state on the first of June, 1924.

Your honor will recall that Dr. Patrick testified on cross examination that he had never conducted an examination as to mental condition under such conditions. Dr. Church had never conducted any such examination under similar conditions. The only alienist

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for the state who stated that the conditions under which the examination was made were favorable was Dr. William O. Krohn, and his conclusions as to the mental condition of the defendants in this case on the 21st of May, 1924, were based upon what he called the memory which he said was intact, the capacity of logical reasoning, and orientation.

In other words, because they could remember things, because they could reason well, because they knew where they were and their relationship to society and their families, they were properly oriented and for such reason, he says, they were mentally well, and they were not mentally diseased.

Now, I would like to call the attention of the court first to a statement by Dr. Bleuer, who is one of the leading psychiatrists of the world. Dr. Euten Bleuer, director of the psychiatrist clinic at Vienna. This is a book published by the MacMillan Company in 1924. I want to read to the court what Dr. Bleuer says with reference to the conducting of an examination where the examination fails to disclose

any evidence of a mental disease.

On page 191, under the heading of

"The Recognition of Insanity"

he says:

"Some psychic symptoms also occur in disease which we do not describe here, such as fevers and traumata, heart diseases, uremia and similar diseases.

What is still more important is this"-- and this he italicizes --

"one must never expect the reverse, namely, to see in a given moment all the important symptoms of a disease. One must never, for example, conclude that if there is no affective disturbance" --

by that he means emotional disturbance --

"that therefore it is not a cause of schizophrenia. Indeed, under certain circumstances, even in a pronounced psychosis or mental disease, one can temporarily find nothing morbid. A negative finding without prolonged observation,

"therefore, never proves that the patient is normal. It only indicates an absence of proof of the disease."

Now when Dr. Patrick, in testifying here on the witness stand, couched his testimony in most careful language and says that on the first of June, 1924 he saw no evidence of mental disease in either of these defendants, with the exclusion from consideration of the facts of the crime itself, he was doing nothing more than stating that to him in that short examination, that inadequate examination, no proof had been submitted to him that the defendants were mentally diseased.

Apart from that, the fact that he found no evidence of mental disease, under the language used by Dr. Blueeler, is no indication that there was no mental disease.

And your honor will recall that Dr. White testified that they have what they called deferred diagnosis in the psychiatric profession. That a patient is brought into an observation institution and he is

kept there for a long time before they can make an adequate diagnosis as to his mental condition. These are deferred cases. Those are cases where the symptoms of mental disease are not so clear and outstanding as to enable the diagnostician to come to a given conclusion.

Now what Dr. Singer and Dr. Krohn think about the subject is best established by their own book, to which I desire to call your honor's attention. And, your honor will pardon me if I do a little extensive reading this morning, because I think it will aid your honor in applying some of these things to the evidence in the case.

I first call your honor's attention to page 199 of the book of Messrs. Singer and Krohn, where they discuss the question of deception on the part of a person being examined by psychiatrists.

Now, some insinuations were made by Mr. Crowe in his cross examination of the alienists for the defense, that something might have been put over them by the two defendants in this case; that they might have been malingering. I wish to

address myself to that particular phase, in reading this quotation from Drs. Singer and Krohn.

On page 199 these doctors says:

"Since simulation is not a disease, it cannot be said that there are any characteristic symptoms. The most practical way to deal with the problem, therefore, seems to be to consider the points that may be of assistance in distinguishing from each of the major types of reaction.

It may be pointed out in general that though insanity is evidenced chiefly by subjective signs, that is to say, by signs that are within the individual's control, the simulation of insanity requires a knowledge of the various types of insanity, and also a capacity for self-control that is possessed by very few. The effort must be continued day and night under all conditions. Unexpected and unforeseen circumstances must continually arise that will distract

"the attention from the purpose of deception, and will betray to the attentive observer the fact that the complaints are not genuine. Few laymen, and indeed few physicians possess sufficient knowledge of the symptoms of insanity to know how to act in accordance with any particular form of insanity. Even if a man does possess this information, it would be necessary for him to think before responding to any situation and the facts of lack of spontaneity and the need for a choice of response will almost certainly give rise to incongruities which cannot fail to excite suspicion if the observer is on the watch for them."

Now, that is the statement of Drs. Singer and Krohn on that subject. Dr. White, in dealing with the subject as to how it was possible to have a criterion of dependability of the truth of the stories told to him by the defendants, or in other words, how he could tell whether they were telling the truth or lying, has

stated it in words much better than those which I could employ, and I therefore would like to refer to his testimony on that subject.

On page 1259 of the transcript this question was asked Dr. White:

"In making an examination of a patient, what are your criteria of dependability and veracity with respect to what the patient tells you? In other words, can you tell when the patient is lying and when he is telling the truth?"

His answer was:

"The criteria is the inherent quality of the evidence ~~is~~ presented and its coherence with known laws of the operation of the mind. If evidence given by a patient departs from well known laws of mental operation, we have the right to question the veracity of the patient. If it is consistent with those well known laws, we have a right to assume, at least

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"for the time being, that a patient is telling the truth. Now, with regard to a specific statement, one's judgment might not be conclusive, but if after talking for hours and hours and getting a description from the patient of all sorts of mental states and attitudes of mind, historical factors, we find that the whole picture presents a coherent whole, that it unfolds itself in accordance with the known laws of the operation of the mind, and we know that that picture is substantially true."

Now, you have on one side the testimony of Dr. White as to how he can tell whether the patient or person being examined is telling the truth. You have that statement corroborated by the statement contained in the book of Drs. Singer and Krohn. So that for the purpose of this case you may assume that it is absolutely correct, that the expert, that the fair expert who is interested in ascertaining what the facts are, has a method of examination by which he can

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determine whether or not the information disclosed to him by the person under examination is true, substantially, coherently, harmoniously true.

One must bear in mind that the shortness of the period of the examination has a great bearing upon the ability of the expert to determine the absence or presence of a mental disease.

In a fifteen minute interview, in a half hour or an hour or two hour interview, it might be possible for a person whose mental condition was being investigated to dissemble in some minor respects and create a suspicion that he might be mentally diseased.

But where the examination is conducted under conditions such as existed when the examinations were made by the defense experts; where the examination covers a long period of time, where the examination is not made by one expert alone, but it is made by four, where the examination of the two boys is made, made separately, and where as a result of all these factors, where the moods have changed, the situations have changed, and then the four experts

arrive at a common understanding as to what the real facts are -- five experts, because Dr. Bowman also examined these boys, although he did not testify, but his report is in evidence, so that you have the verity in the different examinations as to facts arrived at by five experts covering a long period of time in the case of the defense's examination as against the examination made by the State's experts in the instance of Dr. Patrick, Church, and Krohn late~~x~~ one afternoon, and by Dr. Singer the next day in a situation after the boys had been turned over to the sheriff and taken from the custody of the State's Attorney by means of a habeas corpus writ, and where they were brought into Mr. Crowe's office and declined to answer any questions about anything because they had been told by their lawyers not to answer questions.

Now, the impression is sought to be created that because these boys were able to repeat parrot-like in answer to the questions asked by Mr. Crowe or by Dr. Singer, that they refused, respectfully refused to answer, upon advice of counsel, that that is an evidence of an absence of mental disease. The

absurdity of such a position would seem to me to be instantly apparent.

In the first place, if your Honor please, these boys are not claimed by the defense to be stupid. There is no claim made that they do not know how to reason. There is no claim made that they have not good memory.

There is no claim made that they don't know where they are.

As a matter of fact, we claim they do.

They know things occur; they know they are being tried on a plea of guilty as to the question of punishment.

We also claim that they knew that when Mr. Crowe asked these questions after they had been advised by their counsel that the thing for them to do was to keep their mouths shut; but the possession of a superior intelligence is not evidence of mental health.

The evidence, as I shall illustrate hereafter to your Honor, is that the cause of their

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superior intellects, having progressed at an unusually great rate of speed, and on account of the slow development of their emotional life, this split in the personality of these boys has occurred.

That is, as respects Nathan Leopold, Jr. we have a case where we have a paranoid personality. Where we have an individual whose powers of reasoning are intact, which is one of the peculiarities of a paranoic personality.

A paranoiac personality, to begin with, must be a person of superior intellect. He must be a person who is capable of reasoning well. His logic is irrefutable. The only trouble with his logic is, he starts with the wrong premise, and that is what makes him a paranoiac. Now, one of the symptoms of a paranoiac, as your honor will soon see, is that he usually has delusions of grandeur. He has delusions of self importance, he has delusions that he is greater than anybody else. He identifies himself with some great religious character, with some king, or with some potentate of some kind, or with Christ, or with God. And the fact that he does

not formulate his delusions into so many words, and go around saying,

"I am God Almighty",

does not in any way militate against the proposition that he believes he is.

And whether or not he believes he is, if your Honor please, depends upon what he says and what he does, depends upon his behavior.

Now, if your Honor can be satisfied from what he says and what he does, and what he has said and what he has done in the past, that he has acted as if he were God Almighty, or Jesus, or Emperor Napoleon, you have just as much evidence of a delusion as if he went around saying that; and it would be more sincere evidence in my judgment, because it is not so easy to manufacture.

Now, back in October, 1923, even before the commission of this kidnaping and homicide was contemplated by these boys, Leopold was going around and talking about the superman.

And let me digress for a moment, merely to say that there is no claim made here, as has been

argued by the State's Attorneys who preceded me that the fact he believes he is a superman does not entitle him to any consideration for his philosophy.

We are not here to defend his philosophy.

What we claim is, if the court please, that his belief shows he is mentally diseased; that his belief in the superman, or that he is a superman, shows that his mind is not functioning properly, and shows that he has the tendencies of what the books call paranoid personality.

Let me call your Honor's attention to what I regard as very striking evidence in this case, unmanufactured and true beyond peradventure of doubt.

I call your Honor's attention to the letter dated October 10, 1923, written from the Twentieth Century Limited by Nathan Leopold, Jr. to his co-defendant Richard Loeb.

I am not going to read the entire letter, but I merely wish to point out that part of the letter which I think is very significant in this connection.

On page 1503 of the transcript appears

this statement from that letter:

"Now, that is all that is in point to our controversy, but I am going to add a little more in an effort to explain my system of a Nietzschean philosophy with regard to you. It may have occurred to you why a mere mistake in judgment on your part should be treated as a crime, when on the part of another it should not be so considered. Here are the reasons.

"In formulating a superman he is, on account of certain superior qualities inherent in him, exempted from the ordinary laws which govern ordinary men. He is not liable for anything he may do, whereas others would be, except for the one crime that it is possible for him to commit, to make a mistake.

"Now, obviously, any code which conferred upon an individual or upon a group extra-

"ordinary privileges without also putting on him extraordinary responsibilities would be unfair and bad. Therefore, an ubermensch is held to have committed a crime every time he errs in judgment, a mistake excusable in others. But you may say that you have previously made mistakes which I did not treat as crimes. This is true.

"The other night you expressed the opinion and insisted that Marcus Aurelius Antonius was practically the founder of stoicism, and in so doing you committed a crime, but it was a slight crime, and I"-- I, Leopold -- "chose to forgive it. Similarly, I have and had before this matter reached" ---

"I don't know what the next word is"--

"forgiven the crime which you committed in committing the error in judgment which caused the whole train of events".

I -- Nathan Leopold -- have forgiven that minor offense, where Richard Loeb --

MR. CROWE: Now, are you reading or are you supplying "I, Nathan Leopold"?

MR. WALTER BACHRACH: I supply. He says I --, and I will indicate for you when I say Leopold.

MR. CROWE: Indicate to the court.

MR. WALTER BACHRACH: All right.

MR. CROWE: Indicate when you are talking and when Leopold does.

MR. WALTER BACHRACH: All right. I will read it again then just as it is written.

"And in so doing you committed a crime, but it was a slight crime, and I choose to forgive it. Similarly I have and had before this matter reached -- I do not know what the exact word is -- forgiven the crime which you committed in committing the error in judgment which caused the whole train of events. I did not and do not wish to charge you with a crime, but I should be justified in using any of

"the circumstances of your crime
for which you were held responsible to
my advantage. This and only this I
did, so you see how careful you must be."

Here is a letter, if your Honor please,
in which a superman in his own estimation -- not be-
cause he is, but because he thinks he is -- lays down
the code to be obeyed by his companion, Richard Loeb,
whom he generously also allows to go under the name
of superman or designation of superman, but for whom
he, Leopold, establishes a code of conduct.

In other words, he first puts up a very
superior being, and then establishes himself as even
a greater one, thereby showing that he believes him-
self to be by far the greatest superman in the world.
This is evidenced, if your Honor please, as to what
Nathan Leopold Jr. thought on October 10th, 1923, a
spontaneous expression in writing to Richard Loeb,
who is now his co-defendant here.

In addition to the evidence contained
in this letter you have the testimony of the various
fellow students of Leopold at the University of

Chicago, who testified to conversations with Leopold, in which Leopold stated his conception of the superman, his philosophy, his philosophy of Hedonism, his individualistic philosophy, the fact that he had a right to do anything if it pleased him. After all, the test for him was whether it gave him pleasure.

Now, again, let me say that I am not arguing the question as to whether as a belief, as a philosophy, such a philosophy can stand for a moment in any civilized community.

It is not the philosophy that is on trial, but the philosophy is evidence of this boy's mental condition. The fact that he felt that he could live out such a philosophy in a complicated world like this, and the fact that he, Leopold, thought that he was to be the judge, the sole judge, as to whether a thing was right, if it gave him pleasure, is evidence bearing upon the question as to whether he is a paranoid personality.

On page 68 of Messrs. Singer and Krohn's book again, under the head of "Paranoid psychoses" the authors state this:

"The title 'paranoia' literally meaning distortion of mind or crankiness, has been used since the time of Hippocrates to designate a group of mental disorders that are characterized particularly by the development of false judgments (delusions) which are reasoned out calmly and logically. For this reason it was long taught that they were essentially disorders of intelligence rather than of behavior. This view is no longer accepted; it is now recognized that the mainspring of the reaction lies in the effects. It must be understood that we are here considering, not a disease, but a mode of reaction, and the title employed therefore is not paranoia, but an adjective derived from that word. Some confusion has arisen from the use of adjectival forms; the strict form would be paranoiac and this is reserved by some for its literal meaning of 'pertaining to paranoia'. The termination 'oid' on the

"other hand contains the meaning 'like' and the word paranoid should therefore be interpreted as 'like paranoia' and not as necessarily 'of paranoia'.

But since there is still no real knowledge of the essential nature of a diseased paranoia, these fine distinctions have little weight and many authors use the two adjectives synonymously. It is necessary to distinguish between the paranoid personality or temperament, and the psychoses that arise on this foundation. The paranoid temperament is of frequent occurrence, and the vast majority of such persons do not develop a psychosis of sufficient intensity to prevent continuation of social relationships nor to interfere with social responsibility. Indeed so closely do they conform to traits observable in the average individual that their recognition as abnormal may be difficult."

Let me read that last sentence again:

"Indeed, so closely do they conform to traits observable in the average individual that their recognition as abnormal may be difficult.

"The essence of the paranoid personality is an exaggerated appreciation of self, Everything that happens is considered in relation to the effects it has on the self, and there is a corresponding diminution in the sentiments of altruism and gregariousness.

"The vigor or energy of reaction is great, but there ~~ax~~ may be variations in this respect which will have a marked influence on the outward behavior of the individual.

"When the forcefulness is less, there is an approximation to the schizophrenic reaction type with its scattering, dreaming and inefficiency. But, even then,

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"the 'egocentric' character of the reactions is obvious (paranoid dementia praecox).

"The social existence that has been adopted by man results, as pointed out in the last section, in the necessity for controlling and limiting the desires and instinctive impulses of the individual.

"To the paranoid person with his concentrated self-interest, such restriction and regulations necessarily bring many difficulties and conflicts, often with failure to find self-gratification. He is unable~~nk~~ to obtain satisfaction through the substitute channels of altruistic interests, as does the better balanced man, because in him these instincts are less well developed. His failures are painful to the heightened appreciation of self, and he seeks to assuage this by placing the blame on society, . Experi-

"encing longings that are prevented from satisfaction by social convention, he cannot admit that he is inferior in his ability to control them and he endeavors to establish his superiority by exaggerated efforts to correct similar cravings in others. Being so important to himself, he transfers this sense of his importance to others and hence comes to the conclusion that people watch him and comment on his doings.

"Assuming, then, the typical state of well developed energy of reaction, the paranoid personality may be described more concretely as follows: The man is a dominant aggressive person, anxious to be in the forefront and careless of the feelings and interests of others. He takes life seriously, works hard and with purpose", --

just as Leopold did.

He worked with his birds, he was a teacher

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of ornithology; he did all the things which required seriousness of purpose and hard work.

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"He is always sure of himself, is satisfied with his own views and constantly endeavors to impose them on others. He is quick to take affront, yet seldom fights openly, and continually seeks for hidden motives and meanings behind the words and acts of others that do not tend to his own advantage or accord with his own views."

The latter clearly indicates all of this.

"Naturally, he is not popular and he does not make friends though he may have many acquaintances. His mood is one of self satisfied superiority, often combined with irritability which vents itself in words rather than deeds, but may lead to contentious litigation. He prides himself,"--

note this language, if your honor please--

"He prides himself on his intelligence

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"and control of emotions, and, as a matter of fact, reasons logically and connectedly."

Now, the evidence as shown by the physicians here is that since a child he has been trying to drill conscience out of himself, to have a complete control of his emotions. He has done just exactly what Singer and Krohn claim is one of the ~~symptoms~~ symptoms of the paranoid personality.

"He prides himself on his intelligence and control of emotions, and, as a matter of fact, reasons logically and connectedly, but his premises are liable to be vitiated by personal interpretations and slight distortions that contribute to his amour propre and may be so subtle as to be difficult of refutation. The intellectual endowment is usually good and may be superior, but there does not seem necessity for contracting low grade intelligence with a paranoid trend

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"that seemed indicated with the schizophrenic reaction."

And then he goes on and discusses the psychoses— or first before he discusses the psychoses he says this:

"There is an inherent dishonesty in the efforts, which depends on the selfish interests of the personality and causes exaggeration of everything favorable to the cause and the suppression of all that opposes it. The logic is one-sided and bigoted, biased by the interests of the proponent."

That is on the bottom of page 71 and on the top of page 72. On page 72, under the head of "Psychoses";

"The psychoses that develop on such a basis are again only exaggerations of these trends and are brought about by situations of restraint and denial of satisfaction that are too great to be faced. Ideas of reference play a prominent role. The increased feelings

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"of interference with securing personal satisfaction lead to close observation of the sayings and doings of others, with the object of detecting plots and schemes that are responsible for his own failures."

Note the close observation here, if your honor please, as shown by the letter of Leopold to Loeb of October 10, 1923, of the sayings and doings of his friend Richard Loeb. Note the close observation of the fact that he made a mistake as to who was the author of a certain work, and that that constitutes to him a greater crime even than murder.

The authors go on and state:

"Gradually he manages to collect together evidence that convinces him that such plots actually do exist, and from then there is a steady accumulation of facts of actual observation, each slight in itself, often so much so as to appear altogether unworthy of consideration to the unprejudiced observer, from which the whole scheme is pieced to-

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"gether and the authorship established."

Then he goes on and talks about the delusions of
persecution:

"Throughout this process, which takes long for its evolution, the man remains active, energetic and tensely interested in the world as it relates to himself. His reaction to the situations he unearths are vigorous and appropriate, usually, at least, at first, within the bounds of law. Prolific writing and speaking, denunciations and threats, frequently lawsuits and appeals to the police constitute the earlier modes of meeting the 'persecution'. Failing to secure redress in these ways, he may, under conditions of increased emotional stress, take the law into his own hands. This may result in acts of violence, either against property as a means of coercion and reprisal, or against the persons of his persecutors. The striking feature of these acts is that

"they are logical; if one granted the premises from which he reasons, one would admit that the man's reactions were appropriate to the circumstances, though too violent."

Then on the next page, on page 74, is one of the most important statements of all:

"Throughout, the intelligence remains intact; perception is clear and there is no disorientation in the narrower sense of this term. Memory is good, in spite of the falsifications in meaning and context that have been mentioned. The man remains in contact with reality, active, alert and interested and there is no tendency to deterioration or dementia. Hallucinations are unusual, though they may occur during periods of marked excitement."

Now, there, if your honor please, you have a statement of Drs. Singer and Krohn which in effect destroys their

testimony as given here in the court; the testimony of Dr. Krohn that he based his judgment as to the absence of mental disease of Leopold, upon his memory, his logical processes and his orientation, and his senses, are all shown by his own book to be no evidence that a mental disease didnot exist at all.

That they are entirely compatible with the existence of a ~~xxx~~ psychosis, a paranoiac psychosis in Nathan Leopold, Jr.

Now, let us move over from Leopold and see what they have got to say about Loeb.

This book of Drs. Singer and Krohn is most illuminating for this case. It was written by them at a very appropriate time, and published at an appropriate time.

On page 53, in discussing schizophrenic psychosis or dementia praecox, appears this statement:

"Schizophrenia, literally translated, means splitting of the mind. It is not possible to look inside of the mind; hence, conclusions concerning its operation are based on observation of what

"the person says and does, these being the resultants of his mental activity. In this category must be included the activities of the involuntary muscles and glands" --

Glands, if your Honor please, which their diabetic expert attempted to say should not be taken into consideration in determining mental disease, although he did testify that he guessed the functioning or disfunctioning of the glands had something to do with mental disorder --

"In this category must be included the activities of the involuntary muscles and glands, which cooperate in every activity of the body, and play an especially prominent role in such as are accompanied by emotion. When therefore one speaks of the splitting of the mind dissociation, this must be regarded as a descriptive term illustrative of what seems to happen in bringing about the

"outward behaviour. The features in the behaviour that have led to this concept are the apparent lack of harmony between the component parts of the reaction, and between this as a whole and the situation that has seemingly called it forth. The words uttered, for instance, do not correspond with the emotion expressed by the face and the attitude of the body" --

Just as Dickie Loeb, for example, stating that he was sorry for his father and mother, uttered words which did not seem to correspond with the emotions expressed by his face and the attitude of his body --

"or the acts performed with the arms and legs are out of keeping with the thoughts as expressed in words. The observer is at once struck with the incongruity between what is said and what is done, and the actual situation under which these are performed."

Then they go on and discuss the schizophrenic personality .

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on page 55:

"Such is the foundation of schizophrenic personality, the manifest appearances of which may now be described before outlining the psychosis that are liable to develop on such a basis. The latter are exaggerations of the reactions that belong to this type of personality. They are exaggerated either because the situations to be faced are such as to make big demands on the emotional life of the man, or to accentuate his inadequacies, or else they represent effective oscillations similar to those of the ~~manic~~ manic depressive psychosis. Schizophrenic persons are not exempt from such oscillations, but the outward expression of mood, as of instinctive desires in general, is modified by the tendencies to dreaming" --

That means day dreaming, phantasying.

"repression, and dissociation which belonged

"to the personality. The clinical picture presented by such upsets" —

MR. CROWE: Just a moment. Some of that you supplied, Mr. Bachrach?

MR. WALTER BACHRACH: What it says here is:

"The tendencies to dreaming".

I supplied "day dreaming, phantasying".

"The clinical picture presented by such upsets in mood is consequently quite different from those of the manic depressive person."

Then it says here:

"The intelligence of schizophrenic persons is usually good and is often above the average. Indeed, it seems probable that high grade intelligence is necessary for the development of this mode of reaction. In certain respects, the reactions are exaggerations or caricatures of the modification of primitive instinctive adjustments

"that make social existence possible and that is brought about by the evolution of symbolic thinking.

"The facts are usually far better explained by recognizing that there has been a failure to establish memories or associations (intellectual deficiency) as a result of the unusually early and extensive development of a tendency to autism which we shall discuss shortly. Typically, perception and the formation of memories with clear grasp and orientation are fully up to the average. The trouble lies not in the quality of the intellectual tools, but in the use that is made of them."

Again you have a statement in Singer and Krohn's own book that the fact that the ~~juke~~ judgment was possessed, orientation was possessed, memory was possessed, is no indication that in Loeb there are not the schizophrenic tendencies developing into a psychosis.

"We have described the essence of the schizophrenic reaction as a bashful timidity associated with lack of energy. Consequently, the situations that will render it manifest are such as require self assertion."

MR. WALTER BACHRACH: Shall we take a recess now, your Honor?

THE COURT: A five minute recess.

Whereupon a short recess was here taken by Court and Counsel.

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Court reconvened pursuant to
short recess heretofore taken.

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(Whereupon Mr. Walter Bachrach here
resumed his argument on behalf of the
Defendants as follows):

MR. W. BACHRACH: I continue reading from page 57
of Singer and Krohn's book on Insanity and the Law.

They say:

"We have described the essence of
the schizophrenic reaction as a bashful
timidity associated with lack of energy.
Consequently, the situations that will
render it manifest are such as require
self-assertion and active participation
in the world of reality. So long as
the individual can keep within himself
and avoid the necessity for rubbing
shoulders with his fellows, he may show
but little evidence of difficulty. But
it must be remembered that even with

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"himself, there are desires struggling for expression and gratification toward which he may be just as timid as he is toward other persons. Obviously, the period of life during which, as a rule, the demands for adjustment will be least is that of childhood. Then, responsibilities are few and instinctive desires are relatively simple and but little subject to social regulation. The sexual and parental instincts are as yet only foreshadowed and it is in this sphere especially that society places the greatest restrictions on individual behaviour!"

"The schizophrenic child is quiet and retiring, prefers solitary games and amusements, and lacks the aggressive spontaneity and outspoken sensuality of the average child. He does not get into mischief and is often described as 'unusually good,' 'never caused a

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"moment's trouble', docile and easily amused. He may be fairly even tempered and yet subject to rather violent, and perhaps unexpected outbursts of emotion on seemingly small occasion, usually short lived. He is affectionate though undemonstrative and displays his feelings little. He makes few friends and no confidants; in group games he is often on the outside looking in, rather than an active participant. This is not due, necessarily, to an ineptitude for athletic activities, he may even excel in them, but to the difficulty in getting outside himself."

"In school he often does extremely well so far as scholastic acquisitions are concerned. He is liable to be absorbed in books"--

all of which applies literally to Richard Loeb-- and especially in topics that are philosophic and abstract rather than those that would bring him into dealing"--

MR. CROWE: Mr. Bachrach, the statement
"all of which applies literally to
Richard Loeb",

is not in the book, is it?

MR. WALTER BACHRACH: No. The book was not written
late enough for that. It was written before the case.

" -- is liable to be absorbed in books
and especially in topics that are philo-
sophic and abstract rather than those
that would bring him into dealing with
the real and the concrete. Often the school
successes give rise to hopes of a bril-
liant future, incapable of realization
because of the impossibility of effectively
meeting reality.

"As the stronger passions and feelings
develop, the difficulties in expressing
them become proportionately greater
and there is an increasing tendency for
the youth to shut himself up within him-
self (autism) and to dream rather than
to react openly. The process of

"repression and substitution results in the appearance of mannerisms and oddities in behavior, often with increased bashfulness and awkward clumsiness, when the schizophrenic is obliged to mix with others or when his desires and feelings are touched on."

"Oftentimes, these persons develop wonderful dreams of the futures for which they are destined, but these remain as veritable 'castles in Spain', unpractical and without the application that would be necessary to bring them to fruition.

"The dreams and plans are vague and indefinite, though possibly highly colored, and little consideration is given to the practical facts of the situation. The mood is often exalted, but instead of leading to increased activity and sensual interest, it takes

"the form rather of an ecstatic dreaming. On the other hand, the mood may be of depressive color and is then evidenced by fretful worrying, with irritability, and is ineffectige in producing any change in the situation.

"Sometimes it is rather a moody brooding, with occasional outbursts of violence.

"It would be a mistake to assume that every person with a schizophrenic trend is going to develop a psychosis or become insane. Very many never do so at all, possibly because the complexes that are split off do not involve a very large part of the man's personality, or because the conditions under which he has to live do not make demands that he cannot meet sufficiently well to ~~get~~ 'get by'. One of the subgroups of dementia praecox comprises such individuals under the name of dementia simplex.

"They do not often come under the observation of the psychiatrist and have but little importance for the medical jurist. It is readily intelligible, however, that the outbreak of a psychosis is especially liable to occur when special demands in the way of responsibility and direct contact with the real world are made. One such period is that of leaving school and emancipation from home control; another is concerned with the problems of puberty, marriage and the establishment of a home."

In this connection let me call your Honor's attention to the evidence in connection with Richard Loeb as to the fact that until the time when he was fourteen years of age he had been completely under the control and domination of a governess. Up to the age I think of eleven, she took him to school and she brought him from school.

At fourteen she ceased to be his governess; and at that time he entered college.

It was a time when he had reached puberty and was approaching adolescence.

It was a time when he was taken from that home shelter, from the shelter of this governess and from her domination and control, ~~xx~~ from the woman who up to that time had solved all of his problems with the world, who stood between him and his world.

That was gone, and he suddenly was put in an environment, a fourteen-year old boy in college, associated with boys of eighteen, nineteen, twenty, and twenty-one, facing the necessity for meeting life as these boys and young men were meeting life, and thereby being put in a position where excessive demands for adjustment to life would be suddenly placed on him who already had started in as a child as a schizophrenic personality and whose tendency toward schizophrenia had been cultured and fostered by the particular type of care and attention and lack of understanding which he had received from his governess.

Singer and Krohn go on to say on page 60, after stating that one such period is that of

"leaving home and emancipation from home control, that another is concerned with the problems of puberty, marriage and the establishment of a home."

MR. CROWE: Mr. Bachrach, pardon me. You have skipped some, haven't you, in your reading.

MR. WALTER BACHRACH: How do you mean?

MR. B. C. BACHRACH: He has been skipping right along.

MR. WALTER BACHRACH: Yes, I have been skipping at various places, certainly.

(Whereupon Mr. Bachrach continued to read from page 60 as follows):

"These are frequently found as precipitating factors in the psychoses that arise on the basis of the schizophrenic personality. But the outbreak may appear with any special demand, such, for instance, as that which came with induction into the military service during the war. Necessarily, the liabilities to a breakdown diminish with advancing

"years for the reason that susceptible individuals have been steadily eliminated by the varying stresses that have had to be faced."

MR. WALTER BACHRACH: (Continuing): Then he goes on and discusses the subject of the Psychoses, and says:

"The schizophrenic psychoses are exaggerations of the features that have just been outlined, but need description for the reason that many additions appear which, at first glance, may seem to be entirely new.

"It would take us entirely too far afield to explain many of these in detail and we shall, therefore, content ourselves in the main with formal descriptions.

"We would again emphasize the fact that we are not here describing dementia praecox, but only a reaction type. ~~THAT~~

"There will, therefore, be no sub-division into the types of that disease. It will, however, be necessary to speak of the deterioration, so-called, that seems to be the logical outcome of the psychosis.

"First, it should be said that the intellectual mechanism remains undamaged, though this is not always easy of demonstration because the patient is more or less inaccessible to study and examination. The difficulty is increased by the fact that absorption in the dream world, which we found characteristic of the schizophrenic personality, is here exaggerated to such a degree that the real world may be entirely ignored and the man may fail to use his powers of perception and grasp. In consequence, he establishes only scanty and haphazard memories of what transpires around him and may thus seem to have his memory."

Now, the evidence here with respect to Richard Loeb is that he started in as a child to have a peculiar type of phantasy.

He had a phantasy of being in jail, of being looked at by women through the bars.

That he was in a jail yard with a lot of people, women and men were naked and he felt ashamed.

We have therefore in him a peculiar type of phantasy which is different from the normal phantasies that everybody has.

Every child has phantasies, of course.

There was no pretense made by the defense in this case that everybody did not have phantasies.

But, phantasies have a very definite function, they cause the development of the child's imagination, they cause the development of ambition, they cause the development of all those things which will carry the individual forward.

Ordinarily, normal phantasies will do that.

But a phantasy to be normal must be one that has a definite relation to the environment of the individual. It must correspond to the situation existing in the environment of the individual at the time the phantasies are had.

In other words, a small child has phantasies of being a policeman, of being a fireman, of being what his father is.

If his father happens to be a fireman, an iceman or a lawyer he fancies himself the type of person his father is.

If it is a girl, she phantasies the type of person her mother is.

She phantasies herself as being a wonderful person. All sorts of phantasies which are noble in character and which tend to the development, to the maintaining in life so to speak, and to the enlargement of the individual.

They are also compensatory.

As the individual becomes older, as time goes on, the individual finds that some of the things he phantasied about as a child, things that he wanted

to have, that he wished for, are incapable of being had.

That his wishes are incapable of fulfillment. And he, therefore, uses his phantasy life to satisfy this craving, these unsatisfied wishes which he has, and he lives out in his phantasy the kind of a life which is denied to him in this world.

Those things, if your Honor please, are normal; those dreams, those castles in Spain are normal, call them what you like. But it does not do, for example, for Dr. Patrick or Dr. Church to say on the stand:

"Why, everybody has got phantasies.

Phantasies are no evidence of mental disease."

Nobody said they were. We don't say they are, but we say that abnormal phantasies, pathological phantasies, give an indication of what is going on in the human mind. They give an indication of a pathological condition. And when we find a situation such as we find, for example, in the case of Richard Loeb, where he starts in as a child of four and a

half or five years and has abnormal phantasies, and where these abnormal phantasies do not change as his position in life changes, and as he becomes older, but these abnormal phantasies continue, they last, they last until he is in jail at the age of nineteen, charged with a kidnaping and murder. They have lasted unalterably as if they were in an air-tight compartment, out of touch with the world in which he has been living, there being phantasies even now in jail, the same phantasies that he phantasied as a child of four and five; those phantasies being of an abnormal type are indications of something wrong.

Now, were Singer, Krohn and Patrick looking for anything like that?

Of course they were not.

They were in the position of a person who says:

"Prima facie you are sane. Prima facie you are mentally healthy. Show me.

Show me."

Therefore, they took the position that if evidence was not produced before them on one afternoon, on the

"psychic phenomena; and moreover, to attain our end we need to study the whole past life of the patient, his diseases, his accidents, schooling, occupation, environment and character.

"Nor can we stop here, for it is of the greatest importance to inform ourselves as to conditions among his antecedents to determine the type of family from which he sprang, and the presence or absence of an hereditary taint. There is therefore much to learn even before seeing the patient in person."

Did Patrick, did Church, did Singer, did Krohn, do any of that?

Why, they said they never saw the boys before and never made any investigations about them.

Then in another place Church and Peterson have this to say in one of the methods for arriving at the presence of a mental disease. I quote from 774 of the same volume:

"It was Schopenhauer, he says, who said that insanity is a long dream and a dream brief insanity. There is in fact more than a superficial resemblance between dreams and insanity, so much so that psychiatrists the world over are devoting themselves to the study of dreams as a part of their clinical and psychiatric work.

"There is practically no phenomenon that presents itself in dreams that may not be observed among the inmates of any asylum ward. There are in both mental disease and dreams a prominence of visual and auditory hallucinations, a tendency to the reproduction of old experiences, the imaginary fulfillment of wishes and desires" --

MR. CROWE: pardon me, Mr. Bachrach. There is no evidence here of any dreams.

MR. WALTER BACHRACH: There is evidence of day

dreams.

MR. CROWE: Well, you are not reading about day dreams now, are you?

MR. WALTER BACHRACH: The same thing.

MR. CROWE: Are they?

MR. BACHRACH: Yes, all the same thing, insofar as the character of the evidence is concerned of what goes on in the mind.

Day dreams as well as night dreams, if your Honor please, indicate a functioning of the mind, an undirected functioning of the mind without control.

They, therefore, are spontaneous.

They, therefore, speak the truth.

They, therefore, are not subject to the conscious guidance of the individual, and therefore when the psychiatrist has submitted to him the dreams, night dreams or day dreams, of his patient, he has material that is spontaneous, uncontrolled material, and therefore material which interpreted by the psychiatrist forms a basis for a more correct conclusion than merely a controlled history given by the patient.

"There are in both mental disease and dreams a prominence of visual and auditory hallucinations, a tendency to the reproduction of old experiences, the imaginary fulfillment of wishes and desires, the chaotic flow of ideas, incoherence, ~~disorientation~~ disorientation, weakened judgment, and division of personality.

"Sometimes insanity first manifests itself in dreams, though the mind is still normal by day.

"Sometimes in patients just recovering from insanity, who are normal by day, there is a nightly recurrence of insane delirium in sleep, a species of nocturnal insanity."

Now, they did not investigate --

MR. CROWE: Will you pardon me, just another question.

MR. WALTER BACHRACH: yes.

MR. CROWE: All this you have been reading about deals with insanity, does it not?

MR. WALTER BACHRACH: Yes.

MR. CROWE: Is that your defense?

MR. WALTER BACHRACH: It is not.

MR. DARROW: Insanity and diseases of the mind too.

MR. WALTER BACHRACH: The text book which I have read deals with nervous and mental diseases and under the subject of insanity as used by those gentlemen as indicating a mental disease, and not a legal insanity, they discuss these various symptoms.

Now, we do not use the word insanity, if your honor please, in this case, for the simple reason that we are not dealing with the question of a legal defense at all.

We are using it as Dr. White pointed out on the witness stand. We are using the term merely of "medical disease".

Your honor will recall in this connection that when Dr. White was being cross examined by Mr. Crowe, or when Dr. Healy was being cross examined by Mr. Crowe, a reference was made to an old edition written in 1906, or published in 1906, of Dr. White.

I want to call your honor's attention to the last edition of Dr. White, written in 1923, on

page 27, where in a footnote he says:

"Insanity should not be used as a medical term at all.

"It is solely a legal and sociological concept, and so used to designate those members of the community who are so far from able to adjust themselves to the ordinary social requirements that the community segregates them, forcibly perhaps, and takes away their rights as citizens.

"Insanity is a form of social inadequacy, which medically may be the result of many varieties of mental disease.

"Insane, therefore, means nothing more than certifiable ."

Now, we are not concerned at all with the question of insanity in this case. Messrs. Church, Patrick and Krohn failed to comply with any of the conditions laid down in Dr. Church's book for the making of a

psychiatric examination. They had not the opportunity, they had not the time, they did not take the time and they did not take the trouble.

They stopped when they found no proof of disease. They did not look for any disease, although they were put on notice by the circumstances of the crime that it was possible that there should be a disease.

Now, just take the other side of that picture. The same facts, if your honor please, as regards this crime, serve notice on counsel for the defense of the same question, namely, the presence of mental disease, that they served upon the State's Attorney.

Upon the service of such notice, counsel for the defense arranged with Dr. William A. White, who is the head of the United States Service Hospital for the Insane ~~and~~ or mentally diseased at Washington, D.C., with Dr. Healy, William Healy, who is the head or director of the Judge Baker foundation of Boston, who is known nationally and internationally on account of his studies in delinquency of adolescents,

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who began his work in Chicago as the advisor of Judge Pinckney, and, later, Judge Arnold, in the criminal court, and now who sits with the juvenile judge in Boston, as an advisor to the judge on mental conditions of adolescents, who makes no business of testifying in court, who renders his opinion to the judge and whose opinion is accepted by the judge.

We arranged with Dr. Bernard Glueck of New York, who was chief psychiatrist at Sing Sing for a number of years, and was formerly a psychiatrist at St. Elizabeth's Hospital at Washington. All men who make no practice of working for a State's Attorney or working for a defense attorney.

We arranged with those men to make an examination of those boys, with a view of ascertaining their mental condition and reporting that mental condition to us, so that we might know what the mental condition was, as a guide to our conduct in this case.

There was not a string tied to these men. They were not contracted with to testify on behalf of the defense. They were absolutely footloose

to go in and make an examination and to report.

Therefore, they went to the county jail. They had the facilities offered in the jail in the form of a private cell, large enough for the purpose of their examinations, where they had privacy, where they were away from the noises and disturbances, from large crowds, and where they were given the opportunity to make a thorough examination of these boys and arrive at their conclusion.

They had the full co-operation of the boys and they had the full co-operation of the Attorneys for the defense.

Now, under such conditions they made an examination of these boys and I would like to read to your Honor for a few moments about what Dr. White has got to say about how an examination such as they made ought to be made.

(Whereupon Mr. Eachrach here read from Dr. White's evidence beginning with page 1269 of the transcript with regard to the defense alienists' examination of the defendants, and read in the words and figures as follows):

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"Q Will you state if you please just how you carried on the examinations of the two defendants?

A The examination was conducted by a method which is, superficially, descriptive of question and answer. Of course that method of question and answer involves in the first place a certain state of mind of the examiner, because no act of any sort occurs in this world without the state of mind of the actor being an important component. The elements in the state of mind of the actor include a knowledge of the makeup and the characteristics and the methods of operation of the mind, as such of the body, as such of their relation to each other, and of their developmental history.

(Objection)

MR. WALTER BACHRACH: Go ahead, Doctor, the Court said you may answer.

A He must have in mind, as I said, I think the fundamental facts of the historical development of the mind.

(Objection)

THE COURT: Finish your answer, Doctor.

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THE WITNESS: He must have all these things in mind, the knowledge of the mechanism and processes of mind and body, and the relation and their developmental History. Now, in approaching the problem of mental disease there are certain specific things that the examiner has in mind and which I had in mind in examining these boys. We have learned, as a matter of experience, that, for example, that the intellectual functions of the individual and the so-called affective feeling or emotional aspect of the individual don't always go along hand in hand in their development. We always, therefore, in our examination, and I did in this instance, bear in mind that fact with a purpose to seeing whether there was any particular discrepancy as between the intellectual achievement of these boys and their emotional development; because emotions have their historical-- they develop after a certain plan just as definitely as does the intelligence, just as definitely as do the organs of the body. So that is one very definite thing we look for.

There is another very important thing we

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look for and that the examiner has to bear in mind. You cannot examine for it always specifically in all these things but one has to have them in mind so as to be alert when anything crops out in the case that bears on the issue. That is, that any historical fact, any event in the past life of the individual, anything that tends to have a disturbing or distorting influence upon his mentality, particularly on the emotional side increases in significance, other things being equally in proportion to the early period in which it occurs, because of the developing organism the earlier a distortion happens the more quickly and the more certainly are the results of that distortion imbedded within the makeup of that individual, and the more easily, more quickly and more certainly do they become ineradicable.

Then there are other things one has to have in mind for the same thing and for the same purposes, and that is this inner mental life, as you call it, which is the life that goes on inside and is not consciously or intentionally expressed by the individual. It is the thoughts and feeling that are privy to every

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man's inner consciousness, and one needs to inquire into those and to watch during the course of the examination for any indications that show what they may have been, because we know that that inner mental life fulfills a very definite function. Because this inner mental life we know fulfills a very specific function. It is compensatory for the most part in its function, for all of the things which we don't get out of life and which we wish we might have; for all of these aspirations which come to disappointment there is a compensatory inner life which is developed and which runs along more or less in all people to compensate for that, in other words, in this inner life these various desires of ours which have not come true in reality, do come true. Now, the place where that occurs par excellence is during the dreams of sleep. So we are interested in knowing about that inner mental life, because that inner life signifies to the real fundamental needs and aspirations, and hopes and wishes of the individual. They give us the real story of what that individual seeks in life,

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the same when he he himself by word of mouth or through the operation of his consciousness is incapable of doing.

Now, we know that the growth and development of the individual, physically, mentally, is a social unit and tends to fall into certain fairly definite patterns. If we wish to know whether an organ like the kidney is diseased we undertake to examine its function and we know as a matter of fact what the limits of its functional activity are, sufficiently well, so that we are able to recognize a material departure from the limits of the function. In the heart for example, we know what the pulse should and ought to be under ordinary circumstances; we know what it ought to be under exercise, and we know how long it ought to take for the pulse rate to subside from an increased rate due to exercise to a normal rate as ~~are~~ a result of rest. We know how to estimate the function of organs within certain reasonable limits, and it is exactly the same way with the mind. We know so to speak, if I might use figurative language the operations, functions and mechanisms of the mind by which they work, and we can see in this result of our examination in the answers that are given, the information that

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is disclosed to us both voluntary and involuntary by the patient in every sort-of way not only by what he says but what he does during the examination we conceive these various operations of the minds giving evidence of how they are working, and during that examination the patient discloses himself to us in quite the same way that he discloses himself to us when he has an X-Ray taken. "

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MR. BACHRACH: Now, your honor, will recall that when Dr. Krohn was cross examined as to whether there was anything besides what was said by these boys that was taken into consideration, he said the reactions, how they behaved, that all those things were taken into consideration by him, Dr. Krohn, in arriving at the conclusion that there was no proof of mental disease.

Of how much greater value is the evidence of what the physicians for the defense have done? Dr. Krohn said that was very important, to see how they reacted during the course of the examination. Here during the examination by the four experts for the defense you have a situation where a long period of time was taken, where there were repeated examinations made of the boys, where they were examined under various conditions, and from all of these facts you have a situation where these four doctors for the defense have stated that in their opinion, based upon these facts which were contained in ~~their~~ their report, plus their conclusions or observations, or from the opportunities they had, they say that these boys are mentally diseased.

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Now, how can the testimony of men like Drs. Singer, Krohn, Patrick and Church be mentioned in the same breath with the testimony of the experts of the defense?

Bowman and Hulbert, the evidence shows, took fourteen days to gather these facts, and these men got enough in forty minutes to say that there was not any evidence-- I ~~mean~~ mean the state's alienists-- of a mental disease.

Now, I just want to add one word before I close on the subject matter of the endocrines.

Now, I want to call your Honor's attention to a book by Walter Timme, called, "LECTURES ON ENDOCRINOLOGY," and I will be glad, if your Honor cares, to submit this book to your Honor. Walter Timme is an attending neurologist of the Neurological Institute in New Ygrk, he is a professor of endocrinology in the Broad Street Hospital, professor of nervous and mental diseases in the Polyclinic School and Hospital in New York, and this was published in 1924. I just want to show a few things in here by my reading, and the rest your Honor can get from his own observations on the subject of the pineal

3m gland, if your Honor please.

He says, under the heading,

"Precocious Pineal Involution", on page 22:

(Whereupon Mr. Bachrach here
read from page 22, in words
and figures as follows):

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MR. BACHRACH: (Continuing) Now, your Honor will recall that the x-ray films offered in evidence show, so far as Nathan Leopold, Jr. is concerned, the absence of a shadow indicating the calcification, as it has been called, of the pineal gland, at an age before twenty, and which this authority says normally comes after thirty, and which, when it comes before ~~thirty~~ twenty, is an abnormal symptom.

He also says:

"Accompanying this calcification of the pineal gland, usually, however, disturbances only in one field are manifest. There is a blood sugar disturbance."

Which your Honor recalls the evidence in this case showed Leopold, Jr. had.

"Usually one of low content in these precocious pineal cases."

I do not care to take up any further time in reading, except to call your Honor's attention to this fact, that he discussed the low basal metabolism as indicating a defective functioning of the thyroid in

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its relation to the functioning of the other glands. He also discusses the low carbon dioxide content in the blood, all as indicating the various endocryine disturbances. You have the testimony here contained in Singer and Krohn's own book, that the disfunctioning of these glands has a direct effect upon the functioning of the mind. And if I may, I would like to hand this to your Honor, if your Honor cares to have it.

I thank the Court.

MR. CROWE: Are you through?

MR. W. BACHRACH: Yes.

MR. CROWE: Will your Honor suspend at this time?

THE COURT: We will suspend now until two o'clock.

Whereupon an adjournment was

here taken until two o'clock P.M.

Friday, August 23rd, 1924.

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Friday, August 22nd, 1924.

2:00 o'clock P.M.

Court reconvened at 2:00 o'clock P.M.

Friday, August 22nd, 1924, pursuant
to adjournment heretofore taken.

Present: Same as before.

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THE COURT: Keep that door closed. If they persist
in coming in bring somebody up here and I will send
them over to jail.

Keep the doors closed.

Do not let anybody else in. Those
who did not come until this hour are late, I do not
care where they belong, keep them out. Now find seats,
you that are in.

No more crowding in back there.

Keep quiet; keep back out of the way.

Mr. Bailiffs, do not let anybody in,
it does not make any difference who?

All right, Mr. Darrow.

(Whereupon Mr. Clarence Darrow began his closing argument on behalf of the defendants as follows):

MR. DARROW: It has been almost three months since I first assumed the great responsibility that has devolved upon me and my associates in this case; and I am willing to confess that it has been three months of perplexity and great anxiety. A trouble which I would have gladly been spared excepting for my feelings of affection toward some of the members of one of these families.

It is a responsibility that is almost too great for any one to assume that has devolved upon me. But we lawyers can no more choose than the court can choose.

THE COURT: Pardon me just one moment. Sergeant, I want the whole building cleared out.

MR. DARROW: My worry over this case -- your Honor, I think you had better wait, if you don't mind.

MR. CROWE: We had better wait, hadn't we, Judge, until they clean out that corridor, so there will be no interruptions.

(The court here took a short recess).

MR. DARROW: I don't know what we can do, your honor, unless the inside is cleared out.

THE COURT: The police will be here in a minute.

MR. DARROW: I think I had better wait, your Honor.

THE COURT: All right.

MR. DARROW: Are you going to get somebody there pretty quick?

THE COURT: Oh, yes. Is that hall filled outside there? Is that hall still packed?

A BAILIFF: I beg your pardon?

THE COURT: Is that hall still packed?

THE BAILIFF: Yes. There are four of your friends out here.

THE COURT: Let them stay there.

(After a further wait the Court said, addressing the bailiff at the door):

THE COURT: Go downstairs and see if the police have arrived yet.

THE BAILIFF: They have. They are out there.

THE COURT: Well, I want that hall cleared. You

might as well have twenty wooden policemen out there if they don't do what they are told.

THE BAILIFF: The press don't want to get out.

THE COURT: I don't care about that. Everybody out of there.

(At this time the police officers sent for by the Judge arrived).

THE COURT: Officers, clean out that hall, please, and if you have not got enough men, get fifty more. Put everybody out of the building except those in the room now.

THE SERGEANT: They are all out now but the press.

THE COURT: All but what?

THE SERGEANT: All but the press. I can't make them understand that you want them out of the hall.

THE COURT: Have they got press tickets?

THE SERGEANT: Some of them have, but there is a runner out here who has not.

THE COURT: Let the press in. They are entitled to come in and out.

(The door was opened to admit one copy boy):

THE COURT: Clean out that hall, and clean out

the fifth floor after that, and then put everybody outside of the building who has no business here.

THE BAILIFF: The hall is clear, your honor.

THE COURT: Clean off the fifth floor, please, and all the other floors. Take everybody and send them home. Is that hallway cleared out?

THE BAILIFF: Yes, your Honor.

A BAILIFF: Yes, your Honor.

THE COURT: All right, Mr. Darrow:

(Whereupon Mr. Darrow here resumed his closing argument on behalf of the Defendants as follows):

MR. DARROW: Your Honor, our anxiety over this case has not been due to the facts that are connected with this most unfortunate affair, but to the almost unheard of publicity; to the fact that newspapers all over this country have been giving it space such as they have almost never given to a case before. The fact that day after day the people of Chicago have been regaled with stories of all sorts about it, until almost every person has formed an opinion.

And when the public are interested and want a punishment, no matter what the offense is, great or small, they only think of one punishment, and that is death.

It may not be a question that involves the taking of human life; it may be a question of pure prejudice alone, but when the public speaks as one man they only think of killing someone.

We have been in the presence of this stress and strain for three months. We did what we could and all we could to gain the confidence of the public, who in the end really control, whether wisely or unwisely.

It was announced that there were millions of dollars to be spent on this case. Wild and extravagant stories were freely published as if they were facts. Here was to be an effort to save the lives of two boys, that should not have required an effort even, but to save their lives by the use of money, in fabulous amounts, such as these families never had nor could have.

We announced to the public that no ex-

cessive use of money would be made in this case, neither for lawyers, for psychiatrists or in any other way.

We have faithfully kept that promise which we made to the public.

The psychiatrists, as has been shown by the evidence in this case, are receiving a per diem, and only a per diem, which is the same as is paid by the State.

The attorneys of their own motion, at their own request, have agreed to take such amount as the officers of the Chicago Bar Association may think is proper in this case.

If we fail in this defense it will not be for lack of money. It will be on account of money. Money has been the most serious handicap that we have met.

There are times when poverty is fortunate, and this is one of those times.

I insist, your honor, that had this been the case of two boys of this age, unconnected with families who are supposed to have great wealth, that there is not a State's Attorney in Illinois who would

not at once have consented to a plea of guilty and a punishment in the penitentiary for life. Not one.

No lawyer could have justified it.

No prosecution could have justified it.

We could have come into this court without evidence, without argument, with nothing, and this court would have given to us what every judge in the City of Chicago has given to every boy in the City of Chicago since the first capital case was tried. And we would have had no contest.

We are here with the lives of two boys imperiled, with the public aroused.

For what?

Because, unfortunately, their parents have money. Nothing else.

I told your honor in the beginning that never had there been a case in Chicago, where on a plea of guilty, a boy under twenty-one had been sentenced to death. I will raise that age and say, never has there been a case where a human being under the age of twenty-eight or thirty has been sentenced to death. And, I think I am safe in saying, al-

though I have not examined all the records and could not -- but I think I am safe in saying that never has there been such a case in the State of Illinois.

And yet this court is urged, aye, threatened, that he must hang two boys contrary to the precedents, contrary to the acts of every judge who ever held court in this state.

Why?

Tell me what public necessity there is for this.

Why need the State's Attorney ask for something that was never asked before?

Why need a judge be urged by every argument, moderate and immoderate, to hang two boys in the face of every precedent in Illinois and in the face of the progress of the last fifty -- at least twenty-five years.

Lawyers stand here by the day and read cases from the Dark Ages, where Judges have said that if a man had a grain of sense left, if he was barely out of his cradle, he could be hanged because he knew the difference between right and wrong. There have

been boys eighteen, seventeen, sixteen and fourteen --
Brother Marshall has not half done his job. He
should read his beloved Blackstone again.

I have heard in the last six months
nothing but the cry for blood. I have heard raised
from the office of the State's Attorney nothing but
the breath of hate.

I have heard precedents quoted which
would be a disgrace to a savage race.

I have seen a court urged almost to the
point of threats to hang two boys, in the face of
science, in the face of philosophy, in the face
of humanity, in the face of experience, in the face
of all the better and more humane thought of the
age.

Why did not my friend, Mr. Marshall,
who dug up from the relics of the buried past these
precedents that would put a blush of shame upon the
face of a savage, read this from Blackstone:

"Under fourteen, though an infant
shall be judged to be incapable of
guile prima facie, yet if it appeared
to the court and the jury that he was

"capable of guile, and could discern between good and evil, he may be convicted and suffer death."

Thus a girl thirteen has been burned for killing her mistress.

Lord, how that would delight Dr. Krohn! He would lick his chops over that more than over his dastardly homicidal attempt to kill these boys.

A girl of thirteen was burned, because she probably didn't say "Please" to her mistress, -- out of my friend's beloved Blackstone.

And one boy of ten and another of nine years of age, who had killed her companion, were sentenced to death and he of ten actually hanged.

Why?

He knew the difference between right and wrong. He had learned that in Sunday School.

Age does not count.

Why, Mr. Savage says age makes no difference, and that if this court should do what every other court in Illinois has done since its foundation, and refuse to sentence these boys to death, nobody would

be hanged in Illinois any more.

Well, I can imagine something worse than that. So long as this terrible tool is to be used for a plaything, without thought or consideration, in seeking to inflame the mob with the thought that a boy must be hanged, or civilization will be hanged, we ought to get rid of it, and get rid of it altogether, for the protection of human life.

Blackstone, which my friend Marshall read by the page, as if it had anything to do with a fairly enlightened age, as if it had anything to do with the year 1924, as if it had anything to do with Chicago, with its boys' courts and its fairly tender protection of the young, he is called here to urge this judge to do what was never done before.

Now, your honor, I shall discuss that more in detail a little later, and I only say it now because my friend Mr. Savage -- did you pick him for his name or his ability or his learning -- because my friend Mr. Savage, ⁱⁿ ~~xx~~ as savage a speech as he knew how to make, said to this court that we plead guilty because we were afraid to do anything else.

Your Honor, that is true. That is true.

I want to refer to one thing in passing, and then I will discuss this age in the place where I think it belongs.

It was not correct that we would have defended these boys and asked for a verdict of not guilty if we thought we could win. We would not. We believe we have been fair to this court; we believe we have been fair to the public. Anyhow we have tried, and we have tried under terribly hard conditions.

We have said to the public and to this court that neither the parents, nor the friends, nor the attorneys would want these boys released. That they are as they are. Unfortunate though it be, it is true, and those the closest to them know perfectly well that they should not be released, and that they should be permanently isolated from society. We have said that; and we mean it. We are asking this court to save their lives, which is the least and the most that a judge can do.

We did plead guilty before your Honor

because we were afraid to submit our cause to a jury. I would not for a moment deny to this court or to this community a realization of the serious danger we were in and how perplexed we were before we took this most unusual step.

I can tell your Honor why.

I have found that years and experience with life tempers one's emotions and makes him more understanding of his fellow men.

When my friend Savage is my age, or even of yours, he will read his address to this court with horror.

I am aware that as one grows older he is less critical. He is not so sure. He is inclined to make some allowance for his fellow man.

I am aware that a court has more experience, more judgment and more kindness than a jury.

And then, your honor, it may not be hardly fair to the court, because I am aware that I have helped to place a serious burden upon your shoulders. And at that, I have always meant to

be your friend. But this was not an act of friendship.

I know perfectly well that where responsibility is divided by twelve, it is easy to say:

"Away with him".

But, your Honor, if these boys hang, you must do it.

There can be no division of responsibility here.

You must do it. You can never explain that the rest overpowered you. It must be by your deliberate, cool, premeditated act, without a chance to shift responsibility.

We did it, your Honor.

It was not a ~~kind~~ kindness to you.

We placed this responsibility on your shoulders because we were mindful of the rights of our clients, and we were mindful of the unhappy families who have done no wrong.

Now, let us see, your Honor, what we had to sustain us. Of course, I have known your Honor for a good many years. Not intimately. I could not say that I could even guess from my experience what your Honor might do, but I did know something.

I knew, your Honor, that ninety unfortunate human beings had been hanged by the neck until dead in the city of Chicago in our history. We would not have any civilization except for those ninety being hanged, and if we can not make it ninety-two we will have to shut up shop. Some ninety ~~more~~ human beings have been hanged in the history of Chicago, and of those only three have been hanged on the plea of guilty, one of thirty.

I know that in the last ten years three hundred and fifty people have been indicted for murder in the city of Chicago and have plead guilty. Three hundred and fifty have pleaded guilty in the City of Chicago, and only one has been hanged.

And my friend who is prosecuting this case deserves the honor of that hanging while he was on the bench. But his victim was forty years old.

Your honor will never thank me for unloading this responsibility upon you, but you know that I would have been untrue to my clients if I had not concluded to ~~take~~ take this chance before a court, instead of submitting it to a poisoned jury in the City

of Chicago. I did it knowing that it would be an unheard of thing for any court, no matter who, to sentence these boys to death.

And that far, sofar as that goes, Mr. Savage is right.

I hope, your Honor, that I have made no mistake.

I could have wished that the State's Attorney's office had met this case with the same fairness that we have met it.

It has seemed to me as I have listened to this case, five or six times repeating the story of this tragedy, spending days to urge your honor that a condition of mind could not mitigate, or that tender years could not mitigate, it has seemed to me that it ought to be beneath the representative of a proud state like this to invoke the dark and cruel and bloody past to affect this court and compass these boys' death.

And your honor, I must for a moment criticize the arguments that have preceded me. I can read to you in a minute my friend Marshall's argument,

barring Blackstone, and I will simply call your attention to what he left out, But the rest of his arguments and the rest of Brother Savage's argument, I can sum up in a minute: Cruel, dastardly, premeditated, fiendish, abandoned and malignant heart, -- that sounds like a cancer -- cowardly, cold-blooded.

Now that is what I have listened to for three days against two minors, two children, who could not sign a note or make a deed.

I have listened to that for three days.

Cowardly?

Well, I don't know. Let me tell you something that I think is cowardly, whether their acts were or not. Here is Dickie Loeb, and they object to anybody calling him Dickie although everybody did, but they think they can hang him easier if his name is Richard, so we will call him Richard.

Eighteen years old at the time.

Here is Nathan Leopold, Jr. nineteen.

Here are three officers watching them.

They are led out and in this jail and across the bridge

waiting to be hanged. Not a chance to get away.
Handcuffed when they get out. Not a chance. Penned
like a rat in a trap, and for some lawyer with
physiological eloquence to wave his fist in front
of his face and shout cowardly does not appeal to me
as a brave act. It does not commend itself to
me as a proper thing for a State's Attorney or his
assistant, and even defendants not yet hanged have
some rights with an official.

Cold-blooded?

But I don't know, your honor. I will
discuss that a little later, whether it was cold-
blooded or not.

Cold-blooded?

Why?

Because they planned, and schemed, and
arranged, and fixed?

Yes. But here are the officers of
justice, so-called, with all of the power of the
State, with all of the influence of the press, to fan
this community into a frenzy of hate with all of
that, who for months have been planning and scheming,

and contriving, and working to take these two boys lives.

You may stand them up on a scaffold, on a trap door, and choke them to death, but that act would be infinitely more cold-blooded whether it was justified or not, than any act that these boys have committed or can commit.

Cold-blooded!

Let the State, who is so anxious to take these boys' lives, set an example in consideration, kindheartedness and tenderness before they call my clients cold-blooded.

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Now, another thing, your Honor, I have heard this crime as stated, this most distressing and unfortunate homicide, as I would call it, this cold-blooded murder, as the state would call it.

I call it a homicide particularly distressing because I am defending.

They call it a cold-blooded murder because they want to take their lives.

Call it what you will.

I have heard this case talked of, and I have heard these lawyers say that this was the coldest-blooded murder that the civilized world ever knew. Of course, I don't know what they include in the civilized world. I suppose Illinois. Although they talk as if they did not. But we will assume Illinois. This is the most cold-blooded murder, says the state, that ever occurred.

Now, your Honor, I have been practicing law a good deal longer than I should have, anyhow, for forty-five or forty-six years, and during a part of that time I have tried a good many criminal cases, defending always. It does not mean that I am better. It probab-

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ly means that I am more squeamish than the other fellow. It neither means I am better or worse. It means the way I am made. I can't help it. I am like the other fellow,-- I don't want to help it.

I have never yet tried a case where the state's attorney did not say it was the most cold-blooded, inexcusable premeditated case that ever occurred. If it was murder, there never was such a murder. If it was robbery, there never was such a robbery. If it was a conspiracy, it was the most terrible conspiracy that ever happened since the star chamber passed into oblivion. If it was larceny, there never was such a larceny.

Now, I am speaking moderate. All of them are the worst. Why? Well, it adds to the credit of the State's Attorney to be connected with a big case. That is one thing. They can say,

"Well, I tried the cold-bloodiest-- is that right, cold-bloodiest?-- murder case that was ever tried, and I convicted them, and they are dead,"

or, -- "I tried the worse forgery case that was ever tried, and I won that. I never did do anything that wasn't big."

Lawyers are apt to say that, anyhow.

And then there is another thing, your honor.

Of course, I generally try cases to juries, and these adjectives always go well with juries; bloody, cold-blooded, despicable, cowardly, dastardly -- the whole litany of the State's Attorney's office always goes well with a jury. The twelve jurors, being good themselves, think it is a tribute to their virtue if they follow the litany of the State's Attorney.

I suppose it might have some effect with the court; I do not know. Anyway, those are the chances we take. When we do our best to save life and reputation, those are the chances we take.

"Here, your clients have pleaded guilty to the most cold-blooded murder that ever took place in the history of the world. And how does a judge dare

"to refuse to hang by the neck until dead two cowardly ruffians who committed the coldest blooded murder in the history of the world?"

Well now, that is a good talking point.

I want to give some attention to this cold-blooded murder, your honor.

Was it a cold-blooded murder?

Was it the most terrible murder that ever happened in the State of Illinois?

Was it the most dastardly act in the annals of crime?

No.

I insist, your honor, that under all fair rules and measurements, this was one of the least dastardly and cruel of any that I have known anything about.

Now, let us see how we measure it.

They say that this was a cruel murder, the worst that ever happened.

I say that very few murders ever occurred that were as free from it as this.

Now, let's see how we measure it.

There ought to be some rule to determine whether a murder is cruel or not exceedingly cruel.

Of course, your honor, I admit right off that I hate killing, and I hate it no matter how it is done, whether you shoot a man through the heart, or cut his head off with an axe, or kill him with a chisel or tie a rope around his neck, I hate it. I always did. I always shall.

But, there are degrees, and if I might be permitted to make my own rules I would say if I were estimating what was the most cruel murder, I might first consider the victim, as to his suffering.

Now, probably the State would not take that rule. They would say the one that had the most attention in the newspapers.

In that way they have got me beat at the start.

But I would say the first thing to consider was the degree of pain to the victim.

Poor little Bobby Franks suffered very

little. This is no excuse for his killing. If to hang these two boys would bring him back to life, I would say let them ~~gaxx~~ go, and I believe their parents would say it, too. But:

"The moving finger writes, and having
writ moves on; nor all your piety
nor wit can lure it back to cancel
half a line or change one word of it."

Robert Franks is dead, and we cannot change that.

It was all over in fifteen minutes after he got into the car, and he probably never knew it or thought of it. That does not justify it. It is the last thing I would do. I am sorry for the poor boy.

I am sorry for his parents. But, it is done.

Of course I cannot say with the certainty of Mr. Savage that he would have been a great man if he ~~was~~ had grown up. At fourteen years of age I don't know whether he would or not. Savage, I suppose, is a mind reader, and he says he would. He has a phantasy, which is hanging. So far as the cruelty to the victim is concerned, you can scarce imagine one less cruel.

Now, what else would stamp it as being a most atrocious crime?

First, I put the victim, who ought not to suffer; and next I would put the attitude of those who kill.

How about them?

What was the attitude of these two boys?

It may be the State's Attorney would say it was particularly cruel to the victim because he was a boy.

Well, my clients are boys, too, and if it would make more serious the offense to kill a boy, it should make less serious the offense of a boy who did the killing.

What was there in the conduct of these two boys which showed a wicked, malignant, and abandoned heart beyond that of anybody else who ever lived? Your honor, it is simply silly.

Everybody who thinks knows the purpose of this. Counsel knows that under all the rules of the courts they have not the slightest right to ask this court to take life. Yet they urge it upon

this court by falsely characterizing this as being the cruelst act that ever occurred. What about those boys; the second cause or the second thing that would settle whether it was cruel or not?

Mr. Marshall read case after case of murders and he said:

"Why, those cases don't compare with yours. Yours is worse."

Worse, why?

What were those cases?

Most of his cases were robbery cases, where a man went out with a gun to take a person's money and shot him down. Some of them were cases of hatred and of malice, where a man killed from hatred and spite and malice. Some of them were cases of special atrocities, mostly connected with money. A man kills someone to get money, he kills someone through hatred. What is this case?

This is a senseless, useless purposeless, motiveless act of two boys. Now, let me see if I can prove it. There was not a particle of hate,

there was not a grain of malice, there was not an opportunity to be cruel except as death is cruel, -- and death is cruel.

There was absolutely no purpose in it all, no reason in it all, and no motive in it all.

Now, let me see whether I am right or not.

I mean to argue this thoroughly, and it seems to me that there is not a chance for a court to hesitate upon the facts in this case.

I want to try to do it honestly and plainly, and without any attempt at frills or oratory, and to state the facts of this case just as the facts exist, and nothing else.

What does the State say about it?

In order to make this the most cruel thing that ever happened, of course they must have a motive. And what, do they say, was the motive?

Your honor, if there was ever anything so foolish, so utterly futile as the motive claimed in this case, then I have never listened to it.

What did Tom Marshall say?

What did Joe Savage say?

"The motive was to get ten thousand dollars" say they.

These two boys, neither one of whom needed a cent, scions of wealthy people, killed this little inoffensive boy to get ten thousand dollars.

Not, let us see,

First let us call your attention to the opening statement of Judge Crowe, where we heard for the first time the full details of this, after a plea of guilty, and once more published in the newspapers.

All right. He said these two young men were heavy gamblers, and they needed the money to pay gambling debts, or on account of gambling.

Now, your Honor, he said this was atrocious, most atrocious and they did it to get the money because they were gamblers and needed it to pay gambling debts.

What did he prove?

He put on one witness, and one only, who had played bridge with both of them in college, and he said they played for five cents a point.

Now, I trust your honor knows better than I do how much of a game that would be. At poker I might guess, but I do not know much about bridge.

But what else?

He said that in that game, one of them lost ninety dollars to the other one.

They were playing against each other, and one of them lost ninety dollars?

Ninety dollars!

Their joint money was just the same and there is not another word of evidence in this case to sustain the statement of Mr. Crowe, who pleads to hang these boys.

Your Honor, is it not trifling?

It would be trifling, excepting that we, your Honor, are dealing in human life. And we are dealing in more than that; we are dealing in the future disaster of two families. We are dealing in placing a blot upon the escutcheon of two houses that do not deserve it, for nothing. And all that they can get out of their imagination is that there was a game of bridge and one lost ninety dollars

to the other, and therefore they go out and commit murder.

Oh, it was not within two years of that time, or a year, anyhow.

What would I expect if on the part of the defense we would resort to a thing like that?

Could I expect anyone to have the slightest confidence in anything we have said?

Your Honor knows that it is utterly absurd.

The evidence was absolutely worthless. The statement was made out of whole cloth, and Mr. Crowe felt like that policeman who came in here and perjured himself, as I will show you later on, who said when he was talking with Nathan Leopold, Jr. he told him the public were not satisfied with the motive.

I wonder if the public is satisfied with the motive? If there is any person in Chicago who under the evidence in this case, after listening to it or knowing it, would believe that this was the motive, then he is stupid. That is all I have to say for him, just plain stupid.

But let me go further than that.

Who were these two boys?

How did it happen?

On a certain day they killed poor little Robert Franks. I will not go over the paraphernalia, the letter demanding money, the ransom, because I will discuss that later in another connection. But they killed him. These two boys. They were not to get ~~xx~~ ten thousand dollars; they were to get five thousand dollars if it worked, that is, five thousand dollars apiece. Neither one could get more than five, and either one was risking his neck in the job. So each one of my clients was risking his neck for five thousand dollars, if it had anything to do with it, which it did not.

Did they need the money?

Why, at this very time, a few months before, Dickie Loeb had three thousand dollars checking account in the bank.

Your Honor, I would be ashamed to talk about this except that in all seriousness -- all apparent seriousness they are asking to ~~xxx~~ kill these two boys on the strength of this flimsy foolishness.

At that time Richard Loeb had three thousand dollars checking account in the bank. He had three Liberty Bonds, one of which was past due, and the interest on not one of them had been collected for three years. I said, had not been collected; not a penny's interest had been collected, and the coupons were there for three years. And yet they would ask to hang him on the theory that he committed this murder because he needed money, and for money.

In addition to that we brought his father's private secretary here, who ~~saw~~ swears that whenever he asked for it, he get a check, without ever consulting the father. She had open orders to give him a check whenever he wanted ~~it~~ it, and that she had sent him a check in February, and he had lost it and had not cashed it. He got another in March.

Your Honor, how far would this kind of an excuse go on the part of the defense? Anything is good enough to dump into a mess where the public are clamoring, and where the stage is set and where

loud voiced young attorneys are talking about the sanctity of the law, which means killing people; anything is enough to justify a demand for hanging.

How about Leopold?

Leopold was in regular receipt of one hundred and twenty-five dollars a month; had an automobile; paid nothing for board and clothes, expenses; he got money whenever he wanted it, and he had arranged to go to Europe and had bought his ticket and was going to leave about the time he was arrested in this case, your Honor.

He passed his examination for the Harvard Law School, was going to take a short trip to Europe before it was time for him to attend the fall term.

His ticket had been bought, and his father was to give him three thousand dollars to make the trip.

Your Honor, jurors sometimes make mistakes, and courts do, too. If on this evidence the court is to construe a motive out of this case, then I insist, your Honor, that human liberty is not safe and human life is not safe. A motive

could be construed out of any set of circumstances and facts that might be imagined.

In addition to that, your Honor, these boys' families were wealthy, extremely wealthy. They had been raised in luxury, they had never been denied anything; no want or desire left unsatisfied; no debts; no need of money; nothing.

And yet they murdered a little boy, against whom they had nothing in the world, without malice, without reason, to get five thousand dollars, a piece.

All right, All right, your honor, if the court believes it, if anyone believes it, I can't help it.

That is what this case rests on. It could not stand up a minute without motive. Without it, it was the senseless act of immature and diseased children, as it was, a senseless act of children, wandering around in the dark and moved by some emotion, that we still perhaps have not the knowledge of the insight into life to thoroughly understand.

Now, ~~ask~~ let me go on with it. What else do they claim?

I want to say to your honor that you may cut out every expert in this case, you may cut out every lay witness in this case, you may decide this case upon the facts as they appear here alone; and there is no sort of question but what these boys were mentally diseased.

I do not know, your honor, but I don't believe there is any man who knows this case, who has heard it or who has carefully read, who does not know that it can only be accounted for on the theory of the mental disease of these two lads.

I want to discuss that.

First, I want to refer to something else. Mr. Marshall argues to this court that you can do no such thing as to grant us ~~xxx~~ the almost divine favor of saving the lives of two boys, that it is against the law, that the penalty for murder is death; and this court, who, in the fiction of the lawyers and the judges, forgets that he is a human being and becomes a court, pulseless, emotionless, devoid of those common feelings which alone make men, that this court as a human machine must hang them because they killed somebody.

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Now, let us see. I do not need to ask mercy from this court-- although I am willing to do it-- for these clients, nor for anybody else, nor for myself. I have never yet found a person who did not need it, though.

But I do not ask mercy for these boys. Your Honor ~~E~~ may be strict in the enforcement of the law as you please, and you cannot hang these boys. You can only hang them because back of the law and back of justice and back of the common instincts of man, and back of the human feeling for the young, is the hoarse voice of the mob which says, "Hang them." I need ask nothing. What is the law of Illinois?

If one is found guilty of murder in the first degree by a jury, or if he pleads guilty before a court, the court or jury may do one of three things: he may be hanged; he may be imprisoned for life; or he may be imprisoned for a term of not less than fourteen years. Now, why is that the law?

Does it follow from that that a court is bound to ascertain the impossible, and must necessarily measure the degrees of guilt? Not at all. He may not be able to do it. A court may act from any reason or

2m from no reason. A jury may fix any one of these penalties as they see fit. Why was this law passed? Undoubtedly in recognition of the growing feeling in all the forward-thinking people of the United States against capital punishment.

Undoubtedly, through the deep reluctance of courts and juries to take human life, they left it so that the court could do as he pleased on a plea of guilty, and a jury could do as they pleased on a conviction, and find any penalty they saw fit.

And without any reason whatever, without any facts whatever, your Honor must make the choice, and ~~x~~ you have the same right to make one choice as another, no matter what Mr. Justice Blackstone says. It is your Honor's province, you may do it, and I need ask nothing in order to have you do it, excepting that there is the statute. But there is more than that in this case.

We have sought to tell this court why he should not hang these boys. We have sought to tell this court, and to make this court believe, that they were diseased

3m

of mind, and that they were of tender age, both. However, before I discuss that, I ought to say another word in reference to the question of motive in this case. If there was no motive, except the senseless act of immature boys, then of course there is taken from this case all of the feeling of deep guilt upon the part of these defendants.

There was neither cruelty to the deceased, beyond taking his life-- which is such-- nor was there any depth of guilt and depravity on the part of the defendants, for it was a truly motiveless act, without the slightest feeling of hatred or revenge, done by a couple of children for no reason whatever.

But, your Honor, we have gone further than that, and we have sought to show you, as I think we have, the condition of these boys' minds. Of course it is not an easy job to ascertain the condition of another person's mind. These experts in the main have told you that it is impossible to ascertain what the mind is, to start with; to tell how it acts.

I guess some of these people, your honor, would like a recess for a few minutes, your honor.

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THE COURT: Five minutes recess now.

Whereupon a short recess
was here taken by court
and counsel.

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Court reconvened pursuant to
short recess heretofore taken.

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THE COURT: Quiet now.

MR. DARROW: Shall I proceed, your Honor?

THE COURT: Yes.

(Whereupon Mr. Darrow here resumed
his argument on behalf of the Defend-
ants as follows):

MR. DARROW: I will refer later, your Honor,
to the purpose of asking for the ransom which has
been clearly testified to here.

I simply so far wish to show that the
money had nothing whatever to do with it.

The inadequacy of it all, the risk
taken for nothing, the utter lack of need, the sense-
lessness of it all, shows that it had nothing what-
ever to do with this crime, and that the reason is the
reason that has been given by the boys.

Now, I was about to say that it

needs no expert, it needs nothing but a bare recitation of these facts, and a fair consideration of them, to convince any human being that this act was the act of diseased brains.

The state, in their usual effort, to magnify, distort, to force every construction against the defendants, have spoken about this act, having its inception in their going to Ann Arbor to steal a typewriter.

This is on a plain par with their statement that this crime was committed for the purpose of getting Ten thousand dollars.

What is the evidence?

The getting of the typewriter in Ann Arbor had nothing to do with this offense, not the slightest. The evidence in this case shows that they went to Ann Arbor on the 12th day of November.

This act was committed, as I recall it for the moment, on the 21st day of May.

They went to Ann Arbor one night, after the football game in Ann Arbor, drove through in the

nighttime. Nobody knew they were going and nobody knew they had been there. They knew somebody had been there the next morning, because they missed things.

They went there, under the evidence in this case, purely to steal something from the fraternity house.

I will explain the reason for that further on.

Among the rest of the things they took was the typewriter on which these ransom letters were written.

And yet the State with its fertile imagination says:

"Aha, these wonderful planners", whom ~~Mr~~ Dr. Krohn has told you showed such great knowledge, such active brain, such consistent action, such plans and such schemes that they must be sane.

And yet a three-year-old child would not have done any of it.

These wonderful planners foresaw that four months later they were going to write a ransom

letter to somebody, and they were going to kill a boy; nobody knew what, or who, or when, or where, or how.

And in asking for a ransom they would need a typewriting machine to write it on, and so that they could not be detected they went to Ann Arbor and stole one.

That was nearly six months -- it was six months, was it not? -- ahead of this.

Now, let us see.

There is some evidence somewhere in this record that they said on their way home from Ann Arbor that they began to discuss this question of committing a perfect crime, which had been the phantasy for months. That was somewhere on the way home.

The typewriter had nothing whatever to do with it, but to make it seem that they were schemers and planners, that they knew how to think and how to act, they argued that they went all the way ~~to~~ to Ann Arbor in the night time to steal a typewriter, instead of buying one here, or stealing one here, or getting one here, or using their own, or advertising for one,

or securing one in any one of the hundred ways of getting a typewriter here.

Of course it is impossible on the face of it, but let us see what the evidence is.

They did bring a typewriter from Ann Arbor and on that typewriter they wrote this so-called ransom letter, and after the boy had been killed they threw the typewriter into the lagoon, after twisting off the letters.

Why did they twist off the letters?

Well, I suppose anybody knows why. Because anyone who is fairly familiar with a typewriter knows that you can always detect the writing on almost every typewriter. There will be imperfect letters, imperfect tracking, and imperfect this, that and the other, and it is a sure thing, and probably they knew it.

But mark this: Leopold had had that typewriter in his house for six months. According to the testimony of the maid, he had written these letters on it. According to the testimony of his

tutors he had written the dope sheets on it, numbers of them. These were still in existence.

The State's Attorney got those; the typewriter could ~~not~~ be identified without the machine at all. It was identified without the machine; all that was needed was to show that the same machine that wrote the ransom letter wrote the dope sheets and wrote the other letters.

No effort made to conceal it through all these months.

All the boys knew it, the maid knew it, everybody in the house knew it; letters were sent out broadcast and the dope sheets were made from it for the examination.

Now, what is stronger than that even in this statement. Were they trying to conceal it? Did they take a drive in the night time to Ann Arbor, to get it, together with other stuff so that they might be tracked, or did they just get it with other stuff without any thought of this thing that happened six months later?

They say, in order to make out the wonderful mental processes of these two boys, that they fixed up a plan to go to Ann Arbor to get this machine, and yet when they get ready to do this act, they went down the street a few doors from their house and bought a rope; they went around the corner and bought acid; they went somewhere else nearby and bought tape; they went down to the hotel and rented a room, and then gave it up, and went to another hotel, and rented one there.

And Dickie Loeb left his valise in the room. What was in the valise? Why, some books from the University Library with his card, left in the valise in the room.

Dick Loeb went to the room, took a valise containing his library card and some books from the library, left it two days in the room, until the hotel took the valise and took the books. Then he went to another hotel and rented another room, He might just as well send his card with the ransom letter, just as well.

They went to the Rent-a-Car place and

rented a car. All this clumsy machinery was gone through, without any need or anything consecutive, or any thought.

I submit, your honor, that no one, unless they had an afflicted mind, together with youth, could possibly have done it.

But let's get to something stronger than that. Werethese boys in their right minds?

Let's see.

Here were two boys with good intellect, one eighteen and one nineteen. They had all the prospects that life could hold out for any of the young, one a graduate of Chicago and another of Ann Arbor, one who had passed his ~~ex~~ examination for the Harvard Law School and was about to take a trip in Europe, another who had passed at Ann Arbor, the youngest in his class, with money in the bank.

Boys who never knew what it was to want a dollar, boys who could reach any position that was given to boys of that kind to reach, boys of distinguished and honorable fellows, of families of wealth and position, with all the world before them.

And they gave it all up for nothing,
for nothing!

They took a little companion of one of
them, on a crowded street, and killed him, for
nothing, and sacrificed everything that could be of
value in human life upon the crazy scheme of a couple
of immature lads.

Now, your honor, you ~~has~~ have been a boy;
I have been a boy, and am proud of having been a boy.
And we have known other boys. The best way to under-
stand somebody else is to put ourselves in their
place.

Is it within the realm of your imagin-
ation that a boy who was right, with all the pros-
pects of life before him, who could choose what he
would, without the slightest reason in the world,
would lure a young companion to his death, and take
his place in the shadow of the gallows?

I do not care what Dr. Krohn may say;
he is liable to say anything, except to tell the
truth, and he is not liable to do that. There is
nobody who has the process of reasoning, who does not

know that a boy who would do that is not right.

How insane he is I care not, whether medically or legally. They did not reason; they could not reason; they committed the foolishest, most unprovoked, most purposeless, most causeless act that any two boys ever committed, and they put themselves where the rope is dangling above their heads, by their act.

There are not physicians enough in the world if they all testified the same way to convince any thoughtful, fair-minded man that these boys are right.

Was their act one of deliberation, intellectual formality, or were they driven by some force such as Dr. White and Dr. Glueck and Dr. Healy have told this court?

There are only two theories; one is that their diseased brains drove them to it; the other is the old theory of possession by devils, and my friend Marshall could have read you books on that, too, but that has been pretty well given up in Illinois.

That they were intelligent and sane

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and sound and reasoning is unthinkable. Let me call your Honor's attention to another thing.

Why did they kill little Bobby Franks?

Not for money, not for spite; not for hate. They killed him as they might kill a spider or a fly, for the experience. They killed him because they were made that way. Because somewhere in the infinite processes that go to the making up of the boy or the man something slipped, and those unfortunate lads sit here hated, despised, outcasts, and the community shouting for their blood.

Are they to blame for it?

There is not any man on earth can mention any purpose for it all or any reason for it all.

It is one of those things that happened; that happened, and it calls not for hate but for kindness, for charity, for consideration.

I heard them talk of mothers.

Mr. Savage is doing this for the mothers, and Mr. Crowe is thinking of the mothers, and I am thinking of the mothers. Mr. Savage, with the immaturity of youth and inexperience, says if we hang

them there will be no more killing.

My God! This world has been one long slaughter house from the beginning until today, and killing goes on and on and on, and will forever.

Why not read something, why not study something, why not think instead of blindly calling for death?

Kill them.

Will that prevent other senseless boys or other vicious men or vicious women?

No.

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It would simply call upon every weak minded person to do as they have done. I know how easy it is to talk about mothers when you want to do something cruel, as some men talk about patriotism when they want to get something. I know all about it. But I am thinking of the mothers, too. I know that any mother might be the mother of a little Bobby Franks, who left his home and went to his school, and whose life was taken, and who never came back. I know that any mother might be the mother of Richard Loeb and Nathan Leopold, just the same. The trouble is this, that if she is the mother of a Nathan Leopold or of a Richard Loeb, she has to ask ~~herself~~ herself the question,

"How ~~can~~ came my children to be what they are? From what ancestry did they get this strain? How far removed was the ~~poison~~ poison that destroyed their lives? Was I the bearer of the seed that brings them to death?"

Any mother might be the mother of any of them. But

2m these two are the victims. I remember a little poem that seems to me to illustrate the soliloquy of a boy about to be hanged, a soliloquy such as these boys might make. He says:

"The night my father got me

His mind was not on me.

He did not plague his fancy

To muse if I should be the son you see.

The day my mother bore me

She was a fool, and glad

For all the pain I caused her,

Because she bore the lad which borne she had.

My father and my mother

Out of the light they lie.

The warrant could not find them,

So here am only I, Must hang so high.

O let not man remember

The soul that God forgot.

But fetch the county sheriff,

And noose me in a knot, and I will rot.

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And so the game is ended,

That should not have begun.

My father and my mother

They had a likely son, but I have none."

No one knows what will be the fate of the child they get or the child they bear, and the fate of the child is the last thing they think of. This weary old world goes on, begetting, with birth and with living and with death; and all of it is blind from the beginning to the end. I do not know what it was made these boys do this mad act, but I do know there is a reason for it. I know they did not beget themselves. I know that anyone of an infinite number of causes reaching back to the beginning might be working out in these boys minds, whom you are asked to hang in malice and in hatred and injustice, because someone in the past has sinned against them.

I am sorry for the fathers as well as the mothers, for the fathers who give their strength and their lives toward educating and protecting and creating a fortune for the boys that they love, for the mothers who go down into the shadow of death for their children, who nourish them

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and care for them, who risk their lives for them, who watch them with tenderness and fondness and longing, and who go down into honor and disgrace for the children they love.

They are helpless. We are all helpless. But when you are pitying the father and the mother of poor Bobby Franks, what about the fathers and mothers of these two unfortunate boys, and what about the unfortunate boys themselves, and what about all the fathers and all the mothers and all the boys and all the girls who tread a dangerous maze in darkness from the cradle to the grave?

And do you think you can cure it by hanging these two? Do you think you can cure the hatreds and the mal-adjustments of the world by hanging them? You simply show your ignorance and your hate when you say it. You may here and there cure hatred with love and understanding, but you can only add fuel to the flames by hating in return.

What is my friend's idea of justice? He says to this court, whom he says he respects-- and I believe

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he does-- your honor, who sits here patiently, holding the lives of these two boys in your hands:

"Give them the same mercy that they gave to Bobby Franks."

Is that the law? Is that justice? Is this what a court should do? Is this what a State's Attorney should do? For God's sake, if the state in which I live is not kinder, more human, more considerate, more intelligent than the mad act of these two mad boys, I am sorry I have lived so long. I am sorry for these fathers and these mothers. The mother who looks into the blue eyes of her little babe cannot help wonder what will be the end of this child, whether it will be crowned with the greatest promises which her mind can imagine or whether he may meet death from the gallows. All she can do is to raise him with care, to watch over him tenderly, to meet life with hope and trust and confidence, and to leave the rest with fate.

MR. DARROW: Your honor, may we adjourn here?

THE COURT: We will suspend until tomorrow morning at ten o'clock.

Whereupon an adjournment was here taken to ten thirty o'clock A.M. August 23rd, (Saturday), 1924.

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Tuesday, August 26th, 1924.

10:30 o'clock A.M.

Court reconvened at 10:30 o'clock A.M.

Tuesday, August 26th, 1924, pursuant to adjournment heretofore taken.

Present, same as before.

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(Whereupon Mr. B. C. Bachrach began his Argument on behalf of the Defendants, as follows):

MR. B. C. BACHRACH: May it please your Honor, and you gentlemen for the prosecution:

We are approaching the close of this momentous hearing, and as I address myself to your Honor this morning, I have a sinking feeling of humility and unworthiness.

I am somewhat encouraged by the thought that I have been selected by my colleagues and my clients to assume the burden of the responsibility of seeing to it that all proper arguments on the side of these

two defendants are made to your Honor.

How I shall take care of that responsibility must be judged by you and my colleagues hereafter.

I have concluded after laboring with the question that my duty lies in being very brief. If I am wrong in that, I have to abide by the consequences.

I want to notify your Honor that I will not talk more than one hour. I have already notified the State's Attorney,

At the threshold, I call your Honor's attention to the fact that the different experts in this case have been discussed in some measure, their worthiness or unworthiness has been commented upon, but inasmuch as the point in issue in this case is one, your Honor, and only one, namely, that of the degree of punishment, it would seem that if we were fortunate enough to have a person qualified as an expert to talk to your Honor on punishment, it would be very fortunate for all of us, including your Honor.

Mr. Darrow told you how the alienists, the few alienists who testified for the defense, were selected. They were selected with reference to their standing, their integrity, and to their wisdom.

They appeared before you. I will say more about that later, but as to the expert on punishment, your honor, fifteen years ago I had the pleasure of listening to my distinguished colleague talk on that subject.

I have conferred with him frequently during that time. He impressed me then with the value of his learning in this particular. He equipped himself with book lore and observing the various incidents that occurred in the courts in the United States and the world, and he was fortified, may it please your Honor, by a disposition wherein, to use his own expression, "Sympathy welled from him toward mankind."

Mr. Darrow has talked at length on the one subject, if your honor please, that has troubled us here, that is a subject of discussion throughout

the entire world -- what shall the punishment be --
Shall it be death, or shall it be life imprisonment?

We do not ask for anything less than
life.

And here, if your Honor please, comes
made to order a man more competent than any person
throughout the United States, to talk to your Honor
on that subject.

If your Honor please, for the last few
days, on the subject most vital in this matter, the
subject that possesses your Honor's entire interest,
you have been listening to a master. He has told
you from his reading and study what the growth of
sympathy is of the people generally, from the
ancient and barbarous punishments. He has told you
how they used to execute children as low as seven
years of age. He spoke of one case, and in his
haste to get over it he did not call your attention
to a particular thing in it, that I wish to augment.

Your honor remembers his speaking of a case in
which they burned a girl thirteen years of age, and
here are six lines from the Lawyers' Reports annotated,

mentioning this case. I read from page 200:

"The case of the girl mentioned was that of Alice DeWalborough, who Hale tells us (1 Hale, Pleas, The Crown, page 26) was burned to judgment when but thirteen years of age for the killing of her mistress, because by the ancient law none shall be hanged within age, which is intended the age of discretion, namely, fourteen years."

That was a sample of the way they treated childish offenders in the old barbarous days. They found that there was no law to hang the girl, but of course we have confidence in the people of those times and in their aims, and they quickly, by the device of this special reasoning, got all around it by the simple method of burning her.

My distinguished colleague has rapidly traced the history of punishments up to the present time. He has called attention to the fact that state after state has been abolishing capital punishment. The distinguished State's Attorney will un-

doubtedly in his reply call attention to the fact that in one or two states after abolishing it for a while they put it back. But that only, to my mind, means a throw back. They will probably be sorry for it and change it again.

Your honor has had the benefit of all the learning, of all the far-seeing thought of the experts that we brought here, and who made the appeal that the court has listened to for several days.

Now, all that I can do is to select a few points to discuss, that might in some way help your Honor to come to the conclusion that should be made in this case.

In the first place, my friend Mr. Marshall; who seems to have absorbed in his memory and in his books and in his notes all the Supreme Court decisions of the State of Illinois, and when any question comes up he presents decisions, whether they are in point or not. It so happened that there was not a single case of all the cases he read, that was in point.

I suspect, if the Court please, that the cases were gathered together to be read to a jury

before whom he expected to try this case.

That the cases were selected because of the harsh language of the court towards insanity defenses; but he had them there, and he used them on the motion to exclude, or objecting to the evidence that we offered in mitigation.

And once more, when his time came to address your Honor at the close of the case, he went through the cases, at least ninety percent of them, if not all of them, and he once more called your Honor's attention to those cases.

His plan of procedure was simple.

The bald facts attending the commission of the crime itself from the point of view of the prosecutor were to be stated by Mr. Savage.

If those facts could be held up for your honor's consideration, your honor would only have in mind a case of homicide with aggravated attendant circumstances.

His argument pursued here for over a day was to the effect that your honor had no right to hear anything in mitigation, but should only hear

matters of aggravation, and having heard them in aggravation, the mitigation was wiped out, and there you have a simple and complete case which would fit a hanging punishment.

That is what he was trying to show your honor.

He proceeded by citing cases to your honor which would have been good cases to read to a jury, showing a jury how nonsensical it was for anybody to urge a defense of insanity before a jury.

He did not quote any case to shake your honor's ruling as to your honor's duty to hear mitigating circumstances.

Now, then, he did something else. He heard the testimony of eight psychiatrists, four on one side and four on the other.

One would think that Mr. Marshall would find out by the mere listening that insanity, insanity such as the doctors describe, mental disease, a psychosis, a mental disturbance reaching such a degree that it can be labeled by what people call

insanity, that he would know something about that thing; and that when you get to a delusion, hallucination, that that man is ready to be put into a padded cell.

Now, let me show you something.

Mr. Marshall read from a case, Haensel, an Illinois case, 293.

He pointed that out as a case which would impress your honor of our foolishness in claiming that this case was not a case for some penalty less than the death penalty.

"The plaintiff in error met his wife, stuck a gun against her chest, demanded some papers, struck his mother in law in the head with a pair of pliers, and as she ran back in the bedroom fired a shot, which passed through the right side of her chest."

He followed her, a number of shots were fired, and it was an insanity defense, & the man was convicted, and so forth.

And it appears that this man had syphilis, he had a goiter, he had vertigo, he had been struck

on the head by a chain weighing a matter of a thousand pounds.

Mr. Marshall makes the comment that this man was in bad shape. He had syphilis, goiter, vertigo, and had been struck in the head. He had army service. There was some excuse for him. He was a sick man on all the showing made.

And then he goes on:

"There were no phantasies, there were no delusions, there were no hallucinations, but something of substance", after being here four weeks.

How could he help you?

What is the use?

It can make no impression on him.

Are delusions matters of substance as far as mentality is concerned?

Isn't that the last?

Doesn't it mean anything to him?

Is it all piffle?

Undoubtedly what he says is the foreword of what is going to be said by the State's Attorney.

He will say it is all piffle.

Teddy bears, phantasies, we all have phantasies, everybody has phantasies. Even Dr. Patrick, "I had phantasies", he said.

In this case we were not worried about Dr. Patrick's phantasies. Dr. Patrick is by the adolescent period, the period of puberty. I don't know what his phantasies were then, whether he had them then, whether he remembers them, but the kind of phantasies that he has now, gotten along as well as he did, won't do him any harm.

Nobody on the part of the defense claims here that having phantasies was evidence that the man was mentally diseased. What do all these things mean?

I am assuming quite a responsibility when I undertake to explain what these psychiatrists mean who have studied the matter all their lives, who have brilliant minds, equipped to attack the subject, and who come here in the fulness of their knowledge, and, briefly, try to give your Honor something that they have learned.

And, I must undoubtedly be considered presumptuous in trying to interpret their work in this case to your honor, but nevertheless I intend to try.

Considerable has been said about the inability of the State's alienists to come to a just conclusion from their examination.

It is claimed they made an examination. To repeat what has been said, Dr. Krohn is the only one that was well satisfied with the conditions under which that examination was made.

We say they had no opportunity to make an examination. We have been pounding at that, we have been telling your honor that, and now I come to your honor and present the question fairly, -- just what do you mean by that, that they did not have the opportunity to make an examination that was worth while, and worth while coming to a conclusion about.

Your Honor will remember that the most loquacious of the psychiatrists for the State was Dr. Krohn. You remember my asking him as to dealing

with each of the boys.

I call them boys, your honor, for they are below twenty-one years of age. I do not call them boys to deceive your honor.

Your honor knows just how old they are, how old or how young they look.

I hope your honor will not construe my calling them boys as an attempt to have you think they are only three or four years old.

I asked Krohn questions as to what he discovered in that examination, and I had marked down points of his examination, and asked him about them clearly. He said first the senses were all right; the logical reasoning was all right; the logical sequence was all right; there was a flowing stream of thought, a continuity of thought; and that he was oriented at the time, place and social relation. It sounds all right, intelligent, and looks as if we were getting some place. But it appears, then, that all of those things are positively consistent with a person having a psychopathic personality,

every one.

When he found those things there, he had not been shown any evidence of mental disease.

Neither had any of the other psychiatrists.

And at six thirty o'clock, may it please your Honor, on Sunday, June 1st, if I may talk figuratively, the clerk of the court called mental disease three times in stentorian tones, and a forfeiture was declared.

They had not shown the alienists of the State that they had mental disease.

Of course they did not try.

Their souls were stripped bare, so they say, but because they did not show them, that was their conclusion, and they worded it carefully.

Dr. Patrick was the first one.

"Have you an opinion doctor?"

"Yes".

"What is that opinion?"

"There was no evidence of mental disease."

He meant of course that he saw none; that none had been shown him.

Now what was that examination?

I won't go into a discussion as to whether my friend Judge Crowe feared the boys had a mental disease, or whether in his conduct as State's Attorney, charged with the duty of carefully preparing this case, -- and I want to say now lest I forget it, that I never saw a case of this importance so well prepared; the minutest detail taken care of and so expeditiously done as was done by Judge Crowe in this case.

It may be that he feared that the lawyers who might be thereafter retained would come into the courtroom, as he considered, with the only defense that he thought was possible, and that for that reason he was going to forestall them.

Maybe he thought that there was no possibility of their being mentally diseased.

Maybe he was in good faith on that, and thought all that was necessary to determine this case was to bring in some good alienists and say:

"Look them over, doctors. Are you through now? Did you look? Wait,

I will have them tell the story about

"the murder, tell it in all the details. Now you take notes, Leopold, and when he gets through you correct him on that."

The story goes along and then:

"What do you say?"

Krohn tells the reporters:

"Sane".

Krohn knows. Krohn knew what was expected of him.

His response was adequate.

Now you have heard a good deal of this, this criticism of that examination. I do not want to over do it. I have no desire to. I want to bring up the point, what should they have done?

What did they try to find out?

Were they trying to find out if the senses were alert, if the logic was good, if the continuity of thought was perfect, if the stream ran along, and if the ^{accused by} fellow knew where he ~~was?~~ ^{was?}

Is that enough?

Is that the way they found out whether ^{all} men were insane or not?

Maybe Krohn found it out that way in camp. He examined sixteen to forty a day, complicated cases; complicated cases, sixteen to forty a day xx --

MR. DARROW: After others had passed on them and found them difficult.

MR. B. C. BACHRACH: After others had labored with them and could not make up their minds whether the man was insane or not.

Well, he pointed out how they did it in one of the cases.

In one of the cases why they had to put the fellow in the guard house for three hours and that helped them to find out.

It took several hours. It took a long time that day. They didn't get through all the cases. They had to put some of them over till the next day. But how do you find out?

If the Court please, what the alienists for the State did on that Sunday there any lawyer having a high school education, that had studied a little logic, who could ask a few questions, could

come to the same conclusion that those alienists arrived at on that day.

Isn't it true?

How many people in this room are there that couldn't have determined the same identical things that those four alienists determined on that day. They have senses working. They can hear. They look at a book. They can read it. They read it correctly. They read what is said. They talk. They move around the room. They don't seem to have their feet clogged up. Their logic is good. They argue with one another. Why, the ordinary person ~~is~~ around here would say, "Yes, they look to be sane, they look to be normal."

Of course they did. They looked that way to their parents, to their brothers. How do we know they looked that way? Mr. Crowe knows they looked that way. He knows. He knows that the father of Leopold, the uncle of Loeb and the brother came down to see them when they were under investigation and they told him they felt it their duty to co-operate with him in every way, that the boys should

tell. They never dreamed that the boys were anything of this kind. Never dreamed it. Do you suppose that if they had, that they would have been talking to him as they did?

Now, then, my brother, Walter Bachrach, read to your honor in his argument one of the answers given by Dr. White, and it was couched in scientific language, beautifully done, and with the risk of annoying your honor, not by repeating the reading, but by talking about what Dr. White meant, I want to tell your honor just how they go about such an examination.

Dr. White points out that when the child is born there is very little intelligence. There is mind there, but the emotions are working. The child is hungry. A noise affects it. It has a feeling of discomfort, warmth or cold, which it expresses by cries. There is a reaction. The child in its primitive emotion takes the food that is given it. The child is not concerned in determining who pays for that food, whether it is honestly come by or not, whether the person who got it committed

crimes for it. The intelligence grows, and the emotional side of the child grows, and at an early period of life impressions are given to the child.

If the two sides of the mental life grow along in parallel lines, the child will be well balanced, just the same as it would be physically well balanced if the arms grew straight on either side, and if the legs grew straight on either side. The child would be symmetrical and evenly balanced physically. But if it does not happen, your honor, that the emotional side of the child grows in parallel lines with the intellectual side of the child, there will be the same difficulty in the mind of the child as in the physical body, if one arm grew regularly and the other was only half length.

In that case it would be a physical cripple, and the child with a mind that did not grow along parallel lines, on the intellectual side and the emotional side, would be an intellectual cripple. The seriousness of that would depend upon the discrepancy between the emotional side and the

intellectual side of the mind.

Now then, because of that, without going any further at all -- although I expect to go further with it -- because of that, I say, we must have in mind that after all, the insane person, who has the actual psychosis, the mental disease, in the last stages, let us say, for the purpose of illustration, is nothing more than a person in whose mind the emotional side has departed, and a vague discrepancy exists between the emotional side and the intellectual side.

That is all that the demented person is. That is the last.

How it winds up we are not interested in now.

Now then, the doctor said to your honor that the alienist or psychiatrist takes a person, and he knows the rules of the mind, the behavior of the mind, being familiar with them through his studying, having observed thousands and thousands of cases; and one of the first things that they observe is some sort of conduct on the part

of the person that will indicate that in a person of his mental type and environment, there has been a departure from that kind of conduct that you would be entitled to expect from him. That is the first thing that starts a suspicion that there is something wrong with the person mentally.

And so in this case.

I do not need to tell it to your honor.

When the word was flashed across the wires all over the world that these boys had confessed in the manner that has been shown here, nearly all the world at once said,

"They must be ~~as~~ crazy".

Why?

Because the act itself was such a clear and unmistakable departure from the pattern of mind of such persons, fixed in life, toward their environment, as these boys were.

Now, I am not going to discuss the crime itself. That has been done by Mr. Darrow.

But, having that in mind, knowing that much of the thing, the alienist talks to the boy

or man, whoever it is, having a clue of that departure from the pattern, and finds out if the thing was an adequate emotional response to a given logical stimulus. If it had been a crime of revenge, or passion, or something of that kind, it would be easy to understand. But when you cannot find in the crime itself anything indicating any normal sane reason such as ordinary normal people would understand as a reason, then you have a right to suspect that there is something wrong. But it is not conclusive yet.

Then they begin to examine, and as they did in this case, they get the man to talk about his likes and his dislikes. They get the man to talk about his aims, his ambitions, his child life, his dreams, night dreams and day dreams, and the good doctor, and all of them told you, that the phantasies or day dreams were the things that the child had which compensated him for his disappointments in his daily facing the situations in life.

They compensated him.

How?

evidence of them from the State's Attorney before any alienist or any lawyer had the slightest opportunity of talking with them.

As to the delusions of Leopold as a superman, and of Dickie Loeb as a superman, we get evidence that dates back long prior to the commission of the crime, in October, 1923. So we are not in the least disturbed about any argument of that kind.

Your Honor will remember, if it is necessary to recall it, that when the argument occurred in the office of the State's Attorney on that notable Sunday of June 2~~2~~ 1st, 1924, an argument occurred between Dick Loeb and Babe Leopold -- that is, what the State's Attorney was calling them -- in which Leopold tried to convince the State's Attorney that it was Loeb who struck the ~~blow~~ blows with the chisel and sat in the rear seat of the car.

In order to prove it, he called attention to the fact that Richard Loeb was reading detective stories, playing detectives, and had notions of being a criminal, a Master Criminal and so forth.

Just how far that went, I don't have in mind at this particular moment, but it was there. The whole thing was there.

Your honor will remember the letter that was read to you by Mr. Darrow yesterday, written from the Twentieth Century train, in which the two supermen were corresponding with one another. Mr. Darrow called it crazy. It seemed to me idiotic.

"You committed a crime, Dick. I forgave you for it. I, ~~was~~ as a superman (I am interpolating again) forgive you as a superman for committing a crime. You are a superman, but I made you a superman. so I am a bigger superman than you are, and I forgave you that crime. You asserted that Marcus Aurelius was the originator of stoicism. You said that, a thing like that. How dare you say a thing like that? But it was not a very big crime, and so I forgave it."

It ~~was~~ not got'en up for this case, was it?

It ~~was~~ not fabricated for this case.

There was no opportunity to fabricate it for this case. It was long before this happened.

Now, then, I have indicated briefly what an honest, extended examination might bring forth.

I am going to show your honor now what it did bring forth.

I have already told you what the examination of the alienists for the State brought forth, and it was the senses, the logical sequency, of orientation, the stream of thought and continuity of thought. That is the best, the most positive statement that came from the alienists for the State.

Now the alienists for the defense, I will just touch lightly on these things, your honor will remember them. Take Dickie Loeb first.

First they found an abnormal phantasy life. The substance of the phantasies was peculiar; it was the phantasy of the commission of a perfect crime, and about being abused in jail.

The next one was the prolongation into adolescence of these infantile phantasies. They learned that.

They learned also that he projected into the world of reality his phantasy life by endeavoring to conform conduct thereto, ~~was~~ such as playing detective, playing gang leader, playing committing burglary as well as the actual commission of many crimes of a more or less serious nature.

He also projected the phantasy into the world of reality in the ride in the police car. He told the reporters on that occasion that he always wanted to ride in a Marmon, and this was his opportunity.

Of course, the Marmon meant the police car.

He lived out his phantasies by his life in the jail. His satisfaction in the jail life and his evident happiness that was described by all the alienists for the defense.

That is one thing; all these things I put under one.

Now they also discovered his criminalistic tendencies ^{of} activity; the lying and boastfulness, the fainting spells, his infantile and

twisted emotional development, making possible a consideration of his own brother and father as possible victims of kidnaping.

His pathological desire for sympathy, his pathological desire for power. All these things a real examination disclosed.

Here. The commission of crimes in order to have the feeling of superior knowledge over every one, -- you will remember that in the evidence -- and mixing with a crowd to enjoy their evident confusion and ignorance.

The interest in the palpitation of his heart. His heart beat faster when he was engaged in some criminalistic enterprise.

He had an inferiority feeling.

Now from early sheltered boyhood, that early sheltered boyhood, without stopping to take much time with that and what there was about it, surely showed your honor that this boy did not have the opportunity to adjust himself and his emotions to real life.

If you take any baby and keep the baby

confined in a room all of his life up to thirteen or fourteen years of age to be extreme, you can imagine, what the situation might be when the child gets out.

Whether the child will ever adjust or ^{to} not, the matters and things that it must adjust to in life, is a very serious question. It must remain unanswered now.

The best thought at this day seems to be, your honor, in the raising of children is in the kindest ^{and} understanding sort of way to see to it that their problems of life are faced understandingly. Small problems, large problems, whatever the problems of life are, and the baby child has got to meet all sorts of things, the old fashioned idea was, let the baby run wild for a few years, but that thought is not any longer considered good.

The thought is to see that the emotional life, that the emotional response is adequate and not twisted, and that the child will meet its duties and attitude toward life normally and in a healthy frame of mind.

Now this sudden precipitation of Dickie Loeb from early sheltered boyhood into college life with the influence of older companions leading to drink and sex temptations that they learned, that is important too. They get all their materials together and then they form a conclusion.

The influence of the nurse you have heard about. The heightened feeling of inferiority causing resort to crime as a method of a compensatory feeling of power, you are familiar with that. The pathological need for showing off before his associates in iniquity, and his admitted inability to commit crime without a companion before whom to demonstrate his superiority.

Then we come to the endocrine disorders, and then we come to Loeb's basal metabolism, seventeen percent minus, and the instability of the nervous system.

We find the disparity between ~~his~~^{his} intellectual precocity and his emotional retardation, which was one of the things that the psychiatrist~~s~~ was looking for. Then they found his conduct in connection

with the crime itself; absence of remorse, absence of disgust, absence of sympathy, absence of repulsion.

They found his reaction to Mrs. Franks' testimony; his reaction to the suggestion of murdering Walter Bachrach. They found his normal and customary behaviour after the murder, the return to routine existence after the murder and before apprehension.

He went along in life as usual; there was no difficulty about that; they took all that into consideration. They observed his actions and attitudes in the courtroom. The alienists for the State observed them, too. They ^s that he walked all right, that he smiled a good bit; and when Mr. Crowe raised some kind of a rumpus, and called attention to his constant smiling, he changed it. The others did not notice that he changed it at all. They smiled once in a while, and they do not smile, just depending on how they feel.

MR. DARROW: How would he want them to behave? How would he like to have them act, having to sit here?

MR. B. C. BACHRACH: It occurs to me at this time to say that they would have to go a long way if they could act in a way that would suit Mr. Crowe.

Then they learned from that examination the thoughts and plans of suicide. They learned of the thoughts of killing Babe and Dick Rubel, and they saw from their experienced investigation a lack of judgment.

This we found corroborated by witnesses who were called by the defense.

They found that he was willing to die, that he considered life complete, but that if he must go to jail for life, he would be satisfied if he could obtain a complete newspaper file dealing with the crime and the trial. So much they found out from Loeb.

I will go rapidly now, with reference to Leopold. They found out ^{something} ~~thing~~ about Leopold; his sex life, his early sex life. He had some trouble. There was a governess there. She was not there as long as the other. There were endocrine disorders. There was a phantasy life. There was the king-slave

phantasy. There was a prolongation of the same phantasy over a period of years.

There was a projection of phantasies into the world at large, by the search for a superman whose will should govern his activities. He found him eventually in Loeb.

There was the hedonistic philosophy, and the superman idea.

He had a delusion that Dick measured up to the test of the superman, a delusion that was serious.

His letter of October 10, 1923 to Dick shows that. Your H nor heard that yesterday.

You heard the statements of the witnesses called by the defense. He talked ~~kukuk~~ superman to them. He argued in the law class. He maintained in the law class that the rules of law as to torts and crimes did not apply to him. He said superman, but of course we all know he meant himself.

Then he finds that early in life he began a deliberate, intentional destruction of his emotional life.

He showed a willingness to kidnap his own father.

He was conscious of setting out to lead a purely intellectual life, going to leave emotions out of it. He used his intellectual precocity as a weapon with which to combat physical inferiority.

His interest in religion.

Your Honor remembers the churches.

The idea his mother was a Madonna, his aunt was a Madonna.

He classified the churches.

His christ idea.

His atheism.

That was confirmed by his mother's death.

And then came the tremendous disparity between his intellectual precocity and the appropriateness and adequacy of his emotional responses.

His idea of grandeur and comparison of himself in jail to Napoleon at St. Helena.

His illnesses at puberty.

His lack of resistance to infection as disclosed by the examination.

His feelings of inferiority. His small

stature, His attendance at the girls' school, being accompanied to the school by a nurse for many years. His projection into college life at an early age, with the same temptations for drink and sex, and the need of living up to the standards of much older men.

His attitude towards hanging.

His readiness, his desire to show consistency. His desire to leave puzzles for the scientists.

His desire to write an apologia.

His obvious lack of good judgment, which was even apparent to his companions who testified as lay witnesses.

His willingness to subject himself entirely to the hazards of a criminal career in order to obtain satisfaction of his pathological needs.

He had a paranoid personality.

He had a schizophrenic personality.

Now, one of the most interesting things you have, whether it has been called to your Honor's attention, is this: There is no doubt he considered

himself a superman.

If that was not a delusion and there was that in him which justified him in thinking he was a superman through normal tests, what do you think about what he did to that superman?

Here was a superman in his custody. He ruined the superman by this crime.

And for what?

Now, Mr. Marshall in ^{his argument} ~~arguing~~ called attention to the fact -- of course, he was not ~~arguing this question~~, but he was trying to show your honor how absolutely fiendish and cold-blooded these young men were, in order to build up the aggravation which would justify the rope. He called attention to the fact, ^{that} when they went on this ride, ^{after they had} ~~in which~~ ~~there was taken Bobby Franks and his death resulted,~~ ^{covering} ^{and killed him} ~~having the robe for~~ ^{being} ~~the body, to carry the body~~ ~~in, the car, full of blood, the body in there -- I am~~ ~~not referring to the insane and my judgment that~~ ^{of these boys in executing their plan} ~~thought that that was the right way to do it;~~ I am ~~not referring to that; that has been covered~~ ^{these two defendants} ~~but~~ Mr. Marshall spoke the fact that they were armed with

a 32 calibre revolver and a 38 calibre automatic, as additional aggravation, making it clearly within the death penalty.

These boys were prepared to kill anyone or more persons that would attempt to stop them, and they could easily expect to be stopped.

It might be two, it might be four, it might be eight. It might be ten. I don't know how many bullets they had along.

But he argued it to you. He wanted you to consider it, because that shows they are so bad that nothing less than hanging will answer.

And what do you think as to a plan to get five thousand dollars for either one of them -- they were to split it in two -- a plan, a simple little plan of getting five thousand dollars?

Was it an insane plan?

Willing to kill Robert Franks?

That was a matter in the planning that took a few minutes. That was not of much importance, the killing of the boy. Any boy will do, any boy will do whose father has got enough money.

Now, then, Dickie Loeb had three thousand dollars and the other boy in May had some three hundred and some odd dollars in the bank and they could get what money they wanted.

He wanted to go to Europa.

Maybe he will argue that the whole plan, the purpose of the whole crime was to get enough money to have a good time in Europe.

But his father promised him three thousand dollars, and he only needed two thousand dollars more to make up the five thousand.

He could have a good time for five thousand dollars in Europe.

And he was first willing to kill Bobby Franks and then any policeman or any other person that might stop them.

It would seem to be not the right kind of a plan and if he was to present that plan to any normal person he would say it is a little too complicated, it has got too much danger in it, it does not seem like a workable sort of a scheme.

Now just one word more, if your honor please, and I am through.

From what I have indicated your honor can see that we could go on a long time and make application of the different matters in this case; but we have reached a position before your honor where, on the one hand, the State's Attorney and his assistants are saying to your honor, arbitrarily I contend, your honors is the responsibility, there is no shifting of responsibility here, the State's Attorney standing up and saying:

"I am willing to let your honor do what you think is right",

which would be ordinarily the right thing in a serious case. Down in the federal court they do not listen to a prosecutor for two minutes, they don't ask the prosecutor what the sentence should be the judge says that the law imposes on him the duty and obligation of sentencing the person. And all he need do here he has done well. When he prepared his case and presented it to the grand jury, presented the matters in aggravation to your honor, and as far as his urging that there should be a maximum sentence, he can relieve himself of that difficulty very easily by leaving it up to the court. He won't. He will

go on and urge that your honor ought to do it.

There is the State on the one hand urging that your honor shall put these two boys to death. You are listening for the last time in this case to anybody on the part of the defense, humbly, may it please your honor, frankly ~~begging~~ begging and pleading, your honor, to let these boys live and not bring upon the families of these two boys the great anxiety and bitterness ~~and~~ suffering, that death upon the gallows ^{to} ~~that~~ these two boys must necessarily bring.

I thank your honor for your patience.

THE COURT: A five minute recess at this point, gentlemen.

Whereupon a short recess was here taken
by Court and Counsel.

- - - - -

Court reconvened pursuant to
short recess heretofore taken.

(Whereupon State's Attorney Crowe
here began the closing argument on
behalf of the People, as follows):

MR. CROWE: May it please the court.

THE COURT: Mr. Crowe.

MR. CROWE: Before entering into a discussion of the
case at bar, I desire to express to your honor our ap-
preciation for the uniform courtesy and patience with
which you have treated myself and the representatives
of my office.

Before going into a discussion of the
merits of the case, there is a matter that I would
like to refer to. The distinguished gentleman whose
profession it is to protect murder in Cook County, and
concerning whose health thieves inquire before they go
to commit crime, has seen fit to abuse the State's
Attorney's office, and particularly my assistants,
Mr. Marshall and Mr. Savage, for their conduct in this

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case. He has even objected to the State's Attorney referring to two self confessed murderers, who have pleaded guilty to two capital offenses, as criminals.

And he says that Marshall has no heart or if he has a heart that it must be a heart of stone; and that Savage was probably selected on account of his name and not on account of his attainments. That they have dared to tell your Honor that this is a cold-blooded murder; they have violated all the finer sensibility of this distinguished attorney whose profession it is to protect murder in this community, by representing this crime as a dastardly, cruel, premeditated crime.

It is their business, if they refer to this case at all; but Bachrach in his closing argument said that I haven't any right after a plea of guilty has been entered and the evidence presented,-- I haven't any right to talk to your Honor. That this case should be taken under advisement by you. With merely the plea of the defense the State's Attorney ought to go back to his office; he has no business to argue on behalf of the

3m people of the State of Illinois at all. Their arguments must go uncontradicted and without a reply.

We ought not to refer to these two young men, the poor sons of multimillionaires, with any coarse language.

Savage and Marshall should have come up here and tried them with kindness and with consideration.

I can imagine, your Honor, when this case was called for trial and your honor began to warn these two defendants of the consequences of their plea, and when you said we may impose the death penalty, Savage and Marshall both rushing up and saying,

"Now, Judge, now, Judge, not so fast.

We don't intend to be cruel in this case. We don't intend to be harsh.

We want to try these boys, these kiddies, with kindness and consideration."

Your honor ought not to shock their ears by such a cruel reference to the laws of this State, to the penalty of death. Why, don't you know that one

4m of them has to shave every day of the week, and that is a bad sign. The other one only has to shave twice a week and that is a bad sign. One is short and one is tall, and it is equally a bad sign in both of them. When they were children they played with Teddy bears. One of them has three moles on his back. One is over developed sexually and the other not quite so good.

My God, if one of them had a hair lip I suppose Darrow would want me to apologize for having had them indicted.

Can you imagine Savage and Marshall making a plea of that sort to your honor, and saying,

"Instead of sending these two mad boys, who are wandering around in the dark, instead of sending them for life to ~~prison~~ prison, parole them to us. Marshall will take Dickie and Savage will take Babe. And we will try to get them out of this phantasy life. We will try to wake them up, out of their dreams?"

I know ~~your~~ your honor would have said if they had

pursued that line of conduct. You would have said,

"Mr. Sheriff, search these men, find out how much money they have in their pockets."

And if they had not any money in their pockets your honor would tell the sheriff to take them out to the psychopathic hospital and you would send for me and say,

"My God, Crowe, send up somebody who has got some brains to prosecute a murder case in my court room."

If we are cold-blooded, we have planned according to Mr. Darrow for three months, and we have conspired to take the lives of two little boys who are wandering around in dreamland. We have been held up to the world as men who desire blood, who have no kindly instincts within our hearts at all. I do not believe that is fair to Tom Marshall. Tom Marshall has lived in this community for years. He is a kindly man in private life; he is a man of family; he enjoys the respect and confidence of every person who has been fortunate enough to know him.

Joe Savage is a decent man, a clean living man, a man of kindly instincts. He is a man of family also, and he enjoys the confidence and respect of everybody in this community. I do not believe that even Mr. Darrow, who has known me for years, or any other person who knows me, would tell you that Bob Crowe is a cruel, vicious, heartless monster. I am a man of family; I love my children, four of them, and I love my wife, and I believe they love me. I have never been cruel or vicious to any living person in my life.

I have never prosecuted any person for any wrong that he did me personally, and I have been grievously wronged in the past. I have never sued any person for any debt he owed me, although I have many debts now owing to me. I believe in God,— and that is a fault in this case, a fault not only to the two murderers, but a fault to the master pleader whose profession it is to protect murder in this county. I believe in the laws of this state. There is nothing personal in this prosecution with me. If I were not a State's Attorney or if I were

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not on the bench, I would have absolutely no feeling in my heart against these two as individuals. When they were in my care and custody, where it was a matter of man to man, I treated them with kindness and consideration. That is the sworn testimony in this case, that while they were in my custody they were treated with kindness and consideration.

When I first got Leopold's name as a possible owner of these glasses, when I got the name of a lady of this community of respectability and refinement, when I got the name of a prominent lawyer, who might have been the owner of these glasses, I treated all three of them with kindness and consideration. I did not bring them into the State's Attorney's office, so that their names would be headlined across the newspapers, connected with this terrible crime, where they would have their pictures taken by every newspaper in the country. I brought them over to the LaSalle Hotel, so that if none of them had any connection with this case, no disgrace or no notoriety would have attached to them. I think the State's Attorney

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of this county is just as kindly a man as the paid humanitarian, the man who believes in doing his fellow citizens good,— after he has done them good and plenty. But when I had fastened this crime upon these defendants, then I had a duty to perform, a sworn duty to perform the same as your honor has.

I have a right to forgive those who trespass against me, as I do, in the hopes that I in the hereafter will be given my trespasses; as a private citizen I have that right, and as a private citizen I live that religion.

But, as a public official selected by the people, charged with the duty of enforcing the laws of my country, I have no right to ~~far~~ forgive those who violate their country's laws.

It is my duty to prosecute them.

Your Honor has no right to forgive those who trespass against the State of Illinois.

You have a right, and I know you do forgive those who trespass against John R. Caverly, but sitting here as the Chief Justice of this great Court, you have no right to forgive anybody who violates the

law. you have got to deal with him as the law prescribes.

And I want to say to you, your honor, in this case, with the mass of evidence presented by the State, if a jury were sitting in that box and they returned a verdict and did not fix the punishment at death, every person in this community, including your honor and myself, would feel that that verdict was founded in corruption.

And I will tell you why. I have taken quite a trip during the last four or five weeks. I thought I was going to be kept in Chicago all summer trying this case, and that most of my time would be spent in the criminal court building. And I find I have been mistaken. I did come up to your honor's court room five weeks ago, and after I was there a little while Old Doc Yak -- is that his name? -- the man from Washington -- oh, Dr. White, -- Dr. White took me by the hand and led me into the nursery of two poor, rich young boys, and he introduced me to a teddy bear. Then he told me some bedtime stories, and after I got through listening to them, he took

me into the kindergarten and he presented to me little Dickie and Babe, and he wanted to know if I had any objection to calling them that, and I said no, if he had no purpose.

And after he had wandered between the nursery and the kindergarten for quite a while, I was taken in hand by the Bachrach Brothers and taken to a psychopathic laboratory, and there I received quite a liberal education in mental diseases, and particularly what certain doctors did not know about them.

The three wise men from the East, who came on to tell your honor about these little babes, and being three wise men brought on from the East, they wanted to make the picture a little more perfect, and one of them was sacreligious enough to say this pervert, this murderer, this kidnaper thought that he was the Christ child and that he thought that his mother was the Madonna, without a syllable of evidence any place to support the blasphemous and sacreligious statement.

Who said that this young pervert over

thought he was the Christ child?

He has proclaimed since he was eleven years of age that there is no God.

"The fool in his heart hath said there is no God."

I wonder now, Nathan, whether you think there is a God or not.

I wonder whether you think it is pure accident that this disciple of Nietzschean philosophy dropped his glasses or whether it was an act of Divine Providence to visit upon your miserable carcasses the wrath of God in the enforcement of the laws of the State of Illinois.

Well, if your honor please, after the Bachrach had completed my education in the psychopathological laboratories, then my good friend Clarence Darrow took me on a Chautauqua trip with him, and, visiting various towns, we would go to social settlements, such as the Hull House, and Clarence would expound his peculiar philosophy of life, and we would meet with communists and anarchists, and Clarence would regale them with his philosophy of the law, which

means there ought not to be any law and there ought not to be any enforcement of the law.

And he even took me to Springfield, where he argued before the legislature that you ought to abolish capital punishment in the State of Illinois.

I don't know whether the fact that he had a couple of rich clients who were dangerously close to the gallows prompted that trip or not. I know when he was a member of the legislature he did not abolish it or introduce a bill for that purpose.

Yes, and he even on this tour criticized the state's Attorney of this county severely because he in a humane way wanted to correct the law so that men of this sort could be dealt with before somebody lay cold in death, and that the children of this county might be protected.

If your Honor please, when I occupied the position at that your honor graces, I had an unfortunate man come before me. He was a man of my own race, of my own faith. I don't know whether his pineal gland was calcified or ossified. I don't know whether he had club feet or not, and I did

not inspect this back to find out whether he had a couple of moles on him.

I don't know whether he developed sexually at fourteen or at sixteen.

I know under the law he had committed a dastardly crime; he had taken a little six-year old girl, a daughter of the poor, and he was a poor man and he outraged her and he took her into the basement and he covered her over with coal.

He did not even have the decency or the heart to put a handkerchief over that little dead face as he heaped the coal on it.

The law says in extreme cases death shall be the penalty.

If I were in the legislature I might vote against such a law.

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I don't know. But as a judge, I have no right to set aside that law. I have no right to defeat the will of the people, as expressed by the legislature of Illinois. I have no right to be a judicial anarchist, even if Clarence Darrow is an anarchistic advocate. He says that hanging does not stop murder. I think he is mistaken. From the time Thomas Fitzgerald expiated his crime upon the gallows, I have not heard of any little tot in Chicago who met a like fate to that which Janet Wilkinson met.

He says hanging does not stop murder. I will direct your honor's attention to the year 1920, when Judge Kavanagh, Judge Brentano, Judge Barrett and Judge Scanlan came over here at my request and from the Fifth day of May until the First day of July tried nothing but murder cases. In addition to the many men that they sent to the penitentiary for manslaughter or a term of years for ~~murder~~ murder, in that brief period of less than sixty days, fifteen men were sentenced to death in the criminal court of Cook County. The records of the police department, the records of the Chicago Crime Commission, show that as the result of that, murder fell

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fifty-one per cent in Cook County during the year 1920. We had a time here when every night in every newspaper there was a column devoted to the number of automobiles stolen. We established an automobile court, and I presided in it, and after we had sent several hundred to penal institutions for stealing automobiles, the Rolls Royce became just as safe as the fliiver on the streets of Chicago.

We had a reign of terror inaugurated here for years by criminals who dominated labor unions. They were above and beyond the law. They laughed at it, and spat in its face, just the same as these two poor young sons of multimillionaires. Forty-one of them were convicted in the courts of Cook County. The building industry, that had been strangled for years, began to revive and take on life, and we have not heard anything more of the Maders, or the Murphys, or the Walshes since. Punishment in jail does not deter crime? Why are there so few violations of the laws of the United States? When a man files his

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income schedule, why does he hire an auditor to see that he makes no mistake? And yet he goes over on his personal property before the Board of Assessors and Board of Review and conceals millions. Why? Because when you get into the United States court, your honor, where having violated the laws of the United States, if you are guilty, no plea of mercy however eloquent or by whom delivered will cheat the law there.

You have heard a lot about England. Well, I was never very enthusiastic about England myself. That is due to heredity in me. I never had any liking or respect for her laws as they applied to my ancestors and people in an adjoining isle; but I have learnt to have a wholesome respect for the manner in which they enforce the laws of England in England.

There murder is murder; it is not a phantasy. There, justice is handed out swiftly and surely, and as a result there are less murders in the entire Kingdom of Great Britain yearly than there are in the

City of Chicago.

The police of England do not carry weapons. What would happen to the Chicago police if after giving notice, they all went out one night without a weapon?

May we recess here, Judge?

THE COURT: Suspend until two o'clock, gentlemen.

Whereupon an adjournment was here taken to 2:00 o'clock P.M. Tuesday, August 26th, 1924.

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Tuesday, August 26th, 1924.

2:00 o'clock P.M.

Court reconvened at 2:00 o'clock P.M.

Tuesday, August 26th, 1924, pursuant to adjournment heretofore taken.

Present, same as before.

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(Whereupon State's Attorney Crowe resumed his closing argument as follows):

MR. CROWE: May it please the court, we have heard considerable about split personalities in this case, and I was somewhat surprised to learn that my old friend, the humanitarian, who has acted as the kindly old nurse in this case for the two babes who are wandering in dreamland, also possessed a split personality.

I have heard so much of the milk of human kindness that ran out in streams from his

large heart, that I was somewhat surprised to know that he had so much poison in his system also.

It is wrong, if your honor please, for the State's Attorney and his two assistants to refer to these two perverts, these two atheists, these two murderers in language that they can understand.

We ought to treat them with kindness, we ought to treat them with consideration. But it is all right ~~for~~ for Mr. Darrow to take an honorable physician, who has for years enjoyed the confidence of the people of the community, who has enjoyed the confidence of all the Judges and the various States Attorneys in the past and characterize him without a shred of evidence, without the slightest foundation, as a peddler of perjury, and herald that cruel charge broadcast over this land.

Where is there anything in this case that warrants Clarence Darrow in making such an infamous charge against Dr. Kroh?

I would suggest that if they want

mercy and charity, they practice a little bit of it.

Treat them with kindness and consideration?

Call them babes, call them children?

Why, from the evidence in this case they are as much ~~not~~ entitled to the sympathy and mercy of this court as a couple of rattle snakes, flushed with venom, coiled and ready to strike.

They are entitled to as much mercy at the hands of your honor as two mad dogs are entitled to, from the evidence in this case.

They are ~~not~~ no good to themselves. The only purpose that they use themselves for is to debase themselves.

They are a disgrace to their honored families and they are a menace to this community.

The only useful thing that remains for them now in life is to go out of this life and go out of it as quickly as possible under the law.

As I said, we had been traveling considerable since this trial began. We have been through dreamland; we have been through the nursery. When I came into this case, I thought the

playthings of these two perverts, their play toys were bloody chisels, robes and gags, guns and acid.

And one of these wise men from the east told me I was mistaken, that their play toys are teddy bears, soldiers uniforms, policemen's uniforms, and the toys that all healthy minded children delight to play with.

We have been in psychopathic laboratories, we have been in hospitals, we have been before the legislature, and we have been addressing meetings of communists and expounding a doctrine as I consider as dangerous as the crime itself.

I think it is about time we got back into the criminal court. I think it is about time that we realize that we are before the chief justice of this court, and that we are engaged, not in experimenting, not in philosophical discussions, but we are back here trying the murder case of the age, a case the very details of which not only astonishes but fills you with horror.

"Oh", but Mr. Darrow says "these poor little sons of multi-millionaires; it is their wealth

that is their misfortune; if it was not for their wealth there would be no interest in this case."

And yet fifty years ago Charlie Ross was kidnaped, not the son of a multi-millionaire. He was never found, and yet we all, even those of us born many years after, still talk about the case of Charlie Ross.

There is something in the nature of the crime itself that arrests the attention of every person in the land. A child is stolen.

The heart of every father, the heart of every mother, the heart of every man who has a heart, goes out to the parents of the child.

Bobby Franks was kidnaped, and when we had not the slightest notion of who was guilty of the dastardly crime, the papers were full of it.

It was the only topic of conversation.

It remained the only topic of conversation for a week before the State's Attorney of this County called in Nathan Leopold, Jr.

Their wealth in my judgment has not anything to do with this, except it permits a defense

here seldom given to men in the criminal court.

Take away the millions of the Loeb and the Leopolds, and Clarence Darrow's tongue is as silent as the tomb of Julius Caesar.

Take away their millions, and the "Wise men from the East" would not be here, to tell you about phantasies, and teddy bears and bold, bad boys who have their pictures taken in cowboy uniforms.

Take away their money, and what happens?

The same thing that has happened to all the other men who have been tried in this building, who had no money.

A plea of guilty, a police officer sworn, a coroner's physician sworn, the parents of the murdered boy sworn, and a sentence.

I used to wonder what the poet Grey meant when he talked about the simple mantles of the poor.

Clarence Darrow once said that a poor man on trial here was disposed of in fifteen minutes, but if he was rich and committed the same crime and

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he got a good lawyer, his trial would last twenty-one days.

Well, they got three lawyers and it has lasted just a little bit longer, in addition to the three wise men from the east.

What are we trying here, if your honor please, a murder case?

And what is the evidence presented by the State upon which they seek a verdict?

A murder as the result of a drunken brawl, a murder committed in hot blood to avenge some injury either real or fancied?

A man shooting down another because he debauched his wife and destroyed his home?

A murder, the result of impulse or passion?

No. One of the most carefully planned murder cases that your honor or I in all our long experience have ever heard about.

A murder committed by some young gamin of the streets whose father was a drunkard and his

mother loose; who was denied every opportunity, brought up in the slums; ~~was~~ never had a decent example set before him?

No.

But a murder committed by two super-intellec~~ts~~ coming from the homes of the most respected families in Chicago.

Every advantage that love, money and wealth and position could give them was theirs.

A man's conduct, I believe, your honor, depends upon his philosophy of life.

Those who want to grow up to be respected citizens in the community, to be useful citizens, they have got a correct philosophy of life.

Those who want to excel in crime, those ~~who~~ who want to tear down instead of build up, they select the wrong philosophy in life. That is all there is to this.

They had the power of choice, and they deliberately choose to adopt the wrong philosophy, and to make their conduct correspond

with it.

Way last November, after these two defendants had had a quarrel and made it up -- and I will not go into the nature of that quarrel, there is a lot of evidence in this case that has not come out, and I do not intend to repeat it, to shock any person who may be listening.

These two defendants were perverts, Loeb the victim and Leopold the aggressor, and they quarrelled.

Then they entered into a childish compact, -- a childish compact, Dr. Healy says; a compact between these two so that these unnatural crimes might continue.

Dr. Healy says that that is a childish compact.

I say if Dr. Healy is not ashamed of himself, he ought to be.

My God, I was a grown man before I knew of such depravity. They talk about what lawyers will do for money, but my God, I am glad that I do not know of any lawyer who would get on the witness stand and under oath characterize an unnatural agree-

ment between these two perverts as a childish compact.
Darrow and Bachrach that that is an evidence of insanity.

The statutes of Illinois say that crimes
against nature are crimes punishable by imprisonment
in the penitentiary.

It is not a defense to a murder charge.

Mitigation! Mitigation!

I have heard so many big words and for-
eign words in this case that I sometimes thought
that perhaps we were letting error creep into the
record, so many strange, foreign words were being
used here, and the constitution provides that these
trials must be conducted in the English language;
I do not know; maybe I have got aggravation and miti-
gation mixed up.

It is a mitigating circumstance, if your
honor please, that Leopold when they were outlining
the plan of this conspiracy and murder, wanted to
take a little girl, a daughter of the rich, and first
rape her and then murder her and then collect the
ransom.

in. If that evidence had been put in by the state I would have thought it was an aggravation. These three wise men, with their distorted theories, hired by the defense, they put that evidence in, and Clarence Darrow calls it a mitigating circumstance.

Why, when they murder a boy they ought to be treated with kindness and consideration. If they had taken a little tot, a little girl, debauched and raped her, I suppose we ought to have given each a medal and told them to go their way. My God, what are we coming to in this community?

I want to tell your honor, bearing in mind the testimony that was whispered into your ear, one of the motives in this case was a desire to satisfy unnatural lust. They first wanted a little girl so that Leopold could rape her and then they decided on a little boy. What happened? Immediately upon killing him they took his trousers off. How do you undress a child? First the little coat, the collar, the tie, the shirt, and the last thing is their trousers. Yet, immediately after killing this poor little boy, his trousers alone came

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off, and for three hours that little dead boy, without his trousers but with all his other clothes on him, remained in that car, and they did not take the balance of the clothes off until they pushed the body into the culvert.

You have before you the coroner's report, and the coroner's physician says that when little Robert Franks was examined, his rectum was distended that much, indicating almost the size of a half-dollar.

MR. DARROW: Well, now--

MR. B. C. BACHRACH: If the court please, I take exception to that statement. The coroner's report said there was no sign of recent dilation.

MR. CROWE: Your honor has the report.

MR. B. C. BACHRACH: Your honor will look at the report.

MR. CROWE: He says there was no sign beyond a distended rectum.

MR. DARROW: No, that isn't what he said at all.

MR. CROWE: And I want to call your Honor's attention to the fact that this little naked body lay in the water all night long with running water going

over it, and that is why there wasn't any other evidence.

Away back in November, if your honor please, when this crime first began to take form, a kidnaping for ransom, it was necessary to write some letters.

These two little boys wandering around in dreamland know what very few boys and very few men know except those engaged in work such as we are engaged in, that it is possible to take a typewritten document and tell what kind of a machine it was written on.

So they go to Ann Arbor and they steal a typewriter, a portable typewriter for the purpose of writing those letters on it, and in order to divert suspicion from themselves or any other student, because if nothing but a typewriter was stolen, the belief would be prevalent that it was the work of some student, some member of the fraternity, they stole watches and jewelry and other things to divert suspicion.

They go along working out the details of

this crime.

Mr. Darrow says that there is no motive, that it is a senseless crime; that the ten thousand dollars had absolutely nothing to do with it.

I will undertake to prove, not by argument, but by sworn testimony, that the ten thousand dollars had everything to do with it.

I will show that this was not the crime of diseased minds, but this was the crime planned in all its minuteness by more than ordinary intellects.

Dr. Healy on his cross examination testified as follows:

"Q Do you regard this as a crime of passion?

"A No sir.

"Q It is a cold blooded proposition premeditated and planned?

"A Yes sir.

"Q Now, doctor, if in the inception of this crime it has appeared in evidence that the first thing the defendants did was to steal a typewriter so that

it would be difficult for the authorities to trace the letters written, would you consider that a part of childish phantasy, or would you consider that a result of their intellectual attainments?

"A. It is a result of their intellectual attainments in my opinion.

"Q. If after having procured the typewriter they bought a block of paper, plain paper, that it would be difficult or impossible to trace, and wrote the letters on that, would that be the phantasy working, or was it their normal intellect working?

"A. I think it was their good intellects working.

"Q. And if after having written the letter the defendants destroyed the remaining sheets of paper by burning them, and attempted to destroy or lose the typewriter, by throwing it into the

"Lake, after removing the keys and throwing them in a different part of the lake, was that boyish phantasy in operation, or was it their good intellects?

"A I think it was all part and parcel of their desire and plans to commit a perfect crime.

"Q Is it a phantasy or intellect that is operating?

"A It is intellect.

"Q And after having learned from the rent-a-Car people that in order to rent a car they would have to give references, one a Chicago reference, have to give an address where to an identification card could be mailed, to have a bank reference, was it phantasy or intellect? Now, intellect is sometimes commonly referred to as good horse sense, is it not?

"A I think it was their intellect working. I Don't know about the horse sense, but it is their intellect.

"Q Well, good, common sense?

"A I don't think they were showing much good common sense at all in committing the crime at all, you see. But having started on it they used their intellects.

"Q Having found that they had to answer those requirements from the Rent-a-Car people was it intellect or phantasy that caused --

"A Intellect.

"Q Wait a minute, doctor. Was it intellect or phantasy that caused them to assume the name of Morton D. Ballard and rent a room in the Morrison Hotel under that name?

"A Undoubtedly their intellects worked.

"Q After having given the name of Morton D. Ballard, the address at the Morrison Hotel, the name of Louis Mason as a reference, Chicago reference, was it childlike phantasy that caused Loeb to remain at the telephone booth on Wabash Avenue,

" the number of which Leopold had given to the Rent-a-Car people, to wait for a call for Louis Mason; was that childlike phantasy or was it intellect working?

"A Undoubtedly intellect.

"Q Was it intellect working when they opened a bank account at the Hyde Park State Bank under the name of Morton D. Ballard and gave that as their bank reference?

"A I think it was.

"Q And it was not childish phantasy?

"A No sir.

"Q Was it intellect or childish phantasy when they took the bloody-robe that they had wrapped the body in and saturated it with gasoline and took it to the lake to burn?

"A I think it was their intellect.

"Q Was it intellect or phantasy working when they attempted to rub the blood stains from the rented car?

"A Intellect, I believe.

"Q In other words, every detail of this crime is a crime of intellect and not a phantasy?

"A I think so.

"Q And they are above the average in intellect?

"A One of them is, the other is not.

"Q The other is about even?

"A I think he is just about average.

"Q So, super-intellect in one case and normal intellect in the other case planned and carried out every detail of this murder?

"A I think so.

"Q Was it intellect or phantasy that caused Leopold, when he was questioned by Captain Wolfe, the Sunday following the murder, to lie to him and withhold the information concerning this crime, doctor?

"A It was his intellect.

"Q Was it intellect or childish phantasy that caused Leopold to try to divert suspicion prior to his arrest to other persons?

"A It was his intellect at work.

"Q Was it intellect or phantasy that caused Leopold to lie for two days to the State's Attorney of this county when first brought in?

"A Intellect.

"Q Was it intellect or phantasy that caused Loeb, when brought into the State's attorney, to lie for a considerable period of time?

"A I think it was his intellect.

"Q Now, was there any other emotion acting in conjunction with the intellect when they attempted to cover up this crime by the various things they did, and by the various lies they told?"

"A It would be rather hard for me to say whether there was or not, or whether it was all very largely an intellectual process."

There is two hundred and fifty dollars worth of testimony. That is testimony that was bought and paid for at the rate of two hundred and fifty dollars per day.

I have wondered, when I heard these doctors say

that you could not make a complete and adequate examination in less than twenty or thirty days, whether the fact that they were working on a per diem of two hundred and fifty dollars a day did not enter into the matter. If they were paid by the job instead of by the day, I think they could have answered all the questions here in the three or four hours that our alienists employed, from two thirty in the afternoon until six thirty in the evening.

What opportunity, if your honor please, have the State's Alienists in the ordinary murder case to make an examination at all?

The State's Attorney generally don't know what the defense is going to be until the case is four or five months old and is brought to trial.

By that time the defendant has had a lawyer and he has been advised that the only way to save his neck is to appear insane, and if the State's Attorney sends a doctor over to the county jail to act as insane as it is possible for him to act while he is there.

The State was peculiarly fortunate in this

case that we took time by the forelock.

Mr. Baehrach, Jr. was guileless enough to believe that after I had gotten their confessions, and corroborated them in every detail, that I had a suspicion in my mind that these two young perverts and murderers were insane.

Mr. Darrow knows me a little longer and he is not quite as guileless as the younger Baehrach, and he guessed that maybe after I knew they had no defense on the facts, I knew how much money they had, that I might have thought that they were going to put in some kind of a fancy insanity defense.

And that, is the reason why I sent for the four best alienists in the city of Chicago while I still had these young egotistical smart alecks, -- that is all they are.

They are not supermen; they are not men of superior intelligence; they are just a couple of spoiled smart alecks, spoiled by the pampering and the petting of their folks and by the people who fawn upon them on account of their wealth.

They repeat parrot like things that they

have remembered and assume the solemn expression of an owl and pass for supermen.

In one breath one of these wise men from the East will tell you that they still believe in Santa Claus, and then in the next breath Mr. Darrow will tell you that they do not even believe in God.

What better opportunity, in God's world, has the State ever had in an examination, than they had in this?

From two thirty until six thirty, when these two young smart alecks were telling their story and boasting of their depravity, before they had been advised to invent phantasies, before they had been advised to answer certain questions in certain ways, and before they had been advised to withhold even from the wise men from the east certain information that might be detrimental to the defense in this case.

Yes, as Dr. Krohn said, their souls were bared. They were telling everything they knew, with no effort made to hide, no effort made to lie.

And every incident that they told me about, I put a

witness on the stand to prove.

Every detail of their confession has been corroborated by sworn testimony and by exhibits offered in evidence.

And our alienists examined them.

Now, if your Honor please, I do not think that there are a lot of things that we have to have alienists for. I do not think it is necessary in a majority of cases for you or for me or for men experienced in the practice of criminal law, to call in an alienist to find out whether John Jones, the author of this handwriting, also wrote that.

In a great many cases we can tell by looking at it whether it was written by the same person or not.

I am not the physician that the younger Bachrach is, nor the philosopher that the senior counsel is, but I think that if I talk to a man for four hours consecutively, and he is insane, I am going to have a pretty good suspicion of it.

And I think if your honor watches a man for thirty days, day in and day out, and he is a lunatic, you are going to have a well-defined suspicion

of it.

If he is insane, we may not know the cause of that insanity, we may not know the extent of it, or we may not know the extent of it, or we may not know the name of it, and we will have to call in a doctor to advise us on those matters. But if he is insane, we know it, and if he is sane, we know it.

And after these learned doctors had talked to these men from half past two in the afternoon until six thirty that night, I think that they made an examination.

I have sometimes thought that we were dreaming here, when the learned doctors got on the stand who had been employed to find out just how crazy these two fellows were.

"Just make them crazy enough so that they won't hang, and don't make them crazy enough * to make it necessary to put this up to twelve men, because twelve men are not going to be fooled by your twaddle. Just make them insane enough

"so that it will make a mitigating
circumstance that we can submit
to the court."

One of these wise men got up on the stand, and he
had been employed to examine into the mental condition
of Leopold. He is asked:

"Q Doctor, do you know that Leopold
has written a great deal upon the
subject of ornithology, that he is one
of the authorities upon that subject
in the United States, that he has lectured
before the students of Harvard University
upon that subject?

"A Yes sir, I do.

"Q Did you see his works?

"A Yes.

"Q Did you read them?

"A No.

"Q You were employed to examine his mind,
were you not?

"A Yes.

"Q What did you do?

"A I examined his urine.

"Q Don't you think you could get a better idea of his mental condition by reading the things that he wrote, the produce of his brain, than you could by examining his urine?"

And the doctor says:

"I don't know.

Probably he just wanted to find out how much sugar he could discover, to lay a foundation for an argument by Clarence Darrow that these two boys are too sweet for your Honor to treat roughly, as you would the ordinary criminal.

THE COURT: Five minutes recess, folks.

Whereupon a short recess was here taken
by Court and Counsel.

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Court reconvened pursuant to
short recess heretofore taken.

(Whereupon State's Attorney Crowe
resumed his closing argument on behalf
of the People, as follows):

MR. DARROW: Your honor, I would like to have that
coroner's report and the physician's report because
we claim there is absolutely a direct finding on this
matter and absolutely contradictory of the argument.

MR. CROWE: Get them, Joe.

MR. SAVAGE: I will get them.

MR. CROWE: You don't want a recess. I will talk
on that tomorrow.

MR. DARROW: Well, if you are going to talk about it
now I would like to have it.

MR. CROWE: I won't talk about that this afternoon.

MR. B.C. BACHRACH: The suggestion I have to make to
Mr. Crowe about this matter is that this is the first
time it has been charged in this case that the committing
of a sexual act was the purpose of this crime upon the

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part of this boy. Now if that is not cleared up at this time, if it goes out to the newspapers it will do us no good unless it is cleared up at this time, and it is not a fair inference from that report.

MR. CROWE: I think I know what the evidence was in this case and I think all my arguments are based on facts and not on dreams or phantasies.

MR. DARROW: We know exactly what the coroner's report shows.

THE COURT: Look it over and I will stop the argument when you get it.

MR. CROWE: If the court please, I was discussing the testimony of the four state alienists, concededly the four best alienists in Chicago, and the reason why the state's attorney in his effort to enforce the law intelligently and effectively called them in on Sunday, before the defendants were taken out of his custody and turned over to their lawyers and the sheriff.

For the same reason, and to prevent a perjured defense by their friends and associates and servants I

3m called in every person that I understood knew either one of these boys at once and placed them under oath and asked them what they knew about the mental condition of the two defendants. If I had not, the defense in this case would have been insanity, and not a mental disease that goes all around insanity in order to avoid a jury trial. Instead of having one witness perjury himself, as Miss Nathan did, we would have had a flock of them called in to perjury themselves.

Supposing the State's Attorney had not talked to Miss Nathan and did not have her statements that Loeb was a perfectly, normal, rational boy, one of the manliest boys she had ever met, a perfect gentleman at all times? How could I have destroyed her on the stand if I did not have that statement? I do not wonder that the senior counsel, with all his wisdom, gained through many years of practice, made the proposition to the state when he found out what the state had done in the way of preparation,

"Don't you call any of your lay witnesses,
and I won't call any of mine."

And I told him:

"Bring on your lay witnesses; the law is fortified".

And after he got through with Miss Nathan, he was through with all the rest that he had subpoenaed. Do not lose sight of the fact, if your Honor please, that all of the findings in that famous Bowman-Hulbert report were not testified to before your Honor by Dr. Hulbert.

I suppose he thought that the State's Attorney would not read it.

Well, in the discharge of my duty, and in an effort to protect the People of Cook County, I have to do a lot of disagreeable things, so I decided I would read his report.

It has gotten to be quite a famous report; I do not know but what it rivals in fame the jokebook of Joe Miller, that we heard about when I was a boy.

Why did not the State call more lay witnesses?

Why did I not call the brothers of the defendants?

Why did not I call Loeb's valet, whose statement I got down in the State's Attorney's office?

Why did not I call the employes of both families, and all their fraternity brothers, in addition to those that I did call?

Well, I would expect Walter Bachrach, who is not as experienced in the trial of criminal cases as Clarence Darrow is to ask that question. Clarence Darrow knows why I didn't call them, because if I put them on the stand, if I would put Miss Nathan on the stand I was bound by her perjury. They are my witnesses.

I vouch for their truthfulness when I put them on, and I knew they had all been up in Clarence Darrow's office, as Miss Nathan had.

I knew that he would not call them, because I could destroy them.

Your honor could not call them, because under the law, the only witness you can call as a court's witness is a person who has seen the crime committed, an eye witness.

That is why I didn't ask your honor to call them, because under the law you could not

But why, if these men have disordered and diseased minds, if they have indulged in phantasia, why wasn't the old nurse put on the stand to tell about it?

She came all the way from Boston to help Dick, because she loved him.

I will read you some of the things she told Dr. Hulbert that he didn't tell you, and after she got through talking to them and they knew that she would not stand for an insanity defense, -- she is a pensioner of the Loeb family and she is over in Europe right now --

MR. B. C. BACHRACH: I take exception to that, if the court please; there is no such evidence in this case, and that is not so.

MR. CROWE: That she is a pensioner?

MR. B. C. BACHRACH: That she is a pensioner, absolutely not.

MR. CROWE: All right, then there is another inaccuracy, to say the least, in the report of Dr. Hulbert, and I will read it to you.

MR. B. C. BACHRACH: That may be, but it is not

a fact.

MR. CROWE: Well, I will agree with you that this report is filled with lies.

MR. B. C. BACHRACH: You don't have to agree with me.

MR. CROWE: Lies bought and paid for for the purpose of defeating justice and saving these two mad dogs from the fate they so richly deserve.

Don't overlook the fact that every one of the State's Alienists says in addition to all the matters and things that they learned, they took into consideration every bit of Dr. Hulbert's report, just the same as the three wise men from the East did.

Not only that, they took into consideration all the testimony of these three wise men. They did not overlook a word.

They did not overlook the fact that one shaved every day and the other only shaved twice a week. They even considered little teddy and the cowboy suit.

The only explanation I can give of the testimony of Dr. White is that he is in his second childhood. I would hate to think a man of his attain-

ments would prostitute his profession and prostitute his learning to tell the story that he told your honor.

One of the very significant and ~~kit~~ distinguishing things, the eminent doctor says, was the fact that little Dickie had his picture taken in a cowboy's uniform when he was four years of age, and that is a distinguishing thing and stamps him as a man of diseased mind with homicidal tendency; and I saw a shudder go through every woman in the courtroom that has a kid four or five years of age, and I began to think of my poor kids; and the other doctors to relieve the tension and the worry -- I suppose Marshall Field's sale in cowboy suits must have fallen off at least a hundred thousand since that doctor testified and the other doctors saw how ridiculous and silly it all was, and they said they paid no attention to it, and one by one each doctor discarded all this silly bosh that the preceding doctor had testified to as distinguishing matters; and finally the grand old man of the defense, Clarence Darrow, seeing how absolutely absurd it all was, discarded all

their testimony, and substituted as a defense in this case his peculiar philosophy of life, of which we will talk more at length later on.

Having taken into consideration everything that the doctors for the defense had testified to, having taken into consideration everything contained in the Hulbert report, Dr. Church, Dr. Patrick, Dr. Singer and Dr. Krohn said that there was absolutely nothing to indicate mental disease in either one of these defendants.

Thirteen -- twelve or thirteen alienists hired by the defense --

MR. DARROW: Well, I object to that. There is no evidence of that.

MR. CROWE: How many did you have?

MR. DARROW: We had seven or eight examine them.

MR. CROWE: Well, seven or eight then.

MR. DARROW: The Court has a list of those.

MR. CROWE: Dr. Hall, he examined them. He sat in the court room every day.

Dr. Hickson examined them and he was in the court room frequently.

Dr. Neymann examined them and was in the courtroom. I don't know whether Sanger-Brown examined them or not.

But every other alienist in Chicago, except our four, was called in, and not a one of them would take the stand and, for money, perjure his soul and swear to a lot of silly rot --

MR. DARROW: Your Honor, I object to that.

MR. CROWE: (Continuing) -- about their mental condition.

MR. DARROW: There is not a particle of evidence of that sort and it is not --

MR. CROWE: Did any of them take the stand?

MR. DARROW: That isn't what you said. You said not one of them would do it for money.

MR. CROWE: It is a fair inference, when they hired them, they had them here, if they could have used them they would.

MR. DARROW: Now, just a minute. Let me make my objection clear.

MR. CROWE: I didn't object to your argument.

MR. DARROW: I know, but you have right to, if I travel out of the record.

MR. CROWE: Did you ever get inside the record?

MR. DARROW: It was agreed that if they called four alienists we would call four.

MR. CROWE: No.

MR. DARROW: The fact they did not testify, he may comment on that. I don't object to that, if he thinks it belongs there.

MR. CROWE: Finding nothing in their mental condition that would justify a suspicion of insanity or a suspicion of disease, they put on Dr. Hulbert, to testify about certain glands, ductless and otherwise.

Your honor heard an eminent authority upon that subject, Dr. Woodyatt, and he says there is so little known about the pineal gland and about these other matters and things that this doctor testified to so glibly,— there is so little known about it that nobody knows what effect they would have upon the mind of a person; that a calcified gland existed in a sane, sound mind the same as it did in a diseased mind.

And all of the testimony of Hulbert upon that proposition was as illuminating, and should be given the same serious consideration, as Old Doc Yak's teddy bears and Buffalo Bill suits.

If these men are insane, I ask your honor why they were instructed not to let our alienists examine further.

MR. DARROW: I object to that statement.

There is not any such evidence, or any evidence that you ever asked for it. You had a chance to ask for it.

MR. CROWE: It is in evidence, if your Honor please, but when they were in my office Monday, and Dr. Singer was there, they replied to all questions:

"On advice of counsel we decline to answer".
My God, if the defense was a heavy cancer, why should they not their breast and let every doctor and layman look on and see. If there is a diseased mind, why tell Dr. Singer, "Upon advice of counsel we respectfully decline to answer"?

MR. DARROW: Objection.

MR. CROWE: Are they honest in this defense --

MR. DARROW: I just want to have the record straight, that is all.

MR. CROWE: — or are they trying to put something over on the court.

MR. DARROW: If you will pardon me, Judge Crowe. There is not a word of evidence that Dr. Singer ever asked any questions, of that they ever asked for an examination by Dr. Singer, or by any other alienists, which they did not.

THE COURT: If this was a jury, and the statement was made that the defendants refused to testify --

MR. CROWE: Wait a moment, your Honor, Let the record be very explicit on this point. I have made no allusion --

THE COURT: Well, I would not refer to anything that is not in the record. But I do not want to interrupt you. Go ahead.

Did Mr. Savage get back with Dr. Springer's report?

You might make that statement now about the condition of the body of the boy.

Counsel for the defense may say there is

nothing to the statement, And Mr. Crowe says there is. In order that it may be cleared up fully, we will have the entire statement read into the record so that the newspapers will get it.

MR. CROWE: It has been read, your honor.

THE COURT: (Continuing) And know exactly what it is. I would ask the ladies, if there are any here who do not want to hear testimony that might be embarrassing to them, to kindly step out.

We will adjourn promptly after reading this part of the testimony, that you may prefer not to hear.

We will suspend now for five minutes, in order that the ladies may retire for the afternoon. You may come back tomorrow as usual.

(Whereupon a short recess was here taken to allow the ladies present to retire).

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(During the recess, the following occurred):

MR. CROWE: The Coroner's report says that he had a distended rectum, and from that fact, and the fact that the pants were taken off, and the fact that they are perverts, I have a right to argue that they committed an act of perversion.

That is the extent of my content. I do not contend that the coroner's report states that an act of perversion was committed. It merely says that the rectum was distended.

There was no evidence of semen, but it was washed away, I contend.

THE COURT: I have asked the ladies to leave the room. Now, I want you to leave. If you do not, I will have the bailiffs escort you into the hallway. There is nothing left here now but a lot of stuff that is not fit for you to hear. There will be nothing else but that to be read. Why do you persist to listening to such rot. Step out into the hallway.

(An elderly woman came to the bench and started to ask the Court a question:

"Does that mean that even us --"
when the Court interrupted her with --

"It means that all/ of you ought to go. You men in the corner here go back and sit down over there. If those men standing don't take seats I wish the bailiffs would escort them to the hall.

"Now don't tell them again.

Just take them out.

Find seats, please, or do you want me to put you out?")

THE COURT: Now then, you might read it, Mr. Darrow, Mr. Bachrach, Mr. Crowe or Mr. Savage. I don't care which.

MR. CROWE: I would rather have young Mr. Bachrach read this because it contains a number of these strange, foreign words.

THE COURT: Go ahead.

Will you read it into the record so we will have the record straight.

I don't know myself what it contains because I haven't read it yet.

It will be part of my duty after this case is over, to read all this, some twelve hundred pages of stuff. I don't know who is right in the matter. We will have it read into the record, and be sure about it.

MR. DARROW: You read it, Walter.

(Whereupon the record referred to was here read into the record by Mr. Walter Bachrach, in the words and figures,

as follows):

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MR. WALTER BACHRACH(Reading): "The statement of Coroner's Physician A.F.Benson on the 22nd day of May: "I made a post mortem on the body of Robert A. Franks at 13300 Houston Avenue, the body being identified by Edwin M. Gresham. Upon general inspection the body measured five feet in length, and one hundred pounds in weight."

"There was evidence of exposure to sand and water. The body was nude. Upon examination I found two cuts in the forehead inside the hairy margin, two inches above the left and right eyebrow, the left cut one and a half inches in length and the right three quarters inches, both with dull edges, and ante-mortem. There were numerous scratches about the left side of the forehead, also, which were ante-mortem. The face presented a peculiar appearance, with a marked outline around the nose and mouth and part of the chin, the color of the skin in this area being pale, the rest of the face presented a flushed and

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"streaked appearance such as would result from acid fumes. There were a number of scratches on the back over the left shoulder and the right buttock, all of which were ante-mortem. There was one superficial sharp edged cut off the spine one inch to the left of the median line and just above the buttock. This was post mortem."

"I found cutis anserina of the hands and only the scrotum showed evidence of having been submerged in the water. The genitals were intact, and the rectum was dilated, would easily admit one finger. There was no evidence of a recent forcible dilation."

MR. W. BACHRACH: Now, I think that is all that is necessary.

MR. CROWE: It is a matter of argument.

MR. DARRON: I don't think that is a matter of argument.

MR. CROWE: I don't think you and I are going to agree. You have your theory, and I have mine.

MR. DARRON: The coroner's physician says there is no

3a
evidence of it.

MR. CROWE: I understand. My contention is that any evidence has been washed away by the water.

MR. DARROW: That isn't what he says.

MR. CROWE: You have your contention, and I have mine.

MR. B.C. BACHRACH: The unfairness of it, if your honor please, is that the charge comes in the closing argument. There was no hint at all that such a claim would be made, and now all our opportunity to reply is gone.

MR. CROWE: Oh, no. You have made three speeches. Mr. Darrow has just finished his talk, Mr. Walter Bachrach made his argument and you have made your argument. You have had three opportunities to answer it.

MR. DARROW: You had two speeches in opening.

THE COURT: Is there anything further in the report other than that?

MR. SAVAGE: The testimony of Dr. Springer here is substantially to the same effect, that the rectum was dilated.

MR. CROWE: I am not making any contention that there was anything further than that.

THE COURT: The doctor says in this report that the genitals were intact and the rectum was dilated and would admit, easily, one finger; that there was no evidence of a recent forcible dilation. Now, that is the testimony, gentlemen, and that is as far, I think, as you want to go.

MR. CROWE: I had finished my argument on that a long time ago.

THE COURT: All right. Is there anything further that you want on the matter?

MR. W. BACHRACH: No. But there is just one thing that I would like to say in addition to what has already been said here, and that is, before the State's Attorney would be entitled to draw any inference that there was any evidence of mistreatment of the body in the sexual way, there would have to be some evidence upon which he could base such an argument or from which he could draw such an inference, and I say that it is a question of law for the court to say whether or not this statement here—

MR. CROWE: Oh, no, there is other evidence.

MR. W. BACHRACH: Pardon me—

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MR. CROWE: The evidence is that these two defendants are perverts, and when they took the body of the boy in, the first thing they took off was his trousers.

MR. W. BACHRACH: Irrespective of what the evidence shows concerning the two boys, if your honor please, there is no evidence to show that this body was mistreated in a sexual way.

THE COURT: This is the evidence of the coroner and certainly conclusive, and we will let it rest with what the coroner says.

MR. CROWE: May we have a recess now until tomorrow morning?

THE COURT: There is nothing further you have now that you want?

MR. WALTER BACHRACH: That is all.

MR. CROWE: I am through with that argument now anyway.

THE COURT: All right. We will suspend now then until tomorrow morning at 10:30 o'clock.

Whereupon an adjournment

was here taken until

10:30 o'clock A.M. *

Wednesday, August 27, 1924.

10:30 o'clock A.M.

Court reconvened at 10:30 o'clock A.M.
Wednesday, August 27th, 1924, pursuant
to adjournment heretofore taken.

Present, same as before.

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(Whereupon State's Attorney Crowe
read his argument on behalf of
the prosecution as follows):

MR. CROWE: May it please your honor, when I left
off last night I was talking about the State alien-
ists and the three wise men from the east who came
on here to testify that the little "Babe" or the
little Babes, rather, were suffering from a diseased
mind.

Now, when the body is sick, the ordinary
practitioner can generally tell you what kind of a
disease you have, and I do not think there is any

man who pretends to be a specialist who will admit that he cannot tell you what is the matter with you after he examines you.

He may guess wrong, but he is going to make some kind of a guess.

He may tell you you have one kind of a fever when in reality you have another, but he is going to give it some kind of a name.

You know, the doctors have it on us lawyers. When we make mistakes they are discovered. When a doctor makes a mistake he is safe, because dead men tell no tales.

If these two defendants are suffering from a mental disease, what is the name of it?

No one has gone on the stand that has been able to give this mental disease a name. And yet, everyone who got on for the defense pretended to know all that there was in the books and a great deal that never got into the books.

I was surprised that old Doc White wasn't able to name the peculiar mental disease he says exists here, because he in the past has been able to invent names for diseases which didn't exist.

If your honor will recollect, I questioned him as to whether or not he was the same William A. White who testified in the case of Gonzales vs. the United States, and he said he was. There he was trying to save a man from death --

MR. B. C. BACHRACH: I object, if your honor please, to any argument based upon the Gonzales case upon the ground that your honor specifically refused to let us go in and show our side of the Gonzales case, and your honor stated at the time you did not care what occurred in the Gonzales case, you were not interested in the Gonzales case at that time, and it did come out on the examination of Dr. White that the man Gonzales was in his care. We wanted to show you about it, we could have shown you very interesting things about it, but your honor declined to hear them and it would be unfair to go into that case now.

MR. CROWE: If we can quote poetry and if we can quote philosophy, I do not know why I cannot quote law.

MR. DARROW: That is not quoting law.

MR. CROWE: I called their attention to the case,

and identified the doctor as having testified in ~~xxx~~ it, and in their argument they could have argued anything they wanted about it. They have argued about every other case that was tried in the criminal court of Cook County.

They have told your honor the facts where men were sentenced upon plea; they have told your honor the facts where men were sentenced upon verdicts.

Why can't I tell your honor something about the Gonzales case if we can discuss all these other cases?

MR. B. C. BACHRACH: If you ask me I can answer that very quickly.

MR. CROWE: I am addressing my remarks to his honor.

MR. B. C. BACHRACH: I insist upon my objection, if the court please.

MR. CROWE: There was a man in prison, if your honor please, and Dr. White was trying to save him from the gallows, and he said he had a prison psychosis. That is, he was afraid, he was scared stiff that he was going to hang. And the United States court

says that the opinion is expressed that the prisoner is suffering from prison psychosis, a newly discovered type of mental disease or insanity.

Newly discovered by Dr. White, just as the mental disease here is another newly discovered mental disease discovered by Dr. White, which is described as essentially a reaction to the situation in which he finds himself from its realization.

Just imagine! This eminent alienist says it is a newly discovered disease, prison psychosis, which is essentially a reaction to the situation in which he finds himself, from its realization.

The diagnosis, it is admitted, is not inconsistent with defendants' efforts at malingering, with which those who have previously examined him were impressed.

In the second or more elaborate comment on the case it is said:

"The whole reaction is an extremely shallow one; that the defendant's knowledge of the crime of which he is convicted and his realization of the situation in which he is, lie only a

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little bit beneath the surface, and at times it forces itself upon his attention in spite of his defensive efforts.

And so we see in some of the latter notes of his case his plots to escape, and expressions which show a very complete realization of the trouble he is in.

This merely means that his defenses are weak, and that from time to time they break down. That is the diagnosis. . The court says the majority of ^{the} hospital staff with whom the superintendent conferred expressed the opinion that the case was one of malingering, but the superintendent—

Doc. White, who can look into a man's brain and tell whether he is lying with the same certainty as a physician can look into a man's body —

"the majority of the hospital staff with whom he con- ~~ferred~~ ~~the~~ ~~ferred~~ expressed the opinion that the case is one of malingering, but the superintendent, who said he had no doubt that he malingered to a certain

extent, notwithstanding he thinks the theory of malingering does not explain the situation.

He also says that a previous attack of mental disturbance let up very shortly after he had been sent to Baumemora.

This evidently refers to a former conviction in some other jurisdiction, after which he had been committed to an insane asylum.

In his first case, the court was imposed upon and instead of sending him to the penitentiary he was sent to an insane asylum, and after he got there this mental disease disappeared just as suddenly and as mysteriously as it came on.

And continuing with the opinion:

"And he adds, (quoting Dr. White) 'In all probabilities this present disturbance would all disappear very rapidly if the causes for its existence were removed.'"

In all probability the present mental disease of these two defendants would disappear very rapidly if the causes for its existence were removed. If

the glasses had never been found, if the State's Attorney hadnot fastened the crime upon those two defendants, Nathan Leopold would be over in Paris or some other of the gay capitals of Europe, indulging his unnatural lust with the five thousand dollars he had wrung from Jacob Franks.

If they were to be discharged today, through some technicality in the law, this present disturbance would all disappear very rapidly, if the causes for its existence were removed.

I used to wonder why they got Doc. White --

MR. B. C. BACHRACH: I want to take an exception --

MR. CROWE: (Continuing) -- and this explains it.

MR. B. C. BACHRACH: If your Honor please, I want to take an exception to that and ask the court to rule that it is improper to make this argument on Dr. White, because of what I have stated.

The doctor testified on the witness stand that the man was in his custody at the time of the testifying twelve years later.

We expected to show and can show that the sentence was commuted at the request of the President.

THE COURT: Oh, yes. The Gonzales case was stricken out. The defense did not have an opportunity to comment on it, and the state should not. But this court is not going to pay any attention to argument that is outside of the record.

MR. CROWE: If your Honor please, Mr. Darrow argued here, without a thread of evidence of any sort, that Dr. Krohn was a peddler of perjury. Haven't I got a right to comment on Dr. White?

THE COURT: Oh yes, but not upon that case.

MR. CROWE: Haven't I got a right to quote what other people have said about him?

THE COURT: Please don't waste time going into these matters.

MR. CROWE: Now, if your honor please, we will go back of this defense, and see whether it is an honest defense or not, to see whether these mental disturbances came on as suddenly as they would disappear if the causes of them were removed.

Your honor will recollect that while doctors employed by the defense were sitting in the courtroom witnesses were put on to testify to

fainting spells.

Now, what was the purpose of that?

The purpose of that ~~xxx~~ was to lay a foundation in my judgment for some doctor to later take the stand and testify that Loeb was suffering from epilepsy and it would be argued that having epilepsy, his mind was diseased.

Dr. Hulbert in his report, as I will show you later, says that there were not any evidences of fainting in Loeb, except one fainting spell that he had during initiation, and yet witness after witness was put on, and they testified that he fainted, that he was rigid, that his eyes were glassy, and that he frothed at the mouth.

But cross examination showed that he was merely drunk, he was not rigid, but he was stiff, his frothing at the mouth was a drunken vomit, and after he got through he wanted to lick a couple of waiters.

The evidence further showed that these other fainting spells were due to the fact that,

in one case, seven or eight large boys jumped upon him, and he fainted as the result of injuries inflicted upon him.

He fainted again in the hospital after he had been in an automobile accident, and the doctor who waited upon him said that the fainting spells were due entirely in his judgment to the accident.

Then the doctor who had been employed to take the stand and testify to epilepsy was dismissed.

If these lay witnesses had stood up, and had not broken down under cross examination, that doctor would have testified to epilepsy.

I submit that this defense is not an honest defense.

This is a defense built up to meet the needs of the case.

If the State only had half of the evidence that it did have, or a quarter of the evidence that it had, we would have had a jury in the box, and a plea of not guilty. But trapped like a couple

of rats, with no place to escape except through an insanity defense, they proceed to build it up.

A wierd, uncanny crime?

The crime is not half as wierd or uncanny as the defense that is put in here.

Let us see what Dr. Hulbert said in his report. That is in evidence, introduced by the defense, so I do not suppose there will be any objection to my reading from that.

I am glad that the defendants' lawyers concede me some few rights in this courtroom, although they argue that I ought to be down in the office, after a plea ^{of} guilty, and that I have no business up here at all.

"Personal history, Richard Loeb.

Mother's health; during pregnancy she was not very sick.

"Her fever was not remarkable, although there was much morning sickness."

In

The doctor did not testify to that on direct examination, your honor. He did not think this report would ever get into the hands of the State's Attorney, and he said he did not. He created the impression by his direct examination that there was something wrong at the time of this boy's birth.

What does he say in his report? He was a perfect baby. Oh! He developed a little late sexually, and at the age of fifteen Dr. Hulbert in his report said he had gonorrhoea.

On page nine, "There is no history of fainting attacks except that once during an initiation ceremony at school, he fainted."

In other words, after considering the Teddy bears and the Buffalo Bill suits, and all this other trash that was testified to by these wise men from the east, counsel or somebody decided that they had to add something more to it to make it stand even as a mitigating circumstance, and while their report said that there was no history of fainting attacks except once, they tried to prove a dexam in order to build a foundation for epilepsy.

And your honor recollects that on cross examination every one of them either developed into being knocked unconscious by accident, or else it was a drunken stupor brought on by debauchery.

Then this nurse; the nurse who according to the testimony of the defense knew more about Richard Loeb up until the time he was fourteen years of age, than any living person. They tried to create the impression that she was insane, and that Dick caught his insanity from her, the same as one boy catches measles from another.

They had her here in Chicago and she is not produced as a witness.

A letter was read to indicate that she was insane, and if I ever read a letter that more clearly demonstrated sanity than the letter written by that nurse, I don't remember it.

It was a kindly, loving letter, sent by a woman to a boy she loved, filled with motherly advice, advice that it develops is so sadly needed in this case by these two young perverts.

A picture was introduced of her to show that she was some terribly hideous creature.

Let us see what Dr. Hulbert says about her.

She is supposed to have given information in reference to Dick because these people would think he had a diseased mind when he was a child:

"She returned to Chicago after the arrest of young Richard to help him in any way she could, and through the attorneys, arrangements were made for an interview.

"She is very reserved, quiet and strict; her memory is good. She is a woman of attractive appearance, modestly and carefully dressed.

"She denied any imperfections in herself while she was a nurse, and she denied any imperfections with the boy during her stay with the family.

"She said that he was quite all right

"at fifteen years of age, at the time she left the house.

"She said he was a lazy boy, but a bright student. He was lazy until he got along in several grades of school where he found that he could graduate in one year's less time than he expected, if he would study, and so he began to study hard.

"She would not say -- she denied that he ever had any fears or any disorders in his sleep",

and if anybody would know about the day dreams or the night dreams of Richard Loeb, I submit that this woman would know about it; and we are told about the weird, uncanny dreams he had both waking and asleep.

"She denied that he ever had fears or any disorder in his sleep. She would not say anything which might reflect on the boy, even though she was plainly told that a complete understanding of this boy was essential for an accurate diagnosis."

She came on here as Dr. Hulbert said to do anything within her power to help the boy, short of perjury; and although she was told that a complete understanding of the boy was essential for a correct diagnosis, which means for a defense in this case, she would not say anything that might reflect upon him, because she intended to tell the truth, and that is why she was sworn as a witness before these alienists, but was not brought into court and sworn before your honor.

"Her general viewpoint is a conventional one. She was quite unaware of the fact that he had become a petty thief and played detective."

A woman that they claim until he was fifteen years of age never let him out of her sight by day or by night.

A woman that they claim until he was fifteen years of age never let him out of her sight day or night was quite unaware that he was a petty thief or played detective.

If she did not know it, who in God's

name would know it?

If she says he wasn't a petty thief and he didn't play detective, will you take her word for it, or will you take Dr. Hulbert's word?

What information has he got?

He talked to Richard Loeb and he talked to the nurse, the one that they claim was with him every hour of the day, and because he was constantly tied to her apron strings he is now here charged with murder, and she gives the lie to this.

It has been argued here that because Richard Loeb told the doctors that he had no ambition in life, that he hadn't selected or thought of any profession, that is an indication he is mentally unbalanced, and because the other defendant had a definite ambition in life he is also mentally unbalanced.

A happy philosophy of medicine, especially when you are testifying in a guilty case, and trying to cheat the gallows.

It's too bad that they have two defend-

ants here.

It would be so much easier to prove one insane, because anything you found in him could be a bad sign.

But when you have two, and they are not exactly alike, when one has broken arches and the other has a high arch, why, then it has got to be a bad sign in one and a bad sign in the other.

And if one has to shave every day, that is a bad sign; and if the other does not have to shave but twice a week that is a bad sign.

It was a bad sign that Richard Loeb did not have any definite aim or purpose in life, and it was also a bad sign because Leopold wanted to study law and ornithology.

Well, let us see what Dr. Hulbert says about this:

"When the patient" --

that is Loeb, --

"--was asked what use he expected to make of his education, and what were

"his ambitions, he stated he expected to study law the next year.

He said he had always intended to study law."

And yet when they were putting on their defense, everybody was testifying that he had not any ambition in life.

He was just wandering around like a ship without a rudder, and did not know what port he was going to put into.

"When the patient was asked what use he expected to make of his education, and what were his ambitions, he stated he expected to study law the next year.

He said he had always intended to study law. At one time he had thought

of teaching history, but he felt that he was not of the scholarly type. Asked why, he replied that he was always lazy, and that he could never sit down and apply himself. As a boy, he poisoned

"his mind by reading detective stories."

Well, there is a whole lot of us in the same fix.

I remember crawling under the bed to read Nick Carter.

After I got through reading Nick Carter I began to

read Gaborian's French Detective Stories, and

when I was a student at Yale I paid more attention to

Raffles than I did to real property.

I think that is the experience of most normal healthy minded people.

Let us see what the doctor says about it.

"It was observed that he read good books,

Dickens and Thackeray, but not the

Alger books, although he did read Little

Lord Fauntleroy. He spent all his time

in day dreams."

Now, that is what your honor has been told, -- day dreams and the reading of detective stories.

What does the doctor say about it?

"He was rarely observed day dreaming."

That is information he got from the nurse, because

I read what the nurse said:

"He was never haunted by fears or dreams",

is what she said.

And Drs. Hulbert and Bowman, under another heading, in another Chapter, giving information that they got from other people, say he was rarely observed day dreaming.

And here Hulbert and Bowman, under another heading, in another chapter, giving information that they got from other people, says, he was rarely observed day dreaming, night dreams were very rare.

Sometimes he would talk or laugh in his sleep, but not often; he slept soundly and was hard to waken.

Oh, the only reason that Dickie committed this slight delinquency of murdering little Bobby Franks was that he desired the thrill, all his life he craved for ~~exciting~~ thrills.

What does Bowman and Hulbert say about it?

"He never appeared to crave a thrill or excitement, but was rather quiet in his conduct; after Miss Struthers

"left that home he seemed to be much the same as before, quiet, rather affectionate, extremely polite and respectful."

That is what the friends and members of the family must have told the doctor.

Here is what the patient told the doctor himself:

"THE PATIENT'S ESTIMATE OF HIMSELF.

While also at times he had a tremendous output of energy and physically does not tire easily. He is rather inclined to be a leader in athletics and games which he enjoys."

Why, the whole trouble with him is that he never led the natural life that boys lead.

He was always kept in the house ~~xxx~~ with his nose buried in some serious, solemn volume. That is what we were told.

And the only time he had any boys was when Doc. White could put some interpretation upon those boys which would lead to the conclusion of

a diseased mind. That is why we heard about the teddy bears and these various suits of his.

He never went out and played as boys play baseball, marbles and other things, and yet when he is talking to the doctor and the doctor reports to the three wise men from the east, he says he is inclined to be a leader in athletics and games, which he enjoys.

"He makes friends very easily and feels quite at ease with strangers.

He is inclined to be a leader and likes to dominate his environments".

Well, isn't that natural in a healthy minded person?

Everybody desires to strive, to succeed and to lead.

But the doctor adds:

"But can fit himself easily into any sort of a situation, so that he does not become bothered or upset if someone else happens to be dominating the particular situation and he is compelled to assume a minor role."

And as a boy who did not have judgment enough to plan, a boy who had no --Well, to do or not to do, and yet he tells the doctor:

"While the patient often acts without reflection and is quite impulsive, he nevertheless plans a great deal and works out consistent schemes for the future."

He plans a great deal and works out consistent schemes for the future, in this ~~amazing~~ mad brain of this mad boy.

"He is open and frank with others as long as he feels there is nothing he wants to conceal."

Dr. White said he couldn't lie to him.

"Nobody can lie to me. I can read their minds just the same as or look into it just the same as a doctor can look into the human body with an x-ray".

Well, I don't suppose he thinks he knows more than the Lord does, but I don't believe that he would

concede that the Lord knew any more than he did when the Lord was his age.

"But if he feels that it is to his interest to hold anything back he does so. He therefore gives an appearance of great frankness, which is not true. The patient says that he will tell a lie with no compunction whatever, and that he is completely dishonest."

Let us see whether he lied to these doctors and withheld information, the same as they lied to your honor and withheld information.

Here again the doctor says, talking about his being tied to the apron strings of an old nurse and never being allowed to play as other boys played, page 41:

"He has always been fond of athletics and outdoor sports such as tennis, swimming, hockey, skating and so forth, always been fond of bridge. While he plays some other card games, he has not been particularly interested in them. He

"is considered an extremely good bridge player and has spent a great deal of time playing it. He is fond of dancing and mixed society. He has used alcohol considerably since he was fifteen and gotten drunk a number of times."

Never permitted to play with other boys, never allowed the recreations that other boys had, and yet Dr. Hulbert says on page 42:

"In 1912, at the age of seven, he and Jack Mengel built a five foot square room with a pointed roof. This was used for a playhouse.

" year or so later the boys formed a guinea pig company and used the playhouse for the office of the company.

"In 1916, Richard Loeb, with five or six other boys, published two issues of a small three by five inch 24-page journal, called Richard's Magazine.

His contribution was that of being edi-

"tor, manager and author. His writings showed quite advanced thinking for a boy of his age, and reflected well the humanitarian environment of his home." Reflected the humanitarian environment of his home, and yet Mr. Darrow, in a vain effort to save their worthless lives has said that they committed this murder on account of their families.

Oh, another interesting thing that leads these wise men to think that they are demented and stark mad is that over in jail while he is preparing his defense, he wants to wear an old ragged coat.

"He has always been careful of his personal appearance and neat and clean about his person and has liked to appear well dressed."

I have never seen him any other way.

"He has always had a pleasant consciousness of his own body."

May I have a recess here a minute, Judge?

THE COURT: All right. Five minute recess.

Whereupon a short recess was here taken
by Court and Counsel.

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Court reconvened pursuant to
short recess heretofore taken.

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(State's Attorney Crowe here resumed
his argument on behalf of the prose-
cution as follows):

MR. CROWE: If your honor please, when I left off
we were talking about the poor little rich boy who
had been brought up in a golden cage, who never had
a chance to use his wings as other boys did. And
again I find in Doctor Hulbert's report:

"He has always been interested in
camping, motor boating and outdoor
life in general. This has never
been linked with any intellectual
pursuit, such as botany, zoology or
the like."

Tennis, swimming, hockey, skating, bridge, dancing, --
all of the sports every healthy, natural young boy
would like to indulge in, but a great many of which
we were not able to indulge in, because we happened
to be the rich boys of poor parents and not the poor

2a
boys of multimillionaires.

"In 1912 at the age of seven"--
well, I think I read that, about the house, and the
zoo they put in it.

They didn't lie when questioned by their
alienists. It would not have done them any good to
lie to Doc White anyhow, but they did not lie to any
of them; and they all testified that if they had lied,
an impossible thing, and the things that they had told
them were false and they had held back certain things
that were material and did not tell them, that would
have changed their opinion.

Oh, undoubtedly if the facts were not as they
are, we would come to a different conclusion. But
these boys were collaborating with us while we were
planning this weird and uneasy defense for them. They
didn't lie and they didn't withhold anything.

Well, let's see what Dr. Hulbert says and
Dr. Egan said in this report which Dr. Hulbert says,

"I never expected that to fall into
your hands, Mr. Cross."

During the examination on page sixty-six: "During the

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"examination and his recitation of his criminal career, he was not quite frank. Without any indication facially or otherwise he would lie or repress certain instances, unless he imagined that the doctor was previously aware of those instances."

When questioned about this later he said he had failed to mention certain things because he thought it advisable not to mention them or because he had been advised not to mention them. After some guileless attorney, studied in the medicine and grounded in it, probably more than he is in the practice of the criminal law, some doctor or some member of the family had gotten these two smart alecks and had trained and prepared them and told them what to tell the doctors and what not to tell them, then they brought on these doctors and say,

"Now, go on in and listen to that story and if after you listen to the story they tell you, you don't think they are crazy, then you must be crazy."

He failed to mention certain things because he

4a either thought it advisable not to mention them, he himself, or because he had been advised not to mention them. So obviously there are gaps in his history of the development of crime.

"His oldest brother Allan does not know of these untold stories, but the patient says he will not tell them unless Allan advises him so to do."

What are these untold stories? The case is closed, and we have not heard a word of it. They were not going to lie in order to fool the doctors, so that the doctors could fool your honor. No. They were perfectly frank. As Dr. White said,

"They didn't lie to me, and they wouldn't lie to a man as smart as I am."

They had no thought when they were talking to the doctors as to their defense in this case, none whatever. They might as a result of a childish phantasy murder little Bobby Franks as they wandered along in the dark,

5m but God forbid that they should attempt to fool your honor in an effort to save their worthless lives.

But let us continue from the Hulbert-Bowman report.

"On the other hand, there is a certain legal advantage."

This is not a carefully prepared examination for the purpose of putting in a crooked and silly defense, in an effort to fool your honor, according to the witnesses when they are under oath or on the stand. But when they are making a report for the lawyers and a report for the wise men from the east to base an opinion on, Drs. Hulbert and Bowman say,

"On the other hand, there is a certain legal advantage in minimizing the broadcasting of his episodes, even keeping them secret from the attorneys, examiners or relatives."

Here are doctors who want to make your honor believe that their only interest is in finding out what the truth is, and telling it to you regardless, and they give their reason for not insisting on all of the facts

in the following language:

"On the other hand, there is a certain legal advantage in minimizing the broadcasting of his episodes, even keeping them secret from his attorneys, examiners or relatives. Consequently no great effort should be made to bring forth details which he wilfully suppresses."

This is Dr. Bowman and Dr. Hulbert advising Dr. White, Dr. Glueck and Dr. Hoaly, that there is a certain legal advantage not to bring these matters out, and no effort should be made by them to bring ~~forth~~ forth details which he wilfully suppresses.

I quite agree with Dr. Hulbert, that when he wrote this report he never thought it was going to be read by the State's Attorney, or the contents of it would never be told to your honor.

"His phantasies usually occur between the time of retiring and the time sleep comes over him. He estimates that this period was ~~one~~ an average of

"half an hour's duration."

Not wandering around all day, Mr. Darrow, in a day dream and indulging in phantasies, walking up and down the street, snapping fingers, pointing out buildings, waving the gang here and there; not a phantasy that became a part of his life.

Dr. Hulbert and Dr. Bowman said that the phantasies usually occur a half hour before he goes to sleep. That is the time your Honor and I and everybody else phantasy. When we get into bed & we dream dreams of what we are going to accomplish, and we scheme and plan and that is exactly what Dickie Loeb did.

And all this other stuff that we have been regaled with is perjury, pure and simple; perjury for a purpose.

From Philip Drunk to Philip Sober, from the lying alienists on the stand to a report made by the alienists that they did not think would come to light.

Continuing on page 93:

"He denied being implicated in the so-called gland robbery of Mr. Ream."

Well, it would be unfortunate with all these old gland doctors and all this piffle about glands that Dickie beat the doctors to it and experimented on glands prior to this time.

"He denied being in Geneva in the case of the ragged stranger who was found dead with his hands cut off and his face mutilated. He denied having participated in any other delinquencies."

And mark you this, your Honor:

"But later referred to four episodes, for which the letters A, B, C and D were suggested."

He referred to four episodes.

Four crimes, if your honor please, that they merely designated as A, B, C and D.

And then the two doctors, whose only interest is to tell the truth as they find it, add in their own language;

"It was found forensically --"

now what does "forensically" mean?

That it was found from a legal standpoint,
so the doctor says,

"Forensically inadvisable to question
him about these"

And the case closes and we are just as much in the
dark as ever as to what these four crimes were,
because the doctors concluded that legally, forensi-
cally it was inadvisable to question him about it.

And then I ask you, when Darrow
talks about tricks, who are the tricksters in this
case?

What strange hold did this man Leopold
have upon Loeb?

Why did he submit himself to the unnat-
ural practices of Leopold?

I will tell you, your honor, and I
think I will demonstrate it beyond the peradventure
of a doubt, that these four episodes, that these
four crimes, were known to Leopold, and he blackmailed
Loeb, he threatened Loeb with exposure if he did not

submit to him, and Loeb had to go along with Leopold.

And Leopold was willing to go along with Loeb because he could use his body for vile and unnatural practices.

And I will prove that, and I will prove it by the testimony of the defense, beyond a reasonable doubt.

"On their way back from Ann Arbor"
on page 98, --

"the plan of kidnaping a boy coupled with the idea of ransom was first broached by the patient."

That is, that is the first time that Loeb talked to Leopold about kidnaping for ransom. Not a thrill, but ransom.

And I will demonstrate that money was the motive here. I will demonstrate that they gambled and they played for such high stakes that even their millionaire companies could not play with them.

I will demonstrate that they had money

that they cannot account for, unless it is the proceeds of either A, B, C or D.

"The patient had a definite boy in mind at that time; the patient did not like this boy or his family."

A crime by mad boys, without a purpose, without any thought of revenge, without any thought of money?

Let's see.

The first boy they contemplated killing was a boy he did not like.

Hatred, revenge, was the motive in his mind at that time; but their desire for money overcame that.

"The patient did not like this boy nor his family", --

the details of which were not brought out.

Why not?

Because the details might show that the hate and the anger were strong enough to impel him to kill him; but he does tell you that the first boy was one he did not like, and he did not like his family.

"He was the patient's own age, rather large for his age. Patient's idea was to get hold of this boy when he was coming back from a party and lure him into an automobile.

He could not figure any safe way of getting the money, and because he could not figure of any safe way of getting the money, he brushed aside his hate and his desire for revenge upon his enemy."

Money is the motive in this case, and I will prove it repeatedly by their own evidence.

He could not figure any safe way of getting the money.

"The patient and his companion discussed this idea quite frequently. ~~xxxx~~ Neither of them, however, could think of any simple and certain method of securing the money."

All through this case it is money, money, money --
blood:

"Neither of them however could think of any simple or certain way of securing the money. They continued to ~~not~~ discuss the matter, weighing the pros and con, suggesting methods only to pick flaws in them.

"In March, 1934 the patient conceived the idea of securing" --

what? The thrill? The excitement?

No.

"Conceived the idea of securing the money by having it thrown off of a moving train. This idea was discussed in great detail, and gradually developed into a carefully systematized plan."

But Mr. Darrow disagrees with the doctor. This was not carefully discussed and gone into in great detail, and gradually developed into a carefully systematized plan. This was just the mad act of mad boys, wandering around in the dark, looking for a teddy bear.

"It was figured out first that the money should be thrown off of a moving train

"when it was dark, somewhere in the country. He and his companion spent many uncomfortable afternoons" --

I really sympathize with you, dear little boys, for all of the discomfort you suffered on those afternoons.

It is too bad that in this weird, uncanny scheme of yours, of murder, you had to spend many uncomfortable afternoons --

"going over the Illinois Central tracks looking for suitable locations.

Finally his companion" --

that is, Leopold, your honor --

"suggested the idea of setting upon a certain brick factory on the left side of the track as a landmark.

There was considerable discussion as to what car to use. Both the patient and his companion felt that it was not safe to use either of their own cars."

Mad boys in the dark and dreamland, doing a mad act

without any thought of the consequences of it,
and least of all not considering their personal safety
at all?

Too crazy to know that it was wrong,
and too crazy to care whether they were caught?

"They both felt that it was not safe
to use either of their own cars. The
patient developed an intense interest in
the plan, and found also that it
gave him a very pleasant topic of conver-
sation when he and his companion were
together, drinking or driving about."

When he and his companion were drinking they would
gloat over the perfection of their plan to murder, and
murder for money.

I used to think that the most impelling
motive in life was passion. But in
this case passion and a desire for revenge is swept
aside for money.

Money is the controlling motive in this
case. If they merely wanted to kill for a thrill,
if they merely wanted to kill to satisfy his anger

and hate toward this companion of his, he would have been the victim; but they could not figure out how they could safely get the money.

"Patient's companion suggested that they rent a car, so they went to the Morrison Hotel and registered under the name of Ballard. An elaborate -- a crime without a purpose?

A mad act of mad boys without any purpose, without any thought either in its planning or its execution according to Mr. Darrow, but the doctor says:

"An elaborate plan for building up an identification was worked out. Letters were sent to Mr. Ballard at the hotel, and a bank account was opened in his name."

Here is a man who has no emotion; all intellect and no emotion.

His nurse says he was kind and affectionate, obedient and respectful.

Isn't that emotion?

Isn't love one of the greatest emotions that surges through your heart?

Kind and affectionate, loving.

What does the doctor say:

"The bank account was opened in his name", and then the doctor adds in parentheses:

"When the patient came to this point in the narrative he looked decidedly interested, drew up his chair, talked almost in a dramatic whisper with considerable tension; his eyes constantly roaming the room."

In fact he showed that?

Lack of emotion?

Showed that he was devoid of emotion?

No.

In fact he showed intense emotional reaction. Herein the repetition of that which he said had been very thrilling to him.

Who are you going to believe?

The doctor, after he has been coached,

taking the stand and saying he has not any emotion, or the doctor in the first instance when he is making a report, that he does not expect you or I to see, and he stated on the stand he did not, and he says, in fact, he showed intense emotional reactions.

"On May 9th patient's companion went to the rent-a-car company and said he wished to rent a car".

Well, I will pass that. Your honor knows it.

"Mitigation", --

and this document is offered in mitigation of this crime. As I said yesterday, probably I have been confused by the use of all these learned terms in a strange, foreign language that I did not understand or learn. But if this is mitigation, my God, I would like to know what is aggravation.

"The patient's companion" --

that is Leopold --

"first suggested that they get a girl;"

THE COURT: Now, you went over that once yesterday.

It can serve no good purpose to repeat that.

MR. CROWE: I know, but I am merely repeating it, your honor, for the reason --

THE COURT: You mustn't repeat. I don't want to be arbitrary, but don't repeat.

MR. CROWE: All right, your honor.

THE COURT: You can have as much time as you like. There is no necessity of repeating that phrase with these ladies present. You have already gone over it once, and the court is fully aware of it.

MR. CROWE: I know that, but I want to call your Honor's attention to it. Yesterday it was an argument, and today I am reading from the report of the doctor.

THE COURT: Well, there is no use reading it again or repeating it again.

MR. CROWE: Your honor understands it is in the report?

THE COURT: Yes.

MR. CROWE: "Then they considered half a dozen boys, any one of them would do: That they were physically small enough to be easily handled."

That is the first reason.

"They didn't want to take a boy that might put up a fight and get the best of it."

That was one reason why they ~~discarded~~ discarded the first boy, who was bigger than they were, and the second reason was the difficulty of getting the money.

"One who was physically small enough to be easily handled, and their parents were extremely wealthy and who would have no difficulty or disinclination to pay ransom money."

What is the motive?

All the way through this report, all the way through the confession -- money, ransom, wealth.

These boys' identities were not sought other times, when the doctors are not anxious to get all of the facts.

Now, continuing on page 102, your honor:

"Since they planned to kidnap a boy who

"was known to them, because it would be easy to lure him into their automobile, they felt that it was necessary to kill him at once."

Why?

For the thrill?

For the excitement?

The only reason that Mr. Darrow can assign for this mad act of mad boys, that they did it for thrill or excitement?

Oh, no.

This is what they told the doctor:

"A boy who was known to them", etc., "they felt it was necessary to kill him at once, to avoid any possible identification of themselves by the victim, should he escape, or their plans go awry."

That is the motive here.

The kidnaping was planned for ransom. They wanted the money first, and they were going to kidnap a boy to get the money. Then to make sure they were picking the right fellow, whose folks

were wealthy, and who could pay the ransom, they had to pick a boy they knew and who knew them.

Then the motive for the murder was their own self preservation.

You do not have to take my word for it. Take the word of the doctors hired by the alienists, who say the boys told them that themselves.

"It was necessary to kill him at once, to avoid any possible identification by the victim should he escape, or their plans go awry."

Was this killing done as we have been led to believe by the defense, merely for the thrill, your honor, or the excitement?

What does the doctor further say on that?

"The patient" -- Loeb -- "did not anticipate the actual killing with any pleasure."

It was not for the thrill or the excitement. The original crime was the kidnaping for money. The killing was an afterthought, to prevent their identification, and their subsequent apprehension and punishment. He said he did not anticipate the killing with any pleasure. It was merely necessary in order

to get the money.

Motive?

"The killing apparently has no other
significance" --

now, this is not my argument, your honor, but on
page 103 of their own report, their own evidence --

"the killing apparently has no other
significance than being an inevitable
part of a perfect crime in covering one
possible trace of identification".

Drs. Hulbert and Bowman were told by these defendants,
as I told your honor, that the killing had no signif-
icance here except to prevent their being apprehended
and convicted if the victim escaped.

That is the motive for the murder,
self preservation, the same as a thief at night in
your house, when suddenly surprised, shoots to kill.

Why?

He did not go into your house to kill;
he went in to rob. The killing had no significance,
except he did not want to be apprehended; the desire,
the urge of self preservation.

And that is the only significance that

the murder in this case has; not the thrill; as we have been told; not a desire for excitement, but they killed for exactly the same reason that the burglar caught at night kills for, exactly the same reason that Krauser killed when he was robbing the Atlantic & Pacific Tea Store. He did not go into the A & P store with murder in his heart. He went in with greed, just as they went into this kidnaping. He killed because he did not want to be apprehended.

See whether they took delight and pleasure in this killing for the mere wantonness of killing. See whether the mere wantonness of killing gave them the thrill that they tried to make you believe.

"They anticipated a few unpleasant minutes."

Not pleasant minutes; not the thrill and the delight and the fast beating hearts that they tell you that Dickie Loeb has, if he has got a heart at all.

"They anticipated a few unpleasant minutes in strangling him."

And I might tell you at this point, your honor, and will develop later, that the original plan of Loeb was not to kill him with the chisel, but they were to strangle him to death with the ropes that they procured.

He was to pull one end and Leopold the other; and the reason he wanted that done was, as I will demonstrate as we go on, Leopold had something on him.

Leopold knew about the crimes A, B, C and D, and in this murder he was going to make Leopold pull the rope so he would have something equal on Leopold.

"They anticipated a few unpleasant minutes in strangling him",

And then the doctor says in parenthesis:

"The patient's face registered the expression of disgust".

No emotions.

No, his emotions were split off from his intellect.

And again the doctor says he showed emotion; he showed disgust at the plot to strangle that boy.

"And they planned for each of them, namely, the patient and his associate, to have hold of one end of the strangling rope and they would pull at the same time so that both would be equally guilty of murder. They did not seem to think that this would give them a closer tie in their friendship."

No thrill.

No delight.

It was the sharing of culpability.

"It was not anticipated that the blow on the back of the head with the taped chisel would be fatal."

In

"The patient stated that he thinks that during the last week preceding the crime that he had less pleasure in his anticipations."

He didn't take the same pleasure in thinking of getting Ten Thousand Dollars by kidnaping the last week, because the murder end began to worry him, and he was going to make Leopold share the guilt equally of the murder. This man, who does not believe in God, and certainly does not believe in the laws of the state of Illinois, who has no emotions or no heart, might be surprised to know that it was his own conscience bothering him the last week.

"He did not want to back out because of their extensive plans, because of the time spent, because of the trouble they had gone to, and because of his associate being in it with him, and he was afraid of what the associate would think should he not go ahead. They decided to get any young boy they knew."

Any young boy they knew! Is that all? Page 104:

"They decided to get any young boy they knew to be of a wealthy family."

Money didn't enter into it.

Again on page 104: "They had also perfected the plan for securing---" what? The Thrill? The excitement? No. "They had also perfected the plan for securing the money. The victim's father was to be told to put the money in a cigar box," etc. I

won't go on with that because your honor is familiar with the details.

Again, and this is three times in this report as to this boy who had no emotions and on account of lack of emotions in a mad frenzy and in a dream committed this unthinkable crime, on page 107 the doctors say, continuing with Loeb:

"We got the boy and disposed of him as planned on Wednesday,"

then I will skip some.

"So we made our escape without waiting for the train."

What I skipped is merely the details about send-

3m ing the cab, and so on.

"We returned the car to the
agency at 4:30,"

and the doctors remark in parenthesis,

"At this point he choked up."

His emotions overcame him.

"He choked up and he wiped his nose
with his fingers."

He wiped away the tears.

The other fellow hasn't any emotions either,
your honor, none at all. He drove them all out when
he was seven or eight or nine or ten years of age, at
the same time he passed God out of his heart. Well,
let's see what Dickie says about it.

"I had quite a time quieting down my
associate."

This is during the murder, if your honor please. It
follows immediately after,

"He was hit over the head with a chisel",
and so on.

"I had quite a time quieting down my
associate."

4x

On page 108. "I cooled him down in five minutes, after we got him into the back seat, thinking he was alive. I got calmer, while quieting my associate. He was hit on the head several times, (referring to Franks.) My associate says, 'This is terrible, this is terrible.'"

Emotion or totally devoid of emotion? When he saw Loeb knocking out the life of this boy it took Loeb five minutes to quiet him down. He said,

"This is terrible, this is terrible."

I will tell your honor, if you don't think they have got emotions, of another instance. Some of us didn't think that Carl-- what is that fellow's name who stole the cars?

MR. SMITH: Harvey Church.

MR. CROWE: (Continuing) -- that Harvey Church had. He told his story with the air of a braggadocio, and he gloated apparently while he was telling the authorities how tough a fellow he was. But when he was told to begin his march to the gallows they carried him

there in a stupor. And if it is the fate of these two perverts that they must pay the penalty of this crime upon the gallows, when they realize it, you will find that they have got emotion and you will find they have got fear, and you will find these cowardly perverts will have to be carried to the gallows.

"This is terrible, this is terrible, I told him it was all right, and talked and laughed, to calm him."

To calm him? No. "I told him it was all right, and joked and laughed, possibly to calm myself, too."

Cold-blooded? How did they put this poor little Franks boy's body into the culvert? On page 108;

"Unfortunately, the body was not kicked far enough into this hole."

There is that little dead body, naked, and after they shoved it in, they kicked it in; and the unfortunate part of it was, according to Loeb, unfortunately the body was not kicked far enough into this hole, because a foot remained protruding, visible to a passerby.

6m

That was the only unfortunate thing about this, that a foot stuck out, and the body was found the next day; and they are sitting before your honor on a plea of guilty to this murder.

He did not have any emotions. He first told the doctor, in accordance either with his own ideas or his training, that he got a kick out of the whole thing; and then he began to get a little more truthful to the doctor.

On page 110: "He first stated that he got more of a kick in discussing it with his own family, but later changed his statement and said that he felt he got a little less kick because he had some slight remorse. His mother said that whoever did it should be tarred and feathered."

What does that mean? A mob ought to take him. We have heard Mr. Darrow talk repeatedly of the hoarse cry of the angry mob. There is no danger or no fear of us hearing the hoarse cry of the angry mob if the extreme penalty is visited here. I am not so sure otherwise.

"On the other hand the patient was

612
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"a little worried."

Well, what is worry? Worry is an emotion the same as fear, the same as love.

"Worried by the attitude of his father."

I would like to direct your honor's attention to what I have got marked there (handing the Bowman-Hulbert report to Judge Caverly), and particularly the word

"descent",

showing the attitude of mind of some of these defense alienists when they refer to childish acts and so on.

I will skip that. Do you want want to look at it?

Now, let us find out how he has acted in jail.

On page 114, your honor; "He has shown nothing unusual in his behaviour in jail."

Acts just like a normal, sane person.

"He has shown nothing unusual in his behaviour in jail."

Of course after this report had been given to the lawyers and the doctors from the East they had to add to it a little bit, just as they did about the epilepsy, and Doc White brought in a lot of things that are not in this report, and someone else brought the

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unusual conduct of the defendant while he was in jail, wearing an old coat and so on.

But these two doctors, whom the defense was young and had not matured, say he showed nothing unusual in his behavior in jail; his life is quiet and well ordered. He eats and sleeps well; even going to sleep while his associate was being examined in the same room.

Dr. Krohn has been criticized for saying that these defendants were correctly oriented in all three manners.

Let us see what these three doctors say.

"He is correctly oriented in the three spheres."

He knows his name, he knows where he is, he knows what is going on.

"He takes a lively interest in the jail routine, and in the affairs of other prisoners, speaking of their crimes and their prospects in the usual jail phraseology, such as 'I think so and so

"will get the rope" or "I think
so and so will get the street".

Is there anything in his conduct in the jail that those
doctors discovered, to indicate a mad boy who wants
to do a mad act?

Or is it just the conduct of normal
people, people who are responsible to the law for
their violations of it?

It is now twelve thirty.

THE COURT: We will suspend now until two o'clock.

Whereupon an adjournment was here
taken to two o'clock P.M. Wednesday,
August 28th, 1924.

3:00 o'clock P.M.

Wednesday, August 27, 1924.

Court reconvened, pursuant to adjournment heretofore taken, at the hour of 3:00 o'clock P.M. Wednesday, August 27th, 1924.

Present, same as before.

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(Whereupon State's Attorney Crowe here resumed his closing argument on behalf of the prosecution as follows):

MR. CROWE: May it please your honor:

I do not intend to take up any more time than I deem ^{is} necessary. Your honor has been extremely patient with the state and with the defense in this case, but I think that your honor realizes, as most everybody realizes, the tremendous importance of this case, and the fact that it should be tried in an orderly manner, according to the laws of the State; and where h... lives or the enforcement of

the law is concerned, time is of little moment.

I just want to call your attention to one or two little things which show that this was not a purposeless crime of mad boys traveling around in a dream.

On page 105 of the Hulbert-Bowman report, the doctors say:

"The boys arranged to have their rented car, with a black cloth over the license plate, backed up to the tracks, at the place where the box would be thrown. They had timed the train, they had arranged that if the train was late, it probably meant that there had been some flaw in their plans, and that the father had sought aid, whereupon they would drive away in the car, and not wait for the train."

Planning, deliberating, working out the most minute details, they were perfectly assured that their plans were so perfect that they themselves would never be suspected, and of course would never be apprehended

And nothing in my judgment but an act of God, an act of Providence, is responsible for the unraveling of this terrible crime.

I think that when the glasses, that Leopold had not worn for three months, glasses that he no longer needed, dropped from his pocket at night, the hand of God was at work in this case. He may not have believed in a God. But, if he has listened and paid attention and thought as the evidence was unfolded, he must begin to believe there is a God now.

No thought of money; a mad act committed by mad boys in a dream; money did not enter into it, and yet they tell the doctor and he tells us on page 106:

"They planned to divide the ten thousand dollars ransom money equally;" and I believe one of our alienists expressed it, -- they planned to cut it fifty-fifty.

I have repeatedly referred to the fact that they tried to create an impression that when the doctors were examining them they were perfectly

frank they co-operated, they did not lie, they did not distort, they did not hold back any evidence, and that is the sworn testimony of the three doctors from the east.

Let us find out whether that is true or not.

I suspected and I tried to get them to admit on cross examination that boys of superior education and intellect, boys who could plan a crime of this sort stretching over a period of six months and attend to every minute detail, boys who showed such an abandoned and malignant heart as the facts in this case show that they possessed, might possibly, when caught like rats, lie just a little bit to friendly doctors who were trying to build up a defense for them to save their worthless lives.

Oh, no, that is impossible.

Everything they told us was true.

They withheld nothing. They distorted nothing. They suppressed nothing.

Well, let's see what they say about it.

In the report that was intended to be a secret report

and was not to fall into your hands or into mine.
On page 115, if your honor please, in a friendly
psychiatric examination:

"The boy is apparently frank, but is
not absolutely so, sometimes distorting
his statements, but without anything
to indicate it, and sometimes suppresses
much data."

I wonder, is it possible they did fool old Doc Yak
from Washington, and I wonder whether it was necessary
to fool him.

I wonder whether he was not willing to
try to fool the court?

Back to motive again, on page 116:

"He had no hatred toward the boy. As
the hate of his first planned victim
disappeared, the excitement of pl ng
grew, and money developed as an after-
thought. Neither he nor his associate
would have done it without the money.
That extra five thousand dollars would
have been his security",

6r

and then the doctor, quoting the language of Loeb in quotation marks says:

"And five thousand dollars is five thousand dollars".

And again, as to whether or not there are any emotions in the defendant, on page 117: --

I read this morning similar stuff from other sections:--

"He anticipated a few unpleasant minutes in strangling the victim."

Then the doctor comments:

"Facial expression of disgust".

But no interest, no emotion; just mad boys; a feeling of repugnance and disgust at the murder, that was not originally contemplated, but was an afterthought because it was necessary to murder in order to remain at large.

Have they any interest in the money?

Follow on page 118, your honor:

"He anticipated especially the money", in the language of Loeb, and then the doctor adds in parenthesis:

"Facial expression of interest".

"We thought we had it all so cleverly

"worked out, and we felt certain at not being caught. We felt certain of not being caught, or we would not have gone into it."

Is that the mad talk of a mad man or a mad boy?
Or is that the cold blooded reasoning of a man who is a criminal, with a criminal heart and a superior intelligence and education?

"I had considered the possibility of being caught, I was afraid my father" -- more emotion -- "a sick man, could not stand the shock".

First, if they were not certain they were not going to be caught they would have backed out, their own safety considered.

Second: "I had considered the possibility of being caught and I was afraid my father, a sick man, could not stand the shock, but I felt ~~me~~ so certain of not being caught that we went on with it."

No emotion. Just a machine. And yet, again, on page 118, if your honor please, the doctor says:

"He expressed remorse".

At what?

At his being caught?

The only one that he is concerned in, in his scheme of life, is himself.

"I asked him if he would go through this plan again if he felt certain he would not be discovered. He replied: 'I believe I would'".

Why?

Darrow says ten thousand dollars is not the motive, but take it from his own lips:

"I believe I would if I could get the money."

Page 118; not the thrill, not the excitement:

"I believe I would if I could get the money."

"The patient's attention was called to a newspaper account of an interview with Mrs. Franks, the mother of the victim, in which she stated she had no desire to see the boys hanged, but would like to talk to them to know whether the boy

"suffered in his last moments. The patient was asked whether it would upset him at all to talk with Mrs. Franks. He replied he thought it would upset him a little, and make him feel sad. He said when he read this interview in the paper, 'My first feeling was joy'."

Joy at what?

"That it might help us, her not feeling vindictive. Then a little remorse, not much, perhaps a little bit."

His emotions respond not much when he thinks of the suffering of Mrs. Franks, but when he thinks that her statement might save his neck, he experiences great joy. Emotion!

No emotion?

These doctors could not find emotion?

Again on page 119:

"The patient stated that although he had no feeling of remorse about the crime, he felt very, very sorry about it for his family's sake, because it might

"cause them distress. I would be willing to increase the chance of my hanging to save the family from believing that I was the arch fiend. My folks have probably had the blow softened by blaming him (Leopold), and his folks by blaming me; but before I decide to take the responsibility in order to save my family, I must consult with my older brother first."

Everything he said and told the doctors he told it on advice, and repeatedly this report demonstrates that,

There has been some talk here in order to make him appear to be mad, that he even contemplated killing his little brother Tommy or killing his father.

The evidence in this case shows that that is just thrown in for good measure. That it has no foundation in fact at all.

It is another piece of perjury, manufactured in order to build a foundation for a perjured

insanity defense.

On page 120, if your honor please, when questioned about his attitude toward his family, the questioning was directed toward the possibility of some of them having been considered as the victim of this superior crime.

It does not emanate from him, and it does not emanate from Leopold.

The doctor suggested it to him.

"The questioning was directed toward the possibility of some of them having been considered. He described having in a joking way proposed that his own younger brother Tommy being the victim, and his associate jokingly agreed with it, but they gave up the idea because it was not practical for this reason; that if Tommy had disappeared, the patient would have to be at home and with the family during the period of the hunt and could not be foot loose to carry out the plans

"of securing the ransom money. 'I couldn't have done it because I am tremendously fond of him'".

Emotion, love.

After this had been suggested to him, still they thought of money, money, money.

If they kidnaped one of the father, -- on page 121 -- he asked who would furnish the money.

They thought again that it was not practicable, & that there would be no one to furnish the money.

Let's see whether they had any thought of money in this kidnaping.

1a

Again on page 121, if your honor please:

"He had proposed that with his associate, and with his associate had contemplated using Dick Ruble, a very close friend of the patient and his associate, toward whom neither the patient nor his associate had any ill feeling nor grudge, as a victim."

On page 122:

"The plan of kidnaping Dick was given up because Dick's father was so tight we might not get any money from him."

And also another reason. It runs all through.

First, the necessity of getting the money, and, second, the necessity of avoiding detection.

on page 122,

"Furthermore, they might be suspected because they were such close friends, associated so much with him. Therefore, they would be

2a

"to be questioned if Dick Rubel
should disappear."

Now I told your honor about A, B, C, and D,
that these doctors decided that it was forencically
inadvisable to go into, that it might hurt the defense
if it was gone into, and for that reason they did not
go into it. I told you at that time I would prove by
this report that Loeb had committed major crimes, four
of them, that he would not even tell his lawyers about,
that he would not tell the doctors about, and they con-
cluded it was a thing to inquiry; that
Leopold knew about these, and that Loeb was a friend of
Leopold; that he contemplated killing him so that he
would not be in his power.

I told your honor, and I have no desire to
repeat it, the use of Leopold of that information,
and the method in which he blackmailed Loeb. Now let
us see what the evidence is on that.

"The patient and his associate were
on very intimate terms, but the
patient stated that his associate

3m

"often stated that he would never entirely trust the patient, since the time the associates had found that the patient was taking unfair financial advantage of him."

Or in other words that he did not have the honor that is supposed to exist among thieves. Loeb was rubbed by Leopold.

"In a way, I have always been sort of afraid of him. He intimidated me by threatening to expose me"---

A, B, C and D.

"He intimidated me by threatening to expose me, and I could not stand it."

And on page 123,

"Of late the patient, Loeb, often thought of the possibility of shooting his associate."

He was afraid of Leopold; he was afraid that Leopold might tell of A, B, C and D.

"I could not stand it. I had often thought of the possibility of shoot-

"ing him."

And again on page 123, your honor:

"He often contemplated shooting his associate when they were out together and had the associate's revolvers along. He thought of pointing the revolver at his associate and shooting him.

He denied ever having thought of hitting him over the head with a chisel. 'The idea of murdering a fellow, especially alone, -- I don't think I could have done it. If I could have snapped my fingers, and make him pass away in a heart attack, I would have done it'."

Now, we can understand why the doctors in their testimony suppressed this part of the testimony. Now we can understand what A, B, C and D are.

On page 124:

"One reason why he never murdered Leopold"

the report says "associate" --

"was that he felt that he would be suspected, and there was no very safe way of doing it."

An innocent boy, doing the killing for a thrill, who did not care what boy he picked out, rich or poor, black or white.

According to Mr. Darrow, money had nothing to do with it at all.

I have demonstrated by their own evidence, your honor, that money was the underlying motive of the whole thing, and a secondary, or an equally pronounced consideration was that they were not going to kill anybody if they thought there was a possibility of being caught.

They did not kill the first man they had in mind because he was a larger man than they. They would have backed out at any time if they had thought there was a possibility of being caught. Always that concern about their own precious hides.

And, one reason why he did not kill Leopold was that he knew of no very safe way of doing it and he might have been suspected.

Well, it might have been a good thing if he could have planned as safe a way to kill Leopold as he did to kill Bobby Franks and then have

stopped there; or, he might have carried it a little further and committed suicide, and I think the community -- a pall might have settled over them, but I do not think their grief would have lasted long.

"In connection with this he had often contemplated murdering his associate and securing a new pal."

Somebody who would have nothing on him.

"He states that he had often contemplated hitting his associate over the head with a pistol, later shooting him, breaking the crystal of his watch, robbing him, leaving things in a way to create the impression that his associate had been robbed, that there had been a struggle, and he had been killed during the struggle."

On page 124.

Money, and his opinion of the power of money. He thought that on account of his millions, or his father's millions that he was above the law. He

believed that you cannot hang a million dollars in Cook County no matter how dastardly the crime.

Well, I disagree with him. I think the law is superior to money.

I direct your honor's attention to page

126:

"He contemplated escape from jail, but he does not want to do this, for it would distress his family, to have him disappear and be known either as a criminal or an insane person.

"Before he decides to escape he wanted to discuss this with his older brother Allan.

"He thinks" --

and this is his philosophy, and I don't know but what it was quite a coincidence that one of the books he took to the Morrison Hotel was "The influence of Wealth on Imperial Rome", or not, but get this philosophy here, your honor.

"He thinks an escape could be managed"

"by spending a few thousand dollars by bribing the guards at the jail and by someone giving him a gun. He says this without any swagger, as though it was only a matter of careful detailed planning, which his mind can do. He has made no plans as to where he would go should he escape."

Then the doctors add:

"It must be borne in mind that Tommy O'Connor, one of the most desperate and one of the most intelligent criminals Chicago has ever known, did make a successful jail delivery from this jail within the last few years."

What a feeling of comfort and security the mothers and fathers of this town would have, with their children going back and forth upon the streets of Chicago to school, and these two mad dogs at large. By God, every mother and every father would shudder, and they would want to lock their children in the house until they knew that the mad dogs had been captured or killed.

Let us find out about this superman stuff. Page 127:

"He often discussed morals with his associates, who insisted to him that the only wrong he, the patient, can do, is to make a mistake, that anything that gives him pleasure is right for him to do."

Let's find out what judgment and credence Loeb paid to that statement.

Quoting him literally from 127, he says:

"I took this statement with a great big dose of salt. Smile."

Well, he knew Leopold, and he knew when Leopold was joking, and he knew when he was in earnest, and when he talked about the superman theory, he says:

"I took it with a great big dose of salt. Smiles."

But the doctors swallowed it as if it was sugar.

No emotion?

Page 128:

"He says he is not sorry for his present

predicament."

It reminds me of a fellow who killed his wife, over in jail, some years ago, and when his lawyer went in to talk to him he had no defense on earth.

At that time these nameless insanity diseases were not thought of, and it looked as if this fellow was going to hang, and he afterwards did, and he told the lawyer, with tears running down his cheeks:

"You know, there isn't anybody in town who feels as bad about this as I do."

There isn't anybody in town that feels as bad as Loeb does about his present predicament.

"He says that he is sorry for his present predicament for his family's sake. He says he should be sorrier. He says it is wrong. He doesn't know what should be done to him. He felt that the law should take its course, unless he could avoid it in some other way."

Now that is probably by escape, by bribing guards, and as he says, that is not out of the question; Tommy

O'Connor got out and he is out yet.

One hurdle at a time is his theory and Darrow's theory, to beat the rope.

Talk about life imprisonment in the penitentiary.

Escape if you can, and if you cannot, the same arguments that we made to save your neck we will make to the board of pardons or to the governor and get you out.

He would repeat maybe ~~xx~~ if he knew he would not be discovered.

Is that mitigation, your honor?

All the way through this report runs the statement:

"I would kill again if I thought I could get away with it"

and they offer that in mitigation for the murder.

"When he and his associate quarrelled in March the patient considered securing another friend for his criminal operations. He actually hinted concerning this to his friend, but as he met with no favorable

"response he did not press the matter further. As he had considered that he and his associate would be no longer together after June of this year" --

that is when Leopold would be in Europe, on page 129 --

"he had thought of other ways of continuing his career of crime, A, B, C, D and the Franks murder is E. One idea was to rent a room in a bad neighborhood and hang around poolrooms and meet criminals. He had also considered (on page 130) becoming a clever financial criminal.

A financial criminal."

Money, money, money, not thrill, not excitement.

A clever financial criminal after he finished his law courses. He stated that he had considered crimes similar to that of Koretz, who had put through a gigantic stock swindle. If Mr. Darrow had read this, I think he would have blamed Koretz for this murder.

On page 131:

"The patient's intellectual functions are intact; he is obviously of high

"intelligence. The examination was extensive, but did not show any pathology except the low basal"-- how do you pronounce that?

MR. SBARBARO: Metabolism.

MR. CROWE: That was the only thing that this extensive examination showed, and not a sign of pathology at all.

"He is correctly oriented, and in excellent contact with his surroundings. He denies any hallucinatory experiences, and there is no evidence of their presence. He has no feeling that people are against him, or that he is being treated unfairly at the present time. Patient is intensely selfish, and wrapped up in his own thoughts and feelings."

Heredity, finally Mr. Darrow says; the family, or some ancestor away back planted the seed here. Hereditary influence. Well, let us see what their doctors say, on page 139:

"There is nothing about the patient's condition to show any evidence of a hereditary nature, and there is not the slightest reason to suppose that a condition of this kind will be transmitted to future generations by any of his siblings or relatives. This condition is acquired within the life history of the individual, and dies out when he dies."

It is something of his own construction, and his ancestors are in no degree responsible for it. It will die out when he dies out.

"There is nothing elicited from a most careful and painstaking history from all possible sources, to suggest that the family, either by omission or commission, contributed toward his delinquencies in the way they trained this boy."

Is your honor going to be more influenced by an argument of Mr. Darrow that Dickie is not responsible

for this, that his family is; that it is due to heredity, and training; or are you going to be more influenced by the statement of their doctors, who say:

"After the most extensive investigation, we find nothing in his family history or nothing in his training, that contributed in the slightest particular to this crime. It is a matter of his own making, it was born within him and will die within him."

May we take about five or ten minutes, Judge?

THE COURT: All right. Ten minutes recess, folks.

MR. CROME: I expect to finish tomorrow morning about eleven o'clock or so, and take perhaps fifteen minutes to close up the kidnaping case, and we may be through by noon, so counsel may make their plans accordingly.

THE COURT: You will take about half an hour tomorrow morning, then, starting at ten thirty?

MR. CROME: Starting at half past ten. I imagine I will be through at twelve o'clock. I will not

introduce the confessions, because that will take too long to read. I will merely put Shoemaker on the stand and have him testify that they did confess to him, and that will be the end of it.

THE COURT: All right.

Whereupon a short recess was here taken by Court and counsel.

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Court reconvened pursuant to short recess heretofore taken.

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(Whereupon State's Attorney Crowe resumed his closing argument on behalf of the prosecution, as follows):

MR. CROWE: Now, if your honor please, I merely want to direct your attention without reading it to page 100 of the Bowman-Hulbert report on Leopold, and as I come to matters that I do not think ought to be read, I will merely direct your attention to them. That is at the top of the page, the first four or five lines and I won't read it.

Shall I wait for Mr. Darrow?

MR. W. BACHERACH: No.

MR. CROWE: May it please the court again: Continuing with the Bowman-Hulbert report on page One Hundred, and here the person talking is Leopold and not Loeb;

"The reason why they agreed to strangle the victim with a rope, to their mind, was that that would make them equally guilty of the crime. It was not with

"any idea of close friendship or brotherhood. It was rather the opposite. The patient did not like the idea of strangling the victim and suggested chloroforming him, but his companion would not agree to this."

In other words, all this king and slave phantasy is a pure figment of the imagination of the defense. The real tie that binds in this case is that one was a criminal; the other had something on him. He was afraid of exposure; he contemplated murdering him; and the other one blackmailed him in the manner that I have already indicated. Loeb wanted to shut the mouth of Leopold, and then break with him. Leopold had enough on him on A, B, C and D, and that is why he wanted Leopold to help him choke the life out of little Bobby Franks.

Again, on page One Hundred:

"Considerable trouble was experienced in perfecting a plan whereby they could secure"--- what?

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The thrill? No. The money.

"Without exposing themselves to too much danger of being apprehended."

And again on page One Hundred One:

"They wanted to divide the Ten Thousand Dollars ransom money equally."

No emotion in the superman Leopold? No, he killed all his emotions before he came into court, on the advice of counsel and the advice of doctors. But on page One Hundred Two when he is talking he says:

"It was necessary to hit the victim several times over the head and he bled some. This upset the patient a great deal. He said to his companion, 'My God, this is awful.'"

~~xxxx~~

"He experienced a sinking feeling in the pit of his stomach; his hands trembled, he lost some of his self control. His companion, however,

laughed and joked, and helped the patient to get back his self control."

When they get to the culvert they found the boy had already died and they could not carry out their original scheme of strangling him with the ropes.

Again on page One Hundred Eight:

"Asked whether he would commit another such a crime if he were certain that he could escape detection, he replied, 'I would not commit another such a crime because I realize that no one can ever be sure of escaping detection.'"

He feels that this would be the only reason that would keep him from another such attempt. That there would be no question of remorse or guilt entering into it.

The desire to save their own worthless hides is the only thing that enters into their thoughts. No emotion, and yet on page One Hundred Eight before he knew that he would have to obliterate Little Emotion and let Intellect walk into the court alone he stated

that he is rather fond of small children. That he always wanted to take a crying child into his arms and comfort it.

That on such occasions he almost noticed a functioning of his lachrymal glands.

While in jail the patient has clearly been under considerable emotional tension. Been under considerable emotional tension and is rather irritable at times.

"The newspaper report that he is a cold-blooded scientist, with no emotions and entirely unconcerned", the argument of his counsel, that he is a cold-blooded scientist, with no emotions, and entirely unconcerned, as Drs. Hulbert and Bowman say on page 109:

"Is completely wrong."

"The patient ordinarily is able to make a calm, and self-possessed appearance, and before reporters and visitors seems perfectly self-possessed and unconcerned.

On the other hand, when he does not feel the need for doing it, and when he

"is talking frankly with people, and no longer posing, he shows a good deal of irritability and nervous tension."

When he is not posing to prepare a defense, based on the fact that he has no emotion, when he is not posing, these doctors say he shows a great deal of emotion.

He wouldn't lie either.

Why, your Honor, it really would be too bad if these two young fellows imposed on Old Doc Yak, lied to him.

I showed to you what Loeb said he would do. I showed to you in this report that he has done. He has lied repeatedly to the doctors. He has lied under advice of counsel and family. He has suppressed and distorted.

Let's see what Leopold said he would do.

On page 109:

"He seems to be reasonably frank during the examinations, particularly with regard to his own feelings and emotions and his estimate of himself. On the

"other hand, he undoubtedly omits certain data regarding some of his past experiences. He lied rather plausibly at times. Later, when he realized that it was known that he was lying, he appeared perfectly unconcerned. A number of times he inquired whether his story agreed with his companion's, and seemed to show a great deal of concern about this matter."

In other words, he wanted to know whether they had both learned their lesson in the same manner from their instructors and whether they were both telling the same story.

"In fact, he did this so crudely that it was apparent that he was concerned lest there be some failure of their stories to coincide."

In other words, both of them are lying, both of them have lied, both have suppressed things and hid them from their doctors, and they had to do it in order to give a basis of that insanity defense here.

Both of them had been schooled and trained

and instructed as to what to tell these doctors and what not to tell them, and when he is telling his story he is concerned lest there be some failure of their stories to coincide, lest one of them might forget or the other might forget.

Money!

On page 111:

"They also considered kidnaping their respective fathers, but this idea never got very far because the immediate objection of securing the money came to their minds."

Money was always uppermost in their minds when they talk about this kidnaping, and the murder, as I have explained, is an afterthought, in order to protect themselves.

Psychiatric observations. He lives
and learn.

"Patient's intellectual functions are intact" --
Leopold -- "and he is quite obviously an individual of high intelligence. He is correctly oriented, and in excellent contact with

"his surroundings."

Now will your honor read from here over on to the next page a line or two. (Handing the Bowman-Hulbert report to the court).

MR. WALTER BACHRACH: What page is that?

MR. CROWE: Have you the page there, so that they will know?

THE COURT: Page 142, the last paragraph. (Court reading the matter indicated).

MR. CROWE: I might add in passing, I quite agree with them.

The same argument was made by Mr. Darrow with reference to Leopold as was made to me.

First he began to blame the old German philosopher Nietzsche, although every student in every university for the last twenty-five years has read his philosophy.

And then I guess he thought that would not do because if reading this philosophy would be an excuse for this, how about the countless thousands who have gone before and who are still reading this philosophy who lead decent honorable lives?

He did not have a poor old nurse in this case to blame, and he was not quite satisfied in blaming some remote ancestor, and so he blames their parents, respectable, decent law abiding citizens.

The only unfortunate thing that ever came into their life was to have a ~~sax~~ snake like Leopold in that decent family. Casting blame where blame was not due, but where sympathy should go out as it does go out from the heart of every person in this community, to the respected families of these men.

But Darrow says:

"No. Save your sympathy for the boys.

Do not place the blame on the boys.

Place it on their families. This is the result of heredity."

Well, let us see what the doctors say:

On page 122, and I have read what they said about the family history of Loeb:

"However, it might be said that our present degree of knowledge gives us no reason to feel that a mental condition such as the patient's is of an hereditary nature,

"or that it will appear in future generations. The family has apparently endeavored to do everything possible to bring the patient up in a suitable manner, and there has been no ~~any~~ conscious error or neglect on their part."

Well, so much for the medical defense in this case.

Mr. Darrow has read to you poetry. May I be permitted, if your honor please, for a few moments to read you

some prose:

"The White House, Washington, D.C.

August 8, 1904.

"The application for commutation of sentence of John W. Burley is denied. This man committed the most heinous crime known to our laws. Twice before he ~~is~~ has committed crimes of a similar but less horrible character. In my judgment, there is no justification whatever for paying heed to the allegations that he is not of sound mind" --

allegations made after the trial and the conviction, as in this case.

No person in all this broad land who knew these two defendants ever suspected that they were mentally diseased until after Bachrach and Darrow were retained to defend them, in a case where they had no escape on the facts.

If I had taken them into custody on the 20th day of May and attempted to have them committed to an insane asylum, Mr. Darrow would have been here, their families would have been here, and all the doctors that they could hire, and there would be only one crazy man in the court room, and that would be the State's Attorney.

"Allegations made after the trial and conviction. Nobody would pretend that there has ever been such degree of mental unsoundness shown as would make people even consider sending him to an asylum if he had not committed this crime. Under such circumstances he should certainly be esteemed sane enough to suffer the penalty for his monstrous deed."

And the penalty in this case was hanging.

"I have scant sympathy with a plea of insanity advanced to save a man from the consequences of crime, when, unless that crime had been committed, it would have been impossible to persuade any reasonable authority to commit him to an asylum as insane."

Would it be possible in this case, if this crime had not been committed, to persuade any reasonable authority to commit either one of these men to an insane asylum as insane?

Continuing reading:

"The most dangerous criminals, especially among those prone to commit this particular kind of an offense, there are plenty of a temper so fiendish or brutal as to be incompatible with any other than a brutish order of intelligence, but these men are nevertheless responsible for their act, and nothing more tends to encourage crime among such men than the belief that through the plea of insanity or any other method it is possible for them to escape

paying the just penalty of their crime. The crime in question is one to the existence of which we largely owe the existence of that spirit of lawlessness which takes the form of lynching.

"It is a crime so revolting that the criminal is not entitled to one particle of sympathy from any human being."

And I submit, if your honor please, the crime at bar is so revolting that the criminals are not entitled to one particle of sympathy from any human being. I continue the reading:

"It is essential that punishment for it should not only be certain, but as swift as possible. The jury in this case did their duty by recommending the infliction of the death penalty. It is to be regretted that we do not have special provision for some more summary dealing with this type of case."

That it is to be regretted in this case, if your honor please, that under the laws as you have found them, we have no more summary manner of dealing with the case at bar. But this is a city of law, and this community will survive or fall as

we enforce our laws and respect them.

I continue the reading:

"The more we do what in us lies to secure a certain and swift justice in dealing with these cases, the more effectively do we work to secure a certain and swift justice in dealing with these cases, the more effectively do we work against the growth of that lynching spirit which is so full of evil omen for this people, because it seeks to avenge one infamous crime by the commission of another of equal infamy.

"The application is denied, and the sentence will be carried into effect."

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I submit, if your honor please, that it is safer to follow the reasoning of this state document than it is to follow the sophistries of Clarence Darrow. I submit that it is safer to follow the philosophy of Theodore Roosevelt, as he laid it down in this great state paper when he was President of the United States, and was only concerned with the enforcement of the law, than it is to follow the weird and uncanny philosophy of the paid advocates of the defense, whose business it is to make murder safe in Cook County.

Now, if your honor please, the other day Mr. Darrow argued that the state had advanced the silly argument that these boys were gamblers, and they gambled for high stakes, and he said the only evidence we had to predicate such a charge on was the testimony of Leon Mandel who had played one game of bridge with them, and who said that in that game they had played for five or ten cents a point.

The trouble with Mr. Darrow is that he does not know all the facts in this case. He does not know all the evidence.

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I thank God I am not a great pleader, because I think that sometimes when men are obsessed with the idea that when they open their mouth words of wisdom rush out, that all that is necessary in the trial of a case is to make a wonderful argument, that that is why a great many of them fail in my judgment, because they rely too much upon their oratory; they pay no attention whatever to the facts in the case, and after all I believe that courts and juries are influenced not by oratory, but by hard facts sworn to by witnesses.

That is why I have paid more attention to the preparation of the evidence in this case than I have to writing a closing speech.

Now, let us see whether there is any other evidence in this case. Among the letters introduced in evidence we find the following, Allan M. Loeb, 3485 Utah Avenue, Seattle, Washington. Allan Loeb is the generalissimo of the defense. He is the one who is advising young Loeb whether or not he ought to tell the doctors this or whether he ought to tell the lawyers that. This letter was mailed May 19th at 5:30 P.M., 1924, and probably was first received by Richard Loeb

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the day of the murder. Marked "Personal."

"Dear Dick: I wanted to send you
this letter"—

MR. DARROW: Was that offered in evidence?

MR. CROWE: Yes, with that batch of letters.

MR. DARROW: Was it marked or read?

MR. CROWE: No.

MR. DARROW: Let us see it first, will you?

MR. CROWE: Yes, and here is another one.

MR. DARROW: I don't know whether it would be
competent.

MR. CROWE: You will recollect, your honor, I
introduced a mass of correspondence taken
from each one of their rooms, without reading, and
said that anything we wanted to read later we would.
A great many of them are of little or no interest.

MR. DARROW: Are there any other letters there?

MR. CROWE: Those are the only ones. I have got
a stack of them if you want them.

MR. DARROW: I mean those you want to read.

MR. CROWE: No, these are the only two.

"Dear Dick: I wanted to send this

"letter to you so there would be no possible chance of Dad seeing it. Glad to hear about Sammy Schmaltz, but could that amount have been possibly reversed—"

In other words, as I read this letter, and as your honor will read it after I get all through, he was glad to hear he had won some money, but could that amount have been possibly reversed, could he have lost it instead of winning it?

"If so, you are all wrong in your gambling, and even so"— even if you did win instead of lose— "and even so you must be shooting a little too high. Did you get cash?" Or did he pay on an I.O.U., I suppose.

"Best love, Allen."

Another letter from one of his companions, and it is fair to assume he is a wealthy man or the son of a wealthy man.

MR. WALTER RAGNACH: There is no evidence of that.

MR. CROWE: No, there is no evidence. I say, one

of his companions, and it is fair to assume that he associated with people of his own class.

MR. DARROW: Do you think that letter is competent?

MR. CROWE: Absolutely.

MR. DARROW: Either one of them?

MR. CROWE: Absolutely.

MR. DARROW: All right; let it go.

MR. CROWE: "Robert L. Leopold, 530 Thompson Street, Ann Arbor, Michigan. Dear Dick: Just a line, as I am awfully busy, and I am coming to you for help. I have an exam in history, seventeen, and know nothing about it. Furthermore, my notes are no good. You said last semester that you would let me take your notes in the course. Please send them to me right away if you can. My exam is next Friday and I must study. Please drop me a line and let me know, so I know whether to plan on them or not. I am damn sorry that we couldn't see each other while

"I was home, but you are always so
_____ busy. I guess I am too, while
home. But I always feel as though I am
intruding when you guys are gambling,
because I don't gamble that high. At any
rate, better luck next time when home.
Thanks in advance for your trouble.

Sincerely Bobby."

It is in evidence in this case, if your
honor please, that both of these defendants had
a bank account. We put a witness on the stand,
an employe of Sears Roebuck, who testified that
from time to time she gave checks to the defendant
Loeb here. She told about two checks for two hundred
and fifty dollars. I am not quite certain about the
date, and I want to be accurate. One was in February,
was it?

MR. DARROW: As I recall it, the last was March,
February or March.

MR. SMITH: Yes. That is right.

MR. CROME: February or March, and the one in Feb-
ruary was lost?

MR. B. C. BACHRACH: And afterwards founds.

MR. CROWE: And both were for two hundred and fifty dollars.

MR. DARROW: I think they were two hundred and fifty dollars each. I think one took the place of the other, but I am not certain.

MR. CROWE: His allowance was two hundred and fifty dollars a month, so they say. The Charlevoix bank statement shows that on March 15, 1923, he deposited \$141.55; March 25, \$125.00; May 16, \$345.00; May 31, \$300.00 — all this was in 1923 — June 28, \$683.00; July, \$171.40; July 13, \$259.00, July 16, \$108.00; July 21, \$50.00; August 27, \$155.00; August 28, \$175.00; September 6, \$300.00; September 19, \$302.75.

Where did he get it?

These are not checks for two hundred and fifty dollars from Sears Roebuck.

Then he had another account at the Hyde Park State Bank. It shows as follows on deposits:

October 1st, 1923, \$485.00

October 16, \$50.00

November 1st, \$444.50.

November 5, \$100.00,

November 16, \$100.00.

November 19, \$730.00.

November 28, \$175.00.

Business was good that month.

December 24, \$420.00.

January 24, \$400.00.

February 6th -- that is in this year-- \$425.00.

February 14, \$230.00.

March 14, \$137.00

April 16, \$350.00.

April 25, \$100.00.

May 15th -- the week before the murder -- \$536.51.

And where did he get it?

April 16, 1924, \$350.00;

April 25th, \$100.00.

That is 1924. Where did he get it?

MR. DARROW: Do you know whether any of those checks were from one to the other?

MR. CROWE: I don't know, Mr. Darrow.

MR. DARROW: It might do well to look into it.

MR. CROWE: He didn't get it from his father in those amounts and at those times.

Would A, B, C and D explain it or explain part of them, or are these moneys that he won in gambling?

May we suspend now, and I will get my stuff in shape and finish up Thursday morning.

THE COURT: We will suspend until tomorrow morning at ten thirty o'clock.

Whereupon an adjournment was here

taken to 10:30 o'clock A.M. Thursday morning, August 27th, 1934.

Thursday, August 28th, 1924.

10:30 o'clock A.M.

Court reconvened at 10:30 o'clock A.M.

Thursday, August 28th, 1924, pursuant
to adjournment heretofore taken.

Present, same as before.

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(Whereupon State's Attorney Crowe
resumed his closing argument on behalf
of the prosecution as follows):

MR. CROWE: May it please your Honor:

Before resuming my argument in this case,
and not that it has anything to do particularly with
the case at bar, I might report as State's Attorney
of this County to the Chief Justice of the Criminal
Court that last night Antone Valanis, age nineteen,
and young Lydon, sixteen, confessed to the State's
Attorney of Cook County that they murdered a woman
for sixty dollars. One of them went to the
seventh grade in the grammar school; a sister at the
age of seventeen was a prostitute and shoplifter.

When I left off last night, your Honor, I had called your attention to the fact that the defendant Loeb had in the Hyde Park State Bank and the Bank of Charlevoix a sum somewhat over three thousand dollars.

I read off the deposits, showing that in some months he deposited as high as seven, eight or nine hundred dollars, and the testimony on behalf of the defense is here that he had an allowance of two hundred and fifty dollars a month.

That can be construed as evidence either in support of the contention of the State that these men gambled for high stakes, higher than their millionaire friends could afford to gamble for, or it may be considered in support of the contention of the State that A, B, C and D were crimes committed by the defendant Loeb.

There has been testimony here that he had bonds, Liberty Bonds, and had not clipped the coupons from them for two or three years.

Well, if they were the proceeds of a robbery, that was an act of wisdom and discretion.

Now, if your honor please, in support of our contention that the motive in this case was, first, money; that the original crime planned was the crime of kidnaping; that murder was later decided upon in order to protect them from arrest and punishment, I do not intend to take up your honor's time by reviewing all the evidence independent of the statements made by these defendants to their doctor that I read to you yesterday from the Bowman-Hulbert report; but I will direct your honor's attention to the uncomfortable afternoons that they spent along the Illinois Central tracks, the number of times they threw a pad of paper from the car to see where the money would light.

I will direct your attention again to the ransom letter:

"Secure before noon today ten thousand dollars. This money must be composed entirely of old bills."

If they merely wanted to get the money and did not want to use it, what difference whether the bills were old; what difference whether they were marked

or unmarked if they did not intend to spend them?

As a final word of warning:

"This is a strictly commercial proposition".

All the way through, if your honor please, all the way through this most unusual crime runs money, money, money.

And when it is not money it is blood.

I think that we have clearly established the real motive in this case.

Mr. Darrow relies upon the facts, first he says there was no motive, second upon the youth of the defendants, and third upon their mental condition.

I strongly suspect that the real defense in this case is not any of those at all.

The real defense in this case is Clarence Darrow and his peculiar philosophy of life.

I quite agree with the senior Bachrach when he was closing that they brought in a man who was an expert on punishment to instruct your honor just what punishment you should mete out in this case.

In other words, the real defense in this

case is Clarence Darrow, and these things which he has urged upon your honor as a defense I would like to take up in detail.

As I say, I think I have covered completely and have demonstrated beyond the peradventure of a doubt that the only motive, controlling motive in this case, was money, ten thousand dollars and as much more as they could get afterwards.

Now how about their health. The only thing pathologically about Leopold is that he has a calcified pineal gland.

Our doctors, Dr. Woodyatt, said that did not mean anything, nobody knows, and nobody has testified on behalf of the defense that it did mean anything.

Glands, they tell us, do not generally calcify until you are about thirty years of age. Now some people develop earlier in life than others. I believe in Africa women are matured at nine years of age and bear children at nine or ten years of age.

Leopold has developed a little earlier than the average man. He has developed sexually

and mentally and if it means anything at all it means that he has the intellect and brain and mind of a man thirty years of age and that is all.

I read to you last night, report of Drs. Hulbert and Bowman that there was not anything pathological about Loeb except the minus seventeen of his basal metabolism.

And every doctor who took the stand said that that was within the range of normality.

That is the only thing that is abnormal, that is the only thing that is diseased, according to their evidence.

And every expert who took the stand testified that that is normal, assuming it is true.

Why, your honor, can look at them. You have looked at them. You have observed them. There is nothing the matter with them physically. There is nothing the matter with them mentally.

The only fault is the trouble with their moral sense, and that is not a defense in a criminal case.

There is Connors, twenty-two years of age,

a Cairo negro, who was sentenced July 31st for a crime of murder on a plea of guilty by Judge Hartwell, whom your honor undoubtedly knows, because he has sat in the Cook County Courts, and was the former partner of Judge Duncan of the Supreme Court.

MR. DARROW: Excuse me. Would you mind telling me who that is again?

MR. CROWE: Hess Connors, a colored boy, twenty-two years of age, sentenced on a plea of guilty in the State of Illinois, July 31st, of this year.

MR. DARROW: Not in Chicago?

MR. CROWE: Not in Chicago, no.

I submit, your honor please, if we can take the power of American manhood, take boys at eighteen years of age and send them to their death in the front line trenches of France in defense of our laws, we have an equal right to take men nineteen years of age and take their lives for violating those laws that these boys gave up their lives to defend.

Ah, many a boy eighteen years of age lies beneath the poppies in Flanders fields who died to defend the laws of this country. We had no

compunction when we did that; why should we have any compunction when we take the lives of men nineteen years of age who want to tear down and destroy the laws that these brave boys died to preserve?

We might direct your Honor's attention to what is going on over this land right at this time while this case is on trial.

Alexander Bujec, nineteen, must die in the electric chair October 17, for the murder of his thirteen year old cousin in Akron, Ohio. He was sentenced August 30th.

Mr. Darrow has referred in the case to hanging. Mr. Darrow is a student of criminology; he has written a book on it and he says the criminal age, the time when crimes are committed, is between the age of seventeen and twenty-four.

And your honor and I know that the average criminal age is twenty-two.

If we are going to punish crime and by the punishment stop it, and the criminal age is between seventeen and twenty-four, how can we punish it if

the age is a defense?

Mr. Darrow criticized Mr. Marshall for his quotations from Blackstone, and seemed to be under the impressions that we were trying to try this case under the ancient British law.

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We are trying this case, if your honor please under the statutes of the State of Illinois in the year 1934. They say that a boy between ten and fourteen may have sufficient capacity to commit a crime and be answerable for it, but it is the duty of the State to prove beyond a reasonable doubt that he has sufficient capacity.

The statute that your honor is bound to enforce in this case, and the statute under which we are trying these defendants further provides that from fourteen years of age up the law presumes that he has the capacity to commit a crime and is entirely and thoroughly responsible for it.

Let us see at what age some of these men have been hanged. Buff Higgins was ed at the age of twenty-three. Butch Lyons was twenty-five. Henry Foster, twenty-four. Albert C. Fields, twenty-four. Wi th, twenty-nine. , twenty-seven. Dan McCarty, twenty-seven. William T. Powers, twenty-three. Chris Murray, twenty-eight. John D , twenty-two. Robert Howard, thirty. Louis P. Pesant sentenced

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on a plea of guilty April 15, 1904, by Judge Kersten, was twenty-three. Peter Neidermeyer--

MR. DARROW: What happened to that case?

MR. CROWE: Twenty-three and hanged. He was hanged April 15, 1904. Peter Neidermeyer, twenty-three. Gustave Marks, twenty-one. Harvey Van Dine, twenty-one. These were not the poor sons of multi-millionaires; these were the sons of poor men, men who had no advantages in life, men who had no education, men who had been brought up in the gutter and the slums, men who did not develop intellectually at the early age that these men have developed at.

Richard Ivens, twenty-four; Andrew Williams, twenty-two; Thomas Jennings, twenty-eight; Thomas Schultz, nineteen; Frank Shiblewski, twenty-two, and his brother hanged the same day; Ewald, twenty- e; Smith, twenty-seven; Lundgren, twenty-five; Dennis Anderson, ty-one; Lloyd Bopp, twenty- e; Albert Johnson, twenty-five; Earl Dear, twenty-six; Jack O'Brien, twenty-two; Mills, twenty-one; Champion, twenty-two; r, twenty-two; Haensel, a man who

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fought for his country, who was syphilitic, who was hit in the service of his country in the head by a chain weighing a thousand pounds, and who was discharged from further service physically unfit, was hanged in Cook County at the age of twenty-seven; the little songbird from Italy, Viani, seventeen.

Brislane, twenty-seven; Sam Ferrari, twenty-six; Oscar McDavit, a colored man who thought that the Lord had appointed him to lead his ~~fx~~ race back to Africa, twenty-three; George Brown, twenty-nine; Antonio Lopez, twenty-six; Harry Ward, twenty-five; Carl Wanderer, twenty-five; Legrine, twenty-seven; Harvey Church, twenty-three; Pastoni, twenty-six; Dalton, sentenced by your honor, a colored boy, without any of the advantages that these men had, whose ancestors were slaved, only two or three generations removed from savagery in Africa, and yet he paid the penalty for the violation of the laws. Walter Krauser, sitting in the county jail, marking off the days between now and the day he hangs, twenty-one, Bernard Grant, sitting in the county jail waiting for October seventeenth, when he will pay the penalty

upon the gallows.

Oh, but Mr. Darrow says there are only six men who have been hanged on pleas in Cook County.

Now, your honor and I are familiar enough with the practice over here not to be fooled by that.

What happens when a man gets a guilty client and there is no defense?

He generally goes to the State's Attorney, and he says:

"If you will waive the death penalty I will plead guilty."

If there is in the nature of the case any mitigating circumstances, the State's Attorney says:

"Yes, we will waive the death penalty.

Let's go upstairs and plead him guilty,

and I will recommend life."

But if the case is of such a nature that the State's Attorney cannot in conscience and in law waive the extreme penalty, he says:

"No, that man has got to go to a jury".

And then sometimes they do as Walter Stanton did this summer. He went before the State's Attorney and asked

him, would he waive a the death penalty?

The State's Attorney said:

"No, this is a hanging case."

Walter Stanton then went in and stated the facts to Judge Steffen, and Judge Steffen said:

"If you plead him guilty I am going to hang him."

Walter Stanton then went before another judge, and there apparently was some misunderstanding, because he pleaded the man guilty, and when he got through the judge indicated he was going to sentence him to hang, and then Walter Stanton nearly collapsed and begged the court for God's sake to let him go to a jury.

The reason that courts do not hang any oftener than they do is because hanging cases always go to juries.

Where the attorney cannot make an agreement in advance, he says:

"Well, then, I am going to take a chance with twelve men. They can't do any worse than the court can do on a plea, and I am going to give my client a run for

"his money."

Now, your honor and I know that that is the case, and Mr. Darrows knows it is the case, and everybody who is familiar with procedure in the criminal court knows it is the case.

It is not because there is one law for the judge and another law for the jury.

It is not because juries must execute the law to the uttermost, and the court has a right to sit as a friendly father. It is a matter of fact, known to everybody, that when they cannot make an agreement with either the court or the State's Attorney, they go to juries. That is why we only have six hanged on pleas, and so many hanged on verdicts.

MR. DARROW: Judge, will it trouble you to give me that case that you said was before Kersten.

MR. CROWE: Posant.

MR. DARROW: I don't like to interrupt you. You need not look for it now, if it is too much trouble.

MR. CROWE: The first name is Louis.

MR. DARROW: When?

MR. CROWE: April 5, 1904.

MR. DARROW: Aren't you mistaken about that?

MR. CROWE: That being the situation, are we going to tell the criminal world, and Mr. Darrow says the criminal world is between seventeen and twenty-four and that the average is twenty-two, the age at which murders are committed, crimes of violence are committed, are we going to tell them that the new law introduced into the statutes of Illinois by Clarence Darrow and approved by the Chief Justice of the Criminal Court makes it perfectly safe for them to murder, or are we going to tell them that the law will be vigorously enforced?

The law, if your honor please, is made to protect the innocent, and it is made to protect the innocent by punishing the guilty and in no other way can we protect innocence or protect society.

I think, if your honor please, I have now covered the three defenses set forth by Mr. Darrow, their age, lack of motive, and physical and mental condition. When we get all through, Mr. Darrow says that your honor ought to be merciful and finally, and that is his concluding defense, he appeals to your heart and to your sympathy and not to your mind or your

conscience.

When I was listening to Mr. Darrow plead for sympathy for these two men who showed no sympathy, it reminded me of the story of Abraham Lincoln, about a young boy about their age whose parents were wealthy and he murdered both of them. He was an only child and he did it so that he might inherit their money. His crime was discovered the same as this crime has been discovered, and the court asked him for any reason he might have why sentence of death should not be passed upon him and he promptly replied, he hoped the court would be lenient to a poor orphan.

Robert Franks had a right to live.

He had a right to the society of his family and his friends and they had a right to his society. These two young law students of superior intelligence, with more intelligence than they have heart, decided that he must die. He was only fourteen. These two law students knew under the law if you had a right to take a life you had a right to take it at fourteen and they thought that they had a right to take his life, and they proceeded to take it.

Now, if your honor please, if we may take a short recess here I will gather together my papers and be able to close.

If we may take a few minutes recess --

THE COURT: We will take a five minutes recess.

Whereupon a short recess was here taken by Court and Counsel,

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Court reconvened pursuant to short recess heretofore taken.

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(Whereupon State's Attorney Crowe resumed his closing argument on behalf of the prosecution, as follows):

MR. CROWE: If your honor please:

I don't know whether I gave the age of Bernard Grant, who is sentenced to die on October 17th of this year by your confreres, Judge Hebel. Bernard Grant is nineteen years of age.

Mr. Darrow quoted considerable poetry to you and I would like to again be indulged while I read a little bit of prose.

"Crime and criminals. If I looked at jails and crime and prisoners in the way the ordinary person does, I should not speak on this subject to you."

This is an address delivered to the prisoners in the county jail, if your honor please.

"The reason I talk to you on the question of crime, its cause and cure,

"is because I really do not believe the least inclined. There is no such a thing as a crime, as the word is generally understood. I do not believe that there is any sort of distinction between the real moral condition in and out of jail.

One is just as good as the other. The people here can no more help being here than the people outside can avoid being outside. I do not believe that people are in jail because they deserve to be. They are in jail simply because they cannot avoid it, on account of circumstances which are entirely beyond their control and for which they are in no way responsible.

"I suppose a great many people on the outside would say I was doing you harm if they should hear what I have to say to you this afternoon, but you cannot be heard a great deal, anyway, so it will not matter.

The good people outside would say that I

"was really teaching you things that was calculated to injure society, but it is worth while now and then to hear something different from what you ordinarily get from preachers and the like. They will tell you that you should be good and then you will be rich and be happy. Of course we know that people don't get rich by being good, and that is the reason why so many of you people try to get rich some other way, only you don't understand how to do it quite as well as the fellow outside.

"There are people who think that everything in this world is an accident, but really there is no such thing as an accident. A great many persons feel that many of the people in jail ought to be there and many of those outside ought to be in. I think none of them ought to be here. There ought to be no jails, and if it were not for the fact that the people on the outside

"are so grasping and heartless in their dealing with the people on the inside, there would be no such institutions as jails.

"When I ride on the street cars I am held up. I pay five cents a ride for what is worth two and a half cents, simply because a body of men have been bribed -- have bribed the city council and the legislature so that all the rest of us have to pay tribute to them. If I didn't want to fall into the clutches of the gas trust and chose to burn oil instead of gas, then good Mr. Rockefeller holds me up.

"Let me see whether there is any connection between the crime of the respectable classes in your presence and the jail.

Many of you I believe are in jail because you have really committed burglary; many of you because you have stolen something within the meaning of the law; you have taken some other person's property. Some

"of you may have entered a store and carried off a pair of shoes because you did not have the price. Possibly some of you have committed murder. I cannot tell what all of you did. There are a great many people here who have done some of these things who really don't know themselves why they did them. I think I know why you did them, every one of you. You did those things because you were bound to do them. It looked to you at the time as if you had a chance to do them or not, as you saw fit, but still after all you had no choice.

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"There are many people who had some money in their pocket and still went out and got some more money in a way society forbids."

Just the same as these two defendants, while they had some money in the bank, they went out to get more money in a manner that society forbids.

"Now, you may not yourself see exactly why it was you did this, but if you look at the question deeply enough and carefully enough you will see that there were circumstances that drove you to do exactly the thing which you did.

"You could not help it any more than we outside can help take the position we will take.

"The reformers will tell you to be good and you will be happy and people who have property to protect think the only way to do is to build jails and lock you up on week days and pray for you on Sundays.

"I think all this has nothing whatever to do with right conduct. Some so-called criminals, and I will use this word because it is handy, it means nothing to me, I speak of the criminal who gets caught as distinguished from the criminal who catches them -- some of these so-called criminals are in

"jail for the first offense but nine-tenths of you are in jail because you did not have a good lawyer, and of course you did not have a good lawyer because you did not have enough money to pay a good lawyer. There is no very great danger of a rich man going to jail.

"There is a bill before the legislature of this state to punish kidnaping of children with death. We have wise members of the legislature. They know the gas trust when they see it, and they always see it. They can furnish light enough to be seen. And this legislature thinks it is going to stop kidnaping of children by making a law punishing kidnapers of children with death. "

MR. DARROW: Your Honor, I want to take exception to the reading of this. It is not in evidence. It was an address delivered twenty-five years ago.

MR. CROWE: Is it any less evidence than Omar Khayyam is evidence?

MR. DARROW: That is another thing.

MR. CROWE: Oh , certainly.

MR. DARROW: It has not any relation to my views. I have expressed my views freely in a book which Judge Crowe is fairly familiar with and has quoted here. This is simply a talk twenty-five years ago. It hasn't anything to do with this case.

THE COURT. Oh, yes. What Mr. Darrow has said or done has no bearing on this case particularly, except what he has said or done during this trial. The court will not give great consideration to any readings or lectures in any way in determining what should be done with these two young men who have pleaded guilty of this murder.

MR. CROWE: Well, if Clarence Darrow is really ashamed of his philosophy of life, something has been accomplished in this trial.

"I believe that progress is purely a question of the pleasurable units that we get out of life. The pleasures and pain theory is the only correct theory of morality and the only way

"of judging life."

That is the doctrine of Leopold. That is the doctrine expounded last Sunday in the press of Chicago by Clarence Darrow.

I want to tell you the real defense in this case, your honor.

It is Clarence Darrow's dangerous philosophy of life.

He said to your honor that he was not pleading alone for these two young men. He said he was looking to the future, that he was thinking of the ten thousand young boys that in the future would fill the chairs his clients filled, and he wants to soften the law.

He wants them treated not with the severity that the law of this State prescribes, but he wants them treated with ~~kind~~ kindness and consideration.

I want to tell your honor that it would be much better if God had not caused this crime to be disclosed. It would have been much better if it went unsolved and these men went unwhipped of

justice. It would not have done near the harm to this community as will be done if your honor, as chief justice of this great court, puts your official seal of approval ~~xxxx~~ upon the doctrines of anarchy preached by Clarence Darrow as a defense in this case.

Society can endure, the law can endure and criminals escape, but if a court such as this court should say that he believes in the doctrine of Darrow, that you ought not to hang when the law says you should, a greater blow has been struck to our institutions than by a hundred, yes, a thousand murders.

Mr. Darrow has preached in this case that one of the handicaps the defendants are under is that they are rich, the sons of multi-millionaires, I have already stated to your honor that if it was not for their wealth Darrow ~~was~~ would not be here and the Bachrach would not be here.

If it was not for their wealth we would not have been regaled by all this tommy-rot ~~but~~ by

the three wise men from the east.

I don't want to refer to this any more than Mr. Darrow did, but he referred to it and it is in evidence, and he tried to make your honor believe that somebody lied, that Gortland lied when he talked about a friendly judge.

On June 10th, 1924, in the Chicago Herald-Examiner -- that was before this case had been assigned to anybody; that was when Darrow was announcing and he did announce in this same article, that they were going to plead not guilty -- there was an article written by Mr. Slattery, sitting back there, on June 10th:

"The friendly judge resort suggested for the defense will be of no avail. It was mentioned as a possibility that a plea of guilty might be entered on the understanding it would result in life sentence. If this becomes an absolute probability, Crowe announced that he will nolle prosequere the case and reindict the slayers".

Did Gortland lie?

He gave the name of witness after witness that he told the same story to, as he told it to Slattery, before the case was even assigned.

He says that was told to him by Leopold. I don't know whether your honor --

MR. DARROW: Are you quoting from his testimony?

MR. CROWE: I am talking about his testimony.

He said it was told to him by Leopold. I don't know whether your honor believes that officer or not, but I want to tell you, if you have observed these two defendants during the trial, if you have observed the conduct of their attorneys and their families with one honorable exception, and that is the old man who sits in sackcloth and ashes and who is entitled to the sympathy of everybody, old Mr. Leopold, with that one honorable exception everybody connected with the case have laughed and sneered and jeered and if the defendant, Leopold, did not say that he would plead guilty before a friendly judge, his actions demonstrated that he thinks he has got one.

MR. DARROW: I want to take exception to this statement. It has not any place in a court of justice --

MR. CROWE: You brought it up and argued on it, and I am replying to it.

MR. DARROW: Oh, no.

MR. CROWE: But now, if your honor please, you have listened --

THE COURT: Let the reporter write up that statement, have that statement written up.

MR. CROWE: You have listened with a great deal of patience and ~~kind~~ kindness and consideration to the state and the defense. I am not going to unduly trespass upon your honor's time, and I am going to close for the State.

I believe that the facts and circumstances proven in this case demonstrate that a crime has been committed by these two defendants and that no other punishment except the extreme penalty of the law will fit, and I leave the case with you on behalf of the State of Illinois, and I ask your honor in the language of Holy Writ to "Execute justice and righteousness in the land."

(State's Attorney Crowe concluded his final argument to the Court).

MR. B. C. BACHRACH: May we go ahead with the kidnaping case now?

MR. DARROW: There are various exhibits on both sides, and I suppose we had better get them together.

MR. CROWE: I would suggest that probably we will prove up the kidnaping case --

THE COURT: While the court is in session, I want all the exhibits brought in.

MR. CROWE: Is Mr. Savage here?

THE COURT: Impound them, Mr. Clerk.

MR. SAVAGE: I have turned over the exhibits that you asked for. If there are any others --

THE COURT: That is all?

MR. SAVAGE: I have turned those over.

THE COURT: This statement --

MR. CROWE: Some exhibits are in here that he wants.

MR. SAVAGE: Oh, the letter --

MR. CROWE: Do you care for the letter? That has been read a dozen times. I will turn it over to you. We will introduce it in the kidnaping case.

Will Captain Shoemaker and Mr. Franks step forward.

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UPON THE KIDNAPING
CASE WAS PROCEEDED WITH
AS FOLLOWS:

THE COURT: We are all ready. Swear the
witnesses, Mr. Clerk.

(Whereupon Captain Schoemaker
and Mr. Jacob Franks were
sworn)

MR. B.C. BACHRACH: Can you give the number
of the case?

THE C : Number 33624.

MR. CROWE: This is the case of kidnaping
for ransom against the two defen- ts, Leopold
and Loeb.

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J A C O B F R A N K S

a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N

B Y M R . C R O W E .

M R . C R O W E : Q Your name is Jacob Franks?

A Yes.

Q You live in the city of Chicago?

A Yes.

Q You had a son, Robert Franks?

A Yes.

Q When was the last time you saw him alive?

A Twenty-first of May, 1924.

Q That was in Cook County, Illinois?

A Yes.

Q That was at your home?

A Yes.

Q And he disappeared that day, May 21st?

A Yes.

Q the next day his body was found out in the country at One Hundred and Eighteenth street, near the Panhandle Railroad?

A Yes.

3m

Q In the city of Chicago?

A Yes.

Q Did you have a telephone conversation with anybody purporting to be George Johnson?

A Yes.

Q What time was it on the 21st of May, 1924, you had that telephone conversation?

A The conversation I had was on the 23rd.

Q On the Twenty-second?

A The 21st was with my wife.

Q On the Twenty-second you had a conversation?

A Yes.

Q What was that?

A Directing me, following the letter, about the money, to the drug store on Sixty-third street, and they were sending a Yellow for me, and for me to get in right away.

Q And that was in Chicago, Cook County, Illinois?

A Yes.

Q And you did not go because you knew at that time that your son had been killed?

A Yes.

4m Q Did you get a letter before that telephone conversation?

A That morning.

Q I will show you an envelope addressed to Mr. Jacob Franks, 5052 Ellis Avenue, City, Special, with six two-cent stamps on it, and postmarked May Twenty-first, 1:00 A.M. 1924, Chicago, and will ask you if the letter came in that envelope?

A Yes.

MR. CROWE: I will ask that that envelope be marked People's Exhibit One.

(Which was accordingly done.)

MR. CROWE: Q And in that there was a letter?

A Yes.

Q I show you a letter which reads as follows:

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MR. CROWE: I am showing him now a typewritten letter which reads as follows:

"Dear Sir:

As you no doubt know by this time, your son has been kidnaped. You need fear no physical harm for him, provided you live up carefully to the following instructions, and such others as you will receive by future communications. Should you, however, disobey any of our instructions even slightly, his death will be the penalty.

"1. For obvious reasons, make absolutely no attempt to communicate with either the police authorities or any private agency. Should you already have communicated with the police, allow them to continue their investigations, but do not mention this letter.

"2. Secure before noon today ten thousand dollars (\$10,000.00). This money

"must be composed entirely of old bills of the following denominations:

"\$2,000.00 in twenty dollar bills.

"\$8,000.00 in fifty dollar bills.

"The money must be old. Any attempt to include new or marked bills will render the entire venture futile.

"3. The money should be placed in a large cigar box, or if this is impossible, in a heavy cardboard box, securely closed and wrapped in white paper. The wrapping paper should be sealed at all openings with sealing wax.

"4. Have the money with you prepared as directed above and remain at home after one o'clock P.M. See that the telephone is not in use.

"You will receive a future communication instructing you as to your future course.

" As a final word of warning -- this is a strictly commercial proposition, and we

"are prepared to put our threat into execution, should we have reasonable grounds to believe that you have committed an infraction of the above instructions. However, should you carefully follow out our instructions to the letter, we can assure you that your son will be safely returned to you within six hours of our receipt of the money.

Yours truly,

George Johnson."

MR. CROWE: I will ask to have those two exhibits marked as People's Exhibits, the first page People's Exhibit 3, and the second page as People's Exhibit 3. Will you mark them there?

(Whereupon the said documents were duly marked as above directed).

MR. CROWE: And I am offering them in ~~as~~ evidence. Is there any objection?

MR. B. C. BACHRACH: No objection.

MR. CROWE: I will put them back in this folder for you, Judge.

THE COURT: Very well.

MR. CROWE: I think that is all. How old was your boy?

THE WITNESS: Fourteen.

MR. B. C. BACHRACH: How old did he say?

THE WITNESS: Fourteen.

MR. CROWE: Q Where did you live in Chicago?

A 5052 Ellis Avenue.

Q Your boy lived with you and he was a student at School?

A Yes, at Harvard.

Q You got the money and had the money ready?

A yes sir.

Q When you found that your son's dead body had been found?

A yes sir.

Q That is all.

And you are Jacob Franks, the father of the boy who was kidnaped and later killed?

A Yes sir.

MR. CROWE: I think that is all.

W I L L I A M S H O E M A K E R ,

a witness called on behalf of the prosecution, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CROWE.

MR. CROWE: Q Will you state your name, please?

A William Shoemaker.

Q Where do you live?

A 6237 North Oak park.

Q You are a Captain of the police, are you?

A Yes sir.

Q And were you in May of this year, 1924?

A Yes sir.

Q I will ask you whether you know the defendant,
Nathan Leopold, Jr.?

A Yes sir.

Q Do you know the defendant, Richard Loeb?

A Yes sir.

Q Did you have a talk with Nathan Leopold, Jr.
the defendant in this case, in reference to the

kidnaping of Robert Franks on May 31st, 1924 of this year?

A I had a conversation with him, but not on that day; but it was on the kidnaping of that day.

Q In reference to it?

A Yes.

Q When was this conversation held?

A The morning of May 31st.

Q What did he tell you he had to do if anything with this kidnaping and the subsequent killing?

A He said he was with Richard Loeb --

Q Don't go into all the details; did he say that he had anything to do with the kidnaping?

A yes.

Q What did he say?

A He said that he drove the car and he --

Q What I am trying to get at to shorten it, is this:

Did he say --

MR. B. C. BACHRACH: That is a leading question.

MR. CROWE: Q That he and Loeb kidnaped this boy?

A Yes, they took the boy away in an automobile, and later wrote a letter that same night of May the

21st, to the father of the kidnaped boy.

Q Well, they admitted they kidnaped him?

A Yes sir.

Q Did they tell you what they kidnaped him for?

A They wanted ten thousand dollars.

Q They kidnaped him for ten thousand dollars?

A Yes.

Q And that happened where, in what city?

A In Chicago, Cook County, Illinois.

Q In Chicago, Cook County, Illinois. And did they tell you who killed him?

A Well --

Q Well, as to whether they did or not?

A They said they did it, yes.

MR. CROWE: Have you anything further?

MR. BACHRACH: No.

MR. CROWE: Now, if your honor please, your honor has spent considerable time listening to the evidence in the murder case. This would be exactly the same as the one at bar, and I assume the defense would be the same.

MR. B. C. BACHRACH: It would be the same, and we

ask the Court to consider all this evidence in the murder case, in the kidnaping case, that was given here.

MR. CROWE: Yes, consider all the evidence in the murder case in the kidnaping case.

THE COURT: Do you care to argue it?

MR. B. C. BACHRACH: No argument.

MR. CROWE: And the State will waive argument and consider the argument made by both sides in the murder case as if made in this case.

THE COURT: Anything further?

MR. CROWE: The State rests.

THE COURT: Before the State rests in the other case, the court will order stricken from the record the closing remarks of the State's Attorney as being a cowardly and dastardly assault upon the integrity of this court.

MR. CROWE: It was not so intended, your honor.

THE COURT: And it could not be used for any other purpose except to incite a mob and to try and intimidate this court. It will be stricken from the record.

MR. CROWE: If your honor please, the State's Attorney

had no such intention.

THE COURT: We will go on --

MR. CROWE: I merely want to put my personal feelings plainly before the court, it was not the intention of the State's Attorney.

THE COURT: The State's Attorney knew that would be heralded all through this country and all over this world, and he knows the court hasn't an opportunity except to do what he did. It was not the proper thing to do.

MR. CROWE: It was not the intention.

THE COURT: This court will not be intimidated by anybody at any time or place as long as he occupies this position.

Now, in ~~xxx~~ order to fix the date that I will set this case, gentlemen, I want to say there has been a great deal of criticism about the conduct of this case; some of it from well-meaning people who knew no better; others from those who should know better.

We have been criticized about the delays of justice. The court has been criticized because

After a plea of guilty he permitted evidence to be heard, and we have been criticized because of the length of time it takes for an execution after the court passes judgment.

Permit me to say with reference to the delays of justice, that this trial is one of the speediest trials of a criminal case ever heard in Cook County in which the State asked the death penalty.

And this could not have been done if it had not been for the able manner in which the State's Attorney of this County investigated and prepared his case and was ready to go to trial when called.

The defense are to be commended because they made no attempt to delay the trial.

The murder was committed on May 21st, exactly two months before the trial started. The defendants were arrested on May 31st, ten days after the murder, indicted within a short time thereafter, and within six weeks of the day of the indictment this case was on trial.

So that it cannot be truthfully said that their wealth or poverty had anything to do with the

delay in this case, because there was no delay.

There were thirty-four murder indictments returned for murders committed in 1924, between January 1st and May 31st, that have not yet been tried; and twenty of them are held without bail in the county jail of Cook County.

To those who criticize the court for listening to testimony after the defendants pleaded guilty, permit me to call their attention to a section of the statute and to the ruling of the Supreme Court thereon. The Supreme Court has said:

"That part of Section 4 of Division 13 of the Criminal Code making it the duty of the Court to examine witnesses as to the aggravation and mitigation of the offense in cases where the party pleads guilty, is mandatory and not discretionary, and it is necessary for the Court to make such examination when requested or desired either on the part of the People or of the Defendant. It would be reversible error not to do so."

As to those who criticize our courts for the delay in execution after judgment, this is because they have been reciting here that in England or some other place they executed them within ten days, I would respectfully call their attention to Section 749, Chapter 38, of our revised statute, which says:

"When a defendant is sentenced to death, the date set shall not occur before the 10th day of the term of the Supreme Court occurring next after the pronouncing of the judgment."

So that any defendant who was sentenced to death in this county since the date of the indictment of the two defendants in this case, could not be executed before the 17th day of October next, which is the 10th day of the next term of the Supreme Court following the June term.

A person sentenced to death in the middle of June could not be legally executed sooner than a person sentenced to death between then and October 2nd.

I am going to take this case under advise-

ment, gentlemen.

I have nineteen hundred and fifty odd pages, practically two thousand pages of exhibits. When I say exhibits, it is part of the testimony; it is the Bowman-Hulbert report; parts of the confession; some of the testimony that was read in secret that contained matter that was not fit for publication and should not be heard in the courtroom, and it will take me some little time to do that, and to prepare to decide this matter and render judgment in this case.

I think I ought to have ten days or so, and I will fix the day at September 10th.

I will fix the day as September the 10th, at 9:30 o'clock, and I will say to those people who are here now that there will be nobody admitted in this room on that day, except members of the press and members of the family and sheriffs and the State's Attorney's staff.

If anything occurs whereby I could not be in a position or cannot be in a position to render it on that day, I will notify the press and the au-

thorities at least three days in advance. But there will nothing deter me from rendering judgment on that day, gentlemen, unless it is illness.

We will continue this case now until September the 10th at nine thirty o'clock.

MR. B. C. BACHRACH: Both cases, your honor?

THE COURT: Both cases.

Judgment will be rendered in both cases at one time.

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(After the defendants had retired and the court room cleared, the following colloquy took place between the court and counsel):

MR. DARROW: I want those papers of Gortland. You know, his minutes, Gortland's minutes in reference to this, that were impounded. I want the court to have those.

THE COURT: Yes.

MR. SAVAGE: I will get them back, judge. I am sure I gave them back. There is nothing in the case I didn't give back to the court, I don't believe.

MR. DARROW: I know, but I want your honor to have it before you. That report is all right.

MR. SAVAGE: Yes.

MR. D W: Outside of that there is our list of executions, your honor. Judge Crowe said the one of April 15th, 1904, which I have marked there, was a plea.

MR. SAVAGE: Did you look it up in the clerk's office?

MR. DARROW: We have not done it.

MR. SAVAGE: Their records are wrong, if I am not mis-

2m taken about that particular case, judge.

MR. DARROW: It may be you are right.

MR. SAVAGE: We had three cases down there that we checked back where it showed the verdicts were in reality pleas.

MR. DARROW: Otherwise everything is correct, here, but I made a memorandum of that. I think it is right there, is it not?

THE COURT: Yes.

MR. DARROW: So if your honor cares for it you can have it. That was the fellow Twenty-three years old. Otherwise there is no dispute between us now.

MR. SAVAGE: No.

MR. DARROW: Quinlan made that for me and he knows the job well.

MR. SAVAGE: He copied it from the records, but the records are wrong in three instances.

MR. DARROW: But I didn't want your honor to think we were contending they were absolutely correct, because there might be a mistake there. There is a list of the executions in this county. One sentenced to death on a plea. Here are the proofs. Is there any-

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thing more?

MR. B.C.BA OH: The other things impounded with the clerk, are those available?

MR. DARROW: Gortland's? Is that with the clerk?

MR. SAVAGE: I think his papers are, if I am not mistaken.

THE COURT: Whose?

MR. SAVAGE: Gortland's papers.

THE COURT: Oh, I remember Gortland's testimony; it would not make any difference.

MR. DARROW: I just wanted your honor to have his reports before you.

THE COURT: I remember his testimony.

MR. D OW: If you say you don't need it, I am satisfied.

MR. SAVAGE: And the report to the chief, there is nothing in that.

COURT: He stated there is nothing in that. He said the first time he told it to Genevieve Forbes.

MR. SAVAGE: To Genevieve Forbes, yes.

THE COURT: And then he told it to Mr. Crowe, the

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night before--

MR. SAVAGE: That is right, the night after he made his opening statement.

THE COURT: Well, what would that have to do with me on the question of the punishment in this case, whether Gortland lied or did not lie? What has that got to do with it?

MR. SAVAGE: Is there anything else in question here, your honor?

THE COURT: That is all.

MR. SAVAGE: If there is, judge, I will get it for you.

THE COURT: I don't know anything more that I want. If I do, I will call for you.

MR. SAVAGE: Very well, your honor.

Whereupon an adjournment
was here taken to Wednes-
day, September 10th, 1924,
at 9:30 o'clock A.M.

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